MONTANA ADMINISTRATIVE REGISTER

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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 18

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 The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

In the matter of the proposed amendment of rules pertaining to direct-entry midwife apprenticeship requirements	))))	NOTICE OF PROPOSED AMENDMENT OF ARM 8.4.503 DIRECT-ENTRY MIDWIFE APPRENTICESHIP REQUIREMENTS

NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On October 25, 1999, the Board of Alternative Health Care proposes to amend ARM 8.4.503 pertaining to direct-entry midwife apprenticeship requirements.

2. The Board of Alternative Health Care will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Alternative Health Care, no later than 5:00 p.m., on October 15, 1999, to advise us of the nature of the accommodation that you need. Please contact Cheryl Brandt, Board of Alternative Health Care, 111 N. Jackson, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 444-5436; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 444-1667.

3. The proposed amendment of ARM 8.4.503 will read as follows: (new matter underlined, deleted matter interlined)

"8.4.503 DIRECT-ENTRY MIDWIFE APPRENTICESHIP REQUIREMENTS

(1) will remain the same.

(2) Applicants for a direct-entry midwife apprenticeship license shall submit a completed application with the proper fee, a current CPR card indicating certification to perform adult and infant cardiopulmonary resuscitation, a supervision agreement and a curriculum outline or method of academic learning that meets the board's educational rule requirements for licensure. ~~A direct-entry midwife apprentice license is valid for one year after issuance, and shall then expire the following December 31, and each December 31 annually, with a limit of four renewals.~~ A supervision agreement shall include:

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

(a) be currently licensed in good standing as a direct-entry midwife, a certified nurse midwife, a licensed naturopathic physician who is certified for the specialty practice of naturopathic childbirth attendance or a physician licensed under Title 37, chapter 3, MCA. A licensed direct-entry midwife supervisor shall have been licensed for one year and have 20 continuous care births as primary attendant, before becoming a supervisor for level II and III apprentices, except for those licensees who have successfully passed the first licensing exam administered by the board. A licensed

direct-entry midwife who has not been licensed for one year and/or completed 20 continuous carebirths may only supervise level I apprentices;

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

Auth: 37-27-105, MCA; IMP, Sec. 37-27-201, 37-27-205, MCA

REASON: The Board is proposing to delete the reference to the previous apprentice renewal date of December 31. The renewal date has been placed into the Department's renewal date rule (ARM 8.2.208) with the other professions of the Alternative Health Care Board for April 30.

The Board is proposing to amend this rule to allow newly-licensed midwives to supervise first level apprentices only. Level I apprenticeship constitutes 40 birth observations and 20 prenatal examinations. The Board determined that this level of skills could be supervised by a midwife who has not yet obtained the 20 independent continuous care births necessary for Board approval to supervise Level II and III apprentices. There is a shortage of supervisors and some individuals are not able to obtain their apprentice licenses solely due to the lack of approved supervisors. It is hoped that this change will allow those waiting for a supervisor to obtain their apprentice license and begin their training.

4. Concerned persons may submit their data, views or arguments concerning the proposed action(s) in writing to the Board of Alternative Health Care, 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., October 25, 1999.

5. If persons who are directly affected by the proposed action(s) wish to express their data, views or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit the request along with any comments they have to the Board of Alternative Health Care, 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., October 25, 1999.

6. If the Board receives requests for a public hearing on the proposed action(s) from either 10 percent or 25, whichever is less, of those persons who are directly affected by the proposed action(s), from the appropriate administrative rule review 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 six based on the 56 licensees in Montana.

7. The Board of Alternative Health Care maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this Board. Persons who wish to have their name added to the list shall make a written

request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding Alternative Health Care administrative rulemaking proceedings. Such written request may be mailed or delivered to the Board of Alternative Health Care, faxed to the office at (406)444-1667 or may be made by completing a request form at any rules hearing held by the Board of Alternative Health Care.

8. The bill sponsor notice requirements of 2-4-302, MCA do not apply.

BOARD OF ALTERNATIVE HEALTH CARE
MICHAEL BERGKAMP, ND, CHAIRMAN

BY: Annie M Bartos

ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

BY: Annie M Bartos

ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, September 13, 1999.

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

In the matter of the proposed amendment of a rule pertaining to fees) NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF 8.48.1105 FEE SCHEDULE

TO: All Concerned Persons

1. On October 25, 1999, at 9:00 a.m., a public hearing will be held in the downstairs large conference room of the Professional and Occupational Licensing Division, 111 N. Last Chance Gulch, Helena, Montana, to consider the proposed amendment of the above-stated rule.

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

"8.48.1105 FEE SCHEDULE (1) and (2) will remain the same.

(3) The biennial renewal fee for registration as a professional engineer or professional land surveyor shall be ~~$40~~ 60. For professional engineers-surveyors (ES), it shall be ~~$60~~ 80. For partnership or corporation certificates of authorization it shall be ~~$15~~ 25.

(4) The remainder of the fees shall be as follows:

(a)	EIT application and test	$ ~~40~~	60
(b)	PE application and test (original)	~~120~~	130
(c)	PE application and test for out-of-state EIT	~~140~~	150
(d)	PE comity application	~~140~~	250
(e)	will remain the same.		
(f)	LS application and test	~~80~~	100
(g)	LS comity and test	~~140~~	250
(h)	ES comity and test	~~200~~	250
(i)	Re-exam	~~50~~	60
(j)	Partnership and corporation certificate of authorization original	~~40~~	60
(k)	Emeritus application	~~15~~	25
(l)	Reactivation fee, land surveyor and professional engineer"	~~40~~	60

Auth: Sec. 37-1-134, 37-67-202, MCA; IMP, Sec. 37-1-319, 37-67-303, 37-67-312, 37-67-313, 37-67-315, 37-67-320, 37-67-321, MCA

REASON: The Board is proposing these amendments to partially fund the new Compliance Officer/Investigator position, certification technician position, increased recharge costs by the Division, and Oracle computer conversion. The Board is also partially funding the new continuing education and records retention programs under its jurisdiction. The

Board's current fee schedule does not generate enough revenue to establish a cash balance sufficient to administer the entire program during the 2000-2001 biennium.

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., October 15, 1999, to advise us of the nature of the accommodation that you need. Please contact Mary Hainlin, Board of Professional Engineers and Land Surveyors, 111 N. Jackson, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 444-4285; 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 rulemaking process should contact Mary Hainlin.

4. Concerned persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Board of Professional Engineers and Land Surveyors, 111 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., October 25, 1999.

5. Lon Mitchell, attorney, has been designated to preside over and conduct this hearing.

6. Persons who wish to be informed of all Board of Professional Engineers and Land Surveyors 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 Professional Engineers and Land Surveyors, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513 or by phone at (406) 444-4285.

7. The bill sponsor notice requirements of 2-4-302, MCA do not apply.

BOARD OF PROFESSIONAL ENGINEERS
AND LAND SURVEYORS
DAVID HUMMEL, CHAIRMAN

BY: Annie M Bartos

ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

BY: Annie M Bartos

ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, September 13, 1999.

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

In the matter of the amendment of ARM 12.6.901 limiting motor-propelled water craft to no-wake speed from Porcupine Bridge to the mouth of the Swan River.	)))))	NOTICE OF SUPPLEMENTAL COMMENT PERIOD

To: All Concerned Persons

1. On August 12, 1999, the Montana Fish, Wildlife and Parks Commission (commission) published notice of public hearing on the proposed amendment of ARM 12.6.901. The proposed rule amendment can be found on page 1732 of the 1999 Montana Administrative Register, Issue No. 15.

The proposed amendment pertains to amending ARM 12.6.901 to restrict motor propelled water craft to no-wake speed in Lake County from the mouth of the Swan River to Porcupine Bridge in order to protect wildlife in the National Wildlife Refuge.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking 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 October 7, 1999, to advise us of the nature of the accommodation that you need. Please contact Frank Bowen, Department of Fish, Wildlife and Parks, 490 North Meridian Road, Kalispell, MT 59901; (406) 751-4559; FAX (406) 257-0349.

3. While public comment has been in favor of adopting this rule amendment, a number of persons stated that individuals opposed to the rule amendment were not given an equal opportunity to be heard. To ensure that the rulemaking process is fair and all viewpoints have an opportunity to be expressed, we are extending the comment period to October 22, 1999.

4. Concerned persons may present their data, views or arguments concerning the proposed amendment in writing to Frank Bowen, Department of Fish, Wildlife and Parks, 490 North Meridian Road, Kalispell, Montana 59901, no later than October 22, 1999.

BY:

PATRICK J. GRAHAM
Commission Secretary

BY:

MARTHA C. WILLIAMS
Rule Reviewer

Certified to the Secretary of State September 13, 1999

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the adoption of NEW RULE I pertaining to comparable/syngas fuel exclusion; NEW RULES II through VII pertaining to remedial action plans; NEW RULES VIII through XIII pertaining to military munitions; and the amendment of ARM 17.54.102, 17.54.105, 17.54.106, 17.54.107, 17.54.110, 17.54.120, 17.54.128, 17.54.131, 17.54.136, 17.54.146, 17.54.150, 17.54.201, 17.54.301, 17.54.302, 17.54.303, 17.54.307, 17.54.308, 17.54.309, 17.54.311, 17.54.322, 17.54.324, 17.54.325, 17.54.326, 17.54.351, 17.54.401, 17.54.402, 17.54.408, 17.54.435, 17.54.501, 17.54.505, 17.54.511, 17.54.526, 17.54.601, 17.54.609, 17.54.610, 17.54.612, 17.54.701, 17.54.702, 17.54.907, 17.54.1101, 17.54.1105, 17.54.1106, 17.54.1107, 17.54.1108, 17.54.1109, 17.54.1113, 17.54.1114, and 17.54.1118 pertaining to hazardous waste management	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION AND AMENDMENT (HAZARDOUS WASTE)

TO: All Concerned Persons

1. The Department of Environmental Quality will hold a public hearing on October 19, 1999, at 1:30 p.m. in Room 111 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed adoption and amendment of the above-captioned rules.

2. The Department will make reasonable accommodations for persons with disabilities who wish to participate in this hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department no later than 5 p.m., October 8, 1999, to advise us of the nature of the accommodation you need. Please contact the Department at P.O. Box 200901, Helena, Montana, 59620-0901; phone (406) 444-2544; fax (406) 444-4386.

3. The proposed new rules, to be codified in ARM Title 17, chapter 54, provide as follows:

RULE I COMPARABLE/SYNGAS FUEL EXCLUSION (1) Wastes that meet the following comparable/syngas fuel physical specifications are not solid wastes:

(a) The heating value must exceed 5,000 BTU/lbs (11,500 J/g); and

(b) The viscosity must not exceed 50 cs, as-fired.

(2) Table 1 below lists the specification levels and, where non-detect is the specification, minimum required detection limits.

(3) Synthesis gas fuel (i.e., syngas fuel) that is generated from hazardous waste must:

(a) have a minimum BTU value of 100 BTU/Scf;

(b) contain less than 1 ppmv of total halogen;

(c) contain less than 300 ppmv of total nitrogen other than diatomic nitrogen (N_2);

(d) contain less than 200 ppmv of hydrogen sulfide; and

(e) contain less than 1 ppmv of each hazardous constituent in the target list of 40 CFR part 261, Appendix VIII (incorporated by reference in ARM 17.54.352(1)(b)).

Table 1: Detection and Detection Limit Values for Comparable Fuel Specification

Chemical Name	CAS No.	Concentration limit (mg/kg at 10,000 BTU/lb)	Minimum required detection limit (mg/kg)
Total Nitrogen as N	NA	4900	----------
Total Halogens as Cl	NA	540	----------
Total Organic Halogens as Cl	NA	25 or individual halogenated organics listed below	----------
Polychlorinated biphenyls, total [Arocolors, Total]*	1336-36-3	Non-detect	1.4
Cyanide, total	57-12-5	Non-detect	1.0
Metals:			
Antimony, total	7440-36-0	7.9	----------
Arsenic, total	7440-38-2	0.23	----------
Barium, total	7440-39-3	23	----------
Beryllium, total	7440-41-7	1.2	----------
Cadmium, total	7440-43-9	1.2	----------
Chromium, total	7440-47-3	2.3	----------
Cobalt	7440-48-4	4.6	----------
Lead, total	7439-92-1	31	----------
Manganese	7439-96-5	1.2	----------
Mercury, total	7439-97-6	0.24	----------
Nickel, total	7440-02-0	58	----------
Selenium, total	7782-49-2	0.15	----------
Silver, total	7440-22-4	2.3	----------
Thallium, total	7440-28-0	23	----------
Hydrocarbons:			
Benzo[a]antracene	56-55-3	1100	----------
Benzene	71-43-2	4100	----------
Benzo[b]fluoranthene	205-99-2	960	----------
Benzo[k]fluoranthene	207-08-9	1900	----------
Benzo[a]pyrene	50-32-8	960	----------
Chrysene	218-01-9	1400	----------
Dibenzo[a,h]anthracene	53-70-3	960	----------

Chemical Name	CAS No.	Concentration limit (mg/kg at 10,000 BTU/lb)	Minimum required detection limit (mg/kg)
7,12-Dimethylbenz[a]anthracene	57-97-6	1900	----------
Fluoranthene	206-44-0	1900	----------
Indeno(1,2,3-cd)pyrene	193-39-5	960	----------
3-Methylcholanthrene	56-49-5	1900	----------
Naphthalene	91-20-3	3200	----------
Toluene	108-88-3	36000	----------
Oxygetes:			
Acetophenone	98-86-2	1900	----------
Acrolein	107-02-8	37	----------
Allyl alcohol	107-18-6	30	----------
Bis(2-ethylhexyl)phthalate [Di-2-ethylhexyl phthalate]	117-81-7	1900	----------
Butyl benzyl phthalate	85-68-7	1900	----------
o-Cresol [2-Methyl phenol]	95-48-7	220	----------
m-Cresol [3-Methyl phenol]	108-39-4	220	----------
p-Cresol [4-Methyl phenol]	106-44-5	220	----------
Di-n-butyl phthalate	84-74-2	1900	----------
Diethyl phthalate	84-66-2	1900	----------
2,4-Dimethylphenol	105-67-9	1900	----------
Dimethyl phthalate	131-11-3	1900	----------
Di-n-octyl phthalate	117-84-0	960	----------
Endothall	145-73-3	100	----------
Ethyl methacrylate	97-63-2	37	----------
2-Ethoxyethanol [Ethylene glycol monoethyl ether]	110-80-5	100	----------
Isobutyl alcohol	78-83-1	37	----------
Isosafrole	120-58-1	1900	----------
Methyl ethyl ketone [2-Butanone]	78-93-3	37	----------
Methyl methacrylate	80-62-6	37	----------
1,4-Naphthoquinone	130-15-4	1900	----------
Phenol	108-95-2	1900	----------
Propargyl alcohol [2-Propyn-1-ol]	107-19-7	30	----------
Safrole	94-59-7	1900	----------
Sulfoted Organics:			
Carbon disulfide	75-15-0	Non-detect	37
Disulfoton	298-04-4	Non-detect	1900
Ethyl methanesulfonate	62-50-0	Non-detect	1900
Methyl methanesulfonate	66-27-3	Non-detect	1900
Phorate	298-02-2	Non-detect	1900
1,3-Propane sultone	1120-71-4	Non-detect	100
Tetraethyldithiopyrophosphate [Sulfotepp]	3689-24-5	Non-detect	1900
Thiophenol [Benzenethiol]	108-98-5	Non-detect	30
O,O,O-Triethyl Phosphorothioate	126-68-1	Non-detect	1900
Nitrogenated Organics:			
Acetonitrile [Methyl cyanide]	75-05-8	Non-detect	37
2-Acetylaminofluorene [2-AAF]	53-96-3	Non-detect	1900
Acrylonitrile	107-13-1	Non-detect	37
4-Aminobiphenyl	92-67-1	Non-detect	1900
4-Aminopyridine	504-24-5	Non-detect	100
Aniline	62-53-3	Non-detect	1900
Benzidine	92-87-5	Non-detect	1900
Dibenz[a,j]acridine	224-42-0	Non-detect	1900
O,O-Diethyl O-pyrazinyl phophoro-thioate [Thionazin]	297-97-2	Non-detect	1900
Dimethoate	60-51-5	Non-detect	1900
p-(Dimethylamino) azobenzens [4-Dimethylaminoazobenzene]	60-11-7	Non-detect	1900

Chemical Name	CAS No.	Concentration limit (mg/kg at 10,000 BTU/lb)	Minimum required detection limit (mg/kg)
3,3'-Dimethylbenzidine	119-93-7	Non-detect	1900
α,α-Dimethylphenethylamine	122-09-8	Non-detect	1900
3,3'-Dimethoxybenzidine	119-90-4	Non-detect	100
1,3-Dinitrobenzene [m-Dinitrobenzene]	99-65-0	Non-detect	1900
4,6-Dinitro-o-cresol	534-52-1	Non-detect	1900
2,4-Dinitrophenol	51-28-5	Non-detect	1900
2,4-Dinitrotoluene	121-14-2	Non-detect	1900
2,6-Dinitrotoluene	606-20-2	Non-detect	1900
Dinoseb [2-sec-Butyl-4,6-Dinitrophenol]	88-85-7	Non-detect	1900
Diphenylamine	122-39-4	Non-detect	1900
Ethyl carbamate [Urethane]	51-79-6	Non-detect	100
Ethylenethiourea (2-Imidazolidinethione)	96-45-7	Non-detect	110
Famphur	52-85-7	Non-detect	1900
Methacrylonitrile	126-98-7	Non-detect	37
Methapyrilene	91-80-5	Non-detect	1900
Methomyl	16752-77-5	Non-detect	57
2-Methyllactonitrile [Acetone cyanohydrin]	75-86-5	Non-detect	100
Methyl parathion	298-00-0	Non-detect	1900
MNNG (N-Metyl-N-nitroso-N'-nitroguanidine)	70-25-7	Non-detect	110
1-Naphthylamine [α-Naphthylamine]	134-32-7	Non-detect	1900
2-Naphthylamine [β-Naphthylamine]	91-59-8	Non-detect	1900
Nicotine	54-11-5	Non-detect	100
4-Nitroaniline [p-Nitroaniline]	100-01-6	Non-detect	1900
Nitrobenzene	98-95-3	Non-detect	1900
p-Nitrophenol [p-Nitrophenol]	100-02-7	Non-detect	1900
5-Nitro-o-toluidine	99-55-8	Non-detect	1900
N-Nitrosodi-n-butylamine	924-16-3	Non-detect	1900
N-Nitrosodiethylamine	55-18-5	Non-detect	1900
N-Nitrosodiphenylamine [Diphenylnitrosamine]	86-30-6	Non-detect	1900
N-Nitroso-N-methylethylamine	10595-95-6	Non-detect	1900
N-Nitrosomorpholine	59-89-2	Non-detect	1900
N-Nitrosopiperidine	100-75-4	Non-detect	1900
N-Nitrosopyrrolidine	930-55-2	Non-detect	1900
2-Nitropropane	79-46-9	Non-detect	30
Parathion	56-38-2	Non-detect	1900
Phenacetin	62-44-2	Non-detect	1900
1,4-Phenylene diamine [p-Phenylenediamine]	106-50-3	Non-detect	1900
N-Phenylthiourea	103-85-5	Non-detect	57
2-Picoline [alpha-Picoline]	109-06-8	Non-detect	1900
Propythioracil [6-Propyl-2-thiouracil]	51-52-5	Non-detect	100
Pyridine	110-86-1	Non-detect	1900
Strychnine	57-24-9	Non-detect	100
Thioacetamide	62-55-5	Non-detect	57
Thiofanox	9196-18-4	Non-detect	100
Thiourea	62-56-6	Non-detect	57
Toluene-2,4-diamine [2,4-Diaminotoluene]	95-80-7	Non-detect	57
Toluene-2,6-diamine [2,6-Diaminotoluene]	823-40-5	Non-detect	57
o-Toluidine	95-53-4	Non-detect	2200
p-Toluidine	106-49-0	Non-detect	100

Chemical Name	CAS No.	Concentration limit (mg/kg at 10,000 BTU/lb)	Minimum required detection limit (mg/kg)
1,3,5-Trinitrobenzene (sym-Trinitobenzene)	99-35-4	Non-detect	2000
Halogenated Organics:[b]			
Allyl chloride	107-05-1	Non-detect	37
Aramite	104-57-8	Non-detect	1900
Benzal chloride (Dichloromethyl benzene)	98-87-3	Non-detect	100
Benzyl chloride	100-44-77	Non-detect	100
Bis-(2-chloroethyl)ether (Dichloroethyl ether)	111-44-4	Non-detect	1900
Bromoform [Tribromomethane]	75-25-2	Non-detect	37
Bromomethane [Methy bomide]	74-83-9	Non-detect	37
4-Bromophenyl phenyl ether (p-Bromo diphenyl ether)	101-55-3	Non-detect	1900
Carbon tetrachloride	56-23-5	Non-detect	37
Chlordane	57-74-9	Non-detect	14
p-Chloroaniline	106-47-8	Non-detect	1900
Chlorobenzene	108-90-7	Non-detect	37
Chlorobenzilate	510-15-6	Non-detect	1900
p-Chloro-m-cresol	59-50-7	Non-detect	1900
2-Chloroethyl vinyl ether	110-75-8	Non-detect	37
Chloroform	67-66-3	Non-detect	37
Chloromethane (Methyl chloride)	74-87-3	Non-detect	37
2-Chlorophthalene (beta-Chlorophthalene)	91-58-7	Non-detect	1900
2-Chlorophenol (o-Chlorophenol)	95-57-8	Non-detect	1900
Chloroprene (2-Chloro-1,3-butadiene)	1126-99-8	Non-detect	37
2,4-D (2,4-Dichlorophenoxyacetic acid)	94-75-7	Non-detect	7.0
Diallate	2303-16-4	Non-detect	1900
1,2-Dibromo-3-chloropropane	96-12-8	Non-detect	37
1,2-Dichlorobenzene (o-Dichlorobenzene)	95-50-1	Non-detect	1900
1,3-Dichlorobenzene (m-Dichlorobenzene)	541-73-1	Non-detect	1900
1,4-Dichlorobenzene (p-Dichlorobenzene)	106-46-7	Non-detect	1900
3,3'-Dichlorobenzidine	91-94-1	Non-detect	1900
Dichlorodifluoromethane (CFC-12)	75-71-8	Non-detect	37
1,2-Dichloroethane (Ethylene dichloride)	107-06-2	Non-detect	37
1,1-Dichloroethylene (Vinylidene chloride)	75-35-4	Non-detect	37
Dichloromethoxy ethane (Bis(2-chloroethoxy) methane)	111-91-1	Non-detect	1900
2,4-Dichlorophenol	120-83-2	Non-detect	1900
2,6-Dichlorophenol	87-65-0	Non-detect	1900
1,2-Dichloropropane (Propylene dichloride)	78-87-5	Non-detect	37
Cis-1,3-Dichloropropylene	10061-01-5	Non-detect	37
trans-1,3-Dichloropropylene	10061-02-6	Non-detect	37
1,3-Dichloro-2-propanol	96-23-1	Non-detect	30
Endosulfan I	959-98-8	Non-detect	1.4
Endosulfan II	33213-65-9	Non-detect	1.4
Endrin	72-20-8	Non-detect	1.4
Endrin aldehyde	7421-93-4	Non-detect	1.4
Endrin Ketone	53494-70-5	Non-detect	1.4

Chemical Name	CAS No.	Concentration limit (mg/kg at 10,000 BTU/lb)	Minimum required detection limit (mg/kg)
Epichlorohydrin [1-Chloro-2,3-epoxy propane]	106-89-8	Non-detect	30
Ethylidene dichloride [1,1-Dichloroethane]	75-34-3	Non-detect	37
2-Fluoroacetamide	640-19-7	Non-detect	100
Heptachlor	76-44-8	Non-detect	1.4
Heptachlor expoxide	1024-57-3	Non-detect	2.8
Hexachlorobenzene	118-74-1	Non-detect	1900
Hexachloro-1,3,butadiene [Hexachlorobutadiene]	87-68-3	Non-detect	1900
Hexachlorocyclopentadiene	77-47-4	Non-detect	1900
Hexachloroethane	67-72-1	Non-detect	1900
Hexachlorophene	70-30-4	Non-detect	1000
Hexachloropropene [Hexachloropropylene]	1888-71-7	Non-detect	1900
Isodrin	465-73-6	Non-detect	1900
Kepone [Chlordecone]	143-50-0	Non-detect	3600
Lindane [gamma-Hexachlorocyclohexane] [gamma-BHC]	58-89-9	Non-detect	1.4
Methylene chloride [Dichloromethane]	75-09-2	Non-detect	37
4,4'-methylene-bis (2-chloroaniline)	101-14-4	Non-detect	100
Methyl iodide (Iodomethane]	74-88-4	Non-detect	37
Pentachlorobenzene	608-93-5	Non-detect	1900
Pentachloroethane	76-01-7	Non-detect	37
Pentachloronitrobenzene [PCNB] [Quintobenzene] [Zuintozene]	82-68-8	Non-detect	1900
Pentachlorophenol	87-86-5	Non-detect	1900
Pronamide	23950-58-5	Non-detect	1900
Silvex [w,4,5-Trichlorophenoxypropionic acid]	93-72-1	Non-detect	7.0
2,3,7,8-Tetrachlorodibenzo-p-dioxin [2,3,7,8-TCDD]	1746-01-6	Non-detect	30
1,2,4,5-Tetrachlorobenzene	95-94-3	Non-detect	1900
1,1,2,2-Tetrachloroethane	79-34-5	Non-detect	37
Tetrachloroethylene [Perchloroethylene]	127-18-4	Non-detect	37
2,3,4,6-Tetrachlorophenol	58-90-2	Non-detect	1900
1,2,4-Trichlorobenzene	120-82-1	Non-detect	1900
1,1,1-Trichloroethane [Methyl chloroform]	71-55-6	Non-detect	37
1,1,2-Trichloroethane [Vinyl trichloride]	79-00-5	Non-detect	37
Trichloroethylene	79-01-6	Non-detect	37
Trichlorofluoromethane [Trichlormonofluoromethane]	75-69-4	Non-detect	37
2,4,5-Trichlorophenol	95-95-4	Non-detect	1900
2,4,6-Trichlorophenol	88-06-2	Non-detect	1900
1,2,3-Trichloropropane	96-18-4	Non-detect	37
Vinyl Chloride	75-01-4	Non-detect	37

[a]Absence of PCBs can also be demonstrated by using appropriate screening methods, e.g., immunoassay kit for PCB in oils (Method 4020) or colorimetric analysis for PCBs in oil (Method 9079).

[b]Some minimum required detection limits are above the total halogen limit of 540 ppm. The detection limits reflect what was achieved during EPA testing and analysis and also analytical complexity associated with measuring all halogen compounds in Appendix VIII at low levels. EPA recognizes that in practice the presence of these compounds will be functionally limited by the molecular weight and the total halogen limit of 540 ppm.

(4) Waste that meets the comparable or syngas fuel specifications provided by (1) or (3) of this rule (constituent levels are achieved by the comparable fuel when generated, or as a result of treatment or blending, as provided in (7) or (8) of this rule) is excluded from the definition of waste provided that the following requirements are met:

(a) For purposes of this section, the person claiming and qualifying for the exclusion is called the comparable/syngas fuel generator and the person burning the comparable/syngas fuel is called the comparable/syngas burner. The person who generates the comparable fuel or syngas fuel must claim and certify to the exclusion.

(i) The comparable/syngas generator shall submit a one-time notice to the department certifying compliance with the conditions of the exclusion and providing documentation as required by (4)(a)(iii);

(ii) If the generator is a company that generates comparable/syngas fuel at more than one facility, the generator shall specify at which sites the comparable/syngas fuel will be generated;

(iii) A comparable/syngas fuel generator's notification to the department must contain the following items:

(A) the name, address, and RCRA identification number of the person/facility claiming the exclusion;

(B) the applicable EPA hazardous waste codes for the hazardous waste;

(C) the name and address of the units, meeting the requirements of (6) of this rule, that will burn the comparable/syngas fuel; and

(D) the following statement, signed and submitted by the person claiming the exclusion or his authorized representative:

"Under penalty of criminal and civil prosecution for making or submitting false statements, representations, or omissions, I certify that the requirements of ARM 17.54.353 have been met for all waste identified in this notification. Copies of the records and information required at [RULE I] are available at the comparable/syngas fuel generator's facility. Based on my inquiry of the individuals immediately responsible for obtaining the information, the information is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

(5) Prior to burning an excluded comparable/syngas fuel, the burner shall publish in a major newspaper of general circulation local to the site where the fuel will be burned, a notice entitled "Notification of Burning a Comparable/Syngas Fuel Excluded Under the Resource Conservation and Recovery Act" containing the following information:

(a) name, address, and RCRA identification number of the generating facility;

(b) name and address of the unit(s) that will burn the comparable/syngas fuel;

(c) a brief, general description of the manufacturing, treatment, or other process generating the comparable/syngas fuel;

(d) an estimate of the average and maximum monthly and annual quantity of the waste claimed to be excluded; and

(e) the name and mailing address of the department and notice that the claim was submitted to the department.

(6) The comparable/syngas fuel exclusion for fuels meeting the requirements of either (1) or (7) of this rule, and meeting the requirements of (4)(a)(i) applies only if the fuel is burned in the following units that are also subject to federal/state/local air emission requirements, including all applicable Clean Air Act MACT requirements:

(a) industrial furnaces as defined in ARM 17.54.201(66);

(b) boilers, as defined in ARM 17.54.201(10), that are further defined as follows:

(i) industrial boilers located on the site of a facility engaged in a manufacturing process where substances are transformed into new products, including the component parts of products, by mechanical or chemical processes;

(ii) utility boilers used to produce electric power, steam, heated or cooled air, or other gases or fluids for sale; or

(iii) hazardous waste incinerators subject to regulation under subpart O of 40 CFR parts 264 or 265 (incorporated by reference in ARM 17.54.702 and 17.54.609, respectively).

(7) A hazardous waste blended to meet the viscosity specification must:

(a) meet the constituent and heating value specifications of (3)(a) and (4) of this rule as generated and prior to any blending, manipulation, or processing;

(b) be blended at a facility that is subject to the applicable requirements of 40 CFR parts 264 and 265 (incorporated by reference in ARM 17.54.702 and 17.54.609, respectively), or ARM 17.54.421; and

(c) not violate the dilution prohibition of (4) and (11) of this rule.

(8) A hazardous waste may be treated to meet the exclusion specifications of (3) and (4) of this rule provided the treatment:

(a) destroys or removes the constituent listed in the specification or raises the heating value by removing or destroying hazardous constituents or materials;

(b) is performed at a facility that is subject to the applicable requirements of 40 CFR parts 264 and 265, or ARM 17.54.421; and

(c) does not violate the dilution prohibition of (4) and (11) of this rule.

(9) Residuals resulting from the treatment of a hazardous waste listed in ARM 17.54.330, to generate a comparable fuel, remain a hazardous waste.

(10) A syngas fuel can be generated from the processing of hazardous wastes to meet the exclusion specifications of (3) of this rule provided the processing:

(a) destroys or removes the constituent listed in the specification or raises the heating value by removing or destroying constituents or materials;

(b) is performed at a facility that is subject to the applicable requirements of 40 CFR parts 264 and 265, or ARM 17.54.421, or is an exempt recycling unit pursuant to ARM 17.54.309(3); and

(c) does not violate the dilution prohibition of (4) and (12) of this rule.

(11) Residuals resulting from the treatment of a hazardous waste listed in ARM 17.54.330, to generate a syngas fuel, remain a hazardous waste.

(12) No generator, transporter, handler, or owner or operator of a treatment, storage, or disposal facility may in any way dilute a hazardous waste to meet the exclusion specifications of (1), (2) or (3) of this rule.

(13) The generator of a comparable/syngas fuel shall develop and follow a written waste analysis plan, which describes the procedures for sampling and analysis of the hazardous waste to be excluded. The waste analysis plan must be developed in accordance with the applicable sections of the "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (SW-846) (incorporated by reference in ARM 17.54.351). The plan must be followed and retained at the facility excluding the waste.

(a) At a minimum, the plan must specify:

(i) the parameters for which each hazardous waste will be analyzed and the rationale for the selection of those parameters;

(ii) the test methods which will be used to test for those parameters;

(iii) the sampling method which will be used to obtain a representative sample of the waste to be analyzed;

(iv) the frequency with which the initial analysis of the waste will be reviewed or repeated to ensure that the analysis is accurate and up to date; and

(v) if process knowledge is used in the waste determination, any information prepared by the generator in making such determination.

(b) The waste analysis plan must also contain records of the following:

(i) the dates and times waste samples were obtained, and the dates the samples were analyzed;

(ii) the names and qualifications of the person(s) who obtained the samples;

(iii) a description of the temporal and spatial locations of the samples;

(iv) the name and address of the laboratory facility at which analyses of the samples were performed;

(v) a description of the analytical methods used, including any clean-up and sample preparation methods;

(vi) all quantitation limits achieved and all other quality control results for the analysis (including method blanks, duplicate analyses, matrix spikes, etc.), laboratory quality assurance data, and description of any deviations from analytical methods written in the plan or from any other activity written in the plan which occurred;

(vii) all laboratory results demonstrating that the exclusion specifications have been met for the waste; and

(viii) all laboratory documentation that supports the analytical results, unless a contract between the claimant and the laboratory provides for the documentation to be maintained by the laboratory for the period specified in (15) of this rule and also provides for the availability of the documentation to the claimant upon request.

(c) Syngas fuel generators shall submit for approval, prior to performing sampling, analysis, or any management of a syngas fuel as an excluded waste, a waste analysis plan containing the elements of (13)(a)(i) to the department. Waste analysis plans must be in writing and received by the facility prior to sampling and analysis to demonstrate the exclusion of a syngas. The approval of the waste analysis plan may contain such provisions and conditions as the department deems appropriate.

(14) For each waste for which an exclusion is claimed, the generator of the hazardous waste shall test for all the constituents in 40 CFR part 261, Appendix VIII (incorporated by reference in ARM 17.54.352(1)(b)), except those that the generator determines, based on testing or knowledge, should not be present in the waste. The generator is required to document the basis of each determination that a constituent should not be present.

(a) The generator may not determine that any of the following categories of constituents should not be present:

(i) a constituent that triggered the toxicity characteristic for the waste constituents that were the basis of the listing of the waste stream, or constituents for which there is a treatment standard for the waste code in 40 CFR 268.40 (incorporated by reference in ARM 17.54.150(1));

(ii) a constituent detected in a previous analysis of the waste;

(iii) constituents introduced into the process that generate the waste; or

(iv) constituents that are byproducts or side reactions to the process that generate the waste.

(b) Any claim under this section must be valid and accurate for all hazardous constituents; a determination not to test for a hazardous constituent will not shield a generator from liability should that constituent later be found in the waste above the exclusion specifications. For each waste for which the exclusion is claimed where the generator of the comparable/syngas fuel is not the original generator of the hazardous waste, the generator of the comparable/syngas fuel may not use process knowledge pursuant to (14), above, and shall test to determine that all of the

constituent specifications of (2) and (3) of this rule have been met.

(c) The comparable/syngas fuel generator may use any reliable analytical method to demonstrate that no constituent of concern is present at concentrations above the specification levels. It is the responsibility of the generator to ensure that the sampling and analysis are unbiased, precise, and representative of the waste. For the waste to be eligible for exclusion, a generator shall demonstrate that:

(i) each constituent of concern is not present in the waste above the specification level at the 95% upper confidence limit around the mean; and

(ii) the analysis could have detected the presence of the constituent at or below the specification level at the 95% upper confidence limit around the mean.

(d) Nothing in this rule preempts, overrides or otherwise negates the provisions in ARM 17.54.402, which require any person who generates a waste to determine if that waste is a hazardous waste.

(e) In an enforcement action, the burden of proving conformance with the exclusion specification shall be on the generator claiming the exclusion.

(f) The generator shall conduct sampling and analysis in accordance with their waste analysis plan developed under (12) of this rule.

(g) Syngas fuel and comparable fuel that has not been blended in order to meet the kinematic viscosity specifications must be analyzed as generated.

(h) If a comparable fuel is blended in order to meet the kinematic viscosity specifications, the generator shall:

(i) analyze the fuel as generated to ensure that it meets the constituent and heating value specifications; and

(ii) after blending, analyze the fuel again to ensure that the blended fuel continues to meet all comparable/syngas fuel specifications.

(i) Excluded comparable/syngas fuel must be re-tested, at a minimum, annually, and must be re-tested after a process change that could change the chemical or physical properties of the waste.

(15) Any persons handling a comparable/syngas fuel are subject to the speculative accumulation test under ARM 17.54.302(3)(d).

(16) The generator shall maintain records of the following information on-site:

(a) all information required to be submitted to the implementing authority as part of the notification of the claim, including:

(i) the owner/operator's name, address, and RCRA facility identification number of the person claiming the exclusion;

(ii) the applicable EPA hazardous waste codes for each hazardous waste excluded as a fuel; and

(iii) the certification signed by the person claiming the exclusion or his authorized representative.

(b) a brief description of the process that generated the hazardous waste and the process that generated the excluded fuel, if not the same;

(c) an estimate of the average and maximum monthly and annual quantities of each waste claimed to be excluded;

(d) documentation for any claim that a constituent is not present in the hazardous waste as required under (14), above;

(e) the results of all analyses and all detection limits achieved as required under (14), above;

(f) if the excluded waste was generated through treatment or blending, documentation as required under (7) or (8) of this rule;

(g) if the waste is to be shipped off-site, a certification from the burner as required under (18) of this rule;

(h) a waste analysis plan and the results of the sampling and analysis that includes the following:

(i) the dates and times waste samples were obtained, and the dates the samples were analyzed;

(ii) the names and qualifications of the person(s) who obtained the samples;

(iii) a description of the temporal and spatial locations of the samples;

(iv) the name and address of the laboratory facility at which analyses of the samples were performed;

(v) a description of the analytical methods used, including any clean-up and sample preparation methods;

(vi) all quantitation limits achieved and all other quality control results for the analysis (including method blanks, duplicate analyses, matrix spikes, etc.), laboratory quality assurance data, and description of any deviations from analytical methods written in the plan or from any other activity written in the plan which occurred;

(vii) all laboratory analytical results demonstrating that the exclusion specifications have been met for the waste; and

(viii) all laboratory documentation that supports the analytical results, unless a contract between the claimant and the laboratory provides for the documentation to be maintained by the laboratory for the period specified in (17) below and also provides for the availability of the documentation to the claimant upon request; and

(i) if the generator ships comparable/syngas fuel off-site for burning, the generator shall retain for each shipment the following information on-site:

(i) the name and address of the facility receiving the comparable/syngas fuel for burning;

(ii) the quantity of comparable/syngas fuel shipped and delivered;

(iii) the date of shipment or delivery;

(iv) a cross-reference to the record of comparable/syngas fuel analysis or other information used to make the determination that the comparable/syngas fuel meets the specifications as required under (14) of this rule; and

(v) a one-time certification by the burner as required under (18) of this rule.

(17) Records must be maintained for a period of 3 years. A generator shall maintain a current waste analysis plan during that 3-year period.

(18) Prior to submitting a notification to the department, a comparable/syngas fuel generator who intends to ship its fuel off-site for burning shall obtain a one-time written, signed statement from the burner:

(a) certifying that the comparable/syngas fuel will only be burned in an industrial furnace or boiler, utility boiler, or hazardous waste incinerator, as required under (6) of this rule;

(b) identifying the name and address of the units that will burn the comparable/syngas fuel; and

(c) certifying that the state in which the burner is located is authorized to exclude wastes as comparable/syngas fuel under the provisions of this rule.

(19) Wastes that are listed because of presence of dioxins or furans, as set out in 40 CFR part 261, Appendix VIII (incorporated by reference in ARM 17.54.352(1)(b)), are not eligible for this exclusion, and any fuel produced from or otherwise containing these wastes remains a hazardous waste subject to full RCRA hazardous waste management requirements.

AUTH: 75-10-405, MCA
IMP: 75-10-405, MCA

RULE II REMEDIAL ACTION PLANS (1) A "remedial action plan" (RAP) is a special form of RCRA permit that the owner/operator may obtain instead of a permit issued under ARM Title 17, chapter 54, subchapter 1 to authorize the treatment, storage, or disposal of hazardous remediation waste (as defined in ARM 17.54.201(112)) at a remediation waste management site. A RAP may only be issued for the area of contamination where the remediation wastes to be managed under the RAP originated, or areas in close proximity to the contaminated area, except as allowed in limited circumstances under [RULE VII].

(a) The requirements in ARM Title 17, chapter 54, subchapter 1 do not apply to RAPs unless the requirements for traditional RCRA permits are specifically required under [RULE II through RULE VII]. The definitions in ARM 17.54.201 apply to RAPs.

(b) Notwithstanding any other provision of ARM Title 17, chapter 54, subchapters 1 or 9, any document that meets the requirements in this section constitutes a RCRA permit under 42 USC 6925(c).

(c) A RAP may be:

(i) a stand-alone document that includes only the information and conditions required by [RULES II through VII]; or

(ii) part (or parts) of another document that includes information and/or conditions for other activities at the remediation waste management site, in addition to the information and conditions required by [RULES II through VII].

(d) If the owner/operator is treating, storing, or disposing of hazardous remediation wastes as part of a cleanup compelled by federal or state cleanup authorities, the RAP does not affect the owner/operator's obligations under those authorities in any way.

(e) If the owner/operator receives a RAP at a facility operating under interim status, the RAP does not terminate the owner/operator's interim status.

(2) A RAP is needed whenever the owner/operator treats, stores, or disposes of hazardous remediation wastes in a manner that requires a RCRA permit under ARM 17.54.105. The owner/operator must either obtain:

(a) a RCRA permit according to ARM Title 17, chapter 54, subchapter 1; or

(b) a RAP according to [RULES II through VII].

(3) Treatment units that use combustion of hazardous remediation wastes at a remediation waste management site are not eligible for RAPs under [RULES II through VII].

(4) The owner/operator may obtain a RAP for managing hazardous remediation waste at an already permitted RCRA facility. The RAPs must be approved as a modification to the existing permit according to the requirements of ARM 17.54.126 or 17.54.128 instead of the requirements in [RULES II through VII]. When the owner/operator submits an application for such a modification, however, the information requirements in ARM 17.54.128(2)(a) and (b) do not apply; instead, the owner/operator must submit the information required under [RULE III(4)]. When the permit is modified the RAP becomes part of the RCRA permit. Therefore, when the permit (including the RAP portion) is modified, revoked and reissued, terminated or when it expires, the permit will be modified according to the applicable requirements in ARM 17.54.125, 17.54.126, and 17.54.128; revoked and reissued according to the applicable requirements in ARM 17.54.126 and 17.54.127; terminated according to the applicable requirements in ARM 17.54.127; and expire according to the applicable requirements in ARM 17.54.113.

(5) The provisions of ARM 17.54.120 apply to RAPs.

AUTH: 75-10-405, MCA
IMP: 75-10-405, MCA

RULE III APPLYING FOR A RAP (1) To apply for a RAP, the owner/operator shall complete an application, sign it, and submit it to the department according to the requirements in [RULES II through VII].

(2) When a facility or remediation waste management site is owned by one person, but operated by another person, it is the operator's duty to obtain a RAP, except that the owner must also sign the RAP application.

(3) Both the owner and the operator shall sign the RAP application and any required reports according to ARM 17.54.110. In the application, both the owner and the operator shall also make the certification required under ARM 17.54.110(4). However, the owner may choose the alternative certification under ARM 17.54.110(5) if the operator certifies under ARM 17.54.110(4).

(4) The owner/operator shall include the following information in the application for a RAP:

(a) the name, address, and EPA identification number of the remediation waste management site;

(b) the name, address, and telephone number of the owner and operator;

(c) the latitude and longitude of the site;

(d) the United States geological survey (USGS) or county map showing the location of the remediation waste management site;

(e) a scaled drawing of the remediation waste management site showing:

(i) the remediation waste management site boundaries;

(ii) any significant physical structures; and

(iii) the boundary of all areas on-site where remediation waste is to be treated, stored or disposed;

(f) a specification of the hazardous remediation waste to be treated, stored or disposed of at the facility or remediation waste management site. This must include information on:

(i) constituent concentrations and other properties of the hazardous remediation wastes that may affect how such materials should be treated and/or otherwise managed;

(ii) an estimate of the quantity of these wastes; and

(iii) a description of the processes the owner/operator will use to treat, store, or dispose of this waste including technologies, handling systems, design and operating parameters the owner/operator will use to treat hazardous remediation wastes before disposing of them according to the land disposal restrictions standards of 40 CFR part 268 (incorporated by reference in ARM 17.54.150), as applicable;

(g) enough information to demonstrate that operations that follow the provisions in the RAP application will ensure compliance with standards referenced in ARM 17.54.112; and

(h) any other information the department decides is necessary for demonstrating compliance with [RULES II through VII] or for determining any additional RAP conditions that are necessary to protect human health and the environment.

(5) ARM 17.54.1008 allows the owner/operator to claim as confidential any or all of the information submitted to the department under [RULES II through VII]. The owner/operator shall assert any such claim at the time that the owner/operator submits the RAP application or other

submissions by stamping the words "confidential business information" on each page containing such information. If the owner/operator does assert a claim at the time of submission of the information, the department shall apply the procedures in subchapter 10. If the owner/operator does not assert a claim at the time he submits the information, the department may make the information available to the public without further notice. The department shall deny any requests for confidentiality of the owner/operator's name and/or address.

(6) The owner/operator shall submit the application for a RAP to the department for approval.

(7) If the owner/operator submits the application for a RAP as a part of another document, the owner/operator shall clearly identify the components of that document that constitute the RAP application.

AUTH: 75-10-405, MCA
IMP: 75-10-405, MCA

RULE IV GETTING A RAP APPROVED (1) If the department finds that the RAP application includes all of the information required by [RULE III(4)] and that the proposed remediation waste management activities meet the regulatory standards, the department shall make a tentative decision to approve the RAP application. The department shall then prepare a draft RAP and provide an opportunity for public comment before making a final decision on the RAP application, according to [RULES II through VII].

(2) If the department finds that the RAP application does not include all of the information required by [RULE III(4)] or that the proposed remediation waste management activities do not meet the regulatory standards, the department may request additional information from the owner/operator or ask that the deficiencies in the application be corrected. If the owner/operator fails or refuses to provide any additional information the department requests, or to correct any deficiencies in the RAP application, the department may make a tentative decision to deny the RAP application. After making this tentative decision, the department will prepare a notice of intent to deny the RAP application ("notice of intent to deny") and provide an opportunity for public comment before making a final decision on the RAP application, according to the requirements in [RULES II through VII]. The department may deny the RAP application either in its entirety or in part.

(3) If the department prepares a draft RAP, it must include:

(a) information required under [RULE III(4)(a) through (f)];

(b) terms and conditions:

(i) necessary to ensure that the operating requirements specified in the RAP comply with applicable requirements of ARM 17.54.112. In satisfying this provision, the department may incorporate, expressly or by reference, standards

referenced in ARM 17.54.112 into the RAP or establish site-specific conditions as required or allowed by those standards;

(ii) found in ARM 17.54.111;

(iii) for modifying, revoking and reissuing, and terminating the RAP, as provided in [RULE IV(1)]; and

(iv) any additional terms or conditions that the department determines are necessary to protect human health and the environment, including any terms and conditions necessary to respond to spills and leaks during use of any units permitted under the RAP; and

(c) if the draft RAP is part of another document, as described in [RULE II(1)(d)(ii)], the department must clearly identify the components of that document that constitute the draft RAP.

(4) Once the department has prepared the draft RAP or notice of intent to deny, the department shall then:

(a) prepare a "statement of basis" that briefly describes the derivation of the conditions of the draft RAP and the reasons for them, or the rationale for the notice of intent to deny;

(b) compile an administrative record, including:

(i) the RAP application, and any supporting data furnished by the applicant;

(ii) the draft RAP or notice of intent to deny;

(iii) the statement of basis and all documents cited therein; and

(iv) any other documents that support the decision to approve or deny the RAP; and

(c) make information contained in the administrative record available for review by the public upon request.

(5) When the department makes a tentative decision on a draft RAP or notice of intent to deny, the department shall:

(a) send notice to the owner/operator of the department's intention to approve or deny the RAP application, and send the owner/operator a copy of the statement of basis;

(b) publish a notice of the department's intention to approve or deny the RAP application in a major local newspaper of general circulation;

(c) broadcast the department's intention to approve or deny the RAP application over a local radio station; and

(d) send a notice of the department's intention to approve or deny the RAP application to each unit of local government having jurisdiction over the area in which the site is located, and to each state agency having any authority under state law with respect to any construction or operations at the site.

(6) The notice required by (5), above, must provide an opportunity for the public to submit written comments on the draft RAP or notice of intent to deny within at least 45 days.

(7) The notice required by (5), above, must include:

(a) the name and address of the office processing the RAP application;

(b) the name and address of the RAP applicant, and if different, the remediation waste management site or activity the RAP will regulate;

(c) a brief description of the activity the RAP will regulate;

(d) the name, address and telephone number of a person from whom interested persons may obtain further information, including copies of the draft RAP or notice of intent to deny, statement of basis, and the RAP application;

(e) a brief description of the comment procedures in this section, and any other procedures by which the public may participate in the RAP decision;

(f) if a hearing is scheduled, the date, time, location and purpose of the hearing;

(g) if a hearing is not scheduled, a statement of procedures to request a hearing;

(h) the location of the administrative record, and times when it will be open for public inspection; and

(i) any additional information required by the Montana Administrative Procedure Act or which the department considers necessary or proper.

(8) If, within the comment period, the department receives written notice of opposition to the department's intention to approve or deny the RAP application and a request for a hearing, the department shall hold an informal public hearing to discuss issues relating to the approval or denial of the RAP application. The department may also determine on the department's own initiative that an informal hearing is appropriate. The hearing must include an opportunity for any person to present written or oral comments. Whenever possible, the department shall schedule this hearing at a location convenient to the nearest population center to the remediation waste management site and give notice according to the requirements in (5)(a) of this rule. This notice must, at a minimum, include the information required by (7) of this rule and:

(a) reference to the date of any previous public notices relating to the RAP application;

(b) the date, time and place of the hearing; and

(c) a brief description of the nature and purpose of the hearing, including the applicable rules and procedures.

(9) The department will make a final decision on a RAP application as follows:

(a) The department shall consider and respond to any significant comments raised during the public comment period, or during any hearing on the draft RAP or notice of intent to deny, and revise the draft RAP based on those comments, as appropriate.

(b) If the department determines that the RAP includes the information and terms and conditions required in [RULE IV(2)], then the department shall issue a final decision approving the RAP and, in writing, notify the owner/operator and all commentors on the draft RAP that the RAP application has been approved.

(c) If the department determines that the RAP does not include the information required in [RULE IV(2)], then the department shall issue a final decision denying the RAP and, in writing, notify the owner/operator and all commentors on the draft RAP that the RAP application has been denied.

(d) If the department's final decision is that the tentative decision to deny the RAP application was incorrect, the department shall withdraw the notice of intent to deny and proceed to prepare a draft RAP, according to the requirements in [RULES II through VII].

(e) When the department issues the final RAP decision, the department must refer to the procedures for appealing the decision under [RULE IV(6)].

(f) Before issuing the final RAP decision, the department shall compile an administrative record. Material readily available at the department or published materials which are generally available and which are included in the administrative record need not be physically included with the rest of the record as long as it is specifically referred to in the statement of basis or the response to comments. The administrative record for the final RAP must include information in the administrative record for the draft RAP (see [RULE IV(3)(b)]), and:

(i) all comments received during the public comment period;

(ii) tapes or transcripts of any hearings;

(iii) any written materials submitted at these hearings;

(iv) the responses to comments;

(v) any new material placed in the record since the draft RAP was issued;

(vi) any other documents supporting the RAP; and

(vii) a copy of the final RAP.

(g) The department shall make information contained in the administrative record available for review by the public upon request.

(10) The decision to approve or deny a RAP application may be administratively appealed:

(a) by any commentor on the draft RAP or notice of intent to deny, or any participant in any public hearing(s) on the draft RAP pursuant to ARM 17.54.915. Any person who did not file comments, or did not participate in any public hearing(s) on the draft RAP, may petition for administrative review only to the extent of the changes from the draft to the final RAP decision. Appeals of RAPs may be made to the same extent as for final permit decisions under ARM 17.54.915. Instead of the notice required under ARM 17.54.907, the department shall give public notice of any grant of review of RAPs by the department through the same means used to provide notice under [RULE IV(4)]. The notice must include:

(i) the briefing schedule for the appeal;

(ii) a statement that any interested person may file an amicus brief; and

(iii) the information specified in [RULE IV(4)(c)], as appropriate.

(b) This appeal is a prerequisite to seeking judicial review of these department actions.

(11) The RAP becomes effective 30 days after the department notifies the owner/operator and all commentors that the RAP is approved unless:

(a) the department specifies a later effective date in the decision;

(b) the owner/operator or another person has appealed the RAP under [RULE IV(6)];or

(c) no commentors requested a change in the draft RAP, in which case the RAP becomes effective immediately when it is issued.

(12) The owner/operator shall not begin physical construction of new units permitted under the RAP for treating, storing or disposing of hazardous remediation waste before receiving a final effective RAP.

AUTH: 75-10-405, MCA
IMP: 75-10-405, MCA

RULE V MODIFICATION, REVOCATION AND REISSUANCE, OR TERMINATION OF RAPs (1) In the RAP, the department shall specify, either directly or by reference, procedures for future modifications, revocations and reissuance, or terminations of the RAP. These procedures must provide adequate opportunities for public review and comment on any modification, revocation and reissuance, or termination that would significantly change the owner/operator's management of the remediation waste, or that otherwise merits public review and comment. If the RAP has been incorporated into a traditional RCRA permit, as allowed under [RULE II(2)(c)], then the RAP will be modified according to the applicable requirements in ARM 17.54.125, 17.54.126, and 17.54.128; revoked and reissued according to the applicable requirements in ARM 17.54.126 and 17.54.127; or terminated according to the applicable requirements of ARM 17.54.127.

(2) The department may modify the final RAP upon request of the owner/operator or for one or more of the following reasons:

(a) The owner/operator made material and substantial alterations or additions to the activity that justify applying different conditions;

(b) The department finds new information that was not available at the time of RAP issuance and would have justified applying different RAP conditions at the time of issuance;

(c) The standards or rules on which the RAP was based have changed because of new or amended statutes, standards or rules, or by judicial decision after the RAP was issued;

(d) If the RAP includes any schedules of compliance, the department may find reasons to modify the compliance schedule for unusual circumstances such as strike, flood, or materials shortage or other events over which the owner/operator has little or no control and for which there is no reasonably available remedy;

(e) The owner/operator is not in compliance with conditions of the RAP;

(f) The owner/operator failed in the application or during the RAP issuance process to disclose fully all relevant facts, or misrepresented any relevant facts at the time;

(g) The department has determined that the activity authorized by the RAP endangers human health or the environment and can only be remedied by modification; or

(h) The owner/operator has notified the department (as required in the RAP under [RULE VI(3)]) of a proposed transfer of a RAP.

(3) Notwithstanding any other provision in this rule, when the department reviews a RAP for a land disposal facility under [RULE V(6)], the department may modify the permit as necessary to assure that the facility continues to comply with the currently applicable requirements in [RULES II through VII].

(4) The department shall not reevaluate the suitability of the facility location at the time of RAP modification unless new information or standards indicate that a threat to human health or the environment exists that was unknown when the RAP was issued.

(5) The department may revoke and reissue the final RAP upon request of the owner/operator or if one or more reasons for revocation and reissuance exist.

(a) Reasons for modification or revocation and reissuance are the same as the reasons listed for RAP modifications in (2)(a) through (h), above, if the department determines that revocation and reissuance of the RAP is appropriate.

(b) The department shall not reevaluate the suitability of the facility location at the time of RAP revocation and reissuance, unless new information or standards indicate that a threat to human health or the environment exists that was unknown when the RAP was issued.

(6) The department may terminate the final RAP on its own initiative, or deny the renewal application for the same reasons as those listed for RAP modifications in (2)(a) through (h) if the department determines that termination of the RAP or denial of the RAP renewal application is appropriate.

(7) Any commentor on the modification, revocation and reissuance or termination, or any person who participated in any hearing(s) on these actions, may appeal the department's decision to approve a modification, revocation and reissuance, or termination of the RAP, according to [RULE IV(6)]. Any person who did not file comments or did not participate in any public hearing(s) on the modification, revocation and reissuance or termination, may only petition for administrative review of the changes from the draft to the final RAP decision.

(8) Any commentor on the modification, revocation and reissuance or termination, or any person who participated in any hearing(s) on these actions, may informally appeal the

department's decision to deny a request for modification, revocation and reissuance, or termination to the department. Any person who did not file comments, or did not participate in any public hearing(s) on the modification, revocation and reissuance or termination may petition for administrative review only of the changes from the draft to the final RAP decision.

(9) The process for informal appeals of RAPs is as follows:

(a) The person appealing the decision shall send a letter to the department. The letter must briefly set forth the relevant facts.

(b) The department has 60 days after receiving the letter to act on it.

(c) If the department does not take action on the letter within 60 days after receiving it, the appeal shall be considered denied.

(d) This informal appeal is a prerequisite to seeking judicial review of these department actions.

(10) RAPs must be issued for a fixed term, not to exceed 10 years, although they may be renewed upon approval by the department in fixed increments of no more than 10 years. In addition, the department shall review any RAP for hazardous waste land disposal 5 years after the date of issuance or reissuance and the owner/operator or the department shall follow the requirements for modifying the RAP as necessary to assure that the owner/operator continues to comply with currently applicable requirements in 42 USC 6924 and 6925.

(11) If the owner/operator wishes to renew the expiring RAP, the owner/operator shall follow the process for application for and issuance of RAPs in [RULES II through VII].

(12) If the owner/operator has submitted a timely and complete application for a RAP renewal, but the department, through no fault of the owner/operator, has not issued a new RAP with an effective date on or before the expiration date of the previous RAP, the previous RAP conditions continue in force until the effective date of the new RAP or RAP denial.

AUTH: 75-10-405, MCA
IMP: 75-10-405, MCA

RULE VI OPERATING UNDER THE RAP (1) The owner/operator is required to keep records of:

(a) all data used to complete RAP applications and any supplemental information that is submitted for a period of at least 3 years from the date the application is signed; and

(b) any operating and/or other records the department requires the owner/operator to maintain as a condition of the RAP.

(2) Time periods in [RULES II through VII] and the RAP are computed as follows:

(a) a time period scheduled to begin on the occurrence of an act or event begins to elapse on the day after the act or event.

(b) a time period scheduled to elapse before the occurrence of an act or event shall not include the day of the act or event in the computation of the time period.

(c) If the final day of any time period falls on a weekend or legal holiday, the time period extends to the next working day.

(d) Whenever a party or interested person has the right to or is required to act within a prescribed period after the service of notice or other paper by mail, 3 days shall be added to the prescribed term.

(3) If the owner or operator wishes to transfer the RAP to a new owner or operator, the transferring owner/operator shall follow the requirements specified in the RAP for RAP modification to identify the new owner or operator, and incorporate any other necessary requirements. These modifications do not constitute "significant" modifications for purposes of [RULE V(1)]. The new owner/operator shall submit a revised RAP application no later than 90 days before the scheduled change along with a written agreement containing a specific date for transfer of RAP responsibility between the transferring owner/operator and the new owner/operator.

(4) When a transfer of ownership or operational control occurs, the transferring owner or operator shall comply with the applicable requirements in subchapter 8 (financial requirements), until the new owner or operator has demonstrated that they are complying with the requirements in that subchapter. The new owner or operator shall demonstrate compliance with subchapter 8 within 6 months of the date of the change in ownership or operational control of the facility or remediation waste management site. When the new owner/operator demonstrates compliance with subchapter 8 to the department, the department shall notify the transferring owner/operator that they no longer need to comply with subchapter 8 as of the date of demonstration.

(5) The state shall report noncompliance with RAPs according to the provisions of 40 CFR 270.5.

AUTH: 75-10-405, MCA
IMP: 75-10-405, MCA

RULE VII OBTAINING A RAP FOR AN OFF-SITE LOCATION

(1) The owner/operator may request a RAP for remediation waste management activities at a location removed from the area where the remediation wastes originated if the owner/operator believes such a location would be more protective than the contaminated area or areas in close proximity.

(a) If the department determines that an alternative location, removed from the area where the remediation waste originated, is more protective than managing remediation waste at the area of contamination or areas in close proximity, then

the department may approve a RAP for this alternative location.

(b) The owner/operator shall request the off-site RAP, and the department shall approve or deny the off-site RAP, according to the procedures and requirements in [RULES II through VII].

(c) A RAP for an alternative location must also meet the following requirements, which the department shall include in the RAP for such locations:

(i) the RAP for the alternative location must be issued to the person responsible for the cleanup from which the remediation wastes originated;

(ii) the RAP is subject to the expanded public participation requirements in ARM 17.54.907 and the Montana Administrative Procedure Act;

(iii) the RAP is subject to the public notice requirements in ARM 17.54.907(7); and

(iv) the site permitted in the RAP may not be located within 61 meters or 200 feet of a fault, which has had displacement in the Holocene time. The owner/operator shall demonstrate compliance with this standard through the requirements in 40 CFR 270.14(b)(11) (incorporated by reference in ARM 17.54.131(3)). Sites located in counties other than those listed in Appendix VI of 40 CFR part 264 (incorporated by reference in ARM 17.54.702(6)), are assumed to be in compliance with this requirement.

(d) These alternative locations are remediation waste management sites, and retain the following benefits of remediation waste management sites:

(i) exclusion from facility-wide corrective action under 40 CFR 264.101 (incorporated by reference in ARM 17.54.702); and

(ii) application of ARM 17.54.105(13) in lieu of 40 CFR part 264, subparts B, C, and D (incorporated by reference in ARM 17.54.702).

AUTH: 75-10-405, MCA
IMP: 75-10-405, MCA

RULE VIII GENERAL INFORMATION (1) [RULES VIII through XIII] identify when military munitions become a waste, and, if these wastes are also hazardous under [RULES II through VII] or subchapter 3, the management standards that apply to these wastes.

(2) Unless otherwise specified in [RULES VIII through XIII], all applicable requirements of [RULES VIII through XIII] apply to waste military munitions.

AUTH: 75-10-405, MCA
IMP: 75-10-405, MCA

RULE IX DEFINITIONS In addition to the definitions in ARM 17.54.201, the following definitions apply to [RULES VIII through XIII]:

(1) "Active range" means a military range that is currently in service and is being regularly used for range activities.

(2) "Chemical agents and munitions" are defined as in 50 USC 1521(j)(1).

(3) "Explosives or munitions emergency response specialist" is as defined in ARM 17.54.201(46).

(4) "Explosives or munitions emergency" is as defined in ARM 17.54.201(44).

(5) "Explosives or munitions emergency response" is as defined in ARM 17.54.201(45).

(6) "Inactive range" means a military range that is not currently being used, but that is still under military control and considered by the military to be a potential range area, and that has not been put to a new use that is incompatible with range activities.

(7) "Military" means the department of defense (DOD), the armed services, coast guard, national guard, department of energy (DOE), or other parties under contract or acting as an agent for the foregoing, who handle military munitions.

(8) "Military munitions" is as defined in ARM 17.54.201(84).

(9) "Military range" means designated land and water areas set aside, managed, and used to conduct research on, develop, test, and evaluate military munitions and explosives, other ordnance, or weapon systems, or to train military personnel in their use and handling. Ranges include firing lines and positions, maneuver areas, firing lanes, test pads, detonation pads, impact areas, and buffer zones with restricted access and exclusionary areas.

(10) "Unexploded ordnance" (UXO) means military munitions that have been primed, fused, armed, or otherwise prepared for action, and have been fired, dropped, launched, projected, or placed in such a manner as to constitute a hazard to operations, installation, personnel, or material and remain unexploded either by malfunction, design, or any other cause.

AUTH: 75-10-405, MCA
IMP: 75-10-405, MCA

RULE X MILITARY MUNITION WASTE (1) A military munition is not a waste when:

(a) used for its intended purpose, including:

(i) use in training military personnel or explosives and munitions emergency response specialists (including training in proper destruction of unused propellant or other munitions); or

(ii) use in research, development, testing, and evaluation of military munitions, weapons, or weapon systems; or

(iii) recovery, collection, and on-range destruction of unexploded ordnance and munitions fragments during range clearance activities at active or inactive ranges. However, "use for intended purpose" does not include the on-range

disposal or burial of unexploded ordnance and contaminants when the burial is not a result of product use.

(b) an unused munition, or component thereof, is being repaired, reused, recycled, reclaimed, disassembled, reconfigured, or otherwise subjected to materials recovery activities, unless such activities involve use constituting disposal as defined in ARM 17.54.302(3)(a), or burning for energy recovery as defined in ARM 17.54.302(3)(b).

(2) An unused military munition is a waste when any of the following occurs:

(a) the munition is abandoned by being disposed of, burned, detonated (except during intended use as specified in (1)(a), incinerated, or treated prior to disposal;

(b) the munition is removed from storage in a military magazine or other storage area for the purpose of being disposed of, burned, or incinerated, or treated prior to disposal;

(c) the munition is deteriorated or damaged (e.g., the integrity of the munition is compromised by cracks, leaks, or other damage) to the point that it cannot be put into serviceable condition, and cannot reasonably be recycled or used for other purposes; or

(d) the munition has been declared a waste by an authorized military official.

(3) A used or fired military munition is a waste:

(a) when transported off-range or from the site of use, where the site of use is not a range, for the purposes of storage, reclamation, treatment, disposal, or treatment prior to disposal; or

(b) if recovered, collected, and then disposed of by burial, or landfilling either on or off a range.

(4) A used or fired military munition is a "waste" or "solid waste" and, therefore, is potentially subject to RCRA corrective action authorities under RCRA section 3004(u) and (v) and 75-10-406(1) and (7), MCA, and RCRA section 3008(h) and 75-10-416, MCA. Used or fired military munitions are also subject to imminent and substantial endangerment authorities under RCRA section 7003 and 75-10-415, MCA, if the munition lands off-range and is not promptly rendered safe and/or retrieved. Any imminent and substantial threats associated with any remaining material must be addressed. If remedial action is infeasible, the operator of the range shall maintain a record of the event for as long as any threat remains. The record must include the type of munition and its location (to the extent the location is known).

AUTH: 75-10-405, MCA
IMP: 75-10-405, MCA

RULE XI STANDARDS APPLICABLE TO THE TRANSPORTATION OF WASTE MILITARY MUNITIONS (1) Waste military munitions that are being transported and that exhibit a hazardous waste characteristic or are listed as hazardous waste under subchapter 3, are listed or identified as a hazardous waste

(and thus are subject to regulation under [RULES VIII through XIII], unless all the following conditions are met:

(a) the waste military munitions are not chemical agents or chemical munitions;

(b) the waste military munitions are transported in accordance with the department of defense shipping controls applicable to the transport of military munitions;

(c) the waste military munitions are transported from a military owned or operated installation to a military owned or operated treatment, storage, or disposal facility; and

(d) the transporter of the waste provides oral notice to the department within 24 hours from the time the transporter becomes aware of any loss or theft of the waste military munitions, or any failure to meet a condition of (1), above, that may endanger health or the environment. In addition, a written submission describing the circumstances shall be provided within 5 days from the time the transporter becomes aware of any loss or theft of the waste military munitions or any failure to meet a condition of (1), above.

(2) If any waste military munitions shipped under (1), above, are not received by the receiving facility within 45 days of the day the waste was shipped, the owner or operator of the receiving facility shall report this non-receipt to the department within 5 days.

(3) The exemption in (1), above, from regulation as hazardous waste shall apply only to the transportation of non-chemical waste military munitions. It does not affect the regulatory status of waste military munitions as hazardous wastes with regard to storage, treatment or disposal.

(4) The conditional exemption in (1), above, applies only so long as all of the conditions in (1) are met.

(5) If any waste military munition loses its exemption under (1), above, an application may be filed with the department for reinstatement of the exemption from hazardous waste transportation regulation with respect to such munition as soon as the munition is returned to compliance with the conditions of (1), above.

(a) If the department finds that reinstatement of the exemption is appropriate based on factors such as the transporter's provision of a satisfactory explanation of the circumstances of the violation, or a demonstration that the violations are not likely to recur, the department may reinstate the exemption under (1), above.

(b) If the department does not take action on the reinstatement application within 60 days after receipt of the application, then reinstatement shall be deemed granted, retroactive to the date of the application. However, the department may terminate a conditional exemption reinstated by default pursuant to this subsection if the department finds that reinstatement is inappropriate based on factors such as the transporter's failure to provide a satisfactory explanation of the circumstances of the violation, or failure to demonstrate that the violations are not likely to recur.

(c) In reinstating the exemption under (1), above, the department may specify additional conditions as are necessary to ensure and document proper transportation to protect human health and the environment.

(6) The department of defense shipping controls applicable to the transport of military munitions referenced in (1)(b) of this rule are government bill of lading (GBL) (GSA Standard Form 1109), requisition tracking form (DD Form 1348), the signature and talley record (DD Form 1907), special instructions for motor vehicle drivers (DD Form 836), and the motor vehicle inspection report (DD Form 626) in effect on November 8, 1995.

AUTH: 75-10-405, MCA
IMP: 75-10-405, MCA

RULE XII STANDARDS APPLICABLE TO EMERGENCY RESPONSES (1) Explosives and munitions emergencies involving military munitions or explosives are subject to ARM 17.54.105(5), 17.54.401(7), 17.54.501(3) and 17.54.612(1)(h). In the alternative, such emergencies are subject to ARM 17.54.133.

AUTH: 75-10-405, MCA
IMP: 75-10-405, MCA

RULE XIII STANDARDS APPLICABLE TO THE STORAGE OF WASTE MILITARY MUNITIONS (1) Waste military munitions in storage that exhibit a hazardous waste characteristic or are listed as hazardous waste under subchapter 3 are listed or identified as a hazardous waste (and thus are subject to regulation under [RULES VIII through XIII]), unless all the following conditions are met:

(a) The waste military munitions are not chemical agents or chemical munitions.

(b) The waste military munitions are subject to the jurisdiction of the department of defense explosives safety board (DDESB).

(c) The waste military munitions are stored in accordance with the DDESB storage standards applicable to waste military munitions.

(d) Within 90 days of [the effective date ofthis rule], or within 90 days of when a storage unit is first used to store waste military munitions, whichever is later, the owner or operator shall notify the department of the location of any waste storage unit used to store waste military munitions for which the conditional exemption in (1) of this rule is claimed.

(e) The owner or operator shall provide oral notice to the department within 24 hours from the time the owner or operator becomes aware of any loss or theft of the waste military munitions, or any failure to meet a condition of (1) of this rule that may endanger health or the environment. In addition, a written submission describing the circumstances

shall be provided within 5 days from the time the owner or operator becomes aware of any loss or theft of the waste military munitions or any failure to meet a condition of (1) of this rule.

(f) The owner or operator shall inventory the waste military munitions at least annually, must inspect the waste military munitions at least quarterly for compliance with the conditions of (1) of this rule, and shall maintain records of the findings of these inventories and inspections for at least 3 years.

(g) Access to the stored waste military munitions must be limited to appropriately trained and authorized personnel.

(2) The conditional exemption in (1) of this rule from regulation as hazardous waste shall apply only to the storage of non-chemical waste military munitions. It does not affect the regulatory status of waste military munitions as hazardous wastes with regard to transportation, treatment or disposal.

(3) The conditional exemption in (1) of this rule applies only so long as all of the conditions in (1)(a) through (g) of this rule are met.

(4) The owner or operator shall notify the department when a storage unit identified pursuant to (1)(d) of this rule will no longer be used to store waste military munitions.

(5) If any waste military munition loses its conditional exemption under (1) of this rule, an application may be filed with the department for reinstatement of the conditional exemption from hazardous waste storage regulation with respect to such munition as soon as the munition is returned to compliance with the conditions of (1) of this rule.

(a) If the department finds that reinstatement of the conditional exemption is appropriate based on factors such as the owner's or operator's provision of a satisfactory explanation of the circumstances of the violation, or a demonstration that the violations are not likely to recur, the department may reinstate the conditional exemption under (1) of this rule.

(b) If the department does not take action on the reinstatement application within 60 days after receipt of the application, then reinstatement shall be deemed granted, retroactive to the date of the application. However, the department may terminate a conditional exemption reinstated by default pursuant to this subsection if it finds that reinstatement is inappropriate based on factors such as the owner's or operator's failure to provide a satisfactory explanation of the circumstances of the violation, or failure to demonstrate that the violations are not likely to recur.

(c) In reinstating the conditional exemption under (1) of this rule, the department may specify additional conditions as are necessary to ensure and document proper storage to protect human health and the environment.

(6) Waste military munitions that are chemical agents or chemical munitions and that exhibit a hazardous waste characteristic or are listed as hazardous waste under subchapter 3 are subject to the applicable regulatory

requirements of the Montana Hazardous Waste Act, Title 75, chapter 10, part 4, MCA.

(7) Waste military munitions that are chemical agents or chemical munitions and that exhibit a hazardous waste characteristic or are listed as hazardous waste under subchapter 3 are not subject to the storage prohibition in RCRA section 3004, 40 CFR 268.50 (incorporated by reference in ARM 17.54.150(1)).

(8) The DDESB storage standards applicable to waste military munitions, referenced in (1)(c) of this rule, are DOD 6055.9-STD ("DOD Ammunition and Explosive Safety Standards"), in effect on November 8, 1995.

(9) The treatment and disposal of hazardous waste military munitions are subject to the applicable permitting, procedural, and technical standards in [RULES VIII through XIII].

AUTH: 75-10-405, MCA
IMP: 75-10-405, MCA

4. The rules proposed to be amended provide as follows. Text of present rule with matter to be stricken interlined and new matter underlined.

17.54.102 INCORPORATIONS BY REFERENCE (1) and (2) remain the same.

(3) Where the department has adopted a federal regulation by reference, the following shall apply:

(a) Except where indicated otherwise, references in the federal regulations to "administrator", "regional administrator", or US environmental protection agency, or the like, should be read to mean "department".

(b) and (4) remain the same.

(5) For the purposes of this chapter, the department adopts and incorporates herein by reference the following:

(a) the final rules published at 63 FR 42110-89 on August 6, 1998, "Petroleum Refining Process Wastes", to be codified at 40 CFR parts 261, 266, and 268;

(b) the final rules published at 63 FR 46332-34 on August 31, 1998, "Land Disposal Restrictions Phase IV -- Zinc Micronutrient Fertilizers, Amendment", to be codified at 40 CFR 268.40(i);

(c) the final rules published at 63 FR 47409-18 on September 4, 1998, "Emergency Revision of the Land Disposal Restrictions Treatment Standards for Listed Hazardous Wastes from Carbamate Production", to be codified at 40 CFR part 268;

(d) the final rules published at 63 FR 48124-27 on September 9, 1998, "Land Disposal Restrictions Phase IV -- Extension of Compliance Date for Characteristic Slags", to be codified at 40 CFR 268.34;

(e) the final rules published at 63 FR 51254-67 on September 24, 1998, "Land Disposal Restrictions; Treatment Standards for Spent Potliners from Primary Aluminum Reduction (K088)", to be codified at 40 CFR part 268;

(f) the final rules published at 63 FR 56710-35 on October 22, 1998, "Post-Closure Permit Requirement and Closure Process", to be codified at 40 CFR parts 264, 265, and 270; and

(g) the final rules published at 63 FR 65874-947 on November 30, 1998, "HWIR Media", to be codified at 40 CFR parts 260, 261, 264, 265, 268, and 270.

~~(5)~~ (6) As of ~~January 28, 1997~~ September 1, 1999, all of the incorporations by reference of federal agency rules listed below within the specific state agency rules listed below shall refer to federal agency rules as they have been codified in the July 1, ~~1995~~ 1998, edition of Title 40 of the CFR and in (5) of this rule. References in the state rules to federal rules contained in Titles 49 and 33 are updated to the extent that they have been updated by the federal rules which also incorporate these rules by reference. For the proper edition of these rules in Titles 49 and 33, see the reference in Title 40 of the CFR (~~1995~~ 1998 edition), provided in parentheses. A short description of the amendments to incorporated federal rules which have occurred since the last incorporation by reference is contained in the column to the right. This rule supersedes any specific references to editions of the CFR contained in other rules in this chapter.

State Rule 17.54. ...		Federal Rule Incorporated	Notation of Most Recent Changes to Federal Rules
		~~40 CFR . . .~~	
(a)	105	40 CFR 264.17(b), 264.96, 264.117, 264.171, 264.172	~~Post closure care; container standards.~~ NC
(b)	111	40 CFR 264.72, 264.73(b)(9), 264.76	~~Manifesting and operating record requirements.~~ NC
(c)	112	40 CFR Parts 264 (except subpart H) and 266 (except subpart H)	~~General facility standards; standards for specific wastes and facilities.~~ NC
(d)	126	40 CFR 264.98, 264.99, 264.100, 264.112, 264.113, 264.117(a), 264.118, 264.147	NC
(e)	131	40 CFR 270.14 - 270.26	~~Permit application requirements.~~ Post-closure
(f)	136	40 CFR 264.343, 264.345	NC
(g)	137	40 CFR Part 264, Subpart M	NC
(h)	140	40 CFR Parts 264 (except subpart H) and 266 (except subpart H)	~~General facility standards; standards for specific wastes and facilities.~~ NC
(i)	150	40 CFR Part 268, (except sections 268.5, 268.6, 268.42(b), and 264.44) as well as Appendices I through ~~IX~~ XI	~~Land disposal restrictions.~~ HWIR media

State Rule 17.54. ...		Federal Rule Incorporated	Notation of Most Recent Changes to Federal Rules
(j)	201	40 CFR Parts 264 and 266, Appendix to Part 262	~~General facility standards, standards for specific wastes and facilities.~~ Universal wastes, Military Munitions, HWIR media
(k)	309	40 CFR Part 264, Subpart O; Part 265, Subpart O; Part 266, Subparts C-G; 265.71, 265.72; Part 279	~~Standards for specific wastes and facilities.~~ NC
(l)	311	40 CFR Part 273, Subparts A-F	Universal waste management.
		~~49 CFR . . .~~	
(m)	321	49 CFR 173.300 (40 CFR 261.21)	~~Definition of ignitable compressed gas.~~ NC
(n)	323	49 CFR 173.51, 173.53, 173.88 (40 CFR 261.23)	~~Classification of explosives.~~ NC
		~~40 CFR . . .~~	
(o)	331	40 CFR 261.31	~~Hazardous wastes from non-specific sources.~~ NC
(p)	332	40 CFR 261.32	~~Hazardous wastes from non-specific sources.~~ NC
(q)	333	40 CFR 261.33(e) and (f)	~~Discarded chemical products, residue.~~ NC
(r)	334	40 CFR Part 265, Appendix V	NC
(s)	351	40 CFR Part 261, Appendices I, II, and III	NC

State Rule 17.54. ...		Federal Rule Incorporated	Notation of Most Recent Changes to Federal Rules
(t)	352	40 CFR Part 261, Appendices VII and VIII	~~Basis for listing hazardous waste, constituents.~~ NC
(u)	408	40 CFR Part 262, the Appendix	~~NC~~ Military munitions
		~~49 CFR . . .~~	
(v)	415	49 CFR Parts 173, 178, and 179 (40 CFR 262.30)	~~Shipping and packaging of hazardous materials.~~ NC
(w)	416	49 CFR Part 172, Subpart E (40 CFR 262.31)	~~Labeling requirements for hazardous materials~~ NC
(x)	417	49 CFR Part 172, Subpart D (40 CFR 262.32)	~~Marking requirements for hazardous materials transportation.~~ NC
(y)	418	49 CFR Part 172, Subpart F (40 CFR 262.33)	~~Placarding requirements for hazardous materials transportation.~~ NC
		~~40 CFR . . .~~	
(z)	421	40 CFR Part 265, Subparts C and D, 265.111, 265.114, Part 265, Subpart I, Part 265, Subpart J, (except 265.197(c) and 265.200)	~~Air emission standards.~~ NC
(aa)	435	40 CFR 262.58	~~NC~~ Imports and exports of hazardous wastes

State Rule 17.54. ...	Federal Rule Incorporated	Notation of Most Recent Changes to Federal Rules
	~~42 CFR . . ./ 33 CFR . . .~~	
(ab) 511	49 CFR 171.15, 171.16 / 33 CFR 153.203 (40 CFR 263.30)	~~Notice requirements for discharges of hazardous waste.~~ NC
	~~40 CFR . . .~~	
(ac) 603	40 CFR 264.250(c), 265.352, 265.383	NC
(ad) 609	40 CFR Part 265, Subparts B - Q, excluding Subpart H and 265.75	~~Interim status standards.~~ Military munitions, post closure
(ae) 702	40 CFR Part 264, Subparts B - BB, excluding Subpart H and 264.75; Part 264, Appendices I, IV, V, VI, and IX	~~Facility standards.~~ Military munitions, post closure
(af) 802	40 CFR 264.197, 264.228, 264.258, 265.197, 265.228, and 265.258	NC
(ag) 803	40 CFR 264.112, 264.117 - 264.120, 265.112, 265.117 - 265.120	NC
(ah) 807	40 CFR 264.111 - 264.115, 264.143(f)(3), 264.178, 264.197, 264.228, 264.258, 264.280, 264.310, 264.351, 264.601 - 264.603, 265.111-265.115, 265.197, 265.228, 265.258, 265.280, 265.310, 265.351, 265.381, and 265.404	~~Environmental performance standards for miscellaneous units.~~ NC
(ai) 808	40 CFR 264.117 - 264.120, 264.145(f)(5), 264.228, 264.258, 264.280, 264.310,	NC

State Rule 17.54. ...	Federal Rule Incorporated	Notation of Most Recent Changes to Federal Rules
	264.603, 265.117 - 265.120, 265.228, 265.258, 265.280, 265.310	
(aj) 814	40 CFR 264.143(f) and 264.145(f)	NC
(ak) 823	40 CFR 264.147(f), 264.147(g)	NC
(al) 833	40 CFR 264.151(a)-(j)	NC
(am) 1108	40 CFR 51.100(ii)	NC
(an) 1111(3)	40 CFR Part 60, Appendix A, Methods 1 through 5	NC
(ao) 1118	40 CFR Part 266, Appendices I through XII	~~Exempt mercury bearing wastes.~~ Guideline on new air quality models

NC - Refers to no change in the material which is being incorporated by reference from the time of the last formally noticed incorporation by reference.

(6) remains the same, but is renumbered (7).

AUTH: 75-10-405, MCA
IMP: 75-10-405, MCA

17.54.105 SCOPE OF PERMIT REQUIREMENTS (1) remains the same.

(2) Owners and operators of hazardous waste management units shall have HWM permits during the active life, including the closure period, of the unit. Owners or operators of surface impoundments, landfills, land treatment units, and waste pile units that received wastes after July 26, 1982, or that certified closure (according to 40 CFR 265.115) after January 26, 1983, ~~must~~ shall have post-closure permits, unless they demonstrate closure by removal or decontamination as provided under ~~(8) and~~ (9) and (10) of this rule, or obtain an enforceable document in lieu of post-closure permit, as provided in ARM 17.54.702(5). If a post-closure permit is required, the permit must address applicable ground water monitoring, unsaturated zone monitoring, corrective action, and post-closure care requirements of subchapter 7 of this chapter. The denial of a permit for the active life of a hazardous waste management facility or hazardous waste

management unit does not affect the requirement to obtain a post-closure permit.

(3) through (4)(d) remain the same.

(e) owners and operators of elementary neutralization units or wastewater treatment units as defined in ARM 17.54.201, provided that if the owner or operator is diluting hazardous ignitable (D001) wastes (other than the D001 High TOC subcategory defined in 40 CFR ~~268.42~~ 268.40 (incorporated by reference in ARM 17.54.150), Table Treatment Standards for Hazardous Wastes), ~~Table 2), or corrosive (D002) waste~~ or reactive (D003) waste, to remove the characteristic before land disposal, the owner or operator ~~must~~ shall comply with the requirements set out in 40 CFR 264.17(b) (incorporated by reference in ARM 17.54.702);

(f) and (g) remain the same.

(h) universal waste handlers and universal waste transporters (as defined in ARM 17.54.201(144) and (145), respectively) handling the wastes listed below. These handlers are subject to regulation under 40 CFR part 273 (incorporated by reference in ARM 17.54.311(1)(a)), when handling the below-listed universal wastes.

(i) batteries as described in 40 CFR 273.2 (incorporated by reference in ARM 17.54.311(1)(a));

(ii) pesticides as described in 40 CFR 273.3 (incorporated by reference in ARM 17.54.311(1)(a)); and

(iii) thermostats as described in 40 CFR 273.4 (incorporated by reference in ARM 17.54.311(1)(a)).

(5) Further exclusions:

(a) A person is not required to obtain a HWM permit for treatment or containment ~~activities taken~~ actions during immediate response to ~~either of~~ the following activities:

(i) a hazardous waste discharge;

(ii) an imminent and substantial threat of a hazardous waste discharge~~.~~; or

(iii) an immediate threat to human health, public safety, property, or the environment, from the known or suspected presence of military munitions, other explosive material, or an explosive device, as determined by an explosive or munitions emergency response specialist as defined in ARM 17.54.201.

(b) remains the same.

(c) In the case of an explosives or munitions emergency response, if a federal, state, tribal or local official acting within the scope of his or her official responsibilities, or an explosives or munitions emergency response specialist, determines that immediate removal of the material or waste is necessary to protect human health or the environment, that official or specialist may authorize the removal of the material or waste by transporters who do not have EPA identification numbers and without the preparation of a manifest. In the case of emergencies involving military munitions, the responding military emergency response specialist's organizational unit shall retain records for 3 years identifying the dates of the response, the responsible

persons responding, the type and description of material addressed, and its disposition.

(6) The requirements of 40 CFR part 264, subparts B, C, and D (incorporated by reference in ARM 17.54.702(1)) do not apply to remediation waste management sites. Instead, owners or operators of remediation waste management sites shall:

(a) obtain an EPA identification number by applying to the administrator using EPA Form 8700-12;

(b) obtain a detailed chemical and physical analysis of a representative sample of the hazardous remediation wastes to be managed at the site. At a minimum, the analysis must contain all of the information which must be known to treat, store, or dispose of the waste according to 40 CFR 264.1 (incorporated by reference in ARM 17.54.112) and 40 CFR part 268 (partially incorporated by reference in ARM 17.54.150), and must be kept accurate and up to date;

(c) prevent people who are unaware of the danger from entering, and minimize the possibility for unauthorized people or livestock to enter onto the active portion of the remediation waste management site, unless the owner or operator can demonstrate to the director that:

(i) physical contact with the waste, structures, or equipment within the active portion of the remediation waste management site will not injure people or livestock who may enter the active portion of the remediation waste management site; and

(ii) disturbance of the waste or equipment by people or livestock who enter onto the active portion of the remediation waste management site will not violate 40 CFR 264.1 (incorporated by reference in ARM 17.54.112);

(d) inspect the remediation waste management site for malfunctions, deterioration, operator errors, and discharges that may be causing, or may lead to, a release of hazardous waste constituents to the environment, or a threat to human health. The owner or operator must conduct these inspections often enough to identify problems in time to correct them before they harm human health or the environment, and must remedy the problem before it leads to a human health or environmental hazard. Where a hazard is imminent or has already occurred, the owner/operator must take remedial action immediately;

(e) provide personnel with classroom or on-the-job training on how to perform their duties in a way that ensures the remediation waste management site complies with the requirements of 40 CFR 264.1 (incorporated by reference in ARM 17.54.112), and on how to respond effectively to emergencies;

(f) take precautions to prevent accidental ignition or reaction of ignitable or reactive waste, and prevent threats to human health and the environment from ignitable, reactive and incompatible waste;

(g) for remediation waste management sites subject to regulation under subparts I through O and subpart X of 40 CFR 264.1 (incorporated by reference in ARM 17.54.112), the owner/operator shall design, construct, operate, and maintain

a unit within a 100-year floodplain to prevent washout of any hazardous waste by a 100-year flood, unless the owner/operator can meet the demonstration of 40 CFR 264.18(b) (incorporated by reference in ARM 17.54.702);

(h) not place any non-containerized or bulk liquid hazardous waste in any salt dome formation, salt bed formation, underground mine or cave;

(i) develop and maintain a construction quality assurance program for all surface impoundments, waste piles and landfill units that are required to comply with 40 CFR 264.221(c) and (d) (incorporated by reference in ARM 17.54.702), 40 CFR 264.251(c) and (d) (incorporated by reference in ARM 17.54.702), and 40 CFR 264.301(c) and (d) (incorporated by reference in ARM 17.54.702) at the remediation waste management site, according to the requirements of 40 CFR 264.19 (incorporated by reference in ARM 17.54.702);

(j) develop and maintain procedures to prevent accidents and a contingency and emergency plan to control accidents that occur. These procedures must address proper design, construction, maintenance, and operation of remediation waste management units at the site. The goal of the plan must be to minimize the possibility of, and the hazards from, a fire, explosion or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water that could threaten human health or the environment. The plan must explain specifically how to treat, store and dispose of the hazardous remediation waste in question, and must be implemented immediately whenever a fire, explosion, or release of hazardous waste or hazardous waste constituents which could threaten human health or the environment;

(k) designate at least one employee, either on the facility premises or on call (that is, available to respond to an emergency by reaching the facility quickly), to coordinate all emergency response measures. This emergency coordinator shall be thoroughly familiar with all aspects of the facility's contingency plan, all operations and activities at the facility, the location and characteristics of waste handled, the location of all records within the facility, and the facility layout. In addition, this person shall have the authority to commit the resources needed to carry out the contingency plan;

(l) develop, maintain and implement a plan to meet the requirements in (6)(b) through (f), (i) and (j) of this rule; and

(m) maintain records documenting compliance with (6)(a) through (l) of this rule.

(7) Remediation waste management sites that are part of a facility that is subject to a traditional RCRA permit because the facility is also treating, storing or disposing of non-remediation derived hazardous wastes are subject to 40 CFR part 264, subparts B, C, and D.

(6) through (10) remain the same, but are renumbered (8) through (12).

(13) [RULE XIII] identifies when the requirements of this rule apply to the storage of military munitions classified as waste under [RULES IX and X]. The treatment and disposal of hazardous waste military munitions are subject to the applicable permitting, procedural, and technical standards of this chapter.

(14) At the department's discretion, an owner/operator may obtain an enforceable document imposing 40 CFR 265.121 requirements (incorporated by reference in ARM 17.54.609) in lieu of post-closure permits.

(a) "Enforceable document" means an order or other document issued under the authority of 40 CFR 271.16(e) including, but not limited to, a corrective action order issued by EPA under section 3008(h), a CERCLA remedial action, or a closure or post-closure plan.

AUTH: 75-10-405, MCA
IMP: 75-10-405, 75-10-406, MCA

17.54.106 PERMITTING REQUIREMENTS: EXISTING AND NEW HWM FACILITIES (1) remains the same.

(2) At any time after adoption of final facility standards, the owner ~~and~~ or operator of an existing HWM facility may be required to submit Part B of the permit application. Any owner or operator shall be allowed at least 6 months from the date of request to submit Part B of the application. Any owner or operator of an existing HWM facility may voluntarily submit Part B of the application any time after adoption of final facility standards. Notwithstanding the above, any owner or operator of an existing HWM facility ~~must~~ shall submit a Part B permit application in accordance with the dates specified in ARM 17.54.107(6). Any owner or operator of a land disposal facility in existence on the effective date of statutory or regulatory amendments under RCRA defined in ARM 17.54.201 that render the facility subject to the requirement to have a permit ~~must~~ shall submit a Part B application in accordance with the dates specified in ARM 17.54.107(6).

(3) through (8) remain the same.

AUTH: 75-10-405, MCA
IMP: 75-10-405, 75-10-406, MCA

17.54.107 TEMPORARY PERMITS (INTERIM STATUS) (1) through (5) remain the same.

(6) Interim status terminates:

(a) when final administrative disposition of a permit application, except an application for a remedial action plan (RAP) under [RULE III], is made; or

(b) through (g) remain the same.

AUTH: 75-10-404, 75-10-405, MCA

IMP: 75-10-405, 75-10-406, MCA

17.54.110 SIGNATORIES TO PERMIT APPLICATIONS (1) through (4) remain the same.

(5) For RAPs under [RULES II through VII], if the operator certifies according to (4) of this rule, then the owner may choose to make the following certification instead of the certification in (4):

"Based on my knowledge of the conditions of the property described in the RAP and my inquiry of the person or persons who manage the system referenced in the operator's certification, or those persons directly responsible for gathering the information, the information submitted is, upon information and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

AUTH: 75-10-404, 75-10-405, MCA
IMP: 75-10-405, 75-10-406, MCA

17.54.120 EFFECT OF A PERMIT (1)(a) and (1)(a)(i) remain the same.

(ii) are adopted under ARM 17.54.150, restricting the placement of hazardous wastes in or on the land; ~~or~~

(iii) are adopted under ARM 17.54.702 regarding leak detection systems for new and replacement surface impoundment, waste pile and landfill units, and lateral expansions of surface impoundment, waste pile and landfill units. The leak detection system requirements include double liners, construction quality assurance (CQA) programs, monitoring, action leakage rates, and response action plans, and ~~must~~ shall be implemented through the procedures of ARM 17.54.128~~.~~; or

(iv) are promulgated under subparts AA, BB, or CC of 40 CFR part 265 (incorporated by reference in ARM 17.54.609(5)) limiting air emissions.

(1)(b) through (3) remain the same.

AUTH: 75-10-404, 75-10-405, MCA
IMP: 75-10-405, 75-10-406, MCA

17.54.128 MINOR MODIFICATIONS OF PERMITS; TEMPORARY AUTHORIZATIONS FOR MODIFICATIONS; AND AUTHORIZATIONS FOR MANAGEMENT OF NEWLY IDENTIFIED WASTES (1) At the request or upon the consent of the permittee, the department may modify a permit to make the corrections or allowances for changes in the permitted activity listed in Table I of this rule, without following the procedures set forth in subchapter 9. Any permit modification not processed under this rule must be made with draft permit and public notice as required in ARM 17.54.126.

TABLE I
LISTING OF MINOR MODIFICATIONS

A. through D.2. remain the same.

3. Addition of the following new units to be used temporarily for closure activities.

a. Surface impoundments

b. Incinerators

c. Waste piles that do not comply with 40 CFR 264.250(c) (incorporated by reference in ARM 17.54.702(5))

d. Waste piles that comply with 40 CFR 264.250(c) (incorporated by reference in ARM 17.54.702(5))

e. Tanks or containers (other than specified below)

f. Tanks used for neutralization, dewatering, phase separation, or component separation, with prior approval of the department

g. Staging piles

E. through K. remain the same.

L. through 2. remain the same.

3. Technology changes needed to meet standards under 40 CFR part 63 (EEE- National Emission Standards for hazardous air pollutants from hazardous waste combustors), provided the procedures of 270.42(a)(i) are followed.

M. remains the same.

N. Corrective Action:

1. Approval of a corrective action management unit pursuant to 40 CFR 264.552 (incorporated by reference in ARM 17.54.702(5))

2. Approval of a temporary unit or time extension for a temporary unit pursuant to 40 CFR 264.553 (incorporated by reference in ARM 17.54.702(5))

3. Approval of a staging pile operating term extension pursuant to 40 CFR 264.554 (incorporated by reference in ARM 17.54.702(5)).

(2) and (3) remain the same.

(4) The permittee is authorized to continue to accept waste military munitions notwithstanding any permit conditions barring the permittee from accepting off-site wastes, if:

(a) the facility was in existence as a hazardous waste facility, and the facility was already permitted to handle the waste military munitions on the date when the waste military munitions became subject to hazardous waste regulatory requirements;

(b) on or before the date when the waste military munitions became subject to hazardous waste regulatory requirements, the permittee submitted a minor modification request to remove or amend the permit provision restricting the receipt of off-site waste munitions; and

(c) in the case of modifications, which are not minor modifications under Table I above, the permittee submits a complete modification request within 180 days of the date when

the waste military munitions became subject to hazardous waste regulatory requirements.

(5) The following procedures apply to hazardous waste combustion facility permit modifications requested under Appendix I of 40 CFR 270.42, section L(9):

(a) Facility owners or operators shall comply with the Notification of Intent to Comply (NIC) requirements of 40 CFR 63.1211 before a permit modification can be requested under this rule.

(b) If the department does not approve or deny the request within 90 days of receiving it, the request shall be deemed approved. The department may extend this 90-day deadline one time for up to 30 days by notifying the facility owner or operator.

AUTH: 75-10-405, MCA
IMP: 75-10-405, 75-10-406, MCA

17.54.131 CONTENTS OF PART B (1) Part B of the permit application consists of the general information requirements of (2)(a) of this rule and the specific information requirements of (2)(b) of this rule. These information requirements are necessary for the department to determine compliance with ARM 17.54.701, et seq. If owners and operators of HWM facilities can demonstrate that the information prescribed in Part B can not be provided to the extent required, the department may make allowance for submission of such information on a case by case basis. Information required in Part B shall be submitted to the department and signed in accordance with requirements in ARM 17.54.110. Certain technical data, specified below, such as design drawings and specifications and engineering studies shall be certified by a registered professional engineer. Part B information is to be submitted in narrative or report form unless otherwise specified by the department. For post-closure permits, only the information specified in (3)(o), below, is required in Part B of the permit application.

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

(b) the owners or operators of specific types of HWM facilities ~~must~~ shall describe the nature, design operation and maintenance of such facilities and ~~must~~ shall include the items of specific information applicable to such facilities listed in 40 CFR 270.15 through ~~270.26~~ 270.27.

(3) The department hereby adopts and incorporates by reference 40 CFR 270.14 through ~~270.26~~ 270.27 except for 270.22(a)(1)(ii), (a)(2), (a)(4) and (a)(6). The correct CFR edition is listed in ARM 17.54.102.

(a) through (m) remain the same.

(n) 40 CFR 270.27 is a federal agency rule setting forth permit information requirements for air emission controls for tanks, surface impoundments, and containers;

(o) For post-closure permits, the owner or operator is required to submit only the information specified in 40 CFR 270.14(b)(1), (b)(4) through (b)(6), (b)(11), (b)(13),

(b)(14), (b)(16), (b)(18), and (b)(19), (c), and (d) unless the department determines that additional information from 40 CFR 270.14, 270.16, 270.17, 270.18, 270.20, or 270.21 is necessary. The owner or operator is required to submit the same information when an alternative authority is used in lieu of a post-closure permit.

~~(n)~~ (4) Copies of 40 CFR 270.14 through ~~270.26~~ 270.27 or any portion thereof may be obtained from the Department of Environmental Quality, PO Box 200901, Helena, MT 59620-0901.

AUTH: 75-10-405, MCA
IMP: 75-10-405, 75-10-406, MCA

17.54.136 PERMITS FOR HAZARDOUS WASTE INCINERATORS

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

(f) The department shall send a notice to all persons on the facility mailing list as set forth in ARM 17.54.907(6) and to the appropriate units of state and local government as set forth in ARM 17.54.907(6) announcing the scheduled commencement and completion dates for the trial burn. The applicant shall not commence the trial burn until after the department has issued such notice.

(i) This notice must be mailed within a reasonable time period before the scheduled trial burn. An additional notice is not required if the trial burn is delayed due to circumstances beyond the control of the facility or the permitting agency.

(ii) This notice must contain:

(A) the name and telephone number of the applicant's contact person;

(B) the name and telephone number of the permitting agency's contact office;

(C) the location where the approved trial burn plan and any supporting documents can be reviewed and copied; and

(D) an expected time period for commencement and completion of the trial burn.

(f) through (j) remain the same, but are renumbered (g) through (k).

(3) remains the same.

(4) For the purposes of determining feasibility of compliance with the performance standards of 40 CFR 264.343 and of determining adequate operating conditions under 40 CFR 264.345 and except as provided in (5), the applicant for a permit for an existing hazardous waste incinerator ~~must~~ shall prepare and submit a trial burn plan and perform a trial burn in accordance with ~~(2)(b) (i)~~ (2)(b) through (2)(e) and (2)(g) through (2)(i) of this rule or, instead, submit other information as specified in 40 CFR 270.19(c), (40 CFR 270.19 is incorporated by reference in ARM 17.54.131(3)). The department shall announce its intention to approve the trial burn plan in accordance with the timing and distribution requirements of (2)(f) of this rule. The contents of the notice must include:

(a) the name and telephone number of a contact person at the facility;

(b) the name and telephone number of a contact office at the permitting agency;

(c) the location where the trial burn plan and any supporting documents can be reviewed and copied; and

(d) a schedule of the activities that are required prior to permit issuance, including the anticipated time schedule for agency approval of the plan and the time period during which the trial burn would be conducted.

(5) Applicants submitting information under 40 CFR 270.19(a) are exempt from compliance with 40 CFR 264.343 and 264.345 and, therefore, are exempt from the requirement to conduct a trial burn. Applicants who submit trial burn plans and receive approval before submission of a permit application ~~must~~ shall complete the trial burn and submit the results, specified in (2)~~(f)~~ (g) of this rule, with Part B of the permit application. If completion of this process conflicts with the date set for submission of the Part B application, the applicant ~~must~~ shall contact the department to establish a later date for submission of the Part B application or the trial burn results. Trial burn results must be submitted prior to issuance of the permit. When the applicant submits a trial burn plan with Part B of the permit application, the department ~~will~~ shall specify a time period prior to permit issuance in which the trial burn must be conducted and the results submitted.

(5) and (6) remain the same, but are renumbered (6) and (7).

AUTH: 75-10-405, MCA
IMP: 75-10-405, 75-10-406, MCA

17.54.146 PERMITS FOR BOILERS AND INDUSTRIAL FURNACES BURNING HAZARDOUS WASTE (1) through (2)(a) remain the same.

(b) An analysis of each hazardous waste, as-fired, including:

(i) an identification of any hazardous organic constituents listed in ARM 17.54.352(1)(b), that are present in the feed stream, except that the applicant need not analyze for constituents listed in ARM 17.54.352(1)(b) that would reasonably not be expected to be found in the hazardous waste. The constituents excluded from analysis must be identified and the basis for this exclusion explained. The waste analysis must be conducted in accordance with analytical techniques specified in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" EPA Publication SW-846 (incorporated by reference in ARM 17.54.351), or their equivalent.

(ii) an approximate quantification of the hazardous constituents identified in the hazardous waste, within the precision produced by the analytical methods specified in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" EPA Publication SW-846, or other equivalent.

(iii) through (5) remain the same.

AUTH: 75-10-405, MCA
IMP: 75-10-405, 75-10-406, MCA

17.54.150 RESTRICTIONS ON THE LAND DISPOSAL OF HAZARDOUS WASTES (1) The department hereby adopts and incorporates by reference 40 CFR ~~P~~part 268 (except sections 268.5, 268.6, 268.42(b), and 268.44) and Appendices I through ~~IX~~ XI to ~~P~~part 268. The correct CFR edition is listed in ARM 17.54.102.

(2) through (4) remain the same.

AUTH: 75-10-404, MCA
IMP: 75-10-405, MCA

17.54.201 DEFINITIONS In this chapter, the following terms shall have the meanings or interpretations shown below:

(1) through (7) remain the same.

(8) "Battery" means a device consisting of one or more electrically connected electrochemical cells which is designed to receive, store, and deliver electric energy. An electrochemical cell is a system consisting of an anode, cathode, and an electrolyte, plus such connections (electrical and mechanical) as may be needed to allow the cell to deliver or receive electrical energy. The term battery also includes an intact, unbroken battery from which the electrolyte has been removed.

(8) through (21) remain the same, but are renumbered (9) through (22).

~~(22)~~ (23) "Corrective action management unit" ~~or~~ (CAMU) means an area within a facility that is ~~designated by the department for the purpose of implementing corrective action requirements. A CAMU may be~~ used only ~~for~~ to ~~the management of~~ manage remediation wastes ~~pursuant to~~ for ~~implementing such~~ corrective action ~~requirements~~ or cleanup at the facility.

(23) through (25) remain the same, but are renumbered (24) through (26).

(27) "Destination facility" means a facility that treats, disposes of, or recycles a particular category of universal waste, except those management activities described in 40 CFR 273.13(a) and (c) (incorporated by reference in ARM 17.54.311) and 273.33(a) and (c) (incorporated by reference in ARM 17.54.311). A facility at which a particular category of universal waste is only accumulated, is not a destination facility for purposes of managing that category of universal waste.

(26) through (41) remain the same, but are renumbered (28) through (43).

(44) "Explosives or munitions emergency" means a situation involving the suspected or detected presence of unexploded ordnance (UXO), damaged or deteriorated explosives or munitions, an improvised explosive device (IED), other potentially explosive material or device, or other potentially

harmful military chemical munitions or device, that creates an actual or potential imminent threat to human health, including safety, or the environment, including property, as determined by an explosives or munitions emergency response specialist. Such situations may require immediate and expeditious action by an explosives or munitions emergency response specialist to control, mitigate, or eliminate the threat.

(45) "Explosives or munitions emergency response" means all immediate response activities by an explosives and munitions emergency response specialist to control, mitigate, or eliminate the actual or potential threat encountered during an explosives or munitions emergency. An explosives or munitions emergency response may include in-place render-safe procedures, treatment or destruction of the explosives or munitions and/or transporting those items to another location to be rendered safe, treated, or destroyed. Any reasonable delay in the completion of an explosives or munitions emergency response caused by a necessary, unforeseen, or uncontrollable circumstance will not terminate the explosives or munitions emergency. Explosives and munitions emergency responses can occur on either public or private lands and are not limited to responses at RCRA facilities.

(46) "Explosives or munitions emergency response specialist" means an individual trained in chemical or conventional munitions or explosives handling, transportation, render-safe procedures, or destruction techniques. Explosives or munitions emergency response specialists include department of defense (DOD) emergency explosive ordnance disposal (EOD), technical escort unit (TEU), and DOD-certified civilian or contractor personnel; and other federal, state, or local government, or civilian personnel similarly trained in explosives or munitions emergency responses.

~~(42)~~ (47) "Facility" or "hazardous waste management facility" means:

(a) all contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste. A facility may consist of several treatment, storage, or disposal operational units (e.g., one or more landfills, surface impoundments, or combinations of them).

(b) ~~For~~ for the purposes of implementing corrective action under 40 CFR 264.101 or ~~under~~ an administrative order, ~~the term "facility" includes~~ all contiguous property under the control of the owner or operator seeking a permit under subtitle C of RCRA. This definition also applies to facilities implementing corrective action under RCRA section 3008(h) and 75-10-416, MCA.

(c) Notwithstanding (47)(b), a remediation waste management site is not a facility that is subject to 40 CFR 264.101 (incorporated by reference in ARM 17.54.702(5)), but is subject to corrective action requirements if the site is located within such a facility.

(43) through (78) remain the same, but are renumbered (48) through (83).

(84) "Military munitions" means all ammunition products and components produced or used by or for the US department of defense or the US armed services for national defense and security, including military munitions under the control of the department of defense, the US coast guard, the US department of energy (DOE), and national guard personnel. The term "military munitions" includes: confined gaseous, liquid, and solid propellants, explosives, pyrotechnics, chemical and riot control agents, smokes, and incendiaries used by DOD components, including bulk explosives and chemical warfare agents, chemical munitions, rockets, guided and ballistic missiles, bombs, warheads, mortar rounds, artillery ammunition, small arms ammunition, grenades, mines, torpedoes, depth charges, cluster munitions and dispensers, demolition charges, and devices and components thereof. Military munitions do not include wholly inert items, improvised explosive devices, and nuclear weapons, nuclear devices, and nuclear components thereof. However, the term does include non-nuclear components of nuclear devices, managed under DOE's nuclear weapons program after all required sanitization operations under the Atomic Energy Act of 1954, as amended, have been completed.

(79) remains the same, but is renumbered (85).

~~(80)~~ (86) "Miscellaneous unit" means a hazardous waste management unit where hazardous waste is treated, stored, or disposed of and that is not a container, tank, surface impoundment, pile, land treatment unit, landfill, incinerator, boiler, industrial furnace, underground injection well with appropriate technical standards under 40 CFR part 146, containment building, corrective action management unit, ~~or~~ unit eligible for a research, development, and demonstration permit under ARM 17.54.140, or staging pile.

(81) through (92) remain the same, but are renumbered (87) through (98).

(99) "Pesticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, or intended for use as a plant regulator, defoliant, or desiccant, other than any article that:

(a) is a new animal drug under Federal Food, Drug and Cosmetic Act (FFDCA) section 201(w);

(b) is an animal drug that has been determined by regulation of the secretary of health and human services not to be a new animal drug; or

(c) is an animal feed under FFDCA section 201(x) that bears or contains any substances described by (99)(a) or (b).

(93) through (103) remain the same, but are renumbered (100) through (110).

(111) "Remedial action plan" (RAP) means a special form of RCRA permit that a facility owner or operator may obtain instead of a permit issued under subchapter 1 or 6, to authorize the treatment, storage or disposal of hazardous remediation waste (as defined in (112)) at a remediation waste management site.

~~(104)~~ (112) "Remediation waste" means all solid and hazardous wastes, and all media (including ground water, surface water, soils and sediments) and debris, that~~:~~

~~(a)~~ contain listed hazardous wastes or that themselves exhibit a hazardous ~~waste~~ characteristic~~,~~ and

~~(b)~~ are managed for ~~the purpose of~~ implementing ~~corrective action requirements under 40 CFR 264.101 and under an administrative order. For a given facility, remediation wastes may originate only from within the facility boundary, but may include waste managed in connection with corrective action for releases beyond the facility boundary~~ cleanup.

(113) "Remediation waste management site" means a facility where an owner or operator is or will be treating, storing or disposing of hazardous remediation wastes. A remediation waste management site is not a facility that is subject to corrective action under 40 CFR 264.101 (incorporated by reference in ARM 17.54.702(5)), but is subject to corrective action requirements if the site is located in such a facility.

(105) through (112) remain the same, but are renumbered (114) through (121).

(122) "Staging pile" means an accumulation of solid, non-flowing remediation waste (as defined in (112)) that is not a containment building and that is used only during remedial operations for temporary storage at a facility. Staging piles shall be designated by the department according to the requirements of 40 CFR 264.554 (incorporated by reference in ARM 17.54.702).

(113) through (119) remain the same, but are renumbered (123) through (129).

(130) "Thermostat" means a temperature control device that contains metallic mercury in an ampule attached to a bimetal sensing element, and mercury-containing ampules that have been removed from these temperature control devices in compliance with the requirements of 40 CFR 273.13(c)(2) or 273.33(c)(2) (incorporated by reference in ARM 17.54.311(1)(a)).

(120) through (131) remain the same, but are renumbered (131) through (142).

(143) "Universal waste" means any of the following hazardous wastes that are managed under the universal waste requirements of 40 CFR part 273 (incorporated by reference in ARM 17.54.311(1)(a)):

(a) batteries as described in 40 CFR 273.2 (incorporated by reference in ARM 17.54.311(1)(a));

(b) pesticides as described in 40 CFR 273.3 (incorporated by reference in ARM 17.54.311(1)(a)); and

(c) thermostats as described in 40 CFR 273.4 (incorporated by reference in ARM 17.54.311(1)(a)).

(144) "Universal waste handler" means:

(a) a generator of universal waste; or

(b) the owner or operator of a facility, including all contiguous property, that receives universal waste from other universal waste handlers, accumulates universal waste, and

sends universal waste to another universal waste handler, to a destination facility, or to a foreign destination.

(c) Universal waste handler does not mean:

(i) a person who treats (except under the provisions of 40 CFR 273.13(a) or (c), or 273.33(a) or (c), incorporated by reference in ARM 17.54.311(1)(a)), disposes of, or recycles universal waste; or

(ii) a person engaged in the off-site transportation of universal waste by air, rail, highway, or water, including a universal waste transfer facility.

(145) "Universal waste transporter" means a person engaged in the off-site transportation of universal waste by air, rail, highway, or water.

(132) through (143) remain the same, but are renumbered (146) through (157).

AUTH: 75-10-405, MCA
IMP: 75-10-405, 75-10-406, MCA

17.54.301 POLICY (1) through (3)(g) remain the same.

(h) A material is "accumulated speculatively" if it is accumulated before being recycled. A material is not accumulated speculatively, however, if the person accumulating it can show that the material is potentially recyclable and has a feasible means of being recycled and that during the calendar year the amount of material that is recycled, or transferred to a different site for recycling, equals at least 75% by weight or volume of the amount of that material accumulated at the beginning of the period. In calculating the percentage of turnover, the 75% requirement is to be applied to each material of the same type (e.g., slags from a single smelting process) that is recycled in the same way (i.e., from which the same material is recovered or that is used in the same way). Materials accumulating in units that would be exempt from regulation under ARM 17.54.307(1)(h) are not to be included in making the calculation. (Materials that are already defined as wastes also are not to be included in making the calculation~~.~~) Materials are no longer in this category once they are removed from accumulation for recycling~~, however~~.

(i) "Excluded scrap metal" is processed scrap metal, unprocessed home scrap metal, and unprocessed prompt scrap metal.

(j) "Processed scrap metal" is scrap metal which has been manually or physically altered to either separate it into distinct materials to enhance economic value or to improve the handling of materials. Processed scrap metal includes, but is not limited to scrap metal which has been baled, shredded, sheared, chopped, crushed, flattened, cut, melted, or separated by metal type (i.e., sorted), and fines, drosses and related materials which have been agglomerated. Shredded circuit boards being sent for recycling are not considered processed scrap metal. Shredded circuit boards are covered

under the exclusion from the definition of waste for shredded circuit boards being recycled (ARM 17.54.307(1)(q)).

(k) "Home scrap metal" is scrap metal as generated by steel mills, foundries, and refineries such as turnings, cuttings, punchings, and borings.

(l) "Prompt scrap metal" is scrap metal as generated by the metal working/fabrication industries and includes such scrap metal as turnings, cuttings, punchings, and borings. Prompt scrap metal is also known as industrial or new scrap metal.

AUTH: 75-10-404, 75-10-405, MCA
IMP: 75-10-403, 75-10-405, MCA

17.54.302 DEFINITION OF WASTE (1)(a) through (b)(i) remain the same.

(ii) recycled, as explained in (3) of this rule; ~~or~~

(iii) considered inherently waste-like, as explained in (4) of this rule~~.~~; or

(iv) a military munition identified as a waste in ARM 17.54.1303(1).

(2) through (3)(b) remain the same.

(c) reclaimed; materials noted with a "*" in column 3 of table 1 are wastes when reclaimed except as provided under ARM 17.54.307(1)(r); or

(d) remains the same.

Table 1

	Use constituting disposal ARM 17.54.302(3)(a)(1)	Energy recovery/ fuel except as provided in ARM 17.54.307(1)(r) for mineral processing secondary materials ARM 17.54.302(3)(b)(2)	Reclamation ARM 17.54.302(3)(c)(3)	Speculative accumulation ARM 17.54.302(3)(d)(4)
Spent Materials	(*)	(*)	(*)	(*)
Sludges (listed in ARM 17.54.331 or 17.54.332)	(*)	(*)	(*)	(*)
Sludges exhibiting a characteristic of hazardous waste	(*)	(*)	-----	(*)
By-products (listed in ARM 17.54.331 or 17.54.332)	(*)	(*)	(*)	(*)
By-products exhibiting a characteristic of hazardous waste	(*)	(*)	-----	(*)
Commercial chemical products listed in ARM 17.54.333	(*)	(*)	-----	(*)
Scrap metal other than excluded scrap metal (40 CFR 261.1(c)(9))	(*)	(*)	(*)	(*)

Note -- The terms "spent materials," "sludges", "by-products," ~~and~~ "scrap metal" and "processed scrap metal" are defined in ARM 17.54.301.

(4) through (5)(a)(ii) remain the same.

(iii) ~~returned to the original process from which they are generated, without first being reclaimed. The material must be returned as a substitute for raw material feedstock, and the process must use raw materials as principal feedstocks~~ materials noted with a "*" in column 3 of table 1 are wastes when reclaimed (except as provided under ARM 17.54.307(1)(r)). Materials noted with a "---" in column 3 of table 1 are not wastes when reclaimed (except as provided under ARM 17.54.307(1)(r)).

(b) through (6) remain the same.

AUTH: 75-10-404, 75-10-405, MCA
IMP: 75-10-405, MCA

17.54.303 DEFINITION OF HAZARDOUS WASTE (1) through (1)(b) remain the same.

(i) it exhibits any of the characteristics of hazardous waste identified in ARM 17.54.320 through 17.54.324.~~, except that~~ However, any mixture of a waste from the extraction, beneficiation, and processing of ores and minerals excluded under ARM 17.54.307(2)(d) and any other waste exhibiting a characteristic of hazardous waste identified in ARM 17.54.320 through 17.54.324 is a hazardous waste only if it exhibits a characteristic that would not have been exhibited by the excluded waste alone if such mixture had not occurred, or if it continues to exhibit any of the hazardous characteristics exhibited by the non-excluded wastes prior to mixture. Further, for the purposes of applying the toxicity characteristic to such mixtures, the mixture is also a hazardous waste if it exceeds the maximum concentration for any contaminant listed in table I of ARM 17.54.324 that would not have been exceeded by the excluded waste alone if the mixture had not occurred or if it continues to exceed the maximum concentration for any contaminant exceeded by the nonexempt waste prior to mixture.

(1)(b)(ii) through (1)(b)(iv)(B) remain the same.

(C) one of the following wastes identified in ARM 17.54.332, provided that the wastes are discharged to the refinery oil recovery sewer before primary oil/water/solids separation--heat exchanger bundle cleaning sludge from the petroleum refining industry (EPA Hazardous Waste No. K050), crude oil storage tank sediment from petroleum refining operations (EPA Hazardous Waste No. K169), clarified slurry oil tank sediment and/or in-line filter/separation solids from petroleum refining operations (EPA Hazardous Waste No. K170), spent hydrotreating catalyst (EPA Hazardous Waste No. K171), and spent hydrorefining catalyst (EPA Hazardous Waste No. K172); or

(D) remains the same.

(E) wastewater resulting from laboratory operations containing toxic (T) wastes identified in ARM 17.54.330 through 17.54.333, provided that the annualized average flow of laboratory wastewater does not exceed 1% of total wastewater flow into the headworks of the facility's wastewater treatment or pretreatment system, or provided the wastes, combined annualized average concentration does not exceed one part per million in the headworks of the facility's wastewater treatment or pretreatment facility. Toxic (T) wastes used in laboratories that are demonstrated not to be discharged to wastewater are not to be included in this calculation~~;~~ or

(F) one or more of the following wastes listed in 40 CFR 261.32 (incorporated by reference in ARM 17.54.332)--wastewaters from the production of carbamates and carbamoyl oximes (EPA Hazardous Waste No. K157)--provided that the maximum weekly usage of formaldehyde, methyl chloride, methylene chloride, and triethylamine (including all amounts that can not be demonstrated to be reacted in the process, destroyed through treatment, or is recovered, i.e., what is discharged or volatilized) divided by the average weekly flow of process wastewater prior to any dilutions into the headworks of the facility's wastewater treatment system does not exceed a total of 5 parts per million by weight; or

(G) wastewaters derived from the treatment of one or more of the following wastes listed in 40 CFR 261.32 (incorporated by reference in ARM 17.54.332)--organic waste (including heavy ends, still bottoms, light ends, spent solvents, filtrates, and decantates) from the production of carbamates and carbamoyl oximes (EPA Hazardous Waste No. K156)--provided, that the maximum concentration of formaldehyde, methyl chloride, methylene chloride, and triethylamine prior to any dilutions into the headworks of the facility's wastewater treatment system does not exceed a total of 5 milligrams per liter.

(2) through (4)(b)(i) remain the same.

(ii) wastes from burning any of the materials exempted from regulation under ARM 17.54.309(1)(c)~~(iv) (vii)~~ (iii) and (iv); and

(4)(b)(iii)(A) through (C) remain the same.

(D) Biological treatment sludge from the treatment of one of the following wastes listed in 40 CFR 261.32 (incorporated by reference in ARM 17.54.332)--organic waste (including heavy ends, still bottoms, light ends, spent solvents, filtrates, and decantates) from the production of carbamates and carbamoyl oximes (EPA Hazardous Waste No. K156), and wastewaters from the production of carbamates and carbamoyl oximes (EPA Hazardous Waste No. K157).

(E) Catalyst inert support media separated from one of the following wastes listed in 40 CFR 261.32 (incorporated by reference in ARM 17.54.332)--spent hydrotreating catalyst (EPA Hazardous Waste No. K171), and spent hydrorefining catalyst (EPA Hazardous Waste No. K172).

(5) and (6) remain the same.

AUTH: 75-10-405, MCA
IMP: 75-10-403, 75-10-405, MCA

17.54.307 EXCLUSIONS (1) through (1)(l) remain the same.

~~(m)~~(i) spent wood preserving solutions that have been reclaimed and are reused for their original intended purpose;

~~(n)~~(ii) wastewaters from the wood preserving process that have been reclaimed and are reused to treat wood; and

(iii) prior to reuse, the wood preserving wastewaters and spent wood preserving solutions described in (1)(l)(i) and (ii) of this rule, so long as they meet all of the following conditions:

(A) the wood preserving wastewaters and spent wood preserving solutions are reused on-site at water borne plants in the production process for their original intended purpose;

(B) prior to reuse, the wastewaters and spent wood preserving solutions are managed to prevent release to either land or ground water or both;

(C) any unit used to manage wastewaters and/or spent wood preserving solutions prior to reuse can be visually or otherwise determined to prevent such releases;

(D) any drip pad used to manage the wastewaters and/or spent wood preserving solutions prior to reuse complies with the standards in 40 CFR part 265, subpart W (incorporated by reference in ARM 17.54.609(1)), regardless of whether the plant generates a total of less than 100 kg/month of hazardous waste; and

(E) prior to operating pursuant to this exclusion, the plant owner or operator submits to the department a one-time notification stating that the plant intends to claim the exclusion, giving the date on which the plant intends to begin operating under the exclusion, and containing the following language: "I have read the applicable regulation establishing an exclusion for wood preserving wastewaters and spent wood preserving solutions and understand it requires me to comply at all times with the conditions set out in the regulation." The plant owner or operator shall maintain a copy of that document in its on-site records for a period of no less than 3 years from the date specified in the notice. The exclusion applies only so long as the plant meets all of the conditions. If the plant goes out of compliance with any condition, it may apply to the department for reinstatement. The department may reinstate the exclusion upon finding that the plant has returned to compliance with all conditions and that violations are not likely to recur.

~~(o)~~(m) nonwastewater splash condenser dross residue from the treatment of K061 waste in high temperature metals recovery units, provided it is shipped in drums (if shipped) and not land disposed before recovery.

(n)(i) oil-bearing hazardous secondary materials (i.e., sludges, byproducts, or spent materials) that are generated at a petroleum refinery (SIC code 2911) and are inserted into the

petroleum refining process (SIC code 2911 including, but not limited to, distillation, catalytic cracking, fractionation, or thermal cracking units (i.e., cokers)) unless the material is placed on the land, or speculatively accumulated before being so recycled. Materials inserted into thermal cracking units are excluded under this subsection, provided that the coke product also does not exhibit a characteristic of hazardous waste. Oil-bearing hazardous secondary materials may be inserted into the same petroleum refinery where they are generated, or sent directly to another petroleum refinery, and still be excluded under this subsection. Except as provided in (1)(n)(ii), oil-bearing hazardous secondary materials generated elsewhere in the petroleum industry (i.e., from sources other than petroleum refineries) are not excluded under this subsection. Residuals generated from processing or recycling materials excluded under this subsection, where such materials as generated would have otherwise met a listing under 40 CFR part 261, subpart D, or subchapter 3, are designated as F037 listed wastes when disposed of or intended for disposal.

(ii) recovered oil that is recycled in the same manner and with the same conditions as described in (1)(n)(i) of this rule. Recovered oil is oil that has been reclaimed from secondary materials (including wastewater) generated from normal petroleum industry practices, including refining, exploration and production, bulk storage, and transportation incident thereto (SIC codes 1311, 1321, 1381, 1382, 1389, 2911, 4612, 4613, 4922, 4923, 4789, 5171, and 5172). Recovered oil does not include oil-bearing hazardous wastes listed in 40 CFR part 261, subpart D, or subchapter 3; however, oil recovered from such wastes may be considered recovered oil. Recovered oil does not include used oil as defined in ARM 17.54.201.

(o) excluded scrap metal (processed scrap metal, unprocessed home scrap metal, and unprocessed prompt scrap metal) being recycled.

(p) shredded circuit boards being recycled provided that they are:

(i) stored in containers sufficient to prevent a release to the environment prior to recovery; and

(ii) free of mercury switches, mercury relays and nickel-cadmium batteries and lithium batteries.

(q) condensates derived from the overhead gases from kraft mill steam strippers that are used to comply with 40 CFR 63.446(e). The exemption applies only to combustion at the mill generating the condensates.

(r) secondary materials (i.e., sludges, by-products, and spent materials as defined in ARM 17.54.301, other than hazardous wastes listed in ARM 17.54.331 through 17.54.333) generated within the primary mineral processing industry from which minerals, acids, cyanide, water or other values are recovered by mineral processing, provided that:

(i) the secondary material is legitimately recycled to recover minerals, acids, cyanide, water or other values;

(ii) the secondary material is not accumulated speculatively;

(iii) except as provided in (1)(r)(iv), the secondary material is stored in tanks, containers, or buildings meeting the following minimum integrity standards:

(A) a building must be an engineered structure with a floor, walls, and a roof all of which are made of non-earthen materials providing structural support (except smelter buildings may have partially earthen floors provided the secondary material is stored on the non-earthen portion), and have a roof suitable for diverting rainwater away from the foundation;

(B) a tank must be free standing, not be a surface impoundment (as defined in ARM 17.54.201), and be manufactured of a material suitable for containment of its contents;

(C) a container must be free standing and be manufactured of a material suitable for containment of its contents. If tanks or containers contain any particulate, which may be subject to wind dispersal, the owner/operator shall operate these units in a manner which controls fugitive dust. Tanks, containers, and buildings must be designed, constructed and operated to prevent significant releases to the environment of these materials.

(iv) The department may make a site-specific determination, after public review and comment, that solid mineral processing secondary materials may only be placed on pads, rather than in tanks, containers, or buildings. Solid mineral processing secondary materials do not contain any free liquid. The decision-maker must affirm that pads are designed, constructed and operated to prevent significant releases of the secondary material into the environment. Pads must provide the same degree of containment afforded by the non-RCRA tanks, containers and buildings eligible for exclusion.

(A) The decision-maker shall also consider if storage on pads poses the potential for significant releases via ground water, surface water, and air exposure pathways. Factors to be considered for assessing the ground water, surface water, air exposure pathways are:

(I) the volume and physical and chemical properties of the secondary material, including its potential for migration off the pad; and

(II) the potential for human or environmental exposure to hazardous constituents migrating from the pad via each exposure pathway, and the possibility and extent of harm to human and environmental receptors via each exposure pathway.

(B) Pads must meet the following minimum standards:

(I) be designed of non-earthen material that is compatible with the chemical nature of the mineral processing secondary material;

(II) be capable of withstanding physical stresses associated with placement and removal;

(III) have run on/runoff controls;

(IV) be operated in a manner which controls fugitive dust; and

(V) have integrity assurance through inspections and maintenance programs.

(C) Before making a determination under this subsection, the department shall provide notice and the opportunity for comment to all persons potentially interested in the determination. This can be accomplished by placing notice of this action in major local newspapers, or broadcasting notice over local radio stations.

(v) the owner or operator provides a notice to the department, identifying the following information:

(A) the types of materials to be recycled;

(B) the type and location of the storage units and recycling processes; and

(C) the annual quantities expected to be placed in land-based units. This notification must be updated when there is a change in the type of materials recycled or the location of the recycling process.

(vi) For purposes of ARM 17.54.307(2)(d), mineral processing secondary materials must be the result of mineral processing and may not include any listed hazardous wastes. Listed hazardous wastes and characteristic hazardous wastes generated by non-mineral processing industries are not eligible for the conditional exclusion from the definition of solid waste.

(vii) This subsection (1)(r) shall become effective [270 days after the effective date of this rule].

(s) comparable fuels or comparable syngas fuels (i.e., comparable/syngas fuels) that meet the requirements of ARM 17.54.353.

(t) petrochemical recovered oil from an associated organic chemical manufacturing facility, where the oil is to be inserted into the petroleum refining process (SIC code 2911) along with normal petroleum refinery process streams, provided:

(i) the oil is hazardous only because it exhibits the characteristic of ignitability (as defined in ARM 17.54.321) and/or toxicity for benzene (ARM 17.54.324, waste code D018); and

(ii) the oil generated by the organic chemical manufacturing facility is not placed on the land, or speculatively accumulated before being recycled into the petroleum refining process. An associated organic chemical manufacturing facility is a facility where the primary SIC code is 2869, but where operations may also include SIC codes 2821, 2822, and 2865; and is physically co-located with a petroleum refinery; and where the petroleum refinery to which the oil being recycled is returned also provides hydrocarbon feedstocks to the organic chemical manufacturing facility. Petrochemical recovered oil is oil that has been reclaimed from secondary materials (i.e., sludges, byproducts, or spent materials, including wastewater) from normal organic chemical

manufacturing operations, as well as oil recovered from organic chemical manufacturing processes.

(u) spent caustic solutions from petroleum refining liquid treating processes used as a feedstock to produce cresylic or naphthenic acid unless the material is placed on the land, or accumulated speculatively as defined in ARM 17.54.301(3)(h).

(v) dredged material that is not a hazardous waste. Dredged material that is subject to the requirements of a permit that has been issued under 404 of the Federal Water Pollution Control Act (33 USC 1344) or section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 USC 1413) is not a hazardous waste. For this subsection (1)(v), the following definitions apply:

(i) The term "dredged material" has the same meaning as defined in 40 CFR 232.2;

(ii) The term "permit" means:

(A) a permit issued by the US army corps of engineers (corps) or an approved state under section 404 of the Federal Water Pollution Control Act (33 USC 1344);

(B) a permit issued by the corps under section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 USC 1413); or

(C) in the case of corps civil works projects, the administrative equivalent of the permits referred to in (1)(v)(ii)(A) and (B) of this rule, as provided for in corps regulations (for example, see 33 CFR 336.1, 336.2, and 337.6).

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

(d) waste from the extraction, beneficiation and processing of ores and minerals (including coal, phosphate rock and overburden from the mining of uranium ore), except as provided by ARM 17.54.1114 for facilities that burn or process hazardous waste.

(i) For purposes of this exclusion, beneficiation of ores and minerals is restricted to the following activities: crushing; grinding; washing; dissolution; crystallization; filtration; sorting; sizing; drying; sintering; pelletizing; briquetting; calcining to remove water and/or carbon dioxide; roasting, autoclaving, and/or chlorination in preparation for leaching (except where the roasting [and/or autoclaving and/or chlorination]/leaching sequence produces a final or intermediate product that does not undergo further beneficiation or processing); gravity concentration; magnetic separation; electrostatic separation; flotation; ion exchange; solvent extraction; electrowinning; precipitation; amalgamation; and heap, dump, vat, tank, and in-situ leaching.

(ii) For the purposes of this exclusion, waste from the processing of ores and minerals includes only the following wastes as generated:

(i) through (xx) remain the same, but are renumbered (A) through (T).

(iii) A residue derived from co-processing mineral processing secondary materials with normal beneficiation raw

materials remains excluded under ARM 17.54.307(2), if the owner or operator:

(A) processes at least 50 percent by weight normal beneficiation raw materials; and

(B) legitimately reclaims the secondary mineral processing materials.

(2)(e) through (4)(a) remain the same.

(b) The exemption in (4)(a) above is applicable to samples of hazardous waste being collected and shipped for the purpose of conducting treatability studies provided that:

(i) The generator or sample collector uses (in "treatability studies") no more than ~~1000~~ 10,000 kg of media contaminated with ~~any~~ non-acute hazardous waste, 1000 kg of non-acute hazardous waste other than contaminated media, 1 kg of acute hazardous waste, 2500 kg of media ~~or 250 kg of soils, water, or debris~~ contaminated with acute hazardous waste for each process being evaluated for each generated waste stream;

(ii) The mass of each sample shipment does not exceed ~~1000~~ 10,000 kg. The 10,000 kg quantity may be all media contaminated with ~~of~~ non-acute hazardous waste, or may include 2500 kg of media contaminated with acute hazardous waste, 1000 kg of hazardous waste, and 1 kg of acute hazardous waste~~, or 250 kg of soils, water or debris contaminated with acute hazardous waste~~; and

(4)(b)(iii) through (vi) remain the same.

(c) The department may grant requests on a case-by-case basis for up to an additional 2 years for treatability studies involving bioremediation. The department may grant requests on a case-by-case basis for quantity limits in excess of those specified in (4)(b)(i) and (ii) and (5)(d) of this rule, for up to an additional 5000 kg of media contaminated with non-acute hazardous waste, 500 kg of non-acute hazardous waste, 2500 kg of media contaminated with acute hazardous waste and 1 kg of acute hazardous waste:

(i) in response to requests for authorization to ship, store and conduct treatabilty studies on additional quantities in advance of commencing treatability studies. Factors to be considered in reviewing such requests include the nature of the technology, the type of process (e.g., batch versus continuous), size of the unit undergoing testing (particularly in relation to scale-up considerations), the time and quantity of material required to reach steady state operating conditions, or test design considerations such as mass balance calculations.

(ii) in response to requests for authorization to ship, store and conduct treatability studies on additional quantities after initiation or completion of initial treatability studies, when:

(A) there has been an equipment or mechanical failure during the conduct of a treatability study;

(B) there is a need to verify the results of a previously conducted treatability study;

(C) there is a need to study and analyze alternative techniques within a previously evaluated treatment process; or

(D) there is a need to do further evaluation of an ongoing treatability study to determine final specifications for treatment.

(iii) the additional quantities and timeframes allowed in (4)(c)(i) and (ii) of this rule are subject to all the provisions in (4)(a) and (b)(iii) through (vi) of this rule. ~~, for quantity limits in excess of those specified in (b)(i) above, for up to an additional 500 kg of non acute hazardous waste, 1 kg of acute hazardous waste, and 250 kg of soils, water or debris contaminated with acute hazardous waste, to conduct further treatability study evaluation when:~~

~~(i) There has been an equipment or mechanical failure during the conduct of a treatability study;~~

~~(ii) There is a need to verify the results of a previously conducted treatability study;~~

~~(iii) There is a need to study and analyze alternative techniques within a previously evaluated treatment process; or~~

(iv) ~~There is a need to do further evaluation of an ongoing treatability study to determine final specifications for treatment. The additional quantities allowed are subject to all the provisions in (a) and (b) above.~~

~~(d)~~ The generator or sample collector shall apply to the department and provide in writing the following information:

~~(i)~~ (A) The reason why the generator or sample collector requires additional time or quantity of samples~~e~~ for ~~the~~ treatability study evaluation and the additional time or quantity needed;

(ii) through (v) remain the same but are renumbered (B) through (E).

(5) through (5)(b) remain the same.

(c) No more than a total of ~~250~~ 10,000 kg of "as received" media contaminated with non-acute hazardous waste, 2500 kg of media contaminated with acute hazardous waste or 250 kg of other "as received" hazardous waste ~~may be~~ is subject~~ed~~ to initiation of treatment in all treatability studies in any single day. "As received" waste refers to the waste as received in the shipment from the generator or sample collector.

(d) The quantity of "as received" hazardous waste stored at the facility for the purpose of evaluation in treatability studies ~~may~~ does not exceed ~~1000~~ 10,000 kg, the total of which can include 10,000 kg of media contaminated with non-acute hazardous waste, 2500 kg of media contaminated with acute hazardous waste, 1000 kg of non-acute hazardous wastes other than contaminated media, and ~~500 kg of soils, water or debris contaminated with acute hazardous waste or~~ 1 kg of acute hazardous waste. This quantity limitation does not include~~:~~

~~(i) Treatability study residues; and~~

~~(ii)~~ ~~T~~treatment materials (including nonhazardous waste) added to "as received" hazardous waste.

(e) No more than 90 days may elapse from the time the treatability study for the sample was completed, or~~,~~ no more than 1 year (2 years for treatability studies involving bioremediation) ~~may~~ have elapsed from the time the generator

or sample collector ships the sample to the laboratory or testing facility, whichever date first occurs. Up to 500 kg of treated material from a particular waste stream from treatability studies may be archived for future evaluation up to 5 years from the date of initial receipt. Quantities of materials archived are counted against the total storage limit for the facility.

(5)(f) through (k) remain the same.

AUTH: 75-10-405, MCA
IMP: 75-10-403, 75-10-405, MCA

17.54.308 SPECIAL REQUIREMENTS FOR COUNTING HAZARDOUS WASTES (1) ~~In accounting for the quantity of hazardous waste generated for the purpose of determining a generator's proper category, a generator~~ When making the quantity determinations of this rule the generator shall include all hazardous waste that it generates, except hazardous waste that:

(a) ~~need not include hazardous waste that is excluded from regulation under this chapter (e.g., wastes excluded under ARM 17.54.105, 17.54.307, 17.54.612, or 17.54.701, recyclable materials which are excluded under ARM 17.54.309(1)(c), or which are directly reclaimed on site without prior storage, and used oil which has not been mixed with any hazardous waste and which is excluded under ARM 17.54.309(1)(d)~~ is exempt from regulation under ARM 17.54.307(1)(h), 17.54.307(3) through (5), 17.54.309(1)(c), 17.54.310(1), or 17.54.312; or

(b) is managed immediately upon generation only in on-site "elementary neutralization units", "wastewater treatment units", or "totally enclosed treatment units" as defined in ARM 17.54.201; or

(c) is recycled, without prior storage or accumulation, only in an on-site process subject to regulation under ARM 17.54.309(3)(a); or

(d) is used oil managed under the requirements of ARM 17.54.309(1)(d); or

(e) is spent lead-acid batteries managed under the requirements of 40 CFR part 266, subpart G (incorporated by reference in ARM 17.54.309(5)); or

(f) is universal waste managed under 40 CFR 261.9 and 40 CFR part 273 (incorporated by reference in ARM 17.54.311(1)(a)).

(b) through (e) remain the same, but are renumbered (2) through (5).

AUTH: 75-10-405, MCA
IMP: 75-10-405, MCA

17.54.309 REQUIREMENTS FOR RECYCLABLE MATERIALS; REQUIREMENTS FOR THE MANAGEMENT OF USED OIL (1)(a) through (c)(i) remain the same.

(ii) ~~used batteries (or used battery cells) returned to a battery manufacturer for regeneration;~~

~~(iii)~~ scrap metal that is not excluded under ARM 17.54.307(1)(p);

~~(iv)~~ (iii) fuels produced from the refining of oil-bearing hazardous wastes along with normal process streams at a petroleum refining facility if such wastes result from normal petroleum refining, production, and transportation practices (this exemption does not apply to fuels produced from oil recovered from oil-bearing hazardous waste, where such recovered oil is already excluded under ARM 17.54.307(1)(o));

~~(iv) oil reclaimed from hazardous waste resulting from normal petroleum refining, production, and transportation practices, which oil is to be refined along with normal process streams at a petroleum refining facility;~~

~~(vi)~~ (iv)(A) hazardous waste fuel produced from oil-bearing hazardous wastes from petroleum refining, production, or transportation practices, or produced from oil reclaimed from such hazardous wastes, where such hazardous wastes are reintroduced into a process that does not use distillation or does not produce products from crude oil so long as the resulting fuel meets the used oil specification under 40 CFR 279.11 and so long as no other hazardous wastes are used to produce the hazardous waste fuel;

(B) remains the same.

(C) oil reclaimed from oil-bearing hazardous wastes from petroleum refining, production, and transportation practices, which reclaimed oil is burned as a fuel without reintroduction to a refining process, so long as the reclaimed oil meets the used oil fuel specification under 40 CFR 279.11~~; and~~.

~~(vii) petroleum coke produced from petroleum refinery hazardous wastes containing oil at the same facility at which such wastes were generated, unless the resulting coke product exceeds one or more of the characteristics of hazardous waste in subchapter 3 of this chapter.~~

(d) remains the same.

(e) Hazardous waste that is exported to or imported from designated member countries of the organization for economic cooperation and development (OECD) (as defined in 40 CFR 262.58(a)(1)) for purpose of recovery is subject to the requirements of 40 CFR part 262, subpart H, if it is subject to either the manifesting requirements of subchapter 4 or to the universal waste management standards of ARM 17.54.311.

(2) remains the same.

(3)(a) Unless exempted in (1)(b) and (c) above, owners ~~or~~ and operators of facilities that store recyclable materials before they are recycled are regulated under all applicable provisions of subparts B through L, AA, ~~and~~ BB, and CC of 40 CFR parts 264 and 265 (except subpart H of each ~~P~~part and except for 40 CFR 264.75 and 40 CFR 265.75), subparts C through G of 40 CFR ~~P~~part 266, and subchapters 1, 6, 7, 8, and 11 of this chapter. (The recycling process itself is exempt from regulation, except as provided in (4) of this rule and except as provided in subchapter 11.)

(3)(b) through (5) remain the same.

AUTH: 75-10-405, MCA
IMP: 75-10-405, MCA

17.54.311 UNIVERSAL WASTE MANAGEMENT (1)(a) and (b) remain the same.

(c) The wastes listed in this rule are exempt from regulation under ARM Title 17, chapter 54, subchapters 1, 4, 5, 6, and 11, except as specified in 40 CFR part 273 (incorporated by reference in ARM 17.54.311(1)(a)) and, therefore are not fully regulated as hazardous waste. The wastes listed in this subsection (1)(c) and in (2) are subject to regulation under 40 CFR part 273 (incorporated by reference in ARM 17.54.311(1)(a)):

(i) batteries (defined in ARM 17.54.201) as described in 40 CFR 273.2 (incorporated by reference in ARM 17.54.311(1)(a));

(ii) pesticides (defined in ARM 17.54.201) as described in 40 CFR 273.3 (incorporated by reference in ARM 17.54.311(1)(a)); and

(iii) thermostats (defined in ARM 17.54.201) as described in 40 CFR 273.4 (incorporated by reference in ARM 17.54.311(1)(a)).

(2) and (3) remain the same.

AUTH: 75-10-405, MCA
IMP: 75-10-404, 75-10-405, MCA

17.54.322 CHARACTERISTIC OF CORROSIVITY (1) A waste exhibits the characteristic of corrosivity if a representative sample of the waste has either of the following properties:

(a) it is aqueous and has a pH less than or equal to 2 or greater than or equal to 12.5, as determined by a pH meter using Method 9040 ~~the test method specified~~ in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", EPA Publication SW-846, as incorporated by reference in ARM 17.54.351 ~~second edition, as amended by Update I (April 1984) and Update II (April 1985)~~;

(b) it is a liquid and corrodes steel (SAE 1020) at a rate greater than 6.35 mm (0.250 inch) per year at a test temperature of 55°C (130°F) as determined by the test method specified in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", EPA Publication SW-846, as incorporated by reference in ARM 17.54.351 ~~second edition, as amended by Update I (April 1984) and Update II (April 1985)~~.

~~(c) The department hereby adopts and incorporates herein by reference "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", second edition as amended by Update I (April 1984) and Update II (April 1985), which is published by EPA, and which sets forth EPA's standard test methods for determination of, among other things, hazard waste characteristics of solid waste. A copy of this publication may be obtained from the Department of Environmental Quality, PO Box 200901, Helena, MT 59620-0901.~~

(2) remains the same.

AUTH: 75-10-405, MCA
IMP: 75-10-405, MCA

17.54.324 TOXICITY CHARACTERISTIC (1) A waste exhibits the characteristic of toxicity if, using the toxicity characteristic leaching procedure, test method 1311 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", EPA Publication SW-846, as incorporated by reference in ARM 17.54.351 ~~the test methods described in ARM 17.54.351~~, the extract from a representative sample of the waste contains any of the contaminants listed in Table I at a concentration equal to or greater than the respective value given in that table. Where the waste contains less than 0.5% filterable solids, the waste itself, after filtering using the methodology specified in ARM 17.54.351(1)(b), is considered to be the extract for the purposes of this rule.

(2) remains the same.

AUTH: 75-10-204, 75-10-405, MCA
IMP: 75-10-203, 75-10-204, 75-10-405, MCA

17.54.325 RECLASSIFICATION TO A MATERIAL OTHER THAN A WASTE (1) In accordance with the standards and criteria in ARM 17.54.326 and the procedures in ARM 17.54.328, the department may determine on a case-by-case basis that the following recycled materials are not wastes:

(a) materials that are "accumulated speculatively" (as defined in ARM 17.54.301(3)(h)) without sufficient amounts being recycled;

(b) materials that are "reclaimed", (as defined in ARM 17.54.301(3)(d)), and then reused within the original ~~primary~~ production process in which they were generated; or

(c) remains the same.

AUTH: 75-10-404, 75-10-405, MCA
IMP: 75-10-405, MCA

17.54.326 STANDARDS AND CRITERIA FOR RECLASSIFICATION TO A MATERIAL OTHER THAN A WASTE (1) The department may grant requests for a reclassification from classification as a waste to those materials that are accumulated speculatively without sufficient amounts being recycled if the applicant demonstrates that sufficient amounts of the material will be recycled or transferred for recycling in the following year. If a request for reclassification is granted, it is valid only for the following year, but can be renewed, on an annual basis, by filing a new application. The department's decision ~~will~~ must be based on the following ~~standards and~~ criteria:

(1)(a) through (3) remain the same.

AUTH: 75-10-404, 75-10-405, MCA
IMP: 75-10-405, MCA

17.54.351 REPRESENTATIVE SAMPLING METHODS; TOXICITY CHARACTERISTIC LEACHING PROCEDURE; CHEMICAL ANALYSIS TEST METHODS; AND TESTING METHODS (1) through (1)(c) remain the same.

(d) "ASTM Standard Test Method for Analysis of Reformed Gas by Gas Chromatography," ASTM Standard D 1946-82, available from American Society for Testing Materials, 1916 Race Street, Philadelphia, PA 19103;

(e) "ASTM Standard Test Method for Heat of Combustion of Hydrocarbon Fuels by Bomb Calorimeter (High-Precision Method)," ASTM Standard D 2382-83, available from American Society for Testing Materials, 1916 Race Street, Philadelphia, PA 19103;

(f) "ASTM Standard Practices for General Techniques of Ultraviolet-Visible Quantitative Analysis," ASTM Standard E 169-87, available from American Society for Testing Materials, 1916 Race Street, Philadelphia, PA 19103;

(g) "ASTM Standard Practices for General Techniques of Infrared Quantitative Analysis," ASTM Standard E 168-88, available from American Society for Testing Materials, 1916 Race Street, Philadelphia, PA 19103;

(h) "ASTM Standard Practice for Packed Column Gas Chromatography," ASTM Standard E 260-85, available from American Society for Testing Materials, 1916 Race Street, Philadelphia, PA 19103;

(i) "ASTM Standard Test Method for Aromatics in Light Naphthas and Aviation Gasolines by Gas Chromatography," ASTM Standard D 2267-88, available from American Society for Testing Materials, 1916 Race Street, Philadelphia, PA 19103;

(j) "ASTM Standard Test Method for Vapor Pressure-Temperature Relationship and Initial Decomposition Temperature of Liquids by ~~Isoteriscope~~ Isoteniscope," ASTM Standard D 2879-~~86~~92 available from American Society for Testing Materials, 1916 Race Street, Philadelphia, PA 19103;

(k) "APTI Course 415: Control of Gaseous Emissions," EPA Publication EPA-450/2-81-005, December 1981, which contains fundamental concepts of operation of equipment and techniques to control gaseous emissions from stationary sources, available from National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161;

~~(l) "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", second edition as amended by Update I (April 1984) and Update II (April 1985), an EPA publication setting forth standard sampling, extraction, and analytical test methods for the national hazardous waste program (NTIS document number PB87 120 291); and~~

~~(m)~~ (l) "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", EPA Publication SW-846, [T~~t~~hird Edition (November 1986), as amended by ~~Revision~~ Updates I ~~(December 1987)~~ (July 1992), II (September 1994), IIA (August 1993), IIB (January 1995), and III (December 1996)]. The Third Edition of SW-846 and Updates I, II, IIA, IIB and III (document number 955-001-00000-1) are available from the

Superintendent of Documents, US Government Printing Office, Washington, DC 20402, (202) 512-1800. Copies of the Third Edition and its updates are also available from the National Technical Information Service (NTIS), 5285 Port Royal Road Springfield, VA 22161, (703) 487-4650. Copies may be inspected at the Library, US Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; ~~an EPA publication setting forth standard sampling, extraction, and analytical test methods for the national hazardous waste program (document number 955-001-00000-1). The third edition of SW-846 contains 47 analytical testing methods (listed in 40 CFR 260.11) which are not contained in the second edition of this document.~~

(m) "ASTM Standard Test Methods for Flash Point of Liquids by Setaflash Closed Tester," ASTM Standard D-3278-78, available from American Society for Testing Materials, 1916 Race Street, Philadelphia, PA 19103;

(n) "ASTM Standard Test Methods for Flash Point by Pensky-Martens Closed Tester," ASTM Standard D-93-79 or D-93-80, available from American Society for Testing Materials, 1916 Race Street, Philadelphia, PA 19103;

(o) "Flammable and Combustible Liquids Code" (1977 or 1981), available from the National Fire Protection Association, 470 Atlantic Avenue, Boston, MA 02210;

(p) "Screening Procedures for Estimating the Air Quality Impact of Stationary Sources, Revised", October 1992, EPA Publication No. EPA-450/R-92-019, available from Environmental Protection Agency, Research Triangle Park, NC 27711;

(q) "ASTM Standard Test Methods for Preparing Refuse-Derived Fuel (RDF) Samples for Analyses of Metals," ASTM Standard E926-88, Test Method C-Bomb, Acid Digestion Method, available from American Society for Testing Materials, 1916 Race Street, Philadelphia, PA 19103; and

(r) "API Publication 2517, Third Edition", February 1989, "Evaporative Loss from External Floating-Roof Tanks," available from the American Petroleum Institute, 1220 L Street Northwest, Washington, DC 20005.

(2) remains the same.

AUTH: 75-10-405, MCA
IMP: 75-10-405, MCA

17.54.401 GENERAL PROVISIONS (1) remains the same.

(2) Any person who exports or imports for recovery hazardous waste subject to the manifesting requirements of subchapter 4 or subject to the universal waste management standards of ARM 17.54.311, to or from the countries listed in 40 CFR 262.58(a)(1), shall comply with 40 CFR 262, subpart H.

(2) through (4)(c) remain the same, but are renumbered (3) through (5)(c).

(d) For counting requirements, see ARM 17.54.308. Also, 40 CFR 261.5(c) and (d) must be used to determine the applicability of provisions of this subchapter that are

dependent on calculations of the quantity of hazardous waste generated per month.

~~(5)~~ (6) Because of episodic fluctuations in the rate of accumulation or monthly generation, a generator may at any given point in time, be subject to different regulatory requirements for differing accumulations or monthly generations of hazardous waste. The appropriate requirements in this subchapter become applicable to the generated or accumulated hazardous waste, as appropriate. It is the responsibility of the generator to insure compliance with such applicable requirements, and to maintain the documentation necessary to distinguish between such episodic fluctuations.

(7) Persons responding to an explosives or munitions emergency in accordance with ARM 17.54.105(5)(a)(iii) or (c) or ARM 17.54.612(1)(h)(i) or (iv) are not required to comply with the standards of this subchapter.

AUTH: 75-10-405, MCA
IMP: 75-10-405, MCA

17.54.402 HAZARDOUS WASTE DETERMINATION; APPLICABILITY OF RULES TO GENERATOR CATEGORIES; SPECIAL REQUIREMENTS FOR CONDITIONALLY EXEMPT SMALL QUANTITY GENERATORS (1) through (4) remain the same.

(5) The following special requirements apply to a conditionally exempt small quantity generator of acute hazardous waste:

(a) ~~A conditionally exempt generator may accumulate hazardous wastes on site in quantities up to the limits specified in ARM 17.54.401(4)(c)(i). If he exceeds this quantity limit, the time period of ARM 17.54.421(2) for accumulation of wastes on site by a small generator will apply. The time period for accumulation under ARM 17.54.421(2) begins for the conditionally exempt generator at any time when the accumulated hazardous wastes exceed 1000 kilograms (2200 pounds).~~ If a generator generates acute hazardous waste in a calendar month in quantities greater than set forth below, all quantities of that acute hazardous waste are subject to full regulation under subchapters 1, 4, 5, 6, 9, and 11 of this chapter:

(i) a total of one kilogram of acute hazardous wastes listed in 40 CFR 261.31 (incorporated by reference in ARM 17.54.331), 261.32 (incorporated by reference in ARM 17.54.332), or 261.33(e) (incorporated by reference in ARM 17.54.333(1)(g)).

(ii) a total of 100 kilograms of any residue or contaminated soil, waste, or other debris resulting from the clean-up of a spill, into or on any land or water, of any acute hazardous wastes listed in 40 CFR 261.31 (incorporated by reference in ARM 17.54.331), 261.32 (incorporated by reference in ARM 17.54.332), or 261.33(e) (incorporated by reference in ARM 17.54.333(1)(g)), (i.e., those rules applicable to generators of greater than 1000 kg of non-acutely hazardous waste in a calendar month).

(b) In order for acute hazardous wastes generated by a generator of acute hazardous wastes in quantities equal to or less than those set forth in (5)(a)(i) or (ii) of this rule to be excluded from full regulation under this subsection, the generator shall comply with the following requirements:

(i) ARM 17.54.402(1); and

(ii) the generator may accumulate acute hazardous waste on-site. If the generator accumulates at any time acute hazardous wastes in quantities greater than those set forth in (5)(a)(i) or (ii) of this rule, all of those accumulated wastes are subject to regulation under subchapters 1, 4, 5, 6, 9, and 11 of this chapter. The time period of ARM 17.54.421(2), for accumulation of wastes on-site, begins when the accumulated wastes exceed the applicable exclusion limit;

~~(b)~~ (c) A conditionally exempt small quantity generator may either treat or dispose of ~~his~~ acute hazardous waste in an on-site facility, or ensure delivery to an off-site storage, treatment, or disposal facility. Either facility, if located in the United States, ~~must~~ shall meet one of the following conditions, as applicable~~. It must~~:

(i) be permitted under subchapters 1 or 6 of this chapter;

(ii) be authorized by EPA to manage hazardous waste;

(iii) be authorized to manage hazardous waste by a state with a hazardous waste management program approved by EPA;

(iv) be licensed by the department as a solid waste management system pursuant to ARM Title 17, chapter 50, subchapter 5 (subject to any applicable restrictions of that subchapter and any applicable solid waste management system license restrictions) and, if managed in a municipal solid waste landfill, be subject to 40 CFR 258;

(v) be permitted, licensed, or registered by the department to manage non-municipal non-hazardous waste and, if managed in a non-municipal non-hazardous waste disposal unit after January 1, 1998, it must be subject to the requirements in 40 CFR 257.5 through 257.30; or

(vi) be a facility which:

~~(v)~~ (A) beneficially uses or re-uses, or legitimately recycles or reclaims wastes; or

~~(vi)~~ (B) treats waste prior to beneficial use or re-use, or legitimate recycling or reclamation~~.~~; or

(vii) for universal waste managed under 40 CFR part 273 (incorporated by reference in ARM 17.54.311(1)(a)), be a universal waste handler or destination facility subject to the requirements of 40 CFR part 273.

(6) The following special requirements apply to a conditionally exempt small quantity generator of hazardous waste:

(a) A conditionally exempt small quantity generator may either treat or dispose of their hazardous waste in an on-site facility, or ensure delivery to an off-site storage, treatment, or disposal facility. Either facility, if located in the United States, shall meet one of the following conditions, as applicable:

(i) be permitted under subchapters 1 or 6 of this chapter;

(ii) be authorized by EPA to manage hazardous waste;

(iii) be authorized to manage hazardous waste by a state with a hazardous waste management program approved by EPA;

(iv) be licensed by the department as a solid waste management system pursuant to ARM Title 17, chapter 50, subchapter 5 (subject to any applicable restrictions of that subchapter and any applicable solid waste management system license restrictions) and, if managed in a municipal solid waste landfill be subject to 40 CFR part 258;

(v) be permitted, licensed or registered by the department to manage non-municipal non-hazardous waste and, if managed in a non-municipal non-hazardous waste disposal unit after January 1, 1998, be subject to the requirements in 40 CFR 257.5 through 257.30; or

(vi) be a facility which:

(A) beneficially uses or re-uses, or legitimately recycles or reclaims waste; or

(B) treats waste prior to beneficial use or re-use, or legitimate recycling or reclamation; or

(vii) for universal waste managed under 40 CFR part 273 (incorporated by reference in ARM 17.54.311(1)(a)), be a universal waste handler or destination facility subject to the requirements of 40 CFR 273.

~~(c)~~ (7) A conditionally exempt generator's hazardous waste may be mixed with a solid waste (non-hazardous waste) and remain subject to these limited requirements even though the resultant mixture exceeds the quantity limitations identified in ARM 17.54.401(4) unless the mixture meets any of the characteristics of hazardous wastes identified in ARM 17.54.320 through 17.54.324.

~~(d)~~ (8) If a conditionally exempt generator's ~~hazardous~~ wastes are mixed with used oil, the mixture is subject to the requirements of 40 CFR ~~P~~part 279 (incorporated by reference in ARM 17.54.309(5)). Any material produced from such a mixture by processing, blending, or other treatment is also so regulated ~~if it is destined to be burned for energy recovery~~.

AUTH: 75-10-204, 75-10-405, MCA
IMP: 75-10-204, 75-10-405, MCA

17.54.408 MANIFEST GENERAL REQUIREMENTS (1) through (5) remain the same.

(6) The requirements of this subchapter and ARM 17.54.417(2) do not apply to the transport of hazardous wastes on a public or private right-of-way within or along the border of contiguous property under the control of the same person, even if such contiguous property is divided by a public or private right-of-way. Notwithstanding ARM 17.54.501, the generator or transporter shall comply with the requirements for transporters set forth in ARM 17.54.511 and 17.54.512 in the event of a discharge of hazardous waste on a public or private right-of-way.

(6) remains the same, but is renumbered (7).

AUTH: 75-10-405, MCA
IMP: 75-10-405, MCA

17.54.435 INTERNATIONAL SHIPMENTS (1) Any person who exports a hazardous waste from Montana to a foreign country or imports hazardous waste from a foreign country into Montana ~~must~~ shall comply with the requirements of this chapter and with the special requirements of this rule. Except to the extent 40 CFR 262.58 and 40 CFR 262, subpart H, provides~~~~ otherwise, a primary exporter of hazardous waste ~~must~~ shall comply with the special requirements of this rule and a transporter transporting hazardous waste for export ~~must~~ shall comply with applicable requirements of subchapter 5 of this chapter.

(2) through (3)(a) remain the same.

(b) ~~Notification shall be sent to the Office of Waste Programs Enforcement, RCRA Enforcement Division (OS-520), Environmental Protection Agency, 401 M Street SW, Washington, DC 20460 with "Attention: Notification to Export" prominently displayed on the front of the envelope.~~ Notifications submitted by mail must be sent to the following mailing address: Office of Enforcement and Compliance Assurance, Office of Compliance, Enforcement Planning, Targeting, and Data Division (2222A), Environmental Protection Agency, 401 M St. SW, Washington, DC 20460. Hand-delivered notifications must be delivered to: Office of Enforcement and Compliance Assurance, Office of Compliance, Enforcement Planning, Targeting, and Data Division (2222A), Environmental Protection Agency, Ariel Rios Bldg., 12th St. and Pennsylvania Ave. NW., Washington, DC 20004. In both cases, the following must be prominently displayed on the front of the envelope: "Attention: Notification of Intent to Export".

(c) through (6)(a) remain the same.

(b) ~~Reports required to be filed with the EPA shall be sent to the following address: Office of Waste Programs Enforcement, RCRA Enforcement Division (OS-520), Environmental Protection Agency, 401 M Street SW, Washington, DC 20460.~~ Annual reports submitted by mail must be sent to the following mailing address: Office of Enforcement and Compliance Assurance, Office of Compliance, Enforcement Planning, Targeting, and Data Division (2222A), Environmental Protection Agency, 401 M St. SW, Washington, DC 20460. Hand-delivered reports must be delivered to: Office of Enforcement and Compliance Assurance, Office of Compliance, Enforcement Planning, Targeting, and Data Division (2222A), Environmental Protection Agency, Ariel Rios Bldg., 12th St. and Pennsylvania Ave. NW., Washington, DC 20004.

(7) and (8) remain the same.

AUTH: 75-10-404, 75-10-405, MCA
IMP: 75-10-405, MCA

17.54.501 GENERAL PROVISIONS (1) and (2) remain the same.

(3) Persons responding to an explosives or munitions emergency in accordance with ARM 17.54.105(5)(a)(iii) or (c) or ARM 17.54.612(1)(h)(i) or (iv) are not required to comply with the standards of this subchapter.

(4) [RULES XI and XII] identify how the requirements of this subchapter apply to military munitions classified as waste under [RULES IX and X].

(5) A transporter of hazardous waste subject to the manifesting requirements of subchapter 4, or subject to the universal waste management standards of ARM 17.54.311, that is being imported from or exported to any of the countries listed in 40 CFR 262.58(a)(1) for purposes of recovery is subject to subpart A of 40 CFR part 263 and to all other relevant requirements of subpart H of 40 CFR part 262, including, but not limited to, 40 CFR 262.84 for tracking documents.

AUTH: 75-10-204, 75-10-405, MCA
IMP: 75-10-204, 75-10-212, 75-10-214, 75-10-221, 75-10-225, 75-10-405, MCA

17.54.505 MANIFEST SYSTEM (1) A transporter may not accept hazardous waste from a generator unless it is accompanied by a manifest, signed by the generator in accordance with subchapter 4 of this chapter. In the case of exports other than those subject to subpart H of 40 CFR part 262, a transporter may not accept such waste from a primary exporter or other person~~:~~

~~(a)~~ if he knows the shipment does not conform to the EPA acknowledgment of consent; and

~~(b)~~ unless, in addition to a manifest signed in accordance with provisions of ARM 17.54.408, such waste is also accompanied by an EPA acknowledgment of consent which, except for shipment by rail, is attached to the manifest (or shipping paper for exports by water [bulk shipment]). For exports of hazardous waste subject to the requirements of subpart H of 40 CFR part 262, a transporter may not accept hazardous waste without a tracking document that includes all information required by 40 CFR 262.84.

(2) through (8) remain the same.

AUTH: 75-10-404, 75-10-405, MCA
IMP: 75-10-405, MCA

17.54.511 HAZARDOUS WASTE DISCHARGES--IMMEDIATE ACTION (1) through (3)(b) remain the same.

(c) give notice to the department by immediately contacting the Montana hazardous materials emergency response system ((406)~~444-6911~~ 841-3911).

(4) and (5) remain the same.

AUTH: 75-10-405, MCA
IMP: 75-10-405, MCA

17.54.526 EMERGENCY PREPAREDNESS, PREVENTION, AND RESPONSE AT TRANSFER FACILITIES (1) through (2)(c)(ii) remain the same.

(iii) In the event of a fire, explosion, spill or other release which could threaten human health or when the emergency coordinator has knowledge that a spill has reached surface water, the emergency coordinator shall immediately notify the National Response Center (using the 24-hour toll-free telephone number (800)424-8802) and the department (using the 24-hour telephone number (406)~~444-6911~~ 841-3911. The notifications must include the following information:

(A) through (3) remain the same.

AUTH: 75-10-405, MCA
IMP: 75-10-405, MCA

17.54.601 PURPOSE; APPLICABILITY (1) remains the same.

(2) Except as provided in 40 CFR 265.1080(b), the standards of 40 CFR part 265 (incorporated by reference in ARM 17.54.609(5)), ~~T~~the requirements of this subchapter, and of 40 CFR 264.552 ~~and~~, 264.553, and 264.554 (all adopted and incorporated by reference in ARM 17.54.702(5)) apply to owners and operators of all facilities which treat, store or dispose of hazardous waste referred to in ARM 17.54.150~~, and~~ ~~t~~The 40 CFR part 268 standards incorporated by reference in ARM 17.54.150 are considered material conditions or requirements of the interim status standards of this subchapter.

AUTH: 75-10-404, 75-10-405, MCA
IMP: 75-10-405, 75-10-406, MCA

17.54.609 STANDARDS FOR EXISTING FACILITIES WITH TEMPORARY PERMITS (INTERIM STATUS) (1) A person who receives a temporary permit under ARM 17.54.605 ~~must~~ shall comply with the standards and requirements in 40 CFR ~~P~~part 265, subparts B through and including ~~DD~~EE excluding subparts H and R and 40 CFR 265.75.

(2) through (4) remain the same.

(5) The department hereby adopts and incorporates herein by reference 40 CFR ~~P~~part 265, subparts B through and including ~~DD~~EE, and excluding subparts H and R and 40 CFR 265.75. The correct CFR edition is listed in ARM 17.54.102. The equivalent of subpart H is set forth in subchapter 8 of this chapter. The equivalent of 40 CFR 265.75 is set forth in ARM 17.54.613. Subparts B through Q of 40 CFR ~~P~~part 265 are federal agency rules setting forth general facility standards (B); requirements for preparedness and prevention (C); requirements for contingency plan and emergency procedures (D); manifest system, recordkeeping and reporting requirements (E); ground water monitoring requirements (F); closure and post-closure requirements (G); requirements for use and management of containers (I), tanks (J), surface impoundments (K), waste piles (L), land treatment units (M), landfills (N),

incinerators (O), thermal treatment units (P), chemical, physical and biological treatment units (Q); requirements for drip pads at wood treating operations (W); air emission standards for process vents (AA); air emission standards for equipment leaks (BB); ~~and~~ requirements for containment buildings (DD); and hazardous waste munitions and explosives storage (EE). A copy of 40 CFR ~~P~~part 265, subparts B through and including ~~DD~~EE, excluding subparts H and R, or any portion thereof, may be obtained from the Department of Environmental Quality, PO Box 200901, Helena, MT 59620-0901.

AUTH: 75-10-405, MCA
IMP: 75-10-405, 75-10-406, MCA

17.54.610 CHANGES DURING TEMPORARY PERMITTING (INTERIM STATUS) (1) through (2)(g) remain the same.

(h) changes necessary to comply with standards under 40 CFR part 63, subpart EEE--National Emission Standards for Hazardous Air Pollutants From Hazardous Waste Combustors.

AUTH: 75-10-405, MCA
IMP: 75-10-405, 75-10-406, MCA

17.54.612 EXCLUSIONS (1) through (1)(f) remain the same.

(g) the owner or operator of an "elementary neutralization unit" or a "wastewater treatment unit" as defined in ARM 17.54.201, provided that if the owner or operator is diluting hazardous ignitable (D001) wastes (other than the D001 High TOC Subcategory defined in 40 CFR 268.40 incorporated by reference in ARM 17.54.150, Table Treatment Standards for Hazardous Wastes), or reactive (D003) waste, to remove the characteristic before land disposal, the owner/operator shall comply with the requirements set out in 40 CFR 265.17(b) (incorporated by reference in ARM 17.54.609);

(h)(i) except as provided in (1)(h)(ii) below, a person engaged in treatment or containment activities during immediate response to a hazardous waste discharge, ~~or~~ an imminent and substantial threat of a hazardous waste discharge, or an immediate threat to human health, public safety, property, or the environment, from the known or suspected presence of military munitions, other explosive material, or an explosive device, as determined by an "explosive or munitions emergency response specialist" as defined in ARM 17.54.201.

(ii) An owner or operator of a facility otherwise regulated by this subchapter ~~must~~ shall comply with all applicable requirements of 40 CFR ~~P~~part 265, subparts C and D.

(iii) remains the same.

(iv) In the case of an explosives or munitions emergency response, if a federal, state, tribal or local official acting within the scope of his or her official responsibilities, or an explosives or munitions emergency response specialist, determines that immediate removal of the material or waste is

necessary to protect human health or the environment, that official or specialist may authorize the removal of the material or waste by transporters who do not have EPA identification numbers and without the preparation of a manifest. In the case of emergencies involving military munitions, the responding military emergency response specialist's organizational unit shall retain records for 3 years identifying the dates of the response, the responsible persons responding, the type and description of material addressed, and its disposition.

(i) and (j) remain the same.

(k) universal waste handlers and universal waste transporters (as defined in ARM 17.54.201) handling the wastes listed below. These handlers are subject to regulation under 40 CFR part 273 (incorporated by reference in ARM 17.54.311(1)(a)), when handling the following universal wastes:

(i) batteries as described in 40 CFR 273.2 (incorporated by reference in ARM 17.54.311(1)(a));

(ii) pesticides as described in 40 CFR 273.3 (incorporated by reference in ARM 17.54.311(1)(a)); and

(iii) thermostats as described in 40 CFR 273.4 (incorporated by reference in ARM 17.54.311(1)(a)).

~~(k)~~ (l) the disposal of wastes in injection wells; however, where injection wells have associated surface facilities that treat, store or dispose of hazardous waste, such associated surface facilities are subject to the requirements of this subchapter.

(m) [RULES XII and XIII] identify when the requirements of this subchapter apply to the storage of military munitions classified as waste under [RULES IX and X]. The treatment and disposal of hazardous waste military munitions are subject to the applicable permitting, procedural, and technical standards of this chapter.

AUTH: 75-10-405, MCA
IMP: 75-10-405, 75-10-406, MCA

17.54.701 PURPOSE (1) through (3)(a) remain the same.

(b) owners or operators of solid waste management systems licensed by the department pursuant to ARM Title 17, chapter 50, subchapter 5, if the only hazardous waste the facility treats, stores, or disposes of is excluded from regulation by ARM 17.54.402(5) (special requirements for conditionally exempt generators); ~~and~~

(c) owners or operators of facilities managing recyclable materials described in ARM 17.54.309(1)(b), (c), and (d), except to the extent they are referred to in subchapter 11 of this chapter, in 40 CFR part 279 (incorporated by reference in ARM 17.54.309), or in subparts C, F, or G of 40 CFR ~~P~~part 266 (incorporated by reference in ARM 17.54.309(5))~~.~~; and

(d) universal waste handlers and universal waste transporters (as defined in ARM 17.54.201) handling the wastes

listed below. These handlers are subject to regulation under 40 CFR part 273 (incorporated by reference in ARM 17.54.311(1)(a)), when handling the following universal wastes:

(i) batteries as described in 40 CFR 273.2 (incorporated by reference in ARM 17.54.311(1)(a));

(ii) pesticides as described in 40 CFR 273.3 (incorporated by reference in ARM 17.54.311(1)(a)); and

(iii) thermostats as described in 40 CFR 273.4 (incorporated by reference in ARM 17.54.311(1)(a)).

AUTH: 75-10-405, MCA
IMP: 75-10-405, 75-10-406, MCA

17.54.702 STANDARDS AND REQUIREMENTS FOR PERMITTED FACILITIES (1) Except as provided in ARM 17.54.137, any person who owns or operates a HWM facility ~~must~~ shall comply with the standards in 40 CFR ~~P~~part 264, subparts B through and including ~~DD~~EE, excluding subpart H and 40 CFR 264.75.

(2) through (4) remain the same.

(5) The department ~~hereby~~ adopts and incorporates herein by reference 40 CFR ~~P~~part 264, subparts B through and including ~~DD~~EE, excluding subpart H and 40 CFR 264.75. The correct CFR edition is listed in ARM 17.54.102. The equivalent of subpart H is set forth in subchapter 8 of this chapter. The equivalent of 40 CFR 264.75 is set forth in ARM 17.54.705. Subparts B through ~~DD~~EE, excluding subpart H, are federal agency rules setting forth, respectively, general facility standards (B); requirements for preparedness and prevention (C); requirements for contingency plan and emergency procedures (D); manifest system, recordkeeping and reporting requirements (E); ground water monitoring requirements (F); closure and post-closure requirements (G); requirements for use and management of containers (I), tanks (J), surface impoundments (K), waste piles (L), land treatment units (M), landfills (N), and incinerators (O); corrective action for solid waste management units (S); requirements for drip pads at wood treating operations (W); requirements for miscellaneous units (X); air emission standards for process vents (AA); air emission standards for equipment leaks (BB); ~~and~~ requirements for containment buildings (DD); and hazardous waste munitions and explosives storage (EE). A copy of 40 CFR ~~P~~part 264, subparts B through and including ~~DD~~EE, excluding subpart H or any portion thereof, may be obtained from the Department of Environmental Quality, PO Box 200901, Helena, MT 59620-0901.

(6) remains the same.

AUTH: 75-10-405, 75-10-406, MCA
IMP: 75-10-405, 75-10-406, MCA

17.54.907 PUBLIC NOTICE OF PERMIT ACTIONS AND PUBLIC COMMENT PERIOD (1) The department adopts and incorporates by reference herein 40 CFR 124.31, 124.32 and 124.33, with the

exception of paragraph (a) under each section, which is replaced as follows:

(a) 124.31(a): The requirements of this section apply to applications for initial permits for hazardous waste management units. The requirements of this section shall also apply to applications for renewal of permits for such units, where a significant change in facility operations is proposed. For the purposes of this section, a "significant change" is any change that would qualify as a major permit modification under ARM 17.54.126. The requirements of this section do not apply to minor permit modifications under ARM 17.54.128 or to applications that are submitted for the sole purpose of conducting post-closure activities or post-closure activities and corrective action at a facility.

(b) 124.32(a): The requirements of this section apply to all applications for initial permits for hazardous waste management units. The requirements of this section shall also apply to applications for revocation and reissuance of permits for such units under ARM 17.54.126. The requirements of this section do not apply to permit modifications under ARM 17.54.128 or permit applications submitted for the sole purpose of conducting post-closure activities or post-closure activities and corrective action at a facility.

(c) 124.33(a): The requirements of this section apply to all applications for permits for hazardous waste management units.

(1) through (9) remain the same, but are renumbered (2) through (10).

AUTH: 75-10-405, MCA
IMP: 75-10-405, 75-10-406, MCA

17.54.1101 APPLICABILITY (1) through (2)(b) remain the same.

(c) Hazardous wastes that are exempt from regulation under ARM 17.54.307 and 17.54.309(1)(c) ~~(v) (viii)~~ (iii) and (iv), and hazardous wastes that are subject to the special requirements for conditionally exempt small quantity generators under ARM 17.54.402(2).

(d) and (3) remain the same.

(3)(a) To be exempt from ARM 17.54.1105 through 17.54.1113, an owner or operator of a metal recovery furnace or mercury recovery furnace ~~must~~ shall comply with the following requirements, except that an owner or operator of a lead or a nickel-chromium recovery furnace, or a metal recovery furnace that burns baghouse bags used to capture metallic dusts emitted by steel manufacturing, ~~must~~ shall comply with the requirements of (3)(c) of this rule:

(i) through (3)(b) remain the same.

(c) To be exempt from ARM 17.54.1105 through 17.54.1113, an owner or operator of a lead or nickel-chromium or mercury recovery furnace, or a metal recovery furnace that burns baghouse bags used to capture metallic dusts emitted by steel manufacturing, ~~must~~ shall provide a one-time written notice to

the department identifying each hazardous waste burned and specifying whether the owner or operator claims an exemption for each waste under this subsection or (3)(a) of this rule. The owner or operator ~~must~~ shall comply with the requirements of (3)(a) of this rule for those wastes claimed to be exempt under that section and ~~must~~ shall comply with the requirements below for those wastes claimed to be exempt under this subsection.

(i) The hazardous wastes listed in 40 CFR part 266, Appendices XI, ~~and~~ XII, and XIII (as incorporated by reference in ARM 17.54.1118) ~~of this subchapter~~ and baghouse bags used to capture metallic dusts emitted by steel manufacturing are exempt from the requirements of (3)(a) of this rule, provided that:

(A) A waste listed in 40 CFR part 266, Appendix XI (as incorporated by reference in ARM 17.54.1118) must contain recoverable levels of lead, a waste listed in 40 CFR part 266, Appendix XII (as incorporated by reference in ARM 17.54.1118) must contain recoverable levels of nickel or chromium, a waste listed in 40 CFR part 266, Appendix XIII (as incorporated by reference in ARM 17.54.1118) must contain recoverable levels of mercury and contain less than 500 ppm of 40 CFR part 261, Appendix VIII organic constituents, and baghouse bags used to capture metallic dusts emitted by steel manufacturing must contain recoverable levels of metal; and

(B) through (D) remain the same.

(ii) The department may decide on a case-by-case basis that the toxic organic constituents in a material listed in 40 CFR part 266, Appendix XI, ~~or~~ XII, or XIII (as incorporated by reference in ARM 17.54.1118) ~~of this subchapter~~ that contains a total concentration of more than 500 ppm toxic organic compounds listed in ARM 17.54.352(1)(b), may pose a hazard to human health and the environment when burned in a metal recovery furnace exempt from the requirements of this subchapter. In that situation, after adequate notice and opportunity for comment, the metal recovery furnace will become subject to the requirements of this subchapter when burning that material. In making the hazard determination, the department will consider the following factors:

(A) and (B) remain the same.

(C) Whether the acceptable ambient levels established in 40 CFR part 266, Appendices IV or V (as incorporated by reference in ARM 17.54.1118) ~~of this subchapter~~ may be exceeded for any toxic organic compound that may be emitted based on dispersion modeling to predict the maximum annual average off-site ground level concentration.

(4) through (6) remain the same.

AUTH: 75-10-405, MCA
IMP: 75-10-405, MCA

17.54.1105 PERMIT STANDARDS FOR BURNERS (1) through (5)(h)(i)(A) remain the same.

(B) If specified by the permit, carbon monoxide (CO), hydrocarbons (HC), and oxygen on a continuous basis at a common point in the boiler or industrial furnace downstream of the combustion zone and prior to release of stack gases to the atmosphere in accordance with operating requirements specified in (5)(b)(ii) of this rule. CO, HC, and oxygen monitors must be installed, operated, and maintained in accordance with methods specified in 40 CFR part 266, Appendix IX (as incorporated by reference in ARM 17.54.1118) ~~of this subchapter~~.

(5)(h)(i)(C) through (6)(d) remain the same.

(e) Sampling and analysis shall be in conformance with procedures described in Test Methods for Evaluating Solid Waste, Physical/Chemical Methods (incorporated by reference in ARM 17.54.351). The statistical methodology will be the same employed for Bevill residue determinations as described in 40 CFR part 266, Appendix IX ~~of this subchapter~~. That is, the annual samples (taken after hazardous wastes are burned) will be compared to background samples for the constituents of concern. The 95% confidence interval about the mean of the background levels must be used in the comparison of the annual and background samples. The concentration of a constituent in the annual sample is not considered to be significantly higher than in the background sample if the concentration does not exceed the upper limit of the 95% confidence interval about the mean that was established for the background level.

(f) remains the same.

AUTH: 75-10-405, 75-10-406, MCA
IMP: 75-10-405, 75-10-406, MCA

17.54.1106 STANDARDS TO CONTROL ORGANIC EMISSIONS

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

(b) CO and oxygen shall be continuously monitored in conformance with "Performance Specifications for Continuous Emission Monitoring of Carbon Monoxide and Oxygen for Incinerators, Boilers, and Industrial Furnaces Burning Hazardous Waste" in 40 CFR part 266, Appendix IX (as incorporated by reference in ARM 17.54.1118) ~~of this subchapter~~.

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

(c) HC shall be continuously monitored in conformance with "Performance Specifications for Continuous Emission Monitoring of Hydrocarbons for Incinerators, Boilers, and Industrial Furnaces Burning Hazardous Waste" in 40 CFR part 266, Appendix IX (as incorporated by reference in ARM 17.54.1118) ~~of this subchapter~~. CO and oxygen shall be continuously monitored in conformance with (2)(b) of this rule.

(d) and (4) remain the same.

(5) Owners and operators of boilers and industrial furnaces ~~must~~ shall conduct a site-specific risk assessment as follows to demonstrate that emissions of chlorinated dibenzo-p-dioxins (PCDDs) and dibenzofurans (CDDs/CDFs) do not

result in an increased lifetime cancer risk to the hypothetical maximum exposed individual (MEI) exceeding 1 in 100,000 (this provision may be waived if the owner or operator of the facility can demonstrate, to the satisfaction of the department, that raw materials and fuels used are such that dioxins and furans would not be present in waste residues or emissions):

(a) During the trial burn, determine emission rates of the tetra-octa congeners of ~~chlorinated dibenzo-p-dioxins (PCDDs)~~ and ~~dibenzofurans (CDDs/CDFs)~~ using Method ~~23~~0023A, "Sampling Method for Polychlorinated Dibenzo-p-Dioxins and Polychlorinated Dibenzofurans Emissions from Stationary Sources", from EPA Publication SW-846, ~~"Determination of Polychlorinated Dibenzo-p-Dioxins and Polychlorinated Dibenzofurans (PCDFs) from Stationary Sources", in Appendix IX~~ (as incorporated by reference in ARM 17.54.~~1110~~351) ~~of this subchapter~~;

(b) Estimate the 2,3,7,8-TCDD toxicity equivalence of the tetra-octa CDDs/CDFs congeners using "Procedures for Estimating the Toxicity Equivalence of Chlorinated Dibenzo-p-Dioxin and Dibenzofuran Congeners" in 40 CFR part 266, Appendix IX (as incorporated by reference in ARM 17.54.1118) ~~of this subchapter~~. Multiply the emission rates of CDD/CDF congeners with a toxicity equivalence greater than zero (see the procedure) by the calculated toxicity equivalence factor to estimate the equivalent emission rate of 2,3,7,8-TCDD;

(c) Conduct dispersion modeling using methods recommended in Appendix W of 40 CFR part 51 ("Guideline on Air Quality Models (revised)" (1986) and its supplements), ~~Guideline on Air Quality Models (Revised) or~~ the "Hazardous Waste Combustion Air Quality Screening Procedure", ~~which are~~ provided in ~~Appendices X and~~ Appendix IX of 40 CFR part 266, ~~respectively,~~ or ~~"EPA SCREEN Screening Procedure" as described~~ in "Screening Procedures for Estimating Air Quality Impact of Stationary Sources, revised" (as incorporated by reference in ARM 17.54.~~1110~~351), to predict the maximum annual average off-site ground level concentration of 2,3,7,8-TCDD equivalents determined under (5)(b) above. The maximum annual average ~~on-site~~ concentration must be used when a person resides on-site; and

(d) The ratio of the predicted maximum annual average ground level concentration of 2,3,7,8-TCDD equivalents to the risk-specific dose for 2,3,7,8-TCDD (2.2×10^{-7}) provided in 40 CFR part 266, Appendix V (as incorporated by reference in ARM 17.54.1118) ~~of this subchapter (2.2×10^{-7})~~ shall not exceed 1.0.

~~(6) Alternative HC limit for furnaces with organic matter in raw material. For industrial furnaces that cannot meet the 20 ppmv HC limit because of organic matter in normal raw material, the department may establish an alternative HC limit on a case by case basis (under a part B permit proceeding) at a level that ensures that flue gas HC (and CO) concentrations when burning hazardous waste are not greater than~~

~~when not burning hazardous waste (the baseline HC level) provided that the owner or operator complies with the following requirements. However, cement kilns equipped with a by-pass duct meeting the requirements of (7) of this rule, are not eligible for an alternative HC limit.~~

~~(a) When the baseline HC (and CO) level is determined, the owner or operator must demonstrate that the facility is designed and operated to minimize hydrocarbon emissions from fuels and raw materials and that the facility is producing normal products under normal operating conditions feeding normal feedstocks and fuels. The baseline HC (and CO) level is defined as the average over all valid test runs of the highest hourly rolling average value for each run when the facility does not burn hazardous waste, adjusted as appropriate to consider the variability of hydrocarbon levels under good combustion operating conditions. The baseline CO level is determined based on the test runs used to establish the baseline HC level and is defined as the average over all test runs of the highest hourly rolling average CO value for each run. More than one baseline level must be determined if the facility operates under different modes that may generate significantly different HC (and CO) levels;~~

~~(b) The owner or operator must develop an approach to monitor over time changes in the operation of the facility that could reduce the baseline HC level;~~

~~(c) The owner or operator must conduct emissions testing during the trial burn to:~~

~~(i) Determine the baseline HC (and CO) level;~~

~~(ii) Demonstrate that, when hazardous waste is burned, HC (and CO) levels do not exceed the baseline level; and~~

~~(iii) Identify the types and concentrations of organic compounds listed in ARM 17.54.352(1)(b) that are emitted and conduct dispersion modeling to predict the maximum annual average ground level concentration of each organic compound. On site ground level concentrations must be considered for this evaluation if a person resides on site.~~

~~(A) Sampling and analysis of organic emissions shall be conducted using procedures prescribed by the department.~~

~~(B) Dispersion modeling shall be conducted according to procedures provided by (5)(b) of this rule; and~~

~~(iv) Demonstrate that maximum annual average ground level concentrations of the organic compounds identified in (c)(iii) above do not exceed the following levels.~~

~~(A) For the noncarcinogenic compounds listed in Appendix IV (as incorporated by reference in ARM 17.54.1110) of this subchapter, the levels established in Appendix IV (as incorporated by reference in ARM 17.54.1110);~~

~~(B) For the carcinogenic compounds listed in Appendix V (as incorporated by reference in ARM 17.54.1110) of this subchapter, the sum for all compounds of the ratios of the actual ground level concentration to the level established in Appendix V cannot exceed 1.0. To estimate the health risk from chlorinated dibenzo p dioxins and dibenzofuran congeners, use the procedures prescribed by (5)(c) of this rule to~~

~~estimate the 2,3,7,8 TCDD toxicity equivalence of the congeners.~~

~~(C) For compounds not listed in Appendix IV or V, (as incorporated by reference in ARM 17.54.1118), 0.1 micrograms per cubic meter.~~

~~(d) All hydrocarbon levels specified under this section are to be monitored and reported as specified in (3)(a) and (b) of this rule.~~

(7) through (9) remain the same, but are renumbered (6) through (8).

AUTH: 75-10-405, MCA
IMP: 75-10-405, MCA

17.54.1107 STANDARDS TO CONTROL PARTICULATE MATTER

(1) A boiler or industrial furnace burning hazardous waste may not emit particulate matter in excess of 180 milligrams per dry standard cubic meter (0.08 grains per dry standard cubic foot) after correction to a stack gas concentration of 7% oxygen, using procedures prescribed in 40 CFR ~~P~~part 60, Appendix A, methods 1 through 5, and 40 CFR part 266, Appendix IX (as incorporated by reference in ARM 17.54.1118) ~~of this subchapter~~.

(2) remains the same.

AUTH: 75-10-405, MCA
IMP: 75-10-405, MCA

17.54.1108 STANDARDS TO CONTROL METALS EMISSIONS

(1) The owner or operator ~~must~~ shall comply with the metals standards provided by (2), (3), (4), (5), or (6) of this rule for each metal listed in (2)(b) of this rule that is present in the hazardous waste at detectable levels using analytical procedures specified in Test Methods for Evaluating Solid Waste, Physical/Chemical Methods (SW-846), incorporated by reference in ARM 17.54.351(1)~~(e)~~ (1).

(2) Tier I feed rate screening limits for metals are specified in 40 CFR part 266, Appendix I (as incorporated by reference in ARM 17.54.1118) ~~of this subchapter~~ as a function of terrain-adjusted effective stack height and terrain and land use in the vicinity of the facility. Criteria for facilities that are not eligible to comply with the screening limits are provided in ~~section~~ (2)(g) of this rule.

(a) ~~Noncarcinogenic metals.~~ The feed rates of antimony, barium, lead, mercury, thallium, and silver in all feed streams, including hazardous waste, fuels, and industrial furnace feed stocks shall not exceed the screening limits specified in 40 CFR part 266, Appendix I (as incorporated by reference in ARM 17.54.1118) ~~of this subchapter~~.

(i) and (ii) remain the same.

(b) ~~Carcinogenic metals.~~

(i) The feed rates of arsenic, cadmium, beryllium, and chromium in all feed streams, including hazardous waste, fuels, and industrial furnace feed stocks shall not exceed

values derived from the screening limits specified in 40 CFR part 266, Appendix I (as incorporated by reference in ARM 17.54.1118) ~~of this subchapter~~. The feed rate of each of these metals is limited to a level such that the sum of the ratios of the actual feed rate to the feed rate screening limit specified in Appendix I shall not exceed 1.0, as provided by the following equation:

$$\sum_{i=1}^{n} \frac{AFR_{(i)}}{FRSL_{(i)}} \leq 1.0$$

where:

n=number of carcinogenic metals
AFR=actual feed rate to the device for metal "i"
FRSL=feed rate screening limit provided by 40 CFR part 266, Appendix I (as incorporated by reference in ARM 17.54.1118) ~~of this subchapter~~ for metal "i"

(ii) through (B) remain the same.

(c)(i) The terrain-adjusted effective stack height (TESH) is determined according to the following equation:

$$TESH=Ha+H1-Tr$$

where:

Ha=Actual physical stack height
H1=Plume rise as determined from 40 CFR part 266, Appendix VI (as incorporated by reference in ARM 17.54.1118) ~~of this subchapter~~ as a function of stack flow rate and stack gas exhaust temperature.
Tr=Terrain rise within 5 kilometers of the stack.

(ii) through (2)(d) remain the same.

(e) The screening limits are a function of whether the facility is located in an area where the land use is urban or rural. To determine whether land use in the vicinity of the facility is urban or rural, procedures provided in 40 CFR part 266, ~~Appendices~~ Appendix IX ~~or X~~ (as incorporated by reference in ARM 17.54.1118), or 40 CFR part 51, Appendix W ~~of this subchapter~~ shall be used.

(f) through (h) remain the same.

(3) Tier II emission rate screening limits. ~~Emission rate screening limits~~ are specified in 40 CFR part 266, Appendix I (as incorporated by reference in ARM 17.54.1118) as a function of terrain-adjusted effective stack height and terrain and land use in the vicinity of the facility. Criteria for facilities that are not eligible to comply with the screening limits are provided in (2)(g) of this rule.

(a) ~~Noncarcinogenic metals.~~ The emission rates of noncarcinogenic metals such as antimony, barium, lead, mercury, thallium, and silver shall not exceed the screening limits specified in 40 CFR part 266, Appendix I (as incorporated by reference in ARM 17.54.1118) ~~of this subchapter~~.

(b) ~~Carcinogenic metals.~~ The emission rates of carcinogenic metals such as arsenic, cadmium, beryllium, and chromium shall not exceed values derived from the screening limits specified in 40 CFR part 266, Appendix I (as incorporated by reference in ARM 17.54.1118) ~~of this subchapter~~. The emission rate of each of these metals is limited to a level such that the sum of the ratios of the actual emission rate to the emission rate screening limit specified in Appendix I ~~(as incorporated by reference in ARM 17.54.1118)~~ shall not exceed 1.0, as provided by the following equation:

$$\sum_{i=1}^{n} \frac{AER_{(i)}}{ERSL_{(i)}} \leq 1.0$$

where:

n=number of carcinogenic metals

AER=actual emission rate for metal "i"

ERSL=emission rate screening limit provided by 40 CFR part 266, Appendix I (as incorporated by reference in ARM 17.54.1118) ~~of this subchapter~~ for metal "i".

(c) through (4)(a) remain the same.

(b) 40 CFR part 266, Appendices IV and V (as incorporated by reference in ARM 17.54.1118), list the acceptable ambient levels for purposes of this rule. Reference air concentrations (RACs) are listed for the noncarcinogenic metals and 10^{-5} risk-specific doses (RSDs) are listed for the carcinogenic metals. The RSD for a metal is the acceptable ambient level for that metal provided that only 1 of the 4 carcinogenic metals is emitted. If more than 1 carcinogenic metal is emitted, the acceptable ambient level for the carcinogenic metals is a fraction of the RSD as described in (4)(c) below.

(c) through (f) remain the same.

(5) The owner or operator may adjust the feed rate screening limits provided by 40 CFR part 266, Appendix I (as incorporated by reference in ARM 17.54.1118), ~~of this subchapter~~ to account for site-specific dispersion modeling. Under this approach, the adjusted feed rate screening limit for a metal is determined by back-calculating from the acceptable ambient level provided by 40 CFR part 266, Appendices IV and V (as incorporated by reference in ARM 17.54.1118), ~~of this subchapter~~ using dispersion modeling to determine the maximum allowable emission rate. This emission rate becomes the adjusted tier I feed rate screening limit. The feed rate screening limits for carcinogenic metals are as prescribed in (2)(b) of this rule.

(6) ~~Alternative implementation approaches.~~

~~(a)~~ The department may approve on a case-by-case basis approaches to implement the tier II or tier III metals emission limits provided by (3) or (4) of this rule

alternative to monitoring the feed rate of metals in each feedstream.

~~(b)~~ (7) The emission limits provided by (4) of this rule must be determined as follows:

~~(i)~~ (a) For each noncarcinogenic metal, by back-calculating from the RAC provided in 40 CFR part 266, Appendix IV (as incorporated by reference in ARM 17.54.1118), ~~of this subchapter~~ to determine the allowable emission rate for each metal using the dilution factor for the maximum annual average ground level concentration predicted by dispersion modeling in conformance with ~~(8)~~ (9) of this rule; and

~~(ii)~~ (b) For each carcinogenic metal by~~:~~

~~(A)~~ ~~B~~back-calculating from the RSD provided in 40 CFR part 266, Appendix V (as incorporated by reference in ARM 17.54.1118), ~~of this subchapter~~ to determine the allowable emission rate for each metal if that metal were the only carcinogenic metal emitted using the dilution factor for the maximum annual average ground level concentration predicted by dispersion modeling in conformance with ~~(8)~~ (9) of this rule; and

(B) remains the same but is renumbered (c).

~~(7) Emission testing.~~

~~(a)~~ (8) Emission testing for metals shall be conducted using Method 0060, "Determinations of Metals in Stack Emissions", from EPA Publication SW-846, ~~the Multiple Metals Train as described in Appendix IX~~ (as incorporated by reference in ARM 17.54.~~1118~~351)~~, of this subchapter~~.

~~(b)~~ (9) Emissions of chromium are assumed to be hexavalent chromium unless the owner or operator conducts emissions testing to determine hexavalent chromium emissions using procedures prescribed in Method 0061, "Determination of Hexavalent Chromium Emissions from Stationary Sources", from EPA Publication SW-846, ~~Appendix IX~~ (as incorporated by reference in ARM 17.54.~~1118~~351) ~~of this subchapter~~.

~~(8)~~ (10) Dispersion modeling required under this rule shall be conducted according to methods recommended in 40 CFR part 51, Appendix W ("Guideline on Air Quality Models (revised)" (1986) and its supplements), ~~Appendix X (as incorporated by reference in ARM 17.54.1118), of this subchapter,~~ the "Hazardous Waste Combustion Air Quality Screening Procedure" described in 40 CFR part 266, Appendix IX ~~(as incorporated by reference in ARM 17.54.1118)~~, or ~~"EPA SCREEN Screening Procedure" as described~~ in "Screening Procedures for Estimating Air Quality Impact of Stationary Sources, Revised," incorporated by reference in ARM 17.54.~~1118~~351 to predict the maximum annual average off-site ground level concentration. However, on-site concentrations must be considered when a person resides on-site.

(9) remains the same but is renumbered (11).

AUTH: 75-10-405, MCA
IMP: 75-10-405, MCA

17.54.1109 STANDARDS TO CONTROL HYDROGEN CHLORIDE (HCL) AND CHLORINE GAS (Cl_2) EMISSIONS (1) remains the same.

(2)(a) Tier I feed rate screening limits~~. Feed rate screening limits~~ are specified for total chlorine in 40 CFR part 266, Appendix II (as incorporated by reference in ARM 17.54.1118), ~~of this subchapter~~ as a function of terrain-adjusted effective stack height and terrain and land use in the vicinity of the facility. The feed rate of total chlorine and chloride, both organic and inorganic, in all feed streams, including hazardous waste, fuels, and industrial furnace feed stocks shall not exceed the levels specified.

(b) Tier II emission~~ rate screening limits. Emission~~ rate screening limits for HCl and Cl_2 are specified in 40 CFR part 266, Appendix III (as incorporated by reference in ARM 17.54.1118), ~~of this subchapter~~ as a function of terrain-adjusted effective stack height and terrain and land use in the vicinity of the facility. The stack emission rates of HCl and Cl_2 shall not exceed the levels specified.

(c) through (d) remain the same.

(3) ~~Tier III site specific risk assessments.~~

~~(a)~~ Conformance with the tier III controls must be demonstrated by emissions testing to determine the emission rate for HCl and Cl_2, air dispersion modeling to predict the maximum annual average off-site ground level concentration for each compound, and a demonstration that acceptable ambient levels are not exceeded.

~~(b)~~ (a) Acceptable ambient levels. 40 CFR part 266, Appendix IV (as incorporated by reference in ARM 17.54.1118), lists the reference air concentrations (RACs) for HCl (7 micrograms per cubic meter) and Cl_2 (0.4 micrograms per cubic meter).

(c) remains the same but is renumbered (b).

(4) remains the same.

(5) The owner or operator may adjust the feed rate screening limit provided by 40 CFR part 266, Appendix II (as incorporated by reference in ARM 17.54.1118), ~~of this subchapter~~ to account for site-specific dispersion modeling. Under this approach, the adjusted feed rate screening limit is determined by back-calculating from the acceptable ambient level for Cl_2 provided by 40 CFR part 266, Appendix IV (as incorporated by reference in ARM 17.54.1118), ~~of this subchapter~~ using dispersion modeling to determine the maximum allowable emission rate. This emission rate becomes the adjusted tier I feed rate screening limit.

(6) Emissions testing for HCl and Cl_2 shall be conducted using the procedures described in Methods 0050 or 0051, EPA Publication SW-846, ~~Appendix IX~~ (as incorporated by reference in ARM 17.54.~~1110~~351)~~, of this subchapter~~.

(7) and (8) remain the same.

AUTH: 75-10-405, MCA
IMP: 75-10-405, MCA

17.54.1113 STANDARDS FOR DIRECT TRANSFER (1) through (4)(a) remain the same.

(b) The use and management requirements of subpart I, 40 CFR ~~P~~part 265, except for 40 CFR 265.170 and 265.174, (adopted by reference in ARM 17.54.609) and except that in lieu of the special requirements of 40 CFR 265.176 (adopted by reference in ARM 17.54.609) for ignitable or reactive waste, the owner or operator may comply with the requirements for the maintenance of protective distances between the waste management area and any public ways, streets, alleys, or an adjacent property line that can be built upon as required in Tables 2-1 through 2-6 of the national fire protection association's (NFPA) "Flammable and Combustible Liquids Code," 1977 or 1981 (incorporated by reference in ARM 17.54.~~1110~~351). The owner or operator ~~must~~ shall obtain and keep on file at the facility a written certification by the local fire marshal~~,~~ that the installation meets the subject NFPA codes; and

(c) through (5) remain the same.

AUTH: 75-10-405, MCA
IMP: 75-10-405, MCA

17.54.1114 REGULATION OF RESIDUES (1) through (b) remain the same.

(i) ~~Comparison of waste-derived residue with normal residue.~~ The waste-derived residue must not contain ARM 17.54.352(1)(b) constituents, (toxic constituents) that could reasonably be attributable to the hazardous waste at concentrations significantly higher than in residue generated without burning or processing of hazardous waste, using the following procedure. Toxic compounds that could reasonably be attributable to burning or processing the hazardous waste (constituents of concern) include toxic constituents in the hazardous waste, and the organic compounds listed in 40 CFR part 266, Appendix VIII ~~of~~ (incorporated by reference in ARM 17.54.1118), that may be generated as products of incomplete combustion. Sampling and analyses shall be in conformance with procedures prescribed in Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, (incorporated by reference in ARM 17.54.351).

(A) Concentrations of toxic constituents of concern in normal residue shall be determined based on analyses of a minimum of 10 samples representing a minimum of 10 days of operation. Composite samples may be used to develop a sample for analysis provided that the compositing period does not exceed 24 hours. The upper tolerance limit (at 95% confidence with a 95% proportion of the sample distribution) of the concentration in the normal residue shall be considered the statistically-derived concentration in the normal residue. If changes in raw materials or fuels reduce the statistically-derived concentrations of the toxic constituents of concern in the normal residue, the statistically-derived concentrations must be revised or statistically-derived concentrations of

toxic constituents in normal residue must be established for a new mode of operation with the new raw material or fuel. To determine the upper tolerance limit in the normal residue, the owner or operator shall use statistical procedures prescribed in "Statistical Methodology for Bevill Residue Determinations" in 40 CFR part 266, Appendix IX (as incorporated by reference in ARM 17.54.1118.)

(B) remains the same.

(ii) ~~Comparison of waste derived residue concentrations with health based limits.~~

~~(A)~~ The concentrations of each nonmetal toxic constituent of concern (specified in (1)(b)(i) of this rule) in the waste-derived residue must not exceed the health-based level specified in 40 CFR part 266, Appendix VII (as incorporated by reference in ARM 17.54.1118), or the level of detection (using analytical procedures prescribed in SW-846), whichever is higher. If a health-based limit for a constituent of concern is not listed in Appendix VII, then a limit of 0.002 micrograms per kilogram or the level of detection (using analytical procedures prescribed in SW-846), whichever is higher, shall be used. The levels specified in 40 CFR part 266, Appendix VII (incorporated by reference in ARM 17.54.1118(1)) (and the default level of 0.002 micrograms per kilogram or the level of detection for constituents as identified in note 1 of 40 CFR part 266, Appendix VII [incorporated by reference in ARM 17.54.1118(1)]) are administratively stayed under the condition, for those constituents specified in (1)(b)(i) of this rule, that the owner or operator complies with alternative levels defined as the land disposal restriction limits specified in 40 CFR 268.40 (incorporated by reference in ARM 17.54.150) for FO39 nonwastewaters. In complying with those alternative levels, if an owner or operator is unable to detect a constituent despite documenting use of best good-faith efforts as defined by applicable EPA guidance or standards, the owner or operator is deemed to be in compliance for that constituent. Until new guidance or standards are developed, the owner or operator may demonstrate such good-faith efforts by achieving a detection limit for the constituent that does not exceed an order of magnitude above the level provided by 40 CFR 268.40 (incorporated by reference in ARM 17.54.150) for FO39 nonwastewaters. The stay will remain in effect until further administrative action is taken and notice is published in the federal register and the code of federal regulations; and

~~(B)~~ (A) The concentration of metals in an extract obtained using the toxicity characteristic leaching procedure of ARM 17.54.324 must not exceed the levels specified in 40 CFR part 266, Appendix VII (as incorporated by reference in ARM 17.54.1118); and

(C) remains the same but is renumbered (B).

(1)(c) remains the same.

AUTH: 75-10-405, MCA
IMP: 75-10-405, MCA

17.54.1118 INCORPORATION BY REFERENCE (1) The department hereby incorporates by reference Appendices I through XIII of 40 CFR part 266 ~~Subpart H~~.

(2) ~~(a) The department hereby incorporates by reference the document "Screening Procedures for Estimating Air Quality Impact of Stationary Sources", US EPA, August 1988.~~

~~(b) The department hereby incorporates by reference Tables 2-1 through 2-6 of the national fire protection association's "Flammable and Combustible Liquids Code", (1977 or 1981).~~

~~(c)~~ The department hereby incorporates by reference "Guideline on Air Quality Models (Revised)" described in Appendix W of 40 CFR part 51, ~~or~~ and the "Hazardous Waste Combustion Air Quality Screening Procedure", ~~which are~~ provided in 40 CFR part 266, ~~Appendices X and~~ Appendix IX~~, respectively, 40 CFR 260.11 or "EPA SCREEN Screening Procedure"~~. Copies may be obtained from the Department of Environmental Quality, PO Box 200901, Helena, MT 59620-0901.

(3) remains the same.

AUTH: 75-10-405, MCA
IMP: 75-10-405, MCA

5. The department is proposing these new rules and amendments to adopt and incorporate by reference federal regulations which revise existing provisions and propound new provisions implementing the Resource Conservation and Recovery Act of 1976 ("RCRA"). The following Federal RCRA Revision Checklists address the following federal regulations:

Checklist	Subject Matter
125	Boilers and Industrial Furnaces; Changes for Consistency with New Air Regulations.
126	Testing and Monitoring Activities.
127	Boilers and Industrial Furnaces; Administrative Stay and Interim Standards for Bevill Residues.
129	Revision of Conditional Exemption for Small Scale Treatability Studies.
135	Recovered Oil Exclusion.
137	Universal Treatment Standards and Treatment Standards for Organic Toxicity Characteristic Wastes and Newly Listed Wastes.
140	Carbamate Production Identification and Listing of Hazardous Waste.
141	Testing and Monitoring Activities Amendment II.
142A	Universal Waste: General Provisions.
142B	Universal Waste Rule: Specific Provisions for Batteries.
142C	Universal Waste Rule: Specific Provisions for Pesticides.
142D	Universal Waste Rule: Specific Provisions for Thermostats.
144	Removal of Legally Obsolete Rules.

Checklist	Subject Matter
148	RCRA Expanded Public Participation.
152	Imports and Exports of Hazardous Waste: Implementation of OECD Council Decision.
153	Conditionally Exempt Small Quantity Generator Disposal Options Under Subtitle D.
154	Consolidated Organic Air Emission Standards for Tanks, Surface Impoundments, and Containers.
156	Military Munitions Rule: Hazardous Waste Identification and Management; Explosives Emergencies; Manifest Exemption for Transport of Hazardous Waste on Right-of-Ways on Contiguous Properties.
157	Land Disposal Restrictions Phase IV-Treatment Standards for Wood Preserving Wastes, Paperwork Reduction and Streamlining, Exemptions from RCRA for Certain Processed Materials; and Miscellaneous Hazardous Waste Provisions.
158	Testing and Monitoring Activities Amendment III.
164	Kraft Mill Steam Stripper Condensate Exclusion.
166	Recycled Used Oil Management Standards; Technical Correction and Clarification.
167D	Mineral Processing Secondary Materials Exclusion.
167E	Bevill Exclusion Revisions and Clarifications.
167F	Exclusion of Recycled Wood Preserving Wastewaters.
168	Hazardous Waste Combustors Revised Standards.
169	Petroleum Refining Process Wastes.
174	Post-Closure Requirements and Closure Process: Standards Applicable to Owners and Operators of Closed and Closing Hazardous Waste Management Facilities.
175	HWIR Media Rule.

The U.S. Environmental Protection Agency ("EPA") promulgated the regulations on the following dates, at the Federal Register cites indicated.

Checklist	Date promulgated	FR cite
125	07/20/93	58 FR 38,816
126	08/31/93	58 FR 46,040
127	11/09/93	58 FR 59,598
129	02/18/94	59 FR 8,362
135	07/28/94	59 FR 38,536
137	09/19/94	59 FR 47,982
140	02/09/95	60 FR 7,824
141	04/04/95	60 FR 17,001
142A	05/11/95	60 FR 25,492
142B	05/11/95	60 FR 25,492
142C	05/11/95	60 FR 25,492
142D	05/11/95	60 FR 25,492
144	06/29/95	60 FR 33,912
148	12/11/95	60 FR 63,417
152	04/12/96	61 FR 16,289
153	07/01/96	61 FR 34,252

Checklist	Date promulgated	FR cite
154	11/25/96	61 FR 59,931
156	05/06/97	62 FR 6,622
157	05/12/97	62 FR 25,998
158	06/13/97	62 FR 32,452
164	04/15/98	63 FR 18,504
166	05/06/98	63 FR 24,963
167D	05/26/98	63 FR 28,556
167E	05/26/98	63 FR 28,556
167F	05/26/98	63 FR 28,556
168	06/19/98	63 FR 33,782
169	08/06/98	63 FR 42,110
174	10/22/98	63 FR 56,710
175	11/30/98	63 FR 65,874

The EPA has developed these checklists as a mechanism to ensure the minimum regulatory requirements necessary for EPA to approve a state program to implement the revised and/or newly propounded RCRA provisions and for EPA to delegate authority to the state. Under Sections 271.1 and 3006 of RCRA, if EPA does not approve a state's regulations based upon the above guidelines, EPA retains primary authority to implement such regulations. The policy of the state is to adopt a state program equivalent to the federal hazardous waste management program (75-10-402(2), MCA). Adoption of the proposed and amended rules is necessary to maintain state equivalency and therefore primacy.

The department is proposing new rules and amendment to rules with the minimum possible stringency necessary to obtain EPA approval of the state's program. The new rules and amendments to rules are necessary to obtain and maintain authorization under the federal program (75-10-405(1)(o), MCA). The department is not proposing to exceed the federal standards because adoption of rules at least as protective as the EPA regulations is sufficient to gain EPA approval. The department also proposes the minimum requirements for EPA approval because the department has not met the requirements of 75-10-405(2), MCA, which prohibits the department, except in limited circumstances, from adopting rules more stringent than comparable federal regulations or guidelines without first conducting a public hearing and making certain written findings.

6. Concerned persons may submit their data, views or arguments concerning the proposed action either in writing or orally at the hearing. Written data, views or arguments may also be submitted to Debbie G. Allen, Paralegal, Department of Environmental Review, P.O. Box 200901, Helena, Montana, 59620-0901, no later than October 26, 1999. To be guaranteed consideration, the comments must be postmarked on or before that date. Written data, views or arguments may also be submitted electronically no later than 5 p.m. October 26, 1999, via email addressed to Debbie G. Allen, Paralegal, at "dallen@state.mt.us".

7. Mark Steger Smith, attorney for the Department, 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
John F. North, Rule Reviewer

Certified to the Secretary of State September 13, 1999.

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

In the matter of the amendment of ARM 36.14.502 pertaining to dam safety and the hydrologic standard for emergency and principal spillways	)))))	NOTICE OF PROPOSED AMENDMENT NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On October 25, 1999, the Department of Natural Resources and Conservation proposes to amend ARM 36.14.502 pertaining to dam safety and the hydrologic standard for emergency and principal spillways.

2. The Department of Natural Resources and Conservation will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice. If you request an accommodation, contact the department no later than 5:00 p.m. on October 1, 1999, to advise us of the nature of the accommodation that you need. Please contact Shannon Kirby, Department of Natural Resources and Conservation, P.O. Box 201601, Helena, MT 59620-1601; telephone (406)444-2074; FAX (406)444-2684.

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

36.14.502 HYDROLOGIC STANDARD FOR EMERGENCY AND PRINCIPAL SPILLWAYS ~~(1) Spillways for high hazard dams must safely pass the flood calculated from the inflow design flood. The minimum inflow design flood is expressed as a fraction of the probable maximum flood or as otherwise indicated in Table A.~~

~~(2) However, the spillway capacity may be smaller if an analysis shows that there is no additional loss of life expected from the dam failure flood. The minimum inflow design flood shall be the 100 year, 24 hour flood.~~

~~(3) As a minimum, routing of the inflow design flood through the reservoir shall assume storage contents to be at the emergency crest elevation prior to flood routing.~~

~~(4) The breach area below the high hazard dam is designated as Category A if the dam is to be a new dam or an existing dam to be enlarged or a major repair or alteration of the emergency spillway is to be performed, where the downstream hazard area contains more than 20 residents and the failure flood wave is less than 4 hours from the dam to the first residence.~~

~~(5) The breach area below the high hazard dam is designated as Category B if the dam is an existing dam not~~

~~meeting the criteria for a Category A dam.~~

~~(6) The above spillway inflow design flood capacity requirements in Table A are held in abeyance for an interim period ending on December 31, 1997 for existing high hazard dams. In the interim a minimum spillway hydraulic capacity shall be not less than actual design capacity of the spillway and not less than the flow from the 500-year inflow routed through the reservoir with a peak flow computed using the appropriate regional flood frequency regression equation in U.S. Geological Survey Water Resources Investigation Report 92-4048 or subsequent versions thereof or reasonable existing flow data.~~

~~TABLE A~~

~~EMERGENCY SPILLWAY INFLOW DESIGN FLOOD~~

~~Capacity to the Emergency Creat/Height to Dam Crest~~	~~Breach Area Category A~~	~~Breach Area Category B~~
~~Dams less than 100 acre feet & less than 20 feet in height~~	~~2Q~~	~~Q~~
~~Dams less than 500 acre feet & less than 35 feet in height~~	~~.2 PMF~~	~~.1 PMF~~
~~Dams less than 1,000 acre feet & less than 50 feet in height~~	~~.3 PMF~~	~~.15 PMF~~
~~Dams 12,500 acre feet or less & less than 50 feet in height~~	~~.5 PMF~~	~~.5 PMF~~
~~Dams less than 50,000 acre feet & less than 100 feet in height~~	~~.75 PMF~~	~~.75 PMF~~
~~Dams 50,000 acre feet or greater & 100 feet or greater in height~~	~~1.0 PMF~~	~~1.0 PMF~~

(1) Spillway conveyance for high-hazard dams will be based on estimated loss of life downstream from the dam caused by spillway failure.

(2) The minimum inflow design flood for an estimated loss of life of 0.5 or less shall be the 500-year recurrence interval flood.

(3) The minimum inflow design flood recurrence interval for estimated loss of life greater than 0.5 and less than or equal to 5 shall be determined by multiplying the estimated loss of life by 1,000.

(4) The minimum inflow design flood for estimated loss of life greater than 5 and less than 1,000 shall be determined from the design precipitation derived using the following equations:

$$P_a = P_{5,000} \ (10^{rd}) \text{ where}$$

$r = -0.304 + .435 \log_{10}(lol)$
$d = \log_{10}(PMP) - \log_{10}(P_{5,000})$
lol = estimated loss of life
PMP = probable maximum precipitation
$P_{5,000}$ = 5,000-year recurrence interval precipitation
P_s = design precipitation to meet spillway standard

(5) The minimum inflow design flood for estimated loss of life greater than or equal to 1,000 shall be the probable maximum flood.

(6) The reservoir and spillway must safely store and pass the runoff resulting from the minimum inflow design flood.

(7) As a minimum, the reservoir will be assumed at normal operation pool before the minimum inflow design flood begins.

(8) The spillway capacity may be smaller if an analysis shows that there is no additional loss of life expected from the dam failure flood than that observed for the minimum inflow design flood.

AUTH: Sec. 85-15-110, MCA
IMP: Sec. 85-15-210, MCA

4. Under existing Montana rules, the amount of water that existing spillways must convey is the same, regardless of the population below the dam. Some spillways in remote areas are required to pass enormous floods at great cost to the owners. The proposed rule change allows for a hydrologic standard for spillways that is risk based, with dams having a large population below being held to a more stringent criteria than dams having a low population below.

5. Concerned persons may submit their data, views or arguments concerning the proposed action in writing to Terry Voeller, Water Resources Division, Department of Natural Resources and Conservation, P.O. Box 201601, Helena, MT 59620-1601, no later than October 22, 1999. 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. If a person who is directly affected by the proposed action wishes to express data, views and arguments orally or in writing at a public hearing, that person must make a written request for a public hearing and submit such request, along with any written comments to Terry Voeller, Water Resources Division, Department of Natural Resources and Conservation, P.O. Box 201601, Helena, MT 59620-1601, no later than October 22, 1999.

7. If the Department of Natural Resources and Conservation receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the appropriate administrative rule review committee of the legislature; from a governmental agency or subdivision; or from an association having no less than 25 members who are directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be greater than 25 persons based on the more than 250 individuals affected by rules covering high hazard dams.

8. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

Donald D. MacIntyre
DONALD D. MACINTYRE
Rule Reviewer

Arthur R. Clinch
ARTHUR R. CLINCH
Director

Certified to the Secretary of State September 13, 1999.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the Matter of the Proposed Amendment of ARM 42.15.507 relating to Elderly Homeowner Credit	NOTICE OF PROPOSED AMENDMENT NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On November 5, 1999, the department proposes to amend ARM 42.15.507, relating to elderly homeowner credit.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Revenue no later than 5:00 p.m. on October 1, 1999, to advise us of the nature of the accommodation that you need. Please contact Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 5805, Helena, Montana 59620-5805; telephone (406)444-2855; fax number (406)444-3696; e-mail address canderson@state.mt.us.

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

42.15.507 DEFINITIONS (1) through (5) remain the same.

(6) Land ~~ownership~~ surrounding ~~a homestead in excess of one acre but less than 19.99 acres will be computed~~ the eligible residence for the elderly homeowner/renter credit is the 1 acre farmstead or primary acre associated with the primary residence. If the 1 acre farmstead or primary acre is not separately identified on the tax bill or assessment notice from the other acreage and the ownership is less than 20 acres, the allowable credit shall be calculated as follows: total amount of property tax billed on the land, divided by the total acreage to equal the allowable amount of property tax used in the credit calculation.

(a) Land ownership of 20 acres or more that does not have the 1 acre farmstead or primary acre separately identified on the tax bill or assessment notice must go to the ~~county assessor's~~ department's local office for computation of the allowable amount of property tax used in the credit calculation.

(7) through (11) remain the same.

AUTH: Sec. 15-30-305, 15-31-501, and 15-32-611, MCA.

IMP: Sec. 15-30-165, 15-30-166, 15-30-167, 15-31-161, 15-31-162, 15-32-601, 15-32-602, 15-32-603, 15-32-604, 15-32-609, and 15-32-610, MCA.

4. The amendments are necessary to make the rules consistent with the department's practice of breaking out the 1 acre associated with the primary residence when determining the elderly homeowner/renter credit. When the rules were originally

adopted the department did not break the 1 acre out separately. The rules were developed with the requirement to calculate the allowable taxes for the credit based on the total taxes paid on the land divided by the total acreage. In most cases, the department now provides the 1 acre detail for determining the taxes paid on the land associated with the primary residence. The amendment further defines what is considered the 1 acre associated with the primary residence and how it will be treated when it is identifiable.

The formula will be used to determine the allowable amount of property tax used in calculating the credit in cases where the 1 acre may not be separated from the other acreage.

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

Cleo Anderson
Department of Revenue
Director's Office
P.O. Box 202701
Helena, Montana 59620

no later than October 21, 1999.

6. If a person who is directly affected by the proposed action wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he or she has to Cleo Anderson at the above address no later than October 21, 1999.

7. If the agency receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the appropriate administrative rule review committee of the legislature; from a governmental subdivision, or agency; or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register.

8. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding a particular subject matter or matters. Such written request may be mailed or delivered to the person identified in Section 5 above, faxed to the office at (406)444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

9. The notice requirements of 2-4-302(2)(d), MCA, have been satisfied.

Cleo Anderson

CLEO ANDERSON
Rule Reviewer

Mary Bryson

MARY BRYSON
Director of Revenue

Certified to Secretary of State September 13, 1999

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

In the matter of the amendment of rules pertaining to renewal dates, naturopathic physician continuing education requirements, licensing by examination, definitions, midwives continuing education requirements, licensure of out-of-state applicants, and adoption of new rule pertaining to direct entry midwife protocol standard list	))))))))))	NOTICE OF AMENDMENT OF ARM 8.4.405 NATUROPATHIC PHYSICIAN CONTINUING EDUCATION REQUIREMENTS, 8.4.501 LICENSING BY EXAMINATION, 8.4.502 DEFINITIONS, 8.4.508 MIDWIVES CONTINUING EDUCATION REQUIREMENTS, 8.4.510 LICENSURE OF OUT-OF-STATE APPLICANTS, AND ADOPTION OF NEW RULE I DIRECT ENTRY MIDWIFE PROTOCOL STANDARD LIST

TO: All Concerned Persons

1. On July 1, 1999, the Board of Alternative Health Care published a notice of public hearing on the proposed amendment and adoption of the above-stated rules at page 1460, 1999 Montana Administrative Register, issue number 13.

2. The Board has decided not to adopt the proposed change to ARM 8.2.208. The Board has amended ARM 8.4.405, 8.4.501, 8.5.502, 8.4.508, 8.4.510 exactly as proposed. The Board has adopted new rule I (8.4.511) as proposed but with the following changes:

"NEW RULE I (8.4.511) DIRECT ENTRY MIDWIFE PROTOCOL STANDARD LIST REQUIRED FOR APPLICATION

(1) through (2)(q) remains as proposed.

(r) ~~premature~~ prolonged rupture of membranes ~~(ROM and no labor)~~;

(s) through (4)(q) remains as proposed."

Auth: Sec. 37-1-131, 37-27-105, MCA; IMP, Sec. 37-27-201, MCA

3. No comments were received, however, the Board has chosen not to adopt the proposed change to ARM 8.2.208 because the Department of Commerce is implementing a new computer database and has requested that the renewal date for apprentice direct-entry midwives be the same as licensed direct-entry midwives (April 30) so that these license groups can be related properly. The proposed rule would have listed the apprentice renewal date as December 31 which would have impeded the implementation of the new computer database. The Board also desires to amend New Rule I(2)(r) to clarify that prolonged rupture of membranes is a clearer medical description of the condition which is required in the intrapartum protocol standards.

BOARD OF ALTERNATIVE HEALTH CARE
MICHAEL BERGKAMP, ND, CHAIRMAN

BY: Annie M Bartos

ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

BY: Annie M Bartos

ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, September 13, 1999.

BEFORE THE BOARD OF BARBERS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment of a rule pertaining to fees) NOTICE OF AMENDMENT OF 8.10.405 FEE SCHEDULE

TO: All Concerned Persons

1. On March 25, 1999, the Board of Barbers published a notice of public hearing on the proposed amendment of the above-stated rule at page 435, 1999 Montana Administrative Register, issue number 6. The hearing was held on April 14, 1999 in Helena, Montana.

2. The Board has adopted 8.10.405 exactly as proposed.

3. The Board has thoroughly considered all comments and testimony received from two licensees at the hearing. Those comments, and the Board's responses thereto, are as follows:

COMMENT NO. 1: Twenty-two licensees signed a form letter opposing the fee increases. Commentors stated that the fees were raised in 1996 to meet board expenses and asked why now three years later fees are raised again by almost 100% to meet board expenses.

RESPONSE: The Board noted that the increases in 1996 only affected examinations, reciprocity, and initial shop inspection fees. Renewal fees have not been increased since 1994.

COMMENT NO. 2: The following comments: 1) a review of the Board's budget and administrative costs, defined as mailing costs of notices to licensees, i.e. board vacancies, meeting dates and current lists of licensees; 2) the Board and licensees be informed and involved with the Department's Oracle computer conversion; 3) per diem of $50.00 per day for board members had remained the same for a number of years; and 4) how many boards have proposed fee increases were received from eleven individuals. Nine in written form and two oral testimonials.

RESPONSE: The Board noted that during the Executive Planning Process its proposed budget is reviewed by the Board, Division, Department, Governor's Office, Office of the Legislative Fiscal Analyst and the Legislature. At each board meeting, the Board reviews its revenues and expenditures. The board meetings are open to the public and interested persons may attend the meetings and observe and participate in the budget review.

The Board further noted that the office maintains an interested persons list specifically used to automatically mail out to interested persons mailings such as agendas, minutes, and public notices.

In response to the Division's conversion to Oracle, the Board noted that conversion was necessary because the current

Informix database is not Y2K compliant. Oracle conversion began in Fiscal Year 1998. The Department entered into a contract with a private computer consulting firm. The conversion will combine 45+ databases into one. In addition to becoming Y2K compliant, standardization will allow the Division to operate more efficiently. Better service will be provided to licensees and other agencies because extracted information will be more accurate. Conversion costs were based on the number of records transferred per board. Funding for Oracle was submitted to and approved by the Legislature.

Per diem is established on a statewide basis and is set forth in the Department of Administration's statutes. The statute affects all boards and commissions in state government. The Board, at this time and on its own, is not interested in pursuing a change in this statute.

Based on information provided to the Board by staff, about fourteen boards are in the process of increasing their fees for various reasons.

COMMENT NO. 3: At the hearing, one individual requested an explanation of recharges.

RESPONSE: Recharge provides funding for the Division's budget. The Division's budget is a proprietary account and the Board's budget is a special revenue account. The Division budget covers the costs of administrative support provided to all boards of the Division on a fiscal year basis. The Division does not generate its own revenue. Each board pays a recharge to the Division, and such recharges are assessed the boards on an equitable basis as authorized by statute. The recharge is allocated based upon individual board budget requests. Adjustments are made to board budgets if they pay their own office rent and salaries. Based on the adjusted budget, a percentage rate is calculated for each board. That rate is applied to the Division's budget to determine the recharge assessment. The Division's budget (recharges) goes through the same legislative approval process as does a board budget.

COMMENT NO. 4: One written comment received did not oppose the fee increase but asked if revenues collected exceed the Board's budget.

RESPONSE: The Board noted that revenues collected do not exceed the Board's budget when funding for Oracle, which is a separate budget, is taken into consideration.

COMMENT NO.5: One written comment received opposed the fee increases and questioned why the Board even has out-of-state expenses.

RESPONSE: Out-of-state expenses include travel, lodging, meals and registration. Travel must be approved unanimously by the Board and then approved by the Department of Commerce. Typically, the Board sends two of its members to the Annual

Conference of the National Association of Boards of Barbers of America. The Board believes that participation at the national level is necessary so that Montana has input into issues which directly affect licensing and regulation in Montana.

COMMENT NO. 6: One written comment received opposed the fee increases and recommended combining the Cosmetology and Barber boards to cut costs, put together one inspection form for all shops, allow dogs to be present in shops, and send inspectors to common sense and courtesy classes.

RESPONSE: On several occasions, discussion of combining the Cosmetology and Barber boards has taken place. Legislation would be required to achieve a combined board and to date neither board has pursued such action. Inspection forms have been revised, however, board requirements are different which necessitates the use of different forms. In the interest of public safety, current sanitation regulations prohibit the presence of all animals in barbershops. The Board will explore possibilities of customer service training for all employees.

BOARD OF BARBERS
MAX DEMARS, CHAIRMAN

BY: Annie M Bartos

ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

BY: Annie M Bartos

ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, September 13, 1999.

BEFORE THE BOARD OF COSMETOLOGISTS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment of a rule pertaining to fees	))))	NOTICE OF AMENDMENT OF ARM 8.14.814 FEES - INITIAL, RENEWAL, PENALTY AND REFUND FEES

TO: All Concerned Persons

1. On March 25, 1999, the Board of Cosmetologists published a notice of proposed amendment of ARM 8.14.814 pertaining to fees at page 439, 1999 Montana Administrative Register, issue number 6.

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

3. No comments or testimony were received.

BOARD OF COSMETOLOGISTS
VERNA DUPUIS, CHAIRMAN

BY: Annie M. Bartos

ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

BY: Annie M. Bartos

ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, September 13, 1999.

BEFORE THE BOARD OF PRIVATE SECURITY
PATROL OFFICERS AND INVESTIGATORS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment) NOTICE OF AMENDMENT OF
of a rule pertaining to fees) 8.50.437 FEE SCHEDULE

TO: All Concerned Persons

1. On March 25, 1999, the Board of Private Security Patrol Officers and Investigators published a notice of public hearing on the proposed amendment of the above-stated rule at page 459, 1999 Montana Administrative Register, issue number 6. The hearing was held on April 14, 1999 in Helena, Montana.

2. The Board has amended the rule as proposed, with the following changes:

"8.50.437 FEE SCHEDULE

(1)	License application fees		
(a)	Contract security company	~~$250~~	200
(b)	Proprietary security organization	~~250~~	200
(c)	Private investigator	~~250~~	200
(d)	Qualifying agents and resident managers	~~250~~	200
(e)	Security alarm installer	~~250~~	200
(f)	Private investigator trainee	~~250~~	200
(2)	through (2)(c) will remain the same.		
(3)	Licensee and employee renewals		
(a)	Licensee renewals	~~125~~	100
	One-half fee for renewals for each additional license or multiple licenses		

(3)(b) through (8) remain as proposed."

Auth: Sec. 37-1-134, 37-60-202, MCA; IMP, Sec. 25-1-1104, 37-1-134, 37-60-304, 37-60-312, MCA

3. The Board has thoroughly considered all comments and testimony received. Those comments, and the Board's responses thereto, are as follows:

COMMENT NO. 1: Nine written comments were received in opposition to the fee increases. Twelve individuals (two of whom had also submitted written comments) testified at the hearing in opposition to the fee increases.

RESPONSE: The Board, through extensive discussion and review of its fee justification worksheet, voted to adopt a decrease in the proposed fee schedule. The license application fees approved by the Board have been reduced by $50.00, and the licensee renewal fee has been reduced by $25.00. The Board noted that by statute fees must be set commensurate with program costs. The Board is self-funded through licensing fees and does not receive cash from the general fund to operate. Therefore, by reducing these fees, the Board realizes that its overall expenditures will need to be monitored for possible

future fee adjustments. The Board also noted that a significant expenditure was in fingerprint processing by the Montana Department of Justice and the FBI. Commerce staff will research the feasibility of having the fingerprint processing costs removed from the Board's budget.

COMMENT NO. 2: Four of the comments received indicated concerns pertaining to continuing education. The commentors indicated that they do not receive continuing education administered by the Board, and were concerned about the proposal stating that the proposed fee increases were to cover costs of administering continuing education.

RESPONSE: The Board acknowledged that it does not provide or require continuing education of its licensees. The proposed notice should not have stated that fees collected by the Board were to cover costs associated with continuing education.

BOARD OF PRIVATE SECURITY
PATROL OFFICERS AND INVESTIGATORS
GARY GRAY, CHAIRMAN

BY: Annie M Bartos

ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

BY: Annie M Bartos

ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, September 13, 1999.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.56.101 and 17.56.304 pertaining to underground storage tank repairs	NOTICE OF AMENDMENT (UNDERGROUND STORAGE TANKS)

TO: All Concerned Persons

1. On July 1, 1999, the Department of Environmental Quality published notice of the proposed amendment of ARM 17.56.101 and 17.56.304 pertaining to underground storage tank repairs at page 1496 of the 1999 Montana Administrative Register, Issue No. 13.

2. The Department has amended ARM 17.56.101 and 17.56.304 as proposed.

3. The Department received the following comments; responses follow:

COMMENT #1: Are the new rules going to make it impossible to repair tanks?

RESPONSE: No. The new rules simply ensure that any repairs made to tanks are done to a standard that provides assurance that the public health and the environment are not harmed. The proposed rules may allow fewer total number of repairs, but manufacturers have informed the Department that tanks repaired to their standards or under their supervision may be re-certified.

COMMENT #2: Having the manufacturers re-warranty repaired tanks is a good plan, but won't this be impossible to accomplish?

RESPONSE: The Department believes that if the tank manufacturer repairs a damaged or leaking tank to original tank specifications, or certifies that the repair performed by a third party meets that same standard and provides a re-warranty of the tank, the risk to public health and the environment would be minimized. The Department searched for another standard that would offer adequate protection and still allow repairs; however, no industry standard for repair other than those proposed would provide the tank manufacturers with sufficient confidence in the repair to re-warranty the repaired tank. The tank manufacturers assured the Department that they would allow repairs of their tanks if the manufacturers' representative conducted or provided oversight of the repair. The tank manufacturers also indicated they would be willing to re-warranty the tank if they were involved in the repair.

COMMENT #3: Couldn't specially-trained and certified contractors do the repairs and warranty their work?

RESPONSE: The Department does not have the authority or the budget to begin a special training program for underground storage tank repair contractors. Given the limited number of repairs that have been conducted over the program history, developing such a program would be very difficult to justify.

DEPARTMENT OF ENVIRONMENTAL QUALITY

by: *Mark A. Simonich*
MARK A. SIMONICH, Director

Reviewed by:

John F. North
John F. North, Rule Reviewer

Certified to the Secretary of State September 13, 1999.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 23.16.1802, 23.16.1826, and 23.16.1827 Responsible Party for Video Gambling Machine Taxes and Record Keeping	)))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On August 12, 1999, the Department of Justice published notice of the proposed amendment to ARM 23.16.1802, 23.16.1826 and 23.16.1827 at page 1739 of the 1999 Montana Administrative Register, Issue Number 15.

2. The agency has amended ARM 23.16.1802, 23.16.1826 and 23.16.1827 as proposed.

Comment 1: The Department of Justice received only one formal, written comment to the notice of proposed amendment. The comment is couched in terms of a proposed interpretation of the new rule, rather than opposition to, or support of, the proposed amendments to the rules. However, if the Department does not accept the suggested interpretation one could assume that the author would object to the amended rules. Therefore, the Department will treat the comment as an objection.

Steve Dawson, on behalf of B&S Entertainment, a licensed route operator, submitted on September 9, 1999, a memorandum he termed, "An Appeal for a Common Sense Interpretation of the Legislative Mandate Concerning 'designated representative' Duties." Mr. Dawson's memorandum expresses his hope to convince the Department that the existing rules and proposed amendments would allow a video gambling machine owner to designate a representative to act on the machine owner's behalf. Mr. Dawson would like the Department to interpret the gambling rules to allow the machine owner to delegate tax reporting and payment duties to the gambling operator who actually offers the machines to the public for play. Mr. Dawson is not objecting to the rule so much as he is suggesting a way to interpret the rule to allow him to continue to do business as he and a few others have operated prior to the legislature's recent statutory changes.

Mr. Dawson's comment suggests that requiring the video gambling machine owner to maintain income records and pay the gambling tax based on those records would adversely impact the market niche he and some other route operators have developed. By requiring the tax reporting and tax payments to go through the machine owner, he argues, the gambling operator/permittee will have to disclose income figures to the machine owner/route operator. Some gambling operator/permittees prefer to keep their income confidential from the machine owner/route operator. Mr. Dawson observes that under the previous law and rule design, the gambling operator/permittee could name a route operator as

a "designated representative" to act on his or her behalf. Mr. Dawson requests that the Department interpret the new law and rule design to allow the machine owner/route operator to name the gambling operator/permittee as the "designated representative" to maintain records and pay taxes on behalf of the machine owner.

Response: The legislature enacted amendments to Mont. Code Ann. §23-5-610 as part of a program that will develop a statewide automated accounting and reporting system for video gambling machines. Formerly this section read, "A licensed operator issued a permit under this part shall pay" the 15% gambling tax. Following the 1999 amendments to this section, it reads, "A licensed machine owner shall pay" the gambling tax. To facilitate the transition to a statewide automated system, the legislature declared that the machine owner should now be the entity responsible for the tax. Logically, with the tax payment responsibility goes the tax reporting and tax records maintenance duties. Some of Mr. Dawson's gambling operator/permittee clients are unwilling to allow Mr. Dawson access to their gambling income records which gives rise to this issue.

Mr. Dawson suggests that a route operator could designate the gambling operator/permittee as his or her designee for record keeping and tax reporting/payment. Mr. Dawson adds, "Everyone understands that ultimate responsibility lies with the machine owner." Under Mr. Dawson's vision, the route operator would place blind faith in the gambling operator/permittee, trusting that the gambling operator will maintain complete records and will accurately and timely file tax returns and pay the proper tax. If the Department discovers some error, whether intentional or inadvertent, the route operator, according to Mr. Dawson, would willingly accept any sanction because he is, after all, "ultimately responsible." There are two flaws in this reasoning: a) the old system was specifically authorized by statute; and b) Mr. Dawson's design is inconsistent with the Department's regulatory mandate.

Pared down to its core, Mr. Dawson's point is this: Under the old system the operator could assign duties to the machine owner/route operator; under the new system the machine owner/route operator should be able to assign duties to the operator. The old system is based on a statute that allows a route operator to pay permit fees and taxes for an operator. Mont. Code Ann. § 23-5-130(1). The Legislature did not create a similar statute for the new system. The machine owner/route operator may still name a "designated representative" for some functions, but there is no statute which allows an operator/permittee to pay taxes for the machine owner/route operator.

There is a second reason why Mr. Dawson's proposed interpretation is unworkable. The Department is charged with administering the gambling code and rules. Mont. Code Ann. §23-5-115. The legislature has declared that the code should be interpreted to "maintain a uniform regulatory climate," "protect

legal public gambling activities from unscrupulous players and vendors," and "protect the state and local governments from those who would . . . deprive those governments of their tax revenues." Mont. Code Ann. §23-5-110(1). A significant amount of the Gambling Control Division's energy is devoted to a) collecting taxes; b) attempting to assure that each operator pays his or her fair share of taxes; and c) pursuing administrative contested case actions against those who fail to maintain tax records or pay their tax as required. The Department strives to maintain a level playing field for all gambling licensees and at the same time collect the proper taxes. To succeed, the Department must have available to it meaningful sanctions for those who would violate the law.

Mr. Dawson's proposal would force the Department to penalize a forthright machine owner/route operator if his client, the gambling operator, committed a violation. The gambling operator could commit an offense and be insulated from responsibility by the route operator. The Department does not pursue violations for the sake of collecting civil penalties - the point is to assure compliance. Penalizing the wrong licensee would do nothing to promote compliance and further the state's public policy on gambling.

Under the amended rules, as required by the 1999 legislation, the machine owner is responsible for paying the gambling tax. With that responsibility comes the duty to maintain the necessary records and pay the tax. Under the legislature's new design, the machine owner (in this case the route operator) cannot walk away from this responsibility even if another volunteers to shoulder it. Therefore, the Department must overrule Mr. Dawson's objection to the amendments.

By: Margaret S. Baker, Chief Deputy
for Joseph P. Mazurek, Attorney General

Melanie Symons
Melanie Symons, Rule Reviewer

Certified to the Secretary of State September 13, 1999

BEFORE THE DEPARTMENT OF MILITARY AFFAIRS
OF THE STATE OF MONTANA

In the matter of the adoption of new rules for the administration of the Education Benefit Program for the Montana National Guard	)))))	NOTICE OF ADOPTION

TO: All Concerned Persons

1. On July 22, 1999, the department of military affairs published notice of the proposed adoption of new rules I through VI pertaining to the administration of the Montana national guard education benefit program (EBP) at page 1619 of the Montana Administrative Register, issue number 14.

2. The agency has adopted rules I through VI (ARM 34.6.101 through 34.6.106) as proposed.

3. No written comments or testimony were received.

By: _____
John E. Prendergast, Director
Department of Military Affairs

_____
James P. Moran, Rule Reviewer

Certified to the Secretary of State September 13, 1999.

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

In the matter of the adoption of Rules I through XXI pertaining to network adequacy in managed care	))))	NOTICE OF ADOPTION

TO: All Interested Persons

1. On July 22, 1999, the Department of Public Health and Human Services published notice of the proposed adoption of the above-stated rules at page 1627 of the 1999 Montana Administrative Register, issue number 14.

2. The Department has adopted the rules V (37.108.208), VII (37.108.215), VIII (37.108.216), XI (37.108.221), XV (37.108.235), XVI (37.108.236), XVII (37.108.240), XVIII (37.108.241), XIX (37.108.242), XX (37.108.250) and XXI (37.108.251) as proposed.

3. The Department has adopted the following rules as proposed with the following changes from the original proposal. Matter to be added is underlined. Matter to be deleted is interlined.

RULE I (37.108.201) DEFINITIONS The following definitions, in addition to those contained in 33-36-103, MCA, apply to this chapter:

(1) and (2) remain as proposed.

(3) "Geographic service area" means ~~the sum of the~~ a geographic ~~areas~~ area of Montana in which a health carrier has a network that has been deemed adequate by the department ~~and for which the health carrier has received approval from the insurance commissioner as an "area of operation" in which to market and issue health insurance coverage~~.

(4) "Mid-level provider" means a physician assistant-certified or an advanced practice registered nurse.

(5) "Non-urgent care with symptoms" means care required for an illness, injury, or condition with symptoms that do not require care within 24 hours to prevent a serious risk of harm but do require care that is neither routine nor preventive in nature.

(5) through (7) remain as proposed but are renumbered (6) through (8).

AUTH: Sec. 33-36-105, MCA
IMP: Sec. 33-36-103 and 33-36-105, MCA

RULE II (37.108.205) ACCESS PLAN FILING AND REVIEW GUIDELINES (1) When a health carrier submits a proposed access plan to the department for review and approval, the department will either approve, disapprove, or request additional

information on the proposed plan within 60 calendar days. The department has a total of 60 calendar days to review and issue a decision concerning any proposed access plan, not including any 30 calendar day response period that may be granted a health carrier proposing the plan. The department may grant up to two 30 calendar day response periods during the review of each access plan.

(2) During the departmental review of its proposed access plan, a health carrier must respond to a departmental request for information within 30 calendar days after the date of the request. If the response remains incomplete, the department may grant the health carrier a second 30 calendar day period within which to submit a complete response. If, after two departmental requests for information, the health carrier fails to provide information that the department deems sufficient to satisfy its requests, the access plan will be disapproved and the health carrier will be required to submit a new proposed access plan prior to enrolling initial or additional enrollees.

(3) remains as proposed.

AUTH: Sec. 33-36-105, MCA
IMP: Sec. 33-36-105 and 33-36-201, MCA

RULE III (37.108.206) ACCESS PLAN UPDATES (1) Health carriers shall be responsible for monitoring the status of their networks and must submit an updated access plan to the department within 30 calendar days ~~of~~ after a ~~material~~ significant change in the status of their network. For the purposes of this rule, a ~~material~~ significant change is a change in the composition of a health carrier's provider network or a change in the size or demographic characteristics of the population enrolled with the health carrier that renders the health carrier's network non-compliant with one or more of the network adequacy standards set forth at (Rules VII (37.108.215), IX (37.108.219), and XII (37.108.227)). If the revised access plan is not submitted within 30 calendar days after the material change in network status occurs, the health carrier must cease enrolling new recipients in the affected geographic service area until the revised access plan is approved by the department. Review of the revised access plan is subject to the procedures and consequences outlined in (Rule II (37.108.205)).

(2) remains as proposed.

AUTH: Sec. 33-36-105, MCA
IMP: Sec. 33-36-105 and 33-36-201, MCA

RULE IV (37.108.207) ACCESS PLAN SPECIFICATIONS (1) In addition to meeting the requirements of 33-36-201(6), MCA, an access plan for each health carrier offered in Montana must describe or contain the following:

(a) a list of participating providers which describes the type of provider, their specialty or credentials, and also their names, business addresses, zip codes, and phone numbers. The list must indicate which providers are accepting new patients;

(1)(b) through (d) remain as proposed.

(e) a copy of the ~~information filed with the commissioner of insurance outlining~~ health benefit plan's booklet or policy or certificate of coverage, a summary of benefits for each policy (if available), the list of network providers for each policy, and any other important information about the health carrier's services and features which must be provided by the health carrier to either potential enrollees or covered enrollees. This information must be presented in language that is comprehensible to the average layperson. The information to be provided includes, but is not limited to:

(1)(e)(i) through (i) remain as proposed.

(j) the health carrier's ~~method of~~ procedures for complying with geographic accessibility requirements as outlined in (Rules IX (37.108.219) and X (37.108.220)).

AUTH: Sec. 33-36-105, MCA
IMP: Sec. 33-36-105 and 33-36-201, MCA

RULE VI (37.108.214) MANDATORY COVERAGE (1) The following must be reimbursed without regard to either prior authorization or the contractual relationship between the health carrier and the provider:

(a) remains as proposed.

(b) covered services that do not meet the criteria for emergency services, but which were medically necessary and immediately required because ~~of~~ an unforeseen illness, injury or condition occurred when the enrollee was outside the health carrier's geographic service area and ~~the enrollee~~ could not reasonably access services through the health ~~carrier because he or she was outside the health carrier's service area~~ carrier's network of providers; and

(c) renal dialysis, if covered, that is provided while the enrollee is outside the health carrier's service area for no more than 30 calendar days per year.

AUTH: Sec. 33-36-105, MCA
IMP: Sec. 33-36-105, 33-36-201 and 33-36-205, MCA

RULE IX (37.108.219) GEOGRAPHIC ACCESS CRITERIA (1) In order to be deemed adequate, a provider network must fulfill all access criteria of the rules in this chapter within the following geographic restrictions:

(a) to the extent that services are covered by the health carrier, the health carrier must have an adequate network of primary care providers, a hospital~~,~~ and/or medical assistance facility, and a pharmacy that is located within a ~~45~~ 30 mile radius of each enrollee's residence or place of work, unless:

(1)(a)(i) remains as proposed.

(ii) the provider is available but does not meet the health carrier's reasonable credentialing requirements; and

(b) if no qualified provider for a service covered by the plan exists within a ~~45~~ 30 mile radius of an enrollee's residence or place of work, the health carrier must document how

covered services will be provided at no additional charge to enrollees through referrals to qualified providers both inside and outside the ~~45~~ 30 mile radius~~; and~~ .

~~(c)~~ (2) ~~enrollees~~ Enrollees may, at their discretion, select participating primary care providers located farther than ~~45~~ 30 miles from their homes and/or places of business.

(3) When an eligible employee in a group health plan neither resides nor works within a 30 mile radius of the network established pursuant to (1), the network may be deemed adequate subject to the following conditions:

(a) Insured employees living and working outside the 30 mile radius of the primary place of work of their employer, as well as their dependents, may not be penalized either in benefits or by being required to travel outside the 30 mile radius from their own place of work to receive routine treatment typically provided by a primary care provider.

(b) The carrier may require employees to utilize a network primary care provider for referrals, including for referrals for routine treatment provided by a primary care provider. If such a requirement is imposed, access to the network primary care provider must be available to the insured by phone at no cost to the insured. A toll free number to the health carrier would satisfy this requirement.

(c) The maximum number of eligible employees residing and working outside the 30 mile radius of the primary place of work may not exceed, at the time of application for network approval, the following:

(i) for groups with two to five employees, one;

(ii) for groups with six to 15 employees, two;

(iii) for groups with 16 to 30 employees, three, and

(iv) for groups with 30 or more employees, 10% of the employees.

AUTH: Sec. 33-36-105, MCA
IMP: Sec. 33-36-105 and 33-36-201, MCA

RULE X (37.108.220) EXCEPTIONS TO GEOGRAPHIC ACCESS CRITERIA (1) remains as proposed.

(2) Good cause includes but is not limited to the circumstance where the health carrier has documented a good faith effort to negotiate a contract with local providers but has failed to reach an agreement within 60 days after the offer of a written contract from the health carrier. A good faith effort means an honest effort with the intent to deal fairly with providers and includes offering terms and conditions at least as favorable as those offered to other entities providing the same or similar services.

AUTH: Sec. 33-36-105, MCA
IMP: Sec. 33-36-105 and 33-36-201, MCA

RULE XII (37.108.227) MAXIMUM WAIT TIMES FOR APPOINTMENTS (1) An adequate network must meet the following criteria for all enrollees:

(1)(a) and (b) remain as proposed.

(c) appointments for non-urgent care with symptoms must be available within ~~5~~ 10 calendar days;

(1)(d) and (e) remain as proposed.

AUTH: Sec. 33-36-105, MCA
IMP: Sec. 33-36-105 and 33-36-201, MCA

RULE XIII (37.108.228) REFERRAL AND SPECIALTY CARE REQUIREMENTS (1) Procedures for referrals ~~to consulting specialists~~ must be clearly outlined in the access plan, in literature provided to all enrollees, and in literature or contracts provided to all participating providers.

(2) and (3) remain as proposed.

(4) An enrollee must be allowed to designate a participating pediatrician, family practice physician, or, if the health carrier allows a mid-level provider to be a PCP, a mid-level provider specializing in primary care of children as the PCP for the enrollee's children and/or adolescents who are covered by the health carrier.

(5) remains as proposed.

(6) The access plan must include policies and procedures by which an enrollee with a condition that requires ongoing care from a specialist may obtain a standing referral to a participating specialty provider. For purposes of this rule, standing referral means a referral for ongoing care to be provided by a participating specialty care provider that authorizes a series of visits with the specialist for either a specific time period or a limited number of visits, and which is provided according to a treatment plan approved by the carrier and developed by the enrollee's PCP, the specialty provider, and the enrollee.

AUTH: Sec. 33-36-105, MCA
IMP: Sec. 33-36-105 and 33-36-201, MCA

RULE XIV (37.108.229) CONTINUITY OF CARE AND TRANSITIONAL CARE (1) through (1)(c) remain as proposed.

(2) A health carrier must allow enrollees in the categories described in (1)(a) through (1)(c) above to continue to receive services from their existing providers when their provider's contract is terminated by the carrier without cause, so long as those providers agree to abide by the payment rates, quality-of-care standards and protocols, and reporting standards which apply to comparable participating providers.

(3) remains as proposed.

AUTH: Sec. 33-36-105, MCA
IMP: Sec. 33-36-105 and 33-36-201, MCA

4. The Department has thoroughly considered all commentary received. The comments received and the department's response to each follow:

RULE I (37.108.201)

COMMENT #1: Are physical therapists considered "specialty providers" or "specialists" in the proposed rules, and if not, how do the rules include them?

RESPONSE: Under this rule, physical therapists are not considered speciality providers but may be participating providers. "Participating provider" is defined in 33-36-103(19), MCA, and is used in Rules IV (37.108.207), XIII (37.108.228), and XIV (37.108.229).

COMMENT #2: Concerning the definition of "geographic service area", one commentator contended that the reference to the insurance commissioner's "area of operation" was inaccurate, another questioned how the definition fit with Rule XI (37.108.221), and another requested clarification of the word "sum".

RESPONSE: The Department agrees that the above definition did not work well with Rule XI (37.108.221) and that the definition merits rewording; the definition is being amended accordingly.

COMMENT #3: The Department should better define what it means by the term "non-urgent care with symptoms".

RESPONSE: The Department agrees and has added a definition of "non-urgent care with symptoms".

COMMENT #4: The definition of "advanced practice registered nurse" is unnecessary because it is already defined by statute.

RESPONSE: The statutory definition of that phrase in 37-8-102, MCA, is "a registered professional nurse who has completed educational requirements related to the nurse's specific practice role, in addition to basic nursing education...", while 37-8-202(5), MCA, which empowers the board of nursing to set educational requirements for advanced practice registered nurses, indicates that "[advanced practice registered nurses include nurse practitioners, nurse-midwives, nurse-anesthetists, and clinical nurse specialists." For convenience, the department's definition simply consolidates the two provisions and is therefore retained.

COMMENT #5: "Certified" should be added after "physician assistant" in the definition of "mid-level provider".

RESPONSE: The department agrees that "physician assistant-certified" is the proper designation and made the change.

RULE II (37.108.205)

COMMENT #6: The access plan should contain descriptions of the

populations to be served, projections regarding the characteristics of these populations, and a map of the source area with locations of all providers.

RESPONSE: This information should be part of the plan's marketing strategy. Specific requirements to include this in the access plan would be administratively burdensome and expensive given the penetration of managed care in the state at this time. The quality assurance rules are currently being developed to implement Title 33, Chapter 36, Part 3, MCA, and may address consumer component requirements.

COMMENT #7: Reference to "calendar days", rather than "days" alone, should be added in Rule II (37.108.205) for clarity and consistency with the three references already there to "calendar days".

RESPONSE: The department agrees, and all references to "days" in Rule II (37.108.205) have been changed to "calendar days".

COMMENT #8: What are the time lines for submission and approval of initial access plans?

RESPONSE: The network adequacy statutes, in 33-36-201(4), MCA, require the initial access plans to be filed with the department by October 1, 1999. The rest of the review time periods are prescribed by these rules. Although it is apparent that, given the fact that both the law and its implementing rules become effective very soon, both health carriers and the department may find it difficult to meet the prescribed time frames for implementing the new rules, the statutory deadline is not negotiable, and every effort should be made to comply with the dates outlined in this rule.

COMMENT #9: The department should have only 15 days, rather than 60, to make its initial request for additional information.

RESPONSE: The department disagrees. A deadline of 15 calendar days for the initial departmental review, given staffing restrictions, competing responsibilities, etc., is impractical and unreasonable, and the department has determined that the 60 day deadline remains the most reasonable.

COMMENT #10: Freezing new enrollments after an access plan is disapproved, pending approval of a revised plan, exceeds the department's statutory authority, which is limited by 33-36-401, MCA, to recommending corrective action to the carrier in question and/or recommending to the insurance commissioner that the latter take enforcement action.

RESPONSE: The department disagrees that the law in effect prohibits the department from barring a carrier found to have an inadequate access plan from enrolling additional or, in the case of a new carrier, initial enrollees until a revised plan is

submitted. The fact that 33-36-401, MCA, establishes two means of enforcement that the department can utilize does not mean that no other action can be taken by the department to carry out its duty to ensure adequate networks or preclude the department from freezing new enrollments when a plan is found inadequate. Section 33-36-201(4), MCA, obligates existing plans to, by October 1, 1999, submit to the department "an access plan complying with (6) and the rules of the department.." [emphasis added]. The same subsection of 33-36-201, MCA, requires new carriers offering a plan on or after October 1 to do the same "before offering the managed care plan." That language assumes and endorses the principle that a carrier should not be enrolling individuals until an adequate network is in place. The provisions of Rule II (37.108.205) complained of are clearly in step with the mandate in 33-36-201(4), MCA. In addition, 33-36-105, MCA, gives the department the authority and duty to, by rule, establish procedures for ensuring compliance with network adequacy standards. Once again, Rule II (37.108.205)'s freeze of new enrollees if a plan is found inadequate implements that statutory provision by ensuring compliance with the standards.

RULE III (37.108.206)

COMMENT #11: The argument contained in Comment #10 in reference to Rule II (37.108.205) was repeated in reference to Rule III (37.108.206) and its requirement that, if a revised access plan is found to be inadequate, no new enrollees be enrolled until one is approved.

RESPONSE: See the response to Comment #10.

COMMENT #12: The word "significant" should replace the word "material".

RESPONSE: The Department agrees and has made the change.

RULE IV (37.108.207)

COMMENT #13: The access plan specifications should contain more consumer components, e.g., information about the physician's education, results of consumer satisfaction surveys, a 1+800 number, etc.

RESPONSE: The department felt that the quality assurance rules currently under development and implementing Title 33, Chapter 36, Part 3, MCA, are more appropriate than the network adequacy rules for such components and will be considered for inclusion in the quality assurance rules.

COMMENT #14: The reference in Rule IV (37.108.207)(1)(a) to the addresses of participating providers should be specifically business addresses.

RESPONSE: The department agrees and has made the requested change.

COMMENT #15: The word "procedures" should replace "policy" in Rule IV (37.108.207)(1)(e)(v).

RESPONSE: The department disagrees. The language in the rule will not change because the two words are interchangeable and the change would have no impact on the intent of the rule.

COMMENT #16: The filing and approval procedures of the insurance commissioner should be sufficient to comply with this rule.

RESPONSE: The language in the rule will not change because all items in this rule are essential to describe the health carrier's access plan.

COMMENT #17: In Rule IV (37.108.207)(1)(j), the more appropriate word "procedures" should be substituted for "method".

RESPONSE: The department agrees and has made the change.

COMMENT #18: Because there is no particular filing with the commissioner of insurance that contains the specific information required by (1)(e)(i) through (xi), the requirement is confusing and should be removed.

RESPONSE: The department does not agree to removing the subsection entirely, but instead amended subsection (e) to eliminate any confusion, using language suggested by the commissioner of insurance.

COMMENT #19: Standards should be included in subsection (1)(d) as to what is considered reasonable in the removal of barriers to gaining access to services.

RESPONSE: The language in the rule will not change because it would be impossible to identify all possible barriers that may exist. The health carrier is given considerable leeway in how it meets this obligation and complies with the standards set forth in Rule XVI (37.108.236). Furthermore, it is assumed the health carrier will do all it can to avoid complaints from dissatisfied enrollees.

COMMENT #20: The language in subsection (1)(e)(vi) should be deleted because the information is the same as that already required by subsection (1)(e)(v).

RESPONSE: The language was not changed because the two subsections do require two separate types of information and because the information is required for access plan specifications and for the benefit and protection of health care consumers.

COMMENT #21: The meaning of the phrase "facilitate review of post-evaluation or post-stabilization services" in subsection (1)(e)(viii) should be clarified and the subsection preferably should be deleted.

RESPONSE: The language in this rule is necessary to access plans specifications and will not change. To "facilitate" logically means to aid, expedite, or assist, and the department's interpretive guidelines will provide further clarification of the phrase in question.

COMMENT #22: If the health carrier must have a network of specialists, including providers from every specialty, what process will be used to correct an insufficient network, who makes that determination, and is there a time period within which to correct a finding of insufficiency?

RESPONSE: The health carrier must insure access to specialty care. The options to correct an insufficient network may include, but are not limited to, recommending termination of the health benefit plan to the commissioner of insurance or seeking other corrective action. An insufficient network is a failure to meet the requirements of the legislation, and the department will make this determination. As yet, there is no time period set within which to correct a finding of insufficiency.

COMMENT #23: There should be more stringent language in the rule to demonstrate that when an HMO begins marketing in a new area, members of the provider network are actually accepting new patients.

RESPONSE: The department did not change the proposed language because it believes the proposed language is already adequate to provide the department with the information it needs to determine whether the network is adequate. If the HMO has an extensive list of providers, but the providers are not accepting new patients, then the network is not adequate. The department can determine compliance by monitoring access plan specifications as outlined in Rule IV (37.108.207).

COMMENT #24: In subsection (1)(j), how can a health carrier have a "method" of complying with geographic accessibility requirements?

RESPONSE: The department agrees the language could be improved, and, in response, has changed "method of" to "procedures for".

RULE V (37.108.208)

COMMENT #25: The numbers and types of providers should be limited to primary care providers, hospitals, and pharmacies.

RESPONSE: Rule V (37.108.208) will remain the same. The

Department believes this language would negate the intent of the statutes being implemented, which is to ensure that managed care networks have sufficient numbers and type of all of the types of providers needed by the consumers the network serves.

RULE VI (37.108.214)

COMMENT #26: The reference in (1)(b) to accessing "services through the health carrier" should be amended to refer to the carrier's network of providers, since a health carrier does not itself provide health services.

RESPONSE: The department agrees and has rephrased the provision to clarify its meaning.

COMMENT #27: For clarity, the phrase "per year" should be added after "30 calendar days" in subsection (1)(c) concerning renal dialysis.

RESPONSE: The department agrees and has made the suggested change.

COMMENT #28: What is meant by an "unforeseen illness, injury or condition" in (1)(b)?

RESPONSE: An unforeseen event is generally one that is unanticipated, sudden, or occurring by chance. For example, an enrollee may slip and fall on the ice, experience pain from the fall and uncertainty as to the extent or seriousness of the injury, and seek medical care to determine if treatment is needed. The department did not make any change in the language because it believes the meaning is already sufficiently clear.

COMMENT #29: Does subsection (1)(b) apply only when the person is outside the service area for reasons other than seeking out medical care?

RESPONSE: The answer is yes, and the department amended the language to make that fact clearer.

COMMENT #30: A non-participating provider differential should be considered with respect to subsection (1)(b).

RESPONSE: The language in the rule was not changed. The health care provider must ensure that covered services are provided to the enrollee.

COMMENT #31: To require health carriers to reimburse out-of-network providers under certain circumstances exceeds the statutory authority of the department. In addition, 33-36-205(2), MCA only requires payment for "emergency services obtained from a non-network provider within the service area of a managed care plan..", and only for certain emergency services.

RESPONSE: The fact that 33-36-205(2), MCA, contains the above requirement as applied to emergency services provided within the carrier's geographic service area does not mean that emergency services provided outside of that area do not have to be paid for by the carrier. Section 33-36-201, MCA, requires that "[c]overed persons...have access to emergency care 24 hours a day, 7 days a week." That requirement cannot logically be met unless a plan pays for emergency services to enrollees regardless of where they occur or who provides them. As for the contention that only certain emergency services need be covered, the rule refers to "emergency services as defined in 33-36-103, MCA", which in turn states that such services are those "required to evaluate and treat an emergency medical condition."

Section 33-36-205, MCA, allows a carrier to refuse to pay for services that are found not to be necessary, a provision that parallels the language in the definition that the services be "required to evaluate and treat" the condition. (emphasis added) Therefore, the reference in Rule VI (37.108.214) to coverage of emergency services complies with the statutory language and was not changed. As for the contention that the department does not have the authority to require the other two categories of services that Rule VI (37.108.214) requires to be reimbursed, regardless of the existence of preauthorization or the status of the provider as a network provider, the department disagrees. Section 33-36-201, MCA, contains language indicating that non-network providers have to be reimbursed whenever the network is insufficient to provide a covered benefit. In line with that language, Rule VI (37.108.214)(1)(b) and (c) require reimbursement only if the services provided out-of-network are services covered by the plan.

RULE VII (37.108.215)

COMMENT #32: Why were the ratios cited chosen and why were no ratios specified for speciality providers and specialists?

RESPONSE: Rule VII (37.108.215) will remain the same. The ratios set in this rule are nationally accepted ratios for primary care providers and are not intended to set ratios for specialty providers or specialists. There is little information nationally concerning acceptable ratios for specialty providers, so none were included in the rule.

COMMENT #33: It should be clarified that a mid-level PCP is a mid-level provider as defined by Rule I (37.108.201)(4), and the rule should specify that if the mid-level provider is intended to be a PCP, the mid-level PCP has to have been designated as such by the health carrier.

RESPONSE: A mid-level PCP is in fact a mid-level provider, but since the language already fairly indicates that fact, no change was made. With regard to Rule VII (37.108.215) needing to

specify that the mid-level PCP has been designated as such by the health carrier, the department believes that this would be redundant because Rule I (37.108.201)(5) clearly indicates that any PCP has to be designated by the health carrier.

RULE IX (37.108.219)

COMMENT #34: A large number of comments were received regarding the 45 mile radius requirement, many requesting that the radius be returned to 30 miles, others supporting the 45 mile radius, and others suggesting that a mileage of greater than 45 miles should be adopted.

RESPONSE: The department has carefully reviewed all of the mileage options. A comparison of data relevant to the relative impact of both the 30 and the 45 mile radii demonstrates that the 30 mile radius offers the most beneficial and balanced approach to the geographic access issue, for the consumer, the health care provider and the managed care organization. When the 30 mile access radius is applied, access to an additional 32 hospitals, clinics, and allied health care providers is available compared to the potential available providers using the 45 mile radius. The department believes that it is advantageous for all parties to have the largest possible number of potential providers available, both inside the geographic access area and outside or adjacent to the geographic access area. The Department also believes the 30 mile geographic access area will reduce the potential of patients having to leave their local community for primary care services and at the same time reduce the possible negative impacts to the local health care system.

COMMENT #35: Regarding the geographic access exception in (1)(a)(i), the documentation that a carrier provides regarding usual and customary travel patterns should be subject to approval by the department.

RESPONSE: Any exception to the geographic access requirements is inherently subject to review by the Department, since it is a factor in determining the adequacy of the network; consequently, no change in the rule is necessary.

COMMENT #36: The language in (1)(c) should be changed to state "outside the approved geographic service area" in place of "farther than 45 miles from their homes..."

RESPONSE: Because the existing wording is consistent with that in (1)(a) and the suggested change would not necessarily clarify the intent of the rule, no change was made, other than, as previously noted, to change 45 to 30.

COMMENT #37: Does the rule not require specialty providers to be included within the prescribed radius?

RESPONSE: Yes. The rule does not apply to specialty providers.

COMMENT #38: Subsection (1)(b), unlike subsection (a), appears to apply to any "qualified provider", not just to primary care providers, hospitals or Medical Assistance Facility (MAF), and pharmacies. The rule should be reworded to clarify that the entire rule applies only to PCPs, hospitals/MAF's, and pharmacies.

RESPONSE: The rule is not intended to be so limited; subsection (1)(b) does apply to any qualified provider.

COMMENT #39: If an exception is granted pursuant to Rule X (37.108.220), does Rule IX (37.108.219)(1)(b) apply at all?

RESPONSE: Yes, even if an exception is granted pursuant to Rule X (37.108.220).

COMMENT #40: Subsection (1)(c) should be more appropriately designated subsection (2).

RESPONSE: The department agrees and has made the suggested change.

COMMENT #41: Concerning subsection (1)(c), the rule should be amended to indicate that, when an enrollee selects a provider outside the geographic access area, the health carrier will be deemed in compliance with the geographic accessibility standard or a good cause exception exists to that standard.

RESPONSE: No change was made in the rule because it was considered unnecessary. It is implicit that if an enrollee freely chooses to have a primary care provider outside the prescribed radius, the carrier will not be regarded as in violation of the geographic access requirement.

COMMENT #42: Subsection (1)(c) should be amended to allow enrollees to also select a hospital, medical assistance facility (MAF), and/or a pharmacy located outside the geographic access area, in addition to a primary care provider.

RESPONSE: The department did not make the suggested change. An enrollee can select any of these provider types if allowed by the carrier. The department did not feel it would be fair to the plans to require them to cover the cost of any hospital, etc., without the approval of the plan.

COMMENT #43: If some eligible employees do not live and work within the prescribed radius around the primary place of work, the network should still be regarded as adequate if the maximum number of those outside the radius does not exceed one, in the case of a group with 2 to 5 employees; two, in the case of a group with 6 to 15 employees; three, in the case of a group with 16 to 30 employees; and for groups with 31 or more employees,

10% of the employees.

RESPONSE: The department agrees with the proposed changes and has amended the rule accordingly.

COMMENT #44: Rule IX (37.108.219)(1)(c) should apply only to traditional health maintenance organization plans, which are more restrictive in terms of the providers a patient may see; the proposed language does not work with a point-of-service option.

RESPONSE: The department believes the language is clear that this rule is not applicable to a point-of-service product.

COMMENT #45: The commissioner of insurance suggested that insured employees and their dependents living outside the prescribed radius of the network be protected from benefit penalties or from having to travel outside the radius around their own place of work to receive routine treatment from a primary care provider. Another commentator suggested that the commissioner's proposed language provided greater benefits to those dependents than to those under some current managed care plans.

RESPONSE: The department agreed to incorporate the commissioner of insurance's suggestion as best for both plans and out-of-area enrollees, incorporating a change in the process that avoids preferential treatment to out-of-area dependents.

COMMENT #46: The maximum number of eligible employees residing and working more than a 45-mile radius from the employer's primary place of business should not exceed 50 percent of the eligible employees in the employer's group.

RESPONSE: The department disagrees. Allowing 50 percent of eligible employees to live and work outside the 45 mile radius defeats the purpose of network adequacy. Therefore, the department adopted the recommendation of the commissioner of insurance that the outside limit would be 10% of the total number of employees. However, the department did add a requirement that the outlying enrollees reside and work outside the radius of the primary place of work and that the determination of the number of eligible employees would be determined at the time of application for network approval.

COMMENT #47: The commissioner of insurance recommended that, if a carrier required all employees to utilize a network PCP for referrals, access to the network PCPs would have to be available by phone at no cost to the insured. Another commentator asked that the toll-free phone call requirement be deleted because of lack of notice of it in the original notice to providers who would carry the burden of providing the access.

RESPONSE: The department adopted the commissioner's

recommendation in part, but, in agreement with the concern about the impact on providers, added, for clarification, that a toll-free number maintained by the health carrier would satisfy the requirement.

COMMENT #48: In reference to the out-of-area language requested by the insurance commissioner, another commentator suggested clarifying that employees who, at their discretion, pursuant to (1)(c), agree to use primary care providers outside of radius are not to be counted as "out-of-area" employees for purposes of the exception now included as subsection (3).

RESPONSE: The department felt the language was sufficiently clear already and did not make a change.

COMMENT #49: The rule should provide that out-of-area employees may seek primary care services from non-participating providers so long as these providers agree to abide by the payment rates, referral process, quality of care standards and protocols, and reporting standards that apply to comparable participating providers.

RESPONSE: The department did not adopt the suggested language because the purpose of this rule is to allow carriers, under certain limited circumstances, to market outside their network without penalizing the insured outside the network. The proposed language would penalize the insured outside the network.

COMMENT #50: The changes proposed by the Insurance Commissioner should be set out in a separate rule.

RESPONSE: The department believes there is no necessity for a separate rule, and that the suggested changes logically fit within Rule IX (37.108.219).

COMMENT #51: The "usual and customary travel pattern", as referenced in subsection (1)(a)(i), should be documented by the carrier and subject to approval by the department.

RESPONSE: The Department will be responsible for determining usual and customary travel patterns and will develop criteria to make such determinations, as well as interpretive guidance for this subsection.

COMMENT #52: Allowing an exception from the geographic accessibility requirements if a provider within the radius does not meet the credentialing requirements of the carrier could enable health plans to set credentialing standards in such a way that they avoid the geographic accessibility rule.

RESPONSE: Subsection (1)(a)(ii) requires the credentialing requirements to be reasonable. The Department will be responsible for determining whether any given requirements are

reasonable or not.

COMMENT #53: "Qualified provider", as used in (1)(b), is undefined and should be deleted.

RESPONSE: The department added clarifying language that a "qualified provider" was one qualified to provide a service covered by the relevant plan. Given that, it is plain that a qualified provider is a health care provider that is licensed by Montana to provide certain health care services or licensed as a health care facility.

COMMENT #54: The reference to medical assistance facilities is outdated because, under the federal Balanced Budget Act of 1997, they will be converted to "critical access hospitals" on October 1, 1999.

RESPONSE: The change in federal terminology does not alter the fact that what may be a "critical access hospital" under federal law is defined as a "medical assistance facility" under Montana law. Since the legal entity that is subject to Montana licensure standards is designated in 50-5-101, MCA, as a "medical assistance facility" rather than a "critical access hospital", these rules must continue to refer to MAF's.

RULE X (37.108.220)

COMMENT #55: Comments were received that ranged from support of the rule's allowance of potential exceptions from the geographic access requirements of Rule IX (37.108.219) to assertions that no exceptions should be allowed and the rule should be deleted altogether.

RESPONSE: Rule X (37.108.220) will remain the same because the department continues to agree with those that feel some exception process is necessary in order to deal with situations that may impact the geographic service areas and network adequacy. The department will prepare interpretive guidance for this rule and provide the guidance to all interested parties.

COMMENT #56: A "good faith effort" should be more precisely defined.

RESPONSE: Language was added to do so that parallels the definitions of "good faith" in Montana law. Beyond that, the department feels that it is impossible to include all of the factors and components that might define good faith efforts into a single definition.

COMMENT #57: In the phrase "The department may grant exceptions...if good cause to do so exists", the word "must" should be substituted for "may".

RESPONSE: The department did not make the requested change because it needs to have the ability to decline an exception even when good cause seems to exist in instances where granting an exception would compromise the adequacy of the network.

COMMENT #58: Subsection (2) should be replaced by language requiring health carriers and providers to negotiate in good faith to negotiate a contract that adheres to sound business principles, and if no agreement can be reached within 120 days, utilize an alternative dispute resolution process. If the ultimate ruling favors the carrier, it would be allowed to market its product, even without enough local providers under contract, but must, in that case, document how it will provide adequate provider access to enrollees in that area.

RESPONSE: No change was made. As noted above, the department has added language that more specifically defines good faith. As for lengthening the time period for reaching an agreement, the department continues to believe that 60 days is sufficient. As for dispute resolution, the rule already allows such a process and the department is responsible for the ultimate decision whether the network is adequate.

COMMENT #59: Subsection (2), defining a good faith effort as including an offer of terms and conditions at least as favorable as those offered to other entities providing the same or similar services, does not address the situation where two hospitals provide the same services but have vastly different financial circumstances, meaning that the same terms and conditions would not be acceptable to both. In addition, some recognition should be made of offers made by providers and facilities during negotiations.

RESPONSE: The department believes the current language can cover the situations as described, so no change was made.

RULE XI (37.108.221)

COMMENT #60: How does this rule work with the Rule I (37.108.201) definition of "geographic service area"?

RESPONSE: See the response to Comment #2.

RULE XII (37.108.227)

COMMENT #61: Several comments were made concerning the time limit within which non-urgent care with symptoms must be provided. It was suggested that it is unreasonable to expect a plan to provide non-urgent care with symptoms to its members within 5 calendar days, that the deadline be extended to 10 business days, and that the term "non-urgent care with symptoms" be removed altogether. Another party suggested that the

Department limit the definition to include only "illnesses, injuries, or conditions that require care within five calendar days in order to insure good health."

RESPONSE: As for the time period within which such care must be provided, the Department continues to assert that consumers need to be guaranteed access to care by health carriers for those conditions which fall in between urgent and routine conditions. Non-urgent care with symptoms is care required for an illness, injury or condition with symptoms that does not require care within 24 hours to prevent a serious risk of harm but is also not routine or preventive in nature. Examples would include a consumer discovery of a lump in a breast or testicle upon self-examination; a health care consumer who is afebrile but is expectorating green phlegm and has chest pain upon inspiration; or a consumer with a history of low back pain who is newly experiencing sciatic pain that is unrelieved by over-the-counter medications, stretching, rest, ice packs, etc. These are but some conditions for which a consumer might reasonably expect access to care in a shorter time-frame than the 45 days specified for routine care. The Department amended rule XII (37.108.227)(1)(c) to include a deadline of 10 calendar days rather than the five proposed in the original notice for non-routine care. Ten calendar days will ensure adequate consumer access for non-urgent care with symptoms without being unduly burdensome on health carriers, especially in cases like holiday periods where there are fewer business days than usual.

COMMENT #62: Appointments for routine or preventive care should be available within 60 rather than 45 days. This would prevent providers from feeling penalized for participating in a managed care contract because a 45-day period forces the provider to give preferential treatment to managed care patients over traditional fee-for-service patients. The proposed time limit would make it less attractive for a provider to contract with managed care plans, and since managed care plans are capitated and discounted, it would allow a different standard for access for these consumers.

RESPONSE: These rules apply only to maximum waiting times that a health carrier must guarantee. They do not limit a health carrier to using only a primary care provider to guarantee access within the specified appointment times. The comments about the relationship between the health carrier and its network providers deal with a contractual matter beyond the scope of this rule or the enabling legislation. This rule merely seeks to guarantee consumer access within a reasonable period. The department continues to assert that 45 days is a reasonable period, which was adopted after extensive literature research and meetings with interested parties, and the department rejects the suggestion that this time frame be extended to 60 days.

COMMENT #63: Tracking preventive services such as immunization

and mammography rates, which are quality issues that are also tracked through Health Employer Data and Information Set (HEDIS) reporting, appears to combine quality and access issues in this rule.

RESPONSE: The Department believes the requirement is an access issue--that a consumer must have "access to preventive services" such as immunizations and mammography services within a reasonable time frame to protect that consumer's health. For immunizations, this is also a public health concern. To fail to set maximum appointment times would be to fail to carry out the mandate of the enabling legislation.

COMMENT #64: Access standards such as the ones contained in this rule do not accomplish their mission unless they are reported and monitored annually on a standardized tool.

RESPONSE: Rule XVII (37.108.240) as proposed requires the establishment of methods for periodically assessing the sufficiency of the network and provider and consumer satisfaction. Specific requirements such as specifying that an independent satisfaction survey be done annually and a standardized evaluation tool be used were rejected by the department as unduly burdensome and expensive, given the penetration of managed care in the state at this time.

RULE XIII (37.108.228)

COMMENT #65: The language in subsection (4) should be deleted that allows carriers the choice of using mid-level providers as PCPs, because it invites their exclusion and reinforces the myth that mid-level providers are unable to provide excellent medical care.

RESPONSE: The department declines making the suggested change. Mid-level providers are eligible to be included by a carrier as participating providers, but the Department feels that it cannot mandate that a health plan use mid-level providers because mid-level practitioners do not operate independently but in conjunction with a supervisory physician. The language allowing an enrollee's choice of a mid-level provider is contingent on the plans recognizing them as participating providers.

COMMENT #66: The rules should ensure that patients have access to appropriate physical therapist specialists.

RESPONSE: The department did not change the language. Physical therapists are eligible to be included as participating providers but the Department cannot mandate that a health plan use physical therapists. Plan enrollees will have access to physical therapists if the plans recognize them as participating providers.

COMMENT #67: The phrase "or contracts" should be added after "in literature" in subsection (1).

RESPONSE: The department agrees and has made the suggested change.

COMMENT #68: The language in subsection (2) requiring women access to a gynecologist without a PCP referral should be deleted since it is already required by statute.

RESPONSE: The language is retained for purposes of ease of comprehension of enrollee rights by including all of the specialty and referral requirements in one place.

COMMENT #69: The reference to "family physician" should more properly be "family practice physician" in subsection (4).

RESPONSE: The department agrees and has made the suggested change.

COMMENT #70: In subsection (6), a requirement that the treatment plan is approved by the carrier should be added.

RESPONSE: The department agrees and has made the suggested change.

COMMENT #71: "Consulting specialists", as used in subsection (1), should be defined.

RESPONSE: The department agreed there was a question about the meaning of that phrase. As an alternative solution, for purposes of clarity, the phrase "to consulting specialists" was deleted after the word "referrals" in the first line.

COMMENT #72: The language in 33-36-201(2), MCA, allowing the department to approve alternatives to the requirement that a carrier with not enough providers to provide a covered benefit has to provide the benefit at no extra cost to enrollees, should be added to the rule along with criteria for determining which alternative arrangements are acceptable.

RESPONSE: The language in subsection (5) will not change. The primary way that the department has identified of meeting the requirements of 33-36-201(2), MCA, is to require the process referred to in subsection (5) to address instances when a plan has an inadequate number or type of participating providers. The department will review other arrangements if any are proposed, but because no other viable alternatives came to light during the process of developing these rules, no criteria for evaluating them were developed, either. The department remains open to developing criteria for that purpose in the future.

COMMENT #73: What is an "insufficient number or type" of participating provider?

RESPONSE: The interpretation is provided elsewhere in Rules VII (37.108.215) and IX (37.108.219).

COMMENT #74: Which provider types are included in Rule XIII (37.108.228) and does subsection (5) apply only to specialists?

RESPONSE: Rule XIII (37.108.228) and, specifically, subsection (5) apply to both participating providers and their referrals to specialists.

COMMENT #75: What is the meaning of "accessible" in subsection (5)?

RESPONSE: "Accessible" means available to enrollees according to the standards elsewhere in the rules, e.g. Rules VII (37.108.215), IX (37.108.219), and X (37.108.220).

COMMENT #76: Is a point of service (POS) product an acceptable alternative to ensuring covered services are provided at no greater cost to the enrollee?

RESPONSE: The department, after consultation with the Insurance Commissioner's office, has determined that these rules apply only to closed networks.

COMMENT #77: The rule as written leaves little or no incentive for providers to sign up with a plan to be in a participating network.

RESPONSE: The department disagrees and the language will not change. The department feels there are sufficient incentives for providers to be part of the health plan's network.

RULE XIV (37.108.229)

COMMENT #78: Two parties were concerned that they would be unable to guarantee that providers who were outside of the network would meet credentialing criteria, accept payment rates, follow referral processes and protocols and refrain from billing for balances above the carrier's allowed amount for either new enrollees with certain specified conditions or for existing enrollees whose existing provider's contracts had been terminated without cause. One of the parties wanted to know if the department could ensure that providers did not bill patients for a balance.

RESPONSE: Rule XIV (37.108.229) only requires a health carrier to continue to pay for care if the provider agrees to comply with the payment rates, credentialing, referral process, quality-of-care standards and protocols, and reporting standards that apply to comparable participating providers. The health carrier is given a choice. They can pay 100% of the charges and not require the provider to meet any of these requirements if

they so choose. However, if the provider does not agree to comply with these standards, the carrier can choose not to pay providers that did not meet the conditions stated in the rule. In this last instance, the health carrier would be responsible for arranging for a primary care provider to assume the care of this vulnerable population. The department's responsibility is to enforce this rule and monitor to ensure that the provisions are carried out, but is not responsible for negotiating with the health care provider.

COMMENT #79: Rule XIV (37.108.229)(2) should be clarified to state that it only applies if the contract is terminated without cause "prior to the end of the contract term." Discontinuance of a contract at the end of its term should not be termination without cause.

RESPONSE: The department did not make the suggested change. The department believes that failure to renew a contract with a provider who was previously a participating provider would in fact be a termination without cause. Subsection (2) would apply in these cases as well as in cases where the contract is terminated prior to the end of the contract term. In either case, the health care consumer is at risk of an interruption in health care services that could prove detrimental to his/her health. All of the conditions specified in the proposed rule require coordinated medical care to ensure the health of the consumer.

COMMENT #80: The rule should be clarified by indicating what the triggering event of contract termination would be.

RESPONSE: The language in the rule was not changed, because it did not seem necessary to provide any greater clarification.

COMMENT #81: Access standards such as those in Rule XIV (37.108.229) must be reported and monitored annually on a standardized tool if they are to be effective.

RESPONSE: Rule XVII (37.108.240) as proposed requires the establishment of methods for periodically assessing the sufficiency of the network and provider and consumer satisfaction. Specific requirements such as specifying that an independent satisfaction survey be done annually and a standardized evaluation tool be used were rejected by the Department as unduly burdensome and expensive given the penetration of managed care in the state at this time.

RULE XV (37.108.235)

COMMENT #82: The department should allow the enrollee to change primary care providers more frequently than once a year.

RESPONSE: The language in the rule will not change. The

department does feel the rule is necessary to allow enrollees choice and the option to change their choice of a primary care provider at least once a year. The option of allowing enrollees to choose their primary care provider more or less frequently was considered and rejected. Less frequent change would reduce enrollee choice and more frequent changes would disrupt continuity of care. The language as written protects the enrollee and is not administratively burdensome to the plan.

COMMENT #83: Subsection (2) is useless since it would take several years to identify providers who had a higher than average turnover rate.

RESPONSE: Subsection (2) is necessary so that the plan can monitor quality of care and patient satisfaction by how often change requests are being made. A provider that has higher turnover rates than the average can and should be identified and followed up on.

COMMENT #84: Subsection (2) is not needed because the networks are monitored for enrollee satisfaction under Rule XVII (37.108.240).

RESPONSE: Subsection (2) will remain in the rule. It is needed for the reasons stated in the comment listed above. Rule XVII (37.108.240) does provide for monitoring enrollee satisfaction but it is not specific to enrollee choice of primary care providers.

RULE XVI (37.108.236)

COMMENT #85: Standards should be included defining what is considered reasonable in the removal of barriers to gaining access to services.

RESPONSE: The language in the rule will not change, because it would be impossible to identify all possible barriers that may exist. The health carrier is given considerable leeway in how it meets this obligation, and it is assumed the health carrier will do all it can to avoid complaints from dissatisfied enrollees.

RULE XVII (37.108.240)

COMMENT #86: Subsection (1)(a) should be deleted because the rules are not primarily intended for these services.

RESPONSE: Rule XVII (37.108.240) will remain the same because changes in the volumes of these services are important information in assessing the sufficiency of the network.

COMMENT #87: Subsection (1)(d) and (e) should be deleted

because the intent of the law and the purpose of these rules are not ensuring provider satisfaction.

RESPONSE: Subsection (1)(d) and (e) will remain the same. The department position is that the purpose and intent of the act is to establish standards to ensure the adequacy, accessibility, and quality of health care services offered under managed care, and that customer satisfaction is one means of determining adequacy, accessibility, and quality.

COMMENT #88: It is a matter for concern that the proposed rule, specifically subsections (1)(e) and (i), goes beyond NCQA reporting requirements and would require plans to develop and administer their own separate surveys, which would be costly and without national standards to measure the results.

RESPONSE: The department kept the requirements of subsections (1)(e) and (i) because it believes they are important components in assessing the sufficiency of the network, whether or not NCQA reporting requirements are exceeded.

RULE XIX (37.108.242)

COMMENT #89: Is the health carrier to be held responsible for a provider's failure to meet the demands of the rules, though the health carrier is not at fault?

RESPONSE: Yes. Rule XIX (37.108.242) requires that a managed care plan that uses contracts is and remains responsible for the contracted services that the health carrier has purchased via a contract with a provider.

RULE XX (37.108.250)

COMMENT #90: What is the remedy if a dispute arises regarding what is and what is not adequate corrective action?

RESPONSE: If a health carrier disagrees with the department over what constitutes adequate corrective action, the carrier may appeal the decision as provided in Rule XXI (37.108.251).

COMMENT #91: What response is the department seeking from the commissioner of insurance when it provides the commissioner with documentation of the network inadequacy?

RESPONSE: Because of the wide range of possible types of network inadequacy that may occur, the department cannot elaborate on what action the department might recommend to the commissioner. The department would expect the commissioner to take appropriate action based on the department's recommendations within the scope of its own authority, depending upon the nature of the inadequacy in question.

COMMENT #92: In the event that the department determines a network is inadequate, what are the time lines for compliance?

RESPONSE: None are yet prescribed.

5. These rules will become effective October 1, 1999.

Rule Reviewer

Director, Public Health and Human Services

Certified to the Secretary of State September 13, 1999.

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

In the matter of the amendment of ARM 46.12.503, 46.12.504 and 46.12.505 pertaining to inpatient hospital services	))))	NOTICE OF AMENDMENT

TO: All Interested Persons

1. On August 12, 1999, the Department of Public Health and Human Services published notice of the proposed amendment of the above-stated rules at page 1744 of the 1999 Montana Administrative Register, issue number 15.

2. The Department has amended rule 46.12.504 as proposed.

3. The Department has amended the following rules as proposed with the following changes from the original proposal. Matter to be added is underlined. Matter to be deleted is interlined.

46.12.503 INPATIENT HOSPITAL SERVICES, DEFINITIONS

(1) through (5) remain as proposed.

~~(6) "Hospital policy adjustor" means a payment to Montana hospitals paid under the DRG payment system with percentage of medicaid inpatient nursery days at or greater than 55% figured by the department from cost reports.~~

(6) "Hospital policy adjustor" means a payment to a Montana hospital paid under the DRG payment system. Data sources for the department to determine who meets policy adjustor criteria include but are not limited to information from the Montana hospital association database; Montana medicaid paid claims database; department's database for vital statistics; and licensing bureau. Evaluations will be made annually to determine which hospital will qualify for the policy adjustor. All of the following criteria must be met for a hospital to qualify:

(a) has 50 or fewer beds;

(b) routinely delivers babies;

(c) delivered less than 200 babies (all payers) for state fiscal year 1998 (July 1, 1997 through June 30, 1998); and

(d) of the total babies delivered in state fiscal year 1998, 53% covered were either medicaid primary or medicaid secondary.

(7) through (17) remain as proposed.

AUTH: Sec. 53-6-113, MCA
IMP: Sec. 53-2-201, 53-6-101, 53-6-111, 53-6-113 and 53-6-141, MCA

46.12.505 INPATIENT HOSPITAL SERVICES, REIMBURSEMENT

(1) through (16) remain as proposed.

(17) Subject to funding, ~~Providers~~ providers identified as eligible for the "hospital policy adjustor" defined in ARM 46.12.503 will receive, in addition to the DRG payment, a payment amount of 5% of ~~times~~ the hospital's prospective base rate.

AUTH: Sec. 53-6-113, MCA
IMP: Sec. 53-2-201, 53-6-101, 53-6-111, 53-6-113 and 53-6-141, MCA

4. The Department added the phrase "subject to funding" to ARM 46.12.505(17) in order to ensure the Department does not exceed legislative appropriations for these services.

5. The Department has thoroughly considered all commentary received. The comments received and the department's response to each follow:

COMMENT 1: The hospital policy adjuster uses Medicaid nursery days for the statistical factor. It was suggested that the Department use Medicaid births rather than Medicaid nursery days. The statistics could be gathered from the MHA Comp Data program and from the DPHHS using DRG's 385 through 391. This would give rural facilities credit for delivering those newborns that are transferred out. The commentor believes the Department did not intend to use neo-natal days as part of the computation since those facilities are already reimbursed additionally. Using births eliminates that question.

If Medicaid secondary payer statistics are not used in determining the 55%, it is suggested that the percentage be lowered to 51%. If secondary payer statistics are used, the 55% threshold is acceptable.

The Department's statistics should be derived from the facilities fiscal year that began two years prior to the beginning of its current fiscal year. This would allow for the settlement of all outstanding claims.

RESPONSE: The Department concurs with the comment to use births and to place the percentage at 53 using Medicaid secondary payer statistics, to the extent that facilities billed Medicaid after billing primary payers.

Dawn Sliva
Rule Reviewer

Laurie Ekanger
Director, Public Health and Human Services

Certified to the Secretary of State September 13, 1999.

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

In the matter of the repeal of ARM 46.12.3215 pertaining to medicaid health plan enrollment	))))	NOTICE OF REPEAL

TO: All Interested Persons

1. On July 22, 1999, the Department of Public Health and Human Services published notice of the proposed repeal of the above-stated rule at page 1624 of the 1999 Montana Administrative Register, issue number 14.

2. The Department has repealed ARM 46.12.3215 as proposed.

3. No comments or testimony were received.

Rule Reviewer

Director, Public Health and Human Services

Certified to the Secretary of State September 13, 1999.

BEFORE THE DEPARTMENT
OF PUBLIC SERVICE REGULATION
OF THE STATE OF MONTANA

In the Matter of the Proposed Adoption of New Rules and Amendment of Existing Rules Pertaining to Operator Service Providers	))))	NOTICE OF ADOPTION AND AMENDMENT

TO: All Concerned Persons

1. On August 12, 1999, the Department of Public Service Regulation, Public Service Commission (PSC) published notice of public hearing on the proposed adoption of rules pertaining to operator service providers, at pages 1754 through 1760 of the 1999 Montana Administrative Register, issue number 15.

2. The PSC has adopted Rule II (38.5.3404 COST-BASED ALLOWABLE RATE) as proposed. The PSC has adopted and amended the following rules as proposed, but with the following changes:

RULE I. (38.5.3403) ALLOWABLE RATE (1) through (3) remain as proposed.

(a) assisted - operator dialed calling card; collect call; third party billed; ~~sent paid coin;~~ person to person; operator dialed called number; customer dialed calling card, non-company; and customer dialed calling card, company card;

(b) message ~~toll~~ telecommunications service interLATA - ~~first minute, per mile, and flat, and additional minutes, per mile, and flat~~ per minute (if the operator service provider has more than one per minute rate, e.g., distance, time of day, and so forth, "per minute" will be the average per minute); and

(c) message ~~toll~~ telecommunications service intraLATA - ~~first minute, per mile, and flat, and additional minutes, per mile, and flat~~ per minute (if the operator service provider has more than one per minute rate, e.g., distance, time of day, and so forth, "per minute" will be the average per minute).

(4) remains as proposed.

AUTH: 69-3-103 and 69-3-1103, MCA
IMP: 69-3-201, 69-3-1101, 69-3-1102 and 69-3-1105, MCA

RULE III. (38.5.3407) BILLING DISCLOSURE (1) remains as proposed.

(a) the operator service provider ~~charge~~ billed amount, clearly distinguished from the carrier's ~~charges~~ billed amount;

(b) remains as proposed.

(c) the toll-free telephone number of the operator service provider or the operator service provider's billing agent, if the billing agent has authority to resolve disputes and the operator service provider and billing agent have established an effective method of resolving customer disputes.

(2) Upon request of a customer, the billing telecommunications carrier must provide the exact legal name of the

operator service provider, the toll-free telephone number of the operator service provider, the current and complete street address of the operator service provider, and the mailing address of the operator service provider.

AUTH: 69-3-103, 69-3-822 and 69-3-1103, MCA
IMP: 69-3-102 and 69-3-1106, MCA

38.5.3401 GENERAL AND DEFINITIONS (1) and (2) remain as proposed.

(a) "Call blocking" means prohibiting or restricting a consumer's access to a carrier which offers service in the same local exchange area by means of equal access or an access code, including but not limited to 1-800, 950-XXXX, and 10-10XXX-0+ dialing sequences.

(b) remains as proposed.

(c) "Inmate ~~calling provider" or "inmate~~ operator service provider" means a carrier or operator service provider that provides regulated telecommunications services ~~by means of coin or coinless pay telephones~~ for the use of inmates in correctional facilities.

(d) through (d)(ii) remain as proposed.

AUTH: 69-3-103, 69-3-822 and 69-3-1103, MCA
IMP: 69-3-102, 69-3-201, 69-3-802, 69-3-1102 and 69-3-1103, MCA

38.5.3405 GENERAL REQUIREMENTS (1) through (1)(d) remain as proposed.

(e) Obtain ~~a positive~~ an affirmative response from the called party on willingness to accept charges for collect calls.

(2) and (3) remain as proposed.

AUTH: 69-3-103, 69-3-822 and 69-3-1103, MCA
IMP: 69-3-102, 69-3-201, 69-3-802 and 69-3-1104, MCA

38.5.3412 CALL BLOCKING PROHIBITED (1) Except as otherwise provided in these rules, all agreements or contracts between an operator service provider and an owner of a pay telephone instrument or private telecommunications system must contain a provision which prohibits call blocking as defined in these rules. This requirement applies to all contracts or agreements entered into after the effective date of this rule; however, all operator service providers must comply with (2) of this rule at all times, including during the remaining term of all existing contracts and agreements.

(2) remains as proposed.

(3) This rule does not prohibit the blocking of ~~10-10XXX-1+ or 10-10XXX-011+~~ 101xxxx-1+ or 101xxxx-011+ calls.

AUTH: 69-3-103, 69-3-822 and 69-3-1103, MCA
IMP: 69-3-102, 69-3-201 and 69-3-802, MCA

38.5.3440 INMATE OPERATOR SERVICE PROVIDERS (1) remains as proposed.

(2) Inmate operator service providers may not block collect calls to a called party number, except on request by the called party or following seven days written notification to the

called party, or for reasons of individual or public safety.

(3) remains as proposed.

AUTH: 69-3-103 and 69-3-822, 69-3-1103, MCA;
IMP: 69-3-102, 69-3-201 and 69-3-802, MCA

3. Comments received and responses by the PSC:

Comments, written or oral or both, were received from the Montana Consumer Counsel (MCC), AT&T Communications of the Mountain States, Inc., Sprint Communications Company, L.P., and MCI WorldCom, Inc. (jointly, AT&T, Sprint, and MCI), U S West Communications, Inc. (USWC), Montana Telecommunications Association (MTA), and AARP.

The Montana Consumer Counsel comments that the logic underlying the 50 percent adder in Rule I is not clear and suggests the maximum adder be 20 percent. Although the amount of the adder may need to be revisited as implementation of these rules progresses, the PSC will retain 50 percent, as the logic underlying it is at least as clear as the alternative suggested and the amount seems to more readily allow for what might be reasonable aggregator surcharges and other calling fees which are contemplated by statute.

AT&T, MCI, and Sprint comment that interexchange carriers and operator service providers presently have price flexibility and resellers do not undergo tariff review and, given this, there is a dilemma in setting the required price cap. AT&T, MCI, and Sprint also comment that basing the allowable rate on averaging rates, although inclusion of a rate-regulated company in the calculation limits flexibility, may be on the right track, but operator service providers have restructured the way in which they provide and charge for services and the categories of services identified in Rule I are dated. AT&T, MCI, and Sprint suggest a simplified categorization for Rule I, which is in line with current practices and which will also be easier to understand and enforce. In regard to Rule I USWC comments that sent paid coin is direct dialed, not assisted. The PSC agrees with AT&T, MCI, and Sprint in part and amends the "message telecommunications service" categories in Rule I accordingly. The PSC disagrees with AT&T, MCI, and Sprint in part and retains the "assisted" categories. The AT&T, MCI, and Sprint comments demonstrate that these carriers can categorize services according to the proposed categories and the resulting rates appear lower than those resulting from the alternative suggested. The PSC agrees with USWC that "sent paid coin" is not assisted and amends the rule accordingly.

The MTA comments in regard to Rule III that Montana carriers be allowed to comply with the same rules as those contained in the FCC's truth-in-billing guidelines, to avoid duplication of effort and expense aimed at achieving the same result. MTA states that companies may not be able to easily determine the exact legal name and current street address of the operator service provider and these requirements may not be necessary in providing customers an opportunity to communicate with an operator service provider and a toll-free number should

be sufficient. The PSC, or the legislature, may consider this comment when the FCC's guidelines have been implemented, but the PSC rejects the comment for the time being. The PSC must first answer to the statutes, upon which these rules are closely based. The exact legal name and street address of the operator service provider are necessary because the underlying statutes contemplate litigation for violation and require information essential to commencing that litigation.

In regard to Rule III, AT&T, Sprint, and MCI comment that (1)(b) and (c) present practical problems because the operator service provider may have assigned billing to another carrier and cannot respond to billing inquiries. The PSC agrees in part, but believes that it is essential that the operator service provider and the carrier assigned the billing or the billing agent must each have sufficient information to completely and accurately respond to billing disputes. The PSC has amended the rule accordingly.

USWC argues that systems work, at added costs, would need to be done to unbundle a call into rate elements as required by Rule III. The PSC believes the rule, as noticed, might be unclear in this regard and has amended the rule accordingly.

Pertaining to ARM 38.5.3401 USWC comments that inmate calling providers should be excluded from the term operator service provider, as inmate calling providers have unique needs which should exclude them from the general rules. USWC comments that "inmate calling provider" is an inaccurate term and only "inmate operator service provider" should be used and the definition of "inmate operator service provider" is inaccurate and should be revised and the "coin or coinless pay telephone" language should be removed as these are not instruments used for such service. USWC comments that the rules need amendment to reflect that carrier access code dialing has moved from three digit to four digit. The PSC cannot totally exempt inmate operator service providers from the rules because the statutes do not allow it (i.e., the statutes do not distinguish inmate operator service providers). The PSC agrees that "inmate operator service provider" is the correct term and that the further suggested amendments to the rule are advisable. The PSC amends the rule accordingly.

In regard to ARM 38.5.3405 USWC comments that the effective date for (1)(b) should be the same as FCC requirements (presently under reconsideration by the FCC) because there will be increased costs for state-by-state deployment. USWC also suggests that 0+ not be stricken in the rule. Neither of these suggestions can be adopted because the statutes underlying the rules would not allow it. For (1)(e) USWC comments that "positive response" should be replaced by "affirmative response." The PSC agrees and amends the rule accordingly.

Pertaining to ARM 38.5.3412 USWC recommends (1) be deleted or the reference to "an owner of a pay telephone instrument" be removed, as payphones are deregulated. USWC recommends removal of application of (2) in regard to telephone instruments which are deregulated and services which are preempted. USWC comments that blocking of incoming calls at payphones and blocking

certain 800 numbers from payphones are permitted by federal law. The PSC determines that "call blocking" is narrowly defined for purposes of these rules and USWC's comments do not apply to that definition. The rule has been amended to note this. USWC comments that (3) should be updated to the new four digit carrier identification code. The PSC agrees and has amended the rule accordingly.

In regard to ARM 38.5.3440 USWC comments that the rule be deleted in its entirety and (1) be included at ARM 38.5.4312. USWC comments that (2) is not in the public interest and there are certain numbers automatically blocked (e.g., 900, 800, DA, and 0+) and others that normally are blocked (e.g., witness phone numbers, guard phone numbers). The PSC determines the rule should not be deleted, but agrees that amendments should be made to address some of USWC's concerns. The rule has been amended accordingly.

AARP urges the PSC to consider adding language to ensure that consumer protections are in place to handle and resolve consumer complaints efficiently and notify the consumers of what redress and penalties are available. The PSC is actively pursuing customer education and will continue to do so. Redress and penalties for violation are included in the statutes underlying these rules.

Dave Fisher, Chairman

Reviewed By Robin A. McHugh

CERTIFIED TO THE SECRETARY OF STATE SEPTEMBER 13, 1999.

BEFORE THE DEPARTMENT
OF PUBLIC SERVICE REGULATION
OF THE STATE OF MONTANA

In the Matter of the Proposed Adoption of Rules Pertaining to Unauthorized Product or Service Charges on Telephone Bills	)))))	NOTICE OF ADOPTION

TO: All Concerned Persons

1. On August 12, 1999, the Department of Public Service Regulation, Public Service Commission (PSC) published notice of public hearing on the proposed adoption of rules pertaining to unauthorized product or service charges on telephone bills, at pages 1749 through 1753 of the 1999 Montana Administrative Register, issue number 15.

2. The PSC has adopted Rule II (38.5.3904 LETTER OF AGENCY FORM AND CONTENT) as proposed. The PSC has adopted the following rules as proposed, but with the following changes:

RULE I, (38.5.3901) CUSTOMER AUTHORIZATION REQUIRED PRIOR TO PLACEMENT OF CHARGES ON CUSTOMERS' TELEPHONE BILL (1) A telecommunications carrier or other entity that is neither the customer's ~~local exchange carrier nor presubscribed choice of interexchange carrier~~ selected provider of local exchange service nor selected provider of interexchange service may not initiate the placement on a customer's telecommunications bill of charges for services or products except:

(a) When the service is a customer initiated and controlled selection or approval of a calling method, such as dial-around or acceptance of a collect call, or a customer initiated and controlled selection of an available service which will facilitate completing a call, such as directory assistance or operator assistance, if the charges for such calling-method and call-facilitation services are assessed on a per-use basis only and no further obligation of any kind extends to the customer;

(a) through (c) remain the same but are renumbered (b) through (d).

(i) through (5) remain the same.

AUTH: 69-3-1304, MCA
IMP: 69-3-1301 and 69-3-1303, MCA

RULE III, (38.5.3907) COMPLAINTS OF UNAUTHORIZED CHARGES FOR PRODUCTS OR SERVICES BEING PLACED ON A CUSTOMER'S TELEPHONE BILL (1) Upon receipt of a complaint alleging an unauthorized charge for a product or service being placed on a customer's telephone bill, either orally or in writing, from the customer, the customer's local exchange company, or from the commission or its staff on behalf of a customer or applicant, the telecommunications carrier or other entity that initiated placement

of the charge for the product or service on the customer's telephone bill shall make a suitable and documented investigation and advise the party requesting the investigation of the results. The results of the investigation need not be in writing, unless otherwise directed by the commission or requested by a customer. When advising the customer or party requesting the investigation of the results, the carrier or other entity that initiated the placement of the charge for the product or service on the customer's telephone bill shall provide documentation in accordance with ARM 38.5.3901 and 38.5.3904 that confirms the customer's valid authorization for placement of the charge for the product or service on the telephone bill. The burden is on the carrier or other entity that initiated the placement of the charge for the product or service on the customer's telephone bill to produce documentation that valid authorization was obtained from the customer. If a carrier or other entity fails to provide the documentation, all charges for the products or services that the customer did not authorize or that were not provided to the customer will be deemed invalid. A telecommunications carrier or other entity, upon receipt of a complaint ~~from the commission or its staff~~ alleging unauthorized placement of charges for products or service on a customer's telephone bill, shall issue an initial response within five working days.

(2) The carrier or other entity shall maintain and preserve records of complaints for a minimum period of two years after receipt of the complaint. Records of complaints must include the complaint, documentation of the investigation of the complaint, and documentation of the response or responses to the complaint. Records of complaints must include the customer's name, address, and telephone number, the date of the complaint, a summary of the complaint, the date the complaint was resolved, and the resolution reached. Records of complaints must be provided to the commission within 20 days of request by the commission.

AUTH: 69-3-1304, MCA
IMP: 69-3-1301 and 69-3-1303, MCA

RULE IV. (38.5.3910) TELECOMMUNICATIONS CARRIER OR OTHER ENTITY LIABILITY (1) An entity that initiates a placement of a charge for a product or service on a customer's telephone bill in violation of these rules, or that cannot provide documentation that the billing for the product or service was initiated in compliance with these rules, is liable to the customer for all customer-paid charges and fees related to the product or service being billed on the customer's telephone bill by a telecommunications carrier, other entity, or ~~their~~ agent of either, during the period of the unauthorized billing, not to exceed six continuous months of unauthorized billing.

(2) Penalties for violation are as provided in 69-3-1305, MCA.

AUTH: 69-3-1304, MCA
IMP: 69-3-1301 and 69-3-1303, MCA

RULE V. (38.5.3913) CREDIT OR REFUND OF CHARGES (1) A telecommunications carrier or other entity which initiates a placement of a charge for a product or service on the customer's telephone bill without authorization from the customer in accordance with these rules shall issue to the customer a full credit or a refund of the entire amount of such customer's charges for the product or service attributable to the telecommunications carrier or other entity. The required credit and refund are limited to six continuous months of unauthorized charges. The appropriate credit or refund must be issued within a period not to exceed 60 days from the date of the initial complaint ~~from the customer, commission, or staff~~.

(2) If the customer has not paid the charges placed on the customer's telephone bill without authorization in accordance with these rules, the telecommunications carrier or other entity which initiated the unauthorized charge will make appropriate arrangements to adjust the telephone bill to remove the unauthorized charges and any interest or penalty that is attributable to the unauthorized charges. Adjustment to the bill must be within 60 days from the date of the initial complaint.

AUTH: 69-3-1304, MCA
IMP: 69-3-1301 and 69-3-1303, MCA

3. Comments received and responses by the PSC:

Comments, written, oral, or both, were received from AARP, Photos Now, Jesse Long, Montana Consumer Counsel (MCC), MCI WorldCom, Inc. (MCI), Sprint Communications Company, L.P., and AT&T Communications of the Mountain States, Inc. (jointly, Sprint and AT&T), and U S West Communications, Inc. (USWC).

AARP generally suggests the PSC take efforts to educate customers. AARP suggests that penalty provisions be added to the rules. The PSC is actively pursuing customer education and will continue to do so. Redress and penalties for violation are included in the statutes underlying these rules.

Photos Now suggests that every authorization for products and services be required in writing and a copy of documentation explaining exactly what products or services were selected be sent to the customer. The PSC agrees with Photos Now's concern that carriers or other entities obtain customer authorization, but believes the rules as proposed and adopted provide sufficient customer protection, making available a variety of acceptable methods of authorization. The PSC's rules also include record-keeping requirements and the statutes underlying the rules provide for remedies.

Several of USWC's preliminary comments pertain to slamming. The PSC cannot identify how USWC's slamming comments directly pertain to the present proposed rules.

Sprint and AT&T suggest that, for purposes of placement of charges for products and services on a customer's bill, wireless be treated in the same fashion (i.e., exempt from verification requirements) as a customer's local exchange carrier or presubscribed interexchange carrier, as the customer/carrier

relationship is the same. The PSC determines that the exemptions are statutory and cannot be expanded by rule.

Sprint and AT&T, MCI, and USWC argue that certain customer initiated and controlled services (e.g., dial-around, directory assistance, acceptance of a collect call), sometimes referred to as "casual calling," should be exempt from the verification requirements as there is sufficient verification simply by use of the service. The PSC agrees that application of the rules to certain categories of services serves no meaningful purpose and will unreasonably complicate the flow of communications. The PSC has amended Rule I accordingly. Jesse Long suggests that promotions for using some of these "casual calling" services are less than clear and may include unknown conditions. The PSC determines that confining the exemption to per use charges, with no further obligation, will resolve that problem.

MCI recommends that "unauthorized charge" be defined by rule. MCI also recommends that "customer" and "subscriber" be defined by rule to recognize that certain customers and subscribers are multi-member entities (e.g., families, businesses). The PSC's previous amendment to Rule I will likely resolve some concern MCI has with the absence of a definition of "unauthorized charges." The PSC declines further definition of "unauthorized charges" or definition of "customer" and "subscriber." The PSC does not see a compelling need for such definitions at this time. The PSC also determines that the defining of "customer" and "subscriber," if a definition is necessary, might be a task for the legislature not the PSC.

In regard to Rule II, MCC suggests that font size be specified (e.g., 12 point), so that the meaning of "readable" is not subject to debate. Although the idea has some positive merit, the proposal is not of that degree of importance that would justify a Montana-specific rule which is not yet nationally or uniformly recognized as critical to the question of "readability."

MCC suggests that Rules III and V may conflict and V should be revised in regard to who may make complaints and who should receive or is entitled to the response. The PSC agrees and has amended Rules III and V accordingly. MCC argues that responses should be within a specified period and should be directed to anyone lodging a complaint. The PSC agrees and has amended Rule III accordingly. MCC argues that records should be kept by the companies for a period so that frequency and general business practices may be verified. The PSC agrees and has amended Rule III accordingly.

USWC argues that proposed Rules III through V are subject to a preemption challenge. USWC may here be discussing federal slamming provisions, which are not applicable to the proposed rules. The PSC disagrees that Rules III through V of the rules proposed in this rulemaking are preempted by federal law.

In regard to Rules IV and V Sprint and AT&T suggest that there be a refund or credit only if the customer has paid the contested charges and that liability be limited to 30 days. Jesse Long comments that 30 days is too short of a time. The PSC agrees that customer payment is essential in regard to credits and refunds. The PSC has amended Rules IV and V accordingly. The PSC also amends the rules to accommodate the situation where a customer has not paid the unauthorized charges. The PSC disagrees that liability should be limited to 30 days. The PSC agrees that there should be some limitations on the time unauthorized charges may go unchallenged. The PSC determines that refunds and credits should be limited to six continuous months of unauthorized charges and has amended the rule accordingly.

Dave Fisher, Chairman

Reviewed By Robin A. McHugh

CERTIFIED TO THE SECRETARY OF STATE SEPTEMBER 13, 1999.

VOLUME NO. 48 OPINION NO. 7

ACUPUNCTURISTS - Education, training and licensing;
ACUPUNCTURISTS - Medical doctors and acupuncture;
COMMERCE, DEPARTMENT OF - Educating, training, and licensing acupuncturists;
COMMERCE, DEPARTMENT OF - Medical doctors and acupuncture;
HEALTH - Educating, training, and licensing acupuncturists;
HEALTH - Medical doctors and acupuncture;
HEALTH BOARDS AND DISTRICTS - Educating, training, and licensing acupuncturists;
HEALTH BOARDS AND DISTRICTS - Medical doctors and acupuncture;
MEDICINE - Educating, training, and licensing acupuncturists;
MEDICINE - Medical doctors and acupuncture;
ADMINISTRATIVE RULES OF MONTANA - Rules 8.28.501(1), 8.28.511;
MONTANA CODE ANNOTATED - Title 37, chapters 3, 13; sections 37-3-102(6), 37-13-103(1), -104, 37-13-301, -302.

HELD: 1. If a licensed physician wishes to represent himself or herself as licensed to practice the discipline of acupuncture, the physician must acquire a license to practice acupuncture under title 37, chapter 13.

2. A physician licensed under Mont. Code Ann. title 37, chapter 3, may, as part of his or her practice of medicine, use solid needles to perform therapeutic modalities without first acquiring a license to practice acupuncture under title 37, chapter 13.

September 3, 1999

Lawrence McEvoy, M.D., President
Montana Board of Medical Examiners
Professional and Occupational Licensing Division
Department of Commerce
P.O. Box 200513
Helena, MT 59620-0513

Dear Dr. McEvoy:

You have requested my opinion on the following question:

> May a physician licensed under title 37, chapter 3 of the Montana Code Annotated use solid needles to practice acupuncture without first acquiring a license to practice acupuncture under title 37, chapter 13?

I.

The Montana Board of Medical Examiners regulates the practice of medicine by physicians and the practice of acupuncture by acupuncturists. Acupuncture is defined as "the diagnosis, treatment, or correction of human conditions, ailments, diseases, injuries, or infirmities by means of mechanical, thermal, or electrical stimulation effected by the insertion of solid needles. The term includes the use of acupressure and the use of oriental food remedies and herbs." Mont. Code Ann. § 37-13-103(1).

A person may not practice acupuncture or use the title "acupuncturist" in Montana unless the person is licensed pursuant to Mont. Code Ann. title 37, chapter 13. See Mont. Code Ann. § 37-13-301. A person is qualified to be licensed as an acupuncturist in Montana if the person is 18 years or older, is of good moral character, is a graduate of an approved school of acupuncture, and has passed an examination prepared and administered by either the Board of Medical Examiners or the National Commission for the Certification of Acupuncturists. Mont. Code Ann. § 37-13-302(2). No exception to either the education requirement or the examination requirement exists in rule or statute for licensed physicians who wish to practice acupuncture.

An approved school of acupuncture is defined by statute as one which is approved by the National Accreditation Commission for Schools and Colleges of Acupuncture and Oriental Medicine (NACSCAOM) and offers a course of at least 1000 hours of entry-level training in acupuncture or an equivalent curriculum approved by the Board of Medical Examiners. Mont. Code Ann. § 37-13-302(2)(c). The Board of Medical Examiners recently adopted an "advisory rule" clarifying that an approved school of acupuncture is one which is either (1) approved by the NACSCAOM and has a curriculum of at least 1000 hours of entry-level training in recognized branches of acupuncture; or (2) a school which, although not approved by NACSCAOM, offers a curriculum which is the equivalent of a 1000-hour course of entry-level training in recognized branches of acupuncture. Mont. Admin. R. 8.28.511.

The Board of Medical Examiners has determined to review "equivalent curriculum" on a case-by-case basis. Mont. Admin. R. 8.28.501(1). The authority to approve an "equivalent curriculum" includes the right to approve an equivalent curriculum for licensed physicians who wish to become licensed acupuncturists. The fact the Board has chosen not to adopt an equivalent acupuncture curriculum for licensed physicians confirms that licensed physicians are currently subject to the same education requirements as anyone else wishing to become a licensed acupuncturist. Unless the Board of Medical Examiners either adopts or approves on a case-by-case basis an applicable "equivalent curriculum," a licensed physician must take a

1000-hour approved course in order to become a licensed acupuncturist.

The above conclusion is supported by Mont. Code Ann. § 37-13-104(1)(b), which provides: "A doctor of medicine, osteopathy, chiropractic, dentistry, or podiatry may not practice acupuncture in this state unless that doctor has completed a course and passed an examination in acupuncture as required by this chapter." See also Mont. Code Ann. § 37-13-301. Licensed physicians are, however, relieved from taking additional examinations in anatomy, physiology, chemistry, dermatology, diagnosis, bacteriology, materia medica and other subjects required by their existing license. Mont. Code Ann. § 37-13-104(1)(a).

II.

The question remains, however, whether a licensed physician may use solid needles as part of a treatment or therapeutic modality within his or her "practice of medicine." The practice of medicine includes "the diagnosis, treatment, or correction of or the attempt to or the holding of oneself out as being able to diagnose, treat, or correct human conditions, ailments, diseases, injuries, or infirmities, whether physical or mental, by any means, methods, devices, or instrumentalities." Mont. Code Ann. § 37-3-102(6). You have asked whether the phrase "by any means, methods, devices, or instrumentalities" permits a licensed physician who is not a licensed acupuncturist to use solid needles as part of a treatment or therapeutic modality.

The 1995 legislature, along with clarifying the definition and upgrading the standards of the practice of acupuncture, attempted to address the question of whether medical doctors can use solid needles when it adopted Mont. Code Ann. § 37-13-104(2) and (3). See legislative history for ch. 340, 54th Leg. (Mont. 1995).

Mont. Code Ann. § 37-13-104(2) and (3) states:

> (2) Except as provided in 37-13-301 and with particular regard to the insertion of solid needles used to perform acupuncture, this chapter is not intended to limit, interfere with, or prevent a licensed health professional from practicing within the scope of the health professional's license.
>
> (3) This chapter does not affect the practice of an occupation by an individual who does not represent to the public that the individual is licensed under this chapter.

Unfortunately, those subsections do not provide a definitive answer to your question.

Mont. Code Ann. § 37-13-104(2) is internally ambiguous. If the word "except" qualifies only the phrase "as provided in 37-13-301," the legislature most likely intended to permit medical doctors to insert solid needles to perform acupuncture. However, if the legislature intended the word "except" to also qualify the phrase following the word "and," that subsection would ban a licensed physician who is not a licensed acupuncturist from inserting solid needles used to perform acupuncture.

Mont. Code Ann. § 37-13-104(3) emphatically states that the statutes regarding acupuncturists do not apply to anyone who does not represent him- or herself to the public as a licensed acupuncturist. This subsection directly conflicts with Mont. Code Ann. § 37-13-104(2), if the latter subsection is interpreted to prohibit medical doctors from using solid needles to perform acupuncture. It also conflicts with Mont. Code Ann. § 37-13-104(1)(b) with respect to whether a medical doctor must complete an approved course and pass an approved examination in order to practice acupuncture.

The apparent ambiguity between Mont. Code Ann. § 37-3-104(1)(b), (2), and (3) permits reliance on legislative history to determine legislative intent. Lovell v. State Comp. Mut. Ins. Fund, 260 Mont. 279, 285, 860 P.2d 95, 99 (1993). My review of the legislative history disclosed no information that would help resolve this conundrum.

The ambiguous nature of the statute also makes it difficult to apply the typical rules of statutory construction. A fundamental rule of statutory interpretation requires that all statutes concerning a subject be read together, with each given effect if reasonably possible. See Crist v. Segna, 191 Mont. 210, 212, 622 P.2d 1028, 1029 (1981). I have already determined that Mont. Code Ann. § 37-13-104(2) is internally ambiguous and that § 37-13-104(2) and (3) may be mutually exclusive. Additionally, § 37-13-104(3) appears to conflict with §§ 37-13-104(1)(b) and -301(1). It is impossible to give effect to each of these subsections.

The 1969 legislature enacted Mont. Code Ann. § 37-3-102(6). That statute defines the practice of medicine as the "diagnosis, treatment or correction" of "human conditions, ailments, diseases, injuries, or infirmities" by any "means, methods, devices, or instrumentalities." The 1995 legislature, by adopting Mont. Code Ann. § 37-13-104(2), may have intended to exclude acupuncture from the "means, methods, devices, or instrumentalities" licensed physicians are permitted to perform. However, § 37-3-102(6) was not amended to reflect such a change. Repeals by implication are not favored. State v. Gafford, 172 Mont. 380, 388, 563 P.2d 1129, 1134 (1977). Therefore, it cannot be assumed that the legislature silently amended or repealed § 37-3-102(6) when it passed § 37-13-104(2). Conversely, the 1995 legislature may have intended, by adopting

§ 37-13-104(3), to ensure that a licensed physician can use treatment methods including solid needle therapy as long as the physician does not represent him- or herself to be a licensed acupuncturist.

You recently provided me with a position paper and transcript of a Board of Medical Examiners meeting. Both documents indicate the Board agreed to inform me of the following:

> No. 1, that we're saying that we feel solid needle therapy may be used by a licensed physician and surgeon. No. 2, that this is not to be construed as allowing any individual to hold themselves out as a certified acupuncturist unless that individual has gone through the certified acupuncturist training and certification.

Board Meeting of March 13, 1999, Tr. at 74, lines 15-22.

Great deference is afforded an agency's interpretation of the laws it enforces. Norfolk Holdings, Inc. v. Montana Dep't of Rev., 249 Mont. 40, 44, 813 P.2d 460, 462 (1991). This is particularly true in fields such as medicine, where a high level of expertise exists. I find the Board's interpretation of these statutes to be persuasive. It gives meaning to the majority of the statutes and subsections involved and construes conflicting statutes in a manner which gives effect to each section, while protecting the public from the unlicensed practice of acupuncture.

The Board's interpretation is also consistent with the legislative purpose for the legislation, the protection of the public health, safety, and welfare and the protection of the public from "the unauthorized and unqualified practice of acupuncture." Mont. Code Ann. § 37-13-102. The Board of Medical Examiners apparently assumes a medical doctor is properly trained to provide treatment with solid needles. If a medical doctor performs the treatment without proper training or exceeds the scope of his or her license, the doctor is subject to the Board's disciplinary jurisdiction.

THEREFORE, IT IS MY OPINION:

1. If a licensed physician wishes to represent himself or herself as licensed to practice the discipline of acupuncture, the physician must acquire a license to practice acupuncture under title 37, chapter 13.

2. A physician licensed under Mont. Code Ann. title 37, chapter 3, may, as part of his or her practice of medicine, use solid needles to perform therapeutic modalities without first acquiring a license to practice acupuncture under title 37, chapter 13.

Sincerely,

JOSEPH P. MAZUREK
Attorney General

jpm/mas/lrb

NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEE

Interim Committees and the Environmental Quality Council

Administrative rule review is a function of interim committees and the Environmental Quality Council (EQC). These interim committees and the EQC have administrative rule review, program evaluation, and monitoring functions for the following executive branch agencies and the entities attached to agencies for administrative purposes.

Business and Labor Interim Committee:

- Department of Agriculture;
- Department of Commerce;
- Department of Labor and Industry;
- Department of Livestock;
- Department of Public Service Regulation; and
- Office of the State Auditor and Insurance Commissioner.

Education Interim Committee:

- State Board of Education;
- Board of Public Education;
- Board of Regents of Higher Education; and
- Office of Public Instruction.

Children, Families, Health, and Human Services Interim Committee:

- Department of Public Health and Human Services.

Law, Justice, and Indian Affairs Interim Committee:

- Department of Corrections; and
- Department of Justice.

Revenue and Taxation Interim Committee:

- Department of Revenue; and
- Department of Transportation.

State Administration, Public Retirement Systems, and Veterans' Affairs Interim Committee:

- Department of Administration;
- Department of Military Affairs; and
- Office of the Secretary of State.

Environmental Quality Council:

- Department of Environmental Quality;
- Department of Fish, Wildlife, and Parks; and
- Department of Natural Resources and Conservation.

These interim committees and the EQC have 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. They also 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, amend, or repeal a rule.

The interim committees and the EQC welcome comments and invite members of the public to appear before them or to send written statements in order to bring to their attention any difficulties with the existing or proposed rules. The mailing address is PO Box 201706, Helena, MT 59620-1706.

HOW TO USE THE ADMINISTRATIVE RULES OF MONTANA AND THE MONTANA ADMINISTRATIVE REGISTER

Definitions: Administrative Rules of Montana (ARM) is a looseleaf compilation by department of all rules of state departments and attached boards presently in effect, except rules adopted up to three months previously.

Montana Administrative Register (MAR) is a soft back, bound publication, issued twice-monthly, containing notices of rules proposed by agencies, notices of rules adopted by agencies, and interpretations of statutes and rules by the attorney general (Attorney General's Opinions) and agencies (Declaratory Rulings) issued since publication of the preceding register.

Use of the Administrative Rules of Montana (ARM):

Known Subject Matter	1. Consult ARM topical index. Update the rule by checking the accumulative table and the table of contents in the last Montana Administrative Register issued.
Statute Number and Department	2. Go to cross reference table at end of each title which lists MCA section numbers and corresponding ARM rule numbers.

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies which have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through June 30, 1999. This table includes those rules adopted during the period July 1, 1999 through September 30, 1999 and any proposed rule action that was pending during the past 6-month period. (A notice of adoption must be published within 6 months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through June 30, 1999, 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 1998 and 1999 Montana Administrative Registers.

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TRANSPORTATION, Department of, Title 18

I-III Setting Policy for Waiver and Suspension of Motor Fuel Penalties, p. 2666, 513
I-IV and other rules - Special Fuel Users Tax, Dealers and LPG Tax, p. 2797, 645, 1298
I-V Procedures for Dealers of Compressed Natural Gas (CNG) and Liquefied Petroleum Gas (LPG), p. 2671, 515, 651

CORRECTIONS, Department of, Title 20

I-XLIV Operation and Physical Condition of a Private Correctional Facility - Security, Safety, Health,

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

PUBLIC SERVICE REGULATION, Department of, Title 38

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 August 1999, appear. Vacancies scheduled to appear from October 1, 1999, through December 31, 1999, 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 September 7, 1999.

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 AUGUST, 1999

Appointee	Appointed by	Succeeds	Appointment/End Date
Board of Nursing (Commerce)			
Mr. John Burke	Governor	Heyer	8/3/1999
Missoula			7/1/2003
Qualifications (if required): registered professional nurse and currently engaged in administration			
Ms. Sharon Dschaak	Governor	Buhre	8/3/1999
Wolf Point			7/1/2003
Qualifications (if required): licensed practical nurse			
Board of Private Security Patrol Officers and Investigators (Commerce)			
Ms. Francine Britton	Governor	Calnan	8/1/1999
Billings			8/1/2002
Qualifications (if required): representative of the Peace Officers' Standards and Training Advisory Council			
Board of Professional Engineers and Land Surveyors (Commerce)			
Mr. Haley Beaudry	Governor	Walter	8/4/1999
Butte			7/1/2003
Qualifications (if required): professional engineer			
Mr. Warren P. Scarrah	Governor	reappointed	8/4/1999
Bozeman			7/1/2003
Qualifications (if required): professional engineer and instructor			
Ms. Paulette Ferguson	Governor	reappointed	8/4/1999
Missoula			7/1/2003
Qualifications (if required): public member			
Mr. Ronald Allen	Governor	not listed	8/4/1999
Bozeman			7/1/2003
Qualifications (if required): professional and practicing land surveyor			

BOARD AND COUNCIL APPOINTEES FROM AUGUST, 1999

Appointee	Appointed by	Succeeds	Appointment/End Date
Board of Research and Commercialization Technology (Commerce)			
Mr. Gary Buchanan Billings Qualifications (if required): none specified	President of the Senate	not listed	8/4/1999 7/1/2000
Mr. Ralph Hutcheson Bozeman Qualifications (if required): none specified	House Minority Leader	not listed	8/4/1999 7/1/2000
Mr. Chuck Merja Sun River Qualifications (if required): public member	Governor	not listed	8/4/1999 7/1/2001
Mr. Gordon Belcourt Browning Qualifications (if required): Native American	Governor	not listed	8/4/1999 7/1/2000
Mr. William Crain Great Falls Qualifications (if required): none specified	Senate Minority Leader	not listed	8/4/1999 7/1/2001
Mr. Dennis Toussaint Stevensville Qualifications (if required): none specified	Speaker of the House	not listed	8/4/1999 7/1/2001
Family Support Services Advisory Council (Governor's Office)			
Ms. Vicki LaFond Smith Helena Qualifications (if required): parent representative from Region IV	Governor	Kenny	8/25/1999 9/14/2000
Ms. Ann Marie Johnson Missoula Qualifications (if required): representing Medicaid/Childrens Services	Governor	Thompson	8/25/1999 9/14/2000

BOARD AND COUNCIL APPOINTEES FROM AUGUST, 1999

Appointee	Appointed by	Succeeds	Appointment/End Date
Family Support Services Advisory Council (Governor's Office) cont.			
Ms. Michelle Gillespie Helena Qualifications (if required): representing Medicaid/Childrens Services	Governor	not listed	8/25/1999 9/14/2000
Ms. Courtney Hartman Glasgow Qualifications (if required): representing family support specialists	Governor	not listed	8/25/1999 9/14/2000
Mr. Fred Brown Iverness Qualifications (if required): parent representative from Region II	Governor	not listed	8/25/1999 9/14/2000
Health Care Advisory Council (Public Health and Human Services)			
Ms. Tanya M. Ask Missoula Qualifications (if required): representing Region 5	Governor	Agather	8/4/1999 6/30/2001
Ms. Laurie Ekanger Helena Qualifications (if required): representing the executive branch	Governor	reappointed	8/4/1999 6/30/2001
Dr. Lawrence R. Palazzo Glasgow Qualifications (if required): representing Region 1	Governor	reappointed	8/4/1999 6/30/2001
Ms. Joan Taylor Helena Qualifications (if required): representing Region 4	Governor	reappointed	8/4/1999 6/30/2001
Ms. Kristianne Wilson Billings Qualifications (if required): representing Region 3	Governor	reappointed	8/4/1999 6/30/2001

BOARD AND COUNCIL APPOINTEES FROM AUGUST, 1999

Appointee	Appointed by	Succeeds	Appointment/End Date
Health Care Advisory Council (Public Health and Human Services) cont.			
Ms. Lynn O'Malley Great Falls Qualifications (if required): representing Region 2	Governor	Richardson	8/4/1999 6/30/2001
Mental Disabilities Board of Visitors (Governor's Office)			
Mr. Robert W. Visscher Livingston Qualifications (if required): professional	Governor	not listed	8/30/1999 8/1/2001
Dr. John Sampsel Miles City Qualifications (if required): professional	Governor	not listed	8/25/1999 8/1/2001
Ms. Jennifer Pryor Boulder Qualifications (if required): representative of organization concerned with mentally retarded	Governor	not listed	8/25/1999 8/1/2001
Mr. Steve Cahill Clancy Qualifications (if required): representative of organization concerned with welfare of mentally ill	Governor	not listed	8/25/1999 8/1/2001
Ms. Kathleen Driscoll Donovan Hamilton Qualifications (if required): consumer representative	Governor	not listed	8/25/1999 8/1/2001
Mental Health Managed Care Ombudsman (Legislature)			
Ms. Bonnie Adee Helena Qualifications (if required): none specified	Governor	not listed	8/2/1999 8/2/2003

BOARD AND COUNCIL APPOINTEES FROM AUGUST, 1999

Appointee	Appointed by	Succeeds	Appointment/End Date
Montana Consensus Council's Board of Directors (Governor's Office)			
Sen. Greg Jergeson Chinook Qualifications (if required): public member	Governor	not listed	8/23/1999 6/30/2001
Governor Marc Racicot Helena Qualifications (if required): ex-officio member	Governor	not listed	8/23/1999 6/30/2001
Mr. Mike Zimmerman Butte Qualifications (if required): public member	Governor	not listed	8/23/1999 6/30/2001
Mr. Donald Snow Missoula Qualifications (if required): public member	Governor	not listed	8/23/1999 6/30/2001
Ms. Monica Switzer Richey Qualifications (if required): public member	Governor	not listed	8/23/1999 6/30/2001
Rep. Karl Ohs Harrison Qualifications (if required): public member	Governor	not listed	8/23/1999 6/30/2001
Ms. Elaine Forrest Wolf Point Qualifications (if required): public member and a Native American	Governor	not listed	8/23/1999 6/30/2001
Ms. Anne Hedges Helena Qualifications (if required): public member	Governor	not listed	8/23/1999 6/30/2001

BOARD AND COUNCIL APPOINTEES FROM AUGUST, 1999

Appointee	Appointed by	Succeeds	Appointment/End Date
Montana Consensus Council's Board of Directors (Governor's Office) cont.			
Mr. Larry Hamilton Billings Qualifications (if required): public member	Governor	not listed	8/23/1999 6/30/2001
Ms. Jane Jelinski Helena Qualifications (if required): public member	Governor	not listed	8/23/1999 6/30/2001
Mr. Alan Rollo Great Falls Qualifications (if required): public member	Governor	not listed	8/23/1999 6/30/2001
Mr. Steve Snezek Helena Qualifications (if required): public member	Governor	not listed	8/23/1999 6/30/2001
Montana Wheat and Barley Committee (Agriculture)			
Mr. Leonard Schock Vida Qualifications (if required): representative of District VII and a Republican	Governor	reappointed	8/20/1999 8/20/2002
Mr. Daniel Kidd Big Sandy Qualifications (if required): representative of District IV and a Republican	Governor	Christman	8/20/1999 8/20/2002
Montana Workforce Investment Board (Labor and Industry)			
Ms. Linda Pease Billings Qualifications (if required): representing Native Americans	Governor	McDonald	8/23/1999 0/0/0

BOARD AND COUNCIL APPOINTEES FROM AUGUST, 1999

Appointee	Appointed by	Succeeds	Appointment/End Date
Motor Fuel Tax Collection, Enforcement and Refund Advisory Council (Transportation)			
Mr. Joel T. Long Billings Qualifications (if required): representative of the Montana Contractors Association	Governor	not listed	8/26/1999 12/31/2000
Rep. Gary Beck Deer Lodge Qualifications (if required): legislator	Governor	not listed	8/26/1999 12/31/2000
Ms. Rona Alexander Bozeman Qualifications (if required): representative of the Montana Petroleum Marketers Association	Governor	not listed	8/26/1999 12/31/2000
Sen. Ric Holden Glendive Qualifications (if required): legislator	Governor	not listed	8/26/1999 12/31/2000
Rep. Roger Somerville Kalispell Qualifications (if required): legislator	Governor	not listed	8/26/1999 12/31/2000
Sen. Debbie Shea Butte Qualifications (if required): legislator	Governor	not listed	8/26/1999 12/31/2000
Mr. Bob Stephens Dutton Qualifications (if required): representative of the Montana Grain Growers	Governor	not listed	8/26/1999 12/31/2000
Mr. Patrick McNulty Buffalo Qualifications (if required): representative of the Montana Agricultural Producers	Governor	not listed	8/26/1999 12/31/2000

BOARD AND COUNCIL APPOINTEES FROM AUGUST, 1999

Appointee	Appointed by	Succeeds	Appointment/End Date
Motor Fuel Tax Collection, Enforcement and Refund Advisory Council (Transportation) cont.			
Mr. Keith Olson Kalispell Qualifications (if required): representative of the Montana Logging Association	Governor	not listed	8/26/1999 12/31/2000
Ms. Gail Abercrombie Helena Qualifications (if required): representative of the Montana Petroleum Association	Governor	not listed	8/26/1999 12/31/2000
Mr. Robert Turner Helena Qualifications (if required): representative of the Montana Department of Transportation	Governor	not listed	8/26/1999 12/31/2000
Mr. Wes Choc Helena Qualifications (if required): representative of AAA of Montana	Governor	not listed	8/26/1999 12/31/2000
Mr. Jim Peterson Buffalo Qualifications (if required): representative of the Montana Stockgrowers Association	Governor	not listed	8/26/1999 12/31/2000
Mr. Mike Gauthier Missoula Qualifications (if required): representative of the Montana Motor Carriers Association	Governor	not listed	8/26/1999 12/31/2000
Motorcycle Safety Advisory Committee (Office of Public Instruction)			
Mr. Dal Smilie Helena Qualifications (if required): representative of a motorcycle riding group	Governor	reappointed	8/23/1999 7/1/2003

BOARD AND COUNCIL APPOINTEES FROM AUGUST, 1999

Appointee	Appointed by	Succeeds	Appointment/End Date
Motorcycle Safety Advisory Committee (Office of Public Instruction) cont.			
Ms. Michele Hand	Governor	Crockrell	8/23/1999
Missoula			7/1/2001
Qualifications (if required): representative of a motorcycle riding group			
Mr. Ladd Paulson	Governor	Henne	8/23/1999
Billings			7/1/2003
Qualifications (if required): peace officer			
Peace Officers' Standards and Training Advisory Council (Justice)			
Dr. James Burfeind	Governor	not listed	8/10/1999
Missoula			2/13/2000
Qualifications (if required): representing criminal justice educators			
Teachers' Retirement Board (Administration)			
Mr. Scott Dubbs	Governor	Cross	8/23/1999
Lewistown			7/1/2003
Qualifications (if required): teacher/member			
Trauma Care Committee (Public Health and Human Services)			
Dr. Thomas Bennett	Governor	not listed	8/4/1999
Billings			11/2/2003
Qualifications (if required): representing the Eastern Regional Trauma Advisory Committee			

VACANCIES ON BOARDS AND COUNCILS -- OCTOBER 1, 1999 through DECEMBER 31, 1999

Board/current position holder	Appointed by	Term end
Alfalfa Seed Committee (Agriculture)		
Mr. Tom Helm, Toston Qualifications (if required): alfalfa seed grower	Governor	12/21/1999
Mr. Kenneth M. Sagmiller, Ronan Qualifications (if required): alfalfa seed grower	Governor	12/21/1999
Mr. James Whitmer, Bloomfield Qualifications (if required): representing alfalfa seed growers and alfalfa leaf-cutting bee industry	Governor	12/21/1999
Board of Occupational Therapy Practice (Commerce)		
Ms. Diana Margaret Leonard, Great Falls Qualifications (if required): occupational therapist	Governor	12/31/1999
Board of Outfitters (Commerce)		
Mr. Kenneth Greslin, Broadus Qualifications (if required): licensed outfitter in District 5	Governor	10/1/1999
Ms. Rita Orr, Libby Qualifications (if required): public member	Governor	10/1/1999
Ms. Beate Galda, Helena Qualifications (if required): representing the Department of Fish, Wildlife and Parks	Governor	10/1/1999
Board of Speech Pathologists and Audiologists (Commerce)		
Ms. Lynn Harris, Miles City Qualifications (if required): audiologist	Governor	12/31/1999
Ms. Linda Solem, Kalispell Qualifications (if required): speech-language pathologist	Governor	12/31/1999

VACANCIES ON BOARDS AND COUNCILS -- OCTOBER 1, 1999 through DECEMBER 31, 1999

Board/current position holder	Appointed by	Term end
Capitol Restoration Commission (Administration)		
Mr. Loren Smith, Great Falls Qualifications (if required): public member	Lt. Governor	12/3/1999
Ms. Jeanne Michael, Billings Qualifications (if required): public member	Lt. Governor	12/3/1999
Mr. Walter (Howdie) S. Murfitt, Helena Qualifications (if required): Governor's appointee	Governor	12/3/1999
Ms. Gayle Shanahan, Helena Qualifications (if required): Governor's appointee	Governor	12/3/1999
Electric Utility Industry Restructuring Advisory Committee (Legislative Services)		
Mr. Donald Quander, Billings Qualifications (if required): representing the industrial community	Governor	12/31/1999
Ms. Roma Taylor, Bigfork Qualifications (if required): representing the nonindustrial retail electric consumer sector	Governor	12/31/1999
Mr. Gene Leuwer, Helena Qualifications (if required): representing a low-income program provider	Governor	12/31/1999
Mr. Stephen E. Bradley, Crow Agency Qualifications (if required): representing Montana's Indian tribes	Governor	12/31/1999
Ms. Judi Johansen, Portland, OR Qualifications (if required): representing the electric power market industry	Governor	12/31/1999
Mr. Stan Dupree, Butte Qualifications (if required): representing organized labor	Governor	12/31/1999

VACANCIES ON BOARDS AND COUNCILS -- OCTOBER 1, 1999 through DECEMBER 31, 1999

Board/current position holder	Appointed by	Term end
Electric Utility Industry Restructuring Advisory Committee (Legislative Services) cont.		
Ms. Kathy Hadley, Butte	Governor	12/31/1999
Qualifications (if required): represents community comprising environmental and conservation interests		
Historical Preservation Review Board (Historical Society)		
Mr. David Johns, Butte	Governor	10/1/1999
Qualifications (if required): public member		
Mr. Don Wetzel, Billings	Governor	10/1/1999
Qualifications (if required): public member		
Mr. Chris King, Winnett	Governor	10/1/1999
Qualifications (if required): public member		
Independent Living Advisory Council (Public Health and Human Services)		
Mr. Bill Franks, Wibaux	Director	12/10/1999
Qualifications (if required): none specified		
Lewis and Clark Bicentennial Commission (Historical Society)		
Mr. Darrell Kipp, Browning	Governor	10/1/1999
Qualifications (if required): enrolled member of a Montana Indian Tribe		
Ms. Teresa Korpela, Great Falls	Governor	10/1/1999
Qualifications (if required): public member		
Ms. Betty Stone, Glasgow	Governor	10/1/1999
Qualifications (if required): public member		
Local Government Records Committee (Secretary of State)		
Ms. Bonnie Ramey, Boulder	Secretary of State	12/31/1999
Qualifications (if required): none specified		

VACANCIES ON BOARDS AND COUNCILS -- OCTOBER 1, 1999 through DECEMBER 31, 1999

Board/current position holder	Appointed by	Term end
Local Government Records Committee (Secretary of State) cont.		
Ms. Marcia Porter, Missoula Qualifications (if required): none specified	Secretary of State	12/31/1999
Ms. Lorraine Van Ausdol, Helena Qualifications (if required): none specified	Secretary of State	12/31/1999
Ms. Peggy Bourne, Great Falls Qualifications (if required): none specified	Secretary of State	12/31/1999
Montana Public Safety Communications Council (Administration)		
Ms. Lois A. Menzies, Helena Qualifications (if required): Director of the Department of Administration	Governor	11/13/1999
Mr. Dennis M. Taylor, Helena Qualifications (if required): representative of local government	Governor	11/13/1999
Sheriff Bill Slaughter, Bozeman Qualifications (if required): representative of law enforcement and Sheriffs and Peace Officers Association	Governor	11/13/1999
Mr. Lloyd Jackson, Pablo Qualifications (if required): tribal representative	Governor	11/13/1999
Mr. Mike Meldahl, Butte Qualifications (if required): representative of Montana Power Company and other private utilities	Governor	11/13/1999
Mr. Michael J. Griffith, Helena Qualifications (if required): representative of county government operations of Montana	Governor	11/13/1999
Mr. William S. Strizich, Great Falls Qualifications (if required): representative of the federal government	Governor	11/13/1999

VACANCIES ON BOARDS AND COUNCILS -- OCTOBER 1, 1999 through DECEMBER 31, 1999

Board/current position holder	Appointed by	Term end
Montana Public Safety Communications Council (Administration) cont.		
Mr. John Blacker, Helena	Governor	11/13/1999
Qualifications (if required): representative of state government		
Mr. Larry Fasbender, Helena	Governor	11/13/1999
Qualifications (if required): representative of state government		
Mr. Bob Jones, Great Falls	Governor	11/13/1999
Qualifications (if required): representative of law enforcement and Association of Chiefs of Police		
Mr. Drew Dawson, Helena	Governor	11/13/1999
Qualifications (if required): representative of the emergency medical services community		
Mr. William Jameson, Bozeman	Governor	11/13/1999
Qualifications (if required): representative of citizens at large		
Mr. Scott Waldron, Frenchtown	Governor	11/13/1999
Qualifications (if required): representative of fire protection services		
Ms. Anita Parkin, Superior	Governor	11/13/1999
Qualifications (if required): representative of the 9-1-1 community		
Small Business Compliance Assistance Advisory Council (Environmental Quality)		
Ms. Sandy Newton, Jefferson City	Governor	10/1/1999
Qualifications (if required): public member		
Ms. Karen Williams, Helena	Governor	10/1/1999
Qualifications (if required): public member		
Water and Wastewater Operators Advisory Council (Environmental Quality)		
Dr. Carol Reifschneider, Havre	Governor	10/16/1999
Qualifications (if required): faculty member of a university		