MONTANA ADMINISTRATIVE REGISTER

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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 23

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing and where written comments may be submitted.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

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NOTICE SECTION

BEFORE THE TEACHERS' RETIREMENT BOARD
OF THE STATE OF MONTANA

In the matter of the proposed, adoption of new rule relating to adjusting disability allowances, amending Rules 2.44.405 and 2.44.407 relating to the Teachers' Retirement System	NOTICE OF PUBLIC HEARING ON PROPOSED NEW RULE AND AMENDMENT OF RULES RELATING TO THE TEACHERS' RETIREMENT SYSTEM

TO: All Interested Persons.

1. On January 5, 1994 , at 10 A.M. a public hearing will be held in the office of the Teachers' Retirement System, at 1500 Sixth Avenue, Helena, Montana, to consider the adoption new rules and the of amendment of rule 2.44.405 and 2.44.407.

2. New Rule I as proposed to be adopted provides as follows:

Rule I ADJUSTMENT OF DISABILITY ALLOWANCE FOR OUTSIDE EARNINGS (1) A member's disability allowance consists of an annuity plus a pension. The annuity is a monthly benefit provided by the member's contributions with interest. The pension is equal to the total allowance provided by 19-20-902, MCA, less the annuity. If a disabled member is gainfully employed his pension will be reduced so that his outside earning, plus his annuity, plus his pension do not exceed the maximum, allowed under 19-20-904, MCA.

(2) Disabled members who are gainfully employed must notify the Teachers' Retirement System within thirty days of being employed. Notification must include:

(a) Name and address of Employer,

(b) Salary or hourly rate of pay and estimated yearly earnings, and

(c) Description of their duties and responsibilities and if the position is full-time or part-time.

(3) The Disabled member must report to the Teachers' Retirement System, no less than annually, the total amount earned each year. Members are encouraged to report earnings each month so that the TRS can advise the member when they will earn more than allowed and adjust their benefit if necessary.

AUTH: Sec. 19-20-201, MCA; IMP: Sec. 19-20-904, MCA

Rationale: The TRS is required to reduce the monthly benefit of any disabled members whose earnings exceed the maximum allowed under 19-20-904, MCA. This rule provides the board and the member guidance for calculating any reduction in benefits and clarifies reporting responsibilities of the recipient.

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

2.44.405 INTEREST ON NON-PAYMENT FOR ADDITIONAL CREDITS (1)

Interest, at the rate set by the board pursuant to 19-20-201, MCA, compounded annually, will be charged on ~~July 1 of each year~~ the first of each month on ~~the~~ any outstanding balance ~~of any amount~~ owed the Teachers' Retirement System ~~by members for the purchase of additional credit~~.

~~(2) Interest will not be charged on payments received within one year of eligibility to purchase additional service.~~

AUTH: Sec. 19-4-201 MCA; IMP, 19-4-401 through 19-4-411;

Rationale: Prior to July 1, 1975, interest was credited to member accounts only once each year on July 1. Also, at the same time interest accrued on amounts owed to purchase additional service was added to any balance due. Since July 1, 1975, interest has been credited to member accounts each month, compounded annually. The proposed rule change will assess interest against any balance owing the system in the same manner as interest is credited to accounts, making it easier for members to understand the process.

2.44.407 CREDITABLE SERVICE FOR ~~EMPLOYMENT~~ TEACHING IN PRIVATE EDUCATIONAL INSTITUTIONS (1) A member may apply for creditable service for ~~employment~~ teaching in a private elementary, secondary, ~~or~~ post-secondary educational institution, or special purpose school. ~~if the institution is an organized and existing institution which is established, operated, and primarily supported by a nongovernmental agency and which makes a business of instructing children of school age in the required study and for the full time required under the laws of the state in which the institution operates.~~ For purpose of this section the term "educational institution" means only an institution or school that normally maintains a regular faculty and curriculum and normally has a regular organized body of students in attendance at the place where its educational activities are carried on and has been accredited by either the state in which it operates or a recognized association. A school or other function operated in a private home will not be considered an "educational institution".

(2) ~~An institution shall be deemed to be a private elementary or secondary educational institution if it meets the following requirements:~~

~~(a) has a governing authority;~~

~~(b) can show that it provides instructions in the program prescribed by the board of public education of the state in which it operates;~~

~~(c) kindergarten teachers must instruct children who will be eligible the following year to attend first grade as permitted by the law of the state in which the institution operates; and~~

~~(d) is not operated in a private home.~~

The person applying to purchase private teaching service must have been in compliance with the certification requirements of the state (or federal agency) in which the institution was located at the time the service was performed.

AUTH: Sec. 19-4-201, MCA; IMP: Sec. 19-4-408, MCA

Rationale: Clarify that special purpose schools, such as Rivendell, may qualify as private educational institutions and to require that the institution be accredited and that the applicant meet any certification requirements.

4. Interested parties may submit their data, views, or arguments, either orally or in writing, at the public hearing. Written views, comments or data may also be submitted to David L. Senn, Administrator, Teachers' Retirement System, 1500 Sixth Avenue, Helena, MT 59620-0139, no later than January 6, 1994.

5. Pam Buchanan has been designated to preside over and conduct the hearing.

6. The authority of the Board to make the proposed rules is based on section 19-4-201, MCA. and the rules implement Title 19, Section 4, MCA.

By: _____
David L. Senn, Executive Director

_____
Dal Smilie, Chief Legal Counsel
Rule Reviewer

Certified to the Secretary of State on November 29, 1993.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the proposed amendment of ARM 2.21.224, 2.21.227, 2.21.230, 2.21.232, and 2.21.234 relating to annual vacation leave	))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF ARM 2.21.224, 2.21.227, 2.21.230, 2.21.232, and 2.21.234 RELATING TO ANNUAL VACATION LEAVE

TO: All Interested Persons.

1. On January 5, 1994, at 9 a.m. in Room 136 Mitchell Building, Helena, Montana, a public hearing will be held to consider the proposed amendment of ARM 2.2.224, 2.21.227, 2.21.230, 2.21.232, and 2.21.234 relating to annual vacation leave.

The department of administration will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you need to request an accommodation, contact the department no later than 5:00 p.m. on December 28, 1993, to advise us of the nature of the accommodation that you need. Please contact the State Personnel Division, Attn: Ms. Constance Enzweiler, Room 130, Mitchell Building, Helena, MT. 59620; telephone (406) 444-3794; TT (406) 444-1421; FAX (406) 444-2812.

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

2.21.224 MAXIMUM ACCRUAL OF VACATION LEAVE CREDITS (1) In accordance with 2-18-617(1)(a), MCA, all full-time and part-time employees serving in permanent and seasonal positions may accumulate two times the total number of annual leave credits they are eligible to earn per year, according to the rate earned schedule. Except as provided in subsections (2)-(5) below, excess vacation leave credits will be forfeited unless the credits are used by the employee within 90 calendar days from the last day of the calendar year in which the excess credits were earned.

(2) A department director or designee is responsible for actively managing vacation leave for agency employees by, as provided in 2-18-617 (1)(b), MCA, "providing reasonable opportunity for an employee to use rather than forfeit accumulated vacation leave." Departments are encouraged to work with an employee who has an excess vacation leave balance as early as possible in the 90-day window or at any time if the employee's leave balance exceeds two times the annual vacation accrual rate to avoid forfeiture of excess leave.

(3) An employee is responsible for making a reasonable, written request to use excess vacation leave during the 90-day window. A department may approve all, some or none of the employee's request by written response within no more than 5 working days from the receipt of the request. If the original request is not approved, the department and employee may negotiate alternate leave dates during the 90-day window.

(4) For purposes of this section, reasonable means sufficient notice to take the excess vacation leave off before the forfeiture deadline.

(5) If the employing department denies all or any portion of the written request, the excess vacation leave is not forfeited and the employing department must ensure that the employee may use the excess vacation leave before the end of the calendar year in which the leave would have been forfeited.

~~(3)~~ (6) The calculation of excess vacation leave credits (those credits which must be used within the first 90 days of the next calendar year) will be made as of the end of the first pay period which extends into the next calendar year.

(Auth. 2-18-604, MCA; Imp. 2-18-617, MCA)

2.21.227 VACATION LEAVE REQUESTS (1) As provided in 2-18-616, MCA, "the dates when employees' annual vacation leaves shall be granted shall be determined by agreement between each employee and his employing agency, with regard to the best interests of the state...as well as the best interests of each employee." Where the interest of the state requires the employee's attendance, the state's interest overrides the employee's interest. However, as provided in 2-18-617(1)(b), MCA, the agency must provide reasonable opportunity for an employee to use rather than forfeit accumulated vacation leave.

(2) - (4) Remain the same.

(Auth. 2-18-604, MCA; Imp. 2-18-616, 2-18-617, MCA)

2.21.230 ABSENCE DUE TO ILLNESS OR A WORK-RELATED INJURY (1) Remains the same.

(2) As provided in 39-71-736 (4), MCA, an injured worker may take vacation leave without affecting the worker's eligibility for temporary total disability benefits.

(Auth. 2-18-604, MCA, Imp. 2-18-615, MCA)

2.21.232 LUMP-SUM PAYMENT UPON TERMINATION (1) As provided in 2-18-617(2), MCA, "an employee who terminates his employment for a reason not reflecting discredit on ~~himself~~ the employee is ~~shall be~~ entitled upon the date of such termination to cash compensation for unused vacation leave, assuming that the employee has worked the qualifying period set forth in 2-18-611."

(2) - (5) Remain the same.

(Auth. 2-18-604, MCA, Imp. 2-18-617, MCA)

2.21.234 TRANSFERS (1) As provided in 2-18-617(3), MCA, "...if an employee transfers between agencies of the same jurisdiction, ~~there shall be no~~ cash compensation may not be paid for unused vacation leave. In such a transfer, the receiving agency assumes the liability for the accrued vacation credits transferred with the employee."

(2) Remains the same.

(Auth. 2-18-604), MCA, Imp. 2-18-617, MCA)

3. It is reasonably necessary to amend these rules because the 1993 Legislature in H.B. 289 amended 2-15-617, MCA, which requires an agency to provide reasonable opportunity for an employee to use rather than forfeit accumulated vacation

leave and H.B. 622 revised 39-71-736 which allows injured workers to use annual leave without affecting their eligibility for temporary total disability benefits.

4. Constance Enzweiler, Personnel Specialist, State Personnel Division, Department of Administration, Room 130 Mitchell Building, Helena, Montana 59620, has been designated to preside over and conduct the hearing.

5. Interested persons may submit their data, views or arguments concerning the proposed amendments to Mark Cress, Administrator, State Personnel Division, Department of Administration, Room 130 Mitchell Building, Helena, Montana 59620 no later than January 7, 1994.

Dal Smilie, Chief Legal Counsel
Rule Reviewer

Lois A. Menzies, Director
Department of Administration

Certified to the Secretary of State November 29, 1993

BEFORE THE PUBLIC EMPLOYEES' RETIREMENT BOARD
OF THE STATE OF MONTANA

In the matter of amending ARM 2.43.302, 2.43.303, 2.43.403, 2.43.408, 2.43.436, 2.43.502, and 2.43.606; and the repeal of ARM 2.43.608.	NOTICE OF PROPOSED AMENDMENT AND REPEAL OF RULES GOVERNING THE RETIREMENT SYSTEMS ADMINISTERED BY THE PUBLIC EMPLOYEES' RETIREMENT BOARD NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On January 27, 1994, the Public Employees' Retirement Board proposes to amend ARM 2.43.302, 2.43.303, 2.43.403, 2.43.408, 2.43.436, 2.43.502, and 2.43.606 pertaining to the administration of public retirement systems; and to repeal ARM 2.43.608 providing for expedited refunds of member contributions.

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

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

(1) "Benefit recipient" means any retired member, contingent annuitant, or survivor who is receiving a benefit from a retirement system, but does not include a beneficiary who receives either a lump-sum payment or an annuity of equal and fixed payments for life that is the actuarial equivalent of a lump-sum payment.

(1) through (6) are renumbered (2) through (7)

~~(7) "inactive member" means a member who has terminated covered employment and has left their contributions and interest on deposit with the retirement system;~~

(8) remains the same.

~~(9) "member" means a public employee working in covered employment for which contributions are made into either the public employees', sheriffs', municipal police, highway patrol, judges', firefighters' unified, or game wardens' retirement systems;~~

(10) through (17) are renumbered (9) through (16).

~~(18)~~(17) "Survivorship ~~allowance~~ benefit" means a monthly benefit payable for life to the survivor or designated beneficiary of a member who dies while serving in covered employment.

(19) renumber (18)

AUTH: 19-2-403, MCA
IMP: Title 19, Chs. 2, 3, 5, 6, 7, 8, 9, and 13, MCA

2.43.303 REQUEST FOR RELEASE OF INFORMATION BY MEMBERS

(1) Telephone requests from system members or ~~retirees~~ benefit recipients for general information will be handled in a manner most efficient to both the member or ~~retiree~~ benefit recipient and the division, subject to written verification.

(2) Specific information, particular to a member or ~~retiree's~~ benefit recipient's account, will only be released upon receipt by the division of a written authorization signed by the member or ~~retiree~~ benefit recipient.

(3) The administrator may release information to governmental agencies with statutory authority to access specific information. The requesting agency must submit the request in writing citing proper legal authority to obtain the specific information.

AUTH: 19-2-403, MCA
IMP: Title 19, Chs. 2, 3, 5, 6, 7, 8, 9, and 13, MCA

2.43.403 EFFECT OF VOLUNTARY ELECTIONS (1) All employees who may elect membership in ~~PERS under 19-3-403, MCA,~~ a retirement system must do so by completing a membership card, but once electing membership are subject to the same laws, rules and regulations as any member and may not discontinue membership without termination of employment.

(2) Exemption from (1) may be granted upon submission to the ~~division~~ board of proof that the employee was not given the opportunity to freely elect membership. The filing of this request for exemption must be made within ~~one year~~ six months of the date that an individual enjoys the right to elect membership. ~~Request for exemption after this date must be brought to the board.~~

(3) In case of discontinuation of membership as certified above in (2), employee contributions, plus interest will be refunded to the employee; employer contributions will not be refunded.

~~(4) Persons excluded from PERS membership under 19-3-403(10), MCA, must provide satisfactory proof of age to the division as enumerated in ARM 2.43.503.~~

AUTH: 19-2-403, MCA
IMP: 19-2-403, 19-3-403, 19-7-301, and 19-13-301(3), MCA

2.43.408 LUMP SUM PAYMENTS OF VACATION OR SICK LEAVE EXCLUDED (1) No ~~creditable~~ service credit shall be granted for lump sum payments of vacation or sick leave after a member's ~~effective date of retirement~~ last day on the employer's payroll.

AUTH: 19-2-403, MCA
IMP: Title 19, Ch. 2, part 7, 19-3-108(5), 19-6-101(3), 19-7-101(2), 19-8-101(2), 19-9-104(4), and 19-13-104(5), MCA

2.43.436 PURCHASE OF PREVIOUS MILITARY SERVICE--MODIFICATIONS AFFECTING ACTUARIAL COST (1) When ~~any member of the municipal police officers' retirement system or~~ a firefighter who became a member of the firefighters' unified retirement system prior to July 1, 1981 is statutorily eligible to purchase previous active duty military service for credit in the retirement system, the actuarial cost of purchasing periods of active duty military service will be calculated as follows:

(a) For a member with at least 15 years ~~but less than 20~~

~~years~~ of ~~qualified~~ service, the cost of purchasing military service which will bring the member toward achieving, but not exceeding, 20 years of ~~qualified~~ service will be the current actuarial cost rate adopted by the board multiplied by the member's ~~appropriate~~ immediately preceding 12 months ~~salary defined in statute~~ compensation, plus any applicable interest due.

(b) For a member with at least 20 years of ~~credited~~ membership service, or for a member whose total military service purchased will increase ~~his~~ the total ~~qualified~~ service to more than 20 years, the cost of purchasing only those periods of military service which will increase the member's service to over 20 years of ~~qualified~~ service will be 40% of the appropriate actuarial cost rate as adopted by the board multiplied by the ~~appropriate~~ member's immediately preceding 12 months ~~salary defined in statute~~ compensation, plus any applicable interest due.

(2) For a member of the sheriffs' retirement system whose purchase of military service can not be used for retirement eligibility, the actuarial cost of purchasing each year of active duty military service will be 65% of the appropriate actuarial cost rate for the system as adopted by the board, multiplied by the ~~appropriate~~ member's immediately preceding 12 months ~~salary defined in statute~~ compensation, plus any applicable interest due.

AUTH: 19-2-403, MCA
IMP: 19-7-803 and 19-13-403, MCA

2.43.502 DISABILITY RETIREMENT (1) Remains the same.

(a) Remains the same.

(b) Application for disability retirement may be secured from the public employees' retirement division office, and a complete application ~~will~~ must include:

(i) through (iii) remains the same.

(c) Any claimant may request an informal meeting with the board before or after initial action on ~~his~~ a claim by submitting written request to the division at least ~~1 full week~~ ten (10) days before any scheduled meeting; provided, however, claimant will be given an opportunity to discuss ~~his~~ the claim with the board no later than the second regularly scheduled meeting after submitting ~~his~~ the request. Inability to attend any given meeting will not jeopardize a member's right to appear at future meetings.

(d) Remains the same.

(e) ~~Any retiree who has been~~ Upon return to covered employment, a member previously retired under the disability provisions of ~~this act upon return to covered employment~~ the retirement system is subject to immediate reinstatement to active membership and a discontinuance of ~~his~~ the disability ~~allowance~~ benefit.

(f) Remains the same.

(2) Any member of the judges', highway patrol, game wardens', or sheriffs' retirement systems, ~~regardless of length of service,~~ whose ~~is incapacitated for the performance of duty~~

disability was directly caused by ~~a duty-related disability~~ actions occurring in the line of duty may apply for ~~a~~ duty-related disability retirement~~,~~. ~~subject to~~ The member must comply with the ~~rules~~ requirements stated ~~above-enumerated~~ in (1)(a) through (1)(f) of this rule.

(a) Any member who is eligible for a duty-related disability, regardless of length of service, may elect to apply for the more general disability retirement ~~described in (1)(a) through (f), above,~~ if such an election would result in a higher monthly disability ~~allowance~~ benefit ~~because of service credits earned~~.

AUTH: 19-2-403, MCA
IMP: 19-2-406, 19-3-1002, 19-3-1005, 19-3-1006, 19-5-601, 19-6-601, 19-7-601, 19-8-701, 19-9-902, and 19-13-802, MCA

2.43.606 CONVERSION OF OPTIONAL RETIREMENT ~~ANNUITY~~ BENEFIT UPON DEATH OR DIVORCE FROM ~~BENEFICIARY~~ THE CONTINGENT ANNUITANT

(1) Upon the death of, or divorce from, a named ~~beneficiary~~ contingent annuitant, a PERS retiree may convert from an optional to a regular retirement ~~allowance~~ benefit or may designate a new ~~beneficiary~~ contingent annuitant and retirement option. In the case of a divorce, the retiree may only change ~~beneficiaries~~ the contingent annuitant if the court did not award previously assigned optional retirement benefits to the ex-spouse as part of the divorce settlement.

(2) In the case of a conversion from an ~~optional~~ option 2, 3 or 4 to ~~the regular~~ an option 1 retirement ~~allowance~~ benefit after the death of the former ~~beneficiary~~ contingent annuitant, the resulting option 1 retirement ~~allowance~~ benefit will be the same dollar amount ~~as~~ the retiree was receiving ~~at the time of death of the~~ when the ~~beneficiary~~ contingent annuitant died.

(3) In the case of a conversion from an option 2, 3 or 4 to the option 1 retirement ~~allowance~~ benefit after divorce from the former ~~beneficiary~~ contingent annuitant, the resulting option 1 retirement ~~allowance~~ benefit will be the same as the ~~original~~ option 1 retirement ~~allowance~~ benefit calculated at the time of retirement plus an amount equal in dollars to any cost-of-living adjustment granted.

(4) In the case of a subsequent designation of another ~~beneficiary~~ contingent annuitant, the retiree may again elect an option 2, 3 or 4 retirement ~~allowance~~ benefit and the resulting benefits will be calculated by applying the actuarial reduction factors in use at the time of the original retirement (based upon the age of the new ~~beneficiary~~ contingent annuitant) to the option 1 benefit as described in (2) or (3) above.

(5) A change of ~~beneficiary or~~ contingent annuitant will become effective on the date ~~that it is received,~~ a properly completed election form is received by the ~~retirement~~ division. Any subsequent change in an optional retirement ~~allowance~~ benefit will become effective on the first day of the month following receipt of the written election by the division.

AUTH: 19-2-403, MCA
IMP: 19-3-1501, MCA

3. Rule 2.43.302 is being amended to include a definition of "benefit recipient", which will include "retirees", "contingent annuitants" and "survivors" but will exclude "beneficiaries" who receive a payment not subject to future increases. Definitions of "member" and "inactive member" are unnecessary because these terms are now defined in statute. Finally, editorial changes are made in definition (17) to conform with uniform terms now used in retirement statutes.

Amendments to 2.43.303 include replacing the term "retiree" with the more appropriate term, "benefit recipient", which includes all persons receiving benefits from the retirement systems; adding language which recognizes the statutory authority of some government agencies to access information and to state the requirements under which the administrator may release the information; and making editorial changes which conform with uniform terms now used in retirement statutes.

Rule 2.43.403 is being amended to include all retirement systems which have a provision for optional membership; to specify that only the board may grant exemptions and to limit the time frame within which exemptions may be allowed. Since persons may no longer be excluded from PERS membership because of their age, the rule has been further amended to remove reference to this former exclusion.

Rule 2.43.408 currently allows the calculation and crediting of membership service for periods after termination of employment but ending prior to the effective retirement date based upon lump sum payout of sick and annual leave. For example, a member with 20.0 years of service who terminates with a lump sum cash-out for 800 hours of sick and annual leave, could delay his/her effective date of retirement for 5 months and have his/her ultimate retirement benefit calculated using 20.4167 years in the formula. Amendments to the current rule are necessary since a recent legal interpretation held that retirement statutes do not permit service to be credited for periods during which a member is absent from service.

Rule 2.43.436 is being amended because legislation enacted in 1993 increased the retirement benefits for years of service in excess of 20 for municipal police officers, thus this particular calculation no longer applies the purchase of military service in MPORS. The remaining changes are necessary to specify how the actuarial cost is calculated, clarify the meaning, and make the text gender neutral.

Rule 2.43.502 is being amended by replacing "1 full week" with "ten (10) days" which complies with written board policy, and will insure proper review prior to board action. Editorial changes are also made to clarify the meaning, conform with uniform terms used in retirement statutes, and make the text gender neutral.

Rule 2.43.606 is being amended by replacing "beneficiary" with "contingent annuitant" to conform with new statutory language enacted to clarify the distinction between these terms and by editorial changes to clarify the meaning and conform with uniform terms now used in retirement statutes.

4. The board proposes to repeal ARM 2.43.608 dealing with expedited refunds for members terminating as a result of reduction in work force and can be found on page 2-3167 of the ARM. AUTH: Sec. 19-2-403, MCA; IMP: Sec. 19-3-703, 19-5-403, 19-6-403, 19-7-304, 19-8-503, 19-9-304, 19-9-602, 19-13-304, MCA

5. The repeal of 2.43.608 is required because it does not comply with IRC 401(a)(31) which requires a 30 day waiting period prior to making any refund from a tax deferred retirement system. This federal restriction prohibits processing expedited refunds.

6. Interested parties may submit their data, views or arguments concerning the proposed amendments and repeal, in writing, to Linda King, Administrator, Public Employees' Retirement Division, 1712 Ninth Avenue, Helena, Montana 59620, no later than January 10, 1994.

7. If a person who is directly affected by the proposed amendments or repeal wishes to present data, views and oral or written arguments at a public hearing, the individual must make written request for a hearing and submit this request along with any written comments to Linda King, Administrator, Public Employees' Retirement Division, 1712 Ninth Avenue, Helena, Montana 59620. A written request for hearing must be received no later than January 10, 1994.

8. If the Public Employees' Retirement Board receives requests for a public hearing on the proposed amendments and repeal from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the Administrative Code 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 4184 persons based upon the total active and retired membership of the retirement systems covered by these rules. Total membership is based on the retired member payroll and active member payroll reports as of October 26, 1993.

Terry Teichrow, President
Public Employees' Retirement Board

Dal Smilie, Chief Legal Counsel and
Rule Reviewer

Certified to the Secretary of State November 19, 1993.

BEFORE THE BOARD OF THE
STATE COMPENSATION INSURANCE FUND
OF THE STATE OF MONTANA

In the matter of the proposed amendment of ARM 2.55.327 pertaining to the construction industry program and the proposed adoption of new rules pertaining to scheduled rating for loss control non-compliance modifier and unique risk characteristics modifier.	NOTICE OF PUBLIC HEARING

TO: All Interested Persons:

1. On December 29, 1993, the State Compensation Insurance Fund will hold a public hearing at 2:00 p.m., Room 43, Department of Natural Resources and Conservation, Lee Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment of the construction industry premium credit program and proposed adoption of new Rule I relating to scheduled rating - loss control noncompliance modifier, and new Rule II relating to scheduled rating - unique risk characteristics modifier.

2. The State Compensation Insurance Fund makes reasonable accommodations for persons with disabilities who wish to participate in this public hearing. Persons needing accommodations must contact the State Fund, Attn: Ms. Dwan Ford, P.O. Box 4759, Helena, MT 59604; telephone (406) 444-6480; TDD (406) 444-5971; fax (406) 444-6555, no later than 5:00 p.m., December 13, 1993, to advise as to the nature of the accommodation needed and to allow adequate time to make arrangements.

3. The proposed new rules provide as follows:

RULE I. SCHEDULED RATING - LOSS CONTROL NONCOMPLIANCE MODIFIER (1) An employer insured by the state fund will be subject to a premium modifier as established by the board of directors as follows:

(a) an insured does not satisfactorily establish a safety program in accordance with 39-71-1504, MCA, after the state fund has provided on-site safety consultative services; or

(b) an insured has refused on-site safety consultative services after the state fund has offered in writing to provide on-site safety consultative services to the insured.

(2) The modifier as established by the board will be a percentage increase applied to standard premium. The modifier will be effective at the beginning of the next quarterly period.

(3) An insured who has been subject to the premium modifier for at least one full quarter, may have the modifier removed at the end of a quarter in which a satisfactory safety program has been approved and adequately implemented following provision of on-site safety consultative services.

(4) An insured subject to the premium modifier will be assigned a quarterly report basis.

AUTH: Sec. 39-71-2315 and 39-71-2316, MCA.
IMP: Sec. 39-71-2316 and 39-71-2341, MCA.

Rationale: The 1993 Legislative passed the Safety Culture Act which requires the State Fund "to provide an additional pricing level with a higher rate within the classification for those employers who do not satisfactorily implement a safety program subsequent to the provisions or attempt to provide on-site safety consultative services, 39-71-2341, MCA". This rule implements that section of the law and 39-71-2316, MCA, requiring that the process, procedures, formulas, and factors of ratemaking are to be in rule form.

The rule sets out the criteria which will: 1) cause an insured to receive the premium modifier; 2) how it will be calculated; and 3) and how it may be removed. It is intended that this rule apply to insureds' rates effective July 1, 1994. As the Department of Labor is currently in the process of developing rules by which insureds are guided in implementing their safety programs, it should be understood that the State Fund will not implement this rule until the Department of Labor's administrative rules are finally adopted. The additional pricing level with the higher rate has been established as a premium modifier. This allows the modifier to be added or removed on a quarterly basis. The rule also provides that an insured, once they have received the modifier for at least one full quarter, may have the modifier removed if a satisfactory safety program is implemented following provision of on-site safety consultative services by the State Fund. Some insureds may be on a monthly, semi-annual or annual basis for reporting purposes; their report basis will be changed to quarterly in order to allow the insurer the opportunity to apply the modifier in a timely fashion and allow an insured a more timely removal of the modifier.

RULE II. SCHEDULED RATING - UNIQUE RISK CHARACTERISTICS MODIFIER (1) The state fund may modify the premium for an insured to acknowledge characteristics of the business that are not reflected in its experience. Such characteristics may include but are not limited to the condition of the insured's premises and worksites, peculiarities of classification, medical facilities, safety devices, employees and management. The modifier will be a percentage increase (scheduled rating debit modifier) or decrease (scheduled rating credit modifier) applied to standard premium.

(2) All scheduled rating debit and credit modifiers shall be based on evidence contained in the file of the state fund at the time the scheduled rating modifier is applied. The effective date of any scheduled rating modifier shall not be any date prior to the receipt in the state fund's office of the evidence supporting the debit or credit.

(3) The derivation of the scheduled rating modifier must be made available to the insured upon request.

(4) To the degree that the insured can correct the reason for any scheduled rating debit modifier to the satisfaction of the state fund, the modifier may be removed at the beginning of the next quarterly period.

(5) If the insured fails to maintain the basis for which a scheduled rating credit modifier was applied, the modifier may be removed by the state fund at the beginning of the next quarterly period.

(6) An insured subject to the modifier will be assigned a quarterly report basis.

AUTH: Sec. 39-71-2315, 39-71-2316, and 39-71-2330, MCA.
IMP: Sec. 39-71-2316 and 39-71-2330, MCA.

Rationale: This premium modifier has been filed in many jurisdictions by the National Council on Compensation Insurance (NCCI) and is a commonly utilized insurance tool to acknowledge an insured's unique characteristics. The modifier is applied at the State Fund's discretion, based on the unique traits of an individual insured. The State Fund anticipates limited use of this premium modifier.

Some insured's may be on a monthly, semi-annual or annual basis for reporting purposes; their report basis will be changed to quarterly in order to allow the State Fund the opportunity to apply either a debit or credit modifier in a timely fashion and allow an insured a more timely removal of a debit modifier.

4. The proposed amendment provides as follows:

2.55.327 CONSTRUCTION INDUSTRY PREMIUM CREDIT PROGRAM

(1) ~~Effective July 1, 1992, t~~The state fund shall offer a program which provides a premium credit to insureds in the construction industry who pay their workers wages equal to or in excess of:

(a) Effective July 1, 1992: the state's average weekly wage;

(b) Effective July 1, 1994: one and one-half times the state's average weekly wage.

Rationale: Add the "equal to or" statement to be consistent with premium rates for construction industry, 39-71-2211, MCA and 2.55.327 (2)(d), ARM. Additions (a) and (b) are to differentiate between the original statutory language and the change to one and one-half times the state's average weekly wage enacted by the 1993 Legislature.

(2)(a)-(c) remain the same.

(d) have paid an average hourly wage equal to or in excess of:

(i) Effective July 1, 1992: the state's average weekly wage as published by the department of labor and industry for the fiscal year of the survey period~~; and~~.

(ii) Effective July 1, 1994: one and one-half times the state's average weekly wage as published by the department of labor and industry for the fiscal year of the survey period.

Rationale: Additions (i) and (ii) are to differentiate between the original statutory language and the change to one and one-half times the state's average weekly wage enacted by the 1993 Legislature.

(e) Remains the same.

(3) The following class codes are the construction codes eligible for the construction industry premium credit program:

3365	5057	5183	5223	5462	5506	5651	6204	6306	7601
3724	5059	5188	5348	5472	5507	5703	6217	6319	7605
3726	5069	5190	5402	5473	5508	6003	6229	6325	7855
5020	5086	5213	5403	5474	5538	6005	6233	6365	9521
5022	5102	5215	5437	5479	5551	6017	6251	6400	9552
5037	5146	5221	5443	5480	5610	6018	6252	~~7536~~	
5040	5160	5222	5445	5491	5645	6045	6260	7538	

Rationale: Code 7536 was removed as it was cancelled July 1, 1992. Insureds previously assigned code 7536 were reclassified to code 5190, which is also a construction code. Code 5610 was established effective October 1, 1993 and is included in the NCCI plan filed with the Insurance Commissioner but was previously utilized only by private carriers.

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

(c) The following credit percentages in lieu of the tables in (a) and (b) will be used for the fiscal year beginning July 1, 1994.

Average Hourly Wage	Credit Percentage
$13.58 or less	0.00%
$13.59 - $14.08	6.00%
$14.09 - $14.58	7.00%
$14.59 - $15.08	8.00%
$15.09 - $15.58	9.00%
$15.59 - $16.08	10.00%
$16.09 - $16.58	11.00%
$16.59 - $17.08	12.00%
$17.09 - $17.58	13.00%
$17.59 - $18.08	14.00%
$18.09 - $18.58	15.00%
$18.59 - $19.08	16.00%
$19.09 - $19.58	17.00%
$19.59 - $20.08	18.00%
$20.09 - $20.58	19.00%
$20.59 - $21.08	20.00%
$21.09 - $21.58	21.00%
$21.59 and above	22.00%

Rationale: Add a new credit table to incorporate the new state's average weekly wage effective July 1, 1993, the change to one and one-half times the state's average weekly wage enacted by the 1993 Legislature, and reflect a more aggressive

credit formula to more closely adhere to the intent of the 1991 legislation (HB187) which created the program.

AUTH: Sec. 39-71-2315 and 39-71-2316, MCA
IMP: Sec. 39-71-2211, 39-71-2311 and 39-71-2316, MCA

5. Interested persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written testimony may be submitted to state fund attorney Nancy Butler, Legal Department, State Compensation Insurance Fund, 5 South Last Chance Gulch, Helena, Montana 59601, no later than 5:00 p.m., January 6, 1994.

6. The State Fund Legal and Underwriting Department Vice Presidents have been designated to preside over and conduct the hearing.

Dal Smilie, Chief Legal Counsel
Rule Reviewer

Rick Hill
Chairman of the Board

Nancy Butler, General Counsel
Rule Reviewer

Certified to the Secretary of State November 29, 1993.

BEFORE THE DEPARTMENT OF TRANSPORTATION
OF THE STATE OF MONTANA

In the matter of the proposed amendment, repeal and adoption of rules concerning motor carrier services (formerly "gross vehicle weight").	)	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENTS TO RULES 18.8.101, 18.8.301, 18.8.408, 18.8.414, 18.8.415, 18.8.418, 18.8.422, 18.8.426, 18.8.428, 18.8.429, 18.8.504, 18.8.509, 18.8.510A, 18.8.510B, 18.8.512, 18.8.513, 18.8.514, 18.8.519, 18.8.601, 18.8.901, AND 18.8.1401; AND REPEAL OF RULES 18.8.303, 18.8.404, AND 18.8.405; AND ADOPTION OF NEW RULE I

TO: All Interested Persons.

1. On January 14, 1994, at 8:30 a.m., a public hearing will be held in the auditorium of the Department of Transportation building at 2701 Prospect Avenue, Helena, Montana, to consider amendments to certain rules regarding the motor carrier services licensing requirements and permit requirements for overdimensional vehicles and loads. In addition, the rules being amended will reflect that the former Department of Highways was abolished and the Department of Transportation was created by the 1991 Legislature. The specific rules the Department is proposing to amend are listed above.

2. The proposed amendments of the above-stated rules will read as follows: (new matter underlined, deleted matter interlined).

18.8.101 DEFINITIONS (1)(a) through (e) will remain the same.

(f) Overhang means the part of a load that extends beyond the front or rear of a vehicle. Rear overhang is measured from the center of the rear-most axle to the most distant end of the load being hauled. Front overhang is measured from the front bumper of a vehicle to the most distant end of the load being hauled.

(g) A quarter or calendar quarter shall be any consecutive three months.

AUTH: Sec. 61-10-155; MCA; IMP: Sec. 61-10-104, 61-10-121, 61-10-124, 61-10-209 MCA.

REASON: The 53rd Legislature enacted Senate Bill 395 (Chapter 423) which provides a definition of overhang for logs. Proposed amendment (f) will add a definition of overhang which

will apply to all types of loads, thereby promoting uniformity in permitting. Proposed amendment (g) will provide clarification when issuing gross weight fees.

18.8.301 GENERAL RECIPROCITY INFORMATION (1) Vehicles registered in other states and provinces may be granted reciprocity on certain license requirements and fees. Specific information for each jurisdiction is available by contacting the ~~Gross Vehicle Weight~~ Motor Carrier Services Division, Box 4639, Helena, Montana 59604, (406) 444-6130, VOICE, or (406) 444-7696-TDD (2701 Prospect Avenue.)
AUTH: Sec. 61-3-716, MCA; IMP: Sec. 61-3-711 through 61-3-733, MCA.

REASON: The 52nd Legislature enacted Senate Bill 164 (Chapter 512) which established a Department of Transportation and changed the name of the Gross Vehicle Weight Division to the Motor Carrier Services Division.

18.8.408 TOW CARS (WRECKERS) (1) remains the same.
(2) The fees shall be paid on the maximum gross loaded weight of the towing vehicle only. The maximum gross loaded weight shall be determined by the owner.
(3) and (4) remain the same.
AUTH: Sec. 61-10-155, MCA; IMP: Sec 61-10-201, MCA.

REASON: The amendment is proposed for clarification.

18.8.414 INCREASE IN WEIGHT ~~&~~AND/OR CHANGE OF CLASSIFICATION (1) will remain the same.
(2) ~~No credit shall be given for more than the lesser gross weight when changing from a more costly to a cheaper classification.~~ When changing from a more costly gross weight fee classification or weight classification to a less expensive classification no refund shall be given.
(3) ~~The GVW law provides specifically only for increase in GVW by payment of additional fees in the same classification.~~ Within the same classification, increased gross vehicle weight may be purchased by paying the additional required fees.
(4) will remain the same.
AUTH: Sec. 61-10-155 MCA; IMP: Sec. 61-10-201, 61-10-209, and 61-10-233 MCA.

REASON: The proposed amendments are for clarification.

18.8.415 MONTHLY - QUARTERLY G.V.W. FEES (1) The quarter fee shall be one fourth of the fee set forth in ~~schedules I, II, and III~~ sections 61-10-201 and 61-10-203, MCA, if the gross weight exceeds 24,000 pounds~~ and shall be based on a calendar quarter~~. A quarter shall be any consecutive three-month period.
(2) ~~The calendar quarters are as follows: first quarter - January, February, March; second quarter - April, May, June; third quarter - July, August, September; and fourth quarter - October, November, December.~~Any combination of consecutive

monthly fees shall be issued on one receipt and only one $5.00 additional fee shall be charged. Payment of gross weight fees for non-consecutive months requires a separate receipt for each month and the payment of the $5.00 additional fee for each receipt.

(3) ~~For each monthly or quarterly fee collected at any time, other than at the time the basic registration fee is collected, there shall be collected a $5.00 additional fee. If the payment of the monthly or quarterly G.V.W. fee is made prior to the purchase of the Montana registration (Montana license plate), the additional fee of $5.00 per month or quarter is to be paid for each vehicle.~~Upon expiration of gross weight fees purchased for three or more consecutive months, the owner or operator of the vehicle must within ten (10) calendar days or seven (7) business days, whichever is greater, pay the required fee for at least one additional month before the vehicle may be operated on public highways. No grace period is granted to owners of vehicles when gross weight fees are purchased for a one-month period, two-month period, or any combination of non-consecutive months.

(4) through (7) will remain the same.

AUTH: Sec. 61-10-155 MCA; IMP: Sec. 61-10-201, 61-10-209 MCA.

REASON: The proposed amendments are for clarification.

18.8.418 PERIOD OF QUARTER FEE (1) will remain the same.

~~(2) A registration may be for more than one quarter or to the end of the year.~~

(3) will remain the same and be renumbered as (2).

AUTH: Sec. 61-10-155, MCA; IMP: Sec. 61-10-209 and 61-10-223, MCA.

REASON: Subsection (2) is proposed to be deleted because the rule repeats statutory language in section 61-10-209(2)(b), MCA.

18.8.422 TEMPORARY TRIP PERMITS (1) through (4)(d) remain the same.

(e) ~~All non-resident transit plates, or special permits, including transit plates used to transport house trailers.~~Non-reciprocal transit plates.

(4)(f) through (5)(e) remain the same.

(f) ~~Vehicles with fewer than three axles~~Two axle vehicles not exceeding 26,000 pounds licensed in an ~~I~~international ~~R~~registration ~~P~~plan jurisdiction.

(5)(g) through (6) remain the same.

(7) Upon application to an ~~G.V.W.~~ m.c.s. officer or a highway patrolman, a trip permit may be extended by the officer's endorsement for up to 15 days in an emergency, such as mechanical breakage or unsafe road conditions.

(8) Upon application to an ~~G.V.W.~~ m.c.s. enforcement officer or highway patrolman, a permit may be extended for a period of a holiday or weekend where the enforcement officer or patrolman has knowledge that the vehicle could not load or

unload. The extension shall be limited to the period of the holiday.

(9) remains the same.

(10) The department of ~~highways~~ transportation.

AUTH: Sec. 61-10-155; MCA; IMP: Sec. 61-10-211 through 61-10-214, MCA.

REASON: The proposed changes in (1)(e) and (5)(f) are for clarification. Changes in (7), (8) and (10) are proposed because the 52nd Legislature enacted Senate Bill 164 which established a Department of Transportation and changed the name of the Gross Vehicle Weight Division to the Motor Carrier Services Division.

18.8.426 CUSTOM COMBINES (1) Operators of custom combines are issued special permits to cover registration, gross vehicle weight fees, overwidth, overlength and overheight, and fuel requirements. Detailed information may be obtained by contacting the ~~Gross Vehicle Weight~~ Motor Carrier Services Division, Box 4639, Helena, MT 59604, (406)444-6130, VOICE, or (406) 444-7696-TDD. Also, refer to sections 61-10-124(6) and (7), MCA, and to sub-chapters 5 and 7 for overdimensional and additional weight permit requirements.

AUTH: Sec. 61-10-155, MCA; IMP: Sec. 61-10-214(2) and 61-10-124(6) and (7), MCA.

REASON: The 53rd Legislature enacted House Bill 530 which provides for overlength permits to be issued under section 61-10-124 (6) and (7) MCA, for custom combine equipment. The 52nd Legislature enacted Senate Bill 164 which changed the name of the Gross Vehicle Weight Division to the Motor Carrier Services Division.

18.8.428 FERTILIZER VEHICLES (1) ~~Fertilizer vehicles to and including 9 feet in width:~~

~~(a) Laden requires proper safety equipment, must fully license, and pay 55% G.V.W. fees if moved on the highway.~~

~~(b) Unladen may license with S.M. (special mobile) license.~~ Fertilizer spreader trucks used exclusively to transport and apply fertilizer to agricultural fields and plots must fully license and may pay gross weight fees as required in sections 61-10-201 and 61-10-206, MCA.

(2) ~~Overwidth fertilizer vehicles exceeding 9 feet in width must be unladen and must display S.M. (special mobile) license when operated on the highway.~~ The applicant under the fertilizer exception must show a valid fertilizer dealer license issued by the department of agriculture as provided in section 80-10-202, MCA.

(3) Fertilizer vehicles used exclusively by a farmer in his own farming operation are ~~exempt from subsections (1) and (2)~~considered implements of husbandry.

(4) remains the same.

AUTH: Sec. 61-10-155, MCA; IMP: Sec. 61-10-201 and 61-10-206, MCA.

REASON: The 53rd Legislature enacted House Bill 180 which defines fertilizer trailers as special mobile equipment. The proposed amendment is also for clarification.

18.8.429 DISPLAY OF MONTHLY OR QUARTERLY GVW FEE RECEIPTS (1) remains the same.

(2) The receipt shall be carried in the vehicle for which it was issued ~~or the towing unit of a combination of vehicles~~ at all times while the vehicle is operated in Montana.

(3) and (4) remain the same.

AUTH: Sec. 61-10-155, MCA; IMP: Sec. 61-10-209, MCA.

REASON: The proposed amendment is for clarification.

18.8.504 DURATION OF PERMIT (1) remains the same.

(2) Term permits issued to vehicles licensed in other jurisdictions are valid from January 1 through December 31.

AUTH: Sec. 61-10-155, MCA; IMP: Sec. 61-10-101 through 61-10-148, MCA.

REASON: The amendment will assure uniformity in permitting for vehicles licensed in Montana and vehicles licensed in other jurisdictions.

18.8.509 GENERAL PERMIT RESTRICTIONS (1) remains the same.

(a) Vehicles or vehicles with a load 9 feet wide, (9 feet 6 inches wide baled hay), or ~~95~~ 110 feet long without overhang, or 75 feet long with overhang, or 14 feet 6 inches high may travel continuously.

(b) Vehicles or vehicles with a load 10 feet wide, or 110 feet long without overhang, or 75 feet long with overhang, or 14 feet 6 inches high may travel continuously on interstate highways only and within a 2 mile radius of an interstate interchange.

~~(b)~~ (c) Travel is not allowed from 3 p.m. Friday to sunrise on Saturday and from 12 noon on Sunday to sunrise on Monday for vehicles or loads exceeding 9 feet, (9 feet 6 inches baled hay) in width, or ~~95~~ 110 feet in length without overhang, or 75 feet in length with overhang, or 14 feet 6 inches in height on highways indicated on M.C.S. Form 32 permit or "red route restrictions" map, which is available from the Motor Carrier Services Division, Box 4639, Helena, MT 59604, (406) 444-6130, VOICE, or (406) 444-7696-TDD.

(c) through (e) renumbered as (d) through (f) remain the same.

(3) A permit ~~which requires alteration or is lost must be replaced by purchase of another permit.~~ is not transferable upon change of ownership of a vehicle. If the owner of the vehicle for which a current permit has been issued replaces the vehicle, the department may transfer the permit to the new vehicle. A permit is transferable as provided in section 61-10-121(1), MCA.

~~(4) A permit is not transferable except as provided in 61-10-121 (1) MCA.~~

(5) through (10) renumbered as (4) through (9) remain the same.

~~(11)~~(10) Vehicles and/or vehicles with loads with dimensions exceeding 10 feet wide, or 95 feet long, or 14 feet 6 inches in height are restricted to ~~55 m.p.h.~~the posted speed limit unless a lower speed is ~~posted on the highway or~~ required as a condition of the permit. A vehicle towing a house trailer is restricted to 50 m.p.h. as provided in section 61-8-312(4), MCA.

AUTH: Sec. 61-10-155, MCA; IMP: Sec. 61-10-101 through 61-10-148, MCA.

REASON: Amendment of (1)(a) and (c) proposed because the 51st Legislature enacted House Bill 419 which allows commercially hauled hay continous travel when width does not exceed 114 inches. Amendment of 1(a), (b) and (c) are also proposed for uniformity. Amendment of (3) is proposed for uniformity with other licensing and permitting requirements which allow transfer of fees to replacement vehicles.

The 53rd Legislature enacted House Bill 606 which allows commercial hay grinders to travel at the posted highway speed. Subsection (10) is amended to provide uniformity for all types of overdimensional loads not specifically addressed in statute.

18.8.510A REGULATIONS AND EQUIPMENT FOR FLAG VEHICLES

(1) A flag vehicle may be any passenger car or ~~pickup truck that is properly equipped and used to warn other traffic of an oversize or overweight movement.~~two axle truck a minimum of 60 inches wide. A maximum gross vehicle weight of 14,000 pounds is recommended but in no case may the gross vehicle weight exceed 26,000. A flag vehicle may not exceed legal limits of size and weight. A flag vehicle shall not pull a trailer or carry any item(s) or equipment or load in or on the flag vehicle which:

(a) impairs its immediate recognition as a flag vehicle by the motoring public, or

(b) which obstructs the view of the flashing lights or signs used by the flag vehicle, or

(c) causes safety risks or otherwise impairs the performance by the operator.

(2) remains the same.

(3) A sign with the words ~~"wide load"~~ "oversize load" or similar wording shall be visible from the front of the vehicle and rear of the vehicle at all times when piloting an oversize load. Letters shall not be less than 8 inches in height. The letters shall be dark in color on a light colored background.

(4) ~~Flashing amber lights, visible front and rear, a minimum of 5 inches in diameter, 50 candlepower, 60 to 90 flashes per minute, shall be mounted at each end of a "wide load" sign on the roof of the flag vehicle. A revolving or strobe light may be substituted for flashing lights.~~Flag vehicles shall be equipped with a minimum of one flashing or rotating beacon light mounted above the cab or roof of the vehicle.

(5) remains the same.

AUTH: Sec. 61-10-155, MCA. IMP: Sec. 61-10-101 through 61-10-148, MCA.

REASON: The proposed amendment is made for regional uniformity with other western states.

18.8.510B REGULATIONS AND EQUIPMENT FOR VEHICLES OR LOADS EXCEEDING 10 FEET WIDE (1) and (2) remain the same.

(3) Flag vehicles may be required under ARM 18.8.511A in lieu of ~~"wide load"~~ "oversize load" signs and flashing lights.

(4) Towing vehicles must be equipped with two-way radio communications if flag vehicles are required under ARM 18.8.511A.

AUTH: Sec. 61-10-155, MCA; IMP: Sec. 61-10-121 and 61-10-122, MCA.

REASON: The proposed amendment is made for uniformity and clarification.

18.8.512 HEIGHT (1) through (5) remain the same.

(6) A term or single trip overdimensional permit may be issued for height of 15 feet for round hay bales only.

AUTH: Sec. 61-10-155, MCA; IMP: Sec. 61-10-101 through 61-10-148, MCA.

REASON: The proposed amendment is to provide for more economical, efficient transportation of an agricultural commodity.

18.8.513 WIDTH (1) A single trip or term permit may be issued for reducible loads to and including 9 feet in width, (9 feet 6 inches baled hay), if they are hauled by vehicles that do not exceed 9 feet in total width.

(2) and (3) remain the same.

(4) Single trip or term permits for non-reducible loads to and including 10 feet wide may be issued for travel on interstate highways only and within a two mile radius of an interstate interchange at night, Saturdays, Sundays, and holidays, provided lights are displayed the full width and length of the vehicle and/or load.

AUTH: Sec. 61-10-155, MCA; IMP: Sec. 61-10-121 through 61-10-148, MCA.

REASON: Amendment of (1) is proposed because the 51st Legislature enacted House Bill 419 which allows commercially hauled hay continuous travel when width does not exceed 114 inches. Amendment of (4) is proposed for uniformity with other western states.

18.8.514 LENGTH (1) through (2) (a) remain the same.

(b) ~~No travel holidays or holiday weekends.~~

~~(c)~~ Travel is not allowed from 3 p.m. Friday to sunrise Saturday and from 12 noon on Sunday to sunrise on Monday on the highways designated on the "red route restrictions" map.

(3) remains the same.

(4) Any vehicle combination up to and including ~~95~~ 110 feet in length with a load that does not extend beyond the front or rear of the combination may travel continuously.

(5) Any combination of vehicles with load, which extends beyond the ~~front or rear of the combination of vehicles~~ rear of the vehicle in excess of 15 feet, and has a total combined length including the vehicles and load, in excess of 75 feet, but not exceeding 120 feet, is restricted to the following:

(a) Travel during daylight hours, 7 days a week ~~excluding holidays and holiday weekends~~, on all highways except those indicated on the "red route restrictions" map.

(6) and (7) remain the same.

AUTH: Sec. 61-10-155, MCA; IMP: Sec. 61-10-121 through 61-10-148, MCA.

REASON: The 53rd Legislature enacted Senate Bill 395 which defines and restricts overhang on raw logs. The amendment promotes uniformity in permitting all types of loads. The 53rd Legislature enacted House Bill 606 which allows overdimensional hay grinders to travel on holidays and holiday weekends. The amendment will provide uniformity in rules for all types of overdimensional loads.

18.8.519 WRECKER AND/OR TOW VEHICLE REQUIREMENTS (1)(a) remains the same.

(b) The wrecker or tow vehicle may tow the vehicles or vehicle combination from the emergency scene to ~~its place of business or operator's yard if it is within 100 miles of the emergency scene and proper permits have been obtained. The wrecker or tow vehicle operator will be issued an overdimensional permit, in excess of the statutory permit dimensions, to the tow vehicle's place of business or operator's yard if it is within 100 miles of the emergency scene.~~the first place where the disabled vehicle or vehicle combination can be safely removed from the highway and unhitched or broken apart. The disabled vehicle or vehicle combination must be reduced to a single unit before a second move can be made.

(c) remains the same.

(d) When returning from an emergency, the wrecker or tow vehicle and load which exceeds ~~8,000 pounds~~ the weight limits in section 61-10-141, MCA, must enter an open weigh station.

(e) remains the same.

(f) Permits are required when a tow vehicle exceeds statutory weight requirements. Permits are also required if the tow vehicle is legal but statutory weights are exceeded on the vehicle being towed. Overweight permits shall be valid for all kinds of loads including built up loads. Only one permit is required for both the tow vehicle and the vehicle plus any load being towed. All permits must be obtained and carried in the tow vehicle prior to ~~its operation exceeding~~ operating in excess of statutory limits. The fact that the wrecker or tow vehicle is responding to an emergency does not exempt the wrecker or tow vehicle from oversize and/or overweight permit requirements.

~~(g) For moves in excess of 100 miles from the emergency scene, the tow vehicle may tow vehicles or vehicle combinations to the nearest city or town from the emergency scene where the load may safely be adjusted to conform to maximum statutory limits.~~

AUTH: Sec. 61-10-155, MCA; IMP: Sec. 61-10-121 and 61-10-141, MCA.

REASON: The proposed amendment is for clarification of compliance requirements and to assure safety for the traveling public.

18.8.601 OVERWEIGHT SINGLE TRIP PERMITS (1) The department of ~~highways~~ transportation hereby adopts and incorporates by reference the weight analysis manual, which sets forth the weights and conditions for movement of various equipment. A copy of the weight analysis manual published by the bridge bureau of the department of ~~highways~~ transportation is on file in the ~~Gross Vehicle Weight~~ Motor Carrier Services Division, 2701 Prospect Avenue, Helena, Montana 59620.

(2) remains the same.

(3) ~~An overweight load shall be considered to be a non-reducible load when it consists of a single item that cannot be reduced.~~ A non-divisible load is a load which cannot be readily or reasonably dismantled and which is reduced to a minimum practical size and weight. Portions of a load can be detached and reloaded on the same hauling unit provided that the separate pieces are necessary to the operation of the machine or equipment which is being hauled, if the arrangement does not exceed permittable limits.

(4) and (5) remain the same.

(6) Permits do not allow travel on any state highway where seasonal load limits are in effect without authorization of the district engineer or his designated representative in the district or area where travel takes place.

(7) remains the same.

AUTH: Sec. 61-10-155, MCA; IMP: Sec. 61-10-121 through 61-10-148, MCA.

REASON: The 52nd Legislature enacted Senate bill 164 (Chapter 514), creating a Department of Transportation and changing the name of the Gross Vehicle Weight Division to the Motor Carrier Services Division. Proposed amendment (3) will provide uniformity with other western states in determining criteria for a non-divisible load. Proposed amendment (6) defines procedures which are current practice.

18.8.901 CONFISCATION OF PERMITS (1) and (2) remain the same.

(3) ~~In all cases where a violation is apparent to the inspecting officer, the violated portion of the permit will be confiscated and returned to the Helena G.V.W. office.~~

~~(4)~~ In each case where a violation of an oversize, overweight, restricted route load or special vehicle combination

permit is apparent to the inspecting officer, the violated portion of the permit will be confiscated. The inspecting officer will notify the ~~G.V.W.~~m.c.s. office in Helena.

(5) will remain the same and be renumbered as (4).

AUTH: Sec. 61-10-155, MCA; IMP: Sec. 61-10-121, 61-10-122, and 61-10-143, MCA.

REASON: The 52nd Legislature enacted Senate Bill 164 (Chapter 514) changing the name of the Gross Vehicle Weight (GVW) Division to Motor Carrier Services (MCS) Division. The proposed amendment is for clarification.

18.8.1401 QUALIFICATIONS AND TRAINING FOR M.C.S. PERSONNEL AS PEACE OFFICERS (1) through (6) remain the same.

(7) Each employee must meet the requirements set forth in section 7-32-303(2), MCA.

AUTH: Sec. 61-12-202, MCA; IMP: Sec. 61-12-201, 61-12-202, MCA.

REASON: The 53rd Legislature enacted House Bill 446 (Chapter 161) which establishes motor carrier services officer training requirements.

3. The proposed new rule provides as follows:

NEW RULE I DETERMINING THE WEIGHT OF A TRAILER (1) When determining the weight of a trailer, the manufacturer's rated capacity shall be used.

AUTH: Sec. 61-10-155, MCA; IMP: Sec. 61-10-201, MCA.

REASON: The proposed new rule is for uniformity in determining licensed weight.

4. The following rules are proposed for repeal:

18.8.303 SMALL UTILITY RENTAL TRAILERS - DRAWN BY PASSENGER TRUCKS (U-HAUL AND OTHERS) (found on page 18-275 of the Administrative Rules of Montana)

AUTH: Sec. 61-3-716, MCA; IMP: Sec. 61-3-711 through 61-3-733, MCA.

REASON: ARM 18.8.303 is proposed to be repealed because the rule repeats statutory language in section 61-3-714, MCA.

18.8.404 TRAILERS UNDER 2,500 POUNDS (found on page 18-279 of the Administrative Rules of Montana)

AUTH: Sec. 61-10-155, MCA; IMP: Sec. 61-10-201 MCA.

18.8.405 75% FEES (found on page 18-279 of the Administrative Rules of Montana)

AUTH: Sec. 61-10-155, MCA; IMP: Sec. 61-10-201, MCA.

REASON: ARM 18.8.404 and ARM 18.8.405 are proposed to be repealed because the rules repeat statutory language in section 61-10-201, MCA.

5. Interested persons may participate and present data, views, either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Motor Carrier Services Division, Montana Department of Transportation, 2701 Prospect Avenue, P.O. Box 201001, Helena, MT 59620-1001, no later than January 14, 1994.

6. W. D. Hutchison, a hearing officer appointed by the Attorney General's Office, will preside over and conduct the hearing.

MONTANA DEPARTMENT OF TRANSPORTATION

By: _____
MARVIN DYE, Director

_____
LYLE MANLEY, Rule Reviewer

Certified to the Secretary of State November 23, 1993.

BEFORE THE BOARD OF CRIME CONTROL
DEPARTMENT OF JUSTICE
STATE OF MONTANA

In the Matter of Proposed Adoption of rules regarding Regional Youth Detention Services	)	NOTICE OF PROPOSED ADOPTION OF RULES I THROUGH VII REGARDING REGIONAL YOUTH DETENTION
	)	NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On January 8, 1994, the Board of Crime Control proposes to adopt the following rules concerning the provision of regional youth detention services.

2. The proposed rules will read as follows:

RULE I. GENERAL DEFINITIONS (1) "Board" means the board of crime control as provided for in 2-15-2006, MCA.

(2) "Regional plan" means the plan for providing youth detention services as required in 41-5-1003, MCA submitted to the board from regions created under 41-5-812, MCA.

(3) "Regional planning board" means the board created to implement 41-5-812, MCA and prepare regional plans.

(4) "Region" means the youth detention region established in 41-5-812, MCA.

(5) "Detention services" means youth detention services as defined in 41-5-1001, MCA.

AUTH: 41-5-1008, MCA IMP: 41-5-812, 41-5-1003, MCA

RULE II. REGIONAL PLANNING BOARDS (1) Counties that establish regions by using the provisions of the Interlocal Cooperation Act, Title 7, chapter 11, part 1, MCA, may apply to the board for funding of detention services.

(2) A regional planning board must be a representative group from all counties within the region and must include one county commissioner from each county within the region.

(3) A regional planning board may adopt bylaws governing the membership and responsibilities of the participating counties.

(4) Each regional planning board must designate a single county within the region to act as the fiscal authority for the region who is responsible for the following:

(a) preparation and submission of claims for funds to the board;

(b) receipt of funds from the board;

(c) disbursement of funds for youth detention services; and

(d) accountability to the board for the proper use of funds under state and federal law.

AUTH: 41-5-1008, MCA IMP: 41-5-812, 41-5-1002, 41-5-1003, MCA

RULE III. REGIONAL PLAN (1) Regional plans are considered applications for financial assistance from the board.

(2) Regional plans prepared by regional planning boards must fully describe the information required in 41-5-1003, MCA.

(3) Regional plans must be submitted to the board annually by May 15 for the next fiscal year.

(4) The regional plan submitted to the board for funding must be approved by the regional planning board and shall contain the signatures of:

(a) the county commissioner representing the fiscal authority who signs as the official budget representative;

(b) the chair of the regional planning board who signs as the project director; and

(c) the finance officer of the county acting as the fiscal agent who signs as the finance officer.

(5) The regional plan must include a detailed description of the proposed detention services that:

(a) explains how the proposed detention services meet the requirements of state law and 42 U.S.C. 5632, 42 U.S.C. 5633(a)(21) and 42 U.S. C. 5674;

(b) describes a method of evaluating the effectiveness of the proposed detention services; and

(c) describes how counties and the regional planning board will identify and implement corrective action.

(6) The regional plan must include a complete and justified budget for each detention service.

(7) Funds awarded for the regional plan must be used exclusively for the purposes described in the plan.

AUTH: 41-5-1008, MCA IMP: 41-5-1003, 41-5-1004, 41-5-1005, 41-5-1007, MCA

RULE IV. PLAN APPROVAL PROCESS (1) The regional plan submitted by the regional planning board will be first reviewed by the youth justice council. The youth justice council will recommend to the board whether the regional plan should be approved, modified, rejected, or terminated.

(2) If action is recommend to the board by the youth justice council which alters, terminates, or rejects a plan, the regional planning board may request a review of the youth justice council's recommendation by following ARM 23.14.204 through 23.14.207.

AUTH: 41-5-1008, MCA IMP: 41-5-1002, 41-5-1005, MCA

RULE V. AMENDMENTS TO THE REGIONAL PLAN (1) The regional plan submitted to and approved by the board will be effective for one fiscal year. Amendments to the plan are allowable.

(2) Modification of budget line items by five percent or less of the total budget amount may be approved by the regional planning board.

(3) Modifications of budget line items exceeding five percent of the total budget must be requested of the board in writing and approved by the board prior to adjustment of the budget.

(4) New detention services seeking approval must notify the regional planning board 30 days prior to the next scheduled meeting of the regional planning board.

(5) New detention services not described in the regional plan may be amended into a plan by:

(a) approval of the regional planning board; and

(b) approval by the board after written notice to the board which describes the impact of the new detention services on the overall plan and budget.

(6) The board will respond in writing to the regional planning board regarding the request to amend the regional plan.

(7) A regional planning board may follow ARM 23.14.204 through 23.14.207 if its request to amend a plan is rejected.

AUTH: 41-5-1008, MCA IMP: 41-5-1003, 41-5-1004, 41-5-1005, MCA

RULE VI. REPORTS (1) Counties participating in regional plans must submit regular and accurate reports to the board using the juvenile probation information system.

(2) Failure by a county or counties to use or to accurately report using the juvenile probation information system will be reviewed by the regional planning board, which may recommend to the board that the non-reporting county or counties be prohibited from using funds provided to a region for implementing its regional plan.

(3) The board will review the recommendation of the regional planning board and may prohibit the use of funds by non-reporting counties in order to assure the complete and accurate reporting of detention.

(4) A county or counties may request a reconsideration of the regional planning board's recommendation by following ARM 23.14.204 through 23.14.207.

AUTH: 41-5-1008, MCA IMP: 41-5-1003, MCA

RULE VII. REGIONAL DETENTION TASK FORCE (1) The board may establish an advisory task force pursuant to board bylaws comprised of board members and the chair persons of the regional planning boards.

(2) The task force will advise the board and the youth justice council regarding regional detention services.

AUTH: 41-5-1008, MCA IMP: 41-5-1008, 2-15-2006, 44-4-301, MCA

3. These rules are proposed for adoption to comply with 41-5-1008, MCA. These rules are to establish guidelines for applying for the state portion of secure detention funding.

4. Interested parties may submit their data, views, or arguments concerning the proposed adoption of rules in writing to the Board of Crime Control, 303 North Roberts, Helena, Montana, 59620, no later than January 6, 1994.

5. If a person who is directly affected by the proposed adoption wishes to submit his data, or express views and arguments orally or in writing at a public hearing, he must make a written request for a hearing and submit this request, along with any written comments he has to the Board of Crime Control, 303 North Roberts, Helena, Montana, 59620, no later than January 6, 1994.

6. If the agency receives requests for a public hearing on the proposed adoption from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed adoption; from the Administrative Code Committee of the Legislature; from a governmental subdivision, or agency; or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 22.

BOARD OF CRIME CONTROL
EDWIN L. HALL, Executive Director

By: Edwin L. Hall
EDWIN L. HALL, Executive Director
BOARD OF CRIME CONTROL
DEPARTMENT OF JUSTICE

Certified to the Secretary of State, 11/16/93

KATW Smith
Rule Reviewer

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

In the matter of the proposed adoption of rules related to certification of managed care organizations for workers' compensation	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION OF NEW RULES I THROUGH XX

TO ALL INTERESTED PERSONS:

1. On January 6, 1994, at 10:00 a.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services building (north entrance), 111 North Sanders, Helena, Montana, to consider the adoption of rules related to the certification of managed care organizations for workers' compensation purposes.

The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you request an accommodation, contact the Department by not later than 5:00 p.m, January 3, 1994, to advise us of the nature of the accommodation that you need. Please contact the Employment Relations Division, Attn: Ms. Linda Wilson, P.O. Box 8011, Helena, MT 59604-8011; telephone (406) 444-6531; TDD (406) 444-5549; fax (406) 444-4140.

2. The proposed new rules do not replace any existing rules. The Department of Labor and Industry proposes to adopt the rules as follows:

RULE I PURPOSE (1) The purpose of these rules concerning managed care is to provide a process to certify managed care organizations (MCO) in a manner consistent with the purposes and provisions of the Workers' Compensation Act. MCOs are to serve the medical needs of injured workers in an efficient and cost-effective manner.

(2) A MCO may be formed by a single health care provider, such as a hospital, a consortium of medical service providers, or other groups or entities that provide the services required by these rules. In order to expand the areas served by a MCO, the use of satellite office locations providing medical services to injured workers is encouraged.

(3) Although these rules do not regulate preferred provider organizations (PPOs), insurers are encouraged to use PPOs in addition to or in conjunction with the use of MCOs.

(4) The certification procedure contained in these rules consists of a two step process of a preliminary application and a final application. The department anticipates that preliminary applications may have to be revised or modified, and emphasizes that applicants are engaged in a process of certification. Certification of a MCO by the department, however, does not obligate insurers to contract with any MCO.

AUTH: Sec. 39-71-203, 39-71-1103 and 39-71-1105, MCA
IMP: Sec. 39-71-1103 and 39-71-1105, MCA

RULE II DEFINITIONS The following definitions apply to this subchapter:

(1) "Applicant" means an individual, partnership, corporation or other legal entity seeking original certification as a MCO.

(2) "Certification" means authorization from the department to provide managed care services pursuant to the provisions of the Workers' Compensation Act.

(3) "Department" means the Department of Labor and Industry.

(4) "Dispute" means a written complaint about how the MCO provides services to the injured worker or about a decision the MCO has made that affects the injured worker. A complaint that is not written is not a dispute within the meaning of these rules.

(5) "Injured worker" means a person who has suffered an occupational injury or disease for which an insurer:

(a) has accepted liability pursuant to the terms of the Workers' Compensation or Occupational Disease Acts; or

(b) is making compensation payments to the worker pursuant to 39-71-608, MCA, or any other reservation of rights, and the insurer agrees to pay for all of the services provided by the MCO to that injured person.

(6) "Member" means a health care provider, (e.g. physician, osteopath, chiropractor, dentist, physician assistant, podiatrist) other than a personal doctor, who regularly provides services for or on behalf of a MCO, whether as an employee of the MCO or pursuant to contract. Ancillary personnel providing service, but who do not have direct responsibility for management of an injured worker's care are not included in this definition.

(7) "Miles" means air miles ("as the crow flies") from the point referenced, without regard to the availability of a convenient or direct roadway.

(8) "MCO" means a managed care organization that is certified or is currently in the process of applying for certification under these rules.

(9) "Personal doctor" means a person who:

(a) is qualified to be a treating physician;

(b) has a documented history of providing treatment to the injured worker prior to the injury, for any condition;

(c) maintains the injured worker's medical records; and

(d) is one of the following types of practitioners:

(i) family practitioner;

(ii) general practitioner;

(iii) internal medicine practitioner; or

(iv) chiropractor.

(10) "Place of employment" means the job site where the injured worker usually works. For the purpose of this definition, the "usually works" location is determined by the place the worker spends more than 50% of the on-the-job time. If

there is no single site where the injured worker usually works, the place of employment is the local office location from which the worker is based, supervised, or dispatched.

(11) "Plan" means the written statement that details how a managed care organization will deliver medical and other services to claimants and insurers, unless the context clearly indicates otherwise.

(12) "Primary medical services" has the same meaning as provided by section 39-71-116, MCA.

(13) "Secondary medical services" has the same meaning as provided by section 39-71-116, MCA.

(14) "Service contract" means an agreement between an insurer and a MCO whereby the insurer may direct claimants to the MCO for medical and other services.

(15) "Treating physician" has the same meaning as provided by section 39-71-116, MCA.

AUTH: Sec. 39-71-203, 39-71-1103 and 39-71-1105, MCA
IMP: Sec. 39-71-1103 and 39-71-1105, MCA

RULE III SELECTION OF MANAGED CARE ORGANIZATION AND TREATING PHYSICIAN WITHIN A MANAGED CARE ORGANIZATION (1) An injured worker has the right to choose a MCO if the insurer has contracted with more than one MCO in the worker's community, from a list of certified MCOs provided by the insurer.

(2) The MCO will designate a treating physician for the injured worker in accordance with the plan, taking into consideration the nature of the injury and the injured worker's preference of treating physician. Within 7 days of the injured worker's initial visit to a medical provider within a MCO as directed by the insurer, the worker may select a personal doctor as the worker's treating physician, provided the personal doctor agrees to comply with all the rules, terms, and conditions regarding services performed by the MCO. The injured worker will not be responsible for co-payment in this circumstance.

(3) Once an injured worker has selected a MCO and a treating physician has either been designated or chosen, the injured worker may not change either the MCO or treating physician without approval from the insurer.

AUTH: Sec. 39-71-203, 39-71-1103 and 39-71-1105, MCA
IMP: Sec. 39-71-1103 and 39-71-1105, MCA

RULE IV PRELIMINARY APPLICATION (1) In order to be eligible to be certified as a MCO, the applicant must submit a preliminary application to the department. The preliminary application must be approved by the department before a final application for certification can be made.

(2) A preliminary application consists of the following elements:

(a) a statement describing the time, place and manner in which services will be provided to claimants (see [RULE V]);

(b) a map showing the areas served by the MCO (see [RULE VI]);

(c) information describing the organizational structure of the MCO (see [RULE VII]);

(d) the plan for providing managed care (see [RULE VIII]); and

(e) information concerning the ability of the MCO to meet its financial obligations (see [RULE IX]).

(3) An applicant must furnish with the preliminary application the name, address and telephone number of a knowledgeable contact person who is familiar with the contents of the preliminary application.

(4) A preliminary application must be accompanied by a non-refundable application fee of $1,500.00. No fee will be required for final applications or renewal of approved applications.

(5) An applicant must furnish an original and three copies of the preliminary application to the department. In lieu of the copies, an applicant may submit the information in an electronic form or on computer readable media that meets the requirements of the department. Applicants should contact the department to determine the format for supplying that information in electronic form or media. The map of the service areas need not be reproduced in electronic form.

AUTH: Sec. 39-71-203, 39-71-1103 and 39-71-1105, MCA
IMP: Sec. 39-71-1103 and 39-71-1105, MCA

RULE V TIME, PLACE AND MANNER OF PROVIDING SERVICES

(1) An applicant must state in the preliminary application how it intends to serve the medical and medical rehabilitative needs of claimants and identify the times, places and manners in which those services will be provided.

(2) The statement required by this rule must be written to clearly inform claimants and interested parties of the following:

(a) the nature of the primary medical services that are available from the MCO;

(b) the specific location(s) where primary medical services are available and the hours and days on which those services are available;

(c) what other services (if any) are provided by the MCO to claimants, and where those services will be available;

(d) how persons may obtain further information about the MCO, including a telephone number for obtaining such information; and

(e) any other general information which the MCO believes would be useful in describing the operations of the MCO and the services offered.

AUTH: Sec. 39-71-203, 39-71-1103 and 39-71-1105, MCA
IMP: Sec. 39-71-1103 and 39-71-1105, MCA

RULE VI AREAS SERVED BY THE MANAGED CARE ORGANIZATION

(1) For the purposes of this rule, the term "claimant" means only those persons whose workers' compensation insurer has a service contract with the MCO in question.

(2) A claimant may be served by any MCO that offers primary medical services by an appropriate treating physician within 30 miles of either the claimant's residence or place of

employment. If no MCO exists within 30 miles of either the claimant's residence or place of employment, then the claimant may be directed to any MCO that is within 100 miles of the place of employment or residence. If no MCO exists within 100 miles of the place of employment or residence of the claimant, then the claimant may be directed to the nearest MCO. If travel of more than 100 miles is required, the insurer may not require the injured worker to travel any further than the distance normally required for the specific medical services required. If the claimant requires specialty medical services that are not available within the stated mileage restrictions, the managed care plan may refer the claimant to a provider outside of the stated mileage restrictions.

(3) The MCO must file with the department a map, of a scale not smaller than that used by the official Montana highway map, showing circles of a 30 mile radius and a 100 mile radius from each community where the primary medical services are offered by the managed care plan.

AUTH: Sec. 39-71-203, 39-71-1103 and 39-71-1105, MCA
IMP: Sec. 39-71-1103 and 39-71-1105, MCA

RULE VII STRUCTURE OF ORGANIZATION (1) An applicant must submit information in the preliminary application that describes the organizational structure of the MCO and discloses information about individuals and entities that have an ownership or management interest in the MCO.

(2) An applicant must provide the following information:

(a) the complete name of the MCO;

(b) all fictitious business names which the MCO will use;

(c) the type of organizational entity (e.g. corporation, partnership, joint venture, limited liability company) used by the MCO, supported by documentation from the Montana Secretary of State showing that the entity is qualified to do business in Montana and is in good standing;

(d) the street and mailing address of the principal Montana office of the MCO;

(e) an organization chart that depicts the primary departments or functions of the MCO;

(f) the names and occupations of all directors and officers, by whatever title, of the MCO; and

(g) a signed statement from the day-to-day administrator of the MCO certifying that the MCO is not formed, owned or operated by a workers' compensation insurer or self-insured employer, other than a health care provider.

(3) An applicant must disclose the existence of any of the following relationships and provide such information concerning the relationship(s) as the department may reasonably request:

(a) common ownership by or with any other business entity;

(b) common management with any other business entity;

(c) management or ownership by any person or entity that was or currently is associated with a MCO or MCO applicant;

(d) the name of any entity, other than individual health care providers, with whom the MCO has a joint venture or other agreement to perform any of the functions of the plan, and a

description of the specific functions to be performed by each entity; or

(e) ownership interests in any facility to which the physician self-referral prohibitions in sections 39-71-315 and 39-71-1108, MCA may apply.

AUTH: Sec. 39-71-203, 39-71-1103 and 39-71-1105, MCA
IMP: Sec. 39-71-1103 and 39-71-1105, MCA

RULE VIII CONTENTS OF THE MANAGED CARE PLAN The managed care plan must include the following elements. A MCO is free to add additional elements, features or services beyond those described in this rule.

(1) A description of the number and specialties of persons who are eligible to be treating physicians. The following list is a minimum of the number and specialties which must be part of the plan:

(a) a minimum of five medical doctors or osteopaths, providing at least four of the following areas of practice:

(i) orthopedic;

(ii) surgery;

(iii) neurology or neurosurgery;

(iv) osteopathic treatment of musculoskeletal injury;

(v) family practice or internal medicine; and

(vi) occupational medicine or physical medicine;

(b) one chiropractor; and

(c) one dentist.

(2) A description of how the MCO will provide physical therapy services. As provided by section 39-71-1105, MCA, each MCO is encouraged to utilize the services of independent physical therapists.

(3) A description of the number and specialties of other health care providers (e.g. podiatrists, physician assistants, nurse practitioners) who will be furnishing services to injured workers.

(4) A description of how and where the following services are to be provided:

(a) in-patient surgery;

(b) out-patient surgery;

(c) radiology services, including magnetic resonance (MR) and computerized tomography (CT) imaging;

(d) psychological or psychiatric counseling;

(e) diagnostic pathology and laboratory services;

(f) hospital; and

(g) urgent care.

(5) A description of how the MCO will designate the treating physician. The description must include an explanation of how the MCO will decide which physician will be designated as the treating physician, and how the injured workers' preference of treating physician will be taken into account. The plan must identify the medical qualifications of the person or persons who will be making the designations.

(6) A description of under what circumstances injured workers will be referred to physicians or other providers that are not members of the MCO.

(7) A description of what secondary medical services, if any, will be available.

(8) An explanation of how injured workers, once referred to MCO, will be advised of the availability of services provided by the MCO. The injured worker must be able to receive information on a 24 hour basis regarding the availability of necessary medical services provided within the MCO and information on how an injured worker can obtain emergency services or other urgently needed care. The information may be provided through recorded telephone messages after normal working hours.

(9) An explanation of how services will be provided in a timely manner, including establishment of criteria for timeliness that at least meet the following standards:

(a) upon referral to the MCO, the injured worker must receive initial treatment or evaluation by a treating physician in the MCO within 5 working days, subsequent to treatment by a physician outside the MCO.

(10) A description of how the MCO will monitor, evaluate, and coordinate the delivery of quality, cost effective medical treatment and other health services needed in the care of injured workers. The MCO must adhere to any treatment standards that have been developed by the medical advisory committees and adopted and prescribed by the department.

(11) A description of the program that will be used to promote an early return to work for the injured worker. The program must provide for a cooperative effort between the worker, employer, rehabilitation provider(s), and the MCO.

(12) A description of how continuity of care will be ensured.

(13) A description of the MCO's program of peer review. The peer review program must include a review of medical necessity and appropriateness of services being rendered by the health care provider in order to improve the quality of patient care and the cost effectiveness of treatment.

(14) A description of the MCO's program for utilization review. The program must include the collection, review, and analysis of group data to improve overall quality of care and efficient use of resources. The plan must adopt any utilization standards developed by the medical advisory committees and adopted by the department.

(15) A description of the financial incentives that will be implemented to reduce service costs and utilization without sacrificing the quality of services.

(16) A description of the Quality Assurance Program to be implemented by the MCO. Such a program must include information which will allow the MCO to determine injured worker satisfaction with the level of service and care provided by the MCO. The department may forward complaints received directly from injured workers to the MCO and require the MCO to respond to the department in writing regarding issues raised in the complaints.

(17) A description of the procedure for resolving disputes, including a process to resolve disputes raised by injured

workers, members, and insurers. At a minimum, the dispute resolution process must:

(i) be fair;

(ii) provide injured workers with a reasonably convenient method of presenting disputes to the MCO; and

(iii) provide a written response from the MCO addressing the dispute within 15 working days of when the dispute became known.

(18) Provision for a person or persons who will act as communication liaison with the department and insurers with which the MCO contracts. The responsibilities of the liaison shall include, but are not limited to:

(a) coordinating correspondence and compliance with reporting requirements with the department;

(b) unless otherwise provided by a contract with an insurer, coordinating and channeling medical bills to insurers;

(c) unless otherwise provided by a contract with an insurer, providing centralized receipt and distribution of all reimbursements from insurers back to the MCO members; and

(d) serving as a member of the quality assurance committee.

AUTH: Sec. 39-71-203, 39-71-1103 and 39-71-1105, MCA
IMP: Sec. 39-71-1103 and 39-71-1105, MCA

RULE IX FINANCIAL ABILITY OF ORGANIZATION (1) An applicant must provide evidence that it is able to meet the financial obligations that will arise from the plan and other contractual obligations of the MCO to provide services. Such evidence may include, but is not limited to, a showing that the applicant is adequately capitalized, evidence of sufficient insurance and sureties, a business plan or evidence that the debts of the applicant are individually guaranteed by a number of persons with appropriate net worth.

AUTH: Sec. 39-71-203, 39-71-1103 and 39-71-1105, MCA
IMP: Sec. 39-71-1103 and 39-71-1105, MCA

RULE X APPROVAL OF PRELIMINARY APPLICATION (1) The department will review all preliminary applications for completeness. The department may request that an applicant provide additional information. If the applicant declines to provide the additional information requested by the department, the department will process the application and either approve or deny the preliminary application based upon the information supplied by the applicant.

(2) The department will approve preliminary applications which meet the criteria established by these rules and relevant statutes. Once all preliminary application certification requirements have been met, within 60 days of receipt of all required information from the MCO, the department will notify the applicant of the approval or denial of their preliminary application. An applicant that is aggrieved by a decision of the department may request administrative review of the decision or request a contested case hearing.

(3) If the department approves the preliminary

application, the applicant may then prepare and submit a final application.
AUTH: Sec. 39-71-203, 39-71-1103 and 39-71-1105, MCA
IMP: Sec. 39-71-1103 and 39-71-1105, MCA

RULE XI FINAL APPLICATION (1) An applicant that has received approval of the preliminary application is eligible to submit a final application for certification as a MCO.

(2) A final application consists of the following elements:

(a) The approved preliminary application on file with the department;

(b) the name, title, address and telephone number of a contact person who will act as liaison between the department and the MCO;

(c) the name, title, address, and duties of the person who will be the day-to-day administrator of the MCO;

(d) the name, address, medical specialty, and duties, of the medical director, if any, of the MCO;

(e) a list of the name of each individual required by [Rule VIII (1), (2), and (3)], who will provide services under the plan;

(f) the name and professional address of each individual who is eligible to be designated as a treating physician;

(g) the name, of each individual, if any, who will coordinate medical services; and

(h) a signed statement from the medical director or day-to-day administrator of the MCO certifying that all persons who are required to hold a current professional license or certification to render services under the plan are properly licensed or certified by the state of Montana.
AUTH: Sec. 39-71-203, 39-71-1103 and 39-71-1105, MCA
IMP: Sec. 39-71-1103 and 39-71-1105, MCA

RULE XII ORIGINAL CERTIFICATION (1) The department will review all final applications for completeness. The department may request an applicant provide additional information. If the applicant declines to provide the additional information requested by the department, the department will process the application and either approve or deny the final application based upon the information supplied by the applicant.

(2) Within 30 days of receipt of a complete final application which contains all required information from the MCO, the department will approve final applications which meet the criteria established by these rules and relevant statutes. An applicant that is aggrieved by a decision of the department may request administrative review of the decision or request a contested case hearing.

(3)Upon approval of a final application for certification, the department will certify the applicant as a MCO. The original certification will be effective for a specified period of not less than one year or more than two years from the date the certification is issued, unless suspended or revoked by the department. The exact period of certification will be

determined by the department on a case-by-case basis, in order to stagger the renewal dates of MCO certifications. The certification will specify when annual reports (see [Rule XIII]) must be filed with the department.
AUTH: Sec. 39-71-203, 39-71-1103 and 39-71-1105, MCA
IMP: Sec. 39-71-1103 and 39-71-1105, MCA

RULE XIII REPORTING REQUIREMENTS (1) The department finds that one of the purposes of MCOs is to control medical costs in workers' compensation cases. The department further finds that the contracts between an insurer and a MCO may contain trade secrets or proprietary information which the MCO would not voluntarily disclose to the public or competitors. The department also finds that the threat of public disclosure of trade secrets or proprietary information may tend to limit the number of MCOs that will become certified under these rules. However, in order for the department to carry out its regulatory duties, which include ensuring that a MCO is not formed, owned, or operated by an insurer, the department must obtain and review the contracts between insurers and MCOs. Because of the foregoing, and to the extent that the contract relates to business entities that are not publicly owned, the department finds that the insurer-MCO contracts required by this rule are exempt from public disclosure by the department and are not a "public record" within the meaning of 39-71-221 through 39-71-224, MCA. The fact of the existence of a contract between an insurer and a MCO is a matter of public record. Contracts between the State Fund and MCOs are public records, pursuant to 2-6-102, MCA, but may be subject to the provisions of ARM 2.5.602. Persons interested in State Fund contracts should contact the State Fund.

(2) A MCO must provide to the department an executed copy of the following contracts within 10 days of signing:

(a) service contracts; and

(b) modifications to service contracts.

(3) A MCO must provide to the department an executed copy of contracts between the MCO and any entity, other than individual members of the plan and personal doctors, to perform some of the functions of the plan within 30 days of signing.

(4) A MCO must report to the department any changes in the following information within 30 days of the change:

(a) the addition or termination of members of the MCO;

(b) any change in the licensure of members or staff of the MCO;

(c) changes in the administrative staff of the MCO including, but not limited to, the liaison with the department and the day-to-day administrator of the MCO; and

(d) the expiration, termination or cancellation of any service contract.

(5) The MCO must annually report to the department the following:

(a) a summary of the results of the programs implemented to promote early return to work, including the numbers of employers and injured workers involved in the cooperative

effort;

(b) a summary of peer review and utilization review activities describing the number of cases reviewed and the number of cases found where utilization or treatment was not appropriate;

(c) a summary of disputes which were processed through the dispute resolution procedures established by the plan. The summary must generally identify:

(i) how many disputes were raised;

(ii) the issues involved;

(iii) the relative numbers of injured workers, members, insurers or others that were involved in the disputes; and

(iv) how many of the disputes were resolved within the procedure established by the plan.

(6) The MCO must report to insurers any data regarding medical services related to workers' compensation claims which are required by the insurer to determine compensability in accordance with the Montana Workers' Compensation and Occupational Disease Acts, or to comply with reporting requirements of the department.

(7) The department may require additional information from the MCO to determine if the MCO is complying with the provisions of the plan.

AUTH: Sec. 39-71-203, 39-71-1103 and 39-71-1105, MCA
IMP: Sec. 39-71-1103 and 39-71-1105, MCA

RULE XIV DEPARTMENT MAY INSPECT OR AUDIT (1) All records of the MCO must be maintained within the geographic boundaries of the state of Montana.

(2) The department may monitor and conduct periodic audits and special examinations of the managed care plan as necessary to ensure compliance with the managed care plan certification and performance requirements.

(3) All records of the MCO relevant to determining compliance with the managed care plan shall be disclosed within a reasonable time, not to exceed 10 days, after request by the department. Records must be legible and cannot be kept in a coded or semi-coded manner unless a legend is provided for the codes.

AUTH: Sec. 39-71-203, 39-71-1103 and 39-71-1105, MCA
IMP: Sec. 39-71-1103 and 39-71-1105, MCA

RULE XV APPLICATION TO RENEW CERTIFICATION, NOTICE OF INTENT NOT TO RENEW CERTIFICATION (1) At least 60 days, but not more than 120 days, before the MCO certification expires, a MCO must either apply to renew the certification or provide written notice to the department and any insurer with which it has a contract that the MCO will not be renewing its certification.

(2) In order to be eligible to renew its certification, the MCO must be current with all reports and information required to be filed with the department.

(3) Each approved MCO, in order to renew certification, must submit an application for renewal containing the following

information:

(a) a signed statement from the day-to-day administrator of the MCO certifying that the MCO is not formed, owned or operated by a workers' compensation insurer or self-insured employer, other than a health care provider;

(b) the name, title, address and telephone number of the person who will act as the liaison between the department and the MCO;

(c) the name, title, address and telephone number of the person who is the day-to-day administrator of the MCO;

(d) the name, address and medical specialty, of the medical director, if any, of the MCO;

(e) a list of the current members, including names, specialty, addresses, and telephone numbers, together with a signed statement from the medical director or day-to-day administrator of the MCO certifying that each individual on the list is properly licensed to perform those services;

(f) a list of the insurers with which the MCO has contracts and the expiration dates of the contracts; and

(g) a summary of any sanctions or punitive actions taken by the MCO against members.

AUTH: Sec. 39-71-203, 39-71-1103 and 39-71-1105, MCA
IMP: Sec. 39-71-1103 and 39-71-1105, MCA

RULE XVI RENEWAL CERTIFICATION (1) The department will review all renewal applications for completeness. The department may request that a MCO provide additional information. If the MCO declines to provide the additional information requested by the department, the department will process the application and either approve or deny the renewal application based upon the information supplied by the MCO.

(2) Within 60 days of receipt of a complete renewal application, the department will approve renewal applications which meet the criteria established by these rules and relevant statutes. The failure to have timely filed all required reports and information is grounds for the department denying a renewal application. A MCO that is aggrieved by a decision of the department may request administrative review of the decision or request a contested case hearing.

(3) Upon approval of a renewal application, the department will certify the MCO for an additional two years. The certification is subject to being suspended or revoked by the department for cause. The renewal certification will specify when annual reporting (see [Rule XIII]) must be filed with the department.

AUTH: Sec. 39-71-203, 39-71-1103 and 39-71-1105, MCA
IMP: Sec. 39-71-1103 and 39-71-1105, MCA

RULE XVII APPLICATION TO MODIFY PLAN (1) Any voluntary action by the MCO which will reduce the level of service by the MCO to injured workers or result in significant changes to one or more of the plan elements in [Rule VIII] cannot be taken without the approval of the department. MCOs may add members without the approval of the department.

(a) The MCO must submit an explanation of the changes or modifications to the plan and the impact of the change on service to injured workers, the financial stability of the MCO, or any other significant impact.

(b) Within 30 days of receipt of the proposed change, the department will advise the MCO whether the proposed change is acceptable. A MCO that is aggrieved of a decision of the department may request administrative review of the decision or request a contested case hearing.

(2) The MCO must notify the department within 10 days of any event or circumstance which will impair the MCO's ability to fulfill the requirements of the plan.

(a) The MCO must explain what has happened and the effect of the change.

(b) The MCO must describe how it will respond to the change.

(c) The department will advise the MCO whether the action proposed by the MCO is adequate to maintain certification of the MCO.

AUTH: Sec. 39-71-203, 39-71-1103 and 39-71-1105, MCA
IMP: Sec. 39-71-1103 and 39-71-1105, MCA

RULE XVIII ADDITION AND TERMINATION OF MEMBERS (1) The MCO shall certify to the department that each additional member meets all the licensing requirements necessary to practice in Montana.

(2) The MCO, upon termination of an individual member, shall:

(a) make alternate arrangements to provide continuing medical services for any injured worker affected by the termination; and

(b) promptly replace any terminated member, when necessary, to maintain an adequate number of medical providers in each type of health care service as provided in the managed care plan.

AUTH: Sec. 39-71-203, 39-71-1103 and 39-71-1105, MCA
IMP: Sec. 39-71-1103 and 39-71-1105, MCA

RULE XIX REVOCATION OR SUSPENSION OF CERTIFICATION

(1) For the purposes of this rule:

(a) "Suspension" means a temporary limitation that prohibits a MCO from either:

(i) entering into new service contracts; or

(ii) accepting additional injured workers to be treated under existing service contracts.

(b) "Revocation" means an involuntary termination of a MCO's certification to provide services under these rules.

(2) The certification of a MCO issued by the department may be suspended or revoked by the department if:

(a) services to injured workers are not being provided in accordance with the provisions of the certified plan;

(b) the plan for providing medical services fails to meet the requirements of these rules;

(c) the MCO fails to comply with applicable rules and

statutes;

(d) the MCO submits false or misleading information to the department, insurers, claimants or others;

(e) the MCO utilizes the services of a health care provider whose license has been revoked or suspended by the licensing board;

(f) the MCO is or was formed by an insurer, or self-insured employer other than a health care provider or medical services provider; or

(g) the MCO fails to timely file reports.

(3) The department will give 20 days written notice to the MCO of the department's intent to suspend or revoke the certification of the MCO. The notice will specify the grounds for revocation or suspension. If the MCO does not either come into compliance or request a contested case hearing, within 20 days of the notice being sent, the department will suspend or revoke the MCO's certification.

(4) A suspension may be set aside prior to the end of the suspension period if the department is satisfied the MCO has remedied the condition which led to the suspension.

AUTH: Sec. 39-71-203, 39-71-1103 and 39-71-1105, MCA
IMP: Sec. 39-71-1103 and 39-71-1105, MCA

RULE XX DISPUTE RESOLUTION (1) Except as otherwise provided by law, disputes which arise between an injured worker and the MCO or an insurer and the MCO, must first be handled according to the dispute resolution process contained in the plan.

(2) If a dispute is not resolved using the process contained in the plan, the parties may request that the department attempt to informally resolve the dispute. To the extent feasible, the department will attempt to assist the parties in reaching a resolution of the dispute.

(3) If a dispute is not resolved by way of the dispute resolution process contained in the plan, the parties may avail themselves of the remedies provided by law or contract.

AUTH: Sec. 39-71-203, 39-71-1103 and 39-71-1105, MCA
IMP: Sec. 39-71-1103 and 39-71-1105, MCA

RATIONALE: Proposed rules I through XII are necessary because section 39-71-1105, MCA requires the Department of Labor and Industry to adopt by rule the form for the application for certification and the information required in the application. Proposed rules XIII and XIV are reasonably necessary in order to allow the Department to fulfill its regulatory duty by monitoring managed care organizations for statutory compliance. Proposed rules XV through XX are reasonably necessary to provide a process for the periodic renewal of certifications and a means of suspending or revoking certifications of managed care organizations that no longer meet the requirements of the statute. Periodic renewals and revocation of certifications are both contemplated by section 39-71-1105, MCA.

Proposed rule I is needed to generally explain the purpose of

the rules and to identify what is not covered in the rules. During informal discussions with providers and insurers, the Department noticed that there was confusion about the scope of the proposed rules on MCOs. The Department has proposed a two step application process so that MCO applicants are not required to sign contracts with members before the applicant is assured that the managed care plan will be approved.

Proposed rule II is needed to define terms and concepts used in the rest of the proposed rules.

Proposed rule III is needed to clarify the rights of injured workers to select among MCOs, as opposed to the right to select a doctor within the MCO selected. There are two statutes regarding selection of physician and selection of MCO, and the rule coordinates the two.

Proposed rule IV is needed to establish the fee charged by the Department for certification of a MCO. The proposed rule also is needed to identify the various elements of a preliminary application.

Proposed rule V is needed to explain how a MCO must describe the time, place and manner of delivery of services.

Proposed rule VI is needed to clarify the area served by a MCO. The proposed rule is also needed to ensure that injured workers are not required to engage in excessive travel to obtain services from a MCO.

Proposed rule VII is needed to identify the entity that will be the managed care organization and to ensure that the entity is not formed, owned or operated by a workers' compensation insurer.

Proposed rule VIII is needed to establish criteria for judging whether the proposed managed care plan provides at least a minimum level of services and elements so that the MCO provides the comprehensive, efficient and cost-effective care contemplated by section 39-71-1103, MCA.

Proposed rule IX is needed because the statute requires that the MCO provide satisfactory evidence of its financial ability to ensure delivery of services.

Proposed rule X is needed to provide timelines for the Department's approval of the preliminary application. The preliminary application step is needed to ensure that the MCO's plan for delivery of service is appropriate, before the MCO is required to identify the individual members of the MCO.

Proposed rule XI is needed to identify the elements of the final application so that the final application is consistent with statutory requirements.

Taken together, proposed rules IV through XI establish a "disclosure statement" that will enable workers' compensation insurers to make an informed decision when considering whether to contract with a particular MCO. The Department believes that requiring a full disclosure of the MCO's plan for delivery of services is one of the essential functions of the certification process.

Proposed rule XII is needed to provide a timeline for the Department to approve a final application. The proposed rule is also needed to fix the time for which the initial certification is valid, because the statute leaves the time period to be fixed by the department.

Proposed rules XIII and XIV are needed to allow the Department to fulfill its regulatory duty by monitoring managed care organizations for statutory compliance.

Proposed rules XV and XVI are needed to establish a process for renewal of certification of a MCO, following expiration of the initial certification. The Department proposes periodic renewals in order to ensure that if additional requirements are added by rule at a later date, the MCO will have to comply with those additional requirements within a reasonable period of time.

Proposed rule XVII is needed to provide disclosure of changes which may affect the services and care provided by the plan, so that the Department can evaluate whether the MCO certification should be suspended or revoked.

Proposed rule XVIII is needed to ensure that there is continuity of care if a MCO loses a member.

Proposed rule XIX is needed to give notice to MCOs of the events which may lead to loss of certification.

Proposed rule XX is needed to require injured workers, MCOs and insurers to use the informal dispute resolution techniques available before proceeding to more costly and time-consuming formal proceedings, so that disputes involving MCOs do not add unnecessary costs to delivery of services.

3. Interested 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:

Dennis Zeiler, Bureau Chief
Workers' Compensation Regulations Bureau
Employment Relations Division
Department of Labor and Industry
P.O. Box 8011
Helena, Montana 59604-8011

and must be received by no later than 5:00 p.m., January 14, 1994.

4. The Department proposes to make these new rules effective March 1, 1994; however, the Department reserves the right to adopt some or all of the proposed rules at a later time.

5. The Hearing Unit of the Legal Services Division of the Department has been designated to preside over and conduct the hearing.

David A. Scott
Rule Reviewer

Laurie Ekanger, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State: November 29, 1993.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT of ARM 42.21.162 relating to Personal Property Taxation Dates	NOTICE OF THE PROPOSED AMENDMENT of ARM 42.21.162 relating to Personal Property Taxation Dates

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On January 27, 1994, the Department of Revenue proposes to amend ARM 42.21.162 relating to personal property taxation dates.

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

42.21.162 PERSONAL PROPERTY TAXATION DATES (1) In compliance with 15-8-201 and 15-8-301, MCA, all personal property subject to taxation shall be taxed to the owner or person in control or possession of the property as of midnight on January 1 of each tax year provided the personal property is not in an exempt status.

(2) In order to obtain an exemption for personal property for that tax year, an application for exemption must be filed before March 1 of the year for which the exemption is sought, except 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, whichever is later.

(3) If the property has taxable situs in Montana on January 1 and the taxpayer is being assessed for the first time for the property, the application for exemption is due upon the later of March 1 or 30 days after the assessment notice has been sent by the department.

(4) The deadline may be extended by the local assessment or appraisal office for good cause.

~~(2)~~ (5) For personal property situated within the state of Montana on January 1, the exempt and nonexempt status of personal property is as follows:

(a) If personal property is in an exempt status on January 1 of a specific tax year, and at any later date during that tax year loses its exempt status, the personal property will not be taxed until the following tax year.

(b) If the personal property is not in an exempt status on January 1 of a tax year, and at any later date during that tax year is assigned an exempt status, the personal property will be taxed for the entire tax year, unless the personal property is acquired by a governmental entity.

(6) Personal property acquired during the year by a

governmental entity as defined in 15-6-201, MCA, is exempt on proof of ownership. This property remains exempt for the remainder of the year from the date of acquisition by the governmental entity.

(a) If the taxes are paid for the year, the owner, as of January 1, may apply for a refund of taxes for the portion of the year the property is in government ownership.

(b) If the taxes are not paid, the assessment will be adjusted to prorate the taxes.

(c) Applications for refund must be submitted to the county commissioners office of the county in which the tax is paid. The application must comply with the requirements of 15-16-601, MCA.

~~(3)~~ (7) For personal property situated outside the state of Montana on January 1, the exempt and nonexempt status of personal property is as follows:

(a) If personal property is in an exempt status when it is brought into the state of Montana during a tax year, and if at any later date during that tax year the personal property loses its exempt status, the personal property will not be taxed until the following tax year.

(b) If personal property is not in an exempt status when it is brought into the state of Montana, the department will prorate the taxes on the personal property pursuant to 15-24-301 ~~and 15-24-304~~, 15-24-303, and 15-16-613, MCA.

AUTH: Sec. 15-1-201 MCA; IMP: Secs. 15-8-201 and 15-24-301 MCA.

3. The application procedures for real property have previously been specified in the administrative rules. The amendments to ARM 42.21.162 will identify the application procedures for personal property. These amendments will also aid in elimination of challenges to the Department's application deadlines.

4. Interested parties may submit their data, views, or arguments concerning the proposed adoption in writing to:

Cleo Anderson
Department of Revenue
Office of Legal Affairs
Mitchell Building
Helena, Montana 59620

no later than January 7, 1994.

5. If a person who is directly affected by the proposed amendments wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Cleo Anderson at the above address no later than January 7, 1994.

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

adoption; from the Administrative Code Committee of the Legislature; from a governmental subdivision, or agency; or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 25.

CLEO ANDERSON
Rule Reviewer

MICK ROBINSON
Director of Revenue

Certified to Secretary of State November 29, 1993.

BEFORE THE DEPARTMENT OF SOCIAL
AND REHABILITATION SERVICES OF THE
STATE OF MONTANA

In the matter of the amendment of rule 46.10.404 pertaining to Title IV-A day care for children	))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF RULE 46.10.404 PERTAINING TO TITLE IV-A DAY CARE FOR CHILDREN

TO: All Interested Persons

1. On January 5, 1994, at 9:30 a.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana to consider the proposed amendment of rule 46.10.404 pertaining to Title IV-A day care for children.

The Department of Social and Rehabilitation Services will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you request an accommodation, contact the department no later than 5:00 p.m. on December 29, 1993, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, P.O. Box 4210, Helena, MT 59604-4210; telephone (406) 444-5622; FAX (406) 444-1970.

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

46.10.404 TITLE IV-A DAY CARE FOR CHILDREN OF RECIPIENTS IN TRAINING OR IN NEED OF PROTECTIVE SERVICES Subsections (1) through (3)(g) remain the same.

(h) Title IV-A day care is available only for care provided by licensed or registered day care facilities or by a day care provider who is legally operating pursuant to Montana law as set forth in 52-2-703(2)(a) and (b) and 52-2-721(1)(a) and (b), MCA. Title IV-A payments are available for in-home care furnished by a provider who is licensed or registered or is not required to be licensed or registered, including care provided by a person related to the child by blood or marriage. However, no payments shall be made to any person who is ~~in the AFDC assistance unit~~ living in the same house as the child for ~~which~~ whom care is being provided, ~~or whose income is deemed to the assistance unit (for example, a stepparent).~~

Subsection (3)(i) remains the same.

AUTH: Sec. 53-4-212 and 53-4-503 MCA
IMP: Sec. 53-4-211, 53-4-514 and 53-4-716 MCA

3. ARM 46.10.404 requires the department to pay day care costs for children of Aid to Families with Dependent Children

(AFDC) recipients who are attending employment-related training and for children in need of protective services. The rule sets forth the requirements which must be met by providers of day care in order to be reimbursed as well as the rates of reimbursement which will be paid.

ARM 46.10.404(3)(h) currently states that no IV-A day care payments will be made to a provider of in-home care who is a member of the same AFDC assistance unit as the child for whom care is being provided or whose income is deemed to the assistance unit. Recently the Department of Family Services (DFS) has pointed out that the department's policy of paying providers who live in the same home as the child, as long as they aren't part of the assistance unit, is inconsistent with 53-2-702(2), MCA. DFS noted that it was the intention of the 1993 Montana Legislature in amending Section 53-2-702(2) in House Bill 118 to prohibit child care payments to <u>any</u> person who resides in the same household as the child.

The department agrees that its policy should be consistent with DFS' policy in this regard. It is therefore necessary to amend subsection (3)(h) of ARM 46.10.404 to prohibit payments to any person who lives in the same household as the child. The portion of subsection (3)(h) which prohibits payments to persons whose income is deemed to the assistance unit is being eliminated because it would be redundant, in view of the fact that only persons who reside in the household can have their income deemed to the assistance unit.

4. Interested parties 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 Russell E. Cater, Chief Legal Counsel, Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, MT 59604-4210, no later than January 6, 1994.

5. The Office of Legal Affairs, Department of Social and Rehabilitation Services has been designated to preside over and conduct the hearing.

Rule Reviewer

Director, Social and Rehabilitation Services

Certified to the Secretary of State November 29, 1993.

BEFORE THE BOARD OF RADIOLOGIC TECHNOLOGISTS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment of rules pertaining to examinations, renewals, fees, permits and permit fees	)))	NOTICE OF AMENDMENT OF RULES 8.56.407, 8.56.409, 8.56.602A and 8.56.607 PERTAINING TO THE PRACTICE OF RADIOLOGIC TECHNOLOGY

TO: All Interested Persons:

1. On July 15, 1993, the Board of Radiologic Technologists published a notice of proposed amendment of rules pertaining to the practice radiologic technology at page 1455, 1993 Montana Administrative Register, issue number 13.

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

3. No comments or testimony were received.

BOARD OF RADIOLOGIC
TECHNOLOGISTS
JIM WINTER, CHAIRMAN

BY: Anne M. Bartos
ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

Anne M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, November 29, 1993.

BEFORE THE BOARD OF SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS

In the matter of the amendment of rules pertaining to aide supervision and nonallowable functions of aides	))))	NOTICE OF AMENDMENT OF 8.62.502 SCHEDULE OF SUPERVISION - CONTENTS AND 8.62.504 NONALLOWABLE FUNCTIONS OF AIDES

TO: All Interested Persons:

1. On August 12, 1993, the Board of Speech-Language Pathologists and Audiologists published a notice of proposed amendment of the above-stated rules at page 1795, 1993 Montana Administrative Register, issue number 15.

2. The Board voted against amending ARM 8.62.502 as proposed in the original notice. The language will remain as it currently reads in the Administrative Rules of Montana. The Board did vote to amend ARM 8.62.504 exactly as it was proposed in the original notice.

3. The Board has thoroughly considered all comments and testimony received. Those comments and the Board's responses follow:

COMMENT: The Board received six comments stating opposition to the proposed amendment of 8.62.502, as the change would require the physical presence of a supervisor for all speech aides at least once a week, and would not allow for technological advances such as supervision by interactive TV.

RESPONSE: The Board's proposed amendment did not require physical presence of a supervisor once a week, but was instead an attempt to clarify the rule language on percentages of direct and indirect supervision required for each speech aide, without changing the requirements which have always been in existence. Since the proposed language apparently did not clarify, but was instead misinterpreted by a significant number of affected licensees, the Board will not adopt the proposed amendment.

BOARD OF SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS
CARL CLARK, CHAIRMAN

BY: _____
ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

_____
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, November 29, 1993.

BEFORE THE DEPARTMENT OF FISH, WILDLIFE & PARKS
OF THE STATE OF MONTANA

In the matter of an amendment of ARM 12.3.112 regarding the setting of nonresident antelope doe/fawn licenses	)))))	NOTICE OF THE AMENDMENT OF ARM 12.3.112

TO: All interested persons

1. On September 30, 1993, the Department of Fish, Wildlife and Parks published notice of the proposed amendment of the above-captioned rule at page 2201 of the 1993 Montana Administrative Register, issue number 18.

2. The department has adopted the rule as proposed.

3. No comments or testimony were received.

Robert N. Lane
Rule Reviewer

Patrick J. Graham, Director
Montana Department of Fish,
Wildlife and Parks

Certified to the Secretary of State November 26, 1993.

BEFORE THE DEPARTMENT OF FISH, WILDLIFE & PARKS
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 12.3.123 pertaining to nonresident combination license alternate list	NOTICE OF THE AMENDMENT OF ARM 12.3.123

TO: All interested persons

1. On September 30, 1993, the Department of Fish, Wildlife and Parks published notice of a proposed amendment to ARM 12.3.123 pertaining to nonresident combination license alternate list at page 2199 of the 1993 Montana Administrative Register, issue number 18.

2. The agency has adopted the amendment to ARM 12.3.123 with the following changes:

12.3.123 COMBINATION LICENSE ALTERNATE LIST (1) Upon completion of the sale of nonresident combination licenses, the department will randomly draw names for an alternates' list for both categories of nonresident big game combination licenses and all three categories of nonresident deer combination licenses. These lists will contain the names of 300 unsuccessful applicants from ~~both categories~~ each category of big game combination licenses and 100 names from each category of deer combination licenses who may be contacted and given the opportunity to purchase a license in the event refunds are issued to successful applicants.

(2) remains the same.

AUTH: Sec. 87-1-201 MCA: IMP: Sec. 87-2-511 MCA

3. The following comment was received from the Montana Outfitters and Guides Association:

Comment: The department is proposing an increase of the number of names drawn from all unsuccessful applicants in each category from 300 names to 600 names. (These people are then asked if they want to be listed on an alternate list to receive a license in the event that licenses are returned for a refund.) Instead, please consider separating the unsuccessful applicants into guided and nonguided categories and draw 300 names from each.

Response: The department concurs and has incorporated this change into the rule.

Robert N. Lane
Rule Reviewer

Patrick J. Graham, Director
Montana Department of Fish,
Wildlife and Parks

Certified to the Secretary of State November 26, 1993.

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

In the matter of the amendment of Rule 12.6.901 relating to electric motors on Lake Elmo.	))))	NOTICE OF THE AMENDMENT OF RULE 12.6.901 RELATING TO ELECTRIC MOTORS ON LAKE ELMO

To: All Interested Persons

1. On August 26, 1993, the Fish, Wildlife and Parks Commission published notice of the proposed amendment of rule 12.6.901 pertaining to electric motors on Lake Elmo at page 1963 of the 1993 Montana Administrative Register, issue number 16.

2. The commission has amended rule 12.6.901 as proposed.

3. The commission has considered the comments and testimony received on the proposed amendment. The following is a summary of the comments received, along with the commission's response to the comments.

COMMENT:
Boats with motors will increase gasoline and oil pollution and noise pollution. Another person, however, commented that electric motors are quiet and non-polluting.

RESPONSE:
The rule as amended will only allow boats with electric motors. Electric motors are quiet and do not pollute the water; therefore the commission does not anticipate a pollution problem. The proposed rule change was approved on August 30, as required, by the Department of Health and Environmental Sciences' Director who stated that "because DHES anticipates that this amendment would not result in activities on Lake Elmo that cause adverse public health or sanitation effects, I hereby approve the amendment on behalf of the DHES pursuant to Section 87-1-303, MCA."

COMMENT:
The fishery resource in Lake Elmo is under utilized, and allowing the use of electric motors on the lake will allow more people to fish, will encourage more family use, will increase use by the handicapped, will moderately increase the fee revenues, and is consistent with the use allowed at a similar warm water fishery, Castle Rock Reservoir near Colstrip.

RESPONSE:
The commission agrees and is amending the rule to allow such increased use.

COMMENT:
The park should be left the way it is, as natural and as quiet as possible, and should be kept as a place for families and kids to fish.

RESPONSE:
The commission believes that the increased use by allowing electric motors will not substantially change the way the park is used and enjoyed, and that electric motors may increase family use for fishing.

COMMENT:
Comments were received on waterfowl impacts. Some people felt that waterfowl will be adversely impacted by electric motor use; others felt that the use of electric motors will not disturb wildlife or waterfowl any more than the existing trail around the lake.

RESPONSE:
The commission believes that boats with electric motors will not substantially increase waterfowl disturbance. The department will be asked to monitor effects on waterfowl and recommend changes or restrictions as necessary should problems occur.

COMMENT:
Electric motors will invite "high tech" anglers and will have a serious impact on fish populations.

RESPONSE:
The commission believes that the fish population is healthy and will not be significantly reduced by fishing from electric powered boats.

COMMENT:
Handicapped use will increase because of the development of a new fishing pier, and handicapped visitors can also use the lake by having a helper row them across; therefore, greater handicap accessibility is not necessary.

RESPONSE:
The commission agrees that the fishing pier should increase handicapped use but also believes that allowing electric motors may increase use by disabled persons without the need for a helper and without adversely affecting the park.

COMMENT:
Allowing electric motors will pave the way for small gasoline powered boats.

RESPONSE:
Gasoline powered boats would present entirely different concerns on the lake, including safety, noise, water pollution, and over-crowding. The commission does not believe that allowing electric motors will lead to eventual use by gasoline powered boats.

COMMENT:
Use by electric motor boats will increase use of the park, and the commission should wait at least a year before increasing park visitation.

RESPONSE:
Use of Lake Elmo will be likely to increase anyway through the implementation of the 1990 Master Site Plan. The commission does not believe that increased use by boaters under this amendment will be significant or be a problem in relation to the overall use of the park.

COMMENT:
The rule should be further amended to limit boat size, limit motor size, restrict boats to one 12-volt battery, provide a "no wake" rule, and limit the number of people using the park.

RESPONSE:
The commission has considered the suggestions but believes at this time that further amendment does not appear to be necessary. Department employees contacted several marinas in Montana and were told that currently available electric motors for boats are not powerful enough for travel at speeds which could create a wake. The commission will ask the department to monitor the use of electric motor boats and to recommend further restrictions if they seem necessary.

FISH, WILDLIFE AND PARKS COMMISSION

Robert N. Lane
Rule Reviewer

Patrick J. Graham
Secretary

Certified to the Secretary of State on November 26, 1993.

BEFORE THE BOARD OF HEALTH AND ENVIRONMENTAL SCIENCES
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 16.8.701, 1401, 1407, 1414, 1423-1425, 1427-1428, and new rules I-XXXIV dealing with air quality permitting, prevention of significant deterioration, permitting in nonattainment areas, source testing protocol and procedure, and wood waste burners.	NOTICE OF ADOPTION OF NEW RULES I-XXI AND XXIV-XXXIV (16.8.708-709, 16.8.945-963, 16.8.1701-1705, 16.8.1801-1806), AMENDMENT OF 16.8.701, AND REPEAL OF 16.8.921-16.8.943 (Air Quality Bureau)

To: All Interested Persons

1. On June 24, 1993, the board published notice of the proposed amendment and adoption of the above-captioned rules at page 1264 of the 1993 Montana Administrative Register, issue number 12.

2. On October 28, 1993, the board amended a portion of the rules, I6.8.1401, 1407, 1414, 1423-1425, and 1427-1428 and adopted new rules XXII and XXIII (16.8.1429 and 16.8.1430).

3. The remaining rule (16.8.701), is amended as proposed, and appears as follows (new material is underlined; material to be deleted is interlined):

16.8.701 DEFINITIONS As used in this chapter, unless indicated otherwise in a specific subchapter, the following definitions apply:

(1)-(32) Same as proposed.

~~(33) "Potential to emit" means the maximum capacity of a stationary source, or source or alteration to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source or alteration to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source. When used in subchapter 20, this definition does not alter the use of the term "capacity factor" as used in Title IV of the FCAA or rules promulgated thereunder.~~

(34)-(35) Same as proposed but are renumbered (33-34).

~~(36) "Secondary emissions" means emissions which would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. For the purpose of this chapter, secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the stationary source or modification which causes the secondary emissions. Secondary emissions include emissions from any offsite support facility which would not be constructed or increase its emissions except~~

~~as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include any emissions which come directly from a mobile source such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.~~

(37)-(44) Same as proposed but are renumbered (35)-(42).

4. The remaining rules as adopted by the board appear as follows (new material is underlined; material to be deleted is interlined):

RULE I (16.8.708) INCORPORATIONS BY REFERENCE Same as proposed.

RULE II (16.8.709) SOURCE TESTING PROTOCOL (1)(a) Same as proposed.

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

(c) Unless otherwise specified in the Montana source testing protocol and procedures manual or elsewhere in this chapter, all emission source testing must be performed as specified in any applicable sampling method contained in: 40 CFR Part 60, Appendix A; 40 CFR Part 60, Appendix B; 40 CFR Part 61, Appendix B; 40 CFR Part 51, Appendix M; 40 CFR Part 51, Appendix P, and; 40 CFR Part 63 (56 FR 27369, June 13, 1991). Such emission source testing must also be performed in compliance with the requirements of the U.S. EPA quality assurance manual. Alternative equivalent requirements may be used if the department and the source ~~has~~ have determined that such alternative equivalent requirements are ~~necessary~~ appropriate, and prior written approval has been obtained from the department. If approval by the administrator of an alternative test method is required, that approval must also be obtained.

(d) Same as proposed.

(e) Any changes to the Montana source testing protocol and procedures manual shall follow the appropriate rulemaking procedures.

RULE III (16.8.945) DEFINITIONS For the purpose of this subchapter, the following definitions apply:

(1) Same as proposed.

(2) "Allowable emissions" means the emissions rate of a stationary source calculated using the maximum rated capacity of the source (unless the source is subject to federally enforceable limits which restrict the operating rate or hours of operation, or both) and the most stringent of the following:

(a) The applicable standards as set forth in ARM 16.8.1423 or 1424;

(b) The applicable Montana state implementation plan emissions limitation, including those with a future compliance date; or

(c) The emissions rate specified as a federally enforceable permit condition, including those with a future compliance date.

(2)-(11) Remain the same but are renumbered (3)-(12).

(13) "Federally enforceable" means all limitations and conditions which are enforceable by the administrator, including those requirements developed pursuant to 40 CFR Parts 60 and 61, requirements within the Montana state implementation plan, and any permit requirement established pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR Part 51, subpart I, including operating permits issued under an EPA-approved program that is incorporated into the Montana state implementation plan and expressly requires adherence to any permit issued under such program.

(14) "Fugitive emissions" means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

(12)-(18) Remain the same but are renumbered (15)-(21).

~~(19)~~(22)(a) "Major stationary source" means:

(i) Any of the following stationary sources of air pollutants which emits, or has the potential to emit, 100 tons per year or more of any pollutant subject to regulation under the FCAA, excluding hazardous air pollutants, except to the extent that such hazardous air pollutants are regulated as constituents of more general pollutants listed in section 7408(a)(1) of the FCAA: fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input, coal cleaning plants (with thermal dryers), kraft pulp mills, portland cement plants, primary zinc smelters, iron and steel mill plants, primary aluminum ore reduction plants, primary copper smelters, municipal incinerators capable of charging more than 250 tons of refuse per day, hydrofluoric, sulfuric, and nitric acid plants, petroleum refineries, lime plants, phosphate rock processing plants, coke oven batteries, sulfur recovery plants, carbon black plants (furnace process), primary lead smelters, fuel conversion plants, sintering plants, secondary metal production plants, chemical process plants, fossil fuel boilers (or combinations thereof) totaling more than 250 million British thermal units per hour heat input, petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels, taconite ore processing plants, glass fiber processing plants, and charcoal production plants;

(ii)-(xxvii) Same as proposed.

(20)-(21) Same as proposed but renumbered (23)-(24).

(25) "Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

(26) "Secondary emissions" means emissions which would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major sta-

tionary source or major modification itself. For the purpose of this chapter, secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the stationary source or modification which causes the secondary emissions. Secondary emissions include emissions from any offsite support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include any emissions which come directly from a mobile source such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

(22)-(23) Remain the same but are renumbered (27)-(28).

(29)(a) "Volatile organic compounds (VOC)" means any compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate, which participates in atmospheric photochemical reactions, and including any such organic compound other than the following, which have been determined to have negligible photochemical reactivity: methane; ethane; methylene chloride (dichloromethane); 1,1,1- trichloroethane (methyl chloroform); 1,1,1-trichloro-2,2,2-trifluoroethane (CFC-113); trichlorofluoromethane (CFC-11); dichlorodifluoromethane (CFC-12); chlorodifluoromethane (CFC-22); trifluoromethane (FC-23); 1,2-dichloro-1,1,2,2-tetrafluoroethane (CFC-114); chloropentafluoroethane (CFC-115); 1,1,1-trifluoro-2,2-dichloroethane (HCFC-123); 1,1,1,2-tetrafluoroethane (HFC-134a); 1,1-dichloro-1-fluoroethane (HCFC-141b); 1-chloro-1,1-difluoroethane (HCFC-142b); 2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124); pentafluoroethane (HFC-125); 1,1,2,2-tetrafluoroethane (HFC-134); 1,1,1-trifluoroethane (HFC-143a); 1,1-difluoroethane (HFC-152a); and perfluorocarbon compounds which fall into these classes:

(i) Cyclic, branched, or linear completely fluorinated alkanes;

(ii) Cyclic, branched, or linear completely fluorinated ethers with no unsaturations;

(iii) Cyclic, branched, or linear completely fluorinated tertiary amines with no unsaturations; and

(iv) Sulfur-containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine.

(b) For purposes of determining compliance with emissions limits, VOC will be measured by the test methods in 40 CFR Part 60, Appendix A, as applicable. Where such a method also measures compounds with negligible photochemical reactivity, these negligibly-reactive compounds may be excluded as VOC if the amount of such compounds is accurately quantified, and such exclusion is approved by the department. As a precondition to excluding these compounds as VOC or at any time thereafter, the department may require an owner or operator to provide monitoring or testing methods and results demonstrating, to the satisfaction of the department, the amount of negligibly-reactive compounds in the source's emissions.

RULE IV (16.8.946) INCORPORATION BY REFERENCE Same as proposed.

RULE V (16.8.947) AMBIENT AIR INCREMENTS Same as proposed.

RULE VI (16.8.948) AMBIENT AIR CEILINGS Same as proposed.

RULE VII (16.8.949) RESTRICTIONS ON AREA CLASSIFICATIONS (1)-(2) Same as proposed.

(3) The extent of the areas designated as Class I under (1) and (2) above shall conform to any changes in the boundaries of such areas which have occurred subsequent to August 7, 1977, or which may occur subsequent to November 15, 1990.

(3)-(5) Same as proposed but are renumbered (4)-(6).

RULE VIII (16.8.950) EXCLUSIONS FROM INCREMENT CONSUMPTION Same as proposed.

RULE IX (16.8.951) REDESIGNATION Same as proposed.

RULE X (16.8.952) STACK HEIGHTS Same as proposed.

RULE XI (16.8.953) REVIEW OF MAJOR STATIONARY SOURCES AND MAJOR MODIFICATIONS--SOURCE APPLICABILITY AND EXEMPTIONS (1) No major stationary source or major modification shall begin actual construction unless, as a minimum, requirements contained in [RULES XII-XX] have been met. A major stationary source or major modification exempted from the requirements of subchapter 11 under ARM 16.8.1102(1) shall, if applicable, still be required to obtain an air quality preconstruction permit and comply with all applicable requirements of this subchapter.

(2)-(7) Same as proposed.

RULE XII (16.8.954) CONTROL TECHNOLOGY REVIEW Same as proposed.

RULE XIII (16.8.955) SOURCE IMPACT ANALYSIS Same as proposed.

RULE XIV (16.8.956) AIR QUALITY MODELS Same as proposed.

RULE XV (16.8.957) AIR QUALITY ANALYSIS Same as proposed.

RULE XVI (16.8.958) SOURCE INFORMATION Same as proposed.

RULE XVII (16.8.959) ADDITIONAL IMPACT ANALYSES Same as proposed.

RULE XVIII (16.8.960) SOURCES IMPACTING FEDERAL CLASS I AREAS--ADDITIONAL REQUIREMENTS Same as proposed.

RULE XIX (16.8.961) PUBLIC PARTICIPATION Same as proposed.

RULE XX (16.8.962) SOURCE OBLIGATION Same as proposed.

RULE XXI (16.8.963) INNOVATIVE CONTROL TECHNOLOGY Same as proposed.

RULE XXIV (16.8.1701) DEFINITIONS For the purpose of this

subchapter:

(1) Same as proposed.

(2) "Allowable emissions" means the emissions rate of a stationary source calculated using the maximum rated capacity of the source (unless the source is subject to federally enforceable limits which restrict the operating rate or hours of operation, or both) and the most stringent of the following:

(a) The applicable standards as set forth in ARM 16.8.1423 or 1424;

(b) The applicable emissions limitation contained in the Montana state implementation plan, including those with a future compliance date; or

(c) The emissions rate specified as a federally enforceable permit condition, including those with a future compliance date.

(2)-(3) Same as proposed but are renumbered (3)-(4).

~~(4) "Cause or contribute" means, in regard to an ambient air quality impact caused by emissions from a major source or modification, an ambient air quality impact that exceeds the significance level for any pollutant at any location.~~

(5)-(7) Same as proposed.

(8) "Federally enforceable" means all limitations and conditions which are enforceable by the administrator, including those requirements developed pursuant to 40 CFR Parts 60 and 61, requirements within the Montana state implementation plan, and any permit requirement established pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR Part 51, subpart I, including operating permits issued under an EPA-approved program that is incorporated into the Montana state implementation plan and expressly requires adherence to any permit issued under such program.

(9) "Fugitive emissions" means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

(8)-(12) Same as proposed but are renumbered (10)-(14).

(15) "Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

(13) Same as proposed but renumbered (16).

(17) "Secondary emissions" means emissions which would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. For the purpose of this chapter, secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the stationary source or modification which causes the secondary emissions. Secondary emissions include emissions from any offsite support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the major station-

ary source or major modification. Secondary emissions do not include any emissions which come directly from a mobile source such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

~~(14) "Significance level" means, for any of the following pollutants, an ambient air quality impact greater than any of the averages cited below:~~

~~(a) For sulfur dioxide:~~

~~(i) an annual average of 1.0 micrograms per cubic meter;~~

~~(ii) a twenty-four hour average of 5.0 micrograms per cubic meter;~~

~~(iii) a three-hour average of 25.0 micrograms per cubic meter; or~~

~~(iv) a one-hour average of 25.0 micrograms per cubic meter.~~

~~(b) For PM-10:~~

~~(i) an annual average of 1.0 micrograms per cubic meter; or~~

~~(ii) a twenty-four hour average of 5.0 micrograms per cubic meter.~~

~~(c) For nitrogen dioxide:~~

~~(i) an annual average of 1.0 micrograms per cubic meter; or~~

~~(ii) a one-hour average of 6.0 micrograms per cubic meter.~~

~~(d) For carbon monoxide:~~

~~(i) an eight-hour average of 0.5 milligrams per cubic meter; or~~

~~(ii) a one-hour average of 2.0 milligrams per cubic meter.~~

~~(e) For hydrogen sulfide:~~

~~(i) a one-hour average of 0.2 micrograms per cubic meter.~~

~~(f) For lead:~~

~~(i) a ninety-day average of 0.1 micrograms per cubic meter; or~~

~~(ii) a three-month average of 0.1 micrograms per cubic meter.~~

~~(g) For ozone:~~

~~(i) a one-hour average of .005 parts per million.~~

~~(h) For fluorides in forage, settled particulate matter, and visibility:~~

~~(i) an air quality impact which is equivalent to 5% of the applicable ambient air quality standard.~~

(15)-(16) Same as proposed but are renumbered (18)-(19).

(20)(a) "Volatile organic compounds (VOC)" means any compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate, which participates in atmospheric photochemical reactions, and including any such organic compound other than the following, which have been determined to have negligible photochemical reactivity: methane; ethane; methylene chloride (dichloromethane); 1,1,1- trichloroethane (methyl chloroform); 1,1,1-trichloro-2,2,2-trifluoroethane (CFC-113); trichlorofluoromethane (CFC-11); dichlorodifluoromethane (CFC-12); chlorodifluoromethane (CFC-22); trifluoromethane (FC-23); 1,2-dichloro-1,1,2,2-tetrafluoroethane (CFC-114); chloropentafluoroethane (CFC-115); 1,1,1-trifluoro-2,2-dichloroethane (HCFC-123); 1,1,1,2-tetrafluoroethane (HFC-134a); 1,1-dichloro-1-fluoroethane (HCFC-141b); 1-chloro-1,1-difluoroethane (HCFC-142b); 2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124); pentafluoroethane (HFC-125); 1,1,2,2-tetrafluoroethane (HFC-134); 1,1,1-

trifluoroethane (HFC-143a); 1,1-difluoroethane (HFC-152a); and perfluorocarbon compounds which fall into these classes:

(i) Cyclic, branched, or linear completely fluorinated alkanes;

(ii) Cyclic, branched, or linear completely fluorinated ethers with no unsaturations;

(iii) Cyclic, branched, or linear completely fluorinated tertiary amines with no unsaturations; and

(iv) Sulfur-containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine.

(b) For purposes of determining compliance with emissions limits, VOC will be measured by the test methods in 40 CFR Part 60, Appendix A, as applicable. Where such a method also measures compounds with negligible photochemical reactivity, these negligibly-reactive compounds may be excluded as VOC if the amount of such compounds is accurately quantified, and such exclusion is approved by the department. As a precondition to excluding these compounds as VOC or at any time thereafter, the department may require an owner or operator to provide monitoring or testing methods and results demonstrating, to the satisfaction of the department, the amount of negligibly-reactive compounds in the source's emissions.

RULE XXV (16.8.1702) INCORPORATION BY REFERENCE Same as proposed.

RULE XXVI (16.8.1703) WHEN AIR QUALITY PRECONSTRUCTION PERMIT REQUIRED (1) Any new major stationary source or major modification which would locate anywhere in an area designated as nonattainment for a national ambient air quality standard under 40 CFR 81.327 and which is major for the pollutant for which the area is designated nonattainment, shall, prior to construction, obtain from the department an air quality preconstruction permit in accordance with subchapter 11 and all requirements contained in this subchapter if applicable. A major stationary source or major modification exempted from the requirements of subchapter 11 under ARM 16.8.1102(1) which would locate anywhere in an area designated as nonattainment for a national ambient air quality standard under 40 CFR 81.327 and which is major for the pollutant for which the area is designated nonattainment, shall, prior to construction, still be required to obtain an air quality preconstruction permit and comply the requirements of ARM 16.8.1105, 16.8.1107, and 16.8.1109 and with all applicable requirements of this subchapter.

(2) Same as proposed.

RULE XXVII (16.8.1704) ADDITIONAL CONDITIONS OF AIR QUALITY PRECONSTRUCTION PERMIT (1)-(2) Same as proposed.

(3) The requirements of (1)(a) and (1)(c), above, shall only apply to those pollutants for which the major stationary source or major modification is major and for which the area has been declared nonattainment.

(4) Same as proposed.

RULE XXVIII (16.8.1705) BASELINE FOR DETERMINING CREDIT FOR EMISSIONS AND AIR QUALITY OFFSETS (1)-(4) Same as proposed.

(5) No emissions credit shall be allowed for replacing one hydrocarbon compound with another of lesser reactivity, except for those compounds listed in Table 1 of EPA's "Recommended Policy on Control of Volatile Organic Compounds" (42 FR 35314, July 8, 1977).

(5)-(9) Same as proposed but are renumbered (6)-(10).

~~(10)~~(11) Production of and equipment used in the exploration, production, development, storage, or processing of oil and natural gas from stripper wells, are exempt from ~~both~~ the additional permitting requirements of subchapter I, part D, subpart IV of the FCAA, and the application of these additional permitting requirements in this subchapter and subchapter 18 to any nonattainment area designated as serious for particulate matter (PM-10). These sources must comply with all other requirements of Section 173 of the FCAA and this subchapter and subchapter 18.

(11) Same as proposed but is renumbered (12).

RULE XXIX (16.8.1801) DEFINITIONS For the purpose of this subchapter:

(1) Same as proposed.

(2) "Cause or contribute" means, in regard to an ambient air quality impact caused by emissions from a major source or modification, an ambient air quality impact that exceeds the significance level as defined in (3) of this rule, for any pollutant at any location.

(2) Same as proposed but is renumbered (3).

RULE XXX (16.8.1802) INCORPORATION BY REFERENCE Same as proposed.

RULE XXXI (16.8.1803) WHEN AIR QUALITY PERMIT REQUIRED

(1) Any new major stationary source or major modification which would locate anywhere in an area designated as attainment or unclassified for a national ambient air quality standard under 40 CFR 81.327 and which would cause or contribute to a violation of a national ambient air quality standard for any pollutant at any locality that does not or would not meet the national ambient air quality standard for that pollutant, shall obtain from the department an air quality preconstruction permit prior to construction in accordance with subchapters 9 and 11 and all requirements contained in this subchapter if applicable. A major stationary source or major modification exempted from the requirements of subchapter 11 under ARM 16.8.1102(1) which would locate anywhere in an area designated as attainment or unclassified for a national ambient air quality standard under 40 CFR 81.327 and which would cause or contribute to a violation of a national ambient air quality standard for any pollutant at any locality that does not or would not meet the national ambient air quality standard for that pollutant, shall, prior to construction, still be required to obtain an air quality preconstruction permit and comply with the requirements of ARM 16.8.1105, 16.8.1107, and 16.8.1109 and all applicable requirements of this subchapter.

(2) Same as proposed.

RULE XXXII (16.8.1804) ADDITIONAL CONDITIONS OF AIR QUALITY

PERMIT (1)-(2) Same as proposed.

(3) The requirements of (1)(a) and (1)(c), above, shall only apply to those pollutants for which the major stationary source or major modification is major and for which the source is causing or contributing to a violation of a national ambient air quality standard.

(4)-(6) Same as proposed.

RULE XXXIII (16.8.1805) REVIEW OF SPECIFIED SOURCES FOR AIR QUALITY IMPACT Same as proposed.

RULE XXXIV (16.8.1806) BASELINE FOR DETERMINING CREDIT FOR EMISSIONS AND AIR QUALITY OFFSETS (1) For the purpose of this subchapter the following requirements shall apply:

(a) The requirements of [RULE XXVIII], except that [RULE XXVIII~~(6)-(8)~~ (7)-(9)] is not applicable to offsets required under this subchapter;

(b)-(d) Same as proposed.

(e) No emissions credit shall be allowed for replacing one hydrocarbon compound with another of lesser reactivity, except for those compounds listed in Table 1 of EPA's "Recommended Policy on Control of Volatile Organic Compounds" (42 FR 35314, July 8, 1977).

5. The board repealed ARM 16.8.921 through 16.8.943 as proposed. AUTH: 75-2-111, 75-2-203, MCA; IMP: 75-2-202, 75-2-203, MCA

6. No comments were received from the general public, but the following comments from the department, the EPA, and the Clean Air Act Advisory Committee were made, with the board's response to the comments noted below.

At the request of the Clean Air Act Advisory Committee (CAAAC), the definitions of "potential to emit" and "secondary emissions" were removed from the general definition section of Subchapter 7 and moved to their appropriate subchapters.

Rule II: Two changes were made to new Rule II (Source Testing Protocol) at the request of the CAAAC. First, it was clarified that the department and the source may approve an alternate test method if appropriate. Secondly, it was clarified that any changes to the Montana Source Testing Protocol and Procedures Manual must be adopted through the appropriate rulemaking procedures.

Rules III through XXI: At the request of the CAAAC it was clarified that definition of actual emissions applies to an "emissions" unit. Also at the request of the CAAAC, several definitions --"allowable emissions," "federally enforceable," "fugitive emissions," "potential to emit," "secondary emissions," and "volatile organic compounds (VOC)"--were moved or copied from the general definition section in Subchapter 7 to include the exact definitions included in the federal rule. As a requirement of the 1990 Clean Air Act Amendments, a requirement that the Class I status of mandatory Class I areas shall conform to any changes in the boundaries of such areas which have occurred subsequent to August 7, 1977 was added. In response to EPA comments, it was clarified that a major stationary source or major modification subject to PSD and exempted from the requirements of Subchapter 11 under ARM 16.8.1102 (1)

shall, if applicable, still be required to obtain an air quality permit and comply with all applicable requirements of PSD.

Rules XXIV through XXIII: At the request of CAAAC several definitions--"allowable emissions," "federally enforceable," "fugitive emissions," "potential to emit," "secondary emissions," and "volatile organic compounds (VOC)"--were moved or copied from the general definition section in Subchapter 7 to include the exact definitions included in the federal rule. The definition of "significance level" was deleted from Rule XXIV because the phrase was not used in the subchapter to which Rule XXIV applies. In response to EPA comments, it was clarified that a major stationary source exempted from the requirements of Subchapter 11 which would locate in a nonattainment area would still be required to obtain an air quality preconstruction permit and comply with the requirements of ARM 16.8.1105, 16.8.1107, and 16.8.1109 and Subchapter 17. In response to EPA comments, it was clarified that LAER and offsets will only apply to those pollutants for which the area has been declared nonattainment and that no emissions credit shall be allowed for replacing one hydrocarbon compound with another of lesser reactivity, except for certain listed compounds. The application of the stripper well exemption was also clarified based on EPA comments. Stripper wells are exempt only from the additional permitting requirements of Subchapter I, part D, subpart IV of the Clean Air Act and must comply with all other requirements of section 173 of the Clean Air Act and Subchapter 17 and 18 of this chapter.

Rules XXIX through XXXIV: At the request of the CAAAC, the definition of "cause or contribute" was moved from the general definition section in subchapter 17, in which the phrase was not used, to subchapter 18, where the phrase in fact was used. In response to EPA comments, it was clarified that a major stationary source or major modification exempted from the requirements of Subchapter 11 which would cause or contribute to a violation of a national ambient air quality standard would still be required to obtain an air quality permit and comply with the requirements of ARM 16.8.1105, 16.8.1107, and 16.8.1109 and Subchapter 18. Also in response to EPA comments, it was clarified that LAER and offsets shall only apply to those pollutants for which the area has been declared nonattainment and that no emissions credit would be allowed for replacing one hydrocarbon compound with another of lesser reactivity, except for certain listed compounds.

RAYMOND W. GUSTAFSON, Chairman
BOARD OF HEALTH AND
ENVIRONMENTAL SCIENCES

by _____
ROBERT J. ROBINSON, Director

Certified to the Secretary of State November 29, 1993.

Reviewed by: _____
Eleanor Parker, DHES Attorney

BEFORE THE BOARD OF HEALTH AND ENVIRONMENTAL SCIENCES
OF THE STATE OF MONTANA

In the matter of the amendment of rules 16.8.1107, 1109, 1114, and the adoption of new rules I and II dealing with air quality preconstruction permits	))))	NOTICE OF AMENDMENT OF RULES AND ADOPTION OF NEW RULES 16.8.1119 AND 16.8.1120

(Air Quality)

To: All Interested Persons

1. On August 26, 1993, the department published notice of the proposed amendment and adoption of the above-captioned rules at page 1965 of the Montana Administrative Register, Issue No. 16.

2. The board has amended and adopted the rules with the following changes (new material in existing rules is underlined; material to be deleted is interlined):

16.8.1107 PUBLIC REVIEW OF PERMIT APPLICATIONS Same as proposed.

16.8.1109 CONDITIONS FOR ISSUANCE OF PERMIT (1) Same as proposed.

(2) An air quality permit to construct may not be issued to a new or altered source unless the applicant demonstrates that the source or stack can be expected to operate in compliance with the standards and rules adopted under the Montana Clean Air Act, the applicable regulations and requirements of the Federal Clean Air Act (~~40 CFR Parts 51, subpart I, 60 and 61; and 40 CFR § 52.21~~ as incorporated by reference in [Rule II]), and any applicable control strategies contained in the Montana state implementation plan (as incorporated by reference in [Rule II]), and that it will not cause or contribute to a violation of any Montana or national ambient air quality standard.

(3)-(6) Same as proposed.

16.8.1114 TRANSFER OF PERMIT Same as proposed.

RULE I (16.8.1119) GENERAL PROCEDURES FOR AIR QUALITY PRECONSTRUCTION PERMITTING (1) Same as proposed.

(2) An air quality preconstruction permit issued, altered, revised or modified under this chapter will be valid for the life of the air contaminant source or stack associated with the source, unless:

(a) same as proposed.

(b) the air quality preconstruction permit is revoked or revised as provided for in ARM 16.8.1112-1113~~.~~; or

(c) the air quality preconstruction permit clearly provides otherwise.

(3)-(4) Same as proposed.

(5) In order to assist an applicant in obtaining an air quality preconstruction permit under this chapter, the following guidance is provided but is not intended to supersede or replace any specific requirements of this chapter:

(a) Since subchapter 11 constitutes the basic preconstruction permitting program in Montana and is generally applicable to smaller and a larger number of sources ~~or alterations~~, an applicant should first determine if the source ~~or alteration~~ is subject to the air quality preconstruction permitting requirements of subchapter 11. However, some sources exempted from the requirements of subchapter 11 may still be major stationary sources subject to the requirements of subchapters 9, 17, or 18.

(b) In general, all sources ~~or alterations~~ subject to subchapters 9, 11, 17, 18, or 20 are also subject to subchapter 19.

(c) Any source ~~or alteration~~ which is a major source or major modification as defined in ARM 16.8.944 and is locating in an attainment or unclassified area is ~~also~~ subject to the requirements of subchapter 9 and may be subject to the requirements of subchapter 18, regardless of any exemption from the requirements of subchapter 11.

(d) Any source ~~or alteration~~ which is a major source or major modification as defined in ARM 16.8.1701 and is locating in a nonattainment area is also subject to the requirements of subchapter 17, regardless of any exemption from the requirements of subchapter 11.

(e) If a source ~~or alteration~~ submits an air quality preconstruction permit application which is initially subject to subchapter 18, but later amends its air quality preconstruction permit application to reduce its emissions so that it is no longer subject to subchapter 18, the applicant may still be subject to subchapter 9.

(f) Any source ~~or alteration~~ which is:

(i)-(iii) same as proposed.

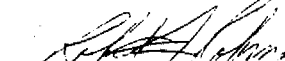
RULE II (16.8.1120) INCORPORATION BY REFERENCE (1) For the purpose of this subchapter, the board hereby adopts and incorporates by reference 40 CFR, Part 60, (~~as of~~ July 1, ~~1993~~ 1992 ed.), which sets forth standards of performance for new stationary sources; 40 CFR, Part 61, (~~as of~~ July 1, ~~1993~~ 1992 ed.), which sets forth emission standards for hazardous air pollutants; 40 CFR, Part 51, subpart I, (~~as of~~ July 1, ~~1993~~ 1992 ed.), which sets forth requirements for state programs for issuing air quality preconstruction permits; 40 CFR, 52.21, (~~as of~~ July 1, ~~1993~~ 1992 ed.), which sets forth federal regulations for prevention of significant deterioration of air quality, and 40 CFR Part 52, subpart BB (July 1, 1992 ed.), which sets forth the Montana state implementation plan ~~effective [on the effective date of this rule], which contains control measure for specific Montana air quality nonattainment areas~~ for the control of air pollution in Montana. Copies of the above regulations and the state implementation plan are available for review and copying at the Air Quality Bureau, Department of

Health and Environmental Sciences, Cogswell Building, Helena, Montana, 59620.

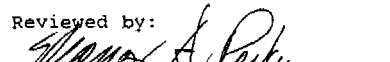
3. In 16.8.1109, based on the comments of the Administrative Code Committee, the references to parts of the Clean Air Act were replaced by references to the new incorporation by reference section. In new Rule I(2)(c), the department clarified that an air quality preconstruction permit is valid for the life of the source unless the air quality preconstruction permit clearly provides otherwise. In response to EPA comments, it was clarified that some sources exempted from the requirements of Subchapter 11 may still be major stationary sources subject to the requirements of Subchapters 9, 17, and 18. As a correction, the term "source or alteration" was replaced by "source" wherever it appeared.

Based on comments of the department legal staff, the dates of the CFR edition adopted by reference in new Rule II were corrected to reference the current edition and the reference to the Montana State Implementation Plan was corrected.

RAYMOND W. GUSTAFSON, Chairman
BOARD OF HEALTH AND
ENVIRONMENTAL SCIENCES

by 
ROBERT J. ROBINSON, Director

Certified to the Secretary of State November 29, 1993.

Reviewed by:

Eleanor Parker, DHES Attorney

BEFORE THE BOARD OF HEALTH AND ENVIRONMENTAL SCIENCES
OF THE STATE OF MONTANA

In the matter of the adoption of new rules I-XXV dealing with operating permits for certain stationary sources of air pollution.	)))))	NOTICE OF ADOPTION OF NEW RULES 16.8.2001-16.8.2025 (Air Quality Bureau)

To: All Interested Persons

1. On August 12, 1993, the department published notice of the proposed adoption of the above-captioned rules at page 1817 of the Montana Administrative Register, Issue No. 15.

2. The board has adopted the rules with the following changes (new material is underlined, material to be deleted is interlined.

RULE I (16.8.2001) AIR QUALITY OPERATING PERMIT PROGRAM OVERVIEW Same as proposed.

RULE II (16.8.2002) DEFINITIONS As used in this subchapter, unless indicated otherwise, the following definitions apply:

(1) "Administrative permit amendment" means an air quality operating permit revision that:

(a)-(c) Same as proposed.

(d) requires changes in monitoring or reporting requirements that the department deems to be no less stringent than current monitoring or reporting requirements;

~~(d)~~(e) allows for a change in ownership or operational control of a source if the department has determined that no other change in the air quality operating permit is necessary, consistent with [RULE XIX]; or

~~(e)~~(f) incorporates any other type of change which the department has determined to be similar to those revisions set forth in (a)-~~(d)~~ (e), above.

(2)-(9) Same as proposed.

(10) "Applicable requirement" means all of the following as they apply to emissions units in a source requiring an air quality operating permit (including requirements that have been promulgated or approved by the department or the administrator through rulemaking at the time of issuance of the air quality operating permit, but have future-effective compliance dates, provided that such requirements apply to sources covered under the operating permit):

(a)-(k) Same as proposed.

(l) any federally-enforceable term or condition of any air quality open burning permit issued by the department under subchapter 13.

(11)-(12) Same as proposed.

(13) "Emergency" means any situation arising from sudden and reasonably unforeseeable events beyond the control of the source, including acts of God, which situation requires immediate corrective action to restore normal operation, and that causes

the source to exceed a technology-based emission limitation under the air quality operating permit due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance to the extent caused by improperly designed equipment, lack of reasonable preventative maintenance, careless or improper operation, or operator error.

(14)-(21) Same as proposed.

(22)(a) "Insignificant emissions unit" means any activity or emissions unit located within a source that:

~~(a)~~(i) has a potential to emit less than ~~one~~ 15 tons per year of any pollutant, other than a hazardous air pollutant listed pursuant to section 7412(b) of the FCAA or lead;

(b)-(d) Same as proposed but are renumbered (ii)-(iv).

(b) Fugitive sources associated with an emissions unit are to be quantified with that emissions unit and are not considered insignificant emission units.

(23) Same as proposed.

(24)(a) "Non-federally enforceable requirement" means the following as they apply to emissions units in a source requiring an air quality operating permit:

(i) any standard, rule, or other requirement, including any requirement contained in a consent decree, or judicial or administrative order entered into or issued by the department, that is not contained in the Montana state implementation plan approved or promulgated by the administrator through rulemaking under Title I of the FCAA;

(ii) any term, condition or other requirement contained in any air quality preconstruction permit issued by the department under subchapters 9, 11, 17, and 18 of this chapter that is not federally enforceable;

(b) "Non-federally enforceable requirement" does not include any Montana ambient air quality standard contained in subchapter 8 of this chapter.

(24)-(28) Same as proposed but are renumbered (25)-(29).

~~(29)~~(30) "Section 502(b)(10) changes" are changes that contravene an express permit term. Such changes do not include changes that would violate applicable requirements or contravene federally-enforceable permit terms and conditions that are monitoring (including test methods), recordkeeping, reporting, or compliance certification requirements.

(30)-(32) Same as proposed but are renumbered (31)-(33).

RULE III (16.8.2003) INCORPORATIONS BY REFERENCE Same as proposed.

RULE IV (16.8.2004) AIR QUALITY OPERATING PERMIT PROGRAM APPLICABILITY (1) Same as proposed.

~~(2) All sources listed in (1) above that are not major or affected sources, or that are solid waste incineration units as defined in section 7429(g) of the FCAA that are not required to obtain a permit pursuant to section 7429(e), are exempt from the obligation to obtain an air quality operating permit for six years after the date this rule is adopted by the board, provided that they submit a complete air quality operating permit applica-~~

~~tion no later than 54 months after the such adoption date, as required in [RULE V](2)(e).~~

~~(3)~~(2) The following source categories are exempted from the obligation to obtain an air quality operating permit:

(a)-(b) Same as proposed.

(c) All sources listed in (1) above that are not major or affected sources, or that are solid waste incineration units as defined in section 7429(g) of the FCAA that are not required to obtain a permit pursuant to section 7429(e).

~~(4)~~(3) The department may exempt a source listed in (1) above from the requirement to obtain an air quality operating permit by establishing federally- enforceable limitations which limit that source's potential to emit, such that the source is no longer required to obtain an air quality operating permit under this subchapter.

(a) In applying for an exemption under this section the owner or operator of the source shall certify to the department that the source's potential to emit, when subject to the federally-_enforceable limitations, does not require the source to obtain an air quality operating permit. Such certification shall contain emissions measurement and monitoring data, location of monitoring records, and other information necessary to demonstrate to the department that the source is not required to obtain a permit under (1), above.

(b) Any source that obtains a federally-_enforceable limit on potential to emit shall annually certify that its actual emissions are less than those that would require the source to obtain an air quality operating permit. Such certification shall include the type of information specified in (4)(a), above.

~~(5)~~(4) Any source exempt from the requirement to obtain an air quality operating permit may nevertheless opt to apply for a permit under this subchapter.

~~(6)~~(5) The air quality operating permit shall include all applicable requirements for all emissions units at a source required to obtain a permit. Non-federally enforceable requirements and requirements for insignificant emission units shall be included, but shall not be subject to the other requirements of this subchapter except as required in [RULE IX (3)].

~~(7)~~(6) Fugitive emissions from a source required to obtain an air quality operating permit shall be included in the permit application and permit in the same manner as stack emissions, regardless of whether the source category in question is included in the list of sources contained in the definition of major source.

~~(8)~~(7) ~~Any~~ The department shall, upon written request of any person ~~may request in writing that the department~~, make an informal determination as to whether a particular source, which that person operates or proposes to operate, is subject to the requirements of this subchapter. The request must contain such information as is believed sufficient for the department to make the requested determination. The department may request any additional information that is necessary for informally determining the applicability of this subchapter. The department shall supply any informal applicability determination to the requestor

in writing. The department shall notify any person that has received an informal determination of applicability 15 days prior to withdrawal of or any change in that informal determination. An informal determination under this section ~~(8)~~ (7) may not be appealed to the board, and does not impair or otherwise limit the opportunity to seek a declaratory ruling under Title 2, Chapter 4, Part 5, MCA.

RULE V (16.8.2005) REQUIREMENTS FOR TIMELY AND COMPLETE AIR QUALITY OPERATING PERMIT APPLICATIONS (1) Same as proposed.

(2) To be considered timely for the purposes of this rule, a source that is required to obtain a permit pursuant to this subchapter must file its application with the department as follows:

(a)-(b) Same as proposed.

(c)(i) Sources required to obtain an air quality operating permit or permit revision that are also required to obtain an air quality preconstruction permit under this chapter shall submit an application for an air quality operating permit or permit revision concurrent with the submittal of the air quality preconstruction permit application.

(ii) The processing of the air quality preconstruction and operating permits will be coordinated to the greatest extent possible, but each permit will be issued according to the applicable procedures and time frames. Each application for an air quality operating permit, permit renewal, or permit revision and the associated preconstruction permit application will be processed independently of any other pending application under this chapter, including sources with pending air quality operation permit applications who submit an application for a new or altered air quality preconstruction permit during the initial transition period. Submittal of new air quality permit applications shall not impede the issuance of any pending air quality permit application.

(iii) During the initial transition period, sources that receive final air quality preconstruction permits prior to their submittal of an operating permit application shall be required to address any changes to their facility in the operating permit application. The operating permit application shall be submitted per the schedule prescribed in (2)(a) above.

(d) Same as proposed.

~~(e) Non-major sources exempted from obtaining an air quality operating permit under [RULE IV](2) must submit a complete air quality operating permit application no later than 54 months after the date this rule is adopted by the board.~~

~~(f)~~(e) Applications for initial phase II acid rain permits shall be submitted to the department by January 1, 1996 for sulfur dioxide, and by January 1, 1998 for nitrogen oxides.

(3) To be deemed complete for the purposes of this rule, a source must file its application for an air quality operating permit, or permit revision with the department as follows:

(a)-(b) Same as proposed.

(c) The source's ability to operate without an air quality operating permit, as set forth in [RULE XV(2)], shall be in ef-

fect from the date the application is determined or deemed to be administratively complete until the final permit is issued, provided that the applicant submits any requested additional information by the deadline specified by the department.

(d)-(f) Same as proposed.

(4)-(5) Same as proposed.

RULE VI (16.8.2006) INFORMATION REQUIRED FOR AIR QUALITY OPERATING PERMIT APPLICATIONS (1)-(2) Same as proposed.

(3) Insignificant emissions units need not be addressed in an application for an air quality operating permit, except that the application must include a list of such insignificant emissions units and emissions from insignificant emission units must be included in emission inventories and are subject to assessment of permit fees. Emission inventories are to be calculated or estimated using accepted engineering methods which may include, but are not limited to, use of appropriate emission factors, material balance calculations, or best engineering judgement or process knowledge. Insignificant emission units may be listed by category.

(4) Same as proposed.

(5) The applicant shall, at a minimum, provide the information specified below:

(a)-(b) Same as proposed.

(c) an emission inventory of all emissions of pollutants for which the source is major, and an emission inventory of all emissions of regulated air pollutants. An air quality operating permit application shall describe all emissions of regulated air pollutants emitted from any emissions unit~~, except where such units are exempted under (3), above~~. The applicant shall provide additional information related to such emissions of air pollutants as necessary to verify which requirements are applicable to the source, and other information that may be necessary to determine any permit fees owed under subchapter 19 of this chapter;

(d)-(t) Same as proposed.

(6)-(8) Same as proposed.

(9) As part of any application for a permit or general permit submitted pursuant to this subchapter, the applicant shall provide to the department a copy of all general safety rules, policies or requirements that are applicable to a department inspector during an air quality inspection. ~~The applicant shall also immediately notify the department in writing of any subsequent changes to such rules, policies or requirements.~~

(10)-(11) Same as proposed.

RULE VII (16.8.2007) CERTIFICATION OF TRUTH, ACCURACY, AND COMPLETENESS Same as proposed.

RULE VIII (16.8.2008) GENERAL REQUIREMENTS FOR AIR QUALITY OPERATING PERMIT CONTENT (1) Same as proposed.

(2) The following standard terms and conditions are applicable to each air quality operating permit issued pursuant to this subchapter:

(a) The permittee must comply with all conditions of the

permit. Any noncompliance with the terms or conditions of a permit constitutes a violation of the Montana Clean Air Act, and may result in enforcement action, operating permit modification, revocation and reissuance, or termination, or denial of a permit renewal application under this subchapter. Permits may only be terminated or revoked and reissued for continuing and substantial violations.

(b) Same as proposed.

(c) The permit may be modified, revoked and reissued, reopened, ~~and reissued,~~ or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or of a notification of planned changes or anticipated noncompliance does not stay any permit condition.

(d) Same as proposed.

(e) The permittee shall furnish to the department, within a reasonable time set by the department (not to be less than 15 days), any information that the department may request in writing to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit, or to determine compliance with the permit. Upon request, the permittee shall also furnish to the department copies of those records that are required to be kept pursuant to the terms of the permit. This subsection does not impair or otherwise limit the right of the permittee to assert the confidentiality of the information requested by the department, as provided in 75-2-105, MCA.

(f)-(i) Same as proposed.

(j) The department's final decision regarding issuance, renewal, revision, denial, revocation, reissuance, or termination~~, or reissuance~~ of a permit is not effective until 30 days have elapsed from the date of the decision. The decision may be appealed to the board by filing a request for hearing within 30 days after the date of the decision. A copy of the request shall be served on the department. The filing of a timely request for hearing postpones the effective date of the department's decision until the board issues a final decision. If effective, the permit shield, or application shield, as appropriate, shall remain in effect until such time as the board has rendered a final decision.

(k) The denial by the department of an application for permit issuance, renewal or revision under this subchapter which is the result of an objection by the administrator may not be appealed to the board. This shall not impair any separate right an applicant or the department may have under state or federal law to challenge an objection by the administrator.

(3)-(5) Same as proposed.

RULE IX (16.8.2009) REQUIREMENTS FOR AIR QUALITY OPERATING PERMIT CONTENT RELATING TO EMISSION LIMITATIONS AND STANDARDS, AND OTHER REQUIREMENTS (1)-(2) Same as proposed.

(3) In the air quality operating permit the department shall specifically designate as ~~not~~ being non-federally-enforceable under the FCAA any terms or conditions included in the permit that are not required under the FCAA or any applicable re-

quirements. Those terms and conditions which the department specifically designates as ~~not~~ being non-federally-_enforceable requirements are not subject to the following rules contained in this subchapter:

(a) [RULE VIII], except for sections (2) and (5). However, while noncompliance with a permit term or condition that is ~~not~~ a non-federally-_enforceable requirement may result in an enforcement action by the department, it ~~may~~ shall not result in permit revocation and reissuance, termination, or denial of a permit renewal application under this subchapter;

(b)-(d) Same as proposed.

(e) ~~[RULE XII] and~~ [RULE XIII];

(f)-(g) Same as proposed.

(4)-(6) Same as proposed.

(7) The requirement under this subchapter to obtain an air quality operating permit may not be construed as providing a basis for establishing new emission limitations beyond those contained in the underlying applicable requirements to be incorporated into the permit.

RULE X (16.8.2010) REQUIREMENTS FOR AIR QUALITY OPERATING PERMIT CONTENT RELATING TO MONITORING, RECORDKEEPING, AND REPORTING (1) Same as proposed.

(2) Each air quality operating permit shall incorporate all applicable recordkeeping requirements and require, where applicable, the following:

(a) Same as proposed.

~~(b) A record describing changes made at the source that result in emissions of a regulated air pollutant subject to an applicable requirement but not otherwise regulated under the permit, and the emissions resulting from those changes.~~

(c) Same as proposed but is renumbered (b).

(3)-(4) Same as proposed.

RULE XI (16.8.2011) REQUIREMENTS FOR AIR QUALITY OPERATING PERMIT CONTENT RELATING TO COMPLIANCE (1)-(3) Same as proposed.

(4) Inspections pursuant to (3) above, shall be conducted in compliance with all applicable federal or state rules or requirements for workplace safety and source-specific facility workplace safety rules or requirements ~~that have been previously supplied to the department in writing~~. The source shall inform the inspector of all applicable workplace safety rules or requirements at the time of the inspection. This section shall not limit in any manner the department's statutory right of entry and inspection as provided for in 75-2-403, MCA.

(5)-(7) Same as proposed.

RULE XII (16.8.2012) REQUIREMENTS FOR AIR QUALITY OPERATING PERMIT CONTENT RELATING TO THE PERMIT SHIELD AND EMERGENCIES

(1) Except as provided in this section, the department shall include in an air quality operating permit a provision stating that compliance with the conditions of the permit shall be deemed compliance with any applicable requirements and any non-federally enforceable requirements as of the date of permit

issuance, provided that:

(a) such applicable requirements and non-federally enforceable requirements are included and are specifically identified in the permit; or

(b) Same as proposed.

(2) An air quality operating permit that does not expressly state that a permit shield extends to specific applicable requirements and to non-federally enforceable requirements will be presumed not to provide such a shield for those requirements.

(3) The permit shield described in (1) above shall remain in affect during the appeal of any permit action (renewal, revision, reopening, revocation or reissuance) to the board until such time as the board renders its final decision.

~~(3)~~(4) Nothing in (1), ~~or~~ (2) or (3) above, or in any air quality operating permit shall alter or affect the following:

(a)-(g) Same as proposed.

~~(4)~~(5) An emergency constitutes an affirmative defense to an action brought for noncompliance with a technology-based emission limitation if the conditions of ~~(5)~~ (6) and ~~(6)~~ (7) below, are met.

(5)-(7) Same as proposed but are renumbered (6)-(8).

RULE XIII (16.8.2013) REQUIREMENTS FOR AIR QUALITY OPERATING PERMIT CONTENT RELATING TO THE OPERATIONAL FLEXIBILITY

(1) If requested by the applicant, the department shall issue an air quality operating permit that contains terms and conditions for reasonably anticipated operating scenarios identified by the source in its application as approved by the department. Such terms and conditions:

(a)-(b) Same as proposed.

(c) shall require the source to provide ~~for the~~ contemporaneous written notification ~~required in (RULE XVIII)(1)(e), which will state~~ when the source ~~will~~ shifts from one specified reasonably anticipated operating scenario to another such operating scenario; and

(d) Same as proposed.

(2)-(3) Same as proposed.

RULE XIV (16.8.2014) AIR QUALITY OPERATING PERMIT ISSUANCE, RENEWAL, REOPENING AND MODIFICATION (1) An air quality operating permit, permit modification, or permit renewal may be issued only if all of the following conditions have been met:

(a) the department has received a complete application for a permit, permit revision, or permit renewal (applications for permit renewal or revision need only address those portions of the source that have or are proposed to be changed per the requirements of [RULE V(3)(a)]);

(b)-(f) Same as proposed.

(2)-(11) Same as proposed.

(12) Expiration of an air quality operating permit terminates the source's right to operate unless a timely and administratively complete permit renewal application has been submitted consistent with [RULE XV] and [RULE V(2)(d)]. If a timely and administratively complete application has been submitted all

terms and conditions of the permit, including the application shield, remain in effect after the permit expires.

(13) The department shall provide a minimum of 30 days advance written notice to the holder of an air quality operating permit of the department's intent to revoke and reissue the permit or deny the permit renewal application. The notice of intent may not be appealed to the board. The department's final decision to revoke and reissue or deny renewal becomes effective and may be appealed to the board as provided for in [RULE VIII(j)]. The permit shield described in [RULE XII(1)] shall remain in affect during any appeal of the department's decision to deny renewal or revoke and reissue to the board until such time as the board renders its final decision. Nothing in this section shall limit the emergency powers of the department under the Montana Clean Air Act, Title 75, chapter 2, MCA.

RULE XV (16.8.2015) OPERATION WITHOUT AN AIR QUALITY OPERATING PERMIT AND APPLICATION SHIELD Same as proposed.

RULE XVI (16.8.2016) GENERAL AIR QUALITY OPERATING PERMITS (1) Same as proposed.

(2) The department may provide for a general permit based upon its own initiative or the application of a source within the source category. The department shall provide a notice and opportunity for public participation, consistent with [RULE XXIV]. Such procedures may be combined with the rulemaking process before the board ~~relating to~~ required for the adoption and incorporation by reference of ~~the~~ a general permit.

(3)-(11) Same as proposed.

RULE XVII (16.8.2017) TEMPORARY AIR QUALITY OPERATING PERMITS Same as proposed.

RULE XVIII (16.8.2018) ADDITIONAL REQUIREMENTS FOR OPERATIONAL FLEXIBILITY AND AIR QUALITY OPERATING PERMIT CHANGES THAT DO NOT REQUIRE REVISIONS (1) A source holding an air quality operating permit is authorized to make changes within a permitted facility as described in (3) and (4) below, providing the following conditions are met:

(a) the proposed changes do not require the source or ~~alteration~~ stack to obtain an air quality preconstruction permit under subchapter 11 of this chapter;

(b)-(e) Same as proposed.

(2)-(3) Same as proposed.

(4) Pursuant to the conditions in (1) and (2) above, and upon the request of the permit applicant, the department shall issue an air quality operating permit that contains terms and conditions, including all terms required under [RULES VIII-XI and XIII] to determine compliance, allowing for the trading of emissions increases and decreases at the source solely for the purpose of complying with a federally-enforceable emissions cap that is established in the permit independent of otherwise applicable requirements, providing the following conditions are met:

(a)-(e) Same as proposed.

(5) A source holding an air quality operating permit may make a change not specifically addressed or prohibited by the permit terms and conditions without requiring a permit revision, provided that the following conditions are met:

(a)-(c) Same as proposed.

(d) the source provides contemporaneous written notice to the department and the administrator of each change~~, except for changes that qualify as~~ that is above the level for insignificant emission units ~~under~~ as defined in [RULE II~~(21)~~ (22)] and [RULE VI(3)], and the written notice describes each such change, including the date of the change, any change in emissions, pollutants emitted, and any applicable requirement that would apply as a result of the change.

(6)-(7) Same as proposed.

RULE XIX (16.8.2019) ADDITIONAL REQUIREMENTS FOR AIR QUALITY OPERATING PERMIT AMENDMENTS (1) Same as proposed.

(2) If the administrative permit amendment involves a change in ownership or operational control of a source, the applicant must include in its request to the department a written agreement containing a specific date for the transfer of permit responsibility, coverage, and liability between the current and new permittee. Such an amendment shall be approved unless the department affirmatively demonstrates why such a change would violate an applicable requirement or jeopardize compliance with the terms and conditions of the operating permit.

(3) Same as proposed.

(4) The permit shield provided for in [RULE XII] shall extend to administrative permit amendments.

RULE XX (16.8.2020) ADDITIONAL REQUIREMENTS FOR MINOR AIR QUALITY OPERATING PERMIT MODIFICATIONS (1)-(11) Same as proposed.

(12) ~~Consistent~~ If the department makes a written determination that a particular modification or type of modification requires public notice, the department shall, consistant with [RULE XXIV], ~~the department shall~~ provide public notice of a change or changes proposed in a minor permit modification application pursuant to this rule, promptly on ~~receipt of the application~~ the making of the determination, and the department shall provide written notice to the source of the specific reason for such determination. It is the intention of this section that public notice for minor modifications shall not be required as a routine procedure.

RULE XXI (16.8.2021) ADDITIONAL REQUIREMENTS FOR SIGNIFICANT AIR QUALITY OPERATING PERMIT MODIFICATIONS (1) The modification procedures set forth in (3) below, must be used for any application requesting a significant modification of an air quality operating permit. Significant modifications include the following:

(a)-(b) Same as proposed.

(c) every significant relaxation of permit reporting or recordkeeping terms or conditions; or

(d) Same as proposed.

(2)-(4) Same as proposed.

RULE XXII (16.8.2022) ADDITIONAL REQUIREMENTS FOR AIR QUALITY OPERATING PERMIT REVOCATION, REOPENING AND REVISION FOR CAUSE (1) An air quality operating permit may be reopened and revised only under the following circumstances:

(a)-(c) Same as proposed.

(d) The administrator or the department determines that the permit must be revised or revoked and reissued to assure compliance with the applicable requirements.

(2)-(3) Same as proposed.

(4) The department shall provide a minimum of 90 days advance written notice to the holder of an air quality operating permit of the department's intent to reopen and revise the permit under (1) above. The department may, in the notice of intent, request such information as may be necessary to prepare the permit revision for inclusion in the permit after reopening. The notice of intent to reopen may not be appealed to the board. The department's final decision on reopening and revision becomes effective and may be appealed to the board as provided for in [RULE VIII(j)]. In an appeal of the department's final decision on reopening, the department shall be required to make a showing of substantial necessity. The permit shield described in [RULE XII(1)] shall remain in effect during any appeal of the department's decision to reopen to the board until such time as the board renders its final decision. Nothing in this section shall limit the emergency powers of the department under the Montana Clean Air Act, Title 75, chapter 2, MCA.

RULE XXIII (16.8.2023) NOTICE OF TERMINATION, MODIFICATION, OR REVOCATION AND REISSUANCE BY THE ADMINISTRATOR FOR CAUSE Same as proposed.

RULE XXIV (16.8.2024) PUBLIC PARTICIPATION (1) Except for permit changes not requiring revisions under [RULE XVIII], administrative permit amendments under [RULE XIX], ~~and~~ department review of activities to be conducted pursuant to general permits under [RULE XVI], and minor permit modifications where the department has not made a determination that public notice is required under [RULE XX(12)], all air quality operating permit proceedings, including initial permit issuance, minor ~~and~~ permit modifications where the department has made a determination that public notice is required under [RULE XX(12)], significant permit modifications, and renewals, shall provide adequate procedures for public notice, including an opportunity for both public comment and a hearing on the draft permit. These procedures shall include the following:

(a)-(d) Same as proposed.

(2)-(3) Same as proposed.

RULE XXV (16.8.2025) PERMIT REVIEW BY THE ADMINISTRATOR AND AFFECTED STATES (1) Same as proposed.

(2) An applicant shall provide a copy of each air quality

operating permit application and each minor or significant permit modification application (including the compliance plans) directly to the administrator. ~~Upon agreement with the administrator, the applicant may submit to the administrator a permit application summary form and any relevant portion of the permit application and compliance plan, in place of the complete application and compliance plan.~~ To the extent practicable, the information required under this subsection shall be provided in computer-readable format compatible with the administrator's national database management system.

(3)-(4) Same as proposed.

(5) The department shall, as part of the submittal of the proposed air quality operating permit to the administrator (or as soon as possible after the submittal for minor permit modification procedures allowed under [RULE XX(4) or (8)]) notify the administrator and any affected state in writing of any refusal by the department to accept all recommendations for the proposed permit submitted by the affected state during the public comment or affected state review period. The notice shall include the department's reasons for not accepting any such recommendation. The department is not required to accept recommendations that are not based on applicable requirements or the requirements of this subchapter. Those requirements designated as not being federally-_enforceable may not serve as the basis for such recommendations.

(6) No air quality operating permit for which an application must be transmitted to the administrator under (2) above, shall be issued if the administrator objects in writing to its issuance within 45 days of receipt of the proposed permit and all necessary supporting information. Objections by the administrator shall only be based on the grounds that the permit did not demonstrate or require compliance with applicable requirements or comply with the requirements of this subchapter. Those requirements designated as not being federally-_enforceable may not serve as the basis for such objections.

(7)-(10) Same as proposed.

(11) If the administrator objects to the air quality operating permit as a result of a petition filed under (9) above, the department shall not issue the permit until the administrator's objection has been resolved, except that a petition for review does not stay the effectiveness of a permit or its requirements if the permit was issued after the end of the 45-day review period and prior to the administrator's objection. If the department has issued a permit prior to receipt of the administrator's objection under this section, and the administrator modifies, terminates, or revokes and reissues the permit consistent with the procedures in [RULE XXIII], the department may thereafter issue only a revised permit that satisfies the administrator's objection. In any case, the source will not be in violation of the requirement to have submitted a timely and complete application. The permit shield described in [RULE XII(1)] shall remain in affect during any appeal of the administrator's objection until such time as a final action is taken.

(12) Same as proposed.

3. Comments were received from both the public, the department, and the Clean Air Act Advisory Committee; the comments and the board's responses follow:

Comment: The department and, in many cases, the Clean Air Act Advisory Committee, requested the following changes in the rules as proposed:

a. In new Rule II, the definition of "administrative permit amendment" should be expanded to include changes in monitoring or reporting requirements that the department deems to be no less stringent than current monitoring or reporting requirements; the definition of "applicable requirement" should be changed to clarify that requirements that have been promulgated or approved by the department or the administrator through rulemaking at the time of issuance of the air quality operating permit, but have future-effective compliance dates, are applicable requirements, provided that such requirements apply to sources covered under the operating permit; the definition of "emergency" should be clarified to read that an emergency does not include noncompliance to the extent caused by lack of "reasonable" preventative maintenance; the definition of "insignificant emissions unit" should be changed to raise the maximum emission limitation for an insignificant emissions unit from one ton per year to 15 tons per year; the definition of "insignificant emissions unit" should be clarified to state that fugitive sources associated with an emissions unit are to be quantified with that emissions unit and are not considered insignificant emission units; and, as a result of the application of the permit shield to non-federally enforceable requirements, a definition of non-federally enforceable requirements should be added that does not include the state ambient air quality standards.

b. New Rule IV should be changed to exempt non-major sources from the requirement to submit a permit application until such time as the EPA adopts specific rules for inclusion of non-major sources; to include non-federally enforceable requirements and requirements applicable to insignificant emissions units; to list non-federally enforceable requirements and requirements applicable to insignificant emissions units but not make them subject to all the requirements of the operating permit program; to require limited information submittal and extend the protection of the permit shield; to add language requiring the department to make a written informal applicability determination upon written request; and to require notification of the source 15 days prior to withdrawal of or any change in an informal applicability determination.

c. New Rule V should be changed to clarify that submittal of air quality preconstruction permits or modifications will not impede issuance of any pending air quality permit; that sources that receive final air quality preconstruction permits prior to their submittal of an operating permit application will be required to address any changes to their facility in that application; and that non-major sources are exempted from the requirement to obtain an air quality operating permit until such time as the EPA adopts rules for inclusion of non-major sources.

d. Language should be added to new Rule VI to require that emissions from insignificant emission units be included in emission inventories and be subject to assessment of permit fees; that emission inventories are to be calculated or estimated using accepted engineering methods including, but not limited to, use of appropriate emission factors, material balance calculations, or best engineering judgment or process knowledge; that the required submittal of plant safety rules be limited to general safety rules; and that the requirement for notification of any subsequent changes in the rules be removed.

e. The term "revoke" should be replaced by "revoke and reissue" wherever it appears because Title V of the FCAA currently requires reissuance of a more stringent permit whenever a permit is revoked.

f. In new Rule VIII, a provision should be added requiring the department to specify a time period of not less than 15 days for the permittee to furnish to the department any information that the department may request in writing to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit, or to determine compliance with the permit; and a statement should be added clarifying that the lack of a right to appeal to the board a permitting decision by the department made as the result of an objection by the administrator will not impair any separate right an applicant or the department may have under state or federal law to challenge an objection by the administrator.

g. The permit shield should be applied to non-federally enforceable requirements and, as a result, the section in new Rule IX that addresses the requirements for non-federally enforceable requirements should be reworded to consistently use the phrase "non-federally enforceable requirements" the statement concerning noncompliance with a permit term or condition that is a non-federally enforceable requirement should be changed so that such noncompliance will not, rather than may not, result in permit revocation and reissuance, termination, or denial of a permit renewal application; and the requirement to obtain an air quality operating permit should be clarified so that it may not be construed as providing a basis for establishing new emission limitations beyond those contained in the underlying applicable requirements.

h. In new Rule X, the requirement for a record describing changes made at the source that result in emissions of a regulated air pollutant subject to an applicable requirement but not otherwise regulated under the permit, as well as the emissions resulting from those changes, should be removed.

i. If the board accepted the previously requested limit of the required submittal of plant safety rules to general safety rules and removed the requirement for notification of any subsequent changes to the safety rules, a provision should be added to Rule XI requiring the source to inform an inspector of all applicable workplace safety rules or requirements at the time of an inspection, as well as a statement clarifying that this section does not limit in any manner the department's statutory right of entry and inspection as provided for in Section 75-2-403, MCA.

j. Language should be added to new Rule XII to apply the permit shield to non-federally enforceable requirements and to clarify that the permit shield remains in affect during the appeal of any permit action (renewal, revision, reopening, revocation or reissuance) to the Board until such time as the Board renders its final decision.

k. In new Rule XIII (c), the requirement for notification of shifts from one specified reasonably anticipated operating scenario to another should be clarified to require contemporaneous notification of such shifts.

l. In new Rule XIV, it should be clarified that an application for a permit renewal or revision need only address those portions of the source that have or are proposed to be changed, that the application shield applies if an administratively complete application has been submitted, and that the permit shield remains in affect during the appeal of any permit action (renewal, revision, reopening, revocation or reissuance) to the Board until such time as the Board renders its final decision.

m. In new Rule XVI, some minor language changes were suggested for the paragraph discussing public participation in the adoption of general permits.

n. In new Rule XVIII, in conformity with federal guidance, a minor language correction should be made to change "source or alteration" to "source or stack"; it should be clarified that a source need only provide contemporaneous written notice to the department and the administrator of each off-permit change that is above the level for insignificant emission units; and the information to be included in the notice (date of the change, any change in emissions, pollutants emitted, and any applicable requirement that would apply as a result of the change) should be specified.

o. Language should be added in new Rule XIX providing that an administrative permit amendment involving a change in ownership or operational control of a source will be approved unless the department affirmatively demonstrates why such a change would violate an applicable requirement or jeopardize compliance with the terms and conditions of the operating permit and applying the permit shield to administrative permit amendments.

p. Language should be added to new Rule XX providing that when the department makes a written determination that a particular modification or type of modification requires public notice, it must provide to the source the specific reason for such determination, and indicating that it is the intention of this section that public notice for minor modifications will not be required as a routine procedure.

q. In new Rule XXI, it should be clarified that only a significant relaxation of permit reporting or recordkeeping terms or conditions would constitute a significant modification.

r. In new Rule XXII, language should be added stating that in an appeal of the department's final decision on reopening, the department will be required to make a showing of substantial necessity and that the permit shield shall remain in affect during any appeal of the department's decision to reopen to the Board until such time as the Board renders its final decision.

s. Language should be added to new Rule XXIV providing that public notice will only be required for minor modifications when the department makes a written determination that a particular modification or type of modification requires it.

t. In new Rule XXIV, it should be clarified that applicants shall provide a copy of each minor or significant permit modification application (including the compliance plans) directly to the administrator; a provision to allow the applicant to submit a permit application summary form should be removed; and language should be added providing that the permit shield will remain in affect during any appeal of the administrator's objection until such time as a final action is taken.

Response: The board made all of the requested changes.

Comment: In Rule II(22)(a), the request by industry and, ultimately, the department to define an "insignificant emissions unit" as having a potential to emit of less than 15 tons, instead of one ton, per year of pollutant should be rejected as unwarranted and unnecessary.

Response: The board retained the change to 15 tons because the department has discussed the appropriate cut-off level for "insignificant emission units" extensively, both internally and with the Clean Air Advisory Committee, there have been several proposals for defining "insignificant emission units" ranging from one ton to 25 tons, and, while any numerical cut-off is going to be arbitrary, there being no magic number defining significance or insignificance, if emission inventory information was required of all emission units, then a 15 ton cut-off for "insignificant emission units" would give the department sufficient information on all significant emission units.

Comment: In regard to Rule V(c)(i-iii), a commenter was troubled that a facility can obtain a pre-construction permit prior to receiving an operating permit, since it could be politically difficult for the Air Quality Bureau to deny or request needed changes to a faulty operating permit application from a facility that has already incurred considerable expenses and made substantial progress from activities already approved by the Bureau in the granted pre-construction permit. Under these circumstances, it could be very difficult for the Bureau to hold up the next steps in spite of valid deficiencies in a faulty operating permit application. While the official laws and regulations seem to distinctly separate the decisions made for different permit applications, the troubling scenario discussed above is political reality.

Response: No change was made because the board does not believe that it would be of any benefit to the public to require that a new or altered source postpone construction until issuance of the operating permit. The operating permit lists applicable requirements imposed by other programs (PSD, NSR, NSPS, NESHAPS) including those from the state preconstruction permit. The precon-

struction permit analysis must still be completed prior to construction and will include all relevant analyses, including imposition of best available control technology (BACT) and appropriate emission limitations. The operating permit will not impose any new substantive requirements that would affect the construction of a source.

Comment: In Rule VIII(2)(a), the phrase "continuing and substantial violations" is unclear in its meaning and is too subjective. Without clarification, any enforcement action taken for "continuing and substantial violation" could easily be challenged by the offending industry, especially in a court of law. For this reason, this language should be deleted from the proposed rules.

Response: The board does not believe that requiring "continuing and substantial violations" for termination of an operating permit will limit the department's enforcement capability. The department has many other enforcement options that would be considered prior to permit termination. By the time that the department pursues permit termination, the violations would be clearly "continuing and substantial."

Comment: In regard to provisions throughout the rules regarding permit terms and conditions that are enforceable only by the state, it is not apparent why state-enforceable terms and conditions are exempted from some of the rules. If the department includes state-enforceable terms and conditions in the operating permit program, which they have the right and latitude to do, state-only enforceable permit terms and conditions should be given the same strength and enforcement coverage as the federally-enforceable rules throughout the state's operating permit program.

Response: The federal operating permit rule does not require inclusion of non-federally enforceable requirements. However, the board believes that it would be helpful to both the source and the department if all relevant requirements for each source (excluding the state ambient standards) were identified in a single document. The operating permit program will differentiate between federally enforceable "applicable requirements" and non-federally enforceable requirements, particularly in the amount of information that is required in relation to the source's compliance status in regard to each requirement. "Applicable requirements" are subject to all the requirements of the operating permit program, require substantial information submittal, must be certified as in compliance under the threat of law, and are protected by the permit shield. "State-only requirements" will only be listed and are not subject to the extensive information submittal and compliance certification requirements, but will still be protected under the permit shield.

Granting the "permit shield" to the state ambient standards would create severe difficulties. This is, in the opinion of the department, why the federal operating permit program does not in-

clude federal ambient air quality standards in the applicable requirements and why the department has chosen to recommend exclusion of the state ambient standards from the operating permit program. This, by no means, limits or affects the department's ability to enforce the state ambient standards.

Comment: Regarding Rule XV, new sources should not operate until their operating permit application has been approved.

Response: The comment was not accepted because the inclusion of an "application shield" (the ability to operate without a permit if a timely and complete application has been submitted) is a requirement of the federal operating permit rule (70.7(b)).

Comment: Regarding Rule VIII(2)(a), unless it is clearly stated in the federal rules that 502(b)(10) changes shall not result in a permit change, the board should not require permits to be modified to reflect such changes.

Response: The definition of Section 502(b)(10) changes is the same as in the federal rule, and the federal rule requires the allowance of Section 502(b)(10) changes without a permit revision.

Comment: There is some confusion as to the definition of volatile organic compounds (VOCs). The VOC definition should be shown somewhere within the existing Montana air quality rules or in the proposed rules. To be consistent with the federal definition of VOCs, it should be noted that methane, ethane, and other listed hydrocarbons are specifically excluded from the definition of VOCs [see 40 CFR 42.24(f)(18)].

Response: The definition of VOCs for this subchapter is the same as the definition of VOCs in the corresponding federal rules, so no change was made.

Comment: After the adoption of the new rules, will the Air Quality Bureau sponsor workshops that will give owners/operators guidance on questions, permitting requirements, filling out permit applications, and time-frames for permit submission?

Response: After adoption of the operating permit rule the Air Quality Bureau and the State Small Business Representative will be working in concert to answer any questions sources may have about the operating program and help sources comply with all applicable rules and requirements.

Comment: Will current Montana air quality permits be automatically converted to the operating permits under the Title V requirements with no additional submission of information on the part of the owner/operator?

Response: Due to the additional information requirements of the operating permit program, all existing sources required to obtain

operating permits will need to submit new operating permit applications. One-third of the existing sources will be required to submit applications by approximately November, 1994, while the remaining two-thirds must submit applications by November, 1995. The first one-third will be chosen on a equitable basis.

RAYMOND W. GUSTAFSON, Chairman
BOARD OF HEALTH AND
ENVIRONMENTAL SCIENCES

by _____
ROBERT J. ROBINSON, Director

Certified to the Secretary of State November 29, 1993 .

Reviewed by:

_____
Eleanor Parker, DHES Attorney

BEFORE THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES
OF THE STATE OF MONTANA

In the matter of the amendment of rules 16.44.102, 114, 118, 202, 303, and 304 dealing with hazardous waste management.	NOTICE OF AMENDMENT OF RULES (Hazardous Waste)

To: All Interested Persons

1. On October 24, 1993, the department published notice of the proposed amendment of the above-captioned rules at page 2330 of the 1993 Montana Administrative Register, issue number 19.

2. The department amended the rules as proposed with no changes.

3. No comments were received.

ROBERT J. ROBINSON, Director

Certified to the Secretary of State November 29, 1993.

Reviewed by:

Eleanor Parker, DHES Attorney

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the adoption, amendment and repeal of Rules of the fire prevention and investigation bureau describing the revision of licensure requirements for persons selling, installing or servicing fire protection equipment and other provisions dealing with fire safety	NOTICE OF ADOPTION, AMENDMENT AND REPEAL OF RULES

TO: All Interested Persons:

1. On August 12, 1993, the Department published a notice of a public hearing to consider the adoption of rules I through VI, the amendment of ARM 23.7.105, 23.7.121, 23.7.122, 23.7.123, 23.7.124, 23.7.125, 23.7.131, 23.7.132, 23.7.133, 23.7.134, 23.7.135, 23.7.136, 23.7.141, 23.7.153, 23.7.154, 23.7.159, 23.7.160 and the repeal of ARM 23.7.142, 23.7.151, 23.7.152 at pages 1855-1869 of the 1993 Montana Administrative Register, issue number 15.

2. The Department has repealed ARM 23.7.142, 23.7.151, 23.7.152 as proposed. The Department has also repealed ARM 23.7.141, consolidating the provisions with ARM 23.7.121.

3. The Department has adopted the following rules with some editorial changes but substantially as proposed, or with one correction. Section 50-3-107, MCA was cited as authority. The corrected cite is 50-39-107, MCA.

RULE II (23.7.126) INSPECTION OF APPLICANT FACILITY
RULE III (23.7.127) PROOF OF INSURANCE
RULE V (23.7.129) TRANSFER OF OWNERSHIP PROHIBITED
23.7.123 DUPLICATE LICENSE OR ENDORSEMENT
23.7.124 DENIAL OF LICENSE OR ENDORSEMENT
23.7.125 INVESTIGATION AND/OR INSPECTION OF IMPROPER INSTALLATION OR SERVICE
23.7.132 LICENSE, ENDORSEMENT AND PROCESSING FEE
23.7.134 ENDORSEMENT
23.7.135 DUTY TO REPORT NAME OR ADDRESS CHANGE
23.7.136 HOLDER NOT ENTITLED TO RIGHT OF ENTRY
23.7.141 WHO MUST OBTAIN A LICENSE
23.7.154 SERVICE TAGS
23.7.159 RENEWAL OF LICENSE OR ENDORSEMENT
23.7.160 RULES RELATING TO THE BUILDING CODE

4. The Department thoroughly considered all oral and written comments. The Department has adopted the following rules as proposed with the following changes:

RULE I (23.7.113 DEFINITIONS) Unless the context requires otherwise, the following definitions apply to [the rules in Title 23, chapter 7, ARM]: (1) "Apprentice" is a person new to

the entity or position in a training capacity, for the service or installation of fire alarm systems, special agent fire suppression systems, or fire extinguishing systems and who is studying in accordance with an apprentice program approved by the department in conjunction with the department of labor and industry, or who ~~holds~~ submits a copy of the National Institute for Certification in Engineering Technologies (NICET) notification letter confirming the applicant's successful completion of the examination elements for level I for the relevant system or systems for which apprenticeship is sought~~certification~~ and is studying for level II testing for the relevant system or systems.

(2) through (13) same as proposed.

(14) "Fire extinguishing system" means a fire sprinkler system designed in accordance with nationally recognized standards that consists of an assembly of piping or conduits that conveys water, foam or air with or without other agents to dispersal openings or devices to extinguish, control or contain fire and to provide protection from exposure to fire or the products of combustion. Included are underground and overhead piping, ponds, tanks, pumps, extra or special hazard applications and other related components or devices necessary for water supplies.

(15) "Fire protection equipment" means the components of any fire alarm system, special agent fire suppression system, or fire extinguishing system ~~or related components~~.

(16) same as proposed.

(17) "Inspection" as used in ARM 23.7.121(5)(a) means a visual check that ~~an extinguisher~~fire protection equipment is available and will operate. It is intended to give reasonable assurance that the ~~extinguisher~~fire protection equipment is fully charged and operable. This is done by seeing that it is in its designated place, that it has not been actuated or tampered with, and that there is no obvious physical damage or condition to prevent operation.

(18) through (22) Same as proposed.

(23) "Sell", sale and associated words mean offering or contracting to transfer, lease, or rent any merchandise, equipment, or service at retail to the public or any member thereof for an agreed sum of money or other consideration.

AUTH: 50-3-102, 50-39-107, MCA; IMP: 50-3-102, MCA

COMMENT: A number of individuals expressed concern over a federal court decision which interprets ERISA as requiring states to recognize apprenticeship programs approved by the Bureau of Apprenticeship and Training of the U.S. Department of Labor. These individuals requested that language be included to reflect the federal court's decision. Another individual requested further clarification of what programs would be "approved by the department."

RESPONSE: It appears that ERISA's requirements with respect to apprenticeship programs have been interpreted differently throughout the jurisdictions and may be subject to federal legislative change. Because the law is not clear in this area,

exempted from the requirements of the rules. There were also comments received from persons who opposed these proposals.

RESPONSE: The department added a definition of "sell", which specifies that only retail sales are covered by the rules. Persons who engage in preliminary sales discussions, however, are not exempted under this definition insofar as those persons engage in "offering or contracting" the systems covered by these rules. The department recognizes the importance of requiring these persons to be knowledgeable about the systems they are retailing to the public. Nonetheless, the department does not intend that each staff person of a licensed entity who is responsible for taking orders for system components in the course of their retail business be individually endorsed. The endorsement requirements refer specifically to the sale of "systems," so that persons contracting for replacement parts, for example, need not be endorsed if they are not otherwise engaged in selling as defined herein.

COMMENT: One individual wrote that it may not be possible to keep systems in service at all times, and that this requirement in (24)(a) could unfairly liable a contractor should the system be down for maintenance, repair or waiting for parts.

RESPONSE: The department recognizes there may be times when a system might be inoperative but there should be no unnecessary delay in restoring the system. Sections 14.110 and 25.117 of the Uniform Fire Code provide for standby personnel to be employed to keep watch for fires until the system is restored. This assures that a system is operative at all times. The language will remain the same.

RULE IV (23.7.128) CONTINUING EDUCATION (1) through (3)(a) same as proposed.

(b) ~~accreditation and refresher~~ courses in specialized programs approved by the department.

(4) Continuing education may also be obtained by correspondence course work ~~through NICET, fire protection equipment manufacturers or industry trade associations~~ approved by the department.

(5) same as proposed

AUTH: 50-3-102, 50-39-107, MCA; IMP: 50-39-102, MCA

COMMENT: Several comments suggested that 15 hours annual continued education were more than needed to keep up with current industry products and codes and that this requirement is cost prohibitive. Both eight and four hours was suggested as more appropriate continued education requirements.

RESPONSE: The department agreed that 8 hours annual continued education will provide adequate training to keep abreast of current industry products and codes. Products and codes change considerably through the year, however, 4 hours is not sufficient to assure continued education is received. 15 hours was amended to 8.

COMMENT: One individual noted that NICET does not offer correspondence course work.

RESPONSE: The reference to NICET in (4) has been deleted.

COMMENT: One individual suggested that the department recognize correspondence work approved by the Bureau of Apprenticeship and Training of the U.S. Department of Labor.

RESPONSE: The Department wishes to retain the discretion to approve correspondence work on a case-by-case basis.

COMMENT: Several persons requested clarification of the process for approving continued education.

RESPONSE: The department will make available a list of approved programs which will fulfill the continued education requirements, to be distributed to all endorsees. Any program not listed must be approved for credit by the Department prior to attendance. The department generalized and clarified (3)(a) by deleting "accreditation and refresher".

~~RULE VI NICET LEVEL III PLANS APPROVAL AUTHORIZATION~~

~~(1) A registered professional electrical engineer, mechanical engineer, fire protection engineer or senior engineering technician having NICET level III certification in fire protection engineering technology may certify plans for fire alarm systems, special agent fire suppression systems or fire extinguishing systems.~~

~~(2) The person may be on staff at an entity licensed in accordance with these rules.~~

~~(3) A person holding NICET level II and who is studying in accordance with NICET level III may certify plans for fire alarm systems, special agent fire suppression systems or fire extinguishing systems for a maximum of one year. The person shall submit NICET level III certification to the department to continue plans certification.~~

~~AUTH: 50-3-102, MCA; IMP: 50-3-102, MCA~~

COMMENT: Numerous comments were received regarding RULE VI. Most notably, John MacMaster, Administrative Code Committee attorney, questioned its legality: "[T]he proposed rule allows one who is not an engineer to certify system plans, and the law relating to the licensing and regulation of engineers appears to forbid this", referring to 37-67-101(5), MCA. "Certifying plans for fire systems appears to fall within this definition. If so, a certifier must, under section 37-67-301, MCA, be a licensed engineer and proposed rule VI appears to conflict with the engineer licensing and regulation law and may be invalid." The Board of Professional Engineers and Land Surveyors submitted similar comments.

RESPONSE: The department deleted this proposed rule.

23.7.105 ADOPTION OF UNIFORM FIRE CODE ~~AND DEFINITIONS~~

(1) The fire prevention and investigation bureau hereby adopts and incorporates by reference the Uniform Fire Code,

International Conference of Building Officials, 1991 edition, and the 1991 edition of the UFC Standards. Copies of the Uniform Fire Code and related materials may be obtained from the International Conference of Building Officials, 5360 South Workman Mill Road, Whittier, California 90601, or ~~from the Building Codes Bureau of the State of Montana Department of Commerce, 1218 East Sixth Avenue, Helena, Montana 59620. Information is available upon request~~ from the Fire Prevention and Investigation Bureau, Department of Justice, 303 North Roberts, Helena MT 59620.

(2) same as proposed.

(3) The fire prevention and investigation bureau does not adopt Articles 4 and 78 of the Uniform Fire Code ~~and does not adopt the following appendices: II-C (Marinas), II-D (Rifle Ranges).~~

(4) same as proposed.

AUTH: 50-3-102, 50-61-102, MCA; IMP: 50-3-102, 50-61-102, MCA

COMMENT: The Building Codes Bureau Chief requested that the Bureau be removed as a source of purchase of the Uniform Fire Code due to budget constraints.

RESPONSE: The department has removed the language that identifies the Building Codes Bureau is a source of purchase of the Uniform Fire Code.

COMMENT: One individual objected to any reference or adoption of the Uniform Fire Code and related appendices, arguing that the Department has no authority to adopt the same under its enabling legislation.

RESPONSE: Adoption of the Uniform Fire Code and related appendices occurred in a previous notice, which became effective in 1991. The present version of this rule simply clarifies language and deletes all definitions, which are now contained in a separate rule, 23.7.113.

23.7.121 WHO MUST OBTAIN A LICENSE; APPLICATION ~~FOR LICENSE~~ PROCEDURE (1) Except as provided in subsection (5), a ~~person or~~ business entity or self-employed person ~~shall obtain a license from the department before engaging~~ engaged in the business of servicing fire extinguishers or selling, leasing, servicing, or installing fire alarm systems, special agent fire suppression systems, or fire extinguishing systems must obtain a license before engaging in those activities. ~~and shall be licensed before participating in contract bidding~~. Applications must also be accompanied by any required application fee.

(2) through (5)(a) remain the same.

(b) A licensed electrical contractor who subcontracts to install ~~fire protection equipment that includes specifically~~ smoke detection and fire alarm equipment pursuant to building specifications is exempt from obtaining a license or endorsement under this chapter, provided the installation is inspected and approved by a person endorsed to service or install the fire protection equipment.

(c) An owner or occupant of a single family residence performing installation of fire protection equipment, as long as the authority having jurisdiction approves the installation.

(6) remains the same.

AUTH: 50-3-102, 50-39-107, MCA; IMP: 50-39-101 through 105, MCA

COMMENT: One individual asked that the requirement that a person or entity be licensed before participating in contract bidding be removed because it may restrict out of state companies from participating in competitive bidding on large projects.

RESPONSE: The department agreed and deleted this requirement.

COMMENT: One individual wrote that the phrase "fire protection equipment" should be deleted from (b) because it encompasses more than fire alarm and smoke detection equipment. Another pointed out that "fire protection equipment" implies that a license is required, and recommended that language be included to exempt single station smoke and heat detectors.

RESPONSE: The language is amended to specify that only fire alarm and smoke detection equipment are covered by (6). The definition of "fire alarm system" excludes single station smoke and heat detectors, so that no exemption for these items is necessary.

COMMENT: Several persons suggested that the Department recognize licenses and endorsements issued by other states as a matter of reciprocity. One person commented that no one should be required to retake a NICET examination for endorsement just because they move to Montana.

RESPONSE: The licensing and endorsement process varies greatly among states. Consistency assures that all entities and endorsees are considered equally. In order to maintain this consistency, the department will not include language to allow reciprocity. It should be noted that NICET is a nationally recognized program whose testing results will be recognized in Montana, regardless of residence.

COMMENT: One individual recommended that owners and occupants of single family residences be allowed to install a fire extinguishing system without being licensed or endorsed.

RESPONSE: The department agreed and included appropriate exemption language in ARM 23.7.121 and 23.7.131.

COMMENT: As a result of several written comments, the department combined ARM 23.7.121 and 23.7.141. Licensing requirements are now contained in one rule.

23.7.122 SUSPENSION OR REVOCATION OF LICENSE OR ENDORSEMENT

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

(e) Serviced, and failed to provide written notification to the owner, and the authority having jurisdiction ~~and the~~

~~department~~ of any deficiencies found in the fire protection equipment;

(f) through (4) remain the same.

AUTH: 50-3-102, 50-3~~9~~-107, MCA; IMP: 50-3-102, 50-39-101 through 105, MCA

COMMENT: One individual questioned the necessity of notifying both the authority having jurisdiction and the Department.

RESPONSE: The department agreed it is not necessary to notify both parties and amended the language to require only the property owner and the authority having jurisdiction be notified.

COMMENT: One individual questioned the type of notification required.

RESPONSE: The Department amended the rule to require that notification be in writing.

23.7.131 WHO MUST OBTAIN AN ENDORSEMENT (1) through (2)(c) remain the same.

(d) An owner or occupant of a single family residence performing installation of fire protection equipment as long as the authority having jurisdiction approves the installation.

(3) ~~(a)~~An apprenticeship program ~~shall be registered with the department and in good standing in an apprentice program approved by the department~~ must assure that ~~and may serve in that capacity until a~~the person completes the program in~~but~~ no longer than:

(~~a~~i) four years for the service or installation of fire alarm systems;

(~~b~~ii) two years for the service or installation of special agent fire suppression systems;

(~~c~~iii) five~~four~~ years for the service or installation of fire extinguishing systems~~, or~~;.

~~(d) studying in accordance with NICET level II certification requirements that are applicable for the endorsement requirements.~~

(4) An apprentice will be registered and issued a card each year while in good standing that indicates the individual is in a training position and shall not install, inspect, recharge, repair, service or test fire protection equipment without the direct and immediate supervision of a person endorsed by the department.

(5) An apprentice shall obtain an endorsement within ninety~~thirty~~ days after completion of the apprentice program.

AUTH: 50-3-102, 50-3~~9~~-107, MCA; IMP: 50-3-102, 50-39-101 through 105, MCA

COMMENT: One comment proposed to delete "so long as the person" and replace with "who", in (2)(b), to clarify that an individual who is studying for NICET level II testing is also required to perform installation or service under the immediate personal supervision of a person holding an endorsement.

RESPONSE: The department determines that the present language accomplishes this better than the proposed language.

COMMENT: One comment pointed out that this rule is inconsistent with the definition of apprentice. Under the definition, an apprenticeship program must be approved or the apprentice must have passed NICET level I and be studying for level II. When the employer opts for NICET certification, there is no program to be approved. This rule talks about approving an apprenticeship program in all instances. The commenter suggested the language be changed to conform with the definition.

RESPONSE: The department agreed and amended the language to conform with the definition.

COMMENT: One comment was received explaining that the Bureau of Apprenticeship and Training of the U.S. Department of Labor apprenticeship program for fire extinguishing systems was five years and suggested changing the proposed four years to five to conform with federal requirements.

RESPONSE: The department amended the language to conform with the federal requirements.

COMMENT: One comment requested ninety days, as opposed to thirty days, for an apprentice to obtain an endorsement. The comment also suggested that proof of certification be required.

RESPONSE: The department agreed that thirty days may not be adequate time to receive documentation of completion and amended the language to reflect ninety days. The rule presently requires that copies of certification be provided, so that no further proof of certification is necessary.

COMMENT: Two health care facilities requested an exemption for those facilities to provide routine maintenance and service to all fire protection equipment, stating that they were more regulated than private business.

RESPONSE: Injury or loss of life due to fire is more likely in facilities such as a hospital where individuals are physically or mentally unable to remove themselves quickly should fire protection equipment fail to operate correctly. It is therefore critical that the hospital retain maintenance personnel who are properly trained to maintain, service, and install these systems. Hospitals and other facilities can meet this requirement by ensuring that at least one maintenance person on every shift be endorsed, and that only the endorsee be allowed to service and maintain the system(s).

COMMENT: Several persons requested exemptions for mechanics working under the supervision of an endorsed foreman, stating that undue financial hardship would result if all mechanics had to be endorsed or qualify as "apprentices."

RESPONSE: The Legislature has required that "[e]ach individual, except an apprentice, employed by the licensee to perform services under the license must obtain from the

department an endorsement to sell, service, or install[.]" MCA § 50-39-101. The department has no authority to create an exception for a mechanic who is employed by a licensee, unless the mechanic qualifies as an "apprentice."

23.7.133 EXAMINATION FOR ENDORSEMENT (1) The department shall issue an endorsement for pre-engineered fire alarm systems, special fire agent suppression systems or fire extinguishing systems to an individual who submits satisfactory documentation that the applicant holds current certification approved by the department or who submits a copy of NICET's notification letter confirming the applicant's successful completion of the examination elements for level II for the relevant system or systems for which endorsement is sought ~~holds NICET level II certification, is knowledgeable of current laws and rules~~ and who pays the required fee.

(2) The department shall issue an endorsement for non pre-engineered fire alarm systems, special fire agent suppression systems or fire extinguishing systems to an individual who submits a copy of NICET's notification letter confirming the applicant's successful completion of the examination elements for level II for the relevant system or systems for which endorsement is sought ~~currently holds NICET level II certification~~, or has successfully completed an approved apprenticeship program, or is a licensed engineer, ~~is knowledgeable of current laws and rules~~ and who pays the required fee.

(3) Individuals applying for any endorsement described herein may be issued a provisional endorsement. The provisional endorsement will expire on December 31, 1994. At the time of renewal, the applicant must submit appropriate documentation verifying that the applicant qualifies for endorsement.

AUTH: 50-3-102, 50-39-107, MCA; IMP: 50-3-102, 50-39-101 through 105, MCA

COMMENT: Several persons criticized any reference to NICET level II certification, pointing out that the enabling legislation contemplated examination only, not certification, as a means for determining a person's qualifications.

RESPONSE: The department amended the language to refer to NICET element examination as opposed to NICET certification.

COMMENT: Several comments suggested better clarification between NICET level II examination required for endorsement and the apprenticeship program, stating that it was not clear whether both were required for endorsement.

RESPONSE: The department has clarified the language to reflect that either NICET level II examination or successful completion of an approved apprenticeship program will suffice for endorsement.

COMMENT: One person recommended that an apprentice be required to work a minimum of five years before installing fire extinguishing systems.

RESPONSE: The apprenticeship program provides two, four and five years, depending on the program, for an apprentice to acquire the necessary skills and abilities to become proficient. The department concludes that these time periods adequately ensure proper training for apprentices in each respective area.

COMMENT: One individual stated that the NICET requirement should not apply to pre-engineered systems as there is no design or engineering involved in the pre-engineered systems.

RESPONSE: The department supports NICET testing to verify that an individual is qualified to service and install pre-engineered systems, not to design or engineer the system.

COMMENT: One individual requested that language be included to address small companies, and that better regulated entities servicing fire extinguishers.

RESPONSE: If a company is engaged in the type of business for which a license or endorsement is required, the rules herein apply regardless of the company's size. Original proposed legislation contained language that regulated training requirements for entities servicing fire extinguishers, but industry lobbying efforts successfully deleted it from the proposal.

COMMENT: Comments were received suggesting a one year provisional license and endorsement be issued to allow for the transition period for any endorsement described in 23.7.133 for individuals that have not completed the NICET examination.

RESPONSE: The Department agreed and added subsection (3).

COMMENT: One person wanted to know how the department would verify that an applicant is "knowledgeable of current laws and rules."

RESPONSE: Since ignorance of the law is no excuse, the department will presume that a person who qualifies for endorsement is knowledgeable of the current laws and rules herein. The reference to "knowledgeable of current laws and rules" is deleted.

~~23.7.141 WHO MUST OBTAIN A LICENSE (1) A business entity or self-employed person engaged in the business of servicing fire extinguishers, selling, leasing, servicing or installing fire alarm systems, special agent fire suppression systems or fire extinguishing systems fire protection equipment must obtain a license.~~

~~AUTH: 50-3-102, MCA; IMP: 50-3-102, MCA~~

23.7.143 APPROVAL OF EQUIPMENT (1) ~~A licensed entity or endorsed person may not sell, lease, install or service f~~ Fire protection equipment or component parts that actuate or control fire protection equipment, which are sold, leased, installed, or serviced under these provisions, must be ~~unless the equipment has been~~ labeled or listed ~~by Underwriters Laboratories, Inc., Underwriters Laboratory of Canada, Factory Mutual Laboratories~~

~~or other~~ in accordance with nationally recognized testing laboratories approved by the department.

(2)(a) through (f) remain the same.

(g) a copy of the most recently adopted edition of the Uniform Fire Code Standards ~~and applicable National Fire Protection Association standards~~, and;

(h) remains the same.

AUTH: 50-3-102, MCA; IMP: 50-3-102, MCA

COMMENT: One individual pointed out that not all component parts are required to be listed material.

RESPONSE: The rule was amended to reflect that only those component parts or equipment which are required to be labeled or listed by Underwriters Laboratories, Inc., Underwriters Laboratory of Canada, Factory Mutual Laboratories, or other nationally recognized testing laboratories, need to be labeled or listed accordingly.

COMMENT: One individual suggested that either the Uniform Fire Code or the National Fire Protection Association Standard be required under this rule.

RESPONSE: The Uniform Fire Code Standards contain the most appropriate standards because Montana has adopted the Uniform Fire Code. The language will remain the same.

GENERAL COMMENTS

COMMENT: One individual suggested that sprinkler fitters are a separate industry craft that should be treated and classified separately. Another individual expressed similar concern with respect to each individual system and task pertaining to that system, and asked that each system and task be regulated separately.

RESPONSE: The department considered separate regulation as an option, but chose a broad but comprehensive regulatory scheme instead.

COMMENT: One individual, referring to entities which service fire extinguishers, opposed the regulations that require training and impose fees, and wanted to know why hardware stores did not have to comply with the Rules.

RESPONSE: Entities that service fire extinguishers are not required to have training. The fees are set by statute, and hardware stores that do not service fire extinguishers are not obligated to comply with the Rules.

COMMENT: One fire department individual commented that the $200 license fee will impede their ability to stock, install and service fire extinguishers and that fire departments should be exempted as a non-profit entity for providing a public service.

RESPONSE: 50-39-101, MCA requires all persons or entities that engage in the business of servicing fire extinguishers to obtain a license. The department supports the private sector's

right to compete with similar groups, and does not want to give one sector an unfair competitive advantage through these rules.

COMMENT: One individual stated he was against fees going into the general fund.
RESPONSE: 50-39-106, MCA provides for a special revenue fund that is credited to the Department for administrative purposes.

COMMENT: One individual suggested that the department be required to inspect a facility.
RESPONSE: The department intends to inspect as many facilities as feasibly possible considering the number of staff and time available. Requiring inspection when it may not always be possible is illogical and may subject the department to potential liability. The language will remain the same.

COMMENT: Two individuals wrote that $1,000,000 commercial general liability insurance for entities engaging in the business of selling, servicing or installing fire alarm systems, special agent fire suppression systems or fire extinguisher systems was excessive and above that generally required in other states. They felt that it would be difficult for newer companies to obtain the insurance and suggested it be replaced with $500,000.
RESPONSE: The department contacted several states that require general liability insurance for entities selling, servicing or installing fire protection equipment, thoroughly studied and selected an average coverage fee from the information and submitted the rule to the Insurance Department of the State Auditor's office for review and comment. The Insurance Department staff approved the amounts and language as applicable for the kinds of services provided. The language will remain the same.

COMMENT: One individual wrote to oppose the amount of the license fee.
RESPONSE: The license fee was adopted under 50-39-105, MCA. The language will remain the same.

5. The adoption of these rules is necessary to implement Chapter 396, Laws of 1993, which revises licensing requirements for persons and entities engaging in the business of selling, servicing, or installing certain fire protection equipment. The rules clarify and refine licensing requirements in accordance with the law and will carry into effect the purpose of the new law to protect life and property from uncontrolled fire due to deficient fire protection systems.

BY: _____ _____
JOE MAZUREK, Attorney General Rule Reviewer

Certified to the Secretary of State Nov. 29, 1993

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

In the Matter of Amendment of a Rule to Remove Reference to Class E Motor Carrier and Repeal of Rules Pertaining to Class E Motor Carriers.	))))	NOTICE OF AMENDMENT TO RULE 38.3.702 AND REPEAL OF RULES 38.3.1401 THROUGH 38.3.1420

TO: All Interested Persons

1. On October 14, 1993 the Department of Public Service Regulation published notice of the proposals identified in the above titles at pages 2370 through 2372, issue number 19 of the 1993 Montana Administrative Register.

2. The Commission has amended 38.3.702, as proposed, and repealed 38.3.1401 through 38.4.1420, found at pages 38-192.1 through 38-192.14 of the Administrative Rules of Montana, as proposed.

3. No written or oral comments to the proposals were received.

4. The authority of the agency to amend and repeal the rules as proposed and the statutes being implemented are set forth in the notice of proposed action identified in paragraph 1.

/s/ Bob Rowe
Bob Rowe, Vice Chairman

CERTIFIED TO THE SECRETARY OF STATE NOVEMBER 29, 1993.

/s/ Ron McKay
Reviewed By

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT of ARM 42.19.401 relating to Low Income Property Tax Reduction	NOTICE OF THE AMENDMENT of ARM 42.19.401 relating to Low Income Property Tax Reduction

TO: All Interested Persons:

1. On October 14, 1993, the Department published notice of the proposed amendment of ARM 42.19.401 relating to low income property tax reduction at page 2398 of the 1993 Montana Administrative Register, issue no. 19.

2. No public comments were received regarding the amendments as proposed.

3. Therefore, the Department has adopted the rule as proposed.

CLEO ANDERSON
Rule Reviewer

MICK ROBINSON
Director of Revenue

Certified to Secretary of State November 29, 1993.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION of NEW RULE I (ARM 42.19.502) and II (ARM 42.19.506) relating to Exemptions Involving Ownership and Use Tests for Property	NOTICE OF THE ADOPTION of NEW RULE I (ARM 42.19.502) and II (ARM 42.19.506) relating to Exemptions Involving Ownership and Use Tests for Property

TO: All Interested Persons:

1. On September 30, 1993, the Department published notice of the proposed adoption of New Rule I (ARM 42.19.502) and II (ARM 42.19.506) relating to exemptions involving ownership and use tests for property at page 2212 of the 1993 Montana Administrative Register, issue no. 18.

2. The Department received written comments from The Confederated Salish and Kootenai Tribes of the Flathead Nation and Monteau & Guenther, P.C., representing the Chippewa Cree Tribe. Those comments are summarized as follows along with the responses of the Department:

COMMENT: Where the ownership percentage is indicated, the rule does not explicitly provide that the Department will allocate accordingly. This should be clarified.

RESPONSE: The Department is amending New Rule I (ARM 42.19.502) to clarify this issue.

COMMENT: The rule should allow tribal members to indicate their ownership interest by affidavit or letter.

RESPONSE: This question has been addressed by the new subsection (1)(d) as indicated in the response to the first comment above.

COMMENT: The Department should not rely exclusively on loan documents or security documents to determine ownership.

RESPONSE: The Department does not intend, nor does the rule provide, for exclusive reliance of loan documents or security documents to determine ownership. When relevant, those documents can be used for determining the criteria for the ownership and use test.

COMMENT: It is arbitrary and unlawful to shift the legal burden on ownership to the tribal member.

RESPONSE: The Department does not agree with this contention. The following cases address this concern: Dorothy Jefferson v. Big Horn County, et al, 766 P.2d 244, 235 Mont. 148, (Mont. 1988) and Lummi Indian Tribe v. Whatcom County, Washington; 93-WL382635 (9th Cir. Wash.). These cases support our request that the tribal member must prove entitlement to an exemption. Therefore, the Department will not be proposing any change or amendment to the is rule.

COMMENT: The rule does not provide for a situation where a vehicle is partially owned by a tribal member who has exclusive use of the venicle.

RESPONSE: Under § 15-24-1208, MCA, the exemption is provided to a tribal member based solely on ownership. The use of the vehicle is not relevant to the rule or the exemption.

COMMENT: Placing the burden of proof on Indian ownership of reservation fee lands is inappropriate given the historical trust relationship of the federal government, Indian tribes, and individual tribal members.

RESPONSE: See the response to the fourth comment above. It also applies to this issue.

3. The Department has amended New Rule I (ARM 42.19.502) as follows:

NEW RULE I (ARM 42.19.502) EXEMPTIONS INVOLVING AN OWNERSHIP TEST (1) A tribal member who owns vehicles and other personal property in whole or in part is subject to the provisions of this rule. The following requirements apply to tribal personal property in order to meet the ownership test:

(a) The exemption applies to tribal members living on the reservation of the Tribe in which they are an enrolled member;

(b) If the tribal member owns 100% of the INTEREST IN personal property (such as vehicles), the property is 100% exempt; and

(c) If the personal property is JOINTLY owned by tribal members and non-tribal members and there is no indication of the percentage of ownership for each owner, the exemption of the property is prorated among the owners as if each owner owned equal interests in the property. An example of this is when a tribal member and two non-tribal members register a vehicle. The vehicle is on the reservation of the tribal member and there is no indication of the percentage of ownership for each owner. The vehicle receives a 33% exemption and is taxed for the remaining 67%.

(d) IF THERE IS AN INDICATION OF PERCENTAGE OF OWNERSHIP, THE EXEMPTION WILL BE PRORATED BASED ON THE INDICATED PERCENTAGES. FOR MOTOR VEHICLES, THE PERCENTAGE OF OWNERSHIP MUST BE PROVEN BY SUBMITTAL OF A CURRENT TITLE OR REGISTRATION INDICATING THE PERCENTAGE OF OWNERSHIP. FOR OTHER PERSONAL PROPERTY, THE PERCENTAGE OF OWNERSHIP CAN BE PROVEN BY SUBMITTAL OF A BILL OF SALE OR AN AFFIDAVIT, SIGNED BY ALL OWNERS, INDICATING EACH OWNER'S PERCENTAGE OF OWNERSHIP.

(2) through (4) remains the same.

4. Therefore, the Department adopts new rule I (ARM 42.19.502) with the amendments listed above and adopts new rule II (ARM 42.19.506) as proposed.

CLEO ANDERSON
Rule Reviewer

MICK ROBINSON
Director of Revenue

Certified to Secretary of State November 29, 1993.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT of ARM 42.20.161 and 42.20.164 and the ADOPTION of NEW RULES I (ARM 42.20.165); II (ARM 42.20.166); III (ARM 42.20.167); IV (ARM 42.20.168); and V (ARM 42.20.169) relating to Forest Land Classification	NOTICE OF THE AMENDMENT of ARM 42.20.161 and 42.20.164 and the ADOPTION of NEW RULES I (ARM 42.20.165); II (ARM 42.20.166); III (ARM 42.20.167); IV (ARM 42.20.168); and V (ARM 42.20.169) relating to Forest Land Classification

TO: All Interested Persons:

1. On October 14, 1993, the Department published notice of the proposed amendment of ARM 42.20.161 and 42.20.164 and adoption of New Rules I (ARM 42.20.165); II (ARM 42.20.166); III (ARM 42.20.167); IV (ARM 42.20.168) and V (ARM 42.20.169) relating to Forest Land Classification at page 2392 of the 1993 Montana Administrative Register, issue no. 19.

2. A Public Hearing was held on November 8, 1993, to consider the proposed amendments and adoption. Mr. Al Kington representing the Montana Tree Farmers Committee and its 400 members, and Mr. Don Allen representing Montana Wood Products Association appeared at the hearing and presented testimony in favor of the rules. They also thanked the Department for its efforts and for allowing the industry to participate in the formation of the language for these rules. The Department did not receive any written comments regarding the rules.

3. The Department presented amendments to the proposed language in New Rule IV (ARM 42.20.168) as follows:

NEW RULE IV (ARM 42.20.168) FOREST COSTS (1) The determination of forest costs in New Rule III (4) (b) (v) shall be based upon the average expenses for fire assessment, brush control, timber stand improvement in zones 1 and 2 only, timber ~~cost control~~ SALE, and administrative overhead as determined by the Department of State Lands (DSL) over the base period specified in New Rule III (3). For forest land valuation zone 1, the allowable expenses will be those calculated by the DSL Northwest land office in Kalispell. For forest land valuation zone 2, the allowable expenses will be those calculated by the DSL Southwest land office in Missoula. For forest land valuation zones 3, 4, and 5, the allowable expenses will be those calculated by the DSL Central land office in Helena. Those costs shall be deducted from the per acre gross timber income.

AUTH: Secs. 15-1-201 and 15-44-105, MCA; IMP: Secs. 15-44-101 through 15-44-104, MCA.

4. The Department has adopted the amendments to ARM

42.20.161 and 42.20.164 and New Rules I (ARM 42.20.165); II (ARM 42.20.166); III (ARM 42.20.167) and V (ARM 42.20.169) as proposed and adopts IV (ARM 42.20.168), with the amendments shown above.

CLEO ANDERSON
Rule Reviewer

MICK ROBINSON
Director of Revenue

Certified to Secretary of State November 29, 1993.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT of ARM 42.21.106, 42.21.107, 42.21.113, 42.21.123, 42.21.131, 42.21.137, 42.21.138, 42.21.139, 42.21.140, 42.21.151, 42.21.155, 42.21.163, and 42.21.305, and REPEAL of ARM 42.21.164 relating to Personal Property	NOTICE OF THE AMENDMENT of ARM 42.21.106, 42.21.107, 42.21.113, 42.21.123, 42.21.131, 42.21.137, 42.21.138, 42.21.139, 42.21.140, 42.21.151, 42.21.155, 42.21.163 and 42.21.305, and REPEAL of ARM 42.21.164 relating to Personal Property

TO: All Interested Persons:

1. On October 14, 1993, the Department published notice of the proposed amendment and repeal of ARM 42.21.106, 42.21.107, 42.21.113, 42.21.123, 42.21.131, 42.21.137, 42.21.138, 42.21.139, 42.21.140, 42.21.151, 42.21.155, 42.21.163, and 42.21.305 and repeal of ARM 42.21.164 relating to personal property at page 2373 of the 1993 Montana Administrative Register, issue no. 19.

2. A Public Hearing was held on November 8, 1993, to consider the proposed action. No one appeared to testify and no written comments were received.

3. Therefore, the Department has adopted and repealed the rules as proposed.

CLEO ANDERSON
Rule Reviewer

MICK ROBINSON
Director of Revenue

Certified to Secretary of State November 29, 1993.

NOTICE OF FUNCTIONS OF ADMINISTRATIVE CODE COMMITTEE

The Administrative Code Committee reviews all proposals for adoption of new rules, amendment or repeal of existing rules filed with the Secretary of State, except rules proposed by the Department of Revenue. Proposals of the Department of Revenue are reviewed by the Revenue Oversight Committee.

The Administrative Code Committee has 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. In addition, the Committee 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 or amend a rule.

The Committee welcomes comments from the public and invites members of the public to appear before it or to send it written statements in order to bring to the Committee's attention any difficulties with the existing or proposed rules. The address is Room 138, Montana State Capitol, Helena, Montana 59620.

HOW TO USE THE ADMINISTRATIVE RULES OF MONTANA AND THE MONTANA ADMINISTRATIVE REGISTER

Definitions: Administrative Rules of Montana (ARM) is a looseleaf compilation by department of all rules of state departments and attached boards presently in effect, except rules adopted up to three months previously.

Montana Administrative Register (MAR) is a soft back, bound publication, issued twice-monthly, containing notices of rules proposed by agencies, notices of rules adopted by agencies, and interpretations of statutes and rules by the attorney general (Attorney General's Opinions) and agencies (Declaratory Rulings) issued since publication of the preceding register.

Use of the Administrative Rules of Montana (ARM):

Known Subject Matter	1. Consult ARM topical index. Update the rule by checking the accumulative table and the table of contents in the last Montana Administrative Register issued.
Statute Number and Department	2. Go to cross reference table at end of each title which lists MCA section numbers and corresponding ARM rule numbers.

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies which have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through September 30, 1993. This table includes those rules adopted during the period October 1, 1993 through December 31, 1993 and any proposed rule action that is pending during the past 6 month period. (A notice of adoption must be published within 6 months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through September 30, 1993, this table and the table of contents of this issue of the MAR.

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