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MONTANA ADMINISTRATIVE REGISTER

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OF MONTANA

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 The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

In the matter of proposed amendment of ARM 2.43.203, 2.43.406, and 2.43.427 pertaining to review of an administrative decision, service credit for compensated hours, and granting of service credit and membership service as the result of court action.	NOTICE OF PROPOSED AMENDMENT NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On August 28, 1997, the Public Employees' Retirement Board proposes to amend ARM 2.43.203, 2.43.406, and 2.43.427 pertaining to who may request review of an administrative decision, the service credit that members may receive must be for compensated hours, and granting of service credit and membership service to members reinstated as the result of a suit, court order, appeal, or out-of-court settlement.

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

2.43.203 REVIEW OF ADMINISTRATIVE DECISION (1) Those matters subject to ~~contested case~~ administrative determination, including contested cases, will be decided by the board initially on the basis of material properly submitted by the requesting party and such other information as the board deems appropriate. The board will notify the requesting party of its preliminary decision. If the decision is adverse, the board will include a general statement of adverse considerations, which need not be exhaustive. The requesting party will be given two options, which must be exercised within 30 days of the date of the notification:

(a) The party may submit a request in writing for reconsideration by the board. Such reconsideration will be based on facts and matters submitted by the party to the board, the testimony of the party, and the presentation of the party or their legal counsel before the board. Facts and matters may be submitted by the requesting party any time after the adverse decision is made until 21 days prior to the second board meeting following the original administrative decision. The board will notify the party of the determination on reconsideration, which will become final and is not subject to administrative or judicial review unless ~~the~~ an individual party exercises the right to request an administrative hearing within 30 days of the date of the notice of determination on reconsideration. A governmental agency does not have a right to an administrative hearing. As to any governmental entity, the board's original decision or decision on reconsideration, if appropriately requested, is final and may not be appealed.

(b) ~~The~~ An individual party may exercise the right to request an administrative hearing (contested case) within 30 days of the date of the notice of the initial determination or determination on reconsideration. Notice will be given orally to the party at the time the board reaches its determination. If neither the requesting party nor their counsel is present, written notice of the board's determination will be mailed.

(2) If ~~the requesting~~ a party fails to exercise an available option within the time allowed by the board, the board's decision becomes final and is not subject to administrative or judicial review. Thereafter, a party may only appear before the board on the same matter based on new and different facts which are not cumulative or repetitive and for good cause shown.

(3) Time periods provided herein may be enlarged only in writing by the board or its authorized representative and only on requests made prior to the expiration of the time period.

Auth: 19-2-403, MCA
IMP: 19-2-403, MCA

2.43.406 BASIC UNIT OF SERVICE (1) The year is the basic unit for the awarding of service credits and service years for all retirement systems.

(2) Except as otherwise specified by rule or statute, 12 months of service credit will equal one year of service credit, regardless of the calendar period during which the service credits were earned.

(3) In the case of members with periods of both full-time and part-time covered employment with such full-time employment being used in the calculation of "final average salary," proportional service credits shall be granted in each calendar month where the fraction is the number of documented hours ~~worked~~ for which the employee received compensation during a calendar month divided by 160 hours. In no case may the fraction be greater than 1.

(4) If a member has only part-time covered employment, or if he has both full-time and part-time covered employment but such full-time employment is not used to calculate "final average salary," proportional service credits shall be granted for each year of continuous part-time employment based upon the months or hours worked during each part-time year and the percentage time worked during the "final average salary" computation period.

Auth: 19-2-403, MCA
IMP: Title 19, Ch. 3, part 5, Ch. 5, part 3, Ch. 6, part 3, Ch. 7, part 3, Ch. 8, part 3, Ch. 9, part 4, Ch. 13, part 4, MCA

2.43.427 REINSTATEMENT -- CREDIT FOR LOST TIME (1) A member whose service is involuntarily terminated and is later reinstated as the result of a suit, court order, appeal or out-of-court settlement, to which the board is a party, may petition the board for service years and credits to be granted for the period of time lost provided the member is awarded

retroactive compensation in settlement of his claim. Lump-sum awards not considered compensation under state and federal tax laws will not be considered compensation for the purposes of this rule.

(2) The board will review among all relevant considerations, documentation provided by the member and will determine the appropriateness of granting service credits and membership service, and the amount of employee and employer contributions which must be paid to the retirement fund based upon the compensation awarded under (1) above and will credit proportional service time to the member after all required contributions, including interest, have been paid.

Auth: 19-2-403, MCA
IMP: Title 19, chs. 3, 5, 6, 7, 8, part 3, and chs. 9 and 13, part 4, MCA

3. The amendment to 2.43.203 is needed to clarify that governmental agencies may not request administrative hearing and may not appeal the Board's decisions. The amendment to 2.43.406 is needed to clarify that a member receives service credit for only those hours which the member is compensated and pays the appropriate contributions. The amendment to 2.43.427 is needed to clarify that the Board may consider and apply statutory limitations.

4. Interested persons may present their data, views, or arguments concerning the proposed amendments in writing no later than August 7, 1997 to:

Mike O'Connor, Acting Administrator
Public Employees' Retirement Division
P.O. Box 200131
Helena, Montana 59620-0131

A Fax may be sent to (406) 444-5428.

An E-mail message may be sent to the Public Employees' Retirement Division on the State Bulletin Board.

An electronic message may be sent to the following Internet address:

Keith McCallum
Kmccallum@MT.GOV

5. 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, the person must make written request for a hearing and submit this request along with any written comments to the above address. A written request for hearing must be received no later than August 7, 1997.

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 4340 persons based on April 1997 payroll reports of active and retired members.

Terry Teichrow, President
Public Employees' Retirement Board

Dal Smilie, Chief Legal Counsel and
Rule Reviewer

Certified to the Secretary of State on June 17, 1997.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the adoption of Rule I, repeal of rule 2.5.504, and the amendment of rules 2.5.201, 2.5.202, 2.5.301, 2.5.302, 2.5.402, 2.5.403, 2.5.404, 2.5.406, 2.5.502, 2.5.503, 2.5.505, 2.5.601, 2.5.602, 2.5.603, 2.5.604, and 2.5.607 concerning state procurement.)	)	NOTICE OF PROPOSED ADOPTION, REPEAL, AND AMENDMENT OF RULES NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On October 1, 1997 the Department of Administration proposes to adopt Rule I, repeal rule 2.5.504 and amend rules 2.5.201, 2.5.202, 2.5.301, 2.5.302, 2.5.402, 2.5.403, 2.5.404, 2.5.406, 2.5.502, 2.5.503, 2.5.505, 2.5.601, 2.5.602, 2.5.603, 2.5.604 and 2.5.607 pertaining to state purchasing.

2. The proposed Rule I will read as follows:

RULE I PREQUALIFICATION OF VENDORS (1) Vendors may be prequalified for particular types of supplies and services under the following conditions:

(a) a need exists to limit a solicitation to those vendors who meet statutory or licensing requirements applicable to the solicitation; or

(b) a need exists to minimize the time necessary to verify vendor qualifications which otherwise would jeopardize the timely award of contracts.

(2) The documentation for vendor prequalification must reflect the capability of the selected vendor(s) to adequately perform the contract. The criteria for prequalification include, but are not limited to, technical expertise, experience, quality of performance, location, availability, rates, prices, financial stability, past performance, catalogs, or other criteria relevant to a particular procurement.

(3) Prequalification must be approved by the division.

(4) Prequalification of a prospective vendor does not necessarily represent supply or service acceptability or a finding of responsibility. (AUTH. Sec. 18-4-221, MCA; IMP, Sec. 18-4-309, MCA.)

3. Rule 2.5.504, the rule proposed to be repealed, is on pages 2-150 through 2-153 of the Administrative Rules of Montana. (AUTH: Sec. 18-4-225, MCA; IMP, Sec. 18-4-225, MCA.)

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

2.5.201 DEFINITIONS In these rules, words and terms defined in Title 18, chapter 4, MCA, shall have the same meaning as in the statutes and, unless the context clearly requires otherwise or a different meaning is prescribed for a particular section, the following definitions apply:

(1)-(24) Remain the same.

(25) "Responsible bidder or offeror" means a person who has the capability in all respects to perform fully the contract requirements and the integrity and reliability which will assure good faith performance.

(26) "Responsive bidder or offeror" means a person who has submitted a bid or offer which conforms in all material respects to the invitation for bids or request for proposals.

(25)-(32) Remain the same, but are renumbered (27)- (34). (AUTH: Sec. 18-1-114 and 18-4-221, MCA; IMP, Sec. 18-4-221, MCA.)

2.5.202 DEPARTMENT OF ADMINISTRATION RESPONSIBILITIES

(1)-(4) Remain the same.

(5) The department is responsible for the review and approval of the following equipment or service procurements regardless of delegated authority:

(a) all printing-related equipment involving duplicating, printing, bindery, and graphic arts for state agencies within a 10-mile radius of the capitol area -- approval by the publications and graphics bureau is required.

(b) data processing equipment, software and contracts--approval by the information services division is required, except as provided in 2-17-501, MCA.

(c) communications equipment--approval by information services division is required.

(d) mail equipment within a 10-mile radius of the capitol area--approval by the ~~general services division~~ procurement and printing division is required.

(6)-(7) Remain the same. (AUTH: Sec. 18-4-221, MCA; IMP, Sec. 2-17-301, 2-17-302, 18-4-221, and 18-4-222, MCA.)

2.5.301 DELEGATION OF PURCHASING AUTHORITY

(1) Remains the same.

~~(2) To initiate development of a delegation agreement an agency should submit a written request to the purchasing bureau.~~

~~(3)~~(2) Unless specifically addressed in a delegation agreement, agencies must buy controlled items through the division except office supply items (as defined in ARM 2.5.201) supplied by central stores ~~or purchased through central stores term contracts~~. These items may be purchased directly from vendors if the vendor's price is a publicly advertised price, established catalog price, or discount price offered to the purchasing agency and is less than the price available from the central stores program ~~or a central stores term contract~~ and the specifications, terms, conditions, and delivery of these items meet or exceed the central stores program.

~~(4)~~(3) Delegation and competitive procedures are ~~is~~ not necessary for the following purchases: salaries; ~~fees for consulting services described in 18-8-101, MCA, et seq. or those~~

~~services exempted by 18-8-103, MCA;~~ fees for those professions exempted by 18-4-132, MCA; travel and per diem; insurance; retirement and social security payments; freight; landfill charges; supplies or services whose prices are regulated by the public service commission or other governmental authority; training; training and conference space rental and catering; and fresh fruits and vegetables. (AUTH: Sec. 18-4-221, MCA; IMP, SEC. 18-4-221, 18-4-222 and 18-4-302, MCA.)

2.5.302 REQUISITIONS FROM THE AGENCIES TO THE DIVISION (1) All agencies must complete the division's requisition form when a state purchase order is required from the division (see ARM 2.5.301). The requisition must be signed or electronically approved by an authorized agency official. Only items of a like nature (items ordinarily procurable from the same vendor) to be billed to one location shall be combined on one requisition. A separate requisition is required for each billing location. The requisition must be accompanied by specifications as described in ARM 2.5.501. Completed requisitions for coarse paper, computer paper, computer software supported by information systems division, fine paper, forms, flags, fire extinguishers, janitorial supplies, and office supplies shall be forwarded to the property and supply bureau; requisitions for printing shall be forwarded to publications and graphics bureau. Completed requisitions for supplies and services (not listed above) shall be forwarded to the purchasing bureau.

(2) - (5) Remain the same. (AUTH: Sec. 18-4-221, MCA; IMP, Sec. 18-4-221, MCA.)

2.5.402 SUSPENSION OR REMOVAL FROM VENDORS LIST (1) The division has the authority to suspend or remove a vendor from the vendors list if the division determines the vendor:

(a) has falsely submitted an affidavit for preference; or

(b) is not a responsible or responsive vendor as defined in 18-4-301, MCA and ARM 2.5.201 and 2.5.407.

~~(2) Suspension from vendors list:~~

~~(a)~~ (2) The division may suspend a vendor from the vendors list upon written determination by the division that probable cause exists for suspension under 18-1-113 and 18-4-241, MCA. A notice of suspension, including a copy of the determination, shall be sent to the affected vendor. The notice must state that:

~~(i)~~ (a) the suspension is for the period it takes to complete an investigation into possible removal ~~but not for a period in excess of three months~~;

~~(ii)~~ (b) bids or proposals will not be ~~solicited~~ accepted from the suspended vendor~~, and, if they are received, they will not be considered~~ during the period of suspension; and

~~(iii)~~ (c) the suspended vendor may request a redetermination.

~~(b)~~ (d) Suspension is effective upon the notice of suspension and, unless the suspension is terminated by the division or a court, it will remain in effect until its expiration date.

~~(3) Removal from vendors list:~~

~~(a) For cause:~~

~~(i) the~~ The division may remove a vendor from the vendors list for cause:

(a) upon written determination by the division that cause exists under 18-1-113 and 18-4-241, MCA.

~~(ii)~~ (b) the division shall prepare a written decision regarding a removal and send a copy to the affected vendor. The decision shall: recite the facts relied upon; indicate the term of the removal; indicate the reasons for the action, and to what extent affiliates are affected.

~~(iii)~~ (c) removal is effective upon issuance and remains effective until its expiration date unless otherwise terminated.

~~(b) For failure to respond:~~

~~(i) the~~ (4) The division may remove a vendor from the vendors list for failure to respond to invitation for bids or proposals on three consecutive solicitations of those items. Prospective bidders and offerors may be reinstated on such lists as described in ARM 2.5.401.

~~(4)~~ (5) The department shall maintain a list of vendors removed or suspended from the vendors list. The list shall be available to all state agencies and the public upon request. (AUTH: Sec. 18-4-221, MCA; IMP, Sec. 18-4-241 and 18-4-308, MCA.)

2.5.403 BIDDING PREFERENCES (1) Montana resident and Montana-made preferences, as required in 18-1-102 and 18-1-112, MCA, must be applied by a public agency when awarding contracts for supplies except in the following instances:

(a) procurements using the competitive sealed proposal process (request for proposal) as defined in 18-4-304, MCA and ARM 2.5.602;

(b) small purchases or limited solicitations as defined in 18-4-305, MCA and ARM 2.5.603;

(c) cooperative purchasing as defined in 18-4-401, MCA;

(d) procurements involving services as defined in 18-4-123, MCA; or

(e) procurements involving funds obtained from the federal government, including term contracts, except in those cases where applicable federal statutes expressly mandate geographic preference.

(2)-(3) Remain the same.(AUTH: Sec. 18-1-114 and 18-4-221, MCA; IMP, 18-4-221, MCA.)

2.5.404 BID PREPARATION

(1)-(5) Remain the same.

(6) Vendors may quote a cash discount based on early payment; however such discounts will not be considered in determination of low bid and payment terms will remain as in ~~(6)~~ (5) above.

(7)-(8) Remain the same. (AUTH: Sec. 18-4-221, MCA; IMP, Sec. 18-4-221, MCA.)

2.5.406 VENDOR PROTEST ~~PROCEDURE~~ (1) ~~Bidders and offerors may protest a bid, proposal, or award by notifying the procurement officer as soon as possible after they discover any~~

~~potential irregularity in the procurement process. The protest must be in writing and state in detail all of the protestor's objections.~~

~~(2) The state is under no obligation to delay, halt, or modify the procurement process due to a protest, but it will conduct an internal review of the procurement.~~

~~(3) The procurement officer must notify the protestor in writing of the findings within thirty (30) working days of the protest. The procurement officer may extend this time period if sufficient evidence cannot be obtained within the thirty (30) working days. Written notice must be sent to the protesting party with justification for extension.~~

~~(4) If the procurement officer finds an irregularity, the procurement officer will adopt the course of action which is in the best interest of the state.~~ Except for small purchases or limited solicitations made pursuant to 18-4-305 MCA, a bidder, offeror, or contractor aggrieved in connection with the solicitation, award, or administration of a contract may protest to the department. Protests involving a solicitation or award must follow the provisions of 18-4-242, MCA.

(2) In the event the protest concerns the administration of an existing contract, the protesting party must follow the protest procedure set out in the contract. If there is no procedure stated in the contract, the protesting party must submit a protest in writing no later than 14 days after the cause of action, question, or dispute has arisen. If the protest is not resolved by mutual agreement, the department shall issue a written decision on the protest within 30 days after the receipt of the protest. In issuing the final decision, the decision must:

(a) state the reason for the action taken by the department with regard to the contract; and

(b) inform the aggrieved party of the party's right to pursue judicial action under Title 18, chapter 1, part 4, MCA.

(6) "Days" mean calendar days as defined in ARM 2.5.201.

(7) Any agency which exercises delegated authority from the department to engage in purchasing activities is responsible for responding to a protest or contested case hearing concerning the solicitation, award, or administration of a contract within their authority. (AUTH. Sec. 18-4-221, MCA; IMP, 18-4-221 and 18-1-402, MCA.)

2.5.502 BID AND CONTRACT PERFORMANCE SECURITY

(1) - (6) Remain the same.

(7) All performance security, except bonds, will be returned to the successful bidder upon completion of the contract, or at the discretion of the ~~purchasing officials~~ procurement official as documented to assure contract completion, or warranty period as declared within the contract. (AUTH. Sec. 18-4-221, MCA; IMP, Sec. 18-1-201 and 18-4-312, MCA.)

2.5.503 PUBLIC NOTICE (1) Invitation for bids and requests for proposals shall be mailed, posted electronically, or otherwise furnished to a sufficient number of bidders or offerors

required to secure competition.

(2) - (3) Remain the same.

~~(4) The state may determine that bids and proposals should be solicited through advertising to secure adequate competition. If so, the advertisement shall be made in at least three newspapers (one of which must be a daily) of general circulation printed within the state, once each week for two consecutive weeks. The advertisement shall identify the supply or service solicited, the time, date and location where bids or proposals will be received and where to obtain copies of the invitation for bid or request for proposal.~~

~~(5)~~ (4) In the event that it is either not practicable or not advantageous to the state to furnish bids to all the bidders listed on the central bidders list for a specific ~~commodity~~ supply or service, the purchasing agency may elect to shorten a bidders list by selecting a sample of bidders. (AUTH. Sec. 18-4-221, MCA; IMP, Sec. 18-4-303 and 18-4-304, MCA.)

2.5.505 MISTAKES AND MINOR VARIATIONS IN BIDS AND OFFERS (1) The procurement officer may allow a bidder or offeror to correct minor mistakes in a bid or offer if the mistake is clearly not attributed to an error in judgment, and the mistake and the intended correct bid are clearly evident on the form of the bid document. Examples of correctable mistakes include, but are not limited to:

(a) typographical errors;
(b) errors in extending unit prices;
(c) transposition errors;
(d) arithmetical errors; and
(e) signature omitted.

(2) The procurement officer may permit a bidder or offeror to withdraw a low bid or proposal if:

(a) a mistake is clearly evident on the face of the ~~bid~~ document but the intended correct ~~bid~~ information is not similarly evident; or

(b) the bidder or offeror submits proof of evidentiary value which clearly and convincingly demonstrates that a mistake was made.

(3) Remains the same. (AUTH. Sec. 18-4-221, MCA; IMP, Sec. 18-4-303 and 18-4-304, MCA.)

2.5.601 COMPETITIVE SEALED BIDS (1) "Sealed bid" is the preferred method of competitive procurement for state supply contracts and service contracts estimated to exceed the amount designated in ARM 2.5.603 as a small purchase or a limited solicitation. ~~greater than $5,000.~~ Sealed bids shall be solicited with an invitation for bid.

(2) - (3) Remain the same.

(4) Addenda, if any, will be ~~sent~~ provided to all vendors who received an invitation for bid. or notice of the addenda will be placed in the electronic format designated for giving public notice.

(5) - (11) Remain the same.

(12) A supplier's currently advertised or established

catalog price, which is available to the public, may be accepted as a bid subject to the following conditions:

(a) The advertisement or established catalog price must be received and time-stamped by the procurement officer authorized to enter into contracts prior to or at the bid opening. In no event will catalog or advertised prices be accepted after a bid opening.

(i) A copy of the catalog or advertised price and specifications may be attached to the requisition received by the ~~purchasing~~ procurement official; or

(ii) The ~~purchasing~~ procurement official or the requesting agency may locate catalog or advertised prices; or

(iii) A vendor may submit catalog or advertised prices as a bid.

(b) The catalog or advertised price must meet or exceed the specifications, terms, and conditions and be the lowest acceptable bid.

(13) - (14) Remain the same.

(15) The division or the using agency may use federal supply schedules established by the general services administration as one source of a bid. The federal supply schedule item must meet or exceed the specifications, terms, and conditions of the invitation for bid and must be the lowest acceptable bid in order to be selected. The pertinent supply schedule must be recorded as a bid from the supplier for the inspection of all bidders. (AUTH. Sec. 18-4-221, MCA; IMP, Sec. 18-4-303, MCA.)

2.5.602 COMPETITIVE SEALED PROPOSALS (1) "Competitive sealed proposal" is a procurement option allowing the award to be based upon stated criteria or evaluation factors. ~~, cost will not be the only consideration.~~ Competitive sealed proposals may be practical ~~bidding is not practicable~~ when one or more of the following conditions exist:

(a) the contract needs to be other than a fixed-price type;

(b) oral or written discussions may need to be conducted with offerors concerning technical and price aspects of their proposals;

(c) offerors may need to be afforded the opportunity to revise their proposals, including prices;

(d) award may need to be based upon a comparative evaluation as stated in the request for proposals of differing price, quality, and contractual factors in order to determine the most advantageous offering to the state. Quality factors include technical and performance capability and the content of the technical proposal; and

(e) the primary consideration in determining award may not be price.

~~(2) The officer who made the determination that sealed bidding is not practicable or advantageous to the state may modify or revoke it at any time, and the determination should be reviewed for current applicability from time to time.~~

~~(3)~~(2) The request for proposals must be prepared in accordance with ~~subsections (1) through (5) of~~ ARM 2.5.601(2) through (4) and must also include:

(a) a statement that discussions may be conducted with one or more offerors who submit proposals, but that proposals may be accepted and a contract issued without such discussions; and

(b) the relative importance of ~~of price and other~~ evaluation factors.

~~(4)~~ (3) Facsimile transmission of a proposal is only acceptable on an exception basis with prior approval of the procurement officer.

~~(5)~~ (4) Proposals shall not be opened publicly but shall be opened in the presence of a procurement official. Proposals ~~and modifications~~ shall be time-stamped upon receipt and held in a secure place by an employee of the agency until the established due date. Proposals ~~and modifications~~ shall be shown only to persons participating in the evaluation or contracting process.

~~(6)~~ (5) After the date established for receipt of proposals, a register of proposals shall be prepared which shall include ~~for all proposals~~ the name of each offeror, ~~and a description sufficient to identify the supply or service offered.~~ The register of proposals shall be open to public inspection only after award of the contract. ~~Interested parties are responsible for making their own arrangements to make copies of proposal materials.~~

~~(7)~~ (6) The evaluation shall be based on the evaluation factors set forth in the request for proposals. Numerical rating systems may be used but are not required. Factors not specified in the request for proposal shall not be considered.

~~(8)~~ (7) For the purpose of conducting discussions, proposals shall be initially classified as:

(a) ~~acceptable~~ responsive; or

(b) ~~potentially acceptable; or~~ nonresponsive.

~~(c) unacceptable.~~

~~(9) For the purpose of competitive sealed proposals, the term "offerors" includes only those businesses submitting proposals that are acceptable or potentially acceptable and the term shall not include businesses who submitted unacceptable proposals.~~

(8) Discussions ~~with offerors are held to~~ may be held with one or more offerors to:

(a) promote understanding of the state's requirements and the offerors' proposals; and

(b) facilitate arriving at a contract that will be most advantageous to the state taking into consideration all ~~price and other~~ factors set forth in the request for proposals.

(c) Discussions may include oral presentations, interviews, demonstrations, responses to specific questions, modifications, and negotiations. Offerors shall not be informed of their rank at the time of discussions.

(d) One or more offerors may be provided an opportunity to submit a best and final offer.

(9) References and the credit and financial responsibility of the offerors may be verified as appropriate.

(10) The department reserves the right to negotiate with one or more offerors for the award of a contract that is most advantageous to the state. The department reserves the right to

award a contract without negotiations or to reject any or all proposals.

~~(10)~~ (11) ~~Trade secrets that are identified by the proposer or offeror will remain confidential after award.~~ All ~~other~~ proposal documents are available for public inspection after the contract is executed, except for trade secrets as defined by the Uniform Trade Secrets Act, Title 30, chapter 14, part 4, MCA.

(12) Interested parties are responsible for making their own arrangements to make copies of proposal materials.

~~(14)~~ (13) Multiple award contracts are allowable if determined to be in the best interest of the state.

~~(12) If the procurement officer has elected to use a multi-step request for proposal which includes the submittal of "best and final" offers, the procurement officer shall then make a written award determination showing the basis on which the award was found to be most advantageous to the state based on the factors set forth in the request for proposals.~~ (AUTH. Sec. 18-4-221, MCA; IMP, 18-4-304, MCA.)

2.5.603 SMALL PURCHASES OR LIMITED SOLICITATION OF SUPPLIES AND SERVICES

(1) The division or state agency may procure supplies or services costing $5,000 or less ~~under this rule. The procurement officer may choose~~ using a purchase technique that best meets the agency's needs. ~~The purchasing bureau suggests that agencies follow prudent purchasing practices and receive competitive telephone or written quotations where practicable.~~

(2) The division or state agency, if authorized in a written delegation agreement, may procure supplies or services costing between $5,001 and $15,000 using a limited solicitation procedure. This procedure requires a minimum of three viable written or oral quotations, if available. The limited solicitation procedure must be documented and, wherever practical, use the department's vendor list.

~~(2)~~ (3) This rule does not apply to controlled items ~~for the state~~ purchased through exclusive term contracts, requisition time schedules, the central stores program or the publications and graphics bureau~~,~~ unless specifically delegated in a written delegation agreement to the agency. ~~However, if a state agency's anticipated usage per requisition time schedule call is $500 or less, the state agency may purchase the item according to the provisions of this rule.~~

~~(3)~~ (4) Procurements shall not be artificially divided or sequenced to avoid using the other source selection methods set forth in Title 18, chapter 4, MCA. (AUTH. Sec. 18-4-221, MCA; IMP, Sec. 18-4-305, MCA.)

2.5.604 SOLE SOURCE PROCUREMENT

(1) - (5) Remain the same.

(6) The following items do not require sole source justification and shall be purchased directly by the agency regardless of delegated authority:

(a) licenses;

(b) dues to associations;

(c) renewal of software license agreements; or

(d) purchase or renewal of software or hardware maintenance agreements. (AUTH. Sec. 18-4-221, MCA; IMP, Sec. 18-4-306, MCA.)

2.5.607 PROCUREMENT FROM SHELTERED WORKSHOPS OR WORK ACTIVITY CENTERS (1) State agencies may purchase ~~products~~ supplies and services from sheltered workshops as defined in 18-5-101, MCA. Such purchases are exempt from competitive bidding laws and rules and may be made directly.

(2) The division will maintain a list of certified sheltered workshops or work activity centers, as defined in 18-5-101, MCA, located in the state. The list will include the ~~products~~ supplies and services provided by each. The list will be available to user agencies. (AUTH. Sec. 18-5-102, MCA; IMP, Sec. 18-5-102 and 18-5-103, MCA.)

5. We propose to adopt Rule I because HB 139 of the recent legislature (Chapter 443, Laws of 1997) changed the law in 18-4-309, MCA, concerning prequalification of vendors. The law now states that vendors may be prequalified "in accordance with department rules." These rules will implement that section and guide agencies in using the prequalification option.

6. We propose to repeal Rule 2.5.504 because the statute that required the rules, Section 18-4-225, MCA, was repealed, effective October 1, 1997, by the recent legislature.

7. It is necessary to amend the rules for the following reasons:

ARM 2.5.201 is amended to include definitions of "responsible bidder or offeror" and "responsive bidder or offeror" due to changes in HB 139 (Chapter 443, Laws of 1997) to Section 18-4-304, MCA during the recent legislative session. Part of this bill made several clarifying changes to the request for proposal process. These definitions will assist agencies when evaluating proposals.

ARM 2.5.202 is amended to reflect the transfer of the central mail operation from the general services division to the procurement and printing division.

ARM 2.5.301 is amended to remove a reference to "central stores term contracts." HB 139 (Chapter 443, Laws of 1997) made similar changes to the statutes because the reference to term contracts was confusing for the agencies. A second change to this rule also clarifies that certain items do not require delegation nor competitive procedures. A third change removes reference to "consulting services" since HB 139 repealed the Consulting Service Act.

ARM 2.5.302 is amended to clarify that a requisition may be "electronically approved" instead of only "signed." The state will soon be adopting new procurement software which will accommodate electronic approval and routing of requisitions.

ARM 2.5.402 is amended to bring the rules in compliance with the changes made to Section 18-4-241, MCA by HB 139 (Chapter 443, Laws of 1997). The state is no longer limited to suspending

vendors for a period not to exceed three months. In addition, a reference is added concerning the new definitions of "responsive" and "responsible" bidders or offerors.

ARM 2.5.403 is amended to state that preferences will not be applied to a limited solicitation procedure because the procedure is not a formal sealed bid.

ARM 2.5.404 is amended to correct an error in citation from a previous rule change.

ARM 2.5.406 is amended to reflect the changes made to Section 18-4-242, MCA, by HB 139 (Chapter 443, Laws of 1997) concerning vendor protest and exclusive remedies. The state's protest procedure is now consistent with statute concerning contract solicitations and awards. In addition, language is added to establish a protest process concerning the administration of a contract per Section 18-1-402, MCA. In addition, language is added to clarify that agencies exercising delegated authority are responsible for responding to protests or contested case hearings concerning a procurement within their authority.

ARM 2.5.502 is amended to change the phrase "purchasing official" to "procurement official" since that later term only is defined in statute.

ARM 2.5.503 is amended to clarify that public notice of bids and proposals may be given in an electronic format, such as Internet, instead of just by traditional mail. In addition, a passage concerning publication of bids and proposals in newspapers is deleted as unnecessary.

ARM 2.5.505 is amended to clarify how mistakes in bids or *offers* should be handled. Previously the rule only addressed mistakes in bids.

ARM 2.5.601 is amended to make several clarifications. First, the amount requiring a sealed bid is removed and a reference to the definition of a "small purchase or limited solicitation" is added. Also, it is clarified that notice of addenda may be given in an electronic format, such as Internet. Third, the term "purchasing official" is replaced with "procurement official." Finally, a rule was drafted to inform agencies how and when they will be able to use federal supply schedules if they become available to state agencies. The option of purchasing off federal supply schedules was established in HB 139 (Chapter 443, Laws of 1997).

ARM 2.5.602 is amended to make numerous clarifications in the rules concerning the request for proposal process per the changes made by HB 139 to Section 18-4-304, MCA. Extraneous material is removed; the organization of the rules improved; and the request for proposal process is detailed and clarified. Specifically, the rule interprets the changes made by HB 139 concerning the process of evaluating submitted responses.

ARM 2.5.603 is amended to establish a process for completing a limited solicitation procedure as permitted by HB 139. In addition, a clarification is made concerning "exclusive" term contracts (as opposed to non-exclusive) and to language concerning requisition time schedules. In addition, the rule clarifies that agencies may have the option of not purchasing controlled items if specifically granted that authority in a

delegation agreement.

ARM 2.5.604 is amended to clarify that the purchase, as well as the renewal of software or hardware maintenance agreements can be automatically considered a sole source and require no further justification.

ARM 2.5.607 is amended to change the term "products" to the statutorily defined term of "supplies."

8. Interested persons may submit their data, views, or arguments concerning the proposed actions to Marvin Eicholtz, Administrator, Procurement and Printing Division, PO 200135, Mitchell Building, Helena, MT 59620-0135 no later than August 4, 1997.

9. If a person who is directly affected by the proposed actions wishes to express his data, views and arguments orally or in writing at a public hearing, he must make a written request for hearing and submit this request along with any written comments to Marvin Eicholtz, Administrator, Procurement and Printing Division, PO 200135, Mitchell Building, Helena, MT 59620-0135 no later than August 4, 1997.

10. If the agency receives requests for a public hearing on the proposed actions from either 10% or 25, whichever is less of the persons who are directly affected by the proposed actions; from the administrative code committee of the legislature; from a government 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 800 persons based on 8,000 vendors interested in submitting bids for supplies and services to the state of Montana.

DAL SMILIE, CHIEF LEGAL COUNSEL, RULE REVIEWER

LOIS MENZIES, DIRECTOR DEPARTMENT OF ADMINISTRATION

Certified to the Secretary of State on June 23, 1997.

BEFORE THE STATE LIBRARY COMMISSION
OF THE STATE OF MONTANA

In the matter of the proposed amendment of ARM 10.101.101 and ARM 10.101.203 concerning the state library commission and the library services advisory council	)))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF ARM 10.101.101 AND ARM 10.101.203

TO: All Interested Persons

1. On July 30, 1997, at 9:00 a.m. in Room 212, Montana State Library, 1515 East Sixth Avenue, Helena, Montana, a public hearing will be held to consider the amendment of ARM 10.101.101 and ARM 10.101.203.

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

10.101.101 AGENCY ORGANIZATION (1) The state library commission consists of five members appointed by the governor for three year terms and the state superintendent of public instruction or his designee and a librarian appointed by the commissioner of higher education from ~~one of the six units of~~ the Montana university system. The commission annually elects a chair from its membership. It employs as its executive officer a state librarian who is not a member of the commission, and who performs duties assigned by the commission.

(2) The state library provides library service at the state level, serving state government, local libraries, and federations; it promotes the development of adequate libraries throughout the state; it provides library service to ~~handicapped persons~~ persons with visual and physical disabilities and persons in state institutions; expends funds available from federal, state, and private sources for the purpose of fostering library development; and provides for a comprehensive program for the acquisition, storage, and retrieval of data related to the natural resources of Montana.

(3) The Montana library services advisory council is created ~~by the Montana state Library Commission with the approval of the governor~~ by the governor in accordance with the provisions of 2-15-122, MCA. The commission shall submit names of recommended council members to the governor.

(a) The council shall advise ~~the Montana state library commission on the development and well being of libraries in Montana; represent the views and opinions of citizen, library users and librarians to the Montana state library commission; gather information and make recommendations to the Montana state library commission; advise the Montana state library commission on the Library Services and Construction Act Program, including but not limited to the development of the state plan and its administration, the long range and annual programs and the evaluation of library program services and~~

~~activities under the state plan.~~ and make recommendations to the commission on the development, evaluation and funding of the Library Services and Technology Act (LSTA) program and other pertinent issues that may relate to or influence LSTA.

(b) The composition of the council shall be no more than ~~fourteen~~ nine members. ~~Twelve~~ Eight shall serve for two years and may be reappointed for ~~a second~~ two additional terms and may represent: ~~users of public library services in each federation area, disadvantage persons, local public libraries, school libraries, academic libraries, special libraries, library service to the institutionalized, library service to the disabled, state agency libraries, Montana participation in WHCLIS (White House Conference on Library and Information Services), and the legislature~~ users of public library services in eastern, central, and western Montana; public libraries; school libraries; academic or special libraries; persons who cannot use traditional library services; and a member of the legislature. The president of the Montana library association or designee may serve a one-year term on the council during the presidency of the association ~~and one library federation coordinator chosen each year by the coordinators shall serve a one year term~~.

(c) The council shall have the authority to establish bylaws for its internal operation. These bylaws may not conflict with 22-1-103, MCA, the Library Services and ~~Construction~~ Technology Act, its rules and regulations, ~~and the EDGAR regulations governing programs of the U.S. Department of Education,~~ or with policies established by the ~~Montana state library~~ commission.

(d) The number of yearly meetings shall be determined by the executive committee of the ~~advisory~~ council. The number shall remain flexible to include no less than two and no more than four meetings.

(4) Inquiries regarding the functions of the state library should be addressed to the state librarian.

(5) Personnel Roster: Montana State Library, 1515 E. 6th Ave., Helena, Montana 59620; State Librarian, ~~Coordinator of Library Development, Information Resources Manager,~~ Statewide Library Resources Director, Regional Director of the Talking Book Library, ~~Librarian for the Blind and Physically Handicapped,~~ and Director of the Natural Resource Information System.

AUTH: 2-4-201, MCA
IMP: 2-4-201, MCA

10.101.203 GUIDELINES FOR PUBLIC PARTICIPATION

(1) Except for financial exigencies, ~~T~~the commission shall meet ~~during the last week of February, at the Montana library association conference, June, August and October and in the first week of December, and at such other times as may be appropriate~~ six times during each calendar year, at approximately equal intervals, and at such other times as may be appropriate. Special meetings may be called by the chair or at the request of two members. An agenda for each regular

meeting shall be prepared by the state librarian in consultation with the chair and will be distributed in advance, with supporting documents to the members.

(2) Agendas are available to the public from the office of the state librarian. Supporting documents may be requested from that office. Each commission agenda shall provide an open time for the public to address the commission.

AUTH: 22-1-101, MCA
IMP: 22-1-101, MCA

3. The amendment of ARM 10.101.101 is reasonably necessary to reflect a change in the guidelines for a new federal library program. The former Library Services and Construction Act required each state to establish an advisory council in order to receive funds. The more recent Library Services and Technology Act allows, but does not mandate, an advisory council. Per 2-15-122, MCA the governor creates advisory councils unless they are mandated by federal law. The changes to this rule will be reflected in an updated organization chart.

The amendment of ARM 10.101.203 is reasonably necessary to reflect a desire by the state library commission to exercise greater flexibility in the scheduling of meetings.

4. 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 Karen Strege, State Librarian, Montana State Library, 1515 East Sixth Avenue, Helena, Montana 59620-1800 and must be received no later than August 7, 1997.

5. Karen Strege, State Librarian, has been designated to preside over and conduct the hearing.

6. Alternative accessible formats of this document will be provided upon request. Persons who need an alternative format of this rule notice, or who require some other reasonable accommodation in order to participate in this process, should contact Mary Jane West, Montana State Library, 1515 East Sixth Avenue Helena, Montana 59620-1800; telephone: (406) 444-3384; TDD (406) 444-3005.

Karen Strege

Karen Strege
State Librarian and
Rule Reviewer

Certified to the Secretary of State, June 23, 1997.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.30.636, regarding operation of dams to avoid harm to beneficial uses of water.	))))	NOTICE OF PUBLIC HEARING FOR PROPOSED AMENDMENT OF RULE

(Water Quality)

To: All Interested Persons

1. On August 4, 1997, at 1:00 p.m., or as soon thereafter as it may be heard, the Board will hold a public hearing at Room 111 of the Metcalf Building, 1520 E. 6th Ave., Helena, Montana, to consider amendment of the above-captioned rule.

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

17.30.636 GENERAL OPERATION STANDARDS (1) Owners and operators of water impoundments ~~operating prior to July 1971~~ that cause conditions harmful to prescribed beneficial uses of state water shall demonstrate to the satisfaction of the department that continued operations will be done in the best practicable manner to minimize harmful effects. New water impoundments must be designed to provide temperature variations in discharging water that maintain or enhance the existing propagating fishery and associated aquatic life. As a guide, the following temperature variations are recommended: continuously less than 40°F during the months of January and February, and continuously greater than 44°F during the months of June through September.
AUTH: 75-5-301, MCA; IMP: 75-5-301, MCA

3. ARM 17.30.636 requires that, for dams in operation prior to July of 1971, the owner or operator shall, if the dam causes conditions harmful to prescribed beneficial uses of water, demonstrate to the Department's satisfaction that continued operation will be done in the best practicable manner to minimize harmful effects. Recently, operation of Hungry Horse and Libby dams has been modified to protect salmon on the Columbia River. These modifications will result in drafting of the dams in August, which will adversely affect the ecological dynamics of the water, including the food web, and is likely to adversely affect resident downstream fish populations, including bull trout in the Flathead drainage and sturgeon in the Kootenai.

The current rule gives the Department authority to require the Bureau of Reclamation to provide a plan to minimize harmful

effects at Hungry Horse Dam. However, the Department cannot issue a similar order for Libby Dam because it began operating after 1971. To provide uniform protection for beneficial uses of water, the Board is proposing to amend ARM 17.30.636 to apply to all dams.

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 Claudia L. Massman, Department of Environmental Quality, PO Box 200901, Helena, MT 59620-0901, no later than August 4, 1997.

5. Claudia L. Massman has been appointed to preside over and conduct the hearing.

BOARD OF ENVIRONMENTAL REVIEW

by _____
CINDY E. YOUNKIN, Chairperson

Reviewed by:

_____
John F. North, Rule Reviewer

Certified to the Secretary of State June 23, 1997 .

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of rule 17.8.210, amending ambient air quality standards for sulfur dioxide.	NOTICE OF PUBLIC HEARING FOR PROPOSED AMENDMENT OF RULE (Air Quality)

To: All Interested Persons:

1. On August 7, 1997, at 1:00 p.m., the Board will hold a public hearing in the Lewis & Clark Room of the Student Union Building, Montana State University, Billings, Montana, to consider amendments to the above-captioned rule.

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

17.8.210 AMBIENT AIR QUALITY STANDARDS FOR SULFUR DIOXIDE

(1) No person shall cause or contribute to concentrations of sulfur dioxide in the ambient air which exceed any of the following standards:

(a) Remains the same.

(b) twenty-four hour average: 0.10 ppm, 24-hour average, not to be exceeded more than once per year~~, except that persons causing or contributing to ambient 24-hour average concentrations of sulfur dioxide that exceeded more than once 0.10 ppm during 1985 must be considered in compliance with this rule if ambient concentrations do not exceed 0.14 ppm more than once per year~~;

(c) annual average: 0.02 ppm, annual average, not to be exceeded~~, except that persons causing or contributing to ambient annual concentrations of sulfur dioxide that exceeded 0.02 ppm during 1985 must be considered in compliance with this rule if ambient concentrations do not exceed 0.03 ppm~~.

(2) Remains the same.

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

3. The proposed amendments to ARM 17.8.210 delete language exempting certain sources from the 24-hour and annual sulfur dioxide standards. The exemptions were added to the rule in 1987 in response to a legislative directive (HB 534; Sec. 1, Ch. 504, L. 1987; "Hannah Bill"). In HB 59, the 1997 legislature repealed the Hannah Bill. The proposed amendments reflect the 1997 legislative intent that the 1987 exemptions be removed from the rule.

The board is also proposing this amendment because there is no scientific or regulatory basis for a different standard for areas that were in non-compliance in 1985, and with the repeal of the Hannah bill, there is no longer a legal basis for a

different standard.

4. Interested persons may submit their data, views, or arguments concerning the proposed amendments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Robert Raisch, Department of Environmental Quality, Metcalf Building, PO Box 200901, Helena, MT 59620-0901, no later than 5:00 p.m., August 4, 1997.

5. David Rusoff has been designated to preside over and conduct the hearing.

BOARD OF ENVIRONMENTAL REVIEW

by _____
CINDY E. YOUNKIN, Chairperson

Reviewed by:

_____
John F. North, Rule Reviewer

Certified to the Secretary of State June 23, 1997.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of 17.8.102, 103, 202, 302, 602, 702, 802, 902, 1002, 1102, 1202, and 1302, updating the incorporations by reference.	)))))	NOTICE OF PUBLIC HEARING FOR PROPOSED AMENDMENT OF RULES (Air Quality)

To: All Interested Persons

1. On July 30, 1997, at 1:30 p.m., or as soon thereafter as it may be heard, the board will hold a public hearing at Room 111 of the Metcalf Building, 1520 E. 6th Ave., Helena, Montana, to consider amendment of the above-captioned rules.

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

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

(a) adopted a federal regulation by reference, the reference is to the July 1, ~~1995~~ 1996, edition of the Code of Federal Regulations (CFR);

(b)-(c) Remain the same.

(d) adopted another rule of the department or of another agency of the state of Montana by reference, the reference is to the December 31, ~~1995~~ 1996, edition of the Administrative Rules of Montana (ARM).

AUTH: 75-2-111, MCA; IMP: Title 75, chapter 2, MCA

17.8.103 INCORPORATION BY REFERENCE (1)-(2) Remain the same.

(3) Copies of federal materials also may be obtained from ~~EPA's Public Information Reference Unit, 401 M Street SW, Washington, DC 20460~~ the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161, phone: (703)487-4650, fax: (703)321-8547, Internet: orders@ntis.fedworld.gov, the National Center for Environmental Publications and Information, (800)490-9198, and the US Government Printing Office, Superintendent of Documents, Mail Stop: SSOP, Washington, DC 20402-9328, and at the libraries of each of the 10 EPA Regional Offices.

(4) Remains the same.

AUTH: 75-2-111, MCA; IMP: Title 75, chapter 2, MCA

17.8.202 INCORPORATION BY REFERENCE (1) For the purposes of this subchapter, the board hereby adopts and incorporates by reference the following:

(a) the Montana Quality Assurance ~~Manual~~ Project Plan (~~July 1991~~ November 1996 ed.), a department of environmental quality manual specifying sampling and data collection, recording, analysis and transmittal requirements;

(b)-(f) Remain the same.

(2) Remains the same.

(3) Copies of federal materials also may be obtained from ~~EPA's Public Information Reference Unit, 401 M Street SW, Washington DC 20460~~ the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161, phone: (703)487-4650, fax: (703)321-8547, Internet: orders@ntis.fedworld.gov, the National Center for Environmental Publications and Information, (800)490-9198, and the US Government Printing Office, Superintendent of Documents, Mail Stop: SSOP, Washington, DC 20402-9328, and at the libraries of each of the 10 EPA Regional Offices.

(4) Remains the same.

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

17.8.302 INCORPORATION BY REFERENCE (1)-(2) Remain the same.

(3) Copies of federal materials also may be obtained from ~~EPA's Public Information Reference Unit, 401 M Street SW, Washington DC 20460~~ the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161, phone: (703)487-4650, fax: (703)321-8547, Internet: orders@ntis.fedworld.gov, the National Center for Environmental Publications and Information, (800)490-9198, and the US Government Printing Office, Superintendent of Documents, Mail Stop: SSOP, Washington, DC 20402-9328, and at the libraries of each of the 10 EPA Regional Offices.

(4) Remains the same.

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

17.8.602 INCORPORATION BY REFERENCE (1)-(2) Remain the same.

(3) Copies of federal materials also may be obtained from ~~EPA's Public Information Reference Unit, 401 M Street SW, Washington DC 20460~~ the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161, phone: (703)487-4650, fax: (703)321-8547, Internet: orders@ntis.fedworld.gov, the National Center for Environmental Publications and Information, (800)490-9198, and the US Government Printing Office, Superintendent of Documents, Mail Stop: SSOP, Washington, DC 20402-9328, and at the libraries of each of the 10 EPA Regional Offices.

(4) Remains the same.

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

17.8.702 INCORPORATION BY REFERENCE (1)-(2) Remain the same.

(3) Copies of federal materials also may be obtained from ~~EPA's Public Information Reference Unit, 401 M Street SW, Washington DC 20460~~ the National Technical Information Service,

5285 Port Royal Road, Springfield, VA 22161, phone: (703)487-4650, fax: (703)321-8547, Internet: orders@ntis.fedworld.gov, the National Center for Environmental Publications and Information, (800)490-9198, and the US Government Printing Office, Superintendent of Documents, Mail Stop: SSOP, Washington, DC 20402-9328, and at the libraries of each of the 10 EPA Regional Offices.

(4) Remains the same.

AUTH: 75-2-111, 75-2-204, MCA; IMP: 75-2-211, 75-2-215, MCA

17.8.802 INCORPORATION BY REFERENCE (1)(a)-(f) Remain the same.

(g) 40 CFR Part 51, Appendix W, ~~The~~ the Guidelines on Air Quality Models ~~(revised) (1986) (EPA publication no. 450/278-0-27R) and supplement A (1987)~~.

(2) Remains the same.

(3) Copies of federal materials also may be obtained at ~~EPA's Public Information Reference Unit, 401 M Street SW, Washington, DC 20460~~ the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161, phone: (703)487-4650, fax: (703)321-8547, Internet: orders@ntis.fedworld.gov, the National Center for Environmental Publications and Information, (800)490-9198, and the US Government Printing Office, Superintendent of Documents, Mail Stop: SSOP, Washington, DC 20402-9328, and at the libraries of each of the 10 EPA Regional Offices.

(4)-(5) Remain the same.

AUTH: 75-2-111, 75-2-203, MCA; IMP: 75-2-202, 75-2-203, 75-2-204, MCA

17.8.902 INCORPORATION BY REFERENCE (1)-(2) Remain the same.

(3) Copies of federal materials also may be obtained from ~~EPA's Public Information Reference Unit, 401 M Street SW, Washington, DC 20460~~ the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161, phone: (703)487-4650, fax: (703)321-8547, Internet: orders@ntis.fedworld.gov, the National Center for Environmental Publications and Information, (800)490-9198, and the US Government Printing Office, Superintendent of Documents, Mail Stop: SSOP, Washington, DC 20402-9328, and at the libraries of each of the 10 EPA Regional Offices.

(4)-(5) Remain the same.

AUTH: 75-2-111, 75-2-203, MCA; IMP, 75-2-202, 75-2-203, 75-2-204, MCA

17.8.1002 INCORPORATION BY REFERENCE (1)-(2) Remain the same.

(3) Copies of federal materials also may be obtained at ~~EPA's Public Information Reference Unit, 401 M Street SW, Washington, DC 20460~~ the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161, phone: (703)487-4650, fax: (703)321-8547, Internet: orders@ntis.fedworld.gov, the National Center for Environmental Publications and

Information, (800)490-9198, and the US Government Printing Office, Superintendent of Documents, Mail Stop: SSOP, Washington, DC 20402-9328, and at the libraries of each of the 10 EPA Regional Offices.

(4)-(5) Remain the same.

AUTH: 75-2-111, 75-2-203, MCA; IMP: 75-2-202, 75-2-203, 75-2-204, MCA

17.8.1102 INCORPORATION BY REFERENCE (1) For the purposes of this subchapter, the board hereby adopts and incorporates by reference the following:

(a) Remains the same.

(b) "Workbook for Plume Visual Impact Screening and Analysis" (Revised) (~~EPA-450/4-80-015, 1988~~ EPA-454/R-92/023), specifying methods for estimating visibility impairment.

(2) Remains the same.

(3) Copies of federal materials also may be obtained from ~~EPA's Public Information Reference Unit, 401 M Street SW, Washington DC 20460~~ the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161, phone: (703)487-4650, fax: (703)321-8547, Internet: orders@ntis.fedworld.gov, the National Center for Environmental Publications and Information, (800)490-9198, and the US Government Printing Office, Superintendent of Documents, Mail Stop: SSOP, Washington, DC 20402-9328, and at the libraries of each of the 10 EPA Regional Offices.

(4) Remains the same.

AUTH: 75-2-111, MCA; IMP: Title 75, chapter 2, MCA

17.8.1202 INCORPORATIONS BY REFERENCE (1)-(2) Remain the same.

(3) Copies of federal materials may be obtained from ~~EPA's Public Information Reference Unit, 401 M Street SW, Washington DC 20460~~ the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161, phone: (703)487-4650, fax: (703)321-8547, Internet: orders@ntis.fedworld.gov, the National Center for Environmental Publications and Information, (800)490-9198, and the US Government Printing Office, Superintendent of Documents, Mail Stop: SSOP, Washington, DC 20402-9328, and at the libraries of each of the 10 EPA Regional Offices.

(4)-(5) Remain the same.

AUTH: 75-2-217, MCA; IMP: 75-2-217, 75-2-218, MCA

17.8.1302 INCORPORATIONS BY REFERENCE (1) Remains the same.

(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~~ National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161, phone: (703)487-4650, fax: (703)321-8547, Internet: orders@ntis.fedworld.gov, the National Center for Environmental Publications and Information, (800)490-9198, and the US Government Printing Office, Superintendent of Documents, Mail Stop: SSOP,

Washington, DC 20402-9328, 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

3. The Board is proposing these amendments to update the incorporations by reference in the air quality rules and to specify additional sources for obtaining federal materials incorporated by reference. The proposed amendments would incorporate the most recent editions of the Code of Federal Regulations, the Montana Code Annotated, the Administrative Rules of Montana, the Montana Quality Assurance Project Plan and federal and state guidance documents.

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 the Board of Environmental Review, PO Box 200901, Helena, MT 59620-0901, no later than 5:00 p.m., August 4, 1997.

5. David Rusoff has been appointed to preside over and conduct the hearing.

BOARD OF ENVIRONMENTAL REVIEW

by _____
CINDY E. YOUNKIN, Chairperson

Reviewed by:

_____
John F. North, Rule Reviewer

Certified to the Secretary of State June 23, 1997.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of 17.8.514, regarding open burning fees.	NOTICE OF PUBLIC HEARING FOR PROPOSED AMENDMENT OF RULE

(Air Quality)

To: All Interested Persons

1. On July 31, 1997, at 1:30 p.m., or as soon thereafter as it may be heard, the board will hold a public hearing at Room 111 of the Metcalf Building, 1520 E. 6th Ave., Helena, Montana, to consider amendment of the above-captioned rule.

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

17.8.514 AIR QUALITY OPEN BURNING FEES (1)-(3) Remain the same.

(4)(a) The major open burning air quality permit application fee shall be based on the actual or estimated actual amount of air pollutants emitted by the applicant in the last calendar year during which the applicant conducted open burning pursuant to an air quality open burning permit for major open burning sources, as required under ARM 17.8.610 (Major Open Burning Source Restrictions). The fee shall be the greater of the following, as adjusted by any amount determined pursuant to (b), below:

(i) a fee calculated using the following formula:

tons of total particulate emitted in the previous appropriate calendar year,
multiplied by ~~$9.75~~ 5.65; plus
tons of oxides of nitrogen emitted in the previous appropriate calendar year,
multiplied by ~~$2.44~~ 1.41; plus
tons of volatile organic compounds emitted in the previous appropriate calendar year,
multiplied by ~~$2.44~~ 1.41; or

(ii) Remains the same.

(b) Remains the same.

AUTH: 75-2-111, MCA; IMP: 75-2-211, 75-2-220, MCA

3. The board is proposing these amendments to reduce fees assessed to major open burners for the 1997/1998 open burning season. The fees fund the department's Smoke Management Program,

which establishes burning time restrictions based upon weather conditions. The program fund currently has a surplus beyond what is necessary to fund the program for the 1997/1998 burning season.

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 the Board of Environmental Review, PO Box 200901, Helena, MT 59620-0901, no later than 5:00 p.m., August 4, 1997.

5. David Rusoff has been appointed to preside over and conduct the hearing.

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 23,1997.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of rule 17.30.716 to simplify review of individual sewage systems under the nondegradation policy.	)))))	NOTICE OF PUBLIC HEARING FOR PROPOSED AMENDMENT OF RULE

(Water Quality)

To: All Interested Persons

1. On August 11, 1997, at 2:00 p.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 of the above-captioned rule.

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

17.30.716 CATEGORIES OF ACTIVITIES THAT CAUSE NONSIGNIFICANT CHANGES IN WATER QUALITY (1) ~~The~~ In addition to the activities listed in 75-5-317, MCA, the following categories or classes of activities have been determined by the department to cause changes in water quality that are nonsignificant due to their low potential for harm to human health or the environment and their conformance with the guidance found in 75-5-301~~(5)(c)~~, MCA:

(a) ~~activities which are nonpoint sources of pollution where reasonable land, soil, and water conservation practices are applied and existing and anticipated beneficial uses will be fully protected~~ a change in water quality resulting from the use of an individual sewage system if:

(i) the system is constructed in accordance with ARM 17.36.304;

(ii) the distance from the drain field, aligned with the longest dimension perpendicular to the direction of ground water flow, to the nearest state surface water is greater than 300 feet in the direction of ground water flow;

(iii) for a sewage system located on a lot that is less than 20 acres in area, the existing concentration of nitrate as nitrogen in the ground water in the uppermost aquifer beneath the lot is less than 2.0 mg/L;

(iv) the soils in the drain field area are medium textured (very fine sandy loam or finer) throughout the upper 8 feet;

(v) bedrock units, if present above the uppermost aquifer, are not fractured;

(vi) the system serves only a single domestic living unit; and

(vii) the system meets the following criteria:

(A) for a system located on an individual lot that is 1 acre in area or larger:

(I) the depth to the uppermost aquifer beneath the site is greater than 100 feet; and

(II) the percolation rate of the soil beneath the drain field is greater than 30 minutes per inch;

(B) for a system located on an individual lot 2 acres in area or larger:

(I) the depth to the uppermost aquifer beneath the site is greater than 50 feet; and

(II) the percolation rate of the soil beneath the drain field is greater than 30 minutes per inch;

(C) for a system located on an individual lot 5 acres in area or larger:

(I) the depth to the uppermost aquifer beneath the site is greater than 30 feet; and

(II) the percolation rate of the soil beneath the drain field is greater than 10 minutes per inch; and

(D) for a system located on an individual lot that is 20 acres in area or larger:

(I) the depth to the uppermost aquifer beneath the site is greater than 20 feet; and

(II) the percolation rate of the soil beneath the drain field is greater than 10 minutes per inch.

~~(b) use of agricultural chemicals in accordance with a specific agrichemical management plan promulgated under 80-15-212, MCA, if applicable, or in accordance with a US EPA approved label and where existing and anticipated uses will be fully protected;~~

~~(c) changes in existing water quality resulting from an emergency or remedial activity that is designed to protect public health or the environment and is approved, authorized, or required by the department;~~

~~(i) changes in existing water quality resulting from treatment of a public water supply system as defined in 75-6-102(12), MCA, or a public sewage system as defined in 75-6-102(11), MCA, by chlorination or other similar means designed to protect the public health or the environment and approved, authorized, or required by the department.~~

~~(d) use of drilling fluids, sealants, additives, disinfectants and rehabilitation chemicals in water well or monitoring well drilling, development, or abandonment, if used according to department approved water quality protection practices (ARM Title 36, chapter 21);~~

~~(e) short term changes in existing water quality resulting from activities authorized by the department pursuant to 75-5-308, MCA;~~

~~(f) land application of animal waste, domestic septage, or waste from public sewage treatment systems containing nutrients where wastes are land applied in a beneficial manner, application rates are based on agronomic uptake of applied nutrients and other parameters will not cause degradation;~~

~~(g) incidental leakage of water from a public water supply~~

~~system as defined in 75-6-102(12), MCA, or from a public sewage system as defined in 75-6-102(11), MCA, utilizing best practicable control technology designed and constructed in accordance with ARM 17.30.101 and 17.30.105;~~

~~(h) discharges of water from monitoring well or water well tests, hydrostatic pressure and leakage tests, or wastewater from the disinfection or flushing of water mains and storage reservoirs conducted in accordance with department approved water quality protection practices;~~

~~(i) oil and gas drilling, production, abandonment, plugging, and restoration activities performed in accordance with ARM Title 36, chapter 22;~~

~~(j) short term changes in existing water quality resulting from ordinary and everyday activities of humans or domesticated animals, including but not limited to recreational activities such as boating, hiking, fishing, wading, swimming and camping, fording of streams or other bodies of water by vehicular or other means, and drinking from or crossing of streams or other bodies of water by livestock and other domesticated animals;~~

~~(k) coal and uranium prospecting performed in accordance with ARM 26.4.1001, et seq.;~~

~~(l) solid waste management systems, motor vehicle wrecking facilities, and county motor vehicle graveyards licensed and operating in accordance with ARM Title 17, chapter 50;~~

~~(m) hazardous waste management facilities permitted and operated in accordance with ARM Title 17, chapter 54~~.

(2) ~~No application need be made to the department for a determination of whether a water quality change is nonsignificant if the activity causing the change is listed in (1) of this rule.~~ For purposes of (1)(a) of this rule:

(a) "Aquifer" means a saturated, permeable geologic material that is capable of sustained groundwater yield sufficient to meet domestic needs.

(b) The depth to the top of an unconfined aquifer is the depth to the seasonally high water table within the permeable geologic material.

(c) The applicant must provide evidence that demonstrates to the department's satisfaction that the individual sewage system for which an application has been filed meets the criteria of (1)(a) of this rule.

AUTH: 75-5-301, 75-5-303, MCA; IMP: 75-5-303, MCA

3. The Board is proposing these amendments in order to simplify review of individual sewage systems under the nondegradation policy by providing categorical exemptions for systems that will cause nonsignificant changes in water quality under the specified locational, soil and hydrogeologic conditions. The exemptions are summarized in table format in item 4. The current amendments have been modified from amendments previously proposed by the Board in MAR Notice No. 17-036 on the basis of public comment and recommendations from a task force composed of county sanitarians, professional engineers, hydrogeologists and the regulated community.

The Board is also proposing to delete existing subsections

(a) through (m) because they no longer need to be in the rule. The 1995 Legislature placed all 14 categories in 75-5-317(2), MCA.

As proposed, the Department anticipates that these exemptions would cover large areas of eastern and central Montana and parts of most counties in the state, but would not exempt sites within the alluvial valleys, such as the Helena, Gallatin or Missoula valleys or areas where fractured bedrock is near land surface.

The Board requests public comment on: (1) whether the rule should include a quantitative definition of an aquifer based on hydrologic properties, such as yield or hydraulic conductivity and/or lithologic properties and thickness, such as sand and gravel units greater than five feet in thickness, (2) whether the categorical exemptions should be limited to single parcels or minor subdivisions (five or fewer lots), and (3) whether categorical exemptions should be allowed in specific areas for which there is adequate evidence that the uppermost aquifer or adjacent surface water bodies are vulnerable to contamination from individual septic systems.

4. Summary of Categorical Exemptions:

	$\geq$ 1 acre	$\geq$ 2 acres	$\geq$ 5 acres	$\geq$ 20 acres
Depth to uppermost aquifer	> 100 feet	> 50 feet	> 30 feet	> 20 feet
Distance to surface water	> 300 feet	> 300 feet	> 300 feet	> 300 feet
Background nitrate	< 2.0 mg/L	< 2.0 mg/L	< 2.0 mg/L	Not applicable
Percolation rate	> 30 min/inch	> 30 min/inch	> 10 min/inch	> 10 min/inch
Soil properties throughout upper 8 feet	medium-textured (very fine sandy loam or finer)	medium-textured (very fine sandy loam or finer)	medium-textured (very fine sandy loam or finer)	medium-textured (very fine sandy loam or finer)
Geologic conditions	No fractured bedrock above aquifer	No fractured bedrock above aquifer	No fractured bedrock above aquifer	No fractured bedrock above aquifer

5. Interested persons may submit their data, views, or arguments concerning the proposed amendments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to the Board of Environmental Review,

Department of Environmental Quality, Metcalf Building, PO Box 200901, Helena, MT 59620-0901, no later than 5:00 p.m., August 11, 1997.

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

BOARD OF ENVIRONMENTAL REVIEW

CINDY E. WOUNKIN, Chairperson

Reviewed by:

JOHN F. NORTH, Rule Reviewer

Certified to the Secretary of State June 23, 1997.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of rules 17.30.1003 and 17.30.1022 amending the Montana ground water pollution control system regulations.	)))))	NOTICE OF PUBLIC HEARING FOR PROPOSED AMENDMENT OF RULES

(Water Quality)

To: All Interested Persons

1. On August 4, 1997, at 2:00 p.m., or as soon thereafter as it may be heard, the Board will hold a public hearing at Room 111 of the Metcalf Building, 1520 E. 6th Ave., Helena, Montana, to consider the amendment of the above-captioned rules.

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

17.30.1003 GROUND WATER QUALITY STANDARDS (1)-(2) Remain the same.

(3) Concentrations of dissolved substances in Class I and Class II ground water and in Class III ground water which is used for drinking water supplies may not exceed the human health standards listed in department Circular WQB-7, entitled "Montana Numeric Water Quality Standards" (December, 1995 edition).

(3) Remains the same but is renumbered (4).

~~(4)~~ (5)(a) The board hereby adopts and incorporates by reference the following:

(i)-(iv) Remain the same.

(b) The publications in (a)(i)-(iii) above set forth criteria for ground water quality, and department Circular WQB-7 establishes limits for toxic, carcinogenic, bioconcentrating, and harmful parameters in water and the human health standards listed in Department Circular WQB-7 are the standards that apply to ~~Montana ground waters~~ Class I and Class II ground water and Class III ground water that is used for drinking water. Copies of the publications listed in (a)(i)-(iv) above are available at the Department of Environmental Quality, PO-Box 200901, Helena, MT 59620-0901.

AUTH: 75-5-301, MCA; IMP: 75-5-301, MCA

17.30.1022 EXCLUSIONS FROM PERMIT REQUIREMENTS (1) In addition to the permit exclusions identified in 75-5-401, MCA, ~~For the purposes of this subchapter,~~ the following activities or operations are not subject to the permit requirements of ARM 17.30.1023, 17.30.1024, 17.30.1030 through 17.30.1033, 17.30.1040 and 17.30.1041:

~~(a) discharges or activities regulated under the federal~~

~~UIC program;~~

~~(b) solid waste management systems licensed pursuant to ARM 17.50.501, et seq.;~~

~~(c) natural persons disposing of their own normal household wastes on their own property;~~

~~(d) hazardous waste management facilities permitted pursuant to ARM 17.54.601, et seq.;~~

~~(e) water injection wells, reserve pits and produced water pits employed in oil and gas field operations and approved pursuant to ARM 36.22.1005, 36.22.1226 through 36.22.1234, and 17.30.1354;~~

~~(f) agricultural irrigation facilities;~~

~~(g) stormwater disposal or stormwater detention facilities;~~

~~(h) subsurface disposal systems for sanitary wastes serving individual residences;~~

~~(i) subsurface disposal systems reviewed and approved by the department pursuant to Title 50, chapters 50, 51 and 52, MCA, and systems reviewed and approved by the department or local authorities under Title 76, chapters 3 and 4, MCA;~~

~~(j) existing treatment works reviewed and approved by the department prior to October 29, 1982;~~

~~(k) facilities approved by the department pursuant to ARM 17.30.101;~~

~~(l) in situ mining of uranium facilities controlled under MIMUCS;~~

~~(m) mining operations subject to operating permits or exploration licenses in compliance with the Strip and Underground Mine Reclamation Act, 82-4-201, et seq., MCA, or the Metal Mine Reclamation Act, 82-4-301, et seq., MCA;~~

~~(n) projects reviewed under the provisions of the Major Facility Siting Act, Title 75, chapter 20, MCA.~~

(a) nonpoint sources of pollution where reasonable land, soil, and water conservation practices are applied and existing and future beneficial uses will be fully protected;

(b) motor vehicle wrecking facilities and county motor vehicle graveyards licensed pursuant to Title 75, Chapter 10, MCA;

(c) sources that obtain an MPDES permit pursuant to ARM Title 17, chapter 30, subchapter 13;

(d) public sewage systems and industrial waste discharge systems reviewed and approved by the department prior to [effective date of this rule] under the Title 75, chapter 6 and ARM 17.38.101. However, this exclusion does not apply if the system is modified or if the department determines that a system is in violation of a statute or rule administered by the department;

(e) sewage disposal systems reviewed and approved by the department under Title 76, chapter 4 and sewage disposal systems reviewed and approved by a local government under Title 76, chapter 3. However, this exclusion does not apply to aerobic package plant systems, mechanical treatment plants, nutrient removal systems, other alternative experimental systems which require a high degree of operation and maintenance, or systems which require monitoring pursuant to ARM 17.30.517(1)(d)(ix).

(f) sewage disposal systems reviewed and approved by the Department of Public Health and Human Services under Title 50, chapters 50, 51 and 52, and sewage disposal systems reviewed and approved by local boards of health under Title 50, chapter 2. However, this exclusion does not apply to aerobic package plant systems, mechanical treatment plants, nutrient removal systems, other alternative experimental systems which require a high degree of operation and maintenance, or systems which require monitoring pursuant to ARM 17.30.517(1)(d)(ix).

(2) Remains the same.

AUTH: 75-5-401, MCA; IMP: 75-5-401, 75-5-602, MCA

3. The Board is proposing these amendments in order to modify the application of water quality human health standards to different classes of ground water (ARM 17.30.1003) and on the modification of Montana Ground Water Pollution Control System (MGWPCS) permit exclusions (ARM 17.30.1022).

Standards - Existing MGWPCS rules adopt the human health standards in WQB-7 as the ground water quality standards for all Montana ground water. This proposed rule change does not change the WQB-7 standards but does change to which ground water classes the standards apply. The current application of the standards was promulgated in December, 1996 when the rules were modified to adopt the updated December, 1995 version of WQB-7. Prior to this 1996 update, the regulations contained the language that is proposed for this rulemaking. The rationale for the 1996 rule change was that to protect ground water quality for use as a source of drinking water, the human health standards should apply to all ground water.

The application of human health standards to all ground water does not reflect the real-world conditions. The board now believes that human health standards should only apply to ground water that is used or potentially used for drinking. Also because the standards are used to establish cleanup levels, the cleanup to human health standards is not necessary if the ground water cannot be used for drinking and the pollutant will not migrate and impact other state water. Therefore the rule would be amended to contain the previous language where the standards only apply to Class I and II ground water and Class III used for drinking. The proposed rule is silent on what standards apply to Class III ground water not used for drinking and Class IV ground water. In nearly all cases these poor quality ground waters are not used for drinking, therefore human health standards should not apply. Class III and Class IV ground water are not considered high-quality state waters so nondegradation requirements do not apply. Decisions related to the standards applicable to these ground waters are generally based upon use criteria or references, such as a requirement to maintain the quality necessary to support stock watering, or a performance standard, such as a requirement that no free floating fuel remain in the subsurface after a fuel leak.

MGWPCS Permit Exclusions - The 1995 Legislature placed in the Water Quality Act (WQA) most of the exclusions present in the MGWPCS rules (See 75-5-401(5), MCA.) It also granted the Board

the authority to grant new exclusions for other sources of ground water pollution that do not need a MGWPCS permit. The purpose of this portion of the proposed rule change is to update the rules to reflect changes made to the WQA. Several new exclusions are also proposed. The rationale for these exclusions is that the existing permit, licensing, or authorization review process will consider and address potential impacts to ground water. Therefore a duplicative MGWPCS permit is not necessary.

4. Interested persons may submit their data, views, or arguments concerning the proposed amendments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to the Board of Environmental Review, Department of Environmental Quality, Metcalf Building, PO Box 200901, Helena, MT 59620-0901, no later than 5:00 pm, August 4, 1997.

5. Claudia L. Massman 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 23, 1997.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of 17.8.504, regarding air quality operation fees, and 17.8.505, regarding air quality permit application fees.	NOTICE OF PUBLIC HEARING FOR PROPOSED AMENDMENT OF RULES (Air Quality)

To: All Interested Persons

1. On August 11, 1997, at 9:00 a.m. or as soon thereafter as it may be heard, the board will hold a public hearing at Room 104 of the State Capitol Building, Helena, Montana, to consider amendment of the above-captioned rules.

2. The board is proposing to amend the above-captioned rules in accordance with either ALTERNATIVE A or ALTERNATIVE B, below. The alternative proposed amendments appear as follows (new material is underlined; material to be deleted is interlined):

ALTERNATIVE A

17.8.504 AIR QUALITY PERMIT APPLICATION FEES

(1)-(4) Remain the same.

(5) The fee is the greater of:

(a) a fee calculated using the following formula:

tons of PM-10 emitted,
multiplied by $~~$15.50~~ 17.39; plus
tons of sulfur dioxide emitted,
multiplied by $~~$15.50~~ 17.39; plus
tons of lead emitted,
multiplied by $~~$15.50~~ 17.39; plus
tons of oxides of nitrogen emitted,
multiplied by $~~$3.88~~ 17.39; plus
tons of volatile organic compounds emitted,
multiplied by $~~$3.88~~ 17.39;

(b) or a minimum fee of:

(i) Remains the same.

(ii) $~~300~~ 400 for all other sources of air contaminants, not subject to (i) above, required to obtain an air quality permit under ARM Title 17, chapter 8, subchapter 7.

AUTH: 75-2-111, 75-2-220, MCA; IMP: 75-2-211, 75-2-220, MCA

17.8.505 AIR QUALITY OPERATION FEES (1)-(3) Remain the same.

(4) The air quality operation fee is based on the actual, or estimated actual, amount of air pollutants emitted during the

previous calendar year and is the greater of a minimum fee of ~~$300~~ 400 or a fee calculated using the following formula:

tons of PM-10 emitted,
multiplied by ~~$15.50~~ 17.39; plus
tons of sulfur dioxide emitted,
multiplied by ~~$15.50~~ 17.39; plus
tons of lead emitted,
multiplied by ~~$15.50~~ 17.39; plus
tons of oxides of nitrogen emitted,
multiplied by ~~$3.00~~ 17.39; plus
tons of volatile organic compounds emitted,
multiplied by ~~$3.00~~ 17.39
except that the total fee may not be greater than $200,000 per permit.

(5)-(6) Remain the same.

AUTH: 75-2-111, 75-2-220, MCA; IMP: 75-2-211, 75-2-220, MCA

ALTERNATIVE B

17.8.504 AIR QUALITY PERMIT APPLICATION FEES

(1)-(4) Remain the same.

(5) The fee is the greater of:

(a) a fee calculated using the following formula:

tons of PM-10 emitted,
multiplied by ~~$15.50~~ 22.50; plus
tons of sulfur dioxide emitted,
multiplied by ~~$15.50~~ 18.00; plus
tons of lead emitted,
multiplied by ~~$15.50~~ 18.00; plus
tons of oxides of nitrogen emitted,
multiplied by ~~$3.00~~ 14.85; plus
tons of volatile organic compounds emitted,
multiplied by ~~$3.00~~ 14.85;

(b) or a minimum fee of:

(i) Remains the same.

(ii) ~~$300~~ 400 for all other sources of air contaminants, not subject to (i) above, required to obtain an air quality permit under ARM Title 17, chapter 8, subchapter 7.

AUTH: 75-2-111, 75-2-220, MCA; IMP: 75-2-211, 75-2-220, MCA

17.8.505 AIR QUALITY OPERATION FEES (1)-(3) Remain the same.

(4) The air quality operation fee is based on the actual, or estimated actual, amount of air pollutants emitted during the previous calendar year and is the greater of a minimum fee of ~~$300~~ 400 or a fee calculated using the following formula:

tons of PM-10 emitted,
multiplied by ~~$15.50~~ 22.50; plus
tons of sulfur dioxide emitted,

multiplied by ~~$15.50~~ 18.00; plus
tons of lead emitted,
multiplied by ~~$15.50~~ 18.00; plus
tons of oxides of nitrogen emitted,
multiplied by ~~$3.88~~ 14.85; plus
tons of volatile organic compounds emitted,
multiplied by ~~$3.88~~ 14.85
except that the total fee may not be greater than $200,000 per permit.

(5)-(6) Remain the same.
AUTH: 75-2-111, 75-2-220, MCA; IMP: 75-2-211, 75-2-220, MCA

3. ARM 17.8.510 requires annual review of air quality permit fees. The proposed amendments to the air quality operation and permit application fee schedules in 17.8.504 and 17.8.505 are necessary to meet the increased direct and indirect costs of the department's air quality permit program. The amendments would produce the fees calculated by the department, as limited by the legislative appropriation, and as being necessary to fund the 1997 legislature's appropriation for operation of the air quality permit program for fiscal year 1998. In calculating the proposed fees, the department has consulted with interested parties.

The board is proposing a $200,000 cap on the air quality operation fees to bring the proportion of the program costs to be paid by some of the large emitters into proportion with the services they receive.

ALTERNATIVE A establishes a flat fee per ton of pollutant emitted. ALTERNATIVE B establishes a tiered fee system, with different fee rates/ton for different pollutants. The board is requesting public comment on the alternative approaches.

4. Interested persons may submit their data, views, or arguments, either orally or in writing, at the hearing, concerning which, if either, of the proposed amendments the board should adopt. Written data, views, or arguments may also be submitted to the Board of Environmental Review, Metcalf Building, P.O. Box 200901, Helena, MT 59620-0901, no later than 5:00 p.m. August 11, 1997.

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

BOARD OF ENVIRONMENTAL REVIEW

JOHN F. NORTH,
Rule Reviewer

CINDY YOUNKIN, Chairperson

Certified to the Secretary of State June 23, 1997.

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

In the matter of the amendment of rules 11.12.115, 11.12.413 and 11.12.601 pertaining to qualifications of child care staff, foster parents, and regular members of foster parents' households	))))))	NOTICE OF PROPOSED AMENDMENT NO PUBLIC HEARING IS CONTEMPLATED

TO: All Interested Persons

1. On September 8, 1997, the Department of Public Health and Human Services proposes to amend rules 11.12.115, 11.12.413 and 11.12.601 pertaining to qualifications of child care staff, foster parents, and regular members of foster parents' households.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice. If you request an accommodation, contact the department no later than 5:00 p.m. on July 25, 1997, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970.

2. The rules as proposed to be amended provide as follows. New language that is to be added is underlined. Language that is being deleted is interlined.

11.12.115 YOUTH CARE FACILITIES, GENERAL REQUIREMENTS FOR FOSTER PARENTS AND CHILD CARE STAFF WORKING IN YOUTH GROUP HOMES AND CHILD CARE AGENCIES (1) remains the same.

(2) The department may require a psychological evaluation or medical examination of, and/or a signed authorization for release of medical or psychological records from:

(a) any person applying for licensure as a foster parent, or any regular member of the household of a person applying for licensure as a foster parent;

(b) any foster parent, or any member of a foster parent household; and

(c) any person defined as child care staff ~~under ARM 11.12.101(1)~~.

(3) A personal statement of health for licensure form provided by the department must be completed for each person subject to the requirements of this rule. The form must be submitted to the department with the initial application for

licensure and annually thereafter.

(4) The department may require completion of a criminal background and child and adult protective services check on each person subject to the requirements of this rule.

AUTH: Sec. 41-3-1103, 41-3-1142 and 53-4-111, MCA
IMP: Sec. 41-3-1103, 41-3-1142 and 53-4-111, MCA

11.12.413 YOUTH GROUP HOME, STAFF (1) House parents, substitute house parents and other child care staff must meet the general requirements for child care staff set out in ARM 11.12.115.

~~(2) A DFS 33, "Personnel Statement of Health for Licensure" form provided by the department must be completed by the provider for each staff member and submitted with the initial application for licensure and annually thereafter.~~

(3) through (8) remain the same but are renumbered (2) through (7).

AUTH: Sec. 41-3-503, 41-3-1103, 41-3-1142, and 53-4-111, MCA
IMP: Sec. 41-3-503, 41-3-1103, 41-3-1142, 53-2-201 and 53-4-113, MCA

11.12.601 YOUTH FOSTER HOME, FOSTER PARENTS (1) Foster parents and other members of the household must meet the general requirements for child care staff set out in ARM 11.12.115. ~~To assist the department in evaluating the mental and physical health of applicants, foster parents and members of the foster home household,~~

(2) T~~t~~he applicant or licensee shall cooperate with the department in providing the ~~following~~ information required by ARM 11.12.115.~~:~~

~~(a) A DFS 33, "Personal statement of health for licensure" form provided by the department must be completed for each person living in the household and submitted to the department with the initial application for licensure and annually thereafter.~~

~~(b) The applicant for licensure or relicensure shall complete the application form provided by the department, which shall include questions regarding whether the applicant or other member living in the household has received inpatient or outpatient treatment for mental illness, drug or alcohol abuse.~~

AUTH: Sec. 41-3-1103(2)(c) and 41-3-1142, MCA
IMP: Sec. 41-3-1103(1)(b) and 41-3-1142, MCA

3. Section 41-3-1103, MCA authorizes rules consistent with the purposes of Title 41, chapter 3, part 11 of the Montana Code Annotated. The purpose of Part 11 is to allow for the establishment of substitute care for children placed out of their homes. § 41-3-1101, MCA.

More specifically, § 41-3-1142, MCA, authorizes rules prescribing the conditions upon which youth care facility licenses shall be issued. The statute also authorizes rules for the operation and regulation of "such facilities for minor children consistent with the welfare of such children." The proposed changes in this notice are necessary for establishing regulations consistent with the welfare of children placed out of their homes and into licensed youth care facilities.

Necessary rules to protect children include rules specifying that persons working or residing in facilities have minimum qualifications. Some of these minimum qualifications are already specified in ARM 11.12.115. For example, (1) of the rule requires that child care staff, and foster parents possess "good moral character," and be physically, mentally and emotionally competent to care for children placed in out-of-home care. (2) provides a means for evaluating whether minimum qualifications are present by allowing for medical and psychological evaluation of foster parents, household members of foster parents and child care staff.

The department has also obtained information to evaluate these qualifications through the provisions in ARM 11.12.413 and 11.12.601, requiring completion of a "Personal Statement of Health for Licensure" form. The provisions of these rules requiring completion of the form are proposed to be deleted, and a new provision in ARM 11.12.115 covering completion of the form is proposed to be inserted. The new provision applies generally to youth care facilities, and eliminates the existing repetition resulting from requiring completion of the form through language in both ARM 11.12.413 and 11.12.601.

In addition, rather than refer to a specific departmental form, the new provision proposed in ARM 11.12.115 simply requires completion of the "personal statement of health" form provided by the department. Under the proposal, no specific form is required so that the form may vary according to the person covered by the form. For example, the department may inquire on a more limited basis as to the health of a household member of foster parents, such as foster parents' natural children. On the other hand, the form for the foster parent would include a more detailed request for health status.

Another addition, appearing in (2) of the rule, clarifies that the department does not seek to verify qualifications of persons who are temporarily members of the foster parents' home. This clarification is necessary to prevent unintended application of the rule to persons such as temporary household guests.

In addition to personal statements of health, it is necessary to protect the welfare of foster children through criminal and protective services background checks of persons covered by (2)

of ARM 11.12.115. The department should be aware of, and if appropriate, reject applications of homes or facilities where persons at the home or facility have criminal backgrounds or protective services histories. The proposed language specifies the means for assuring that the department has information on criminal and protective services histories.

The proposal also deletes the reference to the definition of child care staff within ARM 11.12.102. Reference to the definition is unnecessary because the rules of statutory construction require that the term has the meaning as specifically defined in the code. § 1-2-107, MCA. The rules of statutory construction apply to construing administrative rules.

4. If a person who is directly affected by the proposed action 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 59620-2951, no later than August 4, 1997.

5. If the Department of Public Health and Human Services receives requests for a public hearing on the proposed action 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. Ten percent of those directly affected has been determined to be greater than 25 based on the number of individuals affected by rules covering criminal records and protective service checks of foster parents and youth care facility staff.

Rule Reviewer

Director, Public Health and Human Services

Certified to the Secretary of State June 23, 1997.

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

In the matter of the amendment of rule 11.7.313 pertaining to the model rate matrix used to determine foster care maintenance payments	)))))	NOTICE OF PROPOSED AMENDMENT NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On September 8, 1997, the Department of Public Health and Human Services proposes to amend rule 11.7.313 pertaining to the model rate matrix used to determine foster care maintenance payments.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice. If you request an accommodation, contact the department no later than 5:00 p.m. on July 25, 1997, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970.

2. The rule as proposed to be amended provides as follows. Matter to be added is underlined. Matter to be deleted is interlined.

11.7.313 CLASSIFICATION MODEL (1) through (5) remain the same.

(6) The department's model rate matrix, effective July 1, 1995~~2~~, is hereby adopted and incorporated by this reference. Copies of the model rate matrix of the department are available upon request from the ~~Administrative Support Division, Department of Family Services,~~ Operations and Fiscal Bureau, Child and Family Services Division, P.O. Box 8005, Helena, Montana 59604. The department shall review and revise its model rate matrix at least once every two years.

AUTH: Sec. 41-3-1103 and 52-1-103, MCA
IMP: Sec. 41-3-1103, 41-3-1122 and 52-1-103, MCA

3. The rate matrix must be changed to implement the rate increase for foster care maintenance payments funded by the 1997 Legislature. The rate increase was funded under House Bill 2. The Montana Legislature through House Bill 2, and the appropriation process, has mandated that the department pay the higher rates. The rule, which controls the rates, must therefore be changed to implement the legislative mandate. The

new version of the rate matrix must be referenced in the rule. § 2-4-307, MCA. Publication of the lengthy matrix in the administrative code would be unduly cumbersome.

4. In the event the changes are approved, the Department proposes to apply the amendments retroactive to July 1, 1997. Since the passage of House Bill 2, Department staff have been working on reformulating the matrix. This is the nearest filing date to the determination that the matrix would be complete and ready for implementation on July 1, 1997. Therefore, this notice was not filed at an earlier date due to the uncertain time lines involved with reformulating the matrix.

5. Interested persons may submit their data, views or arguments concerning the proposed action in writing to Laura Harden, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 202951, Helena, MT 59620-2951, no later than August 4, 1997.

6. If a person who is directly affected by the proposed action 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 59620-2951, no later than August 4, 1997.

7. If the Department of Public Health and Human Services receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of those who are directly affected by the proposed action, 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 and a notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be more than 25 based on the number of individuals affected by rules covering the rate matrix used to determine foster care maintenance payments.

Rule Reviewer

Director, Public Health and Human Services

Certified to the Secretary of State June 23, 1997.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT) NOTICE OF PUBLIC HEARING ON
of ARM 42.12.106 AND 42.12.122) PROPOSED AMENDMENTS
relating to Licensing of)
Restaurants which Meet Certain)
Minimum Qualifications)

TO: All Interested Persons:

1. On August 14, 1997, at 2:00 p.m., a public hearing will be held in the Fourth Floor Conference Room of the Mitchell Building, at Helena, Montana, to consider the amendments of ARM 42.12.106 and 42.12.122 relating to licensing of restaurants which meet certain minimum qualifications.

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

42.12.106 DEFINITIONS (1) through (8) remain the same.

(9) "Service bar" means an area where alcoholic beverages are stored and prepared for table service delivery to patrons for on-premises consumption. Consumption of alcoholic beverages by patrons or any other person is not permitted at the service bar.

AUTH: Sec. 16-1-303, MCA; IMP, Secs. 16-4-105, 16-4-207 and 16-4-420 and 16-4-423, MCA

42.12.122 DETERMINATION OF SUITABILITY OF PREMISES (1) and (2)(a) remain the same.

(b) The investigator can easily ascertain the type of alcoholic beverages business that is being conducted on the premises due to indoor and outdoor advertising, signage and/or the general layout and atmosphere of the premises to be licensed. The two circumstances to be ascertained are:

(i) A beer and/or table wine license issued for off-premises consumption operates at a premises recognizable as a grocery store or a pharmacy as defined in ARM 42.12.126; and

(ii) A license issued for on-premises consumption operates at a premises recognizable as a restaurant, bar, tavern or other business directly related to the on-premises consumption of alcoholic beverages such as a bowling alley, hotel, or gambling casino~~.~~. The licensed premises ~~having~~ must have a bar preparation area ~~and~~ with sufficient seating~~,~~ to encourage patrons to remain on the premises and consume the alcoholic beverages sold by the drink. Sufficient seating must consist of not less than 12 seats at either ~~the~~ a bar, not including a service bar as defined in ARM 42.12.106, or tables, booths~~,~~ ~~or~~ gaming areas or ~~a~~ any combination of the above~~, to encourage patrons to remain on the premises and consume the alcoholic~~

~~beverages sold by the drink~~.

(iii) A restaurant beer and wine licensed premises must have a service bar as defined in ARM 42.12.106 and sufficient seating as defined in 16-4-420, MCA.

(c) through (j) remain the same.

(3) and (4) remain the same.

AUTH: Sec. 16-1-303 MCA; IMP, Secs. 16-4-402, 16-4-404, 16-4-405 and 16-4-420, MCA

3. The amendment to ARM 42.12.106 is necessary because Section 1, Chapter 465, Laws of 1997, specifically provides that restaurants licensed for the sale of beer and wine could not have a bar per se. The law further delegates the authority to the Department to define the term "service bar". The term "service bar" must be defined to effectuate the law because this is the only area in a restaurant from which beer and wine may be served. The amendments to ARM 42.12.122 describe additional premises suitability requirements for restaurant beer and wine licensees, and the amendments to (2)(b)(ii) are general housekeeping amendments.

4. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to:

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

no later than August 22, 1997.

5. Cleo Anderson, Department of Revenue, Office of Legal Affairs, has been designated to preside over and conduct the hearing.

Cleo Anderson
CLEO ANDERSON
Rule Reviewer

Mary Bryson
MARY BRYSON
Director of Revenue

Certified to Secretary of State June 23, 1997

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of temporary rules I through XIII and amendment to ARM 42.18.106, 42.18.107, 42.18.109, 42.18.110, 42.18.112, 42.18.113, 42.18.115, 42.18.116, 42.18.118, 42.18.119, 42.18.122, 42.18.124 and 42.18.126 relating to Assessment of Property and Issuing Tax Notices Under Senate Bill 195	NOTICE OF THE PROPOSED ADOPTION OF TEMPORARY RULES AND TEMPORARY AMENDMENT OF CURRENT RULES NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On August 7, 1997, the Department of Revenue proposes to adopt temporary rules and temporarily amend ARM 42.18.106, 42.18.107, 42.18.109, 42.18.110, 42.18.112, 42.18.113, 42.18.115, 42.18.116, 42.18.118, 42.18.119, 42.18.122, 42.18.124 and 42.18.126 on property taxes relating to residential and industrial property, adopted pursuant to 2-4-303(2), MCA. On April 24, 1997, Chapter 463, Session Laws of 1997 became effective. The act phased in the effect of the current property reappraisal cycle for class 3, 4, and 10 property. It allows an extension of the 1997 statutory deadlines relating to property taxes. The act provides for an adjustment of tax rates for class three and four property to compensate for increased valuation of taxable property and revises the property tax limitations implementing initiative measure number 105 by changing the exceptions to the limitations. The act provides for an immediate effective date and a retroactive applicability date.

The department finds that it is necessary to adopt these temporary rules in order for assessment notices to be sent to taxpayers as quickly as possible and to provide local governments with an opportunity to adequately prepare their annual budgets.

2. The temporary rules will be effective until October 1, 1997.

3. The proposed temporary rules provide as follows:

RULE I DEFINITIONS ASSOCIATED WITH VALUATION PHASE-IN

The following definitions are necessary to implement the provisions 15-6-134, 15-7-102 and 15-7-111, MCA, as amended in Ch. 463, L. 1997:

(1) "1996 tax year value" means the market value of a property which appears on the 1996 assessment notice of that property.

(2) "Current year phase-in value" is the difference between

the value before reappraisal (VBR) and the reappraisal value times the phase-in percentage added to the VBR. The current year phase-in value is the amount subject to tax each year and is determined by the following formula:

Current year phase-in =
[(Reappraisal(REAP) value - VBR) x phase-in percentage]
+ VBR

(3) "Destruction" means the removal or deletion of improvements, buildings, living areas, garages, and outbuildings caused by burning, razing, or natural disaster.

(4) "Improvement grade change" means a change in the quality of construction of an improvement. Each improvement grade signifies a different level of construction quality. Examples of improvement grades include, but are not limited to the following:

(i) 1F-1 = cheap construction;

(ii) 1F-5 = average construction; and

(iii) 1F-9 = superior construction.

(5) "Land productivity change (grade change)" means a change in the productive capacity or yield of agricultural or forest land. In a land productivity change the land use does not change, rather the land as currently used simply becomes more or less productive. For example, a productivity change in grazing land may occur when it is discovered that the productivity potential has decreased due to a new saline seep on the land. Because the land continues to be used as grazing land the department shall continue to classify the land as agricultural grazing land, but the grade of the grazing land may be changed to reflect its lessened productivity.

(6) "Land reclassification" means changing the use of land from one type of agricultural use to a different type of agricultural use. For example, a land reclassification occurs when agricultural land that was previously used as grazing land is converted to irrigated land. In a land reclassification, the land is dedicated to agricultural purposes both before and after the change in land use. It is this characteristic that distinguishes a land reclassification from the more general land use change.

(7) "Land split" means the division of a single property into two or more properties for the ultimate purpose of conveying one or more of the properties to a new owner or owners.

(8) "Land use change" means the conversion of a current use of land to a different, alternate use. Examples of land use changes contained in this definition include, but are not limited to, the following:

(i) agricultural land converted to tract land;

(ii) forest land converted to tract land; or

(iii) forest land converted to agricultural land.

(9) "Neighborhood (NBHD) group percentage" means the

percent of change in value from the total 1996 tax year value to the total 1997 reappraisal value, excluding properties with new construction, for those homogeneous areas within each county or between counties that have been defined as a neighborhood group. The neighborhood group percentage is determined by using the following formula:

$$\text{Neighborhood Group Percentage} = \frac{\text{(Total 1997 NBHD REAP Value - Total 1996 NBHD Tax Year Value)}}{\text{Total 1996 NBHD Tax Year Value}}$$

(i) Individual neighborhood group percentages will be determined for residential land, commercial land, residential improvements, and commercial improvements.

(10) "New construction" means the construction, addition, or substitution of improvements, buildings, living areas, garages and outbuildings; or the extensive remodeling of existing improvements, buildings, living areas, garages, and outbuildings.

(11) "Phase-in percentage" is 2% per year. The phase-in percentage accumulates annually and is determined by the following formula:

Current Phase-In Percentage =
(Current tax year - 1996) x 2%

(i) The following illustrates a 1997 application of the phase-in percentage formula:

(A) 1997 Phase-in percentage = (1997-1996) x 2%;
(B) 1997 Phase-in percentage = 1 x 2%; or
(C) 1997 Phase-in percentage = 2%.

(ii) The following illustrates a 1998 application of the phase-in percentage formula:

(A) 1998 Phase-in percentage = (1998-1996) x 2%
(B) 1998 Phase-in percentage = 2 x 2%
(C) 1998 Phase-in percentage = 4%

(iii) The following table illustrates the phase-in percentage for the first 5 years of its application:

Year	Phase-In Percentage
1997	2%
1998	4%
1999	6%
2000	8%
2001	10%

(12) "Reappraisal (REAP) value" means the full 1997 value determined for the current reappraisal cycle pursuant to 15-7-111, MCA, adjusted annually for new construction or destruction. The 1997 reappraisal value reflects a market value of the property on January 1, 1996. A current year REAP value is the same as the 1997 reappraisal value of the property if there is

no new construction, destruction, land splits, land use changes, land reclassifications, land productivity changes, improvement grade changes or other changes made to the property during 1997 or subsequent tax years.

(13) "Value before reappraisal (VBR)" means the 1996 tax year value adjusted for any new construction or destruction that occurred in the prior year. The VBR for the 1997 tax year and subsequent years is the same as the 1996 tax year value if there is no new construction, destruction, land splits, land use changes, land reclassifications, land productivity changes, improvement grade changes or other changes made to the property during 1996 or subsequent tax years.

AUTH: Sec. 15-1-201 and 15-7-111, MCA; IMP: Sec. 15-7-111, MCA

RULE II DETERMINATION OF VALUE BEFORE REAPPRAISAL (VBR)

(1) For property that contains no new construction or destruction, no land reclassification or use change or other property change, the current year VBR will be the same as the prior year VBR.

(2) For class 3 property that contains a land reclassification or a land use change, the current year VBR will be the prior year VBR of the new classification or land use change.

(3) For class 3 property that contains a productivity or grade change, the current year VBR will be the prior year VBR of the prior grade.

(4) For class 4 property (excluding industrial property) that contains new construction, the current year VBR is determined by dividing the reappraisal value by 1 plus the percent of neighborhood group change. The following formula illustrates that calculation:

VBR =
Reappraisal value /(1 + NBHD group percentage)

(5) For class 4 property that has been either partially or wholly destroyed, the current year VBR is calculated by first determining what percent of the property has been destroyed. That percent is multiplied by the prior year improvement VBR to determine a value amount that is attributed to the destruction. The prior year VBR is then the difference between the prior year VBR and the value attributed to the destruction. The following formula illustrates that calculation:

VBR =
Prior year VBR -
(Percent of property destroyed x prior year improvement VBR)

(6) For class 10 property that contains a land reclassification or a land use change, the current year VBR will be the prior year VBR of the new classification or land use change.

(7) For class 10 property that contains a productivity or grade change, the current year VBR will be the prior year VBR of the prior grade.

(8)(a) The only instances when the current year VBR will be less than the prior year VBR are:

(i) In the case of class 4 improvements that have been partially or wholly destroyed;

(ii) When the neighborhood group percentage change is negative and there is new construction; or

(iii) When land use changes have occurred.

(b) In all other situations, the current year VBR will be the greater of the value determined through application of the formula in (4) or the prior year VBR.

AUTH: Sec. 15-1-201 and 15-7-111, MCA; IMP: Sec. 15-7-111, MCA

RULE III DETERMINATION OF CURRENT YEAR PHASE-IN VALUE FOR CLASS 3, CLASS 4, AND CLASS 10 PROPERTY (1) The department is required to determine the current year phase-in value for each property in class 3, class 4, and class 10 annually. The current year phase-in value is determined by adding the difference between the reappraisal value and the VBR times the phase-in percentage to the VBR.

AUTH: Sec. 15-1-201 and 15-7-111, MCA; IMP: Sec. 15-7-111, MCA

RULE IV NEW CONSTRUCTION DETERMINATION (1) The following criteria will be used to identify new construction and destruction:

(a) All residential or commercial structures, outbuildings, and mobile homes that were built or remodeled in the preceding year;

(b) Properties with land splits;

(c) Properties with new attached garages built in the preceding year;

(d) Properties which had any land reclassification or land use changes; or

(e) Properties with outbuildings built in the preceding year.

(2) The following will not be considered new construction or destruction:

(a) Properties with square footage changes due to correction of measurements or sketch vectoring, or due to coding corrections for story heights, such as story with full finished attic to 1½ stories;

(b) Properties with grade changes;

(c) Properties with condition, desirability, utility (CDU) factor changes;

(d) Properties with changes in heat or air conditioning;

(e) Residential dwellings with changes in square footage of living area of 100 square feet or less;

(f) Properties with changes in effective year; or

(g) Properties with changes in finished basement areas.

AUTH: Sec. 15-1-201 and 15-7-111 MCA; IMP: Sec. 15-7-111, MCA

RULE V ASSESSMENT NOTICES AND VALUATION REVIEWS (1) The assessment notice shall include:

(a) Quantity (size or number of properties);
(b) Reappraisal value;
(c) Value before reappraisal (VBR);
(d) Current year phase-in value;
(e) Previous year tax rate;
(f) Previous year taxable value;
(g) Current year tax rate;
(h) Current year taxable value;
(i) The total amount of mills levied against the property in the prior year; and
(j) Statement that the notice is not a tax bill.

(2) The only items on the assessment which are eligible for review by the department are:

(a) Quantity;
(b) Reappraisal value;
(c) Value before reappraisal (VBR) for those properties that had new construction;
(d) Current year phase-in value; and
(e) Methods used to determine those values which are shown in (2)(b) through (d).

AUTH: Sec. 15-1-201 and 15-7-111, MCA; IMP: Sec. 15-7-102, 15-7-111, MCA and Sec. 11, Ch. 463, L. 1997

RULE VI CERTIFIED MILL LEVY DETERMINATION (1) The value of class 4 new construction, for purposes of determining a certified mill levy for the current tax year, is the difference in the taxable value of class 4 property from the previous year to the current year.

AUTH: Sec. 15-1-201 and 15-7-111, MCA; IMP: Sec. 15-6-134 and 15-7-111, MCA

RULE VII PROPERTY TAX ASSISTANCE AND TAX RELIEF PROGRAMS (1) All valuation reductions allowed for under the property tax assistance program or other property tax relief programs will be applied against the current year phase-in value.

AUTH: Sec. 15-1-201 and 15-7-111, MCA; IMP: Sec. 15-7-111, MCA

RULE VIII DEFINITIONS - INDUSTRIAL PROPERTY The definitions set forth in RULE I apply to industrial property unless otherwise specifically indicated in this chapter. The following definitions are necessary to further describe terms used in this chapter:

(1) "Annual appraisal trend factor class 5" means a factor used to annually reappraise class 5 qualifying air and water pollution control property, new industrial property, gasohol facilities, qualifying research and development firms and electrolytic reduction facilities real property by trending their cost values up or down based on accepted cost indices.

(2) "New construction trend factor" means a factor used to adjust reappraisal values and VBRs (values before reappraisal)

in instances where the property has new construction or destruction. The factor will be derived from nationally accepted cost indices.
AUTH: Sec. 15-1-201 and 15-7-111, MCA; IMP: Sec. 15-7-111, MCA

RULE IX DETERMINATION OF VALUE BEFORE REAPPRAISAL (VBR) FOR INDUSTRIAL PROPERTIES (CLASS 4) (1) For property that contains no new construction or destruction, or land use change, the current year VBR will be the same as the prior year VBR.

(2) The reappraisal value of new construction will be trended back to a VBR. The trend used to arrive at the VBR shall be calculated using cost indices from "Marshall Valuation Service". The trend used shall be called the new construction trend factor. The new construction trend factor for industrial properties is .892. The VBR will be adjusted to reflect the new construction as if it were in place in 1996. The same method will be used in subsequent tax years. For purposes of illustration assume the following:

Reappraisal New Construction Value = $100,000
New Construction Trend Factor = .892

(a) Given these assigned values the trend factor is applied as follows:

New construction VBR =
REAP new construction value x new construction trend factor

Example: $89,000 = $100,000 x .892

(3) Property destroyed after January 1, 1996 will be removed from the VBR of the industrial site. The destroyed property also will be deducted from the reappraised value at its reappraised cost.

(4) Land which has been reclassified as industrial land after January 1, 1996 will have the VBR determined by comparing other 1996 market values of similar industrial land, and determining a comparable VBR for the new industrial land.
AUTH: Sec. 15-1-201 and 15-7-111, MCA; IMP: Sec. 15-7-111, MCA

RULE X BASIC DETERMINATION OF PHASE-IN VALUE FOR CLASS 4 INDUSTRIAL PROPERTY (1) The phase-in value is the difference between the reappraisal value and the VBR times the phase-in percentage added to the VBR.

Formula: Phase-in value =
[(REAP value - VBR) x phase-in %]
+ VBR

AUTH: Sec. 15-1-201 and 15-7-111, MCA; IMP: Sec. 15-7-111, MCA

RULE XI VALUATION OF CLASS 5 REAL PROPERTY FOR QUALIFYING AIR AND WATER POLLUTION CONTROL PROPERTY, NEW INDUSTRIAL PROPERTY, GASOHOL FACILITIES, QUALIFYING RESEARCH AND DEVELOPMENT FIRMS AND ELECTROLYTIC REDUCTION FACILITIES (1) Qualifying air and water pollution control property, new industrial property, gasohol facilities, qualifying research and development firms and electrolytic reduction facilities real property included in class 5 will be revalued annually. The department will apply an annual appraisal trending factor to the qualifying property to arrive at the market value. An annual appraisal trend factor will be calculated, using the January cost indices from Marshall Valuation Service, for the current tax year. If Marshall Valuation Service is not available other accepted cost manuals or indices may be used.

(2) The annual appraisal trend factor will be applied to the previous year's market value to arrive at the current year's market value.

AUTH: Sec. 15-1-201 and 15-7-111, MCA; IMP: Sec. 15-7-111, MCA

RULE XII VALUATION OF CLASS 5 LOCALLY ASSESSED ELECTRIC AND TELEPHONE COOPERATIVES (1) The department shall annually appraise locally assessed electric and telephone cooperatives property using the methods described in Title 42, chapter 22, Administrative Rules of Montana. The methods described are used in appraising other property with similar characteristics.

AUTH: Sec. 15-1-201 and 15-7-111, MCA; IMP: Sec. 15-7-111, MCA

RULE XIII VALUATION OF CLASS 7 PROPERTY (1) The department shall annually appraise class 7 property using the methods described in Title 42, chapter 22, Administrative Rules of Montana. The methods described are used in appraising other property with similar characteristics.

AUTH: Sec. 15-1-201 and 15-7-111, MCA; IMP: Sec. 15-7-111, MCA

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

42.18.106 1997 MONTANA REAPPRAISAL PLAN (1) and (2) remain the same.

(3) This rule applies to tax years from January 1, 1997, through December 31, ~~1999~~ 2009.

AUTH: Sec. 15-1-201, MCA; IMP, Sec. 15-7-111 and 15-7-133, MCA

42.18.107 ~~2000~~ 2010 MONTANA REAPPRAISAL PLAN (1) The ~~2000~~ 2010 Montana reappraisal plan consists of seven parts: residential appraisal, commercial appraisal, agricultural and forest land appraisal, industrial appraisal, certification and training requirements, manuals, and progress reporting. The Montana reappraisal plan implements the legislature's cyclical reappraisal program set forth in 15-7-111, MCA.

(2) The Montana reappraisal plan provides for the valuation of residential property, commercial property, agricultural and forest land property, and industrial property.

A computer assisted mass appraisal system (CAMAS) is used to assist in the valuation process. The department's plan is to determine a new appraised value for each property of land, each residential improvement, each commercial improvement, each agricultural improvement, and each industrial improvement. The department will enter the new appraised values on the tax rolls for tax year ~~2000~~ 2010.

(3) The results of this plan apply to tax years beginning January 1, ~~2000~~ 2010, and thereafter.

AUTH: Sec. 15-1-201, MCA; IMP, Sec. 15-7-111 and 15-7-133, MCA

42.18.109 RESIDENTIAL REAPPRAISAL PLAN (1) through (9) remain the same.

(10) This rule applies to tax years from January 1, 1997, through December 31, ~~1999~~ 2009.

AUTH: Sec. 15-1-201 and 15-7-111, MCA; IMP, Sec. 15-7-111, MCA

42.18.110 ~~2000~~ 2010 RESIDENTIAL REAPPRAISAL PLAN (1) through (4) remain the same.

(5) Residential lots and tracts are valued through the use of computer assisted land pricing (CALP) models. Homogeneous areas within each county are geographically defined as neighborhoods. The CALP models will reflect January 1, ~~1999~~ 2009, land market values.

(6) through (8) remain the same.

(9) The results of this rule apply to tax years beginning January 1, ~~2000~~ 2010, and thereafter.

AUTH: Sec. 15-1-201 and 15-7-111, MCA; IMP, Sec. 15-7-111, MCA

42.18.112 COMMERCIAL REAPPRAISAL PLAN (1) through (9) remain the same.

(10) This rule applies to tax years from January 1, 1997, through December 31, ~~1999~~ 2009.

AUTH: Sec. 15-1-201 and 15-7-111, MCA; IMP, Sec. 15-7-111, MCA

42.18.113 ~~2000~~ 2010 COMMERCIAL REAPPRAISAL PLAN (1) through (4) remain the same.

(5) Commercial lots and tracts are valued through the use of computer assisted land pricing (CALP) models. Homogeneous areas within each county are geographically defined as neighborhoods. The CALP models will reflect January 1, ~~1999~~ 2009, land market values.

(6) through(8) remain the same.

(9) The results of this rule apply to tax years beginning January 1, ~~2000~~ 2010, and thereafter.

AUTH: Sec. 15-1-201 and 15-7-111, MCA; IMP, Sec. 15-7-111, MCA

42.18.115 AGRICULTURAL/FOREST LAND AND IMPROVEMENTS REAPPRAISAL PLAN (1) through (7) remain the same.

(8) This rule applies to tax years from January 1, 1997, through December 31, ~~1999~~ 2009.

AUTH: Sec. 15-1-201 and 15-7-111, MCA; IMP, Sec. 15-7-111, MCA

42.18.116 ~~2000~~ 2010 AGRICULTURAL/FOREST LAND AND IMPROVEMENTS REAPPRAISAL PLAN (1) through (6) remain the same.

(7) The results of this rule apply to tax years beginning January 1, ~~2000~~ 2010 and thereafter.

AUTH: Sec. 15-1-201 and 15-7-111, MCA; IMP, Sec. 15-7-111, MCA

42.18.118 INDUSTRIAL PROPERTY REAPPRAISAL (1) and (2) remain the same.

(3) This rule applies to tax years from January 1, 1997, through December 31, ~~1999~~ 2009.

AUTH: Sec. 15-1-201 and 15-7-111, MCA; IMP, Sec. 15-7-111, MCA

42.18.119 ~~2000~~ 2010 INDUSTRIAL PROPERTY REAPPRAISAL

(1) and (2) remain the same.

(3) The results of this rule apply to tax years beginning January 1, ~~2000~~ 2010, and thereafter.

AUTH: Sec. 15-1-201 and 15-7-111, MCA; IMP, Sec. 15-7-111, MCA

42.18.122 REVALUATION MANUALS (1) For residential, and agricultural/forest lands new construction, the January 1, 1996 Montana Appraisal Manual will be used through tax year ~~1999~~ 2009.

(2) For the reappraisal cycle ending December 31, ~~1999~~ 2009, the ~~1999~~ 2009 Montana Appraisal Manual will be used for valuing residential and agricultural/forest lands real property. The cost base schedules will reflect January 1, ~~1999~~ 2009 cost information.

(3) For commercial and industrial new construction the January 1, 1996 Montana Appraisal Manual will be used through tax year ~~1999~~ 2009. If the property is not listed, other construction cost manuals such as Marshall Valuation Service, Boeckh or Means will be used with a publication date as close to the Montana Appraisal Manual as possible.

(4) For the reappraisal cycle ending December 31, ~~1999~~ 2009, the ~~1999~~ 2009 Montana Appraisal Manual will be used for valuing commercial and industrial real property if the property is listed. If not, other construction cost manuals such as Boeckh; Marshall Valuation Service Manual; Richardson Engineering Services, Inc., entitled "Process Plant Construction Estimating Standards"; or R.S. Means Company, Inc., entitled "Building Construction Cost Data" will be used with a publication date as close as possible to the Montana Appraisal Manual. The cost base schedules will reflect January 1, ~~1999~~ 2009 cost information.

(5) Copies of the valuation manuals used by the department of revenue may be reviewed in the county appraisal/assessment offices or purchased from the department at the Property Assessment Division, Helena, Montana 59620.

(6) The results of this rule apply to tax years beginning January 1, 1997, and thereafter.

AUTH: Sec. 15-1-201 and 15-7-111, MCA; IMP, Sec. 15-7-111, MCA

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

(a) For the taxable years from January 1, 1986, through December 31, 1992, all property classified in 15-6-134, MCA, (class ~~four~~ 4) must be appraised at its market value as of January 1, 1982.

(b) For the taxable years from January 1, 1993, through December 31, 1996, all property classified in 15-6-134, MCA, (class ~~four~~ 4) must be appraised at its market value as of January 1, 1992.

(c) For the taxable years from January 1, 1997, through December 31, ~~1999~~ 2009, all property classified in 15-6-134, MCA, (class ~~four~~ 4) must be appraised at its market value as of January 1, 1996.

(d) For the taxable years from January 1, ~~2000~~ 2010 through December 31, ~~2002~~ 2012, all property classified in 15-6-134, MCA, (class ~~four~~ 4) must be appraised at its market value as of January 1, ~~1999~~ 2009.

AUTH: Sec. 15-1-201 and 15-7-111, MCA; IMP, Sec. 15-6-134, 15-7-103, and 15-7-111, MCA

42.18.126 PROGRESS REPORTING (1) remains the same.

~~(2) Regional progress report information is summarized each month and shall be available by the third week of the following month for use in making presentations before the revenue oversight committee.~~

AUTH: Sec. 15-1-201 and 15-7-111, MCA; IMP, Sec. 15-7-111, MCA

5. The rationale for the temporary rules is set forth in paragraph 1.

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

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

no later than August 4, 1997.

7. If a person who is directly affected by the proposed action wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Cleo Anderson at the above address no later than August 4, 1997.

8. If the agency receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the Administrative Code Committee of the Legislature; from a governmental subdivision, or agency; or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing

will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be greater than 25.

CLEO ANDERSON
Rule Reviewer

MARY BRYSON
Director of Revenue

Certified to Secretary of State June 23, 1997

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of new rules I through XIII and amendment to ARM 42.18.106, 42.18.107, 42.18.109, 42.18.110, 42.18.112, 42.18.113, 42.18.115, 42.18.116, 42.18.118, 42.18.119, 42.18.122, 42.18.124 and 42.18.126 relating to Assessment of Property and Issuing Tax Notices	) NOTICE OF PUBLIC HEARING ON THE PROPOSED ADOPTION OF NEW RULES AND AMENDMENT OF CURRENT RULES

TO: All Interested Persons:

1. On July 28, 1997, at 1:00 p.m., a public hearing will be held in the Fourth Floor Conference Room of the Mitchell Building, at Helena, Montana, to consider the adoption of new rules and amendment of ARM 42.18.106, 42.18.107, 42.18.109, 42.18.110, 42.18.112, 42.18.113, 42.18.115, 42.18.116, 42.18.118, 42.18.119, 42.18.122, 42.18.124 and 42.18.126 on property taxes relating to residential and industrial property. On April 24, 1997, Chapter 463, Session Laws of 1997 became effective. The act phased in the effect of the current property reappraisal cycle for class 3, 4, and 10 property. It allows an extension of the 1997 statutory deadlines relating to property taxes. The act provides for an adjustment of tax rates for class three and four property to compensate for increased valuation of taxable property and revises the property tax limitations implementing initiative measure number 105 by changing the exceptions to the limitations. The act provides for an immediate effective date and a retroactive applicability date.

The department is adopting identical temporary rules in order for assessment notices to be sent to taxpayers as quickly as possible and to provide local governments with an opportunity to adequately prepare their annual budgets.

2. The proposed new rules provide as follows:

RULE I DEFINITIONS ASSOCIATED WITH VALUATION PHASE-IN

The following definitions are necessary to implement the provisions 15-6-134, 15-7-102 and 15-7-111, MCA, as amended in Ch. 463, L. 1997:

(1) "1996 tax year value" means the market value of a property which appears on the 1996 assessment notice of that property.

(2) "Current year phase-in value" is the difference between the value before reappraisal (VBR) and the reappraisal value times the phase-in percentage added to the VBR. The current year phase-in value is the amount subject to tax each year and is determined by the following formula:

Current year phase-in =
[(Reappraisal (REAP) value - VBR) x phase-in percentage]
+ VBR

(3) "Destruction" means the removal or deletion of improvements, buildings, living areas, garages, and outbuildings caused by burning, razing, or natural disaster.

(4) "Improvement grade change" means a change in the quality of construction of an improvement. Each improvement grade signifies a different level of construction quality. Examples of improvement grades include, but are not limited to the following:

(i) 1F-1 = cheap construction;

(ii) 1F-5 = average construction; and

(iii) 1F-9 = superior construction.

(5) "Land productivity change (grade change)" means a change in the productive capacity or yield of agricultural or forest land. In a land productivity change the land use does not change, rather the land as currently used simply becomes more or less productive. For example, a productivity change in grazing land may occur when it is discovered that the productivity potential has decreased due to a new saline seep on the land. Because the land continues to be used as grazing land the department shall continue to classify the land as agricultural grazing land, but the grade of the grazing land may be changed to reflect its lessened productivity.

(6) "Land reclassification" means changing the use of land from one type of agricultural use to a different type of agricultural use. For example, a land reclassification occurs when agricultural land that was previously used as grazing land is converted to irrigated land. In a land reclassification, the land is dedicated to agricultural purposes both before and after the change in land use. It is this characteristic that distinguishes a land reclassification from the more general land use change.

(7) "Land split" means the division of a single property into two or more properties for the ultimate purpose of conveying one or more of the properties to a new owner or owners.

(8) "Land use change" means the conversion of a current use of land to a different, alternate use. Examples of land use changes contained in this definition include, but are not limited to, the following:

(i) agricultural land converted to tract land;

(ii) forest land converted to tract land; or

(iii) forest land converted to agricultural land.

(9) "Neighborhood (NBHD) group percentage" means the percent of change in value from the total 1996 tax year value to the total 1997 reappraisal value, excluding properties with new construction, for those homogeneous areas within each county or between counties that have been defined as a neighborhood group. The neighborhood group percentage is determined by using the

following formula:

Neighborhood Group Percentage =
(Total 1997 NBHD REAP Value - Total 1996 NBHD Tax Year Value)
Total 1996 NBHD Tax Year Value

(i) Individual neighborhood group percentages will be determined for residential land, commercial land, residential improvements, and commercial improvements.

(10) "New construction" means the construction, addition, or substitution of improvements, buildings, living areas, garages and outbuildings; or the extensive remodeling of existing improvements, buildings, living areas, garages, and outbuildings.

(11) "Phase-in percentage" is 2% per year. The phase-in percentage accumulates annually and is determined by the following formula:

Current Phase-In Percentage =
(Current tax year - 1996) x 2%

(i) The following illustrates a 1997 application of the phase-in percentage formula:

(A) 1997 Phase-in percentage = (1997-1996) x 2%;

(B) 1997 Phase-in percentage = 1 x 2%; or

(C) 1997 Phase-in percentage = 2%.

(ii) The following illustrates a 1998 application of the phase-in percentage formula:

(A) 1998 Phase-in percentage = (1998-1996) x 2%

(B) 1998 Phase-in percentage = 2 x 2%

(C) 1998 Phase-in percentage = 4%

(iii) The following table illustrates the phase-in percentage for the first 5 years of its application:

Year	Phase-In Percentage
1997	2%
1998	4%
1999	6%
2000	8%
2001	10%

(12) "Reappraisal (REAP) value" means the full 1997 value determined for the current reappraisal cycle pursuant to 15-7-111, MCA, adjusted annually for new construction or destruction. The 1997 reappraisal value reflects a market value of the property on January 1, 1996. A current year REAP value is the same as the 1997 reappraisal value of the property if there is no new construction, destruction, land splits, land use changes, land reclassifications, land productivity changes, improvement grade changes or other changes made to the property during 1997 or subsequent tax years.

(13) "Value before reappraisal (VBR)" means the 1996 tax

year value adjusted for any new construction or destruction that occurred in the prior year. The VBR for the 1997 tax year and subsequent years is the same as the 1996 tax year value if there is no new construction, destruction, land splits, land use changes, land reclassifications, land productivity changes, improvement grade changes or other changes made to the property during 1996 or subsequent tax years.
AUTH: Sec. 15-1-201 and 15-7-111, MCA; IMP: Sec. 15-7-111, MCA

RULE II DETERMINATION OF VALUE BEFORE REAPPRAISAL (VBR)

(1) For property that contains no new construction or destruction, no land reclassification or use change or other property change, the current year VBR will be the same as the prior year VBR.

(2) For class 3 property that contains a land reclassification or a land use change, the current year VBR will be the prior year VBR of the new classification or land use change.

(3) For class 3 property that contains a productivity or grade change, the current year VBR will be the prior year VBR of the prior grade.

(4) For class 4 property (excluding industrial property) that contains new construction, the current year VBR is determined by dividing the reappraisal value by 1 plus the percent of neighborhood group change. The following formula illustrates that calculation:

VBR =
Reappraisal value /(1 + NBHD group percentage)

(5) For class 4 property that has been either partially or wholly destroyed, the current year VBR is calculated by first determining what percent of the property has been destroyed. That percent is multiplied by the prior year improvement VBR to determine a value amount that is attributed to the destruction. The prior year VBR is then the difference between the prior year VBR and the value attributed to the destruction. The following formula illustrates that calculation:

VBR =
Prior year VBR -
(Percent of property destroyed x prior year improvement VBR)

(6) For class 10 property that contains a land reclassification or a land use change, the current year VBR will be the prior year VBR of the new classification or land use change.

(7) For class 10 property that contains a productivity or grade change, the current year VBR will be the prior year VBR of the prior grade.

(8)(a) The only instances when the current year VBR will be less than the prior year VBR are:

(i) In the case of class 4 improvements that have been partially or wholly destroyed;

(ii) When the neighborhood group percentage change is negative and there is new construction; or

(iii) When land use changes have occurred.

(b) In all other situations, the current year VBR will be the greater of the value determined through application of the formula in (4) or the prior year VBR.

AUTH: Sec. 15-1-201 and 15-7-111, MCA; IMP: Sec. 15-7-111, MCA

RULE III DETERMINATION OF CURRENT YEAR PHASE-IN VALUE FOR CLASS 3, CLASS 4, AND CLASS 10 PROPERTY (1) The department is required to determine the current year phase-in value for each property in class 3, class 4, and class 10 annually. The current year phase-in value is determined by adding the difference between the reappraisal value and the VBR times the phase-in percentage to the VBR.

AUTH: Sec. 15-1-201 and 15-7-111, MCA; IMP: Sec. 15-7-111, MCA

RULE IV NEW CONSTRUCTION DETERMINATION (1) The following criteria will be used to identify new construction and destruction:

(a) All residential or commercial structures, outbuildings, and mobile homes that were built or remodeled in the preceding year;

(b) Properties with land splits;

(c) Properties with new attached garages built in the preceding year;

(d) Properties which had any land reclassification or land use changes; or

(e) Properties with outbuildings built in the preceding year.

(2) The following will not be considered new construction or destruction:

(a) Properties with square footage changes due to correction of measurements or sketch vectoring, or due to coding corrections for story heights, such as story with full finished attic to 1½ stories;

(b) Properties with grade changes;

(c) Properties with condition, desirability, utility (CDU) factor changes;

(d) Properties with changes in heat or air conditioning;

(e) Residential dwellings with changes in square footage of living area of 100 square feet or less;

(f) Properties with changes in effective year; or

(g) Properties with changes in finished basement areas.

AUTH: Sec. 15-1-201 and 15-7-111 MCA; IMP: Sec. 15-7-111, MCA

RULE V ASSESSMENT NOTICES AND VALUATION REVIEWS (1) The assessment notice shall include:

(a) Quantity (size or number of properties);

(b) Reappraisal value;

(c) Value before reappraisal (VBR);
(d) Current year phase-in value;
(e) Previous year tax rate;
(f) Previous year taxable value;
(g) Current year tax rate;
(h) Current year taxable value;
(i) The total amount of mills levied against the property in the prior year; and
(j) Statement that the notice is not a tax bill.
(2) The only items on the assessment which are eligible for review by the department are:
(a) Quantity;
(b) Reappraisal value;
(c) Value before reappraisal (VBR) for those properties that had new construction;
(d) Current year phase-in value; and
(e) Methods used to determine those values which are shown in (2)(b) through (d).
AUTH: Sec. 15-1-201 and 15-7-111, MCA; IMP: Sec. 15-7-102, 15-7-111, MCA and Sec. 11, Ch. 463, L. 1997

RULE VI CERTIFIED MILL LEVY DETERMINATION (1) The value of class 4 new construction, for purposes of determining a certified mill levy for the current tax year, is the difference in the taxable value of class 4 property from the previous year to the current year.
AUTH: Sec. 15-1-201 and 15-7-111, MCA; IMP: Sec. 15-6-134 and 15-7-111, MCA

RULE VII PROPERTY TAX ASSISTANCE AND TAX RELIEF PROGRAMS (1) All valuation reductions allowed for under the property tax assistance program or other property tax relief programs will be applied against the current year phase-in value.
AUTH: Sec. 15-1-201 and 15-7-111, MCA; IMP: Sec. 15-7-111, MCA

RULE VIII DEFINITIONS - INDUSTRIAL PROPERTY The definitions set forth in RULE I apply to industrial property unless otherwise specifically indicated in this chapter. The following definitions are necessary to further describe terms used in this chapter:
(1) "Annual appraisal trend factor class 5" means a factor used to annually reappraise class 5 qualifying air and water pollution control property, new industrial property, gasohol facilities, qualifying research and development firms and electrolytic reduction facilities real property by trending their cost values up or down based on accepted cost indices.
(2) "New construction trend factor" means a factor used to adjust reappraisal values and VBRs (values before reappraisal) in instances where the property has new construction or destruction. The factor will be derived from nationally accepted cost indices.
AUTH: Sec. 15-1-201 and 15-7-111, MCA; IMP: Sec. 15-7-111, MCA

RULE IX DETERMINATION OF VALUE BEFORE REAPPRAISAL (VBR) FOR INDUSTRIAL PROPERTIES (CLASS 4) (1) For property that contains no new construction or destruction, or land use change, the current year VBR will be the same as the prior year VBR.

(2) The reappraisal value of new construction will be trended back to a VBR. The trend used to arrive at the VBR shall be calculated using cost indices from "Marshall Valuation Service". The trend used shall be called the new construction trend factor. The new construction trend factor for industrial properties is .892. The VBR will be adjusted to reflect the new construction as if it were in place in 1996. The same method will be used in subsequent tax years. For purposes of illustration assume the following:

Reappraisal New Construction Value = $100,000
New Construction Trend Factor = .892

(a) Given these assigned values the trend factor is applied as follows:

New construction VBR =
REAP new construction value x new construction trend factor

Example: $89,000 = $100,000 x .892

(3) Property destroyed after January 1, 1996 will be removed from the VBR of the industrial site. The destroyed property also will be deducted from the reappraised value at its reappraised cost.

(4) Land which has been reclassified as industrial land after January 1, 1996 will have the VBR determined by comparing other 1996 market values of similar industrial land, and determining a comparable VBR for the new industrial land.

AUTH: Sec. 15-1-201 and 15-7-111, MCA; IMP: Sec. 15-7-111, MCA

RULE X BASIC DETERMINATION OF PHASE-IN VALUE FOR CLASS 4 INDUSTRIAL PROPERTY (1) The phase-in value is the difference between the reappraisal value and the VBR times the phase-in percentage added to the VBR.

Formula: Phase-in value =
[(REAP value - VBR) x phase-in %]
+ VBR

AUTH: Sec. 15-1-201 and 15-7-111, MCA; IMP: Sec. 15-7-111, MCA

RULE XI VALUATION OF CLASS 5 REAL PROPERTY FOR QUALIFYING AIR AND WATER POLLUTION CONTROL PROPERTY, NEW INDUSTRIAL PROPERTY, GASOHOL FACILITIES, QUALIFYING RESEARCH AND DEVELOPMENT FIRMS AND ELECTROLYTIC REDUCTION FACILITIES

(1) Qualifying air and water pollution control property, new industrial property, gasohol facilities, qualifying research

and development firms and electrolytic reduction facilities real property included in class 5 will be revalued annually. The department will apply an annual appraisal trending factor to the qualifying property to arrive at the market value. An annual appraisal trend factor will be calculated, using the January cost indices from Marshall Valuation Service, for the current tax year. If Marshall Valuation Service is not available other accepted cost manuals or indices may be used.

(2) The annual appraisal trend factor will be applied to the previous year's market value to arrive at the current year's market value.

AUTH: Sec. 15-1-201 and 15-7-111, MCA; IMP: Sec. 15-7-111, MCA

RULE XII VALUATION OF CLASS 5 LOCALLY ASSESSED ELECTRIC AND TELEPHONE COOPERATIVES (1) The department shall annually appraise locally assessed electric and telephone cooperatives property using the methods described in Title 42, chapter 22, Administrative Rules of Montana. The methods described are used in appraising other property with similar characteristics.

AUTH: Sec. 15-1-201 and 15-7-111, MCA; IMP: Sec. 15-7-111, MCA

RULE XIII VALUATION OF CLASS 7 PROPERTY (1) The department shall annually appraise class 7 property using the methods described in Title 42, chapter 22, Administrative Rules of Montana. The methods described are used in appraising other property with similar characteristics.

AUTH: Sec. 15-1-201 and 15-7-111, MCA; IMP: Sec. 15-7-111, MCA

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

42.18.106 1997 MONTANA REAPPRAISAL PLAN (1) and (2) remain the same.

(3) This rule applies to tax years from January 1, 1997, through December 31, ~~1999~~ 2009.

AUTH: Sec. 15-1-201, MCA; IMP, Sec. 15-7-111 and 15-7-133, MCA

42.18.107 ~~2000~~ 2010 MONTANA REAPPRAISAL PLAN (1) The ~~2000~~ 2010 Montana reappraisal plan consists of seven parts: residential appraisal, commercial appraisal, agricultural and forest land appraisal, industrial appraisal, certification and training requirements, manuals, and progress reporting. The Montana reappraisal plan implements the legislature's cyclical reappraisal program set forth in 15-7-111, MCA.

(2) The Montana reappraisal plan provides for the valuation of residential property, commercial property, agricultural and forest land property, and industrial property. A computer assisted mass appraisal system (CAMAS) is used to assist in the valuation process. The department's plan is to determine a new appraised value for each property of land, each residential improvement, each commercial improvement, each agricultural improvement, and each industrial improvement. The department will enter the new appraised values on the tax rolls

for tax year ~~2000~~ 2010.

(3) The results of this plan apply to tax years beginning January 1, ~~2000~~ 2010, and thereafter.

AUTH: Sec. 15-1-201, MCA; IMP, Sec. 15-7-111 and 15-7-133, MCA

42.18.109 RESIDENTIAL REAPPRAISAL PLAN (1) through (9) remain the same.

(10) This rule applies to tax years from January 1, 1997, through December 31, ~~1999~~ 2009.

AUTH: Sec. 15-1-201 and 15-7-111, MCA; IMP, Sec. 15-7-111, MCA

42.18.110 ~~2000~~ 2010 RESIDENTIAL REAPPRAISAL PLAN (1) through (4) remain the same.

(5) Residential lots and tracts are valued through the use of computer assisted land pricing (CALP) models. Homogeneous areas within each county are geographically defined as neighborhoods. The CALP models will reflect January 1, ~~1999~~ 2009, land market values.

(6) through (8) remain the same.

(9) The results of this rule apply to tax years beginning January 1, ~~2000~~ 2010, and thereafter.

AUTH: Sec. 15-1-201 and 15-7-111, MCA; IMP, Sec. 15-7-111, MCA

42.18.112 COMMERCIAL REAPPRAISAL PLAN (1) through (9) remain the same.

(10) This rule applies to tax years from January 1, 1997, through December 31, ~~1999~~ 2009.

AUTH: Sec. 15-1-201 and 15-7-111, MCA; IMP, Sec. 15-7-111, MCA

42.18.113 ~~2000~~ 2010 COMMERCIAL REAPPRAISAL PLAN (1) through (4) remain the same.

(5) Commercial lots and tracts are valued through the use of computer assisted land pricing (CALP) models. Homogeneous areas within each county are geographically defined as neighborhoods. The CALP models will reflect January 1, ~~1999~~ 2009, land market values.

(6) through(8) remain the same.

(9) The results of this rule apply to tax years beginning January 1, ~~2000~~ 2010, and thereafter.

AUTH: Sec. 15-1-201 and 15-7-111, MCA; IMP, Sec. 15-7-111, MCA

42.18.115 AGRICULTURAL/FOREST LAND AND IMPROVEMENTS REAPPRAISAL PLAN (1) through (7) remain the same.

(8) This rule applies to tax years from January 1, 1997, through December 31, ~~1999~~ 2009.

AUTH: Sec. 15-1-201 and 15-7-111, MCA; IMP, Sec. 15-7-111, MCA

42.18.116 ~~2000~~ 2010 AGRICULTURAL/FOREST LAND AND IMPROVEMENTS REAPPRAISAL PLAN (1) through (6) remain the same.

(7) The results of this rule apply to tax years beginning January 1, ~~2000~~ 2010 and thereafter.

AUTH: Sec. 15-1-201 and 15-7-111, MCA; IMP, Sec. 15-7-111, MCA

42.18.118 INDUSTRIAL PROPERTY REAPPRAISAL (1) and (2) remain the same.

(3) This rule applies to tax years from January 1, 1997, through December 31, ~~1999~~ 2009.

AUTH: Sec. 15-1-201 and 15-7-111, MCA; IMP, Sec. 15-7-111, MCA

42.18.119 ~~2000~~ 2010 INDUSTRIAL PROPERTY REAPPRAISAL (1) and (2) remain the same.

(3) The results of this rule apply to tax years beginning January 1, ~~2000~~ 2010, and thereafter.

AUTH: Sec. 15-1-201 and 15-7-111, MCA; IMP, Sec. 15-7-111, MCA

42.18.122 REVALUATION MANUALS (1) For residential, and agricultural/forest lands new construction, the January 1, 1996 Montana Appraisal Manual will be used through tax year ~~1999~~ 2009.

(2) For the reappraisal cycle ending December 31, ~~1999~~ 2009, the ~~1999~~ 2009 Montana Appraisal Manual will be used for valuing residential and agricultural/forest lands real property. The cost base schedules will reflect January 1, ~~1999~~ 2009 cost information.

(3) For commercial and industrial new construction the January 1, 1996 Montana Appraisal Manual will be used through tax year ~~1999~~ 2009. If the property is not listed, other construction cost manuals such as Marshall Valuation Service, Boeckh or Means will be used with a publication date as close to the Montana Appraisal Manual as possible.

(4) For the reappraisal cycle ending December 31, ~~1999~~ 2009, the ~~1999~~ 2009 Montana Appraisal Manual will be used for valuing commercial and industrial real property if the property is listed. If not, other construction cost manuals such as Boeckh; Marshall Valuation Service Manual; Richardson Engineering Services, Inc., entitled "Process Plant Construction Estimating Standards"; or R.S. Means Company, Inc., entitled "Building Construction Cost Data" will be used with a publication date as close as possible to the Montana Appraisal Manual. The cost base schedules will reflect January 1, ~~1999~~ 2009 cost information.

(5) Copies of the valuation manuals used by the department of revenue may be reviewed in the county appraisal/assessment offices or purchased from the department at the Property Assessment Division, Helena, Montana 59620.

(6) The results of this rule apply to tax years beginning January 1, 1997, and thereafter.

AUTH: Sec. 15-1-201 and 15-7-111, MCA; IMP, Sec. 15-7-111, MCA

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

(a) For the taxable years from January 1, 1986, through December 31, 1992, all property classified in 15-6-134, MCA, (class ~~four~~ 4) must be appraised at its market value as of January 1, 1982.

(b) For the taxable years from January 1, 1993, through December 31, 1996, all property classified in 15-6-134, MCA, (class ~~four~~ 4) must be appraised at its market value as of January 1, 1992.

(c) For the taxable years from January 1, 1997, through December 31, ~~1999~~ 2009, all property classified in 15-6-134, MCA, (class ~~four~~ 4) must be appraised at its market value as of January 1, 1996.

(d) For the taxable years from January 1, ~~2000~~ 2010 through December 31, ~~2002~~ 2012, all property classified in 15-6-134, MCA, (class ~~four~~ 4) must be appraised at its market value as of January 1, ~~1999~~ 2009.

AUTH: Sec. 15-1-201 and 15-7-111, MCA; IMP, Sec. 15-6-134, 15-7-103, and 15-7-111, MCA

42.18.126 PROGRESS REPORTING (1) remains the same.

~~(2) Regional progress report information is summarized each month and shall be available by the third week of the following month for use in making presentations before the revenue oversight committee.~~

AUTH: Sec. 15-1-201 and 15-7-111, MCA; IMP, Sec. 15-7-111, MCA

4. The rationale for the rules is set forth in paragraph 1 above.

5. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to:

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

no later than August 8, 1997.

5. Cleo Anderson, Department of Revenue, Office of Legal Affairs, has been designated to preside over and conduct the hearing.

Cleo Anderson
CLEO ANDERSON
Rule Reviewer

Mary Bryson
MARY BRYSON
Director of Revenue

Certified to Secretary of State June 23, 1997

BEFORE THE BOARD OF NURSING
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment of rules pertaining to conduct of nurses, survey and approval of schools, annual report, definitions, registered nurse's responsibility to the nursing process, and the repeal and adoption of rules pertaining to standards for schools of nursing and standards for IV therapy and charge nurse for licensed practical nurses	))))))))))	CORRECTED NOTICE OF AMENDMENT

TO: All Interested Persons:

1. On October 24, 1996, the Board of Nursing published a notice of public hearing on the proposed amendment, repeal and adoption of rules pertaining to the practice of nursing at page 2638, 1996 Montana Administrative Register, issue number 20. On April 7, 1997, the Board published a notice of adoption of the rules at page 626, 1997 Montana Administrative Register, issue number 7.

2. The Board amended ARM 8.32.802 as proposed but with one change to (4) which deleted the word "January" and inserted the word "February" in the adoption notice published in issue number 7 identified above.

3. The proposed amendment of ARM 8.32.802 should have appeared as follows in the original notice:

"8.32.802 SURVEY AND APPROVAL OF SCHOOLS (1) through (3) amended as proposed in original notice.

(4) Prior to a site visit a school will submit a self-evaluation narrative report to the board which provides evidence of compliance with the appropriate nursing education standards. The school will forward ~~12~~ six copies of ~~this~~ the self-evaluation narrative report and six copies of the school catalog to the board office by January 1 of the year in which a program visit is scheduled.

(5) through (11) amended as proposed in original notice."

4. Subsection (4) above should have been amended in the original notice by striking the word "this" and underlining the language "the self-evaluation narrative" as shown above. The replacement pages will also reflect the change from the adoption notice which substituted the month of February for January.

5. Subsection (4)(n) in new rule XIX (numbered 8.32.1408 in the adoption notice) should have been amended as follows in the adoption notice:

"8.32.1408 STANDARDS RELATING TO THE LICENSED PRACTICAL NURSE'S ROLE IN INTRAVENOUS (IV) THERAPY (1) through (4)(n) adopted as published in the adoption notice.

~~(n)~~ (i) ~~perform~~ arterio-venous fistula/graft needle insertion;

(ii) through (p) adopted as published in the adoption notice."

6. The word "perform", published in the original notice, should have been stricken in the adoption notice.

7. Subsection (1)(a) in new rule XX (numbered 8.32.1409 in the adoption notice) should have been published in the original notice as follows:

"8.32.1409 PROHIBITED IV THERAPIES (1) adopted as published in the adoption notice.

(a) IV push medications directly into the vein except as in [new rule ~~XVIII~~ XIX(4)(h)];

(b) through (d) adopted as published in adoption notice."

8. The language [new rule XIX(4)(h)] was published in the original notice as [new rule XVIII(4)(h)]. The subsection should have referred to new rule XIX instead of XVIII.

9. Replacement pages for these rules will be submitted on June 30, 1997.

BOARD OF NURSING
JEAN BALLANTYNE, MN, RN,
PRESIDENT

ANNIE M. BARTOS
RULE REVIEWER

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

Certified to the Secretary of State, June 23, 1997.

BEFORE THE BOARD OF OUTFITTERS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment of rules pertaining to licensure - inactive and fees	)	NOTICE OF AMENDMENT OF ARM 8.39.512 LICENSURE - INACTIVE AND 8.39.518 LICENSURE--FEES FOR OUTFITTER, OPERATIONS PLAN AND GUIDE OR PROFESSIONAL GUIDE

TO: All Interested Persons:

1. On March 24, 1997, the Board of Outfitters published a notice of proposed amendment of the above-stated rules at page 530, 1997 Montana Administrative Register, issue number 6. On April 21, 1997, the Board published an amended notice of the above-stated rules at page 667, 1997 Montana Administrative Register, issue number 8.

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

3. No comments or testimony were received.

BOARD OF OUTFITTERS
ROBIN CUNNINGHAM, CHAIRMAN

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

Annie M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, June 23, 1997.

BEFORE THE BUILDING CODES BUREAU
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment of rules pertaining to the Uniform Building Code and Boiler Inspections	))))	NOTICE OF AMENDMENT OF ARM 8.70.101, INCORPORATION BY REFERENCE OF UNIFORM BUILDING CODE AND 8.70.906, BOILER INSPECTION FEES

1. On May 19, 1997, the Building Codes Bureau published a notice of public hearing on the proposed amendment of rules pertaining to the Uniform Building Code and Boiler Inspections, at page 855, 1997 Montana Administrative Register, issue number 10.

2. A public hearing was held on June 17, 1997, and written testimony was received. Written comments were accepted until 5:00 p.m., June 17, 1997. The Bureau thoroughly considered all comments received. Those comments, and the Bureau's responses thereto, are as follows:

COMMENT NO. 1: The Montana Mint Committee, through its Chairman Bruce Tutvedt, submitted written comments regarding the proposed amendment to ARM 8.70.906. The Montana Mint Committee, the members of which use boilers and annually pay the fees referenced in 8.70.906, oppose the increased fees as excessive. The Montana Mint Committee also commented on the frequency of internal boiler inspections. Due to the fact that mint growers have limited seasonal use of their boilers it was suggested that mint still operators be either exempted from the boiler laws or limit the frequency of internal boiler inspection to every 3000 hours of use or every five years, which ever comes first.

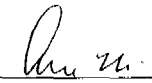
RESPONSE: The proposed amendment to ARM 8.70.906, which increases the fee schedule for boiler inspections, is not a discretionary action on the part of the Building Codes Bureau. Chapter 387, Laws of 1997 (Senate Bill 290) established the new boiler inspection fee schedule. The amendment to the rule updates the former fee schedule as published by rule with the new fee schedule as passed by the legislature.

As to the second part of the comment which addresses the frequency of inspections, the frequency of inspections is not related to the subject matter addressed by this proposed amendment. Due to the unrelated nature of the subject matter, a proposal to modify the inspection frequency would require its

specific public notice and therefore cannot be part of this rule amendment. The Montana Mint Committee's comment will be noted and considered for future revisions of rules.

3. The Bureau has amended the rules exactly as proposed.

BUILDING CODES BUREAU

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


ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, June 23, 1997.

BEFORE THE LOCAL GOVERNMENT ASSISTANCE DIVISION
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the repeal and adoption of rules pertaining to the Federal Community Development Block Grant Program	)))))	NOTICE OF REPEAL OF ARM 8.94.3705 AND 8.94.3706 AND ADOPTION OF NEW RULE I (8.94.3713) FOR THE FEDERAL COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) PROGRAM

1. On January 16, 1997, the Local Government Assistance Division published a notice of public hearing on the proposed repeal and adoption of rules pertaining to the Federal Community Development Block Grant Program, at page 19, 1997 Montana Administrative Register, issue number 1.

2. The Division has adopted New Rule I (8.94.3713) and repealed rules 8.94.3705 and 8.94.3706 as proposed.

3. A public hearing was held on February 6, 1997, and oral and written testimony was received. Written comments were accepted until 5:00 p.m., February 13, 1997. The Division has thoroughly considered all comments received. Those comments, and the Division's responses thereto, are as follows:

COMMENT NO. 1: This comment concerns grant ceilings. The Department had proposed to increase the current grant ceiling of $400,000 for both housing and community revitalization projects and public facilities projects to $500,000. Commentors stated that the Department should not increase these grant ceilings because this would reduce the number of projects that could be funded each year.

RESPONSE: The Department concurs and will maintain the grant amount for Housing and Community Revitalization and Public Facilities projects at the present level of $400,000. This level is contained in the references incorporated by reference in ARM 8.94.3713(1). Grant ceilings will not be increased to $500,000 as proposed.

COMMENT NO. 2: This comment concerns the number of grant awards permitted per jurisdiction. Currently a local government unit may receive two CDBG grants per program year--one for Public Facilities and one for Housing and Community Revitalization. To allow more communities to receive CDBG assistance and encourage them to expeditiously complete their current project before applying for another grant, the Department had proposed to limit grants to one per grantee from these two categories combined. Most commentors felt that the current multi-grant arrangement should remain unchanged.

RESPONSE: In view of the overwhelming opposition to this proposal, it has been withdrawn. The present system will remain unchanged. Local government units will still be able to receive two CDBG grants per program year -- one in the Public Facilities category and one in the Housing and

Community Revitalization category.

COMMENT NO. 3: This comment concerns the application deadlines. The Department had proposed to advance the application deadline for public facilities project grants by two weeks and to delay the deadline for housing and community revitalization project grants by two weeks. Some commentors felt that the Department had given insufficient notice of this proposal for potential applicants to accommodate the change for the 1997 public facilities competition.

RESPONSE: Comments from local governments were evenly divided on this proposal, and the Department has decided to adopt it. Potential applicants were first notified of the proposed change in January of 1997 and have had six months to adjust their schedules to meet the earlier deadline. Changing the application due dates as proposed will give the CDBG staff an additional month to monitor projects and provide technical assistance to grant recipients during late summer and early fall, the busiest part of the construction season.

COMMENT NO. 4: This comment concerns the public hearing requirements. The Department had proposed to modify its public hearing requirement to allow an unsuccessful applicant to conduct one, rather than two, public hearings before reapplying for the same project in the next grant year. Eight commentors supported this proposal and only one commentor opposed it on the grounds that maximum public involvement should be encouraged and that the current two-hearing requirement is not burdensome.

RESPONSE: Although the Department agrees generally that the more the public is involved in project development the better, the Department believes that in the case of reapplications, the additional hearing serves no constructive purpose.

COMMENT NO. 5: This comment concerns the measures to encourage timely completion of CDBG projects. The Department has explained that currently a major concern facing the CDBG program nationally and in Montana is that CDBG projects are not always completed in a timely fashion. HUD's goal is that projects be completed within 12 to 18 months of the awarding of the grant. To better meet this expectation the Department had proposed several program modifications. These include (1) dividing the current "Community Efforts and Readiness" ranking criterion into two criteria one of which would focus on local efforts to bring additional resources to the projects and the other would focus on the applicant's ability to proceed promptly if it received funding; (2) providing that if a tentative grantee fails to comply with current project start-up requirements and cannot demonstrate the existence of unusual or extenuating circumstances that would justify an extension of time, the tentative award will be withdrawn and the funds reallocated to the next highest ranked applicant which is ready to proceed with its CDBG project; and (3)

providing that a previous recipient of a CDBG award under either the housing and community revitalization or the public facilities category would not be eligible to reapply for a grant in either category until a certain percentage of the earlier project had been completed.

The first proposal received some criticism on the grounds that it would give too much weight to the two resulting criteria. There was no particular concern with the second proposal, but a number of local government representatives objected to the third proposal because they felt that applicant communities should be able to compete for scarce CDBG funds based on the severity of their needs rather than on the number of applications they are allowed to submit.

RESPONSE: In response to the criticisms noted above the Department has decided to continue to apply a single criterion entitled "Community Efforts" with a maximum scoring of 100 points. Factors relating to project readiness will be transferred to the current "Implementation and Management" ranking criterion. The Department has adopted the proposal regarding the reallocation of funds that cannot be used in a timely fashion. The Department has withdrawn the proposal to link the completion of public facilities projects to eligibility to receive housing grants, and vice versa. The Department will retain the current arrangement under which a recipient of an earlier Housing and Community Revitalization grant may compete for a Public Facilities grant although the applicant has not completed enough of the first grant project to be eligible for a second grant in the Housing and Community Revitalization category. Likewise, a recipient of an earlier Public Facilities grant will still be eligible to compete for a Housing and Community Revitalization grant although the applicant has not completed enough of the first Public Facilities grant to be eligible for a second grant in this category.

COMMENT NO. 6: This comment concerns allocation of funds. Currently one-third of the total amount available for CDBG grants is set aside for the economic development category. One-third of the balance is allocated to housing and community revitalization projects and two-thirds is allocated to public facilities projects. As a result of the increased numbers of applications received in the housing and community revitalization category in 1996, some individuals have proposed that the allocations for economic development, housing and community revitalization, and public facilities categories each receive one-third of the funds.

The Department requested comments from local governments regarding their preference between the current formula and the equal distribution between the three categories.

RESPONSE: Five commentors supported the present allocation, while four supported the proposed allocation. In view of this narrow division the Department has decided to maintain the current allocation for the 1997 CDBG Program.

COMMENT NO. 7: This comment concerns the ranking system. In order to allow for more precise differentiation between each applicant's response to the CDBG ranking criteria, the Department had proposed to substitute a five-level scoring system for the four-level system that has been in use since the inception of the program. Under this new system a level-five score would be given to the best response, while a zero would be assigned to responses that completely failed to meet pertinent application requirements. The Department received three comments in support of the proposed change and four comments in opposition. Most of those opposing the proposal felt that the quartile system had worked well and there was simply no need for a change.

RESPONSE: The Department feels that change in the scoring system is purely an administrative matter and that an additional scoring level will allow the Department to more precisely differentiate between applications of widely varying quality and thoroughness.

COMMENT NO. 8: This comment concerns the use of program income generated from economic development grants. The Department should eliminate its current requirement that program income from economic development projects funded before 1993 may be expended only if 51 percent of the beneficiaries of the expenditure are low and moderate income (LMI) persons. This LMI requirement exceeds federal requirements.

RESPONSE: The Department concurs and has repealed this requirement because it imposes restrictions on the use of program income greater than federal requirements and unnecessarily limits flexibility of grantees to use these funds.

LOCAL GOVERNMENT ASSISTANCE DIVISION

BY: Ann M. Bartos

ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

Ann M. Bartos

ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, June 23, 1997.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the amendment of Accreditation	)))	NOTICE OF AMENDMENT TO ARM 10.55.603 CURRICULUM DEVELOPMENT AND ASSESSMENT

To: All Interested Persons

1. On May 19, 1997, the Board of Public Education published an amended notice of public hearing on the proposed amendment concerning ARM 10.55.603 Curriculum Development and Assessment on page 871 of the 1997 Montana Administrative Register, Issue No. 10. The original proposal notice was published on May 5, 1997 on page 756 of the 1997 Montana Administrative Register, Issue No. 9.

2. The Board has amended ARM 10.55.603 as proposed.

3. No comments were received.

Wayne G Buchanan
Wayne Buchanan, Executive Secretary
Board of Public Education

Certified to the Secretary of State on 6/23/97.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the amendment of Assessment	)	NOTICE OF AMENDMENT TO ARM 10.56.101 STUDENT ASSESSMENT

To: All Interested Persons

1. On May 19, 1997, the Board of Public Education published an amended notice of public hearing on the proposed amendment concerning ARM 10.56.101 Student Assessment on page 870 of the 1997 Montana Administrative Register, Issue No. 10. The original proposal notice was published on May 5, 1997 on page 754 of the 1997 Montana Administrative Register, Issue No. 9.

2. The Board has amended ARM 10.56.101 as proposed.

3. No comments were recieved.

Wayne Buchanan, Executive Secretary
Board of Public Education

Certified to the Secretary of State on 6/23/97.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the amendment of Teacher Certification	)))	NOTICE OF AMENDMENT TO ARM 10.57.211 TEST FOR CERTIFICATION

To: All Interested Persons

1. On May 19, 1997, the Board of Public Education published an amended notice of public hearing on the proposed amendment concerning ARM 10.57.211 Test for Certification on page 872 of the 1997 Montana Administrative Register, Issue No. 10. The original proposal notice was published on May 5, 1997 on page 757 of the 1997 Montana Administrative Register, Issue No. 9.

2. The Board has amended ARM 10.57.211 as proposed with the following changes:

10.57.211 TEST FOR CERTIFICATION

(1) through (3) will remain the same as proposed.

(4) Individuals seeking to reinstate lapsed Montana teacher, or administrative ~~or specialist~~ certificates are not required to complete the basic skills testing requirement.

(5) Remains unchanged.

AUTH: Sec. 20-2-121(1), MCA IMP: 20-4-102(1), MCA

3. Don Freshour of the Office of Public Instruction pointed out that specialists have never been required to take the test for certification and therefore suggested the removal of the words "or specialist". The Board concurs and has made the change.

Wayne Buchanan, Executive Secretary
Board of Public Education

Certified to the Secretary of State on 6/23/97.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the amendment of Teacher Certification	)))	NOTICE OF AMENDMENT TO ARM 10.57.215 RENEWAL REQUIREMENTS

To: All Interested Persons

1. On May 19, 1997, the Board of Public Education published an amended notice of public hearing on the proposed amendment concerning ARM 10.57.215 Renewal Requirements on page 873 of the 1997 Montana Administrative Register, Issue No. 10. The original proposal notice was published on May 5, 1997 on page 759 of the 1997 Montana Administrative Register, Issue No. 9.

2. The Board has amended ARM 10.57.215 as proposed.

3. No comments were received.

Wayne G Buchanan

Wayne Buchanan, Executive Secretary
Board of Public Education

Certified to the Secretary of State on 6/23/97.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of 17.8.120, regarding variance procedures.	)))	NOTICE OF AMENDMENT OF RULE

(Air Quality)

To: All Interested Persons

1. On May 5, 1997, the board published notice of the proposed amendments to ARM 17.8.120 in the 1997 Montana Administrative Register, Issue No. 9, page 763.

2. On June 5, 1997 a public hearing was held in Helena concerning the proposed amendments. As a result of comments received, the board amends ARM 17.8.120 as follows (new material is underlined; material to be deleted is interlined):

17.8.120 VARIANCE PROCEDURES--INITIAL APPLICATION

(1) Initial application for exemption ~~shall be in the form prescribed by and obtained from the department~~ may be in the form of a letter, and must be submitted to the board with copies sent to the department and the parties. The application must contain or be accompanied by information and data to show that:

(a) the emissions occurring or proposed to occur do not constitute a danger to public health or safety; and

(b) compliance with the rules from which exemption is sought would produce hardship without equal or greater benefits to the public.

(2)-(5) Same as proposed.

3. Comments are summarized as follows along with the responses of the board:

COMMENT: Subsection (1) of the rule states that a variance application shall be in the form "prescribed by and obtained from the department". The language "and obtained from" should be deleted, since the department does not have a variance form.

RESPONSE: Most variance applications have been in letter form, which has proven to be adequate. Subsection (1) is misleading because it implies that an application form is available. Subsection (1) may also be misleading because it implies that the department has authority to "prescribe" the form of an application. Under the variance statute, this authority lies with the board. The board has amended subsection (1) to correct these deficiencies.

COMMENT: Subsection (4) states that the board "shall consider" comments submitted by the general public. This Subsection should be changed to read "may consider".

RESPONSE: The variance statute requires the board to

consider the relative interests of the applicant, other affected parties, and the general public. Section 75-2-212(2), MCA, states:

> "No exemption or partial exemption may be granted pursuant to this section except after public hearing on due notice and until the board has considered the relative interests of the applicant, other owners or property likely to be affected by the emissions, and the general public."

The commenter's recommendation is inconsistent with this statutory directive. It should be noted that, although the statute and rule require the board to consider public comments in a variance proceeding, the board has discretion whether to incorporate the suggestions it receives from the public.

COMMENT: Subsection (4)(a) requires that public comments be submitted in writing to the board. The public should also be required to send copies of their comments to the parties.

RESPONSE: The board agrees with this comment and has modified the rule accordingly.

COMMENT: Since the public has an opportunity to submit written comments, allowing them to participate in the hearing is redundant, and the hearing process may become too lengthy or distracting. Language that allows public commenters to orally present their comments at the hearing should be deleted. Likewise, language pertaining to hearing procedures for public commenters should also be deleted.

RESPONSE: Because the variance statute calls for a "public hearing" on a variance application, board rules should not prohibit public participation in the hearing. The board has discretion to structure the public comment portion of a hearing as needed to prevent disrupting the resolution of contested case issues.

BOARD OF ENVIRONMENTAL REVIEW

by _____
CINDY E. YOUNKIN, Chairperson

Reviewed by:

_____
John F. North, Rule Reviewer

Certified to the Secretary of State June 23, 1997.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of 17.8.302, incorporating by reference federal regulations and other materials related to air quality emission standards, and 17.8.340, regarding standards of performance for new stationary sources of air pollutants.	)))))))	NOTICE OF AMENDMENT OF RULES (Air Quality)

To: All Interested Persons

1. On May 5, 1997, the board published notice of proposed amendment of the above-referenced rules at page 760 of the 1997 Montana Administrative Register, issue number 9.

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

17.8.302 INCORPORATION BY REFERENCE Same as proposed.

17.8.340 STANDARD OF PERFORMANCE FOR NEW STATIONARY SOURCES AND EMISSION GUIDELINES FOR EXISTING SOURCES (1)-(3) Same as proposed.

(4)(a) Designated municipal solid waste landfill facilities under 40 CFR Part 60, subpart Cc shall comply with the requirements in 40 CFR 60.33c, 60.34c, and 60.35c, that are applicable to designated facilities and that must be included in a state plan for state plan approval~~, except that quarterly surface monitoring for methane under 60.34c is required only during the second, third, and fourth quarters of the calendar year~~.

(b) Designated facilities under Subpart Cc, that meet the conditions in 40 CFR 60.33c(a)(1), regarding operation or design capacity, shall submit an initial design capacity report and an initial emission rate report, in accordance with 40 CFR 60.757, within 90 days of EPA's publication in the Federal Register of approval of this rule. If the design capacity report reflects that the facility meets the condition in 40 CFR 60.33c(a)(2) and the emission rate report reflects that the facility meets the condition in 40 CFR 60.33c(a)(3), the facility shall:

(i)-(ii) Same as proposed.

(iii) initiate on-site construction or installation of any necessary air pollution control devices, and initiate any necessary process changes, within ~~18~~ 21 months after the date of EPA's publication of approval of this rule in the Federal Register, or within ~~18~~ 21 months after the date the condition in 40 CFR 60.33c(a)(3) is met, whichever occurs later;

(iv) complete on-site construction or installation of any necessary air pollution control devices, and complete any necessary process changes, within ~~24~~ 27 months after the date of

EPA's publication of approval of this rule in the Federal Register, or within ~~24~~ 27 months after the date the condition in 40 CFR 60.33c(a)(3) is met, whichever occurs later; and

(v) Same as proposed.

(c) Same as proposed.

3. The board received no comments in opposition to the proposed amendments. The board deleted the proposed methane emission monitoring exemption in the first quarter (winter) of each year. The Environmental Protection Agency (EPA) suggested the revision and the only entity currently subject to the requirements, the City of Billings, made no objection. With the revision, the department has discretion to grant exemptions from the methane monitoring requirements due to bad weather or other conditions that might preclude a landfill from complying with the surface monitoring requirements.

The board extended the proposed time lines for compliance with the rule amendments. The City of Billings requested the extensions based on a concern that the proposed time lines would have required construction during winter months. EPA approved the time line revisions, which extend construction commencement time from 18 months to 21 months in ARM 17.8.340(4)(b)(iii) and construction completion time from 24 months to 27 months in ARM 17.8.340(4)(b)(iv).

BOARD OF ENVIRONMENTAL REVIEW

By: _____
CINDY E. YOUNKIN, Chairperson

Reviewed by:

_____
John F. North, Rule Reviewer

Certified to the Secretary of State June 23, 1997.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of 17.8.316, regarding particulate matter emissions from incinerators.)	NOTICE OF AMENDMENT OF RULE

(Air Quality)

TO: All Interested Persons

1. On May 19, 1997, the board published notice of the proposed amendment of ARM 17.8.316 at page 874 of the 1997 Montana Administrative Register, Issue No. 10.

2. The rule was amended as proposed.

3. On June 11, 1997, hearing officer David Rusoff conducted a public hearing on the proposed amendments. At the hearing, several persons testified in support of the proposed amendments and no one testified in opposition. The board also received written comments before and after the hearing. The Environmental Protection Agency (EPA) submitted written comments suggesting further amendments and further review of the proposed amendments. The comments on the proposed amendments are summarized below, followed by the board's responses to comments that suggested further amendments or that may be characterized as being in opposition to the proposed rulemaking:

Comment 1: Persons testifying in favor of the proposed amendments at the hearing included: Don Vidrine, Chief of the Department's Air & Waste Management Bureau; Will Selser, Lewis & Clark County Public Works Department and Headwaters Recycling Cooperative; Peggy Likens, Keep Montana Clean & Beautiful; Joe Scheeler, Environmental Manager for Ashgrove Cement Company; David Leverett, Gallatin Recyclers and Full Circle Recycling; and Brian Heuer, BFI Recycling. Mr. Vidrine testified that the emission limits in ARM 17.8.316 can be unnecessarily restrictive and have caused certain companies not to pursue incineration. Mr. Vidrine testified that the proposed amendments would allow the Department to base the opacity and mass particulate matter emission limits in an air quality permit for a new or altered incinerator upon a technical review of the specific proposal, including an analysis of best available control technology and a health risk assessment. The other persons testifying in support of the proposed amendments commented that the proposed amendments would allow companies, such as Ashgrove Cement Company and Holnam, Inc., to recycle glass into part of their end product, rather than the glass being landfilled due to the high cost of transporting the glass out of state for recycling.

Comment 2: At the hearing, Mr. Leverett also testified that he questioned whether an air quality incinerator permit is required under the Department's statutes and rules to add recycled glass

to the raw materials used in cement production. After the hearing, Holnam, Inc., submitted similar written comments, stating that it will not accept recycled glass as a raw material at this time due to the Department's position that combusting the glass would require an air quality incinerator permit.

Board Response: Whether an air quality preconstruction permit is required to add recycled glass to the raw materials used in cement production is beyond the scope of the present rulemaking proceeding.

Comment 3: Prior to the hearing, the National Park Service and Browning-Ferris Industries submitted written comments in support of the proposed amendments. In its comments, BFI also asked the Board to conduct further rulemaking to require small municipal waste incinerators, which are currently exempt from New Source Performance Standards and Emission Guidelines, to comply with federal emission limits applicable to smaller regulated facilities.

Board Response: Whether the Board should adopt specific emission limits for small municipal waste incinerators is beyond the scope of the present rulemaking proceeding.

Comment 4: The Environmental Protection Agency (EPA) commented that, because the state does not intend to submit the rules implementing § 75-2-215, MCA, as a revision of the state Implementation Plan (SIP), the state is removing from the SIP requirements for new and altered incinerators in ARM 17.8.316 and is not incorporating them into the SIP equivalent provisions. EPA commented that, under Section 110(I) of the federal Clean Air Act (CAA), the state must evaluate whether removal from the SIP of provisions for new and altered incinerators in ARM 17.8.316 will interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the CAA. EPA commented that, for example, the state should evaluate whether removal from the SIP of requirements for new and altered incinerators in ARM 17.8.316 would have any impact in PM-10 nonattainment areas or on PM-10 increment consumption. EPA commented that ARM 17.8.316 has been part of the SIP since the early 1970's and that, under Section 193 of the CAA, any control equipment in effect prior to the 1990 Clean Air Act Amendments in a nonattainment area may not be modified unless the modification ensures equivalent or greater reductions of the relevant air pollutant. EPA commented that the state must evaluate the impact of revising ARM 17.8.316 against the Section 193 requirement. EPA commented that it may not be able to approve the proposed revisions to ARM 17.8.316 unless an analysis of the impacts of the revision is submitted with the SIP modification.

Board Response: The requirements under § 75-2-215, MCA, ARM 17.8.706(5) and ARM 17.8.316 have no comparable federal counterpart and were not promulgated to address an issue of

attainment of national air quality standards. The requirement to install best available control technology (BACT) on new or altered emission sources, including incinerators, is contained in the SIP, which ensures that facilities will be required to install BACT on any new or altered incinerators exempt from ARM 17.8.316.

There is no evidence in the record indicating that the proposed amendments would affect any control requirement in a nonattainment area or otherwise have an adverse effect on attainment of any national air quality standard. The department has commented that it is confident that it will be able to demonstrate in a SIP submittal for the proposed amendments to ARM 17.8.316 that the proposed amendments should be approved by EPA as a SIP revision. The board believes that any issue of SIP approval should be resolved between the department and EPA upon submission of the amendments to EPA as a SIP revision.

Comment 5: EPA noted that the amendments to ARM 17.8.316(5) specify that emission testing shall be conducted in accordance with ARM 17.8.106 and the Montana Source Testing Protocol and Procedures Manual. EPA commented that ARM 17.8.106 is not clear as to whether alternative or equivalent test methods used to determine compliance with SIP emission limits will be submitted to EPA for review and approval. EPA commented that all alternative or equivalent test methods for SIP approved limits must be submitted to EPA for review and approval, that, at some time in the future, the state should modify ARM 17.8.106 to clarify the alternative or equivalent test method requirements for SIP limits, and, in the meantime, the state should insert a sentence at the end of ARM 17.8.316(5) specifying that any alternative or equivalent test method used will be submitted to EPA for review and approval.

Board Response: ARM 17.8.106(1)(b) provides that all emission source testing must be conducted in compliance with the Montana Source Testing Protocol and Procedures Manual and that, "[i]f the use of an alternative test method requires approval by the administrator [of EPA], that approval must also be obtained." ARM 17.8.106(1)(c) provides that, except as otherwise specified in the manual, all testing must be performed as specified in the applicable sampling methods contained in the Code of Federal Regulations (CFR) and in the EPA Quality Assurance Manual. 40 CFR § 60.8(b) provides that performance tests shall be conducted in accordance with the applicable EPA reference method unless the administrator of EPA approves an equivalent or alternate method. Under existing state rules, and under the proposed amendments, any deviation from specified test methods requires the facility to receive prior approval from EPA and no further rule amendments should be necessary to clarify this.

Comment 6: EPA commented that it is unclear in the proposed amendments to ARM 17.8.316(5), regarding the operating conditions necessary for performance tests, whether the phrase "representative of normal operation" refers to the types of

solid or hazardous wastes that can be burned or to the charging level. EPA commented that it interprets "representative conditions" to mean 90% or greater of maximum design load, if there is no operating record of "representative conditions," such as for a new facility, or at another load supported by data demonstrating what representative conditions are, and will likely continue to be. EPA commented that, with respect to the material burned in an incinerator, "representative of normal operation" should mean the material normally burned in the incinerator. EPA commented that, in establishing the appropriate load for performance tests, the state should consider the facility's emission limits and whether the facility exceeds that limit under normal operating conditions. EPA commented that the proposed amendments should be revised to clarify what is meant by "representative of normal operation," i.e., load vs feed, and to ensure that the rule does not limit the conditions under which the state or EPA can require facilities to demonstrate compliance.

Board Response: The phrase "representative of normal operation" is intended to refer to the types of solid or hazardous wastes that will be burned in the incinerator. The proposed amendments also include the requirement that all emission source tests must be conducted in accordance with the Montana Source Testing Protocol and Procedures Manual. The manual specifies that process rates during testing must be representative of maximum operating capacity or maximum permitted capacity, unless otherwise agreed upon by the department and the facility. The board does not believe these requirements are unclear or less stringent than the existing testing requirements and the board does not believe the proposed language limits the conditions under which the department or EPA can require facilities to demonstrate compliance.

Comment 7: EPA noted that the board indicated in the notice of proposed rulemaking that the BACT and negligible risk evaluations of a permit application for a new or altered incinerator reviewed under § 75-2-215, MCA, and ARM 17.8.706(5) may require emission limits that are more or less stringent than the limits required under the present language in ARM 17.8.316. EPA commented that it questions how BACT for a new or altered incinerator could be less stringent than the limits met by existing sources. EPA commented that, because BACT is based on the most current pollution control technology, BACT for new or altered sources should not be less stringent than controls on existing sources.

Board Response: By definition of the term "BACT", under ARM 17.8.701(5), every BACT evaluation for an air quality incinerator permit application involves a case-by-case determination of the maximum reduction of each regulated pollutant achievable by the emission source, considering energy, environmental, and economic impacts and other costs. A BACT evaluation involves review of emission limits met by other

emission sources within the same source category. Section 75-2-215, MCA, enacted in 1993, expanded the definition of "incinerator" to apply to combustion devices previously not defined as incinerators, including kilns, boilers, furnaces and heaters. A BACT evaluation for one or more of those new or altered emission sources, such as a cement kiln, may result in emission limits that are different, i.e., more or less stringent, than those met by different types of existing incinerators, such as grocery store incinerators. This is consistent with BACT requirements.

Comment 8: EPA commented that the state should revise the proposed amendments if an existing source, operating without an air quality permit, could apply for a permit and obtain a less stringent emission limit through the negligible risk/BACT requirements in ARM 17.8.706.

Board Response: Under the proposed amendments, the only emission sources exempted from the emission limits in ARM 17.8.316 would be emission sources covered by an air quality preconstruction permit issued under § 75-2-215, MCA, and the implementing rule, ARM 17.8.706(5). By their terms, § 75-2-215, MCA, and ARM 17.8.706 apply only to new or altered incinerators. Section 75-2-215(2), MCA, provides that an existing emission source is subject to the incinerator permit requirements only if it incinerates or uses as fuel, or would incinerate or use as fuel, solid or hazardous waste that changes the nature, character, or composition of the incinerator's emissions from the design or permitted operation of the incinerator. If an existing incinerator, which is not covered by an air quality permit, is, or becomes, subject to an air quality permit under the terms of § 75-2-215(2), MCA, and the facility applies for a permit, under § 75-2-215(3)(d), MCA, the department may not issue a permit unless it determines that the emission source constitutes no more than a negligible risk to public health, safety and welfare and to the environment and ARM 17.8.706 requires the facility to apply BACT. Most existing incinerators would not be subject to an air quality preconstruction permit under § 75-2-215, MCA; any that become subject to the statute will be subject to source-specific negligible risk and BACT standards. Application of the generic emission limits in ARM 17.8.316 should be unnecessary when an emission source is subject to source-specific limits that have been determined to be in conformance with best available control technology and to be protective of public health, safety and welfare and the environment.

Comment 9: EPA commented that, if a new or revised National Ambient Air Quality Standard (NAAQS) is promulgated for particulate matter, and EPA finalizes its proposed Interim Implementation Policy governing particulate matter air pollution control, EPA may not be able to approve the proposed amendments until the state demonstrates that the existing language in ARM 17.8.316 is not needed for the state to attain the new or revised standard.

Board Response: There is nothing in the record that indicates that the proposed amendments would have an effect on attainment of a revised NAAQS for particulate matter. If EPA revises the NAAQS for particulate matter, any issue of SIP approval should be resolved between the department and EPA, and any necessary rule amendments brought before the board.

BOARD OF ENVIRONMENTAL REVIEW

CINDY E. YOUNKIN, Chairperson

Reviewed by:

JOHN F. NORTH, Rule Reviewer

Certified to the Secretary of State June 23, 1997.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.30.636 regarding operation of dams to avoid harm to beneficial uses of water.	NOTICE OF EMERGENCY AMENDMENT

(Water Quality)

To: All Interested Persons

1. On June 20, 1997, the Board adopted an emergency amendment to ARM 17.30.636, which requires that the operator of a dam that causes conditions harmful to prescribed beneficial uses of state water must demonstrate to the satisfaction of the Department of Environmental Quality that continued operations will be done in the best practicable manner to minimize harmful effects. Prior to this amendment the rule applied only to dams that were in operation prior to July, 1971. The amendment expands the scope of the rule to apply to dams that began operation after June of 1971 as well. The Board has found that an imminent peril to the public welfare and the environment requires adoption of an emergency rule because of the Army Corps' Libby Dam plan of operations for 1997. That dam began operation after July of 1971. Under the 1997 plan of operation, the Corps would release abnormally high flows during June, July, and August. This plan does not replicate the natural flow pattern of gradually decreasing flows through the summer.

The abnormal flow pattern would likely have three adverse impacts on the fishery and associated recreation, both of which are prescribed beneficial uses of the Kootenai River and Koocanusa Reservoir. First, the high flows may adversely affect white sturgeon, an Endangered Species Act listed fish. The summer and fall rearing of the year's hatch is a key point in the life history of the species. The abnormally high flows will eliminate critical rearing habitats and alter the historic thermal regime. Second, the reach of the Kootenai River from Kootenai Falls to the dam is both a bull trout core area and the reach that would be most affected by operation of the dam. Abnormally high flows have the potential to affect movements of bull trout, which is currently being considered for listing under the Endangered Species Act, to spawning grounds and thereby adversely affect spawning success. And third, drawdown of Koocanusa Reservoir would reduce the food supply for juvenile bull trout by dewatering aquatic insect larvae in the reservoir's littoral zone and by reducing insect deposition. The proposed operation for this year includes discharges from the dam that will cause violations of the state water quality standard for total dissolved gas pressure and will thus cause harm to the fish downstream of the dam. The Koocanusa bull trout population is one of the strongest remaining populations in the Northwest.

Because these impacts would occur before a permanent rule could be adopted and implemented, the Board has adopted the emergency rule.

2. The emergency rule amendments are effective June 23, 1997.

3. The text of the emergency rule amendment is as follows (new material is underlined; material to be deleted is interlined):

17.30.636 GENERAL OPERATION STANDARDS (1) Owners and operators of water impoundments ~~operating prior to July 1971~~ that cause conditions harmful to prescribed beneficial uses of state water shall demonstrate to the satisfaction of the department that continued operations will be done in the best practicable manner to minimize harmful effects. New water impoundments must be designed to provide temperature variations in discharging water that maintain or enhance the existing propagating fishery and associated aquatic life. As a guide, the following temperature variations are recommended: continuously less than 40°F during the months of January and February, and continuously greater than 44°F during the months of June through September.
AUTH: 75-5-301, MCA; IMP: 75-5-301, MCA

4. The rationale for the emergency rule is as set forth in paragraph 1.

5. A standard rulemaking procedure will be undertaken prior to the expiration of this emergency rule.

6. Interested persons are encouraged to submit their comments during the upcoming standard rulemaking process. If interested persons wish to be personally notified of that rulemaking process, they should submit their names and addresses to the Board of Environmental Review, Department of Environmental Quality, PO Box 200901, Helena, MT 59620-0901.

BOARD OF ENVIRONMENTAL REVIEW

by _____
CINDY E. YOUNKIN, Chairperson

Reviewed by

_____
John F. North, Rule Reviewer

Certified to the Secretary of State June 23, 1997.

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

In the matter of the amendment of 16.30.102, 16.30.105, 16.30.106, 16.30.215 and 16.30.218 pertaining to emergency medical services licensure requirements and procedures	NOTICE OF AMENDMENT

TO: All Interested Persons

1. On May 5, 1997, the Department of Public Health and Human Services published notice of the proposed amendment of 16.30.102, 16.30.105, 16.30.106, 16.30.215 and 16.30.218 pertaining to emergency medical services licensure requirements and procedures at page 801 of the 1997 Montana Administrative Register, issue number 9.

2. The Department has amended the following rule as proposed with the following changes from the original proposal. Matter to be added is underlined. Matter to be deleted is interlined.

16.30.102 *DEFINITIONS* (1) through (12) remain the same.

(13) "Emergency medical technician-defibrillation (EMT-defibrillation) equivalent" means:

(a) remains the same.

(b) after January 1, 1993, one of the following:

(i) EMT-basic who has successfully completed either an EMT-basic transition course approved by the department or an EMT-basic course following the United States department of transportation's 1994 national standard curriculum, which is adopted by reference as noted in (42) below;

(ii) through (vi) remain the same.

(14) through (41) remain the same.

(42) The department hereby adopts and incorporates by reference the U.S. department of transportation's Emergency Medical Technician: Basic National Standard Curriculum (1994), developed pursuant to contract number DTNH22-90-C-05189, which contains a national standard training program for EMT-basics. A copy of the curriculum may be obtained from the department's Emergency Medical Services and Injury Prevention Section, Health Policy Services Division, P.O. Box 202951, Helena, MT 59620-2951 (phone: (406)444-3895).

AUTH: Sec. 50-6-323, MCA
IMP: Sec. 50-6-323, MCA

3. The Department has thoroughly considered all commentary received. The comments received and the department's response to each follow:

COMMENT #1: The reviewer for the Administrative Code Committee requested that the curriculum referred to in ARM 16.30.102's revised definition of "EMT-defibrillation-equivalent" be adopted and incorporated by reference.

RESPONSE: The department agreed and expressly adopted the curriculum by reference.

COMMENT #2: American Medical Response (AMR) suggested that EMS services operating at the EMT-Intermediate and EMT-Advanced levels should not be required to purchase a dual channel recording defibrillator which would be necessary if an EMT-Basic or EMT-I were to perform defibrillation because those levels of service, having both on-line and off-line medical control, do not need such a defibrillator. AMR, which uses paramedics and other levels of EMTs, uses a monitor/defibrillator that does not have dual-channel recording, and it and other services like it cannot afford to buy a second defibrillation system that would allow lower-level EMTs to perform defibrillation as well. Therefore, it requested that any EMS service with on-line and off-line medical control be allowed to use any appropriate monitor/defibrillator that has an event recorder.

RESPONSE: While the department recognizes the financial difficulty raised by American Medical Response, the difficulty is ultimately a result of the scope-of-practice requirements for EMTS set by the Board of Medical Examiners, not by DPHHS' rules.

An advanced life support service may indeed use the defibrillator suggested by AMR, but an EMT-D equivalent or an EMT-Intermediate employed by AMR may not use that defibrillator without violating their allowed scope of practice. In the same vein, an EMT-Intermediate service may not be licensed to use the suggested defibrillator because its use by the personnel trained at this level would exceed their allowed scope of practice. Therefore, the department cannot comply with AMR's request.

4. Rules 16.30.105, 16.30.106, 16.30.215 and 16.30.218 are amended as proposed.

Rule Reviewer

Director, Public Health and Human Services

Certified to the Secretary of State June 23, 1997.

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

In the matter of the amendment of ARM 16.32.922 pertaining to inspection fees for personal care facilities	))))	NOTICE OF AMENDMENT OF A RULE

TO: All Interested Persons

1. On May 19, 1997, the Department of Public Health and Human Services published notice of the proposed amendment of ARM 16.32.922 pertaining to inspection fees for personal care facilities at page 877 of the 1997 Montana Administrative Register, issue number 10.

2. The Department has amended rule 16.32.922 as proposed.

3. The Department has thoroughly considered all commentary received. The comments received and the department's response to each follow:

COMMENT #1: The department received one comment requesting the total fee amount that would be eliminated by the proposed rule amendment and further requesting the total number of personal care facilities that would be affected by the proposed rule amendment.

RESPONSE: Inspection fees invoiced by the licensure bureau for personal care facility inspections were $37,050 for state fiscal year 1996 and $46,635 for state fiscal year 1997. These fees are designated for deposit into the state general fund.

COMMENT #2: The department received two comments supporting the amendment of rule 16.32.922, as proposed.

RESPONSE: The department thanks the commentors for their interest in and support of the proposed rule amendment.

Rule Reviewer

Director, Public Health and Human Services

Certified to the Secretary of State June 23, 1997.

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

In the matter of the amendment of rules 46.6.903 and 46.6.1601 through 46.6.1604 pertaining to the independent living program	))))	NOTICE OF AMENDMENT OF RULES

TO: All Interested Persons

1. On May 5, 1997, the Department of Public Health and Human Services published notice of the proposed amendment of rules 46.6.903 and 46.6.1601 through 46.6.1604 pertaining to the independent living program at page 765 of the 1997 Montana Administrative Register, issue number 9.

2. The Department has amended rules 46.6.903 and 46.6.1601 through 46.6.1604 as proposed.

3. The Department has thoroughly considered all commentary received. The comments received and the department's response to each follow:

Comment #1: A commentor inquired as to the oversight mechanism for monitoring the standards that are set out by ARM 46.5.903? Is this the role of the State Independent Living Council (SILC)? Is it implied that the success of an independent living program is measured against the independent living 3 year plan? What is the baseline of measurement?

Response: The proposed amendments to ARM 46.6.903, relating to standards for providers, are necessary to provide appropriate accreditation for independent living programs and to provide for necessary incorporations by reference of the applicable accrediting standards relied upon by the Department in the certification process. Since there are no independent living accrediting agencies and the standards and assurances as set forth in the federal law are the requirements, it seems most appropriate for the Department to adopt these standards as the certification. The set of standards and assurances with the accompanying 704 report proposed for adoption is established in federal law to specifically govern the operations and performance of federally funded independent living centers.

The oversight mechanism for monitoring the standards that are set out by this section of rule is the yearly submission of the federally required 704 report which gives assurances that the independent living program is meeting the federally required standards and assurances as set forth by the federal law. The purpose of the 704 report is to serve as a performance measuring instrument for independent living programs, both quantitatively and qualitatively; determine center compliance with the standards, assurances, and indicators of compliance with the

standards in the federal statutes and regulations; collect required data; and serve as the basis for on-site reviews of program grantees. The 704 report is submitted to the federal Rehabilitative Services Administration, the designated state unit and the SILC. These three entities conduct reviews to verify that the information contained in the 704 report meets the federal standards and assurances. The success of an independent living program is measured against their individual program's three year plan which must be consistent with the three-year state plan for independent living. There are no federally established benchmarks regarding a baseline of measurement other then the program assuring that they are providing services and conducting activities that are consistent with the state plan for independent living and the individual independent living program's three year plan.

Comment #2: A commentor asked how can a consumer or representative know what services can be provided through an independent living program under federal law? How can a consumer or representative know what an independent living program is required to provide under state law as adopted from federal law? What process is used by the State to determine what services should be provided under the 3 - year plan? At what level is consumer input sought?

Response: In order for an independent living program to receive federal funds, they are required by federal law to meet the standards and assurances. A consumer or representative could know the services provided through an independent living program under federal law in a number of ways. For example, they could contact the SILC, the designated state unit, read the state independent living plan, or contact a center for independent living. The required services an independent living program must provide, if receiving funds from the federal program, include the four core independent living services: information and referral, independent living skills training, peer relationships, and individual and systems advocacy. Any other services may be provided and are not limited to those listed in the federal law. The designated state unit and SILC jointly determine the services to be provided under the 3 - year state independent living plan. The determination of services is gathered through public hearing, local focus forums, consumer satisfaction surveys, and community needs assessments. Consumer input is sought at every level of the entire process as consumer control is the crux of the independent living movement.

Comment #3: A commentor asked what is the appropriate appeal mechanism for a consumer to use if the service is listed in the independent living state plan, but the regional independent living program does not offer the service? Are there set grievance procedures that are consistent between independent living programs guided by the standards? Or are the individual

grievance processes established by each independent living program? What is the mechanism that consumers will be informed of their rights to appeal? Does the representation provided through the Montana Advocacy Program through the federal Client Assistance Program (CAP) apply to independent living program services? What is the protocol to be followed?

Response: As previously mentioned, centers for independent living are only required to provide the four core services and they may provide others listed in the state independent living plan. Centers do not provide direct assistance, meaning financial assistance for the purchasing of equipment, housing, transportation, etc. However, they may provide assistance in acquiring these or any other service through one of the services listed in the state independent living plan.

A statewide grievance procedure has been adopted through each of the Montana centers for independent living and is reviewed with the consumer upon the development of an individual independent living plan. A consumer of independent living services can contact CAP concerning any issue relating to the receipt or nonreceipt of independent living services.

Comment #4: A commentor asked generally what independent living services are provided where?

Response: Each regional independent living program can establish a program of services that in addition to the four required core services reflects the needs of the region that the independent living program is serving and are within the parameters of the state independent living plan.

Comment #5: A commentor from the Montana Advocacy Program requested that the Department justify with legal authority the inclusion of legal assistance to the list of services in ARM 46.6.1602(3)(k).

Response: The identified legal authority for the inclusion of legal assistance as a service is 29 U.S.C. 796-796f-5 and 34 CFR Parts 364, 365, 366, and 367.

For the purposes of independent living programs and as the federal government intended, advocacy and legal assistance are defined as follows: "advocacy and legal assistance and/or representation in obtaining access to those benefits, services and programs to which an individual with significant disabilities may be entitled." While the federal authorities clearly provide for the inclusion of legal assistance as an independent living service, independent living centers are not mandated to provide that service or any other service which is not one of the required core services.

Advocacy generally means pleading an individual's cause or speaking or writing in support of an individual. To the extent permitted by state law or the rules of the agency before which an individual is appearing, a non-lawyer may engage in advocacy on behalf of another individual. Legally authorized advocate or representative means an individual who is authorized under state law to act or advocate on behalf of another individual. Under certain circumstances, state law permits only an attorney, legal guardian, or individual with a power of attorney to act or advocate on behalf of another individual. In other circumstances, state law may permit other individuals to act or advocate on behalf of another individual.

Independent living centers are not precluded from hiring and employing legal advocates or attorneys. However, in the spirit of consumer control and the independent living philosophy, consumers are taught through the independent living program to use existing resources such as protection and advocacy services and legal aid types of services. The emphasis is on coordinating with these existing resources, otherwise there might be a duplication of services provided with public funds.

Rule Reviewer

Director, Public Health and Human Services

Certified to the Secretary of State June 23, 1997.

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

In the matter of the amendment of rules 46.12.204 and 46.17.121 pertaining to copayments and qualified medicare beneficiaries	))))	NOTICE OF AMENDMENT OF RULES

TO: All Interested Persons

1. On May 5, 1997, the Department of Public Health and Human Services published notice of the proposed amendment of rules 46.12.204 and 46.17.121 pertaining to copayments and qualified medicare beneficiaries at page 820 of the 1997 Montana Administrative Register, issue number 9.

2. The Department has amended rules 46.12.204 and 46.17.121 as proposed.

3. The Department has thoroughly considered all commentary received. The comments received and the department's response to each follow:

COMMENT #1: Although raising copayments will provide for cost savings, "hitting a medicaid recipient in the wallet" is not an appropriate means of cost savings. While the copayments on various services are being raised, the ability to obtain some services is being increased, so recipients will be required to make more copayments. Thus, the recipient has to pay twice while the state and the provider receive more money. While the state cannot provide everything to everyone, cost savings at the expense of recipients' finances or health should be avoided.

RESPONSE: The proposed copayment increases are being adopted at the direction of the 1997 legislature. The legislature decreased medicaid funding based upon cost savings expected to be achieved from the proposed copayment increases. In any event, the proposed copayment increases are very small and the department does not expect that the proposed copayments will significantly impact the finances or health of recipients. The small increase in copayments is preferable to eliminating services. Medicaid providers are not allowed to deny a Medicaid recipient medical care based on an inability to pay the copayment.

Dawn Sliva
Rule Reviewer

Laura Young
Director, Public Health and Human Services

Certified to the Secretary of State June 23, 1997.

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

In the matter of the amendment of rules 46.12.503, 46.12.505, 46.12.507 and 46.12.508 pertaining to medicaid coverage and reimbursement of hospital services	))))))	NOTICE OF AMENDMENT OF RULES

TO: All Interested Persons

1. On May 19, 1997, the Department of Public Health and Human Services published notice of the proposed amendment of 46.12.503, 46.12.505, 46.12.507 and 46.12.508 pertaining to medicaid coverage and reimbursement of hospital services at page 883 of the 1997 Montana Administrative Register, issue number 10.

2. The Department has amended rules 46.12.503, 46.12.505, 46.12.507 and 46.12.508 as proposed.

3. No comments or testimony were received.

Rule Reviewer

Director, Public Health and Human Services

Certified to the Secretary of State June 23, 1997.

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

In the matter of the amendment of rules 46.12.4801, 46.12.4804, 46.12.4805, 46.12.4806, 46.12.4810, 46.12.4813, 46.12.4814, 46.12.4815, 46.12.4816, 46.12.4817, 46.12.4826 and 46.12.4827 pertaining to health maintenance organizations	)	NOTICE OF AMENDMENT

TO: All Interested Persons

1. On May 5, 1997, the Department of Public Health and Human Services published notice of the proposed amendment of rules 46.12.4801, 46.12.4804, 46.12.4805, 46.12.4806, 46.12.4810, 46.12.4813, 46.12.4814, 46.12.4815, 46.12.4816, 46.12.4817, 46.12.4826 and 46.12.4827 pertaining to health maintenance organizations at page 811 of the 1997 Montana Administrative Register, issue number 9.

2. The Department has amended rules 46.12.4804, 46.12.4805, 46.12.4806, 46.12.4810, 46.12.4813, 46.12.4814, 46.12.4816, 46.12.4817, 46.12.4826 and 46.12.4827 as proposed.

3. The Department has amended the following rules as proposed with the following changes from the original proposal. Matter to be added is underlined. Matter to be deleted is interlined.

46.12.4801 HEALTH MAINTENANCE ORGANIZATIONS: DEFINITIONS

(1) through (17) remain as proposed.

(18) "Primary care provider" means a physician including obstetricians and gynecologists, a certified nurse practitioner, a certified nurse midwife, a physicians assistant, a federally qualified health center or rural health clinic with a contract to serve an HMO's enrollees that has been designated by an enrollee as the provider through whom the enrollee obtains health care benefits provided by the HMO. A primary care provider attends to an enrollee's routine medical care, supervises and coordinates all of the enrollee's health care, determines the need for and initiates all referrals, determines the provider of medical services and determines the medical necessity of the medical services to be performed. Obstetrician or gynecologist means a physician who is board eligible or board certified by the American Board of Obstetrics and Gynecology.

(19) through (25) remain as proposed.

AUTH: Sec. 53-2-201 and 53-6-113, MCA
IMP: Sec. 53-2-201, 53-6-101, 53-6-113 and 53-6-116, MCA

46.12.4815 HEALTH MAINTENANCE ORGANIZATIONS: PARTICIPATING PROVIDERS (1) through (8) remain as porposed.

(9) An HMO must permit obstetricians/gynecologists to become primary care providers. An obstetrician or gynecologist seeking designation as a primary care provider must meet the same criteria with regard to credentials and other selection criteria for a participating primary care physician and other providers who are participating as primary care providers.

(10) remains as proposed.

AUTH: Sec. 53-2-201 and 53-6-113, MCA
IMP: Sec. 53-2-201, 53-6-101, 53-6-113 and 53-6-116, MCA

4. The Department has thoroughly considered all commentary received. The comments received and the department's response to each follow:

Comment #1: A commentor stated that there is no problem including obstetricians and gynecologists as primary care providers as provided in ARM 46.12.4801 but suggested adding the following new language at the end of the definition of "primary care provider": "Obstetrician or gynecologist means a physician who is board eligible or board certified by the American Board of Obstetrics and Gynecology." The language was taken directly from SB 144 passed during the last legislature.

Response: The Department has added the proposed language.

Comment #2: A commentor stated agreement with the proposed requirement in ARM 46.12.4801 allowing ob-gyns to become primary care providers.

Response: The Department appreciates knowing of the support for this amendment.

Comment #3: One commentor suggested that the definition of primary care provider in ARM 46.12.4801 be changed to reflect language concerning primary care physicians in SB 144. To accomplish this, the language relating to primary care provider would be struck and the following language inserted: "A primary care provider is one who has the responsibility for providing initial and primary care to patients, for maintaining the continuity of patient care, and for initiating referrals for specialist care."

Response: While it may be desirable to conform the rule definition with the particular statutory definition noted by the commentor, the conformance is not legally necessary and the Department at this time wants to maintain the current operative definition that is used in this program.

Comment #4: One commentor noted that language contained on page

813 of the Montana Administrative Register - ARM 46.12.8410 includes language that lists as covered services targeted case management services "for children at risk of abuse as defined at ARM 46.12.1959; and for children with special health care needs as defined at ARM 46.12.1969." This language seems inconsistent with the last paragraph on page 817. The draft contract document from the Department has removed these benefits as part of the HMO responsibility.

Response: The two new targeted case management programs appear in (2) of the rule which is a listing of services that an HMO need not provide unless the delivery of those services are specified in the contract with the Department.

Comment #5: A commentor asked whether bills incurred during the required wait period for SSI recipients, found in ARM 46.12.4804, preceding enrollment may be retroactively billed to the HMO. Recipients may be financially devastated by this provision.

Response: Delaying the date upon which SSI recipients can begin to enroll in HMOs does not affect their Medicaid coverage. Not everyone on Medicaid can enroll in an HMO. Currently the categories of people who cannot enroll in an HMO include people who have Medicare (in addition to Medicaid); people who are institutionalized; people in nursing homes; SSI recipients (versus people on FAIM); and people who have to "spend down" to become eligible for Medicaid in a given month (also know as "medically needy"). These groups are all still covered by Medicaid.

HMO is not just new to Medicaid; it is new to Montana. The Department made a deliberate decision to go slowly with the Medicaid HMO program. As a part of the decision, it made sense to start just with the population of persons who are within the FAIM welfare program. FAIM recipients consist of families with children, a population similar to the commercial population served by HMOs. SSI recipients tend to have more intensive medical needs, and so the Department set the date of January 1, 1997 to let those recipients join an HMO.

Because enrollment in the HMO program has grown more slowly than anticipated, the HMOs requested an additional delay in the SSI start date. This amendment is a response to that request; it delays the date from January to October of 1997. During this time SSI recipients who have Medicaid continue to get a Medicaid card and get their services paid by Medicaid. There is no financial impact on them.

COMMENT #6: A commentor asked that reimbursement be adjusted to cover the additional services of rubella and Hepatitis B that are to be provided under ARM 46.12.4810(3) by the contracting

HMOs. While the serum is covered by the Vaccine for Children, providers must be paid for the administration which is the HMO's responsibility.

Response: These services are already included in the HMO capitation rate as Medicaid already pays family planning clinics and other family planning providers for the cost of administering rubella and Hepatitis B vaccines.

Comment #7: A commentor, while agreeing with the language in ARM 46.12.4813(13), providing for the extension of the notice period to terminate a contract without cause based on the necessity for time needed for transition, expressed concern for the language allowing for termination without cause.

Response: Termination without cause is currently allowed for by the rule and contractual provision. The rule amendment increases the notice period for termination without cause from 60 to 120 days.

Comment #8: A commentor requested that the new language in ARM 46.12.4815(2)(a) be struck and that the following language be added: "An obstetrician or gynecologist wishing to accept designation as a primary care provider must meet the same criteria with regard to credentials and other selection criteria for a participating primary care physician and other providers who are participating as primary care provider."

Response: The Department assumes the commentor proposes to change the new (9), not (2)(a). The Department believes the Department's proposed language in (9) is necessary to ensure an HMO cannot exclude ob-gyns from becoming primary care providers solely on the basis of subspeciality. However, the Department has added the commentor's proposed language to clarify that ob-gyns must meet the same criteria as other primary care providers.

Comment #9: One commentor objected to the proposed change prohibiting HMOs from using gag clauses because this prohibition would allow HMOs or providers within an HMO to exchange information with other entities which should be kept confidential in favor of the patient.

Response: In managed care the term gag clause refers to putting a "gag" on participating providers from telling patients about certain -- often expensive -- treatment options. This gag is often put into the HMO's contract with the provider, hence the term "clause."

Federal and state legislation prohibiting gag clauses have been recently enacted to prevent HMOs from prohibiting a provider from telling a patient all the treatment options for a given

condition, whether or not the treatment options are expensive or even covered by the HMO. The purpose is to ensure a physician can freely communicate with the patient.

Gag clauses are not related to confidentiality. The requirement to keep medical information confidential still applies to Medicaid recipients who choose to enroll in an HMO.

Comment #10: A commentor objected that under ARM 46.12.4816 an HMO must reimburse medically necessary family planning services provided by a non-participating family planning provider at 100% of the current Medicaid payment rate even though the HMO is paid at 95%. Family planning providers certainly have no incentive to become participating providers with an HMO. If utilization is very high, it will mean adjusting payments to contracted providers in order to balance the dollars from the Department. HCFA has stated that their position is firm on this issue. This creates many political and economic issues that could very well cause some HMOs to reconsider contracting to provide services.

Response: The Department appreciates HMOs' frustrations with the multiplicity of requirements that it must meet as an HMO provider for the medicaid program. The reduction of the capitation rate by 5% is made on the assumption that HMO are more efficient in the delivery of health care. While the HMO may achieve these savings by reducing reimbursement to its participating providers, HMOs can also do so by managing the utilization of services.

If the out of network utilization of family planning providers increases to the point where it is problematic for HMOs, the Department would be willing to discuss ways to mitigate the impact of the HCFA requirement to pay the Medicaid rate.

Comment #11: A commentor, noting that ARM 46.12.4817(7) states, "The department reimburses an HMO for 80% of regular Medicaid reimbursement for cost above the reinsurance threshold chosen by the HMO if an HMO chooses to purchase reinsurance from the department;" asked that this protection be extended to an HMO that opts to purchase SSI reinsurance from an outside reinsurer, rather than from the Department.

Response: The Department does not have the jurisdiction to require a private reinsurer to offer certain types of coverage, including the reinsurance threshold fee schedule used as a basis for calculating whether the threshold is met and the cost-sharing ratios once the threshold is exceeded.

Rule Reviewer

Director, Public Health and Human Services

Certified to the Secretary of State June 23, 1997.

BEFORE THE DEPARTMENT
OF PUBLIC SERVICE REGULATION
OF THE STATE OF MONTANA

In the Matter of Amendment of a Rule Pertaining to Pipeline Safety Incident Reporting Requirements.	))))	NOTICE OF AMENDMENT TO ARM 38.5.2204

TO: All Interested Persons

1. On May 5, 1997 the Department of Public Service Regulation published notice of a proposed amendment of a rule pertaining to pipeline safety reporting at pages 827 and 828, issue number 9 of the 1997 Montana Administrative Register.

2. The Department has amended 38.5.2204 as proposed.

3. No comments on the proposed amendment were received.

Dave Fisher

Dave Fisher, Chairman

CERTIFIED TO THE SECRETARY OF STATE JUNE 23, 1997.

Reviewed By Robin A. McHugh

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, 1997. This table includes those rules adopted during the period April 1, 1997 through June 30, 1997 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, 1997, 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 1996 and 1997 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.

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