MONTANA ADMINISTRATIVE REGISTER

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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 2

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 The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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 found at the back of each register.

Inquiries regarding the rulemaking process, including material found in the Montana Administrative Register and the Administrative Rules of Montana, may be made by calling the Administrative Rules Bureau at (406) 444-2055.

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NOTICE SECTION

BEFORE THE BOARD OF OPTOMETRISTS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed amendment of rules pertaining to fees, licensure of out-of-state applicants, continuing education requirements and approved programs or courses	)))))	NOTICE OF PROPOSED AMENDMENT OF RULES PERTAINING TO THE PRACTICE OF OPTOMETRY

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On February 28, 1998, the Board of Optometrists proposes to amend rules pertaining to the practice of optometry.

2. The proposed amendment of ARM 8.36.409, 8.36.417, 8.36.601 and 8.36.602 will read as follows: (new matter underlined, deleted matter interlined)

"8.36.409 FEE SCHEDULE (1) will remain the same.

(2) Annual renewal ~~$100~~ 75

(3) through (7) will remain the same."

Auth: Sec. 37-10-202, MCA; IMP, Sec. 37-1-134, 37-1-304, 37-10-302, 37-10-307, MCA

REASON: The proposed amendment will decrease the annual renewal fee from $100 down to $75. The board has experienced an excessive cash balance, and in accordance with legislation passed by the 1997 Legislature, will reduce the renewal fee so that the board cash balance does not exceed two times their appropriation.

"8.36.417 LICENSURE OF OUT-OF-STATE APPLICANTS

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

(d) candidates who were licensed ~~without sitting for~~ prior to the availability of all parts of the NBEO examination (1993) shall supply proof of successful completion of a qualifications examination (acceptable to the board) administered by the licensing authority of the state or jurisdiction granting the license, and shall meet qualifications to be therapeutically qualified;

(e) and (f) will remain the same."

Auth: Sec. 37-10-202, MCA; IMP, Sec. 37-1-304, MCA

REASON: The proposed amendment will clarify that all out-of-state applicants who were licensed after the date all three parts of the NBEO became available, must have successfully completed that exam in all its parts. The previous language appeared to allow licensure by state exams, regardless of the date that state exam was completed. Instead, this provision of

the rule was intended to accommodate only those out-of-state applicants who were licensed prior to the availability of the NBEO.

"8.36.601 REQUIREMENTS (1) through (3) will remain the same.

(4) Only six hours of credit for approved continuing education internet or electronic courses will be allowed annually.

(4) and (5) will remain the same, but will be renumbered (5) and (6)."

Auth: Sec. 37-1-319, 37-10-202, MCA; IMP, Sec. 37-1-306, MCA

REASON: The proposed amendment will allow for continuing education courses to be completed on the Internet, or via the computer as other technology develops in the future. The board has received some requests for use of this technology for continuing education, and has decided that courses offered and completed within the general continuing education requirements will be acceptable for credit.

"8.36.602 APPROVED PROGRAMS OR COURSES (1) through (2) will remain the same.

(3) Continuing education courses offered and completed on the internet or via other similar electronic means may be accepted, if all criteria listed below are met, for a maximum of six credits annually, with a total of 12 credits reported on each biennial form.

(a) internet courses must be sponsored by a college or school of optometry;

(b) internet courses must provide a certificate of completion; and

(c) internet courses must comply with all other continuing education requirements, including (1) above."

Auth: Sec. 37-1-319, 37-10-202, MCA; IMP, Sec. 37-1-306, MCA

REASON: The proposed amendment will allow for continuing education courses for the reason stated in ARM 8.36.601 above.

3. Interested persons may submit their data, views or arguments concerning the proposed amendments in writing to the Board of Optometrists, 111 N. Jackson, P.O. Box 200513, Helena, Montana 59620-0513, or by facsimile to (406) 444-1667, to be received no later than 5:00 p.m., February 26, 1998.

4. If a person who is directly affected by the proposed amendments wishes to present his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit the request along with any comments he has to the Board of Optometrists, 111 N. Jackson, P.O. Box 200513, Helena, Montana 59620-0513, or by facsimile to (406) 444-1667, to be received no later than 5:00 p.m., February 26, 1998.

5. If the Board receives requests for a public hearing on the proposed amendments from either 10 percent or 25, whichever is less, of those persons who are directly affected by the proposed amendments, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 24 based on the 238 licensees in Montana.

6. Persons who wish to be informed of all Board of Optometrists administrative rulemaking proceedings, or other administrative proceedings, may be placed on a list of interested persons by advising the Board, in writing, at 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513 or by phone at (406) 444-1698.

BOARD OF OPTOMETRISTS
CYNTHIA JOHNSON, OD, PRESIDENT

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

_____
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, January 16, 1998.

BEFORE THE BOARD OF REAL ESTATE APPRAISERS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed amendment of rules pertaining to qualifying education requirements for licensed appraisers, residential certification and general certification, continuing education and ad valorem tax appraisal experience	)))))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF RULES PERTAINING TO REAL ESTATE APPRAISERS

TO: All Interested Persons:

1. On February 26, 1998, at 9:00 a.m., a public hearing will be held in the Professional and Occupational Licensing Conference room, Lower Level, Arcade Building, 111 North Jackson, Helena, Montana, to consider the proposed amendment of rules pertaining to real estate appraisers.

2. The proposed amendment of ARM 8.57.407, 8.57.408, 8.57.409, 8.57.411 and 8.57.417 will read as follows: (new matter underlined, deleted matter interlined)

"8.57.407 QUALIFYING EDUCATIONAL REQUIREMENTS FOR LICENSED APPRAISERS (1) Applicants for original licensure shall complete at least 90 classroom hours of instruction, 15 hours of which must cover the uniform standards of professional appraisal practice as promulgated by the appraisal foundation at the time the educational offering was completed and at least 15 hours of which must cover report writing. Applicants must demonstrate that their education involves coverage of all topics listed below with particular emphasis on the appraisal of one- to four-unit residential properties:

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

Auth: Sec. 37-1-131, 37-54-105, MCA; IMP, Sec. 37-1-131, 37-54-105, 37-54-202, 37-54-203, MCA

REASON: This amendment is being proposed to assure that an appraiser is fully aware of the appraisal process and that the appraiser knows how to write a report to insure public safety and the safety and soundness of the financial institutions.

"8.57.408 QUALIFYING EDUCATION REQUIREMENTS FOR RESIDENTIAL CERTIFICATION (1) Applicants for residential certification shall provide evidence of completion of 120 classroom hours, 15 hours of which must cover the uniform standards of professional appraisal practice as promulgated by the appraisal foundation and at least 15 hours of which must cover report writing and which may include the 75 hour classroom hour requirement for the license classification.

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

Auth: Sec. 37-1-131, 37-54-105, MCA; IMP, Sec. 37-1-131, 37-54-105, 37-54-303, MCA

REASON: This amendment is being proposed to assure that an appraiser is fully aware of the appraisal process and that the appraiser knows how to write a report to insure public safety and the safety and soundness of the financial institutions.

"8.57.409 QUALIFYING EDUCATIONAL REQUIREMENTS FOR GENERAL CERTIFICATION (1) Applicants for original general certification shall provide evidence of 180 classroom hours of instruction, 15 hours of which must cover the uniform standards of professional appraisal practice, as promulgated by the appraisal foundation and at least 15 hours of which must cover report writing.

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

Auth: Sec. 37-1-131, 37-54-105, MCA; IMP, Sec. 37-1-131, 37-54-105, 37-54-303, MCA

REASON: This amendment is being proposed to assure that an appraiser is fully aware of the appraisal process and that the appraiser knows how to write a report to insure public safety and the safety and soundness of the financial institutions.

"8.57.411 CONTINUING EDUCATION (1) Continuing education courses shall be approved according to the criteria of ARM 8.57.406, including application for re-approval after three years except that an examination shall not be required, except for the 15 hours of the uniform standards of professional appraisal practice which requires an examination.

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

Auth: Sec. 37-1-131, 37-1-306, 37-54-105, MCA; IMP, Sec. 37-1-131, 37-1-306, 37-54-105, 37-54-210, 37-54-303, 37-54-310, MCA

REASON: The Uniform Standards of Professional Appraisal Practice are constantly changing and the Board needs to assure that an appraiser comprehends the standards in order to assure public safety.

"8.57.417 AD VALOREM TAX APPRAISAL EXPERIENCE

(1) Experience credit may be awarded to ad valorem tax appraisers who demonstrate that they use techniques to value properties in compliance with USPAP, and effectively use the appraisal process. Applicants will be questioned on appraisal techniques by the board during an oral interview.

(2) Components of the mass appraisal process that may be given credit are: the highest and best use analysis; model specification (developing the model); and model calibration (developing adjustments to the model). Other components of the mass appraisal process, by themselves, shall not be eligible for experience credit. Applicants will be questioned on these analyses by the board during an oral interview.

(3) ~~Proper documentation shall be by affidavit from the supervising tax appraiser or other appropriate official, and must be from real property mass appraisals.~~ The documentation shall include an experience log which is provided by the board, completed by the applicant and attested to by the applicant's supervisor. This form will indicate the type of experience and hours applicable to ad valorem necessary to confirm the necessary experience hours for the designation sought by the applicant including individual property appraisals, tax appeals, model specifications and model calibrations.

(a) ~~The affidavit shall set forth the applicant's job description, duties and/or role in the appraisal process if not included in the job description and duties.~~ The documentation shall include an experience log which is provided by the board, completed by the applicant and attested to by the applicant's supervisor. This form will indicate the type of experience and hours applicable to ad valorem necessary to confirm the necessary experience hours for the designation sought by the applicant, including individual property appraisals, tax appeals, model specifications and model calibrations.

(b) ~~The supervising tax appraiser or other appropriate official signing the affidavit must indicate their understanding that experience credit shall only be awarded to applicants who demonstrate they use techniques to value properties in compliance with USPAP.~~ The documentation shall include 500 hours of single property appraisals which have been completed, according to standards, within the last five years. For licensing and residential certification, the appraisals would be for residential properties. For general certification, the appraisals would be for non-residential properties.

~~(4) Applicants shall also submit an experience log indicating the type of experience and hours applicable to each type of experience necessary to confirm 2000 experience hours, including without limitation, individual property appraisals, tax appeals, demonstration appraisal reports, model specifications and model calibrations.~~

(5) will remain the same, but will be renumbered (4).

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

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

~~(7)~~ (6) Mass appraisals shall be performed in accordance with standards rule 6 of the USPAP."

Auth: Sec. 37-1-131, 37-54-105, MCA; IMP, Sec. 37-1-131, 37-54-105, MCA

REASON: These amendments are being proposed to assure that an appraiser is fully aware of the appraisal process to insure public safety and the safety and soundness of the financial institutions.

3. The Department of Commerce will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you wish to request an accommodation, contact the Department no later than 5:00 p.m.,

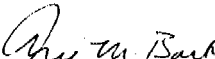
February 16, 1998, to advise us of the nature of the accommodation that you need. Please contact Pam Bragg, Board of Real Estate Appraisers, 111 N. Jackson, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 444-3561; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 444-1667. Persons with disabilities who need an alternative accessible format of this document in order to participate in this rule-making process should contact Pam Bragg.

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 Real Estate Appraisers, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, or by facsimile, number (406) 444-1667, to be received no later than 5:00 p.m., February 26, 1998.

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

6. Persons who wish to be informed of all Board of Real Estate Appraisers administrative rulemaking proceedings, or other administrative proceedings, may be placed on a list of interested persons by advising the Board at the hearing or in writing to the Board of Real Estate Appraisers, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513 or by phone at (406) 444-3561.

BOARD OF REAL ESTATE APPRAISERS
R. FARRELL ROSE, CHAIRMAN

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


ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, January 16, 1998.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of 17.38.101, 17.38.202, 207, 208, 215-218, 226, 229, 234, 235, 239, 244, 256 and 270, updating public water supply and public sewage system rules.	NOTICE OF PUBLIC HEARING FOR PROPOSED AMENDMENT OF RULES (Public Water Supply)

To: All Interested Persons

1. On February 23, 1998, at 1:00 p.m., the Board will hold a public hearing in Room 111 of the Metcalf Building, 1520 E. 6th Ave., Helena, Montana, to consider the amendment of the above-captioned rules.

2. The Board will make reasonable accommodations for persons with disabilities who wish to participate in this hearing. If you need an accommodation, contact the department no later than 5 p.m., February 20, 1998, to advise us of the nature of the accommodation you need. Please contact the Board at P.O. Box 200901, Helena, MT 59620-0901; phone (406)444-2544; fax (406)444-4386.

3. The rules, as proposed to be amended, appear as follows:

17.38.101 PLANS FOR PUBLIC WATER SUPPLY OR WASTEWATER SYSTEM (1)-(2) Remain the same.

(3) As used in this rule, the following definitions apply in addition to those in 75-6-102, MCA.

(a) Remains the same.

(b) "Public sewage system" means a system ~~for~~ of collection, transportation, treatment, or disposal of sewage that ~~is designed to serve or~~ serves ~~10~~ 15 or more families or 25 or more persons daily for a period of at least 60 days ~~out of the~~ in a calendar year.

(i) "Community sewage system" means ~~any~~ a public sewage system ~~which~~ that serves at least 15 service connections used by year-round residents or that regularly serves at least 25 year-round residents.

(ii) Remains the same.

(c)-(g) Remain the same.

(h) "Public water supply system" means a system for the provision of water for human consumption from ~~any~~ a community well, water hauler for cisterns, water bottling plant, water dispenser, or other water supply that ~~serves 10 or more families or 25 or more persons daily or~~ has at least ~~10~~ 15 service connections or that regularly serves at least 25 persons daily for a period of at least 60 days ~~out of the~~ in a calendar year.

(i) "Community water system" means ~~any~~ a public water supply system ~~which~~ that serves at least ~~10~~ 15 service

connections used by year-round residents or that regularly serves at least 25 year-round residents.

(ii) "Non-community water system" means ~~any~~ a public water supply system ~~which~~ that is not a community water system.

(4)-(12) Remain the same.

AUTH: 75-6-103, MCA; IMP: 75-6-103, 75-6-112, 75-6-121, MCA

17.38.202 DEFINITIONS In this subchapter and in department Circulars PWS-1 (~~1994~~ 1998 edition), PWS-2 (~~1994~~ 1998 edition), PWS-3 (~~June 1991~~ 1998 edition) and PWS-4 (~~1994~~ 1998 edition), the following terms have the meanings or interpretations indicated below and must be used in conjunction with and supplemental to those definitions contained in 75-6-102, MCA.

(1) Remains the same.

(2) "Action level" means the concentration of lead or copper in water, as specified in section 3.0 of department Circular PWS-4 (~~1994~~ 1998 edition), that determines followup requirements that a water system is required to complete. Department Circular PWS-4 addresses various requirements for inorganic contaminants and is adopted by reference herein. A copy may be obtained by contacting the Department of Environmental Quality, PO Box 200901, Helena, MT 59620-0901 ~~(406)444-2406~~.

(3)-(9) Remain the same.

(10) "$CT_{99.9}$" means the CT value required for 99.9% (3-log) inactivation of Giardia lamblia cysts. $CT_{99.9}$ for a variety of disinfectants and conditions appear in department Circular PWS-3, (~~June 1991~~ 1998 edition).

(11)-(31) Remain the same.

(32) "Public water supply system" means a system for the provision of water for human consumption from ~~any~~ a community well, water hauler for cisterns, water bottling plant, water dispenser, or other water supply that ~~serves 10 or more families or 25 or more persons daily or~~ has at least ~~10~~ 15 service connections or that regularly serves at least 25 persons daily for a period of at least 60 days ~~out of the~~ in a calendar year.

(a) "Community water system" means ~~any~~ a public water supply system ~~which~~ that serves at least ~~10~~ 15 service connections used by year-round residents or that regularly serves at least 25 year-round residents.

(b) "Non-community water system" means ~~any~~ a public water supply system ~~which~~ that is not a community water system ~~that serves either transient or non-transient populations~~.

(i) "Non-transient non-community water system" ~~or "NTNCWS"~~ means ~~any non-community water system~~ a public water system that is not a community system and that regularly serves at least 25 of the same persons ~~over~~ for at least 6 months ~~per~~ a year.

(ii) "Transient non-community water system" means ~~any non-community water~~ a public water supply system that is not a community water system and that does not regularly serve at least 25 of the same persons ~~over~~ for at least 6 months ~~per~~ a year.

(33)-(34) Remain the same.

(35) "Rem" means the unit of dose equivalent from ionizing radiation to the total body or any internal organ or organ system. A "millirem (mrem)" is ~~1/1000~~ 1/1000 of a rem.

(36)-(50) Remain the same.

AUTH: 75-6-103, MCA; IMP: 75-6-103, MCA

17.38.207 MAXIMUM MICROBIOLOGICAL CONTAMINANT LEVELS

(1) A public water supply system may not exceed the following maximum microbiological contaminant levels:

(a) For monthly and annual MCL's for microbiological contaminants:

(i) Remains the same.

(ii) a system which collects fewer than 40 samples/month may have no more than 1 sample collected during a month analyzed as total coliform-positive~~;~~

~~(iii) a system may have no more than 10% of the samples collected within any consecutive 12 month period analyzed as total coliform positive;~~

~~(iv) a system may have no more than 20% of the samples collected within any 12 month period either analyzed as total coliform positive or invalidated by the laboratory because of heavy bacterial growth, confluent growth, TNTC non coliform, or heterotrophic plate counts greater than 500 colony forming units per milliliter (cfu/ml)~~.

(b) In addition to the requirements of (a) above, a fecal coliform-positive repeat sample or E. coli-positive repeat sample, or any total coliform-positive repeat sample following a fecal coliform-positive or E. coli-positive routine sample is a violation of this rule. (For purposes of the public notification requirements in department Circular PWS-2 (~~1994~~ 1998 edition), this is a violation that may pose an acute risk to health.)

(2) Remains the same.

(3) Failure to submit the required number of repeat samples for the public water supply system is a violation of the coliform bacteria MCL set forth in (1)(a) of this rule, and subjects the system to the required public notification as described in department Circular PWS-2 (~~June 1994~~ 1998 edition), and additional routine sampling specified in ARM 17.38.215.

(4) The department hereby adopts and incorporates by reference department Circular PWS-2 (~~1994~~ 1998 edition), which sets forth public notification requirements for suppliers. A copy may be obtained from the Department of Environmental Quality, PO Box 200901, Helena, MT 59620-0901.

AUTH: 75-6-103, MCA; IMP: 75-6-103, MCA

17.38.208 TREATMENT TECHNIQUES--FILTRATION AND DISINFECTION (1) Remains the same.

(2) A public water supply system using a surface water source or a ground water source under the direct influence of surface water is considered to be in compliance with the requirements of (1) of this rule if the system is operated by qualified personnel certified under the provisions of Title 37,

chapter 42, MCA, and:

(a) the system meets all of the requirements for avoiding filtration and the requirements for disinfection of an unfiltered surface source as described in department Circular PWS-3 (~~June 1991~~ 1998 edition); or

(b) Remains the same.

(3) Remains the same.

(4)(a) A supplier that uses a surface water source and does not provide treatment by filtration must provide the disinfection treatment specified in department Circular PWS-3 (~~June 1991~~ 1998 edition), beginning December 30, 1991, unless the department determines that filtration is required.

(b) A supplier that uses a ground water source under the direct influence of surface water and does not provide treatment by filtration must provide the disinfection treatment specified in department Circular PWS-3 (~~June 1991~~ 1998 edition), beginning December 30, 1991, or 18 months after the department determines that the ground water source is under the influence of surface water, whichever is later, unless the department has determined that filtration is required.

(c)-(d) Remain the same.

(e) Each public water supply system that provides filtration treatment must provide disinfection treatment as follows:

(i)-(ii) Remain the same.

(iii) The residual disinfectant concentration in the distribution system, measured as free chlorine, total chlorine, combined chlorine, or chlorine dioxide cannot be less than 0.2 mg/l using the DPD method or 0.1 mg/l using the amperometric titration method in more than 5.0% of the samples each month for any 2 consecutive months that the system serves water to the public. Water in the distribution system with a heterotrophic bacteria concentration less than or equal to 500 per milliliter, measured as heterotrophic plate count (HPC), is an acceptable substitute for disinfectant residual for purposes of determining compliance with this requirement. The equation in ARM 17.38.235(3)(b)(xv) must be used to calculate compliance with this requirement.

(iv) Remains the same.

(5) The department hereby adopts and incorporates by reference department Circular PWS-3 (~~June 1991~~ 1998 edition), which sets forth criteria to avoid filtration of a surface water source or a groundwater source under the direct influence of surface water. A copy of department Circular PWS-3 (~~June 1991~~ 1998 edition) may be obtained from the Department of Environmental Quality, PO Box 200901, Helena, MT 59620-0901. AUTH: 75-6-103, MCA; IMP: 75-6-103, MCA

17.38.215 BACTERIOLOGICAL QUALITY SAMPLES (1)(a) Remains the same.

(b) The supplier of water for transient non-community water system that:

(i) uses only ground water (except ground water under the direct influence of surface water) and serves a maximum daily population of 1000 persons or fewer shall sample for

coliform bacteria in each calendar quarter during which the system provides water to the public~~; except that beginning October 1, 1993, these suppliers must sample according to the table in (a) above~~.

(ii)-(iii) Remain the same.

(c) Remains the same.

(2)-(3) Remain the same.

(4) ~~Special~~ A special purpose sample~~s~~, including ~~those~~ a sample taken to determine whether adequate disinfection has occurred after pipe placement or repair, may not be ~~used to determine compliance with ARM 17.38.207~~ taken from a part of the public water supply system that is actively serving the public. Repeat samples taken pursuant to (5) of this rule are not special purpose samples.

(5)-(7) Remain the same.

(8) At least 2 samples shall be analyzed for coliform bacteria from any new source of water supply to demonstrate compliance with this subchapter before the source is connected to a public water supply system.

AUTH: 75-6-103, MCA; IMP: 75-6-103, MCA

17.38.216 CHEMICAL AND RADIOLOGICAL QUALITY SAMPLES

(1) Except as provided in (2) below, water served to consumers, which may be a mixture from several sources, must be analyzed for the following inorganic chemicals according to the requirements in section 4.1(E)(2) of department Circular PWS-1 (~~1994~~ 1998 edition):

(a)-(k) Remain the same.

(2) The department may waive the sampling and analysis requirement for any or all of these contaminants if the results of at least ~~3 consecutive samples~~ 1 sample demonstrates that further sampling is unnecessary.

(3)(a) A supplier shall sample and monitor its system for the following inorganic chemicals:

(i) the chemicals listed in ARM 17.38.203(1), Table I, as applicable, under intervals and methods specified in department Circular PWS-1 (~~1994~~ 1998 edition);

(ii) lead and copper, as applicable and under intervals and methods specified in department Circular PWS-4 (~~1994~~ 1998 edition); and

(iii) other water quality parameters as stated in and under intervals and frequencies specified in department Circular PWS-4 (~~1994~~ 1998 edition).

(b) A supplier for a community or non-transient non-community water system must monitor its system for synthetic organic chemicals listed in ARM 17.38.204(1), volatile organic chemicals listed in ARM 17.38.204(3), and certain unregulated organic chemicals specified in department Circular PWS-1 (~~1994~~ 1998 edition).

(c) Remains the same.

(4)-(6) Remain the same.

(7) Every new source of water supply, both surface and ground, ~~added to a community water supply~~ must be analyzed for ~~chemical and radiological content. All~~ nitrate and nitrite before the water is served to the public. Unless otherwise

directed by the department, all new sources of water supply ~~for transient non-community and non-transient non-community water must be analyzed for nitrates~~ must also be analyzed for the following parameters before the end of the calendar quarter in which the source is connected to a public water supply:

(a) radiological content, for community water systems;

(b) chemical content, in accordance with department Circular PWS-1 (1998 edition), for community and non-transient non-community water systems; and

(c) either total dissolved solids (TDS) or specific conductance, in accordance with department Circular WQB-3 (1998 edition), for transient non-community water systems.

(8) Further sampling or corrective action may be required by the department if the results of the analyses do not demonstrate conformance with applicable maximum contaminant levels or actions levels.

~~(8)~~ (9) The department hereby adopts and incorporates by reference department Circular PWS-1 (~~1994~~ 1998 edition), which sets forth standards and monitoring requirements for other volatile organic chemicals, inorganic chemicals, and synthetic organic chemicals, and department Circular PWS-4 (~~1994~~ 1998 edition), which sets forth standards and monitoring requirements for lead and copper. A copy of each may be obtained from the Department of Environmental Quality, PO Box 200901, Helena, MT 59620-0901.

AUTH: 75-6-103, MCA; IMP: 75-6-103, MCA

17.38.217 SAMPLING AND REPORTING RESPONSIBILITY (1)-(2) Remain the same.

(3) A supplier of a public water supply system that has exceeded the microbiological contaminant MCLs specified in ARM 17.38.207 must report the violation to the department no later than the end of the next business day after it learns of the violation, and notify the public in accordance with department Circular PWS-2 (~~1994~~ 1998 edition).

(4) A supplier of a public water supply system that has failed to comply with a total coliform bacterial monitoring requirement, including the sanitary survey requirement stated in ARM 17.38.231, must report the monitoring violation to the department within 10 days after the supplier discovers the violation, and notify the public in accordance with department Circular PWS-2 (~~1994~~ 1998 edition).

(5) A supplier of a community water system must notify the public as specified in department Circular PWS-2 (~~1994~~ 1998 edition) when the fluoride level exceeds 2.0 milligrams per liter (mg/l).

(6)-(7) Remain the same.

(8) If the disinfectant residual falls below 0.2 mg/l in the water entering the distribution system, in a ~~surface water or ground water supply under the direct influence of surface water~~ public water supply using full time disinfection, the ~~system~~ supplier must notify the department as soon as possible, but no later than by the end of the next business day. The supplier of water must also notify the department by the end of the next business day as to whether the residual was restored

to at least 0.2 mg/l within 4 hours after discovery that the 0.2 mg/l standard was not being met.

(9)-(10) Remain the same.

(11) A supplier of water, within 10 days of completion of each public notification required pursuant to these rules and department Circular PWS-2 (~~1994~~ 1998 edition), shall submit to the department a representative copy of each type of notice distributed, published, posted, or made available to the persons served by the system or to the media.

(12) Remains the same.

(13) The department hereby adopts and incorporates by reference department Circular PWS-2 (~~1994~~ 1998 edition), which sets forth public notification requirements for suppliers. A copy may be obtained from the Department of Environmental Quality, PO Box 200901, Helena, MT 59620-0901.

AUTH: 75-6-103, MCA; IMP: 75-6-103, MCA

17.38.218 VERIFICATION SAMPLES (1) Remains the same.

(2) The department may require verification samples for positive or negative results of inorganic (except for lead and copper) and organic chemical analyses in accordance with department Circular PWS-1 (~~1994~~ 1998 edition).

(3) The department may require verification samples for lead and copper in source water or applicable water quality parameters in accordance with department Circular PWS-4 (~~1994~~ 1998 edition).

(4) The department hereby adopts and incorporates by reference department Circular PWS-1 (~~1994~~ 1998 edition), which sets forth standards and monitoring requirements for volatile organic chemicals, inorganic chemicals and synthetic organic chemicals; and department Circular PWS-4 (~~1994~~ 1998 edition), which sets forth standards and monitoring requirements for lead and copper. Copies of each may be obtained from the Department of Environmental Quality, PO Box 200901, Helena, MT 59620-0901.

AUTH: 75-6-103, MCA; IMP: 75-6-103, MCA

17.38.226 CONTROL TESTS--SURFACE SUPPLIES (1) A supplier of water utilizing a water treatment plant for surface water or groundwater under the direct influence of surface water where the plant employs in its operation coagulation, settling, softening, or filtration, shall perform at least daily, unless otherwise specified, the following chemical control tests on the filtered water, list them on a report form approved by the department, and submit the completed form monthly to the department:

(a) Chlorine residual:

(i) Remains the same.

(ii) The supplier of water shall measure the residual chlorine concentration in water from the distribution system at least once each day as specified in ARM 17.38.208(4)(e)(iii).

(A)-(B) Remain the same.

(b)-(f) Remain the same.

(2) A supplier of water utilizing surface water or ground water under the direct influence of surface water which does not filter but which employs disinfection shall perform, at

least daily, unless otherwise specified, the following chemical control tests on the treated water, list them on a report form approved by the department and submit the completed form monthly to the department:

(a) chlorine residual--must be monitored according to department Circular PWS-3 (~~June 1991~~ 1998 edition);

(b) pH value;

(c) turbidity.

(i) A supplier of water utilizing a surface source and not providing filtration treatment must monitor, as specified in these rules and department Circular PWS-3 (~~June 1991~~ 1998 edition), unless the department has determined that filtration is required. The department may specify alternative monitoring requirements, as appropriate, until filtration is in place.

(ii) A supplier of water that uses a ground water source under the direct influence of surface water and does not provide filtration treatment must begin monitoring as specified in department Circular PWS-3 (~~June 1991~~ 1998 edition), 6 months after the department determines that the ground water source is under the direct influence of surface water, unless the department has determined that filtration is required. If filtration is required, the department may specify alternative monitoring requirements, as appropriate, until filtration is in place.

(iii)-(iv) Remain the same.

(3) The department hereby adopts and incorporates by reference department Circular PWS-3 (~~June 1991~~ 1998 edition), which sets forth criteria to avoid filtration of a surface water source or a ground water source under the direct influence of surface water. A copy may be obtained from the Department of Environmental Quality, PO Box 200901, Helena, MT 59620-0901.

AUTH: 75-6-103, MCA; IMP: 75-6-103, MCA

17.38.229 CHLORINATION (1)-(3) Remain the same.

(4) The residual disinfectant concentration in the distribution system for a public water supply using ground water and full time disinfection, measured as free chlorine, total chlorine, combined chlorine, or chlorine dioxide, must not be less than 0.2mg/l using the DPD method or 0.1mg/l using the amperometric titration method. Water in the distribution system with a heterotrophic bacteria concentration less than or equal to 500 per milliliter, measured as heterotrophic plate count (HPC), is an acceptable substitute for disinfectant residual for purposes of determining compliance with this rule.

AUTH: 75-6-103, MCA; IMP: 75-6-103, MCA

17.38.234 TESTING AND SAMPLING RECORDS (1)-(2) Remain the same.

(3) Actual laboratory reports may be kept or data may be transferred to tabular summaries, provided the following information is included:

(i)-(vii) Remain the same but are renumbered (a) - (g).

AUTH: 75-6-103, MCA; IMP: 75-6-103, MCA

17.38.235 OPERATING RECORDS (1)-(8) Remain the same.

(9) A supplier of water using unfiltered ground water under the direct influence of surface water or unfiltered surface water shall keep records in accordance with department Circular PWS-3 (~~June 1991~~ 1998 edition).

AUTH: 75-6-103, MCA; IMP: 75-6-103, MCA

17.38.239 PUBLIC NOTIFICATION FOR COMMUNITY AND NON-COMMUNITY SUPPLIES (1) The owner or supplier of a public water supply system shall notify persons served by the system as specified in department Circular PWS-2 (~~1994~~ 1998 edition) and the department as required under ARM 17.38.217 if the system:

(a)-(c) Remain the same.

(2)-(3) Remain the same.

(4) The department hereby adopts and incorporates by reference department Circular PWS-2 (~~1994~~ 1998 edition), which sets forth public notification requirements for public water supply system suppliers. A copy may be obtained from the Department of Environmental Quality, PO Box 200901, Helena, MT 59620-0901.

AUTH: 75-6-103, MCA; IMP: 75-6-103, MCA

17.38.244 VARIANCE AND EXEMPTIONS FROM MAXIMUM CONTAMINANT LEVELS (MCL'S) FOR ORGANIC AND INORGANIC CHEMICALS AND FROM TREATMENT REQUIREMENTS FOR LEAD AND COPPER (1) The EPA has identified the technologies listed in sections 6.1 and 6.2 of department Circular PWS-1 (~~1994~~ 1998 edition) as the best available technology (BAT), treatment techniques, or other means available for achieving compliance with the maximum contaminant levels for inorganic chemicals listed in ARM 17.38.203 and for synthetic and volatile organic chemicals listed in ARM 17.38.204(1) and (3).

(2) Suppliers of community water systems and non-transient, non-community water systems must install or use any treatment method identified in department Circular PWS-1 (~~1994~~ 1998 edition) as a condition for receiving a variance, except as provided in (3) of this rule. If the system cannot meet the MCL after installation of the treatment method, that system is eligible for a variance.

(3)-(5) Remain the same.

(6) To avoid an unreasonable risk to health, the department may require a public water supply system supplier to use:

(a) bottled water, point-of-use devices, or other means as a condition of granting a variance or an exemption from the requirements of section 3.0, department Circular PWS-1 (~~1994~~ 1998 edition);

(b) bottled water and point-of-use devices or other means, but not point-of-entry devices, as a condition for granting an exemption or variance from corrosion control treatment requirements for lead and copper in sections 5.1 and 5.2 of department Circular PWS-4 (~~1994~~ 1998 edition); or

(c) point-of-entry devices as a condition for granting an exemption or variance from the source water and lead service

line replacement requirements for lead and copper under sections 5.3 or 5.4 of department Circular PWS-4 (~~1994~~ 1998 edition).

(7) Public water supply systems that use bottled water as a condition for receiving a variance or an exemption from the requirements of section 3.0 of department Circular PWS-1 (~~1994~~ 1998 edition) or an exemption from the requirements of section 5.0 of department Circular PWS-4 (~~1994~~ 1998 edition), must meet the following requirements:

(a) The supplier of water shall submit and obtain department approval of a monitoring program for bottled water. The monitoring program must provide reasonable assurance that the bottled water meets all MCLs. The supplier must monitor a representative sample of bottled water for all contaminants regulated under department Circular PWS-1 (~~1994~~ 1998 edition), during the first quarter it supplies the bottled water to the public and annually thereafter. Results of the monitoring program must be provided to the department within 30 days after the end of the first quarter and thereafter within 30 days after the end of a 12-month period.

(b)-(d) Remains the same.

(8)(a)-(f) Remains the same.

(g) In requiring use of a point-of-entry device as a condition for granting an exemption or variance from the treatment requirements for lead and copper under sections 5.3 or 5.4 of department Circular PWS-4 (~~1994~~ 1998 edition), the supplier must demonstrate to the department's satisfaction that use of the device will not cause increased corrosion of lead and copper bearing materials located between the device and the tap that could increase contaminant levels at the tap.

(9) The department hereby adopts and incorporates by reference department Circular PWS-1 (~~1994~~ 1998 edition), which sets forth standards and other requirements for volatile organic chemicals, other organic chemicals, and inorganic chemicals; and department Circular PWS-4 (~~1994~~ 1998 edition), which sets forth standards and monitoring requirements for lead and copper. A copy of each may be obtained from the Department of Environmental Quality, PO Box 200901, Helena, MT 59620-0901. AUTH: 75-6-103, MCA; IMP: 75-6-103, 75-6-107, MCA

17.38.256 VARIANCE "B" (1) The department may grant a variance "B" to any public water supply system from any requirement of a specified treatment technique (except the filtration and disinfection requirements of department Circular PWS-3 (~~June 1991~~ 1998 edition); ARM 17.38.205 and 17.38.208) upon a finding that the public water supply system applying for the variance has demonstrated that such treatment technique is not necessary to protect the health of persons because of the nature of the raw water source of such system.

(2) Remains the same.

(3) The department hereby adopts and incorporates by reference department Circular PWS-3 (~~June 1991~~ 1998 edition), which sets forth criteria to avoid filtration of a surface water source or a ground water source under the direct influence of surface water. A copy may be obtained from the

Department of Environmental Quality, PO Box 200901, Helena, MT 59620-0901.
AUTH: 75-6-103, MCA; IMP: 75-6-103, 75-6-107, MCA

17.38.270 ADOPTION AND INCORPORATION BY REFERENCE

(1) The board hereby adopts and incorporates by reference:

(a) department Circular PWS-1, "Standards and Monitoring Requirements for Volatile Organic, Inorganic, and Synthetic Organic Chemicals" (~~1994~~ 1998 edition), which sets forth standards and monitoring requirements for the foregoing chemicals;

(b) department Circular PWS-2, "Public Notification Requirements for Public Water Supply System Suppliers" (~~1994~~ 1998 edition), which sets forth public notification requirements for public water supply system suppliers;

(c) department Circular PWS-3, "Criteria to Avoid Filtration of a Surface Water Source or a Groundwater Source Under the Direct Influence of Surface Water" (~~June 1991~~ 1998 edition), which sets forth criteria to avoid filtration of a surface water source or a ground water source under the direct influence of surface water; and

(d) department Circular PWS-4, "Requirements for the Control of Lead and Copper" (~~1994~~, 1998 edition), which sets forth standards and monitoring requirements for lead and copper.

(2) Remains the same.
AUTH: 75-6-103, MCA; IMP: 75-6-103, MCA

4. In addition to the changes in the text of the rules, the Board is proposing amendments to 4 circulars that are incorporated by reference into these rules. The Board proposes to amend Department Circulars PWS-1 "Standards and Monitoring Requirements for Volatile Organic, Inorganic, and Synthetic Organic Chemicals", PWS-2 "Public Notification Requirements For Public Water Supply System Suppliers", PWS-3, "Criteria to Avoid Filtration of a Surface Water Source or a Groundwater Source Under the Direct Influence of Surface Water", PWS-4 "Requirements for the Control of Lead and Copper". The amendments make 4 types of changes in the circulars. First, the amendments change the name of the Department from Department of Health and Environmental Sciences to the Department of Environmental Quality, change the mailing address and phone number, and change the references to rule numbers from the former ARM Title 16 rule number to the current and corresponding rule number in ARM Title 17. These amendments make no substantive changes in the rules. Second, the amendments correct typographical errors and make other nonsubstantive editorial changes. Third, section 4.1(E)(4) of Circular PWS-1 is changed to allow DEQ to waive additional nitrite monitoring in certain instances. Fourth, section 7.1(I) of Circular PWS-1 is amended to automatically waive the monitoring requirement for unregulated volatile organic chemicals for systems with less than 150 service connections. This change would eliminate the requirement that a system with

less than 150 service connections send a letter to DEQ requesting a waiver and would instead automatically waive the monitoring requirement. Also, it would allow DEQ to enter the public water supply system and conduct the monitoring, under 75-6-104, MCA, or request the supplier to monitor. To adopt these changes into the rules, the references to the circulars throughout the rules are amended to reference the 1998 version of the circular. Because of the volume of the circulars, the amendments to the circulars are not set out in this notice. However, copies are available from the Board upon request at the address given below for mailing of comments.

5. This rulemaking is being proposed for 4 general reasons. First, in Chapter 488, Laws of 1995, the 1995 Montana legislature amended 75-6-102, MCA, which is the definitions section in the Public Water Supply Act, to redefine the terms "public water supply system," "public sewage system," "community water system," and "transient noncommunity water system". Therefore, certain definitions of those terms in ARM 17.38.101 and 17.38.202 are being changed to match the definitions in the statute, which they implement. Second, the 1995 Montana Legislature reorganized portions of state government that included the former Department of Health and Environmental Sciences (DHES), the former Department of State Lands, the Department of Natural Resources and Conservation and the former Department of Social and Rehabilitation Services. A new agency that was created, the Department of Environmental Quality (DEQ), incorporated parts of DHES, DSL and DNRC. This reorganization makes it necessary to make minor modifications to the rules to use the appropriate name of the agency where specific agency references occur, and to change addresses and phone numbers. Third, DEQ is proposing to change the requirements for microbiological sampling, for transient non-community public water supplies, from monthly to quarterly to be consistent with federal requirements for this class of public water supply. Fourth, the Board is proposing to make additional "housekeeping" changes to the rules for clarification and to correct typographic and other errors.

The Board is proposing amendments to ARM 17.38.101(3)(b), (3)(h), (3)(h)(i), and 17.38.202(32), (32)(a), and (32)(b)(ii), to match definitions in 75-6-102, MCA.

The Board is proposing to amend ARM 17.38.101(3)(b)(i) to make the definition for a community sewage system consistent with the definition for a community water system.

The Board is proposing amendments to ARM 17.38.101 (3)(h)(ii) and 17.38.202(32)(b) and (32)(b)(i) to make the language consistent with other changes in definitions (e.g. changing "any" to "a" and "which" to "that") and to delete unnecessary language (e.g. deleting "that serves either transient or non-transient populations" in ARM 17.38.202 (32)(b)(i)).

The amendment to ARM 17.38.202(35) corrects a typographical error.

The Board is proposing to eliminate the maximum contaminant levels (MCL) for microbiological contaminants in ARM 17.38.207(1)(a)(iii) and (iv). These are Montana specific

requirements that are not currently tracked and have been seldom, if ever, enforced. Typically, systems will exceed shorter term MCLs, which are not being proposed for amendment, for microbiological contaminants and the DEQ's response is immediate to these MCL exceedances. In addition, the United States Environmental Protection Agency (EPA) has criteria, called significant non-compliance (SNC), that define longer term compliance with MCL and monitoring requirements. The EPA notifies DEQ when these longer term criteria are exceeded and requires a response from DEQ. Because of the existing SNC criteria and the requirement that DEQ take action to ensure a return to compliance for systems that exceed the criteria, the existing MCLs in ARM 17.38.207(1)(a)(iii) and (iv) are not necessary.

The Board proposes to amend ARM 17.38.208(4)(e)(iii) to allow "free chlorine", in addition to "total chlorine", "combined chlorine" or "chlorine dioxide", to be measured as residual disinfection concentration to determine compliance with this rule. "Free chlorine" is the preferred form of chlorine to measure and is the most common form measured. Additionally, the words "substitute for" are proposed to be added to the second to last sentence to clarify that heterotrophic plate count (HPC) is not an actual disinfectant residual, but is, in fact, a substitute for disinfectant residual.

The Board proposes to amend ARM 17.38.215(1)(b)(i) to eliminate the requirement that transient non-community water systems, using ground water and serving less than 1,000 persons, sample for coliform bacteria in accordance with 17.38.215(1)(a). This is a Montana specific requirement that currently makes this class of water system sample monthly for coliform bacteria. The deletion in ARM 17.38.215(1)(b)(i) would require these water systems to sample once each calendar quarter for coliform bacteria instead of once each month. The proposed change would make the Montana rule more consistent with federal requirements.

The Board proposes to amend ARM 17.38.215(4) to clarify where special purpose samples may be taken. This rule was primarily intended to allow water systems to sample the water after construction or repair or maintenance work had been done on parts of the system to determine if the water was safe to drink before returning that part of the system back to active service. As currently written, the rule can be interpreted to allow special purpose samples to come from an active part of a system (i.e., a part of a system that is currently being used to treat, pump, store or deliver drinking water) and not count towards compliance. That interpretation may make it difficult for DEQ to take necessary public health protection measures in the case that a special sample indicates bacterial contamination is present in the water in an active part of the system. The proposed change would not allow special purpose samples to come from active parts of the system. Thus, samples taken from active parts of the system may count towards compliance.

The Board proposes to add ARM 17.38.215(8) to require at

least 2 samples to be analyzed for coliform bacteria from a new drinking water source before that new source can be connected to a public water supply system. This amendment is being proposed to be consistent with the practice of requiring, as a condition of engineering plan approval, that specifications call for samples from new water sources. The proposed amendment would clarify that sampling a new source is a public health requirement as well as a plan approval condition.

The Board is proposing to amend ARM 17.38.216(2) to require only 1 sample for the parameters listed in ARM 17.38.216(1)(a) through (k). As currently written this rule requires that 3 samples for these parameters be taken before further sampling can be waived. These parameters consist of water quality indicators and unregulated chemicals. Sampling for these parameters is not a direct health based requirement and therefore it is not critical that 3 samples be taken. However, for some water systems it is necessary that the values of these parameters be quantified in order to adjust treatment processes or to determine compliance with other regulations. Therefore, with this proposed change, DEQ would still retain the authority to require that these parameters be tested on a routine basis, but would have the authority to waive future routine sampling, after 1 sample, where appropriate.

The proposed amendments to ARM 17.38.216(7) and (8) change the chemical and radiological monitoring requirements for new sources of drinking water for public water supplies. The proposed amendment simply specifies the chemical and radiological contaminants that must be sampled and analyzed and when the contaminants must be sampled and analyzed. The existing rule does not provide enough detail regarding the specific contaminants, the timing of the sampling and does not distinguish between the relative health effects of the contaminants. The proposed amendment would require that, before the water source is connected and used, the water be sampled and analyzed for contaminants that have acute health effects. Sampling and analysis for contaminants with non-acute health effects would be required within 3 months of the source being connected to the system.

The Board is proposing to amend ARM 17.38.217(8) to provide that all systems that practice full time disinfection of a drinking water source must notify DEQ when the disinfectant residual falls below the 0.2 milligram per liter limit. The existing rule only requires notification by systems using surface water or ground water under the direct influence of surface water. The proposed change would require notification for systems using surface water, ground water and ground water under the direct influence of surface water. Where disinfection treatment is necessary, maintaining a consistent disinfectant residual for public health protection is crucial.

The Board proposes to amend ARM 17.38.226(1)(a)(ii) to require a disinfectant residual be measured in the distribution system for systems that use surface water or ground water under the direct influence of surface water in order to determine compliance with ARM 17.38.208(4)(e)(iii). A member of the regulated community has noted that ARM 17.38.208(4)(e)(iii)

requires that a specified disinfectant residual be maintained, but not that the disinfectant residual be measured. The proposed amendment clarifies that in order to maintain and demonstrate a specified chlorine residual, a chlorine residual measurement must be made.

The Board proposes to amend ARM 17.38.229(4) to require a minimum disinfectant residual in the distribution system of 0.2 milligrams per liter for water systems using full time disinfection of a ground water source. This proposed amendment is to make the requirements for systems that use disinfection treatment the same regardless of the type of source. The proposed amendment does not require disinfection of ground water sources. However, some ground water systems must disinfect because of poor quality or unprotected sources and the proposed amendment would affect those systems.

The nonsubstantive changes to the circulars are being made to correct the circular and update them to reflect current agency and rule structures.

The change to PWS-1, section 4.1(E)(4), is proposed because this requirement is currently more stringent than the federal requirement and analytical results from initial sampling under this requirement have not shown nitrite to be a significant contaminant in public water supplies in Montana. Under proposed amendments to ARM 17.38.216(7) and (8), new public water supply sources would be required to sample at least once for nitrite. In addition, DEQ may require nitrite sampling under ARM 17.38.219 when nitrite contamination is suspected.

The changes to PWS-1, section 7.1(I), are proposed to correct an inconsistency in PWS-1. Under section 7.2(I), a waiver is automatically granted for systems serving fewer than 150 service connections for unregulated inorganic and synthetic organic chemicals. When PWS-1 was originally proposed and adopted, it was intended that systems serving less than 150 service connections receive a waiver for unregulated chemicals in all 3 groups: inorganic chemicals, synthetic organic chemicals and volatile organic chemicals. This proposed amendment will make sections 7.1(I) and 7.2(I) consistent and implement the original intent of the rule.

6. Interested persons may submit their data, views, or arguments concerning the proposed rules, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to the Board of Environmental Review, PO Box 200901, Helena, MT 59620-0901, no later than February 27, 1998.

7. Richard R. Thweatt has been appointed to preside over and conduct the hearing.

Reviewed by: BOARD OF ENVIRONMENTAL REVIEW

JOHN F. NORTH, Rule Reviewer

CINDY E. YOUNKIN, Chairperson

Certified to the Secretary of State January 16, 1998.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the adoption of new rules I-VI, and the repeal of 17.38.105 pertaining to cross-connections in drinking water supplies.	)))))	NOTICE OF PUBLIC HEARING FOR PROPOSED ADOPTION OF NEW RULES AND REPEAL OF AN EXISTING RULE (Water Quality)

To: All Interested Persons

1. On February 23, 1998, at 3:00 p.m., the Board will hold a public hearing in Room 111 of the Metcalf Building, 1520 E. 6th Ave., Helena, Montana, to consider the adoption and repeal of the above-captioned rules.

The Board will make reasonable accommodations for persons with disabilities who wish to participate in this hearing. If you need an accommodation, contact the department no later than 5 p.m., February 20, 1998, to advise us of the nature of the accommodation you need. Please contact the Board at P.O. Box 200901, Helena, MT 59620-0901; phone (406)444-2544; fax (406) 444-4386.

2. The rule being repealed can be found at Administrative Rules of Montana page 17-3525.

AUTH: 75-6-103, MCA; IMP: 75-6-103, MCA

3. The new rules, as proposed, appear as follows:

RULE I DEFINITIONS For the purposes of this subchapter, unless the context requires otherwise, the following definitions, in addition to those in 75-6-102, MCA, apply:

(1) "Approved backflow prevention assembly or device" means an assembly or device included in the "List of Approved Backflow Prevention Assemblies", incorporated by reference in [Rule VI].

(2) "Back pressure" means any increase of water pressure in the downstream piping system above the supply pressure at a point where backflow could occur.

(3) "Back siphonage" means a form of backflow caused by a reduction in supply pressure which causes a negative or sub-atmospheric pressure to exist in the water system.

(4) "Backflow" means the undesirable reversal of water flow or the reversal of water flow containing other liquids, gases or other substances from a connected source that flows into the distribution pipes of the public water supply system.

(5) "Backflow prevention assembly" means an apparatus that consists of a backflow prevention device, 2 shutoff valves, and appropriate test ports.

(6) "Backflow prevention device" means an apparatus designed to prevent backflow.

(7) "Certified backflow prevention assembly tester" means a person who holds a current certificate issued by a certification program of any state authorizing the person to

test backflow prevention assemblies or who holds a current certificate from the American society of sanitary engineers, American backflow prevention association, foundation for cross-connection control and hydraulic research, or American water works association.

(8) "Cross-connection" is defined in 75-6-102, MCA.

(9) "Health hazard" means a condition that causes or creates a potential for water contamination that may cause disease or have other physical or toxic effects on humans.

(10) "Water contamination hazard" means a condition that causes or creates a potential for water contamination but does not constitute a health hazard.

AUTH: 75-6-103, MCA; IMP: 75-6-103, MCA

RULE II CROSS-CONNECTIONS: REGULATORY REQUIREMENTS

(1) A cross-connection on a public water supply system must be eliminated by the disconnection of the cross-connection whenever reasonably practicable. Whenever elimination of a cross-connection is not reasonably practicable and the cross-connection creates a health or water contamination hazard, the hazard must be eliminated by the insertion into the piping of an approved backflow prevention assembly or device in accordance with (2) of this rule.

(2) For the cross-connections identified below, the following types of approved backflow prevention assemblies or devices must be used:

(a) A health hazard created by a cross-connection that may be subject to back pressure must be eliminated by an approved reduced pressure zone backflow prevention assembly or an air-gap.

(b) A health hazard created by a cross-connection that may be subject to back siphonage, but not subject to back pressure, must be eliminated by an approved air-gap, pressure vacuum breaker assembly, atmospheric vacuum breaker, or a reduced pressure zone backflow prevention assembly.

(c) A water contamination hazard created by a cross-connection that may be subject to back pressure must be eliminated, at a minimum, by an approved double check valve assembly.

(d) A water contamination hazard created by a cross-connection that may be subject to back siphonage, but is not subject to back pressure, must be eliminated, at a minimum, by an approved double check valve assembly, pressure vacuum breaker assembly, or an atmospheric vacuum breaker device.

(3) A backflow prevention assembly or device must be installed and maintained, at a minimum, in accordance with the manufacturer's specifications.

(4) This rule applies to piping between water systems outside of any building and to piping within any building, including cross-connections in plumbing systems.

(5) The department may not approve a plan for the construction of a public water supply system containing provisions for cross-connection unless provisions for the protection of the public water supply are demonstrated in the plan.

AUTH: 75-6-103, MCA; IMP: 75-6-103, MCA

RULE III VOLUNTARY CROSS-CONNECTION CONTROL PROGRAMS: APPLICATION REQUIREMENTS (1) To obtain approval of a voluntary cross-connection control program, an owner or operator of a public water supply system shall file an application with the department.

(2) The application must be accompanied by a copy of the local ordinances or plan of operations that describes the methods for implementing the cross-connection control program. The local ordinances or plan of operations must include the following:

(a) a statement defining the responsibilities of the public water supplier and the responsibilities of the consumer regarding implementation of the program;

(b) a requirement for a survey for the purpose of identifying locations where cross-connections are likely to occur and evaluating the degree of hazard at each location;

(c) a requirement to eliminate cross-connections and hazards in compliance with [Rule II] on a priority basis beginning with those identified as having the highest degree of hazard. A health hazard must be assigned a higher degree of risk than all water contamination hazards;

(d) a description of the procedures and criteria that the public water supplier must or will use to evaluate the degree of hazard represented by a cross-connection. The procedures and criteria must, at a minimum, be consistent with the procedures and criteria specified in the "Manual of Cross-Connection Control", incorporated by reference in [Rule VI];

(e) the method for identifying the appropriate backflow prevention assembly or device for a specific degree of hazard. The methodology must be in accordance with the "Manual of Cross-Connection Control" incorporated by reference in [Rule VI];

(f) a requirement for the installation of backflow prevention assemblies or devices where cross-connections identified in the survey cannot be practically eliminated;

(g) a provision for maps that indicate the location and type of any backflow prevention assembly or device identified or installed in the survey and a provision requiring records regarding the inspection and testing of these devices; and

(h) a written procedure that will be used to inspect and test a backflow prevention assembly or device. The procedures must provide that a certified backflow prevention assembly tester, as defined in this subchapter, will be used to conduct the inspection and testing.

AUTH: 75-6-103, MCA; IMP: 75-6-103, MCA

NEW RULE IV VOLUNTARY CROSS-CONNECTION CONTROL PROGRAMS: PROCEDURE FOR REVIEW OF APPLICATIONS (1) Upon receipt of an application for a voluntary cross-connection control program, the department shall review the application within 60 days to determine if the application is complete. If the application is incomplete, the department shall send written notification to the public water supplier identifying the deficiencies and requesting additional information. Within 60 days of receipt of

the requested information, the department shall review the application for compliance with this subchapter.

(2) After reviewing a complete application for compliance with this subchapter, the department shall approve the application if it meets the requirements of [Rule V] and disapprove the application if it does not meet those requirements. The department shall notify the public water supplier in writing that the voluntary program is or is not approved by the department. If a voluntary program is not approved, the department shall specify the reasons for its denial of the application.

(3) If a public water supplier wishes to modify a department-approved voluntary program for cross-connection control, the modification must be submitted to the department for its review and approval according to the requirements of this subchapter.

AUTH: 75-6-103, MCA; IMP: 75-6-103, MCA

RULE V VOLUNTARY CROSS-CONNECTION CONTROL PROGRAMS: STANDARDS AND REQUIREMENTS FOR CROSS-CONNECTION CONTROL

(1) The department shall approve a voluntary program for cross-connection control if:

(a) the applicant has submitted an application that meets the requirements of [Rule III];

(b) the program provides for elimination of cross-connections, health hazards, and water contamination hazards, and for installation and maintenance of backflow protection devices in accordance with [Rule II];

(c) the program provides that backflow prevention assemblies or devices must be inspected and tested, at least annually, in accordance with the "Manual of Cross-Connection Control", incorporated by reference in [Rule VI]; and

(d) the program provides that inspection and testing of backflow prevention assemblies or devices must be performed by a certified backflow prevention assembly tester.

(2) A cross-connection is exempt from the standards in this rule if the following conditions are met:

(a) the cross-connection is with a public water supply system that has been approved by the department;

(b) the owner or operator of the public water supply that is or will be connected to the system with the approved voluntary cross-connection control program:

(i) sends a written request for an exemption to the public water supplier with the approved voluntary program; and

(ii) submits a sanitary survey conducted within the 3 years preceding the request for an exemption that:

(A) indicates that there are no cross-connections that violate the requirements of [Rule II(1) and (2)] within the public water supply system that is or will be connected; and

(B) has been conducted by the department or a person who has contracted with the department for the purpose of performing the sanitary survey; or

(C) has been determined by the department to be complete and reliable; and

(c) the public water supplier with the approved voluntary

program determines that the public water supply that is or will be connected is acceptable as a source.
AUTH: 75-6-103, MCA; IMP: 75-6-103, MCA

NEW RULE VI INCORPORATION BY REFERENCE (1) The board hereby adopts and incorporates by reference the following publications:

(a) "List of Approved Backflow Prevention Assemblies" published by the Foundation for Cross-Connection Control and Hydraulic Research, University of Southern California (1998 edition);

(b) "Manual of Cross-Connection Control" (ninth edition), published by the Foundation for Cross-Connection Control and Hydraulic Research, University of Southern California (Dec. 1993).

(2) These publications set forth approved backflow prevention assemblies or devices and standards for cross-connections to public water supply systems. Copies of the publications listed above are available at the Department of Environmental Quality, 1520 E. 6th Ave., PO Box 200901, Helena, MT 59620-0901.
AUTH: 75-6-103, MCA; IMP: 75-6-103, MCA

4. The Board is proposing Rule I and Rules III through VI to comply with Chapter 488, Laws of 1995. Chapter 488 requires the Board to adopt minimum standards for cross-connection control devices that may be implemented by the owners and operators of public water supply systems who wish to participate in a voluntary cross-connection control program. The standards are intended to ensure that a public water supply does not become contaminated when it is connected to another non-public water supply or other source of contamination.

Rule I is proposed to define terms that are used in the succeeding Rules II through VI so that the requirements of the rules are definite and understandable.

Rule III is proposed to establish the requirement that an owner or operator of a public water supply must file an application with the department and to specify what must be included in the application.

Rule IV is proposed to establish and notify the public of a procedure for review and approval of voluntary cross-connection control programs.

Rule V is proposed to establish substantive requirements for the contents for voluntary cross-connection control programs. Rule V is also being proposed to establish the measures that voluntarily submitted cross-connection control programs must employ to protect public water systems from contamination by cross-connections. The Board has determined that, in order to prevent contamination of public water supplies, cross-connections should be eliminated whenever practicable and that those that are allowed and present health or water contamination hazards should be equipped with backflow prevention mechanisms.

Rule VI is proposed to adopt and incorporate by reference the List of Approved Backflow Prevention Assemblies and the

Manual of Cross-Connection Control. Both documents are published by the Foundation for Cross Connection Control and Hydraulic Research, University of Southern California. The list of approved backflow prevention assemblies provides a list of backflow preventers that have met minimum standards of production and have met certain laboratory and field testing requirements. Therefore, a high level of public health protection accompanies backflow preventers that are selected from this list.

The repeal of ARM 17.38.105 and its replacement by Rule II is proposed to amend the existing regulatory requirements for cross-connections in public water supply systems. These requirements are applicable to every public water supply system, whether or not it is subject to a voluntary cross-connection control program, and the authority to repeal ARM 17.38.105 and adopt Rule II is the Board's general rulemaking authority in the Public Water Supply Act. ARM 17.38.105 regulated only cross-connections that the department determined to endanger the purity of the public water supply. It allowed the owner or operator of a public water supply that had such a cross-connection to either remove it or install certain generally described devices. The Board has determined that these requirements are not adequate to protect the public because cross-connections can be installed without the department's knowledge, because most cross-connections present at least some risk and should be eliminated wherever practicable, and because acceptable cross-connection devices should be defined and required in order to more effectively protect the public. The repeal of ARM 17.38.105 and its replacement by Rule II is proposed to accomplish these purposes.

5. Interested persons may submit their data, views, or arguments concerning the proposed rules, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to the Board of Environmental Review, PO Box 200901, Helena, MT 59620-0901, no later than February 27, 1998.

6. Richard R. Thweatt has been appointed to preside over and conduct the hearing.

BOARD OF ENVIRONMENTAL REVIEW

CINDY E. YOUNKIN, Chairperson

Reviewed by

JOHN F. NORTH, Rule Reviewer

Certified to the Secretary of State January 16, 1998.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the adoption of new Rules I-IV, providing for assessment of administrative penalties for violations of water quality act.	)))))	NOTICE OF PUBLIC HEARING FOR PROPOSED ADOPTION OF NEW RULES (Water Quality)

To: All Interested Persons

1. On February 18, 1998, at 1:30 p.m., the Board will hold a public hearing in Room 35 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the adoption of the above-captioned rules.

The Board will make reasonable accommodations for persons with disabilities who wish to participate in this hearing. If you need an accommodation, contact the department no later than 5 p.m., February 17, 1998, to advise us of the nature of the accommodation you need. Please contact the Board at P.O. Box 200901, Helena, MT 59620-0901; phone (406)444-2544; fax (406)444-4386.

2. The proposed rules propose an administrative process and describe a methodology for assessment of administrative penalties for violations of the Water Quality Act (Title 75, Chapter 5, MCA) and rules promulgated under the Act (ARM Title 17, chapter 30).

3. The proposed new rules are:

RULE I DEFINITIONS For purposes of [Rules I-IV], the following terms have the meanings or interpretations indicated below and must be used in conjunction with and supplemental to those definitions contained in 75-5-103, MCA:

(1) "Class I violation" means:

(a) a violation of a department order;

(b) a discharge of waste that enters state waters without a permit, or in a quantity or quality not authorized by a permit, unless the discharge falls under (3)(c) of this rule as a Class III violation;

(c) failure to comply with a requirement regarding notification of a spill, bypass or upset condition that results in an unpermitted discharge to state waters;

(d) violation of a permit compliance plan or schedule;

(e) failure to provide reasonable access to premises or records when required by 75-5-603, MCA, a permit, or an order; or

(f) a violation that causes a major harm or poses a major risk of harm to public health or the environment.

(2) "Class II violation" means:

(a) construction, operation, or modification of a disposal system without first obtaining the appropriate permit;

(b) failure to submit a report or plan, as required by rule, permit, or license and not otherwise classified in this rule;

(c) placement of wastes in a location that will cause pollution of state waters;

(d) failure to monitor in accordance with a permit;

(e) failure to pay a permit fee as required by department rule or order; or

(f) any violation that is not otherwise classified in this rule.

(3) "Class III violation" means:

(a) failure to submit a discharge monitoring report of sample analyses by the time specified in an applicable permit;

(b) failure to submit a complete discharge monitoring report;

(c) exceeding a permit condition limiting biochemical oxygen demand (BOD), carbonaceous biochemical oxygen demand (CBOD), or total suspended solids (TSS) by a concentration of 20% or less, or exceeding a mass loading limitation by 10% or less;

(d) violation of a removal efficiency requirement by a factor of less than 0.2 times the number value of the difference between 100 and the applicable removal efficiency requirement; or

(e) violation of a pH requirement by less than 0.5 pH.

(4) "Compliance" means meeting requirements of the Water Quality Act, Title 75, chapter 5, MCA, ARM Title 17, chapter 30, and any administrative permit, authorization, or order issued under any of these authorities.

(5) "Extent and gravity of the violation" means the extent of a violator's deviation from the applicable rule, statute, or order. Relevant factors include concentration, volume, percentage, duration, toxicity, and the actual or potential effects of the violation on human health or state waters. Any single factor may be conclusive.

(6) "Nature of the violation" means the class to which the violation belongs as determined under (1), (2), or (3) of this rule.

(7) "Permit" means a Montana ground water pollution control system or Montana pollutant discharge elimination system permit issued under ARM Title 17, chapter 30, subchapters 10 and 13 respectively; or an authorization under ARM 17.30.637(3).

(8) "Requirement" means any applicable provision of the Water Quality Act (Title 75, chapter 5, MCA), or its implementing rules (ARM Title 17, chapter 30), or any provision of a permit, authorization, or administrative order issued under any of these authorities.

(9) "Violation", unless otherwise specified within a rule, means a transgression of any requirement.

IMP: 75-5-611, MCA; AUTH: 75-5-201, MCA

RULE II ENFORCEMENT ACTIONS FOR ADMINISTRATIVE PENALTIES

(1) The department, upon determining that a violation has occurred, may initiate an administrative action for penalty.

(2) Except for a violation specified under (7) of this rule, the department shall first issue a written notice letter to a violator by certified mail or personal delivery that:

(a) contains the information required in 75-5-611, MCA, including the amount of penalty proposed for assessment under (5) of this rule;

(b) explains how the penalty was calculated;

(c) describes the violator's opportunities for administrative appeal or for informal conference with the department; and

(d) discloses that, unless the alleged violation is vacated or dismissed, the department will include the alleged violation in violator's history for purposes of assessing penalties for any future violations even though this violation may ultimately be resolved without assessment of a penalty.

(3) Refusal to accept delivery of the notice letter does not render service incomplete.

(4)(a) The department may not assess a penalty for a violation cited in the notice letter if the violator submits to the department in writing within the time specified in the notice letter:

(i) a response signed by the violator certifying that its activity is now in compliance with all requirements cited in the notice letter; or

(ii) a proposal that describes a plan and schedule for corrective action that will bring the activity into timely compliance with the requirements cited in the notice letter and that is approved by the department.

(b) The department shall respond to a proposed corrective action plan within 30 days either approving or disapproving the proposed plan.

(5)(a) If, after completing the requirements of (2) of this rule, the department determines that the violator has not adequately responded as required in (4) of this rule, the department may issue an administrative notice and order that assesses a penalty.

(b) The administrative notice and order must contain, as applicable, the information described in (2) of this rule.

(c) If the department finds that a violator is not in compliance as certified under (4)(a)(i) of this rule, or if a violator fails to adhere to the requirements of the plan and schedule for corrective action approved under (4)(a)(ii) of this rule, the department may without further notice issue an administrative notice and order assessing a penalty.

(6) The department shall notify the violator in writing within 30 days of the resolution of an enforcement action under this rule briefly stating the manner of resolution.

(7) For a violation of 75-5-605, MCA, that represents an imminent threat to human health, safety, or welfare or to the environment, the department may issue immediately, without a written notice letter, an administrative notice and order that assesses administrative penalties.

IMP: 75-5-611, MCA; AUTH: 75-5-201, MCA

RULE III FORMULA FOR DETERMINING ADMINISTRATIVE PENALTIES (1) Subject to (7) of this rule and the limits provided in 75-5-611, MCA, the department shall determine the penalty in accordance with the point system set out in this rule.

(2) The department shall assign points for each violation based on the following criteria:

(a) The department shall consider the nature, extent, and gravity of the violation. The nature of the violation must be classified and its extent and gravity determined in accordance with [RULE IV]. Points must then be assessed in accordance with the following matrix:

Nature of violation	Extent and gravity of violation		
	minor	moderate	major
class I:	31 - 36	37 - 43	44 - 50
class II:	16 - 20	21 - 25	26 - 30
class III:	1 - 5	6 - 10	11 - 15

(b) The department shall consider the circumstances of the violation. If a violation has occurred through no negligence on the part of the permittee, it must not be assigned points under this category. A violation involving ordinary negligence, which is failure to exercise toward the violated legal requirement the care ordinarily exercised by a person of common prudence, must be assigned 1 to 15 points depending upon the degree of negligence. If the violation occurred due to gross negligence which is gross or reckless disregard for the violated legal requirement, or intentional conduct, it must be assigned 16 to 30 points depending upon the degree of fault.

(c)(i) The department shall consider the violator's history of violations. One point must be assigned for each class III violation; 3 points for each class II violation; and 5 points for each class I violation. Except as provided in (ii) below, any violation of which the violator has received written notice must be counted regardless of whether further enforcement action was taken.

(ii) A violation must not be counted if:

(A) the notice or order was vacated; or

(B) the notice or order is subject to a pending administrative or judicial review or if the time to request review or to appeal any administrative or judicial decision has not expired. Thereafter it must be counted for 3 years, except that a violation for which the notice or order has been vacated or dismissed must not be counted.

(d) The department shall consider voluntary mitigation. If the violator takes measures beyond those required by law to address or mitigate the violation or the impacts of the violation to waters of the state, 1 to 10 points may be deducted from the total points assigned depending on the amount voluntarily expended. No points may be deducted for corrective actions conducted by the violator pursuant to a department permit, notice or order.

(3) The amount of penalty must be assessed based on the following point schedule:

Points	Dollars	Points	Dollars
10 and below	$200	56	$3,600
11	$220	57	$3,700
12	$240	58	$3,800
13	$260	59	$3,900
14	$280	60	$4,000
15	$300	61	$4,100
16	$320	62	$4,200
17	$340	63	$4,300
18	$360	64	$4,400
19	$380	65	$4,500
20	$400	66	$4,600
21	$420	67	$4,700
22	$440	68	$4,800
23	$460	69	$4,900
24	$480	70	$5,000
25	$500	71	$5,100
26	$600	72	$5,200
27	$700	73	$5,300
28	$800	74	$5,400
29	$900	75	$5,500
30	$1,000	76	$5,600
31	$1,100	77	$5,700
32	$1,200	78	$5,800
33	$1,300	79	$5,900
34	$1,400	80	$6,000
35	$1,500	81	$6,200
36	$1,600	82	$6,400
37	$1,700	83	$6,600
38	$1,800	84	$6,800
39	$1,900	85	$7,000
40	$2,000	86	$7,200
41	$2,100	87	$7,400
42	$2,200	88	$7,600
43	$2,300	89	$7,800
44	$2,400	90	$8,000
45	$2,500	91	$8,200
46	$2,600	92	$8,400
47	$2,700	93	$8,600
48	$2,800	94	$8,800
49	$2,900	95	$9,000
50	$3,000	96	$9,200
51	$3,100	97	$9,400
52	$3,200	98	$9,600
53	$3,300	99	$9,800
54	$3,400	100 and above	$10,000
55	$3,500		

(4) The total penalty assessed under this system is determined by multiplying the penalty amount determined under (1) through (3) of this rule by the number of days on which the practice or condition constituting the violation has occurred, subject to the limits provided in 75-5-611, MCA.

(5) The department shall determine any economic benefit or

savings that the violator gained as a result of the violation. The department shall use the best information reasonably available to it at the time of calculating the penalty to determine the economic benefit or savings. The dollar value of the economic benefit or savings, if any, shall be added to the penalty amount calculated in (1) through (4) of this rule.

(6)(a) If the violator is unable to immediately pay the full penalty amount, the department may place the violator on a payment schedule with interest on the unpaid balance at the rate assessed by the Montana department of revenue on income tax due.

(b) The department may reduce a penalty determined under this rule based on the violator's inability over the long term to pay the full penalty amount pursuant to (a) above. If the violator seeks to reduce the penalty based on its inability to pay the penalty, the violator shall provide to the department documentary evidence demonstrating violator's financial limitations. However, the full penalty amount may not be lowered to a value less than the violator's economic benefit resulting from the violation.

(c) To be eligible for a penalty reduction based on inability to pay the penalty, the violator must show that the violation was not intentional or flagrant.

(7) The department may waive the point system if it finds that exceptional factors make use of the point system demonstrably unjust or demonstrably inadequate as a deterrent. The department shall set forth the basis for waiver in writing. The department may not waive use of the point system or reduce the penalty on the basis that a reduction in the penalty could be used to offset the costs of abating the violation. If the department waives the use of the point system, it shall use the criteria listed in this rule, but not the points attributable thereto, and other matters that justice may require to determine the amount of penalty.

AUTH: 75-5-201, MCA; IMP: 75-5-611, MCA

RULE IV EXTENT AND GRAVITY OF THE VIOLATION (1) In addition to factors described in [Rule I], the extent and gravity of the violation must be characterized as major, moderate, or minor according to the following criteria:

(a) A violation is "major" if:

(i) the violation presents a high likelihood of exposing humans to significant pollution; or

(ii) the violator deviates from the applicable requirements such that there is significant noncompliance in terms of both degree of deviation and length of time.

(b) A violation is "moderate" if:

(i) the violation has exposed or will likely expose state waters, but probably not humans, to significant pollution; or

(ii) the violator deviates from applicable requirements such that there is significant noncompliance in terms of either degree of deviation or length of time, but not both.

(c) A violation is "minor" if:

(i) the violation poses a relatively low likelihood of exposing humans and a low likelihood of exposing state waters to

significant pollution; and

(ii) the violator deviates from applicable requirements but not to the extent that there is significant noncompliance in terms of either degree of deviation or length of time.

AUTH: 75-5-201, MCA; IMP: 75-5-611, MCA.

4. The Board is proposing these rules to generally implement provisions of 75-5-611, MCA, which provides that assessments of administrative penalties under the Water Quality Act must be based on the criteria set forth in 75-5-631(4), MCA, and administrative penalty rules adopted pursuant to 75-5-201, MCA. These rules are therefore necessary to allow the Department of Environmental Quality to assess administrative penalties and also to ensure a consistent and effective program for implementation of those penalties, to ensure that the administrative penalty program is an effective element of the overall water quality enforcement program, and to deter both individual violators and the general regulated community from activities that do not comply with the Water Quality Act (Title 75, Chapter 5, MCA) or rules implementing the Water Quality Act.

Rule I contains definitions to explain significant terms used in these rules. These terms must be well defined so that their use throughout the rules is clear. Sections (1) through (3) of Rule I define 3 classes of violation to evaluate the nature of the violation for penalty assessment pursuant to 75-5-611 and 75-5-631, MCA.

Rule II supplements the provisions of 75-5-611, MCA, and details how the department gives written notice to the violator and how the violator has an opportunity to correct the violation prior to a penalty assessment or to negotiate the amount of the penalty. This rule helps to ensure that the process is applied consistently to each violator.

Rule III is needed to describe how the statutory factors set out in 75-5-631(4), MCA, for determining an appropriate amount of penalty, are to be applied. The point system is a method for considering the nature, extent, circumstances and gravity of the violation, the violator's history of prior violations and any amounts voluntarily expended by the violator to mitigate the violation. Rule III also provides for consideration of the violator's ability to pay, and economic benefit, if any.

Rule IV provides detail on how the extent and gravity of a violation is evaluated for penalty assessment under Rule III.

In summary, these rules are needed to implement statutory provisions for administrative civil penalties using a process and formula that systematically apply the statutory criteria. By doing so, it is intended that administrative civil penalties are assessed in a manner that is objective, consistent, and fair to each violator.

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

Box 200901, Helena, Montana 59620, no later than February 27, 1998.

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

BOARD OF ENVIRONMENTAL REVIEW

CINDY E. YOUNKIN, Chairperson

Reviewed by

JOHN F. NORTH, Rule Reviewer

Certified to the Secretary of State January 16, 1998.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of rule 17.30.1022 amending the Montana ground water pollution control system requirements.	))))	NOTICE OF PUBLIC HEARING FOR PROPOSED AMENDMENT OF RULES (Water Quality)

To: All Interested Persons

1. On February 20, 1998, at 1:30 p.m., the Board will hold a public hearing at Room 111 of the Metcalf Building, 1520 E. 6th Ave., Helena, Montana, to consider the amendment of the above-captioned rule.

The Board will make reasonable accommodations for persons with disabilities who wish to participate in this hearing. If you need an accommodation, contact the department no later than 5 p.m., February 19, 1998, to advise us of the nature of the accommodation you need. Please contact the Board at P.O. Box 200901, Helena, MT 59620-0901; phone (406)444-2544; fax (406)444-4386.

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

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

~~(a) discharges or activities regulated under the federal UIC program;~~

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

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

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

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

~~(f) agricultural irrigation facilities;~~

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

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

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

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

~~(k) facilities approved by the department pursuant to ARM 17.38.101;~~

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

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

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

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

(c) public sewage systems that were reviewed and approved by the department prior to [effective date of this rule] under Title 75, chapter 6, and ARM 17.38.101. However, this exclusion does not apply to systems with a design capacity greater than 5000 gallons per day, if the operator of the system requests a modification after [the effective date of this rule], or if the department determines that operation of the system has caused a violation of a statute or rule administered by the department after [the effective date of this rule];

(d) public sewage systems with a design capacity less than 5000 gallons per day, that are reviewed and approved by the department after [effective date of this rule] under Title 75, chapter 6, and ARM 17.38.101;

(e) multi-family sewage disposal systems reviewed and approved by the department under Title 76, chapter 4, MCA, and multi-family sewage disposal systems reviewed and approved by a local government under Title 76, chapter 3, MCA, after [the effective date of this rule]. However, this exclusion does not apply to aerobic package plant systems, mechanical treatment plants, and nutrient removal systems, which require a high degree of operation and maintenance, or systems which require monitoring pursuant to ARM 17.30.517(1)(d)(ix);

(f) multi-family sewage disposal systems reviewed and approved by the department of public health and human services under Title 50, chapters 50, 51 and 52, MCA, and multi-family sewage disposal systems reviewed and approved by local boards of health under Title 50, chapter 2, MCA, after [the effective date of this rule]. However, this exclusion does not apply to aerobic package plant systems, mechanical treatment plants, and nutrient removal systems, which require a high degree of operation and maintenance, or systems which require monitoring pursuant to ARM 17.30.517(1)(d)(ix).

(2) Remains the same.

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

3. The Board is proposing deletion of (1)(a) through (1)(h), (1)(l), and (1)(m) because the 1995 Legislature placed those exclusions in 75-5-401, MCA.

The 1995 amendments to 75-5-401, MCA, also granted the Board

the authority to adopt additional exclusions for sources that are not excluded by statute. The exclusions in (1)(a) and (1)(b) are being proposed because there are existing review, licensing, or authorization processes in place for these activities.

The proposed amendments also modify the current exclusion for public sewage systems by deleting (1)(i) through (1)(k) and replacing them with (1)(c) through (1)(f).

Under (1)(i) through (1)(j), all multi-family subsurface disposal systems and public treatment works that had or would receive state agency approval under several laws or local approval under the Subdivision and Platting Act were exempt from the ground water permit requirement. Proposed (1)(c) through (1)(f) narrow that exemption in 3 ways. First, proposed (1)(c) does not exempt those existing public sewage systems that have a design capacity of greater than 5,000 gallons a day if, after the effective date of the rules, the operator requests a modification of the system or the system violates a statute or rule administered by the Department. Second, proposed (1)(d) does not exempt those new public sewage systems with a design capacity of more than 5000 gallons a day. These modifications are proposed because these facilities have potential to have significant impacts on ground water quality that necessitates consideration of site characteristics to ensure that the ground water is protected. The review under the other laws does not entail consideration of these factors.

Third, proposed (1)(e) and (1)(f) require a ground water permit for multi-family sewage disposal systems approved under state and local subdivision law or public health laws if the multi-family system would use certain treatment systems that require extensive operation or maintenance activity. These modifications are proposed because these facilities have the potential to have significant impacts on ground water quality that necessitates oversight to ensure that proper operation and maintenance procedures are being followed. The programs implementing the other laws do not involve sufficient inspection and monitoring to ensure that proper procedures are being followed.

4. Interested persons may submit their data, views, or arguments concerning the proposed amendments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to the Board of Environmental Review, Department of Environmental Quality, Metcalf Building, PO Box 200901, Helena, MT 59620-0901, no later than February 27, 1998.

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

Reviewed by: BOARD OF ENVIRONMENTAL REVIEW

JOHN F. NORTH, Rule Reviewer

CINDY E. YOUNKIN, Chairperson

Certified to the Secretary of State January 16, 1998 .

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of rule 17.30.716 regarding categorical exclusions.	)))	NOTICE OF PUBLIC HEARING FOR PROPOSED AMENDMENT OF RULES

(Water Quality)

To: All Interested Persons

1. On February 18, 1998, at 1:30 p.m., the Board will hold a public hearing at Room 111 of the Metcalf Building, 1520 E. 6th Ave., Helena, Montana, to consider the proposed amendment of the above-captioned rule.

The Board will make reasonable accommodations for persons with disabilities who wish to participate in this hearing. If you need an accommodation, contact the department no later than 5 p.m., February 17, 1998, to advise us of the nature of the accommodation you need. Please contact the Board at P.O. Box 200901, Helena, MT 59620-0901; phone (406)444-2544; fax (406)444-4386.

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

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

(a) a change in water quality resulting from the use of an individual sewage system if:

(i) and (ii) Remain the same.

(iii) for a sewage system located on a lot that is less than 20 acres in area, the existing concentration of nitrate as nitrogen in the ground water in the uppermost aquifer beneath the lot is less than 2.0 mg/L and there is no evidence of nitrate as nitrogen concentrations above 2.0 mg/L in ground water in the same aquifer within 1320 feet of the exterior boundaries of the lot;

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

(v) the system serves only a single domestic living unit that is not within a major subdivision; and

(vi) the system meets the following criteria:

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

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

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

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

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

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

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

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

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

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

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

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

(2) For purposes of (1)(a) of this rule:

(a) "Aquifer" means a ~~saturated, permeable geologic material that is capable of sustained groundwater yield sufficient to meet domestic needs~~ geologic material that is saturated and sufficiently permeable to transmit adequate quantities of water to wells and springs for domestic or livestock watering purposes. Specifically, a saturated geologic material is an aquifer if:

(i) there is an existing water supply well or spring within 1/4 mile of the exterior boundaries of the lot being reviewed, which obtains water from the same geologic material; or

(ii) a report published by or for a state or federal agency indicates the saturated geologic material is an aquifer;

(iii) reliable data from at least 3 local well logs demonstrate that the saturated geologic material meets any of the criteria in (iv)(A), (B), or (D) below; or

(iv) the results of site-specific investigations indicate that the saturated geological material meets any 2 of the following criteria:

(A) it can produce water at a rate greater than 150 gallons per day from 15 feet or less of aquifer from a borehole 12 inches or less in diameter (aquifer thickness is the screened interval, open hole interval, or 10 feet for open bottom wells); or

(B) if the saturated geologic material is greater than 15 feet thick, it can produce water at a rate greater than 10 gallons per day per foot of aquifer from a borehole 12 inches or less in diameter (aquifer thickness is the screened interval, open hole interval or 10 feet for open bottom wells); or

(C) if the saturated geologic material is unconsolidated, it is equal to or greater than 3 feet in thickness (thickness is either a single layer or combination of layers separated by less permeable materials) and less than 12% of any one of 3 samples from the permeable geologic material passes through a No. 200 American society for testing and materials (ASTM) sieve, where samples shall be collected and analyzed per the

appropriate ASTM method from 3 separate depths in the geologic material; or

(D) if the saturated geologic material is consolidated, it is equal to or greater than 10 feet in thickness with significant secondary porosity (e.g., fractures, karst, etc.), where thickness is defined by either a single layer or combination of layers separated by less permeable materials; or

(E) the saturated geologic material meets the thickness requirements of (C) or (D) above and has a hydraulic conductivity equal to or greater than 0.1 feet/day as determined by any one of 3 slug tests conducted on 3 separate wells completed within that geologic material, or determined by a single pumping test conducted for a minimum of 4 hours on a well completed within that geologic material, where the methodology used to conduct and analyze the tests is accepted by the department prior to the test.

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

(c) When the department is required to determine whether a proposed activity may cause degradation under 17.30.706(2), ~~T~~the applicant must provide evidence that demonstrates to the department's satisfaction that the individual sewage system for which an application has been filed meets the criteria of (1)(a) of this rule.

(3)(a) The department may determine that the categorical exclusion referenced in (1)(a) of this rule does not apply to all lots or to lots within one or more of the size categories in (1)(a)(v) of this rule within a specific geographic area. This determination must be based upon information submitted in a petition demonstrating that the categorical exclusions should not apply within that area. A petition submitted under this rule may be considered only if it is submitted by a local governing body, a local department or board of health, a local water quality district, or by either 25% or 20, whichever is fewer, of the landowners (or persons with a contract interest in land) within the affected geographic area.

(b) A petition submitted under this rule must contain the following information:

(i) a legal description of the petition area, which is the geographic area proposed to be excluded from consideration under (1)(a) of this rule;

(ii) a declaration as to which lot size categories in (1)(a)(vi) of this rule are proposed to be excluded from the categorical exclusion in (1)(a) of this rule;

(iii) a detailed description of the soils, geology, and hydrogeology of the area described in (3)(b)(i) above;

(iv) evidence that the site conditions for the petition area meet the applicable criteria of (1)(a) of this rule;

(c) If the evidence submitted under (3)(b)(iv) above does not support a finding that the site conditions in the petition area meet the applicable criteria in (1)(a)(vi) of this rule, the department shall notify the petitioner in writing that the categorical exclusions do not apply within the petition area and

the department may not take further action on the petition.

(d) If the department finds that the site conditions for the petition area meet the applicable criteria in (1)(a) of this rule, the department shall notify the petitioner of its determination in writing, and the petitioner shall submit additional information that must include the following:

(i) a current listing from a title insurance company of the names and addresses of all persons who either own or have a contract interest in land within the petition area; and

(ii) data from ground water samples taken from wells that withdraw water from the uppermost aquifer underlying the petition area or from wells that withdraw water from the uppermost aquifer underlying an area within the same or adjacent county with similar climatic, soil, geologic, and hydrogeologic conditions and a density of individual sewage systems similar to that allowed in (3)(b)(ii) above. The ground water data demonstrate that one of the following conditions is met:

(A) nitrate as nitrogen concentrations exceed 5.0 mg/L in ground water samples from more than 25% of at least 30 wells that are not located within a standard mixing zone, as defined in 17.30.517(1)(d)(viii) for a septic system; or

(B) data from ground water samples collected at least 3 years apart from the same 15 wells indicate a statistically significant increase of greater than 1.0 mg/L in nitrate as nitrogen concentrations in the uppermost aquifer.

(e) Within 90 days of receipt of the information required in (3)(d) above, the department shall issue a preliminary decision as to whether the petitioner has satisfied the requirements set forth in (3)(b) and (d) above and describe the reasons for either granting or denying the petition. The preliminary decision must be mailed to the petitioner and to all landowners or persons with a contract interest in land within the petition area and must include the following information:

(i) a description of the petition area;

(ii) a summary of the basis for the preliminary decision including any modifications to the boundaries of the petition area;

(iii) a description of the procedures for public participation and of the opportunity to comment prior to the department's final decision on the petition;

(iv) the ending dates of the comment period and the address where comments will be received;

(v) procedures for requesting a hearing; and

(vii) the name and telephone number of a person to contact for additional information.

(f) Within 60 days after the close of the public comment period, the department shall issue a final decision and provide written notice of its decision to the petitioner and to each person who submitted written comments. The final decision must set forth the department's reasons for granting or denying the petition and must include a response to all substantive comments received by the department during the public comment period or during any hearing.

AUTH: 75-5-301, 75-5-303, MCA; IMP: 75-5-303, 75-5-317, MCA

3. The Board is proposing the amendment to ARM 17.30.716(1)(a)(iii) to clarify that the department is to determine compliance with the nitrate standard by measuring nitrate as nitrogen. This is the commonly accepted method of measuring nitrate in ground water and is the method the Department has used under this rule in the past.

The Board is proposing the definition of "aquifer" to make the requirements of the rule more definite and understandable. With one exception, the new definition is merely a more specific elaboration of an existing definition. The exception is in (2)(a)(ii), which includes within the definition any geologic formation that is labeled as an aquifer in a report published by or for a state or federal agency. The Board is of the opinion that these reports are sufficiently reliable to give it a high level of confidence that any formation labeled as an aquifer in such a report meets the requirements of (2)(a)(iv).

The petition process to exclude areas where degradation of ground water has or is expected to occur has been requested by local health departments. The requirements for triggering the process, for sampling, and for analyses are based on the best professional judgement of the department staff with input from the staff of the Missoula and Lewis and Clark local water quality districts and health departments. The petition process would allow individual determinations of non-significance in those cases where the petitioner has demonstrated that a particular area should not be excluded from individual determinations of non-significance due to site-specific factors. This provides an added level of protection for ground water resources.

4. Interested persons may submit their data, views, or arguments concerning the proposed amendments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to the Board of Environmental Review, Department of Environmental Quality, Metcalf Building, PO Box 200901, Helena, MT 59620-0901, no later than February 27, 1998.

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

BOARD OF ENVIRONMENTAL REVIEW

CINDY E. YOUNKIN, Chairperson

Reviewed by:

JOHN F. NORTH, Rule Reviewer

Certified to the Secretary of State January 16, 1998 .

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the repeal of 16.2.501 Definitions	)	NOTICE OF PROPOSED REPEAL OF RULE
	)	NO PUBLIC HEARING CONTEMPLATED

(Major Facility Siting Act)

To: All Interested Persons

1. On April 3, 1998, the board proposes to repeal ARM 16.2.501. This rule may be found at page 16-21 of the Administrative Rules of Montana.
AUTH: 75-2-111, 75-2-201, 75-20-216(3), MCA
IMP: 75-20-216(3), MCA

2. The repeal of this rule is necessary because of the passage of Chapter 546, Laws of 1995. That act consolidated all Major Facility Siting Act functions into the Department of Environmental Quality. Those functions had been split between the Department of Natural Resources and Conservation and the Board and Department of Health and Environmental Sciences. The rule proposed to be repealed contained two definitions, one of the term "department of health" and the other of "application." Chapter 546 abolished the department referred to in the first definition. The second definition is no longer necessary because the Department of Natural Resources and Conservations's Major Facility Siting Act definitions have been incorporated into the Department of Environmental Quality's rules.

3. Interested persons may submit their data, views, or arguments concerning the proposed repeal, in writing to the Board of Environmental Review, PO Box 200901, Helena, MT 59620-0901, no later than February 27, 1998.

4. If a person who is directly affected by the proposed repeal wishes to express his/her data, views, and arguments orally or in writing at a public hearing, he/she must make written request for a hearing and submit this request along with any written comments he/she has to the Board of Environmental Review, PO Box 200901, Helena, MT 59620-0901. A written request for a hearing must be received no later than February 27, 1998.

5. If the board receives requests for a public hearing on the proposed repeal from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the administrative code committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected,

a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 1 person, based on less than 20 permit holders.

BOARD OF ENVIRONMENTAL REVIEW

CINDY E. YOUNKIN, Chairperson

Reviewed by:

John F. North, Rule Reviewer

Certified to the Secretary of State January 16, 1998.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the repeal of 26.4.1301 Modification of existing permits	))))	NOTICE OF PROPOSED REPEAL OF RULE NO PUBLIC HEARING CONTEMPLATED (Reclamation)

To: All Interested Persons

1. On April 3, 1998, the Board proposes to repeal ARM 26.4.1301. This rule may be found at page 26-387 of the Administrative Rules of Montana.

AUTH: 82-4-204, 82-4-205, MCA; IMP: Sec. 19, Laws of 1979

2. The Board is proposing that this rule be repealed because it is no longer necessary. It was adopted in 1980 as part of a major revision to the rules implementing the Montana Strip and Underground Mine Reclamation Act. It required that, by December 1, 1980, all operating permits had to be updated to include requirements to comply with the amendments. All permits have been so amended for almost two decades and the rule is no longer necessary.

3. Interested persons may submit their data, views, or arguments concerning the proposed repeal, in writing to the Board of Environmental Review, PO Box 200901, Helena, MT 59620-0901, no later than February 27, 1998.

4. If a person who is directly affected by the proposed repeal wishes to express his/her data, views, and arguments orally or in writing at a public hearing, he/she must make written request for a hearing and submit this request along with any written comments he/she has to the Board of Environmental Review, PO Box 200901, Helena, MT 59620-0901. A written request for a hearing must be received no later than February 27, 1998.

5. If the agency receives requests for a public hearing on the proposed repeal from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the administrative code committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 1 person, based on fewer than 20 persons holding operating permits under the Montana Strip and Underground Mine Reclamation Act.

Reviewed by

John F. North, Rule Reviewer

BOARD OF ENVIRONMENTAL REVIEW

CINDY E. YOUNKIN, Chairperson

Certified to the Secretary of State January 16, 1997 .

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.36.801, 802, 804, and 805, increasing the fees and reimbursements to local governing bodies.	)))))	NOTICE OF PUBLIC HEARING FOR PROPOSED AMENDMENT OF RULES

(Subdivisions)

To: All Interested Persons

1. On February 13, 1998, at 10:00 a.m., the department will hold a public hearing at Room 35 of the Metcalf Building, 1520 E. 6th Ave., Helena, Montana, to consider the proposed amendment of the above-captioned rules.

The department will make reasonable accommodations for persons with disabilities who wish to participate in this hearing. If you need an accommodation, contact the department no later than 5 p.m., February 13, 1998, to advise us of the nature of the accommodation you need. Please contact the department at P.O. Box 200901, Helena, MT 59620-0901; phone (406)444-2544; fax (406)444-4386.

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

17.36.801 PURPOSE (1) The purpose of this subchapter is to establish a schedule of fees to be paid to the department for the local and state review of plats and subdivisions. The schedule consists of 3 sections relating to the collection of fees for the review of divisions of land, condominiums and areas providing permanent multiple space for recreational camping vehicles and mobile homes. The fees ~~relate to~~ are based on the complexity of the ~~review of the types of water and sewage disposal systems to serve the subdivisions~~ subdivision, including the number of lots, the type of water system to serve the development, the type of sewage disposal to serve the development, and the degree of environmental research necessary to supplement the review procedure.
AUTH: 76-4-105, MCA; IMP: 76-4-105, MCA

17.36.802 FEE SCHEDULES (1) ~~The fees described below pertain only to review of subdivisions as mandated by Title 76, chapter 4, part 1, MCA. An additional fee may be requested pursuant to the Montana Environmental Policy Act (75-1-101, et seq., MCA) for the preparation of an environmental impact statement.~~

~~(a) The fees in Schedule I shall be charged:~~

~~(i) Per parcel when land is divided into 1 or more parcels.~~

~~(ii) Per trailer space where trailer courts are proposed.~~

~~(iii) Per vehicle parcel for recreational camping vehicles and tourist campgrounds where RV parks or campgrounds are proposed.~~

~~(iv) Per condominium living unit except, where municipal or county district water and sewer are available, the fees shall be charged per sewer hookup to the municipal or county sewer, plus $10 for each unit in excess of 1 which is included on a single service connection to the water and sewer main. For condominium living units with individual service connections to the water and sewer mains, fees in the full amount shown in Schedule I must be charged.~~

~~(Schedule I on next page)~~

~~SCHEDULE I~~

~~Fee schedule for~~ An applicant for approval of a division of land into 1 or more parcels, condominiums, mobile home/trailer courts, recreational camping vehicle spaces and tourist campgrounds shall pay the following fees:~~.~~

	~~Sewage disposal provided by individual, multiple family, or public systems which are not connected to municipal or county sewer district systems~~	~~Extension of municipal or county sewer district systems requiring department approval~~	~~Existing municipal or county sewer district sewers, previously approved (no extensions required)~~
~~Water supply provided by individual, multiple family or public systems which are not connected to municipal or county water district systems~~	~~$120~~	~~$100~~	~~$75~~
~~Extension of municipal or county water district supply systems requiring review and approval~~	~~$100~~	~~$80~~	~~$55~~

~~Existing municipal or county water district systems, previously approved (no extension required)~~	~~$75~~	~~$55~~	~~$30~~

	UNIT	UNIT COST
NUMBER OF LOTS		
Subdivision lot	lot/parcel	$50
Condominium/trailer court/ recreational camping vehicle campground	unit/space	$25
TYPE OF WATER SYSTEM		
Individual well	well	$40
Multi-family system well pumping and storage facilities distribution system (new) extension of existing distribution system	 well facility lot/unit lot/unit	 $200 $200 $10 $25
Public water system new system per WQB-1 connection to existing system extension of existing system	component lot lot	per ARM 17.38.106 fee schedule $10 $25
TYPE OF SEWAGE DISPOSAL		
Conventional subsurface, shallow-capped, sand-lined	lot	$40
Pressure-dosed conventional, cut/fill, deep systems, artificially drained	design drain field	$150 $25
Elevated sand mound, ET systems, intermittent sand filter	design drain field	$500 $25
Aerobic package plant systems, Recirculating sand filters, nutrient removal	hour	$50

	UNIT	UNIT COST
Multi-family sewage system - connection - extension	 lot/unit lot/unit	 $10 $25
Public sewage system per WQB 2	component	per ARM 17.38.106 fee schedule
Connection to existing public sewage system	lot	$10
Extension of existing public sewage system	lot	$25
OTHER		
Deviation/waiver request	request	$75
Reissuance of original plat approval statement	request	$50
Master plan exemption checklist	application	$75
Nonsignificance determinations/ categorical exemption reviews	drain field	$30
Preparation of environmental assessments/environmental impact statements	----	actual cost

~~(b) The fee is $10 per vehicle parcel for recreational camping vehicles and tourist campgrounds where no water or sewer hookups are provided.~~

~~(c) The fee is 50% of the above amount per vehicle parcel for recreational camping vehicles and tourist campgrounds where water or sewer hookups are provided.~~

~~(d) Fee payment should be by check or money order made payable to the department of environmental quality.~~

AUTH: 76-4-105, MCA; IMP: 76-4-105, 76-4-128, MCA

17.36.804 DISPOSITION OF FEES (1) The department shall use the fees collected pursuant to ARM 17.36.802 to fund the following functions:

(a) review performed pursuant to subchapter 1 to determine whether the application complies with subchapter 3, whether to grant a waiver or deviation pursuant to ARM 17.36.601, or whether the proposed subdivision is excluded from review pursuant to ARM 17.36.602;

(b) review performed pursuant to ARM 17.30.706 to determine whether significant degradation will occur;

(c) review performed pursuant to ARM 17.30.707, 17.30.708, 17.30.715, or 17.30.716, regarding nondegradation;

(d) preparation of an environmental assessment pursuant to ARM 17.4.609 and 17.4.610, including costs of gathering data and information, analysis, printing, distribution, and hearing costs;

(e) preparation of an environmental impact statement pursuant to ARM 17.4.615 through 17.4.629, including costs of analysis, printing, distribution, and hearing costs, and excluding the costs of information and data gathering which are subject to fee assessment pursuant to 75-1-202, MCA; and

(f) reimbursement of local government entities as provided in (2) and (3) of this rule.

(2) The department shall reimburse local governing bodies under department contract to review subdivisions as follows:

(a) For major subdivisions with individual sewage treatment systems, ~~$10~~ $15 per parcel. A site evaluation must accompany the submittal.

(b) For minor subdivisions with individual sewage treatment systems, the department ~~will retain $50 per parcel of the review fee collected under ARM 17.36.802 and will~~ shall reimburse ~~the balance to~~ $10 per lot plus 80% of the review fee under ARM 17.36.802 for each review of water and sewage systems and nonsignificance determinations and categorical exemptions performed by the local governing body.

~~(2)~~(3) The department may reimburse counties which have not been delegated review authority of subdivisions containing 5 or fewer parcels but which perform review services, including but not limited to on-site inspection of proposed and approved facilities and assistance to persons in the application procedure, as follows:

(a) ~~$5~~ $15 per parcel for subdivisions containing over 5 parcels with individual sewage treatment systems. A site evaluation must accompany the submittal.

(b) ~~$10~~ $25 per parcel for subdivisions containing 5 or fewer parcels with individual sewage treatment systems. A site evaluation must accompany the submittal.

~~(3) The department will reimburse the local governing bodies $15 per parcel for review of a subdivision coming under the master plan exclusion.~~

(4) Funds ~~will~~ must be reimbursed to the local governing bodies quarterly, based upon the fiscal year starting on July 1 and ending on June 30 of each year.

AUTH: 76-4-105, MCA; IMP: 76-4-105, 76-4-128, MCA

17.36.805 CHANGES IN SUBDIVISION (1) When the applicant proposes to change the water supply, sewage treatment, ~~or~~ solid waste disposal or storm drainage aspects of a subdivision ~~are changed by the applicant~~ or when the applicant proposes changes to the conditions of the certificate of subdivision plat approval (or where such changes are necessitated by a department determination that proposed plans are inadequate), either during or after the review process, the applicant shall submit such changes ~~shall be submitted~~ to the department for review and approval and shall ~~be subject to~~ pay additional review fees not to exceed the amounts listed in ARM 17.36.802.

The exact amount of the additional fee ~~shall~~ must be determined by the department and ~~will~~ must be based on the scope of the change(s) and how much additional review time the change(s) will require. Review time must be charged at the rate of $50 per hour with a minimum charge of $50. When the applicant proposes changes to the approved plat, the fee is $75 per lot reviewed.

AUTH: 76-4-105, MCA; IMP: 76-4-105, MCA

3. The department is proposing amendments to ARM 17.36.802 and 17.36.805 to increase fees paid by applicants for subdivision approval and reimbursements paid to local governing bodies for performing subdivision review functions in order to make the fees and reimbursements commensurate with costs. Current fees are inadequate to fund the appropriate level of review. The department projects that, as is required by 76-4-105, MCA, the fees will not exceed the Department's costs in conducting these reviews.

The department is also proposing to expand the functions for which the fees can be used. This is to be accomplished by amending ARM 17.36.801, amending section (1) in ARM 17.36.802 and adding new section (1) to ARM 17.36.804. The additional functions to be funded are contained in subsections (b) through (e). The functions described in (b) and (c) have been created since the fee rule was adopted. The complexity and cost of the functions described (d) and (e) have increased substantially in the recent past. It is therefore necessary to authorize application fees to be used to fund these functions.

In addition, the department is proposing to amend ARM 17.36.805(1) by allowing the department to charge for review of proposed changes to the conditions of a certificate of plat approval. This amendment is proposed because these requests are becoming more common and this function is currently unfunded.

Several other minor amendments are also proposed. The Board is proposing to delete ARM 17.36.802(1)(d) because, as written it imposes no enforceable requirement and because review of the application does not proceed until the fee is paid. The deletion of ARM 17.36.804(3) is proposed because subdivisions that qualify for a master plan exemption are not subject to department review, see 76-4-111(3), MCA. The addition of a site evaluation requirement to ARM 17.36.804(2)(b) is proposed to give the department adequate information to allow it to determine whether to approve the application. A similar requirement is contained in ARM 17.36.804(3)(b) for reviews conducted by non-contracted counties.

The department is proposing the amendment to existing ARM 17.36.802(1)(d), because the existing provision, by using the term "should," has no effect, and in order to require that checks and money orders are cashable.

Finally, the department is proposing grammatical changes throughout the rules to reflect current rule drafting practices. These include shifting requirements from passive to

active voice; use of the verbs "shall," "must," and "will;" and other changes that also have no substantive effect.

4. Interested persons may submit their data, views, or arguments concerning the proposed amendments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Dennis McKenna at the Department of Environmental Quality, Metcalf Building, PO Box 200901, Helena, MT 59620-0901, no later than February 26, 1998.

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

DEPARTMENT OF ENVIRONMENTAL QUALITY

by Mark A. Simonich
MARK A. SIMONICH, Director

Reviewed by

John F. North, Rule Reviewer

Certified to the Secretary of State January 16, 1998.

BEFORE THE DEPARTMENT OF CORRECTIONS
OF THE STATE OF MONTANA

In the matter of the amendments of ARM Title 20, Chapter 9, Sub-Chapter 5, and the repeal of 20.9.569 pertaining to licensure of youth detention facilities	)))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENTS OF ARM TITLE 20, CHAPTER 9, SUB-CHAPTER 5, AND THE REPEAL OF 20.9.569

TO: All Interested Persons

1. On Wednesday, March 4, 1998, at 1:00 p.m., a public hearing will be held in the downstairs conference room at the Department of Corrections, 1539 11th Avenue, Helena, Montana, to consider the proposed amendments of ARM 20.9.501, 20.9.503, 20.9.506, 20.9.510, 20.9.513, 20.9.515, 20.9.518, 20.9.520, 20.9.524, 20.9.526, 20.9.528, 20.9.533, 20.9.535, 20.9.538, 20.9.541, 20.9.545, 20.9.547, 20.9.550, 20.9.555, 20.9.558, 20.9.561, 20.9.566, 20.9.572, 20.9.575, and 20.9.578, and the repeal of 20.9.569 pertaining to licensure of youth detention facilities.

2. Any person/party may be placed on the Department of Corrections' list of interested persons/parties by contacting Mark Royer, Juvenile Detention Licensing Specialist, in writing, at the address listed below.

3. The Department of Corrections will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you need to request an accommodation, please contact the Department no later than 4:00 p.m. on February 23, 1998, to advise the Department of the nature of the accommodation you need. Please contact Mark Royer, P.O. Box 201301, Helena, MT 59620-1301; telephone (406) 444-7471; FAX (406) 444-4920. Persons with disabilities who need an alternative accessible format of this document in order to participate in the rule-making process are requested to contact Mark Royer.

4. The rule proposed for repeal is 20.9.569 YOUTH DETENTION FACILITY, PASSIVE PHYSICAL RESTRAINT (authority 41-5-809, MCA, and implementing 41-5-802 and 41-5-809, MCA). The text of this rule is located at page 20-147.27, Administrative Rules of Montana.

5. The proposed amendments provide as follows:

20.9.501 ~~YOUTH DETENTION FACILITY:~~ PURPOSE (1) These rules establish licensing requirements and procedures for youth detention facilities, and short-term detention facilities ~~detaining youth for a period of time up to 96 hours, hereinafter referred to as 96-hour detention facilities~~. Except where specifically noted, these rules

apply to both types of facilities. ~~In addition to other restrictions imposed by the Montana Youth Court Act, youths may be held in 96 hour detention facilities for a maximum of 96 hours, excluding weekends and holidays.~~

AUTH: 41-5-1802, MCA IMP: 41-5-1802, MCA

20.9.503 ~~YOUTH DETENTION FACILITY.~~ DEFINITIONS ~~(1)~~ The following definitions apply to all youth detention facility licensing rules:

(1) "Administrative segregation" means a unit housing youth whose continued presence in the general population poses a serious threat to life, property, self, staff, or other youth.

~~(a)~~(2) "Chemical restraint" means the use of ~~psychotropic medication to subdue, inhibit, confine or control a youth's behavior~~ those inflammatory agents which, when used, will temporarily incapacitate.

(3) "Collocated facility" means a youth facility located in the same building as an adult jail or lockup. A complex of buildings is considered "related" when it shares physical features such as walls, fences, or services beyond mechanical services (heating, air conditioning, water and sewer).

(b) Remains the same but renumbered (4).

~~(c)~~ (5) "Custodian" means a person other than a parent or guardian ~~to whom~~ who has legal custody of ~~the~~ a youth ~~has been given~~ but does not include a person who has only physical custody.

~~(d)~~(6) "Delinquent youth" means a youth as defined by 41-5-103~~(13)~~, MCA.

~~(e)~~(7) "Detention" means placement by law of a youth in a detention facility or short-term detention facility. ~~the temporary substitute care of youth in physically restricting facilities.~~

~~(f)~~(8) "Detention facility"~~, and "96 hour detention facility"~~ means a facility as defined by 41-5-103, MCA. ~~that uses locked doors or windows or other means to prevent a youth from departing at will.~~

~~(g)~~(9) "Department" means department of corrections as provided for in 2-15-2301, MCA.

(10) "Disciplinary detention" means a unit housing youth convicted of serious rule violations.

~~(h)~~(11) "Facility" means youth detention facility or short-term detention facility.

(12) "Inflammatory agent" means a substance like oleoresin capsicum (OC), commonly called mace or pepper spray, which is derived from the cayenne pepper plant and classified as an inflammatory agent that affects the mucous membranes and the upper respiratory system.

(13) "Licensing specialist" means the person designated by the department of corrections to perform licensing inspections at detention facilities.

~~(i)~~(14) "Mechanical restraint" means handcuffs, belly chains, shackles or leg irons. ~~the restriction by mechanical~~

~~means of a youth's mobility and/or ability to use his/her hands, arms or legs.~~

(j) Remains the same but is renumbered (15).

~~(k) "Passive physical restraint" means the least amount of direct physical contact required by a staff member using approved methods of making such physical contact to restrain a youth from harming self or others.~~

(16) "Personnel file" means a file as defined by ARM 20.9.528.

(17) "Protective custody" means separating from general population a youth requesting or requiring protection from others.

(18) "Segregation" means the confinement of a youth to an individual cell that is separated from the general population.

(19) "Serious incident" means suicide attempt, use of excessive force by staff, sexual assault by another youth or staff, injury to a youth, staff or visitor which requires hospitalization, or the death of a youth, staff or visitor.

(20) "Short-term detention" means a facility as defined by 41-5-103, MCA.

~~(1)~~(21) "~~Temporary lockup/secure~~ Observation" means ~~isolation~~ placement of a youth in an assigned room for observation only within the initial 24 hours of detention. ~~locked room to protect the youth, other youths, and staff and to give the youth the opportunity to regain control of his or her behavior and emotions by providing definite external boundaries and decreased stimulation.~~

(m) Remains the same but renumbered (22).

(n) Remains the same but renumbered (23).

~~(o)~~(24) "Youth in need of ~~supervision~~ intervention" means a youth as defined in 41-5-103, MCA.

AUTH: 41-5-1802, MCA IMP: 41-5-1802, MCA

20.9.506 ~~YOUTH DETENTION FACILITY~~ LICENSES (1) All youth detention facilities operating within the state of Montana must be licensed by the department or a recognized Indian tribal authority. The current youth detention facility license must be publicly displayed at the facility.

(1) Remains the same but renumbered (2).

(a) through (b) Remain the same.

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

(a) has met all applicable requirements for fire safety; ~~and~~

(b) has met all applicable requirements for health standards; and

(b) Remains the same but renumbered (c).

(i) Remains the same.

~~(3)~~(4) The facility shall not detain more youths at one time than the number specified on the license, except as stipulated in these rules.

AUTH: 41-5-1802, MCA IMP: 41-5-1802, MCA

20.9.510 ~~YOUTH DETENTION FACILITY;~~ LICENSING PROCEDURES (1) Remains the same.

(2) Upon receipt of an application for license or renewal of license, the department shall conduct a licensing study to determine if the applicant meets applicable licensing requirements established in these rules. A licensing study must include an on-site visit for review of incident reports, logs, facility personnel files, youth files, policies and procedures, other written rules, as well as interviews with detained youth and staff members.

(3) If the department determines that an application or accompanying information is incomplete or erroneous, it will notify the applicant, in writing, of the specific deficiencies or errors, and the applicant shall submit the required or corrected information within 60 days of receipt of the written notice. The department may ~~shall~~ not issue a license or renew a license until it receives all required or corrected information.

AUTH: 41-5-1802, MCA IMP: 41-5-1802, MCA

20.9.513 ~~YOUTH DETENTION FACILITY;~~ LICENSE REVOCATION AND DENIAL (1) through (d) remain the same.

(e) failed to report an incident of abuse or neglect within the facility to the county attorney, the department of corrections, and the department of public health and human services ~~and its local affiliate~~ as required by 41-3-201, MCA; or

(f) Remains the same.

AUTH: 41-5-1802, MCA IMP: 41-5-1802, MCA

20.9.515 ~~YOUTH DETENTION FACILITY;~~ HEARING (1) Remains the same.

AUTH: 41-5-1802, MCA IMP: 41-5-1802, MCA

20.9.518 ~~YOUTH DETENTION FACILITY;~~ CONFIDENTIALITY OF RECORDS AND INFORMATION (1) Remains the same.

(a) Those parties entitled to access to records in accordance with 41-5-215, MCA;

(b) The department juvenile detention licensing specialist for purposes of licensing only. The department licensing specialist will keep confidential any information identifiable to a particular youth.

~~(a) the youth court and its professional staff;~~

~~(b) representatives of any agency providing supervision and having legal custody of a youth;~~

~~(c) any other person, by order of the court, having a legitimate interest in the case or in the work of the court;~~

~~(d) any court and its probation and other professional staff or the attorney for a youth who had been a party to proceedings in the youth court;~~

~~(e) the county attorney; and~~

~~(f) the youth who is the subject of the report or record, after he has been emancipated or reaches the age of majority.~~

(2) Remains the same.

AUTH: 41-5-1802, MCA IMP: 41-5-1802, MCA

20.9.520 ~~YOUTH DETENTION FACILITY:~~ REPORTS (1) The facility shall agree to submit to the department, upon ~~its~~ request, any reports required by federal or state law or regulation including but not limited to: release of information, health statement form, a signed statement which outlines the child abuse or neglect laws, and CPR training for all staff.

(2) Remains the same.

(3) Staff members shall report within 24 hours any incidents of known or suspected child abuse or neglect to the local and state department of public health and human services, department of corrections detention licensing specialist ~~office~~ and to the county attorney or local law enforcement ~~in the county~~ where the facility is located.

(a) Each facility shall require each staff member to read and sign a statement which outlines the state law on child abuse and neglect and the staff member's responsibility to report all incidents of child abuse or neglect according to ~~state law~~ 41-3-201, MCA.

~~(b) Each facility shall cooperate fully in the investigation of any incident of suspected child abuse or neglect.~~

~~(c) Each facility shall have written procedures for handling any incident of suspected child abuse including:~~

~~(i) a procedure for ensuring that the staff member involved does not have contact with the youth involved until the investigation is completed; and~~

~~(ii) a procedure for disciplining any staff member involved in an incident of child abuse.~~

~~(d) At the discretion of the department and for protection of the youths in detention, the department may request that the staff member alleged to have committed sexual or physical abuse be moved immediately upon receipt of the allegation to a position where that person does not have contact with youths.~~

(4) Any serious incident involving a youth ~~shall~~ must be reported within the next working day to the parent, the juvenile probation officer and the licensing ~~worker~~ specialist.

~~(a) A "serious incident" means suicide attempts, use of excessive physical force by staff, sexual assault by another youth or staff, injury to a youth which requires hospitalization, or the death of a youth.~~

~~(b)~~ (a) The facility shall complete a written incident report concerning any serious incident involving a youth. The report shall include the date and time of the incident, the youth involved, the nature of the incident, description of the incident and the circumstances surrounding it. A copy of the report shall be filed at the facility and a copy shall be sent to the licensing ~~worker~~ specialist.

(5) Escapes ~~shall~~ must be reported immediately to ~~the police~~ law enforcement and to the youth's probation officer.

(6) Disasters or emergencies which require closure of the facility ~~shall~~ must be reported to the licensing ~~worker~~ specialist within the next working day.

~~(7) The current youth detention facility license shall be publicly displayed at the facility.~~

~~(8)~~ (7) The facility shall implement a means of recording the daily population of ~~juveniles~~ youth in the facility. The means of such recording must be set out in written policy. The policy ~~shall~~ must ensure compliance with the requirement that the population of ~~juveniles~~ youth be recorded daily.

AUTH: 41-5-1802, MCA IMP: 41-5-1802, MCA

20.9.524 ~~YOUTH DETENTION FACILITY~~ ADMINISTRATION

(1) Each facility ~~shall~~ must be purchased, leased, or otherwise provided by one or more counties.

(a) The facility shall ensure that the county commissioners ~~shall~~ provide for inspection of the ~~any~~ facility annually ~~every three months~~. Inspection must include but is not limited to health, fire safety, security, rehabilitation programs, recreation, treatment of youths, and personnel training.

~~(b) The facility shall ensure that the judge of the youth court for the county shall inspect any facility at least once a year.~~

~~(c) In addition to the inspections by the county commissioners and the youth court judge, 96-hour detention facilities are subject to the requirement that the parent agency or governing authority representative meet on a regular basis with the program manager and appropriate staff to ensure compliance with licensing requirements.~~

~~(d)~~ (b) Within 30 days of an ~~health and fire safety~~ inspection, the facility shall develop a plan to correct any deficiencies identified by the inspection.

(i) Remains the same.

(2) The facility ~~shall~~ must not be used for the confinement of adults. If a youth turns 18 years of age while in the facility, the youth may no longer be held in the youth detention facility. ~~Juveniles~~ Youth held or charged with an offense which would not be a crime if committed by adults shall not be confined in detention facilities. Nor ~~shall~~ may any facility ~~serve as a sentencing alternative in youth court proceedings, or~~ be used to confine youth identified solely as abused, dependent or neglected.

(3) The facility must have written policies and procedures which describe the purpose, program and services offered by the facility. Such written policies and procedures shall include: admissions, including the requirement that the facility only admit youth considered appropriate as "appropriate" is defined in such policy, medical care, emergencies, discipline, use of force including use of mechanical restraints and chemical restraints, recreation, food, clothing, visiting, transportation, mail, education services, religious services, grievances, discharge, access by

media, fiscal management, an organizational chart, and personnel consistent with these rules.

(a) and (b) Remain the same.

(c) The policies and procedures ~~shall~~ must be developed in consultation with employees, county commissioners, law enforcement, youth court personnel and other ~~relevant agencies or~~ persons deemed relevant by the facility administrator.

AUTH: 41-5-1802, MCA IMP: 41-5-1802, MCA

20.9.526 ~~YOUTH DETENTION FACILITY.~~ FISCAL MANAGEMENT (1) The facility or county commissioners ~~shall~~ must have written procedures which govern fiscal management consistent with accepted accounting practices.

(2) All financial records ~~shall~~ must be retained for three years and subject to audit in accordance with accepted auditing procedures.

(3) The facility ~~shall~~ must have adequate fire and public liability insurance coverage.

AUTH: 41-5-1802, MCA IMP: 41-5-1802, MCA

20.9.528 ~~YOUTH DETENTION FACILITY.~~ PERSONNEL (1) The facility ~~shall~~ must have written personnel policies and procedures which ~~shall~~ include: job qualifications, descriptions and responsibilities; employee grievance procedure; employee evaluations; confidentiality; record keeping; leave; work hours; salary; disciplinary procedures; staff training; equal opportunity employment provisions; retirement; resignation and termination.

(a) The personnel policies and procedures ~~shall~~ must be provided ~~explained fully~~ to each employee at the time of ~~prior to~~ employment.

(b) The facility shall maintain on site a current and accurate personnel record for each employee. The record ~~shall~~ must include: qualifications, background investigation report, ~~references~~, dates and terms of employment, ~~annual written performance evaluations,~~ orientation and training record, and letters of reprimand which involve abuse and neglect, ~~and termination information~~.

(2) Each facility, other than short-term ~~96 hour~~ detention facilities, ~~shall~~ must have a director to whom all employees or units are responsible and who shall have responsibility and accountability for the day-to-day operations of the facility. The director's duties include supervision of the care and services provided to the youths, personnel matters, fiscal procedures and any other specific matters determined by the county commissioners or the board of directors of the facility.

(a) Remains the same.

(i) have a bachelor's degree supplemented with experience in an area relating to professional child care or appropriate graduate education or an equivalent combination of education and experience, or have been awarded the POST dentention officer administrative certificate;

(ii) through (iv) Remain the same.

(3) Each ~~96-hour~~ short-term detention facility ~~shall~~ must have an identified program manager to whom all employees are responsible and who bears responsibility and accountability for the facility's day-to-day operations. The program manager must have the following qualifications:

~~(i)~~ (a) a bachelor's degree, or at least three years' experience in a supervisory position involving human services responsibility, or have been awarded the POST dentention officer administrative certificate;

(ii) and (iii) Remain the same but renumbered (b) and (c).

(4) Remains the same.

(a) The minimum ratio of staff on duty to numbers of youth ~~shall~~ must be:

(i) and (ii) Remain the same.

(b) At any time when youth are being detained and there is only one awake staff person, there ~~shall~~ must be immediately available backup staff.

(c) Remains the same.

(d) The facility shall investigate the personal and past employment references of all staff prior to hiring and shall file proof of said investigation in the personnel file.

(e) All youth care facility staff must meet the following general qualifications on their first day of employment:

(i) through (vi) remain the same.

(f) Written policy, procedure, and practice provide that all new full-time employees receive 40 hours of orientation training before undertaking their assignments. In addition, all full-time employees must receive 20 hours of in-service training each year thereafter. Training must include, at a minimum, the following: orientation to the purpose, goals, policies, and procedures of the facility; working conditions and regulations; employees' rights and responsibilities; and suicide risk and assessment. Depending on the employee(s) and the particular job requirements, orientation training may include preparatory instruction related to the particular job.

~~(f) Each youth care staff member must complete at least 16 hours of orientation within the first week of employment and at least eight hours of in-service training each year, in an area directly related to the staff member's duties. Orientation training must include suicide risk and assessment, first aid, facility policies and procedures, overview of juvenile justice system, youth rights, training in passive physical restraint, and the provisions of the Montana Youth Court Act.~~ CPR training must be accomplished annually by each youth care staff member in addition to the required 20 ~~eight~~ hours of annual training. ~~Passive physical restraint training shall be accomplished as set out in ARM 20.9.569.~~

(g) All part-time/fill-in staff must have 10 hours of formal orientation training and 10 hours of training each year thereafter, in addition to CPR.

(h) All detention officers must, within their first year of initial employment, complete a detention officers' basic

course or equivalent training as determined by the POST advisory council (ARM 23.14.526).

(i) All training must be documented in each staff member's personnel file.

(ii) Remains the same but renumbered (j).

AUTH: 41-5-1802, MCA IMP: 41-5-1802, MCA

20.9.533 ~~YOUTH DETENTION FACILITY~~ ENVIRONMENT

(1) through (c) Remain the same.

(d) The water system ~~shall~~ must be repaired or replaced when the supply:

(i) and (ii) Remain the same.

(2) through (b) Remain the same.

(c) The sewage system ~~shall~~ must be repaired or replaced whenever:

(i) through (3)(c) Remain the same.

(4) A facility shall comply with the following structural requirements:

(a) All rooms and hallways must ~~shall~~ have adequate lighting.

(b) Adequate space must ~~shall~~ be provided for all phases of daily living, including recreation, privacy, group activities and visits.

(c) Except for ~~96-hour~~ short-term detention facilities, youth ~~shall~~ must have indoor areas of at least 40 square feet of floor space per youth for quiet, reading, study, relaxing, and recreation. Halls, kitchens, and any rooms not used by youth~~s~~ shall not be included in the minimum space requirement.

(d) Except for ~~96-hour~~ short-term detention facilities, sleeping areas ~~shall~~ must contain at least 35 ~~50~~ square feet of ~~floor~~ unencumbered space per youth ~~and bedrooms for single occupancy must have at least 80 square feet~~. Unencumbered space means usable space not encumbered by furniture or fixtures.

(e) ~~96-hour~~ Short-term detention facilities need only provide 30 square feet of floor space per confined ~~juvenile~~ youth in living units primarily designed as single occupancy sleeping rooms. Unless an exception is provided for good cause as determined by the department's licensing specialist, short-term detention may ~~representative, multiple occupancy rooms must~~ not exceed ~~25% of~~ the facility's ~~bed~~ capacity.

(f) There ~~shall~~ must be a minimum of one toilet, shower and wash basin for every eight youth ~~five juvenile detainees~~.

(5) Bath areas ~~shall~~ must be cleaned thoroughly with a germicidal cleaner at least weekly and more often if needed.

(6) Other areas ~~shall~~ must be cleaned on a regular basis.

(7) There ~~shall~~ must be hot and cold water available in the facility. Water temperature for hot water must be limited to 120° or below.

(8) The facility and all areas used by youth ~~shall~~ must have an adequate ventilation and heating system.

(9) The rated population capacity for ~~juvenile detainees~~ youth at each facility must be established and the

population ~~shall~~ must not exceed that capacity except as stipulated in these rules:~~.~~

(a) Short-term detention may never exceed established population.

(b) Long-term facilities may not exceed licensed capacity unless all of the following criteria are met:

(i) the director or designee has been notified and approved the over-capacity admission;

(ii) the placing worker agrees to contact the case manager within 24 hours of placement of any youth already in the facility who may be transferred to a less secure alternative. Those attempts and the findings or results of those contacts should be noted in a report to the facility director and logged;

(iii) in the event that no youth in the facility can be transferred, then capacity may be exceeded:

(A) if the referred youth who would put the facility over capacity has committed a transferable offense under 41-5-206, MCA; and

(B) all other secure facilities within the state are full; or

(C) inclement weather conditions would jeopardize the safety of youth and transport officials to travel to those facilities;

(iv) no facility may exceed capacity unless it can provide an off-the-floor accommodation for sleep and all other commodities and necessities otherwise provided to all other youth;

(v) no facility may exceed capacity if an over-capacity referral would jeopardize the health or safety of those already in the facility by changing youth classification placement;

(vi) the staff-to-youth ratio must be maintained to properly supervise the over-capacity population;

(vii) the facility director or designee shall notify the department licensing specialist by the following working day.

(c) A log of over-capacity admissions must be maintained by the facility director or designee. The log must be available to the department licensing specialist for on-site inspection. Information contained in the log should include but need not be limited to the following:

(i) the youth's name, date of birth, gender and race;

(ii) the date and time of admission and release;

(iii) the alleged offense(s);

(iv) a court order for detention;

(v) the admitting county; and

(vi) the director or designee's rationale for approving over capacity.

(d) In the event the facility's census is over capacity and does not return to licensed capacity within five working days, the facility director or designee shall request, in writing, an in-person meeting with the appropriate case manager to determine solutions to the over capacity.

(i) If the facility's census is not returned to its licensed capacity within 10 working days from the time the facility exceeded its capacity, then the facility director or designee shall notify, in writing, the appropriate case manager and court of jurisdiction (unless they are the same) that failure to bring the facility back into compliance may result in license revocation. A copy of that correspondence must be sent to the department licensing specialist.

(ii) The licensing specialist, at least five working days prior to reducing a license, shall notify the facility director that the license will be reduced at a specific time not less than the five days if the facility remains out of compliance.

(e) Only if all the above conditions have been met may the facility exceed licensure population.

(10) Where a ~~juvenile~~ youth facility is ~~properly shared~~ collocated with an adult facility, the facility must provide for ~~total~~ sight and sound separation of ~~juvenile~~ youth and adult offenders ~~detainees~~. In addition:

(a) ~~sharing of~~ collocated facilities must ensure that ~~may occur only where~~ written operational plans, policies and procedures are in place to ensure that no haphazard contact occurs between ~~juvenile~~ youth and adult ~~detainees~~ offenders ~~occurs~~;

(b) recreational and admission areas used for both adult and ~~juvenile detainees~~ youth must be closely regulated by time phasing to prevent accidental contact between adult and youth; ~~juvenile detainees;~~

(c) sleeping and living areas may not be shared by adult and youth ~~juvenile detainees~~ under any circumstances;

(d) only staff providing specialized services such as cooks, maintenance staff, medical professionals and bookkeepers, whose infrequent contact with ~~detainees~~ youth occurs under conditions of separation of youth and adult offenders ~~and juvenile detainees~~, may serve both populations ~~types of detainees~~; and

(e) ~~administrative and security~~ the day-to-day management, security and direct care functions of ~~juvenile~~ youth detention facilities must be vested in a totally separate staff dedicated solely to the youth population within the collocated facilities, and the facility must meet the same standards as free-standing youth detention centers and be licensed as appropriate. ~~who, where they serve both juvenile and adult populations, are trained to serve juveniles. Staff whose duties include in whole or in part the provision of direct care to juveniles may not be used to serve the adult jail at the same time or during the same tour of duty that they serve in the juvenile detention facility.~~

(11) The facility must also:

(a) and (b) Remain the same.

(c) free all living and sleeping areas of physical features such as bars, grates, hooks or any other physical features which may reasonably be expected to present a suicide risk to youth ~~detainees~~.

(12) Each youth ~~shall~~ must be physically observed ~~at least~~ every fifteen minutes. A means of confirming these checks must be in place. A youth giving indications of self-destructive tendencies or exhibiting behavior suggesting possible medical problems shall be monitored more regularly.
AUTH: 41-5-1802, MCA IMP: 41-5-1802, MCA

20.9.535 ~~YOUTH DETENTION FACILITY;~~ FIRE SAFETY

(1) Remains the same.

(2) Smoke detectors approved by a recognized testing laboratory ~~shall~~ must be located at stairways and in any areas requiring separation as set forth in the uniform building codes.

(3) A fire extinguisher approved by a recognized testing laboratory with a minimum rating of 2A10BC ~~shall~~ must be readily accessible to the kitchen area.

(4) The date and signature of the person checking both the batteries in the smoke detectors and the fire extinguisher ~~shall~~ must be recorded and filed at the facility.

(a) Smoke detector batteries ~~shall~~ must be checked by the facility at least once each month and the batteries replaced at least once each year.

(b) Fire extinguishers ~~shall~~ must be checked by the facility at least quarterly.

(5) The staff ~~shall~~ must be trained in the proper use of the fire extinguisher and the training recorded in the files.

(6) Staff and youths ~~shall~~ must be instructed upon arrival in the procedure for evacuation in case of fire. The procedure ~~shall~~ must be posted in a conspicuous place in the facility and exits must be distinctly and permanently marked.

(7) Paint, flammable liquids and other combustible material ~~shall~~ must be kept in locked storage away from heat sources or in outbuildings not used by the youth.

(8) Polyurethane foam mattresses or furniture ~~shall~~ may not be used in the facility.

(9) The facility ~~shall~~ must be equipped with a fire alarm system.

AUTH: 41-5-1802, MCA IMP: 41-5-1802, MCA

20.9.538 ~~YOUTH DETENTION FACILITY;~~ NUTRITION (1) Each facility must be inspected by the local health department and must provide documentation from a representative of the department of public health and human services that assures the facility's compliance with Title 16, Chapter 10, Part 2, MCA.

~~(1)~~(2) Youths ~~shall~~ must be given three well-balanced meals daily, appropriate to the nutritional needs of the youth, and including the four basic food group requirements.

~~(2)~~(3) Special diets ~~shall~~ must be provided for youths as ordered in writing by a physician. Such orders shall be kept on file at the facility.

(4) The facility's food service plan must be approved by a certified dietician.

~~(3)~~(5) Copies of menus as served ~~shall~~ must be kept on file for one month and ~~shall~~ must be available for inspection.

~~(4)~~(6) All food ~~shall~~ must be transported, stored, covered, prepared and served in a sanitary manner.

~~(5)~~(7) Use of home canned or prepared products~~, other than jams, jellies and fruits~~ is prohibited.

~~(6)~~(8) Hands ~~shall~~ must be washed with warm water and soap before handling the food.

AUTH: 41-5-1802, MCA IMP: 41-5-1802, MCA

20.9.541 ~~YOUTH DETENTION FACILITY;~~ HOUSEKEEPING (1) Remains the same.

AUTH: 41-5-1802, MCA IMP: 41-5-1802, MCA

20.9.545 ~~YOUTH DETENTION FACILITY;~~ SECURITY (1) The facility ~~shall~~ must have written policies and procedures for security and control including detailed instructions on:

(a) through (h) Remain the same.

(2) The facility shall review policies and procedures annually and update them as necessary.

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

~~(3)~~(4) Procedures ~~shall~~ must provide for regular and frequent inspections and maintenance of all security devices, locks and doors, to ensure their proper working order and to detect escape efforts. Any damaged or non-functioning security equipment must be promptly repaired.

~~(4)~~(5) Procedures ~~shall~~ must provide that, except in emergency situations, weapons, including those of law enforcement personnel, ~~must~~ are not ~~be~~ permitted beyond a designated area to which detained youth have no access.

~~(5)~~(6) Procedures ~~shall~~ must govern the control and use of keys, to include:

(a) Remains the same.

(b) An inventory of all keys ~~shall~~ must be made each day.

(c) Detention keys ~~shall~~ must be stored in a secure key locker when not in use.

~~(6)~~(7) Procedures ~~shall~~ must govern the control and use of tools and culinary equipment, to include:

(a) After use, tools and equipment ~~shall~~ must be accounted for by the staff member on duty and returned to their proper storage space.

(b) Eating utensils ~~shall~~ must be accounted for after each meal and returned to the kitchen.

(c) Kitchen cutlery ~~shall~~ must be inventoried daily.

~~(7)~~(8) Procedures ~~shall~~ must provide that when it is necessary for outside maintenance men to work in a detention living area, youth must be removed from the area and the living area carefully searched before youth are re-admitted. Maintenance tools must be carefully checked into and out of the detention area.

~~(8)~~(9) Procedures ~~shall~~ must govern the control and use of all flammable, toxic and caustic materials.

~~(9)~~(10) Procedures ~~shall~~ must provide for reporting escapes or runaways. ~~Such procedures shall be reviewed at least annually and updated as necessary.~~

~~(10)~~(11) Procedures ~~shall~~ must provide for a plan to be followed in emergency situations (e.g., fire, disturbance, taking of hostages) which ~~shall~~ must be made available to all personnel. These plans ~~shall~~ must be reviewed annually and updated as necessary.

~~(11)~~(12) Procedures ~~shall~~ must provide for regular searches of the facility, the youth confined, and any vehicles which are used to transport youth~~,~~; however, the searches ~~shall~~ must:

(a) and (b) Remain the same.

(12) Remains the same but renumbered (13).

(13) Remains the same but renumbered (14).

~~(14)~~(15) Material used for security purposes ~~shall~~ must be designed so the material will not cause injury to youth or staff.

AUTH: 41-5-1802, MCA IMP: 41-5-1802, MCA

20.9.547 ~~YOUTH DETENTION FACILITY~~ ADMISSION (1) The facility shall obtain in writing the youth court's order or consent decree for the detention of a youth, or a consent adjustment, or a written authorization for the detention of the youth from a law enforcement officer, probation officer (or designee of such probation officer), department representative enforcing an aftercare agreement, or other lawful authorizing documentation for detention of the youth under the requirements of the Montana Youth Court Act.

(a) A youth who has been placed in detention shall not be held longer than 24 hours, excluding weekends and legal holidays, unless a hearing has been held by the court to determine whether there is probable cause to believe the youth is a delinquent youth or a youth in need of intervention ~~supervision~~.

(i) The facility shall record the specific charges, date, and time of probable cause hearing.

(2) through (d) Remain the same.

(e) Each youth shall be ~~given~~ provided a shower and given clean under and outer clothing, a clean towel, clean bedding, and necessary toiletry and personal hygiene articles, including soap, toothbrush, toothpaste, and comb. ~~and t~~The youth's own clothing ~~shall~~ must be laundered if needed and safely stored.

(f) through (g)(xiv) Remain the same.

(xv) Any seriously injured or seriously ill youth ~~shall~~ may not be admitted to the facility ~~until~~ unless a medical examination has been conducted by a licensed physician and the physician has cleared the youth to be admitted to the facility. A written record of the diagnosis, treatment, and medication prescribed ~~shall~~ must be placed in the youth's detention file.

(h) Treatment, as directed by medical personnel, ~~shall~~ must be initiated immediately when body pests are detected.

(i) and (j) Remain the same.

(k) After a youth has been admitted, showered, issued clothing and other essentials, ~~he~~ the youth must ~~shall~~ receive orientation on the policies and procedures of the facility prior to disciplinary action or integration with other youth, and within 24 hours of admission. ~~before he is isolated in a room.~~

(i) through (n)(ii) Remain the same.

~~(3) Copies of menus as served shall be kept on file for one month and shall be available for inspection.~~

~~(4) All food shall be transported, stored, covered, prepared and served in a sanitary manner.~~

~~(5) Use of home canned products, other than jams, jellies and fruits is prohibited.~~

~~(6) Hands shall be washed with warm water and soap before handling the food.~~

AUTH: 41-5-1802, MCA IMP: 41-5-1802, MCA

20.9.550 ~~YOUTH DETENTION FACILITY.~~ RIGHTS OF YOUTH (1) Remains the same.

AUTH: 41-5-1802, MCA IMP: 41-5-1802, MCA

20.9.555 ~~YOUTH DETENTION FACILITY.~~ COMMUNICATION

(1) Remains the same.

~~(a) There shall be no limitations on the volume of correspondence a youth may receive or send.~~

(a) The facility shall routinely screen and refuse mail going to or incoming from another correctional detention facility unless it is from a member of the youth's immediate family.

(i) The facility may refuse any incoming mail from a youth who was released within 30 days prior to the date of the correspondence.

(b) through (g) Remain the same.

(2) through (c) Remain the same.

(d) Visitors must submit packages, purses, handbags and briefcases for inspection by facility personnel, and any such item may be excluded from the facility.

(e) through (h) Remain the same.

(3) through (c) Remain the same.

(d) Youth~~s~~ must be permitted reasonable and equitable access to the telephone according to the facility's policy which may establish hours of availability, ~~and~~ time limits, and contacts authorized by the youth's probation officer.

(i) Youth~~s~~ shall have the right to ~~call~~ communicate with attorneys at all reasonable times at facility expense. ~~These~~ Attorney telephone calls ~~shall~~ must be confidential.

AUTH: 41-5-1802, MCA IMP: 41-5-1802, MCA

20.9.558 ~~YOUTH DETENTION FACILITY.~~ SUPERVISION OF MEDICATION (1) Remains the same.

AUTH: 41-5-1802, MCA IMP: 41-5-1802, MCA

20.9.561 ~~YOUTH DETENTION FACILITY,~~ SERVICES AND PROGRAM (1) Because of the limited time period for which a youth may be detained in a ~~96 hour~~ short-term detention facility, this rule applies to ~~96 hour~~ short-term detention facilities only as is documented as practical for such facilities to provide for the services set out in this rule.

(2) and (a) Remain the same.

(b) When ordered by the court, ~~P~~psychiatric, psychological, medical and other diagnostic services~~, as determined by the youth court, shall be available to every youth either~~ may be provided directly by the facility or by contracting with another county or agency which provides such services.

(c) Remains the same.

(3) through (5) Remain the same.

(6) Long-term facilities must have written policies and procedures governing education. The policies and procedures must include the following:

(a) a comprehensive education program which allows youth to receive credits; and

(b) all youth must have access to available educational services.

AUTH: 41-5-1802, MCA IMP: 41-5-1802, MCA

20.9.566 ~~YOUTH DETENTION FACILITY,~~ DISCIPLINE (1) Remains the same.

AUTH: 41-5-1802, MCA IMP: 41-5-1802, MCA

20.9.572 ~~YOUTH DETENTION FACILITY,~~ SEGREGATION AND ~~SECURE~~ OBSERVATION (1) Segregation means the confinement of a youth to an individual cell that is separated from the general population. There are three forms of segregation: administrative segregation, disciplinary detention, and protective custody.

(2) Administrative segregation may be used as a disciplinary measure for behaviors by a youth such that the youth's continued presence in the general population poses a serious threat to life, property, self, staff, or other youth.

(a) The use of administrative segregation may only be permitted after lesser measures have been tried and proven unsuccessful.

(b) The use of administrative segregation must be for the shortest period of time necessary to hold the youth accountable for the behavior. The maximum period of time in which a youth may be placed in administrative segregation as a disciplinary measure is 24 hours.

(3) Disciplinary detention is used to control a youth convicted of serious rule violations and may only be utilized for a maximum of four hours.

(4) Protective custody may be used for youth requesting or requiring protection from other youth.

~~(1) Temporary lockup/secure observation may be used as a means of intervention only when the youth is in danger of harming himself, others, or property and less restrictive~~

~~alternatives have been attempted and failed to control the youth.~~

~~(2) Temporary lockup/secure observation shall be used only for the time needed to change the behavior necessitating its use and shall not be used as punishment.~~

~~(3)~~(5) Each facility which utilizes segregation ~~temporary lockup/secure observation~~ shall have a written statement of its policies which describe, at a minimum:

(a) the criteria for use of segregation ~~temporary lockup/secure observation~~;

(b) the procedure for ~~its~~ use of segregation;

(c) emergency procedures for special circumstances occurring while the youth is in segregation ~~temporary lockup/secure observation~~ (i.e., fire, internal or external disaster, etc.);

(d) the method for youth to express grievances regarding the use of segregation ~~temporary lockup/secure observation~~.

(6) Segregation may not be used as a substitute for programming or for staff convenience.

~~(4)~~(7) The youth shall be informed of the reason for segregation ~~temporary lockup/secure observation~~ at the time of the youth's placement in it.

(8) The youth must be provided a due process disciplinary proceeding when placed in segregation.

~~(5)~~(9) If soundproof, the room ~~shall~~ must have an intercom system which shall be activated when in use.

~~(6) Placement in temporary lockup/secure observation may not exceed one hour unless specifically authorized by the director, shift manager or other designated person in charge. There shall be a review of the continuing need for temporary lockup/secure observation at least every hour.~~

~~(a)~~(10) A youth who requires segregation ~~temporary lockup/secure observation~~ in excess of 24 hours ~~shall~~ must be evaluated by a mental health professional.

~~(7)~~(11) A staff member shall continuously monitor the youth placed in segregation ~~temporary lockup/secure observation~~ by visual or auditory means~~, and shall remain within 20 feet of the room. If continuous monitoring is by auditory means, t~~The staff member shall visually check on the youth at least every 10 minutes.

~~(8)~~(12) Upon the placement of a youth in segregation ~~temporary lockup/ secure observation~~, the following minimum items ~~shall~~ must be recorded, updated and maintained:

(a) through (f) Remain the same.

~~(9)~~(13) Staff of the facility ~~shall~~ must be trained in the use of segregation ~~temporary lockup/secure observation~~ and its effects upon youth.

~~(10)~~(14) Records of the use of segregation ~~temporary lockup/secure observation~~, the youth's records, staff records and the room ~~shall~~ must be made available to the department for inspection.

(15) Segregation for the purpose of observation only may be used only within the initial 24 hours of detention.

AUTH: 41-5-1802, MCA IMP: 41-5-1802, MCA

20.9.575 ~~YOUTH DETENTION FACILITY.~~ MECHANICAL RESTRAINT AND INFLAMMATORY AGENT ~~(1) A facility may use hand/ankle cuffs or soft cuffs when transporting a youth to or from the facility.~~

~~(2) Any other use of mechanical restraint is prohibited.~~

(1) Each facility which utilizes mechanical restraint shall have a written statement of its policies which describes, at a minimum:

(a) Handcuffs and shackles or leg irons are the only approved means of mechanical restraint within a detention facility.

(i) The use of mechanical restraint may only be permitted to transport youth or to control aggressive or assaultive behavior that is a clear and present danger to the youth, other youth, staff or the safety and security of the facility.

(b) A youth who is mechanically restrained may not be denied food, or subjected to corporal punishment or abusive or degrading treatment.

(c) Mechanical restraint may not be used for punishment, for the convenience of staff, or as a substitute for program.

(d) Whenever mechanical restraint is used, for any purpose other than transportation, an incident report which documents all relevant information must be entered into the youth's case record, and a copy must be sent to the department licensing specialist within 48 hours of the incident. The information contained in the incident report must include but need not be limited to the following:

(i) the specific behavior(s) that necessitated the use of mechanical restraint;

(ii) alternative interventions that were unsuccessful in controlling the youth's behavior(s);

(iii) authorization by the director or designee;

(iv) the time and date that the use of mechanical restraint began and ended; and

(v) monitoring reports, with observations and notations regarding the youth's physical and emotional condition, at no greater than fifteen-minute intervals.

(e) The following procedures and conditions must be observed whenever the use of mechanical restraint on a youth is requested:

(i) authorization for the use of mechanical restraint must be provided by the facility director or designee;

(ii) the use of mechanical restraint must be for the minimum period of time necessary to enable the youth to gain control of his behavior, but must not exceed one hour;

(iii) a staff person must remain in sight of the youth and have no duties or responsibilities other than the supervision of the youth;

(iv) the staff person must ensure that the physical needs of the youth are met promptly;

(v) mechanical restraint must be applied in a manner to minimize the risk of injury to the youth or the staff person responsible for supervising the youth; and

(vi) mechanically restraining a youth to a stationary object is prohibited.

(f) A log recording all incidents where mechanical restraint was used must be maintained by the facility director. Information contained in the log must include but need not be limited to the following:

(i) the youth's name;

(ii) the date and time period over which mechanical restraint was used;

(iii) staff who used mechanical restraint; and

(iv) the signature of the director or designee who authorized the use of mechanical restraint.

(g) Facility staff must be trained by a Montana-certified trainer in the use and effects of mechanical restraint upon youth.

(h) Mechanical restraints must be stored and maintained in a locked area with access restricted to the director or designee.

(i) The use of handcuffs, shackles and belly chains during transportation is permitted. The handcuffs, belly chains and shackles must be applied so as to minimize the discomfort of such devices. Lap and shoulder restraints which are part of a vehicle's safety equipment must be worn at all times during transportation.

(2) Each facility which utilizes inflammatory agents must have a written procedure which describes, at a minimum:

(a) Inflammatory agents may only be permitted when a lesser degree of force is not effective to prevent serious injury to youth, other youth, staff or to ensure the safety and security of the facility.

(b) Inflammatory agents must not be used for punishment, for the convenience of staff, or as a substitute for program.

(c) The following procedures and conditions must be observed whenever the use of inflammatory agents on a youth is requested:

(i) authorization for the use of inflammatory agents must be provided by the facility director or designee;

(ii) youth(s) subjected to inflammatory agents who suffer from burning to the eyes, nose, mouth and other exposed skin areas must be removed from the contaminated environment as soon as possible;

(iii) youth(s) who have been subjected to inflammatory agents must be allowed to shower and change clothes once they are under staff control;

(iv) any individual exposed to an inflammatory agent must be examined by a health care employee as soon as practical. If there are any persistent symptoms, the youth(s)

must be monitored until no further effects or symptoms remain; and

(v) cells and other areas exposed to an inflammatory agent may require hosing or other decontamination. Policy must contain the manner of response to cross contamination and evacuation procedures for uninvolved youth.

(d) Whenever inflammatory agents are used, an incident report which documents all relevant information must be entered into the youth's case record, and a copy must be sent to the department licensing specialist within 48 hours of the incident. The information contained in the incident report must include but need not be limited to the following:

(i) the specific behavior(s) that necessitated the use of an inflammatory agent;

(ii) alternative interventions that were unsuccessful in controlling the youth's behavior(s);

(iii) authorization by the director or designee;

(iv) the time and date that the agent was used; and

(v) decontamination procedure followed.

(e) Only the amount of inflammatory agents needed to achieve the desired effect may be used.

(f) The youth's probation officer or referring agency must be notified whenever an inflammatory agent is used.

(g) Protective devices (gas masks) must be available for facility staff in order to function in a contaminated area.

(h) A log recording all incidents where an inflammatory agent was used must be maintained by the facility director. Information contained in the log must include but need not be limited to the following:

(i) the youth's name;

(ii) the date and time used;

(iii) staff who used the inflammatory agent; and

(iv) the name of the director or designee who authorized the use of an inflammatory agent.

(i) Inflammatory agents may be used only by employees specifically trained by a certified oleoresin capsicum trainer in its use and effects upon youth.

(j) Inflammatory agents must be stored and maintained in a locked area with access restricted to the director or designee.

AUTH: 41-5-1802, MCA IMP: 41-5-1802, MCA

20.9.578 ~~YOUTH DETENTION FACILITY~~ RELEASE, TRANSFER AND TRANSPORTATION (1) through (5) Remain the same.

(6) The facility ~~shall~~ must have policy and procedures for transportation of youth which shall include:

(a) The driver of any vehicle transporting youth ~~shall~~ must be at least 18 years of age and ~~shall~~ must be properly licensed to operate the vehicle.

(b) through (d) Remain the same.

AUTH: 41-5-1802, MCA IMP: 41-5-1802, MCA

6. The amendments of ARM 20.9.501, 20.9.503, 20.9.506, 20.9.510, 20.9.513, 20.9.515, 20.9.518, 20.9.520, 20.9.524, 20.9.526, 20.9.528, 20.9.533, 20.9.535, 20.9.538, 20.9.541, 20.9.545, 20.9.547, 20.9.550, 20.9.555, 20.9.558, 20.9.561, 20.9.566, 20.9.572, 20.9.575 and 20.9.578, and the repeal of 20.9.569 pertaining to licensure of youth detention facilities are reasonably necessary to implement the 1997 legislative changes in the Youth Court Act and to address the 1995 reorganization of the Department of Corrections.

7. Interested persons may present their views either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Mark Royer, Juvenile Detention Licensing Specialist, Montana Department of Corrections, P.O. Box 201301, Helena, MT 59620-1301 and must be received no later than March 13, 1998.

8. Lois Adams, Policy Manager, has been designated to preside over and conduct the hearing.

Rick Day, Director
Department of Corrections

David L. Ohler
Rule Reviewer

Certified to the Secretary of State, January 16, 1998.

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

In the matter of the amendment of rule 46.30.1605 and the repeal of 46.30.1601 and 46.30.1603 pertaining to the child support and enforcement services fee schedule	))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND REPEAL

TO: All Interested Persons

1. On February 23, 1998, at 8:30 a.m., a public hearing will be held by Metnet conference at the following Metnet sites: the Metnet studio in the basement of the Department of Public Health and Human Services Building, 111 N. Sanders, Helena, Montana; Montana State University College of Technology, Room 147, 2100 16th Avenue South, Great Falls, Montana; University of Montana, Field House Room 161, Intersection of 6th Avenue East & Van Buren Street, Missoula, Montana; and Montana State University, Special Education Building, Room 162, 1500 N. 30th Street, Billings, Montana to consider the proposed amendment of rule 46.30.1605 and the repeal of 46.30.1601 and 46.30.1603 pertaining to the child support and enforcement services fee schedule. This hearing will be held concurrently with the child support guidelines hearing as proposed in MAR Notice Number 37-91 in this issue of the Montana Administrative Register.

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 February 13, 1998, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970.

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

46.30.1605 FEE SCHEDULE (1) As authorized by 40-5-210, MCA, the CSED ~~will charge fees to recover costs and expenses according to~~ adopts the following schedule:

(1)(a) remains the same.

(b) for mileage, each way and for each mile, when using a personal or state owned automobile to travel for in-person appearances at judicial or administrative hearings or trials as

witness, hearing officer, CSED attorney or other CSED representative, a mileage allowance at a rate equal to the mileage allotment allowed by the United States internal revenue service for the ~~proceeding~~ preceding year;

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

(i) for issuance of an administrative paternity decision and order, the CSED may assess a standardized fee of $60.00.

(j) for preparation of a hardship on payment of delinquent support, a standardized fee of $15.00 for each request and $5.00 for each hardship renewal. This fee shall be paid by the individual requesting a hardship. The total fee incurred against an individual for preparation of a hardship in any 12 month period shall not exceed $30.00.

(k) for preparation of a request for another state to take an action, a standardized fee of $20.00 to be assessed against the individual receiving CSED services.

(l) for each payment distribution to a CSED case, a fee which is the lesser of $7.00 or 10% of the payment. This fee shall be assessed against the individual receiving CSED services. If the individual receiving services is the obligee, the fee may be deducted from the payment before distribution.

(m) for non-assistance related services, a fee for each application. This fee shall be collected at the time of application from the individual submitting the application. The fee shall be $25.00 for an individual whose annual household income is at least $20,000. The fee shall be $15.00 for an individual whose annual household income is at least $10,000, but less than $20,000. The fee shall be $5.00 for an individual whose annual household income is less than $10,000.

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

(5) Under some circumstances, fees assessed to a party with low income under (4)(b) through (e) may be reduced. To determine if a reduction is appropriate, the CSED will refer to the child support determination worksheet (form CS-404A) prepared as part of the review and modification process. The CSED will then divide the figure shown on the worksheet for ~~net~~ income available ~~resources~~ for children by the ~~self support reserve~~ personal allowance. If the resultant number is greater or equal to 50%, no reduction of the fee is appropriate. If the resultant number is less than 50%, it shall be doubled and multiplied by the amount of the fee. The number determined by this process is the reduced fee amount to be assessed to the low income party.

(6) and (6)(a) remain the same

(b) for each intercept of federal ~~and~~ or state ~~income tax refunds and state debt offsets~~ payments in non-public assistance cases, a standardized fee of $25.00 or actual costs if less than the standardized fee; federal or state payments include, but are not limited to, income tax refunds; and

(6)(c) remains the same.

(7) In no case may a fee authorized under this rule be charged to or collected from a person while that person is a

recipient of ~~AFDC~~ public assistance in Montana unless federal regulations pertaining to operation of the IV-D program allow the charging or collection of that fee.

(8) In no case may a fee authorized under this rule be changed to or collected from a foreign reciprocating country, or an obligee residing in a foreign country.

AUTH: Sec. 40-5-202 and 40-5-210, MCA
IMP: Sec. 40-5-210, MCA

3. The rules 46.30.1601 and 46.30.1603 as proposed to be repealed are on pages 46-8401 and 46-8403 of the Administrative Rules of Montana.

AUTH: Sec. 40-5-202 and 40-5-210, MCA
IMP: Sec. 40-5-210, MCA

4. Members of the legislature requested that the Department include additional fees in its schedule, in an effort to defray program costs. The Department commissioned a study by the University of Montana, to identify possible fees and estimate the revenue each fee could generate. The Department used the study to evaluate the effectiveness of implementing each fee suggested by the study.

The proposed rule amendment includes fees for sending full requests to other states for specific actions. The fee would generate program income sufficient to offset associated costs. Such fees would not inhibit an individual's ability to receive support services, since the individual may apply directly to the other state for services, which would avoid costs associated with two states providing services for that individual. Overall, this fee could result in cost savings as well as program income. The fee will be assessed against the person receiving services, since that is the only individual subject to Montana's jurisdiction.

Fees for requesting a hardship to extend the period of time for the Obligor to pay off delinquent support are included in the proposal. The fee would generate program income sufficient to offset associated costs. Since the hardship process is not a federally mandated function, the fee will be assessed to the Obligor. The Obligor is the person requesting a hardship, and the person who benefits from a hardship.

Application fees for services are to be assessed. The application fee is mandated by federal regulations, although the cost of the application fee are presently absorbed by the Department. The fee will generate program income sufficient to offset associated costs. Overall, this fee will result in a small cost savings because costs of paying an application fee to the federal government would no longer be absorbed. The fee

will be assessed against the person receiving services, since that is the person who submits the application.

ARM 46.30.1601 provides a reference to 40-5-210, MCA as the authorizing statute for the child support enforcement division's (CSED) fee schedule. However, ARM 46.30.1605 also provides the statutory reference and history. Therefore, the Department believes that ARM 46.30.1601 is unnecessary and should be deleted.

The Department believes that the terms listed in ARM 46.30.1603 are self-explanatory and require no definition. Therefore, ARM 46.30.1603 is no longer necessary and is being repealed.

ARM 46.30.1605 establishes a fee schedule as allowed under 40-5-210, MCA. Designation of persons subject to fees is necessary to comply with 40-5-210(5)(a), MCA. The Department seeks to clarify certain provisions of the existing rules, by designating the persons subject to fees as required by 40-5-210(5)(a), MCA.

The proposed rule amendment establishing fees is necessary in order to generate the revenue contemplated by the legislature. These include a fee for application for services, which is authorized by 40-5-210(1), MCA. Additional fees may be assessed for interstate requests and hardship requests, which come under the additional fees anticipated by 40-5-210(5), MCA. Finally, the Department proposes a payment processing fee, authorized by 40-5-210(3), MCA.

There are no available options outside of the rulemaking process to implement these fees. The rules are necessary to make sure the public has the opportunity for input. In addition, 40-5-210, MCA provides for a fee schedule implemented through the rulemaking process. The Department is required to adopt rules under the Montana Administrative Procedure Act.

OPTIONS CONSIDERED, BUT NOT CHOSEN:

Charges for telephone calls to the Department's customer service unit were considered. However, the charges were not proposed in the revised rules, because the costs associated with obtaining and collecting judgments for these charges would negate the benefits and result in little or no cost recovery. At the present time, there is no statutory mechanism to obtain the judgments administratively and there are no legal resources to pursue each of these charges in district courts. Such actions in district court would be unduly burdensome on the court systems. In addition, the charges may inhibit persons from making calls which are necessary for case management. The charges could also decrease the ability to meet mandatory audit criteria and interfere with collection of support.

Fees for issuing garnishment orders and notices of intent to issue garnishment orders were discussed. The proposal does not include those fees because costs associated with obtaining and collecting judgments would negate the benefits and result in little or no cost recovery. Another deciding factor was the fact that the number of garnishment orders and notices of intent to issue garnishment orders which are needed in a case cannot be limited or controlled by Obligors and Obligees. Therefore, these individuals have no way to limit the amount of fees that are assessed against them for garnishment related activities. Finally, the existing rule adequately provides for such fees as actual costs, if appropriate.

Fees for each hearing request, informal hearing scheduled, each decision and order issued by the Office of the Administrative Law Judge, and for abstracting administrative decisions to district courts were considered. The fees are not included in proposed rules because of possible public perception that the fee could interfere with a person's right to exercise due process. Although the fees would generate program income, charging for such a public service may also inhibit persons from utilizing services, depriving children of necessary support. The possibility of collecting these fees in a significant number of cases is limited. Finally, the existing rule adequately provides for such fees as actual costs, if appropriate.

Charges for entering paternity information on the Department's computer system, after paternity is resolved were addressed. The costs associated with obtaining and collecting judgments for these fees would negate the benefits and result in little or no cost recovery. In addition, paternity is resolved in many cases because fathers acknowledge paternity, or the children were born during a marriage. Assessment of such a fee in these instances is unfair, no action was required to take to resolve the paternity. Instead, the proposal includes a fee for orders resulting from contested paternity hearings before the Administrative Law Judge.

Fees for issuing a notice to establish a support order were also analyzed. The suggested fee was $10.00 per notice. The costs associated with obtaining and collecting the judgments for the $10.00 fee would negate the benefits and result in little or no cost recovery, because the $10.00 fee would most likely be collected over a two year period under income withholding statutes. Finally, the existing rule adequately provides for such fees, if implementation becomes desirable in the future.

Fees for establishment of support orders were considered. The proposed rules do not include the fee because the fee may inhibit persons from utilizing establishment services, which may deprive children of necessary support. Additionally, the

possibility of collecting these fees in a significant number of cases is limited. Finally, the existing rule adequately provides for such fees, if appropriate.

Fees for issuing motion and orders to dismiss hearing requests were discussed. Such fees may inhibit informal settlement prior to hearing. Ultimately, this would result in additional hearings which would expend personnel resources unnecessarily. The fee was not included in the proposal, in order to save resources and encourage informal settlement.

Fees for serving a notice in an administrative modification action were addressed. The existing rule adequately provides for such fees as actual costs, if appropriate. In addition, the existing rules already provide for specific modification costs, if the action is arbitrated.

Fees for receiving requests from other states for an action were considered. The suggested fee was $10.00 per request. The costs associated with obtaining and collecting the judgments for the $10.00 fee would negate the benefits and result in little or no cost recovery, because the $10.00 fee would most likely be collected over a two year period under existing income withholding statutes. Finally, the existing rule adequately provides for such fees.

Charges for letters to other states asking for the status of their case were discussed. However, the fee is not included in the proposal, because the costs associated with obtaining and collecting judgments for these charges would negate the benefits and result in little or no cost recovery. The fees cannot be assessed against Obligors in these cases, because the Obligors are beyond Montana's jurisdiction. At the present time, there is no statutory mechanism to obtain such judgments administratively and there are no legal resources to pursue each of these charges in district court or federal court. Such actions would be unduly burdensome on the court systems. In addition, the fee would inhibit the ability to meet mandatory audit criteria and interfere with the establishment and collection of support.

Fees for sending letters to verify Obligor's employment were analyzed. The costs associated with obtaining and collecting judgments for these fees would negate the benefits and result in little or no cost recovery. Another factor in the decision not to assess these fees was the fact that the number of employment verifications which are needed in a case cannot be limited or controlled by Obligors and Obligees. Therefore, these individuals have no way to limit the amount of fees that are assessed against them for verification related activities. Finally, the existing rule adequately provides for such fees as actual costs, if appropriate.

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 March 5, 1998. The Department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write the person at the address above.

6. The Office of Legal Affairs, Department of Public Health and Human Services has been designated to preside over and conduct the hearing.

Dawn Sliva
Rule Reviewer

Director, Public Health and Human Services

Certified to the Secretary of State January 16, 1998.

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

In the matter of the proposed adoption of rules I through XXIII and the repeal of rules 46.30.1501, 46.30.1502, 46.30.1507, 46.30.1508, 46.30.1513 through 46.30.1516, 46.30.1520 through 46.30.1522, 46.30.1525, 46.30.1532 through 46.30.1535, 46.30.1538, 46.30.1541, 46.30.1542, 46.30.1543, and 46.30.1549 pertaining to child support enforcement guidelines	))))))))))))))))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION AND REPEAL

TO: All Interested Persons

1. On February 23, 1998, at 8:30 a.m., a public hearing will be held by Metnet conference at the following Metnet sites: the Metnet studio in the basement of the Department of Public Health and Human Services Building, 111 N. Sanders, Helena, Montana; Montana State University College of Technology, Room 147, 2100 16th Avenue South, Great Falls, Montana; University of Montana, Field House Room 161, Intersection of 6th Avenue East & Van Buren Street, Missoula, Montana; and Montana State University, Special Education Building, Room 162, 1500 N. 30th Street, Billings, Montana to consider the proposed adoption of Rules I through XXIII and the repeal of rules 46.30.1501, 46.30.1502, 46.30.1507, 46.30.1508, 46.30.1513 through 46.30.1516, 46.30.1520 through 46.30.1522, 46.30.1525, 46.30.1532 through 46.30.1535, 46.30.1538, 46.30.1541, 46.30.1542, 46.30.1543, and 46.30.1549 pertaining to child support enforcement guidelines. This hearing will be held concurrently with the child support fee schedule hearing proposed in MAR Notice Number 37-90 in this issue of the Montana Administrative Register.

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 February 13, 1998, 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 AUTHORITY, POLICY AND PURPOSE (1) These guidelines are promulgated under the authority of 40-5-209, MCA, for the purpose of establishing a standard to be used by the district courts, child support enforcement agencies, attorneys and parents in determining child support obligations.

(2) These guidelines are based on the principle that it is the first priority of parents to meet the needs of the child according to the financial ability of the parents. In a dissolution of marriage or when parents have never been married, a child's standard of living should not, to the degree possible, be adversely affected because a child's parents are not living in the same household.

(3) These guidelines are structured to determine child support on an annual basis. Payment will be made in equal monthly installments.

(4) As required by 40-4-204, 40-5-226 and 40-6-116, MCA, these guidelines apply to contested, non-contested and default proceedings to establish or modify support orders.

AUTH: Sec. 40-5-203, MCA
IMP: Sec. 40-5-209, MCA

Rule II REBUTTABLE PRESUMPTION (1) The guidelines create a presumption of the adequacy and reasonableness of child support awards. However, every case must be determined on its own merits and circumstances and the presumption may be rebutted by evidence that a child's needs are not being met.

(2) At the request of one of the parties and upon consideration of the factors set out in the guidelines and in 40-4-204, 40-4-208 and 40-6-116, MCA, the guidelines may be rebutted and a variance from the guidelines amount may be granted. Any consideration of a variance from the guidelines must take into account the best interests of the child.

(3) The support order may vary from the guidelines in a particular case only if the decree, separation order or support order contains a specific written finding showing justification that application of the guidelines would be unjust or inappropriate, based upon evidence sufficient to rebut the presumption.

(4) Findings that rebut and vary the guidelines must include a statement of the amount of support that would have been ordered under the guidelines without the variance.

(5) Child support may vary from the guidelines based on a stipulation or agreement of the parties only if the stipulation or agreement meets the following criteria:

(a) it is in writing executed by the parties or is entered by a court or administrative proceeding;

(b) the parties have signed the stipulation or agreement free of coercion;

(c) it contains specific justification as to why

application of the guidelines is unjust or inappropriate; and

(d) it contains a statement of the amount of support that would have been appropriate under the guidelines without the variance.

(6) A support order granting a variance, based upon the existence of a condition or the performance of an act, must provide that, upon termination of the circumstances which justify the variance, the support immediately reverts to the amount which would have been ordered under the guidelines without the variance.

AUTH: Sec. 40-5-203, MCA
IMP: Sec. 40-5-209, MCA

Rule III DEFINITIONS For purposes of this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Actual Income" is defined in [Rule IV].

(2) "CSED" means the child support enforcement division of the Department of Public Health and Human Services.

(3) "Department" means the Department of Public Health and Human Services.

(4) "Federal poverty index" means the minimum amount of income needed for subsistence. The amount is developed by the U.S. Office of Management and Budget, revised annually in accordance with 42 U.S.C. 9902, and published annually in the federal register.

(5) "Guidelines" means the administrative rules for establishment of child support as provided in ARM Title 46, chapter 30, subchapter 15, as promulgated in 40-5-209, MCA.

(6) "Imputed income" is defined in [Rule IV].

(7) "Legal dependent" means natural born and adopted minor children, spouses, special needs adult children, household members covered by a conservatorship or guardianship, and parent's parents living in the household who are claimed on tax returns as legal dependents.

(8) "Long distance parenting" is defined in [Rule XV].

(9) "Other child" means a child whom a parent is legally obligated to support but who is not the subject of the child support calculation. A step-child is not considered an other child.

(10) "Personal Allowance" is defined in [Rule VIII].

(11) "Pre-existing support order" means an order entered by a tribunal of competent jurisdiction prior to the calculation or recalculation of support.

(12) "Primary child support allowance" is defined in [Rule XI].

(13) "SOLA" means standard of living adjustment.

(14) "Standard of living" includes the necessities, comforts and luxuries enjoyed or aspired to by either parent, the child or both parents and the child, which are needed to maintain them in customary or proper community status or circumstances.

(15) "Subsequent child" is defined in [Rule XXIII].
(16) "Transfer Payment" is defined in [Rule XVII].

AUTH: Sec. 40-5-203, MCA
IMP: Sec. 40-5-209, MCA

Rule IV DETERMINATION OF INCOME FOR CHILD SUPPORT

(1) Income for child support includes actual income, imputed income, or any combination thereof which fairly reflects a parent's resources available for child support. Income can never be less than zero.

(2) Actual income includes:

(a) economic benefit from whatever source derived, except as excluded in (3) of this rule, and includes but is not limited to income from salaries, wages, tips, commissions, bonuses, earnings, profits, dividends, severance pay, pensions, preretirement distributions from retirement plans, draws or advances against earnings, interest, trust income, annuities, royalties, alimony or spousal maintenance, social security benefits, veteran's benefits, workers' compensation benefits, unemployment benefits, disability payments, earned income credit and all other government payments and benefits. A history of capital gains in excess of capital losses shall also be considered as income for child support.

(b) gross receipts minus reasonable ordinary and necessary expenses required for the production of income for those parents who receive income or benefits as the result of an ownership interest in a business or who are self-employed. Straight line depreciation for vehicles, machinery and other tangible assets may be deducted if the asset is required for the production of income. The party requesting such depreciation shall provide sufficient information to calculate the value and expected life of the asset. Internal revenue service rules apply to determine expected life of assets. Business expenses do not include deductions relating to personal expenses, or expenses not required for the production of income.

(c) the value of non-cash benefits such as in-kind compensation, personal use of vehicle, housing, payment of personal expenses, food, utilities, etc.

(d) grants, scholarships, third party contributions and earned income received by parents engaged in a plan of economic self-improvement, including students. Financial subsidies or other payments intended to subsidize the parent's living expenses and not required to be repaid at some later date must be included in income for child support.

(e) allowances for expenses, flat rate payments or per diem received, except as offset by actual expenses. Actual expenses may be considered only to the extent a party can produce receipts or other acceptable documentation. Reimbursements of actual employment expenses may not be considered income for purposes of these rules.

(3) Income for child support does not include benefits

received from means-tested veteran's benefits and means-tested public assistance programs including but not limited to the former aid to families with dependent children (AFDC), cash assistance programs funded under the federal temporary assistance to needy families (TANF) block grant, supplemental security income (SSI), food stamps, general assistance and child support payments received from other sources.

(4) For lump sum social security payments, social security benefits received by a child of the calculation as the result of a parent's disability, refer to [Rule XXI].

(5) In determination of a parent's income for child support, income attributable to subsequent spouses, domestic associates and other persons who are part of the parent's household is not considered. If a person with a subsequent family has income from overtime or a second job, that income is presumed to be for the use of the subsequent family, and is not included in income for child support for the purposes of determining support for a prior family.

(6) "Imputed income" means income not actually earned by a parent, but which may be attributed to the parent based on:

(a) the parent's recent work history;

(b) occupational and professional qualifications;

(c) prevailing job opportunities in the community and earning levels in the community.

(7) Income should be imputed whenever a parent:

(a) is unemployed;

(b) is underemployed;

(c) fails to produce sufficient proof of income;

(d) has an unknown employment status; or

(e) is a full-time student whose education or retraining will result, within a reasonable time, in an economic benefit to the child for whom the support obligation is being determined, unless actual income is greater. If income is imputed it should be determined at the parent's earning capacity based on a 40 hour work week for 13 weeks and a 20 hour work week for the remaining 39 weeks of a 12 month period. (This is an annual average of 25 hours per week.)

(8) When income is imputed to a parent, federal earned income credit (EIC) should not be included in the imputed income.

(9) Income should not be imputed if any of the following conditions exist:

(a) the reasonable costs of day care for dependents in the parent's household would offset in whole or in substantial part, that parent's imputed income. Day care includes care of any person for whom a party would be allowed a dependent care tax credit under current internal revenue service rules;

(b) a parent is physically or mentally disabled to the extent that the parent cannot earn income;

(c) unusual emotional and/or physical needs of a legal dependent require the parent's presence in the home.

(d) the parent has made diligent efforts to find and

accept suitable work or to return to customary self-employment, to no avail; or

(e) the court or hearing officer makes a finding that other circumstances exist which make the imputation of income inequitable. However, the amount of imputed income shall be decreased only to the extent required to remove such inequity.

AUTH: Sec. 40-5-203, MCA
IMP: Sec. 40-5-209, MCA

Rule V INCOME VERIFICATION/DETERMINING ANNUAL INCOME (1) A parent must swear to the accuracy and authenticity of all financial information submitted for the purpose of calculating child support.

(2) Income of the parents must be documented. This may include pay stubs, employer statements, income tax returns, profit and loss statements.

(3) To the extent possible, income for child support and expenses should be annualized to avoid the possibility of skewed application of the guidelines based on temporary or seasonal conditions. Income and expenses may be annualized using one of the two following methods:

(a) seasonal employment or fluctuating income may be averaged over a period sufficient to accurately reflect the parent's earning ability; or

(b) current income or expenses may be projected when a recent increase or decrease in income is expected to continue for the foreseeable future. For example, when a student graduates and obtains permanent employment, income should be projected at the new wage.

(4) Income for child support may differ from a determination of income for tax purposes.

AUTH: Sec. 40-5-203, MCA
IMP: Sec. 40-5-209, MCA

Rule VI ALLOWABLE DEDUCTIONS FROM INCOME (1) Allowable deductions from income include:

(a) the amount of alimony or spousal maintenance which a parent is required to pay under a court or administrative order.

(b) an amount for needs of a child not of this calculation whom a parent is legally obligated to support. For each child deduct either:

(i) the amount of a pre-existing support order, or if no order exists, then the amount allowed for a child for whom no support order exists. This amount is calculated by determining one-half of the primary child support allowance as found in [Rule XI] for the number of other children:

(A) for whom no support order exists, plus;

(B) the number of other children who reside with the parent; or

(ii) an amount determined under [Rule XXIII], when

modifying a current child support order.

(c) the amount of any health insurance premium which either parent is required to pay under a court or administrative order for a child not of this calculation;

(d) the actual income tax liability based on tax returns. If no other information is available, or if income is imputed, use the tax tables which show the amount of withholding for a single person with one exemption;

(e) the actual social security (FICA plus Medicare) paid;

(f) actual unreimbursed expenses incurred as a condition of employment such as uniforms, tools, safety equipment, union dues, license fees, business use of personal vehicle and other occupational and business expenses;

(g) actual contributions toward internal revenue service (IRS) approved retirement and deferred compensation plans. Mandatory contributions are fully deductible. Voluntary contributions or a combination of mandatory and voluntary contributions may be deducted up to the current contribution rate for Montana State Public Employees' Retirement System;

(h) one-half reasonable expenses for items such as child care or in-home nursing care for the parent's legal dependents other than those for whom support is being determined, which are actually incurred and which are necessary to allow the parent to work, less federal tax credits. Do not deduct imputed child care expenses when imputing income;

(i) extraordinary medical expenses incurred by a parent to maintain that parent's health or earning capacity which are not reimbursed by insurance, employer, or other entity; and

(j) court ordered payments except as excluded under [Rule VII].

(2) Allowable deductions from income for child support differ from allowable deductions for tax purposes.

AUTH: Sec. 40-5-203, MCA
IMP: Sec. 40-5-209, MCA

Rule VII NON-ALLOWABLE DEDUCTIONS FROM INCOME

(1) Deductions which are not allowable under these rules include:

(a) payroll deductions for the convenience of the parent, such as credit union payments and savings;

(b) a net loss in the operation of a business or farm, unless the parent cannot reasonably be removed from the unprofitable situation;

(c) investment losses outside the normal course of business;

(d) expenses incurred for the support of a spouse capable of self-support;

(e) payments for satisfaction of judgments against a parent related to the purchase of property for the parent's personal use;

(f) bankruptcy payments except to the extent that they

represent debts for expenses which would otherwise be deductible; or

(g) a stepchild and associated costs.

AUTH: Sec. 40-5-203, MCA
IMP: Sec. 40-5-209, MCA

Rule VIII PERSONAL ALLOWANCE (1) Personal allowance is an amount which reflects 1.3 multiplied by the federal poverty index guideline for a one person household. This amount is deducted when determining child support. Personal allowance is a contribution toward, but is not intended to meet the subsistence needs of parents.

(2) Adjustments for the needs of other legal dependents of a parent are limited to those provided for in [Rule VI].

AUTH: Sec. 40-5-203, MCA
IMP: Sec. 40-5-209, MCA

Rule IX INCOME AVAILABLE FOR CHILD SUPPORT (1) Income available for support is determined by subtracting from each parent's income, the deductions allowed under [Rule VI] and the amount of personal allowance determined under [Rule VIII].

AUTH: Sec. 40-5-203, MCA
IMP: Sec. 40-5-209, MCA

Rule X TOTAL INCOME AVAILABLE/PARENTAL SHARE (1) The parents' incomes available for child support are combined to determine the total income available for child support. Each income is divided by the total. The resulting factor determines each parent's responsibility for the primary child support allowance under [Rule XI] and supplements under [Rule XII].

AUTH: Sec. 40-5-203, MCA
IMP: Sec. 40-5-209, MCA

Rule XI PRIMARY CHILD SUPPORT ALLOWANCE (1) Primary child support allowance is a standard amount to be applied toward a child's food, shelter, clothing and related needs and is not intended to meet the needs of a particular child. This allowance is .30 multiplied by the personal allowance found at [Rule VIII] for the first child. For the second and third children, the personal allowance is multiplied by .20 and added for each child. For four or more children, the personal allowance is multiplied by .10 and added for each additional child.

AUTH: Sec. 40-5-203, MCA
IMP: Sec. 40-5-209, MCA

Rule XII SUPPLEMENTS TO PRIMARY CHILD SUPPORT ALLOWANCE

(1) The primary child support allowance is supplemented by:

(a) reasonable child care costs incurred by a parent for children of the calculation as a prerequisite to employment. The day care expense is reduced by the federal dependent care tax credit; and

(b) other needs of the child as determined by the circumstances of the case, excluding health insurance premium and other health related costs.

(2) The total supplemental needs of the child are divided proportionately between the parents according to the parental share determined under [Rule X].

(3) Each parent will receive credit for the amount of the supplemental needs paid by that parent.

AUTH: Sec. 40-5-203, MCA
IMP: Sec. 40-5-209, MCA

Rule XIII MINIMUM SUPPORT OBLIGATION (1) A specific minimum contribution toward child support should be ordered in all cases even though a parent does not have sufficient income as defined in [Rule IV] after deductions as defined in [Rule VI] to meet the parent's personal allowance.

(2) The minimum contribution is a portion of the income after deductions and is determined by the ratio between income after deductions and the personal allowance as follows:

"Income after deductions" divided by the personal allowance	Multiply "income after deductions" by the following
over .00 to .25	.00
.25 to .30	.01
.30 to .35	.02
.35 to .40	.03
.40 to .45	.04
.45 to .50	.05
.50 to .55	.06
.55 to .60	.07
.60 to .65	.08
.65 to .70	.09
.70 to .75	.10
.75 to .80	.11
.80 to .85	.12
.85 to .90	.13
.90 to .95	.14
.95 to 1.00	.15

(3) For parents whose income after deductions equals or exceeds the parent's personal allowance but which is less than the primary child support allowance, plus supplements, the parent's minimum contribution is the greater of:

(a) the difference between income after deductions and the parent's personal allowance; or

(b) an amount equal to .15 multiplied by the parent's income after deductions.

(4) The minimum contributions under this rule are presumptive and may be rebutted by the circumstances of a particular case, provided there is an appropriate finding on the record.

AUTH: Sec. 40-5-203, MCA
IMP: Sec. 40-5-209, MCA

Rule XIV INCOME AVAILABLE FOR STANDARD OF LIVING ADJUSTMENT (SOLA) (1) The purpose of SOLA is to ensure that the child enjoys, to the extent possible, the standard of living commensurate with the parent's income. If a parent has income available after deducting the personal allowance and the parent's share of the child support allowance as supplemented, the remaining income is subject to SOLA.

(2) SOLA is calculated by subtracting from the parent's income available for support, as provided in [Rule IX] the parent's share of the primary child support allowance under [Rule XI] and supplements as provided in [Rule XII].

(3) If income is available for SOLA, multiply the income by the SOLA factor from the following table which corresponds to the number of children for whom support is being determined.

Number of Children	SOLA FACTOR
1	.17
2	.26
3	.33
4	.37
5	.41
6	.45
7 or more	.49

(4) Income available for SOLA may not be less than zero.

AUTH: Sec. 40-5-203, MCA
IMP: Sec. 40-5-209, MCA

Rule XV LONG DISTANCE PARENTING ADJUSTMENT (1) Long distance parenting is any travel by a parent or child to attain the goals of the parenting plan. A long distance parenting adjustment is allowed when travel by a parent or child exceeds 4,000 miles in a calendar year.

(2) The amount of income available for SOLA is reduced to the extent the actual annual expense of transportation for long distance parenting exceeds 4,000 miles multiplied by the current IRS business mileage rate (standard expense). The reduction is determined separately for each parent.

(3) The reduction is calculated as follows:

(a) multiply the parent's annual mileage driven to exercise long-distance parenting by the current IRS business mileage rate;

(b) add the annual cost of transportation by means other than automobile;

(c) subtract the standard expense from the total of (3) (a) and (b) above; and

(d) subtract any difference greater than zero from the parent's income available for SOLA.

(4) Expenses are limited to costs of transportation and do not include meals, lodging, or other costs.

(5) A long distance parenting adjustment may not reduce income available for SOLA below zero.

AUTH: Sec. 40-5-203, MCA
IMP: Sec. 40-5-209, MCA

Rule XVI TOTAL MONTHLY SUPPORT AMOUNT (1) The total monthly support amount consists of:

(a) the primary child support allowance, with supplemental needs, if any, plus the standard of living adjustment; or

(b) the minimum support obligation determined under [Rule XIII].

(2) In setting the amount of order per child, the total monthly support should be divided equally among the children, except when it is allocated according to supplemental needs as provided in [Rule XVIII].

AUTH: Sec. 40-5-203, MCA
IMP: Sec. 40-5-209, MCA

Rule XVII TRANSFER PAYMENT (1) Applying [Rules I through XVI] results in a child support obligation for each parent. If all the children of the calculation spend 110 days or less with a parent, all of that parent's obligation is due and payable to the other parent. This is the transfer payment, which may be adjusted in accordance with [Rule XVIII].

AUTH: Sec. 40-5-203, MCA
IMP: Sec. 40-5-209, MCA

Rule XVIII PAYMENT OF MONTHLY SUPPORT AMOUNT IN COMBINATION PARENTING ARRANGEMENTS (1) If any child of a calculation spends more than 110 days with both parents, there may be an adjustment to the portion of the obligation due and payable from one parent to the other.

(2) The adjusted transfer payment is determined as follows:

(a) recalculate the needs of each child separately;

(b) allocate each parent's obligation to each child based upon that child's proportionate need;

(c) adjust the obligation of each parent proportionately

for each child who spends between 110 and 183 days with both parents;

(d) total each parent's obligation for all children; and

(e) offset the transfer payments. The parent owing the higher transfer payment pays the difference between the two transfer payments to the other parent.

(2) For the purposes of this rule, a day is when a child spends the majority of a 24 hour calendar day with or under the control of a parent. This assumes that there is a correlation between time spent and resources expended for the care of the child. Reference can be made to the residential schedule in the parenting plan ordered under 40-4-234, MCA.

AUTH: Sec. 40-5-203, MCA
IMP: Sec. 40-5-209, MCA

Rule XIX ANTICIPATED CHANGES (1) When child support is determined, if any material change is anticipated within 18 months, separate child support calculations should be completed.

(2) In the initial calculation, present circumstances should be included. In the subsequent calculation(s), appropriate anticipated changes should be calculated. The child support order should provide that the amount(s) from the subsequent calculations will take effect the month following the anticipated changes.

AUTH: Sec. 40-5-203, MCA
IMP: Sec. 40-5-209, MCA

Rule XX SUPPORT PAYABLE IN DOLLARS (1) The child support order is to be paid in U.S. dollars.

(2) Gifts, clothing, food, payment of expenses, etc., in lieu of dollars will not be allowed as a credit for payment of a child support obligation except by court or administrative order.

(3) Direct payments to the child, the parent or a third party will not be allowed as credit for payment of a child support obligation payable through the clerk of court, the child support enforcement division or other entity specified in the court or administrative order.

AUTH: Sec. 40-5-203, MCA
IMP: Sec. 40-5-209, MCA

Rule XXI SOCIAL SECURITY BENEFITS (1) Social Security benefits which are based on the earning record of either parent shall be considered in establishing new support orders or modification of existing orders under the following conditions:

(a) benefits received by the parent on behalf of the minor child are not to be included in that parent's gross income;

(b) the parent's obligation is satisfied if the amount of the child's benefit received for a given month as a result of

that parent's earning record is equal to or greater than the parent's child support obligation. Any benefit received by the child for a given month in excess of the child support obligation is not treated as an arrearage payment or as future support;

(c) the parent must pay the difference if the amount of the child's benefit for a given month is less than the parent's child support obligation. This amount is presumed to be paid if the child resides with that parent a majority of the time; and

(d) whenever either parent receives for the benefit of the child, a lump sum payment which represents an accumulation of monthly benefits:

(i) the lump sum payment should not be treated as income of the parent; and

(ii) the lump sum should be credited to that parent's child support obligation for each month a payment accumulated for the child's benefit.

AUTH: Sec. 40-5-203, MCA
IMP: Sec. 40-5-209, MCA

Rule XXII SUPPORT GUIDELINES TABLES/FORMS (1) The child support enforcement division (CSED) has developed a child support determination worksheet. Copies of this worksheet may be obtained from the Department of Public Health and Human Services, Child Support Enforcement Division, P.O. Box 202943, Helena, MT 59620 or any regional office.

(2) Included for use with the worksheet are a financial affidavit, necessary tables and information for completion of the guidelines calculation. To assure that these tables are current, the child support enforcement division will republish the worksheet with tables annually as soon as practical after release of information upon which tables are based. The worksheet with tables will be identified by the year of publication or republication.

(3) The child support guidelines worksheets, or a replica of those forms with a similar format and containing the same information, must be used in all child support determinations under the guidelines and a copy must be attached to the support order.

AUTH: Sec. 40-5-203, MCA
IMP: Sec. 40-5-209, MCA

Rule XXIII MODIFICATIONS OF CHILD SUPPORT ORDERS (1) Subsequent child is a parent's natural or adopted child, not the subject of the order being modified who:

(a) is not the subject of a support order and was born after entry of the support order being modified; or

(b) is the subject of another support order entered after entry of the support order being modified.

(2) Any other child must be considered in accordance with

[RULE VI (1)(b)].

(3) In a proceeding to modify an existing order, the support obligation of each parent is calculated considering all children, prior and subsequent, of each parent. Then the support obligation of each parent is calculated considering no subsequent children of either parent.

(a) If both calculations result in a decrease in the transfer payment due and payable from the obligated parent, the lesser of the decreases in the transfer payment is granted.

(b) If both calculations result in an increase in the transfer payment due and payable from the obligated parent, the lesser of the increases in the transfer payment is granted.

(c) If the first calculation results in a decrease and the second calculation results in an increase, or if the reverse is true, no modification is granted.

AUTH: Sec. 40-5-203, MCA
IMP: Sec. 40-5-209, MCA

3. The rules 46.30.1501, 46.30.1502, 46.30.1507, 46.30.1508, 46.30.1513 through 46.30.1516, 46.30.1520 through 46.30.1522, 46.30.1525, 46.30.1533 through 46.30.1535, 46.30.1538, 46.30.1541, 46.30.1542, 46.30.1543, and 46.30.1549 as proposed to be repealed are on pages 46-8275 through 46-8341 of the Administrative Rules of Montana.

AUTH: Sec. 40-5-202, MCA
IMP: Sec. 40-5-209, MCA

Rule 46.30.1532 as proposed to be repealed is on page 46-8321 of the Administrative Rules of Montana.

AUTH: Sec. 40-5-209, MCA
IMP: Sec. 40-4-204 and 40-6-116, MCA

4. REQUIREMENTS Under 45 CFR 302.56, all states are required to review their methods of determining child support guidelines once every four years and revise, if appropriate. Montana began this process in 1995, contracting with the University of Montana and the Center for Support of Families to conduct interviews with judges, attorneys, obligees, obligors, legislators, CSED caseworkers and other interested individuals. These interviews revealed general satisfaction with the equity found in the Montana child support guidelines, but they also revealed frustration with the complexity of the rules. There was also general agreement that support orders were commonly too low, especially when the income of the parents was at the minimum contribution level. The Department formed a committee to consider the results of the interviews and to draft modifications to the existing child support guidelines. The guidelines were modified to allow parents a higher amount of income to reserve for their own needs while maintaining the

equity of guideline calculations.

In addition to the substantive changes made to some rules, the committee determined the rules required reorganization to better follow the sequence of steps required by the child support formula. In some cases, this meant a rule would not be changed or changed only in a minor way but the sequence of the rules has been altered. Rather than attempt to present the rule changes in a format where old text is crossed out and new text is added, the committee decided it would be easier for readers if the existing rules were repealed. The combination of substantive rule changes and new placement of existing rules could then be presented as a whole in a format which is easy to read. It may appear that all the rules which comprise the child support guidelines have seen substantial changes when, in fact, the majority of the rules have no substantial change.

PHILOSOPHY The guidelines were written to assist individuals in calculating a child support order, based on average needs for a specific family situation. Like building codes, the guidelines provide the parameters within which decisions can be made. While everyone is required to follow the building codes when constructing a home, each individual home varies according to the income, needs and circumstances of the family who will live there. Likewise, the guidelines provide the parameters within which child support can be determined.

The Montana child support guidelines utilize an arithmetic formula which incorporates parents' income and deductions with a number of predetermined allowances for parents and children. Application of the formula results in an obligation for each parent which is presumed to be adequate and reasonable and provides a standard for the majority of cases. It is also important that child support payments are consistent and timely; therefore, obligations are ordered to be paid monthly. The guidelines are not intended to be exact with respect to specific parents or children, nor are they intended to apply to every case without consideration of the unique circumstances that exist in all families. Each presumption within the guidelines as well as the overall determination is rebuttable when and only when extraordinary circumstances exist which can be shown to make application of the guidelines inequitable. An interpretation which meets the best interests of the children is required. In all cases, it is the first priority of the parents to meet the needs of the children according to the financial ability of the parents.

GENERAL OPTIONS CONSIDERED, BUT NOT CHOSEN The guidelines committee considered, but did not choose the following options when amending the Montana child support guidelines. Initially, the committee reviewed the formula used in Montana to determine child support. Montana uses a modified Melson formula which

considers the income and deductions of both parents, based upon rebuttable presumptions in order to arrive at an equitable amount of child support in a given case. The committee reviewed, but did not choose to adopt the income shares model. The income shares model has many of the same features as the Melson formula, but tends to result in more extreme differences than the Melson formula when the income of one parent is very low and the other parent has a very high income. This defeats the desired equity present in the modified Melson formula and was therefore rejected by the committee.

The committee also considered the percent of income model, often referred to as the Wisconsin model. This model does not generally take into account the income of both parents. The study undertaken by the University of Montana and the Center for the Support of Families revealed strong support for consideration of the income of both parents to assign the financial responsibility for minor children equitably between the parents, depending upon the income of each. Further, this model does not generally allow that a smaller percent of income is required to meet the primary needs of a child when greater amounts of income are available for child support. This model, while simpler in application, does not allow for adjustments that take in to account individual differences such as shared parenting arrangements, extraordinary costs associated with a child, or other special circumstances. If these adjustments are taken in to account, the simplicity is lost.

Therefore, given the results of the independent study undertaken by the Center for the Support of Families and the University of Montana, the Melson formula, with some amendments, meets the intent of fairness most requested by Montanans.

The study also revealed that the majority of respondents concluded that the support levels set under the current formula were too low. The committee reviewed and considered several methods by which to accomplish higher child support determinations where needed, while trying to ensure the obligated parent has adequate funds for self support.

FORMULA EXPLANATION The guidelines formula considers each parent's income, allowable deductions such as income taxes, allowances/deductions for other children and a personal allowance for each parent. The result is an amount of income each parent is presumed to have available for child support. Each parent is assigned a share of the total available income that determines the portion of the children's needs for which the parent will be responsible.

The primary child support allowance is based on the best information available about the cost of raising children in Montana. Added to this amount is the cost of day care and other

expenses specific to the children at issue. Each parent is responsible for a share of the children's needs and that amount is deducted from the income available for that parent.

A portion of the balance of income available, if any, is calculated as a standard of living adjustment (SOLA). The amount calculated for SOLA is added to the parent's portion of the children's needs to arrive at the total support obligation for each parent. This amount is divided by twelve to provide a consistent monthly payment during a calendar year. Except in combined parenting situations, child support amounts should be expressed as "per child" amounts.

CHILDREN Every calculation according to Montana law (40-4-204(2)(h), MCA) must consider all legally dependent children of each parent. Each child must fall into one, and only one, of the following three categories and is considered accordingly:

A. Child for whom the calculation is made - the number of children at issue in the current action is used to determine primary child support allowance and supplements and these children are not considered in any other way.

B. Child not of the action but for whom a parent is court-ordered or administratively-ordered to pay support - the amount of the ordered support is allowed as a deduction from the parent's gross income.

C. Child not of the action and for whom a parent is not ordered to pay support - a predetermined allowance for the child is treated as a deduction from the parent's gross income.

NOTE: The provisions of [Rule XXIII], MODIFICATIONS OF CHILD SUPPORT ORDERS, apply when modifying support orders.

The following is a summary of the new proposed rules and how they relate to the existing rules they will replace:

[Rule I] AUTHORITY, POLICY AND PURPOSE This rule was formerly found at ARM 46.30.1501. Implicit in subsection (2) of this rule is the recognition that in some situations, children are born to parents who are not wed, and who never intend to wed. Subsection (3) was amended to state the general policy of the guidelines and references to the intent to follow federal regulation were removed as unnecessary and self-evident in the rules themselves. Subsection (4) was amended to state the purpose of the guidelines to meet the requirements of Montana law. References to financial information have been deleted here and addressed in [Rule IV] DETERMINATION OF INCOME FOR CHILD SUPPORT.

[Rule II] REBUTTABLE PRESUMPTION This rule states in clear form references to the rebuttable nature of the guidelines. Subsections (3) and (5) have been amended to conform with appropriate rule form. Former subsection (6) has been deleted

as unnecessary. Variances may be allowed by a court or hearing officer as found appropriate. Formerly ARM 46.30.1507.

The committee reviewed the rules and found rebuttal language in some, but not all individual rules. Such construction allowed misinterpretations regarding the rebuttable nature of the rules. This rule clarifies the intent that each single rule and all rules as a whole may be rebutted by substantive, credible, documented evidence in a given case.

[Rule III] DEFINITIONS [Rule III] ensures that words and phrases used in the proposed rules are clearly defined so that persons reading the rules will attribute the same meaning to those words and phrases. "Actual income" replaces "gross income", to avoid confusion with the concept of actual income for child support vs gross income for income tax purposes. "Long distance parenting" has been defined to conform to legislative changes. "Other child" is defined to distinguish between other children for whom a parent is responsible and children for whom a support obligation is being calculated under these rules. The concept of "personal allowance" replaces the concept of "self support reserve" as the amount allowed each parent as an exemption from net income considered for child support. "Non-performing asset" has been deleted and will no longer be considered in routine child support calculations. "Subsequent child" and "transfer payment" have been defined to assist in rule application. Definitions for "Department" and "CSED" have been added for clarity as the CSED was formerly a part of the Department of Social and Rehabilitation Services and is now a division of the new Department of Public Health and Human Services, which assumed all programs and divisions of the Department of Social and Rehabilitation Services in July, 1995. Formerly ARM 46.30.1502.

The committee considered, but rejected the option of providing the full definition of words and phrases in this rule and instead made references to specific rules for the definition of certain words and phrases. This was to provide a reader of the rules a cohesive method in which to apply the rules when making a determination of child support.

[Rule IV] DETERMINATION OF INCOME FOR CHILD SUPPORT The rules concerning income were previously located in ARM 46.30.1508, 46.30.1513, 46.30.1514, and 46.30.1515. It is the intent of this rule to provide a single reference point to determine if a source of funds or ability to obtain funds should be counted as income, real or imputed, in order to appropriately determine each parent's child support obligation.

The committee determined a central reference would be more appropriate. Further, the committee considered the current method of attributing income to assets when determining child

support. While the use of assets was found to be necessary in a few instances (i.e., when a parent owns substantial non-performing assets but has little income), a review of child support determinations from the district courts and the Department's Office of the Administrative Law Judge revealed in most situations, the consideration of assets had little or no effect on the amount of child support owed by the parents. Therefore, consideration of assets was removed from the standard calculation to simplify and limit the amount of information needed.

In addition, under sources of income that are not counted as income for calculating child support, the committee expanded the term "temporary assistance to needy families (TANF)" to the "cash assistance programs funded under the federal temporary assistance to needy families (TANF) block grant" in order to be more inclusive of the various programs under the TANF block grant that may be known by other names in other states and Montana.

[Rule V] INCOME VERIFICATION/DETERMINING ANNUAL INCOME This rule explains the necessity of verifying income with documentation which clearly reflects the income of a parent. This rule also explains the two methods used to annualize income and expenses. Formerly ARM 46.30.1515.

The committee made minor changes to the previous rule to delete unnecessary instructions.

[Rule VI] ALLOWABLE DEDUCTIONS FROM INCOME Deductions from income are limited because the support of children is considered the highest priority. Allowable deductions are those mandated by an employer or by law and deductions for expenses necessary to maintain the health or employment of the parent. Expenses which are discretionary in nature, even if deducted by an employer, are not permitted. Payments under a bankruptcy plan are deductible only to the extent they represent expenses which would otherwise be allowed. Reference to a specific amount allowed as retirement contribution has been replaced with a general reference to the current rate allowed by the Montana State Public Employees' Retirement System. Formerly ARM 46.30.1516 and 46.30.1520.

The committee chose to consolidate appropriate deductions from income previously found in two separate rules, to more logically follow the steps taken in a determination of child support.

[Rule VII] NON-ALLOWABLE DEDUCTIONS FROM INCOME This rule distinguishes what will not be allowed as deductions from income available for child support. Formerly ARM 46.30.1516.

The committee determined that separate rules for allowable and

non-allowable deductions would provide clearer direction when determining child support.

[Rule VIII] PERSONAL ALLOWANCE [Rule VIII] explains the personal allowance that every parent responsible for child support is allowed to set aside from income after deductions. Because a parent must meet at least a portion of his/her basic needs before supporting the children, each is allowed a predetermined reduction of net income known as a personal allowance. Other household members are no longer considered to determine the amount of personal allowance. Formerly self-support reserve at ARM 46.30.1521.

The committee reviewed the input of the study conducted by the University of Montana and the Center for the Support of Families and discovered a common misunderstanding of the previous term "self support reserve". The personal allowance is not intended to meet the subsistence needs of any particular parent although the previous terminology suggested that was the intention. Therefore, the committee considered other terms to explain the amount of net funds each parent is allowed to exempt from consideration for child support in the majority of cases. The committee rejected the use of the term "personal exemption" as apt to be confused with the personal exemption for income tax purposes. The committee chose to use the term "personal allowance" to convey the appropriate intent of the rules. The amount of the allowance is a single figure calculated by multiplying the federal Poverty Index Guideline for a one person household by 1.3.

Further, the committee reviewed the public comments and rejected continued use of household size in the determination of a personal allowance. The calculation of household size was confusing to many people and was often determined incorrectly. Also, because household size is not static, the need for modifications was frequent.

[Rule IX] INCOME AVAILABLE FOR CHILD SUPPORT This rule was formerly found in ARM 46.30.1516. It explains the amount remaining after determining a parent's total income, which has been reduced by appropriate deductions and the personal allowance.

The committee determined that it would be easier to follow the logical sequence of the guidelines calculations if each major step of the calculation had its own rule.

[Rule X] TOTAL INCOME AVAILABLE/PARENTAL SHARE This rule provides the method by which each parent's proportionate responsibility for child support is determined, based upon the share each parent has of the total income used to determine child support. Formerly ARM 46.30.1521(5).

[Rule XI] PRIMARY CHILD SUPPORT ALLOWANCE This rule provides for an amount determined as a portion of the personal allowance and replaces the former primary child support need. As with the personal allowance, the amount is calculated as a portion of the federal Poverty Index Guideline and is intended to meet the needs of the average Montana child. Additional language was added to clarify the purpose and intent of this rule. Formerly ARM 46.30.1522.

The committee found that stating the method of determining the primary child support allowance in decimal form, rather than percentages provides for easier application. Reference to supplemental needs was found redundant by the committee and therefore removed.

The principle of "economies of scale" is applied when determining the primary child support allowance. This means it is not twice as expensive to provide for two children as it is to raise one, nor is it three times as expensive to provide for three children as one, and so on. The committee reviewed this principle carefully and found it achieves the desired equity for Montana child support guidelines.

[Rule XII] SUPPLEMENTS TO PRIMARY CHILD SUPPORT ALLOWANCE This rule provides for certain costs necessary to meet the needs of specific children. Formerly ARM 46.30.1525.

The committee deleted health insurance premiums and uninsured medical costs of the children from this rule because these costs change frequently, leading to a need for modification, and, even though health insurance coverage has been ordered, a parent may not be required to provide the ordered coverage if it is not available at reasonable cost or if it is not cost beneficial as provided in 40-5-806, MCA. The committee considers the changes that occur in health related costs as continuing and feels that these costs are better addressed as outlined in 40-5-801, MCA, et seq.

[Rule XIII] MINIMUM SUPPORT OBLIGATION [Rule XIII] provides a formula by which to determine an amount of support which a parent should pay even when a parent has insufficient income to meet his/her percentage of the primary support obligation plus supplements. Formerly ARM 46.30.1538.

The committee amended this rule to clarify that each parent's personal allowance is still accessible for child support in certain circumstances, and the parent's needs must be adjusted to provide for a child who cannot provide for himself or herself. The committee considered the number of cases to which this rule would apply and determined it applied in a significant number of cases and would be in the best interests of the children of Montana to provide for minimum support under

the intent of 40-5-214, MCA. The minimum obligation is a portion of the parent's income after deductions. The portion is determined by the ratio between income after deductions and the personal allowance. For ease of application, the committee created a chart to determine minimum support obligations in appropriate cases. Minimum support obligations increase under these rules, in keeping with inflation and children's needs.

[Rule XIV] INCOME AVAILABLE FOR STANDARD OF LIVING ADJUSTMENT This rule provides a method to determine that when a parent still has income after meeting that parent's portion of the child's primary child support allowance plus any supplemental needs, there is a portion of that income to which a child should be entitled. The purpose of the standard of living adjustment (SOLA) is to make available to the child a portion of the parent's income which exceeds the contribution to the child's needs. Formerly ARM 46.30.1534.

The committee considered the amounts provided under the previous rule for standard of living adjustments and determined it was appropriate to increase rates for the benefit of the children for whom support is being paid, in keeping with the results of the independent study conducted by the University of Montana and the Center for the Support of Families.

[Rule XV] LONG DISTANCE PARENTING ADJUSTMENT This new rule provides a specific formula to determine if an adjustment is appropriate for long distance parenting. The amount of income available for SOLA may be adjusted by the cost of long distance parenting when such exceeds the threshold. This may be an appropriate method of calculating other adjustments as well, because it preserves the parent's contribution to the child's primary and supplemental needs. Language has also been amended to reflect the legislative changes found in family law at 40-4-211, MCA. Formerly ARM 46.30.1535 and 46.30.1543.

The committee reviewed the previous method of allowing a variance for long distance parenting and determined there was no guidance to provide a method to determine if an adjustment to child support is appropriate. While parental contact is very important to a child, care must be taken to avoid allowing adjustments for parental contact at the expense of meeting a child's needs. Additionally, the benefits to a parent who maintains parental contact with a child cannot be discounted. Finally, the unique situation of geographical distances in Montana was considered.

Therefore, the committee devised a formula by which it can first be determined if an adjustment for long distance visitation is appropriate. If a parent must expend funds for parental contact for distances in excess of 4,000 miles in a calendar year and has income available for SOLA, an adjustment to child support

can be determined.

[Rule XVI] TOTAL MONTHLY SUPPORT AMOUNT This rule provides an explanation of what is considered child support owing for the child, understanding that each parent bears the responsibility of financially supporting the child within that parent's means to do so. References to sole, joint, shared and split custody have been deleted to reflect legislative changes in family law. (40-4-211, MCA). Formerly ARM 46.30.1535.

The committee found the former rule contained more information than was necessary to explain the total monthly support amount. Therefore, this rule was abbreviated and other issues were addressed in more appropriately titled rules for convenience of readers.

[Rule XVII] TRANSFER PAYMENT This new rule differentiates between the child support obligation owed by each parent for the child and the amount of the payment from one parent to the other, if any. No former rule.

Because the guidelines calculate an obligation for each parent for each child, the committee found it necessary to make it clear that each parent does not necessarily pay that amount to the other parent. The parenting arrangement of the parties determines the amount to be paid by one parent to the other and that is the transfer payment.

[Rule XVIII] PAYMENT OF MONTHLY SUPPORT AMOUNT IN COMBINATION PARENTING ARRANGEMENTS This rule provides the appropriate wording for new family law statutes passed in the 1997 legislature (40-4-211, MCA) and provides a formula by which to determine the appropriate amount of payment from one parent to the other when any child spends more than 110 days with both parents. The guidelines include a threshold of visitation set at 110 days per year, below which there is no adjustment to the support obligation. When parenting exceeds 110 days or when each parent has primary parenting responsibilities for at least one of the children, the guidelines provide for an adjustment to the obligations of both parents. A formula determines the support amount due from each parent for each of the children. The parent retains the support due for the time the child is in that parent's care and transfers payment for the balance to the other parent. The child support guidelines contain no provisions for determining parenting arrangements but serve only to determine support obligations once a parenting plan is decided. Formerly ARM 46.30.1535.

The committee found the previous rule was inadequate to properly address combined parenting situations. This finding was reflected by the responses to the informational letters that were sent by the department. The committee started with the

premise that when a child spends more than 110 days with both parents, there needs to be an adjustment to the support obligation. The method contained in the new rule refines the adjustment to the obligation and eliminates the need to determine the type of parenting arrangement. Instead the method relies entirely on the number of days the child spends with each parent.

[Rule XIX] ANTICIPATED CHANGES This new rule provides for multiple calculations of child support to provide for anticipated changes of circumstances which will affect the amount of child support within eighteen months. This rule is necessary to allow an initial order to consider factors which all parties know will change within eighteen months in a specific manner. No former rule.

The committee found district courts and the department review and modification unit were overloaded and frustrated by the volume of cases presented for modification of child support for circumstances the parent could foresee changing within a reasonable period of time. Therefore, the committee authored a rule to provide a method by which an order for support could include an automatic adjustment to child support upon a change of circumstances that would ordinarily result in a modification and which the parents anticipate will occur within eighteen months.

[Rule XX] SUPPORT PAYABLE IN MONEY This rule requires the payment of support be made in United States dollars. Amendments were made to clarify the use of U.S. dollars rather than foreign currency. Formerly ARM 46.30.1541.

The committee amended the former rule to more directly and clearly advise the method of meeting a child support obligation.

[Rule XXI] SOCIAL SECURITY BENEFITS This rule now provides for automatic credit to a parent whose obligation for support is met, in whole or in part, through receipt by the child of social security benefits as a result of the disability or retirement of the obligated parent, in keeping with Montana Supreme Court decisions. Formerly ARM 46.30.1542.

This rule was formerly written to meet the ruling of the Montana Supreme Court in In re the Marriage of Durbin, 251 Mont. 51, 823 P2d 243, 48 St. Rep. 1142 (1991). It has been amended now to meet the ruling of the Montana Supreme Court in In re the Marriage of Cowan, 279 Mont. 491, 928 P2d 214 (November 1996).

[Rule XXII] SUPPORT GUIDELINES TABLES/FORMS This rule provides for use and availability to any interested party the tables and forms developed by CSED for use in determining child support. Formerly ARM 46.30.1549.

The committee amended this rule to provide broader application of the rules and broader acceptance of child support determinations which apply these rules on forms other than those developed by the department, provided the formula designed through the rules is applied and adjustments to that determined amount are supported with specific findings of fact in the court or administrative order.

[Rule XXIII] MODIFICATIONS OF CHILD SUPPORT ORDERS This rule provides for treatment of other dependents of parents who seek or are subject to a modification of a previous child support order, in accordance with 40-4-204, MCA (1997). Formerly ARM 46.30.1520.

The committee reviewed the rationale underlying this rule and determined that the previous method was adequate with minor adjustments.

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 February 12, 1998. The Department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write the person at the address above.

6. The Office of Legal Affairs, Department of Public Health and Human Services has been designated to preside over and conduct the hearing.

Dawn Sliva
Rule Reviewer

Director, Public Health and Human Services

Certified to the Secretary of State January 16, 1998.

BEFORE THE DEPARTMENT
OF PUBLIC SERVICE REGULATION
OF THE STATE OF MONTANA

In the Matter of the Proposed Repeal of Certain Rules Pertaining to Railroads	))))	NOTICE OF PUBLIC HEARING ON THE REPEAL OF RULES 38.4.105 THROUGH 38.4.164 AND 38.4.301

TO: All Interested Persons

1. On Thursday, March 19, 1998, at 9:00 a.m., in the Bollinger Room, Public Service Commission (PSC) offices, 1701 Prospect Avenue, Helena, Montana, the PSC will hold a hearing to consider the proposal identified in the above titles and described in the following paragraphs, all related to the regulation of railroads. Anyone needing accommodations for physical, hearing, or sight impairment in order to attend and participate in the hearing should contact the PSC Secretary at (406) 444-6199 at least one week prior to hearing.

2. The rules proposed for repeal are as follows:

38.4.105 NOTICE PERIOD FOR FILING RAILROAD TARIFFS
38.4.106 CONTENT OF NOTICE
38.4.107 CONSEQUENCE OF DEFECTIVE NOTICE
38.4.108 SAVINGS PROVISION
38.4.109 WAIVER OF TARIFF FILING REQUIREMENTS
38.4.110 COMMENCEMENT OF INVESTIGATION AND SUSPENSION PROCEEDINGS
38.4.111 DURATION OF SUSPENSION PERIOD
38.4.112 GROUNDS FOR SUSPENSION
38.4.113 MARKET DOMINANCE
38.4.114 REASONABLENESS
38.4.115 BURDEN OF PROOF - GENERAL
38.4.116 ZONE OF RATE FLEXIBILITY - INVESTIGATION THRESHOLD
38.4.117 MONETARY ADJUSTMENTS FOR SUSPENSION ACTIONS
38.4.118 FILING PROCEDURES
38.4.119 REFUND OR COLLECTION OF FREIGHT CHARGES
38.4.120 WAIVER OF MONIES DUE TO RAILROAD
38.4.125 INTRAMODAL COMPETITION
38.4.126 INTERMODAL COMPETITION
38.4.127 GEOGRAPHIC COMPETITION
38.4.128 PRODUCT COMPETITION
38.4.132 ZONE OF RATE FLEXIBILITY
38.4.133 MARKET DOMINANCE THRESHOLD
38.4.134 REASONABLENESS OF RATES
38.4.135 BURDEN OF PROOF
38.4.136 NONAPPLICABILITY
38.4.141 CONTRACTS
38.4.142 GROUNDS FOR REVIEW OF CONTRACTS
38.4.143 FILING OF COMPLAINTS
38.4.144 COMMISSION DECISION UPON REVIEW OF CONTRACT

38.4.145 APPROVAL DATE OF CONTRACTS
38.4.146 LIMITATION OF RIGHTS OF A RAIL CARRIER TO ENTER FUTURE CONTRACTS
38.4.147 ENFORCEMENT
38.4.148 LIMITATION ON AGRICULTURAL EQUIPMENT AND RELIEF
38.4.149 SPECIAL TARIFF RULES FOR CONTRACTS
38.4.150 CONTRACT AND CONTRACT TARIFF TITLE PAGE
38.4.151 CONTRACT TARIFF NUMBERING SYSTEM
38.4.152 CONTRACT TARIFF CONTENT
38.4.153 COMMON CARRIER RESPONSIBILITY
38.4.156 EXEMPTIONS
38.4.162 CONTRACT AND CONTRACT SUMMARY AVAILABILITY AND INFORMAL DISCOVERY
38.4.163 PRELIMINARY SHOWING REQUIRED FOR FORMAL CONTRACT DISCOVERY
38.4.164 PROCEDURES FOR FORMAL CONTRACT DISCOVERY

AUTH: (all rules above) 69-2-101, MCA; IMP: (all rules above) 69-1-102, 69-14-111, MCA.

These rules proposed for repeal can be found at pages 38-369 through 38-382.25 of the Administrative Rules of Montana.

38.4.301 DISCONTINUANCE OF STATION AGENTS, STATIONS AND SIDETRACKS

AUTH: 69-2-101, MCA; IMP: 69-1-102, 69-14-111, 69-14-202, MCA.

This rule proposed for repeal can be found at page 38-383 of the Administrative Rules of Montana.

3. A copy of the complete text of the above rules may be obtained by contacting Martin Jacobson, PSC staff attorney, (406) 444-6178. The complete text may also be reviewed in the Administrative Rules of Montana (Title 38).

4. Rationale. The repeal of rules 38.4.105 through 38.4.164 is reasonably necessary as these rules have become obsolete as a result of Ch. 235, L. 1997 (SB182), primarily through repeal of 69-14-301, MCA (the principle statute implemented by the rules). The repeal of rule 38.4.301 is reasonably necessary as state and state agency authority over railroad agencies has been pre-empted by federal law, the ICC Termination Act of 1995 (PL 104-88).

5. Interested parties may submit their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted (original and 10 copies) to the Public Service Commission, Legal Division, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601 no later than Thursday, March 19, 1998. However, the PSC requests that written comments be submitted

no later than Thursday, March 5, 1998, to assist the PSC in preparing for the hearing. (Please note: When filing comments pursuant to this notice please reference "Docket No. L-97.12.8-RUL.")

6. The Public Service Commission, a commissioner, or a duly appointed presiding officer may preside over and conduct the hearing.

7. The Montana Consumer Counsel, 616 Helena Avenue, P.O. Box 201703, Helena, Montana 59620-1703, (406) 444-2771, is available and may be contacted to represent consumer interests in this matter.

8. The Public Service Commission maintains a list of persons interested in Commission rulemaking proceedings and the subject or subjects in which each person on the list is interested. Any person wishing to be on the list must make a written request to the Commission, providing a name, address and description of the subject or subjects which the person is interested. Direct the request to the Public Service Commission, Legal Division, 1701 Prospect Avenue, PO Box 202601, Helena, MT 59620-2601. In addition, persons may be placed on the list by completing a request form at any rules hearing held by the Public Service Commission.

Dave Fisher

Dave Fisher, Chair

CERTIFIED TO THE SECRETARY OF STATE JANUARY 14, 1998.

Robin A. McHugh

Reviewed By Robin A. McHugh

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the repeal of ARM 4.12.3801 and 4.12.3802 regarding grading standards for mustard seed	)))))	NOTICE OF REPEAL

TO: All Interested Persons:

1. On October 20, 1997, the Department of Agriculture published a notice of proposed repeal of the above-stated rules (ARM 4.12.3801 and 4.12.3802) pertaining to the grading standards for mustard seed. The notice was published at page 1869 of the 1997 Montana Administrative Register, Issue No. 20.

2. The department has repealed rules (ARM 4.12.3801 and 4.12.3802) exactly as proposed.

3. No comments or testimony were received.

DEPARTMENT OF AGRICULTURE

Ralph Peck
DIRECTOR

Timothy J. Meloy, Attorney
Rule Reviewer

Certified to the Secretary of State January 15, 1998.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the change of implementing statutes for ARM 4.13.1004 through 4.13.1007	)))))	NOTICE OF AMENDMENT

TO: All Interested Persons:

1. On October 20, 1997, the Department of Agriculture published a notice of proposed amendment of the implementing statutes for rules ARM 4.13.1004 through 4.13.1007, to conform to the 1997 legislative change to the implementing statutes. The notice of amendment was published at page 1867 of the 1997 Montana Administrative Register, Issue No. 20.

2. The department has amended rules (ARM 4.13.1004 through 4.13.1007), exactly as proposed.

3. No comments or testimony were received.

DEPARTMENT OF AGRICULTURE

W. Ralph Peck

Ralph Peck
DIRECTOR

TIMOTHY J. MELOY, ATTORNEY
RULE REVIEWER

Certified to the Secretary of State January 15, 1998.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

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

To: All Interested Persons

1. On November 3, 1997, the Board of Public Education published a notice of proposed amendment concerning ARM 10.57.301 Endorsement Information on page 1962 of the 1997 Montana Administrative Register, Issue No. 21.

2. The Board has amended ARM 10.57.301 as proposed.

3. No comments were received.

Wayne Buchanan, Executive Secretary
Board of Public Education

Certified to the Secretary of State on 1/15/98.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the amendment of Teacher Certification	)))	NOTICE OF AMENDMENT TO ARM 10.58.527 AREA OF PERMISSIVE SPECIAL COMPETENCY

To: All Interested Persons

1. On November 3, 1997, the Board of Public Education published a notice of proposed amendment concerning ARM 10.58.527 Area of Permissive Special Competency on page 1964 of the 1997 Montana Administrative Register, Issue No. 21.

2. The Board (with one dissenting vote) has amended ARM 10.58.527 as proposed.

3. The Board received three letters of support of the proposed amendment. Two persons testified as proponents of the proposed amendment.

Wayne Buchanan, Executive Secretary
Board of Public Education

Certified to the Secretary of State on 1/15/98.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the amendment and repeal of rules regarding Hours and Days of Instruction	))))	NOTICE OF AMENDMENT TO ARM 10.65.101, 10.65.103 AND REPEAL OF 10.65.102, 10.65.201, AND 10.65.202 PUPIL INSTRUCTION-RELATED DAYS

To: All Interested Persons

1. On November 3, 1997, the Board of Public Education published a notice of proposed amendment concerning ARM 10.65.101, 10.65.103 and repeal of 10.65.102, 10.65.201 and 10.65.202 regarding Pupil Instruction-Related Days on page 1966 of the 1997 Montana Administrative Register, Issue No. 21.

2. The Board has amended ARM 10.65.101, 10.65.103 and repealed 10.65.102, 10.65.201 and 10.65.202 as proposed.

3. No comments were received.

Wayne J Buchanan

Wayne Buchanan, Executive Secretary
Board of Public Education

Certified to the Secretary of State on 1/15/98.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of 17.8.1201, 1210, and 1213, in order to obtain approval by EPA for the air quality operating permit program.	)))))	NOTICE OF AMENDMENT OF RULES (Air Quality)

To: All Interested Persons

1. On November 17, 1997, the board published notice of proposed amendment of the above-captioned rules at page 2018 of the 1997 Montana Administrative Register, Issue No. 22.

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

3. No comments were received.

BOARD OF ENVIRONMENTAL REVIEW

By: _____
CINDY E. YOUNKIN, Chairperson

Reviewed by:

_____
John F. North, Rule Reviewer

Certified to the Secretary of State January 16, 1998

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

In the matter of the amendment of 20.3.502, 20.3.503, 20.3.508 and 20.3.509 pertaining to chemical dependency educational courses	))))))	NOTICE OF AMENDMENT

TO: All Interested Persons

1. On November 17, 1997, the Department of Public Health and Human Services published notice of the proposed amendment of 20.3.502, 20.3.503, 20.3.508 and 20.3.509 pertaining to chemical dependency educational courses at page 2040 of the 1997 Montana Administrative Register, issue number 22.

2. The Department has adopted the rules 20.3.503, 20.3.508 and 20.3.509 as proposed.

3. The Department has amended the following rule as proposed with the following changes from the original proposal. Matter to be added is underlined. Matter to be deleted is interlined.

20.3.502 CHEMICAL DEPENDENCY EDUCATIONAL COURSES: DEFINITIONS In addition to terms defined in 53-24-103, MCA and ARM 20.3.202, the following are defined:

(1) through (24) remain as proposed.

(25) "Per se" means for the purpose of this sub-chapter, violating the provisions of 61-8-406, MCA, operation of vehicle by a person with alcohol concentration of ~~1.10~~ 0.10 or more.

(26) and (27) remain as proposed.

AUTH: Sec. 53-24-204 and 53-24-208, MCA
IMP: Sec. 53-24-204, 53-24-208, and 61-8-401, MCA

4. The Department has thoroughly considered all commentary received. The comments received and the department's response to each follow:

COMMENT #1: A comment was received regarding the "Chemical Dependency Educational Courses" (ACT) proposed rule revisions. The comment was not directed towards the current proposed revisions, but rather a separate issue regarding the evaluation process conducted within the ACT program. The comment indicates opposition to the same agency evaluating a defendant sentenced to the ACT program, referring them to treatment and then being the only provider certified to provide the treatment.

RESPONSE: The issue raised in this response was addressed in the 1991 legislative session, and the Administrative Rules were amended accordingly. Since 1991, the defendant may attend the ACT and treatment program of their choice. The treatment must be provided by a certified chemical dependency counselor, however, it does not have to be in a state approved program. The initial evaluation must be provided within an approved ACT program, but the defendant also has the right to receive a second opinion outside of a state approved ACT program. The defendant must be advised of these rights when they enter the ACT program. The Department believes this adequately addresses the issue of allowing the defendant to attend the treatment provider of their choice. The rule will not be further amended regarding this issue.

COMMENT #2: There was a typographical error made when the first notice for these proposed rules were typed. Under the definition for "Per Se" in ARM 20.3.502(25) the alcohol concentration level should have been typed in as 0.10 not 1.10.

RESPONSE: This error has been corrected. 1.10 has been changed to 0.10.

Rule Reviewer

Director, Public Health and Human Services

Certified to the Secretary of State January 16, 1998.

NOTICE OF FUNCTIONS OF ADMINISTRATIVE CODE COMMITTEE

The Administrative Code Committee reviews all proposals for adoption of new rules, amendment or repeal of existing rules filed with the Secretary of State, except rules proposed by the Department of Revenue. Proposals of the Department of Revenue are reviewed by the Revenue Oversight Committee.

The Administrative Code Committee has the authority to make recommendations to an agency regarding the adoption, amendment, or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. In addition, the Committee may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt or amend a rule.

The Committee welcomes comments from the public and invites members of the public to appear before it or to send it written statements in order to bring to the Committee's attention any difficulties with the existing or proposed rules. The address is Room 138, Montana State Capitol, Helena, Montana 59620.

HOW TO USE THE ADMINISTRATIVE RULES OF MONTANA AND THE MONTANA ADMINISTRATIVE REGISTER

Definitions: Administrative Rules of Montana (ARM) is a looseleaf compilation by department of all rules of state departments and attached boards presently in effect, except rules adopted up to three months previously.

Montana Administrative Register (MAR) is a soft back, bound publication, issued twice-monthly, containing notices of rules proposed by agencies, notices of rules adopted by agencies, and interpretations of statutes and rules by the attorney general (Attorney General's Opinions) and agencies (Declaratory Rulings) issued since publication of the preceding register.

Use of the Administrative Rules of Montana (ARM):

Known Subject Matter	1. Consult ARM topical index. Update the rule by checking the accumulative table and the table of contents in the last Montana Administrative Register issued.
Statute Number and Department	2. Go to cross reference table at end of each title which lists MCA section numbers and corresponding ARM rule numbers.

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies which have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through September 30, 1997. This table includes those rules adopted during the period October 1, 1997 through December 31, 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 September 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, 1997 and 1998 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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BOARD APPOINTEES AND VACANCIES

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

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

In this issue, appointments effective in December 1997, appear. Vacancies scheduled to appear from February 1, 1998, through April 30, 1998, are listed, as are current vacancies due to resignations or other reasons. Individuals interested in serving on a board should refer to the bill that created the board for details about the number of members to be appointed and necessary qualifications.

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

IMPORTANT

Membership on boards and commissions changes constantly. The following lists are current as of January 7, 1998.

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

BOARD AND COUNCIL APPOINTEES FROM DECEMBER, 1997

Appointee	Appointed by	Succeeds	Appointment/End Date
Alfalfa Seed Committee (Agriculture)			
Mr. Thomas Matchett	Governor	reappointed	12/21/1997
Billings			12/21/2000
Qualifications (if required): alfalfa seed grower			
Mr. Gayle Patrick	Governor	reappointed	12/21/1997
Malta			12/21/2000
Qualifications (if required): alfalfa seed grower and seller			
Board of Occupational Therapy Practice (Commerce)			
Ms. Alice O'Donnell	Governor	not listed	12/31/1997
Anaconda			12/31/2001
Qualifications (if required): public member			
Board of Speech-Language Pathologists and Audiologists (Commerce)			
Mr. Jeffrey Griffin	Governor	reappointed	12/31/1997
Great Falls			12/31/2001
Qualifications (if required): licensed audiologist			
Ms. Sheila Skinner	Governor	Reynolds	12/31/1997
Belgrade			12/31/2001
Qualifications (if required): licensed speech-language pathologist			
Flathead Basin Commission (Governor's Office)			
Ms. Elna Darrow	Governor	reappointed	12/11/1997
Big Fork			10/1/2001
Qualifications (if required): public member			
Ms. Julie Lapeyre	Governor	Marx	12/11/1997
Helena			0/0/0
Qualifications (if required): Governor's staff serving as executive director			

BOARD AND COUNCIL APPOINTEES FROM DECEMBER, 1997

Appointee	Appointed by	Succeeds	Appointment/End Date
Flathead Basin Commission (Governor's Office) Cont.			
Mr. Bruce Tutvedt Kalispell Qualifications (if required): public member	Governor	Wilson	12/11/1997 10/1/2001
Mr. Arthur Vail Whitefish Qualifications (if required): public member	Governor	reappointed	12/11/1997 10/1/2001
Mr. Gary Wicks Polson Qualifications (if required): public member	Governor	Gregg	12/11/1997 6/30/1999
Independent Living Council (Public Health and Human Services)			
Mr. Bill Franks Wibaux Qualifications (if required): none specified	Director	Babel	12/10/1997 12/10/1999
Water Pollution Control Advisory Council (Environmental Quality)			
Mr. Jack Stults Helena Qualifications (if required): administrator of the Water Resources Division	Governor	Fritz	12/11/1997 0/0/0
Workforce Preparation Coordinating Council (Labor and Industry)			
Mr. John Eyde Butte Qualifications (if required): business representative	Governor	Marks	12/18/1997 0/0/0

VACANCIES ON BOARDS AND COUNCILS -- FEBRUARY 1, 1998 through APRIL 30, 1998

Board/current position holder	Appointed by	Term end
Board of Architects (Commerce)		
Mr. Thomas Geelan, Havre	Governor	3/27/1998
Qualifications (if required): public member		
Ms. Pamela J. Hill, Bozeman	Governor	3/27/1998
Qualifications (if required): architect on staff at a state university of architecture		
Board of Athletics (Commerce)		
Mr. Gary Langley, Helena	Governor	4/25/1998
Qualifications (if required): public member		
Board of Dentistry (Commerce)		
Dr. Donald O. Nordstrom, Missoula	Governor	3/29/1998
Qualifications (if required): dentist		
Board of Hail Insurance (Agriculture)		
Mr. Keith Arntzen, Hilger	Governor	4/18/1998
Qualifications (if required): public member		
Board of Public Education (Education)		
Ms. Sarah Listerud, Wolf Point	Governor	2/1/1998
Qualifications (if required): member		
Board of Regents of Higher Education (Education)		
Mr. Paul F. Boylan, Bozeman	Governor	2/1/1998
Qualifications (if required): Democrat residing in First Congressional District		
Capital Finance Advisory Council (Administration)		
Mr. Marvin Dye, Helena	Governor	2/27/1998
Qualifications (if required): Director of the Department of Transportation		

VACANCIES ON BOARDS AND COUNCILS -- FEBRUARY 1, 1998 through APRIL 30, 1998

Board/current position holder	Appointed by	Term end
Capital Finance Advisory Council (Administration) cont.		
Mr. Jim Kaze, Havre	Governor	2/27/1998
Qualifications (if required): member of the Board of Regents		
Mr. Dave Lewis, Helena	Governor	2/27/1998
Qualifications (if required): Director of the Office of Budget and Program Planning		
Dr. Amos R. Little, Jr., Helena	Governor	2/27/1998
Qualifications (if required): member of the Montana Health Facilities Authority		
Ms. Lois A. Menzies, Helena	Governor	2/27/1998
Qualifications (if required): Director of the Department of Administration		
Rep. Ray Peck, Havre	Governor	2/27/1998
Qualifications (if required): state representative		
Mr. Bob Thomas, Stevensville	Governor	2/27/1998
Qualifications (if required): member of the Montana Board of Housing		
Mr. W. Ralph Peck, Helena	Governor	2/27/1998
Qualifications (if required): Director of the Department of Agriculture		
Executive Board of Montana State University (Education)		
Ms. Carol Willis, Billings	Governor	4/15/1998
Qualifications (if required): public member		
Mr. Richard Roehm, Bozeman	Governor	4/15/1998
Qualifications (if required): public member		
Executive Board of Montana Tech College Advisory Council (Education)		
Mr. Truxton Fisher, Butte	Governor	4/15/1998
Qualifications (if required): public member		

VACANCIES ON BOARDS AND COUNCILS -- FEBRUARY 1, 1998 through APRIL 30, 1998

Board/current position holder	Appointed by	Term end
Executive Board of Northern Montana College (Education)		
Mr. Doug Ross, Havre	Governor	4/15/1998
Qualifications (if required): public member		
Executive Board of University of Montana (Education)		
Ms. Arlene Breum, Missoula	Governor	4/15/1998
Qualifications (if required): public member		
Executive Board of Western Montana College (Education)		
Ms. Patricia J. Blade, Dillon	Governor	4/15/1998
Qualifications (if required): public member		
Low Income Energy Advisory Council (Public Health and Human Services)		
Mr. Peter Blouke, Helena	Governor	2/13/1998
Qualifications (if required): representing the Department of Public Health and Human Services		
Mr. Jay T. Downen, Great Falls	Governor	2/13/1998
Qualifications (if required): representing an energy-related enterprise		
Mr. Mark A. Simonich, Helena	Governor	2/13/1998
Qualifications (if required): representing the Department of Environmental Quality		
Mr. Wayne Fox, Bismarck, ND	Governor	2/13/1998
Qualifications (if required): representing an energy-related enterprise		
Mr. Jack Haffey, Butte	Governor	2/13/1998
Qualifications (if required): representing an energy-related enterprise		
Rep. Royal C. Johnson, Billings	Governor	2/13/1998
Qualifications (if required): member of the Montana State Legislature		

VACANCIES ON BOARDS AND COUNCILS -- FEBRUARY 1, 1998 through APRIL 30, 1998

Board/current position holder	Appointed by	Term end
Low Income Energy Advisory Council (Public Health and Human Services) cont.		
Ms. Nancy McCaffree, Helena	Governor	2/13/1998
Qualifications (if required): representing the Montana Public Service Commission		
Rep. Sheila Rice, Great Falls	Governor	2/13/1998
Qualifications (if required): representing an energy-related enterprise		
Mr. Carl Visser, Billings	Governor	2/13/1998
Qualifications (if required): representing non-energy-related enterprises		
Montana Arts Council (Education)		
Ms. Ann Cogswell, Great Falls	Governor	2/1/1998
Qualifications (if required): public member		
Mr. Rick Halmes, Great Falls	Governor	2/1/1998
Qualifications (if required): public member		
Ms. Jackie Parsons, Browning	Governor	2/1/1998
Qualifications (if required): public member		
Ms. Diane M. Davies, Polson	Governor	2/1/1998
Qualifications (if required): public member		
Ms. Sody Jones, Billings	Governor	2/1/1998
Qualifications (if required): public member		
Multistate Tax Commission Advisory Council (Revenue)		
Ms. Judy Paynter, Helena	Director	3/1/1998
Qualifications (if required): none specified		
Ms. Lynn Chenoweth, Helena	Director	3/1/1998
Qualifications (if required): none specified		

VACANCIES ON BOARDS AND COUNCILS -- FEBRUARY 1, 1998 through APRIL 30, 1998

Board/current position holder	Appointed by	Term end
Multistate Tax Commission Advisory Council (Revenue) cont.		
Mr. David W. Woodgerd, Helena Qualifications (if required): none specified	Director	3/1/1998
Peace Officers Standards and Training Advisory Council (Justice)		
Mr. Dennis McCave, Billings Qualifications (if required): jail administrator	Governor	2/15/1998
Mr. Gary Boyer, Great Falls Qualifications (if required): educator	Governor	2/15/1998
Mr. Christopher Miller, Deer Lodge Qualifications (if required): county attorney	Governor	2/15/1998
Sen. Delwyn Gage, Cut Bank Qualifications (if required): representing the Board of the Crime Control	Governor	2/15/1998
Sheriff Lee Edmisten, Virginia City Qualifications (if required): sheriff	Governor	2/15/1998
Mr. Donald R. Houghton, Bozeman Qualifications (if required): deputy sheriff	Governor	2/15/1998
Chief Robert Jones, Great Falls Qualifications (if required): police chief	Governor	2/15/1998
Mr. Thomas Blivins, Helena Qualifications (if required): representative of the Department of Fish, Wildlife and Parks	Governor	2/15/1998
Ms. Surry Latham, Missoula Qualifications (if required): dispatcher	Governor	2/15/1998

VACANCIES ON BOARDS AND COUNCILS -- FEBRUARY 1, 1998 through APRIL 30, 1998

Board/current position holder	Appointed by	Term end
Peace Officers Standards and Training Advisory Council (Justice) cont.		
Mr. Greg Noose, Bozeman Qualifications (if required): administrator of the Law Enforcement Academy	Governor	2/15/1998
Commissioner Mike Mathew, Billings Qualifications (if required): county commissioner	Governor	2/15/1998
Mr. Jack Lynch, Butte Qualifications (if required): mayor	Governor	2/15/1998
Colonel Craig Reap, Helena Qualifications (if required): Montana Highway Patrol representative	Governor	2/15/1998
Public Employees' Retirement Board (Administration)		
Mr. Fred J. Flanders, Helena Qualifications (if required): member at large	Governor	4/1/1998
Mr. Troy W. McGee, Sr., Helena Qualifications (if required): retired public employee	Governor	4/1/1998