ISSUE NO. 20

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 The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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

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NOTICE SECTION

BEFORE THE STATE COMPENSATION INSURANCE FUND
OF THE STATE OF MONTANA

| | | |
|---|---|---|
| In the matter of the amendment of ARM 2.55.320 pertaining to classifications of employments | ) | NOTICE OF PROPOSED AMENDMENT |
| | ) | NO PUBLIC HEARING CONTEMPLATED |

TO: All Concerned Persons

1. On December 3, 2004, the Montana State Fund proposes to amend ARM 2.55.320 pertaining to classifications of employments.

2. The Montana State Fund 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 Montana State Fund no later than 5:00 p.m., November 26, 2004, to advise us of the nature of the accommodation that you need. Please contact the Montana State Fund, attn: Nancy Butler, PO Box 4759, Helena, Montana 59604-4759; telephone (406) 444-7725; TDD (406) 444-5971; fax (406) 444-1493.

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

2.55.320 METHOD FOR ASSIGNMENT OF CLASSIFICATIONS OF EMPLOYMENTS (1) and (2) remain the same.

(3) The state fund staff shall assign its insureds to classifications contained in the classifications section of the State Compensation Insurance Fund Policy Services Underwriting Manual issued July 1, ~~2003~~ 2004, and assign new or changed classifications as approved by the board. That section of the manual is hereby incorporated by reference. Copies of the classification section of the manual may be obtained from the Insurance Operations Support Department of the State Fund, 5 South Last Chance Gulch, Helena, Montana 59601.

AUTH: Sec. 39-71-2315 and 39-71-2316, MCA
IMP: Sec. 39-71-2311 and 39-71-2316, MCA

REASONABLE NECESSITY: This amendment to ARM 2.55.320 is reasonably necessary at this time to reflect the updates to the State Fund's Underwriting Manual that are now available up to July 1, 2004.

4. Concerned persons may submit their data, views, or arguments concerning the proposed amendment in writing to Montana State Fund attorney, Nancy Butler, General Counsel,

Montana State Fund, 5 South Last Chance Gulch, PO Box 4759, Helena, Montana 59604-4759, by fax (406) 444-1493, or by electronic mail address nbutler@montanastatefund.com. Any comments must be received no later than November 26, 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 Montana State Fund attorney, Nancy Butler, General Counsel, Montana State Fund, 5 South Last Chance Gulch, PO Box 4759, Helena, Montana 59604-4759, by fax (406) 444-1493, or by electronic mail address nbutler@montanastatefund.com. A written request for hearing must be received no later than November 26, 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 2,700 persons based on an estimated 27,000 policyholders.

7. The Montana State Fund 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 Montana State Fund administrative rules. Such written request may be mailed or delivered to Nancy Butler, Montana State Fund, 5 South Last Chance Gulch, PO Box 4759, Helena, MT 59601-4759, faxed to the office at (406) 444-1493, or may be made by completing a request form at any rules hearing held by the State Fund.

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

/s/ Nancy Butler
Nancy Butler, General Counsel
Rule Reviewer

/s/ Herb Leuprecht
Herb Leuprecht
Chairman of the Board

/s/ Dal Smilie
Dal Smilie, Chief Legal Counsel
Rule Reviewer

Certified to the Secretary of State October 8, 2004.

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

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| In the matter of the proposed amendment of ARM 6.6.3504, pertaining to contents of annual audited financial report | ) ) ) ) | NOTICE OF PROPOSED AMENDMENT<br><br>NO PUBLIC HEARING CONTEMPLATED |

TO: All Concerned Persons

1. On December 6, 2004, the State Auditor proposes to amend ARM 6.6.3504 pertaining to contents of annual audited financial report.

2. The State Auditor's Office will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the State Auditor's Office no later than 5:00 p.m., on November 29, 2004, to advise us of the nature of the accommodation needed. Please contact Darla Sautter, State Auditor's Office, 840 Helena Avenue, Helena, Montana 59601; telephone (406) 444-2726; Montana Relay 1-800-332-6145; TDD (406) 444-3246; facsimile (406) 444-3497; or e-mail to dsautter@state.mt.us.

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

6.6.3504 CONTENTS OF ANNUAL AUDITED FINANCIAL REPORT

(1) through (2)(e) remain the same.

(f) notes to financial statements. These notes shall be those required by the appropriate ~~2003~~ 2004 NAIC annual statement instructions and the March ~~2003~~ 2004, NAIC Accounting Practices and Procedures Manual, which are adopted and incorporated by reference, and may be obtained by writing to the NAIC Executive Headquarters, 2301 McGee Street, Suite 800, Kansas City, MO 64108-2662. The notes shall include reconciliation of differences, if any, between the audited statutory financial statements and the annual statement filed pursuant to 33-2-701, 33-4-313, 33-7-118, 33-30-107, and 33-31-211, MCA, with a written description of the nature of these differences.

(3) remains the same.

AUTH: 33-1-313, 33-2-1517 and 33-5-413, MCA
IMP: 33-2-1517 and 33-5-413, MCA

4. REASONABLE NECESSITY STATEMENT: It is necessary to amend ARM 6.6.3504 to reflect date changes referencing NAIC manuals that are published annually.

5. Concerned persons may submit their data, views, or arguments concerning the proposed amendment in writing to Jim Borchardt, State Auditor's Office, 840 Helena Avenue, Helena, Montana 59601, or by facsimile (406) 444-3497, or by e-mail to jborchardt@state.mt.us, and must be received no later than 5:00 p.m., November 29, 2004.

6. If persons who are directly affected by the proposed amendment 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 this request along with any written comments they have to Jim Borchardt, State Auditor's Office, 840 Helena Avenue, Helena, Montana 59601, or by e-mail to jborchardt@state.mt.us no later than November 29, 2004.

7. If the department 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 250 persons who have indicated interest in the rules of this department and who the department has determined could be directly affected by these rules.

8. The State Auditor's Office maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this 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 insurance rules, securities rules, or both. Such written requests may be mailed or delivered to Darla Sautter, State Auditor's Office, 840 Helena Avenue, Helena, Montana 59601, or by e-mail to dsautter@state.mt.us, or by completing a request form at any rules hearing held by the State Auditor's Office.

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

JOHN MORRISON, State Auditor
and Commissioner of Insurance

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

By: /s/ Patrick M. Driscoll
Patrick M. Driscoll
Rule Reviewer

Certified to the Secretary of State on October 8, 2004.

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

| | | |
|---|---|---|
| In the matter of the proposed adoption of new rules I through XII pertaining to insurance standards for safeguarding personal information | ) ) ) ) ) ) | NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION |

TO: All Concerned Persons

1. On November 18, 2004, at 9:00 a.m., a public hearing will be held in the 2nd floor conference room, State Auditor's Office, 840 Helena Avenue, Helena, Montana, to consider the proposed adoption of New Rules I through XII, pertaining to insurance standards for safeguarding personal information.

2. The State Auditor's Office 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 office no later than 5:00 p.m., November 10, 2004, to advise us of the nature of the accommodation needed. Please contact Darla Sautter, State Auditor's Office, 840 Helena Ave., Helena, MT 59601; telephone (406) 444-2726; Montana Relay 1-800-332-6145; TDD (406) 444-3246; facsimile (406) 444-3497 or e-mail to dsautter@state.mt.us.

3. The proposed new rules provide as follows:

RULE I PURPOSE (1) The purpose of these rules is to establish standards for developing and implementing administrative, technical and physical safeguards to protect the security, confidentiality and integrity of an individual's personal information requiring protection pursuant to the provisions of the Montana Insurance Information and Privacy Protection Act, Title 33, chapter 19, MCA (2001) (Privacy Act), as required by the Gramm-Leach-Bliley Act (GLBA), codified at 15 USC 6801, 6805(b) and 6807.

(2) Section 501(a) of GLBA provides that it is the policy of the congress that each financial institution has an affirmative and continuing obligation to respect the privacy of its customers and to protect the security and confidentiality of those "customers' nonpublic personal information." Section 501(b) of GLBA requires the state insurance regulatory authorities to establish appropriate standards relating to administrative, technical and physical safeguards:

(a) to ensure the security and confidentiality of "customer" records and information;

(b) to protect against any anticipated threats or hazards to the security or integrity of such records; and

(c) to protect against unauthorized access to or use of records or information that could result in substantial harm or inconvenience to a "customer."

(3) Section 505(b)(2) of GLBA calls on state insurance regulatory authorities to implement the standards prescribed under Section 501(b) by regulation (or rule) with respect to persons engaged in providing insurance.

(4) Section 507 of GLBA provides, among other things, that a state regulation may afford persons greater privacy protections than those provided by subtitle A of Title V of GLBA. The safeguards established pursuant to these rules shall apply to all personal information of individuals requiring protection pursuant to the provisions of the Privacy Act.

AUTH: Sec. 33-19-106, MCA
IMP: Sec. 33-19-102, MCA

RULE II DEFINITIONS For purposes of [Rules I through XII], the following definitions apply:

(1) "Individual" is defined in 33-19-104, MCA. Any reference to the term "customer" in this subchapter means "individual."

(2) "Information systems" means the electronic or physical methods used to access, collect, store, use, transmit, protect or dispose of personal information.

(3) "Licensee" means a licensee as that term is defined in 33-19-104, MCA.

(4) "Personal information" is defined in 33-19-104, MCA. Any reference to the term "nonpublic customer information" in this subchapter means, for the purpose of these rules, "personal information."

(5) "Service provider" means a person that maintains, processes or otherwise is permitted access to personal information through its provision of services directly to the licensee, and includes an "insurance support organization" as defined in 33-19-104, MCA.

AUTH: Sec. 33-19-106, MCA
IMP: Sec. 33-19-102 and 33-19-104, MCA

RULE III EXEMPTION BASED ON FEDERAL STANDARDS FOR PRIVACY AND SECURITY OF INDIVIDUALLY IDENTIFIABLE HEALTH INFORMATION (1) The obligations imposed under this subchapter do not apply to a licensee that is a covered entity under the provisions of federal regulations that are part of the Federal Health Insurance Portability and Accountability Act of 1996 (HIPAA), 45 CFR, parts 160 and 164, standards for privacy of individually identifiable health information as to any use or disclosure of personal information that is covered under the HIPAA privacy regulations and the HIPAA security rule.

(2) If a licensee considers itself exempt from this subchapter for the reason provided in (1), the licensee shall

give written notice to the commissioner of that exemption and a brief statement describing why it is a HIPAA-covered entity.

(3) A licensee may claim an exemption only as to those lines of business that are subject to HIPAA privacy and security regulations. All other lines of business are subject to this subchapter.

(4) A third-party administrator that is a party to a valid business associate agreement required by HIPAA privacy regulations is exempt from the provisions of this subchapter, but only as to the scope of that particular agreement. Any activities of the third-party administrator that fall outside of the scope of that agreement are subject to the provisions of this subchapter.

AUTH: Sec. 33-19-106, MCA
IMP: Sec. 33-19-105, MCA

RULE IV INFORMATION SECURITY PROGRAM (1) Each licensee shall implement a comprehensive written information security program that includes administrative, technical and physical safeguards for the protection of personal information. The administrative, technical and physical safeguards included in the information security program shall be appropriate to the size and complexity of the licensee and the nature and scope of its activities.

AUTH: Sec. 33-19-106, MCA
IMP: Sec. 33-19-102 and 33-19-306, MCA

RULE V OBJECTIVE OF INFORMATION SECURITY PROGRAM

(1) A licensee's information security program shall be designed to:

(a) ensure the security and confidentiality of personal information;

(b) protect against any anticipated threats or hazards to the security or integrity of the information; and

(c) protect against unauthorized access to or use of the information that could result in substantial harm or inconvenience to any individual or a violation of the Privacy Act.

AUTH: Sec. 33-19-106, MCA
IMP: Sec. 33-19-102 and 33-19-306, MCA

RULE VI EXAMPLES OF METHODS OF DEVELOPMENT AND IMPLEMENTATION (1) The actions and procedures described in [Rules VII through X] are examples of methods of implementation of the requirements of [Rules IV and V]. These examples are non-exclusive illustrations of actions and procedures that licensees may follow to implement [Rules IV and V].

AUTH: Sec. 33-19-106, MCA
IMP: Sec. 33-19-102 and 33-19-306, MCA

RULE VII ASSESS RISK (1) The licensee:

(a) identifies reasonable foreseeable internal or external threats that could result in unauthorized disclosure, misuse, alteration or destruction of an individual's personal information or a licensee's information systems;

(b) assesses the likelihood and potential damage of these threats, taking into consideration the sensitivity of the personal information involved; and

(c) assesses the sufficiency of policies, procedures, information systems and other safeguards in place to control risks.

AUTH: Sec. 33-19-106, MCA
IMP: Sec. 33-19-102 and 33-19-306, MCA

RULE VIII MANAGE AND CONTROL RISK (1) The licensee:

(a) designs its information security program to control the identified risks, commensurate with the sensitivity of the information, as well as the complexity and scope of the licensee's activities;

(b) trains staff, as appropriate, to implement the licensee's information security program; and

(c) regularly tests or otherwise monitors the key controls, systems and procedures of the information security program. The frequency and nature of these tests are determined by the licensee's risk assessment.

AUTH: 33-19-106, MCA
IMP: 33-19-102 and 33-19-306, MCA

RULE IX OVERSEE SERVICE PROVIDER ARRANGEMENTS (1) The licensee:

(a) exercises appropriate due diligence in selecting its service providers; and

(b) requires its service providers to implement appropriate measures designed to meet the objectives of this rule, and where indicated by the licensee's risk assessment, takes appropriate steps to confirm that its service providers have satisfied these obligations. This requirement to implement appropriate measures must be described in the service provider agreements required in 33-19-306 and 33-19-307, MCA.

AUTH: Sec. 33-19-106, MCA
IMP: Sec. 33-19-102 and 33-19-306, MCA

RULE X ADJUST THE PROGRAM (1) The licensee monitors, evaluates and adjusts, as appropriate, the information security program in light of any relevant changes in technology, the sensitivity of an individual's personal information, internal or external threats to information, and the licensee's own changing business arrangements, such as

mergers and acquisitions, alliances and joint ventures, outsourcing arrangements and changes to information systems.

AUTH: Sec. 33-19-106, MCA
IMP: Sec. 33-19-102 and 33-19-306, MCA

RULE XI DETERMINED VIOLATION (1) A violation of these rules will result in a civil penalty as described in 33-19-405, MCA.

AUTH: Sec. 33-19-106, MCA
IMP: Sec. 33-19-405, MCA

RULE XII EFFECTIVE DATE (1) Each licensee shall establish and implement an information security program, including appropriate policies and systems pursuant to these rules by January 1, 2005.

4. REASONABLE NECESSITY STATEMENT: As described in detail in Rule I, the Federal Gramm-Leach-Bliley Act requires the states to develop rules to protect the security, confidentiality and integrity of "customer information." The National Association of Insurance Commissioners (NAIC) developed and adopted the Standards for Safeguarding Customer Information Model Regulation for that purpose. The rules proposed in this notice follow that model, with some adaptations to conform to Montana privacy statutes, which in some cases, are more protective of consumers than the standards established in GLBA. The purpose of the Insurance Information and Privacy Protection Act is "to establish standards for the collection, use and disclosure of information gathered in connection with insurance transactions by insurance institutions, insurance producers, or insurance support organizations ..." 33-19-102, MCA. Establishing standards for the use and disclosure of the information collected includes safeguarding the security, confidentiality and integrity of that information once it is in the possession of the insurance entity. Section 33-19-306, MCA governs disclosures of personal information under the privacy act. Inadvertent disclosures of personal information must be prevented by establishing rules that promote the secure handling of personal information. The commissioner has authority to adopt rules to carry out the provisions of the privacy act. [33-19-106, MCA].

5. Concerned persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Christina L. Goe, Attorney, State Auditor's Office, 840 Helena Avenue, Helena, Montana 59601, or be e-mailed to cgoe@state.mt.us, and must be received no later than November 26, 2004.

6. Christina L. Goe, Attorney, has been designated to preside over and conduct the hearing.

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

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

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
Rule Reviewer

Certified to the Secretary of State on October 8, 2004.

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

| | | |
|---|---|---|
| In the matter of the proposed amendment of ARM 10.10.301C relating to out-of-state attendance agreements | ) | NOTICE OF PROPOSED AMENDMENT |
| | ) | NO PUBLIC HEARING CONTEMPLATED |

TO: All Concerned Persons

1. On November 22, 2004, the Superintendent of Public Instruction proposes to amend ARM 10.10.301C relating to out-of-state attendance agreements.

2. The Superintendent of Public Instruction 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 Legal Division of the Office of Public Instruction no later than 5:00 p.m. on November 15, 2004 to advise us of the nature of the accommodation that you need. Please contact Beverly Marlow, P.O. Box 202501, Helena, MT 59620-2501, telephone: (406) 444-3172, FAX: (406) 444-2893, e-mail opirules@state.mt.us.

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

10.10.301C OUT-OF-STATE ATTENANCE AGREEMENTS

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

(b) The superintendent of public instruction shall provide payment of the amount calculated in (4)(a), but not more than the amount of tuition paid by the district for resident students who attended school out-of-state, in the year the out-of-district attendance report is submitted, provided it is submitted, ~~by July 30 of the~~ with documentation of payment, to the superintendent of public instruction within the school year following the year of attendance.

AUTH: Sec. 20-5-323, 20-9-102, MCA
IMP: Sec. 20-5-314, 20-5-316, 20-5-320, 20-5-321, 20-5-323, 20-5-324, MCA

Statement of Reasonable Necessity: The Superintendent of Public Instruction finds it reasonable and necessary to amend this rule because schools cannot feasibly submit the necessary reports and claim reimbursements by the current July 30 deadline. They often do not receive invoices for payment until after July 30. The Office of Public Instruction is able to make these payments at any time during the year, so submission by July 30 need not be a prerequisite to receiving a reimbursement.

4. Concerned persons may submit their data, views or arguments concerning the proposed amendment in writing to the Superintendent of Public Instruction, 1227 11th Avenue, P.O. Box 202501, Helena, MT 59620-2501 or by e-mail to opirules@state.mt.us to be received no later than 5:00 p.m. on November 18, 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 Superintendent of Public Instruction, 1227 11th Avenue, P.O. Box 202501, Helena, MT 59620-2501, or by e-mail to opirules@state.mt.us. A written request for hearing must be received no later than 5:00 p.m. on November 18, 2004.

6. If the Superintendent of Public Instruction 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 45 persons based on the 452 budgeting and fiscal districts in the State of Montana.

7. The Superintendent of Public Instruction maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the Superintendent. 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 rules promulgated by the Superintendent of Public Instruction. Such written request may be mailed or delivered to the Legal Division of the Office of Public Instruction, 1227 Eleventh Avenue, P.O. Box 202501, Helena, MT 59620-2501, faxed to the office at (406) 444-2893, or may be made by completing a request form at any rules hearing held by the Superintendent of Public Instruction.

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

/s/ Linda McCulloch
Linda McCulloch
Superintendent of Public Instruction

/s/ Catherine K. Warhank
Catherine K. Warhank
Rule Reviewer

Certified to the Secretary of State October 8, 2004.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

| | |
|---|---|
| In the matter of the amendment of ARM 17.38.101, 17.38.201A, 17.38.203, 17.38.205, 17.38.208, 17.38.215, 17.38.216, 17.38.225, and 17.38.234 pertaining to public water and sewage system requirements | NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT<br><br>(PUBLIC WATER SUPPLY) |

TO: All Concerned Persons

1. On November 15, 2004, at 9:00 a.m., the Board of Environmental Review will hold a public hearing in Room 239/240, 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., November 4, 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:

17.38.101 PLANS FOR PUBLIC WATER SUPPLY OR WASTEWATER SYSTEM (1) and (2) remain the same.

(3) As used in this rule, the following definitions apply in addition to those in 75-6-102, MCA.

(a) remains the same.

(b) "Main" means any line providing water or sewer to multiple service connections.

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

(d) "Service connection" means a line that provides water or sewer service to one building or living unit.

(c) through (h)(ii) remain the same, but are renumbered (e) through (j)(ii).

(4) ~~Before commencing~~ A person may not commence or ~~continuing~~ continue the construction, alteration, extension, or operation of a public water supply system or wastewater system, until the applicant ~~shall~~ has submitted a design report along with the necessary plans and specifications for the system to the department or a delegated division of local government for its review and has received written approval. Two sets of plans and specifications are needed for final approval. Approval by the department or a delegated division of local government is contingent upon construction and operation of the public water supply or wastewater system consistent with the approved design

report, plans, and specifications. Failure ~~of~~ to construct or operate the system ~~to operate~~ according to the approved plans and specifications or the department's conditions of approval is an alteration ~~that requires resubmittal of a design report, plans, and specifications for department approval~~ for purposes of this rule.

(a) through (15) remain the same.

AUTH: 75-6-103, MCA
IMP: 75-6-103, 75-6-112, 75-6-121, MCA

REASON: The proposed amendment to (3)(b) is necessary to define the term "main", as used in Circulars DEQ-1, DEQ-2, and DEQ-3. The Department receives many inquiries regarding the definition of this term as it influences various aspects of public water supply laws and rules.

The proposed amendment to (3)(d) is necessary to define the term "service connection", as used in Circulars DEQ-1, DEQ-2, and DEQ-3. The Department receives many inquiries regarding the definition of this term as it influences various aspects of public water supply laws and rules.

The proposed amendment to (4) is necessary to clarify who is accountable for construction that occurs prior to Department review and approval and to make the rule consistent with the intent of 75-6-112, MCA, which states: "A person may not: (3) commence or continue construction...." The effect of this amendment will clarify that any "person" modifying public water or wastewater systems prior to Department approval is in violation of this rule. The proposed amendment also clarifies that an approved system must be both constructed and operated in accordance with the approved plans and specifications and department conditions of approval. This is necessary to help ensure that approved systems are properly constructed and operated.

17.38.201A INCORPORATION BY REFERENCE--PUBLICATION DATES AND AVAILABILITY OF REFERENCED DOCUMENTS (1) Unless expressly provided otherwise, in this subchapter where the board has:

(a) adopted and incorporated by reference a federal regulation, the reference is to the July 1, ~~2001~~ 2003, edition of the Code of Federal Regulations (CFR);

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

(c) through (4) remain the same.

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

REASON: The proposed amendments to (1) are necessary to adopt by reference the current July 1, 2003, editions of the Code of Federal Regulations (CFR), and the Montana Code Annotated (MCA), and all the applicable changes made since the 2001 editions. The CFR changes are described in the following rules, as specific CFR sections are incorporated by reference,

and the reason statements for each rule address the necessity for the particular CFR section adopted. The proposed incorporations of the CFR in this rulemaking are also necessary to allow the Department to enforce the public water supply statutes and to retain primacy for enforcement of safe drinking water laws. The policy of the Montana legislature has been for state agencies to retain primacy over environmental and public health programs.

17.38.203 MAXIMUM INORGANIC CHEMICAL CONTAMINANT LEVELS

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

(a) 40 CFR 141.6(j) and 141.6(k), which set forth effective dates associated with a revised maximum contaminant level for arsenic;

~~(a)~~ (b) 40 CFR 141.11 and 141.62(b), which set forth maximum contaminant levels for inorganic contaminants~~, except that 40 CFR 141.62(b)(16) is modified to read, "(16) Arsenic ..0.010"~~; ~~and~~

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

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

REASON: The proposed addition of new (1)(a) is necessary to adopt effective dates for the revised arsenic maximum contaminant level (MCL), which was adopted in 2003. Sections 141.6(j) and (k) were not adopted by the Board because the effective dates for the arsenic MCL were contained in other rules adopted by reference. Although primacy questions with the EPA in regard to the failure to incorporate these sections have been answered to EPA's satisfaction, it is necessary to adopt these sections for general clarification purposes.

The proposed amendment to (1)(a), renumbered (1)(b), will delete a state rule that has since been adopted in the federal rule, which the Board adopted by reference in 2003. Deletion of the state rule is necessary to eliminate a duplicative statement of the requirement.

17.38.205 MAXIMUM TURBIDITY CONTAMINANT LEVELS (1) The board ~~hereby~~ adopts and incorporates by reference 40 CFR 141.13, 141.73, ~~141.73(a)(1), and~~ 141.173~~(a)(3)~~, 141.550, and 141.551, which set forth maximum contaminant levels for turbidity, except for the following changes:

(a) remains the same.

(b) The following ~~replace~~ replaces 40 CFR 141.73(a)(1) ~~and 141.73(a)(2), respectively~~:

~~(i)~~ "For systems using conventional filtration or direct filtration, ~~The~~ the turbidity level of representative samples of the system's combined filtered water~~, measured at a representative entry point to the distribution system may not exceed~~ must be less than or equal to 0.5 NTU in at least 95% of the measurements taken each month, and may not at any time exceed 1.0 NTU.

~~(ii)~~ (c) The following replaces 40 CFR 141.73(a)(2), and is also added at the end of 40 CFR 141.173(a)(1) and 141.551: "For systems using conventional filtration or direct filtration, ~~The~~ the turbidity level of representative samples of a system's effluent from individual filters, measured at a point prior to mixing with effluent from other filters or other sources, may not exceed 0.5 NTU in at least 95% of the measurements taken each month, and may not at any time exceed 5.0 NTU. This requirement is not violated if the turbidity reading for the effluent from each individual filter is the first reading of the month that exceeds 0.5 NTU and the individual filter is taken off-line within 24 hours after the sample analysis that shows the exceedance."

(d) The first sentence in 40 CFR 141.551 is replaced with the following sentence: "Your system must meet three strengthened combined filter effluent turbidity limits."

(2) remains the same.

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

REASON: The proposed deletion of 40 CFR 141.73(a)(1) from (1) is necessary to correct a duplicative adoption. The rule adopts by reference 40 CFR 141.73, so it is not necessary to specifically adopt 141.73(a)(1).

The proposed deletion of 40 CFR 141.173(a)(3) will have the effect of adopting by reference the full section, which was inadvertently not adopted previously. The full section of the federal rule sets out filtration and disinfection requirements for public water supply systems serving more than 10,000 people. The Department has been requiring compliance with the full section because other federal rules, which have been incorporated by reference in Board rules, require compliance with 141.173. Adoption of the full section is necessary to ensure adequate treatment of water supply for these systems. In addition, a reference to the full section 141.173 is necessary here because the proposed amendments at (1)(c) affect 141.173(a)(1).

The proposed amendments to (1) also adopt 40 CFR 141.550 and 141.551, which set forth maximum contaminant levels for turbidity for systems serving fewer than 10,000 people. The proposed amendments to (1) are also necessary to adopt 40 CFR 141.550 and 141.551, which set forth maximum contaminant levels for turbidity for systems serving fewer than 10,000 people. These proposed amendments are necessary to require systems serving fewer than 10,000 people to now meet the same public health protection requirements that systems serving 10,000 or more people have been meeting since December 2001.

The proposed additions to (1)(b) and new (1)(c) are necessary to clarify the types of filtered systems to which these standards apply and to clarify what would constitute a turbidity exceedance. Subsection (1)(b) has also been reformatted into (1)(b) and (1)(c) for clarity.

New (1)(c) has been amended to apply an existing requirement for individual filtration to 40 CFR 141.173(a)(1) and 141.551, which set out filtration requirements for large and small systems respectively. This is not a substantive change, because the Department has been applying the individual filtration requirement to large and small systems under the existing rules. The proposed amendments will clarify that the existing individual filtration requirement applies to those systems. The individual filtration requirement is necessary to reduce the possibility that an individual filter in a combined filtration system would fail and not be detected. This amendment is necessary to clarify for persons reading 40 CFR 141.173(a)(1) and 141.551 that the state procedure for individual filtration still applies.

17.38.208 TREATMENT REQUIREMENTS (1) through (3) remain the same.

(4) The board ~~hereby~~ adopts and incorporates by reference the following:

(a) and (b) remain the same.

(c) 40 CFR 141.62(c), which sets forth BATs for inorganic contaminants, and 40 CFR 141.62(d), which sets forth small system compliance technologies (SSCT) for arsenic;

(d) through (n) remain the same.

(o) 40 CFR 141.170, which sets forth general treatment requirements in addition to the requirements in 141.70 for public water suppliers that use surface water; ~~and~~

(p) 40 CFR 141.173(b), which sets forth treatment requirements, in addition to the requirements in 40 CFR 141.72, for public water suppliers that use filtered surface water~~.~~;

(q) 40 CFR 141.500, which sets forth general treatment requirements, in addition to the requirements in 141.70, for public water suppliers that use surface water or GWUDISW and that serve fewer than 10,000 people;

(r) 40 CFR 141.501, which identifies the public water suppliers that are subject to the requirements of 40 CFR Part 141, Subpart T;

(s) 40 CFR 141.502 which stipulates the effective date for the requirements of 40 CFR Part 141, Subpart T, except that "January 14, 2005" is changed to "January 1, 2005";

(t) 40 CFR 141.503, which stipulates that public water suppliers that use surface water or GWUDISW and that serve fewer than 10,000 people must comply with the applicable requirements of 40 CFR Part 141, Subpart T;

(u) 40 CFR 141.510 and 141.511, which set forth requirements for construction of finished water storage reservoirs for public water suppliers that use surface water or GWUDISW and that serve fewer than 10,000 people;

(v) 40 CFR 141.520, 141.521 and 141.522, which stipulate that public water suppliers that use surface water or GWUDISW, do not provide filtration, and that serve fewer than 10,000 people must comply with the new watershed protection requirements of 40 CFR Part 141, Subpart T; and

(w) 40 CFR 141.552, which describes microbiological contaminant removal efficiencies that public water suppliers must demonstrate to obtain state approval of alternative filtration technologies.

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

REASON: The proposed amendments to (4)(c) will incorporate by reference the best available technology (BAT) options for inorganic contaminants and the small system compliance technologies for arsenic. The proposed amendments are necessary to identify those treatments allowed to address treatment requirements and to allow small systems the treatment alternatives designed to address financial concerns of small systems.

The proposed addition of new (4)(q) will incorporate by reference the new general treatment requirements for systems using surface water or GWUDISW (ground water under the direct influence of surface water) and that serve fewer than 10,000 people (Subpart T systems). The proposed addition is necessary to ensure adequate treatment of Subpart T systems.

The proposed addition of new (4)(r) will describe what systems must meet the new Subpart T requirements. The proposed addition is necessary to identify what systems must meet the new requirements for surface water systems or GWUDISW systems that serve fewer than 10,000 people.

The proposed addition of new (4)(s) will describe the effective date by which Subpart T systems must meet the new treatment requirements. The proposed addition is necessary to ensure that Subpart T systems remain in compliance with treatment requirements.

The proposed addition of new (4)(t) requires systems to meet the new Subpart T requirements. The proposed addition is necessary to ensure that Subpart T systems remain in compliance with treatment requirements.

The proposed addition of new (4)(u) requires construction standards for finished water reservoirs for Subpart T systems. The proposed addition is necessary to ensure that Subpart T systems are able to protect the water they have treated by storing it in an adequately constructed reservoir.

The proposed addition of new (4)(v) requires Subpart T systems that avoid filtration to meet the new watershed protection requirements. The proposed addition is necessary to ensure that Subpart T systems, avoiding filtration, are protecting the health of its users by protecting the quality of the water at its sources.

The proposed addition of new (4)(w) describes microbiological contaminant removal standards that Subpart T systems wishing state approval for alternate filtration technologies must be able to meet. The proposed addition is necessary to ensure that Subpart T systems are able to consider other filtration methods as long as a minimum standard is met.

17.38.215 BACTERIOLOGICAL QUALITY SAMPLES (1) The board ~~hereby~~ adopts and incorporates by reference the table in 40 CFR 141.21(a)(2), which sets forth total coliform monitoring frequency requirements.

(a) through (c) remain the same.

(d) A water supplier who is allowed to sample quarterly pursuant to (1)(c) ~~above~~ or who was authorized to conduct quarterly sampling on June 3, 1999, and is not required by the department to sample more frequently, may continue to sample quarterly except that:

(i) through (6) remain the same.

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

REASON: The proposed amendment to (1)(d) is necessary to clarify that systems that were once allowed to reduce their microbiological sampling frequency to a reduced rate (from monthly to quarterly) may later be required to increase that frequency if questions as to the safety of the system arise.

17.38.216 CHEMICAL AND RADIOLOGICAL QUALITY SAMPLES

(1) through (2) remain the same.

(3) The board ~~hereby~~ adopts and incorporates by reference the following monitoring and analytical requirements:

(a) 40 CFR 141.23, which sets forth sampling and analytical method requirements for inorganic chemicals except that 141.23(i) is replaced with the following:

"(i) Compliance with 40 CFR 141.11 or 141.62(b) (as appropriate) shall be determined based on the analytical result(s) obtained at each sampling point.

(A) through (E) remain the same, but are renumbered (1) through (5).

(6) Compliance with the maximum contaminant levels for nitrate and nitrite is determined based on one sample if the levels of these contaminants are below the MCLs. If the levels of nitrate and/or nitrite exceed the MCLs in the initial sample, a confirmation sample is required in accordance with paragraph (f)(2) of this section, and compliance shall be determined based on the average of the initial and confirmation samples.

(7) Arsenic sampling results will be reported to the nearest 0.001 mg/L."

(b) through (6) remain the same.

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

REASON: The proposed amendments to (3)(a)(i) are necessary to correct numbering errors in the existing rule format. The proposed amendments are necessary to adopt the specific language as quoted directly from the CFR. The numbering changes were inadvertently made during the last rulemaking process to meet Montana Secretary of State formatting guidelines. The

renumbering above will make the language appear as published in the CFR.

The proposed addition of (3)(a)(i)(6) is necessary to readopt the nitrate/nitrite MCL determination process that was inadvertently removed during the last rulemaking process. This proposed addition is necessary so systems are able to determine whether they are meeting the public health standard as defined by the MCL.

The proposed addition of (3)(a)(i)(7) adopts a reporting level requirement for arsenic. Because this requirement was expressed in other areas of the rules adopted by reference, the Board did not specifically adopt this section in the past. However, at EPA's request, this section is proposed for adoption to avoid a disparity between federal and state rules. The adoption is necessary to help prevent public confusion about what are the applicable requirements.

17.38.225 CONTROL TESTS (1) through (5) remain the same.

(6) The board ~~hereby~~ adopts and incorporates by reference the following:

(a) through (c) remain the same.

(d) 40 CFR 141.174, which sets forth filtration sampling requirements; ~~and~~

(e) 40 CFR 141.530, 141.531, 141.532, 141.533, 141.534, 141.535, 141.536, 141.540, 141.541, 141.542, 141.543 and 141.544, which set forth requirements for disinfection profiling and benchmarking for public water suppliers using surface water or GWUDISW and that serve fewer than 10,000 people;

(f) 40 CFR 141.553, which describes turbidity monitoring provisions for systems that utilize lime softening;

(g) 40 CFR 141.560, which describes individual filter monitoring requirements for public water suppliers that utilize direct or conventional filtration treatment;

(h) 40 CFR 141.561, which describes monitoring requirements for public water suppliers when continuous turbidity monitoring equipment fails;

(i) 40 CFR 141.562, which describes turbidity monitoring requirements for public water suppliers that utilize two or fewer filters; and

(e) remains the same, but is renumbered (j).

(7) remains the same.

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

REASON: The proposed addition of (6)(e) adopts new requirements for Subpart T systems, detailing disinfection profiling and benchmarking. These proposed additions are necessary to ensure that existing treatment standards are not reduced while meeting new requirements.

The proposed addition of new (6)(f) describes turbidity monitoring requirements for Subpart T systems that lime-soften. The proposed addition is necessary to ensure that Subpart T systems, using lime softening, are not adversely impacted by

elevated turbidity readings that may be due to the addition of the lime-softening agent.

The proposed addition of new (6)(g) describes individual filter monitoring requirements for direct or conventional filtration. The proposed addition is necessary to ensure that individual filters are functioning as designed and producing safe water.

The proposed addition of new (6)(h) describes turbidity monitoring requirements when continuous monitoring is unavailable. The proposed addition is necessary to ensure that filters are functioning as designed and producing safe water.

The proposed addition of new (6)(i) describes turbidity monitoring requirements for Subpart T systems with two or fewer filters. The proposed addition is necessary to ensure that filters are functioning as designed and producing safe water.

17.38.234 TESTING AND SAMPLING RECORDS AND REPORTING REQUIREMENTS (1) and (2) remain the same.

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

(a) through (d) remain the same.

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

(f) through (h) remain the same, but are renumbered (e) through (g).

(4) and (5) remain the same.

(6) The board ~~hereby~~ adopts and incorporates by reference the following:

(a) through (c) remain the same.

(d) 40 CFR 141.75, which sets forth reporting requirements for public water supplies that use surface water ~~sources~~ or GWUDISW, except for the following changes:

(i) and (ii) remain the same.

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

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

~~(f)~~ (g) 40 CFR 141.134, which, in addition to 40 CFR 141.31, sets forth reporting requirements for disinfection byproducts; ~~and~~

~~(g)~~ (h) 40 CFR 141.175, which, in addition to 40 CFR 141.75, sets forth reporting requirements for public water supplies that serve 10,000 or more people that use surface water ~~sources~~ or GWUDISW~~.~~;

(i) 40 CFR 141.563, which sets forth reporting and follow-up actions that public water suppliers that utilize surface water or GWUDISW, serve fewer than 10,000 people, and are required to filter must take when certain individual filter turbidity limits are exceeded;

(j) 40 CFR 141.564, which sets forth reporting and follow-up actions that public water suppliers that utilize surface water or GWUDISW, serve fewer than 10,000 people, are required to filter, and utilize lime softening must take when certain individual filter turbidity limits are exceeded;

(k) 40 CFR 141.570, which, in addition to 40 CFR 141.75, sets forth general reporting requirements for public water suppliers that utilize surface water or GWUDISW and serve fewer than 10,000 people; and

(l) 40 CFR 141.571, which, in addition to 40 CFR 141.75, sets forth general recordkeeping requirements for public water suppliers that utilize surface water or GWUDISW and that serve fewer than 10,000 people.

(7) Upon request by the department, a public water supplier shall ensure that recommendations of a certified professional engineer required under 40 CFR 141.175 or 40 CFR 141.563 are implemented through consultation and technical assistance provided by the department or by a third party approved by the department.

(7) and (8) remain the same, but are renumbered (8) and (9).

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

REASON: The proposed deletion of (3)(e) corrects an error made during the original rule adoption. Sections 40 CFR 141.76(b) and (d) were inadvertently adopted under (3)(e), which pertain to actual laboratory reports, but should have been adopted under (6), the incorporations by reference section. The cites are being deleted from (3) and adopted under (6) to correct that mistake.

The proposed amendment to (6)(d) is necessary to clarify what systems must meet the requirements of this rule. Surface water systems and systems deemed to be ground water under the direct influence of surface water (GWUDISW) are classified as Subpart H systems, which means they must meet the surface water treatment requirements. This proposed amendment is necessary to clarify that GWUDISW systems must also meet the requirements adopted in this rule.

The proposed amendment of (6)(h) clarifies the reporting requirements for Subpart H systems that serve at least 10,000 people. The proposed amendment is necessary to ensure systems serving at least 10,000 people do not report under the Subpart T requirements.

The proposed addition of new (6)(i) describes follow-up actions Subpart T systems must take when certain individual filter turbidity limits are exceeded. The proposed addition is necessary to ensure that filters are functioning as designed and producing safe water.

The proposed addition of new (6)(j) describes follow-up actions Subpart T systems that use lime softening must take when certain individual filter turbidity limits are exceeded. The proposed addition is necessary to ensure that filters are functioning as designed and producing safe water.

The proposed amendment of (6)(k) clarifies the reporting requirements for Subpart H systems that serve fewer than 10,000 people. The proposed amendment is necessary to ensure systems

serving fewer than 10,000 people report under the Subpart T requirements.

The proposed amendment of (6)(l) clarifies the recordkeeping requirements for Subpart H systems that serve fewer than 10,000 people. The proposed amendment is necessary to ensure Subpart T systems keep records that indicate the quality of the water produced.

The proposed addition of new (7) would allow the Department to require corrections to be made to problems identified during comprehensive performance evaluations. This proposed addition is necessary to ensure that filters are functioning as designed and producing safe water.

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, November 18, 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.

Reviewed by: BOARD OF ENVIRONMENTAL REVIEW

*James M. Madden* By: *Joseph W. Russell*
JAMES M. MADDEN JOSEPH W. RUSSELL, M.P.H.,
Rule Reviewer Chairman

Certified to the Secretary of State, October 8, 2004.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

| | |
|---|---|
| In the matter of the amendment of ARM 17.8.335 pertaining to Maintenance of Air Pollution Control Equipment for Existing Aluminum Plants | NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT<br><br>(AIR QUALITY) |

TO: All Concerned Persons

1. On December 1, 2004, at 2:00 p.m., the Board of Environmental Review will hold a public hearing in Room 35, Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The Board will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board no later than 5:00 p.m., November 22, 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 rule proposed to be amended provides as follows, stricken matter interlined, new matter underlined:

17.8.335 MAINTENANCE OF AIR POLLUTION CONTROL EQUIPMENT FOR EXISTING ALUMINUM PLANTS (1) The department may not initiate an enforcement action for a violation of ARM 17.8.111, 17.8.334(2), or any emission standard, except the requirements of 40 CFR Part 63, as incorporated by reference in this chapter, resulting from necessary scheduled maintenance of air pollution control equipment at an existing primary aluminum reduction plant, as defined in ARM 17.8.330, if:

(a) through (11) remain the same.

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

REASON: On July 26, 2002, the Board adopted New Rule I, Maintenance of Air Pollution Control Equipment for Existing Aluminum Plants, which was numbered ARM 17.8.335. The rule prohibits the Department from taking enforcement action for violations of various rules, including emission limits, that occur when control equipment is bypassed at an aluminum plant during scheduled maintenance.

The proposed revision to the state implementation plan was submitted to EPA on January 16, 2003. On October 29, 2003, EPA proposed to disapprove this State Implementation Plan (SIP) revision (Federal Register Volume 68, Number 209, pages 61650-61654). In addition to concerns about the rule itself, EPA expressed two concerns regarding the interaction of ARM 17.8.335

with the national emission standards for hazardous air pollutants for primary aluminum reduction plants (the maximum achievable control technology or MACT standard). The first concern is that the state may impact its automatic delegation of the MACT standard because the new rule could be interpreted to alter the requirements of the delegated MACT standard. EPA's MACT standard does not include any provision for exempting excess emissions during a maintenance event. Any excess emissions must be reported and enforcement discretion must be available to determine what, if any, enforcement action is appropriate for the event. The MACT standard was automatically delegated to the state under the condition that the state's rule be identical to the EPA rule (40 CFR 63.91(a)(1)). If changes are made, the automatic delegation could be withdrawn.

EPA's second concern is that, by adopting ARM 17.8.335, the state has rules with conflicting requirements - one set in the MACT standard adoption and one set in this SIP rule, leading to confusion for the regulated entity and the public as to which one applies.

The proposed rulemaking would add language to ARM 17.8.335 to address EPA's MACT concerns by specifying that the enforcement prohibition does not apply to enforcement of the MACT standard. However, this rulemaking does not address all of EPA's concerns with ARM 17.8.335.

The Board will also take testimony on submission of proposed amendments to EPA as proposed revisions to the 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., December 8, 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, October 8, 2004.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

| | |
|---|---|
| In the matter of the amendment of ARM 17.20.201, 17.20.202, 17.20.207, 17.20.301, 17.20.602, 17.20.603, 17.20.606, 17.20.607, 17.20.804, 17.20.807, 17.20.815, 17.20.818, 17.20.901, 17.20.907, 17.20.920 through 17.20.924, 17.20.928, 17.20.929, 17.20.1301, 17.20.1302, 17.20.1304, 17.20.1305, 17.20.1311, 17.20.1426, 17.20.1604, 17.20.1606, 17.20.1607, 17.20.1803, 17.20.1804, 17.20.1901 and 17.20.1902 and the repeal of 17.20.1427 through 17.20.1431, 17.20.1434 through 17.20.1440, and 17.20.1444 through 17.20.1447 pertaining to the Montana Major Facility Siting Act | NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND REPEAL<br><br>(MAJOR FACILITY SITING ACT) |

TO: All Concerned Persons

1. On December 1, 2004, at 9:00 a.m., the Board of Environmental Review will hold a public hearing in Room 35, Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment and repeal 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., November 22, 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:

17.20.201 DEFINITIONS Unless the context requires otherwise, in this subchapter:

(1) through (3) remain the same.

(4) "~~Long-range plan~~ Geothermal exploration plan" means the plan, actual or tentative, which a person has for the gathering of geological data by boring of test holes or other underground exploration, investigation, or experimentation

related to possible future development of a ~~utility~~ facility employing geothermal resources for the ensuing 10 years after submission to the department under this subchapter.

(5) through (8) remain the same.

AUTH: 75-20-1001, MCA
IMP: 75-20-1001, MCA

REASON: The Legislature, in Chapter 329, Laws of 1997, removed the requirement for filing of 10-year plans, but 75-20-1001, MCA, requires persons who conduct geothermal exploration to notify the Department. Consequently, the notification requirement (long-range plan) would be renamed "geothermal exploration plan" to remove reference to 10-year plans and the time period for the notification changed to one year to avoid implying that the Department is regulating geothermal exploration as it was when 10-year plans were required. The term "utility" would be removed because the distinction between utility facilities was removed from law during the 53rd Legislative session in 1993.

17.20.202 ~~LONG-RANGE~~ GEOTHERMAL EXPLORATION PLANS (1) ~~On November 1, 1974, every person shall submit a long-range plan. In addition, every~~ Every person shall submit a ~~long-range~~ geothermal exploration plan on April 1, 1975, and each year thereafter.

(2) ~~Twenty~~ Two copies along with an electronic copy acceptable to the department of the ~~long-range~~ geothermal exploration plan shall be submitted to the Department of Environmental Quality, P.O. Box 200901, Helena, MT 59620-0901. ~~Less than 20 copies may be submitted upon prior approval of the department.~~

(3) The ~~long-range~~ geothermal exploration plan shall be typed, printed, or otherwise legibly reproduced on 8½" x 11" paper. Maps, drawings, charts, or other documents bound in a ~~long-range~~ geothermal exploration plan shall be cut or folded to 8½" x 11" size. Maps, drawings, or charts may accompany a ~~long-range~~ geothermal exploration plan as separate exhibits.

(4) remains the same.

(5) All pages in a ~~long-range~~ geothermal exploration plan shall be consecutively numbered. Maps, drawings, or charts accompanying the ~~long-range~~ geothermal exploration plan as exhibits shall be identified as "Exhibit __" and, if comprising more than ~~1~~ one sheet, shall be numbered "sheet __ of __."

(6) Within each ~~long-range~~ geothermal exploration plan shall be included:

(a) remains the same.

(b) the approximate dates for gathering geological and hydrogeological data by boring of test holes or other underground exploration, investigation, or experimentation, related to possible future development of geothermal resources shall be listed;

(c) remains the same.

(d) the general location, a description of the area

involved, and the size and type of all drill holes, bore holes, or wells to be drilled, instruments, and all other equipment used.

(7) Any change in plans which would result in some action prior to the filing of the next ~~long-range~~ geothermal exploration plan shall be reported to the department within 60 days.

AUTH: 75-20-1001, MCA
IMP: 75-20-1001, MCA

REASON: The Legislature, in Chapter 329, Laws of 1997, removed the requirement for filing of 10-year plans. Consequently the term "long-range" has been replaced with the term "geothermal exploration" and the requirement for submission of a plan on November 1, 1974, has been deleted.

In (2) the number of copies has been reduced from 20 to two in order to reduce unnecessary paperwork. An electronic copy acceptable to the Department would facilitate production and distribution of any additional copies needed.

In (6)(b) the word "hydrogeological" is proposed for addition to explicitly allow the Department to obtain information on this phase of geothermal exploration.

In (6)(d) language has been revised for clarity.

17.20.207 CONFIDENTIALITY (1) The pertinent technical data submitted pursuant to ARM 17.20.204 through 17.20.206 shall be for the exclusive use of the department and other state agencies involved in geothermal research or regulation, and shall remain confidential for a period of ~~2~~ two years following commencement of operations for the drilling of an actual well for testing a potential geothermal resource or ~~6~~ six months following completion of a well capable of producing a geothermal resource, unless approved in writing for release earlier by the person who submitted such data or unless such data are entitled to protection under the Uniform Trade Secrets Act, Title 30, chapter 14, part 4, MCA.

(2) A person furnishing documents that the person believes are entitled to protection as trade secrets shall notify the department before or at the time the person furnishes the documents to the department. If the department determines that the information is protected, it shall maintain the documents as confidential. If the department determines that the documents are not entitled to protection, it shall notify the person and maintain the documents as confidential for a period reasonably necessary for the person to obtain a court order requiring the department to maintain confidentiality, or to retrieve the documents from the department.

AUTH: 75-20-1001, MCA
IMP: 75-20-1001, MCA

REASON: These amendments are necessary to allow the Department to determine whether documents are protected from

public disclosure by the right to privacy contained in the Montana Constitution and the Uniform Trade Secrets Act. If the information is not protected, the information must be disclosed. The proposed amendment gives the Department the authority to keep information confidential for the time necessary to obtain a court order. The new language allows the Department to comply with the Constitution and the Uniform Trade Secrets Act and avoid liability for violation of the provisions.

17.20.301 DEFINITIONS Unless the context requires and clearly states otherwise, in these rules:

(1) through (4) remain the same.

(5) "Application" means an application to the department for a certificate of ~~environmental compatibility~~ compliance under 75-20-211, MCA.

(6) through (8)(b) remain the same.

~~(9) "Area of concern" means a geographic area or location specified in ARM 17.20.1430 and 17.20.1431, where construction or operation of a facility will likely damage the significant environmental values peculiar to the area or where environmental constraints may pose siting or construction problems, but where formal public recognition or designation has not been granted.~~

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

~~(11)~~ (10) "Baseline study" means a detailed analysis of a proposed site for a generation or conversion facility and impact zones or alternative ~~routes~~ facility locations and impact zones for a linear facility for purposes of impact assessment and comparison and selection of a preferred ~~route~~ facility location.

(12) and (13) remain the same, but are renumbered (11) and (12).

~~(14)~~ (21) "~~Centerline~~ Facility location" means a location for a linear facility ~~within an approved route~~ accurately depicted to within 250 feet unless otherwise specified by the ~~board~~ department by a line one millimeter or less in width drawn on a 1:24,000 map, and which may or may not be surveyed.

(a) "Alternative ~~centerline~~ facility location" means one of the alternative locations potentially suitable for construction of a linear facility ~~that the applicant or the department has selected after study of the approved route described in the certificate and~~ that has been depicted on overlays to the base map described in ~~ARM 17.20.1703(1)~~ Circular MFSA-2, section 3.3;

(b) "Approved ~~centerline~~ facility location" means the precise location for a linear facility that is approved by the ~~board~~ department and accurately depicted to within 250 feet, unless otherwise specified by the department, in the certificate ~~on the map described in ARM 17.20.1706(3)~~;

(c) "Preferred ~~centerline~~ facility location" means the applicant's desired location for a linear facility as depicted on overlays to the base map described in ~~ARM 17.20.1703(1) after study of the approved route and the centerline for which board approval is sought~~ Circular MFSA-2.

~~(15) "Centerline evaluation" means an analysis to determine the location of the centerline of a linear facility~~

~~within the approved route.~~

(16) remains the same, but is renumbered (13).

~~(17) "Corridor" means:~~

~~(a) "Approved corridor" means an area of land of a width specified by the board that is generally suitable for siting a linear associated facility.~~

~~(b)~~ (41) "Study ~~corridor~~ area" means a geographical area of variable size and width ~~within the study area~~ that is potentially suitable for siting a linear facility ~~as determined by the reconnaissance and that contains one or more routes~~.

(18) through (23) remain the same, but are renumbered (14) through (19).

~~(24) "Exclusion area" means a geographic area specified in ARM 17.20.1428 legally designated for its environmental values and having legally defined boundaries wherein facility construction or operation is prohibited, excepting those portions of the area where permission to site a facility has been obtained from the legislative or administrative unit of government with direct authority over the area.~~

(25) remains the same, but is renumbered (20).

(26) through (28) remain the same, but are renumbered (22) through (24).

~~(29)~~ (33) "~~Inventory~~ Overview survey" means the collection and mapping of environmental information within ~~candidate siting areas or~~ a study ~~corridors~~ area for the purpose of selecting alternative ~~routes~~ facility locations.

(30) through (37) remain the same, but are renumbered (25) through (32).

(38) and (39) remain the same, but are renumbered (34) and (35).

~~(40) "Reconnaissance" means a preliminary assessment of the study area based on published or readily available data used to select study corridors.~~

(41) remains the same, but is renumbered (36).

~~(42) "Route" means a preliminary location for a linear facility accurately depicted to within 0.1 mile as specified by a line one millimeter or less in width drawn on a 1:24,000 map.~~

~~(a) "Alternative route" means one of the alternative locations potentially suitable for the construction of a linear facility that the applicant has selected for baseline study and has depicted on the base map described in ARM 17.20.1440(2).~~

~~(b) "Approved route" means a linear strip of land of a width specified by the board on the map described in ARM 17.20.1701 that contains one or more alternative centerlines for a linear facility.~~

~~(c) "Preferred route" means the applicant's preferred location for a linear facility and the route for which a certificate is sought as depicted by the applicant on the base map described in ARM 17.20.1440(2).~~

~~(43) "Sensitive area" means a geographic area or location specified in ARM 17.20.1429 and 17.20.1431, where construction or operation of a facility will likely damage the significant environmental values peculiar to the area or where environmental constraints may pose siting or construction problems and where~~

~~these values or constraints have received formal public recognition or designation or are in the process of being designated at the time the application is filed.~~

(44) remains the same, but is renumbered (37).

~~(45)~~ (38) "Significant adverse impact" means a detrimental change in the social, economic, cultural, physical or natural environment as a result of the construction, operation, maintenance, or decommissioning of a facility, as determined by the ~~board~~ department on the basis of the impact's severity, duration, geographic extent, or frequency of occurrence or the uniqueness of the affected environmental value or its importance to the state and/or to society.

(46) and (47) remain the same, but are renumbered (39) and (40).

~~(48) "Study area" means the geographical region containing the locations where a proposed linear facility reasonably could be sited, considering the applicant's service area, the intended market area(s) of the product the facility transports, and/or the electrical system problems that would be solved by the facility.~~

(49) remains the same, but is renumbered (42).

AUTH: 75-20-105, MCA
IMP: 75-20-104, MCA

REASON: The proposed amendments to this rule, as more specifically explained below, are necessary for consistency with the proposed consolidation of information requirements from the current five-step alternative siting study for linear facilities covered under MFSA to a proposed three-step alternative siting study.

Section (5) is being amended because the Legislature, in Chapter 329, Laws of 1997, changed the name of the certificate issued pursuant to the Major Facility Siting Act by replacing the phrase "environmental compatibility" with "compliance." The proposed revision would conform the rule to the amended statute.

The proposed deletion of (9) is for consistency with the proposed consolidation of information requirements from the current five-step alternative siting study for linear facilities covered under MFSA to the proposed three-step alternative siting study.

The proposed replacement of the term "routes" with "facility locations" and "route" with "facility location" in (9), renumbered (10), is for consistency in the proposed consolidation of information requirements from the current five-step alternative siting study for linear facilities covered under MFSA to a three-step alternative siting study.

The proposed replacement of the term "centerline" with "facility location" in (14)(a), (b) and (c), renumbered (21)(a), (b) and (c), is consistent with Board action in March 2001, that repealed subchapter 17 of Chapter 20 addressing evaluation of centerlines for linear facilities. Use of the phrase "facility location" clarifies what the Department would be evaluating and certifying under MFSA.

The proposed deletion of the phrases "within an approved route," "that the applicant or the department has selected after study of the approved route described in the certificate and" in (14)(a), renumbered (21)(a), and the phrase "after study of the approved route and the centerline for which board approval is sought" in (14)(c), renumbered (21)(c), is for consistency with the proposed consolidation of information requirements for the alternative siting study for linear facilities.

The term "board" is being replaced by the term "department" throughout the rule because the Department is now charged with making the certification decision and the Board only hears appeals.

The proposed deletion of the phrase "on the map described in ARM 17.20.1706(3)" in (14)(b), renumbered (21)(b), is necessary because subchapter 17 was repealed in March of 2001. Specification of a narrower width, if necessary, would be done in a certificate either in a narrative or on a map.

The proposed deletion of (15) is consistent with Board action in March of 2001 that repealed subchapter 17 addressing evaluation of centerlines for linear facilities.

The proposed deletion of (17) and (17)(a) is for consistency in the proposed consolidation of information requirements for the alternative siting study for linear facilities. The proposed replacement of the term "corridor" with "area" and the deletion of the phrase "determined by the reconnaissance and that contains one or more routes" in (17)(b), renumbered (41), are consistent with the proposed consolidation of information requirements for the alternative siting study for linear facilities. The proposed addition of the phrase "size and" provides applicants flexibility in their completion of this step in the alternative siting study. Deletion of "within the study area" provides clarity to the proposed definition.

The proposed deletion of (24) is for consistency with the proposed consolidation of information requirements for the alternative siting study for linear facilities. Current rules call wilderness areas and national primitive areas "exclusion areas." Under both current and proposed rules these areas could be considered for a facility location.

The proposed replacement of "inventory" with "overview survey," "corridors" with "area" and "routes" with "facility locations" in (29), renumbered (33), are for consistency with the proposed consolidation of information requirements for the alternative siting study for linear facilities. Proposed deletion of the phrase "candidate siting areas or" also conforms to this proposed consolidation. Addition of the word "a" is for grammar.

The proposed deletion of (40) is for consistency with the proposed consolidation of information requirements for the alternative siting study for linear facilities.

The proposed deletion of (42) through (42)(c) is for consistency with the proposed consolidation of information requirements for the alternative siting study for linear facilities.

The term "board" in (45), renumbered (38) is being changed to "department" because the Department is now charged with making the certification decision and the Board only hears appeals.

Subsection (48) is being proposed for deletion because the previous definition for study area provided in (17)(b), renumbered (41), is a better fit with the proposed and consolidated alternative siting study.

17.20.602 NOTIFICATION OF REQUEST FOR WAIVER (1) The applicant shall submit a written notice of request for a waiver to the ~~board~~ department, by certified mail or personal service. The notice must be accompanied by an affidavit of service showing that copies of the notice have been served on the department ~~and the units of local government and agencies listed in 75-20-211(3), MCA~~, and that public notice of the request for waiver has been given. Public notice shall be given to persons residing within the area in which any portion of the facility would be located if the waiver is granted. Notice shall be given by publication of a display ad containing a summary description of the facility and a summary of the contents of the request for waiver, once in each of ~~3~~ three consecutive weeks in newspapers of general circulation in that area.

AUTH: 75-20-105, MCA
IMP: 75-20-105, 75-20-304, MCA

REASON: The Legislature, in Chapter 329, Laws of 1997, gave the authority to waive authorizations to the Department. This authority had previously resided with the Board. The Legislature, in Chapter 217, Laws of 2003, changed the law concerning service of an application for a certificate. Proposed language reflects current legislative direction.

17.20.603 CONTENTS OF NOTICE OF REQUEST FOR WAIVER PURSUANT TO 75-20-304(1), MCA (1) For a waiver of provisions described in 75-20-304(1), MCA, the notice of request for waiver must contain the following information:

(1) and (2) remain the same, but are renumbered (a) and (b).

~~(3)~~ (c) a description of the ~~preferred~~ site for a non-linear facility or ~~preferred route~~ proposed location for the proposed linear facility, alternative sites or ~~routes~~ locations which were considered, an explanation of the reasons for selecting the ~~preferred~~ proposed site or ~~route~~ location, and a description of the significant environmental advantages and disadvantages of the ~~preferred~~ proposed and alternate ~~sites or routes~~ locations;

(4) and (5) remain the same, but are renumbered (d) and (e).

AUTH: 75-20-105, MCA
IMP: 75-20-105, 75-20-304~~(1)~~, MCA

REASON: The proposed editorial changes are necessary to be consistent with proposed changes in language pertaining to the alternative siting study for linear facilities in Circular MFSA-2. In Chapter 329, Laws of 1997, the Legislature removed the requirement that a route for a linear facility first be certified and a centerline be approved later. Instead, the Department reviews reasonable alternative locations to determine compliance with standards in 75-20-301, MCA.

17.20.606 ~~BOARD~~ DEPARTMENT ACTION ON REQUEST FOR WAIVER (1) Within 90 days after receipt of the information required by ARM 17.20.603 or 17.20.605, the ~~board~~ department shall give notice and set a date for a hearing.

(2) The ~~board~~ department shall give notice and set a date for a hearing and render a decision as soon as practicable after receipt of the information required by ARM 17.20.604.

(a) remains the same.

AUTH: 75-20-105, MCA
IMP: 75-20-105, 75-20-304, MCA

REASON: The Legislature, in Chapter 329, Laws of 1997, gave the authority to waive certain aspects of certification proceedings to the Department. This authority had previously resided with the Board. Proposed language reflects current legislative direction.

17.20.607 CONTENT OF AN APPLICATION FOLLOWING RECEIPT OF WAIVER PURSUANT TO 75-20-304(3), MCA (1) An application for a facility which has been granted a waiver pursuant to 75-20-304(3), MCA, must contain applicable information required by ARM ~~17.20.1415, 17.20.1416,~~ 17.20.1418~~, and 17.20.1419,~~ for the preferred site only.

(2) remains the same.

AUTH: 75-20-105, MCA
IMP: 75-20-105, 75-20-211, 75-20-304~~(3)~~, ~~75-20-503,~~ MCA

REASON: ARM 17.20.1415, 17.20.1416, and 17.20.1419 were repealed in 2001. Information formerly in ARM 17.20.1419 has been incorporated into Circular MFSA-2. Section 75-20-503, MCA, was repealed in 1997. The proposed language reflects these changes.

17.20.804 DOCUMENTATION OF INFORMATION SOURCES AND OMISSION OF CERTAIN INFORMATION REQUIREMENTS (1) remains the same.

(2) An application should include only information relevant to the facility. The application requirements in these rules address a comprehensive range of issues for the wide range of facilities covered by the Act. The applicability or relevance of the requirements to a particular facility are dependent on its type, its design, how its output will be

marketed, its size or length, and on the characteristics and complexity of the geographic area(s) where the facility may be located. An application shall contain the information required by subchapters ~~7 through~~ 8 and 9 and ~~12~~ 13 through 15 unless specific provisions for submitting less information are contained in the rule, or unless the department gives written permission, prior to filing the application, to omit certain information. Unless a rule provides differently, an applicant desiring to omit information it considers irrelevant to the project shall submit to the department a written request to make the omission, along with documentation justifying its request. The department shall review the applicant's request and shall make a written determination of whether the information may be omitted. If there is a substantial cost to the department to verify the applicant's justification, the applicant shall contract with the department and reimburse it for expenses incurred pursuant to 75-20-106, MCA.

AUTH: 75-20-105, MCA
IMP: 75-20-105, 75-20-211, MCA

REASON: Subchapters 7 and 12 were repealed by the Board in March 2001. Consequently, references to these subchapters are proposed for deletion and the references are being renumbered.

17.20.807 AMENDMENT TO APPLICATION--NEW APPLICATION

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

(2) The department may determine that a new application and a filing fee ~~is~~ are required if the extensive nature of a change or the timing of the notification of a change or addition to the original application would not allow the department, or the other agencies listed in 75-20-216~~(5)~~, MCA, to discharge their duties and responsibilities under the Act and these rules under the statutory time requirements and filing fee or under contractual terms pursuant to 75-20-215~~(2)~~, MCA. If a new application and a filing fee ~~is~~ are required, processing of the original application shall be terminated. If the total filing fee was paid at the time of filing, unexpended portions of the fee shall be returned to the applicant or credited to the new fee at the applicant's request if a new application is to be filed. For an application being processed under a contract pursuant to 75-20-215~~(2)~~, MCA, the applicant shall be billed for the department's expenses up to the date of termination. Any studies completed or partially completed at the time of termination that are relevant to an amended or new application shall not be duplicated.

(3) remains the same.

(4) The applicant shall give notice upon filing an amendment or a new application as set forth in 75-20-211~~(3), (4) and (5)~~, MCA.

(5) remains the same.

AUTH: 75-20-105, MCA
IMP: 75-20-211, 75-20-213, 75-20-215, 75-20-216, MCA

REASON: In (2), the rule given shows the wrong subsection in MFSA.

Section 75-20-211(4), MCA, was repealed in the 2003 Legislative session. That is reflected in the proposed amendment to (4) of this rule.

17.20.815 LINEAR FACILITIES, ESTIMATED ANNUAL COSTS

(1) An application for a linear facility must contain a detailed analysis of the annual costs of the facility for purposes of comparing the facility with alternatives, as required by 75-20-301~~(2)(c)~~, MCA, including detail on the capital and operating costs and operational characteristics of the facility.

(1) through (10) remain the same, but are renumbered (2) through (11).

AUTH: 75-20-105, MCA
IMP: 75-20-105, 75-20-211, 75-20-215, MCA

REASON: This rule has been renumbered in accordance with guidelines from the Secretary of State's office. The board is deleting references to subsections in internal citations to avoid having to amend rules when subsections of statutes or administrative rules are renumbered.

17.20.818 LINEAR FACILITIES, EVALUATION OF ECONOMIC COSTS AND BENEFITS (1) and (2) remain the same.

(3) For external costs the information provided under ~~ARM 17.20.1444 or 17.20.1445~~ Circular MFSA-2, Sections 3.7 and 3.8 is sufficient.

(4) Information on benefits must include, where relevant, benefits to the consumer, benefits to the applicant, and benefits to Montana. Information concerning these benefits may include increased reliability, increased transient stability, increased power transfer capability, decreased chance of voltage drop and other economic considerations such as current system costs. The applicant may not double count benefits and shall include nonmonetary benefits wherever possible.

AUTH: 75-20-105, MCA
IMP: 75-20-105, 75-20-211, 75-20-215, MCA

REASON: The Board is proposing that the text of ARM 17.20.1444 and 17.20.1445 is being repealed and transferred, with amendments, to Circular MFSA-2, Sections 3.7 and 3.8 respectively. This proposed change is reflected in the proposed amendment to (3).

The proposed amendment to (4) would clarify what types of benefits would likely occur from a proposed linear facility. The benefits mentioned comprise the need determination of the facility, although benefits need not be limited to these. The applicant is also required to follow the standard economic practices for comparing benefits and costs of avoiding double

counting and including nonmonetary benefits. The proposed amendment will also provide more guidance to applicants.

17.20.901 GENERATION AND CONVERSION FACILITIES, EXPLANATION OF PURPOSE AND BENEFITS OF THE PROPOSED FACILITY (1) remains the same.

AUTH: 75-20-105, MCA
IMP: 75-20-211, ~~75-20-503,~~ MCA

REASON: Section 75-20-503, MCA, was repealed in 1997. The proposed change to the implementation section reflects this.

17.20.907 TRANSMISSION FACILITIES, REGIONAL RELIABILITY CRITERIA (1) through (1)(e) remain the same.

AUTH: 75-20-105, MCA
IMP: 75-20-211, ~~75-20-503,~~ MCA

REASON: Section 75-20-503, MCA, was repealed in 1997. The proposed change to the implementation section reflects this.

17.20.920 ELECTRIC TRANSMISSION LINES, EXPLANATION OF NEED (1) An application for an electric transmission line must contain an explanation of the need for the facility, based on, but not limited to, ~~1~~ one or more of the following conditions:

(1) through (5) remain the same, but are renumbered (a) through (e).

AUTH: 75-20-105, MCA
IMP: 75-20-211, ~~75-20-503,~~ MCA

REASON: The rule is being renumbered to meet Secretary of State formatting guidelines. Section 75-20-503, MCA, was repealed in 1997. The proposed change to the implementation section reflects this.

17.20.921 ELECTRIC TRANSMISSION LINES, TRANSIENT STABILITY CONSIDERATIONS (1) For electric transmission lines where transient stability considerations are a basis of need, an application must contain the following information:

(1) and (2) remain the same, but are renumbered (a) and (b).

AUTH: 75-20-105, MCA
IMP: 75-20-211, ~~75-20-503,~~ MCA

REASON: The rule is being renumbered to meet Secretary of State formatting guidelines. Section 75-20-503, MCA, was repealed in 1997. The proposed change to the implementation section reflects this.

17.20.922 ELECTRIC TRANSMISSION LINES, POWER TRANSFER CAPACITY, VOLTAGE DROP (1) For electric transmission lines

where power transfer capacity or voltage drop is a basis of need, the application must contain an explanation of the problem situation including the following information:

(1) through (5) remain the same, but are renumbered (a) through (e).

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

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

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

AUTH: 75-20-105, MCA
IMP: 75-20-211, ~~75-20-503,~~ MCA

REASON: The rule is being renumbered to meet Secretary of State formatting guidelines. Section 75-20-503, MCA, was repealed in 1997. The proposed change to the implementation section reflects this.

17.20.923 ELECTRIC TRANSMISSION LINES, RELIABILITY OF SERVICE (1) For electric transmission lines where reliability of service is a basis of need, an application must contain the following:

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

AUTH: 75-20-105, MCA
IMP: 75-20-211, ~~75-20-503,~~ MCA

REASON: The rule is being renumbered to meet Secretary of State formatting guidelines. Section 75-20-503, MCA, was repealed in 1997. The proposed change to the implementation section reflects this.

17.20.924 ELECTRIC TRANSMISSION LINES, ECONOMY CONSIDERATIONS (1) For electric transmission lines where economy considerations are a basis of need, an application must contain the following, as relevant:

(1) through (7) remain the same, but are renumbered (a) through (g).

(2) If the transmission grid is managed by a regional transmission organization (RTO) formed under FERC order 2000, the application must report:

(a) the extent of congestion and the costs of congestion throughout the year, with and without the proposed facility, for each affected flow path on the regional grid;

(b) a projection of the transmission rights that would be created by the proposed facility; and

(c) planning evaluations of the proposed facility written either by the RTO or another regional planning organization.

AUTH: 75-20-105, MCA
IMP: 75-20-211, ~~75-20-503,~~ MCA

REASON: The rule is being renumbered to meet Secretary of State formatting guidelines. New (2) is being proposed for inclusion because Montana's transmission lines will soon be under the authority of Regional Transmission Organizations that are forming under order of the Federal Energy Regulatory Commission. The new language addresses some of the general rules that new transmission lines would have to meet under an RTO. The information required under the proposed amendment is necessary to support findings required by 75-20-301, MCA.

Section 75-20-503, MCA, was repealed in 1997. The proposed change to the implementation section reflects this.

17.20.928 OTHER LINEAR FACILITIES, EXPLANATION OF NEED (1) remains the same.

AUTH: 75-20-105, MCA
IMP: 75-20-211, ~~75-20-503,~~ MCA

REASON: Section 75-20-503, MCA, was repealed in 1997. The proposed change to the implementation section reflects this.

17.20.929 LINEAR FACILITIES, INTERCONNECTION AGREEMENTS (1) through (2) remain the same.

AUTH: 75-20-105, MCA
IMP: 75-20-211, ~~75-20-503,~~ MCA

REASON: Section 75-20-503, MCA, was repealed in 1997. The proposed change to the implementation section reflects this.

17.20.1301 GENERATION AND CONVERSION FACILITIES, EVALUATION OF ALTERNATIVES (1) through (3) remain the same.

AUTH: 75-20-105, MCA
IMP: 75-20-211, ~~75-20-503,~~ MCA

REASON: Section 75-20-503, MCA, was repealed in 1997. The proposed change to the implementation section reflects this.

17.20.1302 GENERATION AND CONVERSION FACILITIES, CRITERIA FOR EVALUATION OF ALTERNATIVES TO THE PROPOSED FACILITY (1) through (5) remain the same.

AUTH: 75-20-105, MCA
IMP: 75-20-211, ~~75-20-503,~~ MCA

REASON: Section 75-20-503, MCA, was repealed in 1997. The proposed change to the implementation section reflects this.

17.20.1304 ~~SERVICE AREA UTILITIES,~~ ELECTRIC TRANSMISSION LINES, EVALUATION OF ALTERNATIVES (1) An application must contain an evaluation of the nature and economics of relevant alternatives to the proposed facility, which could in whole or in part address the problem or opportunity as described in ARM

17.20.920 that the proposed facility is designed to address, including transmission alternatives, alternative energy resources, alternative transmission technologies, alternative levels of reliability and nonconstruction alternatives. The no action alternative must be evaluated. The evaluation must also include a comparison of alternatives leading to the selection of a preferred alternative and an explanation of the reasons for the selection of the proposed facility.

~~(1)~~ (2) An application for an electric transmission line must include an evaluation of transmission alternatives, including alternative end points and intermediate substation locations for the transmission line and upgrading or replacing an existing facility that would serve to provide the needed reinforcement that would be provided by the proposed facility. An application must also evaluate alternative timing of other electric transmission lines planned by the applicant, ~~including those identified in the long-range plan filed with the department under ARM 17.20.502 or in other planning documents,~~ which in whole or in part would address the problem situation or opportunity or provide the needed reinforcement that would be provided by the proposed facility. For each transmission alternative, a minimum of ~~3~~ three load flow studies must be provided, as required by ARM 17.20.922~~(5)~~.

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

AUTH: 75-20-105, MCA
IMP: 75-20-211, ~~75-20-503,~~ MCA

REASON: The rule is being renumbered to meet Secretary of State formatting guidelines. In 75-20-301(4), MCA, there was a distinction between utilities and non-utilities that was repealed in 1997. The current version of MFSA no longer contains this qualifier in 75-20-301, MCA; all facilities are treated the same. Therefore, the term "service area utilities" has been removed from the rule title.

ARM 17.20.502 was repealed in 2001 and the long-range plan filed under that rule was repealed in 1993. Therefore, the language referring to the repealed rule and long-range plan is proposed for deletion.

Section 75-20-503, MCA, was repealed in 1997. The proposed change to the implementation section reflects this.

The board is deleting references to subsections in internal citations to avoid having to amend rules when subsections of statutes or administrative rules are renumbered.

17.20.1305 ~~SERVICE AREA UTILITIES,~~ ELECTRIC TRANSMISSION LINES, CRITERIA FOR EVALUATION OF ALTERNATIVES (1) through (4) remain the same.

AUTH: 75-20-105, MCA
IMP: 75-20-211, ~~75-20-503,~~ MCA

REASON: In 75-20-301(4), MCA, there was a distinction

between utilities and non-utilities that was repealed in 1997. See Section 15, Chapter 329, Laws of 1997. The current version of MFSA no longer contains this qualifier in 75-20-301, MCA, and all facilities are treated the same. Therefore, the term "service area utilities" has been removed from the heading.

Section 75-20-503, MCA, was repealed in 1997. The proposed change to the implementation section reflects this.

17.30.1311 PIPELINE FACILITIES, EVALUATION OF ALTERNATIVES (1) remains the same.

AUTH: 75-20-105, MCA
IMP: 75-20-211, ~~75-20-503,~~ MCA

REASON: Section 75-20-503, MCA, was repealed in 1997. The proposed change to the implementation section reflects this.

17.20.1426 LINEAR FACILITIES, GENERAL REQUIREMENTS OF THE ALTERNATIVE SITING STUDY (1) An application for a linear facility must contain an alternative siting study and baseline environmental data as specified in ~~ARM 17.20.1426 through 17.20.1431, 17.20.1434 through 17.20.1440, and 17.20.1444 through 17.20.1447~~ Circular MFSA-2.

(2) The board adopts and incorporates by reference department Circular MFSA-2, "Application Requirements for Linear Facilities", which sets forth the requirements for an alternative siting study and the baseline study requirements and impact assessment to be included in an application for a linear facility. Copies may be obtained from the Department of Environmental Quality, Environmental Management Bureau, P.O. Box 200901, Helena, Montana 59620-0901.

~~(2) The alternative siting study for an electric transmission line or a pipeline must include:~~

~~(a) delineation of the study area (see ARM 17.20.1434);~~

~~(b) a reconnaissance of the study area (see ARM 17.20.1435);~~

~~(c) selection of study corridors (see ARM 17.20.1436);~~

~~(d) an inventory of the study corridors (see ARM 17.20.1437 and 17.20.1438);~~

~~(e) selection of alternative routes (see ARM 17.20.1439);~~

~~(f) a baseline study of alternative routes, including baseline data collection and impact assessment (see ARM 17.20.1440, 17.20.1444, 17.20.1445);~~

~~(g) a comparison of alternative routes (see ARM 17.20.1446); and~~

~~(h) selection of the preferred route (see ARM 17.20.1447).~~

~~(3) The alternative siting study shall include any alternative routes for the facility which have alternative end points or combinations of end points identified according to ARM 17.20.1412 and 17.20.1415 that would meet the need the proposed facility is intended to address, and would have a levelized annual cost no more than 35% higher (25% higher for transmission lines 230 kV or greater voltage and 30 miles or longer) than the levelized annual cost of the facility or would have significant~~

~~environmental advantages over the facility, with the end points proposed by the applicant.~~

~~(4) An application must contain a summary of the results of consultation with government agencies to identify their concerns over the proposed facility's possible locations or effects on the environment, and the way the applicant considered these concerns in identifying preferred and alternative routes for the facility.~~

~~(5) An application may contain any valid and useful existing studies, reports, or data prepared on the linear facility and may be submitted by the applicant towards fulfilling the requirements of ARM 17.20.1426 through 17.20.1431, 17.20.1434 through 17.20.1440, and 17.20.1444 through 17.20.1447, but shall be subject to supplementation, and shall be used by the department only to the extent it considers them applicable.~~

AUTH: 75-20-105, MCA
IMP: 75-20-211, ~~75-20-503,~~ MCA

REASON: These proposed amendments are necessary because the detailed information requirements of alternative siting studies, the baseline study and the impact assessment are proposed for transfer, with amendments, to Circular MFSA-2.

The proposed addition of new (2) is necessary to adopt Circular MFSA-2 that requires alternative siting studies, and a baseline study and impact assessment for linear facilities. The Board is proposing to transfer these requirements, with amendments, to Circular MFSA-2.

Section 75-20-503, MCA, was repealed in 1997. The proposed amendment to the implementation section reflects this.

17.20.1604 LINEAR FACILITIES, ~~UTILITIES,~~ PUBLIC INTEREST, CONVENIENCE AND NECESSITY STANDARD (1) In order for the ~~board~~ department to find that a proposed facility will serve the public interest, convenience and necessity as required by 75-20-301~~(2)(g)~~, MCA, the ~~board~~ department must find and determine that the discounted net present value of benefits (less costs) is greater for the facility than for any other reasonable alternative, based on a determination of the following:

(a) through (2) remain the same.

AUTH: 75-20-105, MCA
IMP: 75-20-301, ~~75-20-503,~~ MCA

REASON: The board is deleting references to subsections in internal citations to avoid having to amend rules when subsections of statutes or administrative rules are renumbered. The Legislature, in Chapter 329, Laws of 1997, transferred the authority to issue certifications, which includes findings referenced in this rule, to the Department. This duty had previously resided with the Board. Proposed changes reflect this legislative direction. In 75-20-301(4), MCA, there was a distinction between utilities and non-utilities that was

repealed in 1997. The current version of MFSA no longer contains this qualifier in 75-20-301, MCA; all facilities are treated the same. Therefore, the term "utilities" has been deleted from the rule title.

Section 75-20-503, MCA, was repealed in 1997. The proposed change to the implementation section reflects this.

17.20.1606 ELECTRIC TRANSMISSION LINES, ~~SERVICE AREA UTILITIES,~~ NEED STANDARD (1) In order to find that there is a need for an electric transmission facility as required by 75-20-301~~(2)(a)~~, MCA, ~~that is proposed by a service area utility as defined by ARM 17.20.301,~~ the ~~board~~ department must find that the services of the facility are needed by finding and determining the following:

~~(1)~~ (a) For facilities for which insufficient power transfer capacity at adequate voltage levels under normal operating conditions is a stated basis of need in the application, either that:

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

~~(b)~~ (ii) if the finding in ~~(a) above~~ (1)(a)(i) cannot be met, that the expected benefits of constructing a transmission line with the transfer capacity of the proposed line, instead of ~~1~~ a line for which the finding in ~~(a) above~~ (1)(a)(i) can be met, warrant the ~~resource commitment,~~ costs based on a finding and determination of the following:

~~(i)~~ (A) the expected benefits of building the proposed line compared with ~~1~~ a line that would satisfy ~~(a) above~~ (1)(a)(i); and

~~(ii)~~ (B) the extra costs of building the proposed line compared with ~~1~~ a line that would satisfy ~~(a) above~~ (1)(a)(i).

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

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

(3) and (4) remain the same, but are renumbered (c) and (d).

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

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

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

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

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

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

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

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

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

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

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

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

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

AUTH: 75-20-105, MCA
IMP: 75-20-301, ~~75-20-503,~~ MCA

REASON: Before 1997, 75-20-301(4), MCA, provided that considerations of need, public need, or public convenience and necessity apply only to utilities. That limitation was repealed in 1997. The current version of MFSA no longer contains this limitation. In 75-20-301, MCA, all facilities are treated the same. Therefore, the term "service area utilities" is being deleted from the rule title and (1).

The board is deleting references to subsections in internal citations to avoid having to amend rules when subsections of statutes or administrative rules are renumbered. The word "board" is also being changed to "department" in (1) because the Department is now charged with making the decision on an application and the Board only hears appeals.

Subsection (1)(b), renumbered (1)(a)(ii), is being amended to clarify language for a showing of need when insufficient power transfer capacity occurs at adequate voltage levels under normal operating conditions. The old rule had been rewritten and changed in a manner that was grammatically nonsensical (the word "one" was changed to "1") causing ambiguity between a reference to (1) and "a line".

Section 75-20-503, MCA, was repealed in 1997, and thus ARM 17.20.1601 no longer implements that law.

The rule is being renumbered to meet Secretary of State formatting guidelines.

17.20.1607 LINEAR FACILITIES, MINIMUM IMPACT STANDARD

(1) In order for the ~~board~~ department to find and determine that a linear facility represents the minimum adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives as required by 75-20-301~~(1)(c)~~, MCA:

(a) the ~~board~~ department finds and determines:

(i) that the expected net present value of costs, including monetary costs of construction to the applicant, external monetary costs, and the value of reasonably quantifiable environmental impacts is lower for the proposed facility than for any other available alternative that would meet the need finding required by ARM 17.20.1606~~(1)~~. Other available alternatives include transmission alternatives, alternative energy resources and energy conservation, alternative transmission technologies, alternative levels of transmission reliability and the no action alternative;

(ii) that unquantified environmental impacts are not significantly adverse to alter the finding required by (1)(a)(i) ~~above~~;

(iii) that all mitigation measures included in the mitigation plan in (1)~~(g)~~(a)(vii)(C) ~~below~~ have been incorporated in the cost finding required by (1)(a)(i) ~~above~~;

(iv) that the ~~route~~ final location for the facility

achieves the best balance among the preferred ~~route~~ location criteria listed in ~~ARM 17.20.1427~~ Circular MFSA-2, section 3.1 considering environmental impact and economic cost;

(v) that the ~~route~~ final location for the facility will not cross one of the ~~board's designated exclusion~~ areas listed in ~~ARM 17.20.1428~~ Circular MFSA-2, section 3.2(1)(d)(i) and (ii), unless the legislative or administrative unit of government with direct authority over the area has given the applicant permission to locate the facility there;

(vi) that reasonable alternative locations for the facility were considered in selecting the ~~route~~ final location, pursuant to ~~ARM 17.20.1431, 17.20.1436, and 17.20.1439~~ Circular MFSA-2, section 3.0;

(vii) that the ~~route~~ final location for the facility will result in less cumulative adverse environmental impact and economic cost than siting the facility ~~on~~ in any reasonable alternative location, based on the following:

(A) and (B) remain the same.

(C) adoption of an acceptable mitigation plan based on the measures identified in (1)(a)(vii)(B) ~~above~~, including environmental specifications, that will be included in conditions to the certificate; and

(D) remains the same.

(viii) ~~If~~ if in making the finding required by (1)(a)(vii) ~~above~~, the ~~route~~ final location for the facility crosses one or more of the ~~sensitive~~ areas listed in ~~ARM 17.20.1429 or 17.20.1431, or the areas of concern listed in 17.20.1430 or 17.20.1431~~ Circular MFSA-2, section 3.2(1)(d)(iii) through (xi) and section 3.4(1)(b) through (w) for transmission lines and in Circular MFSA-2, sections 3.2(1)(e) and 3.4(2) for pipelines, either that no significant adverse environmental impacts would result in the area(s); or

(A) that any significant adverse environmental impacts affecting the environmental resources, qualities or characteristics for ~~which the sensitive~~ these areas ~~or areas of concern are designated~~ have been identified;

(B) remains the same.

(C) that an acceptable mitigation plan based on the measures identified in (1)(a)(viii)(B) ~~above~~, including environmental specifications, has been identified and will be included in conditions to the certificate; and

(D) remains the same.

(2) The ~~board~~ department must condition its approval of a facility on the following standards:

(a) through (g) remain the same.

(h) for all linear facilities, that any other standards the ~~board~~ department deems important will be met.

AUTH: 75-20-105, MCA
IMP: 75-20-105, 75-20-211, 75-20-301, ~~75-20-503,~~ MCA

REASON: Throughout this rule references are made to an approval of a "route" followed by approval of a centerline. Section 75-20-205, MCA, which authorized the centerline approval

process, was repealed in 1997. A centerline determination is no longer authorized by statute. Centerlines for linear facilities would be addressed in the initial Department decision on the final location of a facility. Consequently references to routes and centerlines are proposed to be replaced with reference to final location.

The term "board" is being changed to "department" because the Department is now charged with making the decision on an application and the Board only hears appeals. Remaining amendments are proposed for consistency in the transfer of rules to Circular MFSA-2. The language in the proposed amendment to (1)(a)(v) was previously in ARM 17.20.1428, which is proposed for repeal, and is necessary to support findings required in 75-20-301, MCA.

Section 75-20-503 was repealed in 1997, and thus ARM 17.20.1601 cannot implement that law.

The board is deleting references to subsections in internal citations to avoid having to amend rules when subsections of statutes or administrative rules are renumbered.

17.20.1803 CERTIFICATE AMENDMENT PURSUANT TO CHANGE IN DEPARTMENT OF ENVIRONMENTAL QUALITY OR BOARD OF ENVIRONMENTAL REVIEW PERMIT (1) An amendment affecting, amending, altering or modifying a decision, opinion, order, certification or permit issued by the department of environmental quality or board of environmental review under the applicable statutes administered by those agencies in accordance with 75-20-219~~(5)~~, MCA, shall be adopted by the ~~board~~ department and incorporated as a certificate amendment, as follows:

~~(1)~~ (a) within 10 days of the issuance of an amendment by the department or board, the certificate holder shall serve the ~~board~~ department with a certified copy of the amendment;

~~(2)~~ (b) the ~~board~~ department shall issue a notice of proposed action to modify the certificate to fully and completely incorporate the amendment authorized by the department or board;

(3) and (4) remain the same, but are renumbered (c) and (d).

~~(5)~~ (e) if no show-cause hearing is requested or required, the ~~board~~ department shall take the proposed action as set forth in the notice pursuant to ~~(2) of this rule~~ (1)(b);

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

AUTH: 75-20-105, MCA
IMP: 75-20-219, MCA

REASON: The board is deleting references to subsections in internal citations to avoid having to amend rules when subsections of statutes or administrative rules are renumbered. The term "board" is being changed to "department" because the Department is now charged with making the decision on an application and the Board only hears appeals. This change to 75-10-219, MCA, was made in the 2001 legislative session. See Chapter 293, Laws of 2001.

17.20.1804 DECISIONS ON CERTIFICATE AMENDMENTS (1) In order for the ~~board~~ department to determine that an amendment to a certificate should be granted or modified, the ~~board~~ department must find and determine that the amendment will not materially alter the findings required by subchapter 16 that were the basis for granting the certificate.

(2) In making the findings required by (1) ~~of this rule~~, the ~~board~~ department shall limit itself to consideration of the effects that the proposed change or addition to the facility contained in the notice for the certificate amendment may produce.

AUTH: 75-20-105, MCA
IMP: 75-20-219, MCA

REASON: The term "board" is being changed to "department" because the Department is now charged with making the decision on an application and the Board only hears appeals. This change to 75-10-219, MCA, was made in the 2001 legislative session. See Chapter 293, Laws of 2001.

17.20.1901 MONITORING REQUIRED BY CERTIFICATE (1) As required by 75-20-303~~(3)(a)(v)~~, MCA, the certificate shall include a plan for monitoring environmental effects of the facility and associated facilities. The plan shall specify the types of monitoring data and activities required, and the terms and schedules of monitoring data collection, and assign responsibilities for data collection, inspection, reporting, or other activities required to effectively monitor the facility and associated facilities.

(2) The certificate holder shall reimburse the department for all costs incurred relative to the monitoring plan approved by the ~~board~~ department in accordance with 75-20-402, MCA.

(3) All activities of the certificate holder or the certificate holder's representative during preconstruction, construction, reclamation, operation, maintenance and decommissioning of the facility shall be conducted in accordance with the environmental specifications and conditions to the certificate approved by the ~~board~~ department.

AUTH: 75-20-105, MCA
IMP: 75-20-301, 75-20-303, 75-20-402, MCA

REASON: The term "board" is proposed to be changed to "department" because the Department is now charged with making the decision on an application and the Board only hears appeals.

The board is deleting references to subsections in internal citations to avoid having to amend rules when subsections of statutes or administrative rules are renumbered.

17.20.1902 ~~ELECTRIC TRANSMISSION LINES~~ LINEAR FACILITIES, MONITORING REQUIREMENTS (1) Within 15 days of the ~~board's~~ department's approval of a ~~centerline~~ final location, the

department shall designate an environmental inspector to monitor compliance with the environmental specifications and any other conditions contained in the certificate. The environmental inspector shall be the certificate holder's liaison with the department on all subsequent activities related to the facility.

(2) Within 15 days of the ~~board's~~ department's approval of a ~~centerline~~ final location, the certificate holder shall designate a chief field representative to be the department's liaison with the certificate holder on all subsequent activities related to the facility.

(3) remains the same.

(4) The certificate holder shall submit the following information to the department at least 15 days prior to the commencement of construction of any segment of the project. Any information previously submitted in an application ~~or during the centerline evaluation of the facility~~ may be referenced.

(a) On orthophoto mosaics or plan and profile maps, or on available USGS 7.5 minute topographic maps, at a scale of 1:24,000, the location of the following as appropriate:

(i) through (iii) remain the same.

(iv) clearing backlines, clearing limits or disturbance limits, staging sites, and pulling sites, if known;

(v) through (5) remain the same.

(6) If a construction bond is required by the certificate, the certificate holder shall submit to the department proof that the construction bond has been obtained prior to the commencement of construction. Pursuant to the certificate, this bond may be held until construction is complete and the ~~board~~ department has determined that all environmental specifications have been followed, that cleanup is complete, that damage has been repaired, and that recontouring, site restoration, and revegetation are progressing satisfactorily.

(a) In the event the department finds that the certificate holder is not correcting damage created during construction in a satisfactory manner, the department may ~~file a forfeiture of bond report with the board.~~

~~(b) The board shall subsequently~~ determine the amount and disposition of all or a portion of the bond to correct any damage that has not been corrected by the certificate holder.

(7) For electric transmission lines greater than 230 kV and pipeline facilities, the certificate holder shall hold a preconstruction conference at least 15 days prior to commencement of construction activities to brief the following persons regarding the content of the environmental specifications required by the certificate, to identify any specific geographical areas of concern where special construction precautions may be required, and to explain the role of the environmental inspector:

(a) through (8) remain the same.

(9) If a construction and reclamation bond is required by the certificate pursuant to ARM 17.20.1706(2), at the time the construction bond is released by the ~~board~~ department, the certificate holder shall submit proof that the reclamation bond has been obtained. Pursuant to the certificate, portions of

this bond or bonds may be held for ~~1~~ one year and ~~5~~ five years, respectively, or until the ~~board~~ department determines that revegetation and road closures adequately meet the requirements specified in the certificate and in (10) ~~of this rule~~.

(a) In the event the department finds that revegetation has not attained the growth required after ~~1~~ one year or ~~5~~ five years specified in (10) ~~of this rule~~, the department may find the certificate holder in substantive noncompliance with the terms of the reclamation bond and may ~~file a forfeiture of bond report with the board.~~

~~(b) The board may subsequently~~ determine the amount and disposition of all or a portion of the bond or bonds to achieve satisfactory reclamation and revegetation.

(10) The following standards for reclamation shall be used to determine reclamation bond release or to determine that expenditure of the reclamation bond is necessary to meet the requirements of the certificate for transmission lines, unless otherwise determined by the ~~board~~ department:

(a) and (b) remain the same.

(c) on private lands the certificate holder may contract with the landowner for revegetation or reclamation which would release the certificate holder from the reclamation bond performance on the property upon showing the ~~board~~ department that the property owner wants different reclamation standards from those specified in (10)(a) and (b) ~~above~~ applied on his property and that not reclaiming to the standards specified in (10)(a) and (b) ~~above~~ would not have adverse impacts on the public and other landowners; and

(d) on public lands the certificate holder may contract with the affected land management agency for revegetation or reclamation which would release the certificate holder upon showing the ~~board~~ department that the land management agency wants different reclamation standards from those specified in (10)(a) and (b) ~~above~~ applied on its lands and that not reclaiming to the standards specified in (10)(a) and (b) ~~above~~ would not have adverse impacts on the public and other landowners.

(11) ~~At the direction of the board, the~~ The department may formulate and carry out a plan to ensure that the standards in (10) ~~of this rule~~ are accomplished.

(12) In the event that the department finds the contractor responsible for construction of the facility to be in violation of the construction and mitigation standards or any of the conditions of the certificate, and finds that the certificate holder cannot or will not take appropriate action to correct the problem, the department shall immediately file an incident report with the certificate holder ~~and the board~~, as follows:

(a) and (b) remain the same.

(c) ~~Immediately upon~~ Upon correction of any violation described in an incident report, the department shall file a compliance report with the certificate holder ~~and the board~~ stating that the problem has been satisfactorily resolved.

(d) remains the same.

AUTH: 75-20-105, MCA
IMP: 75-20-301, 75-20-303, 75-20-402, MCA

REASON: The word "centerline" in (1) and (2) and the phrase "or during the centerline evaluation of the facility" in (4) are proposed for deletion because 75-20-205, MCA, which authorized the centerline approval process, was repealed in 1997. A centerline determination is no longer authorized by statute. Centerlines for linear facilities are being addressed in the initial Department decision rather than in a two-step process. The proposed amendment to (4)(a) is necessary to prevent applicants from submitting maps containing no substantive information in an effort to comply with the "map" requirement.

The phrase "clearing backlines" is a term-of-art used in the electric transmission line industry. The phrase "clearing limits or disturbance limits" is proposed for addition in (4)(a)(iv) to allow the Department to understand the amount of disturbance proposed for any linear facility, especially pipeline facilities, not just a transmission line in a forested area.

Currently there are no procedures set by rulemaking addressing pre-construction procedures for pipeline facilities. The proposed amendment in (7) would apply the procedures that have been used to monitor transmission facilities. These procedures are necessary to determine with whom the Department will communicate, disturbance areas and when construction is supposed to commence.

The term "board" would be changed to "department" because the Department is now charged with making decisions on applications and bond forfeiture and the Board only hears appeals.

In (10), the phrase "for transmission lines" is being added to qualify that the reclamation standards would continue to apply only to transmission lines. Reclamation standards for pipelines would be handled on a case-by-case basis as part of the certification process. The current reclamation standards have been developed primarily for transmission lines and do not appropriately address pipeline disturbances. Thus, the Department proposes reviewing pipeline reclamation standards on a case-by-case basis.

In (12)(c), the word "immediately" is proposed for deletion because typically the Department does not employ full time inspectors. Because operation of the facility is not suspended pending completion of the report, there is no need to require "immediate" filing of the compliance report. The proposed amendment would allow the Department to more efficiently schedule inspections of corrected violations.

4. The rules proposed for repeal are as follows:

17.20.1427 LINEAR FACILITIES, PREFERRED ROUTE CRITERIA (AUTH: 75-20-105, MCA; IMP, 75-20-211, 75-20-503, MCA), located at page 17-1291, Administrative Rules of Montana.

17.20.1428 LINEAR FACILITIES, EXCLUSION AREAS (AUTH: 75-20-105, MCA; IMP, 75-20-211, 75-20-503, MCA), located at page 17-1291, Administrative Rules of Montana.

17.20.1429 LINEAR FACILITIES, ELECTRIC TRANSMISSION LINES, SENSITIVE AREAS (AUTH: 75-20-105, MCA; IMP, 75-20-211, 75-20-503, MCA), located at pages 17-1292 and 17-1293, Administrative Rules of Montana.

17.20.1430 LINEAR FACILITIES, ELECTRIC TRANSMISSION LINES, AREAS OF CONCERN (AUTH: 75-20-105, MCA; IMP, 75-20-211, 75-20-503, MCA), located at pages 17-1293 through 17-1295, Administrative Rules of Montana.

17.20.1431 LINEAR FACILITIES, PIPELINES, SENSITIVE AREAS AND AREAS OF CONCERN (AUTH: 75-20-105, MCA; IMP, Sec. 75-20-211, 75-20-503, MCA), located at page 17-1296, Administrative Rules of Montana.

17.20.1434 LINEAR FACILITIES, DELINEATION OF THE STUDY AREA (AUTH: 75-20-105, MCA; IMP, 75-20-211, 75-20-503, MCA), located at page 17-1301, Administrative Rules of Montana.

17.20.1435 LINEAR FACILITIES, RECONNAISSANCE (AUTH: 75-20-105, MCA; IMP, 75-20-211, 75-20-503, MCA), located at page 17-1302, Administrative Rules of Montana.

17.20.1436 LINEAR FACILITIES, SELECTION OF STUDY CORRIDORS (AUTH: 75-20-105, MCA; IMP, 75-20-211, 75-20-503, MCA), located at page 17-1302, Administrative Rules of Montana.

17.20.1437 LINEAR FACILITIES, INVENTORY, GENERAL REQUIREMENTS (AUTH: 75-20-105, MCA; IMP, 75-20-211, 75-20-503, MCA), located at pages 17-1302 and 17-1303, Administrative Rules of Montana.

17.20.1438 LINEAR FACILITIES, INVENTORY, ENVIRONMENTAL INFORMATION (AUTH: 75-20-105, MCA; IMP, 75-20-211, 75-20-503, MCA), located at pages 17-1305 through 17-1307, Administrative Rules of Montana.

17.20.1439 LINEAR FACILTIES, SELECTION OF ALTERNATIVE ROUTES (AUTH: 75-20-105, MCA; IMP, 75-20-211, 75-20-503, MCA), located at page 17-1307, Administrative Rules of Montana.

17.20.1440 LINEAR FACILITIES, BASELINE STUDY, GENERAL REQUIREMENTS (AUTH: 75-20-105, MCA; IMP, 75-20-211, 75-20-503, MCA), located at pages 17-1308 and 17-1309, Administrative Rules of Montana.

17.20.1444 LINEAR FACILITIES, ELECTRIC TRANSMISSION LINES, BASELINE DATA REQUIREMENTS AND IMPACT ASSESSMENT (AUTH: 75-20-105, MCA; IMP, 75-20-211, 75-20-503, MCA), located at pages 17-

1313 through 17-1321, Administrative Rules of Montana.

17.20.1445 LINEAR FACILITIES, PIPELINES, BASELINE DATA REQUIREMENTS AND IMPACT ASSESSMENT (AUTH: 75-20-105, MCA; IMP, 75-20-211, 75-20-503, MCA), located at pages 17-1323 through 17-1325, Administrative Rules of Montana.

17.20.1446 LINEAR FACILITIES, COMPARISON OF ALTERNATIVE ROUTES (AUTH: 75-20-105, MCA; IMP, 75-20-211, 75-20-503, MCA), located at page 17-1327, Administrative Rules of Montana.

17.20.1447 LINEAR FACILITIES, SELECTION OF THE PREFERRED ROUTE (AUTH: 75-20-105, MCA; IMP, 75-20-211, 75-20-503, MCA), located at page 17-1328, Administrative Rules of Montana.

REASON: These rules are proposed for repeal because the Board is proposing to place the text of the rules containing baseline study requirements and impact assessment for linear transmission facilities in Department Circular MFSA-2. The Board is also proposing modification of this text as indicated in the proposed Circular.

5. Concerned persons may obtain a copy of proposed department Circular MFSA-2 by calling (406) 444-0988 or by writing to the Board at the address listed in paragraph 6 below. In addition, a copy of the Circular is available at http://www.deq.state.mt.us/Notices/mfs.asp.

6. 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., December 3, 2004. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

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

8. 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.

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

Reviewed by: BOARD OF ENVIRONMENTAL REVIEW

*John F. North* BY: *Joseph W. Russell*
JOHN F NORTH JOSEPH W. RUSSELL, M.P.H.,
Rule Reviewer Chairman

Certified to the Secretary of State, October 8, 2004.

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

| | |
|---|---|
| In the matter of the amendment of ARM 17.58.311 and 17.58.326 pertaining to definitions and applicable rules governing the operation and management of petroleum storage tanks | NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT<br><br>(PETROLEUM BOARD) |

TO: All Concerned Persons

1. On November 16, 2004, at 10:00 a.m., the Petroleum Tank Release Compensation Board will hold a public hearing in Room 112, 1100 North Last Chance Gulch, 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., November 8, 2004, to advise us of the nature of the accommodation that you need. Please contact Terry Wadsworth, Executive Director, Petroleum Tank Release Compensation Board, P.O. Box 200902, Helena, Montana 59620-0902; phone (800) 556-5291; fax (406) 841-5091.

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

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

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

(5) "Board staff" means those employees of the ~~department of environmental quality provided to the board~~ petroleum tank release compensation board hired by the board pursuant to 75-11-318, MCA.

(6) through (22) remain the same.

AUTH: 75-11-318, MCA
IMP: 75-11-318, MCA

REASON: The proposed amendment is necessary to change the definition of "board staff" to reflect a 2003 legislative amendment to 75-11-318(1), MCA, which added a sentence to that statute giving the Petroleum Tank Release Compensation Board authority to hire its own staff. The 2003 Legislature also removed the provision in 75-11-318(4), MCA, directing the Department of Environmental Quality to provide staff support to the Board.

17.58.326 APPLICABLE RULES GOVERNING THE OPERATION AND MANAGEMENT OF PETROLEUM STORAGE TANKS (1) ~~As used in 75-11-~~

~~308(1)(e), MCA, the term "applicable state rules" means~~ The applicable state rules referenced in 75-11-308(1)(a)(ii) and (c), MCA, are:

(a) the following provisions of the ~~1997 Uniform Fire Code, Article 79, "Flammable and Combustible Liquids"~~ National Fire Protection Association 1 Uniform Fire Code, (NFPA1/UFC) (2003), a copy of which may be obtained from ~~International Fire Chiefs Institute, 5360 Workman Mill Road, Whittier, CA 90601~~ the National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02169, or online without cost at www.nfpa.org:

~~(i)~~(iv) Section ~~7901.11.3~~ 42.2.4.2.3, which states that ~~aboveground metallic piping subject to corrosive action shall be fabricated from noncorrosive materials or provided with corrosion protection~~ any portion of a piping system that is in contact with the soil must be protected from corrosion in accordance with good engineering practice;

~~(ii)~~(iii) Section ~~7901.11.8~~ 42.2.4.2.1, which states that ~~aboveground piping joints shall be liquid tight and shall either be welded, flanged or threaded. Threaded or flanged joints shall fit tightly by using approved methods and materials for the type of joint~~ the design, fabrication, assembly, test and inspection of the piping system must meet the requirement of chapter 5 of NFPA1/UFC 30, Flammable and Combustible Liquids Code;

~~(iii)~~(viii) Section ~~7902.1.8.2.1~~ 66.2.2.1, which states that ~~the design, fabrication and construction of tanks shall be in accordance with good engineering practice and nationally recognized standards~~ tanks may be of any shape, size, or type consistent with sound engineering design. Metal tanks must be welded, riveted and caulked, or bolted, or constructed using a combination of these methods;

~~(iv)~~(ix) Section ~~7902.1.14.2~~ 66.2.3.1.1, which states that tanks must rest on the ground or on foundations made of concrete, masonry, piling or steel. Tank foundations ~~shall~~ must be designed to minimize the possibility of uneven settling of the tank and to minimize corrosion in any part of the tank resting on the foundation; ~~and~~

~~(v)~~(ii) Section ~~7902.3.6~~ 42.2.3.4.5.2, which states that guard posts or other approved means ~~shall~~ must be provided to protect ~~aboveground storage~~ tanks ~~from~~ that are subject to vehicular damage~~.~~;

~~(b) The following subsections of Article 53 of the Uniform Fire Code as added and adopted in ARM Title 23, chapter 7, subchapter 3:~~

~~(i)~~ (v) Section ~~5301.5.1~~ 42.2.5.3.4, which states that ~~fuel dispensers shall be properly mounted on a minimum six-inch high concrete island or other approved method~~ dispensing devices must be mounted on a concrete island or must otherwise be protected against collision damage by means acceptable to the authority having jurisdiction. Dispensing devices must be bolted securely in place;

~~(ii) Section 5301.5.2, which states that fuel dispensers shall be secured in an approved manner and shall not be secured to the island using piping or conduit;~~

~~(iii)~~ (vii) Section ~~5301.5.3~~ 42.2.5.7, which states that ~~emergency shut down devices shall be provided for all fuel dispensers in locations approved by the chief~~ fuel dispensing systems must be provided with one or more clearly identified emergency shutoff devices or electrical disconnects;

~~(iv)~~ (vi) Section ~~5302.4.1(1)(B)~~ 42.2.5.5.2, which states that ~~fuel dispensing hoses shall be provided with a listed emergency breakaway device~~ a listed emergency breakaway device designed to retain liquid on both sides of the breakaway point must be installed on each hose dispensing Class I liquids. Such devices must be installed and maintained in accordance with the manufacturers' instructions; and

~~(v)~~ (i) Section ~~5302.4.1(1)(C)~~ 42.2.3.4.4.3, which states that ~~aboveground petroleum storage tanks shall be provided with overfill protection~~ means must be provided to sound an audible alarm when the liquid level in the tank reaches 90% capacity. Means must be provided either to automatically stop the flow of liquid into the tank when the liquid level in the tank reaches 98% capacity, or to restrict the flow of liquid into the tank to a maximum flow rate of 2.5 gpm when the liquid in the tank reaches 95% of capacity~~.~~; and

~~(c)~~ (b) ~~T~~the following requirements in ARM Title 17, chapter 56:

(i) through (iii) remain the same.

(iv) the testing, monitoring and recordkeeping requirements ~~associated with the requirements~~ identified in (1)~~(c)~~(b)(ii) and (iii);

(v) ~~Subchapters 5 and 6 which address~~ the release reporting, initial response and corrective action requirements identified in subchapters 5 and 6; and

(vi) for inactive and permanently closed underground storage tanks, ARM 17.56.701 and 17.56.702, to the extent that those rules require emptying of ~~temporarily and permanently closed underground storage~~ such tanks.

~~(d)~~ (2) ~~The board may determine that an~~ An owner or operator ~~is~~ shall be considered in compliance with the requirements of (1)~~(c)~~(b)(i) through ~~(vi)~~(iv), if the owner's underground storage tank, as defined in 75-11-503, MCA, has one of the following permits issued by the department in accordance with 75-11-509, MCA:

~~(i) the facility has a valid operating permit issued by the department under ARM 17.56.308; or~~

~~(ii) the board is provided with substantial evidence that the owner or operator has made a reasonable effort to fulfill the terms of a compliance plan issued pursuant to ARM 17.56.309.~~

(a) a valid operating permit; or

(b) a valid conditional permit.

AUTH: 75-11-318, 75-11-319, MCA
IMP: 75-11-308, MCA

REASON: The rule is being renumbered for clarity.

The introductory clause to ARM 17.58.326(1) currently refers to the term "applicable state rules" as used in "75-11-

308(1)(e), MCA." That reference requires amendment because the 2003 legislature eliminated 75-11-308(1)(e), MCA. The references in 75-11-308(1), MCA, to applicable state rules for owner-operator eligibility are now set forth at 75-11-308(1)(a)(ii), (iii), and (c), MCA. The proposed rule change relates only to the applicable state rules referenced in 75-11-308(1)(a)(ii) and (c), MCA.

The proposed amendments to ARM 17.58.326(1)(a) and (b) are required because of the adoption of the 2003 National Fire Protection Association 1 Uniform Fire Code (NFPA1/UFC) by the Department of Justice, Fire Prevention and Investigation Section (State Fire Marshal), and the concomitant repeal by the State Fire Marshal of the referenced sections of the Uniform Fire Code. The provisions of the NFPA1/UFC proposed for adoption are parallel to the current referenced sections of the Uniform Fire Code. As noted above, the proposed rule would renumber ARM 17.58.326(1)(a) and (b) by combining those two subsections as ARM 17.58.326(1)(a).

The proposed amendment to ARM 17.58.326(1)(c)(vi) would replace the word "temporarily" with the word "inactive," and would make it clear that for inactive and permanently closed tanks, the only "applicable state rules" are ARM 17.56.701 and 17.56.702 (to the extent those two rules require emptying of such tanks.) The amendment is necessary because in December 2003 the Department of Environmental Quality amended ARM 17.56.101 and 17.56.701 to refer to "inactive" tanks, rather than "temporarily closed" tanks. As noted above, the proposed amendment would renumber ARM 17.58.326(1)(c) to 17.58.326(1)(b), and the subsections of ARM 17.58.326(1)(c) would be renumbered accordingly. Thus current ARM 17.58.326(1)(c)(vi) would be renumbered as ARM 17.58.326(1)(b)(vi).

The proposed amendment to ARM 17.58.326(1)(d) would change the reference in the introductory clause to relate to a more limited set of subsections of ARM 17.58.326(1)(c). The current introductory clause of ARM 17.58.326(1)(d), which refers to ARM 17.58.326(1)(c)(i) through (vi), appears to be a mistake in transcription when the current rule was promulgated in 2002. The reference should be to ARM 17.58.326(1)(c)(i) through (iv), not to ARM 17.58.326(1)(c)(i) through (vi). See 2002 Montana Administrative Register Issue No. 15 at p. 2057.

In addition, because the Department of Environmental Quality no longer issues compliance plans pursuant to ARM 17.56.309, the proposed amendment to ARM 17.58.326(1)(d) would simply require an owner or operator to have one of the two relevant permits issued by the Department under 75-11-509, MCA, i.e., a valid operating or conditional permit. An owner or operator that complied with this permit requirement could then be determined by the Board to be in compliance with ARM 17.58.326(1)(c)(i) through (iv) (which as proposed will be renumbered ARM 17.58.326(1)(b)(i) through (iv)). As noted above, the proposed rule would renumber ARM 17.58.326(1)(d) to ARM 17.58.326(2), and the subsections of the rule would be renumbered accordingly.

4. Concerned persons may submit their data, views or arguments concerning the proposed amendments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Terry Wadsworth, Executive Director, Petroleum Tank Release Compensation Board, P.O. Box 200902, Helena, Montana 59620-0902; faxed to (406) 841-5091; or emailed to Terry Wadsworth at twadsworth@state.mt.us no later than November 18, 2004. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

5. Paul Johnson, 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 Board. 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 rulemaking notices. Such written request may be mailed or delivered to Terry Wadsworth, Executive Director, Petroleum Tank Release Compensation Board, P.O. Box 200902, Helena, Montana 59620-0902; faxed to (406) 841-5091; or emailed to Terry Wadsworth at twadsworth@state.mt.us or may be made by completing a request form at any rules hearing held by the Board.

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

Reviewed by: PETROLEUM TANK RELEASE COMPENSATION BOARD

*James M. Madden* BY: *Barry Johnston*
JAMES M. MADDEN BARRY JOHNSTON, Chairman

Certified to the Secretary of State, October 8, 2004.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

| | | |
|---|---|---|
| In the matter of the proposed adoption of New Rules I through VII, and the proposed repeal of ARM 8.15.302, all pertaining to boilers, terminology, licensure, examinations, responsibility of licensees, and training | ) ) ) ) ) ) ) | NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION AND REPEAL |

TO: All Concerned Persons

1. On November 12, 2004, at 10:00 a.m., a public hearing will be held in room B-07 of the Park Avenue Building, 301 South Park Avenue, Helena, Montana to consider the proposed adoption and repeal of the above-stated rules.

2. The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or who need an alternative accessible format of this notice. If you require an accommodation, contact Mr. Todd Boucher no later than 5:00 p.m., November 8 2004, to advise us of the nature of the accommodation you need. Please contact Todd Boucher, Boiler Program, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2368; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail dlibsdboi@state.mt.us.

3. The proposed new rules provide as follows:

NEW RULE I USE OF TERMINOLOGY For the purposes of this chapter, the following terminology is used:

(1) "Boiler classification" means, for the purpose of determining the appropriate class of boiler operating engineer's license required:

(a) a determination of the conditions under which the boiler is actually being operated, with respect to:

(i) the operating pressure;

(ii) the operating temperature; and

(iii) the BTUs per hour or horsepower per hour produced; but

(b) is not based upon the maximum allowable working pressure (MAWP) rating limit(s) established on the boiler's manufacturer's data plate.

(i) The department may require the boiler owner to provide appropriate verification from the power supplier, which establishes the BTU per hour or horsepower per hour rate at which the boiler is being fired, as applicable.

(2) "Department" means the department of labor and industry.

(3) "Hot water supply boiler" means a boiler providing potable water within the temperature and pressure limits established by the state plumbing code, and which may be monitored by any person holding a current low pressure boiler operating engineer's license or limited low pressure operating engineer license.

(4) "Limited low pressure operator" means a person who has been issued a boiler operating engineer's license specifically authorizing the monitoring of low pressure hot water heating boilers and hot water supply boilers only.

(5) "Monitoring" the operation of a boiler means appropriate periodic maintenance and observation of the functioning of a hot water heating boiler or hot water supply boiler, which contains all failsafe features necessary to operate fully unattended. Failsafe features include control circuitry that stops the flow of fuel and/or control feed water to the boiler.

(6) "Operating" a boiler or steam engine means the manual operating and monitoring of an automatically fired power boiler or steam engine, which requires the operator to be present while the boiler is fired. For purposes of this chapter, "operating" does not include monitoring an automatically fired steam heating boiler, provided that no operations are performed upon the boiler other than maintenance and emergency shut down in alarm situations.

(7) Additional definitions related to boiler operators are in building code rules found at ARM 24.301.711. The department incorporates by reference the definitions contained in the September 30, 2004, version of ARM 24.301.711, which include the following terms:

(a) boiler;
(b) high temperature water boiler;
(c) hot water heating boiler;
(d) power boiler;
(e) standard boiler;
(f) state special boiler;
(g) steam heating boiler;
(h) temporary boiler;
(i) traction engine;
(j) water heater; and
(k) water heating system.

AUTH: 50-74-101, MCA
IMP: 50-74-101, MCA

REASON: It is reasonable and necessary for the Department to propose these definitions to clarify the types of boilers operated, the difference between monitoring and operation of a boiler, and a sub-class of licensees – limited low pressure boiler operating engineer's license. There is also a reference to definitions used by the boiler inspection program for boiler operations, to provide additional clarification for terms used relating to boilers and pressure vessels.

NEW RULE II LICENSE REQUIRED TO OPERATE BOILERS AND STEAM ENGINES (1) A person shall obtain the proper class of boiler operating engineer's license from the department if the person is:

(a) operating a boiler;

(b) operating a steam engine; or

(c) monitoring the operation of an automatically fired boiler.

(2) If the boiler or steam engine being operated or monitored is exempt from the provisions of Title 50, chapter 74, MCA, the person is not required to obtain a boiler operating engineer's license.

AUTH: 50-74-101, MCA
IMP: 50-74-103, 50-74-301, MCA

REASON: It is reasonable and necessary for the Department to propose this rule to require that boiler operators operating or monitoring a boiler be properly licensed unless otherwise exempted. The term monitoring was added for automatically fired steam heating boiler, hot water heating boiler, or hot water supply boiler, which specifically contains all the failsafe features necessary to operate fully unattended. Additionally, it is considered essential that licensing occur to ensure that public health, safety and welfare is protected.

NEW RULE III APPLICATION FOR LICENSURE (1) Any person required to obtain a boiler operating engineer’s license shall make application to the department on form(s) prescribed by the department.

(2) Applications for licensure must include:

(a) a completed and signed application;

(b) proof that the applicant is 18 years of age or older;

(c) a nonrefundable application fee; and

(d) documentation acceptable to the department establishing that the applicant has the requisite experience and qualifications to take the examination.

(3) Applicants for other than a first or second class boiler operating engineer’s license may provide documentation in lieu of the requisite experience and qualification requirements. An applicant for other than a first or second class boiler operating engineer’s license may furnish documentation which provides:

(a) proof the applicant has successfully completed department approved training course(s) specific to the class of boiler license sought; and

(b) verification, acceptable to the department, from a boiler operating engineer with a license at least equal to the class of license sought by the applicant, that the applicant has worked with the type of boiler for which the license is sought under the engineer’s supervision for a minimum of 40

hours and that the applicant is competent to operate the boiler of the class for which the license is being sought.

(4) Applicants may apply for a limited low pressure boiler operating engineer's license which limits them to low pressure hot water heating boilers and hot water supply boilers only. To qualify for a low pressure boiler operating engineer's license for operation of both steam and hot water boilers, applicants must pass both the steam and hot water portions of the low pressure operator examination.

(5) The department will review applications for licensure on a case-by-case basis and approve only those applicants meeting the requirements established by 50-74-304 or 50-74-307, MCA, as applicable. The department may accept credentials and documentation it believes to be substantially equal to the training and experience requirements established above.

AUTH: 50-74-101, MCA
IMP: 50-74-302, 50-74-303, 50-74-304, 50-74-305, 50-74-307, 50-74-308, MCA

REASON: It is reasonable and necessary for the department to clarify minimum application requirements and to set forth review process considerations the department uses in determining that those minimum requirements are met to better protect the public from potential harm.

NEW RULE IV EXAMINATIONS (1) Examinations to determine the fitness and competence of applicants will be conducted in Helena, Montana at not less than three month intervals. At the department's discretion, additional examinations may be conducted based on the number of approved applicants waiting for examination.

(2) The department may conduct examinations in other locations and accept examination results from third party agencies if authorized by the department.

(3) Special examinations may be held in the event the examination date and place regularly set by the department conflicts with the religious beliefs of the applicant or for other appropriate reasons, and in that event, the applicant may petition the department by letter requesting such special examination. If the department allows such a special examination, it shall set the time and place, in its discretion.

(4) Applicants will be required to successfully complete the examination with a minimum passing score of 70%.

(5) Failing candidates will be required to pay a retake fee and will have to wait a minimum of 45 days from their last failure to retake the examination.

(6) An applicant who fails to appear and take the first examination for which the applicant is scheduled may have the examination fee apply toward the next scheduled examination. However, if the applicant fails to appear and take the next scheduled examination, the fee is forfeited and any

application for a subsequent examination requires an additional examination retake fee.

AUTH: 50-74-101, MCA
IMP: 50-74-302, 50-74-306, 50-74-311, 50-74-320, MCA

REASON: It is reasonable and necessary for the Department to provide this new rule to clarify the examination process that will be utilized. This new rule also includes exam location information, passing percentage required, review of failed examinations requirements, and failure to show for examinations. Applicants were not aware of the examination requirements or what is considered a minimum passing score.

NEW RULE V RENEWAL OF LICENSE (1) Renewal of licenses is on an annual basis. Licensees shall submit the appropriate fee established in ARM 8.15.301 when applying to renew a license.

(2) Renewal notices will be mailed by the department prior to the expiration of the boiler operating engineer's license to the licensee's address on file. It is the responsibility of the licensee to keep a current address on file with the department. Lack of receipt of such renewal notice by the licensee does not relieve the licensee of the responsibility to renew the license.

(3) The consequences for failure to renew a boiler operating engineer's license are established in 50-74-313, MCA.

(4) At the time of license renewal, operators shall inform the department, in writing or by online renewal on the forms provided, which boiler(s), identified by Montana boiler number (MTB#) and location, the operator is responsible for operating and/or monitoring.

(5) At the time of license renewal, operators shall inform the department, in writing or by online renewal on the forms provided, of the name(s) of any person(s) currently being trained to operate and/or monitor the boiler(s) listed in (4).

AUTH: 50-74-101, MCA
IMP: 50-74-313, MCA

REASON: The Department has determined that it is reasonable and necessary to propose this new rule to address the renewal processes. Additional renewal information would allow for tracking of trainees related to boiler license numbers, which can then be used to verify experience received by applicants.

NEW RULE VI RESPONSIBILITY OF LICENSEE (1) Licensed boiler operating engineers shall allow a department inspector free access to the boiler and, when requested, shall assist the inspector with the inspection.

(2) A power boiler in active service (which is the period of time when the main stop valves are open and the boiler is firing) must not be left unattended for a period longer than it takes for the water level to drop below the normal operating level when:

(a) the feed water is shut off; and

(b) the boiler is forced to its maximum capacity.

(3) The operator shall personally check the operation of a power boiler, the necessary auxiliaries, and the water level in the boiler at such intervals as are necessary to ensure safe operation of the boiler. In no case may this interval exceed 120 minutes.

(4) All applicable boiler operating certificates and boiler operating engineer's licenses must be conspicuously displayed in the boiler room. In lieu of posting in the boiler room, appropriate signage may be provided establishing the location where the documents may be examined.

(5) Licensees shall notify the department of any change in the status of their responsibility to operate and/or monitor the boiler(s). Notification must be in writing and received by the department within 10 days of the change of status.

(6) When an accident occurs which renders a boiler inoperative, the licensee shall notify the department as soon as it is practical.

AUTH: 50-74-101, MCA
IMP: 50-74-106, 50-74-210, 50-74-214, MCA

REASON: It is reasonable and necessary for the Department of Labor and Industry to provide these changes to clarify responsibility of licensees related to inspections, operation and oversight of power boilers, posting of licenses, and notification of change in address. This rule addresses common questions about the operation of the boilers.

NEW RULE VII APPROVAL OF TRAINING COURSES (1) Any person or entity wishing to conduct a training course, approved by the department as acceptable for fulfilling educational requirements for boiler operator engineer licensure established in 50-74-304, MCA, shall apply for approval on forms provided by the department.

(2) Minimum training course hours are as follows:

(a) For limited low pressure boiler operating engineers, applicable to the monitoring of low pressure hot water heating and hot water supply boilers only, a minimum of 16 hours, with a minimum of eight hours of classroom training is required.

(b) For all other classes of boiler operating engineer training courses, a minimum of 30 hours, including classroom instruction and field or shop time is required.

(3) Training course providers shall receive department approval prior to offering courses. Applications for approval of a training course must include the following:

(a) a description of the training course identifying the specific class of license for which the course is designed;

(b) a list of books, publications and source material to be utilized in the training course;

(c) a course outline, which includes a breakdown of the hours to be used to cover each area of training, including total classroom instruction hours and field or shop time hours;

(d) a copy of the certificate of completion to be awarded to the persons successfully completing the course;

(e) the name of each person who will act as an instructor for the course; and

(f) a copy of the instructor's boiler operating engineer's license or other documentation acceptable to the department, which outlines the instructor qualifications to teach the course.

(i) Instructors who are not currently licensed by the state of Montana as a boiler operating engineer with a class of license at least equal to the level of training class being offered are required to successfully pass the applicable written examination prior to teaching the training course.

(4) The department will review and evaluate each training course application on a case-by-case basis, and will approve only those courses fulfilling the requirements established in this chapter. Once approved by the department, course curriculum cannot be modified until proposed changes are approved by the department.

(a) Approval for a training course remains valid until such time as the department gives the training course provider 30 days notice of the department's justification and intent to withdraw its approval of the course.

(b) Training course providers may petition the department for reconsideration during the 30 day period. The department will notify the provider of its final determination subsequent to the termination of the 30 day period.

(c) The department staff may, at no charge, observe courses for the purpose of auditing the course content, but will not be issued a course completion certificate.

(5) Instructors or entities approved to conduct a training course shall provide a certificate of completion to those persons successfully completing the course, which includes the specific name of the approved course and the date of completion.

(6) All training programs currently approved will have to be reevaluated by [90 days after the adoption of this rule]. Those programs not evaluated by [90 days after the adoption of this rule] will not be accepted by the department as credit for experience for license applicants.

AUTH: 50-74-101, MCA
IMP: 50-74-304, MCA

REASON: It is reasonable and necessary for the Department of Labor and Industry to incorporate changes made

to boiler operator law (50-74-304, MCA) during the 2003 Legislative session, House Bill 525, enrolled as Chapter 392, Laws of 2003. These changes primarily establish the ability of applicants to obtain approved training and with additional experience qualify for licensure as a low pressure, limited low pressure, or third class boiler operator. New Rule VII will replace the existing training program's rule ARM 8.15.302.

4. The rule proposed to be repealed is as follows:

8.15.302 TRAINING PROGRAMS CREDITED TOWARD EXPERIENCE found at ARM page 8-487.

AUTH: 50-74-101, MCA
IMP: 50-74-305, MCA

REASON: It is reasonable and necessary for the Department of Labor and Industry to repeal ARM 8.15.302 in conjunction with implementing the provisions of Chapter 392, Laws of 2003. The repeal is proposed in conjunction with the proposed adoption of NEW RULE VII, regarding approval of training courses.

5. Concerned persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted by mail to: Todd Boucher, Boiler Program, Department of Labor and Industry, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to dlibsdboi@state.mt.us and must be received no later than 5:00 p.m., November 19, 2004.

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

7. The Boiler Program maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this Program. 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 all Boiler Program administrative rulemaking proceedings or other administrative proceedings. Such written request may be mailed or delivered to the Boiler Program, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2305, e-mailed to dlibsdboi@state.mt.us or may be made by completing a request form at any rules hearing held by the agency.

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

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

DEPARMENT OF LABOR AND INDUSTRY
BOILERS, BLASTERS AND CRANES

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

/s/ MARK CADWALLADER
Mark Cadwallader
Alternate Rule Reviewer

Certified to the Secretary of State October 8, 2004.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the proposed amendment of ARM 8.15.301, pertaining to boiler operating engineer license fees ) NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On November 12, 2004, at 11:00 a.m., a public hearing will be held in room B-07 of the Park Avenue Building, 301 South Park Avenue, Helena, Montana to consider the proposed amendment of the above-stated rule.

2. The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or who need an alternative accessible format of this notice. If you require an accommodation, contact Mr. Todd Boucher no later than 5:00 p.m., November 8, 2004, to advise us of the nature of the accommodation you need. Please contact Todd Boucher, Boiler Program, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2368; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail dlibsdboi@state.mt.us.

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

8.15.301 FEE SCHEDULE FOR BOILER OPERATING ENGINEERS

(1) Initial application, including examination:

| | | | |
|---|---|---|---|
| ~~(1)~~(a) | First-class engineer license | ~~$60~~ | 100 |
| ~~(2)~~(b) | Second-class engineer license | ~~50~~ | 100 |
| ~~(3)~~(c) | Third-class engineer license | ~~40~~ | 80 |
| ~~(4)~~(d) | Agriculture-class engineer license | ~~40~~ | 50 |
| ~~(5)~~(e) | Low-pressure engineer license | ~~40~~ | 60 |
| ~~(6)~~(f) | Traction engineer license | ~~40~~ | 50 |
| ~~(7)~~(2) | Annual renewal of license (all classes) | ~~20~~ | 50 |
| ~~(8)~~(3) | Replacement of lost license | | 15 |

~~(9) An applicant for licensure shall pay 50% of the license fee for which application is being made. The payment shall be forfeited in the event the applicant fails to appear for the examination at the scheduled time or fails to pass the examination. This subsection repeats statutory language to provide licensees with a single referral source for all fees.~~

~~(10)~~(4) An applicant who fails the examination shall ~~again~~ pay 50% of the licensure fee in order to retake the examination.

~~(11) The applicant shall pay the remaining 50% of the licensure fee at the time of successful completion of the examination.~~

(5) All fees are nonrefundable.

AUTH: 50-74-101, ~~50-74-309,~~ MCA
IMP: 50-74-309, 50-74-313, MCA

REASON: There is reasonable necessity to amend ARM 8.15.301 in order to have the license fees be commensurate with the costs of operating the boiler operating engineer license program. Section 50-74-309, MCA, requires that license fees be set commensurate with program area costs.

The Department notes that the boiler operating engineer license program is currently operating at a deficit, and started the fiscal year with an inter-agency loan. For the first quarter of fiscal year 2005, the program had revenues of approximately $28,000, but expenditures of approximately $50,000. The proposed fee increases are designed to place the program back on a self-supporting financial foundation.

The Department has reviewed the amount of work needed to process a new license application and administer an examination and concludes that the workload for processing each class of license application is not the same. The license application fee consists of three components: the application fee, the cost of administering the examination, and the license fee for the first year. The Department's cost for original licensing varies, depending on the type of license and the respective examination, proctoring time and grading. The Department therefore proposes to increase the license application and examination fee to $100 for first and second class boiler operating engineer licenses, $80 for third class boiler operating engineer licenses, $60 for low pressure boiler operating engineer licenses, and $50 for either the agriculture class or traction class of boiler operating engineer licenses. The re-examination fee will remain at 50% of the license application fee to cover the cost of administering the examination a second or subsequent time. The Department's cost for annual renewal licensing is $50. Annual renewal fees are proposed to be increased to $50.

Based on the number of persons licensed as boiler engineers in fiscal year 2004, the Department estimates that this rule will affect approximately 3,500 individuals who currently hold some class of boiler operating engineer license (including traction licenses). The Department estimates that the proposed fee increase for license renewal will generate approximately $105,000 per year in additional revenue.

The Department estimates that approximately 207 individuals per year apply for a boiler operating engineer's license. The Department estimates additional annual revenue from the proposed fee increases for each license class as follows:

| | |
|---|---|
| First class license (15 applicants) | $ 600 |
| Second class license (10 applicants) | 500 |
| Third class license (50 applicants) | 2,000 |

| | |
|---|---|
| Agriculture license (1 applicant) | 10 |
| Low pressure license (130 applicants) | 2,600 |
| Traction license (1 applicant) | 10 |

The Department therefore estimates that it will receive approximately $5,720 in additional annual revenue from the proposed increase in application fees. The Department estimates that increased examination re-take annual revenue is probably a minimal amount, approximately $200. Accordingly, the Department estimates that the proposed fee increases will affect approximately 3,700 persons, with a total annual increased cost of $110,920.

4. Concerned persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted by mail to: Todd Boucher, Boiler Program, Department of Labor and Industry, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to dlibsdboi@state.mt.us and must be received no later than 5:00 p.m., November 19, 2004.

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

6. The Boiler Program maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this Program. 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 all Boiler Program administrative rulemaking proceedings or other administrative proceedings. Such written request may be mailed or delivered to the Boiler Program, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2305, e-mailed to dlibsdboi@state.mt.us or may be made by completing a request form at any rules hearing held by the agency.

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

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

DEPARMENT OF LABOR AND INDUSTRY
BOILERS, BLASTERS AND CRANES

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

/s/ MARK CADWALLADER
Mark Cadwallader
Alternate Rule Reviewer

Certified to the Secretary of State October 8, 2004.

BEFORE THE BOARD OF OCCUPATIONAL THERAPY PRACTICE
DEPARTMENT OF LABOR AND INDUSTRY
OF THE STATE OF MONTANA

| | | |
|---|---|---|
| In the matter of the proposed adoption of NEW RULES I through XIV regarding modalities and medications, and the proposed repeal of ARM 24.165.301 definitions, ARM 24.165.503 approval to use modalities, ARM 24.165.508 permission to use electrical or sound physical agents | ) ) ) ) ) ) ) ) ) | NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION AND REPEAL |

TO: All Concerned Persons

1. On November 18, 2004, at 10:00 a.m., a public hearing will be held in room 438 of the Park Avenue Building, 301 South Park, Helena, Montana to consider the proposed adoption and repeal of the above-stated rules.

2. The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Occupational Therapy Practice no later than 5:00 p.m., on November 12, 2004, to advise us of the nature of the accommodation that you need. Please contact Helena Lee, Board of Occupational Therapy Practice, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2385; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail to dlibsdotp@state.mt.us.

3. GENERAL STATEMENT OF REASONABLE NECESSITY: House Bill 542 (HB 542), enacted as Chapter 101, Laws of 2003, provides that licensed occupational therapists may use occupational therapy techniques involving topical medications. The proposed NEW RULES implement HB 542 by describing the manner in which a licensee can demonstrate having met the statutory requirements for use of topical medications. The Board of Occupational Therapy Practice believes that there is reasonable necessity to adopt a comprehensive set of rules to provide for and implement the various statutory provisions concerning the practice of occupational therapy by defining terms, clarifying meanings, and describing specific procedures for licensees to follow. As part of the proposed adoption of comprehensive rules, the Board also believes that there is reasonable necessity to repeal several existing rules that are better addressed by the proposed new rules.

The Board also notes that it has developed the proposed new rules in consultation with the Board of Pharmacy and the Board

of Medical Examiners, and with input from the physical therapy community.

This General Statement of Reasonable Necessity applies to proposed NEW RULES I through XIV and the proposed repeals. Supplemental statements of reasonable necessity follow specific rules as appropriate.

4. The proposed new rules provide as follows:

NEW RULE I APPROVED INSTRUCTION (1) The term "instruction" refers to didactic study that is presented in any of the following forums:

(a) continuing education unit course work;

(b) in-service training by licensed health care professionals;

(c) professional conference;

(d) professional workshop; or

(e) self-study course work pursuant to ARM 24.165.2101 (10).

(2) Any of the following sponsors or providers of instruction are approved by the board to provide instruction to licensees who wish to provide sound and electrical physical agent modalities or superficial physical agent modalities:

(a) providers approved or recognized by the American occupational therapy association;

(b) providers approved by the national board for certification in occupational therapy;

(c) providers approved or recognized by the American society of hand therapists; or

(d) graduate level education course work offered by an accredited college or university, provided that:

(i) the course work is taken after the licensee has obtained an undergraduate degree in occupational therapy; and

(ii) the course work provides skills and knowledge beyond mere entry level skills or knowledge of the topic.

(3) The board will approve instruction provided by licensed health care professionals whose competency in teaching the use of sound and electrical physical agent modalities and superficial physical agent modalities is demonstrated to the satisfaction of the board.

AUTH: 37-24-201, 37-24-202, MCA
IMP: 37-24-105, 37-24-106, 37-24-107, MCA

NEW RULE II APPROVED TRAINING (1) The term "training" refers to proctored learning sessions provided via example and observation by a qualified person.

(2) A qualified person, within the meaning of this rule, is any person who is:

(a) a licensed occupational therapist:

(i) approved by the board to administer superficial physical agent modalities and is certified to administer sound

and electrical physical agent modalities for iontophoresis and phonophoresis; and

(ii) who has more than one year of clinical experience in either the use of sound and electrical physical agent modalities or superficial physical agent modalities; or

(b) a licensed health care professional who has more than one year of clinical experience in the use of sound and electrical physical agent modalities or superficial physical agent modalities.

AUTH: 37-24-201, 37-24-202, MCA
IMP: 37-24-105, 37-24-106, MCA

NEW RULE III DOCUMENTATION OF INSTRUCTION AND TRAINING

(1) The term "documentation" means written evidence that the person has successfully completed a formal instruction program. Documentation consists of all the following:

(a) a certificate of course attendance or completion, signed by a program official;

(b) the name or title of the course attended;

(c) the number of hours of course instruction;

(d) the date or dates the course was attended; and

(e) a copy of the course syllabus.

AUTH: 37-24-201, 37-24-202, MCA
IMP: 37-24-105, 37-24-106, MCA

NEW RULE IV APPROVAL TO USE SOUND AND ELECTRICAL PHYSICAL AGENT MODALITIES (1) A licensee desiring to use sound or electrical physical agent modalities must successfully complete and provide to the board documentation of:

(a) 20 hours of instruction or training in sound physical agent modality devices;

(b) 20 hours of instruction or training in electrical physical agent modality devices; and

(c) either:

(i) certification by the hand certification commission, inc.; or

(ii) the successful completion of 10 proctored treatments consisting of:

(A) five proctored treatments under the direct supervision of a licensed medical practitioner in sound physical agent modality devices; and

(B) five proctored treatments under the direct supervision of a licensed medical practitioner in electrical physical agent modality devices.

(2) The 40 hours of instruction or training required by (1) must be approved by the board, and must consist of the following subjects:

(a) the principles of physics related to specific properties of light, water, temperature, sound, or electricity, as indicated by selected modality;

(b) the physiological, neurophysiological, and electrophysiological changes, as indicated, which occur as a result of the application of the selected modality;

(c) the response of normal and abnormal tissue to the application of the modality;

(d) the indications and contraindications related to the selection and application of the modality;

(e) the guidelines for treatment or administration of the modality within the philosophical framework of occupational therapy;

(f) the guidelines for educating the patient including instructing the patient to the process and possible outcomes of treatment, including risks and benefits;

(g) the safety rules and precautions related to the selected modality;

(h) the methods for documenting the effectiveness of immediate and long term effects of treatment; and

(i) the characteristics of the equipment, including safe operation, adjustment, and care of equipment.

AUTH: 37-24-201, 37-24-202, MCA
IMP: 37-24-106, MCA

NEW RULE V QUALIFICATIONS TO APPLY TOPICAL MEDICATIONS - CLINICIAN DEFINED (1) Prior to the administration or use of topical medications, an occupational therapist desiring to administer or use topical medications on a patient shall, in addition to the instruction or training provided for in 37-24-106, MCA and [NEW RULE IV], successfully complete five hours of instruction or training approved by the board in:

(a) principles of topical drug interaction;

(b) adverse reactions and factors modifying response;

(c) actions of topical drugs by therapeutic classes; and

(d) techniques by which topical drugs are administered.

(2) In addition to the five hours of instruction required by (1), a licensee shall, pursuant to 37-24-107, MCA, prior to administering topical medication, perform one proctored treatment in direct application of topical medications under the direct supervision of a licensed medical practitioner, and either:

(a) two proctored treatments in phonophoresis under the direct supervision of a licensed medical practitioner; or

(b) three proctored treatments of iontophoresis under the direct supervision of a licensed medical practitioner.

(3) For the purposes of the rules related to application of topical medications by occupational therapists, the term "clinician" means an occupational therapy licensee who has been approved by the board to administer topical medications.

AUTH: 37-24-201, 37-24-202, MCA
IMP: 37-24-106, 37-24-107, MCA

NEW RULE VI USE OF TOPICAL MEDICATIONS (1) Topical medication prescribed for a patient on a specific or standing

basis by a licensed medical practitioner with prescriptive authority must be obtained from a licensed Montana pharmacy. The topical medication may be obtained by either:

(a) the clinician who will be administering the topical medication; or

(b) the patient.

(2) All prescribed topical medications, whether obtained by the clinician or directly by the patient, must be stored at the clinician's place of business in compliance with proper storage guidelines under Title 37, chapter 7, MCA, or as otherwise developed by the board of pharmacy.

(a) Any particular requirements for storage as noted by the pharmacist must be followed by the clinician.

(b) Topical medications must be stored in the environmental conditions as prescribed by the labeled drug directions.

(c) All topical medications obtained by the patient directly and brought to the clinician's place of business must be returned to the patient's possession at the termination of the course of treatment with the patient.

(d) No topical medications obtained by the patient directly may be transferred to or used in treatment of any other occupational therapy patient.

(3) All topical medications must be administered by the clinician as prescribed and in accordance with any pharmacy guidelines given with the topical medication.

(4) A copy of the written prescription specifying the topical medication to be applied and the method of application (direct application, phonophoresis or iontophoresis) must be retained in the patient's occupational therapy medical records.

AUTH: 37-24-201, 37-24-202, MCA
IMP: 37-24-107, 37-24-108, MCA

NEW RULE VII PROTOCOLS FOR USE OF TOPICAL MEDICATIONS

(1) Only those classes of topical medications approved for use by 37-24-108, MCA, may be applied by the clinician to a patient.

(2) Each clinician is responsible for understanding the use of approved topical medications. The medications must be prescribed for the patient by a licensed medical practitioner with prescriptive authority.

(a) The clinician is responsible for reading and understanding the medication's package inserts for indications and contraindications, as well as actions.

(b) The clinician is responsible for consulting the Physician's Desk Reference ("PDR") whenever the clinician needs to supplement the information contained in the package insert in order to appropriately understand the use of the medication.

(c) The clinician is responsible for keeping appropriate records with respect to the topical medication applied or administered in the course of the clinician's practice. Such

record keeping must be part of the patient's chart and must verify that the topical medication is properly labeled and packaged as required. Moreover, the record must include a verification that the topical medication was purchased from a licensed Montana pharmacy.

(3) The following list identifies the classes of topical medications which are approved for use by the clinician. The list also cross-references the rule that provides more detailed information concerning each class of approved topical medications:

(a) debriding agents, including bactericidal agents (see [NEW RULE VIII]);

(b) anesthetic agents (see [NEW RULE IX]);

(c) anti-inflammatory agents (see [NEW RULE X]);

(d) antispasmodic agents (see [NEW RULE XI]); and

(e) adrenocortico-steroids (see [NEW RULE XII]).

(4) The use of an approved class of topical medications is subject to the conditions and requirements established by the administrative rule applicable to that class.

(5) In the event a licensee works at a facility that has different protocols for the use of topical medications by occupational therapy practitioners, the licensee may apply to the board for authorization to use topical medications pursuant to the protocols adopted by the facility. The board, in the exercise of its sound judgment and discretion, and in consultation with such health care providers as it deems appropriate, may grant a licensee such authorization on a case-by-case basis. In no instance will the board authorize the use of topical medications that are not within the classes of topical medications authorized by statute for use by occupational therapy practitioners.

AUTH: 37-24-201, 37-24-202, MCA
IMP: 37-24-108, 37-24-109, MCA

NEW RULE VIII DEBRIDING AGENTS PROTOCOLS (1) Within the class of debriding agents, only the following subclasses are approved for use by the clinician on a patient:

(a) papain-based ointments;

(b) papain with urea additives;

(c) anti-inflammatories;

(d) collangenases;

(e) endogenous platelet-derived growth factors;

(f) antibiotic ointments;

(g) fibrinolytics;

(h) antimicrobial agents; and

(i) bactericidal agents.

(2) Clinicians may use papain-based ointments as directed by a licensed medical practitioner with prescriptive authority.

(a) Papain-based ointments act via a proteolytic enzyme that digests nonviable proteins, but which is harmless to viable tissues.

(b) Papain-based ointments are indicated when there is a need to debride necrotic tissue and liquefy slough in acute and chronic lesions, trauma wounds or infected lesions.

(c) Papain-based ointments are contraindicated for patients with known sensitivities to papain or any other ingredient of the medication.

(3) Clinicians may use papain with urea additive agents as directed by a licensed medical practitioner with prescriptive authority.

(a) Papain with urea additive acts as a denaturant to proteins, helps expose papain's activators by a solvent action, rendering them more susceptible to enzymatic digestion.

(b) Papain with urea additive indications are to treat acute and chronic lesions such as:

(i) venous ulcers;

(ii) diabetic and decubitus ulcers;

(iii) burns;

(iv) postoperative wounds;

(v) pilonidal cyst wounds;

(vi) carbuncles; and

(vii) traumatic or infected wounds.

(c) Papain with urea additive has no known contraindications.

(4) Clinicians may use anti-inflammatory agents as directed by a licensed medical practitioner with prescriptive authority.

(a) Antiinflammatory agents act to decrease histamine reactions to peri-wound areas, decreasing inflammation, and encouraging remodeling.

(b) Anti-inflammatory agents are indicated to relieve inflammation and pruritis caused by dermatosis.

(c) Anti-inflammatory agents are contraindicated for patients with known sensitivity to any components of the preparation.

(5) Clinicians may use collagenase agents as directed by a licensed medical practitioner with prescriptive authority.

(a) Collagenase agents act by digesting collagens in necrotic tissues, without destroying healthy granulation, and by encouraging epithelialization.

(b) Collagenase agents are indicated for the debridement of chronic dermal ulcers and severely burned areas.

(c) Collagenase agents are contraindicated for patients with local or systemic hypersensitivity to collangenases.

(6) Clinicians may use endogenous platelet derived growth factor agents as directed by a licensed medical practitioner with prescriptive authority.

(a) Endogenous platelet derived growth factor agents act by promoting chemotactic recruitment and the proliferative stage of healing. They enhance formation of granulation tissue.

(b) Endogenous platelet derived growth factors are indicated for diabetic neuropathic ulcers that extend into subcutaneous tissue with an adequate blood supply.

(c) Endogenous platelet derived growth factor agents are contraindicated for patients with known hypersensitivity, such as parabens. Endogenous platelet derived growth factor agents are not for use with wounds that close by primary intention because they are a nonsterile, low bioburden, preserved product.

(7) Clinicians may use antibiotic ointments as directed by a licensed medical practitioner with prescriptive authority.

(a) Antibiotic ointments act to kill bacteria and microbes.

(b) Antibiotic ointments are indicated on culture-proven infected wounds.

(c) Antibiotic ointments are contraindicated in patients with proven sensitivities or allergic reactions to the antibiotic prescribed.

(8) Clinicians may use fibrinolytics as directed by a licensed medical practitioner with prescriptive authority.

(a) Fibrinolytics act by contributing to collagen synthesis, where over-production of collagen can cause poor remodeling of the wound.

(b) Fibrinolytics are indicated in patients who exhibit painful, indurated wounds. Fibrinolytics are also indicated in slow healing venous wounds. Fibrinolytics are only used adjunctively in therapy.

(c) Fibrinolytics are contraindicated in patients who are allergic or exhibit a sensitivity to steroids. Fibrinolytics are contraindicated when used alone in the treatment of wounds.

(9) Clinicians may use antimicrobial agents as directed by a licensed medical practitioner with prescriptive authority.

(a) Antimicrobial agents contain a broad spectrum-silver cascade that acts to reduce the bioburden in wounds for up to seven days.

(b) Antimicrobial agents are indicated for managing full and partial thickness wounds and may be used over debrided or grafted partial thickness wounds.

(c) Antimicrobial agents have no known contraindications.

(10) Clinicians may use bacterial agents only for debridement as directed by a licensed medical practitioner with prescriptive authority.

(a) Bactericidal agents act by killing bacteria.

(b) Bactericidal agents are indicated for the presence of bacteria.

(c) Bactericidal agents are contraindicated in patients with allergic or sensitive response to the agent.

AUTH: 37-24-201, 37-24-202, MCA
IMP: 37-24-108, 37-24-109, MCA

NEW RULE IX ANESTHETIC AGENTS PROTOCOLS (1) Clinicians may use anesthetic agents as directed by a licensed medical practitioner with prescriptive authority.

(2) Anesthetic agents act by blocking both the initiation and conduction of nerve impulses by decreasing the neuron membrane's permeability to sodium ions.

(3) Anesthetic agents are indicated to relieve pain and inflammation associated with minor skin disorders and for acute inflammatory conditions.

(4) Anesthetic agents are contraindicated if there is sensitivity to the topical anesthetic. They are contraindicated if there are abrasions, openings or a local infection at the site of application.

(5) The specific anesthetic agents permitted by this rule are:

(a) fluoromethane compounds:
(i) dichlorofluoromethane 15%;
(ii) trichloromonofluoromethane 85%;
(iii) lidocaine hydrochloride;
(iv) lidocaine;
(v) ethyl chloride;
(vi) hydrocortisone menthol; and
(vii) lidocaine hydrocortisone.

AUTH: 37-24-201, 37-24-202, MCA
IMP: 37-24-108, 37-24-109, MCA

NEW RULE X NONSTEROIDAL ANTI-INFLAMMATORY AGENTS PROTOCOLS (1) Clinicians may use nonsteroidal anti-inflammatory agents directed by a licensed medical practitioner with prescriptive authority.

(2) Nonsteroidal anti-inflammatory agents act by blocking the formation of prostaglandins.

(3) Nonsteroidal anti-inflammatory agents are indicated for acute inflammation such as tendonitis, arthritis and bursitis.

(4) Nonsteroidal anti-inflammatory agents are contra-indicated when there is sensitivity to topical anti-inflammatory agents, especially when there is a local infection or abrasion at the site of application.

(5) The specific nonsteroidal anti-inflammatory agents permitted by this rule are:

(a) ketaprofen 20% (10% is available without prescription);
(b) piroxicam 1% or 2%;
(c) ibuprofen, up to 20%; and
(d) diclofenac 2.5%.

AUTH: 37-24-201, 37-24-202, MCA
IMP: 37-24-108, 37-24-109, MCA

NEW RULE XI ANTISPASMODIC AGENTS PROTOCOLS

(1) Clinicians may use antispasmodic agents directed by a licensed medical practitioner with prescriptive authority.

(2) Antispasmodic agents act by forming strong drug-receptor complex at postganglionic parasympathetic neuroeffector sites in smooth muscle, cardiac muscle and exocrine glands, thereby blocking action of acetycholine.

(3) Antispasmodic agents are indicated to reduce the volume of perspiration by inhibiting sweat gland secretions to reduce muscle spasms and pain.

(4) Antispasmodic agents are contraindicated if the formulation contains sapphire, which can cause allergic reactions in susceptible individuals. Other contraindications may be listed in the current PDR.

(5) The antispasmodic agents permitted by this rule are:

(a) cyclobenzaprine 1% or 2%; and

(b) baclofen 10%.

AUTH: 37-24-201, 37-24-202, MCA
IMP: 37-24-108, 37-24-109, MCA

NEW RULE XII ADRENOCORTICO-STERIOD AGENT PROTOCOLS

(1) Clinicians may use andrenocortico-steriod agents as directed by a licensed medical practitioner with prescriptive authority.

(2) Andrenocortico-steriod agents act by diffusing across cell membranes to combine with specific cytoplasmic receptors. The resulting complexes enter the nucleus and bind to DNA, thereby irritating cytoplasmic synthesis of the enzymes responsible for systemic effects of adrenocortico-steroids.

(3) Andrenocortico-steriod agents are indicated for inflammation (such as tendonitis, bursitis, arthritis, or myositis), and for antipruritic and vasoconstrictor actions.

(4) Andrenocortico-steriod agents are contraindicated or require special care when used with children, growing adolescents and pregnant women. The use of adrenocortico-steroids is also contraindicated:

(a) by intolerance to adrenocortico-steroids;

(b) if an infection which is not controlled by antibiotics is present at the treatment site;

(c) for prolonged periods of time;

(d) for large areas; and

(e) with occlusive dressings.

(5) The andrenocortico-steriod agents permitted by this rule are:

(a) hydrocortizone cream 10%;

(b) dexamethasone sodium phosphate;

(c) triamcinolone acetonide; and

(d) dexamethazone cream.

AUTH: 37-24-201, 37-24-202, MCA
IMP: 37-24-108, 37-24-109, MCA

NEW RULE XIII PROTOCOL FOR USE OF AN APPROVED MEDICATION AS A NEUROPATHIC PAIN AGENT (1) Clinicians may use approved topical medications as neuropathic pain agents, when and as

directed by a licensed medical practitioner with prescriptive authority.

(2) Neuropathic pain agent actions depend upon the type of agent.

(3) Neuropathic pain agents are indicated for injuries to central or peripheral nervous system, including fibromyalgias, diabetic neuropathy, and regional pain syndrome.

(4) Neuropathic pain agents are contraindicated if an infection or rash is present at the site of application or there is a sensitivity to the topical agent.

AUTH: This rule is advisory only, but may represent a correct interpretation of the law. 37-24-201, 37-24-202, MCA
IMP: 37-24-108, 37-24-109, MCA

REASON: The Board believes that there is reasonable necessity to adopt NEW RULE XIII as an interpretative rule to clarify that topical medications are sometimes prescribed for use as a neuropathic pain agent. If the prescribed topical medication is one which is otherwise approved for use by the clinician in NEW RULES VIII through XII, the Board believes the clinician can safely and effectively apply the medication. As an example, it is the Board's understanding that antispasmodic agents are sometimes prescribed because they are effective neuropathic pain agents. The Board believes that Montana law allows a clinician to follow the specific directions of the licensed medical practitioner with prescriptive authority and apply approved topical medications, even if the stated purpose is because of the medication's effectiveness as a neuropathic pain agent. Although the Board believes that NEW RULE XIII represents a correct interpretation of 37-24-108, MCA, the Board advises practitioners, including its licensees, and the public that NEW RULE XIII is an interpretive rule, and thus is advisory only.

NEW RULE XIV DOCUMENTING EDUCATION AND COMPETENCE TO PERFORM SOUND AND ELECTRICAL PHYSICAL AGENT MODALITIES -- OUT-OF-STATE PRACTITIONERS (1) A person who has a license or endorsement from another state which allows that person to use sound and electrical physical agent modalities in the person's practice of occupational therapy may apply to the board for authority to use sound and electrical physical agent modalities in Montana.

(2) The person with the out-of-state license or endorsement shall provide the board with a signed and notarized certificate of verification from that out-of-state licensing authority that verifies the person is authorized by that other state to use sound and electrical physical agent modalities in that person's practice as an occupational therapist. In addition, the person must demonstrate:

(a) that with respect to performing sound and electrical physical agent modalities, the education and training requirements of the other state are substantially similar to

or exceed Montana's requirements for authority to use those modalities;

(b) that the person is not under investigation or subject to pending charges or final disciplinary action for unprofessional conduct or impairment in any state where the person is authorized to practice occupational therapy; and

(c) that there are no reasons why the person should not be allowed to perform sound and electrical physical agent modalities, if the person is licensed in Montana as an occupational therapy practitioner.

(3) The determination as to whether the standards of the other state are substantially similar to or greater than those of this state rests in the sole discretion of the board. The board shall make such decisions on a case-by-case basis.

AUTH: 37-24-201, 37-24-202, MCA
IMP: 37-1-304, 37-24-302, 37-24-303, MCA

REASON: There is reasonable necessity to adopt proposed NEW RULE XIV to provide a process for out-of-state applicants as part of the comprehensive revision of the Board's rules regarding how licensees document they are qualified to perform sound and electrical and physical agent modalities without endangering the public.

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

24.165.301 [formerly ARM 8.35.402] DEFINITIONS found at ARM page 24-17519 [formerly at page 8-1055].

AUTH: 37-1-131, 37-24-201, 37-24-202, MCA
IMP: 37-24-103, 37-24-104, 37-24-105, 37-24-106, 37-24-202, MCA

24.165.503 [formerly ARM 8.35.501] APPROVAL TO USE MODALITIES found at ARM page 24-17536 [formerly at page 8-1061].

AUTH: 37-24-202, MCA
IMP: 37-24-105, 37-24-106, MCA

24.165.508 [formerly ARM 8.35.502] PERMISSION TO USE ELECTRICAL OR SOUND PHYSICAL AGENTS found at ARM page 24-17543 [formerly at page 8-1061].

AUTH: 37-24-202, MCA
IMP: 37-24-106, MCA

Although the rules have been transferred from Title 8 to Title 24, the rules do not yet appear in Title 24. They will be printed as part of the third quarter updates to ARM at the pages listed.

6. Concerned persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Board of Occupational Therapy Practice, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to dlibsdotp@state.mt.us and must be received no later than 5:00 p.m., November 29, 2004.

7. The Board of Occupational Therapy Practice 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 Occupational Therapy Practice administrative rulemaking proceedings or other administrative proceedings. Such written request may be mailed or delivered to the Board of Occupational Therapy Practice, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2305, e-mailed to dlibsdotp@state.mt.us or may be made by completing a request form at any rules hearing held by the agency.

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

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

BOARD OF OCCUPATIONAL THERAPY PRACTICE
ELSPETH RICHARDS, CHAIRMAN

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

/s/ MARK CADWALLADER
Mark Cadwallader,
Alternate Rule Reviewer

Certified to the Secretary of State October 8, 2004

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

| | | |
|---|---|---|
| In the matter of the proposed adoption of New Rules I through XIII; amendment of ARM 38.5.3301, 38.5.3320, 38.5.3330, 38.5.3331, 38.5.3332, 38.5.3333, 38.5.3334, 38.5.3335, 38.5.3336, 38.5.3337, 38.5.3339, 38.5.3343, 38.5.3350, 38.5.3351, 38.5.3352, and 38.5.3353; and repeal of ARM 38.5.3302, 38.5.3338, 38.5.3341, 38.5.3360, 38.5.3361, 38.5.3362, 38.5.3370, and 38.5.3371, pertaining to telecommunications service standards | ) | NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION, AMENDMENT, AND REPEAL |

TO: All Concerned Persons

1. On December 16, 2004, at 9:00 a.m., a public hearing will be held in the Bollinger Room, Public Service Commission (PSC) offices, 1701 Prospect Avenue, Helena, Montana, to consider the proposed adoption, amendment, and repeal of the above-stated rules.

2. The PSC will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation contact the PSC no later than 5:00 p.m. on December 6, 2004 to advise us of the nature of the accommodation that you need. Please contact Connie Jones, PSC Secretary, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, telephone number (406) 444-6170, TTD number (406) 444-6199, fax number (406) 444-7618, e-mail conniej@state.mt.us.

3. The proposed new rules provide as follows:

NEW RULE I DEFINITIONS In this sub-chapter the following terms have the meaning assigned in the Montana Telecommunications Act at 69-3-803, MCA, and in this rule:

(1) "Answer" means that a carrier operator, carrier service representative, or carrier automated system is ready to assist a customer or accept information necessary to process the call. Acknowledgments that a customer is waiting on the line does not qualify as an answer for purposes of these rules.

(2) "Appointment" means a commitment that requires the customer or the customer's representative to be present when the carrier installs, changes, disconnects, repairs, or otherwise affects the customer's service.

(3) "Billing agent" means a telecommunications carrier that includes in a bill that it sends to a customer a charge for a product or service offered by a service provider.

(4) "Billing aggregator" means any entity, other than a service provider, that forwards the charge for a product or service offered by a service provider to a billing agent.

(5) "Carrier" or "telecommunications carrier" means any provider of telecommunications services providing retail service in Montana. A person providing other products and services in addition to telecommunications services is considered a telecommunications carrier only to the extent that it is engaged in providing telecommunications services. The term does not mean aggregators of telecommunications services as defined in 47 USC 226.

(6) "Competitive local exchange carrier" means a carrier providing local exchange service, through any means, but is not the incumbent local exchange carrier.

(7) "Delayed orders" means orders not completed in the required time.

(8) "Incumbent local exchange carrier" means, with respect to an area, the local exchange carrier that:

(a) on February 8, 1996, provided telephone exchange service in the area; and

(b) on February 8, 1996, was considered to be a member of the exchange carrier association pursuant to 47 CFR 69.601(b) or is a person or entity that, after that date, became a successor or assign of a member of the exchange carrier association.

(9) "Installation order" means a request for new or transferred primary, additional, or regraded residential or business service, but does not include change orders or requests for features to be added to existing service.

(10) "Local exchange carrier" includes "incumbent local exchange carrier" and "competitive local exchange carrier".

(11) "Local exchange service" means telecommunications service provided within local exchange service areas and includes the use of facilities required to establish connections between or among customer locations within the exchange service area and between customer locations and interexchange facilities serving the exchange.

(12) "Network interface device" means a device that:

(a) establishes a point of demarcation between the telecommunications utility facilities and a customer's premises wiring and equipment;

(b) permits the disconnection of all customer premises wiring from the local exchange carrier network; and

(c) for testing purposes, provides for direct network access through an industry registered jack of a type provided for in part 68 of the federal communications commission rules.

(13) "Out-of-service trouble report" means a trouble report concerning:

(a) no dial tone;
(b) an inability to make or receive calls; or
(c) a deterioration of transmission quality.

(14) "Regulated telecommunications service" means two-way switched, voice-grade access and transport of communications originating and terminating in this state and nonvoice-grade access and transport if intended to be converted to or from voice-grade access and transport.

(15) "Repeat trouble report" means trouble on the same access line occurring within 30 days following the carrier's investigation and clearing of a previous trouble report involving the same access line.

(16) "Retail service" means telecommunications service to an end-user.

(17) "Service" means "regulated telecommunications service," and commission-regulated incidents thereto.

(18) "Service provider" means any entity, other than the billing agent, that offers a product or service to a customer, the charge for which appears on the bill of a billing agent.

(19) "Service standards" means these rules, unless otherwise specified.

(20) "Small telecommunications carrier" means a person, partnership, corporation, or other entity providing regulated telecommunications service to less than 12,000 subscribers in Montana. Rural telephone cooperatives organized under Title 35, chapter 18, MCA, are not small telecommunications providers for purposes of these rules.

(21) "These rules" means all rules in this sub-chapter, ARM Title 38, chapter 5, sub-chapter 33.

(22) "This rule" means the specific rule in these rules in which the terminology "this rule" is used.

(23) "Trouble report" means a customer communication to a local exchange carrier relating to any defect, difficulty, or dissatisfaction with telecommunications service facilities.

AUTH: 69-3-103, MCA
IMP: 69-3-102 and 69-3-201, MCA

NEW RULE II PENALTY PROVISIONS (1) In addition to other penalties and relief provided by law, the commission may, upon a finding that a violation is proven by clear and convincing evidence, assess a civil penalty of up to $1,000 per day against any person for each violation of any provision of these rules.

AUTH: 69-3-103, MCA
IMP: 69-3-102, 69-3-103, 69-3-110, 69-3-209 and 69-3-206, MCA

NEW RULE III STUDIES, INSPECTIONS, TESTS, MONITORING, AND AUDITING (1) Each carrier providing services using its own facilities shall make traffic studies and maintain records to determine that sufficient equipment and an adequate operating force are provided at all times including the average busy hour, busy season.

(2) Each carrier shall adopt a program of periodic tests, inspections and preventive maintenance aimed at achieving and maintaining efficient operation of its system and the provision of safe, adequate, and continuous service.

(3) Each carrier providing services using its own facilities shall maintain or have access to test facilities enabling it to determine the operating and transmission capabilities of all equipment and facilities, both for routine maintenance and for trouble location. The actual transmission performance of the network must be monitored in order to determine if the carrier's established objectives and operating requirements are met. This monitoring function must consist of, but not be limited to, circuit order tests prior to placing trunks in service, routine periodic trunk maintenance tests, tests of actual switched trunk connections, periodic noise tests of a sample of customer loops in each exchange, and transmission surveys of the network.

(4) The commission may require any carrier to contract with an independent auditor to verify compliance with this sub-chapter.

AUTH: 69-3-103, MCA
IMP: 69-3-102, 69-3-103, 69-3-108, 69-3-202 and 69-3-205, MCA

NEW RULE IV MEASUREMENTS, RECORDS, AND REPORTING IN GENERAL (1) Each incumbent local exchange carrier shall:

(a) maintain monthly internal measurements of performance for all standards established by these rules;

(b) prepare a summary of the internal measurements each month;

(c) investigate and take appropriate corrective action to correct any instances of noncompliance with these standards;

(d) upon request, provide the commission or its representatives with the measurements and the summaries of those measurements;

(e) retain the records of the measurements and summaries for not less than 24 months; and

(f) such records must be adequate to:

(i) readily support (in form, format, and content) an audit of the carrier's compliance with these rules;

(ii) accurately measure the extent of the carrier's compliance and noncompliance with these rules;

(iii) readily substantiate the application of any exceptions or exclusions allowed by these rules; and

(iv) readily support investigations of customer complaints.

(2) Upon request by the commission, each incumbent local exchange carrier shall submit a service quality performance report to the commission on a calendar quarter basis within 20 days following the end of each quarter. Quarters end March 31, June 30, September 30, and December 31. The report must include the carrier's monthly performances for installations, installation credits provided, delayed orders, appointments

missed, appointment credits provided, trouble reports, and call center answers for each exchange or wire center the carrier serves as well as on a statewide aggregate basis. The commission may establish uniform carrier report formats or forms.

(3) Unless these rules or a commission order otherwise states, when a carrier is required by these rules or a commission order to make records, maintain records, or report regarding performance related to these rules, the records and reports must be made, maintained, and reported by individual exchange and statewide aggregate bases.

AUTH: 69-3-103, MCA
IMP: 69-3-102, 69-3-103, 69-3-108, 69-3-202, 69-3-201 and 69-3-205, MCA

NEW RULE V INSTALLATION OF LOCAL EXCHANGE SERVICE

(1) When contacted by an applicant for service installation, a local exchange carrier shall inform the applicant of the specific date when the installation order will be completed. If the applicant requests that the work be done on a business day later than that offered by the carrier, the customer's requested date shall be the commitment date.

(2) When on-premises access is required to complete the installation order, the carrier shall offer the date and time of day for installation within a four-hour period. When the carrier cannot keep an appointment, the carrier shall attempt to notify the customer by a telephone call and schedule a new appointment. If unable to gain access to the customer's premises, when such access is required to complete the installation, the carrier representative shall leave a notice at the premises advising the customer how to reschedule the work.

(3) The following apply to installation of service:

(a) The installation interval measurement commences with either the date of application or the date on which the applicant qualifies for service by paying any appropriate pre-installation fees, whichever is later.

(b) The carrier shall complete 95% of its installation orders within five business days of the application date, excluding those orders where the customer specifically requests a later due date. Ninety-five percent of the orders where the customer specifically requested a later due date must be completed on the customer-requested due date.

(c) The carrier shall complete 95% of all installation orders, excluding those orders where the customer specifically requested a later due date, within 30 calendar days of the application date.

(d) The carrier shall complete 100% of all orders for service installation, excluding those orders where the customer specifically requested a later due date, within 90 calendar days of the application date.

(4) Violations do not exist if the carrier is unable to meet the rule's requirements due to force majeure events, delays due to customer reasons, or work stoppages directly affecting

provision of service in the state of Montana. A carrier may not exclude orders from this measurement in those instances where installation required access to the customer's location and no access was available, but the carrier either did not schedule an appointment for on-premises access or did schedule an appointment but did not arrive at the customer's premises during the scheduled four-hour appointment interval.

(5) For purposes of determining violations and the amount of penalties that will apply if a local exchange carrier fails to complete the percent of orders required by (3)(b), (c), and (d), each order the local exchange carrier fails to complete in excess of the highest number of uncompleted orders that would not have triggered a violation shall be a separate violation.

(6) The carrier shall maintain a summary of delayed orders for each exchange or wire center, showing the name and location of each applicant for service, the date of application, the class type and grade of service applied for, together with the explanation for the delay in providing the service to the applicant and the expected date of service.

(7) Carriers shall not unilaterally cancel customer installation orders. An installation order received by a carrier shall remain a pending order until installation is completed or the customer requests cancellation.

AUTH: 69-3-103, MCA
IMP: 69-3-102, 69-3-103, 69-3-108 and 69-3-201, MCA

NEW RULE VI INSTALLATION AND ACTIVATION CREDITS (1) All local exchange carriers shall maintain a provision for crediting applicants for local exchange service if the installation order is not installed and activated within five business days of the application for service. If construction charges are applicable, the credit applies if service is not installed within 30 calendar days of the application date or the date the customer pays the construction charges, whichever is later. If the carrier fails to determine whether construction charges are applicable within five business days of the application for service, then the credit applies. The credit amount shall be no less than 200% of the carrier's local service charge, unless otherwise specified by tariff, other contract, or agreement.

(2) Service credits are not required when the carrier is unable to meet the rule requirements due to force majeure events, delays due to customer reasons, or work stoppages directly affecting provision of service in the state of Montana. In cases where access is required, credits must be provided if installation did not occur because the carrier either did not schedule an appointment for on-premises access or did schedule an appointment but did not arrive at the customer's premises during the scheduled four-hour appointment interval.

AUTH: 69-3-103, MCA
IMP: 69-3-102, 69-3-103, 69-3-108 and 69-3-201, MCA

NEW RULE VII MISSED APPOINTMENT CREDITS (1) All local

exchange carriers shall include a provision for crediting customers for missed appointments that conform with this rule.

(2) Carriers shall credit customers not less than $50 when the carrier fails to keep an appointment and does not notify the customer at least 24 hours in advance of the broken appointment. The carrier keeps the appointment when the technician arrives during the scheduled four-hour interval, even if the technician cannot complete the order until a later date.

(3) When a carrier notifies the customer at least 24 hours prior to the scheduled appointment that a new appointment is necessary and a new appointment is made, the order date, installation requirements and credit requirements of [New Rule IV] and the timelines set out therein are not affected by the carrier's action to change the appointment. A carrier initiated changed appointment date is not a change to the order date for purposes of determining compliance with [New Rule VI].

(4) A carrier is not required to pay a missed appointment credit when it is unable to meet its obligations due to force majeure events, delays due to customer reasons, or work stoppages directly affecting provision of service in the state of Montana.

AUTH: 69-3-103, MCA
IMP: 69-3-102, 69-3-103, 69-3-108 and 69-3-201, MCA

NEW RULE VIII CUSTOMER TROUBLE REPORTS (1) Each carrier shall provide for the receipt of customer trouble reports 24 hours per day and make a full and prompt investigation of and response to them. Each carrier shall maintain for a period of two years an accurate record of trouble reports made by its customers. This record shall be available to the commission upon request at any time and shall include:

(a) appropriate identification of the customer or service affected;

(b) the time, date and nature of the report;

(c) the action taken to clear trouble or satisfy the complaint; and

(d) the date and time of trouble clearance or other disposition.

(2) Provision must be made to clear all out-of-service trouble of an emergency nature 24 hours per day, consistent with the bona fide needs of customers and the personal safety of utility personnel.

(3) The carrier shall provide to each customer who submits a trouble report a commitment date and time by which the trouble will be cleared. If on-premises access by the carrier is required in order to clear the trouble, the carrier shall offer the time of day for trouble clearance within a four-hour period. When the carrier cannot keep an appointment, the carrier shall attempt to notify the customer by a telephone call and schedule a new appointment. If unable to gain access to the customer’s premises during the scheduled appointment period, the carrier representative shall leave a notice, which includes the date and exact time of the representative’s visit at the premises

advising the customer how to reschedule the work.

(4) Service must be maintained by the carrier in such a manner that the monthly rate of all customer trouble reports does not exceed four per 100 local access lines per month per wire center or exchange. For the purpose of administering this rule, each party line customer shall be considered as one local access line.

(5) Ninety percent of out-of-service trouble reports shall be cleared within 24 hours. The carrier may not exclude from this or any other trouble report measurement those instances where, when on-premises access was required, the carrier representative either did not schedule an appointment or did not arrive during the scheduled four-hour appointment interval.

(6) The number of repeat trouble reports in an exchange or wire center shall not exceed 5% of the number of trouble reports for that exchange or wire center received during the month.

(7) Carriers may charge customers for investigating trouble reports only when:

(a) dispatch of carrier personnel to the customer site is required;

(b) the customer has been notified, prior to the dispatch, that a charge may apply;

(c) the carrier has identified the exact nature of the problem that prompted the trouble report; and

(d) the problem exists on the customer side of the service.

AUTH: 69-3-103, MCA
IMP: 69-3-102, 69-3-103, 69-3-108 and 69-3-201, MCA

NEW RULE IX CARRIER CALL CENTER ANSWER TIMES

(1) The start time by which time to answer is measured is the point of the first ring, as heard by the calling customer.

(2) On a company-wide, calendar-month basis, a carrier shall meet the following answer times:

(a) operators and directory assistance shall answer 85% of calls within 10 seconds; and

(b) business office and repair service shall answer 85% of calls within 20 seconds.

(3) Menu driven, automated, interactive answering systems must include the following:

(a) a customer option of transferring to an actual person for assistance, the option being clearly explained in the initial message; and

(b) the transfer of the customer to an actual person if the customer fails to interact within five seconds following any prompt offered by the system.

AUTH: 69-3-103, MCA
IMP: 69-3-102, 69-3-103, 69-3-108 and 69-3-201, MCA

NEW RULE X CALL COMPLETION (1) Local exchange carriers shall provide and maintain sufficient central office and interoffice channel capacity and equipment to meet the following

requirements during the average busy hour and busy season without encountering blockages or equipment irregularities:

(a) dial tone within three seconds on 98% of calls;

(b) proper completion of 98% of correctly dialed intraoffice calls;

(c) proper completion of 98% of correctly dialed interoffice calls within the local calling area;

(d) proper completion of 98% of correctly dialed interexchange toll calls.

AUTH: 69-3-103, MCA
IMP: 69-3-102, 69-3-103, 69-3-108 and 69-3-201, MCA

NEW RULE XI SERVICE INTERRUPTIONS (1) When a local exchange carrier is aware of occurrences or developments that are likely to disrupt or interrupt service to 25% or more of the carrier's intrastate customer base for more than two hours, the carrier shall immediately report the situation to the commission, local radio stations, and other local news media.

(2) Local exchange carriers planning work on facilities or equipment that will interrupt service to any customer for more than four hours shall do the work at a time of minimal inconvenience to customers and shall notify each affected customer at least 24 hours in advance of the interruption.

AUTH: 69-3-103, MCA
IMP: 69-3-102, 69-3-103, 69-3-108 and 69-3-201, MCA

NEW RULE XII TRANSMISSION QUALITY (1) All carrier facilities must meet accepted industry design standards and shall conform to the following transmission design parameters:

(a) Newly constructed and rebuilt subscriber lines must be designed for no more than 8 dB transmission loss at 1000 + 20 Hz from the serving central office to the customer premises network interface. Subscriber lines must be maintained so that transmission loss does not exceed 8 dB. Subscriber lines must be designed and constructed so that metallic noise does not exceed 25 dB above reference noise level ("C" message weighting) on 90% of the lines. Subscriber lines must be maintained so that metallic noise does not exceed 30 dB above reference noise level ("C" message weighting).

(b) PBX and multiline trunk circuits must be designed and maintained so that transmission loss from the central office to the point of connection with customer equipment does not exceed 5 dB (or 6.5 dB loss through a coupling device provided by the local exchange carrier). These circuits must be designed and constructed so that metallic noise does not exceed 25 dB above reference noise level ("C" message weighting) on 90% of the lines. These circuits must be maintained so that metallic noise does not exceed 30 dB above reference noise level ("C" message weighting).

(c) Ninety-five percent of the measurements on interoffice calls within a local calling area must have from 2 to 10 dB transmission loss at 1000 + 20 Hz and no more than 30 dB

metallic noise above reference noise level ("C" message weighting). This measurement must be made from the line terminals of the originating central office to the line terminals of the terminating central office.

AUTH: 69-3-103, MCA
IMP: 69-3-102, 69-3-103, 69-3-108 and 69-3-201, MCA

NEW RULE XIII COMPUTATION OF TIME (1) When a carrier is required by these rules to fulfill a request within a certain period of time the following will apply:

(a) a period stated in calendar days begins the day of the request, or the next calendar day if the request is received by the carrier after 3:00 p.m. mountain time, and ends at the close of the last day of the stated period, including when the last day is a Saturday, Sunday, or holiday; and

(b) a period stated in business days begins the day of the request, or the next business day if the request is received by the carrier after 3:00 p.m. mountain time, and ends at the close of the last day of the stated period, unless the last day is a Saturday, Sunday, or holiday, in which case the period ends at the close of the next following business day.

AUTH: 69-3-103, MCA
IMP: 69-3-102 and 69-3-201, MCA

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

38.5.3301 PURPOSE (1) Section 69-3-201, MCA, requires every public utility to furnish reasonably adequate service and facilities. ~~The~~ A purpose of these rules is to establish ~~certain~~ minimum standards for ~~determining if~~ reasonably adequate retail telecommunications service and facilities ~~is adequate~~. ~~The commission will liberally construe these rules and may require additional standards when necessary to provide adequate service.~~ Failure of a carrier to meet these standards constitutes a failure to provide reasonably adequate service and facilities with respect to the standard that has been violated.

(2) ~~These service~~ Except as may be otherwise provided in a specific rule, these rules apply to ~~any carrier~~ all carriers providing retail services operating in Montana ~~and subject to the commission's jurisdiction~~. At a minimum each carrier shall maintain its facilities, equipment, and work force in such a manner that the standards established in these rules are met.

(3) If the application of ~~any~~ a rule results in an unreasonable hardship ~~to a carrier or a customer, either may apply for waiver under ARM 38.2.305~~, the commission, in its sole discretion, on its own motion or on motion of an affected carrier or customer, may waive application of the rule. Waivers will not be routinely granted, but may be granted for clearly demonstrated and verifiable good cause.

(4) The commission recognizes that in exchanges where local service is competitive a competitive local exchange

carrier may, pursuant to a commission approved interconnection or resale agreement, engage an incumbent local exchange carrier to perform certain functions (e.g., installations, repair). In such instances the competitive local exchange carrier remains responsible for ensuring compliance with these rules.

AUTH: 69-3-103, MCA
IMP: 69-3-102 and 69-3-201, MCA

38.5.3320 ~~DATA TO BE FILED~~ EXCHANGE MAPS -- FILING WITH THE COMMISSION (1) ~~Exchange maps. In addition to tariffs as required by 69-3-301, MCA, e~~Each incumbent local exchange carrier ~~must~~ shall file with the commission a map showing the boundaries of the exchange service area and zone and distance boundaries when applicable for each ~~exchange~~ of that incumbent local exchange carrier's exchanges within the state. Boundary lines must be located by appropriate measurement to an identifiable location if not otherwise located on section lines, waterways, railroads, roads, etc. Maps must include location of highways, section lines, geographic township and range lines, railroads, and waterways outside municipalities and show the map scale and other detail. An exchange map and the applicable rates for local service must be available at the business office serving the exchange area. Each incumbent local exchange carrier filing an original or revised map shall submit proof of notice of ~~the~~ a proposed boundary to ~~any~~ all other ~~telecommunications utility~~ local exchange carriers with service areas adjoining the area in which a boundary line is to be established or changed.

~~(2) Service reports. Each carrier must furnish to the commission, at such times and in such form as the commission requires, the results of any service-related tests, summaries or records in its possession. The carrier shall also furnish the commission with any information concerning the utility's facilities or operations which may be requested.~~

~~(3) Service disruption reports. Each carrier must report promptly to the commission and to a local radio station or other local news media any specific occurrence or development which disrupts the service of a substantial number of its customers (the smaller of 25 percent or 100 customers) for a time period in excess of two hours. This rule shall not apply to interexchange carriers in the case of an outage affecting local service.~~

AUTH: 69-3-103, MCA
IMP: 69-3-102 and 69-3-201, MCA

38.5.3330 RATE AND SPECIAL CHARGES INFORMATION (1) ~~The~~ A local exchange carrier ~~must~~ shall provide all information and assistance necessary ~~needed by applicants, customers, or others~~ to determine the lowest cost telecommunications service available from the local exchange carrier ~~that meets their stated needs~~ and shall provide sufficient data and information to allow a customer to compare rates and services offered. ~~The~~

A local exchange carrier ~~must~~ shall immediately provide ~~a commission approved catalog of available services and prices in response to all service orders, at the~~ written rate information upon request of customers, and as otherwise required by the commission.

~~(a)~~ (2) Prior to taking any action ~~or offering any service~~ while discussing local service options with a customer, the local exchange carrier ~~must~~ shall notify ~~customers~~ the customer of any ~~connection charge or other charge~~ base rates or charges and ~~must~~ shall provide an estimate of the customer's initial bill for ~~flat monthly services (service furnished at a fixed monthly charge) and other applicable charges~~ the service requested by the customer. The carrier shall inform the customer whether or not taxes and other fees are included in the estimate.

~~(2)~~(3) The local exchange carrier ~~must~~ shall give an applicant a written estimate of special charges for services ~~not established by tariff such as construction charges which are~~ that are levied on an actual cost basis.

AUTH: 69-3-103, MCA
IMP: 69-3-102 and 69-3-201, MCA

38.5.3331 BUSINESS OFFICES AND TOLL-FREE TELEPHONE INFORMATION (1) Each carrier~~, operator service provider and inmate calling provider~~ must have at least one business office ~~to provide customers and others with access to~~ staffed with personnel who can:

(a) provide information on services and rates~~,~~;

(b) accept and process service applications~~,~~;

(c) explain customers' bills~~,~~;

(d) adjust errors~~,~~; and

(e) generally represent the carrier.

(2) If one business office serves several exchanges or states, toll-free calling to that office must be provided to Montana customers and the office must be staffed during Montana business hours.

~~(2) Exchange carriers which provide billing services for other carriers shall include in such bills the toll-free telephone numbers of such carriers, or their billing agents, which are provided to the exchange carriers in accordance with subsection (3).~~

(3) Service providers placing charges on local exchange carriers' telephone bills ~~Carriers which bill through exchange carriers are required to~~ shall provide ~~the~~ toll-free telephone numbers required in ~~subsection (1)~~ (2) to their billing aggregators or billing agents. ~~Such carriers may also provide the toll-free telephone number of their billing agent aggregator.~~

(4) ~~Exchange~~ Local exchange carriers and billing aggregators ~~must~~ shall provide a ~~carrier's~~ toll-free number to a customer, upon request, at no charge, for any service provider for which it bills.

AUTH: 69-3-103, MCA
IMP: 69-3-102 and 69-3-201, MCA

38.5.3332 CUSTOMER BILLING (1) ~~Billing~~ Carriers are required to bill in accordance with the following procedures:

(a) ~~Typed or machine-printed bills~~ Bills ~~must~~ shall be issued monthly, unless ~~there are no charges during the month~~ the originating carrier has obtained the customer's consent for bills to be issued on an alternative billing schedule.

(b) Residential and single-line business bills must itemize ~~by tariff element~~ the charges for all services. The bill must clearly provide the following information:

(i) through (iii) remain the same.

(iv) a statement that ~~regulated services~~ local exchange service may not be disconnected for nonpayment of ~~nonregulated~~ unregulated services, toll services, or services provided by other carriers~~, except for other carriers' regulated services that cannot be disconnected or discontinued separate from local service~~;

(v) remains the same.

(c) Bills may only include charges for services that have been requested by and provided to the customer or the customer's authorized representative(s), and other charges required by law.

(d) Charges contained on telephone bills must be accompanied by a brief, clear, nonmisleading, plain language description of the service or services rendered. The description must be sufficiently clear in presentation and specific enough in content so customers can determine whether services for which they are billed correspond to those that have been requested and received, and that charges for those services conform to the customer's understanding of what the charge was to be.

~~(e)~~(e) If ~~an exchange~~ a regulated carrier bills and collects for any interexchange carrier, including itself, all toll calls must be itemized showing the date, the time, the length in minutes, discounts if applicable, and the destination of the call, unless the customer has subscribed to a service option which does not require itemization. For collect ~~and/or~~ and third party calls, the point of origin and the telephone number of origin must be ~~stated~~ shown.

(f) A carrier, billing agent, or billing aggregator may only bill telecommunications charges for entities properly registered to provide service in Montana. A carrier, billing agent, or billing aggregator may not knowingly bill for a company that has failed to pay a commission-ordered fine.

~~(d)~~(g) Upon request, a carrier ~~must~~ shall ~~notify~~ provide to the commission ~~of~~ the name and address of all entities for which it provides billing and collection services. If ~~an~~ a local exchange carrier bills and collects for ~~an interexchange~~ another carrier, the ~~two~~ billing carrier~~s~~ must ~~establish an efficient method of resolving customer disputes. The carrier must be able to~~ provide the customer with the name, address and telephone number of ~~an interexchange~~ the other carrier's ~~employee or~~ department responsible for customer dispute

resolution. All local exchange carriers, billing agents, and billing aggregators that provide billing services for service providers shall include in bills the names and toll-free telephone numbers of such service providers and their billing aggregators, in accordance with ARM 38.5.3331. The name of the entity and the associated charges must be included in the customer's bill, and must meet all the requirements of these rules.

(h) The bill must clearly and conspicuously identify, on the front page, any change in service provider.

(i) If the bill includes charges from an entity that did not bill the subscriber for service during the customer's previous billing cycle, the name of the new provider and the charges billed must be printed in bold type.

(e) remains the same but is renumbered (j).

(2) ~~Inaccurately billed service.~~ If telecommunications service has been underbilled in an amount exceeding $25, and the underbilling is due to ~~because of~~ the carrier's error, ~~omission or negligence and the amount owed exceeds $25,~~ the carrier ~~must~~ shall offer the customer a reasonable payment arrangement. The utility may submit a bill to the customer for a period not to exceed the six months preceding the date the underbilling was discovered. If telecommunications service has been overbilled, the carrier ~~must~~ shall credit the customer's ~~future~~ next bill~~s~~ for the amounts overbilled, unless the customer requests a cash refund of the credit balance. The utility is required to credit the customer for a period not to exceed the six months preceding the date the overbilling was discovered. ~~In either case (underbilling or overbilling) the carrier shall abide by the applicable statute of limitations, and 69-3-221, MCA.~~

~~(3) Service Interruption. If a customer's service is interrupted for any reason other than the customer's negligence or willful act and service remains out for more than 24 hours after being reported, appropriate adjustments shall be made to the customer's bill upon determination of the outage. For the purpose of administering this rule, every month is considered to have 30 days.~~

(3) Every carrier must provide pro rata credits whenever a service is billed on a monthly basis and is not available for more than a total of 24 hours in a billing cycle, after being reported by the customer. The minimum amount of pro rata credit a company must provide is the monthly cost of service divided by 30, then multiplied by the number of days or portions of days during which service was not provided. If a carrier provides a credit amount for unavailable service that is equal to or greater than the credit amount required by this rule, the amount of credit required by this rule need not be provided.

(4) ~~Billing dispute. The~~ Subject to the disconnect limitations in ARM 38.5.3332, a carrier may require ~~the~~ a customer to pay the undisputed portion of ~~the~~ a bill to avoid discontinuance of service for nonpayment. The carrier ~~must~~ shall investigate the dispute and report the result to the customer. ~~If the billing dispute is not resolved, the~~ A carrier

~~must~~ shall advise the customer that the commission is available for review and disposition of ~~the matter~~ disputes.

(5) ~~Billing. Telecommunications service regulated by the Montana public service commission cannot be denied or terminated because of nonpayment for nonregulated services or services provided by other carriers, except for other carriers' regulated services that cannot be disconnected or discontinued sepaate from local service.~~ A telecommunications provider's bill to its customer ~~shall~~ must clearly distinguish between regulated and ~~nonregulated~~ unregulated service. ~~Regulated and nonregulated service may appear on the same bill but must be presented as seprate line items.~~

(a) Undesignated partial payments of a bill shall be applied first to local exchange carrier regulated local exchange services and then to service other than local exchange ~~carrier regulated services~~ service ~~in such percentage~~ prorated as each other service provider's charges represent ~~of~~ the total charges ~~to the customer for services other than local exchange carrier regulated services~~. A carrier shall not modify or change a customer's local service due to billing disputes over toll service, unregulated service, or service provided by other carriers or service providers. ~~Regulated service may not be affected by billing disputes over nonregulated service or service provided by other carriers.~~

(6) ~~Late billing.~~ If a carrier bills a customer for a service more than 60 days after the service is provided and the customer contacts the carrier (or its billing agent) to question or dispute the late-billed charges, the carrier (or its billing agent) ~~must~~ shall offer the customer a payment plan that allows an equal period of time to pay the late-billed charges as it took the carrier to bill the customer. ~~During this period,~~ Late payment charges ~~must~~ shall not be assessed on the late-billed service charges, and the carrier is prohibited from taking any collection actions against the customer ~~other than monthly notice by mail of the unpaid charges~~. Any ~~such~~ monthly notice from the carrier must not threaten any further collection action, and must contain a verbatim statement of this ~~sub~~section.

(7) Disputed charges shall not be subject to interest or late fees.

(8) Calls requiring timing must be accurately timed. Upon request, carriers shall provide the method of timing. If a carrier is unable to provide its timing method or timing is inaccurate, bills for such timed calls shall be void.

(9) All carriers, including operator service providers and inmate calling providers, are prohibited from charging any amount for incomplete or unanswered calls.

AUTH: 69-3-103, MCA
IMP: 69-3-102, 69-3-201 and 69-3-221, MCA

38.5.3333 PUBLIC INFORMATION (1) Each local exchange carrier ~~must~~ shall have the following information available ~~for viewing~~ at each business office and the carriers web site~~.~~:

(a) ~~All its~~ the local exchange carrier's tariffs~~.~~; and

(b) ~~Exchange~~ the local exchange carrier's exchange maps ~~showing base rate area and zone boundaries from which all customer locations can be determined and mileage and/or zone charges quoted~~ as required in ARM 38.5.3320.

(2) Each local exchange carrier shall make staff available to customers seeking information on:

~~(c)~~(a) ~~Information on~~ plans for major service changes in the area served by the business office. In the alternative, ~~an~~ a local exchange carrier may provide this information by a toll free number; and

~~(d)~~(b) ~~Information pertaining to~~ services and rates as proposed in pending tariff or rate change filings.

AUTH: 69-3-103, MCA
IMP: 69-3-102, 69-3-103 and 69-3-201, MCA

38.5.3334 CUSTOMER DEPOSITS ~~FOR TELECOMMUNICATIONS SERVICES~~ (1) Deposit requirements for business and residential service must comply with the commission's rules on "customer deposit for guaranteed payment," ARM 38.5.1101~~, et seq.~~ through 38.5.1112, except no deposit may be required from a Montana telephone assistance program participant who has subscribed to toll blocking.

AUTH: 69-3-103, MCA
IMP: 69-3-102 and 69-3-201, MCA

38.5.3335 COMPLAINTS AND APPEALS (1) ~~Complaints.~~ All carriers ~~must~~ shall promptly investigate customer complaints and inform the customer of proposed action. ~~If requested,~~ Upon request, the carrier ~~must~~ shall provide a written statement of its action on the complaint.

(2) ~~Appeals.~~ A carrier ~~must~~ shall inform a customer that a review by supervisory personnel of an unfavorable action on a bill or complaint is available. If requested the carrier ~~must~~ shall provide a written statement of the supervisor's action on the complaint. The written statement must ~~also~~ inform the customer that commission review is available and provide the commission's telephone number and address.

(3) Upon receipt of a complaint~~, either orally or in writing,~~ from the commission ~~or its staff~~ on behalf of a customer or applicant, ~~the~~ a carrier shall make ~~a suitable~~ an investigation and advise the commission ~~or its staff~~ of the results ~~thereof~~. ~~Initial~~ A response to the commission ~~or its staff~~ shall be provided within five ~~working~~ business days.

AUTH: 69-3-103, MCA
IMP: 69-3-102 and 69-3-201, MCA

38.5.3336 DIRECTORIES (1) An incumbent local exchange carrier ~~must~~ shall provide its customers with telephone directories at regular intervals ~~(~~not to exceed 18 months~~),~~. A directory shall list at a minimum ~~listing~~ all customers' names,

addresses and telephone numbers, except such information that upon the ~~public telephones, addresses and telephone service not published at the~~ customer's request is to be excluded from publication.

(2) The local exchange carrier ~~must~~ shall list its customers, excluding ~~(except those~~ customers requesting otherwise~~),~~ with the directory assistance operators within three business days of service connection. If directory assistance ~~(DA)~~ is provided by another company, the local exchange carrier ~~must~~ shall submit the ~~DA~~ directory assistance listing updates to the ~~DA~~ directory assistance provider within three business days and the ~~DA~~ directory assistance provider ~~must~~ shall update its listings within ~~the following~~ three business days of receiving such information.

(3) Upon issuance, a copy of each directory shall be distributed free of charge to all customers served by that directory and to the commission. Free copies shall also be made available to any public library in the state requesting a directory. In the case of hotels, motels and other multi-line locations, one directory per access line or up to two directories for each installed station ~~will~~ shall be provided at no charge, upon request.

(4) The name of the incumbent local exchange carrier, the coverage area, ~~included in the directory~~ and the month and year of ~~issue must~~ issuance shall appear on the front cover. Information pertaining to emergency calls, such as for the police and fire departments, ~~must~~ shall be conspicuously printed on the inside front cover of the directory.

(5) The directory ~~must~~ shall contain instructions on placing local and long distance calls, calls to repair and directory assistance services, and locations and telephone numbers of incumbent local exchange carrier business offices within the appropriate service area.

(6) ~~Exchange~~ Incumbent local exchange carriers shall make available, at no charge, space on the front cover of the incumbent local exchange carrier's directory for other local exchange carriers serving the directory area and shall make available, at a reasonable charge, space in the front part of the directory for interexchange ~~carriers~~ carriers' information and rates ~~on long-distance calling, directory assistance, operator services, discount periods, billing inquiries, etc~~.

(7) remains the same.

(8) If there is ~~an~~ a carrier error in the directory listing for a customer, the local exchange carrier ~~must~~ shall intercept all calls to the listed number at no charge~~, for six months or~~ until a new directory is published~~, whichever occurs first~~. If there is ~~an~~ a carrier error or omission in the name listing of a customer, the correct name and telephone number and address (unless excluded by customer request) must be placed in the files of the directory assistance ~~and/or~~ and intercept operators and the correct number furnished the calling party upon request or interception.

(9) If a customer's telephone number is changed after a directory is published, the local exchange carrier ~~must~~ shall

offer to intercept all calls to the former number ~~for a reasonable period of time,~~ for three months or until a new directory is published, whichever occurs first, and give the calling party the new number unless the customer directs otherwise.

(10) When additions or changes in plant or changes to any other local exchange carrier operations necessitate changing telephone numbers to a group of customers, reasonable notice must be given to all affected customers.

AUTH: 69-3-103, MCA
IMP: 69-3-102 and 69-3-201, MCA

38.5.3337 PAY TELEPHONES (1) ~~Carrier-owned. Each exchange carrier must provide in each exchange at least one pay telephone available to the public at all hours, prominently located and lighted at night.~~ All local exchange carrier pay telephones shall be properly maintained and equipped with dialing instructions, a directory, local call price information and appropriate emergency telephone numbers. ~~All pay telephones must comply with 10-4-121, MCA.~~

~~(2) The commission may require a regulated carrier to install pay telephones at locations determined by the commission.~~

~~(3)~~ (2) ~~Customer-owned.~~ Each local exchange carrier ~~must~~ shall provide access lines to connect customer-owned pay telephones in accordance with tariffs on file with ~~and approved by~~ the commission.

~~(4)~~ (3) All ~~carrier-owned and customer-owned~~ pay telephones are prohibited from call blocking, ~~as defined~~ in accordance with ARM 38.5.3401~~(2)(b)~~.

~~(5)~~ (4) All ~~carrier-owned and customer-owned~~ pay telephones ~~are required to~~ shall enable operator service providers to comply with ARM 38.5.3405, 38.5.3416 and 38.5.3343.

~~(6)~~ (5) All ~~carrier-owned and customer-owned~~ pay telephones ~~are required to~~ shall enable inmate calling providers to comply with ARM 38.5.3440.

~~(7) Each exchange carrier shall file an annual report with the commission, listing the pay telephones within its service area which are not in compliance with applicable tariff requirements or commission rules. Concurrently with the filing of the annual report, each exchange carrier shall serve notification of noncompliance and potential termination upon each owner of such pay telephones. If the pay telephones on the annual report are not brought into full compliance within thirty (30) days following notification of the owners of the pay telephones, the exchange carrier shall immediately terminate service thereto. The provisions of the applicable tariffs and commission rules shall be included in the notice sent to the pay telephone owners.~~

~~(8) All pay telephones must comply with all applicable state and federal statutes and regulations.~~

AUTH: 69-3-103, MCA
IMP: 69-3-102 and 69-3-201, MCA

38.5.3339 TERMINATION OF SERVICE (1) A carrier may interrupt service without notice only in emergency situations. ~~or if the service was obtained without the carrier's authorization.~~ If service was fraudulently obtained a carrier may immediately interrupt service.

(2) ~~Grounds for termination.~~ Subject to the requirements of these rules, telecommunications services may be discontinued~~, after notice, as provided in ARM 38.5.3339(5),~~ for the following reasons:

(a) ~~F~~failure to make a security deposit or guarantee of payment for regulated services;

(b) remains the same.

(c) ~~U~~unauthorized interference, unauthorized use of equipment that is disabling or negatively impacting network equipment, performance, or customers, or unauthorized diversion or use of telephone service;

(d) ~~V~~violation of ~~relevant~~ laws, ordinances, commission rules or carrier tariffs; or

(e) remains the same.

(3) ~~Grounds that do not support termination. None of the following constitute sufficient grounds for discontinuing regulated local exchange service.~~ A carrier may neither terminate nor refuse to provide regulated local exchange service based on the following:

(a) ~~T~~the failure of ~~any~~ a person other than the customer against whom termination is sought to pay any charges due to the telecommunications utility~~.~~;

~~(i)~~ (b) ~~F~~failure to pay for business service at a different location and with a different telephone number ~~is not grounds for disconnecting~~ than the customer's residential service; ~~and vice versa.~~

(c) ~~F~~failure to pay for residential service at a different location and with a different number than the customer's business service~~.~~;

~~(b)~~ (d) ~~F~~failure to pay an amount ~~in dispute pending before the commission.~~ that the customer has disputed; and

~~(c)~~ (e) ~~F~~failure to pay for ~~nonregulated~~ unregulated service, toll service, or service provided by other carriers.

(4) Upon request of a customer, ~~All~~ local exchange carriers ~~must~~ shall provide, without charge, ~~establish a system of third party~~ third-party notification of nonpayment prior to terminating any service. ~~That is, if a customer requests that a third party such as a social service, minister, responsible adult, etc., be notified of nonpayment, the exchange carrier must provide such a service, free of charge.~~

(5) ~~Notice.~~ Notices must comply with the following requirements:

(a) ~~W~~written notice of termination must be sent at least ~~seven~~ 10 calendar days prior to service ~~disconnection~~ termination and must ~~contain the following~~ include:

(i) which service or services are in jeopardy of termination;

~~(i)~~ (ii) ~~The~~ the reason for ~~disconnection.~~ threatened termination;

~~(ii)~~(iii) ~~Corrective~~ the corrective actions ~~the customer may take.~~ available;

~~(iii)~~ (iv) ~~Appeal~~ the appeal actions ~~the customer may take.~~ available; and

~~(iv)~~ (v) ~~Cost~~ the cost of reconnection, deposit requirements and any other costs associated with reconnecting the service.

(b) ~~On~~ on the ~~business~~ day prior to ~~disconnection~~ termination, a carrier representative ~~must~~ shall ~~make a reasonable effort to~~ contact and notify the customer of the information in the written notice. If telephone contact is unsuccessful, the carrier shall leave notice in a place conspicuous to the customer that service will be terminated on the next business day unless the delinquent charges have been paid or satisfactory arrangements made. The carrier ~~must~~ shall keep a record showing the name of employee, date and hour of attempted contact and whether the customer was ~~orally~~ verbally notified of disconnection or if a doorhanger was used.

(6) ~~Exception to seven-day notice requirement, excessive toll usage accompanied by risk of nonpayment. The seven-day notice requirement shall be excused when~~ A carrier is not required to provide the notice requirement set forth in this rule where toll service is to be terminated for excessive toll usage and an identifiable risk of nonpayment exists~~, as defined herein~~.

(a) ~~Toll usage. For purposes of this rule t~~Toll usage includes regulated toll charges ~~whether already~~ billed or ~~as yet~~ unbilled, ~~but~~ excludes~~ing~~ ~~all~~ amounts owed or owing for ~~nonregulated~~ unregulated services or services provided by other carriers. Toll usage includes ~~except for~~ other carriers' regulated services that ~~cannot~~ may not be disconnected or discontinued separate from local service.

(b) ~~Excessive toll usage. For purposes of this rule,~~ "Excessive toll usage" is ~~defined as~~ toll usage ~~for an estimated~~ in a one month billing period that:

(i) exceeds 200% of the monthly average of the customer's toll charges~~, if any,~~ from the preceding six months; and

(ii) remains the same.

(c) ~~Risk of nonpayment. For purposes of this rule,~~ "r~~R~~isk of nonpayment" includes the absence of a ~~is established by the presence of any one of the following:~~

~~(i) No deposit. Risk of nonpayment exists when there is no~~ customer deposit and ARM 38.5.1103 permits the requirement of such a deposit; or when,

~~(ii) Historical deficiency. Risk of nonpayment exists when,~~ during the preceding 12 months, any of the following conditions existed:

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

~~(C)~~(iii) ~~payment was made with~~ a customer had two or more ~~dishonored~~ checks dishonored.

(d) ~~Contact with customer. The~~ A carrier shall not terminate service without providing the customer the following notice: ~~under the provisions of this rule without first contacting or making a diligent effort to contact the customer. Such contact will be for the purposes of:~~

(i) ~~notifying the customer of the~~ there is excessive toll usage threatening the customer's service;

(ii) ~~notifying the customer of the possibility~~ that service can be terminated on an expedited basis; and

(iii) ~~providing the customer with the opportunity to supply~~ upon adequate assurance of payment~~. In no event shall a diligent effort consist of less than three distinct attempts to contact the customer, either in person or by telephone. The carrier must keep a record showing the name of the employee, date, hour and type of each attempted contact.~~ from the customer the service may not be terminated. Adequate assurance includes:

(A) the establishment of satisfactory credit as defined by ARM 38.5.1101;

(B) the existence of a deposit, consistent in amount with ARM 38.5.1105; or

(C) any other form of assurance mutually agreed upon by the customer and the carrier. If the carrier supplies adequate assurance, no further action may be taken to terminate service.

(e) ~~Adequate assurance of payment. For purposes of this rule, adequate assurance shall include:~~ A carrier shall not terminate service without making three distinct attempts to contact the customer. The carrier shall keep a record showing the name of the employee, date, hour and type of each attempted contact.

~~(i) the establishment of satisfactory credit as defined by ARM 38.5.1101;~~

~~(ii) the existence of a deposit, such deposit being consistent in amount with ARM 38.5.1105; or~~

~~(iii) any other form of assurance mutually agreed upon by the customer and the carrier, including an oral or written promise to pay. If the customer supplies adequate assurance as defined herein, no further action may be taken to terminate service.~~

(f) ~~Termination of service.~~ If the carrier has made three documented attempts ~~is unable~~ to contact the customer without success it may terminate service three business days ~~(not including those days when there is no mail delivery)~~ after the mailing of a notice consistent ~~in form~~ with the requirements of ~~ARM 38.5.3339~~(5). If the carrier is able to contact the customer ~~and~~ but no adequate assurance ~~is supplied~~ of payment is given, the carrier may terminate service not less than 24 hours after such contact.

AUTH: 69-3-103, MCA
IMP: 69-3-102 and 69-3-201, MCA

38.5.3343 EMERGENCY CALL ROUTING (1) Upon receipt of any emergency telephone call, ~~an~~ a local exchange carrier ~~must~~ shall immediately connect the call to the appropriate emergency

service ~~which serves the reported location of the emergency. If the location of the emergency is not known, the exchange carrier must immediately connect the call to the appropriate emergency service which serves the originating location of the call~~.

(2) Charges for ~~Consumers shall not be charged for any~~ emergency calls shall not be placed on a customer's bill.

(3) ~~An~~ A local exchange carrier ~~must~~ shall stay connected on an emergency call until ~~it is determined that~~ the caller has been connected to the proper emergency service provider.

(4) ~~An~~ A local exchange carrier ~~must~~ shall provide emergency call routing, as provided in this rule~~, on a full-time basis,~~ 24 hours per day, ~~7~~ seven days per week.

(5) Upon receipt of any emergency telephone call, interexchange carriers and operator service providers ~~must~~ shall immediately connect the consumer to the local exchange carrier ~~or explain dialing instructions for access to the exchange carrier~~.

AUTH: 69-3-103 and 69-3-822, MCA
IMP: 69-3-102, 69-3-201 and 69-3-802, MCA

38.5.3350 CONSTRUCTION (1) ~~Engineering and construction standards. In determining standard engineering and construction practice, the commission will be guided by the provisions of the American National Standards Institute, the National Electrical Code, the National Electrical Safety Code, the exchange carriers standards association, the rural electrification administration, and such other codes and standards as are generally accepted by the industry, except as modified by this commission or by municipal regulations within their jurisdiction. The~~ A telecommunications plant shall be designed, constructed, maintained and operated in accordance with the National Electrical Safety Code, the American National Standards Institute, the National Electrical Code, the exchange carriers standards association, the Rural Utilities Service, and such other codes and standards as are generally accepted by the industry ~~these standards,~~ and in such manner to best accommodate the public, and to prevent interference with ~~and from~~ service furnished by other public utilities ~~insofar as practical~~.

(2) ~~The c~~Carriers shall design and construct ~~the~~ telecommunications facilities to reduce or prevent electromagnetic interference from AC power systems. ~~The c~~Carriers shall engage in prior coordination with power utilities in the area before placing a new plant or making major changes in an existing plant likely to be impacted by the power utility's facilities. Such coordination ~~shall be~~ is governed by the latest issue of ANSI/IEEE 776 Guide for Inductive Coordination of Electric Supply and Communications Lines.

~~(2) Automatic number identification. Exchange carriers shall have as an objective the provision of automatic number identification in all exchanges. All exchange carriers shall file a report with the commission within six months following adoption of this rule, and every six months thereafter, includ-~~

~~ing the status of current exchanges and plans to comply with this provision.~~

(3) ~~Party line service.~~ Where party line service is provided, ~~no more than~~ a maximum of four customers ~~shall be connected to any one~~ per channel is allowed, unless an alternative maximum is ~~such action is~~ approved by the commission. The local exchange carrier may regroup customers ~~in such a way as may be necessary~~ to carry out the provisions of this rule. A carrier's compliance with this rule through regrouping shall be reported to ~~Upon completion or delay in the meeting of this requirement a report to that effect shall be filed with~~ the commission.

~~(4) Selective carrier denial. Exchange carriers shall have as an objective the provision of selective carrier denial in all exchanges. All exchange carriers shall file a report with the commission within 18 months following adoption of this rule, and every 6 months thereafter, including progress towards compliance and timetable for completion of implementation.~~

AUTH: 69-3-103, MCA
IMP: 69-3-102 and 69-3-201, MCA

38.5.3351 EMERGENCY OPERATION (1) Carriers shall prevent interruption or impairment of telecommunications service in cases of ~~make reasonable provisions to meet emergencies resulting from failures of~~ lighting or power service failures, unusual and prolonged increases in traffic, illness of personnel, or other unexpected events ~~from fire, storm, or other acts of God and inform its employees as to procedures to be followed in the event of emergency in order to prevent or minimize interruption or impairment of telecommunications service~~.

(2) Each central office and interexchange toll switching office or access tandem shall contain ~~as~~ at a minimum four hours of battery reserve to serve that office's customer base.

(3) In central offices exceeding 5,000 lines and in all interexchange toll switching offices or access tandems, a permanent auxiliary power unit shall be installed. ~~In c~~Central offices with less than 5,000 lines shall have either a permanent auxiliary power unit installed or ~~without permanently installed emergency power facilities, there shall be~~ a mobile power unit available that ~~which~~ can be delivered and connected ~~on short notice~~ within two hours.

AUTH: 69-3-103, MCA
IMP: 69-3-102 and 69-3-201, MCA

38.5.3352 CONSTRUCTION WORK NEAR ~~EXCHANGE~~ CARRIER FACILITIES (1) Upon ~~receipt of written or verbal~~ notification ~~from the property owner, or from a contractor,~~ of construction work that ~~which~~ may affect ~~its~~ facilities used for serving the public, ~~the~~ a carrier shall investigate ~~and decide~~ what action, if any, must ~~reasonably~~ be taken to protect or alter telephone facilities ~~in order~~ to protect service to the public and to

avoid unnecessary damage~~, such as identifying in a suitable manner the location of any underground facilities which may be affected by the work~~.

AUTH: 69-3-103, MCA
IMP: 69-3-102 and 69-3-201, MCA

38.5.3353 NETWORK INTERFACE (1) Each local exchange carrier shall establish a point of demarcation between the utility facilities and a customer's premises wiring and equipment. It shall be the responsibility of the utility to install and maintain a network interface device in accordance with commission guidelines, the local exchange carrier's tariff, and with rules established by the federal communications commission.

(2) The ~~NID shall~~ network interface device shall be located outside the customer's premises unless such location is impractical or the customer requests an inside location. If the ~~NID~~ network interface device is located inside, it should be at a point close to the protector and convenient to the customer.

(3) If a customer requests ~~that an NID~~ a network interface device be placed in a location other than that selected by the utility, and ~~which~~ that conforms to the criteria set forth herein, the company may charge the customer for any extra associated work.

(4) For ~~simple~~ one- and two-line business and residence service, all wiring on the customer's premises shall connect to the telephone network through a ~~NID~~ network interface device.

(5) A ~~NID shall~~ network interface device shall be installed on all new services when a visit to the customer premises is necessary to establish service. For party line services a selective ringing module ~~will~~ shall be installed.

(6) Work load permitting, a ~~NID~~ network interface device, with ~~and~~ selective ringing module where appropriate, shall be installed on all maintenance visits to a customer premises.

AUTH: 69-3-103, MCA
IMP: 69-3-102 and 69-3-201, MCA

5. The commission proposes to repeal the following rules:

38.5.3302 DEFINITIONS found at ARM page 38-845.

AUTH: 69-3-103, MCA
IMP: 69-3-102 and 69-3-201, MCA

REASON: The proposed repeal of ARM 38.5.3302 is because it is being replaced by New Rule I.

38.5.3338 AUTOMATIC DIALING - ANNOUNCING DEVICES found at ARM page 38-890.

AUTH: 69-3-103, MCA
IMP: 69-3-102 and 69-3-201, MCA

REASON: The proposed repeal of ARM 38.5.3338 is because it is being replaced by New Rules I-XII.

38.5.3341 UNANSWERED CALLS found at ARM page 38-894.

AUTH: 69-3-103, MCA
IMP: 69-3-102, 69-3-201 and 69-3-802, MCA

REASON: The proposed repeal of ARM 38.5.3341 is because it is being replaced by New Rule X.

38.5.3360 CUSTOMER TROUBLE REPORTS found at ARM page 38-919.

AUTH: 69-3-103, MCA
IMP: 69-3-102 and 69-3-201, MCA

REASON: The proposed repeal of ARM 38.5.3360 is because it is being replaced by New Rule VIII.

38.5.3361 STUDIES, INSPECTIONS, TESTS, AND MONITORING found at ARM page 38-929.

AUTH: 69-3-103, MCA
IMP: 69-3-102 and 69-3-201, MCA

REASON: The proposed repeal of ARM 38.5.3361 is because it is being replaced by New Rule III.

38.5.3362 SERVICE INTERRUPTIONS found at ARM page 38-929.

AUTH: 69-3-103, MCA
IMP: 69-3-102 and 69-3-201, MCA

REASON: The proposed repeal of ARM 38.5.3362 is because it is being replaced by New Rule XI.

38.5.3370 GENERAL found at ARM page 38-929.

AUTH: 69-3-103
IMP: 69-3-102 and 69-3-201, MCA

REASON: The proposed repeal of ARM 38.5.3370 is because it is being replaced by New Rule IV.

38.5.3371 SERVICE OBJECTIVES AND SURVEILLANCE LEVELS found at ARM page 38-929.

AUTH: 69-3-103, MCA
IMP: 69-3-102 and 69-3-201, MCA

REASON: The proposed repeal of ARM 38.5.3371 is because it is being replaced by New Rules I-XII.

RATIONALE: Adoption of the new rules is necessary to allow the commission to accurately track and monitor telecommunications service providers quality of service and performance. Amendment of the existing rules is necessary to allow the commission to track and monitor quality of service standards and to update the existing rules to reflect technological and statutory changes since the time the existing rules were implemented. Repeal of the existing rules is necessary to make the proposed new rules flow sequentially and to be consistent with existing rules and proposed amended rules.

6. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments (original and 10 copies) may also be submitted to Legal Division, Public Service Commission, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, and must be received no later than December 16, 2004, or may be submitted to the PSC through the PSC's web-based comment form at http://psc.state.mt.us/Consumers/comments/ then complete and submit the form no later than December 16, 2004. (PLEASE NOTE: When filing comments pursuant to this notice please reference "Docket No. L-04.07.7-RUL.")

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

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

9. The PSC maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the PSC. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: electric utilities, providers, and suppliers; natural gas utilities, providers and suppliers; telecommunications utilities and carriers; water and sewer utilities; common carrier pipelines; motor carriers; rail carriers; and administrative procedures. Such written request may be mailed or delivered to Public Service Commission, Legal Division, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, faxed to Connie Jones at (406) 444-7618, e-mailed to conniej@state.mt.us, or may be made by completing a request form at any rules hearing held by the PSC.

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

/s/ Bob Rowe
Bob Rowe, Chairman
Public Service Commission

/s/ Robin A. McHugh
Reviewed By: Robin A. McHugh

Certified to the Secretary of State October 8, 2004.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

| | | |
|---|---|---|
| In the matter of the repeal of ARM 2.21.801 through 2.21.804, 2.21.810 through 2.21.814, and 2.21.820 through 2.21.822 pertaining to the Sick Leave Fund | ) ) ) ) ) ) | NOTICE OF REPEAL |

TO: All Concerned Persons

1. On September 2, 2004, the Department of Administration published MAR Notice No. 2-2-348 regarding the proposed repeal of ARM 2.21.801 through 2.21.804, 2.21.810 through 2.21.814, and 2.21.820 through 2.21.822 pertaining to the Sick Leave Fund at page 2027 of the 2004 Montana Administrative Register, issue number 17.

2. The Department has repealed the rules as proposed.

3. No requests to hold a public hearing were received. The Department received one comment in support of the repeal and several comments asking whether the repeal would eliminate the Sick Leave Fund.

RESPONSE: Repealing the rules will not eliminate the sick leave fund or the direct grant programs. The Department intends to publish a revised Sick Leave Fund policy as soon as the rules are repealed. The rules are being repealed to provide greater efficiency in policy development and maintenance, which is permitted under the Montana Administrative Procedure Act at 2-4-102(11), MCA.

By: */s/ Steve Bender*
Steve Bender, Acting Director,
Department of Administration

By: */s/ Dal Smilie*
Dal Smilie, Rule Reviewer

Certified to the Secretary of State October 8, 2004.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

| | | |
|---|---|---|
| In the matter of the amendment of ARM 4.10.201, 4.10.202, 4.10.203, 4.10.205, 4.10.401, 4.10.404, 4.10.502, 4.10.503, 4.10.709, and 4.10.1806 relating to pesticide certification | ) ) ) ) ) ) ) ) ) | NOTICE OF AMENDMENT |

TO: All Concerned Persons

1. On September 2, 2004, the Department of Agriculture published MAR Notice No. 4-14-145 regarding the proposed amendment of the above-stated rules relating to pesticide certification at page 2031 of the 2004 Montana Administrative Register, Issue Number 17.

2. The agency has amended ARM 4.10.201, 4.10.202, 4.10.203, 4.10.205, 4.10.401, 4.10.404, 4.10.502, 4.10.503, 4.10.709 and 4.10.1806 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, October 8, 2004.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

| | |
|---|---|
| In the matter of the amendment of ARM 17.8.505 and 17.8.514 pertaining to air quality operation fees and open burning fees | NOTICE OF AMENDMENT<br><br>(AIR QUALITY) |

TO: All Concerned Persons

1. On June 17, 2004, the Board of Environmental Review published MAR Notice No. 17-214 regarding a notice of public hearing on the proposed amendment of the above-stated rules at page 1355, 2004 Montana Administrative Register, issue number 12.

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

3. No public comments or testimony were received.

Reviewed by: BOARD OF ENVIRONMENTAL REVIEW

*David R. Rusoff*
DAVID R. RUSOFF
Rule Reviewer

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

Certified to the Secretary of State, October 8, 2004.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

| | | |
|---|---|---|
| In the matter of the amendment, adoption and repeal of rules in Title 17, chapter 24, subchapters 3 through 13 pertaining to the Montana Strip and Underground Mine Reclamation Act | ) ) ) ) ) ) | NOTICE OF AMENDMENT, ADOPTION AND REPEAL<br><br>(STRIP MINING) |

TO: All Concerned Persons

1. On April 22, 2004, the Board of Environmental Review published MAR Notice No. 17-210 regarding a notice of public hearing on the proposed amendment, adoption and repeal of the above-stated rules at page 777, 2004 Montana Administrative Register, issue number 8.

2. The Board has amended ARM 17.24.301 through 17.24.306, 17.24.312, 17.24.315, 17.24.321, 17.24.322, 17.24.324, 17.24.401, 17.24.404, 17.24.405, 17.24.412, 17.24.413, 17.24.416, 17.24.515, 17.24.520, 17.24.523, 17.24.601, 17.24.602, 17.24.603, 17.24.609, 17.24.623, 17.24.633, 17.24.636, 17.24.638, 17.24.645, 17.24.701 through 17.24.703, 17.24.711, 17.24.714, 17.24.716 through 17.24.718, 17.24.725, 17.24.751, 17.24.761, 17.24.762, 17.24.815, 17.24.823, 17.24.832, 17.24.901, 17.24.903, 17.24.911, 17.24.924, 17.24.927, 17.24.930, 17.24.932, 17.24.1001, 17.24.1002, 17.24.1003, 17.24.1017, 17.24.1104, 17.24.1106, 17.24.1108, 17.24.1116, 17.24.1125, 17.24.1129, 17.24.1131 through 17.24.1133, 17.24.1201, 17.24.1202, 17.24.1206, 17.24.1211, 17.24.1212, 17.24.1219, 17.24.1225, 17.24.1226, 17.24.1250, 17.24.1255, and 17.24.1263; adopted new rule I (17.24.764), and repealed ARM 17.24.323, 17.24.719, 17.24.720, 17.24.728, 17.24.730, 17.24.732, 17.24.733, and 17.24.824 through 17.24.826 exactly as proposed. The Board has amended ARM 17.24.308, 17.24.313, 17.24.427, 17.24.501, 17.24.522, 17.24.605, 17.24.624, 17.24.626, 17.24.634, 17.24.635, 17.24.639, 17.24.642, 17.24.646, 17.24.723, 17.24.724, 17.24.726, 17.24.821, 17.24.1018, 17.24.1109 and 17.24.1301 as proposed, but with the following changes, deleted matter interlined, new matter underlined:

17.24.308 OPERATIONS PLAN (1) Each application must contain a description of the operations proposed to be conducted during the life of the mine including, at a minimum, the following:

(a) remains as proposed.

(b) a narrative, with appropriate cross sections, design drawings and other specifications sufficient to demonstrate compliance with ARM 17.24.609 and applicable rules of subchapter 10, explaining the construction, modification, use, maintenance, and removal of the following facilities (unless retention of

such facilities is necessary for postmining land use as specified in ARM 17.24.762):

(i) through (vi) remain as proposed.

(vii) facilities or sites and associated access routes for environmental monitoring and data gathering ~~facilities~~ activities or ~~facilities or sites and associated access routes used~~ for the gathering of subsurface data by trenching, drilling, geophysical or other techniques to determine the nature, depth, and thickness of all known strata, overburden, and coal seams; and

(viii) through (f) remain as proposed.

17.24.313 RECLAMATION PLAN (1) Each reclamation plan must contain a description of the reclamation operations proposed, including the following information:

(a) through (d)(v) remain as proposed.

(e) ~~a drainage basin reclamation plan that demonstrates the feasibility of accomplishing postmining revegetation, land use and hydrologic requirements, and standards of ARM 17.24.634. This reclamation plan may be tailored to specific drainages or to classes of drainages, and may vary depending on but not limited to such factors as postmining land use, drainage basin size, flow characteristics, topographic position, and substrates;~~ a description of postmining drainage basin reclamation that ensures protection of the hydrologic balance, achievement of postmining land use performance standards, and prevention of material damage to the hydrologic balance in adjacent areas, including:

(i) a comparison of premining and postmining drainage basin size, drainage density, and drainage profiles as necessary to identify characteristics not distinguishable on the premining and postmining topographic maps;

(ii) a discussion of how, within drainage basins:

(A) the plan meets each performance standard in ARM 17.24.634;

(B) the requirements of 82-4-231(10)(k), MCA, and ARM 17.24.314 will be met where the postmining topography differs from the premining as allowed by ARM 17.24.301(13)(c);

(f) drainage channel designs appropriate for preventing material damage to the hydrologic balance in the adjacent area and to meet the performance standards of ARM 17.24.634, including:

(i) detailed drainage designs for channels that contain critical hydrologic, ecologic or land use functions not already addressed in this rule such as alluvial valley floors, wetlands, steep erosive upland drainages, drainages named on USGS topographic maps, or intermittent or perennial streams. Detailed drainage designs include fluvial and geomorphic characteristics pertinent to the specific drainages being addressed; and

(ii) for all other channels, typical designs and discussions of general fluvial and geomorphic habit, pattern, and other relevant functional characteristics;

(f) through (i) remain as proposed, but are renumbered (g) through (j).

17.24.427 CHANGE OF CONTRACTOR (1) The permittee shall notify the department of a proposed new contractor or any proposed change in a contractor responsible for day-to-day operations at a permit area. When such a change is proposed without transfer of the permit pursuant to ARM 17.24.418, the permittee shall submit the following to the department:

(a) through (2) remain as proposed.

17.24.501 GENERAL BACKFILLING AND GRADING REQUIREMENTS

(1) through (3)(b) remain as proposed.

(4) All final grading on the area of land affected must be to the approximate original contour of the land in accordance with 82-4-232(1), MCA.

(a) The operator shall transport, backfill, and compact to ensure compliance with ~~ARM 17.24.501~~(3)(b)~~,~~ and ARM 17.24.505~~, and (3)(b)~~, and grade all spoil material as necessary to achieve the approximate original contour. Highwalls must be reduced or backfilled in compliance with ARM 17.24.515(1), or approved highwall reduction alternatives in compliance with ARM 17.24.515(2).

(b) through (7) remain as proposed.

17.24.522 PERMANENT CESSATION OF OPERATIONS (1) and (2) remain as proposed.

(3) Equipment needed for reclamation may not be removed from the mine until reclamation is complete.

17.24.605 HYDROLOGIC IMPACT OF ROADS AND RAILROAD LOOPS

(1) through (7)(c) remain as proposed.

(8) Drainage structures are required for stream channel crossings. Drainage structures must not affect the normal flow or gradient of the stream or adversely affect fish migration and aquatic habitat or related environmental values. Riprap may be used for roads where an ephemeral channel is too shallow for placement of a culvert.

(9) remains as proposed.

17.24.624 SURFACE BLASTING REQUIREMENTS (1) through (13) remain as proposed.

(14) The maximum weight of explosives to be detonated within any eight-millisecond period may be determined by the formula $W = (D/Ds)^2$ where W = the maximum weight of explosives, in pounds, that can be detonated in any eight-millisecond period; D = the distance, in feet, from the ~~nearest~~ blast hole nearest to ~~the nearest public building or structure,~~ a dwelling, ~~school, church,~~ or public, commercial, community or institutional building ~~or structures~~, except as noted in (12); and Ds = the scaled distance factor, using the values identified in (11).

17.24.626 RECORDS OF BLASTING OPERATIONS (1) A record of each blast, including seismograph records, must be retained for at least three years and must be available for inspection by the department and the public on request. Blasting records must be complete and accurate at the time of inspection. The record must contain the following data:

(a) through (c) remain as proposed.

(d) direction and distance, in feet, from the ~~nearest~~ blast hole nearest to ~~the nearest~~ a dwelling~~, school, church,~~ or commercial, public, community, or institutional building ~~or structure~~ either:

(i) through (t) remain as proposed.

17.24.634 RECLAMATION OF DRAINAGE BASINS

(1) Reclaimed drainage basins, including valleys, channels, and floodplains must be constructed to:

(a) through (g) remain as proposed.

(h) establish or restore a diversity of habitats that ~~achieve~~ are consistent with the approved postmining land use, and restore, enhance where practicable, or maintain natural riparian vegetation as necessary to comply with ARM subchapter 7; and

(i) and (2) remain as proposed.

17.24.635 GENERAL REQUIREMENTS FOR TEMPORARY AND PERMANENT DIVERSION OF OVERLAND FLOW, THROUGH FLOW, SHALLOW GROUND WATER FLOW, ~~AND~~ EPHEMERAL DRAINAGEWAYS, AND INTERMITTENT~~,~~ AND PERENNIAL STREAMS (1) through (5) remain as proposed.

17.24.639 SEDIMENTATION PONDS AND OTHER TREATMENT FACILITIES (1) Sedimentation ponds, either temporary or permanent, may be used individually or in series and must:

(a) through (d) remain as proposed.

(e) be constructed as approved unless modified under ARM 17.24.642~~(3)~~(7).

(2) through (6) remain as proposed.

(7) Sedimentation ponds ~~using~~ having embankments must be constructed to provide:

(a) a combination of ~~principle~~ principal and emergency spillways or a single spillway only to safely discharge the runoff from a 25-year, 24-hour precipitation event, or larger event specified by the department, assuming the impoundment is at full pool for spillway design. A single spillway must be constructed of non-erodible materials and designed to carry sustained flows, or be earth- or grass-lined and designed to carry short-term infrequent flows at non-erosive velocities where sustained flows are not expected. The elevation of the crest of the emergency spillway must be a minimum of one foot above the crest of the principal spillway. Emergency spillway grades and allowable velocities must be approved by the department;

(b) through (21)(b) remain as proposed.

(22)(a) All ponds with embankments must be designed and inspected regularly during construction under the supervision

of, and certified after construction by, a qualified licensed professional engineer experienced in the construction of impoundments.

~~(a)~~ After construction, inspections and certifications must be made and reports filed with the department, pursuant to ARM 17.24.642(4). Inspection and certification reports must be submitted until the embankments are removed.

(b) and (23) remain as proposed.

(24)(a) Sedimentation ponds and other treatment facilities must not be removed:

(a) through (c) remain as proposed, but are renumbered (i) through (iii).

(25) through (27) remain as proposed.

(28)(a) Excavations which are sediment control structures during or after the mining operation must have perimeter slopes that are stable. Where surface runoff enters the impoundment area, the sideslope must be protected against erosion. An excavated sediment pond requires no spillway and must be able to contain the 10-year, 24-hour precipitation event, and conform with (1), (2), (4), (6), (18), (22)(a), (24) and (27).

(b) remains as proposed.

17.24.642 PERMANENT IMPOUNDMENTS AND FLOOD CONTROL IMPOUNDMENTS (1) Permanent impoundments are prohibited unless constructed in accordance with ARM 17.24.504 and 17.24.639, and have ~~emergency~~ open-channel spillways that will safely discharge runoff resulting from a 100-year, 24-hour precipitation event, assuming the impoundment is at full pool for spillway design, or larger event specified by the department. The department may approve a permanent impoundment upon the basis of a demonstration that:

(a) through (5)(a) remain as proposed.

(b) Flood control impoundments with embankments must be constructed in accordance with (1)(f) and ARM 17.24.639(7) through (21), and be inspected, maintained and certified according to (3), (4)(a), (4)(d) ~~(5)(a)~~, and ~~(5)(c)~~ (6) and ARM 17.24.639(22)~~(a) and (b)~~ and (23).

(c) through (c)(iii) remain as proposed.

(d) An initial pond certification report and inspections must be made for excavated flood control impoundments in accordance with ARM 17.24.639~~(27)~~(28)(b). If the volume of the flood control impoundment is used in determination of required volume for a downstream pond, annual certification reports are required in accordance with ~~(5)(a), (5)(b), (5)(c), and (5)(e)~~ (4)(a), (4)(c), and (4)(d).

(e) Prior to construction, ~~Flood~~ flood control impoundments must be approved ~~prior to construction~~ by the department.

(6) and (7) remain as proposed.

17.24.646 SURFACE WATER MONITORING (1) through (3) remain as proposed.

(4) After disturbed areas have been regraded and stabilized according to ARM 17.24.501, the operator shall

monitor surface water flow and quality. Data from this monitoring must be used to determine whether the quality and quantity of runoff without treatment is consistent with the requirements of this rule to minimize disturbance to the prevailing hydrologic balance, to demonstrate that the drainage basin has stabilized to its previous, undisturbed state, and to attain the approved postmining land use. These data must also be used by the department to review requests for removal of water quality or flow control systems and for bond release. With department approval, other information or methods, such as models, may be used, in conjunction with monitoring data, for these purposes.

(5) through (7) remain as proposed.

17.24.723 MONITORING (1) The operator shall conduct periodic vegetation, soils, and wildlife monitoring under plans submitted pursuant to ARM 17.24.312(1)(d)~~,~~ and 17.24.313(1)(f)(iv)~~,~~ and ~~17.24.313~~(1)(g)~~(iii)~~(ix) and the approved postmining land use as approved by the department.

(2) through (4) remain as proposed.

17.24.724 REVEGETATION SUCCESS CRITERIA (1) Success of revegetation must be determined by comparison with unmined reference areas or by comparison with technical standards. Reference areas and standards must be representative of vegetation and related site characteristics occurring on lands exhibiting good ecological integrity. The department must approve the reference areas, technical standards, and methods of comparison.

(2) through (3)(c) remain as proposed.

17.24.726 VEGETATION MEASUREMENTS (1) and (2) remain as proposed.

(3) The revegetated areas must meet the performance standards in (1) and (2) for at least two of the last four years of the phase III bond period. ~~The performance standards must also be met~~ Pursuant to ARM 17.24.1113, the department shall evaluate the vegetation at the time of the bond release inspection~~, pursuant to ARM 17.24.1113(1)~~ for phase III to confirm the findings of the quantitative data.

(4) remains as proposed.

17.24.821 ALTERNATIVE POSTMINING LAND USES: SUBMISSION OF PLAN (1) through (1)(c) remain as proposed.

(2) Each application for alternative postmining land use is subject to public review requirements of subchapter 4 either as part of a new application or as an application for a major revision. However, in its notice of application to government entities pursuant to ARM 17.24.401, the department shall allow 60 days for submission of comments from authorities having jurisdiction over land use policies and plans, and from appropriate state and federal fish and wildlife agencies ~~pursuant to ARM 17.24.824(1)(f)~~.

17.24.1018 NOTICE OF INTENT TO PROSPECT (1) through (8) remain as proposed.

(9) All provisions of this subchapter, except ARM 17.24.1001(1), (2)(j), (k), ~~(p),~~ and (q), (3), (4), and (5), 17.24.1003, 17.24.1014, 17.24.1016, and 17.24.1017, apply to a prospecting operation for which a permit is not required pursuant to ARM 17.24.1001.

17.24.1109 BONDING: LETTERS OF CREDIT (1) Letters of credit are subject to the following conditions:

(a) through (d) remain as proposed.

(e) Using the balance sheet referenced in (1)(d) and a certified income and revenue sheet, the bank must meet the three following criteria:

(i) and (ii) remain as proposed.

(iii) capital or stockholders' equity must be at least 5.5% of total assets ((total stockholders equity [shareholders equity + capital surplus + retained earnings])/total assets = 0.055 or more).

(f) and (g) remain as proposed.

(h) The department may not accept letters of credit from a bank for any person, on all permits held by that person, in excess of three times the company's maximum single obligation ~~as provided in (1)(d)~~.

(i) through (j)(iii) remain as proposed.

17.24.1301 MODIFICATION OF EXISTING PERMITS: ISSUANCE OF REVISIONS AND PERMITS (1) Within one year of [the effective date of this rule amendment], each operator and each test pit prospector shall submit to the department an application for all permit revisions necessary to bring the permit and operations conducted thereunder into compliance with subchapters ~~5~~ 3 through ~~10~~ 12 as they read on [the effective date of this rule amendment].

(2) and (3) remain as proposed.

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

COMMENT NO. 1: The following problems or issues are evident in the proposed definition of approximate original contour (AOC) at ARM 17.24.301(13): a) changing the orientation of a drainage is major with unpredictable consequences; b) the exceptions in part (c) of the definition make the assumption that "ephemeral drainageways" are short and small, which they are not in many cases in eastern Montana, and this change allows for great latitude to change the postmining topography; c) there are no sideboards for control of this issue in the proposed definition nor in ARM 17.24.634; and d) with regard to (d) of the definition, does AOC determine postmining land use or vice versa?

RESPONSE: The proposed amendment defining AOC incorporates verbatim the definition of the term enacted in HB 373. The

Board has no authority to modify the definition of a term enacted by the Legislature.

COMMENT NO. 2: Montana has been represented as having a good permitting program, requiring cross-sections, premining topography maps, and maps keyed to cross-sections showing the postmining topography (PMT) to be met at final bond release. I am surprised that the proposed amendment to ARM 17.24.301(13) and elsewhere implies that this information does not exist in the Montana program. Also, since the Board is only now proposing a requirement in ARM 17.24.305(1)(j) for permit applications to include premining topography maps, how have the Department and the operators been determining AOC all of these past years?

RESPONSE: The definition of AOC, set forth in ARM 17.24.301(13) does not include any requirements for cross-sections or maps. The requirements for PMT maps and cross-sections are currently found in ARM 17.24.313(3) and in the proposed amendment to ARM 17.24.313(1)(d). Premining topography maps have been submitted by operators for many years at the request of the Department because, as the commentor implies, these maps are required to determine AOC.

COMMENT NO. 3: Protection of the hydrologic balance must not be tied to postmining land use. Water is too precious to be tied to anything other than what was there previous to disturbance. Montana's rules must comply with the Surface Mining Control and Reclamation Act (SMCRA) which requires restoration of the hydrologic balance regardless of postmining land use.

RESPONSE: The proposed amendments to ARM 17.24.301(13)(c), (54), and (67) reflect enactment of HB 373 requiring the minimization of disturbances to the prevailing hydrologic balance at the mine site as necessary to support postmining land use. See 82-4-231(10)(k), MCA. If the Office of Surface Mining (OSM) determines that the provisions of the Montana Strip and Underground Mine Reclamation Act (MSUMRA) that are reflected in these amendments do not comply with SMCRA, MSUMRA and the amended rules would need to be revised accordingly.

COMMENT NO. 4: The proposed definition of "diversion" in ARM 17.24.301(33) is more narrow than the federal and the current state definitions. The proposed definition would remove supervision in the construction of diversions. Would all efforts to move water on a disturbed area then be an "ephemeral drainageway" rather than a diversion?

RESPONSE: The current federal and state definitions do not incorporate the concept of supervision in the definition. The proposed amendment to the definition of "diversion" would not result in the loss of oversight regarding the construction and maintenance of these features. The proposed amendment defines "diversion" to mean a channel, embankment, or other manmade structure constructed to divert undisturbed runoff around an area of disturbance and back to an undisturbed channel. This

definition does not exclude the possibility that the diversion itself could be located on an area of disturbance. A diversion is distinguishable from an "ephemeral drainageway." An ephemeral drainageway is a feature to be constructed as part of the postmine topography and does not have the purpose of diverting undisturbed runoff around an area of disturbance. The design and construction of all diversions must be certified by a licensed professional engineer under ARM 17.24.635(5).

COMMENT NO. 5: The proposed amendments do not set sideboards for the reclamation of ephemeral drainageways. The amendment to ARM 17.24.301(38) defining "ephemeral drainageway" should be clarified regarding the area of land covered, otherwise it may lead to reclamation that is far removed from the concept of approximate original contour. Other provisions in the rule package deal with drainage basins one mile square in relation to ephemeral streams. In addition, implementation of the definition of "ephemeral drainageway" may become very subjective. Finally, the proposed amendment deletes "channel bottom" from the definition of "ephemeral drainageway." Almost all ephemeral streams have channel bottoms that should be reconstructed. A channel bottom is the difference between a drainage constructed by nature and an empty irrigation ditch.

RESPONSE: The proposed amendment defining "ephemeral drainageways" in ARM 17.24.301(38) incorporates verbatim the definition of the term in 82-4-203(17), MCA. The Board has no authority to modify the definition of a term enacted by the Legislature. The only rule provisions that refer to "one square mile of land" are ARM 17.24.636(1) and (2)(a) that address temporary diversions. Amendments in this rule package propose to delete these provisions. The Board does not believe that omission of "channel bottom" from the definition will significantly affect reclamation of ephemeral drainageways. Specific requirements for drainage basin designs, including ephemeral drainageways, are set forth in ARM 17.24.313(1)(e) and (f). In addition, ARM 17.24.634 sets forth performance standards for drainage basins, retaining most of the current standards. Subjectivity will be limited by these requirements and performance standards.

COMMENT NO. 6: In regard to the amendment to the definition of the phrase "historically used for cropland" in ARM 17.24.301(53), there seems to be no justification in replacing "5" with the word "five" while leaving "10" as is in (a) and (b). Furthermore, the addition of (c) allows land that was not actually used for cropland to be considered "historically used for cropland" if it would likely have been used as cropland except for the existence of specified conditions. This amounts to historical fiction and makes more land eligible for farming.

RESPONSE: The convention for numerals in administrative rules is established by the Secretary of State's office and requires numbers one through nine to be spelled out while numbers 10 and greater are to be represented numerically. The definition proposed by the Board is identical to the definition

adopted by OSM in 30 CFR 701.5. Therefore, the Board is adopting the rule as proposed.

COMMENT NO. 7: The federal program requires changes in the postmining land use to be treated as a major revision. State rules need to make this requirement clear to mine operators. The federal regulation does not define "major revision" and delegates to state programs the authority to determine which revisions must meet notice, public participation and notice of decision requirements.

RESPONSE: In the current rules, a proposed change in postmining land use constitutes a major revision under ARM 17.24.301(63). Although this provision is not amended in this rule package, it is renumbered ARM 17.24.301(65).

COMMENT NO. 8: What is meant by the word "dedicated" in the definition of "fish and wildlife habitat" in ARM 17.24.301(64)(h)? All other definitions of land use say "land used for".

RESPONSE: "Dedicated" and "land used for" are synonymous in this context. The slightly revised definition in the rules is a quotation of that now found in MSUMRA, and both of these are identical to the OSM definition in 30 CFR 701.5. The Legislature chose to use the OSM definition.

COMMENT NO. 9: Maintaining "as determined by premining inventories" in the definition of "reference area" in ARM 17.24.301(103) would be a good idea. It seems like using premining inventories is a reasonable approach to locating reference areas.

RESPONSE: The amended definition of "reference area" in ARM 17.24.301(103) incorporates verbatim the definition in 82-4-203(44), MCA. The Board has no authority to modify the definition of a term enacted by the Legislature. Premining inventories, however, will still need to be used to identify reference areas that are representative of vegetation and related site characteristics occurring on lands exhibiting good ecological integrity pursuant to ARM 17.24.724(1).

COMMENT NO. 10: In the proposed amendment to ARM 17.24.302(1), the term "current" should be defined in light of the situation involving the permitted operation in the Bull Mountains.

RESPONSE: That situation was a transfer of a permit under 82-4-250, MCA. That statute provides for the transfer of a revoked permit and further provides that the Department cannot require new information unless it can show significant changes in baseline condition. A definition of "current" in the rules would not supersede 82-4-250, MCA.

COMMENT NO. 11: The proposed amendments renumbering ARM 17.24.303, 17.24.304, 17.24.308, 17.24.313, 17.24.626, and 17.24.1106 are unnecessary and inappropriate. If there is only one main heading (such as in these rules), it is inappropriate

to put a (1) in front of it and subsequently renumber the rest of the rule.

RESPONSE: The proposed amendments conform the rules to formatting requirements established by the Secretary of State's office.

COMMENT NO. 12: The proposed amendment to ARM 17.24.304(1)(i)(ii) deletes the requirement that an applicant set forth information on range trends in an application for an operating permit. The amendment to ARM 17.24.304(1)(l), however, requires an application to indicate historic land use and vegetation of the proposed permit area, which necessarily includes a discussion of range trends.

RESPONSE: The requirement that an application for a permit contain information on range trends was deleted from ARM 17.24.304(1)(i)(ii) because management by range sites, including the use of range trends, is no longer a conventionally accepted method. However, if the proposed permit area was historically rangeland, it may be appropriate to include a discussion of range trends in the information on historic use and vegetation required by ARM 17.24.304(1)(l).

COMMENT NO. 13: ARM 17.24.308(1)(b)(vii) should also require an application to contain a description of sites and associated access routes for environmental monitoring and data gathering.

RESPONSE: The Board agrees that all disturbances associated with environmental monitoring and data gathering should be described in the application and has amended the rule to require applications to contain the additional information.

COMMENT NO. 14: The amendment to ARM 17.24.313(1)(d) and 17.24.634 should expressly require the postmine topographical map to depict postmining drainage basins.

RESPONSE: The postmine topographical map required under ARM 17.24.313(1)(d) is a contour map, depicting elevations and surface configuration by means of contour lines. The contour lines themselves show where drainage channels and drainage divides are to be located in the reclaimed landscape. Therefore, expressly delineating the outline of drainage basins on the postmine topographic map is not necessary. While always implicitly required in practice, the postmining topographic map and approximate original contour requirements are expressly set forth in the amendment to ARM 17.24.634 to provide a complete list of the substantive requirements for reclaiming drainage basins.

COMMENT NO. 15: Proposed text in ARM 17.24.313(1)(e) on drainage basin reclamation plan requirements is vague and confusing and not quite consistent with the requirements in the Act that were adopted with passage of HB 373. The vagueness might result in subjective interpretation of these requirements by DEQ program staff, inconsistent application of the requirements, and permit application approval delays. The

commentor suggested replacement of the proposed language with the following:

17.24.313 RECLAMATION PLAN (1) Each reclamation plan must contain a description of the reclamation operations proposed, including the following information:

...

(e) a description of postmining drainage basin reclamation that ensures protection of the hydrologic balance, achievement of postmining land use performance standards, and prevention of material damage to the hydrologic balance in adjacent areas including:

(i) a comparison of pre- and postmining drainage basin size, drainage density, and drainage profiles as necessary to identify characteristics not distinguishable on the postmining topographic map;

(ii) a discussion, within drainage basins, of:

(A) how the plan meets each performance standard in ARM 17.24.634(1);

(B) requirements of 82-4-231(10)(k), MCA, and ARM 17.24.314 where the postmining topography differs from the premine as allowed by ARM 17.24.301(13)(c); and

(f) drainage channel designs appropriate for preventing material damage to the hydrologic balance in the adjacent area and to meet the performance standards of ARM 17.24.634(1) including:

(i) typical designs and/or discussions of general fluvial and geomorphic habit or characteristic pattern; or

(ii) detailed drainage designs for channels that contain critical hydrologic, ecologic or land use functions not already addressed in this rule such as alluvial valley floors, wetlands, steep erosive upland drainages, drainages named on USGS Quad maps, and intermittent or perennial streams. Detailed drainage designs include fluvial and geomorphic characteristics pertinent to the specific drainages being addressed.

RESPONSE: The Board agrees with the suggested replacement text with some additional changes. "Premining and" needs to be added before "postmining" in ARM 17.24.313(1)(e)(i) for grammatical correctness. For clarity, ARM 17.24.313(1)(e)(ii) will be reworded as shown above. In (1)(e)(ii)(B), "hydrologic function" will be replaced with "the requirements of 82-4-231(10)(k), MCA, and ARM 17.24.314 will be met" to specify the statutory provisions relevant to hydrologic function. In (1)(f), the order of (i) and (ii) will be reversed and the phrase "for all other channels" will be added to the beginning of new (1)(f)(ii) for clarity. In new (1)(f)(ii), the phrase "and other relevant functional characteristics" will be added to cover other channel attributes that may need to be considered. A few other miscellaneous changes have been made for consistent or improved wording or grammatical correctness. All of this has been included in the amended rule as shown above.

COMMENT NO. 16: Adoption of the Montana Department of Environmental Quality's proposed reclamation and reporting standards for drainages is needed.

RESPONSE: The Board interprets this to mean that the commentor supports the proposed amendment to ARM 17.24.313(1)(e) and 17.24.634 regarding drainage reclamation. While the Board appreciates the inferred support, the Board is significantly revising the original proposed amendment of ARM 17.24.313(1)(e) as discussed above. ARM 17.24.634 is amended as proposed.

COMMENT NO. 17: The proposed amendment in ARM 17.24.313(1)(e) on drainage basin reclamation plan requirements is non-site-specific and may result in a cookie cutter approach to ephemeral drainageway reclamation planning. This new provision will require much more pre-planning and, therefore, more staff time at the permit application stage, where there is pressure to process permits quickly. I am wondering how well some of these plans will hold up when they are implemented 20 or 30 years later. The rationale for placing stream planning process later in the mining and reclamation process (i.e., as currently written in ARM 17.24.634) was probably due to the thought that a more realistic assessment could be done at a later time.

RESPONSE: As discussed in the Response to Comment No. 15, the Board is adopting revised text for ARM 17.24.313. The amendment as revised will require more work at the permit application stage. However, the Board does not anticipate it will be burdensome to the point that it will require more staff to implement. It is quite likely that certain plans for drainage basin and channel reclamation, which are not scheduled for implementation for many years, will be amended, just as PMT and revegetation plans have historically been amended over time. It is anticipated that some operators may request to delay submitting detailed designs, where required, for drainages that will not be disturbed or reclaimed for many years. This could be accomplished with a permit stipulation. Therefore, while there is good reason to allow delay of detailed designs for some drainages, it is important that the Department obtain an appropriate level of information on drainage basin reclamation at the front end to facilitate review of the overall reclamation plan.

COMMENT NO. 18: The amendment to ARM 17.24.313(3)(e) deletes the requirement that a reclamation plan contain a plan for the early detection of grading problems. Why is a plan for early detection of grading problems not a good idea? Although providing notification to the Department of grading problems has been inserted into ARM 17.24.501(7), having a plan in the permit would call the operator's attention to the fact that this is its responsibility.

RESPONSE: Practice has proven that there is no feasible way to formulate specific plans for the early detection of grading problems. It is more straightforward and appropriate to

treat this as a performance standard, which is what is being required in the amendment to ARM 17.24.501(7).

COMMENT NO. 19: The rule amendment to ARM 17.24.323 would allow livestock grazing of reclaimed areas to become voluntary instead of mandatory. This is problematic because grazing is beneficial in facilitating the incorporation of dead plant material into the soil, improving soil quality and maintaining plant diversity on reclaimed lands. Required grazing of reclaimed areas also can allow ranchers in the Colstrip area to benefit by resting their lands while their livestock graze reclaimed lands. This can be important in periods of drought, which may allow a rancher to avoid reducing his herd.

RESPONSE: The Board agrees with the general sentiments expressed about the benefits of grazing. However, grazing should be a discretionary management tool used by mine operators to achieve the approved revegetation and postmining land use results. Implementation and management of grazing within a mine permit area should be the responsibility of the operator. If the operator fails to appropriately use grazing, the desired/approved revegetation land use results will probably not be obtained and Phase III bond release will not be realized. Despite the proposed elimination of ARM 17.24.323, the Board believes that considerable grazing will still take place on lands reclaimed to grazing land and pastureland. Regarding the benefits to some ranchers of the availability of reclaimed lands for grazing of their livestock, this is not a matter over which the Board has any authority or jurisdiction. Based on the expectation that considerable grazing will still occur under the proposed amendments, however, the Board would expect that substantial areas of reclaimed lands would still be available for the benefit of ranchers.

COMMENT NO. 20: In ARM 17.24.427(1), "a" should be inserted before "contractor responsible" for grammatical correctness.

RESPONSE: The Board agrees with the comment and has amended the rule accordingly.

COMMENT NO. 21: In ARM 17.24.501(4)(a), an "and" needs to be inserted before "compact" for grammatical correctness. The rule unnecessarily references both ARM 17.24.501(3) and (3)(b).

RESPONSE: The Board agrees with the comment and has amended the rule accordingly.

COMMENT NO. 22: The deletion of (3) under ARM 17.24.522 provides an open-ended time frame for reclamation to be completed. Paying for final reclamation upon mine closure is like paying for a dead horse; all of the profit is gone and there is nothing but expense. With no time frames to complete final reclamation, this can drag on and on. Ninety days may be too short, but certainly some time frame should exist as an incentive to finish the job. The provision to keep reclamation

equipment on site until reclamation is completed should be retained.

RESPONSE: The ninety-day time frame for backfilling and grading provided for in ARM 17.24.522(3) is inconsistent with ARM 17.24.501(6)(b), which requires backfilling and grading to be completed within two years after coal removal has been completed. Deletion of the ninety-day provision in ARM 17.24.522(3) and retention of the two-year provision in ARM 17.24.501(6)(b) provides a realistic period for completion of backfilling and grading. Thus, the period of completion of the backfilling and grading requirements is not open-ended.

Although ARM 17.24.501(1) requires retention of equipment on site that is necessary for backfilling and grading, a provision proposed to be deleted in the amendment of ARM 17.24.522(3) is more broad, requiring retention of all equipment that is necessary to complete reclamation. The Board agrees with the commentor that this provision should not be deleted and has revised the amendment accordingly.

COMMENT NO. 23: The amendments to ARM 17.24.501 do not address the situation at the Rosebud Mine, where little coal has been removed from one of the pits. The Department has not determined that these operations are completed nor is reclamation in those pits proceeding under ARM 17.24.501.

RESPONSE: The commentor's statement does not address the substance of ARM 17.24.501 and, therefore, is outside the scope of this rulemaking procedure. The Board invites the commentor to contact the Department's coal program to discuss the matter.

COMMENT NO. 24: Regarding the amendment to ARM 17.24.602(1), how would an inspector know where the road and railroad were to be located if they are not marked on the site prior to the pre-inspection?

RESPONSE: The inspectors would use the mine plan and premining topography maps to locate the sites of proposed roads or railroad loops.

COMMENT NO. 25: With regard to the proposed amendment to ARM 17.24.605(8), would riprap used in an ephemeral channel for construction of a railroad act as a dam to flow in the channel?

RESPONSE: The Board agrees with this comment and will revise the amendment by inserting the phrase "for roads" after "Riprap may be used." This revision will confine the use of riprap to roads only, where there is adequate flexibility in the construction of roads to avoid the damming of ephemeral channels.

COMMENT NO. 26: The coal rules must continue to observe at least a one-mile blasting radius.

RESPONSE: The proposed amendment of ARM 17.24.623(2), requires copies of blasting schedules to be distributed to local governments, public utilities, and residences within 1/2 mile of the permit area rather than within one mile of the permit area as currently required. Blasting does not normally impact areas

more than 1/2 mile away, and therefore the purpose of this rule would not be served by continuing to send blasting schedules to agencies or residences beyond 1/2 mile from the permit area. The amendment has, therefore, been adopted as proposed.

COMMENT NO. 27: The amendment to ARM 17.24.623(5)(b) deletes the requirement that blasting areas be reasonably compact and not larger than 300 acres. Deletion of these requirements would contribute to the wasting of coal by prematurely exposing it to weathering.

RESPONSE: The purpose of ARM 17.24.623(5)(b) is not to limit the area that an operator may blast at one time and the current language of that rule provision does not contain such a restriction. Rather, the purpose of ARM 17.24.623(5)(b) is to provide a method for providing public notice of blasting activities. The current requirement that the public notice must identify a blasting area that is reasonably compact and is not larger than 300 acres has resulted in public notices containing lengthy and complicated legal descriptions. Removing the 300-acre restriction simplifies the legal description which makes it easier to understand.

COMMENT NO. 28: ARM 17.24.624(14) should be amended to make it consistent with the proposed amendments to ARM 17.24.624(6)(a), (7)(a), and (11).

RESPONSE: The Board agrees with the comment and has amended the rule accordingly.

COMMENT NO. 29: ARM 17.24.626(1)(d) should be amended to make it consistent with the proposed amendments to ARM 17.24.624(6)(a), (7)(a), and (11).

RESPONSE: The Board agrees with the comment and has amended the rule accordingly.

COMMENT NO. 30: State rules need to include objective hydrologic balance tests for bond release. There are 3-D computer model programs such as the USGS's MODFLOW ground water modeling program which could be used for this purpose. Application of modeling to reclaimed surface and ground water systems in conjunction with monitoring data could be used to test field performance necessary for bond release.

RESPONSE: Section 82-4-231(10)(k), MCA sets forth specific requirements with which an operator must comply to protect the hydrologic balance at the mine site and adjacent areas. These requirements address acid mine drainage, contributions of sediment to streamflow or runoff outside the permit area, removal of siltation structures following successful reclamation, restoration of the recharge capacity, avoidance of channel deepening, preservation of the hydrologic functions of the alluvial floor, and construction of intermittent and perennial stream channels. The Board has adopted rules implementing these criteria in ARM 17.24.631 through 17.24.652.

COMMENT NO. 31: The proposed amendment to ARM 17.24.633(2) conflicts with SMCRA by tying water quality to postmining land use. Postmining land use cannot be used to allow impairment of the hydrologic balance.

RESPONSE: The proposed amendment to ARM 17.24.633(2) does not include "hydrologic balance" or "water quality" in the text, and thus, does not tie postmining land use to these terms. However, there is a tie between hydrologic balance and postmine land use in the proposed rule amendments to ARM 17.24.301(13)(c), (54), and (67). These proposed amendments reiterate statutory provisions enacted in HB 373. See 82-4-231(10)(k), MCA. If OSM determines that these statutory provisions do not comply with SMCRA, the rule provisions incorporating the statutory language will have to be amended accordingly.

COMMENT NO. 32: The proposed amendment to ARM 17.24.634 does not seem to give much consideration to reclaiming drainage basins to their approximate original contour. Rather, achievement of the postmining land use seems to be the controlling factor, an approach that seems to conflict with SMCRA. Additionally, engineering and channel layout requirements, including the submission of a design based on sound geomorphic and engineering principles prior to reclamation of the drainage basin, have been largely deleted from ARM 17.24.634 and have not been reinserted by the proposed amendment to ARM 17.24.313(1)(e). Finally, the proposed amendment to ARM 17.24.634 deletes the requirement that the average gradient of a reclaimed channel exhibit a concave longitudinal profile.

RESPONSE: The proposed amendments to ARM 17.24.634 retain the requirement that reclaimed drainage basins (including channels) be constructed to the approximate original contour. Subsection (1)(a) requires drainage basins to be constructed in compliance with the approved postmining topographic map which, under 82-4-222(1)(o)(iii), MCA, must depict projected elevations of primary drainageways and associated drainage divides and generalized slopes with the level of detail appropriate to project the approximate original contour. Additionally, (1)(b) of ARM 17.24.634 specifically requires drainage basins to be constructed to the approximate original contour. The requirements in (1)(h) and (i) that the reclaimed drainages restore a diversity of habitats that achieve the approved postmine land use and exhibit dimensions and characteristics that will accommodate the postmine land use does not negate the approximate original contour requirement.

SMCRA and the federal regulations implementing SMCRA do not have provisions directly addressing the reclamation of drainage basins that would serve as a counterpart to ARM 17.24.634. The basic principle in SMCRA that would govern reclamation of drainage basins is protection of the hydrologic balance on the mine site and in adjacent areas. This principle is reflected in the amendments to ARM 17.24.634(1)(c) by the reference to 82-4-231(10)(k), MCA.

The design requirements for reclaimed channels that had been set forth in ARM 17.24.634(2) have been restated and are included in ARM 17.24.313(1)(e). As asserted by the commentor, ARM 17.24.313(1)(e) does not specifically require the designs to be based on sound geomorphic and engineering principles. However, ARM 17.24.313(1)(e) and (f) and 17.24.634 include text regarding designs or construction to fluvial and geomorphic habit, characteristic pattern, and other relevant functional characteristics. The only specifically missing standard is designing to "sound engineering principles." The Board believes that this requirement is implicit and does not need to be specifically stated. There is a level of engineering that is assumed to apply to many aspects of reclamation but is not specifically required in the applicable rules (Operations Plan, ARM 17.24.308; Reclamation Plan, ARM 17.24.313; General Backfilling and Grading Requirements, ARM 17.24.501; Cut and Fill Terraces, ARM 17.24.502; Disposal of Offsite-Generated Waste and Fly Ash, ARM 17.24.510; Highwall Reduction, ARM 17.24.515; and Other Support Facilities, ARM 17.24.609). The proposed amendment to ARM 17.24.634 retains the requirement that a reclaimed channel exhibit a concave longitudinal profile. The requirement is set forth in (1)(g).

Finally, the Board does not agree that the requirements of this rule are subordinate to the postmining land use. "Postmining land use" has been inserted in (1)(h) and (i). However, the Board does believe that the text in (1)(h) needs to be modified to more accurately relate the establishment or restoration of a diversity of habitats to the postmining land use. Therefore, "achieve" will be replaced with "are consistent with."

COMMENT NO. 33: In ARM 17.24.634(1)(e), the proposed amendment to "six-hour precipitation event" should be revised to "6-hour precipitation event". According to Shipley's Style Guide, Writing in the World of Work, 1990, page 153, numerals are to be used for any number expressing measurements.

RESPONSE: The Secretary of State's formatting standards require that the numbers one through nine be spelled out and the numbers 10 and above be set out numerically. The Board complies with this requirement and is adopting the language as proposed.

COMMENT NO. 34: In regard to ARM 17.24.634(1)(f), how far afield will the Department go to find an "unmined landscape", 100 miles, 10 miles, or lands adjacent to the mine?

RESPONSE: The amendment to ARM 17.24.634(1)(f) requires reclamation of drainage basins to a condition that is comparable to an unmined landscape with similar climate, topography, vegetation and land use. Because the unmined landscape must have similar climate, topography, vegetation and land use, it is anticipated that the "unmined landscape" used as a reference will be in the general vicinity of the mine site.

COMMENT NO. 35: Should the title of ARM 17.24.635 be revised to recognize that the term "ephemeral stream" has been changed to "ephemeral drainageway" in ARM 17.24.301(38)?

RESPONSE: The Board agrees with the comment and has amended the rule accordingly.

COMMENT NO. 36: In ARM 17.24.639(1)(e), the rule reference needs to be corrected to ARM 17.24.642(7).

RESPONSE: The reference is intended to be to the portion of ARM 17.24.642 that deals with review of modifications, which is (2). The Board agrees with the suggested change and has amended the rule accordingly.

COMMENT NO. 37: In ARM 17.24.639(7), a more grammatically correct and clearer term for the word "using" in "using embankments" would be "having."

RESPONSE: The Board agrees with the comment and has amended the rule accordingly.

COMMENT NO. 38: In ARM 17.24.639(7)(a), the proposed change from "principal" to "principle" regarding spillways is grammatically incorrect. "Principal" is the correct word because it means main or primary, which is the context of the word here.

RESPONSE: The Board agrees with the comment and has amended the rule accordingly.

COMMENT NO. 39: In ARM 17.24.639(28)(a), the proposed amendment includes rule section references. Section (22) needs to be added to make this list of references complete.

RESPONSE: The Board agrees with the comment and has amended the rule to include the suggested cross-reference.

COMMENT NO. 40: I interpret ARM 17.24.642 to mean that permanent impoundments cannot have a combination of principal and emergency spillways? The only spillway that could safely pass the flood standard would be an open grassed or riprapped spillway. For safety reasons, debris in a flood must be considered in the design of permanent pond spillways.

RESPONSE: ARM 17.24.642 does not preclude a permanent impoundment from having a principal and emergency spillway. The salient requirement is that a permanent impoundment have a spillway (referred to as an emergency spillway in the rules) that is able to safely pass the 100-year, 24-hour design event. Such a spillway would be sufficient if it were the impoundment's only spillway. The impoundment, however, may also have a "principal" spillway designed under ARM 17.24.639(7). Nevertheless, the Board believes that the use of the term "emergency spillways" in the proposed amendment of ARM 17.24.642(1) is confusing. Thus, the word "emergency" has been deleted from the proposed amendment.

Flood debris is considered in the design of all impoundments, permanent or temporary, under ARM 17.24.639(3). The Board agrees that all permanent impoundments must have open-

channel spillways and has revised the rule amendment accordingly.

COMMENT NO. 41: The proposed amendment to ARM 17.24.642(1)(i) deletes safety factor requirements that were applicable to permanent impoundments.

RESPONSE: Although ARM 17.24.642(1)(i) has been deleted, permanent impoundments remain subject to safety factor requirements. Pursuant to ARM 17.24.642(2), permanent impoundments must meet the design and performance requirements of ARM 17.24.639, including minimum seismic and static safety factors required under (16).

COMMENT NO. 42: In ARM 17.24.642(5)(b), the cross referenced rules need to be revised to reflect the proposed rule amendments. Subsections (4)(a), (4)(d) and (6) need to be added, (5)(a) and (5)(c) need to be deleted, and (22) needs to be added in line 5.

RESPONSE: The Board agrees that certification reports for flood control impoundments with embankments need to only include the statements required under (4)(a) and (4)(d). Instead of adding (4)(a) and (4)(d) to the referenced rules as suggested by the commentor, however, the Board has replaced the reference to (4) with references to (4)(a) and (4)(d). The Board agrees that the inspection requirements set forth in (6) should apply to flood control impoundments with embankments and has amended the rule accordingly. The Board further agrees that (5)(a) should be deleted because it does not contain inspection, maintenance and certification report requirements and that (5)(c) should be deleted because the requirements for excavated flood control impoundments are not applicable to flood control impoundments with embankments. The Board has amended the rule accordingly. Finally, the Board disagrees that a reference to (22) needs to be added. A reference to a rule provision includes all subsections under that rule provision. Therefore, the Board has deleted the references to ARM 17.24.639(22)(a) and (b).

COMMENT NO. 43: In ARM 17.24.642(5)(d), the cross reference to ARM 17.24.639(27)(b) needs to be corrected to ARM 17.24.639(28)(b) and the cross-references at the end of the provision should be corrected to (4)(a), (4)(c) and (4)(d).

RESPONSE: Pursuant to the adoption of this rule package, ARM 17.24.639(27)(b) is being renumbered ARM 17.24.639(28)(b). Furthermore, the statements required to be set forth in certification reports under (4)(a), (4)(c) and (4)(d) should be included in certification reports for excavated flood control impoundments addressed in ARM 17.24.642(5)(d). The Board, therefore, agrees with the comment and has amended the rule accordingly.

COMMENT NO. 44: The proposed amendment to ARM 17.24.642(5)(e) incorrectly implies that the Department is constructing the flood control impoundments.

RESPONSE: The Board agrees with the comment and has reworded the amendment accordingly.

COMMENT NO. 45: ARM 17.24.646(4) should be amended to clarify that the Department's review is of requests for the removal of water quality or flow control systems.

RESPONSE: The Board agrees with the comment and has amended the rule accordingly.

COMMENT NO. 46: The proposed amendment to ARM 17.24.711 should include vegetation standards for each new land use sanctioned by HB 373.

RESPONSE: The proposed amendment to ARM 17.24.711 incorporates verbatim the vegetation standards set forth in 82-4-233, MCA, for the postmine land uses in which vegetation plays an integral role. The proposed amendment to ARM 17.24.726 also provides additional and supplmentary standards. The reference in the comment to "each new land use sanctioned by HB 373" implies that the Montana program has not previously recognized any of the alternative land uses. This is incorrect. All of the land uses now listed in MSUMRA have been recognized in the Montana rules since 1980. HB 373 has removed some of the major restrictions in the selection of postmining land use that were originally in place.

COMMENT NO. 47: The difference between the vegetation standards for pastureland and grazing land is not clear. Pastureland can be either irrigated or dryland. Some introduced pastureland species would be undesirable in a dryland situation (e.g. cheat grass and smooth brome do not produce well in a dryland situation but are very persistent). Standards for determining what species are appropriate for the various postmining land uses should be set forth. Using a case-by-case approach in each permit gives opportunities for manipulation and drifting away from SMCRA standards.

RESPONSE: In enacting HB 373, the Legislature established the same vegetation criteria for lands reclaimed for the postmine land uses of grazing and pastureland. The general applicable vegetation standards are set forth in 82-4-233(1) and (2), MCA. The vegetation criteria specifically applicable to lands reclaimed to pastureland or grazing land are set forth in 82-4-233(3)(b), MCA, and require the reestablished vegetation to have use for grazing by domestic livestock at least comparable to premining conditions or enhanced when practicable. These vegetation standards for pastureland and grazing land have been incorporated verbatim in the administrative rules in the proposed amendment to ARM 17.24.711. The acceptability of species for reclamation to pastureland are evaluated under 82-4-232(8), MCA, and ARM 17.24.762, 17.24.821 and 17.24.823. The Department has historically developed recommendations regarding species that are appropriate for grazing and pastureland.

COMMENT NO. 48: Section 515(b)(19) of SMCRA reads: "... establish on the regraded areas, and all other lands affected, a

diverse, effective, and permanent vegetative cover of the same seasonal variety native to the area of land to be affected and capable of self-regeneration and plant succession at least equal in extent of cover to the natural vegetation of the area; except, that introduced species may be used in the revegetation process where desirable and necessary to achieve the approved postmining land use plan." It is clear that SMCRA states a preference for the use of native species, and the use of introduced species is to be an exception, not having equal status as the conjunctive clause in ARM 17.24.711(1)(b) would indicate.

RESPONSE: The proposed amendment to ARM 17.24.711(1)(b) reflects enactment of HB 373 and is essentially identical to 30 CFR 816.111(a)(2). Thus, the use of introduced species relative to native species is the same in the proposed Montana rules and OSM regulations.

COMMENT NO. 49: I think that ARM 17.24.711(1)(d) will not be approved because SMCRA requires soil erosion to be controlled with the best available technology.

RESPONSE: The proposed amendment to ARM 17.24.711(1)(d) reflects enactment of HB 373, which inserted this language in 82-4-233(1)(d), MCA. The Board has no authority to adopt a rule that is inconsistent with this statute. If the Office of Surface Mining disapproves the provision of HB 373 reflected in the amendment to ARM 17.24.711(1)(d), the Board will be required to amend the rule accordingly.

COMMENT NO. 50: In reference to ARM 17.24.711(3), what does "programmatic basis" mean?

RESPONSE: This means determining specifications for cover, planting, and stocking of vegetation on a broad, program-wide basis that can then be applied to various site-specific circumstances.

COMMENT NO. 51: Who will determine and how will the appropriate stocking rates for fish and wildlife habitat be determined? Does use for grazing land at least comparable to premining conditions include having trees available on reclamation for livestock to escape heel flies in hot weather?

RESPONSE: The Department will determine appropriate stocking rates for fish and wildlife habitat after consultation and with the approval of the Department of Fish, Wildlife and Parks, pursuant to ARM 17.24.711(3)(a). Stocking rates will be determined on the basis of the requirements of ARM 17.24.313(1)(g), 17.24.717, 17.24.726 with reference to selection of reference areas or technical standards for the revegetation types involved and ARM 17.24.751. If it was appropriate in any site-specific situation, trees on grazing land for cattle shade or insect-escape purposes could be included.

COMMENT NO. 52: The deleted text in ARM 17.24.714 removes a required practice (applying mulch and cover crops as soon as

possible) that some operators may use automatically, but others may not. This plainly tells operators what is expected of them.

RESPONSE: While the proposed amendment to ARM 17.24.714 retains the requirement that operators use practices such as seedbed preparation, mulching or cover cropping on regraded and resoiled areas, it is unnecessary to state that these practices be employed as soon as practical in the Department's experience. If the operator fails to implement these practices as soon as practical and impacts result, such as erosion or sedimentation, the Department can require the operator to take corrective action.

COMMENT NO. 53: In reference to the amendment to ARM 17.24.716(1), if productivity levels recover promptly, should that not lead to more rapid bond release? Vegetation establishment is not the same as productivity level. It appears that productivity levels are not germane to cropland.

RESPONSE: The amendment to ARM 17.24.716(1) is deleting the reference to production levels because production level standards are addressed elsewhere. Thus, while the Board agrees that production level recovery affects bond release and that vegetation establishment is not the same as production levels, this does not provide a basis for retaining the reference to production levels in ARM 17.24.716(1). Productivity levels are relevant in determining the success of reclamation to the postmine land use of cropland. Section 82-4-235(1)(a), MCA, and ARM 17.24.726(2) provide standards for evaluating the success of reclamation to cropland based on productivity. While it is important to promptly establish vegetation to control erosion with species that are necessary for the postmining land use, productivity itself is not specifically targeted for assessment until Phase III bond release, which occurs a minimum of 10 years after final seeding.

COMMENT NO. 54: In ARM 17.24.718, what happens if normal husbandry practices are ineffective in establishing vegetation consistent with the approved reclamation plan?

RESPONSE: If normal husbandry practices do not work in a given situation, the operator would need to use measures such as landscape reconfiguration or reseeding/replanting that would restart the responsibility period to get the desired result.

COMMENT NO. 55: In ARM 17.24.723(1), the reference to ARM 17.24.313(1)(g)(iii) needs to be corrected to ARM 17.24.313(1)(g)(ix).

RESPONSE: The Board agrees with the comment because ARM 17.24.313(1)(g)(ix) is the provision that requires a plan for monitoring and has amended the rule accordingly.

COMMENT NO. 56: The proposed amendment to ARM 17.24.723(3) requires the operator to develop corrective measures when vegetation is not being successfully established without requiring the operator to inform the Department of the corrective measures. The Department will be the judge of the

operator's effectiveness in complying with the permit, and can assist the operator in moving in the right direction regarding the establishment of vegetation.

RESPONSE: The Department will be informed of any corrective measures that operators implement in the annual reports filed pursuant to ARM 17.24.1129. The Department also will be made aware of the corrective measures in the course of regular inspections of the mines during which operators often ask for Departmental input and advice on a variety of issues. Thus, the Department will be informed and involved, but without a defined formal process.

COMMENT NO. 57: Given the potential for cropland to be an alternative postmine land use under the amendment adding new Rule I, what are the tests to determine the required productivity levels of cropland?

RESPONSE: Pursuant to 82-4-235(1)(a), MCA, for areas reclaimed for use as cropland, crop production must be at least equal to that achieved prior to mining based on comparison with historical data, comparable reference areas or United States Department of Agriculture publications applicable to the areas of the operations, as referenced in rules adopted by the Board. ARM 17.24.724 governs the use of reference areas and technical standards (including use of historical data and data contained in federal publications). ARM 17.24.726(2) provides that production is considered to meet the required standard if it is equal to 90% of the standard with 90% statistical confidence, using an appropriate one-tail test with a 10% alpha error.

COMMENT NO. 58: ARM 17.24.724(2) inappropriately deletes the word "unmined" before "reference area".

RESPONSE: The Board agrees and the rule has been amended accordingly.

COMMENT NO. 59: The federal program requires reclaimed vegetation to pass normative and objective productivity tests. The normative test for cropland productivity is bushels or tons per acre and for native range and planted pasture is animal unit months grazed. Measurement of water and nutrient cycling, energy flow, and biotic community are also normative productivity tests in wide use today. State rules must provide for objective reclamation vegetation productivity standards for bond release.

RESPONSE: Productivity standards for cropland, grazing land, and pastureland are found in the proposed amendment to ARM 17.24.726 which incorporates the standards set forth in 82-4-235(1), MCA. These standards are equivalent to federal standards set forth in 30 CFR 816.116(b). Neither the OSM rules nor state rules include (or propose to include) animal unit months, nutrient cycling, energy flow, or biotic community measurements in the form of a standard.

COMMENT NO. 60: Any changes that HB 373 and the proposed rules allow would be governed by 82-4-232(8), MCA. Therefore,

in most cases, cropland, pastureland, recreational, residential, commercial, industrial, etc. will not have any particular vegetation standards, if existing permits are amended to "higher or better uses".

RESPONSE: The assertion that there are no vegetation standards for the state list of land uses is incorrect. These are covered in 82-4-233 and 82-4-235, MCA, and ARM 17.24.726.

COMMENT NO. 61: ARM 17.24.726(3) would require vegetation sampling in two of the last four years of the Phase III bonding period. It also would require that the performance standards be met at the time of the Phase III bond release inspection. If the bond release inspection were delayed for a year or two from the last sampling date, there is concern that DEQ would require further quantitative sampling at the time of the bond release inspection to verify that the standards were still being met. Thus, the last sentence in ARM 17.24.726(3) is proposed to be amended as follows: "Pursuant to ARM 17.24.1113(1), the department shall evaluate the reclamation at the time of the bond release inspection to confirm the findings of the quantitative data."

RESPONSE: The Board agrees with the comment and has amended the rule accordingly. The Board has also clarified that the bond release inspection is for Phase III.

COMMENT NO. 62: With regard to ARM 17.24.726(3), does the operator have any responsibility for vegetation during Phase IV bond release? Is there a place here for minimal standards for field and lab methods to be used in permits so that all mines have a level playing field that is readily ascertainable?

RESPONSE: The operator would have responsibility for vegetation in Phase IV bond release only insofar as ARM 17.24.1116(6)(d)(i), as amended, requires all lands within any designated drainage basin to have been reclaimed in accordance with Phase I, II, and III requirements before the drainage basin is eligible for Phase IV bond release. In regard to minimal standards for field and lab methods, ARM 17.24.302(2) requires all tests, analyses, surveys and data collection to be performed or certified by a qualified person using scientifically valid techniques. However, as provided in (1), the operator may propose other methods and the Department will approve them if they provide an acceptable method of measurement. This provides flexibility for operators. Pursuant to (2), the Department has historically developed recommendations regarding acceptable field and laboratory methods.

COMMENT NO. 63: One of the rules requiring 51% native species to meet SMCRA standards is being changed. ARM 17.24.728 also is slated for repeal and it barely meets SMCRA standards as it is.

RESPONSE: The only rules that contain the 51% native species standard are ARM 17.24.726 and 17.24.728. The proposed amendment to ARM 17.24.726 and the repeal of ARM 17.24.728 implements the enactment of HB 373, providing for the less

restrictive use of introduced species and no longer requiring the vegetation to be predominantly native species. Neither SMCRA nor the federal regulations have a 51% native species standard.

COMMENT NO. 64: Because of the variableness of nature, the only reasonable standards for revegetation would be to compare it to similar vegetation on nearby land. These reference areas must not be stricken from the rules.

RESPONSE: Reference areas are not being stricken from the rules. Under the proposed rule amendments, the use of reference areas is required in ARM 17.24.724(1).

COMMENT NO. 65: The federal program disallows "impractical" alternative land uses. State rules need to include an impracticality assessment on any plans to reclaim lands to industrial parks or residential use instead of agriculture.

RESPONSE: Section 82-4-232(8)(a)(iii), MCA, is virtually identical to 30 CFR 816.133(c)(3)(i) and requires an alternative land use to be not impracticable or unreasonable. The proposed rule amendments to ARM 17.24.821 and 17.24.823 that address alternative postmining land uses include references to this provision of MSUMRA and also require a demonstration that the proposed alternative land uses are feasible. A demonstration of feasibility must be shown for all proposed alternative land uses, including agriculture reclamation such as cropland or pastureland.

COMMENT NO. 66: How are revegetated areas to be managed when the approved postmining land use is commercial, industrial, residential, or recreational?

RESPONSE: There is no requirement in MSUMRA or SMCRA for "management" of vegetation associated with these land uses other than to manage the vegetation to support the postmining land use, to control erosion, and to achieve vegetation comparable to reference areas if reference areas are used. If these were proposed as alternative land uses, then any management plans might be included or suggested case-by-case as a result of review and evaluation under the requirements of 82-4-232(8), MCA, and ARM 17.24.821 and 17.24.823.

COMMENT NO. 67: In ARM 17.24.821(2), the reference to ARM 17.24.824(1)(f) needs to be deleted because that rule is proposed for repeal.

RESPONSE: The Board agrees with the comment and has amended the rule accordingly.

COMMENT NO. 68: The provisions of ARM 17.24.821(2) and 17.24.1301(2) appear to be in conflict regarding whether proposed land use changes are major or minor revisions. It looks like ARM 17.24.1302 is an effort to evade the public review requirements for land use changes that would occur if viewed as major revisions.

RESPONSE: ARM 17.24.301(65)(b) and 17.24.821(2) indicate that proposed postmining land use changes are major revisions subject to public review requirements. ARM 17.24.1301(2) indicates that permit revisions required to bring permits into compliance with the rules as amended are minor revisions. A proposed revision changing the approved postmine land use would not be made for the purpose of bringing the permit into compliance with the amended rules and, therefore, is not governed by ARM 17.24.1301.

COMMENT NO. 69: The provision in the amendment to ARM 17.24.823(1)(c) that allows appropriate letters of commitment from parties other than the operator to demonstrate the feasibility of alternative land use plans is a good idea. The state should also have a letter of release from the operator and/or the ultimate landowner indicating that the state is absolved of responsibility if the alternative land use is unsuccessful. If the state issues final bond release, the state is warranting that the reclaimed land has successfully met the standards of the prescribed land use.

RESPONSE: The commentor correctly states that the Department issues bond release based on a determination that the reclaimed land has successfully met the standards of the prescribed land use, which would include grazing land and cropland. More broadly, the Department may only issue final bond release if MSUMRA and the administrative rules adopted under MSUMRA have been met. Assuming that the Department has followed all of the required procedures and has evaluated the reclaimed land in accordance with all of the applicable standards and requirements, there is no need to obtain a letter of release from the operator and/or landowner.

COMMENT NO. 70: It is entirely possible that alternative land uses may fail. ARM 17.24.825, the rule that New Rule I replaces, had "fall-back" provisions to address a failure to achieve production standards for cropland. The proposed addition of New Rule I makes no provision for such a failure.

RESPONSE: The Board agrees that an operator may fail to achieve the required standard for an alternative postmine land use such as cropland or grazing land. In that event, a remedy is available to the Department under the amendment to ARM 17.24.1202. Section (4) of that rule allows the Department to order the operator to immediately investigate and determine the cause of a failure to establish successful reclamation and to submit an investigative report to the Department with a prescribed course of corrective action. Furthermore, the Department retains an operator's reclamation bond until the bond release standards are met. If they are not met and the operator defaults on its obligations, the Department revokes the bond and completes reclamation.

COMMENT NO. 71: In ARM 17.24.1018(9), the proposed addition of "(p)" to the list of provisions that do not apply to operations under this rule is erroneous. ARM 17.24.1001(2)(p)

requires proposed post disturbance land use to be set forth in an application for a permit. Specification of the proposed post disturbance land use needs to be included in an application for a notice of intent.

RESPONSE: The Board agrees with the comment and has deleted the reference to ARM 17.24.1001(2)(p).

COMMENT NO. 72: In ARM 17.24.1109(1)(e)(iii), a set of parentheses must be added to enclose "(total stockholders equity ... or more").

RESPONSE: The Board agrees with the comment and has amended the rule accordingly.

COMMENT NO. 73: In ARM 17.24.1109(1)(h), the term "as provided by" should be changed to "consistent with".

RESPONSE: The Board agrees that the phrase "as provided in (1)(d)" is confusing, but does not believe that replacing the phrase with "consistent with (1)(d)" adds clarity. ARM 17.24.1109(1)(h) contains a stand-alone requirement for letters of credit. Therefore, the Board has amended the proposed rule to delete the reference to (1)(d).

COMMENT NO. 74: I think ARM 17.24.1116(6)(b)(iii) will run into problems similar to ARM 17.24.633 regarding making erosion and water quality dependent upon postmining land use.

RESPONSE: This provision does not make a connection between erosion and water quality and postmining land use. "Erosion" and "water quality" are not found in this provision, and the term "postmining land use" is stated as an independent factor among many listed in this provision.

COMMENT NO. 75: The internal catchphrases proposed for deletion in the amendment to ARM 17.24.1212 provide a fast and efficient way to find topics under this rule.

RESPONSE: The internal catchphrases are being deleted from the rule to meet Secretary of State formatting standards.

COMMENT NO. 76: In ARM 17.24.1301(1), the phrase "subchapters 5 through 10" needs to be revised to "subchapters 3 through 12" to include rule amendments in all subchapters that may be pertinent to the requirement in (1) to revise permits, and also to be consistent with the subchapters 3 through 12 requirement in (3) of this rule.

RESPONSE: The Board agrees with the comment and has amended the rule accordingly.

COMMENT NO. 77: The Montana rules must not include less stringent requirements than the federal Surface Mining Control and Reclamation Act.

RESPONSE: The Board agrees with the comment. Many of the proposed amendments reflect the enactment of HB 373 by the 2003 Montana Legislature. If the Office of Surface Mining disapproves any of the changes to state law enacted by HB 373 that have been reflected in the proposed rule amendments, the

Board will be required to make additional amendments to the rules.

COMMENT NO. 78: Reclamation should be based on sound science and specifically stated high standards. Reclamation should promote best management practices. Water is so important in our arid region. Coal companies must be required to reclaim and restore disturbed waterways and wetlands to the highest standards. By setting high standards, mining companies, the public and state agencies know what is expected. By retaining high standards, our land, water, wildlife, and agricultural economy will be preserved, while at the same time we can responsibly develop our state's natural resources.

RESPONSE: The Legislature has set reclamation standards for coal mines through enactment and subsequent amendment of the Montana Strip and Underground Mine Reclamation Act (MSUMRA). The Board is charged with adopting rules that implement these reclamation standards. Ultimately, MSUMRA and the rules adopted under MSUMRA must be at least as stringent as federal law.

COMMENT NO. 79: Alternative land uses, while possibly appropriate, should be specifically spelled out and defined.

RESPONSE: The phrase "alternative land use" does not need to be defined by administrative rule because the concept is adequately addressed by statute. Section 82-4-232(8)(a), MCA, allows an operator to propose a "higher or better use" as an alternative postmining land use. Section 82-4-203(23), MCA, defines "higher or better uses" as "postmining land uses that have a higher economic value or non-economic benefit to the landowner or the community than the premining land uses." Potential alternative land uses could be any of the land uses defined in MSUMRA, including cropland (82-4-203(13), MCA), developed water resources (82-4-203(16), MCA), fish and wildlife habitat (82-4-203(20), MCA), forestry (82-4-203(21), MCA), grazing land (82-4-203(22), MCA), industrial or commercial (82-4-203(26), MCA), pastureland (82-4-203(37), MCA), recreation (82-4-203(43), MCA), or residential (82-4-203(46), MCA).

COMMENT NO. 80: Grazing standards must be included in the rules.

RESPONSE: The standard for reclaiming disturbed areas for pastureland or grazing land is set forth in statute. Section 82-4-233(3), MCA, provides that the reestablished vegetation for pastureland or grazing land must have use for grazing by domestic livestock at least comparable to premining conditions or enhanced when practicable. Section 82-4-235(1)(b), MCA, provides that the extent of ground cover and production of living plants on areas reclaimed for use as pastureland or grazing land must be at least equal to that of a reference area or other standard approved by the Department as appropriate for the postmining land use. Finally, the proposed amendment to ARM 17.24.724 indicates that comparison of the vegetation of reclaimed areas to the appropriate standard must be based on equivalent management of the reclaimed areas and the reference

area or lands from which an appropriate standard is derived; such management would include grazing for grazing land and pasture land.

COMMENT NO. 81: Many of the suggested amendments to the rules are formulas that are geared to process rather than results and would, at best, get good results on a sometimes basis. Process is no substitute for standards.

RESPONSE: The Board disagrees that the proposed amendments do not provide sufficient standards with which to judge the success of reclamation. The amended rules would continue to provide standards for backfilling and grading (ARM 17.24.501), highwall reduction (ARM 17.24.515), drainage basins (ARM 17.24.634), soils (ARM 17.24.701 and 17.24.702), vegetation (ARM 17.24.711, 17.24.716, 17.24.717, 17.24.724 and 17.24.726) and wildlife (ARM 17.24.751).

COMMENT NO. 82: Since the provisions of HB 373 are still under review by OSM, this rulemaking is premature. Some of the provisions of HB 373 are not in compliance with SMCRA, one of the more important being whether postmining land use should determine how the water resource is reclaimed. I do not think that OSM will look favorably on reclamation as a mere process to release bond automatically after grading, topsoiling, and seeding. I think we will be back here again reviewing new changes in the law and rules.

RESPONSE: HB 373 became effective January 1, 2004. As of that date, rule provisions that are inconsistent with HB 373 were superseded. The Board has determined that it would not be appropriate for the Board to not implement an Act of the Legislature in anticipation of OSM disapproval, which may or may not occur. Therefore, the Board made the decision in 2004 to go forward with rulemaking prior to conclusion of OSM's review of HB 373. IF OSM disapproves provisions of HB 373, the commentor is correct that MSUMRA and the rules adopted under MSUMRA will probably be subject to additional amendments.

COMMENT NO. 83: Grazing/wildlife uses have been the predominant premining uses at the existing mines. Is it fair to say that all other uses will be regarded as higher or better uses?

RESPONSE: If the premining land use on a parcel was grazing land/wildlife habitat and an operator wanted to reclaim that parcel to an alternative use, the operator would have to demonstrate the alternative use was "higher or better" as that term is defined in MSUMRA. See 82-4-203(23), MCA. However, the reverse is also true. If the premining land use was cropland and the operator wanted to reclaim it to grazing land and/or wildlife habitat, the operator would have to demonstrate that grazing land and/or wildlife habitat was "higher or better" as defined in MSUMRA.

Reviewed by: BOARD OF ENVIRONMENTAL REVIEW

*John F. North* By: *Joseph W. Russell*
JOHN F. NORTH JOSEPH W. RUSSELL, M.P.H.
Rule Reviewer Chairman

Certified to the Secretary of State, October 8, 2004.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

| | |
|---|---|
| In the matter of the amendment of ARM 17.30.716, 17.36.912, 17.36.914, 17.36.916, 17.36.922, 17.38.101 and 17.38.106 pertaining to incorporation by reference of DEQ-4 as it pertains to water quality | NOTICE OF AMENDMENT<br><br>(WATER QUALITY) |

TO: All Concerned Persons

1. On June 17, 2004, the Board of Environmental Review published MAR Notice No. 17-213 regarding a notice of public hearing on the proposed amendment of the above-stated rules at page 1347, 2004 Montana Administrative Register, issue number 12, in conjunction with Department of Environmental Quality MAR Notice No. 17-212 which also pertains to the incorporation by reference of Department Circular DEQ-4.

2. The Board has amended ARM 17.30.716, 17.36.912, 17.36.914, 17.36.916, 17.36.922 and 17.38.106 exactly as proposed, and has amended ARM 17.38.101 as proposed, but with the following changes. Based on the comments received, several changes were made to the proposed revisions to the Circular. The revised Circular is available at the Department of Environmental Quality, Permitting and Compliance Division, 1520 East Sixth Avenue, P.O. Box 200901, Helena, Montana 59620-0901, or at www.deq.state.mt.us/wqinfo under Water Quality Circulars.

17.38.101 PLANS FOR PUBLIC WATER SUPPLY OR WASTEWATER SYSTEM (1) through (3)(h)(ii) remain as proposed.

(4) Before commencing or continuing the construction, alteration, extension, or operation of a public water supply ~~system~~ or wastewater system, the applicant shall submit a design report along with the necessary plans and specifications for the system to the department or a delegated division of local government for its review and written approval. Two sets of plans and specifications are needed for final approval. Approval by the department or a delegated division of local government is contingent upon construction and operation of the public water supply or wastewater system consistent with the approved design report, plans, and specifications. Failure of the system to operate according to the approved plans and specifications or the department's conditions of approval is an alteration that requires resubmittal of a design report, plans, and specifications for department approval.

(a) through (c) remain as proposed.

(d) The board ~~hereby~~ adopts and incorporates by reference ARM 17.36.320 through 17.36.325, 17.36.327 and 17.36.345. The design report, plans, and specifications for public subsurface sewage treatment systems must be prepared in accordance with ARM

17.36.320 through 17.36.325, 17.36.327 and 17.36.345 and in accordance with the format and criteria set forth in department Circular DEQ-4, "Montana Standards for Subsurface Wastewater Treatment Systems," 2004 edition.

(e) through (13) remain as proposed.

(14) The board ~~hereby~~ adopts and incorporates by reference the following:

(a) through (c) remain as proposed.

(d) department ~~of Environmental Quality~~ Circular DEQ-4, ~~2002~~ 2004 edition, which sets forth standards for subsurface wastewater treatment systems.

(e) and (15) remain as proposed.

3. A total of 26 comment letters were received. Of the 26 letters, 23 were in favor of the proposed changes to Department Circular DEQ-4, two letters were generally in opposition to the changes, and one letter was both favorable and unfavorable to specific changes. In addition, five members of the public testified at the public hearing. Four people were in favor of the proposed changes and one person was both favorable and unfavorable to specific changes. The comments received are as follows and appear with the Board's and Department's responses:

COMMENT NO. 1: There does not seem to be any reason for denying, in Section 4.3.3.2, the use of fill systems to meet vertical separation distance to limiting layers. The use of fill systems should be reconsidered. A previous draft of a Department circular allowed mound systems to meet separation distance when the depth to ground water was three feet or more from the natural ground surface. Also, engineered fill can provide better treatment than native soil. Allowing the use of fill solves problems and should be allowed at sites that only marginally exceed the vertical four-foot separation distance required by rule.

RESPONSE: The proposed change retains and clarifies the current prohibition, for replacement systems, against use of fill to meet vertical separation distances. The Board recognizes that there are situations when the use of fill systems in areas with less than four feet of vertical separation from the natural ground surface to a limiting layer offers a practical solution to replace a failed primary system. Deviations from Section 4.3.3.2 may be granted on a case-by-case basis in accordance with the criteria in Section 1.3.2.

The proposed change pertains to replacement systems only. Use of fill for new systems is prohibited by ARM 17.36.321(3)(b), and no waiver of that requirement is available. ARM 17.36.321(3)(b) was not proposed for amendment, so comments pertaining to use of fill to meet separation distances for new systems are outside the scope of this rulemaking.

COMMENT NO. 2: The language in Section 4.3.3.2 should explicitly state that fill may be used only when there is four feet of vertical separation distance from the natural ground surface to a limiting layer.

RESPONSE: The suggested language helps clarify the requirement and the section has been revised accordingly.

COMMENT NO. 3: The proposed language in Sections 6.2.1, 7.1, and 8.1 is appropriate but designers would have no control if a homeowner installs a water softener after the septic system is constructed. The requirement to accommodate water softener backwash in sizing new and replacement septic systems should be reevaluated in light of present construction standards. There has been a trend over the previous years to increase the size of drainfields through more aggressive regulation, and septic systems constructed in accordance with current standards may already have adequate capacity for the additional flow from water softener backwash.

RESPONSE: The language in Section 8.1 is prospective and is not intended to require homeowners to modify an existing septic system if they presently have or choose to install a water treatment device after the system is constructed. Instead, the language in Section 8.1 requires system designers/installers to consider the additional flow from water treatment devices when sizing new and replacement drainfields, which would be the most practical time to implement such a requirement.

The commentor correctly notes that, under current standards for new and replacement septic system design, there should be adequate capacity left in most systems to accommodate the additional flow from a water treatment device. Water softeners typically regenerate once or twice a week and produce approximately 50 gallons of backwash over a 30-minute period for each regeneration cycle. Current standards for new and replacement septic systems are that a drainfield for a three-bedroom home must be sized to accommodate 300 gallons per day of total wastewater. EPA guidance indicates that the average person generates approximately 40 to 70 gallons of wastewater per day. Assuming an average of approximately 2.5 people per household in Montana based on the 2000 census, there should be adequate capacity left in most septic systems to accommodate the additional flow from a water treatment device.

The Department also surveyed sanitarians in 38 counties/regions in Montana to determine if there were problems with water softeners and septic systems occurring on a statewide level. The results of that survey indicated that there were no documented septic system failures that could be attributed to water softener backwash. Several county sanitarians did indicate that there have been cases of hydraulic failure of undersized septic systems at residences that have water treatment devices. However, none of the sanitarians was able to document that the water treatment device was the actual cause of the failure. In a recent investigation of a failed septic system that was initially reported to have been caused by a water softener, it was determined through operational records that the cause of the failure was from household sources other than the water softener. Based on this and other information reviewed by the Department, hydraulic overloading of drainfields

from water treatment devices does not appear to be a common or widespread problem in Montana. Therefore, in most cases, new and replacement septic systems should not have to be increased beyond current design standards for homes with water softeners. However, the language in Section 8.1 will make septic system designers aware of the potential need to increase the size of a new or replacement drainfield to accommodate the additional flow from water treatment devices that may generate more backwash than a typical water softener.

COMMENT NO. 4: Percolation results do not always match the soil descriptions in Section 8, Table 8. Percolation testing could be eliminated and replaced by soil textural classification.

RESPONSE: The percolation rate/soil type tables in Chapter 8 are not proposed for amendment so this comment is outside the scope of this rulemaking. It should be noted, however, that Department subdivision rules and the Board minimum standards for local board of health sewage regulations require soil tests rather than percolation tests. However, the rules allow the reviewing authority to require percolation tests if needed in certain circumstances. See ARM 17.36.325 and 17.36.914.

COMMENT NO. 5: The regulatory structure should not discourage the use of experimental systems. Also, there is a lack of clear review, approval, and variance procedures at the local level. There is a need for coordination of procedures for review used by the Department, local health officials, and local governing bodies that review septic systems under the Subdivision and Platting Act (Title 76, chapter 3, MCA).

RESPONSE: Requirements concerning experimental systems and local variance procedures are outside the scope of this rulemaking. However, provision is made for experimental systems in Chapter 22 of Department Circular DEQ-4. The current Circular and rules have also been drafted with the intention of standardizing, among different reviewing authorities, the review criteria for experimental septic systems. The procedures set out in Chapter 22 for review and approval of experimental systems apply to Department and local reviewers performing subdivision review, and apply to local officials when they implement their Title 50, MCA, septic permitting authority. City and county officials reviewing subdivisions under the Platting Act also must follow the review and deviation criteria in the Circular. See 76-3-504(1)(f)(iii), MCA.

COMMENT NO. 6: Water softener brine discharge needs to be kept out of biological wastewater treatment systems because it causes stratification, inhibits solids settling, and has negative effects on the microorganisms that live in septic tanks and advanced treatment systems.

RESPONSE: The Department formed a technical committee that included members of the Department's subdivision task force, Department specialists, and industry representatives to examine the issue of potential effects of water softener backwash to

septic systems. The preponderance of the technical information reviewed by the committee, including information from EPA, supports the conclusion that there will not be problems caused by discharging backwash to septic systems.

The Department contacted state agencies across the country and found that, of the agencies responding, most do not prohibit water softener backwash into septic systems. The Department surveyed sanitarians in 38 counties/regions in Montana to determine if there were problems with water softeners and septic systems occurring on a statewide level. The results of that survey indicated that there were no documented septic system failures that could be attributed to water softener backwash.

Water softener backwash may have detrimental effects on aerobic, nonstandard and other proprietary systems. Therefore, the proposed language in Section 7.1 of Department Circular DEQ-4 prohibits the discharge of backwash from water softeners and other water treatment devices into these types of systems unless the discharge meets the specifications of the designer or manufacturer of the system.

COMMENT NO. 7: Discharging the water softener brine into many NSF Class I treatment systems voids the manufacturer's warranty, and anyone recommending such disposal would have to be prepared to accept liability for the consequences.

RESPONSE: The language in Section 7.1 of Department Circular DEQ-4 prohibits the discharge of backwash from water softeners and other water treatment devices into aerobic, nonstandard, and other types of proprietary systems unless the discharge meets the specifications of the designer or manufacturer of the system. See Response to Comment No. 6.

COMMENT NO. 8: When regulators consider whether to allow discharge of water softener brine to wastewater treatment systems, the burden of proof should be on the party who stands to profit from their position. Rather than asking wastewater system manufacturers to prove harm to the treatment system, water softener manufacturers should have to prove that addition of their waste to the stream does no harm.

RESPONSE: Representatives from the water softener industry actively participated in the deliberations of the Department's water softener committee that examined the issue of potential effects of water softener backwash to septic systems. The industry representatives provided the committee with extensive documentation to show that water softener backwash does not harm conventional septic systems. One industry representative also funded an investigation of a failed septic system that was initially reported to have been caused by a water softener. The investigation concluded that the water softener was not responsible for the system failure.

COMMENT NO. 9: The managers of many municipal systems have recognized the deleterious effects of brine on their anaerobic and aerobic processes, and have taken steps to keep brine out of their systems. It should be kept out of onsite systems too.

Not all "experts" agree with the published conclusions regarding water softeners and wastewater treatment systems, and recommend that further research is needed. Experienced soil scientists also disagree on the effects of brine on drainfields. Until conclusive research is done, the conservative public health approach is to require water softeners to discharge to their own drainfield or sump. This avoids the need to speculate on which technology caused the drainfield to fail. It is impractical to think that water softener users will monitor their devices' discharges, which may lead to brine concentrations higher than the manufacturer's recommendations. Water softener manufacturers must step up to the responsibility of helping their customers deal properly with the residual product that their appliance generates. This product is not the result of a biological process, and so it does not belong in a biological wastewater treatment system, whether onsite or municipal.

RESPONSE: The changes to Department Circular DEQ-4 address conventional onsite septic systems, which are constructed and operated very differently from large, municipal systems. Although technical experts may disagree on the effects of water softener brine to on-site septic systems, the preponderance of technical evidence reviewed by the Department, including information from EPA, indicate that water softener backwash will not cause septic system failure. The results of a statewide survey also did not find any documented septic system failures that could be attributed to water softener backwash. See Responses to Comment Nos. 6, 7 and 8.

COMMENT NO. 10: The proposed language in Section 7.1 "(A) conserves water by design" is vague and could be eliminated since the requirement in (B), for a demand-initiated regeneration control device, is the most likely method that water will be conserved. Also, an additional requirement must be added to the list in 7.1 for approval by the local health authority before a water softener can discharge to a septic system so that the county can decide if the backwash is acceptable in wastewater treatment systems due to either local regulation or soil conditions.

RESPONSE: The language in proposed Section 7.1(A) was not necessary in light of (B), and has been deleted. The word "only" also has been inserted in Section 7.1 to make the requirements of (A) and (B) more explicit and enforceable. However, adding a requirement to Department Circular DEQ-4 for approval by the local health authority is not necessary. Local boards of health have authority under Title 50, chapter 2, MCA, to adopt regulations for the control and disposal of sewage. The decision whether to impose more stringent local requirements on water softener discharges should be made at the local level. If local requirements are imposed, they will be binding on the Department in its review of subdivisions under the Sanitation in Subdivisions Act. See ARM 17.36.108(4).

COMMENT NO. 11: The paragraph in Section 7.1 that describes the alternative methods of backwash disposal should

include language that it must be discharged in a manner and location that will not affect the functioning of the wastewater treatment system.

RESPONSE: Section 7.1 contains a statement that the alternative disposal methods cannot be prohibited by other regulations. Department rules, which provide setback requirements for wastewater treatment systems from subsurface drains and other infrastructure, will protect the functioning of the wastewater treatment system. See ARM 17.36.323, Table 3. Also, as indicated in the Response to Comment No. 3, the amount of backwash will generally be small and the Department believes that there would be little potential for impacts.

COMMENT NO. 12: The proposed second paragraph in Section 8.1, which requires that new and replacement drainfields be adequately designed to dispose the additional flow from water softeners, iron filters, and reverse osmosis units, should be changed to include existing drainfields. Lake County requires permitting prior to installation of a water softener, in order to evaluate whether the additional flow can be handled by the existing septic system. The paragraph as written allows the addition of a water softener to an existing system without review.

RESPONSE: See Responses to Comment Nos. 3 and 10.

COMMENT NO. 13: The proposed third paragraph in Section 8.1 only suggests that the local health official be contacted, and only for systems within a given soil type. This is not consistent with current Lake County requirements.

RESPONSE: The third paragraph in Section 8.1 recommends that designers of systems contact local health officials for area-specific information on potential adverse impacts if the drainfield site contains clay soils with shrink/swell properties. Mandatory consultations are needed only if local conditions warrant, and the requirement for such consultations should be based in local rules. The language in the Circular does not interfere with the ability of local boards of health to adopt such rules. Also, a specific reference to clay soils with shrink/swell properties was added to the last sentence in the third paragraph for clarity.

COMMENT NO. 14: The Circular draft that was presented to the water softener committee is weak in indicating that water softener discharge is detrimental to wastewater treatment systems. It also is too vague to enforce, does nothing to limit flow from water softeners, makes contacting local health officials an option in clay soils, doesn't address the issue of adding water softener backwash after the system is constructed, doesn't give local boards of health an option to opt out of allowing water softener discharge into wastewater treatment systems, and has no language that holds the reviewer, designer, installer, or maintenance provider harmless should the wastewater treatment system fail as a result of accepting water softener discharge.

RESPONSE: Please see Responses to Comment Nos. 3, 6, 10 and 13. Failures should not occur from accepting water softener discharge if wastewater treatment systems are properly designed, constructed and operated. Also, it is not appropriate, in a technical design circular, to address the potential liabilities of reviewers, designers, and installers for failed wastewater treatment systems.

COMMENT NO. 15: Montana is a large state with many different types of water and soils. The job of writing an all-inclusive set of rules seems impossible in the short term. The proposed changes are sensible and follow other states that have considered the water softener issue. The Department has developed a sound rule that should be approved.

RESPONSE: Comment noted.

COMMENT NO. 16: The Montana Water Quality Association supports the new language in Department Circular DEQ-4 allowing the regeneration water from water softeners to go into septic tanks. During the last 20 years, technology has improved the salt usage and amount of total water discharged from a water softener to a septic tank. There has never been scientific or physical evidence proving that water softener regeneration waste has ever caused problems with the operation of a septic system.

RESPONSE: Comment noted.

COMMENT NO. 17: The proposed rules should be adopted. Based on review of published rules or contacts with state officials, 45 states allow softener backwash to septic systems. Ten of those states have some type of restriction such as a requirement for demand initiated regeneration equipment and three states, including Montana, presently ban backwash to septic systems. Studies also have shown that the backwash brine does not impact standard septic systems and drainfields.

RESPONSE: Comment noted.

COMMENT NO. 18: The Board received comment letters from 19 homeowners in Ethridge, Great Falls, Hamilton, Missoula, Havre, Bigfork, Lakeside, Victor, and Kalispell, Montana who have water softeners connected to septic systems. The letters describe how the homeowners' water softeners have been discharging to septic systems, in most cases for over 10 years and in some cases for over 30 years, without any problems. Several homeowners expressed concern over any new requirement to discharge the water softener backwash to a separate drainfield or dry well, indicating that such a requirement would be unnecessary, expensive or impractical.

RESPONSE: Comments noted.

COMMENT NO. 19: Properly functioning water softeners do not harm septic systems. Water softener regeneration backwash adds less than 8% to the total waste stream of a three-bedroom dwelling. Clay soil is widely distributed in Montana. The

calcium and magnesium captured by the water softener is useful for mitigating the impact of sodium in clay soils.

RESPONSE: Comment noted.

COMMENT NO. 20: The current prohibition in Department Circular DEQ-4 of discharge of water softener backwash to septic systems lacks scientific basis, and imposes a financial burden of $500 to $2000 for an alternative disposal system on homeowners who install water softeners. Modern water softeners are more efficient and have reduced salt consumption and wastewater generation compared to 20 years ago.

RESPONSE: Comment noted.

COMMENT NO. 21: The commentor is a water softener dealer whose business has been family-owned for 40 years, and has never heard of a septic system fail because of a water softener in his area.

RESPONSE: Comment noted.

COMMENT NO. 22: The use of on-demand water softening equipment is more economical for the consumer because there is less water usage, less salt consumption and less loading on the septic system. Some water is naturally high in sodium and sulfate, and there is a question as to whether these types of water could be a cause of septic system failure.

RESPONSE: Comment noted.

COMMENT NO. 23: The commentor has 35 years of experience installing septic systems and is a proponent of the water softener change, but has other concerns with Department Circular DEQ-4. Section 4.3.3.2 should allow the use of fill to meet minimum separation distances. A brief period of seasonally high ground water should not prevent the use of a septic system that uses engineered fill.

RESPONSE: Please see Response to Comment No. 1.

COMMENT NO. 24: A commentor expressed a concern with ARM 17.36.922, which allows a local board of health to grant variances from the requirements of Department Circular DEQ-4. Variances should be based on engineering, not on politics. The commentor also questioned what was meant by "seasonal" in ARM 17.36.916(5), which allows holding tank systems only for seasonal use.

RESPONSE: The current rulemaking does not propose any changes to ARM 17.36.922, so comments relating to the local variance procedures in that rule are outside the scope of this proceeding. It should be noted that the variance criteria set out in ARM 17.36.922 relate primarily to health, safety, and welfare, although local boards may adopt additional criteria. Local boards must also follow the criteria for approving deviations from Department Circular DEQ-4, which are set out in the Circular at Section 1.3.1. These criteria also focus on impacts to health, safety, and welfare. The term "seasonal", for purposes of the holding tank provisions in ARM 17.36.916, is

defined as "use for not more than a total of four months (120 days) during any calendar year." ARM 17.36.916(5)(a).

Reviewed by: BOARD OF ENVIRONMENTAL REVIEW

*James M. Madden*
JAMES M. MADDEN
Rule Reviewer

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

Certified to the Secretary of State, October 8, 2004.

BEFORE THE DEPARTMENT ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

| | |
|---|---|
| In the matter of the amendment of ARM 17.36.345 pertaining to adoption by reference of DEQ-4 | NOTICE OF AMENDMENT (SUBDIVISIONS) |

TO: All Concerned Persons

1. On June 17, 2004, the Department of Environmental Quality published MAR Notice No. 17-212 regarding a notice of public hearing on the proposed amendment of the above-stated rule at page 1345, 2004 Montana Administrative Register, issue number 12, in conjunction with Board of Environmental Review MAR Notice No. 17-213 which also pertains to incorporation by reference of Department Circular DEQ-4.

2. The Department has amended the rule as proposed, but with the following changes:

17.36.345 ADOPTION BY REFERENCE (1) For purposes of this chapter, the department ~~hereby~~ adopts and incorporates by reference the following documents. All references to these documents in this chapter refer to the edition set out below:

(a) through (c) remain as proposed.

(d) Department Circular DEQ-4, "Montana Standards for Subsurface Wastewater Treatment Systems", 2004 edition;

(e) through (2) remain as proposed.

3. The hearing for this notice of amendment was held in conjunction with the hearing held for MAR Notice No. 17-213. Both notices were incorporating by reference the updated Department Circular DEQ-4 pertaining to Standards for Subsurface Wastewater Treatment Systems. Comments solicited were for both rulemaking procedures and applied to both rulemaking proceedings. Those comments and the Department's and the Board's responses are set forth in the Notice of Amendment published on page 2579 in the Rule section of this Montana Administrative Register under MAR Notice No. 17-213.

Based on the comments received, several changes were made to the proposed revisions to the Circular. The revised Circular is available at the Department of Environmental Quality, Permitting and Compliance Division, 1520 East Sixth Avenue, P.O. Box 200901, Helena, Montana 59620-0901, or at www.deq.state.mt.us/wqinfo under Water Quality Circulars.

Reviewed by: DEPARTMENT OF ENVIRONMENTAL QUALITY

*James M. Madden*
JAMES M. MADDEN
Rule Reviewer

By: *Jan P. Sensibaugh*
JAN P. SENSIBAUGH, DIRECTOR
Chairman

Certified to the Secretary of State, October 8, 2004.

BEFORE THE BOARD OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 32.2.403 pertaining to diagnostic lab fees ) NOTICE OF AMENDMENT

To: All Concerned Persons

1. On September 2, 2004, the department of livestock published MAR Notice No. 32-4-166 regarding the proposed amendment of ARM 32.2.403, pertaining to diagnostic lab fees at page 2047 of the 2004 Montana Administrative Register, Issue Number 17.

2. The department of livestock has amended ARM 32.2.403 exactly as proposed.

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

COMMENT 1: A comment was received in support of the proposed fee increase, stating the fees were not out of line. The comment stated the fee increase was justified and the lab is needed in Montana to serve the agricultural industry.

RESPONSE: The Department acknowledges receipt of the comment in support.

DEPARTMENT OF LIVESTOCK

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

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

Certified to the Secretary of State October 8, 2004.

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

| | | |
|---|---|---|
| In the matter of the amendment of ARM 38.2.5001, 38.2.5002, 38.2.5004, 38.2.5007, 38.2.5008, 38.2.5012, 38.2.5014, 38.2.5016, 38.2.5017, 38.2.5020, 38.2.5021, 38.2.5022, 38.2.5023, 38.2.5024, 38.2.5027, 38.2.5028 and the repeal of ARM 38.2.5003 and 38.2.5010 pertaining to Protective Orders and Protection of Confidential Information | ) ) ) ) ) ) ) ) ) ) ) ) ) ) | NOTICE OF AMENDMENT AND REPEAL |

TO: All Concerned Persons

1. On July 22, 2004, the Department of Public Service Regulation, Public Service Commission (Commission), published MAR Notice No. 38-2-178 regarding the public hearing on the proposed amendment and repeal of the above-stated rules at page 1595 of the 2004 Montana Administrative Register, Issue No. 14.

2. The commission has amended ARM 38.2.5001, 38.2.5002, 38.2.5004, 38.2.5012, 38.2.5014, 38.2.5016, 38.2.5017, 38.2.5020, 38.2.5021, 38.2.5022, 38.2.5023, 38.2.5024, 38.2.5027, 38.2.5028, and repealed ARM 38.2.5003 and ARM 38.2.5010 exactly as proposed.

3. The commission has amended ARM 38.2.5007 and 38.2.5008 with the following changes, (stricken matter interlined, new matter underlined):

38.2.5007 PROTECTIVE ORDER -- REQUESTS, TIMING OF REQUESTS, AND PROCEDURE (1) through (2) remain as proposed.

(3) The factual showing and legal analysis must make a prima facie showing and must make clear to the commission the basis for the claim of confidential information. A provider has the burden of demonstrating that information is confidential information. The request for protective order must include:

(a) through (4)(b) remain as proposed.

(i) prior to requesting a protective order, ~~a trade secret claim is a strict business necessity and that~~ the provider has considered that the commission is a public agency and that there is a constitutional presumption of access to documents and information in the commission's possession;

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

~~(5)~~ (6) ~~The demonstrations required by (4) are not necessarily sufficient for the issuance of a protective order.~~ Prior to issuing a protective order the commission will review the demonstrations made pursuant to (4) and (5), and may

question a provider on those demonstrations.

(6) remains as proposed but is renumbered (5).

(7) remains as proposed.

(8) The commission will notice each request for protective order on its weekly agenda. When the commission determines that a request for protective order constitutes a prima facie showing that the information is confidential information, it will issue a protective order. Notice of issuance of protective orders will be given in the next commission weekly agenda.

(9) remains as proposed.

38.2.5008 PROTECTIVE ORDER -- ISSUANCE, RECONSIDERATION, CHALLENGE TO CONFIDENTIALITY~~, INTERIM PROTECTIVE ORDERS~~

(1) through (3) remain as proposed.

(a) A motion challenging a protective order must be filed with the commission and served on the providing party. The providing party must file a response to the motion within 10 days. Requests for hearing or oral argument may be granted for good cause, or may be scheduled on the commission's own motion~~; or~~.

(b) If the commission determines that information should be removed from protection, the information will remain protected under the governing protective order for a reasonable period, to be established in the commission ruling, to allow the provider time to appeal the commission decision. ~~or to request that the information be returned to the provider.~~

~~(4) Upon challenge of a protective order, the provider shall bear the burden of demonstrating that information is confidential information.~~

4. The commission received comments on the proposed amendments. The following is a summary of the comments, and commission responses.

COMMENTS ON ARM 38.2.5001: NorthWestern Energy (NWE) contends the definition of "confidential information" "remains problematic" because 69-3-105, MCA, authorizes the commission to issue protective orders to preserve trade secrets. NWE maintains that there might be information, not trade secret, that is entitled to protection, but that use of the language "lawfully withhold" will make it difficult or impossible to protect such information. NWE notes the uncertainty surrounding third party confidential information in the possession of the providing party and information subject to a confidentiality agreement between the providing party and a third party. NWE recommends the commission identify by rule "all classes of confidential information, not just trade secrets, that it believes are properly the subject of [a commission] protective order."

RESPONSES: The commission acknowledges that 69-3-105, MCA, may limit its ability to protect certain non-trade secret

information; and that such limitation may undermine the commission's regulatory function and the public interest. However, the proper place to address this limitation is in the legislature. Obviously, the commission cannot unlawfully protect information; so that the language of ARM 38.2.5001(1) which is of concern to NWE seems evidently correct. The commission finds it has gone as far as it can when it identifies trade secret, individual privacy and other possible bases for lawful protection, which a provider may argue and attempt to support.

COMMENTS ON ARM 38.2.5002(4): Qwest Corporation (Qwest) and Montana-Dakota Utilities (MDU), commenting jointly, contend this section should be deleted because it is "unclear" and creates "undesirable ambiguity." They say the commission does not need to address personnel records and that the references to "law enforcement efforts" and "identities of certain informants" "seems misplaced." They also question the language "normally but not exclusively limited [to] a contested case proceeding."

RESPONSES: The intent of the language in this section, both original and new, is to indicate that the protective order process covered by the rules does not pertain to all information in the commission's possession which it may lawfully withhold from the public. Questions arise occasionally about this and it is considered helpful to include explanatory language about the scope of the rules. The commission finds that this language helps to clarify the scope of the rules, and does not create ambiguity. The second sentence makes the point that while normally these rules apply to the protection of confidential information provided in the context of a contested case, there are situations, for example confidential information provided as part of an annual report, when a protective order will issue outside of a contested case.

COMMENTS ON ARM 38.2.5004: NWE suggests this rule be expanded "to include a 'class protective order' that protects specified classes of confidential information within a particular docket,..."

RESPONSES: It appears that NWE, when it refers in its comments to "A rate case proceeding" and "within a particular docket," may misunderstand the focus and intent of this rule. The intent of the rule is described in the proposed rule itself. It is generally not intended to apply to the usual request for protective order within a contested case proceeding. It is probably not possible to avoid completely the burden of the protective order process; however, proposed ARM 38.2.5007(3)(b) does alleviate the burden somewhat by allowing a provider to plead by "category of items which are alike...." The commission finds that an ARM 38.2.5004 "term protective order" should not be expanded beyond the intent of

that rule.

COMMENTS ON ARM 38.2.5007: NWE restates its suggestion that the commission identify "other classes of confidential material considered "protectable" by [the commission]." NWE suggests the commission should go beyond ARM 38.2.5007(6) in this regard. NWE asserts that noticing protective order requests, per Commissioner Rowe's position, "may unreasonably delay the timely submission of confidential data to MPSC staff, Montana Consumer Counsel, and other parties."

Qwest/MDU state ARM 38.2.5007(4)(a)(i) "must be deleted" because it is not practical if "a significant number of individuals are involved[,]" and there is an implication in the rule that regulated utilities "should facilitate individuals giving up their individual right of privacy,..." Qwest/MDU assert that requiring a demonstration that a trade secret claim is a "strict business necessity," ARM 38.2.5007(4)(b)(i), is unlawful and must be deleted. Qwest/MDU state that the commission may not impose a "strict business necessity" test on the determination of trade secret. Qwest/MDU also maintain that ARM 38.2.5007(5) must be deleted because it undermines the purpose of describing by rule the standards for obtaining protection, and it is contrary to the law that a regulated utility is entitled to commission protection of trade secrets.

Great Falls Tribune (GFT) comments that ARM 38.2.5007(2) is unnecessary because attorneys are already required to make sure pleadings are based on good faith investigation and argument. Also, GFT asserts the section reflects a "misguided" commission approach of leaving the determination of protectability on the provider. GFT states the role of the provider is to argue for protection, the job of the commission is to make the determination. GFT comments that ARM 38.2.5007(4)(b) should have a provision requiring contact with the person "whose rights are at issue," similar to ARM 38.2.5007(4)(a)(i). GFT is critical of ARM 38.2.5007(4)(b)(i) because, in GFT's opinion, it seems to require the provider to "consider," when the emphasis should be on commission consideration when it makes a determination whether a protective order should issue. Regarding ARM 38.2.5007(8), GFT urges the commission to adopt a meaning for "prima facie showing" such that a provider request for protection must compel a protective order in the absence of contrary evidence and argument. GFT also urges, per Commissioner Rowe's proposal, that the commission notice protective order requests. GFT suggests such notice would not unduly interfere with commission process but, moreover, may be required by Article II, Section 8 of the Montana Constitution which creates a right of citizen participation in agency operations.

Like Qwest/MDU, MCI comments that ARM 38.2.5007(5) should be deleted.

RESPONSES: For the reasons explained in response to comments on ARM 38.2.5001, the commission will not attempt to

identify other bases for confidentiality. It is sufficient to note, at ARM 38.2.5007(6), that there could be other bases and the commission will consider them individually in response to provider requests. The commission will not delete ARM 38.2.5007(4)(a)(i). The commission's experience is that protective order requests based on the individual right to privacy typically do not involve a "significant number of individuals," and if in a given case the rule creates a practical problem of sufficient magnitude the provider can seek a waiver of the rule pursuant to ARM 38.2.5002. The commission disagrees that the rule creates any implication that a utility must facilitate an individual giving up the right to privacy. The rule simply requires that the utility inquire of an individual whether he/she waives the right to privacy with respect to particular information. If the answer is no then the utility seeks protection; if yes, there is no need for protection. The commission has amended ARM 38.2.5007(4)(b)(i). The commission has amended ARM 38.2.5007(5).

GFT may be correct technically that ARM 38.2.5007(2) is unnecessary. However, the commission considers it a good idea to emphasize the requirement, and also thinks such emphasis is consistent with the tenor of GFT's comments generally. The commission agrees that it is the provider role to request a protective order, following the requirements of the rules, and it is the commission's role to determine or rule on the request. The commission finds that nothing in the rules states or implies otherwise, or confuses the proper roles of commission and provider. The commission finds that a provision like ARM 38.2.5007(4)(a)(i) should not be included in ARM 38.2.5007(4)(b). A provider does not need to contact itself when it is seeking to protect its own trade secret and, in the event a provider seeks to protect the trade secret of another such contact can be reasonably presumed. ARM 38.2.5007(4)(b)(i) does require the provider to "consider" certain things, but this is only logical because the rule is addressed to providers. Of course, the commission will "consider" also in the course of making a decision. Regarding "prima facie showing," the commission is in general agreement with the "sense" and application of the term urged by GFT. The commission will not, however, define or "clarify" the term further by rule. The commission has decided to notice protective order requests, and has revised ARM 38.2.5007(8) accordingly.

COMMENTS ON ARM 38.2.5008: Qwest/MDU maintain that ARM 38.2.5008(4) should either be deleted as unnecessary, or because it is at odds with Montana case law, the law of evidence and a proper understanding of burden of proof. GFT contends that this rule (ARM 38.2.5008) should be deleted in its entirety in favor of a process whereby a challenging party could either ask for reconsideration of a decision to issue a protective order, or appeal directly to district court. GFT strongly criticizes ARM 38.2.5008(3)(b) for allowing the

provider, after commission determination that information be removed from protection, to request that the information be returned to the provider.

RESPONSES: ARM 38.2.5008(4) has been deleted. The requirement that a provider bears the burden of demonstrating confidentiality, implicit in the rules, is made explicit by adding language at ARM 38.2.5007(3). The new language at ARM 38.2.5008(3)(b) has been deleted. The commission is addressing the question of returning information to the provider in Docket No. D2001.10.144, and may further address it when it considers revisions to ARM 38.2.5030. The commission on its own has amended the first two words at ARM 38.2.5008(3), has struck the last word at ARM 38.2.5008(3)(a), and has amended the heading to ARM 38.2.5008 to reflect the deletion of ARM 38.2.5008(5). GFT's proposal to delete ARM 38.2.5008 entirely, a proposal echoed by Qwest/MDU at hearing, reflects a disagreement over the wisdom of providing a commission remedy after a protective order is issued on a prima facie showing. The commission concludes that providing such a remedy is effective, because the commission generally is an informed decision maker about the particular issues involving confidential information, and efficient, because the commission is in control of its own process and likely can reach a decision more expeditiously than a court. The commission does not agree that the challenge process is essentially futile because the commission has already made a determination on a prima facie showing. Once a challenge is made the commission will set aside its initial determination in favor of a review of the entire record created in the challenge proceeding, similar to the normal contested case or judicial decision making process. Neither does the commission agree that an order on a challenge will be automatically appealed. As with any commission order a decision to appeal will be based on interest, probable outcome and other factors.

COMMENTS ON ARM 38.2.5016 (AND ARM 38.2.5008(1)): GFT comments that this rule should be clarified to indicate who prepares the summary and who determines that it is satisfactory. GFT asserts the summary should be subject to review by the commission and its staff to ensure it discloses as much as possible.

RESPONSES: The rule states already that the provider prepares the summary, and it is implicit that the commission determines what is satisfactory compliance with this and all the rules. The commission finds that no language change to this rule is necessary, but understands the GFT admonition that compliance with the rule must be monitored and enforced if it is to be meaningful and useful to the public.

COMMENTS ON ARM 38.2.5017(2), ARM 38.2.5027 and ARM 38.2.5028: Qwest/MDU assert that these rules must be deleted because they provide a process for non-parties to gain access

to protected information. Qwest/MDU maintain that it "makes no sense" to allow access to non-parties because confidential information is provided only to allow the commission to perform its regulatory duties. Qwest/MDU also contend that allowing non-parties access is inconsistent with ARM 38.2.5023(1) and ARM 38.2.5020(2). Qwest/MDU state that "[n]o rational utility" will provide information to the commission if such information might be given to non-parties. Regarding ARM 38.2.5028 NWE suggests a provision allowing for the return or destruction of "voluntarily submitted" confidential information when extending access to that information by non-parties is contemplated.

RESPONSES: ARM 38.2.5017(2) was not revised to give non-parties access to protected information. Such access is contemplated in Mountain States Telephone v. Department of Public Service Regulation, 194 Mont. 277, 289 (1981), and has been provided for in commission rule since July 28, 2000. The purpose of the substantive addition to this rule is to avoid inadvertently allowing access at the commission office to protected information to a person unknown to the provider, and to whose access to the information the provider has not had the opportunity to object pursuant to ARM 38.2.5028. It is not true that allowing access to non-parties means granting access to anyone willing to sign a non-disclosure agreement. A provider may refuse access to a non-party, even if the non-party agrees to sign a non-disclosure agreement, pursuant to ARM 38.2.5028. The standard is whether access will "be reasonably likely to jeopardize the confidential nature of the information." The commission will make a ruling, which is appealable to court. The fact that confidential information is provided to the commission only to allow it to perform its regulatory duties does not distinguish confidential from non-confidential information. The commission does not have an interest in any information except that which allows it to perform its regulatory duties. Access to protected information by non-parties "makes sense" because the Montana Constitution grants access to all persons to agency information, provided such access can be accomplished while protecting the rights of the providers. ARM 38.2.5023(1) is not inconsistent: it applies to parties, not access to non-parties, which is addressed in separate rules. Similarly, ARM 38.2.5020(2) is not inconsistent, since a non-party is also required to use the information only "for purposes of the proceeding." Non-party access to protected information will not have any impact on the discovery of confidential information since non-parties cannot conduct discovery in commission proceedings. The commission does not reserve to itself the right to give access to non-parties. When there is a request for protected information from a non-party these rules give due process to providers, and judicial review from an adverse commission ruling. The commission declines to add a provision to ARM 38.2.5028 allowing for the return or destruction of information at the point when the commission

"contemplates extending access to non-parties (public)." Such a provision would make a mockery of the public access rule.

COMMENTS ON ARM 38.2.5022: NWE proposes that this rule include a provision for returning or destroying protected information, once a final order has been issued and the judicial review period has passed.

RESPONSES: The commission declines to address the question of the destruction or return of protected information in this rulemaking. The current rule addressing this matter is ARM 38.2.5030, and the commission will consider revising that rule in the future.

COMMENTS ON ARM 38.2.5024: NWE proposes a provision allowing for the return or destruction of "voluntarily submitted confidential information" when the commission "contemplates extending access to employee experts."

RESPONSES: The commission declines to modify the rule as suggested. NWE appears to ignore the complete due process rights afforded a provider when the issue is extending access to employee experts. Throughout NWE's comments it refers to "voluntarily submitted confidential information," a characterization the legal significance of which eludes the commission. These rules address the process for protecting confidential information. Whether such information is provided "voluntarily" or not is irrelevant.

/s/ Bob Rowe
Bob Rowe, Chairman
Public Service Commission

/s/ Robin A. McHugh
Reviewed By: Robin A. McHugh

Certified to the Secretary of State on October 8, 2004.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

| | |
|---|---|
| In the matter of the adoption of New Rule I (42.4.501) and II (42.4.502) relating to capital gain credit | NOTICE OF ADOPTION |

TO: All Concerned Persons

1. On September 2, 2004, the department published MAR Notice No. 42-2-740 regarding the proposed adoption of the above-stated rules relating to capital gain credit at page 2098 of the 2004 Montana Administrative Register, issue no. 17.

2. A public hearing was held on September 23, 2004, to consider the proposed adoption. No one appeared at the hearing to testify and no written comments were received. Therefore, the department adopts the rules as proposed.

3. 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 | /s/ Don Hoffman |
| CLEO ANDERSON | DON HOFFMAN |
| Rule Reviewer | Acting Director of Revenue |

Certified to Secretary of State October 8, 2004

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

| | |
|---|---|
| In the matter of the amendment and transfer of ARM 42.15.508 (42.4.2604) and 42.15.509 (42.4.2605) relating to personal income taxes, credits, incentives and exemptions | CORRECTED NOTICE OF AMENDMENT AND TRANSFER |

TO: All Concerned Persons:

1. On February 26, 2004, the department published MAR Notice No. 42-2-731 regarding a public hearing on the proposed amendment and transfer of the above-stated rules relating to personal income taxes, credits, incentives, and exemptions at page 429 of the 2004 Montana Administrative Register, Issue No. 4. On August 19, 2004, the Department published notice of the amendment and transfer of ARM 42.15.508 (42.4.2604) and 42.15.509 (42.4.2605) at page 1965 of the 2004 Montana Administrative Register, Issue No. 16.

2. The reason for the correction is that there is a typographical error in an implementing cite for both of these rules. The statute as cited in the original adoption notice does not exist. The corrected rule amendments read as follows:

42.15.508 (42.4.2604) CREDIT FOR INVESTMENTS IN DEPRECIABLE EQUIPMENT OR MACHINERY TO COLLECT, PROCESS, OR MANUFACTURE A PRODUCT FROM RECLAIMED MATERIAL, OR PROCESS SOILS CONTAMINATED BY HAZARDOUS WASTES (1) through (10) remain as proposed.

AUTH: Sec. 15-32-611, MCA
IMP: Sec. 15-32-601, 15-32-602, 15-32-603, 15-32-604, ~~15-32-309~~ 15-32-609, and 15-32-610, MCA

42.15.509 (42.4.2605) PERIOD COVERED FOR THE RECLAMATION AND RECYCLING CREDIT (1) through (3) remain as proposed.

AUTH: Sec. 15-32-611, MCA
IMP: Sec. 15-32-601, 15-32-602, 15-32-603, 15-32-604, ~~15-32-309~~ 15-32-609, and 15-32-610, MCA

3. Replacement pages for the corrected notice of amendment and transfer were submitted to the Secretary of State on September 30, 2004.

4. An electronic copy of this Correction 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 Correction Notice conform to the official version of the Notice, as printed in the Montana

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

| | |
|---|---|
| /s/ Cleo Anderson | /s/ Don Hoffman |
| CLEO ANDERSON | DON HOFFMAN |
| Rule Reviewer | Acting Director of Revenue |

Certified to Secretary of State October 5, 2004

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

| | | |
|---|---|---|
| In the matter of the amendment of ARM 42.21.113; 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 42.22.1311 relating to personal, industrial and centrally assessed property tax trend table updates | ) | NOTICE OF AMENDMENT |

TO: All Concerned Persons

1. On September 2, 2004, the department published MAR Notice No. 42-2-739 regarding the proposed amendment of the above-stated rules relating to personal, industrial and centrally assessed property tax trend table updates at page 2077 of the 2004 Montana Administrative Register, issue no. 17.

2. A public hearing was held on September 27, 2004, to consider the proposed amendments. No one appeared at the hearing to testify and no written comments were received. Therefore, the department amends the rules as proposed.

3. 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/ Don Hoffman
DON HOFFMAN
Acting Director of Revenue

Certified to Secretary of State October 8, 2004

**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 June 30, 2004. This table includes those rules adopted during the period July 1, 2004 through September 30, 2004 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 June 30, 2004, 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 2003 and 2004 Montana Administrative Registers.

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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 September 2004, appear. Vacancies scheduled to appear from November 1, 2004, through January 31, 2005, 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 October 8, 2004.

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 SEPTEMBER 2004**

| Appointee | Appointed by | Succeeds | Appointment/End Date |
|---|---|---|---|
| **Alternative Health Care Board** (Labor and Industry) | | | |
| Dr. Margaret Beeson | Governor | reappointed | 9/1/2004 |
| Billings | | | 9/1/2008 |
| Qualifications (if required): naturopath | | | |
| **Board of Clinical Laboratory Science Practitioners** (Labor and Industry) | | | |
| Ms. Rosemary Shively | Governor | Adams | 9/22/2004 |
| Helena | | | 4/16/2007 |
| Qualifications (if required): clinical laboratory practitioner | | | |
| **Board of Nursing** (Labor and Industry) | | | |
| Ms. Cynthia Pike | Governor | Lythgoe | 9/21/2004 |
| Billings | | | 7/1/2007 |
| Qualifications (if required): registered nurse and an educator | | | |
| **Board of Physical Therapy Examiners** (Labor and Industry) | | | |
| Mr. Bruce Lamb | Governor | reappointed | 9/16/2004 |
| Havre | | | 7/1/2007 |
| Qualifications (if required): physical therapist | | | |
| **Board of Public Education** (Education) | | | |
| Rep. Gay Ann Masolo | Governor | Morris | 9/7/2004 |
| Townsend | | | 2/1/2006 |
| Qualifications (if required): Republican from District 1 | | | |
| **Director Montana Department of Military Affairs and Adjutant General National Guard** (Military Affairs) | | | |
| Brig. General Randall Mosley | Governor | Prendergast | 9/1/2004 |
| Helena | | | 12/31/2004 |
| Qualifications (if required): appointed | | | |

**BOARD AND COUNCIL APPOINTEES FROM SEPTEMBER 2004**

| Appointee | Appointed by | Succeeds | Appointment/End Date |
|---|---|---|---|
| **Family Support Services Advisory Council** (Public Health and Human Services) | | | |
| Ms. Phyllis Astheimer<br>Bozeman<br>Qualifications (if required): representative of family support specialists | Governor | not listed | 9/22/2004<br>9/22/2006 |
| Mr. John Clymer<br>Helena<br>Qualifications (if required): agency representative of Child and Family Services Division | Governor | not listed | 9/22/2004<br>9/22/2006 |
| Ms. Diana Colgrove<br>Eureka<br>Qualifications (if required): representative of Parents Region V | Governor | not listed | 9/22/2004<br>9/22/2006 |
| Sen. Mike Cooney<br>Helena<br>Qualifications (if required): representative of public awareness and education/ legislative representative | Governor | not listed | 9/22/2004<br>9/22/2006 |
| Ms. Sylvia Danforth<br>Miles City<br>Qualifications (if required): Provider/Part C Agency representative | Governor | not listed | 9/22/2004<br>9/22/2006 |
| Rep. Mary Anne Guggenheim<br>Helena<br>Qualifications (if required): representative of medical/health care services | Governor | not listed | 9/22/2004<br>9/22/2006 |
| Ms. Lucy Hart-Paulson<br>Missoula<br>Qualifications (if required): representative of language therapists | Governor | not listed | 9/22/2004<br>9/22/2006 |

**BOARD AND COUNCIL APPOINTEES FROM SEPTEMBER 2004**

| Appointee | Appointed by | Succeeds | Appointment/End Date |
|---|---|---|---|
| **Family Support Services Advisory Council** (Public Health and Human Services) cont. | | | |
| Mr. Ron Herman | Governor | not listed | 9/22/2004 |
| Helena | | | 9/22/2006 |
| Qualifications (if required): agency representative of the Insurance Commissioner's Office | | | |
| Ms. Mary Huston | Governor | not listed | 9/22/2004 |
| Richland | | | 9/22/2006 |
| Qualifications (if required): representative of Parents Region 1 | | | |
| Ms. Jackie Jandt | Governor | not listed | 9/22/2004 |
| Helena | | | 9/22/2006 |
| Qualifications (if required): agency representative for Mental Health Division | | | |
| Ms. Ann Marie Johnson | Governor | not listed | 9/22/2004 |
| Missoula | | | 9/22/2006 |
| Qualifications (if required): representative of Head Start | | | |
| Ms. Kelly Johnson | Governor | not listed | 9/22/2004 |
| Frenchtown | | | 9/22/2006 |
| Qualifications (if required): representative of parents at large | | | |
| Mr. Brian Lenhardt | Governor | not listed | 9/22/2004 |
| Havre | | | 9/22/2006 |
| Qualifications (if required): representative of Parents Region II | | | |
| Ms. Rene Lenhardt | Governor | not listed | 9/22/2004 |
| Havre | | | 9/22/2006 |
| Qualifications (if required): representative of Parents Region II | | | |
| Mr. Ted Maloney | Governor | not listed | 9/22/2004 |
| Missoula | | | 9/22/2006 |
| Qualifications (if required): representative at large | | | |

**BOARD AND COUNCIL APPOINTEES FROM SEPTEMBER 2004**

| Appointee | Appointed by | Succeeds | Appointment/End Date |
|---|---|---|---|
| **Family Support Services Advisory Council** (Public Health and Human Services) cont. | | | |
| Ms. Sandi Marisdotter<br>Helena<br>Qualifications (if required): Provider/Part C Agency representative | Governor | not listed | 9/22/2004<br>9/22/2006 |
| Ms. Novelene Martin<br>Miles City<br>Qualifications (if required): DDP representative of quality improvement specialists | Governor | not listed | 9/22/2004<br>9/22/2006 |
| Mr. Dan McCarthy<br>Helena<br>Qualifications (if required): agency representative of OPI/special education preschool specialist | Governor | not listed | 9/22/2004<br>9/22/2006 |
| Ms. Sandy McGennis<br>Great Falls<br>Qualifications (if required): provider representative/Montana School for the Deaf and Blind | Governor | not listed | 9/22/2004<br>9/22/2006 |
| Ms. Micah Mitchell<br>Helena<br>Qualifications (if required): representative of Parents Region IV | Governor | not listed | 9/22/2004<br>9/22/2006 |
| Ms. Susie Morrison<br>Missoula<br>Qualifications (if required): representative of personnel preparation | Governor | not listed | 9/22/2004<br>9/22/2006 |
| Sen. Gerald Pease<br>Lodge Grass<br>Qualifications (if required): representative of Parents Region III/legislative representative | Governor | not listed | 9/22/2004<br>9/22/2006 |

**BOARD AND COUNCIL APPOINTEES FROM SEPTEMBER 2004**

| Appointee | Appointed by | Succeeds | Appointment/End Date |
|---|---|---|---|
| **Family Support Services Advisory Council** (Public Health and Human Services) cont. | | | |
| Ms. Patti Russ | Governor | not listed | 9/22/2004 |
| Helena | | | 9/22/2006 |
| Qualifications (if required): agency representative of child care services | | | |
| Ms. Barbara Smith | Governor | not listed | 9/22/2004 |
| Helena | | | 9/22/2006 |
| Qualifications (if required): agency representative of children's special health services | | | |
| Ms. Barbara Stefanic | Governor | not listed | 9/22/2004 |
| Laurel | | | 9/22/2006 |
| Qualifications (if required): representative of special education cooperatives | | | |
| Ms. Jackie Thiel | Governor | not listed | 9/22/2004 |
| Helena | | | 9/22/2006 |
| Qualifications (if required): agency representative of EPSDT/Medicaid | | | |
| Ms. Cristin Volinkaty | Governor | not listed | 9/22/2004 |
| Missoula | | | 9/22/2006 |
| Qualifications (if required): Provider/Part C Agency representative | | | |
| **Flathead Basin Commission** (Governor) | | | |
| Mr. Paul Williams | Governor | Smiley | 9/7/2004 |
| Kalispell | | | 6/30/2007 |
| Qualifications (if required): public member | | | |
| **Governor's Council on Organ and Tissue Donor Awareness** (Public Health and Human Services) | | | |
| Mr. Jim DeTienne | Governor | Bullock | 9/16/2004 |
| Helena | | | 4/14/2006 |
| Qualifications (if required): representative of the Department of Public Health and Human Services | | | |

**BOARD AND COUNCIL APPOINTEES FROM SEPTEMBER 2004**

| Appointee | Appointed by | Succeeds | Appointment/End Date |
|---|---|---|---|
| **Governor's Council on Worklife Wellness** (Public Health and Human Services) | | | |
| Ms. Catherine Ipsen | Governor | not listed | 9/7/2004 |
| Missoula | | | 12/1/2005 |
| Qualifications (if required): representative of persons with disabilities | | | |
| **Montana Fetal Alcohol Syndrome Advisory Council** (Public Health and Human Services) | | | |
| Ms. Joan Cassidy | Governor | Mena | 9/21/2004 |
| Helena | | | 10/1/2004 |
| Qualifications (if required): non-voting member | | | |
| **Montana Historical Records Advisory Council** (Historical Society) | | | |
| Ms. Jodi L. Allison-Bunnell | Governor | not listed | 9/7/2004 |
| Missoula | | | 9/7/2006 |
| Qualifications (if required): public member | | | |
| Mr. Sean Chandler | Governor | not listed | 9/7/2004 |
| Harlem | | | 9/7/2006 |
| Qualifications (if required): public member | | | |
| Ms. Ellen Crain | Governor | not listed | 9/7/2004 |
| Butte | | | 9/7/2006 |
| Qualifications (if required): public member | | | |
| Ms. Judy Ellinghausen | Governor | not listed | 9/7/2004 |
| Great Falls | | | 9/7/2006 |
| Qualifications (if required): public member | | | |
| Ms. Peggy Gow | Governor | not listed | 9/7/2004 |
| Deer Lodge | | | 9/7/2006 |
| Qualifications (if required): public member | | | |

## BOARD AND COUNCIL APPOINTEES FROM SEPTEMBER 2004

| Appointee | Appointed by | Succeeds | Appointment/End Date |
|---|---|---|---|
| **Montana Historical Records Advisory Council** (Historical Society) cont. | | | |
| Ms. Molly Kruckenberg<br>Helena<br>Qualifications (if required): state archivist | Governor | not listed | 9/7/2004<br>9/7/2006 |
| Ms. Donna McCrea<br>Missoula<br>Qualifications (if required): public member | Governor | not listed | 9/7/2004<br>9/7/2006 |
| Ms. Samantha K. Pierson<br>Libby<br>Qualifications (if required): public member | Governor | not listed | 9/7/2004<br>9/7/2006 |

**VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2004 through JANUARY 31, 2005**

| Board/current position holder | Appointed by | Term end |
|---|---|---|
| **Aeronautics Board** (Transportation) | | |
| Mr. Ken D. Tolliver, Billings | Governor | 1/1/2005 |
| Qualifications (if required): representative of the Montana Chamber and an attorney | | |
| Ms. Debra Metz, Big Arm | Governor | 1/1/2005 |
| Qualifications (if required): representative of the Association of Montana Aerial Applicators | | |
| Mayor George Warner, Dillon | Governor | 1/1/2005 |
| Qualifications (if required): representative of the Montana League of Cities and Towns | | |
| Mr. Lanny Hanson, Glasgow | Governor | 1/1/2005 |
| Qualifications (if required): representative of the Montana Airport Management Association | | |
| Mr. Frank Bass, Moore | Governor | 1/1/2005 |
| Qualifications (if required): representative of the Montana Pilots Association | | |
| **Alternative Livestock Advisory Council** (Livestock and Fish, Wildlife, and Parks) | | |
| Ms. Meg Smith, Divide | Governor | 1/1/2005 |
| Qualifications (if required): representative of the Board of Livestock | | |
| Mr. John Lane, Cascade | Governor | 1/1/2005 |
| Qualifications (if required): representative of the Fish, Wildlife, and Parks Commission | | |
| **Appellate Defender Commission** (Administration) | | |
| Ms. Randi Hood, Helena | Governor | 1/1/2005 |
| Qualifications (if required): attorney/public defender | | |
| Mr. Todd Hillier, Bozeman | Governor | 1/1/2005 |
| Qualifications (if required): attorney/public defender | | |

**VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2004 through JANUARY 31, 2005**

| Board/current position holder | Appointed by | Term end |
|---|---|---|
| **Board of Chiropractors** (Labor and Industry) | | |
| Dr. Daniel Prideaux, Missoula | Governor | 1/1/2005 |
| Qualifications (if required): licensed chiropractor | | |
| **Board of Crime Control** (Justice) | | |
| Mr. John Flynn, Townsend | Governor | 1/1/2005 |
| Qualifications (if required): county attorney | | |
| Attorney Mike McGrath, Helena | Governor | 1/1/2005 |
| Qualifications (if required): Attorney General | | |
| Ms. Janet Stevens, Missoula | Governor | 1/1/2005 |
| Qualifications (if required): public member | | |
| Ms. Elaine Allestad, Big Timber | Governor | 1/1/2005 |
| Qualifications (if required): county commissioner | | |
| Chief Robert Jones, Great Falls | Governor | 1/1/2005 |
| Qualifications (if required): representative of police chiefs | | |
| Mr. Jim Oppedahl, Helena | Governor | 1/1/2005 |
| Qualifications (if required): public member | | |
| Mr. Bill Slaughter, Helena | Governor | 1/1/2005 |
| Qualifications (if required): Director of the Department of Corrections | | |
| Sheriff Clifford Brophy, Columbus | Governor | 1/1/2005 |
| Qualifications (if required): sheriff | | |
| Sen. Mack Cole, Forsyth | Governor | 1/1/2005 |
| Qualifications (if required): public member | | |

**VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2004 through JANUARY 31, 2005**

| Board/current position holder | Appointed by | Term end |
|---|---|---|
| **Board of Crime Control** (Justice) cont. | | |
| Sen. Bob Keenan, Bigfork | Governor | 1/1/2005 |
| Qualifications (if required): state senator | | |
| Mr. Robert Brooks, Butte | Governor | 1/1/2005 |
| Qualifications (if required): public member | | |
| Mr. William Mercer, Billings | Governor | 1/1/2005 |
| Qualifications (if required): ex-officio member | | |
| Ms. Margaret (Peg) Shea, Missoula | Governor | 1/1/2005 |
| Qualifications (if required): public member | | |
| Mr. Godfrey Saunders, Bozeman | Governor | 1/1/2005 |
| Qualifications (if required): educator | | |
| **Board of Environmental Review** (Environmental Quality) | | |
| Mr. Ward Shanahan, Helena | Governor | 1/1/2005 |
| Qualifications (if required): having expertise in local government planning and an attorney | | |
| Mr. Russell Hudson, Libby | Governor | 1/1/2005 |
| Qualifications (if required): public member | | |
| Dr. Garon Smith, Missoula | Governor | 1/1/2005 |
| Qualifications (if required): scientist | | |
| Mr. David Fishbaugh, Billings | Governor | 1/1/2005 |
| Qualifications (if required): having expertise in hydrology | | |

**VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2004 through JANUARY 31, 2005**

| Board/current position holder | Appointed by | Term end |
|---|---|---|
| **Board of Horse Racing** (Livestock) | | |
| Mr. T.J. Graveley, Townsend | Governor | 1/20/2005 |
| Qualifications (if required): public member representing District 4 | | |
| **Board of Housing** (Commerce) | | |
| Mr. William H. Oser, Billings | Governor | 1/1/2005 |
| Qualifications (if required): public member | | |
| Mr. Robert J. Savage, Sidney | Governor | 1/1/2005 |
| Qualifications (if required): public member | | |
| Mr. Thomas Welch, Dillon | Governor | 1/1/2005 |
| Qualifications (if required): public member | | |
| Mr. Stephen Redinger, Billings | Governor | 1/1/2005 |
| Qualifications (if required): public member | | |
| **Board of Investments** (Commerce) | | |
| Mr. Dick Anderson, Helena | Governor | 1/1/2005 |
| Qualifications (if required): public representative | | |
| Mr. Joel T. Long, Billings | Governor | 1/1/2005 |
| Qualifications (if required): public member | | |
| Mr. Tim Ryan, Great Falls | Governor | 1/1/2005 |
| Qualifications (if required): representative of the Public Teachers' Retirement Board | | |
| Mr. Jay Klawon, Hamilton | Governor | 1/1/2005 |
| Qualifications (if required): representative of the Public Employees' Retirement Board | | |
| Mr. Dennis Beams, Kalispell | Governor | 1/1/2005 |
| Qualifications (if required): representative of the financial industry | | |

**VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2004 through JANUARY 31, 2005**

| Board/current position holder | Appointed by | Term end |
|---|---|---|
| **Board of Labor Appeals** (Labor and Industry) | | |
| Mr. Joseph E. Thares, Helena | Governor | 1/1/2005 |
| Qualifications (if required): public member | | |
| Ms. Carol L. Vega, Butte | Governor | 1/1/2005 |
| Qualifications (if required): public member | | |
| **Board of Milk Control** (Livestock) | | |
| Ms. Dixie S. Hertel, Moore | Governor | 1/1/2005 |
| Qualifications (if required): public member and a Republican | | |
| Mr. Milton "Swede" Olson, Whitewater | Governor | 1/1/2005 |
| Qualifications (if required): public member and a Republican | | |
| Mr. Jesse Russell Gleason, Fairfield | Governor | 1/1/2005 |
| Qualifications (if required): public member and a Republican | | |
| **Board of Occupational Therapy Practice** (Commerce) | | |
| Ms. Shelbi Berg, Marion | Governor | 12/31/2004 |
| Qualifications (if required): occupational therapist | | |
| **Board of Oil and Gas Conservation** (Natural Resources and Conservation) | | |
| Mr. Allen C. Kolstad, Chester | Governor | 1/1/2005 |
| Qualifications (if required): landowner with mineral rights | | |
| Mr. David Ballard, Billings | Governor | 1/1/2005 |
| Qualifications (if required): representative of the oil and gas industry | | |
| Mr. Gary Willis, Helena | Governor | 1/1/2005 |
| Qualifications (if required): public member | | |
| Mr. Jerry Kennedy, Shelby | Governor | 1/1/2005 |
| Qualifications (if required): representative of the oil and gas industry | | |

**VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2004 through JANUARY 31, 2005**

| Board/current position holder | Appointed by | Term end |
|---|---|---|
| **Board of Pardons and Parole** (Corrections) | | |
| Ms. Sheryl Hoffarth, Billings | Governor | 1/1/2005 |
| Qualifications (if required): auxiliary member with knowledge of Indian culture | | |
| Rep. Matt McCann, Harlem | Governor | 1/1/2005 |
| Qualifications (if required): auxiliary member with knowledge of American Indian culture and problems | | |
| Mr. Mark Fournier, Hamilton | Governor | 1/1/2005 |
| Qualifications (if required): public member | | |
| **Board of Personnel Appeals** (Labor and Industry) | | |
| Mr. James P. Reardon, East Helena | Governor | 1/1/2005 |
| Qualifications (if required): labor union representative | | |
| Mr. Thomas Schneider, Helena | Governor | 1/1/2005 |
| Qualifications (if required): labor union representative | | |
| Mr. Michael O'Neill, Butte | Governor | 1/1/2005 |
| Qualifications (if required): management representative | | |
| **Board of Public Assistance** (Public Health and Human Services) | | |
| Ms. Mary Belcher, Clancy | Governor | 1/1/2005 |
| Qualifications (if required): attorney | | |
| Ms. Julie Ann Millam, Helena | Governor | 1/1/2005 |
| Qualifications (if required): public member | | |
| **Board of Respiratory Care Practitioners** (Commerce) | | |
| Ms. Linda Davis, Townsend | Governor | 1/1/2005 |
| Qualifications (if required): public member | | |

**VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2004 through JANUARY 31, 2005**

| Board/current position holder | Appointed by | Term end |
|---|---|---|
| **Board of Respiratory Care Practitioners** (Commerce) cont. | | |
| Dr. Gregory Paulauskis, Great Falls | Governor | 1/1/2005 |
| Qualifications (if required): respiratory care practitioner | | |
| Ms. Shirley Pollard, Stevensville | Governor | 1/1/2005 |
| Qualifications (if required): respiratory care practitioner | | |
| **Board of Social Work Examiners and Professional Counselors** (Commerce) | | |
| Ms. Mary Meis, Conrad | Governor | 1/1/2005 |
| Qualifications (if required): social worker | | |
| Mr. Ervin Booth, Roundup | Governor | 1/1/2005 |
| Qualifications (if required): professional counselor | | |
| Mr. Patrick Wolberd, Livingston | Governor | 1/1/2005 |
| Qualifications (if required): social worker | | |
| Ms. Rashel Jeffrey, Missoula | Governor | 1/1/2005 |
| Qualifications (if required): professional counselor | | |
| **Board of Speech-Language Pathologists and Audiologists** (Labor and Industry) | | |
| Ms. Sheila Skinner, Belgrade | Governor | 12/31/2004 |
| Qualifications (if required): speech-language pathologist | | |
| Ms. Julie Fiske, Kalispell | Governor | 12/31/2004 |
| Qualifications (if required): public member who is a consumer | | |
| Mr. Darrell Micken, Bozeman | Governor | 12/31/2004 |
| Qualifications (if required): licensed audiologist | | |
| **Coal Board** (Commerce) | | |
| Mr. Alan Evans, Roundup | Governor | 1/1/2005 |
| Qualifications (if required): representative of District 4 and an impact area | | |

**VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2004 through JANUARY 31, 2005**

| Board/current position holder | Appointed by | Term end |
|---|---|---|
| **Coal Board** (Commerce) cont. | | |
| Mr. Gerald Feda, Glasgow | Governor | 1/1/2005 |
| Qualifications (if required): representative of District 3 | | |
| Mr. Roger Knapp, Hysham | Governor | 1/1/2005 |
| Qualifications (if required): representative of District 4 and an impact area | | |
| Mr. James W. Royan, Missoula | Governor | 1/1/2005 |
| Qualifications (if required): representative of District 1 | | |
| **Commissioner of Political Practices** (Political Practices) | | |
| Ms. Linda Vaughey, Helena | Governor | 1/1/2005 |
| Qualifications (if required): not listed | | |
| **Commissioner of Political Practices Advisory Council** (Governor's Office) | | |
| Ms. Linda Vaughey, Helena | Governor | 12/31/2004 |
| Qualifications (if required): Commissioner of Political Practices | | |
| Ms. Mona Jamison, Helena | Governor | 12/31/2004 |
| Qualifications (if required): public member | | |
| Sen. Joe Tropila, Great Falls | Governor | 12/31/2004 |
| Qualifications (if required): member of the Montana Senate | | |
| Ms. Ellen Engstedt, Helena | Governor | 12/31/2004 |
| Qualifications (if required): public member | | |
| Rep. John Sinrud, Belgrade | Governor | 12/31/2004 |
| Qualifications (if required): member of the Montana House of Representatives | | |
| Mr. Chuck Denowh, Helena | Governor | 12/31/2004 |
| Qualifications (if required): designee of the chair of the Montana Republican Party | | |

**VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2004 through JANUARY 31, 2005**

| Board/current position holder | Appointed by | Term end |
|---|---|---|
| **Commissioner of Political Practices Advisory Council** (Governor's Office) cont. | | |
| Mr. David Hunter, Helena | Governor | 12/31/2004 |
| Qualifications (if required): designee of the chair of the Montana Democratic Party | | |
| Mr. James Santoro, Helena | Governor | 12/31/2004 |
| Qualifications (if required): representative of the Governor's Office | | |
| Mr. Jim Scheier, Helena | Governor | 12/31/2004 |
| Qualifications (if required): attorney who provides legal services for the Commissioner of Political Practices | | |
| **Developmental Disabilities Planning and Advisory Council** (Public Health and Human Services) | | |
| Mr. Wallace Melcher, Helena | Governor | 1/1/2005 |
| Qualifications (if required): secondary consumer | | |
| Ms. Othelia Schulz, Anaconda | Governor | 1/1/2005 |
| Qualifications (if required): representing Region IV | | |
| Ms. Paula Holdeman, Plentywood | Governor | 1/1/2005 |
| Qualifications (if required): secondary consumer | | |
| Ms. Sonya Standing Rock, Box Elder | Governor | 1/1/2005 |
| Qualifications (if required): consumer | | |
| Mr. Edward James Brown, Jr., Harlem | Governor | 1/1/2005 |
| Qualifications (if required): consumer | | |
| Ms. Diana Tavary, Helena | Governor | 1/1/2005 |
| Qualifications (if required): parent of a consumer | | |
| Ms. P.J. Rismon-Beckley, Kalispell | Governor | 1/1/2005 |
| Qualifications (if required): family member of a consumer | | |

**VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2004 through JANUARY 31, 2005**

| Board/current position holder | Appointed by | Term end |
|---|---|---|
| **Developmental Disabilities Planning and Advisory Council** (Public Health and Human Services) cont. | | |
| Mr. Len Nopen, Great Falls | Governor | 1/1/2005 |
| Qualifications (if required): primary consumer | | |
| Ms. Barbara Olind, Baker | Governor | 1/1/2005 |
| Qualifications (if required): parent of a developmentally disabled adult and a secondary consumer | | |
| Ms. Melissa Clark, Great Falls | Governor | 1/1/2005 |
| Qualifications (if required): primary consumer | | |
| **Director Montana Department of Military Affairs and Adjutant General National Guard** (Military Affairs) | | |
| Brig. General Randall Mosley, Helena | Governor | 12/31/2004 |
| Qualifications (if required): appointed | | |
| **Fish, Wildlife, and Parks Commission** (Fish, Wildlife, and Parks) | | |
| Mr. Dan Walker, Billings | Governor | 1/1/2005 |
| Qualifications (if required): representative of District 5 | | |
| Mr. Michael E. Murphy, Helena | Governor | 1/1/2005 |
| Qualifications (if required): representative from District 1 | | |
| Mr. John Lane, Cascade | Governor | 1/1/2005 |
| Qualifications (if required): representative of District 3 | | |
| Mr. Rich Lane, Missoula | Governor | 1/1/2005 |
| Qualifications (if required): representative of District 1 | | |
| **Flathead Basin Commission** (Governor) | | |
| Mr. Todd O'Hair, Helena | Governor | 12/31/2004 |
| Qualifications (if required): representative of the Governor | | |

**VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2004 through JANUARY 31, 2005**

| Board/current position holder | Appointed by | Term end |
|---|---|---|
| **Governor's Advisory Council on Disability** (Administration) | | |
| Ms. Shelley Laing, Kalispell<br>Qualifications (if required): public member | Governor | 11/26/2004 |
| Mr. Gene Haire, Helena<br>Qualifications (if required): public member | Governor | 11/26/2004 |
| Mr. David Diehl, East Helena<br>Qualifications (if required): public member | Governor | 11/26/2004 |
| Ms. Katherine Kountz, Helena<br>Qualifications (if required): ex-officio member | Governor | 11/26/2004 |
| Mr. Brian Tocher, Great Falls<br>Qualifications (if required): public member | Governor | 11/26/2004 |
| Ms. Bernadine Gantert, Missoula<br>Qualifications (if required): public member | Governor | 11/26/2004 |
| Dr. Margaret J. Osika, Warm Springs<br>Qualifications (if required): public member | Governor | 11/26/2004 |
| Mr. Edward "Ted" Robbins, Great Falls<br>Qualifications (if required): public member | Governor | 11/26/2004 |
| **Governor's HIV/AIDS Advisory Council** (Public Health and Human Services) | | |
| Mr. Frank Gary, Butte<br>Qualifications (if required): public member | Governor | 11/26/2004 |
| Mr. Steven C. Yeakel, Helena<br>Qualifications (if required): public member | Governor | 11/26/2004 |

**VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2004 through JANUARY 31, 2005**

| Board/current position holder | Appointed by | Term end |
|---|---|---|
| **Governor's HIV/AIDS Advisory Council** (Public Health and Human Services) cont. | | |
| Mr. David Herrera, Missoula<br>Qualifications (if required): public member | Governor | 11/26/2004 |
| Sen. John Bohlinger, Billings<br>Qualifications (if required): legislator | Governor | 11/26/2004 |
| Mr. Fred Zaino, Conrad<br>Qualifications (if required): public member | Governor | 11/26/2004 |
| Ms. Annie Tavary, Helena<br>Qualifications (if required): public member | Governor | 11/26/2004 |
| Pastor Jack Preston, Lincoln<br>Qualifications (if required): public member | Governor | 11/26/2004 |
| Sister Mary Vincentia Maronick, Billings<br>Qualifications (if required): public member | Governor | 11/26/2004 |
| Ms. Kathryn L. Hall, Billings<br>Qualifications (if required): public member | Governor | 11/26/2004 |
| Ms. LeeAnn Bruisedhead, Lame Deer<br>Qualifications (if required): native american | Governor | 11/26/2004 |
| Mr. Steve Woodward, Missoula<br>Qualifications (if required): public member | Governor | 11/26/2004 |
| Ms. Aimee Sandon, Helena<br>Qualifications (if required): public member | Governor | 11/26/2004 |
| Ms. Becky Ketterling, Billings<br>Qualifications (if required): public member | Governor | 11/26/2004 |

**VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2004 through JANUARY 31, 2005**

| Board/current position holder | Appointed by | Term end |
|---|---|---|
| **Governor's HIV/AIDS Advisory Council** (Public Health and Human Services) cont. | | |
| Ms. Mary Jane Nealon, Missoula | Governor | 11/26/2004 |
| Qualifications (if required): public member | | |
| Ms. June Hermanson, Billings | Governor | 12/31/2004 |
| Qualifications (if required): consumer | | |
| Ms. Tonya Santoro, Helena | Governor | 11/26/2004 |
| Qualifications (if required): student representative | | |
| **Governor's Public Health Care Advisory Council** (Public Health and Human Services) | | |
| Ms. June Hermanson, Billings | Governor | 12/31/2004 |
| Qualifications (if required): consumer | | |
| Ms. Rose Hughes, Helena | Governor | 12/31/2004 |
| Qualifications (if required): representative of long term care | | |
| Rep. Loren Soft, Billings | Governor | 12/31/2004 |
| Qualifications (if required): representative of chemical dependency | | |
| Rep. Betty Lou Kasten, Brockway | Governor | 12/31/2004 |
| Qualifications (if required): public member | | |
| Dr. R. D. Marks, Missoula | Governor | 12/31/2004 |
| Qualifications (if required): physician | | |
| Sen. Bob Keenan, Bigfork | Governor | 12/31/2004 |
| Qualifications (if required): representative of the legislature | | |
| Rep. Trudi Schmidt, Great Falls | Governor | 12/31/2004 |
| Qualifications (if required): representative of the legislature | | |

**VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2004 through JANUARY 31, 2005**

| Board/current position holder | Appointed by | Term end |
|---|---|---|
| **Governor's Public Health Care Advisory Council** (Public Health and Human Services) cont. | | |
| Rep. Dan Hurwitz, White Sulphur Springs | Governor | 12/31/2004 |
| Qualifications (if required): representative of the legislature | | |
| Mr. John Pipe, Wolf Point | Governor | 12/31/2004 |
| Qualifications (if required): representative of Native Americans | | |
| Rep. Edith J. Clark, Sweet Grass | Governor | 12/31/2004 |
| Qualifications (if required): representative of the legislature | | |
| Rep. Jonathan Windy Boy, Box Elder | Governor | 12/31/2004 |
| Qualifications (if required): representative of the legislature | | |
| Ms. Mary Caferro, Helena | Governor | 12/31/2004 |
| Qualifications (if required): public member | | |
| Ms. Twila Costigan, Helena | Governor | 12/31/2004 |
| Qualifications (if required): consumer | | |
| Dr. Gary Mihelish, Helena | Governor | 12/31/2004 |
| Qualifications (if required): dentist | | |
| Mr. James Kiser, Butte | Governor | 12/31/2004 |
| Qualifications (if required): representative of hospitals | | |
| Mr. Bob Bartholomew, Helena | Governor | 12/31/2004 |
| Qualifications (if required): representative of senior citizens | | |
| Ms. Tanya Ask, Helena | Governor | 12/31/2004 |
| Qualifications (if required): representative of the insurance industry | | |
| Dr. Patsy Vargo, Conrad | Governor | 12/31/2004 |
| Qualifications (if required): representative of rural health | | |

**VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2004 through JANUARY 31, 2005**

| Board/current position holder | Appointed by | Term end |
|---|---|---|
| **Hail Insurance Board** (Agriculture) | | |
| Mr. W. Ralph Peck, Helena | Governor | 1/1/2005 |
| Qualifications (if required): director of the Department of Agriculture | | |
| Mr. John Morrison, Helena | Governor | 1/1/2005 |
| Qualifications (if required): State Auditor | | |
| **Hard Rock Mining Impact Board** (Commerce) | | |
| Ms. Betty Aye, Broadus | Governor | 1/1/2005 |
| Qualifications (if required): county commissioner from District 4 | | |
| Ms. Tammy Johnson, Whitehall | Governor | 1/1/2005 |
| Qualifications (if required): industry representative from District 2 | | |
| Mr. Craig Rehm, Fort Benton | Governor | 1/1/2005 |
| Qualifications (if required): representative of a financial institution and District 3 | | |
| **Human Rights Commission** (Labor and Industry) | | |
| Ms. Evelyn Stevenson, Pablo | Governor | 1/1/2005 |
| Qualifications (if required): public member and an attorney | | |
| Mr. Gary Hindoien, Clancy | Governor | 1/1/2005 |
| Qualifications (if required): public member | | |
| Ms. Arleah Shechtman, Kalispell | Governor | 1/1/2005 |
| Qualifications (if required): public member | | |
| **Independent Living Council** (Public Health and Human Services) | | |
| Ms. Shelley Laing, Kalispell | Director | 12/1/2004 |
| Qualifications (if required): representing consumers | | |
| Ms. Flo Kiewel, Missoula | Director | 12/24/2004 |
| Qualifications (if required): none specified | | |

**VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2004 through JANUARY 31, 2005**

| Board/current position holder | Appointed by | Term end |
|---|---|---|
| **Independent Living Council** (Public Health and Human Services) cont. | | |
| Mr. Wilfred "Max" Bear, Poplar | Director | 12/24/2004 |
| Qualifications (if required): none specified | | |
| Mr. Tom Tripp, Butte | Director | 12/24/2004 |
| Qualifications (if required): none specified | | |
| **Judicial Nomination Commission** (Justice) | | |
| Rep. Rick Hill, Helena | Governor | 1/1/2005 |
| Qualifications (if required): public member | | |
| Mr. L. Randall Bishop, Billings | Supreme Court | 12/31/2004 |
| Qualifications (if required): appointed | | |
| **Martin Luther King, Jr. Commemorative Commission** (Office of Community Service) | | |
| Reverend Phillip Caldwell, Great Falls | Governor | 1/20/2005 |
| Qualifications (if required): public member | | |
| Mr. Robert Fourstar, Wolf Point | Governor | 1/20/2005 |
| Qualifications (if required): public member | | |
| Ms. Cristina Medina, Helena | Governor | 1/20/2005 |
| Qualifications (if required): public member | | |
| Ms. Carol Murray, Browning | Governor | 1/20/2005 |
| Qualifications (if required): public member | | |
| Mr. Alan Thompson, Helena | Governor | 1/20/2005 |
| Qualifications (if required): public member | | |
| Ms. Kathy Day, Great Falls | Governor | 1/20/2005 |
| Qualifications (if required): public member | | |

**VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2004 through JANUARY 31, 2005**

| Board/current position holder | Appointed by | Term end |
|---|---|---|
| **Martin Luther King, Jr. Commemorative Commission** (Office of Community Service) cont. | | |
| Ms. Lindley Dupree, Kalispell | Governor | 1/20/2005 |
| Qualifications (if required): public member | | |
| Ms. Gwendolyn Kircher, Billings | Governor | 1/20/2005 |
| Qualifications (if required): public member | | |
| Ms. Nancy Knauff, Great Falls | Governor | 1/20/2005 |
| Qualifications (if required): public member | | |
| Reverend Marcus Collins, Great Falls | Governor | 1/20/2005 |
| Qualifications (if required): public member | | |
| Mr. Benjamin Pease, Lodge Grass | Governor | 1/20/2005 |
| Qualifications (if required): public member | | |
| **Montana Alfalfa Seed Committee** (Agriculture) | | |
| Mr. John Markegard, Laurel | Governor | 12/21/2004 |
| Qualifications (if required): representative of alfalfa seed growers industry and alfalfa leaf-cutting bee industry | | |
| Mr. Ernest Johnson, Chinook | Governor | 12/21/2004 |
| Qualifications (if required): representative of alfalfa seed growers industry | | |
| **Montana Committee for the Humanities** | | |
| Rep. Arla Jeanne Murray, Miles City | Governor | 1/2/2005 |
| Qualifications (if required): public member | | |
| Mr. Stuart Knapp, Bozeman | Governor | 1/2/2005 |
| Qualifications (if required): public member | | |
| Ms. Julie Cajune, Ronan | Governor | 1/2/2005 |
| Qualifications (if required): public member | | |

**VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2004 through JANUARY 31, 2005**

| Board/current position holder | Appointed by | Term end |
|---|---|---|
| **Montana Committee for the Humanities** cont. | | |
| Mr. James Driscoll, Butte | Governor | 1/2/2005 |
| Qualifications (if required): public member | | |
| **Montana Grass Conservation Commission** (Natural Resources and Conservation) | | |
| Mr. Bill Loehding, Ekalaka | Governor | 1/1/2005 |
| Qualifications (if required): holder of active preference rights within the state grazing district | | |
| Mr. Phil Hill, Mosby | Governor | 1/1/2005 |
| Qualifications (if required): holder of active preference rights within the state grazing district | | |
| **Montana Health Facility Authority** (Commerce) | | |
| Ms. Gayle Carpenter, Helena | Governor | 1/1/2005 |
| Qualifications (if required): public member | | |
| Ms. Joyce Asay, Forsyth | Governor | 1/1/2005 |
| Qualifications (if required): public member | | |
| Mr. Lee Jockers, Billings | Governor | 1/1/2005 |
| Qualifications (if required): public member | | |
| Ms. Kelley Evans, Red Lodge | Governor | 1/1/2005 |
| Qualifications (if required): public member | | |
| **Montana Licensed Addiction Counselor's Program Advisory Council** (Labor and Industry) | | |
| Ms. Karen Workman, Great Falls | Director | 11/25/2004 |
| Qualifications (if required): university member | | |
| Ms. Marian Scofield, Billings | Director | 11/25/2004 |
| Qualifications (if required): representing Montana Association of Alcoholism and Drug Abuse Counselors | | |

**VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2004 through JANUARY 31, 2005**

| Board/current position holder | Appointed by | Term end |
|---|---|---|
| **Montana Licensed Addiction Counselor's Program Advisory Council** (Labor and Industry) cont. | | |
| Mr. Joel Wagner, Billings | Director | 11/25/2004 |
| Qualifications (if required): public member | | |
| **Montana Small Business Development Center Advisory Council** (Commerce) | | |
| Rep. Ronald R. Devlin, Terry | Director | 12/20/2004 |
| Qualifications (if required): none specified | | |
| Sen. Jon Tester, Big Sandy | Director | 12/20/2004 |
| Qualifications (if required): none specified | | |
| Ms. Toni Broadbent, Helena | Director | 12/20/2004 |
| Qualifications (if required): none specified | | |
| Mr. Ken Green, Whitefish | Director | 12/20/2004 |
| Qualifications (if required): none specified | | |
| Mr. Paul Tuss, Havre | Director | 12/20/2004 |
| Qualifications (if required): none specified | | |
| Mr. John Langenheim, Bozeman | Director | 12/20/2004 |
| Qualifications (if required): none specified | | |
| Ms. Michelle Johnston, Helena | Director | 12/20/2004 |
| Qualifications (if required): none specified | | |
| Ms. Brenda Burkartsmeier, Billings | Director | 12/20/2004 |
| Qualifications (if required): none specified | | |
| Mr. Steve Holland, Bozeman | Director | 12/20/2004 |
| Qualifications (if required): none specified | | |

**VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2004 through JANUARY 31, 2005**

| Board/current position holder | Appointed by | Term end |
|---|---|---|
| **Montana Small Business Development Center Advisory Council** (Commerce) cont. | | |
| Ms. Kathy Jones, Great Falls | Director | 12/20/2004 |
| Qualifications (if required): none specified | | |
| Mr. Dan Killoy, Miles City | Director | 12/20/2004 |
| Qualifications (if required): none specified | | |
| Mr. Joe Unterreiner, Kalispell | Director | 12/20/2004 |
| Qualifications (if required): none specified | | |
| Ms. Maria Valandra, Billings | Director | 12/20/2004 |
| Qualifications (if required): none specified | | |
| Ms. Reatha Montoya, Colstrip | Director | 12/20/2004 |
| Qualifications (if required): none specified | | |
| **Montana Vocational Rehabilitation Council** (Public Health and Human Services) | | |
| Ms. Ruth Straley, Helena | Director | 11/4/2004 |
| Qualifications (if required): federally mandated business industry and labor position | | |
| Mr. Don Jones, Helena | Director | 1/17/2005 |
| Qualifications (if required): federally mandated client assistance program position | | |
| **Noxious Weed Seed Free Forage Advisory Council** (Agriculture) | | |
| Mr. W. Ralph Peck, Helena | Director | 12/18/2004 |
| Qualifications (if required): Director | | |
| Mr. Dennis Cash, Bozeman | Director | 12/18/2004 |
| Qualifications (if required): ex officio | | |
| Mr. Ray Ditterline, Bozeman | Director | 12/18/2004 |
| Qualifications (if required): agricultural experiment station | | |

**VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2004 through JANUARY 31, 2005**

| Board/current position holder | Appointed by | Term end |
|---|---|---|
| **Noxious Weed Seed Free Forage Advisory Council** (Agriculture) cont. | | |
| Mr. Kelly Flynn, Townsend<br>Qualifications (if required): outfitters and guides | Director | 12/18/2004 |
| Mr. Clay Williams, Livingston<br>Qualifications (if required): weed districts | Director | 12/18/2004 |
| Mr. Tim Schaff, Fishtail<br>Qualifications (if required): forage producer | Director | 12/18/2004 |
| Mr. Wayne Maughn, Fort Benton<br>Qualifications (if required): livestock/agriculture | Director | 12/18/2004 |
| Mr. David Leininger, Lewistown<br>Qualifications (if required): forage producer | Director | 12/18/2004 |
| Mr. Ross Wagner, Kalispell<br>Qualifications (if required): forage producer | Director | 12/18/2004 |
| Mr. Jim Pfau, Stevensville<br>Qualifications (if required): feed pellets/cubes products | Director | 12/18/2004 |
| Mr. Keith Kirscher, Townsend<br>Qualifications (if required): forage producer | Director | 12/18/2004 |
| Mr. Robert Wagner, Plains<br>Qualifications (if required): weed districts | Director | 12/18/2004 |
| **Property Tax Exemption Study Committee** (Revenue) | | |
| Mr. Dwaine J. Iverson, Shelby<br>Qualifications (if required): representative of business | Governor | 12/31/2004 |

**VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2004 through JANUARY 31, 2005**

| Board/current position holder | Appointed by | Term end |
|---|---|---|
| **Property Tax Exemption Study Committee** (Revenue) cont. | | |
| Sen. Mack Cole, Forsyth | Governor | 12/31/2004 |
| Qualifications (if required): representative of local government | | |
| Mr. William Parker, Malta | Governor | 12/31/2004 |
| Qualifications (if required): representative of K-12 public schools | | |
| Mr. Jim Oliverson, Kalispell | Governor | 12/31/2004 |
| Qualifications (if required): representative of a property tax-exempt organization | | |
| Mr. Gary Hickle, Billings | Governor | 12/31/2004 |
| Qualifications (if required): representative of a property tax-exempt organization | | |
| Mr. Randy Wilke, Helena | Governor | 12/31/2004 |
| Qualifications (if required): representative of the executive branch | | |
| **State Compensation Insurance Fund Study Committee** (State Compensation Insurance Fund) | | |
| Mr. George Wood, Missoula | Governor | 1/1/2005 |
| Qualifications (if required): representative of a plan #1 insurer | | |
| Sen. Thomas Beck, Helena | Governor | 1/1/2005 |
| Qualifications (if required): representative of the Governor's Office | | |
| Mr. Jack Morgenstern, Lewistown | Governor | 1/1/2005 |
| Qualifications (if required): representative of the State Fund Board and an insured employer of state fund | | |
| Ms. Jacqueline Lenmark, Helena | Governor | 1/1/2005 |
| Qualifications (if required): representative of a plan #2 insurer | | |
| **State Employee Group Benefits Advisory Council** (Administration) | | |
| Sen. Mike Cooney, Helena | Director | 1/1/2005 |
| Qualifications (if required): none specified | | |

**VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2004 through JANUARY 31, 2005**

| Board/current position holder | Appointed by | Term end |
|---|---|---|
| **State Employee Group Benefits Advisory Council** (Administration) cont. | | |
| Mr. Thomas Schneider, Helena | Director | 1/1/2005 |
| Qualifications (if required): none specified | | |
| Mr. Dale Taliaferro, Helena | Director | 1/1/2005 |
| Qualifications (if required): none specified | | |
| Ms. Mary Dalton, Helena | Director | 1/1/2005 |
| Qualifications (if required): none specified | | |
| Mr. Steve Barry, Helena | Director | 1/1/2005 |
| Qualifications (if required): none specified | | |
| Mr. John W. Northey, Helena | Director | 1/1/2005 |
| Qualifications (if required): none specified | | |
| Mr. Todd Lovshin, Helena | Director | 1/1/2005 |
| Qualifications (if required): none specified | | |
| Mr. Richard Cooley, Helena | Director | 1/1/2005 |
| Qualifications (if required): none specified | | |
| Ms. Barbara Smith, Helena | Director | 1/1/2005 |
| Qualifications (if required): none specified | | |
| Mr. Monte Brown, Helena | Director | 1/1/2005 |
| Qualifications (if required): none specified | | |
| Ms. Amy Carlson, Helena | Director | 1/1/2005 |
| Qualifications (if required): none specified | | |

**VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2004 through JANUARY 31, 2005**

| Board/current position holder | Appointed by | Term end |
|---|---|---|
| **State Lottery Commission** (Commerce) | | |
| Sheriff Clifford Brophy, Columbus | Governor | 1/1/2005 |
| Qualifications (if required): law enforcement officer | | |
| **State Lottery Commission** (Administration) | | |
| Mr. Donald Sterhan, Billings | Governor | 1/1/2005 |
| Qualifications (if required): public member | | |
| **State Tax Appeal Board** (Administration) | | |
| Ms. JereAnn Nelson, Helena | Governor | 1/1/2005 |
| Qualifications (if required): public member | | |
| **State Trauma Care Committee** (Public Health and Human Services) | | |
| Mr. John M. Mootry, Dillon | Governor | 11/2/2004 |
| Qualifications (if required): representative of the Montana Hospital Association | | |
| Dr. J. Bradley Pickhardt, Missoula | Governor | 11/2/2004 |
| Qualifications (if required): representative of the Western Regional Trauma Care Committee | | |
| Ms. Jennie Catlin Nemec, Helena | Governor | 11/2/2004 |
| Qualifications (if required): representative of the Central Regional Trauma Care Committee | | |
| **Tax Reform Study Committee** (Revenue) | | |
| Mr. Myles Watts, Bozeman | Governor | 12/31/2004 |
| Qualifications (if required): representative of agriculture | | |
| Mr. Ken Morrison, Helena | Governor | 12/31/2004 |
| Qualifications (if required): representative of large industry | | |
| Mr. Jerry Driscoll, Helena | Governor | 12/31/2004 |
| Qualifications (if required): representative of labor | | |

**VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2004 through JANUARY 31, 2005**

| Board/current position holder | Appointed by | Term end |
|---|---|---|
| **Tax Reform Study Committee** (Revenue) cont. | | |
| Ms. Mary Whittinghill, Helena | Governor | 12/31/2004 |
| Qualifications (if required): representative of small business | | |
| **Transportation Commission** (Transportation) | | |
| Rep. Shiell W. Anderson, Livingston | Governor | 1/1/2005 |
| Qualifications (if required): representative of District 2 and a Republican | | |
| Mr. Daniel Rice, Great Falls | Governor | 1/1/2005 |
| Qualifications (if required): representative of District 3 and an Independent | | |
| Mr. Meredith Reiter, Billings | Governor | 1/1/2005 |
| Qualifications (if required): representative of District 5 and a Republican | | |
| **Trauma Care Committee** (Public Health and Human Services) | | |
| Dr. Louis Kattine, Missoula | Governor | 11/2/2004 |
| Qualifications (if required): representative of the Montana Medical Association | | |
| **Traumatic Brain Injury Advisory Council** (Public Health and Human Services) | | |
| Ms. Ruby Clark, Poplar | Governor | 1/1/2005 |
| Qualifications (if required): family member of a survivor | | |
| Mr. Reg Gibbs, Billings | Governor | 1/1/2005 |
| Qualifications (if required): representative of injury control or prevention programs | | |