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 The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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

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NOTICE SECTION

**BEFORE THE DEPARTMENT OF FISH, WILDLIFE AND PARKS
OF THE STATE OF MONTANA**

In the matter of the adoption of new rules I and II, the amendment of ARM 12.10.103, 12.10.104, 12.10.105, and 12.10.106, and the repeal of ARM 12.10.101 pertaining to shooting range development grants	)	NOTICE OF PROPOSED ADOPTION, AMENDMENT AND REPEAL NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On July 30, 2003, the Department of Fish, Wildlife and Parks (department) proposes to adopt new rules I and II, amend ARM 12.10.103, 12.10.104, 12.10.105, and 12.10.106 and repeal ARM 12.10.101 pertaining to shooting range development grants.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the department no later then 5:00 p.m. on July 9, 2003, to advise us of the nature of the accommodation that you need. Please contact Kurt Cunningham, 1420 East Sixth Avenue, Helena, MT 59620; telephone (406) 444-1267; fax (406) 444-4952.

3. The proposed new rules provide as follows:

NEW RULE I REQUIRED INFORMATION FOR GRANT APPLICATIONS

(1) Each shooting range grant application must contain a comprehensive description of the proposed project. The information presented in the description will be used by the department to review, evaluate, and prioritize applications. The description must provide:

(a) statement of need and benefit for the proposed project, including:

(i) plans to enhance safety;

(ii) hunter education;

(iii) access by persons with disabilities;

(iv) use by a variety of shooters (archery, shotgun, rifle, pistol); and

(v) availability to the public;

(b) work to be completed, including:

(i) a calendar with completion dates, budget (including cost estimates and in-kind contributions); and

(c) site plan (within the property boundary) for the proposed project, including:

(i) location of proposed work/facilities;

(ii) existing development/facilities;

(iii) north orientation arrow;

(iv) access route(s) to the project;

(v) safety zones and impact areas; and

(vi) current photographs of the proposed project area.

(2) The applicant must submit satisfactory documentation of a long-term lease, easement, or ownership of the land where the project is proposed. Long-term leases are those with terms of 10 years or more with option for renewal. Lease with terms of less than 10 years may qualify only under special circumstances.

AUTH: 87-1-278, 87-1-279, MCA
IMP: 87-1-278, 87-1-279, MCA

REASON: Until this rulemaking, most of the information contained in this rule was incorporated in ARM 12.10.103 which outlined both the procedure for applying for a shooting range grant and the information needed in the application. Having all this information in one rule made it long and unwieldy. Additionally, after gaining experience with the shooting range grant program, the department found that some of the application information required in ARM 12.10.103 was not necessary. The department is amending ARM 12.10.103 by removing the part of the rule describing what information is required for grant applications and forming new rule I. Application information needed by the department was updated and integrated into the new rule.

NEW RULE II GRANT PRIORITY (1) As long as funds are sufficient to allocate grants to all eligible applicants, grants will be allocated on a first come, first served basis.

(2) When the department receives more eligible applications for grants than funds are available, the department may include, but is not limited to, the following criteria to disperse funds and approve grants:

(a) needs of the community determined by distance to existing shooting ranges, and/or annual club membership/range use;

(b) population of the county compared with numbers of shooting ranges allowing public use within the county;

(c) disabled accessibility improved to existing shooting range as a result of the project;

(d) types of firearms and archery equipment that can be used at the proposed project;

(e) range safety improved as a result of the proposed project; and

(f) impacts to the human environment.

AUTH: 87-1-279, MCA
IMP: 87-1-277, 87-1-278, 87-1-279, MCA

REASON: HB 389, 1999 Legislative Session, states that the department shall prioritize shooting range grant applications according to those that provide facilities for the greatest number of shooters. The bill also directs the department to establish other criteria to prioritize grant

applications. New rule II sets out the department's rationale for distributing grants when applicants exceed available funding. New rule II also helps applicants in knowing what features in a shooting range proposal are considered of highest benefit to communities and in the project evaluating process. These criteria are intended to prompt project sponsors to consider a broad spectrum of users and need in the community, as well as facilities, and need already available in neighboring communities.

4. The rules as proposed to be amended provide as follows:

12.10.103 ~~REQUIRED INFORMATION FOR~~ GRANT APPLICATIONS~~S~~ PROCEDURE (1) To apply for a shooting range development grant, an applicant must prepare and submit a completed application to the department's conservation education division in Helena. For questions and assistance ~~call (406) 444-4046~~ contact:

Department of Fish, Wildlife and Parks
Conservation Education Division
1420 East Sixth Avenue
P.O. Box 200701
Helena, MT 59620
Phone (406) 444-3188

(2) Applications are reviewed throughout the biennium as long as funds are available.

~~(3) The following information must accompany a grant request. Incomplete applications will result in delays or the denial of the application.~~

~~(a) Each shooting range grant application must contain a comprehensive description of the proposed project. The information presented in the description will be used by the department to review, evaluate and prioritize applications. The description must provide:~~

~~(i) a detailed design description; including construction plans for storage and maintenance structures. A description of activities and design features that conserve water, energy, soils, vegetation, sanitation or other natural resources. The description should cover all major aspects of the proposed project.~~

~~(ii) a description of the need for the proposed project. Also, describe how the project will enhance safety, hunter education and public use in the area.~~

~~(iii) a list of the work needed to be completed, including a schedule showing completion dates for project segments and cost estimates for each segment.~~

~~(iv) one copy of the site plan for the proposed project, including plans for access by persons with disabilities and plans for use by a variety of users. The site plan must show:~~

~~(A) location of proposed work/facilities;~~
~~(B) existing development/facilities;~~
~~(C) north orientation arrow;~~
~~(D) access route(s) to the project;~~
~~(E) safety zones and impact areas;~~

~~(F) how beams, canopies or impact areas ensure safety.~~

~~(v) current photographs of the proposed project area.~~

~~(vi) a map showing the location of the proposed project. The map must show surrounding land ownership, surrounding development, and the location of the proposed project, including road access. For the land that adjoins the project land, identify the historical and current use(s).~~

~~(b) If the applicant controls the land where the project is proposed, the applicant must submit satisfactory documentation of a long-term lease, easement or ownership. Long-term leases are those with terms of 20 years or more. Leases with terms of less than 20 years may qualify only under special circumstances. If the applicant does not control the land, the applicant must provide written documentation from the landowner that the property may be used as a shooting range.~~

~~(c) Documentation that the applicant offered the public an opportunity to participate in the planning process for the project. At a minimum, the applicant must advertise and hold a public meeting to receive comment before submitting an application. Proof that this meeting was held must be included with the application.~~

~~(d) The applicant must submit a commitment to allow future public and hunter education use of the project facilities and documentation of past public and hunter education program use. Hunter/bowhunter education classes must be allowed to use the facility upon request at no charge. The public may be charged a reasonable fee to use the facilities. The department will determine whether the proposed fee is reasonable.~~

~~(e) The applicant must submit a commitment to allow the public to use the range facility, including times when club members are using the range. The project may be closed to the public for club competition events.~~

~~(f)~~ (3) If the applicant is a private club or organization, the ~~The~~ applicant must submit a club or organization resolution that approves the application for financial assistance, the project proposal, the commitment to allow public and hunter education program use of the facilities, and certifies the applicant's ability to provide matching funds or in-kind contributions.

~~(g) The applicant must submit assurances that the applicant will comply with state and federal regulations as specified by the department.~~

(4) Applicants receiving preliminary approval must enter into a shooting range development project agreement with the department before the department gives final approval and disburses grant funds. The agreement shall delineate the terms the applicant must abide by under applicable statutes, administrative rules, and state and department policy. Department final approval of an agreement is contingent upon the EA decision notice.

AUTH: 87-1-201, 87-1-279, MCA

IMP: 87-1-201, 87-1-278, 87-1-279, 87-2-105, MCA

REASON: HB 389 directed the department to develop a simple application process for shooting range grants. The department is removing the outdated material from this rule to update the grant application process. Section (1) was modified to include the department headquarters address and general information phone number to better serve the public in their requests. Individual department staff and corresponding phone numbers may change, but receptionists can refer callers to the appropriate personnel to answer grant questions. Subsections (3)(a) and (3)(b) describe information needed on grant applications and have been integrated into new rule I. Subsection (3)(c) is no longer needed as the department has determined that most shooting range projects require an environmental assessment and public participation can take place during this process. The department is removing subsections (3)(d) and (3)(e) as it does not need the commitments referred to since the shooting range development project agreement can be amended to include these provisions and the new provisions required under 87-1-278, MCA. Including these provisions in the project agreement will simplify the grant process by lessening the number of forms that an applicant will need to submit to the department.

The department no longer needs the written assurances referred to in (3)(g) as federal money is not currently being used for the grants and state provisions can be incorporated into the project agreement. If federal money is used in the future, these assurances will be made part of the project agreement.

12.10.104 REIMBURSEMENT OF COSTS (1) All billing on a proposed project must be completed by June 30 of each year.

(2) Reimbursement requests will be based upon actual costs or in-kind contributions, verified by receipts and documentation that the work was completed.

AUTH: 87-1-279, MCA
IMP: 87-1-276, 87-1-277, 87-1-278, 87-1-279, MCA

REASON: This rule was amended to conform with HB 389, 1999 Legislative Session, and to conform with practices that the department has found work well in administering the program.

12.10.105 LAND ACQUISITION (1) Shooting range grant funds may be used to purchase public or private land for the purpose of a shooting range. Fee title or an equitable interest in the land ~~to the land~~ must be held by the applicant. The applicant must provide evidence that other adequate land is not available for lease. A copy of the purchase agreement, an appraisal from a qualified appraiser and a commitment for title insurance must be ~~submitted at the time of application~~ submitted prior to dispersal of grant

funds. If funding is provided for the purchase of land, the department must be listed ~~on the title for a period of 10 years~~ as a reversionary interest on the property title. Section 87-1-278, MCA, sets forth the conditions that trigger a diversionary interest. Funding assistance will be provided at a maximum ~~70 percent~~ 50% state, ~~30 percent~~ 50% applicant matching basis, not to exceed ~~$25,000~~ 30% of available program funds for the state share.

AUTH: 87-1-279, MCA
IMP: 87-1-276, 87-1-277, 87-1-278, 87-1-279, MCA

REASON: This rule was amended to conform with HB 389, 1999 Legislative Session.

12.10.106 ~~PROGRESS REPORTS AND~~ INSPECTIONS (1) ~~If funding is provided, quarterly progress reports must be submitted to the department.~~ The department may conduct periodic on-site inspections.

~~(2) All work and billing must be completed by June 10 1993, and a report submitted to the department.~~

~~(3) Photographs showing completed work must accompany other submitted documentation.~~

~~(4)~~ (2) Project sites will be subject to inspection by the department for 10 years following receipt of a shooting range development grant.

(3) Upon completion of the work, the applicant must submit photographs of the completed project.

AUTH: 87-1-279, MCA
IMP: 87-1-276, 87-1-277, 87-1-278, 87-1-279, MCA

REASON: After gaining experience administering the shooting range grant program, the department decided that periodic inspections/consultations would achieve the goals of the program and be less cumbersome than quarterly reports. Other material deleted from this rule is not necessary as it is included in the amendments to ARM 12.10.104.

5. ARM 12.10.101 ELIGIBILITY, the rule proposed to be repealed, is on page 12-1007 of the Administrative Rules of Montana.

AUTH: 87-1-201, MCA
IMP: 87-1-201, 87-2-105, MCA

REASON: The 1999 Legislature passed HB 389, codified at 87-1-276 through 87-1-279, MCA, which address what entities are eligible for shooting range grants. These statutes make ARM 12.10.101 redundant.

6. Concerned persons may submit their data, views or arguments concerning proposed new and amended rules in writing to Kurt Cunningham, 1420 East Sixth Ave., P.O. Box 200701,

Helena, MT 59620-0701, or email them to kcunningham@state.mt.us. Any comments must be received no later than July 25, 2003.

7. If persons who are directly affected by the proposed adoption, amendment and repeal 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 Kurt Cunningham, 1420 East Sixth Ave., P.O. Box 200701, Helena, MT 59620-0701. A written request for hearing must be received no later than July 25, 2003.

8. If the department receives requests for a public hearing on the proposed actions from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed actions; from the appropriate administrative rule review committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 340 persons based on an estimated amount of 3,400 people who use shooting ranges.

9. The department maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by this department. Persons who wish to have their name added to the list shall make written request which includes the name and mailing address of the person to receive the notice and specifies the subject or subjects about which the person wishes to receive notice. Such written request may be mailed or delivered to Fish, Wildlife and Parks, Legal Unit, P.O. Box 200701, 1420 East Sixth Avenue, Helena, MT 59620-0701, faxed to the office at (406) 444-7456, or may be made by completing the request form at any rules hearing held by the department.

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

BY: /s/ Larry Peterman
Larry Peterman,
Chief of Field Operations
Department of Fish, Wildlife
and Parks

BY: /s/ Martha C. Williams
Martha C. Williams
Rule Reviewer

Certified to Secretary of State June 16, 2003

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

In the matter of the repeal of ARM 12.9.203 pertaining to the abandonment of the Green Meadow Game Preserve	))))	NOTICE OF PROPOSED REPEAL NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On August 7, 2003, the Fish, Wildlife and Parks Commission (commission) proposes to repeal ARM 12.9.203 pertaining to the abandonment of the Green Meadow Game Preserve.

2. The commission will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m. on July 9, 2003, to advise us of the nature of the accommodation that you need. Please contact Michael Korn, Fish, Wildlife and Parks Helena Area Resource Office, 930 Custer Ave. W., P.O. Box 200701, Helena, MT 59620-0701; telephone (406) 495-3269; fax (406) 495-3273.

3. ARM 12.9.203, the rule proposed to be repealed, is on page 12-612 of the Administrative Rules of Montana.

AUTH: 87-5-402(3), MCA
IMP: 87-1-301, 87-1-305, 87-5-403, MCA

4. The Green Meadow Game Preserve, west of Helena, was created in 1934 in concert with the wildlife management philosophy of that era. In 1997 the commission received citizen requests to abandon the preserve. The commission conducted a public hearing process in contemplation of permanently abandoning the Green Meadow Game Preserve on the grounds that it was no longer needed due to substantial residential development within the boundaries of the preserve which resulted in the firearms restrictions applicable to game preserves under 87-5-401, MCA, to be burdensome and unenforceable and that the game preserve was no longer considered an appropriate or necessary tool for the management or enhancement of wildlife. On August 6, 1999, the commission voted to abandon the preserve, effective March 1, 2002. The commission minutes reflect that most citizen comments addressing the abandonment of the preserve did not show concern for the preserve itself but manifested residents' fears of shooting in the area if the preserve was abandoned. The commission believed that the concern over shooting in the area should be addressed by county ordinance and delayed abandoning the preserve until March 1, 2002, to give Lewis and Clark County time to study the issue and decide how to act on

area residents' concerns. The two year period has elapsed, and the commission deems it appropriate to entirely do away with and abandon the preserve without further public process.

5. Concerned persons may submit their data, views or arguments concerning the proposed repeal in writing to Michael Korn, Helena Area Coordinator, 930 Custer Ave. W., P.O. Box 200701, Helena, MT 59620-0701, or email them to mkorn@state.mt.us. Any comments must be received no later than July 25, 2003.

6. If persons who are directly affected by the proposed repeal wish to express their data, views and arguments orally or in writing at a public hearing, they must make written request for and submit this request along with any written comments they have to Michael Korn, Helena Area Coordinator, 930 Custer Ave. W., P.O. Box 200701, Helena, MT 59620-0701. A written request for a hearing must be received no later than July 25, 2003.

7. If the commission receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the appropriate administrative rule review committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 250 based on the residents in the area and the approximate number of users of the area.

8. The department maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by this department or commission. Persons who wish to have their name added to the list shall make written request which includes the name and mailing address of the person to receive the notice and specifies the subject or subjects about which the person wishes to receive notice. Such written request may be mailed or delivered to Fish, Wildlife and Parks, Legal Unit, P.O. Box 200701, 1420 East Sixth Avenue, Helena, MT 59620-0701, faxed to the office at (406) 444-7456, or may be made be completing the request form at any rules hearing held by the department.

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

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

By: /s/ Robert N. Lane
Robert N. Lane
Rule Reviewer

Certified to the Secretary of State June 16, 2003

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

In the matter of the amendment of ARM 17.38.602 and 17.38.603 pertaining to definitions and enforcement procedures	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT (PUBLIC WATER AND SEWAGE SYSTEM REQUIREMENTS)

TO: All Concerned Persons

1. On July 31, 2003 at 1:00 p.m., the Board of Environmental Review will hold a public hearing in Room 35 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Board will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board no later than 5:00 p.m., July 21, 2003, to advise us of the nature of the accommodation that you need. Please contact the Board Secretary at P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2544; fax (406) 444-4386; or email ber@state.mt.us.

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

17.38.602 DEFINITIONS Unless the context clearly states otherwise, the following definitions, in addition to those in 75-6-102, MCA, and ARM 17.38.202 apply throughout this subchapter.

(1) through (8) remain the same.

~~(9) "Notice of violation" or "NOV" means a notice that a violation exists and includes an order directing the person to respond.~~

~~(10)~~ (9) "Order" means a written direction issued by the department to a person to take an action or series of actions to comply with a provision of the act or rules implementing the act ~~found at ARM Title 17, chapter 38, subchapters 1 and 2~~, within a time established under the order and which may include a penalty assessment. ~~It also means any consent order issued pursuant to this subchapter.~~

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

~~(12)~~ (11) "~~Warning~~ Violation letter" means a letter ~~notifying~~ sent by the department pursuant to 75-6-110(2), MCA, to notify ~~a~~ persons that they are in violation of the act, rules implementing the act, a condition of approval, or an order of the department, and to describe the actions and a timetable necessary to return to compliance. A violation letter does not constitute a final action by the department and does not create a right to a contested case appeal.

AUTH: 75-6-103, MCA
IMP: 75-6-109, MCA

REASON: The proposed amendments to ARM 17.38.602 are necessary to update and clarify certain definitions. The proposed amendment to delete ARM 17.38.602(9) "notice of violation" or "NOV" is necessary to eliminate confusion with a notice letter, and because a NOV is not a separate administrative enforcement document but is typically part of an order.

The proposed amendment to ARM 17.38.602(10) "order" is necessary to clarify and explain that an order is issued by the department and to delete a redundant portion of the definition that states "an order also means a consent order," since consent order is already defined in ARM 17.38.602(4).

The proposed amendment to ARM 17.38.602(12) is necessary to change "warning letter" to "violation letter" to coincide with existing department terminology. Language is added to the definition to clarify that a violation letter must explain what action is necessary to return to compliance and to clarify that a violation letter does not create a right to an administrative appeal.

17.38.603 ENFORCEMENT PROCEDURES (1) Administrative enforcement under this subchapter encourages progressive enforcement from an initial enforcement response, such as a written or ~~verbal~~ oral communication, through optional follow-up or additional enforcement actions. The initial administrative enforcement action taken will be determined according to the following criteria:

~~(a) A Class I violation may be responded to by the issuance of a notice of violation (NOV) and order for immediate corrective action and may include a penalty. An NOV and order issued pursuant to this subsection, which includes penalties, must be signed by the director or designee.~~

~~(b) Those violations determined by the department to be Class II violations require the issuance of a warning letter prior to the issuance of any NOV and order or consent order under this subchapter. Any NOV and order or consent order issued after failure of the recipient to respond to a warning letter may include administrative penalties.~~

~~(c) Failure to comply with the terms of an order or consent order may be followed by an increased administrative penalty assessment or a judicial action for penalties as provided by law.~~

~~(d) Except for Class I violations, the issuance of a warning letter must precede an imposition of penalties and must identify violations, require appropriate corrective measures within a specified time period, and give notice that the violation may result in the assessment of administrative penalties if:~~

~~(i) there is a failure to take corrective action within the time specified in the letter, or~~

~~(ii) the same or similar violation occurs within 12 months of the date of the warning letter.~~

(a) unless the violation represents an imminent threat to human health, safety, or welfare or to the environment, or is a Class I violation, the department shall first send a violation letter, pursuant to 75-6-110(2), MCA, prior to initiating an administrative enforcement action under this rule;

(b) the department may respond to a Class I violation or a violation that represents an imminent threat to human health, safety, or welfare or to the environment, by issuing an order in lieu of a violation letter;

(c) if a person fails to comply with the compliance requirements or schedule specified in a violation letter, the department may respond by issuing an order.

(2) Orders under this subchapter may include, but are not limited to, the following requirements or conditions:

(a) that the existing public water supply or sewage system be repaired or modified;

(b) and (c) remain the same.

(d) that no additional service connections be made to the public water supply or sewage system;

(e) that the public water supply or sewage system ~~be monitored as required by ARM Title 17, chapter 38, subchapter 2~~ conduct monitoring and reporting;

(f) that a report concerning the condition and operation of the ~~plant, works, system, or~~ public water supply or sewage system ~~required by ARM 17.38.217~~ be submitted to the department;

(g) that ~~project reports, construction documents, and construction report forms~~ maps, design reports, plans and specifications required by ARM 17.38.101 be submitted to the department;

(h) remains the same.

(i) that ~~construction cease and that~~ any commencement or continued construction, alteration, extension or operation ~~further use~~ of the public water supply ~~system, public~~ or sewage system~~, or improvements to those systems~~ be halted until all written approvals or fees required by statute or rule are obtained;

(j) that activities be conducted to prevent or remove a source of pollution from a place that will cause pollution of a public water supply system or of state water used for domestic purposes; ~~and~~

(k) that public notification be given as specified by rule or order~~.~~; and

(l) that the public water supply or sewage system retain a certified operator in accordance with Title 37, chapter 42, MCA.

(3) ~~Judicial action may be taken for failure to comply with any term or condition of an order issued under this subchapter. The judicial action may be criminal or civil.~~ The provisions of this subchapter do not limit the authority of the department to bring a judicial action, which may include the assessment of penalties and injunctive relief, prior to initiating an administrative action under this subchapter. The judicial action may be criminal or civil.

AUTH: 75-6-103, MCA
IMP: 75-6-109, 75-6-110, MCA

REASON: The proposed amendments to ARM 17.38.603 are necessary to explain the department's implementation of 75-6-110(2), MCA, and to simplify administrative enforcement procedures. Section 75-6-110(2), MCA, states that unless the violation represents an imminent threat to human health, safety or welfare or to the environment, the department shall first issue a letter notifying the person of the violation and requiring compliance. The existing rules do not refer to, or clearly implement, this statutory requirement. The existing rules state that in response to a Class I violation, the department may issue an order without sending a notice letter. The existing rules also state that in response to a Class II violation, a warning letter must precede the imposition of penalties.

The proposed amendments delete ARM 17.38.603(1)(a) through (d) and add new language to clarify the enforcement procedures. Proposed amendments to ARM 17.38.603(1)(a) relate to 75-6-110(2), MCA, and state that unless the violation represents an imminent threat to human health, safety or welfare, or to the environment, the department shall first send a violation letter. The Department considers Class I violations, as defined in these rules, as constituting an "imminent threat" for purposes of 75-6-110(2), MCA. As proposed, this amended rule means that a violation letter must be sent for all Class II violations. Proposed amendments to ARM 17.38.603(1)(b) state that the department may respond to a Class I violation or a violation that represents an imminent threat to human health, safety or welfare, or to the environment, by issuing an order in lieu of a violation letter. ARM 17.38.603(1)(c) states that if a person fails to comply with the requirements of a violation letter, the department may issue an order.

Most administrative penalties under the public water supply laws are assessed for violations caused by the failure to monitor. However, the existing rules create barriers to the assessment of penalties for monitoring violations. As currently written, ARM 17.38.603(1)(d)(i) creates an unattainable compliance threshold because monitoring violations cannot be corrected by sampling during a subsequent month. ARM 17.38.603(1)(d)(ii) creates an unnecessary burden by requiring the department to track 12-month compliance periods related to each monthly monitoring violation.

Currently, if a public water supply fails to monitor, the department sends a violation letter to notify the person of the violation and to describe what is required to return to compliance. If the violations continue and exceed the thresholds established by EPA for a significant noncompliance, the department will initiate an administrative enforcement action to seek a penalty and compel compliance. The proposed amendments eliminate the barriers described above and simplify the enforcement rules to facilitate enforcement.

Proposed amendments to ARM 17.38.603(2) are necessary to update terminology and to clarify that public sewage systems are subject to enforcement under the public water supply laws if the public sewage system operates in violation of 75-6-112, MCA. Section 75-6-112, MCA, lists prohibited acts and provides that a person may not commence construction or modify a public water or sewer system without approval, and that a person may not violate a condition or requirement of an approval issued by the department.

ARM 17.38.603 describes the requirements the department may include in an order. Proposed amendments to ARM 17.38.603(2)(d), (e) and (f) add public sewage system to the rules so that the department may order a sewer system to: (d) restrict new connections, (e) conduct monitoring and reporting, and (f) submit a report on the condition and operation of a public water or sewer plant. Proposed amendments to ARM 17.38.603(g) correctly refer to maps, design reports, plans and specifications as required in ARM 17.38.101. Proposed amendments to ARM 17.38.603(2)(i) add public sewage system and coincide with new language in 75-6-112(3), MCA, that was amended by the legislature to include "commence or continue. . . ." The addition of ARM 17.38.603(2)(l) is necessary to clarify that the department may order a public water supply or sewage system to retain a certified operator in accordance with the requirements of the Operator Certification Act, Title 37, chapter 42, MCA.

Proposed amendments to ARM 17.38.603(3) are necessary to clarify that the department may initiate a judicial action, including assessment of penalties and injunctive relief, for failure to comply with the act, rule, order or condition of an approval issued by the department. The authority for this rule is provided in 75-6-110, MCA, which lists the enforcement options available to the department.

4. Concerned persons may submit their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to the Board of Environmental Review, P.O. Box 200901, Helena, Montana 59620-0901, faxed to (406) 444-4386 or emailed to the Board Secretary at ber@state.mt.us and must be received no later than 5:00 p.m., July 31, 2003. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

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

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

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

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

Reviewed by: **BOARD OF ENVIRONMENTAL REVIEW**

James M. Madden **By:** *Joseph W. Russell*

JAMES M. MADDEN
Rule Reviewer

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

Certified to the Secretary of State June 16, 2003.

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

In the matter of the amendment of ARM 17.30.716 pertaining to categories of activities that cause non-significant changes in water quality	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT (WATER QUALITY)

TO: All Concerned Persons

1. On July 31, 2003 at 9:00 a.m., the Board of Environmental Review will hold a public hearing in Room 35 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The Board will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board no later than 5:00 p.m., July 21, 2003, to advise us of the nature of the accommodation that you need. Please contact the Board Secretary at P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2544; fax (406) 444-4386; or email ber@state.mt.us.

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

17.30.716 CATEGORIES OF ACTIVITIES THAT CAUSE NON-SIGNIFICANT CHANGES IN WATER QUALITY (1) In addition to the activities listed in 75-5-317, MCA, the ~~following~~ categories or classes of activities that are identified in this rule have been determined by the department to cause changes in water quality that are nonsignificant due to their low potential for harm to human health or the environment and their conformance with the guidance found in 75-5-301, MCA~~:~~.

~~(a) a change in water quality resulting from the use of an individual sewage system if:~~

~~(i) the system is constructed in accordance with ARM 17.36.304;~~

~~(ii) the distance from the drain field, aligned with the longest dimension perpendicular to the direction of ground water flow, to the nearest state surface water is greater than 300 feet in the direction of ground water flow;~~

~~(iii) for a sewage system located on a lot that is less than 20 acres in area, the existing concentration of nitrate as nitrogen in the ground water in the uppermost aquifer beneath the lot is less than 2.0 mg/L and there is no evidence of nitrate as nitrogen concentrations above 2.0 mg/L in ground water in the same aquifer within 1320 feet of the exterior boundaries of the lot;~~

~~(iv) the soils in the drain field area are medium textured (very fine sandy loam or finer) throughout the upper 8 feet;~~

~~(v) the system serves only a single domestic living unit that is not within a major subdivision; and~~

~~(vi) the system meets the following criteria:~~

~~(A) for a system located on an individual lot that is 1 acre in area or larger:~~

~~(I) the depth to the uppermost aquifer or fractured bedrock unit beneath the site is greater than 100 feet; and~~

~~(II) the percolation rate of the soil beneath the drain field is greater than 30 minutes per inch;~~

~~(B) for a system located on an individual lot 2 acres in area or larger:~~

~~(I) the depth to the uppermost aquifer or fractured bedrock unit beneath the site is greater than 50 feet; and~~

~~(II) the percolation rate of the soil beneath the drain field is greater than 30 minutes per inch;~~

~~(C) for a system located on an individual lot 5 acres in area or larger:~~

~~(I) the depth to the uppermost aquifer or fractured bedrock unit beneath the site is greater than 30 feet; and~~

~~(II) the percolation rate of the soil beneath the drain field is greater than 10 minutes per inch; and~~

~~(D) for a system located on an individual lot that is 20 acres in area or larger:~~

~~(I) the depth to the uppermost aquifer or fractured bedrock unit beneath the site is greater than 20 feet; and~~

~~(II) the percolation rate of the soil beneath the drain field is greater than 10 minutes per inch.~~

~~(2) For purposes of (1)(a) of this rule:~~

~~(a) "Aquifer" means a saturated, permeable geologic material that is capable of sustained groundwater yield sufficient to meet domestic needs.~~

~~(b) The depth to the top of an unconfined aquifer is the depth to the seasonally high water table within the permeable geologic material.~~

~~(c) When the department is required to determine whether a proposed activity may cause degradation under ARM 17.30.706(2), the applicant must provide evidence that demonstrates to the department's satisfaction that the individual sewage system for which an application has been filed meets the criteria of (1)(a) of this rule.~~

~~(3)(a) The department may determine that the categorical exclusion referenced in (1)(a) of this rule does not apply to all lots or to lots within one or more of the size categories in (1)(a)(v) of this rule within a specific geographic area. This determination must be based upon information submitted in a petition demonstrating that the categorical exclusions should not apply within that area. A petition submitted under this rule may be considered only if it is submitted by a local governing body, a local department or board of health, a local water quality district, or by either 25% or 20, whichever is fewer, of the landowners (or persons with a contract interest in land) within the affected geographic area.~~

~~(b) A petition submitted under this rule must contain the following information:~~

~~(i) a legal description of the petition area, which is the geographic area proposed to be excluded from consideration under (1)(a) of this rule;~~

~~(ii) a declaration as to which lot size categories in (1)(a)(vi) of this rule are proposed to be excluded from the categorical exclusion in (1)(a) of this rule;~~

~~(iii) a detailed description of the soils, geology, and hydrogeology of the area described in (3)(b)(i) above;~~

~~(iv) evidence that the site conditions for the petition area meet the applicable criteria of (1)(a) of this rule;~~

~~(c) If the evidence submitted under (3)(b)(iv) above does not support a finding that the site conditions in the petition area meet the applicable criteria in (1)(a)(vi) of this rule, the department shall notify the petitioner in writing that the categorical exclusions do not apply within the petition area and the department may not take further action on the petition.~~

~~(d) If the department finds that the site conditions for the petition area meet the applicable criteria in (1)(a) of this rule, the department shall notify the petitioner of its determination in writing, and the petitioner shall submit additional information that must include the following:~~

~~(i) a current listing from a title insurance company of the names and addresses of all persons who either own or have a contract interest in land within the petition area; and~~

~~(ii) data from groundwater samples taken from wells that withdraw water from the uppermost aquifer underlying the petition area or from wells that withdraw water from the uppermost aquifer underlying an area within the same or adjacent county with similar climatic, soil, geologic, and hydrogeologic conditions and a density of individual sewage systems similar to that allowed in (3)(b)(ii) above. The groundwater data demonstrate that one of the following conditions is met:~~

~~(A) nitrate as nitrogen concentrations exceed 5.0 mg/L in groundwater samples from more than 25% of at least 30 wells that are not located within a standard mixing zone, as defined in ARM 17.30.517(1)(d)(viii)for a septic system; or~~

~~(B) data from groundwater samples collected at least 3 years apart from the same 15 wells indicate a statistically significant increase of greater than 1.0 mg/L in nitrate as nitrogen concentrations in the uppermost aquifer.~~

~~(e) Within 90 days of receipt of the information required in (3)(d) above, the department shall issue a preliminary decision as to whether the petitioner has satisfied the requirements set forth in (3)(b) and (d) above and describe the reasons for either granting or denying the petition. The preliminary decision must be mailed to the petitioner and to all landowners or persons with a contract interest in land within the petition area and must include the following information:~~

~~(i) a description of the petition area;~~

~~(ii) a summary of the basis for the preliminary decision including any modifications to the boundaries of the petition area;~~

~~(iii) a description of the procedures for public participation and of the opportunity to comment prior to the department's final decision on the petition;~~

~~(iv) the ending dates of the comment period and the address where comments will be received;~~

~~(v) procedures for requesting a hearing; and~~

~~(vi) the name and telephone number of a person to contact for additional information.~~

~~(f) Within 60 days after the close of the public comment period, the department shall issue a final decision and provide written notice of its decision to the petitioner and to each person who submitted written comments. The final decision must set forth the department's reasons for granting or denying the petition and must include a response to all substantive comments received by the department during the public comment period or during any hearing.~~

(2) Except as provided in (5), a subsurface wastewater treatment system (SWTS) that meets all of the criteria in (2)(a) and falls within one of the categories in (2)(b) is nonsignificant.

(a) The SWTS, including primary and replacement drainfields must meet all of the following criteria:

(i) the drainfield must be 1,000 feet or more (400 feet or more for lots that meet the criteria in (2)(b)(iv)) from the nearest downgradient high quality state surface water that might be impacted. This distance may be reduced by 50% (to 500 and 200 feet, respectively) if the drainfield is pressure-dosed;

(ii) if the drainfield is not pressure-dosed:

(A) the soil percolation rate must be between 16 and 50 minutes per inch, if a percolation test has been conducted for the drainfield; and

(B) the natural soil beneath the absorption trench must contain at least six feet of very fine sand, sandy clay loam, clay loam, or silty clay loam;

(iii) the SWTS must serve no more than two single-family residences, or must serve a facility that produces non-residential, non-industrial wastewater with a wastewater design flow of 700 gallons per day or less;

(iv) there must be only one SWTS receiving wastewater from the lot;

(v) the SWTS must be located on the lot where wastewater is produced;

(vi) the SWTS must meet the current design standards defined in ARM Title 17, chapter 36, subchapter 3 and department Circular DEQ-4; and

(vii) for lots smaller than 20 acres, and for lots 20 acres and larger on which the drainfield is 500 feet or less from the downgradient property boundary, the backgound nitrate (as N) concentration in the shallowest ground water must be less than three mg/L.

(A) The department may require multiple ground water samples over a specified time period to determine whether seasonal variation of ground water nitrate concentrations may affect compliance with this requirement.

(b) The SWTS must fall within one of the following five categories:

(i) for category one:

(A) the lot size is two acres or larger;

(B) the percolation rate is 16 minutes per inch or slower, if a percolation test has been conducted for the drainfield;

(C) the natural soil beneath the absorption trench contains at least six feet of very fine sand, sandy clay loam or finer soil; and

(D) the depth to bedrock and seasonally high ground water is eight feet or greater;

(ii) for category two:

(A) the drainfield is pressure-dosed;

(B) the lot size is two acres or larger;

(C) the percolation rate is six minutes per inch or slower, if a percolation test has been conducted for the drainfield;

(D) the natural soil beneath the absorption trench contains at least six feet of medium sand, sandy loam or finer soil; and

(E) the depth to bedrock and seasonally high ground water is 12 feet or greater;

(iii) for category three:

(A) the drainfield is pressure-dosed;

(B) the lot size is one acre or larger;

(C) the subdivision consists of five lots or fewer;

(D) there is no existing or approved SWTS within 500 feet of the subdivision boundaries;

(E) the percolation rate is six minutes per inch or slower, if a percolation test has been conducted for the drainfield;

(F) the natural soil beneath the absorption trench contains at least six feet of medium sand, sandy loam or finer soil; and

(G) the depth to bedrock and ground water is 100 feet or greater;

(iv) for category four:

(A) the total number of subdivision lots that were reviewed pursuant to 76-4-101 et seq., MCA, and were created in a county during the previous 10 state fiscal years is fewer than 150; and

(B) the lot is not within one mile of the city limits of an incorporated city or town with a population greater than 500 as determined by the most recent census; or

(v) for category five:

(A) the SWTS is a level II system;

(B) the lot size is two acres or larger;

(C) the bottom of the drainfield absorption trenches is not more than 18 inches below ground surface; and

(D) the depth to limiting layer (based on test pit data) is greater than six feet below ground surface.

(3) A mixing zone is not required for SWTSs that meet the criteria in this rule. However, SWTS drainfields must be located so that there is a 100-foot setback between existing and

approved water supply wells and the boundaries of a 100-foot mixing zone that is provisionally designated for purposes of applying this setback.

(4) The department may require that on-site information be provided to verify any of the criteria required in this rule.

(5) Notwithstanding an activity's designation as nonsignificant in this rule, the department may review the activity for significance under the criteria in ARM 17.30.715(1) based upon the following:

(a) cumulative impacts or synergistic effects;

(b) secondary byproducts of decomposition or chemical transformation;

(c) substantive information derived from public input;

(d) changes in flow;

(e) changes in the loading of parameters;

(f) new information regarding the effects of a parameter; or

(g) any other information deemed relevant by the department and that relates to the criteria in ARM 17.30.715(1).

AUTH: 75-5-301, 75-5-303, MCA
IMP: 75-5-303, 75-5-317, MCA

REASON: The proposed amendments to (1) are grammatical. Because amendments to the remainder of the current rule are extensive, the current language is proposed for deletion and will be replaced with new (2) through (5).

The amendments to the current rule were deemed necessary because historically very few on-site wastewater treatment systems have met the criteria in the current rule, even though many other systems are legitimately nonsignificant sources of pollution. The Department believes that there are many SWTSs that could safely be approved without having to meet the more complex requirements in ARM 17.30.715. Although exact records were not maintained, the Department estimates that fewer than 30 SWTSs have been determined nonsignificant since the effective date of the current rule in 1998. The Department believes that the proposed amendments will be applicable to many more SWTSs while still preventing degradation of high quality state waters.

Subsection (2)(a) lists general criteria that a SWTS must meet. Subsection (2)(b) includes five site-specific categories. A SWTS must meet all the requirements in (2)(a) and fall within one of the five categories in (2)(b) to be considered a nonsignificant source of pollution under the proposed amendments.

The general requirements in (2)(a) are included to insure that a SWTS is appropriate to be considered for exclusion from meeting the requirements in ARM 17.30.715. The requirements in (2)(a) are necessary to insure that:

1. the SWTS is not located too close to surface waters (the distance varies depending on the use of pressure dosed drainfields and the amount of recent subdivision growth in the county), which can be adversely affected by relatively low

concentrations of the nutrients (nitrogen and phosphorus) that are present in wastewater [(2)(a)(i)];

2. the optimum type of soil is present for treatment. If the optimum soil type is not present, the drainfield must be pressure-dosed, which provides better distribution and treatment than the more common gravity-dosed drainfield [(2)(a)(ii)];

3. the SWTS is a relatively small system serving one or two homes or a small commercial establishment [(2)(a)(iii)];

4. tight clustering of SWTS does not occur, which decreases the chances of degrading ground water [(2)(a)(iv through v)] ;

5. only properly constructed SWTS qualify [(2)(a)(vi)]; and

6. the existing ground water nitrogen concentration is less than 3 mg/L and has not already been impacted by other sources of nitrogen (USGS studies have stated that ground water with nitrate concentrations greater than 3 mg/L is typically an indication of anthropogenic impacts) [(2)(a)(vii)].

The first three categories in (2)(b) [(2)(b)(i), (2)(b)(ii), and (2)(b)(iii)] are similar to the categories in (1)(a)(vi) of the current rule because they use a combination of lot size, soil types, percolation rates, depth to ground water and depth to bedrock as the criteria. The numeric requirements for each criterion in the proposed amendments are different than the current rule, and are designed to allow more STWSs to meet the proposed requirements while still preventing degradation. The criteria in (2)(b)(iii) only apply to subdivisions of five or fewer lots because this category applies to relatively small lots (one acre). The Department does not believe that large subdivisions (with more than five lots) consisting of small lots should qualify for this category.

The fourth category in the proposed amendments [(2)(b)(iv)] does not have a comparable category in the current rule. This category was included because the Department recognized that requiring compliance with ARM 17.30.715 was not necessary for a large portion of the state that has very little population growth (primarily the eastern two-thirds of the state). Based on current records, this exemption will include the following 31 counties: Glacier, Toole, Liberty, Pondera, Chouteau, Judith Basin, Wheatland, Golden Valley, Musselshell, Petroleum, Blaine, Phillips, Valley, Garfield, Rosebud, Treasure, Daniels, Sheridan, Roosevelt, McCone, Dawson, Wibaux, Prairie, Fallon, Custer, Powder River, Carter, Richland, Teton, Meagher, and Big Horn. The Department intends to review and revise (if necessary) this list at the end of each fiscal year. Therefore, the counties that meet this criterion could change every year.

The fifth sub-category in the proposed rule [(2)(b)(v)] does not have a comparable category in the current rule. This category is included to provide incentive to use a level II SWTS which provides a higher degree of treatment for nitrogen, total suspended solids, biological oxygen demand and pathogens. The Department believes that increased use of level II SWTSs is an overall benefit to the quality of state waters.

Section (2) of the proposed amendments includes numerous numeric criteria including: distance to surface water or a town, percolation rate, depth to ground water, depth to bedrock, depth to limiting layer, and lot size. These numeric criteria are based on the experienced judgment of experts in the Department and members of the public (including local sanitarians) that helped to prepare the proposed amendments. The numeric criteria are not based on an equation or similar system. The numeric criteria that each SWTS must meet are designed, in the judgment of the persons involved with preparing the proposed amendments, to protect ground water and surface water from significant degradation.

Section (3) of the proposed amendments establishes a horizontal setback that applies to SWTS drainfields. The setback is necessary to provide protection for existing and approved water supply wells.

Section (3) of the current rule includes a petition process that allows local landowners or local government entities to restrict the use of ARM 17.30.716 when the petitioners believe that state waters will be degraded as a result of the proposed SWTSs. The proposed amendments repeal that petition process because it has not been used since the rule was promulgated. The proposed procedure in (5) allows for review of the appropriateness of the exclusions provided in this rule based on site-specific factors.

4. Concerned persons may submit their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to the Board of Environmental Review, P.O. Box 200901, Helena, Montana 59620-0901, faxed to (406) 444-4386 or emailed to the Board Secretary at ber@state.mt.us and must be received no later than 5:00 p.m., July 31, 2003. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

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

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

Environmental Review, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901, faxed to the office at (406) 444-4386, emailed to the Board Secretary at ber@state.mt.us or may be made by completing a request form at any rules hearing held by the Board.

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

BOARD OF ENVIRONMENTAL REVIEW

By: *Joseph W. Russell*
JOSEPH W. RUSSELL, M.P.H., Chairman

Reviewed by:

James M. Madden
JAMES M. MADDEN, Rule Reviewer

Certified to the Secretary of State June 16, 2003.

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

In the matter of the amendment of ARM 17.8.501, 17.8.504, 17.8.505, 17.8.511, 17.8.514 and 17.8.515 pertaining to definitions, permit application fees, operation fees, application/operation fee assessment appeal procedures and open burning fees	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT (AIR QUALITY)

TO: All Concerned Persons

1. On July 30, 2003, at 1:30 p.m., the Board of Environmental Review will hold a public hearing in Room 111 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Board will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board no later than 5:00 p.m., July 21, 2003, to advise us of the nature of the accommodation that you need. Please contact the Board Secretary at P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2544; fax (406) 444-4386; or email ber@state.mt.us.

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

17.8.501 DEFINITIONS For the purposes of this subchapter:

(1) ~~"Source(s) of air contaminants" shall mean all air contaminant emission points, including fugitive emissions, located on 1 or more contiguous or adjacent properties and under common control or ownership.~~ "Facility" means any real or personal property that is either stationary or portable and is located on one or more contiguous or adjacent properties under the control of the same owner or operator and that emits or has the potential to emit any air pollutant subject to regulation under the Clean Air Act of Montana or the Federal Clean Air Act, including associated control equipment that affects or would affect the nature, character, composition, amount, or environmental impacts of air pollution and that has the same two-digit standard industrial classification code. A facility may consist of one or more emitting units.

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

17.8.504 AIR QUALITY PERMIT APPLICATION FEES

(1) Concurrent with submittal of ~~an~~ a Montana air quality

permit application, as required in ARM Title 17, chapter 8, subchapter 7 ~~(Permit, Construction and Operation of Air Contaminant Sources)~~, or ARM Title 17, chapter 8, subchapter 8 ~~(Prevention of Significant Deterioration of Air Quality)~~, the applicant shall submit an ~~air quality permit~~ application fee of $500.

(2) Concurrent with submittal of the following air quality operating permit applications, as required in ARM Title 17, chapter 8, subchapter 12, the applicant shall submit an application fee of $500:

(a) an application for a new air quality operating permit that is not submitted concurrently with a Montana air quality permit application;

(b) an application for an air quality operating permit renewal; or

(c) an application for a significant modification to an air quality operating permit.

~~(2)~~ (3) ~~A~~ An air quality permit application is incomplete until the proper application fee is paid to the department.

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

AUTH: 75-2-111, 75-2-220, MCA
IMP: 75-2-211, 75-2-220, MCA

17.8.505 AIR QUALITY OPERATION FEES (1) ~~As a condition of continued operation, an~~ An annual air quality operation fee must be submitted to the department by the owner or operator of:

(a) each ~~source of air contaminants holding an~~ facility for which a Montana air quality permit~~, excluding an open burning permit, issued by the department~~ has been issued by the department and remains in effect; and

(b) each ~~source of air contaminants that will be required to obtain a~~ facility for which an air quality operating permit ~~pursuant to section 502 of the Federal Clean Air Act, 42 USC 7401, et seq., as amended, and which does not otherwise hold an air quality permit issued by the department~~ has been issued by the department and remains in effect.

(2) ~~Fees~~ Pursuant to this rule, fees shall be assessed ~~under this rule for~~ to the owner or operator of record on the date of billing, for all ~~sources of air contaminants described above in (1)~~ facilities that meet the description in (1) as of January 1 of the calendar year in which fees are billed.

(3) Air quality permit fee schedules will require owners and operators of all ~~sources of air contaminants~~ facilities required to obtain a Montana air quality permit or an air quality operating permit to contribute to those department activities funded by air quality permit fees. The department shall attempt to identify all ~~sources of air contaminants~~ facilities subject to the annual air quality operating fee requirement and shall require payment from the owners or operators of all ~~such sources of air contaminants~~ facilities.

(4) Annually, the department shall provide the owner or operator of each ~~air contaminant source,~~ facility required to pay an air quality operation fee, with written notice of the

amount of the fee and the basis for the fee assessment.

(a) The air quality operation fee is due within 30 days after receipt of the notice, unless the fee assessment is appealed pursuant to ARM 17.8.511. If any portion of the fee is not appealed, that portion of the fee that is not appealed is due within 30 days after receipt of the notice. Any remaining fee~~, which may be~~ that is due after completion of an appeal, is due ~~immediately upon~~ within 30 days after issuance of the board's decision or ~~upon completion of~~ within 30 days after issuance of the final decision in any judicial review of the board's decision.

(b) If an owner or operator assessed an air quality operation fee fails to pay the required fee (or any required portion of an appealed fee) within ~~60~~ 30 days after the ~~billing~~ due date, the department may impose a late payment charge of 10% of the fee (or of any required portion of an appealed fee), plus interest on the fee (or on any required portion of an appealed fee) computed at the interest rate established under 75-2-220(5)(a)(i), MCA.

(5) The air quality operation fee is based on the actual, or estimated actual, amount of air pollutants emitted by the facility during the previous calendar year and is an administrative fee of $400, plus $~~17.89~~ 20.61 per ton of PM-10, sulfur dioxide, lead, oxides of nitrogen and volatile organic compounds emitted.

(6) ~~A separate air quality operation fee, as set forth in (5) above, is assessed for each source of air contaminants under (1), except that~~ The owner or operator of a ~~source of air contaminants~~ facility may not be required to pay more than one administrative fee if the facility is subject to more than one Montana air quality permit issued by the department.

(7) and (8) remain the same.

(9) ~~Each source of air contaminants~~ The owner or operator of each facility subject to (1) ~~above~~ shall submit to the department, on the date specified by the department, all information necessary to complete an inventory of estimated actual emissions for the preceding calendar year. The department shall notify the ~~source~~ owner or operator of the facility of the date by which the information must be submitted. The information submittal date may not be earlier than February 15.

AUTH: 75-2-111, 75-2-220, MCA
IMP: 75-2-211, 75-2-220, MCA

17.8.511 AIR QUALITY PERMIT APPLICATION/OPERATION FEE ASSESSMENT APPEAL PROCEDURES (1) The department's fee assessment may be appealed by the owner or operator of ~~a source of air contaminants~~ the facility to the board of environmental review within 20 days of:

(a) receipt of the fee assessment notice ~~described in ARM 17.8.505(2) (Air Quality Operation Fees)~~; or

(b) issuance of a determination of incompleteness of a permit application based on the lack of the proper permit

application fee ~~pursuant to ARM 17.8.504(2) (Air Quality Permit Application Fees) or ARM 17.8.514(3) (Air Quality Open Burning Fees)~~.

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

17.8.514 AIR QUALITY OPEN BURNING FEES (1) Concurrent~~ly~~ with ~~the~~ submittal of an air quality major open burning permit application, as required in ARM ~~Title 17, chapter 8, subchapter 6 (Open Burning),~~ 17.8.610 ~~(Major Open Burning Source Restrictions)~~, the applicant shall submit an air quality major open burning permit application fee.

(2) Air quality major open burning fees are separate and distinct from any air quality operation fee required to be submitted to the department pursuant to ARM 17.8.505 or Montana air quality permit application fee required to be submitted to the department pursuant to ARM 17.8.504 ~~by a source of air contaminants~~.

(3) An air quality major open burning permit application is incomplete until the proper air quality major open burning fee is paid to the department. If the department determines that the ~~air quality major open burning~~ fee submitted with the ~~major open burning permit~~ application is insufficient, it shall notify the applicant in writing of the appropriate fee which must be paid before the major open burning permit application can be processed. If the fee assessment is appealed to the board pursuant to ARM 17.8.511, and if the fee deficiency is not corrected by the applicant, the major open burning permit application is incomplete until issuance of the board's decision or ~~when the~~ until any judicial review of the board's decision has been completed, whichever is later. Upon final disposition of ~~the~~ an appeal, any portion of the fee ~~which may be~~ due to either the department or the applicant as a result of the decision is ~~immediately~~ due ~~and payable~~ within 30 days after issuance of the board's decision or within 30 days after issuance of the final decision in any judicial review of the board's decision.

(4) The air quality major open burning ~~air quality~~ permit application fee shall be based on the actual, or estimated actual, amount of air pollutants emitted by the applicant in the last calendar year during which the applicant conducted open burning pursuant to an air quality major open burning permit ~~for major open burning sources, as~~ required under ARM 17.8.610 ~~(Major Open Burning Source Restrictions)~~.

(a) The air quality major open burning permit application fee ~~shall be~~ is the greater of the following, as adjusted by any amount determined pursuant to (4)(b)~~, below~~:

(i) a fee calculated using the following formula:

tons of total particulate emitted in the previous appropriate calendar year,
multiplied by $~~13.32~~ 16.60; plus
tons of oxides of nitrogen emitted in the previous

appropriate calendar year,
multiplied by $~~3.33~~ 4.15; plus
tons of volatile organic compounds emitted in the previous appropriate calendar year,
multiplied by $~~3.33~~ 4.15; or

(ii) a minimum fee of $250.

(b) The department may reduce or eliminate, as appropriate, the air quality major open burning permit application fees~~s~~ to be collected from an applicant in recognition of the non-monetary contributions made by the applicant to the smoke management program. The department may recognize only those non-monetary contributions made by the applicant in the last calendar year during which the applicant conducted open burning pursuant to an air quality open burning permit for major open burning sources, ~~as~~ required under ARM 17.8.610. To be accepted for the purpose of reducing an applicant's fees for the subsequent calendar year, a written claim for non-monetary contributions to the smoke management program must be filed with the department no later than 60 days after the close of the calendar year during which the non-monetary contributions were made by the applicant. ~~The~~ A claim ~~shall~~ must describe in detail both the nature of the non-monetary contributions and the dollar value of ~~such~~ the contributions. ~~The non~~ Non-monetary contributions may consist of, but are not limited to, staff time and the use of equipment, supplies or space. The department ~~may~~ shall review ~~the~~ any written claims ~~that are~~ submitted, and may adjust the dollar value of the non-monetary contributions ~~based~~ upon ~~a~~ finding that the value assigned to the contributions is not reasonable, the non-monetary contributions that were made were not reasonably related to the smoke management program, or both. In no case ~~shall a source~~ may an applicant be reimbursed for non-monetary contributions in excess of ~~their~~ the applicant's assessed open burning permit fee.

AUTH: 75-2-111, MCA
IMP: 75-2-211, 75-2-220, MCA

17.8.515 AIR QUALITY OPEN BURNING FEES FOR CONDITIONAL, EMERGENCY, CHRISTMAS TREE WASTE, ~~AND~~ COMMERCIAL FILM PRODUCTION AND FIREFIGHTER TRAINING OPEN BURNING PERMITS (1) Concurrent with ~~the~~ submittal of an air quality open burning permit application, as required in ARM ~~Title 17, chapter 8, subchapter 6 (Open Burning),~~ 17.8.611 ~~(Emergency Open Burning Permits)~~, 17.8.612 ~~(Conditional Air Quality Open Burning Permits)~~, 17.8.613 ~~(Christmas Tree Waste Open Burning Permits)~~, ~~and~~ 17.8.614 ~~(Commercial Film Production Open Burning Permits)~~, or 17.8.615, the applicant shall submit an air quality open burning fee.

(2) Air quality open burning fees are separate and distinct from any other air quality fee required to be submitted to the department pursuant to this subchapter. ~~However, nothing in these rules may be deemed to allow the department to collect more than one fee simultaneously.~~

(3) An air quality open burning permit application is incomplete until the proper air quality open burning fee is paid to the department, except as provided in (4)(c). If the department determines that the ~~air quality open burning~~ fee submitted with the ~~open burning permit~~ application is insufficient, it shall notify the applicant in writing of the appropriate fee which must be paid before the open burning permit application can be processed. If the fee assessment is appealed to the board pursuant to ARM 17.8.511, and if the fee deficiency is not corrected by the applicant, the permit application is incomplete until issuance of the board's decision or until any judicial review of the board's decision has been completed, whichever is later. Upon final disposition of ~~the~~ an appeal, any portion of the fee ~~which may be~~ due to either the department or the applicant as a result of the decision is ~~immediately~~ due ~~and payable~~ within 30 days after issuance of the board's decision or within 30 days after issuance of the final decision in any judicial review of the board's decision.

(4) The air quality open burning ~~air quality~~ permit application fees ~~shall be~~ are:

~~(a)~~ (b) $100 for a wood and wood byproduct trade waste open burning permit under ARM 17.8.612;

~~(b)~~ (c) ~~No fee is required~~ $100 for an untreated wood-waste open burning permit at a licensed landfill site under ARM 17.8.612. The required fee for this activity is included in the solid waste management system licensing fee, submitted pursuant to ARM Title 17, chapter 50, subchapter 4. Therefore, the applicant is not required to submit a fee with the untreated wood-waste open burning permit application;

~~(c)~~ (a) $100 for an emergency open burning permit under ARM 17.8.611. A fee for an emergency open burning permit application need not be submitted with the initial oral request to the department, but must be submitted with the subsequent written application required under ARM 17.8.611. Submittal of the fee is a condition of any authorization given by the department under ARM 17.8.611, and the failure to submit the fee is considered a violation of such authorization and may be subject to enforcement action;

(d) $100 for a Christmas tree waste open burning permit under ARM 17.8.613; ~~and~~

(e) $100 for a commercial film production open burning permit under ARM 17.8.614; and

(f) $25 for a firefighter training open burning permit under ARM 17.8.615. As a condition of a firefighter training open burning permit, the department may require submission of an annual fee to maintain the permit.

AUTH: 75-2-111, 75-2-211, 75-2-220, MCA
IMP: 75-2-211, 75-2-220, MCA

17.8.501, 17.8.504, 17.8.505, 17.8.511

REASON: Pursuant to 75-2-220, MCA, the Department assesses air quality permit application fees, annual air quality

operation fees, and major open burning permit fees. In the aggregate, these fees must be sufficient to cover the Department's costs of developing and administering the permitting requirements of the Clean Air Act of Montana. Under ARM 17.8.510, the structure and the amount of the fees are to be determined and reviewed annually by the Board.

Air quality operation fees are required for all facilities that hold an air quality permit or that will be required to obtain an air quality permit pursuant to the Title V air quality operating permit program. The air quality operation fee is based on the actual, or estimated actual, amount of air pollutants emitted during the previous calendar year and includes an administrative fee plus a per-ton fee for tons of PM-10, sulfur dioxide, lead, oxides of nitrogen and volatile organic compounds emitted. The amount of money the Department needs to generate through air quality operation fees depends on the legislative appropriation and the amount of carryover from the previous fiscal year. The emission component of the operation fee is also revised to account for changes in the total amount of pollutants emitted in the state in the previous calendar year. This rulemaking would set the air quality operation fees to be billed in calendar year 2003. Air quality fees billed in 2003 will be based on emissions from calendar year 2002 and will fund the Department's activities in fiscal year 2004.

The legislative appropriation for fiscal year 2003 was $2,430,557. The amount of the carryover from fiscal year 2002 was $231,742. The total amount of pollutants reported for last year's fees was 112,416 tons, and the per-ton component of the air quality operation fee was $17.89.

The appropriation for fiscal year 2004 is $2,665,948, an increase of $235,391 from last fiscal year. The projected carryover from fiscal year 2003 is $227,946. The total amount of pollutants reported for 2003 fees is 103,917 tons. Based upon the appropriation, the carryover, the projected permit application fees, and the emission inventory, to cover the Department's costs of developing and administering the air quality permitting program, it is necessary for the Board to increase the per ton charge to $20.61. Therefore, the Board is proposing to amend ARM 17.8.505(5) by replacing the per-ton charge of $17.89 with $20.61.

In 2002, the total amount of fees assessed was $2,205,926. The amount of fees that would be assessed to meet this fiscal year’s appropriation would be $2,342,002, for an increase of $136,076. In 2003, fees would be assessed for 501 facilities.

The Board is proposing to change the term "source(s) of air contaminants" to "facility(ies)" throughout ARM Title 17, chapter 8, subchapter 5, to be consistent with the new subchapter 7 air quality permit rules. The definition of "facility" would be added to ARM 17.8.501 and the definition of "source(s) of air contaminants" would be deleted.

The term "owner or operator" would be added to several subsections to clarify that the owner or operator of a facility, rather than the facility itself, pays the fees.

The Board is proposing to add language to several subsections relating to applications and fees that would clarify the distinction between a Montana air quality permit (formerly a preconstruction permit), and an air quality operating permit. Section 75-2-220(1), MCA, requires the applicant to submit a fee concurrent with the submittal of a permit application, and the Board is proposing that language be added to clarify the provisions of the rule that implement this statutory requirement.

The Board is proposing several additional miscellaneous amendments to ARM 17.8.505. ARM 17.8.505(2) would be amended to clarify that fees are assessed to the current holder of the permit. ARM 17.8.505(4)(a) would be amended to allow 30 days for submission of any remaining fee due after completion of a fee appeal, rather than requiring immediate payment as under the current rule. This amendment is necessary to allow adequate time for submission of the payment. ARM 17.8.505(4)(b) would be amended to allow the Department to impose a late payment charge and interest if the owner or operator fails to pay the operation fee within 30 days after the due date, rather than within 60 days after the billing date, as under the current rule. The due date is 60 days after the billing date; however, billing dates may vary, and the due date is printed on the invoices, making it easier to determine when 30 days have passed since the due date.

Other proposed amendments to the air quality fee rules would make minor clerical changes that would have no substantive effect and would make the rules easier to read.

17.8.514, 17.8.515

REASON: The Board is proposing to amend ARM 17.8.514 by revising the fee required for major open burning permit applications for fiscal year 2004. Each year, in consultation with the Montana Airshed Group, which includes the major open burners in the state, the Department develops a budget reflecting the cost the Department will incur that fiscal year in operating its Smoke Management Program for major open burners. Fees assessed to individual burners are based upon the budget and the burner's actual, or estimated actual, emissions during the previous calendar year in which the burner conducted open burning pursuant to an air quality major open burning permit. For calendar year 2002, the major open burners reported 6129.1 tons of emissions, compared to 7691.4 tons for calendar year 2001, or a decrease of 1562.3 tons.

The budget for operating the program for 12 major open burners in fiscal year 2004 is $47,737.00, compared to a budget of $44,723.00 for fiscal year 2003. The $3,014.00 budget increase is due to expected increases of $1,709.00 for personnel services, $975.00 for balloon runs, $15.00 for miscellaneous expenses, and $393.00 for indirect costs. Travel expenses are expected to decrease by $78.00. Due to the decrease in the emission inventory and the expected increase in expenses for the program, it is necessary to increase the per ton charge. The Board is proposing to increase the permit fees from $13.32 per

ton of particulate, $3.33 per ton of oxides of nitrogen, and $3.33 per ton of volatile organic compounds emitted to $16.60, $4.15, and $4.15, respectively.

The $3,014.00 budget increase for this fiscal year would result in a total cumulative increase in fees of the same amount. This amount would be paid by the 12 major open burners.

The Board is proposing to delete language in ARM 17.8.515(2) relating to the Department's ability to collect more than one fee simultaneously. Similar language was deleted from ARM 17.8.504(3) and 17.8.505(7) in 1999, and this proposed amendment would conform the air quality open burning fee rules to the air quality fee rules, in this respect.

In accordance with 75-2-220(1), MCA, requiring submission of a fee with all permit applications required under the Clean Air Act of Montana, the Board is proposing a new ARM 17.8.515(4)(f) to require a $25 application fee for a firefighter training open burning permit.

The Board is proposing to add language to ARM 17.8.515(4)(c) to clarify that, although a fee of $100 is required for an untreated wood-waste open burning permit at a licensed landfill site, this fee is included in the solid waste management system licensing fee and the applicant is not required to submit an additional fee with the open burning permit application.

The Board is proposing to amend ARM 17.8.514(3) and 17.8.515(3) to make the same change proposed to ARM 17.8.505(4)(a) allowing 30 days for payment of any fee due after final disposition of a fee appeal.

Other proposed amendments to the open burning fee rules would make minor clerical changes that would have no substantive effect and would make the rules easier to read.

4. Concerned persons may submit their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to the Board Secretary at Board of Environmental Review, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana, 59620-0901; faxed to (406) 444-4386; or emailed to ber@state.mt.us, no later than 5:00 p.m., August 6, 2003. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

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

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

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

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

Reviewed by: **BOARD OF ENVIRONMENTAL REVIEW**

David Rusoff
DAVID RUSOFF
Rule Reviewer

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

Certified to the Secretary of State June 16, 2003.

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

In the matter of the amendment of ARM 17.8.749, 17.8.759, 17.8.763 and 17.8.764 pertaining to conditions for issuance or denial of permits, review of permit applications, revocation of permits and administrative amendment to permits	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT (AIR QUALITY)

TO: All Concerned Persons

1. On July 30, 2003, at 10:30 a.m., the Board of Environmental Review will hold a public hearing in Room 111, Department of Environmental Quality, Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Board will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board no later than 5:00 p.m., July 21, 2003, to advise us of the nature of the accommodation that you need. Please contact the Board Secretary at P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2544; fax (406) 444-4386; or email ber@state.mt.us.

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

<u>17.8.749 CONDITIONS FOR ISSUANCE OR DENIAL OF PERMIT</u>

(1) through (6) remain the same.

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

(8) through (8)(c) remain the same.

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

<u>17.8.759 REVIEW OF PERMIT APPLICATIONS</u> (1) through (3) remain the same.

(4) After making a preliminary determination, the department shall notify those members of the public who requested such notification subsequent to the notice required by ARM 17.8.748 and the applicant of the department's preliminary

determination. The notice must specify that comments may be submitted on the information submitted by the applicant and on the department's preliminary determination. The notice must also specify the following:

(a) remains the same.

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

(i) 30 days after the notice is mailed for applications subject to the federal air permitting provisions of 42 USC 7475, 7503, or 7661 or the provisions of 75-2-215, MCA, or applications that require preparation of an environmental impact statement; or

(ii) 15 days after the notice is mailed for all other applications; and

(c) ~~that unless the review period is extended pursuant to (5),~~ the date by which a final decision must be made pursuant to 75-2-211(9), MCA ~~within 60 days after a complete application is submitted to the department as required by 75-2-211, MCA. The notice must specify the date upon which the 60-day review period expires, the person from whom a copy of the final decision may be obtained, and the procedure for requesting a hearing before the board concerning the department's final decision~~.

(5) remains the same.

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

17.8.763 REVOCATION OF PERMIT (1) remains the same.

(2) The department shall notify the permittee in writing of its intent to revoke a permit or a portion of a permit. ~~The department shall serve the notice as provided in ARM 17.8.749.~~ The department's decision to revoke a permit or any portion of a permit becomes final when 15 days have elapsed after ~~service~~ the permittee's receipt of the notice unless the permittee requests a hearing before the board.

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

(4) remains the same.

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

17.8.764 ADMINISTRATIVE AMENDMENT TO PERMIT

(1) through (1)(c) remain the same.

(2) The department shall notify the permittee in writing of any proposed amendments to the permit. ~~The department shall serve the notice as provided for in ARM 17.8.749.~~ The permit is deemed amended in accordance with the notice when 15 days have

elapsed ~~after service of the notice~~ from the date of the department's decision to amend the permit, unless the permittee requests a hearing before the board.

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

(4) remains the same.

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

REASON: HB 427, enacted by the 2003 Montana Legislature, requires the Board to adopt rules providing a 30-day public comment period for draft air quality permits for applications that are: subject to the federal air permitting provisions of 42 USC 7475 (attainment area major new source review), 7503 (nonattainment area major new source review), or 7661 (Title V operating permits for major sources); subject to the incinerator permitting provisions of 75-2-215, MCA; or that require preparation of an environmental impact statement (EIS). Based on the prior 60-day statutory timeline for the Department's decision on all air quality permit applications except those requiring preparation of an EIS, ARM 17.8.759(4)(b) now provides for a 15-day public comment period. The proposed amendments to ARM 17.8.759(4)(b) are necessary to implement the requirement in HB 427 to extend the public comment period from 15 days to 30 days for applications for permits for major sources, major modifications, and incinerators and for applications that require preparation of an EIS.

HB 427 also extended from 60 days to 75 days the timeline for the Department to notify the applicant for an air quality permit of approval or denial of the application if the application does not require preparation of an EIS and the application is subject to: the federal air permitting provisions of 42 USC 7475, 7503, or 7661; or the incinerator permitting provisions of 75-2-215, MCA. (HB 427 does not affect the timeline for notification when the owner or operator also is required to obtain a solid waste management system license or hazardous waste management facility permit.) The proposed amendments to ARM 17.8.759(4)(c) are necessary to implement the extended timeline under HB 427 for the Department's decision on applications for permits for major sources, major modifications, and incinerators.

ARM 17.8.749(7), 17.8.763(2) and (3), and 17.8.764(2) and (3), require service of the Department's decision to deny a permit application, revoke a permit, or make an administrative amendment as provided in the Montana Rules of Civil Procedure. Rule 4(D)(1) of the Montana Rules of Civil Procedure requires personal service by a sheriff, deputy sheriff, constable, or

other person over the age of 18. Personal service of the Department's decision to approve or deny a permit application or to revoke or amend a permit is not necessary. The proposed amendments to ARM 17.8.749(7), 17.8.763(2) and (3), and 17.8.764(2) and (3) would allow the Department to provide these notices by mail.

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

5. Concerned persons may submit their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Board of Environmental Review, P.O. Box 200901, Helena, Montana 59620-0901, faxed to (406) 444-4386 or emailed to the Board Secretary at ber@state.mt.us, to be received no later than 5:00 p.m. August 6, 2003. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

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

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

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

BOARD OF ENVIRONMENTAL REVIEW

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

Reviewed by:

David Rusoff
DAVID RUSOFF, Rule Reviewer

Certified to the Secretary of State, June 16, 2003.

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

In the matter of the amendment of ARM 17.36.340 pertaining to minimum lot size requirements for subdivisions	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT (SUBDIVISIONS)

TO: All Concerned Persons

1. On July 16, 2003, at 10:00 a.m., the Department of Environmental Quality will hold a public hearing in Room 35 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The Department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department no later than 5:00 p.m., July 7, 2003, to advise us of the nature of the accommodation that you need. Please contact Melanie Lee, Department of Environmental Quality, P.O. Box 200901, Helena, Montana, 59620-0901; phone (406) 444-4224; fax (406) 444-1374; or email mellee@state.mt.us.

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

<u>17.36.340 LOT SIZES: EXEMPTIONS</u> (1) This rule sets out, for purposes of the review of proposed subdivisions, the requirements for minimum lot or parcel size and the criteria for varying the minimum size. Proposed subdivisions involving mobile homes, trailer courts, campgrounds, multiple family dwellings, and commercial or industrial development are also subject to this rule.

(a) If an applicant proposes to use subsurface wastewater treatment systems, as described in department Circular DEQ-4, ~~2000 edition,~~ the minimum lot size must be one acre for each living unit and one acre for up to 700 gallons per day of design wastewater flow for commercial and other non-residential uses. The department may allow smaller lot sizes pursuant to waiver as provided in (1)(b) and ARM 17.36.601. The reviewing authority may, without a waiver, allow smaller lot sizes in accordance with the criteria set out in (1)(c) and (d). The reviewing authority may require larger lot sizes as provided in (1)(e).

(b) The department may allow, pursuant to a waiver under ARM 17.36.601, lot sizes smaller than one acre only for lots created before July 1, 1973 <u>and for alteration of lots created before April 15, 2003 as provided in (1)(b)(i)</u>, and only after approval by the local health department. To qualify for a waiver, the applicant shall provide adequate evidence as set out in (1)(b)~~(i)~~<u>(ii)</u> and ~~(ii)~~<u>(iii)</u> to demonstrate that water quality is protected~~:~~<u>.</u>

(i) For purposes of this rule, "alteration" of lots created before April 15, 2003, means combining lots by eliminating common boundaries, redefining lots by relocating common boundaries, or a combination of both. An alteration of lots under this rule must also meet the following requirements:

(A) it must be impracticable to create lots that comply with the minimum lot size required in (1)(a) and the alteration must improve, or at least not reduce, the capability for wastewater treatment on the affected lots;

(B) the alteration may not result in an increase in the number of affected lots;

(C) the alteration may not decrease the total acreage of all affected lots; and

(D) the number of existing wastewater systems on the affected lots may not be increased, although existing wastewater systems may be altered or replaced.

~~(i)~~ (ii) ~~the~~ The applicant shall provide site-specific information regarding soil and aquifer characteristics, mixing zones, and impacts on surrounding properties taking into account existing and potential uses. The applicant shall also provide evidence showing that:

(A) through (C) remain the same.

~~(ii)~~ (iii) ~~in~~ In order to determine site suitability, the reviewing authority may require the applicant to provide additional site-specific information, including results of ground water or soils analyses.

(c) and (d) remain the same.

(e) The reviewing authority may require lot sizes larger than those allowable under (1)(a)~~,~~ or may limit the wastewater flow for a lot if:

(i) wastewater flow exceeds 700 gallons per day per acre;

(ii) wastewater flow exceeds residential strength;

(iii) lots are used for a combination of residential and non-residential uses; or

(iv) if otherwise necessary to protect water quality.

AUTH: 76-4-104, MCA
IMP: 76-4-104, MCA

REASON: The proposed amendments are to the minimum lot size rule, which applies to subdivision review under the Sanitation in Subdivisions Act. The amendments would allow the Department to waive the minimum lot size of one acre for certain existing lots, would clarify the circumstances under which the Department may require a minimum lot size larger than one acre, and would make minor changes to formatting.

The amendments to (1)(a) delete the reference to the 2000 edition of Department Circular DEQ-4. References to particular editions of Department Circulars incorporated by reference in these rules are contained in ARM 17.36.345, and it is duplicative to include reference to the edition here.

The amendments to (1)(b) set out a new case for waiving the minimum lot size rule. Under the amendments, a waiver would be available for alterations of existing lots, provided that it is impracticable to meet the lot size rule, the wastewater treatment capability of the lots will be improved or at least not reduced, the number of lots and wastewater systems does not increase, and the alteration does not reduce the total size of all affected lots. Waivers are subject to the approval of the local health department. The purpose of the amendments is to allow reconfiguration of existing small lots where adequate wastewater treatment can be shown, and where it is impracticable to create lots that meet the minimum lot size. The amendments are necessary to give the reviewing authority a problem-solving tool to address wastewater treatment for existing small lots.

The amendments to (1)(e) are necessary to clarify several circumstances in which the Department would consider requiring lot sizes larger than the one-acre minimum. These situations include wastewater flows greater than 700 gpd, wastewater exceeding residential strength, and lots used for a combination of residential and non-residential purposes.

4. Concerned persons may submit their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to Melanie Lee, Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901, faxed to (406) 444-1374 or emailed to mellee@state.mt.us and must be received no later than 5:00 p.m., July 24, 2003. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

5. James M. Madden, attorney for the Department, has been designated to preside over and conduct the hearing.

6. 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.

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

DEPARTMENT OF ENVIRONMENTAL QUALITY

BY: *Jan P. Sensibaugh*
JAN P. SENSIBAUGH, Director

Reviewed by:

James M. Madden
JAMES M. MADDEN, Rule Reviewer

Certified to the Secretary of State June 16, 2003.

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

In the Matter of the Proposed Amendment of ARM 38.5.3801, 38.5.3802, 38.5.3815, 38.5.3901 and 38.5.3904 Pertaining to Slamming, and the Proposed Adoption of New Rules I through III Pertaining to Cramming, and the Repeal of ARM 38.5.3001 through 38.5.3009 Pertaining to Interim Universal Access	)	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT, ADOPTION AND REPEAL

TO: All Concerned Persons

1. On August 5, 2003, at 1:30 p.m., a public hearing will be held in the Bollinger Room, Public Service Commission (PSC) offices, 1701 Prospect Avenue, Helena, Montana, to consider the amendment of ARM 38.5.3801, 38.5.3802, 38.5.3815, 38.5.3901 and 38.5.3904, the adoption of new Rules I through III, and the repeal of 38.5.3001 through 38.5.3009.

2. The PSC 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 PSC no later than 5:00 p.m. on August 1, 2003, to advise us of the nature of the accommodation that you need. Please contact Laura Culkin, PSC Secretary, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, telephone number (406) 444-6170, TTD number (406) 444-6199, fax number (406) 444-7618, email lculkin@state.mt.us.

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

<u>38.5.3801 CHANGE IN TELECOMMUNICATIONS PROVIDER</u>

(1) remains the same.

(a) When the carrier initiating the change has obtained the customer's written <u>or electronic signature</u> authorization in a form that meets the letter of agency form and content requirements (as referenced below); or

(b) through (4) remain the same.

AUTH: 69-3-1301, 69-3-1302 and 69-3-1303, MCA
IMP: 69-3-1304, MCA

<u>38.5.3802 LETTER OF AGENCY FORM AND CONTENT</u> (1) A telecommunications carrier initiating a change in a subscriber's primary interexchange carrier or local exchange carrier shall obtain any necessary written <u>or electronically signed</u> authorization from a subscriber by using a letter of agency as

specified in this rule. Any letter of agency that does not conform with this rule is invalid.

(2) The letter of agency shall be a separate document (or an easily separable document) or located on a separate screen or webpage containing only the authorizing language described in (5) ~~of this rule~~, the sole purpose of which is to authorize a telecommunications carrier to initiate a primary interexchange carrier or local exchange carrier change. The letter of agency must be signed and dated by the subscriber to the telephone line(s) requesting the change in carrier.

(3) The letter of agency shall not be combined on the same document, screen or webpage with inducements of any kind.

(4) through (7) remain the same.

(8) Letters of agency submitted with an electronically signed authorization must include the consumer disclosures required by Section 101(c) of the Electronic Signatures in Global and National Commerce Act (2003) (47 CFR 64.1130) which is adopted and incorporated by reference. A copy of this section may be obtained from the Commission, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601.

AUTH: 68-3-1301, 69-3-1302 and 69-3-1303, MCA
IMP: 69-3-1304, MCA

38.5.3815 DEFINITIONS For the purpose of this subchapter ~~38~~, the following definitions are applicable:

(1) "Electronic signature" has the meaning as provided in 30-18-102(8), MCA.

(1) through (2)(b) remain the same but are renumbered (2) through (3)(b).

AUTH: 69-3-1301, 69-3-1302 and 69-3-1303, MCA
IMP: 69-3-1304, MCA

38.5.3901 CUSTOMER AUTHORIZATION REQUIRED PRIOR TO PLACEMENT OF CHARGES ON CUSTOMERS' TELEPHONE BILL

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

(b) When the telecommunications provider or other entity initiating the placement of charges has obtained the customer's written or electronic signature authorization in a form that meets the letter of agency form and content requirements in ARM 38.5.3904;

(c) through (5) remain the same.

AUTH: 69-3-1301, 69-3-1302 and 69-3-1303, MCA
IMP: 69-3-1304, MCA

38.5.3904 LETTER OF AGENCY FORM AND CONTENT

(1) A telecommunications carrier or other entity initiating a product or service charge to be placed on a customer's telecommunications bill shall obtain any necessary written or electronically signed authorization from a subscriber by using a letter of agency as specified in this rule. Any letter of agency that does not conform with this rule is invalid.

(2) The letter of agency shall be a separate document (or an easily separable document) or located on a separate screen or

webpage containing only the authorizing language described in (5) ~~of this rule~~, the sole purpose of which is to authorize a charge to be placed on the customer's telecommunications bill for a product or service. The letter of agency must be signed and dated by the subscriber to the telecommunications account being authorized for the billing.

(3) The letter of agency shall not be combined on the same document, screen or webpage with inducements of any kind.

(4) through (7) remain the same.

(8) Letters of agency submitted with an electronically signed authorization must include the consumer disclosures required by Section 101(c) of the Electronic Signatures in Global and National Commerce Act (2003) (47 CFR 64.1130) which is adopted and incorporated by reference. A copy of this section may be obtained from the Commission, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601.

(9) A carrier or other entity shall submit an order for placement of the charge for the product or service on the subscriber's telephone bill within no more than 60 days of obtaining a written or electronically signed letter of agency authorizing the charge from the subscriber.

AUTH: 69-3-1301, 69-3-1302 and 69-3-1303, MCA
IMP: 69-3-1304, MCA

4. The proposed new rules provide as follows:

RULE I SALE OR TRANSFER OF SUBSCRIBER BASES (1) A carrier shall submit a carrier change order on behalf of a subscriber within no more than 60 days of obtaining a written or electronically signed letter of agency.

(2) A carrier may acquire, through a sale or transfer, either part or all of another carrier's subscriber base without obtaining each subscriber's authorization and verification in accordance with ARM 38.5.3801, provided that the acquiring carrier complies with the following procedures. A carrier may not use these procedures for any fraudulent purpose, including any attempt to avoid liability for violations under ARM 38.5.3801.

(a) No later than 30 days before the planned transfer of the affected subscribers from the selling or transferring carrier to the acquiring carrier, the acquiring carrier shall file with the commission a letter of notification providing the names of the parties to the transaction, the types of telecommunications services to be provided to the affected subscribers, and the date of the transfer of the subscriber base to the acquiring carrier. In the letter notification, the acquiring carrier also shall certify compliance with the requirement to provide advance subscriber notice in accordance with the obligations specified in that notice, and with other commission requirements that apply to this process. In addition, the acquiring carrier shall attach a copy of the notice sent to the affected subscribers.

(b) If, subsequent to the filing of the letter notification with the commission required by (3), any material

changes to the required information should develop, the acquiring carrier shall file written notification of these changes with the commission no more than 10 days after the transfer date announced in the prior notification. The commission may require the acquiring carrier to send an additional notice to the affected subscribers regarding such material changes.

(c) Not later than 30 days before the transfer of the affected subscribers from the selling or transferring carrier to the acquiring carrier, the acquiring carrier shall provide written notice to each affected subscriber of the information specified. The acquiring carrier is required to fulfill the obligations set forth in the advance subscriber notice. The following information must be included in the advance subscriber notice:

(i) The date on which the acquiring carrier will become the subscriber's new provider of telecommunications service;

(ii) The rates, terms, and conditions of the service(s) to be provided by the acquiring carrier upon the subscriber's transfer to the acquiring carrier, and the means by which the acquiring carrier will notify the subscriber of any change(s) to these rates, terms, and conditions;

(iii) The acquiring carrier will be responsible for any carrier change charges associated with the transfer;

(iv) The subscriber's right to select a different preferred carrier for the telecommunications service(s) at issue, if an alternative carrier is available;

(v) All subscribers receiving the notice, even those who have arranged preferred carrier freezes through their local service providers on the service(s) involved in the transfer, will be transferred to the acquiring carrier, unless they have selected a different carrier before the transfer date; existing preferred carrier freezes on the service(s) involved in the transfer will be lifted; and the subscribers must contact their local service providers to arrange a new freeze;

(vi) Whether the acquiring carrier will be responsible for handling any complaints filed, or otherwise raised, prior to or during the transfer against the selling or transferring carrier; and

(vii) The toll-free customer service telephone number of the acquiring carrier.

AUTH: 69-3-1301, 69-3-1302 and 69-3-1303, MCA
IMP: 69-3-1304, MCA

RULE II REGISTRATION REQUIREMENTS AND OBLIGATIONS OF SERVICE PROVIDERS, BILLING AGGREGATORS, AND BILLING AGENTS

(1) A service provider may not offer a product or service to a customer, the charge for which appears on the bill of a billing agent, nor forward such a charge to a billing agent, unless the service provider is registered with the commission pursuant to this rule.

(2) A billing aggregator may not forward to a billing agent charges for a service or product offered by a service provider unless:

(a) the billing aggregator is registered with the commission pursuant to this rule; and

(b) the service provider is properly registered pursuant to these rules.

(3) A billing agent may not directly bill on behalf of a service provider or billing aggregator who is required to be registered, and who is not properly registered, under this rule.

(a) The commission will add new registrants to its list of service providers and billing aggregators within two business days of the effective date of the registration and said list will be posted to the commission's internet website.

(b) The commission will remove from its list within two business days of the revocation being final registrants whose registration has been revoked.

(c) A billing agent that places a charge on a customer's bill on behalf of a service provider that is not registered with the commission must immediately remove the charge from the customer's bill and will be liable to the customer for reimbursement of charges paid.

(4) Each billing aggregator shall submit to the commission no later than April 1 of each year a list of service providers and other entities for which the billing aggregator provides billing services. The billing aggregator's initial list will be submitted when the billing aggregator completes the registration form. The billing aggregator's annual list of service providers shall include:

(a) the name and address of the service provider and every name under which the service provider's products will be billed by the aggregator; and

(b) a signed and notarized statement that the billing aggregator has verified that each service provider on the list is registered with the commission.

AUTH: 69-3-1305, 69-3-1308, 69-3-1309, 69-3-1310, 69-3-1311, 69-3-1315 and 69-3-1316, MCA

IMP: 69-3-1304, MCA

RULE III REGISTRATION PROCEDURES FOR SERVICE PROVIDERS AND BILLING AGGREGATORS (1) Billing aggregators and service providers must register on a form provided by the commission that is notarized and signed by two officers of the applicant. A copy of the application form is available from the commission or on the commission's internet website.

(2) Each applicant must file an original application, two paper copies and a copy in an electronic format specified by the commission.

(3) The applicant shall inform the commission of any change in the information provided in the application during the pendency of the application.

(4) When correspondence sent by the commission to a registered billing aggregator or service provider by mail or electronic mail to the mailing and electronic mailing addresses provided by the registrant is returned as undeliverable, the registrant will be removed from the list of registered providers and will no longer be registered. The commission will notify

all registered billing aggregators and telecommunications carriers of the removal of the billing aggregator's or service provider's registration within two business days of the removal.

(5) The commission may reject a registration request if the commission finds that:

(a) the application is incomplete and the applicant does not take reasonable steps to provide the missing information; or

(b) the applicant has knowingly misrepresented or omitted a material fact on the application.

(6) After notice and an opportunity for a hearing, the commission may revoke a registration in accordance with this rule.

(7) The commission may revoke the registration of a service provider who has:

(a) knowingly or repeatedly billed one or more customers for unauthorized service, provided that for the purposes of these rules, a service provider knowingly billed for unauthorized charges if it cannot verify the customer's authorization for such charges, pursuant to these rules; or

(b) engaged in any other false or deceptive billing practices.

(8) The commission may revoke the registration of a billing aggregator who has:

(a) knowingly or repeatedly forwarded the charge for a service or product to a billing agent on behalf of a service provider who was required to be registered with the commission under these rules and who was not registered, provided that:

(i) for purposes of these rules, a billing aggregator acted knowingly if it forwarded a charge and if the service provider's name was not on the commission's list of registered service providers at the time the charge was forwarded to the billing agent; or

(ii) if the service provider's registration had been revoked and properly noticed pursuant to these rules at the time the charge was forwarded to the billing agent; or

(b) engaged in any other false or deceptive billing practices.

(9) The commission shall provide notice of the revocation of a registration under this rule to all registered telecommunications carriers and billing aggregators doing business in Montana within two business days of the revocation becoming final.

AUTH: 69-3-1305, 69-3-1308, 69-3-1309, 69-3-1310, 69-3-1311, 69-3-1315 and 69-3-1316, MCA
IMP: 69-3-1304, MCA

5. The amendment to existing rules and adoption of new rules is necessary to implement legislation passed in the 2003 legislative session, under HB 479 and HB 562.

6. ARM 38.5.3001 through 38.5.3009, which can be found on pages 38-809 through 38-813 of the Administrative Rules of Montana, are proposed to be repealed because the statutory authority governing Montana's interim universal access program,

pursuant to which these rules were put in effect, has been repealed.

AUTH: 69-3-822, MCA
IMP 69-3-856, 69-3-857, 69-3-858, 69-3-859, 69-3-860, MCA

7. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments (original and 10 copies) may also be submitted to Legal Division, Public Service Commission, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, and must be received no later than August 5, 2003, or may be submitted to the PSC through the PSC's web-based comment form at http://psc.state.mt.us/PublicComment/PublicComment.htm no later than August 5, 2003. (PLEASE NOTE: When filing comments pursuant to this notice please reference "Docket No. L-03.6.1-RUL.")

8. The PSC, a commissioner, or a duly appointed presiding officer may preside over and conduct the hearing.

9. The Montana Consumer Counsel, 616 Helena Avenue, P.O. Box 201703, Helena, Montana 59620-1703, phone (406) 444-2771, is available and may be contacted to represent consumer interests in this matter.

10. The PSC maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the PSC. 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: electric utilities, providers, and suppliers; natural gas utilities, providers and suppliers; telecommunications utilities and carriers; water and sewer utilities; common carrier pipelines; motor carriers; rail carriers; and administrative procedures. Such written request may be mailed or delivered to Commission Secretary, Public Service Commission, Legal Division, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, faxed to Commission Secretary at (406) 444-7618, emailed to rmchugh@state.mt.us, or may be made by completing a request form at any rules hearing held by the PSC.

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

/s/ Bob Rowe
Bob Rowe, Chairman

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

CERTIFIED TO THE SECRETARY OF STATE JUNE 16, 2003.

Pages 1269 - 1271 pulled at agency request.

**BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA**

In the matter of the amendment of ARM 4.5.202, 4.5.203, and 4.5.204 relating to the designation of noxious weeds	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On May 8, 2003, the Department of Agriculture published MAR Notice No. 4-14-139 regarding the proposed amendment of the above-stated rules relating to designation of noxious weeds, at page 867 of the 2003 Montana Administrative Register, Issue Number 9.

2. The following comment was received and appears with the Department of Agriculture's response.

COMMENT 1: One comment was received in favor of the rule amendment.

RESPONSE: The department concurs.

3. The agency has amended ARM 4.5.202, 4.5.203, and 4.5.204 exactly as proposed.

/s/ W. Ralph Peck
Ralph Peck
Director

/s/ Tim Meloy
Tim Meloy, Attorney
Rule Reviewer

Certified to the Secretary of State June 16, 2003.

**BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA**

In the matter of the amendment of ARM 4.9.401 relating to wheat and barley assessment and refunds	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On May 8, 2003, the Department of Agriculture published MAR Notice No. 4-14-140 regarding a public hearing on the proposed amendment of the above-stated rule relating to wheat and barley assessment and refunds, at page 871 of the 2003 Montana Administrative Register, Issue Number 9.

2. The following comment was received and appears with the Department of Agriculture's response:

COMMENT 1: A public hearing was held on May 29, 2003. The department received one comment from Lochiel Edwards, representing the Montana Grain Growers Association generally supporting the proposed amendment.

RESPONSE 1: The department concurs.

3. The agency has amended ARM 4.9.401 exactly as proposed.

DEPARTMENT OF AGRICULTURE

/s/ Dan Kidd
Dan Kidd, Chairman
MONTANA WHEAT & BARLEY COMMITTEE

/s/ W. Ralph Peck
Ralph Peck
Director

/s/ Tim Meloy
Tim Meloy, Attorney
Rule Reviewer

Certified to the Secretary of State June 16, 2003.

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

In the matter of the adoption of New Rules II and III pertaining to classifications for constructed coal bed methane water holding ponds, and the amendment of ARM 17.30.706 pertaining to informational requirements for nondegradation significance/ authorization review	NOTICE OF ADOPTION AND AMENDMENT (WATER QUALITY)

TO: All Concerned Persons

1. On August 29, 2002, the Board of Environmental Review published MAR Notice No. 17-171 regarding a notice of public hearing on the proposed adoption and amendment of the above-stated rules at page 2269, 2002 Montana Administrative Register, issue number 16. On December 26, 2002, the Board of Environmental Review published MAR Notice No. 17-187 regarding an amended notice of public hearing on the proposed adoption and amendment of the above-stated rules at page 3489, 2002 Montana Administrative Register, issue number 24. MAR Notice Nos. 17-171 and 17-187 were part of the same rulemaking proceeding. On April 24, 2003, the Board published an adoption notice for MAR Notice No. 17-187 at page 779, 2003 Montana Administrative Register, issue number 8.

2. In the adoption notice for 17-187, the Board did not adopt New Rule I or the proposed amendments of ARM 17.30.715 from MAR Notice No. 17-171 or Alternative I of New Rule IV from MAR Notice No. 17-187. The Board deferred consideration of proposed New Rules II and III, published in MAR Notice No. 17-171, and the proposed amendment of ARM 17.30.706, published in MAR Notice No. 17-187, until its June 6, 2003 regularly scheduled meeting. In the adoption notice for MAR Notice No. 17-187, the Board adopted Alternative II of New Rule IV (17.30.670) and amended ARM 17.30.602 as proposed, but with a change as set forth in the notice.

3. The Board has adopted New Rules II (17.30.616) and III (17.30.658) as proposed in MAR Notice No. 17-171, and amended ARM 17.30.706 as proposed in MAR Notice No. 17-187, but with the following changes, stricken matter interlined, new matter underlined:

<u>17.30.616 WATER-USE CLASSIFICATION AND DESCRIPTION FOR PONDS AND RESERVOIRS CONSTRUCTED FOR THE DISPOSAL OF COAL BED METHANE WATER</u> (1) The water-use classification for waters in constructed ponds and reservoirs <u>not located in drainage systems</u> that hold water produced from coal bed methane

development and are ~~not located in drainage systems that reach other~~ defined as "state waters" in 75-5-103, MCA, is . . . G-1

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

(a) remains as proposed.

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

(c) remains as proposed.

17.30.706 INFORMATIONAL REQUIREMENTS FOR NONDEGRADATION SIGNIFICANCE/AUTHORIZATION REVIEW (1) through (2) remain as proposed.

(3) Any person proposing to discharge unaltered ground water into surface or ground water for purposes of developing coal bed methane must complete a department "Application for Determination of Significance", as described in (4), unless the person applies for a permit pursuant to Title 17, chapter 30, subchapter 13. The department shall review the application and determine whether the discharge is nonsignificant according to criteria established by the board. If the department determines that the discharge is nonsignificant, the department shall issue a "Determination of Nonsignificance", which must include any conditions or limitations on the discharge that are reasonably necessary to ensure compliance with its determination. No person may violate the conditions or limitations included in the department's "Determination of Nonsignificance" and any violation of those conditions or limitations constitutes degradation in violation of 75-5-605(1)(d), MCA.

(4) through (14) remain as proposed.

4. The following comments pertaining to New Rules II and III and ARM 17.30.706 were received and appear with the Board's responses:

COMMENT NO. 1: One commentor stated that New Rules II and III, which establish water quality standards for "ponds and reservoirs constructed for the disposal of CBM water", are illegal, because they conflict with the federal CWA. Specifically, 40 C.F.R. § 122.2 excludes from the definition of "waters of the United States" any "waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of the CWA." Since the purpose of the constructed ponds and reservoirs is to dispose of CBM wastewater, those ponds are not waters of the United States. Consequently, New Rules II and III conflict with the CWA because they classify the wastewater in constructed ponds as waters of the United States.

RESPONSE: In MAR Notice No. 17-171, the Board proposed to adopt a water-use classification and standards for ponds and reservoirs that hold water produced by coal bed methane development on the theory that the unaltered ground water in those ponds is "state waters" as defined in 75-5-103, MCA.

Subsequently, the Court of Appeals for the Ninth Circuit on April 10, 2003, issued an opinion that coal bed methane water is a "pollutant" or "industrial waste." Under this ruling, some or all ponds or reservoirs constructed for the purpose of holding coal bed methane water may be exempt from the definition of "state waters" in 75-5-103, MCA, since that definition excludes "ponds or lagoons used solely for treating, transporting, and impounding pollutants." However, the Court has been asked to stay implementation of this decision pending an appeal to the United States Supreme Court. Since it is uncertain at this time whether the Ninth Circuit will stay its decision pending appeal or whether its decision will ultimately be upheld or reversed, the Board is amending ARM 17.30.616 to clarify that the classification and standards for coal bed methane ponds apply only to waters that meet the definition in 75-5-103, MCA. This amendment will allow the Department to determine whether or not the newly adopted classification and standards apply depending upon the current, prevailing decision of the federal courts.

Whether or not the constructed ponds and reservoirs are "waters of the United States" under 40 C.F.R. § 122.2, is an issue that will be considered by EPA when it determines whether it has jurisdiction to review the newly adopted classification and standards under § 303(c) of the federal CWA.

COMMENT NO. 2: New Rule III establishes certain designated uses for waters in constructed ponds and reservoirs that include "... watering wildlife and livestock, aquatic life not including fish, secondary contact recreation, and marginally suitable for irrigation." The water quality standards established under New Rule III do not protect these designated uses, because there is no limit on SAR and the standard for EC is 3,000 µS/cm. Given that untreated CBM water has SAR values of 40-50, the Board must provide a rationale for why the waters will be "marginally suitable for irrigation" when there is no limit on these high SAR values and the EC limit is 3,000 µS/cm.

RESPONSE: The intent of the rule is to provide a level of protection that will maintain these waters marginally suitable for irrigation. In order to implement the original intent of protecting potential sources of irrigation water, the Board is amending the rule to specify that the waters are "marginally suitable for irrigation after treatment or with mitigation measures."

COMMENT NO. 3: Except for EC and fecal coliform, New Rule III exempts constructed ponds and reservoirs from all other water quality standards for surface and ground water.

The Department has failed to provide any rationale as to how the designated uses of these ponds will be fully protected when none of the standards in WQB-7 apply to these waters. The designated uses of these ponds include aquatic life, livestock, wildlife, and humans that use these waters for recreation.

RESPONSE: The standards in WQB-7 are based on protecting the use of water for consumption by people and for protecting aquatic life including fish. The proposed classification does not include use of this water for consumption by people nor does it include protection for fish. Thus, WQB-7 standards are not appropriate. Protection of livestock, wildlife and aquatic life not including fish will be accomplished through application of the narrative standards in ARM 17.30.637 on a site-specific and parameter-specific basis.

COMMENT NO. 4: The amendment of ARM 17.30.706, which imposes a determination of nonsignificance on discharges from CBM development, is meaningless. The Department is already required to make such a determination under state and federal law.

RESPONSE: The Board disagrees that state and federal laws require the Department to review all activities for compliance with Montana's nondegradation laws. In instances where neither EPA nor the state has authority to regulate sources under the NPDES requirements of the federal CWA, then the federal antidegradation requirements do not apply. See, American Wildlands et al. v. Browner, 260 F.3d 1192, 1197-1198 (10th Cir. 2001).

Similar to federal law, state law does not require the Department to review discharges that are not required to obtain an MPDES permit, license or approval from the Department. Specifically, under ARM 17.30.706(1)(a), any persons who are not regulated by the Department may "determine for themselves" that their proposed discharge is "nonsignificant" by using the criteria in ARM 17.30.715 or 17.30.716. See ARM 17.30.706(1)(a). In contrast, when a permit or approval from the Department is required or requested, then the Department must determine whether the proposed activity is nonsignificant based upon information submitted by the applicant during the permitting process. See ARM 17.30.706(2).

In MAR Notice No. 17-187, the Board proposed amending ARM 17.30.706 in response to a federal district court decision finding that coal bed methane water is not subject to federal and state NPDES/MPDES permit requirements. Rather than allow CBM developers to avoid all regulation under Montana water quality laws, the Board proposed adding a new (3) to ARM 17.30.706, which would require the Department to make a nonsignificance determination for all proposals to discharge coal bed methane water even though the discharges are not subject to the MPDES requirements.

On April 10, 2003, the Ninth Circuit Court of Appeals reversed the District Court by ruling that CBM discharges are

subject to NPDES permit requirements. The Board notes, however, that the Ninth Circuit may stay its decision pending review by the United States Supreme Court. At this time, it is uncertain whether the federal courts will ultimately conclude that an NPDES/MPDES permit is required for coal bed methane water. In order to avoid the possibility of unregulated discharges of coal bed methane water, the Board is adopting the requirement for a nonsignificance determination for these discharges as originally proposed. However, in order to avoid the possibility of duplicative requirements in the event an NPDES/MPDES permit is required, the Board is adopting an amendment that will eliminate the requirement for a mandatory nonsignificance review if the person proposing to discharge applies for an MPDES permit.

COMMENT NO. 5: **The undefined "criteria" for nonsignificance to be determined by the Board under ARM 17.30.706(5) violate MAPA, the Montana Water Quality Act, and the Constitution's requirement that all aspects of rulemaking be subject to public review and participation. The Board cannot adopt a rule that allows a key component to be decided later, without any public participation and review.**

RESPONSE: **Section (5) in ARM 17.30.706 clearly specifies that the "criteria" that will be used by the Department to determine whether CBM discharges are "nonsignificant" are the criteria that have already been adopted by the Board and are contained in ARM 17.30.715 and 17.30.670. Any amendments to the criteria contained in those rules, such as the Board's adoption of nonsignificance criteria for EC and SAR, must also be used by the Department according to the provisions of ARM 17.30.706(5). As such, the Board does not agree that the "criteria" referred to in ARM 17.30.706 are undefined or that the Board will determine what those criteria are at a later date.**

Reviewed by: **BOARD OF ENVIRONMENTAL REVIEW**

John F. North **By:** *Joseph W. Russell*

JOHN F. NORTH **JOSEPH W. RUSSELL, M.P.H.**
Rule Reviewer **Chairman**

Certified to the Secretary of State, June 16, 2003.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.38.101, 17.38.201A, 17.38.202, 17.38.203, 17.38.206, 17.38.208, 17.38.216, 17.38.229, 17.38.234, 17.38.239, 17.38.249, 17.38.302, and the adoption of new rule I pertaining to ground water under the direct influence of surface water determinations	NOTICE OF AMENDMENT AND ADOPTION (PUBLIC WATER SUPPLY AND WASTEWATER SYSTEM REQUIREMENTS)

TO: All Concerned Persons

1. On April 10, 2003, the Board of Environmental Review published MAR Notice No. 17-190 regarding a notice of public hearing on the proposed amendment and adoption of the above-stated rules at page 622, 2003 Montana Administrative Register, issue number 7.

2. The Board has amended ARM 17.38.101, 17.38.201A, 17.38.202, 17.38.203, 17.38.206, 17.38.208, 17.38.216, 17.38.229, 17.38.239, 17.38.302, and adopted new rule I (17.38.209) exactly as proposed. The Board has amended ARM 17.38.234 and 17.38.249 as proposed, but with the following changes, deleted matter interlined, new matter underlined:

17.38.234 TESTING AND SAMPLING RECORDS AND REPORTING REQUIREMENTS (1) and (2) remain as proposed.

(3) Actual laboratory reports may be kept or data may be transferred to tabular summaries, provided the following information is included:

(a) through (d) remain as proposed.

(e) 40 CFR 141.76(b) and (d), which set forth reporting and recordkeeping requirements for ~~lead and copper~~ the recycle provisions;

(f) through (8) remain as proposed.

17.38.249 CERTIFIED OPERATOR AND DESIGNATED CONTACT PERSON (1) remains as proposed.

(2) The owner of a public water supply or wastewater treatment system shall provide, no later than 30 days after the issuance of a written request by the department, the name, address, and telephone number of a designated person who shall be responsible for contact and communications with the department in matters relating to system alteration, extension and construction, monitoring and sampling, maintenance, operation, recordkeeping, notification, and reporting. ~~For a community or a non-transient non-community public water supply or wastewater treatment system, this person must be certified~~

~~in accordance with the requirements of Title 37, chapter 42, MCA.~~

(3) The owner of a public water supply or wastewater treatment system shall report any change in ~~assigned responsibilities~~ certified operator or designated person~~s~~ to the department within 30 days after the change.

(4) and (5) remain as proposed.

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

COMMENT NO. 1: Multiple commentors were concerned with the costs associated with complying with the new arsenic standard.

RESPONSE: As part of the federal regulation development process, the Environmental Protection Agency (EPA) is required to take cost of compliance into consideration when considering regulations for promulgation. The EPA has determined that compliance with this new standard is affordable to systems of all sizes. Compliance may be achieved through various treatment types and there are certain funding sources that offer grant monies and low interest loans to qualifying systems.

To retain primary enforcement responsibility, the state of Montana, through the Board of Environmental Review (Board), is required by 40 CFR 142.12 to adopt the new arsenic standard. The Board has no leeway to deviate from this standard.

Therefore, the Board declines to make a change to the proposed rules.

COMMENT NO. 2: One commentor believes that it is unfair to group together small systems with cities and townships that have tax-funded resources.

RESPONSE: The federal and state definitions of a public water supply make no distinction as to whether a system collects taxes or not. If a system meets the definition of a public water supply, as defined in ARM 17.38.202, then it is required to meet the applicable standards. Cost issues are addressed in the response to Comment No. 1 above.

Therefore, the Board declines to make a change to the proposed rules.

COMMENT NO. 3: One commentor stated that nothing removes arsenic.

RESPONSE: As part of the federal regulation development process, the EPA is required to take availability of treatment into consideration when considering regulations for promulgation. The EPA has identified Best Available Treatment (BATs) technologies for compliance with this new standard. Compliance may be achieved through various treatment types, including various central treatment options and Point-of-Use/Point-of-Entry devices.

The state of Montana, through the Board, has adopted by reference 40 CFR Part 141, which contains tables indicating the BATs for individual contaminants.

Therefore, the Board declines to make a change to the proposed rules.

COMMENT NO. 4: **A commentor suggested sending the arsenic rule back to the federal government.**

RESPONSE: **As a primacy state, the state of Montana is required by 40 CFR 142.12 to have laws and rules at least as stringent as the federal requirements regulating public water supplies. Through the federal regulation adoption process, the EPA accepts and responds to public comments. The public comment period for the federal regulation adoption process would have been the correct forum in which to make this suggestion.**

Therefore, the Board declines to make a change to the proposed rules.

COMMENT NO. 5: **A commentor was concerned with the costs associated with complying with a new radon standard.**

RESPONSE: **These rule amendments do not contain a proposal to adopt a radon standard. In fact, the EPA has put the proposed federal radon regulation on hold.**

Therefore, the Board is not proposing to adopt a radon standard and declines to make a change to the proposed rules.

BOARD OF ENVIRONMENTAL REVIEW

By: *Joseph W. Russell*
JOSEPH W. RUSSELL, M.P.H.
Chairman

Reviewed by:

James M. Madden
JAMES M. MADDEN, Rule Reviewer

Certified to the Secretary of State, June 16, 2003.

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

In the matter of the adoption of New Rule I concerning determination of annual permit surcharge, New Rule II concerning a change in designation of number of machines for annual permit surcharge, amendment of ARM 23.16.120, 23.16.125, 23.16.1803, 23.16.1805, 23.16.1823, 23.16.1901, and 23.16.3501 concerning the implementation of the video gambling machine permit fee surcharge and the repeal of ARM 23.16.1806 concerning regulation of gambling	))))))))))))))	NOTICE OF ADOPTION, AMENDMENT AND REPEAL

TO: All Concerned Persons

1. On May 8, 2003, the Department of Justice published MAR Notice No. 23-16-140 regarding the proposed adoption of new rules concerning the annual permit surcharge, amendment of ARM 23.16.120, 23.16.125, 23.16.1803, 23.16.1805, 23.16.1823, 23.16.1901, and 23.16.3501 concerning the implementation of the video gambling machine permit fee surcharge and the repeal of ARM 23.16.1806 concerning regulation of gambling at page 874 of the 2003 Montana Administrative Register, Issue Number 9.

2. The Department of Justice has adopted New Rule I (23.16.1809); amended ARM 23.16.120, 23.16.125, 23.16.1803, 23.16.1805, 23.16.1823, 23.16.1901 and 23.16.3501; and repealed ARM 23.16.1806 exactly as proposed.

3. The department adopts the remaining rule with the following changes, stricken matter interlined, new matter underlined:

RULE II (23.16.1810) CHANGE IN DESIGNATION OF NUMBER OF MACHINES FOR ANNUAL PERMIT SURCHARGE (1) Licensees ~~may request~~ must file a change in designation from a premises having ~~20~~ 19 or fewer machines~~, or fewer~~ to a premises having ~~than~~ 20 machines. A premises may file a change in designation when changing from a premises having 20 machines to a premises having less than 20 machines.

(2) A change in designation must be requested on a form provided by the department ~~and the department must approve any change in designation~~.

~~(3) A licensee may not request more than one change in designation during a fiscal year.~~

(4) and (5) remain the same, but are renumbered (3) and

(4).

4. These amendments will be effective June 27, 2003.

5. The following comments were received and appear with the Department of Justice's responses.

At the public hearing Ronda Carpenter, Montana Coin Machine Operators Association, raised objections to Rules I and II. The Department of Justice also received written comments from Rich Miller, Executive Director, Gaming Industry Association of Montana, Inc., and Mark Staples, Attorney for the Montana Tavern Association raising objections to Rules I and II. Some of the objections relate to both of the proposed rules.

Comment No. 1: Proposed Process is Inefficient – Comments indicated that some felt that there was no need to ask the applicant how many machines they intended to operate but the division could determine this by the number of machines submitted for renewal of permits. It was also suggested that if an operator permitted or renewed less than 20 machines and later added one or more machines to become a 20-machine location, the division not only collect the $20 surcharge on the new permit application but also assess the difference between the higher and lower rates on the other machines permitted.

Response No. 1: The division considered assessing the surcharge in the manner suggested. If the number of machines renewed or permitted was less than 20, assess the $10 surcharge; and if the number of machines renewed or permitted was 20, assess the $20 surcharge. The division also considered auditing location permit files and assessing the difference between the higher and lower rates when an operator increased permitted machines to 20. There were two reasons the division chose to request a designation.

a. The first reason for requesting a designation on the renewal form is that a large number of 20-machine locations do not renew all 20 machines but know they will be licensing 20 machines. Many 20-machine locations swap machines out of their location at renewal. The renewal notice sent to the location includes the 20 machines currently operated in each location. When the operators mail the notice back, they will renew only those that will remain in the location for the upcoming year. Those they intend to replace will continue to be operated until the end of the fiscal year and removed. Permit applications are then submitted for machines replacing those removed at the end of the year. Two different types of application forms, submitted at different times, are used to permit the machines that will be in play at the beginning of the fiscal year. Using the procedure suggested by industry representatives would require the applicant to pay and division to accept a $10 surcharge on the renewal form, and a $20 surcharge on the separate permit application(s) filed after the renewal form.

Clearly these operators plan on operating 20 machines and know that at the time of renewal. By calculating the surcharge off of the renewal form many 20-machine operators would be assured of a second round of surcharge paperwork when applications are filed for the replacement machines. If the location informs the division of its intention to be a 20 or less-than-20 machine location up front and pays accordingly, the division can more efficiently administer the surcharge.

b. The second reason for not determining the surcharge from the renewal application is that the division does not have the data base programming or staff license or audit resources necessary to track and administer the surcharge in the manner suggested. Tracking the surcharge by machine, auditing location permit files and assessing differences between low and high surcharges, when a location increases the number of machines permitted to 20 from less-than-20, would be too costly and require the devotion of already limited staff resources.

Comment No. 2: Concerning Privilege to License 20 Machines - Comments on Rule I require location operators to designate whether they will be a 20-machine location or a less-than-20 machine location. Objections included suggestions that the rule implies the division can limit the location to less-than-20 machines. Mr. Miller also commented that the proposed rules implied that the division could deny an operator the "privilege of placing 20 video gambling machines on the licensed premise." This concern was also echoed in comments from Ms. Carpenter. Ms. Carpenter described a situation in which an operator decides to go from a seven-machine location to a 20-machine location during the year. The operator files a change in designation to go to 20 machines and permits 13 more machines. One or two months later (during the same year) the location determines it was better to be a seven machine location and removes the additional 13 machines. The rule would require another change in designation.

Response No. 2: With regard to the concern that the proposed rule appears to limit the privilege of licensing 20 video gambling machines the Division proposes revising the wording of proposed Rule II to clarify that a notice of a change in designation is required rather than a request for department approval. The proposed rule will be revised so that no notice will be required to reduce the number of machines to less than 20 and the limitation on one change per year will be deleted.

Comment No. 3: Legislature Intended That Fee Only be Applied One Time Ms. Carpenter and Mr. Staples objected to the proposed rules applying the fee to a video gambling machine more than once during a fiscal year. This objection is based on their recollection of intent of the 2003 Legislature.

Response No. 3: The 2003 Legislature provided no evidence of this intent in the public hearings on House Bill 758. The

legislation was drafted as an addition to 23-5-612, MCA, which provides for an annual machine permit fee. House Bill 758 provided that the surcharge was to be charged "in addition to annual permit fee." The legislation further provided that the surcharge was to be "prorated" in the same manner as the permit fee. The proration provides for the payment on a quarterly basis which is inconsistent with the contention that the fee would only be paid on an annual basis.

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

/s/ Ali Bovingdon
ALI BOVINGDON, Rule Reviewer

Certified to the Secretary of State June 16, 2003.

**BEFORE THE BOARD OF RESPIRATORY CARE PRACTITIONERS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA**

In the matter of the transfer of ARM 8.59.101 through 8.59.702, pertaining to the board of respiratory care practitioners	)))))	NOTICE OF TRANSFER

TO: All Concerned Persons

1. Pursuant to Chapter 483, Laws of Montana 2001, effective July 1, 2001, the Board of Respiratory Care Practitioners was transferred from the Department of Commerce to the Department of Labor and Industry ARM Title 24, Chapter 213.

2. The Department of Labor and Industry has determined that the transferred rules will be numbered as follows:

OLD	NEW	
8.59.101	24.213.101	Board Organization
8.59.201	24.213.201	Procedural Rules
8.59.202	24.213.202	Public Participation Rules
8.59.402	24.213.301	Definitions
8.59.506	24.213.401	Fee Schedule
8.59.501	24.213.402	Application For Licensure
8.59.503	24.213.405	Temporary Permit
8.59.502	24.213.408	Examination
8.59.505	24.213.412	Procedures For Renewal
8.59.507	24.213.415	Inactive Status
8.59.403	24.213.421	Board Seal
8.59.601	24.213.2101	Continuing Education Requirements
8.59.602	24.213.2104	Traditional Education by Sponsored Organizations -- Category I
8.59.603	24.213.2107	Traditional Education By Non-Sponsored Organizations -- Category II
8.59.604	24.213.2111	Teaching -- Category III
8.59.605	24.213.2114	Papers, Publications, Journals, Exhibits, Videotapes, Independent Study and College Course Work -- Category IV
8.59.607	24.213.2121	Waiver of Continuing Education Requirements
8.59.702	24.213.2301	Unprofessional Conduct

3. The transfer of rules is necessary because this board was transferred from the Department of Commerce to the Department of Labor and Industry by the 2001 legislature by Chapter 483, Laws of Montana 2001.

BOARD OF RESPIRATORY CARE PRACTITIONERS
GREGORY PAULAUSKIS, CHAIRMAN

/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 June 16, 2003

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

In the matter of the amendment of ARM 8.64.501 and 8.64.505, pertaining to application requirements and continuing education	)))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On February 13, 2003, the Board of Veterinary Medicine published MAR Notice No. 8-64-28 regarding the proposed amendment of the above-stated rules relating to application requirements and continuing education at page 166 of the 2003 Montana Administrative Register, Issue Number 3.

2. No public hearing on the proposed amendment of the above-stated rules was conducted. The Board received one comment concerning the proposed amendments. The Board has thoroughly considered the comment received concerning the proposed veterinary rule changes. The comment and the Board's response are as follows:

COMMENT NO. 1 The commenter supported the proposed rule changes.

RESPONSE NO. 1 The members appreciated the commenter's support and will adopt the rule changes as proposed.

3. The Board of Veterinary Medicine has amended the rules exactly as proposed.

**BOARD OF VETERINARY MEDICINE
JEAN LINDLEY, DVM, PRESIDENT**

**/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 June 16, 2003.

**BEFORE THE BOARD OF LIVESTOCK
OF THE STATE OF MONTANA**

In the matter of the amendment of ARM 32.2.401, 32.2.403, 32.15.601 and 32.23.301 pertaining to fees charged by the department for various licenses, permits and services performed by the department	))))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On May 8, 2003, the department of livestock published MAR Notice No. 32-4-158 regarding the proposed amendment of ARM 32.2.401, 32.2.403, 32.15.601 and 32.23.301, pertaining to department fees, diagnostic lab fees, fees for filing notices regarding security agreements and licensee assessments at page 879 of the 2003 Montana Administrative Register, Issue Number 9.

2. The department of livestock has amended ARM 32.2.401, 32.2.403, 32.15.601, and 32.23.301 exactly as proposed.

3. The following comment was received and appears with the department of livestock's response:

COMMENT 1: A comment was received stating that veterinarians in the state have a need for accurate and timely lab results, which they have not always been able to get from the department of livestock diagnostic laboratory. The comment stated the clients sometimes need service on days when the lab is closed. The comment also stated the lab has no boarded clinical pathologist to reference for questions. The comment stated the department is asking for more money, but without an improvement in service. The comment concluded that the result will most likely be that veterinarians in the state will start sending their lab work to the large reference labs, which provide more services for fees similar to the department's proposed fees.

RESPONSE: The department of livestock acknowledges the concerns with timeliness of lab availability and lack of additional staff, but notes the current proposed rule notice dealt only with an increase in lab fees, and not with perceived service problems with the diagnostic lab. The department will seek to address these concerns with lab services in the future. However, since the costs of providing current diagnostic lab services has risen, the department must increase fees to keep the fees commensurate with costs, as required by state statute.

DEPARTMENT OF LIVESTOCK

By: /s/ Marc Bridges
Marc Bridges, Exec. Officer,
Board of Livestock
Department of Livestock

By: /s/ Carol Grell Morris
Carol Grell Morris,
Rule Reviewer

Certified to the Secretary of State June 16, 2003.

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

In the matter of the amendment of ARM 37.14.1002 and 37.14.1003 pertaining to radiation general safety provisions	)))))	NOTICE OF AMENDMENT

TO: All Interested Persons

1. On April 24, 2003, the Department of Public Health and Human Services published MAR Notice No. 37-279 regarding the public hearing on the proposed amendment of the above-stated rules at page 710 of the 2003 Montana Administrative Register, issue number 8.

2. The Department has amended the following rules as proposed with the following changes from the original proposal. Matter to be added is underlined. Matter to be deleted is interlined.

37.14.1002 DEFINITIONS (1) remains as proposed.

(2) "~~Dead-man~~ Enabling switch" means an underwriters laboratory (UL) switch so constructed that a single depression by the operator will provide a single exposure and that continuous pressure by the operator does not provide a continuous or multiple exposure.

(3) through (22) remain as proposed.

AUTH: Sec. 50-79-201 and 75-3-201, MCA
IMP: Sec. 50-79-101, 50-79-102, 50-79-103 and 75-3-201, MCA

37.14.1003 GENERAL SAFETY PROVISIONS (1) through (4) remain as proposed.

(5) The general shielding safety requirements are as follows:

(a) and (b) remain as proposed.

(c) Within 30 days of reaching a determination that the floor plans meet the criteria stated in (5)(b), the qualified expert shall submit to the department a written report containing, at a minimum, the following information:

(i) through (vi) remain as proposed.

(vii) the qualified expert's opinion that the proposed equipment arrangement and shielding precautions are consistent with NCRP Report No. 49~~, or its successor,~~ and No. 51, and are in compliance with the requirements of Title 10, part 20 of the Code of Federal Regulations, and the requirements of this subchapter.

(d) Each installation shall be provided with such primary protective barriers and/or secondary protective barriers as are necessary to assure compliance with ARM 37.14.705, 37.14.708 and

37.14.709. This requirement shall be deemed to be met if the thickness of such barriers ~~are~~ is determined by a qualified expert to be consistent with NCRP Report No. 49 ~~or its successor~~ and No. 51.

(e) Lead barriers shall be ~~mounted~~ bonded to panels of rigid supporting material in such a manner that they will not sag or cold-flow because of their own weight and shall be protected against mechanical damage. Lead shielding less than ~~1~~ one mm thick shall be bonded to panels of some rigid supporting material. The minimum allowable thickness of lead is 0.79 mm (1/32 inches or two pounds per square foot).

(f) through (8) remain as proposed.

AUTH: Sec. 50-79-201, 50-79-202, 50-79-204, 75-3-201 and 75-3-204, MCA
IMP: Sec. 50-79-101, 50-79-102, 50-79-103, 50-79-104, 50-79-105, 50-79-106, 50-79-107, 50-79-108, 50-79-201, 50-79-202, 50-79-203, 50-79-204 and 75-3-201, MCA

3. The Department has thoroughly considered all commentary received. The comments received and the Department's response to each follow:

ARM 37.14.1002

COMMENT #1: The definition "dead-man's switch" is more correctly referred to as an "enabling switch." It is suggested that "enabling switch" be used for the sake of uniformity among health physicists and for political correctness.

RESPONSE: The Department agrees with the comment and has made the modifications to the rule.

COMMENT #2: ARM 37.14.1003(5)(c)(vii), Utilization of the National Council on Radiation Protection and Measurements (NCRP) Report No. 49 provides guidance for low diagnostic energy photons. It is recommended that the NCRP Report No. 51 also be implemented. This report refers to the high therapeutic radiation.

RESPONSE: The Department agrees with the comment and has made the modifications to the rule.

COMMENT #3: ARM 37.14.1003(5)(e) has a reference to lead up to about 1 cm thickness, and perhaps greater is not self-supporting. Lead shielding is most often attached to a support barrier such as dry wall or plywood. It is recommended that we add "should be bonded to panels of rigid supporting material".

RESPONSE: The Department agrees with the comment and has made the modifications to the rule.

4. These rule amendments will be effective July 1, 2003.

Dawn Sliva for
Rule Reviewer

Mike Billings for
Director, Public Health and Human Services

Certified to the Secretary of State June 16, 2003.

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

In the matter of the amendment of ARM 37.40.302, 37.40.307, 37.40.311, 37.40.330, 37.40.337 and 37.40.345 and the repeal of ARM 37.40.360 pertaining to medicaid nursing facility reimbursement	))))))))	NOTICE OF AMENDMENT AND REPEAL

TO: All Interested Persons

1. On April 24, 2003, the Department of Public Health and Human Services published MAR Notice No. 37-283 regarding the public hearing on the proposed amendment and repeal of the above-stated rules at page 739 of the 2003 Montana Administrative Register, issue number 8.

2. The Department has amended ARM 37.40.302, 37.40.307, 37.40.311, 37.40.330, 37.40.337 and 37.40.345 and repealed ARM 37.40.360 as proposed.

3. The Department has thoroughly considered all commentary received. The comments received and the Department's response to each follow:

COMMENT #1: We support the efforts of the Department to minimize volatility in Medicaid reimbursement rates and to establish nursing facility rates that represent a fair and reasonable price for a day of nursing home care. We support the proposed rules as a final step in the transition to the new system. This proposal moves all nursing facilities to the price-based formula. The "hold harmless" provision previously in place is no longer required because all facilities now receive a rate increase under the formula.

RESPONSE: The price-based system was adopted to facilitate the reimbursement of nursing facility services at a reasonable price. The Department agreed that during the transition to a price-based system it was appropriate to not reduce any provider's rate. Emphasis was placed on moving facilities that historically had lower Medicaid reimbursement rates closer to the average price during the transition period. Since all facilities have completed the transition to the full price-based system, the minimum rate increase "hold harmless" provisions are no longer necessary and have been removed.

COMMENT #2: Support for a price-based system is dependent on the underlying principle that the price is set at an amount that is fair and reasonable. There will be little support in the future for a price-based system that does not reasonably take

into account the cost of providing care to Montana's elderly Medicaid recipients residing in nursing facilities. Although nursing facilities will receive significantly higher rate increases than in prior years, the price resulting from this rule, about $116.51 per patient day, is still substantially below the actual cost of a day of care. The estimated actual cost of care for fiscal year 2004 is $124.19. However, facilities will receive additional lump sum payments through the Intergovernmental Transfer (IGT) program which will decrease the gap between rates and cost.

RESPONSE: The 2001 Montana Legislature acknowledged the need for additional funding for nursing facilities and approved the Department's request for a 4.5% increase in funding for nursing facility reimbursement during the state fiscal year (SFY) 2002 and 2003 biennium. The 2003 Montana legislature avoided an initially projected 1.87% rate reduction with a reallocation of funding from the portion of "at risk" provider payments that were traditionally directed to the mental health program. In addition, the 2003 Montana Legislature appropriated funding from an increase in the nursing facility utilization fee to fund rate increases for nursing facility providers during the SFY 2004 and 2005 biennium. Additional funds from the IGT program were approved by the legislature, and the Department expects IGT will continue to be a substantial source of needed funds to maintain the quality of care provided in Montana's nursing facilities.

At the Department's request the consulting firm of Myers and Stauffer compared the rates from SFY 2003, the second year of the transition to a price-based system, to the cost of nursing facility services utilizing SFY 2001 cost report information, inflated to the mid point of the 2003 rate year. This analysis indicated that once the IGT payments were factored into the rates, the Medicaid day weighted average total rate was $118.96 and the Medicaid inflated cost was $117.22 for SFY 2002. A comparison of these two amounts demonstrates that, on average, Medicaid is paying approximately 101.48% of the cost of services in the second year of the transition to the new price-based system of reimbursement. Even when the contribution from counties through the IGT program is removed from this comparison, the rate to cost analysis is still very close to unity.

This analysis will again be prepared for SFY 2004 rates and will serve as one of the benchmarks for the adequacy of future rates that will be established through the price-based methodology. Other factors that will be considered in the establishment of the price include the cost of providing nursing facility services, Medicaid recipients' access to nursing facility services, the quality of nursing facility care as well as budgetary or funding levels. The price-based rate will be commensurate with the services that must be provided by nursing facilities to meet federal and state requirements. The SFY 2004 average rate is $116.51 compared to the average for SFY 2003 of

$106.33 before taking into consideration the additional funds that will be provided through the IGT program to all facilities. IGT funding is expected to increase in SFY 2004.

COMMENT #3: We are pleased that the Department agreed to adjust patient days based on changes in eligibility. Even without the eligibility change, the trend in nursing home occupancy and Medicaid days has been downward for several years. Typically, funds appropriated for nursing facility reimbursement have not been fully spent because estimated utilization days were higher than actual days. The nursing facility funding was then used to support other programs within the Department. Although those programs may be very worthy, nursing facilities are struggling financially, serve the most frail and difficult-to-care-for of Montana's elderly, and can ill afford to give up any of their funding.

RESPONSE: All of the funds appropriated by the legislature for nursing facility reimbursement in SFY 2004 were distributed through the reimbursement methodology. The Department initially issued target rate sheets with the price at $114.79. Since that issuance, the Department reconsidered its calculation and the actions of the legislature affecting how property is treated for purposes of nursing home eligibility determinations, and made a subsequent adjustment to the price-based rate calculation. The eligibility changes should result in a reduction in the number of Medicaid eligible days for some recipients as well as an increase in the amount that residents will have available to contribute to the cost of their nursing home care. The impact of these changes has been factored into the final rate calculation which increases the average price to $116.51.

The Department adjusted the projected Medicaid days downward and increased the calculation of the patient contribution. The Department will monitor the payment patterns and determine whether the projected savings are actually occurring. If the utilization does not decrease or the patient contribution being collected does not increase, the Department will reassess the rates, utilization patterns and available funding to determine if adjustments will be necessary to maintain the Medicaid nursing facility budget within appropriated funding levels.

COMMENT #4: We support the continuation of "at risk" payments to county owned and operated providers and to other nursing facilities through the use of intergovernmental transfers of funds.

RESPONSE: The Department agrees that the intergovernmental transfer program provides critical funding for "at risk" nursing facilities and to all other nursing facility providers in Montana. The Department recognizes that many nursing facilities are struggling with declining occupancy and other financial constraints while trying to keep their doors open and continuing to provide needed nursing home services in their communities.

The Department intends to continue the intergovernmental transfer program for the foreseeable future.

4. These amendments and repeal will be effective July 1, 2003.

Dawn Sliva for
Rule Reviewer

Mike Billings for
Director, Public Health and Human Services

Certified to the Secretary of State June 16, 2003.

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

In the matter of the amendment of ARM 37.57.301, 37.57.304, 37.57.305, 37.57.306, 37.57.307, 37.57.315, 37.57.316 and 37.57.321 pertaining to newborn infant screening	)))))))	NOTICE OF AMENDMENT

TO: All Interested Persons

1. On May 8, 2003, the Department of Public Health and Human Services published MAR Notice No. 37-285 regarding the public hearing on the proposed amendment of the above-stated rules at page 890 of the 2003 Montana Administrative Register, issue number 9.

2. The Department has amended rules 37.57.301, 37.57.304, 37.57.306, 37.57.307, 37.57.315, 37.57.316 and 37.57.321 as proposed.

3. The Department has amended the following rule as proposed with the following changes from the original proposal. Matter to be added is underlined. Matter to be deleted is interlined.

37.57.305 INFANTS OTHER THAN THOSE WITH VERY LOW BIRTH WEIGHT: IN HOSPITAL (1) The hospital or institution wherein newborn care was rendered to a newborn weighing 1,500 grams or more must take the required specimen on the third day of life:

(a) between 24 and 72 hours of age of each newborn; or

(b) 48 hours following its first ingestion of milk, but not later than the seventh day of life.

(2) through (3) remain as proposed.

AUTH: Sec. 50-19-202, MCA
IMP: Sec. 50-19-203, MCA

4. The Department has thoroughly considered all commentary received. The comments received and the department's response to each follow:

COMMENT #1: ARM 37.57.304 and 37.57.305 together are confusing, especially for people who will only infrequently refer to the rules, because, in ARM 37.57.305, the requirement to provide screening after the first 24 hours of life for infants weighing 1,500 grams or more is missing, although it is in ARM 37.57.304, which applies to infants weighing less than that.

RESPONSE: The department has edited ARM 37.57.305 to clarify the timing of the testing requirement. No change was made to

ARM 37.57.304 because the department felt it unnecessary, since the changes made to ARM 37.57.305 now parallel the language of ARM 37.57.304.

COMMENT #2: ARM 37.57.305 should have a provision addressing testing of babies who go home before they are 24 hours old.

RESPONSE: No change or addition is necessary because the rule does indeed have such a requirement, contained in ARM 37.57.305(2) of the rule. That section was unchanged and was therefore not set out verbatim in the rulemaking notice.

COMMENT #3: The changes to ARM 37.57.315 concerning transfused babies were a good improvement.

RESPONSE: The department appreciates the affirmation.

COMMENT #4: Newborn screening should include screening for congenital adrenal hyperplasia, because it occurs more frequently than galactosemia and hemoglobinopathies, its early diagnosis can prevent death, and the added cost is minimal if done through the Wisconsin newborn screening program.

RESPONSE: While the Department agrees that inclusion of the above test would be a good thing, the cost of doing so is more than the Department can fiscally handle at this point in time. Hemoglobinopathy testing was indeed added to the required tests because the cost could be easily absorbed by the Department's laboratory. As for doing so through the Wisconsin program rather than the Montana state laboratory, Montana's reference laboratory is required by statute (see 50-19-203, MCA), which needs a certain level of income to continue to function. In addition, and more important, the Department does not have, nor can it afford, a mechanism to link reports coming in from multiple laboratories to produce the reports to the federal Department of Health and Human Services required of the state by the Maternal and Child Health Block Grant.

COMMENT #5: The proposed amendments to ARM 37.57.305 will be particularly difficult for hospitals and physicians to implement and will cause unnecessary duplication of newborn screening.

RESPONSE: The Department made no change because the rule requires only one test and no duplication, except in the small number of cases when the baby is discharged prior to 24 hours of age.

COMMENT #6: The rules should mention the other types of newborn tests available within Montana, through the state, such as a test for medium chain Acyl-CoA Dehydrogenase deficiency (MCAD) and cystic fibrosis.

RESPONSE: The rules specify the metabolic testing that is mandatory and the role of the Department's laboratory in this

limited mandatory testing, as required by law. The other non-mandatory metabolic tests that are available and may be ordered by a physician the Department considers to be the responsibility of the attending physician rather than the Department.

COMMENT #7: The Department should ensure that the state laboratory is capable of performing complete, comprehensive, newborn screening, with appropriate follow up, for the same types of screening now available to infants in other states.

RESPONSE: While the Department agrees that a comprehensive newborn screening program in Montana would be ideal, current reality is that the Department does not have the resources to conduct such a comprehensive program at this time and must instead prescribe limited mandatory testing and provide referrals for advisable testing that is not mandatory.

5. These rule amendments will be effective July 1, 2003.

Dawn Sliva for
Rule Reviewer

Mike Billings for
Director, Public Health and Human Services

Certified to the Secretary of State June 16, 2003.

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

In the matter of the amendment of ARM 37.78.102, 37.78.406 and 37.82.101 pertaining to Temporary Assistance for Needy Families (TANF) and Medicaid	)))))	NOTICE OF AMENDMENT

TO: All Interested Persons

1. On April 24, 2003, the Department of Public Health and Human Services published MAR Notice No. 37-278 regarding the public hearing on the proposed amendment of the above-stated rules at page 692 of the 2003 Montana Administrative Register, issue number 8.

2. The Department has amended ARM 37.78.102, 37.78.406 and 37.82.101 as proposed.

3. The Department has thoroughly considered all commentary received. The comments received and the Department's response to each follow:

COMMENT #1: Manual Section FMA 103-4 on Verification and Documentation, which is being incorporated by reference in ARM 37.82.101 as part of the Family Medicaid Manual, should state that Medicaid applicants and recipients must cooperate in providing health insurance policy information.

RESPONSE: The Department agrees. Section FMA 103-4 has been revised to clarify this requirement, which is mandated by federal law but was not previously specified in the Family Medicaid Manual.

COMMENT #2: Manual Section FMA 201-3 on Qualified Pregnant Woman, which is being incorporated by reference in ARM 37.82.101 as part of the Family Medicaid Manual, should list providing health insurance information as a non-financial requirement for receiving Family Medicaid. Additionally, references in this section to the Child Support Enforcement Division (CSED) screen in The Economic Assistance Management System (TEAMS) should be removed, since this screen will be eliminated in the near future.

RESPONSE: The Department agrees. Providing health insurance information was omitted from the list of non-financial requirements in error. The references to the CSED screen are no longer necessary. Section FMA 201-3 has been revised accordingly.

COMMENT #3: Manual Section FMA 201-8 on Poverty Six Child,

which is being incorporated by reference in ARM 37.82.101 as part of the Family Medicaid Manual, should list providing health insurance information as a non-financial requirement for receiving Family Medicaid.

RESPONSE: The Department agrees. Providing health insurance information was omitted from the list of non-financial requirements in error. Section FMA 201-8 has been revised accordingly.

COMMENT #4: Manual Section FMA 301-1 on Citizenship, which is being incorporated by reference in ARM 37.82.101 as part of the Family Medicaid Manual, should specify correct TEAMS coding for certain required filing and assistance unit members.

RESPONSE: The Department agrees that coding instructions should be included. Section FMA 301-1 has been revised accordingly.

COMMENT #5: Manual Section FMA 307-1 on Third Party Liability/Health Insurance Premium Payment System, which is being incorporated by reference in ARM 37.82.101 as part of the Family Medicaid Manual, should state that as part of the TPL requirements, applicants and recipients must cooperate in providing health insurance information.

RESPONSE: The Department agrees. Section FMA 307-1 has been revised to clarify this requirement, which is mandated by federal law but was not previously specified in the Family Medicaid Manual.

COMMENT #6: Manual Section FMA 703-1 on Medical Expense Option, which is being incorporated by reference in ARM 37.82.101 as part of the Family Medicaid Manual, should state that newly submitted bills are only added to the system when they cause the individual to be eligible earlier in the month. If there is no change in the eligibility date, the bills will not be entered, but other action may be necessary.

RESPONSE: The Department agrees. Section FMA 703-1 has been revised to clarify this point.

COMMENT #7: Manual Section FMA 1504-1 on Overpayments, which is being incorporated by reference in ARM 37.82.101 as part of the Family Medicaid Manual, should state that staff must wait at least 13 months to establish Medicaid overpayments, since Medicaid providers have 365 days after the date of service to file a claim with Medicaid. Additionally, the statement that Medicaid overpayments are entered into TEAMS should be removed from this section, since it is not necessary to enter Medicaid overpayments into TEAMS. Also, the number of the notice informing the household of a potential Medicaid overpayment should be specified in this section.

RESPONSE: The Department agrees. Section FMA 1504-1 has been

revised to clarify that staff must wait at least 13 months to establish a Medicaid overpayment and to specify that notice #M901 is sent to notify households of potential Medicaid overpayments. A number had not been assigned to this notice when this section of the manual was first drafted. The statement that Medicaid overpayments are entered into TEAMS has been removed from this section, since this is incorrect.

COMMENT #8: Manual Section MA 305-1 on Third Party Liability/Health Insurance Premium Payment System, which is being incorporated by reference in ARM 37.82.101 as part of the SSI Medicaid Manual, should state that as part of the TPL requirements, applicants and recipients must cooperate in providing health insurance information.

RESPONSE: Section MA 305-1 has been revised to clarify this requirement, which is mandated by federal law but was not previously specified in the SSI Medicaid Manual.

COMMENT #9: Manual Section MA 703-1 on the Medical Expense Option, which is being incorporated by reference in ARM 37.82.101 as part of the SSI Medicaid Manual, should state that newly submitted bills are only added to the system when they cause the individual to be eligible earlier in the month. If there is no change in the eligibility date, the bills will not be entered, but other action may be necessary.

RESPONSE: The Department agrees. Section MA 703-1 has been revised to clarify this point.

COMMENT #10: Manual Section 103-4 on Verification and Documentation, which is being incorporated by reference in ARM 37.78.102 as part of the TANF cash assistance manual, should specify that the document used to verify an applicant or recipient's age typically is the same document used to verify the relationship between children and the parent or caretaker relative.

RESPONSE: The Department agrees and has revised Section 103-4 accordingly.

COMMENT #11: Manual Section 201-2 on Marital Status/Joint Custody, which is being incorporated by reference in ARM 37.78.102 as part of the TANF cash assistance manual, states that to enter into a valid common law marriage, both parties must be old enough to marry and must not be married to anyone else. It would be helpful to specify that this is true even if the parties have children in common. Also, Section 201-2 should state that a minor child who is visiting for a temporary purpose is not considered to be residing in the home and that TANF cash assistance cannot be provided for that temporary time span.

RESPONSE: The Department agrees and has revised Section 201-2 accordingly. Examples to clarify what a temporary purpose is

have also been added.

COMMENT #12: Manual Sections 201-3 on Adding/Removing Member and 302-1 on Residency/Home/Temporary Absence, which are being incorporated by reference in ARM 37.78.102 as part of the TANF cash assistance manual, should state that a minor child who is visiting for a temporary purpose is not considered to be residing in the home and that TANF cash assistance cannot be provided for that temporary time span.

RESPONSE: The Department agrees and has revised Sections 201-3 and 302-1 accordingly. Examples to clarify what a temporary purpose is have also been added.

COMMENT #13: Manual Section 306-1 on Child Support Enforcement Referral, which is being incorporated by reference in ARM 37.78.102 as part of the TANF cash assistance manual, states that applicants and participants are required to cooperate with CSED but does not specify that a caretaker relative who does not choose to receive assistance for himself or herself must cooperate with CSED, even though the caretaker relative is not an applicant or participant. Section 306-1 also should specify that the TANF policy regarding the completion of the CSE referral form HCS/CS-332 is different in some instances from the Medicaid policy on CSE referrals.

RESPONSE: The Department agrees. Section 306-1 has been revised to specify that caretaker relatives as well as applicants and participants must cooperate with CSED and to clarify how the TANF policy on CSE referrals differs from the Medicaid policy.

COMMENT #14: Manual Sections 306-1, 306-2, and 306-4 pertaining to Child Support Enforcement, which are being incorporated by reference in ARM 37.78.102 as part of the TANF cash assistance manual, refer to the Child Support Liaison. These references should be deleted since the Child Support Liaison position is being eliminated effective July 1, 2003.

RESPONSE: The Department agrees and has deleted all references to the Child Support Liaison from the TANF manual.

COMMENT #15: Manual Section 702-3 on Sanctions, which is being incorporated by reference in ARM 37.78.102 as part of the TANF cash assistance manual, should include information on child care and workers compensation coverage for individuals who continue to participate in previously negotiated activities during a sanction period.

RESPONSE: The Department agrees and has revised Section 702-3 to clarify that child care coverage will still be available during the sanction penalty month for individuals who continue to participate in activities and to clarify that workers compensation coverage will also continue for the month for

individuals participating in the Work Experience Program (WEX). Section 702-3 has also been revised to clarify that supportive service payments are not allowed for a sanctioned individual during a sanction penalty month.

COMMENT #16: Manual Section 803-1 on TANF Months/Out-of-State Requests, which is being incorporated by reference in ARM 37.78.102 as part of the cash assistance manual, should explicitly state that the Out-of-State Benefit Verification Request form FA-100 only needs to be completed once for a specific state unless the individual has returned to that state after the Montana case closure.

RESPONSE: The Department agrees. Section 803-1 has been revised accordingly and examples of when the form FA-100 should be completed have been added.

4. These amendments will be effective July 1, 2003.

Dawn Sliva for
Rule Reviewer

Mike Billings for
Director, Public Health and Human Services

Certified to the Secretary of State June 16, 2003.

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

In the matter of the amendment of ARM 37.80.101, 37.80.102, 37.80.201, 37.80.202, 37.80.205, 37.80.301, 37.80.316 and 37.80.502 and the repeal of ARM 37.80.204 pertaining to the child care and development fund	)))))))))	NOTICE OF AMENDMENT AND REPEAL

TO: All Interested Persons

1. On April 24, 2003, the Department of Public Health and Human Services published MAR Notice No. 37-284 regarding the public hearing on the proposed amendment and repeal of the above-stated rules at page 748 of the 2003 Montana Administrative Register, issue number 8.

2. The Department has amended ARM 37.80.102, 37.80.202, 37.80.301, 37.80.316 and 37.80.502 and repealed ARM 37.80.204 as proposed.

3. The Department has amended the following rules as proposed with the following changes from the original proposal. Matter to be added is underlined. Matter to be deleted is interlined.

37.80.101 PURPOSE AND GENERAL LIMITATIONS (1) through (2)(c) remain as proposed.

(d) A parent who provides child care to another's child while their own child is cared for by someone else is not eligible for child care assistance, unless they are an employee of a child care provider that is unable to care for the parent's child. The foregoing does not prevent child care assistance to an employee of a child care provider whose child receives care from that provider, so long as children other than those of the employee and the employee's employer are also attending the facility.

(3) through (10) remain as proposed.

AUTH: Sec. 52-2-704 and 53-4-212, MCA
IMP: Sec. 52-2-702, 52-2-704, 52-2-713, 52-2-731, 53-2-201, 53-4-211, 53-4-601, 53-4-611 and 53-4-612, MCA

37.80.201 NON-FINANCIAL REQUIREMENTS FOR ELIGIBILITY AND PRIORITY FOR ASSISTANCE (1) through (5) remain as proposed.

(6) Due to limited funding for child care assistance, some households which meet all requirements for eligibility may not receive benefits. If there are insufficient funds to provide benefits to all eligible households, priority for benefits will

be determined as follows:

(a) a household receiving assistance funded by the TANF program is guaranteed needed child care when participating in family investment agreement activities which require child care, subject to the following:

(i) Assistance for care provided by a provider certified by the department will begin the date that the TANF participant parent is ~~both~~ referred to ~~and contacts~~ a child care resource and referral agency to obtain child care assistance, so long as the participant makes the contact within 10 days after the date the referral is made.

(ii) through (10)(b) remain as proposed.

AUTH: Sec. 40-4-234, 52-2-704 and 53-4-212, MCA
IMP: Sec. 52-2-704, 52-2-713, 52-2-721, 52-2-722, 52-2-723, 52-2-731, 53-2-201, 53-4-211, 53-4-601 and 53-4-611, MCA

37.80.205 CHILD CARE RATES: PAYMENT REQUIREMENTS

(1) through (4)(c) remain as proposed.

(5) The rates set forth in the Child Care Manual Section 1-4, dated July 1, 2003, are the maximum rates payable. The Child Care Manual Section 1-4 is hereby adopted and incorporated by this reference. The manual section is available for public viewing at the resource and referral agencies located in various communities through the state, or at the Department of Public Health and Human Services, Human and Community Services Division, Early Childhood Services Bureau, Cogswell Building, 1400 Broadway, P.O. Box 202952, Helena, MT 59620-2952. Copies of the Child Care Manual section are also available upon request at the aforementioned address. Additionally, the rate charged by the child care provider for children whose child care is paid for by the department cannot exceed the rate charged to private pay parents for the same service. The following exceptions apply for quality child care providers:

(a) Providers who qualify for a one star quality child care rating will receive 110% of the respective rate and providers who qualify for a two star rating will receive 115% of the respective rate. The criteria to qualify for quality incentive adjustments are set forth in Section 7-1 of the Child Care Manual, dated March 1, 2002. The Child Care Manual Section 7-1, dated March 1, 2002, is ~~hereby~~ adopted and incorporated by ~~this~~ reference. The manual section is available for public viewing at the resource and referral agencies located in various communities through the state, or at the Department of Public Health and Human Services, Human and Community Services Division, Early Childhood Services Bureau, Cogswell Building, 1400 Broadway, P.O. Box 202952, Helena, MT 59620-2952. Copies of the Child Care Manual section are also available upon request at the aforementioned address.

(6) and (7) remain as proposed.

AUTH: Sec. 52-2-704 and 53-4-212, MCA
IMP: Sec. 52-2-704 and 52-2-713, MCA

4. The Department has amended ARM 37.80.201(6)(a)(i) for clarification to avoid an interpretation that child care assistance would be provided from the date of referral of a TANF parent even if the provider was not yet certified by the Department.

5. The Department has thoroughly considered all commentary received. The comments received and the Department's response to each follow:

ARM 37.80.101

COMMENT #1: A commentor generally endorsed the rule's proposed prohibition against providing child care assistance to providers who have abused the system by caring for each other's children in order to receive such assistance. However, the language seems also to preclude payment in cases when a day care employee pays for care of their own child at the facility in which they are employed. The language should be clarified to ensure that a parent who works for a child care business entity, such as a child care center, group home, or family child care provider, may still be eligible for a child care subsidy.

RESPONSE: The Department agrees and has added clarifying language.

COMMENT #2: The commentor also wants to prohibit subsidy payment when the subsidy parent/employee's children are the only children in care, other that the provider's children.

RESPONSE: The Department agrees and has added appropriate language.

ARM 37.80.201

COMMENT #3: It was suggested that it is more appropriate for assistance to begin on the date that the TANF parent is referred to the child care resource and referral agency, rather than the date the agency is contacted, so long as the contact is made within 10 days following the TANF child care referral.

RESPONSE: The Department agrees and has made the change.

COMMENT #4: The incorporation by reference of the Child Care Manual version as of a specific date is too limiting, and subsequent updates should be incorporated as well.

RESPONSE: The Department did not make the suggested change. While the suggestion would offer efficiency, state law requires the Department to provide proper notice to the public of any rule changes, including those manuals incorporated by reference, and to give the public the opportunity for comment. Therefore, incorporation of the manual has to be of the version in existence on one particular date, and any subsequent manual

changes will have to be incorporated through formal rulemaking.

ARM 37.80.205

COMMENT #5: The Child Care Manual reference should be Section 7-1 instead of 7.

RESPONSE: The Department agrees that the reference to Section 7 should have been 7-1, and has made the correction.

ARM 37.80.301

COMMENT #6: While endorsing the rule's proposed changes in general, one commentor expressed concern about how to ensure compliance with the sign-in, sign-out requirement and requested clarification of what would occur if there was an oversight.

RESPONSE: The Department recognizes that occasional mistakes will be made and asserts that the rule does not disqualify participants for clerical errors. The rule allows parents to authorize someone other than themselves to perform the required signing-in and signing-out, and the Department is currently working on examples of different methods to provide the required documentation, which should help providers meet the requirements of this rule.

ARM 37.80.316

COMMENT #7: The requirement to report attendance to within 1/4 hour accuracy should be limited to those children in attendance for less than 6 hours in a day, since a daily cap applies once 6 hours are reached and the hourly rate no longer applies.

RESPONSE: While the Department recognizes that children attending from 6 to 10 hours qualify for the daily rate, the Department does not agree with the comment. Accurate attendance records are needed to properly administer the benefits certified for each family participating in the child care program. While daily rates apply to children attending 6 to 10 hours in a single day, a single standard for billing practices also serves the need to corroborate invoices with sign-in/sign-out sheets and the child care certification plan.

ARM 37.80.502

COMMENT #8: The language in ARM 37.80.502(7) should apply to both provider and parents.

RESPONSE: The Department agrees, but no change was made because ARM 37.80.502(7) already applies to both providers and parents. Since the provider bears the responsibility for submitting the invoices, specific consequences related to the provider invoicing are identified in this rule.

COMMENT #9: While the addition of penalties is good, what is the definition of "willful action"?

RESPONSE: "Willful action" is defined in ARM 27.80.502(6)(a) as the following:

"A willful action includes but is not limited to the making of a false statement, a misrepresentation, or the concealment or withholding of facts or information."

COMMENT #10: It is unclear, in the case where both provider and parent have been overpaid, who is assessed the penalty, and whether it will then count as one overpayment for each party.

RESPONSE: The assessment follows the party responsible for the willful misrepresentation. If an investigation determines that both the parent and the provider have been overpaid due to willful misrepresentations, the overpayment and the assessment will be divided between parties. Both parties may be credited with willful misrepresentations. The Department made no change in the rule in regard to the comment because it feels the language is already sufficiently clear that a penalty is only assessed against the party committing willful misrepresentation resulting in overpayment.

COMMENT #11: Is it the intent of the rule to permanently deny participation after three willful misrepresentations?

RESPONSE: The Department confirms that the consequence of three willful misrepresentations is a ban on further participation.

COMMENT #12: One commentor felt that some of the rule changes in ARM 37.80.301, 37.80.316 and 37.80.502 were not recommended by the Montana Early Childhood Advisory Council, contrary to the assertion made in the notice of proposed rulemaking.

RESPONSE: The Montana Early Childhood Advisory Council did recommend the primary basis for the rule change in ARM 37.80.501. The Department supplemented the policy in ARM 37.80.301 and 37.80.316 in order to make ARM 37.80.501 enforceable.

6. These rule amendments and repeal will be effective July 1, 2003.

Dawn Sliva for
Rule Reviewer

Mike Billings for
Director, Public Health and Human Services

Certified to the Secretary of State June 16, 2003.

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

In the matter of the amendment of ARM 37.85.212 pertaining to resource based relative value scale (RBRVS) fees	)))))	NOTICE OF AMENDMENT

TO: All Interested Persons

1. On April 24, 2003, the Department of Public Health and Human Services published MAR Notice No. 37-281 regarding the public hearing on the proposed amendment of the above-stated rule at page 721 of the 2003 Montana Administrative Register, issue number 8.

2. The Department has amended the following rule as proposed with the following changes from the original proposal. Matter to be added is underlined. Matter to be deleted is interlined.

37.85.212 RESOURCE BASED RELATIVE VALUE SCALE (RBRVS) REIMBURSEMENT FOR SPECIFIED PROVIDER TYPES (1) and (2) remain as proposed.

(3) Except as set forth in (8), (9), (10) and (11) the fee for a covered service provided by any of the provider types specified in (2) is determined by multiplying the relative value units determined in accordance with (7) by the conversion factor specified in (4), and then multiplying the product by a factor of one plus or minus the applicable policy adjustor as provided in (5), if any; provided, however, that rates for procedure codes included in the conversion to the RBRVS reimbursement methodology are:

(a) through (f)(ii) remain as proposed.

(g) effective state fiscal year (SFY) 2004, all codes will be paid at the federal RVUs ~~without regard to a transition corridor~~ without being frozen at any level.

(4) The conversion factor used to determine the medicaid payment amount for the services covered by this rule for state fiscal year 2004 is:

(a) ~~$30.34~~ 31.18 for medical and surgical services, as specified in (2); and

(b) ~~$14.06~~ 24.94 for anesthesia services, which is 80% of the medical/surgical conversion factor.

(5) through (7) remain as proposed.

(8) Except for physician administered drugs as provided in ARM 37.86.105(3), clinical, laboratory services and anesthesia services, if neither medicare nor medicaid sets RVUs, then reimbursement is by-report.

(a) remains as proposed.

(b) For state fiscal year 2004, the "by-report" rate is ~~51~~ 47% of the provider's usual and customary charges.

(9) through (14) remain as proposed.

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 Department has thoroughly considered all commentary received. The comments received and the department's response to each follow:

COMMENT #1: Several comments were received regarding the decrease of the anesthesia services conversion factor. Commentors noted that there was a minimal increase in reimbursement for medical and surgical services, that one group should not be reimbursed at the expense of another, that it is not anesthesiologists' responsibility to provide free community service, that some anesthesiologists may decide not to provide services for elective obstetrical care, and, that many Montana hospitals currently subsidize anesthesia services and, because of the significant Medicaid population among obstetrical services, these cuts may place anesthesia services in jeopardy. Several commentors stated that they are very concerned about continued access to quality health care services and the only satisfactory resolution is an overall increase in program funding.

RESPONSE: The Department's budget is mandated by the Legislature, making an overall increase impossible. After consideration of all comments and information provided, the Department has amended the conversion factors. Effective July 1, 2003 the medical/surgical conversion factor will be $31.18 and the anesthesia conversion factor will be $24.94.

COMMENT #2: Commentor asked if it is the Department's intent to publish a rule to address the proposal to implement a program limiting physician visits to 10 per year.

RESPONSE: The legislature directed the Department to save $5.3 million over the coming biennium by eliminating unnecessary or inappropriate physician visits.

The Department considered many options, including a strict physician visit limit as proposed in the legislative budget, and has designed a program that will provide the required savings while still providing medically necessary services. The program is called Care Management and has 2 basic components: a Nurse Call Line, which will be available to all Medicaid clients 24 hours a day seven days a week and a disease management program for clients who want help in managing certain medical conditions such as diabetes and asthma.

Care Management is still in the development stages. It is expected to be implemented late in 2003 or by January 1, 2004 at the latest. Any necessary rule changes will be proposed at a later date.

COMMENT #3: The Department is proposing to restore the 2.6% reduction but both conversion factors in the proposal notice are reduced more than 2.6%. Please explain the Department's methodology and details of how it arrived at the anesthesia conversion factor of $14.06 and medical/surgical conversion factor of $30.34. Also, the proposed rule includes a 2% reduction in provider rates as directed by the Governor. The Commentor believes the Legislature provided funding to eliminate that reduction.

RESPONSE: The value of the conversion factor is driven by many components, including the overall budget, utilization of various procedures and the relative value of the service codes. For RBRVS services, the new set of relative values adopted from Medicare means that some relative values go up and some go down.

Each fiscal year the Department determines the overall budget goal and the conversion factor is the variable that allows the Department to meet such a goal. For State Fiscal Year (SFY) 2004 the 2.6% reduction is restored, but because of the interactions of all the components affecting the conversion factor, this fact will not be apparent in a comparison of conversion factors from year to year.

The commentor is correct that after April 14, 2002, the filing date for the proposed rule amendments, the 2% reduction noted in the proposed rule amendments was funded for all providers but hospitals.

COMMENT #4: Commentor notes that in its rationale for the rule amendment the Department stated that this proposal has an estimated $260,000 budget impact. Is the estimated impact positive or negative?

RESPONSE: The proposed amendment represented a positive impact, or rather, an additional $260,000 spent on RBRVS services. Again, since the administrative rule filing date, funding was found by the Legislature which made the proposed 2% reduction unnecessary, changing the positive impact to $1,086,000.

4. This rule amendment will be effective July 1, 2003.

Dawn Sliva for
Rule Reviewer

Mike Billings for
Director, Public Health and Human Services

Certified to the Secretary of State June 16, 2003.

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

In the matter of the amendment of ARM 37.86.805, 37.86.1004, 37.86.1506, 37.86.1802, 37.86.1807, 37.86.2207, 37.86.2405, 37.86.2505 and 37.86.2605 pertaining to hearing aid services, reimbursement for source based relative value for dentists, home infusion therapy services, prosthetic devices, durable medical equipment (DME) and medical supplies, early and periodic screening, diagnostic and treatment services (EPSDT), transportation and per diem and specialized nonemergency medical transportation	)	NOTICE OF AMENDMENT

TO: All Interested Persons

1. On April 24, 2003, the Department of Public Health and Human Services published MAR Notice No. 37-280 regarding the public hearing on the proposed amendment of the above-stated rules at page 715 of the 2003 Montana Administrative Register, issue number 8.

2. The Department has amended rules 37.86.805, 37.86.1506, 37.86.1807, 37.86.2207, 37.86.2405, 37.86.2505 and 37.86.2605 as proposed.

3. The Department has amended the following rules as proposed with the following changes from the original proposal. Matter to be added is underlined. Matter to be deleted is interlined.

<u>37.86.1004 REIMBURSEMENT METHODOLOGY FOR SOURCE BASED RELATIVE VALUE FOR DENTISTS</u> (1) For procedures listed in the relative values for dentists scale, reimbursement rates shall be determined using the following methodology:

(a) remains as proposed.

(b) The conversion factor used to determine the medicaid payment amount for services provided to eligible individuals age 18 and above is $~~19.99~~ <u>20.40</u>.

(c) The conversion factor used to determine the medicaid payment amount for services provided to eligible individuals age 17 and under is $~~25.99~~ <u>26.52</u>.

AUTH: Sec. <u>53-6-113</u>, MCA

IMP: Sec. 53-6-101, MCA

37.86.1802 PROSTHETIC DEVICES, DURABLE MEDICAL EQUIPMENT, AND MEDICAL SUPPLIES, GENERAL REQUIREMENTS (1) through (3) remain as proposed.

(4) The following items are not reimbursable by the program:

(a) through (g) remain as proposed.

(h) disposable incontinence ~~products~~ wipes.

(5) remains as proposed.

AUTH: Sec. 53-2-201 and 53-6-113, MCA
IMP: Sec. 53-6-101, 53-6-113 and 53-6-141, MCA

4. The Department intends to increase the conversion factors in ARM 37.86.1004 from the rates published in the proposed rules. On April 14, 2003, when these proposed rule changes were filed with the Secretary of State, the Legislature was considering a 2% provider rate reduction as outlined in the Governor's proposed budget. The 2% reduction was included in the calculation of the proposed conversion factor in ARM 37.86.1004. Legislative actions after April 14, 2003, did not implement the 2% reduction therefore the Department has removed the 2% reduction and increased the final conversion factors.

5. The Department has thoroughly considered all commentary received. The comments received and the department's response to each follow:

ARM 37.86.1802

COMMENT #1: The Department received numerous comments opposed to ending Medicaid reimbursement for disposable incontinence products.

RESPONSE: The Department has rescinded its proposal to eliminate Medicaid coverage of all disposable incontinence products. Disposable diapers and personal pad/liners/shields will remain reimbursable items. The Department continues to review the utilization of all services provided to ensure that benefits are delivered in the most appropriate and cost effective manner. The proposed discontinuance of coverage of disposable incontinence wipes for children and adults is adopted effective July 1, 2003.

6. These rule amendments will be effective July 1, 2003.

Dawn Sliva for
Rule Reviewer

Mike Billings for
Director, Public Health and Human Services

Certified to the Secretary of State June 16, 2003.

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

In the matter of the adoption of new rules I through IV and the amendment of ARM 37.86.2201, 37.86.2206 and 37.86.2207 pertaining to early and periodic screening, diagnostic and treatment services (EPSDT)	)))))))	NOTICE OF ADOPTION AND AMENDMENT

TO: All Interested Persons

1. On April 10, 2003, the Department of Public Health and Human Services published MAR Notice No. 37-276 regarding the public hearing on the proposed adoption and amendment of the above-stated rules at page 638 of the 2003 Montana Administrative Register, issue number 7.

2. The Department has amended rules 37.86.2201 and 37.86.2206 as proposed.

3. The Department has adopted the following rules as proposed with the following changes from the original proposal. Matter to be added is underlined. Matter to be deleted is interlined.

RULE I [37.86.2230] EARLY AND PERIODIC SCREENING, DIAGNOSTIC AND TREATMENT SERVICES (EPSDT), SCHOOL-BASED HEALTH-RELATED SERVICES

(1) School-based services for the purposes of medicaid are defined as medically necessary services provided through a public school district, joint board or cooperative. The public school district or cooperative must receive funds from the state ~~special education funds through the office of public instruction (OPI)~~ general fund for the purpose of providing special education.

(2) through (2)(j) remain as proposed.

(3) School based ~~H~~health-related services provided in the school to a child with disabilities, as that term is defined in Title 20, chapter 7, part 4, MCA, are eligible for medicaid reimbursement when those services are required by the child's individualized education program (IEP). The IEP is considered the order for health-related services.

(4) ~~Health-related services that are not required by an IEP but are provided by schools and billed to anyone who receives a medical service are covered.~~ School based health related services include services that are not required by an IEP but are provided by schools to students for a fee and billed under the student's name. Schools cannot bill medicaid for services not required by an IEP that are provided free to other children.

(5) remains as proposed.

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

RULE II [37.86.2232] EARLY AND PERIODIC SCREENING, DIAGNOSTIC AND TREATMENT SERVICES (EPSDT), SCHOOL-BASED PERSONAL CARE PARAPROFESSIONAL SERVICES (1) Personal care paraprofessional services are medically necessary in-school services provided to medicaid clients whose health conditions cause them to be functionally limited in performing activities of daily living.

(2) through (3)(b) remain as proposed.

(4) Personal care service ~~may not be~~ provided by ~~or reimbursed for~~ an immediate family member ~~as follows:~~ will not be reimbursed. The term immediate family member includes:

(a) ~~natural, adoptive~~ parent or stepparent;

(b) and (c) remain as proposed.

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

RULE III [37.86.2233] EARLY AND PERIODIC SCREENING, DIAGNOSTIC AND TREATMENT SERVICES (EPSDT), SCHOOL PSYCHOLOGIST SERVICES (1) School psychologist services are those services provided by an individual with a class 6 specialist license with a school psychologist endorsement, as required by ARM 10.57.434.

(2) School psychologists may perform medically necessary evaluation and counseling services. Counseling services may be provided to individuals or ~~in~~ groups.

(3) Group counseling and therapy services provided by a school psychologist must have no more than eight individuals participating in the group.

(4) and (5) remain as proposed.

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

RULE IV [37.86.2231] EARLY AND PERIODIC SCREENING, DIAGNOSTIC AND TREATMENT SERVICES (EPSDT), ELIGIBILITY AND SCOPE OF SCHOOL BASED HEALTH-RELATED SERVICES (1) through (3) remain as proposed.

(4) Full-service education cooperatives and joint boards include only those cooperatives and joint boards eligible to receive direct state aid payments from the superintendent of public instruction for the purpose of providing special education services consistent with the provisions of Title 20, MCA.

(5) remains as proposed.

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

4. The Department has amended the following rule as

proposed with the following changes from the original proposal. Matter to be added is underlined. Matter to be deleted is interlined.

37.86.2207 EARLY AND PERIODIC SCREENING, DIAGNOSTIC AND TREATMENT SERVICES (EPSDT), REIMBURSEMENT (1) Reimbursement for an EPSDT service, except as otherwise provided in this rule, is the lowest of the following:

(a) remains as proposed.

(b) the reimbursement determined in accordance with the methodologies provided in ARM 37.85.212 and 37.86.105; ~~or the department's medicaid mental health fee schedule, except for the by-report method; or~~

(c) the department's medicaid mental health fee schedule, except for the by-report method; or

~~(c)~~ (d) for public agencies, cost based reimbursement as determined in accordance with OMB Circular A-87, Cost Principles for State, Local and Indian Tribal Governments as established and approved by the department. The department ~~hereby~~ adopts and incorporates ~~herein~~ by reference the OMB Circular A-87, Cost Principles for State, Local and Indian Tribal Governments, as further amended August 29, 1997. A copy of OMB Circular A-87 may be obtained from the Department of Public Health and Human Services, Health Policy and Services Division, Medicaid Services Bureau, P.O. Box 202951, Helena, MT 59620-2951.

(2) through (8) remain as proposed.

(9) School-based health-related services are reimbursed at 90% of the fees as specified in (1)(a) through ~~(c)~~ (d), adjusted to reimburse these services at the federal matching assistance percentage (FMAP) rate.

(10) and (11) remain as proposed.

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

5. The Department intends to make the following non-substantive changes to the rules. These changes are to make wording consistent with the existing rules and to improve clarity. The changes do not alter the intent of the rules as they are proposed.

1. The words "joint board" will be added in Rule I(1) (37.86.2230) Early and Periodic Screening, Diagnostic and Treatment Services (EPSDT), School Based Health Related Services and in Rule IV(4) (37.86.2231) Early and Periodic Screening, Diagnostic and Treatment Services (EPSDT), Eligibility and Scope of School Based Health Related Services for consistent word usage in both rules.

2. The Department will also change a phrase "special education funds through the office of public instruction (OPI)" to "general fund for the purpose of providing special education" in Rule I(1) (37.86.2230) Early and Periodic Screening, Diagnostic and Treatment Services (EPSDT), School Based Health Related

Services to be consistent with language in Rule IV(5) (37.86.2231) Early and Periodic Screening, Diagnostic and Treatment Services (EPSDT), Eligibility and Scope of School Based Health Related Services.

3. The Department will also change the term health related services to school based health related services in Rule I(3) (37.86.2230) Early and Periodic Screening, Diagnostic and Treatment Services (EPSDT), School Based Health Related Services so that the language will be consistent throughout the rules.

4. The Department is clarifying the language in Rule I(4) (37.86.2230) Early and Periodic Screening, Diagnostic and Treatment Services (EPSDT), School Based Health Related Services pertaining to services that are not required by an individualized education program (IEP) but are provided by schools to students and billed under the student's name. The original language referred to "billed to anyone who receives a medical service". The intent was to refer to services billed under the student's name.

5. The Department is adding the phrase "Early and Periodic Screening, Diagnostic and Treatment Services (EPSDT)," to the catchphrases in Rules II (37.86.2232), III (37.86.2233) and IV (37.86.2231) to clarify the rules. In addition, the Department is adding the term "school based" to the catchphrase of Rule IV (37.86.2231) to be consistent with the other rules being adopted.

6. The Department will clarify the wording in Rule II(4) (37.86.2232) Early and Periodic Screening, Diagnostic and Treatment Services (EPSDT), School Based Personal Care Paraprofessional Services in order to establish identical criteria for an immediate family member acting as a personal care paraprofessional for either a child or an adult.

7. The Department will reword Rule III(2) (37.86.2233) to read as follows: "School psychologists may perform medically necessary evaluations and counseling services. Counseling services may be provided to individuals or groups." This change is necessary to clearly state that group counseling may be provided as a school based service.

8. Rule 37.86.2207(1)(b) is being separated into two subsections for clarity. The content of (1)(b) set forth two separate reimbursement provisions. (1)(c) is being renumbered to (1)(d) as a result of the separation of (1)(b). There is no change to the text. The words "cost based" are being added to the provision renumbered to (1)(d) to clearly state that reimbursement determined in accordance with OMB Circular A-87 is cost based reimbursement. ARM 37.86.2207(9) will be reworded to reflect the renumbering of (1)(b) through (1)(d). See also Comment #2 below.

9. The Department has determined that the words "School based" and "Health related" should not be hyphenated and is therefor removing the hyphens.

6. The Department has thoroughly considered all commentary received. The comments received and the department's response to each follow:

COMMENT #1: The Department should specify the meaning of the acronym "OMB" in Rule 37.86.2207(c). Also, the OMB document is difficult to locate.

RESPONSE: OMB means "Office of Management and Budget". A copy of the OMB Circular A-87 has since been provided to Legal for distribution on request. This document may also be obtained from the Department of Public Health and Human Services, Health Policy and Services Division, Medicaid Services Bureau, P.O. Box 202951, Helena, MT 59620-2951.

COMMENT #2: Personal care services are often provided by an immediate family member. The language proposed in Rule II(4) (37.86.2232) Early and Periodic Screening, Diagnostic and Treatment Services (EPSDT), Eligibility and Scope of Health Related Services should be revised to make it clear that these services can be provided by immediate family members but not reimbursed by Medicaid.

RESPONSE: The Department agrees and has made the correction "Personal care service provided by an immediate family member will not be reimbursed. The term immediate family member includes:".

7. Rules I (37.86.2230), II (37.86.2232), III (37.86.2233) and IV (37.86.2231) are proposed to be applied retroactively to January 1, 2003. The Department intends to apply the changes to ARM 37.86.2207 retroactively to May 16, 2003, the date the emergency notice implementing these changes expired. There is no adverse impact to a retroactive applicability date. School districts and cooperatives are not compelled to participate as of January 1, 2003. Allowing school based health related services to be billed as of that date gives districts and cooperatives the opportunity to bill as of January 1, 2003 if they wish to do so. The rule could not be effective prior to January 1, 2003 because the program had to be approved by the Center for Medicaid and Medicare Services (CMS) and coordinated with the Office of Public Instruction.

Dawn Sliva for
Rule Reviewer

Mike Billings for
Director, Public Health and Human Services

Certified to the Secretary of State June 16, 2003.

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

In the matter of the amendment of ARM 37.106.302 and 37.106.401 pertaining to minimum standards for a hospital, general requirements	))))))	NOTICE OF AMENDMENT

TO: All Interested Persons

1. On May 8, 2003, the Department of Public Health and Human Services published MAR Notice No. 37-290 regarding the public hearing on the proposed amendment of the above-stated rules at page 962 of the 2003 Montana Administrative Register, issue number 9.

2. The Department has amended ARM 37.106.302 and 37.106.401 as proposed.

3. The Department has thoroughly considered all commentary received. The comments received and the Department's response to each follow:

COMMENT #1: The Department received numerous written comments in support of the Department's proposed rule change.

RESPONSE: The Department appreciates the support and will move forward with the rule amendment as proposed.

4. These rule amendments will be effective July 1, 2003.

Dawn Sliva for
Rule Reviewer

Mike Billings for
Director, Public Health and Human Services

Certified to the Secretary of State June 16, 2003.

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

In the matter of the adoption of new rules I through XXXIX pertaining to intermediate care facilities for the developmentally disabled (ICF/DD)	)))))	NOTICE OF ADOPTION

TO: All Interested Persons

1. On May 8, 2003, the Department of Public Health and Human Services published MAR Notice No. 37-289 regarding the public hearing on the proposed adoption of the above-stated rules at page 935 of the 2003 Montana Administrative Register, issue number 9.

2. The Department has adopted the rules I [37.106.2101], II [37.106.2102], III [37.106.2105], IV [37.106.2106], V [37.106.2109], VI [37.106.2110], VIII [37.106.2116], XI [37.106.2119], XII [37.106.2125], XIII [37.106.2126], XIV [37.106.2127], XV [37.106.2131], XVII [37.106.2133], XVIII [37.106.2136], XIX [37.106.2137], XXI [37.106.2139], XXV [37.106.2146], XXVI [37.106.2150], XXVII [37.106.2151], XXVIII [37.106.2152], XXIX [37.106.2153], XXX [37.106.2154], XXXI [37.106.2160], XXXII [37.106.2161], XXXIII [37.106.2162], XXXIV [37.106.2164], XXXV [37.106.2170] and XXXVI [37.106.2171] as proposed.

3. The Department has adopted the following rules as proposed with the following changes from the original proposal. Matter to be added is underlined. Matter to be deleted is interlined.

RULE VII [37.106.2115] CLIENT PROTECTIONS, THE PROTECTION OF RESIDENTS' RIGHTS (1) The facility must ensure the rights of all of the clients~~,~~ and must:

(a) and (b) remain as proposed.

(c) inform the individual client of their rights as a client of the facility, including the right to file complaints, the right to protection against any retaliation when filing a complaint and the right to due process;

(d) through (h) remain as proposed.

(i) ensure each client the opportunity to communicate, associate and meet privately with individuals and to send and receive unopened mail, except ~~as contraindicated by factors identified within their individual treatment plan~~ that these rights may be restricted as provided in Title 53, part 20, MCA;

(j) ensure that each client ~~have~~ has access to telephones with privacy for incoming and outgoing local and long distance calls, except ~~as contraindicated by factors identified within their individual treatment plan~~ that these rights may be

restricted as provided in Title 53, part 20, MCA;

(k) ensure that each client has the right to retain and use appropriate personal possessions and clothing, and ensure that each client is dressed in their own clothing each day, except ~~as contraindicated by factors identified within their individual treatment plan~~ that these rights may be restricted as provided in Title 53, part 20, MCA;

(l) ensure the client the opportunity to participate in social, religious and community group activities, except ~~as contraindicated by factors identified within their individual treatment plan~~ that these rights may be restricted as provided in Title 53, part 20, MCA; and

(m) permit a husband and wife who both reside in the facility to share a room ~~except as contraindicated by factors identified within their individual treatment plan~~. This right may only be limited by written order of the individual treatment planning team when there is no less restrictive means for preventing imminent bodily harm to either partner, or when either partner requests a separate room. The written order must explain the reason for the restriction and must be reviewed monthly by the individual treatment planning team if the restriction is to be continued.

(2) ~~Reasonable limitations may be placed upon the client's rights stated in (1)(d), (g), (i) and (j) through (m), if the limitations are necessary to accomplish a goal of the client's individual treatment plan or are in the client's best interests, or if the limitations are necessary to protect the client, other clients, staff or members of the public.~~ Any rights to which residents are entitled under this subchapter may be limited as provided in Title 53, part 20, MCA.

AUTH: 50-5-103 and 50-5-238, MCA
IMP: 50-5-103, 50-5-201, and 50-5-238, MCA

RULE IX [37.106.2117] COMMUNICATION WITH CLIENTS, PARENTS, AND GUARDIANS (1) The facility must:

(a) and (b) remain as proposed.

~~(c) permit visits by individuals with a relationship to the client (such as family, close friends, legal guardians and advocates) at any reasonable hour, without prior notice, consistent with the right of that client's and other clients' privacy, unless the interdisciplinary team determines that the visit would not be appropriate;~~

(d) remains as proposed but is renumbered (c).

~~(e)~~ (d) notify the client or client's guardian of changes in the client's condition including, but not limited to, serious illness, accident, death, abuse, or unauthorized absence in a timely manner as indicated by an assessment of the individual incident.

AUTH: 50-5-103 and 50-5-238, MCA
IMP: 50-5-103, 50-5-201, and 50-5-238, MCA

RULE X [37.106.2118] PREVENTION, INVESTIGATION, AND

REPORTING OF CLIENT ABUSE, SEXUAL ABUSE, NEGLECT AND EXPLOITATION (1) through (3) remain as proposed.

(4) The results of all facility investigations of client abuse, sexual abuse, neglect or exploitation must be reported to the department when the investigation has been initiated and upon completion. If an allegation of client abuse, sexual abuse, neglect or exploitation is verified, appropriate corrective action must be taken.

AUTH: 50-5-103 and 50-5-238, MCA
IMP: 50-5-103, 50-5-201, and 50-5-238, MCA

RULE XVI [37.106.2132] ADMISSIONS, TRANSFERS, DISCHARGE AND FAIR HEARING (1) through (4) remain as proposed.

(5) A resident has a right to a fair hearing to contest an involuntary transfer or discharge as provided at ARM 37.5.116.

AUTH: 50-5-103 and 50-5-238, MCA
IMP: 50-5-103, 50-5-201, and 50-5-238, MCA

RULE XX [37.106.2138] PROGRAM MONITORING AND CHANGE (1) and (2) remain as proposed.

(3) The facility must designate and use a specially constituted committee or committees consisting of members of facility staff, legal guardians, clients (as appropriate), qualified persons who have either experience or training in contemporary practices to change inappropriate client behavior, and persons with no ownership or controlling interest in the facility to:

(a) remains as proposed.

(b) ~~insure~~ ensure that these treatments are conducted only after the client or legal guardian has been informed; and

(c) review, monitor and make suggestions to the facility about its practices and programs as they relate to:

(i) drug usage;

(ii) physical restraints;

(iii) time out rooms;

(iv) application of painful or noxious stimuli;

(v) control of inappropriate behavior;

(vi) protection of client rights and funds; and

(vii) any other area that the committee believes needs to be addressed.

AUTH: 50-5-103 and 50-5-238, MCA
IMP: 50-5-103, 50-5-201, and 50-5-238, MCA

RULE XXII [37.106.2140] MANAGEMENT OF INAPPROPRIATE CLIENT BEHAVIOR (1) The facility must develop and implement written policies and procedures that govern the management of inappropriate client behavior only as allowed in 53-20-146, MCA. These policies and procedures must be consistent with the provisions of ARM 37.106.2139, and must:

(a) specify all facility-approved interventions to manage inappropriate client behavior;

(b) designate these interventions on a hierarchy to be implemented, ranging from most positive or least intrusive, to least positive or most intrusive;

(c) ~~insure~~ ensure, prior to the use of more restrictive techniques, that the client's record documents that programs incorporating the use of less intrusive or more positive techniques have been tried systematically and demonstrated to be ineffective; and

(d) address the following:

(i) the use of secured units;

(ii) the use of observation and seclusion rooms;

(iii) the use of physical restraints;

(iv) the use of time out procedures;

(iv) through (vii) remain as proposed but are renumbered (v) through (viii).

(2) through (5) remain as proposed.

AUTH: 50-5-103 and 50-5-238, MCA
IMP: 50-5-103, 50-5-201, and 50-5-238, MCA

RULE XXIII [37.106.2144] OBSERVATION AND SECLUSION ROOMS (1) A client may be placed in a an observation and seclusion room from which egress is prevented only as allowed in 53-20-146, MCA and only if the following conditions are met:

(a) The placement is ~~a part of an approved systematic observation and seclusion program as required by [RULE XXII]. Thus, emergency placement of a client into an observation and seclusion room is not allowed~~ required because of an emergency situation requiring immediate action or for other therapeutic purposes.

(b) and (c) remain as proposed.

(d) A licensed professional shall examine the client and provide written approval within the first three hours of placement unless the client has a long history of episodic violence. In these cases the examination and approval shall be obtained within the first 12 hours of placement.

(2) through (4) remain as proposed.

(5) An intermediate care facility for the developmentally disabled shall:

(a) designate specific rooms designed for observation/seclusion purposes; and

(b) develop policies and procedures for the use and maintenance of the observation/seclusion rooms.

AUTH: 50-5-103 and 50-5-238, MCA
IMP: 50-5-103, 50-5-201, and 50-5-238, MCA

RULE XXIV [37.106.2145] PHYSICAL RESTRAINTS (1) The facility may employ physical restraint only as allowed in 53-20-146, MCA, and only as:

~~(a) an integral part of an individual treatment plan that is intended to lead to less restrictive means of managing and eliminating the behavior for which the restraint is applied;~~

(b) and (c) remain as proposed but are renumbered (a) and

(b).

~~(2) Authorizations to use or extend restraints as an emergency must be:~~

~~(a) in effect no longer than 12 consecutive hours; and~~

~~(b) obtained as soon as the client is restrained or stable.~~

(3) through (5) remain as proposed but are renumbered (2) through (5).

(6) A licensed professional shall examine the client and provide written approval for restraint within the first three hours of placement and shall monitor and record the client's progress every 24 hours thereafter.

AUTH: 50-5-103 and 50-5-238, MCA
IMP: 50-5-103, 50-5-201, and 50-5-238, MCA

RULE XXXVII [37.106.2163] SECURED UNITS (1) A secured unit within a facility shall have a written policy outlining ~~the~~ resident admission criteria, transfer criteria and discharge criteria for ~~the placing of a resident into~~ the secured unit.

(2) through (9) remain as proposed.

AUTH: 50-5-103 and 50-5-238, MCA
IMP: 50-5-103, 50-5-201, and 50-5-238, MCA

4. As a result of comments received the Department is adopting New Rules XXXVIII [37.106.2180] and XXXIX [37.5.116] to address the concerns expressed that the proposed rules did not adequately specify the fair hearing rights to which the proposed rules were intended to be applied. The rules are adopted as follows:

RULE XXXVIII [37.106.2180] FACILITY FAIR HEARING (1) A facility has the right to appeal licensure decisions as outlined in 50-5-208, MCA.

(2) The department shall follow the hearing procedure for fair hearings as outlined at ARM 37.5.117.

AUTH: 50-5-103 and 50-5-238, MCA
IMP: 50-5-103, 50-5-201, and 50-5-238, MCA

RULE XXXIX [37.5.116] INTERMEDIATE CARE FACILITY FOR THE DEVELOPMENTALLY DISABLED (ICF/DD): APPLICABLE HEARING PROCEDURES

(1) Hearings relating to involuntary transfers and discharge from an intermediate care facility for the developmentally disabled are available as follows:

(a) Involuntary transfer or discharge is defined in ARM 37.106.2805.

(b) A resident may exercise his or her right to appeal an involuntary transfer or discharge by submitting a written request for fair hearing to the Department of Public Health and Human Services, Office of Fair Hearings, P.O. Box 202953, Helena, MT 59620-2953, within 30 days of notice of transfer or discharge.

(c) The parties to a hearing regarding a contested transfer or discharge are the facility and the resident contesting the transfer or discharge. The department is not a party to such a proceeding and relief may not be granted to either party against the department in a hearing regarding a contested transfer or discharge.

(d) Hearings regarding a contested transfer or discharge shall be conducted in accordance with ARM 37.5.304, 37.5.305, 37.5.307, 37.5.313, 37.5.322, 37.5.325 and 37.5.334 and a resident shall be considered a claimant for purposes of these rules.

(e) The request for appeal of a transfer or discharge does not automatically stay the decision of the facility to transfer or discharge the resident. The hearing officer may, for good cause shown, grant a resident's request to stay the facility's decision pending a hearing.

(f) The hearing officer's decision following a hearing shall be the final decision for the purposes of judicial review under ARM 37.5.334.

AUTH: 50-5-103 and 50-5-238, MCA
IMP: 50-5-103, 50-5-201, and 50-5-238, MCA

5. The Department has thoroughly considered all commentary received. The comments received and the Department's response to each follow:

COMMENT #1: The Department should change Rule VII(1)(c) to read as follows: "Allow and encourage ~~inform~~ the individual client ~~of~~ to exercise their rights as a client of the facility and as a citizen of the United States and of Montana, including the right to file complaints and the right to due process". Simply informing residents of their rights, including the right to due process, is already addressed in Rule VII(1)(a) and (b) [37.106.2115].

Requiring the facility to facilitate and promote the exercise of individual rights is critical to promoting the independence and self-reliance of each resident, and to advancing the purpose of the facility. See 53-20-101, MCA. (The purpose of developmental disabilities statutes is to "assure such treatment and habilitation are skillfully and humanely administered for full respect for the person's dignity and personal integrity" and "assure that due process of law is accorded any person coming under the provisions of this part".) This proposed amendment borrows language from 42 CFR 483.420(a)(3), on which these subsections of the proposed rule appear to be based.

RESPONSE: The Department disagrees with the proposed amendment. The Department and any facility to which the proposed rules will apply are bound by the requirements of 53-20-101, MCA, et seq., and residents are entitled to their Constitutional rights, regardless of the language employed by said rules. 42 CFR Part 483.420(a)(3) is a certification standard for medicaid. The

Department believes the language that we have proposed is both adequate to describe what the facility must do and measurable from a licensing survey standpoint.

COMMENT #2: The Department should change Rule VII(1)(f) as follows: "ensure that each client is free from unnecessary drugs and unnecessary physical restraints and is provided active treatment to reduce dependency on drugs and physical restraints." The proposed amendment is taken directly from 42 CFR 483(a)(6). We believe it is necessary to include this language to give effect to 53-20-145, MCA (right to be free from unnecessary or excessive medication) and to the right to habilitation in the least restrictive environment, guaranteed by both the Americans With Disabilities Act and the right to due process of the Montana constitution.

RESPONSE: The Department disagrees with the proposed amendment. We are assuming the Commentor meant to refer to 42 CFR 483.420(a)(6) since this cite talks about unnecessary drugs and physical restraint. This cite addresses a condition of participation for Medicaid. The concept of "active treatment" was discussed with the two legislative committees who heard this bill. The Department recommended that "the active treatment language" not be adopted as this is the very reason that some people at Montana Development Center do not currently qualify for Medicaid.

"Active treatment" as defined by Medicaid is focused on activities such as bathing, grooming, etc. as well as upon inappropriate socialization. If a client does not need assistance with the former and refuses to participate in treatment for anger management or inappropriate sexual behaviors they cannot meet Medicaid's restrictive standards for "active treatment". The legislature concurred with the Department's recommendation and adopted language requiring rules to be adopted to address "individual treatment and habilitation needs". The Department's proposed rule does this. Residents are entitled to the protections stated in 53-20-145, MCA, as well as to their rights under the Montana Constitution and the Americans with Disabilities Act, regardless of the language employed in the proposed rules.

COMMENT #3: To the extent that Rule VII [37.106.2115] addresses rights guaranteed by statute, it may only allow restrictions on those rights as provided by statute. In addition, personal liberty, the right to dignity and other rights guaranteed by state and federal law cannot be abridged except as allowed by law.

By statute, the right to send and receive sealed mail cannot be abridged. See 53-20-142(2), MCA ("Residents are entitled to send and receive sealed mail. Moreover, it is the duty of the facility to foster the exercise of this right by furnishing the necessary materials and assistance".)

The statutory right to unrestricted visitation, 53-20-142(4), MCA, may only be limited as provided by statute. The amendment proposed above also borrows "as necessary for habilitation, evaluation or care" from 53-20-141(1), MCA (denial of legal rights). The phrase "of their choice", which is taken from 42 CFR 420(a)(9), paraphrases the statutory term "unrestricted right".

The phrase "when there is no less-restrictive alternative" is critical to ensuring residents' rights to equal protection and due process under U.S. and Montana constitutions, and right to care in the least restrictive environment under the Americans With Disabilities Act. As reflected in the amendments proposed below, this phrase should be included wherever rights restrictions are contemplated.

In addition, the proposed amendment specifies that monthly review of any on going restriction must be by the individual treatment plan (ITP) team rather than only the qualified mental retardation professional (QMRP). We feel that involvement of the ITP is necessary to ensure adequate review of a very serious restriction of individual autonomy.

RESPONSE: The Department agrees that restrictions on client rights must be consistent with statute. The proposed Rule VII(1)(i) [37.106.2115] has been amended accordingly.

COMMENT #4: The statutory right to unrestricted private telephone use, 53-20-142(3), MCA, may only be limited as provided by statute. The amendment proposed above also borrows "as necessary for habilitation, evaluation or care" from 53-20-141(1), MCA (denial of legal rights), which provides the basis for limiting rights.

RESPONSE: The Department agrees that restrictions on client rights must be consistent with statute. The proposed Rule VII(1)(j) [37.106.2115] has been amended accordingly.

COMMENT #5: The statutory right to "keep and use the residents' own personal possessions", 53-20-142(7), MCA, may only be limited by the ITP team or QMRP because of dangerousness. The requirement for a written order and quarterly review of the order by the ITP team is necessary to ensure that restrictions last no longer than necessary to effect the intent of the statute.

RESPONSE: The Department agrees that restrictions on client rights must be consistent with statute. The proposed Rule VII(1)(k) [37.106.2115] has been amended accordingly.

COMMENT #6: Montana law, 53-20-142(11), MCA, makes no allowance for limiting the opportunity of residents to participate in religious activities. The proposed amendment makes it clear

that this right can only be infringed for safety reasons when there is no less restrictive alternative.

By statute, residents have the right to "suitable opportunities for interaction with the opposite sex", except as provided by statute, 53-20-142(14), MCA. This right is encompassed within the "opportunity to participate in social . . . and community group activities". The proposed amendment inserts the statutory language into the proposed rule.

The right to regular exercise and to be outdoors daily, 53-20-142(13), MCA, is encompassed within "the opportunity for social . . . and community group activities". Restrictions on this right must be justified by medical necessity, rather than the more permissive "as necessary for habilitation, evaluation or care".

RESPONSE: The Department agrees that restrictions on client rights must be consistent with statute. The proposed Rule VII(1)(l) has been amended accordingly.

COMMENT #7: Although not named in Montana's statutes, the right of a husband and wife to be together in privacy if they choose is guaranteed by Montana's right to privacy, Montana Constitution, Art. II, Sec. 10, which says that "[t]he right of individual privacy is essential to the well being of a free society and shall not be infringed without the showing of a compelling state interest". Preventing imminent bodily harm has been recognized by courts as a compelling state interest.

RESPONSE: The Department agrees. The proposed rule has been amended accordingly.

COMMENT #8: The broad "reasonable limitations" language of VII(2) [37.106.2115] violates both statutory and constitutional limitations on the authority of a facility to limit the rights of clients and conflicts with the amendments proposed above.

RESPONSE: The Department agrees that the proposed rule may be inconsistent with statutory language. The proposed Rule VII(2) [37.106.2115] has been amended accordingly.

COMMENT #9: Replace "permit visits" with "promote visits," and delete "unless the interdisciplinary team determines that the visit would not be appropriate" in Rule IX(1)(c) [37.106.2117].

The Federal rule requires ICF/MRs to promote visits by friends, family and others, rather than only permitting them. It is critical that the facility take an active role in encouraging visits in order to promote habilitation, progress towards discharge, and minimize the disheartening isolation and ostracism many residents feel as a result of placement at the facility.

Deleting the last clause in Rule IX(1)(c) [37.106.2117] is necessary because permissible limitation on the statutory right to unrestricted visitation are already addressed by Rule VII(1)(i) [37.5.2115]. "Appropriateness" is not a statutorily permissible basis for restricting visitation.

RESPONSE: The Department agrees that visitation by relatives is addressed in proposed Rule VII(1)(i) [37.106.2115]. Proposed Rule IX(1)(c) [37.106.2117] has been deleted.

COMMENT #10: The text of Rule VII(1)(c) [37.106.2115] is: "inform the individual client of their rights as a client of the facility, including the right to file complaints and the right to due process." I see nowhere in this proposal the individual client being protected against any retaliation if filing a complaint.

Is this protected under the due process rule, an administrative Rule of the facility, or just under the ADA?

These folks need to be informed of their rights sure but they must also be informed of their right to be protected against any form of retaliation for filing a complaint. If retaliation is addressed in this proposal please direct me to the correct area.

RESPONSE: The Department agrees that clients must have protection against any retaliation if filing a complaint. Proposed Rule VII(1)(c) [37.106.2115] has been amended accordingly.

COMMENT #11: Visitors may need encouragement to visit all the parts of facility to which they are entitled to access. Becoming familiar with all aspects of the facility will make them better advocates and supporters of the resident. The word "promote" is used in the Federal rule, 42 CFR 483.420(c)(4).

RESPONSE: The Department disagrees with the proposed amendment. 42 CFR Part 483.420(c)(4) is a medicaid certification standard. The Department finds the word "permit" rather than "promote" to be more measurable and appropriate as a licensure standard. From a licensure standpoint "permit visits" can be defined and observed while "promote visits" is subjective.

COMMENT #12: The Department should change Rule IX(1)(e) as follows: "notify promptly the client or client's guardian of any significant incidents, or changes in the client's condition, including, but not limited to, serious illness, accident, death, abuse, or unauthorized absence." The language added by this amendment to Rule VII(1)(c) [37.106.2115] appears in 42 CFR 483.420(c)(6) and is necessary so that the guardian has adequate information about developments in the ward's life and can take steps to protect, help or just assure the ward. Under this proposed amendment, for instance, the guardian would be informed that the resident had made an allegation of abuse. Without this

amendment, including the requirement of prompt notification, it appears that the guardian would only be told about abuse that had been substantiated, and would be unable to look out for the ward's interests during the critical hours following an allegation.

RESPONSE: The Department agrees with the concept in the proposed amendment in part. The importance of responding in a timely manner will be incorporated into the rule. The Department disagrees in part with the proposed language. The Department asserts that from a licensure standpoint the words "promptly" and "significant" are subjective.

COMMENT #13: The Department should add "Promote frequent and informal leaves from the facility for visits, trips or vacations" to the text of Rule IX [37.106.2117].

This language, taken from 42 CFR 483.420(c)(5), is necessary to promote effective habilitation and rapid return to the community. Unless the facility actively encourages friends, family and others to invite residents for visits, trips and vacations in the community, most residents have no opportunities for being included in community life in this very valuable way.

RESPONSE: The Department disagrees with the proposed amendment. The Department asserts that methods regarding habilitation of a resident are best determined by professional facility personnel according to the needs of each individual resident, and within the constraints of Montana law, and not by the proposed rules.

42 CFR Part 483.420(c)(5) is a Medicaid certification standard that we do not find necessary for licensure purposes. From a licensure standpoint "permit" can be defined and observed while "promote" is subjective.

COMMENT #14: The Department should add "The facility must promptly and thoroughly investigate all allegations of abuse, neglect, mistreatment or exploitation; must maintain complete records of all investigations; must make specific findings with regard to each allegation; and must prevent further potential abuse while the investigation is in progress. Staff accused of abuse must be removed from direct client care pending investigation and corrective action, if any." to Rule X [37.106.2118].

It is critical that every allegation of mistreatment, neglect or abuse is investigated promptly and thoroughly; that investigations are completed, including a statement of findings; and that staff against whom allegations have been made are removed from direct client services until findings have been made and corrective action taken. Effective investigations are obviously critical to ensuring safe and humane care. Delayed, incomplete investigations, inadequate findings, and allowing staff who are under investigation to remain in direct care

positions are violations of residents' due process rights to treatment in the least restrictive environment.

RESPONSE: The Department agrees that additional language will clarify the investigation process, but also asserts that 52-3-148, MCA provides all the enabling language needed to investigate the allegation. The proposed Rule X [37.106.2118] has been amended accordingly.

COMMENT #15: The Department should change Rule XV(1) [37.106.2131] as follows: "Each client must ~~be offered~~ receive a treatment and habilitation program".

We believe we understand the rationale behind changing the language in 42 CFR 483.440(1) from "receive" to "be offered". That is, every resident has a right to refuse treatment. In our experience, however, the right to refuse treatment should not be used as an excuse to not to meet the equally important obligation to provide active treatment. In fact, the right to refuse treatment is meaningless unless the facility's response to refusal of certain services is met with the choice of different services.

As written, this rule would promote rigid, unimaginative treatment planning, in violation of the right to an individualized, active treatment plan, required by 53-20-148, MCA; by Title 53, Chapter 20, MCA, generally; by the Montana constitution; by the Americans with Disabilities Act; and by the U.S. Constitution.

RESPONSE: The Department disagrees with the proposed amendment and the notion that this rule would promote rigid, unimaginative treatment planning. The use of "be offered" balances the rights of the client to refuse treatment with the responsibility of the facility to provide service. The Department asserts that methods regarding habilitation of a resident are best determined by professional facility personnel according to the needs of each individual resident, and within the constraints of Montana law, and not by the proposed rule change.

42 CFR Part 483.440(1) is a condition of participation for Medicaid that we do not believe needs to be incorporated verbatim for licensure purposes. The Department's proposed rules do not address participation in the Medicaid programs, nor do they address surveys of facilities regarding participation in Medicaid.

COMMENT #16: The Department should change Rule XVI(4) [37.106.2132] as follows: "At the time of the discharge, the facility must . . .(b) provide a post-discharge plan of care that will assist the client in adjusting to the new living environment and ensure that the client has the means to obtain adequate housing and other basic needs".

The proposed language is necessary to ensure that the client is not discharged without the means to obtain basic services, including room and board.

RESPONSE: The Department disagrees with the proposed amendment. The Department asserts that these responsibilities are not within the scope of the rules or Senate Bill 113 of the 2003 Montana Legislature regarding ICF/DD.

COMMENT #17: After reviewing the proposal notice regarding the proposed rules pertaining to intermediate care facilities for the developmentally disabled (ICF/DD), a question comes to mind regarding appeal/fair hearing rights for ICF/DD providers and residents.

Based upon ARM 37.5.107(3), it appears the resident or potential resident has the right to appeal, through an administrative hearing, issues of denial of admission or discharge from an ICF/DD. See also ARM 37.5.117. Should not a section be added to the ICF/DD rules which states such and makes reference to the applicable hearing procedures? A subsection to RULE XVI [37.106.2132] may be the most appropriate. This would be consistent with the Department's practice such as in the personal care facility rule ARM 37.106.2824(4)(a) through (f). The wording added to RULE XVI [37.106.2132] could be similar to ARM 37.106.2824(4).

RESPONSE: The Department agrees with the proposed rule change. Wording similar to ARM 37.106.2824(4) will be adopted as RULE XXXIX [37.5.116]. RULE XVI [37.106.2132] has been amended accordingly referring to the hearing procedures in RULE XXXIX [37.5.116].

COMMENT #18: The Department should amend Rule XV(1) [37.106.2131] as follows: "Each client must ~~be offered~~ receive a treatment and habilitation program."

We believe we understand the rationale behind changing the language in 42 CFR 483.440(1) from "receive" to "be offered". That is, every resident has a right to refuse treatment. In our experience, however, the right to refuse treatment should not be used as an excuse to not meet the equally important obligation to provide active treatment. In fact, the right to refuse treatment is meaningless unless the facility's response to refusal of certain services is met with the choice of different services.

As written, this rule would promote rigid, unimaginative treatment planning, in violation of the right to an individualized, active treatment plan, required by 53-20-148, MCA; by Title 53, Chapter 20, MCA, generally; by the Montana constitution; by the Americans with Disabilities Act; and by the U.S. Constitution.

RESPONSE: The Department disagrees. Please see Comment #15 to Rule XV(1) [37.106.2131].

COMMENT #19: The Department should change Rule XX(3)(b) [37.106.2138] as follows: "~~insure~~ ensure that these treatments are conducted only ~~after~~ with the informed written consent of the client or legal guardian ~~has been informed~~";

We urge restoring the language employed by the Federal rule at 42 CFR 483.440(f)(3)(ii), which required informed consent in writing from the client or guardian if the Committee determines that the measures being employed to manage client behavior involve risks to client protection and client rights. This requirement would only apply to those situations where the measures taken posed risks not usually associated with active treatment and behavior management.

RESPONSE: The Department agrees in part. The word "ensure" is a more appropriate term. Rule XX(3)(b) [37.106.2138] has been changed to read "ensure that these treatments are conducted".

The Department disagrees with the proposed amendment in part. The Department asserts that "treatments are conducted only with the informed written consent of the client or legal guardian" could impede the progress of client treatment. The Department asserts that methods regarding habilitation of a resident are best determined by professional facility personnel according to the needs of each individual resident, and within the constraints of Montana law, and not by the proposed rule change.

COMMENT #20: The Department should add time out procedures to the list of interventions that must be addressed in policies and procedures in Rule XXII(1)(c) [37.106.2140].

Time out procedures are a necessary part of any hierarchy of interventions that could result in restraint or seclusion.

RESPONSE: The Department agrees. "Time out procedures" will be added as a subsection under Rule XXII(1)(d) [37.106.2131].

COMMENT #21: Rule XXIII(1)(c) [37.106.2144] delete observation and seclusion rooms and physical restraint from the list of allowed interventions.

Reports have consistently found that the Montana Developmental Center has failed to properly develop and implement intervention programs. We believe that MDC should not be permitted to use observation and seclusion, and restraints, at this time, so we believe it is inappropriate for this licensing rule to include these interventions. If these interventions are not struck from the rule, then the rule must be far more proscriptive about time out, seclusion and observation, and restraint procedures.

We also believe that the involuntary use of "observation and seclusion", though permitted by statute if it is part of the treatment plan, is prohibited by the Ihler order (discussed below), which found that the use of seclusion was a violation of the resident's right to due process unless required to prevent imminent risk of harm.

RESPONSE: The Department agrees. Rules XXIII [37.5.2144] and Rule XXIV [37.106.2145] will be changed to be more proscriptive. The facility may employ "time out", "observation and seclusion" and "restraints" only as allowed in 53-20-146, MCA. "Observation and seclusion" will be ordered by an independent licensed professional according to time lines that are discussed in Ihler. The facility may employ "observation and seclusion" and "restraints" only as allowed in 53-20-146, MCA. The proposed Rules XXIII [37.106.2144] and XXIV [37.106.2145] have been amended accordingly.

COMMENT #22: Putting a resident into a locked room must comply with the order of the Lewis and Clark County District Court in Ihler v. Chisholm, which found that employing restraint or seclusion except under the orders of the treating professional violated the due process rights of residents at another state facility, the Montana State Hospital. Applying the Ihler standard to an ICF/DD facility, we believe that at a minimum, restraint or seclusion may only be ordered by an independent, licensed professional. As required by Ihler, that professional person must see the resident who has been restrained or secluded within the hour; orders must be in writing; and the restraint or seclusion must end as soon as the emergency ends. In addition, the written orders, we believe, must be time limited to no more than an hour.

RESPONSE: The Department agrees. "Restraint or seclusion" will be ordered by an independent licensed professional according to time lines that are discussed in Ihler. The facility may employ "observation and seclusion" and "restraints" only as allowed in 53-20-146, MCA. The proposed Rule XXII and Rule XXIII [37.106.2144] have been amended accordingly to read the same as in the response to Comment #19.

COMMENT #23: Rule XXXVII(1) [37.106.2151] should be amended to require that the secured unit have a written policy outlining discharge criteria, as well as admission criteria, for the unit.

RESPONSE: The Department agrees that the proposed rule should be changed to broaden facility's secure units policies and procedure. The proposed XXXVII(1) [37.106.2151] has been amended accordingly.

COMMENT #24: Further, ARM 37.5.117 provides that hearings in the matter of health care facility licensure and enforcement under Title 50, Chapter 5, MCA are available to the provider. Is an ICF/DD considered a health care facility? If so, then

would not the facility have a right to appeal a licensure issue to the Office of Fair Hearings? If this were the case, it would probably be most proper to add this to the ICF/DD rules by simply placing reference to ARM 37.5.117 in the new rules.

RESPONSE: The Department agrees with the proposed rule change. Since an ICF/DD is a health care facility, reference to ARM 37.5.117 has been added accordingly.

COMMENT #25: We support the concept of the ICF/DD. We would suggest that Rule XXIII [37.106.2144], Observation and Seclusion Rooms, contain language that ensure policies and procedures specific to a seclusion room exist and that a specific room be designed for observation/seclusion purposes.

RESPONSE: The Department agrees that an ICF/DD must have policies and procedures for observation and seclusion rooms and that a specific room be designed for observation/seclusion purposes. The proposed Rule XXIII(5) [37.106.2144] has been amended accordingly.

6. These rule adoptions will be effective July 1, 2003.

Dawn Sliva for
Rule Reviewer

Mike Billings for
Director, Public Health and Human Services

Certified to the Secretary of State June 16, 2003.

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

In the matter of the adoption of new rules I through XXVII pertaining to bed and breakfast establishments	))))	NOTICE OF ADOPTION

TO: All Interested Persons

1. On May 8, 2003, the Department of Public Health and Human Services published MAR Notice No. 37-288 regarding the public hearing on the proposed adoption of the above-stated rules at page 897 of the 2003 Montana Administrative Register, issue number 9.

2. The Department has adopted the rules V [37.111.312], VI [37.111.313], VII [37.111.314], IX [37.111.308], X [37.111.320], XI [37.111.321], XII [37.111.322], XV [37.111.328], XVI [37.111.329], XVII [37.111.330], XVIII [37.111.334], XIX [37.111.335], XXI [37.111.342], XXII [37.111.339], XXIII [37.111.310], XXIV [37.111.343] XXV [37.111.344], XXVI [37.111.307] and XXVII [37.111.350] as proposed.

3. The Department has adopted the following rules as proposed with the following changes from the original proposal. Matter to be added is underlined. Matter to be deleted is interlined.

RULE I [37.111.301] PURPOSE (1) The purpose of these rules is to establish public health requirements governing the operation of bed and breakfast establishments in order to ~~prevent or eliminate unsanitary and unhealthful conditions and practices which may endanger the health of the traveling public~~ protect the health and safety of guests staying at such establishments.

AUTH: Sec. 50-51-103 and 50-51-108, MCA
IMP: Sec. 50-51-103, MCA

RULE II [37.111.302] DEFINITIONS In addition to those definitions contained in 50-51-102, MCA, the following definitions apply to this subchapter:

(1) through (10) remain as proposed.

(11) "Individual wastewater system", in accordance with ARM 17.36.101, means a wastewater system that serves one living unit or commercial structure. The total number of people served may not exceed 24.

(12) "Individual water system", in accordance with ARM 17.36.101, means any water system that serves one living unit or commercial structure. The total number of people served may not exceed 24.

(13) "Living unit", in accordance with ARM 17.36.101 and for the purpose of interpreting the size of wastewater and water systems, means the area under one roof occupied by a family. For example, a duplex is considered two living units.

(11) remains as proposed but is renumbered (14).

(15) "Multiple user wastewater system", in accordance with ARM 17.36.101, means a non-public wastewater system that serves or is intended to serve three through 14 living units or three through 14 commercial structures. The total number of people served may not exceed 24.

(16) "Multiple user water system", in accordance with ARM 17.36.101, means a non-public water supply system designed to provide water for human consumption to serve three through 14 living units or three through 14 commercial structures. The total number of people served may not exceed 24.

(12) and (13) remain as proposed but are renumbered (17) and (18).

(19) "Public wastewater system", in accordance with ARM 17.36.101, means a system for collection, transportation, treatment, or disposal of wastewater that serves 15 or more families or 25 or more persons daily for a period of at least 60 days in a calendar year.

(20) "Public water supply system", in accordance with ARM 17.36.101, means a system for the provision of water for human consumption that has at least 15 service connections or that regularly serves at least 25 persons daily for any 60 days or more in a calendar year.

(14) remains as proposed but is renumbered (21).

(22) "Shared wastewater system", in accordance with ARM 17.36.101, means a wastewater system that serves or is intended to serve two living units or commercial structures. The total number of people served may not exceed 24.

(23) "Shared water system", in accordance with ARM 17.36.101, means a water system that serves or is intended to serve two living units or commercial structures. The total number of people served may not exceed 24.

(15) through (17) remain as proposed but are renumbered (24) through (26).

AUTH: Sec. 50-51-103 and 50-51-108, MCA
IMP: Sec. 50-51-102 and 50-51-103, MCA

RULE III [37.111.305] PRELICENSURE REVIEW AND APPROVAL (1) Bed and breakfast establishments shall submit facility and operating plans to the regulatory authority for review and approval when the following conditions apply:

(a) through (b)(i) remain as proposed.

(ii) When a proposal to use an existing building as an establishment involves structural modification, plans meeting the requirements of (2) must be submitted to the regulatory authority for review and approval. If no structural modification is involved, the regulatory authority may waive the requirement for submission of plans if:

(A) remains as proposed.

(B) the fire authority approves the building; ~~and~~

(C) the building authority approves the building or waives approval; and

(D) the establishment is in compliance with other state and local requirements.

(2) remains as proposed.

AUTH: Sec. 50-51-103 and 50-51-108, MCA
IMP: Sec. 50-51-103, MCA

RULE IV [37.111.306] LICENSURE, RENEWAL, AND INSPECTION (1) It is unlawful for a bed and breakfast establishment to operate without a license, as specified in 50-51-201, MCA. Failure to procure a license may subject the operator to criminal penalties as provided in 50-51-106, MCA, and/or civil penalties, injunctive relief, and costs as provided in 50-51-401 through 50-51-402, MCA.

(1) through (4) remain as proposed but are renumbered (2) through (5).

(6) An applicant or licensee who is denied a license or whose license is cancelled has the rights specified in 50-51-210 and 50-51-211, MCA.

AUTH: Sec. 50-51-103 and 50-51-108, MCA
IMP: Sec. 50-51-103, 50-51-201, 50-51-202 and 50-51-204, MCA

RULE VIII [37.111.315] FOOD PREPARATION (1) and (2) remain as proposed.

(3) Potentially hazardous foods ~~being processed~~ must be cooked to heat all parts of the food to a temperature of at least 135ºF (57.2ºC), except ~~that~~ as follows:

~~(a) poultry, poultry stuffings, stuffed meats and stuffings containing meat must be cooked to heat all parts of the food to at least 165ºF (74ºC) with no interruption of the cooking process;~~

~~(b) pork and pork products must be cooked to heat all parts of the food to at least 145ºF (63ºC);~~

~~(c) rare roast beef must be cooked to an internal temperature of at least 130ºF (55ºC) and rare beef steak must be cooked to a temperature of 130ºF (55ºC) unless otherwise ordered by the immediate consumer; and~~

~~(d) ground meat must be cooked to an internal temperature of at least 155ºF (68.3ºC) and must hold this temperature for at least 15 seconds.~~

Food Item	Temperature
Poultry, poultry stuffing, stuffed meats, stuffings containing meat	heat all parts of the food to at least 165ºF (74ºC) with no interruption in the cooking process

Pork and pork products	heat all parts of the food to at least 145ºF (63ºC)
Rare roast beef, rare beef steak	cook to an internal temperature of at least 130ºF (55ºC) unless otherwise ordered by customer for immediate service
Ground meat	cook to an internal temperature of 155ºF (68ºC), and the food must hold this temperature for at least 15 seconds

(4) Uncooked, unpasteurized shell eggs may not be used for the preparation of ready-to-eat foods or foods that are not further cooked or baked.

(5) The reheating of food for hot holding must be done as follows:

~~(a) Potentially hazardous foods that have been cooked, cooled and reheated for hot holding must be reheated so that all parts of the food reach a temperature of at least 165ºF (74ºC) and must hold this temperature for 15 seconds.~~

~~(b) Potentially hazardous food reheated for hot holding in a microwave oven shall be:~~

~~(i) covered;~~

~~(ii) rotated or stirred throughout or midway during cooking or according to label instructions during heating;~~

~~(iii) heated to a temperature of at least 165ºF (74ºC); and~~

~~(iv) allowed to stand covered two minutes after reheating.~~

~~(c) For all food, reheating for hot holding must be done rapidly so that the time the food is between the temperature of 45ºF (7ºC) and 165ºF (74ºC) does not exceed two hours.~~

~~(d) Ready-to-eat food taken from a commercially processed, hermetically sealed container or from an intact package from a food processing plant that is inspected by the regulatory authority, must be heated to a temperature of at least 140ºF (60ºC) for hot holding.~~

~~(e) Cooked and refrigerated food that is prepared for immediate service in response to an individual consumer order, such as a roast beef sandwich au jus, may be served at any temperature.~~

Food Item	Temperature
Potentially hazardous food that has been cooked, cooled and reheated for hot holding	reheat to reach at least 165ºF (74ºC) in all parts of the food and maintain

	temperature for 15 seconds
Reheating all food for hot holding	reheat rapidly so that temperature of 165°F (74°C) is attained within two hours
Ready-to-eat food taken from commercially processed hermetically sealed container or intact package from a licensed or approved food processing plant	reheat to reach at least 140°F (60°C) prior to hot holding
Cooked and refrigerated food that is for immediate service in response to a consumer's order, such as a roast beef sandwich au jus	serve at any prepared temperature

(6) Potentially hazardous food reheated for hot holding in a microwave oven must:

(a) be covered;

(b) rotated or stirred throughout or midway during cooking or according to label instructions during heating;

(c) heated to a temperature of at least 165°F (74°C); and

(d) allowed to stand covered for two minutes after reheating.

(6) through (9) remain as proposed but are renumbered (7) through (10).

AUTH: Sec. 50-51-103 and 50-51-108, MCA
IMP: Sec. 50-51-103, MCA

RULE XIII [37.111.326] WATER SUPPLY AND PLUMBING (1) remains as proposed.

(2) Before a license may be issued, an establishment using ~~a private or multiple family~~ an individual, shared or multiple user water supply must submit the following to the regulatory authority:

(a) and (b) remain as proposed.

(3) A supplier of ~~a private or multiple family~~ an individual, shared or multiple user water supply shall conduct a coliform bacteria test of the system at least twice a year with one sample collected between April 1 through June 30 and the second sample collected between August 1 through October 31 and shall conduct a nitrate test of the system at least once every three years. A supplier shall keep sampling result records for three years at the premises of the bed and breakfast establishment for review by the regulatory authority.

(4) through (11) remain as proposed.

AUTH: Sec. 50-51-103 and 50-51-108, MCA
IMP: Sec. 50-51-103, MCA

RULE XIV [37.111.327] ~~SEWAGE SYSTEM AND WASTE WATER~~ WASTEWATER SYSTEM (1) An adequate and safe ~~sewage~~ wastewater system must be provided for conveying, treating and disposing of all sewage. Immediate measures must be taken to alleviate health and sanitation hazards caused by ~~sewage~~ wastewater at the bed and breakfast establishment when they occur.

(2) A ~~sewage~~ wastewater system has failed and requires replacement or repair if any of the following conditions occur:

(a) the system fails to accept, treat or dispose of ~~sewage~~ wastewater as designed;

(b) effluent from the ~~sewage~~ wastewater system contaminates a potable water supply or state waters; or

(c) the ~~sewage~~ wastewater system is subjected to mechanical failure, including electrical outage, or collapse or breakage of a septic tank, lead line or drainfield line.

(3) Extension, alteration, replacement or new development of any ~~sewage~~ wastewater system must be done in accordance with all applicable local laws and ARM Title 17, chapter 36, subchapters 1, 3 and 6, which cover the minimum standards for ~~single family and multiple family residential sewage~~ individual, shared or multiple user wastewater systems, as regulated by the Montana department of environmental quality.

(4) Disposing of discharged liquid wastes from sinks, showers, toilets or baths on the ground surface is prohibited. Such waste must be discharged into the ~~sewage~~ wastewater system serving the bed and breakfast establishment or into an alternate system approved by the regulatory authority.

(5) and (6) remain as proposed.

AUTH: Sec. 50-51-103 and 50-51-108, MCA
IMP: Sec. 50-51-103, MCA

RULE XX [37.111.336] HOUSEKEEPING AND MAINTENANCE

(1) Housekeeping~~,~~ and maintenance ~~and linen~~ services must be provided a minimum of every three days and must be available on a daily basis when requested by a guest. Housekeeping~~,~~ and maintenance ~~and linen~~ services must be provided between guest occupancies. Shared bathrooms must be cleaned daily.

(2) through (6) remain as proposed.

(7) All bedding, towels and washcloths provided by management must be clean and in good repair. Clean ~~laundered~~ bed sheets and pillowcases must be provided on each bed and shall be replaced by clean, freshly laundered sheets and pillowcases after the departure of each guest ~~or lodger~~ and prior to occupancy by the next guest. ~~At least weekly, clean~~ Clean bedding must be available to each guest on a weekly basis or more often if requested by a guest. Clean towels and washcloths must be available to each guest every three days, at minimum, or more often if requested by a guest.

(8) remains as proposed.

AUTH: Sec. 50-51-103 and 50-51-108, MCA
IMP: Sec. 50-51-103, MCA

4. The Department has thoroughly considered all commentary received. The comments received and the department's response to each follow:

COMMENT #1: In general, it is understandable that bed and breakfast establishments should abide by standards of general cleanliness and safety, but is it necessary to have such a complicated regulation? Perhaps the regulation can be condensed in a booklet for operators minus the legal terms.

RESPONSE: The Department followed the state legislature's mandate in developing these rules, as provided in 50-51-103 and 50-51-108, MCA. A negotiated rulemaking committee composed mostly of bed and breakfast operators worked with the department and a local health employee when devising these rules, and all people serving on the committee approved of the rules in their format. The department does not contemplate providing a condensed booklet at this time, but may do so at a later date.

COMMENT #2: Rule I [37.111.301] states that the purpose of the bed and breakfast establishment rules is to "prevent or eliminate unsanitary and unhealthful conditions and practices which may endanger the health of the traveling public." This language is negative and implies that the rules provide a remedy for past problems concerning health and safety of bed and breakfast establishments. Replace the rule language with that contained in the corresponding rationale: That the purpose of the rules is to "protect the health and safety of guests staying at bed and breakfast establishments."

RESPONSE: The Department agrees and has made the requested change.

COMMENT #3: On the definition of a "bed and breakfast establishment" in Rule II(1) [37.111.302], the limit of having 18 daily guests is too low of a number. The number does not take into consideration families with children that are guests. Limiting the number of guests to 18 can negatively impact business and lead to a loss of tax revenue for the state.

RESPONSE: The Department disagrees. Rule II(1) [37.111.302] contains the same definition of a bed and breakfast establishment as that found in statute in 50-51-102(1), MCA. Section 50-51-102(1)(b), MCA, specifies that the number of daily guests cannot exceed 18. The state legislature set the limit when it enacted the statute, and as a result the department cannot change it.

COMMENT #4: In Rule II(9) [37.111.302], pillows are not found in the definition of "furnishings".

RESPONSE: The definition of "bedding" found in Rule II(2) [37.111.302] includes "pillow protectors and cases".

COMMENT #5: Eliminate the definition of "single service articles" as found in Rule II(15) [37.111.302]. Bed and breakfast establishments do not use those items. Furthermore, having the definition may lead to an overzealous regulatory authority requiring bed and breakfast establishments to use only disposable single service articles when serving food to guests, as has happened in the past.

RESPONSE: The Department disagrees. Under certain circumstances, single service items may be required such as when potable running water is temporarily unavailable or some other emergency circumstance exists. Many bed and breakfast establishments also routinely use single service items. The bed and breakfast rule is supposed to be all-inclusive of every item that may exist in a bed and breakfast kitchen, therefore single service items were included.

COMMENT #6: For the definition of "guest" in Rule II(10) [37.111.302], add that guests are "not to exceed 18 people" on a daily basis, as found in the definition of a "bed and breakfast" in 50-51-102(1), MCA. Doing so will make Rule IV(4) [37.111.306] clear that a bed and breakfast operation does not need a separate food service establishment license when the number of people served does not exceed 18 daily guests. The clarity will make operators obtain separate food service establishment licenses when they have conjoined catering businesses that serve non-guests.

RESPONSE: The Department agrees with the comment but finds that any change in the rule is unnecessary. A "bed and breakfast establishment" is defined in Rule II(1) [37.111.302], and it specifies that such an establishment may have up to 18 daily guests. If a bed and breakfast establishment exceeds 18 guests, then it becomes a different kind of public accommodation. As long as the public accommodation serves food to only its registered guests, no matter the number, it does not need a separate food service license, as provided in 50-50-102(8)(c), MCA. When a public accommodation has an adjacent operation serving food to others that are not registered guests (such as a catering business), then the food facility portion needs to have a separate food service license.

COMMENT #7: Concern was voiced over Rule III(1)(a)(i) [37.111.305], which requires operators to submit plans to the regulatory authority and get approval before constructing new establishments or making additions to existing establishments. What about bed and breakfast operators who have been constructing additional guest cabins without plan approval before the rule's effective date? Will there be an allowance or waiver for such situations?

RESPONSE: There will not be an allowance or a waiver. Before the bed and breakfast rules go into effect, operators and regulatory authorities have been relying on the general public

accommodation rule in ARM Title 37, chapter 111, subchapter 1. Submission of plans for approval has always been required for all public accommodations, as specified in ARM 37.111.104. Additionally, the cabins would not be included as a bed and breakfast establishment, but may qualify as either another type of public accommodation or a trailer park/campground. The trailer park/campground rules require submission of plans for approval.

COMMENT #8: It was suggested to add Rule III(1)(b)(ii)(D) [37.111.305]: "the establishment is in compliance with other local and state requirements" as a requirement for prelicensure review and approval. The additional language would assist with the compliance and enforcement of subdivision approvals and water and sewer system changes that come under the authority of the Montana Department of Environmental Quality.

RESPONSE: The Department agrees and has made the requested change.

COMMENT #9: There are no provisions concerning due process that inform operators what rights or administrative remedies they have if their licenses are not approved or revoked. Perhaps this could be accomplished by cross-referencing to state statutes or other administrative rules that provide the due process provisions. Also, it would be beneficial if the rules clearly set forth the penalties for violating the rules. Although the penalties are specified in 50-51-201, MCA, et seq., and 50-51-401, MCA, et seq., the rules should either have a cross-reference to those statutory provisions or be re-stated in the rules.

RESPONSE: Although other department rules concerning licensed establishments do not include reference to the statutes concerning penalties and administrative remedies, the Department has added them.

COMMENT #10: There should be a provision about the repercussions of having an unlicensed bed and breakfast establishment.

RESPONSE: See response to comment #9.

COMMENT #11: A concern was raised about the prohibition of storing food in entryways, as stated in Rule VII [37.111.314]. Does this mean that food cannot be stored in a pantry room that has an outside door when the door is used to easily haul in groceries? Not allowing storage in such a pantry room may be unduly burdensome when the groceries have to be carried in through the home's entryway where guests may be in the way.

RESPONSE: Because of public health reasons, food must not be stored near an entry. Outside debris and drafts of unfiltered air can be sources of microbial contamination.

COMMENT #12: It is understandable to have the need for safe food temperatures, as specified in Rule VIII [37.111.315]. However, it is confusing to know all of the myriad of temperatures listed in the rule. A simple table of the temperatures would help with the confusion.

RESPONSE: The Department agrees and has configured a chart listing all of the required food preparation temperatures. A similar chart is found in the corresponding retail food service rule in ARM 37.110.207.

COMMENT #13: It seems unduly burdensome to require three-compartment dishwashing sinks, as specified in Rule X(11) [37.111.320].

RESPONSE: The requirement for a three-compartment dishwashing sink is only required for establishments serving more than 10 meals per day. In devising this provision, the negotiated rule committee, which was mostly comprised of bed and breakfast operators, determined that a three-compartment sink was needed given that more dishes, utensils and food equipment would be used. A three-compartment sink facilitates the washing, rinsing, and sanitizing requirements as specified in Rule XI [37.111.321].

COMMENT #14: In Rule XI(5) [37.111.321], it would be better to explain the amounts of sanitizing solution in terms of cups or gallons rather than parts per million. Specifying such measurements would allow operators to know when the sanitizing solution exceeds what is allowable for purposes of Rule XI(6) [37.111.321].

RESPONSE: The Department cannot accommodate the suggestion because different brands of sanitizing solution can contain different concentrated strengths. The best way to assure the correct sanitizing strength is to use a testing kit or other device, as required in Rule XI(6) [37.111.321]. One type of testing device contains testing strips that change color when inserted in the sanitizing solution. The color of the strip indicates the solution's sanitizing strength.

COMMENT #15: Why was the water temperature for mechanical dishwashing lowered from 160°F. to 150°F., as specified in Rule XI(7)(b)(iii) [37.111.321]? The higher temperature has been the industry standard for some time.

RESPONSE: The negotiated rulemaking committee determined to have a lower temperature requirement because bed and breakfast establishments are commonly run out of standard residential dwellings with a domestic or home-style dishwasher. The setting may not be able to accommodate a higher temperature as is required in a commercially-built establishment, and may not be able to accommodate an industrial dishwasher. The negotiated rulemaking committee determined that a lower temperature in a

domestic dishwasher was sufficient to kill microbial pathogens as long as the other requirements listed in Rule XI(7)(b)(i) through (iv) [37.111.321] were met.

COMMENT #16: It is a relief to know that water testing samples only need to be collected two times per year, as stated in Rule XIII(3) [37.111.326]. It was previously understood that testing needed to be done four times per year. In actuality, once per year should be sufficient.

RESPONSE: The Department thanks you for your comment. Because bed and breakfast establishments typically operate out of residential homes, the establishments may not always be connected to a public water supply system. As such, they do not fall under the requirement by the Montana Department of Environmental Quality that tests be done four times per year (or more). The Department of Public Health and Human Services will not change the requirement that coliform testing be done two times per year during the months specified in the rule. The testing is to occur during the spring and late summer/fall seasons because historically water may have bacteriological contamination during those times of year.

COMMENT #17: There may be a contradiction between Rule XIII(3) and (4) [37.111.326]. Section (3) requires operators using a private or multifamily water system to collect water samples for coliform bacteria testing two times per year and nitrate testing once every three years. Section (4) requires public water supply systems to collect samples as specified in ARM Title 17, chapter 38, subchapter 2, which requires more frequent sampling.

RESPONSE: The requirements for private water supply systems, as specified in Rule XIII(3) [37.111.326], are different than that for public water supplies, as stated in section (4). Because private water supply systems are not regulated by the Montana Department of Environmental Quality, the Department of Public Health and Human Services imposed its own water sampling requirements, and determined that the number of times the water should be sampled at the designated time intervals specified in Rule XIII(3) [37.111.326] was sufficient to address public health and safety concerns.

COMMENT #18: Rules XIII [37.111.326] and XIV [37.111.327] refer to "private," "single family" and "multiple family" water and sewer systems. The Montana Department of Environmental Quality has changed those terms to "individual", "shared" and "multiple user" systems, without any reference to "family". The new definitions exist in ARM 17.36.101 and should be used.

RESPONSE: The Department agrees and has made the recommended changes.

COMMENT #19: If it is acceptable to dispose waste water in toilets under Rule XIV(5) [37.111.327], then there needs to be a requirement that the toilets be sanitized after the disposal.

RESPONSE: Rule XIV(5) [37.111.327] only allows mop water or heavily soiled cleaning water to be disposed in toilets. The negotiated rulemaking committee determined that mop and soiled cleaning water did not pose a significant public health concern. The committee also felt that requiring an additional utility sink or a curbed cleaning sink commonly used to dispose mop and soiled cleaning water was unnecessary given the smallness of bed and breakfast operations. Toilets are required to be clean as specified in Rule XV [37.111.328].

COMMENT #20: The necessity to have a dedicated hand washing sink, as specified in Rule XVI [37.111.329], makes no sense. The requirement creates a hardship for operators to make room and provide plumbing for another sink in a small kitchen. Also, it is questionable whether washing hands in dish sinks is hazardous. Antibacterial soap suds being rinsed from hands do not seem to be more hazardous than the germs that may already exist on the dirty dishes in the sink. It should be sufficient for employees to wash their hands in the bathroom sinks after using the bathroom or being outside, and to wash their hands in the kitchen's dish sink when their hands are soiled with food.

RESPONSE: The negotiated rulemaking committee determined that establishments serving more than 10 meals per day should be held to the same standard as commercial kitchens regarding the provision of having dedicated hand washing facilities. The committee decided that the volume of food being prepared required an additional hand washing sink to assure that food-related employees' hands are kept clean, and dirt being washed from the hands is not contaminating food, food equipment or utensils. Also, having a designated and accessible hand washing sink assures that hand washing practices are being done at all times when food is being prepared.

COMMENT #21: Although carpeting is allowed in bathrooms and kitchens under Rule XVIII(2) [37.111.334], it is not believed that carpet can be kept properly cleaned and sanitized in those rooms.

RESPONSE: The negotiated rulemaking committee allowed exceptions for carpeting because bed and breakfast establishments are operated out of residential settings. Some residential settings do have carpeted bathrooms or kitchens. The committee determined that closely woven fabric must be used to assist with keeping the carpeting clean, and that such floor covering did not pose a public health risk.

COMMENT #22: Why was the water temperature for laundry lowered from 130°F. to 120°F., as specified in Rule XIX(2) [37.111.335]?

The former temperature has been the industry standard for some time.

RESPONSE: The negotiated rulemaking committee recognized that many bed and breakfast operations use domestic washing machines that may not reach the hot water temperature of commercial ones. Also, Rule XIX(2) [37.111.335] requires that bedding, towels and washcloths be dried in a hot air tumble dryer at the minimum temperature of 150ºF (65.5ºC), and laundry other than bedding, towels and washcloths must be washed with a sanitizer in addition to detergent. The drying temperature and sanitizer requirements control pests such as lice from humans that may exist on the laundry.

COMMENT #23: There appears to be a contradiction between the requirements found in Rule XX(1) and (7) [37.111.336] concerning housekeeping. Section (1) states that linen services must be provided for a minimum of every three days for the same guest. Section (7) specifies that clean bedding must be available at least weekly for each guest.

RESPONSE: The Department agrees. The intent of the term "linen" was for towels and washcloths, not bedding. The Department has eliminated the term "linen" in (1), and clarified the language in (7).

COMMENT #24: The requirement in Rule XXIII [37.111.310] to keep a guest registration may infringe on the privacy rights of guests. Also, bed and breakfast establishments should not be singled out by requiring that they keep guest registration. If bed and breakfast establishments must do so, then all food service establishments should keep registrations of their consumers.

RESPONSE: The Department disagrees. The Department requires guest registration in other public accommodation establishments and in campgrounds. The reason for the requirement is that guests spend more time in lodging establishments than in food service establishments. As specified in the rationale for the rule, the guest registration is considered confidential under the government health care information act found in Title 50, chapter 16, MCA.

COMMENT #25: A question was raised over the requirement that guests be provided with emergency exit information upon registration, as specified in Rule XXVI(3) [37.111.307]. Guests can be overwhelmed with information upon their arrival and they can forget what they are told. It would be better for operators to prominently post the emergency exit information.

RESPONSE: Regulations under the state building and fire safety codes may already require the posting of emergency exit information. Explaining the information to guests further reinforces their need to know emergency exits.

COMMENT #26: It is questionable whether cats should be allowed in kitchens, as permitted by Rule XXV [37.111.344]. Cats can climb onto and walk on countertops. It is hopeful that the operator sanitizes often if the situation happens.

RESPONSE: The negotiated rulemaking committee determined to allow pets because most bed and breakfast establishments serve as private dwellings for the operators, and the operators may have personal pets. Any concern about the contamination of countertops is addressed in Rule XXV(1)(a) [37.111.344], where pets are prohibited from the kitchen and dining areas during food preparation and service, and Rule XI(9) [37.111.321] concerning the cleaning and sanitizing of all food contact surfaces.

5. These rule adoptions will be effective July 1, 2003.

Dawn Sliva for
Rule Reviewer

Mike Billings for
Director, Public Health and Human Services

Certified to the Secretary of State June 16, 2003.

**BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA**

In the matter of the adoption of New Rule I (ARM 42.31.902); amendment of ARM 42.29.101 and 42.31.401; and repeal of ARM 42.31.503 relating to miscellaneous fees collected by the department	NOTICE OF ADOPTION, AMENDMENT, AND REPEAL

TO: All Concerned Persons

1. On May 8, 2003, the department published MAR Notice No. 42-2-714 regarding the proposed adoption, amendment, and repeal of the above-stated rules relating to miscellaneous fees collected by the department at page 965 of the 2003 Montana Administrative Register, issue no. 9.

2. A public hearing was held on May 29, 2003, to consider the proposed adoption, amendment, and repeal. No one appeared at the hearing to testify and no comments were received.

3. The department determined an implementing cite was inadvertently omitted from New Rule I (42.31.902). Therefore New Rule I (42.31.902) is amended as follows:

NEW RULE I (42.31.902) REPORTING REQUIREMENTS FOR THE PUBLIC SERVICE COMMISSION AND CONSUMER COUNCIL (1) remains as proposed.

AUTH: Sec. 15-1-201, MCA
IMP: Sec. 69-1-223 and 69-1-402, MCA

4. The department adopts New Rule I (42.31.902) with the amendment listed above; amends ARM 42.29.101 and 42.31.401; and repeals ARM 42.31.503 as proposed.

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

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

/s/ Linda M. Francis
LINDA M. FRANCIS
Director of Revenue

Certified to Secretary of State June 16, 2003

**BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA**

In the matter of the adoption of New Rules II (ARM 42.31.802), III (ARM 42.31.803), and IV (ARM 42.31.810) relating to fees for nursing facilities	)))))	NOTICE OF ADOPTION

TO: All Concerned Persons

1. On May 8, 2003, the department published MAR Notice No. 42-2-715 regarding the proposed adoption of the above-stated rules relating to fees for nursing facilities at page 969 of the 2003 Montana Administrative Register, issue no. 9.

2. A public hearing was held on May 28, 2003, to consider the proposed adoption. No one appeared at the hearing to testify and no comments were received.

3. After further consideration, the department has decided not to adopt proposed New Rule I because there aren't any filers that fit the criteria of the proposed rule at this time. Therefore, the department adopts New Rules II (ARM 42.31.802) and IV (ARM 42.31.810) as proposed and adopts New Rule III (ARM 42.31.803) with the following amendment:

NEW RULE III (42.31.802) ESTIMATION AND COLLECTION OF DELINQUENT OR UNPAID FEES (1) If a nursing facility fails, neglects, or refuses to file the report in accordance with 15-60-201, MCA, ~~or [New Rule I]~~ within the time required, or fails to pay the fee within the required period, the department shall estimate the number of bed days subject to the fee.

(2) remains as proposed.

AUTH: 15-60-104, MCA
IMP: 15-1-216, 15-60-201, 15-60-204, and 15-60-205, MCA

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

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

/s/ Linda M. Francis
LINDA M. FRANCIS
Director of Revenue

Certified to Secretary of State June 16, 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

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through March 31, 2003. This table includes those rules adopted during the period April 1, 2003 through June 30, 2003 and any proposed rule action that was pending during the past six-month period. (A notice of adoption must be published within six months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through March 31, 2003, 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 and 2003 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.

(Board of Public Education)

10.55.602 and other rules - Criminal History Background Check - Substitute Teachers - Teacher License Classification - Definition of "Immoral Conduct" - Investigation - Reporting of the Surrender, Denial, Revocation or Suspension of a License - Accreditation - Teacher Certification - Hearing Procedures, p. 2489, 3309

10.55.1003 and other rules - Accreditation and Educator Licensure - Substitute Teachers, p. 76, 554

10.57.218 Renewal Unit Verification, p. 508, 977

10.57.410 and other rules - Educator Licensure, p. 510, 978

(State Library)

10.101.201 and other rules - Montana State Library Commission - Model Rules - Grants - Loans - Circulation Records - Selection of Materials - Lost or Damaged Books - Graduate Scholarship Program, p. 3192, 8

FISH, WILDLIFE, AND PARKS, Department of, Title 12

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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 May 2003, appear. Vacancies scheduled to appear from July 1, 2003, through September 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 June 10, 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 MAY 2003

Appointee	Appointed by	Succeeds	Appointment/End Date
Board of Clinical Laboratory Science Practitioners (Labor and Industry)			
Mr. Edward R. Adams Clancy Qualifications (if required): clinical laboratory science practitioner	Governor	Pullman	5/6/2003 4/16/2007
Ms. Karen McNutt Sidney Qualifications (if required): clinical laboratory science practitioner	Governor	reappointed	5/6/2003 4/16/2007
Ms. Charliene Staffanson Deer Lodge Qualifications (if required): public member	Governor	Knox	5/6/2003 4/16/2007
Board of County Printing (Administration)			
Ms. Nancy Clark Ryegate Qualifications (if required): public member	Governor	reappointed	5/21/2003 4/1/2005
Ms. Julie Jordan Miles City Qualifications (if required): County Commissioner	Governor	reappointed	5/21/2003 4/1/2005
Mr. Verle L. Rademacher White Sulphur Springs Qualifications (if required): representative of the printing industry	Governor	reappointed	5/21/2003 4/1/2005
Ms. Marianne Roose Eureka Qualifications (if required): County Commissioner	Governor	reappointed	5/21/2003 4/1/2005

BOARD AND COUNCIL APPOINTEES FROM MAY 2003

Appointee	Appointed by	Succeeds	Appointment/End Date
Board of County Printing (Administration) cont.			
Mr. Curtis Starr	Governor	reappointed	5/21/2003
Malta			4/1/2005
Qualifications (if required): representative of the printing industry			
Board of Milk Control (Livestock)			
Dr. Robert Greer	Governor	reappointed	5/21/2003
Bozeman			1/1/2007
Qualifications (if required): public member and an Independent			
Mr. Michael F. Kleese	Governor	reappointed	5/21/2003
Stevensville			1/1/2007
Qualifications (if required): attorney and a Democrat			
Board of Nursing Home Administrators (Labor and Industry)			
Ms. Lori Henderson	Governor	reappointed	5/28/2003
Havre			5/28/2008
Qualifications (if required): nursing home administrator			
Board of Optometry (Labor and Industry)			
Ms. Delores Hill	Governor	Staffanson	5/1/2003
Mosby			4/3/2007
Qualifications (if required): public member			
Dr. Larry Obie	Governor	reappointed	5/1/2003
Havre			4/3/2007
Qualifications (if required): registered optometrist			
Board of Plumbers (Labor and Industry)			
Mr. Marc Golz	Governor	Butts	5/13/2003
Helena			5/4/2007
Qualifications (if required): representative of the Department of Environmental Quality			

BOARD AND COUNCIL APPOINTEES FROM MAY 2003

Appointee	Appointed by	Succeeds	Appointment/End Date
Board of Plumbers (Labor and Industry) cont.			
Ms. Margaret Laknar Dillon Qualifications (if required): public member	Governor	reappointed	5/13/2003 5/4/2007
Mr. Mike Mullowney Absarokee Qualifications (if required): public member	Governor	Hawkins	5/13/2003 5/4/2007
Mr. Stephen R. Nelson Great Falls Qualifications (if required): master plumber	Governor	reappointed	5/13/2003 5/4/2007
Ms. Loree Olsen Helena Qualifications (if required): journeyman plumber	Governor	Metcalf	5/13/2003 5/4/2007
Board of Real Estate Appraisers (Labor and Industry)			
Mr. David Heine Kalispell Qualifications (if required): real estate appraiser	Governor	reappointed	5/21/2003 5/1/2006
Ms. Janeth Martin Helena Qualifications (if required): public member	Governor	reappointed	5/21/2003 5/1/2006
Board of Realty Regulation (Labor and Industry)			
Mr. Mike Basile Bozeman Qualifications (if required): real estate broker	Governor	Beagle	5/21/2003 5/9/2007

BOARD AND COUNCIL APPOINTEES FROM MAY 2003

Appointee	Appointed by	Succeeds	Appointment/End Date
Board of Realty Regulation (Labor and Industry) cont.			
Ms. Teddye Beebe	Governor	reappointed	5/21/2003
Libby			5/9/2007
Qualifications (if required): public member			
Board of Review (Revenue)			
Ms. Linda Francis	Governor	Alme	5/5/2003
Helena			0/0/0
Qualifications (if required): presiding officer			
Board of Veterans' Affairs (Military Affairs)			
Mr. Charles Van Gorden	Governor	McKinney	5/21/2003
Valier			8/1/2005
Qualifications (if required): veteran			
District Court Council (Supreme Court)			
Judge John C. McKeon	Supreme Court	Warner	5/20/2003
Malta			6/30/2005
Qualifications (if required): none specified			
Family Support Services Advisory Council (Public Health and Human Services)			
Ms. Becky Grey Bear	Governor	not listed	5/13/2003
Wolf Point			10/1/2004
Qualifications (if required): parent representative from Region I			
Information Technology Board (Administration)			
Mr. Mike Strand	Governor	Gustafson	5/8/2003
Helena			7/1/2003
Qualifications (if required): representative of the private sector			

BOARD AND COUNCIL APPOINTEES FROM MAY 2003

Appointee	Appointed by	Succeeds	Appointment/End Date
Judicial Standards Commission (Justice)			
Judge Gary L. Day	Supreme Court	Warner	5/19/2003
Miles City			6/30/2005
Qualifications (if required): none specified			
Montana Alberta Bilateral Advisory Council (Commerce)			
Sen. Jerry Black	Governor	not listed	5/12/2003
Shelby			5/12/2005
Qualifications (if required): member of the Montana Senate			
Rep. Edith J. Clark	Governor	not listed	5/12/2003
Sweet Grass			5/12/2005
Qualifications (if required): member of the Montana House of Representatives			
Mr. Mark Cole	Governor	not listed	5/12/2003
Shelby			5/12/2005
Qualifications (if required): representative of private sector (transportation)			
Mr. David A. Galt	Governor	not listed	5/12/2003
Helena			5/12/2005
Qualifications (if required): Director of the Department of Transportation			
Mr. Dave Gibson	Governor	not listed	5/12/2003
Helena			5/12/2005
Qualifications (if required): representative of the Office of the Governor			
Mr. Joe Horel	Governor	not listed	5/12/2003
Rudyard			5/12/2005
Qualifications (if required): representative of private sector (agriculture)			

BOARD AND COUNCIL APPOINTEES FROM MAY 2003

Appointee	Appointed by	Succeeds	Appointment/End Date
Montana Alberta Bilateral Advisory Council (Commerce) cont.			
Rep. John L. Musgrove	Governor	not listed	5/12/2003
Havre			5/12/2005
Qualifications (if required): member of the Montana House of Representatives			
Lt. Governor Karl Ohs	Governor	not listed	5/12/2003
Harrison			5/12/2005
Qualifications (if required): chairman			
Mr. W. Ralph Peck	Governor	not listed	5/12/2003
Helena			5/12/2005
Qualifications (if required): Director of the Department of Agriculture			
Sen. Glenn A. Roush	Governor	not listed	5/12/2003
Cut Bank			5/12/2005
Qualifications (if required): member of the Montana Senate			
Mr. Mark A. Simonich	Governor	not listed	5/12/2003
Helena			5/12/2005
Qualifications (if required): Director of the Department of Commerce			
Montana Children's Trust Fund Board (Public Health and Human Services)			
Ms. Ann (Punky) Bullis	Governor	Perez	5/21/2003
Crow Agency			1/1/2006
Qualifications (if required): public member			
Montana Heritage Preservation and Development Commission (Montana Historical Society)			
Mr. Bill Howell	Governor	reappointed	5/23/2003
West Yellowstone			5/23/2006
Qualifications (if required): manager of a tourist facility			

BOARD AND COUNCIL APPOINTEES FROM MAY 2003

Appointee	Appointed by	Succeeds	Appointment/End Date
Montana Heritage Preservation and Development Commission (Montana Historical Society) cont.			
Ms. Mary Oliver Ennis Qualifications (if required): businessperson	Governor	reappointed	5/23/2003 5/23/2006
Montana State Veterans Cemetery Advisory Council (Military Affairs)			
Mr. Don Buffington Conrad Qualifications (if required): 40 & 8	Director	not listed	5/1/2003 5/1/2005
Mr. Chris Denning Fort Harrison Qualifications (if required): Department of Military Affairs	Director	not listed	5/1/2003 5/1/2005
Ms. Alma Dickey Helena Qualifications (if required): Disabled American Veterans Auxiliary	Director	not listed	5/1/2003 5/1/2005
Ms. JoAnn Ellison Anaconda Qualifications (if required): American Legion Auxiliary	Director	not listed	5/1/2003 5/1/2005
Mr. Joseph Foster Helena Qualifications (if required): Chairman	Director	not listed	5/1/2003 5/1/2005
Mr. M. Herbert Goodwin Helena Qualifications (if required): First Special Service Force	Director	not listed	5/1/2003 5/1/2005

BOARD AND COUNCIL APPOINTEES FROM MAY 2003

Appointee	Appointed by	Succeeds	Appointment/End Date
Montana State Veterans Cemetery Advisory Council (Military Affairs) cont.			
Mr. Mike Hampson	Director	not listed	5/1/2003
Helena			5/1/2005
Qualifications (if required): Vietnam Veterans of America			
Mr. Jim Heffernan	Director	not listed	5/1/2003
Helena			5/1/2005
Qualifications (if required): Marine Corps League			
Ms. Eve Longfellow	Director	not listed	5/1/2003
Helena			5/1/2005
Qualifications (if required): Veterans of Foreign Wars Auxiliary			
Mr. Robert C. McKenna	Director	not listed	5/1/2003
Helena			5/1/2005
Qualifications (if required): technical expert			
Mr. Mickey Nelson	Director	not listed	5/1/2003
Helena			5/1/2005
Qualifications (if required): technical expert			
Mr. George Paul	Director	not listed	5/1/2003
Helena			5/1/2005
Qualifications (if required): Military Order of the Cooties			
Mr. George Poston	Director	not listed	5/1/2003
Helena			5/1/2005
Qualifications (if required): Disabled American Veterans			
Mr. Arlie Rognstad	Director	not listed	5/1/2003
Helena			5/1/2005
Qualifications (if required): Military Order of the Purple Heart			

BOARD AND COUNCIL APPOINTEES FROM MAY 2003

Appointee	Appointed by	Succeeds	Appointment/End Date
Montana State Veterans Cemetery Advisory Council (Military Affairs) cont.			
Mr. Bob Schwegel	Director	not listed	5/1/2003
Fort Harrison			5/1/2005
Qualifications (if required): Veterans of Foreign Wars			
Mr. Gary White	Director	not listed	5/1/2003
Helena			5/1/2005
Qualifications (if required): American Legion			
State Compensation Insurance Fund Study Committee (State Compensation Insurance Fund)			
Sen. Thomas Beck	Governor	not listed	5/21/2003
Helena			1/1/2005
Qualifications (if required): representative of the Governor's Office			
Ms. Jacqueline Lenmark	Governor	not listed	5/21/2003
Helena			1/1/2005
Qualifications (if required): representative of a plan #2 insurer			
Mr. Jack Morgenstern	Governor	not listed	5/21/2003
Lewistown			1/1/2005
Qualifications (if required): representative of the State Fund Board and an insured employer of state fund			
Mr. George Wood	Governor	not listed	5/21/2003
Missoula			1/1/2005
Qualifications (if required): representative of a plan #1 insurer			
State Library Commission (State Library)			
Mr. Donald Allen	Governor	Garvey	5/22/2003
Billings			5/22/2006
Qualifications (if required): public member			

BOARD AND COUNCIL APPOINTEES FROM MAY 2003

Appointee	Appointed by	Succeeds	Appointment/End Date
State Library Commission (State Library) cont.			
Ms. Caroline Bitz Box Elder Qualifications (if required): public member	Governor	Atchley	5/9/2003 5/22/2004
Ms. Toni Broadbent Helena Qualifications (if required): public member	Governor	Johnson	5/22/2003 5/22/2006
Supreme Court Justice #2 (Supreme Court)			
Judge John Warner Havre Qualifications (if required): appointed	Governor	Trieweiler	5/2/2003 1/1/2005

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2003 through SEPTEMBER 30, 2003

Board/current position holder	Appointed by	Term end
Aging Advisory Council (Public Health and Human Services)		
Ms. Roberta Feller, Stockett	Governor	7/18/2003
Qualifications (if required): public member		
Ms. Eloise England, Heart Butte	Governor	7/18/2003
Qualifications (if required): public member		
Ms. Wesleta Branstetter, Billings	Governor	7/18/2003
Qualifications (if required): public member		
Board of Banking (Administration)		
Mr. Robert J. Gersack, Billings	Governor	7/1/2003
Qualifications (if required): state bank officer for a large sized bank		
Board of Barbers (Commerce)		
Mr. Terrance Luff, Billings	Governor	7/1/2003
Qualifications (if required): practicing barber		
Board of Cosmetology (Commerce)		
Mr. John Reichelt, Billings	Governor	7/1/2003
Qualifications (if required): licensed cosmetologist		
Board of Funeral Services (Commerce)		
Mr. Douglas D. Lowry, Big Timber	Governor	7/1/2003
Qualifications (if required): licensed mortician		
Board of Hearing Aid Dispensers (Commerce)		
Ms. Marlene Tash, Dillon	Governor	7/1/2003
Qualifications (if required): public member		
Ms. Cindy Burk, Helena	Governor	7/1/2003
Qualifications (if required): hearing aid dispenser without a master's degree		

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2003 through SEPTEMBER 30, 2003

Board/current position holder	Appointed by	Term end
Board of Hearing Aid Dispensers (Commerce) cont.		
Dr. Paul J. Byorth, Billings	Governor	7/1/2003
Qualifications (if required): otolaryngologist		
Ms. Beckie Hoffmann, Butte	Governor	7/1/2003
Qualifications (if required): hearing aid dispenser without a master's degree		
Board of Medical Examiners (Commerce)		
Dr. Faust Alvarez, Helena	Governor	9/1/2003
Qualifications (if required): doctor of medicine		
Board of Nursing (Commerce)		
Ms. Sharon L. Dschaak, Wolf Point	Governor	7/1/2003
Qualifications (if required): licensed practical nurse		
Board of Nursing (Labor and Industry)		
Ms. Connie K. Schultz, Glasgow	Governor	7/1/2003
Qualifications (if required): registered nurse		
Board of Pharmacy (Commerce)		
Ms. Colette Bernica, Great Falls	Governor	7/1/2003
Qualifications (if required): public member		
Board of Physical Therapy Examiners (Commerce)		
Dr. B. John Heetderks, Belgrade	Governor	7/1/2003
Qualifications (if required): physician		
Ms. Brenda T. Mahlum, Missoula	Governor	7/1/2003
Qualifications (if required): physical therapist		
Ms. Judy Cole, Hysham	Governor	7/1/2003
Qualifications (if required): public member		

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2003 through SEPTEMBER 30, 2003

Board/current position holder	Appointed by	Term end
Board of Private Security Patrol Officers and Investigators (Commerce)		
Mr. Jeffrey Patterson, Missoula	Governor	8/1/2003
Qualifications (if required): private investigator		
Mr. Gary Dent, Conrad	Governor	8/1/2003
Qualifications (if required): representative of a city police department		
Sheriff Ronald Rowton, Lewistown	Governor	8/1/2003
Qualifications (if required): representative of a county sheriff's department		
Board of Professional Engineers and Land Surveyors (Commerce)		
Mr. Haley Beaudry, Butte	Governor	7/1/2003
Qualifications (if required): professional engineer		
Mr. Warren P. Scarrah, Bozeman	Governor	7/1/2003
Qualifications (if required): professional engineer and instructor		
Ms. Paulette Ferguson, Missoula	Governor	7/1/2003
Qualifications (if required): public member		
Mr. Ronald W. Allen, Bozeman	Governor	7/1/2003
Qualifications (if required): professional and practicing land surveyor		
Board of Psychologists (Commerce)		
Dr. Marian Martin, Billings	Governor	9/1/2003
Qualifications (if required): psychologist		
Board of Public Accountants (Commerce)		
Ms. Beryl Argall Stover, Missoula	Governor	7/1/2003
Qualifications (if required): certified public accountant		

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2003 through SEPTEMBER 30, 2003

Board/current position holder	Appointed by	Term end
Board of Radiologic Technologists (Commerce)		
Ms. Jane Christman, Dutton	Governor	7/1/2003
Qualifications (if required): radiologic technologist		
Board of Research and Commercialization (Commerce)		
Mr. Terry Spalinger, Helena	Governor	7/1/2003
Qualifications (if required): public member		
Board of Sanitarians (Commerce)		
Ms. Denise Moldroski, Livingston	Governor	7/1/2003
Qualifications (if required): registered sanitarian		
Board of Veterans' Affairs (Military Affairs)		
Ms. Karen Furu, Bozeman	Governor	8/1/2003
Qualifications (if required): veteran		
Board of Veterinary Medicine (Commerce)		
Dr. Jean Lindley, Miles City	Governor	7/31/2003
Qualifications (if required): licensed veterinarian		
Board of Water Well Contractors (Natural Resources and Conservation)		
Mr. Kevin Haggerty, Bozeman	Governor	7/1/2003
Qualifications (if required): licensed water well contractor		
Burial Preservation Board (Indian Affairs)		
Mr. Carl Fourstar, Poplar	Governor	8/22/2003
Qualifications (if required): representative of the Assiniboine Tribe		
Dr. Randall Skelton, Missoula	Governor	8/22/2003
Qualifications (if required): physical anthropologist		
Ms. Jennie Parker, Ashland	Governor	8/22/2003
Qualifications (if required): representative of the Northern Cheyenne Tribe		

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2003 through SEPTEMBER 30, 2003

Board/current position holder	Appointed by	Term end
Burial Preservation Board (Indian Affairs) cont.		
Mr. Melbert Eaglefeathers, Butte	Governor	8/22/2003
Qualifications (if required): public member		
Mr. Tony Incashola, Pablo	Governor	8/22/2003
Qualifications (if required): representative of the Salish and Kootenai Tribes		
Mr. Stephen S.K. Platt, Helena	Governor	8/22/2003
Qualifications (if required): representative of the State Historic Preservation Office		
Mr. Ken Talksabout, Browning	Governor	8/22/2003
Qualifications (if required): representative of the Blackfeet Tribe		
Commission on Community Service (Governor)		
Ms. Nancy Coopersmith, Helena	Governor	7/1/2003
Qualifications (if required): representing K-12 education		
Mr. George Dennison, Missoula	Governor	7/1/2003
Qualifications (if required): representing higher education		
Major John Walsh, Helena	Governor	7/1/2003
Qualifications (if required): representing the Department of Military Affairs		
Mr. Donald Kettner, Glendive	Governor	7/1/2003
Qualifications (if required): representing private citizens		
Committee on Telecommunications Access Services for Persons with Disabilities (Public Health and Human Services)		
Mr. Eric Eck, Helena	Governor	7/1/2003
Qualifications (if required): representative of the Public Service Commission		
Mr. Thomas P. McGree, Helena	Governor	7/1/2003
Qualifications (if required): representing the InterLATA interchange carriers		

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2003 through SEPTEMBER 30, 2003

Board/current position holder	Appointed by	Term end
Committee on Telecommunications Access Services for Persons with Disabilities (Public Health and Human Services) cont.		
Mr. Norman Eck, Helena	**Governor**	**7/1/2003**
Qualifications (if required): non-disabled senior citizen		
Ms. Lynn Harris, Missoula	**Governor**	**7/1/2003**
Qualifications (if required): representing licensed audiologists		
Mr. Gary Duncan, Helena	**Governor**	**7/1/2003**
Qualifications (if required): representative of the largest local exchange company in Montana		
Family Education Savings Program Oversight Committee (Commissioner of Higher Education)		
Mr. Ed Jasmin, Bigfork	**Governor**	**7/1/2003**
Qualifications (if required): representative of the Board of Regents		
Ms. Sarah Kelly, Helena	**Governor**	**7/1/2003**
Qualifications (if required): public member		
Independent Living Council (Public Health and Human Services)		
Ms. Donna M. Scott, Billings	**Director**	**7/23/2003**
Qualifications (if required): represents business and consumers		
Information Technology Board (Administration)		
Ms. Gail Gray, Helena	**Governor**	**7/1/2003**
Qualifications (if required): representing a state agency		
Mr. Mike McGrath, Helena	**Governor**	**7/1/2003**
Qualifications (if required): representing a state agency		
Ms. Lois A. Menzies, Helena	**Director**	**7/1/2003**
Qualifications (if required): representing the Legislative Branch		

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2003 through SEPTEMBER 30, 2003

Board/current position holder	Appointed by	Term end
Information Technology Board (Administration) cont.		
Mr. Jay Stovall, Billings	PSC	7/1/2003
Qualifications (if required): none specified		
Mr. Bill Slaughter, Helena	Governor	7/1/2003
Qualifications (if required): representing a state agency		
Justice Jim Nelson, Helena	Chief Justice	7/1/2003
Qualifications (if required): none specified		
Ms. Linda McCulloch, Helena	Public Instruction	7/1/2003
Qualifications (if required): none specified		
Mr. Mike Strand, Helena	Governor	7/1/2003
Qualifications (if required): representative of the private sector		
Mr. Richard A. Crofts, Helena	Board of Regents	7/1/2003
Qualifications (if required): none specified		
Sen. William E. (Bill) Glaser, Huntley	Senate President	7/1/2003
Qualifications (if required): none specified		
Rep. Linda L. Holden, Valier	House Speaker	7/1/2003
Qualifications (if required): none specified		
Ms. Jan Sensibaugh, Helena	Governor	7/1/2003
Qualifications (if required): representing a state agency		
Ms. Mary Sexton, Choteau	Governor	7/1/2003
Qualifications (if required): representing local government		
Mr. William Kennedy, Billings	Governor	7/1/2003
Qualifications (if required): representing local government		

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2003 through SEPTEMBER 30, 2003

Board/current position holder	Appointed by	Term end
Information Technology Board (Administration) cont.		
Ms. Wendy Keating, Helena	Governor	7/1/2003
Qualifications (if required): representing a state agency		
Ms. Linda Francis, Helena	Governor	7/1/2003
Qualifications (if required): director of a state agency		
Information Technology Managers Council (Administration)		
Mr. Tony Herbert, Helena	Director	7/1/2003
Qualifications (if required): deputy CIO for operations		
Mr. Barney Benkelman, Helena	Director	7/1/2003
Qualifications (if required): representing Fish, Wildlife, and Parks		
Mr. Hank Voderberg, Helena	Director	7/1/2003
Qualifications (if required): representing Department of Administration		
Mr. Gary Wulf, Helena	Director	7/1/2003
Qualifications (if required): representing Department of Commerce		
Ms. Dana Corson, Helena	Director	7/1/2003
Qualifications (if required): representing Judicial Branch		
Mr. Art Pembroke, Helena	Director	7/1/2003
Qualifications (if required): representing Lewis and Clark County		
Mr. David Nagel, Helena	Director	7/1/2003
Qualifications (if required): representing Department of Labor and Industry		
Ms. Tori Hunthausen, Helena	Director	7/1/2003
Qualifications (if required): representing Legislative Audit Division		

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2003 through SEPTEMBER 30, 2003

Board/current position holder	Appointed by	Term end
Information Technology Managers Council (Administration) cont.		
Mr. Hank Trenk, Helena	Director	7/1/2003
Qualifications (if required): representing Legislative Services Branch		
Ms. Kathy James, Helena	Director	7/1/2003
Qualifications (if required): representing Department of Livestock		
Mr. Homer Young, Helena	Director	7/1/2003
Qualifications (if required): representing Department of Military Affairs		
Ms. Carleen Layne, Helena	Director	7/1/2003
Qualifications (if required): representing Montana Arts Council		
Mr. Bob Auer, Helena	Director	7/1/2003
Qualifications (if required): representing Department of Natural Resources and Conservation		
Ms. Dulcy Hubbert, Helena	Director	7/1/2003
Qualifications (if required): representing Office of Political Practices		
Mr. Bob Morris, Helena	Director	7/1/2003
Qualifications (if required): representing Office of Public Instruction		
Mr. Joel Oelfke, Helena	Director	7/1/2003
Qualifications (if required): representing Public Service Commission		
Mr. Michael Randall, Helena	Director	7/1/2003
Qualifications (if required): representing Department of Transportation		
Mr. Dan Ellison, Helena	Director	7/1/2003
Qualifications (if required): representing Department of Revenue		

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2003 through SEPTEMBER 30, 2003

Board/current position holder	Appointed by	Term end
Information Technology Managers Council (Administration) cont.		
Mr. Jeff Brandt	Director	7/1/2003
Qualifications (if required): deputy CIO for policy and planning		
Mr. Mike Jacobson, Helena	Director	7/1/2003
Qualifications (if required): representing Department of Agriculture		
Mr. Ken Kops, Helena	Director	7/1/2003
Qualifications (if required): representing State Auditor's Office		
Mr. Dan Chelini, Helena	Director	7/1/2003
Qualifications (if required): representing Department of Corrections		
Ms. Amy Sassano, Helena	Director	7/1/2003
Qualifications (if required): representing Governor's Office		
Ms. Edwina Dale, Helena	Director	7/1/2003
Qualifications (if required): representing Higher Education		
Ms. Doreen Boyer, Helena	Director	7/1/2003
Qualifications (if required): representing Historical Society		
Mr. Steve Tesinsky, Helena	Director	7/1/2003
Qualifications (if required): representing Department of Justice		
Mr. Mike Allen, Helena	Director	7/1/2003
Qualifications (if required): representing Legislative Fiscal Division		
Mr. Mike Carroll, Helena	Director	7/1/2003
Qualifications (if required): representing State Library		
Mr. Paul Gilbert, Helena	Director	7/1/2003
Qualifications (if required): representing State Lottery		

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2003 through SEPTEMBER 30, 2003

Board/current position holder	Appointed by	Term end
Information Technology Managers Council (Administration) cont.		
Mr. Mark Sheehan	Director	7/1/2003
Qualifications (if required): representing Montana State University		
Mr. Dan Forbes, Helena	Director	7/1/2003
Qualifications (if required): representing Department of Public Health and Human Services		
Ms. Lynn Keller, Helena	Director	7/1/2003
Qualifications (if required): representing Secretary of State		
Mr. Rocky Brown, Helena	Director	7/1/2003
Qualifications (if required): representing State Fund		
Mr. Dave Marshall	Director	7/1/2003
Qualifications (if required): representing University of Montana		
Interagency Coordinating Council for State Prevention Programs (Public Health and Human Services)		
Mr. William Snell, Billings	Governor	7/1/2003
Qualifications (if required): representing prevention programs and services		
Ms. Alison Counts, Belgrade	Governor	7/1/2003
Qualifications (if required): representing prevention programs and services		
Judicial Standards Commission (Justice)		
Ms. Patty Jo Henthorn, Big Timber	Governor	7/1/2003
Qualifications (if required): public member		
Mental Disabilities Board of Visitors (Governor)		
Ms. Kathleen Driscoll Donovan, Hamilton	Governor	7/1/2003
Qualifications (if required): consumer with experience with the Montana public mental health system		

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2003 through SEPTEMBER 30, 2003

Board/current position holder	Appointed by	Term end
Mental Disabilities Board of Visitors (Governor) cont.		
Ms. Cindy Dolan, Great Falls	Governor	7/1/2003
Qualifications (if required): consumer of mental health services and experience with Montana public mental health system		
Ms. Gay Moddrell, Kalispell	Governor	7/1/2003
Qualifications (if required): consumer of developmental disabilities services		
Mental Health Managed Care Ombudsman (Legislature)		
Ms. Bonnie Adee, Helena	Governor	8/2/2003
Qualifications (if required): none specified		
Montana Economic Development Action Group (Governor)		
Ms. Diane Brandt, Glasgow	Governor	7/1/2003
Qualifications (if required): none specified		
Mr. Jon Marchi, Polson	Governor	7/1/2003
Qualifications (if required): none specified		
Mr. Tom Scott, Billings	Governor	7/1/2003
Qualifications (if required): none specified		
Mr. Don Peoples, Butte	Governor	7/1/2003
Qualifications (if required): none specified		
Mr. John Olson, Sidney	Governor	7/1/2003
Qualifications (if required): none specified		
Mr. Mark A. Simonich, Helena	Governor	7/1/2003
Qualifications (if required): none specified		
Mr. Steve Roth, Big Sandy	Governor	7/1/2003
Qualifications (if required): none specified		

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2003 through SEPTEMBER 30, 2003

Board/current position holder	Appointed by	Term end
Montana Economic Development Action Group (Governor) cont.		
Rep. Carol C. Juneau, Browning	Governor	7/1/2003
Qualifications (if required): none specified		
Ms. Susan Humble, Great Falls	Governor	7/1/2003
Qualifications (if required): none specified		
Mr. Dave Gibson, Helena	Governor	7/1/2003
Qualifications (if required): none specified		
Mr. Dave Bayless, Bozeman	Governor	7/1/2003
Qualifications (if required): none specified		
Ms. Rosalie Sheehy Cates, Missoula	Governor	7/1/2003
Qualifications (if required): none specified		
Mr. Ian Davidson, Great Falls	Governor	7/1/2003
Qualifications (if required): none specified		
Mr. Gene Fenderson, Helena	Governor	7/1/2003
Qualifications (if required): none specified		
Mr. Charlie Grenier, Columbia Falls	Governor	7/1/2003
Qualifications (if required): none specified		
Mr. Roger Peterson, Billings	Governor	7/1/2003
Qualifications (if required): none specified		
Ms. Dee Russell, Bozeman	Governor	7/1/2003
Qualifications (if required): none specified		
Ms. Virginia Sloan, Kalispell	Governor	7/1/2003
Qualifications (if required): none specified		

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2003 through SEPTEMBER 30, 2003

Board/current position holder	Appointed by	Term end
Montana Economic Development Action Group (Governor) cont.		
Mr. Bruce Whittenberg, Billings	Governor	7/1/2003
Qualifications (if required): none specified		
Mr. Turner Askew, Whitefish	Governor	7/1/2003
Qualifications (if required): none specified		
Montana Historical Society Board of Trustees (Historical Society)		
Dr. Thomas A. Foor, Missoula	Governor	7/1/2003
Qualifications (if required): archeologist		
Mr. William M. Holt, Lolo	Governor	7/1/2003
Qualifications (if required): public member		
Ms. Vicki A. McCarthy, Billings	Governor	7/1/2003
Qualifications (if required): public member		
Montana Mint Committee (Agriculture)		
Mr. Bill Kleinhans, Somers	Governor	7/1/2003
Qualifications (if required): mint grower		
Mr. Ken Smith, Kalispell	Governor	7/1/2003
Qualifications (if required): mint grower		
Montana Organic Commodity Advisory Council (Agriculture)		
Mr. David Oien, Conrad	Director	7/29/2003
Qualifications (if required): handler		
Ms. Judy Owsowitz, Whitefish	Director	7/29/2003
Qualifications (if required): producer		
Mr. Robert Boettcher, Big Sandy	Director	7/29/2003
Qualifications (if required): producer		

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2003 through SEPTEMBER 30, 2003

Board/current position holder	Appointed by	Term end
Montana Organic Commodity Advisory Council (Agriculture) cont.		
Mr. Robert Quinn, Big Sandy	Director	7/29/2003
Qualifications (if required): producer		
Montana Power Authority (Natural Resources and Conservation)		
Sen. Gary C. Aklestad, Shelby	Governor	7/2/2003
Qualifications (if required): public member		
Chief Justice Jean A. Turnage, Polson	Governor	7/2/2003
Qualifications (if required): public member		
Montana Wheat and Barley Committee (Agriculture)		
Mr. Dan DeBuff, Shawmut	Governor	8/20/2003
Qualifications (if required): representing District V and being a Republican		
Mr. Franklin Mosdal, Broadview	Governor	8/20/2003
Qualifications (if required): representing District VI and being a Democrat		
Mr. Brian Kaae, Dagmar	Governor	8/20/2003
Qualifications (if required): representing District I and being a Democrat		
Motorcycle Safety Advisory Committee (Office of Public Instruction)		
Mr. Dal Smilie, Helena	Governor	7/1/2003
Qualifications (if required): representative of a motorcycle riding group		
Mr. Ladd Paulson, Billings	Governor	7/1/2003
Qualifications (if required): peace officer		
River Recreation Advisory Council (Fish, Wildlife, and Parks)		
Sen. Bill Tash, Dillon	Director	7/1/2003
Qualifications (if required): none specified		

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2003 through SEPTEMBER 30, 2003

Board/current position holder	Appointed by	Term end
River Recreation Advisory Council (Fish, Wildlife, and Parks) cont.		
Mr. Robin Cunningham, Gallatin Gateway	Director	7/1/2003
Qualifications (if required): none specified		
Mr. Tim Mulligan, Whitehall	Director	7/1/2003
Qualifications (if required): none specified		
Rep. Gail Gutsche, Missoula	Director	7/1/2003
Qualifications (if required): none specified		
Rep. Diane Rice, Harrison	Director	7/1/2003
Qualifications (if required): none specified		
Mr. Mike Penfold, Billings	Director	7/1/2003
Qualifications (if required): none specified		
Mr. Marty Baker, Missoula	Director	7/1/2003
Qualifications (if required): none specified		
Mr. Larry Clark, Philipsburg	Director	7/1/2003
Qualifications (if required): none specified		
Mr. Larry Copenhaver, Helena	Director	7/1/2003
Qualifications (if required): none specified		
Mr. David Decker, Wise River	Director	7/1/2003
Qualifications (if required): none specified		
Mr. Mike Ewing, Bozeman	Director	7/1/2003
Qualifications (if required): none specified		
Mr. John Gangemi, Bigfork	Director	7/1/2003
Qualifications (if required): none specified		

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2003 through SEPTEMBER 30, 2003

Board/current position holder	Appointed by	Term end
River Recreation Advisory Council (Fish, Wildlife, and Parks) cont.		
Mr. Dudley Improta, Missoula	Director	7/1/2003
Qualifications (if required): none specified		
Mr. Russ Kipp, Dillon	Director	7/1/2003
Qualifications (if required): none specified		
Ms. Cindy Kittredge, Cascade	Director	7/1/2003
Qualifications (if required): none specified		
Mr. Steve Leubeck, Butte	Director	7/1/2003
Qualifications (if required): none specified		
Mr. Jerry Nichols, Superior	Director	7/1/2003
Qualifications (if required): none specified		
Mr. Steve Ortez, Great Falls	Director	7/1/2003
Qualifications (if required): none specified		
Ms. Julia Page, Gardiner	Director	7/1/2003
Qualifications (if required): none specified		
Mr. Jim Rainey, Bozeman	Director	7/1/2003
Qualifications (if required): none specified		
Ms. Amy Sullivan, Helena	Director	7/1/2003
Qualifications (if required): none specified		
Mr. Mike Whittington, Billings	Director	7/1/2003
Qualifications (if required): none specified		

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2003 through SEPTEMBER 30, 2003

Board/current position holder	Appointed by	Term end
State Banking Board (Commerce)		
Ms. Barbara Skelton, Billings	Governor	7/1/2003
Qualifications (if required): public member		
State Electrical Board (Commerce)		
Mr. Todd Stoddard, Dillon	Governor	7/1/2003
Qualifications (if required): licensed electrician		
Teachers' Retirement Board (Administration)		
Mr. Scott A. Dubbs, Lewistown	Governor	7/1/2003
Qualifications (if required): teacher/member		
Tourism Advisory Council (Commerce)		
Ms. Donna Madson, West Yellowstone	Governor	7/1/2003
Qualifications (if required): representing Yellowstone Country		
Mr. Ed Heinrich, Fairmont	Governor	7/1/2003
Qualifications (if required): representing Goldwest Country		
Mr. Clark Whitehead, Lewistown	Governor	7/1/2003
Qualifications (if required): representing a federal agency and Russell Country		
Mr. Richard J. Young, Poplar	Governor	7/1/2003
Qualifications (if required): representing Missouri River Country and tribal government		
Mr. Kim Champney, Billings	Governor	7/1/2003
Qualifications (if required): representative from Custer Country		
Yellowstone River Task Force (Fish, Wildlife, and Parks)		
Mr. John Bailey, Livingston	Governor	8/21/2003
Qualifications (if required): representing local business		

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2003 through SEPTEMBER 30, 2003

Board/current position holder	Appointed by	Term end
Yellowstone River Task Force (Fish, Wildlife, and Parks) cont.		
Mr. Joel Marshik, Helena	Governor	8/21/2003
Qualifications (if required): representing the Department of Transportation and being an ex-officio member		
Mr. Bob Wiltshire, Livingston	Governor	8/21/2003
Qualifications (if required): representing the angling community		
Ms. Michelle Goodwine, Livingston	Governor	8/21/2003
Qualifications (if required): representing local business		
Mr. Jerry O'Haire, Livingston	Governor	8/21/2003
Qualifications (if required): representing ranchers living by the river		
Mr. Roy Aserlind, Livingston	Governor	8/21/2003
Qualifications (if required): representing property owners		
Mr. Rod Siring, Livingston	Governor	8/21/2003
Qualifications (if required): representing property owners		
Mr. Brant Oswald, Livingston	Governor	8/21/2003
Qualifications (if required): representing conservation groups		
Ms. Ellen Woodbury, Livingston	Governor	8/21/2003
Qualifications (if required): representing Park County		
Mr. Doug McDonald, Helena	Governor	8/21/2003
Qualifications (if required): representing the Corps of Engineers and being an ex-officio member		
Mr. Laurence Siroky, Helena	Governor	8/21/2003
Qualifications (if required): representing the Department of Natural Resources and Conservation and being an ex-officio member		

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2003 through SEPTEMBER 30, 2003

Board/current position holder	Appointed by	Term end
Yellowstone River Task Force (Fish, Wildlife, and Parks) cont.		
Mr. Stuart Lehman, Helena	Governor	8/21/2003
Qualifications (if required): representing the Department of Environmental Quality and being an ex-officio member		
Yellowstone River Task Force (Fish, Wildlife, and Parks) cont.		
Mr. Joel Tohtz, Helena	Governor	8/21/2003
Qualifications (if required): representing the Department of Fish Wildlife and Parks and being an ex-officio member		
Mr. Jim Woodhull, Livingston	Governor	8/21/2003
Qualifications (if required): representing the City of Livingston		
Mr. David Haug, Livingston	Governor	8/21/2003
Qualifications (if required): representing Park County Conservation District		
Mr. G. Douglas Ensign, Livingston	Governor	8/21/2003
Qualifications (if required): representing ranchers living by the river		
Mr. Andy Dana, Bozeman	Governor	8/21/2003
Qualifications (if required): representing property owners		
Youth Justice Advisory Council (Commerce)		
Dr. Marshall White, Jr., Hamilton	Governor	9/1/2003
Qualifications (if required): physician whose practice includes obstetrics		