ISSUE NO. 20

The Montana Administrative Register (MAR or Register), 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 The Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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 contains final rule notices which show any changes made since the proposal stage. All rule actions are effective the day after publication of the adoption notice unless otherwise specified in the final notice. The Interpretation Section contains the Attorney General's opinions and state declaratory rulings. Special notices and tables are found at the end 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 Secretary of State's Office, Administrative Rules Bureau, at (406) 444-2055.

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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 and ARM 2.55.502 pertaining to individual loss sensitive dividend plans	)))))	NOTICE OF PROPOSED AMENDMENT NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On December 8, 2006, the Montana State Fund proposes to amend the above-stated rules.

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. on November 27, 2006, to advise us of the nature of the accommodation that you need. Please contact Nancy Butler, Montana State Fund, P.O. Box 4759, 5 South Last Chance Gulch, Helena, Montana 59604-4759; telephone (406) 444-7725; fax (406) 444-1493; or e-mail nbutler@mt.gov.

3. The rules proposed to be amended provide 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, ~~2005~~ 2006, and assign new or changed classifications as approved by the board. That section of the manual is 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, P.O. Box 4759, Helena, Montana 59604-4759.

AUTH: 39-71-2315, 39-71-2316, MCA
IMP: 39-71-2311, 39-71-2316, MCA

REASON: 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, 2006.

2.55.502 INDIVIDUAL LOSS SENSITIVE DIVIDEND DISTRIBUTION PLAN
(1) through (5) remain the same.

(6) Individual retrospectively rated and optional deductible policies shall not be eligible for a dividend declared by the board under this rule. This section applies to policies with policy effective dates after December 31, 2006.

~~(6)~~ (7) The board may set a minimum amount below which a dividend shall not be payable to an individual policyholder.

~~(7)~~ (8) A dividend will be issued as a warrant to a policyholder, unless ~~(7)~~ (8)(a) through ~~(7)~~ (8)(c) exist. The dividend will be applied to the account, unless an exception is made by the board of directors for a warrant to be issued, if the following situations exist:

(a) the current policy is pending forced cancellation for nonpayment of premium;

(b) a canceled policy with an existing debt owed the State Fund; or

(c) the dividend amount is above the minimum amount established pursuant to ~~(6)~~ (7) ~~above~~ but below an amount as established by the board.

~~(8)~~ (9) If a dispute under the policy arising from the dividend year exists and remains unresolved at the time the dividend is declared, the dividend amount will be withheld and not applied to the account or a warrant issued until such time as outstanding issues with the State Fund are resolved.

~~(9)~~ (10) The State Fund has a security interest in all dividends to secure payment to the State Fund of any and all amounts owed to the State Fund by the policyholder, regardless of the policy years in relation to which the policyholder owes the State Fund, or to which the State Fund declares a dividend.

AUTH: 39-71-2315, 39-71-2316, MCA
IMP: 39-71-2323, MCA

REASON: This amendment to ARM 2.55.502 is reasonably necessary to make the State Fund's loss sensitive dividend distribution more equitable. Presently, retrospectively rated and optional deductible policies are eligible for a dividend under the terms of ARM 2.55.502. It is reasonably necessary to amend the rule now, as the State Fund has historically not written many of these policies, but is now writing more retrospectively rated policies, representing increasing volume of premium, and may write optional deductible policies in the future. Under the terms of retrospectively rated and optional deductible policies, a policyholder is rewarded with a return or retention of premium if its losses for a policy period are less than expected, but the valuation period is beyond the dividend valuation. This return or retention of premium serves a similar purpose to the loss sensitive dividend distribution made in accordance with this rule. The proposed change to ARM 2.55.502 will eliminate the possibility of a retrospectively rated or optional deductible policy being rewarded twice for the same result.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Nancy Butler, Montana State Fund, P.O. Box 4759, 5 South Last Chance Gulch, Helena, Montana 59604-4759; telephone (406) 444-7725; fax (406) 444-1493; or e-mail nbutler@mt.gov. Any comments must be received no later than November 27, 2006.

5. If persons who are directly affected by the proposed action wish to express data, views, or arguments, orally or in writing at a public hearing, they must make a written request for a hearing, and submit this request along with any written comments to Nancy Butler at the above address no later than November 27, 2006.

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 has been determined to be 2,700 persons based on 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 and specifies that the person wishes to receive notices regarding the Montana State Fund. Such written request may be mailed or delivered to Nancy Butler, Montana State Fund, P.O. Box 4759, 5 South Last Chance Gulch, Helena, Montana, 59604-4759, faxed to the office at (406) 444-1493; or may be made by completing a request form at any rules hearing held by the Montana State Fund.

8. An electronic copy of this Notice of Proposed Amendment is available through the Secretary of State's web site at http://sos.mt.gov/ARM/Register. The Secretary of State strives to make the electronic copy of the Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

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

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

/s/ Ed Henrich
Ed Henrich
Chairman of the Board

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

Certified to the Secretary of State October 16, 2006.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.50.213 pertaining to reimbursement payments for abandoned vehicle removal	NOTICE OF PROPOSED AMENDMENT (MOTOR VEHICLE RECYCLING AND DISPOSAL) NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On November 27, 2006, the Department of Environmental Quality proposes to amend the above-stated rule.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., November 13, 2006, to advise us of the nature of the accommodation that you need. Please contact Robert A. Martin, Waste and Underground Tank Management Bureau, Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-4194; fax (406) 444-1374; or e-mail rmartin@mt.gov.

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

17.50.213 PAYMENT REQUESTS (1) and (2) remain the same.

(3) The department shall pay each claim at the flat rate of ~~$70.00~~ 85.00 per vehicle removed.

(4) through (8) remain the same.

AUTH: 75-10-503, MCA
IMP: 75-10-532, MCA

REASON: Section 75-10-503(3), MCA, authorizes the department to adopt rules providing for the reimbursement of hired removal charges of certain abandoned vehicles in accordance with 61-12-401, MCA. ARM 17.50.213 establishes the amount of the reimbursement payment for each abandoned vehicle removed (with a valid claim for payment). The reimbursement rate was set at $70 in 1999. Because of inflation and increasing fuel expenses incurred by persons hired to remove these abandoned vehicles, the department is proposing to increase the amount of the reimbursement payment from $70 to $85 per vehicle removed.

In FY 2005, approximately 300 tow truck drivers removed 1577 vehicles for which reimbursement was paid. Therefore, the department estimates that the

increase in the reimbursement rate would provide each tow truck driver an average $80 per year increase in reimbursements. The total increase in reimbursement by the department is estimated to be about $24,000 per year.

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 Robert A. Martin, Waste and Underground Tank Management Bureau, Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-4194; fax (406) 444-1374; or e-mail to rmartin@mt.gov, no later than 5:00 p.m., November 27, 2006. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

5. If persons who are directly affected by the proposed actions wish to express their data, views, and arguments orally or in writing at a public hearing, they shall make written request for a hearing and submit this request along with any written comments they have to Robert A. Martin, Waste and Underground Tank Management Bureau, Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; fax (406) 444-1374; or e-mail rmartin@mt.gov. A written request for hearing must be received no later than 5:00 p.m., November 27, 2006.

6. If the department receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the appropriate administrative rule review committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 30 based on the number of tow truck drivers that removed abandoned vehicles for which reimbursement was paid in 2005.

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

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

Reviewed by: DEPARTMENT OF ENVIRONMENTAL QUALITY

/s/ David Rusoff By: */s/ Richard H. Opper*
DAVID RUSOFF RICHARD H. OPPER
Rule Reviewer Director

Certified to the Secretary of State, October 16, 2006.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the proposed adoption of NEW RULE I, responsibility for costs; and proposed amendment of ARM 23.12.103 through 23.12.105, concerning criminal history records program	)))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION AND AMENDMENT

TO: All Concerned Persons

1. On November 15, 2006, at 9:00 a.m., the Montana Department of Justice will hold a public hearing in the auditorium of the Scott Hart Building, 303 North Roberts, Helena, Montana, to consider the proposed adoption and amendment of the above-stated rules.

2. The Department of Justice will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m. on November 1, 2006, to advise us of the nature of the accommodation that you need. Please contact Jon Ellingson, Department of Justice, 215 North Sanders, P.O. Box 201401, Helena, MT 59620-1401; (406) 444-2026; Montana Relay Service 711; fax (406) 444-3549; or e-mail jellingson@mt.gov.

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

NEW RULE I RESPONSIBILITY FOR COSTS (1) If a city or town commits a person to the detention center of the county in which the city or town is located for a reason other than detention pending trial for violating an ordinance of that city or town, or detention for service of a sentence for violating an ordinance of that city or town, the costs associated with meeting the regulatory requirements of this subchapter shall be borne by the county.

AUTH: 44-5-105, MCA
IMP: 44-5-213, MCA

REASON: This rule is necessary to provide consistency with 7-32-2242(b), MCA.

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

23.12.103 MONTANA ARREST NUMBERING SYSTEM NUMBER TO BE ASSIGNED - CJIN (1) Following a custodial or felony arrest, the arresting agency or ~~by agreement~~ the custodial agency shall access the Montana arrest numbering system (MANS) through the CJIN and have a number assigned to that custodial or felony arrest.

(2) Prior to release, the arresting agency, custodial agency, or the courts shall ensure that an individual has been fingerprinted and a MANS number registered on the criminal case history and final disposition report form.

(3) remains the same.

AUTH: 44-5-105, 44-5-213, MCA
IMP: 44-5-213, MCA

23.12.104 FINGERPRINT CARD (1) Whenever a person charged with a crime is fingerprinted under 44-5-202, MCA, two original FBI fingerprint cards, form number FD-249, must be completed by the ~~arresting agency~~ appropriate law enforcement agency and submitted to the department.

(2) through (4) remain the same.

AUTH: 44-5-105, MCA
IMP: 44-5-213, MCA

23.12.105 CRIMINAL CASE HISTORY AND FINAL DISPOSITION REPORT

(1) Whenever an individual charged with a crime is fingerprinted under 44-5-202, MCA, a criminal case history and final disposition report, form number CHRP1, made available by the department, must be initiated by the arresting or custodial agency. The report form or computer program design must be in a format approved by the department and must include the information designated on the form.

(2) remains the same.

(a) Before the individual is released from custody, the information pertaining to the individual and the initial charge(s) must be completed by the arresting or custodial agency and forwarded to the court of appropriate jurisdiction prior to the individual's initial appearance.

(b) through (4) remain the same.

AUTH: 44-5-105, MCA
IMP: 44-5-213, MCA

REASON: These amendments are needed to provide consistency with proposed NEW RULE I. The amendments address the fact that responsibility for meeting the regulatory requirements of this section will not always lie with the arresting agency.

5. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Jon Ellingson, Department of Justice, 215 North Sanders, P.O. Box 201401, Helena, MT 59620-1401, fax (406) 444-3549; or e-mail jellingson@mt.gov, and must be received no later than November 24, 2006.

6. Jon Ellingson, Assistant Attorney General, Department of Justice, Legal Services Division, has been designated to preside over and conduct the hearing.

7. The Department of Justice maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices of rules regarding the Crime Control Division, the Central Services Division, the Forensic Sciences Division, the Gambling Control Division, the Highway Patrol Division, the Law Enforcement Academy, the Division of Criminal Investigation, the Legal Services Division, the Consumer Protection Division, the Motor Vehicle Division, the Justice Information Systems Division, or any combination thereof. Such written request may be mailed or delivered to Jon Ellingson, 215 North Sanders, P.O. Box 201401, Helena, MT 59620-1401, faxed to the office at (406) 444-3549, ATTN: Jon Ellingson, e-mailed to jellingson@mt.gov, or may be made by completing a request form at any rules hearing held by the Department of Justice.

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

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

/s/ Jon Ellingson
JON ELLINGSON
Rule Reviewer

Certified to the Secretary of State on October 16, 2006.

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

In the matter of the proposed amendment of ARM 24.168.301 definitions, 24.168.401, 24.168.402, 24.168.408, and 24.168.411 general provisions, 24.168.711 diagnostic permissible drugs, 24.168.901, 24.168.911 therapeutic pharmaceutical agents, 24.168.2101 and 24.168.2104, continuing education, 24.168.2307 screening panel, the proposed adoption of NEW RULE I fee abatement, and the proposed repeal of 24.168.405 examinations, 24.168.701 approved courses and examinations, 24.168.704 new licensees, 24.168.904 applicants for licensure, 24.168.907 therapeutic pharmaceutical agents, and 24.168.2304 complaint procedure	) NOTICE OF PUBLIC HEARING) ON PROPOSED AMENDMENT,) ADOPTION, AND REPEAL

TO: All Concerned Persons

1. On November 20, 2006, at 9:00 a.m., a public hearing will be held in room 489, 301 South Park Avenue, Helena, Montana to consider the proposed amendment, adoption, and repeal of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Optometry (board) no later than 5:00 p.m., on November 15, 2006, to advise us of the nature of the accommodation that you need. Please contact Sharon McCullough, Board of Optometry, 301 South Park, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2390; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail dlibsdopt@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY: As part of the board's ongoing rule review process, the board determined it is reasonable and necessary to generally update its rules and therefore is proposing a substantial number of revisions. Some of the proposed amendments are technical in nature, such as substituting modern language for archaic phrasing and gender neutral for gender specific terms, amending rule catchphrases for accuracy, reorganizing and renumbering within rules for easier reference and following amendment, and updating obsolete or inappropriate statutory references. Grammatical corrections

are proposed where necessary to comply with ARM rule formatting requirements. Other rule changes reflect a decision by the board to attempt to combine and streamline its rules. To affect this, the board is proposing the rewording of several rules to incorporate pertinent licensure application provisions into fewer, but clearer and better organized rules. Repeal of certain existing rules is proposed as the significant provisions will be incorporated into the reworked rules, making them redundant and unnecessary. Accordingly, the board believes that there is reasonable necessity to generally amend certain existing rules, repeal certain existing rules, and adopt one new rule at this time. Where additional specific bases for a proposed action exist, the board will identify those reasons immediately following that rule. Additionally, the board has determined it is reasonably necessary to amend authority and implementation cites to accurately reflect all statutes implemented through the rules, to provide the complete sources of the board's rulemaking authority, and to delete references to repealed or erroneous statutes.

The 2005 Montana Legislature enacted Chapter 467, Laws of 2005 (House Bill 182), an act generally revising and consolidating professional and occupational licensing laws and distinguishing duties regarding licensure, examination, and fees between the department and the particular boards or programs. The bill was signed by the Governor on April 28, 2005, and became effective on July 1, 2005. It is reasonable and necessary to amend the board's rules throughout to maintain compliance with the statutory changes, avoid duplication with the recently adopted department rules and to further the intent of the 2005 legislation.

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

24.168.301 ~~ANTERIOR SEGMENT DEFINED~~ DEFINITIONS For the purposes of this chapter, the following definitions apply:

(1) "ACOE" means the Accreditation Council on Optometry Education of the American Optometric Association.

(2) "ARBO" means the Association of Regulatory Boards of Optometry.

~~(1)~~(3) ~~For the purpose of the Optometry Act, the anterior~~ "Anterior segment of the eye" ~~is defined as~~ means that part of the eye anterior to the vitreous face.

(4) "Board" means the Board of Optometry as defined in 2-15-1736, MCA.

(5) "Department" means the Department of Labor and Industry as defined in 2-15-1701, MCA.

(6) "DPA" means certification by the board in diagnostic pharmaceutical agents.

(7) "NBEO" means the National Board of Examiners in Optometry.

(8) "TMOD" means the Treatment and Management of Ocular Disease multiple choice examination administered by NBEO.

(9) "TPA" means certification by the board in therapeutic pharmaceutical agents.

AUTH: 37-10-202, MCA
IMP: 37-10-101, 37-10-103, 37-10-304, MCA

REASON: The board determined it is reasonably necessary and will increase clarity and ease of use by amending this rule to consolidate and define several relevant acronyms that are used throughout the board's rules.

24.168.401 FEE SCHEDULE

(1) and (2) remain the same.

(3) ~~Out-of-state license~~ Endorsement application 300

(4) and (5) remain the same.

AUTH: 37-1-131, 37-1-134, 37-10-202, MCA
IMP: 37-1-134, 37-1-141, 37-1-304, 37-10-302, MCA

24.168.402 ~~APPLICATION FOR~~ LICENSURE BY EXAMINATION (1) ~~All candidates for examination shall file the appropriate application with the national board of examiners in optometry along with the proper fees as required by the national board of examiners in optometry.~~ All applicants for licensure by examination shall submit a completed application.

(2) The application material must include the following:

(a) verification of successful passage of all parts of the national optometry examination administered by the NBEO with scores sent directly from the examination agency;

(b) verification of passage of the TMOD examination;

(c) verification of graduation with a transcript sent directly from the college, university, or institution approved by the ACOE, and recognized by ARBO, in which the practice and science of optometry is taught;

(d) license verifications from all states where a licensee has held or holds a license;

(e) three affidavits from individuals not related to the applicant attesting to the good moral character of the applicant; and

(f) the appropriate fee.

(3) Applicants shall read and understand the statutes and rules of the board for compliance with their profession.

(a) Proof of an applicant's familiarity with the board statutes and rules is evidenced by attestation on the application.

AUTH: 37-1-131, 37-10-202, MCA
IMP: 37-1-131, 37-10-301, 37-10-302, MCA

24.168.408 LICENSURE BY ENDORSEMENT ~~OF OUT-OF-STATE APPLICANTS~~ ~~(1) A license to practice optometry in the state of Montana may be issued at the discretion of the board provided the applicant completes and files with the board an application for licensure and the required application fee. The candidate must meet the following requirements:~~

~~(a) the candidate holds a current, valid and unrestricted license to practice optometry in another state or jurisdiction, which was issued under standards equivalent to or greater than current standards in this state. Official written~~

~~verification of such licensure status must be received by the board directly from the other state(s) or jurisdiction(s);~~

~~(b) the candidate shall supply a copy of the certified transcript sent directly from a college, university or institution approved by the board, including schools of optometry accredited by the association of regulatory boards of optometry (ARBO), in which the practice and science of optometry is taught in a course of study covering eight semesters or four years of actual attendance;~~

~~(c) the candidate shall supply proof of successful completion of all parts of the national examination offered by the national board of examiners in optometry (NBEO) with a passing score. Candidate scores on the examination must be forwarded by the exam agency directly to the board;~~

~~(d) candidates who were licensed prior to the availability of all parts of the NBEO examination (1993) shall supply proof of successful completion of a qualifications examination (acceptable to the board) administered by the licensing authority of the state or jurisdiction granting the license, and shall meet qualifications to be therapeutically qualified;~~

~~(e) the candidate shall read Montana statutes and rules of the board and sign a disclaimer verifying completion of this review; and~~

~~(f) the candidate shall supply a copy of the laws and rules from the state of licensure, which were in effect at the time the license was granted in the other state.~~

(1) All applicants for licensure by endorsement shall submit a completed application.

(2) The application shall include the following:

(a) verification of successful passage of all parts of the national optometry examination administered by the NBEO with scores sent directly from the examination agency;

(b) verification of passage of the TMOD examination;

(c) verification of graduation with a transcript sent directly from the college, university, or institution approved by the ACOE, and recognized by ARBO, in which the practice and science of optometry is taught;

(d) license verifications from all states where a licensee has held or holds a license;

(e) three affidavits from individuals not related to the applicant attesting to the good moral character of the applicant;

(f) any other information the board may require; and

(g) the appropriate fee.

(3) Applicants not meeting the qualifications of (2)(a), (b), or (c) shall be reviewed by the board on a case-by-case basis.

(4) If an applicant was licensed prior to the inclusion of TMOD in the NBEO examination (1993), the applicant shall:

(a) provide proof of successful completion of a qualifying examination, or examinations, as defined in 37-10-304, MCA, administered by the licensing authority of the state or jurisdiction granting the license; and

(b) meet all qualifications to be TPA and DPA certified.

(5) Applicants shall read and understand the statutes and rules of the board for compliance with their profession.

(a) Proof of an applicant's familiarity with the board statutes and rules is evidenced by attestation on the application.

AUTH: 37-1-131, 37-10-202, MCA
IMP: 37-1-304, MCA

24.168.411 GENERAL PRACTICE REQUIREMENTS (1) through (1)(a)(ii) remain the same.

(iii) a professional limited liability company, pursuant to 35-8-1301, et seq., MCA, in which all managers or shareholders are licensed to practice optometry or medicine; or

(iv) a trust in which both the trustor and any trustees are licensed to practice optometry or medicine.; and

(b) all professional signs and advertising, etc., must include the optometrist's name and the title "Optometrists Optometrist", "Doctor of Optometry", or initials "O.D." in connection therewith;.

(c)(2) the The board will consider all advertising appearing over the signature of an individual as having been inserted and approved by that individual, and will hold the individual responsible for such advertising. If advertising appears over the signature of a company, firm, or corporation, all the individual officers or partners of the organization will be considered individually responsible for such advertising.

(2)(3) Each registered licensed optometrist must file and have on record with the board annually, the location of each and every office wherein the practice of optometry is conducted by him or her the licensed optometrist.

(3)(4) Each registered licensed optometrist must maintain accurate patient records for not less than five years from the last time the patient was treated.

AUTH: 37-1-131, 37-10-202, MCA
IMP: 37-10-301, MCA

24.168.711 OPTHOMOLOGICAL DIAGNOSTIC PERMISSIBLE DRUGS

(1) remains the same.

(a) Mydriatics;

~~(i) Phenylephrine hydrochloride~~

~~(ii) Hydroxyamphetamine hydrobromide~~

(b) Cycloplegics;

~~(i) Tropicamide~~

~~(ii) Cyclopentolate~~

~~(iii) Homatropine hydrobromide~~

~~(iv) Atropine sulfate~~

(c) Topical anesthetics; and

~~(i) Proparacaine hydrochloride~~

~~(ii) Benoxinate hydrochloride~~

~~(iii) Piperocaine hydrochloride~~

(d) Miotic, only in the event of an emergency and after consultation with physician.

~~(i) Pilocarpine hydrochloride~~

AUTH: 37-1-131, 37-10-202, MCA
IMP: 37-10-101, 37-10-103, 37-10-304, MCA

REASON: The board has determined it is reasonable and necessary to amend the rule deleting the specific listing of permissible diagnostic drugs and instead designating the permissible drugs by category. This amendment will allow for licensees' use of permissible new drugs within the allowed categories as the drugs are developed and without requiring the board's continuous amendment of the rule.

24.168.901 APPROVED TPA COURSE ~~AND EXAMINATION~~ (1) An approved course, as referred to in 37-10-304(2)(a)(ii), MCA, shall ~~be a therapeutic pharmaceutical agents course approved by the board which consists~~ consist of a minimum of 100 hours of didactic classroom ~~instruction~~ and clinical instruction.

~~(a) The test for competency will be given either by the staff conducting the course, or the ARBO. The ARBO exam referred to in this rule is the exam on ocular therapeutics. A passing score will be an average of 75% or higher on all subjects tested.~~

AUTH: 37-1-131, 37-10-202, MCA
IMP: 37-10-304, MCA

REASON: Due to ongoing inquiries by licensees, it is reasonable and necessary to amend this rule to clarify the process for current licensees to obtain a TPA or DPA certification after licensure.

24.168.911 ~~APPROVED~~ OCCULAR THERAPEUTIC APPROVED DRUGS
(1) and (1)(a) remain the same.
(i) ~~anti-biotic~~ antibiotic;
(ii) ~~anti-viral~~ antiviral;
(iii) ~~anti-fungal~~ antifungal; and
(iv) ~~anti-parasitic~~ antiparasitic;
(b) ~~auto-immune~~ autoimmune agents, including:
(i) ~~anti-allergy~~ antiallergy;
(ii) ~~anti-histamines~~ antihistamines;
(iii) remains the same.
(iv) mast cell stabilizers; and
(v) ~~anti-anaphylaxis~~ antianaphylaxis;
(c) and (d) remain the same.
(e) ~~anti-glaucoma~~ antiglaucoma agents;
(f) remains the same.
(g) autonomic agents; and
(h) remains the same.

AUTH: 37-1-131, 37-10-202, MCA
IMP: 37-10-101, 37-10-103, 37-10-304, MCA

24.168.2101 CONTINUING EDUCATION REQUIREMENTS (1) Each licensed optometrist shall obtain a minimum of ~~be required to attend~~ not less than 36 hours of continuing education every two years ~~biennially of~~ in scientific clinics, forums, or optometric educational studies ~~as may be provided or~~ approved by the board ~~of optometry as a prerequisite for his/her license renewal. Continuing education will be reported every two years on the renewal form commencing with the 1999 renewal form~~. The board will accept:

~~(a) A copy of this act shall be sent to each licensee by the board prior to the license renewal date each year.~~

~~(b) For the purpose of implementation of the continuing education act, the term "annually" shall refer to the fiscal year July 1 through June 30.~~

~~(2)~~ (a) ~~The board will accept~~ up to four hours of practice management continuing education credit every two years~~.~~ ; and

~~(3)~~ (b) ~~Twelve~~ twelve hours of credit for approved continuing education correspondence courses or ~~approved~~ Internet courses ~~will be allowed biennially~~ every two years.

~~(4) The continuing education requirement is waived for the reporting period during which:~~

~~(a) the person graduates from an accredited school of optometry and then promptly becomes a licensee; or~~

~~(b) the licensee completes a residency program accredited by the Accreditation Council on Optometric Education of the American Optometric Association.~~

(2) A person who graduates from an accredited school of optometry and becomes a licensee within one year of graduation is excused from the continuing education requirement during the first year the person is a licensee.

(3) A licensee who is enrolled in a residency program accredited by the ACOE is excused from the continuing education requirement while the licensee is in the residency program and for the year in which the licensee successfully completed the residency program.

~~(5)~~ (4) The board may conduct ~~randomly select~~ random audits of 20 percent of all renewed licensees ~~report forms for audit and verification~~. It ~~will be~~ is the responsibility of each optometrist to maintain ~~his or her~~ the optometrist's own records of participation and completion, and make them available upon request.

(a) Random audits will be conducted in odd-numbered years.

AUTH: 37-1-319, 37-10-202, MCA
IMP: 37-1-306, MCA

REASON: The board has determined it is reasonable and necessary to amend this rule to clarify for licensees that the board now randomly audits 20 percent of all licensees' continuing education (CE) during every two-year renewal period.

24.168.2104 APPROVED PROGRAMS OR COURSES (1) ~~The type of educational~~ Educational programs approved by the board shall be ~~those~~ affiliated with national, regional, or state optometric associations, academies, colleges of

optometry or approved by the ~~Association of Regulatory Boards of Optometry's~~ ARBO's Council on Optometric Practitioner Education (COPE).

(a) Any other continuing education course(s) not covered ~~above~~ in (1) must be submitted by the licensee and have prior approval by the board ~~to qualify~~. Any course not submitted to the board and approved prior to attendance ~~will~~ shall not be allowed for credit. The course program~~/~~ or syllabus, and information on the credentials and qualifications of the course presenter must accompany the application approval form.

~~(2) In-office training or privately sponsored education programs, however, are not generally acceptable.~~

~~(3)~~ (2) Continuing education courses offered and completed on the Internet or via other similar electronic means ~~may be accepted, if all criteria listed below are met~~ must comply with all the requirements in (1).

~~(a) internet courses must be sponsored by a college or school of optometry;~~

~~(b) internet courses must provide a certificate of completion; and~~

~~(c) internet courses must comply with all other continuing education requirements, including (1) above.~~

AUTH: 37-1-131, 37-1-319, 37-10-202, MCA
IMP: 37-1-131, 37-1-306, MCA

24.168.2307 SCREENING PANEL (1) The board screening panel shall consist of at least two board members including the optometrist board member who has served longest on the board, and the public member of the board. The ~~chairman~~ chairperson may reappoint screening panel members, or replace screening panel members as necessary at the ~~chairman's~~ chairperson's discretion.

(2) The screening panel shall not review anonymous complaints.

AUTH: 37-10-202, MCA
IMP: 37-1-307, MCA

REASON: The board determined it is reasonable and necessary to incorporate into this rule the language regarding anonymous complaints that was formerly in ARM 24.168.2304 which is proposed to be repealed in this notice.

5. The proposed new rule provides as follows:

NEW RULE I FEE ABATEMENT (1) The Board of Optometry adopts and incorporates by reference the fee abatement rule of the Department of Labor and Industry found at ARM 24.101.301.

AUTH: 37-1-131, MCA
IMP: 17-2-302, 17-2-303, 37-1-134, MCA

REASON: The board has determined there is reasonable necessity to adopt and incorporate by reference ARM 24.101.301 to allow the board to authorize the department to perform renewal licensure fee abatements as appropriate and when

needed, without further vote or action by the board. The department adopted ARM 24.101.301 to implement a means for the prompt elimination of excess cash accumulations in the licensing programs operated by the department.

Adoption and incorporation of ARM 24.101.301 will allow the department to promptly eliminate excess cash balances of the board that result from unexpectedly high licensing levels or other nontypical events. Abatement in such instances will allow the licensees who have paid fees into the board's program to receive the temporary relief provided by abatement. Adoption of this abatement rule does not relieve the board from its duty to use proper rulemaking procedures to adjust the board's fee structure in the event of recurrent instances of cash balances in excess of the statutorily allowed amount.

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

24.168.405 EXAMINATIONS found at ARM page 24-18032.

AUTH: 37-10-202, MCA
IMP: 37-10-201, 37-10-302, MCA

24.168.701 APPROVED COURSES AND EXAMINATIONS found at ARM page 24-18077.

AUTH: 37-10-202, MCA
IMP: 37-10-304, MCA

24.168.704 NEW LICENSEES found at ARM page 24-18077.

AUTH: 37-10-202, MCA
IMP: 37-10-304, MCA

24.168.904 APPLICANTS FOR LICENSURE found at ARM page 24-18091.

AUTH: 37-10-202, MCA
IMP: 37-10-304, MCA

24.168.907 THERAPEUTIC PHARMACEUTICAL AGENTS found at ARM page 24-18091.

AUTH: 37-1-131, 37-1-319, 37-10-202, MCA
IMP: 37-1-131, 37-10-103, MCA

24.168.2304 COMPLAINT PROCEDURE found at ARM page 24-18265.

AUTH: 37-10-202, MCA
IMP: 37-1-308, 37-1-309, MCA

REASON: The board has determined it is reasonably necessary to repeal this rule as the information is currently in statute in Title 37, chapter 1, part 3, MCA, and does not need to be repeated in rule.

7. 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 Optometry, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to dlibsdopt@mt.gov, and must be received no later than 5:00 p.m., November 28, 2006.

8. An electronic copy of this Notice of Public Hearing is available through the department and board's site on the World Wide Web at www.optometry.mt.gov. The department strives to make the electronic copy of this Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems, and that technical difficulties in accessing or posting to the e-mail address do not excuse late submission of comments.

9. The Board of Optometry 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 Optometry administrative rulemaking proceedings or other administrative proceedings. Such written request may be mailed or delivered to the Board of Optometry, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2305, e-mailed to dlibsdopt@mt.gov, or may be made by completing a request form at any rules hearing held by the agency.

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

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

BOARD OF OPTOMETRY
DOUGLAS MCBRIDE, O.D., PRESIDENT

/s/ MARK CADWALLADER
Mark Cadwallader
Alternate Rule Reviewer

/s/ KEITH KELLY
Keith Kelly, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State October 16, 2006

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

In the matter of the proposed amendment of ARM 24.189.301 definitions, 24.189.401 fee schedule, 24.189.411 use of title, and 24.189.607 required supervised experience	))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On November 17, 2006, at 9:00 a.m., a public hearing will be held in room B-07, 301 South Park Avenue, Helena, Montana to consider the proposed amendment of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Psychologists (board) no later than 5:00 p.m., on November 9, 2006, to advise us of the nature of the accommodation that you need. Please contact Cheryl Brandt, Board of Psychologists, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2394; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail dlibsdpsy@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY: As part of the board's ongoing rule review process, the board determined it is reasonable and necessary to generally update its rules regarding the postdoctoral supervision requirement for psychologist license applicants. The rules as currently written are poorly organized and lack much-needed specificity in delineating the required roles and requirements of both the postdoctoral supervisees and supervisors. Numerous applicants and potential supervisors have expressed confusion in reading and applying the current supervision rules. Therefore, the board is proposing a substantial number of revisions to the supervision rules. Most of the proposed amendments are technical in nature, such as reorganizing and renumbering within rules for easier reference and following amendment of the rules, and replacing archaic word usage with current terminology. In addition, punctuation is being amended throughout to comply with ARM formatting requirements. Accordingly, the board believes that there is reasonable necessity to generally amend the existing postdoctoral supervision rules at this time. Where additional specific bases for a proposed action exist, the board will identify those reasons immediately following that rule.

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

24.189.301 DEFINITIONS As used in this chapter, the following definitions apply:

(1) and (2) remain the same.

(3) "Psychological resident" means a supervisee following board approval of a supervised postdoctoral supervision proposal. This title shall be:

(a) used only in conjunction with activities and services of the postdoctoral supervised training to fulfill the experience requirements;

(b) used for a maximum of three years; and

(c) identified for clients, third-party payers, and other entities.

AUTH: 37-1-131, 37-17-202, MCA
IMP: 37-1-131, 37-17-101, MCA

REASON: It is reasonably necessary to add the definition of "psychological resident" to the board's definitions rule to delineate the acceptable title used by an individual engaged in a board approved postdoctoral supervision period. This title is widely used in the profession but has never before been defined by the board.

24.189.401 FEE SCHEDULE (1) through (1)(d) remain the same.

(e) Supervision proposal approval	25

(2) remains the same.

AUTH: 37-1-134, 37-17-202, MCA
IMP: 37-1-134, 37-1-141, 37-17-302, MCA

REASON: It is reasonable and necessary to implement a new fee of $25 to cover the time and effort by the board in reviewing and approving postdoctoral supervision proposals. The board estimates that eight proposals are received and reviewed by the board each year. The board has noted an increase in the necessary review time due in part to an increase in the number of predoctoral internships that are not approved by the American Psychological Association and therefore require more in depth evaluation. In addition, because the board is now requiring specific experience and training for supervisors, the board expects a further increase in the time board members devote to reviewing proposals. Approximately eight applicants for supervision approval will be affected by this new $25 fee with an estimated annual increase in board revenue of $200.

24.189.411 USE OF TITLE (1) Persons who are not licensed under Title 37, chapter 17, MCA, may use certain titles in representing themselves to the public, as long as the titles clearly delineate the nature and the level of training. Such persons may use titles such as "psychological trainee," "psychological intern," and "psychological assistant," provided that such persons perform their activities under the direct supervision and responsibility of a licensed psychologist. ~~Nothing in this section shall be construed to apply to any person other than~~ This requirement applies to the following individuals only:

(a) ~~a~~ matriculated graduate ~~student~~ students in psychology whose activities constitute a part of the course of study for a graduate degree in psychology at an institution of higher education; or

(b) ~~an individual~~ individuals pursuing postdoctoral training or experience in psychology, including ~~persons~~ those seeking to fulfill the requirements for licensure, ~~under the provisions of this Act~~ but who have not received board approval of the postdoctoral supervision setting.

(2) Individuals whose postdoctoral setting has been approved by the board shall use the title "psychological resident."

(2) remains the same but is renumbered (3).

AUTH: 37-1-131, 37-17-202, MCA
IMP: 37-17-104, 37-17-301, MCA

24.189.607 REQUIRED SUPERVISED EXPERIENCE (1) Acceptable supervised experience must involve the practice of psychology and must have been performed competently at a professional level in order to be considered satisfactory in scope and quality.

(a) Experience limited to essentially repetitious and routine tasks at the preprofessional level will not be accepted, e.g., administering and scoring structured tests, as in a practicum course, computing statistics, assisting an instructor in psychology courses, or personal therapy. Such experiences are primarily preparatory to the practice of psychology.

(b) ~~No experience~~ Experience of any kind gained prior to the completion of all requirements for the master's degree in psychology or its equivalent ~~applies to the provisions of this Act~~ shall not be acceptable.

(c) Satisfactory examples of professional experience include tasks ~~which~~ that depend upon the application of skills, concepts, and principles made available during the applicant's formal professional education~~. Examples of these types of activities~~ and include:

(i) administering and interpreting psychological tests~~,~~ ;

(ii) providing clients or patients assistance in solving their professional or personal problems~~,~~ ;

(iii) designing original research projects~~,~~ ;

(iv) analyzing and reporting research data~~,~~ ; and

(v) teaching a course in psychology.

(2) Required supervised experience shall include two calendar years (a minimum of 3200 hours) of supervised experience.

(a) One year of experience may be predoctoral, occurring after the master's degree and obtained during an internship in an approved training program for the doctoral degree in psychology. The predoctoral internship must be American Psychology Association (APA) approved or substantially equivalent to an APA internship.

(b) One year of experience (a minimum of 1600 hours) must be postdoctoral. Each year of required supervised experience that occurs over more than 12 consecutive months (e.g., due to medical reasons) will be considered for board approval on a case-by-case basis. Postdoctoral supervised experience is calculated

from the time of completion of all requirements for the doctoral degree and may be established by communication from an appropriate institutional official, such as the registrar or the dean of the graduate school.

~~(2)~~ (4) The ~~work~~ 1600 hours of postdoctoral supervision must: ~~described in (1) above should have been done throughout the year~~

(a) consist of a minimum of one hour of face-to-face (personal) supervision per week throughout the period of supervision;

(b) be obtained over a period of no more than three calendar years;

(c) involve the supervisee providing direct clinical services to clients at least 50 percent of the time; and

(d) occur under the ~~face-to-face (personal)~~ supervision of a licensed psychologist ~~with~~ who has:

(i) training and experience at least equivalent to that required by the state of Montana for licensing~~,~~ ; and

(ii) ~~who is experienced and competent~~ experience and competency in the skills and knowledge in which the applicant is engaged.

(A) Teleconferencing which is two-way, interactive, real time, simultaneous, continuous, and provides for both audio and visual interaction may substitute for face-to-face supervision.

(B) Teleconferencing allowing only oral communication via technology may be allowed upon written request and prior board approval, when unusual circumstances so require. Oral teleconference supervision may constitute no more than 25 percent of the total supervision. ~~Such supervision should have been conducted according to standards at least equivalent to those described in these rules, that the supervision be for at least a minimum of one hour per week throughout the year of experience. Teleconferencing, which allows visual and oral contact via technology, may be allowed upon written request and prior board approval, when unusual circumstances so require.~~

~~(3)~~ (5) ~~The term "year" shall mean a calendar year, including leaves for vacation with pay during which the individual was engaged in employment on a full-time basis.~~

~~(a) In case of full-time employment, the work schedule in the employing agency, clinic, institution, or organization shall be for a calendar year, meaning that work will be during consecutive months.~~

~~(b) In the case of~~ When the supervisee is employed on a part-time ~~employment~~ basis, credit for ~~such periods of~~ employment shall be calculated by the calendar month or year according to 1-1-301, MCA, ~~in such manner that~~ as follows:

(a) the number of hours actually worked per week ~~will be~~ divided by 40, and the resulting fraction ~~shall be applied to~~ multiplied by the number of calendar months of employment reported ~~to determine the number of months to be credited to the applicant~~. Example: applicant employed from July 1, 1970 through October 31, 1971 on an average of 20 hours per week, total period - 16 months at one-half time. Applicant is credited with eight months of experience.

~~(4) Qualified professional experience may include one calendar year of supervised experience after the master's degree and must include at least one calendar year post-doctoral. One year may be an internship in an approved training program for the Ph.D. in clinical psychology; the post-doctoral year is figured from~~

~~the time of completion of all requirements for the doctoral degree. Such time of completion may be established by communication from an appropriate institutional official, ordinarily, the registrar or the dean of the graduate school.~~

~~(5)~~ (6) Individual solo private practice ~~shall~~ does not qualify ~~be considered~~ as acceptable professional experience ~~for purposes of the experience requirement~~. The supervisee must be an employee of the postdoctoral training setting and shall not bill directly for services provided.

~~(6)~~ (7) An acceptable ~~post-doctoral~~ postdoctoral training setting shall have two other board approved licensed mental health professionals participating in the ~~provision of~~ training of the ~~candidate,~~ supervisee. ~~and approved by the board, in addition to the licensed psychologist supervisor. The supervisee must be a salaried employee receiving both administrative and clinical supervision from the supervisor.~~ The two additional mental health professionals must be on-site when the supervisor is not on-site.

(8) Qualifying supervisors shall provide evidence of:

(a) licensure for a minimum of three years prior to acting as a supervisor; and

(b) previous training and/or experience in supervising.

(9) During the postdoctoral supervision period, the supervisor shall:

(a) not be required to work in the same setting as, nor be an actual employee of the organization or institution where the supervisee works;

(b) be available in a timely manner for supervision in the event of an emergency;

(c) be available to the supervisee's clients for emergency consultation and intervention either:

(i) in person;

(ii) by oral teleconferencing; or

(iii) by oral and visual teleconferencing;

(d) determine the adequacy of the supervisee's preparation for the tasks to be performed;

(e) provide the supervisee with a written document specifying the roles, goals, and objectives for both supervisee and supervisor;

(f) develop, along with the supervisee, a written individualized training plan that:

(i) is consistent with the purpose of the setting;

(ii) meets the needs of the supervisee; and

(iii) serves as the foundation for the supervisor's quarterly written evaluations of the supervisee. Quarterly evaluations must:

(A) address professional conduct, ethical conduct, psychotherapy skills, evaluation skills, and other conduct, knowledge, and skills applicable to the tasks performed and training received, such as teaching, research, and supervision of students;

(B) be reviewed with the supervisee and signed by both the supervisor and supervisee; and

(C) be maintained for a minimum of five years and available upon board request;

(g) interrupt or terminate the supervisee's activities when necessary to ensure adequate development of skills and the protection of the public;

(h) report to the board any breach in ethical, legal, or professional responsibilities of the supervisee; and

(i) be ethically and legally responsible for all of the professional activities of the supervisee.

~~(7)~~ (3) ~~A person who holds a doctorate in psychology and wishes to gain a year of~~ An applicant for ~~post-doctoral~~ postdoctoral supervised experience ~~acceptable to the board, must~~ shall obtain from and submit to the board, a supervision proposal form. ~~provided by the board,~~ The form must ~~indicating~~ indicate an agreement, acceptable to the board, between the ~~holder of the doctorate degree~~ applicant and the supervisor, ~~certifying~~ and certify the existence of a supervisory relationship, as defined in ~~(1), (2), (3), (4) above~~ this rule, for a specified period ~~when the doctorate level person will be working under supervision~~. The board shall notify the applicant in writing of the acceptability of the supervision proposal. ~~In this case, work considered relevant to subsequent practice of psychology shall be assessed and criticized constructively; in this sense "supervision" is differentiated from consultation.~~

~~(a) A diary or record of supervisory contacts shall be kept and submitted to the board in support of the experience. The diary shall provide dates of contact and sufficient detail to represent clearly the issues and problems discussed, but no material of a confidential nature shall be included.~~

~~(b) In the event the relationship is terminated, it is the responsibility of the applicant to request the supervisor to inform the board in writing of the effective date of the termination and the reasons for termination as well as indicate the nature and effectiveness of the applicant's response to such supervision.~~

~~(c) A licensed psychologist who is supervising and whose primary responsibilities are in another position, should not supervise more than three supervisees at any one time.~~

~~(d) All psychological reports or other professional opinions rendered by persons engaging in psychological activities without a license under these rules shall be countersigned by the licensed psychologist acting as their supervisor or the legally responsible person designated by the organization in which such work is done.~~

~~(e) The board shall indicate in writing the acceptability of the proposal.~~

~~(f) A licensed psychologist who is supervising shall not be involved in a dual relationship with the supervisee, which would compromise the supervisory relationship, e.g. related by marriage, immediate family, business partnership, etc.~~

(10) During the postdoctoral supervision period, the supervisee shall:

(a) use the title "psychological resident" throughout the period of postdoctoral experience;

(b) maintain a diary or record of supervisory contacts, with all confidential information redacted, and submit it to the board upon completion of the supervision period. The diary must include:

(i) dates of contact;

(ii) sufficient detail to represent clearly the issues and problems discussed; and

(iii) signatures of both the supervisee and supervisor, to indicate the accuracy of the diary;

(c) sign all psychological reports or other professional opinions rendered by the supervisee using the title "psychological resident" and obtain a countersignature of the supervisor or the legally responsible person designated by the organization where such work is done; and

(d) inform clients orally and in writing of the supervised nature of the work and provide the name, address, and telephone number of the supervisor.

(11) In the event the relationship is terminated before the end of the supervisory period, the supervisor shall inform the board in writing of the following:

(a) the effective date of the termination;

(b) the reasons for the termination; and

(c) the nature and effectiveness of the supervisee's response to the supervision.

(12) A supervisor whose primary responsibilities are in another employment position shall not supervise more than three supervisees at any one time.

(13) A supervisor shall not be involved in a dual relationship with a supervisee, which would compromise the supervisory relationship, e.g., related by marriage, immediate family, business partnership, employee of the supervisee, or former client-professional relationship. If the supervisee pays the supervisor for the postdoctoral supervision, the supervisor shall pay particular attention to the impact of the financial arrangements on the supervisory relationship.

AUTH: 37-1-131, 37-17-202, MCA
IMP: 37-17-302, 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 the Board of Psychologists, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to dlibsdpsy@mt.gov, and must be received no later than 5:00 p.m., November 27, 2006.

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

7. 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 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 administrative rulemaking proceedings or other administrative proceedings. Such written request may be mailed or delivered to the Board of Psychologists, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2305, e-mailed to dlibsdpsy@mt.gov, or 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, do not apply.

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

BOARD OF PSYCHOLOGISTS
JAY PALMATIER, Ph.D., CHAIRPERSON

/s/ DARCEE L. MOE
Darcee L. Moe
Alternate Rule Reviewer

/s/ KEITH KELLY
Keith Kelly, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State October 16, 2006

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the proposed adoption of NEW RULES I through V related to country of origin placarding for beef, pork, poultry, and lamb	))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION

TO: All Concerned Persons

1. On November 29, 2006, at 1:00 p.m., or as soon thereafter as is feasible, a public hearing will be held in the Department of Public Health and Human Services (DPHHS) Auditorium, 111 Sanders Street, Helena, Montana to consider the proposed adoption of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., on November 22, 2006, to advise us of the nature of the accommodation that you need. Please contact the Business Standards Division, Department of Labor and Industry, Attn: Lisa Johnson, P.O. Box 200517-0517, Helena, MT 59620-0517; telephone (406) 841-2046; fax (406) 841-2050; TDD (406) 444-5549; or e-mail lisaj@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY: The 2005 Legislature enacted the Country of Origin Placarding Act (act) which is now codified at Montana Code Annotated Title 30, chapter 12, part 7 (Chap. 279, L. of 2005; House Bill 406). This act establishes retailer placarding requirements for beef, pork, poultry, and lamb. Under 30-12-704, MCA, if the meat is produced in a country other than the United States, the product must be placarded. If the meat is produced entirely in Montana or entirely in the United States, placarding is voluntary. Section 30-12-703, MCA, also provides for voluntary labeling for products produced entirely in Montana. Prepared or ready to eat foods that include beef, pork, poultry, and lamb are exempt from the statutory requirements. Adoption of the following rules is required for administration of the act in order to clarify what products require placarding, what statements are required on the placards, and what form of placarding is permissible.

The proposed new rules were drafted based on recommendations from the Governor's Country of Origin Labeling Advisory Council, a group that includes members representing a variety of interests. The interests represented include consumers, agricultural producers and processors, retail sellers, a representative from the Board of Livestock, and state agencies, including the Department of Agriculture, the Department of Commerce, and the Department of Labor and Industry. The Advisory Council met in February and June in Lewistown and also communicated by e-mail.

The department notes that federal legislation regarding country of origin labeling (the so-called "COOL" legislation) was originally enacted in 1999. However, the original COOL laws contained a sunset provision. Similar legislation was then reenacted in 2002. To date, no federal regulations implementing the federal COOL laws in regard to beef, pork, poultry, and lamb have been adopted or implemented because Congress has not provided funding to implement the laws. (Federal regulations for seafood have been in effect since April 2005.) Current federal law prohibits the implementation of the federal COOL program for meat labeling until 2008.

In order to address this void in regulations requiring information to be provided to consumers, the 2005 Legislature enacted the act to require placarding of the country of origin. The state act expressly provides that it becomes void as soon as the federal statutes and regulations are fully implemented. The legislative history indicates the Legislature intended the act to supply consumers with more information so that consumers could make more informed decisions based on their individual concerns. These concerns include, among others, health concerns regarding various meat-borne illnesses, including bovine spongiform encephalopathy, more commonly referred to as "mad cow" disease, hoof and mouth disease (sheep), and bird influenza (poultry).

This statement of reasonable necessity applies to all of the rules in this notice. More specific rationales for each rule are discussed following each individual rule.

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

NEW RULE I DEFINITIONS For purposes of this subchapter, the following definitions apply:

(1) "Born" means the birth of a cow, pig, fowl, or lamb.

(2) "Cow" means an animal that when processed becomes beef.

(3) "Fed" means all the activities during the life of a cow, pig, fowl, or lamb that occur between when it is born and when it is processed.

(4) "Fresh" means product that is not being sold in a frozen condition.

(5) "Fowl" means an animal that when processed becomes poultry. The term includes, but is not limited to, chickens, turkeys, ducks, and geese.

(6) "Lamb" means a member of the sheep family, not more than 12 months old, that when processed becomes lamb.

(7) "Pig" means an animal that when processed becomes pork.

(8) “Prepared foods for immediate sale or ready to eat" means all meat or other items containing meat that are offered or exposed for retail sale, except a product as defined in this rule.

(9) "Processed" means the slaughter of a cow, pig, fowl, or lamb. The term does not include any event that occurs after a product is shipped from its location of slaughter.

(10) "Produced" means the stages of production and includes where an animal was born, fed, and processed.

(11) "Product" means:

(a) fresh, raw, uncured muscle cuts produced from beef, pork, poultry**,** or lamb; and

(b) fresh, raw, uncured, single-species, ground beef, ground pork, ground poultry**,** or ground lamb; but

(c) as provided by 30-12-704, MCA, the term "product" does not include prepared foods for immediate sale or ready to eat.

AUTH: 30-12-706, MCA
IMP: 30-12-703**,** 30-12-704, MCA

REASON: It is reasonably necessary to adopt this rule to clarify that the products covered by these rules only include fresh, raw, uncured, muscle cuts of beef, pork, poultry, lamb and fresh, raw, uncured, single species ground beef, ground pork, ground poultry, and ground lamb. Specifically, it is reasonably necessary to indicate in the definitions that this proposed rule only covers products offered for sale in a refrigerated case and does not cover products offered for sale in a freezer. The Advisory Council recommended only addressing fresh meat at this time because of the difficulties in placarding frozen meat. For example, it is more difficult to delineate the differences between meat that is a prepared food for immediate sale or ready to eat when the item is frozen versus fresh. In other words, more quasi-preprepared items are sold as frozen than as fresh. The main example discussed by the Advisory Council was sausage. Further, the Advisory Council indicated that the vast majority of meat sold as frozen that is covered by 30-12-703, MCA, and 30-12-704, MCA, includes poultry that is produced entirely in the United States. Therefore, the department anticipates addressing the placarding of frozen meat at a later date.

Further, it is reasonably necessary to indicate that the term "produced" as used in 30-12-703 and 30-12-704, MCA, includes all stages of an animal's life from birth to death. Because placarding is mandatory whenever any production is in a foreign country or is unknown, the proposed definition clarifies the stages of production as born, fed, and processed. The department believes that this definition is the most straightforward approach to addressing the stages of production. In proposing this definition, the department is incorporating the language used by the Advisory Council.

Finally, it is also reasonably necessary to indicate that "processed" does not include the shipment of meat, storage of meat in shipment, or the further butchering of meat that is done by retailers.

NEW RULE II WHEN PLACARDING IS REQUIRED (1) A placard stating the country of origin for all products covered by this subchapter is required when a product is offered for retail sale as follows:

(a) A product that was born, fed, and processed entirely in a foreign country must be placarded with a statement declaring the country where the product was born, fed, and processed.

(b) A product that was born, fed, and processed in more than one country must be placarded with statements declaring which country each stage of production took place for each stage or production that was not within the United States.

(c) A product that blends together foreign and domestic product must be placarded as required by (1)(a) or (1)(b) as if produced entirely in the foreign country.

(d) A product lacking any documentation indicating where the product was born, fed, and processed must be placarded with a statement declaring the country of origin unknown. However, if any stage of production of a product is documented and is not within the United States, that product must be placarded with a statement indicating the country of origin for each known stage of production not within the United States and a statement indicating the country of origin unknown for the unknown stages of production.

(2) A product that was born, fed, and processed entirely in Montana may be placarded with a statement declaring it to be a product of Montana.

(3) A product that was born, fed, and processed entirely in the United States may be placarded with a statement declaring it to be a product of the United States.

AUTH: 30-12-706, MCA
IMP: 30-12-703, 30-12-704, MCA

REASON: It is reasonably necessary to adopt this rule to clarify when placarding is required pursuant to 30-12-704, MCA. Under this statute, placarding is mandatory for products produced in a foreign country. Placarding is also mandatory when the country of origin of production is unknown. The rule is intended to clarify when placarding is mandatory versus voluntary. For any stage of production that is in a foreign country or is unknown, placarding is mandatory.

NEW RULE III PLACARD LOCATION AND WORDING (1) A placard displayed for the purposes of complying with these rules must be displayed in the refrigerated area where products are offered for sale. A placard must be displayed in one or more of the following locations within the establishment where the products are offered for retail sale:

(a) At least one placard is required for every 20 linear feet (6 meters) of refrigerator case that is used to display product if the retailer is placarding the majority of its product as country of origin unknown. The placards must read “Unless specifically placarded, the country of origin is unknown for all beef, pork, poultry, or lamb offered for sale in this establishment.” The placard must be displayed in such a manner as to be readily apparent and visible to the customer.

(b) If a placard is used to declare the country of origin for specific, segregated product in the refrigerated case, the placard must be displayed immediately adjacent to the product it is intended to identify. The placard must read “Country of Origin” followed by the name of the country of origin as required by [NEW RULE II]. If the country of origin of the stages of production must be indicated as required by [NEW RULE II], the placard must read "Country of Origin - Born: [insert country name], Fed: [insert country name], Processed: [insert country name]."

The placard must be displayed in such a manner as to be readily apparent and visible to the customer.

(2) Retailers are permitted to add additional wording to the placards in order to convey additional information to consumers as long as the additional wording does not prevent the country of origin statements from being readily apparent and visible to customers and as long as the information is directly pertinent to country of origin information. For example, additional wording may include statements such as: "These products are placarded as country of origin unknown because country of origin information was not supplied to this retailer by the supplier" or "USDA inspected."

AUTH: 30-12-706, MCA
IMP: 30-12-704, MCA

REASON: It is reasonably necessary to adopt this rule to more precisely indicate the placarding display location and wording requirements pursuant to 30-12-704, MCA. Because the Governor's Advisory Council indicated that many products will be labeled as country of origin unknown, the department is proposing language that allows for one placard for every 20 feet of refrigerated meat case if a retailer is unable to determine the country of origin for the majority of its products. Further, because the legislative history of the act indicates that the ultimate purpose is to give more information to consumers, the department is proposing to allow additional language on placards as long as the minimum language required by the act is present. For example, retailers are allowed to explain why they are not able to obtain country of origin information.

NEW RULE IV PLACARD SIZE AND LETTERING SIZE (1) Except as provided in (2), the minimum placard size is 8.5 inches by 11 inches (210 mm by 275 mm). For all placards equal to or larger than 8.5 inches by 11 inches, the minimum height of the letters is 5/16 inch (8 mm). All letters must be of the same font size and font.

(2) For placards displayed at the location described in [NEW RULE III(1)(b)], the placard size is 3 inches by 5 inches (75 mm by 125 mm). For all placards of this size, the minimum height of the letters is 3/16 inch (5 mm). All letters must be of the same font size and font.

(3) With the exception of the letters "USA" denoting the United States of America, no abbreviations of country names are permitted.

AUTH: 30-12-706, MCA
IMP: 30-12-704, MCA

REASON: It is reasonably necessary to adopt this rule to set uniform placarding appearance requirements. The uniform size and font requirements are consistent with those in the National Institute of Standards and Technology (NIST) Handbook 130, Uniform Packaging and Labeling Regulations, that have been adopted by the department for other purposes. This rule is intended to prevent a placard from having a size or font that is misleading to consumers. Specifically, by requiring a

uniform, minimum size font on a given size placard, the use of "fine print" is prevented. Similarly, prohibiting the use of country name abbreviations prevents the use of misleading or confusing abbreviations.

NEW RULE V DOCUMENTATION REQUIRED (1) All retail vendors engaged in the business of selling product covered by this subchapter shall produce on demand by the department a copy of an invoice, packer documentation, bill of lading, or the other documentation upon which the vendor is relying for the statements on each country of origin placard.

AUTH: 30-12-706, MCA
IMP: 30-12-207, 30-12-210, 30-12-704, 30-12-705, MCA

REASON: It is reasonably necessary to adopt this rule to clarify that documentation is required to demonstrate what the retailer relied on in making its country of origin statements on its placards. Under this proposed rule, the department will accept any type of documentation and will judge its reliability on a case-by-case basis. The proposed rule also clarifies that a retailer must show this documentation when requested by the department.

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: Jack Kane, Deputy Administrator, Business Standards Division, Department of Labor and Industry, P.O. Box 200517, Helena, Montana 59620-0517; by facsimile to (406) 841-2050; or by e-mail to jkane@mt.gov, and must be received no later than 5:00 p.m., December 6, 2006.

6. An electronic copy of this Notice of Public Hearing is available through the department's site at http://dli.mt.gov/events/calendar.asp, under the Calendar of Events, Administrative Rules Hearings 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 web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems, and that a person's difficulties in accessing the web site or sending an e-mail do not excuse late submission of comments.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all Department of Labor and Industry administrative rulemaking proceedings or other administrative proceedings. Such written request may be mailed or delivered to the Department of Labor and Industry,

attention: Mark Cadwallader, 1327 Lockey Avenue, P.O. Box 1728, Helena, Montana 59624-1728, faxed to the department at (406) 444-1394, e-mailed to mcadwallader@mt.gov, 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. The department's Hearings Bureau has been designated to preside over and conduct this hearing.

/s/ MARK CADWALLADER	/s/ DORE SCHWINDEN
Mark Cadwallader	Dore Schwinden, Deputy Commissioner
Alternate Rule Reviewer	DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State October 16, 2006

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

In the matter of the adoption of New Rules I and II and amendment of 37.62.101, 37.62.103, 37.62.106, 37.62.108, 37.62.110, 37.62.111, 37.62.114, 37.62.118, 37.62.121, 37.62.123, 37.62.126, 37.62.128, 37.62.134, 37.62.136, 37.62.140, 37.62.148, and 37.62.2121, and the repeal of ARM 37.62.130, 37.62.138, and 37.62.146 pertaining to child support guidelines	))))))))))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION, AMENDMENT, AND REPEAL

TO: All Interested Persons

1. On November 15, 2006, at 1:30 p.m., a public hearing will be held in the auditorium of the Department of Public Health and Human Services Building, 111 N. Sanders, Helena, Montana to consider the proposed adoption, amendment, and repeal of the above-stated rules.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice or provide reasonable accommodations at the public hearing site. If you need to request an accommodation, contact the department no later than 5:00 p.m. on November 6, 2006, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970; e-mail dphhslegal@mt.gov.

2. The rules as proposed to be adopted provide as follows:

RULE I DETERMINATION OF PARENTING TIME (1) Each parent is responsible for a daily amount of child support whether or not the child lives with the parent. This obligation may not be met in its entirety if a parent's child support is determined under ARM 37.62.126 (minimum contribution). A child may also reside with a third party, who is treated as a parent for the purpose of receiving child support.

(2) The number of days a child spends with each parent or third party determines the portion of each parent's obligation that is retained and the portion that is owed to the other parent/party. For purposes of this rule, a "day" is defined as the majority of a 24-hour calendar period in which the child is with or under the control of a parent/party. The calendar period begins at midnight of the first day and ends at midnight of the second day. When the child is in the temporary care of a third party, such as in school or a day care facility, the parent who is the primary

contact for the third party is the parent who has control of the child for that period of time. If both parents are primary contacts, the parent with whom the child spends the night following the third party care, is the parent credited with that time period. This definition assumes there is a correlation between time spent and resources expended for the care of the child. Reference can be made to the residential schedule in the parenting plan ordered under 40-4-234, MCA.

(3) The number of days entered into the child support worksheet must be corroborated by a:

(a) parenting plan; or

(b) signed agreement between the parties; or

(c) determination by a court.

(4) Absent one of the items in (3), 305 days are entered for the custodial parent and 60 days for the noncustodial parent, unless credible evidence is presented that would prove this unconscionable, such as one parent serving a period of time in prison or a parent having no relationship or performing no "parenting functions" (see 40-4-234(1), MCA) with respect to the child of the calculation. In such a case, enter "365" days into the support calculation for the parent/party with residential custody and "0" days for the other parent.

(5) If support is calculated for more than one child and the children spend varying amounts of time with each parent/party, as in the case where child A lives with mother for 275 days and father for 90 days, and child B lives with each parent for 182.5 days, the parenting time should be averaged for each parent/party. (Example: mother 275 + 182.5 = 457.5 ÷ 2 = 229; father 90 + 182.5 = 272.5 ÷ 2 = 136. Mother's entry is 229 days and father's entry is 136 days for a total of 365 days).

AUTH: 40-5-203, MCA
IMP: 40-5-209, MCA

RULE II DETERMINATION OF INCOME FOR CHILD SUPPORT

(1) Parents are presumed to be capable of full time employment; full time employment is presumed to be no more than 40 hours per week and may be less depending upon the parent's profession, the employer's policies, or the industry standard in the parent's location. Income for child support includes actual income, imputed income, or any combination thereof which fairly reflects a parent's resources available for child support. Income can never be less than zero.

(2) Actual income includes:

(a) economic benefit from whatever source derived, except as excluded in (3), and includes but is not limited to income from salaries, wages, tips, commissions, bonuses, earnings, profits, dividends, severance pay, pensions, periodic distributions from retirement plans, draws or advances against earnings, interest, trust income, annuities, royalties, alimony or spousal maintenance, social security benefits, veteran's benefits, workers' compensation benefits, unemployment benefits, disability payments, and all other government payments and benefits. A history of capital gains in excess of capital losses shall also be considered as income for child support;

(b) gross receipts minus reasonable and necessary documented expenses

required for the production of income for those parents who receive income or benefits as the result of an ownership interest in a business or who are self-employed. Straight line depreciation for vehicles, machinery, and other tangible assets may be deducted if the asset is required for the production of income. The party requesting such depreciation shall provide sufficient information to calculate the value and expected life of the asset. Internal Revenue Service rules apply to determine expected life of assets. Business expenses do not include deductions relating to personal expenses, or expenses not required for the production of income;

(c) the value of noncash benefits such as in-kind compensation, personal use of vehicle, housing, payment of personal expenses, food, utilities, etc.;

(d) grants, scholarships, third party contributions, and earned income received by parents engaged in a plan of economic self-improvement, including students. Financial subsidies or other payments intended to subsidize the parent's living expenses and not required to be repaid at some later date must be included in income for child support;

(e) allowances for expenses, flat rate payments or per diem received, except as offset by actual expenses. Actual expenses may be considered only to the extent a party can produce receipts or other acceptable documentation. Reimbursements of actual employment expenses may not be considered income for purposes of these rules.

(3) Income for child support does not include the federal earned income tax credit, the federal child tax credit, and the federal dependent care tax credit. Also not included are benefits received from means-tested veteran's benefits and means-tested public assistance programs including but not limited to cash assistance programs funded under the federal temporary assistance to needy families (TANF) block grant, supplemental security income (SSI), food stamps, and child support payments received from other sources. One time lump sum payments not anticipated to recur ordinarily are not considered income.

(4) Lump sum social security payments, or social security benefits, or other financial subsidy:

(a) received on behalf of a child of the calculation as the result of a parent's disability, (Title II, SSDI), is considered in accordance with ARM 37.62.144; or

(b) received on behalf of a child of the calculation as the result of that child's disability (Title XVI, SSI), is not included in a parent's income; or

(c) received on behalf of a child, whether or not of the calculation, is not included in a parent's income.

(5) To determine income for child support, income attributable to subsequent spouses, domestic associates, and other persons who are part of the parent's household is not considered. In an action to establish a child support order, income from current overtime or a second job is included in income for child support if it is reliable and expected to continue for the foreseeable future.

(6) In an action to modify a child support order, income from current overtime or second job is not included unless it was included in the original order for that family. If it cannot be determined that overtime or second job income was included in the original order, the current income from overtime or second job is not included in income for child support.

AUTH: 40-5-203, MCA
IMP: 40-5-209, MCA

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

37.62.101 AUTHORITY, POLICY, AND PURPOSE (1) These guidelines are promulgated under the authority of 40-5-209, MCA, for the purpose of establishing a standard to be used by the district courts, child support enforcement agencies, attorneys, and parents in determining child support obligations.

(2) These guidelines are based on the principle that it is the first priority of parents to meet the needs of the child according to the financial ability of the parents. In a dissolution of marriage or when parents have never been married, a child's standard of living should not, to the degree possible, be adversely affected because a child's parents are not living in the same household.

(3) These guidelines are structured to determine annual child support ~~on an annual basis~~ based on circumstances at the time of the calculation. Payment will be made in equal monthly installments.

(4) As required by 40-4-204, 40-5-226, and 40-6-116, MCA, these guidelines apply to contested, noncontested, and default proceedings to establish or modify support orders.

AUTH: 40-5-203, MCA
IMP: 40-5-209, MCA

37.62.103 DEFINITIONS For purposes of this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Actual income" is defined in ~~ARM 37.62.106~~ [Rule II].

(2) "CSED" means the Child Support Enforcement Division of the Department of Public Health and Human Services.

(3) "Department" means the Department of Public Health and Human Services.

(4) "Federal poverty ~~index~~ guidelines" means the ~~minimum amount of income needed for subsistence~~ guidelines published by the U.S. Department of Health and Human Services under the authority of 42 USC 9902(2), which will be updated periodically in the Federal Register. Such updates will be adopted by amendment to these rules as appropriate. ~~The amount is developed by the U.S. office of management and budget, revised annually in accordance with 42 USC 9902, and published annually in the federal register.~~

(5) "Guidelines" means the administrative rules for establishment of child support as provided in ARM Title 37, chapter 62, subchapter 1, as promulgated in 40-5-209, MCA.

(6) "Imputed income" is defined ~~in ARM 37.62.106~~ as income not actually earned but which is attributed to a parent.

(7) "Legal dependent" means natural born and adopted minor children, spouses, special needs adult children, household members covered by a

conservatorship or guardianship, and parent's parents living in the household who are claimed on tax returns as legal dependents.

~~(8) "Long distance parenting" is defined in ARM 37.62.130.~~

~~(9)~~ (8) "Other child" means a child whom a parent is legally obligated to support but who is not the subject of the child support calculation. A stepchild is not considered an other child.

~~(10)~~ (9) "Personal allowance" is defined in ARM 37.62.114.

~~(11)~~ (10) "Preexisting support order" means an order entered by a tribunal of competent jurisdiction prior to the calculation or recalculation of support.

~~(12)~~ (11) "Primary child support allowance" is defined in ARM 37.62.121.

~~(13)~~ (12) "SOLA" means standard of living adjustment.

~~(14)~~ (13) "Standard of living" includes the necessities, comforts, and luxuries enjoyed by either parent, the child, or both parents and the child, which are needed to maintain them in customary or proper community status or circumstances.

~~(15) "Subsequent child" is defined in ARM 37.62.146.~~

~~(16)~~ (14) "Transfer payment" is defined in ARM 37.62.136.

(15) "Underemployed" means employed less than full time, when full time work is available in the community or the local trade area, and/or earning a wage that is less than the parent has earned in the past, or is qualified to earn, when higher paying jobs are available in the community or the local trade area, for which the parent is qualified.

AUTH: 40-5-203, MCA
IMP: 40-5-209, MCA

37.62.106 ~~DETERMINATION OF~~ IMPUTED INCOME FOR CHILD SUPPORT ~~(1) Income for child support includes actual income, imputed income, or any combination thereof which fairly reflects a parent's resources available for child support. Income can never be less than zero.~~

~~(2) Actual income includes:~~

~~(a) economic benefit from whatever source derived, except as excluded in (3) of this rule, and includes but is not limited to income from salaries, wages, tips, commissions, bonuses, earnings, profits, dividends, severance pay, pensions, periodic distributions from retirement plans, draws or advances against earnings, interest, trust income, annuities, royalties, alimony or spousal maintenance, social security benefits, veteran's benefits, workers' compensation benefits, unemployment benefits, disability payments, earned income credit and all other government payments and benefits. A history of capital gains in excess of capital losses shall also be considered as income for child support.~~

~~(b) gross receipts minus reasonable ordinary and necessary expenses required for the production of income for those parents who receive income or benefits as the result of an ownership interest in a business or who are self-employed. Straight line depreciation for vehicles, machinery and other tangible assets may be deducted if the asset is required for the production of income. The party requesting such depreciation shall provide sufficient information to calculate the value and expected life of the asset. Internal revenue service rules apply to determine expected life of assets. Business expenses do not include deductions~~

~~relating to personal expenses, or expenses not required for the production of income.~~

~~(c) the value of non-cash benefits such as in-kind compensation, personal use of vehicle, housing, payment of personal expenses, food, utilities, etc.~~

~~(d) grants, scholarships, third party contributions and earned income received by parents engaged in a plan of economic self-improvement, including students. Financial subsidies or other payments intended to subsidize the parent's living expenses and not required to be repaid at some later date must be included in income for child support.~~

~~(e) allowances for expenses, flat rate payments or per diem received, except as offset by actual expenses. Actual expenses may be considered only to the extent a party can produce receipts or other acceptable documentation. Reimbursements of actual employment expenses may not be considered income for purposes of these rules.~~

~~(3) Income for child support does not include benefits received from means-tested veteran's benefits and means-tested public assistance programs including but not limited to the former aid to families with dependent children (AFDC), cash assistance programs funded under the federal temporary assistance to needy families (TANF) block grant, supplemental security income (SSI), food stamps, general assistance and child support payments received from other sources.~~

~~(4) For lump sum social security payments, social security benefits received by a child of the calculation as the result of a parent's disability, refer to ARM 37.62.144.~~

~~(5) In determination of a parent's income for child support, income attributable to subsequent spouses, domestic associates and other persons who are part of the parent's household is not considered. If a person with a subsequent family has income from overtime or a second job, that income is presumed to be for the use of the subsequent family, and is not included in income for child support for the purposes of determining support for a prior family.~~

~~(6) "Imputed income" means income not actually earned by a parent, but which will be attributed to the parent based on:~~

~~(a) the parent's earning potential if employed full-time;~~

~~(b) the parent's recent work history;~~

~~(c) occupational and professional qualifications;~~

~~(d) prevailing job opportunities in the community and earning levels in the community.~~

~~(7) Income should be imputed whenever a parent:~~

~~(a) is unemployed;~~

~~(b) is underemployed;~~

~~(c) fails to produce sufficient proof of income;~~

~~(d) has an unknown employment status; or~~

~~(e) is a full-time student whose education or retraining will result, within a reasonable time, in an economic benefit to the child for whom the support obligation is being determined, unless actual income is greater. If income to a student parent is imputed it should be determined at the parent's earning capacity based on a 40 hour work week for 13 weeks and a 20 hour work week for the remaining 39 weeks of a 12 month period. (This is an annual average of 25 hours per week.)~~

(1) It is appropriate to impute income to a parent, subject to the provisions of (5), when the parent:

(a) is unemployed;

(b) is underemployed;

(c) fails to produce sufficient proof of income;

(d) has an unknown employment status; or

(e) is a student.

(2) In all cases where imputed income is appropriate, the amount is based on:

(a) the parent's recent work history;

(b) the parent's occupational and professional qualifications;

(c) existing job opportunities and associated earning levels in the community or the local trade area. If full time work is not available, imputed income is based on the number of hours and the hourly pay that is currently available in positions for which the parent is qualified.

(3) Imputed income may be in addition to actual income and may not necessarily reflect the same rate of pay as the actual income.

(4) Income is imputed according to a parent's status as a full or part-time student, whose education or retraining will result, within a reasonable time, in an economic benefit to the child for whom the support obligation is determined, unless actual income is greater. If the student is:

(a) full time, the parent's earning capacity is based on full time employment for 13 weeks and approximately half of full time employment for the remaining 39 weeks of a 12-month period; or

(b) part-time, the parent's earning capacity is based on full time employment for a 12-month period.

~~(8) When income is imputed to a parent, federal earned income credit (EIC) should not be added to income and child care expense should not be deducted from income when the effects are offsetting.~~

~~(9)~~ (5) Income should not be imputed if any of the following conditions exist:

(a) the reasonable costs of child care for dependents in the parent's household would offset in whole or in substantial part, that parent's imputed income;

(b) a parent is physically or mentally disabled to the extent that the parent cannot earn income;

(c) unusual emotional and/or physical needs of a legal dependent require the parent's presence in the home~~.~~ ;

(d) the parent has made diligent efforts to find and accept suitable work or to return to customary self-employment, to no avail; or

(e) the court or hearing officer makes a finding that other circumstances exist which make the imputation of income inequitable. However, the amount of imputed income shall be decreased only to the extent required to remove such inequity.

AUTH: 40-5-203, MCA
IMP: 40-5-209, MCA

37.62.108 INCOME VERIFICATION/DETERMINING ANNUAL INCOME

(1) A parent must swear to the accuracy and authenticity of all financial

information submitted for the purpose of calculating child support.

(2) Income of the parents must be documented. This may include pay stubs, employer statements, income tax returns, and profit and loss statements.

(3) To the extent possible, income for child support and expenses should be annualized to avoid the possibility of skewed application of the guidelines based on temporary or seasonal conditions. Income and expenses may be annualized using one of the two following methods:

(a) seasonal employment or fluctuating income may be averaged over a period sufficient to accurately reflect the parent's earning ability; . If a parent is self-employed, a minimum of three years of profit and loss statements and/or income tax returns for both the individual parent and the business entity are required to consider the average of the parent's income for entry to the child support worksheet; or

(b) current income or expenses may be projected when a recent increase or decrease in income is expected to continue for the foreseeable future. For example, when a student graduates and obtains permanent employment, income should be projected at the new wage.

(4) Income for child support may differ from a determination of income for tax purposes.

AUTH: 40-5-203, MCA
IMP: 40-5-209, MCA

37.62.110 ALLOWABLE DEDUCTIONS FROM INCOME (1) Allowable deductions from income include those required by law, those required as a condition of employment, and those necessary for the production of income. Deductions are allowed for documented annual expenses paid by one or both parents, to include:

(a) the amount of alimony or spousal maintenance which a parent is required to pay under a court or administrative order.

(b) an amount for the needs of all "other" children as defined in ARM 37.62.103(9), determined as follows:

(i) When establishing a child support obligation, deduct:

(A) the total of any pre-existing support orders for the other children; and

(B) an amount equal to one-half of the primary child support allowance as found in ARM 37.62.121 for the number of other children for whom no support order exists. These include children who reside with the parent as well as children who do not.

(ii) When modifying a current children support order, deduct the amount determined under ARM 37.62.146.

(c) the amount of any health insurance premium which either parent is required to pay under a court or administrative order for a child not of this calculation;

(d) the actual income tax liability based on tax returns. If no other information is available, use the tax tables which show the amount of withholding for a single person with one exemption;

(e) the actual social security (FICA plus medicare) paid;

(a) the total, annual out-of-pocket cost of health insurance coverage paid by either or both the parents for the parent and the parent's family if the child of the

calculation is insured under the same policy;

(b) the amount of any health insurance premium which either parent is required to pay under a court or administrative order for a child not of this calculation, unless the premium is deducted under (1)(a);

(c) the actual amount of documented, reasonable child care costs incurred by a parent for children of the calculation as a prerequisite to employment. Child care expense is not imputed when income is imputed;

(d) the current, annual amount of alimony or spousal maintenance which a parent is required to pay under a court or administrative order;

(e) an amount for the needs of all "other" children as defined in ARM 37.62.103(8). Deduct:

(i) the current, annual total of any preexisting support orders for the other children; and

(ii) an amount equal to one-half of the primary child support allowance as found in ARM 37.62.121 for the number of other children who reside with the parent for whom no support order exists;

(f) the amount of income tax withholding for a single person with one exemption according to Internal Revenue Service (IRS) and state of Montana withholding tax tables;

(g) the actual Social Security (FICA plus Medicare) paid or withheld on gross income or the amount that would be due for imputed or projected income at the current social security contribution rate;

~~(f)~~ (h) actual, documented unreimbursed expenses incurred as a condition of employment such as uniforms, tools, safety equipment, union dues, license fees, business use of personal vehicle, and other occupational ~~and business~~ expenses;

~~(g)~~ (i) actual, documented mandatory contributions toward ~~Internal Revenue Service (~~IRS~~)~~ approved retirement and deferred compensation plans. Mandatory contributions are fully deductible;

~~(h)~~ (j) ~~one-half reasonable expenses for items such as child care or in-home nursing care for the parent's legal dependents other than those for whom support is being determined, which are actually incurred and which are necessary to allow the parent to work, less federal tax credits. Do not deduct imputed child care expenses when imputing income;~~ one-half the amount of a parent's documented payments for other children for child care expenses necessary to allow the parent to work and for extraordinary medical expenses;

~~(i)~~ (k) extraordinary medical expenses incurred by a parent to maintain that parent's health or earning capacity which are not reimbursed by insurance, employer, or other entity; ~~and~~

~~(j)~~ (l) court ordered payments except as excluded under ARM 37.62.111 (nonallowable deductions)~~.~~;

~~(k)~~ (m) cost of tuition, books, and mandatory student fees for a parent who is a ~~full-time~~ student as anticipated under ARM 37.62.106~~(7)(e)~~ (4) (imputed income)~~.~~; and

(n) the annual, documented interest expense paid by a parent on that parent's student loans.

(2) Allowable deductions from income for child support differ from allowable deductions for tax purposes.

AUTH: 40-5-203, MCA
IMP: 40-5-209, MCA

37.62.111 NONALLOWABLE DEDUCTIONS FROM INCOME

(1) Deductions which are not allowable under these rules include:

(a) payroll deductions for the convenience of the parent, such as credit union payments and savings;

(b) a net loss in the operation of a business or farm, ~~used to offset other income~~ which is not the parent's principal source of income nor is it related to the principal source of income;

(c) investment losses ~~outside the normal course of business~~ unless the parent's principal source of income is from investments;

(d) expenses incurred for the support of a spouse capable of self-support;

(e) payments for satisfaction of judgments against a parent related to the purchase of property for the parent's personal use;

(f) bankruptcy payments except to the extent that they represent debts for expenses which would otherwise be deductible; or

(g) a stepchild and associated costs.

AUTH: 40-5-203, MCA
IMP: 40-5-209, MCA

37.62.114 PERSONAL ALLOWANCE (1) Personal allowance is an amount which reflects 1.3 multiplied by the federal poverty ~~index~~ guideline for a one person household. This amount is deducted when determining child support. Personal allowance is a contribution toward, but is not intended to meet the subsistence needs of parents.

(2) Adjustments for the needs of other legal dependents of a parent are limited to those provided for in ARM 37.62.110 (allowable deductions).

AUTH: 40-5-203, MCA
IMP: 40-5-209, MCA

37.62.118 TOTAL INCOME AVAILABLE/PARENTAL SHARE (1) The parents' incomes available for child support are combined to determine the total income available for child support. Each income is divided by the total. The resulting factor determines each parent's share of the primary child support allowance under ARM 37.62.121 and ~~supplements~~ adjustments under ARM 37.62.123.

(2) For any parent whose support obligation is determined according to the provisions of ARM 37.62.126(1)(a) and (1)(b) (minimum support), the amount of the minimum contribution is substituted for that parent's total income available for child support for the purpose of determining each parent's share of the primary child support allowance and ~~supplements~~ adjustments.

AUTH: 40-5-203, MCA

IMP: 40-5-209, MCA

37.62.121 PRIMARY CHILD SUPPORT ALLOWANCE (1) Primary child support allowance is a standard amount to be applied toward a child's food, shelter, clothing, and related needs and is not intended to meet the needs of a particular child. This allowance is ~~.30~~ .35 multiplied by the personal allowance found at ARM 37.62.114 for the first child. For the second and third children, the personal allowance is multiplied by .20 and added for each child. For four or more children, the personal allowance is multiplied by .10 and added for each additional child.

(2) The primary child support allowance, plus or minus adjustments, is divided between the parents according to the factors determined in ARM 37.62.118(1) (total income available/parental share).

AUTH: 40-5-203, MCA
IMP: 40-5-209, MCA

37.62.123 ~~SUPPLEMENTS~~ ADJUSTMENTS TO PRIMARY CHILD SUPPORT ALLOWANCE ~~(1) The primary child support allowance is supplemented by:~~

~~(a) reasonable child care costs incurred by a parent for children of the calculation as a prerequisite to employment. The child care expense is reduced by the federal dependent care tax credit;~~

~~(b) costs required for health insurance coverage for the children of the calculation. Include only those amounts which reflect the actual costs of covering the children; and~~

~~(c) other needs of the child as determined by the circumstances of the case, including other health related costs.~~

~~(2) The total supplemental needs of the child are divided proportionately between the parents according to the parental share determined under ARM 37.62.118.~~

~~(3) Each parent will receive credit for the amount of the supplemental needs paid by that parent.~~

(1) Because the primary child support allowance is designed to apply to all children, some individual children may have needs/expenses that are greater or less than the allowance. Upon proof of expenses and/or receipts, it may be appropriate to increase or decrease the amount of the allowance before it is divided between the parents. If a child previously enjoyed participation in an activity or organization when the parents resided together, there is a presumption in favor of including those costs in the child support calculation, if they are recurring and predictable and expected to continue into the future. The presumption may be rebutted by, among others, evidence that the cost of supporting two households leaves insufficient income to support payment of the additional costs.

(2) Increases must be an appropriate or necessary cost:

(a) for the health or special needs of the child, which may include:

(i) a child's unreimbursed medical expenses exceeding $250 per year, which are recurring, and can reasonably be predicted. If such an increase is entered, the paying parent shall be held responsible for only his share of the expenses which

exceed the amount entered, when they are actually incurred, because the parent will already pay his share of the amount entered in each monthly child support payment; or

(ii) special educational programs or equipment;

(b) which encourages the developmental growth of the child, such as:

(i) private school tuition; or

(ii) participation in extra-curricular activities; or

(iii) the additional cost of automobile insurance for an older child.

(3) Decreases to the primary child support allowance may include but are not limited to regular, annual receipt of funds for the child by the child's household. The amount received may be entered into the support calculations as a decrease to the primary support allowance so long as the child's additional expenses, if any, are entered as an increase to the primary child support allowance. A decrease is allowed for funds which are:

(a) intended for the child's needs or upkeep; and

(b) not received from a parent or other guardian; and

(c) not social security payments based on the earning record of either parent; and

(d) not included in the parent's income for child support; and

(e) not listed in [Rule II(3)] (determination of income).

(4) If a parent pays a nonparent provider for an expense added to the primary child support allowance for a child (such as private school tuition), the parent must receive credit for the payment in the calculation to produce an accurate support obligation.

AUTH: 40-5-203, MCA
IMP: 40-5-209, MCA

37.62.126 MINIMUM SUPPORT OBLIGATION (1) A specific minimum contribution toward child support should be ordered in all cases when the parent's income is insufficient to meet the parent's personal allowance or the parent's child support obligation is less than ~~12%~~ 14% of that parent's income after deductions.

(a) For parents whose income as defined in [Rule II] and ARM 37.62.106 after deductions, as defined in ARM 37.62.110, is insufficient to meet the parent's personal allowance, the minimum contribution is a portion of the income after deductions and is determined by applying the table in (3) as follows:

(i) divide the income after deductions by the personal allowance as defined in ARM 37.62.114 to determine the income ratio;

(ii) find the income ratio in Column A;

(iii) locate the corresponding minimum contribution multiplier in Column B; and

(iv) multiply the income after deductions by the minimum contribution multiplier. The result is the parent's minimum contribution.

(b) For parents whose income after deductions exceeds the personal allowance, the parent's minimum contribution is ~~the greater of:~~

~~(i) the difference between income after deductions and the parent's personal allowance; or~~

~~(ii) 12%~~ 14% of income after deductions.

(2) The minimum contributions under this rule are presumptive and may be rebutted by the circumstances of a particular case, provided there is an appropriate finding on the record.

(3) The table for determining the minimum support obligation of a parent whose income after deductions is insufficient to meet the parent's personal allowance is as follows:

Column A "Income Ratio"		Column B "Minimum Contribution Multiplier"
If the IR is in the range:		The minimum contribution is:
~~over~~	.00 to ~~.25~~ .35	.00
If the IR is:		
over:	but not over:	minimum is:
~~.25~~ .35 ~~to~~	~~.31~~ .40	.01
~~.31~~ .40 ~~to~~	~~.37~~ .45	.02
~~.37~~ .45 ~~to~~	~~.43~~ .50	.03
~~.43~~ .50 ~~to~~	~~.50~~ .55	.04
~~.50~~ .55 ~~to~~	~~.56~~ .60	.05
~~.56~~ .60 ~~to~~	~~.62~~ .65	.06
~~.62~~ .65 ~~to~~	~~.68~~ .70	.07
~~.68~~ .70 ~~to~~	.75	.08
.75 ~~to~~	~~.81~~ .80	.09
~~.81~~ .80 ~~to~~	~~.87~~ .85	.10
~~.87~~ .85 ~~to~~	~~.93~~ .90	.11
~~.93~~ .90 ~~to~~	~~1.00~~ .95	.12
.95	1.00	.13

AUTH: 40-5-203, MCA
IMP: 40-5-209, MCA

37.62.128 INCOME AVAILABLE FOR STANDARD OF LIVING ADJUSTMENT (SOLA) (1) The purpose of the standard of living adjustment (SOLA) is to ensure that the child enjoys, to the extent possible, the standard of living commensurate with the parent's income. If a parent has income available after deducting the personal allowance and the parent's share of the child support allowance as ~~supplemented~~ adjusted, the remaining income is subject to SOLA.

(2) ~~SOLA is calculated by subtracting from the parent's income available for support, as provided in ARM 37.62.116 the parent's share of the primary child support allowance under ARM 37.62.121 and supplements as provided in ARM 37.62.123.~~ The amount of income available for SOLA may be adjusted before determination of the standard of living adjustment. A reduction in the amount of income available at this stage of the child support calculation does not adversely affect the child's needs but reduces the amount of support owed by the parent and must be shown to be in the best interests of the child.

(3) One allowable adjustment to income available for SOLA is a portion of the cost of transportation necessary to exercise parenting time with the child of the

calculation. A dollar threshold is determined by multiplying 2,000 miles by the current year's IRS business mileage rate. The threshold amount is deducted from the total cost of transportation and the remaining balance is deducted from income available for SOLA before the SOLA factor is applied; the threshold is known as the "standard expense". The adjustment is calculated as follows:

(a) multiply the parent's annual mileage driven to exercise parenting time by the current IRS business mileage rate;

(b) add the annual cost of transportation by means other than automobile;

(c) subtract the standard expense from the total of (2)(a) and (2)(b); and

(d) subtract any difference greater than zero from the parent's income available for SOLA.

~~(3)~~ (4) If income is available for SOLA, multiply the income by the SOLA factor from the following table which corresponds to the number of children for whom support is being determined.

Number of Children	SOLA Factor
1	.14
2	.21
3	.27
4	.31
5	.35
6	.39
7	.43
8 or more	.47

~~(4)~~ (5) Income available for SOLA may not be less than zero.

AUTH: 40-5-203, MCA
IMP: 40-5-209, MCA

37.62.134 TOTAL MONTHLY SUPPORT AMOUNT (1) For each parent, ~~T~~the total ~~monthly~~ child support amount consists of:

(a) the parent's share of the primary child support allowance, with ~~supplemental needs,~~ adjustments and credits, if any, plus the parent's standard of living adjustment; or

(b) the minimum support obligation determined under ARM 37.62.126.

(2) ~~In setting the amount of order per child, the total monthly support should be divided equally among the children, except when it is allocated according to supplemental needs as provided in ARM 37.62.138.~~ Each parent's total child support provides annual support for the children of the calculation. The amount of support a parent retains and the amount a parent owes to the other parent are determined by the amount of time the child spends with each parent. A parent's total child support is not the same amount as the parent's transfer payment except when the parent spends zero days with the child; the exception is addressed in ARM 37.62.136(3) (transfer payment).

AUTH: 40-5-203, MCA

IMP: 40-5-209, MCA

37.62.136 TRANSFER PAYMENT ~~(1) Applying ARM 37.62.101 through 37.62.134 results in a child support obligation for each parent. If all the children of the calculation spend 110 days or less with a parent, all of that parent's obligation is due and payable to the other parent. This is the transfer payment, which may be adjusted in accordance with ARM 37.62.138.~~

(1) The amount that is owed by one parent to the other parent as support for their child, and/or is owed by one or both parents to a third party, is called the transfer payment. The transfer payment is based on the current or proposed amount of time the child spends with each parent, or third party, at the time of the child support calculation. The transfer payment is calculated by one of the following methods.

(a) If both parties parent the child at least one day (see definition at [Rule I] - parenting time) per year, the transfer payment is the difference between the parent's support amounts (as in ARM 37.62.134) after each parent has been credited with the support amount corresponding to the percentage of time the child spends with each of them. For example, if the child spends 275 days, or 75% of the year, with mother, and 90 days, or 25% of the year, with father, mother retains 75% of her support amount and owes the remaining 25% to father. Father retains 25% of his support amount and owes 75% to mother. The amounts owed are offset against each other and the parent owing the higher amount pays the difference to the parent owing the lower amount.

(b) If both parties do not parent the child at least one day per year, there is no need to offset the support amounts to determine the transfer payment. The parent with whom the child spends zero days owes that parent's total child support to the other parent.

(c) If the child lives with a third party, both parents' support obligations are payable to the third party for the percentage of time each year the child resides with the third party. The obligation to the third party is in addition to the obligation of each parent to the other, if any, and is calculated by the same method as in (1)(a) or (1)(b).

(2) To set the amount of the monthly transfer payment per child, divide the annual transfer payment by 12 and then divide the monthly transfer payment by the number of children in the calculation. The monthly per child amount is rounded to whole dollars as follows: round down for $.01 to $.49 and round up for $.50 through $.99. The total of the rounded per child amounts is the monthly transfer payment owed by one parent to the other, and/or to a third party, and, due to rounding, may not equal the monthly transfer payments shown on the worksheet.

AUTH: 40-5-203, MCA
IMP: 40-5-209, MCA

37.62.140 ANTICIPATED CHANGES (1) To the extent possible, child support orders must address children's changing needs as they grow and mature, in a way that minimizes the need for future modifications. ~~When child support is determined, i~~If any material change in current circumstances is anticipated within 18

months, separate child support calculations should be completed.

(2) In the initial calculation, present circumstances should be included. In the subsequent calculation(s), appropriate anticipated changes should be calculated. The child support order should provide that the amount(s) from the subsequent calculations will take effect the month following the anticipated changes.

AUTH: 40-5-203, MCA
IMP: 40-5-209, MCA

37.62.148 SUPPORT GUIDELINES TABLES/FORMS (1) The Child Support Enforcement Division (CSED) has developed a child support ~~determination~~ calculation worksheet. Copies of this worksheet may be obtained from the Department of Public Health and Human Services, Child Support Enforcement Division, P.O. Box 202943, Helena, MT 59620 or any regional office. The worksheet is also available on the department's Internet site at www.dphhs.mt.gov/forms.

(2) Included for use with the worksheet are a financial affidavit, necessary tables and information for completion of the guidelines calculation. To assure that these tables are current, the Child Support Enforcement Division will republish the ~~worksheet with~~ tables annually as soon as practical after release of information upon which tables are based. The ~~worksheet with~~ tables will be identified by the year of publication or republication.

(3) The child support guidelines worksheets, or a replica of those forms with a similar format and containing the same information, must be used in all child support ~~determinations~~ calculations under the guidelines and a copy must be attached to the support order.

AUTH: 40-5-203, MCA
IMP: 40-5-209, MCA

37.62.2121 ADDITIONAL HEARING PROCEDURES (1) To the extent they are not inconsistent with the provisions of this subchapter, the overall hearing procedures set forth in subchapter ~~6~~ 9 of this chapter are applicable to administrative hearings under this subchapter.

AUTH: 40-5-203, MCA
IMP: 40-5-209, MCA

4. The rules 37.62.130, 37.62.138, and 37.62.146 as proposed to be repealed are on pages 37-13513, 37-13522, and 37-13533 of the Administrative Rules of Montana.

AUTH: 40-5-203, MCA
IMP: 40-5-209, MCA

5. The Child Support Enforcement Division (CSED) of the Department of Public Health and Human Services, State of Montana, is required by both federal regulation (45 CFR 302.56) and state law (40-5-209, MCA) to review its uniform

child support guidelines at least every four years. The CSED adopted changes to the guidelines in 1998 intended to simplify the calculation and based partially on the results of a study by the University of Montana on the CSED's behalf. The study conclusion emphasized the need for simplification of the guidelines while at the same time maintaining the equity contained in the calculation, according to the results of interviews with parents, attorneys, and judges. Nevertheless, when the CSED started on the current review of the guidelines, late in 2002, the call for simplification was still strong.

Comments, suggestions, questions, and complaints about the guidelines are received every working day by the CSED from those parents who pay or receive child support and from attorneys, judges, and its own caseworkers. One of the first steps taken in the quadrennial guideline review was a CSED review of a random sample of nearly 300 child support case files from both the CSED and the district courts. Federal regulations require the case review "to ensure that their [guidelines] application results in the determination of appropriate child support award amounts". In addition to considering how the guidelines are applied, the CSED notes variances or deviations from the guidelines and searches for errors and misunderstandings of the administrative rules that constitute the guidelines.

The CSED also placed a survey regarding child support and child support guidelines on its web site early in the current guidelines review. Without funds to publicize the survey, the CSED still received approximately 375 completed questionnaires from members of the public. Responses demonstrated a strong sense of fairness regarding the imputing of income to parents for the child support calculation. Among the most interesting were responses to the question: "After the family breaks up, should the child support guidelines always require child support to be based on the highest income a parent can earn"? Only 49 respondents chose "Yes" while 299 answered "No". In addition, by a margin of two to one, the respondents strongly supported the self-support reserve in Montana's guideline and the majority favored only one guideline model of the four considered: Montana's current Melson model.

One of the most important of the proposed changes to the Montana Child Support Guidelines is a direct result of the federal charge to issue orders in the appropriate amount. The CSED has been concerned for some time about the accuracy of the federal poverty guidelines, which are the basis for the primary child support allowance or what amounts to basic child support under Montana's guidelines. Having researched the method used to determine the poverty amounts, the CSED decided it was no longer adequate by itself as a basis for child support. Further research led the CSED to a method (see Proposed Changes, below) recommended by the National Academy of Sciences for a new national poverty line. Although not charged with establishing a national poverty line, the CSED would adapt the suggested method to determine the primary support allowance in the guidelines to be at least an amount that would provide the minimum necessary to raise a child. If Montana's child support guidelines are to continue to determine adequate amounts of child support, it is necessary that the CSED's proposed changes be adopted.

Since the 1998 changes to the guidelines, there has been an important development in the calculation of child support across the country: the use of automated child support calculators, usually found on the state child support agency's Internet web site. On the child support web site of family law attorney, Laura Morgan (www.supportguidelines.com), there are links suggesting at least 23 states currently have a child support calculator available to the public. The Montana CSED began receiving requests in the late '90s for the location of its child support calculator. Unable to provide one at that time, the CSED began to look for ways it could change that for the public as well as guideline practitioners, because some of those calls came from Montana attorneys and district court judges. The CSED found that simplification of the guidelines would make it easier to build a calculator and to make its instructions clear to users.

The state's summary dissolution process, passed by the Montana Legislature in the 1990s, would also benefit from a child support calculator available to the public. The process allows couples who meet eligibility requirements to file for a simplified dissolution (divorce) in district court that can be completed without the assistance of an attorney. Before the summary dissolution is filed, however, a child support order must be entered in district court and a child support order requires a worksheet calculated under the guidelines. Currently, there are two possibilities available for most couples who require a child support calculation and are unable to hire an attorney. The parents may open a case with the CSED or they can prepare the child support worksheet manually, a daunting but doable task. The need for a child support calculator available to the public is a need the CSED can meet by simplifying the calculation of child support as proposed in these rule changes.

The Montana Supreme Court made a request in, In re marriage of Kummer & Heinert, 2002 MT 168, 310 MT 470, 51 P3rd 513 (2002), that CSED provide an expanded definition of a "day" of parenting in the guidelines. In a second decision, Albrecht v. Albrecht, 2002 MT 227, 311 MT 412, 56 P3rd 339 (2002), the Supreme Court addressed the provision of business records for the purpose of calculating child support. The court held that the lower court "abused its discretion by deviation from the Guidelines' preference for a three-year average of net income for a self-employed parent". The CSED finds it necessary to change the guidelines to reflect the court's decision and to provide the expanded definition of a day of parenting requested by the court.

In recent years, parents, particularly fathers, have become more educated about guidelines and the nation has seen an increase in the number and volume of fathers' groups and other groups working to make guidelines and other child support policies fairer. In March 2000, Vicki Turetsky, writing for the Center for Legal and Social Policy ("Realistic Child Support Policies for Low Income Fathers") pointed out that research shows low income fathers find many child support policies to be unfair. One of the most difficult to deal with is the state policy for retaining child support when the children are receiving welfare payments from the state. "Just as a job is about more than a paycheck, child support also is about more than money. A father's good faith effort to pay child support carries with it symbolic meaning about

his capacity to care for and take care of his children". (Turetsky, 2000, p. 4) Turetsky (2000, p. 2) also noted the encouraging evidence for noncustodial parents that those who pay support have more contact with their children.

Studies as far back as the 1980s have found that the "research generally shows a positive relationship between child support and visiting. Similarly, families that report problems with paying or collecting child support are also likely to report problems with visiting". (Seltzer, Judith A., "Child Support and Child Access: Experiences of Divorced and Nonmarital Families" from Oldham, J. Thomas and Marygold S. Melli, Editors, Child Support the Next Frontier, the University of Michigan Press, Ann Arbor, 2000).

A 2000 report by the Office of Inspector General (OIG) of the U.S. Department of Health and Human Services, The Establishment of Child Support Orders for Low Income NonCustodial Parents found similar results regarding unfairness. This federal report made recommendations in five categories, many of which involve perceived unfairness by the noncustodial parent. The findings suggest that as a parent's perception of unfairness increases, the likelihood of payment decreases. For example, the report cited statistics that 14% made no payments during the study period when no retroactive support was charged, 23% made no payments when up to 12 months retroactive support was charged, and when more than 12 months' support was charged, the nonpayment rate increased again, to 34%.

The report also notes that not all low income noncustodial parents cite inability to pay as the primary reason for nonpayment of child support. Other reasons include custody and visitation disputes, where it is frequently seen as unfair that the state/federal government funds an office to enforce child support orders but has no funding available for enforcement of other parenting requirements in court orders, such as the noncustodial parent's right to visitation and state retention of child support payments made when the family receives welfare, another issue of basic fairness to noncustodial parents, previously noted.

These study results led the CSED to consider how the calculation of child support in Montana could be made fairer. One part of the Montana guidelines of possible concern to the CSED was the visitation threshold, already criticized as unfair by some noncustodial parents because it provides no credit to them until they spend more than 110 days per year parenting their children. The effect of the 110-day threshold is to exclude the noncustodial parent's cost of parenting the children for a full 30% of the year while it ignores the custodial parent's reduction in costs when the children are residing with the other parent. With increasing concern over the unfairness issue, and studies finding that the payment of child support goes hand in hand with spending more time with their children, CSED decided it was necessary to change the visitation threshold to acknowledge the cost of parenting, which may encourage noncustodial parents to spend time with their children. There are numerous studies showing that children benefit in many ways from increased time with the noncustodial parent, from better grades to higher self-esteem.

The proposed change to the method of determining the primary child support allowance will treat parents the same with regard to their liability for support whether they are "custodial" or "noncustodial". The child support calculation will consider the parenting plan to determine the noncustodial parent's obligation when the child is expected to reside with the custodial parent and the custodial parent's obligation when the child is expected to reside with the noncustodial parent.

By describing the needs identified in this notice, from the increase in the primary child support allowance to the ability of low-income parents to file for a summary dissolution in district court; from the Montana Supreme Court request to CSED to the study conclusions of unfairness; from the requests of the judiciary and the state bar for simplification to the pressing need for an online child support calculator, the Montana CSED has shown the necessity for change in the administrative rules that make up the child support guidelines. And, because the guidelines are contained in administrative rules, the CSED has no other option but to propose changes to the rules through this statutory rule change process.

To assist the reader, the CSED prepared a primer on child support guidelines and a worksheet for the proposed guideline changes in the spreadsheet computer program, Excel. Both the primer and the worksheet can be found on the CSED Internet site at www.dphhs.mt.gov/csed.

THE CURRENT REVIEW

The CSED began with a decision to articulate the goals of Montana's child support guidelines beyond the obvious desire to establish support orders adequate to meet the needs of children. Following are the most important goals identified (not necessarily in order of priority).

1. Meet the basic needs of children and prevent or reduce child poverty.
2. If income is available, provide additional resources to allow the child a higher standard of living, which allows interests to be pursued, and skills and abilities developed.
3. Allow parents to meet their own basic needs so they can maintain employment.
4. Recognize that child support should not force a parent into poverty.
5. Consider that a separated family cannot live as economically in two households as in one, due to lost economies of scale and duplication of household expenses.
6. Recognize costs incurred for parenting/visitation with the children.

Early into the guideline review, the CSED decided to expand it to consider other guideline models, including one never adopted by any state, a model called Cost Shares. Author of the original model, Donald J. Bieniewicz, and another proponent, R. Mark Rogers, both economists, have touted the benefits of the cost shares method since at least 1994 when it appeared in chapter 11 of Child Support Guidelines: The Next Generation, a collection of articles published through a contract between the American Bar Association and the federal Office of Child Support Enforcement.

Bieniewicz originally developed the guideline model as a volunteer for the Children's Rights Council. The model is unlike any other in use or proposed in that it offsets the child-related income tax benefits (up to $5,000/year for two children), which mostly accrue to the custodial parent, against the costs of raising the child and divides the remaining balance between the parents. This feature, however, also causes the resulting obligations (as determined by CSED) to be lower than those calculated by the other guideline models and cost shares is not the model chosen by CSED.

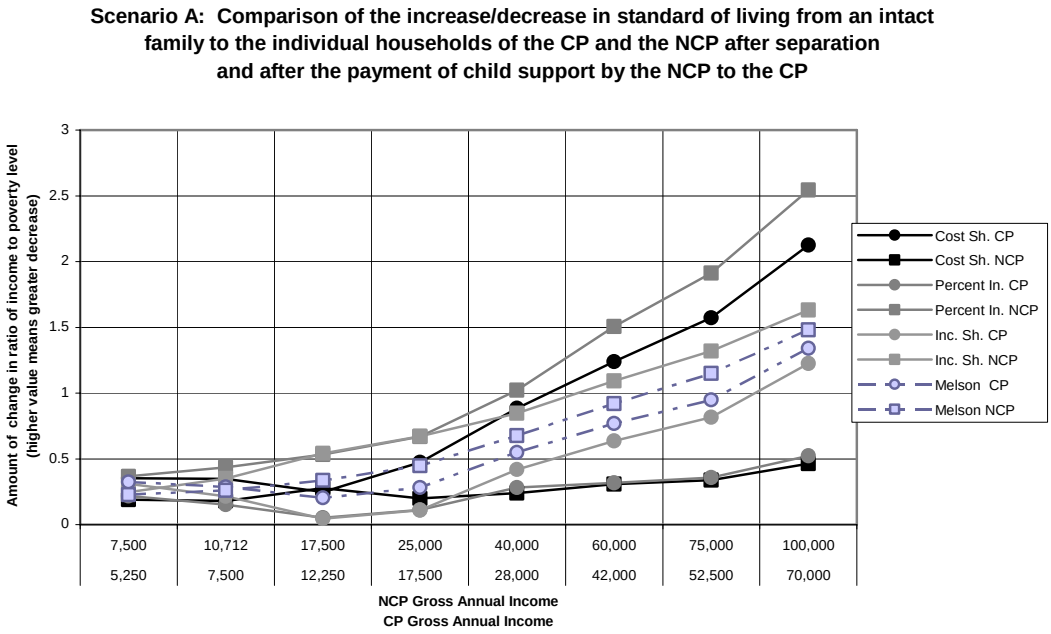
Bieniewicz and Rogers were concerned with the income shares and percent of income guideline models for the damage they do to noncustodial parents with extremely high child support awards relative to their incomes. Those support obligations sometimes maintain the custodial parent and children, at the intact family standard of living, or, occasionally even above that standard, but leave the noncustodial parent in poverty. For this phase of the guideline review, the CSED had an additional goal in mind: a guideline model that equitably distributes the inevitable decrease in the standard of living between the parties to the calculation. In other words, which model treats the parents most fairly when the standard of living falls?

Using automated worksheets, the CSED completed hundreds of calculations under the four models reviewed: Montana's Melson, Wisconsin's Percent of Income, Colorado's Income Shares, and the Cost Shares model. The Cost Shares worksheet was based on one that Rogers developed, which is available on his Internet site (www.guidelineeconomics.com). Because of the difficulty in comparing the parents' households, which are usually of different size after separation, the Federal Poverty Guidelines were used to create a format in which each party's income is standardized as a multiple of the household's poverty level. In other words, the ratio of income to poverty level is the standard of measurement.

For example, a custodial parent with two children has a 2006 poverty level for a three-person household of $16,600 per year, while the noncustodial parent, at a household size of one, has a poverty level of $9,800. The household poverty levels were adjusted for the fact that the children spend 75% of the year with their mother and 25% with their father. The adjustments result in a reduction in mother's poverty level to $14,900 [(75% x $16,600) + (25% x $9,800)] and an increase in father's poverty level to $11,500 [(25% x $16,600) + (75% x $9,800)].

If the custodial party's after-tax, after-child support income is three times her poverty level ($44,700), a ratio of 3 to 1, and the noncustodial party's after-tax, after-child support income is three times his poverty level ($34,500), also a ratio of 3 to 1, the two households are approximately equal in standard of living after the payment of taxes and child support, even though their incomes are very different. This method has been used for many years by social scientists and child support advocates to compare the effects of a particular guideline or guideline change on the resulting standard of living of the participants.

Figure 1. Comparison of Change in Standard of Living for Each Parent in Four Guideline Models



The results of the CSED's analysis are shown in Figure 1. By first determining the standard of living of the family when it was intact (total income of both parents divided by the poverty level for a household of four, which is $20,000 for 2006), CSED created a base from which to compare the standard of living of each parent's household after separation. Because the income to poverty level ratio is the standard of measurement, Figure 1 displays the change in the ratio from intact household to each parent's household after separation. Each of the four guideline models is represented by two lines, one for custodial and one for the noncustodial parent and the closer the two lines are to each other, the closer the change in standard of living for both parties. In this analysis, the percent of income model reflects the greatest difference between the line for the custodian and the line for the noncustodial parent, followed by the cost shares model. Interestingly, it is the noncustodial parent who sees the greatest decrease in standard of living in the percent of income model, while it is the custodial parent who drops the most in the cost shares model. The guidelines model with the least distance between the parents' after-separation ratios is the Melson model, the model currently used in Montana. The proximity of the two lines indicates the parents' standards of living have been reduced approximately the same.

In addition to these factors, the CSED considered a number of other criteria before selecting the Melson guidelines as the basis for Montana's child support guidelines. Besides the standard of living comparison, the CSED rated the models' performance in relation to the goals stated above and also for complexity/simplicity. The CSED did not choose one of the other three guideline models due to the high support amounts for low-income, noncustodial parents under the income shares and percent

of income guideline models and the lower support amounts of most orders from the cost shares guideline model. The percent of income model recognizes almost no circumstances of the noncustodial party, beyond income, and does not consider the income of the custodial parent, nor does it include a self-support reserve, an important requirement for Montana's guideline. The income shares model rated higher than percent of income but still below cost shares, which was second to Melson. Although cost shares offers a new method of calculation, the resulting child support orders are low compared to the other guideline models and the CSED believes those support orders would not be acceptable to the public in Montana due to concerns about adequacy. Based on these factors, the Montana CSED is confident the Melson model continues to offer the best foundation for child support guidelines in Montana.

PHILOSOPHY

The child support guidelines were written to assist individuals in calculating a child support order based on average needs for a specific family situation. Like building codes, the guidelines provide the parameters within which decisions can be made. While everyone is required to follow the building codes when constructing a home, each individual home varies according to the income, needs, and circumstances of the family who will live there. Likewise, the guidelines provide the parameters within which child support can be determined.

The Montana child support guidelines utilize an arithmetic formula, which incorporates parents' income and deductions with a number of predetermined allowances for parents and children. Application of the formula results in an obligation for each parent, which is presumed to be adequate and reasonable and provides a standard for the majority of cases. It is also important that child support payments are consistent and timely; therefore obligations are payable monthly. The guidelines are not intended to be exact with respect to specific parents or children, nor are they intended to apply to every case without consideration of the unique circumstances that exist in all families. Each presumption within the guidelines as well as the overall determination may be rebutted when and only when extraordinary circumstances exist which can be shown to make application of the guidelines inequitable. An interpretation, which meets the best interests of the children, is required. In all cases, it is the first priority of the parents to meet the needs of the children according to the financial ability of the parents.

GUIDELINES HISTORY

Child support guidelines have been in existence only since the late 1980s, so they are still being amended and adjusted based on the experience of state child support agencies and other users. Each guideline method in use around the country must be evaluated to determine if it operates the way it was intended and if it accomplishes agency goals. Considering that early state child support agencies existed for the sole purpose of collecting child support from noncustodial parents to reimburse state and federal governments for welfare spending, the original

guidelines have evolved as the mission of the agencies has evolved. When government reimbursement was the goal, the percent of income guideline provided for higher collections as it appropriated a flat percentage of the noncustodial parent's gross income, based on the number of children to be supported.

Today, these states that adopted the percent of income guideline in the late '80s are beginning to change to other models (Georgia, Tennessee, and Minnesota, most recently, moved from percent of income to the income shares model) as noncustodial parents continue to object to a guideline that does not consider the custodial parent's income and can result in very high support orders relative to income.

As guidelines evolved, some state child support agencies gradually made changes to take into account the amount of time the children spend with the noncustodial parent. In the beginning, all children's costs were assumed to reside with the custodial parent and even when the children were in the care of the other parent, it was thought that the full child support payment must continue to the custodial parent to maintain the household for the children's return.

In Montana, the original child support guidelines adopted by the Supreme Court in 1987 were based on the income shares model developed by the Advisory Panel on Child Support Guidelines under a federal grant to the National Center for State Courts in 1986. That original guideline had a less refined method of providing for parenting-time adjustments. During the next review of the guidelines in 1991 and 1992, the CSED decided that the income shares model was not the best available for Montana's guidelines. With the assistance of Marianne Takas, of the American Bar Association, the CSED chose the Melson model to replace income shares and slightly modified the provision for the self-support reserve to take into account other income earners in the household. That first Melson guideline in Montana included a parenting time adjustment that took effect after the noncustodial parent spent more than 110 days per year parenting the children.

The next review of the guidelines began in 1995 and involved a contract with the University of Montana to gather opinions from all types of guideline users, from parents to district court judges. In addition to some specific complaints, primarily regarding the complexity of the guidelines, those Montanans interviewed agreed that the Melson model remained the fairest but needed simplification. Other survey conclusions included: respondents were not willing to give up the equity they saw in the Montana Melson guidelines; the modification to the self-support reserve calculation to consider other income-earners living in the household, made when the Melson guideline was adopted, was difficult to understand and frequently calculated incorrectly; and, there were concerns that support orders were very high for low-income parents. The guideline review concluded with a notice of rule change providing that other income-earners in the household would no longer be considered in the self-support reserve, income would no longer be attributed to nonperforming assets, and the self-support reserve was increased from 100% to 130% of the federal poverty line for a single person household, in addition to other minor changes

proposed. Members of Montana CSED's guideline committee also collaborated with Nick Bourdeau, a Montana CPA, to improve its worksheet for shared parenting.

After the current review began, the CSED distributed an in-house survey to CSED staff and placed a second survey on its Internet site for completion by any interested party, to learn more about opinions on the various aspects of child support, including guidelines. In addition, CSED regularly receives comments and suggestions about its guidelines from people who use them and people who are subject to orders based on them. It was these sources, in addition to the experience of the members of the CSED guidelines committee and the recommendations of a variety of studies by public and private organizations, that form the basis of most of the changes currently proposed to the Montana guidelines.

The Montana CSED believes there is a need to increase fairness in the child support guidelines calculation and it is fairness that makes it necessary for CSED to amend the guidelines.

PROPOSED CHANGES

Fairness and simplicity are the two cornerstones of these proposed rule changes and explain the necessity of amending the rules. As noted above, each state is responsible, by federal regulation, for setting appropriate child support orders and administrative rule changes are the only method available to Montana's CSED to comply. The guidelines must be amended from time to time to keep up with changing social values and public perceptions of child support obligations. While there are many proposed changes to the administrative rules that make up the child support guidelines, most are relatively minor and will not change support orders a great deal. Some will not affect the amount of support at all, but are necessary to clear up misunderstandings or to include new circumstances. There are changes that will have a greater effect on one party or the other although CSED has attempted to balance the changes in such a way as to mitigate those effects. Following is a summary of the proposed changes and their effects, and, following that, a rationale for each individual rule.

Proposed amendments to the guidelines would change the parents' income available for child support in a number of ways. By excluding federal tax credits from income, including the Earned Income Tax Credit, the Child Tax Credit and the Dependent Care Tax Credit, the division has simplified the calculation of support, an essential element, based on comments from inside and outside the agency. Experience has shown that keeping up with regular changes to the tax credits and tax rates by Congress and the resulting changes in worksheets by the IRS are taking increasing programming time away from CSED's other priorities. In addition, the proposed changes include deducting state and federal income taxes based on filing single with one exemption for all parents rather than use parties' actual filing status at the time of the calculation. In the past, the calculation has been driven to a significant extent by the actual filing status and number of exemptions entered, which can and does change with regularity. The CSED believes these changes are

necessary both to simplify the calculation and to remove a variable that exercises too strong an influence on the calculation.

To ensure the position of the state of Montana on parents who are not employed to support their children is clear, a specific presumption is proposed that a parent is capable of full time employment, although that could be less than 40 hours per week in some cases. The guideline policy on imputing income to parents was also rearranged to affect a change in emphasis. The change recognizes that imputing income at a level not supported by available jobs in the local community is not fair to parent or child.

As noted above, the guidelines are subject to orders and requests from Montana's Supreme Court and two of the proposed changes are a result of such. The proposed addition to ARM 37.62.108 adopts the policy of requiring a minimum of three years of tax returns or profit and loss statements from a self-employed parent as articulated by the Court in Albrecht v. Albrecht, 2002 MT 227, 311 MT. 412, 56 P3rd 339 (2002). Although this suggestion has been included in the CSED instructions for completing a child support guidelines worksheet since 1999, the guideline rules did not require it. A second case involves a specific request from the Supreme Court to CSED, contained within a case opinion, for a better guidelines definition of a "day" when children are in the temporary care of third parties, such as day care providers and schools. (In re marriage of Kummer and Heinert, 2002 MT 168, 310 MT. 470, 51 P3rd 513, (2002)). These rule changes are necessary to improve public understanding of the guidelines and to keep up with changes in case law.

Allowable deductions from income in Montana's guidelines have always been restricted to those required by law, those required as a condition of employment, and those necessary for the production of income. One proposed change will add this specific language to ARM 37.62.110, which is necessary to provide direction to parents who have potential deductions not specifically addressed in the rules. Another proposed change is to allow for deduction of the entire health insurance premium paid out-of-pocket by a parent, as long as the child of the calculation is covered by the policy, and is intended to recognize that, except for child-only policies, health insurance is a family affair and usually requires enrollment of the parent. To include the cost for the parent as well as others covered by the policy, it is necessary to move the entry point for the premium cost in the calculation because the other parent is not responsible to share any part of the premium except the child's. Rather than adding the cost to the child's primary support allowance and then dividing it between the parents, as is currently the procedure, the premium will be deducted from the income of the parent who pays it. A similar proposal also treats child care necessary for a parent to work outside the home as a deduction from income. These proposed changes will treat the children's expenses more like parents treat them, as a reduction of their income available for supporting their children's other needs.

The last change to allowable deductions from income is an addition necessary to

keep up with changes in the law and that is the cost of interest on student loans. This expense is arguably a cost of employment because of the connection between education and employment and the federal government has improved the collection of student loans to the point that parents have no choice but repayment. The loan principal is not considered income in any context and, likewise, the repayment of principal is not a reduction of income for child support.

Rule I, Determination of Parenting Time, is an entirely new rule and, is, perhaps, the proposed rule with the greatest effect on the calculation of child support. The 110-day per year visitation threshold is no longer a part of the guidelines in this proposal, and, instead, the percentage of time a parent spends parenting the child determines the percentage of the parent's child support obligation retained to spend directly on the child. This change is believed to be necessary by the CSED because it recognizes the parenting costs of the noncustodial parent, a change from the current rules, and treats parents the same. Each parent's obligation is divided into the support retained for spending directly on the child when in the parent's care and the support owed to the other parent for time periods when the child resides with the other parent. When each parent owes a part of his support obligation to the other parent, the amounts owed are offset by subtracting the lower amount from the higher amount. The parent with the higher obligation pays the difference to the parent with the lower obligation.

EXAMPLE: One child resides 75% of the time with his mother and 25% of the time with his father. Father's child support is $400 per month and Mother's support is $200 per month. Each parent owes the other when the child is residing with the other parent. Each parent retains the same percentage of support as the percentage of time spent parenting the child.

Father - $400 x .75 = $300 **Mother** - $200 x .25 = $50
$400 x .25 = $100 $200 x .75 = $150

Father retains $100 per month (25%) to spend on the child when the child is with him. He owes the other $300 per month (75%) to Mother. Mother retains $150 (75%) per month to spend on the child when the child is with her. She owes the other $50 (25%) to Father. So, Mother owes $50 to Father and Father owes $300 to Mother. After offset, ($300 – 50 = $250) Father owes $250 per month to Mother.

Rule I also includes a default provision if the parents are unable to agree on the number of days the child spends with each of them. The provision is necessary because of the many parents who are unable or unwilling to agree on the amount of time the child spends with them. The final section of this rule gives directions for averaging the amount of time if there is more than one child, and the children spend different amounts of time with each parent.

The proposed change to the Primary Child Support Allowance, at ARM 37.62.121, is small but important. CSED research provided an in-depth look at the current federal

poverty figures and the deficiencies of the poverty guidelines, which are the basis for the support variables currently used by the guidelines. The CSED decided it was necessary to find a new method and opted to use the recommendation of a report from the National Academy of Sciences (NAS), a book called Measuring Poverty A New Approach (Citro, Constance F. and Robert T. Michael, Editors, National Academy Press, Washington, D.C. 1995). The purpose of the NAS study was to evaluate the current federal poverty thresholds and recommend a new method of determining them, if necessary.

Among the recommendations of the NAS Panel on Poverty and Family Assistance, is the following formula for a more realistic poverty threshold:

> "The poverty thresholds should represent a budget for food, clothing, shelter (including utilities), and a small additional amount to allow for other needs (e.g. household supplies, personal care, nonwork-related transportation)".

The panel recommended this formula be applied to the data contained in the USDA publication "Expenditures on Children by Families", which is based on the Consumer Expenditure Survey undertaken by the Bureau of Labor Statistics of the federal Department of Labor. Because the CSED is concerned with setting the amount of Montana child support orders rather than a national poverty line, the formula was applied to the table of expenditure data for rural areas for a single child and resulted in the following calculation for 2005, the latest year for which figures are available. (Because the expenditures on children publication sums children's costs for 18 years, that figure was first divided by 18 to determine the average expenditures for a year):

> Measuring Poverty A New Approach (recommendation for new poverty line adapted to poverty level for a child in Montana):

Basic Costs*		Multiplier**
Housing	$1,795/yr	$3,703 x 1.2 = $4,444
Food	1,455/yr	
Clothing	453/yr	$4,444 ÷ 12 = $370/month
Total	$3,703/yr	

* From "Expenditures on Children by Families, 2005", Table 6, published by the Center for Nutrition Policy and Promotion, U.S. Dept of Agriculture, April 2006.

** The recommendation included the addition of an amount determined by adding from 15% to 25% of the basic costs to allow for other needs; Montana used 20%.

The amount of basic support for a child, by this method, is approximately $370 per month and is the rough equivalent of the recommended poverty level for a child. Because Montana's modified Melson guidelines are based

on a minimum level of support for the child before adding more if the parents have sufficient income, the poverty level is an appropriate place to begin for the support of the child. The CSED compared the amount generated by this method to the amount based on the method currently in use, which is 30% of the personal allowance, or $3,822, for the first child, for 2005. If the percentage is raised to 35%, however, the result is $4,459, which is very close to the amount derived from the National Academy of Sciences panel, at $4,444, shown above. Considering what was learned about the problems with the current Federal Poverty Guidelines, CSED decided it was necessary to link the primary child support allowance in the Montana guidelines to a more reliable source. While the Consumer Expenditure Survey data are based on expenditures, rather than costs, it is virtually the only information available in this country that even comes close to the cost of raising children.

In past reviews, the CSED has struggled to provide answers to questions about financial circumstances that are not specifically addressed by the guidelines. One of those is the receipt of funds by the child's household that are intended for the child but come from a source other than the parents or guardians. The proposed new rule [Rule II] provides that such funds should not be included in a parent's income. In such a case, the child's needs are being met, or partially met by the additional funds, and the child's remaining needs are less than the primary child support allowance. Because of the structure of the Melson model calculation, the parent's income is first allocated to meet the child's primary child support allowance. If the parent has income remaining, a percentage is added to the parent's share of primary support. In other words, if less of the parent's income is necessary to meet the child's primary support, then more income is available for the standard of living adjustment (SOLA), which applies a percentage based on the number of children to the remaining income. Whether these outside funds are at the disposal of the child or parent or are deposited to a savings account for the child's education, for example, would determine if it is appropriate to include the funds in the calculation.

ARM 37.62.123 previously addressed the addition of children's supplemental needs (day care and health insurance, primarily) to the primary child support allowance. Because the CSED proposes to deduct those items from the income of the parent who is paying these expenses, ARM 37.62.123 has been amended to address adjustments to the primary child support allowance. Above is the CSED's rationale for adjustments that decrease the allowance and, of course, there may also be items that increase the allowance. This amended rule provides criteria which allow the user to determine if expenses of the child qualify as an increase in the allowance.

The CSED decided since the percentage by which the primary child support allowance in the guidelines is determined is being increased, that the minimum obligation must also be raised. As the income of the parents increases, the amounts of their child support obligations also increase and do so in an orderly manner. The maximum amount of minimum orders is naturally followed by the lowest of the standard or nonminimum orders. Because the lowest of the standard orders increased, the CSED proposes to increase the percentage for minimum orders from

12% to 14%. There is also a minor change to the lowest of the minimum orders where the obligation is actually zero. These changes are necessary to maintain balance in the calculation of both standard and minimum child support orders.

ARM 37.62.128, which is the Standard of Living Adjustment (SOLA), referenced above, appears to have substantial changes in the rule, but, in fact, there is only one and it is the addition of what previously was ARM 37.62.130, Long Distance Parenting Adjustment. Because the review of cases, early in the current guidelines review, indicated this adjustment is used in very few support orders, the CSED decided to repeal the rule and combine its contents with the SOLA rule, to which it is connected in the calculation. This combination was necessary because the guidelines also allow other reductions in income available for SOLA and the long-distance parenting adjustment is now just one of those available.

The last of the significant changes to the guidelines, proposed by CSED, is amendment of the transfer payment rule at ARM 37.62.136. The amendment is similar to the new parenting time rule proposed at Rule I in that it explains the calculation of the transfer payment in terms of the number of days the children spend with each parent. This new method of determining child support orders is simpler to understand and to calculate because the method is intuitive: the percentage of the support order that a parent keeps is the same as the percentage of the year the child resides with that parent. The balance of the support order is owed to the other parent and corresponds to the percentage of time the child spends with that parent. Unfortunately, the 110-day threshold calculation is not intuitive and is more difficult to administer for that reason.

INDIVIDUAL RULE RATIONALES FOR NEW, AMENDED, AND REPEALED RULES

NEW RULES

Rule I DETERMINATION OF PARENTING TIME

This is an entirely new rule written to implement a change to the child support guidelines in which the amount of time the child spends with each parent determines the amount of each parent's support obligation that is retained and the amount that is owed to the other parent. The overall reason for this rule is to increase fairness in the guidelines by treating parents the same regarding recognition of their costs of parenting. The CSED believes that parents deserve to be treated alike and that it will increase their sense of fairness regarding the support order. As noted earlier, studies show that noncustodial parents are more likely to pay child support if they believe the order was set fairly and those more likely to pay are more likely to see their children on a regular basis. Although causation is not stated or implied, the studies found clear associations between these behaviors.

In Rule I(1) it is necessary to lay the groundwork for determining the period of time in days the child will spend with each parent, which, in turn, will determine the amount

of money paid by one parent to the other, known as the transfer payment. The first two sentences provide basic information regarding the parent's obligation and the last establishes that third-party custodians may also be owed child support from the parents based on the number of days the child resides with the third-party custodian.

Rule I(2) provides an expanded definition of a "day" for the purpose of determining how many days are spent with each parent. The Montana Supreme Court, as noted above, specifically requested that the CSED provide an enhanced definition of a "day" in the opinion for the Marriage of Kummer and Heinert, (2002 MT 168). In that case, the child spent time with a third-party service provider, such as a child care facility, and the Court held that the rule was insufficient to determine which parent should be credited with such times in determining the number of days the child spent with each parent.

Section (3) provides a requirement for documentary support of the number of days a parent claims: a parenting plan, a signed agreement between the parties, or a determination by a court. In addition, if none of these documents are present, the rule provides for the number of days to be entered for both parents. This provision is necessary for the CSED to continue its work without undue delay due to parties who cannot or will not agree to a number of days.

Section (4) provides instructions for averaging the amount of time children spend with their parents when there is more than one child and each child spends a different amount of time with the parents. This provision is necessary to accommodate families with multiple children who may each have his own schedule for residing with each parent, which is different than the other children's schedules.

RULE II DETERMINATION OF INCOME FOR CHILD SUPPORT

Due to the length of the current rule (ARM 37.62.106) regarding the determination of income for child support, the CSED proposes to split the rule into two rules. The first, Rule II, will have the name of the current rule and will cover approximately the first two-thirds of the current content. The second rule, ARM 37.62.106, will be named IMPUTED INCOME FOR CHILD SUPPORT and will cover approximately the final third of the existing rule. Following is the rationale for Rule II.

Rule II(1) provides direction in determining if a source of funds or ability to obtain funds should be counted as income, actual or imputed, in order to appropriately determine each parent's child support obligation. The CSED added a presumption that parents are capable of full time employment and that full time may be less than 40 hours per week depending on the parent's profession and the industry standard in the parent's location. This addition was necessary to make clear that full time employment could include something less than 40 hours per week. The medical profession is a good example, where many physicians' offices are open only four days a week and a 36-hour week is considered full time for a registered nurse.

The CSED deleted the reference in Rule II(2)(a) to the "earned income credit",

because it is no longer counted as income for child support. This change was made in an effort to simplify the calculation because the inclusion of tax credits and the requirements of eligibility complicate the calculation significantly. Also, most tax credits are means-tested (based on resources available) and are designed to assist a low income family, so not using them is fair and consistent with the exclusion of other means-tested types of income for consideration for child support.

The CSED deleted the word "ordinary" in (2)(b) as it was not necessary to describe expenses required for the production of income.

References to the federal earned income tax credit, the federal child tax credit, and the dependent care tax credit are added to (3), which provides a list of benefits and public assistance programs that are exempt from consideration as income for child support as provided in (2)(a).

The reference in (3) to "the former Aid to Families with Dependent Children (AFDC)" was deleted as it is obsolete because the AFDC program ended with the passage of welfare reform in the mid '90s and has been replaced by a block grant program called Temporary Assistance to Needy Families (TANF). The reference to "general assistance" was also deleted because the program was terminated many years ago.

The addition of directions regarding lump sum payments in (3) was necessary to convey the message that ordinarily they are not considered income for child support because they are not recurring. This language suggests the possibility of including the lump sum in a calculation if a way can be found around the nonrecurring nature of the payment.

Explanation was added to (4)(a), (b), and (c) on the various types of income from the Social Security Administration (SSA) and other financial subsidies, and that, if received on behalf of a child, are not income to the parent. The inclusion of the SSA title and program acronym was intended to assist guideline users in determining what type of payment is being received by a household and how to treat it in a child support calculation.

The CSED revised the explanation in (5) of how to treat overtime pay and income from a second job so that clearer direction is available regarding establishing an order and modifying an order. The requirement that overtime/second job pay be included when establishing an order is needed because, if a parent has contributed overtime/second job pay to the family's support when all resided together, it is fair that same income continues to be available to the family as long as the parent is working overtime.

If a parent begins working overtime or acquires a second job after separating from his first family and the extra income was not included in the first family's child support, that income is not available to the first family when modifying its support order. Due to the possibility that it is undeterminable if that type of income was included in the first family's support order, direction was added for that occurrence in

(6). The CSED believes that this is a fair approach because it allows the child support payer to retain this extra income for a second family if it was never part of his earnings for the first family. In this way, a parent may be able to afford a second family without reducing support to the first.

GENERAL AMENDMENTS TO RULES

1. ARM 37.62.123 is currently titled "Supplements to Primary Child Support Allowance" and is proposed to change to "Adjustments to Primary Child Support Allowance". The current rules provide for supplementing the allowance by adding day care costs, health insurance premiums, and other child-related costs and dividing the total between the parents. As part of the change to this rule and to ARM 37.62.110, Allowable Deductions from Income, the cost of day care and health insurance will be treated as deductions from income rather than as supplements to the allowance.

In addition, under the proposed change to this rule, ARM 37.62.123, increases or decreases to the allowance will be called "adjustments" instead of "supplements", which will help distinguish the new provision from the old. Throughout ARM Title 37, chapter 62, subchapter 1, the child support guidelines, there are references to "supplements", which will be changed to "adjustments", and "supplemented", which will be changed to "adjusted". References to "supplemental", or other forms of the word, "supplement", if any, are addressed in the specific changes to rules, below.

2. The word "documented" was added to a number of rule provisions for the deduction of expenses, or costs, so that proof of deductions from income can be required. Proof is necessary because parents have strong incentives to increase deductions and, thereby, decrease income available for child support.

SPECIFIC AMENDMENTS TO RULES

ARM 37.62.101 AUTHORITY, POLICY, AND PURPOSE

The minor change to ARM 37.62.101(3), this first rule of the child support guidelines, adds definition to the understanding that child support is calculated at a given point in time and does not change automatically or by any method other than a formal modification. This change is necessary to support the language in ARM 37.62.136(1), Transfer Payment, which explains the transfer payment is based on the "...amount of time the child spends with each parent, or third party, at the time of the child support calculation". This change addresses concerns about a misunderstanding that child support is somehow recalculated whenever a child spends more or less time with a parent than considered in the child support calculation. This proposed rule change is not intended to alter the fact that child support is calculated at a given point in time and must undergo modification to change the amount.

ARM 37.62.103 DEFINITIONS

The definition of terms used in the child support guidelines was revised to reflect changes in other rules. This rule provides guidance for specific definitions of terms that may differ from ordinary use outside application of the Montana Child Support Guidelines. In addition, the sections of the rule were renumbered to retain its alphabetical order in compliance with Secretary of State format requirements.

The definition of "Federal Poverty Guidelines" has been updated to reflect the appropriate federal agency and to adopt the wording suggested by the U.S. Department of Health and Human Services at its Internet web site.

The definition of "imputed income" was added to provide clarity when applying the Montana Child Support Guidelines and to distinguish this amount from any income actually earned by a parent.

The definition of "long distance parenting" is deleted as unnecessary given the proposed repeal of ARM 37.62.130, Long Distance Parenting.

The definition of "subsequent child" is deleted due to the proposed repeal of ARM 37.62.146 regarding treatment of other children in modifications of child support.

A new definition of "underemployed" is added to increase the emphasis placed on imputed income in the proposed changes. That emphasis is intended to clarify the category of parents who are employed but for fewer hours or for lower wages than the parent can earn in the present job market and resulting in lower income available for child support. It is allowable to impute income to make up the difference between actual and potential earnings only if there are jobs available for which the parent is qualified.

ARM 37.62.106 IMPUTED INCOME FOR CHILD SUPPORT

Following is the rationale for the imputed income rule, ARM 37.62.106, which is the remaining text after the rest was moved to Rule II.

The CSED found that by rearranging the provisions regarding imputing income, currently contained in (6) and (7) (determination of income), emphasis can more easily be placed on the necessity of showing that jobs for which the parent is qualified are available in the parent's local trade area when income is imputed.

Because of the necessity of showing available jobs for which the parent is qualified, imputed income may be calculated at a different rate than actual income included for child support.

The reference to "full time student" is changed to "student" as there is no reason to exclude education expenses for parents who improve their job skills by attending school part-time. The CSED determined that part-time students are presumed to work full time because typically this is what occurs. Both full time and part-time

students are subject to the provision that the education or retraining will result, within a reasonable time, in an economic benefit to the child.

The CSED changed the references to 20 and 40-hour work weeks to "full time" and "approximately half of full time" because many occupations now have standard work weeks that are less than 40 hours for full time. This is a more accurate reflection of what hours are actually being worked. The reference to annual average of 25 hours per week when imputing income for full time students was changed to full time employment for 13 weeks in the summer and approximately half of full time employment for the remaining 39 weeks of the year. This change is consistent with the change in language to full time and approximately half of full time.

ARM 37.62.108 INCOME VERIFICATION/DETERMINING ANNUAL INCOME

This rule explains the necessity of verifying income with documentation, which clearly reflects the income of the parent. This rule also explains the two methods used to annualize income and expenses.

While the instructions for completing the child support guideline worksheets include direction that income for a self employed parent should include the average of at least three years' net earnings, the administrative rules do not include such a requirement. In 2002, the Montana Supreme Court held, in Albrecht v. Albrecht (2002 MT 227), that the district court "abused its discretion by deviating from the Guidelines preference for a three-year average of net income for a self-employed parent". If parents and district court judges will be held to this standard by the Supreme Court then CSED believes there should be a clear requirement in the administrative rules that a minimum of three years' profit and loss statements and/or tax returns are required for self-employed persons for a calculation under the guidelines. Therefore CSED is adding this requirement in (3)(a).

ARM 37.62.110 ALLOWABLE DEDUCTIONS FROM INCOME

The existing provisions of (1) through (1)(d) have been deleted and new text has been inserted because the text has been rearranged in these sections as well as amended. This allows for ease of comprehension of the changes being made.

Allowable deductions from income in (1) include those required by law, those required as a condition of employment and those necessary for the production of income. This provision is necessary to provide direction to users who have questions about deductions not specifically addressed in the rule.

The total out-of-pocket cost of health insurance premiums covered in (1)(a) paid by and for the parent and the parent's family, as long as the child of the calculation is covered by the policy, is an allowable deduction because it encourages family health insurance and presents a more realistic picture of a parent's income available for child support.

Child care expenses covered in (1)(b) are now treated as an allowable deduction from income because they are an employment-related expense of the parent and, again, this method presents a more realistic picture of a parent's available income for child support.

The need to specify in (1)(c) and (d)(i) that the deduction for alimony and child support includes only current alimony and current child support, and not arrears, is a result of the frequency of questions from parents regarding the deductibility of past due alimony and past due child support.

The proposed change in (1)(d)(ii) adds the phrase, "who reside with the parent" to provide a parent an allowance for the parent's children, who are not in the calculation, but who live with the parent. This language is also intended to disallow the "other child allowance" for children for whom the parent does not pay child support and who do not live with the parent. This change is necessary to prevent a parent from benefiting from the reduction in income for the other child allowance when the parent pays little or nothing to support the child.

Court ordered health insurance premiums for other children will continue to be allowed as a deduction unless the child is covered by the same policy as the child of the calculation, in which case the entire premium has already been allowed in (1)(a). The language in (1)(e) is necessary to prevent a duplicate deduction.

The proposed change to (f) provides that each parent is allowed a deduction from income for state and federal income taxes based on a filing status of single with one exemption, as determined by the IRS and state income tax withholding tables. This was changed in an effort to accurately reflect the status of the parents at the time of the separation or birth of the child because of the advantage or disadvantage to parents whose current filing status and exemptions may include new spouses and children. The change is also necessary because tax credits are no longer considered income for child support.

Please refer to the GENERAL CHANGES TO RULES, #2, re: "documented" at the beginning of this rationale for an explanation of the changes to (1)(h). The second change to this provision is the deletion of "and business" from the description of "other occupational and business expenses". The words are unnecessary because they add nothing to the description that "occupational" does not already cover.

Please refer to the GENERAL CHANGES TO RULES, #2, at the beginning of this rationale for an explanation of the changes in (1)(i).

The requirement in (1)(j) for child care to be reduced by the federal dependent care tax credit was deleted as the result of an effort to simplify the calculation of child support by deleting three federal tax credits, one of which is the dependent care credit. The deduction of one-half the extraordinary medical expenses for other children is a proposed new deduction because parents cannot ignore extraordinary medical expenses for their children regardless of which children they are and, again,

a more realistic picture of the parent's income available for child support is presented. The provision allowing the deduction of one-half of child care expenses for other children, as necessary for the parent to work, is currently part of the rule and is included in the new language, as well.

The term "full time student" in (1)(m) was changed to "student" to allow part-time students, as well as full time, to deduct the cost of tuition, books, and mandatory fees. The change is necessary because the deduction is currently limited to full time students and there is no reason to limit the deduction of expenses for education that is expected to benefit the child.

The proposal to add (1)(n) to allow a deduction from income for the annual amount of documented interest expense paid on the parent's student loans is due to recognition that this is an additional expense necessary for many students to attend college, where education is expected to eventually benefit the child. The CSED considered the option of including the annual principal payments on student loans as a deduction from income. However, because loan proceeds are never considered an addition to income in an accounting system, the repayment of principal cannot be considered a deduction from income. As with business loans, only the interest expense is deductible from income.

ARM 37.62.111 NONALLOWABLE DEDUCTIONS FROM INCOME

This rule distinguishes what will not be allowed as deductions from income available for child support.

Due to the difficulty guideline users have understanding (1)(b), the CSED determined that the rule's purpose was not clearly stated: when is it appropriate to allow a net loss in the operation of a business or farm to offset, or reduce, other income? The proposed change to the rule clearly states that losses in businesses that are not the parent's principal source of income are not allowed to reduce income from the principal source; related businesses may offset losses against gains and only the net gain is entered into the child support calculation. Net losses are not entered because income for child support cannot be less than zero.

The difficulty users have with (1)(c) is similar to the difficulty they have with (1)(b). The proposed change is necessary to increase understanding of how to deal with investment gains and losses in a guidelines calculation.

ARM 37.62.114 PERSONAL ALLOWANCE

The proposed change to (1) deletes a single word, "index", because the name of the Federal Poverty Guidelines no longer includes index. Because CSED must accurately name the source of information it uses in administrative rules, it is necessary to amend to correct the name.

ARM 37.62.118 TOTAL INCOME AVAILABLE/PARENTAL SHARE

Please refer to the GENERAL CHANGES TO RULES, #1, at the beginning of this rationale for an explanation of the changes to (1)(i).

ARM 37.62.121 PRIMARY CHILD SUPPORT ALLOWANCE

ARM 37.63.121(1) provides the method of setting the primary child support allowance, which is the base amount of support for raising a child. The percentage used to determine the amount has not been adjusted since adoption of this rule and the CSED determined it would be appropriate to review the use of this method. As a result, the CSED reviewed a U.S. Department of Labor publication entitled Expenditures on Children by Families. This report is broken down into seven categories of spending: housing, food, clothing, transportation, health care, child care and education, as well as a miscellaneous listing. The expenditures are incremented into three-year periods from birth to age 18.

In addition to these publications, the CSED studied a report from the National Academy of Sciences, published as a book entitled, Measuring Poverty A New Approach, which suggests the minimum amount necessary to support a family is the total of amounts spent on housing, food, and clothing plus a multiplier of this sum of .15 to .25 for the remaining expenses. It is recommended these numbers be calculated at the 30th to 35th percentile for all family expenditures, but that information is not available from the USDA publication nor can it be obtained from the federal Bureau of Labor Statistics, which conducts the Consumer Expenditure Survey (CEX), upon which it is based. Therefore, the CSED used Table 6, published by USDA for "rural" areas in its 2006 release, and selected the lowest income level of the three tables available. That level, which is $26,800, is slightly less than Montana's average wage per job for 2004 ($27,721), the most recent available. The next income level was over $57,000, which would represent only a small percentage of Montanans. To more closely approximate the expenditure data for the USDA, the CSED recommended an increase from .30 to .35 of the personal allowance to determine the primary child support allowance under this rule.

Section (2) is necessary to maintain a running set of instructions for completing the calculation. Although most of the calculation remains the same as is currently in use, there are changes due to the proposed adoption, amendments, and repeal of these rules.

ARM 37.62.123 ADJUSTMENTS TO PRIMARY CHILD SUPPORT ALLOWANCE

As part of the changes proposed to this rule, the catchphrase is being changed from "Supplements To Primary Child Support Allowance" to "Adjustments To Primary Child Support Allowance". The existing language has been deleted because it dealt only with increasing the amount of the allowance. The new title's use of the word "adjustments" suggests the possibility of both increasing and decreasing the allowance, and this is exactly what was intended. Just as in the past, the primary child support allowance, after adjustments, is divided between the parents according

to each parent's share of combined income.

Previously, child care expense, health insurance premiums, and other supplements to the primary child support allowance were used to increase the allowance. Child care and health insurance expenses have both been changed in (1) to deductions from income for reasons explained in those rule rationales. Only extraordinary medical expenses and other needs of the child continue to increase the allowance. In addition, the rules have been changed to allow for specific items of interest to children. For example, there is a new presumption in this rule that states, if a child was previously involved in an activity or organization when the parents resided together, it is presumed those costs will be included in the calculation. There is also a specific rebuttal named as a defense to such an addition.

Section (2) provides for increases in the allowance that are "an appropriate or necessary cost". By this phrasing, it is clear that the activities or needs of the child must be appropriate to the child's age and interests. Expenses to maintain the child's health, if they exceed $250 per year, or to meet special needs, are included so that the parents share those costs rather than deducting them from income. Finally, this section provides for the cost of special educational programs or equipment for the child, because there are a significant number of children who need assistance of this type.

This section also includes a statement necessary to avoid the duplicate payment of expenses by the paying party. If, for example, the child has unreimbursed medical expenses of $1450, after the $250 threshold, the sum of $1200 is added to the primary child support allowance. When the first $1,450 in medical bills arrive, the paying parent is paying his monthly amount for the child's medical expenses in the monthly child support payment and is not expected to reimburse the other parent for the amount included in the calculation.

A second category of adjustments are those that encourage the developmental growth of the child, such as private school tuition, extra-curricular activities, or automobile insurance for an older child. As the language suggests, these items of expense are examples of the kind of activities or costs that may be considered in the guidelines calculation.

Section (3) addresses decreases to the primary child support allowance due to the receipt of funds by the child's household. The CSED has, over the years, taken many questions from inside and outside of CSED regarding receipt of funds that are intended for the child but do not flow from any person or other entity that is normally responsible for supporting the child. One example is Social Security Survivor's Benefits for a child from the child's stepparent, who is deceased. The child still has two parents legally required to support him, in most cases, and some will think it necessary to include the annual amount of funds received in the child support calculation. There are a substantial number of other possibilities for entries to decrease the allowance and the purpose of this section is to lay out criteria which the parent must meet in order to do so. The criteria are meant to limit the use of

adjustments that decrease the allowance to those clearly outside the usual payments of support for children.

Section (4) is necessary to obtain an accurate calculation of support by providing that, if an expense is treated as an adjustment and increases the primary support allowance, the parent who pays the expense must receive credit for payment in the calculation. Otherwise, having increased the allowance by the amount of the expense, the paying parent will pay again if not credited for the original payment.

ARM 37.62.126 MINIMUM SUPPORT OBLIGATION

This rule provides a formula by which to determine an amount of support which a parent should pay even when a parent has insufficient income to meet his share of the primary support obligation. The minimum obligation is a portion of the parent's income after deductions. The portion is determined by the ratio between income after deductions and the personal allowance.

Due to the proposed increase in the primary child support allowance (See ARM 37.62.121, above) - which sets a standard amount to be applied to a child's food, shelter, clothing, and related needs - there must also be an increase in the minimum support obligation for consistency and fairness. Currently, if the parent's income is insufficient to meet the parent's personal allowance or the parent's child support obligation is less than 12% of the parent's income after deductions, the chart to determine a minimum contribution would be used. The top percentage is 12% now and this proposal raises it to 14%. Increasing the percentages in (1) also helps to avoid a cliff or ledge effect where child support moves from the minimum contribution to child support based on the guidelines formula.

The CSED also found it necessary to simplify and clarify some language by proposing that the minimum contribution is 14% of income after deductions when the parent's income after deductions exceeds the personal allowance.

The table for determining the minimum support obligation in (3) also had to be updated with the change from 12% to 14%. In order for column B "Minimum Contribution Multiplier" to continually rise by 1% CSED added 13%, as it previously ended at 12%. This addition to column B required an adjustment to the ranges in column A "Income Ratio". The first ratio from .00 to .25 was raised to .00 to .35 and successive ratios were raised by .05 until 1.00 was reached.

The changes in this rule do not change the current method used to determine a minimum support obligation. The CSED did not identify any other alternative to accomplishing this change, although it was not for lack of discussion. The CSED recognizes the complexity added to the child support calculation by the minimum contribution requirement. However, the minimum rule is intended to protect both parents and children by requiring realistic child support obligations.

ARM 37.62.128 INCOME AVAILABLE FOR STANDARD OF LIVING

ADJUSTMENT (SOLA)

This rule provides a method to determine when a parent still has income after meeting that portion of the child's primary support allowance as adjusted; there is a portion of that income to which a child should be entitled. The amount of income available for SOLA may be adjusted before determination of the standard of living adjustment.

Since its inception, the long distance parenting adjustment has always been a deduction from the amount of income available for SOLA. The committee felt it was not necessary to have a totally separate rule for this adjustment (See ARM 37.62.130, below). This rule is a more appropriate place for the Long Distance Parenting Adjustment provision from ARM 37.62.130, although it will no longer be called that, and it was added as an example of what can be adjusted.

ARM 37.62.130 LONG DISTANCE PARENTING ADJUSTMENT

The CSED determined that this rule should be repealed and adjustments for transportation expenses incurred by parents for parenting time with their minor child will be addressed in the Standard of Living Adjustment (SOLA) rule found at ARM 37.62.128. A review of a random sample of 287 case files from both the CSED and Montana district courts, in 2003, revealed that the adjustment for visitation expenses is not used a great deal in child support calculations. Rather than devote an entire rule to it, transportation costs for parenting time will be one of a number of possible adjustments to income available for the standard of living adjustment.

ARM 37.62.134 TOTAL MONTHLY SUPPORT AMOUNT

This rule is provided to explain the amount of support parents owe for the benefit of their minor children.

Subsection (1)(a) now reflects the total amount of support a parent owes for a child, including the parent's portion of the primary child support allowance after adjustments and credits are determined for that parent.

Section (2) now further explains that each parent is determined from (1)(a) to owe an annual amount of support for all the children in the calculation, and that amount is then altered depending on the amount of time each parent spends with each child. The result of this determination is the monthly transfer payment owed from one parent to the other. This rule was amended to distinguish between a parent's total child support amount and a parent's monthly transfer payment to the other parent. These amounts are never the same unless a parent spends zero days with a child.

ARM 37.62.136 TRANSFER PAYMENT

The purpose of this rule is to describe and explain the determination of the transfer payment, which is the dollar amount that changes hands between a parent and the

custodian of the child. In most cases, children live with one or the other parent, or both, but may also reside with a third party. For this reason, it is possible a parent will owe an amount of child support to the other parent and to the third party and each is called a transfer payment.

It is important to understand how the transfer payment is determined and, particularly, the fact that the total amount of a parent's child support obligation is rarely the same as the transfer payment. Both parents are responsible for supporting their children every day of the year and that support must go where the child goes. When the child resides with parent A, that parent retains the amount of support necessary to support the child for that period, plus the parent receives child support from parent B. When the child lives with parent B, that parent retains the amount of support necessary to support the child plus parent B receives support from parent A.

The only instance in which a parent's transfer payment is the same as the parent's total monthly support amount is when the parent does not spend a single "day" (as defined by the guidelines) parenting the child.

If the child resides with a third party custodian, that person may be entitled to receive child support from one or both parents. The support is calculated by the same method as for a parent except the third party custodian has no responsibility for support of the child.

Section (4) explains the method of setting the monthly transfer payment on a per child basis and provides for rounding of the obligations to the extent possible.

ARM 37.62.138 PAYMENT OF MONTHLY SUPPORT AMOUNT IN COMBINATION PARENTING ARRANGEMENTS

This rule provided a formula by which to determine the appropriate amount of payment from one parent to the other when a child spends more than 110 days with both parents. This rule is being repealed and addressed in Rule I.

A new worksheet is being developed which no longer requires a special formula to credit parents with days each has the child, therefore this rule was no longer necessary.

ARM 37.62.140 ANTICIPATED CHANGES

This rule was written to provide for an additional calculation of child support to include anticipated changes that would otherwise require modification of the order within eighteen months of creating the order. The new language was added because the CSED believed it could positively influence those preparing guideline calculations to look at the child's future for anticipated changes. By anticipating changes, the effort will save time and money and the change in child support will take place much more quickly than by modifying the support order.

ARM 37.62.146 MODIFICATIONS OF CHILD SUPPORT ORDERS

The CSED decided to repeal this rule to simplify the calculation in a modification action and to treat all a parent's children the same. This repeal eliminates the requirement of determining if the parents have a "subsequent child" and the need for two guideline calculations. In reviewing the modification cases within the Child Support Enforcement Division, in most instances, the calculation which included the subsequent child was the calculation that ultimately was used when this rule was applied. Therefore, even after repeal of the rule, it is likely the modified amounts will be very close to the amounts that resulted before repeal of the rule.

The alternative would be to keep the rule and it was determined that would cause unnecessary child support calculations to be performed.

ARM 37.62.148 SUPPORT GUIDELINES TABLES/FORMS

This rule provides for use and availability to any interested party the tables and forms developed by CSED for use in determining child support.

The CSED changed the word "determination" in (1) to "calculation" as this is how the child support calculation and worksheet are widely referred to. This change was made to other rules in the last changes to the guidelines in 1998 but this rule was missed at that time.

The reference in (2) to reprinting the worksheet every year was deleted because there is a need for only the tables to be published every year, not the worksheet.

Finally, a sentence was added to (3) to inform people that the child support worksheet is available on the department's Internet site and to provide the site address. This is necessary for convenience and easy access. The CSED did not identify any other alternative to accomplishing this change.

ARM 37.62.2121 ADDITIONAL HEARING PROCEDURES

The amendment to (1) is necessary in order to correct a typographical mistake. Subchapter 6 is reserved and the correct hearing procedure subchapter is 9. This amendment also makes the rule consistent with other administrative rules. There are no other viable alternatives to modifying ARM 37.62.2121. Because this amendment only corrects a typographical error, the number of persons affected by the changes to this rule is minimal or zero.

OVERALL FISCAL IMPACT

It is not possible to determine a cumulative fiscal impact these proposed changes will have upon those affected by the changes because any increases, decreases, or new determinations will vary depending on the numbers of child support

enforcement applicants, which continually fluctuates and the individual determinations will also fluctuate depending on individual circumstances that cannot be predicted by CSED.

6. Interested persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210, no later than 5:00 p.m. on November 24, 2006. Data, views, or arguments may also be submitted by facsimile (406)444-1970 or by electronic mail via the Internet to dphhslegal@mt.gov. The department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write the person at the address above.

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

/s/ Dawn Sliva
Rule Reviewer

/s/ Joan Miles
Director, Public Health and Human Services

Certified to the Secretary of State October 16, 2006.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the proposed adoption of New Rules I and II and amendment of ARM 42.18.107, 42.18.110, 42.18.112, 42.18.113, 42.18.116, 42.18.124, 42.18.125, 42.18.127, 42.18.205, 42.18.206, 42.18.207, 42.18.208, and 42.18.210 relating to the general provisions and certification requirements for appraising property	))))))))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION AND AMENDMENT

TO: All Concerned Persons

1. On November 15, 2006, at 8:30 a.m., a public hearing will be held in the Director's Office (Fourth Floor) Conference Room of the Sam W. Mitchell Building, at Helena, Montana, to consider the adoption and amendment of the above-stated rules.

Individuals planning to attend the hearing shall enter the building through the east doors of the Sam W. Mitchell Building, 125 North Roberts, Helena, Montana.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Revenue no later than 5:00 p.m., November 6, 2006, to advise us of the nature of the accommodation that you need. Please contact Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-5828; fax (406) 444-3696; or e-mail canderson@mt.gov.

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

NEW RULE I DEFINITIONS The following definitions apply to terms used in this subchapter:

(1) "Immediate family member" means a spouse and any member of the household, or any parent, child, grandparent, grandchild, or corresponding in-law.

(2) "Owner's agent" means:

(a) an immediate family member of the property owner;

(b) an employee of the property owner;

(c) the property owner's attorney;

(d) the property owner's legal representative or guardian;

(e) the property owner's partner;

(f) trustee, if the owner of record is a trust;

(g) officer or member, if the owner of record is a corporation;

(h) officer or member, if the owner of record is an association.

(3) “PVAS” means the department’s property valuation assessment system.

(4) "Trail" means a relatively smooth and clear pathway made by animals, humans, and/or vehicles, usually narrower and rougher than a road and made by frequent use rather than by mechanical grading and paving; in some instances, open only to foot travel.

AUTH: 15-7-111, MCA
IMP: 15-7-139, MCA

REASONABLE NECESSITY: The department is proposing to adopt New Rule I because definitions are necessary to define terms that will be used in New Rule II.

NEW RULE II PERMISSION BY THE OWNER OR OWNER'S AGENT TO ENTER IMPROVEMENTS AND PERSONAL PROPERTY (1) Property valuation staff entering the owner's land may not willfully or purposefully damage any real or personal property in gaining access to the property or while on the property.

(2) Property valuation staff will limit their vehicle access to established roads and trails while on the property.

AUTH: 15-7-111, MCA
IMP: 15-7-139, MCA

REASONABLE NECESSITY: The department is proposing to adopt New Rule II to provide guidance to the department staff and the public regarding who can authorize access to property for property tax appraisal purposes, as well as the employee's responsibility regarding property damage when these appraisals and audits are conducted.

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

42.18.107 2009 MONTANA REAPPRAISAL PLAN (1) through (2)(d) remain the same.

(3) ~~CAMAS~~ PVAS, as defined in ARM 42.2.304, is used to assist in the valuation process. The department determines a new appraised value for each:

(a) through (5) remain the same.

AUTH: 15-1-201, MCA
IMP: 15-7-111, 15-7-133, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.18.107 to change the reference from CAMAS to PVAS because that is the computer system that will be used to manage the reappraisal process in 2009.

42.18.110 2009 RESIDENTIAL REAPPRAISAL PLAN (1) The reappraisal of residential property consists of:

(a) through (g) remain the same.

(h) generation and review of ~~inventory contents~~ property record sheets ~~(ICS)~~ (PRS) and comparable sales sheets; and

(i) through (4) remain the same.

(5) Residential property data entry consists of correcting, updating, and adding residential property data on ~~CAMAS~~ PVAS. The process includes the review of edit reports, the addition of supplementary data to ~~CAMAS~~ PVAS, and sketch vectoring.

(6) The collection, verification, analysis, and data entry of sales information is an important component of ~~CAMAS~~ PVAS. The department shall formulate procedures for collection, verification, and validation of sales information. Accuracy of sales information is critical to the development of:

(a) through (7) remain the same.

(8) The development of sales comparison models using ~~CAMAS~~ PVAS is a requirement for property valuation during the reappraisal cycle. The key components that influence value and the appropriate level of influence are determined through use of multiple regression analysis. Staff may develop separate sales comparison models for each neighborhood.

(9) ~~Inventory contents~~ Property record sheets ~~(ICS)~~ (PRS) and comparable sales sheets are generated and reviewed by appraisal staff. These sheets include:

(a) physical characteristics and component information;

(b) sales information; and

(c) valuation information.

(10) The review consists of analyzing and collecting component information such as condition and style of improvements. This review allows the appraiser to compare property information to an estimate of value. Discrepancies in data or the collection of additional information required by the review results in updating ~~CAMAS~~ PVAS data.

(11) Final determinations of value are conducted once all required field and program needs of ~~CAMAS~~ PVAS are met. The appraised value for residential property may include indicators of value using the:

(a) through (13) remain the same.

AUTH: 15-1-201, 15-7-111, MCA
IMP: 15-7-111, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.18.110 to make general housekeeping changes such as changing the reference from CAMAS to PVAS because that is the computer system that will be used to manage the reappraisal process in 2009. Also, the sheets that will be used are called "property record" sheets rather than "inventory contents" sheets.

42.18.112 2003 COMMERCIAL REAPPRAISAL PLAN (1) through (6)(e) remain the same.

(7) Commercial lots and tracts are valued through the use of CALP models. Homogeneous areas within each county are geographically defined as neighborhoods. The CALP models will reflect January 1, ~~2007~~ 2002, land market values.

(8) through (12) remain the same.

(13) This rule applies to tax years January 1, ~~2009~~ 2003 through December 31, ~~2014~~ 2008.

AUTH: 15-1-201, 15-7-111, MCA
IMP: 15-7-111, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.18.112 to correct the dates that apply to the 2003 reappraisal plan period.

42.18.113 2009 COMMERCIAL REAPPRAISAL PLAN (1) The reappraisal of commercial property consists of:

(a) through (e) remain the same.

(f) generation and review of ~~inventory contents~~ property record sheets; and

(g) and (2) remain the same.

(3) The reappraisal plan provides for field reviews. A field review of commercial property consists of an internal or external observation to:

(a) determine accuracy of existing information on the ~~inventory content~~ property record sheets ~~(ICS)~~ (PRS) and property record card;

(b) through (4) remain the same.

(5) Commercial property data consists of correcting, updating, and adding commercial property data on ~~CAMAS~~ PVAS.

(6) The collection, verification, analysis, and data entry of sales information and income and expense information is an important component of ~~CAMAS~~ PVAS. The department shall formulate procedures for collection, verification, and validation of sales information and income and expense information. Accuracy of sales information and income and expense information is critical to:

(a) through (7) remain the same.

(8) The development of income models using ~~CAMAS~~ PVAS is a component for property valuation during the reappraisal cycle. Staff may develop separate income models for each neighborhood.

(9) ~~Inventory contents~~ Property record sheets ~~(ICS)~~ (PRS) and cost and income reports are generated and reviewed by appraisal staff. These sheets include:

(a) through (d) remain the same.

(10) The review consists of analyzing and collecting component information. This review allows the appraiser to review and compare property information to an estimate of value. Discrepancies in data or the collection of additional information required by the review results in updating ~~CAMAS~~ PVAS data.

(11) Final determinations of value are conducted once all required field and program needs of ~~CAMAS~~ PVAS are met. The appraisal value for commercial property may include indicators of value using the:

(a) through (13) remain the same.

AUTH: 15-1-201, 15-7-111, MCA
IMP: 15-7-111, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.18.113 to make general housekeeping changes such as changing the reference from CAMAS to PVAS because that is the computer system that will be used to manage the reappraisal process in 2009. Also, the sheets that will be used are called "property record" sheets rather than "inventory contents" sheets.

42.18.116 2009 AGRICULTURAL/FOREST LAND AND IMPROVEMENTS REAPPRAISAL PLAN (1) through (3) remain the same.

(4) The reappraisal plan provides for field reviews. A field review consists of an internal or external observation to:

(a) determine accuracy of existing information on the property record card;

(b) observe condition;

(c) review grade and depreciation assignment;

(d) review agricultural and forest lands classification; and

(e) collect additional data required to implement ~~CAMAS~~ PVAS.

(5) remains the same.

(6) Agricultural/forest lands property data entry consists of correcting, updating, and adding agricultural/forest lands property data to ~~CAMAS~~ PVAS. The correction, updating, and addition process also consists of reviewing edit reports which result from that process, the entry of agricultural/forest lands information to ~~CAMAS~~ PVAS, the addition of improvement data (outbuildings and residences) to ~~CAMAS~~ PVAS, and sketch vectoring.

(7) ~~Inventory contents~~ Property record sheets ~~(ICS)~~ (PRS) and comparable sales sheets are generated and reviewed by appraisal staff. These sheets include:

(a) physical characteristic and component information for agricultural/forest lands improvements;

(b) productivity information for agricultural/forest lands and land use classifications; and

(c) valuation information.

(8) The review consists of:

(a) analyzing;

(b) collecting component information on improvements; and

(c) reviewing productivity information on agricultural/forest lands and land use type.

(9) This review allows the appraiser to compare property information to an estimate of value. Discrepancies in data or the collection of additional information required by the review results in updating data on ~~CAMAS~~ PVAS. The addition or refinement of existing data results in a more accurate valuation estimate.

(10) Final determinations of value are conducted once all required field and program needs of ~~CAMAS~~ PVAS are met. The appraised value for agricultural/forest lands property improvements includes an estimate of market value using the cost approach and, when possible, the sales comparison and income approaches.

(11) and (12) remain the same.

AUTH: 15-1-201, 15-7-111, MCA
IMP: 15-7-111, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.18.116 to make general housekeeping changes such as changing the reference from CAMAS to PVAS because that is the computer system that will be used to manage the reappraisal process in 2009. Also, the sheets that will be used are called "property record" sheets rather than "inventory contents" sheets.

42.18.124 CLARIFICATION OF VALUATION PERIODS (1) In compliance with 15-7-103, MCA:

(a) For the taxable years from January 1, ~~1997~~ 2003, through December 31, 2008, all property classified in 15-6-134, MCA, (class four) must be appraised at its market value as of January 1, 2002.

(b) remains the same.

AUTH: 15-1-201, 15-7-111, MCA
IMP: 15-6-134, 15-7-103, 15-7-111, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.18.124 to correct the dates that apply to the 2003 reappraisal plan period.

42.18.125 EXTENSION OF TIME FOR LANDOWNERS TO RESPOND TO ACCESS NOTICES FROM DEPARTMENT (1) through (5) remain the same.

AUTH: 15-7-139, 15-7-140, MCA
IMP: ~~5-1-116,~~ 15-7-139, 15-7-140, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.18.125 to delete a cite that does not apply to this rule.

42.18.127 PROPERTY TAX FEE APPRAISAL REQUIREMENTS WHEN TAXPAYER DENIES THE DEPARTMENT ACCESS TO PROPERTY TO CONDUCT AN APPRAISAL AND/OR AUDIT (1) through (3)(b) remain the same.

(4) The appraisal must be conducted within one year of the reappraisal base year provided for in 15-7-103, MCA, and ARM 42.18.124, which means the appraisal must be adjusted to the market value as it would have been in the base year provided for in 15-7-103, MCA, and ARM 42.18.124. This may require the appraiser to make a retrospective appraisal, in accordance with the uniform standards of professional appraisal practice, which means the effective date of the appraisal may be prior to the date of the appraisal report. If the appraisal has already been conducted, and it was conducted after the base year provided for in 15-7-103, MCA, and ARM 42.18.124, then a re-certification or update of value will be required as an addendum to the original appraisal. The re-certification or update must be completed by the same appraiser who conducted the original appraisal.

AUTH: 15-1-201, 15-7-139, MCA
IMP: 15-7-139, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.18.127 to add the reference to the administrative rule that supports and clarifies 15-7-103, MCA.

42.18.205 DEFINITIONS The following definitions apply to this subchapter:

(1) through (4) remain the same.

(5) "Failure to perform the appraisal work satisfactorily" refers to the work that is completed by the appraiser and is determined to be unsatisfactory by the ~~unit~~ area manager and/or regional ~~lead~~ manager. At a minimum, that determination will include areas such as:

(a) through (11) remain the same.

AUTH: 15-1-201, MCA
IMP: 15-7-107, 15-7-111, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.18.205 to update the titles for department staff.

42.18.206 RESIDENTIAL PROPERTY CERTIFICATION REQUIREMENTS

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

(c) The required timeframes for submitting reports may be extended upon written request by the employee's direct supervisor. Written requests shall be directed to the appropriate regional ~~lead~~ manager for consideration. The regional ~~lead~~ manager will approve or deny the request. Copies of the regional ~~lead's~~ manager's determination will be distributed to the employee, the employee's immediate supervisor, and ~~appropriate process lead~~ the administrator.

(4) and (5) remain the same.

AUTH: 15-1-201, MCA
IMP: 15-7-107, 15-7-111, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.18.206 to update the titles for department staff.

42.18.207 AGRICULTURAL PROPERTY CERTIFICATION REQUIREMENTS (1) through (3)(b) remain the same.

(c) Extensions of the timeframes for submitting the reports may be requested in writing by the employee's direct supervisor. The written request shall be directed to the appropriate regional ~~lead~~ manager for consideration. The regional ~~lead~~ manager will then be responsible for approving or denying the request, with copies of the action taken being distributed to the employee, the employee's immediate supervisor, and ~~appropriate process lead~~ the administrator.

(4) and (5) remain the same.

AUTH: 15-1-201, MCA
IMP: 15-7-107, 15-7-111, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.18.207 to update the titles for department staff.

42.18.208 COMMERCIAL PROPERTY CERTIFICATION REQUIREMENTS (1) through (3)(b) remain the same.

(c) Extensions of the timeframes for submitting the reports may be requested in writing by the employee's direct supervisor. The written request shall be directed to the appropriate regional ~~lead~~ manager for consideration. The regional ~~lead~~ manager will then be responsible for approving or denying the request, with copies of the action taken being distributed to the employee, the employee's immediate supervisor, and ~~appropriate process lead~~ the administrator.

(d) through (5) remain the same.

AUTH: 15-1-201, MCA
IMP: 15-7-107, 15-7-111, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.18.208 to update the titles for department staff.

42.18.210 CERTIFICATION SEQUENCE (1) Specific positions within the department require multiple certifications:

Examples 1 and 2 remain the same.

Example 3: Regional ~~lead~~ manager and ~~unit~~ area manager positions require residential, agricultural, and commercial certification.

Example 4 through (3) remain the same.

AUTH: 15-1-201, MCA
IMP: 15-7-107, 15-7-111, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.18.210 to update the titles for department staff.

5. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-5828; fax (406) 444-3696; or e-mail canderson@mt.gov and must be received no later than November 24, 2006.

6. Cleo Anderson, Department of Revenue, Director's Office, has been designated to preside over and conduct the hearing.

7. An electronic copy of this Notice of Public Hearing is available through the department's site on the World Wide Web at www.mt.gov/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 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 web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

8. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding particular subject matter or matters. Such written request may be mailed or delivered to the person in 5 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

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

/s/ Cleo Anderson	/s/ Dan R. Bucks
CLEO ANDERSON	DAN R. BUCKS
Rule Reviewer	Director of Revenue

Certified to Secretary of State October 16, 2006

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the proposed amendment of ARM 42.21.116, 42.21.124, 42.21.132, 42.21.154, 42.21.156, 42.21.157, 42.21.158, 42.21.159, and 42.21.162 relating to personal property	)))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On November 15, 2006, at 11:00 a.m., a public hearing will be held in the Director's Office (Fourth Floor) Conference Room of the Sam W. Mitchell Building, at Helena, Montana, to consider the amendment of the above-stated rules.

Individuals planning to attend the hearing shall enter the building through the east doors of the Sam W. Mitchell Building, 125 North Roberts, Helena, Montana.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Revenue no later than 5:00 p.m., November 6, 2006, to advise us of the nature of the accommodation that you need. Please contact Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-5828; fax (406) 444-3696; or e-mail canderson@mt.gov.

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

42.21.116 EXEMPT INTANGIBLE PERSONAL PROPERTY DEDUCTION FOR COMMERCIAL AND INDUSTRIAL PROPERTY (1) remains the same.

AUTH: 15-1-201, MCA
IMP: ~~15-6-202~~ 15-6-218, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.21.116 because 15-6-218, MCA, is the statute that this rule more appropriately supports.

42.21.124 PER CAPITA LIVESTOCK TAX REPORTING PROCEDURE
(1) and (2) remain the same.

AUTH: 15-1-201, MCA
IMP: ~~15-6-136,~~ 15-6-207, 15-24-921, 15-24-922, 15-24-925, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.21.124 to delete 15-6-136, MCA because that section was repealed in 2000.

42.21.132 MINING EQUIPMENT (1) through (3) remain the same.

(4) The trended depreciation schedule referred to in (1)(b) is found in ARM ~~42.22.1314~~ 42.22.1311, Table 21, Mine Mill and ARM 42.22.1312.

AUTH: 15-1-201, MCA
IMP: 15-6-135, 15-6-138~~, 15-6-140~~, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.21.132 to show the rules that address the trend depreciation tables for mining equipment. The department is further deleting the implementing cite of 15-6-140, MCA, because that statute was repealed.

42.21.154 VALUATION OF FURNITURE AND FIXTURES (1) and (2) remain the same.

AUTH: 15-1-201, MCA
IMP: ~~15-6-139~~ 15-6-138, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.21.154 to delete the implementing cite of 15-6-139, MCA, because it was repealed. The department is adding the implementing cite of 15-6-138, MCA, because the implementing language for ARM 42.21.154 previously contained in 15-6-139, MCA, was transferred to 15-6-138, MCA.

42.21.156 CATEGORIES (1) through (9) remain the same.

AUTH: 15-1-201, MCA
IMP: ~~15-6-139~~ 15-6-138, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.21.156 to delete the implementing cite of 15-6-139, MCA, because it was repealed. The department is adding the implementing cite of 15-6-138, MCA, because the implementing language for ARM 42.21.154 previously contained in 15-6-139, MCA, was transferred to 15-6-138, MCA.

42.21.157 PREPARATION OF TREND FACTOR SCHEDULES (1) through (4) remain the same.

AUTH: 15-1-201, MCA
IMP: ~~15-6-139~~ 15-6-138, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.21.157 to delete the implementing cite of 15-6-139, MCA, because it was repealed. The department is adding the implementing cite of 15-6-138, MCA, because the implementing language for ARM 42.21.154 previously contained in 15-6-139, MCA, was transferred to 15-6-138, MCA.

42.21.158 PROPERTY REPORTING REQUIREMENTS (1) through (7) remain the same.

AUTH: 15-1-201, MCA
IMP: 15-1-303, 15-8-104, 15-8-301, 15-8-303, 15-8-309, 15-24-902, 15-24-903, 15-24-904, 15-24-905~~, and 15-24-920~~, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.21.158 to delete the implementing cite of 15-24-920, MCA, because it was repealed.

42.21.159 PROPERTY AUDITS AND REVIEWS (1) remains the same.

(2) For purposes of audits and reviews, the department may utilize information supplied by the Secretary of State, Department of Livestock, Department of Revenue, Department of Agriculture, Department of Commerce, ~~federal agricultural stabilization and conservation service offices~~ Federal Farm Services Agency, Federal Natural Resource Conservation Service, department developed models or comparative studies, and local government entities to determine the taxable value of the property subject to taxation.

(3) through (4)(d) remain the same.

AUTH: 15-1-201, MCA
IMP: 15-8-104, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.21.159 to correct the name of one of the federal agencies that may be utilized to obtain information relative to the requirements of this rule.

42.21.162 PERSONAL PROPERTY TAXATION DATES (1) remains the same.

(2) In order to obtain an exemption for personal property, other than class eight property that is exempt under 15-6-138, MCA, or intangible personal property that is exempt under 15-6-218, MCA, an application for exemption must be filed before March 1 of the year for which the exemption is sought. If the applicant acquires the personal property after January 1, they must submit an application for exemption:

(a) by March 1;

(b) within 30 days of acquisition of the property; or

(c) within 30 days of receipt of an assessment ~~list~~ notice, whichever is later.

(3) through (7)(b) remain the same.

AUTH: 15-1-201, MCA
IMP: 15-8-201, 15-16-613, 15-24-301, 15-24-303, MCA

REASONABLE NECESSITY: The department is proposing to repeal ARM 42.21.162 to correct the name of the document.

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: Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-5828; fax (406) 444-3696; or e-mail canderson@mt.gov and must be received no later than November 24, 2006.

5. Cleo Anderson, Department of Revenue, Director's Office, has been designated to preside over and conduct the hearing.

6. An electronic copy of this Notice of Public Hearing is available through the department's site on the World Wide Web at www.mt.gov/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 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 web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

7. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding particular subject matter or matters. Such written request may be mailed or delivered to the person in 4 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

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

/s/ Cleo Anderson	/s/ Dan R. Bucks
CLEO ANDERSON	DAN R. BUCKS
Rule Reviewer	Director of Revenue

Certified to Secretary of State October 16, 2006

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the proposed adoption of New Rule I and amendment of ARM 42.20.101, 42.20.102, 42.20.106, 42.20.107, 42.20.204, 42.20.301, 42.20.302, 42.20.303, 42.20.304, 42.20.305, 42.20.307, 42.20.501, 42.20.503, 42.20.505, 42.20.515, 42.20.517, 42.20.601, 42.20.605, 42.20.615, 42.20.620, 42.20.625, 42.20.640, 42.20.645, 42.20.650, 42.20.655, 42.20.660, 42.20.665, 42.20.670, 42.20.675, 42.20.680, and 42.20.701 relating to valuation of real property, classification of nonproductive patented mining claims, agricultural land, and forest land	)	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION AND AMENDMENT

TO: All Concerned Persons

1. On November 15, 2006, at 9:30 a.m., a public hearing will be held in the Director's Office (Fourth Floor) Conference Room of the Sam W. Mitchell Building, at Helena, Montana, to consider the adoption and amendment of the above-stated rules.

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3. The proposed new rule does not replace or modify any section currently found in the Administrative Rules of Montana. The proposed new rule provides as follows:

<u>NEW RULE I EXCEPTIONS TO AGRICULTURAL LAND ASSESSMENT</u>

(1) The following land shall not be classified and assessed as agricultural land:

(a) land that is used for residential, commercial, or industrial purposes, or has covenants or other restrictions that effectively prohibit agricultural use, including lands described in ARM 42.20.156;

(b) land that meets the provisions of ARM 42.20.705 to be assessed as forest land.

(2) Land described in (1)(a) may not be assessed by the department at a value lower than the agricultural land assessed value previously determined for the land by the department.

(a) For ownerships of contiguous land that are equal to or greater than 160 acres in size, the land which has covenants or other restrictions that effectively prohibit agricultural use as described in (1)(a), shall be assessed as forest land, provided the parcel meets the provisions of ARM 42.20.705 to be assessed as forest land, and provided the land is not withdrawn from timber utilization by statute, ordinance, covenant, court order, administrative order, or other operation of law.

(i) The qualifying acres of forest land shall be assessed at the value of the productive grade of forest land that most closely approximates the former assessed value of the property, but in no case will the assessed value be lower than the former assessed value. If there are remaining acres not qualifying for forest land assessment, the remaining acres shall be assessed and taxed as class 4 land.

(ii) If the land is also withdrawn from timber utilization by any of the operations described in (2)(a), the land shall be assessed and taxed as class 4 land.

(b) For ownerships of contiguous land that are at least 20 acres but less than 160 acres in size, the land which has covenants or other restrictions that effectively prohibit agricultural use as described in (1)(a), shall be assessed as forest land, provided the parcel meets the provisions of ARM 42.20.705 to be assessed as forest land, and provided the land is not withdrawn from timber utilization by statute, ordinance, covenant, court order, administrative order, or other operation of law.

(i) The qualifying acres of forest land shall be assessed at the value of the productive grade of forest land that most closely approximates the former assessed value of the property, but in no case will the assessed value be lower than the former assessed value. If there are remaining acres not qualifying for forest land assessment, the remaining acres shall be assessed and taxed as class 4 land.

(ii) If the land is also withdrawn from timber utilization by any of the operations described in (2)(a), the land shall be assessed and taxed as class 4 land.

(c) For ownerships of contiguous land that are less than 20 acres in size, the land which has covenants or other restrictions that effectively prohibit agricultural use as described in (1)(a), shall be assessed as forest land, provided the parcel meets the provisions of ARM 42.20.705 to be assessed as forest land, and provided the land is not withdrawn from timber utilization by statute, ordinance, covenant, court order, administrative order, or other operation of law.

(i) The qualifying acres of forest land shall be assessed at the value of the productive grade of forest land that most closely approximates the former assessed value of the property, but in no case will the assessed value be lower than the former assessed value. If there are remaining acres not qualifying for forest land assessment, the remaining acres shall be assessed and taxed as class 4 land.

(ii) If the land is also withdrawn from timber utilization by any of the operations described in (2)(a), the land shall be assessed and taxed as class 4 land.

AUTH: 15-1-201, MCA
IMP: 15-6-133, 15-6-134, 15-7-201, 15-7-202, 15-44-101, 15-44-102, 15-44-103, MCA

REASONABLE NECESSITY: The department is proposing to adopt New Rule I to provide clear direction for the assessment and taxation of lands that have covenants or other restrictions that effectively prohibit agricultural use.

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

42.20.101 CITY AND TOWN LOTS AND IMPROVEMENTS (1) The assessment of city and town lots and the assessment of rural and urban improvements shall be at market value as determined by an appraisal using one or more of the three accepted approaches to determine value:

(a) the cost approach, where the ~~2002~~ Montana Appraisal Manual and national cost service manuals, as indicated in ARM 42.18.122, are used;

(b) the sales comparison approach; and

(c) the income approach.

(2) remains the same.

~~(3) This rule would be effective for tax years beginning after December 31, 1978.~~

AUTH: 15-1-201, MCA
IMP: 15-7-103, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.20.101 to provide clarity and to bring the rule into compliance with the current department practice.

42.20.102 APPLICATIONS FOR PROPERTY TAX EXEMPTIONS (1) The property owner of record or the property owner's agent must make application through the department in order to obtain a property tax exemption. An application must be filed on a form available from the local department office before March 1 of the year for which the exemption is sought or within 30 days ~~of~~ after receiving an assessment notice, whichever is later. Applications postmarked after March 1 or more than 30 days of receiving the assessment notice, whichever is later, will be considered for the following tax year only, unless the department determines any of the following conditions are met:

(a) through (d) remain the same.

(2) The following documents must accompany the application:

(a) articles of incorporation (if incorporated);

(b) Internal Revenue Service tax-exempt status letter, if they have one (501 determination letter);

(c) deed or security agreement which is evidence of ownership (for real property only);

(d) title of motor vehicle or mobile home or letter of explanation if title is not applicable which is evidence of ownership (for personal property only);

(e) letter explaining how the organization or society qualifies for property tax exemption and the specific use of the property; and

(f) photograph of the property, if available.

(3) Upon receipt of the application and supporting documents, the local department office will perform a field evaluation. The department~~'s specified agent~~ will approve or deny the application. The applicant and the local department office will be advised, in writing, of the decision.

(4) through (5)(a) remain the same.

AUTH: 15-1-201, MCA
IMP: 7-8-2307, 15-6-201, 15-6-203, 15-6-209, 15-7-102, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.20.102 to provide clarity and to bring the rule into compliance with the current department practice.

42.20.106 DEFINITIONS The following definitions apply to this subchapter:

(1) remains the same.

(2) "Comparable properties" means properties that have similar utility, use, function, and are of a similar type as the subject property. Comparable properties must be influenced by the same set of economic trends, and physical, economic, governmental, and social factors as the subject property. Comparable properties must have the potential of a similar use as the subject property. For any property that does not fit into this definition, the department will rely on the definition of comparable property contained in 15-1-101, MCA.

(a) Within the definition of comparable property ~~in (1)~~, the following types of property are considered comparable:

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

AUTH: 15-1-201, MCA
IMP: 15-1-101, 15-7-304, 15-7-306, 15-24-1501, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.20.106 to remove the internal reference of (1) in subsection (2)(a) because it is incorrect.

42.20.107 VALUATION METHODS FOR COMMERCIAL PROPERTIES

(1) remains the same.

(2) If the department is not able to develop an income model with a valid capitalization rate based on the stratified direct market analysis, the band-of-investment method, or another accepted method, or is not able to collect sound income and expense data, the final value chosen for ad valorem tax purposes will be based on the cost approach or, if appropriate, the ~~market~~ sales comparison approach to value. The final valuation is that which most accurately estimates market value.

AUTH: 15-1-201, MCA
IMP: 15-7-111, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM

42.20.107 to clarify terminology associated with current department practice.

42.20.204 CHANGE OF ASSESSMENT ROLL (1) The department shall not change to whom real property is assessed unless properly notified by means of an accurately prepared Realty Transfer Certificate (RTC), except in the case of Tribal patents or letters of conveyance from the Bureau of Land Management. Property assessments will continue to be made in the name of the previous owner until an RTC has been completed and filed in the manner prescribed by law (except for Tribal patents and letters of conveyance from the Bureau of Land Management).

(2) In an instance when the department is notified of a Tribal patent, or a letter of conveyance issued by the Bureau of Land Management, that is not recorded with the Clerk and Recorder's Office, the department will change to whom the real property is assessed.

(2) remains the same but is renumbered (3).

AUTH: 15-7-306, MCA
IMP: 15-7-304, 15-7-305, 15-7-307, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.20.204 to bring the rule into compliance with the current department practice and clarify that the department will change to whom the real property is assessed in certain cases.

42.20.301 APPLICATION FOR CLASSIFICATION AS NONPRODUCTIVE, PATENTED MINING CLAIM (1) The property owner of record or the property owner's agent must make application to the department to secure classification of the owner's land as a nonproductive, patented mining claim. To be considered for the current tax year, an application must be filed on a form available from the department by the first Monday in June or 30 days after receiving ~~a notice of classification and appraisal~~ an assessment notice from the department, whichever is later. The form must be filed with the department.

(2) and (3) remain the same.

AUTH: 15-1-201, MCA
IMP: 15-6-101, 15-6-133, 15-8-111, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.20.301 to bring the rule into compliance with the current department practice.

42.20.302 DEFINITIONS The following definitions apply to this subchapter:

(1) through (6) remain the same.

AUTH: 15-1-201, MCA
IMP: 15-6-101, 15-6-133, ~~15-6-148, 15-6-153,~~ 15-8-111, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.20.302 to remove two implementing cites that were previously repealed.

42.20.303 CRITERIA FOR VALUATION AS MINING CLAIM (1) through (6) remain the same.

AUTH: 15-1-201, MCA
IMP: 15-6-101, 15-6-133, ~~15-6-148, 15-6-153,~~ 15-8-111, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.20.303 to remove two implementing cites that were previously repealed.

42.20.304 ADDITIONAL RESTRICTIONS THAT CURTAIL PREFERENTIAL TREATMENT (1) remains the same.

(2) Land shall not be classified or valued as a class three mining claim after mining activity begins. Once mining activity begins, ARM ~~42.20.159~~ 42.20.645 will apply.

AUTH: 15-1-201, MCA
IMP: 15-6-101, 15-6-133, ~~15-6-148, 15-6-153,~~ 15-8-111, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.20.304 to correct the administrative rule cite because ARM 42.20.159 was transferred to ARM 42.20.645 in 2003 and this rule was inadvertently not corrected at that time. The department is also proposing to amend ARM 42.20.304 to remove two implementing cites that were previously repealed.

42.20.305 VALUATION OF ACREAGE BENEATH IMPROVEMENTS ON ELIGIBLE MINING CLAIMS (1) For all mining claims that have improvements that are specifically for the support of the mining claim on them, the land that is beneath all the improvements and the land that is necessary for the use of those improvements shall not receive classification and valuation as class three property. A market value determination shall be made for the acreage that is beneath the improvements and for the acreage necessary for the use of those improvements.

(2) and (3) remain the same.

AUTH: 15-1-201, MCA
IMP: 15-6-101, 15-6-133, 15-8-111, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.20.305 to provide clarity and to bring the rule into compliance with the current department practice.

42.20.307 VALUATION OF ELIGIBLE MINING CLAIM LAND (1) All land contained in an eligible mining claim except that land described in ARM ~~42.21.205~~ 42.20.305 shall be valued as class three grazing land. The appropriate grazing land classification will be G2B.

AUTH: 15-1-201, MCA

IMP: 15-6-133, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.20.307 to correct the administrative rule reference because it was previously transferred from ARM 42.21.205 to ARM 42.20.305.

42.20.501 DEFINITIONS The following definitions apply to this subchapter:

(1) through (3) remain the same.

(4) "Comstead exemption" means the percentage of phase-in value of commercial property that is exempt from taxation pursuant to ~~15-6-201~~ 15-6-222, MCA.

(5) through (9) remain the same.

(10) "Homestead exemption" means the percentage of phase-in value of residential property that is exempt from taxation pursuant to ~~15-6-201~~ 15-6-222, MCA.

(11) through (25) remain the same.

AUTH: 15-1-201, MCA
IMP: ~~15-6-201,~~ 15-6-222, 15-7-111, 15-10-420, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.20.501 to correct the statutory reference. The new language brings the rule into compliance with current statute.

42.20.503 DETERMINATION OF CURRENT YEAR PHASE-IN VALUE FOR CLASS THREE, CLASS FOUR, AND CLASS TEN PROPERTY (1) For tax years 2003 through 2008, the department is required to determine the current year phase-in value for each property in class three, class four, and class ten annually. The current year phase-in value is determined by subtracting the 2002 VBR from the 2003 reappraisal value multiplied by the applicable phase-in percentage, the product of which is added to the 2002 VBR value. The calculations of the phase-in values are represented by the following formula:

2003 Phase-in =
[(2003 reappraisal value - 2002 VBR value) x 16.66%]
+ 2002 VBR

2004 through 2006 calculations of the phase-in values remain the same.

AUTH: 15-1-201, 15-7-111, MCA
IMP: 15-7-111, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.20.503 to correct the formula for the 2003 phase-in calculations.

42.20.505 ASSESSMENT NOTICES AND VALUATION REVIEWS

(1) As required by 15-7-102, MCA, the assessment notice shall include:

(a) reappraisal value;
(b) current year phase-in value;
(c) total amount of mills levied against the property in the prior year;
(d) statement that the notice is not a tax bill; and
(e) amount of appraised value exempt from taxation under ~~15-6-201~~ 15-6-222, MCA.
(2) remains the same.

AUTH: 15-1-201, 15-7-111, MCA
IMP: 15-6-201, 15-7-102, 15-7-111, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.20.505 to correct the statutory reference. The new language brings the rule into compliance with current statute.

42.20.515 DETERMINATION OF TOTAL TAXABLE VALUE OF NEWLY TAXABLE PROPERTY (1) remains the same.
(2) For tax year 2001 and subsequent tax years, the department will calculate for each taxing jurisdiction the total taxable value of newly taxable property that is classified as class five, ~~six,~~ seven, eight, nine, twelve, ~~and~~ thirteen, and fourteen property. The taxable value of newly taxable property of class five, ~~six,~~ seven, eight, nine, twelve, ~~and~~ thirteen, and fourteen property shall be determined as follows:
(a) through (3) remain the same.
(4) The total taxable value of all newly taxable property in a taxing jurisdiction shall be determined by adding together~~:~~
~~(a)~~ the separate taxable values as determined above for class three, four, five, ~~six,~~ seven, eight, nine, ten, twelve, ~~and~~ thirteen, and fourteen property for that taxing jurisdiction~~; and~~
~~(b) the total taxable value of eliminated property for the taxing jurisdiction which is calculated by the department at 0.12% of the previous year total taxable value of the taxing jurisdiction~~.

AUTH: 15-1-201, 15-7-111, MCA
IMP: ~~15-40-420~~ 15-10-420, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.20.515 to delete class six and add class fourteen property to reflect changes to the statute that (1) eliminated class six property and (2) created class fourteen property. The department is further proposing to delete (4)(b) because the Legislature previously repealed the requirement to calculate the total value of eliminated property. The proposed amendments also correct a typographical error showing 15-40-420, MCA, as an implementing cite. The correct cite should have been 15-10-420, MCA.

42.20.517 APPLICATION OF HOMESTEAD OR COMSTEAD EXEMPTION TO MIXED USE PROPERTIES (1) Properties with mixed commercial and

residential use where more than 50% ~~or more~~ of total square footage of the structure is dedicated to use as a residential dwelling will receive the residential homestead exemption.

(2) Properties with mixed commercial and residential use where more than 50% ~~or more~~ of the total square footage of the structure is dedicated to a commercial use, as defined in 15-1-101, MCA, will receive the comstead exemption.

(3) If the use of the property, based on square feet, is equal between commercial and residential, the property will receive the homestead exemption.

AUTH: 15-1-201, MCA
IMP: 15-6-134, 15-7-111, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.20.517 to bring the rule into compliance with the current practice of the department.

42.20.601 DEFINITIONS The following definitions apply to this subchapter:

(1) and (2) remain the same.

(3) "Animal unit" means a cow/calf pair, including a mature cow of approximately 1,000 pounds and a calf as old as six months, or their equivalent.

(4) through (10) remain the same.

(11) "Effectively prohibit" means the land has limitations that prevent agricultural use of the land in its entirety. If the covenants or other restrictions prohibit all farming and grazing activities the land is effectively prohibited from agricultural use.

(11) remains the same but is renumbered (12).

~~(12) "Hobby animals" mean livestock that are owned as pets for the general purpose of personal entertainment, relaxation, and enjoyment, and not used directly in a normal day-to-day income-producing business. Examples of livestock that are not hobby animals are those used in income-producing businesses including, but not limited to, outfitter operations, working ranches, and horses raised for the specific purpose of producing income.~~

(13) "Income from agricultural production" means the gross amount of income received from the sale of food, feed, fiber commodities, livestock, poultry, bees, biological control insects, fruits, vegetables, and also includes sod, ornamental, nursery, and horticultural crops that are raised, grown, or produced for commercial purposes, income from farm rental, the sale of draft, breeding, dairy, or sporting livestock, the share of partnership or S corporation gross income received from a farming or ranching business entity, or the taxpayer's share of distributable income from an estate or trust involved in an agricultural business. When the income from agricultural production is used to qualify land for agricultural classification, it must be reportable income for income tax purposes.

(a) Wages received as a farm employee or wages received from a farm corporation are not gross income from farming.

(13) through (17) remain the same but are renumbered (14) through (18).

(19) "Nonqualified agricultural land" means parcels of land of 20 acres or more but less than 160 acres under one ownership that are not eligible for valuation, assessment, and taxation as agricultural land under 15-7-202(1), MCA.

~~(18)~~(20) "Owner" means that the applicant and owner of record are the same individual, corporation, ~~or~~ partnership, sole proprietorship, or trust.

(19) through (22) remain the same but are renumbered (21) through (24).

(25) "Sole proprietorship" for the purposes of qualifying land for agricultural assessment and taxation under the provisions of 15-7-202, MCA, and ARM 42.20.625, means an ownership of agricultural land in the name of one or more individuals which can be any of the following: grandparent(s), parent(s), spouse, sibling(s), children, stepchildren, aunt(s), uncle(s) and first generation cousin(s).

(23) remains the same but is renumbered (26).

AUTH: 15-7-111, MCA
IMP: 15-1-101, 15-6-133, 15-7-201, 15-7-202, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.20.601 to add new definitions of terms used in this subchapter that apply to the changes in the law by Senate Bills 74 and 296 from the 59th Legislature. The department also proposes to delete the definition for “hobby animals”, since it is no longer relevant.

42.20.605 AGRICULTURAL LANDS (1) The department adopts and incorporates the "Montana Agricultural Land Classification Manual" by reference. Current copies of this manual may be reviewed at the local department office. ~~or may be accessed at the department's website, www.discoveringmontana.com/revenue.~~

(2) and (3) remain the same.

AUTH: 15-1-201, MCA
IMP: 15-6-133, 15-7-103, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.20.605 to remove the web site address since this manual is not available on the department's web site.

42.20.615 APPLICATION FOR AGRICULTURAL CLASSIFICATION OF LAND (1) The property owner of record or the property owner's agent must make application to the department in order to secure agricultural classification of the property owner's land if the contiguous ownership is less than 160 acres in size. In order to be considered for the current tax year, an application must be filed on a form available from the local department office before the first Monday in June or 30 days after receiving ~~a notice of classification change~~ an assessment notice from the department, whichever is later. The form must be filed with the local department office.

(2) through (5) remain the same.

AUTH: 15-1-201, MCA
IMP: 15-6-133, ~~15-6-144,~~ 15-7-202, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.20.615 to correct the document name and to delete an implementing cite because that statute was repealed.

42.20.620 CRITERIA FOR AGRICULTURAL LAND VALUATION FOR LAND OWNERSHIPS TOTALING LESS THAN 20 ACRES (1) through (6) remain the same.

(7) Plants or nursery stock ~~that are~~ not grown and nourished by the land are not acceptable forms of agricultural income or agricultural production for purposes of this rule. Examples include trees grown in self-contained pots or burlap bags placed in or on the ground and plants grown in flats located in a greenhouse.

(8) ~~The sale of hobby animals, as defined in ARM 42.20.601, shall not be considered agricultural income for the purposes of meeting the $1,500 income requirement found in 15-7-202, MCA.~~

~~(9)~~ If the land is used primarily to raise and market livestock, the land must currently support 30 or more animal unit (AU) months of grazing carrying capacity, with cattle as the base. ~~A nine-month grazing season shall be the basis for calculating the number of animal units based on current carrying capacity.~~ One AU is assumed to consume 915 pounds of dry herbage production per month from native grazing land. The carrying capacity may be based on information obtained from the United States Natural Resource and Conservation Service (NRCS) soil survey. If a soil survey does not exist, the carrying capacity may be based on an estimate by the NRCS, the local county agricultural extension agent, or the department. Based on the manner in which the NRCS measures dry herbage production and the lost forage consumption due to grazing livestock and other causes, the per-acre per-year dry herbage production consumed is 25% of the NRCS estimate for an unfavorable precipitation year on nonirrigated grazing land. On nonirrigated domestic grazing land, the department shall increase the estimated nonirrigated native grazing land carrying capacity by 50% (1.5). The department shall use the following formula, based on NRCS soil survey information, to calculate the carrying capacity for nonirrigated native grazing land, which does not exhibit significant overgrazing or weed infestation:

(a) through (c) remain the same.

(10) through (18) remain the same but are renumbered (9) through (17).

AUTH: 15-1-201, MCA
IMP: 15-7-201, 15-7-202, 15-7-203, 15-7-206, 15-7-207, 15-7-208, 15-7-209, 15-7-210, 15-7-212, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.20.620(7) for clarification, 42.20.620(8) as renumbered to delete the reference to a grazing period, and 42.20.620(17) for clarification. The department proposes to repeal ARM 42.20.620(8) since there is no longer a reason to reference hobby animals.

42.20.625 CRITERIA FOR AGRICULTURAL LAND VALUATION FOR LAND OWNERSHIPS TOTALING 20 TO 160 ACRES IN SIZE (1) An applicant for agricultural land classification must prove that the parcel(s) indicated in the application actually produced the livestock, poultry, honey, and other products from bees, biological control insects, field crops, fruit, or other animal and vegetable matter raised for food or fiber or sod, ornamental, nursery, and horticultural crops that are raised, grown, or produced for commercial purposes. Contiguous parcels under one ownership must be actively devoted to agricultural use and meet all of the production and income qualification tests in these rules to be classified as agricultural land. Each noncontiguous parcel of land as defined in ARM 42.20.601 that is under one ownership and totals between 20 and 160 acres in size must be part of a bona fide agricultural operation and meet agricultural eligibility criteria set forth in this rule. Each noncontiguous parcel of land that is under one ownership and totals between 20 and 160 acres in size that is not part of a bona fide agricultural operation must each meet agricultural eligibility criteria set forth in this rule.

(a) For parcels of land that do not meet income eligibility requirements as outlined in this rule, but are used for farming or ranching, as a part of a family farm or ranch business as described in 15-7-202, MCA, the following proof of eligibility requirements will be considered when the owner of the land applies for agricultural land classification and the successful fulfillment of these requirements will allow the parcel to be classified as agricultural land:

(i) the subject property must be located within 15 air miles of the family-operated farm or ranch;

(ii) the owner of the subject property must submit proof that 51% or more of the owner's Montana annual gross income is derived from agricultural production;

(iii) the property taxes on the subject property are paid by the family-operated farm or ranch business, which may be a family corporation, family partnership, sole proprietorship, or a family trust; and

(iv) submit proof that at least 51% of the farm or ranch entity's Montana annual gross income comes from agricultural production.

(b) If the conditions of (1)(a)(i) through (a)(iv) are met, the land is eligible for agricultural classification.

(2) ~~Contiguous and noncontiguous parcels must be under one ownership and each parcel must be actively devoted to agricultural use and meet all of the production and income qualification tests in these rules to be classified as agricultural land. Noncontiguous parcels in the same ownership that are actively devoted to agricultural use can combine agricultural production and/or livestock carrying capacity to meet the income or carrying capacity requirements.~~ The department will accept a copy of a cancelled check as proof of payment of property taxes by the family-operated business entity. Other acceptable proof of payments of the property taxes will be reviewed on a case-by-case basis.

(3) If the owner of the subject property, which does not meet the requirements to be classified and valued as agricultural land, is a shareholder, partner, owner, or member of the family-operated farming or ranching entity involved in Montana agricultural production, the property owner may qualify the subject

property as agricultural land if they submit proof that details the legal relationship between the owner and the family-operated farming or ranching business entity. This proof must include:

(a) a copy of the documents that establish a legal relationship with the family-operated farming or ranching business entity, such as the documents on file with the Secretary of State; and

(b) proof that at least 51% of the property owner's or family-operated farming or ranching business entity's Montana annual gross income comes from agricultural production.

(4) If the conditions of this rule are met (mileage, establishment of the legal relationship, and income), the land is eligible for classification as agricultural land according to its use.

(5) For all applications received under this rule, the acceptable proof of income shall be the most recent year Montana individual and/or corporate tax statements, whichever is appropriate. The forms presented as proof must include all state and federal tax forms that detail the amount of income received from agricultural production as well as the amount of Montana gross income.

~~(3)~~(6) A current county farm and ranch reporting form that reflects any livestock or personal property used on the land must have been filed ~~at some point~~ by the current landowner with the local department office.

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

~~(8) The sale of hobby animals, as defined in ARM 42.20.601, shall not be considered agricultural income for the purposes of meeting the $1,500 income requirement found in 15-7-202, MCA.~~

~~(9)~~(11) If the land is used primarily to raise and market livestock, the land must currently support 30 or more animal unit (AU) months of grazing carrying capacity, with cattle as the base. ~~A nine-month grazing season shall be the basis for calculating the number of animal units based on current carrying capacity.~~ One AU is assumed to consume 915 pounds of dry herbage production per month from native grazing land. The carrying capacity may be based on the information obtained from the NRCS soil survey. If a soil survey does not exist, the carrying capacity may be based on an estimate by the NRCS, the county agricultural extension agent, or the department. Based on the manner in which the NRCS measures dry herbage production and the lost forage consumption due to grazing livestock and other causes, the per-acre per-year dry herbage production consumed is 25% of the NRCS estimate for an unfavorable precipitation year on nonirrigated grazing land. On nonirrigated domestic grazing land, the department shall increase the estimated nonirrigated native grazing land carrying capacity by 50% (1.5). The department shall use the following formula, based on NRCS soil survey information, to calculate the carrying capacity for nonirrigated native grazing land, which does not exhibit significant overgrazing or weed infestation:

(a) through (c) remain the same.

(10) through (19) remain the same but are renumbered (12) through (21).

AUTH: 15-1-201, MCA
IMP: 15-6-133, 15-7-201, 15-7-202, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.20.625 because of changes made by the 59th Legislature when it enacted Senate Bill 296. The amendments clarify the requirements that must be met in order for agricultural land that does not meet the income requirements of 15-7-202, MCA, to be eligible for agricultural classification. The amendment to (3) is for clarification purposes, and the amendment to (11) is necessary to delete the reference to a grazing period. The department proposes to repeal ARM 42.20.625(8) since there is no longer a reason to reference hobby animals. The department proposes to delete the current language in (2) and rewrite it for clarification purposes.

42.20.640 VALUATION OF ~~AGRICULTURAL~~ LAND OWNERSHIPS ~~EXCEEDING~~ 160 ACRES OR LARGER IN SIZE (1) In accordance with the provisions of 15-7-202, MCA, contiguous parcels of land under one ownership as defined in ARM 42.20.601 ~~exceeding~~ 160 acres or larger in size shall be valued as agricultural land~~.~~, ~~P~~provided that no portion of the ownership meets the criteria for forest land classification and there are no covenants, easements, deed restrictions, or other operations of law that prohibit the land from being used as agricultural, or the land is not used for residential, commercial, or industrial purposes.

(2) Under this rule, an ownership or the portion of an ownership meeting the criteria for forest land classification set forth in ARM 42.20.710 shall be classified and valued as forest land.

(3) Any remaining acreage in the ownership parcel will be classified and assessed as agricultural land provided the land is not used for residential, commercial, or industrial purposes, and that the land doesn't have stated covenants or other restrictions that effectively prohibit agricultural use. If the remaining acreage in the ownership parcel is either used for residential, commercial, or industrial purposes, or has stated covenants or other restrictions that effectively prohibit agricultural use, the remaining acreage will be classified and valued as class 4 land.

~~(2)~~(4) For contiguous parcels of land that are 160 acres or larger in size, and under one ownership as defined in ARM 42.20.601 ~~exceeding 160 acres in size~~, any acreage exceeding that which meets the criteria for forest land set forth in ARM 42.20.705, which is withdrawn from timber utilization by statute, ordinance, covenant, court order, administrative order, or other operation of law or has stated restrictions that effectively prohibit agricultural use, or is used for residential, commercial, or industrial purposes, shall be classified pursuant to the provisions of ~~15-6-133,~~ 15-6-134~~, and 15-7-202~~, MCA.

~~(3)~~(5) Land under the CRP, the Integrated Farm Management (IFM) program, or any other program that reimburses the landowner to remove the land from the current agricultural use and places it in a different agricultural use shall be classified and valued in the same land use category the acreage was in when it became eligible for the programs.

AUTH: 15-1-201, MCA
IMP: 15-6-133, 15-6-134, 15-7-201, 15-7-202, 15-44-101, 15-44-102, 15-44-103, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM

42.20.640 to provide clarification for the correct classification determination of land ownerships that are 160 acres or larger in size. It also addresses how acreages within this size ownership parcel that are withdrawn from timber utilization, or are effectively prohibited from agricultural use, or are used for residential, commercial or industrial purposes, are to be classified and valued.

42.20.645 CLASSIFICATION AND ASSESSMENT OF THOSE PORTIONS OF ANY ~~LAND THAT DOES NOT MEET~~ AGRICULTURAL, NONQUALIFIED AGRICULTURAL, OR FOREST LAND ~~ELIGIBILITY REQUIREMENTS~~ PARCELS THAT ARE RESIDENTIAL, COMMERCIAL, OR INDUSTRIAL SITES (1) Any portion of any parcel of land that is used as a residential, commercial, or industrial site (except for the one-acre area beneath the residence on agricultural land, which is valued as agricultural land according to 15-7-206, MCA), shall not be classified as agricultural land, nonqualified agricultural land, or forest land.

(2) Land in contiguous ownerships less than 160 acres in size that do not meet agricultural, nonqualified agricultural land, or forest land eligibility requirements will be valued ~~at market value~~ as class 4 property.

AUTH: 15-1-201, MCA
IMP: 15-7-201, 15-7-202, 15-7-203, 15-7-206, 15-7-207, 15-7-208, 15-7-209, 15-7-210, 15-7-212, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.20.645 to correct the title to better reflect the contents of this rule and add the reference to a statute that the rule implements.

42.20.650 VALUATION OF NONQUALIFIED AGRICULTURAL LAND FROM 20 TO 160 ACRES (1) Parcels of land that meet the criteria as nonqualified agricultural land under ARM ~~42.20.625~~ 42.20.601 are valued at the productive capacity value of grazing land, grade G3.

(2) Parcels of land not qualifying for forest land under ARM 42.20.705 and that qualify as nonqualified agricultural land under ARM ~~42.20.625~~ 42.20.601 are valued at the productive capacity value of grazing land, grade G3.

AUTH: 15-1-201, MCA
IMP: 15-6-133, 15-7-201, 15-7-202, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.20.650 to change the administrative rule cite to the definition rule because that is where nonqualified land is defined rather than in ARM 42.20.625.

42.20.655 VALUATION OF ONE ACRE BENEATH IMPROVEMENTS ON AGRICULTURAL AND NONQUALIFIED AGRICULTURAL LAND (1) An agricultural valuation will be made for each one-acre area beneath each residence(s) located on agricultural land as defined in ARM ~~42.20.650~~ 42.20.660, 42.20.665, 42.20.670, ~~and~~ 42.20.675, and 42.20.680.

(a) through (d) remain the same.

(2) A market value determination will be made for each one-acre area beneath each residence(s) which is located on nonqualified agricultural land. ~~as explained in ARM 42.20.650.~~

(a) through (3) remain the same.

AUTH: 15-1-201, MCA
IMP: 15-6-134, 15-7-103, 15-7-201, 15-7-202, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.20.650 to bring the rule into compliance with the current practice of the department.

42.20.660 NON-IRRIGATED SUMMER FALLOW FARM LAND (1) through (1)(b) and the charts remain the same.

AUTH: 15-1-201, MCA
IMP: 15-7-103, 15-7-201, ~~and 15-7-221,~~ MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.20.660 for clerical purposes only. Section 15-7-221, MCA, is being deleted as an implementing cite because that statute was repealed.

42.20.665 NON-IRRIGATED, CONTINUOUSLY CROPPED FARM LAND
(1) through (1)(b) remain the same.

NON-IRRIGATED FARMLAND,
CONTINUOUSLY CROPPED BASIS

GRADE	Bu. Wheat Per Acre Per Year	2003 Assessed Value/AC	2004 Assessed Value/AC	2005 Assessed Value/AC
1A4	44+	$696.76	$713.85	$730.95
1A3	42 - 43	$665.45	$681.77	$698.10
1A2	40 - 41	$634.13	$649.69	$665.24
1A1	38 - 39	$602.82	$617.60	$632.39
1A	36 - 3~~8~~7	$571.50	$585.52	$599.54
1	34 - 35	$540.19	$553.44	$566.69
2	32 - 33	$508.87	$521.35	$533.84
3	30 - 31	$477.56	$489.27	$500.99
4	28 - 29	$446.24	$457.19	$468.13
5	26 - 27	$414.93	$425.10	$435.28
6	24 - 25	$383.61	$393.02	$402.43
7	22 - 23	$352.29	$360.94	$369.58
8	20 - 21	$320.98	$328.85	$336.73

9	18 - 19	$289.66	$296.77	$303.88
10	16 - 17	$258.35	$264.69	$271.03
11	14 - 15	$227.03	$232.60	$238.17
12	12 - 13	$195.72	$200.52	$205.32
13	10 - 11	$164.40	$168.44	$172.47
14	< 10	$78.29	$80.21	$82.13

NON-IRRIGATED FARMLAND,
CONTINUOUSLY CROPPED BASIS

GRADE	Bu. Wheat Per Acre Per Year	2006 Assessed Value/AC	2007 Assessed Value/AC	2008 Assessed Value/AC
1A4	44+	$748.04	$765.13	$782.23
1A3	42 - 43	$714.42	$730.75	$747.07
1A2	40 - 41	$680.80	$696.36	$711.91
1A1	38 - 39	$647.18	$661.97	$676.76
1A	36 - 3~~8~~7	$613.56	$627.58	$641.60
1	34 - 35	$579.94	$593.19	$606.45
2	32 - 33	$546.32	$558.81	$571.29
3	30 - 31	$512.70	$524.42	$536.13
4	28 - 29	$479.08	$490.03	$500.98
5	26 - 27	$445.46	$455.64	$465.82
6	24 - 25	$411.84	$421.25	$430.66
7	22 - 23	$378.22	$386.87	$395.51
8	20 - 21	$344.60	$352.48	$360.35
9	18 - 19	$310.98	$318.09	$325.20
10	16 - 17	$277.36	$283.70	$290.04
11	14 - 15	$243.74	$249.31	$254.88
12	12 - 13	$210.12	$214.93	$219.73
13	10 - 11	$176.50	$180.54	$184.57
14	< 10	$84.05	$85.97	$87.89

AUTH: 15-1-201, MCA
IMP: 15-7-103, 15-7-201~~, and 15-7-221~~, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.20.665 to delete 15-7-221, MCA, as an implementing cite because that statute was repealed.

42.20.670 NON-IRRIGATED CONTINUOUSLY CROPPED HAY LAND
(1) through (1)(b) remain the same.

NON-IRRIGATED CONTINUOUSLY
CROPPED HAYLAND

Grade	Tons of Hay Per Acre	2003 Assessed Value/AC	2004 Assessed Value/AC	2005 Assessed Value/AC
1	~~> 3.0+~~ 3.0+	$661.17	$684.14	$707.10
2	2.5 - 2.9	$587.78	$601.17	$614.57
3	2.0 - 2.4	$478.93	$489.84	$500.76
4	1.5 - 1.9	$370.08	$378.52	$386.95
5	1.0 - 1.4	$261.23	$267.19	$273.14
6	.5 - .9	$152.39	$155.86	$159.33
7	< .5	$54.42	$55.66	$56.90

NON-IRRIGATED CONTINUOUSLY
CROPPED HAYLAND

Grade	Tons of Hay Per Acre	2006 Assessed Value/AC	2007 Assessed Value/AC	2008 Assessed Value/AC
1	~~> 3.0+~~ 3.0+	$730.07	$753.03	$776.00
2	2.5 - 2.9	$627.96	$641.36	$654.75
3	2.0 - 2.4	$511.67	$522.59	$533.50
4	1.5 - 1.9	$395.38	$403.82	$412.25
5	1.0 - 1.4	$279.09	$285.05	$291.00
6	.5 - .9	$162.80	$166.28	$169.75
7	< .5	$58.14	$59.38	$60.63

AUTH: 15-1-201, MCA
IMP: 15-7-103, 15-7-201~~, and 15-7-221~~, MCA

REASONABLE NECESSITY: The department is proposing to strike the (>) sign and to amend ARM 42.20.670 to delete 15-7-221, MCA, as an implementing cite because that statute was repealed.

42.20.675 TILLABLE, IRRIGATED FARM LAND (1) through (1)(a) remain the same.

~~Tons~~ ASSESSED VALUE PER ACRE BY WATER CLASS (WC)

Tons	WC 1	WC 2	WC 3	WC 4	WC 5
Alfalfa	Under	$20.00	$25.00	$30.00	$35.00

Per Acre	Grade	$19.99	$24.99	$29.99	$34.99	$40.00
4.5+	1A	863.19	788.19	710.06	631.94	553.51
4.0 - 4.4	1B	741.94	666.92	588.81	510.69	432.56
3.5 - 3.9	2	620.69	545.69	467.56	389.44	311.31
3.0 - 3.4	3	499.44	424.44	346.31	268.19	218.25
2.5 - 2.9	4	378.19	303.19	225.06	218.25	218.25
2.0 - 2.4	5	256.94	218.25	218.25	218.25	218.25
<2.0	6	218.25	218.25	218.25	218.25	218.25

(2) remains the same.

(3) The phase-in formula for each year of the reappraisal cycle is as follows:

(a) change in value = full reappraisal value - value before reappraisal;

(b) phase-in value (year 1) = value before reappraisal + (change in value ~~*~~ x .166~~7~~6);

(c) phase-in value (year 2) = value before reappraisal + (change in value ~~*~~ x .~~3334~~ 3342);

(d) phase-in value (year 3) = value before reappraisal + (change in value ~~*~~ x ~~.5000~~.4998);

(e) phase-in value (year 4) = value before reappraisal + (change in value ~~*~~ x .~~6667~~ 6664);

(f) phase-in value (year 5) = value before reappraisal + (change in value ~~*~~ x .~~8333~~ 8330); and

(g) phase-in value (year 6) = value before reappraisal + (change in value ~~*~~ x 1.000).

(4) The following examples demonstrate how the phase-in formula calculates the assessed value for irrigated land:

(a) For 2002:

(i) ~~The~~ the 2002 full reappraisal value for irrigated grade 1A in water class five is $518.63~~:~~ ;

~~(b)~~(ii) ~~The~~ the full reappraisal value for the same irrigated grade in water class five in ~~2003~~ 2008 is $553.51~~.~~; and

~~(c)~~(iii) ~~The~~ the change in value is $34.88 ($553.51 - $518.63).

~~(d)~~(b) The 2003 phase-in value = $518.63 + (34.88 ~~*~~ x .166~~7~~6) = $518.63 + $5.81 or $524.44.

~~(e)~~(c) For 2007:

(i) ~~The 2007~~ the 2002 full reappraisal value for irrigated grade 1A in water class five is $518.63~~.~~;

~~(f)~~(ii) ~~The~~ the full reappraisal value for the same irrigated grade in water class five in ~~2007~~ 2008 is $553.51~~.~~; and

~~(g)~~(iii) ~~The~~ the change in value is $34.88 ($553.51 - $518.63).

~~(h)~~(d) The 2007 phase-in value = $518.63 + (34.88 ~~*~~ x .833~~3~~0) = $518.63 + $29.0~~7~~6 or $547.~~70~~69.

(5) through (12) remain the same.

AUTH: 15-1-201, MCA
IMP: 15-7-103, 15-7-201~~, and 15-7-221~~, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.20.675 to correct the format so that it is consistent with other rules with similar formulas and to better clarify the examples in this rule. Section 15-7-221, MCA, is being deleted as an implementing cite because that statute was repealed.

42.20.680 GRAZING LAND (1) through (1)(b) remain the same.

GRAZING LAND

Grade	Acres Per Animal Unit Month	2003 Assessed Value/AC	2004 Assessed Value/AC	2005 Assessed Value/AC
1A2	< .30	$664.75	$682.03	$699.32
1A1	.30 - .50	$332.37	$341.02	$349.66
1A+	.51 - .59	$241.73	$248.01	$254.30
1A	.60 - 1.00	$166.19	$170.51	$174.83
1B	1.01 - 1.89	$91.69	$94.07	$96.46
2A	1.90 - 2.19	$66.47	$68.20	$69.93
2B	2.20 - 2.79	$54.26	$55.68	$57.09
3	2.80 - 3.79	$40.91	$41.97	$43.03
4	3.80 - 5.59	$28.59	$29.33	$30.08
5	5.60 - 9.99	$17.15	$17.60	$18.05
6	> 9.99	$10.64	$10.91	$11.19

GRAZING LAND

Grade	Acres Per Animal Unit Month	2006 Assessed Value/AC	2007 Assessed Value/AC	2008 Assessed Value/AC
1A2	< .30	$716.60	$733.89	$751.17
1A1	.30 - .50	$358.30	$366.94	$375.59
1A+	.51 - .59	$260.58	$266.87	$273.15
1A	.60 - 1.00	$179.15	$183.47	$187.79
1B	1.01 - 1.89	$98.84	$101.23	$103.61
2A	1.90 - 2.19	$71.66	$73.39	$75.12
2B	2.20 - 2.79	$58.50	$59.91	$61.32
3	2.80 - 3.79	$44.10	$45.16	$46.23
4	3.80 - 5.59	$30.82	$31.57	$32.31
5	5.60 - 9.99	$18.49	$18.94	$19.39
6	> 9.99	$11.47	$11.74	$12.02

AUTH: 15-1-201, MCA
IMP: 15-7-103, 15-7-201~~, and 15-7-221~~, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.20.680 to add the word "month" to the grazing land chart for productive capacity values and add "9" to Grade 6. The department is also proposing to delete 15-7-221, MCA, as an implementing cite because that statute was repealed.

42.20.701 DEFINITIONS The following definitions apply to this subchapter:

(1) through (9) remain the same.

(10) "Non-forest land" means land that is at least 120 feet in width and at least five acres in size which does not meet the requirements of ARM ~~42.20.702~~ 42.20.705. Non-forest land can include rivers and streams, roads, highways, power lines, and railroads.

(11) through (19) remain the same.

(20) "Uninterrupted forest land" means forest land that meets the requirements of ARM ~~42.20.702~~ 42.20.705 and is unbroken by non-forest land.

AUTH: 15-44-105, MCA
IMP: 15-1-101, 15-44-101, 15-44-102, 15-44-103, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.20.701 to correct typographical errors within the rule that reference an incorrect administrative rule cite.

5. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-5828; fax (406) 444-3696; or e-mail canderson@mt.gov and must be received no later than November 24, 2006.

6. Cleo Anderson, Department of Revenue, Director's Office, has been designated to preside over and conduct the hearing.

7. An electronic copy of this Notice of Public Hearing is available through the department's site on the World Wide Web at www.mt.gov/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 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 web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

8. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding particular subject matter or matters. Such written request may be mailed or delivered to the person in 5 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

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

/s/ Cleo Anderson	/s/ Dan R. Bucks
CLEO ANDERSON	DAN R. BUCKS
Rule Reviewer	Director of Revenue

Certified to Secretary of State October 16, 2006

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the proposed adoption of New Rule I and amendment of ARM 42.19.401, 42.19.402, 42.19.503, 42.19.506, 42.19.1103, 42.19.1104, 42.19.1213, 42.19.1222, and 42.19.1240 relating to low income property, disabled veterans tax exemptions, energy related tax incentives, and new industrial property	))))))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION AND AMENDMENT

TO: All Concerned Persons

1. On November 15, 2006, at 9:00 a.m., a public hearing will be held in the Director's Office (Fourth Floor) Conference Room of the Sam W. Mitchell Building, at Helena, Montana, to consider the adoption and amendment of the above-stated rules.

Individuals planning to attend the hearing shall enter the building through the east doors of the Sam W. Mitchell Building, 125 North Roberts, Helena, Montana.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Revenue no later than 5:00 p.m., November 6, 2006, to advise us of the nature of the accommodation that you need. Please contact Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-5828; fax (406) 444-3696; or e-mail canderson@mt.gov.

3. The proposed new rule does not replace or modify any section currently found in the Administrative Rules of Montana. The proposed new rule provides as follows:

NEW RULE I DEFINITIONS The following definitions apply to this subchapter:

(1) "Value added" means an increase in the worth of the product being produced and not merely an increase in existing production. The tax incentive is limited to manufacturing machinery and equipment involved in the value added process. If the department determines that manufacturing machinery and equipment qualifies for the tax incentive, the application must still be approved by the governing body of the local taxing jurisdiction.

AUTH: 15-24-2405, MCA
IMP: 15-24-2403, 15-24-2404, MCA

REASONABLE NECESSITY: The department is proposing to adopt New Rule I to

define the term "value added" which is used in rules contained in subchapter 12 of Chapter 19 and not defined by statute.

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

42.19.401 PROPERTY TAX ASSISTANCE PROGRAM (1) The property owner of record or the property owner's agent must make application through the ~~Department of Revenue, P.O. Box 5805, Helena, Montana 59604-5805~~ local department office, in order to receive the benefit provided for in 15-6-134, MCA. An application must be made on a form available from the local county appraisal/assessment office before March 15 of the year for which the benefit is sought. Applications postmarked after March 15 will not be considered for that tax year unless the department determines the applicant was unable to apply for the current year due to hospitalization, physical illness, infirmity, or mental illness. These impediments must be demonstrated to have existed at significant levels from January 1 of the current year to the time of application. Telephone extensions and written extensions will be granted through July 1 of the current year for the above-listed reasons. Willful misrepresentation of facts pertaining to income or the impediments that prevent timely application filing will result in the automatic rejection of the application.

(2) through (5) remain the same.

~~(6) "Head of household" means an unmarried individual who is not a surviving spouse and who maintains a household containing a dependent, as the term "head of household" is defined in section 2 of the Internal Revenue Code, as amended.~~

AUTH: 15-1-201, MCA
IMP: 15-6-134, 15-6-191, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.19.401 to change the location of where taxpayers may contact the department for information and to remove the definition of "head of household" because it is not used anywhere in these rules and is not necessary.

42.19.402 INFLATION ADJUSTMENT FOR PROPERTY TAX ASSISTANCE PROGRAM (1) remains the same.

(2) The calculation of the inflation adjustment shall be made on a yearly basis as follows:

(a) ~~Calculation of inflation factor:~~ Section 15-6-134, MCA, specifies that the implicit price deflator for personal consumption expenditures (PCE), published quarterly in the Survey of Current Business by the Bureau of Economic Analysis of the U.S. Department of Commerce, is to be used in the calculation of the inflation factor.

(b) remains the same.

(c) ~~Updating the income schedules for inflation:~~ The inflation factor, calculated per the previous section, is used to annually adjust the base year income

schedules for the effects of inflation.

Each income figure in the base year table is multiplied by the inflation factor calculated for the tax year in question in order to update the table. The product is then rounded to the nearest whole dollar amount.

The base year income schedule is below.

---------- Base Income Schedules ----------

Single Person	Married Couple	Percentage Multiplier
$0 - $6,000	$0 - $8,000	20%
6,001 - 9,200	8,001 - 14,000	50%
9,201 - 15,000	14,001 - 20,000	70%

AUTH: 15-1-201, MCA
IMP: 15-6-134, 15-6-191, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.19.402 for housekeeping purposes only. The text being deleted is redundant and does not add anything of value to the rule.

42.19.503 INFLATION ADJUSTMENT FOR QUALIFIED DISABLED VETERAN PROPERTY TAX EXEMPTION PROGRAM (1) remains the same.

(2) The calculation of the inflation adjustment shall be made on a yearly basis as follows:

(a) ~~Calculation of inflation factor:~~ Section 15-6-211, MCA, specifies that the implicit price deflator for personal consumption expenditures (PCE), published quarterly in the survey of current business by the Bureau of Economic Analysis of the U.S. Department of Commerce, is to be used in the calculation of the inflation factor.

(b) remains the same.

(c) ~~Updating the income schedules for inflation~~: The inflation factor, calculated per (2)(b) ~~the previous subsection~~, is used to annually adjust the base-year income schedules for the effects of inflation.

Each income figure in the base-year table is multiplied by the inflation factor calculated for the tax year in question in order to update the table. The product is then rounded to the nearest whole dollar amount.

The base-year income schedule follows:

---------- Base Income Schedules ----------

Single Person	Married Couple	Surviving Spouse	Percentage Multiplier

$ 0 - 30,000	$ 0 - 36,000	$ 0 - 25,000 0%
30,001 - 33,000	36,001 - 39,000	25,001 - 28,000 20%
33,001 - 36,000	39,001 - 42,000	28,001 - 31,000 30%
36,001 - 39,000	42,001 - 45,000	31,001 - 34,000 50%

AUTH: 15-1-201, MCA
IMP: 15-6-211, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.19.503 for housekeeping purposes only.

42.19.506 EXEMPTIONS INVOLVING A USE TEST (1) and (2) remain the same.

(3) ~~If the proposed use is the determining factor in granting the exemption, the exemption will be reviewed as of January 1 of the next year to determine if the property was placed in the proposed use within the prior year. If it was not placed in the proposed use, the department may adjust the exemption to reflect the actual use during the preceding year; and~~

~~(4)~~ An example of the application of the use test in (1) is when 25% of a building was used for educational purposes in 1992 and the remainder of the building was used for commercial purposes. The applicant applies for an exemption on January 1, 1993. For 1993 and until the use changes, the property receives a 25% exemption for the land and the building.

(5) and (6) remain the same but are renumbered (4) and (5).

AUTH: 15-1-201, MCA
IMP: 15-6-201, 15-6-203, 15-6-209, 15-24-1208, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.19.506 to reflect changes made to 15-6-201, MCA, by the 59th Legislature.

42.19.1103 TREATMENT OF ETHANOL MANUFACTURING FACILITIES (1) and (2) remain the same.

AUTH: 15-1-201, MCA
IMP: 15-6-138, ~~15-6-201~~ 15-6-220, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.19.1103 because the 2005 Legislature transferred 15-6-201, MCA, to 15-6-220, MCA.

42.19.1104 PROPERTY TAX EXEMPTION FOR NONFOSSIL ENERGY SYSTEM (1) The property owner of record, or the property owner's agent, must make application to the ~~Department of Revenue, P.O. Box 5805, Helena, Montana 59604-5805,~~ local department office for classification as a nonfossil form of energy generation. Application will be made on a form available from the local department field office before March 1 or within 30 days of receipt of an assessment notice,

which ever is later, to be considered for exemption for the current tax year.

(2) When a completed application is received by the local department field office, the department staff will adhere to the following procedures:

(a) through (d)(ii) remain the same.

(e) The maximum exemption for residential property is $20,000 in market value as determined by the department and for nonresidential property, it is $100,000 in market value as determined by the department. If the value of the energy system appears to exceed those amounts, the property data and exemption application will be reviewed for consideration by the department. Any market value over $20,000 for residential property or $100,000 for nonresidential property will not receive the exemption.

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

AUTH: 15-1-201, MCA
IMP: ~~15-6-201~~ 15-6-224, 15-32-102, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.19.1104 due to the recodification of 15-6-201, MCA, which was made by the 59th legislative session and to correct the implementation cite that was transferred by the 59th Legislature.

42.19.1213 CHANGES IN OPERATIONS (1) through (3) remain the same.

(4) If a qualified new industry ceases to operate, either temporarily or permanently, the three-year period continues until its normal expiration date, regardless of subsequent commencement of new operations. ~~There is no tacking of periods~~ Once a date is established it cannot be modified. Following cessation of operation, an application for classification as new industrial property may not be granted unless the new operation is substantially different from the former operation.

AUTH: 15-1-201, MCA
IMP: 15-6-135, 15-6-192, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.19.1213 for clarification purposes only. The statement regarding "tacking" was confusing and the department is proposing to make it clear that modifications are not allowed after a date is established.

42.19.1222 APPLICATION FOR SPECIAL CLASSIFICATION (1) through (2)(i) remain the same.

(j) an exact description of the nature of the business (~~perspective~~ prospective business), economic, or industry operations or activities conducted by the applicant, related persons or business units, or any controlling officers, directors, incorporators, partners, shareholders, investors, or any predecessor thereof;

(k) through (5) remain the same.

AUTH: 15-1-201, MCA
IMP: 15-6-135, 15-6-192, 15-24-1401, 15-24-1402, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.19.1222 for housekeeping purposes only.

42.19.1240 TAXABLE RATE REDUCTION FOR VALUE ADDED PROPERTY (1) Manufacturing machinery and equipment installed as a result of a plant expansion program may be eligible for a reduction in taxable value based on a ratio of new qualifying employees to the number of employees prior to the expansion. ~~In this regard, the following definitions apply:~~

~~(a) "Value added" means an increase in the worth of the product being produced and not merely an increase in existing production. The tax incentive is limited to manufacturing machinery and equipment involved in the value added process. If the department determines that manufacturing machinery and equipment qualifies for the tax incentive, the application must still be approved by the governing body of the local taxing jurisdiction.~~

~~(b) "Qualifying employees" means a person whose job was created as a direct result of value added process expansion; and whose annual full-time position pays not less than 3/4 the amount of gross annual wage which is typical for that particular job category.~~

(2) remains the same.

(3) Any year within the consecutive seven-year qualifying period that the applicant does not meet the criteria for reduction in taxable value, the taxable percentage will revert to the statutory taxable percentage for manufacturing machinery and equipment. The seven-year qualifying period commences with the first assessment year after the expansion project has become operational. The seven-year qualifying period is to run consecutively without regard to change in ownership, suspension of operation, or failure to qualify in any year within the qualifying standards set forth by statute. ~~There is no tacking of periods~~ Once a date is established it cannot be modified.

(4) remains the same.

AUTH: 15-24-2405, MCA
IMP: 15-24-2401, 15-24-2402, 15-24-2403, 15-24-2404, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.19.1240 to move the definition of "value added" to New Rule I which is the definition rule for this subchapter and delete the definition of "qualifying employees" because it is now contained in 15-24-2402, MCA. The department further proposes to amend this rule to clarify that no modifications can be made once a date has been established.

5. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-5828; fax (406) 444-3696; or e-mail canderson@mt.gov and must be received no later than November 24, 2006.

6. Cleo Anderson, Department of Revenue, Director's Office, has been designated to preside over and conduct the hearing.

7. An electronic copy of this Notice of Public Hearing is available through the department's site on the World Wide Web at www.mt.gov/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 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 web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

8. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding particular subject matter or matters. Such written request may be mailed or delivered to the person in 5 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

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

/s/ Cleo Anderson	/s/ Dan R. Bucks
CLEO ANDERSON	DAN R. BUCKS
Rule Reviewer	Director of Revenue

Certified to Secretary of State October 16, 2006

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the proposed adoption of New Rules I and II relating to the hospital utilization fee for inpatient bed days	)))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION

TO: All Concerned Persons

1. On November 17, 2006, at 9:30 a.m., a public hearing will be held in the Director's (Fourth Floor) Conference Room of the Sam W. Mitchell Building, at Helena, Montana, to consider the adoption of the above-stated rules.

Individuals planning to attend the hearing shall enter the building through the east doors of the Sam W. Mitchell Building, 125 North Roberts, Helena, Montana.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Revenue no later than 5:00 p.m., November 6, 2006, to advise us of the nature of the accommodation that you need. Please contact Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-5828; fax (406) 444-3696; or e-mail canderson@mt.gov.

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

NEW RULE I UTILIZATION FEE DETERMINATION (1) The Department of Revenue shall determine the fee to be charged for each inpatient bed day beginning January 1, 2007. The fee shall not exceed $50 and will be based on information provided by the Department of Public Health and Human Services.

(2) As provided in 15-66-102, MCA, the information provided by the Department of Public Health and Human Services shall include but is not limited to:

(a) an estimate of the unpaid medicaid hospital costs;

(b) total inpatient days;

(c) federal medical assistance percentages;

(d) an estimate of any federal limit on federal financial participation for hospital services; and

(e) an estimate of federal disproportionate share funds not matched by state general funds.

AUTH: 15-66-104, MCA
IMP: 15-66-102, MCA

REASONABLE NECESSITY: The department is proposing to adopt New Rule I to

clarify how the department will determine the utilization fee for the period January 1, 2007, through June 30, 2007, as required by 15-66-102(2), MCA.

NEW RULE II FEE (1) Each hospital in the state shall pay to the department a utilization fee in the amount of $27.70 for each inpatient bed day for the period between January 1, 2007, and June 30, 2007.

AUTH: 15-66-104, MCA
IMP: 15-66-102, MCA

REASONABLE NECESSITY: The department is proposing to adopt New Rule II to advise the public of the per patient bed utilization fee for the period January 1, 2007. through June 30, 2007, as required by 15-66-102(2), MCA.

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 Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701, telephone (406) 444-5828; fax (406) 444-3696; or e-mail canderson@mt.gov and must be received no later than November 24, 2006.

5. Cleo Anderson, Department of Revenue, Director's Office, has been designated to preside over and conduct the hearing.

6. An electronic copy of this Notice of Public Hearing is available through the department's site on the World Wide Web at www.mt.gov/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 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 web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

7. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding particular subject matter or matters. Such written request may be mailed or delivered to the person in 4 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

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

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

/s/ Dan R. Bucks
DAN R. BUCKS
Director of Revenue

Certified to Secretary of State October 16, 2006

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 2.21.6505 through 2.21.6509 and 2.21.6515, and the repeal of ARM 2.21.6522 pertaining to Discipline Handling	)))))	NOTICE OF AMENDMENT AND REPEAL

TO: All Concerned Persons

1. On August 10, 2006, the Department of Administration published MAR Notice No. 2-2-376 regarding the proposed amendment of ARM 2.21.6505 through 2.21.6509 and 2.21.6515, and the repeal of ARM 2.21.6522 pertaining to the above-stated rules at page 1923 of the 2006 Montana Administrative Register, Issue No. 15.

2. The department has amended ARM 2.21.6505, 2.21.6506, 2.21.6508, and 2.21.6515 exactly as proposed. The department has amended ARM 2.21.6507 and 2.21.6509 as proposed, but with the following changes. Matter to be added is underlined; matter to be deleted is interlined. The department has repealed ARM 2.21.6522 as proposed.

2.21.6507 DEFINITIONS As used in this subchapter, the following definitions apply:

(1) "Agency" ~~means a department, board, commission, office, bureau, institution, or unit of state government recognized in the state budget.~~ has the same meaning as defined in 2-18-101(1), MCA.

(2) through (4) remain as proposed.

(5) "Employee" means an employee in a permanent position who has attained permanent status as defined in 2-18-101, MCA. It does not include employees hired as temporary employees, short-term workers, student interns, and employees who have not attained permanent status as those terms are defined in 2-18-101, MCA~~, or~~. It does not include officers and employees identified in 2-18-103 and 2-18-104, MCA.

(6) and (7) remain as proposed.

(8) "Just cause" means reasonable, job-related grounds for taking a disciplinary action based on failure to satisfactorily perform job duties, or disruption of agency operations~~, or other legitimate business reasons~~. Just cause may include, but is not limited to: an actual violation of an established agency standard, procedure, legitimate order, policy, or labor agreement; failure to meet applicable professional standards; criminal misconduct; wrongful discrimination; deliberate misconduct; negligence; deliberately providing false information on an employment application; willful damage to public or private property; workplace violence or intimidation; harassment; unprofessional or inappropriate behavior; or a series of lesser violations.

(9) through (12) remain as proposed.

AUTH: 2-18-102, MCA
IMP: 2-18-102, MCA

2.21.6509 FORMAL DISCIPLINARY ACTION (1) When formal disciplinary action is necessary, just cause, due process, and documentation, or other evidence of the facts ~~is~~ are required.

(2) remains as proposed.

(3) In each formal disciplinary action, management shall give the employee a written notification that includes, but is not limited to:

(a) and (b) remain as proposed.

(c) the improvements or corrections expected, if applicable; and

(d) remains as proposed.

(4) Management shall offer the employee the opportunity to review the notice of formal disciplinary action and to acknowledge its receipt by signing and dating the notice. The employee's signature does not necessarily mean the employee agrees with the disciplinary action. If the employee refuses to sign the notice, management shall make note of that fact.

(5) Management shall offer the employee the opportunity to respond to the notice of formal disciplinary action either ~~verbally~~ orally or in writing.

AUTH: 2-18-102, MCA
IMP: 2-18-102, MCA

3. No requests to hold a public hearing were received. The department received several comments in support of the amendments as proposed. The department received additional comments requesting substantive changes to the proposed amendments. A summary of the substantive comments and the department's response follows.

Comment No. 1: The department received one comment regarding ARM 2.21.6506(1)(c) and (d). The commenter is concerned that the proposed section would deprive employees of due process.

Response No. 1: The department believes the proposed language merely clarifies that management must inform employees of the just cause for formal disciplinary action and offer employees the right to respond. This is consistent with the definition of due process. The department has not made a substantive change to the 1984 Discipline Handling Policy at ARM 2.21.6506(1)(c). This change was made for writing style and clarity.

Comment No. 2: The department received three comments regarding ARM 2.21.6506(3). The proposed section states "management may implement disciplinary actions under this policy regardless of whether a performance evaluation has been completed." Some commenters expressed concern that including such language in the discipline policy would blur the line between discipline and performance management. They believe discipline and performance management

are entirely separate issues, with different methods and procedures, which should be addressed in different policies.

Response No. 2: The department agrees that discipline, and performance evaluations and management, are often two separate matters, addressed in two specific state policies. However, there are times when inadequate performance and management's response to it also includes informal discipline such as coaching sessions or oral warnings. By adding this section, the department does not intend to require that management follow the formal procedures in the proposed Discipline Policy to address all performance deficiencies. The proposed section merely clarifies that management may proceed with discipline even though a formal or written performance evaluation has not been completed.

Comment No. 3: The department received one comment regarding ARM 2.21.6507(6). This section defines formal disciplinary action. The commenter believes "formal discipline requires a Loughmiller [sic] notice." The commenter disagrees "that written warnings should be considered formal discipline." The commenter further states that "the 'but not limited to' language in the 'formal discipline' definition is going to dilute management control. This is raising the bar to a standard unattainable my [sic] management."

Response No. 3: The department believes it has merely stricken the unnecessary language found in the 1984 definition of formal disciplinary action. The department agrees that a notice and opportunity to respond is required in all formal disciplinary actions. However, a "pretermination 'hearing' " as discussed in the Loudermill decision is not required in all formal disciplinary actions. (See Loudermill et al. v. Cleveland Board of Education et al., 3/19/1985 U.S. Supreme Court.) In a related case, the Montana Supreme Court also referred to the Loudermill decision and recognized a "property right" to employment under the state's Discipline Handling Policy. (See Boreen v. Christensen, 10/20/1994.) Neither case required a formal pre-termination hearing, but strongly suggested a "pre-termination opportunity to respond," prior to taking disciplinary action that results in discharge. This opportunity to respond is essentially "due process," which is a mandatory element of formal discipline under the proposed Discipline Policy.

The department also believes the proposed Discipline Policy, when coupled with a timely post-termination hearing according to the state's Grievances Policy, provides sufficient due process in disciplinary actions resulting in discharge.

The department believes written warnings are indeed formal disciplinary actions. By reducing a disciplinary action to writing, management formalizes the action and also triggers the second element of due process, or the employee's right to respond. This is unchanged from the 1984 Discipline Handling Policy; it has not been problematic. Therefore, the department has not removed written warnings from the definition of "formal disciplinary action."

The department has elected to include the language "but is not limited to" in this definition rather than create an extensive list of formal disciplinary actions. In doing so, the department does not believe it has changed the standards or "bar" management must reach to implement formal disciplinary actions.

Comment No. 4: The department received numerous comments regarding ARM 2.21.6507(8). The proposed section defines "just cause". Several of the commenters disagreed with the proposal to include the language "legitimate business reason" in this definition. One commenter believes the language is "nebulous." Another commenter believes it is "too vague and subject to too much interpretation." One commenter illustrated how the term "legitimate business reason" came into being. This commenter stated that in 1987, bill drafters "drew on the state's policy for the definition of 'good cause'." The drafters of the Wrongful Discharge From Employment legislation added the term "other legitimate business reason" to the state's definition of just cause to "address circumstances like layoff or reduction in force." (See 39-2-903(5), MCA (2005).)

One commenter stated in part that "demotion for failure to perform job duties should be termed a 'disciplinary demotion'. As a 'disciplinary demotion' this action now triggers a mandatory grievance with a hearing examiner at the step 3 level of the hearings process. These hearings are time-consuming and expensive." In the remainder of the comment, the commenter illustrates how the agency spends a substantial amount of time and resources when dealing with disciplinary demotions at step 3 of the grievance process. In a follow-up contact with the department, the commenter expressed concern that the proposed Discipline Policy does not clearly establish when management must follow that policy versus the Performance Evaluation and Management Policy when dealing with substandard performance, which results in a disciplinary demotion.

Another commenter stated in part that the definition includes "failure to satisfactorily perform job duties…my only thought is that we want to make sure that 'just cause' includes the simplest of things, too -- like simply not performing the job duties outlined on a job profile. It is acknowledged that 'deliberate misconduct' and 'negligence' are listed, but what about simply not getting (or not being able to get) the job done?"

A final commenter stated in part, "what is less than unprofessional or inappropriate behavior." The commenter suggested deleting these terms from the definition of just cause.

Response No. 4: The department agrees with the comments about the term "legitimate business reason." Therefore, this language has been removed from the definition of just cause because legitimate business reasons to terminate employment, for example, decisions to reduce the workforce through layoffs, are not disciplinary actions.

The department believes the language "failure to satisfactorily perform job duties" is essential to the definition of just cause. This language is unchanged from the 1984 Discipline Handling Policy. As explained in part in Response No. 2, the department believes that discipline and performance evaluations and management are typically separate employment issues, which are addressed in separate state policies. However, there are times when both policies are simultaneously applicable. As stated earlier, the department does not intend to require that management follow the formal disciplinary procedures set out in the proposed Discipline Policy when dealing with substandard performance via established agency procedures, for example, conducting very frequent performance evaluations, coaching, or providing training designed to improve performance. The department has clarified that these and other performance improvement tools are informal disciplinary actions, which are included in the new definition at ARM 2.21.6507(7).

The department agrees in part with the commenter that a disciplinary demotion should not always be grievable under the Grievances Policy unless it results in an action that also has an "adverse affect" on an employee, for example, a disciplinary demotion accompanied by a reduction in compensation. The department has convened a policy advisory committee to review the Grievances Policy and address this and other grievance-related issues.

The department believes the term "failure to satisfactorily perform job duties" is sufficiently broad enough to provide "just cause" for taking disciplinary action due to an employee's failure to satisfactorily perform all the required duties of a position.

In addressing the final comment, the department believes most individuals understand the term "unprofessional behavior." One legal reference defines "unprofessional conduct," which is a synonymous term, as "that which is by general opinion considered to be unprofessional because [it is] immoral, unethical, or dishonorable." In other words, the general population believes this behavior is recognizable and unacceptable in the workplace. The term "inappropriate" is defined in many common references as synonymous with "not appropriate." The antonym of inappropriate is appropriate, which these references define as "especially suitable or compatible." Therefore, the department has retained the language "unprofessional or inappropriate behavior" in the definition of just cause because these terms are definable and generally recognized as unacceptable workplace behaviors.

Comment No. 5: The department received one comment regarding ARM 2.21.6507(9). The proposed section changes the definition of management to include "those individuals beginning with an employee's immediate supervisor and other managers in a successive direct line of authority within an agency." The commenter expressed concern about immediate supervisors "who are not mature enough nor trained to a proper level in management to make these calls."

Response No. 5: The department believes each agency's procedures for implementing disciplinary action are unique. For example, in some agencies,

discipline typically begins with an immediate supervisor. In other agencies, disciplinary matters are always referred to a higher level of management. The language in the proposed definition is intended to cover this broad spectrum of agency managers who either implement disciplinary actions or refer them to a higher authority.

Comment No. 6: The department received one comment regarding ARM 2.21.6508(2). The proposed section states "management should document all informal disciplinary actions." The commenter stated "where is management supposed to keep this documentation? It can't go in the personnel file."

Response No. 6: The department believes documentation of informal disciplinary actions is good management practice because such documentation could provide the basis for progressive or additional disciplinary action. Under the proposed Discipline Policy, agency management may determine the nature of this documentation and provide for its retention and storage. For example, in one agency, documentation of informal discipline, such as coaching, may be informal notes, which a manager keeps in a journal or logbook. In another agency, a manager may choose to document the occurrence of an oral warning or coaching session via a memo addressed to the employee.

Comment No. 7: The department received one comment pertaining to ARM 2.21.6509(4). As proposed, this section contains language about an employee who refuses to sign a written notification of disciplinary action. The commenter believes two managers should sign the notice when an employee refuses to do so.

Response No. 7: The department has not changed the language as proposed because such a requirement would be cumbersome and unnecessary.

Comment No. 8: The department received one comment regarding ARM 2.21.6509(6). The department proposes to repeal this section that speaks to documenting disciplinary actions. The commenter believes this section should not be repealed.

Response No. 8: The department believes this section is unnecessary because it duplicates ARM 2.21.6509(3), which states in part "in each formal disciplinary action, management shall give the employee written notification…"

Comment No. 9: The department received two comments regarding ARM 2.21.6515. As proposed, this rule clarifies that an employee may file a grievance under the state's Grievances Policy if the employee receives a formal disciplinary action resulting in "suspension without pay, disciplinary demotion, or discharge." The proposed rule also prohibits an employee from filing a grievance "based on an informal disciplinary action or a formal disciplinary action that results in a written warning." Both commenters expressed concern that employees would not have the right to file a grievance because of a written warning, which is a formal disciplinary action.

Response No. 9: The department believes it has merely clarified when it is appropriate for eligible employees to file a grievance under the state's Grievances Policy. Earlier this year, the department convened a policy committee to assist it in reviewing and revising the proposed Discipline Policy and other MOM policies. Many committee members indicated that grievances due to written warnings were burdensome, time-consuming, and unnecessarily consumed valuable agency resources. Furthermore, the current Grievances Policy illustrates that a grievance means "a complaint or dispute…which adversely affects the employee." [Emphasis added.] The department believes "adversely affects" generally means a material change in the terms and conditions of employment. Unlike more serious disciplinary actions, written warnings, by themselves, do not have this immediate effect. The department intends to address this and other grievance issues when it revises the state's Grievances Policy in the near future.

BY: /s/ Janet R. Kelly
Janet R. Kelly, Director
Department of Administration

BY: /s/ Dal Smilie
Dal Smilie, Rule Reviewer
Department of Administration

Certified to the Secretary of State October 16, 2006.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OFFICE OF THE STATE PUBLIC DEFENDER
OF THE STATE OF MONTANA

In the matter of the adoption of NEW RULES I through VI pertaining to the Office of the State Public Defender	)))	NOTICE OF ADOPTION

TO: All Concerned Persons

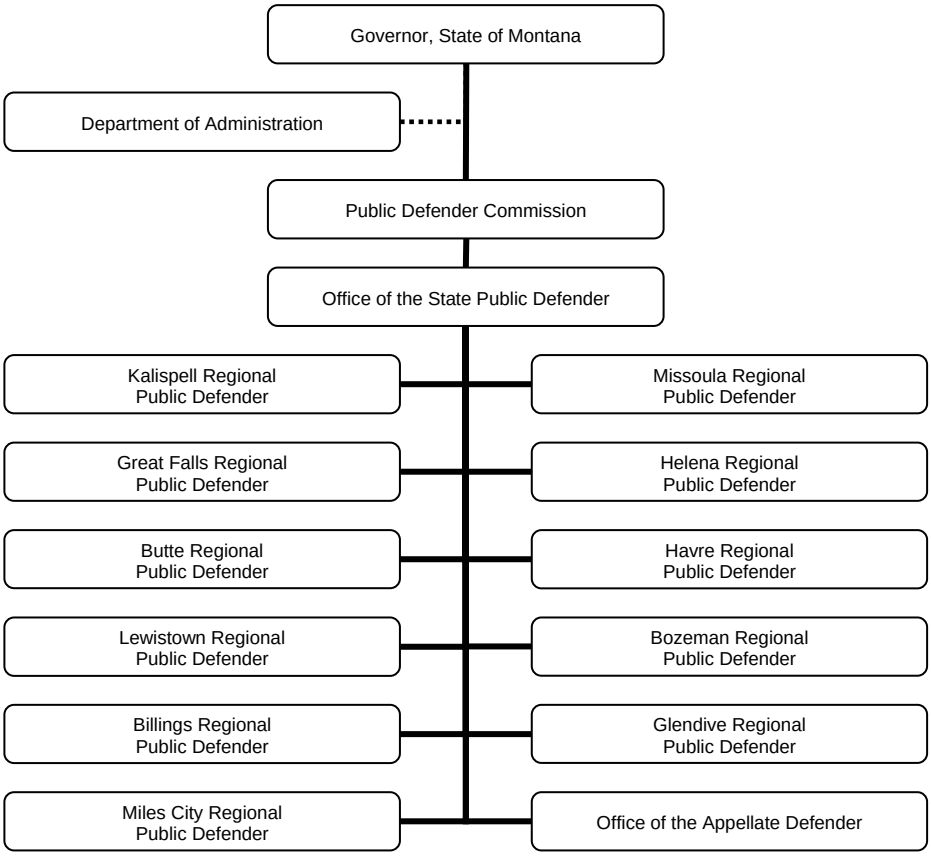
1. On September 7, 2006, the Office of the State Public Defender published MAR Notice No. 2-2-377 regarding a public hearing on the proposed adoption of the above-stated rules at page 2068, 2006 Montana Administrative Register, issue number 17.

2. The office has adopted New Rules II (2.69.201), III (2.69.202), IV (2.69.203), and VI (2.69.601) exactly as proposed. The office has adopted New Rules I (2.69.101) and V (2.69.301) as proposed, but with the following changes, stricken matter interlined, new matter underlined:

NEW RULE I (2.69.101) ORGANIZATION OF THE STATEWIDE PUBLIC DEFENDER SYSTEM (1) through (3) remain as proposed.

(4) Organization Chart.

The proposed organization chart is replaced with the following chart to show that the Office of the Appellate Defender reports to the Office of the State Public Defender, not to the Public Defender Commission:



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

NEW RULE V (2.69.301) DETERMINATION OF INDIGENCY (1) through (4) remain as proposed.

(5) All information collected on the forms shall be treated as confidential except:

(a) as required in 47-1-111, MCA; or

(b) when judicial review of the determination is requested by the applicant. At that time, the forms shall be submitted to the court for ~~camera~~ *in camera* inspection.

AUTH: 47-1-105, 47-1-111, MCA
IMP: 47-1-105, 47-1-111, MCA

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

Comment No. 1: "Section 47-1-111(2)(c), MCA, provides that information contained in an application, financial statement, or affidavit for public defender services 'is not admissible in a civil or criminal action except when offered for impeachment purposes or in a subsequent prosecution of the applicant for perjury or false swearing'.

Proposed Rule V(5) provides the 'All information collected on the forms [used for the application, financial statement, or affidavit] shall be treated as confidential except when judicial review of the determination [of whether the applicant is indigent and thus entitled to a public defender] is requested.'

It seems to me that there is a conflict, which needs to be resolved, between the above-quoted statutory and rule provisions. The proposed rule only allows a confidentiality bypass for purposes of judicial review of the determination of the application for a public defender, whereas the statute allows a confidentiality bypass: (1) for purposes of impeachment in a civil or criminal action, and (2) in a subsequent prosecution of the applicant for perjury or for false swearing."

Response No. 1: The Office of the State Public Defender concurs and revised the rule as shown above.

BY: /s/ James Park Taylor
James Park Taylor, Chair
Montana Public Defender Commission

BY: /s/ Dal Smilie
Dal Smilie, Rule Reviewer
Department of Administration

Certified to the Secretary of State October 16, 2006.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.8.740 and 17.8.767 pertaining to definitions and incorporation by reference, and the adoption of New Rules I and II pertaining to mercury emission standards and mercury emission credit allocations	NOTICE OF AMENDMENT AND ADOPTION (AIR QUALITY)

TO: All Concerned Persons

1. On May 4, 2006, the Board of Environmental Review published MAR Notice No. 17-246 regarding a notice of public hearing on the proposed amendment and adoption of the above-stated rules at page 1112, 2006 Montana Administrative Register, issue number 9.

2. The board has amended ARM 17.8.740 and 17.8.767 and adopted new rules I (17.8.721) and II (17.8.722) as proposed, but with the following changes, stricken matter interlined, new matter underlined:

17.8.740 DEFINITIONS For the purposes of this subchapter:

(1) through (9) remain as proposed.

(10) "Maximum design heat input" has the meaning as defined in 40 CFR 60.4102.

(10) remains as proposed, but is renumbered (11).

~~(11)~~ (12) "Mercury-emitting generating unit" means any emitting unit at a facility for which an air quality permit is required pursuant to 75-2-211 or 75-2-217, MCA, that generates electricity and combusts coal, coal refuse, or a synthetic gas derived from coal ~~in an amount greater than 10% of its total heat input, calculated on a rolling 12-month time period,~~ and that is ~~subject to 40 CFR 60, subpart HHHH~~ defined as an electrical generating unit under 40 CFR 60.24.

(13) "Mercury-emitting generating unit that combusts lignite" means any mercury-emitting generating unit that combusts lignite in an amount equal to or greater than 75% of its total heat input, calculated for the prior calendar year on a calendar year basis.

(12) through (19)(b) remain as proposed, but are renumbered (14) through (21)(b).

17.8.767 INCORPORATION BY REFERENCE (1) For the purposes of this subchapter, the board ~~hereby~~ adopts and incorporates by reference:

(a) through (c) remain as proposed.

(d) 40 CFR Part 60, specifying standards of performance for new stationary sources, except for ~~40 CFR 60.4101-4176, subpart HHHH, Emission Guidelines and Compliance Times for Coal-fired Electric Steam Generating Units~~ 40 CFR 60.4141-4142;

~~(e) 40 CFR 60.4101-4176, subpart HHHH, Emission Guidelines and Compliance Times for Coal-fired Electric Steam Generating Units, except for 40 CFR 60.4141-4142, until December 31, 2014. The adoption and incorporation by reference of 40 CFR Part 60, subpart HHHH, is not effective after December 31, 2014.~~

(f) remains as proposed, but is renumbered (e).

~~(g)~~ (f) Tables 4-1 and 4-3 of the Department of Environmental Quality Air Quality Health Risk Assessment Procedures/Model, January 1995; ~~and~~

~~(h)~~ (g) 42 USC 7412, et seq., listing hazardous air pollutants~~.~~; and

(h) 40 CFR Part 75, pertaining to mercury requirements.

(2) through (4) remain as proposed.

RULE I (17.8.771) MERCURY EMISSION STANDARDS FOR MERCURY-EMITTING GENERATING UNITS (1) Except as provided in (3) ~~through (7)~~, the owner or operator of a mercury-emitting generating unit shall:

(a) if obtaining a Montana air quality permit pursuant to ARM 17.8.743, install best available control technology for control of mercury emissions as required by ARM 17.8.752;

~~(a)~~ (b) except for any period for which another mercury emissions limit has been established pursuant to this rule, beginning January 1, 2010, or ~~when~~ at commencement of commercial operation ~~has begun~~, whichever is later, limit mercury emissions from the mercury-emitting generating unit to an emission rate equal to or less than:

(i) 1.5 pounds of mercury per trillion Btu, calculated as a rolling 12-month average, for mercury-emitting generating units that combust lignite; or

(ii) 0.9 pounds of mercury per trillion Btu, calculated as a rolling 12-month average, for all other mercury-emitting generating units;

~~(b)~~ (c) by January 1, 2009, or 12 months prior to commencement of commercial operation, whichever is later, ~~for a facility for which the department has issued a Montana air quality permit,~~ submit an application to the department for a Montana air quality permit or modification of ~~the~~ an existing Montana air quality permit for the ~~facility pursuant to 75-2-211 or 75-2-217, MCA,~~ mercury-emitting generating unit solely to establish the mercury emission limit from (1)~~(a)~~(b) and any necessary operational requirements as a condition of the permit. ~~and provide an analysis with respect to the facility's mercury control plan by January 1, 2009, or 12 months prior to beginning commercial operation, whichever is later;~~ The owner or operator shall include in the application an analysis of potential mercury control options including, but not limited to, boiler technology, mercury emission control technology, and any other mercury control practices. The owner or operator shall also include in the application a proposed mercury emission control strategy projected to achieve compliance with the emission limit in (1)(b) and that must include boiler technology, mercury emission control technology, or any other mercury control practices used or anticipated to be used by the owner or operator to achieve compliance with (1)(b). If the department determines that the mercury emission control strategy is projected to achieve compliance with the emission limit in (1)(b), the department shall include the provisions of the mercury control strategy as conditions of the Montana air quality permit; and

~~(c)~~ (d) by January 1, 2010, or ~~when~~ at commencement of commercial operation ~~has begun~~, whichever is later, ~~operate equipment that is projected, as determined by the department, to meet the standard in (1)(a)~~ implement the mercury emission control strategy approved pursuant to (1)(c).

(2) If more than one mercury-emitting generating unit is located at a facility, the owner or operator may demonstrate compliance with the requirements of (1)(b), an alternative emission limit, or a revised alternative emission limit on a facility-wide basis. An owner or operator choosing to demonstrate compliance with this rule on a facility-wide basis shall report the information required in (11) on a facility-wide basis.

~~(2)~~ (3) If the owner or operator of a mercury-emitting generating unit properly ~~installs and operates~~ implements the mercury control ~~technology or boiler technology, or follows practices projected to meet the mercury standard in (1)(a),~~ strategy approved pursuant to (1)(c), and the mercury control ~~technology, boiler technology, or practices fail~~ strategy fails under normal operation to meet the emission rate required in (1)~~(a)~~(b), the owner or operator:

(a) shall notify the department of the failure to meet the emission rate required in (1)(b) by ~~April 1~~ March 1, 2011, or within ~~15~~ two months ~~after commercial operation has begun~~ of such failure, whichever is later; and

(b) may ~~file~~ submit an application ~~with~~ to the department for a Montana air quality permit or ~~permit~~ a modification ~~pursuant to 75-2-211, MCA,~~ of a Montana air quality permit solely to establish an alternative mercury emission limit. The ~~application must be filed~~ owner or operator shall file any application for an alternative emission limit by July 1, 2011, or within ~~18~~ six months ~~after commercial operation has begun, whichever is later, and must include all~~ of the failure to meet the emission rate required in (1)(b), whichever is later, and shall include as part of the application:

(i) all mercury emission monitoring data, obtained pursuant to ~~(9)~~ (11), for the mercury-emitting generating unit~~.~~;

(ii) a description of the reason(s) for the failure and any corrective action that may be appropriate;

(iii) a certification that the failure occurred during normal operation of the facility and was not caused entirely or in part by start-up, shakedown, or improper implementation of the mercury control strategy approved pursuant to (1)(c); and

(iv) a revised mercury control strategy demonstrating how compliance with (1)(b) is projected to be achieved as soon as reasonably practicable but no later than 2018. The revised mercury control strategy may include, but is not limited to, boiler technology, mercury emission control technology, and any other mercury control practices used or anticipated to be used by the owner or operator to achieve compliance with (1)(b). The revised mercury control strategy must include measurable indicators of progress toward compliance with the emission limit in (1)(b), which may include a plan of increasing levels of mercury control progressing to compliance with (1)(b).

(4) If an application is submitted in accordance with (3)(b), the failure of the owner or operator of the mercury-emitting generating unit to comply with the mercury emission limit in (1)(b) is not a violation of this rule or the permit until the department has issued its final decision on the application.

~~(3)~~ (5) ~~The department may establish an alternative mercury emission limit only if the owner or operator applies for, or has applied for, a permit under 75-2-211, MCA, that requires boiler technology, mercury-specific control technology, or practices that the department determines constitute a continual program of mercury control~~ If the information submitted pursuant to (3)(b) demonstrates that the owner or operator of the mercury-emitting unit cannot reasonably comply with the mercury emission limit in (1)(b), the department may establish an alternative mercury emission limit, except that the department may not require the owner or operator to install a different boiler technology than is in use or contained in a final air quality permit. The department may establish an alternative mercury emission limit only if the owner or operator of the mercury-emitting unit demonstrates that the revised mercury control strategy constitutes a continual program of mercury control progression able to achieve the mercury emission rate requirement of (1)~~(a)~~(b). ~~The department may not establish an alternative mercury emission limit that would cause an exceedance, after December 31, 2014, of the state of Montana's electrical generating unit mercury budget established by EPA.~~ If the department establishes an alternative mercury emission limit, the department must include as a condition of the permit a requirement that the owner or operator of the mercury-emitting generating unit make reasonable efforts toward achieving the measurable indicators of progress contained in the revised mercury control strategy. Failure to make reasonable efforts toward achieving the measurable indicators of progress contained in the revised mercury control strategy is a violation of the permit. The department shall base any alternative mercury emission limit on the best level of emission control achieved or achievable by the revised mercury control strategy and shall consider the information submitted pursuant to (3) when establishing the alternative mercury emission limit.

~~(4)~~ (6) An alternative mercury emission limit established in a Montana air quality permit ~~issued pursuant to 75-2-211, MCA, expires four years after the date of the department's decision establishing the alternative mercury emission limit.~~ expires January 1, 2018, and must not exceed:

(a) 4.8 pounds of mercury per trillion Btu, calculated as a rolling 12-month average, for a mercury-emitting generating unit that combusts lignite and commenced commercial operation prior to October 1, 2006;

(b) 3.6 pounds of mercury per trillion Btu, calculated as a rolling 12-month average, for a mercury-emitting generating unit that combusts lignite and commenced commercial operation on or after October 1, 2006;

(c) 2.4 pounds of mercury per trillion Btu, calculated as a rolling 12-month average, for a mercury-emitting generating unit that does not combust lignite and commenced commercial operation prior to October 1, 2006; or

(d) 1.5 pounds of mercury per trillion Btu, calculated as a rolling 12-month average, for all other mercury-emitting generating units that do not combust lignite.

~~(5)~~ (7) The owner or operator of a mercury-emitting generating unit, for which the department has established an alternative mercury emission limit, ~~may file~~ shall, by January 1, 2014, submit an application ~~with~~ to the department for a Montana air quality permit or a modification of ~~the~~ a Montana air quality permit for the ~~facility, pursuant to 75-2-211, MCA,~~ mercury-emitting generating unit to establish a ~~new~~ revised alternative mercury emission limit. The owner or operator shall submit, as

part of any application, the information required in (3)(b)(i) through (iv), a best available control technology analysis for the control of mercury emissions, a review of the mercury-emitting generating unit's existing ~~must be filed with the department at least three months prior to expiration of the~~ alternative mercury emission limit, including associated mercury emission monitoring and operational data, and a revised mercury control strategy. ~~If such an application is filed, the failure of the owner or operator of the mercury-emitting generating unit to have a new alternative mercury emission limit for the unit prior to expiration of the existing alternative mercury emission limit is not a violation of this rule until the department takes final action on the permit application, except as otherwise stated in this rule.~~

~~(6)~~ (8) ~~For any application for a new alternative mercury emission limit under (5), the department shall review the mercury-emitting generating unit's existing alternative mercury emission limit and program of mercury control, associated data, and available mercury control technologies, and may establish the same, or a more stringent, alternative mercury emission limit, based upon data regarding the demonstrated control capabilities of the type of control technology or boiler technology installed and operated at the mercury-emitting generating unit, if the data supports the new alternative mercury emission limit. The department may not establish a less stringent alternative mercury emission limit pursuant to this section.~~ In reviewing an application submitted pursuant to (7), the department shall establish a revised alternative mercury emission limit in a Montana air quality permit that will become effective beginning January 1, 2018. A revised alternative mercury emission limit must meet the requirements of (5), except that the department may not require the owner or operator to install a different boiler technology than is in use or contained in a final air quality permit, or constitute best available control technology, whichever is more stringent, but must not exceed:

(a) 2.8 pounds of mercury per trillion Btu, calculated as a rolling 12-month average, for a mercury-emitting generating unit that combusts lignite; or

(b) 1.2 pounds of mercury per trillion Btu, calculated as a rolling 12-month average, for all other mercury-emitting generating units.

~~(7)~~ (9) ~~If an owner or operator has timely notified the department of failure to comply with (1)(a), files a complete application for an alternative mercury emission limit, and operates and maintains the mercury-emitting generating unit, including any associated air pollution control equipment, in a manner consistent with good air pollution control practices for minimizing mercury emissions, the department may not initiate an enforcement action for violation of (1)(a) between the date when (1)(a) became applicable and the date of the department's decision on the application for an alternative emission limit, if the department establishes an alternative emission limit.~~ No later than ten years after issuance of the permit containing the mercury emission limit, and every ten years thereafter, the owner or operator of a mercury-emitting generating unit, for which the department has established a mercury emission limit under (1)(b) or (8), shall file an application with the department for a Montana air quality permit or a modification of a Montana air quality permit for the mercury-emitting generating unit to establish a revised mercury emission limit. The owner or operator shall submit, as part of the application, the information required in (3)(b)(i) through (iv), a best available control technology analysis for the control of mercury emissions, and a review of the mercury-emitting generating unit's existing

alternative mercury emission limit and the mercury control strategy, including associated mercury emission monitoring and operational data. The department shall establish a revised mercury emission limit in a Montana air quality permit that meets the requirements of (5), except that the department may not require the owner or operator to install a different boiler technology than is in use or contained in a final air quality permit, or constitutes best available control technology whichever is more stringent, but that must not exceed:

(a) 2.8 pounds of mercury per trillion Btu, calculated as a rolling 12-month average, for a mercury-emitting generating unit that combusts lignite; or

(b) 1.2 pounds of mercury per trillion Btu, calculated as a rolling 12-month average, for all other mercury-emitting generating units.

~~(8) If more than one mercury-emitting generating unit is located at a facility, the owner or operator may demonstrate compliance with the requirements of (1)(a) or an alternative emission limit on a facility-wide basis. An owner or operator choosing to demonstrate compliance with this rule on a facility-wide basis shall report the information required in (10) on a facility-wide basis.~~

~~(9)~~ (10) The owner or operator of a mercury-emitting generating unit shall ~~monitor compliance, pursuant to 40 CFR 60.48(a) through 60.52(a) and 40 CFR 75 subpart I, with the mercury emission standard applicable under this rule or any alternative emission limit.~~ comply with the monitoring, recordkeeping, and reporting provisions of 40 CFR Part 75. Any continuous emissions monitors used must be operated in compliance with 40 CFR Part 60, Appendix B.

(10) through (10)(b) remain as proposed, but are renumbered (11) through (11)(b).

(12) If the federal Clean Air Mercury Rule (CAMR), adopted in 70 Fed. Reg. 28606 (May 18, 2005), is declared invalid by a court of competent jurisdiction, the provisions of 40 CFR Part 75 and Part 60, Appendix B, amended by CAMR, as they pertain to monitoring, recordkeeping, and reporting of mercury emissions, remain in effect as incorporated by reference in ARM 17.8.767(1).

RULE II (17.8.772) MERCURY ALLOWANCE ALLOCATIONS UNDER CAP AND TRADE BUDGET (1) Except as provided in (4), the ~~The~~ department shall submit to EPA mercury allowance allocations as described below.

(a) For mercury-emitting generating units for which commercial operation commenced before ~~January 1, 2001~~ October 1, 2006, the department shall submit allowance allocations by ~~October 31~~ November 17, 2006, for the control period years of 2010, 2011, and 2012, and by October 31, 2009, and October 31 of each year thereafter for the fourth control period year after the year of the notification deadline in a format prescribed by EPA and in accordance with (2) and (3).

(b) For mercury-emitting generating units for which commercial operation ~~commenced~~ commences on or after ~~January 1, 2001,~~ October 1, 2006:

(i) ~~the~~ The department shall submit mercury allowance allocations by October 31 of the control period year for which the mercury allowances are allocated.

(ii) Starting with the control period year of 2018, the department shall submit mercury allowance allocations by October 31 of the earliest control period year to be allocated under the schedule set forth in (1)(a) for which the owner(s) or operator(s)

of mercury-emitting generating units that have commenced construction, as defined in ARM 17.8.801, anticipate to be in commercial operation.

~~(c) If the department fails to submit to EPA the mercury allowance allocations in accordance with (1), the allocations of mercury allowances for the applicable control period are the same as for the control period that immediately precedes the applicable control period.~~

~~(2) The mercury allowance shall be calculated by multiplying the applicable numerical limitation below by the maximum (nameplate) heat input value (in MMBtu/hr) for a specific mercury emitting generating unit and multiplying that value by 8760 hours per year to determine an annual allocation value. The calculation result will be rounded to the next whole allowance as appropriate.~~

~~(a) Mercury allowances shall be allocated, pursuant to (1), to the owner or operator of a mercury-emitting generating unit on the following basis:~~

~~(i) For the owner or operator of a mercury-emitting generating unit for which commercial operation commenced before January 1, 2001, and that does not combust lignite, the mercury allocation shall be based on an emission rate equal to 2.4 pounds of mercury per trillion Btu. For the owner or operator of a mercury-emitting generating unit for which commercial operation commenced before January 1, 2001 that combusts lignite, the mercury allocation shall be based on an emission rate equal to 4.7 pounds of mercury per trillion Btu;~~

~~(ii) For the owner or operator of a mercury-emitting generating unit for which commercial operation did not commence before January 1, 2001, the mercury allocation shall be based on an emission rate equal to 1.5 pounds of mercury per trillion Btu as allocations are available, on a first-come, first-served basis, not to exceed the Montana mercury budget.~~

~~(b) Allocations for a particular control period are limited to those mercury-emitting generating units that were, or are anticipated to be, in commercial operation in the year for which the allocations are being made. Allocations for a partial year, or anticipated partial year, shall be prorated. The owner or operator of a mercury-emitting generating unit that did not operate, or that operated less than projected, must surrender excess allowances.~~

~~(c) Allocations may not exceed the Montana mercury budget.~~

~~(3) This rule is not effective after December 31, 2014.~~

(2) The department shall allocate mercury allowances to the owner or operator of a mercury-emitting generating unit holding a Montana air quality permit on the following basis:

(a) For each control period beginning in 2010 and ending in 2017, mercury allowance allocations for mercury-emitting generating units must be calculated as follows:

(i) 24.0 ounces (equivalent to 1.5 pounds) per trillion Btu multiplied by the maximum design heat input per year, for each Montana mercury-emitting generating unit that combusts lignite; or

(ii) 14.4 ounces (equivalent to 0.9 pounds) per trillion Btu multiplied by the maximum design heat input per year, for each Montana mercury-emitting generating unit that does not combust lignite.

(b) For each control period beginning in 2018, mercury allowance allocations for mercury-emitting generating units must be based on an emission rate calculated

as follows: 4,768 (298 pound mercury budget in ounces) divided by the sum of the maximum design heat inputs per year in trillion Btu for each Montana mercury-emitting generating unit in commercial operation for the previous calendar year or that has submitted a request for mercury allowances under (2)(c) for that control period year. The maximum design heat input per year for each Montana mercury-emitting generating unit must be calculated by multiplying the maximum design heat input in trillion Btu per hour by 8,760 hours per year. The department shall determine maximum design heat input for each mercury-emitting generating unit based on information reported to it by the owner or operator of the mercury-emitting generating unit.

(c) The owner or operator of a mercury-emitting generating unit that commences commercial operation on or after October 1, 2006, may submit to the department a request to be allocated mercury allowances, starting with the later of the control period in 2010 or the first control period after the control period in which the mercury-emitting generating unit commences commercial operation. A mercury allowance allocation request must be submitted on or before July 1 of the first control period for which the mercury allowances are requested after the date on which the mercury-emitting generating unit commences commercial operation. If commercial operation is anticipated to commence in the control period year of 2018 or later, upon the commencement of construction, as defined in ARM 17.8.801, the mercury allowance allocation request must be submitted with a schedule for commencement of commercial operation.

(d) The department may not allocate mercury allowances in excess of the Montana mercury trading budget under 40 CFR 60.4140.

(e) Any allowances left unallocated by the department shall be placed into a general account for the State of Montana, as established under 40 CFR 60.4151.

(3) Allocations for a particular control period are limited to those mercury-emitting generating units that were, or are anticipated to be, in commercial operation in the year for which the allocations are being made. Mercury allowance allocations for a partial year, or anticipated partial year, must be prorated. If a request for allowance allocations is submitted upon commencement of construction, based on a schedule for commencement of commercial operation, as defined in ARM 17.8.801, and commercial operation is not commenced as planned, any unused allowances (based on the date upon which commercial operation commences) for that control period year (or prorated year) must be surrendered to the department. The owner or operator of a mercury emitting generating unit who submits a request for allowance allocation upon commencement of construction, based on a schedule for commencement of commercial operation, shall report to the department the actual date of commencement of commercial operation within 30 days after commencement of commercial operation.

(4) The department is not required to submit mercury allowance allocations if the federal Clean Air Mercury Rule (CAMR), adopted in 70 Fed. Reg. 28606 (May 18, 2005), is invalidated by a court of competent jurisdiction.

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

Response to Comments: Comments are divided into broad categories, and, when possible, are responded to as a group.

No Hotspots/Local Deposition in Montana; Mercury is a Global Problem

COMMENT NO. 1: Many commentors stated that reducing, or eliminating, mercury emissions from Montana power plants would have no impact on mercury deposition in the state.

COMMENT NO. 2: A commentor stated that U.S. Environmental Protection Agency (EPA) and Electric Power Research Institute (EPRI) models show that mercury deposition in Montana is virtually entirely due to mercury emissions from outside the U.S.

COMMENT NO. 3: A commentor stated that regulation of mercury from EGUs is unnecessary because electric utility generating units (EGUs) in Montana are such a small part of the global picture.

COMMENT NO. 4: A commentor stated that the board should make a careful policy decision on the proposed rules that leads to achievable goals and is not based on politics or emotions. There is a lot of public concern about mercury, but the science, particularly the science of cause and effect between mercury and emissions, mercury deposition, fish levels, and human exposure is still evolving.

COMMENT NO. 5: A commentor stated that reducing mercury emissions beyond the reductions of EPA's Clean Air Mercury Rule (CAMR) would have no appreciable impact in Montana. The winds in Montana annually carry several hundred tons of mercury across Montana from sources outside of Montana, and about six tons are annually deposited in Montana. Most of this is from sources outside the U.S., which would not be affected by Montana rules.

COMMENT NO. 6: A commentor stated that Montana is not an isolated ecosystem and that what goes on around Montana impacts quality of life in the state. Setting a mercury emissions standard that may render it impossible to construct the Highwood Generating Station would do little, if anything, to shield Montana from the presence of mercury in the environment.

COMMENT NO. 7: A commentor stated that mercury emissions and deposition in the U.S. have been decreasing for many years in the absence of attempts to reduce emissions from power plants and that there is no credible evidence that controlling emissions from power plants will impact global burdens or deposition of mercury.

COMMENT NO. 8: A commentor stated that entirely eliminating Montana power plant mercury emissions would result in virtually no change in the levels of mercury deposition in Montana based on the comparison of mercury deposition scenarios resulting from various emission control strategies, including the existing

condition, CAMR Phase I, CAMR Phase II, and total elimination of mercury emissions from all U.S. power plants.

COMMENT NO. 9: A commentor stated that, based on modeling conducted for CAMR, the average deposition rate in Montana is approximately 90% of the average deposition rate in the U.S. and that Montana is one of four states with the lowest average rate of mercury deposition. Montana also is one of five states with the lowest percentage of mercury estimated to come from emissions by EGUs.

COMMENT NO. 10: A commentor stated that Montana's EGUs account for less than 0.5% of Montana's total statewide mercury deposition and that an evaluation of the impact of the proposed rules on deposition in Montana shows that over 99% of the mercury deposition occurring in Montana without the proposed rules still would occur. Also, approximately ten times more mercury is deposited within Montana than is currently released from Montana's coal-fired EGUs. Therefore, there will be no meaningful reduction of mercury deposition in Montana as a result of the proposed rules, and there will be no measurable net benefit to Montanans. This is because the mercury emitted by Montana's coal-fired EGUs is almost all (over 90%) elemental mercury, which is not deposited in Montana, and because most mercury deposition in Montana is the result of out of state mercury sources. Emissions of reactive gaseous mercury and particle-bound mercury deposit within a few days and, therefore, mostly, will be deposited within a few hundred miles downwind of the source. Particle-bound mercury emissions are not converted to other forms of mercury and will be removed from the ambient air by deposition.

COMMENT NO. 11: A commentor stated that, because roughly half of the mercury emitted globally is in the ionic form, it will be deposited near its source, while the remaining portion of mercury emissions (elemental and particulate) will become part of the global background. Once released into the air, elemental mercury vapor has an average lifetime of about one year. Approximately 98% of elemental mercury emitted by U.S. combustion sources is transported outside of Montana's borders.

COMMENT NO. 12: A commentor stated that the board has not been provided credible evidence supporting speculation that mercury emitted from power plants in Montana or anywhere else in the country will accumulate in hot spots of pollution. The board has not been provided evidence for the existence of hot spots or that there is a consensus definition of hot spots or that the existence of hot spots, should there be any, have anything to do with public health. If mercury hot spots are being created in the simple manner implied by advocacy groups seeking further regulation of power plant emissions, then those hot spots should be readily discernible in states that have greater mercury emissions. In turn, the bodies of water in those states should have more mercury contamination and the fish should show greater concentrations of methyl mercury in their flesh. But, that isn't the case. Fish in Ohio, the state with the third highest volume of mercury power plant emissions (7,109 lbs in 2002) have an average mercury content 12% lower than fish

in California, even though Ohio's power plant mercury emissions are 817 times greater than power plant mercury emissions in California.

COMMENT NO. 13: A commentor stated that there is no basis for concern that restrictions are needed to reduce higher localized concentrations of mercury deposition in a particular water body, resulting from EGUs in Montana. Based on the analysis of ENVIRON, taking into account the eastern location of EGUs in the state, atmospheric chemistry for emissions that are mostly elemental mercury, the prevailing wind patterns, and the modeling studies, hot spots are not a problem in Montana.

COMMENT NO. 14: A commentor stated that the results of the EPA-sponsored Steubenville, Ohio mercury deposition study released to date match almost exactly the deposition predicted by EPA and EPRI models, thereby validating the models' results both for Steubenville and for the rest of the U.S., including Montana, which showed very little deposition.

COMMENT NO. 15: A commentor stated that attempts to reduce man-made mercury emissions in Montana or elsewhere will not measurably improve, or decrease risks to, public health.

COMMENT NO. 16: A commentor stated that there is no evidence that mercury concentrations in Montana's water bodies would change significantly as a result of the proposed rules.

COMMENT NO. 17: A commentor stated that there is no evidence of mercury causing health problems in Montana as a result of consuming fish from Montana or other U.S. water bodies.

COMMENT NO. 18: A commentor stated that virtually none of the mercury deposition in Montana comes from Montana power plants because the mercury emitted in Montana by power plants is almost entirely elemental mercury (greater than 90%), which plays little or no role in in-state deposition. Elemental mercury is very unreactive and tends not to dissolve in water, so it will travel around the globe instead of being deposited locally. Emissions of elemental mercury tend to remain in the atmosphere for about a year, meaning they can travel around the globe many times before being deposited far from the original sources.

COMMENT NO. 19: A commentor stated that, based on the results of mercury deposition modeling EPA conducted for CAMR, most of the elevated mercury deposition is occurring in the western part of the state and the least amount of deposition is occurring in the eastern part of the state, where the EGUs are located.

COMMENT NO. 20: A commentor stated that the board has not been provided any evidence that reducing mercury emissions will reduce mercury in fish in this country or anywhere else in the world.

RESPONSE TO COMMENT NOS. 1 THROUGH 20 IN "NO HOTSPOTS/LOCAL DEPOSITION IN MONTANA; MERCURY IS A GLOBAL PROBLEM" CATEGORY: The board does not dispute that emission levels do not directly equal local deposition levels. However, there is a growing body of evidence indicating that a portion of mercury emissions from an EGU can be deposited locally.

RESPONSE TO COMMENT NO. 4: The board believes that it has been careful in making its decision, that the requirements in these rules are achievable, and that the board's decision is based on the record rather than on politics or emotions. The board agrees that the science of cause and effect between EGU mercury emissions and mercury deposition, levels of mercury in fish, and human exposure is still evolving. However, there is substantial evidence that EGU mercury emissions are deposited on land and in water, that some of this deposition may occur locally, that some of this deposition leads to higher levels of mercury in fish, and that higher levels of mercury in fish pose a threat to public health and to the environment, including fish and wildlife.

RESPONSE TO COMMENT NOS. 15, 17: The board agrees with EPA's finding that a clear link exists between mercury deposition from anthropogenic sources and waterbody contamination. Whether or not a specific causal link has been established by studies in Montana, EPA has concluded public health is adversely affected by mercury ingestion, particularly when humans consume fish from mercury-contaminated waterbodies. Also, there is evidence indicating that consumption of certain fish from Montana and other U.S. water bodies poses a risk to public health and the environment, due to mercury contamination. There are mercury advisories in Montana for consumption of certain fish statewide, and there are separate advisories for specific water bodies in Montana. There also are similar advisories in numerous other states in this country. The largest existing mercury emitting EGU in the state, the Colstrip facility, is located near the Crow and Northern Cheyenne Indian Reservations and the proposed Highwood Generating Station has the potential to impact the Rocky Boys Reservation. A commentor stated that walleye in Big Horn Reservoir, on the Crow Reservation, have the third highest concentration of mercury of any species of fish found in any reservoir nationwide, and commentors noted that some of the people on the reservations depend upon fish consumption. The board agrees that there is no evidence in the record linking consumption of fish with health problems in Montana. However, there is substantial evidence that consumption of fish contaminated with mercury poses a significant risk to public health and the environment in Montana, and these rules will reduce that risk.

RESPONSE TO COMMENT NO. 18: While studies have shown that much of the mercury emissions from EGUs deposited in Montana likely comes from emission sources outside Montana, there are no studies showing that none of the mercury emissions from EGUs in the state are deposited in Montana. Mercury released into the air as elemental, ionic, or particulate mercury and deposited into waterbodies undergoes a process of methlyation, i.e., microorganisms ingest mercury and metabolize it into a more toxic form called methyl mercury. While the precise actions

of the biological processes that convert inorganic and elemental mercury into methyl mercury remain unclear, the conversion of elemental mercury to methyl mercury is not in dispute. So, there is reason to believe that any elemental mercury that is deposited in the state into water bodies or that is deposited onto land and that is washed into water bodies may be converted into methyl mercury. Also, Montanans consume fish from water bodies outside of Montana either through purchasing fish that were caught outside Montana or by traveling to other parts of the country and world and consuming fish there. Mercury emissions from Montana EGUs pose a risk to public health and the environment both inside and outside of the state.

RESPONSE TO COMMENT NO. 20: The level of mercury contamination of fish in any waterbody is directly proportional to the total amount of mercury measured in the waterbody. One may infer that reduction of mercury in a waterbody has a linear relationship to the amount of contamination in fish, to the extent previous bioaccumulation is considered and discounted, and studies in other states support this inference. Reductions in mercury levels in fish in other states have followed regulatory reductions in mercury emissions from industrial sources in those states.

Mercury is a Natural Substance

COMMENT NO. 21: Several commentors stated that mercury is a natural substance.

COMMENT NO. 22: A commentor stated that the board has not been provided with credible evidence supporting speculation that U.S. power plants account for more than one percent of global mercury emissions. Advocates for enhanced regulation of mercury emissions from power plants all ignore the contribution of natural sources of mercury to the atmosphere, notwithstanding the fact that natural sources make up between 50% and 66% of the planet’s mercury pool.

COMMENT NO. 23: A commentor stated that, regarding protection of wildlife, etc., according to a National Park Service web site, in Yellowstone National Park, the Norris and Mammoth thermal basins produce between 205 and 450 pounds of mercury per year.

RESPONSE TO COMMENT NOS. 21 THROUGH 23 IN "MERCURY IS A NATURAL SUBSTANCE" CATEGORY: The board does not dispute that there are natural sources of mercury. However, Dr. Mark Coen, a United States Geological Survey scientist, stated that an ice core study in Wyoming shows that human-caused sources of mercury account for 70% of mercury deposition over the past 100 years. Some of these anthropogenic sources of mercury, including EGUs in Montana, are, and will be, located close to human populations, and, in some cases, may be closer to human populations than the natural sources. As discussed in other portions of this notice, there is substantial evidence that local deposition of mercury emissions occurs so that mercury emissions from EGUs pose a risk to public health

and the environment not only globally but also locally. Also, due to the high toxicity of mercury, the fact that there are natural sources of mercury may create a greater need to reduce anthropogenic sources as much as reasonably possible. Based upon the risk to public health and the environment posed by anthropogenic sources of mercury emissions, EPA concluded, in 2000, that it was appropriate and necessary for every state in this country to require new and modified EGUs to use maximum achievable control technology (MACT) to control mercury emissions, pursuant to Section 112 of the Federal Clean Air Act (FCAA). 65 Federal Register 79,825 (December 20, 2000). While EPA eventually adopted CAMR instead of a MACT standard, CAMR requires Montana to develop a mercury control plan for EGUs. Regardless of the origin of other mercury emissions, the board is required to regulate mercury emissions from EGUs.

Local Deposition and Hot Spots are Issues That Should Be Addressed by the Rules

COMMENT NO. 24: Many commentors stated that local deposition and hot spots of mercury are issues and should be addressed by the rules. A commentor stated that cap-and-trade is based on the assumption that there is no significant local deposition of mercury from coal-fired power plants; however, recent research and case studies show that there are significant local and regional effects. According to Dr. Mark Coen, of the National Oceanic and Atmospheric Administration (NOAA), approximately 46% of mercury emissions from EGUs are reactive gaseous mercury, sometimes called ionic mercury, and particulate mercury. This is a nationwide average, not just in the Steubenville area. These are the emissions of concern for creating hot spots. Cohen modeled deposition of all the different species of mercury under a number of different assumptions and concluded from his modeling that "there can be large local and regional impacts from any given source." In the Steubenville study, they used modeling, starting with the emissions inventory and a knowledge of air chemistry and local meteorological data and local mercury deposition. Then you monitor deposition and the environment and statistically work backwards to identify the sources of that pollutant. They can now use tracer compounds in the mercury deposited to identify the source of the emissions. What they found in the first two years of data collection was that 75% of the mercury wet deposition at the Steubenville site is attributable to local and regional human sources, and two-thirds of the mercury deposited was from coal combustion.

COMMENT NO. 25: A commentor stated that walleye in Big Horn Reservoir, on the Crow reservation, have the third highest concentration of mercury of any species of fish found in any reservoir nationwide by EPA, which tests more than 200 reservoirs. This is a hot spot. We may not have hair samples from people in the southeast part of the state, but, based on the fish studies, we have a mercury problem. Humans absorb 94% to 95% of the methyl mercury in the fish they eat. Some of the people in my community eat fish as part of a subsistence diet, and they cannot afford to buy beef at the IGA. This is not something that is just optional; they cannot elect to just not eat fish for the next 15 years until we get the problem under control.

COMMENT NO. 26: A commentor stated that, in states that have reduced their mercury emissions, mercury levels in fish have dropped significantly. Local and regional control has resulted in local and regional declines in mercury concentrations. Seven years after Massachusetts enacted tough new restrictions on mercury emissions from incinerators, the mercury levels in yellow perch in eight nearby lakes dropped an average of 32%. Farther away from these sources, there also were reductions, but only about half as much. In other words, reductions had even more of an impact locally. Statewide, the drop in mercury concentrations was an average of 15%. There was the same pattern for large-mouth bass; there were significant reductions closer to the sources of mercury emissions, but there also was a statewide drop. The Florida Department of Environmental Protection synthesized monitoring, research, and modeling approaches similar to the study at Steubenville, to address the problem of mercury contamination in Florida's fresh water ecosystems. Since the mid-1980s, mercury emissions from incinerators in south Florida have declined about 99% as a result of pollution prevention and control policies. This has been followed in the last seven years by a 60% decline in mercury in both fish and wildlife. Pennsylvania's Department of Environmental Protection found in an eight-year period that mercury levels were 47% higher in areas closer to coal-fired power plants.

COMMENT NO. 27: A commentor stated that Dr. Krabbenhoft, the project leader for the U.S. Geological Survey (USGS) national mercury project, has stated that an ice core study in Wyoming shows that human-caused sources of mercury account for 70% of mercury deposition over the past 100 years. This is a study in Wyoming, so Yellowstone has not been the major contributor. He also has stated that local mercury emissions do contribute substantially to the local problem and that he is certain that reducing mercury emissions will reduce the contamination of fish in U.S. watersheds. Dr. Krabbenhoft also referenced the Mercury Experiment to Assess Atmospheric Loading in Canada and the U.S. (METAALICUS). The study is a novel approach of tracking stable mercury isotopes through ecosystems. In this study, it was discovered that, from the time mercury is deposited on a lake to the point that methylation occurs and it enters the food chain, takes only about three weeks. So, if deposition to lakes is reduced, there will very quickly be a decrease in the level of mercury in the food chain.

COMMENT NO. 28: A commentor stated that EPA director Stephen Johnson, when questioned about the Steubenville study in January 2006, said that EPA did not have the results back in time for the CAMR rulemaking, but he challenged the states to consider the Steubenville study in rulemaking. So, the latest research and its implications for human health should be considered.

COMMENT NO. 29: A commentor stated that EPA research has proven that mercury is deposited locally and that, since the time EPA adopted CAMR, even more research has confirmed local deposition of mercury. The EPA Inspector General found that EPA's senior management had instructed staff to arrive at a predetermined conclusion favoring the utility industry when they prepared CAMR. The report also found that CAMR would not protect children's health. A Northern

Wisconsin study found "modest changes in acid rain or mercury deposition can significantly affect mercury bioaccumulation over short time scales." A study found as follows that mercury emissions from the Chicago/Gary urban area contributed significantly to mercury levels in Lake Michigan: " . . . the spatial pattern of atmospheric mercury and meteorological cluster modeling results from the Lake Michigan Mass Balance Study clearly indicate that sources in the Chicago/Gary urban area were contributing to enhanced Hg in precipitation and Hg (p) concentrations across the entire Lake Michigan area." While additional research is necessary to confirm that mercury emissions are causing downwind hotspots, until that research is funded and completed, the board should adopt rules that protect the public and wildlife.

RESPONSE TO COMMENT NOS. 24 THROUGH 29 IN "LOCAL DEPOSITION AND HOT SPOTS ARE ISSUES THAT SHOULD BE ADDRESSED BY THE RULES" CATEGORY: The board agrees that the possibility of local deposition of EGU mercury emissions and resulting hot spots of mercury should be addressed in this rulemaking. In its decision in 2000 to list EGUs under Section 112 of the FCAA, which then required EPA to promulgate a MACT standard, EPA stated that: "The EPA . . . recognizes and shares concerns about the local impacts of mercury emissions and any regulatory scheme for mercury that incorporates trading or other approaches that involve economic incentives must be constructed in a way that assures that communities near the sources of emissions are adequately protected." 65 Fed. Reg. 79,830. This rulemaking addresses the risk posed by local deposition and hot spots of mercury by requiring each EGU to install and operate a mercury control strategy. Because emissions from each EGU are addressed and required to be controlled under the rules, any local deposition and possible hotspots would be minimized.

Studies on Local Impacts Needed

COMMENT NO. 30: A couple of commentors stated that studies should be conducted to quantify local impacts of mercury on human and fish populations. A commentor stated that the department should conduct such a study, and another commentor stated that the board should direct the department and the Department of Public Health and Human Services (DPHHS) to initiate a study of mercury levels in Montanans and how these levels relate to distances from power plants in Montana. A commentor stated that studies of the mercury levels in pregnant women and their offspring should be conducted at Colstrip.

RESPONSE TO COMMENT NO. 30: The department is working with the Department of Public Health and Human Services to determine the scope and feasibility of a study to quantify local impacts of mercury. The board will be advised as progress is made.

Health and Environmental Impacts of Mercury Emissions

COMMENT NO. 31: Several commentors stated that the board has not been provided any credible evidence of adverse human health impacts caused by mercury emissions.

COMMENT NO. 32: A commentor stated that the board has not been provided any credible evidence supporting speculation that any women, children, or fetuses have been harmed or have been placed at increased risk of harm as a result of consumption of fish obtained from bodies of water in Montana or other parts of the U.S. For example, advocates of regulation of mercury emissions from utilities cite a link between autism and mercury emissions. If there was, in fact, a causal relationship between mercury emissions and autism, then that relationship should exist throughout the U.S., but it doesn't. Montana is a perfect example. The number of children classified as autistic in Montana increased from 20 in 1992 to 341 by December 2005, a 1,600% increase. But mercury emissions haven't changed significantly. Montana is a rural state with little industry and there is no doubt that coal-fired plants are the single largest source of man-made mercury emissions in the state. There has not been a new power plant built in the state since 1983; and, with some year-to-year fluctuations, overall mercury emissions have remained relatively steady. Montana's coal-fired power plants lie in the eastern third of the state but the highest rates of autism are found in Ravalli, Missoula, and Flathead counties, in far western Montana and clearly upwind of Montana's major man-made mercury sources.

COMMENT NO. 33: A commentor stated that the recent increase in the number of fish advisories in the U.S. is due to an increase in the number of mercury measurements in fish rather than an increase in levels of mercury in fish or in the environment. Increased fish consumption by pregnant women and young children clearly has been associated with improved intelligence and higher mental development scores in children, and increased fish consumption by adults has been associated with a slower cognitive decline. The majority of the Japanese population has mercury levels well in excess of that which is recommended currently by EPA. Also, the blood mercury levels in U.S. women of childbearing age have been shown consistently to fall orders of magnitude below levels considered to be associated with known health effects.

COMMENT NO. 34: A commentor stated that the mercury form of concern is methyl mercury, which is ingested by humans almost exclusively by eating fish. In contrast, the form of mercury emitted by coal-fired power plants is primarily elemental mercury with some in an oxidized state. People breathe in elemental mercury every day; it is omnipresent in the atmosphere but is present in such low concentrations that it has no adverse effect. Also, it has not been shown that human beings are capable of converting elemental mercury into appreciable amounts of methyl mercury within their bodies. Mercury is not appreciably absorbed through the skin, nor is it found in the atmosphere in sufficient quantities to make inhalation of the substance problematic, even downwind of coal-fired EGUs.

COMMENT NO. 35: A commentor stated that the board has not been provided valid, reliable, and generally accepted evidence supporting the speculation that burdens of mercury have increased in the past decade, the past century, or even the past millennium, in fish, in human beings, or in the total environment of Montana, of the United States, or even of the world. Studies of fish and mummies indicate that, if anything, mercury levels either are stable or declining in both fish and human beings.

COMMENT NO. 36: Many commentors stated that power plant mercury emissions are harmful to public health and the environment. A commentor stated that mercury contamination not only exacts a high toll on public health, it also impacts the economy. The Harvard Study, published by the Northeast States for Coordinated Air Use Management (NESCAUM), found that strong mercury controls on coal-fired power plants, similar to those originally suggested by EPA, could save nearly $5 billion annually through reduced neurological and cardiac harm. Also, the costs of lost productivity associated with loss of IQ from methyl mercury exposure to children amounts to $8.7 billion annually. Of this total, $1.3 billion each year is attributable to mercury emissions from U.S. power plants. Mercury from U.S. power plants also accounts for 231 cases of excess mental retardation per year, at a cost of $289 million. Toxic injury to the fetal brain caused by mercury emitted from coal-fired power plants exacts a significant human and economic toll on American children. It can cost about $3.2 million to care for an autistic person over his or her lifetime. Caring for all people with autism over their lifetime costs an estimated $35 billion per year in the U.S.

COMMENT NO. 37: A commentor stated that there seems to be a high incidence of birth abnormalities in southeastern Montana. The board should seriously consider the possibility that they are being caused by mercury emissions from Colstrip and should substantially eliminate mercury emissions.

COMMENT NO. 38: A commentor stated that mercury is a poison and that one teaspoon of mercury will pollute a 1,000-acre body of water so that the fish are inedible. The rules should require the fossil fuel industry to get in step with the other industries that have removed mercury for years. Montana should be a leader and set an example in the field of mercury standards for our nation, for the world, and, more importantly, for our own Montana citizens.

COMMENT NO. 39: A commentor stated that the people of Montana depend upon the judgment and wisdom of the board to protect their health. The board has an opportunity not only to set policy, but to set a precedent that would help other states set policy and allow the U.S. to recapture its role as a leader in the area of human health.

COMMENT NO. 40: A commentor stated that we are leaving our children with a terrible burden -- the burden of environmental toxins, including mercury, which need to be sequestered and placed somewhere where they are not going to continue to be a poison for humans. Mercury has been linked to attention deficit

disorder, hyperactivity, learning disabilities, developmental delays, behavioral problems, and autism, and we have to limit the amount of mercury in our biosphere. Years from now, boards such as this board are going to be trying to figure out how to sequester all of these tons of mercury in our environment, and it makes no sense to add to it.

COMMENT NO. 41: A commentor stated that PPL should be forced to reduce its mercury emissions as soon as possible because somebody is being poisoned as a result of what they are doing. Eight hundred pounds a year of mercury from PPL is not acceptable.

COMMENT NO. 42: A commentor stated that mercury is a potent neurotoxin that harms people and wildlife. It can damage the brain and nervous system. It is especially harmful to children and developing fetuses. Six to 15% of women of childbearing age may be exposed to mercury above a safe level, and there is more data coming out now about the correlation between heart attacks in men and mercury exposure.

COMMENT NO. 43: A commentor stated that 45 states have issued fish consumption advisories for mercury, and that the concentrations and deposition levels are similar in both the east and the west.

COMMENT NO. 44: A commentor stated that the board should adopt strong and predictable emission standards and should not adopt the proposed cap-and-trade provisions. Montana has 420,000 acres of impaired lakes, 1300 miles of impaired streams, and statewide fish advisories for northern pike, lake trout, and walleye. There are additional concerns for aquatic mammals, such as mink and otter. Birds affected by mercury include ducks, geese, and swans, all of which are eaten. Pheasants, grouse, and Hungarian partridge all bio-accumulate mercury and also are eaten. Also, there are birds that are not eaten but that are our "canary in the coal mine" that tell us how our environment is doing, and those include birds such as loons, wading birds, herons, egrets, pelicans, cormorants, gulls, terns, hawks, eagles, and owls. Mercury poisoning of wildlife is insidious; there are no big die-offs, so it is not noticed like impacts to people. There is abnormal egg-laying behavior, impaired reproduction, slow growth of young, tremors, and weakness. Most of the existing problems with mercury in Montana probably are due to historic mining, as well as some natural mercury, but the point is that Montana's wildlife has a mercury problem right now, and we shouldn’t aggravate that problem. A recent EPA study in Ohio found that 70% of the mercury was from nearby coal-burning power plants, meaning that coal plants pollute local landscapes. We do not want to create hot spots in Montana and problems for wildlife. Montana should have a clean environment, and the board should adopt the strongest possible rules.

COMMENT NO. 45: The Chippewa-Cree Tribe commented that it opposes the coal-fired power plant to be located near Great Falls, due to health concerns for the residents of the Rocky Boys Reservation. The wind blows northeast 92% of the time, so that the reservation would be downwind of the proposed power plant from

which mercury will be emitted into the air, fall back to the earth in rain and snow, and accumulate in microorganisms that live in the water and plants eaten by livestock and wild game. There are many streams and dams on the reservation that many of the residents of the reservation fish and hunt for wild game on a regular basis for consumption, and the effects of mercury on men, women, and children are highly documented.

COMMENT NO. 46: The Montana Public Health Association (MPHA) commented that the board should protect the public health of the most vulnerable Montanans, infants and children, by requiring coal-fired power plants to control mercury emissions, with no cap-and-trade. Mercury pollution is a major public health issue. Mercury poisoning has become the lead poisoning of yesteryears. Mercury emissions include extremely toxic substances that, in minute amounts, can chemically contaminate infants' and children's brains. The exposure of a developing child to mercury may well translate into lifelong impacts on brain function. EPA has stated that one in six women of childbearing age have mercury levels that are toxic to the developing fetus. In Montana, this means that as many as 1,822 babies of the 11,045 born each year are at risk for developmental problems due to mercury exposure while in the womb. This will negatively affect our children's educational achievement, economic performance, and income. If only 10% of these 1,822 babies born each year need special education, at a cost of an average of $5,900 per year, the cost for Montana would be $12,900,000 per year, according to one estimate. The Center for Children's Health and the Environment at the Mt. Sinai School of Medicine concluded that exposure to mercury causes lifelong loss of intelligence in hundreds of American babies born each year and that this loss of intelligence exacts a significant economic cost to American society; a cost that is estimated to be in the hundreds of millions of dollars each year. In a study conducted by the Northeast States for Coordinated Air Use Management, in collaboration with the Harvard School of Public Health, the participants quantified how decreasing mercury emissions from coal-fired power plants would result in less mercury exposure and, consequently, I.Q. point gains for the population of children born each year. According to this study, a 70% decrease in coal-fired power plant mercury emissions by 2018 would result in benefits to society of between $119 million and $288 million every year. There is an economic benefit to decreasing mercury emissions. A PPL representative says that the proposed plans to protect our infants and children from mercury emissions will hurt Montana power plants. Last year, four of these power plants netted over $1 billion. Installation of equipment to control mercury emissions from these plants is estimated to cost about $4 million. It is obvious PPL's interests are in corporate profits and not in the welfare of Montanans. The membership of MPHA is counting on the board to require Montana's coal-fired plants to control mercury emissions, with no cap-and-trade, and protect public health.

COMMENT NO. 47: A commentor stated that the National Education Association has stated that, to reduce the prevalence of mercury contamination as a factor in learning disabilities, we need to reduce mercury in fish and the only way to do this is to reduce the amount of mercury released into our environment. Because

coal-fired power plants are our nation's biggest mercury emitters, we cannot solve this problem without reducing mercury emissions from these facilities. Our children and grandchildren are going to inherit our world. We should take precautions and not leave the poison. People need to take responsibility and clean up after themselves.

COMMENT NO. 48: A commentor stated that mercury is an extremely dangerous neurotoxin that can cause autism, ADD, cardiac disease, especially for men, hearing impairment, and death. Because it is so dangerous to humans and animals, regulation should not be put off until a later date; it should begin immediately. The rules should be strict and provide for inspections, strong enforcement, and penalties for infractions and should not allow buying and selling of pollution credits. The technology exists to meet the standards. The expense is probably higher to start with, but, compared with the profits the companies have been making and the improved health of the state, this is a minor consideration.

COMMENT NO. 49: A commentor stated that, according to the United Nations Environmental Program, 70% of worldwide mercury emissions now are caused by human activity, and coal plants are the largest single source of man-made mercury contaminating our environment, accounting for about 48 tons of mercury in 1999, the last year it was measured. Coal plants are poisoning our planet and they need to be regulated. Mercury poisoning of fetal cells during embryological and fetal development, passed through from the mother, prevents normal neurological development, creating a lifelong deficit. The Harvard Center for Risk Analysis calculates between .5 and 1 point I.Q. loss per one part per million of mercury in the hair samples of women, which is why mercury is so devastating to children. The National Academy of Science has stated that neurological change to children exposed to mercury will result in increased numbers of children requiring special education and remedial classes and that mercury exposure may also continue in infants through contaminated breast milk. At the University of Texas, Dr. Claudia Miller reported a 17% increase in the rate of autism and a 43% increase in special education services for every thousand pounds of environmentally released mercury. Mercury also has an adverse impact on the immune system in people of all ages. At high concentrations, neurological damage can occur in people of all ages exposed to mercury. While there has been much discussion of methyl mercury from consumption of fish, mercury also is a toxin as a metal and as a salt, which is where the expression "mad as a hatter" comes from -- mercury salts used in the 1800s in making felt hats. If we fail to control mercury, we are going to have another syndrome in the 21st century, and it is going to be "mad as a mother."

COMMENT NO. 50: A commentor stated that, in a Finnish study, 1871 men were followed over an average duration of 13.9 years. Through linear regression analysis and other complex, but well-accepted, mathematical and statistical methods, the study found that a person in the top third of hair mercury content was 1.7 times more likely to have cardiovascular disease, 1.6 times more likely to die of a heart attack, and 1.4 times more likely for all-cause death. This is not cause and effect; it is an association, but these numbers, 1.6 to 1.4, are high numbers for

medical research. Regarding statements that there is no credible evidence, a certain cause and effect relationship cannot be established without exposing real people to mercury and determining the outcome, and this will not be done. However, the information about mercury toxicity is reminiscent of the path the medical community took concerning smoking 50 years ago, and we are losing 440,000 Americans per year from smoking.

COMMENT NO. 51: A commentor stated that the medical literature is full of studies of the potential impacts of mercury exposure, both prenatal exposure and effects in adults, particularly cardiovascular effects in men. From this body of data, it can be inferred that there are men, women, and children in Montana right now who are being affected by mercury exposure. Children are being affected simply because their mothers ate fish while they were pregnant, and these children are being born with an unnecessary disadvantage that will affect them throughout their lives. It is not correct that what the board does will not affect local impacts. For the board, what is relevant are Montana emissions, because that is what the board can work on today, and reducing emissions here in Montana will be effective in affecting public health. About 12 years ago, the Florida health department issued fish consumption advisories for the Everglades because the levels of mercury in fish were so high, and they banned certain types of fish. They made extensive efforts over the last 12 years to reduce local sources of mercury, particularly mercury from incinerators, and they reduced mercury emissions by 99%. When they retested the fish and wildlife, there were 60% and 70% lower levels of mercury in the tissues of those fish just ten to 12 years after reducing emissions. So, local mercury emission control can lower the effects in fish and wildlife here in Montana. We cannot wait 12 to 15 years for these rules to take effect because, by that time, we could have an effect. We are already decades late in imposing rules to correct the problem that we have today.

COMMENT NO. 52: A commentor stated that toxins in the environment, including mercury, may be a trigger in developing autism in children. Autism used to be considered a rare disorder, affecting 1 in 15,000 children, then it increased to 1 in 5,000, 1 in 1,000, and, now, 1 in 166. So, the cause has to be something within our environment because we know it is not strictly genetic. A genetic predisposition may exist, but there is an environmental trigger that is causing these children to develop this lifelong developmental disability.

COMMENT NO. 53: A commentor stated that public health studies indicate that mercury and methyl mercury are public health threats and that the data on the public health impacts of mercury are overwhelming. Eight percent of women in the U.S. have concentrations of mercury in their blood at concentrations higher than EPA considers safe, placing more than 600,000 newborns at risk each year. Mercury readily crosses the placenta and newborns have higher levels of mercury in their system than their mothers. Prenatal mercury exposure is correlated with lower scores in neurodevelopmental screening, especially for the linguistic pathway. A study of methyl mercury poisoning in Iraq found that mercury readily passes from mother to fetus and later can pass to an infant through a mother's milk. Some

children demonstrated gross impairment of motor and mental development. The neurotoxic effects from exposure to mercury in the womb are irreversible. Mercury poisoning has led to hypertension in children. Fetal exposure to methyl mercury is associated with cardiac abnormalities in children. Mercury interferes with development of the central nervous system, particularly in the prenatal stage. Chronic exposure to mercury can lead to visual impairments, hearing deficits, and motor and mental disturbances. The National Academy of Science concluded that the neurological damage to children exposed to consumption of fish contaminated with mercury, during their mother's pregnancy, will result in an increase in the number of children who have to struggle to keep up in school and who might require remedial classes or special education. Mercury has profound, toxic effects upon the immune system as it inhibits most lymphocyte functions that are essential to a functioning immune system. Mercury has also been linked to an increase in allergic reactions.

COMMENT NO. 54: A commentor stated that the board should adopt the board's proposed rules, which are a good first step toward safeguarding our air from emissions from coal-fired power plants. The board rules would balance power generation with environmental protection and ensure safe development of the largest known coal reserves in the world. Montana must not be taken advantage of by allowing the pollution to stay here while the electricity moves out of state. More stringent standards than those of EPA would benefit the health of Montanans and the environment. The board should not accept the EPA standards, which science shows will harm us.

RESPONSE TO COMMENT NOS. 31 THROUGH 54 IN "HEALTH AND ENVIRONMENTAL IMPACTS OF MERCURY EMISSIONS" CATEGORY: The comments emphasizing the risks to public health and the environment posed by mercury are based on information and studies similar to the body of information cited by EPA in concluding in 2000 that it was appropriate and necessary to list EGUs under Section 112 of the FCAA, thereby requiring use of MACT by new and modified EGUs. In its final decision to promulgate CAMR instead of a MACT standard, EPA also relied on similar information related to the toxicity of mercury and the risk to public health and the environment. The board concurs with EPA that mercury is a hazardous air pollutant, that it is emitted from EGUs, and that these emissions need to be regulated to reduce the risks to public health and the environment. However, EPA's cap-and-trade rule, alone, would not sufficiently reduce mercury emissions in Montana. The rules being amended and adopted by the board would reduce mercury emissions from existing as well as new and modified EGUs, would require greater emission reductions in Montana than would be required under EPA's model cap-and-trade rule alone, and would reduce the potential for local deposition, thereby responding more appropriately to the risk to public health and the environment identified by EPA and by numerous commentors in this rulemaking proceeding.

RESPONSE TO COMMENT NO. 34: While people may breathe in low concentrations of elemental mercury every day, mercury may not be absorbed

through the skin, and methylation may not occur within the human body, as discussed above, elemental mercury, like other forms of mercury, can be converted into methyl mercury through deposition into water bodies, including water bodies that contain fish that are consumed by other fish, wildlife, and humans.

RESPONSE TO COMMENT NO. 40: Mercury removed from EGU emission streams, pursuant to the rules being amended and adopted by the board, will be disposed of in a manner consistent with the continued protection of human health and the environment.

RESPONSE TO COMMENT NO. 48: The amendments and new rules adopted by the board in this proceeding will be effective the day after publication in the Montana Administrative Register. The emission limits and emission control requirements of the rules will not apply to an EGU until 2010, or upon commencement of commercial operation, whichever is later. However, the board's existing rules already require best available control technology for all new or modified facilities for which a Montana air quality permit is required. The 2010 date is intended to allow a reasonable time for facilities to develop and submit to the department for its approval specific additional mercury control strategies that may not be currently required for a new or modified facility under a BACT analysis or that are not currently required for existing facilities. Existing Montana statutes and rules provide for inspections of regulated facilities and provide civil and criminal penalties for noncompliance with air quality requirements. The new rules will allow emission credit trading, under which an owner or operator who does not hold sufficient allowances to operate will be allowed to purchase emission credits. However, the rules will not allow an owner or operator to use emission credits to exceed an applicable emission limit, thereby ensuring actual emission reductions in Montana and protecting against local deposition and hot spots.

For Adoption of CAMR and/or Emissions Trading

COMMENT NO. 55: Many commentors stated that CAMR will protect Montana, that the board should adopt a cap-and-trade program, that the board does not have evidence that the proposed rules would benefit public health or the environment, that the proposed rules would not change mercury deposition in Montana, and/or that the proposed rules would not have a measurable effect in Montana beyond the reductions achieved under CAMR.

COMMENT NO. 56: A commentor stated that EPA promulgated CAMR because every EGU cannot achieve the same emission reductions by 2014.

COMMENT NO. 57: A commentor stated that the U.S. contribution to global mercury emissions is about three percent, that one-third of those emissions come from U.S. power plants, and that U.S. power plants emit one percent of global mercury emissions. Under CAMR, mercury emissions will continue to drop significantly, and a full cap-and-trade program will ensure that U.S. mercury emissions continue to decline.

COMMENT NO. 58: A commentor stated that the rules should be based on science rather than emotion. On July 5, 2006, in Pediatric Magazine, McGill University released news of a study that dismissed the existence of a link between mercury-based immunizations and autism. It would be a mistake for the board to base its decision on a link that does not exist, and the board should adopt CAMR rather than the proposed rules.

COMMENT NO. 59: The board received two petitions to the governor, the department, and the board, signed by residents of Sidney and the Colstrip area, requesting that the board adopt CAMR and not adopt any further restrictions.

COMMENT NO. 60: A commentor stated that the board should not adopt rules more stringent than CAMR without published quantitative evidence that there would be a benefit from more stringent rules. It will take a huge effort for energy companies just to meet the requirements of CAMR, and it would be impossible for them to meet more stringent requirements.

COMMENT NO. 61: A commentor stated that 92% of mercury emissions in the U.S. comes from other countries, and only 1% comes from coal-fired power plants. Due to high natural gas prices and high costs for all energy, it makes sense to use coal to produce electricity. Montana has 120 billion tons of coal reserves, which is more than any other state. To allow use that coal, the board should adopt CAMR.

COMMENT NO. 62: A commentor stated that CAMR is appropriate for Montana and that the proposed rules will impose substantial additional costs to Montanans, in general, and to the Colstrip facility in particular.

COMMENT NO. 63: A commentor stated the federal government has taken the best available research to date and adopted stringent guidelines and an implementation schedule in CAMR, based on the best available information. Ongoing research is being conducted on mercury, as evidenced by the Department of Energy's (DOE's) June 2004 request for proposals for assistance in conducting research on mercury control and mercury measurements. We do not have all the answers yet. I currently have more mercury emissions in my body from the three fillings that I have in my head than OSHA standards allow. The tox facts web site addresses the mercury exposure pathways, which include eating fish or shellfish contaminated with methyl mercury, breathing emissions from spills, incinerators, and industries that burn mercury-containing fuels, dental work, medical treatments, breathing contaminated workplace air, skin contact during use in the workplace, exposure to chemical industries and other industries that use mercury, as well as practicing rituals that include mercury. The Montana Department of Fish, Wildlife and Parks' 2000 Montana fish consumption advisory states that contaminant levels, primarily levels of mercury and PCBs, found in Montana's fish were low and are considered a hazard only if consumed very frequently. There have not been any known cases of illnesses from eating fish caught in Montana. Mercury is widespread

in the environment and can be found in low concentrations in most soils and rocks. These naturally occurring deposits are the most probable cause for elevated levels of mercury in fish in Montana. If we are concerned about local deposition, then why are we not testing the people who have lived near, and worked at, a coal-powered generation facility, like the Colstrip facility, the last 20 years? Montana should not be among the 20% of the states with requirements that are more stringent than the federal regulations. We should be among the 80% of the states with requirements that are consistent with federal regulations. Montana needs the federal cap-and-trade program, and it is appropriate for Montana.

COMMENT NO. 64: A commentor stated that mercury problems are worldwide and are coming into Montana, whether we want them or not, and 1% of mercury emissions worldwide comes from coal-fired power plants, making the amount of Montana emissions small. This amount becomes minute after reductions of 70% under CAMR. The difference between 70% and 90% reduction is not that great. The federal government went through a great number of studies to come up with its number, and I feel more comfortable with that than I do with the 90% control the board is proposing, because I do not know what is behind that number. We still are going to be subject to generation in surrounding states that will compete with Montana. We are not going to be competitive if we are at 90% and they are at 70%. We have a large amount of coal deposits, and we have great energy opportunities. We all want the coal developed, and we all want environmental conditions as good as possible. It is up to the board to come up with a middle ground so that we can have the development we need as well as the clean air, keep our kids at home, keep the jobs, and keep the wage scale high. Energy development speaks to all of that.

COMMENT NO. 65: A commentor stated that Montana, more and more, is being relegated by special interests to a playground status for a few privileged outsiders. Montana is being set up to export all of our resources, including our kids, to benefit either east coast or west coast economies or a world market. The board should adopt mercury rules based on science and guaranteed emission standards. Currently, many manufacturers are willing to guarantee 1.5 TBtu, and that should be the immediate standard until industry is capable of guaranteeing greater reductions.

COMMENT NO. 66: A commentor stated that rules beyond CAMR would be costly, difficult to implement, and would not result in a coordinated federal program.

COMMENT NO. 67: A member of the Montana legislature commented that the proposed rules were rejected during the 2005 legislative session and that the board should adopt CAMR. If additional requirements are needed, they should be introduced as legislation and discussed, debated and voted on by the legislators selected by the people to make these types of decisions.

COMMENT NO. 68: A commentor stated that the federal program has as its goal to allocate 298 lbs of mercury to Montana facilities by 2018, with the caveat of trading emissions. With a few caveats, the proposed rules attempt to achieve this same goal but are overly prescriptive. There does not appear to be a clear rationale

justifying the complications of the proposed regulatory program or the uncertainties and substantial costs being imposed on the regulated community.

COMMENT NO. 69: A commentor stated that CAMR is the preferred approach to reducing mercury emissions, based on its emission limits, the timeframe within which to achieve those limits, and the flexibility of trading emission allowances should the limits be difficult to achieve.

COMMENT NO. 70: A commentor stated that unrestricted participation in the proposed national cap-and-trade program is necessary for the proposed rules to work to 2018 and beyond. The emission standard for existing units that will be required by the Montana mercury budget is very low, and cannot be achieved using current technology. As a result, the state must provide EGUs with a compliance safety valve – the ability to fully participate in the national cap-and-trade program established by EPA in CAMR by purchasing mercury allowances on the national market to address the insufficiency of allowances available in Montana. Without the ability to purchase needed allowances on the national market, investors in new projects will not build in Montana.

COMMENT NO. 71: Great Northern Power Development, LP ("Great Northern") commented that it has spent over $6 million on the Nelson Creek Power Project and would like to be able to continue making a substantial investment in Montana through the development of this project. When Great Northern commenced planning and development for the project, there was no proposed mercury rule. As a result of the petition to the board to adopt a mercury rule, and subsequent board action, Great Northern has had to reconsider the economics of developing a power plant at the site. Without a cap-and-trade program, there are insufficient allowances allocated to Montana to allow construction of any new facilities either not currently permitted or in the permit process. If the proposed rules do not provide for a cap-and-trade program, the Great Northern Nelson Creek Power Project is dead; therefore, the board should provide for full participation in the federal cap-and-trade program.

COMMENT NO. 72: Montana-Dakota Utilities Company (MDU) commented that the board should adopt CAMR. The MDU Lewis and Clark station has a similar configuration to the Colstrip plant, with a wet particulate scrubber. Controlling such a facility is fairly difficult. Eighty percent control could be possible, but anything over that would involve a significant rebuild of the facility. Minnesota, which is a noncoal producing state, recently implemented an emissions control law that is more stringent than CAMR. However, that law requires a plant-specific technology selection and a review by the Public Utilities Commission to determine whether the costs are justifiable. Specific technology selection is important, and MDU is opposed to any firm limits. Firm limits can really put companies in a box; there needs to be a fallback position. An achievable technology selection process would be more justifiable. Neighboring coal-producing states, Wyoming and North Dakota, plan to adopt CAMR.

COMMENT NO. 73: PPL-Montana commented that, because of the uncertainties related to control technologies and what Colstrip can accomplish and the variability of mercury in the coal, trading would be required to ensure that PPL can meet the proposed limits, not only to 2018, but also beyond that date because of the very high level of control required and the unknowns in meeting that high percent removal. Trading would allow Colstrip to manage technology variables as Colstrip strives for compliance with the limits.

COMMENT NO. 74: A commentor stated that there is a long history of emissions trading providing environmental and economic gains. Experience over the past decade has shown that a well-designed and well-implemented cap-and-trade program can achieve air emissions targets at lower costs than the traditional command and control approach. It provides an opportunity to achieve cheaper and more environmentally secure environmental regulations. It provides incentives for different kinds of facilities to, as a group, apply the least-cost way of achieving a different target. So the trading mechanism allows both buyers and sellers to gain. In some cases, they are sharing the gains in the trade and reducing the overall costs of meeting the program. The government does not have to determine which is the low-cost option and which is the high-cost option. All of the facilities have an incentive to understand what their costs are and to participate in the trading program.

COMMENT NO. 75: A commentor stated that mercury emissions are well-suited for a national emissions trading program because the information suggests that emissions are important over a broad area. That means that the emissions traded are equivalent in terms of environmental impact. Also, trading works where there are large differences in the cost of control. If there is not much difference in the cost of control, there is not much gain in trading. Most of the evidence about mercury suggests that there is a lot of difference in the cost of controlling mercury across different sources, so that the gains from trading would be substantial. Trading is a major advantage when there is a lot of uncertainty about costs. If a facility is not quite sure what the costs are, trading provides the flexibility to avoid a situation where the facility needs to meet a particular control requirement regardless of cost. If the cost turns out to be much more expensive, trading provides the option of purchasing allowances rather than engaging in something that is expensive. The price on allowances provides incentives for low-emission technologies. There is no incentive for a facility to go below its emission limit unless there is an emissions trading program.

COMMENT NO. 76: A commentor stated that, from an economic and environmental perspective, Montana would be better off if its plants are able to take advantage of emissions trading. Studies have shown that overall costs of a program are reduced by about 50% with emissions trading across sources and across time, with the possibility of banking, which results in additional cost savings. Trading also has spurred the development of new technologies, which is important for mercury. Full interstate trading, including provisions for buying and selling, is likely to result in significant cost savings in Montana, and banking provisions would result in earlier

emission reductions. Requiring that pollution control investments be made in Montana would increase the cost without achieving any environmental benefit.

COMMENT NO. 77: A commentor stated that the problem with restricting trading to Montana is that, with a relatively small number of facilities to trade with, the cost-saving advantages of trading are not present. If every state did that, there would not be 40% to 50% cost savings, and the program would be much more expensive. Preventing facilities from taking advantage of lower cost control options outside the state would be a waste of money.

COMMENT NO. 78: A commentor stated that NERA's analysis suggests that it would be cost-effective for the Corette plant to reduce mercury emissions by approximately 75% from current levels if Corette is allowed to fully participate in the CAMR trading program, under the allowance price predicted by EPA. These reductions would be achieved by 2015, with approximately a 55% reduction relative to current levels in the period 2010 to 2015. Under the proposed Montana rules, a reduction of approximately 89% would be necessary. NERA's results show that this additional 14% reduction would cost approximately 66% more per pound than the first 75% of reduction achieved, with $18,000 per pound under the cap-and-trade program, compared to $30,000 per pound under the Montana rules. Not only are substantial reductions in Montana mercury emissions likely if interstate trading is allowed as under CAMR, but these reductions would be much less costly on average than the additional 14% required under the proposed Montana rules. Allowing interstate trading for the Corette facility would result in a significantly more cost-effective regulatory solution for mercury emissions in Montana.

COMMENT NO. 79: A commentor stated that, based on allowance price projections by EPA and information from URS Corporation on the cost of controls, the Colstrip facility is expected to make substantial mercury emission reductions under CAMR. In the early years of the program, it is expected to be the net seller of allowances. In the later years of the program, beginning in 2015, Colstrip is expected to be a net buyer of allowances. Under CAMR, emissions from Colstrip are projected to be reduced by about 73% from baseline levels in the early years of 2010 through 2014 and by about 77% in the later years, beginning in 2015. The proposed Montana rules would reduce emissions from Colstrip by about 10% more than under CAMR in the early years and by only about 6% in the later years. There would be no difference in national mercury emissions between the proposed Montana rules and the national cap-and-trade program because of the national cap. Cost savings at Colstrip from participating in interstate trading are expected to be high because interstate trading avoids the need to install very expensive controls to achieve the last few pounds of emission reductions beyond reductions achieved by more cost-effective technology. These last pounds require technology that is estimated to cost more than $100,000 per pound, in contrast to a projected allowance price of less than $50,000 per pound.

COMMENT NO. 80: A commentor stated that mercury control comes in a variety of different shapes and is rapidly developing. Tremendous progress has

been made by a number of companies over the years, so it is a challenge for the board, as policymaker, to develop policy at the same time the technology is developing. Progress has been made, and a great deal of investment has been made in control technology, resulting in better performance and lower cost. It is regulations that drive investment and commercial competition for lower costs. Because of the Clean Air Interstate Rule (CAIR), there have been significant advances in technology so that we are likely to get much more mercury removed than initially anticipated. In a trading program, the credits will be readily available and relatively inexpensive because of improvements in the technology. Unfortunately, those improvements do not apply to western coals because the chemistry is not right.

COMMENT NO. 81: A commentor stated that the rules should not forestall future energy development in Montana, so at least a limited cap-and-trade component that allocates mercury allowances in an equitable manner to existing facilities and new development should be included as a safety valve. Any left over allowances that are not allocated should be available to new development on a first-come first-served basis, but, the department could not allocate allowances in excess of Montana's budget.

COMMENT NO. 82: A commentor stated that emission trading programs can encourage additional emission reductions and earlier compliance with emission standards. However, this happens only if the trading program is paired with an underlying regulatory structure that establishes appropriate emission limits. Without that underlying regulatory structure, emission trading programs only allow old, dirty plants to stay that way.

COMMENT NO. 83: A commentor stated that adopting the proposed rules would conflict with any Montana option for developing and implementing a Montana-specific mercury emission cap-and-trade program.

COMMENT NO. 84: A commentor stated that the feasibility of meeting the extremely stringent requirements of the rules has not been demonstrated and that it is not clear that the rules would provide any benefits beyond the reductions of CAMR. However, the costs of the Montana rules could be significant in terms of the lost potential for establishment of future coal-fired power generation within the state, which is likely to shift to other states that have adopted the technologically and economically feasible CAMR standards without additional constraints.

COMMENT NO. 85: A commentor stated that ENVIRON used EPA's Community Multi-Scale Air Quality (CMAQ) model to evaluate the impacts in Montana of reductions in mercury emissions from Montana's EGUs. Additionally, ENVIRON made the most conservative assumptions in preparing the model, including assuming that the Colstrip plant, which accounts for a large majority of mercury emissions in the state, would not make any reductions under CAMR but would, instead, purchase allowances as its sole means of compliance. As discussed in the National Economic Research Associates (NERA) report, based on projected

allowance prices and control costs, it is expected that Colstrip ultimately will make substantial mercury reductions under CAMR, so that the impact of the additional restrictions in the Montana proposal would be substantially less than ENVIRON shows in its modeling. The results of ENVIRON's modeling show the proposed 90% capture mandate would achieve, at most, no more than a 0.25% reduction of total mass deposition across the state.

COMMENT NO. 86: A commentor stated that, if there are requirements for control technology and emission limits on all EGUs in addition to cap-and-trade, cap-and-trade would not detract from the protection offered by the emission limits.

COMMENT NO. 87: A commentor stated that the rules should not include banking but should include limited trading and coordinated multi-pollutant controls.

RESPONSE TO COMMENT NOS. 55 THROUGH 87 IN "FOR ADOPTION OF CAMR AND/OR EMISSIONS TRADING" CATEGORY: EPA's CAMR requires that each state, in which an EGU is located, and each tribe having regulatory authority over an EGU, must adopt a mercury control plan. CAMR does not require adoption of EPA's model cap-and-trade rule, but, rather, offers the model rule as an approvable option. The board has determined that, considering economic and technological feasibility, the most appropriate rule for Montana would include the federal cap-and-trade program but would also require all EGUs in Montana to control mercury emissions and to meet stringent emission limits. This approach provides the benefits of cap-and-trade, including incentives for EGUs to further reduce emissions and the ability to allow for future development, but avoids the negative aspects of EPA's model rule, including allowing dirty plants to stay dirty and providing a substantial allowance advantage to existing sources and penalizing new ones. EPA's model emission trading rule includes an allocation scheme under which 95% of mercury emission allowances would be allocated to existing EGUs from 2010 to 2017, and 97% would be allocated to existing EGUs in 2018 and beyond, leaving only 5% and 3%, respectively, of a state's allowances for new generation. The allocations in the final mercury rule allocate allowances at 0.9 lb/TBtu for nonlignite combustion and 1.5 lb/TBtu for lignite combustion regardless of existing or new status, allocated up to the 754 lb Montana allocation budget from 2010-2017. Starting in 2018, the 298 lb Montana allocation budget would be divided up by total maximum design heat input, which would also not discriminate between existing and new sources. The Montana allocation system is much more accommodating to new generation than the EPA model rule.

RESPONSE TO COMMENT NO. 67: That a bill that would have required mercury control failed before the Legislature is not material to the board's consideration of this rulemaking. The Legislature did not prohibit the board from initiating rulemaking in this matter, and, in fact, some members of the Legislature agreed to delay action to await the outcome of the federal rulemaking process. This rulemaking is in response to the mandate in CAMR for Montana to submit a mercury control plan. Pursuant to the Clean Air Act of Montana, the Legislature charged the board with promulgating rules to set emission limits for air pollutants, which includes

hazardous air pollutants, and the Legislature required the board to conduct a public hearing and consider public comments, pursuant to the Montana Administrative Procedure Act, prior to adopting a rule to implement the act. The Legislature established this regulatory scheme because the board is presumed to possess particular knowledge, skills, and abilities attendant to assessing the impacts associated with environmental regulation and to provide for a public participation process in which proposed rules can be discussed, debated, and voted on by the board members, who have been selected particularly to make environmental regulation.

CAMR Does Not Preclude Adoption of More Stringent State Rules

COMMENT NO. 88: A commentor stated that CAMR does not require Montana to participate in the federal cap-and-trade program. Under CAMR, states may choose to not participate in the optional cap-and-trade program and obtain equivalent emission reductions from other means. Also, states may incorporate a mechanism to implement more stringent controls at the state level with their allowance allocation methodology. States also have the flexibility to not participate in the trading program or require more stringent mercury emission reductions. States that do not participate in the trading program can establish their own methodology for meeting state mercury budgets by obtaining reductions from affected utility units. Moreover, states remain authorized to require emission reductions beyond those required by the state budget, and nothing in CAMR precludes the states from requiring stricter controls and still being eligible to participate in the mercury emission trading program. Other states are implementing stricter standards than CAMR with and without the trading aspect.

RESPONSE TO COMMENT NO. 88: The board agrees with this general interpretation and has included in the final rules requirements for mercury emissions control in addition to a cap-and-trade program. The cap and trade program included in the final rules incorporates a different allocation scheme and timing schedule than is offered under EPA's model rule, but that is more appropriate given the overall mercury control plan finalized by the board.

Against CAMR and/or Emissions Trading

COMMENT NO. 89: Many commentors stated that emissions trading is not appropriate for toxic pollutants or neurotoxins, such as mercury.

COMMENT NO. 90: A commentor stated that cap-and-trade is a bad idea for something as hazardous as mercury, and it is almost a moral obligation to use the best available control technology. The public pays the cost of having mercury in our systems, and it is going to be the public that pays the cost of getting it out or reducing it, which is appropriate. We recognize that our resources are here and they should be wisely used. We understand the desire to have more independence in this country for our energy needs. But, the degree the public will accept more coal

development in the state will hinge directly on the degree to which we believe our health and safety are being protected.

COMMENT NO. 91: A commentor stated that there is a moral and medical responsibility to be as diligent as humanly possible to put into effect rules that not only protect the citizens of Montana from the electric gluttony of our nation, but that ensure our neighbors do not suffer from shortsightedness on our part. The proposed rules are inadequate in intent and substance. The lag time for implementation is far too long. The hazards are known, the technology exists, and the concern for animals and human health is real and present. The board has a responsibility to implement its mission with incredible due diligence, and the cap-and-trade and implementation proposals do not accomplish this. We have the right and the ability to minimize the impact of large-scale coal development on human health and safety for generations, and we have a responsibility to exercise that to our fullest ability.

COMMENT NO. 92: A commentor stated that the board should require all plants to have a department-approved plan for limiting emissions to 0.9 lb/TBtu by 2010 but that the board should not adopt a cap-and-trade program. Delaying mandatory reductions would postpone an essential and unavoidable step toward a solution, while compounding negative health impacts. Rather than postponing compliance by investing in other states' cleaner air by purchasing credits, that money should be invested in emission control technology in Montana. Allowing plants to buy pollution from a cleaner state, in lieu of implementing more stringent controls, needlessly puts Montana communities at risk.

COMMENT NO. 93: A commentor stated that cap-and-trade is inappropriate for toxic pollutants like mercury that may create hot spots, and cap-and-trade would only transfer or aggravate pollution at another site.

COMMENT NO. 94: A commentor stated that mercury pollution is a local, national, and global problem. Reducing mercury pollution on the state level may encourage other states to do the same.

COMMENT NO. 95: A commentor stated that the board should adopt more stringent mercury standards than the standards in CAMR.

COMMENT NO. 96: A commentor stated that, because CAMR does not address localized impacts of mercury emissions or apply any specific limits on emissions from individual facilities, CAMR does not sufficiently protect Montana from exposure to mercury hot spots. To reduce localized exposure to mercury, the rules should require that all EGUs have equipment installed that can control mercury. The rules also must set reasonably achievable emission limits for all facilities.

COMMENT NO. 97: A commentor stated that, to diminish the burden of disease in current and future generations of Montanans, to mitigate financial hardship on our local taxpayers, and to provide an example of proper ethical

behavior, we owe it to our grandchildren to control mercury emissions as much as possible.

COMMENT NO. 98: A commentor stated that Montana has a history of outsiders extracting our resources and leaving a damaged environment behind. Now, we have an opportunity to require them to keep our state as uncontaminated as possible.

COMMENT NO. 99: A commentor stated that, if the board adopts a cap-and-trade provision, industry should be required to post bonds for, and be absolutely liable to, any person who suffers from any malady where mercury is directly or indirectly involved. Further, the board should provide that, if a financial cap is placed on damages, any right to trade becomes void from inception.

COMMENT NO. 100: A commentor stated that cap-and-trade regarding mercury emissions is unethical and morally unconscionable. It is morally wrong to inflict such a widespread and long-lasting health hazard on human and animal lives for generations to come. Mercury is a toxin that has a cumulative effect within our bodies and has the capacity to inflict lasting ecological damage to our planet.

COMMENT NO. 101: A commentor stated that the rules proposed by the department are inadequate in intent and substance. The lag time for implementation is far too long. All power plants, present and proposed, should utilize BACT and not be allowed to "buy" the leeway to release toxins into our atmosphere through a cap-and-trade provision.

COMMENT NO. 102: The Northern Cheyenne Tribe commented that technology exists that can control most of the mercury pollution at the coal-fired power plants and that this needs to be implemented to protect public health and the environment. Cap-and-trade should not be considered because it would allow other power plants to buy and trade mercury emissions that could allow the Colstrip facility to increase its emissions and even more affect the Northern Cheyenne Reservation. The Northern Cheyenne Reservation is only 13 miles downwind of Colstrip, and the Northern Cheyenne people and their environment will be greatly impacted if the rules are adopted as proposed. The department should address local mercury hot spots. The cap-and-trade program has never been used before for a toxic air pollutant and will place public health at risk. EPA's own inspector general found that the cap-and-trade program could lead to toxic hot spots. The board should adopt rules to make these plants clean up and protect human and environmental health on the Northern Cheyenne Reservation.

COMMENT NO. 103: A commentor stated that the department’s proposal is incredibly complicated, and that a system is needed that is fair, predictable, and simple. Cap-and-trade fails on every point. It is legally flawed, economically flawed, and technologically flawed. It does not protect public health and 12 years is too long for the public to wait for real public health protections. The federal cap-and-trade program fails to provide essential protections to people who live downwind of EGUs.

COMMENT NO. 104: A commentor stated that the really disturbing part of the cap-and-trade program is the banking part. When a source achieves early control, it may bank emission credits. That is why, when questioned about the 15-ton national limit in 2018, EPA admits that the national limit probably will not be met until sometime after 2028 because of the banking provision.

COMMENT NO. 105: A commentor stated that one of the principles of cap-and-trade is early controls are rewarded, and banking is supposed to reward early controls. However, the mercury reductions for 2010 are just co-benefit controls that the utilities in the east are going to have to achieve under CAIR. So, they are doing nothing to control mercury.

COMMENT NO. 106: A commentor stated that the federal Clean Air Act states that air pollution prevention primarily is the responsibility of states and local governments. EPA did not do it, so it is our responsibility to do it.

COMMENT NO. 107: A commentor stated that allowing one plant to exceed the emission limit while another plant reduces its emissions just means that children in one area are going to be more poisoned than another, and we are letting the companies decide where that is going to happen. It is unethical, it is unacceptable for Montana, and, given the number of lawsuits, it is very likely to be found to be illegal. Other states and local governments are opposing interstate trading.

COMMENT NO. 108: A commentor stated that cap-and-trade is an averaging approach, and, when you take the average of average averages, you lose some essential geometry. In the Great Falls area, the wind is going to go in a lot of different directions. If you have a point source of mercury and a lot of other pollutants that is located not too far away, this is the closest population that will be affected. Average of average averages misses some essential points of the geometry.

COMMENT NO. 109: A commentor stated that cap-and-trade may be good for the polluter's bottom line, but their neighbors are the losers, whether the rules allow interstate trading or only intrastate trading. But, it would be much more detrimental to Montana to allow interstate trading. This would allow Montana to become the mercury dumping place for the region or the nation. Our plants could continue to be dirty while those in surrounding areas would have to clean up. We do not even benefit from the power generated, as most of it is exported. It would be win/win for everyone else and lose/lose for Montana.

COMMENT NO. 110: A commentor stated that Montana already has mercury advisories for its streams and lakes. Not only does this sully our pristine image and take some of the fun out of fishing, it creates real problems for our Native American peoples whose heritage and right it is to fish for sustenance. They may need to fish to provide a large portion of their family's protein needs. By doing so, they are endangering the next generation. Even if that were not the case, the very fact that

fish are polluted is an affront to them, and it should be an affront to us, as well, when polluters tell us they cannot afford to clean up their effluent. Why should we in Montana wish to make it easier on polluters to operate their businesses in Montana? Can we not learn the lessons of history? We can create clean and green industries and businesses. We do not need to rely on greedy corporations to provide for us as if we were helpless to envision or dictate our own destiny. Our state constitution guarantees us the right to preserve treasures such as our land, water, forests, and big sky. The board is entrusted with the ability to tell polluters that we have drawn the line and, in order to do business in Montana, they must clean up. Catch a better vision for Montana, and it will be clear to you that a cap-and-trade rule for mercury pollution is unthinkable.

COMMENT NO. 111: A commentor stated the department has opted to include interstate cap-and-trade in its proposal because it does not want to preclude future energy development but that this assumes that future energy development in Montana needs to be in the form of traditional pulverized-coal facilities. An energy future that includes additional coal-burning facilities threatens Montana's air, water, and public health. It is also out of sync with the governor's vision for Montana's energy future, which is to use the newest and cleanest technologies for new coal development. We can have a clean environment, we can create jobs, and we can create economic development. We do not have to rely on traditional, dirty, pulverized-coal facilities.

COMMENT NO. 112: A commentor stated that cap-and-trade will not work. Some research papers have shown fallout to be local and to heavily adversely affect the locale at which the emission is occurring.

COMMENT NO. 113: A commentor stated that everyone is affected by mercury pollution. Little children and pregnant women probably are more heavily affected than anybody. Do we base our societal values on simply making money regardless of what it does to the rest of us? Cap-and-trade will just encourage the building of more of these facilities, which will produce more and more pollution. There is ample evidence that there is a great local effect. It is not just effects from outside the area. Cap-and-trade is a crazy policy.

COMMENT NO. 114: A commentor stated that Montana should join the 15 plus states and several municipalities in going beyond CAMR.

COMMENT NO. 115: A commentor stated that there is so much flexibility in the rules that they bend over backward to accommodate an industry that is making money hand-over-fist. It is inappropriate to have a cap-and-trade program, especially when the rules already provide so much flexibility to this industry. The proposed rules would allow plants to profit from selling credits out of state and allow plants in other locations in this country to increase their mercury emissions, and that is wrong. We would be exporting pollution, and it is wrong to poison people in Montana, Alabama, or anywhere. If we have the ability to control mercury, we

should do it, and we should not export our problem to somebody else in the name of economic gain.

COMMENT NO. 116: A commentor stated that using credits purchased from other areas, which would allow localized accumulation in Montana, would compound our already existing problem. This practice creates an investment in pollution, rather than our future. Banking credits until the federal deadline is reached in 2018 allows the industry to invest in pollution well into the future, avoiding limits long past the deadline.

COMMENT NO. 117: A commentor stated that, if trading as a safety valve is necessary, only in-state trading should be allowed, to reduce local emissions.

RESPONSE TO COMMENT NOS. 89 THROUGH 117 IN "AGAINST CAMR AND EMISSIONS TRADING" CATEGORY: The board agrees that a cap-and-trade program by itself would not be appropriate for a hazardous air pollutant such as mercury. However, the final rules adopted by the board include mercury emissions restrictions and requirements for pollution control devices, technology, and/or practices that control mercury emissions. The board is sensitive to the sense of urgency surrounding this issue; the implementation schedule balances the technological and economic feasibility of installing controls with expeditiousness. A cap-and-trade program is included beyond that emissions control "track" to provide added incentive and flexibility for reducing mercury emissions. However, no EGU regulated under the board's final rules would have the ability to buy its way out of controlling mercury by purchasing allowances. In addition, the cap-and-trade program will provide a disincentive for choosing an alternative emission limit because the allowances will be distributed at either 0.9 lb/TBtu for nonlignite combustion or 1.5 lb/TBtu for lignite combustion, making it expensive for EGUs to buy allowances to emit up to an alternative emission limit.

RESPONSE TO COMMENT NO. 99: The department has authority to assess a penalty against the owner or operator of an EGU who violates an air quality requirement, and the department has authority to require corrective action. However, the department does not have authority to determine whether a person has been injured by emissions from an EGU or to award damages to an injured person. A person seeking damages for an injury caused by emissions from an EGU would need to pursue a civil action in court.

RESPONSE TO COMMENT NOS. 104, 105: The board believes any early control measures to reduce mercury emissions, including those produced through the "co-benefits" of control for other pollutants, should be lauded. While EGUs in other states may not be required to implement specific control for mercury in 2010, under the board's rules, by 2010, all EGUs in Montana will be required to implement a control strategy specific to the control of mercury emissions and will be required to meet stringent mercury emission limits.

RESPONSE TO COMMENT NO. 106: Without discussing the relative merits of (1) EPA's decision to repeal the December 2000 finding by removing coal- and oil-fired EGUs from the hazardous air pollutant source category list, and (2) EPA's acting instead to regulate mercury emissions pursuant to existing authority under 42 USC 7411 (New Source Performance Standards), which establishes standards of performance for new stationary sources and existing sources not otherwise regulated under the Maximum Achievable Control Technology program, the statement that the federal government did not act to regulate mercury is inaccurate. EPA promulgated CAMR and directed states to develop mercury control plans, offering a proposed cap-and-trade program as an approvable option under CAMR. The board decided that EPA's proposed cap-and-trade program, alone, was not appropriate for Montana and has developed a Montana-specific mercury control plan that will be submitted to EPA and that includes mercury emission limitations and control requirements as well as a cap-and-trade provision.

RESPONSE TO COMMENT NO. 107: The board's mercury rules will continue in effect, regardless of the disposition of any challenge to EPA's CAMR. The board has included a severability clause to maintain the mercury emission limitations and control requirements even if CAMR is vacated or remanded to EPA. As discussed above, under the board's rules, the owner or operator of an EGU will not be able to purchase emission credits to exceed an emission limit. Under the board's rules, the owner or operator of an EGU in Montana may use purchased emission credits only to allow emissions of mercury up to the applicable emission limit. While this does allow for trading of emission allowances and development of some new EGUs in the state, the stringent emission limits in the board's rules will protect public health and the environment.

RESPONSE TO COMMENT NO. 108: The mercury control plan finalized in the board's rules contains stringent mercury emission limits and control requirements, so that any "averaging" associated with a cap and trade provision has much less impact and public health and the environment are protected.

RESPONSE TO COMMENT NO. 111: Promotion of, or requirements for, alternatives to traditional pulverized coal-fired power generation are issues of policy for the Montana Legislature, rather than issues within the rulemaking authority of the board pursuant to the Clean Air Act of Montana. However, the stringent emission limits and control requirements in the mercury rules being adopted by the board may have the indirect effect of promoting development of alternatives to pulverized coal-fired energy generation.

CAMR Violates the Federal Clean Air Act

COMMENT NO. 118: Several commentors stated that CAMR violates the FCAA.

COMMENT NO. 119: A commentor stated that CAMR does not meet the requirements of the FCAA and is based on the federal government's sudden

disregard for the ample scientific evidence of mercury's health and environmental impacts and of the availability of cost-effective treatment technology.

COMMENT NO. 120: A commentor stated that the board should opt out of the federal mercury control program and adopt more protective standards, because EPA's CAMR violates the FCAA. There was extensive scientific evidence showing that power plants are the number one contributor of mercury emissions in the U.S. Based on that, EPA determined it was necessary and appropriate to regulate EGUs under Section 112 of the FCAA, providing for maximum achievable control technology (MACT) standards. When EPA delisted EGUs from Section 112 and promulgated CAMR under Section 111, it did not make the necessary showing because it could not be made. The only way EPA could have removed EGUs from the Section 112 list was to show that emissions from EGUs would not exceed a level that is adequate to protect public health with an ample margin of safety and no adverse environmental effect would result from emissions of any EGU. The problem with EPA choosing to not regulate EGUs under Section 112, as required by the FCAA, is that it ensures CAMR cannot stand up in court. Also, EPA has no authority to create a cap-and-trade program under either Section 111 or 112 of the FCAA. CAMR fails to satisfy even the more flexible requirements of Section 111. Most notably, in promulgating CAMR, EPA ignored the best available mercury pollution control technology, ACI, which would allow for much greater reductions in mercury emissions on a much faster timeline than is provided for under CAMR. Thus, contrary to the FCAA, CAMR does not establish standards that "reflect the degree of emissions limitations" that are now "achievable through the application of the best system of emission reductions." Just the opposite, CAMR would have the perverse result of allowing mercury emissions to increase in some states. If the board adopts CAMR, it will be obliged to undertake yet another rulemaking process in the likely event that CAMR is struck down in the course of ongoing litigation in the D.C. Circuit Court of Appeals. The board would be wise to adopt rules that would be consistent with MACT standards that will eventually be adopted by EPA -- standards that reflect the best that can be done in controlling mercury emissions from power plants.

COMMENT NO. 121: An officer of the State and Territorial Air Pollution Program Administrators/Association of Local Air Pollution Control Officials (STAPPA/ALAPCO), testifying on his own behalf, and not on behalf of STAPPA/ALAPCO, commented that the position of state and local agencies that discussed MACT regulations for EGUs with EPA was: minimal subcategorization; the most stringent levels of mercury control possible; a multi-pollutant approach; enhancement of the ability of states to implement the standards; early compliance encouraged through the use of incentives; and no trading of toxins. It is clear that neurotoxins cannot be traded under the FCAA. The EPA rulemaking process ignored these points, and was truly flawed. In addition to the states' environmental commissioners, STAPPA/ALAPCO have stated that CAMR is inadequate to protect public health, inconsistent with the FCAA, and does not account for available technology. The Children's Heath Protection Advisory Committee to EPA stated that CAMR does not go far enough to protect children, infants, and women of

childbearing age. CAMR is illegal and will be overturned. The deadlines are too protracted and it does not reflect what is technically feasible.

COMMENT NO. 122: A commentor stated that a February 3, 2005, report of the Office of Inspector General of EPA reported that politics steered science. The evidence indicates that EPA's senior management instructed EPA staff to develop a MACT standard for mercury that would result in national emissions of 34 tons annually, instead of basing the standard on an unbiased determination of what the top performing units were achieving in practice. The standard likely understates the average amount of mercury emission reductions achieved by the top performing utilities. In a similar May 2006 report, the Office of Inspector General of EPA stated that CAMR fails to recognize scientific data concerning local deposition and a great deal more monitoring is required to reach the conclusion that CAMR will not allow hot spots.

RESPONSE TO COMMENT NOS. 118 THROUGH 122 IN "CAMR VIOLATES THE FEDERAL CLEAN AIR ACT" CATEGORY: Whether CAMR is found to be unlawful or not in the future has no present effect on the CAMR requirement that states in which operating EGUs are located, including Montana, submit a mercury control plan to EPA by November 17, 2006. However, the board has included a severability clause in its rules. Pursuant to the severability clause, if CAMR is vacated or remanded to EPA, the monitoring requirements from CAMR, referenced in New Rule I, would remain in effect. New Rule II would be rendered useless if CAMR is vacated because New Rule II outlines the allocation of allowances and the timing of those allocations based on EPA’s cap-and-trade program. Without EPA’s cap-and-trade program, New Rule II would be meaningless.

Emission Limits/Control Technologies

COMMENT NO. 123: Several commentors stated that the proposed emission limit of 0.9 lb/TBtu may not be achievable.

COMMENT NO. 124: SME commented that the proposed mercury emission standard of 0.9 lb/TBtu for implementation in 2015 is a very stringent limit and will be challenging to meet. SME is engaged in negotiations with two major international boiler manufacturers and both entities are uncertain that they can guarantee achieving 0.9 lb/TBtu on a standard sustainable basis. Both agreed to guarantee a mercury emissions limit of 1.5 lb/TBtu, or 90% removal, but stated it is one thing to achieve an emissions limit at a test facility and for short periods of time, but that betting $515 million on a sustained capture rate is a different matter. Alstom Power, one of the boiler manufacturers, stated that the issue with 0.9 lb/TBtu is a combination of not having field test data to support guaranteeing such a low level, and, perhaps more importantly, not having instruments capable of reliably measuring such a low level of emissions from a utility-sized boiler.

COMMENT NO. 125: PPL commented that it has reviewed the technology across the industry and conducted actual testing at the Colstrip facility, and the conclusions are that compliance will be difficult and will require the flexibility of trading because of the uncertainties with respect to control technology and the variability of the mercury in the coal. The three fundamental areas of uncertainty are: mercury content of coal; confidence in control technology for mercury reduction; and actual mercury reductions obtained at Colstrip after the application of mercury control technology. To achieve an emission limit of 0.9 lb/TBtu heat input, the level proposed in Montana's New Rules I and II, the required mercury control varies from 73% removal for the mean mercury content to 90% for the highest mercury content. More data must be collected from Colstrip coal source deposits to be able to predict the coal mercury content in future years. The current lack of data on long-term performance of various mercury reduction technologies on plants such as Colstrip that burn Powder River Basin coal may drive the plant to install far more expensive control than if there were flexibility to try more cost-effective controls with the option of purchasing allowances if those controls turn out to be insufficient.

COMMENT NO. 126: PPL commented that there is a lot of literature stating that different plants have been able to achieve different levels of control. What has been seen at Colstrip is that plant-specific conditions drive the level of control. As PPL reviewed the control technologies and their capture efficiencies, PPL has seen that, for the Colstrip facilities, it appears that additional development of chemical injection technology and use of the existing scrubbers at Colstrip may achieve up to 80% mercury capture. However, to get to the 90% level, the review of the technology indicates that a fabric filter probably would be required, and implementation of that technology would be a major retrofit at the Colstrip facility. Installing the technology at Colstrip required to achieve the small incremental gain from 80% to 90% removal would be a huge, difficult project and would be very costly. There are many issues involved with such a project, including finding the space to install the equipment and balance-of-plant impacts, such as the need for extensive ducting to tie the equipment into the plant, fan upgrades and probably extensive scrubber modifications to allow the plant to meet existing SO_2 requirements. The cost of a fabric filter retrofit at Colstrip, based on industry average, would be about $250 million. The costs of addressing the balance of plant impacts could equal that amount, for a total of half a billion dollars. Such a retrofit would take at least five to six years from conception to implementation. Also, it is not certain that a fabric filter-type technology would achieve 90% control at Colstrip because, as PPL has learned in its testing, PPL has not been able to achieve the numbers that the literature indicates have been achieved at other facilities.

COMMENT NO. 127: PPL commented that there are a couple of specific conditions at the Colstrip facility that are unique. Colstrip is a mine-mouth plant that burns Montana coal, which is a low-sulfur, but also low-chlorine, coal. Low-chlorine coal limits the effectiveness of a lot of control technologies because chlorine acts as an oxidizer, which helps convert elemental mercury to oxidized mercury so that it can be removed. Colstrip has no rail or loading facilities or coal blending capabilities to accommodate other coals at this time. The wet scrubbers at Colstrip are very

efficient at controlling emissions from the plants; however, the predominant form of mercury in the flue gas from low-chloride coal at Colstrip, elemental mercury, is not water soluble and is not removed in the wet scrubbers. Oxidized mercury is water soluble and can be removed by wet scrubbers. There are control technologies that oxidize elemental mercury so that it can be removed in wet scrubbers, and that is the prudent approach to take at Colstrip.

COMMENT NO. 128: PPL commented that there appear to be several technologies that can achieve from 50-80% mercury capture at Colstrip. One would be ACI. Up to 50% mercury capture may be achieved across wet scrubbers with this technology. However, in testing at Colstrip with ACI, less than 10% mercury capture was achieved with this technology. Another technology that may achieve this range of control is chemical injection. Up to 80% mercury capture may be achieved across a wet scrubber. PPL tested two different types of chemicals, both oxidizers, at Colstrip and achieved about 30% mercury capture with this technology. PPL also tested a combination of both activated carbon and oxidized injection. The preliminary results indicate that PPL achieved anywhere from 8% to 30% mercury capture with these technologies. This lower-than-expected mercury capture emphasizes the effect of plant specific coal and equipment on mercury control technologies.

COMMENT NO. 129: PPL commented that it appears that the lower mercury capture at Colstrip may be related to the mercury's attachment to very small particles. The Colstrip scrubbers are very efficient at removing the fly ash particulate they were designed to remove, which normally is in the range of ten microns. Powdered activated carbon is much smaller than that, and it appears that it is getting past the scrubbers.

COMMENT NO. 130: PPL commented that it is planning long-term testing for 2007, which will be used to further develop the technologies to enhance capture and also evaluate balance-of-plant impacts. With almost all of these technologies, there is some negative result for the rest of the operation of the plant at Colstrip, and PPL needs to understand exactly what those impacts are going to be.

COMMENT NO. 131: PPL commented that, based on a limited amount of data, the KFx coal treatment process is expected to produce treated coal that contains up to 70% less mercury than untreated coal. However, the Corette plant's boiler may not be able to exclusively burn the treated coal because of its higher heat content. It is expected that the treated coal may have to be blended with untreated coal. Therefore, if mercury reductions greater than 30-70% are required, as would be required by the proposed rules, controlling mercury emissions solely by this fuel modification most likely would not be adequate to achieve compliance.

COMMENT NO. 132: PPL commented that using chemically treated ACI upstream of an electrostatic precipitator (ESP) has enabled some PRB-fired EGUs to achieve 90% mercury control. However, this technology has been tested only on plants that have a large ESP, as opposed to facilities with a small ESP, as exists at

the Corette plant. The size of the ESP is important for the success of this technology because the amount of activated carbon that can be injected may be limited if the ESP is not large enough to collect enough of the particulates generated to remain in compliance with the facility's particulate emission limit. With no test data, it is impossible to predict how this technology would perform at Corette. A full-scale demonstration of ACI is needed at Corette to determine: whether brominated ACI can provide the required mercury removal; and whether ACI could pose an opacity problem or other operation and maintenance problems. The capital cost of installing a typical ACI system at Corette is estimated at $855,000. The operating cost, which is a variable cost that increases with the consumption of chemically-treated carbon and any lost ash sales, could be very high, depending on the price of activated carbon and the alternative disposal costs for the fly ash.

COMMENT NO. 133: PPL commented that it is researching a Toxecon™ process, which involves the addition of a pulse-jet fabric filter downstream of the ESP. In the Toxecon™ process, chemically treated activated carbon is injected into the flue gas after the ESP, but upstream of the fabric filter. The capital cost of a typical Toxecon™ process system is about $17 million, and additional plant modifications that have not yet been identified may be required. While the Toxecon™ process should address the ESP size limitation and should not affect ash sales, because the carbon would be collected in the baghouse while the fly ash would still be collected by the ESP, the process has a much higher capital cost and increased operating costs for disposal of the mercury-laden carbon in a landfill and has not been demonstrated for a plant that fires PRB coal. At the highest mercury control percentage evaluated, 90%, Toxecon™ represents a higher probability of success as a retrofit technology choice for Corette than does ACI. A brief test using ChemMod liquid also was conducted at the Corrette plant. Although the test looked promising, the plant did not achieve near the levels of reduction that would be required under the proposed rules. A longer test burn in the boiler would need to be conducted before PPL can consider it a candidate technology.

COMMENT NO. 134: PPL commented that the infeasibility of the proposed rules is illustrated by the fact that they would apparently require the Colstrip facility to commit now to the most aggressive technology currently available, the extraordinarily expensive fabric filter technology. However, there is no sound basis to project now that the technology will in fact achieve the 0.9 lb/TBtu limit by 2010. Long-term testing under varied circumstances that would be required to make that projection has not been done. Also, installation of the technology now would foreclose the option of adopting a new or different technology that may prove, as technology advances, to be a better choice – maybe the only good choice – for the facility. The proposed rules could force a choice for the Colstrip facility that results in the waste of hundreds of millions of dollars only to find that the facility is unable to meet the rule requirements.

COMMENT NO. 135: MDU commented that the rules should not contain specific emission limits, but that limits should be based on an achievable unit-specific technology through a BACT/Best Available Retrofit Technology (BART)

process and should be included in permits. The technology selection, in conjunction with allowance trading, would address "hotspots" and allow sufficient flexibility for plant operators. The control selection process must include technology that is commercially available at the time of the selection, and consider energy impacts, other environmental impacts, and economic considerations. Due to the variability in coal and power plant configurations, limits should be based on technology selection, rather than the "one-size-fits-all" emission limits in New Rule I(1). The cap-and-trade program should be used to supplement this approach, if needed by a unit to meet its allocation of the state's budget.

COMMENT NO. 136: A commentor stated that, to be successful with mercury control technologies, it is critical to understand what you start with and the system you are trying to operate, and the challenge is significant. It is necessary to be able to follow the technology and somehow manage the way the system is operated to make certain the desired level of control is obtained over a long period of time. It is necessary to understand the combination of the fuel and the system and how those are interrelated in the particular situation, and ash characteristics and particulate control both can affect how effective different controls may be.

COMMENT NO. 137: A commentor stated that reliability and balance of plant equipment and operational impacts have to be known in order to determine mercury control availability. The initial sets of 30-day tests by EERC have been focused on the level of mercury that can be removed. The focus has not been on what happens to the rest of the facility when the mercury is removed. That will be the focus of the longer term Department of Energy testing in three or four month increments starting this fall.

COMMENT NO. 138: A commentor stated that, due to fuel differences, there is no one-size-fits-all technology. There are marked differences between western fuels and eastern fuels, and there are many related issues, but chlorine content is critical. In most of the eastern coals, there is a much higher level of mercury, so it can be reduced by 80%, but there may not be lower emission levels than what will occur with some of the other facilities, even under a much less scrubbed condition. There also are issues regarding guarantees, balance-of-plant impacts, and the need for longer term demonstrations. Regarding mercury control guarantees, vendors want to first have three facilities, at a 500-megawatt scale, operating for three years before they consider guaranteeing production levels and other impacts. Also, the power industry is unique in many ways because people are not willing to accept the lights going on 90% of the time. The equipment that is used to generate power has to be available all of the time, so it is necessary to be very careful and cautious about new technology options for this industry. We will get there, but we need to have the time to do this properly, and we need to go through the appropriate steps and get the information to make certain that we are not making big mistakes.

COMMENT NO. 139: A commentor stated that mercury control technologies are in various phases of development, ranging from technologies tested only in a laboratory to those that have undergone full-scale testing at coal-fueled facilities.

Only one mercury control technology, ACI, has been tested for a longer period – one year at a single utility unit.

COMMENT NO. 140: A commentor stated that one of the primary concerns with the rules is that the board would establish an emission limit on a wide range of existing and proposed power generation sources without knowing the costs or whether the affected community can comply. For example, there are facilities in Montana for which neither the department nor the board has any measured data with which to ascertain compliance with or without added air pollution control equipment. It is inappropriate to propose an emission limit for these sources without some advanced knowledge regarding compliance.

COMMENT NO. 141: A commentor stated that chlorine oxidizes mercury and the very low levels of chlorine in the coal burned at the Colstrip facility means that the vast majority of the mercury emitted at Colstrip is in the elemental form. Elemental mercury is not deposited locally, whereas oxidized mercury is, to a greater degree. The concentration levels of mercury in the coal at Colstrip also differ considerably. These fluctuations in concentration make it difficult to predict the type of control technologies and removal efficiency that will be needed to achieve a pre-determined emission limit at all times.

COMMENT NO. 142: A commentor stated that recent testing showed that the mercury capture rate is approximately 10% at the Colstrip units. Two "add on" methods are candidates to increase mercury capture, possibly in the range of 50% to 80%, using the existing wet scrubbers. These methods are chemical addition and ACI. Additional mercury control technologies are under development, which also operate by removing mercury. These, however, would have to virtually replace, not enhance, the existing wet particulate scrubbers at the Colstrip facility. Two of these technologies include: a fabric filter retrofit, and a multi-pollutant control process. Both of the replacement technologies have yet to be tested over the long term, and also would be very costly to put into operation at the Colstrip facility due to the need to replace the existing emission controls.

COMMENT NO. 143: A commentor stated that, unlike the units at which such technologies have been tested, the Colstrip facility has wet scrubbers rather than ESPs or fabric filters. Many mercury control technologies rely on mercury co-removal from ESPs or fabric filters.

COMMENT NO. 144: A commentor stated that the companies that make air pollution control equipment have concluded that a 50-70% reduction in mercury will be achievable within the next few years, by 2008 or 2010. Also, there has been an advancement in the control of western subbituminous coal mercury emissions. When EPA came out with CAMR, it was thought that subbituminous coal was more difficult to control than bituminous. Now, it is just the opposite.

COMMENT NO. 145: Several commentors stated that the proposed emission limits either are appropriate or that they should be more stringent and require 90% to 95% control.

COMMENT NO. 146: A commentor stated that an alternative to a 90% reduction would be to set a low level to reach in a fixed amount of time.

COMMENT NO. 147: A commentor stated that new plants should be required to meet mercury emission standards as stringent as integrated gasification combined cycle (IGCC) technology would provide because it is clearly the best available technology. Existing plants should be required to remove 90% of mercury emissions and should be given short but adequate time to retrofit with the new technologies.

COMMENT NO. 148: A commentor stated that development of good control technology will protect coal's future and provide certainty to all stakeholders. Because CAMR will be found to be illegal, and everyone needs certainty for regulations, the greatest certainty will be in those states with stringent 90% to 95% control.

COMMENT NO. 149: A commentor stated that the rules should distinguish between existing and new sources. The board should give the old plants time to install the newest, best technology and achieve 90% control. The new plants, including the one being proposed for Great Falls, should be limited to zero emissions of mercury.

COMMENT NO. 150: A commentor stated that, given the level of technology that exists today, the performance standards applicable to new plants also should be required for existing plants.

COMMENT NO. 151: A commentor stated that emission levels below the proposed emission limit of 0.9 lb/TBtu likely will be possible using the best available technology, and the board should consider adopting a more protective emission limit. EPA's flawed allocation should not be used as the basis for determining an appropriate limit.

COMMENT NO. 152: A commentor stated that the existing rules are sufficient. When older plants are rebuilt, they are required to be fitted with the most up-to-date, cleanest pollution control technology available. The Colstrip and Corette plants are 25 to 30 years old. They all either have been substantially rebuilt already or are in the process, and they should be required to change their pollution control devices now under the current law. A society should use its best technology, which is the least that can be done for our children.

COMMENT NO. 153: A commentor stated that EPA's actions undermine Montana's ability to develop a plan that is right for our state, based on our concerns, and our industries, etc. Rulemaking is essential to reducing mercury emissions and

protecting public health, fishing, tourism, the recreation industry of our state, and our planet. If the board adopts the department's proposal, the board should eliminate the cap-and-trade provision, except, perhaps, for intrastate trading for a very limited time, and reduce the timeframe for meeting the lower emission standard from 2018 to, perhaps, 2010. The board should hold to stringent levels, from 1.5 to .9. A more stringent mercury rule would not cut off new development, given the 298-pound limit. States can decide the amount available for existing projects and the amount to be reserved for new ones. The board should allocate Montana's budget between existing and new projects in ways that best meet our needs and protect public health, and the department's proposal to reserve 29% for new projects and reserve 33% after 2014 is appropriate.

COMMENT NO. 154: A commentor stated that industry relies on the laws to make them responsible for the environment, and they will hold to those laws. The sooner the laws are set in place to control mercury, the sooner industry will do it. The longer the board waits, the more lenient the rules will be, and the longer it will take to reach the hydrogen age.

COMMENT NO. 155: A commentor stated that activated carbon and other sorbents have been available since the early 1990s and have been used in the U.S. and Europe to control mercury emissions from waste boilers. It has essentially eliminated mercury because the top two man-made mercury sources in the U.S. were the medical waste and municipal waste burners. Usually, pollution control devices are very large boxes, and the air pollution control equipment is comparable in size to the generating facility itself. Mercury control is not another big box; it is a way of turning existing boxes for SO_2, PM, and NO_x control into mercury control devices. Adding a "big box" for pollution control may take years, but mercury control can be added in about six months. If you install a "big box" device, you have made a huge capital commitment for the life of the plant, and if somebody comes up with a new, better control device, you cannot take advantage of it. But, with sorbent injection, the advances in technology occur in what is put in the silo that is attached to the mercury control device. So, you are not stuck with today's technology. As sorbents improve, you can take advantage of the improvements.

COMMENT NO. 156: A commentor stated that the best particulate control device, for control of mercury, is the fabric filter. The dust is collected on a filter that looks like a giant vacuum cleaner bag. Because the dust is collected on the filter, carbon is collected on the filter, and there is very close contact between the gas and the carbon again, resulting in a second chance for removal. In an ESP, the plates are spaced about a foot apart and the particles are collected on the plates, so the gas flows between the plates, resulting in another chance for the gas to interact with the carbon. It is not as good as a fabric filter, but the gas is between the plates for a few seconds, and there is time for some additional removal. The most difficult case for mercury removal is the wet particulate scrubber. The gas comes in with the particles, the particles are hit with high-velocity water jets, and the water immediately captures the particles and sweeps them away. So, there is no possibility for carbon to have a second chance of contacting the gas, and it is necessary to focus on

capturing as much mercury as possible before it gets into the device, because the carbon is immediately removed.

COMMENT NO. 157: A commentor stated that the difficulties of dealing with western coals relate to the lack of halogens. Advances have been made, and halogens -- chlorine and bromine and fluorine and iodine – can be added by spraying them into the gas stream or by adding them directly to the sorbent. Tests have been conducted to determine what this will do for western coals. At one plant burning PRB coal and using an ESP for particulate control, injecting a brominated sorbent achieved an average of 93% removal at a relatively low injection rate and achieved 0.4 lb/TBtu in a month-long test. In another unit burning PRB coal, with a spray dryer and fabric filter for SO_2 and particulate control, a control efficiency of 93% and 0.8 lb/TBtu were achieved.

COMMENT NO. 158: A commentor stated that the primary control device for mercury emissions from municipal waste combustors is the same control that would be used on power plants, proving that the technology is available and that mercury emissions from power plants can be controlled.

COMMENT NO. 159: A commentor stated that, despite arguments that mercury is a global issue and most emissions come from Asia, the U.S. can develop the technology for controlling mercury, control the mercury emissions we are responsible for, and export the technology around the world.

RESPONSE TO COMMENT NOS. 123 THROUGH 159 IN "EMISSION LIMITS/CONTROL TECHNOLOGIES" CATEGORY: Data in the record shows that 0.9 lb/TBtu has been achieved by EGUs firing western subbituminous coals. However, the board understands that mercury emissions control technology is rapidly maturing and that the effectiveness of different technologies varies widely depending on the particular coal combusted and the particular boiler and control technology configuration utilized. The final rule reflects both of those issues by using a target mercury emission limitation, but allowing for alternative emission limits if the technology chosen does not perform to expectations. This "soft landing" provision should relieve the concern regarding obtaining financing for new EGUs. In addition, the final rules are not prescriptive with respect to particular mercury control technologies because the board is aware that mercury control is not a one-size-fits-all solution. Owners and operators of EGUs can work with the department to propose and permit an appropriate mercury control strategy for each EGU, considering boiler and control technology configurations as well as balance of plant issues. The rule states: "The owner or operator shall include in the application an analysis of potential mercury control options including, but not limited to, boiler technology, mercury emission control technology, and any other mercury control practices." An owner or operator is required to include in the application "a proposed mercury emission control strategy projected to achieve compliance with the emission limit in (1)(b)." The term "projected to achieve" is based on an owner or operator submitting information sufficient to cause the department to believe there is a reasonable possibility that a particular (or combination of) mercury control

technology would enable the EGU in question to achieve the limit in (1)(b). The analysis of boiler technology is intended by the board to allow inclusion of specific boiler technologies or boiler optimization techniques that provide mercury control in the analysis for the specific boiler configuration in use or proposed. The analysis of boiler technology, as part of the approval of the initial mercury control strategy or establishing the initial mercury emission limit under NEW RULE I(1)(c), is not intended, in any way, to require redefinition of the emission source or a change in boiler technology. The analysis of boiler technology, as part of the approval of a revised mercury control strategy or establishing a mercury emission limit or an alternative mercury emission limit under NEW RULE I(5), (8), or (9), is not intended, in any way, to require redefinition of the emission source or a change in boiler technology from a boiler configuration that is in use or from a boiler configuration for which the department has issued a final air quality permit. Facilities for which a mercury emission limit or an alternative mercury emission limit is established under NEW RULE I(5), (8), or (9) would either be in use or would have been issued a final air quality permit by the department. Furthermore, the board does not intend this rule to affect in any way the application or interpretation of BACT. An emission trading provision in the rules will provide an incentive for the owners and operators of EGUs to decrease mercury emissions below the emission limitations.

RESPONSE TO COMMENT NOS. 145, 147, 149: The board is approaching the mercury limitation from two angles: first, by establishing a 1.5 lb/TBtu limit for lignite-combusting units and 0.9 lb/TBtu limit for nonlignite combusting units; and second, by requiring a mercury control strategy with subsequent BACT reviews and requirements. This approach allows EGUs to implement plant-specific mercury control strategies while ensuring that any improvements in technology also can be implemented. The rules encourage reductions beyond the mercury emission limitation by allowing plant-specific control solutions and adding trading provisions for an economic incentive. It is not possible at this time for a fossil fuel fired EGU to meet a "zero emissions" standard. No current fossil fuel fired combustion technology, including IGCC, eliminates all emissions. Requiring facilities to meet an emission standard based on a completely different combustion technology would amount to requiring that technology, which is outside the scope of this rulemaking. Based on EPA guidance and precedent, "Best Available Control Technology" analysis is used to determine the best control technology for a particular proposed emission source, not to define the process or redefine the emission source.

RESPONSE TO COMMENT NO. 148: As discussed above, whether CAMR is ultimately invalidated by the courts, Montana presently is required, pursuant to CAMR, to submit a mercury control plan to EPA for its approval. The board has included a severability clause in the final rules, which will maintain the monitoring requirements from CAMR, referenced in New Rule I, if CAMR is vacated or remanded to EPA. The stringent mercury emission limitations and mercury control requirements in the board’s rules would remain in force regardless of the status of CAMR, providing certainty to industry, the public, and regulators in Montana.

RESPONSE TO COMMENT NO. 150: Under the board's rules, the same mercury emission limitations and control requirements will apply to both new and existing facilities. However, the board recognizes the greater difficulty that is associated with retrofitting existing equipment, and therefore, has provided a larger amount of flexibility regarding upper limits on the alternative emission limits for existing facilities.

RESPONSE TO COMMENT NO. 151: The board agrees that mercury emission limits below 0.9 lb/TBtu may be possible, particularly for new units. The rule provides flexibility and incentives for facilities to outperform the 0.9 lb/TBtu limit if it is possible. Also, the BACT review requirements in the existing and new rules may, ultimately, result in emission limits below 0.9 lb/TBtu.

Best Available Control Technology (BACT)

COMMENT NO. 160: A commentor stated that the rules should require stringent BACT for all new units.

RESPONSE TO COMMENT NO. 160: ARM 17.8.752, of the existing air quality permitting rules, already requires BACT for all new or modified emitting units. New Rule I(1)(a) also specifies that BACT for control of mercury emissions shall be installed, as required under ARM 17.8.752.

COMMENT NO. 161: SME commented that facilities for which permits have been issued prior to January 1, 2009, based on a BACT-analysis for mercury, should not be required to apply for a permit modification under the department's revised proposed rules. SME, for example, potentially would be required to undergo the time and expense of a permit modification, and the department potentially would be required to process two permit modification requests within two and a half years, which is unnecessary and a waste of resources.

RESPONSE TO COMMENT NO. 161: Any facilities that have formally submitted information to the department in a permit application regarding a mercury control strategy can reference such information in subsequent submittals if the information remains relevant to the current application. The board is retaining the requirement in these rules to apply for a permit modification because significant changes can occur with respect to mercury control technologies and maturity over time. For example, SME initially submitted its air quality permit application on November 30, 2005. Much has changed regarding mercury control technology in the last 3-4 years, and the board expects further advancements between November 30, 2005, the date of SME's application, and January 1, 2009, the date under the new rules when applications for mercury emission limits and operational requirements are due.

COMMENT NO. 162: A commentor stated that the present BACT requirement in the Clean Air Act should be clarified further and not confused with

"best affordable clean technology." ACI can be implemented immediately on existing plants and IGCC and wind generation can be required for all new plants.

RESPONSE TO COMMENT NO. 162: Clarification of the existing BACT requirement is outside the scope of this rulemaking proceeding.

COMMENT NO. 163: A commentor stated that coal-fired utilities are not only major sources of mercury, but also major sources of sulfur dioxide and nitrogen oxides. The board should define BACT for coal-fired boilers and put them on a schedule to meet BACT. At one time, it was thought that the useful life of a utility boiler was between 30 and 35 years. That has been stretched and almost 70% of the utility boilers currently operating in the U.S. are 30 years old or older. The rules should require that, when a plant is upgraded, the air pollution control equipment is upgraded to best available technology. If a boiler is too old to be renovated or controlled, it should be placed on a phase-out schedule for replacement with modern equipment.

RESPONSE TO COMMENT NO. 163: As discussed above, under the existing air quality rules, BACT is required for all new and modified emitting units. If a coal-fired boiler is modified, within the meaning of the air quality rules, BACT is required. However, BACT is a case-by-case determination, balancing several factors listed in the rules; it is not a specification of a particular emission limitation for every emitting unit within a particular source category. Specifying BACT for sulfur dioxide and nitrogen oxides and requiring phase-outs of EGUs are outside the scope of the current rulemaking proceeding.

Integrated Gasification Combined Cycle (IGCC) Technology

COMMENT NO. 164: A couple of commentors stated that IGCC technology should be used in any new coal-fired plants. New development can occur without a trading program if new plants use clean technologies such as IGCC, which can remove as much as 99% of mercury emissions.

COMMENT NO. 165: A commentor stated that, under the Clean Air Act, the most effective, clean pollution control that is available is required for a new power plant. At this time, IGCC plants set that standard, achieving reductions to about .2 to .5 pounds per trillion Btu.

COMMENT NO. 166: A commentor stated that any new coal plants should not be constructed unless they employ zero emission IGGC technology. The utilities should use the coal industry lobby to obtain tax incentives to help update our infrastructure to get it into the 21st century. Other states are adopting stringent requirements and Montana has the strongest constitutional guarantees to a clean and healthful environment. We need to set the example for the developing world.

RESPONSE TO COMMENT NO. 164 THROUGH 166 IN "INTEGRATED GASIFICATION COMBINED CYCLE TECHNOLOGY (IGCC)" CATEGORY: The

board wishes to encourage cleaner coal development, which includes IGCC. However, tax incentives and requiring all coal-fired units built in Montana to employ IGCC technology are outside the scope of this rulemaking, as is "redefining the source." Also, as discussed above, IGCC technology is not, at this time, "zero emission."

Alternative Emission Limits

COMMENT NO. 167: A commentor stated that the proposed rules would provide only an illusory mechanism to develop alternative mercury emission limits (AELs) because a facility would be eligible only after it is in noncompliance with federally enforceable emission limits, given that the proposed rules would be placed in Montana's State Implementation Plan (SIP).

COMMENT NO. 168: A commentor stated that technology selection must not be iterative and that the provisions for AELs should be replaced with a one-time selection of the best achievable technology. The fundamental fault with the current AEL concept is that each incremental installation is very costly and the effect is not necessarily additive. The cost, at least in the case of regulated utilities, will have a direct and significant impact on consumers. The board should pick one date by which a technology selection must be made and another date for installation and implement the results as a permit condition. Further equipment installation would be extremely costly and would not result in measurable reductions of mercury in the environment.

COMMENT NO. 169: A commentor stated that the BACT requirement and/or the mercury rules for new facilities should not result in a hard limit but should allow facilities a demonstration period after which an appropriate limit could be set, as was incorporated into the settlement regarding the Hardin power plant. The rules should provide for an AEL that would provide a "soft landing" in the event that the limit is ultimately unachievable. Any AEL should be based on criteria that would promote advancement of control technology but that also would consider energy, economic, and environmental impacts, the type of control technology and boiler technology installed, and mercury and nonmercury coal constituents. Provisions for re-evaluation of an AEL should include a reasonable operating period, such as ten years, and the rules should not arbitrarily terminate AELs in 2018 if performance criteria indicate that an AEL is necessary.

COMMENT NO. 170: A commentor stated that the board should adopt a "safety valve" of an AEL for those facilities that, despite the use of best available control efforts, cannot meet the 0.9 lb/TBtu standard on a consistent basis. A continuing AEL that does not expire in 2018, and limited interstate trading after 2015, should be allowed for those facilities that applied appropriate mercury control technology or techniques and that have demonstrated through emissions testing that the 0.9 lb/TBtu emissions level cannot be consistently achieved. These limited "safety valves" should be granted after a "best efforts" mercury control demonstration by the facility.

COMMENT NO. 171: A commentor stated that, because mercury control is rapidly evolving, facilities should be granted some regulatory flexibility, such as the ability to obtain AELs in the initial transition period until 2018. An EGU should be able to obtain an AEL if it complies with the requirements to install and operate control technology or boiler technology or follows practices projected to meet the mercury standard listed in the rules. The AEL should expire January 1, 2015, and extension of an AEL should be subject to a more rigorous showing that another AEL is necessary. The rules should require that an application for an extended AEL include the data and mercury control program associated with the existing AEL and available mercury control technologies. Only the same, or a more stringent, AEL should be granted in an extension, not a less stringent AEL. The rules should provide that, if an extended AEL is granted, it expires in 2018.

COMMENT NO. 172: A commentor stated that the commentor had never seen a rule, such as the first half of the department's rule, that provides more flexibility to an industry for meeting a clean air standard. AELs mean that companies install technology that, on paper, can meet a standard. But, in fact, if the company cannot meet that standard when equipment is up and running, the company is not penalized, and that is appropriate. Companies should be forced to do their best, try their hardest, and install the right technology to achieve the standard. If they fail despite their best efforts, with the oversight of the department making sure that their best efforts are in fact their best, then they should not be punished, but should receive a temporary AEL for a couple years while they try to figure out how they can achieve the limit.

RESPONSE TO COMMENT NOS. 167 THROUGH 172 IN "ALTERNATIVE EMISSION LIMITS" CATEGORY: The rules state that "If an application is submitted in accordance with [alternative emission limit application requirements], the failure of the owner or operator of the mercury-emitting generating unit to comply with the mercury emission limit in (1)(b) is not a violation of this rule or the permit until the department has issued its final decision on the application." The mercury rules will be submitted to EPA as a control plan, as required by CAMR, and will not be submitted to be included in the Montana state implementation plan. The board has clarified the criteria for obtaining an AEL. More emphasis has been placed on determining the appropriate mercury control strategy prior to the initial compliance date, and eligibility for obtaining an AEL is dependent on how well the facility complied with the provisions in its air quality permit specifying the mercury control strategy. The rules now list the required contents of an application for approval of a mercury control strategy as well as specifying the data an owner or operator must provide to apply for an AEL. If a facility has complied with the mercury control strategy approved by the department, obtaining an AEL based on the capability of that approved strategy will not be complicated. Specific BACT requirements apply later. For those facilities that cannot meet the applicable mercury emission limit and have been granted an AEL, an application for BACT review is due in 2014. For those facilities that meet the applicable mercury emission limit, an application for BACT review is due ten years after issuance of the final permit establishing the

facility's mercury control strategy. Every facility will then be subject to a continuing BACT review every ten years.

Soft Landing/Safety Valve

COMMENT NO. 173: Several commentors stated that the rules should include provision for a "soft landing" for plants that cannot meet the required standards.

COMMENT NO. 174: A commentor stated that EGUs should have a safety valve/AEL/soft landing that does not end. Considering the lack of maturity of mercury control technology, "hard limits," would negatively affect the ability to obtain financing for new coal facilities, possibly, making the projects uneconomical.

COMMENT NO. 175: A commentor stated that the challenge of regulation is to not threaten generation but provide the opportunity to take advantage of technology as it improves. One way to do this is to account for plant-by-plant variations and costs. A fabric filter provides the most predictable performance for mercury control, but a wet particulate scrubber probably is the most challenging application for mercury control. Providing economic incentives for early compliance would offset some of the risks of new technology. Many problems won't be discovered and addressed until equipment is installed. By setting lower achievable earlier standards the board would establish the potential for greater reductions later. Unlike other air pollution control equipment, an activated carbon injection (ACI) system designed for 70% control looks exactly the same as an ACI system for 90% control. We do not know exactly what the performance curve is going to look like for every site. The rules have to be flexible because there is not much flexibility in dealing with the laws of physics and it is necessary to account for differences in costs and performance. Pennsylvania has a "soft landing" provision, so that if a facility installs the right equipment to meet the requirements of the regulation, and it does not meet the expected performance, the facility is considered to be in compliance. Minnesota has a large number of wet particulate scrubbers, and it accounted for the performance of this technology by establishing a two-phase program in which the units with wet scrubbers have a longer time to install different equipment. Banking provisions in Georgia and New Hampshire regulations encourage early reductions and result in controlling mercury much sooner than with a three to four-year implementation period.

COMMENT NO. 176: A commentor stated that the rules should incorporate a mechanism for developing requirements that would be implemented in three, four, or five years based on the fact that the technology has been improving over time and is likely to continue to improve.

COMMENT NO. 177: A commentor stated that, regarding the concept of a soft landing, the board already has such a regulatory mechanism in the BACT requirement, which already applies to new facilities.

RESPONSE TO COMMENT NOS. 173 THROUGH 177 IN "SOFT LANDINGS/SAFETY VALVE" CATEGORY: The board has incorporated a "soft landing" provision in the rules, under which the owner or operator of an EGU may apply to the department for an additional alternative emission limit, if necessary and if the EGU has complied with the requirements listed in the rule to receive an alternative emission limit. The rules are flexible and not prescriptive with respect to control technology to address the fact that mercury control is not a "one size fits all" solution. The trading provisions of the rule provide economic incentives to reduce mercury emissions below the limitations in the rules.

New Facility Testing

COMMENT NO. 178: SME commented that the board should consider including the opportunity for new facility testing. A test period of six months to one year is needed to test any commercial-grade facility implementing the best available control technology, to accurately determine actual performance characteristics. SME wants to try to test halogenated sorbents in a field operation to determine how effective SME can be in its capture rates. The standards should be set on the basis of field tests, using Montana coal, burning it with the best available control technology, sharing the results with the department, and sharing the scientific basis for setting the standards.

RESPONSE TO COMMENT NO. 178: Under these mercury rules, SME will have the opportunity, during the application process for the mercury emission limitation and control strategy, to compile and share with the department the basis for the proposed mercury control strategy for the Highwood Generating Station. During the first 12 months of operation under the mercury rules, all facilities will be optimizing their mercury control strategies. The board understands that a new facility probably will have more variation in emission control initially than an existing facility, not only for mercury but for all pollutants, as the process goes through the shakedown period. To address this variability, the rules include provision for the owner or operator, in applying for an AEL, to note data that is not representative of normal operation or that represents unusual circumstances.

Subcategorization by Coal Type

COMMENT NO. 179: Several commentors stated that the rules should distinguish between lignite and subbituminous coal.

COMMENT NO. 180: A commentor stated that, to require a facility burning lignite to meet the same standard as for subbituminous coal would put the vast majority of Montana’s coal resource at a significant competitive disadvantage. The other commentor stated that the department adequately addressed the distinction in its Proposed Alternative Rules.

COMMENT NO. 181: MDU commented that, if the board adopts firm limits, there should be higher allowances and limits for lignite.

COMMENT NO. 182: MDU commented that, in its experience as operator of a lignite-fired unit, the quality of lignite can be quite poor and inconsistent, and, occasionally, it is necessary to supplement the coal fired in its boilers with other coal, such as subbituminous, with lower moisture content, lower hardness, lower sodium, or higher Btu value. This supplement of higher quality coal may be as high as 30%. The only equitable way to resolve establishment of an emission limit for a plant that uses both lignite and subbituminous coals is to prorate the limit and allowances based on the amount of each coal used over a reasonable averaging period. Due to the long-term variability of lignite, this averaging period should not be shorter than five years; however, such a prorating system likely would prove to be quite unwieldy to manage. A simpler, and still equitable, solution would be to use 50% as the dividing point and distinguish the coals using the following language: "…for a mercury-emitting generating unit that combusts over 50% lignite…" and "…for a mercury-emitting generating unit that does not combust over 50% lignite…"

COMMENT NO. 183: A commentor stated that the rules should provide long-term predictability for the regulated facilities, and, therefore, should focus on achievement of the emission limits necessary to comply with the 2018 CAMR mercury budget of 298 pounds. Including existing EGUs and EGUs either permitted or in the permitting process, with heat input rates based on maximum design heat input for each unit, the limit that would enable compliance with the 2018 CAMR mercury budget of 298 pounds is 0.9 lb/TBtu, on a rolling 12-month basis. As lignite coal historically has been more difficult to control than nonlignite coal, the appropriate limit for the lignite-burning EGUs would be 2.4 times (using the EPA-derived factor) the 0.9 lb/TBtu rate, or 2.16 lb/TBtu.

COMMENT NO. 184: A commentor stated that the rules should recognize the different needs of existing, currently proposed, and new facilities, but eventually lead to a level playing field. One way to do that would be with allocation distribution under a backstop trading scheme on top of emission limits and control equipment requirements. The preferred allocation scheme starting in 2015 would be as follows (based on the following emissions rate multiplied by the maximum design heat input of the unit):

2.4 lb/TBtu for facilities that commenced commercial operation prior to January 1, 2001, and do not combust lignite;
5.76 lb/TBtu for facilities that commenced commercial operation prior to January 1, 2001, and combust lignite;
1.5 lb/TBtu for facilities that did not commence commercial operation prior to January 1, 2001, and do not combust lignite; and
3.6 lb/TBtu for facilities that did not commence commercial operation prior to January 1, 2001 and combust lignite.

The differences between the lignite and nonlignite allocations reflect the 2.4 EPA factor for the different level of difficulty of control between subbituminous and lignite coals. Starting in 2015, the preferred allocation scheme would be 0.9 lb/TBtu for

facilities that do not combust lignite; and 2.16 lb/TBtu for facilities that combust lignite.

COMMENT NO. 185: A commentor stated that the department should investigate the technology that has been claimed to allow lignite coal to burn as "cleanly" as nonlignite and that, if this is true, the restrictions in the rules should be just as firm for both types.

COMMENT NO. 186: A commentor stated that, for PPL to try to burn lignite at the Colstrip facility, there would need to be modifications to the boilers.

RESPONSE TO COMMENT NOS. 179 THROUGH 186 IN "SUBCATEGORIZATION BY COAL TYPE" CATEGORY: The board agrees that subcategorization by coal type is necessary, due to the differences in controlling mercury from lignite and subbituminous combusting sources. To further address this, the board added the following definition to the rules: "(13) "Mercury-emitting generating unit that combusts lignite" means any mercury-emitting generating unit that combusts lignite in an amount equal to or greater than 75% of its total heat input, calculated for the prior calendar year on a calendar year basis." Also, the board determined the following mercury emission limitations were appropriate: 1.5 pounds of mercury per trillion Btu, calculated as a rolling 12-month average, for mercury-emitting generating units that combust lignite; and 0.9 pounds of mercury per trillion Btu, calculated as a rolling 12-month average, for all other mercury-emitting generating units. The board used a similar conversion factor in the provisions for alternative mercury emission limits, which state as follows:

"An alternative mercury emission limit established in a Montana air quality permit must not exceed:

(i) 4.8 pounds of mercury per trillion Btu, calculated as a rolling 12-month average, for a mercury-emitting generating unit that combusts lignite and commenced commercial operation prior to October 1, 2006;

(ii) 3.6 pounds of mercury per trillion Btu, calculated as a rolling 12-month average, for a mercury-emitting generating unit that combusts lignite and commenced commercial operation on or after October 1, 2006;

(iii) 2.4 pounds of mercury per trillion Btu, calculated as a rolling 12-month average, for a mercury-emitting generating unit that does not combust lignite and commenced commercial operation prior to October 1, 2006; or

(iv) 1.5 pounds of mercury per trillion Btu, calculated as a rolling 12-month average, for all other mercury-emitting generating units that do not combust lignite." Starting in 2018, "The department shall establish a revised alternative mercury emission limit in a Montana air quality permit that will become effective beginning January 1, 2018. A revised alternative mercury emission limit must not exceed:

(a) 2.8 pounds of mercury per trillion Btu, calculated as a rolling 12-month average, for a mercury-emitting generating unit that combusts lignite; or

(b) 1.2 pounds of mercury per trillion Btu, calculated as a rolling 12-month average, for all other mercury-emitting generating units."

From 2010-2017, emission allowances would be allocated based on the target mercury emission limitations. Starting in 2018, an equation, based on total maximum design heat input, would be used to allocate Montana's mercury allowance budget. Therefore, starting in 2018, owners and operators combusting lignite would have no advantage regarding allocations.

12-Month Rolling Average Emission Limits

COMMENT NO. 187: A commentor stated that a 12-month rolling average is an incredibly flexible and generous provision. Every coal seam contains different constituents, and a 12-month rolling average emission limit accounts for variability and allows a company that has a high level of mercury in one shipment of coal to moderate that with other coal shipments during the year. Regarding trading within plants, if PPL is having difficulty at its four Colstrip units meeting its strict mercury emission limit, three of those units can work really hard. If they average the emissions of those four units, the fourth unit does not have to do quite as good of a job, instead of being penalized for a particularly difficult unit.

RESPONSE TO COMMENT NO. 187: A 12-month rolling average is consistent with the averaging period applicable to the emission limits under CAMR for new emission sources, and is appropriate, given the variability of mercury in coal. The board also concurs that allowing averaging of emissions between emitting units within a facility is appropriate to offset variability factors that can be magnified when more than one emitting unit is located within one facility (coal quality, for example).

Allocation Scheme

COMMENT NO. 188: A commentor stated that the proposed rules should treat new and existing facilities the same with respect to allowances. The board should not make material changes to the allocation plan in the proposed rules that could have an adverse effect on existing and planned facilities.

COMMENT NO. 189: A commentor stated that the department's proposed allocation of the majority of the remaining 93 pounds of mercury emissions to new coal plants is flawed or premature. The department has overstated the amount of allowances needed by the Hardin Generating Station. An application has been submitted to the Department of Energy for a grant for the Hardin plant that requires plants to aim for 90% reduction in mercury emissions. There have been many rumors that Bull Mountain Development Company is changing its proposal for the Roundup Power Project from a pulverized coal plant to a gasification plant. Bull Mountain has said in the press that it intends to build an IGCC plant and convert coal to liquids. It is inappropriate and premature to allocate 52 of the remaining 93 pounds of mercury to the Roundup Power Project when Bull Mountain is telling the press that it is going to build a different plant and, therefore, will not need any of the 93 pounds. Also, Bull Mountain's permit has expired. The legal process to settle this dispute is ongoing and its outcome remains unclear. Regarding the SME plant, it is presumptuous to allocate credits to a facility that is in the middle of the

permitting process. Due to the high level of coal-fired power plant speculation in Montana and across the west, it would be premature and presumptuous to count any plant that has not been constructed. Allocations should be assumed only when a plant is operational.

RESPONSE TO COMMENT NOS. 188 AND 189 IN "ALLOCATION SCHEME" CATEGORY: The board determined that mercury emission allocations should be the same for new and existing EGUs. The allocations for 2010-2017 are based on 0.9 lb/TBtu for nonlignite combusting facilities and 1.5 lb/TBtu for lignite combustors, regardless of the age of the facility. In 2018, the playing field is leveled further by eliminating the difference in allocations between lignite and nonlignite combustors with the use of an equation based on total maximum design heat input. The rules do not allocate emission allowances to facilities by name. The proposals considered prior to final action included different scenarios that included the current EGU universe in Montana based on the facilities that had air quality permits or that were currently in the air permitting process. Under New Rule II, the owner or operator of any facility that has not commenced commercial operation prior to October 1, 2006, would have to request allocations based on a process outlined in the rule. For example, if the Roundup Power Project has not commenced commercial operation prior to October 1, 2006, it will never receive any allocations. Also, if commencement of commercial operation for a newly constructed EGU is delayed, any allowances, for the time between projected and actual commencement of commercial operation, that had been allocated by the department to the EGU would have to be surrendered to the department. The rule would not allow permitted facilities to speculate using mercury allowances.

Timeframes

COMMENT NO. 190: Several commentors stated that the timeframe for implementing the rules is too lenient to protect public health, due to the toxic nature of mercury. Commentors suggested 2008 or 2009, to better protect public health and allow people to eat fish.

RESPONSE TO COMMENT NO. 190: If a MACT standard to control mercury emissions from EGUs had been promulgated by EPA, the time from the date of the final rule to the compliance date probably would have been three years, based on previous MACT rules. Three years is a reasonable amount of time to allow the owners and operators of EGUs to make the necessary investments in control equipment, as well as to have that control equipment installed and operating. From the time of final action in this rulemaking proceeding, in October of 2006, to the starting compliance date of January 1, 2010, is just over three years. In order to provide the maximum mercury control for EGUs in Montana, the rules must allow enough flexibility and time to establish and install the best mercury control strategy for each individual facility. Providing less than three years could force owners and operators to select the mercury control that is most easily available and easiest to install, instead of selecting a strategy that would be most appropriate for the facility and most protective of public health.

Disposal of Captured Mercury

COMMENT NO. 191: A commentor stated that mercury captured on a sorbent or in the ash seems to be very stable and effectively removed from the environment. The one negative impact that has been seen is that, for a facility that sells the ash for use in concrete, the activated carbon absorbs some of the chemicals used in making concrete. Over the last several years, technologies have emerged to deal with this, and EPRI has a couple of configurations that allow use of activated carbon and sale of the ash.

COMMENT NO. 192: Two commentors stated that the board should consider, and the rules should address, what will happen to mercury that has been removed from coal and how it will be stabilized so that it is inert. It is necessary to ensure that people are not drinking the mercury that they do not want to breathe because it is a hazardous substance and it must be dealt with as a hazardous substance, otherwise, cleaning up the air will result in poisoning of the water.

RESPONSE TO COMMENT NOS. 191 AND 192 IN "DISPOSAL OF CAPTURED MERCURY" CATEGORY: When the owners and operators of EGUs submit their applications for the mercury emission limit and mercury control strategy and subsequent mercury BACT determinations, disposal issues, and issues regarding ash sales, if applicable, will be addressed, as they would be for any other air quality permit control technology analysis. In determining appropriate control technologies, and in evaluating environmental impacts pursuant to any analysis required by the Montana Environmental Policy Act, the department will consider the environmental impacts of disposal of captured mercury in addition to any solid or hazardous waste requirements that may apply.

Environmental Justice

COMMENT NO. 193: A commentor stated that the board should consider the environmental justice issue of native populations being disproportionately affected by mercury emissions. The board should review where native people are located in relation to the mercury sources.

RESPONSE TO COMMENT NO. 193: The board is aware of the proximity of native populations (and other populations that may be affected by environmental justice) to several of the existing and proposed EGUs in Montana. Evidence in the record (and in the preamble to EPA's CAMR) points to a potential increased risk of mercury contamination in native populations due to subsistence fishing. The requirement that each existing and new EGU in Montana employ a mercury control strategy, and comply with stringent emission limits, would minimize any local impacts from those EGUs beyond the reductions that would be achieved under EPA's model cap-and-trade rule.

Implementation of the Constitutional Right to a Clean and Healthful Environment

COMMENT NO. 194: A commentor stated that the Montana Constitution guarantees the right to a clean and healthful environment. Strengthening the state's mercury laws will bring the laws into compliance with the constitution, and it also will protect the health of all Montanans – both the born and the yet-to-be born.

COMMENT NO. 195: A commentor stated that the board should adopt strict, explicit mercury rules. Clean air is among Montana's most significant assets, and Montanans are very fortunate to be protected by the Montana Constitution. It would be tragic to permit mercury emissions to further harm our beautiful state. The department's proposal would allow complete agency discretion regarding whether a company is doing all it can to control mercury, and this is too big a risk for the public to take. The board should implement Montana's constitutional provisions for a clean and healthful environment by keeping mercury emissions out of our air.

RESPONSE TO COMMENT NOS. 194 AND 195 IN "IMPLEMENTATION OF THE CONSTITUTIONAL RIGHT TO A CLEAN AND HEALTHFUL ENVIRONMENT" CATEGORY: The constitutional right to a clean and healthful environment is implemented through Montana's environmental laws, including the Clean Air Act of Montana, and these mercury control rules are being adopted pursuant to the Clean Air Act of Montana. The final rules include stringent emission limits, specific criteria regarding the department's review of applications for alternate mercury emission limits, establishment of alternate mercury emission limits, including maximum alternative emission limits, and requirements for EGUs to implement BACT. The board believes that these rules will protect public health and the environment and protect the constitutional right to a clean and healthful environment.

Harm to Economic Development and Proposed EGUs

COMMENT NO. 196: Several commentors stated that the proposed rules would unnecessarily harm economic development in the state.

COMMENT NO 197: A representative of an economic development group commented that the perception in the private sector is that Montana is closed for business. The state will not grow if more businesses leave or locate in other states, if youth do not want to work in burger establishments or clean motel rooms, and if youth continue to leave the state for higher paying jobs in Wyoming and North Dakota. The board should balance economic growth with environmental care. Natural resource development is a great opportunity for Montana, and the board should not prevent responsible energy development.

COMMENT NO. 198: A commentor stated that capital investment by industry is necessary to support schools, healthcare, and public infrastructure. Montana should encourage maximization of alternative energy sources, including conservation, but alternative energy sources cannot meet the market demand for energy. Montana, particularly eastern Montana, has the opportunity to make energy

from all sources the largest and most lucrative export commodity, but that cannot happen if Montana continues to create barriers to business development.

COMMENT NO. 199: Commentors stated that hundreds or thousands of Montanans will lose their jobs if the board adopts rules that are more stringent than CAMR.

COMMENT NO. 200: Commentors stated that the rules should not put Montana at an economic disadvantage compared to neighboring states that appear to be adopting CAMR. Montana needs good jobs and an increased tax base, and a full cap-and-trade program would enhance Montana's ability to attract investment money necessary to develop the state's vast coal resources.

COMMENT NO. 201: A commentor stated that the proposed rules would unnecessarily harm the development of new coal-fired EGUs by imposing limits that are below those technically achievable on a consistent basis. The proposal also would unduly burden future operation of existing facilities because of substantial uncertainty as to whether such units can meet the proposed limits.

COMMENT NO. 202: A commentor stated that the proposed rules are not workable, will create considerable financial and technical hardships for companies operating in Montana, and will discourage other companies from investing in coal-based enterprises in the state. The ultimate result would be higher electricity prices for Montana customers and loss of potential jobs and tax revenues to the state, with no measurable health benefits beyond those expected to be realized by implementation of CAMR.

COMMENT NO. 203: A commentor stated that any mercury rule stronger than CAMR will stop development in Montana, including the currently proposed Great Northern Nelson Creek Power Project, and pose a risk to existing power generators.

COMMENT NO. 204: Great Northern commented that lenders will not lend money for a new coal-fired project that will become subject to a limit in the future that cannot be met today with existing technology, due to the potential that the project may not be able to meet the future limit. If Great Northern cannot obtain a guarantee by 2008 for mercury emission limits, there will be no funding, and the Nelson Creek Power Project will not be built.

COMMENT NO. 205: A commentor stated that economic development efforts in the state are under-funded and the board should not make decisions that will increase that hardship.

COMMENT NO. 206: A commentor stated that the board should be very careful in making rules that will affect the ability to build the SME Highwood Generating Station and any other plants in Montana.

COMMENT NO. 207: A commentor stated that McCone County is the site of Great Northern's proposed 500-MW Nelson Creek Power Project that would use the most advanced, reliable, clean technology and that Great Northern has stated that the proposed rules would stop development of the project and any other new development of Montana coal reserves. The county needs the project, and the majority of people in the county and surrounding counties support this development. Montana should not shut down the coal-fired electrical industry but should allow it to grow and create new technology to improve our lives, our communities, and our economies. It does no good to shut down coal development in Montana and then have coal plants in Canada or elsewhere with fewer environmental controls sell their electricity to the U.S. If Montana has greater regulation and a much higher cost of operation than surrounding states and countries, businesses will not locate here. McCone County and eastern Montana want and need responsible energy development.

COMMENT NO. 208: A commentor stated that McCone County is one of the poorest counties in the state but has large quantities of coal reserves that could be developed. Limiting this development with regulations that are more stringent than federal regulations would not serve any purpose but would limit the economic growth of eastern Montana.

COMMENT NO. 209: A commentor stated that, with the technology today, a coal-fired power plant can be developed and we can still have quality air and water. We should use our natural resources so that consumers can have affordable electricity, to stimulate the economy, and to help keep our young people in Montana.

COMMENT NO. 210: A commentor stated that it is tough watching little communities in eastern Montana die for lack of jobs and opportunities. This will continue, and there is a need for coal-fired generating power. While the governor is touting development, his agencies are drafting rules to stop coal development. The company developing a plant near the commentor, the Nelson Creek Project, a coal-fired generating plant near Circle, told the commentor they could not build the plant if the proposed rules were adopted. The rules need to be workable to allow coal development.

COMMENT NO. 211: A commentor stated that no other industry in Montana's history has made such a significant positive impact on the economy of our state as the coal industry has. The rules need to allow for responsible development of Montana coal reserves and power plants rather than prohibit them or provide other states an unfair advantage. Montana's future needs a balance of the economy and the environment. Mandated imbalances in either direction hurt everyone. Natural resource development is an opportunity in Montana right now, and the board should not kill this opportunity.

COMMENT NO. 212: Several commentors stated that protection of public health is more important than economic development or that the proposed rules would not harm economic development.

COMMENT NO. 213: A commentor stated that some things in life are more important than jobs and the economy, such as health and life itself. Trading mercury emissions is unethical. It may be deemed legal, but it is morally wrong to inflict such a widespread and long-lasting health hazard with the capacity to cause a multitude of known health problems affecting hundreds of thousands of lives, not only human, but animal lives as well. This includes not only those who live within the vicinity of mercury emissions at the present time, but foreseeable generations to come. The board should not allow monetary or political reasons to be the bottom line in making this momentous decision, which we will be living with for generations to come.

COMMENT NO. 214: A labor organization stated that it supports standards that are protective of public health because it believes that Montana can go beyond the federal standard. This will create more new jobs in Montana because laborers across the state will install the technology.

COMMENT NO. 215: A commentor stated that Montana can meet its 298 lb. cap without impeding future coal plant development. The commentor stated that, according to the department, a 0.9 lb/TBtu mercury emission limit would result in 205 pounds of mercury per year being emitted by existing coal plants. That would leave 93 pounds for new development. An allowance of 93 pounds of mercury for new plants would allow for six to 16 new coal-fired IGCC plants. The board should consider the capabilities of IGCC.

COMMENT NO. 216: A commentor stated that Montana power plants generate more power than Montana needs, and Montana exports power, so new power plants in Montana are not necessary. Montana can have economic development and solve the country's power shortage problems by producing coal and shipping it out of state to the states that need to burn it. If they burn it, they will be more careful with it, and they will learn how to produce power with less environmental degradation.

RESPONSE TO COMMENT NOS. 196 THROUGH 216 IN "HARM TO ECONOMIC DEVELOPMENT AND PROPOSED EGUS" CATEGORY: The board's final rules will not prevent economic development related to coal-fired power production. As with any other pollutant, under existing rules and these new rules, new EGUs must use Best Available Control Technology for mercury emissions. Also, they would be subject to the same standards as existing EGUs regarding mercury emission limits and mercury emission control requirements. However, the inclusion of provisions for trading mercury emissions, and the board's emission allowance system, under which more emission allowances will be reserved for new facilities than under CAMR's model allowance system, will allow for growth in the energy sector, but the mercury emission limits and control requirements will limit growth to clean EGUs that comply with Montana standards.

RESPONSE TO COMMENT NOS. 197, 201, 204: The board received comments from both sides regarding balancing responsible energy development with environmental protection, and there is information in the record as to the

specific rule requirements that would or would not allow new development, such as the Southern Montana Electric or Great Northern Power projects, to occur. The final rules provide strict mercury limitations and control requirements, for responsible development, while allowing flexibility if mercury control strategies do not perform as predicted and while providing enough flexibility to ensure that financing of new projects would not be hindered. The board does not believe the emission limits specified in these rules are unachievable on a consistent basis, especially for new facilities and given the ability of both existing and new EGUs to receive an alternative emission limit if the facility's mercury emission control strategy does not perform as expected. Also, participation in the emissions trading allowed under these rules will avoid limiting development to the Montana mercury budget established by EPA under CAMR, and also will provide incentives to reduce mercury emissions below the applicable emissions limitations.

RESPONSE TO COMMENT NO. 215: It is the board's intention that these mercury rules will promote development of cleaner coal technologies, and IGCC falls into that category.

RESPONSE TO COMMENT NO. 216: Any decisions as to whether new power plants in Montana are necessary or not and as to whether it would be wiser to promote shipping coal out of state rather than combusting it in state are policy decisions that are outside the authority of the board.

Economic Impacts to Ratepayers

COMMENT NO. 217: Several commentors stated that the proposed rules would increase the costs to power consumers.

COMMENT NO. 218: A commentor stated that there is no known, proven technology that can reduce mercury emissions at Montana power plants burning Montana coal to the level mandated in the proposed rules and that, therefore, it is impossible to predict the economic impacts to the companies, and ratepayers, etc.

COMMENT NO. 219: A commentor stated that the proposed rules would negatively impact ratepayers, industry, unions, and communities, with little or no demonstrable benefit to the people of Montana, because reducing power plant mercury emissions would have no more than a negligible impact on mercury in the food chain.

COMMENT NO. 220: A commentor stated that the costs to comply with the proposed rules would be considerable and that regulators will not disallow pass-through of costs for legally-required additional pollution controls.

COMMENT NO. 221: MDU commented that the costs to consumers are higher as a result of plants having to comply with more stringent rules. For regulated utilities, such as MDU, costs associated with a more stringent state rule most likely would have to be borne solely by the ratepayers of the state issuing that rule.

COMMENT NO. 222: SME commented that the cost to install ACI for the SME Highwood Generating Station would be about $35 million. Including operation and maintenance costs, the operating costs on an annual basis would be more than $1 million per year. Over the life of the project, this cost would show up in power rates.

COMMENT NO. 223: A commentor stated that the board should balance the responsibility for the health of Montanans with the cost that the rules would have for every electricity ratepayer in Montana.

COMMENT NO. 224: A commentor stated that, because mercury is a global issue, Montana electricity ratepayers would be paying for a benefit that they would not receive.

COMMENT NO. 225: A couple of commentors stated that PPL will not pass on the cost of compliance to ratepayers.

COMMENT NO. 226: A commentor stated that mercury regulation beyond cap-and-trade won't harm ratepayers but would create a level playing field among all companies in Montana, especially because PPL is the only company that may be directly spending significant amounts to comply with the rules. Due to deregulation, PPL bases its rates on what the market will bear, and it is not able to recover the costs of investments in pollution control as it could have done as a regulated entity. PPL will soon discover that, to compete nationally, it will need to produce clean energy.

COMMENT NO. 227: A commentor stated that PPL charges market rates, and will charge as much as it can. A mercury rule will only take away some of its profits.

COMMENT NO. 228: A commentor stated that the commentor is willing to pay whatever it takes to reduce mercury so that people are not subsidizing the coal industry with the health of our children or with the health of the children in China or wherever the mercury eventually is deposited. The governor of California and governors of other states are saying that they don't want to take power unless it is clean power. They could say that, unless Montana meets their standards, they are not going to take our power. So Montana should develop standards that are going to be acceptable in this industry. Also, the utility companies were not at all reluctant to drive up the costs for Montana consumers for their own profits, but they are reluctant to drive the costs up to protect the health of the world's children.

COMMENT NO. 229: A commentor stated that the cost of any requirement for an upgrade of the Colstrip units will be shared on a pro rata basis, based on investment participation, and that 70% of the responsibility for anything related to Colstrip upgrades will be borne by regional utilities and regional customers. The commissioners in Washington and Oregon have no interest in exporting the impacts associated with their power use to Montana, North Dakota, or Minnesota or

downstream states. They are very progressive in terms of recognizing their responsibility as consumers and as state agencies to bear the real cost of their electric consumption. Based on the Federal Energy Regulatory Commission decision that it did not have monopoly power, which constituted a $40 million gift to PPL, PPL is well-positioned to step forward and accept its responsibility for mercury impacts and any requirements that the board may place on PPL's outdated, 25-year-old technology. That is a depreciated plant, and the cost has declined over time with depreciation. The suggestion that there should not be some level of upgrade of pollution control is not valid. Montana-Dakota Utilities (MDU) has expressed concerns, on behalf of its customers, of course, about the impacts of a mercury rule. MDU has not had a rate case in Montana since 1986, 20 years ago. MDU is doing very well and has no interest in exposing itself to a rate case in Montana. The dominant theme in consumers' complaints have not been related to the cost of environmental protection. They have been related to matters such as excessive profits, executive compensation, inefficiencies, and deregulation. PPL will charge whatever the market will bear, which is why it is doing so well. There is not a regulatory agency to allow PPL to build in the cost for this new upgrade, but it also does not have the regulated cost basis that the other four utilities have.

COMMENT NO. 230: The same commentor stated that, if the board does not ensure that projects incorporate the best available technology, this would distort the economics of project alternatives. The board should ensure that the real costs are built into the project so that choices can be made, otherwise choices are distorted in favor of old and outdated technologies, relatively dirty fuel, and relatively dirty plants. There is a great impetus and a lot of economic interest in developing coal, and if we do not address these issues right now, we are missing a golden opportunity and locking ourselves into a bad prospective future. All of the costs that are imposed on society should be built into the projects so that good economic decisions can be made and consumers face the real cost of their consumption. That way, they can choose alternatives that may be less damaging. Let the PSC take the heat for the rates. That is what we are getting paid for. If the board just deals with the fundamental mercury issue, then everybody will be well-served because that is where the board's expertise is.

COMMENT NO. 231: A commentor stated that technology currently is available that would reduce mercury emissions from coal-fired EGUs by 90%. When passed on to consumers, the cost per household to implement stronger mercury controls than those promulgated by EPA would amount to less than $1.50 per month.

RESPONSE TO COMMENT NOS. 217 THROUGH 231 IN "ECONOMIC IMPACTS TO RATEPAYERS" CATEGORY: Implementation of any mercury control strategy in Montana, including implementation of EPA's cap-and-trade provisions that EPA provided as an approvable plan under CAMR, would result in costs to the owners and operators of EGUs. NESCAUM, the Clean Air Association of the Northeast States, estimated that mercury controls more stringent than the minimum controls required to comply with CAMR, based on more stringent rules promulgated

in that region, would result in a cost to the average ratepayer of approximately $0.70 per month. Consumers of electricity should take responsibility for the impacts of that power production, as should consumers of any other product. Pollution control for any pollutant and for any regulated industry is costly; however, the owners and operators of EGUs, and their customers, are responsible for the costs of the pollution that is created by those units in producing power. The Montana Public Service Commission, and any other similar commissions for states or regions that buy Montana power, will have the authority to review pollution control costs for regulated customers. For those EGUs that operate in a nonregulated market, their owners are able to charge what the market will bear and the market will determine whether the owners can pass on the costs of pollution control to consumers, as businesses do with other costs of doing business. Regarding emission trading provisions, by requiring mercury pollution control on every EGU in Montana, the final rules shift the impact of those costs from potential allowance buying to actual pollution control.

Reliance on Ability to Later Amend Rules

COMMENT NO. 232: Great Northern commented that the board should not rely upon the ability to come back and conduct later rulemaking to correct any errors in the rules, because errors would be fatal for the Great Northern Nelson Creek Project. For example, a correction in 2010 would be too late for Great Northern to meet its 2013 timeframe.

RESPONSE TO COMMENT NO. 232: Although the board reserves the right to make corrections or changes to any rules it adopts, the final mercury control rules were adopted with no intention by the board of revisiting the issues to "fix" potential perceived problems.

House Bill 521

COMMENT NO. 233: Several commentors stated that the proposed rules could not be adopted, pursuant to Section 75-2-207, MCA, of the Clean Air Act of Montana, which implements House Bill 521 from the 1995 Montana Legislative Session, because the criteria for adoption of a state rule that is more stringent than a comparable federal regulation or guideline, CAMR, cannot be met. There is no evidence in the record, and the board cannot show, that the proposed rule "protects public health or the environment, " "can mitigate harm to the public health or the environment," and "is achievable with current technology."

COMMENT NO. 234: A commentor stated that most of the experience with mercury control technologies is based only on short-term testing, sometimes of 30 days or less. This is not enough time to determine efficiency rates, or effects on existing plant equipment, etc. True estimates of operation and maintenance costs have not been, and cannot be, ascertained over the short-term. There are no peer-reviewed scientific studies contained in the record that would form the basis for the board to conclude that anything other than CAMR would accomplish the objectives.

RESPONSE TO COMMENT NOS. 233 AND 234 IN "HOUSE BILL 521" CATEGORY: Section 75-2-207, MCA, of the Clean Air Act of Montana, implements House Bill 521 from the 1995 Montana Legislature. The statute states that the board or department may adopt a rule to implement the Clean Air Act that is more stringent than comparable federal regulations or guidelines only if:

a public hearing is held;
public comment is allowed; and
the board or department makes a written finding after the public hearing and comment period that is based on evidence in the record that the state rule:
protects public health or the environment;
can mitigate harm to public health or the environment; and
is achievable with current technology.

While EPA has promulgated CAMR to regulate mercury emissions from EGUs, it is not clear that CAMR is comparable to the mercury control rules adopted by the board, for reasons discussed in a separate written finding that is available from the board. In any event, as also discussed in the separate written finding, the board held a public hearing concerning adoption of mercury control rules, the board allowed public comment on the rules, and the rules protect public health and the environment, can mitigate harm to public health and the environment, and are achievable with current technology.

Montana Environmental Policy Act (MEPA)

COMMENT NO. 235: Several commentors stated that the board is required to comply with MEPA for this rulemaking and has not done so.

COMMENT NO. 236: A commentor stated that the board's mercury rulemaking process is not the functional and legal equivalent of the MEPA process. A process that is "functionally equivalent" would entail at least the board independently investigating the issues relating to regulating mercury emissions, instead of relying on the analyses of interested third parties.

COMMENT NO. 237: A commentor stated that the fly ash from the Corette plant is sold for use in concrete. Varying levels of mercury could be contained in the fly ash used in the manufacture of concrete, which is an issue requiring further assessment under MEPA.

COMMENT NO. 238: A commentor stated that this rulemaking is not subject to MEPA because the rulemaking does not constitute an action on the part of a state agency. The rules would require the owner or operator of an EGU that is subject to the rules to apply for a permit. Issuance of a permit would constitute an action, and would be subject to MEPA. Also, in issuing a permit, the department would be able to conduct a MEPA analysis for the particular EGU and situation in question.

RESPONSE TO COMMENT NOS. 235 THROUGH 238 IN "MONTANA ENVIRONMENTAL POLICY ACT (MEPA)" CATEGORY: The board does not believe that MEPA applies to this rulemaking proceeding. The mercury control rules being adopted by the board would be implemented through air quality permitting procedures that include submission of an application to the department for a permit establishing the applicable mercury emission limit and any necessary operational requirements, department review of the application, preparation by the department of an environmental review document pursuant to MEPA, and issuance of a draft permit and draft environmental review document for public review prior to the department's decision on the application. Therefore, the board believes that issuance of a permit required under these rules, rather than adoption of the rules, would be the action of state government, within the meaning of MEPA, triggering the environmental review requirement. Also, an environmental analysis or environmental impact statement regarding this rulemaking would be a programmatic document. Pursuant to the MEPA rules, programmatic environmental analyses and programmatic environmental impact statements concerning regulatory decisions are discretionary with the agency. The board believes that this rulemaking proceeding has included analyses of impacts and public participation procedures that were the functional equivalent of an environmental review pursuant to MEPA. The board does not believe that any further environmental review is required for this rulemaking, pursuant to MEPA.

Economic Impact Statement

COMMENT NO. 239: A member of the Montana Legislature commented that a petition from legislators would be submitted to require the board to prepare an economic impact statement on the proposed rules. Subsequently, a petition requesting preparation of an economic impact statement was submitted to the board.

RESPONSE TO COMMENT NO. 239: An economic impact statement titled "Benefits and Costs of Various Options for Meeting CAMR through Control of Mercury on Electrical Generating Units" has been prepared in response to the request received from the Montana legislators. The report was made available on the department's web site prior to the board's September 15, 2006, meeting.

Reasonable Necessity for Rules

COMMENT NO. 240: Several commentors stated that the proposed rulemaking does not fulfill the mandatory procedural requirement of 2-4-305(6), MCA, of the Montana Administrative Procedure Act (MAPA), to provide an adequate statement of reasonable necessity for the rules and that any rule more stringent than CAMR is not "reasonably necessary."

COMMENT NO. 241: A commentor stated that the board cannot meet the requirements of the Clean Air Act of Montana to establish that the restrictions in the proposed rules beyond the requirements of CAMR are "reasonably necessary" to

carry out the purpose of the act, which is to protect air quality in Montana, and that the board cannot make required findings, based on record evidence and peer-reviewed studies, that the more restrictive requirements of the proposed rules are needed to protect public health and mitigate harm and are achievable with current technology. The restrictions that go beyond CAMR do not meet these requirements because those restrictions will not have any discernible impact on mercury levels in Montana. Mercury deposition in Montana is very low to begin with, and the proposed restrictions beyond CAMR will not produce meaningful further reductions in mercury deposition within the state. Especially under these circumstances, there is no justification for imposing more stringent emission limits that cannot be achieved with current technologies, as confirmed by recent testing at Colstrip, and without the flexibility afforded by the cap-and-trade provisions of CAMR.

RESPONSE TO COMMENT NOS. 240 AND 241 IN "REASONABLE NECESSITY FOR RULES" CATEGORY: Section 2-4-305(6), MCA, of MAPA, states that an administrative rule is not valid or effective unless it is reasonably necessary to effectuate the purpose of the statute implemented by the rule. The statute further states that the agency adopting a rule must state the principal reasons and the rationale for its intended action and for the particular approach that it takes. In its Notice of Public Hearing on Proposed Amendment and Adoption for this rulemaking, the board included a statement of the reasonable necessity for adoption of rules regulating emissions of mercury from EGUs. 2006 MAR p. 1112 (May 4, 2006). That statement explained the basis for the particular rule provisions proposed by the board but noted that the board also would consider comments on other approaches. For the reasons included in the statement of reasonable necessity, and the reasons discussed in these comments and responses to comments, the board believes that the rules being adopted by the board are reasonably necessary to protect air quality and protect public health and the environment. The other issues raised in the comments regarding reasonable necessity are discussed above in responses to other comments and in the written finding addressing House Bill 521 issues.

Rule Language Clarifications and Other Changes

COMMENT NO. 242: Several commentors suggested language changes in the rules.

RESPONSE TO COMMENT NO. 242: The board made several changes to the language of the final rules, as discussed in more detail below.

COMMENT NO. 243: Several commentors stated that the rules are not clear, are too complicated, leave too much room for interpretation, and/or leave too much room for department discretion.

RESPONSE TO COMMENT NO. 243: The board clarified the rules, to limit the need for interpretation and to give the regulated community, the department, and the public more certainty regarding the application process to obtain a permit for a

mercury emissions limit and mercury control strategy, the application process for an alternative emission limit and the eligibility criteria for an AEL, and the application process for subsequent mercury BACT determinations.

COMMENT NO. 244: A commentor stated that there should be specific objective criteria for the department to determine whether to establish an AEL and that the department should be required to review the demonstration of the technology being used on the facility to control mercury emissions, including the results of sustained emissions testing while employing that technology, as well as its cost and feasibility. Because the phrase "constitutes a continual program of mercury control progression" is not defined and is not limited by considerations of cost effectiveness or feasibility, the term could be interpreted to allow the department open-ended discretion to impose untested mercury control technology as a condition of establishing an AEL. The propose rules should be expanded and clarified to explain the process the department will use for establishing an AEL. Using the principles from a BACT analysis, the rules should incorporate a review of technical feasibility of mercury controls, i.e., controls that are available and applicable, and a review of the cost-effectiveness of those available controls.

RESPONSE TO COMMENT NO. 244: The board has clarified the qualifications for obtaining an AEL. The board has placed more emphasis in the rules on determining the appropriate mercury control strategy prior to the initial compliance date, and eligibility for obtaining an AEL will be dependent on how well the facility complied with the provisions in the air quality permit describing the mercury control strategy. New Rule I now lists the required contents of an application for a mercury control strategy as well as the specific data a facility must provide to apply for an AEL. If a facility has done all it is required under its permit to do to control mercury, obtaining an AEL based on the true capability of the approved mercury control strategy will not be complicated. Specific BACT requirements apply later in implementation of the new rules. An application for a BACT determination is due in 2014 for those facilities that have an AEL, and an application for a BACT determination will be due ten years after issuance of the final permit for a mercury control strategy, for those facilities that achieve the original mercury limitation. An application for a new BACT determination will then be due for every facility every ten years.

COMMENT NO. 245: A commentor stated that the rules should clearly state that a facility in compliance with an AEL is not in violation of the Clean Air Act of Montana. Under New Rule I(7), while the department would be barred from initiating enforcement action, failure to attain the 0.9 lb/TBtu mercury emissions limit still would constitute a violation of the act and the SIP. A facility would be vulnerable to a citizen suit and/or EPA enforcement action if it was in compliance with an AEL but not the 0.9 lb/TBtu limit. Section (7) should be revised to add the phrase "exceedance of a limit established by (1)(a) shall not be a violation of the CAA of Montana, 75-2-101, MCA, nor the Montana state implementation plan under the federal CAA and," before the phrase "the department may not initiate."

RESPONSE TO COMMENT NO. 245: The rules currently state that: "If an application is submitted in accordance with [alternative emission limit application requirements], the failure of the owner or operator of the mercury-emitting generating unit to comply with the mercury emission limit in (1)(b) is not a violation of this rule or the permit until the department has issued its final decision on the application." These mercury control rules will be submitted to EPA as a control plan, as required by CAMR, and will not be submitted for inclusion in the Montana state implementation plan. The board does not believe any clarification of this language in the rules is necessary.

COMMENT NO. 246: A commentor stated that the department's proposed mercury limits for 2010 are vague, confusing, and infeasible. The proposal appears to allow for an AEL if the plant properly installs controls that the department determines are "projected to meet" this limit but they fail to do so. But, the rules contain no direction on how such determinations and projections would be made. The rules should clearly describe the process for approving control technologies designed to meet the limit.

RESPONSE TO COMMENT NO. 246: As discussed above, the board has clarified the criteria for obtaining an AEL.

COMMENT NO. 247: A commentor stated that the proposed rules do not provide a definition of "practices," within the meaning of the "mercury control practices" that the owner or operator of an EGU may propose as a mercury control strategy. It is the commentor's understanding that a precombustion process such as K-Fuel™ would be a recognized "practice" as a compliance option for coal-fired power plants. If this understanding is not correct, the board should revise the language appropriately so that all mercury reduction techniques and processes, including precombustion, are treated as equal solutions to reducing mercury emissions and meeting required emission rates.

RESPONSE TO COMMENT NO. 247: It is the board's intent that precombustion processes such as K-Fuel™ would be considered recognized "practices" and compliance options for EGUs. The board has not revised this language in the rules because the board intends for the language to be broad and not limit the "practices" for reducing mercury emissions at EGUs that may be approved by the department.

COMMENT NO. 248: A commentor stated that, if the board adopts Rule II, the language should be clarified. "Allowance allocation value" should be defined as one allowance for each ounce of mercury emitted per year. The allocation also should be clarified. The formula in (2) is pounds x MMBtu/hr x 8760 hours = "allocation allowance value." Section (5) states that the department shall allocate mercury allowances on a first come, first served basis, by date of commencement of commercial operation, and allocations may not exceed the Montana mercury budget. The board should clarify what occurs if the cap is exceeded. The board should clarify whether the most efficient plant has to cease operation, whether the

department would start with the most recent commencement date and work back to the oldest plant, or whether some prorata formula would apply.

RESPONSE TO COMMENT NO. 248: The board has clarified the mercury emission allowance calculation language, and the board believes this language appropriately expresses the required methodology. The current allocation scheme, including all of the existing, currently permitted, and sources that are in the midst of the permitting process (specifically Southern Montana Electric), would allocate approximately half of Montana's budget from 2010-2017. Unallocated allowances would be available for new sources as they commenced commercial operation. Because the department is prohibited from allocating allowances in excess of the state budget, if the budget is reached, the owners or operators of any new EGUs requesting allowances beyond the budget amount would be refused through 2017. Starting in 2018, all facilities operating (or anticipated to be operating based on notification provided at commencement of construction) would be included in the allowance allocation equation. The department would base the allocations on the sum of the maximum design heat input for all existing EGUs in Montana as well as those that had commenced construction and notified the department of their intent to commence commercial operation for the control period year in question. The Montana allocation budget of 298 lbs would be divided up by that sum of the maximum design heat inputs.

COMMENT NO. 249: A couple of commentors stated that the rule requirements should take effect either immediately or as soon as possible.

RESPONSE TO COMMENT NO. 249: Requiring the mercury rule requirements to take effect immediately would result only in noncompliance, not environmental protection. Current rules, which are referenced in the mercury control rules, require that new or modified facilities install BACT for control of mercury emissions prior to startup. Requiring existing facilities to comply with a standard that they have had no time to prepare for or implement control for would be counterproductive. As discussed above, if EPA had promulgated a MACT standard to control mercury emissions from EGUs, instead of promulgating CAMR, the time from promulgation of the final rule to the compliance date probably would have been three years, based on previous MACT rules. Three years is a reasonable amount of time to allow facilities to make the necessary investments in control equipment, as well as to have that control equipment installed and operating. From the time of final action on these state rules in October of 2006, to the starting compliance date of January 1, 2010, is just over three years. In order to provide the maximum amount of mercury control on EGUs in Montana, the rules must allow enough flexibility and time for owners and operators to establish and implement the best mercury control strategy for each particular facility. Providing less than three years would force owners and operators to select the mercury control that is most available and easiest to install, instead of implementing a strategy that would be most appropriate for the facility and most protective of public health.

COMMENT NO. 250: A commentor stated that, under New Rule I(2)(a), the deadlines for notice of failure to meet the mercury standards are far too liberal. Notice should occur within six months, or by April 1, 2011, whichever is earlier. Under New Rule I(2)(b), the deadlines to apply for an AEL also are too liberal and should be within 18 months, or by July 1, 2011, whichever is earlier.

RESPONSE TO COMMENT NO. 250: The board has revised the deadlines for notice of failure to meet the mercury standards to "by March 1, 2011, or within 2 months of the failure, whichever is later." The board has revised the deadline to file an application for an alternative emission limit to "by July 1, 2011, or within 6 months of the failure, whichever is later." The "whichever is later" language applies to both new and existing facilities. A new facility starting up in 2012 automatically would be out of compliance based on the language suggested by the commentor. Owners and operators need a reasonable amount of time to review, and provide a quality assurance check on, any data submitted to the department, and 60 days is a standard amount of time to submit such data. Similarly, facilities need a reasonable amount of time to prepare a complete application for an alternative emission limit.

COMMENT NO. 251: A commentor stated that trading of surplus mercury emission credits should be reserved for use only by new or expanding mercury emitting units, rather than for ongoing units that fail to operate within their assigned limits. Credit buying and selling should not be used to perpetuate noncompliance. There should be stiff fines for units that are not in compliance, and the fine could be granted back to the owner of the noncompliant unit upon the investment in adequate pollution reducing technology.

RESPONSE TO COMMENT NO. 251: Under the final rules, an owner or operator will not be able to "buy" into compliance with mercury allowances from the emission credit trading program. If a facility is out of compliance with a mercury emission limit or alternative emission limit, the compliance status cannot be changed by buying emission credits. That facility potentially would be subject to enforcement action. If a facility has an approved alternative emission limit, is in compliance with that limit, and needs to buy allowances between the allocation level and that limit, such purchases will be allowed and would be necessary to operate and maintain compliance with the EPA program that would require each EGU compliance account to have one allowance per ounce of mercury emitted for that control period year. Fines, among other enforcement tools, would be an available course of action for the department in the case of noncompliance with the mercury rules. Currently, there is no mechanism for granting enforcement fines back to noncompliant units upon investment in adequate pollution control equipment, and such a change would be outside the scope of this rulemaking.

COMMENT NO. 252: A commentor stated that the proposed rules do not provide definitions for the two categories of EGUs covered. The board should clarify what constitutes a unit that "combusts lignite," to ensure that utilities cannot make a windfall profit by receiving allowances based upon the lignite standard when the

EGU is actually burning a significant amount of subbituminous coal. In ARM 17.8.740, "Definitions," the board should insert the following language:

(13) "a mercury emitting generating unit that does not combust lignite" means a mercury emitting generating unit that combusts lignite in an amount less than 10% of its total heat input, calculated for the prior calendar year on a calendar year basis.

(14) "a mercury emitting generating unit that combusts lignite" means a mercury emitting generating unit that combusts lignite in an amount equal to or greater than 90% of its total heat input, calculated for the prior calendar year on a calendar year basis.

RESPONSE TO COMMENT NO. 252: The board agrees that clarification is necessary and has added the following definition:

(13) "Mercury-emitting generating unit that combusts lignite" means any mercury-emitting generating unit that combusts lignite in an amount equal to or greater than 75% of its total heat input, calculated for the prior calendar year on a calendar year basis.

Another commentor requested that the percentage of lignite should be set at exceeding 50%. After further discussions with the commentors on why particular percentages were requested, the board determined that 75% was most appropriate because other lignite facilities similar to the MDU facility have had to use up to 25% subbituminous coal to supplement the lignite in order to create a stable fuel mixture (due to the sometimes unpredictable properties of lignite). The board believes that the definition of "mercury emitting generating unit that does not combust lignite" is implicit in this definition and that a separate definition of that phrase is unnecessary.

COMMENT NO. 253: A commentor stated that further definition of the AEL requirements is necessary. There are situations where there is no technology or practice that can achieve a standard from a technical perspective, be operative for the specific unit in question and/or be economically viable for the specific unit in question. Requiring installation of that equipment, solely for the purpose of having it fail in order to qualify for an AEL puts the company in the position of incurring not only stranded equipment, installation, and operating costs, but also lost revenues from outages and other reductions in efficiency in electrical generation. The board should borrow from existing Clean Air Act concepts and amend New Rule I(2) as follows:

"If the owner or operator of a mercury-emitting generating unit properly installs and operates control technology, boiler technology, or follows practices projected to progress to achieve the mercury standard in (1)(a) (but only to the extent that such technology or practices are technologically feasible, commercially available, and economically viable for the specific mercury-emitting generating unit), and the control technology, boiler technology, or practices fail to achieve the emission rate required in (1)(a), the owner/operator . . . ."

RESPONSE TO COMMENT NO. 253: As discussed above in response to other comments, the board has clarified the criteria for obtaining an AEL.

COMMENT NO. 254: A commentor stated that, if the board adopts cap-and-trade, the rules should include a provision prohibiting facilities from speculating in mercury allowances merely because they hold an air quality permit.

RESPONSE TO COMMENT NO. 254: As discussed above, owners and operators merely holding an air quality permit would not be allocated allowances, and, therefore, would not be able to speculate in mercury allowances. The owners and operators of facilities commencing commercial operation prior to 2018 would request allocations during the year in which they commence commercial operation. The owners and operators of EGUs that are anticipated to commence commercial operation in 2018 or later would be required to request allowances from the department for the time they anticipate commencing commercial operation when they provide notification of commencement of construction, pursuant to ARM 17.8.801. If they commence commercial operation later than that, they would have to surrender those unused allowances to the department.

COMMENT NO. 255: EPA commented that Montana's approach of incorporating by reference most of the provisions of the EPA model rule not only facilitates EPA's review but also will facilitate adoption by Montana of changes in the model rule.

RESPONSE TO COMMENT NO. 255: The board's intent was to simplify the rules by incorporating by reference as much of the requirements from CAMR as was possible, without sacrificing the flexibility allowed under the allowance allocation section, which the board customized to meet Montana's needs.

COMMENT NO. 256: EPA commented that, to be consistent with the change EPA made to the Montana EGU mercury budget in the May 31, 2006, final EPA rule on reconsideration, New Rule II should state Montana's EGU mercury budget in ounces of mercury, because each of the allowances that will be allocated will authorize one ounce of mercury emissions.

RESPONSE TO COMMENT NO. 256: The board has revised its final rules to express allowances in ounces, in response to this comment.

COMMENT NO. 257: EPA commented that New Rule II(1)(a) requires Montana to submit allocations to EPA in 2009, and later, for the control period four years after the year of the submission deadline. For example, in 2011, Montana would have to submit allocations for 2015. However, the proposed rules state that trading will not be allowed after 2014. Consistent with this intent, the draft rules should bar allocations for control periods after 2014.

RESPONSE TO COMMENT NO. 257: The board has not revised the timing of allocation submittals because the board has deleted the prohibition on trading of emission credits after 2014, and New Rule II now reflects unrestricted trading.

COMMENT NO. 258: EPA commented that, similar to EPA's model rule, New Rule II(1)(c) would provide for allocations in the absence of state submission of allocations to EPA. CAIR NO_X model trading rule initially included a provision similar to that in the mercury model rule. EPA subsequently removed that provision from CAIR and may propose to take the same action regarding the mercury model rule. Therefore, Montana should reconsider the need for New Rule II(1)(c).

RESPONSE TO COMMENT NO. 258: Based on EPA's comment, the board has deleted the section of the rules formerly included under New Rule II(1)(c).

COMMENT NO. 259: EPA commented that, under New Rule II(2), allowances would be determined by multiplying each unit's "maximum (nameplate) heat input value (in mmBtu/hr)" by 8,760 hours. The rule should describe what would happen if the calculation used in the allocation methodology resulted in total allowance allocations exceeding the state budget. The rule should provide a mechanism to reduce each unit's allocation, in that event, so that total allocations cannot exceed the state budget. New Rule II(1)(c) states that allocations will not exceed the budget, but the rule must explain how Montana will ensure this. Also, the rules should define the phrase "maximum (nameplate) heat input value," used in the rules. The rules should describe how the department will obtain this value or state that the department will use the best available data reported to it by the unit owner or operator.

RESPONSE TO COMMENT NO. 259: As discussed above, the allocation scheme adopted by the board would include all existing, currently permitted, and anticipated to be permitted EGUs and would allocate approximately half of Montana's budget from 2010-2017. Because the department is prohibited from allocating allowances in excess of the state budget, if that budget is reached, the owners and operators of any new EGUs requesting allowances beyond the state budget would be refused through 2017. Starting in 2018, all EGUs operating, or anticipated to be operating, would be included in the allowance allocation equation. The board has defined the phrase "maximum design heat input" as having the meaning as defined in 40 CFR 60.4102. Also, the board has added language to New Rule II that states: "The department shall determine maximum design heat input for each mercury-emitting generating unit based on information reported to it by the owner or operator of the mercury-emitting generating unit."

COMMENT NO. 260: EPA commented that the rules should include language similar to CAMR Model Rule 60.4141(c)(2), describing how mercury allowances may be requested for a new unit.

RESPONSE TO COMMENT NO. 260: As EPA suggested, the board has included language in New Rule II similar to Model Rule 60.4141(c)(2), describing

how mercury allowances may be requested for a new EGU. The language for EGUs commencing commercial operation in or after 2018 has been customized to reflect Montana's allocation scheme starting in 2018.

COMMENT NO. 261: EPA commented that the rules should state the criteria the department will use to determine whether a unit is to be treated as combusting lignite coal, e.g., by specifying that a minimum percentage of heat input during a specified period must be from lignite.

RESPONSE TO COMMENT NO. 261: As discussed above, the board added a definition of "mercury-emitting generating unit that combusts lignite."

COMMENT NO. 262: EPA commented that the proposed allocation methodology in New Rule II(2)(b), requiring surrender of "excess" allowances, assumes that each unit operates at maximum heat input value every hour of the year (8,760 hours); however, typically, units do not operate at this level. Therefore, every unit will be required to surrender allowances. The rules should describe how the "excess" allocation amount will be determined. Requiring surrender of "excess" allocations could create a disincentive to reduce emissions if the surrender is based on actual emissions. Also, the rules should specify procedures for implementing the requirement to surrender allowances, e.g., procedures requiring unit owners and operators to transfer allowances to a Montana general account. Surrender of allowances by the owner or operator is not part of the EPA end-of-year compliance process and would need to be compatible with the allowance transfer deadline in the model rule.

RESPONSE TO COMMENT NO. 262: The board has revised New Rule II to require surrender of excess emissions only for facilities that commence commercial operation during or after 2018 and that commence commercial operation later than planned. The owners and operators of EGUs in this category would be required to request allocations based on their anticipated date of commencement of commercial operation, as defined in ARM 17.8.801. The board also added the following language to New Rule II(2): "(e) Any allowances left unallocated by the department or surrendered to the department shall be placed into a general account for the State of Montana as established under 40 CFR 60.4151." To be consistent with the allowance transfer deadline, the board also added language stating that any allowances surrendered must be surrendered prior to the end of the year.

COMMENT NO. 263: EPA commented that New Rule II should specify what happens to mercury allowances that are not allocated or to "excess" mercury allowances that are surrendered. Also, the rules should state what happens after 2014 to all unused mercury allowances issued by the department or held by Montana entities.

RESPONSE TO COMMENT NO. 263: As discussed above, the board revised New Rule II(2) to state: "(e) Any allowances left unallocated by the department or surrendered to the department shall be placed into a general account

for the State of Montana as established under 40 CFR 60.4151." No revision is necessary to address allowances after 2014 because the final rules allow trading beyond that date.

COMMENT NO. 264: EPA commented that New Rule I includes mercury emission limits applicable in 2010 and thereafter for some, but not all, units subject to New Rule II, but the rules provide for an emissions allowance trading program only during 2010-2014. Montana needs to demonstrate that the state will not exceed its mercury budget for 2015 and beyond. For example, the state needs to show how its budget, which imposes a mass limit, will not be exceeded under rules that impose only emission rate limits and on some, but not all, EGUs.

RESPONSE TO COMMENT NO. 264: The final rules include mercury emission limits for all EGUs that are subject to New Rule II, as the definition of mercury-emitting generating unit references the definition of electrical generating unit under 40 CFR 60.24. The final rule is somewhat different than the original proposed New Rule II in that trading is now allowed on an unrestricted basis. The board's understanding is that, if unrestricted emission trading under EPA's trading program is allowed, it is not necessary for the state to demonstrate that its rules will meet the state mercury budget.

COMMENT NO. 265: EPA commented that, to participate in the EPA-administered mercury trading program, Montana must adopt EPA's model trading rule without substantive changes, except for the allowance allocation methodology. For example, substantive changes to the allowance transfer provisions of the model rule may not be made. The allowance transfer provisions allow facilities to buy and sell to any entity, without limitation, mercury allowances issued under the EPA mercury trading program. A state provision barring or limiting purchase of allowances from out-of-state entities would be inconsistent with the allowance transfer provisions and, thus, constitute a substantive change that would prevent EPA approval of participation by the state's facilities, and use of the state's allowances, in the EPA-administered mercury trading program.

RESPONSE TO COMMENT NO. 265: The final rules contain no provisions limiting allowance transfer and adopt EPA's model trading rule, except for allowed changes to the allowance allocation methodology.

COMMENT NO. 266: A commentor stated that the definition of "commence commercial operation" should be revised so that the rules apply only to facilities selling electricity. The definition, as contained in 40 CFR 60.4102, could be interpreted so that an EGU would be subject to the rules, including the emission limits, from the date of first firing, before selling electricity under contract, because of the phrase "for sale or use, including test generation" included in the definition in 40 CFR 60.6102. The definition of "commence operation" should include the phrase "supplying electricity to meet contractual obligations." It is critical that facilities be allowed to conduct reasonable testing prior to commercial operation, without the threat of enforcement.

RESPONSE TO COMMENT NO. 266: Consistency with federal definitions is key to making the emission trading provisions work. Also, the suggested revision may not be approvable by EPA. The definition of "commence commercial operation" remains the same as the definition in 40 CFR 60.4102.

COMMENT NO. 267: A commentor stated that the board should not adopt the proposed AEL provisions but, if not eliminated from the rules, the AEL provisions should contain more certainty such that when a facility makes legitimate efforts to meet the final limits, the department must approve the AEL, and AELs must be available after 2018. Replacing the unworkable language of "projected, as determined by the department, to meet the standard in (1)(a)" with the following language might alleviate some concerns: "A source qualifies for an AEL if it demonstrates that it has made best efforts to achieve the 2.4 lb/TBtu for subbituminous and 5.7 lb/TBtu for lignite coal emission rate by 2010 and 0.9 lb/TBtu for subbituminous and 2.2 lb/TBtu for lignite by 2018. The AEL means that emission rate which results from the source having applied the best system of emission reduction that is available and has been adequately demonstrated in the market for the configuration and age of combustion system, rank of coal and emission control in operation at the unit(s) or the source demonstrates by which date it intends to apply the best system of emission reduction taking into account the cost of achieving such reduction and any non-air quality health and environmental impact and energy requirements." Another suggestion, which is not a preferred alternative, is to phase in emission limits to match the state budget.

RESPONSE TO COMMENT NO. 267: As discussed above, the board has clarified the criteria for obtaining an AEL.

Implementation of the Hardin Generating Station Settlement

COMMENT NO. 268: Centennial Power/Rocky Mountain Power commented that months before any party submitted proposed mercury rules to the board, Centennial Power/Rocky Mountain Power reached a settlement agreement with the department and the Montana Environmental Information Center (MEIC), which was approved by the board and under which: (1) the Hardin Generating Station would become a test facility for mercury control equipment for a 36-month demonstration period; (2) the company would install an ACI system or other suitable equipment at the end of the demonstration period; and (3) after an 18-month optimization period, the company would submit a permit application based on a factual analysis of the equipment. Settlements are worthless, however, if the department and the board can void those settlements through rulemaking procedures. If this is the case, parties in future disputes are less likely to consider settlement discussions and probably will proceed with full administrative/judicial litigation on disputed issues. The company is actively working toward quantifiable solutions to the mercury issue right now. In February of this year, the DOE awarded the Hardin Generating Station (HGS), in conjunction with ADA-ES, a $3.2 million grant to test mercury control equipment. The testing will be partially funded by the company. This shows the company’s commitment to finding mercury emission solutions and to the Hardin

settlement agreement. The company gave its word and intends to honor the Hardin settlement agreement, and MEIC has confirmed that it also intends to honor the agreement. The board and department should do the same. The board should incorporate a provision in any mercury rule it adopts that does not void the mercury control provisions of the Hardin Generating Station agreement.

RESPONSE TO COMMENT NO. 268: While the board understands the concern expressed by the commentor, the settlement expressly states that the settlement agreement was not intended to ". . . limit any Party's participation in any . . . proceedings . . . with respect to any future decisions or permitting decisions; or to initiate or participate in any action to enforce any permit conditions or new law applicable to HGS." At the time the settlement agreement was signed, all parties knew that Montana would have to respond to the requirements under CAMR to develop a mercury control plan and that the HGS would be subject to it. The DOE grant awarded for the HGS targets 90% control of mercury. The "as-fired" mercury content in HGS coal as reported in air quality permit applications was estimated at 4.6 lb/TBtu. Under the final rules, if HGS needs to apply for an alternative emission limit, that alternative emission limit could not exceed 2.4 lb/TBtu, which would amount to less than 50% control. The board believes the rules provide enough flexibility to HGS while still encouraging the HGS to reduce mercury emissions as much as possible. For those reasons, the board has not included an exemption from the rules for the HGS, and the board does not believe that the final rules void any part of the settlement agreement.

Miscellaneous

COMMENT NO. 269: A commentor stated that mercury rules are necessary to avoid a situation like the contamination at the Zortman-Landusky mine.

RESPONSE TO COMMENT NO. 269: The board agrees that mercury is a hazardous air pollutant that needs to be regulated.

COMMENT NO. 270: A commentor stated that there should be tax credits to give the coal/power companies incentive to clean up mercury emissions.

RESPONSE TO COMMENT NO. 270: Tax credits for coal/power companies to clean up mercury emissions are outside of the scope of this rulemaking.

COMMENT NO. 271: A commentor stated that, at this time, coal is the most affordable form of creating electricity and that it does not make sense to restrict coal processing and then purchase electricity from others and take their pollution.

RESPONSE TO COMMENT NO. 271: The board believes that coal can be developed responsibly and in balance with environmental concerns, as demonstrated in this rulemaking process.

Reviewed by: BOARD OF ENVIRONMENTAL REVIEW

/s/ David Rusoff
DAVID RUSOFF
Rule Reviewer

/s/ Joseph W. Russell
JOSEPH W. RUSSELL, M.P.H.
Chairman

Certified to the Secretary of State, October 16, 2006.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM 24.21.411, the adoption of NEW RULE I and the repeal of ARM 24.21.414, all related to the apprenticeship and training program	)))))))	NOTICE OF AMENDMENT, ADOPTION, AND REPEAL

TO: All Concerned Persons

1. On September 7, 2006, the Department of Labor and Industry published MAR Notice No. 24-21-210 regarding the proposed amendment, adoption, and repeal of the above-stated rules at page 2073 of the 2006 Montana Administrative Register, issue no. 17.

2. On September 29, 2006, the department held a public hearing in Helena regarding the above-stated rules. No comments were heard from the public at the public hearing. No written comments were received prior to the closing date of October 6, 2006.

3. The department has amended ARM 24.21.411 exactly as proposed.

4. The department has adopted NEW RULE I (24.21.425) exactly as proposed.

5. The department has repealed ARM 24.21.414 as proposed.

/s/ MARK CADWALLADER
Mark Cadwallader
Alternate Rule Reviewer

/s/ KEITH KELLY
Keith Kelly, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State October 16, 2006

BEFORE THE BOARD OF RADIOLOGIC TECHNOLOGISTS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM 24.204.408 applications, 24.204.501 limited permit applications - types, 24.204.504 permits - practice limitations, 24.204.511 permit examinations, and adoption of NEW RULE I renewal - proof of good standing	))))))	NOTICE OF AMENDMENT AND ADOPTION

TO: All Concerned Persons

1. On July 27, 2006, the Board of Radiologic Technologists (board) published MAR Notice No. 24-204-32 regarding the proposed amendment and adoption of the above-stated rules, at page 1819 of the 2006 Montana Administrative Register, issue no. 14.

2. On August 21, 2006, a public hearing was held on the proposed amendment and adoption of the above-stated rules in Helena. No comments or testimony were received.

3. The board has amended ARM 24.204.408, 24.204.501, 24.204.504, and 24.204.511 exactly as proposed.

4. The board has adopted NEW RULE I (24.204.2116) exactly as proposed.

BOARD OF RADIOLOGIC TECHNOLOGISTS
ANNE DELANEY, CHAIRPERSON

/s/ DARCEE L. MOE
Darcee L. Moe
Alternate Rule Reviewer

/s/ KEITH KELLY
Keith Kelly, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State October 16, 2006

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

In the matter of the amendment of ARM 24.213.402 application for licensure and 24.213.408 examination	)))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On July 6, 2006, the Board of Respiratory Care Practitioners (board) published MAR Notice No. 24-213-15 regarding the notice of public hearing on the proposed amendment of the above-stated rules, at page 1716 of the 2006 Montana Administrative Register, issue no. 13.

2. On July 28, 2006, a public hearing was held on the proposed amendment of the above-stated rules in Helena. No comments or testimony were received.

3. The board has amended ARM 24.213.402 and 24.213.408 exactly as proposed.

BOARD OF RESPIRATORY CARE PRACTITIONERS
EILEEN CARNEY, CHAIRPERSON

/s/ DARCEE L. MOE
Darcee L. Moe
Alternate Rule Reviewer

/s/ KEITH KELLY
Keith Kelly, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State October 16, 2006

DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM 24.351.215 license fee schedule for weighing and measuring devices	)))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On June 1, 2006, the Department of Labor and Industry (department) published MAR Notice No. 24-351-190 regarding the proposed amendment of the above-stated rule at page 1356 of the 2006 Montana Administrative Register, issue no. 11.

2. On June 22, 2006, a public hearing was held on the proposed amendment of the above-stated rule in Helena. Several comments were received by the June 30, 2006, deadline.

3. The department has thoroughly considered the comments and testimony received. A summary of the comments received and the department's responses are as follows:

COMMENT 1: One commenter asked why propane (LPG) meters are not included in the same fee schedule as the retail motor fuel devices, and why fees for LPG devices are higher than those for the other devices.

RESPONSE 1: The department notes that the fee schedule for retail and wholesale gasoline and diesel fuels is based on the maximum flow rate of the device. Because the device must be tested at maximum flow rate for a minimum of one minute, the flow rate dictates the size of the volumetric prover required for the test. The costs of these volumetric provers are dependent upon their size. For example, a retail gasoline pump requires the use of a five gallon test measure which costs approximately $400.00 and is used to test around a thousand pumps a year with each test taking about 10 –15 minutes. By comparison, a wholesale meter will require a 100-gallon prover costing around $1,500 each, plus the price of the trailer needed to transport to prover. This device will be used to test approximately 200 to 300 meters a year, with each test taking about 45 minutes. From this example, it is obvious that it costs less to test a retail device compared to a wholesale device. Because the fees must be commensurate with associated costs, the license fee for a wholesale device is greater than that for a retail device. LPG device fees are the same regardless of flow rate because the costs associated with testing are allocated evenly for all meters and are higher because of the equipment cost and time needed to perform the test. While the department does test LPG using two different sized provers based somewhat on flow rates, these two provers are generally sold as a single proving unit mounted on a trailer. A new LPG proving unit will cost in excess of $45,000, and will be used to test approximately 250 meters a year, with each meter taking between 45 and 60 minutes.

COMMENT 2: A few commenters suggested privatizing the inspection process to the fuel companies.

RESPONSE 2: The department notes that other states have attempted to privatize weights and measures functions, but these functions have always reverted back to public agencies. When testing and certifying weighing and measuring devices, the Weights and Measures Bureau (W&M) acts as an independent third party whose only concern is equity. Passing this function to an entity whose interests may also include increased gasoline sales would not provide the same level of confidence and impartiality that is provided by W&M. An additional consideration is the level and cost of service provided to all businesses throughout the state. The W&M currently tests and inspects every meter on an annual basis for a set fee, regardless of location. In conjunction with the inspection process, W&M will often adjust meters to bring them back into tolerance. If this function were transferred to a private entity, the cost may decrease for those businesses located within an area having a large population of devices, but for those located a greater distance from the service provider in less densely populated areas, the cost will likely increase. The department has determined that weights and measures functions should remain with a public entity to provide the best service at the least cost for all businesses involved as well as the greatest confidence in accurate devices.

COMMENT 3: A few comments were made on the differences in device fees and frequency of inspections between Montana and surrounding states.

RESPONSE 3: The department notes that comparing the device fees charged by Montana and the fees charged by the selected states is like comparing apples to oranges. In Montana, the W&M program is funded 100% by device registration fees; no general fund monies are used. In the surrounding states named, a large part of their programs include general funding. In Idaho, device fees provide 1/3 of the program funding, while general funds account for 2/3 of the Idaho program's funding. Extrapolating Idaho's $5.00 per retail device fee out to 100% of program cost would result in a fee of $15.00 per meter, which is very comparable to what Montana charges. Information from the state of Idaho indicates that a proposed $5.00 per retail meter fee increase will be presented at the next legislature to bring their fees more in line with their expenses. Information from Oregon indicates that based on test time, equipment costs, and travel expenses, the Oregon program is just breaking even at its current $30.00 per retail meter fee level.

Concerning inspection frequency, Montana is statutorily required to license every device once a year. Some of the surrounding states do inspect and test on a less frequent basis; however, that rate is based more on staff size and inadequate funding rather than the premise that inspecting devices every two or three years is adequate. Washington, for example, has a goal of an inspection frequency of 28 months, but their current average inspection frequency for retail meters is over 36 months. Montana's fee structure and inspection frequency rate are very comparable to programs of other states that are also fully funded by fees and consistently report a high level of compliance.

COMMENT 4: Several commenters suggested the bureau cut costs and control operating expenses instead of increasing the fees.

RESPONSE 4: The department responded that the bureau continually strives to control operating costs. The bureau now has two less employees than it did in 1989, yet the bureau tests and inspects more devices now than it did then. Expenditures for equipment have been kept to a minimum and while the bureau had to purchase some new equipment to handle the increased workload, provers that were originally built or bought in the 1950s are still in use. The majority of the 56% operating expense increase over the last ten years or 5.6% per year is directly attributable to cost increases the bureau has no control over such as fuel, lodging, per diem, etc. These expenses include gasoline, which was less than $1.25 a gallon five years ago, but has very recently been about $3.00 a gallon, and the state rate for motel rooms which was $35.00 a night five years ago, but is now at least $60.00 a night.

COMMENT 5: A few comments were made regarding matters unrelated to the proposed rule amendments, such as the Montana approval of North Dakota truck meters and high costs of credit card companies and customer drive-offs.

RESPONSE 5: The department finds that these comments deal with concerns outside the purview of the proposed rule notice and are beyond the scope of the department's rulemaking authority.

COMMENT 6: A commenter expressed concern over the competitiveness and slim profit margins in the retail fuel market and that passing along this increase will drive the price of fuel higher.

RESPONSE 6: The department recognizes that with the addition of large box stores selling gasoline and some retail establishments relying more on gambling machines to increase their profit margins, the industry has shifted from local service stations selling gasoline, automobile accessories, and service toward a more diversified industry. However, this fee increase is applied uniformly to all meters regardless of the type of business structure and should not impact one type of retail establishment any more than another.

COMMENT 7: Several commenters opposed the increase in fees, stating that the amount of increase is too great.

RESPONSE 7: The department notes that it has been six years since a fee increase was last enacted, which amounts to less than 5% per year and is slightly less than the bureau's operating increase of 5.6% per year. For an average station having 20 meters, the proposed increase will amount to $100.00 per year. If expressed as dollars per gallon for a retail outlet that averages 800,000 gallons per year, this comes to .000125 dollars per gallon that would be passed on to recoup the expenses. The department asserts that this is not a significant increase in light of today's gasoline prices and is necessary to keep fees commensurate with costs.

4. The board has amended ARM 24.351.215 exactly as proposed.

DEPARTMENT OF LABOR AND INDUSTRY

/s/ MARK CADWALLADER	/s/ KEITH KELLY
Mark Cadwallader	Keith Kelly, Commissioner
Alternate Rule Reviewer	DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State October 16, 2006

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

In the matter of the adoption of New Rules I through XXVIII pertaining to home and community-based services for adults with severe disabling mental illness	))))	NOTICE OF ADOPTION

TO: All Interested Persons

1. On August 24, 2006, the Department of Public Health and Human Services published MAR Notice No. 37-390 pertaining to the public hearing on the proposed adoption of the above-stated rules, at page 1996 of the 2006 Montana Administrative Register, issue number 16.

2. The department has adopted new rules II (37.90.402), III (37.90.406), V (37.90.408), VII (37.90.413), VIII (37.90.420), IX (37.90.425), X (37.90.428), XII (37.90.430), XIII (37.90.431), XIV (37.90.432), XV (37.90.436), XVI (37.90.437), XVII (37.90.438), XVIII (37.90.440), XIX (37.90.441), XX (37.90.442), XXI (37.90.445), XXII (37.90.446), XXIII (37.90.447), XXIV (37.90.448), XXV (37.90.449), XXVI (37.90.450), XXVII (37.90.460), and XXVIII (37.90.461) as proposed.

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

RULE I (37.90.401) HOME AND COMMUNITY-BASED SERVICES FOR ADULTS WITH SEVERE DISABLING MENTAL ILLNESS: FEDERAL AUTHORIZATION AND STATE ADMINISTRATION (1) The department has submitted a proposal seeking approval from ~~T~~the U.S. Department of Health and Human Services (HHS) ~~has granted the department~~, under 42 CFS 441.300 through 441.310, ~~the authority~~ to establish a program of Medicaid funded home and community-based services for persons who have severe disabling mental illness, as defined in ARM 37.89.103, and who would otherwise have to reside in and receive Medicaid reimbursed care in a nursing facility or a hospital. Upon formal approval, the department will initiate the program in accordance with the conditions of approval governing federal and state authorities and these rules.

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

AUTH: 53-2-201, 53-6-402, MCA
IMP: 53-2-401, 53-6-402, MCA

RULE IV (37.90.410) HOME AND COMMUNITY-BASED SERVICES FOR ADULTS WITH SEVERE DISABLING MENTAL ILLNESS: ELIGIBILITY AND SELECTION

(1) and (2) remain as proposed.

(3) A person is qualified to be considered for enrollment in the program if the person meets the following criteria:

(a) is at least 18 years of age ~~or older or is certified as disabled by~~ and, if under the age of 65, has been determined to be disabled according to the Social Security Administration;

(b) through (7)(h) remain as proposed.

AUTH: 53-2-201, 53-6-402, MCA
IMP: 53-2-401, 53-6-402, MCA

RULE VI (37.90.412) HOME AND COMMUNITY-BASED SERVICES FOR ADULTS WITH SEVERE DISABLING MENTAL ILLNESS: PLANS OF CARE (1) A plan of care is a written plan of supports and interventions, inclusive of personal recovery oriented goals to guide the provision of services, based on an assessment of the status and needs of a recipient. The plan of care describes the needs of the recipient and the services available through the program and otherwise that are to be made available to the recipient in order to maintain the recipient at home and in the community.

(2) through (10) remain as proposed.

AUTH: 53-2-201, 53-6-402, MCA
IMP: 53-2-401, 53-6-402, MCA

RULE XI (37.90.429) HOME AND COMMUNITY-BASED SERVICES FOR ADULTS WITH SEVERE DISABLING MENTAL ILLNESS: SUPPORTED LIVING, REQUIREMENTS (1) through (2)(f) remain as proposed.

(g) supported employment as specified at ~~[RULE XI]~~ [RULE XIV] (37.90.432);

(h) through (j) remain as proposed.

(3) An entity providing supported living services must ~~meet the following criteria:~~

~~(a) be accredited by the Commission on Accreditation of Rehabilitation Facilities (CARF) or by the Council on Quality in the areas of integrated living, congregate living, personal, social and community services, community employment services, and work services; and~~

~~(b)~~ have two years experience in providing services to persons with mental disabilities.

(4) remains as proposed.

AUTH: 53-2-201, 53-6-402, MCA
IMP: 53-2-401, 53-6-402, MCA

4. In reviewing the rules in conjunction with the comments received, the department believes the requirement of proposed Rule XI (37.90.429), that providers of supported living through the Severe Disabling Mental Illness Program (SDMI) obtain accreditation either through the Commissioner of Accreditation of Rehabilitation Facilities (CARF) or the Council on Quality (the council), will present a

barrier to obtaining providers of those program services and recommends the proposed rule not include this requirement. The certification requirements of these bodies are unnecessary for purposes of quality assurance in that they would be duplicative of and less effective than the quality assurance requirements imposed through the federal approval process upon the administration of the SDMI Program by the state. Those federal requirements are enforced through reviews by the Centers for Medicare and Medicaid Services (CMS) and reporting provided by the state to CMS. The federal requirements are essential to the implementation and ongoing administration of the SDMI Program. In addition, these rules contain other features of quality assurance implementation. Therefore, Rule IX (37.90.425) has been adopted without the certification requirement.

In addition, the language in proposed Rule IV(3)(a) (37.90.410) is being changed to: "is at least 18 years of age, and, if under the age of 65, has been determined disabled according to Social Security Administration criteria". The language of the rule, as proposed, lacked adequate definition and the department has revised the language to more clearly state that those eligible for the program must fit the required categories of being at least 18 years of age, but if they are under the age of 65, they must also be determined to be disabled by the Social Security Administration. Anyone who is 65 or older qualifies for the program. By changing the language as proposed, the department is conforming the language to the standard language that is utilized by the state and federal programs.

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

COMMENT #1: A commentor is concerned that, in accordance with the language in proposed Rule I (37.90.401), the rules are to be effective upon formal adoption of the rules which may occur before the receipt of federal approval necessary for the implementation of the SDMI Program. The commentor suggests that the effective date of the proposed rules be rewritten to base the effective date on federal approval for the SDMI Program.

RESPONSE: The department agrees that the state cannot implement the SDMI Program until approval of that program is received from CMS. Therefore, persons will not be determined eligible for the program and services will not be available until after final approval is received from CMS. The text of the rule, as adopted, has been written to reflect the contingent effectiveness of the rules.

COMMENT #2: A commentor asks if an immediate family member for the purposes of proposed Rule III(2) (37.90.406) includes a parent.

RESPONSE: The department has made a policy decision after review of federal authorities and consideration of other guidance to define immediate family member as a spouse or legal guardian. Any family member who does not fit that description may be eligible to be reimbursed for the provision of services as a reimbursed provider or as an employee of a reimbursed provider.

COMMENT #3: A commentor commends Montana for moving forward with implementation of the SDMI Program as it will offer many critical services to individuals with serious mental illness. The commentor wishes more than 105 individuals could be served.

RESPONSE: The department appreciates the commentor's support for the implementation of the SDMI Program. At this time the program, based upon the 2005 legislative appropriation for the program, is limited to providing no more than 105 service slots.

COMMENT #4: A commentor asks the department to define the SDMI Program's services in accordance with evidence-based practices and to maintain fidelity to the evidence-based practices for services included in the program proposal submitted for federal approval. This commentor also asks Montana to implement outcome measures for the program and expresses a concern the proposed rules do not specify any outcome measurements.

RESPONSE: The department does not agree that it is necessary to set forth evidence-based principles and outcome goals in rule. Appendix H of the application submitted to CMS for approval includes language specific to quality assurance and outcome measures. These measures will be monitored by CMS through quality assurance reviews. The department has provided the commenter a copy of Appendix H of the Medicaid Waiver Application for Adults with Severe Disabling Mental Illness.

COMMENT #5: A commentor recommends the department consider an Assertive Community Treatment Program in the Butte-Silver Bow Region to assist in the delivery of the proposed SDMI Program services.

RESPONSE: The department appreciates the recommendation. There is currently no eligible provider of ACT services in the Butte-Silver Bow Region. Even should a provider be identified, it is not appropriate to include provision of ACT services in the SDMI Program. ACT services are already authorized in rule at ARM 37.88.901(13) as a component of mental health services that may be funded with Medicaid monies as a state plan service. The SDMI Program, as a Medicaid Home and Community Program, cannot provide services that are duplicative of those available through a Medicaid funded state plan service.

COMMENT #6: A commentor commends Montana for including a nurse and a trained social worker experienced in the mental health field as the case management team for consumers enrolled in the SDMI Program. The commentor states it would be helpful if the rules allowed for inclusion on the treatment planning team of the consumer, family members, peer support specialist, and the case manager to complete the treatment team and to jointly develop the plan of care. The recommendation is to revise the proposed rules to ensure the plan meets, in addition to the needs of the consumer, the needs of the consumer's family and the

consumer's support network.

RESPONSE: The department appreciates the commendation regarding the use of a case management team for managing the delivery of services to an eligible person. The case management team develops, in consultation with the consumer, the plan of care. The plan is to be person-centered. The rule is not written to prohibit the case management team from consulting with the consumer and others concerning the features of the plan of care. The consumer may ask the team to consult with any person the consumer chooses to involve in the plan of care development. Additionally, the case management team may consult with others who have knowledge of the consumer's needs.

COMMENT #7: A commentor recommends that the treatment planning should include a discussion of the consumer's strengths and of the supports in the consumer's community as well as the consumer's recovery oriented goals.

RESPONSE: The department agrees with the commentor's recommendation. While these features are addressed in the mandated Plan of Care Form and process, the department agrees that there should be recognition in the rules that the SDMI Program is intended to be recovery oriented and that consumers will be encouraged to develop goals that will support their personal recovery. Rule VI(1) (37.90.412) as adopted includes this language.

COMMENT #8: A commentor expresses a concern about the lack of adequate housing for persons with mental illness and states it will be a challenge to find adequate housing for some of the 105 individuals who are to be served through the SDMI Program.

RESPONSE: The department acknowledges that the availability of appropriate housing is important for the successful treatment of many consumers. Federal requirements preclude the provision of housing as a Medicaid funded home and community service. The department, however, expects that the case management teams will play an important role in helping consumers in locating appropriate housing and in transitioning those consumers into that housing.

COMMENT #9: A commentor expresses a concern that vocational therapy and supportive employment will be difficult to achieve and believes that supported employment should be a part of the services offered through the SDMI Program.

RESPONSE: The department agrees that supported employment is a primary service need for persons returning to active lives in their communities. Supported employment is an authorized component of the habilitation service as provided in Rule XIV (37.90.432).

COMMENT #10: A commentor states that the Addictive and Mental Disorders Division has made the integrated treatment of mental illness and chemical dependency a priority for the last three to five years and they are trying extremely

hard to make this treatment a reality, but there has not been significant progress in this area in spite of the best of intentions.

RESPONSE: The department appreciates the commentor's concerns and agrees that for persons with co-occurring illnesses chemical dependency services are very important to improvement in their mental health. Rule XX (37.90.442) does provide that chemical dependency counseling services are an available program service.

/s/ Cary Lund
Rule Reviewer

/s/ Joan Miles
Director, Public Health and Human Services

Certified to the Secretary of State October 16, 2006.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the adoption of New Rules I through XVIII pertaining to elections, the amendment of ARM 44.3.101, 44.3.104, 44.3.114, 44.3.1101, 44.3.1701, 44.3.2001, 44.3.2003, 44.3.2005, 44.3.2010, 44.3.2110, 44.3.2111, 44.3.2113, 44.3.2114, 44.3.2203, 44.3.2301, 44.3.2302, 44.3.2303, 44.3.2304, 44.3.2401, 44.3.2402, 44.3.2403, 44.3.2404 and 44.3.2601 pertaining to elections, and the repeal of ARM 44.3.1731 through 44.3.1750, 44.3.1760 through 44.3.1775, 44.3.1781 through 44.3.1787, and 44.3.2112 pertaining to elections	) NOTICE OF ADOPTION,) AMENDMENT, AND) REPEAL

TO: All Concerned Persons

1. On September 7, 2006, the Secretary of State's Office published MAR Notice No. 44-2-135 regarding the public hearing on the proposed adoption, amendment, and repeal of the above-stated rules at page 2077 of the 2006 Montana Administrative Register, issue no.17.

2. On September 28, 2006, the Secretary of State held a public hearing on the proposed adoption, amendment, and repeal of the above-stated rules in Helena. Several comments were received by the October 6, 2006, deadline.

3. The department has adopted the following rules as proposed: Rule I (44.3.115), II (44.3.1711), III (44.3.1712), V (44.3.1714), VII (44.3.1716), VIII (44.3.1717), XIII (44.3.2506), XIV (44.3.2507), XV (44.3.2508), XVI (44.3.2509), and XVII (44.3.2510).

4. The department has adopted the following new rules as proposed but with the following changes from the original proposal, matter to be stricken interlined, new matter underlined:

NEW RULE IV (ARM 44.3.1713) UNIFORM PROCEDURES FOR USING VOTING SYSTEMS (1) For each voting system approved under 13-17-101, MCA, the system must comply, as applicable, with the following procedures specified in the instruction manuals, user guides, and technical manuals provided by the manufacturer and distributor of the ~~database~~ system, as well as the election judge handbook provided by the office of the Secretary of State~~,~~ (except in cases in which those materials conflict with state laws or rules, in which case the laws or rules shall

apply):

(a) through (f) remain as proposed.

AUTH: 13-17-211, MCA
IMP: 13-17-211, MCA

NEW RULE VI (44.3.1715) METHOD OF CORRECTION OF BALLOT

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

(i) if the ballot is a paper ballot that is not produced for use with a voting system, follow the procedures in ~~(2)~~ (1)(b) or ~~(3)~~(c);

(ii) through (c) remain the same.

AUTH: 13-12-204, MCA
IMP: 13-12-204, MCA

NEW RULE IX (ARM 44.3.2014) MAINTENANCE OF ACTIVE AND INACTIVE VOTER REGISTRATION LISTS FOR ELECTIONS (1) through (3) remain as proposed.

(4) The election administrator shall cancel the registration of an elector if the elector fails to respond to certain confirmation mailings, is placed on the inactive list, and fails to vote in two consecutive federal general elections after being placed on the inactive list.

(5) The name of an elector must be moved by an election administrator from the inactive list to the active list of a county if an elector meets the requirements for registration provided in this chapter and appears in order to vote or votes by absentee ballot in any election.

(6) An elector reactivated pursuant to (5) is a legally registered elector for purposes of the election in which the elector voted.

AUTH: 13-2-108, MCA
IMP: 13-2-220, MCA

NEW RULE X (ARM 44.3.2015) LATE REGISTRATION PROCEDURES

(1) remains as proposed.

(2) Except as provided in (3)(a), an elector who registers or changes the elector's voter information pursuant to this rule may vote in the election only if the elector votes at the county election administrator's office. For the purposes of this rule, voting at the county election administrator's office includes:

(a) remains as proposed.

(b) at any time after registering under the procedures of this rule, receiving in person from the election administrator and returning an absentee ballot directly to the county election administrator's office, either in person or by mail, subject to applicable deadlines.

(3) and (4) remain as proposed.

AUTH: 13-2-108, MCA
IMP: 13-2-304, 13-2-514, MCA

NEW RULE XI (ARM 44.3.2016) STATEWIDE VOTER REGISTRATION DATABASE (1) and (2) remain as proposed.

(3) Consistent with (1)(f):

(a) the driver's license numbers, whole or partial social security numbers, and address information protected from general disclosure pursuant to 13-2-115, MCA, may not be provided unless required by a court order~~, or permitted by written request and the consent of the Secretary of State~~; and

(b) ~~at the option of each county election administrator and of the Secretary of State,~~ all identifying information about an individual protected from disclosure ~~pursuant to 13-2-115, MCA, including but not limited to the individual's name,~~ may not be provided, unless required by a court order~~, requested by another agency in writing in the official course of business, or permitted by written consent of the Secretary of State~~.

(4) remains as proposed.

AUTH: 13-2-108, MCA
IMP: 13-2-108, MCA

NEW RULE XII (ARM 44.3.2109) PROCEDURES FOR CHALLENGES (1) remains as proposed.

(2) A challenge may be made on the grounds that the elector:

(a) through (e) remain as proposed.

(f) has not been, for at least 30 days, a resident of the county in which the elector is offering to vote, unless the elector is exempt under 13-2-514, MCA, and has been a resident of the state for at least 30 days; or

(g) through (6) remain as proposed.

AUTH: 13-13-301, MCA
IMP: 13-13-301, MCA

NEW RULE XVIII (ARM 44.3.2511) ELECTRONIC TRANSMISSION OF VOTING MATERIALS (1) County election administrators shall allow United States electors to receive and transmit election materials electronically, as long as the identity of each elector is confirmed and facilities are available ~~that provide secrecy and security~~ to ~~the greatest extent possible~~ maintain the accuracy, integrity, and secrecy of the ballot process. The procedures in this subchapter shall be followed, wherever applicable, in regard to the receipt and transmission of election materials electronically~~.~~:

(a) A county election administrator desiring to offer electronic transmission of voting materials must use a system that is secure from unauthorized access. Access to the system must be limited by the following means: it has the technological ability to store the ballots that are sent and received by electronic transmission, and ballots stored in such manner can only be accessed by the election administrator or specially appointed deputies.

(b) Upon request for electronic transmission of a ballot, an election administrator who has received a valid application from a United States elector shall,

subject to (1), send by electronic transmission a ballot, instructions to the elector and a notice that the elector's ballot will not be secret in that it will be received by the election administrator and the elector's votes will be transcribed to the original ballot by a panel of no less than two election judges. The original instructions and original ballot shall be retained in a secure absentee envelope.

(c) The election administrator shall keep an official log of all ballots transmitted and received electronically.

(d) If the returned electronically transmitted ballot is acceptable, the election administrator shall log in the receipt of the ballot and place it in the secure absentee envelope with the original ballot until the ballots are ready to be transcribed.

(e) On or before election day, the election administrator shall have the electronically transmitted ballots transcribed using the procedure prescribed for assistance to voters with disabilities.

(f) No less than two election judges shall participate in the transcription process to transfer the elector's vote from an electronically transmitted ballot to the standard ballot used in the precinct.

(g) There may be noted next to the elector’s name in the precinct register "Electronically Transmitted Ballot".

(h) An electronically transmitted ballot identifying number shall be written on the original transcribed ballot and the electronically transmitted ballot.

(i) The election judges who transcribed the electronically transmitted ballot shall sign in the log next to the name of the elector.

(j) No one participating in the electronic ballot transmission process may reveal any information about the elector’s ballot.

AUTH: 13-21-104, MCA
IMP: 13-21-104, MCA

5. The department has amended the following rules as proposed: ARM 44.3.101, 44.3.104, 44.3.114, 44.3.1101, 44.3.1701, 44.3.2001, 44.3.2003, 44.3.2005, 44.3.2010, 44.3.2110, 44.3.2111, 44.3.2301, 44.3.2302, 44.3.2303, 44.3.2401, 44.3.2402, 44.3.2403, 44.3.2404, and 44.3.2601. After consideration, the department has decided not to amend the following rule which was proposed to be amended: ARM 44.3.2113.

6. The department has amended the following rules as proposed with the following changes from the original proposal, matter to be stricken interlined, new matter underlined:

44.3.2114 PROVISIONAL VOTING PROCEDURES ON ELECTION DAY AFTER THE CLOSE OF POLLS - THE SIXTH DAY AFTER ELECTION DAY

(1) through (5) remain the same.

(6) If a legally registered elector casts a provisional ballot because the elector failed to provide sufficient identification as required pursuant to 13-13-114(1)(a), MCA, the election administrator or designee shall compare the elector's signature or the signature of an elector’s agent designated pursuant to 13-1-116, MCA, on the affirmation required under 13-13-601, MCA, to the elector's or elector’s agent’s

signature on the elector's voter registration card.

(a) through (10) remain as proposed.

AUTH: 13-13-603, MCA
IMP: 13-15-107, MCA

44.3.2203 FORM OF ABSENTEE BALLOT APPLICATION AND ABSENTEE BALLOT TRANSMISSION TO ELECTION ADMINISTRATOR (1) Consistent with 13-13-212, MCA, an elector may apply for an absentee ballot by using a standardized form provided by rule by the Secretary of State, or by making a written request which must include the applicant's birth date and must be signed by the applicant or by an agent designated pursuant to 13-1-116, MCA, except that if the election administrator can independently obtain the applicant's birth date, the application shall not be rejected for lack of the applicant's birth date. The request must be submitted to the election administrator of the applicant's county of residence within the time period specified in 13-13-211, MCA.

(2) The minimum acceptable prescribed form for an application for an absentee ballot must include a written request for the absentee ballot, the elector's birth date, and the elector's or the elector's agent's signature. Additional recommended statements include the election for which the elector is requesting an absentee ballot and the address to which the elector wants the ballot mailed. Electors are strongly encouraged to use the form used by election administrators, which appears in the forms booklet that is provided by the Secretary of State to each election administrator.

(3) and (4) remain as proposed.

(5) An election administrator who receives a request under (4) shall determine whether the elector's or the elector's agent's signature on the request matches the elector's or the elector's agent's signature on the elector's voter registration card, prior to placing the elector on a list of individuals who wish to receive absentee ballots in subsequent elections.

(6) The election administrator shall mail an address confirmation form, prescribed by the Secretary of State, at least 75 days before the election to each elector who has requested an absentee ballot for subsequent elections. The form shall, in bold print, indicate that the elector may update the elector's mailing address using the form. The elector or elector's agent shall sign the form, indicate the address to which the absentee ballot should be sent, and return the form to the election administrator. If the form is not completed and returned, the election administrator shall remove the elector from the register of electors who have requested an absentee ballot for subsequent elections.

(7) and (8) remain as proposed.

AUTH: 13-13-212, MCA
IMP: 13-13-211, 13-13-212, 13-13-213, MCA

44.3.2304 PROCEDURES FOR ABSENTEE AND MAIL BALLOT VOTING – DETERMINING THE SUFFICIENCY OF IDENTIFICATION OF PROVISIONALLY REGISTERED ELECTORS (1) remains as proposed.

AUTH: 13-13-603, MCA
IMP: 13-13-114, 13-13-201, 13-13-241, 13-19-309, MCA

7. The department repeals the following rules as proposed: ARM 44.3.1731 through 44.3.1750, 44.3.1760 through 44.3.1775, 44.3.1781 through 44.3.1787, and 44.3.2112.

8. The Secretary of State has thoroughly considered the comments and testimony received. A summary of the comments received and the department's responses are as follows:

COMMENT 1: This comment was regarding proposed New Rule IX:

Both 13-2-108 and 13-2-220, MCA, specifically refer to rules for maintaining the statewide voter registration list, including maintaining the active and inactive voter lists. This proposed New Rule IX ends at the point at which electors are placed on the inactive voter list; it does not describe either the process by which inactive eligible electors may vote, or when inactive electors' registrations may be cancelled. We suggest that such language be added:

There is a provision in the 2006 Election Judges Handbook which describes how, as of October 1, 2005, inactive voters can reactive their registration status at any election and vote in that election at the polls or by absentee ballot. This should be added to the rules.

Montana statute (13-2-402, MCA) states that election administrators shall cancel the registration of an elector if the elector fails to respond to certain confirmation mailings and fails to vote in two consecutive elections. This part of the process should be added to the rules.

RESPONSE: The state agrees that these rule changes should be adopted since they provide a more complete description of the maintenance process for active and inactive voter lists, are consistent with current law, and are already current practices used by the county election administrators. The proposed New Rule IX has been amended accordingly.

COMMENT 2: This comment was regarding proposed New Rule XI:

We appreciate that language allowing certain restricted database information to be given to other state agencies has been removed from (3)(a), and support this deletion. However, we remain concerned that there are no guidelines for situations under which the Secretary of State will give the same information to undefined parties. In addition, we are concerned that other protected information may be released at the option of an election administrator or Secretary of State through request of a state agency or again, consent of the Secretary of State, without any guidelines (3)(b). There is the potential for even state or other agencies to neglect adopting sufficient security measures to ensure that released information is not misused or abused. The issues of security and privacy, and concerns over identity

theft and abuse of personal information, suggest such that stricter controls be placed on the release of such information.

The Montana Supreme Court's Commission on Technology established a privacy and access task force in 2005 that recently recommended model rules for access to certain records; one of those recommendations was that there should not be any public access to social security numbers. We suggest that at a minimum, no part of a person's social security number, or the driver's license number, which in Montana may still be a person's social security number, be released without a court order. In addition, we would suggest limiting the release of any protected information unless required by a court order, or unless the request meets other criteria or guidelines stated in the rules, and security measures are in place to ensure the information is not released to the public or otherwise misused.

RESPONSE: We agree with these comments and have amended proposed New Rule XI accordingly.

COMMENT 3: This comment was regarding proposed New Rule XVIII:

Earlier, we had raised concerns that these draft rules referenced faxed ballots but not ballots electronically transmitted, such as via the internet as is permitted in 13-21-207, MCA, for absent uniformed services and overseas electors. In response, New Rule XVIII has been amended to say that the procedures regarding receipt, acceptance, logging, transcription, and secrecy of faxed ballots should be followed in regard to the receipt and transmission of election materials electronically. We want to ensure that all steps, including logging in, accepting, transcribing, and ensuring the secrecy of all ballots received electronically apply to ballots received over the internet. Since these are new rules, it is not clear under what heading they will appear, but are concerned that it is less efficient and effective to just include the sentence in New Rule XVIII instead of clearly stating each step that must be taken for electronically transmitted ballots, i.e., to include "electronically transmitted" ballots in New Rules XIII, XV, XVI, and XVII. It may be possible to simply repeat these rules under the section of the rules that applies to electronically transmitted ballots, if that is a different section.

In addition, suggesting in New Rule XVIII that facilities for sending and receiving ballots must ensure secrecy and security "to the greatest extent possible" does not meet the requirements of 13-21-104, MCA, which says that the rules "must maintain the accuracy, integrity, and secrecy of the ballot process." We suggest that the rule be amended to say that the facilities "must maintain the accuracy, integrity, and secrecy of the ballot process," and furthermore, suggest that the Secretary of State's office confirm that such measures are in place in each county.

RESPONSE: We agree with the suggestions to amend New Rule XVIII, consistent with directives sent to the counties.

COMMENT 4: This comment was regarding proposed amendments to Rule 44.3.1101:

A previous draft of these rules proposed deleting this rule, since it originally pertained to the Centralized Voter File, which has been replaced by the Statewide Voter Database. We assume that in deciding to keep the rule but amend it, you are also amending the title of the subchapter to "Statewide Voter Database."

RESPONSE: We agree with this comment. It has been communicated to the Administrative Rules Bureau for amendment of the applicable title of the subchapter.

COMMENT 5: This comment was regarding proposed amendments to Rule 44.3.2113:

The new language – section (6) - provides a process for verifying a provisional voter's identification by confirming the voter's signature of affirmation on the provisional ballot outer envelope with the elector's signature on the elector's voter registration card, as required by law. However, this process cannot occur at the polling place, as the voter registration cards are not at the polling places. This process must occur after the close of polls, but before the sixth day after Election Day. Consequently, this language should be incorporated in Rule 44.3.2114.

RESPONSE: We agree with these comments and accordingly have removed the proposed amendments to Rule 44.3.2113.

COMMENT 6: This comment was regarding proposed amendments to Rules 44.3.2203, 44.3.2114, and 44.3.2203:

The Montana League of Women Voters has raised legitimate concerns about the process of matching signatures on absentee ballot/permanent absentee voter list requests to voter registration cards. Currently, if the signatures don't match, the absentee ballot/permanent absentee voter list request is simply rejected. MT LWV has suggested that if the signatures don't match, the elector be notified and be given a chance to either re-apply or confirm that they did not make the request. Since the use of absentee ballots and the permanent absentee voter list is going to continually increase, we believe the issue of mismatched signatures in such cases may deserve more attention, either through these rules, or legislation, if necessary.

In addition, other election rules include an allowance for situations where signatures may not match because the elector has designated an agent to provide a signature or identifying mark. We ask that this allowance be added to this rule as well.

RESPONSE: In regard to the first paragraph, current statutes do not require county election administrators to notify absentee voting applicants that their application signatures do not match the signatures on their registration cards. We believe a statutory change would be necessary to implement this suggestion.

In regard to the second paragraph, we believe that this is consistent with current law and procedures, and the rules have been amended accordingly.

COMMENT 7: This comment was regarding proposed amendments to Rule 44.3.2401:

Rule 44.3.2401, sections (1) through (4), generally repeats 13-12-202, MCA, which specifically requires rules for ballot forms and the manner of correcting ballots, which is also addressed in New Rule VI, Method of Correction of a Ballot. As currently written, New Rule 44.3.2401 states that ballot corrections, order and arrangement of ballots, etc., are prescribed in the forms booklet. As proposed to be amended, such items could also be prescribed in the election judge handbook. Neither the forms booklet nor the handbook goes through the same formal public review as rules, and neither is posted on the Secretary of State's web site. While we have in the past received ready access to both the forms and the handbook when we requested either, we are concerned that something that the law requires be prescribed in rule is being done in a manner that is, for the most part, not readily available or subject to public review. We suggest that at a minimum, the forms booklet and election judge handbook be accessible on the Secretary of State's web site so that anyone can review the ballot form prescriptions.

RESPONSE: We agree that the forms booklet and election judge handbook should be accessible on the Secretary of State's web site, in order to provide information about the procedures required in the laws and rules.

COMMENT 8: This comment was regarding proposed amendments to New Rule IV:

The state is urged to consider these proposed revisions: (delete strike-through text, add underlined) (1) (e) The security measures necessary to secure the voting system before, during, and after an election, including secure and documented handling of machines and memory cards (PCMCIA) by authorized election personnel at all times, disabling of all wireless communication outlets, and security following a recount under 13-16-417, MCA: and

REASONS: Both machines and memory cards are subject to malicious attacks. Allowing either to be taken home the night before an election, or allowing other insecure scenarios, opens up opportunities for mischief, misplacement, and lawsuits. A malicious code "could be inserted into a PCOS (precinct counter optical scanner) scanner source code tree, operating system COTS (commercial over the counter software) software, and software patches and updates." –Brennan Center report p. 78. A software attack inserted on memory cards is the "least difficult" attack, because it can be accomplished by one person who gains access to the card, either to replace it with a reprogrammed one, or modify it via a modem if the central tabulator that programs the card is connected to a phone line, or the PCOS that reads the cards is connected to a phone line, or via a hand held device through

a wireless communication outlet on the PCOS machine. –Brennan Center Report, p. 78.

A law suit has been brought against San Diego County by voting rights advocates because poll workers were allowed to take voting machines home the night before the special election between Francine Busby and Brian Bilbray for the House seat of jailed Rep. Randy "Duke" Cunningham. "The legal suit charges that unrestricted access to the machines by poll workers compromised the election and violated both state and federal law."-"Hack the Vote? No problem," Brad Friedman.
Wireless communication outlets make voting machines vulnerable to malicious attacks. "The most vulnerable voting machines use wireless components open to attack by virtually any member of the public with some knowledge and a personal digital assistant." -Brennan Center Report, p. 85

RESPONSE: In coordination with county election administrators, the Secretary of State has developed procedures for testing and security of voting systems in handbooks, instruction manuals, user guides, and from technical manuals provided by the manufacturer and distributor of the systems, and looks forward to working with the commenters for modifying those documents as necessary.

COMMENT 9: This comment was also regarding proposed amendments to New Rule IV:

NEW RULE IV UNIFORM PROCEDURES FOR USING VOTING SYSTEMS (1)(f) Testing and certification of voting systems pursuant to 13-17-212, MCA, including a random test conducted by a county election administrator or designee of 5% of voting systems, a minimum of one per county, on election day, during an election to validate the accuracy of valid paper ballots with the voting system results.

(i) Specific machines and PCMCIA cards shall be selected at the last possible moment.

(ii) Tests shall be conducted by personnel chosen at the last minute from a pool of trained election workers.

(iii) Tests shall be observed by at least two members of the public, one from each of the major political parties and videotaped for future record.

(iv) Real voters shall vote each test ballot and be observed by at least two observers who note choices made.

(v) Test ballots shall be flagged by different colored ballots or other identifying devices. Test votes shall be flagged on machines with different colored printer ink.

(vi) Test ballots shall be quarantined from other ballots by placing them in a special envelope to be delivered to the central election office.

(vii) If any discrepancy appears between the valid ballot and machine tally, the machine shall be shut down and procedures followed in ARM 44.3.1714.

REASONS: Without audits to uncover programming errors and malicious attacks, rigorous testing becomes critical. Precinct count optical scanners (PCOS) are vulnerable to undetectable, malicious software attacks during an election, according to The Brennan Center Task Force on Voting System Security Report, "The Machinery of Democracy: Protecting Elections in an Electronic World," Summer 2006:

"It is fairly easy to enumerate a long list of conditions that corrupt election software could check in order to distinguish between testing and real elections. It could check the date, for example, misbehaving only on the first Tuesday after the first Monday of November in even numbered years, and it could test the length of time the polls had been open, misbehaving only if the polls were open for at least 6 hours, and it could test the number of ballots cast, misbehaving only if at least 75 were encountered, or it could test the distribution of votes over the candidates, misbehaving only if most of the votes go to a small number of the candidates in the vote-for-one races or only if many voters abstain from most of the races at the tail of the ballot."

David Wagner, Ph.D. University of California, Berkeley, who tested California's voting systems at the request of that state, agrees. In testimony before the U.S. House committees on Science and House Administration on July 19, 2006, he stated:

"In the short term, adopting the recommendations of the Brennan Center report on e-voting is the most effective and practical step election officials could take to make existing voting systems as secure and reliable as possible for this November."

It is appropriate to include detailed directives for testing during an election in the rules where the public has input, rather than in directives or handbooks. Detailed directions are included for other aspects of the election process, such as absentee voting, voter registration, vote counting, etc., and should be for election day testing.

RESPONSE: As noted above, in coordination with county election administrators, the Secretary of State has developed procedures for testing and security of voting systems in handbooks, instruction manuals, user guides, and from technical manuals provided by the manufacturer and distributor of the systems, and looks forward to working with the commenters for modifying those documents as necessary.

COMMENT 10: This comment was regarding proposed amendments to Rules 44.3.2203 and 44.3.2304. Language suggested by the commenter is underlined below.

44.3.2203 FORM OF ABSENTEE BALLOT APPLICATION AND ABSENTEE BALLOT TRANSMISSION TO ELECTION ADMINISTRATOR

(5) An election administrator who receives a request under (4) shall determine whether the elector's signature on the request matches the elector's signature on the elector's voter registration card, prior to placing the elector on a list of individuals who wish to receive absentee ballots in subsequent elections. If there is no match and the request is received two weeks prior to an election, contact shall be made to inform the elector of the mismatch and an opportunity given for resubmission of the signature.

44.3.2304 PROCEDURES FOR ABSENTEE AND MAIL BALLOT VOTING-DETERMINING THE SUFFICIENCY OF IDENTIFICATION

(1)(b) Upon receipt of one of the forms of required identification defined in ARM 44.3.2302(6), if the identification form is verified through a voter verification process or another form of identification provided in ARM 44.3.2302(6) is sufficient, an election official or election worker shall mark on the absentee or mail ballot outer return envelope that sufficient identification was provided by the elector. If the identification is insufficient and the ballot is received two weeks prior to an election, contact shall be made to notify the elector about insufficient identification, and an opportunity given for submission of the correct identification.

REASONS: Voters deserve to know why they have not been added to the permanent absentee list or why their ballot has been rejected. An opportunity to resubmit their identification should be given. Provisional voters who lack identification are given until the day after election day to provide it. Registered voters deserve a similar opportunity to provide proper I.D.

RESPONSE: Current statutes do not require county election administrators to notify absentee voting applicants that their application signatures do not match the signatures on their registration cards. We believe a statutory change would be necessary to implement this suggestion. Current statutes and the full text of ARM 44.3.2304 already require county election administrators to notify provisionally registered electors of insufficient identification.

COMMENT 11: This comment was regarding proposed amendments to New Rule X:

We would like to clarify under late registration that an elector must receive a ballot in person from the election administrator.

RESPONSE: We agree with this minor change since it is consistent with directives to the counties. The applicable change to the rule has been made.

SECRETARY OF STATE

/s/ BRAD JOHNSON
Secretary of State

/s/ JANICE DOGGETT
Rule Reviewer

Certified to the Secretary of State, October 16, 2006.

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 or Register) 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	2.	Go to cross reference table at end of each Number and title which lists MCA section numbers and Department corresponding ARM rule numbers.

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through March 31, 2006. This table includes those rules adopted during the period April 1 through June 30, 2006 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 or Register).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through March 31, 2006, 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 2006 Montana Administrative Register.

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

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BOARD APPOINTEES AND VACANCIES

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

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

In this issue, appointments effective in September 2006 appear. Vacancies scheduled to appear from November 1, 2006, through January 31, 2007, 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 1, 2006.

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 2006

Appointee	Appointed by	Succeeds	Appointment/End Date
Board of Investments (Governor)			
Mr. James Turcotte	Governor	not listed	9/29/2006
Helena			1/1/2009
Qualifications (if required): TRS representative			
Board of Sanitarians (Governor)			
Ms. Denise Moldroski	Governor	not listed	9/29/2006
East Helena			7/1/2009
Qualifications (if required): sanitarian			
Board of Veterans' Affairs (Military Affairs)			
Ms. Sylvia Beals	Governor	Tindall	9/19/2006
Forsyth			8/1/2010
Qualifications (if required): Veteran and resident of Region 4			
Ms. Teresa Bell	Governor	reappointed	9/19/2006
Fort Harrison			8/1/2010
Qualifications (if required): representative of the U.S. Department of Veterans' Affairs			
Ms. Mary Creech	Governor	Furu	9/19/2006
Butte			8/1/2010
Qualifications (if required): Veteran and resident of Region 2			
Mr. Thomas Huddleston	Governor	Sperry	9/19/2006
Helena			8/1/2010
Qualifications (if required): experience with veterans' issues			

BOARD AND COUNCIL APPOINTEES FROM SEPTEMBER 2006

Appointee	Appointed by	Succeeds	Appointment/End Date
Board of Veterans' Affairs (Military Affairs) cont.			
Mr. Harry LaFriniere	Governor	Bogut	9/19/2006
Florence			8/1/2010
Qualifications (if required): Veteran and resident of Region 1			
Sen. Joseph Tropila	Governor	reappointed	9/19/2006
Great Falls			8/1/2010
Qualifications (if required): representative of the State Administration and Veterans' Affairs Committee			
Ms. Kelly Williams	Governor	reappointed	9/19/2006
Helena			8/1/2010
Qualifications (if required): representative of the Department of Public Health and Human Services			
Governor's Disabilities Advisory Council (Governor)			
Ms. Marie Pierce	Governor	Bach	9/1/2006
Sidney			3/30/2007
Qualifications (if required): disabilities community			
Kindergarten to College Work Group (Governor)			
Mr. Evan Barrett	Governor	not listed	9/29/2006
Butte			7/13/2008
Qualifications (if required): Chief Business Development Officer			
Mr. Dick Clark	Governor	not listed	9/29/2006
Helena			7/13/2008
Qualifications (if required): Chief Information Officer			

BOARD AND COUNCIL APPOINTEES FROM SEPTEMBER 2006

Appointee	Appointed by	Succeeds	Appointment/End Date
Kindergarten to College Work Group (Governor) cont.			
Rep. David Ewer	Governor	not listed	9/29/2006
Helena			7/13/2008
Qualifications (if required): Budget Director			
Mr. Steve Gettel	Governor	not listed	9/29/2006
Great Falls			7/13/2008
Qualifications (if required): School for Deaf and Blind representative			
Ms. Rachel Grosvold	Governor	not listed	9/29/2006
Butte			7/13/2008
Qualifications (if required): student representative			
Director Keith Kelly	Governor	not listed	9/29/2006
Helena			7/13/2008
Qualifications (if required): Commissioner of Labor and Industry			
Superintendent Linda McCulloch	Governor	not listed	9/29/2006
Helena			7/13/2008
Qualifications (if required): Superintendent of Public Instruction			
Mr. Steve Meloy	Governor	not listed	9/29/2006
Helena			7/13/2008
Qualifications (if required): Board of Public Education representative			
Director Joan Miles	Governor	not listed	9/29/2006
Helena			7/13/2008
Qualifications (if required): Director of the Department of Public Health and Human Services			

BOARD AND COUNCIL APPOINTEES FROM SEPTEMBER 2006

Appointee	Appointed by	Succeeds	Appointment/End Date
Kindergarten to College Work Group (Governor) cont.			
Ms. Janine Pease	Governor	not listed	9/29/2006
Billings			7/13/2008
Qualifications (if required): Board of Regents representative			
Director Tony Preite	Governor	not listed	9/29/2006
Helena			7/13/2008
Qualifications (if required): Director of the Department of Commerce			
Ms. Sheila Stearns	Governor	not listed	9/29/2006
Helena			7/13/2008
Qualifications (if required): Commissioner of Higher Education			
Mr. James Stipcich	Governor	not listed	9/29/2006
Helena			7/13/2008
Qualifications (if required): Student Assistance Foundation representative			
Ms. Erin Williams	Governor	not listed	9/29/2006
Missoula			7/13/2008
Qualifications (if required): parent representative			
Rep. Jonathan Windy Boy	Governor	not listed	9/29/2006
Box Elder			7/13/2008
Qualifications (if required): governor's representative			

BOARD AND COUNCIL APPOINTEES FROM SEPTEMBER 2006

Appointee	Appointed by	Succeeds	Appointment/End Date
Private Security Patrol Officers and Investigators (Labor and Industry)			
Ms. Tracy Dahl	Governor	Woods	9/7/2006
Havre			8/1/2009
Qualifications (if required): city police department representative			
Mr. Leo Dutton	Governor	Liedle	9/7/2006
Helena			8/1/2009
Qualifications (if required): county sheriff's office representative			
Mr. Shad Foster	Governor	Maddox	9/7/2006
Butte			8/1/2009
Qualifications (if required): proprietary security organization representative			
Ms. Linda Sanem	Governor	reappointed	9/7/2006
Bozeman			8/1/2009
Qualifications (if required): licensed private investigator			
Research and Commercialization Technology Board (Commerce)			
Mr. Michael Dolson	Governor	reappointed	9/20/2006
Hot Springs			7/1/2008
Qualifications (if required): Native American			
State Tribal Economic Development Commission (Governor)			
Mr. Shawn Real Bird	Governor	reappointed	9/1/2006
Garryowen			6/30/2009
Qualifications (if required): representative of the Crow Tribe			

BOARD AND COUNCIL APPOINTEES FROM SEPTEMBER 2006

Appointee	Appointed by	Succeeds	Appointment/End Date
State Tribal Economic Development Commission (Governor) cont.			
Mr. James Parker Shield	Governor	Koke	9/1/2006
Great Falls			6/30/2009
Qualifications (if required): representative of the Little Shell Tribe			
Mr. Loren Stiffarm	Governor	Brown	9/1/2006
Harlem			6/30/2009
Qualifications (if required): representative of the Fort Belknap Community			
Ms. Caroline Brown	Governor	Stiffarm	9/29/2006
Harlem			6/30/2009
Qualifications (if required): representative of the Fort Belknap Community			
Ms. Emorie Davis Bird	Governor	not listed	9/18/2006
East Glacier Park			6/30/2007
Qualifications (if required): representative of the Blackfeet Tribe			
Mr. Ken Erickson	Governor	not listed	9/18/2006
Havre			6/30/2009
Qualifications (if required): representative of the Little Shell Band of Chippewa			
Mr. Roger "Sassy" Running Crane	Governor	Parsons	9/18/2006
Browning			6/30/2007
Qualifications (if required): representative of the Blackfeet Tribe			

BOARD AND COUNCIL APPOINTEES FROM SEPTEMBER 2006

Appointee	Appointed by	Succeeds	Appointment/End Date
Statewide Interoperability Executive Advisory Council (Administration)			
Commissioner Kathy Bessette	Governor	reappointed	9/7/2006
Havre			9/7/2008
Qualifications (if required): county government representative			
Ms. Mary Failing	Governor	Feiss	9/7/2006
Poplar			9/7/2008
Qualifications (if required): emergency medical community representative			
Director Mike Ferriter	Governor	not listed	9/29/2006
Helena			9/7/2008
Qualifications (if required): Director of the Department of Corrections			
Director Jeff Hagener	Governor	not listed	9/29/2006
Helena			9/7/2008
Qualifications (if required): Director of Fish, Wildlife, and Parks			
Mr. William Hedstrom	Governor	not listed	9/29/2006
Kalispell			9/7/2008
Qualifications (if required): Chair of the Board of Livestock			
Ms. Elizabeth Horsman-Witala	Governor	not listed	9/29/2006
Helena			9/7/2008
Qualifications (if required): federal representative			

BOARD AND COUNCIL APPOINTEES FROM SEPTEMBER 2006

Appointee	Appointed by	Succeeds	Appointment/End Date
Statewide Interoperability Executive Advisory Council (Administration) cont.			
Director Janet Kelly	Governor	Brandt	9/7/2006
Helena			9/7/2008
Qualifications (if required): director of the Department of Administration			
Mr. Chuck Lee	Governor	reappointed	9/7/2006
Baker			9/7/2008
Qualifications (if required): 9-1-1 community representative			
Sheriff Cheryl Liedle	Governor	Maxwell	9/7/2006
Helena			9/7/2008
Qualifications (if required): county law enforcement representative			
Director Jim Lynch	Governor	not listed	9/29/2006
Helena			9/7/2008
Qualifications (if required): Director of the Department of Transportation			
Attorney Mike McGrath	Governor	Fasbender	9/7/2006
Helena			9/7/2008
Qualifications (if required): Attorney General			

BOARD AND COUNCIL APPOINTEES FROM SEPTEMBER 2006

Appointee	Appointed by	Succeeds	Appointment/End Date
Statewide Interoperability Executive Advisory Council (Administration) cont.			
General Randall Mosley	Governor	not listed	9/29/2006
Fort Harrison			9/7/2008
Qualifications (if required): Adjutant General of the Department of Military Affairs			
Mr. Bruce Nelson	Governor	not listed	9/29/2006
Helena			9/7/2008
Qualifications (if required): Governor's Chief of Staff			
Ms. Jodi O'Sullivan	Governor	Mergenthaler	9/7/2006
Polson			9/7/2008
Qualifications (if required): volunteer fire department representative			
Chief Lisa Power	Governor	Jones	9/7/2006
Miles City			9/7/2008
Qualifications (if required): municipal law enforcement representative			
Director Mary Sexton	Governor	not listed	9/29/2006
Helena			9/7/2008
Qualifications (if required): Director of the Department of Natural Resources and Conservation			
Mayor Ron Tussing	Governor	Burton	9/7/2006
Billings			9/7/2008
Qualifications (if required): municipal government representative			
Mr. Chuck Winn	Governor	reappointed	9/7/2006
Bozeman			9/7/2008
Qualifications (if required): paid fire department representative			

BOARD AND COUNCIL APPOINTEES FROM SEPTEMBER 2006

Appointee	Appointed by	Succeeds	Appointment/End Date
Tourism Advisory Council (Commerce)			
Ms. Cindy Andrus	Governor	Court	9/26/2006
Bozeman			7/1/2009
Qualifications (if required): representative of Yellowstone Country			
Ms. Dyani Bingham	Governor	reappointed	9/26/2006
Billings			7/1/2009
Qualifications (if required): Tribal Government representative			
Mr. Mark Browning	Governor	reappointed	9/26/2006
Miles City			7/1/2009
Qualifications (if required): representative of Custer Country			
Mr. Michael Morrison	Governor	reappointed	9/26/2006
Great Falls			7/1/2009
Qualifications (if required): representative of Russell Country			
Ms. Marilyn Polich	Governor	Schnur	9/26/2006
Butte			7/1/2009
Qualifications (if required): representative of Goldwest Country			
Water and Waste Water Operators' Advisory Council (Environmental Quality)			
Mr. Donald Coffman	Governor	Ruhd	9/20/2006
Harlem			10/16/2007
Qualifications (if required): water treatment plant operator			

VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2006 through JANUARY 31, 2006

Board/current position holder	Appointed by	Term end
9-1-1 Advisory Council (Administration)		
Mr. Mark Lerum, Helena Qualifications (if required): Helena Police Department	Director	11/3/2006
Mr. Geoff Feiss, Helena Qualifications (if required): Montana Telecommunications Association	Director	11/3/2006
Mr. Jeff Brandt, Helena Qualifications (if required): Department of Administration	Director	11/3/2006
Mr. Steve Larson, Helena Qualifications (if required): Montana State Fire Chiefs Association	Director	11/3/2006
Mr. Chuck Winn, Bozeman Qualifications (if required): Montana State Fire Chiefs Association	Director	11/3/2006
Mr. Joe Calnan, Montana City Qualifications (if required): Montana State Volunteer Fire Fighters Association	Director	11/3/2006
Mr. Larry Sheldon, Helena Qualifications (if required): Qwest Communications	Director	11/3/2006
Mr. Don Hollister, Kalispell Qualifications (if required): Century Tel	Director	11/3/2006
Ms. Jenny Hansen, Helena Qualifications (if required): Department of Administration	Director	11/3/2006

VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2006 through JANUARY 31, 2006

Board/current position holder	Appointed by	Term end
9-1-1 Advisory Council (Administration) cont.		
Mr. Brian Wolf, Helena Qualifications (if required): Department of Administration	Director	11/3/2006
Ms. Lisa Kelly, Kalispell Qualifications (if required): Century Tel	Director	11/3/2006
Ms. Margaret Morgan, Helena Qualifications (if required): Western Wireless	Director	11/3/2006
Mr. Craig Bender, Great Falls Qualifications (if required): 3 Rivers Wireless	Director	11/3/2006
Mr. Mike Doto (city not listed) Qualifications (if required): Montana State Volunteer Fire Fighters Association	Director	11/3/2006
Mr. Phil Maxwell (city not listed) Qualifications (if required): Montana Telecommunications Association	Director	11/3/2006
Ms. Anne Kindness (city not listed) Qualifications (if required): Helena Police Department	Director	11/3/2006
Mr. Dennis Luttrell (city not listed) Qualifications (if required): Qwest Communications	Director	11/3/2006
Ms. Aimee Grmoljez, Helena Qualifications (if required): Verizon Wireless	Director	11/3/2006

VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2006 through JANUARY 31, 2006

Board/current position holder	Appointed by	Term end
9-1-1 Advisory Council (Administration) cont.		
Mr. Stanley Kaleczyc (city not listed) Qualifications (if required): Verizon Wireless	Director	11/3/2006
Mr. Terry Ferestad, Billings Qualifications (if required): Western Wireless	Director	11/3/2006
Mr. Ernie Peterson (city not listed) Qualifications (if required): 3 Rivers Wireless	Director	11/3/2006
Ms. Becky Berger, Helena Qualifications (if required): Department of Administration	Director	11/3/2006
Ms. Anita Moon, Helena Qualifications (if required): Department of Administration	Director	11/3/2006
Board of Aeronautics (Transportation)		
Mr. John Rabenberg, Fort Peck Qualifications (if required): public member	Governor	1/1/2007
Mr. Craig Denney, Billings Qualifications (if required): commercial airlines representative	Governor	1/1/2007
Mr. Charles J. Manning, Kalispell Qualifications (if required): actively engaged in aviation education	Governor	1/1/2007
Mr. Lonnie Leslie, Miles City Qualifications (if required): fixed base operator	Governor	1/1/2007

VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2006 through JANUARY 31, 2006

Board/current position holder	Appointed by	Term end
Board of Crime Control (Justice)		
Mr. Marko Lucich, Butte Qualifications (if required): chief probation officer	Governor	1/1/2007
Mr. Dwight MacKay, Billings Qualifications (if required): public member	Governor	1/1/2007
Reverend Steven Rice, Miles City Qualifications (if required): representative of the Youth Justice Council	Governor	1/1/2007
Mr. Richard L. Kirn, Poplar Qualifications (if required): representative of local government	Governor	1/1/2007
Mr. Alex Capdeville, Havre Qualifications (if required): public member	Governor	1/1/2007
Board of Environmental Review (Environmental Quality)		
Ms. Susan Kirby Brooke, Helena Qualifications (if required): public member	Governor	1/1/2007
Ms. Kim Lacey, Glasgow Qualifications (if required): public member	Governor	1/1/2007
Mr. Joseph Russell, Kalispell Qualifications (if required): county health officer	Governor	1/1/2007
Ms. Heidi Kaiser, Park City Qualifications (if required): public member	Governor	1/1/2007

VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2006 through JANUARY 31, 2006

Board/current position holder	Appointed by	Term end
Board of Housing (Commerce)		
Mr. Bob Thomas, Stevensville Qualifications (if required): public member	Governor	1/1/2007
Ms. Susan Moyer, Kalispell Qualifications (if required): public member	Governor	1/1/2007
Ms. Judy Glendenning, Helena Qualifications (if required): public member	Governor	1/1/2007
Board of Investments (Commerce)		
Dr. Maureen J. Fleming, Missoula Qualifications (if required): labor representative	Governor	1/1/2007
Mr. Calvin Wilson, Busby Qualifications (if required): attorney and an agriculture representative	Governor	1/1/2007
Ms. Karen B. Fagg, Billings Qualifications (if required): business person	Governor	1/1/2007
Mr. Terrill R. Moore, Billings Qualifications (if required): financial representative	Governor	1/1/2007
Board of Labor Appeals (Labor and Industry)		
Mr. Jerome T. Loendorf, Helena Qualifications (if required): attorney	Governor	1/1/2007

VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2006 through JANUARY 31, 2006

Board/current position holder	Appointed by	Term end
Board of Labor Appeals (Labor and Industry) cont.		
Mr. Jack Calhoun, Helena Qualifications (if required): public representative	Governor	1/1/2007
Board of Milk Control (Livestock)		
Mr. Michael F. Kleese, Stevensville Qualifications (if required): attorney and a Democrat	Governor	1/1/2007
Dr. Robert Greer, Bozeman Qualifications (if required): public member and an Independent	Governor	1/1/2007
Board of Occupational Therapy Practice (Labor and Industry)		
Ms. Cindy Stergar, Butte Qualifications (if required): Public Representative	Governor	12/31/2006
Ms. Elspeth Richards, Missoula Qualifications (if required): occupational therapist	Governor	12/31/2006
Ms. L. Delores Gilbert, Sidney Qualifications (if required): public member	Governor	12/31/2006
Mr. Tim Tracy, Kalispell Qualifications (if required): Occupational Therapist	Governor	12/31/2006
Board of Oil and Gas Conservation (Natural Resources and Conservation)		
Mr. Denzil Young, Baker Qualifications (if required): landowner with no mineral rights	Governor	1/1/2007

VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2006 through JANUARY 31, 2006

Board/current position holder	Appointed by	Term end
Board of Oil and Gas Conservation (Natural Resources and Conservation) cont.		
Mr. Jack King, Billings	Governor	1/1/2007
Qualifications (if required): representative of the oil and gas industry		
Ms. Elaine Mitchell, Cut Bank	Governor	1/1/2007
Qualifications (if required): public member		
Board of Pardons and Parole (Corrections)		
Sen. Don Hargrove, Belgrade	Governor	1/1/2007
Qualifications (if required): auxiliary member		
Board of Personnel Appeals (Labor and Industry)		
Mr. Steve Johnson, Missoula	Governor	1/1/2007
Qualifications (if required): representative of management with collective bargaining experience		
Mr. Joe Dwyer, Billings	Governor	1/1/2007
Qualifications (if required): representative of labor		
Mr. Patrick J. Dudley, Butte	Governor	1/1/2007
Qualifications (if required): representative of substitute management with collective bargaining experience		
Board of Public Assistance (Public Health and Human Services)		
Ms. Carole A. Graham, Missoula	Governor	1/1/2007
Qualifications (if required): public member		
Board of Public Education (Education)		
Ms. Patty Myers, Great Falls	Governor	1/1/2007
Qualifications (if required): Democrat from District 3		

VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2006 through JANUARY 31, 2006

Board/current position holder	Appointed by	Term end
Board of Social Work Examiners and Professional Counselors (Labor and Industry)		
Dr. Leta Livoti, Thompson Falls	Governor	1/1/2007
Qualifications (if required): licensed professional counselor		
Ms. Antoinette Fraser Rosell, Billings	Governor	1/1/2007
Qualifications (if required): licensed professional counselor		
Children's Trust Fund (Governor)		
Ms. Margaret (Peg) Shea, Missoula	Governor	1/1/2007
Qualifications (if required): public representative		
Ms. Tara Jensen, Helena	Governor	1/1/2007
Qualifications (if required): representative of the Office of Public Instruction		
Coal Board (Commerce)		
Mr. Kurt H. Hilyard, Conrad	Governor	1/1/2007
Qualifications (if required): representative of education and District 3		
Ms. Janice B. Riebhoff, Belgrade	Governor	1/1/2007
Qualifications (if required): representative of education and District 2		
Mr. Jim Smitham, Butte	Governor	1/1/2007
Qualifications (if required): representative of business and District 2		
Mr. Thomas Kalakay, Billings	Governor	1/1/2007
Qualifications (if required): resident of District 2		

VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2006 through JANUARY 31, 2006

Board/current position holder	Appointed by	Term end
Commission for Human Rights (Labor and Industry)		
Mr. Jack Copps, Seeley Lake Qualifications (if required): public member	Governor	1/1/2007
Mr. Ryan C. Rusche, Wolf Point Qualifications (if required): attorney	Governor	1/1/2007
Country of Origin Labeling Advisory Council (Labor and Industry)		
Director Keith Kelly, Helena Qualifications (if required): Department of Labor and Industry Commissioner	Governor	12/31/2006
Ms. Linda Nielsen, Nashua Qualifications (if required): Board of Livestock Representative	Governor	12/31/2006
Rep. Bob Bergren, Havre Qualifications (if required): Legislative Representative	Governor	12/31/2006
Director Nancy K. Peterson, Helena Qualifications (if required): Department of Agriculture Director	Governor	12/31/2006
Director Tony Preite, Helena Qualifications (if required): Department of Commerce Director	Governor	12/31/2006
Mr. Dan Teigen, Teigen Qualifications (if required): Livestock Industry Representative	Governor	12/31/2006
Ms. Margaret Novak, Chester Qualifications (if required): Retail Food Industry Representative	Governor	12/31/2006

VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2006 through JANUARY 31, 2006

Board/current position holder	Appointed by	Term end
Country of Origin Labeling Advisory Council (Labor and Industry) cont.		
Mr. John Munsell, Miles City	Governor	12/31/2006
Qualifications (if required): Consumer		
Mr. John Lehfeldt, Lavina	Governor	12/31/2006
Qualifications (if required): Livestock Industry Representative		
Developmental Disabilities Planning and Advisory Council (Public Health and Human Services)		
Ms. Ramona Weber, Billings	Governor	1/1/2007
Qualifications (if required): primary consumer		
Ms. Suzie Twedt, Great Falls	Governor	1/1/2007
Qualifications (if required): parent of a developmentally disabled adult and a secondary consumer		
Mr. Jason Billehus, Missoula	Governor	1/1/2007
Qualifications (if required): primary consumer		
Mr. Darwin Nelson, Helena	Governor	1/1/2007
Qualifications (if required): primary consumer		
Ms. Karen Lundby, Miles City	Governor	1/1/2007
Qualifications (if required): parent of developmentally disabled adult and a secondary consumer		
Ms. Paula Lester, Butte	Governor	1/1/2007
Qualifications (if required): primary consumer		

VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2006 through JANUARY 31, 2006

Board/current position holder	Appointed by	Term end
Fish, Wildlife, and Parks Commission (Fish, Wildlife, and Parks)		
Sen. John Brenden, Scobey	Governor	1/1/2007
Qualifications (if required): representative of District 4		
Mr. Tim Mulligan, Whitehall	Governor	1/1/2007
Qualifications (if required): representative of District 2		
Hard-Rock Mining Impact Board (Commerce)		
Mr. Donald B. Kinsey, Big Timber	Governor	1/1/2007
Qualifications (if required): public member residing in District 4, an impact area		
Ms. Sandra Muster, Thompson Falls	Governor	1/1/2007
Qualifications (if required): school district trustee residing in District 1, an impact area		
Historic and Cultural Advisory Council (Governor)		
Lt. Governor John Bohlinger, Helena	Governor	1/15/2007
Qualifications (if required): public member		
Commissioner Chris King, Winnett	Governor	1/15/2007
Qualifications (if required): public member		
Sen. Lynda Bourque Moss, Billings	Governor	1/15/2007
Qualifications (if required): public member		
Mr. Randy Hafer, Billings	Governor	1/15/2007
Qualifications (if required): public member		

VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2006 through JANUARY 31, 2006

Board/current position holder	Appointed by	Term end
Historic and Cultural Advisory Council (Governor) cont.		
Mr. Bob McCarthy, Butte Qualifications (if required): public member	Governor	1/15/2007
Ms. Wendy Raney, Wolf Creek Qualifications (if required): public member	Governor	1/15/2007
Ms. Marilyn Ross, Twin Bridges Qualifications (if required): public member	Governor	1/15/2007
Horse Racing Task Force (Governor)		
Sen. Dale Mahlum, Missoula Qualifications (if required): public representative	Governor	12/31/2006
Mr. Shawn Real Bird, Garryowen Qualifications (if required): public representative	Governor	12/31/2006
Ms. Sherry Meador, Clancy Qualifications (if required): public representative	Governor	12/31/2006
Mr. Joe Birdrattler, Browning Qualifications (if required): public representative	Governor	12/31/2006
Mr. Ben Carlson, Billings Qualifications (if required): public representative	Governor	12/31/2006
Mr. Bill Schmitt, Great Falls Qualifications (if required): public representative	Governor	12/31/2006

VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2006 through JANUARY 31, 2006

Board/current position holder	Appointed by	Term end
Horse Racing Task Force (Governor) cont.		
Mr. Ron Thiebert, Kalispell Qualifications (if required): public representative	Governor	12/31/2006
Mr. John Tooke, Miles City Qualifications (if required): public representative	Governor	12/31/2006
Independent Living Council (Public Health and Human Services)		
Mr. Bob Maffit, Helena Qualifications (if required): Independent Living Center representative	Governor	12/1/2006
Judicial Nomination Commission (Justice)		
Sen. Jack Galt, Martinsdale Qualifications (if required): public member	Governor	1/1/2007
Montana Council on Developmental Disabilities (Commerce)		
Ms. Connie Wethern, Glasgow Qualifications (if required): secondary consumer representative	Governor	1/1/2007
Ms. Janet Carlson, Malta Qualifications (if required): primary consumer representative	Governor	1/1/2007
Montana Facility Finance Authority (Commerce)		
Mr. John B. Dudis, Kalispell Qualifications (if required): attorney	Governor	1/1/2007
Rep. Joe Quilici, Butte Qualifications (if required): public member	Governor	1/1/2007

VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2006 through JANUARY 31, 2006

Board/current position holder	Appointed by	Term end
Montana Facility Finance Authority (Commerce) cont.		
Mr. John Bartos, Corvallis Qualifications (if required): public member	Governor	1/1/2007
Montana Small Business Development Center Advisory Council (Commerce)		
Mr. Andy Poole, Helena Qualifications (if required): none specified	Director	12/15/2006
Sen. Jon Tester, Big Sandy Qualifications (if required): none specified	Director	12/15/2006
Ms. Shirley Beck, Philipsburg Qualifications (if required): none specified	Director	12/15/2006
Mr. Ken Green, Whitefish Qualifications (if required): none specified	Director	12/15/2006
Mr. Paul Tuss, Havre Qualifications (if required): none specified	Director	12/15/2006
Mr. John Langenheim, Bozeman Qualifications (if required): none specified	Director	12/15/2006
Ms. Michelle Johnston, Helena Qualifications (if required): none specified	Director	12/15/2006
Mr. Steve Holland, Bozeman Qualifications (if required): none specified	Director	12/15/2006

VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2006 through JANUARY 31, 2006

Board/current position holder	Appointed by	Term end
Montana Small Business Development Center Advisory Council (Commerce) cont.		
Ms. Kathy Jones, Great Falls Qualifications (if required): none specified	Director	12/15/2006
Mr. Dan Killoy, Miles City Qualifications (if required): none specified	Director	12/15/2006
Mr. Joe Unterreiner, Kalispell Qualifications (if required): none specified	Director	12/15/2006
Ms. Reatha Montoya, Colstrip Qualifications (if required): none specified	Director	12/15/2006
Mr. Steve Louttit, Helena Qualifications (if required): none specified	Director	12/15/2006
Ms. Sara Hamlen, Townsend Qualifications (if required): none specified	Director	12/15/2006
Mr. Scott Atwood, Billings Qualifications (if required): none specified	Director	12/15/2006
Mr. Hale Williams, Missoula Qualifications (if required): none specified	Director	12/15/2006

VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2006 through JANUARY 31, 2006

Board/current position holder	Appointed by	Term end
Small Business Health Insurance Pool Board (Auditor)		
Mr. Christian Mackay, Billings	Governor	1/1/2007
Qualifications (if required): consumer representing the public interest		
Ms. Gail Briese-Zimmer, Helena	Governor	1/1/2007
Qualifications (if required): management-level individual with knowledge of medicaid services		
State Employee Group Benefits Advisory Council (Administration)		
Sen. Mike Cooney, Helena	Director	12/31/2006
Qualifications (if required): representing the Legislature		
Mr. Thomas Schneider, Helena	Director	12/31/2006
Qualifications (if required): representing the Labor Organization		
Mr. Dale Taliaferro, Helena	Director	12/31/2006
Qualifications (if required): representing Retired State Employees		
Ms. Mary Dalton, Helena	Director	12/31/2006
Qualifications (if required): representing State Employees		
Mr. Bartley J. Campbell, Helena	Director	12/31/2006
Qualifications (if required): representing the Legislative Branch		
Mr. Steve Barry, Helena	Director	12/31/2006
Qualifications (if required): representing State Employees		

VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2006 through JANUARY 31, 2006

Board/current position holder	Appointed by	Term end
State Employee Group Benefits Advisory Council (Administration) cont.		
Mr. Richard Cooley, Helena Qualifications (if required): representing State Employees	Director	12/31/2006
Mr. Monte Brown, Helena Qualifications (if required): representing State Employees	Director	12/31/2006
Ms. Amy Carlson, Helena Qualifications (if required): representing State Employees	Director	12/31/2006
Ms. Connie Welsh, Helena Qualifications (if required): Ex-Officio Member	Director	12/31/2006
Mr. Eric Feaver, Helena Qualifications (if required): representing the Labor Organization	Director	12/31/2006
Ms. Christi Jacobsen, Helena Qualifications (if required): representing State Employees	Director	12/31/2006
State Lottery Commission (Administration)		
Mr. Robert Crippen, Butte Qualifications (if required): certified public accountant	Governor	1/1/2007
State Tax Appeal Board (Administration)		
Mr. Joe Roberts, Helena Qualifications (if required): public member	Governor	1/1/2007

VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2006 through JANUARY 31, 2006

Board/current position holder	Appointed by	Term end
Transportation Commission (Transportation)		
Ms. Nancy Espy, Broadus	Governor	1/1/2007
Qualifications (if required): representative of District 4 and a Republican		
Mr. S. Kevin Howlett, Arlee	Governor	1/1/2007
Qualifications (if required): representative of District 1 and an Independent		