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MONTANA ADMINISTRATIVE REGISTER

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1995 ISSUE NO. 4
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PAGES 243-321



MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 4

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 The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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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BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the proposed) NOTICE OF A PROPOSED ADOPTION
adoption of a New Rule by) BY REFERENCE AND REPEAL OF THE
reference and Repeal of) FEED AND PET FOOD RULES
ARM 4.12.201 through 4.12.217)

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On March 25, 1995, the department of agriculture proposes to adopt a new rule to adopt model regulations for feed and pet foods, and repeal old rules dealing with the same.

2. The rule, as proposed to be adopted, appears as follows (new material is underlined). Rules 4.12.201 through 4.12.217 are proposed to be repealed. Text of these rules can be found on pages 4-354.1 through 4-367 of the Administrative Rules of Montana.

(AUTH: Sec. 80-9-103 and 204, MCA)

(IMP: Sec. 80-9-101, 202, 203 and 204, MCA)

NEW RULE I ADOPTION OF MODEL FEED AND PET FOOD REGULATIONS (1) The Montana Department of Agriculture hereby adopts and incorporates by reference, the Model Feed Regulations and Model Pet Food Regulations as published in the 1995 Official Publication of the Association of American Feed Control Officials (AAFCO). A copy of the AAFCO model rules may be obtained from the Montana Department of Agriculture, PO Box 200201, Helena, Montana, 59620 or the entire Official Publication may be obtained for a cost of \$25 through the AAFCO Treasurer, phone (404) 656-3637. The Director of the Montana Department of Agriculture or his designee shall be the official recognized throughout the model regulations.

(2) A "customer-formula feed" as used in the model rules is defined as a custom mixed feed.

(AUTH: Sec. 80-9-103, MCA; IMP: Sec.80-9-101, MCA)

REASON: The Montana Commercial Feed Act states that the Department, in the interest of uniformity, shall adopt the official provisions of the Association of American Feed Control Officials (AAFCO) as published in their official publication, unless inconsistent with the act. The model feed and pet food rules developed by consensus through AAFCO are consistent with the Montana Commercial Feed Act. The change of the Montana rules to match the model rules of AAFCO was brought to the department by the Montana feed industry.

The adoption of these rules will update the Montana Commercial Feed rules to the current standards in the feed industry. The feed industry will have access to the text of the Montana rules in a publication that is nationally utilized by the industry.

The new labeling requirements better convey information from the feed producer to the consumer. The new rules require species specific label information including nutritional and medication claims, guarantee analysis, ingredients, directions, cautions and warnings. These labels are more detailed than existing required feed labels.

The proposed time frame between the adoption date and the implementation date will allow the feed industry to review their feed labels, make any necessary changes and affix the proper labels to their products.

3. The Department proposes to make these new rules effective October 1, 1995.

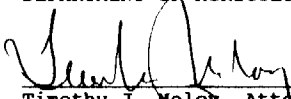
4. Interested persons may submit their written data, views, or arguments concerning these amendments to Gary Gingery, Administrator, Department of Agriculture, Agricultural Sciences Division, P.O. Box 200201, Helena, MT 59620-0201, no later than March 23, 1995.

5. If a party who is directly affected by the proposed amendment 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 Gary Gingery, Administrator, Department of Agriculture, Agricultural Sciences Division, P.O. Box 200201, Helena, MT 59620-0201 no later than March 23, 1995.

6. If the department receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendment; from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not fewer 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.



Leo Giacometto, Director
DEPARTMENT OF AGRICULTURE



Timothy J. Meloy, Attorney
Rule Reviewer
DEPARTMENT OF AGRICULTURE

Certified to the Secretary of State February 10, 1995.

BEFORE THE CLASSIFICATION AND RATING COMMITTEE
OF THE STATE OF MONTANA

In the matter of the amendment	)	NOTICE OF PROPOSED
of ARM 6.6.8301, updating	)	AMENDMENT OF ARM
references to the NCCI Basic	)	6.6.8301
Manual for Workers')	
Compensation and Employers	)	NO PUBLIC HEARING
Liability Insurance, 1980 ed.	)	CONTEMPLATED

TO: All Interested Persons.

1. March 28, 1995, the classification and rating committee of the state of Montana proposes to amend rule 6.6.8301 updating references to the NCCI Basic Manual for Workers' Compensation and Employers Liability Insurance, 1980 ed.

2. The rule, as proposed to be amended, appears as follows (new material is underlined; material to be deleted is interlined)

6.6.8301 ESTABLISHMENT OF CLASSIFICATIONS FOR COMPENSATION PLAN NO. 2 (1) The committee hereby adopts and incorporates by reference the NCCI Basic Manual for Workers' Compensation and Employers Liability Insurance, 1980 ed., as supplemented through ~~March 21, 1994~~ July 1, 1995, which establishes classifications with respect to employers electing to be bound by compensation plan No. 2 as provided in Title 39, chapter 71, part 22, Montana Code Annotated. A copy of the Basic Manual for Workers' Compensation and Employers Liability Insurance is available for public inspection at the Office of the Commissioner of Insurance, Room 270, Sam W. Mitchell Building, 126 North Sanders, P. O. Box 200301, Helena, MT 59620-0301. Copies of the Basic Manual for Workers' Compensation and Employers Liability Insurance may be obtained by writing to the Montana Classification and Rating Committee in care of the National Council on Compensation Insurance, ~~Two Tamarac Square, Suite 613~~, 7535 East Hampden Ave., Suite 607, Denver, CO 80231. Persons obtaining a copy of the Basic Manual for Workers' Compensation and Employers Liability Insurance must pay the committee's cost of providing such copies.

(2) Remains the same.

AUTH: Sec. 33-16-1012, MCA IMP: Sec. 33-16-1012, 2-4-103, MCA.

3. The proposed amendment is necessary in order to bring references to the NCCI Classification and Rating Manual current. Changes to the NCCI Classification and Rating Manual, to be effective July 1, 1995, affect certain classifications with respects to the Quick Printing Industry and businesses that

employ clerical office workers.

4. Interested persons may submit their data, views, or arguments in writing to:

Robert Carlson, Chairperson
Montana Classification and Rating Committee
c/o National Council on Compensation Insurance, Inc.
7535 East Hampden Avenue, Suite 607
Denver, Colorado 80231
Comments must be received no later than March 28, 1995.

5. If a person who is directly affected by the proposed amendment wishes to present data, views, or arguments orally or in writing at a public hearing, such person must make written request for a hearing and submit the request along with any comments such person has to:

Robert Carlson, Chairperson
Montana Classification and Rating Committee
c/o National Council on Compensation Insurance, Inc.
7535 East Hampden Avenue, Suite 607
Denver, Colorado 80231

6. If the classification and rating committee of the state of Montana receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendment; from the administrative code committee of the legislature; from a governmental agency or subdivision or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. For each category of classification affected, ten percent of the persons directly affected has been determined as follows: five (5) for the classification involving the Quick Print Industry based on 50 persons in the state the classification of which are affected by the proposed amendment; 25 for the classification amendment related to clerical office workers.

By:


Robert Carlson, Chairperson
Classification and Rating Committee

By:


Gary Spaeth, Rule Reviewer
State Auditor's Office

Certified to the Secretary of State February 13, 1995

BEFORE THE BOARD OF INVESTMENTS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed) NOTICE OF PUBLIC HEARING ON
amendment of rules pertaining) THE PROPOSED AMENDMENT OF
to definitions, forward commit-) RULES PERTAINING TO LOAN
ment fees, residential loan) PROGRAMS ADMINISTERED BY THE
programs, appraisals, conven-) BOARD OF INVESTMENTS
tional loan programs, FHA and)
VA loan programs, loan programs)
for commercial, multi-family)
and non-profit corporations and)
conventional, FHA, VA, commer-)
cial, and multi-family loan)
programs - assumptions)

TO: All Interested Persons:

1. On March 15, 1995, at 9:00 a.m., a public hearing will be held in the Board of Investments conference room, 555 Fuller Avenue, Helena, Montana, to consider the proposed amendment of rules pertaining to loan programs administered by the Board of Investments.

2. The proposed amendments will read as follows: (new matter underlined, deleted matter interlined)

"8.97.1301 DEFINITIONS In addition to the definitions set forth in 17-5-1503 and 17-6-302, MCA, the following definitions apply in all sub-chapters contained in Title 8, chapter 97, of these rules:

(1) through (19) will remain the same.

~~(20) "loan loss reserve fund for the in state investment fund" means the fund established in 17-6-315, MCA.~~

(21) through (41) will remain the same, but will be renumbered (20) through (40)."

Auth: The portion of this rule implementing 17-6-201, MCA, is advisory only, but may be a correct interpretation of this section, Sec. 17-5-1503, 17-5-1521, 17-6-324, MCA; IMPLIED, Sec. 17-6-201, 17-6-324, MCA; IMP, Sec. 17-5-1503, 17-6-201, 17-6-211, 17-6-302, ~~37-6-302~~, MCA

"8.97.1303 FORWARD COMMITMENT FEES AND YIELD REQUIREMENTS FOR ALL LOANS (1) and (1)(a) will remain the same.

(b) a forward commitment fee will be refunded only if the application is rejected or the counter offer made by the board is not accepted within 10 days by the seller/servicer. A minimum of \$500 will be withheld from the forward commitment fee on commercial and multi-family loans to compensate the board for loan analysis; and \$100 will be withheld on economic development linked deposit loans and residential loans;

(c) and (d) will remain the same.

(e) forward commitment rates, on a net yield basis, will be posted every Thursday for a one week period. To ~~obtain~~

lock a forward commitment rate for any loan offering at the rate set last, a written request and fee must be submitted or postmarked within the forward commitment rate period. The basis for residential rates will be the FHLMC index and for all types of commercial and multi-family loans the treasury bond rates of similar maturity will be used. The seller/servicer is not required to deliver the loan documents or designate the borrower(s) name when reserving a forward commitment rate. In establishing those interest rates, the board will consider:

(i) through (2)(b) will remain the same.

(c) the net yield requirements on loans which exceed the FHLMC maximum loan amount will be one-quarter of one percent (25 basis points) above the residential rates.

(3) through (4) will remain the same."

Auth: Sec. 17-5-1504, 17-5-1521, 17-6-311, 17-6-315, 17-6-324, MCA; IMP, Sec. 17-5-1504, 17-5-1521, 17-6-304, 17-6-308, 17-6-211, 17-6-315, 17-6-324, MCA

REASON: The Board is proposing the above amendments to subchapter 13 to achieve underwriting guidelines similar to FHLMC (Freddie Mac) Federal Home Loan Mortgage Corporation Underwriting Guidelines. This should induce lenders to sell mortgages to the Board on a similar underwriting basis as required by other secondary markets.

"8.97.1401 RESIDENTIAL LOAN PROGRAMS - GENERAL REQUIREMENTS (1) through (e)(ii) will remain the same.

(f) ~~partial release of secured property will be considered with a reduction to principal balance and endorsement to title policy.~~ The seller/servicer should provide a recommendation and furnish all necessary information and items in the form of a written request including the reasons for the partial release; anticipated use of the land; the legal description of the land to be released and survey, if required. Any and all costs must be borne by the borrower."

Auth: The portion of this rule implementing 17-6-201, MCA, is advisory only, but may be a correct interpretation of this section, Sec. 17-5-1054, 17-5-1521, MCA; IMPLIED, Sec. 17-6-201, 17-6-324, MCA; IMP, Sec. 17-5-1504, 17-5-1521, 17-6-201, 17-6-324, MCA

"8.97.1402 APPRAISALS (1) Financial institutions must have all offerings appraised by an independent fee appraiser licensed in Montana, and by In submitting the appraisal, the financial institution certifies as to that the appraiser's competence is competent, appraisal has the appropriate experience, and lacks a of conflict of interest as to regarding the appraised property.

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

(5) All conventional loan offerings must be supported by, and include, an acceptable appraisal prepared by an appraiser licensed in Montana prepared by an independent fee appraiser which confirms that the subject property conforms to HUG/VA property standards.

(6) will remain the same.

(7) Commercial and multi-family (over 12 units) appraisals must be a full narrative report prepared in a format consistent with standards established by the American institute of real estate appraisers or the society of real estate appraisers to include at a minimum;

(a) through (c) will remain the same."

Auth: The portion of this rule implementing 17-6-201, MCA, is advisory only, but may be a correct interpretation of this section, Sec. 17-5-1504, 17-5-1521, MCA; IMPLIED, Sec. 17-6-201, 17-6-324, MCA; IMP, Sec. 17-5-1504, 17-5-1521, 17-6-201, 17-6-324, MCA

"8.97.1403 CONVENTIONAL LOAN PROGRAM - GENERAL REQUIREMENTS (1) through (f) will remain the same.

~~(g) a maximum 90 percent loan to value will be considered for a property that is the borrower's primary residence with private mortgage insurance in an amount not less than 20 percent issued by an insurer acceptable to the board;~~

(h) and (i) will remain the same, but will be renumbered (g) and (h)."

Auth: The portion of this rule implementing 17-6-201, MCA, is advisory only, but may be a correct interpretation of this section, IMPLIED, Sec. 17-6-201, 17-6-324, MCA; IMP, Sec. 17-6-201, 17-6-211, MCA

"8.97.1404 CONVENTIONAL LOAN PROGRAM - PURPOSE AND LOAN RESTRICTIONS (1) through (5) will remain the same.

(a) For a borrower's primary residence, the maximum loan-to-value ratio for uninsured loans will be ~~70~~ 75 percent up to the FHLMC maximum and then the graduated scale in ARM 8.97.1403(1)(a) will be used.

(b) For a property which is not a borrower's primary residence, the maximum loan-to-value ratio for uninsured loans will be ~~65~~ 70 percent up to the FHLMC maximum and then the graduated scale in ARM 8.97.1403(1)(a) will be used less five percent. Use of refinance proceeds must be limited to paying off the existing first mortgage, for paying off junior liens against the property at least one year old as of the origination date of the refinance mortgage, and for paying related closing costs associated with the refinance loan. Cash out to be disbursed to the borrower or any other payee will not be permitted.

(6) through (8)(d) will remain the same."

Auth: The portion of this rule implementing 17-6-201, MCA, is advisory only, but may be a correct interpretation of the law, IMPLIED, Sec. 17-6-201, 17-6-324, MCA; IMP, Sec. 17-6-201, 17-6-211, MCA

"8.97.1405 CONVENTIONAL LOAN PROGRAMS - OFFERING CHECKLIST (1) If the offering contains residential conventional mortgages, the seller/servicer is required to submit ~~any number of~~ the following for underwriting:

(a) will remain the same.

(b) ~~the a complete loan offering sheet FHLMC/FNMA Uniform Underwriting and Transmittal Summary form;~~

(c) through (h) will remain the same.

(i) a copy of the buy/sell agreement and/or, if new construction, a certified and dated breakdown of construction costs plus land costs signed by the contractor and borrower; where the borrower is the builder, the financial institution will certify the breakdown of construction costs;

(j) a copy of the appraisal report obtained by the seller/servicer, utilizing the FNMA or FHLMC most updated form for number of units, with at least two all actual clear and current pictures of subject property, and all comparable properties, dated within 180 days;

(i) through (2) will remain the same.

(a) if new construction, the appraiser's verification that the subject property has been completed per plans and specifications and a current recertification of value;

(b) through (e) will remain the same.

(f) a certified copy of the recorded assignment of mortgagee's interest by the clerk and recorder; the assignment must be assigned as required by the board, except for participation;

(g) will remain the same.

~~(h) a survey;~~

(i) will remain the same, but will be renumbered (h).

~~(j) a certification by the contractor or an independent qualified inspector that the subject property has been constructed in compliance with the construction standards established by the FHA;~~

~~(k) (i) for newly constructed properties with individual water systems, a copy of the well log confirming that the well was drilled by a licensed water well contractor; or certification that the system provides 100 gallons per person per day for domestic use has been approved by the state department of health if the water supply system is not an individual well and is a community system designed to service more than one property;~~

~~(l) for existing properties with individual water systems, a copy of the well log, if available;~~

(m) will remain the same, but will be renumbered (j).

~~(n) (k) for properties with individual sewage systems, confirmation that the septic system meets state and local requirements, if available;~~

~~(o) road maintenance agreements as required by FHA;~~

(p) will remain the same, but will be renumbered (l)."

Auth: The portion of this rule implementing 17-6-201, MCA, is advisory only, but may be a correct interpretation of this section, IMPLIED, Sec. 17-6-201, 17-6-324, MCA; IMP. Sec. 17-6-201, 17-6-211, MCA

"8.97.1406 FHA AND VA LOAN PROGRAMS - GENERAL REQUIREMENTS (1) Approved seller/servicers ~~may~~ must submit offerings on a whole basis. Participation is not allowed.

(2) through (6) will remain the same."

Auth: the portion of this rule implementing 17-6-201, MCA, is advisory only, but may be a correct interpretation of

this section, IMPLIED, Sec. 17-6-201, 17-6-324, MCA; IMP, Sec. 17-6-201, 17-6-211, MCA

"8.97.1407. FHA AND VA LOAN PROGRAMS - OFFERING CHECKLIST

(1) If the offering contains FHA or VA loans, the seller/servicer ~~may be~~ is required to submit ~~any of~~ the following for underwriting:

(a) will remain the same.

(b) ~~the completed loan offering sheet, to be provided by the board Mortgage Credit Analysis (FHA) or Loan Analysis (VA) Worksheet;~~

(c) and (d) will remain the same.

~~(e) a copy of the formal written credit report(s) on each borrower from the credit reporting agency, dated within 90 days;~~

~~(f) a verification of deposits and employment;~~

~~(g) a copy of the borrower's completed federal tax return for the past two years along with a completed cash flow analysis, to be provided by the board, if the borrower or co-borrowers are self-employed or have cash flow from other sources, including but not limited to: depreciation, interest, dividends, partnerships, and corporations;~~

~~(h) a copy of the VA certificate of reasonable value or HUD conditional commitment along with one actual clear and current picture of the subject property;~~

(2) and (2)(a) will remain the same.

~~(b) a copy of the final title insurance policy ALTA extended coverage endorsed as required by the board;~~

(c) will remain the same, but will be renumbered (b).

~~(d) a copy of the recorded first trust indenture;~~

~~(e) (c) a copy of the recorded assignment of the mortgagee's interest certified by the clerk and recorder. The assignment must be assigned as required;~~

~~(f) (d) a copy of the FHA mortgage insurance certificate, if applicable;~~

~~(g) (e) a copy of the VA loan guaranty certificate demonstrating that the maximum exposure of the board does not exceed 65 percent, if applicable;~~

~~(h) the acknowledgment of non-exemption from execution as a homestead pursuant to 70-32-202, MCA;~~

(i) will remain the same, but will be renumbered (f)."

Auth: the portion of this rule implementing 17-6-201, MCA, is advisory only, but may be a correct interpretation of this section, IMPLIED, Sec. 17-6-201, 17-6-324, MCA; IMP, Sec. 17-6-201, 17-6-211, MCA

"8.97.1410. LOAN PROGRAMS FOR COMMERCIAL, MULTI-FAMILY AND NON-PROFIT CORPORATIONS - GENERAL REQUIREMENTS (1)

through (15) will remain the same.

(16) Partial release of collateral will be considered ~~with a reduction to the principal balance.~~ The seller/servicer must provide a written recommendation and furnish all necessary information and documentation in the form of a written request to justify the partial release of collateral. All expenses related to the requested release shall be borne by the borrower."

Auth: Sec. 17-5-1504, 17-5-1521, 17-6-308, 17-6-315, 17-6-324, MCA; IMP, Sec. 17-5-1504, 17-5-1521, 17-6-211, 17-6-308, 17-6-315, 17-6-324, MCA

"8.97.1412 LOAN PROGRAMS FOR COMMERCIAL, MULTI-FAMILY AND NON-PROFIT CORPORATIONS - OFFERING CHECKLIST (1) through (1)(r) will remain the same.

(2) If the offering is accepted, the following information ~~must~~ may be ~~submitted~~ required prior to funding disbursement:

(a) through (h) will remain the same.

(i) a copy of the recorded first deed of trust or mortgage, if approved, with due-on-sale clause; ~~the FNMA/FHLMC most recent form required on multi-family loans including a properly completed multi-family due-on-transfer rider;~~

(j) through (m) will remain the same."

Auth: Sec. 17-5-1054, 17-5-1521, 17-6-308, 17-6-324, MCA; IMP, Sec. 17-5-1504, 17-5-1521, 17-6-304, 17-6-305, 17-6-308, 17-6-314, 17-6-324, MCA

"8.97.1414 CONVENTIONAL, FHA, VA, COMMERCIAL, AND MULTI-FAMILY LOAN PROGRAMS - ASSUMPTIONS (1) through (5) will remain the same.

~~(6) Prior approval of a purchaser's credit for a release of liability is required for an assumption of a FHA/VA loan.~~

~~(7) If the board approves an assumption of any loan, a written release of liability for the original debtor will be sent to the seller/servicer."~~

Auth: The portion of this rule implementing 17-6-201, MCA, is advisory only, but may be a correct interpretation of this section, Sec. 17-5-1504, 17-5-1521, MCA; IMPLIED, Sec. 17-6-201, 17-6-315, 17-6-324, MCA; IMP, Sec. 17-5-1504, 17-5-1521, 17-6-201, 17-6-211, 17-6-315, 17-6-324, MCA

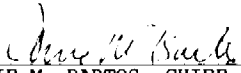
REASON: The Board is proposing these amendments to achieve underwriting guidelines similar to FHLMC (Freddie Mac) Federal Home Loan Mortgage Corporation Underwriting Guidelines. This should induce lenders to sell mortgages to the Board on a similar underwriting basis as required by other secondary markets. In addition, certain of these amendments reflect changes in underlying federal rules or statutes.

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 the Board of Investments, 555 Fuller, P.O. Box 200126, Helena, Montana 59620-0126, to be received no later than 5:00 p.m., March 23, 1995.

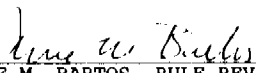
4. Julie Endner, Program Assistant, Board of Investments, has been designated to preside over and conduct this hearing.

BOARD OF INVESTMENTS
WARREN VAUGHAN, CHAIRMAN

BY:



ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE



ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, February 13, 1995.

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

In the matter of the amendment of) NOTICE OF PUBLIC HEARING
rules 16.8.1404, 16.8.1413 and) FOR PROPOSED AMENDMENT
16.8.1429, dealing with opacity) OF RULES
requirements at kraft pulp mills)

(Air Quality)

To: All Interested Persons

1. On April 5, 1995, at 6:00 p.m., the board will hold a public hearing at the Missoula City Hall, City Council Chambers, 201 W. Spruce, Missoula, Montana, to consider the amendment of the above-captioned rules.

2. The rules, as proposed to be amended, appear as follows (new material is underlined; material to be deleted is interlined):

16.8.1404 VISIBLE AIR CONTAMINANTS (1)-(3) Remain the same.

(4) This rule does not apply to emissions from:

(a)-(c) Remain the same.

(d) those new stationary sources listed in ARM 16.8.1423 for which a visible emission standard has been promulgated; ~~or~~

(e) residential solid-fuel combustion devices such as fireplaces and wood or coal stoves; or

(f) recovery furnaces at kraft pulp mills.

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

16.8.1413 SULFUR EMISSIONS-- KRAFT PULP MILLS (1) For the purposes of this rule, the following definitions apply:

(a) Remains the same.

(b) "Cross recovery furnace" means a furnace used to recover chemicals consisting primarily of sodium and sulfur compounds by burning black liquor that on a quarterly basis contains more than 7 weight percent of the total pulp solids from the neutral sulfite semichemical process and has a green liquor sulfidity of more than 28%.

(b)-(d) Remain the same but are renumbered (c)-(e).

(f) "Recovery furnace" means either a straight kraft recovery furnace or a cross recovery furnace, and includes the direct-contact evaporator for a direct-contact furnace.

(e) Remains the same but is renumbered (g).

(h) "Straight kraft recovery furnace" means a furnace used to recover chemicals consisting primarily of sodium and sulfur compounds by burning black liquor that on a quarterly basis contains 7 weight percent or less of the total pulp solids from the neutral sulfite semichemical process or has green liquor sulfidity of 28% or less.

(f) Remains the same but is renumbered (i).
(2)-(6) Remain the same.
(7) All TRS emission standards in this rule ~~shall~~ will be based on average daily emissions. The TRS limitations ~~herein~~ in this rule shall will not preclude a requirement to install the highest and best practicable treatment and control available. New mills or mills expanding existing facilities may be required to meet more restrictive TRS emission limits.

(8) No person may cause or authorize to be discharged into the outdoor atmosphere, from any recovery furnace installed on or before November 23, 1968, emissions that exhibit 35% opacity or greater averaged over 6 consecutive minutes. For recovery furnaces, this opacity limitation supersedes any other opacity limitation contained in this chapter, including ARM 16.8.1404 and 16.8.1423.

(9) No person may cause or authorize to be discharged into the outdoor atmosphere, from any recovery furnace installed after November 23, 1968, emissions that exhibit 30% opacity or greater averaged over 6 consecutive minutes. For recovery furnaces, this opacity limitation supersedes any other opacity limitation contained in this chapter, including ARM 16.8.1404 and 16.8.1423.

(10) Any person subject to (8) or (9) above shall install, calibrate, maintain, and operate a continuous opacity monitoring system (COMS) to monitor and record the opacity of emissions discharged into the atmosphere from any recovery furnace subject to this rule. This COMS shall comply with the requirements of 40 CFR, Part 60, regarding the installation, calibration, maintenance, and operation of COMS for kraft pulp mill recovery furnaces and any other applicable requirement in this chapter regarding the installation, calibration, maintenance, and operation of COMS.

(11) COMS will be the primary measure of compliance with the opacity limits specified in (8) or (9) above, except that the department may use another appropriate method of determining compliance, as specified in the Montana source test protocol and procedures manual, including the test method contained in 40 CFR, Part 60, appendix A, method 9, when the department has reason to believe that COMS data is not accurate or when COMS data is unavailable.

(12) Any person subject to (10) above shall report every time period of excess opacity from any recovery furnace, as determined by the COMS, and shall report every time period when the COMS was not operational. For the purposes of this report, excess emissions means any 6 minute average opacity of 35% or greater for any recovery furnace installed on or before November 23, 1968, or 30% or greater for any recovery furnace installed after November 23, 1968. These reports must be submitted on forms provided by the department and must be made in compliance with department procedures and applicable requirements for submittal of excess emissions reports. These reports must be submitted to the department quarterly, within 30 days after the end of each calendar quarter.

AUTH: 75-2-111, 75-2-201, MCA; IMP: 75-2-203, MCA

16.8.1429 INCORPORATIONS BY REFERENCE (1) Remains the same.

(2) For the purposes of this subchapter, the board hereby adopts and incorporates herein by reference the following:

(a) Remains the same.

(b) 40 CFR Part 60, appendix A, method 9, which sets forth a method for visual determination of the opacity of emissions from stationary sources;

(c) 40 CFR Part 60, appendix B, performance specification 1, which sets forth specifications and test procedures for opacity continuous emission monitoring systems in stationary sources;

(b)-(g) Remain the same but are renumbered (d)-(i).

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

3. The board is proposing these amendments to the rules as necessary to resolve a declaratory ruling proceeding before the board brought by Stone Container Corporation (Stone), to provide greater consistency to the opacity limits for different age classes of kraft pulp mill recovery furnaces, and to provide a method for continuously monitoring the opacity of emissions from these furnaces.

On November 22, 1992, the air quality bureau (aqb) of the department issued Stone a notice of an air quality permit modification for Stone's kraft pulp mill in Missoula, including a specific opacity limit of 20% for Stone's No. 4 recovery furnace, installed in 1972. Past permits had not specified the opacity limits for Stone's recovery furnaces. Stone's No. 3 recovery furnace, installed in 1966, is subject to a 40% opacity limit under ARM 16.8.1404(1) and Stone's No. 5 recovery furnace, installed in 1980, is subject to a 35% New Source Performance Standard (NSPS), under ARM 16.8.1404(4)(d).

Stone appealed the permit to the board. On June 8, 1993, Stone withdrew its appeal and filed a petition for a declaratory ruling with the board asking the board to rule that, under ARM 16.8.1404(4)(d), the applicable opacity limit for Stone's No. 4 recovery furnace is 35%. The department contested Stone's petition, asserting that ARM 16.8.1404(2) requires a 20% opacity limit.

On July 15, 1994, the board granted Stone's petition and ordered that, under ARM 16.8.1404, the applicable opacity limit for Stone's No. 4 recovery furnace is 35%. On November 2, 1994, the board granted a petition for rehearing by the department and, subsequently, the board scheduled rehearing for November 18, 1994. Prior to rehearing, the department and Stone agreed to attempt to resolve the matter by submitting a rule-making proposal to the board. The terms of that agreement are embodied in this notice of proposed rulemaking.


As a kraft pulp mill recovery furnace, Stone's No. 4 recovery boiler is in an NSPS category but was constructed prior to the September 24, 1976, effective date of the 35% NSPS opacity limit. Application of the 20% opacity limit under ARM 16.8.1404(2) results in a more stringent opacity limit for a boiler built in 1972 than the limit that applies to the No. 5

recovery boiler, installed in 1980, or any new kraft pulp mill recovery boiler installed in the future. The proposed amendments would result in a uniform 30% opacity limit for recovery boilers installed after November 23, 1968, and would lower the limit for boilers installed on or before November 23, 1968, from 40% to 35%. The proposed amendments would also extend to all kraft pulp mill recovery boilers, including Stone's No. 3 and No. 4 recovery boilers, the continuous six minute average opacity monitoring requirement that now applies only to recovery boilers installed after September 24, 1976. Presently, opacity compliance by Stone's No. 3 and No. 4 recovery boilers must be determined by periodic visual inspection under EPA Method 9.

4. Interested persons may submit their data, views, or arguments concerning the proposed amendment, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Yolanda Fitzsimmons, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620, no later than April 5, 1995.

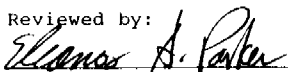
5. Will Hutchison has been designated to preside over and conduct the hearing.

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

by 
for ROBERT J. ROBINSON, Director

Certified to the Secretary of State February 13, 1995.

Reviewed by:


Eleanor Parker, DHES Attorney

BEFORE THE DEPARTMENT OF TRANSPORTATION
OF THE STATE OF MONTANA

In the matter of the proposed	)	NOTICE OF PUBLIC
amendment and repeal of rules	)	HEARING ON PROPOSED
concerning the location of	)	AMENDMENTS TO RULES
utilities in highway right-of-way	)	18.7.201 THROUGH
	)	18.7.204, 18.7.206,
	)	18.7.211, 18.7.222
	)	THROUGH 18.7.224,
	)	18.7.226, 18.7.227, AND
	)	18.7.229 THROUGH
	)	18.7.232; AND
	)	REPEALING 18.7.241
	)	REGARDING THE LOCATION
	)	OF UTILITIES IN HIGHWAY
	)	RIGHT-OF-WAY

TO: All Interested Persons.

1. On March 22, 1995, at 9 a.m., a public hearing will be held in the auditorium of the Department of Transportation building at 2701 Prospect, Helena, Montana, to consider amendments to certain rules regarding the location of utilities in highway right-of-way. 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. Also, where the rules used an English measurement, there will be provided a metric equivalent. 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).

18.7.201 PURPOSE OF UTILITY OCCUPANCY REGULATIONS

(1) The purpose of these regulations is to prescribe conditions under which utility facilities may be accommodated on right-of-way of highways under the jurisdiction of the Department of ~~Highways~~ transportation. The principal objectives of these regulations are to achieve maximum public use of such highway right-of-way consistent with the laws of the state of Montana while yet providing maximum public safety, environmental protection, preservation of the highway investment and minimization of future conflicts between highway and utility facilities.

(2) These regulations are adopted and promulgated pursuant to the authority of the ~~State of Montana~~ Department of ~~Highways~~ transportation, hereinafter referred to as the Department, to regulate occupancy of highway right-of-way. ~~Federal Highway Administration Policy and Procedure Memorandum 30-4.1 has been utilized as a guideline in establishing the policies and procedures set forth in these regulations to the extent that the provisions of Federal Highway Administration~~

3-2/23/95 MAR Notice No. 18-70

Policy and Procedure Memorandum 30-4-1 are not inconsistent with the Constitution and Laws of the State of Montana and local conditions and circumstances do not necessitate the adoption and promulgation of policies and procedures especially suited to this area. 23 C.F.R. Part 645, Subpart B, has been used as a guideline in establishing the policies and procedures set forth in these regulations to the extent the provisions of 23 C.F.R. Part 645, Subpart B, are not inconsistent with the Constitution and laws of the state of Montana or with special local conditions and circumstances.
AUTH: Sec. 60-3-101 and 60-4-402, MCA; IMP: Sec. 60-3-101 and 60-4-402, MCA.

REASON: This amendment was made necessary by the change in federal policy as found in 23 C.F.R. Part 645, Subpart B. In addition, the amendment reflects an awareness of the need for environmental protection. The amendment also recognizes the change in the name of the Department from the Department of Highways to the Department of Transportation pursuant to Ch. 512, Session Laws of Montana 1991, and Executive Order No. 11-91. Also see section 2-15-2501, MCA.

18.7.202 DEFINITIONS (1) "Department" means the State of Montana Department of Highways transportation and its authorized agents and representatives.

(2) "State" means the State of Montana and the State of Montana Department of Highways transportation as a duly constituted agency thereof, and its employees.

(3) will remain the same.

(4) "Facility" means all pipes, mains, conduits, cables, wires, towers, poles and other equipment, structures and appliances built or installed by any utility or non-utility for the purpose of transporting, transmitting, furnishing and/or distributing hydro-carbons and the products thereof, electric power and energy, communication signals, water and sewage.

(5) "State Highway Project" means any highway construction project on a highway that is under the jurisdiction of the Department of Highways transportation.

(6) "Highway" means any highway under the jurisdiction of the Department of Highways transportation.

(7) "Highway Right of Way" means the land owned or controlled by the State of Montana Department of Highways transportation which is designated as highway right-of-way.

(8) "Highway Structure" means any structure located on a highway that is under the jurisdiction of the Department of Highways transportation and constructed for the purpose of carrying vehicular, rail or pedestrian traffic over a depression, stream, obstacle, roadway, walkway or railroad.

(9) ~~"Freeway" means an expressway with full control of access.~~ "Full Controlled-Access Facility" means those portions of an interstate highway, throughway, or throughway intersection which the highway commission designates for through traffic or other federal aid or state highways over, from, or to which the owners or occupants of abutting land or other persons have no

easement of access, light, air, or view. It also means those portions of spurs of the interstate system which the highway commission designates as unsafe or impeded by unrestricted access of traffic from intersecting streets or alleys or public or private roads or ways of passage.

(10) "Expressway" means a divided arterial highway for through traffic with full or partial control of access and, generally, with grade separations at major intersections.

(11) "Retained Facility" means an existing facility which occupies right-of-way required for a new highway project by virtue of that a permit, right, or easement under which they it were originally installed.

(12) "Clear Recovery Area" means that portion of the highway right-of-way as established by the department. Unless otherwise provided, the distance for this area shall be 9.144 meters (30 feet) from the outer edge of the outside travel lane on paved sections or 12.8016 meters (42 feet) from the centerline of the road on unpaved sections, or "Clear Zone," as defined by the 1989 edition of the AASHTO publication "Roadside Design Guide," whichever is greater. (Copies of all AASHTO publications referenced in these rules are available for inspection and copying at the department's offices in Helena. Copies of current AASHTO publications are available for purchase from the American Association of State Highway and Transportation Officials, Suite 225, 444 North Capital Street, NW, Washington, DC 20001.)

(13) "District" means the specific geographic area of the state designated by the department of transportation as a district. There are five district headquarters, which are currently located in Missoula, Butte, Great Falls, Billings, and Glendive.

(14) "District Administrator" means the administrative head of each district or the designee of the district engineer.

(15) "Occupancy Agreement", "Common Use Agreement", or "Encroachment Permit" mean the documents the owner must secure from the department, prior to occupancy, showing the conditions of occupancy of highway right-of-way, whether such occupancy is overhead, underground, or on the surface.

AUTH: Sec. 60-3-101 and 60-4-402, MCA; IMP: Sec. 60-3-101 and 60-4-402, MCA.

REASON: The Department had to adopt a definition for "Clear Recovery Area" in order to comply with 23 C.F.R. Part 645, Subpart B. The referenced AASHTO publication provides guidance in establishing the boundaries of the free zone or "clear recovery area." The 9.2 meters (30 feet), or 12.8 meters (42 feet), minimum limitations are the Department's determination that such limits are needed for safety purposes, and reflect current practice. In addition, the term "District" is used throughout the rules, and it is convenient to provide a definition. Subsections (9) and (10) were deleted because those two terms are not used in these rules. A definition of "full

control access facility" was added, because that term is used in the rules. The proposed amendment reflects the creation of the Department of Transportation by the 1991 Legislature. The Agreement and Permit are defined in order to make clear that all parties must secure such a document prior to occupancy of highway right-of-way. The metric and English measures are being given throughout these proposed rules in order to comply with the Metric Conversion Act (15 U.S.C. § 2056); and the Omnibus Trade and Competitiveness Act of 1988, (P.L. 100-418, 15 U.S.C. § 205). Also, throughout the amended rules there has been an attempt to provide consistency by eliminating capital letters whenever it is proper to do so.

18.7.203 SCOPE AND APPLICATION (1) These regulations apply to all portions of all Federal-aid highway systems in Montana. They establish requirements for occupancy of highway rights-of-way by:

(a) Utility facilities having property rights which have not been extinguished as a result of the utility facilities having been relocated, or have not been extinguished by specifically acquiring the property rights in question. ARM 18.7.211 covers and explains the status of and actions to be taken regarding situations where both a utility company and the Department of Highways have property rights in a given piece of property.

(b) will remain the same.

(2) (a) (b) (c) (d) and (e) will remain the same.

(f) Occupancy by utility-type facilities that do not have a statutory right to occupy highway right-of-way, but are allowed under established use and encroachment permits administered by the department. Longitudinal occupancy of highway right-of-way by a non-utility is contrary to department policy. Where such longitudinal occupancy is approved by the district administrator, it will only be by a revocable encroachment permit.

(3) (a) will remain the same.

(b) Occupancy by utility-type facilities that do not have right-of-way occupancy, but are allowed under established Use and Encroachment Permits administered by the Department.

(4) will remain the same.

AUTH: Sec. 60-3-101 and 60-4-402, MCA; IMP: Sec. 60-3-101 and 60-4-402, MCA.

REASON: The amendment reflects the creation of the Department of Transportation. Subsection (3)(b) of the rule was transferred to subsection (2)(f) of the rule to provide that the regulations do apply to all types of occupancy by utility-type facilities. This provides consistency with current department policy and with ARM 18.7.206. Also, some language in (2)(f) (formerly (3)(b)) was changed to make the meaning clear, and to set forth the policy for longitudinal occupancy by non-

utilities.

18.7.204 OCCUPANCY OF FULL CONTROLLED-ACCESS FACILITY RIGHT OF WAY (1) Occupancy of full controlled-access facility right-of-way by utility facilities is contrary to Federal and Department policy and such occupancy will be permitted under these regulations only where it is not economically feasible to locate such facilities elsewhere is contrary to department policy, however, occupancy may be permitted in special cases where the utility owner shows that:

(a) The accommodation will not adversely affect the safety, design, construction, operation, maintenance or stability of the full control access facility;

(b) The accommodation will not be constructed or serviced by direct access from through traffic roadways or connecting ramps;

(c) The accommodation will not interfere with or impair the present use or future expansion of the full controlled-access facility;

(d) Any alternative location would be contrary to the public interest. This determination includes an evaluation of the direct and indirect environmental and economic effects which would result from disapproval of the use of such right-of-way for the accommodation of such utility.

(2) New utility installations and adjustments or relocations of existing utilities may cross the full controlled-access facility right-of-way. To the extent feasible and practicable they should cross at right angles to the full controlled-access facility right-of-way. No structures, vents, poles, manholes or other above-ground fixtures may be located within the full control access facility right-of-way unless approved by the department.

(3) Utilities can be installed within the right-of-way of a crossroad over or under the full controlled-access facility, provided such installation is in compliance with all applicable rules, and provided the installation and servicing can be accomplished without access from the through traffic facilities of the full controlled-access facility roadway or ramps.

AUTH: Sec. 60-3-101 and 60-4-402, MCA; IMP: Sec. 60-3-101 and 60-4-402, MCA.

REASON: The proposed amendment provides a more detailed explanation of those circumstances under which a utility will be allowed to occupy full control access facility rights-of-way. The rule as it currently reads does not set forth a standard that is easily applied in a uniform manner, and is limited to an economic test. The proposed amendment reflects a more detailed test, which is not limited to an economic test, and allows the Department to consider other factors; such as safety, environmental concerns, maintenance, or future expansion of the highway.

18.7.206 AUTHORITY OF PRIVATE AND PUBLIC UTILITY LINES

(1) All utilities ~~and facilities~~ defined in ARM Section (3) of ARM 18.7.202, have authority under Montana law to occupy highway rights-of-way, and in event of relocation, ~~these~~ are eligible for reimbursement pursuant to the laws of the State of Montana.

(2) All other facilities are private and have no authority to occupy highway rights-of-way other than by revocable permits issued at the sole discretion of the Department. Such facilities are regulated by these provisions, but in the event of relocation, they are not eligible for reimbursement ~~of any kind by under~~ the provisions of PPM-30-4 23 C.F.R. Part 645, Subpart A, or otherwise.

AUTH: Sec. 60-3-101 and 60-4-402, MCA; IMP: Sec. 60-3-101 and 60-4-402, MCA.

REASON: This amendment was made necessary by the adoption of new federal standards. In addition, there have been some clarifying language changes. It was also necessary to amend the rule to make clear that only a utility is qualified for the reimbursement.

18.7.211 AREAS OF COMMON USE AND OWNERSHIP (1) ~~Applica-~~
~~tion~~---This section applies to those situations where both utility facilities and highway facilities occupy a given piece of land ~~and~~ where the utility has a real property interest in the said land. This situation most commonly occurs as follows: Prior to expansion, improvement, or new construction of the highway, the utility constructed its line on land where it had a compensable interest; subsequent to this, the highway was widened or newly constructed, and the area where the utility had property rights was purchased by the ~~Department of Highways~~; the utility was not required to be relocated for the physical construction of the road, but remained and continued to occupy the land in which the utility company had an easement (in this case, the utility continues to occupy an easement which predates the right of way acquisition by the ~~Department of Highways~~, and thus the utility continues to occupy land in which it has a compensable real property interest). The situation of joint use and joint occupancy can conceivably occur in other ways, but the above is far the most common manner which gives rise to the common use situation.

(2) ~~Procedure~~---~~Although both the State and the utility company have real property interests in the subject land, it is desirable and good business that an effort should be made for both parties to~~ In those situations described in (1) above, ~~the parties should enter into a written agreement, thereby acknowledging their respective recognizing one another's rights of ownership and use and making a record thereof. When this situation arises, field Utility Agents and Helena Utility Section personnel should proceed with the actions outlined in~~

~~the current Utility Manual. Said written agreement may be The objective of these actions is to cause the state and the utility company to enter into a common use agreement pursuant to these regulations. The a "Common Use Agreement," which is used may be of the form shown in ARM 18.7.241 of these regulations, or it may be of any other form mutually acceptable to the parties and appropriate to the situation.~~

AUTH: Sec. 60-3-101 and 60-4-402, MCA; IMP: Sec. 60-3-101 and 60-4-402, MCA.

REASON: The amendments reflect the change in the name of Department, and include clarifying language. The amendments also reflect the repeal of ARM 18.7.241.

18.7.222 LONGITUDINAL OCCUPANCY OF HIGHWAY RIGHT OF WAY BY NEW FACILITIES - GENERAL (1) will remain the same.

(a) ~~In rural areas it is preferable that where sufficient right of way is available, the above-ground facilities should be located thirty feet or more from the edge of the pavement unless circumstances warrant a lesser distance at the edge of the right-of-way, but in no case should they be located within the clear recovery area, without prior department approval.~~ Furthermore, above-ground facilities should not be ~~closer nearer~~ than proposed ~~or existing~~ roadside appurtenances and fixtures.

(b) ~~Where sufficient right of way is not available in rural areas, above ground and below ground, facilities should be located as near as possible to the right-of-way line.~~

(c) ~~In cities, towns and urban areas, above-ground facilities to be placed within the public right-of-way will be located placed as far as practicable from the edge of the pavement.~~

(d) ~~In any case, where reasonably acceptable conditions exist, the rules in subsection (1)(a) and (b) of this rule shall not be applied to At the discretion of the department, the clear recovery area requirement may be waived for minor sections of a facility if no other reasonable alternative exists line in such a manner as to create misalignment of the facility. Any such waiver may only be granted upon the written approval of the district administrator.~~

AUTH: Sec. 60-3-101 and 60-4-402 MCA; IMP: Sec. 60-3-101 and 60-4-402, MCA.

REASON: The proposed amendment is necessary to maintain consistency in the rules insofar as the definition of "clear recovery area." The proposed change brings the regulations into compliance with federal policy, as well as current Department procedures. See the reason given under ARM 18.7.202, above. The amendment also includes clarifying changes in the language.

18.7.223 LONGITUDINAL OCCUPANCY BY NEW OVERHEAD FACILITIES

(1) Facilities above ground shall be located along the

outer portion of the mean right-of-way width.

(a) Where right-of-way width and terrain features permit, the facilities shall be located ~~not less than thirty feet from the edge of the pavement on paved sections or the shoulder of the road on unpaved sections, outside the clear recovery area,~~ except as follows:

(i) and (ii) will remain the same.

(iii) In timbered areas, adherence to the principle of occupying the outer portion of the right-of-way or adherence to the ~~30-foot minimum from the edge of pavement clear recovery area distance~~ may result in unwarranted cutting of timber along the roadway or the cutting of a new pathway along the right-of-way line. In these cases, discretion should be exercised to balance the undesirable aesthetic effects of such additional cutting against the results which are achieved by strict adherence to general policy. Any deviation from this rule will require written approval from the district administrator.

(iv) As set forth in 18.7.222(1)(c).

(b) ~~National Electrical Safety Code Requirements~~ Where appropriate, installations shall comply with the current edition of the National Electric Safety Code, as applied to the Medium Loading District or other applicable code or regulation.
AUTH: Sec. 60-3-101 and 60-4-402, MCA; IMP: Sec. 60-3-101 and 60-4-402, MCA.

REASON: The proposed amendment is necessary to maintain consistency in the rules insofar as the definition of "clear recovery area." The proposed change brings the regulations into compliance with federal policy. See the reason given under ARM 18.7.202, above. The amendment also includes clarifying changes in the language.

18.7.224 LONGITUDINAL OCCUPANCY BY NEW UNDERGROUND FACILITIES (1) will remain the same

(2) ~~Natural Gas, Water, Sewer and Hydrocarbon Pipeline Facilities~~

~~(a) For Natural Gas and other Hydrocarbon Facilities, pipeline installation shall conform to Parts 192 and 195 of the Code Federal Regulations, Title 49, Chapter 1, and any subsequent amendments thereof all applicable federal regulations.~~

~~(3) (a) Water and Sewer Facilities, Pipeline installation shall conform to the current standards for Montana Public Works Standard Specifications Railway and Highway Crossings adopted by the American Water Works Association and to the State's current Standard Specifications for Road and Bridge Construction and all applicable federal regulations.~~

~~(4) (a) No underground facilities will be permitted longitudinal occupancy under any portion of the pavement or surfacing courses in rural areas. However, in hardship cases such as solid rock, steep cliffs and swampy areas, etc., the Department may permit the placement of utility facilities along the~~

shoulder of the highway road section, provided ample sufficient justification is shown. It would be preferable in these cases, however, if the facilities were placed in the roadway ditch section or in the roadway fills for the short distance required to bypass the hardship areas. In such hardship cases consideration will be given to placement in conduit, at extra depth, or placing a concrete cap over the facility for additional protection. The installations shall be well marked as they leave the edge of the right of way and where they are located within the highway road facility. This does not affect the direct crossing of the highway rights-of-way in any manner (for underground crossings, see ARM 18.7.227 through 18.7.229). Utility installation in curbed sections or built-up areas may be permitted under the pavement or surfacing courses provided there are no border strips available for the installation.

(5) Fiber optic cable is to be buried a minimum of 1.0668 meters (42 inches) below the ground line except where the department approves a lesser depth because of some exceptionally difficult construction problems, including, but not limited to, solid rock or placement in utility conduits under city streets. The installed cable must be properly marked above ground and have a location or warning tape 457.2 millimeters (18 inches) above the cable, except as provided for in (5). The above-ground marking should be at least at 152.4 meters (500 foot) intervals or on a common line of sight between signs and markers.

(6) When installing non-metallic pipe or cable, the utility owner shall install suitable markers and other metallic location tape or wire for all installations other than pushed or bored crossings.

AUTH: Sec. 60-3-101 and 60-4-402, MCA; IMP; Sec. 60-3-101 and 60-4-402, MCA.

REASON: The 106 centimeter (42-inch) requirement is necessary because of the expense of repairing a damaged fiber optic cable. In addition, the utility owning the cable could lose substantial amounts of transmission time while a cable is being repaired. Repair for damage to such a cable can be as high as \$3,000 per splice and \$70,000 per minute of "down time." The Department (or other utilities) on many occasions performs earth work in the right-of-way which could sever the cable if it were buried at a depth less than 1.0668 meters (42 inches). Once the cable is installed it is expected that it will remain in the ground almost permanently; therefore, it is in everyone's best interest to ensure that it is well protected. The 1.0668 meter (42-inch) requirement is necessary to protect the cable from inadvertent damage by necessary maintenance and repair work. The other requirements of the proposed amendment are also necessary to protect the particular utility from some activity which would inadvertently sever a fiber optic cable. The amendment also includes clarifying changes in the language.

18.7.226 AERIAL CROSSINGS BY NEW UTILITY FACILITIES

~~(1) Facilities on the right of way shall comply with the conditions listed for In addition to the rules for longitudinal occupancy, as set forth in ARM 18.7.222 through 18.2.224 the following shall apply to new aerial crossings:~~

~~(a) Consideration shall be given to minimizing the frequency and length of crossing spans.~~

~~(2)(b) Facility crossings shall be made as nearly as possible at right angles to the highway.~~

~~(3)(c) Installation shall comply with the current edition of the National Electric Safety Code, or other appropriate code or regulation as applied to the Medium Loading District. In no event will a vertical clearance of less than eighteen feet be permitted 6.4008 meters (twenty-one feet) of clearance is required above the surface of the roadway.~~

AUTH: Sec. 60-3-101 and 60-4-402, MCA; IMP: 60-3-101 and 60-4-402, MCA.

REASON: The proposed rule change is to set forth the current standard used by the Department. It is necessary to provide for a clearance of 6.4008 meters (21 feet) to provide for the safety of the traveling public as well as the utility. The amendment also includes clarifying changes in the language.

18.7.227 UNDERGROUND CROSSINGS BY NEW COMMUNICATION AND ELECTRIC POWER FACILITIES (1) ~~Underground facilities shall be buried not less than the minimum depths required by the National Electrical Safety Code 762 millimeters (30 inches) deep. For facilities not governed by the National Safety Code, the cover shall, in no event be less than 18 inches and shall be a minimum of 30 inches wherever practicable.~~

~~(2) will remain the same.~~

~~(3) All other crossings shall should be made with conduit of sufficient capacity to handle anticipated future requirements of the utility.~~

~~(4) and (5) will remain the same.~~

~~(6) Fiber optic cable crossings are to be buried a uniform, minimum depth of 1.0668 meters (42 inches) below the ground line, or the bottom of a ditch, whichever is greater, if a ditch is present. Steel, heavy gauge pvc, or some equivalent conduit is required on road crossings where the district determines it is necessary. The location or warning tape will not be required on roadway crossings.~~

AUTH: Sec. 60-3-101 and 60-4-402, MCA; IMP: 60-3-101 and 60-4-402, MCA.

REASON: The change from 457.2 millimeters (18 inches) to 762 millimeters (30 inches) is necessary to protect the facility. Subsection (3) was changed, because it is no longer mandatory that all crossings be encased. For those portions of the amendment dealing with fiber optic cable see the reason given

for the amendment to 18.7.224, above.

18.7.229 UNDERGROUND CROSSING METHODS (1) For Crossing Existing Highways:

(a) If practicable, all crossings under existing highways shall be made by boring, ~~or by pushing pipe or other acceptable trenchless technology.~~

(b) Full control access facility crossings shall be installed by trenchless technology, or other acceptable methods, from control access fence to control access fence. The district can consider exceptions where soils are not suitable for boring or pushing or the length and topography make boring or pushing impracticable. In these cases permission can be granted to install jacking or boring pits within the control access fences. Receiving pits may also be installed in the median to reduce the distance only as a last resort. A traffic control plan must be submitted by the utility and approved by the district prior to beginning work.

~~(c)~~ (c) Trenching through existing paved highways shall be permitted only when installation by boring or pushing pipe is not practicable. When trenching is ~~necessary~~ allowed by the district administrator, installation will be made under the following conditions:

(i) The Department shall approve the methods used for backfill and compaction and repair of the highway surface where the surface is cut or damaged by utilities' operations. The methods followed shall be consistent with the Department's ~~Standard Practice in the area.~~ Non-shrink backfill may be required by the district as an acceptable alternative to conventional backfill methods.

(ii), (iii), and (iv) will remain the same.

(d) A traffic control plan shall be submitted by the utility and approved by the district administrator prior to commencing such work.

(2) will remain the same

AUTH: Sec. 60-3-101 and 60-4-402, MCA; IMP: 60-3-101 and 60-4-402, MCA.

REASON: It is necessary to amend the rule to protect the full access control area (from right-of-way fence to right-of-way fence). This is necessary for the safety of the traveling public. The proposed amendments also provide for consistency among the Districts and attempt to conform to current Department policy.

18.7.230 ATTACHMENT TO HIGHWAY STRUCTURES ~~(1) Utility facilities may be attached to existing highway structures whenever the Department so determines, except that they shall not be allowed on controlled access highways.~~

~~(2) When permitted to attach facilities to highway structures, the utility may be charged an equitable portion of~~

~~the added costs of design and construction necessary for the accommodation of such facilities.~~

~~(3) Utility lines on highway structures shall be concealed from view whenever possible.~~

~~(1) For existing attachments:~~

~~(a) Attachments to existing structures in place prior to the effective date of these rules are considered to be in compliance with this rule, provided:~~

~~(i) The owner shall inspect the attachment annually and shall repair any deficiencies. The owner shall maintain a record of the inspections.~~

~~(ii) If the attachment is not currently permitted by a structure attachment permit, the owner shall submit an application for a permit and drawings to the appropriate district office for approval under these rules within six months of the effective date of these rules.~~

~~(2) For proposed attachments to existing structures:~~

~~(a) Where it is feasible and reasonable to locate utility facilities elsewhere, attachment to highway structures will not be allowed. Where other locations create undue hardship for the installation of the facility, consideration will be given to attaching the utility facility to a highway structure. The following conditions will apply:~~

~~(i) All utility facilities attached to structures shall be attached as provided in this rule unless written approval to do otherwise is granted by the department's bridge engineer.~~

~~(ii) Attachments to structures shall be inspected by the owner at least once per year and the owner shall repair any deficiencies immediately. Records of the inspections shall be maintained by the owner for a minimum of three years.~~

~~(iii) Attachment to longitudinal structures on a full control access facility system generally will not be permitted except to exclusively serve a highway facility. Attachments to existing structures crossing the full control access facility will be considered on a case-by-case basis.~~

~~(iv) The attachment method shall conform to engineering standards for preserving the highway, its safe operation, maintenance and appearance.~~

~~(v) Attachment of a utility facility will not be permitted unless the structure can support the additional load, and accommodate the utility facility without compromising highway user safety and convenience, and its attachment does not impair bridge inspection or maintenance.~~

~~(vi) Manholes will not be allowed in the driving lanes of a bridge deck. Where the structure has a minimum shoulder width of 3.048 meters (10 feet), manhole access through the deck in the shoulder area may be allowed within the discretion of the department.~~

~~(vii) The utility attachment will be installed on the bridge in a manner which will not reduce the vertical clearances above river, stream, pavement or top of a rail.~~

(viii) Utility attachments to the outside of a structure that is located within 402.336 meters (440 yards) of a residential structure, park, fishing access site, or other recreational facility will not be permitted. A residential structure is any building intended for human occupancy, including businesses. This provision may be waived by the district administrator if the utility can demonstrate the provision will place an economic hardship on the utility and that the design and attachment of the facility will not detract from the aesthetics of the structure. In other areas where, in the opinion of the district administrator, bridge aesthetics are not a particular concern, a utility may be attached to the outside of the structure. Utilities attached to the outside of the structure will be on the downstream side.

(ix) Utility facilities shall be firmly attached to the structure and where necessary padded to eliminate noise and abrasion due to vibrations caused by wind or traffic.

(x) The installation of a utility through the abutment or wing wall of an existing structure shall not be permitted.

(xi) In locations where a utility attached to a structure is carried beyond the back of the abutment, the utility shall curve or angle out to its proper alignment outside the roadbed area within the shortest possible distance from the abutment.

(xii) So long as utility facilities comply with the other conditions set forth in these rules such a facility may be attached to structures by hangers or roller assemblies suspended from inserts in the underside of the deck or from hanger rods clamped to a flange of a superstructure member.

(A) Bolting through the deck or concrete beams shall not be permitted.

(B) Welding of attachments to steel members or bolting through such members shall not be permitted.

(C) The use of anchors driven using the explosive type drilling force shall not be permitted.

(D) Drilling in prestressed concrete beams shall not be permitted.

(E) Attachments of utilities facilities to bridge handrail or guardrail or their anchorage systems shall not be permitted.

(F) Attachment of pipelines carrying deleterious or corrosive substances shall not be permitted.

(xiii) The design of a utility attachment to a highway structure shall include provisions acceptable to the department for lineal expansion and contraction due to temperature changes. Line bends or expansion couplings may be used for this purpose.

(xiv) Each proposed bridge attachment will be considered on a case-by-case basis by the department.

(xv) Trenching in the vicinity of piers, bents or abutments shall be a sufficient distance from footings to prevent undercutting or material from sloughing from under the footing.

(xvi) An application which involves the reduction of existing waterway area shall not be permitted.

(xvii) Utilities attached to bridges shall not be maintained from the bridge deck without the prior approval of the department's district engineer.

(xviii) Utility facilities shall not be attached to bridges on or eligible for listing on the national register of historic places without written consent of the state historic preservation officer.

(xix) By accepting the occupancy permit, the owner of the utility facility shall be fully liable to the department, or others, for any damage to the structure, or the surrounding environment, caused by the placement and use of the facility on a highway structure. If the structure is damaged by the utility facility, through negligence or otherwise, so that the structure can not be used by the traveling public, then the utility must pay all costs to repair the structure, and associated costs.

(xx) The department shall not allow any new attachments to a highway structure by petroleum, natural gas, or other products pipelines in seismically active areas (those areas where the anticipated acceleration coefficients due to an earthquake exceed 10% of gravity) unless the structure has been retrofitted or built in conformity to the department's seismic requirements since January 1, 1992. The department may waive this requirement if the department determines that the structure is adequate for the seismic area within which it is located.

(3) For proposed attachments to new bridge structures:

(a) Where the department plans to construct a new structure, the design of the structure will, upon request of a utility company, be reviewed by the department's bridge bureau for accommodation of existing or proposed utility installations consistent with the requirements set forth herein. The utility company may be required to reimburse the state for additional design and construction costs associated with accommodating the utility facility on the new structure.

(b) Installation of a utility facility on a new structure shall be coordinated with the bridge construction so as not to interfere with the operations of the highway contractor.

(c) The applicant shall submit complete plans and specifications of the proposed installation, including the weight per linear meter (foot) and detail drawings to the department prior to the department's completion of plans and specifications for the proposed structure.

(d) Utility facilities may be installed through free standing bridge abutments, but shall not be permitted through abutments or bents that are expected to move as the thermal expansion and contraction affects the bridge. The hole created in the bridge abutment must be of the minimum size necessary to accommodate the utility and it shall be sleeved to permit relative movement between the abutment and utility.

(4) For pipelines:

(a) At the option of the utility, pipelines must be attached to a highway structure by one of the following methods:

(i) The carrier line shall be encased throughout the length of the structure and the casing shall be carried beyond, but not through, the bridge abutments and shall be effectively opened or vented at each end. The casing shall be designed to withstand the same internal pressure as the carrier pipe; or

(ii) The carrier line may be attached to the structure unencased using the following design factors:

<u>Class Location 1</u>	<u>0.50</u>
<u>Class Location 2</u>	<u>0.40</u>
<u>Class Location 3</u>	<u>0.33</u>
<u>Class Location 4</u>	<u>0.27</u>

The design factor specified shall be obtained in accordance with the equations set forth in 49 C.F.R. 192 by any combination of wall thickness and/or pipe yield strength that will provide the required design factors. If the design factor is obtained by increasing steel strength, the utility shall provide certification at the time of installation to the department that the pipe, in fact, meets the strength requirements in the design calculations.

(b) The carrier pipe shall be pressure tested before start-up in accordance with the latest edition of applicable industry codes, as well as the applicable statutes and regulations.

(c) The attachment shall be designed to prevent any discharge from damaging the structure or reaching the waterway in the event of a rupture. That capability shall be demonstrated to the satisfaction of the department's bridge engineer prior to approval of the attachment.

(d) Pipelines using bridge members to resist forces generated by fluids in motion shall not be permitted.

(e) The following information shall be included in the application: outside diameter, inside diameter, pipe material, actual working pressure, substance carried, type of coating, and any other information requested by the department.

(f) Pipelines attached to highway structures shall be electrically isolated from the structure.

(g) Pipelines shall be attached to provide sufficient clearance for convenience and safety during maintenance and repair of the structure or other utility attachments on the structure. The pipeline shall be located to minimize the possibility of damage from traffic. Pipelines shall include the capability to allow for expansion and contraction of the structure and the pipeline.

(5) For power and communication lines:

(a) Electric power and communication conductors attached to a highway structure shall be insulated from the structure, and carried in protective conduit or pipe throughout the structure. Exposed metallic conduit shall be grounded on each end. Where metallic conduit is installed within two meters (seven feet) of any metal parts of the structure which are readily accessible, including, but not limited to, railings,

platforms, or stairs, the metallic conduit shall be bonded to the metal parts of the structure. When bonding, all sections of the structure shall be bonded to the metallic conduits.

(b) Electrical power and communication lines shall be attached to provide sufficient clearance for convenience and safety during maintenance and repair of the structure or other utility attachments on the structure. The conduit shall be located to minimize the possibility of damage from traffic. Conduits shall allow for the expansion and contraction of the structure.

(c) Attachments shall comply with the national electrical safety code and applicable regulations.

(d) Metallic conduit attached to structures that are cathodically protected shall meet all of the above requirements and shall not adversely affect the cathodic protection of the structure, i.e., insulate the conduit from the soil and use anodes at each end for grounding. Method to be used shall be approved by the department's bridge engineer on a case by case basis.

(6) Aerial power or communication lines will not cross over bridges where it is possible to avoid such installations. A minimum vertical clearance of 7.62 meters (25 feet) from the top of the bridge rail will be maintained. A horizontal clearance of 7.62 meters (25 feet) will be maintained from the neat lines of the structures.

(7) For attachment materials:

(a) All attachments to structures shall be constructed from durable materials designed for long service life and be free from routine servicing or maintenance. All materials shall conform to current applicable industry specifications and codes.

(b) All steel materials used in attaching a utility conduit to a structure shall be stainless or galvanized.

(c) Materials used for attaching a utility facility to the structure shall be compatible with the structural material to eliminate the possibility of corrosion.

AUTH: Sec. 60-3-101 and 60-4-402, MCA; IMP: Sec. 60-3-101 and 60-4-402, MCA.

REASON: The proposed amendments are necessary in order to more fully protect the affected structure and the traveling public. In addition, the proposed amendments provide for standard procedures for statewide applicability, many of which conform to current practices.

18.7.231 GENERAL CONSIDERATIONS (1) Will remain the same.

(a) Occupancy of Controlled Access Right of Way Utility facilities shall be allowed to occupy controlled access portions of controlled access highways only upon receiving prior approval from the Department and the Federal Highway Administration. Utility facilities occupying such right of way shall comply with

~~the American Association of State Highway and Transportation Officials' "Policy on the Accommodation of Utilities on Freeway Rights of Way."~~

~~(b) Changes in Highway~~ — If the State should deem it necessary and/or desirable to change, construct, reconstruct, or otherwise use for highway purposes, the premises occupied by utility facilities, or any portion thereof, and such change, construction, reconstruction or usage should necessitate changes in utility structures or installations, the utility shall make the necessary changes and the costs thereof shall be paid in accordance with the law in effect at the time the change is required to be made; State and utility reserve the right to test validity or constitutionality of any such law. The department reserves the right to expand highway facilities over existing underground utilities located within highway right-of-way without adjusting the utility facility, if the construction work does not conflict with the utility.

~~(c)(b)~~ The utility facility owner shall be liable, and State shall not be liable, to the general public for any injury to or death of any person whomsoever, or for the loss of or damage to property of any kind or nature to whomsoever belonging when such injury, death, loss or damage arises out of or results from the construction, maintenance, or repair of existing or future utility facilities located within the highway right-of-way, or the installation or operation of such utility facilities within the highway right-of-way, regardless of whether or not the Department has expressed or implied approval of the construction, maintenance, repair, installation or operation of such facilities within the highway right-of-way. If any highway or transportation facility or structure is damaged by any party, whether through negligence or otherwise, then that party is fully responsible for the cost to repair the structure and any associated costs, including, but not limited to those liabilities set forth in the previous sentence.

~~(d)(c) Highway Drainage~~ — If the work done by the utility interferes in any way with highway drainage ~~of the state highway affected~~, the utility, at its expense, shall make such reasonable provisions as the Department may direct to ~~take care of correct~~ such drainage.

~~(e)(d) Clearing of Vegetation~~ — Clearing of trees, bushes and other vegetation shall be held to the minimum required for construction and safety. All such clearing shall be revegetated in accordance with 7-22-2152, MCA. Spraying of vegetation to inhibit growth is ~~undesirable and should be performed only in isolated cases where other methods are not feasible prohibited.~~

(e) In the event it is necessary to cut or disturb a paved portion of a roadway, then such disturbance shall be properly patched, and shall be maintained for one year from the installation date. If the responsible party does not perform required repairs within 30 days of notification, the department

may make such repair and charge the full cost to the responsible party.

(f), (g), (h), and (i) will remain the same.

(j) ~~Removal of Above-ground Facilities~~ — Upon termination of occupancy, the utility shall remove its above-ground facilities and restore the right-of-way as nearly as practicable to the condition existing at the time of initial occupancy thereof. ~~Reasonable and ordinary wear and tear and damage deterioration caused by use or the elements or by circumstances over which the utility has no control, the acts of nature are~~ excepted.

(k) Retired or abandoned below-ground facilities shall, at the discretion of the department, be removed by the facility owner, and any costs (including costs associated with the proper removal of hazardous or solid wastes) associated with such removal shall be the responsibility of the utility facility owner.

(k) will remain the same, but will be redesignated as (l).

~~(l)(m) Occupancy Where State Has Easement for Highway Purposes Only~~ — Where the State's right-of-way is by easement for highway purposes only, utility occupancy ~~is~~ may be subject to approval by the owner of the underlying fee interest. The utility company ~~shall be responsible for obtaining such approval before installing its facilities is encouraged to determine whether it is in its best interest to obtain such approval prior to installing its facilities.~~

~~(m)(n) Scenic Enhancement~~ ✓ New utility facility installations, including those needed for highway purposes, will not be permitted within scenic strips, overlooks, rest areas, recreation areas, the rights-of-way of highways adjacent thereto, the rights-of-way of highways which pass through historic sites and public parks, archaeological sites that have been determined eligible for listing on the national register of historic places, a wetland protected by Executive Order 11990, or any other environmentally sensitive area, except as follows:

(i) New underground utility facilities ~~will~~ may be permitted within such areas where they do not require extensive removal of, or damage to, trees visible to the highway user, or impair the appearance of the area.

(ii) will remain the same.

(iii) Situations involving unusual hardship or other extenuating circumstances within scenic and public use areas will be considered, ~~as provided in Paragraph 69(3) of Policy and Procedure Memorandum 30-4-1.~~

(iv) If avoidance of such areas is not feasible, and the applicant demonstrates to the satisfaction of the department that mitigation of any adverse impacts is possible and preferable to complete avoidance, then the department may allow the applicant to occupy such areas provided such mitigation measures are taken.

~~(n) Traffic Protection~~

~~(i) The requirements of that part of the Manual on Uniform Traffic Control Devices which specify Traffic Controls for Street and Highway Construction and Maintenance Operations will be the general standard for traffic protection. Those utility companies that agree to follow these said standards will be issued a general permission to proceed on all routine utility work on highway right of way without presenting a specific traffic protection plan for each job or project. Other utility companies which have general company policies relating to traffic protection may present such policies to the Department and request general permission to proceed on certain routine utility work. Such policies will be reviewed and if the policies and the general operating record of the utility company on highway right of way are deemed acceptable, general permission to perform certain defined utility work may be granted.~~

~~(ii) Utility occupancies involving unusual problems or unusual traffic characteristics should be coordinated with the Department.~~

~~(iii) However, where an independent contractor is to perform utility work on highway right of way, he must, prior to commencing work, present a plan for traffic protection and obtain the approval of the Department.~~

(o) The installation of utility facilities or conduits on the right-of-way of federal aid or direct federal highway projects for the purpose of draining adjacent wetlands onto the highway right-of-way is inconsistent with Executive Order 11990, Protection of Wetlands, dated May 24, 1977, and shall not be permitted.

The filling, dredging or draining of wetlands located on highway right-of-way shall not be allowed unless in compliance by all federal and state laws and regulations.

(p) The utility company shall comply with the Montana Environmental Policy Act, sections 75-1-101, et seq., MCA.; the Threatened and Endangered Species Act, 16 U.S.C. § 1531, et seq.; the Migratory Bird Treaty Act, 16 U.S.C. § 701, et seq.; the Bald and Golden Eagle Protection Act, 16 U.S.C. § 668, et seq.; and all other applicable environmental laws, regulations or provisions.

(q) Whenever a utility installation, adjustment, or maintenance activity will affect the movement of traffic or traffic safety, the utility shall implement a traffic control plan and use traffic control devices as necessary to ensure the safe and expeditious movement of traffic around the work site and the safety of the utility work force. The traffic control plan and the application of traffic control devices shall conform to the standards set forth in the Manual on Uniform Traffic Control Devices (MUTCD), and 23 C.F.R. 655, Subpart F. No road closure shall occur without prior approval from the district engineer. In all cases, it is nec-

essary that utility work be undertaken in a manner that will minimize interference with the traveling public.

AUTH: Sec. 60-3-101 and 60-4-402, MCA; IMP: Sec. 60-3-101 and 60-4-402, MCA.

REASON: The proposed amendments are necessary for several reasons. The elimination of former part (a) is necessary because this subject matter is covered elsewhere. Subpart (b) was amended to make clear that the state is allowed to use the right-of-way for its primary function. New subpart (e) was added to ensure that the party responsible for the disturbing and patching of a portion of roadway will perform such patching in the proper manner, and be responsible for that work for one year. New subpart (k) was added to make clear that the state is not liable for removal of retired or abandoned underground facilities, and that any clean-up of hazardous waste materials is to be the responsibility of the utility. Subpart (l) was amended because Montana case law holds that a utility company does have the right to occupy the right-of-way even in those instances where the right-of-way is held by easement rather than in fee. Bolinger v. City of Bozeman, 158 Mont. 507, 493 P.2d 1062 (1972). There may, however, be instances when the utility should make an independent determination as to whether it is in the utility's best interest to obtain such independent approval, such as where the underlying fee is owned or administered by a state, federal or tribal agency. Subpart (m) (now n) was amended to bring the rule into line with current practice, and to allow the Department some discretion in subpart (m)(i). Subpart (m)(iii) was amended in part to reflect that the Policy and Procedure Memorandum 30-4.1 is no longer in use. Subpart (n) was amended to bring the rule into line with current state and federal policy as set forth in the referenced material. Subpart (o) was added to bring the rule into compliance with the referenced Executive Order, and to make clear that the utility facility would not be allowed to destroy or degrade wetlands located on highway right-of-way. Subpart (p) was necessary in order to allow the Department to place restrictions and conditions upon the placement of utilities in highway right-of-way. It was the opinion of the Department that without such a rule the Department may not have the authority to require utilities to make their utilities "raptor proof," or otherwise require the utilities to comply with environmental requirements. Further, without such an ability the Department could conceivably be liable under the referenced federal laws. Subpart (q) was added to ensure the safe and convenient use of the highway facility by the traveling public when a utility is being located or relocated within a highway right-of-way.

18.7.232 PROCEDURE - NEW UTILITY FACILITIES ON HIGHWAY RIGHT OF WAY (1) The procedure described below will be followed when a utility proposes to occupy the right-of-way of a

new or existing highway. No such occupancy shall be allowed until such time as the utility acquires from the department an approved occupancy agreement, common use agreement or an encroachment permit.

~~(a) Ground-mounted or Underground Facilities-~~

~~(i) The utility will prepare and submit a notice of its proposed occupancy to the appropriate Division Office. (on active construction projects, action will be taken by the division Construction Section Supervisor; in other cases, action will be taken by the Field Maintenance Bureau Chief). The form to be used for such notice is hereby prescribed and identified in ARM 10.7.241. The notice shall be submitted in triplicate, accompanied by utility plans showing the location of the proposed facilities with respect to the highway.~~

~~(ii) The Supervisor or Chief will review the occupancy as proposed by the utility and if the proposed installation conforms with the standards set forth in these regulations, he will indicate his approval by affixing his signature to the notice. One copy of the approved notice will be returned to the utility and two copies will be retained by the Department.~~

~~(iii) If the Supervisor or Chief determines that the utility's occupancy does not conform with these standards, he will return the utility's proposal specifying in writing the reasons it does not conform with these standards.~~

~~(iv) The utility may resubmit its proposal after making whatever changes may be necessary to conform with such determination, to the director of highways for review.~~

(a) The utility shall prepare and submit the appropriate occupancy form in triplicate to the department's district office for approval.

(b) The form must be accompanied with a plan showing the location of the proposed facility in relation to the highway centerline and right-of-way.

(c) The district administrator or designate shall review and approve or disapprove the proposed occupancy form. The utility will be notified in writing of the determination.

(d) If an installation is made that does not comply with these rules, or is installed without an approved permit or agreement, the owner of the installation shall be required to remove said installation at no cost to the state, or, at the option of the department, correct the deficiencies as directed by the district.

~~(b) Attachment to highway structures—The utility will prepare and submit notice of its proposal to the appropriate division office as described in subsection (1) (a) (i) of this rule. The notice shall be accompanied by an "Encroachment Application and Permit," provided for in ARM 10.7.241. This form shall be prepared in accordance with the instructions shown thereon.~~

AUTH: Sec. 60-3-101 and 60-4-402, MCA; IMP: Sec. 60-3-101 and 60-4-402, MCA.

REASON: The proposed amendment is necessary because the term "division" no longer describes the primary geographical areas into which the Department has delineated its operations, or field offices. As explained under the reason to the amendments to ARM 18.7.202, such offices are now described as "districts." In addition, the proposed amendments change and delete language in order to make the rule clearer, or to take out redundant material.

18.7.241 FORMS (IS HEREBY REPEALED)

AUTH: Sec. 60-3-101 and 60-4-402, MCA; IMP: Sec. 60-3-101 and 60-4-402, MCA. This rule is found at page 18-220 of the Administrative Rules of Montana.

REASON: The proposed repeal is necessary because the forms are being substantially changed, and the designations are no longer appropriate. In addition, by repealing this rule it will allow the department to change the forms, and their designations, in the future, without requiring a change of the rules.

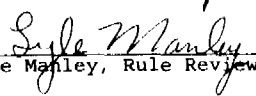
3. Interested persons may submit their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to Robert E. Fischer at the Montana Department of Transportation, 2701 Prospect, Helena, MT 59620, no later than 5 p.m., April 4, 1995.

4. Tom Bowe has been designated to preside over and conduct the hearing.

MONTANA DEPARTMENT OF TRANSPORTATION

By: 

MARVIN DYE, Director


Lyle Manley, Rule Reviewer

Certified to the Secretary of State February 13, 1995.

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

In the matter of the proposed) NOTICE OF CONTINUANCE OF
adoption of 15 new rules) PUBLIC HEARING
related to the operation of)
the uninsured employers' fund)
and the underinsured employers')
fund, and the repeal of ARM)
24.29.2801)

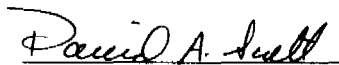
TO ALL INTERESTED PERSONS:

1. On January 26, 1995, the Department of Labor and Industry published notice of a public hearing at pages 101 through 108 of the 1995 Montana Administrative Register, Issue No. 2, concerning the proposed adoption of 15 new rules related to the operation of the uninsured employers' fund and the underinsured employers' fund, and the repeal of ARM 24.29.2801.

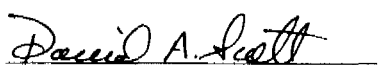
2. The Department has decided, pursuant to 2-4-302, MCA, to continue the public hearing previously set for February 17, 1995, because of pending legislation that may affect the subject matter of the proposed rule-making activity.

3. The Department will give notice of the date, time and location of the continued public hearing in time to allow interested persons at least 20 days notice of the public hearing.

Laurie Ekanger, Commissioner
DEPARTMENT OF LABOR & INDUSTRY


David A. Scott
Rule Reviewer

By:


David A. Scott, Chief Counsel
DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State: February 13, 1995.

In the matter of the amendment)	NOTICE OF AMENDMENT OF RULE
of Rule 11.7.501 pertaining to)	11.7.501 PERTAINING TO
foster care review committees)	FOSTER CARE REVIEW
)	COMMITTEES

1. On January 12, 1995, the Department of Family Services published notice of the proposed amendment of ARM 11.7.501 pertaining to foster care review committees, at page 10 of the 1995 Montana Administrative Register, issue no. 1.

3. No comments were received.

Hank Hudson, Director

John Melcher, Rule Reviewer

Certified to the Secretary of State, February 13, 1995.

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

In the matter of the adoption of	)	CORRECTED NOTICE OF
new rules I-V establishing	)	ADOPTION OF
administrative enforcement	)	NEW RULES I - V
procedures for the public water)	
supply act.)	

(Public Water Supply)

To: All Interested Persons

1. On February 9, 1995, the board published notice of the adoption of the above-captioned rules at page 208 of the Montana Administrative Register, Issue No. 3. Because there were already rules assigned to subchapter 5 of Title 16, chapter 20, this correction is being made to reassign these rules to subchapter 8 of Title 16, chapter 20.


RULE I (16.20.501 801) PURPOSE

RULE II (16.20.502 802) DEFINITIONS

RULE III (16.20.503 803) ENFORCEMENT PROCEDURES

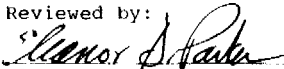
RULE IV (16.20.504 804) ADMINISTRATIVE PENALTIES

RULE V (16.20.505 805) SUSPENDED PENALTIES


ROBERT J. ROBINSON, Director

Certified to the Secretary of State February 13, 1995.

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) NOTICE OF AMENDMENT
rule 16.32.302 concerning construc-)
tion standards for health care)
facilities)

(Health Care Facilities)

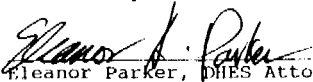
To: All Interested Persons

1. On January 12, 1995, the department published notice of the proposed amendment of ARM 16.32.302 at page 14 of the Montana Administrative Register, Issue #1.
2. The department has amended the rule as proposed with no changes.
3. There were no comments received on this rulemaking.


for ROBERT J. ROBINSON, Director

Certified to the Secretary of State February 13, 1995.

Reviewed by:


Eleanor Parker, DHES Attorney

BEFORE THE DEPARTMENT OF CORRECTIONS
AND HUMAN SERVICES
OF THE STATE OF MONTANA

In the matter of the	)	NOTICE OF ADOPTION OF NEW
adoption of new rules	)	RULES 20.7.301 THROUGH 20.7.304
which set forth the	)	FOR SEX OFFENDER EVALUATION AND
guidelines and quali-	)	TREATMENT PROVIDER GUIDELINES AND
fications for sex	)	QUALIFICATIONS
offender evaluation and)	
treatment providers)	

TO: ALL INTERESTED PARTIES

1. On December 22, 1994, the Department of Corrections and Human Services published a Notice of Proposed Adoption of Rules I through IV (ARM 20.7.301 through 20.7.304) setting forth the guidelines and qualifications for sex offender evaluation and treatment providers at page 3174 of the Montana Administrative Register, issue number 24.

2. No written comments were received.

3. The agency has adopted new rules ARM 20.7.301 through 20.7.304 as proposed.



DAVID L. OHLER
Rule Reviewer



RICK DAY, Director
Department of Corrections
and Human Services

Certified to the Secretary of State February 13th, 1995.

BEFORE THE BOARD OF OIL AND GAS CONSERVATION
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION
OF THE STATE OF MONTANA

In the matter of the amendment)	
to Rules 36.22.604 and 36.22.605)	
pertaining to the issuance,	)	NOTICE OF AMENDMENT
expiration, extension, and)	
transfer of permits, and)	
Rule 36.22.703 pertaining to)	
horizontal wells.)	

TO: ALL INTERESTED PERSONS

1. On October 27, 1994, the Board of Oil and Gas Conservation published notice of the proposed amendment of rules 36.22.604 and 36.22.605 which pertain to the issuance, expiration, extension, and transfer of permits, and rule 36.22.703 pertaining to horizontal wells, at page 2792 of the Montana Administrative Register, Issue No. 20.

2. On November 30, 1994, the Board of Oil and Gas Conservation amended rules 36.22.604 and 36.22.605 as proposed. The board amended rule 36.22.703 with the following changes:

36.22.703. HORIZONTAL WELLS Subsections (1) through (3) remain the same.

(4) The operator of a horizontal well may designate an optional drilling unit, which must consist of two, three, or four contiguous drilling units of the size and shape otherwise authorized for a vertical well of the same projected depth. The operator must receive administrative approval of the optional drilling unit before starting to drill the horizontal drainhole. Minimum distance requirements from drilling unit boundaries that would apply to the contiguous drilling units apply to the optional drilling unit, except that such requirements do not apply to the common boundary of the contiguous units. Any operator designating an optional drilling unit under this section must apply for proper well spacing within 90 days after the completion of a well capable of production.

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

AUTH: Sec. 82-11-111, MCA

IMP: Sec. 82-11-124 and 82-11-201, MCA

COMMENT: At the board meeting, it was suggested changing the language to allow two, three, or four contiguous drilling units which would provide more flexibility for

drilling unit configurations than just two. The suggestion was made into a motion, and it unanimously passed.

BOARD OF OIL & GAS CONSERVATION


THOMAS P. RICHMOND, ADMINISTRATOR


DONALD D. MACINTYRE, RULE REVIEWER

Certified to the Secretary of State Feb. 6, 1995.

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, 1994. This table includes those rules adopted during the period October 1, 1994 through December 31, 1994 and any proposed rule action that was 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, 1994, this table and the table of contents of this issue of the MAR.

This table indicates the department name, title number, rule numbers in ascending order, catchphrase or the subject matter of the rule and the page number at which the action is published in the 1994 and 1995 Montana Administrative Register.

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BOARD APPOINTEES AND VACANCIES

Section 2-15-108, MCA, passed by the 1991 Legislature, directed that all appointing authorities of all appointive boards, commissions, committees and councils of state government take positive action to attain gender balance and proportional representation of minority residents to the greatest extent possible.

One directive of 2-15-108, MCA, is that the Secretary of State publish monthly in the **Montana Administrative Register** a list of appointees and upcoming or current vacancies on those boards and councils.

In this issue, appointments effective in January, 1995, appear. Vacancies scheduled to appear from March 1, 1995, through May 31, 1995, are listed, as are current vacancies due to resignations or other reasons. Individuals interested in serving on a new board should refer to the bill that created the board for details about the number of members to be appointed and qualifications necessary.

Each month, the previous month's appointees are printed, and current and upcoming vacancies for the next three months are published.

IMPORTANT

Membership on boards and commissions changes constantly. The following lists are current as of February 2, 1995.

For the most up-to-date information of the status of membership, or for more detailed information on the qualifications and requirements to serve on a board, contact the appointing authority.

BOARD AND COUNCIL APPOINTEES FROM JANUARY, 1995

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Board of Aeronautics (Transportation)			
Ms. Josephine Eisenzimer	Governor	Mecklenbur	1/1/1995
Cascade			1/1/1999
Qualifications (if required): involved in aviation education			
Mr. Leland F. Ford			
Bigfork	Governor	reappointed	1/1/1995
			1/1/1999
Qualifications (if required): public member			
Mr. Robert M. Hector			
Billings	Governor	reappointed	1/1/1995
			1/1/1999
Qualifications (if required): representative of commercial airline operators			
Mr. Arnold Lindberg			
Cut Bank	Governor	Stroh	1/1/1995
			1/1/1999
Qualifications (if required): fixed base operator			
Board of Chiropractors (Commerce)			
Dr. Marvin S. Harris	Governor	reappointed	1/1/1995
Great Falls			1/1/1998
Qualifications (if required): practicing chiropractor			
Board of Horseracing (Commerce)			
Ms. Trish Fisher	Governor	Christian	1/20/1995
Florence			1/20/1998
Qualifications (if required): represents District 5			
Mr. Lou Wojciechowski			
Billings	Governor	Adams	1/20/1995
			1/20/1998
Qualifications (if required): represents District 2			

BOARD AND COUNCIL APPOINTEES FROM JANUARY, 1995

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Board of Investments (Commerce)			
Mr. Douglas Bardwell	Governor	MacFadden	1/1/1995
Missoula			1/1/1999
Qualifications (if required):	represents the financial community		
Ms. Maureen J. Fleming	Governor	reappointed	1/1/1995
Missoula			1/1/1999
Qualifications (if required):	represents labor		
Mr. F. Lee Robinson	Governor	reappointed	1/1/1995
Malta			1/1/1999
Qualifications (if required):	represents business		
Mr. Calvin Wilson	Governor	Johnson	1/1/1995
Busby			1/1/1999
Qualifications (if required):	attorney and public member		
Board of Natural Resources and Conservation (Natural Resources and Conservation)			
Mr. Gerald Feda	Governor	reappointed	1/1/1995
Glasgow			1/1/1999
Qualifications (if required):	experienced in subjects of natural resources		
Mr. Jack Galt	Governor	reappointed	1/1/1995
Martinsdale			1/1/1999
Qualifications (if required):	experienced in subjects of natural resources		

BOARD AND COUNCIL APPOINTEES FROM JANUARY, 1995

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Board of Oil and Gas Conservation (Natural Resources and Conservation)			
Mr. Stanley Lund	Governor	not listed	1/1/1995
Reserve			0/0/0
Qualifications (if required): none specified			
Mr. Warren H. Ross	Governor	reappointed	1/1/1995
Chinook			1/1/1999
Qualifications (if required): landowner with mineral rights			
Mr. Dean A. Swanson	Governor	reappointed	1/1/1995
Polson			1/1/1999
Qualifications (if required): in the oil and gas industry			
Mr. Derzil Young	Governor	reappointed	1/1/1995
Baker			1/1/1999
Qualifications (if required): landowner with no mineral rights			
Board of Pardons (Corrections and Human Services)			
Mr. Patrick T. Fleming	Governor	Hoffman	1/1/1995
Butte			1/1/1999
Qualifications (if required): attorney			
Ms. Mary Jo Fox	Governor	Fleming	1/1/1995
Billings			1/1/1997
Qualifications (if required): auxiliary member			

BOARD AND COUNCIL APPOINTEES FROM JANUARY, 1995

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeded</u>	<u>Appointment/End Date</u>
Board of Passenger Tramway Safety (Commerce)			
Mr. Scott Bowen	Governor	Prather	1/1/1995
Big Sky			1/1/1999
Qualifications (if required):	ski area operator		
Mr. Merv Erickson			
Missoula	Governor	reappointed	1/1/1995
Qualifications (if required):	representing the United States Forest Service		1/1/1999
Board of Personnel Appeals (Labor)			
Ms. Jean Hagan	Governor	Klepper	1/1/1995
Big Fork			1/1/1999
Qualifications (if required):	representative of management in collective bargaining activity		
Mr. Willis M. McKeon			
Malta	Governor	reappointed	1/1/1995
Qualifications (if required):	has labor-management experience		1/1/1999
Mr. Leonard A. McKinney			
Lewistown	Governor	reappointed	1/1/1995
Qualifications (if required):	has labor-management experience		1/1/1999
Board of Social and Rehabilitation Appeals (Social and Rehabilitation Services)			
Ms. Donna Heggen	Governor	Goodover	1/1/1995
LoLo			1/1/1999
Qualifications (if required):	public member		
Ms. Antoinette Rosell			
Billings	Governor	reappointed	1/1/1995
Qualifications (if required):	licensed professional counselor		1/1/1999

BOARD AND COUNCIL APPOINTEES FROM JANUARY, 1995

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Board of Social Work Examiners and Professional Counselors (Commerce)			
Mr. Richard Simonton	Governor	reappointed	1/1/1995
Glendive			1/1/1999
Qualifications (if required): attorney and public member			
Dr. Leta Livoti	Governor	reappointed	1/1/1995
Helena			1/1/1999
Qualifications (if required): licensed professional counselor			
Board of Water Well Contractors (Health and Environmental Sciences)			
Mr. John L. Arrigo	Governor	not listed	1/3/1995
Helena			0/0/0
Qualifications (if required): none specified			
Hard Rock Mining Impact Board (Commerce)			
Ms. Betty Aye	Governor	Manuel	1/1/1995
Broadus			1/1/1999
Qualifications (if required): school board trustee			
Mr. David Young	Governor	Gardner	1/1/1995
Troy			1/1/1999
Qualifications (if required): representative of the industry			
Health Facility Authority Board (Commerce)			
Ms. Gayle Carpenter	Governor	reappointed	1/1/1995
Helena			1/1/1997
Qualifications (if required): public member			

BOARD AND COUNCIL APPOINTEES FROM JANUARY, 1995

Appointee	Appointed by	Succeeds	Appointment/End Date
Human Rights Commission (Labor and Industry)			
Ms. Kathy Ogren	Governor	Limberhand	1/1/1995
Missoula			1/1/1999
Qualifications (if required): public member			
Mr. Rodney Svec	Governor	Meyer	1/1/1995
Hardin			1/1/1999
Qualifications (if required): public member			
Interstate Oil Compact Commission (Governor)			
Mr. Kemp Wilson	Governor	Ross	1/5/1995
Billings			0/0/0
Qualifications (if required): assistant representative for the Governor			
Judicial Nomination Commission (Justice)			
Mr. Frank Stock	Governor	reappointed	1/1/1995
Polson			1/1/1999
Qualifications (if required): public member			
Montana Coal Board (Commerce)			
Mr. Haley Beaudry	Governor	MacLay	1/1/1995
Butte			1/1/1999
Qualifications (if required): has expertise in engineering and represents District 2			
Ms. Linda Price	Governor	Jagiello	1/1/1995
Lewistown			1/1/1999
Qualifications (if required): has expertise in education and represents District 3			
Ms. Janice Riebhoff	Governor	Finch	1/1/1995
Belgrade			1/1/1999
Qualifications (if required): has expertise in education and represents District 2			

BOARD AND COUNCIL APPOINTEES FROM JANUARY, 1995

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Vocational Rehabilitation Advisory Council (Social and Rehabilitation Services)			
Mr. Michael Copping	Director	Williard	1/20/1995
Billings			0/0/0
Qualifications (if required):	represents Independent Living Council		
Mr. Michael J. Kelly	Director	Neal	1/16/1995
Kalispell			0/0/0
Qualifications (if required):	represents Montana Association of Rehabilitation Facilities		

VACANCIES ON BOARDS AND COUNCILS -- March 1, 1995 through May 31, 1995

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Architects (Commerce) Ms. Pamela J. Bancroft, Bozeman Qualifications (if required): registered architect on MSU School of Architecture staff	Governor	3/27/1995
Board of Athletics (Commerce) Dr. John Halseeth, Great Falls Qualifications (if required): public member	Governor	4/25/1995
Mr. Gary Langley, Helena Qualifications (if required): public member	Governor	4/25/1995
Dr. Andrew Vandolah, Conrad Qualifications (if required): public member	Governor	4/25/1995
Board of County Printing (Commerce) Mr. Roy Aafedt, Great Falls Qualifications (if required): county commissioner	Governor	4/1/1995
Ms. Nancy Clark, Ryegate Qualifications (if required): public member	Governor	4/1/1995
Ms. Fern Hart, Missoula Qualifications (if required): county commissioner	Governor	4/1/1995
Mr. Verle L. Rademacher, White Sulphur Springs Qualifications (if required): represents printing industry	Governor	4/1/1995
Mr. Curtis Starr, Malta Qualifications (if required): represents publisher-printer	Governor	4/1/1995

VACANCIES ON BOARDS AND COUNCILS -- March 1, 1995 through May 31, 1995

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Dentistry (Commerce) Dr. R.W. Rector, Havre Qualifications (if required): dentist	Governor	3/29/1995
Board of Hail Insurance (Agriculture) Mr. Louis Beirwaggon, Big Sandy Qualifications (if required): public member	Governor	4/18/1995
Board of Livestock (Livestock) Mr. Tom Lane, Livingston Qualifications (if required): none specified	Governor	3/1/1995
Mr. Jack Salmond, Choteau Qualifications (if required): none specified	Governor	3/1/1995
Board of Nursing Home Administrators (Commerce) Ms. Joyce Asay, Forsyth Qualifications (if required): nursing home administrator	Governor	5/28/1995
Board of Optometrists (Commerce) Dr. P.L. Kathrein, Great Falls Qualifications (if required): optometrist	Governor	4/3/1995
Ms. Charlene Staffanson, Deer Lodge Qualifications (if required): public member	Governor	4/3/1995
Board of Plumbers (Commerce) Mr. Terry Campbell, Helena Qualifications (if required): represents Department of Health	Governor	5/4/1995
Mr. Donald L. Kent, Bozeman Qualifications (if required): Journeyman Plumber	Governor	4/28/1995

VACANCIES ON BOARDS AND COUNCILS -- March 1, 1995 through May 31, 1995

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Plumbers (Commerce) cont. Mr. Elmer Lazure, Helena Qualifications (if required): public member	Governor	5/4/1995
Mr. Lloyd Linden, Helena Qualifications (if required): public member	Governor	5/4/1995
Mr. Robert R. Nault, Havre Qualifications (if required): Master Plumber	Governor	4/28/1995
Board of Professional Engineers and Land Surveyors (Commerce) Mr. David F. Gibson, Bozeman Qualifications (if required): engineering instructor	Governor	4/30/1995
Mr. J.G. Shockley, Victor Qualifications (if required): public member	Governor	4/30/1995
Board of Real Estate Appraisers (Commerce) Ms. Connie G. Clarke, Miles City Qualifications (if required): public member	Governor	5/1/1995
Ms. Janet Davis, Billings Qualifications (if required): licensed appraiser	Governor	5/1/1995
Board of Realty Regulation (Commerce) Mr. Steven E. Cummings, Kalispell Qualifications (if required): public member and from Western Congressional District	Governor	5/9/1995
Mr. Rocky Zimdars, Glasgow Qualifications (if required): in realty business and Democrat from Eastern Congressional District	Governor	5/9/1995

VACANCIES ON BOARDS AND COUNCILS -- March 1, 1995 through May 31, 1995

Board/current position holder	Appointed by	Term end
Education Advisory Council (Office of Public Instruction)		
Mr. Bob Deming, Great Falls	Governor	5/1/1995
Qualifications (if required):	represents institutions of higher education	
Mr. J.K. Kuzara, Roundup	Governor	5/1/1995
Qualifications (if required):	school board member	
Ms. Wilma Mad Plume, Browning	Governor	5/1/1995
Qualifications (if required):	represents classroom teachers	
Ms. Robin McCallum, Helena	Governor	5/1/1995
Qualifications (if required):	school counselor	
Rep. Scott T. McCulloch, Billings	Governor	5/1/1995
Qualifications (if required):	legislator	
Ms. Carol McElwain, Butte	Governor	5/1/1995
Qualifications (if required):	school board member	
Ms. Martha H. Parrish, Rexford	Governor	5/1/1995
Qualifications (if required):	represents elementary school librarians	
Ms. Kathy Seacat, Helena	Governor	5/1/1995
Qualifications (if required):	represents parents of elementary students	
Ms. Mary Wagner, Missoula	Governor	5/1/1995
Qualifications (if required):	represents school administrators	
Mr. R. Stephen White, Helena	Governor	5/1/1995
Qualifications (if required):	represents home schoolers	
Sister Elizabeth Youngs, Billings	Governor	5/1/1995
Qualifications (if required):	represents private school	

VACANCIES ON BOARDS AND COUNCILS -- March 1, 1995 through May 31, 1995

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Executive Board of MT College of Mineral Science & Technology Mr. Truxton Fisher, Butte Qualifications (if required): resides in county where unit is located	Governor (University System)	4/17/1995
Executive Board of Eastern Montana College Mr. Bill Tierney, Billings Qualifications (if required): resides in the county where unit is located	Governor (University System)	4/17/1995
Executive Board of Montana State University Mr. Dick Roehm, Bozeman Qualifications (if required): resides in county where unit is located	Governor (University System)	4/17/1995
Executive Board of Northern Montana College Ms. Eleanor C. Wink, Bigfork Qualifications (if required): resides in county where unit is located	Governor (University System)	4/17/1995
Executive Board of Western Montana College Ms. Patricia J. Blade, Dillon Qualifications (if required): resides in county where unit is located	Governor (University System)	4/17/1995
Executive Board of the University of Montana Ms. Arlene Breum, Missoula Qualifications (if required): resides in county where unit is located	Governor (University System)	4/17/1995
Prison Ranch Advisory Council (Corrections and Human Services) Representative Francis Bardanouve, Harlem Qualifications (if required): none specified	Director	3/1/1995
Mr. Don Davis, Deer Lodge Qualifications (if required): none specified	Director	3/1/1995
Rep. Edward (Ed) J. Grady, Canyon Creek Qualifications (if required): none specified	Director	3/1/1995

VACANCIES ON BOARDS AND COUNCILS -- March 1, 1995 through May 31, 1995

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Prison Ranch Advisory Council (Corrections and Human Services) cont. Sen. Francis Koehnke, Townsend Qualifications (if required): none specified	Director	3/1/1995
Mr. Ray Lybeck, Kalispell Qualifications (if required): none specified	Director	3/1/1995
Rep. Bob Thoft, Stevensville Qualifications (if required): none specified	Director	3/1/1995
Public Employees' Retirement Board (Administration) Mr. Terry Teichrow, Helena Qualifications (if required): active public employee	Governor	4/1/1995
State Compensation Mutual Insurance Fund (Administration) Mr. Les Hirsch, Miles City Qualifications (if required): representative of private for profit enterprise	Governor	4/28/1995
Mr. Robert Holman, Kalispell Qualifications (if required): state fund policy holder	Governor	4/28/1995
State Library Commission (Education) Ms. Mary Doggett, White Sulphur Springs Qualifications (if required): public member	Governor	5/22/1995
Veterans Cemetery Advisory Council (Military Affairs) Mr. Herb Ballou, Helena Qualifications (if required): none specified	Director	5/1/1995
Mr. Dick Baumberger, Helena Qualifications (if required): none specified	Director	5/1/1995

VACANCIES ON BOARDS AND COUNCILS -- March 1, 1995 through May 31, 1995

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Veterans Cemetery Advisory Council (Military Affairs) cont.		
Mr. Joel Cusker, Helena	Director	5/1/1995
Qualifications (if required): none specified		
Ms. Alma Dickey, Helena	Director	5/1/1995
Qualifications (if required): none specified		
Mr. Lee Dickey, Helena	Director	5/1/1995
Qualifications (if required): none specified		
Mr. James W. Duffy, Helena	Director	5/1/1995
Qualifications (if required): none specified		
Mr. M. Herbert Goodwin, Helena	Director	5/1/1995
Qualifications (if required): none specified		
Mr. Jim Heffernan, Helena	Director	5/1/1995
Qualifications (if required): none specified		
Mr. James F. Jacobson, Helena	Director	5/1/1995
Qualifications (if required): none specified		
Mr. Robert C. McKenna, Helena	Director	5/1/1995
Qualifications (if required): none specified		
Mr. Mickey Nelson, Helena	Director	5/1/1995
Qualifications (if required): none specified		
Mr. Carl L. Nordberg, Helena	Director	5/1/1995
Qualifications (if required): none specified		
Mr. Fred Olson, Fort Harrison	Director	5/1/1995
Qualifications (if required): none specified		

VACANCIES ON BOARDS AND COUNCILS -- March 1, 1995 through May 31, 1995

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Veterans Cemetery Advisory Council (Military Affairs) cont.		
Mr. George Paul, Helena	Director	5/1/1995
Qualifications (if required): none specified		
Ms. Irma Paul, Helena	Director	5/1/1995
Qualifications (if required): none specified		
Mr. Ray Read, Helena	Director	5/1/1995
Qualifications (if required): none specified		
Mr. Ruddy Reilly, Helena	Director	5/1/1995
Qualifications (if required): none specified		
Ms. Rose Marie Storey, Helena	Director	5/1/1995
Qualifications (if required): none specified		
Vocational Education Advisory Council (Governor)		
Mr. Fred "Rocky" Clark, Butte	Governor	5/1/1995
Qualifications (if required): none specified		
Mr. Jeff Dietz, Billings	Governor	5/1/1995
Qualifications (if required): none specified		
Ms. Aleta Ann Haagenstad, Clancy	Governor	5/1/1995
Qualifications (if required): none specified		
Dr. Jon Jourdonnais, Great Falls	Governor	5/1/1995
Qualifications (if required): none specified		
Dr. August "Gus" Korb, Havre	Governor	5/1/1995
Qualifications (if required): none specified		

VACANCIES ON BOARDS AND COUNCILS -- March 1, 1995 through May 31, 1995

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Vocational Education Advisory Council (Governor) cont. Dr. Dennis Lerum, Missoula Qualifications (if required): none specified	Governor	5/1/1995
Mr. Jesse O'Hara, Great Falls Qualifications (if required): none specified	Governor	5/1/1995
Dr. Robert Schaal, Kalispell Qualifications (if required): none specified	Governor	5/1/1995
Mr. James Schultz, Lewistown Qualifications (if required): none specified	Governor	5/1/1995
Colonel Gordon Simmons, Missoula Qualifications (if required): none specified	Governor	5/1/1995
Rep. Chuck Swysgood, Dillon Qualifications (if required): none specified	Governor	5/1/1995
Ms. Avis Ann Tobin, Helena Qualifications (if required): none specified	Governor	5/1/1995
Mr. Howard Williams, Helena Qualifications (if required): none specified	Governor	5/1/1995
Vocational Rehabilitation Divisions Advisory Council (Social and Rehabilitation Services) Mr. Jim Betty, Missoula Qualifications (if required): none specified	Director	4/15/1995
Mr. Mark Bowlds, Helena Qualifications (if required): none specified	Director	4/15/1995

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
VACANCIES ON BOARDS AND COUNCILS -- March 1, 1995 through May 31, 1995		
Vocational Rehabilitation Divisions Advisory Council (Social and Rehabilitation Services)		
cont.		
Ms. Sally Cerny, Great Falls	Director	4/15/1995
Qualifications (if required): none specified		
Mr. Ken Christensen, Helena	Director	4/15/1995
Qualifications (if required): none specified		
Ms. Ladonna Fowler, Pablo	Director	4/15/1995
Qualifications (if required): none specified		
Ms. Sandra Jarvie, Helena	Director	4/15/1995
Qualifications (if required): none specified		
Mr. Robert LeMieux, Great Falls	Director	4/15/1995
Qualifications (if required): none specified		
Mr. Ralph Martin, Bozeman	Director	4/15/1995
Qualifications (if required): none specified		
Ms. Kelly Moore, Helena	Director	4/15/1995
Qualifications (if required): none specified		
Ms. Gail Neal, Billings	Director	4/15/1995
Qualifications (if required): none specified		
Ms. Anita Nelson, Missoula	Director	4/15/1995
Qualifications (if required): none specified		
Mr. Pat Pope, Helena	Director	4/15/1995
Qualifications (if required): none specified		

VACANCIES ON BOARDS AND COUNCILS -- March 1, 1995 through May 31, 1995

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Vocational Rehabilitation Divisions Advisory Council (Social and Rehabilitation Services) cont.		
Ms. Nancy Staigmiller, Miles City Qualifications (if required): none specified	Director	4/15/1995
Ms. Virginia Sutich, Sand Coulee Qualifications (if required): none specified	Director	4/15/1995
Ms. Raelen Williard, Helena Qualifications (if required): none specified	Director	4/15/1995
Ms. Lynn Winslow, Helena Qualifications (if required): none specified	Director	4/15/1995
Youth Justice Advisory Council (Justice)		
Mr. Craig Anderson, Glendive Qualifications (if required): none specified	Governor	3/1/1995
Judge Diane G. Barz, Billings Qualifications (if required): none specified	Governor	3/1/1995
Mr. Randy H. Bellingham, Billings Qualifications (if required): none specified	Governor	3/1/1995
Mr. Al Davis, Helena Qualifications (if required): none specified	Governor	3/1/1995
Mr. Rick Day, Helena Qualifications (if required): none specified	Governor	3/1/1995
Ms. Gail Gray, Helena Qualifications (if required): none specified	Governor	3/1/1995

VACANCIES ON BOARDS AND COUNCILS -- March 1, 1995 through May 31, 1995

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Youth Justice Advisory Council (Justice) cont. Mr. Allen Horsfall, Jr., Hamilton Qualifications (if required): none specified	Governor	3/1/1995
Mr. Hank Hudson, Clancy Qualifications (if required): none specified	Governor	3/1/1995
Rep. Royal C. Johnson, Billings Qualifications (if required): none specified	Governor	3/1/1995
Mr. Ted O. Lympus, Kalispell Qualifications (if required): none specified	Governor	3/1/1995
Ms. Jeannette Manning, Helena Qualifications (if required): none specified	Governor	3/1/1995
Ms. Kate Mrgudic, Missoula Qualifications (if required): none specified	Governor	3/1/1995
Mr. Steve P. Nelsen, Bozeman Qualifications (if required): none specified	Governor	3/1/1995
Mr. Kim Olson, Bozeman Qualifications (if required): none specified	Governor	3/1/1995
Mr. David Pope, Bozeman Qualifications (if required): none specified	Governor	3/1/1995
Mr. Gary Racine, Browning Qualifications (if required): none specified	Governor	3/1/1995
Ms. Sally Stansberry, Missoula Qualifications (if required): none specified	Governor	3/1/1995