MONTANA ADMINISTRATIVE REGISTER

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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 13

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 The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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NOTICE SECTION

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

In the matter of the amendment of rule 2.55.408, pertaining to retrospective rating plans.	)))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF RULE 2.55.408

TO: All Interested Persons:

1. On July 24, 1996, the State Compensation Insurance Fund will hold a public hearing at 2:00 p.m., in Room 201 of the State Compensation Insurance Fund Building, 5 South Last Chance Gulch, Helena, Montana, to consider the amendment of rule 2.55.408.

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

2.55.408 RETROSPECTIVE RATING PLANS (1) The state fund may offer an employer, or a group, a retrospective rating plan for coverage under the Workers' Compensation Act.

(2) The board shall establish employer retrospective rating plans for each fiscal year utilizing the methods and formulas published by the National Council on Compensation Insurance Retrospective Rating Manual, 1984 edition, as revised to November 27, 1995. The board shall determine the factors, multipliers, ratios or other formula components for the plan. The board may establish a group retrospective rating plan utilizing the methods, formulas, factors, multipliers, ratios or other formula components as determined by the board.

(3) To qualify for participation in a plan the employer or group shall:

(a) and (b) remain the same;

(c) have an annual estimated employer or group earned premium that equals or exceeds an amount determined by the board.

(4) The employer, group, or group member may be disqualified from participation in a plan because of a poor payment history with the state fund, as a result of a credit investigation or review of relevant financial information which demonstrates the employer, group, or group member is not sufficiently financially stable to be responsible for the payment of any retrospective rating adjustment. As a condition of approval the state fund may require security including, but not limited to, surety bond, cash deposit or guarantee sufficient to meet the reasonably anticipated obligations of the employer for the fiscal year.

(5) The plan shall provide for penalty for early termination of the plan by an employer. The plan may provide for penalty for early termination of the plan by a group.

AUTH: Sec. 39-71-2315 and 39-71-2316 MCA
IMP: Sec. 39-71-2316 MCA, 39-71-2330 MCA and 29-71-2341 MCA

RATIONALE: 2.55.408 - Amends the current rule to permit underwriting group retrospective rating plans in addition to individual retrospective rating plans provided under the present rule.

Section 39-71-2316(9), MCA, grants the State Fund the authority to "perform all functions and exercise all powers of a private insurance carrier that are necessary, appropriate, and convenient for the administration of the State Fund". This rule is reasonably necessary to implement this authority. This rule allows the Board of the State Fund to determine the criteria for group retrospective rating plans to apply to individual or group policies. The State Fund will be able to implement group retrospective rating programs similar to programs available to employer groups through other workers' compensation carriers and will result in better products available to State Fund insureds. The retrospective rating mechanism provides a more significant and immediate reward for superior loss experience. The Board will determine the processes, formulas, and other components in establishing group retrospective rating plans.

3. The State Compensation Insurance Fund makes reasonable accommodations for persons with disabilities who wish to participate in this public hearing. Persons needing accommodations must contact the State Fund, Attn: Ms. Rita Bird, P.O. Box 4759, Helena, MT 59604; telephone (406) 444-6480; TDD (406) 444-5971; fax (406) 444-6555, no later than 5:00 p.m., July 17, 1996, to advise as to the nature of the accommodation needed and to allow adequate time to make arrangements.

4. 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 state fund attorney Nancy Butler, Legal Department, State Compensation Insurance Fund, 5 South Last Chance Gulch, P.O. Box 4759, Helena, Montana 59604-4759, and must be received no later than 5:00 p.m. July 31, 1996.

5. The State Fund Legal and Underwriting Departments have been designated to preside over and conduct the hearing.

Dal Smilie, Chief Legal Counsel
Rule Reviewer

Rick Hill
Chairman of the Board

Nancy Butler, General Counsel
Rule Reviewer

Certified to the Secretary of State June 24, 1996.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of rules 16.8.1102 and 16.8.1113 and adoption of new rule I, allowing existing facilities flexibility to make minor changes without revising their air quality preconstruction permits.	NOTICE OF PUBLIC HEARING FOR PROPOSED AMENDMENT AND ADOPTION OF RULES

(Air Quality)

To: All Interested Persons

1. On July 29, 1996, at 10:00 a.m., the Board will hold a public hearing at Room 111 of the Metcalf Building, 1520 E. 6th Ave., Helena, Montana, to consider the amendment and adoption of the above-captioned rules.

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

16.8.1102 WHEN PERMIT REQUIRED--EXCLUSIONS (1) Except as hereafter specified, no person shall construct, install, alter or use any air contaminant source or stack associated with any source without first obtaining a permit from the department or the board. A permit is not required for the following:

(a)-(n) Remain the same.

(o) asphalt concrete plants and mineral crushers which do not have the potential to emit more than 5 tons per year of any pollutant, other than lead, for which a rule has been adopted in this chapter; ~~and~~

(p) temporary process or emission control equipment, replacing malfunctioning process or emission control equipment, and meeting the requirements of ARM 16.8.705(7)~~.~~; and

(q) construction or changed conditions of operation at a facility holding an air quality preconstruction permit issued under this chapter that do not increase the facility's potential to emit by more than 15 tons per year of any pollutant except:

(i) any construction or changed conditions of operation at a facility that would violate any condition in the facility's existing air quality preconstruction permit or any applicable rule contained in this chapter is prohibited, except as provided in ARM 16.8.1113(1)(c);

(ii) any construction or changed conditions of operation at a facility that would qualify as a major modification of a major stationary source under subchapters 9, 17, or 18 of this chapter;

(iii) any construction or changed conditions of operation at a facility that would affect the plume rise or dispersion characteristics of the emissions in a manner which would cause or contribute to a violation of an ambient air quality standard or

an ambient air increment, as defined in ARM 16.8.947; and

(iv) any construction or improvement project with a potential to emit more than 15 tons per year may not be artificially split into smaller projects to avoid air quality preconstruction permitting under this subchapter.

AUTH: 75-2-111, 75-2-204, MCA; IMP: 75-2-204, 75-2-211, MCA

16.8.1113 MODIFICATION OF PERMIT (1) An air quality permit may be modified for the following reasons:

(a) changes in any applicable rules and standards adopted by the board; ~~or~~

(b) changed conditions of operation at a source or stack which do not result in an increase in emissions because of the changed conditions of operation. A source may not increase its emissions beyond those found in its permit unless the source applies for and receives another permit in accordance with the procedures found in ARM 16.8.1103 through 16.8.1109 and with all applicable requirements in Title 16, chapter 8, subchapter 9~~.~~; or

(c) changes made under ARM 16.8.1102(1)(q) that would violate an existing condition in the air quality preconstruction permit. Upon request of the permittee, conditions in the air quality preconstruction permit concerning control equipment specifications, operational procedures, or testing, monitoring, record keeping, or reporting requirements may be revised, at the department's discretion. Conditions in the air quality preconstruction permit establishing emission limits, or production limits in lieu of emission limits, may not be changed or added under this rule.

(2) Remains the same.

AUTH: 75-2-111, 75-2-204, MCA; IMP: 75-2-204, 75-2-211, MCA

NEW RULE I NOTIFICATION OF EMISSIONS INCREASE (1) A facility holding an air quality preconstruction permit issued under this chapter shall notify the department of any construction or improvement project conducted pursuant to ARM 16.8.1102(1)(q) that would change the facility's annual emission inventory. The notice must be included with the annual emission inventory submitted to the department and must include information sufficient to calculate the facility's estimated actual emissions.

AUTH: 75-2-111, 75-2-204, MCA; IMP: 75-2-204, 75-2-211, MCA

3. The Board is proposing these amendments and adoption of rules in order to allow existing facilities flexibility to make minor changes without revising their preconstruction permits. Operational flexibility is necessary to allow facilities to react quickly to changes in technological and market conditions. The Clean Air Act of Montana and the state's air quality operating permit rules allow for operational flexibility, but the present air quality preconstruction permitting rules require alteration of an existing preconstruction permit prior to any new construction or change in conditions of operation.

4. Interested persons may submit their data, views, or arguments concerning the proposed amendments and adoption, either

orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to the Board of Environmental Review, Department of Environmental Quality, Metcalf Building, PO Box 200901, Helena, MT 59620-0901, no later than July 31, 1996.

5. Tim Fox has been designated to preside over and conduct the hearing.

BOARD OF ENVIRONMENTAL REVIEW

CINDY B. YOUNKIN, Chairperson

Reviewed by:

JOHN F. NORTH, Rule Reviewer

Certified to the Secretary of State June 24, 1996.

BEFORE THE BOARD OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the adoption of rules I-IX incorporating federal transportation conformity rules and adopting interagency consultation procedures.	)))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION OF NEW RULES (Air Quality)

To: All Interested Persons

1. On July 29, 1996, at 10:00 a.m., the board will hold a public hearing in Room 111 of the Metcalf Building, 1520 E. 6th Ave., Helena, Montana, to consider the adoption of the above-captioned rules.

2. The rules, as proposed, appear as follows:

RULE I DEFINITIONS (1) For the purposes of this subchapter, terms have the meaning as defined in 40 CFR 93.101, except that the definition of "regionally significant project" is modified below.

(2) For the purposes of this subchapter and 40 CFR Part 93, subpart A, as adopted by reference in this subchapter, the following additional definitions apply:

(a) "Consulted agency" means a federal, state, or local agency or MPO required to be consulted pursuant to this subchapter.

(b) "MPO" means a metropolitan planning organization created pursuant to 23 CFR Part 450, Subpart C (Metropolitan Transportation Planning and Programming) for the purpose of carrying out transportation planning in urban areas.

(c) "Regionally significant project" means a transportation project (other than an exempt project) that is on a facility that serves regional transportation needs (such as access to and from the area outside of the region, major activity centers in the region, major planned developments such as new retail malls, sports complexes, etc., or transportation terminals as well as most terminals themselves) and would normally be included in the modeling of a rural nonattainment area or metropolitan area's transportation network, including at a minimum all principal arterial highways and all fixed guideway transit facilities that will offer an alternative to regional highway travel.

(d) "Responsible entity" means a federal, state or local government agency having primary responsibility for planning or approving an action for which consultation is required under 40 CFR Part 93, subpart A or this subchapter.

(e) "State air quality agency" means the Montana department of environmental quality ("department" or "DEQ").

(f) "State department of transportation" means the Montana department of transportation ("MDT") provided for in

2-15-2501, MCA.
AUTH: 75-2-111, MCA; IMP: 75-2-202, MCA

RULE II INCORPORATIONS BY REFERENCE (1) For the purposes of this subchapter, the board hereby adopts and incorporates herein by reference the following:

(a) 40 CFR Part 93, subpart A, which sets forth the conformity to state or federal implementation plans of transportation plans, programs and projects developed, funded or approved under Title 23 USC or the Federal Transit Act.

(b) 60 FR 40098 which sets forth amendments to Subpart A: transition to the control strategy period; and

(c) 60 FR 57179 which sets forth amendments to Subpart A: miscellaneous revisions.

(2) Copies of federal materials incorporated by reference in this subchapter may be obtained from the US environmental protection agency ("EPA") public information reference unit, 401 M St. SW, Washington DC 20460, and at the libraries of each of the 10 EPA regional offices. Copies of the code of federal regulations ("CFR") may be obtained from the Superintendent of Documents, US Government Printing Office, Washington DC 20402.
AUTH: 75-2-111, MCA; IMP: 75-2-202, MCA

RULE III DETERMINING CONFORMITY OF TRANSPORTATION PLANS, PROGRAMS, AND PROJECTS TO STATE OR FEDERAL IMPLEMENTATION PLANS (1) Any entity responsible for preparing any transportation plan, program or project developed, funded or approved under Title 23 USC or the Federal Transit Act shall comply with 40 CFR Part 93, subpart A and this subchapter.

(2) Any entity responsible for developing transportation related air quality emission inventories or implementation plans shall comply with 40 CFR Part 93, subpart A and this subchapter.
AUTH: 75-2-111, MCA; IMP: 75-2-202, MCA

RULE IV CONSULTATION REQUIREMENTS: APPLICABILITY (1) The consultation procedures set out in this subchapter must be utilized by the department and local air quality agencies in developing applicable implementation plans, and by the MDT, MPOs, and local transportation planning agencies in making conformity determinations or in deciding that a conformity determination is not necessary because a revision to a transportation plan or transportation improvement program ("TIP") merely adds or deletes an exempt project listed in 40 CFR Part 93, subpart A.

(2) Tables A through E below identify the specific actions for which consultation is required under this subchapter, and set out the parties, timing, methods, and documentation required for such consultations.

TABLE A

ACTION: Research and Data Collection.
RESPONSIBLE ENTITY: MDT, DEQ, MPO, local air quality and transportation planning agencies

Action Step	Consult with	When to Consult	Consultation Method	Consultation Documentation
Design/scheduling/funding of research and data collection for transportation related air quality inventories, transportation modeling, or planning efforts	local air and transportation agencies, MPO, DEQ, MDT	before starting research or data collection	letter of notification (meet at consulted agency request)	not required
Completion of project	same as above	project completion	distribute summary of findings	not required

TABLE B

ACTION: Preparation or revision of emission inventory (involving transportation-related emission sources).
RESPONSIBLE ENTITY: Local air quality agency or DEQ.

Action Step	Consult with	When to Consult	Consultation Method	Consultation Documentation
Selection of methods, models, assumptions, data sources for determining transportation emissions	local transportation and air agencies, MPO, DEQ, MDT, EPA, FHWA, FTA	before starting analysis using these parameters	letter of notification (meet at consulted agency request)	describe consultation, response, and response use in draft inventory
Release of draft Emission Inventory	same as above	release of draft inventory	distribution of draft inventory	discuss in final inventory
Release of final Emission Inventory	same as above	release of final inventory	distribution of final inventory *	not required

* If consultation on draft does not result in any revisions, distribution of a separate final document is not required. In this case consulted agencies may simply be notified that the draft has been adopted as final.

TABLE C

ACTION: Preparation or revision of state implementation plan (SIP)
RESPONSIBLE ENTITY: Local air quality agency or DEQ

Action Step	Consult with	When to Consult	Consultation Method	Consultation Documentation
Selection of methods, models, assumptions, data sources for determining transportation-related emissions*	local transportation and air agency, MPO, DEQ, MDT, FTA, FHWA, EPA	before starting analysis using these parameters	letter of notification (meet at consulted agency request)	describe consultation, response, and response use in draft SIP
Selecting transportation-related control strategies, TCMs, and proposed transportation emissions budget	same as above	before strategy /TCM selection and budget allocation	letter of notification (meet at consulted agency request)	discuss in draft SIP
Distribution of draft SIP	same as above	release of proposed SIP document	distribute proposed SIP	written response to consulted agency comment
State conflict resolution appeal period, per [RULE VIII]	local transportation and air agency, MPO, DEQ, MDT	initiated by responsible entity written response to comments on draft	appeals to governor by consulted agencies	discuss comments on draft, appeals (if any), and appeal resolution in final document
Adoption of final SIP (emission budget determination)	local transportation and air agency, MPO, DEQ, MDT, FHWA, FTA, EPA	upon end of appeal period or resolution of any appeals	distribute final SIP**	not required

* Consultation at this step is not required if these factors are unchanged from those used in an emission inventory on which consultation requirements were fulfilled.
** If consultation on draft does not result in an appeal to the governor or in any revisions to the draft, distribution of a separate final document is not required. In this case consulted agencies may simply be notified that the draft has been adopted as final.

TABLE D

ACTION: Transportation Conformity Determination (for Transportation Plan, TIP, Project, and Hot-Spot Analyses.
RESPONSIBLE ENTITY: Metropolitan planning office (MDT outside metro areas)

**** NOTE **** For guidance relating to the specific action steps required for plan, TIP, project, or hot-spot analysis (and directions for accomplishing those steps) refer to 40 CFR Part 93.

Action Step	Consult with	When to Consult	Consultation Method	Consultation Documentation
Selection of methods, models, assumptions, data sources, and routes (including any minor arterials) to be used in emissions analysis*	local transportation and air agency, DEQ, MDT, FHWA, FTA, EPA	before starting analysis using these parameters	letter of notification (meet at consulted agency request)	discuss consultation, response, and response use in draft determination
Identify projects to be included in the analysis (include exempt projects treated as non-exempt)*	same as above	upon initial selection and any revisions during analysis	same as above	same as above
Determine TCM implementation status per 40 CFR §93.113*	same as above	before starting emission analysis	same as above	discuss in draft conformity determination
Draft conformity determination release	same as above	before or with draft plan, TIP, or project document release	distribute determination	written response to comment on draft determination

* Consultation on these steps will often be done concurrently.

(Table D continued next page)

Table D (Continued)

Action Step	Consult with	When to Consult	Consultation Method	Consultation Documentation
State conflict resolution appeal period, per [RULE VIII]	local air and transportation agency, MPO, DEQ, MDT	initiated by responsible entity written response to comments on draft determination	appeals to governor by consulted agencies	discuss comments on draft, appeals (if any), and appeal resolution in final determination
Responsible entity final conformity determination	FHWA, FTA (notify local air and transportation agency, MPO, DEQ, MDT)	upon conclusion of appeal period or resolution of any appeals	distribute and request concurrence from FHWA & FTA	not required
Conformity determination concurrence by FHWA and FTA	local air and transportation agency, DEQ, MDT, FHWA, FTA, EPA	upon notice of FHWA and FTA concurrence	distribute final plan, TIP, or project document	summarize consultation process and conformity determination in final plan, TIP, or project document

TABLE E

ACTION: Determination that a transportation plan or TIP revision or amendment merely adds or deletes exempt projects listed in 40 CFR 93.134.
RESPONSIBLE ENTITY: Metropolitan planning office or MDT

Action Step	Consult with	When to Consult	Consultation Method	Consultation Documentation
Identification of projects included in the revision or amendment and initial finding that all are exempt and do not hinder TCM implementation.	local transportation and air agency, DEQ, MDT, FHWA, FTA, EPA	upon preliminary determination that all projects are exempt	letter of notification (meet at consulted agency request)	describe consultation, response, and response use in notice of final determination
Determination that all included projects are exempt and do not interfere with TCM implementation	same as above	upon responsible entity determination	same as above	not required
OR Determination that one or more included projects are not exempt or do interfere with TCM implementation	same as above	upon responsible entity determination	same as above	implement conformity determination process, per Table D

AUTH: 75-2-111, MCA; IMP: 75-2-202, MCA

RULE V CONSULTATION PROCEDURES (1) Responsible entities shall conduct consultations in accordance with the specific procedures set out in Tables A through E of [RULE IV]. In conducting consultations, responsible entities shall comply with the following general requirements:

(a) The responsible entity shall allow reasonable time for consultation. Because the time available to accomplish many of the actions required under this subchapter will be limited, consulted agencies shall make a reasonable effort to develop response procedures that will allow them to respond

quickly. In its request for consultation, the responsible entity shall specify the date by which a response is needed. If a consulted agency is unable to respond by the date specified, it shall contact the responsible entity to arrange a mutually acceptable date.

(b) The responsible entity shall provide sufficient information to provide a basis for meaningful consultation. If the supporting materials for a particular action are too voluminous for reasonable circulation, the responsible entity shall summarize and indicate the availability of material not circulated. The responsible entity shall provide additional information upon request of a consulted agency.

(c) The responsible entity may use meetings for consultation and shall convene a consultation meeting upon request of a consulted agency. If a meeting is scheduled, the responsible entity shall notify all consulted agencies of the meeting. The responsible entity shall make a written record of the issues discussed and any decisions or commitments made during a consultation meeting.

(d) The responsible entity shall include in the draft and final documentation of the actions covered by this subchapter a description of the consultation opportunities provided during accomplishment of the action, a summary of the responses received, and a discussion of how those responses were used in accomplishing the action.

(2) On or before 60 days after the effective date of this rule, the department shall contact the federal, state and local government agencies anticipated to be involved in the actions requiring consultation pursuant to 40 CFR Part 93, subpart A or this subchapter. DEQ shall ascertain the organizational level within each such agency that will be responsible for coordinating the agency's consultation involvement. The department shall request each federal, state and local government agency to identify one contact office/official for all consultation contacts. DEQ shall compile a list of these contacts, distribute the list to all involved agencies, and update the list as necessary.

AUTH: 75-2-111, MCA; IMP: 75-2-202, MCA

RULE VI SPECIAL ISSUES (1) In conducting consultations pursuant to [RULE V], responsible entities shall ensure that the following special issues are addressed, when applicable:

(a) evaluating and choosing a model or models and associated methods and assumptions to be used in hot-spot analyses and regional emissions analyses;

(b) determining which minor arterials and other transportation projects should be considered "regionally significant" for the purposes of regional emissions analysis (in addition to those functionally classified as principal arterial or higher or fixed guideway systems or extensions that offer an alternative to regional highway travel), and which projects should be considered to have a significant change in design concept and scope from the transportation plan or TIP;

(c) evaluating whether projects otherwise exempted from meeting the requirements of 40 CFR Part 93, subpart A (see 40

CFR 93.134 and 93.135) should be treated as non-exempt in cases where potential adverse emissions impacts may exist for any reason;

(d) determining, as required by 40 CFR 93.113(c)(1), whether past obstacles to implementation of transportation control measures ("TCMs") that are behind the schedule established in the applicable implementation plan have been identified and are being overcome, and whether state and local agencies with influence over approvals or funding for TCMs are giving maximum priority to approval or funding for TCMs. This process shall also consider whether delays in TCM implementation necessitate revisions to the applicable implementation plan to remove TCMs or substitute TCMs or other emission reduction measures;

(e) determining, as required by 40 CFR 93.129(b), whether a project is included in the regional emissions analysis supporting the currently conforming TIP, even if the project is not strictly "included" in the TIP for the purposes of MPO project selection or endorsement, and whether a project's design concept and scope have changed significantly from those included in the regional emission analysis, or in a manner which would significantly alter use of the facility;

(f) identifying, as required by 40 CFR 93.131(d), projects located at sites in PM_{10} nonattainment areas which have vehicle and roadway emission and dispersion characteristics which are essentially identical to those at sites which have violations verified by monitoring, and therefore require quantitative PM_{10} hot-spot analysis;

(g) determining which transportation plan or TIP revisions or amendments merely add or delete exempt projects listed in 40 CFR Part 93, subpart A;

(h) consulting on emissions analysis for transportation activities which cross the borders of MPOs or nonattainment areas or air basins;

(i) whenever the MPO does not include the entire nonattainment or maintenance area, determining conformity of all projects outside the metropolitan area and within the nonattainment or maintenance area;

(j) designing, scheduling, and funding research and data collection efforts and regional transportation model development by the MPO or MDT (e.g., household/travel transportation surveys).

AUTH: 75-2-111, MCA; IMP: 75-2-202, MCA

RULE VII NOTICE REQUIREMENTS FOR NON-FHWA/FTA PROJECTS

(1) Any state or local agency having the authority for planning or approving the construction of non-federal highway administration/federal transit administration (FHWA/FTA) transportation project (including those by recipients of funds designated under Title 23 USC or the Federal Transit Act) shall ensure that the MPO and MDT are informed of project plans and plan changes on a timely basis. This requirement includes projects for which alternative locations, design concept and scope, or the no-build option are still being considered. Notice to the MPO and MDT must be in accordance with the

following procedures:

(a) The agency planning or approving the project shall inform the MPO and MDT prior to obligating or expending funds for project design or construction or when the first consultation request following project concept identification is received from a responsible entity performing an action covered by this subchapter, whichever occurs first.

(b) Whenever the project information provided by an agency planning or approving a project is not adequate to determine whether the project is regionally significant or to perform a regional emissions analysis, the responsible entity shall coordinate with the agency planning or approving the project to reach agreement on significance and the assumptions about project parameters to be used in the responsible entity's analysis.

(c) If a project has not been disclosed to the responsible entity in accordance with (a) above and is subsequently disclosed and determined to be regionally significant, the project must be deemed not to meet the requirements of 40 CFR 93.129 for adoption, approval, or funding.

AUTH: 75-2-111, MCA; IMP: 75-2-202, MCA

RULE VIII CONFLICT RESOLUTION (1) Conflicts among state agencies or between state agencies and an MPO that arise during consultations conducted pursuant to this subchapter may be appealed to the governor if the conflict cannot be resolved by the heads of the affected agencies. For conflicts involving such state or local entities, the following procedures apply:

(a) A consulted agency that has submitted comments pursuant to this subchapter on a proposed implementation plan or conformity determination has 14 days to appeal to the governor after being notified by the responsible entity of the response to the consulted agency's comments. The specific actions that start the 14-day appeal period are identified in Tables C and D of [RULE IV].

(b) The consulted agency must provide written notice of the appeal to the responsible entity and to the governor.

(c) If no appeal is filed within 14 days, the responsible entity may proceed with the final implementation plan or conformity determination. If an appeal is filed within 14 days, the final implementation plan or conformity determination must have the concurrence of the governor.

(2) The governor may delegate the conflict resolution and concurrence roles to another official or agency within the state, but not to the Montana board of environmental review, the environmental quality council, the Montana transportation commission, the directors or staffs of the department or MDT, or the MPO or local government entity involved in the dispute.

AUTH: 75-2-111, MCA; IMP: 75-2-202, MCA

RULE IX PUBLIC CONSULTATION PROCEDURES (1) The following public consultation procedures must be adhered to during actions required by 40 CFR Part 93, subpart A or this subchapter:

(a) Local air quality agencies and the department shall utilize a proactive public involvement process which provides opportunity for public review and comment prior to taking formal action establishing emissions budgets or allocating budgets among sources.

(b) MPOs and MDT shall utilize a proactive public involvement process which provides opportunity for public review and comment prior to taking formal action on a conformity determination for all transportation plans and TIPs, consistent with the requirements of 23 CFR Part 450. In addition, these agencies shall specifically address in writing all public comments that known plans for a regionally significant project that is not receiving FHWA or FTA funding or approval have not been properly reflected in the emissions analysis supporting a proposed conformity finding for a transportation plan or TIP. These agencies shall also provide opportunity for public involvement in conformity determinations for projects where otherwise required by law.

AUTH: 75-2-111, MCA; IMP: 75-2-202, MCA

3. The board is proposing these rules in order to fulfill requirements of the federal Clean Air Act which require that any transportation plan, program or project developed, funded or approved under Title 23 USC or the federal transit act must conform to state or federal air quality implementation plans. The state is required through the federal Clean Air Act to adopt a state rule that incorporates the federal transportation conformity rule (40 CFR Part 93, Subpart A, 60 FR 40098 and 60 FR 57179), and to develop consultation procedures pursuant to 40 CFR 93.105. Upon adoption of these rules, the department is proposing that the rules be incorporated into the State Implementation Plan (SIP) and be submitted by the governor to the environmental protection agency as a revision to the Montana State Implementation Plan.

4. Interested persons may submit their data, views, or arguments concerning the proposed rules, either orally or in writing, at the hearing. Comments may also be submitted concerning the proposed submittal of the rules to EPA as a revision of the SIP. Written data, views, or arguments may also be submitted to the Board of Environmental Review, PO Box 200901, Helena, MT 59620-0901, no later than July 31, 1996.

5. Jim Madden has been designated to preside over and conduct the hearing.

BOARD OF ENVIRONMENTAL REVIEW

CINDY E. YOUNKIN, Chairperson

Reviewed by:

JOHN F. NORTH, Rule Reviewer

Certified to the Secretary of State June 24, 1996 .

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of rules 26.4.107M through 26.4.107P pertaining to enforcement and penalties.	))))	NOTICE OF PROPOSED AMENDMENT OF RULES NO PUBLIC HEARING CONTEMPLATED (Hard Rock)

To: All Interested Persons

1. On September 20, 1996, the board proposes to amend ARM 26.4.107M through 26.4.107P.

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

26.4.107M ENFORCEMENT: PROCESSING OF VIOLATIONS AND PENALTIES (1) Except as provided in ~~(5)~~ (4) of this rule, the department shall issue a notice of noncompliance, ~~by certified mail,~~ if a violation of the Act, this chapter, or the permit, license, or exclusion is identified as a result of any inspection. The notice shall be served by certified mail and shall state that~~:~~

~~(a)~~ the alleged violator, may, by filing a written response within ~~30~~ 15 days of receipt of the notice, provide facts to be considered in further assessing whether a violation occurred and in assessing the penalty~~; and~~

~~(b) by filing a written request within 30 days of receipt of the notice, the alleged violator may obtain an informal conference on the issues of whether the alleged violation occurred or whether the abatement is reasonable, or both~~.

(2) Within ~~60~~ 30 days after issuance of the notice of noncompliance, the department shall serve a ~~notice~~ statement of proposed penalty~~, notice of waiver of penalty, or notice of vacation of the notice of noncompliance. Failure to serve the notice of proposed penalty within 60 days is not grounds for dismissal of the penalty unless the person against whom the penalty is assessed demonstrates actual prejudice resulting from the delay~~. If the ~~notice~~ statement of proposed penalty is tendered by mail at the address of the person, as set forth in the permit in case of a permittee, and he or she refuses to accept delivery of or to collect such mail, service is completed upon such tender.

(3) The person may, within ~~30~~ 20 days of receipt of the statement of proposed penalty, respond in writing to the ~~notice of proposed penalty~~ statement and may request an informal conference, a contested case hearing, or both, on the issues of whether the violation occurred, whether the abatement ordered by

the department is reasonable, and whether the penalty proposed to be assessed is proper.

~~(4) The department may not institute suit to collect the penalty until it has:~~

~~(a) considered the response to the proposed penalty, if one is submitted within 30 days; and~~

~~(b) held an informal conference if one is requested within 30 days.~~

~~(5)~~(4) Whenever an authorized representative of the department observes a minor violation that clearly does not represent a potential harm to public health, public safety, or the environment and clearly does not impair administration of the Act or this subchapter, the representative may issue a 10-day notice to the person. The notice must describe the violation and how the violation can be corrected. If, within 10 days, the person provides the department with documentation that the violation has been corrected, the department shall waive the imposition of penalty. If the person does not provide that documentation within 10 days, the department shall issue a notice of noncompliance pursuant to (1) of this rule.

(5) If a contested case hearing has not been requested, the department shall make findings of fact, issue a written decision, and order payment of any penalty as provided in 82-4-361, MCA. If a contested case hearing has been requested, the board of environmental review shall hold a hearing and make the findings of fact, issue the decision, and order payment of any penalty, as provided in 82-4-361, MCA.

AUTH: 82-4-321, MCA; IMP: 82-4-337, 82-4-339, 82-4-361, MCA

26.4.107N ENFORCEMENT: ABATEMENT OF VIOLATIONS AND PERMIT SUSPENSION (1) Except when the violation has already been abated, the department shall issue an abatement order with any notice of noncompliance ~~and a~~ or suspension order.

(2) The abatement order shall require mitigation of the effects of the activity for which the notice or order was issued.

(3) Each abatement order shall identify a time frame for completion and may be extended only if the permittee documents good cause for extension.

(4) Within 30 days of notification by a permittee that an abatement order has been satisfied, the department shall inspect or review the abatement and determine whether or not the abatement order has been satisfied. The department shall notify the permittee of its determination.

(5) The director shall immediately issue an order suspending the license or permit for each violation of the Act, this subchapter, or the permit, that is creating an imminent danger to the health or safety of the persons outside the permit area.

(6) The director may, after opportunity for an informal conference, suspend a permit or license for a violation of the Act, this subchapter, or the permit that:

(a) may reasonably be expected to create a danger to the health or safety of persons outside the permit area;

(b) may reasonably be expected to cause significant environmental harm to land, air, or water resources; or

(c) remains unabated subsequent to the deadline for abatement contained in an abatement order.

AUTH: 82-4-321, MCA; IMP: 82-4-357, 82-4-361, 82-4-362, MCA

26.4.107O ENFORCEMENT: ASSESSMENT AND WAIVER OF PENALTIES (1) The department shall determine the proposed penalty for each violation based upon the following criteria:

(a) Remains the same.

(b) Seriousness. The assessment for seriousness must be based on either:

(i) harm to public health, public safety or environment. If the violation created a situation in which the public health, public safety, or environment could have been harmed, and the violated law, rule, order, or permit term or condition was designed to prevent such harm, up to $1,000 may be assessed, depending upon the severity of the probable or actual harm which the violated standard was designed to prevent; if the violation created an imminent danger to the health or safety of the public or caused significant environmental harm, up to $5000 may be assessed; or

(ii) Remains the same.

(c) and (d) Remain the same.

(e) The total proposed penalty must not exceed $1000 per day, unless the violation created imminent danger to the health and safety of the public or caused significant environmental harm, in which case the total proposed penalty must not exceed $5000 per day.

(f) Remains the same.

(2)-(4) Remain the same.

AUTH: 82-4-321, 82-4-361, MCA; IMP: 82-4-361, MCA

26.4.107P NOTICES AND ORDERS: ISSUANCE AND SERVICE ~~(1) The commissioner shall immediately issue an order suspending the license or permit for each violation of the Act, this subchapter, or the permit, that is creating an imminent danger to the health or safety of the persons outside the permit area.~~

~~(2) The commissioner may, after opportunity for an informal conference, suspend a permit or license for a violation of the Act, this subchapter, or the permit that:~~

~~(a) may reasonably be expected to create a danger to the health or safety of the persons outside the permit area;~~

~~(b) may reasonably be expected to cause significant environmental harm to land, air, or water resources; or~~

~~(c) remains unabated subsequent to the deadline for abatement contained in an abatement order.~~

~~(3)~~(1) A notice of noncompliance, statement of proposed penalty, or an abatement, suspension, or revocation order, an order to reclaim, and other orders issued pursuant to the Act must be served upon the person to whom it is directed promptly after issuance by:

(a) tendering a copy of the notice or order in person to the permittee; or

(b) sending a copy of the notice or order by certified mail to the permittee at the address on the application for a permit.

~~(4)~~(2) Service is complete upon tender of the document and is not incomplete because of refusal to accept.

AUTH: 82-4-321, MCA; IMP: 82-4-341, 82-4-357, 82-4-361, 82-4-362, MCA

3. The 1995 legislature amended 82-4-361, MCA, of the Montana Metal Mine Reclamation Act revising enforcement procedures and increasing the maximum penalty for serious violations. Section 4, Chapter 204, 1995 Laws of Montana. The Board is proposing to amend rules 26.4.107M and 26.4.107O in order to conform with this legislation. The Board proposes to amend rules 26.4.107N and 26.4.107P in order to move provisions relating to permit suspension to rule 26.4.107N where those provisions are more appropriate. The Board is also proposing minor editorial amendments to rule subsections 26.4.107M (1) and 26.4.107N (1).

4. Interested persons may submit their data, views, or arguments concerning the proposed amendments, in writing, to the Board of Environmental Review, PO Box 200901, Helena, MT 59620-0901, no later than August 2, 1996.

5. If a person who is directly affected by the proposed amendment wishes to express his/her data, views, and arguments orally or in writing at a public hearing, he/she must make written request for a hearing and submit this request along with any written comments he/she has to the Board of Environmental Review, PO Box 200901, Helena, MT 59620-0901. A written request for a hearing must be received no later than August 2, 1996.

6. If the agency receives requests for a public hearing on the proposed amendments from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the administrative code committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 91, based on 10% of 916 persons holding operating permits, exploration licenses, or small miner exclusion statements under the Montana Metal Mine Reclamation Act.

Reviewed by

John F. North, Rule Reviewer

BOARD OF ENVIRONMENTAL REVIEW

by

CINDY E. YOUNKIN, Chairperson

Certified to the Secretary of State June 24, 1996.

BEFORE THE HUMAN RIGHTS COMMISSION
OF THE STATE OF MONTANA

In the matter of the proposed repeal of Rules 24.9.801, 24.9.803, 24.9.804, 24.9.1101, 24.9.1102, 24.9.1103, 24.9.1104, 24.9.1105, 24.9.1106, 24.9.1401, 24.9.1402, 24.9.1403, 24.9.1404, and 24.9.1405, and the adoption of Rules I - XII regarding proof of discrimination	)	NOTICE OF PUBLIC HEARING ON PROPOSED REPEAL AND ADOPTION

TO: All Interested Persons.

1. On Monday, August 5, 1996 at 1:30 p.m., a public hearing will be held at the Public Service Commission offices, 1701 Prospect Avenue, Helena, Montana, to take public testimony, consider comments from interested persons, and to take action on the proposed repeal of rules 24.9.801, 24.9.803, 24.9.804, 24.9.1101, 24.9.1102, 24.9.1103, 24.9.1104, 24.9.1105, 24.9.1106, 24.9.1401, 24.9.1402, 24.9.1403, 24.9.1404, and 24.9.1405 and the adoption of new rules I-XII, which would be codified in a new subchapter entitled proof of unlawful discrimination.

The Montana Human Rights Commission will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you request an accommodation, contact the Commission no later than 5:00 p.m., July 26, 1996, to advise us of the nature of the accommodation that you need. Please contact the Montana Human Rights Commission, Attn: Ms. Joan Schneider, P.O. Box 1728, Helena, MT 59624-1728; telephone (406) 444-3870; TDD (406) 444-0532; fax (406) 444-2798.

2. The proposed repeal and adoption of new rules is part of an ongoing effort to revise and improve the administrative rules of the Human Rights Commission, and is intended to provide parties to cases before the Commission and discrimination law practitioners with a quick reference to the law in this area by incorporating various holdings of the Montana Supreme Court and other relevant case law into the administrative rules of the Commission, to clarify that the requirements of state and federal disability discrimination

laws are substantially equivalent, and to eliminate outdated, confusing rules.

3. The Montana Human Rights Commission proposes to repeal the following rules:

24.9.801 DEFINITIONS (REPEAL) Rule 24.9.801 is on page 24-481 of the Administrative rules of Montana.
AUTH, Sec. 49-2-204 MCA; IMP, Sec. 2-15-1706, 49-2-101 MCA and Sec. 49-3-101 MCA.

24.9.803 RETALIATION (REPEAL) Rule 24.9.803 is on page 24-4-481 of the Administrative rules of Montana.
AUTH, Sec. 49-2-504 MCA; IMP, Sec. 2-15-1706, 49-2-102, 49-2-303, 49-2-401 MCA

24.9.804 AFFIRMATIVE ACTION REQUIRED BY THE COMMISSION (REPEAL)
Rule 24.9.804 is on page 24-482 of the Administrative Rules of Montana.
AUTH, Sec. 49-2-204 MCA; IMP, Sec. 2-15-1706, 49-2-102, 49-2-203 MCA

24.9.1101 COVERAGE; ALIENS (REPEAL) Rule 24.9.1101 is on page 24-501 of the Administrative Rules of Montana.
AUTH, Sec. 49-2-204 MCA; IMP, Sec. 2-15-1706, 49-2-101 MCA

24.9.1102 COVERAGE; INSURANCE COMPANIES (REPEAL) Rule 24.9.1102 is on page 24-501 of the Administrative Rules of Montana.
AUTH, Sec. 49-2-204 MCA; IMP, Sec. 2-15-1706, 49-2-306 MCA

24.9.1103 PRINTED MATTER FOR PUBLIC ACCOMMODATIONS; WHEN DISCRIMINATION PERMITTED (REPEAL) Rule 24.9.1103 is on page 24-501 of the Administrative Rules of Montana.
AUTH, Sec. 49-2-204 MCA; IMP, Sec. 2-15-1706, 49-2-102, 49-2-303, 49-2-304, 49-2-305 MCA

24.9.1104 REAL PROPERTY TRANSACTIONS; WHEN DISCRIMINATION PERMITTED (REPEAL) Rule 24.9.1104 is on page 24-501 of the Administrative Rules of Montana.
AUTH, Sec. 49-2-204 MCA; IMP, Sec. 2-15-1706, 49-2-304 MCA

24.9.1105 EDUCATIONAL INSTITUTIONS; WHEN DISCRIMINATION PERMITTED (REPEAL) Rule 24.9.1105 is on page 24-502 of the Administrative Rules of Montana.
AUTH, Sec. 49-2-204 MCA; IMP, Sec. 2-15-1706, 49-2-307, 49-2-308 MCA

24.9.1106 BURDEN OF PROOF (REPEAL) Rule 24.9.1106 is on page 24-502 of the Administrative Rules of Montana.
AUTH, Sec. 49-2-204 MCA; IMP, Sec. 2-15-1706, 49-2-102, 49-2-301(1), 49-2-303, 49-2-304, 49-2-305, 49-2-306, 49-2-308, 49-2-307, 49-2-401, 49-2-402 MCA

24.9.1401 GENERAL PRINCIPLES (REPEAL) Rule 24.9.1401 is on page 24-525 of the Administrative Rules of Montana.
AUTH, Sec. 49-2-204 MCA; IMP, Sec. 2-15-1706, 49-2-102, 49-2-303, 49-2-401 MCA

24.9.1402 SEX DISCRIMINATION AS A REASONABLE DEMAND OF EMPLOYMENT (REPEAL) Rule 24.9.1402 is on page 24-525 of the Administrative Rules of Montana.
AUTH, Sec. 49-2-204 MCA; IMP, Sec. 2-15-1706, 49-2-102, 49-2-303, 49-2-401 MCA

24.9.1403 AGE DISCRIMINATION AS A REASONABLE DEMAND OF EMPLOYMENT (REPEAL) Rule 24.9.1403 is on page 24-526 of the Administrative Rules of Montana.
AUTH, Sec. 49-2-204 MCA; IMP, Sec. 2-15-1706, 49-2-102, 49-2-303, 49-2-401 MCA

24.9.1404 PHYSICAL HANDICAP DISCRIMINATION AS A REASONABLE DEMAND OF EMPLOYMENT (REPEAL) Rule 24.9.1404 is on page 24-526 of the Administrative Rules of Montana.
AUTH, Sec. 49-2-204 MCA; IMP, Sec. 2-15-1706, 49-2-102, 49-2-303, 49-2-401 MCA

24.9.1405 MENTAL HANDICAP DISCRIMINATION AS A REASONABLE DEMAND OF EMPLOYMENT (REPEAL) Rule 24.9.1405 is on page 24-527 of the Administrative Rules of Montana.
AUTH, Sec. 49-2-204 MCA; IMP, Sec. 2-15-1706, 49-2-102, 49-2-303, 49-2-401 MCA

4. The full text of the new rules the Human Rights Commission proposes to adopt is as follows:

RULE I. PURPOSE OF THESE RULES REGARDING PROOF OF UNLAWFUL DISCRIMINATION (1) These rules regarding proof of unlawful discrimination are intended to provide general statements of what must be proved to establish unlawful discrimination in various kinds of complaints. They are not intended to be exhaustive statements of the applicable law, but general guidelines and informational summaries of the law. Practitioners appearing in cases before the commission should also refer to the statutes, the balance of the commission's rules, and the federal, state and commission decisions addressing the issues in their particular cases.
AUTH: Sec. 49-2-204, 49-3-106, MCA
IMP: Sec. 49-2-301 through 49-2-404, MCA; Sec. 49-3-103, 49-3-104, and 49-3-201 through 49-3-209, MCA

RULE II. MEMBERSHIP IN A PROTECTED CLASS (1) "Membership in a protected class" means belonging to a group of persons who are afforded protection against discrimination because of race, creed, color, sex (including pregnancy), physical or mental disability, age, marital status, familial status, national origin or political beliefs or ideas as set forth in the act or code.

(2) The person alleging discrimination has the burden of proving that the charging party or other aggrieved person is a member of a protected class.

AUTH: Sec. 49-2-204, 49-3-106, MCA
IMP: Sec. 49-2-101, 49-2-303, 49-2-304, 49-2-305, 49-2-306, 49-2-307, 49-2-308, 49-2-403, 49-3-101, 49-3-103, 49-3-104, 49-3-201, 49-3-202, 49-3-203, 49-3-204, 49-3-205, 49-3-206, 49-3-207, and 49-3-208, MCA.

RULE III. RETALIATION AND COERCION PROHIBITED (1) It is unlawful to retaliate against or otherwise discriminate against a person because the person engages in protected activity. A significant adverse act against a person because the person has engaged in protected activity or is associated with or related to a person who has engaged in protected activity is illegal retaliation. "Protected activity" means the exercise of rights under the act or code and may include:

(a) aiding or encouraging others in the exercise of rights under the act or code;

(b) opposing any act or practice made unlawful by the act or code; and

(c) filing a charge, testifying, assisting or participating in any manner in an investigation, proceeding or hearing to enforce any provision of the act or code.

(2) Significant adverse acts may include the following:

(a) violence or threats of violence, malicious damage to property, coercion, intimidation, harassment, the filing of a factually or legally baseless civil action or criminal complaint, or other interference with the person or property of an individual;

(b) discharge, demotion, denial of promotion, denial of benefits or other material adverse employment action;

(c) expulsion, blacklisting, denial of privileges or access, or other action adversely affecting the availability of goods, services, facilities, or advantages of a public accommodation;

(d) eviction, denial of services or privileges, or other action adversely affecting the availability of housing opportunities; and

(e) denial of credit, financing, insurance, educational, governmental or other services, benefits or opportunities.

(3) When a respondent or agent of a respondent has actual or constructive knowledge that proceedings are or have been pending with the commission or in court to enforce a provision of the act or code, the commission will presume that significant adverse action taken by respondent or the agent of respondent against a charging party or complainant was in retaliation for protected activity, if the adverse action occurs while the proceedings were pending or within six months following the final resolution of the proceedings.

AUTH: Sec. 49-2-204, 49-3-106, MCA
IMP: Sec. 49-2-301, 49-3-209, MCA

RULE IV. DISCRIMINATION PROHIBITED - EMPLOYMENT (1) Except as provided in 49-2-303, 49-2-308 and 49-3-201, MCA, it is unlawful for an employer, agent of an employer, employment agency or labor organization to discriminate against a person in the terms, conditions or privileges of employment because of a person's membership in a protected class.

(2) Terms, conditions or privileges of employment which are subject to the act and code include:

(a) recruitment, advertising and job application procedures;

(b) hiring, promotion, upgrading, award of tenure, transfer, layoff, discipline, discharge, termination of employment, right to return from layoff, and rehiring;

(c) rates of pay or compensation and changes in compensation;

(d) job assignments, job classifications, organizational structures, position descriptions, lines of progression and seniority lists;

(e) leaves of absence, sick leave or any other leave;

(f) fringe benefits available through employment, whether or not administered by the employer;

(g) selection and financial support for training, including apprenticeships, professional meetings, conferences or other related activities;

(h) social and recreational activities sponsored by an employer, agent of an employer, employment agency or labor organization; and

(i) any other term, condition or privilege of employment.

(3) Examples of practices which may constitute unlawful employment discrimination include the following:

(a) denying, qualifying, or limiting a term, condition, or privilege of employment because of a person's membership in a protected class or protected activity;

(b) subjecting a person to harassment in the workplace because of the person's membership in a protected class or protected activity;

(c) failing to make reasonable accommodation as further explained in [rules VI and VIII];

(d) segregating or classifying a person in a way that adversely affects employment status or opportunities because of membership in a protected class;

(e) participating in a contract or other arrangement (including an arrangement with an organization providing fringe benefits or an organization providing training or apprenticeship programs) that has the effect of discriminating against persons in the terms, conditions or privileges of employment because of membership in a protected class;

(f) using standards, criteria or methods of administering or managing employment opportunities which discriminate in the terms, conditions or privileges of employment because of membership in a protected class or which perpetuate the denial of equal employment opportunities because of membership in a protected class;

(g) using or administering qualification standards, employment tests or other selection criteria that screen out or tend to screen out members of a protected class; and

(h) discriminating against a person in the terms, conditions or privileges of employment because the person has a relationship with or otherwise associates with a member of a protected class.

AUTH: 49-2-204, MCA; 49-3-106, MCA
IMP: 49-2-303, MCA; 49-2-308, MCA; 49-3-201, MCA; 49-2-202, MCA.

RULE V, EMPLOYMENT DISCRIMINATION: REASONABLE DEMANDS/BONA FIDE OCCUPATIONAL QUALIFICATION EXCEPTIONS (1) It is not unlawful employment discrimination to make a distinction based on age, physical or mental disability, marital status, or sex when the reasonable demands of the position or program require the distinction.

(2) The commission construes the exceptions contained in this rule strictly, against allowing the exception.

(3) The commission construes the statutory exception permitting distinctions based on age, marital status and sex in accordance with the legal standards for "bona fide occupational qualifications" under section 703(e)(1) of the Civil Rights Act of 1964 (42 U.S.C. §2000-2(e)(1)) and section 4(f) of the Age Discrimination in Employment Act of 1967 (29 U.S.C. §623(f)).

(4) The commission construes the statutory exception permitting distinctions based on physical or mental disability in accordance with the legal standards for determining whether a person is a "qualified individual with a disability" under section 101(8) of the Americans with Disabilities Act of 1990 (42 U.S.C. §12111(8)).

(5) These exceptions are affirmative defenses. A respondent claiming an exception has the burden of proof on the issue.

AUTH: Sec. 49-2-204, 49-3-106, MCA
IMP: Sec. 49-2-101(1), 49-2-101(15), 49-2-303, 49-3-101(1), 49-3-101(3), 49-3-101(5), 49-3-201, 49-3-202, MCA.

RULE VI. FAILURE TO MAKE REASONABLE ACCOMMODATION - EMPLOYMENT DISCRIMINATION BECAUSE OF A DISABILITY (1) It is an unlawful discriminatory practice for an employer, agent of an employer, employment agency or labor organization to:

(a) fail to make reasonable accommodations to the known physical or mental limitations of an otherwise qualified employee, employment applicant or union member with a physical or mental disability unless it can demonstrate that the accommodation would impose an undue hardship on the operation of the business in question; or

(b) deny equal employment opportunities to a person with a physical or mental disability because of the need to make a reasonable accommodation to the person's disability so that

the person can perform the essential functions of an employment position.

(2) A person with a physical or mental disability is qualified to hold an employment position if the person can perform the essential functions of the job with or without a reasonable accommodation for the person's physical or mental disability. If an employer has prepared a written description before advertising or interviewing applicants, the description is evidence of the essential functions of the job.

(3) "Reasonable accommodation" to a person with a physical or mental disability for the purposes of enabling the person to perform the essential functions of an employment position may include:

(a) making existing facilities used by employees readily accessible to and usable by individuals with physical or mental disabilities; and

(b) job restructuring, part-time or modified work schedules, reassignment to vacant positions, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations or training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with physical or mental disabilities.

(4) An accommodation to a person with a physical or mental disability for the purpose of enabling the person to perform the essential functions of an employment position is reasonable unless it would impose an undue hardship upon the employer.

(5) For purposes of determining whether an accommodation to a physical or mental disability is reasonable, "undue hardship" means an action requiring significant difficulty or extraordinary cost when considered in light of:

(a) the nature and expense of the accommodation needed;

(b) the overall financial resources of the facility or facilities involved in the provision of the accommodation, the number of persons employed at the facility, the effect on expenses and resources of the facility, and other impacts of the accommodation on the operation of the facility;

(c) the overall financial resources of the employer, the overall size of the business of the employer with respect to the number of employees, and the number and type and location of the facilities of the employer; and

(d) the type of operation or operations of the employer, including composition, structure, and functions of the work force of the employer, and the geographic separateness and administrative or fiscal relationship of the facility or facilities in question to the employer.

(6) An accommodation to a person with a physical or mental disability for the purpose of enabling the person to perform the essential functions of an employment position is not reasonable if it would endanger the health or safety of any person.

(7) If an employer defends an adverse employment action against a person with a physical or mental disability on the

grounds that an accommodation would endanger the health or safety of a person, but the employer did not independently assess whether the accommodation would create a reasonable probability of substantial harm, the commission will presume that the employer's justification is a pretext for discrimination on the basis of disability.

(a) Independent assessment of the risk of substantial harm is evaluation by the employer of the probability and severity of potential injury in the circumstances, taking into account all relevant information regarding the work and medical history of the person with the disability before taking the adverse employment action in question.

(b) Except in cases where the danger posed is obvious, an independent assessment cannot be based entirely on medical reports or the employer's subjective evaluation.

AUTH: Sec. 49-2-204, 49-3-106, MCA
IMP: Sec. 49-2-101, 49-3-201, 49-3-202, MCA.

RULE VII. PROHIBITED MEDICAL EXAMINATIONS AND INQUIRIES - EMPLOYMENT DISCRIMINATION BASED ON DISABILITY (1) An employer, agent of an employer, employment agency or labor organization shall not require medical examinations or make inquiries of employees for the purposes of determining whether an employee has a physical or mental disability or to determine the nature or severity of a disability unless the examination or inquiry is shown to be job-related and consistent with business necessity.

(2) Use of an employment application form or process which requires a medical examination or makes an inquiry of a job applicant for the purpose of determining whether a person has a physical or mental disability or to determine the nature or severity of a physical or mental disability prior to an offer of employment constitutes a violation of 49-2-303(1)(c), MCA and is evidence of a violation of 49-2-303(1)(a), MCA, unless the form or process complies with the requirements of this rule.

(3) An employer, agent of an employer, employment agency or labor organization may make pre-employment inquiries into the ability of an applicant to perform job-related functions.

(4) An employer, agent of an employer, employment agency or labor organization may require a medical examination of a person after an offer of employment has been made and prior to the commencement of the employment duties and may condition the offer of employment on the results of the examination if:

(a) all entering employees or union members are subjected to the same examination regardless of disability;

(b) information obtained regarding the medical condition or history of a person is treated as a confidential medical record; and

(c) information obtained is collected and maintained in accordance with the requirements of the Americans with Disabilities Act (ADA) where the employer, employment agency or labor organization is subject to ADA requirements.

(5) An employer, agent of an employer, or labor organization may conduct voluntary medical examinations, including voluntary medical histories, that are part of a bona fide employee or union health program. Information obtained pursuant to a bona fide employee or union health program is a confidential medical record and subject to the same confidentiality requirements and restrictions on disclosure stated in (4).

(6) An employer, after a conditional offer of employment to a prospective employee, may inquire whether the prospective employee is certified pursuant to Title 39, Chapter 71, Part 9 of the Montana Workers' Compensation Act.

AUTH: Sec. 49-2-204, 49-3-106, MCA.
IMP: Sec. 49-2-303, 49-3-201, 49-3-202, MCA.

RULE VIII. FAILURE TO ACCOMMODATE - EMPLOYMENT DISCRIMINATION BASED ON RELIGION (1) It is an unlawful discriminatory practice for an employer, an agent of an employer, an employment agency or a labor organization to discriminate against a person in the terms, conditions or privileges of employment because of religion.

(2) The term religion includes all aspects of religious observance, practice and belief.

(3) For purposes of providing equal employment opportunities, an employer has a duty to accommodate an employee's religion unless to do so would cause a more than de minimis hardship on the conduct of the business.

(a) An employee whose religion conflicts with an employment requirement has a duty to inform the employer of the conflict in a timely manner.

(b) Once informed of a religion based conflict, an employer has a duty to initiate good faith efforts to accommodate the conflict. An employer can demonstrate that an accommodation to an employee's religious belief or practice is not reasonable with proof that the accommodation would require a significant cost to the business, would violate contract obligations which cannot be reconciled, or would otherwise cause a more than de minimis hardship to the employer.

(c) The employer and the employee have a mutual obligation to engage in bilateral cooperation in a search for a reasonable resolution of conflicts which may arise between an employer's business and an employee's religion.

(4) Determining whether an accommodation can be made and whether a more than de minimis hardship would occur for purposes of the provisions of the act or code prohibiting religious discrimination in employment must be made on a case by case basis.

AUTH: Sec. 49-2-204, 49-3-106, MCA.
IMP: Sec. 49-2-303, 49-3-201, 49-3-202, MCA.

RULE IX. DISCRIMINATION PROHIBITED - PUBLIC ACCOMMODATION (1) Except as provided in 49-2-304, MCA, it is unlawful for an owner, lessee, manager, agent or employee of a public accommodation to deny equal access to services, goods,

facilities, advantages or privileges to a person because of membership in a protected class.

(2) Unlawful discrimination in a public accommodation may include the following:

(a) imposing or applying qualification standards, admittance tests or other selection criteria that screen out or tend to screen out a person or persons who are members of a protected class unless the standard, test or other selection criteria can be shown to be necessary for the provision of the goods, services, facilities, advantages or privileges being offered;

(b) denying equal access to the goods, services, facilities, advantages or privileges of a public accommodation to a person because of the person's relationship or association with a member of a protected class; or

(c) subjecting a member of the public or patron to harassment in the public accommodation because of the person's membership in a protected class or protected activity.

(3) Unlawful discrimination against a person with a disability in a public accommodation may include:

(a) failing to make reasonable modifications in policies, practices or procedures when the modifications are necessary to afford the goods, services, facilities, advantages or privileges to persons with disabilities unless the public accommodation can demonstrate that making the modifications would fundamentally alter the nature of its goods, services, facilities, advantages or privileges;

(b) failing to take necessary action to ensure that a person with a disability is not excluded, denied services, segregated or otherwise denied equal access because of the absence of auxiliary aids and services, unless the public accommodation can demonstrate that taking those steps would fundamentally alter the nature of the goods, services, facilities, advantages or privileges being offered or would result in an unreasonable expense or undue burden after considering the circumstances of the public accommodation;

(c) failing to remove architectural barriers and communication barriers in existing facilities that are structural in nature and deny equal access to persons with disabilities when the removal is readily achievable; or

(d) failing to make goods, services, facilities, advantages and privileges available through alternative methods if removal of barriers that deny equal access to persons with disabilities is not readily achievable.

AUTH: Sec. 49-2-204, MCA; 49-3-106, MCA
IMP: Sec. 49-2-101, 49-2-304, 49-3-208, MCA.

RULE X. BURDEN OF PROOF - DISPARATE TREATMENT (1) To prove a claim of unlawful discrimination or illegal retaliation based on disparate treatment, a charging party must establish a prima facie case in support of the alleged violation of the act or code.

(2) A prima facie case of discrimination or retaliation based on disparate treatment means evidence from which the

trier of fact can infer that adverse action against the charging party was motivated by respondent's consideration of charging party's membership in a protected class, protected activity, or association with or relation to a person who is a member of a protected class or who has engaged in protected activity.

(a) The elements will vary according to the type of charge and the alleged violation, but generally consist of proof:

(i) That charging party is a member of a protected class or engaged in protected activity;

(ii) That charging party was subjected to adverse action;

(iii) That there is a causal connection between the adverse action and the membership in the protected class or the protected activity.

(b) Circumstantial evidence of a causal connection is sufficient if it raises a reasonable inference that the alleged discriminatory act was done because of a person's membership in a protected class or protected activity.

(3) Once a charging party establishes a prima facie case of unlawful discrimination or illegal retaliation based on circumstantial evidence of disparate treatment, the respondent must produce evidence of a legitimate, nondiscriminatory reason for the challenged action.

(4) If a respondent produces evidence of a legitimate, nondiscriminatory reason for a challenged action in response to a prima facie case, the charging party must demonstrate that the reason offered by the respondent is a pretext for unlawful discrimination or illegal retaliation. The charging party can prove pretext with evidence that the respondent's acts were more likely based on an unlawful motive or indirectly with evidence that the explanation for the challenged action is not credible and is unworthy of belief.

(5) If a charging party has established a prima facie case with direct evidence of unlawful discrimination or illegal retaliation, the respondent must prove by a preponderance of the evidence that an unlawful motive played no role in the challenged action or that the direct evidence of discrimination is not credible and is unworthy of belief.

AUTH: Sec. 49-2-204, 49-3-106, MCA

IMP: Sec. 49-2-101, 49-2-303, 49-2-304, 49-2-305, 49-2-306, 49-2-307, 49-2-308, 49-2-403, 49-3-101, 49-3-103, 49-3-104, 49-3-201, 49-3-202, 49-3-203, 49-3-204, 49-3-205, 49-3-206, 49-3-207, 49-3-208, and 49-3-209, MCA.

RULE XI. BURDEN OF PROOF - MIXED MOTIVE CASE (1) When the charging party proves that the respondent engaged in unlawful discrimination or illegal retaliation but the respondent proves the same action would have been taken in the absence of the unlawful discrimination or illegal retaliation, the case is a mixed motive case. In a mixed motive case, the commission will order respondent to refrain from the discriminatory conduct and may impose other conditions to minimize future violations, but the commission will not issue

an order awarding compensation for harm to the charging party caused by an adverse action that would have been taken by the respondent regardless of an unlawful discriminatory or retaliatory motive.

AUTH: Sec. 49-2-204, 49-3-106, MCA
IMP: Sec. 49-2-101, 49-2-301, 49-2-303, 49-2-304, 49-2-305, 49-2-306, 49-2-307, 49-2-308, 49-2-403, 49-3-101, 49-3-103, 49-3-104, 49-3-201, 49-3-202, 49-3-203, 49-3-204, 49-3-205, 49-3-206, 49-3-207, 49-3-208, and 49-3-209, MCA.

RULE XII. BURDEN OF PROOF - DISPARATE IMPACT (1) To prevail on a claim of unlawful discrimination based on disparate impact, a charging party must establish a prima facie case by proving that one or more identified practices or policies of the respondent have a significant or substantial adverse effect on the charging party's protected class.

(2) Evidence of a respondent's intent to discriminate against members of a protected class is not required to establish a prima facie case of unlawful discriminatory practice based on disparate impact.

(3) Once a charging party establishes a prima facie case of unlawful discrimination based on a charge of disparate impact, the respondent must produce evidence of a legitimate business justification for the challenged practices or policies. Proof of a legitimate business justification requires admissible evidence that the challenged practices or policies are job-related and consistent with business necessity.

(4) If a respondent produces admissible evidence of a legitimate business justification for a challenged business practice or policy, the charging party must prove that the articulated justification offered by the respondent is a pretext for unlawful discrimination. The charging party may prove pretext directly with evidence that an unlawful motive more likely motivated the respondent, or indirectly with evidence that the articulated business justification is not worthy of belief or that there are other practices or policies available which are equally effective in serving the legitimate business interests of the respondent which do not have similar discriminatory effects upon members of a protected class.

AUTH: Sec. 49-2-204, 49-3-106, MCA
IMP: Sec. 49-2-101, 49-2-303, 49-2-304, 49-2-305, 49-2-306, 49-2-307, 49-2-308, 49-2-403, 49-3-101, 49-3-103, 49-3-104, 49-3-201, 49-3-202, 49-3-203, 49-3-204, 49-3-205, 49-3-206, 49-3-207, and 49-3-208, MCA.

5. 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 Anne L. MacIntyre, Administrator, Montana Human Rights Commission, P.O. Box 1728, Helena, MT 59624, and must be received no later than 5:00 p.m. on Wednesday, July 31, 1996.

Jane Lopp, Chair
Human Rights Commission

By: Anne L. MacIntyre
Anne L. MacIntyre, Administrator,
Human Rights Commission

Mark Cadwallader, Rule Reviewer
Department of Labor

Certified to the Secretary of State June 24, 1996

BEFORE THE BOARD OF LIVESTOCK
DEPARTMENT OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the proposed amendments to rules on importation of animals and semen into Montana; brucellosis; tuberculosis; poultry; animal identifications; control of biologics; rendering plants; vehicles and equipment; and animal health requirements for livestock markets; and adoption of new rules as they relate to importation of animals and semen into Montana and tuberculosis; and repeal of rule 32.3.407B as it relates to brucellosis; and rule 32.3.602 as it relates to official tuberculin tests.	NOTICE OF PROPOSED AMENDMENTS, ADOPTION AND REPEAL NO PUBLIC HEARING CONTEMPLATED

TO: ALL INTERESTED PERSONS:

1. On August 5, 1996, the board of livestock proposes to amend rules 32.3.201, 32.3.210, 32.3.212, 32.3.214, 32.3.215, 32.3.216, 32.3.218, 32.3.219, 32.3.220, 32.3.221, 32.3.225, 32.3.401, 32.3.403, 32.3.407A, 32.3.418, 32.3.601, 32.3.607, 32.3.2001, 32.3.2301, 32.6.1103, and 32.15.204; adopt new rules I-III; and repeal rules 32.3.407B and 32.3.602.

2. The rules as proposed to be amended provide as follows: (text of rule with matter to be omitted interlined and new matter added, then underlined)

"32.3.201 DEFINITIONS

(1)-(a) Remains the same.

(b) "Dairy goats" means goats of dairy breeds or dairy types that may at some time be used for the production of milk or milk products for human consumption.

(b)-(f) Remains the same but renumbered to (c)-(g)."

AUTH: 81-2-102, 81-20-101, MCA
IMP: 81-2-102, 81-2-103, 81-20,101, MCA

"32.3.210 TESTS REQUIRE OFFICIAL CONFIRMATION (1) All tests of animals required by Montana or federal authorities as a condition for entry into Montana must be made or confirmed in state or federal animal diagnostic laboratories. If an on site test is used, official written permission from the state veterinarian must be obtained."

AUTH: 81-2-102, 81-20-101, MCA
IMP: 81-2-102, 81-20-101, MCA

"32.3.212 ADDITIONAL REQUIREMENTS FOR CATTLE

(1) Remains the same.

~~(2)(a) All female cattle over 12 months of age entering Montana from states classified as class A must be found negative to a brucellosis test performed within 30 days prior to the date of entry into the state of Montana (and confirmed in a state or federally approved animal diagnostic laboratory) except the following:~~

~~(i) Spayed heifers;~~

~~(ii) Official vaccinates as defined in ARM 32.3.401 in which the first pair of permanent incisor teeth have not erupted or which are not in the last trimester of pregnancy, parturient or post parturient;~~

~~(iii) Test eligible officially vaccinated cattle from certified brucellosis free herds, provided the certified herd number is shown on the health certificate accompanying such cattle into this state, this information must be given when the import permit is requested.~~

~~(iv) Cattle consigned directly to a slaughtering establishment in this state operating under the Federal Meat Inspection Act (21 U.S.C. 601 et seq.), for immediate slaughter, and~~

~~(v) Montana cattle returning from an "A" area in adjoining states where they have pastured as part of normal ranching operating. The cattle must originate from an established Montana herd. No additions to the herd may occur while out of state. The pasture premises must be leased or owned by the owner of the cattle. The owner must file an acceptable grazing permit herd plan prior to the cattle leaving Montana. The owner must assume any liability the department may incur for granting this exception if brucella infection is traced to the pasture location from which the cattle returned. A visual inspection by the department of the pasture area, at the owner's expense, may be required before acceptance of the herd plan. If at any time the department determines the cattle may have been exposed to brucellosis, it may prohibit reentry and require such testing as it determines is necessary.~~

~~(b) All cattle required to be tested for brucellosis prior to entry into the state of Montana must be quarantined upon entry and kept separate and apart from all other livestock until determined to be negative to an official test for brucellosis made not less than 45, nor more than 120 days after entry and quarantine. The cost of quarantine and testing is at the owner's expense. The requirements for quarantine and retest after entry do not apply to female cattle originating in states having no known brucellosis infection in the previous 6 months.~~

(2) All cattle imported into Montana must meet the interstate requirements as set forth in Title 9 CFR.

~~(3) Cattle moving from Montana into an adjacent state, or from an adjacent state into Montana for purposes of summer grazing are exempt from the provisions of this subsection~~

~~pertaining to test, quarantine and retest provided the following conditions are met:~~

~~(a) The cattle enter and return to Montana under permit from the state veterinarian and an official health certificate certifying the animals are free of visible diseases; and~~

~~(b) While outside of Montana, the cattle are kept under fence and are not intermingled with cattle belonging to another person. The state veterinarian may waive this requirement as to intermingling when he is satisfied that the possibility of exposure to brucellosis is minimal.~~

~~(c) The county where the cattle are grazed in the adjacent state has achieved class free status, and the cattle return to a Montana location with the same Montana status from which they left.~~

~~(d) Cattle otherwise subject to test under this rule which are added to the herd while it is out of state are subject to test, quarantine and retest as provided in this rule.~~

~~(4) (a) Vaccinated female cattle, from states classified as B or C, may enter Montana under permit if they originate directly from a brucellosis free certified herd. The herd number and test date must be included on the certificate of veterinary inspection. The state veterinarian may require a brucellosis test 45 to 120 days after arrival.~~

~~(b) Vaccinated nonpregnant heifers under 18 months of age (first pair of permanent incisors not erupted) from any herds not under quarantine in "B" and "C" states may enter if they have been hot iron branded with an "F" brand. The brand must be no less than 3 inches high by 2 inches wide and applied as prescribed by the department. These cattle may only enter for purposes of feeding, grazing, or slaughter. They may not be used as breeding or dairy stock. The grazing period may not exceed six months.~~

~~(c) Spayed heifers from "B" and "C" areas may enter under permit if they are properly identified and certified by a licensed veterinarian.~~

~~(5) With regards to tuberculosis, cattle coming from states in which herds are or have been quarantined because of M. bovis in the past 6 months, and cattle 12 months of age and over coming from points of origin having less than "accredited free" or "modified accredited" tuberculosis status, and dairy cattle from any point of origin must be found negative to an approved test for tuberculosis administered not more than 30 days prior to entry into Montana, as evidenced by an official test form showing the results of that test. No other cattle are subject to tuberculosis testing as a condition for entry into Montana.~~"

AUTH: 81-2-102, 81-2-707, 82-20-101, MCA
IMP: 81-2-102, 81-20-101, MCA

"32.3.214 SPECIAL REQUIREMENTS FOR GOATS

(1) Remains the same.

(2) Dairy and breeding goats may enter the state of Montana provided they originate in a certified brucellosis-free herd, for which the certified herd number and date of last herd test are shown on the permit, or health certificate;

or they have been tested for brucellosis with negative results within 30 days of the date of shipment ~~and originate in herds which have been tested with negative results within the preceding 12 months~~.

(3) All dairy goats brought into the state, except those for slaughter only, must be tested for tuberculosis before they may be brought into the state.

~~(a) The test must: be of a type approved for use by the department; be performed not more than 60 nor less than 30 days prior to entry in the state; and, be conducted by a federally accredited veterinarian.~~

~~(b)~~(a) All test results shall be recorded on or attached to all copies of the animals health certificate."

AUTH: 81-2-102, 81-2-103, 81-2-707, 81-20-101, MCA
IMP: 81-2-102, 81-2-103, 81-2-701, 81-20-101, MCA

"32.3.215 GAME, FURBEARING AND WILD ANIMALS (1) Game, furbearing and wild animals under domestication or in custody may enter the state of Montana if all applicable fish and game laws are complied with and a permit is obtained from the state veterinarian prior to the movement of such animals into the state. The state veterinarian may require tests for specific diseases at his or her discretion."

AUTH: 81-2-101, 81-20-101, MCA
IMP: 81-2-102, 81-20-101, MCA

"32.3.216 HORSES, MULES AND ASSES (1) Horses, mules and asses may enter the state of Montana provided they are transported or moved in conformity with ARM 32.3.201 through 32.3.211. Such animals 6 months of age and over ~~coming from areas in which equine infectious anemia (EIA) is endemic may be~~ must be tested negative for EIA within the previous 12 months as a condition for obtaining the permit required by ARM 32.3.204.

~~(2) Equine quarantine stations. Stallions or mares imported from foreign countries; receipt prohibited except at approved equine quarantine stations. No person may receive in this state any stallion or mare which is imported from a foreign country in which contagious equine metritis has been reported unless the stallion or mare is imported directly to an approved equine quarantine station in a sealed vehicle. The sealed vehicle shall have been sealed at a federal or federally approved quarantine station by a federal or federally approved agent. The imported stallion or mare shall be accompanied by an import permit issued by the animal health division prior to the date on which the stallion or mare is brought into this state. The vehicle seal may not be removed except by an authorized employee or agent of the department of livestock at an approved equine quarantine station. All equine animals, including test mares, which are received at an approved equine quarantine station shall be identified with an individual identification of a type approved by the department.~~

~~(a) Quarantine release. An imported stallion or mare received at an approved equine quarantine station under paragraph 2 is quarantined until the quarantine is released by~~

~~the department in writing. A quarantined equine animal may not be removed from the quarantine premises or be allowed in contact with other equine animals on adjacent premises. Contact between a quarantined equine animal and a test mare is permitted, but only pursuant to a written agreement with the department under sub-paragraph (d). A test mare which has been in contact with an imported quarantined stallion is quarantined until the quarantine is released by the department in writing.~~

~~(b) Approved equine quarantine station permit. No person may operate an approved equine quarantine station in Montana without annual written permission from the animal health division, department of livestock. Permits shall expire December 31 of each year. Applications for a permit shall be made in writing as required by the department. The department shall grant or deny a permit application within 90 days after the application is received provided that the application is accompanied by all requisite information and documentation. Every application shall include:~~

~~(i) the name and mailing address of the applicant and any trade or business name to be used by the applicant;~~

~~(ii) a statement indicating whether the applicant is an individual partnership, corporation, cooperative corporation, or other business association or entity;~~

~~(iii) the location of the equine quarantine station specified by county, township, and section;~~

~~(iv) the name and address of the accredited veterinarian who will perform all identification, handling, testing, and treatment of equine animals at the approved equine quarantine station under procedures or protocols established by the department; and~~

~~(v) other information which the department may require if the information is reasonably relevant to the department's action on the permit request.~~

~~(c) Construction requirements; sanitary operation. Approved equine quarantine stations shall be constructed and maintained to prevent contact between quarantined equine animals and any other equine animals on the premises, including test mares. An approved equine quarantine station shall be maintained in a clean and sanitary manner.~~

~~(d) Testing and treatment procedures; written agreement. Before permission is granted for the operation of an approved equine quarantine station, the station operator and the accredited veterinarian designated under sub-paragraph (b)(iv) shall enter into a written agreement with the department establishing procedures and protocols to be followed in the identification, handling, testing, and treatment of equine animals quarantined at the station. The approved equine quarantine station shall be operated in compliance with the agreed procedures and protocols. Procedures and protocols shall be performed by the designated veterinarian except as otherwise authorized by the department.~~

~~(e) Record keeping. The operator of an approved equine quarantine station shall keep complete and accurate records which shall be made available for inspection and copies of which shall be supplied to the department upon request.~~

~~Records shall be kept for at least two years after they are made and shall include:~~

~~(i) the identification, date of arrival, and date of removal of each imported equine animal received at the quarantine station;~~

~~(ii) the name and address of the owner of each equine animal received at the quarantine station correlated with a specific identification of the equine animal; and~~

~~(iii) a complete record of the procedures and protocols followed in conjunction with the identification, handling, testing, and treatment of each imported animal.~~"

AUTH: 81-2-102, 82-20-101, MCA
IMP: 81-2-101, 81-20-101, MCA

"32.3.218 SPECIAL REQUIREMENTS FOR SHEEP

(1) Remains the same.

(2) All breeding rams must have a negative ELISA, or other recognized test, for brucella ovis within 30 days prior to entry into Montana or originate directly from an officially recognized brucella ovis free flock. Individual identification by eartag or tattoo is required along with date of the last brucella ovis herd test. All rams must be free of any gross or palpatable lesions of ram epididymitis upon examination by the certifying accredited veterinarian.

(3) Remains the same.

(4) Sheep infected with biting or sucking lice ~~(Damalina ovis)~~ may enter by permit only after acceptable insecticide treatment under supervision of an accredited veterinarian."

AUTH: 81-2-101, 81-20-101, MCA
IMP: 81-2-102, 81-2-103, 81-20-101, MCA

"32.3.219 SPECIAL REQUIREMENTS FOR SWINE

(1) Swine may enter the state of Montana provided they are transported or moved in conformity with ARM 32.3.201 through 32.3.211 and Title 9 CFR part 85 and accompanied by an official health certificate of the state of origin issued by an accredited veterinarian attesting that:

(1)(a)-(2)(b) Remains the same.

(3) With regards to pseudorabies ~~no swine will be permitted from herds that have had evidence of pseudorabies infection within the past 12 months~~ all swine entering must meet the requirements as set forth in Title 9 CFR part 85. No pseudorabies vaccinated swine will be permitted. The state veterinarian may impose a retest on swine originating from other states with a stage 4 (surveillance) or less as classified in Title 9 CFR part 85.

~~(a) All breeding swine must:~~

~~(i) be from an official qualified pseudorabies negative herd. Herd number available at time of request for permit; or~~

~~(ii) be officially tested negative for pseudorabies within thirty days of entry into Montana, be held separate under quarantine on arrival, and be retested negative for pseudorabies from thirty to forty five days at owner's expense before release.~~

~~(b) All feeder swine must:~~

~~(i) originate in a recognized pseudorabies monitored~~

~~herd or an officially qualified negative herd, or be officially tested negative for pseudorabies within thirty days of entry, and~~

~~(ii) move direct to a farm feeding premises where they are kept separate from other swine, and leave that premises only direct to slaughter.~~

~~(iii) originate from a farm in a Stage 4 or 5 state.~~

~~(c) Slaughter swine may, if apparently healthy:~~

~~(i) move directly to a recognized USDA slaughter establishment, or~~

~~(ii) move directly to a licensed livestock market approved to receive such swine for immediate sale direct to a recognized slaughter establishment.~~"

AUTH: 81-2-102, 81-20-101, MCA
IMP: 81-2-102, 81-20-101, MCA

"32.3.220 ~~BOVINE~~ SEMEN SHIPPED INTO MONTANA: PERMIT REQUIRED

(1) All sires must not have been used for natural service while the semen is being collected and certified for artificial insemination.

~~(1)~~(2) Bovine semen may not be transported into Montana for the purpose of artificial insemination and bovine semen may not be used for artificial insemination unless it originates from bulls whose health status conforms to the requirements that follow~~, and an annual permit is obtained from the Montana state veterinarian:~~:

(a) An annual permit is obtained from the Montana state veterinarian for an individual animal, or

(b) An annual blanket permit is obtained from the Montana state veterinarian (at his or her discretion) for semen from bulls in a designated stud. The bulls must be permanent residents of the bull stud, and a licensed-accredited veterinarian must certify that the testing is being done. A permanent resident is a bull that has passed all testing requirements and is qualified to remain in the stud as long as it meets the biannual requirements.

~~(a)~~(i) Remains the same.

~~(b)~~(ii) All bulls must be interpreted to be free of brucellosis by the state regulatory officials on the basis of official ~~tube agglutination blood~~ test, conducted by a state-federal laboratory ~~and negative to the semen plasma test (tube agglutination 1:25) for brucellosis~~ within 60 days prior to the first collection of semen destined for use in artificial insemination, and be interpreted to be brucellosis free by the state regulatory officials on the basis ~~of the blood and semen plasma tests~~ of an official test as recognized by the code of federal regulations each 6 months thereafter. Bulls permanently residing at a bull stud in a class free area may (at the state veterinarian's discretion) be exempt from the brucellosis testing.

~~(c)~~(iii) ~~All bulls must pass 6 negative examinations for 6 successive weeks for Trichomonas fetus following the last natural service performed.~~ All bulls must pass 3 negative examinations for 3 consecutive weeks for trichomonas fetus following the last natural service performed and within 60

days prior to the first collection of semen destined for artificial insemination, and 1 negative examination each 6 months thereafter. The inpouch method (or equivalent method as determined by the state veterinarian) must have been used. If the inpouch or equivalent was not used then 6 negative tests for 6 consecutive weeks are required.

~~(d)~~(iv) Remains the same.

(v) All bulls must be negative to bovine virus diarrhea (BVD) using culture of the blood serum, or semen. If the culture is positive then isolate and reculture in 21 days. If the culture is negative, reculture in 14 days; if still negative the bull may be returned to the bull stud and semen may be collected 30 days later.

~~(e)~~(vi) Remains the same.

(2)-(b) Remains the same but renumbered (3)-(b).

~~(3)~~(4) All tests must be conducted according to specifications adopted by the United States animal health association and approved by the United States department of agriculture, agricultural research service and the official order dated September 26, 1990, by the board of livestock recognizing certified semen service (CSS) health standards as equal to Montana's requirements will be continued.

~~(4)~~(5) All tests must be reported on the uniform certificate recommended by the United States animal health association on page 170, 1962 proceedings of the United States animal health association, or other form subsequently approved by the United States animal health association, in applying for the annual permit to transport bovine semen into Montana to be used in artificial insemination.

(6) Porcine semen from all boars used for the production of semen in artificial insemination must meet the following requirements:

(a) a negative tuberculosis test yearly;

(b) test negative to brucellosis, leptospirosis (low-stabilized titre O.K.), and PRRS every 6 months;

(c) test negative to pseudorabies every three months; and

(d) an approved antibiotic must be added to the semen.

(7) Equine semen from all equine, used for the production of semen in artificial insemination, must test negative for:

(a) equine infectious ANEMIA; and

(b) equine viral arteritis every six months by a test approved by the state veterinarian.

(8) Elk semen from all elk, used for the production of semen in artificial insemination, must test negative to:

(a) tuberculosis annually using an approved elk tuberculosis test;

(b) brucellosis, and leptospirosis (low-stabilized titre O.K.) every 6 months; and

(c) must be certified free of red deer genes.

(9) Ovine semen from all ovine, used for the production of semen in artificial insemination, must test negative to brucella ovis every 6 months."

AUTH: 81-2-102, 81-20-101, MCA
IMP: 81-2-102, 81-20-101, MCA

"32.3.221 TUBERCULOSIS AND BRUCELLOSIS TEST, IMPORTATION OF WILD SPECIES OF CLOVEN-HOOFED UNGULATES (1) All wild species of cloven-hoofed ungulates brought into the state must be tested for tuberculosis and brucellosis and found to be negative.

~~(2)~~(a) The tuberculosis test must be:

(i) ~~be~~ of a type approved for use by the department;

(ii) ~~be~~ performed not more than ~~(60)~~ 90 days on cervidae or ~~(60)~~ days on bovidae ~~nor less than 30 days~~ prior to entry into the state; and~~,~~

(iii) ~~be~~ conducted by a federally accredited veterinarian. The test must be a type approved for that species by the state veterinarian.

(b) The brucellosis test must be a type approved by the state veterinarian, and is valid for 30 days.

~~(3)~~(2) All test results shall be recorded on or attached to all copies of the animals health certificate."

AUTH: 81-2-102, 81-2-103, MCA
IMP: 81-2-102, 81-2-103, MCA

"32.3.225 LLAMAS

(1)-(a) Remains the same.

(b) With regard to tuberculosis, officially tested negative for tuberculosis within 60 days of entry into the state using the axillary or other test approved for camildae."

AUTH: 81-2-102, 81-2-103, MCA
IMP: 81-2-103, MCA

"32.3.401 DEFINITIONS

(1) Remains the same.

(2) "Brucellosis" is an infectious, transmissible disease of animals and man caused by Brucella abortus, Brucella suis or Brucella melitensis, which are referred to in these rules collectively as "Brucella organisms" or individually as a "brucella organism". Disease control in animals shall be in compliance with Title 9 CFR part 78 and USDA APHIS brucellosis eradication Uniform Method and Rules (UM&R).

~~(3) An "approved antigen" is a standardized suspension of Brucella organism approved by the United States department of agriculture used for testing for brucellosis.~~

~~(4) An "official test" is a test by a deputy state veterinarian or other person specifically trained to conduct such test approved by the state veterinarian, performed on animal blood, sera, secretions, excretions, discharges, tissues, fetal membranes, or fetuses designed to indicate the presence of brucellosis utilizing one or more of the following procedures: the standard plate test (SPT), the standard tube test (STT), the card test (CT), the rivanol test, the complement fixation (CF) test, the mercaptoethanol (ME) tube test, the rapid screening test (RST), brucellosis ring test (BRT), the heat inactivation test (HIT), the hemoagglutination (HA) test, or any other isolation test or procedure recommended for use in the diagnosis of brucellosis by the United States department of agriculture. To be considered official the procedure is to be performed in a facility~~

~~approved by the department unless otherwise authorized by the state veterinarian. The determination of whether an animal is a reactor animal, a suspect animal, or a negative animal must be made from the official test by a veterinarian who is in the employ of the department or a designated brucellosis epidemiologist. Test results must be recorded on the official forms of the department for the recording of brucellosis test results.~~

~~(5) "Official vaccination" for bovine brucellosis is the subcutaneous inoculation of a female bovine by a deputy state veterinarian or other persons approved by the state veterinarian, with a Brucella abortus vaccine licensed by the Veterinary Biologics Division, United States Department of Agriculture. The vaccine will contain three billion to ten billion live organisms per 2 ml dose. The female bovine animal must be 4 - 12 months (120 to 365 days) of age at the time of vaccination with a licensed Brucella abortus vaccine. An official vaccination shall include proper permanent identification of the animal at the time of vaccination and the issuance of a completed form 8V 64.~~

~~(6) An "official vaccinate" is an animal, which has received an official vaccination, bearing proper permanent identification with a report of the official vaccination filed with the department.~~

~~(7) "Proper permanent identification" of officially vaccinated animals shall include the following forms of identification recorded on form 8V 64.~~

~~(a) The United States registered "Shield and V" applied in the right ear of the animal. The "Shield and V" shall be preceded by a numeral indicating the quarter of the year and followed by the last digit of the year in which the official vaccination was performed; and~~

~~(b) The U.S.D.A. approved metal vaccination eartag placed in the right ear; or~~

~~(c) The breed registration tattoo applied in the left ear if the animal is officially registered as a member of a recognized breed.~~

~~(d) In the event that the right ear is of insufficient size to accommodate the tattoo and eartag, because of injury or identification ear marking, they may be placed in the left ear.~~

~~(8) A "reactor animal" is:~~

~~(a) An official vaccinate in which the first pair of permanent incisor teeth has erupted, or, not having the first pair of permanent incisor teeth, that is in the last trimester of pregnancy, parturient or post parturient that discloses sufficient reaction to an official test to indicate the presence of Brucella organisms, or which is found to be infected with Brucella organisms by other diagnostic procedures; or~~

~~(b) Any other animal that discloses sufficient reaction to an official test to indicate the presence of Brucella organisms, or which is found to be infected with Brucella organisms by other diagnostic procedures.~~

~~(9) "Suspect animal" is:~~

~~(a) An official vaccinate in which the first pair of permanent incisor teeth has erupted, or, not having the first pair of permanent incisor teeth, that is in the last trimester of pregnancy, parturient or post parturient that is displaying equivocal results to an official test; or~~

~~(b) Any other animal disclosing equivocal results to an official test.~~

~~(i) An "equivocal result" is one in which there is a reaction to an official test indicating the possible presence of Brucella organisms but which is insufficient to justify designating the tested animal as a reactor.~~

~~(10) A "negative animal" is:~~

~~(a) An official vaccinate in which the first pair of permanent incisor teeth has erupted, or, not having the first pair of permanent incisor teeth, that is in the last trimester of pregnancy, parturient or post parturient that displays negative results to an official test; or~~

~~(b) Any other animal which displays negative results to an official test.~~

~~(11) An "exposed animal" is any animal that is a part of a herd with brucellosis reactors, or an animal that has been in contact with brucellosis reactors on farms, ranches, in feedlots, in marketing channels or elsewhere for periods of time sufficient for transmission of the Brucella organism.~~

~~(12) A "herd" is:~~

~~(a) One or more animals of the same species owned or supervised by one or more persons and kept in a location that permits easy intermingling of animals unhindered by man-made or natural barriers; or~~

~~(b) Two or more groups of one or more animals of the same species kept geographically separated, but under common ownership or supervision in which there is an interchange or movement of animals between or among such groups without regard to health status.~~

~~(13) A "contact herd" is a herd of animals that is shown through epidemiological investigation to have come in contact with herds of known reactor animals, or exposed herds or animals through direct contact or through being in proximity to possible modes of transmission of the Brucella organisms.~~

~~(14) A "herd test" is an official test of all swine over 6 months of age in a herd, or an official test of all cattle in a herd over 8 months of age, except steers, spayed heifers, official vaccinates in which the first pair of permanent incisor teeth has not erupted, or, that are not in the third trimester, parturient or post parturient.~~

~~(15) "Department" is the Montana department of livestock, animal health division.~~

~~(16) "Person" is an individual, partnership, corporation, trust or any other entity capable of owning livestock.~~

~~(17) "Investment service" is a person who purchases and manages cattle for five or more separate persons whose primary occupations are not the production of livestock.~~

(18)-(20)(c) Remains the same but renumbered to (3)-(5)(c).

~~(21) "Emergency circumstances" means events or situations~~

~~which, in the opinion of the board of livestock, pose an immediate or impending economic or livestock health danger to the livestock industry~~."

AUTH: 81-2-102, 81-2-103, MCA
IMP: 81-2-102, MCA

"32.3.403 USE OF BRUCELLA ABORTUS VACCINE (1) ~~No use~~ Use of brucella abortus vaccine that does not conform to the definition of "official vaccination" contained in Title 9, CFR part 78 is not permitted unless specifically approved by the state veterinarian.

(2) The state veterinarian, upon his finding that the owner of imported livestock eligible for official vaccination cannot otherwise have those cattle officially vaccinated, shall arrange~~, upon the livestock owner's request,~~ for the official vaccination of such eligible cattle at a reasonable cost to the owner."

AUTH: 81-2-102, 81-2-103, MCA
IMP: 81-2-102, MCA

"32.3.407A CHANGE OF OWNERSHIP TEST (1) ~~In the county of (none as of June 6, 1986) before ownership of animals listed in (2) is changed or before the animals are moved to Montana, premises located in a class free area they~~ Cervidae must undergo an official test for brucellosis and must be determined negative before change of ownership. The test must be performed not more than 30 days prior to the date they are sold or moved and the results must be entered on a department official test form.

(2) This test shall be performed on the following cervidae:

~~(a)~~ all ~~female cattle, bison,~~ caribou or elk over 6 months of age ~~under domestication,~~ capable of breeding.~~, in which the eruption of the first pair of permanent incisor teeth has occurred, or which are in the third trimester of the first pregnancy or are post parturient;~~

~~(b) female swine; and,~~

~~(c) boars, six months of age and older.~~

~~(3) This requirement does not apply to any of the above if they are consigned for immediate slaughter or to an out of state destination. No animal consigned to an out of state destination may be diverted to an instate destination if it has not met the test requirements of this section and if it has been determined to be an exposed animal. Permission from the department must be received before animals may be diverted to a different immediate slaughter destination.~~

~~(4) Further special exemptions to this rule are found in ARM 32.3.407C~~."

AUTH: 81-2-102, 81-2-103, MCA
IMP: 81-2-102, 81-2-103, MCA

"32.3.418 INDEMNITY PAID FOR REACTORS (1) The owner of cattle sold and slaughtered as brucellosis reactors pursuant to and in accordance with the provisions of this sub-chapter shall be paid an indemnity by the department not to exceed

~~$25.00~~ $50.00 per head on cattle so slaughtered. The indemnity shall be paid when the following conditions exist:

(a)-(3) Remains the same."

AUTH: 81-2-102, 81-2-103, MCA
IMP: 81-2-102, MCA

"32.3.601 ~~DEFINITIONS~~ DISEASE CONTROL (1) ~~In this sub-chapter "tuberculosis" means an infectious, transmissible disease of animals caused by Mycobacterium tuberculosis of either the bovine, avian, or human strain.~~ Tuberculosis disease control in animals shall be pursuant to the provisions of Title 9 CFR part 77 and tuberculosis eradication method and rules."

AUTH: 81-2-102, 81-2-103, MCA
IMP: 81-2-102, MCA

"32.3.607 DISPOSAL OF INFECTED ANIMALS (1) All animals infected with tuberculosis as determined by physical examination or tuberculin test~~, or otherwise (unless the owner or person in charge of infected animals makes a written request within 5 days after the animal or animals have been quarantined, that he or she desires to hold the animal or animals in strict quarantine for lawful purposes)~~ must be ordered destroyed by the state veterinarian.

(2) Remains the same."

AUTH: 81-2-102, 81-2-103, MCA
IMP: 81-2-102, 81-2-103, MCA

"32.3.2001 BRANDS AND EARMARKS

(1)-(c) Remains the same.

~~(i) "D" on left jaw designates reactors to the blood test for dourine and animals otherwise determined to be affected with dourine.~~

~~(ii) "G" on right jaw designated reactors to the mallein test and animals otherwise determined to be affected with glanders.~~

~~(iii)~~(i) "81A" on left neck or left shoulder, to be used with marks "0 to 99".

~~(iv)~~(ii) "0 to 99" on left neck to be used with "81A"."

AUTH: 81-2-102, MCA
IMP: 81-2-102, MCA

"32.3.2301 CONTROL OF BIOLOGICS

(1)-(3) Remains the same.

~~(4) No person or persons may sell or offer for sale in the state of Montana any product for use in animals or poultry that contains a living virus or living organism that is pathogenic or disease producing, except upon specific permission to do so from the Montana department of livestock, animal health division.~~

~~(5) No person may sell, offer for sale, or use Brucella antigen of any kind unless specific permission has been given by the state veterinarian's office.~~

~~(6) No person shall inject into or otherwise administer to poultry or animals which produce milk or other food~~

~~products, or that are to be used as food for man or for animals, any virus or other substance containing pathogenic or disease producing microorganisms of a kind that is virulent for man, animals, or poultry except upon specific permission to do so from the Montana department of livestock, animal health division.; provided, however, that the restriction set forth in this paragraph shall not apply to contagious ecthyma vaccine when such product is used in accordance with the recommendations of the manufacturer and the regulations of the Montana department of livestock.~~

~~(7) Manufacturers of contagious ecthyma vaccine manufactured under a license issued by the U.S. department of agriculture may ship contagious ecthyma vaccine to a person, persons or concern in Montana having a blanket permit which bears a serial number issued by the Montana department of livestock, animal health division. In all such orders the permittee shall designate the serial number of his permit before such order shall be filled. Permittees shall report, on forms presented by the department, to the Montana department of livestock, animal health division each month the number of doses of contagious ecthyma vaccine sold during the month and the name, address and signature of the purchaser.~~

~~(8) The distribution, sale, or the use of virulent hog cholera virus is prohibited.~~

~~(9)~~(4) The distribution, sale or use of viable anthrax vaccines is prohibited except by permit from the state veterinarian of Montana.

~~(10)~~(5) The sale of any rabies biologic except to a licensed veterinarian or public health agency is prohibited.

~~(11) Any person using tuberculin in livestock or poultry shall report immediately the use of that tuberculin, giving the number of animals or poultry injected, time and place, and the name and address of the owner of the animals or poultry, and results obtained to the Montana department of livestock, animal health division.~~

~~(12) All serums, viruses, and vaccines and any biologic sold or offered for sale within the state of Montana for use in domestic animals or poultry shall be sold or offered for sale in their original container.~~

~~(13)~~(6) All serums, viruses and vaccines sold or offered for sale in the state of Montana for use in domestic animals shall be kept in a dark place at a temperature of not more than 45°F., and not less than 35°F., until such time as they are sold, and shall not be sold after their expiration date. They must be sold in their original container."

AUTH: 81-2-102, 81-20-101, MCA
IMP: 81-2-101, 81-20-101, MCA

"32.6.1103 VEHICLES (1) Conveyances for the transportation of animal carcasses, or parts of animal carcasses, must be provided with an all metal or metal-lined box or tank which is watertight. ~~The back end of the bottom of the box or tank must be beveled to a height of 6 inches~~, with The box must have a metal or metal-lined endgate constructed so as to fit firmly against the box or tank. ~~Such box or tank must be equipped with a fly tight cover.~~

(2) Remains the same."
AUTH: 81-9-302, MCA
IMP: 81-9-302, MCA

"32.15.204 QUARANTINE PENS (1) A suitable quarantine pen, or pens, located in a portion of the yard approved by a representative of the Montana department of livestock, animal health division, must be provided in each livestock market. The top rail of the gate of each quarantine pen must be painted with a solid yellow color and have painted upon it the words "QUARANTINE PEN" in black letters at least 6 inches in height. Water and feed will be provided and will not be shared by non-quarantined animals.

(2) Remains the same."
AUTH: 81-2-102, 81-8-231, MCA
IMP: 81-2-102, 81-8-215, 81-8-231, MCA

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

"RULE I IMPORTATION OF CATTLE FROM MEXICO (1) Steers and spayed heifers from states in Mexico that have been determined by the state veterinarian to have fully implemented the Control preparatory phase (STAGE I) of the Mexican Tuberculosis Eradication Program may be imported into the state until March 1, 1997 providing they have been tested negative for tuberculosis in accordance with the Norma Official Mexicana (NOM) within 60 days prior to entry into the United States. Steers and spayed heifers from states in Mexico that have not been determined to have implemented the control/preparatory phase (STAGE I) of the Mexican tuberculosis eradication program may not be imported into the state. Until March 1, 1997, these steers and spayed heifers must be retested 120 to 180 days after import into Montana.

(2) After March 1, 1997, steers and spayed heifers from states in Mexico that have been determined by the state veterinarian to have fully implemented the eradication phase (STAGE II) of the Mexican tuberculosis eradication program may be imported into the state providing they have been tested negative for tuberculosis in accordance with the Norma Official Mexicana (NOM) within 60 days prior to entry into the United States or originate from a herd that is equivalent to an accredited tuberculosis free herd in the United States that are moved directly from a herd of origin across the border as a single group and not commingled with other cattle prior to arriving at the border. Steers and spayed heifers from states in Mexico that have not been determined to have implemented the eradication phase (STAGE II) of the Mexican tuberculosis eradication program may not be imported into state.

(3) Steers and spayed heifers that have been determined by the state veterinarian to have achieved accredited tuberculosis free status may move directly into the state without testing or further restrictions provided they are moved as a single group and not commingled with other cattle prior to arriving at the border.

(4) Holstein and holstein crossbred steers and spayed heifers from Mexico are prohibited from entering the state regardless of test history."
AUTH: 81-2-102, MCA
IMP: 82-2-102, MCA

"RULE II RATITES (FLAT BREASTED) FLIGHTLESS BIRDS
(1) All birds must be accompanied by a veterinary inspection certificate (VIC) and an import permit and tested for specific diseases as determined by the state veterinarian."
AUTH: 81-2-102, MCA
IMP: 81-2-102, MCA

"RULE III CHANGE OF OWNERSHIP TEST (1) Before change of ownership into Montana all cervidae must undergo an official test for tuberculosis and be determined negative. The test must be performed not more than 90 days prior to the date they are sold or moved and the results must be entered on a department official test form. The test must be a type approved by the state veterinarian.
(2) This test shall be performed on all cervidae over 6 months of age in captivity.
(3) This requirement does not apply to any of the above if they are consigned for immediate slaughter or to an out-of-state destination. No animal consigned to an out-of-state destination may be diverted to an instate destination if it has not met the test requirements of this rule and if it has been determined to be an exposed animal. Permission from the department must be received before animals may be diverted to a different immediate slaughter destination."
AUTH: 81-2-102, 81-2-103, MCA
IMP: 81-2-102, 81-2-103, MCA

4. Rule 32.3.407B, the rule as proposed to be repealed, is on page 32-118 of the Administrative Rules of Montana.
AUTH: 81-2-102, 81-2-103, MCA
IMP: 81-2-102, 81-2-103, MCA

5. Rule 32.3.602, the rule as proposed to be repealed, is on page 32-153 of the Administrative Rules of Montana.
AUTH: 81-2-102, 81-2-103, MCA
IMP: 81-2-102, 81-2-103, MCA

6. The proposed amended and new rules are designed to bring Montana more in line with current scientific data and the needs demonstrated by that scientific data as well as meeting the Code of Federal Regulations (CFR) and other statutory and regulatory guidelines. It is believed that this action meets the statutory guideline of "protecting the livestock interests of the state from theft and disease and ... fosters this industry."

7. The proposed repealed rules are not necessary for the functioning of the department of livestock and are to be

deleted pursuant to HJR-5 (1995).

8. Interested parties may submit their data, views, or arguments concerning the proposed rules in writing to Laurence Petersen, Executive Officer to the Board of Livestock, 301 N. Roberts St., PO Box 202001, Helena, MT 59620-2001. Any comments must be received no later than August 5, 1996.

9. If a person who is directly affected by the proposed rules wishes to express their data, views, and arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to Laurence Petersen, Executive Officer to the Board of Livestock, 301 N. Roberts St., PO Box 202001, Helena, MT 59620-2001. A written request for hearing must be received no later than August 5, 1996.

10. If the Board receives requests for a public hearing on the proposed rules from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the administrative code committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 5 persons based on an estimate of licensed dairies, or farmers and ranchers in Montana, or other interested persons.

MONTANA BOARD OF LIVESTOCK
JAMES HAGENBARTH, Chairman

By: _____
A. Laurence Petersen, Exec.
Secretary, Board of Livestock

By: _____
Lon Mitchell, Rule Reviewer
Livestock Chief Legal Counsel

Certified to the Secretary of State June 24, 1996.

BEFORE THE BOARD OF LAND COMMISSIONERS
OF THE STATE OF MONTANA

In the matter of the proposed amendment of Rule 36.2.803 pertaining to categorical exclusions to consultation with the State Historic Preservation Office	)	NOTICE OF PROPOSED AMENDMENT
	)	NO PUBLIC HEARING CONTEMPLATED

To: All Interested Persons.

1. On August 2, 1996, the State Board of Land Commissioners and the Montana Department of Natural Resources and Conservation proposes to amend Rule 36.2.803 to provide categorical exclusions to actions where consultation with the State Historic Preservation Office is not necessary.

2. The proposed amendment provides as follows:

36.2.803 INITIAL CONSULTATION (1) The department shall consult with SHPO early in any decision making process leading to a department action, which is not categorically excepted from such consultation as described by this rule. The department's initial request to SHPO for consultation shall include the following information:

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

(5) The department need not conduct an archaeological field inspection or consult with SHPO when, after reviewing the specific project plans, the department's cultural and paleontological resources information, and a memorandum of a general field inspection, the department determines that one of the proposed department actions is not within the vicinity of a known human burial or re-burial site or a sensitive cultural or paleontological resource site, and the department action consists of one of the following actions:

(a) fenceline construction where grading, leveling, or land alteration will not occur;

(b) resurfacing or maintenance of roads within existing road rights-of-way;

(c) stock pits excavated in existing drainage channels, when the banks of the channel will not be disturbed and total surface disturbance is less than one acre;

(d) maintenance or improvements to state-owned structures, facilities built within the last 50 years;

(e) cultivation of land in areas currently tilled as cropland or which were tilled below 4 inches from the surface in the past;

(f) use, repairs, and maintenance of forest and range roads, trails, and air strips, where all activity occurs on existing rights-of-way;

(g) installation and replacement of flow-lines and injection lines in existing oil and gas production areas that have been graded or leveled;

(h) prescribed burns on grasslands or timberlands where no hand or machine dug firebreaks/firelines are used and no structures are present which were constructed prior to 1946;

(i) tree planting accomplished by hand held augers or planting bars;

(j) pre-commercial thinning projects conducted in dense, stagnant stands of young conifers. In this instance, the work is done by chainsaws with the slash lopped and scattered over the project area and heavy equipment is not used and transport vehicles and equipment stay on existing roads and trails;

(k) timber sales conducted by skyline or helicopter logging when on-the-ground equipment use existing roads; when logs are not dragged across the ground; and when helicopter pads are surveyed or are on existing roads or pads;

(l) forest product removal on ground covered by at least 6 inches of snow and frozen at least 4 inches below the surface. These conditions will be verified by the Area or Unit Office staff;

(m) timber slash disposal done by hand piling, lopping, or broadcast burn with no scarification;

(n) post, rail, tree stake, and domestic firewood permits where any vehicle use is restricted to existing roads and no skid trails will be constructed;

(o) replacement of existing stock watering and handling facilities in the exact previous location with the same size tank and replacement of watering collector systems, pipelines, utility lines and/or irrigation ditches when ground disturbance occurs only within previously disturbed areas;

(p) utility lines, irrigation ditches, telephone lines, and similar lineal impacts within existing and previously disturbed road right-of-way;

(q) installation of portable, irrigation water diversion structures where trails will not be constructed to access the stream bed;

(r) road construction and timber cuts on slopes of 30% or greater when the potential is low for knappable stone or intact paleontological remains;

(s) vertical expansion of existing gravel pits or reclaimed pits within previously disturbed areas without impact to previously undisturbed adjacent land surfaces;

(t) stockwater wells located farther than 1/4 mile from known springs, drainages, valley edges, or other prominent topographic features;

(u) irrigation pump sites where disturbance is limited to an area below the high water mark on streams;

(v) seismic operations conducted when the ground is totally frozen or totally dry and where there will be no new road construction;

(w) utility lines and pipelines routed over or beneath navigable rivers where DNRC does not own the adjacent surface.

and no historically or culturally significant structures or landmarks are present or are at least 1/4 mile away;

(x) areas previously inventoried by a qualified archaeologist within the past 5 years when similar activities are proposed;

(y) harvesting of Yew tree bark, plant seed, berries, and mushrooms and similar types of activities when no new roads will be constructed and the ground will not be disturbed;

(z) non-mechanized mineral prospecting. This category includes all geophysical surveys and those geochemical surveys where:

(i) rock or mineral samples are collected from exposed outcrops;

(ii) stream sediment samples are collected in drainage channels and the adjoining stream banks are not disturbed;

(iii) soil samples are collected at interval spacings equal to or exceeding 100 feet; or

(iv) samples of plant matter are collected without uprooting the plants.

(aa) issuance of a permit for grazing of livestock, outfitting, trapping, or any activity on state land acceptable within a general recreational use license;

(ab) any change in actual land use or private action taken by a Lessee, Licensee, or Permittee that was previously authorized by a pre-existing written contract with the department;

(ac) where the department has previously completed a cultural resource inventory of the project area and previously determined that no cultural resources exist within the area proposed to be disturbed.

AUTH: 22-3-424, MCA
IMP: 22-3-424, MCA.

3. The amendment is necessary to restrict archaeological review to pertinent state undertakings which could result in damage to cultural resources and avoid needless reviews.

4. Interested persons may submit data, views, or arguments concerning the proposed amendment in writing to Kevin Chappell, Surface Management Bureau Chief, DNRC, P.O. Box 201601, Helena, Montana 59620-1601. Any comments must be received no later than July 31, 1996.

5. If a person 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 or she has to Kevin Chappell, Surface Management Bureau Chief, DNRC, P.O. Box 201601, Helena, Montana 59620-1601. A written request for hearing must be received no later than July 31, 1996.

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

amendment; from the administrative code committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 20 based on the number of annually proposed projects which require consideration of potential impacts to heritage properties.

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

By: _____
Arthur R. Clinch, Director

By: _____
Donald D. MacIntyre, Chief Legal Counsel
Rule Reviewer

Certified to the Secretary of State on June 24, 1996.

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

In the matter of the amendment of rule 11.14.605 pertaining to income eligibility and copayments for day care.	)))))	NOTICE OF PROPOSED AMENDMENT OF RULE NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On August 12, 1996, the Department of Public Health and Human Services proposes to amend rule 11.14.605 to be effective September 1, 1996, pertaining to income eligibility and copayments for daycare.

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

11.14.605 INCOME ELIGIBILITY AND COPAYMENTS (1) remains the same.

(2) The sliding fee scale is based on the most recent federal poverty level (FPL) income guidelines ~~for the federal fiscal year of 1995~~ as published annually in the federal register.

(3) remains the same.

(4) The department hereby adopts and incorporates by reference the sliding fee scale chart, revised ~~July 1, 1995~~ September 1, 1996, which appears within the appendix of the child care and development block grant plan of the state of Montana. The sliding fee scale chart is established pursuant to the requirements of 45 C~~.~~F~~.~~R~~.~~ ~~Section~~ 98.16 (1991). The chart sets forth the copayments paid by parents receiving payment for day care services under this subchapter. A copy of the sliding fee scale chart may be obtained from the Department of Public Health and Human Services, Protective Services Division, Research and Planning Bureau, P.O. Box 8005, Helena, Montana 59604.

(5) through (10) remain the same.

AUTH: Sec. 52-2-704, MCA
IMP: Sec. 52-2-704 and 52-2-713, MCA

3. Funding mandates of HB 2 require payment for this daycare benefits program pursuant to a sliding fee scale chart utilizing the federal poverty level. The federal poverty level has been adjusted. The new chart has been drafted and appended to the block grant plan. The rule must be changed to be consistent with the plan, and to comply with HB 2.

4. If a person who is directly affected by the proposed amendment wishes to express data, views and arguments orally or in writing at a public hearing, that person must make a written request for a public hearing and submit such request, along with any written comments to Laura Harden, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 202951, Helena, MT 59620, no later than July 31, 1996.

5. If the Department of Public Health and Human Services receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of those 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 are directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be more than 25 based on the number of individuals affected by rules covering income eligibility and copayments for day care.

Rule Reviewer

Director, Public Health and Human Services

Certified to the Secretary of State June 24, 1996.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 4.9.101, 4.9.301, 4.9.303, 4.9.304, 4.9.401 and 4.9.402	)))	NOTICE OF AMENDMENT OF WHEAT & BARLEY COMMITTEE RULES

TO: All interested persons:

1. On May 23, 1996, the Department of Agriculture published a notice of proposed amendment to the above-stated Wheat & Barley Committee rules at page 1343, 1996 Montana Administrative Register, issue number 10.

2. The Department has amended the rules as proposed.

3. One comment has been received and that comment and department response is as follows:

COMMENT: A comment was received suggesting that a certain number of days of notice preceding annual meetings should be specified.

RESPONSE: The Wheat & Barley Committee already notifies Montana's agricultural organizations representing grain producers, and other parties of interest, at least 10 days in advance of regularly scheduled Wheat & Barley Committee meetings.

W. Ralph Peck, Director
DEPARTMENT OF AGRICULTURE

Timothy J. Meloy, Attorney
RULE REVIEWER

Certified to the Secretary of State June 24, 1996

BEFORE THE CLASSIFICATION REVIEW COMMITTEE
OF THE STATE OF MONTANA

In the matter of the amendment of rule 6.6.8301, concerning updating references to the NCCI Basic Manual for Workers Compensation and Employers Liability Insurance, 1996 ed.	)))))	NOTICE OF AMENDMENT

TO: All Interested Persons.

1. On May 23, 1996, the classification review committee published a notice of proposed amendment to rule 6.6.8301 concerning updating references to the NCCI Basic Manual for Workers Compensation and Employers Liability. The notice was published at page 1348, of the 1996 Montana Administrative Register, issue number 10.

2. The classification review committee has amended the rule as proposed.

3. No comments or requests for hearing were received regarding the proposed amendment.

4. The proposed changes to the NCCI Basic Manual for Workers Compensation and Employers Liability become effective retroactive to July 1, 1996, as follows:

06 MT 96 - Code 9079 - Restaurant
MOC and Code 9058 - Hotel Restaurant Employees

CHRISTY WEIKART, CHAIRPERSON
CLASSIFICATION REVIEW COMMITTEE

By: Christy Weikart
Christy Weikart
Chairperson

By: Gary M. Spaeth
Gary M. Spaeth
Rules Reviewer

Certified to the Secretary of State this 24th day of June, 1996.

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

In the matter of the adoption of new rule I (6.10.133) pertaining to securities regulation on the internet.	)))))	NOTICE OF ADOPTION

TO: All Interested Persons

1. On May 23, 1996, the state auditor and commissioner of securities of the state of Montana published notice of proposed adoption no public hearing contemplated, of new rule I pertaining to securities regulation on the internet. The notice was published at page 1346 of the 1996 Montana Administrative Register, issue number 10.

2. The agency has adopted new rule I (6.10.133) exactly as proposed.

3. No written comments were received.

MARK O'KEEFE
STATE AUDITOR and
COMMISSIONER OF INSURANCE

By: Rusty Harper
Rusty Harper
Deputy State Auditor

By: Gary L. Spaeth
Gary L. Spaeth
Rules Reviewer

Certified to the Secretary of State this 24th day of June, 1996.

BEFORE THE BOARD OF ALTERNATIVE HEALTH CARE
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the adoption of a new rule pertaining to vaginal birth after cesarean delivery	)))	NOTICE OF ADOPTION OF NEW RULE I (8.4.509) VAGINAL BIRTH AFTER CESAREAN (VBAC) DELIVERIES

1. On February 8, 1996, the Board of Alternative Health Care published a notice of public hearing on the proposed adoption of a new rule pertaining to vaginal birth after cesarean (VBAC) deliveries, at page 348, 1996 Montana Administrative Register, issue number 3.

2. The Board has voted to adopt new Rule I (8.4.509) as proposed, but with the following changes: (authority and implementing sections will remain the same as in original notice)

8.4.509 VAGINAL BIRTH AFTER CESAREAN (VBAC) DELIVERIES

(1) through (b)(i) will remain the same as proposed.

(ii) place of birth within 30 minutes of transport to the nearest hospital able to perform an emergency cesarean;

(iii) will remain the same as proposed.

(iv) phone contact with nearest hospital at onset of labor and prior to any transport to notify that transport is in progress; and at conclusion of home birth if no transport is necessary.

(c) Licensee shall obtain prior doctor/hospital cesarean records, in writing, prior to acceptance of the woman as a client, and shall analyze the indication for the previous cesarean, and retain the records and a written assessment of the physical and emotional considerations in licensee's files. Records which show a previous classical uterine/vertical incision are a contraindication to VBAC at home, and shall require immediate transfer of care of the client. If a licensee is unable to obtain written records, the licensee shall not retain the woman as a client.

(d) and (2) will remain the same as proposed."

3. A public hearing was held on March 5, 1996, and oral and written testimony was received. Written comments were also accepted until 5:00 p.m., March 7, 1996. The Board has thoroughly considered all comments received. Those comments, and the Board's responses thereto, are as follows:

COMMENT NO.1: One comment was received stating VBAC births are listed in gynecological texts as high-risk pregnancies, due to the significant dangers of uterine rupture, fetal or maternal mortality, placenta previa and postpartum hemorrhage. This places VBAC births in a category outside the statutory language for direct entry midwives.

RESPONSE: The Board has been researching this issue, and the professional literature is not conclusive on the risks

associated with VBAC deliveries. The Board gathered statistics and data, and discovered that 25% of less than 1% with a poor result is the general finding. This does not appear to place VBAC births in a high risk category. The Board is additionally concerned that there is no current control over VBAC at home. VBAC births are not regulated, as they are not specifically mentioned in the legislative statutory language, and therefore, the Board is now attempting to impose proper regulation where none currently exists in this area.

COMMENT NO. 2: Two comments were received stating New Rule I(1)(a) and (1)(b)(i) should require a written formalized agreement among the direct-entry midwife, the hospital, and the physician who would provide care. That way, the parties would all know the back-up plan, and the flow of information and responsibility in an emergency situation. The rule language should not assume a physician back-up for the walk-in patient is available, but should require confirmation of the physician's availability with the local hospital prior to the onset of labor.

RESPONSE: The Board noted that there is much divergent feeling about VBAC deliveries, and therefore a written plan as described is not usually possible. If the Board required this cooperative plan, VBAC deliveries at home would not be possible for many women, as the direct entry midwife would be unable to find a physician to sign the written agreement. The Board had previously discovered that if a physician is required to consent to the plan, and thus be the decision-maker in the matter, the birth will always be in the hospital, and VBAC deliveries at home will become unavailable for mothers in this state. The Board also conducted a survey and discovered many hospitals in the state would not provide back-up and in fact, did not want to know about a VBAC delivery in progress in their area, thus making a written plan even more unattainable.

COMMENT NO. 3: Two comments were received stating new Rule I(1)(b)(ii) requiring the place of birth to be within 30 minutes of transport to the nearest hospital should be changed to state "5 minutes." The 30 minute standard for ability to perform a cesarean is a time frame from the moment of decision until the baby is born, including 20 minutes preparation time, and would leave only 10 minutes for the entire transfer, including calling the ambulance, etc.

RESPONSE: The Board concurs with the comment and will amend the rule to clarify the language. It is the direct entry midwife's responsibility to contact the nearest hospital and find out the procedure for emergency cesarean sections, and eliminate the hospitals that are not able to perform an emergency cesarean. The word "emergency" will therefore be added to this subsection of the rule. The informed consent required to be presented for signature to each VBAC home delivery client will also contain this information.

COMMENT NO. 4: One comment was received stating that new Rule I(c) stating that a client who has had a previous classical C-section is an inappropriate candidate for VBAC at home should be changed. The comment suggested the language instead state "any vertical uterine incision" would cause the client to be an inappropriate candidate, because both classical and low vertical incisions have a high rate of uterine rupture.

RESPONSE: The Board concurs with the comment and will amend the rule as shown.

COMMENT NO. 5: One comment was received stating new Rule I(2) on the sunset review of the rule is not sufficient. The Board should instead conduct a formal review annually of the individual cases, as well as the statistics on both successful and unsuccessful vaginal delivery.

RESPONSE: The Board noted that it already reviews direct entry midwife cases through both 72 hours and 6 months reports required by statute. The specific language in new Rule I (2) on sunset review is instead for the express purpose of reviewing the necessity and safety of the VBAC rule as a whole. The Board noted that a one year time frame would not collect enough data to conduct this review.

COMMENT NO. 6: Two comments were received stating that both the Montana Council for Maternal and Child Health and the Board need to conduct more data gathering, as no conclusive data yet shows that VBAC at home is safe. There should be more communication among all groups interested in insuring the well-being of Montana mothers and babies.

RESPONSE: The Board agrees that communication among all interested groups is critical, and the Board would like to continue coalition building. The Board would also encourage communication with physicians to show that direct entry midwives are not antagonistic. The Board further noted that it has already conducted a great deal of data gathering on VBAC, but would be willing to continue to collect new data as it becomes available, so that the five year sunset review of the rule could be based on a wide basis of information. Finally, the Board noted that the demand for VBAC deliveries at home exists in Montana, so the Board would like to see these deliveries happen in a controlled setting, instead of by the parents alone, as may happen without regulation allowing the direct entry midwife to conduct these home births.

COMMENT NO. 7: One comment was received stating that the MIAMI Council was not in favor of the rule, as direct entry midwives were limited to handling low risk births by specific direction from the Montana Legislature.

RESPONSE: The Board acknowledged receipt of the comment, and responded that it would like to keep communication open with the MIAMI Council. The Board then noted that the MIAMI Council's definition of VBAC delivery as "high risk" is countered by the medical literature. The Board's review of statistics shows other risk factors are the same for out of

hospital births. VBAC is an emotional issue, with changes in the attitudes toward VBAC delivery very slow in coming, but definitely changing based on the new statistics. Finally, the Board noted that the controversy appears to arise from the Board trying to regulate in this area, where no regulation has previously existed, and none currently exists, thus allowing any licensee to perform VBAC with no guidelines or required procedures in place.

COMMENT NO. 8: One comment was received stating new Rule I(1)(b)(iv) should require phone contact with the nearest hospital not only prior to any transport, but at the onset of labor with proposed VBAC delivery at home. This would allow an on-call physician to know that the labor is in progress, and the physician could be called.

RESPONSE: The Board concurs with the comment and will amend the rule as shown to require phone contact at the onset of labor, prior to transport, and after successful home delivery if appropriate to notify the hospital of the outcome. The Board cannot impose requirements on physicians or hospitals for notification or acceptance of patients, but the Board does have the authority to impose requirements on direct entry midwives to present necessary information to the hospitals. The Board will also require follow up calls to inform the hospital of the outcome. The Board felt that better communication with the hospitals and physicians will ease the newness of this procedure over time.

COMMENT NO. 9: One comment was received stating new Rule I(1)(d) on the training and qualifications for assessment of potential complications and emergencies for VBAC deliveries needs to be more clearly defined for direct entry midwives licensed in Montana.

RESPONSE: The Board noted that licensed direct entry midwives are already trained to deal with pregnancies with potential complications. All births need assessments of potential complications, and VBAC births do not differ in this regard. The application and apprenticeship processes require training, and this new rule would not be any clearer with a further definition of "training" in the VBAC area solely.

COMMENT NO. 10: One comment was received stating direct entry midwife training needs to include detailed assessment of the newborn.

RESPONSE: The Board noted that this appears to be a scope of practice issue, and not a comment on the new rule, as far as the difference between birth and newborn areas. Separation of these issues is not relative to the proposed VBAC rule specifically. A newborn would not need a separate assessment based solely on the fact that the delivery had been a VBAC birth.

COMMENT NO. 11: One comment was received stating the Board needs to define "immediate postpartum period" in the VBAC regulations.

RESPONSE: The Board noted that the phrase "immediate postpartum period" is defined in statute at §37-27-103 (6), MCA, and the rules cannot unnecessarily repeat statutory language. In addition, complications after any birth can arise the same as after a VBAC birth, and the new VBAC rule does not therefore need a separate definition. The Board will consider a clarification of the statutory language, if necessary and appropriate, for inclusion in another more appropriate area of the rules.

COMMENT NO. 12: One comment was received stating the new Rule I(1)(d) should define the phrase "skilled with VBAC support."

RESPONSE: The Board noted that midwife education and training already includes qualification in dealing with pregnancies, and further definition specifically for the new VBAC rule is not therefore necessary. The Board will consider revision of the apprenticeship training checklist to include training and education in the VBAC area specifically.

COMMENT NO. 13: One comment was received stating that as per 37-27-201(2), MCA, the Board needs to define "immediate care of mother and newborn," and "recognition of early signs of possible abnormalities." The comment questioned whether licensed direct entry midwives are skilled at assessing cardiac lesions and whether mothers and babies have been screened for important infectious diseases such as group B strep.

RESPONSE: The Board noted that this was not a comment on the proposed new rule. The Board is not therefore required to provide a response in this rule adoption format.

COMMENT NO. 14: One comment was received stating an appropriate informed consent for direct entry midwife clients would include sections on verification of support personnel, details on hospital back-up and transport, details on other medical resources, etc.

RESPONSE: The Board noted that this was not a comment on the proposed new rule. The Board is not therefore required to provide a response in this rule adoption format.

COMMENT NO. 15: One comment was received stating a well-defined back up plan would include a legally binding written plan for dealing with emergencies and complications, to include a number of listed items.

RESPONSE: See response to Comments #2 and #3 above. The licensed direct entry midwife will not accept a client if all the requirements are not in place, as per the rule language.

COMMENT NO. 16: One comment was received stating a method of data gathering to monitor the process, including reports of all home deliveries within 72 hours to the DPPHS and a joint analysis of the reports between the Board and the DPPHS should be implemented.

RESPONSE: The Board noted that this was not a comment on the proposed new rule. The Board is not therefore required to provide a response in this rule adoption format.

COMMENT NO. 17: One comment was received stating follow up examination of newborn and mother should be done by a pediatrician or primary care doctor within 6 hours of birth, and a recommendation by the direct entry midwife that the mother see a physician within 24 hours should be implemented.

RESPONSE: The Board noted that this was not a comment on the proposed new rule. The Board is not therefore required to provide a response in this rule adoption format.

BOARD OF ALTERNATIVE HEALTH CARE
MICHAEL BERGKAMP, N.D., CHAIRMAN

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

_____
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, June 24, 1996.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the amendment of Teacher Certification	)))	CORRECTED NOTICE OF AMENDMENT OF ARM 10.57.301 ENDORSEMENT INFORMATION

To: All Interested Persons

1. On June 20, 1996, the Board of Public Education published a notice on page 1666 of the Montana Administrative Register, Issue No. 12, of the amendment of ARM 10.57.301 Endorsement Information.

2. The reason for the correction is to clarify the rule to specifically show the special education endorsement to read P-12 instead of K-12.

10.57.301 ENDORSEMENT INFORMATION

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

(3) Appropriate teaching areas acceptable for certificate endorsement include: agriculture, art K-12, biology, business education, chemistry, computer science, drama, earth science, economics, elementary education, English, English as a second language K-12, French K-12, geography, German K-12, guidance and counseling K-12, health, history, history political science, home economics, industrial arts, journalism, Latin K-12, library K-12, marketing, mathematics, music K-12, other language K-12, physical education and health K-12, physical science, physics, political science, psychology, reading K-12, Russian K-12, science (broadfield), social studies (broadfield), sociology, Spanish K-12, special education ~~K-12~~ P-12, speech-communication, speech-drama, technology education, trade and industry, traffic education.

(4) through (5) will remain the same.

(6) Both elementary and secondary training to include student teaching or appropriate waiver are required for endorsement in any approved ~~P-12~~ K-12 endorsement area.

(a) A class 1 or 2 certificate may be endorsed in special education ~~K-12~~ P-12 with program preparation at the elementary or secondary levels, or a balanced ~~P-12~~ K-12 program of comparable preparation.

(7) through (10) remain the same.

AUTH: Sec. 20-2-121 MCA IMP: Sec. 20-4-102 MCA

3. Replacement pages for the corrected notice of amendment will be submitted to the Secretary of State on June 28, 1996.

Wayne Buchanan, Executive Secretary
Board of Public Education

Certified to the Secretary of State on 6/20/96

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

In the matter of the repeal of ARM 12.2.304, 12.5.101, 12.5.401 and 12.10.102, and the amendments of ARM 12.5.102 and 12.10.103 relating to the natural resource policies and public participation.	)))))))	NOTICE OF REPEAL AND AMENDMENT OF RULES

1. On April 25, 1996, the Fish, Wildlife and Parks Commission (commission) and Department of Fish, Wildlife and Parks (department) published notice of the proposed repeal and amendment of the above-captioned rules at page 997, 1996 Montana Administrative Register, issue number 8.

2. The commission and department have repealed and amended the rules as proposed.

3. No adverse comments or testimony were received.

RULE REVIEWER

Robert N. Lane

FISH, WILDLIFE AND PARKS
COMMISSION AND DEPARTMENT OF
FISH, WILDLIFE AND PARKS

Patrick J. Graham, Secretary of the Fish, Wildlife and Parks Commission and Director of the Department of Fish, Wildlife and Parks

Certified to the Secretary of State on June 24, 1996.

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

In the matter of the repeal of ARM 12.3.107, 12.3.108, 12.3.114, 12.3.207, and 12.3.401 all relating to the issuance of hunting, fishing and trapping licenses.	NOTICE OF REPEAL

1. On April 25, 1996, the Fish, Wildlife and Parks Commission (commission) and Department of Fish, Wildlife and Parks (department) published notice of the proposed repeal of the above-captioned rules at page 991, 1996 Montana Administrative Register, issue number 8.

2. The commission and department have repealed the rules as proposed with the following changes:

The rulemaking authority and implementing citations for Rule 12.3.107 were incorrect due to a typographical error. The correct citations are AUTH: 87-2-706, MCA and IMP: 87-2-706, MCA.

3. No adverse comments or testimony were received.

RULE REVIEWER

Robert N. Lane

FISH, WILDLIFE AND PARKS
COMMISSION AND DEPARTMENT OF
FISH, WILDLIFE AND PARKS

Patrick J. Graham, Secretary of the Fish, Wildlife and Parks Commission and Director of the Department of Fish, Wildlife and Parks

Certified to the Secretary of State on June 24, 1996.

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

In the matter of the amendment of ARM 12.4.102 relating to the stream access definitions in rules.	)))))	NOTICE OF AMENDMENT

To: All Interested Persons.

1. On April 25, 1996, the Fish, Wildlife and Parks Commission (commission) published notice of the proposed amendment of the above-captioned rule at page 994, 1996 Montana Administrative Register, issue number 8.

2. The commission has adopted the rule amendment as proposed.

3. No adverse comments or testimony were received.

FISH, WILDLIFE AND PARKS COMMISSION

Robert N. Lane
Rule Reviewer

Patrick J. Graham, Secretary

Certified to the Secretary of State on June 24, 1996.

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

In the matter of the repeal of 12.6.1604, 12.6.1704, 12.6.1902, 12.6.1905, and 12.6.2004; and the amendments of 12.6.1304, 12.6.1601, 12.6.1701, 12.6.1802, 12.6.1901, and 12.6.1903 all relating to the regulation of roadside zoos, game bird farms, fur farms, migratory game bird avicultural permits, and tattooing of certain captive predators.	NOTICE OF REPEAL AND AMENDMENT

To: All Interested Persons.

1. On April 25, 1996, the Department of Fish, Wildlife and Parks published notice of the proposed repeal and amendment of the above-captioned rules at page 1002, 1996 Montana Administrative Register, issue number 8.

2. The department has repealed and amended the rules as proposed.

3. No adverse comments or testimony were received.

MONTANA DEPARTMENT OF FISH,
WILDLIFE AND PARKS

Robert N. Lane
Rule Reviewer

Patrick J. Graham, Director

Certified to the Secretary of State on June 24, 1996.

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

In the matter of the repeal of ARM 12.7.401 and 12.7.1101 through 12.7.1103, and the amendments of ARM 12.7.1104, 12.7.1106 and 12.7.1112 relating to fish ladders and the river restoration program.	NOTICE OF REPEAL AND AMENDMENT OF RULES

1. On April 25, 1996, the Fish, Wildlife and Parks Commission (commission) and Department of Fish, Wildlife and Parks (department) published notice of the proposed repeal and amendment of the above-captioned rules at page 1007, 1996 Montana Administrative Register, issue number 8.

2. The commission and department have repealed and amended the rules as proposed.

3. No adverse comments or testimony were received.

RULE REVIEWER

Robert N. Lane

FISH, WILDLIFE AND PARKS
COMMISSION AND DEPARTMENT OF
FISH, WILDLIFE AND PARKS

Patrick J. Graham, Secretary of the Fish, Wildlife and Parks Commission and Director of the Department of Fish, Wildlife and Parks

Certified to the Secretary of State on June 24, 1996.

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

In the matter of the repeal of ARM 12.8.101 and, 12.8.401 through 12.8.410, and amendment of ARM 12.8.502 all relating to the state park system, state recreational waterway system, and cultural resources.	)))))))	NOTICE OF REPEAL AND AMENDMENT OF RULES

1. On April 25, 1996, the Fish, Wildlife and Parks Commission (commission) and Department of Fish, Wildlife and Parks (department) published notice of the proposed repeal and amendment of the above-captioned rules at page 1011, 1996 Montana Administrative Register, issue number 8.

2. The commission and department have repealed and adopted the rules as proposed with the following changes:

The rulemaking authority and implementing citations for Rule 12.8.101 were incorrect due to a typographical error. The correct citations are AUTH: 23-1-1026, MCA, and IMP: 23-1-1026, MCA.

3. No adverse comments or testimony were received.

RULE REVIEWER

Robert N. Lane

FISH, WILDLIFE AND PARKS
COMMISSION AND DEPARTMENT OF
FISH, WILDLIFE AND PARKS

Patrick J. Graham, Secretary of the Fish, Wildlife and Parks Commission and Director of the Department of Fish, Wildlife and Parks

Certified to the Secretary of State on June 24, 1996.

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

In the matter of repeal of ARM 12.9.105, 12.9.106, and 12.9.403 addressing wild turkey policy, 10-80 baits, and the reintroduction of peregrine falcon.	NOTICE OF REPEAL

To: All Interested Persons.

1. On April 25, 1996, the Fish, Wildlife and Parks Commission (commission) published notice of the proposed repeal of the above-captioned rules at page 1014, 1996 Montana Administrative Register, issue number 8.

2. The commission has repealed the rules as proposed with the following changes:

The rulemaking authority and implementing citations for Rule 12.9.403 were incorrect due to a typographical error. The correct citations are AUTH: 87-~~1~~5-704 & 87-~~1~~5-711, MCA and IMP: 87-~~1~~5-704 & 87-~~1~~5-711, MCA.

3. No adverse comments or testimony were received.

FISH, WILDLIFE AND PARKS COMMISSION

Robert N. Lane
Rule Reviewer

Patrick J. Graham, Secretary

Certified to the Secretary of State on June 24, 1996.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of rules 16.8.701, 16.8.945, and 16.8.1701 adopting the current federal definition of volatile organic compounds.	)))))	NOTICE OF AMENDMENT OF RULES (Air Quality)

To: All Interested Persons

1. On April 25, 1996, the board published notice of the proposed amendment of the above referenced rules at page 1019 of the Montana Administrative Register, Issue No. 8.

2. The board has amended the rules as proposed, with no changes.

3. No comments were received.

BOARD OF ENVIRONMENTAL REVIEW

by Cindy E. Younkin
CINDY E. YOUNKIN, Chairperson

Reviewed by

John F. North
John F. North, Rule Reviewer

Certified to the Secretary of State June 24, 1996 .

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of rules 16.8.704, 708, 807, 809, 813, 815, 816, 817, 820, 821, 946, 1001, 1004, 1302, 1503, 1601, 1701, 1702, 1802, and 2003, and the adoption of new rules I-VI, updating the incorporations by reference and references to the MCA to the most recent regulations and statutes and combining certain provisions of the air quality rules)	NOTICE OF AMENDMENT AND ADOPTION

(Air Quality)

To: All Interested Persons

1. On April 25, 1996, the board published notice of proposed amendment and adoption of the above-referenced rules at page 1034 of the 1996 Montana Administrative Register, issue number 8.

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

16.8.704 TESTING REQUIREMENTS (1) Same as proposed.

(2) All sources subject to the requirements of 40 CFR Part 51, Appendix P, incorporated by reference in ARM 16.8.708, must install, calibrate, maintain and operate equipment for continuously monitoring and recording emissions. All subject sources must have installed all necessary equipment and shall have begun monitoring and recording emissions data in accordance with Appendix P by January 31, 1988.

16.8.708 INCORPORATION BY REFERENCE (1) Same as proposed.

(2) ~~[NEW RULE I] lists the addresses for obtaining copies of the above-referenced materials.~~ A copy of materials incorporated by reference in this subchapter is available for public inspection and copying at the Department of Environmental Quality, 1520 E. 6th Ave., PO Box 200901, Helena, MT 59620-0901.

(3) Copies of federal materials also may be obtained from EPA's Public Information Reference Unit, 401 M Street SW, Washington, DC 20460, and at the libraries of each of the 10 EPA Regional Offices.

(4) Copies of the CFR may be obtained from the Superintendent of Documents, US Government Printing Office, Washington, DC 20402.

16.8.807 AMBIENT AIR MONITORING (1) Same as proposed.

(2) Except as otherwise provided in this chapter, or

unless written approval is obtained from the department for an exemption from a specific part of the Montana Quality Assurance Manual, all sampling and data collection, recording, analysis, and transmittal, including but not limited to site selection, precision and accuracy determinations, data validation procedures and criteria, preventive maintenance, equipment repairs, and equipment selection must be performed as specified in the Montana Quality Assurance Manual, incorporated by reference in [New Rule II], except when more stringent requirements are determined by the department to be necessary pursuant to the US Environmental Protection Agency Quality Assurance Manual, or 40 CFR Part 50 including Appendices A through E, Part 53 including Appendix A, and Part 58 including Appendices A through G, also incorporated by reference in [New Rule II], at which time the latter 2 documents shall be adhered to for the specific exception.

(3) and (4) Same as proposed.

16.8.809 METHODS AND DATA (1) Except as otherwise provided in this subchapter, or unless written approval is obtained from the department for an exemption from a specific part of the Montana Quality Assurance Manual, all sampling and data collection, recording, analysis and transmittal, including but not limited to site selection, calibrations, precision and accuracy determinations must be performed as specified in the Montana Quality Assurance Manual, incorporated by reference in [New Rule II], except when more stringent requirements are contained in the US Environmental Protection Agency Quality Assurance Manual or 40 CFR, Part 50 including Appendices A through E, Part 53 including Appendix A, and Part 58 including Appendices A through G, also incorporated by reference in [New Rule II].

(2) and (3) Same as proposed.

16.8.813 FLUORIDE IN FORAGE (1) Remains the same.

(2) The following sampling protocol must be applied:

(a)-(g) Same as proposed.

(h) The composite sample must be thoroughly mixed prior to any chemical analysis. Replicate aliquots are to be taken using a sample splitter or any other unbiased technique, and analyzed chemically for fluoride using the semi-automated method, as more fully described in Methods of Air Sampling and Analysis, ~~Second Edition (1977), Method No. 122-2-02-68T~~ incorporated by reference in [New Rule II], except that the surfaces of the plant material must not be washed, or by an approved equivalent method.

(i) and (j) Same as proposed.

16.8.815 AMBIENT AIR QUALITY STANDARD FOR LEAD (1) Same as proposed.

(2) For determining compliance with this rule, lead shall be measured by the high-volume method as more fully described in 40 CFR Part 50, Appendix B, and by the atomic absorption method as more fully described in 40 CFR Part 50, Appendix G,

both incorporated by reference in [New Rule II], or by an approved equivalent method.

16.8.816 AMBIENT AIR QUALITY STANDARDS FOR NITROGEN DIOXIDE (1) Same as proposed.

(2) For determining compliance with this rule, nitrogen dioxide shall be measured by the chemiluminescence method, as more fully described in 40 CFR Part 50, Appendix F, incorporated by reference in [New Rule II], or by an approved equivalent method.

16.8.817 AMBIENT AIR QUALITY STANDARD FOR OZONE

(1) Same as proposed.

(2) For determining compliance with this rule, ozone shall be measured by the chemiluminescence method, as more fully described in 40 CFR Part 50, Appendix D, incorporated by reference in [New Rule II], or by an approved equivalent method.

16.8.820 AMBIENT AIR QUALITY STANDARDS FOR SULFUR DIOXIDE

(1) Same as proposed.

(2) For determining compliance with this rule, sulfur dioxide shall be measured by the pararosaniline method as more fully described in 40 CFR Part 50 Appendix A, incorporated by reference in [New Rule II], or by an approved equivalent method.

16.8.821 AMBIENT AIR QUALITY STANDARD FOR PM-10

(1) Same as proposed.

(2) For the purposes of this rule, expected exceedance and expected annual average shall be determined in accordance with 40 CFR Part 50, Appendix K, incorporated by reference in [New Rule II].

(3) For determining compliance with this rule, PM-10 shall be measured by an applicable reference method based on 40 CFR Part 50, Appendix J, and designated in accordance with 40 CFR Part 53 or by an equivalent method designated in accordance with 40 CFR Part 53, all incorporated by reference in [New Rule II].

16.8.946 INCORPORATION BY REFERENCE (1) Same as proposed.

(2) ~~[NEW RULE I] lists the addresses for obtaining copies of the above-referenced materials.~~ A copy of materials incorporated by reference in this subchapter is available for public inspection and copying at the Department of Environmental Quality, 1520 E. 6th Ave., PO Box 200901, Helena, MT 59620-0901.

(3) Copies of federal materials also may be obtained at EPA's Public Information Reference Unit, 401 M Street SW, Washington, DC 20460, and at the libraries of each of the 10 EPA Regional Offices.

(4) Copies of the CFR may be obtained from the Superintendent of Documents, US Government Printing Office,

Washington, DC 20402.

(5) The standard industrial classification manual (1987) (order no. PB 87-100012) and the guidelines on air quality models (revised) (1986) (EPA publication no. 450/278-027R) and supplement A (1987) may be obtained from the US Department of Commerce, National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161.

16.8.1001 APPLICABILITY--VISIBILITY REQUIREMENTS (1) This subchapter is applicable to the owner or operator of a proposed major stationary source, as defined by ARM 16.8.945(22), or of a source proposed for a major modification, as defined by ARM 16.8.945(20) proposing to construct such a source or modification after July 1, 1985, in any area within the state of Montana designated as attainment, unclassified, or nonattainment, in accordance with 40 CFR 81.327, incorporated by reference in [New Rule III]. The requirements of this subchapter shall be integrated with the requirements of ARM Title 16, Chapter 8, subchapters 9 (Prevention of Significant Deterioration of Air Quality) and 11 (Permit, Construction and Operation of Air Contaminant Sources).

16.8.1004 VISIBILITY MODELS (1) All estimates of visibility impact required under this subchapter shall be based on those models contained in "Workbook for Plume Visual Impact Screening and Analysis" (EPA-450/4-88-015, 1988), incorporated by reference in [New Rule III]. Equivalent models may be substituted if approved by the department.

16.8.1302 PROHIBITED OPEN BURNING--WHEN PERMIT REQUIRED (1)(a)-(q) Same as proposed.

(r) hazardous wastes, as defined by 40 CFR Part 261, incorporated by reference in [New Rule IV];

(s)-(x) Same as proposed.

(2) Same as proposed.

16.8.1503 STANDARD FOR VISIBLE EMISSIONS (1) No owner or operator subject to this rule may cause the emission into the atmosphere from any potroom group of any gasses or particles which exhibit 10% opacity or greater, as determined by EPA Reference Method 9 in Appendix A of 40 CFR Part 60, incorporated by reference in [New Rule V].

16.8.1601 CERTIFICATION AND TESTING STANDARDS (1) Same as proposed.

(2) Pursuant to 15-32-102(6)(a)(ii), MCA, and for the purposes of certifying the particulate emission rate of any brand and model of noncatalytic stove or furnace that is specifically designed to burn wood pellets or other nonfossil biomass pellets, the department shall use any available test data, generally gathered by the manufacturer, which was obtained in accordance with the testing criteria and procedures contained in 40 CFR Part 60, subpart AAA, incorporated by

reference in [New Rule VI]. In determining if a pellet conversion unit meets the particulate emission rate set forth in 15-32-102(6)(a)(ii), MCA, the pellet conversion unit and the particular model and brand of stove or furnace to which it is attached shall be tested together as a combined unit.

(3) Pursuant to 15-32-102(6)(a)(iii), MCA, and for the purposes of certifying the air-to-fuel ratio of any brand and model of noncatalytic stove or furnace that is specifically designed to burn wood pellets or other nonfossil biomass pellets, the department shall use any available test data, generally gathered by the manufacturer, which was obtained in accordance with the testing criteria and procedures contained in 40 CFR Part 60, subpart AAA, incorporated by reference in [New Rule VI]. In determining if a pellet conversion unit meets the requirements in 15-32-102(6)(a)(iii), MCA, concerning air-to-fuel ratio, the pellet conversion unit and the particular model and brand of stove or furnace to which it is attached shall be tested together as a combined unit.

(4) Pursuant to 15-32-102(6)(b), MCA, and for the purposes of certifying the particulate emission rate of any brand and model of noncatalytic stove or furnace that burns wood or other nonfossil biomass, the department shall use any available test data, generally gathered by the manufacturer, which was obtained in accordance with the testing criteria and procedures contained in 40 CFR Part 60, subpart AAA, incorporated by reference in [New Rule VI].

(5) Same as proposed.

16.8.1702 INCORPORATION BY REFERENCE (1) Remains the same.

(2) ~~[NEW RULE I] lists the addresses for obtaining copies of the above-referenced materials.~~ A copy of materials incorporated by reference in this subchapter is available for public inspection and copying at the Department of Environmental Quality, 1520 E. 6th Ave., PO Box 200901, Helena, MT 59620-0901.

(3) Copies of federal materials also may be obtained from EPA's Public Information Reference Unit, 401 M Street SW, Washington, DC 20460, and at the libraries of each of the 10 EPA Regional Offices.

(4) Copies of the CFR may be obtained from the Superintendent of Documents, US Government Printing Office, Washington, DC 20402.

(5) The standard industrial classification manual (1987) may be obtained from the US Department of Commerce, National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161 (order no. PB 87-100012).

16.8.1802 INCORPORATION BY REFERENCE (1) Same as proposed.

(2) ~~[NEW RULE I] lists the addresses for obtaining copies of the above-referenced materials.~~ A copy of materials incorporated by reference in this subchapter is available for public inspection and copying at the Department of Environmen-

tal Quality, 1520 E. 6th Ave., PO Box 200901, Helena, MT 59620-0901.

(3) Copies of federal materials also may be obtained at EPA's Public Information Reference Unit, 401 M Street SW, Washington, DC 20460, and at the libraries of each of the 10 EPA Regional Offices.

(4) Copies of the CFR may be obtained from the Superintendent of Documents, US Government Printing Office, Washington, DC 20402.

(5) The standard industrial classification manual (1987) may be obtained from the US Department of Commerce, National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161 (order no. PB 87-100012).

16.8.2003 INCORPORATION BY REFERENCE (1) Same as proposed.

(2) ~~[NEW RULE I] lists the addresses for obtaining copies of the above-referenced materials.~~ A copy of materials incorporated by reference in this subchapter is available for public inspection and copying at the Department of Environmental Quality, 1520 E. 6th Ave., PO Box 200901, Helena, MT 59620-0901.

(3) Copies of federal materials may be obtained from EPA's Public Information Reference Unit, 401 M Street SW, Washington DC 20460, and at the libraries of each of the 10 EPA Regional Offices.

(4) Copies of the CFR may be obtained from the Superintendent of Documents, US Government Printing Office, Washington DC 20402.

(5) The standard industrial classification manual (1987) (Order No. PB 87-100012) may be obtained from the US Department of Commerce, National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161.

NEW RULE I [16.8.710] INCORPORATION BY REFERENCE--PUBLICATION DATES AND AVAILABILITY OF REFERENCED DOCUMENTS

(1) Same as proposed.

~~(2) A copy of state materials incorporated by reference in this chapter is available for public inspection and copying at the Department of Environmental Quality, Metcalf Building, PO Box 200901, Helena, MT 59620-0901. Copies of federal materials may be obtained from EPA's Public Information Reference Unit, 401 M Street SW, Washington, DC 20460, and at the 10 EPA Regional Offices. Copies of the CFR may be obtained from the Superintendent of Documents, US Government Printing Office, Washington, DC 20402. The standard industrial classification manual (1987) (order no. PB 87-100012) and the guidelines on air quality models (revised 1986) (EPA publication no. 450/278-027R), including Supplement A (1987), may be obtained from the US Department of Commerce, National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161 (order no. PB 87-100012).~~

NEW RULE II [16.8.823] INCORPORATION BY REFERENCE

(1) Same as proposed.

(2) ~~[NEW RULE I] lists the addresses for obtaining copies of the above-referenced materials.~~ A copy of materials incorporated by reference in this subchapter is available for public inspection and copying at the Department of Environmental Quality, 1520 E. 6th Ave., PO Box 200901, Helena, MT 59620-0901.

(3) Copies of federal materials also may be obtained from EPA's Public Information Reference Unit, 401 M Street SW, Washington DC 20460, and at the libraries of each of the 10 EPA Regional Offices.

(4) Copies of the CFR may be obtained from the Superintendent of Documents, US Government Printing Office, Washington DC 20402.

NEW RULE III [16.8.1009] INCORPORATION BY REFERENCE

(1) Same as proposed.

(2) ~~[NEW RULE I] lists the addresses for obtaining copies of the above-referenced materials.~~ A copy of materials incorporated by reference in this subchapter is available for public inspection and copying at the Department of Environmental Quality, 1520 E. 6th Ave., PO Box 200901, Helena, MT 59620-0901.

(3) Copies of federal materials also may be obtained from EPA's Public Information Reference Unit, 401 M Street SW, Washington DC 20460, and at the libraries of each of the 10 EPA Regional Offices.

(4) Copies of the CFR may be obtained from the Superintendent of Documents, US Government Printing Office, Washington DC 20402.

NEW RULE IV [16.8.1311] INCORPORATION BY REFERENCE

(1) Same as proposed.

(2) ~~[NEW RULE I] lists the addresses for obtaining copies of the above-referenced materials.~~ A copy of 40 CFR Part 261 is available for public inspection and copying at the Department of Environmental Quality, 1520 E. 6th Ave., PO Box 200901, Helena, MT 59620-0901.

(3) Copies of federal materials also may be obtained from EPA's Public Information Reference Unit, 401 M Street SW, Washington DC 20460, and at the libraries of each of the 10 EPA Regional Offices.

(4) Copies of the CFR may be obtained from the Superintendent of Documents, US Government Printing Office, Washington DC 20402.

NEW RULE V [16.8.1507] INCORPORATION BY REFERENCE

(1) Same as proposed.

(2) ~~[NEW RULE I] lists the addresses for obtaining copies of the above-referenced materials.~~ A copy of materials incorporated by reference in this subchapter is available for public inspection and copying at the Department of Environmental Quality, 1520 E. 6th Ave., PO Box 200901, Helena, MT 59620-0901.

(3) Copies of federal materials also may be obtained from EPA's Public Information Reference Unit, 401 M Street SW, Washington DC 20460, and at the libraries of each of the 10 EPA Regional Offices.

(4) Copies of the CFR may be obtained from the Superintendent of Documents, US Government Printing Office, Washington DC 20402.

NEW RULE VI [16.8.1603] INCORPORATION BY REFERENCE

(1) Same as proposed.

(2) ~~[NEW RULE I] lists the addresses for obtaining copies of the above-referenced materials.~~ A copy of 40 CFR Part 60, subpart AAA, is available for public inspection and copying at the Department of Environmental Quality, 1520 E. 6th Ave., PO Box 200901, Helena, MT 59620-0901.

(3) Copies of federal materials also may be obtained from EPA's Public Information Reference Unit, 401 M Street SW, Washington DC 20460, and at the libraries of each of the 10 EPA Regional Offices.

(4) Copies of the CFR may be obtained from the Superintendent of Documents, US Government Printing Office, Washington DC 20402.

3. The department received no comments on the proposed rules. However, the Secretary of State, who is responsible for publication of the ARM, has requested a change in the streamlining of the incorporations by reference. The proposed rules change the existing incorporations, which appear in the current rules on a rule-by-rule basis, to a chapter-by-chapter basis. The Secretary of State has recommended that the incorporations be done on a subchapter-by-subchapter basis and the department has made the changes as suggested.

BOARD OF ENVIRONMENTAL REVIEW

by _____
CINDY E. YOUNKIN, Chairperson

Reviewed by

_____
John F. North, Rule Reviewer

Certified to the Secretary of State June 24, 1996 .

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the repeal of ARM 16.8.1419, regarding fluoride emissions-phosphate processing.	)))	NOTICE OF REPEAL OF 16.8.1419

(Air Quality)

To: All Interested Persons

1. On April 25, 1996, the board published notice of the proposed repeal of ARM 16.8.1419 at page 1017 of the Montana Administrative Register, Issue No. 8.

2. The board has repealed the rule as proposed.

3. No comments were received.

BOARD OF ENVIRONMENTAL REVIEW

by Cindy E. Younkin
CINDY E. YOUNKIN, Chairperson

Reviewed by

John F. North
John F. North, Rule Reviewer

Certified to the Secretary of State June 24, 1996.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF
rule 16.8.2026 regarding acid rain) AMENDMENT OF RULE

(Air Quality)

To: All Interested Persons

1. On April 25, 1996, the board published notice of the proposed amendment of the above referenced rules at page 1022 of the Montana Administrative Register, Issue No. 8.

2. The board has amended the rule as proposed, with no changes.

3. No comments were received.

BOARD OF ENVIRONMENTAL REVIEW

by _____
CINDY E. YOUNKIN, Chairperson

Reviewed by

_____
John F. North, Rule Reviewer

Certified to the Secretary of State June 24, 1996.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the repeal of 17.30.640, 17.30.716, 17.30.1601, pertaining to water quality.	))))	NOTICE OF REPEAL OF RULES (Water Quality)

To: All Interested Persons

1. On April 25, 1996, the board published notice of proposed repeal of the above referenced rules at page 1047 of the Montana Administrative Register, Issue No. 8.

2. The board has repealed two of the rules as proposed, ARM 17.30.640 and 17.30.1601.

3. DEQ recommended that ARM 17.30.716 not be repealed because certain local government officials and private individuals have requested that a new exemption be added to the existing nondegradation exemptions. This can best be accomplished by amending ARM 17.30.716.

The board agrees and has not repealed ARM 17.30.716.

No other comments were received.

BOARD OF ENVIRONMENTAL REVIEW

By _____
CINDY E. YOUNKIN, Chairperson

Reviewed by

_____
John F. North, Rule Reviewer

Certified to the Secretary of State June 24, 1996.

BEFORE THE TRANSPORTATION COMMISSION
OF THE STATE OF MONTANA

In the matter of the amendment of Rules 18.6.202, 18.6.203, 18.6.211 through 18.6.214, 18.6.221, 18.6.231, 18.6.241, 18.6.242, 18.6.244, 18.6.245, 18.6.251 and 18.6.262; the adoption of a new rule; and the repeal of Rules 18.6.201, 18.6.261 and 18.6.271 relating to outdoor advertising regulations	)	NOTICE OF ADOPTION, AMENDMENT AND REPEAL

TO: All Interested Persons.

1. On January 11, 1996, the Transportation Commission published notice of the proposed amendment of rules 18.6.202, 18.6.203, 18.6.211 through 18.6.214, 18.6.221, 18.6.231, 18.6.241, 18.6.242, 18.6.244, 18.6.245, 18.6.251 and 18.6.262, the proposed adoption of a new rule, and the repeal of rules 18.6.201, 18.6.261 and 18.6.271 at page 39 of the Montana Administrative Register, issue number 1. A public hearing was held in the auditorium of the Montana Department of Transportation building in Helena, Montana, on February 23, 1996, and public comments, written and oral, were received.

On April 10, 1996, the Transportation Commission held another public hearing to review the recommendations of the Department staff, the hearing officer's report, and further public comment. The Commission voted to defer action on these rules until its next meeting in order to give its members more time to review all the material. At the Commission's next meeting on June 4, 1996, in Hamilton, Montana, the proposed rules were reviewed and upon motion and second, the rules were adopted as proposed, with the following changes.

2. The agency has amended Rule 18.6.202 with the following changes:

18.6.202 DEFINITIONS

(1) through (7) same as proposed.

~~(2)~~(8) "On-premise sign" means signs erected on property for the sole purpose of advertising its sale or lease or of advertising an activity conducted on the property. To qualify as an on-premise sign, a sign advertising an activity conducted on the property must be located on the land actually used or occupied by the activity. The extent of the property used for the activity includes its buildings, parking area and incorporated landscaped areas, but does not include vacant land, land used for unrelated activities, or land that is separated by other ownerships or roadways. ~~Boundaries which in the judgment of the commission are fabricated solely to circumvent the intent and purpose of this definition shall be disregarded.~~

~~Incorporated landscaped areas, parking lots, and access roads shall not be considered to qualify off-premise signs.~~ If the activity is over 660 feet from the nearest point of the highway and is accessed by an approach and road from the highway, any sign, landscaped area or other appurtenance associated with the activity that is adjacent to the approach and access road shall not be used to qualify off-premise signs.

~~(9) "Scenic area" is an area that is designated by the legislature of the state of Montana.~~

(10) and (11) same as proposed, but renumbered (9) and (10)

AUTH: 75-15-121 MCA IMP: 75-15-111, 75-15-112, 75-15-113 MCA

COMMENT: Testimony at the hearing indicated the language in (8) was confusing. For (9), testimony indicated the definition was too restrictive by only recognizing "scenic areas" as designated by the Legislature. Opponents believe this restricts the ability of local government entities to designate scenic areas and the definition is in direct conflict with current law. Opponents suggest that if the proposed definition is not revised to include scenic areas designated by local government, the Department or the Commission, the definition should be deleted.

RESPONSE: The Department recommends the change to clarify the intent of the definition in (8) and concurs that the definition of "scenic area" in (9) be deleted.

The agency has amended Rule 18.6.203 with the following changes:

18.6.203 UNZONED COMMERCIAL OR INDUSTRIAL ACTIVITY

(1) and (1)(a) same as proposed.

(b) The permanent buildings or improvements comprising a business intended to serve the traveling public must be clearly visible to the traveling public and be easily recognizable as a commercial or industrial activity. A commercial activity shall be occupied and open to the public during regularly scheduled hours in excess of 20 hours per week. ~~Industrial activities shall be in operation at least six months a year and provide bonafide products or services.~~ Commercial and industrial activities shall have been in business at least ~~six months~~ one year prior to being considered as qualifying the area as an unzoned commercial or industrial area. Signs, displays or other devices identifying the business may be considered in the determination of visibility. A business located on what is ~~otherwise~~ primarily used as residential property will not qualify an area as an unzoned commercial or industrial area ~~if only a portion of the building so used is visible~~. Seasonal (but not temporary or transient) activities may be considered as a qualifying activity at the discretion of the department.

(c) ~~Incorporated landscaped areas, parking lots and access roads shall not be considered to qualify off-premise signs.~~ If the activity is over 660 feet from the nearest point of the highway, and is accessed by an approach and road from the highway, any

sign, landscaped area or appurtenance associated with the activity adjacent to the approach and access road shall not be used to qualify off-premise signs.

(d) same as proposed.

AUTH: 75-15-121 MCA IMP: 75-15-111 and 75-15-113 MCA

COMMENT: Testimony at the hearing indicated the proposed language in (b) was too lenient and not reflective of the intent of the Legislature when Senate Bill 181 was passed.

RESPONSE: The Department recognizes the public hearing comments and recommends the revisions. The change in (c) is consistent with 18.6.202(8) and clarifies the intent of the subsection. Rule 18.6.203(1) establishes the criteria to determine if an activity qualifies the area for the placement of signs. Under the proposed rule, a business that is open 20 hours a week qualifies it to establish an unzoned area. Opponents believe this rule should be changed to 40 hours a week. The Department believes there are a variety of legitimate business activities, such as a bank, that are open to the public from 9 a.m. to 3 p.m., five days a week, totalling 30 hours a week.

This rule also allows for seasonal activities to qualify at the discretion of the Department. In Montana, there are many seasonal activities that are bonafide businesses and should be considered by the Department. Examples include recreational activities such as camping or RV parks, waterslides and tourist oriented shops. Opponents argue these kinds of activities may allow for business activities to be created primarily for the purpose of qualifying the area for outdoor advertising. Subsection (4) gives the Department the authority to deny such activities. The key to this section is the Department may consider such activities at its discretion.

There was also a request to add a subsection to this rule to provide for an appeal process to the Commission if a party disagreed with the Department's determination. Because this would be a new subsection and not properly noticed, the Department does not believe the Commission can consider this provision at this time. The Department also believes procedures are already in place for a party to request a declaratory ruling on a Department decision.

The agency has amended Rules 18.6.211, 18.6.212 and 18.6.213 as proposed.

COMMENT: Opponents to the permit fee structure (18.6.211) indicate that costs for new sign applications should be substantially increased, thereby reducing the costs for the required three-year renewal for permits.

RESPONSE: With the more restrictive requirements under Senate Bill 181, the Department estimates approximately 125 new sign applications annually. There are approximately 3,200 signs

permitted, with about 1,050 renewed annually. The Department estimates that an initial application fee of between $350 and $500 would be required to make any significant difference in reducing the renewal fees. The agency believes it is unfair to require a small business owner to pay an excessive fee to erect a small billboard. Additionally, the law requires fees be established based on the square footage of that sign face.

COMMENT: Opponents also are critical of the Department's cost estimates to administer the program.

RESPONSE: Because the Department has no way to accurately analyze the program costs from past years, its estimates are based on the number of employees involved, their time spent on sign issues, salaries, benefits, travel and overhead. It is important to note that state law requires the costs charged to run programs cannot exceed the actual costs of operation. The Department plans to analyze actual program costs on a biennial basis and, if required, request the Commission to modify permit fees accordingly.

The proposed fees are intended to cover the costs to process new applications and renewals of existing permits. The costs of sign surveillance, enforcement of unlawful signs, publication and training are funded by state funds with federal participation. Section 75-15-122, MCA, specifies that the permit fees cover the costs of administration of new sign applications and renewal of existing permits.

There was a concern raised at the Commission hearing on April 10, 1996, by Commissioner Dan Larson that all signs, including public services and church signs, should pay the annual fee. The Department reviewed this issue and found that statewide there were 348 signs less than 50 square feet that would have to make application so as to have the signs on an inventory. It was not feasible to have these signs pay the annual fees. The Department recommended that no annual fees be required. Further, it was pointed out to the Commission that the issues of fees could be considered at any time in the future if either the Department or affective members of the public petitioned the Commission for another review of the fee rules.

The agency has amended Rule 18.6.214 with the following changes:

18.6.214 RENEWALS (1) Although the department plans, as a courtesy, to remind sign owners to apply for renewal of permits, failure to issue such notice will not serve to excuse the sign owner from his duty to make proper application for renewal of a permit. ~~Such application, including the required fee and any other information or evidence which may be required must be received by the department at the applicable district office in Billings, Butte, Great Falls, Glendive or Missoula prior to 5:00 p.m. on the first normal business day after the day on which the permit expired.~~ Failure to submit the

mandatory sign permit renewal fee within 30 days after expiration of the permit may result in cancellation.
AUTH: 75-15-121 MCA IMP: 75-15-122 MCA

COMMENT: Testimony received at the hearing requested that the Department continue to notify permittees of the required renewals.

RESPONSE: The Department agrees. Therefore, the first sentence of the interlined material in the notice will be kept. As a courtesy, notices of upcoming renewals will be provided.

COMMENTS: The proposed rule indicates that "[f]ailure to submit the mandatory sign permit renewal fee within 30 days after expiration of the permit may result in cancellation." Opponents indicate the Department should be required to cancel the permit for nonpayment and not have the option to consider a permittee's reason for not paying the renewal fee.

RESPONSE: The Department feels there may be legitimate reasons for nonpayment and they should be considered. Additionally, automatic cancellation and subsequent proceedings to remove a sign could be avoided by allowing the payment to be made late for good cause.

The agency has amended Rules 18.6.221, 18.6.231 and 18.6.241 as proposed.

The agency has amended Rule 18.6.242 with the following changes:

18.6.242 RANCH AND RURAL DIRECTIONAL SIGNS
(1) through (3) same as proposed.
(4) and (a) same as proposed.
(b) not be erected or maintained if they exceed ~~100~~ 32 square feet in area, including border and trim, but excluding base or apron, supports and other structural members.
(c) through (6) same as proposed.
AUTH: 75-15-121 MCA IMP: 75-15-111 MCA

COMMENT: Testimony indicated that a 32-square-foot sign is an adequate size for a ranch or rural directional sign.

RESPONSE: Because the rule allows only the name and distance to the operation with no additional advertising, 32 square feet is adequate and the Department concurs with the change.

The agency has amended Rules 18.6.244 and 18.6.245 as proposed.

The agency has amended Rule 18.6.251 with the following changes:

18.6.251 REPAIR OF SIGNS
(1) through ~~(4)~~ same as proposed.

~~(e)~~(c) In no case may the repair, maintenance, or re-erection of nonconforming signs (or signs in conforming areas which do not meet required size, lighting and spacing criteria) result in an increase in the area used to display advertising copy or an increase of height, width, or areas over the height, width or area of the sign when first permitted~~;~~. ~~also, i~~In no case may the repair, maintenance or re-erection of a sign result in a substantial upgrading of the type or value of the sign. For example, a change from wood to steel structure or a change from unilluminated to illuminated would constitute a substantial upgrading. ~~Unlighted signs may not be lighted.~~

(d) same as proposed.

(f) same as proposed.

(2) ~~Nonconforming signs classified by the department after April 21, 1995~~ As further clarification, signs that meet the statutory requirements of 75-15-111(4), MCA:

(a) and (b) same as proposed.

(c) may be illuminated.

(d) may replace wood poles with steel poles provided the size and number of poles remain the same or less.

(e) changes must meet the standards of any lawful ordinance, regulation or resolution of local government.

(f) any increased sign value resulting from maintenance, repair or illumination as provided in this rule will be deducted if the sign is purchased by the department.

(3) same as proposed.

AUTH: 75-15-121 MCA IMP: 75-15-111 and 75-15-113 MCA

COMMENT: There was substantial testimony for and against this rule. It is the opinion of the proponents that the value of their sign plant has been substantially decreased as a result of the passage of Senate Bill 181. Many of the signs that were conforming prior to passage of the legislation are now nonconforming. The sign owners' ability to illuminate or upgrade nonconforming signs that meet the size requirements is essential to remaining competitive in the industry. Opponents indicate that allowing upgrading increases the life of nonconforming signs contrary to the intent of the Highway Beautification Act and the Montana Outdoor Advertising Act.

RESPONSE: The Department has no evidence that not allowing substantial upgrading puts the sign owner at a competitive disadvantage, nor does it have evidence to indicate that replacing wood poles with steel poles will extend the life of the sign.

After the April 10, 1996, hearing, the Department staff reviewed this matter and recommend the following. The signs in question were legal conforming signs until April 21, 1995, when Chapter 510 (1995 Legislature) became effective. Because those signs now become non-conforming, the Department staff believes that to impose the more restrictive requirements of both state and federal regulation would be unfair and was not the intention of the Legislature. The Department proposed the rule be adopted.

The agency has amended Rule 18.6.262 with the following changes:

18.6.262 ~~BLANK SIGNS~~ SIGN STRUCTURES THAT ARE BLANK, ABANDONED OR IN DISREPAIR (1) Sign structures that have no face or have faces ~~with less than 25~~ without 100 percent advertising copy shall be considered blank. ~~Copy advertising the space for rent or lease shall not be considered advertising.~~ Blank is defined as all faces not leased, rented or otherwise occupied by an advertising or public service message. The sign owner is not prohibited from noticing the sign for rent or lease, however, for the purposes of this rule, the sign shall be considered blank while being noticed for rent or lease.

(2) same as proposed.

(3) The department may determine a sign ~~structure~~ is in disrepair if ~~it~~ the structure is unsafe, or if the sign face is unreadable or not visible to the travelling public.

~~(1)~~(4) When a sign ~~face structure~~ has been blank, abandoned, or ~~painted out~~ in disrepair for a period of six continuous months, the ~~permit may be canceled. Any future advertising affixed to the structure must have a new permit, be conforming, and be approved, as would any new sign~~ department shall notify the sign owner of the violation and require remedial action within 45 days. If such action is not taken, the permit will be canceled and action for the removal of the sign will be taken as provided in 75-15-131, MCA.

AUTH: 75-15-121 MCA IMP: 75-15-111 and 75-15-113 MCA

COMMENT: An opponent to this rule argued that, as written, the proposed rule does not allow the sign owner to advertise the property for rent or lease, which is an infringement on free commercial speech. Revision of (1) allows for the sign owner to advertise for rent or lease. The opponent also argues that arbitrary cancellation of the permit without notice will cause loss of a property right without notice or an opportunity to remedy the violation. Another opponent argued that covering 25 percent of the sign face allows sign owners to partially cover the face, but not eliminate the problem of unused or unnecessary signs.

RESPONSE: Revised (4) provides for time for remedial action and notice of violation. The Department believes it is difficult to determine percentage of coverage and difficult to regulate partially covered signs. The Department concurs with the recommended revisions.

COMMENT: There was additional testimony addressing the need to have specific language in the rules to regulate obsolete signs and creating substantial penalties for the erection of unlawful signs.

RESPONSE: The Department recommends the Commission not address these issues which were not properly noticed during the rulemaking procedure.

COMMENT: Testimony indicated a concern with the possibility of billboard lighting creating a safety problem for the travelling public.

RESPONSE: The Department believes this issue is covered by existing law under section 75-15-113(1), MCA.

COMMENT: Substantial testimony was not addressed to specific rules, but indicated the proliferation of signs is interfering with the scenic beauty of Montana, and the Department is not placing a priority on the enforcement of unlawful signs.

RESPONSE: The Department can only regulate signs as allowed by statute. The Department admits sign regulation has not been a high priority in the past. However, the Department is now taking a more proactive position with sign regulation and will continue to do so.

3. The agency adopts New Rule I (18.6.246) as proposed.

4. The agency repeals Rules 18.6.201 REGULATIONS - SUPPLEMENTARY, 18.6.261 POLES, and 18.6.271 OUTDOOR ADVERTISING REGULATIONS TO APPLY TO RECENTLY DESIGNATED PRIMARY ROUTES, found on pages 18-139, 18-147 and 18-148 of the Administrative Rules of Montana.

MONTANA TRANSPORTATION COMMISSION

By: _____
THORM FORSETH, Chairman

_____
Lyle Manley, Rule Reviewer

Certified to the Secretary of State June 24, 1996.

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

In the matter of the transfer of ARM 24.29.706A through 24.29.706E, inclusive, to ARM Title 24, chapter 35	) NOTICE OF TRANSFER OF RULES) (Independent Contractors))	

TO ALL INTERESTED PERSONS:

1. On May 9, 1996, in MAR issue no. 9, at pages 1303, the Department of Labor and Industry adopted five new rules related to the independent contractor exemption for workers' compensation and other purposes. The Department has determined that new rules should be transferred to a new chapter in ARM Title 24 for the purpose of logical organization and coordination with other rules that are being adopted related to independent contractors.

2. The Department of Labor and Industry has determined that the transferred rules will be numbered as follows:

OLD	NEW	
24.29.706A	24.35.111	Application For Independent Contractor Exemption
24.29.706B	24.35.116	Renewal Of Independent Contractor Exemption
24.29.706C	24.35.121	Application Fee For Independent Contractor Exemption
24.29.706D	24.35.131	Suspension Or Revocation Of Independent Contractor Exemption
24.29.706E	24.35.141	Guidelines For Determining Whether An Independent Contractor Exemption Is Needed

3. The history of each rule will remain the same insofar as the authority and implementation.

4. The transfer is effective July 1, 1996.

David A. Scott
Rule Reviewer

Laurie Ekanger, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State: June 24, 1996.

BEFORE THE BOARD OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of repeal of rules related to the department of livestock.) NOTICE OF REPEAL

TO: ALL INTERESTED PERSONS:

1. On February 8, 1996, the Board of Livestock, acting through the department of livestock, published notice of proposed repeal of rules related to the department of livestock in Title 32, chapters 3, 6, 8, 9, 15, and 18, on page 376 of the Montana Administrative Register, issue No. 3.

2. The board has repealed the following rules as proposed: 32.3.121, 32.3.208, 32.3.222, 32.3.407C, 32.3.407D, 32.3.407E, 32.3.410, 32.3.417, 32.3.425, 32.3.426A, 32.3.431, 32.3.432, 32.3.441, 32.3.442, 32.3.445, 32.3.446, 32.3.447, 32.3.450, 32.3.603, 32.3.604, 32.3.605, 32.3.612, 32.3.613, 32.3.614, 32.3.615, 32.3.616, 32.3.617, 32.3.618, 32.3.801, 32.3.802, 32.3.803, 32.3.804, 32.3.1508, 32.3.2302, 32.3.2304, 32.6.601, 32.8.104, 32.9.102, 32.9.202, 32.9.203, 32.9.205, 32.9.207, 32.15.801, 32.15.802, 32.15.803, 32.15.804, 32.18.301, 32.18.302, 32.18.303 and 32.18.304. These rules are located respectively on pages 32-73, 32-90, 32-101, 32-118, 32-119, 32-121, 32-125, 32-129, 32-130, 32-133, 32-134, 32-137, 32-139, 32-141, 32-153, 32-154, 32-156, 32-157, 32-167, 32-198, 32-232, and 32-233, 32-291, 32-350, 32-381, 32-387 through 32-391, 32-645, 32-707 through 32-709, Administrative Rules of Montana.

AUTH: 81-2-101, 102, and 103, MCA
IMP: 81-2-101, 102, and 103, MCA

3. No comments or testimony were received.

By: _____
A. Laurence Petersen, Exec. Officer
Board of Livestock
Department of Livestock

By: _____
Lon Mitchell, Rule Reviewer
Livestock Chief Legal Counsel

Certified to the Secretary of State June 24, 1996.

BEFORE THE BOARD OF LAND COMMISSIONERS
OF THE STATE OF MONTANA

In the matter of the repeal of Rule 36.11.301, pertaining to streamside management zone	)))	NOTICE OF REPEAL

To: All Interested Persons

1. On February 8, 1996, the agency published a corrected notice of proposed repeal at page 379 of the Montana Administrative Register, Issue No. 3. The notice of proposed repeal included rules 36.11.102, 36.11.201, 36.11.203, and 36.11.211, and 36.11.301. On March 21, 1996, the board published a notice of repeal at page 774 of the Montana Administrative Register, Issue No. 6, for Rules 36.11.102, 36.11.201, 36.11.203, and 36.11.211. Rule 36.11.301 was not included in that notice of repeal.

2. The board has repealed rule 36.11.301 as proposed.
AUTH: 2-4-201, MCA
IMP: 2-4-201, MCA

3. No comments were received.

BOARD OF LAND COMMISSIONERS
MARC RACICOT, CHAIR

BY: _____
ARTHUR R. CLINCH, DIRECTOR
DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

_____
DONALD D. MacINTYRE,
RULE REVIEWER

Certified to the Secretary of State June 24, 1996.

BEFORE THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION
OF THE STATE OF MONTANA

In the matter of new rules for the resolution of disputes over the administration of the Yellowstone River Compact) NOTICE OF ADOPTION

TO: All Interested Persons.

1. On April 25, 1996, the Department of Natural Resources and Conservation published a notice of proposed adoption of new Rules I through VII establishing procedures for the resolution of disputes between Montana and Wyoming on the administration of the Yellowstone River Compact at page 1078 of the Montana Administrative Register, issue number 8.

2. The department has adopted new Rules I through VII (36.26.101 through 36.26.107) as proposed.

3. No comments or testimony were received.

DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

BY: _____
Arthur R. Clinch, Director

_____
Donald D. MacIntyre, Rule Reviewer

Certified to the Secretary of State June 24, 1996

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

In the matter of the adoption of Rules I through XIII pertaining to retirement home licensing requirements	))))	NOTICE OF ADOPTION OF RULES

TO: All Interested Persons

1. On March 21, 1996, the Department of Public Health and Human Services published notice of the proposed adoption of new rules I through XIII pertaining to retirement home licensing requirements at page 734 of the 1996 Montana Administrative Register, issue number 6.

2. The Department has adopted [RULE I] 16.32.801 RETIREMENT HOMES: DEFINITIONS; [RULE II] 16.32.802 RETIREMENT HOMES: APPLICATION OF OTHER RULES; [RULE III] 16.32.805 RETIREMENT HOMES: FIRE AND BUILDING CODES APPROVAL; [RULE IV] 16.32.806 RETIREMENT HOMES: SWIMMING POOLS AND SPAS; [RULE VI] 16.32.808 RETIREMENT HOMES: ENVIRONMENTAL CONTROL; [RULE XI] 16.32.816 RETIREMENT HOMES: FOOD SERVICE REQUIREMENTS; and [RULE XII] 16.32.811 RETIREMENT HOMES: SOLID WASTE; as proposed.

3. The Department has adopted the following rules as proposed with the following changes:

[RULE V] 16.32.807 RETIREMENT HOMES: PHYSICAL REQUIREMENTS (1) and (2) remain as proposed.

~~(a) There must be at least one storage room sufficient in size for the storage of extra bedding and furnishings.~~

(2)(b) through (2)(e)(ii) remain as proposed but are renumbered (2)(a) through (2)(d)(ii). (3)(a) and (3)(b) remain as proposed.

(c) at least one operable window; and

(d) access to a toilet room without entering through another resident's room~~; and~~.

~~(e)~~(4) If a retirement home elects to provide furnishings as part of its services, the retirement home must provide in each bedroom an adequate closet or wardrobe, bureau or dresser or its equivalent, and at least 1 arm chair, for every 2 residents.

(4) through (10) remain as proposed but are renumbered (5) through (11).

AUTH: 50-5-103, MCA
IMP: 50-5-103 and 50-5-214, MCA

[RULE VII] 16.32.809 RETIREMENT HOMES: WATER SUPPLY SYSTEM (1) The department hereby adopts and incorporates by reference ARM ~~16.20.207~~ 17.38.207, stating maximum microbiological contaminant levels for public water supply systems, and the following circulars establishing construction, operation, and maintenance standards for spring, surface water, wells and cisterns:

(1)(a) and (b) remain as proposed.

(c) Circular #17 entitled "Cisterns for Water Supplies." Copies of ARM ~~16.20.207~~ 17.38.207 and circulars WQB-1, WQB-3 and #17 may be obtained from the Water Quality Bureau (WQB), Department of Environmental Quality (DEQ), Metcalf Building, 1520 East 6th Avenue, Helena, Montana 59620.

(2) through (2)(b)(iii) remain as proposed.

(3) If a nonpublic water supply system is used in accordance with (2)(b), a retirement home must:

(a) submit a water sample at least quarterly to a laboratory licensed by the department of environmental quality to perform microbiological analysis of water supplies in order to determine that the water does not exceed the maximum microbiological contaminant levels stated in ARM ~~16.20.207~~ 17.38.207.

(4) remains as proposed.

(a) contains microbiological contaminants in excess of the maximum levels contained in ARM ~~16.20.207~~ 17.38.207; or

(4)(b) through (8) remain as proposed.

AUTH: 50-5-103, MCA
IMP: 50-5-103 and 50-5-214, MCA

[RULE VIII] 16.32.810 RETIREMENT HOMES: SEWAGE SYSTEM (1) The department hereby adopts and incorporates by reference ARM Title ~~16~~ 17, chapter ~~17~~ 36, sub-chapter ~~1~~ 9, on-site subsurface wastewater treatment systems. A copy of ARM Title ~~16~~ 17, chapter ~~17~~ 36, sub-chapter ~~1~~ 9 may be obtained from the Water Quality Bureau, Department of Environmental Quality, Metcalf Building, 1520 East 6th Avenue, Helena, Montana 59620.

(2) through (2)(a) remain as proposed.

(b) if the retirement home is not utilized by more than 25 persons daily at least 60 days out of the calendar year, including guests, staff, and residents, and an adequate public sewage system is not available, utilize a nonpublic system whose construction and use meet the construction and operation standards in ARM Title ~~16~~ 17, chapter ~~17~~ 36, sub-chapter ~~1~~ 9;

(c) replace or repair a failed system as defined by ARM ~~16.17.103(6)~~ 17.36.903(6).

AUTH: 50-5-103, MCA
IMP: 50-5-103 and 50-5-214, MCA

[RULE IX] 16.32.814 RETIREMENT HOMES: LAUNDRY FACILITIES (1) Laundry facilities ~~operated in conjunction with, or~~

utilized by~~,~~ a retirement home for laundering of its soiled laundry, including but not limited to bed linen, towels and washcloths, must be provided with:

(1)(a) through (3) remain as proposed.

(4) The provisions of ARM 16.32.814 do not apply to laundry facilities provided by the retirement home for the personal use of its residents.

AUTH: 50-5-103, MCA
IMP: 50-5-103 and 50-5-214, MCA

~~[RULE X]~~ 16.32.815 RETIREMENT HOMES: HOUSEKEEPING AND MAINTENANCE (1) A retirement home must provide ~~daily housekeeping and~~ maintenance services ~~and ensure that~~:, With respect to the provision of maintenance services, and housekeeping services, where a retirement home elects to provide those services to individual residents within their rooms, the retirement home must ensure that:

(1)(a) through (1)(c) remain as proposed.

(d) the transporting, handling and storage of clean bedding, where provided by the retirement home, is performed in such a manner as to preclude contamination by soiled bedding or from other sources;

(1)(e) through (1)(i) remain as proposed.

(j) all bedding, towels, and wash cloths, where provided by ~~management~~ the retirement home, are clean and in good repair. Bedding, towels, and wash cloths, where provided by the retirement home, ~~At least weekly, clean bed linens must be made available to each resident. Clean wash cloths and towels~~ must be made available to each resident on a daily or weekly basis;

(k) all furnishings, where provided by the retirement home, fixtures, floors, walls, and ceilings are clean and in good repair;

(1)(l) through (1)(n) remain as proposed.

AUTH: 50-5-103, MCA
IMP: 50-5-103 and 50-5-214, MCA

~~[RULE XIII]~~ 16.32.817 RETIREMENT HOMES: RESIDENT REGISTER (1) A retirement home must maintain a register of all residents currently residing at the retirement home, noting for each resident, at a minimum, the resident's name and:

(a) room ~~assignment~~ or apartment number;

(b) date of ~~admission~~ arrival; and

(c) date of departure~~;~~ ~~and~~

~~(d) forwarding address.~~

(2) The register must be kept on the retirement home premises and be available for review and verification by the department during inspections.

AUTH: 50-5-103, MCA
IMP: 50-5-103 and 50-5-214, MCA

4. The department received multiple written and oral comments on the proposed rules. The comments are summarized and responded to below.

GENERAL COMMENTS

COMMENT #1: One commentor felt that regulation of retirement homes should be left under the regulations pertaining to hotels, motels, and other public accommodations.

RESPONSE: The department is required to follow the directive of the legislature which, in 1995, through House Bill 301, moved the regulation of retirement homes from Title 50, chapter 51, Montana Code Annotated, MCA (Hotels, Motels, and Roominghouses) to Title 50, chapter 5, MCA (Hospitals and Related Facilities).

COMMENT #2: One commentor felt that the rules should define minimum requirements for resident contracts and leases for retirement homes noting that retirement homes must now comply with the rules and regulations pertaining to apartment leases.

RESPONSE: The minimum requirements for tenant contracts and leases for retirement homes are contained in the Residential Landlord and Tenant Act of 1977 found at Title 70, chapter 24, MCA. The department has chosen not to include any additional requirements in its proposed rules based on the adequacy of the minimum requirements contained in the Residential Landlord and Tenant Act of 1977 relating to tenant/resident contracts and leases.

COMMENT #3: One commentor asked the department to define the population that is allowed to reside in a retirement home versus a personal care unit and what types of health care may be provided. Another commentor requested that the department allow a retirement home to provide reminders to certain residents to take their medications.

RESPONSE: In response to the commentor's concerns about whether and what type of health care may be provided in a retirement home, pursuant to Section 50-5-214, MCA, the legislature has directed that a retirement home may not offer nursing or personal care services to the residents, other than by a contract with a third party. Section 50-5-225 through 50-5-227, MCA, defines the population and specifies the types of services, including personal care services, to be provided by a personal care facility.

COMMENT #4: One commentor noted that there are differences between retirement apartments and other retirement homes and suggested that the rules be adjusted to accommodate the differences between them. Another commentor felt that retirement homes are in an area that is in a state of flux and

that the rules need to be better defined.

RESPONSE: Although there may be individual differences between retirement homes, they must all meet the minimum requirements established in these rules, except where the department has limited the applicability of a section to those retirement homes offering a specific service. The department has modified the proposed rules so that a retirement home is not required to provide furnishings or housekeeping services. In promulgating and amending the proposed rules, pursuant to this notice, the department feels that the rules clearly define the minimum requirements which apply to the regulation of retirement homes.

[RULE V] 16.32.807 RETIREMENT HOMES: PHYSICAL REQUIREMENTS

COMMENT #5: One commentor objected to the department's proposed requirement that retirement homes provide both furnishings and bedding citing that most retirement homes rent apartments that are unfurnished. Similarly, the commentor deemed it unreasonable to require retirement homes to provide storage for excess furnishings and bedding.

RESPONSE: The department agrees that not all retirement homes provide furnishings and bedding and that such election should be left up to the individual retirement home. The department has therefore amended Rule V (16.32.807) to delete the requirement that retirement homes provide furnishings. However, where a retirement home elects to provide furnished bedrooms as part of its overall services, the department believes, in that case, that it is reasonable and necessary to specify the minimum amount of furnishing required for each bedroom and accordingly, has modified the language of Rule V (16.32.807) to state and require the same. The department has deleted the requirement that requires retirement homes to furnish a storage area for excess bedding and furniture.

COMMENT #6: One commentor questioned whether the requirement that each multi-bedroom contain at least 80 square feet per bed would preclude couples putting two beds into a bedroom smaller than 160 square feet.

RESPONSE: The department acknowledges that there might be certain instances, including the one specified by the commentor, in which the requirements of Rule V (16.32.807) might be unnecessary. Without being able to state with certainty every possible instance in which the department would make such a determination, the department, in Rule V (16.32.807), has reserved the right to waive any requirement contained therein if compliance with the requirement would involve unreasonable hardship or unnecessary inconvenience with little or no increase in the level of safety to the residents. Similarly, the specific requirements of Rule V (16.32.807) may be modified by

the department to allow alternative arrangements that would provide the same level of safety to the residents. The ability to waive or modify a requirement would enable the department to accommodate those individual circumstances which the department determines justifies waiver or modification of a particular requirement.

[RULE IX] 16.32.814 RETIREMENT HOMES: LAUNDRY FACILITIES

COMMENT #7: One commentor questioned whether the phrase "in conjunction with" in Rule IX (16.32.814) meant that laundry facilities provided by retirement homes for the use of its residents would have to meet the institutional laundry requirements of Rule IX (16.32.814).

RESPONSE: The provisions of Rule IX (16.32.814) apply only to those retirement homes which are utilizing laundry facilities for institutional purposes, and do not apply to residents doing their laundry in a laundry facility provided by the retirement home. To eliminate any ambiguity, the department has deleted the phrase "operated in conjunction with, or" in Rule IX (16.32.814) and further, has modified Rule IX (16.32.814) by adding a new subsection (4) which qualifies that the provisions of Rule IX (16.32.814) do not apply to residents using laundry facilities provided by the retirement home for the personal use of its residents.

[RULE X] 16.32.815 RETIREMENT HOMES: HOUSEKEEPING AND MAINTENANCE

COMMENT #8: One commentor objected to the requirement that retirement homes must provide daily housekeeping services. The commentor further stated that it would be impossible to ensure that bedding, towels, and furnishings were clean and in good repair if those items were not provided by the retirement home. One commentor asked whether the rule would preclude the furnishings of linens, towels, and washcloths, where a facility has elected to provide the same, on a daily or weekly basis.

RESPONSE: The department agrees with the comments and has modified Rule X (16.32.815) to reflect deletion of housekeeping as a requirement of a retirement home and to reflect that bedding, towels and furnishings, only where provided by a retirement home, must be clean and in good repair. However, where a retirement home has elected to provide housekeeping services to its residents in their apartment or room, the requirements of Rule X (16.32.815) apply to the provision of those housekeeping services. Further, the department agreed with the second commentor and modified the rule to allow the provision of linens on a weekly basis.

[RULE XIII] 16.32.817 RETIREMENT HOMES: RESIDENT REGISTER

COMMENT #9: One commentor questioned the requirement that retirement homes maintain a resident register, asking specifically where the register was to be located, who has access, and how long does a departed resident remain on the register. The commentor further stated that a retirement home cannot require its residents to provide forwarding addresses and that the terms used in Rule XIII (16.32.817), such as "room assignment" and "admission," are not relevant to a retirement home setting.

RESPONSE: The department declines to delete the general requirement that retirement homes maintain a resident register. A resident register is necessary for the department to verify the identity and number of residents residing in a retirement home as that pertains to licensing and inspection of a retirement home. The department has, however, modified Rule XIII (16.32.817) to clarify the location, access to, and contents of the register and has deleted the requirement that the register reflect a forwarding address. Further, the department eliminated those terms that are not common to retirement homes.

Rule Reviewer

Director, Public Health and Human Services

Certified to the Secretary of State June 24, 1996.

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 March 31, 1996. This table includes those rules adopted during the period April 1, 1996 through June 30, 1996 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 March 31, 1996, 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 1995 and 1996 Montana Administrative Registers.

To aid the user, the Accumulative Table includes rulemaking actions of such entities as boards and commissions listed separately under their appropriate title number. These will fall alphabetically after department rulemaking actions. Accumulative Table entries will be listed with the department name under which they were proposed, e.g., Department of Health and Environmental Sciences as opposed to Department of Environmental Quality.

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