

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 24

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 The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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

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BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the proposed)	NOTICE OF PROPOSED
amendment of ARM 4.5.301,)	AMENDMENT
4.5.302, 4.5.305, 4.5.306,)	
4.5.308, 4.5.309, 4.5.313,)	NO PUBLIC HEARING
and 4.5.315 relating to)	CONTEMPLATED
noxious weeds)	

TO: All Concerned Persons

1. On, January 23, 2004, the Montana Department of Agriculture proposes to amend ARM 4.5.301, 4.5.302, 4.5.305, 4.5.306, 4.5.308, 4.5.309, 4.5.313, and 4.5.315 relating to noxious weeds.

2. The Department of Agriculture will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Agriculture no later than 5:00 p.m. on January 7, 2004, to advise us of the nature of the accommodation that you need. Please contact Gregory H. Ames at the Montana Department of Agriculture, 303 N. Roberts, P.O. Box 200201, Helena, MT 59620-0201; Phone: (406) 444-2944; TTY: (406) 444-4687; Fax: (406) 444-5409; or E-mail: agr@state.mt.us.

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

4.5.301 PURPOSE AND SCOPE (1) The 1995 Montana legislature, upon finding that the movement of agricultural crops containing noxious weed seeds, as livestock forage, bedding, mulch, pellets, cubes, grain concentrates and related material was causing new and expanding noxious weed infestations, authorized and directed the Montana department of agriculture to implement the Noxious Weed Seed Free Forage Act and to adopt all necessary rules for the exercise of its power under that act.

AUTH: 80-7-909, MCA
IMP: 80-7-902, MCA

REASON: Addition of the term "grain concentrates" is necessary to allow the Montana Noxious Weed Seed Free Forage (NWSFF) program to certify products that have been mechanically cleaned of noxious weeds.

4.5.302 DEFINITION OF TERMS These definitions apply to all rules adopted under the Montana Noxious Weed Seed Free Forage Act, Title 80, chapter 7, part 9, MCA- :
(1) and (2) remain the same.

~~(3)~~ (6) "Montana certified forage" means forage products that meet Montana's forage certification standards and are approved by an agent; or grain concentrates, processed pellets, cubes, and other forage products that meet the requirements of ARM 4.5.306(2) through ~~(6)~~ (8).

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

(5) "Grain concentrate" means a grain product which includes but is not limited to whole grains, intended for livestock consumption that has been cleaned of noxious weed seeds by an approved process, inspected by an agent, and identified under a department-approved process as "Montana NWSFF certified".

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

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

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

AUTH: 80-7-909, MCA

IMP: 80-7-903, MCA

REASON: It is necessary to define "grain concentrates" in order to clarify use of the term specifically for the NWSFF program.

4.5.305 STANDARD RANGE OF TOLERANCES FOR NOXIOUS WEED SEEDS (1) through (1)(c) remain the same.

(d) For grain concentrates cleaned and sampled by a department-approved process, this means presence of noxious weed seeds was not detected.

(2) remains the same.

AUTH: 80-7-909, MCA

IMP: 80-7-903, MCA

REASON: Inclusion of a zero tolerance statement is necessary for the new NWSFF product, (grain concentrate) in order to maintain the integrity of the program.

4.5.306 PROCEDURES FOR MONTANA CERTIFICATION OF FORAGE PRODUCTS (GRAIN CONCENTRATES - PELLETS - CUBES - OTHER)

(1) A person desiring to certify processed feed products as noxious weed seed free must make an annual application on the department's application form. The application shall be valid from the date of issuance through December 31 of that calendar year.

(a) Applications for certification of mechanically cleaned grain concentrates must describe the method of cleaning to remove noxious weed seed. The method must be approved by the department.

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

(5) ~~Cubes and pellets shipped into the state must meet all of Montana's NWSFF certification requirements. A person desiring to certify grain concentrates coming from non-certified fields must meet the following requirements:~~

(a) an annual production plant inspection must be performed by an agent;

(b) samples will be taken by an agent and sent to the Montana state seed laboratory or an alternate facility designated by the department to determine if the product meets NWSFF standards of zero tolerance. The sampling procedure will follow the procedure and the minimum amount required for seed testing as prescribed by the association of official seed analysis, "2003 Rules For Testing Seeds" which is adopted and incorporated by reference, and can be obtained from the Montana Department of Agriculture, PO Box 200201, Helena, MT 59620-0201; and

(c) at the conclusion of the inspection/sampling/analysis process, those lots of grain concentrate meeting criteria for certification will be certified. The department will provide:

(i) an invoice for the inspection fees;

(ii) appropriate markers; and

(iii) transportation certificates.

(6) To enforce this chapter, the department upon presenting appropriate credentials may enter, at reasonable times or under emergency conditions, any factory, warehouse, or establishment within the state in which grain concentrates, pellets, cubes and other forage products are manufactured, processed, packed, distributed, or held, or enter any vehicle being used to transport or hold such products. The department may inspect, obtain samples and examine records at reasonable times and within reasonable limits and in reasonable manner any factory, warehouse, establishment, or vehicle and all pertinent equipment, finished and unfinished materials, containers, and labeling found in them.

(7) Grain concentrates, cubes and pellets shipped into the state as noxious weed seed free must meet all of Montana's NWSFF certification requirements.

~~(6)~~(8) Any person may request Montana certification of their grain concentrate, pellets, cubes or other forage produced out-of-state from the department. The department may enter into agreements with other state departments of agriculture or appropriate state agencies or provincial governments to verify that the grain concentrate, pellets, cubes or other forage meet Montana NWSFF certification standards. The agreements may specify the types of identification markers and/or transportation certificates that are acceptable.

AUTH: 80-7-909, MCA

IMP: 80-7-906, MCA

REASON: Insertion of the term grain concentrate is added where necessary to permit certification and regulation of this product. Approval of the method of cleaning the grain concentrate is needed because there are many acceptable methods of cleaning grain. In addition to reviewing the potential efficacy of the method, the department will need a

record of the method used in all the plants for comparison in enforcement issues.

The certification method described in subsections (5)(a), (b) and (c) is believed by the department to be adequate to produce a product free of noxious weed seeds. In order to effectively enforce these regulations, the department must have access to production facilities and products for inspection and sampling.

The department intends that out-of-state products meet the same standards required for products produced in Montana. By definition, invasive species come from outside Montana's borders.

4.5.308 FORAGE IDENTIFICATION AND TRANSPORTATION

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

(ii) Loads of bulk ~~forage~~ hay or straw not marked with colored twine may be identified with identification markers (tags) placed on the four corners of the load.

(d) through (3)(f) remain the same.

(g) number of bales by type or tonnage or weight of grain concentrate, pellets or other forage product;

(h) through (5) remain the same.

(a) Certified grain concentrates, pellets, cubes or other forage byproducts must have a separate label attached (~~either sewn, printed or a separate label~~) showing proof of certification of the contents with the following statement: ~~"This product has been certified by the Montana Department of Agriculture as Montana Noxious Weed Seed Free."~~ "MONTANA CERTIFIED Noxious Weed Seed Free Forage NOTE: Certification means this product has been inspected by an agent of the MT NWSFF program using recognized inspection methods and no noxious weed seed was detected."

(b) For out-of-state pelleted, cubed or grain concentrate products the label on the product must ~~have the following statement:~~ ~~"This product has been certified by (state, agency, province) to be in compliance with Montana's standards for Noxious Weed Seed Free Forage."~~ Montana may enter into reciprocal agreements with other states, agencies, and/or provinces that will identify the certification procedures to be used.

(c) All ~~identification~~ labels for grain concentrates, pellets, cubes or other forage products manufactured in Montana must be obtained from ~~submitted to~~ the department ~~for approval.~~

(6) remains the same.

AUTH: 80-7-909, MCA

IMP: 80-7-912, MCA

REASON: The word 'forage' was replaced by the phrase 'hay or straw' as forage includes grain concentrate, pellets, cubes and other products. Measurement by weight is added

because not all NWSFF products are measurable by bale or ton. The term 'separate' indicates that an individual Montana NWSFF adhesive label will be applied to all non-baled NWSFF products. Subsection (5)(b) has been changed in order to include grain concentrates and continue to ensure that out-of-state products adhere to Montana standards. Subsection (5)(c) establishes criteria for label consistency. The intent of this is to enhance the traceability of NWSFF products as well as improve ease of field recognition.

4.5.309 CERTIFICATION OF AGENTS (1) Each person desiring to be an agent must be trained and certified according to department standards. ~~This certification will be for a three year period.~~

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

~~(3) The department will require agents to recertify after the third year of initial certification.~~

~~(a) The training schedule will be:~~

Initial	Recertification	Recertification
1996	1999	2002
1997	2000	2003
1998	2001	2004
1999	2002	2005
2000	2003	2006

(3) Agents participating in the NWSFF program will receive an annual recertification packet containing:

(a) any changes or additions to the NWSFF law and rules and/or general program;

(b) any changes or additions to the Montana noxious weed list;

(c) form updates;

(d) regional program changes and issues; and

(e) an identification card to be used in the current season.

~~(4) The following are minimum requirements for recertification training beginning in 1996:~~

~~(a) inspection procedure review;~~

~~(b) management methods;~~

~~(c) forms review;~~

~~(d) review of state and regional certification standards and guidelines;~~

~~(e) state and regional designated noxious weed review;~~

~~(f) a written recertification quiz may be offered at the conclusion of the training session. Agents certifying grain concentrates from non-certified fields must be trained department inspectors familiar with grain sampling procedures.~~

(5) remains the same.

AUTH: 80-7-909, MCA

IMP: 80-7-905, MCA

REASON: The department and the NWSFF advisory council believe the three-year agent recertification requirement is impractical. The changes reflect a more functional and realistic system to provide agents information about changes in the program. Section (4) reflects the skills and training needed in grain sampling procedures that are distinct from field inspections.

4.5.313 FEES (1) through (2)(c) remain the same.

(3) The government agent must submit 25 cents per acre or \$2.50 for ~~ten~~ 10 acres or less for hay or straw, to the department and report on a financial form provided by the department. The funds and form must be submitted by September 15 of each year to ensure that the persons producing certified forage will be included on the NWSFF producer list.

(4) remains the same.

(5) An inspection fee of \$20.00 per hour or a \$40.00 minimum charge per facility per inspection will be charged to manufacturers of certified processed pellets using non-certified forage in the process will be assessed a minimum fee of 75 cents per ton and certified grain concentrates harvested from non-certified fields that are mechanically cleaned of noxious weed seed. State mileage and per diem rates may also be assessed by agents. payable on or before January 30 for the previous year's production. The manufacturer shall document the tons of grain concentrate or pellets processed and submit the document to the department on or before January 30 for the previous year's production with the appropriate fee.

(6) A record of grain concentrates or the pellets produced from non-certified forage shall be retained for two years.

(7) The cost for grain concentrate analysis shall be paid by the manufacturer. The product marker (label) will be provided by the department to the manufacturer of certified grain concentrates and pellets at cost.

AUTH: 80-7-909, MCA

IMP: 80-7-907, MCA

REASON: Inclusion of the phrase 'for hay or straw' serves to clarify that the forage products from certified fields will be levied a separate fee structure from the products that come from a non-certified field. The remainder of the section defines those products and sets the fees and standards associated with them.

The department desires that the fee scales for inspection of certified products from non-certified fields, pellets and grain concentrates alike, should reflect the actual cost to the department. In an effort to accomplish this, the fee is set at \$20.00 per hour, the average cost of a grade 14 Department of Agriculture Specialist. As with forage from certified fields, a minimum fee for inspection of certified products from non-certified fields is established, and mileage

and per diem are recoupable. Laboratory testing costs and Montana NWSFF labels are the financial responsibility of the manufacturer, and are not part of the inspection fee. The demand for certified NWSFF products continues to increase and adoption of these rules will provide an additional NWSFF product. All Montanans benefit from the cost savings provided by the prevention of the spread of noxious weeds.

The producers of certified NWSFF products from non-certified fields currently number fewer than 10. The inspection fees charged by the department will be offset by what the producer charges for the value added product. Approximately \$200 per year of revenue could be generated from producer fees with this rule change.

4.5.315 IDENTIFICATION OF PRODUCT AND PACKAGE TYPES ~~(1)~~

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

(ix) Grain concentrate GC

~~(ix)~~(x) Other packages OP

AUTH: 80-7-909, MCA

IMP: 80-7-909, MCA

REASON: This additional term will give the agents a code for the mechanically cleaned grain products. 'Other packages' was changed from (ix) to (x) because as the default term, it belongs last on the list.

4. Concerned persons may submit their data, views or arguments concerning this proposed amendment in writing to Gregory H. Ames at the Montana Department of Agriculture, 303 N. Roberts, P.O. Box 200201, Helena, MT 59620-0201; Fax: (406) 444-5409; or E-mail: agr@state.mt.us. Any comments must be received no later than January 21, 2004.

5. If persons who are directly affected by the proposed amendment wish to express their data, views and arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to Gregory H. Ames at the Montana Department of Agriculture, 303 N. Montana, P.O. Box 200201, Helena, MT 59620-0201; Phone: (406) 444-2944; TTY: (406) 444-4687; Fax: (406) 444-5409; or E-mail: agr@state.mt.us. A written request for hearing must be received no later than January 21, 2004.

6. If the agency receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the appropriate administrative rule review committee 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 35 persons based on 350 producers of noxious weed seed free products.

7. The Department of Agriculture maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding noxious weed seed free forage, noxious weeds, alfalfa seed, agriculture in Montana schools program, agriculture development, pesticides, warehouseman, produce, mint, seed, alternative crops, wheat research and marketing, rural development and/or hail. Such written request may be mailed or delivered to Montana Department of Agriculture, 303 N. Roberts, P.O. Box 200201, Helena, MT 59620-0201; Fax: (406) 444-5409; or E-mail: agr@state.mt.us or may be made by completing a request form at any rules hearing held by the Department of Agriculture.

8. An electronic copy of this Notice of Proposed Amendment is available through the Department's website at www.agr.state.mt.us, under the Administrative Rules section. The Department strives to make the electronic copy of the Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Department strives to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems.

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

DEPARTMENT OF AGRICULTURE

/s/ Ralph Peck
Ralph Peck
Director

/s/ Tim Meloy
Tim Meloy, Attorney
Rules Reviewer

Certified to the Secretary of State, December 15, 2003.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the proposed)	NOTICE OF PROPOSED
amendment of ARM 4.12.1427)	AMENDMENT
relating to shipping point)	
inspection fees)	NO PUBLIC HEARING
)	CONTEMPLATED

TO: All Concerned Persons

1. On January 23, 2004, the Montana Department of Agriculture proposes to amend the above stated rule relating to shipping point inspection fees.

2. The Department of Agriculture will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Agriculture no later than 5:00 p.m. on January 7, 2004, to advise us of the nature of the accommodation that you need. Please contact Gregory H. Ames, Administrator, Agricultural Sciences Division at the Montana Department of Agriculture, 303 N. Roberts, P.O. Box 200201, Helena, MT 59620-0201; Phone: (406) 444-3730; TTY: (406) 444-4687; Fax: (406) 444-5409; or E-mail: agr@state.mt.us.

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

4.12.1427 SHIPPING POINT INSPECTION FEES (1) All
produce - ~~5.5¢~~ 7.5¢ per unit.
(2) through (5) remain the same.

AUTH: 80-3-303, MCA
IMP: 80-3-315, MCA

REASON: Inspection fees are required by statute to be commensurate with the cost of providing the inspection. Figures now indicate that projected costs exceed revenues by nearly \$43,000 in fiscal year 2004. This fee increase would generate revenue to cover operating costs and inspector wages. If any revenue exceeds these costs, it will be deposited in the special revenue account established by 80-3-304, MCA.

Based on 90 produce growers, the proposed changes in shipping point inspection fees, which primarily affect seed potato inspections, will generate an additional \$48,000 in revenue per year. This will be commensurate with the costs of the program.

4. Concerned persons may submit their data, views or arguments concerning this proposed amendment in writing to

Gregory H. Ames at the Montana Department of Agriculture, 303 N. Roberts, P.O. Box 200201, Helena, MT 59620-0201; Fax: (406) 444-5409; or E-mail: agr@state.mt.us. Any comments must be received no later than January 21, 2004.

5. If persons who are directly affected by the proposed amendment wish to express their data, views and arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to Gregory H. Ames at the Montana Department of Agriculture, 303 N. Roberts, P.O. Box 200201, Helena, MT 59620-0201; Phone: (406) 444-3730; TTY: (406) 444-4687; Fax: (406) 444-5409; or E-mail: agr@state.mt.us. A written request for hearing must be received no later than January 21, 2004.

6. If the agency receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed 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 nine persons based on 90 seed potato, apple, cherry and other produce growers requesting this service

7. The Department of Agriculture maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding noxious weed seed free forage, noxious weeds, alfalfa seed, agriculture in Montana schools program, agriculture development, feed and fertilizer, pesticides, warehouseman, produce, mint, seed, alternative crops, wheat research and marketing, rural development and/or hail. Such written request may be mailed or delivered to Montana Department of Agriculture, 303 N. Roberts, P.O. Box 200201, Helena, MT 59620-0201; Fax: (406) 444-5409; or E-mail: agr@state.mt.us or may be made by completing a request form at any rules hearing held by the Department of Agriculture.

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

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

DEPARTMENT OF AGRICULTURE

/s/ Ralph Peck
Ralph Peck
Director

/s/ Tim Meloy
Tim Meloy, Attorney
Rules Reviewer

Certified to the Secretary of State, December 15, 2003.

BEFORE THE DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed)	NOTICE OF PROPOSED
amendment of ARM 8.99.401)	AMENDMENT AND REPEAL
relating to the definitions)	
concerning microbusiness)	
development corporations, and)	
the repeal of ARM 8.99.403,)	
8.99.601, 8.99.602, 8.99.603,)	
8.99.604, 8.99.605, 8.99.606,)	
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8.122.805, relating to the Job)	
Investment Act, and science)	NO PUBLIC HEARING
and technology development)	CONTEMPLATED

TO: All Concerned Persons

1. On February 23, 2004, the department proposes to amend and repeal the above-stated rules.

2. The Department of Commerce 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 January 20, 2004, to advise us of the nature of the accommodation that you need. Please contact Marty Tuttle, 301 South Park Ave., 2nd Floor, P.O. Box 200501, Helena, MT 59620-0501; telephone (406) 841-2706; fax (406) 841-2701; e-mail matuttle@state.mt.us.

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

8.99.401 DEFINITIONS As used in this sub-chapter, the following definitions apply:

(1) remains the same.

~~(2) "Council" means the microbusiness advisory council established in 17-6-411, MCA.~~

~~(3) "Certified community lead organization" means an agency that has sponsored and maintained current community certification under the certified community program of the department.~~

(4) through (21) remain the same but are renumbered (2) through (19).

AUTH: Sec. 17-6-406, MCA

IMP: Sec. 17-6-406, 17-6-408, MCA

REASON: The proposed deletion of (2) is necessary due to the repeal of 17-6-411, MCA by the Fifty-Eighth Legislature in HB 76, so there is no longer a Microbusiness Advisory Council to be defined.

The proposed deletion of (3) is necessary because the aforementioned House Bill 76 amended 90-1-116, MCA, and eliminated the certified communities program.

4. The rules proposed to be repealed are as follows:

8.99.403 SOLICITING NOMINATIONS on page 8-3643 of the Administrative Rules of Montana.

AUTH: Sec. 17-6-406, MCA

IMP: Sec. 17-6-411, MCA

REASON: The proposed repeal of ARM 8.99.403 is necessary because in HB 76 the Fifty-Eighth Legislature eliminated the Microbusiness Advisory Council.

8.99.601 PROCEDURAL RULES on page 8-3655 of the Administrative Rules of Montana.

AUTH: Sec. 2-4-201, 17-6-502, MCA

IMP: Sec. 2-4-201, 17-6-505, MCA

8.99.602 CITIZEN PARTICIPATION RULES on page 8-3655 of the Administrative Rules of Montana.

AUTH: Sec. 2-3-103, 17-6-505, MCA

IMP: Sec. 2-3-103, 17-6-505, MCA

8.99.603 DEFINITIONS on pages 8-3655 and 8-3655.1 of the Administrative Rules of Montana.

AUTH: Sec. 17-6-502, 17-6-505, MCA

IMP: Sec. 17-6-505, MCA

8.99.604 APPLICATION PROCEDURES on page 8-3655.1 of the Administrative Rules of Montana.

AUTH: Sec. 17-6-504, MCA
IMP: Sec. 17-6-505, MCA

8.99.605 LOAN REVIEW COMMITTEE on page 8-3655.1 of the Administrative Rules of Montana.

AUTH: Sec. 17-6-510, MCA
IMP: Sec. 17-6-505, MCA

8.99.606 CONFIDENTIALITY AND OPEN MEETINGS on pages 8-3655.1 and 8-3655.2 of the Administrative Rules of Montana.

AUTH: Sec. 17-6-502, MCA
IMP: Sec. 17-6-505, MCA

8.99.607 BUSINESS APPLICATION REQUIREMENTS on pages 8-3655.2 and 8-3655.3 of the Administrative Rules of Montana.

AUTH: Sec. 17-6-505, MCA
IMP: Sec. 17-6-505, MCA

8.99.608 INTEREST RATES on page 8-3655.3 of the Administrative Rules of Montana.

AUTH: Sec. 17-6-505, MCA
IMP: Sec. 17-6-505, MCA

8.99.609 LOAN LOSS RESERVE FUND on page 8-3655.3 of the Administrative Rules of Montana.

AUTH: Sec. 17-6-505, MCA
IMP: Sec. 17-6-505, MCA

8.99.610 TERMS OF JOB INVESTMENT LOAN AGREEMENT on page 8-3655.3 of the Administrative Rules of Montana.

AUTH: Sec. 17-6-505, MCA
IMP: Sec. 17-6-505, MCA

8.99.611 COLLATERAL on page 8-3655.3 of the Administrative Rules of Montana.

AUTH: Sec. 17-6-505, MCA
IMP: Sec. 17-6-505, MCA

8.99.612 FUNDING CRITERIA on pages 8-3655.3 and 8-3655.4 of the Administrative Rules of Montana.

AUTH: Sec. 17-6-505, MCA
IMP: Sec. 17-6-505, MCA

8.99.613 LOAN DOCUMENTATION on page 8-3655.4 of the Administrative Rules of Montana.

AUTH: Sec. 17-6-505, 17-6-510, MCA
IMP: Sec. 17-6-505, MCA

REASON: The proposed repeal of ARM 8.99.601 through 8.99.613 is necessary because in HB 650 the Fifty-Seventh Legislature repealed the Job Investment Act.

8.99.701 DEFINITIONS on page 8-3657 of the Administrative Rules of Montana.

AUTH: Sec. 15-53-203, MCA
IMP: Sec. 15-53-202, 15-53-203, MCA

8.99.702 APPLICATION FOR TAX CREDITS on pages 8-3657 and 8-3657.1 of the Administrative Rules of Montana.

AUTH: Sec. 15-53-203, MCA
IMP: Sec. 15-53-202, 15-53-203, MCA

8.99.703 FACTORS THAT ESTABLISH WHETHER ADVANCED TELECOMMUNICATIONS INFRASTRUCTURE PROVIDE IMPROVEMENTS on pages 8-3657.1 and 8-3657.2 of the Administrative Rules of Montana.

AUTH: Sec. 15-53-203, MCA
IMP: Sec. 15-53-203, MCA

8.99.704 DEPARTMENT REVIEW AND DECISION on page 8-3657.2 of the Administrative Rules of Montana.

AUTH: Sec. 15-53-203, MCA
IMP: Sec. 15-53-203, MCA

8.99.705 APPLICATION TIMELINES on pages 8-3657.2 and 8-3657.3 of the Administrative Rules of Montana.

AUTH: Sec. 15-53-203, MCA
IMP: Sec. 15-53-203, MCA

REASON: The proposed repeal of ARM 8.99.701 through 8.99.705 is necessary because in HB 96 the Fifty-Eighth Legislature repealed the Advanced Telecommunications Infrastructure Tax Credit.

8.122.102 ORGANIZATIONAL RULE on page 8-4749 of the Administrative Rules of Montana.

AUTH: Sec. 2-4-201, MCA
IMP: Sec. 2-4-201, MCA

8.122.204 PROCEDURAL RULES on page 8-4751 of the Administrative Rules of Montana.

AUTH: Sec. 2-4-201, MCA
IMP: Sec. 2-4-201, 90-3-521, MCA

8.122.205 CITIZEN PARTICIPATION RULES on page 8-4751 of the Administrative Rules of Montana.

AUTH: Sec. 2-3-103, 90-3-204, MCA
IMP: Sec. 2-3-103, 90-3-204, MCA

8.122.206 DEFINITIONS on pages 8-4751 and 8-4752 of the Administrative Rules of Montana.

AUTH: Sec. 90-3-204, MCA
IMP: Sec. 90-3-204, MCA

8.122.601 APPLICATION PROCEDURES FOR A SEED CAPITAL TECHNOLOGY LOAN - SUBMISSION AND USE OF EXECUTIVE SUMMARY on page 8-4769 of the Administrative Rules of Montana.

AUTH: Sec. 90-3-204, MCA
IMP: Sec. 90-3-204, MCA

8.122.602 APPLICATION PROCEDURES FOR A SEED CAPITAL TECHNOLOGY LOAN - SUBMISSION OF BUSINESS PLAN on pages 8-4769.1 and 8-4770 of the Administrative Rules of Montana.

AUTH: Sec. 90-3-204, MCA
IMP: Sec. 90-3-204, MCA

8.122.603 APPLICATION PROCEDURES FOR A SEED CAPITAL TECHNOLOGY LOAN - REVIEW PROCESS on page 8-4770 of the Administrative Rules of Montana.

AUTH: Sec. 90-3-204, MCA
IMP: Sec. 90-3-204, MCA

8.122.604 APPLICATION PROCEDURES FOR A SEED CAPITAL TECHNOLOGY LOAN - BOARD ACTION on pages 8-4770 and 8-4771 of the Administrative Rules of Montana.

AUTH: Sec. 90-3-204, MCA
IMP: Sec. 90-3-204, 90-3-523, MCA

8.122.605 APPLICATION PROCEDURES FOR A SEED CAPITAL TECHNOLOGY LOAN - POST DISBURSEMENT ACTIVITIES on page 8-4771 of the Administrative Rules of Montana.

AUTH: Sec. 90-3-204, MCA
IMP: Sec. 90-3-204, MCA

8.122.606 APPLICATION PROCEDURES FOR A RESEARCH AND DEVELOPMENT PROJECT LOAN - SUBMISSION AND USE OF EXECUTIVE SUMMARY on pages 8-4771 and 8-4772 of the Administrative Rules of Montana.

AUTH: Sec. 90-3-204, MCA
IMP: Sec. 90-3-204, MCA

8.122.607 APPLICATION PROCEDURES FOR A RESEARCH AND DEVELOPMENT PROJECT LOAN - SUBMISSION OF RESEARCH AND DEVELOPMENT PROPOSAL on page 8-4772 of the Administrative Rules of Montana.

AUTH: Sec. 90-3-204, MCA
IMP: Sec. 90-3-204, MCA

8.122.608 APPLICATION PROCEDURES FOR A RESEARCH AND DEVELOPMENT PROJECT LOAN - EVALUATION - DUE DILIGENCE on pages 8-4772 and 8-4773 of the Administrative Rules of Montana.

AUTH: Sec. 90-3-204, MCA
IMP: Sec. 90-3-204, MCA

8.122.609 APPLICATION PROCEDURES FOR A RESEARCH AND DEVELOPMENT PROJECT LOAN - REVIEW PROCESS on page 8-4773 of the Administrative Rules of Montana.

AUTH: Sec. 90-3-204, MCA
IMP: Sec. 90-3-204, MCA

8.122.610 APPLICATION PROCEDURES FOR A RESEARCH AND DEVELOPMENT PROJECT LOAN - BOARD ACTION on pages 8-4773 and 8-4774 of the Administrative Rules of Montana.

AUTH: Sec. 90-3-204, MCA
IMP: Sec. 90-3-204, MCA

8.122.611 APPLICATION PROCEDURES FOR A RESEARCH AND DEVELOPMENT PROJECT LOAN - MONITORING REPORTS on page 8-4774 of the Administrative Rules of Montana.

AUTH: Sec. 90-3-204, MCA
IMP: Sec. 90-3-204, MCA

8.122.612 FAILURE TO COMMERCIALIZE OR PRODUCE IN MONTANA - ALL SCIENCE AND TECHNOLOGY DEVELOPMENT PROJECT LOANS on page 8-4774 of the Administrative Rules of Montana.

AUTH: Sec. 90-3-204, MCA
IMP: Sec. 90-3-204, MCA

8.122.613 RECONSIDERATION OF LOAN DECISION - ALL SCIENCE AND TECHNOLOGY DEVELOPMENT LOANS on pages 8-4774 and 8-4775 of the Administrative Rules of Montana.

AUTH: Sec. 90-3-204, MCA
IMP: Sec. 90-3-204, MCA

8.122.614 RIGHTS TO INTELLECTUAL PROPERTY - ALL SCIENCE AND TECHNOLOGY DEVELOPMENT LOANS on page 8-4775 of the Administrative Rules of Montana.

AUTH: Sec. 90-3-204, MCA
IMP: Sec. 90-3-204, MCA

8.122.615 CONFIDENTIALITY OF INFORMATION AND OPEN MEETINGS on pages 8-4775 and 8-4776 of the Administrative Rules of Montana.

AUTH: Sec. 90-3-204, MCA
IMP: Sec. 90-3-204, MCA

8.122.616 MEDICAL RESEARCH FACILITY PROJECTS - APPLICATION PROCEDURES, REVIEW PROCESS AND BOARD ACTION on page 8-4776 of the Administrative Rules of Montana.

AUTH: Sec. 90-3-204, 90-3-901, MCA
IMP: Sec. 90-3-204, MCA

8.122.701 RESEARCH AND DEVELOPMENT PROJECTS OF MONTANA COMPANIES, MEDICAL RESEARCH FACILITIES, AND UNIVERSITY-BASED RESEARCH AND DEVELOPMENT PROGRAMS - ADDITIONAL INFORMATION ON SCIENTIFIC AND TECHNOLOGICAL ASPECTS OF PROJECT on page 8-4779 of the Administrative Rules of Montana.

AUTH: Sec. 90-3-204, MCA
IMP: Sec. 90-3-204, MCA

8.122.702 RESEARCH AND DEVELOPMENT PROJECTS OF MONTANA COMPANIES, MEDICAL RESEARCH FACILITIES, AND UNIVERSITY-BASED RESEARCH AND DEVELOPMENT PROGRAMS - COMMERCIALIZATION POTENTIAL OF PROJECTS on pages 8-4779 and 8-4780 of the Administrative Rules of Montana.

AUTH: Sec. 90-3-204, MCA
IMP: Sec. 90-3-204, MCA

8.122.703 RESEARCH AND DEVELOPMENT PROJECTS OF MONTANA COMPANIES - FINANCIAL INFORMATION REQUIREMENT on pages 8-4780 and 8-4781 of the Administrative Rules of Montana.

AUTH: Sec. 90-3-204, MCA
IMP: Sec. 90-3-204, MCA

8.122.704 RESEARCH AND DEVELOPMENT PROJECTS OF MONTANA COMPANIES, MEDICAL RESEARCH FACILITIES, AND UNIVERSITY-BASED RESEARCH AND DEVELOPMENT PROJECTS - REQUIREMENT FOR TECHNICAL DEVELOPMENT AND COMMERCIALIZATION MILESTONES on page 8-4781 of the Administrative Rules of Montana.

AUTH: Sec. 90-3-204, MCA
IMP: Sec. 90-3-204, MCA

8.122.801 APPLICATION PROCEDURES FOR A SEED CAPITAL PROJECT LOAN TO A VENTURE CAPITAL COMPANY - SUBMISSION AND USE OF PROSPECTUS on pages 8-4783 and 8-4784 of the Administrative Rules of Montana.

AUTH: Sec. 90-3-519, MCA
IMP: Sec. 90-3-519, MCA

8.122.802 APPLICATION PROCEDURES FOR A SEED CAPITAL PROJECT LOAN TO A VENTURE CAPITAL COMPANY - REVIEW PROCESS on page 8-4784 of the Administrative Rules of Montana.

AUTH: Sec. 90-3-519, MCA
IMP: Sec. 90-3-519, MCA

8.122.803 APPLICATION PROCEDURES FOR A SEED CAPITAL PROJECT LOAN TO A VENTURE CAPITAL COMPANY - BOARD ACTION on pages 8-4784 and 8-4785 of the Administrative Rules of Montana.

AUTH: Sec. 90-3-519, MCA
IMP: Sec. 90-3-519, MCA

8.122.804 VENTURE CAPITAL COMPANIES - INVESTMENT IN MONTANA COMPANIES on page 8-4785 of the Administrative Rules of Montana.

AUTH: Sec. 90-3-519, MCA
IMP: Sec. 90-3-519, MCA

8.122.805 VENTURE CAPITAL COMPANIES - AGREEMENT - INTEREST - PAYBACK on page 8-4785 of the Administrative Rules of Montana.

AUTH: Sec. 90-3-520, MCA
IMP: Sec. 90-3-519, MCA

REASON: The proposed repeal of these Chapter 122 rules is necessary because in HB 578 the Fifty-Fifth Legislature eliminated the Montana Board of Science and Technology Development, the Science and Technology Development Project Loan Program, and Medical Research Facility Projects.

5. Concerned persons may submit their data, views or arguments concerning the proposed action in writing to Marty Tuttle, Department of Commerce, 301 South Park Ave., 2nd Floor, P.O. Box 200501, Helena, MT 59620-0501, by facsimile to (406) 841-2701, or by e-mail to matuttle@state.mt.us to be received no later than 5:00 p.m., January 26, 2004.

6. If persons who are directly affected by the proposed action wish to express their data, views or arguments orally or in writing at a public hearing, they must make written

request for a hearing and submit the request along with any comments they have to Marty Tuttle, Department of Commerce, 301 South Park Ave., 2nd Floor, P.O. Box 200501, Helena, MT 59620-0501, by facsimile to (406) 841-2701, or by e-mail to matuttle@state.mt.us to be received no later than 5:00 p.m., January 26, 2004.

7. If the department receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of those persons who are directly affected by the proposed action, from the appropriate administrative rule committee of the legislature, from a governmental agency or subdivision, or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 10 persons based on the number of persons who received economic development assistance under the repealed statutes.

8. The Department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the Department. 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 any specific topic or topics over which the department has rulemaking authority. The written request may be mailed or delivered to Leona Holm, Department of Commerce, P.O. Box 200501, Helena, MT 59620-0501, faxed to the Department at (406) 841-2701, e-mailed to lholm@state.mt.us, or submitted at any rules hearing held by the Department.

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

DEPARTMENT OF COMMERCE

By: /s/ MARK A. SIMONICH
MARK A. SIMONICH, DIRECTOR
DEPARTMENT OF COMMERCE

By: /s/ G. MARTIN TUTTLE
G. MARTIN TUTTLE, RULE REVIEWER

Certified to the Secretary of State, December 15, 2003.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment)	NOTICE OF PUBLIC HEARING ON
of ARM 17.8.102, 17.8.103,)	PROPOSED AMENDMENT
17.8.106, 17.8.130, 17.8.316,)	
17.8.320, 17.8.340, 17.8.401,)	
17.8.801, 17.8.819, 17.8.822,)	(AIR QUALITY)
17.8.1201 and 17.8.1204)	
pertaining to incorporation by)	
reference of current federal)	
regulations and other)	
materials into air quality)	
rules)	

TO: All Concerned Persons

1. On January 21, 2004, at 1:30 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., January 12, 2004, 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:

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

(a) adopted a federal regulation by reference, the reference is to the July 1, ~~2002~~ 2003, edition of the Code of Federal Regulations (CFR);

(b) adopted a section of the United States Code (USC) by reference, the reference refers to the 1994 edition of the USC and Supplement ~~5-(2000)~~ I (2002);

(c) referred to a section of the Montana Code Annotated (MCA), the reference is to the ~~2001~~ 2003 edition of the MCA;

(d) adopted another rule of the department or of another agency of the state of Montana by reference, the reference is to the December 31, ~~2002~~ 2003, edition of the Administrative Rules of Montana (ARM).

AUTH: 75-2-111, MCA

IMP: Title 75, chapter 2, MCA

17.8.103 INCORPORATION BY REFERENCE AND AVAILABILITY OF REFERENCED DOCUMENTS (1) For the purposes of this subchapter, the board hereby adopts and incorporates by reference the following:

(a) through (n) remain the same.

(o) the Montana Source Testing Protocol and Procedures Manual (July 1994 ed.), a department manual pertaining to sampling and data collection, recording, analysis and transmittal requirements; and

(p) through (4) remain the same.

AUTH: 75-2-111, MCA

IMP: Title 75, chapter 2, MCA

17.8.106 SOURCE TESTING PROTOCOL (1) remains the same.

(2) All emission source testing, sampling and data collection, recording, analysis, and transmittal must be performed as specified in the Montana Source Testing Protocol and Procedures Manual, unless alternate equivalent requirements are determined by the department and the source to be appropriate, and prior written approval has been obtained from the department. If the use of an alternative test method requires approval by the administrator, that approval must also be obtained.

(3) Unless otherwise specified in the Montana Source Testing Protocol and Procedures Manual or elsewhere in this chapter, all emission source testing must be performed as specified in any applicable sampling method contained in: 40 CFR Part 60, Appendix A; 40 CFR Part 60, Appendix B; 40 CFR Part 61, Appendix B; 40 CFR Part 51, Appendix M; 40 CFR Part 51, Appendix P; and 40 CFR Part 63. Such emission source testing must also be performed in compliance with the requirements of the EPA Handbook for Air Pollution Measurement Systems. Alternative equivalent requirements may be used if the department and the source have determined that such alternative equivalent requirements are appropriate, and prior written approval has been obtained from the department. If approval by the administrator of an alternative test method is required, that approval must also be obtained.

(4) remains the same.

(5) Any changes to the Montana Source Testing Protocol and Procedures Manual shall follow the appropriate rulemaking procedures.

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

IMP: 75-2-203, MCA

17.8.130 ENFORCEMENT PROCEDURES--NOTICE OF VIOLATION--ORDER TO TAKE CORRECTIVE ACTION (1) ~~Contents of written notice of violation.~~ The A written notice of violation may contain, but is not limited to:

(a) ~~The~~ the name of the alleged violator-;i

(b) ~~His~~ the last known address of the alleged violator-;i

(c) ~~The~~ the number of the permit, if any, issued under 75-

2-204 and 75-2-211, MCA;

(d) ~~A~~ a summary of the complaint made by the department including:

(i) the specific provisions of the statute, ~~or~~ rule or permit alleged to be violated; ~~and~~

(ii) the specific facts alleged to constitute a violation; ~~and~~

(e) ~~A copy of either:~~

~~(i) the any order to take corrective action, order to pay an administrative penalty, or both if given, or; and~~

~~(ii) the notice of hearing requested by the board to answer the charge.~~

(f) ~~If~~ if the ~~board~~ department has issued an order to take corrective action, a statement in conspicuous type stating that the alleged violator will be found in default and the order will become final and enforceable unless, not later than 30 days after the notice is received, the person named ~~therein shall petition the board requests,~~ in writing, ~~for~~ a hearing before the board.

(2) remains the same.

AUTH: 75-2-111, MCA

IMP: 75-2-401, MCA

17.8.316 INCINERATORS (1) through (4) remain the same.

(5) This rule applies to performance tests for determining emissions of particulate matter from incinerators. All performance tests shall be conducted while the affected facility is burning solid or hazardous waste representative of normal operation. Testing shall be conducted in accordance with ARM 17.8.106 and the Montana Source Testing Protocol and Procedures Manual.

(6) remains the same.

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

IMP: 75-2-203, MCA

17.8.320 WOOD-WASTE BURNERS (1) through (8) remain the same.

(9) Rubber products, asphaltic materials, or other prohibited materials specified in ARM 17.8.604~~(2)~~(1)(b) through (d), (f) through (r), (t), ~~and~~ (u), (w) and (y) may not be burned or disposed of in wood-waste burners.

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

IMP: 75-2-203, MCA

17.8.340 STANDARD OF PERFORMANCE FOR NEW STATIONARY SOURCES AND EMISSION GUIDELINES FOR EXISTING SOURCES

(1) through (3) remain the same.

(4) The following apply to designated municipal solid waste landfill facilities under 40 CFR Part 60, subpart Cc:

(a) Designated ~~municipal solid waste landfill~~ facilities under ~~40 CFR Part 60, subpart~~ subpart Cc shall comply with the

requirements in 40 CFR 60.33c, 60.34c, and 60.35c~~7~~ that are applicable to designated facilities and that must be included in a state plan for state plan approval.

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

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

IMP: 75-2-203, MCA

17.8.401 DEFINITIONS In this subchapter, the following definitions apply:

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

(4) "Excessive concentration" as used in (2)(c) means:

(a) remains the same.

(b) For sources seeking credit after October ~~±~~ 11, 1983, for increases in existing stack heights up to the heights established under (2)(b), either:

(i) through (c) remain the same.

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

IMP: 75-2-203, MCA

17.8.801 DEFINITIONS In this subchapter, the following definitions apply:

(1) through (21)(d) remain the same.

(22) The following apply to the definition of the term "major stationary source":

(a) through (b) remain the same.

(c) The fugitive emissions of a stationary source may not be included in determining, for any of the purposes of this subchapter, whether it is a major stationary source, unless the source belongs to one of the following categories of stationary sources:

(i) through (xxvi) remain the same.

(xxvii) any other stationary source category which, as of August 7, 1980, is being regulated under sections ~~7411~~ 111 or ~~7412~~ 112 of the FCAA.

(23) through (29) remain the same.

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

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

17.8.819 CONTROL TECHNOLOGY REVIEW (1) remains the same.

(2) A new major stationary source shall apply BACT for each pollutant subject to regulation under the FCAA that it would have the potential to emit in significant amounts, excluding hazardous air pollutants, except to the extent that such hazardous air pollutants are regulated as constituents of more general pollutants listed in section ~~7408~~ 108(a)(1) of the FCAA. In evaluating the environmental impacts of any control technology option, the BACT analysis shall consider all pollutants, including hazardous air pollutants.

(3) and (4) remain the same.

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

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

17.8.822 AIR QUALITY ANALYSIS (1) through (6) remain the same.

(7) The owner or operator of a proposed major stationary source or major modification of volatile organic compounds who satisfies all conditions of subchapter ~~17~~ 9 may provide post-approval monitoring data for ozone in lieu of providing preconstruction data as required under (1) ~~of this rule~~.

(8) and (9) remain the same.

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

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

17.8.1201 DEFINITIONS In this subchapter, unless indicated otherwise, the following definitions apply:

(1) through (14) remain the same.

(15) "Emissions unit" means any part or activity of a stationary source that emits or has the potential to emit any regulated air pollutant or any pollutant listed under section ~~7412~~ 112(b) of the FCAA. This term is not meant to alter or affect the definition of the term "unit" for purposes of Title IV of the FCAA.

(16) through (33) remain the same.

AUTH: 75-2-217, MCA

IMP: 75-2-217, 75-2-218, MCA

17.8.1204 AIR QUALITY OPERATING PERMIT PROGRAM APPLICABILITY (1) through (2)(c) remain the same.

(3) The department may exempt a source listed in (1) ~~above~~ from the requirement to obtain an air quality operating permit by establishing federally enforceable limitations which limit that source's potential to emit, such that the source is no longer a major stationary source, as defined by ARM 17.8.1201(23).

(a) remains the same.

(b) Any source that obtains a federally enforceable limit on potential to emit shall annually certify that its actual emissions are less than those that would require the source to obtain an air quality operating permit. Such certification shall include the type of information specified in (3)(a) ~~above~~.

(c) through (7) remain the same.

AUTH: 75-2-217, MCA

IMP: 75-2-217, MCA

REASON: The proposed amendments to ARM 17.8.102 would adopt revisions to the federal air quality regulations that are incorporated by reference in the Montana air quality rules. These revisions were published in the Federal Register between July 1, 2002, and June 30, 2003, and are included in the July 1, 2003, edition of the Code of Federal Regulations (CFR). The proposed amendments to ARM 17.8.102 also would incorporate the

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

The proposed amendments to the catchphrases of ARM 17.8.102 and 17.8.103 reflect that the availability of referenced documents now is included in ARM 17.8.103 rather than in ARM 17.8.102.

The proposed amendments to ARM 17.8.103, 17.8.106 and 17.8.316 correct the internal references to the Montana Source Test Protocol and Procedures Manual.

The proposed amendments to ARM 17.8.130 would update language and would make minor editorial changes and corrections necessary to conform to 75-2-401(1), MCA.

The proposed amendments to ARM 17.8.320 would make corrections to internal citations to reflect previous amendments to subchapter 6.

The proposed amendments to ARM 17.8.340 would eliminate "double earmarking" of sections to conform to the current numbering style of the office of the Secretary of State and make minor editorial changes.

The proposed amendment to ARM 17.8.401 is a clerical amendment that would correct a date to conform to the date specified in 40 CFR 51.100(kk)(2).

The proposed amendments to ARM 17.8.801, 17.8.819 and 17.8.1201 would correct the style of Federal citations, and the proposed amendment to ARM 17.8.822 would update an internal citation.

The proposed amendment to ARM 17.8.1204 would update the style of internal references to conform to the current rule drafting style of the office of the Secretary of State.

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

4. Concerned persons may submit their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to the Board Secretary at Board of Environmental Review, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana, 59620-0901; faxed to (406) 444-4386; or emailed to ber@state.mt.us, no later than 5:00 p.m., January 28, 2004. 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.

BOARD OF ENVIRONMENTAL REVIEW

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

Reviewed by:

David Rusoff
DAVID RUSOFF, Rule Reviewer

Certified to the Secretary of State, December 15, 2003.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment)	NOTICE OF PUBLIC HEARING ON
of ARM 17.30.502, 17.30.615,)	PROPOSED AMENDMENT
17.30.619, 17.30.651,)	
17.30.653, 17.30.656,)	(WATER QUALITY)
17.30.657, 17.30.702,)	
17.30.715, 17.30.1001,)	
17.30.1006, and 17.30.1007)	
pertaining to water use)	
classifications and department)	
Circular WQB-7)	

TO: All Concerned Persons

1. On January 16, 2004, at 10:00 a.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., January 5, 2004, 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. The proposed amendments to department Circular WQB-7 can be accessed through the Division's website at www.deq.state.mt.us/wqinfo/Standards/Index.asp, or a copy may be obtained by contacting Christian Levine, Planning, Prevention and Assistance Division, Department of Environmental Quality, P.O. Box 200901, Helena, MT 59620-0901; by emailing clevine@state.mt.us; or by telephone (406) 444-3071.

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

(1) through (13) remain the same.

(14) The board hereby adopts and incorporates by reference department Circular WQB-7, entitled "Montana Numeric Water Quality Standards" (~~December 2002~~ January 2004 edition), which establishes water quality standards for toxic, carcinogenic, bioconcentrating, nutrient, radioactive, and harmful parameters. Copies of Circular WQB-7 are available from the Department of Environmental Quality, P.O. Box 200901, Helena, MT 59620-0901.

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

17.30.615 WATER-USE CLASSIFICATIONS AND DESCRIPTIONS - CONSTRUCTED DITCHES, SEASONAL AND SEMI-PERMANENT LAKES AND EPHEMERAL STREAMS (1) through (1)(h) remain the same.

(2) This rule does not classify any specific water body. Prior to reclassifying a specific water body ~~being~~ classified in ARM 17.30.607 through 17.30.614 under one of the water-use classifications identified in (1)(a) through (h) and before the U.S. environmental protection agency's approval of the water body's revised classification, a use attainability analysis must be conducted in accordance with 40 CFR 131.10(g), (h) and (j).

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

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

(a) department Circular WQB-7, entitled "Montana Numeric Water Quality Standards" (~~December 2002~~ January 2004 edition), which establishes water quality standards for toxic, carcinogenic, bioconcentrating, nutrient, radioactive and harmful parameters;

(b) through (2) remain the same.

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

17.30.651 D-2 CLASSIFICATION STANDARDS (1) remains the same.

(2) No person may violate the following specific water quality standards for waters classified D-2:

(a) ~~the acute aquatic life standards in WQB-7 apply, except for the ammonia standards, which do not apply; the aquatic life standards for priority pollutants listed in WQB-7;~~

(b) the aquatic life standards for ammonia and other non-priority pollutants listed in WQB-7, unless those standards are modified or removed based upon a use attainability analysis developed for a specific waterbody;

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

~~(3) The narrative standards in ARM 17.30.637(1)(d) and (2) that pertain to aquatic life do not apply.~~

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

17.30.653 E-2 CLASSIFICATION STANDARDS (1) remains the same.

(2) No person may violate the following specific water quality standards for waters classified E-2:

~~(a) the acute aquatic life standards in WQB-7 apply, except for the ammonia standards, which do not apply; the aquatic life standards for priority pollutants listed in WQB-7;~~

(b) the aquatic life standards for ammonia and other non-priority pollutants listed in WQB-7, unless those standards are modified or removed based upon a use attainability analysis developed for a specific waterbody;

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

~~(3) The narrative standards in ARM 17.30.637(1)(d) and (2) that pertain to aquatic life do not apply.~~

AUTH: 75-5-301, MCA

IMP: 75-5-301, MCA

17.30.656 E-5 CLASSIFICATION STANDARDS (1) Waters classified E-5 are to be maintained suitable for agricultural purposes, secondary contact recreation, saline tolerant aquatic life and wildlife.

(2) No person may violate the following specific water quality standards for waters classified E-5:

(a) remains the same.

(b) when the daily maximum water temperature is greater than 60°F, no permitted discharge(s) may cause the geometric mean number of organisms of the fecal coliform group to exceed 1,000 per 100 ml, and 10% percent of the samples during any 30-day period may not exceed 2,000 fecal coliforms per 100 ml.

(3) Changes in the water quality must support existing and designated uses.

~~(3) The narrative standards in ARM 17.30.637(1)(d) and (2) that pertain to aquatic life do not apply.~~

AUTH: 75-5-301, MCA

IMP: 75-5-301, MCA

17.30.657 F-1 CLASSIFICATIONS STANDARDS (1) remains the same.

(2) No person may violate the following specific water quality standards for waters classified F-1:

~~(a) the acute aquatic life standards in WQB-7 apply, except for the ammonia standards, which do not apply; the aquatic life standards for priority pollutants listed in WQB-7;~~

(b) the aquatic life standards for ammonia and other non-priority pollutants listed in WQB-7, unless those standards are modified or removed based upon a use attainability analysis developed for a specific waterbody;

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

~~(3) The narrative standards in ARM 17.30.637(1)(d) and (2) that pertain to aquatic life do not apply.~~

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

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

(1) through (23) remain the same.

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

(a) department Circular WQB-7, entitled "Montana Numeric Water Quality Standards" (~~December 2002~~ January 2004 edition), which establishes water quality standards for toxic, carcinogenic, bioconcentrating, nutrient, radioactive, and harmful parameters; and

(b) and (c) remain the same.

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

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

(4) The board ~~hereby~~ adopts and incorporates by reference department Circular WQB-7, entitled "Montana Numeric Water Quality Standards" (~~December 2002~~ January 2004 edition), which establishes water quality standards for toxic, carcinogenic, bioconcentrating, nutrient, radioactive, and harmful parameters.

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

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

(1) through (15) remain the same.

(16) The board ~~hereby~~ adopts and incorporates by reference department Circular WQB-7, entitled "Montana Numeric Water Quality Standards" (~~December 2002~~ January 2004 edition), which establishes water quality standards for toxic, carcinogenic, bioconcentrating, nutrient, radioactive, and harmful parameters.

AUTH: 75-5-201, 75-5-401, MCA
IMP: 75-5-301, 75-5-401, MCA

17.30.1006 CLASSIFICATIONS, BENEFICIAL USES, AND SPECIFIC STANDARDS FOR GROUND WATERS (1)~~(a)~~ Class I ground waters are those ground waters with a natural specific conductance less than or equal to 1,000 microSiemens/cm at 25°C.

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

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

(2)(a) Class II ground waters are those ground waters with a natural specific conductance that is greater than 1,000 and less than or equal to 2,500 microSiemens/cm at 25°C.

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

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

(3)(a) Class III ground waters are those ground waters with a natural specific conductance that is greater than 2,500 and less than or equal to 15,000 microSiemens/cm at 25°C.

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

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

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

(4)(a) Class IV ground waters are those ground waters with a natural specific conductance greater than 15,000 microSiemens/cm at 25°C.

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

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

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

(5) and (6) remain the same.

(7) The board hereby adopts and incorporates by reference department Circular WQB-7, entitled "Montana Numeric Water Quality Standards" (~~December 2002~~ January 2004 edition), which establishes water quality standards for toxic, carcinogenic, bioconcentrating, nutrient, radioactive, and harmful parameters.

AUTH: 75-5-301, 80-15-105, 80-15-201, MCA

IMP: 75-5-301, 80-15-201, MCA

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

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

(a) department Circular WQB-7, entitled "Montana Numeric Water Quality Standards", ~~December 2002~~ January 2004 edition;

(b) through (4) remain the same.

AUTH: 75-5-301, MCA

IMP: 75-5-301, MCA

REASON: The Board is proposing amendment of ARM 17.30.651, 17.30.653, 17.30.656 and 17.30.657, classification standards for ditches, ephemeral and low flow streams, in response to a disapproval action by the United States Environmental Protection Agency (USEPA). The USEPA has a mandatory duty to review and approve water quality standards adopted by individual states. The EPA, during its recent review (at the national and regional level), objected to the

"level of protection" provided for aquatic life in the new D-2, E-2, E-5 and F-1 classes (ARM 17.30.651, 17.30.653, 17.30.656 and 17.30.657, respectively). The specific water-use classifications and descriptions for those classes in ARM 17.30.615 were also disapproved. Normally the USEPA is required to promulgate approvable standards following a disapproval action. However, the Region 8 EPA and the Department have been working together to find a solution since the Department made its review submission in November 2002. The Board's proposed amendments are the result of those discussions and the USEPA has indicated that it would approve the Board's proposed amendments.

The proposed amendments include the addition of chronic aquatic life standards to the D-2, E-2 and F-1 classes with a provision for modification or removal of specific non-priority pollutant standards, after the completion of a Use Attainability Analysis (UAA). The Board proposes to add a "saline tolerant aquatic life" use to the E-5 class and a narrative standard that "changes in water quality must support existing and designated uses." The Board also proposes to remove (3) in the D-2, E-2, E-5 and F-1 classifications. Section (3) removed the application of ARM 17.30.637(1)(d) and (2) that pertained to aquatic life. Retaining this exclusion would be in conflict with the proposed addition of chronic aquatic life standards for these classes. The classifications and standards, if amended as proposed, will be functionally equivalent as those classifications and standards effective August 16, 2002, except that more emphasis will be placed on the UAA which will be the vehicle to modify or remove non-priority pollutant standards (i.e., ammonia).

Should the Board decide not to make the proposed amendments to the disapproved standards, or to adopt amendments that would not meet USEPA approval, the USEPA would be required by the federal Clean Water Act to promulgate approvable standards. The effect would be to have two sets of standards for the same waterbody type. In the MPDES permitting process the more stringent federal standards would likely be used to meet USEPA requirements. The corresponding state standards would not be used and would create confusion in the regulated community.

The Board is also proposing to amend Department Circular WQB-7 to indicate which of the listed aquatic life standards are a USEPA priority pollutant or a non-priority pollutant. The proposed amendment will help clarify which standards apply and which standards may be modified by the classification standards described above. Not indicating which aquatic life standards are priority pollutants or non-priority pollutants will cause the public to contact the Department for each specific parameter, or possibly inappropriately attempt to modify a standard for a parameter through a Use Attainability Analysis.

The Board is proposing the amendment of ARM 17.30.502, 17.30.619, 17.30.702, 17.30.715, 17.30.1001, 17.30.1006 and 17.30.1007 to update the incorporations by reference of

Department Circular WQB-7, which contains Montana's numeric water quality standards. Amending these rules that reference WQB-7 is necessary to adopt the revised version of the Circular.

The Board is proposing the amendment of ARM 17.30.615 to improve the readability of the statement that a Use Attainability Analysis must be completed and approved by the USEPA before reclassification. The proposed amendments are necessary to clarify the meaning of the rule.

The Board is also proposing to amend ARM 17.30.702 and 17.30.1001 to make the introductory language consistent with other definition rules in this chapter.

The Board is proposing to amend ARM 17.30.1006 to make the section numbering conform to the proper rule formatting style of the Secretary of State's office.

The proposed amendments will not change the content or meaning of the rules. The proposed amendments will make the rule consistent with other rules and facilitate proper citation of the rules.

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., January 23, 2004. 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, do not apply.

BOARD OF ENVIRONMENTAL REVIEW

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

Reviewed by:

James M. Madden
JAMES M MADDEN, Rule Reviewer

Certified to the Secretary of State, December 15, 2003.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the proposed	)	NOTICE OF PROPOSED
amendment of ARM 23.5.101,	)	AMENDMENT
23.5.102 and 23.5.105 to)	
incorporate amendments to	)	NO PUBLIC HEARING
federal regulations pertaining	)	CONTEMPLATED
to motor vehicle standards)	
previously incorporated by)	
reference in current rules and)	
to make general revisions to)	
clarify scope of rules)	

TO: All Concerned Persons

1. On January 26, 2004, the department proposes to amend ARM 23.5.101, 23.5.102 and 23.5.105 to update the incorporation of federal regulations pertaining to motor carrier and commercial motor vehicle safety standards to include amendments to the federal regulations published on or before October 1, 2003.

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 than 5:00 p.m. on January 13, 2004, to advise us of the nature of the accommodation that you need. Please contact Brenda Nordlund, Department of Justice, Office of the Attorney General, P.O. Box 201401, Helena, MT 59620-1401; (406) 444-2026; FAX (406) 444-3549; email contactdoj@state.mt.us.

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

23.5.101 TRANSPORTATION OF HAZARDOUS MATERIALS -
INTRASTATE OPERATION - DEFINITIONS (1) A commercial motor vehicle or motor carrier subject to regulation by the department under 44-1-1005, MCA, shall comply with and the department ~~does hereby adopt,~~ adopts by reference, the following federal regulations of the department of transportation ~~which concern~~ concerning the transportation of hazardous materials. The regulations adopted by reference are 49 CFR part 107, 49 CFR part 171, 49 CFR part 172, 49 CFR part 173, 49 CFR part 177, 49 CFR part 178, and 49 CFR part 180. The regulations adopted may be found in the Code of Federal Regulations, Title 49, chapter I, subchapters B and C, as updated through ~~June 1, 2001; they~~ October 1, 2003. Copies may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, D-C-20402.

(2) The following definitions apply to the federal regulations incorporated in this rule and ARM 23.5.102 with

respect to the operation of a commercial motor vehicle or motor carrier in intrastate commerce:

(a) "Commercial motor vehicle (CMV)" means any self-propelled or towed vehicle used on a way of this state open to the public to transport passengers or property when the vehicle:

(i) has a gross vehicle weight rating, ~~or~~ gross combination weight rating, gross vehicle weight, or gross combination weight of 26,001 or more pounds (11,804 or more kilograms) and that is not a farm vehicle operating solely in Montana; ~~or~~

(ii) is designed or used to transport more than 15 passengers, including the driver, not for compensation;

(iii) is designed or used to transport nine or more passengers, including the driver, for compensation; or

~~(iii)~~(iv) is of any size and is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act (49 U.S.C. 5101, et seq.) and which require the motor vehicle to be marked or placarded under the Hazardous Materials Regulations (49 CFR chapter I, subchapter C); ~~and~~

~~(iv) is not a farm vehicle.~~

(b) "Farm vehicle" means a commercial motor vehicle that is:

(i) controlled by a farmer and operated by the farmer or a person employed by the farmer as a private motor carrier of property;

(ii) being used to transport either:

(A) agricultural products; or

(B) farm machinery, farm supplies, or both, to or from a farm;

(iii) not being used in the operation of a for-hire motor carrier; and

(iv) not carrying hazardous materials of a type or quantity that requires the commercial motor vehicle to be placarded in accordance with 49 CFR 177.823.

(c) "Farmer" means any person who operates a farm or is directly involved in the cultivation of land, crops, or livestock which are:

(i) owned by that person; or

(ii) under the direct control of that person.

(d) "Gross combination weight (GCW)" means the loaded weight of a combination of vehicles. In the absence of a readily available means to determine the weight of a vehicle combination, GCW will be deemed to equal the declared weight of the power unit or the aggregate value of the tire rating in pounds for each tire on a vehicle missing a manufacturer's rating certification plate, whichever is greater.

~~(d)~~(e) "Gross combination weight rating (GCWR)" means the value specified by the manufacturer as the loaded weight of a combination (articulated) motor vehicle. In the absence of a value specified by the manufacturer, GCWR will be determined by adding the GVWR of the power unit and the total weight of the towed unit and any load thereon.

(f) "Gross vehicle weight (GVW)" means the weight of a

vehicle without load plus the weight of any load on the vehicle. In the absence of a readily available means to determine the weight of a vehicle, GVW will be deemed to equal the vehicle's declared weight, as that term is defined in 61-1-510, MCA, or the aggregate value of the tire rating in pounds for each tire on a vehicle missing a manufacturer's rating certification plate, whichever is greater.

~~(e)~~(g) "Gross vehicle weight rating (GVWR)" means the value specified by the manufacturer as the loaded weight of a single motor vehicle. In the absence of a stated manufacturer's rated capacity for a particular vehicle, GVWR will be deemed to equal the maximum weight limit for which the vehicle is licensed under Title 61, chapter 10, MCA, or the actual physical weight of the vehicle.

~~(f)~~(h) "Intrastate commerce" means any trade, traffic, or transportation within the state of Montana which is not described in the term "interstate commerce," as defined in 49 CFR 390.5.

~~(g)~~(i) "Motor carrier" means a person transporting goods or passengers by operation of a commercial motor vehicle upon a way of the state open to the public. The term includes duly authorized agents, officers, and representatives, as well as employees of the motor carrier who are responsible for hiring, supervising, training, assigning, or dispatching of drivers and employees concerned with the installation, inspection and maintenance of motor vehicle equipment or accessories.

~~(h)~~(j) "Way of this state open to the public" means any highway, road, alley, lane, parking area or other public or private place adapted and fitted for public travel that is in common use by the public, including, but not limited to, any roadway available to, and passable by, except during scheduled periods, extreme weather or emergency conditions, four-wheel standard passenger cars, and open to the general public for use without restrictive gates, prohibitive signs, or regulation other than restrictions based on size, weight, or class of vehicle registration.

AUTH: 44-1-1005~~(1)~~, MCA
IMP: 44-1-1005~~(1)~~, MCA

23.5.102 FEDERAL MOTOR CARRIER SAFETY RULES AND STATE MODIFICATIONS (1) Any commercial motor vehicle or motor carrier subject to regulation by the department under 44-1-1005, MCA, shall comply with and the department ~~does hereby adopt,~~ adopts by reference, the following portions of the federal motor carrier safety regulations of the department of transportation, subject to the provisions of (2) ~~below~~. The regulations adopted are 49 CFR part 382, 49 CFR part 385, 49 CFR part 387, 49 CFR parts 390 through 399 and Appendix G to subchapter B of chapter III, Title 49 of the Code of Federal Regulations, as updated through ~~June 1, 2001~~ October 1, 2003. Copies of the regulations may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, D-C- 20402.

(2) The federal regulations incorporated ~~herein~~ by

reference are subject to the following modifications:

(a) For purposes of part 385 as applied to intrastate carriers, the "compliance review" will be referred to as a "safety fitness review." A safety fitness review may only be conducted by a specially trained civilian inspector authorized by the department to perform such reviews.

(b) With respect to 49 CFR 385.13, the prohibitions on transportation only apply to commercial motor vehicles or motor carriers operating in interstate commerce.

(c) With respect to 49 CFR 385.21, ~~a "Motor Carrier Identification Report" (form MC805) prescribed by the department shall be used by all intrastate carriers instead of a "Motor Carrier Identification Report, Form MCS 150"; this report may be obtained from the Montana Highway Patrol/Motor Vehicle Inspection Bureau, 2550 Prospect, P.O. Box 201419, Helena, MT 59620-1419~~ an intrastate motor carrier must complete a "Motor Carrier Identification Report" (form MCS-150) at the following times:

(i) before the carrier begins operation; and

(ii) every 24 months thereafter, in accordance with the schedule in 49 CFR 390.19.

(d) For the purpose of 49 CFR 390.21, the department will assign a ~~motor vehicle identification (MVI)~~ United States department of transportation (USDOT) number to each intrastate motor carrier and that number, in addition to the name or trade name of the motor carrier, must be marked on each self-propelled commercial motor vehicle operated by the carrier in the same manner as is required of a federally issued USDOT number.

(i) The motor carrier is required to mark each vehicle subject to these regulations with "USDOT", the number assigned and the state abbreviation "MT."

(ii) All CMVs that are part of an intrastate motor carrier's existing fleet as of [the effective date of this rule] and that are marked with a motor vehicle identification (MVI) number must be converted to the carrier's USDOT number on or before September 30, 2005.

(e) Part 391 is subject to the age and physical qualification provisions of ARM 23.3.505 and 23.3.506 for those individuals operating under a type 2 commercial driver's license and not engaged in "interstate commerce," as defined in 49 CFR, part 391.

(f) For the purpose of 49 CFR 395.1(k), the planting and harvesting seasons during which transportation of agricultural commodities or farm supplies for agricultural purposes is conducted shall be deemed to run from January 1 through December 31 of each year.

(g) For the purpose of 49 CFR 395.8, a person exempted from 49 CFR 395.3 pursuant to the exclusion set forth in 49 CFR 395.1(k) must keep a daily record of the number of hours worked. No record of duty status must be maintained. The format of the daily record may be determined by the record keeper, so long as the format includes a provision for entry of hours worked by calendar day. The daily record must be retained for a period of ~~6~~ six months from initial entry date. Payroll records or time

sheets may be used for this purpose, if they are updated on a daily basis.

AUTH: 44-1-1005(1), MCA
IMP: 44-1-1005(1), MCA

23.5.105 SAFETY INSPECTION PROGRAM: PURPOSE AND OUT-OF-SERVICE CRITERIA (1) The safety inspection program implemented by the department of justice is intended to focus on those driver-related and mechanical factors most often blamed for accidents involving trucks, passenger carriers, and hazardous material transporters and is designed to remove potentially unsafe drivers and imminently hazardous vehicles from Montana's highways.

(2) In addition to the federal regulations adopted in ARM 23.5.102, the safety inspection program will follow Commercial Vehicle Safety Alliance (CVSA), ~~Memorandum of Understanding, Appendix A,~~ North American Uniform Out-of-Service Criteria (January 1, 2004), incorporated herein by reference. A copy of the North American Uniform Out-of-Service Criteria may be obtained from the Commercial Vehicle Safety Alliance, ~~5430 Grosvenor Lane, Suite 130, Bethesda, MD 20814~~ 1101 17th Street, NW, Suite 803, Washington, DC 20036.

(3) For purposes of this program, inspection may be waived for any vehicle subject to inspection and bearing a CVSA inspection decal issued by state or province using CVSA out-of-service criteria within the preceding 90 days, as identified by color code and corner trimming.

AUTH: 44-1-1005(1), MCA
IMP: 44-1-1005(1), MCA

4. STATEMENT OF REASONABLE NECESSITY:

(a) Overview of federal rules incorporation.

The Department proposes the amendment of these rules in order to bring the rules concerning the appropriate hazardous material and safety regulations into compliance with the most recent version of applicable federal regulations. Such revisions will ensure minimum duplication and maximum coordination of enforcement effort with the federal authorities and compliance with program requirements for continued federal funding under 49 CFR Part 350. Periodic updating of state rules to conform to applicable federal regulations is required to ensure continued federal funding.

Rules 23.5.101 and 23.5.102, as currently written, were last amended 9/21/01 and 23.5.105, as currently written, was last amended 12/22/95. The department proposes to adopt the specified federal regulations, as amended by final rule adoptions published in the Federal Register after September 21, 2001, but on or before October 1, 2003. By such proposal, the incorporation will include final rule adoptions with effective dates and/or compliance dates both before and after October 1, 2003. This proposal specifically incorporates any revision to the federal regulations by the United States Department of

Transportation, Federal Motor Carrier Safety Administration, and Research and Special Project Administration, listed below:

Federal Register (Volume) (Page start #)(Date Published)	Effective Date	Amended 49 CFR Parts
FR (Vol. 66)(Page 67689)(12/31/01)	12/31/01	393
FR (Vol. 67)(Page 9410)(3/1/02)	4/1/02	390
FR (Vol. 67)(Page 13680)(3/25/02)	3/5/02	172
FR (Vol. 67)(Page 31978)(5/13/02)	1/1/03	385
FR (Vol. 67)(Page 41196)(6/17/02)	7/17/02	385
FR (Vol. 67)(Page 46123)(7/12/02)	8/12/02	172, 174, 175, 176, 177
FR (Vol. 67)(Page 49741)(7/31/02)	9/30/02	390
FR (Vol. 67)(Page 49741)(7/31/02)	9/30/02	390
FR (Vol. 67)(Page 51626)(8/8/02)	10/1/02	107, 171, 172 173, 177, 178 179, 180
FR (Vol. 67)(Page 51770)(8/9/02)	2/5/02	393
FR (Vol. 67)(Page 53117)(8/14/02)	10/1/02	171, 172, 173 177, 178
FR (Vol. 67)(Page 55162)(8/28/02)	9/27/02	392
FR (Vol. 67)(Page 58343)(9/16/02)	1/6/03	107
FR (Vol. 67)(Page 61211)(9/27/02)	12/26/02	392, 393
FR (Vol. 67)(Page 61006)(9/27/02)	9/27/02	105, 107, 130 171, 172, 173 175, 176, 177 178, 179, 180
FR (Vol. 67)(Page 61287)(9/30/02)	10/1/02	173, 177
FR (Vol. 67)(Page 61818)(10/2/02)	10/2/02	382, 387, 390 391, 393
FR (Vol. 67)(Page 62191)(10/4/02)	11/4/02	397
FR (Vol. 67)(Page 66571)(11/1/02)	11/1/02	172, 174, 175 176, 177
FR (Vol. 68)(Page 1013)(1/8/03)	1/8/03	171
FR (Vol. 68)(Page 1341)(1/9/03)	3/3/03	107
FR (Vol. 68)(Page 14509)(3/25/03)	3/25/03	172
FR (Vol. 68)(Page 19257)(4/18/03)	10/1/03	107, 171, 172 173, 177, 178 180
FR (Vol. 68)(Page 22455)(4/28/03)	6/27/03	385, 390, 395
FR (Vol. 68)(Page 23831)(5/5/03)	5/5/03	107, 171, 176 177
FR (Vol. 68)(Page 24653)(5/8/03)	6/9/03	107, 171, 173 177, 180
FR (Vol. 68)(Page 32409)(5/30/03)	6/30/03	171, 173, 177 178
FR (Vol. 68)(Page 32679)(6/2/03)	6/2/03	107, 171, 173 177, 180
FR (Vol. 68)(Page 44991)(7/31/03)	10/1/03	171, 172, 173 178, 180
FR (Vol. 68)(Page 47860)(8/12/03)	11/10/03	390, 398
FR (Vol. 68)(Page 48562)(8/14/03)	10/1/03	171, 172, 173 177, 178, 180

FR (Vol. 68)(Page 52363)(9/3/03)	10/1/03	172, 178, 180
FR (Vol. 68)(Page 55542)(9/26/03)	9/26/03	107, 180
FR (Vol. 68)(Page 56196)(9/30/03)	9/30/03	387, 391, 393 396
FR (Vol. 68)(Page 57629)(10/3/03)	10/3/03	171, 172, 173 177, 178,

(b) Addition to "Commercial motor vehicle" definition. The current definition did not include reference to non-compensated 15 passenger vehicles or compensated vehicles less than nine passengers. This addition was the result of changes in the federal definition referenced in 49 CFR Part 390.5. These vehicles would now be subject to the safety requirements in the 49 CFR regulations adopted within this document limited to any exemptions name within those parts.

(c) Additions and deletions pertaining to definitions of "Gross combination weight rating (GCWR)" and "Gross vehicle weight rating (GVWR)" in ARM 23.5.101(2)(d) and (e). Clarification was needed to determine a vehicle and driver's compliance with the Federal Motor Carrier Safety Regulations when there was an absence of the manufacturer's rating or the inability to physically weigh the vehicle. The addition of including the tire rating and the declared weight of a vehicle or combination of vehicles is needed to help the road-side officer determine if the vehicle and/or the driver is required to comply with certain portions or all of the Federal Motor Carrier Safety Regulations. This would also clarify the level of compliance needed for the motor carrier as well by helping motor carrier personnel to assess their own level of compliance prior to operation of vehicles, thereby reducing costly and needless delays.

(d) Additions and deletions pertaining to ARM 23.5.102(2)(c) and (d). Presently, the department requires an intrastate motor carrier to complete an MC805 form to be used in the assignment of a "MVI" (Motor Vehicle Inspection) number. This number is required to be placed on every vehicle that is subject to the regulations adopted.

The department proposes to discontinue that numbering system and require all intrastate motor carriers to obtain and mark their vehicles with an intrastate USDOT-MT number. The MCS-150 form will be completed to accomplish this. This change will allow the department to take advantage of the federal scoring system, "Safety Status Measurement System" (SAFESTAT), which categorizes intrastate motor carriers according to the carrier's safety fitness level. Using SAFESTAT, the department will be able to focus its resources on those motor carriers exhibiting the least level of safety fitness. This change would also standardize marking requirements between the state and federal governments creating ease of compliance for the motor carrier industry and ease of enforcement for the department. The change would create a more uniform system for both intrastate and interstate motor carriers, promoting a more level economic operating field within the whole transportation industry. The department intends to allow existing motor

carriers adequate time to comply with this change so as to not impose any undue economic burden.

(e) Changes in ARM 23.5.105. The changes in this rule reflect the proper address for the Commercial Vehicle Safety Alliance, which moved since the last amendment.

5. Concerned persons may present their data, views or arguments concerning the proposed amendments in writing to Brenda Nordlund, Department of Justice, Office of the Attorney General, P.O. Box 201401, Helena, MT 59620-1401; (406) 444-2026; FAX (406) 444-3549; email contactdoj@state.mt.us, to be received no later than 5:00 p.m., January 23, 2004.

6. If persons who are directly affected by the proposed amendments wish to express their data, views and arguments orally or in writing at a public hearing, they must make a written request for a hearing and submit their request along with any written comments they have to the same address as above. A request for hearing must be received no later than 5:00 p.m., January 23, 2004.

7. If the department 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 500, based upon the current number of intrastate motor carriers operating (3,000), and interstate motor carriers domiciled (2,000) in the state.

8. An electronic copy of this notice is available through the department's site at www.doj.state.mt.us/resources/administrativerules.asp.

9. The Department of Justice maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies the subject area or areas of interest of the person requesting notice, including but not limited to rules proposed by the Motor Vehicle Division, the Forensic Science Division, the Highway Patrol Division, the Fire Prevention and Investigation Bureau, the Division of Criminal Investigation, the Board of Crime Control or the Law Enforcement Academy, or proposed rules pertaining to certificates of public advantage for health care. Such written request may be mailed or delivered to Brenda Nordlund, Department of Justice, Office of the Attorney General, P.O. Box 201401, Helena, MT 59620-1401, faxed to the office at (406) 444-3549, or may be made by

completing a request form at any rules hearing held by the department.

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

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

/s/ Ali Bovington
ALI BOVINGDON, Rule Reviewer

Certified to the Secretary of State December 15, 2003.

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

In the matter of the proposed) NOTICE OF
amendment of ARM 8.64.501 and) PROPOSED AMENDMENT
8.64.509, pertaining to)
application requirements) NO PUBLIC HEARING
and licensure by endorsement) CONTEMPLATED

TO: All Concerned Persons

1. On January 26, 2004, the Board of Veterinary Medicine (Board) proposes to amend the above-stated rules relating to veterinary matters.

2. The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Veterinary Medicine no later than 5:00 p.m., January 15, 2004, to advise us of the nature of the accommodation that you need. Please contact Cheryl Brandt, Board of Veterinary Medicine, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2394; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail dlibsdrvvet@state.mt.us.

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

8.64.501 APPLICATION REQUIREMENTS (EXAMINATION)

(1) Applicants for licensure by examination in the state of Montana shall submit a completed application with the proper fee and supporting documents to the board office no later than 45 days prior to the jurisprudence examination date as set by the board. Applicants for the North American veterinary licensing examination (NAVLE) wishing to sit as a Montana candidate shall submit the Montana state licensure application to the board no later than ~~65~~ 97 days prior to the first date of each NAVLE test window. Montana NAVLE candidates shall submit the NAVLE application and fee directly to the national board of veterinary medical examiners examination committee. Supporting documents for the Montana state licensure application ~~shall~~ must include:

(a) through (2) remain the same.

(3) Foreign veterinary school graduates ~~must~~ shall either have completed the requirements of the American veterinary medical association's education commission for foreign veterinary graduates (ECFVG) as evidenced by a copy of the ECFVG certificate, or must have completed the requirements of the program for the assessment of veterinary education equivalence (PAVE) as evidenced by a copy of the PAVE certificate before an application will be accepted.

~~(a) A foreign veterinary medical school graduate may serve the required, but not more than, one year internship (12 months) in this state providing, however, that proof can be shown that the private practice is currently approved by the ECFVG, and written approval has been obtained from the board of veterinary medicine. This internship allows candidates to participate in all phases of the practice of veterinary medicine under direct supervision to the extent permitted by 37-18-101, MCA, et seq.~~

~~(b)(a)~~ For specific information on the requirements of the ECFVG, contact the American Veterinary Medical Association, ECFVG, 1931 North Meacham Road, Suite 100, Schaumburg, IL 60173. For specific information on the requirements of the PAVE, contact the American Association of Veterinary State Boards at ~~3100 Main Street, Suite 208,~~ 4106 Central, Kansas City, MO 64111.

(4) remains the same.

AUTH: 37-18-202, MCA

IMP: 37-18-202, 37-18-302, ~~37-18-303,~~ MCA

REASON: It is reasonable and necessary that the Board of Veterinary Medicine propose rule changes to update the examination application requirements. The national testing agency for veterinary medicine has recently notified the Board that the number of days required to process a national examination application has increased from 50 days to 82 days. The Board is changing its deadline to comply with the national requirement. The Board has also recently been informed that an internship for foreign graduates has not been required since the mid-1980s. The Board is removing this reference to an antiquated provision. The rule change also updates a name change and address for national contact organizations. In addition, there is also reasonable necessity to amend the rule to make technical changes to make word usage consistent with the style requirements of the Legislative Service Division's Bill Drafting Manual, and to delete a questionable IMP cite. The changes will affect all veterinarians applying for licensure by examination.

8.64.509 LICENSURE OF OUT-OF-STATE APPLICANTS (ENDORSEMENT) (1) A license to practice veterinary medicine in the state of Montana may be issued at the discretion of the board provided the applicant meets all of the following requirements:

(a) The candidate has graduated from and holds a degree/diploma from a school of veterinary medicine accredited or approved by the American veterinary medical association council on education as evidenced by a certified copy of the transcript sent directly from the veterinary school. Graduates of foreign veterinary schools ~~must~~ shall have completed the requirements of the American veterinary medical association's education commission for foreign veterinary graduates (ECFVG) or the program for the assessment of veterinary education equivalence (PAVE).

(b) through (f) remain the same.

~~(g) The candidate has not previously taken and failed to pass the veterinary practical licensing examination in this state.~~

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

AUTH: 37-1-131, 37-18-202, MCA

IMP: 37-1-304, MCA

REASON: It is reasonable and necessary for the Board to propose to update the application requirements for out-of-state applicants by endorsement. It is reasonable and necessary to add the recently approved method of evaluating foreign graduate education and training (PAVE) to apply to endorsement candidates for licensure as well as examination candidates, to make the rule consistent with the proposed amendments in ARM 8.64.501.

It is reasonable and necessary that the Board propose to amend the rule to delete the requirement that an applicant cannot have previously taken and failed the Montana practical examination. The Board has not administered its own practical examination since 1997. The Board has also determined that a candidate that has previously taken and failed the Montana veterinary practical examination has sufficiently demonstrated safety for the public through a record of four years of undisciplined practice in another state and passing the national examination and Montana jurisprudence examination. The Board believes this will remove a possible barrier to licensure for some candidates, and thus provide Montanans with greater access to veterinary services.

In addition, there is also reasonable necessity to amend the rule to make technical changes to make word usage consistent with the style requirements of the Legislative Service Division's Bill Drafting Manual. The proposed amendments will affect all veterinarians applying for licensure via endorsement.

4. Concerned persons may submit their data, views or arguments concerning the proposed amendment in writing to the Board of Veterinary Medicine, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to dlibsdrvvet@state.mt.us and must be received no later than 5:00 p.m., January 22, 2004.

5. If persons who are directly affected by the proposed amendment wish to express their data, views and arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to Cheryl Brandt, Board of Veterinary Medicine, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to dlibsdrvvet@state.mt.us to be received no later than 5:00 p.m., January 22, 2004.

6. If the Board receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed

amendment; from the appropriate administrative rule review committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 99 persons based on approximately 991 licensees.

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

8. The Board of Veterinary Medicine will meet on January 26, 2004, to consider the comments made by the public, the proposed responses to those comments, and take final action on the proposed amendments. Members of the public are welcome to attend the meeting and listen to the Board's deliberations.

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

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

BOARD OF VETERINARY MEDICINE
JOHN SMITH, 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 on December 15, 2003.

BEFORE THE BOARD OF REAL ESTATE APPRAISERS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the proposed) NOTICE OF PROPOSED
amendment of ARM 24.207.402,) AMENDMENT
adoption of USPAP by reference)
) NO PUBLIC HEARING
) CONTEMPLATED

TO: All Concerned Persons

1. On March 1, 2004, the Board of Real Estate Appraisers proposes to amend ARM 24.207.402, adoption of USPAP by reference.

2. The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Real Estate Appraisers no later than 5:00 p.m., on January 20, 2004, to advise us of the nature of the accommodation that you need. Please contact Grace Berger, Board of Real Estate Appraisers, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2386; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail dlibsrea@state.mt.us.

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

24.207.402 ADOPTION OF USPAP BY REFERENCE (1) Upon review of the publication known as the Uniform Standards of the Professional Appraisal Practice (USPAP), published by the appraisal foundation, the board ~~hereby~~ adopts and incorporates by reference the ~~2003~~ 2004 edition of USPAP. The board adopts and incorporates by reference the advisory opinions listed as an addendum to the USPAP publication, for the purpose of explaining and interpreting professional appraisal practice standards as required by 37-54-105, MCA.

(2) Upon review of the publication known as USPAP Frequently Asked Questions (USPAP FAQ), published by the appraisal foundation, the board ~~hereby~~ adopts and incorporates by reference the ~~2003~~ 2004 edition of USPAP FAQ, for the purpose of explaining and interpreting the standards as provided by 37-54-105, MCA.

(3) and (4) remain the same.

AUTH: 37-54-105, MCA
IMP: 37-54-105, 37-54-403, MCA

REASON: The Board finds it is reasonably necessary to incorporate by reference the most current version of professional standards established by the appraisal standards

board of the Appraisal Foundation, as required by the provisions of 37-54-403, MCA. The Board also finds it reasonably necessary to incorporate by reference the various publications and documents by which the Board will use to explain and interpret the USPAP, as directed in 37-54-105(6), MCA. The Board finds that the USPAP are the generally accepted standards of professional appraisal practice.

4. Concerned persons may present their data, views or arguments concerning the proposed amendment in writing to the Board of Real Estate Appraisers, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to dlibsirea@state.mt.us. Any comments must be received no later than 5:00 p.m., January 27, 2004.

5. If persons who are directly affected by the proposed amendment wish to express their data, views and arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to the Board of Real Estate Appraisers, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to dlibsirea@state.mt.us, to be received no later than 5:00 p.m., January 27, 2004.

6. If the board receives requests for a public hearing on the proposed amendments from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendment; from the appropriate administrative rule review committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 44 persons based on approximately 436 licensees.

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

8. The Board of Real Estate Appraisers will meet in its offices on the fourth floor, 301 South Park Avenue, Helena,

Montana on March 1, 2004, to consider the comments made by the public, the proposed responses to those comments, and take final action on the proposed amendment. Members of the public are welcome to attend the meeting and listen to the Board's deliberations.

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

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

/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 December 15, 2003.

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

In the matter of the adoption	)	NOTICE OF PUBLIC HEARING
of Rule I and the amendment	)	ON PROPOSED ADOPTION AND
of ARM 37.36.101, 37.36.401,	)	AMENDMENT
37.36.402 and 37.36.603 and)	
the repeal of ARM 37.36.406)	
pertaining to the Montana)	
telecommunications access)	
program (MTAP))	

TO: All Interested Persons

1. On January 13, 2004, at 10:00 a.m., a public hearing will be held in the auditorium of the Department of Public Health and Human Services Building, 111 N. Sanders, Helena, Montana to consider the proposed adoption and amendment of the above-stated rules.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice or provide reasonable accommodations at the public hearing site. If you need to request an accommodation, contact the department no later than 5:00 p.m. on January 5, 2004, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970; Email dphhslegal@state.mt.us.

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

RULE I FINANCIAL ELIGIBILITY CRITERIA (1) Individuals whose gross family income is less than 250% of the 2003 poverty guidelines published by the U.S. department of health and human services (HHS) are eligible for a loan of specialized telecommunications equipment based on income. The HHS 2003 poverty guidelines and 250% of the poverty guidelines for families of various sizes are shown in (2).

(2) The 2003 poverty guidelines and 250% of the poverty guidelines are as follows:

FAMILY SIZE	100% OF POVERTY GUIDELINE	250% OF POVERTY GUIDELINE
One	\$ 8,980	\$22,450
Two	12,120	30,300

Three	15,260	38,150
Four	18,400	46,000
Five	21,540	53,850
Six	24,680	61,700
Seven	27,820	69,550
Eight	30,960	77,400
Each Additional Person, Add	3,140	7,850

(3) There is no asset test to be eligible for a loan of specialized telecommunications equipment.

AUTH: Sec. 53-19-305, MCA
IMP: Sec. 53-19-307, MCA

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

37.36.101 DEFINITIONS For purposes of this chapter, the following definitions apply:

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

(5) "Department" means the department of public health and human services.

~~(5)~~ (6) "Director" means the person employed by the committee on telecommunications services to administer the Montana telecommunications access program (MTAP).

(7) "Family" means the person with a telephone usage disability and the relatives with whom the person resides as specified in (7)(a) through (d), except that if the person with a telephone usage disability is a foster child, "family" means the foster child only and does not include the persons with whom the foster child resides, whether related or unrelated to the child. Relatives of the person with a telephone usage disability included in the household when the person is not a foster child are:

(a) the spouse;

(b) the mother and/or father, if the person with a telephone usage disability is a minor child. This includes biological parents and parents by adoption and, at the option of the person with a telephone usage disability, may include stepparents;

(c) minor children. This includes biological children and children by adoption and, at the option of the person with a telephone usage disability, may include stepchildren; and

(d) minor siblings. This includes half-siblings and, at the option of the person with a telephone usage disability, may include stepsiblings.

~~(6)~~ (8) "Gross income" means the total income, including earned and unearned income, before taxes or any other deductions, of the family of the individual applying for or receiving a telecommunication device from MTAP. Gross income ~~does not include the income of other members of the individual's household and~~ does not include in kind income.

~~(7)~~ (9) "Hard of hearing" means having a hearing loss to the extent that the person requires specialized telecommunications equipment to communicate effectively on the telephone.

~~(8)~~ (11) "MTAP" means the Montana telecommunications access program.

~~(9)~~ (10) "Local exchange company" means a telecommunications company which provides telephone access lines or wireless service to members of the public who are its customers.

(12) "Mobility impaired" means having reduced function of the arms and hands, making activities related to moving, turning or pressing objects difficult or impossible. The term includes difficulty in using a wide range of telecommunications equipment.

~~(10)~~ (13) "Person with a telephone usage disability" means an individual who is deaf, deaf-blind, hard-of-hearing, ~~or~~ speech impaired or mobility impaired and is in need of specialized telecommunications equipment.

(11) and (12) remain the same but are renumbered (14) and (15).

~~(13)~~ (16) "Specialized telecommunications equipment" means any telecommunications device which enables or assists a person with a telephone usage disability to communicate with others by means of the conventional telephone network. The term includes but is not limited to telecommunications devices, puff-blow devices, electronic artificial larynx devices, amplified handsets, ~~and~~ telebraille and equipment for the mobility impaired.

(14) and (15) remain the same but are renumbered (17) and (18).

AUTH: Sec. 53-19-307, MCA

IMP: Sec. 53-19-305 and 53-19-307, MCA

37.36.401 LOANS (1) A person who satisfies the eligibility requirements of ARM 37.36.403 is eligible for a cost free loan of specialized telecommunications equipment. Specialized telecommunications equipment will be loaned to a person who satisfies the eligibility requirements of ARM 37.36.603 after the individual has received training and signed a written agreement accepting the conditions of the loan prescribed in ARM 37.36.612.

(2) remains the same.

AUTH: Sec. 53-19-307, MCA

IMP: Sec. 53-19-307, MCA

37.36.402 OWNERSHIP (1) All equipment loaned through MTAP will remain the property of the state of Montana. All equipment will be recorded and tracked for a minimum of five years by serial number, state of Montana identification tag, and name, address and telephone number of recipient.

AUTH: Sec. 53-19-307, MCA
IMP: Sec. 53-19-307, MCA

37.36.603 NONFINANCIAL ELIGIBILITY CRITERIA (1) To be eligible for a loan of specialized telecommunications equipment, an applicant, in addition to meeting the financial criteria for eligibility specified in [Rule I], must:

(a) through (c) remain the same.

(d) be able to demonstrate the applicant's ability to understand the nature and use of the equipment; and

(e) have regular access to telephone service; and.

~~(f) have gross annual income of \$35,000 or less.~~

(2) Specialized telecommunications equipment will be loaned to a person who satisfies the requirements of this rule and of [Rule I] for eligibility after the person has received training and signed a written agreement accepting the conditions of the loan prescribed in ARM 37.36.612.

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

AUTH: Sec. 53-19-307, MCA
IMP: Sec. 53-19-307, MCA

4. ARM 37.35.406 as proposed to be repealed is on page 37-7867 of the Administrative Rules of Montana.

AUTH: Sec. 53-19-307, MCA
IMP: Sec. 53-19-307, MCA

5. The Montana Telecommunications Access Program (MTAP) provides specialized telecommunications equipment to persons who need such equipment to communicate effectively on the telephone. MTAP is administered by the Committee on Telecommunications Access Services for Persons with Disabilities (the Committee). The amendment of the administrative rules governing MTAP is now necessary to implement amendments to MTAP's governing statutes at 53-19-301 through 53-19-312, MCA, made by the 57th Montana Legislature in Senate Bill 360 and the 58th Montana Legislature in House Bill 266.

Prior to these amendments, 53-19-302, MCA defined "person with a disability" to mean an individual who is deaf, deaf and blind, hard-of-hearing, or speech impaired. 53-19-302, MCA, as amended, expands the definition of "person with a disability" to include persons who are mobility impaired. It is therefore necessary to amend ARM 37.36.101, the definitions rule, to enlarge the definition of the term "person with a telephone usage disability" to include mobility impaired persons and to

add the definition of "mobility impaired person" provided in Senate Bill 360. The definition of "specialized telecommunications equipment" also must be amended to include equipment for the mobility impaired.

It is also necessary to add a definition of "family" to ARM 37.36.101 because 53-19-307, MCA, as amended provides that eligibility for MTAP is limited to persons whose family income is less than 250% of the federal poverty level. The Committee proposes to define a family as including the spouse, mother and father, and children who reside with the person with a telephone usage disability because this definition is consistent with the commonly accepted meaning of the term "family" and is also consistent with the way the term "family" is defined for purposes of many public assistance programs. The Committee proposes to define "family" to exclude foster children because the inclusion of payments received for the care of foster children could adversely affect eligibility for MTAP and the Committee does not wish to penalize families who are willing to provide care to foster children.

Similarly, the Committee proposes to allow the individual applying for MTAP the option of including or excluding stepparents, stepchildren, and stepsiblings from the family unit so that the inclusion of income of a steprelative will not adversely affect eligibility for MTAP. The Committee feels that an individual should not be ineligible for MTAP because of income of a steprelative, since there is generally no legal obligation to support steprelatives. On the other hand, inclusion of steprelatives who have no income or little income in the family unit would benefit the person applying for MTAP, because the applicable income limit is higher if there are more persons included in the family. The Committee has chosen to allow the option of inclusion of steprelatives in the family in order to allow as many individuals as possible to qualify for MTAP.

The amendment of the definition of "gross income" in ARM 37.36.101 is also necessary because the current definition states that income of other members of the individual's household is not included in gross income. This is no longer correct, since the statute now requires income of family members to be considered in determining eligibility. It is therefore necessary to amend the definition to provide that gross income includes income of the individual's family.

Prior to its amendment, 53-19-307(1), MCA authorized the Committee to develop an appropriate means test for eligibility for MTAP, but it did not contain any specific income criteria for eligibility. Since the statute at that time did not contain an income limit based on the federal poverty levels and did not specify that family income must be considered rather than just the income of the individual needing equipment, ARM 37.36.603(1)(e) currently limits loans of equipment to persons

whose gross annual income is \$35,000 or less, regardless of the size of the person's family and without comparing the person's income to the federal poverty levels. Thus, subsection (1)(e) of ARM 37.36.603 must now be deleted, since the \$35,000 gross income limit is no longer applicable, and in its place Rule I is being adopted to specify that persons whose gross family income is less than 250% of the FPL are eligible for loans of specialized telecommunications equipment.

53-19-307, MCA, as amended provides that the Committee shall develop an appropriate means test for eligibility for MTAP based on family income of less than 250% of the federal poverty level. The federal poverty levels (FPL) used are those published by the U.S. Department of Health and Human Services, as specified in Rule I. Although the language of 53-19-307, MCA would allow the Committee to set the income limits for eligibility lower than 250% of the FPL, the Committee chose to cap eligibility at 250% of poverty. The Committee chose to adopt income limits which are the maximum allowed by the statute because the Committee considers it desirable to provide MTAP services to the largest number of persons possible based on funds available. The Committee has determined it has sufficient funds available at this time to provide services to all individuals whose family income is less than 250% of the FPL.

The adoption of Rule I is therefore necessary to specify that all persons whose gross family income is less than 250% of the FPL are eligible for equipment. Section (2) of Rule I shows in table form the levels of income equal to 100% and 250% of the FPL for various family sizes. The inclusion of the 250% of poverty standards is necessary so that members of the public are able to determine what the income limits are for various individuals depending on the size of the individual's family. The 100% of poverty standards are included as a reference because the 250% standards are computed based on the federal poverty levels, which are published in terms of 100% of poverty.

ARM 37.36.401(1) currently states that a person who meets the eligibility criteria is entitled to a loan of equipment. ARM 37.36.401 is now being amended to state that an eligible person will be provided with equipment after the person has received training on use of the equipment and has signed an agreement specifying the conditions of the loan. The requirements to attend training and sign an agreement are already stated in ARM 37.36.612 and are not new, but they are being added to this rule so that all requirements which must be fulfilled before equipment is provided are stated in one place.

ARM 37.36.402 currently provides that all equipment loaned by MTAP remains the property of the State of Montana and requires MTAP to track all loaned equipment. The provision for tracking equipment is based on 53-19-307(1)(h), MCA, which requires MTAP to maintain records of each item of equipment. In 2003 the Legislature amended 53-19-307(1)(h), MCA, to state that MTAP

must maintain records for a minimum of five years. ARM 37.36.402 is therefore being amended to provide that loaned equipment will be tracked for a minimum of five years in order to allow MTAP the option of not tracking equipment after five years. This option was chosen because the value of equipment decreases over time and it therefore may not be worthwhile to continue tracking equipment which an individual has had for five or more years.

ARM 37.36.406 currently provides that MTAP participants who receive equipment worth more than \$1,000 must post a security deposit of \$5.00. This rule was adopted to implement 53-19-307(1)(i), MCA, which provides that the Committee at its discretion shall require an appropriate security deposit for equipment. The Committee has now determined that security deposits are not necessary to protect equipment and that it is administratively cumbersome to require a security deposit for equipment. Therefore, the Committee is exercising the discretion granted under the statute to require no security deposits. ARM 37.36.406 is therefore being repealed to eliminate the requirement for a security deposit.

ARM 37.36.603 currently sets forth both the financial and nonfinancial criteria to qualify for a loan of equipment. As previously discussed, financial criteria will now be addressed in Rule I. Nonfinancial criteria will be contained in ARM 37.36.603. Financial and nonfinancial eligibility requirements are being broken out into two separate rules because the addition of the tables showing the levels of income equal to 100% and 250% of the FPL for various family sizes to ARM 37.36.603 would make ARM 37.36.603 excessively long and therefore harder to read.

ARM 37.36.603(1)(e) currently limits loans of equipment to persons whose gross annual income is \$35,000 or less, regardless of the size of the person's family and without comparing the person's income to the federal poverty levels. This provision must now be deleted because the flat \$35,000 gross income limit no longer applies as a result of the amendment of 53-19-307(1), MCA. The new income limits based on 250% of the FPL will be contained in Rule I.

6. Interested persons may submit their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210, no later than 5:00 p.m. on January 21, 2004. Data, views or arguments may also be submitted by facsimile (406)444-1970 or by electronic mail via the Internet to dphhslegal@state.mt.us. The Department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write the person at the address above.

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

Dawn Sliva
Rule Reviewer

John Chappuis for
Director, Public Health and
Human Services

Lynn Harris
Chairman of the Montana
Telecommunications Access
Committee

Certified to the Secretary of State December 15, 2003.

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

In the matter of the adoption	)	NOTICE OF PUBLIC HEARING
of new Rule I and the	)	ON PROPOSED ADOPTION AND
amendment of ARM 37.5.123 and	)	AMENDMENT
37.75.101 pertaining to child)	
and adult care food program)	
(CACFP) administrative review)	
procedures)	

TO: All Interested Persons

1. On January 21, 2004, at 10:00 a.m., a public hearing will be held in the auditorium of the Department of Public Health and Human Services Building, 111 N. Sanders, Helena, Montana to consider the proposed adoption and amendment of the above-stated rules.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice or provide reasonable accommodations at the public hearing site. If you need to request an accommodation, contact the department no later than 5:00 p.m. on January 12, 2004, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970; Email dphhslegal@state.mt.us.

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

RULE I CHILD AND ADULT CARE FOOD PROGRAM: APPLICABLE ADMINISTRATIVE REVIEW (APPEAL) PROCEDURES FOR DAY CARE HOMES

(1) Administrative reviews (appeals) are available to the extent granted in 7 CFR 226.6(1). The provisions of ARM 37.5.304, 37.5.307, 37.5.310, 37.5.311, 37.5.313, 37.5.316, 37.5.318, 37.5.322, 37.5.325, 37.5.331, 37.5.334 and 37.5.337 do not apply to such administrative reviews.

(2) An administrative review of an intent to terminate a day care home provider's agreement for cause or a suspension of their participation will be limited to a review of the written information, federal policies, 7 CFR 226, state laws and administrative rules, the requirements shown in the sponsor/provider agreement, and policies and procedures governing the child and adult care food program. This review will be performed by allowing the parties to submit written statements to support their claim.

(3) A day care home provider must request an administrative review in writing. The written request must be received by the office of fair hearings at the Department of Public Health and Human Services, Office of Fair Hearings, P.O.

Box 202953, Helena, MT 59620-2953 within 15 calendar days of receipt of the notice of intent to terminate or notice of suspension by the day care home provider.

(4) The day care home provider may refute the findings contained in the notice of intent to terminate or notice of suspension by submitting written documentation to the administrative review officials at the office of fair hearings.

Copies of documentation submitted to the office of fair hearings by the sponsor or provider must be transmitted in written format to the affected parties and the Montana CACFP at the time of submission.

(5) In order for documentation to be considered, the day care home provider and the sponsoring organization must submit written documentation to the administrative review official at the office of fair hearings no later than 30 calendar days after receipt of the notice of intent to terminate or notice of suspension received by the day care home provider.

(6) When a request for an administrative review from a day care home provider is received by the office of fair hearings, the office of fair hearings will:

(a) Acknowledge receipt by notifying the department, the sponsor and the day care home provider of the request for administrative review within 10 calendar days and include the final date for rendering a decision.

(b) The administrative review official will consider only written documentation submitted by the sponsoring organization and the day care home (or its authorized representatives). Day care home providers and sponsors will not be contacted for additional information. The decision will be based entirely upon the written documentation provided to the office of fair hearings, and on federal and state laws, 7 CFR 226, rules, regulations, the requirements stated in the sponsor/provider agreement, and policies and procedures governing the program.

(c) The office of fair hearings will render a final decision within 60 calendar days of receipt of the written request for an administrative review from the day care home provider. This time limit is a federal administrative requirement for the department and may not be used as a basis for overturning the department's action if a decision is not made within the specified time limit.

(i) The determination made by the administrative review official is the final administrative determination to be afforded the day care home.

(7) Only information submitted during the initial administrative document review will be considered. No other information will be considered. No other information can be submitted.

AUTH: Sec. 50-1-202, MCA
IMP: Sec. 50-1-202, MCA

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

37.5.123 CHILD AND ADULT CARE FOOD PROGRAM (CACFP):
APPLICABLE HEARING ADMINISTRATIVE REVIEW (APPEAL) PROCEDURES FOR
INSTITUTIONS, RESPONSIBLE PRINCIPALS AND RESPONSIBLE INDIVIDUALS

~~(1) Hearings relating to the child and adult care food program are available to the extent granted and as provided in 42 CFR 226.6(k). The provisions of ARM 37.5.304, 37.5.307, 37.5.310, 37.5.311, 37.5.313, 37.5.316, 37.5.318, 37.5.322, 37.5.325, 37.5.331, 37.5.334 and 37.5.337 do not apply to such hearings.~~

~~(a) Review of actions under the child and adult care food program will be limited to a review of written information, unless the affected institution requests a hearing in addition to, or in lieu of, a review of written information. The notice of action required by 42 CFR 226.6(k) must state that in the event the institution chooses to appeal an action, a hearing will be held by the review official in addition to, or in lieu of, a review of written information, only if the institution so requests in the letter of notice of appeal.~~

~~(b) Hearings relating to the child and adult care food program will be conducted in person in Helena, Lewis and Clark County, Montana, at a location designated by the department, unless the parties mutually agree to conduct the hearing telephonically.~~

(1) Administrative reviews (appeals) are available to the extent granted in 7 CFR 226.6. The provisions of ARM 37.5.304, 37.5.307, 37.5.310, 37.5.311, 37.5.313, 37.5.316, 37.5.318, 37.5.322, 37.5.325, 37.5.331, 37.5.334 and 37.5.337 do not apply to such administrative reviews.

(2) An administrative review of actions will be limited to a review of the written information, federal policies, 7 CFR 226, state laws and administrative rules, policies and procedures governing the program unless the affected institution or its responsible principals or individuals request a hearing in addition to, or in lieu of, a review of written information.

(3) A notice of action from the department to the institution and responsible principals and individuals shall be issued as required by 7 CFR 226.6(k). The notice of action required by 7 CFR 226.6(k) must state that in the event the institution or responsible principals and individuals chooses an administrative review of an action, a hearing will be held by the review official in addition to, or in lieu of, a review of written information, only if the institution or the responsible principles or individuals so requests in the letter requesting an administrative review.

(4) Administrative reviews will be conducted in person in Helena, Lewis and Clark County, Montana, at a location designated by the office of fair hearings, unless the parties mutually agree to conduct the administrative review telephonically.

(5) The written request for an administrative review must be received by the office of fair hearings within 15 calendar days of the date of receipt of the notice of action by the institution and, in the event of a serious deficiency, the date

of receipt by the responsible principals and individuals.

AUTH: Sec. 50-1-202, MCA

IMP: Sec. 50-1-202, MCA

37.75.101 DEFINITIONS For purposes of this chapter, the following definitions apply:

(1) through (15) remain the same.

(16) "Institution" means a sponsoring organization, child care center, outside-school-hours care center or adult day care center which enters into an agreement with the state agency to assume final administrative and financial responsibility for CACFP operations.

(16) through (26) remain the same but are renumbered (17) through (27).

AUTH: Sec. 52-2-704, MCA

IMP: Sec. 52-2-704, MCA

4. ARM 37.5.123 and new Rule I provide guidance to day care centers and sponsors appealing an adverse action or termination of participation with the Child and Adult Care Food Program (CACFP). Rule I provides guidance to day care home providers appealing an intent to terminate or suspension of their agreement for participation in the CACFP.

According to federal regulation 7 CFR 226, the procedures for an administrative review may be different for institutions and day care homes. The change to ARM 37.5.123(1) is necessary to provide specific guidance for institutions and responsible principals and individuals of the institution to request an administrative review.

The change regarding the federal regulation number 42 CFR 226 is necessary because the existing rule refers to a regulation that does not relate to the CACFP. 7 CFR 226 is the federal regulation regarding participation in the CACFP. The change is necessary to direct participants to the correct federal regulation.

Rule I is necessary to provide specific guidance to day care home providers regarding how and when they may request an administrative review appeal. This is in accordance with federal regulation 7 CFR 226, which went into effect on June 27, 2002.

A change in the wording from hearings to administrative reviews is necessary to avoid confusion that could develop as a result of differing terminology between the fair hearing rules and federal regulation 7 CFR 226. Federal regulation 7 CFR 226 was revised on June 27, 2002 and includes specific definitions and requirements for administrative reviews (appeals), responsible principals, responsible individuals and day care homes. Language changes are necessary to maintain consistent

terminology between state and federal regulation.

The Department is required to follow federal law in the administration of the CACFP. Under 7 CFR 226.6(1)(5)(iii), the Department is not required to provide a "full" hearing to day care home providers that seek to challenge a negative decision regarding their participation in CACFP. Instead, federal law allows the Department to have an impartial official conduct an administrative review of the written documentation associated with the case, and render a decision based upon that documentation.

The Department elects to provide such "document review" hearings instead of "full" hearings to potentially aggrieved day care home providers. There are three reasons for this election:

(1) Under federal law, appeals by day care home providers must be processed within 60 days of the initial notice provided to the Department that a provider is seeking an administrative review. The Department's Office of Fair Hearings (the division that supplies impartial review officials) is not able to schedule and conduct a "full" hearing and render a decision within this time frame.

(2) During the time an appeal is pending, the Department must continue to pay funds to day care homes that are potentially going to be terminated from the CACFP. In the past, the Department has found it difficult (sometimes impossible) to recover these funds from day care homes that are ultimately terminated. Also, additional expenses are incurred because such debts must be referred to a collection division. The Department seeks to minimize these expenses by electing to provide "document review" hearings. Such reviews take less time than "full" hearings; less time equals fewer funds paid out that may ultimately have to be recovered.

(3) Because participation in the CACFP is not equivalent to a real or perceived property interest under the Montana constitution, a "document review" hearing satisfies due process requirements under Montana law.

(4) Regarding day care institutions, the Department is required by Federal law to provide a "full" in-person hearing if the affected institution or its responsible principals or individuals request one. Such hearings will be governed by ARM 37.5.123, as amended herein.

Finally, the Department is adding a definition for the term "institution" to ARM 37.75.101, the definitions rule for the child and adult food program, in order to make it clear to the public and providers that are affected and subject to these proposed hearing rules and provisions what the federal program considers to be an institution.

5. Interested persons may submit their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Kathy Munson,

Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 202951, Helena, MT 59620-2951, no later than 5:00 p.m. on January 23, 2004. Data, views or arguments may also be submitted by facsimile (406)444-9744 or by electronic mail via the Internet to dphhslegal@state.mt.us. The Department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write the person at the address above.

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

Dawn Sliva
Rule Reviewer

John Chappuis for
Director, Public Health and
Human Services

Certified to the Secretary of State December 15, 2003.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the) NOTICE OF ADOPTION
adoption of New Rules I and)
II pertaining to the do-not-)
call list)

TO: All Concerned Persons

1. On September 25, 2003, the Department of Administration published MAR Notice No. 2-2-339 regarding a public hearing on the proposed adoption of New Rules I and II pertaining to the do-not-call list at page 2015 of the 2003 Montana Administrative Register, Issue Number 18.

2. The agency has adopted New Rule I (ARM 2.61.506) and New Rule II (ARM 2.61.507) exactly as proposed.

3. The following two comments were received:

Comment 1: Three persons suggested that the rules include a provision to allow employees to call on behalf of a licensed professional.

Response 1: Section 30-14-1601, MCA, allows only a licensed professional to place calls to schedule appointments. Therefore, the Department is of the opinion it was not granted the authority by the Legislature to expand the exceptions already granted in the law.

Comment 2: One person thanked the Department for combining the federal and state list because this will require less work and hardship on business.

Response 2: The Department felt that combining the two do-not-call lists was both logical and cost effective.

By: /s/ Scott Darkenwald
SCOTT DARKENWALD, Director
Department of Administration

/s/ Dal Smilie
DAL SMILIE, Rule Reviewer

Certified to the Secretary of State December 9, 2003.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the) NOTICE OF ADOPTION
adoption of new rules I)
through XV relating to)
organic certification)

TO: All Concerned Persons

1. On October 30, 2003, the Department of Agriculture published MAR Notice No. 4-14-133 regarding the proposed adoption of new rules I through XV relating to organic certification at page 2324 of the 2003 Montana Administrative Register, Issue Number 20.

2. The agency has adopted New Rule I, ARM 4.17.101; New Rule II, ARM 4.17.102; New Rule III, ARM 4.17.103, New Rule IV, ARM 4.17.104; New Rule V, ARM 4.17.105; New Rule VI, ARM 4.17.106; New Rule VII, ARM 4.17.107; New Rule VIII, ARM 4.17.108; New Rule IX, ARM 4.17.109; New Rule X, ARM 4.17.110; New Rule XI, ARM 4.17.111; New Rule XII, ARM 4.17.112; New Rule XIII, ARM 4.17.113; New Rule XIV, ARM 4.17.114; and New Rule XV, ARM 4.17.115 exactly as proposed.

3. No comments or testimony were received.

DEPARTMENT OF AGRICULTURE

/s/ W. Ralph Peck
Ralph Peck
Director

/s/ Tim Meloy
Tim Meloy, Attorney
Rule Reviewer

Certified to the Secretary of State December 15, 2003.

BEFORE THE STATE AUDITOR AND COMMISSIONER OF INSURANCE
OF THE STATE OF MONTANA

In the matter of the amendment)	NOTICE OF AMENDMENT
of ARM 6.6.1610 pertaining to)	AND REPEAL
collection in advance of fees)	
for a public adjuster's)	
license and examination,)	
ARM 6.6.4206 pertaining to)	
certification requirements for)	
licensees and limit on credit)	
for courses repeated, and the)	
repeal of ARM 6.6.4207)	
pertaining to extensions of)	
time for course completions)	

TO: All Concerned Persons

1. On November 13, 2003, the State Auditor and Commissioner of Securities published MAR Notice No. 6-146 regarding a public hearing on the proposed amendment and repeal of the above-stated rules at page 2488 of the 2003 Montana Administrative Register, Issue No. 21.

2. A public hearing was held in Helena on December 3, 2003. No comments or testimony were received.

3. The Department has amended ARM 6.6.1610 and ARM 6.6.4206 exactly as proposed, and has repealed ARM 6.6.4207 exactly as proposed.

4. These rule actions will be effective January 1, 2004.

JOHN MORRISON, State Auditor
and Commissioner of Insurance

By: /s/ Alicia Pichette
Alicia Pichette
Deputy Insurance Commissioner

By: /s/ Christina L. Goe
Christina L. Goe
Rules Reviewer

Certified to the Secretary of State on December 15, 2003.

BEFORE THE STATE AUDITOR AND COMMISSIONER OF SECURITIES
OF THE STATE OF MONTANA

In the matter of the amendment	)	NOTICE OF AMENDMENT AND
of ARM 6.10.140 and 6.10.141	)	ADOPTION
pertaining to minimum)	
financial requirements for)	
investment advisers and)	
bonding requirements for)	
certain investment advisers)	
and the adoption of New Rule I,)	
(ARM 6.10.142), pertaining to)	
custody of client funds or)	
securities by investment)	
advisers and New Rule II)	
(ARM 6.10.148), pertaining to)	
custody of notice filings for)	
offerings of federal covered)	
securities)	

TO: All Concerned Persons

1. On July 17, 2003, the state auditor and commissioner of securities published MAR Notice No. 6-141 regarding a public hearing on the proposed amendment and adoption of the above-stated rules at page 1427 of the 2003 Montana Administrative Register, Issue No. 13.

2. A public hearing was held in Helena on August 7, 2003. Don Allen, representing the Montana Association of Insurance and Financial Advisers offered an oral comment at the hearing. No written comments were received prior to the closing date of the comment period on August 21, 2003.

3. After considering the oral comment given, the State Auditor has amended ARM 6.10.140 and 6.10.141 exactly as proposed, and has adopted New Rule I (ARM 6.10.142) and New Rule II (ARM 6.10.148) exactly as proposed.

4. The State Auditor's Office has thoroughly considered the oral comment given at the hearing. A summary of that comment and the Department's response follows:

Comment No. 1: Don Allen, representative for the Montana Association of Insurance and Financial Advisers, testified that the actual language in the proposed rules was not problematic to the financial advisory industry. He indicated his purpose for attending and testifying in the rules hearing was solely to express the financial advisory industry's concern about the possibility of an increased fee burden being placed on the industry.

Response No. 1: These proposed rules do not include any additional fees or increase in any fee. The purpose of these

rules is for clarification and more direct guidance to the industry.

JOHN MORRISON, State Auditor
and Commissioner of Securities

By: /s/ Karen E. Powell
Karen E. Powell
Deputy Securities Commissioner

By: /s/ Christina L. Goe
Christina L. Goe
Rule Reviewer

Certified to the Secretary of State on December 15, 2003.

BEFORE THE COMMUNITY DEVELOPMENT DIVISION
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the adoption) NOTICE OF ADOPTION
of a new rule (ARM 8.94.3720))
for the administration of the)
2004-2005 Federal Community)
Development Block Grant (CDBG))
Program)

TO: All Concerned Persons

1. On November 7, 2003, the Department of Commerce published MAR Notice No. 8-94-39 regarding the public hearing on the proposed adoption of a rule concerning the administration of the 2004-2005 Federal Community Development Block Grant (CDBG) Program at page 2158 of the 2003 Montana Administrative Register, Issue Number 19.

2. The Department has adopted the new rule (8.94.3720) exactly as proposed.

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

Comment 1: A question was asked whether \$225,000 to be set aside under Economic Development Technical Assistance is the same \$225,000 being discussed for the Certified Regional Development Corporations?

Response: The \$225,000 to be set aside under Economic Development Technical Assistance is a different pool of funds than the funds set aside for the Certified Regional Development Corporations (CRDCs).

Comment 2: A question was asked if future applications for funding through the CDBG program (Economic Development category) would be funneled through the Certified Regional Development Corporations' offices?

Response: Future applications for CDBG Economic Development funds will not be "funneled" through CRDC offices. Designated CRDCs will assist entities within their regions to develop projects whether or not CDBG-Economic Development funding is selected. Local governments are the only eligible applicants for CDBG Economic Development funds. If a local government wants to develop a Revolving Loan Fund, it may be able to contract with a CRDC to manage that fund.

Comment 3: A portion of the CDBG Economic Development dollars should be put into a discretionary account for unique projects that fall outside the currently written guidelines. A

funding account should be specifically established to accommodate an "enterprise facilitation model".

Response: The Department has decided not to establish a separate discretionary account for special projects or to accommodate an "enterprise facilitation model" that would fall outside the requirements of the currently written guidelines. The Department has made this determination as part of its initiative to have economic development resources managed on a regional level and to encourage resource providers to develop partnerships for efficient delivery of scarce resources in a way that limits duplication and overlap as much as possible. Local economic development programs are encouraged to partner with related organizations to pursue special projects and apply to the Montana Department of Commerce's existing Certified Regional Development Corporation (CRDC) program.

COMMUNITY DEVELOPMENT DIVISION
DEPARTMENT OF COMMERCE

By: /s/ MARK A. SIMONICH
MARK A. SIMONICH, DIRECTOR
DEPARTMENT OF COMMERCE

By: /s/ G. MARTIN TUTTLE
G. MARTIN TUTTLE, RULE REVIEWER

Certified to the Secretary of State December 15, 2003.

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

In the matter of the)
adoption of new rules I)
through XIV, amendment of)
ARM 12.11.501, 12.11.3435,) CORRECTED NOTICE OF ADOPTION
12.11.3455, 12.11.3460, and)
the repeal of ARM)
12.11.345, pertaining to)
recreational water use)

TO: All Concerned Persons

1. On, July 31, 2003, the Fish, Wildlife and Parks Commission (commission) published MAR Notice No. 12-288 regarding the proposed adoption, amendment and repeal of the above-stated rules pertaining to recreational water use at page 1583 of the 2003 Montana Administrative Register, Issue Number 14, and the notice of adoption on November 26, 2003, at page 2622 of the 2003 Montana Administrative Register, Issue Number 22.

2. The reason for the correction is that new rule XII was incorrectly numbered as ARM 12.11.1420. New rule XII is adopted as proposed but is renumbered as shown below, stricken matter interlined, new matter underlined:

~~12.11.1420~~ 12.11.1408 (NEW RULE XII) RYAN DAM
(1) through (3) remain as adopted.

AUTH: 23-1-106, 87-1-303, MCA
IMP: 23-1-106, 87-1-303, MCA

By: /s/ M. Jeff Hagener
M. Jeff Hagener, Secretary
Fish, Wildlife and Parks
Commission

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

Certified to the Secretary of State December 15, 2003

BEFORE THE GRANT REVIEW COMMITTEE
OF THE OFFICE OF ECONOMIC DEVELOPMENT
GOVERNOR'S OFFICE
STATE OF MONTANA

In the matter of the) NOTICE OF ADOPTION
adoption of NEW RULES I)
through VI, relating to the)
Primary Sector Business)
Workforce Training Act)

TO: All Concerned Persons

1. On October 16, 2003, the Grant Review Committee published MAR Notice No. 14-2 regarding a public hearing on the proposed adoption of the above-stated rules at page 2161, 2003 Montana Administrative Register, issue number 19.

2. The Grant Review Committee has adopted new Rule I (14.4.101) through Rule VI (14.4.106), exactly as proposed.

3. No comments or testimony were received.

GRANT REVIEW COMMITTEE

/s/ JAMES W. SANTORO
James W. Santoro
Governor's Chief Legal
Counsel
Rule Reviewer

/s/ DAVE GIBSON
Dave Gibson, Chair of
Grant Review Committee

Certified to the Secretary of State: December 15, 2003

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment)	NOTICE OF AMENDMENT
of ARM 17.8.1213 pertaining to)	
requirements for air quality)	
operating permit content)	(AIR QUALITY)
relating to compliance)	

TO: All Concerned Persons

1. On October 16, 2003, the Board of Environmental Review published MAR Notice No. 17-199 regarding a notice of public hearing on the proposed amendment of the above-stated rule at page 2187, 2003 Montana Administrative Register, issue number 19.

2. The Board has amended the rule exactly as proposed.

3. No public comments or testimony were received.

BOARD OF ENVIRONMENTAL REVIEW

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

Reviewed by:

David Rusoff
DAVID RUSOFF, Rule Reviewer

Certified to the Secretary of State, December 15, 2003.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment) NOTICE OF AMENDMENT
of ARM 17.50.401, 17.50.402,)
17.50.403, 17.50.410,)
17.50.411, 17.50.412 and) (SOLID WASTE)
17.50.416 pertaining to solid)
waste fees)

TO: All Concerned Persons

1. On August 14, 2003, the Board of Environmental Review published MAR Notice No. 17-197 regarding a notice of public hearing on the proposed amendment of the above-stated rules at page 1720, 2003 Montana Administrative Register, issue number 15.

2. The Board has amended ARM 17.50.401, 17.50.402, 17.50.411, 17.50.412 and 17.50.416 exactly as proposed. The Board has amended ARM 17.50.403 and 17.50.410 as proposed, but with the following changes, deleted matter interlined, new matter underlined:

17.50.403 DEFINITIONS Unless the context requires otherwise, in this subchapter the following definitions apply:

(1) through (12) remain as proposed.

(13) "~~Interim closure~~" means the period of time from the ~~final receipt of waste at the solid waste management facility department's receipt of the certification required in ARM 17.50.530(1)(h) until the department approves~~ verifies closure compliance under ARM 17.50.530.

(14) through (30) remain as proposed.

(31) "One-time household hazardous waste collection event" means a collection of household hazardous waste from the public ~~on a one-time basis with a frequency no greater than annually at any given location.~~

(32) through (54) remain as proposed.

17.50.410 ANNUAL OPERATING LICENSE REQUIRED (1) through (6)(c) remain as proposed.

(7) Fees at a facility in interim closure must be held in abeyance by the department. If the department determines, pursuant to ARM 17.50.530, that closure was not completed in compliance with the closure plan, the owner or operator shall pay the fees held in abeyance to the department. An owner or operator of a facility determined by the department not to have completed closure in compliance with the facility's closure plan shall, after the owner or operator believes that closure has been completed in compliance with the closure plan, submit a new certification as required in ARM 17.50.530(1)(h). The facility is then again in interim closure, pending re-inspection and verification of closure compliance by the department. ~~Fees held in abeyance are due~~

~~and payable to the department if the facility does not complete closure in the times specified in Title 17, chapter 50, sub chapter 5, MCA.~~

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

COMMENT NO. 1: One commentor noted that there was no time frame for the definition of "one-time household hazardous waste collection event" in ARM 17.50.403(31).

RESPONSE: The definition in (31) is provided to define a waste management practice for which the Department will not charge a fee. See ARM 17.50.410(6). These events are often held on an annual basis in major Montana cities and last for only one or two days. Therefore the Board agrees with the comment and has amended the definition to specify that, to qualify for the license fee waiver, these events may be no more frequent than annual at any given location.

COMMENT NO. 2: Two commentors thought, based on their experience, that the weights of a cubic yard of uncompacted and compacted wastes listed in ARM 17.50.411(3) were too high.

RESPONSE: The Department assesses a fee based on the number of tons of waste disposed of at a facility. If a facility does not weigh incoming waste, the facility is allowed to estimate the weight based on the volume of the waste. ARM 17.50.411(3) provides the conversion factors to be used in the estimates. They are 300 pounds/cubic yard for uncompacted waste and 700 pounds/cubic yard for compacted waste. They were retained from the previous version of the rule and were based on testimony before the 1991 Legislature when the volume-based fees were authorized and were incorporated in the Statement of Intent for SB 209 of that legislative session (Ch. 643, Laws of 1991). The Solid Waste Association of North America (SWANA) cites the following typical densities in its Manager of Landfill Operations course manual (2000) at page I-13:

<u>Source</u>	<u>Density, lb/cubic yard</u>
Residential Waste (uncompacted at curb)	Average 250
Commercial/Industrial Waste (uncompacted)	Average 500
Municipal Solid Waste (compacted in truck)	Average 750

Since the fee rule does not make a distinction between household and commercial/industrial wastes because both types of wastes are handled at Montana landfills, the average of 300 pounds/cubic yard for uncompacted waste is a reasonable estimate given that most waste is from residential sources, and is consistent with national averages. The density of 700 pounds/cubic yard for compacted waste is also in line with national averages.

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

COMMENT NO. 3: One commentor requested that the Board consider the impact of these fees on small rural Montana communities.

RESPONSE: The proposed fees were developed with the help of the Solid Waste Advisory Committee, an advisory committee to the Department of Environmental Quality voluntarily established by members of the regulated community and the Department to enhance interaction between solid waste program staff and the regulated community. The committee includes representation from all types of facilities in Montana, both urban and rural. The fees proposed were established with significant input from the Advisory Committee members and seemed reasonable to the Committee members and the Board and represent only a small percentage of the cost of waste management. For example, an Intermediate Class II landfill that receives 10,000 tons of waste annually would pay \$0.76 per ton to the Department when tonnage and annual fees are taken into account, with operating costs of about \$30.00 per ton. (SWANA Manager of Landfill Operations course manual (2000), page XI-11.) Fees would therefore make up 2.5% of operating costs. A Major Class II facility receiving 200,000 tons per year would pay \$0.42 per ton to the Department when tonnage and annual fees are taken into account and have operating costs of about \$13.00 per ton. (SWANA, op. cit.) Fees would therefore make up 3.2% of operating costs.

As stated in the initial notice, the fees charged by the Department for solid waste disposal have not changed since 1991, and inflation has increased costs of licensing and regulation. The Board believes that the Department needs additional funding to adequately perform its regulatory duties, and believes that the proposed fees are an appropriate and reasonable way to provide that funding.

Therefore, the Board believes that it has taken into consideration the costs of the proposed fees to all Montanans, and declines to change the proposed fees.

COMMENT NO. 4: Department staff noticed and commented that there is a conflict between ARM 17.50.530(1)(h) and the definition of "interim closure" in proposed ARM 17.50.403(13) and the holding of fees in abeyance during interim closure in proposed ARM 17.50.410(7). The Department commented that the definition of interim closure in ARM 17.50.403(13) and the section on holding fees in abeyance during interim closure in ARM 17.50.410(7) should be modified to be consistent with the closure requirement in ARM 17.50.530(1)(h). The Department also suggested an amendment to ARM 17.50.410(7) to address fees if the Department finds that a landfill was not closed as required by its closure plan.

RESPONSE: The proposed definition in ARM 17.50.403(13) would have defined interim closure as starting at the time a landfill stops accepting waste, and the proposed addition of ARM 17.50.410(7) would have required the Department to hold annual landfill fees in abeyance during interim closure.

ARM 17.50.530(1)(h), which is a Department rule not being amended in this rulemaking, states that, after the owner or operator has notified the Department that "closure has been completed in accordance with the closure plan...the department will: (i) place the landfill in interim closure status and hold in abeyance any fees due under ARM 17.50.410 until closure compliance is verified by the department;..."

Therefore, under the existing ARM 17.50.530(1)(h), interim closure status starts, and fees are held in abeyance, after an owner or operator notifies the Department that closure has been completed. However, under the proposed additions to ARM 17.50.403(13) and 17.50.410(7), interim closure status and the holding of fees in abeyance would begin as soon as the facility stops accepting waste.

As a result, the proposed rule amendments in ARM 17.50.403(13) and 17.50.410(7) would have been inconsistent with the existing requirements in ARM 17.50.530(1)(h).

The Department wishes to retain the approach in the existing rules, and the Board agrees with the Department. Requiring a landfill owner or operator to pay fees until it completes closure according to the closure plan gives the owner or operator a financial incentive to complete closure quickly, within the 180 days required by ARM 17.50.530. Closure within 180 days helps protect public health and the environment by making sure that a cap (cover) is placed over waste to minimize infiltration of water into the waste, which in turn minimizes the production of leachate with harmful chemicals that can contaminate ground water. Also, until a landfill has completed closure according to the plan, the Department is required to inspect and review the landfill and inspects the closure work. The Department, therefore, incurs expenses, and it is reasonable to require the landfill's owner or operator to pay fees during that time.

The Department proposed language that would make the fees held in abeyance due if it finds that closure was not completed in accordance with the closure plan. Then, when the owner or operator completes the work and again certifies to the Department that closure is complete, future fees would again be held in abeyance until the Department has verified that closure was completed according to the plan.

The Board has amended ARM 17.50.403(13) and 17.50.410(7) to be consistent with ARM 17.50.530(1)(h).

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, December 15, 2003.

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

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 8.32.302 and 8.32.409,)
relating to re-certification of)
nurse midwives and authorized)
signatures on nurses' licenses)

TO: All Concerned Persons

1. On August 28, 2003, the Department of Labor and Industry published MAR Notice No. 8-32-60 regarding the public hearing on the proposed amendment of the above-stated rules relating to re-certification of nurse midwives and authorized signatures on nurses' licenses at page 1835 of the 2003 Montana Administrative Register, issue no. 16.

2. On October 2, 2003, a public hearing on the proposed amendment of the above-stated rules was conducted in Helena. No public comments were made at the hearing. Written comments were received before the comment period closed.

3. After considering the comments, the Board of Nursing amended ARM 8.32.409 exactly as proposed.

4. After considering the comments, the Board of Nursing amended ARM 8.32.302 with the following changes (deleted matter stricken, new matter underlined):

8.32.302 NURSE MIDWIFERY PRACTICE (1) remains as proposed.

(2) Effective December 31, 2004, all licensed certified nurse midwives shall be enrolled in either the certification maintenance program or the continuing competency assessment program through the American College of Nurse Midwives college of nurse midwives. ~~The mailing address for the American College of Nurse Midwives is 818 Connecticut Avenue, NW, Suite 900, Washington, DC 20006; Phone: (202) 728 9860; Web: www.midwife.org.~~ Contact information for the American college of nurse midwives may be obtained from the Montana board of nursing office at 301 South Park Avenue, P.O. Box 200513, Helena, MT 59620, telephone (406) 841-2340.

AUTH: 37-1-131, 37-8-202, MCA
IMP: 37-8-202, 37-8-409, MCA

5. The Board of Nursing has thoroughly considered all of the comments received. A summary of the comments and the Board's responses are as follows:

8.32.302 NURSE MIDWIFERY PRACTICE

Comment 1: Sami Butler, on behalf of the Montana Nurses' Association (MNA) expressed support for the proposed amendment to ARM 8.32.302 as a reasonable step to protect Montana citizens. Ms. Butler suggested deleting the mailing address for the American College of Nurse Midwives because the address may change in the future and the rule would need to be amended.

Response 1: The Board agrees that the proposed amendment to ARM 8.32.302 protects the public by requiring certification maintenance or continuing competency assessment for licensed nurse midwives. The Board also agrees it should delete from the rule contact information for the American College of Nurse Midwives (ACNM) and substitute the Board's own contact information. The Board maintains information concerning the ACNM and is able to field inquiries for contact information. Processing inquiries in that way would guard against contact information for ACNM inadvertently remaining in the rule after it is outdated.

8.32.409 PREPARATION OF LICENSES

Comment 2: Sami Butler, on behalf of the Montana Nurses' Association (MNA) supports the proposed amendment of ARM 8.32.409 as a reasonable step to maximize efficiency in the licensing process.

Response 2: The Board agrees with the comment.

6. The Board notes that it has corrected capitalization in ARM 8.32.302 for the purpose of complying with the style guidelines of the Secretary of State's Administrative Rules Bureau.

BOARD OF NURSING
KIM POWELL, RN, 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 December 15, 2003.

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

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 8.32.416, 8.32.425, 8.32.1501,) AND ADOPTION
and the adoption of NEW RULE I)
(8.32.307A) related to licensure,)
fees, prescriptive authority, and)
psychiatric-mental health)
practitioner practice)

TO: All Concerned Persons

1. On July 17, 2003, the Board of Nursing published MAR Notice No. 8-32-59 regarding the public hearing on the proposed amendment and adoption of the above-stated rules relating to licensure, fees, prescriptive authority, and psychiatric-mental health practitioner practice at page 1439 of the 2003 Montana Administrative Register, issue no. 13.

2. On August 7, 2003, a public hearing on the proposed amendment and adoption of the above-stated rules was conducted in Helena. Public comments were made at the hearing. Written comments were also received.

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

GENERAL COMMENTS:

Comment 1: Susan Bodurtha, an employee of the State Hospital but speaking only on behalf of herself, supported the proposed rule changes and expressed appreciation that the Board listened to concerned persons when the proposed rule amendments and proposed new rule were being drafted.

Response 1: The Board acknowledges the comments.

Comment 2: Sharon R. Androes, CNS, Psychiatric Mental Health, expressed appreciation for the Board's work on the psychiatric mental health issue and willingness to reconsider its previous position.

Response 2: The Board acknowledges the comment.

Comment 3: Eleanor Patty Lavin, CNS, Psychiatric Mental Health, suggests there is a typographical error in New Rule I in the word "analogous".

Response 3: In reviewing NEW RULE I, the Board notes that the word "analogous" is not contained in the actual text of that rule but only in the statement of reasonable necessity which

will not be a part of the published rule. Thus, if there were a typographical error in the word, no remedial action would be required.

ARM 8.32.416 VERIFICATION OF LICENSURE

Comment 4: Todd Thun, on behalf of the Montana Nurses Association (MNA), expressed support for the proposed amendment of ARM 8.32.416 as a reasonable step to maximize efficiency in the licensing process.

Response 4: The Board agrees with the comment.

ARM 8.32.425 FEES

Comment 5: Todd Thun, on behalf of MNA, expressed support for the proposed amendment of ARM 8.32.425 as a reasonable step to keep pace with business operating costs.

Response 5: The Board agrees with the comment.

ARM 8.32.1501 PRESCRIPTIVE AUTHORITY FOR ELIGIBLE APRNS

Comment 6: Mr. Thun, on behalf of MNA, expressed support for elimination of the sunset provision for prescriptive authority in ARM 8.32.1501 but opposition to the continued exclusion of nonpsychiatric CNSs from prescriptive authority eligibility. He stated that MNA believes alternatives exist to facilitate transition of the CNS programs to accommodate the needs for pharmacological education. MNA believes the exclusion limits innovation in meeting the health care needs of our rural state.

Response 6: The Board agrees with the comment relating to elimination of the sunset provision. The Board remains open to revisiting the issue of prescriptive authority for nonpsychiatric CNSs at such time as their national certification training includes appropriate pharmacological education and when the national certification examination for nonpsychiatric CNSs tests candidates' minimum competency in pharmacotherapeutics and the integration of pharmacotherapeutics into patient care. By way of contrast, the Board notes that the national certification training for psychiatric CNSs and for psychiatric NPs includes pharmacology education and their national certification examination tests minimum competence in pharmacotherapeutics and the integration of pharmacotherapeutics into patient care.

The only Board-approved national certifying body for CNSs is the American Nurses Credentialing Center (ANCC). If ANCC were to include appropriate pharmacology training in its national certification training for nonpsychiatric CNSs and test for minimum competence in pharmacotherapeutics and the integration of pharmacotherapeutics into patient care and/or if it were to offer a "bridge" program for currently certified CNSs who wish to obtain the additional training in pharmacology and be tested

and nationally certified in pharmacotherapeutics and the integration of pharmacotherapeutics into patient care, the Board would revisit the issue of prescriptive authority for nonpsychiatric CNSs at that time, or at any time when evolution of the national certification training and national certification exam for CNSs warrants further review.

Comment 7: Eleanor Patty Lavin, CNS, Psychiatric Mental Health, asked why there continues to be a distinction between psychiatric mental health nurse practitioners and clinical nurse specialists as she believes they have the same practice.

Response 7: See Response 6 to Comment 6.

Comment 8: Dana Hillyer, CNS, Psychiatric Mental Health, expressed support for the deletion of the sunset date for prescriptive authority for psychiatric mental health clinical nurse specialists. Ms. Hillyer disagrees with the board's exclusion of non-psychiatric mental health clinical nurse specialists from prescriptive authority eligibility. She would support prescriptive authority for all CNS practice provided that the requirements for that authority can be demonstrated. Ms. Hillyer noted graduate nursing education programs are constantly evolving to include core coursework in graduate level health assessment, pharmacology, pathophysiology, and health promotion and disease prevention with integrated clinical practice. She believes denial of prescriptive authority to CNSs falsely suggests there are two levels of APRN practice, one more advanced than the other.

Response 8: See Response 6 to Comment 6.

Comment 9: The American Psychiatric Nurses Association (APNA) supports the deletion of the sunset date.

Response 9: The Board agrees with the propriety of eliminating the sunset date.

Comment 10: Linda Torma, CNS, believes an APRN who can meet previous prescriptive authority requirements should be granted prescriptive authority and that excluding non-psych CNSs from prescriptive authority leaves all APRNs vulnerable to practice limitations.

Response 10: See Response 6 to Comment 6.

NEW RULE I (8.32.307A) PSYCHIATRIC-MENTAL HEALTH PRACTITIONER PRACTICE

Comment 11: Todd Thun, on behalf of the MNA, expressed support for NEW RULE I's clarification of the two paths for APRN practice in psychiatric mental health.

Response 11: The Board agrees that NEW RULE I (ARM 8.32.307A)

clarifies the two paths for APRN practice in psychiatric mental health.

Comment 12: The American Psychiatric Nurses Association (APNA) supports NEW RULE I in that it defines and clarifies psychiatric mental health practice. The APNA expressed that the last sentence in (1) should be changed to read: "Advanced Practice Psychiatric Mental Health Nursing" etc., in order to eliminate the confusion associated with the word practitioner.

Response 12: The Board believes NEW RULE I, read as a whole, is clear.

Comment 13: Dana Hillyer, CNS, Psychiatric Mental Health, supports new rule I because it defines and clarifies psychiatric mental health nursing practice but believes the last sentence of (1) in the new rule is confusing and should be changed to say that the advanced practice of psychiatric mental health nurse practitioners and psychiatric mental health clinical nurse specialists includes, etc.

Response 13: The Board believes NEW RULE I, read as a whole, is clear.

4. After considering the comments, the Board has amended ARM 8.32.416, 8.32.425, and 8.32.1501 exactly as proposed.

5. After considering the comments, the Board adopted NEW RULE I (8.32.307A) exactly as proposed.

BOARD OF NURSING
KIM POWELL, RN, 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 December 15, 2003.

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

In the matter of the) NOTICE OF AMENDMENT
amendment of ARM 24.17.127,)
pertaining to prevailing wage)
rates - non-construction)
services and heavy and highway)
construction services)

TO: All Concerned Persons

1. On October 30, 2003, the Department of Labor and Industry published MAR Notice No. 24-17-178 regarding the public hearing on the proposed amendment of the above-stated rule relating to prevailing wage rates, at page 2371 of the 2003 Montana Administrative Register, issue no. 20.

2. On November 21, 2003, the Department held a public hearing in Helena on the proposed amendments. Several comments were received by the November 28, 2003, deadline.

3. The comments received and the Department's responses are as follows:

COMMENT 1: Mary Alice McMurray of the Montana Labor-Management Alliance asked that the Department provide descriptions of the occupations covered by craft classifications.

RESPONSE 1: The Department notes that it sets heavy and highway construction wage rates by adopting the federal Davis-Bacon Act heavy and highway rates. Inherent in that adoption is the incorporation of the occupational titles used for federal Davis-Bacon Act projects. The occupational classifications used by the federal government do not directly correspond to standard job descriptions listed in the Dictionary of Occupational Titles or the Standard Occupational Classification system. The Department further notes that various union contracts, due to jurisdictional issues, do not necessarily use a consistent set of occupational descriptions.

The Department recognizes there are a wide variety of factors used in classification of workers on heavy or highway construction projects. The Department can provide technical assistance to employers with specific questions about how to appropriately classify workers on a particular public works project. Employers with such questions may contact Tonya McCormack, compliance specialist, by telephone at 406-444-1876; by e-mail at tmccormack@state.mt.us; or by mail at Wage and Hour Unit, Employment Relations Division, Department of Labor and Industry, P.O. Box 1728, Helena, MT 59620-1728.

COMMENT 2: Mr. Edwin C. "Bud" Anderson, of Anderson Masonry, Inc. requests that Bricklayer and Hodcarrier classifications to be added to the heavy and highway construction prevailing wage schedule. Mr. Anderson notes that his corporation has worked on a number of federal projects in northwestern Montana, and expects to be working on similar projects in the future, and has had to seek special rate settings from the United States Department of Labor in the past.

RESPONSE 2: The Department notes that it sets Montana's heavy and highway construction wage rates by adopting the federal Davis-Bacon Act heavy and highway rates. Montana rates are applicable to projects funded by the State of Montana or by local governments in Montana. The Department's jurisdiction over prevailing wage rates does not apply to projects funded by the United States government. Based on the Department's understanding of the commenter's concerns, it appears that the Montana Department of Labor and Industry cannot assist the commenter, as the State of Montana cannot require the federal government to establish federal prevailing wage rates for the specified occupational classifications.

To have the specified occupations added for federal Davis-Bacon Act projects in Montana, the Department suggests that Mr. Anderson contact Mr. Forest Randall, U.S. Department of Labor, 200 Constitution Ave. NW, Washington, DC 20210 with his request.

COMMENT 3: Gary E. Gray, Senior Branch Manager, Securitas Security Services USA, Inc., stated he supports the new rates.

RESPONSE 3: The Department acknowledges the commenter's support.

4. The Department has amended ARM 24.17.127 exactly as proposed.

/s/ MARK CADWALLADER
Mark Cadwallader
Alternate Rule Reviewer

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

Certified to the Secretary of State December 15, 2003

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

In the matter of the) NOTICE OF AMENDMENT
amendment of ARM 24.17.144)
and 24.17.147, relating to)
obligations of public)
contracting agencies,)
employers, and contractors)

TO: All Concerned Persons

1. On October 30, 2003, the Department of Labor and Industry published MAR Notice No. 24-17-176 regarding a public hearing concerning the proposed amendment of the above-stated rules at page 2367, 2003 Montana Administrative Register, issue number 20.

2. A public hearing was held in Helena on November 20, 2003. One member of the public attended the hearing and offered oral comment. No written comments were received prior to the closing of the comment period on December 1, 2003.

3. After consideration of the comment, the Department has amended ARM 24.17.144 and 24.17.147 exactly as proposed.

4. The Department has thoroughly considered the public comment made. The Department's response is as follows:

Comment 1: Representative Jim Keane of Butte (HD 36), and prime sponsor of House Bill 403 (enacted as Chapter 564, Laws of 2003), spoke in favor of the proposed amendments.

Response 1: The Department acknowledges the comment of Representative Keane.

/s/ MARK CADWALLADER
Mark Cadwallader,
Alternate Rule Reviewer

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

Certified to the Secretary of State December 15, 2003

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

In the matter of the proposed) NOTICE OF AMENDMENT
amendment of ARM 24.29.1526,)
relating to disallowed)
medical procedures for)
workers' compensation purposes)

TO: All Concerned Persons

1. On July 31, 2003, the Department of Labor and Industry published MAR Notice No. 24-29-171 regarding a public hearing on the proposed amendment of the above-stated rule relating to disallowed medical procedures for workers' compensation purposes, at page 1617, 2003 Montana Administrative Register, issue number 14.

2. A public hearing was held in Helena on August 22, 2003. Members of the public attended the hearing but offered no comments. A number of written comments from members of the public were received prior to the closing of the comment period on August 29, 2003.

3. After consideration of the comments, the Department has amended ARM 24.29.1526 as proposed with the following changes, stricken matter interlined, new matter underlined:

24.29.1526 DISALLOWED PROCEDURES (1) through (3)(a) remain as proposed.
~~(b) intradiscal electrothermal (IDET) therapy;~~
(c) and (d) remain as proposed but are renumbered (b) and (c).

AUTH: 39-71-203, MCA
IMP: 39-71-704, MCA

4. The Department has thoroughly considered all of the comments made. The comments received, and the Department's responses, are as follows:

Comment 1: Several commenters addressed the question of whether intradiscal electrothermal therapy (IDET) should be disallowed, given that it is widely used by many practitioners.

Response 1: The Department requested that the Board of Medical Examiners review their earlier recommendation that the IDET procedures be disallowed in light of the comments received. The Board of Medical Examiners met on November 21, 2003, and put forth a new set of recommendations regarding the IDET procedure. The Department believes, on the basis of all of the comments made and the recommendations of the Board of Medical Examiners, that IDET may have a place in the appropriate treatment of certain individuals under certain circumstances. The Department

believes that in light of conflicting medical and/or scientific opinions surrounding IDET, it should accept the recommendations of the Board of Medical Examiners.

The Department will post the recommendations of the Board of Medical Examiners regarding IDET on the Department's website at www.erd.dli.state.mt.us/WorkCompRegs/WCRmedreg.htm. The Department notes that although IDET is not being added to the list of disallowed procedures, that fact does not automatically mean that IDET is an appropriate course of treatment for any given patient. The Department also reminds providers and insurers that a determination of whether a proposed course of treatment constitutes reasonable medical services is usually a medical judgment that can only be made on a case-by-case basis.

Comment 2: The President of the Montana Society of Anesthesiologists commented that no notice of the Board of Medical Examiners May 2003 meeting at which the IDET procedure was discussed was given to interested physicians. The physician requested that the Department forestall a decision on the issue of disallowance of IDET until a properly noticed Board of Medical Examiners meeting can take place.

Response 2: The Executive Secretary for the Board of Medical Examiners has stated that notice of the Board's May 2003 meeting was given to everyone on the Board's interested parties list and notice of the meeting was provided on the Department's web site. As noted in Response 1, the Department has decided not to include IDET in the list of disallowed procedures.

Comment 3: A medical director for a managed care organization provided the organization's analysis regarding IDET. The commenter wrote that the information provided was obtained by consultation with appropriate specialists who are familiar with the procedures, and also through literature search and review of existing guidelines by specialty societies. The commenter concluded that there is still not sufficient valid data and information regarding IDET to support its use at this time, although there may be in the future.

Response 3: The Department acknowledges the comments made. As noted in Response 1, the Board of Medical Examiners has made a new set of recommendations regarding IDET procedures. The comments made by the commenter were presented to the Board of Medical Examiners for consideration at its November 2003 meeting. The Department believes that the Board's new recommendations take into account the comments made by this commenter.

Comment 4: A medical director for a managed care organization provided the organization's analysis of the extracorporeal shockwave therapy and the intervertebral disc replacement, two procedures not included in the proposed amendments. The commenter wrote that the information provided was obtained by

consultation with appropriate specialists who are familiar with the procedures, and also through literature search and review of existing guidelines by specialty societies. The commenter stated that the information provided supports a finding that the two procedures are experimental and unproved.

Response 4: The Department acknowledges the comments made. The Department notes that the two specific procedures discussed by the comment were not included in the proposed amendments. The Department will keep the comments and evidence provided in mind when the Department is next contemplating amendments to the rule. Please also see Response 6, concerning the Department's plans for periodic reviews.

Comment 5: A commenter from the Montana State Fund supported the proposed rule amendment and supplied a letter from a medical consultant of the State Fund supporting the Department's proposal on the IDET procedure.

Response 5: The Department acknowledges the comments made. As noted in Response 1, the Board of Medical Examiners has made a new set of recommendations regarding IDET procedures. The comments made by the commenter were presented to the Board of Medical Examiners for consideration at its November 2003 meeting. The Department believes that the Board's new recommendations take into account the comments made by this commenter.

Comment 6: The Montana State Fund also expressed support of periodic review by the Department of disallowed procedures to determine if research supports future rule modification.

Response 6: The Department agrees that periodic review of disallowed procedures and the tracking of medical research regarding disallowed and new procedures is appropriate. The Department intends to continue with such periodic reviews.

/s/ MARK CADWALLADER
Mark Cadwallader,
Alternate Rule Reviewer

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

Certified to the Secretary of State December 15, 2003

BEFORE THE BOARD OF ALTERNATIVE HEALTH CARE
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment) NOTICE OF AMENDMENT
of ARM 24.111.502, licensing) AND ADOPTION
by examination; ARM 24.111.602,)
direct-entry midwife)
apprenticeship requirements; ARM)
24.111.612, vaginal birth after)
cesarean (VBAC) deliveries; ARM)
24.111.2102, naturopathic)
physician continuing education)
requirements; ARM 24.111.2103,)
midwives continuing education)
requirements; and the adoption)
of new rule I defining scope of)
practice for naturopaths)

TO: All Concerned Persons

1. On July 31, 2003, the Department of Labor and Industry published MAR Notice No. 24-111-17 regarding the public hearing on the proposed amendment and adoption of the above-stated rules at page 1620 of the 2003 Montana Administrative Register, issue no. 14.

2. On August 29, 2003, a public hearing on the proposed amendment and adoption of the above-stated rules was conducted in Helena. No public comments were made at the hearing and no written comments were received.

3. The Board has amended ARM 24.111.502, 24.111.602, 24.111.612, 24.111.2102, and 24.111.2103 exactly as proposed.

4. The Board has adopted NEW RULE I (24.111.512) exactly as proposed.

BOARD OF ALTERNATIVE HEALTH CARE
DOLLY BROWDER, L.M., CHAIRPERSON

/s/ MARK CADWALLADER
Mark Cadwallader
Alternate Rule Reviewer

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

Certified to the Secretary of State December 15, 2003.

BEFORE THE BOARD OF LAND COMMISSIONERS AND
THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION
OF THE STATE OF MONTANA

In the matter of the adoption) NOTICE OF ADOPTION
of new rules I through VI)
regarding obtaining a)
conservation license in lieu)
of timber sale)

TO: All Concerned Persons

1. On July 17, 2003, the department published MAR Notice No. 36-11-88 regarding a public hearing on the proposed adoption of the above-stated rules relating to establishing rules for obtaining a conservation license in lieu of timber sale at page 1453 of the 2003 Montana Administrative Register, issue no. 13.

2. A public hearing was held on August 6, 2003, to consider the proposed adoption.

3. The department has adopted new rules I (36.11.451), IV (36.11.454), V (36.11.455), and VI (36.11.456) as proposed.

4. The department has adopted new rules II and III as proposed but with the following changes, stricken matter interlined, new matter underlined:

NEW RULE II (36.11.452) TIMBER CONSERVATION LICENSE APPLICATION CONDITIONS AND FORMS (1) through (4)(d) remain as proposed.

(5) An application ~~for the offer by~~ to the department ~~of~~ for a conservation license in lieu of a timber sale shall be ~~submitted~~ on a form prescribed by the department.

(a) through (6) remain as proposed.

(7) If the high bidder for the timber conservation license in lieu of a timber sale has a winning bid and is someone other than the applicant, then the successful bidder will be assessed the ~~\$500~~ application fee and the original applicant's fee will be refunded.

(8) remains as proposed.

(9) The duration of the timber conservation license shall be determined within the Montana Environmental Policy Act (MEPA) process but shall not in any event exceed ~~40 years~~ the period established in 77-1-204, MCA, with respect to the sale, lease or exchange of state trust land.

(10) through (12) remain as proposed.

NEW RULE III (36.11.453) TIMBER CONSERVATION LICENSE BIDDING AND BONDING (1) through (5)(f) remain as proposed.

(g) A bond filed in accordance with the provisions of this rule may not be released by the department until the rules adopted pursuant to 77-5-208, MCA, and the terms of the timber conservation license have been fulfilled.

(7) The volume of timber associated with the timber conservation license ~~shall~~ may be counted as part of the annual timber sale requirement for the state timber sale program administered by the department.

COMMENT NO. 1: New rule II, Section 8, suggests a maximum term of 40 years as determined by the Montana Environmental Policy Act. The Montana Logging Association (MLA) would like to suggest that 40 years is too long of a time frame in a very dynamic ecosystem.

RESPONSE NO. 1: The term of the license will be determined within the MEPA analysis. The maximum time limit will reflect the period established by 77-1-204, MCA with respect to the sale, lease or exchange of state trust land. Each license request will vary significantly as will the environmental and economic impacts associated with the sale and the license. Possible impacts will include habitat, wildlife and fish. Deferred management of a stand will also impact the overall management plan for the sale area and may impact the long-term revenue generated for the trust from the area licensed. What these effects will be will vary significantly from sale to sale. It is appropriate that the term of the lease be determined within the MEPA analysis since it is designed specifically to evaluate sale and license impacts and establish the conditions under which the trust will receive the "full, fair market value" for the timber deferred from sale.

COMMENT NO. 2: We would like to encourage and support the state's efforts to ensure that anyone seeking a conservation license pay market stumpage prices, forest improvement fees, and any and all infrastructure improvement costs such as is required by a potential timber sale bidder.

RESPONSE NO. 2: Sections 77-5-208(1)(d) and (e), MCA, identify the bond and FI requirements for all conservation license purchasers. Other fees are not authorized under this law.

COMMENT NO. 3: MLA has issue with the fact that this section (Rule III, section 7) allows for a conservation license volume to replace actual mill volume and will have a significant economic impact.

RESPONSE NO. 3: The word "shall" will be changed to "may" in New Rule III, section 7 in order to be consistent with 77-5-223, MCA. The DNRC, in evaluating the potential impact of counting the license volumes toward the annual timber sale requirement, considered the volumes likely to be involved in the purchase of conservation licenses to be small enough so that they would not have a significant impact on the supply of logs for timber.

COMMENT NO. 4: We in the Montana Wood Products Association
Montana Administrative Register

24-12/24/03

(MWPA) have grave concerns over the language in New Rule III, section 7, which reads, "The volume associated with the timber conservation license shall be counted as part of the annual timber sale requirement for the state timber sale program administered by the department." I encourage the department to look closely at New Rule III, section 7, and simply add the word "not" so it reads, "...the timber conservation license shall not be counted as part of the annual timber sale requirement for the state timber sale program...."

RESPONSE NO. 4: The word "shall" will be changed to "may" in New Rule III, section 7 in order to be consistent with 77-5-223, MCA. The DNRC, in evaluating the potential impact of counting the license volumes toward the annual timber sale requirement, considered the volumes likely to be involved in the purchase of conservation licenses to be small enough so that they would not have a significant impact on the supply of logs for timber.

COMMENT NO. 5: From the Montana Environmental Information Center, the definition of "deferred stumpage value" should include some consideration for the additional value the standing trees will bring at the expiration of the license period. Although there may be times, according to DNRC, when trees decline in value over time, I find it hard to believe that DNRC would not make more money by getting paid to defer the timber sale for the term of the license and then being able to sell the timber in no more than 40 years. Therefore, this definition in this rule (or some other provision in this rule) should account for the fact that the agency has standing trees it can harvest when the license period expires. I simply don't believe that the agency has a 40-year rotation period for harvested trees. If so, please describe where that occurs now and how frequently it occurs.

RESPONSE NO. 5: Section 77-5-208(1)(c), MCA, states "the department shall solicit bids simultaneously for each alternative authorized by this section to ensure that the full, fair market value is secured for the beneficiaries." This requirement limits the department's ability to compensate conservation license purchasers for timber that may be sold subsequent to the expiration of the license. One of the primary concerns is that by reimbursing the license purchaser for the residual value of the licensed timber, the purchaser could through successive license purchases remove substantial acreage from harvest at a rate below the "full, fair market value." Nearly all compensation schemes will require the ability to adjust the payment level for the license when it expires if the "full, fair market value is secured for the beneficiaries" requirement is to be met. The maximum time limit will reflect the period established by 77-1-204, MCA with respect to the sale, lease or exchange of state trust land. The term of the lease will be determined within the MEPA analysis since it is designed specifically to evaluate

sale and license impacts and establish the conditions under which the trust will receive the "full, fair market value" for the timber deferred from sale.

COMMENT NO. 6: NEW RULE II(5). The wording in this section is extremely confusing and muddled. I am particularly confused by the word "by" in the first line. Please clarify.

RESPONSE NO. 6: The Department agrees that, as written, NEW RULE II(5) is not clear and will make changes to reflect the concerns of MEIC.

COMMENT NO. 7: NEW RULE II. Another section should be added between (11) and (12) that says, "The department's environmental analysis shall identify any roads that may be necessary to reach other state lands during the term of the license." This is only fair for the potential licensee. NEW RULE IV(3) attempts to get at this point, but fails to require the department to disclose the potential need for roads in order to reach tracts for such things as timber harvesting that otherwise might be difficult or impossible to access. The purpose of MEPA is full disclosure of potential impacts. This impact should be disclosed so that the potential licensee can determine if the license will truly serve their purpose.

RESPONSE NO. 7: To the extent that it is known, the MEPA analysis of the conservation license should disclose any future timber harvests that would require a road through the conservation license area. These should also be noted in the conservation license.

COMMENT NO. 8: NEW RULE II. There does not appear to be a mechanism for the licensee to get the bond back if they fulfill their commitments. There should be a mechanism. Please explain or clarify.

RESPONSE NO. 8: The Department has added subsection (5)(g) in NEW RULE III to cover the return of bonds associated with the conservation license.

COMMENT NO. 9: NEW RULE IV(3). It would be helpful to insert the word "identify" in the following sentence: "The department shall identify and look at other reasonable future access alternatives during MEPA analysis..." This indicates that the department will be more specific in its analysis of other reasonable access sites. In general, we support the concept in this sentence as providing the licensee with more certainty about future activities.

RESPONSE NO. 9: The insertion of the word "identify" does not appear necessary and could lead to procedural problems if there were no viable alternatives to the road(s) identified in the initial analysis. The MEPA process provides ample opportunity for comment and will allow an applicant

opportunity to suggest an alternative route(s) if, in the opinion of the applicant, the MEPA analysis is deficient in this area.

COMMENT NO. 10: NEW RULE IV(4). This section is the most controversial of this rule package. A small change may help alleviate some concerns about the value of conservation licenses if the department has the discretion to punch roads through the middle of them at any time. State and federal public land ownership is relatively static. This static nature makes it far easier for the department to predict its needs for accessing state lands in the near future. I believe that a phrase should be added that puts a burden on the department to consider possible roads during the MEPA process. I believe that a phrase could be inserted at the end that says: "as long as those changes were identified in the original MEPA analysis." This gives some predictability to the licensee and helps the licensee understand how their license may be affected over time.

RESPONSE NO. 10: The addition of this language could put the department in an untenable position with regard to its forest management responsibilities as well as its fiduciary responsibilities to the trust. For example, the unanticipated bug infestation, mineral development, special use leasing, or tract acquisition could require the department initiate salvage activities, 77-5-207, MCA, or other activities requiring road access. If the only access were through the conservation license area, the state would be precluded by contract from constructing the road and doing the required activity. There is no way to predict these kinds of conditions in advance; hence, they could not be part of the MEPA analysis.

COMMENT NO. 11: Respondent voiced concern whether or not the department would consider in the analysis of the conservation license request the additional growth that would occur after the harvest of the trees that would not occur if the conservation license were issued.

RESPONSE NO. 11: While not explicitly identified in the rules, this will be part of the MEPA analysis process. The varying conditions associated with each sale and each license makes it improper to include the specific analysis as a rule. There are too many sale specific conditions to have a rule that would fully cover this issue.

BOARD OF LAND COMMISSIONERS

DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

By: /s/ Judy Martz
JUDY MARTZ
Chair

By: /s/ Arthur R. Clinch
ARTHUR R. CLINCH
Director

By: /s/ Tommy H. Butler
TOMMY H. BUTLER
Rule Reviewer

Certified to the Secretary of State December 5, 2003.

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

In the matter of the amendment	)	CORRECTED NOTICE OF
of ARM 37.12.301, 37.12.305,	)	AMENDMENT
37.12.306, 37.12.310,)	
37.12.311, 37.12.312,)	
37.12.314, 37.12.315,)	
37.12.316, 37.12.320,)	
37.12.324, 37.12.326,)	
37.12.337, 37.12.338,)	
37.12.341, 37.12.345,)	
37.12.346, 37.12.401,)	
37.12.601 and 37.12.603)	
pertaining to laboratories)	
)	

TO: All Interested Persons

1. On September 11, 2003, the Department of Public Health and Human Services published notice of the proposed amendment of the above-stated rules at page 1969 of the 2003 Montana Administrative Register, issue number 17, and on October 30, 2003, published notice of the amendment on page 2442 of the 2003 Montana Administrative Register, issue number 20.

2. This corrected notice is being filed to correct an error in ARM 37.12.603.

3. The rule is corrected as follows:

37.12.603 PROCEDURES (1) through (1)(d) remain as amended.

(2) The procedure for completion of the medical certificate when the examination is made outside of Montana is as follows:

(a) through (d) remain as amended.

~~(e) Except as modified by this subsection, the procedures of (1) of this rule apply.~~

AUTH: Sec. 40-1-206, MCA

IMP: Sec. 40-1-203, 40-1-204 and 40-1-206, MCA

4. The Department intended to show ARM 37.12.603(2)(e) as being deleted. This subsection does not make sense and serves no purpose, so the Department was deleting this subsection as it was unnecessary rule text. During the publication process at the Secretary of State's office, this was inadvertently removed from the notice. As there is no substantive content to this subsection, its removal will have no impact and is solely a clerical correction.

5. All other rule changes amended remain the same.

Dawn Sliva
Rule Reviewer

John Chappuis for
Director, Public Health and
Human Services

Certified to the Secretary of State December 15, 2003.

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

In the matter of the amendment) NOTICE OF AMENDMENT
of ARM 37.40.1415, 37.86.1802,)
37.86.1806 and 37.86.1807)
pertaining to medicaid)
reimbursement for durable)
medical equipment,)
prosthetics, orthotics and)
medical supplies)

TO: All Interested Persons

1. On October 30, 2003, the Department of Public Health and Human Services published MAR Notice No. 37-303 pertaining to the public hearing on the proposed amendment of the above-stated rules relating to medicaid reimbursement for durable medical equipment, prosthetics, orthotics and medical supplies, at page 2383 of the 2003 Montana Administrative Register, issue number 20.

2. The Department has amended ARM 37.40.1415, 37.86.1802, 37.86.1806 and 37.86.1807 as proposed.

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

COMMENT #1: Commentor agrees with the changes to match payments with Medicare except for a few instances. Medicare patients generally have money whereas Medicaid patients do not; Medicare patients can afford the additional charges and Medicaid patients cannot.

RESPONSE: It is unclear what additional charges the Commentor is referring to. The proposed changes merely provide that Medicaid will pay the same amount for durable medical equipment, prosthetics, orthotics and medical supplies which Medicare pays.

COMMENT #2: The proposed changes will not pay enough for ostomy and urology supplies under the Medicare payment scale. While Medicare patients can afford these supplies, Medicaid patients cannot afford to pay them on their own. Paying Providers just the Medicare rate for these supplies does not make it worthwhile for providers to carry them.

RESPONSE: Currently, Medicaid reimbursement for ostomy and urology supplies equals the Medicare fee paid at the time when such procedure codes were introduced nationally. Medicare has increased its fees for most of these supplies since then, so the current Medicaid fees for the majority of ostomy and urology supplies are less than those currently paid by Medicare. Thus,

under the proposed reimbursement methodology which will pay the 100% of the Medicare allowable fee in most instances, fees for most ostomy and urology supplies will increase. Additionally, the proposed methodology provides for the use of the most current, updated Medicare allowable fee as it becomes available for each item, so Medicaid fees will increase each time the Medicare allowable increases. The Department believes the increased fees for ostomy and urology supplies are adequate to ensure Medicaid recipients have access to these items.

COMMENT #3: Medicare doesn't pay for raised toilet seats and tub assists; and Medicaid patient can't afford them on their own. The same applies to seat lift chairs.

RESPONSE: The proposed changes affect only the amount of the fees for durable medical equipment, prosthetics, orthotics and medical supplies and will not change the coverage of such items currently allowed under the Medicaid program. Medicaid will continue to cover raised toilet seats, tub assists, and seat lift chairs, although the fees paid may be different than those paid under the current rule.

COMMENT #4: Medicare does not pay for anything connected with a wheelchair if the patient is in a nursing home whereas Medicaid has paid for the maintenance of wheelchairs for nursing home patients. Will Medicaid continue to reimburse for this? Will Medicaid continue to pay for wheelchair labor and repair?

RESPONSE: The proposed changes affect only the amount of the fees for durable medical equipment, prosthetics, orthotics and medical supplies and will not change the coverage of items currently allowed under the Medicaid program. Medicaid will continue to cover maintenance of patient owned and medically necessary wheelchairs for nursing home patients.

Dawn Sliva
Rule Reviewer

John Chappuis for
Director, Public Health and
Human Services

Certified to the Secretary of State December 15, 2003.

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

In the matter of the adoption) NOTICE OF ADOPTION AND
of new rule I and the) AMENDMENT
amendment of ARM 37.86.2207)
and 37.86.2230 pertaining to)
early and periodic screening,)
diagnostic and treatment)
services (EPSDT), school based)
transportation and health)
related services)

TO: All Interested Persons

1. On November 13, 2003 the Department of Public Health and Human Services published MAR Notice No. 37-306 pertaining to the proposed adoption and amendment of the above-stated rules relating to early and periodic screening, diagnostic and treatment services (EPSDT), school based transportation and health related services, at page 2498 of the 2003 Montana Administrative Register, issue number 21.

2. The Department has amended ARM 37.86.2207 and 37.86.2230 as proposed.

3. The Department has adopted 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.

RULE I [37.86.2234] EARLY AND PERIODIC SCREENING, DIAGNOSTIC AND TREATMENT SERVICES (EPSDT), SCHOOL BASED SPECIALIZED TRANSPORTATION SERVICES (1) Coverage of specialized transportation is limited to school based transportation of clients with disabilities for the purpose of obtaining nonemergency medical services covered by the medicaid program.

(a) through (4) remain as proposed.

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

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

COMMENT #1: Nothing in Rule I [37.86.2234] limits its application to school based transportation.

RESPONSE: The Department agrees and has added the phrase "school based" to the first sentence of Rule I(1) [37.86.2234(1)] as proposed to clearly state that the Medicaid

reimbursement is limited to school based transportation.

COMMENT #2: Is school based transportation an allowable medical service under the federal Social Security Act that may be provided by the Montana Medicaid program pursuant to 53-6-101(3)(q), MCA?

RESPONSE: Specialized nonemergency school based transportation to obtain medical services is an allowable medical service under the federal Social Security Act that may be provided by the Montana Medicaid program pursuant to Montana statute. Since these services are provided to people under 21 they are also an early and periodic screening, diagnosis, and treatment (EPSDT) service and would be authorized under 53-6-101(2)(g), MCA.

Dawn Sliva
Rule Reviewer

John Chappuis for
Director, Public Health and
Human Services

Certified to the Secretary of State December 15, 2003.

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

In the matter of the amendment) NOTICE OF AMENDMENT
of ARM 37.86.3501, 37.86.3502,)
37.88.101, 37.88.901,)
37.88.907 and 37.89.103)
pertaining to adult mental)
health services)

TO: All Interested Persons

1. On October 30, 2003, the Department of Public Health and Human Services published MAR Notice No. 37-304 pertaining to the public hearing on the proposed amendment of the above-stated rules relating to adult mental health services, at page 2395 of the 2003 Montana Administrative Register, issue number 20.

2. The Department has amended ARM 37.86.3502, 37.88.907 and 37.89.103 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.

37.86.3501 CASE MANAGEMENT SERVICES FOR ADULTS WITH SEVERE DISABLING MENTAL ILLNESS, DEFINITIONS (1) through (6) remain as proposed.

(7) "Severe disabling mental illness" means with respect to a person who is 18 or more years of age that the person meets the requirements of ~~(2)(7)~~(a), (b) or (c). The person must also meet the requirements of ~~(2)(7)~~(d). The person:

(a) through (b)(vii) remain as proposed.

(c) has a DSM-IV diagnosis ~~with a severity specifier of moderate or severe~~ of personality disorder (301.00, 301.20, 301.22, 301.4, 301.50, 301.6, 301.81, 301.82, 301.83, or 301.90) which causes the person to be unable to work competitively on a full-time basis or to be unable to maintain a residence without assistance and support by family or a public agency for a period of at least six months or is obviously predictable to continue for a period of at least six months; and

(d) through (d)(v) remain as proposed.

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

IMP: Sec. 53-6-101, MCA

37.88.101 MEDICAID MENTAL HEALTH SERVICES, AUTHORIZATION REQUIREMENTS (1) through (3)(b) remain as proposed.

(4) Adult intensive outpatient therapy services may be medically necessary for a person with safety and security needs who has demonstrated the ability and likelihood of benefit from continued outpatient therapy. The person must meet the

requirements of (4)(a) or (b). The person must also meet the requirements of (4)(c). The person has:

(a) remains as proposed.

(b) a DSM-IV diagnosis ~~with a severity specifier of moderate or severe~~ borderline personality disorder (301.83), personality disorder (NOS) (301.9) with prominent features of 301.83; and

(c) through (11) remain as proposed.

AUTH: Sec. 53-6-113, MCA

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

37.88.901 MENTAL HEALTH CENTER SERVICES, DEFINITIONS (1) through (13) remain as proposed.

(14) "Program of assertive community treatment" means a self-contained clinical team which:

(a) through (e) remain as proposed.

(f) provides psychiatric services at the rate of at least ~~12~~ (20) hours per week for each 70 persons served; and

(g) through (18) 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

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

ARM 37.86.3501

COMMENT #1: Use of the term "involuntarily hospitalized" persons would unfairly penalize persons who were insightful enough to accept a voluntary hospitalization. Additionally, we believe that limiting the facility to which the individual had been hospitalized to just the Montana State Hospital penalizes persons who were treated at another psychiatric facility/ward in Montana. A person who cooperates with his treatment team and consents to appropriate hospitalization would be excluded from this criterion.

This criterion is entirely too restrictive. Many individuals with SDMI are never hospitalized at Warm Springs. The criterion should be changed to include any psychiatric hospitalization, not just an involuntary one, in any psychiatric facility, not just Warm Springs.

RESPONSE: The proposed amendment establishes a criterion for an individual who does not meet the diagnostic criteria in (7)(b) or (c), but who has been hospitalized for a period of at least 30 days to be determined SDMI if functional impairment (7)(d) is present. The intent is to ensure that persons who are involuntarily hospitalized can access mental health services in the community and be discharged as soon as possible to a less restrictive setting that is clinically appropriate. The

Department does not wish to expand eligibility for publicly funded mental health services beyond the diagnostic criteria it otherwise employs and beyond its ability to reimburse for services.

COMMENT #2: Adding anxiety disorder was an excellent change.

We support the suggested inclusion of additional anxiety disorders. We would hope that the department will consider inclusion of other disabling anxiety disorders, such as post-traumatic stress disorder, generalized anxiety disorder, and anxiety disorder "not otherwise specified" (NOS).

We are very concerned that the Department does not recognize many valid DSM-IV diagnoses that are very often applied to people with severe and persistent mental illnesses (or SDMI). There are few apparent logical reasons for the inclusion or exclusion of various diagnoses - indeed, entire diagnostic categories - in the list the Department has developed. We would recommend that the Department instead identify broad diagnostic categories or even drop the diagnostic criterion altogether. If the Department insists in listing specific diagnoses, at the very least the list should more comprehensively and inclusively reflect those diagnoses that may be applied to people with severe and persistent mental illnesses.

RESPONSE: Historically, the publicly funded mental health system has experienced a growth that is not sustainable within existing fiscal resources. The Department intends to establish a method for identification of those individuals with the greatest clinical need and with serious disabling, as opposed to persistent, mental illness. To accomplish this, a combination of diagnostic criteria and functional impairment is used. The alternative, which includes reductions in provider reimbursement rates, further service restrictions or elimination of eligibility categories would result in a service delivery system that is unable to meet the treatment needs of those with the greatest disability.

COMMENT #3: In regard to criterion (7)(c), we do not understand the Department's references to "severity specifiers" in regard to personality disorders. In the DSM-IV, formal severity specifiers are not used (or defined) for the personality disorders.

RESPONSE: The Department agrees and the proposed rule has been amended to reflect this.

COMMENT #4: Under (7)(d), the indicator was changed from one to two, which means it will be more difficult to qualify; however, considering the list of indicators, I think this is valid.

We object to the proposed change that an individual must meet at least two of the criteria in (7)(d). This proposed change would

further unnecessarily and inappropriately restrict services available to individuals who need them, making it much more difficult for them to qualify for needed services. The current requirement to meet only one of the criteria should remain in force.

RESPONSE: In order to identify individuals who demonstrate severe disability due to mental illness, the Department believes that it is reasonable to require at least two of the conditions identified in the proposed amendment be documented. The population that will be served is made up of those individuals with the greatest clinical need and with serious disabling, as opposed to persistent, mental illness. Expansion of the target population would require alternative strategies including reductions in provider reimbursement rates, further service restrictions, or elimination of eligibility categories that would result in a service delivery system that is unable to meet the treatment needs of those with the greatest disability.

COMMENT #5: Under (7)(d)(i) health care professional was changed to "medical professional with prescriptive authority". Although social workers do not prescribe medications, they are able to assess when medications might be warranted and refer to psychiatrists when appropriate. Therefore, I suggest that "health care professional" not be deleted.

The Commentor opposes the suggested change. The Commentor believes that a properly trained mental health professional can make an appropriate determination as to whether or not medication is warranted, even though they may not be able to actually prescribe the medication. The current wording should stand. This appears to be an attempt to cut mental health professional persons and others out of the process of determining who may have a SDMI, and something that we vigorously oppose.

RESPONSE: The proposed amendment is intended to clarify the existing administrative rule provision, (7)(d)(i) that a health care professional has determined that medication is necessary to control the symptoms of mental illness. ARM 37.106.1902(16) defines a licensed health care professional as a licensed physician, physician assistant-certified, or advanced practice registered nurse who is authorized to prescribe medication within the scope of the license. A licensed mental health professional is defined separately in ARM 37.106.1902(17). The Department recognizes that some licensed mental health professionals may be capable of accurately determining the need for medication, but has no way to evaluate or assure competence at this time. The Department will adopt the amendment as proposed.

COMMENT #6: We do not object to the proposed changes to (7)(d)(ii) through (v). In each case the proposed changes appear to be benign or even beneficial.

Under (7)(d)(ii), "full time" should be deleted and replaced with "the person is unable to work in a competitive . . .".

RESPONSE: The Department believes that rehabilitation services for individuals with mental illness should include competitive employment whenever possible. An individual's inability to achieve full-time competitive employment due to a mental illness should be taken into consideration in determination of functional impairment for SDMI. The Department does not wish to exclude those individuals who can only work part time due to a mental illness.

ARM 37.88.101

COMMENT #7: For intensive outpatient therapy services, I suggest "at least two of the following" instead of the requirement that the individual meet all of the criteria in (4)(c). Mentally ill patients are not all suicidal. Under (4)(c)(iii), I suggest that "and" be replaced with "or".

RESPONSE: The criterion does not suggest that an individual must be suicidal in order to be eligible for intensive outpatient therapy. The intent is to assess the degree to which the individual presents a danger to others or the potential for self-harm. The conditions identified in (4)(c)(i) through (iv) together identify the ongoing symptomology that support the medical necessity of this intensive service.

COMMENT #8: The comments and proposed remedies reflected in Comment #5 apply to the proposed criteria for intensive outpatient therapy services.

RESPONSE: The Department intends to establish a method for identification of those individuals with the greatest clinical need. The Department is unable to support on-demand access to this intensive level of care and developed criteria that it believes will differentiate those individuals who are likely to benefit from the treatment.

ARM 37.88.901(14)(f)

COMMENT #9: A Program of Assertive Community Treatment (PACT) team should provide 20 hours of psychiatric coverage each week for every 70 patients. The recommendation for this rule amendment originated with the two PACT teams in Montana. The proposed amendment contained an error.

RESPONSE: The Department agrees and has amended the proposed rule to reflect the increased hours of weekly psychiatric coverage.

General comments

COMMENT #10: The Commentor is gravely concerned that DPHHS did

not notify professional associations of the proposed rule changes. Rather than attempting to implement this rule change without considerable and appropriate public input, we propose that the Department engage a process with various consumer and provider groups to jointly develop more appropriate definitions of SDMI.

RESPONSE: The Department had thought that the professional associations had requested to be on the notification list maintained for amendments to rules pertaining to mental health services. However, it appears that there had not been a request. The professional associations have since been added to the list. The notice and comment procedures under the Montana Administrative Procedure Act were followed and they are sufficient to assure public participation in development of the definitions.

COMMENT #11: The Commentor is concerned that many of the proposed changes will make it more difficult for people with severe and persistent mental illnesses to gain access to needed services. The rules should be amended to facilitate access to appropriate services for those individuals who may be in need of them.

RESPONSE: The Department provides reimbursement for mental health services for individuals who have been determined to have severe disabling mental illness. It is not possible at this time to provide publicly funded services for individuals who do not meet the Department's strict criteria without either a substantial increase in financial resources or a drastic reduction in the service array. The Department will continue its attempt to balance legislative appropriation with a system of care that delivers needed services to those who meet both clinical and functional criteria.

The Department received other general comments not specifically related to the proposed amendments. The Department responded to each Commentor individually. Neither the comments nor responses are set forth in this notice.

Dawn Sliva
Rule Reviewer

John Chappuis for
Director, Public Health and
Human Services

Certified to the Secretary of State December 15, 2003.

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

In the matter of the adoption) NOTICE OF ADOPTION
of new rules I through IV)
pertaining to the)
implementation of the Montana)
medicaid disease management)
program)

TO: All Interested Persons

1. On October 30, 2003, the Department of Public Health and Human Services published MAR Notice No. 37-305 pertaining to the proposed adoption of the above-stated rules relating to the implementation of the Montana medicaid disease management program, at page 2406 of the 2003 Montana Administrative Register, issue number 20.

2. The Department has adopted rules I [37.86.5201], II [37.86.5202], III [37.86.5205] and IV [37.86.5206] as proposed.

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

COMMENT #1: This program appears to be a managed care program as that term is used in 53-6-116 and 53-6-117, MCA. 53-6-116(5), MCA, requires the program be submitted to the Legislative Finance Committee for comment.

RESPONSE: The Department submitted the program to the Legislative Finance Committee for comment and has added 53-6-116 and 53-6-117, MCA as the implementing authority.

COMMENT #2: The Commentor supports rules for a disease management program. The rules should provide an opportunity for pharmacists to have an active role in the program.

RESPONSE: The Department appreciates the support, but does not agree that the rules should contain more specifics. The rules define a Disease Management Organization (DMO) as a "clinically qualified organization that has a disease management program which uses evidence based health care practices". Programs operated under a contract with a DMO must be based on evidence based health care practices and the request for proposal and resulting contract will include the specific requirements, standards and evaluations for the particular program.

COMMENT #3: The Department should consider the role of pharmacists in the Disease Management Program.

RESPONSE: The Department recognizes the important role that

pharmacists play in any successful disease management program. Managing chronic diseases requires appropriate pharmaceutical management. The DMO is expected to use evidence based health care practices (including pharmaceutical) to manage the chronic conditions.

Dawn Sliva
Rule Reviewer

John Chappuis for
Director, Public Health and
Human Services

Certified to the Secretary of State December 15, 2003.

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

In the matter of the amendment)
of ARM 38.5.8201, 38.5.8202,) NOTICE OF AMENDMENT
and 38.5.8226 and the adoption) AND ADOPTION
of New Rules I and II, all)
pertaining to the Electric)
Utility Industry Restructuring)
and Customer Choice Act, Minimum)
Filing Requirements, Advanced)
Approval Applications, and Fees)

TO: All Concerned Persons

1. On October 16, 2003, the Department of Public Service Regulation, Public Service Commission (Commission) published MAR Notice No. 38-2-175 regarding the public hearing on proposed amendments to existing rules, and proposed adoption of new rules, all pertaining to the Electric Utility Industry and Customer Choice Act, Minimum Filing Requirements, Advanced Approval Applications, and Fees, was at page 2228 of the 2003 Montana Administrative Register, Issue No. 19.

2. The Commission has amended ARM 38.5.8201, 38.5.8202 and 38.5.8226, and adopted new rule II (38.5.8229) exactly as proposed.

3. The Commission has adopted new rule I (38.5.8228) following changes from the original proposed language (deleted language interlined):

NEW RULE I (38.5.8228) MINIMUM FILING REQUIREMENTS FOR DSU APPLICATIONS FOR ADVANCED APPROVAL (1) If a DSU intends to file an application for advanced approval of a power purchase agreement, it must notify the commission and the Montana consumer counsel far enough in advance of filing to accommodate adequate pre-filing communication. If the power purchase contract will result from a competitive solicitation, notice must be provided before the DSU issues a request for proposals. ~~For opportunity resources, the DSU should provide notice immediately upon a determination by the DSU that a real and viable opportunity exists and should be pursued.~~

(2) remains as proposed.

AUTH: 69-8-403 and 69-8-419, MCA
IMP: 69-8-403 and 69-8-419, MCA

4. The Commission received comments on the proposed rules. The following is a summary of the comments, and Commission responses.

General comment: Commercial Energy of Montana commented that the rules should be expanded to subject affiliate transactions to a higher standard of review. Transactions between the default supply utility and an affiliate should be constrained to the lower of cost or market.

Response: Rules governing transactions between the default supply utility and any affiliates are not the subject of this rulemaking. The Commission has already addressed Commercial Energy's concerns about affiliate transactions in the Default Electric Supplier Procurement rules adopted April 11, 2003. Those rules contain an entire section dedicated to affiliate transactions, and the lower of cost or market standard Commercial Energy advocated is included explicitly. See ARM 38.5.8221. Those rules also state that, by definition, affiliate transactions cannot be presumed to occur on a truly arm's-length basis and, therefore, the Commission subjects such transactions to close scrutiny.

Comment on Rule I: Commercial Energy stated that the concept of opportunity resources should be defined in the rules so that it is clear what characteristics such resources embody. For example, the rule should clarify how resource life, quantity and cost affect whether a resource can be considered an opportunity resource. The rules should also clarify whether interested persons have a right to object to an opportunity resource. James Carkulis stated that real, viable opportunities can only exist in the context of a level playing field. Mr. Carkulis expressed a concern that the Commission and Montana Consumer Counsel might not be aware of all opportunities the default supply utility had because of a lack of transparency. Mr. Carkulis also asserted that a default supply utility should not be allowed to circumvent Commission rules and processes through the procurement of opportunity resources.

Response: The Commission has stricken the references to opportunity resources from the rules because, by definition, opportunity resources do not generally fit within an advanced approval framework. The time needed to process an application for advanced approval would normally not be available with a true opportunity resource, and if there is time to undertake an advanced approval process then there should also be time to apply the Commission's preferred resource procurement approach. Striking references to opportunity resources in the rule does not preclude a default supply utility from submitting an application for advanced approval of a resource it defines as an opportunity resource. However, the utility must demonstrate that the resource is in the public interest, facilitates achieving the goals and objectives in the Commission's default electric supplier procurement rules and complies with the minimum filing requirements in these rules.

General comment: Commercial Energy observed that the proposed rules are premised on a filing by the default supply utility of a procurement plan by December 15, 2003. Commercial Energy reasoned that if the utility does not file a plan by the specified date it should not be entitled to advanced approval. Mr. Carkulis commented that the rules impose certain requirements with which NorthWestern Energy will not have complied if it asks for advanced approval for some the resources it has arranged to date. For example, the proposed rules require the default supply utility to notify the Commission if it intends to file an advanced approval application. If the resource to be included in the application will be procured using a competitive solicitation, the notice must be provided before an RFP is issued. Mr. Carkulis wondered about the implications of this rule for resources NorthWestern Energy selected in prior solicitations; does the Company have to start over or can the Company request advanced approval for the resources picked in those prior solicitations?

Response: Senate Bill 247, and the rules the Commission adopted to implement it, only apply to power supply purchase agreements for which the procurement process began on or after April 24, 2003, the date the bill became law. Therefore, SB 247 and the Commission's rules technically do not apply to the electric default supply procurement plan NorthWestern Energy has been developing since the summer of 2002 or any competitive solicitations the Company conducted prior to April 24, 2003. However, the Commission can and will still do its best to process default supply procurement plans and any advanced approval applications in a manner that is consistent with the intent of the law and its own rules. The Commission would not be bound by the time constraints imposed by SB 247 and a longer proceeding may be warranted by extraordinary circumstances. But contrary to the suggestion implied by Commercial Energy and Mr. Carkulis, the Commission will not automatically reject an application for advanced approval if a procurement plan is filed after December 25, 2003 or because the default supply utility does not comply with the letter of certain rules that are now being adopted for prospective planning cycles.

/s/ Bob Rowe
Bob Rowe, Chairman

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

CERTIFIED TO THE SECRETARY OF STATE December 15, 2003.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of)	NOTICE OF ADOPTION,
New Rule I (42.5.202); amendment)	AMENDMENT, TRANSFER,
of ARM 42.5.201 and 42.5.213;)	AND REPEAL
transfer of ARM 42.5.210)	
(42.15.317); and repeal of ARM)	
42.5.211 and 42.5.212 relating to)	
electronic signatures, filing and)	
remittance of tax information)	

TO: All Concerned Persons

1. On October 30, 2003, the department published MAR Notice No. 42-2-725 regarding the public hearing on the proposed adoption, amendment, transfer, and repeal of the above-stated rules relating to electronic signatures, filing, and remittance of tax information at page 2411 of the 2003 Montana Administrative Register, issue no. 20.

2. A public hearing was held on December 1, 2003, to consider the proposed adoption, amendment, transfer, and repeal of the rules stated above. No public testimony was presented at the hearing and no written comments were received. The department presented amendments to New Rule I (42.5.202) at the hearing. These amendments are necessary to correct a clerical error in (6) and the deletion of (7) through (9). The deletion is necessary because, at this time, the department does not have a way to monitor electronic mail notifications from employers who would not have quarterly withholding to report. This may be considered again next year after the new tax system is developed.

3. Therefore, the department adopts New Rule I (42.5.202) with the following changes:

NEW RULE I (42.5.202) ELECTRONIC RETURNS, REPORTS, AND SIGNATURES (1) through (5) remain as proposed.

(6) Except as permitted in the federal-state joint-filing program described in ~~(3)(a)~~ (4), a return or report may not be made electronically for a taxpayer unable to make the taxpayer's own return made by an authorized agent or by a guardian or other person charged with the care of the person or property of the taxpayer as provided in ARM 42.15.303.

~~(7) Registered employers who have no quarterly withholding to report may, in lieu of filing a required withholding report showing "no wages paid this quarter," submit an e-mail to the department's website at www.discoveringmontana.com/revenue, on or before the filing due date. The department's website contains a section entitled "about the agency" and there is a drop down box inside this reference entitled "contact us." Registered employers may complete and submit this page with the following~~

information:

- ~~(a) name of the person filing the report;~~
- ~~(b) telephone number of the person filing the report;~~
- ~~(c) name of the registered employer;~~
- ~~(d) address of the registered employer;~~
- ~~(e) the registered employer's federal employer identification number;~~
- ~~(f) the registered employer's Montana employer identification number; and~~
- ~~(g) the statement, "no wages paid this quarter" reporting that no state withholding is due.~~
- ~~(8) Registered employers filing a "no wages paid this quarter" state withholding report by e mail as provided in (7) must retain proof that they sent the report as part of their payroll records, as required by 15-30-204, MCA, and ARM 42.17.203.~~
- ~~(9) If the department notifies a registered employer that a withholding report may not be submitted by e mail as provided in (7), the employer must thereafter file a paper report or, if authorized, an electronic withholding report.~~

~~AUTH: Sec. 15-1-803, MCA~~

~~IMP: Sec. 15-1-231, 15-1-801, 15-1-802, 15-1-803, 15-30-142, and 15-30-305, MCA~~

4. Therefore, the department adopts New Rule I (ARM 42.5.202) with the amendments listed above, amends ARM 42.5.201 and 42.5.213, transfers ARM 42.5.210 to ARM 42.15.317, and repeals ARM 42.5.211 and 42.5.212 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.discoveringmontana.com/revenue>, under "for your reference;" "DOR administrative rules;" and "upcoming events and proposed rule changes." 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 December 15, 2003

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption) NOTICE OF ADOPTION AND
of New Rule I (ARM 42.11.105)) AMENDMENT
and amendment of ARM 42.11.104,)
42.11.201, 42.11.205, 42.11.211,))
42.11.212, 42.11.217, 42.11.243,))
42.11.245, 42.11.251, 42.11.401,))
42.11.402, 42.11.405, 42.11.406,))
42.11.407, 42.11.409, 42.11.421,))
42.11.422, 42.11.423, 42.11.424,))
and 42.11.425 relating to liquor))
distribution and liquor vendors)

TO: All Concerned Persons

1. On September 25, 2003, the department published MAR Notice No. 42-2-722 regarding the proposed adoption and amendment of the above-stated rules relating to liquor distribution and liquor vendors at page 2059 of the 2003 Montana Administrative Register, issue no. 18.

2. A public hearing was held on December 3, 2003, to consider the proposed adoption and amendments. No one appeared at the hearing to testify and no written comments were received. After review of the proposed amendments, the department amends ARM 42.11.401, 42.11.406 and 42.11.422 with the following changes:

42.11.401 DEFINITIONS As used in this sub-chapter, the following definitions apply:

(1) through (6) remain as proposed.

(7) "SAMPLE" MEANS A LIQUOR PRODUCT FURNISHED BY A LIQUOR VENDOR TO BROKERS AND REPRESENTATIVES FOR THE PURPOSE OF PROMOTING THE PRODUCT.

AUTH: Sec. 16-1-103 and 16-1-303, MCA

IMP: Sec. 16-1-103, 16-1-104, and 16-1-302, MCA

42.11.406 PRODUCT LISTING (1) through (4)(d)(iii) remain as proposed.

(5) SAMPLE PRODUCTS, LIKE ALL REGULAR INVENTORY PRODUCTS, MUST BE SHIPPED TO THE STATE LIQUOR WAREHOUSE FOR DISTRIBUTION PURPOSES. SAMPLE PRODUCTS MUST MEET THE FOLLOWING CRITERIA:

(a) SAMPLES ARE LIMITED TO 750 MILLIMETER SIZES OR LESS;
AND

(b) LIMIT OF SIX CASES PER BRAND, PER VENDOR, PER CALENDAR YEAR IN ADDITION TO SIX CASES OF 50 MILLIMETERS.

AUTH: Sec. 16-1-103 and 16-1-303, MCA

IMP: Sec. 16-1-103, 16-1-104, and 16-1-302, MCA

42.11.422 BAILMENT RECEIVINGS (1) Vendors may ship products to the bailment warehouse only if they are listed as "regular," "warehouse," "special order," "SAMPLE," or

"promotional" products in accordance with ARM 42.11.406.

(2) through (5) remain as proposed

AUTH: Sec. 16-1-103 and 16-1-303, MCA

IMP: Sec. 16-1-103, 16-1-104, and 16-1-302, MCA

3. Therefore, the department amends ARM 42.11.401, 42.11.406, and 42.11.422 with the amendments listed above and adopts New Rule I (42.11.105) and amends ARM 42.11.104, 42.11.201, 42.11.205, 42.11.211, 42.11.212, 42.11.217, 42.11.243, 42.11.245, 42.11.251, 42.11.402, 42.11.405, 42.11.407, 42.11.409, 42.11.421, 42.11.423, 42.11.424, and 42.11.425 as proposed.

4. An electronic copy of this Adoption Notice is available through the Department's site on the World Wide Web at <http://www.discoveringmontana.com/revenue>, under "for your reference;" "DOR administrative rules;" and "upcoming events and proposed rule changes." 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 December 15, 2003

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment) NOTICE OF AMENDMENT
of ARM 42.21.113, 42.21.115,)
42.21.123, 42.21.131, 42.21.137,))
42.21.138, 42.21.139, 42.21.140,))
42.21.151, 42.21.153, 42.21.155,))
42.22.1311, and 42.22.1312)
relating to personal property)
and centrally assessed property)
tax trend tables)

TO: All Concerned Persons

1. On October 16, 2003, the department published MAR Notice No. 42-2-724 regarding the public hearing on the proposed amendment of the above-stated rules relating to personal property and centrally assessed property at page 2245 of the 2003 Montana Administrative Register, issue no. 19.

2. A public hearing was held on December 2, 2003, to consider the proposed amendments. No one appeared at the hearing to testify but written comments were received from Mary Whittinghill, Executive Director, Montana Taxpayers' Association, and that comment is summarized as follows along with the response of the department:

COMMENT NO. 1: The Montana Taxpayers' Association would like further explanation of why the department moved wind generation to their own table with life expectancy of 20 years from other electrical power equipment that has a life of 16 years.

RESPONSE NO. 1: Wind-power generation continues to use electrical power equipment trend factors. Wind-power generation was added as a separate line item to eliminate confusion among department personnel. As discussed in the reasonable necessity found in the proposal notice, the extension of the economic life to 20 years is a direct reflection of the long-term contracts the qualifying facility (QFs) enters into with the power company (currently NorthWestern Energy). The contract lives vary from 20-30 years. Additionally, the new generation of wind turbine technology requires limited maintenance and equipment replacements, confirming the move to 20 years.

3. The department amends ARM 42.22.1311 to correct clerical errors as follows:

42.22.1311 INDUSTRIAL MACHINERY AND EQUIPMENT TREND FACTORS (1) and (2) remain as proposed.
(3) Tables 1 through 13 remain as proposed.

<u>YEAR</u>	<u>TABLE 11</u> <u>Elec. Pwr.</u> <u>Eq.</u>	<u>TABLE 12</u> <u>Elec. Eq.</u> <u>Mfg.</u>	<u>TABLE 13</u> <u>Cannery/</u> <u>Fish</u>	<u>TABLE 14</u> <u>Flour,</u> <u>Cer. Feed</u>	<u>TABLE 15</u> <u>Cannery/</u> <u>Fruit</u>
2003	1.000	1.000	1.000	1.000	1.000
2002	0.014	0.015	1.016	1.015	1.014
2001	1.011	1.014	1.023	1.021	1.021
2000	1.018	1.021	1.034	1.032	1.032
1999	1.038	1.040	1.054	1.052	1.053
1998	1.033	1.036	1.057	1.057	1.057
1997	1.035	1.041	1.068	1.067	1.066
1996	1.040	1.050	1.088	1.083	1.088
1995	1.049	1.062	1.104	1.100	1.102
1994	1.104	1.113	1.149	1.144	1.144
1993	1.127	1.140	1.186	1.175	1.184
1992	1.135	1.152	1.209	1.194	1.212
1991	1.131	1.154	1.227	1.205	1.233
1990	1.138	1.167	1.255	1.230	1.262
1989	1.157	1.190	1.291	1.262	1.298
1988	1.228	1.257	1.364	1.322 1.332	1.371
1987	1.307	1.330	1.426	1.390	1.432
1986	1.316	1.344	1.451	1.408	1.458
1985	1.324	1.350	1.474	1.424	1.482
1984	1.337	1.367	1.502	1.447	1.508

Tables 15 through 26 remain as proposed.

<u>YEAR</u>	<u>TABLE 26</u> <u>Refriger-</u> <u>ation</u>	<u>TABLE 27</u> <u>Rubber</u>	<u>TABLE 28</u> <u>Steam</u> <u>Power</u>	<u>TABLE 29</u> <u>Textile</u>	<u>TABLE 30</u> <u>Ware-</u> <u>housing</u>
2003	1.000	1.000	1.000	1.000	1.000
2002	1.018	1.017	1.018	1.013	1.011
2001	1.026	1.020	1.022	1.017	1.015
2000	1.036	1.029	1.030	1.025	1.021
1999	1.056	1.044	1.046	1.041	1.039
1998	1.061	1.049	1.047	1.042	1.041
1997	1.071	1.060	1.055	1.051	1.044
1996	1.088	1.075	1.066	1.069	1.061
1995	1.108	1.195 1.095	1.183 1.083	1.083	1.083
1994	1.071	1.149	1.134	1.126	1.116
1993	1.180	1.160	1.150	1.145	1.138
1992	1.203	1.183	1.163	1.167	1.164
1991	1.217	1.195	1.169	1.182	1.180
1990	1.244	1.222	1.188	1.208	1.201
1989	1.277	1.256	1.219	1.239	1.230
1988	1.348	1.321	1.292	1.301	1.285
1987	1.403	1.373	1.353	1.356	1.326
1986	1.423	1.395	1.368	1.378	1.344
1985	1.434	1.406	1.374	1.394	1.354
1984	1.456	1.432	1.396	1.414	1.369

Tables 29 through 32 remain as proposed.

4. Therefore, the department amends ARM 42.22.1311 with the amendments listed above and amends ARM 42.21.113, 42.21.115, 42.21.123, 42.21.131, 42.21.137, 42.21.138, 42.21.139, 42.21.140, 42.21.151, 42.21.153, 42.21.155, and 42.22.1312 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.discoveringmontana.com/revenue>, under "for your reference;" "DOR administrative rules;" and "upcoming events and proposed rule changes." 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 December 15, 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;
- ▶ Office of the State Auditor and Insurance Commissioner;

and

- ▶ Office of Economic Development.

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.

Energy and Telecommunications Interim Committee:

- ▶ Department of Public Service Regulation.

Revenue and Transportation Interim Committee:

- ▶ Department of Revenue; and
- ▶ Department of Transportation.

State Administration, and Veterans' Affairs Interim Committee:

- ▶ Department of Administration;
- ▶ Department of Military Affairs; and
- ▶ Office of the Secretary of State.

Environmental Quality Council:

- ▶ Department of Environmental Quality;
- ▶ Department of Fish, Wildlife, and Parks; and
- ▶ Department of Natural Resources and Conservation.

These interim committees and the EQC have the authority to make recommendations to an agency regarding the adoption, amendment, or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. They also may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt, amend, or repeal a rule.

The interim committees and the EQC welcome comments and invite members of the public to appear before them or to send written statements in order to bring to their attention any difficulties with the existing or proposed rules. The mailing address is PO Box 201706, Helena, MT 59620-1706.

HOW TO USE THE ADMINISTRATIVE RULES OF MONTANA
AND THE MONTANA ADMINISTRATIVE REGISTER

Definitions: Administrative Rules of Montana (ARM) is a looseleaf compilation by department of all rules of state departments and attached boards presently in effect, except rules adopted up to three months previously.

Montana Administrative Register (MAR) is a soft back, bound publication, issued twice-monthly, containing notices of rules proposed by agencies, notices of rules adopted by agencies, and interpretations of statutes and rules by the attorney general (Attorney General's Opinions) and agencies (Declaratory Rulings) issued since publication of the preceding register.

Use of the Administrative Rules of Montana (ARM):

- | | |
|-------------------------------------|---|
| Known
Subject | 1. Consult ARM topical index.
Update the rule by checking the accumulative table and the table of contents in the last Montana Administrative Register issued. |
| Statute
Number and
Department | 2. Go to cross reference table at end of each title which lists MCA section numbers and corresponding ARM rule numbers. |

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through September 30, 2003. This table includes those rules adopted during the period October 1, 2003 through December 31, 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 September 30, 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.

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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 November 2003, appear. Vacancies scheduled to appear from January 1, 2004, through March 31, 2004, 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 December 9, 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 NOVEMBER 2003

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Board of Private Security Patrol Officers and Investigators (Labor and Industry)			
Ms. Cheryl Liedle Helena	Governor	not listed	11/19/2003 8/1/2006
Qualifications (if required): representative of a county sheriff's department			
Board of Social Work Examiners and Professional Counselors (Labor and Industry)			
Ms. Sherry Meador Clancy	Governor	Simonton	11/20/2003 1/1/2007
Qualifications (if required): attorney			
Commissioner of Political Practices Advisory Council (Governor's Office)			
Mr. Chuck Denowh Helena	Governor	not listed	11/1/2003 12/31/2004
Qualifications (if required): designee of the chair of the Montana Republican Party			
Ms. Ellen Engstedt Helena	Governor	not listed	11/1/2003 12/31/2004
Qualifications (if required): public member			
Mr. David Hunter Helena	Governor	not listed	11/1/2003 12/31/2004
Qualifications (if required): designee of the chair of the Montana Democratic Party			
Ms. Mona Jamison Helena	Governor	not listed	11/1/2003 12/31/2004
Qualifications (if required): public member			
Mr. James Santoro Helena	Governor	not listed	11/1/2003 12/31/2004
Qualifications (if required): representative of the Governor's Office			

BOARD AND COUNCIL APPOINTEES FROM NOVEMBER 2003

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Commissioner of Political Practices Advisory Council (Governor's Office) cont.			
Mr. Jim Scheier Helena	Governor	not listed	11/1/2003 12/31/2004
Qualifications (if required): attorney who provides legal services for the Commissioner of Political Practices			
Rep. John Sinrud Belgrade	Governor	not listed	11/1/2003 12/31/2004
Qualifications (if required): member of the Montana House of Representatives			
Sen. Joe Tropila Great Falls	Governor	not listed	11/1/2003 12/31/2004
Qualifications (if required): member of the Montana Senate			
Ms. Linda Vaughey Helena	Governor	not listed	11/1/2003 12/31/2004
Qualifications (if required): Commissioner of Political Practices			
Governor's Advisory Council on Disability (Administration)			
Mr. Edward "Ted" Robbins Great Falls	Governor	Blomquist	11/14/2003 11/26/2004
Qualifications (if required): public member			
Historic Preservation Review Board (Historical Society)			
Ms. Kathy Doeden Miles City	Governor	reappointed	11/5/2003 10/1/2007
Qualifications (if required): public member			
Mr. James Rea Glasgow	Governor	White	11/5/2003 10/1/2007
Qualifications (if required): public member			

BOARD AND COUNCIL APPOINTEES FROM NOVEMBER 2003

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Historic Preservation Review Board (Historical Society) cont.			
Mr. Robert Valach Lewistown	Governor	King	11/5/2003 10/1/2007
Qualifications (if required): public member			
Montana Geographic Information Council (Administration)			
Mr. Harold Blattie Helena	Governor	not listed	11/19/2003 11/19/2005
Qualifications (if required): representative of local government			
Mr. Lance Clampitt Denver, CO	Governor	not listed	11/19/2003 11/19/2005
Qualifications (if required): federal USDI representative			
Mr. Dick Clark Helena	Governor	not listed	11/19/2003 11/19/2005
Qualifications (if required): designee of the Director of Department of Transportation			
Ms. Dolores Cooney Helena	Governor	not listed	11/19/2003 11/19/2005
Qualifications (if required): designee of the Director of Department of Revenue			
Mr. Tom Deiling Billings	Governor	not listed	11/19/2003 11/19/2005
Qualifications (if required): federal USDI representative			
Rep. Dick Haines Missoula	Governor	not listed	11/19/2003 11/19/2005
Qualifications (if required): member of the Montana House of Representatives			

BOARD AND COUNCIL APPOINTEES FROM NOVEMBER 2003

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Montana Geographic Information Council (Administration) cont.			
Mr. Tony Herbert Helena	Governor	not listed	11/19/2003 11/19/2005
Qualifications (if required): designee of the Director of the Department of Administration			
Mr. Jeff Hutten Kalispell	Governor	not listed	11/19/2003 11/19/2005
Qualifications (if required): representing the Interagency GIS Technical Working Group			
Mr. Ken Jenkins Missoula	Governor	not listed	11/19/2003 11/19/2005
Qualifications (if required): representing MARLS			
Dr. Katherine Maynard Bozeman	Governor	not listed	11/19/2003 11/19/2005
Qualifications (if required): federal USDA representative			
Mr. Art Pembroke Helena	Governor	not listed	11/19/2003 11/19/2005
Qualifications (if required): local government representative			
Mr. Alex Philip Missoula	Governor	not listed	11/19/2003 11/19/2005
Qualifications (if required): representative of a private business active in land information systems			
Mr. Martin Prather Missoula	Governor	not listed	11/19/2003 11/19/2005
Qualifications (if required): federal USDA representative			

BOARD AND COUNCIL APPOINTEES FROM NOVEMBER 2003

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Montana Geographic Information Council (Administration) cont.			
Mr. Tom Reynolds Kalispell	Governor	not listed	11/19/2003 11/19/2005
Qualifications (if required): representing the Montana Local Government GIS Coalition			
Mr. Jon Sesso Butte	Governor	not listed	11/19/2003 11/19/2005
Qualifications (if required): representative of local government			
Mr. Steve Shannon Butte	Governor	not listed	11/19/2003 11/19/2005
Qualifications (if required): representative of public utilities			
Mr. Chris Smith Helena	Governor	not listed	11/19/2003 11/19/2005
Qualifications (if required): designee of the Director of Fish, Wildlife, and Parks			
Ms. Karen Strege Helena	Governor	not listed	11/19/2003 11/19/2005
Qualifications (if required): State Librarian			
Mr. Robin Trenbeath Helena	Governor	not listed	11/19/2003 11/19/2005
Qualifications (if required): designee of the Director of Department of Environmental Quality			
Mr. Don Wetzel Bozeman	Governor	not listed	11/19/2003 11/19/2005
Qualifications (if required): representative of Native American Tribes of Montana			
Mr. Hans Zuuring Missoula	Governor	not listed	11/19/2003 11/19/2005
Qualifications (if required): representative of the university system			

BOARD AND COUNCIL APPOINTEES FROM NOVEMBER 2003

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Noxious Weed Management Advisory Council (Agriculture)			
Ms. Verna Billedeaux Browning	Director	not listed	11/21/2003 6/30/2005
Qualifications (if required): at-large member			
Ms. Pachy Burns Big Timber	Director	not listed	11/21/2003 6/30/2005
Qualifications (if required): consumer group			
Ms. Josie Dahlberg Brockton	Director	not listed	11/21/2003 6/30/2005
Qualifications (if required): agriculture crop production			
Mr. Jack Eddie Dillon	Director	not listed	11/21/2003 6/30/2005
Qualifications (if required): Western County representative			
Ms. Ramona Ehnes Great Falls	Director	not listed	11/21/2003 6/30/2005
Qualifications (if required): sportsman/wildlife group			
Mr. Jerry Marks Missoula	Director	not listed	11/21/2003 6/30/2005
Qualifications (if required): biological research and control			
Mr. W. Ralph Peck Helena	Director	not listed	11/21/2003 6/30/2005
Qualifications (if required): Director			
Mr. Dave Philipps Lewistown	Director	not listed	11/21/2003 6/30/2005
Qualifications (if required): herbicide dealer and applicator			

BOARD AND COUNCIL APPOINTEES FROM NOVEMBER 2003

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Noxious Weed Management Advisory Council (Agriculture) cont.			
Rep. Diane Rice Harrison	Director	not listed	11/21/2003 6/30/2005
Qualifications (if required): Montana Weed Control Association			
Ms. Carol Sparks Plevna	Director	not listed	11/21/2003 6/30/2005
Qualifications (if required): livestock production			
Mr. Jerry Weber Joliet	Director	not listed	11/21/2003 6/30/2005
Qualifications (if required): Eastern County representative			
Public Safety Communications Council (Administration)			
Mr. Dwight MacKay Billings	Governor	Siegle	11/3/2003 6/18/2004
Qualifications (if required): representative of a federal agency			
State Tribal Economic Development Commission (Indian Affairs)			
Ms. Darrel Koke Great Falls	Governor	Zimmerman	11/5/2003 6/30/2006
Qualifications (if required): representative of the Little Shell Tribe			
Mr. Noel Sansaver Poplar	Governor	Sansaver	11/14/2003 6/30/2004
Qualifications (if required): representative of the Fort Peck tribes			
State Workforce Investment Board (Labor and Industry)			
Mr. Bob Bartholomew Helena	Governor	Erickson	11/4/2003 0/0/0
Qualifications (if required): representative of older workers			

BOARD AND COUNCIL APPOINTEES FROM NOVEMBER 2003

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
State Workforce Investment Board (Labor and Industry) cont.			
Ms. Arlene Parisot Helena	Governor	Lerum	11/4/2003 0/0/0
Qualifications (if required): representative of community based colleges			
Ms. Sheila Stearns Helena	Governor	Crofts	11/4/2003 0/0/0
Qualifications (if required): lead state agency official			
Ms. Linda Woods Darby	Governor	Case	11/4/2003 0/0/0
Qualifications (if required): representative of Job Corps			
Trauma Care Committee (Public Health and Human Services)			
Mr. John Bleicher Missoula	Governor	Sorenson	11/2/2003 11/2/2007
Qualifications (if required): representative of Montana Trauma Coordinators			
Mr. Randall Combs Lame Deer	Governor	Flint	11/2/2003 11/2/2007
Qualifications (if required): representative of Indian Health Service			
Mr. Joseph D. Hansen Big Timber	Governor	Fried	11/2/2003 11/2/2007
Qualifications (if required): representative of the Eastern Region Trauma Advisory Committee			
Ms. Pauline Linnell Bigfork	Governor	Overcast	11/2/2003 11/2/2007
Qualifications (if required): representative of Montana Emergency Medical Services Association			

BOARD AND COUNCIL APPOINTEES FROM NOVEMBER 2003

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Trauma Care Committee (Public Health and Human Services) cont.			
Mr. Michael P. McGree Butte	Governor	reappointed	11/2/2003 11/2/2007
Qualifications (if required): representative of private ambulance operators			
Dr. Gregory J. Moore Missoula	Governor	reappointed	11/2/2003 11/2/2007
Qualifications (if required): representative of the Western Region Trauma Advisory Committee			
Dr. Michael B. Orcutt Great Falls	Governor	Eddy	11/2/2003 11/2/2007
Qualifications (if required): representative of the Montana Committee on Trauma of the American College of Surgeons			
Dr. Kirby Peden Big Timber	Governor	Bennett	11/2/2003 11/2/2007
Qualifications (if required): representative of the Eastern Region Trauma Advisory Committee			
Mr. Tim Sinton Choteau	Governor	Orcutt	11/2/2003 11/2/2007
Qualifications (if required): representative of the Central Region Trauma Advisory Committee			
Mr. William Taylor Bigfork	Governor	Guevara	11/2/2003 11/2/2007
Qualifications (if required): representative of Montana Emergency Nurses Association			
Youth Justice Council (Justice)			
Mr. Robert Peake Havre	Governor	Mena	11/14/2003 6/20/2005
Qualifications (if required): public member			

VACANCIES ON BOARDS AND COUNCILS -- JANUARY 1, 2004 through MARCH 31, 2004

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Alternative Livestock Advisory Council (Fish, Wildlife, and Parks) Dr. Duane Douglas, Sidney Qualifications (if required): veterinarian	Governor	1/1/2004
Ms. Becky Mesaros, Cascade Qualifications (if required): representative of the alternative livestock industry	Governor	1/1/2004
Mr. Stanley Rauch, Victor Qualifications (if required): representative of sportspersons	Governor	1/1/2004
Appellate Defender Commission (Administration) Ms. Beverly Kolar, Geyser Qualifications (if required): public member	Governor	1/1/2004
Board of Architects (Commerce) Mr. Thomas R. Wood, Bozeman Qualifications (if required): representative of MSU-Bozeman School of Architecture	Governor	3/27/2004
Board of Architects (Labor and Industry) Mr. John Fontaine, Glasgow Qualifications (if required): public member	Governor	3/27/2004
Board of Chiropractors (Commerce) Dr. Gregory Hoell, Bozeman Qualifications (if required): chiropractor	Governor	1/1/2004
Board of Dentistry (Commerce) Dr. Michael McCarthy, Billings Qualifications (if required): dentist	Governor	3/29/2004
Ms. Deana Standley, Great Falls Qualifications (if required): dental hygienist	Governor	3/29/2004

VACANCIES ON BOARDS AND COUNCILS -- JANUARY 1, 2004 through MARCH 31, 2004

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Horse Racing (Commerce)		
Ms. Susan Austin, Kalispell	Governor	1/20/2004
Qualifications (if required): representative of District 5		
Mr. Jay C. Clark, Sweetgrass	Governor	1/20/2004
Qualifications (if required): representative of the horse racing industry		
Mr. Charles Carruthers, Butte	Governor	1/20/2004
Qualifications (if required): representative of the horse racing industry		
Ms. Brenda Koch, Lewistown	Governor	1/20/2004
Qualifications (if required): representative of District 2		
Board of Personnel Appeals (Labor and Industry)		
Mr. Jack Holstrom, Clancy	Governor	1/1/2004
Qualifications (if required): attorney with labor-management experience		
Board of Public Education (Board of Public Education)		
Ms. Joyce A. Silverthorne, Dixon	Governor	2/1/2004
Qualifications (if required): Democrat representing District 1		
Board of Regents of Higher Education (Education)		
Mr. Ed Jasmin, Bigfork	Governor	2/1/2004
Qualifications (if required): Republican from District 1		
Board of Research and Commercialization Technology (Commerce)		
Mr. Tom Kaiserski, Columbus	House Speaker	2/11/2004
Qualifications (if required): none specified		
Board of Respiratory Care Practitioners (Commerce)		
Dr. Robert Pueringer, Billings	Governor	1/1/2004
Qualifications (if required): physician		

VACANCIES ON BOARDS AND COUNCILS -- JANUARY 1, 2004 through MARCH 31, 2004

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Respiratory Care Practitioners (Commerce) cont.		
Mr. Robert Kirtley, Bozeman	Governor	1/1/2004
Qualifications (if required): respiratory care practitioner		
Capital Finance Advisory Council (Administration)		
Mr. Dick Anderson, Helena	Governor	2/14/2004
Qualifications (if required): representative of the Board of Investments		
Sen. Bea McCarthy, Anaconda	Governor	2/14/2004
Qualifications (if required): legislator		
Sen. Chuck Swysgood, Helena	Governor	2/14/2004
Qualifications (if required): representative of the Budget Office		
Sen. Royal C. Johnson, Billings	Governor	2/14/2004
Qualifications (if required): legislator		
Mr. Jim Currie, Helena	Governor	2/14/2004
Qualifications (if required): representative of the Department of Transportation		
Mr. Bob Thomas, Stevensville	Governor	2/14/2004
Qualifications (if required): representative of the Board of Housing		
Mr. Mark A. Simonich, Helena	Governor	2/14/2004
Qualifications (if required): representative of the Department of Commerce		
Mr. W. Ralph Peck, Helena	Governor	2/14/2004
Qualifications (if required): representative of the Department of Agriculture		
Mr. Bud Clinch, Helena	Governor	2/14/2004
Qualifications (if required): representative of the Department of Natural Resources and Conservation		

VACANCIES ON BOARDS AND COUNCILS -- JANUARY 1, 2004 through MARCH 31, 2004

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Capital Finance Advisory Council (Administration) cont.		
Mr. Mark Semmens, Great Falls Qualifications (if required): representative of the Board of Regents	Governor	2/14/2004
Ms. Jan Sensibaugh, Helena Qualifications (if required): representative of the Department of Environmental Quality	Governor	2/14/2004
Ms. Michelle Barstad, Helena Qualifications (if required): representative of the Montana Facility Finance Authority	Governor	2/14/2004
Mr. Scott Darkenwald, Helena Qualifications (if required): representative of the Department of Administration	Governor	2/14/2004
Developmental Disabilities Planning and Advisory Council (Public Health and Human Services)		
Ms. Sylvia Danforth, Miles City Qualifications (if required): services provider	Governor	1/1/2004
Sen. Bea McCarthy, Anaconda Qualifications (if required): legislator	Governor	1/1/2004
Mr. Dan McCarthy, Helena Qualifications (if required): representative of the Office of Public Instruction	Governor	1/1/2004
Dr. R. Timm Vogelsberg, Missoula Qualifications (if required): university program representative	Governor	1/1/2004
Rep. Bob Lawson, Whitefish Qualifications (if required): legislator	Governor	1/1/2004
Ms. Bernadette Franks-Ongoy, Helena Qualifications (if required): representative of the Montana Advocacy Program	Governor	1/1/2004

VACANCIES ON BOARDS AND COUNCILS -- JANUARY 1, 2004 through MARCH 31, 2004

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Developmental Disabilities Planning and Advisory Council (Public Health and Human Services) cont.		
Ms. Marlene Disburg, Helena Qualifications (if required): representative of vocational rehabilitation	Governor	1/1/2004
Ms. Jannis Conselyea, Helena Qualifications (if required): representative of Department of Public Health and Human Services	Governor	1/1/2004
Ms. Kim Evermann, Helena Qualifications (if required): representative of the Older Americans Act	Governor	1/1/2004
Ms. JoAnn Dotson, Helena Qualifications (if required): Title IV representative	Governor	1/1/2004
Governor's Council on Organ and Tissue Donor Awareness (Public Health and Human Services)		
Gov. Judy Martz, Helena Qualifications (if required): representative of donor families and state government	Governor	3/25/2004
Mr. Ted Marchion, Anaconda Qualifications (if required): representative of donor recipients	Governor	3/25/2004
Mr. Paul Buck, Missoula Qualifications (if required): ex-officio member	Governor	3/25/2004
Ms. Jan Hendrix, Kalispell Qualifications (if required): ex-officio member	Governor	3/25/2004
Ms. Sandi Stroot, Superior Qualifications (if required): ex-officio member	Governor	3/25/2004

VACANCIES ON BOARDS AND COUNCILS -- JANUARY 1, 2004 through MARCH 31, 2004

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Governor's Council on Organ and Tissue Donor Awareness (Public Health and Human Services) cont.		
Mr. Dean Roberts, Helena Qualifications (if required): representative of the Department of Justice	Governor	3/25/2004
Ms. Mary Hainlin, Helena Qualifications (if required): representative of donor families	Governor	3/25/2004
Rev. Kenneth Mottram, Kalispell Qualifications (if required): representative of clergy	Governor	3/25/2004
Ms. Jennifer Keck, Conrad Qualifications (if required): representative of donor recipients	Governor	3/25/2004
Ms. Maggie Bullock, Helena Qualifications (if required): Department of Public Health and Human Services representative	Governor	3/25/2004
Grass Conservation Commission (Natural Resources and Conservation)		
Mr. Dewayne Ozark, Glasgow Qualifications (if required): grazing district preference rights holder	Governor	1/1/2004
Judicial Nomination Commission (Justice)		
Mr. Tony Harbaugh, Miles City Qualifications (if required): public member	Governor	1/1/2004
Montana Abstinence Education Advisory Council (Public Health and Human Services)		
Sen. Sherm Anderson, Deer Lodge Qualifications (if required): legislator	Governor	3/11/2004
Dr. Tom Rasmussen, Helena Qualifications (if required): public member	Governor	3/11/2004

VACANCIES ON BOARDS AND COUNCILS -- JANUARY 1, 2004 through MARCH 31, 2004

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Montana Abstinence Education Advisory Council (Public Health and Human Services) cont. Sen. Duane Grimes, Clancy Qualifications (if required): legislator	Governor	3/11/2004
Ms. Geraldine (Jeri) Snell, Miles City Qualifications (if required): public member	Governor	3/11/2004
Ms. Jessie Stinger, Polson Qualifications (if required): public member	Governor	3/11/2004
Mr. Gary Swant, Deer Lodge Qualifications (if required): public member	Governor	3/11/2004
Mr. Bryce Skjervem, Helena Qualifications (if required): public member	Governor	3/11/2004
Mr. Jim Good, Bozeman Qualifications (if required): public member	Governor	3/11/2004
Ms. Joleen Spang, Lame Deer Qualifications (if required): public member	Governor	3/11/2004
Ms. Traci Hronek, Great Falls Qualifications (if required): public member	Governor	3/11/2004
Rep. Kenneth D. Peterson, Billings Qualifications (if required): legislator	Governor	3/11/2004
Ms. Julie Ippolito, Helena Qualifications (if required): public member	Governor	3/11/2004
Ms. Judy LaPan, Sidney Qualifications (if required): public member	Governor	3/11/2004

VACANCIES ON BOARDS AND COUNCILS -- JANUARY 1, 2004 through MARCH 31, 2004

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Montana Abstinence Education Advisory Council (Public Health and Human Services) cont.		
Mr. Matt Antonich, Kremlin Qualifications (if required): public member	Governor	3/11/2004
Mr. Collins Lawlor, Helena Qualifications (if required): youth representative	Governor	3/11/2004
Ms. Elisabeth Dellwo, Helena Qualifications (if required): youth representative	Governor	3/11/2004
Ms. Elaine Collins, Helena Qualifications (if required): public member	Governor	3/11/2004
Montana Children's Trust Fund Board (Public Health and Human Services)		
Ms. Judy Birch, Helena Qualifications (if required): representative of the Office of Public Instruction	Governor	1/1/2004
Rep. Betty Lou Kasten, Brockway Qualifications (if required): public member	Governor	1/1/2004
Ms. Betty Hidalgo, Great Falls Qualifications (if required): public member	Governor	1/1/2004
Ms. Shirley Brown, Helena Qualifications (if required): representative of the Department of Public Health and Human Services	Governor	1/1/2004
Mr. Mark A. Bryan, Bozeman Qualifications (if required): public member	Governor	1/1/2004
Montana Correctional Enterprises Ranch Advisory Council (Corrections)		
Mr. Don Davis, Deer Lodge Qualifications (if required): public member	Governor	1/29/2004

VACANCIES ON BOARDS AND COUNCILS -- JANUARY 1, 2004 through MARCH 31, 2004

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Montana Correctional Enterprises Ranch Advisory Council (Corrections) cont. Sen. Francis Koehnke, Townsend Qualifications (if required): public member	Governor	1/29/2004
Mr. Ray Lybeck, Kalispell Qualifications (if required): public member	Governor	1/29/2004
Rep. Robert Thoft, Stevensville Qualifications (if required): public member	Governor	1/29/2004
Sen. Thomas Beck, Helena Qualifications (if required): public member	Governor	1/29/2004
Rep. Edward (Ed) J. Grady, Canyon Creek Qualifications (if required): public member	Governor	1/29/2004
Mr. Bill Slaughter, Helena Qualifications (if required): public member	Governor	1/29/2004
Mr. Ross Swanson, Deer Lodge Qualifications (if required): public member	Governor	1/29/2004
Sen. Bill Tash, Dillon Qualifications (if required): public member	Governor	1/29/2004
Sen. Gerald Pease, Lodge Grass Qualifications (if required): public member	Governor	1/29/2004
Rep. Allen Rome, Garrison Qualifications (if required): public member	Governor	1/29/2004
Ms. Gayle Lambert, Deer Lodge Qualifications (if required): public member	Governor	1/29/2004

VACANCIES ON BOARDS AND COUNCILS -- JANUARY 1, 2004 through MARCH 31, 2004

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Montana Correctional Enterprises Ranch Advisory Council (Corrections) cont.		
Mr. Bill Dabney, Deer Lodge Qualifications (if required): public member	Governor	1/29/2004
Mr. Steve Hartman, Deer Lodge Qualifications (if required): public member	Governor	1/29/2004
Sen. Sherm Anderson, Deer Lodge Qualifications (if required): public member	Governor	1/29/2004
Montana Economic Advisory Council (Governor)		
Mr. Tom Scott, Billings Qualifications (if required): member of EDAG	Governor	2/14/2004
Rep. Dave Kasten, Brockway Qualifications (if required): public member	Governor	2/14/2004
Mr. Jerry Driscoll, Helena Qualifications (if required): public member	Governor	2/14/2004
Mr. Scott Mendenhall, Cardwell Qualifications (if required): public member	Governor	2/14/2004
Mr. Turner Askew, Whitefish Qualifications (if required): member of EDAG	Governor	2/14/2004
Ms. Sharron Quisenberry, Bozeman Qualifications (if required): public member	Governor	2/14/2004
Mr. Will Weaver, Great Falls Qualifications (if required): public member	Governor	2/14/2004

VACANCIES ON BOARDS AND COUNCILS -- JANUARY 1, 2004 through MARCH 31, 2004

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Montana Health Coalition (Public Health and Human Services) Dr. Paul S. Donaldson, Helena Qualifications (if required): none specified	Director	2/1/2004
Mr. Paul Peterson, Missoula Qualifications (if required): none specified	Director	2/1/2004
Sen. Duane Grimes, Clancy Qualifications (if required): none specified	Director	2/1/2004
Mr. Larry Robinson, Ronan Qualifications (if required): none specified	Director	2/1/2004
Ms. Kris Kleinschmidt, Great Falls Qualifications (if required): none specified	Director	2/1/2004
Ms. Kristianne Wilson, Billings Qualifications (if required): none specified	Director	2/1/2004
Rep. Edith J. Clark, Sweet Grass Qualifications (if required): none specified	Director	2/1/2004
Mr. Garfield Little Light, Billings Qualifications (if required): none specified	Director	2/1/2004
Ms. Mary Caferro, Helena Qualifications (if required): none specified	Director	2/1/2004
Ms. Laurie Francis, Livingston Qualifications (if required): none specified	Director	2/1/2004
Ms. Marianne Krpan, Helena Qualifications (if required): none specified	Director	2/1/2004

VACANCIES ON BOARDS AND COUNCILS -- JANUARY 1, 2004 through MARCH 31, 2004

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Montana Health Coalition (Public Health and Human Services) cont. Ms. Claudia Clifford, Helena Qualifications (if required): none specified	Director	2/1/2004
Mr. James Holcomb, Great Falls Qualifications (if required): none specified	Director	2/1/2004
Ms. Connie Welsh, Helena Qualifications (if required): none specified	Director	2/1/2004
Mr. Dave Young, Bozeman Qualifications (if required): none specified	Director	2/1/2004
Ms. Joan Bowsher, Helena Qualifications (if required): none specified	Director	2/1/2004
Ms. Kathy Jensen, Plentywood Qualifications (if required): none specified	Director	2/1/2004
Montana Statewide Independent Living Council (Public Health and Human Services) Ms. Kris Kleinschmidt, Great Falls Qualifications (if required): none specified	Director	1/2/2004
Multistate Tax Compact Advisory Council (Revenue) Mr. Alec Hansen, Helena Qualifications (if required): representing the political subdivisions of Montana	Director	2/27/2004
Mr. Gordon Morris, Helena Qualifications (if required): representing the political subdivisions of Montana	Director	2/27/2004
Mr. Kurt Alme, Helena Qualifications (if required): Director of the Department of Revenue	Director	2/27/2004

VACANCIES ON BOARDS AND COUNCILS -- JANUARY 1, 2004 through MARCH 31, 2004

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Organ and Tissue Donor Awareness Task Force (Public Health and Human Services)		
Mr. Tim Reardon, Helena	Governor	3/25/2004
Qualifications (if required): organ donor recipient		
Mr. John Pipe, Poplar	Governor	3/25/2004
Qualifications (if required): organ donor recipient and a Native American		
Ms. Rosemary Wolter, Billings	Governor	3/25/2004
Qualifications (if required): family donor and businessperson		
Peace Officers Standards and Training Advisory Council (Justice)		
Mr. Mike Batista, Helena	Governor	2/14/2004
Qualifications (if required): representative of the Montana Law Enforcement Academy		
Mr. Shawn T. Driscoll, Helena	Governor	2/14/2004
Qualifications (if required): representative of the Montana Highway Patrol		
Mr. Jim Smith, Helena	Governor	2/14/2004
Qualifications (if required): representative of the League of Cities and Towns		
Ms. Elaine Allestad, Big Timber	Governor	2/14/2004
Qualifications (if required): representative of the Board of Crime Control		
Mr. Christopher Miller, Deer Lodge	Governor	2/14/2004
Qualifications (if required): representative of the Montana Attorneys Association		
Mr. Dennis McCave, Billings	Governor	2/14/2004
Qualifications (if required): representative of the Montana Detention Officers Association		
Mr. John Strandell, Great Falls	Governor	2/14/2004
Qualifications (if required): representative of the Sheriffs and Peace Officers Association		

VACANCIES ON BOARDS AND COUNCILS -- JANUARY 1, 2004 through MARCH 31, 2004

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Peace Officers Standards and Training Advisory Council (Justice) cont.		
Dr. Ray Murray, Missoula	Governor	2/14/2004
Qualifications (if required): representative of the public		
Mr. Gary Fjelstad, Forsyth	Governor	2/14/2004
Qualifications (if required): representative of the Montana Association of Counties		
Mr. John Ramsey, Helena	Governor	2/14/2004
Qualifications (if required): representative of the Department of Fish, Wildlife, and Parks		
Mr. Bill Dove, Bozeman	Governor	2/14/2004
Qualifications (if required): representative of the Police Protective Association		
Dr. James W. Burfeind, Missoula	Governor	2/14/2004
Qualifications (if required): representative of criminal justice educators		
Ms. Winnie Ore, Helena	Governor	2/14/2004
Qualifications (if required): representative of the Department of Corrections		
Ms. Shanna Bulik-Chism, Great Falls	Governor	2/14/2004
Qualifications (if required): representative of juvenile detention administrators		
Ms. Anne Kindness, Billings	Governor	2/14/2004
Qualifications (if required): representative of 911 services		
Mr. Mark Tymrak, Bozeman	Governor	2/14/2004
Qualifications (if required): representative of the Police Chiefs Association		
Mr. Greg Hintz, Missoula	Governor	2/14/2004
Qualifications (if required): representative of the Deputy Sheriff's Association		

VACANCIES ON BOARDS AND COUNCILS -- JANUARY 1, 2004 through MARCH 31, 2004

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Peace Officers Standards and Training Advisory Council (Justice) cont. Mr. Jack Wiseman, Helena Qualifications (if required): representative of the Department of Livestock	Governor	2/14/2004
Resource Conservation Advisory Council (Natural Resources and Conservation) Mr. Tom Stelling, Fort Shaw Qualifications (if required): representative of conservation districts	Director	1/30/2004
Ms. Marieanne Hanser, Billings Qualifications (if required): representative of South Central Montana	Director	1/30/2004
Mr. Robert Fossum, Richland Qualifications (if required): representative of Eastern Montana	Director	1/30/2004
Ms. Vicki McGuire, Eureka Qualifications (if required): representative of Western Montana	Director	1/30/2004
Mr. Dave Schwarz, Terry Qualifications (if required): representative of conservation districts	Director	1/30/2004
Mr. Bob Breipohl, Saco Qualifications (if required): representative of North Central Montana	Director	1/30/2004
Mr. Robert Anderson, Poplar Qualifications (if required): representative of the general pPublic	Director	1/30/2004
State 9-1-1 Advisory Council (Administration) Mr. Larry J. Bonderud, Shelby Qualifications (if required): Montana League of Cities and Towns	Director	3/1/2004
Dr. Drew Dawson, Helena Qualifications (if required): Department of Public Health and Human Services	Director	3/1/2004

VACANCIES ON BOARDS AND COUNCILS -- JANUARY 1, 2004 through MARCH 31, 2004

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
State 9-1-1 Advisory Council (Administration) cont.		
Mr. Jim Oppedahl, Helena	Director	3/1/2004
Qualifications (if required):	Montana Board of Crime Control	
Mr. Jim Anderson, Helena	Director	3/1/2004
Qualifications (if required):	Department of Military Affairs	
Mr. Mike Strand, Helena	Director	3/1/2004
Qualifications (if required):	Montana Independent Telecommunications Systems	
Mr. Bob Jones, Great Falls	Director	3/1/2004
Qualifications (if required):	Montana Association of Chiefs of Police	
Mr. Bert Obert, Helena	Director	3/1/2004
Qualifications (if required):	Montana Highway Patrol	
Mr. Ronald Rowton, Lewistown	Director	3/1/2004
Qualifications (if required):	Montana Sheriff's and Peace Officers Association	
Mr. Geoff Feiss, Helena	Director	3/1/2004
Qualifications (if required):	Montana Telephone Association	
Ms. Sherry Cargill, Boulder	Director	3/1/2004
Qualifications (if required):	Montana Association of Counties	
Mr. Dan Hawkins, Helena	Director	3/1/2004
Qualifications (if required):	Association of Public Safety Communications Officials	
Mr. Richard Brumley, Lewistown	Director	3/1/2004
Qualifications (if required):	Montana Emergency Medical Services Association	
Mr. Chuck Winn, Bozeman	Director	3/1/2004
Qualifications (if required):	Montana State Fire Chiefs Association	

VACANCIES ON BOARDS AND COUNCILS -- JANUARY 1, 2004 through MARCH 31, 2004

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
State 9-1-1 Advisory Council (Administration) cont. Mr. Joe Calnan, Montana City Qualifications (if required): Montana State Volunteer Fire Fighters Association	Director	3/1/2004
Ms. Wilma Puich, Butte Qualifications (if required): Association of Disaster and Emergency Services Coordinators	Director	3/1/2004
Mr. Larry Sheldon, Helena Qualifications (if required): Qwest Communications	Director	3/1/2004
Ms. Jody Pierce, Helena Qualifications (if required): Public Safety Answering Point representative	Director	3/1/2004
Mr. Don Hollister, Kalispell Qualifications (if required): PTI Communications	Director	3/1/2004
Mr. Mark Yahne, Cedar City, UT Qualifications (if required): Western Wireless	Director	3/1/2004
Ms. Andrea Homier, Helena Qualifications (if required): Verizon Wireless	Director	3/1/2004
Mr. Tom Kuntz, Red Lodge Qualifications (if required): Montana Public Safety Communications Council	Director	3/1/2004
Ms. Jenny Hansen, Helena Qualifications (if required): Department of Administration 9-1-1 Program	Director	3/1/2004