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OF MONTANA

**MONTANA
ADMINISTRATIVE
REGISTER**

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1997 ISSUE NO. 17
SEPTEMBER 8, 1997
PAGES 1496-1622



MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 17

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 The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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

In the matter of the	)	NOTICE OF PROPOSED
proposed adoption of new	)	ADOPTION
rule I regarding)	
transactional exemptions	)	NO PUBLIC HEARING
for cooperative	)	CONTEMPLATED
associations.)	

TO: All Interested Persons.

1. On October 8, 1997, the State Auditor and Commissioner of Securities proposes to adopt a rule regarding transactional exemptions for cooperative associations.

2. The proposed rule provides as follows:

NEW RULE I TRANSACTIONAL EXEMPTIONS FOR COOPERATIVE ASSOCIATIONS (1) A cooperative association organized under another state's laws that are substantially the same as the provisions of Title 35, chapter 15, MCA, is entitled to a transactional exemption from the registration requirements of the Montana Securities Act, provided that the association has furnished the commissioner with a general written description of the security to be offered or sold in Montana. For the purposes of 33-10-105, MCA, the commissioner has determined that the following states' laws authorizing the organization of the corresponding types of cooperative organizations are substantially the same as the provisions of Title 35, chapter 15, MCA:

(a) Alabama	Incorporated Marketing Associations
(b) Alaska	Cooperative Corporations
(c) Arkansas	Agricultural Cooperative Associations Marketing Associations
(d) California	Non-profit Cooperative Associations
(e) Colorado	Cooperative Associations Cooperative Marketing Associations
(f) Connecticut	Cooperative Marketing Associations
(g) Florida	Agricultural Cooperative Marketing Associations
(h) Georgia	Cooperative Marketing Associations
(i) Hawaii	Agricultural Cooperative Associations
(j) Idaho	Cooperative Marketing Associations
(k) Illinois	Co-operative Corporations
(l) Indiana	Agricultural Cooperatives
(m) Iowa	Co-operative Associations
(n) Kansas	Cooperative Associations
(o) Kentucky	Cooperative Corporations
(p) Louisiana	Agricultural Co-operative Associations

(q) Maine	Cooperative Associations
(r) Massachusetts	Cooperative Agricultural, Dairy or Mercantile Associations
(s) Michigan	Cooperative Associations
(t) Minnesota	Cooperatives
(u) Mississippi	Cooperative Marketing Associations
(v) Missouri	Aquatic Products Marketing Associations Cooperative Marketing Associations Commodity Associations
(w) Nebraska	Cooperative Companies
(x) Nevada	Cooperative Associations
(y) New Jersey	Agricultural Cooperatives
(z) New Mexico	Cooperative Associations
(aa) New York	Cooperative Corporations
(ab) North Carolina	Cooperative Associations
(ac) North Dakota	Cooperative Associations
(ad) Oklahoma	Cooperative Corporations Agricultural Marketing Associations
(ae) Oregon	Cooperative Corporations
(af) Ohio	Cooperative Corporations
(ag) Pennsylvania	Cooperative Corporations
(ah) Rhode Island	Producers' Cooperatives
(ai) South Carolina	Cooperative Associations
(aj) South Dakota	Cooperatives
(ak) Tennessee	Cooperative Marketing Associations
(al) Texas	Cooperative Corporations
(am) Utah	Co-operative Associations
(an) Vermont	Cooperative Associations
(ao) Virginia	Cooperative Associations Agricultural Cooperatives Associations
(ap) Washington	Cooperative Associations
(aq) West Virginia	Cooperative Associations
(ar) Wisconsin	Cooperative Associations Agricultural Associations
(as) Wyoming	Cooperative Marketing Associations

(2) For the purposes of 30-10-105, MCA, a "general written description" must include:

- (a) citation of the state law under which the cooperative is organized;
- (b) the type of industry or business in which the cooperative is engaged;
- (c) a general description of the offering, including type of security, price, restrictions, if any, on security ownership, and the number of shares to be issued;
- (d) the purpose of the security offering; and
- (e) a list of states in which the offering will be conducted.

AUTH: 30-10-105 and 30-10-107, MCA
IMP: 30-10-105, MCA

3. This rule is necessary to provide clear guidelines for the purpose of determining which out-of-state cooperatives may take advantage of the transactional exemption from securities registration for cooperatives. This rule will streamline and simplify regulatory processes for cooperatives by clarifying which state laws are considered substantially similar to Title 35, chapter 15, MCA. The rule is also necessary to provide submission requirements for a cooperative submitting a "general written description" of the cooperative's securities transaction.

4. Interested parties may submit their data, views or arguments concerning the proposed rule in writing to Elizabeth O'Halloran, Securities Attorney, State Auditor's Office, P.O. Box 4009, Helena, Montana 59604-4009, to be received no later than October 6, 1997.

5. If a person who is directly affected by the proposed adoption 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 Elizabeth O'Halloran, Securities Attorney, State Auditor's Office, P.O. Box 4009, Helena, Montana 59604-4009. The request for hearing must be received no later than October 6, 1997.

6. If the agency receives requests for a public hearing on the proposed adoption from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed adoption; from the 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 10 persons based on 100 persons which the agency has determined will be affected by the action who have requested notice of actions of this type.

7. The State Auditor's Office maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies whether the person wishes to receive notices regarding insurance rules, securities rules, or both. Such written request may be mailed or delivered to the State Auditor's Office, P.O. Box 4009, Helena, MT 59604, faxed to the office at 406-444-3497, or may be made by

completing a request form at any rules hearing held by the State Auditor's Office.

MARK O'KEEFE, State Auditor
and Commissioner of Securities

By:



Mark O'Keefe
Securities Commissioner

By:



Gary L. Spaeth
Rules Reviewer

Certified to the Secretary of State on August 25, 1997.

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

In the matter of the	)	NOTICE OF PROPOSED
proposed amendment of rule	)	AMENDMENT
6.6.5101 regarding the plan)	
of operation of the small	)	NO PUBLIC HEARING
employer health reinsurance	)	CONTEMPLATED
program)	

TO: All Interested Persons.

1. On October 8, 1997, the State Auditor and Commissioner of Insurance proposes to amend Rule 6.6.5101 regarding the plan of operation of the small employer health reinsurance program.

2. The proposed rule amendments are as follows (new material is underlined; material to be deleted is interlined):

6.6.5101- APPLICABILITY AND SCOPE PLAN OF OPERATION

(1) ~~These rules constitute the administrative rule component of the~~ The plan of operation for the Montana small employer health reinsurance program developed by the board of directors of the program ~~(board)~~ and adopted by the commissioner pursuant to 33-22-1819, MCA.

~~(2) These rules apply to all members of the program.~~

~~(3) The plan of operation with changes through July 31, 1995~~ June 16, 1997 is hereby adopted and incorporated by reference. A copy of the plan of operation is available for public inspection at and a copy may be obtained from the Office of the Commissioner of Insurance, Room 270, Sam W. Mitchell Building, 126 N. Sanders, P.O. Box 4009, Helena, MT 59620-4009.

AUTH: 33-1-313 and 33-22-1822, MCA

IMP: 33-22-1819, MCA

3. This rule is necessary in order to incorporate by reference the current plan of operation of the board of the program. It is necessary to delete the language in (1) and (2) because those subsections refer to rules which have been repealed.

4. Interested parties may submit their data, views or arguments concerning the proposed action in writing to Claudia Clifford, State Auditor's Office, P.O. Box 4009, Helena, Montana 59604-4009, to be received no later than October 6, 1997.

5. 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, the person must make written request for a hearing and submit this request along with any written comments to Claudia Clifford, State Auditor's Office, P.O. Box 4009, Helena, Montana 59604-4009. A written request for hearing must be received no later than October 6, 1997.

6. If the agency receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the 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 30 persons based on 300 persons which the agency has determined will be affected by the action who have requested notice of actions of this type.

7. The State Auditor's Office maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies whether the person wishes to receive notices regarding insurance rules, securities rules, or both. Such written request may be mailed or delivered to the State Auditor's Office, P.O. Box 4009, Helena, MT 59604, faxed to the office at 406-444-3497, or may be made by completing a request form at any rules hearing held by the State Auditor's Office.

MARK O'KEEFE, State Auditor
and Commissioner of Insurance

By: 

Frank Cote
Deputy Insurance Commissioner

By: 

Gary L. Spaeth
Rules Reviewer

Certified to the Secretary of State on August 25, 1997.

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

In the matter of the	)	NOTICE OF PROPOSED
proposed amendment of rule	)	AMENDMENT
6.6.4002 pertaining to)	
definitions of money market	)	NO PUBLIC HEARING
funds.	)	CONTEMPLATED
)	

TO: All Interested Persons.

1. On October 8, 1997, the State Auditor and Commissioner of Insurance proposes to amend rule 6.6.4002 pertaining to definitions of money market funds.

2. The proposed rule amendments are as follows (new material is underlined; material to be deleted is interlined):

6.6.4002 DEFINITIONS OF MONEY MARKET FUNDS (1) For the purposes of implementing 33-4-403, MCA, the commissioner defines "money market funds" as those investments which comply with the standards of the United States securities and exchange commission adopted in 17 C.F.R. 270.2a-7, as it appears in the April 1, ~~1990~~1997, edition of the Code of Federal Regulations.

(2) The commissioner hereby adopts and incorporates herein by reference 17 C.F.R. 270.2a-7, as it appears in the April 1, ~~1990~~ 1997, edition of the Code of Federal Regulations. A copy of the complete regulation is available for inspection at the office of the Commissioner of Insurance, Room 270, Sam W. Mitchell Building, Helena, Montana. Copies of the regulation may also be obtained by writing to United States Securities and Exchange Commission Regional Office, 3040 Jackson Federal Building, 915 Second Avenue, Seattle, Washington 98174. Persons obtaining such copies may be required to pay the costs of providing such copies.

AUTH: 33-1-313 and 33-4-403, MCA
IMP: ~~33-4-404~~ 33-2-806 and 33-4-403, MCA

3. Since the federal regulation that defines money markets, 17 C.F.R. 270.2a-7, has been amended, this proposed rule amendment is necessary in order to incorporate by reference the correct version of the federal regulation now in effect. The implementing cites are being amended to correct a clerical error and to include 33-2-806, MCA, which this rule now implements subsequent to an amendment of that statute in the last legislative session.

4. Interested parties may submit their data, views or arguments concerning the proposed action in writing to Jim Borchardt, State Auditor's Office, P.O. Box 4009, Helena, Montana 59604-4009, to be received no later than October 6, 1997.

5. 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, the person must make written request for a hearing and submit this request along with any written comments to Jim Borchardt, State Auditor's Office, P.O. Box 4009, Helena, Montana 59604-4009. The request for hearing must be received no later than October 6, 1997.

6. If the agency receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the 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 30 persons based on 300 persons which the agency has determined will be affected by the action who have requested notice of actions of this type.

7. The State Auditor's Office maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies whether the person wishes to receive notices regarding insurance rules, securities rules, or both. Such written request may be mailed or delivered to the State Auditor's Office, P.O. Box 4009, Helena, MT 59604, faxed to the office at 406-444-3497, or may be made by completing a request form at any rules hearing held by the State Auditor's Office.

MARK O'KEEFE, State Auditor
and Commissioner of Insurance

By: 

Frank G. Cote
Deputy Insurance Commissioner

By: 

Gary L. Spaeth
Rules Reviewer

Certified to the Secretary of State on the 25th day of August, 1997.

17-9/8/97

MAR Notice No. 6-95

BEFORE THE BOARD OF PROFESSIONAL ENGINEERS AND LAND SURVEYORS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed) NOTICE OF PUBLIC HEARING ON
amendment of a rule pertaining) THE AMENDMENT OF A RULE
to classification of experience) PERTAINING TO CLASSIFICATION
) OF EXPERIENCE

TO: All Interested Persons:

1. On October 3, 1997, at 10:00 a.m., a public hearing will be held in the Professional and Occupational Licensing Bureau Conference Room at the Department of Commerce, 111 N. Jackson, Helena, Montana 59620, to consider the proposed amendment of a rule pertaining to classification of experience.
2. The proposed amendment to ARM 8.48.507 will read as follows: (new matter underlined, deleted matter interlined)

"8.48.507 CLASSIFICATION OF EXPERIENCE (1) Engineering experience or land surveying experience ~~of a character satisfactory to the board~~ shall include the following:

~~(a) Sub professional work shall be construed to cover the time spent as rodman, chairman, instrumentman, inspector, recorder, draftsman, computer, lester, superintendent of construction, junior engineers or similar work; that is, positions in which the responsibility is slight and the individual performance of a task, set and supervised by a superior, is all that is required. It shall also include full time engineering employment before the applicant graduated from an approved college or university.~~

~~(b) Each year of experience in sub professional work, as defined herein may be credited as one half year toward the requirement of experience or practice of a character satisfactory to the board. Only experience of the applicant which is classified as sub professional or pre professional work by the board will be considered.~~

~~(c) Pre professional work is work performed before registration in Montana, which is of a character worthy of the profession. Pre professional work shall include the time after the applicant has graduated from an approved college or university, during which he has been accepted in engineering work of a higher grade and responsibility than that above defined as sub professional work. Successful completion of graduate study in engineering shall be considered pre professional work, but such study will not be credited as more than one year of pre professional work. The mere execution, as a contractor, of work designed by an engineer, or the mere supervision of construction of such work as foreman or superintendent shall not be deemed to be pre professional work.~~

~~(d) Experience time may not be counted as pre professional or sub professional for work done during years counted for education.~~

(e) ~~Land survey experience consists of work done under the supervision of a registered professional land surveyor such as section breakdowns, retracing old boundaries, establishing new boundaries, corner search and re-establishment, calculations and preparations of certificates of surveys, deed searches and corner recordation.~~

(f) ~~Other survey experience is survey work which may or may not be done under the supervision of a registered professional land surveyor. It includes such work as construction layout of buildings and miscellaneous structures, surveys necessary to obtain data and location of highways, roads, pipelines, canals, etc., construction staking for land modification, construction staking for highways, roads, utilities, etc.~~

(i) ~~Non survey experience is work not related to surveying.~~

(g) ~~Pre professional work (in charge) means: in the field, the applicant must have directed the work. The successful accomplishment of the work must have rested upon him. He must have made decisions regarding methods of execution and suitability of materials without relying upon advice or instructions from his superiors.~~

(i) ~~In the office, the applicant must have had to undertake investigations, or carry out important assignments, demanding resourcefulness and originality, or to make plans, write specifications and direct drafting and computation for designs or engineering, with only rough sketches, general information and field measurements for reference and guidance.~~

(ii) ~~In teaching, the applicant must have taught an engineering program of recognized standing, and must have been engaged in research, product development or consulting as a concurrent activity.~~

(h) ~~Pre professional work (design) means: all that is given above as pre professional in charge and in addition one qualified in design must have met the demands encountered in engineering design and fulfilled the requirements of local circumstances and conditions without violating any of the canons of engineering.~~

(2) ~~The board will not deem experience to be pre professional work, pre professional work (in charge) or pre professional work (design), as those terms are defined in (1) of this rule, unless during the period of time in question the applicant's work products were reviewed by a licensed professional engineer or professional land surveyor as appropriate.~~

(3) ~~The board, in passing on each of these requirements as defined, will carefully weigh the evidence of experience submitted by the applicant and the replies received from his references.~~

(a) Sub professional experience gained before graduation. This experience shall be credited to the required pre professional experience at a maximum of one half the period of experience. Credible experience may include:

(i) surveying experience, supervised:

- (ii) engineering experience, supervised;
- (iii) construction experience, supervised.
- (b) Pre-professional experience is four years of total progressive experience, all of which is required to be completed at the time of application. Credible experience may include:
 - (i) approved sub-professional experience;
 - (ii) progressive experience on engineering/land surveying projects which indicate the experience is of increasing quality and required greater responsibility;
 - (iii) experience not obtained in violation of the licensure act;
 - (iv) experience gained under the supervision of a licensed professional engineer/land surveyor or, if not, an explanation of why the experience should be considered acceptable;
 - (v) credible teaching experience at an advanced level, post graduate or senior graduate, in a college or university offering an engineering curriculum of four years or more that is approved by the board. Land surveying teaching experience shall also be at an advanced level on a land surveying curriculum approved by the board;
 - (vi) experience gained in engineering research and design projects by members of an engineering faculty, in an engineering curriculum approved by the board;
 - (vii) successful completion of graduate study leading to the master's degree in engineering, which has followed a baccalaureate degree in engineering, as credit for one year's experience. If the Ph.D. in engineering is completed under the same conditions, two year's total experience may be credited, including the one year credited for the master's degree, in the two year's total. If the Ph.D. is obtained without the master's degree, two year's experience may be credited. All degrees shall have been obtained from colleges or universities with board approved programs.
- (2) Experience must be completed at the time of application. Experience time cannot be counted during periods counted for education.
- (3) Experience should be gained under the supervision of a registered professional engineer or, if not, an explanation should be made showing why the experience should be considered acceptable.
- (4) Obtaining a Ph.D. in engineering from an approved program is considered equivalent to passing the fundamentals of the engineering exam. Four years experience in addition is required to qualify to take the professional engineers examination.
- (5) Upon request by the board, an applicant must demonstrate knowledge of fundamental principles of engineering design and the practical solution of engineering problems.
- (6) Land surveying experience must include a substantial portion spent in charge of work related to property conveyance and/or boundary line determination.
- (7) Upon request by the board, land surveyor applicants

must demonstrate adequate experience in the field aspects of the profession.

(a) Land survey experience such as section breakdowns, retracing old boundaries, establishing new boundaries, corner search and re-establishment, calculations and preparations of certificates of surveys, deed searches and corner recordation, consists of work done under the supervision of a registered professional land surveyor.

(b) Other survey experience is survey work which may or may not be done under the supervision of a registered professional land surveyor. It includes such work as construction layout of buildings and miscellaneous structures; surveys necessary to obtain data and location of highways, roads, pipelines, canals, etc.; construction staking for land modification; and construction staking for highways, roads, utilities, etc."

Auth: Sec. 37-67-202, MCA; IMP, Sec. 37-67-306, 37-67-309, MCA

REASON: The Board has determined that the amendment above, submitted in a request by the professional associations, adds substantial clarity to the rule and provides greater guidance for license applicants.

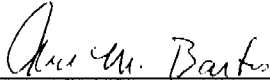
3. The Department of Commerce will make reasonable accommodations for persons with disabilities who wish to participate in the public hearing. If you wish to request an accommodation, contact the Department no later than 5:00 p.m., September 26, 1997, to advise us of the nature of the accommodation that you need. Please contact the Board of Professional Engineers and Land Surveyors, 111 N. Jackson, P.O. Box 200513, Helena, Montana 59620; telephone (406) 444-3737, Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 444-1667. Persons with disabilities who need an alternative accessible format of this document in order to participate in this rule making process should contact R. Perry Eskridge at the above address.

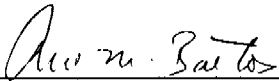
4. Interested persons may present their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to the Board of Professional Engineers and Land Surveyors, 111 N. Jackson, P.O. Box 200513, Helena, Montana 59620, no later than October 6, 1997.

5. R. Perry Eskridge, attorney, has been designated to preside over and conduct the hearing.

BOARD OF PROFESSIONAL ENGINEERS
AND LAND SURVEYORS

BY:


ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE


ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, August 25, 1997.

BEFORE THE BUILDING CODES BUREAU
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed) NOTICE OF PUBLIC HEARING ON
amendment, repeal and adoption) THE PROPOSED AMENDMENT, REPEAL
of rules pertaining to the) AND ADOPTION OF RULES
Building Codes Bureau) PERTAINING TO THE BUILDING
) CODES BUREAU

TO: All Interested Persons:

1. On October 15, 1997, at 10:00 a.m., a public hearing will be held in the Downstairs Conference Room at the Department of Commerce, 1424 Ninth Avenue, Helena, Montana 59620, to consider the proposed amendment, repeal and adoption of rules pertaining to the Building Codes Bureau.

2. The proposed amendments to ARM 8.70.101, 8.70.104, 8.70.105, 8.70.110, 8.70.302, 8.70.303, 8.70.404, 8.70.502, 8.70.503, 8.70.504, 8.70.505, 8.70.512, 8.70.516, 8.70.522, 8.70.531, 8.70.532, 8.70.533, 8.70.534, 8.70.537, 8.70.540, 8.70.541, 8.70.542, 8.70.543, 8.70.544, 8.70.547, 8.70.548, 8.70.549, 8.70.557, 8.70.558, 8.70.561, 8.70.567, 8.70.568, 8.70.569, 8.70.903 and 8.70.907 will read as follows:
(new matter underlined, deleted matter interlined)

"8.70.101 INCORPORATION BY REFERENCE OF UNIFORM BUILDING CODE (1) The building codes bureau of the Department of Commerce adopts and incorporates by reference herein the Uniform Building Code, 1994 Edition, together with the Appendix Chapter 4 (Division II - Aviation Control Towers, Division III - Regulations Governing Fallout Shelters), Appendix Chapter 3 (Division I - Detention and Correctional Facilities, Division II - Agricultural Buildings, Division III - Requirements for Group R, Division 3 Occupancies), Appendix Chapter 16 (Division I - Snow Load Design, Division III - Earthquake Regulations for Seismic-Isolated Structures), Appendix Chapter 21 (Prescriptive Masonry Construction in High-Wind Areas), Appendix Chapter 23 (Conventional Light-Frame Construction in High-Wind Areas), Appendix Chapter 18 (Waterproofing and Damp Proofing Foundations), Appendix Chapter 11 (Division I - Site Accessibility, Division II - Accessibility for Existing Buildings), Appendix Chapter 15 (Reroofing), Appendix Chapter 31 (Division I - Flood Resistant Construction, Division II - Membrane Structures, Division III - Patio Covers), and Appendix Chapter 13 (Energy Conservation in New Building Construction), as amended by ARM 8.70.104, with the following amendments thereto:

(1)(a) through (7) will remain the same.

(8) Subsection 109.3 of the Uniform Building Code, 1994 Edition, is amended for the bureau to read: "109.3 Certificate issued. After the building official or his agent inspects the

building or structure and finds substantial compliance with the intent of this code, the building official shall may issue a certificate of occupancy which shall contain the following:

1. The building permit number.
2. The address of the building.
3. The name and address of the owner.
4. A description of that portion of the building for which the certificate is issued.
5. A statement that the described portion of the building has been inspected for substantial compliance with this code for the group and division of occupancy and the use for which the proposed occupancy is classified.

6. The name of the building official.²

(8) (a) through (12) will remain the same.

(13) Section 50-60-102(1)(a), MCA, exempts certain buildings from application of the state building codes. Provisions of the Uniform Building Code shall not be applied in determining whether a building or structure is exempt from the state building codes. For example, area separation walls as described in subsection 504.6.1 of the Uniform Building Code, 1994 Edition, shall not be used to separate buildings otherwise covered by the state building codes into smaller buildings that would, if alone, be exempted by 50-60-102(1)(a), MCA.

(14) The exemptions in 50-60-102(1)(a), MCA, do not apply to any building used as or in conjunction with a hotel, motel, inn, motor court, guest or dude ranch, tourist home, public lodging house, bed and breakfast establishment or other place where sleeping accommodations are furnished for a fee to a transient guest. "Transient guest" means a guest for only a brief stay, such as the traveling public.

(15) through (25) will remain the same.

(26) Section 904.1 (Installation Requirements) is amended for the bureau by addition of the following:

"This subsection shall apply to buildings which are required by the Uniform Building Code to be provided with an automatic sprinkler system, but have an inadequate water supply.

In accordance with UBC Standard 9-1, Section 9.101 and UBC Standard 9-3, Section 9.302, the building official shall be the designated authority responsible for administering and enforcing NFPA-13 and NFPA-13R. When the available water supply does not meet NFPA-13 and NFPA-13R requirements, it may be modified by the building official.

The modified water supply shall include sufficient storage on site to operate a minimum of four sprinkler heads for the response time of the local fire department. Response time is the time from alarm to the time the fire department can apply water to the fire. Response time shall be established by the use of the formula $T = 0.65 + 1.7D$, where T is response time, in minutes, and D is distance, in miles, from the fire station to the building, but shall not be less than 20 minutes.

Water supply requirements shall be established by using the area/density method. A 50% reduction in design area, to not less than four heads, is allowed. Density is not modified.

When a modified water supply is allowed, the sprinkler system must utilize quick response heads, be equipped with a flow alarm, automatic dialer and a fire department connection.

(27) and (28) will remain the same.

(29) ~~Subsection 1105.1 of the Uniform Building Code is amended for the bureau by addition of the following sentence:~~
~~"On a case by case basis, at the discretion of the building official, a person or entity may not be required to meet fully the accessibility requirements for buildings, where the person or entity can demonstrate that it is structurally impracticable, due to unique characteristics of terrain and/or not practicable in relation to the proposed usage of the building."~~ Section 312.1 of the Uniform Building Code, 1994 Edition, is amended for the bureau by addition of the following sentences to the exception to Division I: Riding arenas limited to occupant loads of 200 or less and used for boarding, breeding and training of horses, horse shows and competitions, clinics and rider instruction and open riding are considered agricultural buildings subject to the provisions of Appendix Chapter 3, Division II, as amended. Uses such as rodeos, barn dances, craft and other nonlivestock shows, conventions and similar events which result in large numbers of spectators or occupants are not allowed in riding arenas classified as agricultural buildings.

(30) ~~Subsection 1105.2 of the Uniform Building Code is amended for the bureau by addition of the following sentence:~~
~~"Except for establishments where food or beverages are to be consumed on the premises, on a case by case basis, at the discretion of the building official, a person or entity may not be required to meet fully the accessibility requirements for toilet facilities, where the person or entity can demonstrate that it is structurally impracticable, due to unique characteristics of terrain and/or not practicable in relation to the proposed usage of the building."~~ Appendix Chapter 3, Section 326 is amended by addition of 5. Riding arenas as defined in amended section 312.1.

(31) Appendix Chapter 3, Section 330 is amended for the bureau by addition of the following sentences to exception 2: The portion of riding arena buildings where riding will occur or where spectators may be present or seating is provided shall be provided with a minimum of four exits directly to the outside, with the exits located in a manner acceptable to the bureau that enhances exit from spectator areas. Exits from this portion of the building shall not be provided with a latch or lock unless it is panic hardware.

(32) Appendix Chapter 3, Section 330 is amended for the bureau by addition of the following sentence to exception 3: Exit openings for riding arenas shall not be less than 3 feet by 6 feet 8 inches.

(33) Upon the effective date of new requirements, administrative rules and/or adoption of new editions of model codes, any building or project for which a legal building permit has been issued shall not be required to meet the new requirements. If the building or project is subsequently

altered or remodeled, the alteration or remodel shall be subject to the applicable requirements in effect at the time of permit issuance for the new work. On a case-by-case basis, the building official shall have the discretion to determine if the process for issuance of a legal permit was substantially complete enough to warrant the exemption of said project or building from the new requirements, rules or code provisions.

(34) As required by Sec. 2, Ch. 331, L. 1997, compliance with the requirements of the state building code for physical accessibility to persons with disabilities or the issuance of a building permit or certificate of occupancy by the state or a municipality or county does not necessarily guarantee compliance with the Americans with Disabilities Act of 1990, the Rehabilitation Act of 1973, the Fair Housing Amendments Act of 1988, Title 49, chapter 2, commonly known as the Montana Human Rights Act, or other similar federal, state or local laws that mandate accessibility to commercial construction or multifamily housing.

(35) The building official, at his discretion, may require an applicant for a building permit to obtain, at the applicant's expense, an independent plan review from a plan review firm or agency acceptable to the building official. The independent plan review shall include, but is not limited to, a structural review for compliance with the requirements of the building code. On a case-by-case basis, the building official may modify the plan review fee for projects which were required to obtain the independent plan review to be commensurate with the services provided by the agency in relation to the fee charged the applicant by the independent plan review firm or agency.

(36) In new or existing structures, the building official has the discretion to allow the installation of non-code compliant equipment, facilities or structural elements including, but not limited to, fire-extinguishing (sprinkler) systems or fire-resistive construction, which are not required by the building code, upon the finding that such installation does not negatively impact the overall compliance of the structure with the building code.

(37) Plans and specifications for public buildings, owned by the state and its political subdivisions as outlined by 18-2-122, MCA, shall bear the seal of a design professional. The building official, on a case-by-case basis, shall have the discretion to waive the requirements for a design professional seal for minor projects such as storage sheds and minor renovations which do not have a direct bearing on the public health and safety. In addition, the requirement for the seal of a design professional may be waived, on a case-by-case basis, for projects for which documentation has been submitted including, but not limited to, a letter from the attorney for the local jurisdiction where the project is located, which supports a conclusion that the scope of the project does not have the potential to have a direct bearing on public health and safety.

(38) The term "public building" as used in 18-2-122, MCA,

refers only to the buildings owned by the state and its political subdivisions for the purposes of requiring a design professional's seal and does not include privately owned buildings as included in the definition of a "public building" in 50-60-101, MCA.

(31) will remain the same, but will be renumbered (39).
~~(32)~~ ~~(40)~~ Appendix Chapter 34 (Division I - Life Safety Requirements for Existing Buildings other than High-rise Buildings), Appendix Chapter 34 (Division II - Life Safety Requirements for Existing High-rise Buildings), Appendix Chapter 3 (Division IV - Requirements for Group R Division 4 Occupancies), Appendix Chapter 16 (Division II - Earthquake Recording Instrumentation), Appendix Chapter 19 (Protection of Residential Concrete Exposed to Freezing and Thawing), ~~Appendix Chapter 11 (Division I - Site Accessibility)~~, Appendix Chapter 12 (Division II - Sound Transmission Control), Appendix Chapter 9 (Basement Pipe Inlets), Appendix Chapter 33 (Excavation and Grading) are adopted for use by local governments specifically adopting them. However, the department will not be enforcing them.

(41) A copy of the Uniform Building Code, 1994 Edition, as well as the Appendixes incorporated by reference are available from the Building Codes Bureau, Capitol Station, Helena, Montana 59620 or by writing to CABO, 5203 Leesburg Pike, Falls Church, Virginia 22041."

Auth: Sec. 50-60-104, 50-60-203, MCA; IMP, Sec. 50-60-103, 50-60-104, 50-60-108, 50-60-109, 50-60-201, 50-60-203, MCA

REASON: The Bureau is proposing these changes to 8.70.101 for the following reasons (referenced by subsection number):

(1) Appendix Chapter 11 (Division I - Site Accessibility), Uniform Building Code, is adopted by reference as required by Sec. 2, Ch. 331, L. 1997.

(8) The word "may" is being substituted for the word "shall" to clarify that a certificate of occupancy may not be issued for a project, when the Bureau was unable to perform the required key inspections during construction, as referenced in 8.70.101(8)6.(a). The issuance of a certificate of occupancy may not be warranted in cases when a project was substantially completed prior to the application for plan review/building permit.

(13) Correction of references which contain the omission of a subsection number.

(14) Correction of references which contain the omission of a subsection number.

(29) This subsection is deleted and incorporated into the new accessibility requirements subsection. New (29) establishes that riding arenas with an occupant load of not over 200, which typically do not attract a large number of spectators due to the type of activity for which the structure is utilized, will be classified as an agricultural building with additional exiting requirements from the seating area or where spectators may be present.

(30) This subsection is deleted and incorporated into the

new accessibility requirements subsection. New (30) amends Section 326 of Appendix Chapter 3 to include a riding arena in the group of structures classified as agricultural.

(31) Amends Section 330 of Appendix Chapter 3 to clarify the number of required exits from the seating or spectator areas of riding arenas.

(32) Amends Section 330, Exception 3, Appendix Chapter 3 to clarify the dimensional sizes of required exit openings for riding arenas.

(33) The addition of this new rule will establish an effective implementation date for new requirements, rules and model codes and will clarify that the building official has the discretion to determine if a project in the plan review/building permit process was substantially complete enough to not require implementation of the new requirements on the project.

(34) This proposed rule is to establish the requirement for compliance with the provision imposed by SB286 (Sec. 2, Ch. 331, L. 1997) and clarifies that a disclaimer statement regarding accessibility compliance must be included with the issuance of a building permit or certificate of occupancy.

(35) This proposed rule will allow the building official to require an independent plan review on certain projects and to modify the plan review fee charged the applicant by the agency in relation with the fees paid by the applicant to the independent plan review agency.

(36) The addition of this proposed rule will allow the building owner to voluntarily make changes to a structure or to add equipment, facilities or elements that are not required by the code and to clarify that the building official has the discretion to allow the voluntary changes/additions even though the changes do not fully meet the requirements of the code.

(37) The addition of this proposed rule clarifies that a design professional's seal is required on government owned public building projects and allows the building official to waive the requirement for the seal for minor projects which do not have a direct bearing on public health and safety.

(38) This proposed addition to the rules will clarify that the term "public building", utilized for requiring a design professional's seal, pursuant to Section 18-2-122, MCA, is not the same as the term "public building" as defined in Section 50-60-101, MCA.

(40) Appendix Chapter 11 (Division I - Site Accessibility) is deleted from this subsection, which contains optional appendix chapters which may be adopted by Certified Local Government Programs, and relocated to (1) of this rule which incorporates by reference the appendix chapters included in the state building code.

(41) The reason for adding this rule is to notify persons of where one can obtain information on the Uniform Building Code, 1994 Edition as well as the appendix chapters.

"8.70.104 INCORPORATION BY REFERENCE OF THE MODEL ENERGY CODE (1) through (2) will remain the same.

(3) The Model Energy Code, 1993 Edition, is a nationally recognized model code for energy efficient construction of buildings. A copy of the Model Energy Code, 1993 Edition can may be obtained from the Building Codes Bureau, Capitol Station, Helena, Montana 59620, at cost plus postage and handling. A copy may also be obtained by writing to CABO, 5203 Leesburg Pike, Falls Church, Virginia 22041."

Auth: Sec. 50-60-201, 50-60-203, MCA; IMP, Sec. 50-60-201, 50-60-203, MCA

REASON: The Bureau is proposing the substitution of the word "may" for the word "can" to clarify the meaning of the rule.

"8.70.105 INCORPORATION BY REFERENCE OF UNIFORM MECHANICAL CODE (1) through (1)(c) will remain the same.

(d) ~~The following will be added to section 304.6 LPG Appliances. LPG appliances may be installed in single-family dwellings not withstanding the prohibition on the installation of such appliances by the UMC and the UPC provided: Section 304.6 Liquefied Petroleum Gas Appliances. Delete.~~

~~(i) All LPG piping is pressure tested to insure it is gas tight and not installed in concealed locations. Concealed LPG piping means all piping and fittings which, when in place in the finished building, would require removal of permanent construction to gain access to the piping. Piping may be installed in an attic, under floor area, including basement or crawl space, provided this area is adequately ventilated from at least two exposed sides of the building. Each ventilation opening shall be a minimum of 36 square inches.~~

~~(ii) The appliance is a vented type, approved by a nationally recognized testing organization, and installed in accordance with the manufacturer's recommendations.~~

~~(iii) Automatically controlled LPG appliances shall be of the complete shutoff type. Complete (100%) shutoff means that gas to both the pilot light and the main gas burner(s) will shut off in the event of pilot outage.~~

~~(iv) A readily accessible and identified shutoff valve controlling the flow of gas to the entire gas piping system shall be installed near the point of connection to the service piping or supply connection of the LPG tank. The container service valve may be used for this purpose.~~

~~(v) The installer shall promptly report any accident/incident where LPG may have been a factor, or could become a contributing factor, to the building codes bureau by phone. If death or serious personal injury occurs or if property damages in excess of \$500 results from any such accident/incident, a written report shall be prepared by the installer and presented to the bureau within 15 days of the accident/incident.~~

~~(vi) A LPG detection/shutoff valve system shall be installed that sounds an alarm and shuts off the main gas supply in the event of the detection of LPG. The valve shall be a solenoid type shutoff valve, held open when powered, and shall be located outside the building foundation.~~

(1)(e) through (1)(f) will remain the same.

~~(i) Add to definition of LIQUEFIED PETROLEUM GAS FACILITIES: Gas piping shall be considered a portion of liquefied petroleum gas facilities. Refer to ARM 8.70.105(d) for installations in single family dwellings.~~

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

~~(iii) Section 1315.1(5). Amend line one by deleting the wording "in a pit or basement."~~

~~(iii) Section 1315.1(6). Delete.~~

(1)(g) through (7) will remain the same."

Auth: Sec. 50-60-104, 50-60-201, 50-60-203, 50-60-508, MCA; IMP, 50-60-103, 50-60-104, 50-60-201, 50-60-203, MCA

REASON: The Bureau is proposing these changes to the rule to allow the installation of below grade LPG (propane) appliances and fuel gas piping as required by Ch. 140, L. 1997.

"8.70.110 INCORPORATION BY REFERENCE OF THE UNIFORM CODE FOR BUILDING CONSERVATION (1) and (1)(a) will remain the same.

(b) Section 207 of the code will be left in for use by local governments (i.e., municipalities and counties) who by 50-60-303, MCA, must provide an appeal procedure. Local governments may use the board of appeals created in accordance with section 105 of the Uniform Building Code, 1994 Edition, to serve ~~on~~ as the board of appeals. The bureau and state of Montana, however, will use all applicable provisions of the Montana Administrative Procedure Act in all cases of appeal in lieu of section 207.

(2) and (3) will remain the same."

Auth: Sec. 50-60-203, 50-60-301, MCA; IMP, Sec. 50-60-203, 50-60-301, MCA

REASON: The Bureau is proposing the substitution of the word "as" for the word "on" to clarify the meaning of the rule.

"8.70.302 INCORPORATION BY REFERENCE OF UNIFORM PLUMBING CODE (1) through (1)(xvii) will remain the same.

~~(xviii) Adding the following to Sec. 1215 (c): LPG Appliances may be installed in single family dwellings notwithstanding the prohibition on the installation of such appliances by the UMC and the UPC provided: Chapter 12, Fuel Gas Piping, is deleted and replaced with Appendix B, Chapter 13, 1994 Uniform Mechanical Code (ICBO version), Fuel Gas Piping.~~

~~(A) All LPG piping is pressure tested to insure it is gas tight and not installed in concealed locations. Concealed LPG piping means all piping and fittings which, when in place in the finished building, would require removal of permanent construction to gain access to the piping. Piping may be installed in an attic, under floor area, including basement or crawl space, provided this area is adequately ventilated from at least two exposed sides of the building. Each ventilation opening shall be a minimum of 36 square inches.~~

~~(B) The appliance is a vented type, approved by a~~

~~nationally recognized testing organizations, and installed in accordance with the manufacturer's recommendations.~~

~~(C) Automatically controlled LPG appliances shall be of the complete shutoff type. Complete (100%) shutoff means the gas to both the pilot light and the main gas burner(s) will shut off in the event of pilot outage.~~

~~(D) A readily accessible and identified shutoff valve controlling the flow of gas to the entire gas piping system shall be installed near the point of connection to the service piping or supply connection of the LPG tank. The container service valve may be used for this purpose.~~

~~(E) The installer shall promptly report any accident/incident where LPG may have been a factor, or could become a contributing factor, to the building codes bureau by phone. If death or serious personal injury occurs or if property damage in excess of \$500 results from any such accident/incident, a written report shall be prepared by the installer and presented to the bureau within 15 days of the accident/incident.~~

~~(F) A LPG detection/shut off valve system shall be installed that sounds an alarm and shuts off the main gas supply in the event of the detection of LPG. The valve shall be a solenoid type shut off valve, held open when powered, and shall be located outside the building foundation.~~

~~(xix) Add the following to Sec. 1215 (f): Refer to 1215 (c) for installation in single family dwellings.~~

~~(xx) through (xxii) will remain the same, but will be renumbered (xix) through (xxi).~~

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

Auth: Sec. 50-60-201, 50-60-203, 50-60-504, 50-60-508, MCA; IMP, Sec. 50-60-201, 50-60-203, 50-60-504, 50-60-508, MCA

REASON: The Bureau is proposing this change to the rule to clarify that fuel gas piping installations are a portion of the mechanical system, with the installation requirements for fuel gas piping established by the mechanical code.

"8.70.303 MINIMUM REQUIRED PLUMBING FIXTURES (1) will remain the same.

MINIMUM NUMBER OF PLUMBING FACILITIES^{a, n}
Fixtures (Number of fixtures per number of occupants)

Occupancy		Water Closets (Urinals - see footnotes g & m)		Lavatories	Bathtubs/ Showers	Drinking Fountains
		Male	Female			
A S S E M B L Y	Theaters	1 per 125	1 per 65	USE SECTION 2902, UBC		1 per 1,000
	Nightclubs ^{g,h,i}	1 per 40	1 per 40			1 per 500
	Restaurants ^{g,h,i}	1 per 75	1 per 75			1 per 500
	Halls, museums, coliseums, arenas ^g , stadiums, pools, etc.	1 per 125	1 per 75			1 per 1,000
	Churches ^b	1 per 150	1 per 75			1 per 1,000
	Business ^{j,k,l}	1 per 25				1 per 100
Educational		SEE SECTION 2902.4, UBC				
Factory and industrial		1 per 100		1 per 100		1 per 400
High hazard		1 per 100		1 per 100		1 per 1,000
I N S T I T U T I O N A L	Residential care	1 per 10		1 per 10	1 per 8	1 per 100
	Hospitals, ambulatory nursing home patients ^c	1 per room ^a		1 per room ^a	1 per 15	1 per 100
	Day nurseries ^e , sanitariums nonambulatory nursing home patients, etc. ^c	1 per 15		1 per 15	1 per 15 ^f	1 per 100
	Employees, other than residential care ^c	1 per 25		1 per 35		1 per 100
	Visitors, other than residential care	1 per 75		1 per 100		1 per 500
	Prisons ^c	1 per cell		1 per cell	1 per 15	1 per 100
	Asylums, reformatories, etc. ^c	1 per 15		1 per 15	1 per 15	1 per 100
	Mercantile	1 per 500		1 per 750		1 per 1,000
R E S I D E N T I A L	Hotels, motels	1 per guestroom		1 per guestroom	1 per guestroom	
	Lodges	1 per 10		1 per 10	1 per 8	1 per 100
	Multiple family	1 per dwelling unit		1 per dwelling unit	1 per dwelling unit	
	Dormitories	1 per 10		1 per 10	1 per 8	1 per 100
	One and two-family dwelling ^d	1 per dwelling unit		1 per dwelling unit	1 per dwelling unit	

a. through n. (footnotes) will remain the same.

o. Riding arenas as defined in ARM 8.70.101 are required to provide separate male and female accessible restrooms which contain a minimum of one water closet and one lavatory.

p. See (new rule III) for additional requirements and provisions concerning building accessibility."

Auth: Sec. 50-60-203, 50-60-504, MCA; IMP, 50-60-203, 50-60-504, MCA

REASON: The Bureau is proposing this change to the rules to establish the minimum plumbing fixtures required in riding arenas, classified as agricultural buildings in Section 312, Uniform Building Code and to reference (New rule III), building accessibility.

"8.70.404 ELECTRICAL PERMIT (1) through (3) will remain the same.

(4) The term "inspection tag" listed in ~~50-60-604~~, 50-60-605 and 50-60-606, MCA, means the electrical permit issued by the bureau to the permittee for the electrical installation. (5) through (12) will remain the same."

Auth: Sec. 50-60-203, 50-60-603, 50-60-607, MCA; IMP, 50-60-203, 50-60-603, 50-60-604, MCA.

REASON: The Bureau is proposing the deletion of the reference to 50-60-604 in this rule because the term "inspection tag" was deleted and replaced with the term "electrical permit" by HB266 (Ch. 379, L. 1997).

"8.70.502. APPLICABILITY OF STATE STATUTES AND ADOPTED ADMINISTRATIVE RULES (1) These rules and standards are based on the provisions of Title 50, chapter 60, MCA, in order to implement, interpret and make specific and otherwise carry out the statutory provisions relating to the manufacture and sale of ~~recreational vehicle~~, factory-built buildings and components thereof.

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

~~(3) Recreational vehicles shall meet the requirements of the NFPA 501C/ANSI A119.2, latest adopted edition.~~

~~(4) Park trailers shall meet the requirements of the ANSI A119.5, latest adopted edition.~~

(5) will remain the same, but will be renumbered (3)."

Auth: Sec. 50-60-203, 50-60-401, MCA; IMP, Sec. 50-60-203, 50-60-401, MCA

"8.70.503 DEFINITIONS For use throughout these rules, the terms herein set forth shall have the following meanings: (1) and (2) will remain the same.

(3) "Custom-made unit" means a ~~recreational vehicle~~, factory-built housing unit constructed with individual specifications for one or a limited number of models.

(4) "Effective date" means the date these rules governing ~~recreational vehicles and~~ factory-built buildings became effective according to the provisions of the Administrative Rules of Montana. The effective date of these original rules means March 1, 1975.

(5) through (10) will remain the same.

(11) "Model" means a specific design width of factory-built building or ~~a type of recreational vehicle or~~ components thereof as designed by the manufacturer.

(12) "Model group" means two or more manufacturer-designed ~~recreational vehicles~~, factory-built buildings, or components thereof which constitute one model.

(13) "Prohibited sales notice" means a printed notification issued by the bureau that the vehicle unit may not be offered for sale because of violations of these rules.

(14) through (16)(d) will remain the same.

(17) "Unit" means a ~~recreational vehicle or~~ factory-built

building and components thereof."

Auth: Sec. 50-60-203, 50-60-401, MCA; IMP, 50-60-203, 50-60-401, MCA

"8.70.504. EFFECTIVE DATE OF REQUIREMENTS RELATING TO SALES (1) No person or persons shall sell or offer for sale within the state of Montana any ~~recreational vehicle or~~ factory-built building manufactured after the effective date of these rules which does not meet the standards and requirements for construction, plumbing, heat-producing, or electrical equipment established by these rules."

Auth: Sec. 50-60-203, 50-60-401, MCA; IMP, Sec. 50-60-203, 50-60-401, 50-60-402, 50-60-404, MCA

REASON: The Bureau is proposing these changes to all sections that contain references to recreational vehicles to remove the requirements for the recreational vehicle program which was repealed by Ch. 240, L. 1997.

"8.70.505 USE OF MOBILE HOMES AND RECREATIONAL VEHICLES FOR COMMERCIAL OR BUSINESS OCCUPANCY PROHIBITED -- EXCEPTION

(1) will remain the same.

(2) These units do not meet code requirements for commercial or business occupancy and are therefore prohibited for these types of uses. Manufactured (mobile) homes shall not be utilized for any occupancy other than as a single family dwelling.

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

Auth: Sec. 50-60-203, 50-60-401, MCA; IMP, Sec. 50-60-203, 50-60-402, MCA

REASON: The Bureau is proposing this change to ARM 8.70.505 to clarify that manufactured (mobile) homes built to the HUD Standard for construction of single family dwelling units may not be utilized for any occupancy other than as a single family dwelling, including other "R" occupancies.

"8.70.512 BUREAU INSPECTORS (1) All inspectors of the bureau shall have a working knowledge of the Uniform Building Code, the Uniform Mechanical Code, the Uniform Plumbing Code, ~~and the National Electrical Code, and the National Fire Protection Association (NFPA) 501C,~~ and shall not be under the control of any listing agency, testing agency, third party inspection agency, dealer, or manufacturer."

Auth: Sec. 50-60-203, 50-60-401, MCA; IMP, Sec. 50-60-203, 50-60-401, MCA

"8.70.516 PRODUCT STANDARDS (1) All manufacturers of factory-built buildings and ~~recreational vehicles~~ shall use only plumbing, heating, and electrical products which are listed and approved by a listing agency. Products not listed and approved may be used if the Bureau first determines that such products are adequate for the protection of health, safety, and the general welfare."

Auth: Sec. 50-60-203, 50-60-401, MCA; IMP, Sec. 50-60-203, 50-60-401, MCA

"8.70.522 RECIPROCITY (1) through (3)(a) will remain the same.

~~(4) Reciprocal status for recreational vehicles may be granted to states which have enforcement programs for recreational vehicles similar to that of Montana and which follow the same recreational vehicle code as Montana. States which meet the criteria for reciprocal status are:~~

~~(a) Arizona, California, Colorado, Florida, Idaho, Kentucky, Missouri, Nebraska, Oregon, Tennessee, Washington."~~

Auth: Sec. 50-60-203, 50-60-401, MCA; IMP, Sec. 50-60-203, 50-60-401, MCA

"8.70.531 APPLICATION FOR TYPICAL STRUCTURAL DESIGN APPROVAL (1) A manufacturer of factory-built buildings may make application for a typical structural design approval prior to construction, which may be referenced on subsequent plans submitted based on width or type of construction. ~~Structural design approval is not required for recreational vehicles.~~

(2) through (3)(f) will remain the same."

Auth: Sec. 50-60-203, 50-60-401, 50-60-402, MCA; IMP, Sec. 50-60-203, 50-60-401, 50-60-402, MCA

"8.70.532 APPLICATION FOR ELECTRICAL, MECHANICAL, AND PLUMBING SYSTEM APPROVAL (1) through (2)(d) will remain the same;

(e) calculations according to NFPA 70, ~~for factory built buildings, and NFPA 501C, for recreational vehicles,~~

~~(f) when designated for low potential, systems, a complete schematic of the electrical system, including equipment, shall be made.~~

(3) will remain the same.

(a) description of all materials, fittings, pipe, tubing, vents, and ducts;

(b) and (c) will remain the same;

~~(d) type(s) of fuel;~~

~~(e) diameter and type of pipe and tubing, including method calculating the system;~~

~~(f) size and location of liquid fuel tanks and LPG cylinders;~~

~~(g) size and location and construction of fuel storage compartment;~~

~~(h) vertical clearances between range burners and combustible materials and methods of protection where required;~~

(i) through (l) will remain the same, but will be renumbered (d) through (g).

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

Auth: Sec. 50-60-203, 50-60-401, MCA; IMP, Sec. 50-60-203, 50-60-401, MCA

"8.70.533 APPLICATION FOR CUSTOM-MADE FACTORY-BUILT BUILDING UNIT REVIEW (1) Any manufacturer of a custom-made

factory-built building unit shall apply to the bureau for a plan review and shall furnish the required sets of plans as set forth in ARM 8.70.531 through 8.70.549, shall submit the fees pursuant thereto as set forth in ARM 8.70.566 through 8.70.569, and shall request a visual inspection pursuant to ARM 8.70.519."

Auth: Sec. 50-60-203, 50-60-401, MCA; IMP, Sec. 50-60-203, 50-60-401, MCA

"8.70.534 APPLICATION FOR MODEL PLAN REVIEW (1) through (1)(c) will remain the same;

(d) two copies of the complete plans and specifications for factory built buildings, which must show:

(1)(d)(i) through (1)(d)(vi) will remain the same.

~~(e) one copy of the complete plans and specifications showing the specific design requirements for recreational vehicles, which must show:~~

~~(i) dimensioned floor plan(s);~~

~~(ii) location of all appliances and fixtures;~~

~~(iii) location of plumbing drain, water, gas, and electrical connections;~~

~~(iv) location of all electrical outlets (receptacles and lights);~~

~~(v) number of outlets and appliance on each circuit and circuit rating."~~

Auth: Sec. 50-60-203, 50-60-401, 50-60-402, MCA; IMP, 50-60-203, 50-60-401, 50-60-402, MCA

"8.70.537 MODEL MANUFACTURED AT MORE THAN ONE LOCATION

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

~~(b) two sets of complete plans and specifications for factory built buildings or one set of plans and specifications for recreational vehicles;~~

~~(1)(c) through (2)(b) will remain the same."~~

Auth: Sec. 50-60-203, 50-60-401, 50-60-402, MCA; IMP, Sec. 50-60-203, 50-60-401, 50-60-402, MCA

"8.70.540 EVIDENCE OF BUREAU'S REVIEW (1) Reviewed plans and specifications shall be evidenced by the stamp of review of the bureau. One set of reviewed plans and specifications for factory built buildings will be returned to the manufacturer. A reviewed copy shall be retained at each plant of manufacture."

Auth: Sec. 50-60-203, 50-60-401, 50-60-402, MCA; IMP, Sec. 50-60-203, 50-60-401, 50-60-402, MCA

REASON: The Bureau is proposing these changes to all sections that contain references to recreational vehicles to remove the requirements for the recreational vehicle program which was repealed by Ch. 240, L. 1997.

"8.70.541 PLAN REVIEW TERMINATION (1) A plan review issued by the bureau shall remain in effect for 15 months through December 31 of the year following the original year of

approval and through December 31 of each subsequent year of renewal as established in ARM 8.70.549 or until revoked by the bureau. A plan review will be revoked by the bureau upon a finding that a manufacturer is not complying with the plan as reviewed or that such manufacturer has used materials not listed and reviewed by a listing agency or reviewed as an alternate or equivalent by the bureau."

Auth: Sec. 50-60-203, 50-60-401, MCA; IMP, 50-60-203, 50-60-401, MCA

REASON: The Bureau is proposing this change because it will provide for all factory-built building plan approvals to expire on December 31 of each year, except for original approvals which will expire on December 31 of the first full year following the original approval, for purposes of administrative efficiency.

"8.70.542 IN-PLANT QUALITY CONTROL (1) through (2)(k) will remain the same.

~~(3) The following specific information is required for the manual for recreational vehicle units:~~

- ~~(a) scope and purpose of the manual;~~
- ~~(b) types and frequency of product inspection;~~
- ~~(c) sample of inspectional control form used;~~
- ~~(d) record keeping procedures for quality control forms;~~
- ~~(e) where responsibility for quality control program lies;~~
- ~~(f) test procedural manual, including electrical, gas line, water systems, and drain/vent/plumbing fixture tests and type of test equipment used;~~
- ~~(g) list of test equipment."~~

Auth: Sec. 50-60-203, 50-60-401, MCA; IMP, Sec. 50-60-203, 50-60-401, MCA

"8.70.543 TRANSMISSION OF REVIEW MATERIALS TO RECIPROCAL STATE (1) through (1)(b) will remain the same.

(c) Two reproductions of the original manufacturer's review ~~for factory built buildings or one set of the original manufacturer's review for recreational vehicles~~ shall be submitted. The reproductions shall show the review stamp of the reviewing state.

(d) After recording of transmitted plan review(s) and/or system review(s), the reviewing state shall notify the manufacturer of its acceptance or rejection of the plan(s) and/or system(s). One copy of the plan(s) and/or system(s) ~~for factory built buildings~~, bearing the mark or stamp of review of both states shall then be returned to the manufacturer by the state receiving the transmittal and granting the additional review."

Auth: Sec. 50-60-203, 50-60-401, 50-60-402, MCA; IMP, 50-60-203, 50-60-401, 50-60-402, MCA

"8.70.544 CHANGES TO REVIEWED PLANS (1) Where the manufacturer proposes changes in the construction, plumbing,

heat producing, or electrical equipment or installations, or where these rules are amended to necessitate such change, two sets of supplemental detailed plans and specifications for ~~factory built buildings or one set of supplemental detailed plans and specifications for recreational vehicles~~ of such changes shall be submitted to the bureau for plan checking and comparison. Plans shall be accompanied by a letter of transmittal and the plan inspection fee pursuant to ARM 8.70.566. When such supplemental details do not constitute a new model, the supplemental details will be filed with and become part of the existing plan review. Where the supplemental details constitute a model change, application for plan review is to be processed as for a new model.

(2) and (3) will remain the same."

Auth: Sec. 50-60-203, 50-60-401, 50-60-402, MCA; IMP, Sec. 50-60-203, 50-60-401, 50-60-402, MCA

"8.70.547. DISCONTINUANCE OF MANUFACTURE (1) When a manufacturer discontinues production of a model under ~~division bureau~~ plan review, the manufacturer shall within 10 days advise the bureau of the date of such discontinuance and return all insignia allocated for such discontinued vehicles."

Auth: Sec. 50-60-203, 50-60-401, MCA; IMP, Sec. 50-60-203, 50-60-401, MCA

"8.70.548. UNIT IDENTIFICATION (1) will remain the same.

(2) ~~The manufacturer's identifying serial number of a recreational vehicle shall be stamped as set forth in subsection (1) of this rule, and the bureau's insignia shall be permanently attached to the exterior wall adjacent to the main door, not less than 6 inches above the floor line.~~

(3) (2) The manufacturer's identifying serial number of ~~the factory built building~~ and the bureau's insignia shall be permanently attached to the exterior wall adjacent to the rear or side exit."

Auth: Sec. 50-60-203, 50-60-401, MCA; IMP, Sec. 50-60-203, 50-60-401, MCA

REASON: The Bureau is proposing these changes to all sections that contain references to recreational vehicles to remove the requirements for the recreational vehicle program which was repealed by Ch. 240, L. 1997.

"8.70.549. PLAN RENEWAL (1) Except as established in ARM 8.70.541 for original plan approvals. Every 15 months the manufacturer shall make application to have their plans renewed for the following year prior to the December 31 expiration date of each year. At the time of renewal, plans which have not been changed do not require the submission of plans. If any changes have been made, an updated plan must be submitted. The application shall be accompanied by the fee listed in ARM 8.70.566."

Auth: Sec. 50-60-203, 50-60-401, 50-60-402, MCA; IMP, Sec. 50-60-203, 50-60-401, 50-60-402, MCA

REASON: The Bureau is proposing this change because it will provide for all factory-built building plan approvals to expire on December 31 of each year, except for original approvals which will expire on December 31 of the first full year following the original approval, for purposes of administrative efficiency.

"8.70.557 APPLICATION FOR INSIGNIA PURSUANT TO PLAN REVIEW (1) Following receipt of plan approval, the unit manufacturer shall make application for an insignia for each unit manufactured. The application shall be submitted to the bureau in duplicate, accompanied by the insignia fees pursuant to ARM 8.70.568. The application shall include the plan review number and serial number of each ~~vehicle~~ unit for which an insignia is requested. Multiple units shall be designated where applicable.

(2) Advance inclusions of the unit's serial number may be omitted from the application provided the applicant submits a report of the insignia number and serial number of the specific unit to which the insignia has been assigned. Such report shall be on the monthly insignia report form and shall be submitted no later than the tenth of the month after the use of such insignia.

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

Auth: Sec. 50-60-203, 50-60-401, 50-60-402, MCA; IMP, 50-60-203, 50-60-401, 50-60-402, MCA

"8.70.558 DENIAL OF INSIGNIA (1) Should inspection reveal that a manufacturer is not manufacturing units according to plans ~~reviewed~~ approved by the bureau, and such manufacturer, after having been served with a notice setting forth in what respect the provisions of these rules have been violated continues to manufacture units in violation of these rules, applications for new insignia shall be denied and the insignia previously issued shall be confiscated after a proper hearing as provided for in ARM 8.70.577. Upon satisfactory proof of compliance such manufacturer may resubmit an application for insignia."

Auth: Sec. 50-60-203, 50-60-401, MCA; IMP, Sec. 50-60-203, 50-60-401, MCA

"8.70.561 ALTERATION VOIDS REVIEW--RETURN OR CONFISCATION OF INSIGNIA (1) will remain the same.

(2) ~~Any alteration or conversion of the plumbing, heat producing, or electrical equipment prior to or during installation of a recreational vehicle which bears an insignia shall void such review and the insignia shall be returned to or be confiscated by the bureau unless review of the bureau is first obtained.~~

(3) (2) The following changes in ~~factory built buildings and recreational vehicles~~ shall not constitute alterations according to the provisions of this rule:

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

Auth: Sec. 50-60-203, 50-60-401, MCA; IMP, Sec. 50-60-

203, 50-60-401, MCA

"8.70.567 PLAN AND SYSTEM REVIEW FEES FOR FACTORY-BUILT BUILDINGS AND RECREATIONAL VEHICLES HANDLED THROUGH RECIPROCAL STATES (1) through (3) will remain the same."

Auth: Sec. 50-60-203, 50-60-401, MCA; IMP, Sec. 50-60-203, 50-60-401, MCA

"8.70.568 INSIGNIA FEES (1) through (1)(b) will remain the same.

~~(c) Recreational vehicles \$15 per unit.~~

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

Auth: Sec. 50-60-203, 50-60-401, MCA; IMP, Sec. 50-60-203, 50-60-401, MCA

"8.70.569 MISCELLANEOUS FEES (1) Inspection fee - \$30, provided that such inspection of vehicle unit(s) is not in excess of one hour in duration. Fifteen dollars for each 30 minutes or fractional part thereof in excess of one hour. On lot inspection fee for unapproved units (units from unapproved plants in nonreciprocal states) - \$300 minimum plus above rates for inspections in excess of one hour in duration.

(2) through (5)(a) will remain the same."

Auth: Sec. 50-60-203, 50-60-401, MCA; IMP, Sec. 50-60-203, 50-60-401, MCA

REASON: The Bureau is proposing these changes to all sections that contain references to recreational vehicles to remove the requirements for the recreational vehicle program which was repealed by Ch. 240, L. 1997.

"8.70.903 DEFINITIONS For the purposes of this subchapter, the following definition shall apply:

(1) through (8) will remain the same.

(9) "Hot water supply boiler" means a boiler, completely filled with water, intended for operation at pressures not exceeding 160 psig and/or temperatures exceeding 250 degrees F., measured at or near the boiler outlet, that furnishes hot water to be used external to itself ~~for purposes other than potable use.~~

(10) through (29) will remain the same."

Auth: Sec. 50-60-203, 50-74-101, MCA; IMP, Sec. 50-60-203, 50-74-101, MCA

REASON: The Bureau is proposing this change to the rule to clarify that hot water supply boilers are not exempt from the requirements of the boiler safety program and may furnish potable water to be used external to the boiler.

"8.70.907 BOILERS EXEMPTED (1) through (1)(d) will remain the same;

(e) water heaters or water heating systems operating at pressures not exceeding 150 psig and/or temperatures not exceeding 210 degrees F. which are utilized to supply potable hot water as regulated by the state plumbing code. Maximum operating pressures and temperatures shall be determined by the listing(s) on the manufacturer's data plate. Examples of exempted water heaters and water heating systems include, but are not limited to, lined potable water heaters, hot water ~~supply boilers heaters~~ of corrosion resistant elements utilized in conjunction with lined potable storage vessels, instantaneous type ~~boilers or~~ water heaters designed to deliver potable hot water without storage, water heating systems which utilize an approved heat exchanger to heat potable water and other similar systems."

Auth: Sec. 50-60-203, 50-74-101, MCA; IMP, Sec. 50-60-203, 50-74-103, MCA

REASON: The Bureau is proposing this change to the rule to clarify that hot water heaters which are regulated by the state plumbing code are exempt from the boiler safety program.

3. The Bureau is proposing to repeal ARM 8.70.109 (authority 50-60-201, 50-60-203, MCA and implementing 50-60-103, 50-60-201, MCA); 8.70.501 (authority 50-60-201, 50-60-203, 50-60-401, MCA and implementing 50-60-201, 50-60-203, 50-60-401, MCA); 8.70.506 (authority 50-60-401, MCA and implementing 50-60-401, MCA); 8.70.519 (authority 50-60-203, 50-60-401, MCA and implementing 50-60-203, 50-60-401, MCA); 8.70.520 (authority 50-60-203, 50-60-401, MCA and implementing 50-60-203, 50-60-401, MCA); 8.70.570 (authority 50-60-104, 50-60-203, 50-60-401, MCA and implementing 50-60-104, 50-60-203, 50-60-401, MCA). The text of these rules is located at pages 8-2003, 8-2055, 8-2059, 8-2071 and 8-2115, Administrative Rules of Montana. The rules are being proposed for repeal because the sections contain references to recreational vehicles and to remove the requirements for the recreational vehicle program which was repealed by Ch. 240, L. 1997. The Bureau is repealing ARM 8.70.109 and replacing it with the proposed new rules which address building and site accessibility as imposed by Sec. 2, Ch. 331, L. 1997.

4. The proposed new rules will read as follows:

"I SCOPE OF RULES (1) The access requirements established in the currently adopted edition of the state building code and CABO/ANSI A117.1 are utilized as the basis for establishing the accessibility requirements and guidelines in this rule.

(2) This subchapter is promulgated in order to provide rules and guidelines, as required by 50-60-203, MCA, to ensure that newly constructed public buildings and certain altered public buildings are readily accessible and usable by persons with disabilities, according to the principles applicable to accessibility in the state building code.

(3) The term "public building" as used in this rule means a building or facility owned or operated by a government entity or a private sector building or facility that is open to members of the public, as established in 50-60-101, MCA."

Auth: Sec. 50-60-203, MCA; IMP, Sec. 50-60-201, MCA

REASON: The Bureau is proposing this new rule to clarify that CABO/ANSI A117.1 and the current edition of the state building code are utilized for establishing access requirements and that the term "public building" includes government owned and privately owned buildings for the purpose of accessibility requirements and guidelines.

"II DISCLAIMER (1) A building permit or certificate of occupancy issued by the state or a municipality or county must contain a statement that reads: "Compliance with the requirements of the state building code for physical accessibility to persons with disabilities does not necessarily guarantee compliance with the Americans with Disabilities Act of 1990, the Rehabilitation Act of 1973, the Fair Housing Amendments Act of 1988, Title 49, chapter 2, commonly known as the Montana Human Rights Act or other similar federal, state or local laws that mandate accessibility to commercial construction or multifamily housing."

Auth: Sec. 50-60-203, MCA; IMP, Sec. 50-60-201, MCA

REASON: The Bureau is proposing this rule to outline the requirement imposed by Sec. 2, Ch. 331, L. 1997 for a disclaimer statement to be included in the issuance of all building permits and certificates of occupancy which establishes that compliance with the state building code does not necessarily guarantee compliance with other applicable disability related acts.

"III BUILDING ACCESSIBILITY (1) Section 1105, UBC, is amended to clarify that not every restroom installed in a building or structure is required to be accessible as long as the required facilities are accessible and reasonably available from all areas of the primary function areas of the building. Primary function area means an area of a building or facility in which a major activity for which the building or facility is designed is carried out.

(a) Subsection 1105.1 General. The first paragraph is amended to read as follows: "When buildings or portions of buildings are required to be accessible, required building facilities shall be accessible as provided in this section. A person or entity may not be required to meet fully the accessibility requirements for buildings, where the person or

entity can demonstrate that it is structurally impracticable, due to unique characteristics of terrain and/or not practicable in relation to the proposed usage of the building, as determined on a case-by-case basis, at the discretion of the building official."

(b) Subsection 1105.2.2 Toilet Facilities. The second paragraph is amended to read as follows: "In other occupancies, each required toilet room shall be accessible. At least one of each type of fixture or element in each required accessible toilet room shall be accessible. When six or more toilet stalls are provided in a toilet room, at least one ambulatory accessible toilet stall shall be provided in addition to the wheelchair accessible toilet stall."

(i) Exception: "A required toilet facility for a single occupant and not for the common or public use may be adaptable."

(ii) A person or entity may not be required to meet fully the accessibility requirements for required toilet facilities, where the person or entity can demonstrate that it is structurally impracticable, due to unique characteristics of terrain and/or not practicable in relation to the proposed usage of the building, as determined on a case-by-case basis, at the discretion of the building official.

(c) The following examples are not intended to be inclusive of the provisions established in (a) and (b) above, but are provided to help clarify which facilities and plumbing fixtures are required to be accessible:

(i) In occupancies which include an office and a shop area, that requires one accessible restroom for employees, and the owner chooses to install an additional restroom, only one restroom is required to be accessible.

(ii) In occupancies which provide one accessible restroom and a shower is installed that is not a required fixture, the shower is not required to be accessible, even if it is located in the accessible restroom.

(d) In the new construction of establishments which serve food or beverages to be consumed on premises, on a case-by-case basis, the building official shall have the discretion to approve the installation of one unisex accessible restroom which includes a urinal, in lieu of one male and one female accessible restroom, when it can be demonstrated that due to an occupant load which will not exceed 20 seated persons, it would not be reasonable to require two separate accessible restrooms. Section 1002, Uniform Building Code, shall be used to determine occupant load.

(e) In existing establishments, including those which serve food or beverages to be consumed on premises, on a case-by-case basis, the building official shall have the discretion to approve the addition of one unisex accessible restroom or to allow the alteration of the two existing restrooms to make one restroom single occupant unisex accessible and the other restroom single occupant unisex, when it can be demonstrated that it would be impractical to alter the existing facilities to include two separate accessible restrooms, one male and one

female. In establishments which serve food or beverages to be consumed on premises, which provide two single occupant unisex restrooms, the unisex accessible restroom shall have a urinal.

(f) Business or commercial occupancies which are open to the public and located in portions of a private residence are required to be accessible even if those portions used for the business or commercial purposes are also used for residential purposes. The accessibility requirements extend to and includes an accessible route from the sidewalk, through the doorway, through the hallway and other portions of the home, such as restrooms, used by clients and customers of the business or commercial occupancy."

Auth: Sec. 50-60-203, MCA; IMP, 50-60-201, MCA

REASON: The Bureau is proposing this new rule for the following reasons as outlined by section:

(1)(a) Clarifies that only those facilities which are required by the code are required to be accessible and that optional and additional facilities in a building which are not related to the primary function of a building are not required to be accessible. In addition, due to unique characteristics of terrain or proposed usage of the building, it may be deemed structurally impracticable to fully meet the accessibility requirements.

(1)(b) Clarifies that only the toilet facilities required by the minimum plumbing fixture chart in ARM 8.70.303 are required to be accessible and that optional or additional toilet facilities, including non-required showers installed in accessible restrooms, are not required to be accessible.

(1)(c) Provides two specific examples of the provisions contained in (1)(a) and (1)(b) above to help clarify which specific fixtures may not be required to be accessible.

(1)(d) Clarifies that one unisex accessible restroom with a urinal may be acceptable in smaller food service establishments which provide a limited amount of on-premise seating, such as espresso stands and convenience stores where the main portion of the business is take-out.

(1)(e) Clarifies that remodel of existing food service establishments to provide an accessible restroom(s) may be allowed to add one additional unisex accessible restroom or to remodel the two existing restrooms into unisex restrooms with one of the restrooms being accessible with a urinal.

(1)(f) Clarifies that cottage industries or portions of residential structures which are open to the public are required to be accessible, including an accessible exterior route, even if the same portions are also utilized for residential purposes when the business is not open.

"IV SITE ACCESSIBILITY (1) Sec. 3, Ch. 331, L. 1997, requires that construction of a public building or alteration of primary function areas of a public building, which have not been issued a legal building permit prior to October 1, 1997, include compliance with the requirements of Appendix Chapter 11 - Division I - Site Accessibility, UBC, and the requirements

established by CABO/ANSI A117.1, which include the building site, parking areas, passenger loading zones, private sidewalks and the accessibility from adjacent sidewalks, public streets and public transportation stops. Existing public buildings that are not undergoing an alteration to a primary function area are not subject to the requirements of Appendix Chapter 11 - Division I - Site Accessibility. Primary function area means an area of building or facility in which a major activity for which the building or facility is designed is carried out.

(2) An accessible exterior route must be provided to the building's accessible entrance from public transportation stops, accessible parking spaces and accessible passenger loading zones within the boundaries of the building site and from public sidewalks, if they exist, that are immediately adjacent to the building site. When more than one public building is on a building site, at least one accessible exterior route must connect all accessible buildings, facilities and elements on the site. An accessible exterior route must be the most direct route from the accessible public parking to the accessible public entrance. An accessible route is not required in cases when there is not a pedestrian route for the general public.

(3) Appendix Chapter 11, UBC, Site Accessibility is amended as follows:

(a) Subsection 1106.1, subsection 1107.1 and subsection 1108.1 are each amended by addition of the following sentence: "A person or entity may not be required to meet fully the accessible exterior route requirements for new buildings or alterations to existing buildings, where the person or entity can demonstrate that due to unique characteristics of the terrain, it is structurally impractical to fully comply, as determined on a case-by-case basis, at the discretion of the building official. Full compliance may be considered structurally impractical only in those rare circumstances when the unique characteristics of the terrain prevent the incorporation of accessibility features. The person or entity shall comply with the accessible facilities requirements to the extent that compliance is not structurally impractical."

(4) An alteration which affects the access to a primary function area of a building must be made accessible to the fullest extent possible to ensure that the path of travel to the altered primary function area and the restrooms, telephones and drinking fountains serving the altered primary function area are readily accessible and useable by persons with disabilities.

(5) During an alteration to a primary function area of a building or structure, a person or entity is not required to make alterations to the accessible path of travel if the costs are disproportionate to the cost of the alterations to the primary function area. Disproportionate costs are considered to be an amount that exceeds 20% of the cost of the alteration being performed to the primary function area.

(6) Each new building or alteration to an existing building which provides off street parking shall provide at

least one accessible parking space with required additional parking spaces as established in Table A-11-A and Section 1107 of Appendix Chapter 11, UBC."

Auth: Sec. 50-60-203, MCA; IME, Sec. 50-60-201, MCA

REASON: The Bureau is proposing these new rules to address the requirements for site accessibility as implemented by Sec. 3, Ch. 331, L. 1997. The provisions for an accessible exterior route must be met for all new buildings and alterations to the primary function areas of existing buildings to the extent that it is feasible. Subsections 1106.1, 1107.1 and 1108.1 of Appendix Chapter 11 of the Uniform Building Code are amended to clarify to what extent an accessible exterior route must be provided and when it is considered structurally impractical to fully meet the requirements.

"V. GUIDELINES FOR COMPLIANCE WITH REQUIREMENTS FOR EXTERIOR ACCESSIBLE ROUTE AND PARKING SPACE" (1) The following guidelines for providing an accessible exterior route and parking spaces are not inclusive of all means for achieving compliance but may be utilized to meet the established requirements:

- (a) Width of route: 36 inches minimum.
- (b) Length of route: The most direct route to the accessible building entrance with passing spaces of 60 inches x 60 inches provided at intervals not to exceed 200 feet for routes with a clear width of less than 60 inches.
- (c) Slope of route: The cross slope of a route (perpendicular to the direction of travel) shall not exceed 1:50 (1 vertical to 50 horizontal). The maximum running slope (in the direction of travel) of a route may not exceed 1:20 (1 vertical to 20 horizontal) with portions of the route with running slopes steeper than 1:20 (1 vertical to 20 horizontal) considered ramps. If the terrain precludes development of accessible routes with running slopes of 1:8 (1 vertical to 8 horizontal), it may be infeasible to develop accessible routes.
- (d) Surface material: Surface texture of a route shall be stable, firm and slip-resistant, with all surface coverings securely attached. If carpet is used on the route it must have a firm cushion and a maximum pile thickness of 1/4 inch. Other acceptable surface materials may include concrete, asphalt, wood and 3/8 inch minus crushed aggregate, with an acceptable bonding agent, compacted to a field density of 95 percent maximum dry density. The building official may approve alternate surface materials for accessible routes which will provide compliance with the requirements for surface texture.
- (e) Vehicle parking space size per vehicle: 108 inches minimum wide by 216 inches long and shall include 60 inches minimum access aisle. Two accessible parking spaces may share a common access aisle.
- (f) Vehicle parking space and access aisle slope: To be level with surface slopes not exceeding 1:50 (1 vertical to 50 horizontal) in all directions.
- (g) Signage requirements: Parking spaces shall be

designated as reserved by a post or wall mounted sign showing the symbol of accessibility. Such signs shall be located so they cannot be obscured by a vehicle parked in the space."

Auth: Sec. 50-60-203, MCA; IMP, 50-60-201, MCA

REASON: The Bureau is proposing this rule to provide some guidelines for building owners to utilize when constructing an accessible exterior route and accessible parking spaces to achieve compliance with the requirements of Sec. 3, Ch. 331, L. 1997.

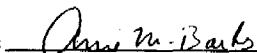
5. The Department of Commerce will make reasonable accommodations for persons with disabilities who wish to participate in the public hearing. If you wish to request an accommodation, contact the Department no later than 5:00 p.m., October 9, 1997, to advise us of the nature of the accommodation that you need. Please contact the Building Codes Bureau, Department of Commerce, 1218 E. Sixth, P.O. Box 200517, Helena, Montana 59620; telephone (406) 444-3933, Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 444-4240. Persons with disabilities who need an alternative accessible format of this document in order to participate in this rule making process should contact Eric Fehlig at the above address.

6. Interested persons may present their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to the Building Codes Bureau, Department of Commerce, 1218 E. Sixth, P.O. Box 200517, Helena, Montana 59620, no later than October 16, 1997.

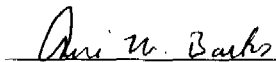
7. Eric Fehlig, attorney, has been designated to preside over and conduct the hearing.

BUILDING CODES BUREAU

BY:



ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE



ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, August 25, 1997.

BEFORE THE BANKING AND FINANCIAL INSTITUTIONS DIVISION
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed	)	NOTICE OF PUBLIC HEARING ON
adoption of rules pertaining	)	THE ADOPTION OF NEW RULES
to the Foreign Capital	)	PERTAINING TO THE FOREIGN
Depositories	)	CAPITAL DEPOSITORY

TO: All Interested Persons:

1. On October 7, 1997, at 10:00 a.m., a public hearing will be held in the Van Nice Auditorium at the Federal Reserve Bank, 100 Neill Avenue, Helena, Montana, to consider the adoption of rules pertaining to the foreign capital depositories.

2. The proposed new rules will read as follows:

"I. AUTHORITY, PURPOSE AND SCOPE: DEFINITIONS (1) This sub-chapter prescribes the regulations of the state banking board, commissioner of banking and financial institutions and the Department of Commerce, issued pursuant to the Montana Foreign Capital Depository Act.

(2) For purposes of sub-chapter 8:

(a) "Act" means the Montana Foreign Capital Depository Act, 32-8-101, et seq., MCA.

(b) "Board" means the state banking board provided for in 2-15-1803, MCA.

(c) "Capital" means currency that is convertible to United States dollars or personal property, including tangible personal property.

(d) "Cash" or "funds" means currency, cashier's checks, money orders and other monetary instruments as defined in the Bank Secrecy Act (Public Law 91-508, October 1970). A copy of Public Law 91-508 may be obtained from the Division of Banking and Financial Institutions, Department of Commerce, 846 Front Street, P.O. Box 200546, Helena, Montana 59620-0546. The Bank Secrecy Act (Public Law 91-508) is hereby adopted and incorporated by reference. Neither "cash" nor "funds" includes precious metals or other tangible personal property that may be held by a foreign capital depository.

(e) "Charter" means a certificate issued by the board through the commissioner to a corporation verifying that the corporation is authorized to conduct business in Montana as a foreign capital depository.

(f) "Commissioner" means the commissioner of banking and financial institutions provided for in 32-1-211, MCA.

(g) "Controlling person" means any person who directly or indirectly or acting through or in concert with one or more persons holds 5% or more of the equity in a foreign capital depository or who is otherwise determined by the board to exercise controlling authority over decisions affecting the

management and operation of a foreign capital depository.

(h) "Customer" means a person who is using or has used the services of a foreign capital depository or for whom a foreign capital depository has acted as a fiduciary.

(i) "Department" means the department of commerce established in 2-15-1801, MCA. The "division of banking and financial institutions" is part of the department.

(j) "Foreign bank" means a bank that has its primary office outside the jurisdiction of the United States and is licensed under the laws of a foreign country or a political subdivision of a foreign country.

(k) "Foreign capital depository" or "depository" means a financial institution incorporated in Montana and chartered by the board to conduct business as a foreign capital depository in accordance with the Act and solely at and using locations within the state of Montana.

(l) "Incorporators" means the persons who act as the original corporate organizers of a foreign capital depository pursuant to 35-1-215, MCA.

(m) "Money laundering" is the process through which the existence, illegal source, true ownership or unlawful application of illicitly derived funds is concealed or disguised to make the funds appear legitimate, thereby helping to evade detection, prosecution, seizure or taxation; or the use of such proceeds to conduct a financial transaction proscribed by 18 U.S.C. section 1956.

(n) "Nonresident alien" means a person who is not a citizen or a resident of the United States.

(o) "Person" means an individual, partnership, corporation, limited liability company, association, trust or other legal entity."

Auth: Sec. 32-8-107, MCA; IMP, Sec. 32-8-107, MCA

"II APPLICATION PROCEDURE FOR A CHARTER (1) One or more individual incorporators desiring to organize a foreign capital depository shall file with the commissioner an application to the board for a charter for a foreign capital depository. The application shall be signed by each of the incorporators, sworn to before a notary, officer or other official recognized by the laws of this state or under federal law as having the power to administer oaths or witness and attest to execution, and the application shall contain the following information in addition to any other information as may be required pursuant to 32-8-201, MCA, including the form of application prescribed by the commissioner:

(a) the names, addresses, places of residence and principal occupations of the incorporators and the stockholders initially subscribing to purchase the capital stock of the applicant and the number of shares subscribed by each initial subscriber;

(b) the name of the city or town and county in which the principal office of the depository is to be located;

(c) the names, principal occupations, addresses, places of residence and business and professional experience of all

proposed officers, including the officer designated as managing officer for the applicant;

(d) the number of the board of directors and the names, principal occupations, addresses, places of residence and business and professional experience of the applicant's initial board members;

(e) the purposes for which the depository is formed, which shall be limited to those services for nonresident aliens allowed to the depository under the act;

(f) the financial statements that contain sufficient detail to substantiate each controlling person's net worth;

(g) the document from a certified public accountant confirming that the applicant has satisfied the requirements of capital adequacy as required by Rule V;

(h) the business plan pro forma statement containing operational projections over a period of three years as required by Rule IV;

(i) the intended location of each place of business and identification and location of any third-party facilities (all of which places of business and third-party facilities must be located in Montana) that will be used to maintain or hold assets deposited with, or the funds or other assets of, the depository, including the identity and qualifications of any third parties which will control or hold any such assets or funds and documentation of the proposed policies and procedures for assuring compliance by third parties with the act and administrative rules pertaining to privacy and all other matters;

(j) the officers and employees of the applicant proposed to be bonded, the amount of bonds to be provided and the surety company or sureties proposed to issue said bonds, which bonds shall be in such form as is provided or approved by the commissioner and issued by a surety company qualified and authorized to do business in Montana or otherwise approved by the commissioner; and

(k) such other information relevant to an applicant's fitness to operate a foreign capital depository, as the commissioner or board may require.

(2) Subject to the provisions of Rule IX(3), an application fee of \$25,000 shall be paid to the state of Montana at the time of application and thereafter shall not be refundable in whole or in part.

(3) The proposed articles of incorporation in accordance with 32-1-301, MCA, shall be submitted with the application for a charter.

(4) The form for applying for a charter for a foreign capital depository (Form FCD-1) may be obtained from the Commissioner of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546."

Auth: Sec. 32-8-107, MCA; IMP, Sec. 32-8-107, MCA

"III EVIDENCE OF GOOD CHARACTER AND PROSPECTIVE COMPLIANCE WITH FEDERAL LAW (1) An application under Rule II shall be accompanied by:

(a) documents certifying that the identity of each incorporator, director, executive officer and controlling person of the proposed foreign capital depository has been verified by means of a background check. Such background check, which shall be in addition to any background check that the commissioner or designated personnel of the division of banking and financial institutions shall conduct pursuant to Rule VIII(2), shall be conducted by a reputable and licensed private investigative service and include inquiry into each individual's financial means, employment history, credit history, criminal record and record of tax delinquencies, if any;

(b) a written copy of the applicant's know-your-customer policy and a written description of the implementation method for such policy, prepared in reasonable detail. Such policy shall be approved by the applicant's board of directors and noted in the applicant's official records. The criteria for such policy are set forth in Rule XIII; and

(c) a written description of the applicant's personnel training and pre-employment screening programs, plan for establishing a security program similar to the security program prescribed by 12 C.F.R. section 326.3, methods of compliance with applicable federal record keeping and reporting laws and any contracts entered with third parties to provide any services or facilities related to these requirements, prepared in reasonable detail."

Auth: Sec. 32-8-107, MCA; IMP, Sec. 32-8-107, 32-8-301, MCA

"IV BUSINESS PLAN AND PRO FORMA STATEMENT (1) An application under Rule II shall be accompanied by a business plan and pro forma statement, containing at a minimum:

(a) a three-year projected comparative balance sheet, income statement and statement of cash flows, showing projections of income, costs, profits and cash flows;

(b) a three-year estimate of the volume of deposits to be made with the proposed depository, with an explanation of the applicant's reasons for believing it will develop such volume of business; and

(c) a statement of proposed expenditures for fixed assets such as premises, fixtures, furniture and equipment, a statement of estimated start-up costs and evaluation of relevant changes in financial markets."

Auth: Sec. 32-8-107, MCA; IMP, Sec. 32-8-201, MCA

"V CAPITAL ADEQUACY (1) An application under Rule II shall be accompanied by:

(a) a statement from a certified public accountant confirming that the applicant has financial assets in excess of liabilities in an amount sufficient, in the judgment of the board, to secure the services that the applicant intends to provide; and

(b) in addition, evidence that the applicant's initial paid-in capital is sufficient to:

(i) establish an undivided profits account in an amount great enough to absorb any initial operating losses under the business plan and pro forma statement submitted by the applicant pursuant to Rule IV and foreseeable business conditions; and

(ii) provide protection for depositors' funds."

Auth: Sec. 32-8-107, MCA; IMP, Sec. 32-8-201, MCA

"VI APPLICANTS THAT ARE SUBSIDIARIES OF FOREIGN BANKS

(1) A subsidiary of a foreign bank may obtain a charter as a foreign capital depository if, in addition to the other requirements of this subchapter, such applicant:

(a) obtains approval from the board of governors of the federal reserve to operate in the United States in accordance with the Foreign Bank Supervision Enhancement Act of 1991 (12 U.S.C. section 3101, et seq.); and

(b) submits the following information with its application for a charter:

(i) a description of the history, background and business of the foreign bank, including an organizational chart showing parent and affiliated corporations and their country of organization;

(ii) background and financial information on each controlling person of the applicant;

(iii) a description of the management structure, including the board of directors and principal officers of the foreign bank and any of its affiliates that will constitute a controlling person of the applicant;

(iv) a consolidated statement of the foreign bank's financial condition as of a date within 90 days prior to the date of application for a charter and audited consolidated financial statements, including statements of income and expense, for the foreign bank's latest three fiscal years, both certified by the foreign bank's chief executive or chief financial officer;

(v) a description of the bank regulatory system in the home country of the foreign bank, and if different, any foreign bank that owns the foreign bank whose subsidiary is applying for a charter as a foreign capital depository, describing:

(A) the extent to which each foreign bank is subject to comprehensive regulation or supervision on a consolidated basis in the home country;

(B) the powers and functions of the home country banking authorities, including frequency and scope of examinations;

(C) the function of any central bank and its relationship to private banking institutions in the home country; and

(D) the deposit insurance system, if any, in the home country.

(vi) a statement from the banking authorities in the home country stating that such authorities do not object to the establishment of the proposed subsidiary foreign capital depository, and that the foreign bank is duly organized and is in good standing;

(vii) a duly executed instrument demonstrating that the

foreign bank has established a registered office and registered agent in the state of Montana in accordance with 35-1-1032, MCA; and

(viii) such additional documents or information as the commissioner or board may require."

Auth: Sec. 32-8-107, MCA; IMP, Sec. 32-8-201, MCA

"VII NOTICE OF HEARINGS (1) A public hearing must be conducted upon all accepted applications for a charter in accordance with the Montana Administrative Procedure Act relating to a contested case.

(2) Applicants will be notified of official acceptance of applications for charters. Upon receipt of such notification, the applicant shall, within five days, cause notices to be published in newspapers of general circulation throughout the state, so as to provide statewide notification to any interested parties of their right to protest the application.

(3) Any person desiring to protest an application must notify the department in writing of the intent to protest, setting forth the reasons for the protest, within 15 days of the date of the publication of the notice described above.

(4) The applicant and all persons timely filing notice of intent to protest an application required by this regulation shall be notified of the date for a public hearing before the board as established by the department. The hearing must be conducted no sooner than 30 days and no later than 90 days following the mailing of the notification of official acceptance of the application for a foreign capital depository charter. Intention to appear at such hearing by an individual filing a protest must be filed in writing with the commissioner within 15 days from the date of notification of a hearing date or the publication of notice, whichever is later. Failure to file notice of an intention to appear at the hearing shall constitute grounds for dismissal of the protest by the commissioner."

Auth: Sec. 32-8-107, MCA; IMP, Sec. 32-1-202, MCA

"VIII GROUNDS FOR DENIAL (1) In order to ensure that the business of a foreign capital depository will be conducted in accordance with the intent of the act and to protect the privacy and other interests of depositors, the board shall deny a charter application if it finds that a person planning to own, operate or manage the foreign capital depository is not of good character or financial integrity, or if the applicant for a charter is not adequately prepared to comply with or ensure compliance with Montana law or federal law and regulations relating to money laundering and other financial crimes or is not financially sound.

(2) The board authorizes the commissioner and designated personnel of the division of banking and financial institutions to gather all available information relative to an application filed with the commissioner pursuant to Rule II, including such background information and information regarding any of the applicant's incorporators, stockholders, directors,

officers, controlling persons or other persons associated with the application as the commissioner or designated division personnel may deem prudent or appropriate. Information so gathered must be reported to the board in such form and in such manner as the board directs. The commissioner is also authorized to make, or cause to be made, such investigations determined to be warranted under the existing circumstances and must make the information obtained available to the board.

(3) Notwithstanding any other provisions of this rule or the act, final determination to grant, conditionally or otherwise, or deny any application for a charter, shall be in the sole discretion of the board. The board may grant a charter to an applicant unconditionally or upon such terms and conditions (financial or otherwise) as the board deems prudent or appropriate."

Auth: Sec. 32-8-107, MCA; IMP, Sec. 32-8-202, MCA

"IX PROCEDURAL RULES FOR DETERMINATIONS: APPROVAL CONDITIONS (1) In the event that an application is incomplete in any respect or if additional information is required, the applicant will be so notified by the division of banking and financial institutions and allowed up to 60 days in which to perfect the application or provide additional information. An extension of this 60-day period may be obtained from the division of banking and financial institutions by showing good cause why it should be extended.

(2) In the event that an application for a charter for a foreign capital depository does not include information required by Rules II through VI, the board may direct that if a charter is to be issued for the applicant it shall be conditioned upon the submission of such information at least 60 days prior to the opening of the foreign capital depository and that the board finds said information unobjectionable.

(3) In the event that a charter for a foreign capital depository is granted to an applicant, the applicant, within five business days of receipt by the applicant of notice of approval of the charter, shall pay to the department an initial charter fee of \$50,000, less the fee paid to the department at the time of the application pursuant to Rule II(2), which fee shall be deposited in the account established pursuant to 32-8-306, MCA, and thereafter shall not be refunded in whole or in part."

Auth: Sec. 32-8-107, MCA; IMP, Sec. 32-8-201, 32-8-205, MCA

"X PROCEDURAL RULES FOR DISCOVERY AND HEARINGS (1) In the case of hearings concerning the issuance, suspension or revocation of a foreign capital depository charter, or in enforcement actions pursuant to Rule VII:

(a) the attorney general's model rules, as stated in ARM 1.3.101 through 1.3.234, with the exceptions set forth in ARM 8.2.104 through 8.2.106, are hereby adopted and incorporated by reference. A copy of the attorney general's model rules may be obtained from the Banking and Financial Institutions Division, Department of Commerce, 846 Front Street, P.O. Box 200546, Helena, Montana 59620-0546. Prehearing discovery

procedures shall be allowed in the same manner as specified under the Montana Rules of Civil Procedure relative to district court actions. The time period established in discovery may be shortened at the discretion of the board; and

(b) The board adopts "Robert's Rules of Order".

Auth: Sec. 32-1-205, 32-8-301, MCA; IME, Sec. 32-1-205, 32-8-301, MCA

"XI ANNUAL FEES" (1) A foreign capital depository shall pay an annual charter renewal fee in the amount of \$10,000 to the department.

(2) A foreign capital depository shall pay to the department an annual supervision and examination fee. Such fee shall be commensurate with the costs incurred by the department in conducting such examination but not less than \$500 per examination, including \$200 per day for each examiner engaged in examination of the depository, the actual cost of travel expenses in the event that travel outside of the state of Montana is deemed necessary and a reasonable amount to cover the actual costs of counsel and other department resources. The \$500 minimum charge may be waived by the department when such charge clearly exceeds the hours spent on an examination. The amount of such fee shall be determined by the department and the fee assessed on or before December 31 of each year.

(3) The fees described in this rule shall be due on or before every 30th day of January after the first grant of a charter, and when collected deposited by the department in the account established pursuant to 32-8-306, MCA, for use of the department in its regulatory function."

Auth: Sec. 32-8-107, MCA; IME, Sec. 32-8-205, MCA

"XII EXAMINATIONS" (1) The department shall examine a foreign capital depository at least once each year and may examine or investigate a foreign capital depository more frequently at any time it deems such action necessary or desirable, except as otherwise provided in 32-8-303, MCA, which allows federal reserve system examinations to be substituted for the department's examination.

(2) At least once annually the examination shall consist of a comprehensive review of the records, operations and affairs of the foreign capital depository, which review shall include inquiry into:

(a) whether the depository is operating in a safe and sound manner;

(b) the accounting and financial record keeping practices of the depository;

(c) the continued accuracy of each representation contained in the application for a charter, and whether:

(i) there have been material changes in the financial condition of any director, executive officer or controlling person of the foreign capital depository;

(ii) any person not previously constituting a controlling person has become a controlling person of the foreign capital depository; or

(iii) there has been a material change in the ownership of any controlling interests.

(d) compliance with reporting and record keeping requirements 32-8-309, 32-8-315 and 32-8-503, MCA, the Bank Secrecy Act, the Money Laundering Control Act of 1986 (12 U.S.C. section 1951, et seq., as amended), and the Annunzio-Wylie Anti-Money Laundering Act (31 U.S.C. section 5311, et seq., as amended) and relevant implementing regulations. The Bank Secrecy Act, the Money Laundering Control Act of 1986 (12 U.S.C. section 1951, et seq., as amended), and the Annunzio-Wylie Anti-Money Laundering Act (31 U.S.C. section 5311, et seq., as amended), and the relevant implementing regulations are hereby adopted and incorporated by reference. A copy of the federal law may be obtained from the Division of Banking and Financial Institutions, Department of Commerce, 846 Front Street, P.O. Box 200546, Helena, Montana 59620-0546. The department shall evaluate whether the depository's program for compliance satisfies the criteria set forth in Rule XIV;

(e) the depository's diligence in ascertaining the true identity of its customers (including, without limitation, such customers' citizenship and residency), the legitimacy of the customers' business and the lack of criminal record of such customers (and, in the case of corporations, controlling persons of such corporations);

(f) the implementation of the depository's know-your-customer policy in satisfaction of the criteria set forth in Rule XIII;

(g) implementation of the privacy requirements of 32-8-501 through 32-8-524, MCA, including whether a comprehensive system of controls has been implemented, extended and communicated throughout the organization and whether there have been any events of noncompliance with such sections;

(h) with respect to precious metals accounts, compliance with applicable legal requirements, including the limitations contained in 32-8-403 and 32-8-404, MCA;

(i) implementation of an effective security program, similar to the security program prescribed at 12 C.F.R. section 326.3 (May 1991). The federal law 12 C.F.R. section 326.3 is hereby adopted and incorporated by reference. A copy of the federal law may be obtained from the Division of Banking and Financial Institutions, Department of Commerce, 846 Front Street, P.O. Box 200546, Helena, Montana 59620-0546; and

(j) any other matter concerning the operation, management, soundness and integrity of the foreign capital, depository deemed relevant by the department.

(3) Employees of the department shall not divulge any information or prior notice, directly or indirectly, to any officer, director, agent, representative or employee of the depository concerning the time or date of examination of the depository except in accordance with internal policy prescribed by the department."

Auth: Sec. 32-8-301, MCA; IMP, Sec. 32-8-303, MCA

"XIII. CRITERIA FOR KNOW-YOUR-CUSTOMER POLICY (1) A depository's know-your-customer policy shall conform to the substance of the know-you-customer regulations, if any, issued by the federal reserve, or, in the absence of such regulations, such policy shall make adequate provision for:

(a) identifying and verifying the true identity of customers, their sources of funds and backgrounds. Such description shall include the name and address of the international private investigative service proposed to be used by the foreign capital depository in performing background checks on prospective depositors;

(b) developing a profile of the customer's anticipated transactions and determining whether the customer is a suitable client for the foreign capital depository;

(c) monitoring customers' depository activities to determine whether they are consistent with initial profiles and documenting any depository activity varying from such initial profiles;

(d) complying with the reporting and other requirements of the Bank Secrecy Act, the Money Laundering Control Act of 1986 (12 U.S.C. section 1951, et seq., as amended), and Annunzio-Wylie Anti-Money Laundering Act (31 U.S.C. section 5311, et seq., as amended); and

(e) implementing a program for internal audits to ensure that the know-your-customer system is functioning properly.

(2) Implementation of such policy shall be evaluated on the following bases:

(a) whether a comprehensive system of internal controls to assure ongoing compliance has been established and extended to employees throughout the organization;

(b) whether defined standards have been communicated throughout the organization;

(c) whether documented records of compliance that facilitate third-party review are maintained; and

(d) whether proper measures are taken in the event of failure to comply with the policy."

Auth: Sec. 32-8-301, MCA; IMP, Sec. 32-8-301, MCA

"XIV. CRITERIA FOR ANTI-MONEY-LAUNDERING COMPLIANCE

(1) A program for compliance with the Bank Secrecy Act, the Money Laundering Control Act of 1986 (12 U.S.C. section 1951, et seq., as amended), and the Annunzio-Wylie Anti-Money Laundering Act (31 U.S.C. section 5311, et seq., as amended) shall be evaluated on the basis of whether the depository has established and maintained procedures reasonably designed to assure and monitor its compliance with such law.

(2) A compliance program, shall, at a minimum:

(a) provide for a system of internal controls to assure ongoing compliance;

(b) provide for independent testing for compliance to be conducted by depository personnel or by an outside party;

(c) designate an individual responsible for coordinating and monitoring day-to-day compliance; and

(d) provide training for appropriate personnel."

Auth: Sec. 32-8-301, MCA; IMP, Sec. 32-8-301, 32-8-309, 32-8-314, 32-8-501, MCA

"XV QUARTERLY AND ANNUAL REPORTS (1) Within 30 days of the end of each calendar quarter ending March 31, June 30 and September 30, a foreign capital depository shall submit to the department a quarterly report, verified as required in 32-8-308, MCA, which shall include financial statements of the depository for and at the close of the just-concluded calendar quarter, including a balance sheet that reflects not only the assets and liabilities of the depository itself but all assets held for the benefit of, and accounts and liabilities in favor of, all customers, together with a report on operations for the just-completed quarter and the year-to-date period ending at the conclusion of the quarter, and such other information and in such format as the department may require in Form FCD-Q.

(2) A foreign capital depository shall submit to the department an annual report, in the form of Form FCD-K and verified as required in 32-8-308, MCA, containing the following information, within 60 days of the close of the calendar year:

(a) the information required by (1);

(b) financial statements of the depository for and at the close of the just-concluded calendar year, including a balance sheet that reflects not only the assets and liabilities of the depository itself but all assets held for the benefit of, and accounts and liabilities in favor of, all customers and a statement of income and expenses for the calendar year prepared in accordance with generally accepted accounting principles, all certified by an independent certified public accountant;

(c) a description of how the depository's know-your-customer policy and implementation thereof meets the criteria set forth in Rule XIII;

(d) a description of its procedures for filing suspicious activity reports, and a description of its procedures for compliance with federal anti-money-laundering law and how these procedures satisfy the criteria set forth in Rule XIV;

(e) a description of security measures designed to deter and prevent theft, fraud and corruption, demonstrating fulfillment of the minimum security procedures set forth at 12 C.F.R. section 326 (or its successor provision);

(f) a statement that all assets of the depository and the capital of its customers have been maintained within the state of Montana and at locations specified in the depository's charter application, as amended from time to time, for the identification of the types and locations of facilities used to maintain or hold the assets of depositors, with consent authorizations, in the form required by the department, from the owner and controlling party with respect to all facilities, submitting to such record keeping and audit requirements as the department may require;

(g) a description of the frequency and content of employee training programs regarding disclosure and other aspects of financial privacy;

(h) evidence that the foreign bank maintains a registered office and registered agent in the state in accordance with 35-1-1032, MCA; and

(i) such other information as may be required by Form FCD-K."

Auth: Sec. 32-8-301, MCA; IMP, Sec. 32-8-308, MCA

"XVI SUSPICIOUS ACTIVITY REPORTS (1) The department hereby adopts and incorporates by reference the regulations set forth at 12 C.F.R. section 208.20 (May 1991), which shall govern the circumstances under which a suspicious activity report is required to be filed with the financial crimes enforcement network of the United States department of the treasury and other matters concerning such reports as therein set forth. A copy of the federal law may be obtained from the Division of Banking and Financial Institutions, Department of Commerce, 846 Front Street, P.O. Box 200546, Helena, Montana 59620-0546.

(2) Within three business days of its filing of a report with the financial crimes enforcement network, a foreign capital depository shall furnish to the department a copy of any such report or notice.

(3) The department hereby adopts and incorporates by reference the form of suspicious activity report prescribed by the federal reserve board in accordance with 12 C.F.R. section 208.20(b)(3). A copy of the federal law may be obtained from the Division of Banking and Financial Institutions, Department of Commerce, 846 Front Street, P.O. Box 200546, Helena, Montana 59620-0546."

Auth: Sec. 32-8-301, MCA; IMP, 32-8-301, 32-8-309, MCA

"XVII OTHER REPORTS REQUIRED (1) The commissioner shall have the power from time to time to call for special reports from a depository when, in the judgment of the commissioner, such special reports are necessary or would be of substantial assistance to the commissioner in its prudent supervision of the depository. Such reports shall be in writing, verified as required in 32-8-308, MCA.

(2) A director, officer or controlling person of a depository shall furnish immediate notice to the commissioner upon learning that any application or report submitted by or in connection with a depository contains a material misstatement or fails to include a statement or fact necessary for the application or report not to be misleading.

(3) Upon the request of the commissioner, a depository shall furnish to the commissioner its records of any or all transfers or withdrawals of currency from the depository in an amount equal to or greater than \$10,000. Such records may be in a written or electronic format, and must contain the customer's name, last-known address, and if the customer is an individual, his or her passport number.

(4) A foreign capital depository shall report to the department within five business days any change in the stock ownership by a controlling person that either:

(a) affects more than 20% of the total outstanding stock

of the depository; or

(b) results in the acquisition or disposition of more than a 50% interest in the total outstanding stock of the depository.

(5) Unless a specific timing requirement is imposed by statute or the regulations of the department, board or commissioner, reports required by the commissioner shall be filed within 30 days of receipt of a request of a report or within 30 days after the occurrence of the event which triggers the reporting requirement."

Auth: Sec. 32-8-301, MCA; IMP, 32-8-301, 32-8-308, 32-8-315, MCA

REASON: The rules are being proposed to implement Senate Bill 83. Rulemaking authority is granted to the Division and the Department under 32-8-107, MCA, of the Montana Foreign Capital Depository Act.

3. Interested persons may present their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to the Division of Banking and Financial Institutions, Department of Commerce, 846 Front Street, P.O. Box 200546, Helena, Montana 59620-0546, no later than October 7, 1997.


4. The Department of Commerce will make reasonable accommodations for persons with disabilities who wish to participate in the public hearing. If you wish to request an accommodation, contact the Department no later than 5:00 p.m., October 3, 1997, to advise us of the nature of the accommodation that you need. Please contact Chris Olson, Division of Banking and Financial Institutions, Department of Commerce, 846 Front Street, P.O. Box 200546, Helena, Montana 59620-0546; telephone (406) 444-2091; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 444-4186. Persons with disabilities who need an alternative accessible format of this document in order to participate in this rule-making process should contact Chris Olson.

5. Annie M. Bartos, Chief Legal Counsel, has been designated to preside over and conduct the hearing.

BANKING AND FINANCIAL
INSTITUTIONS DIVISION

BY: 

ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE


ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, August 25, 1997.

BEFORE THE ECONOMIC DEVELOPMENT DIVISION
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed) NOTICE OF PUBLIC HEARING ON
amendment of rules pertaining) THE PROPOSED AMENDMENT OF
to the Microbusiness Advisory) RULES PERTAINING TO THE
Council and the Microbusiness) MICROBUSINESS ADVISORY
Finance Program) COUNCIL AND THE MICROBUSINESS
Finance Program) FINANCE PROGRAM

TO: All Interested Persons:

1. On October 8, 1997, at 10:00 a.m., a public hearing will be held in the downstairs conference room of the Department of Commerce, 1424 9th Avenue, Helena, Montana 59620, to consider the proposed amendment of rules pertaining to the Microbusiness Advisory Council and the Microbusiness Finance Program.

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

"8.99.401 DEFINITIONS (1) through (14) will remain the same.

(15) "Unfunded" means an MBDC certified in good standing but not holding a development loan. See 8.99.404(2)(b).

(16) "Renewal" means an MBDC who is currently certified. meets the requirements for certification for an additional term and is awarded a development loan for an additional term.

(15) through (19) will remain the same, but will be renumbered (17) through (21)."

Auth: Sec. 17-6-406, MCA; IMP, Sec. 17-6-406, 17-6-408, MCA

REASON: The reason for adding (15) is in regards to ARM 8.99.404(2) which states that there is no limit to the number of certified MBDCs per region, but that only one certified MBDC may be funded at any given time in any one region; (b) provides for the program to include an MBDC who wishes to maintain its certified status but not hold a development loan. ARM 8.99.404 states that such an MBDC must be reviewed and recertified every four years. ARM 8.99.401 did not include a definition for an "unfunded MBDC". An MBDC has requested status as an unfunded MBDC which was met with some confusion regarding the admissibility or rationale for such a status. This definition will aid in mitigating such confusion in the future.

The reason for adding (16) is in regards to ARM 8.99.504(1) which provides that development loans may be renewable at intervals of no more than four years. The process of renewal has been completed for all MBDC certified before July, 1993. The process established by the Microbusiness Advisory Council and the Department includes ARM 8.99.401

requirements for certification and those agreements set out in the development loan contract. Including the definition of renewal in ARM 8.99.401 will alert users to the importance of the process.

"8.99.402 COMPOSITION OF THE COUNCIL (1) will remain the same.

(a) no more than seven members may reside in any one of the state's United States congressional districts, as those districts existed on December 31, 1990;

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

Auth: Sec. 17-6-406, MCA; IMP, Sec. 17-6-411, MCA

REASON: The recommendation to clarify congressional districts as U.S. congressional districts when defining advisory council geographic representation provides more clarity.

"8.99.404 CERTIFICATION OF REGIONAL MICROBUSINESS DEVELOPMENT CORPORATIONS (1) and (2) will remain the same.

(a) ~~When~~ the certified and funded MBDC in a region is determined to be in default that MBDC is considered decertified and no longer funded, and another certified MBDC in that region may apply for and receive a development loan.

(b) ~~To~~ maintain its status as a certified MBDC, an MBDC that is certified but not funded must be reviewed and recertified every four years.

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

(d) a staffing plan including job titles, job descriptions, necessary qualifications, experience, education and other qualifications of ~~principle~~ primary manager, and personnel training and supervision.

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

(k) ~~The~~ department may require such additional information as the department in its discretion deems to be appropriate.

(4) will remain the same.

(a) ~~The~~ department will follow state agency procedures in conducting requests for proposals for certification from each region.

(b) ~~The~~ department will review proposals and determine whether to recommend certification of the MBDC. The proposal and staff's recommendation will be forwarded to the department director for a decision on certification.

(c) ~~In~~ regions with proposals for certification and/or renewal from more than one organization, the department will convene and chair a regional evaluation committee. Nominations for membership to the committee will be solicited from groups including, but not limited to, proposers from that region, local governments, certified community lead organizations, financial institutions, business assistance groups, women and representatives of low-income and minority populations. The committee will attempt, through negotiation, to arrive at a consensus proposal from the region. If, however, in the opinion of the chair and a majority of the committee a

consensus cannot be reached in a timely fashion, then the committee will evaluate the competing proposals or any modified proposals that have emerged from negotiation, and will select by means of that evaluation a single proposal to be forwarded to the department for certification review.

(5) Statewide MBDCs may not be certified until the date one year from the deadline for receiving proposals specified in the first request for proposals for certification of MBDCs issued by the department.

Auth: Sec. 17-6-406, MCA; IMP, Sec. 17-6-408, MCA

REASON: The recommendation to change "principle manager" to "primary manager" when listing the contents of a staffing plan for an MBDC will avoid the possible misinterpretation of the term to mean a manager of "principal" or a fund investor.

In clarifying the process for completing applications to serve an MBDC Region to include in addition, to proposals for initial certification, those proposals for renewal will make certain the situations for which the process is appropriate.

The reason for changing capitalization to lower case at the beginning of the sentence is to be more consistent throughout the rule.

"8.99.505 DEVELOPMENT LOAN - MATCHING CONTRIBUTIONS AND COLLATERAL (1) will remain the same.

(2) The development loan agreement between the department and an MBDC must specify account(s), or type of account(s), into which the full amount of the cash collateral must be deposited before the development loan may be disbursed to the MBDC, except that, when the MBDC presents a legally binding commitment for cash collateral from a federal agency contingent only upon disbursement of the development loan, the development loan may be disbursed prior to deposit of that ~~committee~~ committed federal portion of the cash collateral.

(3) In order to assist an MBDC in obtaining collateral from other sources, the department may provide a legally binding commitment to an MBDC to award a development loan,

contingent on receipt and deposit of cash collateral as specified in the loan agreement. ~~Such a commitment must have an expiration date; the duration of such commitments may be no longer than one calendar quarter, so that commitments to MBDCs without collateral cash on hand do not unreasonably delay lending to MBDCs with cash collateral ready and available. Such a commitment will be made first to MBDCs with cash collateral ready and available and then to MBDCs with strong evidence of collateral commitments materializing. Such commitments to those developing collateral must have an expiration date.~~

(4) through (10) (ii) will remain the same."

Auth: Sec. 17-6-406, MCA; IMP, Sec. 17-6-406, MCA

REASON: Committing an award to an MBDC of a development loan is useful in enabling an MBDC to secure collateral from other sources to provide the required 1:6 local match. Obtaining local collateral has proven challenging and at times requires more than a month to secure. During the period of time required to secure the match other conditions may arise around MBDC performance criteria which delay the department in awarding the development loan. The local region should not be permanently prevented from small business credit due to temporary and curable MBDC performance issues.

"8.99.506 DEVELOPMENT LOAN - RENEWAL REQUIREMENTS

(1) ~~The department will notify MBDCs in writing at least six months prior to expiration of a loan agreement of its intent. The department will notify MBDCs in writing of its intent to renew and/or require repayment of a development loan, two weeks after the last quarter report in the calendar year in which a loan agreement expires.~~

(2) ~~The department may renew the four year interest only term of the development loan, renew the terms of the development loan up to four years and interest only, or may require the repayment of the loan in full or in part.~~

(3) will remain the same."

Auth: Sec. 17-6-406, MCA; IMP, Sec. 17-6-406, MCA

REASON: At present the notification period is six months prior to expiration of a loan agreement. That period has proven so lengthy that performance and conditions change substantially rendering the earlier decision in some cases inappropriate. Reducing the period of notification to just over four months provides MBDCs time to prepare a renewal application and/or plan for return of the fund and at the same time allows the decision to be made based on more appropriate data.

In allowing the Department to renew development loans less than four years will allow for a more flexible and fitting term for specific situations.

"8.99.510 MICROBUSINESS LOANS - LENDING OUTSIDE THE

REGION (1) Up to 10% of the loans made or guaranteed by an MBDC may be to clients outside the MBDC's service region. An

MBDC may exceed this limit only after entering into written agreement(s) to do so with the MBDC(s) certified in the other service region(s) in which loans are outstanding exceed this limit only after notifying in writing the MBDC certified in the other service region in which the proposed loan is to be made."

Auth: Sec. 17-6-406, MCA; IMP, Sec. 17-6-406, MCA

REASON: Allowing MBDCs to respond to borrowers who do not live in their region, in some instances, compensates for unwieldy shaped county lines which require borrowers to travel inappropriate distances. If a written agreement is required before a loan can be made unreasonable delays may occur threatening the borrowers' business opportunity.

3. The Department of Commerce will make reasonable accommodations for persons with disabilities who wish to participate in the public hearing. If you wish to request an accommodation, contact the Department no later than 5:00 p.m., September 24, 1997, to advise us of the nature of the accommodation that you need. Please contact the Economic Development Division, 1424 9th Avenue, Helena, Montana 59620; telephone (406) 444-4325, Montana Relay 1-800-243-4091; TDD (406) 444-2971; facsimile (406) 444-2903. Persons with disabilities who need an alternative accessible format of this document in order to participate in this rule making process should contact Lynn Robson at the above address.

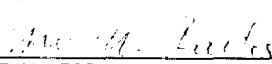
4. Interested persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Business Development Division, 1424 9th Avenue, Helena, Montana 59620, no later than October 6, 1997.

5. Lynn Robson, Program Officer, has been designated to preside over and conduct the hearing.

ECONOMIC DEVELOPMENT DIVISION

BY: 

ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE


ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, August 25, 1997.

BEFORE THE DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION
OF THE STATE OF MONTANA

In the matter of the proposed	)	NOTICE OF PROPOSED
adoption of rule I and rule II	)	ADOPTION
concerning the streamside)	
management zone	)	NO PUBLIC HEARING
	)	CONTEMPLATED

TO: All Interested Persons.

1. On October 10, 1997, the Montana Department of Natural Resources and Conservation proposes to adopt rules pertaining to the streamside management zone. The rules are being proposed to assist the department in regulating forest practices in the streamside management zone by adding additional definitions.

2. The proposed rules provide as follows:

RULE I APPLICABILITY (1) This subchapter applies to forest practices conducted within a timber sale in the streamside management zone. Such practices, as defined at 77-5-302(3), MCA, include the following activities when conducted within a "timber sale" defined in Rule II:

- (a) the harvesting of trees;
- (b) road construction or reconstruction associated with harvesting and accessing trees;
- (c) site preparation for regeneration of a timber stand;
- (d) reforestation;
- (e) management of logging slash.

AUTH: Sec. 77-5-307, MCA

IMP: Sec. 77-5-302 and 77-5-307, MCA

RULE II DEFINITIONS Wherever used in this subchapter, unless a different meaning clearly appears from the context:

(1) "Alternative practices" means forest practices conducted in the SMZ that are different from the practices required by the standards provided in 77-5-303, MCA, and are approved by the department either by adoption of this subchapter or on a site-specific basis upon application of the operator.

(2) "Broadcast burning" means spreading fire through a continuous fuel cover. The fuels consist of slash resulting from forest practices, surface litter, and duff. Fuels are left in place, fairly uniform, and ignited under certain conditions with the intent to meet planned management objectives in the desired area.

(3) "Class 1 stream segment" means a portion of stream that supports fish; or a portion of stream that normally has surface flow during 6 months of the year or more; and that contributes surface flow to another stream, lake, or other body of water.

(4) "Class 2 stream segment" means a portion of stream that is not a class 1 or class 3 stream segment. Two common examples of class 2 stream segments are:

(a) A portion of stream which does not support fish; normally has surface flow during less than 6 months of the year; and contributes surface flow to another stream, lake, or other body of water; or

(b) A portion of stream that does not support fish; normally has surface flow during 6 months of the year or more; and does not contribute surface flow to another stream, lake, or other body of water.

(5) "Class 3 stream segment" means a portion of a stream that does not support fish; normally has surface flow during less than 6 months of the year; and rarely contributes surface flow to another stream, lake, or other body of water.

(6) "Clearcutting" means removal of virtually all the trees, large and small, in a stand in one cutting operation. Virtually all woody vegetation is removed from the site preparatory to establishment of new trees.

(7) "Construction" means cutting and filling of earthen material that results in a travel-way for wheeled vehicles.

(8) "Diameter at breast height" (abbreviated "dbh") means the diameter of a tree measured 4½ feet from the ground level. Ground level is the highest point of the ground touching the stem.

(9) "Eastern zone" means the counties of Big Horn, Blaine, Carter, Chouteau, Custer, Daniels, Dawson, Fallon, Fergus, Garfield, Golden Valley, Hill, Liberty, McCone, Musselshell, Petroleum, Phillips, Powder River, Prairie, Richland, Roosevelt, Rosebud, Sheridan, Toole, Treasure, Valley, Wibaux, and Yellowstone.

(10) "Established road" means an existing access or haul route for highway vehicles that is passable under one or more of the following circumstances:

(a) without any work;

(b) with clearing of windfall or small woody vegetation;

(c) with surface blading;

(d) with replacement of stream crossing structures and drainage structures that were removed to restrict access; or

(e) with removal of constructed access barriers.

(11) "Hazardous or toxic material" means substances which by their nature are dangerous to handle or dispose of, or are a potential environmental contaminant, and includes petroleum products, pesticides, herbicides, chemicals, and biological wastes.

(12) "Lake" means a body of water where the surface water is retained by either natural or artificial means, where the natural flow of water is substantially impeded, and which supports fish.

(13) "Ordinary high water mark" means the stage regularly reached by a body of water at the peak of fluctuation in its water level. The ordinary high water mark is generally observable as a clear, natural line impressed on the bank. It may be indicated by such characteristics as terracing, changes in soil characteristics, destruction of vegetation, presence or absence of litter or debris, or other similar characteristics.

(14) "Other body of water" means ponds and reservoirs

greater than 1/10th acre that do not support fish; and irrigation and drainage systems discharging directly into a stream, lake, pond, reservoir, or other surface water. Water bodies used solely for treating, transporting, or impounding pollutants shall not be considered surface water.

(15) "Road" means a travel-way suitable for highway vehicles.

(16) "Salvage" means harvesting trees that have been killed or damaged or are in imminent danger of being killed or damaged by injurious agents other than competition between trees.

(17) "Sidecasting" means the act of moving excess earthen material over the side of a road during road maintenance operations.

(18) "Slash" means the woody debris that is dropped to the forest floor during forest practices. Timber slash consists of stems, branches, and twigs left behind after forest practices.

(19) "Slope distance" means the length of a line between two points on the land surface.

(20) "Stream", as defined at 77-5-302(7), MCA, means "a natural watercourse of perceptible extent that has a generally sandy or rocky bottom or definite banks and that confines and conducts continuously or intermittently flowing water."

(21) "Streamside management zone" or "zone" (abbreviated "SMZ"), as defined at 77-5-302(8), MCA, means "the stream, lake, or other body of water and an adjacent area of varying width where management practices that might affect wildlife habitat or water quality, fish, or other aquatic resources need to be modified. The streamside management zone encompasses a strip at least 50 feet wide on each side of a stream, lake, or other body of water, measured from the ordinary high-water mark, and extends beyond the high-water mark to include wetlands and areas that provide additional protection in zones with steep slopes or erosive soils."

(22) "Timber sale", as defined at 77-5-302(9), MCA, means "a series of forest practices designed to access, harvest, or regenerate trees on a defined land area for commercial purposes."

(23) "Wetlands" means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands include marshes, swamps, bogs, and similar areas.

AUTH: Sec. 77-5-307, MCA

IMP: Sec. 77-5-302 and 77-5-307, MCA

3. The proposed rules re-adopt those definitions of the streamside management zone previously contained in administrative rule 36.11.301 which was inadvertently repealed in July, 1996, as a result of the department's restructuring with the former Department of State Lands. The rules re-state verbatim those definitions contained in the prior rule, and are necessary to implement forest practices in the streamside management zone.

4. Interested parties may submit their data, views or arguments concerning the proposed adoption in writing to Richard E. Bach, Counsel, Montana Department of Natural Resources and Conservation, P.O. Box 201601, Helena, MT 59620-1601, to be received no later than 5:00 p.m., October 8, 1997.

5. If a person who is directly affected by the proposed adoption 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 Richard E. Bach, Counsel, Montana Department of Natural Resources and Conservation, P.O. Box 201601, Helena, MT 59620-1601. The comments must be received no later than 5:00 p.m., October 8, 1997.

6. If the agency receives requests for a public hearing on the proposed adoption from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed adoption; from the administrative code committee of the legislature; from a governmental subdivision or agency; or from an association having 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 greater than 25, based on the number of persons who have an interest in the management of state forest lands.

DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

for Randy Mosley, Acting
ARTHUR R. CLINCH, DIRECTOR

Donald D. MacIntyre
DONALD D. MACINTYRE, REVIEWER

Certified to the Secretary of State August 25, 1997.

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

In the matter of the adoption	)	NOTICE OF PUBLIC HEARING
of rules I through XXI and the	)	OF PROPOSED ADOPTION AND
repeal of 16.32.346 pertaining	)	REPEAL
to minimum standards for mental)	
health centers)	

TO: All Interested Persons

1. On September 30, 1997 at 2:00 p.m., a public hearing will be held in the auditorium of the Department of Public Health and Human Services Building, 111 N. Sanders, Helena, Montana to consider the proposed adoption of rules I through XXI and the repeal of 16.32.346 pertaining to minimum standards for mental health centers.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you request an accommodation, contact the department no later than 5:00 p.m. on September 22, 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 adopted provide as follows:

[RULE I] MENTAL HEALTH CENTER: APPLICATION OF OTHER RULES

(1) To the extent that other licensure rules in ARM Title 16, chapter 32, subchapter 3 conflict with the terms of this subchapter, the terms of this subchapter will apply to mental health centers. AUTH: Sec. 50-5-103, MCA

IMP: Sec. 50-5-103 and 50-5-204, MCA

[RULE II] MENTAL HEALTH CENTER: DEFINITIONS

In addition to the definitions in 50-5-101, MCA, the following definitions apply to this subchapter:

(1) "Administrator" means a designated individual having daily overall management responsibility for the operation of a mental health center.

(2) "Adult day treatment program" means a program which provides a variety of mental health services to adults with a mental illness.

(3) "Child and adolescent" means a person seventeen years of age or younger.

(4) "Child and adolescent day treatment program" means a program which provides an integrated set of mental health,

education and family intervention services to children or adolescents with a severe emotional disturbance.

(5) "Client" means an adult, child or adolescent, or resident receiving services from a mental health center.

(6) "Community residential facility" means the definition provided in 76-2-411, MCA.

(7) "Crisis intervention stabilization facility" means a facility which provides short-term 24 hour supervised housing for adults with a mental illness experiencing a crisis.

(8) "Crisis telephone services" means a 24 hour emergency mental health telephone service.

(9) "Individualized education program" means a written plan developed and implemented for each student with a disability in accordance with 34 CFR §§ 300.341 through 300.350 as revised as of July 1, 1995. The department hereby adopts and incorporates by reference 34 CFR § 300.341 through 300.350. A copy of the regulations may be obtained from the Department of Public Health and Human Services, Licensing Bureau, Cogswell Building, P.O. Box 202951, 1400 Broadway, Helena, Montana 59620-2951.

(10) "Individualized treatment plan" means a written plan that outlines individualized treatment activities for maximum reduction of mental disability and restoration of the client's ability to function adequately in the family, at work or school, and as a member of the community.

(11) "Intensive case management" means the activities of a single person or team that assists individuals with mental illness to make informed choices for community services which seek to maximize their personal abilities and enable growth in some or all aspects of the individual's vocational, social, and health related environments.

(12) "Licensed mental health professional" means a physician, clinical psychologist, social worker, professional counselor or registered nurse licensed to practice in Montana.

(13) "Medical director" means a psychiatrist licensed by the Montana board of medical examiners to practice psychiatry who oversees the mental health center's clinical services.

(14) "Mental health group home" means a community residential facility which provides housing and rehabilitation services to adults with a mental illness to learn, maintain or enhance community living skills.

(15) "Mental illness" means that condition of an individual in which there is either psychological, physiological, or biochemical imbalance which has caused impairment in functioning and/or behavior.

(16) "Program supervisor" means a designated licensed mental health professional having daily overall responsibility for the operation of a mental health center area of endorsement.

(17) "Program therapist" means a licensed mental health professional with the training and knowledge to provide psychotherapy.

(18) "Representative payee" means a payee appointed by the

Social Security Administration when a beneficiary is unable to manage their social security benefits, supplementary security income or Medicare benefits.

(19) "Seclusion" means a child or adolescent is separated involuntarily by staff from visible contact with the rest of the class to calm down and appropriately manage their behavior.

(20) "Severe emotional disturbance" means a mental illness that has a significant impact on the child or adolescent's functioning over an extended period of time.

(21) "Time out" means a child or adolescent requesting a voluntary time apart from the rest of the class or activity to calm down and appropriately manage their behavior.

AUTH: Sec. 50-5-103, MCA

IMP: Sec. 50-5-103 and 50-5-204, MCA

[RULE III] MENTAL HEALTH CENTER: SERVICES (1) Services provided by a mental health center must be rendered by a single administration in a discrete physical facility or multiple facilities or by written agreements with other facilities such as hospitals, clinics, or educational institutions which may combine to provide services.

(2) A mental health center shall provide one or more of the following services: (a) child and adolescent intensive case management; (b) adult intensive case management; (c) child and adolescent day treatment program; (d) adult day treatment program; (e) mental health group home; (f) crisis telephone services; or (g) crisis intervention stabilization facility.

AUTH: Sec. 50-5-103, MCA

IMP: Sec. 50-5-103 and 50-5-204, MCA

[RULE IV] MENTAL HEALTH CENTER: ORGANIZATIONAL STRUCTURE

(1) Each mental health center shall employ or contract with an administrator who shall:

(a) maintain daily overall responsibility for the mental health center's operations;

(b) develop and oversee the implementation of policies and procedures pertaining to the operation and services of the mental health center;

(c) establish written orientation and training procedures for all employees including new employees, relief workers, temporary employees, students, interns, volunteers, and trainees. The training must include orientation on all the mental health center's policies and procedures;

(d) establish written policies and procedures:

(i) defining the responsibilities, limitations, and supervision of students, interns, and volunteers working for the mental health center;

(ii) for verifying each professional staff member's credentials, when hired, and thereafter, to ensure the continued validity of required licenses; and

- (iii) for client complaints and grievances.
- (e) develop an organizational chart that accurately reflects the current lines of administration and authority; and
- (f) maintain a file for all client incident reports.
- (2) Each mental health center shall employ or contract with a medical director who shall:
 - (a) coordinate with and advise the staff of the mental health center on clinical matters; and
 - (b) provide direction, consultation, and training regarding the mental health center's programs and operations as needed.

AUTH: Sec. 50-5-103, MCA

IMP: Sec. 50-5-103 and 50-5-204, MCA

[RULE VI] MENTAL HEALTH CENTER: CLINICAL SERVICES

- (1) Each mental health center shall maintain a clinical services policies and procedures manual. The manual must be reviewed and approved, at least annually, by the medical director and administrator. At a minimum, the manual must contain policies and procedures for:
 - (a) notifying staff of all changes in policies and procedures;
 - (b) addressing client rights, including a procedure for informing clients of their rights;
 - (c) addressing and reviewing ethical issues faced by staff and reporting allegations of ethics violations to the applicable professional licensing authority;
 - (d) informing clients of the policy and procedures for client complaints and grievances;
 - (e) initiating services to clients;
 - (f) informing clients of rules governing their conduct and the types of infractions that can result in suspension or discontinuation of services offered by the mental health center;
 - (g) suspending or discontinuing program services with the following information to be provided to the client:
 - (i) the reason for suspending or discontinuing services or access to programs;
 - (ii) the conditions that must be met to resume services or access to programs;
 - (iii) the grievance procedure that may be used to appeal the suspension or discontinuation; and
 - (iv) what services, if any, will be continued to be provided even though participation in a particular service or program may be suspended or discontinued.
 - (h) referring clients to other providers or services that the mental health center does not provide;
 - (i) conducting quality assessment and improvement activities;
 - (j) conducting medication management services, if clinically indicated, for:
 - (i) administering and dispensing client medications, both

prescriptive and over the counter medications, by appropriately licensed staff working within the scope of their practice;

(ii) maintaining a medical administration record, for each client, listing all medications used and all doses taken or not taken by the client, and when not taken, the reason for omission of any scheduled dose of medication;

(iii) documenting, reporting and addressing in a timely manner, any medication errors, adverse and non-adverse drug reactions;

(iv) providing and documenting education to each client about the effects, side effects, contraindications and management procedures of the client's medication;

(v) providing safe and secure storage of all medications;

(vi) providing segregated refrigeration for medication from food items within the temperature range specified by the manufacturer for medication that requires refrigeration; and

(vii) storing medication in the container dispensed by the pharmacy or in the container in which it was purchased in the case of over the counter medication, with the label intact and clearly legible.

(2) If the mental health center provides representative payee services, the center must comply with the accounting and reporting procedures established by the commissioner of social security as identified in section 1631 (a)(2) of the social security act and must further ensure that clients are involved in budgeting their money and that budget sheets be used which require client signatures.

AUTH: Sec. 50-5-103, MCA

IMP: Sec. 50-5-103 and 50-5-204, MCA

[RULE VI] MENTAL HEALTH CENTER: CLINICAL RECORDS

(1) Each mental health center shall:

(a) collect assessment data and maintain clinical records on all clients who receive services and ensure the confidentiality of clinical records in accordance with the Uniform Health Care Information Act, Title 50, chapter 16, part 5, MCA. At a minimum, the clinical record must include:

(i) an initial and complete intake client assessment;

(ii) additional assessments or evaluations, if clinically indicated;

(iii) a copy of the client's individualized treatment plan and all modifications to the treatment plan;

(iv) progress notes which indicate whether or not the stated treatment plan has been implemented, and the degree to which the client is progressing, or failing to progress, toward stated treatment objectives;

(v) medication orders from the prescribing physician and documentation of the administration of all medications;

(vi) signed orders by a licensed mental health professional for any restrictions of rights and privileges accorded clients of the mental health center including the

reason(s) for the restriction, and

(vii) a termination report when the client's file is closed.

AUTH: Sec. 50-5-103, MCA

IMP: Sec. 50-5-103 and 50-5-204, MCA

[RULE VII] MENTAL HEALTH CENTER: CLIENT ASSESSMENTS

(1) Each mental health center shall complete an initial assessment within 12 hours after admission for crisis intervention and stabilization facility services and within 72 hours after admission for other services. The initial assessment must include the following information:

- (a) presenting problem and history of problem;
- (b) mental status;
- (c) diagnostic impressions;
- (d) initial treatment plan goals; and
- (e) risk factors to include suicidal or homicidal ideation.

(2) Each mental health center shall develop a complete intake assessment within 10 days after admission and include the following information if clinically indicated:

- (a) psychiatric history;
- (b) substance use/abuse and history;
- (c) current medication and medical history;
- (d) financial resources and residential arrangements; and
- (e) education and work history.

(3) Based on the client's clinical needs, each mental health center shall conduct additional assessments which may include, but are not limited to, physical, psychological, emotional, behavioral, psychosocial, recreational, vocational, and psychiatric evaluations.

(4) Each mental health center shall establish a written process for referring clients for assessment services not provided by the center.

AUTH: Sec. 50-5-103, MCA

IMP: Sec. 50-5-103 and 50-5-204, MCA

[RULE VIII] MENTAL HEALTH CENTER: INDIVIDUALIZED TREATMENT PLANS

(1) Based upon the findings of the assessment(s), each mental health center shall establish an individualized treatment plan for each client within 24 hours after admission for crisis intervention and stabilization facility services and within 1 week after admission for other services. The treatment plan must contain:

- (a) specifically stated and measurable treatment plan objectives;
- (b) a description of the specific services which will be provided in order to achieve each objective;
- (c) the identification of the staff person or program responsible for each treatment service to be provided;

(d) the client's and parent/guardian's signature indicating participation in the development of the treatment plan. If the client's and parent/guardian's participation is not possible or inappropriate, written documentation must indicate the reason;

(e) the signature and date of the licensed mental health professional and person(s) with primary responsibility for implementation of the plan indicating development and ongoing review of the plan; and

(f) the criteria for discharge.

(2) The treatment plan must be reviewed at intervals of no less than 90 days for all clients and whenever there is a significant change in the client's condition.

(3) The treatment plan review must be conducted by a licensed mental health professional and person(s) with primary responsibility for each service received by the client. Other staff members and outside service providers must be involved in the review process as clinically indicated. The review must be comprehensive with regard to the client's response to treatment and result in either an amended treatment plan or a statement of the continued appropriateness of the existing plan. The results must be entered into the client's clinical record. The documentation must include a description of the client's functioning and justification for each client goal.

AUTH: Sec. 50-5-103, MCA

IMP: Sec. 50-5-103 and 50-5-204, MCA

[RULE IX] MENTAL HEALTH CENTER: CLIENT TERMINATION

(1) Each mental health center shall prepare a termination report for each client. The termination report must include:

(a) the reason for termination;

(b) a summary of the services provided by the mental health center including recommendations for aftercare services and referrals to other services, if applicable;

(c) an evaluation of the client's progress as measured by the treatment plan and the impact of the services provided by the mental health center; and

(d) the signature of the staff member who prepared the report and the date of preparation.

(2) Termination reports must be filed in the clinical record within one month of the date of termination.

(3) For cases left open when a client has not received services for over 30 days, documentation must be entered into the record indicating the reason for leaving the case open.

AUTH: Sec. 50-5-103, MCA

IMP: Sec. 50-5-103 and 50-5-204, MCA

[RULE X] MENTAL HEALTH CENTER: PERSONNEL RECORDS

(1) For each employee or contracted individual, the mental health center shall maintain the following information on file:

- (a) a current job description;
- (b) if a licensed mental health professional, documentation of current licensure and certification; and
- (c) dated documentation of the individual's involvement in orientation, training, and continuing education activities.

AUTH: Sec. 50-5-103, MCA

IMP: Sec. 50-5-103 and 50-5-204, MCA

[RULE XI] MENTAL HEALTH CENTER: QUALITY ASSESSMENT

(1) Each mental health center shall implement and maintain an active quality assessment program. At a minimum, the program must include procedures for:

- (a) conducting client satisfaction surveys, at least annually, for all mental health center programs;
- (b) reviewing emergency or unusual occurrences; and
- (c) using quality assessment information collected to make improvements in the mental health center's policies and procedures and services.

(2) Each mental health center shall prepare and maintain on file an annual report of improvements made as a result of the quality assessment program.

AUTH: Sec. 50-5-103, MCA

IMP: Sec. 50-5-103 and 50-5-204, MCA

[RULE XII] MENTAL HEALTH CENTER: COMPLIANCE WITH BUILDING AND FIRE CODES, FIRE EXTINGUISHERS, SMOKE DETECTORS AND MAINTENANCE

(1) Each mental health center shall ensure that its facilities, buildings, and homes:

- (a) meet all applicable local building and fire codes;
- (b) have a workable portable fire extinguisher on each floor, with a minimum rating of 2A10BC. Extinguishers must be readily accessible at all times; and
- (c) have a properly maintained and regularly tested smoke detector, approved by a recognized testing laboratory, on each floor. Building exits must be unobstructed and clearly marked.

(2) Each mental health center shall maintain its facilities, buildings, homes, equipment, and grounds in good repair at all times for the safety and well-being of its clients, staff, and visitors.

AUTH: Sec. 50-5-103, MCA

IMP: Sec. 50-5-103 and 50-5-204, MCA

[RULE XIII] MENTAL HEALTH CENTER: PHYSICAL ENVIRONMENT

(1) Each mental health center providing a mental health group home or a crisis intervention stabilization facility must ensure that no more than 4 residents reside in a single bedroom. Each multi-bedroom must contain at least 80 square feet per bed, exclusive of toilet rooms, closets, lockers, wardrobes, alcoves, or vestibules. Each center must further provide:

- (a) one toilet for every 4 residents;
 - (b) a toilet and sink in each toilet room;
 - (c) one bathing facility for every 12 residents; and
 - (d) showers and tubs with non-slip surfaces.
- (2) Any provision of this rule may be waived at the discretion of the department if conditions in existence prior to the adoption of this rule or construction factors would make compliance extremely difficult or impossible and if the department determines that the level of safety to residents and staff is not diminished.

AUTH: Sec. 50-5-103, MCA

IMP: Sec. 50-5-103 and 50-5-204, MCA

[RULE XIV] MENTAL HEALTH CENTER: EMERGENCY PROCEDURES

- (1) Each mental health center shall develop a written plan for emergency procedures. At a minimum, the plan must include:
- (a) emergency evacuation procedures to be followed in the case of fire or other emergency;
 - (b) procedures for contacting emergency service responders; and
 - (c) the names and phone numbers for contacting other mental health center staff in emergency situations.
- (2) Telephone numbers of the hospital, police department, fire department, ambulance, and poison control center must be posted by each telephone.

AUTH: Sec. 50-5-103, MCA

IMP: Sec. 50-5-103 and 50-5-204, MCA

[RULE XV] MENTAL HEALTH CENTER: LICENSE ENDORSEMENT

- (1) Each mental health center shall submit a license application to the department requesting approval to provide one or more of the following services:
- (a) child and adolescent intensive case management;
 - (b) adult intensive case management;
 - (c) child and adolescent day treatment program;
 - (d) adult day treatment program;
 - (e) mental health group home;
 - (f) crisis telephone services; or
 - (g) crisis intervention and stabilization facility.
- (2) Each service approved by the department must be endorsed on the mental health center's license.

AUTH: Sec. 50-5-103, MCA

IMP: Sec. 50-5-103 and 50-5-204, MCA

[RULE XVII] MENTAL HEALTH CENTER: CHILD AND ADOLESCENT AND ADULT INTENSIVE CASE MANAGEMENT (1) In addition to the requirements established in [RULE I through RULE XV] in this subchapter, each mental health center providing child and adolescent and adult intensive case management services shall

comply with the requirements established in this rule.

(2) Each mental health center providing intensive case management program services shall:

(a) employ or contract with a program supervisor, experienced in providing services to individuals with mental illnesses, in each community where an intensive case management program exists. The program supervisor shall meet with each intensive case manager, on an individual basis, no less than every other week for supervision and consultation purposes;

(b) employ or contract with case managers who have the knowledge and skills needed to effectively perform case management duties. Minimum qualifications are a bachelor's degree in a human services field or RN licensure, and at least one year of full time experience serving people with mental illnesses. Individuals with other educational backgrounds who, as providers, consumers, or advocates of mental health services have developed the necessary skills, may also be employed as intensive case managers. The mental health center's case management position description must contain equivalency provisions;

(c) maintain progress notes for each client. The progress notes must be entered into the client's clinical record at least every 30 days and upon the occurrence of any significant change in the client's condition;

(d) develop written policies and procedures addressing the independence of the intensive case manager. At a minimum, the policies and procedures must address:

(i) the intensive case manager acting as a client's advocate in involuntary commitment proceedings;

(ii) the intensive case manager's role in conflicts between the client and the mental health center or other agencies;

(iii) the ability of the intensive case manager to freely advocate for services from or outside of the mental health center on behalf of the client;

(iv) the relationship between the primary therapist, if the client has one, and the case manager;

(v) the obligation to report information to the mental health center staff that the client has requested to be kept confidential; and

(vi) the ability of the intensive case manager to contact an advocacy organization if the case manager believes the mental health center is unresponsive to the needs of the client.

(3) The availability of intensive case management services may not be made contingent upon a client's willingness to receive other services. A client suspended or excluded from other programs or services provided by the mental health center may not be restricted or suspended from intensive case management services solely due to the action involving the other program or services.

(4) Intensive case management services are largely provided throughout the community rather than in an office or a

facility. All contacts with clients must occur in a place that is convenient for the client. More than 50% of a case manager's in person contacts with clients must be outside of the mental health center's facility. Restrictions may not be placed on a case manager's ability to meet with a client in any reasonable location.

AUTH: Sec. 50-5-103, MCA

IMP: Sec. 50-5-103 and 50-5-204, MCA

[RULE XVII] MENTAL HEALTH CENTER: CHILD AND ADOLESCENT DAY TREATMENT PROGRAM (1) In addition to the requirements established in [RULE I through RULE XV], each mental health center providing a child and adolescent day treatment program shall comply with the requirements established in this rule.

(2) The child and adolescent day treatment program must be site based and shall:

(a) operate at least 5 days per week for at least 3 hours per day, unless school holidays preclude day treatment activities;

(b) employ or contract with a program supervisor who is knowledgeable about the service and support needs of children and adolescents with severe emotional disturbances. The program therapist or program supervisor must be site based;

(c) establish admission criteria which assess the child or adolescent's needs and the appropriateness of the services to meet those needs. Students still in school, 18 years of age or older, remain eligible for the program;

(d) provide mental health services including individual therapy, family and group therapy, social skills training, life skills training, pre-vocational training, therapeutic recreation services and emergency services;

(e) provide appropriate educational services to clients including special education, if necessary, through:

(i) full collaboration with a school district;

(ii) employment of educational staff within the program;
or

(iii) interagency agreements with educational agencies;

(f) provide referral and aftercare coordination with inpatient facilities, residential treatment programs, or other appropriate out-of-home placement programs;

(g) establish policies and procedures regarding the use of time-out and seclusion. Time-out and seclusion may not be used with a locked door. Mechanical restraints may not be used. If seclusion is used, there must be continuous direct staff observation. The clinical record must include signed orders by a licensed mental health professional for use of seclusion, a detailed description of the circumstances warranting such action, and the date, time and duration of the seclusion;

(h) require and ensure that the program supervisor and all staff shall each have a minimum of 6 contact hours of annual

training relating to child and adolescent mental illnesses and treatment; and

(i) maintain progress notes for each client. The progress notes must be entered into the client's clinical record at least every 30 days and upon the occurrence of any significant change in the client's condition.

(3) The day treatment program staff:

(a) shall attend all Child Study Team (CST) meetings held for clients if clinically indicated. If the client requires an Individualized Education Program (IEP), a copy of the program must be included in the client's treatment plan; and

(b) must be trained in the therapeutic de-escalation of crisis situations to ensure the protection and safety of the client and staff. The training must include the use of physical and non-physical methods of controlling children and adolescents and be updated, at least annually, to ensure that necessary skills are maintained.

(4) Each licensed mental health professional shall carry an active caseload not to exceed 12 day treatment clients. There must be at least one full-time equivalent (FTE) clinical or supportive staff member for every 6 clients in the program. For the purpose of this ratio, the number of participants in the program must be based on the average daily attendance.

AUTH: Sec. 50-5-103, MCA

IMP: Sec. 50-5-103 and 50-5-204, MCA

[RULE XVIII] MENTAL HEALTH CENTER: ADULT DAY TREATMENT PROGRAM (1) In addition to the requirements established in [RULE I through RULE XV], each mental health center providing an adult day treatment program shall comply with the requirements established in this rule.

(2) The adult day treatment program shall:

(a) operate at least 2 days a week, for at least 4 hours a day;

(b) employ or contract with a site based program supervisor who is knowledgeable about the service and support needs of individuals with a mental illness, day treatment programming and psychosocial rehabilitation;

(c) provide, by means of a variety of individual and group treatment modalities, therapy and rehabilitation in the areas of independent living skills, crisis intervention, pre-vocational and vocational skill building, socialization, and recreational activities;

(d) structure its treatment activities to promote increasing levels of independence in the client's functioning;

(e) require the program supervisor and all program staff to each have a minimum of 6 contact hours of annual training relating to adult mental illness and treatment;

(f) maintain progress notes for each client. The progress notes must be entered into the client's clinical record at least every 30 days and upon the occurrence of any significant change

in the client's condition; and

(g) maintain a client to staff ratio that may not exceed 10 clients to 1 staff member.

AUTH: Sec. 50-5-103, MCA

IMP: Sec. 50-5-103 and 50-5-204, MCA

[RULE XIX] MENTAL HEALTH CENTER: MENTAL HEALTH GROUP HOME

(1) In addition to the requirements established in [RULE I through RULE XV], each mental health center providing a mental health group home shall comply with the requirements established in this rule.

(2) The purpose of a mental health group home is to provide residential treatment for adults with a mental illness.

(3) The mental health group home is considered to be a community residential facility for the purposes of local zoning and building codes reviews.

(4) The mental health group home must be annually inspected for compliance with fire codes by the state fire marshal or the marshal's designee. The home shall maintain a record of such inspection for at least 1 year following the date of the inspection.

(5) The mental health group home shall:

(a) employ or contract with a program supervisor who is knowledgeable about the service and support needs of individuals with mental illnesses;

(b) maintain staffing at least 8 hours daily. Additional staff hours and supervision shall be dictated by the needs of the group home residents;

(c) ensure that 24 hour a day emergency mental health care is available through the mental health center or other contracted entities;

(d) structure its treatment activities to promote increasing levels of independence in the client's functioning;

(e) establish admission criteria which assess the individual's needs and the appropriateness of the services to meet those needs. At a minimum, admission criteria must require that the person:

(i) be 18 years of age or older and be unable to maintain the stability of their mental illness in an independent living situation;

(ii) be diagnosed with a mental illness;

(iii) be medically stable;

(iv) not be an immediate danger to self or others;

(v) requires a transitional residential level of care from a short acute hospital stay or long term commitment, or requires some ongoing residential structure or supervision;

(vi) sign a contract to follow group home rules.

(f) assess new admissions to the mental health group home and offer ongoing treatment and training in the following areas:

(i) community adjustment (ability to use community resources such as stores, professional services, recreational

facilities, government agencies, etc.);

(ii) personal care (grooming, food preparation, housekeeping, money management, etc.);

(iii) socialization; and

(iv) recreation/leisure.

(g) maintain progress notes for each client. The progress notes must be entered into the client's clinical record at least every 30 days and upon the occurrence of any significant change in the client's condition.

(6) Staff working in the mental health group home must:

(a) be 18 years of age;

(b) possess a high school diploma or GED;

(c) have received training in the treatment of adults with a mental illness;

(d) be capable of implementing each resident's treatment plan; and

(e) be trained in the Heimlich maneuver and maintain certification in cardiopulmonary resuscitation (CPR).

(7) The program supervisor shall orient new staff on how to deal with client rule violations, new admissions, emergency situations, after hour admissions and client incident reports. Written policies and procedures for handling day-to-day operations must be available at the group home.

(8) The program supervisor and all program staff must each have a minimum of 6 contact hours of annual training relating to adult mental illness and treatment.

(9) Upon admission, each resident must be provided with:

(a) a written statement of resident rights which, at a minimum, include the applicable patient rights in 53-21-142, MCA;

(b) a copy of the mental health center grievance procedure; and

(c) the written rules of conduct including the consequences for violating the rules.

(10) At the time of a resident's discharge from the group home, the staff shall assist the resident in making arrangements for housing, employment, education, training, treatment, and/or other services needed for adequate adjustment to community living.

AUTH: Sec. 50-5-103, MCA

IMP: Sec. 50-5-103 and 50-5-204, MCA

[RULE XX] MENTAL HEALTH CENTER: CRISIS TELEPHONE SERVICES (1) In addition to the requirements established in [RULE I through RULE XV], each mental health center providing crisis telephone services shall comply with the requirements established in this rule.

(2) The mental health center providing crisis telephone services shall:

(a) ensure that crisis telephone services are available 24 hours a day;

(b) employ or contract with only licensed mental health professionals to answer crisis calls. Local law enforcement officers trained to answer and refer mental health crisis calls may be used. Calls must be answered promptly and in person. Answering services may not be used;

(c) publish the crisis telephone number in the local telephone directory in the yellow pages under mental health services;

(d) maintain progress notes for each crisis call. The progress notes must reflect:

- (i) the date of the call;
- (ii) the staff involved;
- (iii) identifying data, if possible;
- (iv) a description of the crisis;
- (v) an assessment of any danger posed by caller to self or others;
- (vi) an assessment of mental illness; and
- (vii) action taken and outcome.

AUTH: Sec. 50-5-103, MCA

IMP: Sec. 50-5-103 and 50-5-204, MCA

[RULE XXI] MENTAL HEALTH CENTER: CRISIS INTERVENTION AND STABILIZATION FACILITY (1) In addition to the requirements established in [RULE I through RULE XV], each mental health center providing a crisis intervention and stabilization facility shall comply with the requirements established in this rule.

(2) The facility must be annually inspected for compliance with fire codes by the state fire marshal or the marshal's designee. The facility shall maintain a record of such inspection for at least 1 year following the date of the inspection.

(3) The crisis intervention and stabilization facility shall:

(a) employ or contract with a program supervisor knowledgeable about the service and support needs of individuals with mental illness experiencing a crisis. The program supervisor or a licensed mental health professional must be site based;

(b) ensure that the program supervisor and all staff each have a minimum of 6 contact hours of annual training relating to the service and support needs of individuals with mental illness experiencing a crisis;

(c) orient staff prior to assuming the duties of the position. The orientation must include specific information on the following subjects:

- (i) types of mental illness and treatment approaches;
- (ii) suicide risk assessment and prevention procedures;
- (iii) crisis prevention and de-escalation procedures;
- (iv) therapeutic communications;
- (v) legal responsibilities of mental health service

providers;

(vi) mental health laws of Montana regarding the right of consumers;

(vii) other services provided by the mental health center; and

(viii) infection control and prevention of transmission of blood borne pathogens;

(d) train staff in the Heimlich maneuver and ensure staff maintain current certification in cardiopulmonary resuscitation (CPR).

(e) maintain 24 hour awake staff;

(f) establish admission criteria which assess the individual's needs and the appropriateness of the services to meet those needs. At a minimum, admission criteria must require that the person:

(i) be at least 18 years of age;

(ii) be medically stable (with the exception of the person's mental illness);

(iii) be drug and alcohol free (with the exception of prescribed medications, caffeine and nicotine);

(iv) be willing to enter the program and accept recommended treatment;

(v) be willing to sign a no-harm contract, if clinically indicated;

(vi) not require physical or mechanical restraint;

(vii) be in need of frequent observation on a 24 hour basis;

(g) establish policies and procedures for the secure storage of toxic household chemicals and sharp household items such as utensils and tools;

(h) develop written procedures to be followed should residents, considered to be at risk for harming themselves or others, attempt to leave the facility without discharge authorization from the licensed mental health professional responsible for their treatment; and

(i) maintain progress notes for each resident. The progress notes must be entered at least daily into the resident's clinical record. The progress notes must describe the resident's physical condition, mental status, and involvement in treatment services.

AUTH: Sec. 50-5-103, MCA

IMP: Sec. 50-5-103 and 50-5-204, MCA

3. The rule 16.32.346 MINIMUM STANDARDS FOR A MENTAL HEALTH AND RETARDATION FACILITY, LICENSING AND CERTIFICATION as proposed to be repealed is on page 16-1489 of the Administrative Rules of Montana.

AUTH: Sec. 50-5-103 and 50-5-404, MCA

IMP: T. 50, Ch.8, Sec. 50-5-103, 50-5-204, and 50-5-404, MCA

4. Pursuant to 50-5-101(17), MCA, mental health centers are required to be licensed by the Department of Public Health and Human Services (the department). Section 50-5-103, MCA, authorizes the department to promulgate and adopt rules and minimum standards for implementation of Title 50, chapter 5, parts 1 and 2, MCA.

Prior to April 1, 1997, community mental health centers, created in 1975 in Title 53, chapter 21, part 2, MCA, provided comprehensive mental health services to the public. The department's addictive and mental disorders division entered into contracts with regional mental health corporations for the purpose of providing specified mental health services. Each contract delineated the types of services to be provided by the mental health center including a detailed description of the standards applicable to such services. Upon execution of the contract with the regional mental health corporation and inspection of the community mental health center, the addictive and mental disorders division then made a recommendation to the department's quality assurance division (the licensing entity) to issue a license.

In 1984, the then Department of Health and Environmental Sciences adopted ARM 16.32.346 prescribing minimum standards for a mental health and retardation center, licensing and certification. The rule, for the most part, briefly described the types of services required to be provided by a community mental health center but did not provide sufficient standards or limitations for operating a mental health center relying instead upon the underlying mental health contracts to provide the necessary standards for performance.

In December, 1996, the department contracted with the Montana Community Partners to provide mental health services to the public with a start date of April 1, 1997. With the advent of managed care, the regional mental health corporations no longer contracted directly with the state to provide mental health services. As such, the performance standards, heretofore stated in the underlying contracts with the regional mental health corporations, and relied upon by the department as the basis for issuance of a mental health center license, ceased to exist.

With the exception of ARM 16.32.346 which, as described above, provides scant guidance to the department in assessing compliance by mental health centers, the licensure bureau was left with virtually no licensing standards in place to regulate the provision of the various types of mental health services.

The adoption of new rules I through XXI is therefore necessary to specify the most current and complete licensure standards applicable to mental health centers. Based upon the antiquity and inadequacy of the existing rule (ARM 16.32.346), the

department believes that the proposed rules will provide the minimum standards for operation of mental health centers, are reflective of the most current standards in the diagnosis and treatment of individuals with mental illnesses and will ensure the well-being and safety of individuals with mental illnesses. The rules categorize mental health services into seven distinct types of services, any or all of which may be offered by a single mental health center: child and adolescent intensive case management, adult intensive case management, child and adolescent day treatment program, adult day treatment program, mental health group home, crisis telephone services or crisis intervention stabilization facility.

As most of the provisions and terms in ARM 16.32.346 were either dated, in terms of their applicability to mental health services, or not relevant based upon the changing structure of mental health centers, ARM 16.32.346 is proposed for repeal in its entirety. For those provisions that remained applicable, their text has been transferred to the new rules. The department feels that the resulting notice is more readable and understandable without the retention of ARM 16.32.346 in a drastically modified form.

5. Interested persons may submit their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210, no later than October 6, 1997.

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

Michael E. Carter
Rule Reviewer

Michael Bellwigs for
Director, Public Health and
Human Services

Certified to the Secretary of State August 25, 1997.

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

In the matter of the	)	NOTICE OF PROPOSED
amendment of rule 16.32.302	)	AMENDMENT
pertaining to minimum)	
standards of construction for	)	NO PUBLIC HEARING
a licensed health care	)	CONTEMPLATED
facility)	

TO: All Interested Persons

1. On October 8, 1997, the Department of Public Health and Human Services proposes to amend rule 16.32.302 pertaining to minimum standards of construction for a licensed health care facility.

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

16.32.302 MINIMUM STANDARDS OF CONSTRUCTION FOR A LICENSED HEALTH CARE FACILITY--ADDITION, ALTERATION, OR NEW CONSTRUCTION--GENERAL REQUIREMENTS (1) Except as may otherwise be provided in (2) of this rule, a health care facility and the construction of, alteration, or addition to a facility shall comply with:

(a) all standards set forth in:

(i) the ~~1992-1993~~ 1996-1997 ~~"Guidelines for the Construction and Equipment for Hospitals and Medical Facilities", "Guidelines for Design and Construction of Hospitals and Health Care Facilities"~~ and NFPA 101, "Life Safety Code, 1994 edition," except that a facility already licensed under an earlier edition of the "Life Safety Code" published by the national fire protection association, is not required to comply with later editions of the "Life Safety Code". Copies of the cited editions are available at the ~~department~~, Department of Public Health and Human Services, Licensing Bureau, Cogswell Building, P.O. Box 202951, Helena, Montana, 59620-2951.

(ii) the 1992 "American National Standards Institute All17.1".

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

(4) The department hereby adopts and incorporates by reference:

(a) The ~~1992-1993~~ 1996-1997 ~~"Guidelines for the Construction and Equipment for Hospitals and Medical Facilities", "Guidelines for Design and Construction of Hospital and Health Care Facilities"~~ which set forth minimum construction and equipment requirements deemed necessary by the ~~federal~~ state department of public health and human services to ensure health care facilities can be efficiently maintained and operated to furnish adequate facilities.

(4) (b) through (4) (f) remain the same.

AUTH: Sec. 50-5-103, MCA


IMP: Sec. 50-5-103, 50-5-201 and 50-5-204, MCA

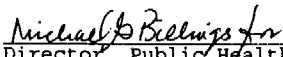
3. The 1992-1993 guidelines referenced in 16.32.302 were updated by a 1996-1997 edition. Numerous architects, engineers, and health care providers involved in the development and design of health care facilities have requested the department to use the updated 1996-1997 guideline standards for health care construction. Accordingly, the department has proposed for adoption the most current design and construction guideline standards. Further, the department has provided the address where copies of the referenced guidelines and life safety code may be obtained.

4. Interested persons may submit their data, views or arguments concerning the proposed action in writing to Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210, no later than October 6, 1997.

5. 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 Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210, no later than October 6, 1997.

6. 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 17 based on the number of facilities affected by rules pertaining to minimum standards of construction for a licensed health care facility.


Rule Reviewer


Director, Public Health and
Human Services

Certified to the Secretary of State August 25, 1997.

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

In the matter of the amendment)	NOTICE OF AMENDMENT OF ARM
of rules pertaining to permit)	8.56.602C PERMIT EXAMINATIONS
examinations and fees, and)	AND 8.56.607 PERMIT FEES, AND
adoption of new rules)	ADOPTION OF NEW RULES I ARM
pertaining to inspections and)	8.56.413 INSPECTIONS, II ARM
continuing education)	8.56.414 CONTINUING EDUCATION
)	AND III ARM 8.56.415
)	CONTINUING EDUCATION--WAIVER

1. On June 2, 1997, the Board of Radiologic Technologists published a notice of public hearing on the proposed amendment of rules pertaining to permit examination and fees, and adoption of new rules pertaining to inspections and continuing education, at page 977, 1997 Montana Administrative Register, issue number 11.

2. The Board has amended and adopted ARM 8.56.602C, 8.56.607, New Rule I, ARM 8.56.413 and New Rule III, ARM 8.56.415 exactly as proposed. The Board adopted New Rule II, 8.56.414 as proposed, but with the following changes: (authority and implementing sections remain the same as proposed)

"8.56.414 CONTINUING EDUCATION (1) through (6) will remain the same as proposed.

(a) the ~~licensee~~ ~~permittee~~ must pass the course;
(b) through (9) (a) will remain the same as proposed.
(b) documentation must be maintained in the form of a book review written by the ~~licensee~~ ~~permittee~~ noting the author, title, publisher and publishing date of the book or article.

(10) through (12) will remain the same."

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

COMMENT NO. 1: The Board received one comment regarding carry over credit. Commentors requested an amendment allowing credits earned since January 1, 1996, to be applied toward the continuing education requirement.

RESPONSE: The Board rejects this comment. The Board has determined that continuing education courses obtained to satisfy the Board of Clinical Laboratory Science continuing education requirement are not germane to the profession of radiologic technology. Therefore, no credit will be given for clinical laboratory courses.

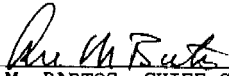
Regarding the carry over of 12 credits from 1996, the Board determined that a two year period is too long for a continuing education requirement. The purpose of this requirement is to remain current and a carry over period as

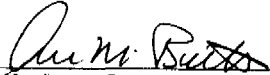
proposed would defeat that purpose.

Finally, with regard to the portion pertaining to the perceived difficulty in obtaining six hours of credit, the Board notes that six hours is easily obtainable where four hours may be gained by simply reading literature germane to the profession. Two hours of traditional instruction is not a burdensome requirement. Such instruction may be obtained through the following organizations: Montana Society of Radiologic Technicians, c/o Tim Ery, President, 72 Bonnie Street, Glasgow, Montana 59230; Claudia Janecek, Coordinator, District 6 Health Care Learning Center, 1222 North 27th Street, Suite 104, Billings, Montana 59101; and American Society of Radiologic Technologists, 15000 Central Avenue S.E., Albuquerque, New Mexico 87123-3909. For these reasons, the suggestion for a carry over period is rejected.

The Board inadvertently used the word "licensee" in the proposed amendment. Limited permit holders are referred to throughout as "permitees." This amendment makes the language consistent.

BOARD OF RADIOLOGIC TECHNOLOGISTS
JIM WINTER, CHAIRMAN

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


ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, August 25, 1997.

BEFORE THE BOARD OF SANITARIANS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment) NOTICE OF AMENDMENT OF
of a rule pertaining to fees) 8.60.413 FEE SCHEDULE

TO: All Interested Persons:

1. On July 21, 1997, the Board of Sanitarians published a notice of proposed amendment of the above-stated rule at page 1243, 1997 Montana Administrative Register, issue number 14.
2. The Board has amended the rule exactly as proposed.
3. No comments or testimony were received.

BOARD OF SANITARIANS
MELISSA TUEMMLER, 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, August 25, 1997.

BEFORE THE BOARD OF INVESTMENTS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment) AMENDED NOTICE OF AMENDMENT
of rules pertaining to General)
Requirements for All)
Investments in Mortgages and)
Loans)

TO: All Interested Persons:

1. On August 4, 1997, the Department of Commerce published a notice of amendment of the above-stated rules at page 1361 of the 1997 Montana Administrative Register, issue number 15.

2. Following publication of the notice, it was discovered that 8.97.1401(1)(c)(ii) and 8.97.1410(10)(b) should not have been adopted. The testimony provided that small banks have difficulty attracting and keeping good directors who are typically the best customer of the bank. The staff to the Board believe that the insiders are able to obtain financing through a correspondent bank or affiliated bank or any other bank which, in turn, can sell the loan to the board. The insider's bank has no control over the credit sold to the board which is consistent with federal agencies utilizing the same prohibition. This was in response to testimony received by members of the board during and after the hearing conducted on June 16, 1997. The Board agreed that the proposed rules should not be adopted until further research is done indicating a need for these rules. The Board meets on October 31, 1997, to discuss the need for these rules. The corrected rules will read as follows: (authority and implementing sections remain the same as amended)

"8.97.1401 RESIDENTIAL LOAN PROGRAMS - GENERAL REQUIREMENTS (1) through (c)(i) will remain the same as amended.

~~(ii) effective August 5, 1997, loans to "insiders" of the seller/servicer as defined under 8.97.1301(20);~~

(d) through (h) will remain the same as amended."

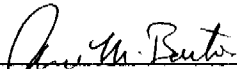
"8.97.1410 LOAN PROGRAMS FOR COMMERCIAL, MULTI-FAMILY AND NON-PROFIT CORPORATIONS - GENERAL REQUIREMENTS (1) through (10)(a) will remain the same as amended.


~~(b) effective August 15, 1997, loans to "insiders" of the seller/servicer as defined under 8.97.1301(20);~~

(11) through (16) will remain the same as amended."

3. Replacement pages for the amended notice of amendment will be submitted to the Secretary of State on September 30, 1997.

BOARD OF INVESTMENTS

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


ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, August 7, 1997.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

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

(Air Quality)

To: All Interested Persons

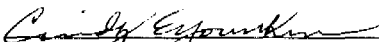
1. On July 7, 1997, the board published notice of proposed amendment of the above-captioned rules, at page 1126 of the 1997 Montana Administrative Register, Issue No. 13.

2. The board adopted the rules as proposed with no changes.

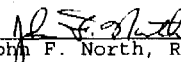
3. The "Notice of Public Hearing" specified the reasons for adoption and the Board received no comments in opposition to the amendment. The Environmental Protection Agency submitted written comments suggesting several additional updates to incorporations by reference of certain federal guidance documents. Two of the suggested updates were outside the scope of the rulemaking because the rules identified by EPA were not included in the notice of hearing. The department agreed with EPA's suggested additional updates and indicated that it will propose them to the board the next time the department proposes general updates to the incorporations by reference.

BOARD OF ENVIRONMENTAL REVIEW

By:


CINDY E. YOUNKIN, Chairperson

Reviewed by:


John F. North, Rule Reviewer

Certified to the Secretary of State August 25, 1997.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of)	NOTICE OF
rule 17.8.210, amending ambient)	AMENDMENT
air quality standards for sulfur)	OF RULE
dioxide.)	

(Air Quality)

To: All Interested Persons:

1. On July 7, 1997, the Board published notice of proposed amendment of ARM 17.8.210, at page 1124 of the 1997 Montana Administrative Register, Issue No. 13.

2. The Board has adopted the amendments as proposed.

3. The Board received comments in support of the proposed amendments from the Department of Environmental Quality, the Yellowstone County Air Pollution Control Agency, Montana Power Company, Exxon Company, USA and Montana Sulphur and Chemical Company. The Board received comments from the Yellowstone Valley Citizens Council (YVCC) and several individuals in opposition to the proposed amendments. The following is a summary of the comments in opposition to the proposed amendments, along with the Board's responses:

COMMENT 1: YVCC and several individuals commented that the proposed amendments are inadequate to provide for enforcement of the state ambient standards for sulfur dioxide in the Billings/Laurel area. They commented that, because there are multiple sources of sulfur dioxide emissions in the area, the Department will not be able to take enforcement action based upon violations detected by ambient monitors and that the Board should direct the Department to conduct dispersion modeling and establish emission limits for each source of sulfur dioxide, to be enforced by in-stack monitors. Several of these persons are residents of Billings who commented that they suffer personal health problems that they believe are caused by sulfur dioxide in the atmosphere. A school teacher commented that more children in Billings have respiratory problems than in other areas. One person commented regarding damage to metal materials he believes was caused by sulfur dioxide in 1969 and commented that persons should not be breathing air that would cause extensive damage to metal objects. YVCC also commented that, in 1995, the Department's position was that, to identify facilities contributing to violations of the state standards and develop an emission control plan, the Department should follow a process similar to the state implementation plan (SIP) process followed for attainment of the national sulfur dioxide ambient standards.

RESPONSE: The control plan recently developed for attainment of the national sulfur dioxide standards in the Billings/Laurel area requires the facilities involved to install in-stack

continuous emission monitors in all major sources of sulfur dioxide by March 1998. The Department is also revising its ambient monitoring network to ensure that monitors are located in the areas with the highest concentrations of sulfur dioxide and the Department has taken public comment on that revision. The in-stack monitors required under the SIP, and the ambient monitoring network, should allow the Department to determine the levels of emissions being emitted by each sulfur dioxide source, may allow the Department to determine the likely contributors to a monitored violation, and may allow the Department to directly enforce the state standards under certain circumstances. The record indicates that sulfur dioxide emissions have been decreasing in the area since 1987 and that substantial further emission decreases will occur under the operational changes required under the SIP, for the facilities involved to maintain continuous compliance with the national standards.

YVCC is correct that, in 1995, the Department indicated that a process similar to the SIP process should be followed for attainment of the state sulfur dioxide standards in the Billings/Laurel area. The record indicates that, since that time, sulfur dioxide emissions in the area have continued to decrease, emission limits have been established under the SIP that will require the facilities involved to reduce their emissions to levels that will also achieve compliance with the state standards, and a SIP-like process may not be necessary at this time to ensure compliance with the state standards. Dispersion modeling, which assumes worst-case emissions and meteorological conditions, could indicate that violations are occurring, and trigger installation of expensive control equipment that may not be necessary under actual emission and meteorological conditions.

The purpose of the proposed amendments is to establish uniform statewide ambient standards for sulfur dioxide. With repeal of the Hannah Bill, which directed the Board to establish exemptions for the Billings/Laurel area, there is no longer a basis for retention of those exemptions. The Board is adopting the proposed amendments because there is no basis for facilities in the Billings/Laurel area not to comply with the same sulfur dioxide standards as facilities in other parts of the state.

Establishing monitoring and enforcement requirements, beyond those in the existing rules, is beyond the scope and purpose of this rulemaking proceeding. Additional amendments to the air quality rules should be dealt with in separate rulemaking proceedings.

However, the Board expects the Department to be proactive. The Board urges the Department to establish a cooperative effort with the facilities involved to examine the emissions monitoring data derived from the in-stack monitors for operational changes that can be made to achieve further emission reductions, even beyond those necessary to achieve compliance with the state

standards. The Board also intends to continue to review the status of sulfur dioxide emissions in the Billings/Laurel area and the Board will take further action later if monitoring indicates that further action is necessary to protect public health, public welfare or the environment. The Board has requested that the Department provide the Board with annual reports at future Board meetings, regarding the levels of sulfur dioxide in the Billings/Laurel area.

COMMENT 2: A retired biologist commented that the SIP allows 38,000 tons per year of sulfur dioxide in the area, but the facilities are emitting only 22,000 tpy. He commented that the SIP should be modified to allow only 22,000 tpy, which he stated also has "dire effects."

RESPONSE: Although the Environmental Protection Agency has not approved the plan, yet, the Board has already approved the control plan for attainment of the national ambient standards for sulfur dioxide in the Billings/Laurel area. Consideration of revising the control plan is outside the scope of this rulemaking proceeding and, as discussed above, should be dealt with in the SIP process.

BOARD OF ENVIRONMENTAL REVIEW

by

Cindy E. Yonkin
CINDY E. YONKIN, Chairperson

Reviewed by:

John F. North
John F. North, Rule Reviewer

Certified to the Secretary of State August 25, 1997.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of)	NOTICE OF
17.8.504, regarding air quality)	AMENDMENT
permit application fees, and)	OF RULES
17.8.505 regarding air quality)	
operation fees.)	

(Air Quality)

To: All Interested Persons

1. On July 7, 1997, the board published notice of proposed amendment of ARM 17.8.504 and 17.8.505, at page 1142 of the 1997 Montana Administrative Register, Issue No. 13.

2. The board proposed to amend the above-captioned rules in accordance with either ALTERNATIVE A or ALTERNATIVE B. The board has adopted ALTERNATIVE B with no changes.

3. On August 11, 1997, hearing officer Timothy C. Fox conducted a public hearing on the proposed amendments. At the hearing, four people testified in favor of the adoption of the proposed amendments in Alternative B. Leif Griffin of Stone Container Corporation and Dexter Busby of Montana Refining Company submitted written comments requesting modifications to the proposed amendments in Alternative B. The comments on the proposed rule amendments are summarized below, followed by the Board's responses to comments that suggested modifications or that could be construed as being in opposition to the proposed rulemaking.

Comment 1: Persons testifying in favor of the proposed amendments in Alternative B included: Jan Sensibaugh, Permitting and Compliance Division Administrator, Montana Department of Environmental Quality; Don Allen, Allen Associates, representing Cenex Refinery; Dr. Carlton Grimm, Montana Power Company; James Mockler, Montana Coal Council; Leif Griffin, Stone Container Corporation; Dexter Busby, Montana Refining Company. Jan Sensibaugh testified in favor of both Alternative A and Alternative B as both being rule amendments that are acceptable to the Department. Each fee system is fair and equitable according to those testifying, and will generate the needed revenue for the Department. All but one of those testifying in favor of Alternative B were also in favor of the \$400 minimum fee for all other sources, and the \$200,000 maximum fee cap per permit in ARM 17.8.505(4).

Comment 2: Leif Griffin submitted written testimony on behalf of Stone Container Corporation generally in favor of the proposed rule amendments in Alternative B. However, Stone Container Corporation proposes that Alternative B be modified so that the fees for FY 1998 are calculated by using the fees paid by each facility in FY 1997 as a base, and then by adding an additional 34 percent to that base to account for the additional

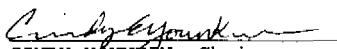
appropriations needed to fund the air quality program. This proposal, according to Stone Container Corporation, will allow the Department time to develop a "well defined basis for emission fees in future years."

Board Response: Stone Container Corporation's proposal would essentially maintain a 4:1 tier fee system as used in last year's fee rule, with an additional 34 percent fee increase for each permit to generate the additional revenue needed to fund the air quality program. There was a general consensus between the Department and the regulated community that the 4:1 tier system is not fair and equitable, and that it needed to be changed. For these reasons, the Board does not accept Stone Container Corporation's modifications to Alternative B.

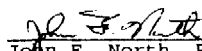
Comment 3: Dexter Busby submitted written testimony on behalf of Montana Refining Company in favor of the proposed amendments in Alternative B. However, Montana Refining Company suggests that the minimum permit fee of \$400 is too low and does not accurately reflect the cost to the Department for administering that permit. Montana Refining Company recommends that the Board raise the fee to more closely approximate the actual cost to the Department, and to more fairly allocate fees among permittees.

Board Response: The Board acknowledges that the \$400 minimum permit fee might be low in relation to the actual cost to the Department for processing and administering a given permit. However, there does not appear to be sufficient evidence at this time with which to calculate a more exact work load-related minimum fee. The \$400 minimum permit fee is reasonable given the current information about the Department's work load. However, this minimum fee could be adjusted by the Board in future years as the Department accumulates more information about the amount of work expended on given permitting and regulatory tasks. A \$400 minimum permit fee reduces the financial burden to small businesses in the short term as they plan for greater fee increases in subsequent fiscal years. Conversely, the imposition of a greater minimum fee for FY 1998 would create a financial hardship for small businesses that have not budgeted for a fee increase. For these reasons, the Board does not accept Montana Refining Company's proposed modifications to Alternative B.

BOARD OF ENVIRONMENTAL REVIEW


CINDY YOUNKIN, Chairperson

Reviewed by:


John F. North, Rule Reviewer

Certified to the Secretary of State August 25, 1997.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment) NOTICE OF AMENDMENT
of 17.8.514, regarding open burning) OF RULE
fees.)

(Air Quality)

To: All Interested Persons

1. On July 7, 1997, the board published notice of proposed amendment of ARM 17.8.514, at page 1131 of the 1997 Montana Administrative Register, Issue No. 13.

2. The board adopted the rule as proposed with no changes.

3. The "Notice of Public Hearing" specified the reasons for adoption and the Board received no comments in opposition to the amendment.

BOARD OF ENVIRONMENTAL REVIEW

By: *Cindy E. Younk*
CINDY E. YOUNKIN, Chairperson

Reviewed by:

John F. North
John F. North, Rule Reviewer

Certified to the Secretary of State August 25, 1997.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

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

(Water Quality)

To: All Interested Persons

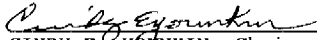
1. On July 7, 1997, the board published notice of proposed amendment of ARM 17.30.636, at page 1122 of the 1997 Montana Administrative Register, Issue No. 13.

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

3. The "Notice of Public Hearing" specified the reasons for adoption and the Board received no comments in opposition to the amendment.

BOARD OF ENVIRONMENTAL REVIEW

by


CINDY E. YOUNKIN, Chairperson

Reviewed by:


John F. North, Rule Reviewer

Certified to the Secretary of State August 25, 1997.

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

In the matter of the amendment	)	NOTICE OF
of Rule 36.22.1231 pertaining to	)	AMENDMENT
notice of application and objections,	)	AND REPEAL
and Rule 36.22.1423 pertaining to)	
injection fee and well classification,)	
and the repeal of Rules 36.22.1228,)	
36.22.1230, 36.22.1233 and 36.22.1234)	
pertaining to disposal by injection,)	
application--contents and requirements,)	
notice of commencement of discontinuance))	
--plugging of abandoned wells, and)	
records required)	

To: All Interested Persons.

1. On July 21, 1997, the Board of Oil and Gas Conservation of the Montana Department of Natural Resources and Conservation published notice of the proposed amendment of Rule 36.22.1231 pertaining to notice of application and objections, and Rule 36.22.1423 pertaining to injection fee and well classification, and the repeal of Rules 36.22.1228, 36.22.1230, 36.22.1233 and 36.22.1234 pertaining to disposal by injection, application--contents and requirements, notice of commencement of discontinuance--plugging of abandoned wells, and records required, at page 1245 of the 1997 Montana Administrative Register, Issue No. 14.

2. The department has amended the rules as proposed.

AUTH: 82-11-111, MCA

IMP: 82-11-111, 82-11-121, 82-11-123, 82-11-124, 82-11-127 and 82-11-137, MCA

3. The department has repealed the rules as proposed.

AUTH: 82-11-111, MCA

IMP: 82-11-123 and 82-11-124, MCA

4. No comments were received.

BOARD OF OIL AND GAS CONSERVATION


THOMAS P. RICHMOND, ADMINISTRATOR


DONALD D. MACINTYRE, RULE REVIEWER

Certified to the Secretary of State August 25, 1997

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

In the matter of the the) NOTICE OF REPEAL
repeal of rules 20.3.401)
through 20.3.413 and 20.3.416)
through 20.3.421 pertaining)
to chemical dependency)
counselor certification rules)

TO: All Interested Persons

1. On July 21, 1997, the Department of Public Health and Human Services published notice of the proposed repeal of rules 20.3.401 through 20.3.413 and 20.3.416 through 20.3.421 pertaining to chemical dependency counselor certification rules at page 1249 of the 1997 Montana Administrative Register, issue number 14.

2. The Department has repealed rules 20.3.401 through 20.3.413 and 20.3.416 through 20.3.421 as proposed.

3. No comments or testimony were received.

Russell E. Carter
Rule Reviewer

Nicholas B. Bellinger Jr.
Director, Public Health and
Human Services

Certified to the Secretary of State August 25, 1997.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption) NOTICE OF ADOPTION OF TEMPORARY
of temporary rules I through) NEW RULES AND TEMPORARY
XIII and amendment to ARM) AMENDMENT OF CURRENT RULES
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)
Ch. 463, Session Laws of 1997)

TO: All Interested Persons:

1. On July 7, 1997 the Department published notice of the proposed adoption of new temporary rules and temporary amendments 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, commercial and industrial property, adopted pursuant to 2-4-303(2), MCA, at page 1153 of the 1997 Montana Administrative Register, issue no. 13.

2. No public comments were received regarding these rules, however, the Department amends new rules I and II 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) through (7) remain the same.

(8) "Land use change" means the conversion of a current use of land to a different, alternate use. LAND SPLITS SHALL BE CONSIDERED LAND USE CHANGES. 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) through (13) remain the same.

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) through (3) remain the same.

(4) For class 4 property (excluding industrial property) that contains new construction OR A LAND USE CHANGE, 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 =

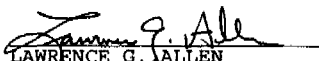
Reappraisal value / (1 + NBHD group percentage)

(5) through (8) remain the same.

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

3. The Department adopts new temporary rules I and II with these amendments and new temporary rules III through XIII as proposed. The Department adopts the amendments 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 as proposed.


CLEO ANDERSON
Rule Reviewer


LAWRENCE G. ALLEN
For Mary Bryson
Director of Revenue

Certified to Secretary of State August 7, 1997

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption) NOTICE OF ADOPTION
of Rules I (42.20.501), II) AND AMENDMENT
(42.20.502), III (42.20.503),)
IV (42.20.504), V (42.20.505),)
VI (42.20.506), VII (42.20.507),)
VIII (42.20.508), IX (42.20.)
509), X (42.20.510), XI (42.20.)
511), XII (42.20.512) and XIII)
(42.20.513) 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)

TO: All Interested Persons:

1. On July 7, 1997, the Department published notice of the proposed adoption and amendment relating to Rules I (42.20.501), II (42.20.502), III (42.20.503), IV (42.20.504), V (42.20.505), VI (42.20.506), VII (42.20.507), VIII (42.20.508), IX (42.20.509), X (42.20.510), XI (42.20.511), XII (42.20.512) and XIII (42.20.513) 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 at page 1165 of the 1997 Montana Administrative Register, issue no. 13.

2. A Public Hearing was held on July 28, 1997, to consider the proposed action, where written and/or oral comments were received.

3. Oral and written comments received during and subsequent to the hearing are summarized as follows along with the response of the Department:

COMMENT: Under no circumstance should a reduction of market value due to a property tax appeal or due to recognition of obsolescence in the appraisal, be limited by the phase-in rules. The VBR should be subject to adjustment in these situations.

Change Rule I (3) as follows:

"Destruction" means the removal or deletion of improvements, buildings, living areas, garages, and outbuildings. "Destruction" includes the reduction in value due to tax appeals or due to recognition of obsolescence in the appraisal.

Also, change Rule IV (1) to include:

(f) Properties having appraisal adjustments due to tax appeal or due to recognition of obsolescence in the appraisal.

RESPONSE: The Department declines to change Rule 1 (3) or Rule IV (1) as requested by the commenter. Any change in the 1997 reappraisal value due to an appeal decision will automatically result in a new value before reappraisal and a new Phase-In Value if the property had new construction or destruction. Any change in the 1997 reappraisal value due to an appeal decision will automatically result in a new phase-in value if the property had no new construction or destruction. Appeal decisions take precedent over existing values. Changes in the 1997 reappraisal value due to recognition of obsolescence whether they occur during an AB-26 review or as a result of an appeal decision will result in a new value before reappraisal and a new phase-in value if the property had new construction or destruction. Similarly, if the property had no new construction or destruction, only the phase-in value would change.

COMMENT: Is the phase-in value calculated on a per acre/per sq. ft. basis, or on a total value basis? This issue must be clarified in the rules because it affects the conditions which require adjustment of the VBR. For example, assume the square footage of a building has been changed. The VBR square footage must be changed to match the REAP value square footage if the total cost basis is used. If the phase-in value is determined on a per sq. foot basis, then applied to the new sq. footage, the VBR does not require adjustment.

Change Rule I as follows:

(2) "Current 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 determined by the

following formula:

$$\text{Current year phase-in value} = ((\text{REAP value} - \text{VBR}) \times \text{phase-in percentage}) + \text{VBR}$$

(a) For appraisals determined on a per acre or per square foot basis, the phase-in value will be calculated on the same basis, then applied to the property acreage or square footage.

Note: Punctuation also added to Rule I (2) to clarify the order of operations.

RESPONSE: The Department accepts the comments on Rule I (2) relative to punctuation added to clarify the order of operations and to the recommended addition of the word "value" after the phrase "Current year phase-in" in the formula.

The Department declines to change Rule I by adding the

recommended language on appraisals determined on a per acre or per square foot basis. The phase-in value is calculated on a total value basis. Changes in square foot or per acre made for the 1997 reappraisal value are considered part of the normal reappraisal process. Those same changes will not be made to the 1996 property tax records so the VBR will not be changed.

COMMENT: The current year phase-in value is not the amount subject to tax. The tax rate for each class is applied to the phase-in value to determine the taxable value. The taxable value is the amount subject to tax.

Delete the following text from Rule I (2):
"Is the amount subject to tax each year and"

RESPONSE: The Department declines to delete the commenter's recommended text from Rule I (2). The current year phase-in value is in fact the value subject to tax (not the VBR or the 1997 reappraisal value). This administrative rule is not intended to change the calculation of taxable value. The tax class percentage and the corresponding calculation of taxable value are provided for in law and are not affected by these administrative rules.

COMMENT: The definition of destruction in Rule I (3) unnecessarily lists causes for the removal or deletion of assets. The definition may unintentionally inhibit proper treatment of unforeseen situations by the appraiser. For example, deletion through correction of the appraisal upon inspection.

Delete the following text from Rule I (3):
"caused by burning, razing, or natural disaster."

RESPONSE: The Department declines to delete the commenter's recommended text from Rule I (3). The definition of the term "destruction" is not intended to include the correction of an appraisal due to inspection. That type of correction is a normal part of the appraisal process and shall not be precluded from occurring due to this definition.

COMMENT: The definition of "land split" unnecessarily states the owner's ultimate purpose. The owner's ultimate purpose is both irrelevant and unknown to the appraiser. Furthermore, the combination of parcels should be handled in the same manner as land splits. Perhaps the term "boundary change" could be substituted to cover both situations.

Delete the following text from Rule I (7):
"for the ultimate purpose of conveying one or more of the properties to a new owner or owners."

RESPONSE: The Department declines to delete the existing text from Rule I (7). The phrase "for the ultimate purpose of conveying one or more of the properties to a new owner or owners" is important. There are situations where land is split but there is no intent to convey any of the property to a new or different owner (i.e. agricultural land situations for financing purposes only). Since land splits are considered land use changes, eliminating that language could result in some incorrect calculations of the VBR.

COMMENT: The definition of REAP value includes the statement "The 1997 reappraisal value reflects a market value of the property on January 1, 1996." This statement could be misleading because changes in the property prior to January 1, 1997 would also be reflected.

Change the second sentence under Rule I (12) to the following:
"The 1997 reappraisal value reflects a market value of the property on January 1, 1996 adjusted for changes which occurred prior to January 1, 1997."

RESPONSE: The Department declines to change the language in Rule I (12) as recommended by the commenter. The statement, "The 1997 reappraisal value reflects a market value of the property on January 1, 1996." is accurate. That date reflects the base year established in administrative rule for the recently completed reappraisal cycle. All property in the state was appraised and will continue to be appraised with that point of reference until another reappraisal cycle is completed.

The comments suggest concern that changes to property characteristics or conditions may not be acknowledged during years subsequent to January 1, 1996. That is not the case. The first sentence of Rule I (12) indicates that the Reappraisal (REAP) value is adjusted annually for new construction, destruction, etc. In addition, that has been the longstanding practice of the Department.

COMMENT: Is the REAP value on a per acre/per sq. foot basis, or on a total value basis? (See issue #1)

Add to Rule I (12) the following item:

"(a) For appraisals determined on a per acre or per sq. foot basis, the REAP value will be calculated on the same basis."

RESPONSE: The Department declines to change Rule I (12) by adding the recommended language for appraisals determined on a per acre or per square foot basis. The REAP value is calculated on a total value basis. Changes in square foot or per acre made for the 1997 Reappraisal Value are considered part of the normal reappraisal process. The new legislation and these administrative rules will not change or affect the normal appraisal

process.

COMMENT: In Rule II there is no indication that the rule does not apply to class 4 industrial property, however; industrial property is handled separately in Rule VIII. If a taxpayer was unaware of Rule VIII, the taxpayer would assume that industrial property was covered by this rule. Only under Rule II (4) is the exclusion noted.

Revise the heading for Rule II as follows:
"DETERMINATION OF VALUE BEFORE REAPPRAISAL (VBR), EXCLUDING INDUSTRIAL PROPERTIES"

Also insert in Rule II (5) following "class 4 property"
"(excluding industrial property)"

RESPONSE: The Department accepts the comments. They will be incorporated into the rule.

COMMENT: Rule II (1) is inconsistent with Rule I (13) which immediately precedes it. All the same changes should apply.

Change Rule II (1) as follows:

"For property that contains no new construction, destruction, land splits, land use changes, land reclassifications, land productivity changes, improvement grade changes or other changes made to the property, the current VBR will be the same as the prior year VBR."

RESPONSE: The Department accepts the comments. Rule II (1) will be amended to read: For property that contains 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, the current year VBR will be the same as the prior year VBR.

COMMENT: Rule II (3) is incorrect as written.

Change the last half of the sentence to "...the current year VBR will be the prior year VBR of the new grade."

RESPONSE: The Department declines to change the language in Rule II (3). The intent of the Department is to use the VBR of the prior grade for the current year VBR.

COMMENT: Rule II (5) is incorrect as written.

Change the third sentence to the following:
"The current year VBR is then the difference..."

RESPONSE: The Department accepts the comments. The recommended

change will be incorporated into the administrative rule.

COMMENT: Rule II (7) is incorrect as written.

Change the last half of the sentence to "...the current year VBR will be the prior year VBR of the new grade."

RESPONSE: The Department declines to change the language in Rule II (7). The intent of the Department is to use the VBR of the prior grade for the current year VBR.

COMMENT: The language used in Rule II (8)(a), specifically the word only, may prohibit the appraiser from proper treatment of unforeseen situations.

All of Rule II (8) is not necessary and should be deleted. If retained, the text should be presented as non-exclusive examples. In addition, (i) should include class 4 buildings. Also, (iii) should include land splits, reclassifications, productivity changes, grade changes, etc.

Part (8)(b) does not apply to class 3, class 10, or industrial property, yet there is no acknowledgment of this situation. Again, Rule II (8) is a problem area and it is unnecessary. This section should be deleted.

RESPONSE: The department declines to delete Rule II (8). The Department believes it's important to identify those situations where the current year VBR will be less than the prior year VBR. The commenter recommended that the text should be presented as non-exclusive examples. Some were given, such as including class 4 buildings in (i). That recommendation is unnecessary since class 4 improvements already include class 4 buildings. The other examples are incorrect (i.e. including reclassifications, productivity changes, grade changes etc. in (ii)) since in those instances there will be no situations where the current year will be less than the prior year VBR. They will be the same. Part (8)(b) is still accurate for class 3, class 10 and industrial property. In fact, class 3 and class 10 property will not be run through the new construction/land use formula and the current year VBR will be the prior year VBR.

COMMENT: The heading for Rule III should clarify that industrial property is handled in a separate rule.

Change the heading as follows:
"RULE III DETERMINATION OF CURRENT YEAR PHASE-IN VALUE FOR CLASS 3, CLASS 4, (EXCLUDING INDUSTRIAL), AND CLASS 10 PROPERTY"

RESPONSE: The Department declines to change the heading of Rule III. While there may be different methods of determining the

VBR in situations where there is new construction or destruction of industrial property, once that calculation is made the same method is followed to determine the phase-in value for all class 3, class 4 (including industrial property), and class 10 property.

COMMENT: The calculation described in Rule III should be punctuated to clarify the order of operations, and should be shown in numeric form consistent with other rules.

Punctuate the second sentence and add the equation as follows:
"The current year phase-in value is determined by adding the difference between the REAP value and the VBR, times the phase-in percentage, to the VBR."

Formula:

Current year phase-in value =
 $((\text{REAP value} - \text{VBR}) \times \text{phase-in percentage}) + \text{VBR}$

RESPONSE: The Department accepts the comments. Rule III will be amended to read: (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 (REAP) value and the VBR, times the phase-in percentage, to the VBR.

Current year phase-in value =
 $[(\text{Reappraisal (REAP) value} - \text{VBR}) \times \text{phase-in percentage}] + \text{VBR}$

COMMENT: Rule IV is confusing as to both meaning and function. Definitions of new construction and destruction are already established. Some of the items have no relation to new construction or destruction. If the function is to identify circumstances which do and do not require adjustment of the VBR, this should be clearly stated in the heading.

Change the heading to "Adjustment of VBR" and change the body as follows:

(1) The following situations require adjustment of the prior year VBR.

(a) "built, remodeled, or destroyed"

(d) "land reclassification, land use, or productivity grade changes."

(2) The following situations do not require adjustment to the prior year VBR.

(b) "Properties with improvement grade changes."

RESPONSE: The Department declines to change the heading of Rule IV since the current heading best illustrates the property that is being determined, however, it accepts the recommendations for

improving (1)(a) and (2)(b). The recommendation for adding "productivity grade" in (1)(d) is not accepted since productivity changes will not be run through the new construction/land use formula.

COMMENT: The assessment notice will show all items needed to review calculation of the phase-in value, except the phase-in percentage.

Add the phase-in percentage to the assessment notice if possible.

RESPONSE: The Department declines to accept the recommendation. The development of the assessment notice does not allow for the addition of the phase-in percentage. In addition that percentage is identified in Rule I (11), and can be found in current statutory law.

COMMENT: The VBR is only eligible for review if there is new construction or the methodology is wrong. The VBR calculation can be complicated, therefore, it should be eligible for review for any reason. For example, the VBR may have been calculated based on incorrect data. The appraiser should be able to support the VBR calculation.

Change Rule V (2)(c) by deleting "for those properties that had new construction."

RESPONSE: The Department declines to delete the existing language of the rules as recommended by the commenter in Rule V (2)(c). The thrust of the proposed language is to advise taxpayers that any VBR that has been calculated is subject to review. However, it is the position of the Department that if the current year VBR is the same as the prior year VBR, it is not eligible for review.

COMMENT: Rule VI as written absorbs the 2% phase-in value into the new construction value for mill levy determination. Under SB 195 shouldn't the 2% phase-in value be excluded for mill levy determination? Under SB 195 shouldn't the 2% phase-in value be excluded in this calculation?

The value of class 4 new construction for purposes of determining the certified mill levy should be the difference between the current year VBR (includes the new construction) and the prior year VBR (excludes the new construction), times the taxable percentage.

RESPONSE: The Department declines to accept the recommendation provided by the commenter. The administrative rule as written comports with the legislative direction the Department received concerning the implementation of Senate Bill 195.

COMMENT: The VBR for class 4 industrial property should be adjusted for land splits and land reclassification, as well as for the conditions listed. This would be consistent with previous rules.

Change Rule IX (1) to the following:

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

RESPONSE: The Department accepts the commenter's recommendations. They will be incorporated into the rules.

COMMENT: Rule IX (2) states that the new construction trend factor is .892. Is the factor only applicable to 1997?

The .892 figure possibly should be described as the 1997 new construction trend factor.

RESPONSE: The Department declines to accept the recommendation provided by the commenter. The new construction trend factor (i.e. .892) trends previous reappraisal cycle base year (i.e. 1/1/92) costs to the current reappraisal cycle base year (i.e. 1/1/96) costs. The cost indices used to derive the trend factor were derived from Marshall Valuation Service. The indices will not change in subsequent years, so the trend factor will remain static for class 4 property.

COMMENT: The description of the phase-in value for industrial property should be punctuated to clarify the order of operations.

Rule X (1) should read as follows:

"The phase-in value is the difference between the REAP value and the VBR, times the phase-in percentage, added to the VBR."

RESPONSE: The Department accepts the comments. Rule X will be amended to read: (1) The phase-in value is the difference between the reappraisal (REAP) value and the VBR, times the phase-in percentage, added to the VBR.

COMMENT: Is the phase-in value for industrial property calculated on a per acre/per sq. foot basis, or on a total value basis? (See issue #1)

Add the following to Rule IX:

"(5) For appraisals determined on a per acre or per square foot basis, the VBR will be calculated on the same basis."

Also, add the following to Rule X:

"(2) For appraisals determined on a per acre or per square foot

basis, the phase-in value will be calculated on the same basis, then applied to the property acreage or square footage."

RESPONSE: The Department declines to change Rule IX by adding the recommended language on appraisals determined on a per acre or per square foot basis. The VBR and the phase-in value are calculated on a total value basis. Changes in square foot or per acre made for the 1997 reappraisal value are considered part of the normal reappraisal process. Those same changes will not be made to the 1996 property tax records so the VBR will not be changed.

4. As a result of the comments received the Department adopts new rules IV, (42.20.504), V (42.20.505), VI (42.20.506), VII (42.20.507), VIII (42.20.508), XI (42.20.511), XII (42.20.512), and XIII (42.20.513) and amends 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 as proposed.

5. The Department further amends new rules I (42.20.501), II (42.20.502), III (42.20.503), IX (42.20.509), and X (42.20.510) 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) remains the same.

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

(3) remains the same.

(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)~~ (a) 1F-1 = cheap construction;
- ~~(ii)~~ (b) 1F-5 = average construction; and
- ~~(iii)~~ (c) 1F-9 = superior construction.

(5) through (7) remain the same.

(8) "Land use change" means the conversion of a current use of land to a different, alternate use. LAND SPLITS SHALL BE CONSIDERED LAND USE CHANGES. Examples of land use changes

contained in this definition include; but are not limited to, the following:

- ~~(i)~~ (a) agricultural land converted to tract land;
- ~~(ii)~~ (b) forest land converted to tract land; or
- ~~(iii)~~ (c) 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:

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

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

(10) remains the same.

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

$$\text{Current Phase-In Percentage} = (\text{Current tax year} - 1996) \times 2\%$$

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

~~(A)~~ (i) 1997 Phase-in percentage = $(1997 - 1996) \times 2\%$;

~~(B)~~ (ii) 1997 Phase-in percentage = $1 \times 2\%$; or

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

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

~~(A)~~ (i) 1998 Phase-in percentage = $(1998 - 1996) \times 2\%$

~~(B)~~ (ii) 1998 Phase-in percentage = $2 \times 2\%$

~~(C)~~ (iii) 1998 Phase-in percentage = 4%

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

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

(12) and (13) remain the same.

RULE II (ARM 42.20.502) DETERMINATION OF VALUE BEFORE REAPPRAISAL (VBR), EXCLUDING INDUSTRIAL PROPERTIES

(1) For property that contains no new construction, ~~or~~ destruction, ~~no~~ LAND SPLITS, LAND USE CHANGES, land reclassificationS, ~~or use change~~ LAND PRODUCTIVITY CHANGES, IMPROVEMENT GRADE CHANGES or other ~~property change~~, CHANGES MADE TO THE PROPERTY DURING 1996 OR SUBSEQUENT TAX YEARS, the current year VBR will be the same as the prior year VBR.

(2) through (4) remain the same.

(5) For class 4 property (EXCLUDING INDUSTRIAL 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~~ CURRENT 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) through (8) remain the same.

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 (REAP) value and the VBR, times the phase-in percentage, to the VBR.

CURRENT YEAR PHASE-IN VALUE =

[(REAPPRAISAL (REAP) VALUE - VBR) X PHASE-IN PERCENTAGE] + VBR

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, OR DESTROYED 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 IMPROVEMENT grade changes;

(c) through (g) remain the same.

RULE IX (ARM 42.20.509) 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, LAND SPLITS, OR OTHER CHANGES TO THE PROPERTY, the current year VBR will be the same as the prior year VBR.

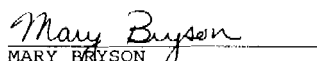
(2) through (4) remain the same.

RULE X (ARM 42.20.510) BASIC DETERMINATION OF PHASE-IN VALUE FOR CLASS 4 INDUSTRIAL PROPERTY (1) The phase-in value is the difference between the reappraisal (REAP) value and the VBR, times the phase-in percentage, added to the VBR.

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

4. Therefore, the Department adopts the rules with the amendments listed above.


CLEO ANDERSON
Rule Reviewer


MARY BRYSON
Director of Revenue

Certified to Secretary of State August 25, 1997

BEFORE THE BOARD OF NURSING
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the petition) NOTICE OF PETITION FOR
for declaratory ruling on the) DECLARATORY RULING
performance of pap smears and)
pelvic examinations by a)
professional nurse)

1. On November 6, 1997, at 3:00 p.m., the Board of Nursing will hold a public hearing in the Professional and Occupational Licensing Bureau conference room, 111 North Jackson, Arcade Building, Lower Level, Helena, Montana, to consider a petition for declaratory ruling on the authority of professional nurses to perform pap smears and pelvic examinations using a speculum.

2. This petition is filed by Judy Jacoby, RN, BSN, (Petitioner) on behalf of the Mayo Clinic of Rochester, MN, 200 First Street SW, Rochester, MN 55905.

3. Petitioner alleges that the performance of pap smears and pelvic examinations using a speculum is within the scope of practice for licensed professional nurses, with additional training, as that practice is defined at 37-8-102(5)(b), MCA. Petitioner submitted a copy of the formal 40-hour training course offered by the Mayo Clinic's Nurses Performing Annual Cancer Screening program.

Petitioner suggests that the performance of such screenings should take place only in the clinical setting with examination tables, facilities for sterilization of equipment, and access to referral resources. Additionally, Petitioner recommends that if the practice is found to be within the scope of practice for professional nurses, that it is a practice which should not be eligible for delegation citing lack of client safety, training and expertise as this skill is not generally acquired in the course of generic nursing practice.

4. The statute upon which Petitioner requests the declaratory ruling is section 37-8-102(5)(b), MCA, which provides:

"Practice of professional nursing" means the performance for compensation of services requiring substantial specialized knowledge of the biological, physical, behavioral, psychological, and sociological sciences and of nursing theory as a basis for the nursing process. The nursing process is the assessment, nursing analysis, planning, nursing intervention, and evaluation in the promotion and maintenance of health; the prevention, casefinding, and management of illness, injury, or infirmity; and the restoration of optimum function. The term also include administration, teaching, counseling, supervision, delegation, and evaluation of nursing practice and the administration of medications and treatments prescribed by physicians, advanced practice

registered nurses, dentists, osteopaths, or podiatrists authorized by state law to prescribe medications and treatments. Each registered nurse is directly accountable and responsible to the consumer for the quality of nursing care rendered. As used in this subsection (5)(b):

- (i) "nursing analysis" is the identification of those client problems for which nursing care is indicated and may include referral to medical or community resources;
- (ii) "nursing intervention" is the implementation of a plan of nursing care necessary to accomplish defined goals.

5. The Petitioner requests that the Board of Nursing declare that the performance of pap smears and pelvic exams utilizing a speculum is within the scope of practice for a licensed professional nurse.

6. The Petitioner notes the following interested parties:

Dr. Thomas Kottke
Mary Alice Trapp
Mayo Clinic
200 First Street SW
Rochester, MN 55905

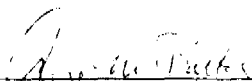
Indian Health Service
Billings Area Office

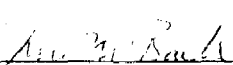
7. The Department of Commerce will make reasonable accommodations for persons with disabilities who wish to participate in the public hearing. If you request an accommodation, contact the Department no later than 5:00 p.m., November 3, 1997, to advise us of the nature of the accommodation that you need. Please contact Dianne Wickham, RN, MN, Board Executive Director, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 444-2071; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 444-7759. Persons with disabilities who need an alternative accessible format of this document in order to participate in this rule-making process should contact Dianne Wickham.

8. 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 Nursing, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, to be received no later than 5:00 p.m., October 16, 1997.

9. R. Perry Eskridge, attorney, has been designated to preside over and conduct this hearing.

BOARD OF NURSING
RITA M. HARDING, RN, MN, CNS

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


ANNIE M. BARTOS, RULE REVIEWER

BEFORE THE BOARD OF NURSING
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the petition for) NOTICE OF PETITION FOR
declaratory ruling on the) DECLARATORY RULING
performance of mixed venous O₂)
saturation and hemoglobins by a)
licensed professional nurse using)
an AVOXIMETER.

1. On November 6, 1997, at 4:00 p.m., in the conference room of the Professional and Occupational Licensing Bureau, 111 North Jackson, Arcade Building, Lower Level, Helena, Montana, the Board of Nursing will consider a petition for declaratory ruling on the performance of mixed venous O₂ saturation and hemoglobins by a licensed professional nurse using an AVOXIMETER.

2. This petition is filed by Evie English (Petitioner), Director of the St. Peter's Hospital Intensive Care Unit and Cardiac Catheter Laboratory in Helena, Montana. Petitioner filed the petition on behalf of Dr. Paustian in the St. Peter's Cardiac Catheter Laboratory, 2475 Broadway, Helena, Montana 59601. Petitioner identified Cheryl Gunter, Julie Liston, Joyce Mow, Linda Murray, and Mat Sullivan as other interested persons all of whom are employed by St. Peter's Hospital.

3. A Joint Commission on Accreditation of Hospitals survey brought the possibility of professional nurses performing this procedure to Petitioner's attention. Accordingly, Petitioner alleges that the performance of O₂ saturation and hemoglobins are within the scope of practice for a licensed professional nurse when performed on an AVOXIMETER. Petitioner cites to section 37-34-301, MCA as the relevant statute, however, that section applies to the licensure and practice of clinical laboratory science practitioners. The correct statutory citation should be section 37-8-102(5)(b), MCA.

Petitioner alleges that RNs who receive manufacturer training would be sufficiently prepared to perform the procedures at issue in this petition. Petitioner states that the circumstance in which an RN would perform such a procedure is limited to the heart catheter lab during bilateral heart catheterization on a patient who is not receiving oxygen. Moreover, the cardiologist would be present (in the scrubbing room) and the procedure would be performed on an AVOXIMETER with a quality assurance program and monthly quality checks. Petitioner states that RNs will perform the procedures 40-50 times a year.

Petitioner states that RNs should be allowed to perform these tests as the nurses are already present in the heart catheter lab, it makes the results readily available to the cardiologist, and the machine may be run by the nurse with little or no chance of error.

4. The statute upon which Petitioner requests the declaratory ruling is section 37-8-102(5)(b), MCA, which provides:

"Practice of professional nursing" means the performance for compensation of services requiring substantial specialized knowledge of the biological, physical, behavioral, psychological, and sociological sciences and of nursing theory as a basis for the nursing process. The nursing process is the assessment, nursing analysis, planning, nursing intervention, and evaluation in the promotion and maintenance of health; the prevention, casefinding, and management of illness, injury, or infirmity; and the restoration of optimum function. The term also includes administration, teaching, counseling, supervision, delegation, and evaluation of nursing practice and the administration of medications and treatments prescribed by physicians, advanced practice registered nurses, dentists, osteopaths, or podiatrists authorized by state law to prescribe medications and treatments. Each registered nurse is directly accountable and responsible to the consumer for the quality of nursing care rendered. As used in this subsection (5)(b):

- (i) "nursing analysis" is the identification of those client problems for which nursing care is indicated and may include referral to medical or community resources;
- (ii) "nursing intervention" is the implementation of a plan of nursing care necessary to accomplish defined goals.

5. Petitioner has also referenced section 37-34-301, MCA which provides:

A person may not engage in the practice of clinical laboratory science or hold out to the public that the person is a clinical laboratory science practitioner in this state unless the person is licensed pursuant to this chapter.

While Petitioner does not cite to the following section, another appropriate statutory citation is 37-34-302(2)(a), MCA which provides:

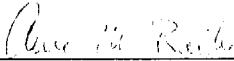
This chapter does not apply to: (a) any other profession licensed under Title 37 to the extent that the applicable scope of that practice, as defined by statute, rules of the board or agency governing the other profession, or both the statute and rules, authorizes the performance of a clinical laboratory test[.]

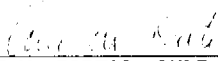
6. The Petitioner requests that the Board of Nursing declare that the performance of mixed venous O₂ saturation and hemoglobins by a licensed professional nurse using an AVOXIMETER is within the scope of practice for a licensed professional nurse.

7. Interested persons may submit their data, view, or arguments, either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Board of Nursing, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, to be received no later than 5:00 p.m., October 16, 1997.

8. The Department of Commerce will make reasonable accommodations for persons with disabilities who wish to participate in the public hearing. If you desire an accommodation, contact the Department no later than 5:00 p.m., November 3, 1997, to advise of the nature of the accommodation that you need. Please contact Dianne Wickham, RN, MN, Board Executive Director, 111 N. Jackson, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 444-2071; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 444-7759. Persons with disabilities who need an alternative accessible format of this document in order to participate in this rule-making process should contact Dianne Wickham.

BOARD OF NURSING
RITA M. HARDING, RN, MN, CS

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


ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, August 25, 1997.

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 June 30, 1997. This table includes those rules adopted during the period July 1, 1997 through September 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 June 30, 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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