MONTANA ADMINISTRATIVE REGISTER

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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 19

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 The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

In the matter of the adoption of new Rules I and II, repeal of ARM 2.5.119, and the amendment of ARM 2.5.201, 2.5.202, 2.5.302, 2.5.303, 2.5.401, 2.5.403, 2.5.404, 2.5.405, 2.5.406, 2.5.407, 2.5.501, 2.5.502, 2.5.503, 2.5.505, 2.5.601, 2.5.602, 2.5.603, and 2.5.604 concerning state procurement.	) NOTICE OF PROPOSED ADOPTION, REPEAL AND AMENDMENT OF RULES)) NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On November 16, 1999, the Department of Administration proposes to adopt New Rules I and II, repeal ARM 2.5.119, and amend ARM 2.5.201, 2.5.202, 2.5.302, 2.5.303, 2.5.401, 2.5.403, 2.5.404, 2.5.405, 2.5.406, 2.5.407, 2.5.501, 2.5.502, 2.5.503, 2.5.505, 2.5.601, 2.5.602, 2.5.603, and 2.5.604 pertaining to state procurement.

2. The Department of Administration 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 Administration no later than 5:00 p.m. on November 4, 1999 to advise us of the nature of the accommodation that you need. Please contact Sheryl Motl, PO Box 200135, Helena, MT 59620-0135; (406) 444-3315; TDD 1-800-253-4091; or FAX (406) 444-2529.

3. The proposed new rules will read as follows:

Rule I REQUESTS FOR INFORMATION (1) Agencies may issue requests for information. A request for information may be used only to obtain preliminary information about a market or the type of available supply or service, where there is not enough information readily available to write an adequate specification or work statement.

(2) Pricing information may be requested only with the provision that such information would be submitted voluntarily. The request for information must clearly state that no award will result from the inquiry.

AUTH: Section 18-4-221, MCA
IMP: Section 18-4-221, MCA

Rule II LATE BIDS OR PROPOSALS (1) Late bids or proposals will not be accepted, regardless of cause. Late bids or proposals will be returned unopened to the vendor at the expense of the vendor or destroyed if requested.

AUTH: Section 18-4-221, MCA
IMP: Section 18-4-221, MCA

4. ARM 2.5.119, the rule proposed to be repealed, is on page 2-133 of the Administrative Rules of Montana.

AUTH: Section 18-4-221, MCA
IMP: Section 18-4-221, MCA

5. The rules to be amended provide as follows: (new matter underlined, deleted matter interlined)

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

(1) and (2) Remain the same.

~~(3) "Bid sample" means a sample to be furnished by bidder to show the characteristics and/or quality of the item offered in the bid.~~

(3) "Bid" means the executed document submitted by a "bidder" in response to an invitation for bid.

(4) and (5) Remain the same.

~~(6) "Competitive bidding" means the offering of prices by individuals or firms competing for a contract to supply specified services or merchandise.~~

(7) through (11) Remain the same, but are renumbered (6) through (10)

(11) "Exclusive contract" means that state agencies must obtain the specified supply or service from the contract holder(s), unless the contract allows otherwise.

(12) through (14) Remain the same.

(15) "Non-exclusive contract" means state agencies are not required to purchase this supply or service from the contract holder(s) and may obtain the necessary service or supply from a different source following the requirements of Title 18, MCA and their agency procurement delegation agreement.

~~(15) "Non resident bidder" means a bidder whose residence is not in this state as determined under 18-1-103, MCA.~~

(16) "Offer" means proposal. "Offeror" means a person submitting a proposal when a procurement is made ~~by a source selection method other than competitive sealed bidding~~ by a request for proposal process.

(17) "Office supply" means an item ~~included under the office supply commodity class codes (#610, 615 and 620) maintained by the division. In~~ in the Central Stores Product Catalog~~, the inventory codes for these supplies are all items~~ with prefixes beginning with the following numbers: 7001 through 7704, 7802 through 7904, 7907 and 9513.

(18) through (20) Remain the same.

~~(21) "Purchasing bureau" means that bureau of the division responsible for procuring or supervising the procurement of all supplies and services needed by the state excluding those services procured by the property and supply bureau and publications and graphics bureau.~~

(21) "Request for information" means a document used to informally solicit information about a market or type of available supply or service where there is no information readily available to write an adequate specification or work statement.

(22) "Request for quote" means any source selection method allowed for in Title 18, MCA.

(22) Remains the same, but is renumbered (23).

~~(23)~~(24) "Requisition time schedule" means a schedule issued by the ~~purchasing~~ state procurement bureau each year which designates the dates by which certain categories of controlled items must be requested from the bureau.

(24) through (28) Remain the same, but are renumbered (25) through (29).

~~(29)~~(30) "Specifications" means a detailed description of what the purchaser requires and what a bidder or offeror must offer to be considered for an award.

(31) "State procurement bureau" means that bureau of the division responsible for procuring or supervising the procurement of all supplies and services needed by the state excluding those services procured by the property and supply bureau and publications and graphics bureau.

(30) through (33) Remain the same, but are renumbered (32) through (35).

~~(34)~~(36) "Vendors list" means a list maintained by the division listing the names and addresses of suppliers of various ~~goods~~ supplies and services from whom bids or proposals can be solicited.

AUTH: Section 18-1-114 and 18-4-221, MCA
IMP: Section 18-4-221, MCA

2.5.202 DEPARTMENT OF ADMINISTRATION RESPONSIBILITIES

(1) through (5)(b) Remain the same.

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

(d) Remains the same.

(6) Delegation of authority.

(a) Except for controlled items or as specified in (5), authority is hereby delegated to all agencies for the procurement of supplies and services of $5,000 or less.

(b) Remains the same.

(c) Delegation greater than $5,000 will be given through a written delegation agreement with the ~~purchasing~~ state procurement bureau. The written delegation shall specify:

(i) through (7) Remains the same.

AUTH: Section 18-4-242, MCA

IMP: Section 2-17-301, 2-17-302, 18-4-221 and 18-4-222, MCA

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

(2) through (4) Remain the same.

AUTH: Section 18-4-221, MCA
IMP: Section 18-4-221, MCA

2.5.303 ENFORCING THE CONTRACT (1) Except for items purchased and warehoused by the division's central stores program, agencies are responsible for receiving supplies and services procured on their behalf by the department. Receiving means inspecting the supply or service and checking it against the contract to ~~insure~~ ensure that it is acceptable, complete and in compliance with the terms of the contract.

(2) Remains the same.

(3) The state of Montana reserves the right to assess liquidated damages for failing to comply with delivery requirements indicated in the bid or proposal. This sum may be deducted from vendor payment for failure to deliver when specified. Liquidated damages should not be punitive and should only be used where it is difficult to determine actual damages at the time of contracting. ~~No premium will be awarded to the vendor for delivery in advance of the specified time.~~

AUTH: Section 18-4-221, MCA
IMP: Section 18-4-221, MCA

2.5.401 VENDORS LIST (1) Remains the same.

(2) To get on the vendors list, a vendor must register with the division on a form supplied by the division, including information sufficient to identify ~~proper~~ the ~~commodity(ies) on which~~ supplies or services the vendor wishes

to ~~bid~~ supply. ~~Registration forms are available from the procurement and printing division.~~

AUTH: Section 18-4-221, MCA
IMP: Section 18-4-221, MCA

2.5.403 BIDDING PREFERENCES (1) Remains the same.

(2) To assess eligibility, the department requires vendors to apply for preference by completing the applicable sections of the bidder affidavit form described in 18-1-113, MCA. The affidavit must be on file with the division or appropriate political subdivision at the time of bid opening, or be submitted with the bid to be considered for preference eligibility. The business name and federal identification number on the affidavit must match the business name and federal identification number on the submitted bid documents in order to be considered eligible for the preference. Branch offices of a Montana resident company must have a separate affidavit on file with the public agency unless the submitted bid documents reflect the same business name and same federal identification number as the parent company's affidavit. Vendors who submit inaccurate information on this form may be subject to the provisions of ARM 2.5.402.

(3) ~~A third~~ The preference~~, as~~ required in 18-7-107, MCA, must be applied to all state printing, binding, and stationery work subject to the limitations in (1).

AUTH: Section 18-1-114 and 18-4-221, MCA
IMP: Section 18-4-221, MCA

2.5.404 BID AND PROPOSAL PREPARATION (1) Any exceptions to the ~~bid or~~ specifications on the part of the bidder or offeror must be clearly indicated. Exceptions may be rejected.

(2) Each item on which a bidder or offeror submits a quotation must be new and unused and of the latest model or manufacture unless otherwise specified by the state. It shall be equal in quality and performance characteristics to that indicated in the ~~invitation for bid~~ invitation for bid or request for proposal.

(3) The price for each item must be stated ~~in the bid~~ and shall be clearly shown in the space provided on the ~~bid~~ form. Only one unit price shall be shown for each item unless specific provision is made in the ~~bid~~ form for an optional figure. The price of each item shall be extended to show the total price for the quantity requested. In case of error in extension, the unit price shall prevail.

(4) Remains the same.

(5) Unless stated otherwise in the solicitation, ~~P~~payment will be due 30 days from:

(a) the receipt of a properly executed claim; or

(b) upon satisfactory receipt of the merchandise or service, whichever is later.

(6) Remains the same.

(7) Vendors will offer a firm price for 30 days after a bid or proposal opening, pending award, unless otherwise provided for in the invitation for bids or request for proposal.

(8) Remains the same.

AUTH: Section 18-4-221, MCA
IMP: Section 18-4-221, MCA

2.5.405 BLIND VENDORS' BIDDING PREFERENCE (1) A blind person wishing to claim the vending facility preference must complete the determination form provided by the ~~purchasing~~ state procurement bureau. The form must be completed by an ophthalmologist, physician skilled in diseases of the eye or a state of Montana, department of public health and human services, visual services counselor.

(2) Remains the same.

AUTH: Section 18-5-501, MCA
IMP: Section 18-5-501, MCA

2.5.406 VENDOR PROTEST (1) Except for small purchases or limited solicitations made pursuant to 18-4-305, MCA, a bidder, offeror, or contractor aggrieved in connection with the solicitation, award, or administration of a contract may protest to the department. Protests involving a solicitation or award must follow the provisions of 18-4-242, MCA. The department is responsible for making decisions involving the best interests of the state.

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

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

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

(3) and (4) Remain the same

AUTH: Section 18-4-221, MCA
IMP: Section 18-1-402 and 18-4-221, MCA

2.5.407 STANDARDS OF RESPONSIBILITY (1) Among factors that may be considered in determining whether the standard of responsibility has been met are whether a prospective contractor:

(a) through (d) Remain the same.

(e) has a satisfactory record of past performance. Nothing shall prevent the procurement officer from establishing additional responsibility standards for a particular procurement, provided that these additional standards are set forth in the solicitation, or from using past performance with the state of Montana as a reference.

(2) A prospective contractor must supply information requested by the procurement officer concerning the responsibility of the contractor in a timely and convincing manner. If the contractor fails to supply the requested information, the procurement officer shall base the determination of responsibility upon any available information or may find the prospective contractor nonresponsible.

(3) and (4) Remain the same.

AUTH: Section 18-4-221, MCA
IMP: Section 18-4-308, MCA

2.5.501 SPECIFICATIONS (1) through (5) Remain the same.

(6) A specification for a specific brand of supplies or services ~~or equipment~~ may be used if the requesting agency has a documented need to maintain a standard of performance and compatibility with existing supplies, equipment or staff experience.

(7) The suggested format for specifications is as follows:

(a) through (e) Remain the same.

(f) Date commodity is to be delivered. ~~(On the average, an agency can expect delivery 60 to 90 days after submitting a requisition to purchasing; however, vendor delivery schedules vary dramatically from product to product.)~~

(g) and (h) Remain the same.

AUTH: Section 18-4-232, MCA
IMP: Section 18-4-231 through 18-4-234, MCA

2.5.502 BID, PROPOSAL, AND CONTRACT PERFORMANCE SECURITY

(1) The state may, at its discretion, require bid or proposal security and/or contract performance security for the procurement of services and supplies.

(2) Bid or proposal security and contract performance security requirements must be stated in the invitation for bids or the request for proposals.

(3) and (4) Remain the same.

(5) All bid and proposal security, except bonds, will be returned to the unsuccessful bidders and proposers within 30 days from the date of the award.

(6) Remains the same.

(7) All contract performance security, except bonds, will be returned to the successful bidder or offeror upon completion of the contract, or at the discretion of the procurement official as documented to assure contract

completion, or warranty period as declared within the contract.

AUTH: Section 18-4-221, MCA
IMP: Section 18-1-102 and 18-4-312, MCA

2.5.503 PUBLIC NOTICE (1) through (3) Remain the same.

(4) In the event that it is either not practicable or not advantageous to the state to furnish ~~bids~~ solicitations to all the ~~bidders~~ vendors listed on the central ~~bidders~~ vendors list for a specific supply or service, the purchasing agency may elect to shorten ~~a bidders~~ the list by selecting a sample of bidders or offerors.

AUTH: Section 18-4-221, MCA
IMP: Section 18-4-303 and 18-4-304, MCA

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

(a) through (3) Remain the same.

AUTH: Section 18-4-221, MCA
IMP: Section 18-4-303 and 18-4-304, MCA

2.5.601 COMPETITIVE SEALED BIDS (1) through (4) Remain the same.

(5) Upon receipt of a bid or a facsimile transmission of a bid, an employee of the agency other than the procurement officer will cause it to be time-stamped and stored in a secure place until the time and date set for bid opening. In order to be considered timely, the entire printed bid must be at its destination by the specified time.

(6) Bids shall be opened publicly at the time, date and place designated in the invitation for bid. ~~The name of each bidder, the bid price, and such other information as is deemed appropriate by the procurement officer shall be available for public inspection.~~

(7) Remains the same.

(8) Following determination of product acceptability, ~~if any is required,~~ bids will be ~~evaluated~~ reviewed to determine which bidder offers the lowest cost to the state in accordance with the ~~evaluation criteria~~ specifications set forth in the invitation for bids ~~and~~, including the preference provisions described in ARM 2.5.403. ~~Examples of such criteria include, but are not limited to, transportation cost, and life cycle cost formulas. Evaluation factors need not be precise predictors of actual future costs, but to the extent possible such evaluation factors shall.~~

~~(a) be reasonable estimates based upon information the state has available concerning future use; and~~

~~(b) treat all bids equitably.~~

(9) and (10) Remain the same.

(11) The discretion of the division or the head of a purchasing agency, will be used to resolve tie bids not resolved by the provisions of 18-1-111, MCA. ~~If no permissible methods will be effective in discouraging tie bids and a written determination is made so stating, award may be made by drawing lots. If collusion is suspected records shall be made of all invitations for bid on which tie bids are received showing the following information:~~

~~(a) the identification number of the invitation for bids;~~

~~(b) the supply or service; and~~

~~(c) a listing of all the bidders and the prices submitted. A copy of such records shall be sent to the attorney general's office.~~

(12) through (15) Remain the same.

AUTH: Section 18-4-221, MCA
IMP: Section 18-4-303, MCA

2.5.602 COMPETITIVE SEALED PROPOSAL (1) "Competitive sealed proposal" is a procurement option allowing the award to be based upon an evaluation process using stated criteria ~~or evaluation factors.~~ to facilitate arriving at a contract that will be most advantageous to the state.

(2) Competitive sealed proposals, solicited through a request for proposals, may be practical when one or more of the following conditions exist:

(a) through (c) Remain the same.

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

(e) price will be only one of several criteria considered in determining an award, if evaluated at all. ~~the primary consideration in determining award may not be price.~~

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

(a) Remains the same.

(b) ~~the relative importance of evaluation factors.~~ the criteria that will be used to evaluate the proposals.

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

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

~~(5)~~ (6) After the ~~date~~ time established for receipt of proposals, a procurement officer shall open the proposals and inspect the proposals for material not available for public inspection pursuant to 18-4-304, MCA. The procurement officer will remove confidential documents and then make the proposals available for public inspection. Offerors submitting a proposal containing a claim for confidential information pursuant to 18-4-304, MCA, must include a statement that attests to the offeror's acceptance of the legal and financial responsibility for defending the claim. In addition, any claim for trade secret confidentiality must be made by an offeror's legal counsel using the affidavit prescribed by the division. ~~a register of proposals shall be prepared which shall include the name of each offeror. The register of proposals shall be open to public inspection only after award of the contract.~~

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

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

(a) responsive; or

(b) non-responsive.

(i) Proposals may be found non-responsive any time during the evaluation process if:

(A) any of the required information is not provided;

(B) the submitted price is found to be excessive or inadequate as measured by criteria stated in the request for proposal; or

(C) the proposal is not within the plans and specifications described and required in the request for proposal.

(ii) Non-responsive proposals will be eliminated from further consideration.

(8) and (8)(a) Remain the same.

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

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

(d) At the discretion of the procurement officer, one or more offerors may be provided an opportunity to submit a best and final offer if additional information is required in order to reach a final decision. A best and final offer may not be requested from the offeror(s) on price alone.

(9) Remains the same.

(10) The evaluation shall be based on the evaluation criteria set forth in the request for proposals. The evaluators shall exercise discretion in assigning points or value to a proposal, which involves a judgmental assessment of the evaluation criteria. The contract will be awarded to the

highest scoring proposal offered by a responsive and responsible offeror.

(10) Remains the same, but is renumbered (11).

~~(11) All proposal documents are available for public inspection after the contract is executed, except for trade secrets as defined by the Uniform Trade Secrets Act, Title 30, chapter 14, part 4, MCA.~~

(12) and (13) Remain the same.

AUTH: Section 18-4-221, MCA
IMP: Section 18-4-304, MCA

2.5.603 SMALL PURCHASES OR LIMITED SOLICIATIONS OF SUPPLIES AND SERVICES (1) Remains the same.

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

(3) and (4) Remain the same.

AUTH: Section 18-4-221, MCA
IMP: Section 18-4-305, MCA

2.5.604 SOLE SOURCE PROCUREMENT (1) through (5) Remain the same.

(6) through (6)(c) Remain the same.

(d) purchase or renewal of maintenance agreements for software or hardware ~~maintenance agreements~~.

AUTH: Section 18-4-221, MCA
IMP: Section 18-4-306, MCA

6. We propose to adopt New Rule I concerning requests for information to give agencies some guidance in how to use this form of information gathering. We mean to clearly state that a request for information may not be used as a "source selection method" permitted in Title 18, chapter 4, MCA.

7. We propose to adopt New Rule II concerning late bids and proposals to specify in rule what is the long held policy in public procurement and specifically of the Department of Administration concerning late bids and proposals.

8. We propose to repeal ARM 2.5.119 because it unnecessarily repeats the statute found in Section 18-4-132, MCA.

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

ARM 2.5.201(3) is deleted as unnecessary. A new (3) is inserted to include a reference to "bidder" when discussing the definition of "bid."

ARM 2.5.201(6) is deleted as unnecessary.

ARM 2.5.201(new 11) and (new 15) are amended to add definitions of "exclusive" and "non-exclusive" contracts. Recently the state has begun distinguishing between these two types of contracts and a formal definition will assist vendors and agencies in understanding the difference.

ARM 2.5.201(15) is deleted as unnecessary since there is a definition of "resident bidder."

ARM 2.5.201(16) is amended to clarify that an "offeror" is a vendor responding to a request for proposal instead of an "invitation for bid."

ARM 2.5.201(17) changes the wording to reflect a different business practice for the state's new purchasing software.

ARM 2.5.201(old (21) and new (31)) reflects the new name for the state procurement bureau. This same change is made everywhere reference is made to the "purchasing" bureau.

ARM 2.5.201(new 21) is amended to add a definition of "request for information." This definition will give agencies some guidance in how to use this form of information gathering. We mean to clearly state that a request for information may not be used as a "source selection method" permitted in Title 18, chapter 4, MCA.

ARM 2.5.201(new 22) is amended to add a definition of "request for quote." This definition is necessary because the state's new purchasing software refers to "requests for quote" and not "invitations for bid" or "requests for proposals" as found in statute.

ARM 2.5.201(new 24) changes the name of the purchasing bureau to "state procurement bureau."

ARM 2.5.201(new 30) adds the word "offeror" where the rule discusses "specifications" to clarify that the rule applies to both invitations to bid and requests for proposals.

ARM 2.5.201(new 36) "Goods" is replaced as an outdated term with "supplies."

ARM 2.5.202(5)(c) is amended to reflect language in Section 2-17-302, MCA concerning communications systems.

ARM 2.5.202(6)(a) provides clarification.

ARM 2.5.202(6)(c) changes the name of the bureau.

ARM 2.5.302 is amended to refer to the state's new electronic requisition form and changes the name of the bureau.

ARM 2.5.303(3) The last sentence is dropped because it does not relate to the subject matter of liquidated damages.

ARM 2.5.401 is amended to reflect changes required by the new purchasing software.

ARM 2.5.403 is amended to reflect Sections 18-1-101 and 18-1-113, MCA, which refer to "public agencies" maintaining a file of affidavits for the Montana resident preference. The rule currently only refers to "the division" maintaining the affidavits which is inaccurate. The second part of the

amendment clarifies how the state will proceed in handling claims for resident preference from branch offices of a parent company. Furthermore, the amendments clarify when a preference for printing is applied.

ARM 2.5.404 is amended to make minor clarifications concerning bid and proposal preparation.

ARM 2.5.405 is amended to change the name of the bureau.

ARM 2.5.406 is amended to include a statement to clarify that the state is responsible for making determinations of what is in the state's best interest in a protest procedure. This became an issue during recent litigation.

ARM 2.5.407 is amended to clarify that the state may consider its own experience with a vendor in making a determination of "responsibility" as required in Section 18-4-308, MCA.

ARM 2.5.501 is amended to make minor clarifications in the text.

ARM 2.5.502 is amended to continue to distinguish between bids and proposals and bidders and offerors.

ARM 2.5.503 is amended to make minor clarifications in the text.

ARM 2.5.505 is amended to make minor clarifications in the text concerning bids and proposals.

ARM 2.5.601(5) is amended to clarify that incomplete bids will not be accepted as timely. Subsection (6) is amended to clarify that all information involving a bid is open to the public. Subsection (8) is amended to clarify how bids will be awarded and to continue the clarification between bids and proposals. Some material is deleted as unnecessary. Subsection (11) makes minor clarifications and removes unnecessary text.

ARM 2.5.602 is amended extensively as a result of a 1998 Montana Supreme Court decision addressing the "public's right to know" concerning the request for proposal process and as a result of recent litigation. See Great Falls Tribune Company v. Day, 1998 MT 133, 959 P.2d 508 (1998). Subsection (1) is amended to clarify that the evaluation process for a request for proposal process must be based solely on "stated criteria" and removes the confusing and redundant reference to "evaluation factors." In addition, language is inserted to clarify that the purpose of the request for proposal process is to reach a contract that will be most advantageous to the state. New subsection (2)(e) clarifies the language concerning the consideration of price in a request for proposal. Subsection (3)(b) states that evaluation criteria must be included in the original solicitation document. Subsection (5) is amended to remove restrictions on the public's right to inspect the proposal documents. Subsection (6) concerns the protection of trade secret information and what an offeror must do in order to submit trade secret material. Old subsection (6) is deleted and the concepts re-inserted in new (10). New subsection (7) describes when a proposal may be found non-responsive and specifies that proposals found non-responsive may not be considered further. Subsection (8)(c) is amended to remove the restriction on informing offerors of the

their status. This information may not be withheld under the recent Supreme Court opinion.

ARM 2.5.602(8)(d) places limitations on when best and final offers may be requested. The Supreme Court decision concerning the public's right to know implies that competing offerors may now inspect each others proposals for information that may enhance their own ability to obtain a contract award. If best and final offers were requested on price alone, the business community could be subjected to an auction type environment that is not permitted even in the invitation for bid process.

ARM 2.5.602(10) is amended to describe how requests for proposals may be evaluated. In addition, language is included to clarify that discretion will be involved in the evaluation process, implying that an RFP evaluation process cannot be totally without some subjectivity. However, this amendment also limits that discretion by clarifying that the contract must be awarded to the highest scoring proposal offered by a responsible and responsive offeror. Subsection (11) is struck because it directly conflicts with the Supreme Court decision.

ARM 2.5.603 is amended to state that contracts awarded using the limited solicitation process must be awarded on the basis of lowest responsive and responsible bidder.

ARM 2.5.604 is amended to clarify the intent of the rule.

10. Proposed rule notices are placed on the Procurement and Printing Division's Internet site at www.state.mt.us/doa/ppd.

11. Concerned persons may submit their data, views, or arguments concerning the proposed rule actions to Sheryl Motl, Bureau Chief, State Procurement Bureau, Department of Administration, PO Box 200135, Helena, MT, 59620-0135. Electronic responses may be sent to smotl@state.mt.us. Any comments must be received no later than November 4, 1999.

12. If persons who are directly affected by the proposed action wish to express their data, views, and arguments orally or in writing at a public hearing, they must make a written request for a hearing and submit this request along with any written comments they have to Sheryl Motl at the address listed above. The comments must be received no later than November 4, 1999.

13. 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 not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those

persons directly affected has been determined to be 25 based on the minimum numbers stated above.

14. The Department of Administration maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to this 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 notice regarding state procurement. Such written request may be mailed or delivered to Sheryl Motl, PO Box 200135, Helena, MT 59620-0135, faxed to the office at (406) 444-2529, or may be made by completing a request form at any rules hearing held by the Department of Administration.

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

By:

Lois Menzies

Lois Menzies, Director, Department of Administration

Dal Smilie

Dal Smilie, Rule Reviewer, Department of Administration

Certified to the Secretary of State September 27, 1999.

BEFORE THE CLASSIFICATION REVIEW COMMITTEE
OF THE STATE OF MONTANA

In the matter of the proposed amendment of ARM 6.6.8301, concerning updating references to the NCCI Basic Manual for Workers Compensation and Employers Liability Insurance, 1996 ed.	))))))	NOTICE OF PROPOSED AMENDMENT OF ARM 6.6.8301 NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On December 16, 1999, the Montana Classification Review Committee proposes to amend ARM 6.6.8301 updating references to the NCCI Basic Manual for Workers Compensation and Employers Liability, 1996 edition.

2. The Classification Review Committee will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Committee no later than 5:00 p.m., November 9, 1999, to advise us of the nature of the accommodation needed. Please contact Christy Weikart, State Compensation Insurance Fund, 5 South Last Chance Gulch, Helena, MT 59601; telephone (406) 444-9332; fax (406) 444-6555.

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

6.6.8301 ESTABLISHMENT OF CLASSIFICATION FOR COMPENSATION PLAN NO. 2 (1) The committee hereby adopts and incorporates by reference the NCCI Basic Manual for Workers Compensation and Employers Liability Insurance, 1996 ed., as supplemented through August 1, 1999. ~~January 1, 1999,~~ which establishes classifications with respect to employers electing to be bound by compensation plan No. 2 as provided in Title 39, chapter 71, part 22, Montana Code Annotated. A copy of the Basic Manual for Workers Compensation and Employers Liability Insurance is available for public inspection at the Office of the Commissioner of Insurance, Room 270, Sam W. Mitchell Building, 126 North Sanders, P.O. Box 4009, Helena, MT 59620-4009. Copies of the Basic Manual for Workers Compensation and Employers Liability Insurance may be obtained by writing to the Montana Classification Review Committee in care of the National Council on Compensation Insurance, Inc., 7220 West Jefferson Avenue, Suite 310, Lakewood, Colorado 80235. Persons obtaining a copy of the Basic Manual for Workers Compensation and Employers Liability Insurance must pay the committee's cost of providing such copies.

(2) Remains the same.

AUTH: 33-16-1012, MCA;
IMP: 33-16-1012, 2-4-103, MCA

4. The proposed amendments are necessary in order to update references to the NCCI Basic Manual for Workers Compensation and Employers Liability. Changes to the NCCI Basic Manual for Workers Compensation and Employers Liability affect classifications for those employers listed below:

Item B-1359 - Elimination or Enhancement of Selected Basic Manual Classifications and Basic Manual Classification Advisory Notes

Purpose: The proposed filing eliminates three classifications that have minimal national payroll/credibility. The three codes are:

1470 - Coke Mfg. & Drivers (any existing experience in this code will be moved to Code 1472)
7323F - Stevedoring: Explosive Materials Under Contract (existing experience moved to Code 7309F, 7317F or 7327F depending on type of stevedoring performed)
8710 - Field Bonded Warehousing - All Employees & clerical (existing experience moved to Codes 8291, 8292 or 8293 depending on type of items being warehoused)

Item B-1361 - Basic Manual Updates or Selected Rules and References

Purpose: Filing proposes 9 different enhancement or modernization's of certain Basic Manual Rules and References

Specialty Contractor Classifications:
1) Flagging Services
2) Concrete Pumping Service

Purpose: To assign all specialty contractor flagging services to Code 5506 - Street or Road Construction: Paving or Repaving and to assign all specialty contractor concrete pumping services to Code 9534 - Mobile Crane and Hoisting Service Contractors NOC.

5. Concerned persons may submit their data, views or arguments concerning the proposed amendment in writing to Christy Weikart, c/o National Council on Compensation Insurance,

Inc., 7220 West Jefferson Avenue, Suite 310, Lakewood, Colorado 80235, to be received no later than December 1, 1999.

6. If persons who are directly affected by the proposed amendment wish to express their data, views and arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to Christy Weikart, Chairperson, Montana Classification Review Committee, c/o National Council on Compensation, Inc., 7220 West Jefferson Avenue, Suite 310, Lakewood, Colorado 80235. The comments must be received no later than December 1, 1999.

7. If the classification review committee of the state of Montana receives requests for a public hearing on the proposed amendments from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendment; from the appropriate administrative rule review committee of the legislature; from a governmental agency or subdivision; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register.

Ten percent of the businesses directly affected by the proposed elimination of the classification codes has been determined to be 10 based on 100 businesses.

Ten percent of the business directly affected by the proposed change to specialty flagging contractors and specialty concrete pumping contractors has been determined to be 25 based on 250 businesses.

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

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

CLASSIFICATION AND
REVIEW COMMITTEE

By: Christy Weikart
Christy Weikart
Chairperson

By: Gary L. Spaeth
Gary L. Spaeth

Certified to the Secretary of State September 27, 1999.

BEFORE THE BOARD OF MEDICAL EXAMINERS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed amendment of a rule pertaining to definitions and the proposed adoption of rules pertaining to post-graduate training programs	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF 8.28.1501 DEFINITIONS AND THE PROPOSED ADOPTION OF NEW RULES I MEDICAL STUDENT, II STUDENT'S PERMITTED ACTIVITIES, III INTERN, IV INTERN'S SCOPE OF PRACTICE, V RESIDENT, VI RESIDENT'S SCOPE OF PRACTICE AND VII APPROVED RESIDENCY

TO: All Concerned Persons

1. On November 10, 1999, at 10:00 a.m., a public hearing will be held in the Division of Professional and Occupational Licensing Conference room, Lower Level, Arcade Building, 111 North Jackson, Helena, Montana, to consider the proposed amendment and adoption of the above-stated rules.

2. 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., November 1, 1999, to advise us of the nature of the accommodation that you need. Please contact LaVelle Potter, Board of Medical Examiners, 111 N. Jackson, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 444-9322; Montana Relay 1-800-253-4091; TDD (406)444-2978; facsimile (406) 444-9396. Persons with disabilities who need an alternative accessible format of this document in order to participate in this rule-making process should contact Lavelle Potter.

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

"8.28.1501 DEFINITIONS As used in this sub-chapter the following definitions apply:

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

(3) "Intern" means a person who has graduated from an approved medical school, and is enrolled in a program of training approved for first year post-graduates. The intern may also be referred to as "in post-graduate year 1" (PGY-1), or "first year resident."

(a) An intern has passed USMLE Steps 1 and 2, and is preparing for, or awaiting the results of, USMLE Step 3, or the American osteopathic equivalent;

(b) An intern is:

(i) not yet eligible for licensure;

(ii) not required to obtain a license for medical practice performed while in Montana; and

(iii) not monitored by the board.

(c) The board may extend the time of internship beyond

one year for good cause shown.

(3) and (4) remain the same, but are renumbered (4) and (5).

(6) "Medical student" means a person currently enrolled in a school of allopathic or osteopathic medicine approved by the council on medical education of the American medical association, the equivalent body of the American osteopathic association or the board.

(a) A medical student is:

(i) not yet eligible for licensure;

(ii) not required to obtain a license for medical practice performed while in Montana; and

(iii) not monitored by the board.

(b) A person is not a medical student if the person:

(i) has been awarded a doctorate degree and successfully completed the United States medical licensing examination (USMLE) Steps 1 and 2, or the equivalent level of testing by the American osteopathic association; or

(ii) has passed USMLE Step 3, or the equivalent level of testing by the American osteopathic association.

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

(8) "Resident" means a person who is educationally eligible for licensure as a physician, that is:

(a) has the degree of medical doctor, doctor of osteopathy or an equivalent degree;

(b) for purposes of licensure only:

(i) prior to October 1, 2001, has completed post-graduate year 1; or

(ii) on or after October 1, 2001, has completed post-graduate year 2;

(c) holds a certificate from the educational commission for foreign medical graduates (ECFMG) where applicable, or the American osteopathic association equivalent; and

(d) is enrolled in a residency training program approved by the accreditation council for graduate medical education (ACGME) or the equivalent American osteopathic association credentialing body.

(e) A resident may apply for licensure:

(i) if the resident is enrolled in an ACGME-approved residency or a residency approved by the American osteopathic association, the resident need not have an existing, active license to practice as a physician in a state or territory of the United States;

(ii) if the resident is not enrolled in an ACGME-approved residency, the resident must have an existing, active license to practice as a physician in a state or territory of the United States in order to obtain resident registration."

(6) through (8) remain the same, but are renumbered (9) through (11).

Auth: Sec. 37-1-131, 37-3-203, MCA; IMP, Sec. 37-3-102, 37-3-203, MCA

4. The proposed new rules will read as follows:

"I MEDICAL STUDENT'S PERMITTED ACTIVITIES (1) All medical practice must be under the direct supervision of a Montana-licensed physician, who must be aware of the limitations on the medical student's scope of practice. Either the medical student's medical school or the supervising physician must carry malpractice insurance covering the medical student's practice during the training process.

(2) As used herein, "direct supervision" means that the supervising physician is physically present in the same building as the medical student, or is within 20 minutes of the physical presence of the patient being cared for by the medical student.

(3) The medical student may:

(a) assist the licensed physician in medical procedures (for example, suturing wounds) in an office or hospital;

(b) scrub and assist the licensed physician in surgery;

(c) participate in educational and patient conferences; and

(d) participate in medical research.

(4) The medical student may not practice independently; for example, among other things, the medical student may not:

(a) perform surgery;

(b) care for a patient in an emergency room without the physical presence of the supervising physician;

(c) prescribe medications without the co-signature of the medical student's supervising physician;

(d) write or issue orders without the co-signature of the medical student's supervising physician; or

(e) sign hospital records or patient charts without the co-signature of the medical student's supervising physician."

Auth: Sec. 37-1-131, 37-3-203, MCA; IMP, Sec. 37-3-102, 37-3-203, MCA

"II INTERN'S SCOPE OF PRACTICE (1) If the training program in which the intern is enrolled is approved by the ACGME, the intern's scope of practice shall be defined by the residency review committee of the ACGME, or American osteopathic association equivalent.

(2) If the training program in which the intern is enrolled is not approved by the ACGME or American osteopathic association equivalent, the intern's medical practice must be under the direct supervision of a Montana-licensed physician, who:

(a) must be aware of the statutory limitations on the intern's scope of practice; and

(b) must carry malpractice insurance covering the intern's conduct during the training process.

(3) As used herein, "direct supervision" means that the supervising physician is physically present in the same building as the intern, or is within 20 minutes of the physical presence of the patient being cared for by the intern.

(4) Subject to the local training program's requirements, the intern may:

(a) assist the licensed physician in medical procedures (office and hospital);

(b) scrub and assist the licensed physician in surgery;

(c) participate in educational and patient conferences;

(d) participate in medical research;

(e) prescribe medications, without the co-signature of the intern's supervising physician;

(f) write or issue orders, without the co-signature of the intern's supervising physician; and

(g) sign hospital records or patient charts, without the co-signature of the intern's supervising physician.

(5) The intern may not practice independently; for example, among other things, the intern may not:

(a) perform surgery; or

(b) care for a patient in an emergency room without the physical presence of the supervising physician."

Auth: Sec. 37-1-131, 37-3-203, MCA; IMP, Sec. 37-3-102, 37-3-203, MCA

"III RESIDENT'S SCOPE OF PRACTICE (1) A resident may practice medicine in a hospital or clinic in which the resident is training, under the general supervision of a Montana-licensed physician.

(2) As used herein, "general supervision" means that the supervising physician need not be physically present in the same building as the resident, nor within 20 minutes of the physical presence of the patient being cared for by the resident.

(3) If the training program in which the resident is enrolled is approved by, or affiliated with a program approved by the ACGME, the resident's scope of practice shall be defined by the residency review committee of the ACGME.

(4) If the training program in which the resident is enrolled is not approved by the ACGME, the supervising physician must be aware of the statutory limitations on the resident's scope of practice, and must carry malpractice insurance covering the resident's conduct during the training process.

(5) A resident may, among other things:

(a) participate in active, actual patient care;

(b) write prescriptions and orders without co-signature of the sponsoring or supervising physician;

(c) sign hospital charts and office records;

(d) assume increasing responsibility in surgical and medical care, within the context of a review process;

(e) take emergency room and other calls independently and without direct supervision; and

(f) participate in medical research and review processes."

Auth: Sec. 37-1-131, 37-3-203, MCA; IMP, Sec. 37-3-102, 37-3-203, MCA

"IV APPROVED RESIDENCY (1) A residency is approved for purposes of 37-3-102(3), MCA, if the training program meets the following criteria:

(a) is in a hospital or clinic located in the United States; and

(b) has been approved by the American council on graduate medical education or the American osteopathic association.

(2) Alternatively, a residency is approved if, upon investigation, the board finds that the residency:

(a) is approved by, or affiliated with, the world health organization;

(b) carries malpractice insurance;

(c) has been approved for certification by the American board of medical specialties;

(d) requires residents to have sufficient fluency in spoken and written English to practice medicine with reasonable skill and safety;

(e) has an internal examination process (if written examinations are conducted, the residency will provide the board with reports or access to examination results); and

(f) provides that residents are supervised by a mentor who:

(i) is a licensed physician; and

(ii) provides written evaluations and/or reports to the training program, and to the board upon request."

Auth: Sec. 37-1-131, 37-3-203, MCA; IMP, Sec. 37-3-102, 37-3-203, MCA

REASON: There are three levels of medical education after the baccalaureate degree which are undertaken by persons training to be physicians: medical school (generally, four years, following the college bachelor degree), internship (or "post-graduate year 1" following medical school) and residency ("post-graduate years 2 and 3" following internship.) Section 37-3-102, MCA, authorizes the Board to approve "internships" and "residencies," but does not set down criteria for such approval, nor does it distinguish between those two levels of post-graduate education. There is no definition for the term "medical student," nor is that level of education distinguished from that of interns and residents. Section 37-3-203, MCA, exempts interns and residents from licensure, but does not set forth a scope of practice for either educational level, or for that of the medical student. This silence in the law has raised questions and problems.

Although Montana does not have a medical school, the state is experiencing a healthy increase in all levels of physicians-in-training coming into the state for at least part of their medical education--for rotations of two- to four-weeks up to two or more years. These persons learn how to provide rural medicine, and many are attracted to the state and return to settle and practice permanently here. At present, however, there is no formal regulation of these trainee physicians, although they are undertaking increasing

responsibility for actual patient care. Questions have been presented to the Montana Board of Medical Examiners as to the scope of practice of these trainees, such as: "Can a medical student assist at surgery?" "Can a foreign medical graduate who does not qualify for a Montana physician license work in the state as a 'resident?'" "Can an 'intern' order medications for a patient in a hospital, or must orders be counter-signed by a Montana-licensed physician?"

The Montana Board of Medical Examiners determined that a systematic set of rules was needed to define the qualifications of the three educational levels (that is, "medical student," "intern" and "resident"), and to give the public notice of the scope of practice at each level and the degree of supervision required. The rules proposed above were drafted in consultation with the administrators of some of the training programs operating in the state.

The proposed rules set the standards the Board would apply in answering questions from the public, and administering the licensing and disciplinary statutory scheme. The proposed rules give guidance to persons seeking Board approval of non-accredited programs, as provided in section 37-3-102, MCA. The proposed rules fill a gap in the law, and are consistent with the existing statutory and regulatory scheme.

5. 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 Medical Examiners, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, or by facsimile, number (406)444-9396, to be received no later than 5:00 p.m., November 10, 1999.

6. Charlene Norris, attorney, has been designated to preside over and conduct this hearing.

7. Persons who wish to be informed of all Board of Medical Examiners 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 Medical Examiners, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513 or by phone at (406)444-4284.

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

BOARD OF MEDICAL EXAMINERS
LAWRENCE R. McEVOY, MD,
PRESIDENT

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, Septemeber 27, 1999

BEFORE THE BOARD OF NURSING
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed amendment and adoption of rules pertaining to nursing tasks that may be delegated, general nursing tasks that may not be delegated, nursing tasks related to gastrostomy feeding that may be delegated	)))))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF 8.32.1702 NURSING TASKS WHICH MAY BE DELEGATED, 8.32.1709 GENERAL NURSING TASKS THAT MAY NOT BE DELEGATED, NEW RULE I NURSING TASKS RELATED TO GASTROSTOMY FEEDING THAT MAY BE DELEGATED

TO: All Concerned Persons

1. On October 27, 1999, at 2:00 p.m., a public hearing will be held in the Boyd Andrew Center, Suite 1E, Arcade Building, 111 North Last Chance Gulch, Helena, Montana, to consider the proposed amendment and adoption of the above-stated rules.

2. The Department of Commerce will make reasonable accommodations for persons with disabilities who wish to participate in this action and need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Commerce no later than 5:00 p.m., on October 20, 1999, to advise us of the nature of the accommodation that you need. Please contact Jill Caldwell, Acting Executive Director, Board of Nursing, 111 N. Jackson, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 444-7762; Montana Relay 1-800-253-4091; TDD (406)444-2978; facsimile (406)444-7759.

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

"8.32.1702 NURSING TASKS ~~WHICH~~ THAT MAY BE DELEGATED (1) Nursing tasks that may be delegated are as follows:

~~(1)~~(a) ~~A~~administration of medications as provided in this subchapter.

(b) administration of a gastrostomy tube feeding by way of a nonacute, well healed, patent, percutaneous insertion site older than 2 months as provided in this subchapter."

Auth: Sec. 37-8-202, MCA; IMP, Sec. 37-8-202, MCA

"8.32.1709 GENERAL NURSING TASKS THAT MAY NOT BE DELEGATED (1) By way of example, but not in limitation, the following are nursing tasks that are not within the scope of nursing judgment to delegate to an unlicensed person:

(a) sterile procedures involving a wound or an anatomical site which could potentially become infected;

(b) non-sterile procedures such as dressing or cleansing

penetrating wound or deep burns;

(c) invasive procedures such as inserting tubes in a body cavity or instilling or inserting substances into an indwelling tube except administration of a gastrostomy tube feeding by way of a nonacute, well healed, patent, percutaneous insertion site older than 2 months;

(d) and (e) remain the same."

Auth: Sec. 37-8-202, MCA; IMP, Sec. 37-8-202, MCA

4. The proposed new rule will read as follows:

"NEW RULE I NURSING TASKS (1) Feeding via a gastrostomy tube is a nursing function. As such, the nurse retains full responsibility for such feeding administration.

(2) Administration of gastrostomy tube feeding may only be delegated by the nurse as provided in ARM 8.32.1705 and 8.32.1707.

(3) The following activities related to gastrostomy tube feeding may not be delegated:

(a) calculation of any nutritional formulas; or

(b) administration of medications by way of the gastrostomy tube."

Auth: Sec. 37-8-202, MCA; IMP, Sec. 37-8-202, MCA

REASON: The Board of Nursing recognizes that certain healthy individuals rely on gastrostomy tube feedings for nutrition. The current statutes and rules for nursing require only a licensed nurse administer these feedings. This poses a problem for many individuals who would need to obtain professional nursing services for several feedings a day. Recognizing that this procedure is safely done by an adequately trained non-professional person, the Board of Nursing has decided to amend and adopt these rules of delegation.

5. 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 Nursing, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, or by facsimile, number (406) 444-7759, to be received no later than 5:00 p.m., November 4, 1999.

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

7. The Board of Nursing 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 the Board of Nursing. Such written request may be mailed or delivered to the Board of Nursing, faxed to the

office at (406)444-7759 or may be made by completing a request form at any rules hearing held by the Board of Nursing.

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

BOARD OF NURSING
KIM POWELL, RN, BSN, PRESIDENT

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 27, 1999.

BEFORE THE BOARD OF OPTOMETRY
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed amendment of rules pertaining to licensure of out-of-state applicants, approved programs or courses, therapeutic pharmaceutical agents, approved course and examination, and approved drugs	)))))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF 8.36.417 LICENSURE OF OUT-OF-STATE APPLICANTS, 8.36.602 APPROVED PROGRAMS OR COURSES, 8.36.801 THERAPEUTIC PHARMACEUTICAL AGENTS, 8.36.803 APPROVED COURSE AND EXAMINATION, AND 8.36.804 APPROVED DRUGS

TO: All Concerned Persons

1. On November 5, 1999, at 9:00 a.m., a public hearing will be held in the Division of Professional and Occupational Licensing Conference room, Lower Level, Arcade Building, 111 North Jackson, Helena, Montana, to consider the proposed amendment of the above-stated rules.

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

"8.36.417 LICENSURE OF OUT-OF-STATE APPLICANTS (1) and (a) remain the same.

(b) the candidate shall supply a copy of the certified transcript sent directly from a college, university or institution approved by the board, including schools of optometry accredited by the ~~international~~ association of regulatory boards of ~~examiners in~~ optometry (ARBO), in which the practice and science of optometry is taught in a course of study covering eight semesters or four years of actual attendance;

(c) through (f) remain the same."

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

"8.36.602 APPROVED PROGRAMS OR COURSES (1) The type of educational programs approved by the board shall be those affiliated with national, regional or state optometric associations, academies, colleges of optometry or approved by the ~~international~~ association of regulatory boards of ~~examiners in~~ optometry's council on optometric practitioner education (COPE).

(a) through (3)(c) remain the same."

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

"8.36.801 THERAPEUTIC PHARMACEUTICAL AGENTS (1) remains the same.

(a) A certificate of competency for use of therapeutic pharmaceutical agents will be issued by the board of optometry to those doctors of optometry who have successfully taken a required course and passed a required examination~~, or~~

~~successfully passed an examination of the international association of boards of examiners in optometry~~ in an approved course as defined in ARM 8.36.803(1). The fee will be determined by the board.

(b) and (c) remain the same."

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

"8.36.803 APPROVED COURSE AND EXAMINATION (1) remains the same.

(a) The test for competency will be given either by the staff conducting the course, or the ~~IAB~~ ARBO. The ~~IAB~~ ARBO exam referred to in this ~~section~~ rule is the exam on ocular therapeutics. A passing score will be an average of 75% or higher on all subjects tested.

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

"8.36.804 APPROVED DRUGS (1) The board hereby approves the following drugs for the use in ocular treatment limited to the anterior segment of the eye and adnexa:

~~(1)~~(a) ~~Topical drugs~~ Anti-infective agents, including:

~~(a)~~(i) Anti-biotic ~~agents,~~;

~~(b)~~(ii) Anti-viral ~~agents,~~;

~~(c)~~(iii) Anti-fungal ~~agents,~~;

~~(d)~~(iv) ~~Anti inflammatory agents,~~ Anti-parasitic;

~~(e) Anti histamines,~~

~~(2)~~(b) ~~Oral drugs~~ Auto-immune agents, including:

~~(a)~~(i) ~~Oral analgesics~~ Anti-allergy~~,~~;

(ii) Anti-histamines;

(iii) Decongestants;

(iv) Mast cell stabilizers;

(v) Anti-anaphylaxis;

(c) Analgesics;

~~(i) Codeine,~~

~~(ii) Propoxyphene,~~

~~(iii) Hydrocodone,~~

~~(iv) Dihydrocodeine.~~

~~(b) The above may be administered alone or in combination with non scheduled or non regulated drugs.~~

(d) Anti-inflammatory agents;

(e) Anti-glaucoma agents;

(f) Hyperosmotic agents;

(g) Autonomic agents;

~~(c)~~(h) Over the counter agents."

Auth: Sec. 37-10-202, MCA; IMP, Sec. 37-10-101, 37-10-304, MCA

REASON: The International Association of Boards (IAB) has recently changed its name to the Association of Regulatory Boards of Optometry (ARBO). The proposed amendments to ARM 8.36.417, 8.36.602, 8.36.801 and 8.36.803 are simply to reflect the correct name of the board's national association.

The Montana Legislature passed House Bill 85 in the 1999 session which allows optometrists to treat Glaucoma. The

amendments to ARM 8.36.801 and 8.36.804 will implement that bill by stating that anti-glaucoma drugs can be prescribed by an optometrist.

3. The Department of Commerce will make reasonable accommodations for persons with disabilities who wish to participate in this action and need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Commerce no later than 5:00 p.m., on October 25, 1999, to advise us of the nature of the accommodation that you need. Please contact Linda Grief, Board of Optometry, 111 N. Jackson, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406)444-5924; Montana Relay 1-800-253-4091; TDD (406)444-2978; facsimile (406)444-1667.

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 Optometry, 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., November 5, 1999.

5. Ed Meyers, attorney, has been designated to preside over and conduct this hearing.

6. The Board of Optometry 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 the Board of Optometry. Such written request may be mailed or delivered to the Board of Optometry, 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 Optometry.

7. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled.

BOARD OF OPTOMETRY
CHARLIENE STAFFANSON, 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 27, 1999.

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

In the matter of the proposed amendment of rules pertaining to the monumentation of surveys and to the form, accuracy, and descriptive content of records survey	) NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF ARM 8.94.3001, 8.94.3002, AND 8.94.3003 PERTAINING TO THE MONUMENTATION OF SURVEYS AND TO THE FORM, ACCURACY, AND DESCRIPTIVE CONTENT OF RECORDS OF SURVEY

TO: All Concerned Persons

1. On October 27, 1999, at 1:30 p.m., a public hearing will be held in the downstairs conference room, at the Department of Commerce building, 1424 Ninth Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Commerce will make reasonable accommodations for persons with disabilities who wish to participate in this action and need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Commerce no later than 5:00 p.m., on October 21, 1999, to advise us of the nature of the accommodation that you need. Please contact Richard M. Weddle, Local Government Assistance Division, P.O. Box 200501, Helena, Montana 59620-0501; telephone (406) 444-2781; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 444-4482 or by E-mail, addressed to rweddle@state.mt.us.

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

8.94.3001 UNIFORM STANDARDS FOR MONUMENTATION (1) The following standards ~~shall~~ govern the monumentation of land surveys:

(a) The terms "monument" and "permanent monument" as used in these regulations ~~shall~~ mean any structure of masonry, metal or other permanent, durable material placed in the ground, which is exclusively identifiable as a monument to a survey point, expressly placed for surveying reference.

(b) All ~~permanent control monuments or~~ metal monuments ~~set to control or mark the boundaries of any division shall be of not less than~~ must be at least one-half inch in diameter and 24 inches in length with a cap ~~of~~ not less than 1 ~~1/4~~ inch in diameter marked in a permanent manner with the ~~name and/or~~ registration number of the ~~registered land~~ surveyor in charge of the survey and either the name of the surveyor or the company employing the surveyor. A monument may also consist of a cap ~~of the~~ as described above ~~dimensions may be~~ set firmly in concrete. Metal monuments marking a U.S. government corner

must be at least 30 inches long and 3/4 inch in diameter with an appropriately stamped metal cap at least 3 inches in diameter.

(c) ~~Prior to the filing of any~~ Before a subdivision plat or certificate of survey may be filed for record the ~~land~~ surveyor shall confirm the location of ~~sufficient~~ as many monuments as, in the surveyor's professional judgment, are necessary to reasonably assure the perpetuation ~~or reestablishment~~ of any corner ~~of~~ or boundary ~~or retracement of~~ established by the survey and to enable other surveyors to reestablish those corners and boundaries and retrace the survey. The surveyor shall clearly identify on the face of the plat or certificate of survey all monuments ~~used in~~ pertinent to the survey, and the descriptions of these monuments ~~shall~~ must be sufficient to identify the monuments without reference to another record of survey although additional references may be included.

(d) The surveyor shall set all ~~All~~ monuments ~~must be set~~ prior to the filing of a plat or certificate of survey except those monuments ~~which~~ that will be disturbed by the installation of improvements or that, because of severe weather conditions, may, in the surveyor's judgment, be more appropriately and accurately set after the weather has improved. In these two circumstances the surveyor may set ~~Such~~ monuments ~~may be set subsequent to filing~~ after the survey document is filed if the surveyor certifies on the survey document that ~~they~~ the monuments will be set ~~before~~ by a specified date and if the survey document bears the following language in at least 14 point, bold-faced type: "This (certificate of survey or subdivision plat) shows the location of certain monuments that have not been set in the ground. The land depicted in this may not be sold, rented, leased, or otherwise conveyed by the owner until a registered land surveyor has filed an affidavit, to be attached to this (certificate of survey or subdivision plat), certifying that all of these monuments have been set."

(i) If during the later monumentation of the corners of a plat or certificate of survey that were not monumented before the plat or certificate was filed, the surveyor finds that it is necessary to set a reference monument to a corner, the surveyor shall prepare and file an amended certificate of survey or subdivision plat.

(ii) The failure of the surveyor to set the monuments by the date certified on the record of survey will be deemed a violation of these rules.

~~(e) The plat or certificate must clearly show the relationship of all adjacent monuments of record and relationship of the monuments of record to monuments set after filing.~~

~~(f)~~(e) The surveyor shall set ~~Monuments~~ monuments ~~not less than three eights inch in diameter and 18 inches in length and marked with the name and/or registration number of the registered land surveyor in charge of the survey shall be set~~ at the following locations:

(i) At each corner and angle point of all lots, blocks ~~or~~ and parcels of land created by the survey.

(ii) At every point of intersection of the outer boundary of ~~the~~ a subdivision with an existing ~~or created~~ road right-of-way line of record or a road right-of-way line created by the survey.

(iii) At every point of curve, point of tangency, point of reversed curve, ~~or~~ point of compounded curve, and point of intersection on each road right-of-way line ~~established~~ created by the survey.

(iv) At the intersection of a boundary line and a meander line. Meander line angle points need not otherwise be monumented.

~~(g)~~(f) ~~When~~ If the placement of a required monument at its proper location is physically impractical, the surveyor may set a reference or witness monument ~~near that point~~. ~~Such a~~ This ~~reference~~ monument has the same status as other monuments of record if its location is properly shown. ~~Where any point requiring monumentation has been previously monumented, the location of the existing monument shall be confirmed by the land surveyor if used, and if so confirmed shall likewise be considered a monument of record when properly shown and described on the certificate or plat filed.~~ If the surveyor relies upon any existing monument in conducting a survey, he or she shall confirm the location of the monument and show and describe it on the resulting certificate of survey or subdivision plat.

~~(h) If the land surveyor uses any previously established monument, he the must confirm the location of the monument. If properly confirmed and shown and described on the filed certificate or plat, such a monument shall be considered a monument of record.~~

Auth: Sec. 76-3-403, MCA; IMP, Sec. 76-3-403

8.94.3002 UNIFORM STANDARDS FOR CERTIFICATES OF SURVEY

(1) A certificate of survey may not be filed by ~~the~~ a county clerk and recorder unless it complies with the following requirements:

~~(1)~~(a) A ~~Certificates~~ certificate of survey ~~shall~~ must be legibly drawn with permanent ink or printed or reproduced by a process guaranteeing a permanent record and ~~shall~~ must be 18 inches by 24 inches, or 24 inches by 36 inches, overall to include a 1 ½ inch margin on the binding side.

~~(2)~~(b) One signed ~~cloth backed or opaque mylar~~ copy on cloth-backed material or on 3 mil or heavier matte stable-base polyester film or equivalent and one signed reproducible copy on a ~~stable base~~ stable-base polyester film or equivalent ~~shall~~ must be submitted.

~~(3)~~(c) ~~Whenever~~ If more than one sheet must be used to ~~accurately portray~~ adequately depict the land ~~subdivided~~ surveyed, each sheet must show the number of that sheet and the total number of sheets included. All ~~certificates~~ certifications ~~shall~~ must be ~~shown~~ placed or ~~referenced~~ referred to on one sheet.

~~(4)~~(d) ~~The~~ A certificate of survey ~~shall~~ must show or contain on its face or on separate sheets ~~referenced~~ referred to on its face the following information ~~only:~~. The surveyor may, at his or her discretion, provide additional information regarding the survey.

~~(a)~~(i) A title or title block including the ~~quarter section~~ quarter-section, section, township, range, principal meridian, and county ~~or~~ in which the surveyed land is located. ~~Space shall be provided on the certificate of survey for the clerk and recorder's filing information.~~ A certificate of survey ~~shall~~ must not bear the title "plat," "subdivision," or any title other than "Certificate of Survey."

~~(b)~~(ii) The ~~Name(s)~~ name(s) of the ~~owner(s) of the land surveyed~~ person(s) who commissioned the survey and the names of any adjoining platted subdivisions and the numbers of any adjoining certificates of survey previously ~~recorded~~ filed ~~and ties thereto~~.

~~(c)~~(iii) The ~~Date~~ date the survey was completed and a brief ~~description~~ explanation of why the certificate of survey was prepared, such as ~~creation of~~ to create a new parcel, ~~retracement of~~ retrace a section line, ~~retracement of~~ or retrace an existing ~~tract~~ parcel of land.

~~(d)~~(iv) A ~~North~~ north ~~point~~ arrow.

~~(e)~~(v) A ~~Scale~~ scale bar. (The scale ~~shall~~ must be sufficient to legibly represent the required information and data ~~on the certificate of survey submitted for filing~~.)~~.~~

~~(f)~~(vi) The kind, diameter and length (if known), any stamping or scribing on, the location of, and other information relating to ~~All~~ all monuments found, set, reset, replaced, or removed ~~describing their kind, size, location and giving other data relating thereto~~.

(A) If additional monuments are to be set after the certificate of survey is filed, these monuments must be shown by a distinct symbol, and the certificate of survey must bear a certification by the surveyor as to the reason the monuments have not been set and the date by which they will be set.

(B) All monuments and other evidence found during retracements that influenced the position of any corner or boundary indicated on the certificate of survey must be clearly shown.

~~(g)~~(vii) The location of any section corners ~~of sections~~ or corners of divisions of sections the surveyor deems to be pertinent to the survey.

~~(h)~~(viii) Witness and reference monuments~~,~~ and basis of ~~bearing~~ bearings~~, bearings and length of lines~~. For purposes of this rule the term "basis of bearings" means the surveyor's statement as to the origin of the bearings shown in the certificate of survey. The basis of bearings may refer to a particular line between monumented points in a previously filed survey document. If the certificate of survey shows true bearings, the basis of bearings must describe the method by which these true bearings were determined.

~~(i)~~(ix) The bearings, distances, and curve data of all ~~perimeter boundary~~ boundary lines ~~shall be indicated~~. ~~When~~ If

the parcel surveyed is bounded by an irregular shoreline or a body of water, the bearings and distances of a meander traverse generally paralleling the riparian boundary ~~shall~~ must be given.

(A) The courses along a meander line are shown solely to provide a basis for calculating the acreage of a parcel that has one or more riparian boundaries as the parcel existed at the time of survey.

(B) For purposes of this rule a line that indicates a fixed boundary of a parcel is not a "meander" or "meander line" and may not be designated as one.

~~(j)~~(x) Data on all curves sufficient to enable the reestablishment of the curves on the ground. ~~These~~ For circular curves these data ~~shall~~ must at least include~~:~~ radius and arc length.

~~(i) Radius of curve.~~

~~(ii) Arc length.~~

~~(iii) Notation of~~ For non-tangent curves, which must be so labeled, the certificate of survey must include the bearings of radial lines or chord length and bearing.

~~(k)~~(xi) Lengths of all lines shown to at least tenths of a foot, and all angles and bearings shown to at least the nearest minute.

~~(l)~~(xii) A narrative legal description ~~of the perimeter boundary~~ of the ~~tract~~ parcel surveyed as follows~~:~~:

(A) If the parcel surveyed is an aliquot part of a U.S. government section, the information required by this subsection is the aliquot description of the parcel.

(B) If the survey depicts the retracement or division of a parcel or lot that is shown on a filed certificate of survey or subdivision plat, the information required by this subsection is the number or name of the certificate of survey or plat and the parcel or lot number of the parcel surveyed.

(C) If the parcel surveyed does not fall within (1)(d)(xii)(A) or (B), above, the information required by this subsection is the metes-and-bounds description of the perimeter boundary of the parcel surveyed.

(D) If the certificate of survey establishes the boundary of a parcel containing one or more interior parcels, the information required by this subsection is the legal description of the encompassing parcel.

~~(m)~~(xiii) Except as provided by (1)(f)(iv), ~~All~~ all parcels created by the survey, designated by number or letter, and the dimensions and area of each parcel. (Excepted parcels ~~shall~~ must be marked "Not included in this survey.") If a parcel created by the survey is identifiable as a 1/32 or larger aliquot part of a U.S. government section or as a U.S. government lot, it may be designated by number or letter or by its aliquot part or government lot identification.

(xiv) The location of any easement that will be created by reference to the certificate of survey.

~~(n)~~(xv) The dated signature and the seal of the ~~registered land~~ surveyor responsible for the survey. The affixing of ~~his~~ this seal constitutes a certification by the

surveyor that the certificate of survey has been prepared in conformance with the Montana Subdivision and Platting Act (~~sections~~ 76-3-101 through ~~76-3-614~~ 76-3-625, MCA) and the regulations adopted ~~pursuant thereto~~ under that Act.

~~(6)~~(xvi) ~~Memorandum~~ A memorandum of any oaths administered ~~pursuant to~~ under 76-3-405, MCA.

(xvii) Space for the county clerk and recorder's filing information.

(e) Certificates of survey that do not represent a division of land, such as those depicting the retracement of an existing parcel and those prepared for informational purposes, must bear a statement as to their purpose and must meet applicable requirements of this rule for form and content.

~~(5)~~(f) Procedures for divisions of land exempted from public review as ~~subdivision~~ subdivisions. ~~—certificates~~ Certificates of survey for divisions of land meeting the criteria set out in ~~section~~ 76-3-207, MCA, must meet the following requirements:

~~(a)~~(i) A ~~Certificates~~ certificate of survey of a division of land ~~which~~ that would otherwise be a subdivision but ~~which~~ that is exempted from ~~public~~ subdivision review under ~~section~~ 76-3-207, MCA, may not be filed by the county clerk and recorder unless it bears the acknowledged certificate of the property owner stating that the division of land ~~in question~~ is ~~exempted~~ exempt from review as a subdivision and citing the applicable exemption.

~~(b)~~(ii) ~~Where~~ If the exemption relied upon requires that the property owner enter into a covenant running with the land, the certificate of survey may not be filed unless it bears a signed and acknowledged ~~copy~~ recitation of the covenant.

~~(c)~~(iii) ~~For any~~ If a certificate of survey invokes the exemption ~~as~~ for ~~a gift~~ gifts ~~or~~ and ~~sale~~ sales to ~~a member~~ members of the landowner's immediate family, the certificate ~~of survey~~ must ~~also~~ indicate the name of the proposed grantee, the relationship of the grantee to the landowner, and the parcel to be conveyed to the grantee.

~~(d)~~(iv) ~~For an~~ If a certificate of survey invokes the exemption ~~as a~~ for the relocation of ~~a~~ common boundary ~~line~~ lines~~,~~:

(A) ~~the~~ The certificate of survey must bear the signatures of all landowners whose parcels ~~are changed~~ will be altered by the proposed relocation. The certificate of survey must show that the exemption was used only to change the location of or eliminate a boundary line dividing two or more parcels, and must clearly distinguish the prior boundary location (shown, for example, by a dashed or broken line or a notation) from the new boundary (shown, for example, by a solid line or notation)~~.~~;

(B) The certificate of survey must show the boundaries of the area that is being removed from one parcel and joined with another parcel. The certificate of survey may, but is not required to, establish the exterior boundaries of the

resulting parcels. However, the certificate of survey must show portions of the existing unchanged boundaries sufficient to clearly identify both the location and the extent of the boundary relocation;

(C) If a boundary line will be completely eliminated, the certificate must establish the boundary of the resulting parcel.

(v) A survey document that modifies lots in a platted and filed subdivision and invokes an exemption from subdivision review under 76-3-201 or 76-3-207(1)(d) or (e), MCA, must be entitled "amended plat of the (name of subdivision)," but for all other purposes is to be regarded as a certificate of survey. The document must contain a statement signed by the property owner that approval of the local government body is not required and citing the applicable exemption.

(vi) If the certificate of survey invokes an exemption from subdivision review under 76-3-207, MCA, the certificate of survey must bear, or be accompanied by, a certification by the county treasurer that all taxes and special assessments assessed and levied on the surveyed land have been paid.

(vii) For purposes of (1)(f), when the parcel of land for which an exemption from subdivision review is claimed is being conveyed under a contract-for-deed, the terms "property owner," "landowner," and "owner" mean the seller of the parcel under the contract-for-deed.

~~(6)~~(g) Procedures for filing certificates of survey of divisions of land entirely exempted from the requirements of the Act. The divisions of land described in ~~sections~~ 76-3-201, 76-3-205, and 76-3-209, MCA, and divisions of federally owned land made by a United States government agency are not required to be surveyed, nor must a certificate of survey or subdivision plat ~~thereof~~ showing these divisions be filed with the clerk and recorder. A certificate of survey of ~~such a division~~ one of these divisions may, however, be filed with the clerk and recorder if ~~it~~ the certificate of survey meets the requirements for form and content for certificates of survey contained in this ~~section~~ rule and bears a certificate of the surveyor performing the survey ~~stating~~ citing the applicable exemption from the Act or, when applicable, that the land surveyed is owned by the federal government.

Auth: Sec. 76-3-403, MCA; IMP, Sec. 76-3-403

8.94.3003 UNIFORM STANDARDS FOR FINAL SUBDIVISION PLATS

(1) A final subdivision plat may not be approved by the governing body ~~nor~~ or filed by the county clerk and recorder unless it complies with the following requirements:

(a) Final subdivision plats ~~shall~~ must be legibly drawn with permanent ink or printed or reproduced by a process guaranteeing a permanent record and ~~shall~~ must be 18 inches by 24 inches or 24 inches by 36 inches overall to include a 1 ½-inch margin on the binding side.

(b) One signed ~~cloth-backed or opaque mylar~~ copy on cloth-backed material or on 3 mil or heavier matte stable-base

polyester film or equivalent and one signed reproducible copy on a ~~stable base~~ stable-base polyester film or equivalent ~~shall~~ must be submitted.

(c) ~~Whenever~~ If more than one sheet must be used to ~~accurately portray~~ adequately depict the land subdivided, each sheet must show the number of that sheet and the total number of sheets included. All certifications ~~shall~~ must be ~~shown~~ placed or ~~referenced~~ referred to on one sheet.

(d) ~~Changes to~~ A survey that modifies a filed subdivision plat must be ~~filed~~ entitled "amended plat of (lot, block, and name of subdivision being amended)," and unless it is exempt from subdivision review by 76-3-201 or 76-3-207(1)(d) or (e), MCA, ~~with the county clerk and recorder as an amended plat. An amended plat~~ may not be filed with the county clerk and recorder unless ~~it meets~~ it meets the filing requirements for ~~a~~ final subdivision ~~plat~~ plats specified in ~~these rules~~ this rule~~, except that approval by the local governing body is not required where waived by section 76-3-207(1)(c), MCA, for relocation of common boundary lines or aggregation of five or fewer lots~~.

(2) ~~The~~ A final plat submitted for approval ~~shall~~ must show or contain, on its face or on separate sheets ~~referenced~~ referred to on the plat, the following information~~:~~. The surveyor may, at his or her discretion, provide additional information regarding the survey.

(a) A title or title block indicating the quarter-section~~(s)~~, section, township, range, principal ~~meridan~~ meridian, and county ~~of~~ in which the subdivision is located. The title of the plat ~~shall~~ must contain the words "plat" and either "subdivision" or "addition".

(b) ~~Name(s)~~ The name of the person(s) who commissioned the survey and the name(s) of the owner~~(s)~~ of the land ~~surveyed~~ to be subdivided if other than the person(s) commissioning the survey, ~~and~~ the names of any adjoining platted subdivisions, and the numbers of any adjoining certificates of survey previously ~~recorded~~ filed ~~and ties thereto~~.

(c) ~~North~~ A north ~~point~~ arrow.

(d) ~~Scale~~ A scale bar. (The scale ~~shall~~ must be sufficient to legibly represent the required information and data on the plat ~~submitted for filing~~.)

(e) The kind, diameter and length (if known), any stamping or scribing on, the location of, and other information relating to ~~All~~ all monuments found, set, reset, replaced, or removed ~~describing their kind, size, location and giving other data relating thereto~~.

(i) If additional monuments are to be set after the plat is filed, the location of these monuments must be shown by a distinct symbol, and the plat must bear a certification by the surveyor as to the reason the monuments have not been set and the date by which they will be set.

(ii) All monuments and other evidence found during retracements that influenced the positions of any corner or boundary indicated on the plat must be clearly shown.

(f) The location of any section corners or corners of divisions of sections pertinent to the survey.

~~(f)~~ (g) Witness and reference monuments~~,~~ and basis of ~~bearing~~ bearings~~, bearings and lengths of lines~~. For purposes of this rule the term "basis of bearings" means the surveyor's statement as to the origin of the bearings shown on the plat. The basis of bearings may refer to a particular line between monumented points in a previously filed survey document. If the plat shows true bearings, the basis of bearings must describe the method by which these true bearings were determined.

~~(g)~~(h) The bearings, distances, and curve data of all ~~perimeter~~ boundary lines ~~shall be indicated~~. ~~When~~ If the subdivision is bounded by an irregular shoreline or body of water that is a riparian boundary, the bearings and distances of a meander traverse generally paralleling the riparian boundary ~~shall~~ must be given.

(i) The courses along a meander line are shown solely to provide a basis for calculating the acreage of a parcel with one or more riparian boundaries as the parcel existed at the time of survey.

(ii) For purposes of these regulations a line that indicates a fixed boundary of a parcel is not a "meander" or "meander line" and may not be designated as one.

~~(h)~~(i) Data on all curves sufficient to enable the reestablishment of the curves on the ground. ~~These~~ For circular curves these data ~~shall~~ must at least include~~:~~ radius and arc length.

~~(i) Radius of curve.~~

~~(ii) Arc length.~~

~~(iii) Notation of~~ For non-tangent curves, which must be so labeled, the plat must include the bearings of radial lines or chord length and bearing.

~~(i)~~(j) Lengths of all lines ~~shall be~~ shown to at least tenths of a foot, and all angles and bearings shown to at least the nearest minute.

~~(j)~~(k) The location of ~~all~~ any section corners ~~of legal subdivision corners of~~ or corners of divisions of sections the surveyor deems to be pertinent to the survey of the subdivision ~~boundary~~.

~~(k)~~(l) All lots and blocks in the subdivision, designated by number, the dimensions of each lot and block, the area of each lot, and the total acreage of all lots. (Excepted parcels ~~shall~~ must be marked "Not included in this subdivision" or "Not included in this plat~~,~~" as appropriate, and the ~~boundary completed indicated by~~ bearings and ~~distances~~ lengths of these excepted boundaries must be shown.)

~~(l)~~(m) All streets, alleys, avenues, roads, and highways; their widths (if ascertainable), bearings, and area; the width and purpose of all ~~rights of way~~ road rights-of-way and all other easements that will affect or will be created by the filing of the plat; and the names of all streets, roads, and highways.

~~(m)~~(n) The location, dimensions, and areas of all parks, common areas, and ~~all~~ other grounds dedicated for public use.

~~(n)~~(o) The total ~~Acreage~~ acreage of the subdivision~~, gross and net~~.

~~(o)~~(p) A narrative legal description ~~of the perimeter boundary~~ of the ~~tract surveyed~~ subdivision as follows~~.~~:

(i) If the parcel being subdivided is an aliquot part of a U.S. government section, the information required by this subsection is the aliquot description of the parcel.

(ii) If the plat depicts the division of a parcel or lot that is shown on a filed certificate of survey or subdivision plat, the information required by this subsection is the number or name of the certificate of survey or plat and the number of the parcel or lot affected by the survey.

(iii) If the parcel surveyed does not fall within (2)(p)(i) or (ii), above, the information required by this subsection is the metes-and-bounds description of the perimeter boundary of the subdivision.

(iv) If the plat establishes the boundaries of a subdivision containing one or more interior parcels, the information required by this subsection is the legal description of the perimeter boundary of the subdivision.

~~(p) All monuments to be of record must be adequately described and clearly identified on the plat. Where additional monuments are to be set subsequent to the filing of the plat, the location of such additional monuments shall be shown by a distinct symbol noted on the plat. All monuments or other evidence found during retracements that would influence the positions of any corner or boundary indicated on the plat must be clearly shown.~~

(q) The dated signature and the seal of the ~~registered land~~ surveyor responsible for the survey. The affixing of ~~his~~ this seal constitutes a certification by the surveyor that the final plat has been prepared in conformance with the Montana Subdivision and Platting Act (~~sections~~ 76-3-101 through ~~76-3-614~~ 76-3-625, MCA) and the regulations adopted ~~pursuant thereto~~ under that Act.

(r) A ~~Memorandum~~ memorandum of any oaths administered ~~pursuant to~~ under ~~section~~ 76-3-405, MCA.

(s) The dated, signed, and acknowledged consent to the subdivision of the owner of the land being subdivided. For purposes of this rule when the parcel of land proposed for subdivision is being conveyed under a contract-for-deed, the terms "owner" and "owner of the land" refers to the seller under the contract-for-deed.

~~(s)~~ (t) Certification by the governing body that the final subdivision plat is approved~~, except where the plat shows changes to a filed subdivision plat which that are exempt from local government review under section 76-3-207(1)(d) or (e), MCA. Where an amended plat qualifies for such a waiver the plat must contain a statement that pursuant to section 76-3-207(1)(e), MCA, approval by the local government body is not required for relocation of common boundary lines or aggregation of lots.~~

(u) Space for the clerk and recorder's filing information.

(3) The following documents ~~shall~~ must appear on the face of or accompany the approved final plat when it is presented to ~~filed with~~ the county clerk and recorder for filing:

(a) If applicable, ~~Certification~~ the owner's certificate of dedication of streets, parks, or playgrounds, or other public improvements~~, or of cash donation in lieu of dedication, when applicable~~.

(b) If applicable, a certificate of the governing body expressly accepting any dedicated land and improvements. An acceptance of a dedication is ineffective without this certification.

~~(b)~~(c) A ~~Certification~~ certificate ~~by~~ of a ~~licensed~~ title abstractor showing the names of the owners of record of the land to be subdivided and the names of any lien holders or claimants of record against the land and the written consent to the subdivision by the owners of the land, if other than the subdivider, and any lien holders or claimants of record against the land.

~~(c)~~(d) Copies of any covenants or deed restrictions relating to ~~public improvements~~ the subdivision.

~~(d)~~(e) If applicable, a ~~Certification~~ certificate ~~by~~ from the ~~S~~state ~~D~~department of ~~Health and E~~environmental ~~Sciences~~ quality stating that it has approved the plans and specifications for water supply and sanitary facilities.

~~(e) Copies of the articles of incorporation and by-laws for any property owners' association.~~

(f) A ~~Certification~~ certificate ~~by~~ from the subdivider indicating which required public improvements have been installed and a copy of any subdivision improvements agreement securing the future construction of any additional public improvement to be installed.

(g) Unless otherwise provided by local subdivision regulations, ~~Copies~~ copies of final plans, profiles, grades, and specifications for improvements, including a complete grading and drainage plan, with the certification of a registered professional engineer that all required improvements which have been installed are in conformance with the attached plans. Local subdivision regulations may authorize the subdivider, under conditions satisfactory to the governing body, to prepare these plans and specifications after the final plat has been filed or file them with a government official other than the county clerk and recorder, or both.

~~(h) Certification by the governing body expressly acceptingany dedicated land and improvements. Acceptance of dedication shall be ineffective without such certification.~~

~~(i)~~(h) If applicable, the ~~Certificates~~ certificate of the examining land surveyor ~~where applicable~~.

~~(j)~~(i) If a street created by the plat will intersect with a state highway, a ~~Copy~~ copy of the state highway access permit ~~when a new street will intersect with a state highway~~.

~~(k)~~ (j) The certification of the county treasurer that all real property taxes and special assessments assessed and levied on the land to be subdivided have been paid.

Auth: Sec. 76-3-403, MCA; IMP, Sec. 76-3-403, MCA

REASON: It is reasonably necessary to amend the Department's monumentation and surveying rules because they have remained essentially unchanged since their original adoption in 1974. Over the past two years the department has conferred extensively with representatives of the land surveying profession and with state and local government officials whose functions require them to work with surveying records to craft modifications which will clarify the rules and harmonize them with the provisions of the Montana Subdivision and Platting Act. Many of the proposed changes are organizational or editorial in nature while others are intended to better reflect currently accepted standards for the practice of professional land surveying.

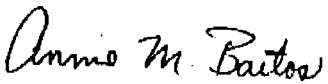
3. Concerned persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Richard Weddle, Local Government Assistance Division, P.O. Box 200501, Helena, Montana 59620-0501, or by facsimile, number (406) 444-4482, or by E-mail, addressed to rweddle@state.mt.us to be received no later than 5:00 p.m., November 4, 1999.

4. Richard M. Weddle, attorney, has been designated to preside over and conduct this hearing.

5. The Local Government Assistance Division maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the Division. Persons who wish to have their name added to this list may 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 rules relating to survey monumentation and records of survey. This request may be mailed or delivered to the Division, faxed to the office at (406) 444-4482 or may be made by completing a request form at any rules hearing held by the Division.

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

LOCAL GOVERNMENT ASSISTANCE
DIVISION DEPARTMENT OF COMMERCE



ANNIE M. BARTOS, CHIEF COUNSEL

ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, September 27, 1999

BEFORE THE BOARD OF INVESTMENTS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed amendment and repeal of rules pertaining to the INTERCAP Program	) NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF ARM 8.97.910 INTERCAP PROGRAM - PURPOSE, 8.97.911 INTERCAP PROGRAM - ELIGIBLE GOVERNMENT UNIT'S BORROWING AUTHORITY AND 8.97.913 INTERCAP PROGRAM - ADDITIONAL PROGRAM REQUIREMENTS - INTERCAP-EZ PROGRAM AND 8.97.915 INTERCAP PROGRAM - LOAN TERMS, INTEREST RATES, FEES AND CHARGES, AND THE REPEAL OF RULES PERTAINING TO THE INTERCAP PROGRAM

TO: All Concerned Persons:

1. On October 27, 1999, at 9:00 a.m., a public hearing will be held in the Board of Investments conference room, 555 Fuller Avenue, Helena, Montana, to consider the proposed amendment and repeal of the rules pertaining to the INTERCAP Program.

2. The Department of Commerce will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Commerce no later than 5:00 p.m., on October 25, 1999, to advise us of the nature of the accommodation that you need. Please contact David Ewer, Board of Investments, 555 Fuller Avenue, P.O. Box 200126, Helena, Montana 59620-0126; telephone (406) 444-0001; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 449-6579.

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

"8.97.910 INTERCAP PROGRAM - PURPOSE (1) The board hereby creates its intermediate term capital program (INTERCAP) for providing loans ~~for periods up to 10 years~~ to eligible government units that are authorized to participate in the program to finance equipment, vehicles, capital improvements and other needs, and to refinance outstanding indebtedness.

(a) will remain the same."

Auth: Sec. 17-5-1605, MCA; IMP, Sec. 17-5-1606, MCA

"8.97.911 INTERCAP PROGRAM - ELIGIBLE GOVERNMENT UNIT'S BORROWING AUTHORITY (1) In order to receive financing through the INTERCAP program, an eligible government unit must

be legally authorized to borrow money for the proposed project and must have complied with all constitutional and statutory requirements to borrow such money. The INTERCAP loan will be evidenced by a loan agreement consistent with the eligible government unit's enabling authority and the financial requirements of the board. ~~The board will require the eligible government unit in the process of the application to identify the statutes under which it is proceeding.~~"

Auth: Sec. 17-5-1605, MCA; IMP, Sec. 17-5-1606, MCA

"8.97.913 INTERCAP PROGRAM - ADDITIONAL PROGRAM REQUIREMENTS ~~INTERCAP EZ PROGRAM~~ (1) through (1)(g) remain the same.

~~(2) The board, in an effort to provide a more streamlined procedure for small, fully secured loans, hereby creates within the INTERCAP program its INTERCAP EZ program.~~

~~(a) The EZ program shall be used to finance motor vehicles and equipment in an amount not to exceed maximum principal amounts established by board policy from time to time, for a term not to exceed five years.~~

~~(b) The loans made under the EZ program shall be secured by a lien on the financed vehicle or equipment.~~

~~(c) The bond program officer and the executive director may review and approve applications for the EZ program if in their collective determination the requirements of 17-5-1611(8), MCA, are met.~~

~~(3) The board will not consider applications for loans secured by the pledge of tax increment, nor will it consider loans that are private activity loans within the meaning of Section 141 of the Internal Revenue Code unless the board has determined, based on the opinion of nationally recognized bond counsel, that such loans will not affect the tax exemption on the board bonds issued to finance the program.~~"

Auth: Sec. 17-5-1605, MCA; IMP, Sec. 17-5-1606, MCA

"8.97.915 INTERCAP PROGRAM - LOAN TERMS, INTEREST RATES, FEES AND CHARGES (1) and (1)(a) will remain the same.

(2) The eligible government unit will be required to make semiannual loan payments on each February 15 and August 15, except as provided in ARM 8.97.916. Prepayments will be allowed without a prepayment penalty on any business day upon 30 days prior notice to the board ~~in writing~~."

Auth: Sec. 17-5-1605, MCA; IMP, Sec. 17-5-1606, MCA

4. The rules, found on Administrative Rules of Montana pages 8-3529 through 8-3533, proposed for repeal are as follows:

8.97.914 INTERCAP PROGRAM - ORIGINATION FEE Auth: Sec. 17-5-1605, MCA; IMP, Sec. 71-5-1611, 17-5-1643, MCA

8.97.916 INTERCAP PROGRAM - SHORT-TERM LOANS Auth: Sec. 17-5-1605, MCA; IMP, Sec. 17-5-1606, MCA

8.97.917 INTERCAP PROGRAM - GENERAL OBLIGATION BONDED DEBT - DESCRIPTION REQUIREMENTS Auth: Sec. 17-5-1605, MCA; IMP, Sec. 17-5-1606, MCA

8.97.918 INTERCAP PROGRAM - REVENUE OBLIGATION - TAX BACKED REVENUE OBLIGATIONS - DESCRIPTION - REQUIREMENTS Auth: Sec. 17-5-1605, MCA; IMP, Sec. 17-5-1606, MCA

8.97.919 INTERCAP PROGRAM - SPECIAL IMPROVEMENT BOND DEBT - DESCRIPTION - REQUIREMENTS Auth: Sec. 17-5-1605, MCA; IMP, Sec. 17-5-1606, MCA

8.97.921 INTERCAP PROGRAM - OTHER LOANS; LIMITS Auth: Sec. 17-5-1605, MCA; IMP, Sec. 17-5-1606, 17-5-1611, MCA

REASON: The Board is proposing the above amendments and repeals to make the rules more current with usage and expectations of the public. The Municipal Finance Consolidation Act directs the Board to create programs for local and state government to obtain affordable capital. The Act allows, but does not require, the Board to implement rules to govern the Act.

5. 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 Investments, 555 Fuller Avenue, P.O. Box 200126, Helena, Montana 59620-0513, or by facsimile (406) 444-6579, to be received no later than 5:00 p.m., November 4, 1999.

6. David Ewer has been designated to preside over and conduct this hearing.

7. The Board of Investments 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 INTERCAP and other Board of Investments programs. Such written request may be mailed or delivered to the Board of Investments, 555 Fuller Avenue, P.O. Box 200126, Helena, Montana 59620-0513, faxed to the office at (406) 444-6579 or may be made by completing a request form at any rules hearing held by the Board of Investments.

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

BOARD OF INVESTMENTS

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 27, 1999.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
AND THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.4.101 pertaining to incorporation by reference of the Attorney General's Model Rules	NOTICE OF PROPOSED AMENDMENT NO PUBLIC HEARING CONTEMPLATED (PROCEDURAL)

TO: All Concerned Persons

1. On January 7, 2000, or as soon thereafter as the Board of Environmental Review shall meet, the Department of Environmental Quality and the Board of Environmental Review propose to amend ARM 17.4.101.

2. The Department and the Board will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Department and Board no later than 5 p.m., on October 18, 1999, to advise us of the nature of the accommodation you need. Please contact the Department and Board at P.O. Box 200901, Helena, Montana, 59620-0901; phone (406) 444-2544; fax (406) 444-4386.

3. The rule proposed to be amended provides as follows. Text of present rule with matter to be stricken interlined and new matter underlined.

17.4.101 MODEL RULES (1) The department of environmental quality and the board of environmental review herein adopt and incorporate the attorney general's model procedural rules, ARM 1.3.101, 1.3.102, and 1.3.201 through 1.3.233, as amended effective June 4, 1999, including the appendix of sample forms which follows the model rules, except as modified by (2)~~,~~ and (3) ~~and (4)~~ below, as authorized by 2-4-302, MCA.

(2) remains the same.

~~(3) The incorporation of the appendix of sample forms is modified by deletion of the "Note:" paragraphs in Sample Forms 4, 5, 7, 8, and 9.~~

(4) and (5) remain the same, but are renumbered (3) and (4).

AUTH: 2-4-201, MCA
IMP: 2-4-201, 2-4-302, 2-4-303, 2-4-305, 2-4-306, 2-4-315, MCA

4. On April 8, 1999, at page 600 of the 1999 Montana Administrative Register, the Attorney General issued a notice of proposed amendment to the Model Rules of Procedure and sample forms attached to the Model Rules of Procedure. On

June 3, 1999, the Attorney General published notice of adoption of the amendments with certain modifications.

The Department of Environmental Quality and the Board of Environmental Review wish to adopt the amended rules and sample forms as amended by the Attorney General.

The proposed amendments are necessary because the 1997 and 1999 Legislatures passed numerous bills clarifying, changing, and expanding the laws pertaining to the Administrative Rules of Montana. Each change, its location in the Montana Code Annotated (1997), and the Administrative Rules of Montana to which the change applies, follow.

The 1999 Legislature passed and the Governor signed Senate Bill 11, which eliminates the Administrative Code Committee and replaces it with several, subject specific, administrative rule review committees. Therefore the references to the Administrative Code Committee are replaced with "appropriate administrative rule review committee". ARM 1.3.204(4)(b)(iii)(D), 1.3.204(6), 1.3.205(1)(b), 1.3.206(3)(b)(i)(B), 1.3.206(3)(c)(i), 1.3.207(2)(a)(iii)(B), 1.3.208(3) and (4), 1.3.209(1)(b)(i).

1997 Mont. Laws ch. 489 defines "signficant interest to the public" (§ 2-4-102(12), MCA) and requires an agency to conduct a public hearing if proposed rules, or changes thereto, involve matters of signficant interest to the public. § 2-4-302(4), MCA; ARM 1.3.102, 1.3.204(4)(b)(ii) and (iii), 1.3.207(1)(a).

1997 Mont. Laws ch. 489, § 2 requires that an agency post notice of its intended action on the state electronic bulletin board, or other electronic communications system available to the public. § 2-4-302(2)(c), MCA; ARM 1.3.206(1)(c).

1997 Mont. Laws ch. 152 sets forth the statutory authority which must be in place before substantive rules may be proposed or adopted. § 2-4-305(3), MCA; ARM 1.3.204(3).

1997 Mont. Laws ch. 340 requires that the chief sponsor of a legislative bill be notified when an agency starts working on the initial rules implementing any section or sections of the bill (§ 2-4-302(2)(d), MCA) and that the chief sponsor be provided a copy of the initial rule proposal within 3 days of publication in the Montana Administrative Register. (§2-4-302(2)(a), MCA.) Former legislators desiring notification of initial rules must provide their name and address to the Secretary of State. § 2-4-302(8), MCA; ARM 1.3.204(4)(a)(ii), 1.3.206(1)(a), 1.3.206(1)(d)(ii) and 1.3.206(1)(e).

1997 Mont. Laws ch. 489 defines an "interested person" (§ 2-4-102(5), MCA), and requires agencies to maintain lists of interested persons by subject area, requires agencies to inform people of the interested persons list and how to get on the list, and requires agencies to inform interested persons of any rulemaking procedures in their area(s) of interest. § 2-4-302(2) and (7)(b); ARM 1.3.204(4)(a)(iii), 1.3.204(5), 1.3.206(1)(d)(i), 1.3.206(3)(a)(i)(A)(IV), 1.3.207(2)(a)(iii)(C).

1997 Mont. Laws ch. 152 requires that a statement of reasonable necessity contain the principal reasons and the rationale for each rule proposed to be adopted, amended or repealed. 1997 Mont. Laws ch. 489 requires that the rationale for any proposed rulemaking be written in plain, easily understood language, and provides that any deficiencies in the statement of reasonable necessity cannot be corrected in the adoption notice. § 2-4-302(1) and 2-4-305(6)(b), MCA; ARM 1.3.204(4)(a)(iv), 1.3.206(3)(a)(i)(A)(III).

1997 Mont. Laws ch. 152 clarifies that the 28 days afforded persons to submit written or oral comment on a proposed rule is 28 days from the date of the original notice of proposal. That time frame may be extended if an amended or supplemental notice is filed. § 2-4-302(4), MCA; ARM 1.3.204(4)(b)(i).

1997 Mont. Laws ch. 489 expands on the reasons why and process by which temporary emergency rules are adopted. Adoption of a temporary emergency rule requires "circumstances that truly and clearly constitute an existing imminent peril to the public health, safety, or welfare". The published statement of reasons must stand on its own merits for purposes of judicial review. Hearings on whether such circumstances exist must be given priority over all other matters. Notice must be given to the Administrative Rule Review Committee, and must be liberally disseminated. ARM 1.3.209(2) clarifies the difference between temporary emergency and temporary rules. § 2-4-303, MCA; ARM 1.3.204(6) and (7), 1.3.209.

1997 Mont. Laws ch. 110 elaborates on the process to be used by an agency when responding to a petition for the adoption, amendment or repeal of rules. The agency's decision on the petition must be in writing, based on evidence in the record, and include the reasons for the decision. The agency is given some discretion on whether to conduct a hearing or oral presentation in order to develop a record. § 2-4-315, MCA; ARM 1.3.205(3) and (4).

1997 Mont. Laws ch. 335 adopts processes by which the Administrative Rule Review Committee may postpone the adoption and delay the effective date of a new rule, or the amendment or repeal of an existing rule. § 2-4-305, MCA; ARM 1.3.208(3).

Finally, general amendments to the existing model rules are necessary to conform short-form references to those used in the Montana Code Annotated, to simplify citations to applicable statutes and administrative rules, and to clarify whether a reference is to the Montana Code Annotated, the Administrative Rules of Montana or the Montana Administrative Register. ARM 1.3.101, 1.3.201 through 1.3.203, and 1.3.210.

Many of the sample forms referred to in the model rules conform with current requirements and more clearly illustrate proper formats. Amendments include reference to requirements imposed by the Americans with Disabilities Act; information regarding interested persons lists and how to be put on those lists; notification to bill sponsors of proposed rules implementing their legislation; more detailed statements of

reasonable necessity; and reference to the appropriate administrative rule review committee rather than the Administrative Code Committee.

5. Due to the volume of changes, the expense of publication, and fiscal constraints, the forms are not being published in the Montana Administrative Register. However, copies of the rule and form amendments can be obtained by contacting Debbie G. Allen, Paralegal, Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; telephone (406) 444-2630; facsimile (406) 444-4386; email, "dallen@state.mt.us".

6. Concerned persons may submit their data, views or arguments concerning the proposed action in writing to the Board of Environmental Review, P.O. Box 200901, Helena, Montana, 59620-0901, no later than November 4, 1999. To be guaranteed consideration, the comments must be received or postmarked on or before that date. Written data, views or arguments may also be submitted electronically via email addressed to Leona Holm, Board Secretary, at "lholm@state.mt.us", no later than 5 p.m. November 4, 1999.

7. If persons who are directly affected by the proposed amendment wish to express their data, views, and arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to the Board of Environmental Review, P.O. Box 200901, Helena, MT 59620-0901. A written request for hearing must be received or postmarked no later than November 4, 1999.

8. If the Board receives requests for a public hearing on the proposed action(s) 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 not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be more than 25 persons based on the fact that rules adopted by the Department and Board affect all citizens of Montana who are interested in rulemaking conducted by the Department or the Board.

BOARD OF ENVIRONMENTAL REVIEW

by: *Joe Gerbase*
JOE GERBASE, Chairperson

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 27, 1999.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.24.101, 17.24.102, 17.24.118, 17.24.123, 17.24.128, 17.24.137, 17.24.140, 17.24.141, 17.24.144, 17.24.150, 17.24.158, 17.24.184 through 17.24.189 pertaining to the metal mines reclamation act	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT (METAL MINES)

TO: All Concerned Persons

1. On November 9, 1999, at 1:30 p.m. in Room 35 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, the Board of Environmental Review will hold a hearing to consider the proposed amendment of the above-captioned rules.

2. The Board 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 Board no later than 5 p.m., November 1, 1999, to advise us of the nature of the accommodation you need. Please contact the Board at P.O. Box 200901, Helena, Montana, 59620-0901; phone (406) 444-2544; fax (406) 444-4386.

3. The rule proposed to be amended provides as follows. Text of present rule with matter to be stricken interlined and new matter underlined.

17.24.101 GENERAL PROVISIONS (1) The Act and this subchapter provide that no person may engage in exploration for, or mining of minerals on or below the surface of the earth, engage in ore processing, reprocessing of mine waste rock or tailings, construct or operate a hard rock mill, use cyanide or other metal leaching solvents or ore-processing reagents, or disturb land in anticipation of any of these activities without first obtaining the appropriate license or permit from the department. Prior to receipt of an exploration license or operating permit the applicant, other than a public or governmental agency, shall deposit with the department a reclamation performance bond in a form and amount as determined by the department in accordance with 82-4-338, MCA. The license or permit may be issued following receipt and acceptance of the reclamation performance bond, and, at such time, operations may commence.

(2) Section 82-4-390, MCA provides that open pit mining for gold or silver using heap leaching or vat leaching with cyanide ore-processing reagents is prohibited, except that a mine in operation on November 3, 1998, may continue operating under its existing operating permit or any amended permit that is necessary for continued operation of the mine.

(2) and (3) remain the same, but are renumbered (3) and (4).

~~(4) The Act is not applicable to:~~

~~(a) any person engaged in mining activities if the miner's operations and activities do not:~~

~~(i) use motorized excavating equipment;~~

~~(ii) use blasting agents;~~

~~(iii) disturb more than 100 square feet or 50 cubic yards of material per site;~~

~~(iv) leave disturbed and unreclaimed surface sites as defined in ARM 17.24.102(8) that are less than 1 mile apart;~~

~~(v) use a suction dredge with an intake of more than 4 inches in diameter; and~~

~~(vi) operate a suction dredge beyond the area of the streambed that is naturally under water at the time of operation; or~~

~~(b) a person who allows other persons to engage in mining activities on land owned or controlled by that person, if those activities cumulatively meet the requirements of (a) above.~~

(5) The Act and this subchapter do not apply to a person engaging in a mining activity described in 82-4-310(1) and (2), MCA, or to a person who, on land owned or controlled by that person is allowing other persons to engage in mining activities as provided in 82-4-310(3), MCA.

~~(5)~~ (6) Subject to the exclusions set forth in the Act and pursuant to the definitions of "surface mining", "mining", "exploration" and "mineral" in the Act, placer or dredge mining, and rock quarrying~~, peat and topsoil mining operations~~ are included in the application of the Act.

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

~~(7)~~ (8) Common use pits and quarries on federal land which are available to the general public for ~~noncommercial~~ the exclusive or nonexclusive procurement of ~~salable minerals~~ rock or stone and which are administered by the responsible federal agency under appropriate regulations are not subject to these rules, pursuant to 82-4-309, MCA.

AUTH: 82-4-321, MCA
IMP: 82-4-305, 82-4-309, 82-4-310, 82-4-320, 82-4-331, 82-4-332, 82-4-335, 82-4-361, 82-4-362, MCA

17.24.102 DEFINITIONS As used in the Act and this subchapter, the following definitions apply~~:~~

(1) through (11) remain the same.

(12) "Mineral" means any ore, rock or substance, other than oil, gas, bentonite, clay, coal, sand, gravel, ~~phosphate~~ peat, soil materials, scoria or uranium, taken from below the surface or from the surface of the earth for the purpose of milling, leaching, concentration, refinement, smelting, manufacturing, or other subsequent use or processing or for stockpiling for future use, refinement or smelting.

(13) through (24) remain the same.

(25) "Surface mining" means all or any part of the process involved in mining of minerals by removing the overburden and mining directly from the mineral deposits thereby exposed, including, but not limited to, open-pit mining of minerals naturally exposed at the surface of the earth, mining by the auger method, and all similar methods by which earth or minerals exposed at the surface are removed in the course of mining. Surface mining shall not include the extraction of oil, gas, bentonite, clay, coal, sand, gravel, ~~phosphate~~ peat, soil materials, scoria or uranium nor excavation or grading conducted for on-site farming, on-site road construction, or other on-site building construction.

AUTH: 82-4-321, MCA
IMP: 82-4-303, 82-4-305, 82-4-309, 82-4-310, 82-4-331, MCA

17.24.118 ANNUAL REPORT (1) through (4) remain the same.

(5) Each annual report for those operations using cyanide or other metal leaching solvents or reagents or having the potential to generate acid must provide a narrative summary of water balance conditions during the preceding year and identify excess water holding capacity at the time of the annual report.

(6) through (10) remain the same.

(11) If site-specific closure requirements identified in the permit include monitoring for cyanide or other metal leaching solvent or reagent neutralization, acid rock drainage development, or similar occurrences, the annual report must include an evaluation of monitoring and testing data required in the permit for closure under 82-4-335, MCA.

(12) through (15) remain the same.

AUTH: 82-4-321, MCA
IMP: 82-4-335 through 82-4-339, 82-4-362, MCA

17.24.123 PERMIT CONSOLIDATION (1) In order to facilitate management ~~or~~ of multiple permits for a contiguous area, a permittee may, with department approval, consolidate permits.

(2) and (3) remain the same.

AUTH: 82-4-321, MCA
IMP: 82-4-335, MCA

17.24.128 INSPECTIONS: FREQUENCY, METHOD, AND REPORTING (1) through (1)(b) remain the same.

(i) uses cyanide or other metal leaching solvents or reagents;

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

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

17.24.137 NOTICES AND ORDERS: EFFECT (1) remains the same.

(2) If a suspension order will not completely abate the imminent danger to the health or safety of persons outside the permit or license area in the most expeditious manner physically possible, the director or ~~his~~ the director's authorized representative shall impose affirmative obligations on the person to whom it is issued to abate the condition, practice, or violation. The order must specify the time by which abatement must be accomplished and may require, among other things, the use of existing or additional personnel and equipment.

(3) and (4) remain the same.

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

17.24.140 BONDING: DETERMINATION OF BOND AMOUNT (1) and (1)(a) remain the same.

(b) the additional estimated costs to the department which may arise from additional design work, applicable public contracting requirements or the need to bring personnel and equipment to the operating area after its abandonment by the operator; ~~and~~

(c) an additional amount based on factors of cost changes during the preceding 5 years for the types of activities associated with the reclamation to be performed~~.~~ ; and

(d) the additional estimated cost to the department which may arise from management, operation, and maintenance of the site upon temporary or permanent operator insolvency or abandonment, until full bond liquidation can be effected.

(2) through (5) remain the same.

AUTH: 82-4-321, MCA
IMP: 82-4-338, MCA

17.24.141 BONDING: ADJUSTMENT OF AMOUNT OF BOND (1) The amount of the performance bond must be reviewed for possible adjustment as the disturbed acreage is revised, methods of mining operation change, standards of reclamation change or when contingency procedures or monitoring change. ~~The amount must also be reviewed at least every 5 years.~~

(2) The department shall conduct an overview of the amount of each bond annually and shall conduct a comprehensive bond review at least every 5 years. The department may conduct additional comprehensive bond reviews if, after modification of the reclamation or operation plan, an annual overview, or an inspection of the permit area, the department determines that an increase of the bond level may be necessary.

(2) through (5) remain the same, but are renumbered (3) through (6).

(7) A bond filed for an operating permit obtained under 82-4-335, MCA may not be released or decreased until the public has been provided an opportunity for a hearing and a hearing has been held if requested. The department shall provide reasonable statewide and local notice of the opportunity for hearing, including but not limited to publishing a notice in newspapers of general daily circulation. The department shall provide a 30-day comment period in the notice. A request for hearing must be submitted to the department in writing within the comment period.

AUTH: 82-4-321, MCA
IMP: 82-4-338, 82-4-342, MCA

17.24.144 BONDING: SURETY BONDS (1) through (1)(f) remain the same.

(g) Whenever operations are abandoned concurrent with cancellation of the bond, the department must reclaim the site and forfeit the bond within ~~7~~ 2 years, consistent with 82-4-341, MCA, for any reclamation obligation incurred in the reclamation of the site.

AUTH: 82-4-321, MCA
IMP: 82-4-338, 82-4-341, 82-4-360, MCA

17.24.150 ABANDONMENT OR COMPLETION OF OPERATION (1) For the purposes of administering the Act the ~~board~~ department will presume that an operation is abandoned or completed (and thus subject to the reclamation time schedule outlined in 82-4-336, MCA) as soon as ore ceases to be extracted for future use or processing. Should the ~~permittee~~ operator wish to rebut said assumption, ~~he~~ the operator must provide evidence satisfactory to the ~~board~~ department that ~~his~~ the operations have not in fact been abandoned or completed.

(2) remains the same.

(3) At the discretion of the ~~board~~ department, the following evidence and any other relevant evidence may be satisfactory to show intent to resume operations:

(a) exhibition of drill core and accompanying assay reports to show that ore minerals still remain in the mine and that they are present in veins or accumulations of sufficient size, grade and accessibility to warrant continued development—. ~~g~~Geological, geochemical or geophysical indications of valuable mineralization sufficient to warrant further development or mining will also be considered by the ~~board~~ department;

(b) remains the same.

(c) data recording present and predicted commodity prices, labor and transportation costs, etc., or any other evidence which may show that mining may soon resume on a profitable basis. Board comment: It is recognized that "abandonment or completion of mining" under the operating permit (see 82-4-336, MCA) is an action commonly predicated upon complex and changing economic circumstances; that

cessation of mining need not mean abandonment or completion; and that short of obtaining an operator's records and examining ~~his~~ the mine development drill core, the ~~board~~ department may be unable to determine the operator's true intent.

AUTH: 82-4-321, MCA
IMP: 82-4-336, MCA

17.24.158 BLASTING OPERATIONS: PARTICIPATION AND COOPERATION OF PERSONS USING EXPLOSIVES (1) through (3)(b) remain the same.

(c) The recognized expert must submit ~~his~~ the expert's qualifications to the department for review. At a minimum, the expert must:

(i) through (4)(c) remain the same.

AUTH: 82-4-321, MCA
IMP: 82-4-356, MCA

17.24.184 SMALL MINER BOND FORFEITURE AND SMES REVOCATION (1) If a small miner who conducts a placer or dredge operation fails to commence reclamation within 6 months after cessation of mining or within an extended period allowed by the department for good cause shown pursuant to (4) of this rule, or fails to diligently complete reclamation, the department shall notify the small miner by certified mail at ~~his~~ the small miner's last reported address that bond will be forfeited and the department will reclaim the site unless the small miner commences reclamation within 30 days and diligently completes reclamation.

(2) through (7) remains the same.

AUTH: 82-4-321, MCA
IMP: 82-4-305(4), (5), and (6), MCA

17.24.185 SMALL MINER ~~CYANIDE~~ METAL LEACHING SOLVENT OR REAGENT APPLICATIONS (1) A small miner proposing to ~~operate~~ use cyanide~~-~~ or other metal leaching solvents or reagents in a processing ~~facilities~~ facility and ~~a~~ mine under a small miner exemption must continue to meet the criteria for a small miner exemption under 82-4-305, MCA, concerning the mining operation. The acreage disturbed by the cyanide or other metal leaching solvent or reagent ore-processing operation and covered by the operating permit pursuant to 82-4-335(2), MCA, is excluded from the 5 acre limit.

(2) remains the same.

(3) A small miner proposing to use metal leaching solvents or reagents other than cyanide in an ore processing facility must obtain a permit for those facilities pursuant to 82-4-335(2), MCA, for operations for which a valid small miner exclusion statement had not been obtained prior to May 1, 1999.

~~(3)~~ (4) To expedite permitting of cyanide or other metal leaching solvent or reagent facilities, the department shall make available to a small miner who has submitted or may submit an application for a permit to operate a cyanide or other metal leaching solvent or reagent ore processing facility appropriate department staff to determine how baseline, operating and reclamation plan requirements may be met in view of conditions and characteristics of the site at which the ~~cyanide ore processing~~ facility is proposed. The department shall process these ~~cyanide ore processing~~ permit applications as expeditiously as possible consistent with statutory deadlines for other permit applications and the department's obligations under the Montana Environmental Policy Act.

~~(4)~~ (5) An application for a small miner cyanide or other metal leaching solvent or reagent ore processing operating permit must contain:

(a) baseline information meeting the requirements of ARM 17.24.186~~;~~

(b) an operating plan meeting the requirements of ARM 17.24.187~~;~~ and

(c) a reclamation plan meeting the requirements of ARM 17.24.188.

AUTH: 82-4-321, MCA
IMP: 82-4-305, 82-4-335, MCA

17.24.186 SMALL MINER ~~CYANIDE~~ METAL LEACHING SOLVENT OR REAGENT BASELINE INFORMATION (1) An application for a small miner cyanide or other metal leaching solvent or reagent processing facility permit must include the following baseline information on the existing conditions at the site:

(a) through (i) remain the same.

AUTH: 82-4-321, MCA
IMP: 82-4-305(7), 82-4-335(2), MCA

17.24.187 SMALL MINER ~~CYANIDE~~ METAL LEACHING SOLVENT OR REAGENT OPERATING PLANS (1) An application for a small miner cyanide or other metal leaching solvent or reagent processing facility permit must include the following information for construction and operation of the ~~cyanide processing~~ facility:

(a) appropriate maps showing the location of the mine and support facilities, cyanide or other metal leaching solvent or reagent-processing facilities, permit boundaries, and perennial streams;

(b) and (c) remain the same.

(d) number, size and location of any proposed leach pads and ponds, and ore and tailings piles associated with ~~cyanide~~ processing;

(e) remains the same.

(f) a plan for a leak detection system, including a program and schedule of monitoring for possible leakage which monitors pH, electrical conductivity (EC), ~~and~~ cyanide as weak

acid dissociable (WAD), other metal leaching solvents or reagents as appropriate, and other constituent levels, for those constituents appropriate to the type of processing proposed;

(g) through (m) remain the same.

(n) a plan to salvage and stockpile soil from all areas to be disturbed by cyanide or other metal leaching solvent or reagent-processing facilities, including stockpiles and wastepiles;

(o) and (p) remain the same.

(q) end-of-season procedures for shutdown of the cyanide or other metal leaching solvent or reagent-processing facility;

(r) through (w) remain the same.

(x) for facilities that are exposed to precipitation flows and that carry cyanidated or other metal leaching solvent or reagent solution, a plan that provides for adequate passage of a 50-year 24-hour storm even flow; and

(y) a plan for preventing wildlife access to facilities with cyanidated or other metal leaching solvent or reagent solutions.

AUTH: 82-4-321, MCA
IMP: 82-4-305, 82-4-335, MCA

17.24.188 SMALL MINER ~~CYANIDE~~ METAL LEACHING SOLVENT OR REAGENT RECLAMATION PLANS (1) An application for a small miner cyanide or other metal leaching solvent or reagent ore processing permit must contain a reclamation plan that includes the following:

(a) through (e) remain the same.

(f) a map showing regrading plans for all cyanide or other metal leaching solvent or reagent-processing and related facilities to a stable, minimally erosive slope configuration by backfilling excavated material, consistent with the postmining land use;

(g) through (l) remain the same.

(2) In addition, a ~~cyanide~~ processing facility which would constitute a "project", as that term is defined in 75-7-103, MCA, on a perennial stream, must comply with the requirements of the Natural Streambed and Land Preservation Act, as amended, by obtaining permits required by the appropriate conservation district.

AUTH: 82-4-321, MCA
IMP: 82-4-305, 82-4-335, MCA

17.24.189 SMALL MINER ~~CYANIDE~~ METAL LEACHING SOLVENT OR REAGENT PROCESSING FACILITIES PERFORMANCE STANDARDS AND BONDING (1) remains the same.

(2) In addition to the applicable performance standards of ARM 17.24.188 and 17.24.101, and 82-4-305, MCA, the following are required prior to bond release:

(a) neutralization of cyanide or other metal leaching solvent or reagent-containing tailing and solutions to those levels considered acceptable under applicable water quality standards;

(b) submittal of construction reports for tailings, ponds, and other appropriate facilities related to cyanide or other metal leaching solvent or reagent processing, on a monthly basis;

(c) remains the same.

(3) Bonding for cyanide or other metal leaching solvent or reagent-processing facilities must cover the actual cost of reclamation to the department ~~of reclamation~~ and the additional estimated cost to the department which may arise from management, operation, and maintenance of the site upon temporary or permament insolvency or abandonment, until full bond liquidation can be effected. Bonds must be reviewed and, if necessary, adjusted at least once every 5 years, tied to either the rate of inflation based on the consumer price index, a change in activities, or both, as appropriate.

(4) remains the same.

AUTH: 82-4-321, MCA
IMP: 82-4-305, 82-4-335, MCA

4. The Board is proposing the above rule amendments to implement two acts revising the Metal Mine Reclamation Act (Sections 82-4-301, et seq., hereinafter referred to as the Act) by the 1999 Montana Legislature. In Chapter 507, Laws of 1999, the Legislature enacted a broad range of revisions including a change in the definition of minerals subject to the Act (adding phosphate rock and removing peat and soil materials), the regulation of other metal leaching solvents or reagents to the same extent as cyanide, restrictions on the use of mercury, and modifications to bonding procedures. In Chapter 457, Laws of 1999, the Legislature revised Section 82-4-390, MCA, to allow open-pit mines that were in operation and using cyanide leach processing on November 3, 1998, to continue to operate under an amended permit.

Most of the rule amendments are proposed to conform the rules to the Act. Other amendments are proposed for clarification and to correct typographical errors.

Rule 17.24.101: The proposed amendment to subsection (1) reflects the revision of the Act contained in Chapter 507, Laws of 1999, that regulates other metal leaching solvents or reagents to the same extent as cyanide. The proposed amendment adds subsection (2) to reflect the revision of Section 82-4-390, MCA, by Chapter 457, Laws of 1999, that allows open-pit mines in operation and using cyanide leach processing on November 3, 1998, to continue to operate under an amended permit.

Subsection (4), renumbered as subsection (5) contained a verbatim statement of the exemptions to the Act set forth in 82-4-310(1), (2) and (3), MCA. Chapter 507, Laws of 1999, revised these exemptions. Rather than setting forth the

revised exemptions verbatim, subsection (5) simply refers to 82-4-310, MCA. The statutory reference was substituted because subsection (5) did not contain any additional information than that set forth in the statute. Subsection (6) reflects the removal of peat and soil materials from regulation under the Act pursuant to Chapter 507, Laws of 1999.

Subsection (8) addresses applicability of the Act to the extraction of resources from common-use pits and quarries located on federal lands and subject to federal law. The purpose of the subsection is to eliminate duplicative state and federal regulation by exempting the quarries and pits located on federal land from the Act.

As formerly written, the subsection exempted the general public's "noncommercial procurement" of "saleable minerals" from these pits and quarries. In the context of eliminating duplicative state and federal regulation, however, there is no basis for distinguishing between the general public's noncommercial and commercial extraction of resources from these pits and quarries. Therefore, the phrase "noncommercial procurement" was replaced by "exclusive or nonexclusive procurement". This new phrase is meant to be inclusive of all extractions from the pits and quarries, covering situations in which the right to access the pit or quarry is held by an individual member or is shared among members of the general public.

"Salable minerals" is a term-of-art in federal law that is not pertinent to the administration of the Act. That phrase, therefore, has been replaced by the phrase "rock or stone", which describes the resource being taken from the pit or quarry.

Rule 17.24.102: The proposed amendments to subsections (12) and (25) reflect the revision to the Act's definition of "mineral" contained in Chapter 507, Laws of 1999, adding phosphate rock and removing peat and soil materials.

Rule 17.24.118: The proposed amendments to subsections (5) and (11) reflect the revisions to the Act contained in Chapter 507, Laws of 1999, regulating other metal leaching solvents or reagents to the same extent as cyanide.

Rule 17.24.123: The proposed amendment to this rule corrects a typographic error, changing the word "or" to "of".

Rule 17.24.128: The proposed amendment to this rule reflects revisions to the Act contained in Chapter 507, Laws of 1999, regulating other metal leaching solvents or reagents to the same extent as cyanide.

Rule 17.24.137: The proposed amendment to (2) inserts gender neutral language, changing "his" to "the director's".

Rule 17.24.140: Chapter 507, Laws of 1999 revised Section 82-4-338(1), MCA, to require the Department to include the cost of Department management, operation and maintenance of a minesite upon temporary or permanent operator insolvency or abandonment in calculating the amount of bond required. The proposed amendment to ARM 17.24.140 reflects this revision of the Act.

Rule 17.24.141: Chapter 507, Laws of 1999, revised Section 82-4-338(2), MCA, to require the Department to conduct an overview of the amount of a bond issued under the Act annually and to conduct a comprehensive bond review at least every 5 years. The proposed amendment to subsection (2) reflects this revision of the Act. Chapter 507, Laws of 1999, also revised Section 82-4-338(4), MCA, to require the opportunity for a public hearing before the Department may decrease a bond for an operating permit. The revision also specifies that a public hearing must be held, if requested, prior to releasing or decreasing a bond and requires the Department to provide reasonable statewide and local notice of the opportunity for hearing. The proposed amendment to subsection (7) reflects Section 82-4-338(4) as revised.

The Board believes that a procedural framework was necessary to effectuate the opportunity for a public hearing required by Section 82-4-338(4). Thus, the proposed amendment to the rule requires the Department to provide notice of the opportunity for hearing and a 30-day comment period. A request for a hearing must be submitted to the Department in writing within the comment period.

Rule 17.24.144: The proposed amendment to this rule corrects a typographic error, changing the number "7" to "2". As amended, the rule is consistent with Section 82-4-341, MCA.

Rule 17.24.150: The proposed amendment to this rule is consistent with previous amendments to rules promulgated under the Act replacing the term "board" with "department". The Department of State Lands, which was headed by the Board of Land Commissioners, previously administered the Act. It was this entity that the rules referred to as the "board". Administration of the Act, however, has subsequently been transferred to the Department of Environmental Quality. The proposed amendment to Rule 17.24.150 reflects this change. The proposed amendment also replaces "permittee" with "operator" in subsection (1). The change in terms was made because "operator" includes licensees who have obtained an exploration license under Section 82-4-332, MCA, as well as permitees who have obtained an operating permit under Section 82-4-335, MCA. In addition, the Board proposes deleting "he" and "his" in (1) and (3)(c) and inserting gender neutral language in its place.

Rule 17.24.158: The Board proposes deleting "his" in (3)(c) and inserting gender neutral language in its place.

Rule 17.24.184: The Board proposes deleting "his" in (1) and inserting gender neutral language in its place.

Rule 17.24.185: The proposed changes to subsections (1), (4) and (5) of this rule reflect the revisions of the Act under Chapter 507, Laws of 1999, regulating other metal leaching solvents or reagents to the same extent as cyanide.

Chapter 507, Laws of 1999, specifically amended Section 82-4-305(7), MCA, to require a small miner using metal leaching solvents or reagents other than cyanide to obtain an operating permit. Section 23 of Chapter 507, Laws of 1999, provides that Section 82-4-305(7), MCA, applies to operations for which a valid small miner exclusion had not been filed

before May 1, 1999. The proposed rule amendment adds subsection (3) which contains the same requirement as Section 82-4-305(7), MCA, as revised by Chapter 507, Laws of 1999, and with the applicability date set forth in Section 23 of Chapter 507, Laws of 1999.

Rule 17.24.186, Rule 17.24.187, Rule 17.24.188, and Rule 17.24.189: These proposed rule changes reflect the revisions to the Act under Chapter 507, Laws of 1999, regulating other metal leaching solvents or reagents to the same extent as cyanide.

5. 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 the Board of Environmental Review, P.O. Box 200901, Helena, Montana, 59620-0901, no later than November 12, 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 via email addressed to Leona Holm, Board Secretary, at "lholm@state.mt.us", no later than 5 p.m. November 12, 1999.

6. James B. Wheelis, attorney for the Board, has been designated to preside over and conduct the hearing.

BOARD OF ENVIRONMENTAL REVIEW

by: *Joe Gerbase*
JOE GERBASE, Chairperson

Reviewed by:

John F. North
John F. North, Rule Reviewer

Certified to the Secretary of State September 27, 1999.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the proposed adoption of a new rule regarding insurance required prior to the public display of fireworks, the proposed transfer and amendment of ARM 23.7.113, and the proposed amendment of ARM 23.7.102 through 23.7.104, 23.7.106 through 23.7.110, 23.7.112, 23.7.201 through 23.7.203, 23.7.301 through 23.7.310 of the fire code.	)))))))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED ADOPTION, TRANSFER, AND AMENDMENT OF RULES

TO: All Concerned Persons

1. On October 29, 1999, at 9:00 a.m. a public hearing will be held in the auditorium of the Scott Hart Building at 303 North Roberts, Helena, Montana, to consider the adoption of new Rule I, the transfer and amendment of ARM 23.7.113, and the amendment of ARM 23.7.102 through 23.7.104, 23.7.106 through 23.7.110, 23.7.112, 23.7.201 through 23.7.203, and 23.7.301 through 23.7.310 of the fire code.

2. The Department of Justice will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Justice no later than 5:00 p.m. on October 21, 1999, to advise us of the nature of the accommodation that you need. Please contact Melanie Symons, 215 North Sanders, P.O. Box 201401, Helena, MT 59620-1401; (406) 444-5880; FAX (406) 444-3549.

3. The proposed new rule provides as follows:

RULE I GENERAL LIABILITY INSURANCE REQUIRED FOR PUBLIC DISPLAY OF FIREWORKS (1) Any organization or group of individuals planning a public display of fireworks must provide proof to either the fire prevention and investigation program or the governing body of a city, town, or county, that the group has a general liability insurance policy in the amount of not less than $1,000,000 per occurrence.

(2) The proof of insurance must be provided with the application for permit referenced in 50-37-107, MCA, no later than 15 days prior to any public display of fireworks. The general liability insurance policy must be valid at the time of the public display.

(3) The general liability insurance policy must cover payment of any liability, including personal and property damages, arising out of the public display of fireworks.

(4) Although the general liability insurance must meet the

requirements of 50-37-108, MCA, an insurance policy is permitted in lieu of a damage indemnity bond as damage indemnity bonds are no longer available for the public display of fireworks.

(5) Alternative methods of liability coverage may be approved if equivalent to the above-listed requirements.

AUTH: 50-3-102 and 50-3-103, MCA
IMP: 50-37-108, MCA

This rule is required as the statute provides for a bond "in a sum not less than $500". A bond in the amount of $500 is completely insufficient to cover the magnitude of damages which could arise from the public display of fireworks. Insurance companies have recommended a minimum of $1,000,000 in coverage. Bonds in excess of $1,000 are prohibitive to acquire. Additionally, although the statute provides for a damage indemnity bond, the Department has learned that damage indemnity bonds are no longer available for entities engaged in the public display of fireworks. This rule guarantees that general liability insurance policies will satisfy the statutory requirement.

4. ARM 23.7.113 is proposed to be transferred to ARM 23.7.101A , and amended as follows, stricken matter interlined, new matter underlined:

~~23.7.113~~ 23.7.101A DEFINITIONS Unless the context requires otherwise, the following definitions apply to ~~the~~ rules in ARM Title 23, chapter 7~~:~~

~~(1) "Apprentice" is a person new to the entity or position in a training capacity, for the service or installation of fire alarm systems, special agent fire suppression systems, or fire extinguishing systems and who is studying in accordance with an apprentice program approved by the department in conjunction with the department of labor and industry, or who submits a copy of the National Institute for Certification in Engineering Technologies (NICET) notification letter confirming the applicant's successful completion of the examination elements for level I for the relevant system or systems for which apprenticeship is sought and is studying for level II testing for the relevant system or systems.~~

~~(2)~~(1) "Building code" means the latest edition of the Uniform Building Code (UBC) adopted by the department of commerce. Whenever a provision of the ~~B~~building ~~C~~code is incorporated within the Uniform Fire Code (UFC) by reference, such provision is hereby adopted for application to all buildings within the jurisdiction of the ~~state~~ fire prevention and investigation ~~bureau~~ program (FPIP), unless the ~~bureau chief~~ state fire marshal determines otherwise in accordance with UFC ~~Section~~ 103.1.2. Copies of the ~~Uniform Building Code~~ UBC may be obtained from the Building Codes ~~Bureau~~ Division of the Department of Commerce, 1218 East Sixth Avenue, Helena, Montana 59620-0517.

~~(3)~~(2) "Building official" ~~refers to~~ means the ~~bureau~~

~~chief~~ division administrator of the building codes division ~~bureau~~ of the department of commerce or, when made applicable by statute or rule, the building official of the local jurisdiction.

(3) "Certificate of approval" means a letter of approval issued by the fire prevention and investigation program.

(4) "Chief," "fire chief," "fire marshal," and "fire prevention engineer" all ~~are treated as referring to~~ mean the ~~chief of the fire prevention and investigation bureau of the department of justice~~ state fire marshal or, when made applicable by statute or rule or the context thereof, ~~to~~ the chief official of the appropriate local fire protection agency.

~~(5) "City" is treated as referring to the state of Montana or, when made applicable by statute or rule or the context thereof, to the appropriate local jurisdiction.~~

~~(6) "Commercial general liability insurance" means insurance that covers bodily injury and property damage, personal and advertising injury and medical payments resulting from, but not limited to, premises/operations claims and products/completed operations claims.~~

(7) remains the same but is renumbered (5).

~~(8)~~(6) "District," as used in ~~section~~ 50-61-114, MCA, means a rural fire district established under Title 7, chapter 33, part 21, MCA.

~~(9) "Endorsement" means a document issued by the department to an individual who has met qualifications which authorizes the individual to service and install fire alarm systems, special agent fire suppression systems, or fire extinguishing systems.~~

(10) and (11) remain the same but are renumbered (7) and (8).

(9) "Fire code" means the latest edition of the Uniform Fire Code (UFC) and any additions thereto adopted by the fire prevention and investigation program.

~~(12)~~(10) "Fire department" and "bureau of fire prevention" are treated as referring to the fire prevention and investigation ~~bureau~~ program of the department of justice or, when made applicable by statute or rule or the context thereof, to the appropriate local jurisdiction.

(13) through (17) remain the same but are renumbered (11) through (15).

(16) "Fireworks stand" means a small, temporary, often open-air structure, booth, or other portable stand-alone structure designed and constructed of wood or metal, utilized for the express purpose of display and sale of fireworks at retail.

~~(18) "Inspection" as used in ARM 23.7.121(5)(a) means a visual check that fire protection equipment is available and will operate. It is intended to give reasonable assurance that the fire protection equipment is fully charged and operable. This is done by seeing that it is in its designated place, that it has not been actuated or tampered with, and that there is no obvious physical damage or condition to prevent operation.~~

~~(19)~~(17) "License" means the document issued by the

department of commerce which authorizes a person or entity to engage in the business of servicing fire extinguishers ~~or before engaging in the business of selling, servicing or installing fire alarm systems, special agent fire suppression systems or fire extinguishing systems~~.

(20) remains the same but is renumbered (18).

~~(21)~~(19) "Mechanical code" means the latest edition of the Uniform Mechanical Code (UMC) adopted by the department of commerce. Whenever a provision of the ~~Uniform Mechanical Code~~ UMC is incorporated within the ~~Uniform Fire Code~~ UFC by reference, such provision is hereby adopted for application to all buildings within the jurisdiction of the ~~state~~ fire prevention and investigation ~~bureau~~ program, unless the ~~bureau chief~~ state fire marshal determines otherwise in accordance with UFC ~~Section~~ 2.301.

(20) "Nationally recognized standards" includes but is not limited to any of the standards referenced in UFC Article 90, National Fire Protection Association (NFPA) standards, Underwriters Laboratories Inc. (UL) standards, American Petroleum Institute (API) standards, American Society for Testing and Materials (ASTM) standards, and American National Standards Institute (ANSI) standards.

(22) remains the same but is renumbered (21).

~~(23)~~(22) "Ordinance" means state law, city or county ordinance, or rule adopted by the fire prevention and investigation ~~bureau~~ program.

(24) remains the same but is renumbered (23).

~~(25)~~(24) "Service"~~,~~ means:

(a) when referring to portable fire extinguishers and fire extinguisher cylinders, ~~means~~ maintenance and includes breakdown for replacement of parts or agent, repair, recharging, or hydrostatic testing~~.~~;

~~(a)~~(b) ~~When~~ when referring to alarm systems, fire extinguishing systems, and fire suppression systems, ~~"service" means~~ maintenance and testing required to keep the protective signaling, extinguishing, and suppression system and its component parts in an operative condition at all times, together with replacement of the system or its component parts with listed or approved parts, when, for any reason they become undependable, defective, or inoperative~~.~~; and

~~(b)~~(c) "Service" does not include resetting manual alarm systems which may be reset by properly trained building owners or their designated representative.

~~(26)~~(25) "Single family private house" means a dwelling unit as the term dwelling is defined in the ~~Uniform Fire Code~~ UFC, no part of which is rented to another person.

~~(27)~~(26) "Special agent fire suppression system" means an approved system and components which require individual engineering in accordance with manufacturer specifications and includes dry chemical, carbon dioxide, halogenated, gaseous agent, foam, and wet chemical systems~~.~~. The term includes a pre-engineered system but does not include a fire extinguishing system.

~~(28) "Uniform fire code" means the latest edition of the~~

~~Uniform Fire Code adopted by the state fire prevention and investigation bureau.~~

AUTH: 50-3-102, 50-39-107, MCA
IMP: 50-3-102, MCA

ARM 23.7.113 is proposed to be transferred to ARM 23.7.101A as definitions which are applicable to a set of rules are generally found at the beginning of the rules to which they apply.

The proposed amendments to the definitions clarify the terms used throughout the rules and eliminate definitions no longer needed. Specifically, the terms "Apprentice," "Commercial General Liability Insurance," "Endorsement" and "Inspection" are proposed to be deleted because duties associated with those terms have been transferred to the Department of Commerce; "Certificate of Approval" is proposed to be adopted to clarify that letters issued by the FPIP qualify as certificates; "City" is proposed to be deleted as the term is not used in the way in which it was defined; "Uniform Fire Code" is proposed to be deleted and replaced with "Fire Code" for consistency purposes; "Fireworks Stand" is proposed to be adopted to clarify the type of structures from which fireworks can be sold; "License" is proposed to be amended to indicate that the Department of Commerce is now charged with licensing responsibilities; "Nationally Recognized Standards" is proposed to be adopted to better identify the various standards referenced throughout the rules; and the terms "Service" and "Single Family Private House" are proposed to be amended to eliminate confusion within their current definitions.

The other proposed changes are merely clerical in nature. For example, the Fire Prevention and Investigation Bureau is now the Fire Prevention and Investigation Program, or FPIP, and the bureau chief is now the state fire marshal.

5. The rules proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

23.7.102 ENFORCEMENT OF FIRE PREVENTION AND INVESTIGATION ~~BUREAU~~ PROGRAM RULES (1) The fire prevention and investigation ~~bureau~~ program (FPIP) shall administer and enforce in every area of the state of Montana all the provisions of the ~~F~~fire ~~C~~code~~s of Montana~~ and rules adopted pursuant thereto. The chief fire officials of each municipality, fire service area, or organized fire district shall have responsibility for enforcement of applicable fire codes within the limits of ~~his~~ their jurisdiction, and shall assist the ~~bureau~~ FPIP in the enforcement of laws and rules pertaining to fire safety in public buildings.

(2) Each local authority responsible for fire prevention inspections shall maintain reports of inspections performed. ~~The local authority shall submit to the fire prevention and investigation bureau, annually, a report listing inspections~~

~~performed.~~ Fire prevention inspection reports shall be accessible to and provided to the ~~fire prevention and investigation bureau~~ FPIP when deemed necessary by the ~~bureau chief~~ state fire marshal.

(3) Each official responsible for investigating fires shall file with the state fire marshal a fire incident report on each and every fire occurring within the official's jurisdiction. ~~Forms may be obtained from the state fire prevention and investigation bureau, and~~ Fire incident reports must be submitted on ~~the~~ forms obtained from ~~supplied by~~ the ~~bureau~~ FPIP. The state fire marshal may return ~~incomplete forms~~ reports ~~may be returned~~ for resubmission with complete information.

AUTH: 50-3-102, MCA
IMP: 50-3-102, 50-61-102, 50-63-203, MCA

Subsection (1) - Fire service areas were first created by the 1997 legislature. The term is proposed to be adopted here to recognize the existence of fire service areas and to ensure that an area's chief fire official has the responsibility of enforcing the fire code in the fire service area. Subsection (2) - Although annual inspections are still required, the FPIP no longer requires submission of annual inspection reports absent a specific request for the report from the FPIP. Storage issues and logistics necessitate this proposed change. Subsection (3) - Local agencies must now obtain federally mandated incident reports from the FPIP and must complete those reports according to FPIP specifications. This change is proposed to ensure consistent information is provided the FPIP.

23.7.103 NOTICE OF VIOLATION (1) Upon determination by an officer of the fire prevention and investigation ~~bureau~~ program (FPIP) that any person or entity is in violation of any provision of the ~~Fire Codes of Montana~~ fire code or any rule adopted pursuant thereto, the ~~bureau~~ FPIP shall serve upon the person or a designated representative of the entity a notice of violation, as provided in ~~section~~ 50-61-115, MCA~~, or~~. Additionally, if the violation constitutes ~~if~~ a fire hazard ~~is present~~, the ~~bureau~~ FPIP ~~shall~~ may proceed in accordance with ~~sections~~ 50-62-102 and 50-62-103, MCA.

AUTH: 50-3-102, MCA
IMP: 50-3-102, 50-3-103, MCA

Proposed changes are merely clerical in nature. For example, the Fire Prevention and Investigation Bureau is now the Fire Prevention and Investigation Program, or FPIP. The substantive meaning of the rule has not changed.

23.7.104 INTERPRETATION (1) Interpretations of rules adopted by the fire prevention and investigation ~~bureau~~ program shall be made by the state fire marshal.

AUTH: 50-3-102, MCA
IMP: 50-3-102, 50-61-102, MCA

Proposed changes are merely clerical in nature. For instance, the Fire Prevention and Investigation Bureau is now the Fire Prevention and Investigation Program, or FPIP. The substantive meaning of the rule has not changed.

23.7.106 APPOINTMENT OF SPECIAL FIRE INSPECTORS (1) and (2) remain the same.

(3) Qualifications for persons appointed special fire inspector are:

(a) Any person appointed special deputy state fire marshal, except for a qualified inspector employed by another state agency, must have a degree in fire protection engineering or related field from a recognized institution of higher education, ~~or 2~~ two years' experience in fire protection, or be UFC certified, and must complete a training course administered or approved by the fire prevention and investigation ~~bureau~~ program (FPIP).

(b) An employee of another agency of the state of Montana may be appointed special fire inspector for the purpose of conducting inspections or investigations authorized by the ~~fire prevention and investigation bureau~~ FPIP if such employee is qualified by the employing agency as an inspector or investigator and is approved to conduct inspections or investigations by the department of justice.

(4) A special fire inspector may perform any duty with which the ~~fire prevention and investigation bureau~~ FPIP is charged by state law or rule, subject to the direction of the ~~bureau chief~~ state fire marshal.

AUTH: 50-3-106, MCA
IMP: 50-3-106, MCA

"UFC certified" is proposed to be adopted as an option for a special fire inspector's qualifications. Such certification is equivalent to others listed in the rule, and commonly obtained by inspectors. Other proposed changes are merely clerical in nature. For instance, the Fire Prevention and Investigation Bureau is now the Fire Prevention and Investigation Program, or FPIP.

23.7.107 FIRE ESCAPES FOR PUBLIC BUILDINGS (1) The following UFC appendices are adopted for application to ~~All~~ buildings described in ~~section~~ 50-61-103, MCA, which are of two or more stories in height~~, except private residences, shall be equipped with adequate fire escapes in accordance with this rule.~~

~~(2)~~(a) UFC Appendix I-A, Section 2.4 Fire Escapes; and ~~of the Uniform Fire Code is adopted for application to all existing buildings subject to this rule other than high rise buildings, and subsection 2 thereof shall govern the provision of exits and fire escapes in all such buildings. Appendix I-B of the Uniform~~

~~Fire Code is adopted for application to all existing high rise buildings subject to this rule.~~

(b) UFC Appendix I-C ~~of the Uniform Fire Code shall govern stairway identification~~ applies to existing buildings.

~~(3) Provision of fire escape exits in new buildings shall be in accordance with the Building Code.~~

AUTH: 50-3-103, MCA
IMP: 50-61-105, MCA

Proposed changes clarify that the FPIP does not enforce Appendix I-A of the Uniform Fire Code, except Section 2.4 Fire Escapes is enforced in existing buildings of two or more stories in height. Appendix I-C of the Uniform Fire Code is enforced only in existing buildings of two or more stories in height. These clarifications are consistent with the policies of the Building Codes Division, Department of Commerce.

23.7.108 SMOKE DETECTORS IN RENTAL UNITS (1) remains the same.

(2) An approved smoke detector is a device that is capable of detecting visible or invisible particles of combustion, that emits an alarm signal, and that bears a label or other identification issued by an approved testing agency ~~having a service for inspection of~~ which inspects materials and workmanship at the factory during fabrication and assembly.

(3) UFC Appendix I-A, - SECTION 6-SMOKE DETECTORS of the ~~Uniform Fire Code~~ shall govern the installation of smoke detectors in all dwelling units ~~subject to this rule~~ rented to another person.

AUTH: 50-3-102, 70-24-303, MCA
IMP: 50-3-102, 70-24-303, MCA

Proposed changes clarify that rented dwelling units must have smoke detectors. These clarifications are consistent with Montana's Landlord-Tenant Law.

23.7.109 CERTIFICATE OF APPROVAL FOR DAY CARE CENTERS FOR ~~THIRTEEN~~ 13 OR MORE CHILDREN (1) Any applicant for a license from the department of ~~family~~ public health and human services to operate a day care center for 13 or more children under Title 52, chapter 2, MCA, must obtain a certificate of approval from the state fire marshal in accordance with this rule.

(2) To obtain a certificate of approval, the applicant shall submit a written application to the state fire marshal setting forth the following information:

(a) ~~N~~name and address of applicant; ~~and~~

(b) location of proposed day care center; and

~~(b)~~ (c) ~~N~~number of children for which proposed day care center will provide care.

(3) Upon receipt of an application for certificate of approval, the state fire marshal or ~~his~~ a representative shall conduct an inspection of the proposed day care center.~~, and~~

~~shall promptly thereafter issue his findings, indicating whether or not fire safety rules have been met. In addition to compliance with the Uniform Fire Code, all~~

(4) Day care centers shall comply with the fire code.

(5) ~~d~~Day care centers shall comply with the following provisions of the building code which are hereby incorporated by reference: ~~Secs. 802(c)~~ UBC 305.2.3, ~~803~~ 305.3, ~~808~~ 305.8, ~~809~~ 305.9, chapter ~~33~~ 8, chapter 10, ~~section 3802(c)~~ 904.2.4.2, and 904.2.4.3. ~~and chapter 42.~~ Copies of the 1997 UBC may be obtained from the Building Codes Division, Department of Commerce, PO Box 200517, Helena, MT 59620-0517.

(6) Day care centers ~~must~~ shall also comply with the following additional requirements:

(a) through (h) remain the same.

(i) Portable fire extinguishers shall be installed and maintained in accordance with UFC Standard 10-1 or the national fire protection association's standard for portable fire extinguishers, NFPA 10 (1998).

(j) through (l) remain the same.

~~(4)~~(7) If the proposed day care center is in compliance with these rules, the state fire marshal shall issue a certificate of approval. If the center is not in compliance, the state fire marshal shall issue a notice of corrective action needed to bring the center into compliance. Additional inspections may be conducted as needed until compliance is achieved.

~~(5)~~(8) For the purposes of this rule, the definitions contained in ~~section~~ 52-2-703, MCA, are applicable.

(6) remains the same but is renumbered (9).

AUTH: 50-3-102, 52-2-734, MCA
IMP: 50-3-102, 52-2-733, 52-2-734, MCA

The Department of Family Services has been eliminated. Its previous functions are now the responsibility of the Department of Public Health and Human Services. Proposed changes clarify that the state fire marshal is charged with inspecting day care centers for 13 or more children and that such centers must comply with various provisions of the Uniform Fire Code and the National Fire Protection Association's standards for portable fire extinguishers. Proposed changes further clarify when and what day care center reports must be issued by the state fire marshal.

23.7.110 CERTIFICATE OF APPROVAL FOR COMMUNITY HOMES

(1) This rule shall govern certification for fire and life safety of all community homes for the developmentally disabled, in accordance with ~~section~~ 53-20-307, MCA, and of all community homes for persons with severe disabilities, in accordance with ~~section~~ 52-4-204, MCA.

(2) and (3) remain the same.

(a) ~~N~~name and address of applicant; ~~and~~

(b) location of ~~proposed~~ community home; and

~~(b)~~(c) ~~N~~number of residents for which ~~proposed~~ community

home ~~will~~ provides care.

(4) Upon receipt of an application for certificate of approval, the state fire marshal or ~~his~~ a representative shall conduct an inspection of the ~~proposed~~ community home, and shall promptly thereafter issue ~~his~~ findings~~,~~ indicating whether ~~or not~~ the fire ~~safety rules have~~ code has been met. If the community home is in compliance with these rules, the state fire marshal shall issue a certificate of approval. If the community home is not in compliance, the state fire marshal shall issue a notice of corrective action needed to bring the community home into compliance. Additional inspections may be conducted as needed until compliance is achieved.

(5) For purposes of determining compliance with the fire ~~safety rules~~ code, all community homes shall comply with the Uniform Fire Code and with all other rules promulgated by the fire prevention and investigation ~~bureau~~ program.

~~(6) If the proposed community home is in compliance with these rules, the fire marshal shall issue a certificate of approval. If the home is not in compliance, the fire marshal shall issue a notice of corrective action needed to bring the home into compliance. Additional inspections may be conducted as needed until compliance is achieved.~~

~~(7)~~(6) The state fire marshal shall notify the department of ~~social and rehabilitation services and the department of family services~~ public health and human services when a community home has been certified.

AUTH: 52-4-204, 53-20-307, MCA
IMP: 52-4-204, 53-20-307, MCA

The Department of Family Services and the Department of Social and Rehabilitation Services have been eliminated. Their relevant functions are now the responsibility of the Department of Public Health and Human Services. Proposed changes clarify that the regulation applies to proposed and existing community homes, and distinguishes between the issuance of a certificate of approval and a notice of corrective action.

23.7.112 THREAT OF EXPLOSIVES IN STATE BUILDINGS (1) ~~In any building housing state offices,~~ eEach department director or official in charge shall assign one individual ~~for~~ in each building housing members of the department~~,~~ whose responsibilities shall be to coordinate evacuation and to practice proper procedures involving a threat of explosive materials in the assigned building or building area. The designated individual shall have responsibility to ensure that appropriate fire and law enforcement authorities are notified of a threat of explosives.

(2) In the event a building houses more than one state ~~agency~~ department, each ~~agency~~ department shall designate a responsible individual. Where the threatened explosive device is located in a particular ~~agency's~~ department's area of the building, that ~~agency's~~ department's designated individual shall be primarily responsible for evacuation and notification of

proper authorities.

AUTH: 50-3-102, MCA
IMP: 50-3-102, MCA

Proposed changes clarify that each department housed in a building is responsible for the handling of threats of explosive devices. This will eliminate any confusion regarding responsibility issues.

23.7.201 RETAIL FIREWORKS SALE (1) Anyone engaged in the retail sale of permissible fireworks, as defined in ~~section~~ 50-37-105, MCA, must obtain a permit if required by the applicable local jurisdiction. The provisions of this rule do not apply if a local ordinance has been adopted pursuant to ~~section~~ 7-33-4206, MCA, regulating or prohibiting the retail sale of fireworks.

(2) The retail sale of permissible fireworks may occur only from approved retail business establishments or approved fireworks stands as defined in ARM 23.7.101A. Fireworks shall not be sold from or stored in any tent, canopy or temporary membrane structure (UFC 3215.2), sold from a mobile trailer which is designed for the transportation of goods, or sold from a fireworks stand or mobile trailer which permits entry of the public.

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

~~(3)~~(4) No fireworks may be discharged within 100 feet of a fireworks stand ~~retail sales location~~.

~~(4)~~(5) No smoking shall be allowed within the fireworks stand. At any place where permissible fireworks are sold or displayed, a sign reading "NO SMOKING" must be posted in letters at least four inches in height and ½ one-half inch in stroke where customers are most likely to read it.

~~(5)~~(6) Except as provided in ~~subsection~~ (12) of this rule, retail sale of fireworks shall be conducted from fireworks stands located at least 300 feet from a church or hospital, 50 feet from any flammable liquid dispensing device or installation, 50 feet from other inhabited areas, and 30 feet from any public roadway.

~~(6)~~(7) Parking of vehicles used to transport Class A or B explosives or flammable and combustible liquids is prohibited within 100 feet of a ~~retail~~ fireworks stand.

~~(7)~~(8) Fireworks ~~S~~stands shall be equipped inside with at least one pressurized water extinguisher with a minimum rating of 2A or one garden hose connected to an available water supply.

~~(8) Any stand constructed to admit members of the public inside shall have a minimum of two unobstructed exits remotely located from each other.~~

(9) All weeds, dry grass, and combustible material shall be cleared for a minimum distance of 25 feet in all directions from ~~the~~ a fireworks stand.

(10) Electrical wiring shall be in a safe condition, and if found upon inspection to be unsafe shall be upgraded to comply with the applicable provisions of the National Electrical

Code (NEC) adopted by the building codes ~~bureau~~ division of the department of commerce.

(11) Open flame devices of any kind are prohibited in or within 25 feet of any ~~retail~~ fireworks ~~stands, and within 25 feet of the~~ stand.

(12) through (12)(b)(i) remain the same.

(ii) It is protected by a fire suppression sprinkler system approved by the fire prevention and investigation ~~bureau~~ program or by a fire marshal of the local jurisdiction; or

(iii) remains the same.

(13) All ~~retail~~ fireworks stands ~~shall be subject to inspection~~ must be inspected by the chief in accordance with ~~section 2.201~~ UFC 103.2.1.1 ~~of the Uniform Fire Code~~. Violations shall be handled in accordance with ~~section~~ 50-61-115, MCA. If immediate action is necessary to safeguard life and property, the chief may issue an order to remedy in accordance with ~~section~~ 50-62-102, MCA.

AUTH: 50-3-102, MCA
IMP: 50-3-102, MCA

Proposed subsection (2) is new. It ensures that the retail sale of fireworks may occur only from fireworks stands and retail establishments which meet particular structural and safety requirements. The FPIP is especially concerned that facilities which permit entry by the public have adequate exits and other safety features. Subsection (8) is proposed to be deleted because under new proposed subsection (2), the public cannot enter a "fireworks stand." If the public is permitted entry, the structure must meet the requirements of a retail business establishment permitted to sell fireworks. Proposed amendments to subsection (13) mandate inspections of fireworks stands by a chief, again to ensure the public's safety.

23.7.202 FIREWORKS REPACKAGING, STORAGE AND SHIPPING

(1) All buildings where fireworks are stored, opened for repacking, repackaged, or prepared for shipping shall conform to the provisions of the ~~B~~building ~~C~~code and the ~~Uniform F~~fire ~~C~~code. Where those codes are silent, National Fire Protection Association (NFPA) pamphlet 1124 (1998) shall be applied.

(2) (NFPA) pamphlet 1124 ~~shall be~~ (1998), which is the code governing the manufacture, transportation and storage of fireworks and which can be found in the 1999 edition of the National Fire Code (NFC), is hereby incorporated by reference. Copies may be obtained from the Fire Prevention and Investigation ~~Bureau~~ Program, ~~303 North Roberts~~ 1310 East Lockey, Helena, Montana 59620.

AUTH: 50-3-102, MCA
IMP: 50-3-102, MCA

Proposed changes are merely clerical or clarifying in nature. For instance, the Fire Prevention and Investigation Bureau is now the Fire Prevention and Investigation Program, or FPIP, and

its address has changed and NFPA Pamphlet 1124 is further defined. The substantive meaning of the rule has not changed.

23.7.203 OUTDOOR DISPLAY OF FIREWORKS (1) Unless prohibited by local ordinance, supervised public displays of fireworks shall be conducted in accordance with ~~section~~ 50-37-107, MCA, and applicable local ordinances. Where no local ordinance is in effect, the governing body of the city, town, or county shall be notified at least 15 days in advance of any outdoor display.

AUTH: 50-3-102, 50-37-107, 50-37-108, MCA
IMP: 50-3-102, 50-37-107, MCA

Proposed changes are merely clerical in nature, and made to ensure consistency throughout the regulations. The substantive meaning of the rule has not changed.

23.7.301 ADOPTION OF UNIFORM FIRE CODE (1) The fire prevention and investigation ~~bureau~~ program hereby adopts and incorporates by reference the Uniform Fire Code and appendices, ~~1994~~ 1997 edition (UFC), and the Uniform Fire Code Standards, ~~1994~~ 1997 edition (UFC Standards), with the additions, amendments, and deletions enumerated in this subchapter. Copies of the ~~Uniform Fire Code~~ UFC and related materials may be obtained from the International Conference of Building Officials, 5360 South Workman Mill Road, Whittier, CA 90601-2298, ~~(310) 692-4226~~ 1-800-423-6587, www.icbo.org, or from the MSU Fire Training School, 2100 16th Avenue South, Great Falls, MT 59405-4997, (406) ~~761-7885~~ 771-4336.

(2) remains the same.

(3) This rule establishes a minimum fire protection code to be used in conjunction with the Uniform Building Code, ARM ~~80.70.101~~ 8.70.101, et seq. Nothing in this rule prohibits any local government unit from adopting those portions of the ~~Uniform Fire Code~~ UFC that are not adopted by the fire prevention and investigation ~~bureau~~ program or standards which are more restrictive than the ~~Uniform Fire Code~~ UFC.

AUTH: 50-3-102, MCA
IMP: 50-3-103, MCA

The International Fire Code Institute continually studies the use of new technology, construction materials and methods, safety devices, and prevention techniques, and updates the Uniform Fire Code and Uniform Fire Code Standards to reflect and incorporate those improvements. The Department proposes to replace the 1994 Uniform Fire Code and Uniform Fire Code Standards with the 1997 Uniform Fire Code and Uniform Fire Code Standards. The 1997 versions contain updated fire practices and are more current in their applications. The newer code will assist in the Department's ongoing objective of enacting codes and standards which reflect the safest methods of establishing and implementing fire safety.

The remaining proposed changes are merely clerical in nature, and made to ensure consistency throughout the regulations. For instance, the Fire Prevention and Investigation Bureau is now the Fire Prevention and Investigation Program, or FPIP, and agency telephone numbers have been changed. The substantive meaning of the rule has not changed.

23.7.302 ADMINISTRATION (1) and (1)(a) remain the same.

(b) ~~Subsection~~ UFC 105.8-Permit Required~~,~~ and any other subsection of the UFC referring to permits ~~subsections a.2 through a.5, b.1, c.1, c.3 through c.8, d.1, d.2, e.1, f.1 through f.5, h.2, h.3, 1.1 through 1.3, m.1 through m.3, o.1 through o.3, p.1, p.2, r.1 through r.3, s.1, t.1, t.2, and w.1 only,~~ are not adopted.

(2) remains the same.

(a) APPENDIX II-C MARINAS Section 3-Permits is not adopted. The remainder of Appendix II-C is adopted in its entirety;

(b) through (d) remain the same.

(e) APPENDIX I-A, ~~Subsection 1.2 Effective Date is amended to read as follows: 1.2 Effective Date. Plans and specifications for the necessary alterations shall be filed with the chief within the time period established by the department after the date of owner notification. Work on the required alterations to the building shall be completed within 36 months. The chief may grant necessary extensions of time when it can be shown that the specified time periods are not physically practical or pose an undue hardship. The granting of an extension of time for compliance shall be based upon the showing of good cause and subject to the filing of an acceptable systematic progressive plan of correction with the chief.~~ except Section 2.4 Fire Escapes is adopted as stated at ARM 23.7.107 and SECTION 6-SMOKE DETECTORS is adopted as stated at ARM 23.7.108.

AUTH: 50-3-102, MCA
IMP: 50-3-103, MCA

Subsection (1) is proposed to be amended to clarify that none of the Uniform Fire Code's permitting sections have been adopted by the FPIP. Those sections are not being adopted as the FPIP lacks the necessary resources. Subsection (2)(a) is proposed to be amended to clarify that the only section of Appendix II-C not adopted is that pertaining to permits. The remainder of Appendix II-C is adopted. Subsection (2)(c) is proposed to be amended to comply with the proposed amendments to ARM 23.7.107 and 23.7.108.

23.7.303 ADDITIONAL DEFINITIONS (1) ARTICLE 2-DEFINITIONS AND ABBREVIATIONS is adopted with the following additions:

(1) and (2) remain the same, but are renumbered (a) and (b).

~~(3)~~ (c) "Rural area" means ~~any area outside a three-mile radius of a Class 1 or a Class 2 city's boundaries, as defined~~

~~in 7-1-4104, MCA and outside a one and one-half mile radius of a Class 3 city's boundaries~~ those areas located three miles or more beyond (outside) the corporate limits of a Class 1 or Class 2 city, as defined in 7-1-4111, MCA, and one and one-half miles or more beyond (outside) the corporate limits of a Class 3 city, as defined in 7-1-4111, MCA, when the Class 3 city's population is more than 1,500 residents. In the case of an unincorporated place, the place will be considered rural if it has a population of less than ~~1,000~~ 1,500 and a density of less than 800 persons per square mile, according to the most recent U.S. census.

AUTH: 50-3-102, 50-61-102, MCA
IMP: 50-3-102, 50-61-102, MCA

The proposed amendment eliminates confusion caused by the use of the term "radius" in defining a rural area. The proposed changes clarify that a rural area starts three miles outside any point on the outer boundary of the corporate limits of a city.

23.7.304 GENERAL PROVISIONS FOR SAFETY (1) Articles 9 through 13 of the UFC are adopted with the following exceptions:
~~(1)~~ (a) Section 1104 Parade Floats (including all subsections) is not adopted; and
~~(2)~~ (b) Subsection 1302.3 False Alarms is not adopted.

AUTH: 50-3-102, MCA
IMP: 50-3-103, MCA

Proposed changes are merely clerical in nature, and made to ensure consistent earmarking throughout the rules.

23.7.305 SPECIAL OCCUPANCY USES (1) Articles 24 through 36 of the UFC are adopted without change.

AUTH: 50-3-102, MCA
IMP: 50-3-103, MCA

Proposed change is merely clerical in nature, and made to ensure consistent earmarking throughout the rules.

23.7.306 SPECIAL PROCESSES (1) Articles 45 through 52 of the UFC are adopted with the following exceptions and amendments:

(a) UFC 5201.1 Scope is amended by adding the following statement at the end of the subsection: "For public automotive motor vehicle fuel-dispensing stations located in rural areas, see Article 53 of the UFC, below";

(b) UFC 5201.2 Definitions is amended by adding the definition of "bulk plant or terminal" found in Article 2 of the UFC and the definition of "rural area" found in ARM 23.7.303;

(c) UFC 5201.3.1 Permits is not adopted;

(d) UFC 5201.4.1.1 General is amended by referencing "Article 53 of the UFC" at the end of the first exception;

~~(3)~~(e) ~~Subsection~~ UFC 5201.4.1.3 is amended as follows:

5201.4.1.3 Bulk plants. 1. Motor vehicle fuel-dispensing stations are not permitted at bulk plants which are not located in a rural area. EXCEPTION: Existing bulk plants which are not located in rural areas if the motor vehicle fuel-dispensing dispensers were installed prior to February 9, 1996, and if the dispensers are in compliance with UFC 5302.4.1.

2. Bulk plants located inside the districts defined as "rural" are permitted to incorporate motor vehicle fuel-dispensing stations. The ~~Motor~~ motor vehicle fuel-dispensing stations ~~at bulk plants~~ shall be separated by a fence or similar barrier from the area in which bulk operations are conducted and in accordance with Section 5201. See ~~also Section~~ UFC 5202.3.1 and Article 53 of the fire code;

(f) UFC 5201.6.3 Unsupervised Dispensing is amended by requiring the sign to provide an "EMERGENCY" telephone number rather than a "Fire Department" telephone number;

(g) UFC 5202.1 General is amended by adding the following statement at the end of the subsection: "For public automotive motor vehicle fuel-dispensing stations located in rural areas, see Article 53 of the fire code";

~~(4)~~(h) ~~Subsection~~ UFC 5202.3.1 General is amended as follows:

5202.3.1 General. Class I liquids shall be stored in closed containers, in tanks located ~~at bulk plants,~~ underground or in special enclosures in accordance with ~~Section~~ UFC 5202.3.6. ~~Classes~~ Class II and III-A liquids shall be stored in containers or in tanks located underground or in special enclosures in accordance with ~~Sections~~ UFC 5202.3.6 ~~or 5201.4.1.3~~. Storage of Class I, II, or III-A liquids at public motor vehicle fuel-dispensing stations located in rural areas and bulk plants located in rural areas is permitted in aboveground tanks. See also Appendix II-F and Article 53 of the fire code;~~.~~

~~(1)~~(i) ~~Subsection~~ UFC 5202.3.4 ~~Fuel tanks at bulk plants. is not adopted.~~ is amended as follows:

5202.3.4 Fuel tanks at bulk plants. Storage tanks used for fueling operations shall not be connected to or serve as bulk plant tanks. EXCEPTION: Storage tanks which are located at bulk plants in rural areas and which are constructed and installed in accordance with Articles 53 and 79 below;

(5) remains the same but is renumbered (j).

~~(6)~~(k) ~~Subsection~~ UFC 5202.4.1 Aboveground tanks~~.~~ is amended as follows: Class I and ~~Class~~ II liquids shall not be dispensed into the fuel tank of a motor vehicle from aboveground tanks except when such tanks are installed inside special enclosures in accordance with ~~Section~~ UFC 5202.3.6 ~~or 5201.4.1.3~~. See also Appendix II-F, UFC. ~~and by adding the following exception.~~ EXCEPTION: ~~As permitted at rural areas in accordance with Section 5300.~~ Aboveground tanks located at public automotive motor vehicle fuel-dispensing stations located in rural areas and bulk plants located in rural areas. See Article 53 below;

(l) UFC 5202.4.4.1 General is amended by adding at the end

of the third paragraph: "See Article 53 of the fire code";

(7) remains the same but is renumbered (m).

~~(2)~~(n) ~~Subsection 5202.12~~ UFC 5202.13 Vapor Recovery ~~(including all subsections)~~ is not adopted;

(o) UFC 5203 and 5204 are adopted in their entirety;

~~(8)~~(p) The following entire Article ~~(53)~~ is added to the ~~UFC~~ fire code:

Article 53-Rural Motor Vehicle Fuel-Dispensing Stations

SECTION 5301 - GENERAL

5301.1 Scope. ~~Rural~~ Public automotive motor vehicle fuel-dispensing stations located in rural areas, including publicly accessible operations but excluding farms and ranches, shall be in accordance with ~~these rules~~ Articles 52 and 53 of the UFC. ~~Such operations shall include public accessible operations but excludes farms and ranches.~~ Private operations, other than farms and ranches, shall comply with Article 52 above. Flammable and combustible liquids and LP-gas shall also be in accordance with Articles 79 and 82, UFC.

5301.2 Definitions. For definitions of BULK PLANT or TERMINAL, CNG, COMBUSTIBLE LIQUID, FLAMMABLE LIQUID and MOTOR VEHICLE FUEL-DISPENSING STATION, see Article 2, UFC. For the definition of RURAL AREA, see ARM 23.7.303.

5301.3 Plans.

5301.3.1 Plans submittal. Plans submittal is ~~recruited~~ required for rural public automotive motor vehicle fuel-dispensing stations.

5301.3.2 Plans and specifications submittal. Plans and specifications shall be submitted for review and approval prior to the installation or construction of a ~~rural~~ public automotive motor vehicle fuel-dispensing station ~~utilizing flammable or combustible liquids~~ located in a rural area. A site plan shall be submitted which illustrates the location of flammable liquid, LP-gas, or CNG storage vessels, and their spatial relation to each other, property lines, and building openings. Both aboveground and underground storage vessels shall be shown on plans. For each type of station, plans and specifications shall include, but not be limited to, the following:

1. Plans, blueprints, or drawings for the renovation or construction of a ~~rural~~ public automotive motor vehicle fuel-dispensing station located in a rural area that utilizes aboveground storage of flammable or combustible liquids, or both, must be submitted to the ~~F~~fire ~~P~~prevention and ~~I~~investigation ~~Bureau~~ program (FPIP) by registered receipt mail for approval before beginning construction. The ~~Fire Prevention and Investigation Bureau~~ FPIP shall approve or deny the plans within 50 calendar days or they are automatically considered approved. The plans must comply with ~~Sections~~ UFC 7901.8, 7901.11, 7902.1.8.2.1, 7902.1.10, 7902.1.11, 7902.1.12, 7902.1.13, 7902.2.3, ~~and~~ Article 53 of the ~~Uniform Fire Code~~ UFC, and the National Electrical Code (NEC), and contain all the following information:

A. ~~Quantities~~ Tank styles, capacities, and types of liquids to be stored;

B. Distances from tanks ~~and dispensers~~ to:

I. property lines, rights-of-way, and public ways;

II. ~~and~~ buildings;

III. other tanks;

IV. dike walls;

V. dispensers;

C. through H. remain the same.

I. Seismic design in accordance with the ~~Uniform Building Code~~ building code;

J. Secondary containment (include calculation sheets);

K. through O. remain the same.

2. Prior to the proposed renovation or construction of a ~~rural~~ public automotive motor vehicle fuel-dispensing station ~~renovation or construction the~~ located in a rural area, an applicant shall obtain a letter of ~~preliminary review within 10 calendar days~~ approval from the local fire official responsible for fire protection. This letter and two sets of plans, blueprints, or drawings shall be submitted to the fire prevention and investigation ~~bureau~~ program for examination and approval ~~of compliance with this rule~~.

3. Liquefied Petroleum Gas (LPG). See UFC 5201.3.2(2) and 5203.

4. Compressed Natural Gas (CNG). See UFC 5201.3.2(3) and 5204.

5301.4 and 5301.4.1 remain the same.

5301.4.1.1 General. ~~Flammable and combustible liquids, CNG and LP gas shall not be dispensed in buildings and dispensers for such products shall not be located in buildings. EXCEPTION: dispensing of flammable and combustible liquids inside buildings in accordance with Section 5302. See Sections 5302, 5203 and 5204 for additional requirements.~~ See UFC 5201.4.1.1.

5301.4.1.2 Dispensing devices. Dispensing devices shall be ~~located as follows:~~ subject to UFC 5201.4 through 5201.11.

~~1. Ten feet (3048 mm) or more from property lines,~~

~~2. Ten feet (3048 mm) or more from buildings having combustible exterior wall surfaces or buildings having noncombustible exterior wall surfaces that are not part of one hour fire-resistive assembly,~~

~~EXCEPTION: Canopies constructed in accordance with the Building Code.~~

~~3. Such that all portions of the vehicle being fueled will be on the premises of the motor vehicle fuel dispensing station,~~

~~4. Such that the nozzle, when the hose is fully extended, will not reach within 5 feet (1524 mm) of building openings, and~~

~~5. Twenty feet (6096 mm) or more from fixed sources of ignition.~~

~~5301.4.1.3 Bulk plants. Motor vehicle fuel dispensing stations located at bulk plants shall be separated by a fence or similar barrier from the area in which bulk operations are conducted. See also Section 5302.3.4.~~

~~5301.4.2 Storage vessels. Storage vessels for LP gas and~~

~~CNG shall be located 20 feet (6096 mm) or more from aboveground tanks containing flammable or combustible liquids.~~

5301.5 Spill Control, Drainage Control, and Secondary Containment. Spill control and secondary containment shall be provided in accordance with UFC 7901.8. Drainage control and diking shall be provided as set forth in UFC 7902.2.8.

~~5301.5.1 Protection of dispensers. Dispensing devices shall be protected against physical damage from vehicles mounting on a concrete island 6 inches (152.4 mm) or more in height or by other approved methods.~~

~~5301.5.2 Dispenser installation. Dispensing devices shall be secured in an approved manner. Dispensers shall not be secured to the island using piping or conduit.~~

~~5301.5.3 Emergency shutdown devices. Emergency shutdown devices shall be provided for all fuel dispensers in locations approved by the chief. Emergency shutdown devices for exterior fuel dispensers, at unattended facilities, shall be located within 75 feet (22,860 mm) of, but not less than 25 feet (7620 mm) from, dispensers. For interior fuel dispensing operations, the emergency shutdown devices shall be installed at approved locations. Activation of the emergency shutdown devices shall stop the transfer of fuel to the dispensers and close all valves which supply fuel to dispensers. Such devices shall be distinctly labeled EMERGENCY FUEL SHUTDOWN DEVICE. Signs shall be provided in approved locations.~~

~~5301.5.4 Dispenser electrical disconnects. An electrical disconnect switch shall be provided for all dispensers in accordance with the Electrical Code. The disconnect shall be placed in the OFF position before repairing dispensers and before closing a motor vehicle fuel dispensing station.~~

~~5301.6 Supervision of Dispensing Operations~~

~~5301.6.1 General. The dispensing of fuel into fuel tanks of automotive or portable containers shall be under the supervision of a qualified attendant at all times.~~

~~EXCEPTION: Unsupervised dispensing of flammable and combustible liquids, LP-gas and CNG as a motor fuel is allowed in accordance with Sections 5301.6.3, 5302, 5203 and 5204.~~

~~5301.6.2 Attendants. The attendant's primary function shall be to supervise, observe and control the dispensing of motor fuels. The attendant shall prevent the dispensing of flammable and combustible liquids and flammable gases into containers not in compliance with this code, control sources of ignition, give immediate attention to accidental spills or releases, and be prepared to use fire extinguishers. A method of communicating with the fire department shall be provided for the attendant.~~

~~5301.6.3 *Unsupervised dispensing.* Unsupervised dispensing is allowed when the owner or operator provides, and is accountable for, daily site visits, regular equipment inspection and maintenance, conspicuously posted instructions for the safe operation of dispensing equipment, and posted telephone numbers for owners or operators. A sign, in addition to the signs required by Section 5301.8, shall be posted in a conspicuous location reading: During hours of operation, stations having~~

~~unsupervised dispensing shall be provided with a fire alarm transmitting device. A telephone not requiring a coin to operate is acceptable.~~

~~5301.7 Sources of Ignition. Electrical equipment shall be in accordance with the Electrical Code. Smoking and open flames shall be prohibited in areas where fuel is dispensed. The engines of vehicles being fueled shall be stopped.~~

~~5301.8 Signs. Signs prohibiting smoking, prohibiting dispensing into unapproved containers and requiring vehicle engines to be stopped during fueling shall be conspicuously posted within sight of each dispenser.~~

~~5301.9 Fire Protection. Portable fire extinguishers shall be provided as set forth in UFC Standard 10-1.~~

~~5301.10 Clearance from Combustible Materials. Weeds, grass, brush, trash and other combustible materials shall be kept not less than 10 feet (3048 mm) from fuel storage vessels and fuel handling equipment.~~

~~5301.11 Maintenance. Fueling systems shall be maintained in proper operating condition.~~

~~5301.12 Spill Control, Drainage Control, and Diking. Spill control and drainage control shall be provided as set forth in Sections 7901.8 and 7902.2.8.~~

~~5301.13.~~ 5301.6 Leaking Aboveground Storage Tanks. A leaking tank shall be reported to the local fire official and the department and may be replaced with an approved tank of the same volume without prior written approval as required in 5302.2.4.1. Subsequent inspection and approval shall be made by the local fire official.

SECTION 5302 -- ~~RURAL~~ PUBLIC FLAMMABLE AND COMBUSTIBLE LIQUID AUTOMOTIVE MOTOR VEHICLE FUEL-DISPENSING STATIONS LOCATED IN RURAL AREAS

5302.1 General. ~~Rural~~ Public automotive motor vehicle fuel-dispensing stations located in rural areas and utilizing flammable or combustible liquids shall be in accordance with ~~Section~~ UFC 5301 and 5302. See also Article 79, UFC.

5302.2 remains the same.

5302.2.1 General. ~~Equipment and appliances used for the storage or dispensing of flammable and combustible liquids shall be approved or listed in accordance with Section 5302.2.~~ See UFC 5202.2.1.

5302.2.2 Approved equipment. ~~Pits and piping used for flammable and combustible liquids shall be approved.~~ See UFC 5202.2.2.

5302.2.3 Listed equipment. ~~Tanks, electrical equipment, dispensers, hose, nozzles, and submersible or subsurface pumps used for the storage or dispensing of flammable and combustible liquids shall be listed.~~ See UFC 5202.2.3.

5302.3 remains the same.

5302.3.1 General.

1. Class I, II, and III-A liquids may be stored in aboveground storage tanks at public automotive motor vehicle fuel-dispensing stations located in "rural areas" as defined in

ARM 23.7.303 ~~ADDITIONAL DEFINITIONS~~. Primary product-bearing tanks may be of horizontal or vertical design but shall not exceed 12,000 gallons individual capacity or 48,000 gallons aggregate capacity.

2. Storage tanks, at the option of the owner, may be installed in accordance with the requirements of ~~Section~~ UFC 5202.3.1, ~~or~~ Appendix II-F, or Appendix II-J ~~of the 1994 Edition, Uniform Fire Code as adopted~~.

5302.3.2 Interconnection of aboveground tanks and underground tanks. ~~A connection shall not be made between an aboveground tank and an underground tank.~~ See UFC 5202.3.2.

5302.3.3 Fueling from portable tanks. ~~Portable and semiportable tanks are allowed to be temporarily used in conjunction with the dispensing of Class I, II or III-A liquids into the fuel tanks of motor vehicles or other motorized equipment on premises not normally accessible to the public when approved by the chief.~~ See UFC 5202.3.3.

5302.3.4 Fuel tanks at bulk plants. Storage tanks storing Class I, II, and III-A liquids at bulk plants located in "rural areas," as defined in ARM 23.7.303 ~~ADDITIONAL DEFINITIONS~~ and which are interconnected for use at motor vehicle fuel-dispensing stations, shall be installed in accordance with ~~Section~~ UFC 5302 and shall have no capacity restrictions.

5302.3.5 Class I liquids in basements or pits. ~~Class I liquids shall not be stored or used within a building having a basement or pit into which flammable vapors could travel unless such area is provided with ventilation designed to prevent the accumulation of flammable vapors therein.~~ See UFC 5202.3.5.

5302.3.6 ~~Container storage inside buildings. Class I, II or III A liquids stored inside motor vehicle fuel dispensing station buildings shall be in approved containers and in accordance with Section 7902.5.~~ Special enclosures. See UFC 5202.3.6.

5302.3.7 ~~Testing of leak detection devices. Leak detection devices shall be tested annually by the owner or occupant of the property on which they are located. Test results shall be maintained and be available to the chief on request.~~ Container storage inside buildings. See UFC 5202.3.7.

5302.3.8 Testing of leak-detection devices. See UFC 5202.3.8.

~~5302.3.8~~ 5302.3.9 Inventory control. Accurate daily inventory records shall be maintained and reconciled on Class I, II, and III-A liquid storage tanks for indication of possible leakage from tanks and piping. The records shall be kept at the premises and available to the chief upon request and shall include records showing, by product, daily reconciliation between sales, use, receipts, and inventory on hand. If there is more than one system consisting of tanks serving separate pumps or dispensers for a product, the reconciliation shall be ascertained separately for each tank system. A consistent or accidental loss of Class I, II, or III-A liquids shall be immediately reported to the fire department.

5302.4 Dispensing.

5302.4.1 Aboveground tanks. Class I and ~~Class~~ II liquids

may be dispensed into the fuel tank of a motor vehicle from aboveground tanks when the aboveground tanks are located in "rural areas" and the tanks are installed in accordance with these rules.

Existing installations shall have the following and Nnew installations shall provide the following at the time of installation:~~.~~ ~~Existing installations shall provide the following within 36 months of the adoption of this rule.~~

1. remains the same.

A. remains the same.

B. Breakaway valves. Product delivery hoses are equipped with a listed emergency breakaway device designed to retain liquid on both sides of the breakaway point. Such devices shall be installed and maintained in accordance with manufacturer's instructions. See UFC 5202.4.3.

C. remains the same.

2. Guard posts. Guard posts or other means shall be provided outside the dike to protect from vehicle impact the dike and the area where tanks are installed. The design shall ~~be in accordance~~ comply with ~~Section~~ UFC 8001.9.3.

3. Fencing. Tanks shall be surrounded by a fence not less than ~~5~~ five feet in height, constructed of wire mesh, solid metal sheathing, or masonry.

5302.4.2 Filling of portable containers, tanks, and cargo tanks. Class I, II, and III-A liquids shall not be dispensed into portable containers unless such container is of approved material and construction, and ~~having~~ has a tight closure with screwed or spring cover so designed that the ~~contents~~ liquid can be dispensed into the container without spilling. Cargo tanks shall be filled at either bulk plants or terminals.

5302.4.3 Design and Construction remains the same.

5302.4.3.1 General. ~~Class I and II liquids shall be transferred from tanks by means of fixed pumps so designed and equipped as to allow control of the flow and to prevent leakage or accidental discharge. Supplemental means shall be provided outside of the dispensing area whereby the source of power can readily be disconnected in the event of fire or other accident. Dispensing devices for Class I, II or III A liquids shall be of an approved type. See Article 90, Standard u.1.6.~~ See UFC 5202.4.4.1.

1. Horizontal tanks.

a. Suction systems. Class I, II, ~~or~~ and III-A liquids shall be dispensed by approved pumps taking suction through the top of the ~~container on horizontal tanks.~~ tank through the installation of a pick-up tube which terminates within six inches of the tank bottom. Such systems shall have an approved anti-syphon device installed in the dispensing line which is electrically connected to the dispenser; or

b. Pressure systems. Class I, II, and III-A liquids shall be dispensed by an approved submersible pressure pump installed in the top of the tank. Such systems shall have an approved anti-syphon device installed in the dispensing line which is electrically connected to the dispenser; or

c. Gravity flow systems. Class I, II, and III-A liquids

shall be dispensed by approved pumps taking product from openings in the bottom end of horizontal tanks provided the following is complied with:

(1) All openings below liquid level, through which product flows, have fire valves in accordance with UFC 5302.4.1(1)(a) above; and

(2) All dispensing lines have an approved anti-syphon device installed in the dispensing line which is electrically connected to the dispenser.

d. All electrically interconnected anti-syphon valves shall be located outside the diked area of storage tanks. See UFC 7902.2.8.3.8.

2. Vertical tanks. Vertical tanks dispensing Class I, II, or III-A liquids may rely on gravity flow provided one of the following methods of product withdrawal is employed:

a. Day (pig) tanks:

(1) shall not exceed 250 gallons capacity;

(2) shall be located outside the storage tank dike area;

(3) shall be installed within a separate, independent secondary containment (liquid tight dike) system;

(4) shall be provided with fire valves in accordance with UFC 5302.4.1(1)(a);

(5) shall be provided with an approved method or device for equalization of head pressure between the primary storage tank and the day tank;

(6) shall have submersible pressure pumps installed in the top;

(7) shall have product withdrawal piping which has an approved anti-syphon device electrically connected to the dispensers; and

(8) shall, when equipped with underground piping, have an automatic line leak detection installed in accordance with department of environmental quality/underground storage tank (DEQ/UST) rules.

b. In-line suction and/or pressure pumps. Approved in-line suction and/or pressure pumps may be installed without the use of a day (pig) tank in accordance with the following:

(1) Pumps shall be located outside the dike area for storage tanks. See UFC 7902.2.8.3.8;

(2) Pumps shall be located within their own secondary containment (liquid tight dike) system;

(3) Tanks shall be provided with approved fire valves;

(4) Withdrawal piping shall be provided with an approved anti-syphon device electrically connected to the dispensers; and

(5) If any system piping runs underground, automatic line leak detection shall be installed in accordance with DEQ/UST rules.

c. Class I, II, and III-A liquids shall not be dispensed by a device that operates through pressure within a storage tank or container unless the tank or container has been approved as a pressure vessel for the use to which it is subjected. Air and oxygen pressure shall not be used for dispensing Class I, II, or III-A liquids. ~~Above ground tanks dispensing Class I, II or III-A liquids may rely on gravity flow, pumps located at the~~

~~tanks, or suction pumps located in the base of the dispenser. Approved means shall be provided to prevent siphoning. Class I, II and III A liquids shall not be dispensed by a device that operates through pressure within a storage tank or container unless the tank or container has been approved as a pressure vessel for the use to which it is subjected. Air and oxygen pressure shall not be used for dispensing Class I, II or III A liquids. See Section 5302.5 for pressure delivery motor vehicle fuel dispensing stations.~~

5302.4.3.2 Nozzles. ~~A listed automatic closing type hose nozzle valve with or without a latch open device shall be provided on island type dispensers used for dispensing Class I, II or III A liquids. Overhead type dispensing units shall be provided with a listed automatic closing type hose nozzle valve without a latch open device.~~

~~EXCEPTION: A listed automatic closing type nozzle valve with latch open device is allowed to be used if the design of the system is such that the hose nozzle valve will close automatically in the event the valve is released from a fill opening or upon impact with a driveway.~~

~~Where dispensing of Class I, II or III A liquids is performed by someone other than a qualified attendant, a listed automatic closing type hose nozzle valve shall be used incorporating the following features:~~

~~1. The hose nozzle valve shall be equipped with an integral latch open device.~~

~~2. When the flow of product is normally controlled by devices or equipment other than the hose nozzle valve, the hose nozzle valve shall not be capable of being opened unless the delivery hose is pressurized. If pressure to the hose is lost, the nozzle shall close automatically.~~

~~3. The hose nozzle shall be designed such that the nozzle is retained in the fill pipe during the filling operation.~~ See UFC 5202.4.4.2.

5302.4.4 Supervision. In addition to the requirements in ~~Section~~ 5301.6, dispensing equipment used at unsupervised locations shall comply with one of the following:

1. The amount of fuel being dispensed is limited in quantity by a preprogrammed card.

2. Dispensing devices are programmed or set to limit uninterrupted fuel delivery to 25 gallons (94.6 L) and require a manual action to resume continued delivery, or

3. Product delivery hoses are equipped with a listed emergency breakaway device designed to retain liquid on both sides of the breakaway point. Such devices shall be installed and maintained in accordance with the manufacturer's instructions.

5302.4.5 Dispensing inside garages. ~~Where an outside location is impractical, dispensing devices approved for inside use are allowed to be installed inside a garage or similar establishment which stores, parks, services or repairs automotive equipment. The location of and safeguards for such dispensing devices shall be approved. Dispensing devices shall be protected from physical damage by vehicles by mounting such~~

~~devices on a concrete island, or by equivalent means, and shall be located in a position where they cannot be struck by an out-of-control vehicle descending a ramp or other slope. The dispensing area shall be provided with an approved mechanical or gravity ventilation system. When dispensing units are located below grade, only approved mechanical ventilation shall be used and the entire dispensing area shall be protected by an approved automatic sprinkler system. Ventilating systems shall be electrically interlocked with Class I liquid dispensing units such that the dispensing units cannot be operated unless the ventilating fan motors are energized. See also Section 5302.10.~~ See UFC 5202.4.6.

5302.4.6 Electrical controls. ~~A control shall be provided that will allow the pump to operate only when a dispensing nozzle is removed from its bracket or normal position with respect to the dispensing unit and the switch on the dispensing unit is manually actuated. This control shall also stop the pump when all nozzles have been returned, either to their brackets or to the normal nondispensing position.~~ See UFC 5202.4.7.

5302.4.7 Special-type dispensers. ~~Approved special dispensing systems such as, but not limited to, coin operated and remote preset types, are allowed at motor vehicle fuel dispensing stations, provided there is at least one qualified attendant on duty while the station is open to the public, and:~~

~~1. The attendant or supervisor on duty shall be capable of performing the functions and assuming the responsibilities set forth in Sections 5301 and 5302.4.4,~~

~~2. Instructions for the operation of dispensers shall be conspicuously posted,~~

~~3. Remote preset type devices shall be set in the off position while not in use so that the dispenser cannot be activated without the knowledge of the attendant,~~

~~4. The dispensing device shall be in clear view of the attendant at all times and obstacles shall not be placed between the dispensing devices and the attendant, and~~

~~5. The attendant shall be able to communicate with persons in the dispensing area at all times.~~ See UFC 5202.4.8.

5302.4.8 Dispenser hoses.

5302.4.8.1 Hose length. See UFC 5202.4.3.1.

5302.5 remains the same.

5302.5.1 General. ~~Systems used for the dispensing of Class I or II liquids that transfer the liquid from storage to individual or multiple dispensing units by pumps that are not located at dispensing units shall be in accordance with Section 5302.5.~~

~~EXCEPTION: The chief is authorized to alter or impose additional regulations where such systems are located within buildings.~~

~~Notification shall be given to the chief prior to abandonment, alteration or repair of any part of a pressure delivery system, except the dispenser.~~ See UFC 5202.5.1.

5302.5.2 Pits. ~~Pits intended to contain subsurface pumps~~

~~or fittings from submersible pumps shall not be larger than necessary to contain the intended equipment and to allow the free movement of hand tools operated from above grade.~~

~~Pits and covers shall be designed and constructed to withstand the external forces to which they could be subjected. When located above an underground tank, at least 1 foot (305 mm) of earth or sand cover shall be maintained over the top of the tank.~~

~~Pits shall be protected against ignition of vapors by one of the following methods:~~

~~1. Sealing the unpierced cover with mastic or by bolting against a gasket in an approved manner, or~~

~~2. Filling the pit with a noncombustible inert material.~~ See UFC 5202.5.2.

5302.5.3 Piping, valves and fittings. See UFC 5202.5.3.

5302.5.3.1 General. ~~Piping, valves and fittings shall be designed for the working pressures and structural stresses to which they could be subjected. Metallic piping in contact with The ground shall be provided with cathodic protection. Threaded joints or connections shall be made up tight with the use of an approved pipe joint sealing compound. Nonmetallic joints shall be approved and shall be installed in accordance with the manufacturer's instructions.~~ See UFC 5202.5.3.1.

5302.5.3.2 Valves. A check or manual valve shall be provided in the discharge dispensing supply line from the pump with a union between the valve and the same pump discharge. An approved emergency shutoff impact valve incorporating a fusible link designed to close automatically in the event of severe impact or fire exposure shall be rigidly mounted and connected by a union in the dispensing supply line at the base of each dispensing device. The shear section of the impact valve shall be mounted flush with the top of the surface upon which the dispenser is mounted. ~~Existing dispensers not equipped with an impact valve shall be so equipped within 36 months of the adoption of this rule.~~

5302.5.3.3 Leak detection. Pumps supplying Class I, II, or III-A liquids through underground piping systems shall have installed on the discharge an approved leak-detection device which will provide an indication if the piping and dispensers are not essentially liquid tight in accordance with DEQ/UST rules. Also see UFC 5302.4.4.1, Vertical Tanks.

5302.5.3.4 Testing. ~~Upon completion of the installation, the system shall be tested in accordance with Section 7901.11.~~ See UFC 5202.5.3.4.

5302.6 Electrical Equipment. See UFC 5202.6.1 through 5202.6.3.

~~5302.6.1 General. Areas where Class I liquids are stored, handled or dispensed shall be in accordance with Section 5302.6. See also Section 7901.4.~~

~~5302.6.2 Electrical wiring and equipment. Electrical wiring and equipment shall be installed in a manner which provides reasonable safety to persons and property. Evidence that wiring and equipment are of the type approved for use in the hazardous locations as set forth in Table 5302.6 A and that~~

~~wiring and equipment have been installed in accordance with the Electrical Code shall be provided.~~

~~5302.6.3 Classified area. In Table 5302.6 A, a classified area need not extend beyond an unpierced wall, roof or other solid partition. For area classifications not covered in Section 5302.6.2 and not listed in Table 5202.6 A, the chief is authorized to classify the extent of the hazardous area.~~

5302.7 Heating Equipment. See UFC 5202.7.1 and 5202.7.2.

~~5302.7.1 Electrical heating equipment. Electrical heating equipment shall be in accordance with Section 5302.6.~~

~~5302.7.2 Fuel burning equipment. Fuel burning equipment, other than wet heat system and direct fired makeup air heaters, shall not be located in dispensing rooms or in areas where vapors could migrate. Such systems shall be in accordance with the Mechanical Code.~~

5302.8 Drainage Control. Provisions shall be made to prevent liquids spilled during dispensing operations from flowing into buildings. Acceptable methods include grading driveways, raising doorsills, or other approved means. See UFC 5301.5.

5302.9 Fire Protection. ~~A fire extinguisher with a minimum rating of 2-A, 20-B:C shall be provided and located such that it is not more than 75 feet (22,860 mm) from any pump, dispenser or fill pipe opening.~~ See UFC 5202.9.

5302.10 Motor Vehicle Fuel-~~d~~Dispensing Stations Located ~~i~~Inside Buildings. See UFC 5202.10.

~~5302.10.1 General. Automotive motor vehicle fuel dispensing stations which dispense fuels into vehicles in areas that are wholly or partially enclosed by the walls, floors or ceilings of the buildings shall be in accordance with Section 5302.10. See also Section 5302.4.5.~~

~~EXCEPTION: Motor vehicle fuel dispensing stations located inside a building with two or more sides of the dispensing area open to the building exterior so that normal ventilation can be expected to dissipate flammable vapors.~~

~~Dispensing of fuel into motor vehicles inside of buildings is allowed only when approved by the chief.~~

~~5302.10.2 Construction. Automotive motor vehicle fuel dispensing stations within buildings shall be constructed in accordance with the Building Code.~~

~~5302.10.3 Ventilation.~~

~~5302.10.3.1 General. Heating, ventilation and air conditioning systems shall be in accordance with the Mechanical Code.~~

~~5302.10.3.2 Interlocks on dispensers. When mechanical systems for ventilation are installed serving only the area where fuels are dispensed, the system shall operate when the motor vehicle fuel dispensing station is open for business and shall be interlocked to dispensing units so that fuel cannot be dispensed unless the ventilation system is in operation.~~

~~5302.10.3.3 Exhaust system design. The exhaust system shall be designed to provide air movement across all portions of the dispensing floor area and to prevent the flow of flammable vapors beyond the dispensing area. Exhaust inlet ducts shall~~

~~not be less than 3 inches (76.2 mm) or more than 12 inches (304.8 mm) above the floor. Exhaust ducts shall not be located in floors or penetrate the floor of the dispensing area and shall discharge to a safe location outside the building.~~

~~5302.10.4 Piping.~~

~~5302.10.4.1 General. Piping systems shall be in accordance with Section 7901.11.~~

~~5302.10.4.2 Enclosure of vent piping. Fuel and flammable vapor piping inside buildings, but outside of the motor vehicle fuel dispensing station area, shall be enclosed within a horizontal or a vertical shaft used only for this piping. Vertical and horizontal shafts shall be constructed of materials having a fire resistance rating of not less than two hours.~~

AUTH: 50-3-102, MCA
IMP: 50-3-103, MCA

Article 52: Article 52 of the Uniform Fire Code addresses public and private motor vehicle fuel-dispensing stations. In 1996, the Montana Fire Prevention and Investigation Program (FPIP) created Article 53 to establish regulations regarding aboveground rural motor vehicle fuel-dispensing installations. The majority of the proposed changes to Article 52 are references to applicable sections of and amendments to Article 53, as the subject matter of the two articles is intertwined. Compliance with Article 53 often constitutes compliance with Article 52 as well.

UFC 5201.3.1 Permits is not proposed for adoption as the Department does not have the resources to issue and monitor such permits. UFC 5201.6.3 is proposed to be amended to require an emergency phone number rather than a fire department phone number as many volunteer fire departments use emergency numbers rather than station numbers. UFC 5203 and 5204 are proposed to be adopted in their entirety as the increase in the dispensing of liquefied petroleum gas and compressed natural gas in Montana necessitate the adoption of safety standards regarding such dispensing.

Article 53: Article 53 adopted much of its language from Article 52, UFC. Article 53 also references some of the provisions of Article 79, UFC, which addresses flammable and combustible liquids. The three articles are sufficiently interrelated to necessitate amendments to all when the terms of one are amended. Most of the proposed amendments address or incorporate the International Fire Code Institute's amendments to Articles 52 and 79. The FPIP has also decided to reference Article 52 provisions rather than reiterate those sections in Article 53. The intent is to reduce the length of the rules and the associated printing costs, not to change the existing rules or their intent.

UFC 5301: UFC 5301.1 Scope and many subsequent sections are proposed to be amended to clarify which articles apply to the

various tank types and the dispensing of fuels from those tanks. UFC 5301.3.2 is proposed to be amended to clarify the detail required in various site plans and the source of approval for the renovation or construction of a public automotive motor vehicle fuel-dispensing station located in a rural area. UFC 5301.5 is proposed to be adopted to clarify that Article 79 dictates spill control, drainage control and secondary containment.

UFC 5302: UFC 5302.4.8 Dispenser hoses is being proposed for adoption to comply with dispenser hose provisions in Article 52. UFC 5302.4.3.1 is proposed to be deleted because it relies on definitions which apply to underground storage tanks, not to aboveground storage tanks. UFC 5302.4.4.1 proposes specific equipment requirements to ensure the safe operation of horizontal and vertical aboveground tanks. UFC 5302.5.3.1 is proposed to be amended as the 36 months allowed for compliance has expired. All dispensers must now meet the section's requirements. UFC 5302.5.3.3 is proposed to be amended to clarify that a leak-detection device is needed only on underground piping.

23.7.307 EQUIPMENT (1) Articles 61, 62, ~~and~~ 63, and 64 of the UFC are adopted without change.

AUTH: 50-3-102, MCA
IMP: 50-3-103, MCA

Article 64, "Stationary Lead-acid Battery Systems," was newly adopted in the 1997 edition of the UFC. The FPIP is, for safety purposes, proposing to adopt this Article exactly as it exists in the UFC.

23.7.308 SPECIAL SUBJECTS (1) Articles 74 through 88 of the UFC are adopted with the following exceptions, and those in ARM 23.7.309:

(1) remains the same but is renumbered (b).
(2) remains the same but is renumbered (c).
(3) remains the same but is renumbered (d).
(4) remains the same but is renumbered (a).

(e) UFC 7902.1.7.4.2 Disposal is modified as follows: Tanks shall be disposed of in accordance with the following:

(i) Underground tanks shall be disposed of in accordance with American Petroleum Institute (API) 1604, Second Edition, December 1987 and the department of environmental quality's underground storage tank requirements;

(ii) All "unlisted" aboveground tanks which are no longer fit for continued service or which cannot be internally lined in accordance with nationally-recognized standards, shall be disposed of in accordance with API 2202, Third Edition, January 1991.

(5) remains the same but is renumbered (f).

AUTH: 50-3-102, MCA
IMP: 50-3-102, MCA

The proposed changes modify the UFC's provisions regarding the disposal of underground and aboveground storage tanks. The UFC provides only that "tanks shall be disposed of in accordance with federal, state or local regulations." The UFC does not list any specific federal, state, or local regulation. The proposed amendments establish a proper method of disposal which complies with nationally-recognized standards as published by the petroleum industry. The proposed amendment directs tank owners to a specific document they can reference for the proper disposal of tanks.

23.7.309 FLAMMABLE AND COMBUSTIBLE LIQUIDS (1) The following subsections are added to ARTICLE 79-FLAMMABLE AND COMBUSTIBLE LIQUIDS, of the UFC:

7904.8 remains the same.

7904.8.1 General. Permanent and temporary storage and dispensing of Class I and II liquids for private use in motor vehicles on farms and ranches shall be in accordance with ~~Section~~ UFC 7904.8.

EXCEPTION: Storage and use of fuel-oil and containers connected with oil-burning equipment regulated by Article 61 and the ~~M~~mechanical ~~C~~code.

7904.8.2 Combustibles and open flames near tanks. ~~Storage areas shall be kept free of weeds and extraneous combustible material. Open flames and smoking are prohibited in flammable or combustible liquid storage areas.~~ See UFC 7904.2.2.

7904.8.3 Marking of tanks and containers. Tanks and containers for the storage of liquids aboveground shall be conspicuously marked with the name of the product which they contain and the word FLAMMABLE. ~~Existing tanks not marked and labeled shall be marked and labeled within 12 months of the adoption of this code in accordance with Sections 7901.9.2 and 7902.1.3.2.~~

7904.8.4 Containers for storage and use. ~~Metal containers used for storage of Class I or II liquids shall be in accordance with DOT requirements or shall be of an approved design. Discharge devices shall be of a type that does not develop an internal pressure on the container. Pumping devices or approved self-closing faucets used for dispensing liquids shall not leak and shall be well maintained. Individual containers shall not be interconnected and shall be kept closed when not in use. Containers stored outside shall be in accordance with Section 7902.~~ See UFC 7904.2.4.

7904.8.5 through 7904.8.5.2 remain the same.

7904.8.5.2.1 General. Supports and foundations for aboveground storage tanks on farms and ranches shall be in accordance with ~~Section~~ UFC 7904.8.5.2.

7904.8.5.2.2 Tanks at grade. ~~Tanks shall rest on the ground or on foundations made of concrete, masonry, piling or steel. Tank foundations shall be designed to minimize the possibility of uneven settling of the tank and to minimize~~

~~corrosion in any part of the tank resting on the foundation.~~ See UFC 7902.1.14.2.

7904.8.5.2.3 Tanks above grade. ~~Tanks shall be securely supported. Supports for tanks storing Class I, I or III A liquids shall be of concrete, masonry, or steel. Single wood timber supports, not cribbing, laid horizontally are allowed for outside aboveground tanks if not more than 12 inches (304.8 mm) high at their lowest point.~~ See UFC 7902.1.14.3.

7904.8.5.2.4 Design of supports. ~~The design of the supporting structure for tanks shall be in accordance with well-established engineering principles of mechanics and shall be in accordance with the Building Code. Tanks shall be supported in a manner which prevents the excessive concentration of loads on the supporting portion of the shell.~~ See UFC 7902.1.14.5.

7904.8.5.3 remains the same.

7904.8.5.4 Vents. Each new tank shall be provided with a free-opening vent of a size not less than specified in Table 7904.2-A to relieve vacuum or pressure which could develop in normal operation or from fire exposure. Venting shall be in accordance with ~~Sections 7902.1.10 and~~ UFC 7902.1.11 and 7902.1.12. Vents shall be arranged to discharge in a manner which prevents localized overheating or flame impingement on any part of the tank in the event vapors from such vents are ignited.

7904.8.5.5 and 7904.8.5.5.1 remain the same.

7904.8.5.5.2 Locations where aboveground tanks are prohibited. ~~The storage of Class I and II liquids in aboveground tanks is prohibited in any area inside a 3-mile radius of Class 1 or Class 2 city boundaries and inside 1 ½ mile radius of Class 3 boundaries as defined according to these rules, except for tanks existing on the effective date of these rules. Existing installations must comply with the retroactive requirements of this chapter.~~

1. Aboveground storage tanks are not prohibited on "farms" and "ranches." All new and existing aboveground storage tanks on farms and ranches must be installed in accordance with ARM 23.7.309.

2. For existing and new bulk plants not located in a rural area, see ARM 23.7.306.

3. For existing and new public motor vehicle fuel-dispensing stations not located in a rural area, see ARM 23.7.306.

7904.8.5.6 and 7904.8.5.6.1 remain the same.

7904.8.5.6.2 Tanks with top openings only. Horizontal tanks with top openings only shall be mounted and equipped as follows:

1. Supports and foundations shall be in accordance with UFC 7904.8.5.2

2. Horizontal tanks with top openings only shall be equipped with a tightly and permanently attached, approved pumping device having an approved hose of sufficient length for filling vehicles, equipment, or containers to be served from the tank. ~~An effective antisiphoning device shall be included in~~

~~the pump discharge unless a self-closing nozzle is provided. Siphons or internal pressure discharge devices shall not be used. Existing hoses not equipped with a breakaway coupling shall be retrofitted within 36 months of the adoption of this code.~~

~~7904.8.6.3~~ 7904.7.5.6.3 Tanks for gravity discharge. Horizontal and vertical tanks with a connection in the bottom or end for gravity dispensing liquids shall be mounted and equipped ~~as follows:~~ with supports and foundations which are in accordance with UFC 7902.1.14.

~~1. Supports and foundations shall be in accordance with 7904.8.5.2.~~

~~2. Bottom or end openings for gravity discharge shall be equipped with a valve located adjacent to the tank shell which will close automatically in the event of fire through operation of an effective heat actuated shut off device. Existing tanks not equipped with a heat actuated shut off device shall be retrofitted within 36 months of the adoption of this code. If this valve cannot be operated manually, it shall be supplemented by a second manually operated valve. The gravity discharge outlet shall be provided with an approved hose equipped with a self closing valve at the discharge end. Existing hoses not equipped with a break away coupling shall be retrofitted within 36 months of the adoption of this code.~~

~~7904.8.5.7 Spill control, drainage control and diking. Indoor storage and dispensing areas shall be provided with spill control and drainage control as set forth in Section 7901.8. Outdoor storage areas shall be provided with drainage control or diking as set forth in Section 7902.2.8.~~

7904.8.6 and 7904.8.6.1 remain the same but are renumbered 7904.7.6 and 7904.7.6.1.

AUTH: 50-3-102, MCA
IMP: 50-3-102, MCA

Article 79 of the Uniform Fire Code addresses the storage, use, dispensing, mixing, and handling of flammable and combustible liquids. In 1996, the Montana Fire Prevention and Investigation Program (FPIP) created Section 7904.8 to establish regulations regarding the aboveground storage and dispensing of flammable and combustible liquids on farms and ranches. Many of the proposed changes to Section 7904.8 are references to applicable sections of and amendments to Article 79, UFC, as the subject matter of Article 79 and Section 7904.8 are intertwined. Other proposed changes simply clarify the rules that were previously adopted, or delete repetition of the requirements stated in the UFC. Existing rules contain the exact terminology found in the UFC. There is no need to repeat that terminology in these rules. The intent is to reduce the length of the rules, and the associated publishing costs.

UFC 7904.8.3 Marking of tanks and containers is proposed to be amended to delete the 12-month time frame in which existing tanks are to be marked and labeled. The time period has passed.

All existing tanks must be marked and labeled in accordance with the section.

UFC 7904.8.5.5.2 Locations where aboveground tanks are prohibited is proposed to be amended to clarify that aboveground storage tanks are not banned from farms and ranches, and to reference the regulations which govern the installation of aboveground storage tanks outside rural areas.

UFC 7904.8.5.6.2 Tanks with top openings only is proposed to be amended because the legislature has determined that the FPIP can not require shut-off devices for storage tanks intended only for private use on farms and ranches, 50-3-103, MCA.

23.7.310 STANDARDS (1) The Uniform Fire Code Standards (Vol. 2 of the UFC) are adopted, with the following amendments:

UNIFORM FIRE CODE STANDARD 10-1
SELECTION, INSTALLATION, INSPECTION, MAINTENANCE AND TESTING OF PORTABLE FIRE EXTINGUISHERS

See ~~Sections~~ UFC 1002.1, 1006.2.7, 1102.5.2.3, 2401.13, ~~3209~~ 3208, 3407, 4502.8.2, 4503.7.1, 5201.9, 7901.5.3, 7902.5.1.2.1, 7903.4.7.1, ~~and~~ 7904.5.1.2, 8102.11, and 8211.2 ~~Uniform Fire Code~~. This standard, with certain deletions, is based upon the National Fire Protection Association Standard for Portable Fire Extinguishers, NFPA Standard ~~10-1994~~ 10 (1998).

SECTION 10.101 -- AMENDMENTS
The Standard for Portable Fire Extinguishers, ~~NFPA-10-1994~~ NFPA Standard 10 (1998), applies to the selection, installation, inspection, maintenance, and testing of portable fire extinguishers, except as follows:

1. and 2. remain the same.

3. Sec. 1-3 is revised by amending the following definitions ~~of "authority having jurisdiction" as follows~~:

1. ~~AUTHORITY HAVING JURISDICTION~~ "Authority Having Jurisdiction" is the official responsible for the administration and enforcement of this standard.

2. The definitions of ~~"approved,"~~ "Approved," ~~"labeled,"~~ "Labeled," and ~~"listed"~~ "Listed" shall be as set forth in ~~UNIFORM FIRE CODE,~~ UFC Volume 1.

3. The definition of ~~"should"~~ "Should" is deleted and replaced with the word "Shall" as defined in this standard.

4. through 15. remain the same.

~~(2) Pursuant to Subsection 9001.1 of the UFC, Uniform Fire Code - Appendix- Standard A II F-1 Testing Requirements for Protected Motor Vehicle Fuel Storage Tanks (including all subsections) is specifically adopted.~~

AUTH: 50-3-103, MCA
IMP: 50-3-103, MCA

Proposed changes to UFC citations in ARM 23.7.310(1) reflect

changes in content and in arrangement of the 1997 Uniform Fire Code. NFPA Standard 10 (1994), which the FPIP adopted by reference, was revised and updated in 1998. The FPIP proposes to adopt by reference the revised version of NFPA Standard 10. Subsection 3 of Section 10-101 Amendments is proposed to be amended to clarify that three definitions contained in Sec. 1-3 have been amended, not just the definition of "authority having jurisdiction."

ARM 23.7.310(2) is proposed to be deleted because Uniform Fire Code Appendix Standard A-II-F-1 Testing Requirements for Protected Motor Vehicle Fuel Storage Tanks no longer exists.

6. 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 Terry Phillips, State Fire Marshal, 1310 East Lockey, P.O. Box 201415, Helena, MT 59620-1415, and must be received no later than November 5, 1999.

7. Melanie Symons, Department of Justice, P.O. Box 201401, Helena, MT 59620-1401, has been designated to preside over and conduct the hearing.

8. The Department of Justice maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices of rules for the Board of Crime Control, the Forensic Science Division, the Highway Patrol, the Gambling Control Division, the Law Enforcement Academy, the Justice Information Systems Division, the Division of Criminal Investigation, the Motor Vehicle Division, or any combination thereof. Such written request may be mailed or delivered to Melanie Symons, Department of Justice, P.O. Box 201401, Helena, MT 59620-1401, faxed to the office at (406) 444-3549, or may be made by completing a request form at any rules hearing held by the Department of Justice.

9. The bill sponsor notice requirements of 2-4-302, MCA apply and have been complied with.

By: /s/ Chris D. Tweeten, Chief Counsel
for JOSEPH P. MAZUREK, Attorney General
Department of Justice

/s/ Melanie Symons
Melanie Symons, Rule Reviewer

Certified to the Secretary of State September 27, 1999.

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

In the matter of the amendment of ARM 36.2.101, pertaining to the department model procedural rules	))))	NOTICE OF PROPOSED AMENDMENT NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On November 8, 1999, the Department of Natural Resources and Conservation proposes to amend ARM 36.2.101 by incorporating by reference ARM 1.3.101 through 1.3.233, the Attorney General's model rules of procedure, and the sample forms attached to the model rules.

2. The department 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 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 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, stricken matter interlined, new matter underlined:

36.2.101 DEPARTMENT MODEL PROCEDURAL RULES (1) The department of natural resources and conservation herein adopts and incorporates by reference ARM 1.3.101 through ~~1.3.234~~ 1.3.233 which set forth the attorney general's model rules. A copy of the model rules may be obtained from the Department of Natural Resources and Conservation, ~~1520 East Sixth~~ 1625 11th Avenue, P.O. Box 201601, Helena, Montana 59620-1601.

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

4. The amendment to ARM 36.2.101 is proposed to adopt the Attorney General's amendments to the Model Rules of Procedure, which were adopted at page 1225 of the 1999 Montana Administrative Register, Issue No. 11, effective June 4, 1999. The model procedural rules provide rules of practice, setting forth the nature and requirements for formal and informal administrative procedures.

5. Concerned persons may submit their data, views or arguments concerning the proposed amendment in writing to Don

MacIntyre, Chief Legal Counsel, Department of Natural Resources and Conservation, P.O. Box 201601, Helena, MT 59620-1601. Any comments must be received no later than November 4, 1999.

6. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding conservation districts and resource development, forestry, oil and gas conservation, trust land management, water resources or combination thereof. Such written request may be mailed or delivered to the Department of Natural Resources and Conservation, 1625 11th Avenue, P.O. Box 201601, Helena, MT 59620-1601, faxed to the office at (406) 444-2684, or may be made by completing a request form at any rules hearing held by the Department of Natural Resources and Conservation.

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

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

By: Donald D. MacIntyre
DONALD D. MACINTYRE
Rule Reviewer

By: Arthur R. Clinch
ARTHUR R. CLINCH
Director

Certified to the Secretary of State September 27, 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	))))	CORRECTED NOTICE OF PROPOSED AMENDMENT NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On September 23, 1999, the department published notice of proposed amendment to ARM 36.14.502 pertaining to dam safety and the hydrologic standard for emergency and principal spillways at page 2031 of the 1999 Montana Administrative Register, Issue Number 18. The notice of proposed agency action is corrected because ARM 36.14.502(5) through (8) are new text and should have been underlined. ARM 36.14.502(1) through (4) remain as proposed.

2. The department will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m. on October 14, 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. Concerned persons may submit their data, views or arguments concerning the proposed amendment in writing to Terry Voeller, Water Resources Division, Department of Natural Resources and Conservation, P.O. Box 201601, Helena, MT 59620-1601. Any comments must be received no later than October 22, 1999.

4. If persons who are directly affected by the proposed amendment wish to express their data, views and arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to Terry Voeller, Water Resources Division, Department of Natural Resources and Conservation, P.O. Box 201601, Helena, MT 59620-1601. A written request for hearing must be received no later than October 22, 1999.

5. 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 not less than 25 members who will be directly affected, a hearing will be held at a later date.

Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those 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.

6. The agency maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding conservation districts and resource development, forestry, oil and gas conservation, trust land management, water resources or combination thereof. Such written request may be mailed or delivered to the Department of Natural Resources and Conservation, P.O. Box 201601, Helena, MT 59620-1601, faxed to the office at (406)444-2684, or may be made by completing a request form at any rules hearing held by the agency.

7. 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 27, 1999.

BEFORE THE DEPARTMENT
OF PUBLIC SERVICE REGULATION
OF THE STATE OF MONTANA

In the Matter of the Proposed Adoption of Rules Implementing) Senate Bill 406 ("Electricity Buying Cooperative Act") and House Bill 211 Pertaining to Electricity Default Suppliers	NOTICE OF PUBLIC HEARING ON THE PROPOSED ADOPTION OF ELECTRICITY DEFAULT SUPPLIER LICENSING AND SELECTION RULES

TO: All Concerned Persons

1. On November 4, 1999 at 10:00 a.m. in the Bollinger Room, Public Service Commission offices, 1701 Prospect Ave., Helena, Montana, the Montana Public Service Commission (Commission) will conduct a hearing to consider the proposed adoption of electricity default supplier licensing and selection rules.

2. The Public Service Commission will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Public Service Commission no later than 5:00 p.m. on November 1, 1999 to advise us of the nature of the accommodation that you need. Please contact Kathy Anderson, Commission Secretary, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, telephone number 406-444-6170, TTD number 406-444-6199, fax number 406-444-7618.

3. The proposed rules do not replace or modify any section currently found in the Administrative Rules of Montana.

4. The Commission proposes alternative models for the default supplier Rules I, III, IV and V. The rules proposed to be adopted provide as follows:

NOTE: Rule I (4) is removed from alternative B because the Commission will not establish melded default service rates in alternative B.

ALTERNATIVE A

RULE I. DEFINITIONS (1) "Default supplier" means a regulated transmission and distribution services provider, as defined in 69-8-103(10), MCA, or a retail electricity supplier licensed by the Montana public service commission to provide all or a portion of the electricity supply requirements of all or a portion of the small customers of a regulated transmission and distribution services provider that are not being served by a retail electricity supplier.

(2) "Default supply service" means regulated electricity supply service provided by one or more default suppliers as designated by the commission.

(3) "Default supply tariff" means a tariff filed by a designated default supplier and approved by the commission that contains the price(s) and other terms and conditions.

(4) "Melded retail default service rate" means the assigned-load-weighted average of the individual default supply tariff prices filed by designated default suppliers for their assigned loads that is charged to small customers receiving default supply service. The melded retail default service rate may be different for residential and nonresidential customers.

(5) "Small customer" means a retail customer of a regulated electric distribution utility with an average monthly demand in the previous calendar year of less than 100 kilowatts or a new customer with an estimated average monthly demand of less than 100 kilowatts.

AUTH: 69-8-403, MCA
IMP: 69-8-203 and 69-8-416, MCA

ALTERNATIVE B

RULE I. DEFINITIONS (1) "Default supplier" means a regulated transmission and distribution services provider, as defined in 69-8-103(10), MCA, or a retail electricity supplier licensed by the Montana public service commission to provide all or a portion of the electricity supply requirements of all or a portion of the small customers of a regulated transmission and distribution services provider that are not being served by a retail electricity supplier.

(2) "Default supply service" means regulated electricity supply service provided by one or more default suppliers as designated by the commission.

(3) "Default supply tariff" means a tariff filed by a designated default supplier and approved by the commission that contains the price(s) and other terms and conditions.

(4) "Small customer" means a retail customer of a regulated electric distribution utility with an average monthly demand in the previous calendar year of less than 100 kilowatts or a new customer with an estimated average monthly demand of less than 100 kilowatts.

AUTH: 69-8-403, MCA
IMP: 69-8-203 and 69-8-416, MCA

NOTE: Rule II would be the same for both alternative A and alternative B.

RULE II. DEFAULT SUPPLIER LICENSE REQUIREMENTS (1) To become a default supplier, an electricity supplier must submit a bid for designation as a default supplier in the commission's competitive solicitation, or submit an application to the commission for designation as a default supplier. The supplier must submit the following

information to the commission and the public utility(ies) serving the area(s) in which the supplier wishes to provide default supply:

(a) complete business name of the applicant;

(b) complete street and mailing address of the applicant's principal office;

(c) the name of a regulatory contact who should be contacted regarding the application, and the address, direct telephone number, fax number and e-mail address of that person;

(d) the name and business address of all applicant's officers and directors, partners or other similar officials, and a statement that neither the applicant, nor any or its officers and directors, partners or other similar officials are currently in violation of, and within the past three years have not violated, any state or federal consumer protection laws or rules;

(e) a list of affiliates, a corporate organization diagram, a description of each affiliate's activities and purpose;

(f) a statement explaining whether the applicant owns, holds, equips or maintains any distribution systems or facilities in the state of Montana;

(g) a demonstration that it has the capability to generate or acquire energy, capacity and other generation-related services, transmission rights and interconnection arrangements sufficient to deliver to the public utility's transmission and distribution system, electricity supply equivalent to the power product described by Western Systems Power Pool, Schedule C;

(h) an agreement to comply with reliability criteria established by the North American electric reliability council and the western systems coordinating council and mid-continent area power pool, as applicable;

(i) a financial performance bond with a value equal to the product of five dollars per megawatt-hour times the estimated annual megawatt-hours of electricity that the applicant will deliver to the public utility's transmission interconnection(s) if designated as a default supplier. The performance bond must allow the Montana public service commission to order the bond issuer to pay, up to the financial value of the bond, any debts owed by the applicant due to applicant's failure to deliver to the public utility's transmission interconnection(s) the electric energy, capacity and other generation services necessary to satisfy the applicant's default supplier obligations; and

(j) verification that the applicant can execute an agreement with the public utility for deliveries of default electric supply to the utility's transmission system interconnection points.

AUTH: 69-8-403, MCA
IMP: 69-8-203 and 69-8-416, MCA

NOTE: Rule III (2) is changed in alternative B to reflect an individual customer relationship with a default supplier. Rule III (4) is deleted in alternative B because the Commission will not establish melded default service rates. Rule III (5) is deleted in alternative B because uniform default service rates in a utility's service area are not required. Rule III (7) is deleted in alternative B because default suppliers may perform their own collections functions. Remaining subparts are renumbered accordingly.

ALTERNATIVE A

RULE III. STANDARDS OF DEFAULT ELECTRICITY SUPPLY SERVICE (1) The commission will designate one or more default suppliers and/or the regulated transmission and distribution services provider to provide default supply service in a regulated transmission and distribution services provider's service territory if the service territory is open to retail supply competition and customer choice pursuant to 69-8-101, et seq., MCA.

(2) Default suppliers must generate or acquire electric energy, capacity and other generation-related services and deliver these services to the regulated electric utility's transmission system interconnection point(s) in sufficient quantities to provide a reliable, firm source of electricity supply, equivalent to the power product described by Western Systems Power Pool, Schedule C, to serve:

(a) in the case of a single default supplier, the full load requirements of all small customers receiving default supply service; or

(b) in the case of two or more default suppliers, an assigned share of the full load requirements of all small customers receiving default supply service, in increments of 20 percent consistent with [RULE V], as determined by the commission, unless a default supplier is a city, county, consolidated government or buying cooperative. The default supplier(s) must supply hourly energy matching a day-ahead preschedule provided to them by the utility under normal operating procedures.

(3) Default suppliers are responsible for line losses that occur on the public utility's transmission and distribution system in the process of delivering default electricity from the regulated utility's points of delivery to end-use customers.

(4) Except when the default supplier is a city, county, consolidated government or buying cooperative, public utilities must bill customers for default supply service through consolidated, unbundled bills using commission-approved, melded default service rates.

(5) Rates, terms and conditions for default supply service must be uniform throughout a regulated transmission and distribution services provider's service area, except if the commission designates a city, county, consolidated government or buying cooperative to serve a specific

geographic area within the regulated transmission and distribution services provider's service area according to [RULES VI and VII]. Default service prices may include seasonal rate changes, but may not involve more than two such rate changes in each one-year period.

(6) A small customer whose default supply account is not in arrears may leave default supply service and select a competitive retail electricity supplier at any time. A small customer whose default supply service account is in arrears must clear the unpaid balance before the customer may select a competitive retail electricity supplier. A small customer being served by a retail electricity supplier may return to default supply service at any time during the transition period. This rule does not release the customer from possible early termination penalties that may be contained in the customer's contract with the supplier.

(7) The public utility is responsible for collections for nonpayment of default supply service. Designated default suppliers will be allocated costs associated with annual default supply-related uncollectable balances and costs for collection activities in proportion to their assigned default supply load obligation.

(8) Only the regulated transmission and distribution services provider may physically disconnect a default service customer for nonpayment of default supply service. A regulated transmission and distribution services provider must comply with the commission's termination rules when physically disconnecting a default supply service customer.

AUTH: 69-8-403, MCA
IMP: 69-8-203 and 69-8-416, MCA

ALTERNATIVE B

RULE III. STANDARDS OF DEFAULT ELECTRICITY SUPPLY SERVICE (1) The commission will designate one or more default suppliers and/or the regulated transmission and distribution services provider to provide default supply service in a regulated transmission and distribution services provider's service territory if the service territory is open to retail supply competition and customer choice pursuant to 69-8-101, et seq., MCA

(2) Default suppliers must generate or acquire electric energy, capacity and other generation-related services and deliver these services to their customers.

(3) Default suppliers are responsible for line losses that occur on the regulated transmission and distribution services provider's transmission and distribution system in the process of delivering default electricity from the regulated utility's points of delivery to end-use customers.

(4) A small customer whose default supply account is not in arrears may leave default supply service and select a competitive retail electricity supplier at any time. A small customer whose default supply service account is in arrears must clear the unpaid balance before the customer may select a

competitive retail electricity supplier. A small customer being served by a retail electricity supplier may return to default supply service at any time during the transition period. This rule does not release the customer from possible early termination penalties that may be contained in the customer's contract with the supplier.

(5) Only the regulated transmission and distribution services provider may physically disconnect a default service customer for nonpayment of default supply service. A regulated transmission and distribution services provider must comply with the commission's termination rules when physically disconnecting a default supply service customer.

AUTH: 69-8-403, MCA
IMP: 69-8-203 and 69-8-416, MCA

NOTE: Rule IV.(2)(c)(v) is removed from alternative B because collection for nonpayment is not a required utility obligation. Subsequent subsections in Rule IV are renumbered accordingly.

ALTERNATIVE A

RULE IV. OBLIGATIONS OF PUBLIC UTILITIES (1) The public utility must perform billing and metering functions for default supply service until the commission determines that these functions should be functionally separated from regulated utility service.

(2) In addition to other obligations specified in these rules or by commission order, public utilities must:

(a) educate customers about the availability of default supply service but must not promote it;

(b) act as emergency electricity suppliers in the event designated default suppliers fail to provide electric energy, capacity and other generation-related services necessary to maintain reliable, firm electricity supply service to small customers receiving default supply service;

(c) submit for commission approval tariffs that specify the rates, terms and conditions that will apply when the utility provides the following services to designated default suppliers:

(i) transmission system interconnection;
(ii) energy scheduling services;
(iii) energy imbalance services;
(iv) metering and billing services;
(v) collections for nonpayment;
(vi) termination for nonpayment; and
(vii) emergency supply services.

(d) provide to commission-designated default suppliers day-ahead preschedules of hourly energy requirements under normal operating procedures;

(e) provide to prospective bidders for default supplier designation:

(i) a two-year, nonbinding forecast of monthly residential and nonresidential default service load requirements;

(ii) separate load profiles for residential and nonresidential default service loads;

(iii) two years of historic, monthly residential and nonresidential default service consumption data, by customer class; and

(iv) two years of historic, monthly, supply-related uncollectable costs associated with residential and nonresidential small customers, by customer class.

AUTH: 69-8-403, MCA
IMP: 69-8-203 and 69-8-416, MCA

ALTERNATIVE B

RULE IV. OBLIGATIONS OF PUBLIC UTILITIES (1) The public utility must perform billing and metering functions for default supply service until the commission determines that these functions should be functionally separated from regulated utility service.

(2) In addition to other obligations specified in these rules or by commission order, public utilities must:

(a) educate customers about the availability of default supply service but must not promote it;

(b) act as emergency electricity suppliers in the event designated default suppliers fail to provide electric energy, capacity and other generation-related services necessary to maintain reliable, firm electricity supply service to small customers receiving default supply service;

(c) submit for commission approval tariffs that specify the rates, terms and conditions that will apply when the utility provides the following services to designated default suppliers:

(i) transmission system interconnection;

(ii) energy scheduling services;

(iii) energy imbalance services;

(iv) metering and billing services;

(v) termination for nonpayment; and

(vi) emergency supply services.

(d) provide to commission-designated default suppliers day-ahead preschedules of hourly energy requirements under normal operating procedures;

(e) provide to prospective bidders for default supplier designation:

(i) a two-year, nonbinding forecast of monthly residential and nonresidential default service load requirements;

(ii) separate load profiles for residential and nonresidential default service loads;

(iii) two years of historic, monthly residential and nonresidential default service consumption data, by customer class; and

(iv) two years of historic, monthly, supply-related uncollectable costs associated with residential and nonresidential small customers, by customer class.

AUTH: 69-8-403, MCA

IMP: 69-8-203 and 69-8-416, MCA

NOTE: Alternative A establishes a Commission-conducted, annual competitive solicitation process for selecting default suppliers and determining default service prices. The service quality and reliability characteristics of default service are pre-set and the Commission selects default suppliers based on the lowest bid price(s). In alternative B the Commission first establishes the default service prices. Suppliers then submit bids to the Commission that the Commission may use to establish default service rates, terms and conditions. Bidders are provided the discretion to shape the default service they would provide and the associated price(s). The Commission would select the mixture of default suppliers that best meets the public interest.

ALTERNATIVE A

RULE V. DESIGNATION OF DEFAULT SUPPLIERS

(1) The commission will determine whether it is in the public interest to designate one or more electricity suppliers and/or the regulated transmission and distribution services provider as default electricity suppliers through a competitive bid process. During the rate moratorium period defined in 69-8-211, MCA, the commission will reject bids that exceed the public utility's tariffed, unbundled electricity supply rates.

(2) The commission will select the default supplier(s) it determines meet the public interest. Retail electricity suppliers that have obtained a license pursuant to [RULE II] may bid for designation as a default supplier for either residential default supply loads, nonresidential default supply loads or both. The commission may give preference to offers that include a single price for both residential and nonresidential default supply loads and bids to serve the entire default customer load. If a retail electricity supplier offers different prices for residential and nonresidential loads, the commission may, with the supplier's agreement, designate the supplier as a default supplier for either residential loads only or nonresidential loads only.

(3) Bids for supplying residential and/or nonresidential loads must be in the form of a single, fixed price per kilowatt-hour, but may include seasonal rate differences. All bids must be for a term of one year. Bids must be based on the forecast requirements described in [RULE III] and must include associated losses.

(4) Electricity suppliers must submit bids to serve the firm power supply requirements of the residential and/or nonresidential default service load in increments of 20 percent of the entire residential and/or nonresidential default service load. However, a supplier may submit a bid for only a portion of the total residential and/or nonresidential default service load, e.g., 40 percent of the residential default service load.

(5) If the commission receives two or more identical bids, the commission will establish a reasonable means of designating a default supplier, including an agreement with the bidders or a required re-bid.

(6) A retail electricity supplier that is designated by the commission as the default supplier for a regulated electric utility's small customers will receive its tariffed price(s) for all metered kilowatt-hour default service deliveries, as specified in default service tariffs approved by the commission.

(7) If the commission designates two or more default suppliers, each default supplier will receive its individual tariffed price(s) for the proportion of all metered kilowatt-hour default service deliveries equal to the supplier's preschedule. Default service customers will be billed a melded price based on individual tariffed prices and assigned load share.

(8) The commission will publicly disclose all default supply service bids following designation of the default supplier(s) other than the utility. Interested persons may request reconsideration of the commission's designation of the default supplier(s) but may not submit alternative bids.

(9) All federal power marketing administration power benefits available to a public utility or a buying cooperative through the year 2006 must be applied to an equal portion of the individual loads of each residential customer of the public utility, whether or not the customer subscribes to default supply service. The price and equivalent quantity of federal power marketing administration power benefits must be an unbundled component of the utility bill and must be identified separately from default supply service or supply service provided by retail electricity suppliers. The equivalent quantity of federal power marketing administration power will be removed from the default supply load the commission submits for bid under this rule.

(10) If the commission designates a city, county or consolidated government as a default supplier pursuant to [RULE VI], or an electricity buying cooperative pursuant to [RULE VII], the default service load associated with that designation will be removed from the default service load submitted for bids in the next annual solicitation.

AUTH: 69-8-403, MCA
IMP: 69-8-203 and 69-8-416, MCA

ALTERNATIVE B

RULE V. DESIGNATION OF DEFAULT SUPPLIERS

(1) The commission will determine whether it is in the public interest to designate one or more electricity suppliers and/or the regulated transmission and distribution services provider as default electricity suppliers through a competitive bid process. The commission will establish the price at which default supply service will be provided to customers. Bidders may submit bids for prices at which they would agree

to provide default supply service, which may be different than the commission-established default service price. If a commission-designated default supplier's bid is higher than the commission-established default service rate, that price will be considered by the commission in its selection. If a commission-designated default supplier's bid is lower than the commission-established default supply rate, customers will pay the commission-established rate. A bidder's proposal may include a premium which will be paid to the distribution company each billing cycle to be distributed to all customers of the distribution company in proportion to customers' kilowatt-hour consumption. During the rate moratorium period defined in 69-8-211, MCA, the commission will reject bids that exceed the public utility's tariffed, unbundled electricity supply rates. If it is in the public interest the commission will designate the regulated transmission and distribution services provider as the default supplier.

(2) The commission will select the default supplier(s) by determining the bid(s) that best satisfy the public interest.

(3) Bids for supplying default service must include a description of the default service to be provided and the customers to be served. Bid prices may include seasonal rate differences. Bids must be based on the forecast requirements described in [RULE III] and must include associated losses.

(4) If the commission receives two or more identical bids, the commission will establish a reasonable means of designating a default supplier, including an agreement with the bidders or a required re-bid.

(5) A retail electricity supplier that is designated by the commission as the default supplier for a regulated electric utility's small customers will receive its tariffed price(s) for all metered kilowatt-hour default service deliveries, as specified in default service tariffs approved by the commission.

(6) If the commission designates two or more default suppliers, each default supplier will receive its tariffed price(s) for all metered kilowatt-hour default service deliveries to its customers.

(7) The commission will publicly disclose all default supply service bids following designation of the default supplier(s) other than the utility. Interested persons may request reconsideration of the commission's designation of the default supplier(s), but may not submit alternative bids.

(8) All federal power marketing administration power benefits available to a public utility or a buying cooperative through the year 2006 must be applied to an equal portion of the individual loads of each residential customer of the public utility, whether or not the customer subscribes to default supply service. The price and equivalent quantity of federal power marketing administration power benefits must be an unbundled component of the utility bill and must be identified separately from default supply service or supply service provided by retail electricity suppliers. The

equivalent quantity of federal power marketing administration power will be removed from the default supply load the commission submits for bid under this rule.

(9) If the commission designates a city, county or consolidated government as a default supplier pursuant to [RULE VI], or an electricity buying cooperative pursuant to [RULE VII], the default service load associated with that designation will be removed from the default service load submitted for bids in the next annual solicitation.

AUTH: 69-8-403, MCA
IMP: 69-8-203 and 69-8-416, MCA

NOTE: Rules VI through VIII would be the same for both alternative A and alternative B.

RULE VI. CITIES, COUNTIES AND CONSOLIDATED GOVERNMENTS

(1) A city, county or consolidated government that has satisfied the commission's default supplier license requirements may apply to the commission to be designated as the default supplier for small customers within its jurisdiction for service after the transition period.

(2) A city, county or consolidated government applying to the commission for designation as a default supplier must fully describe its plan for providing default supply service and demonstrate that its designation as a default supplier:

(a) will provide net efficiency gains with respect to the provision of default service within the public utility's service area and provide benefits to the small customers within its jurisdiction that would not be otherwise available;

(b) will not negatively impact the remaining default service customers of the public utility; and

(c) will promote and facilitate the development of retail competition in the geographic area to be served and in the public utility's service area generally.

(3) The commission will notice receipt of a city, county or consolidated government's application for designation as a default supplier and provide interested parties an opportunity to submit comments and request a hearing, after which the commission may approve, modify or deny a city, county or consolidated government's plan for providing default supply service.

(4) Pursuant to 69-8-201(3) and 69-8-403(1), MCA, a city, county or consolidated government designated by the commission as a default supplier shall come under the commission's regulatory jurisdiction with respect to the rates, terms and conditions of default supply service.

AUTH: 69-8-403, MCA
IMP: 69-8-203 and 69-8-416, MCA

RULE VII. ELECTRICITY BUYING COOPERATIVES

(1) An electricity buying cooperative that has satisfied the commission's default supplier license requirements may apply to the commission to be designated as the default supplier for small customers.

(2) An electricity buying cooperative applying to the commission for designation as a default supplier must fully describe its plan for providing default supply service and demonstrate that its designation as a default supplier:

(a) will provide net efficiency gains with respect to the provision of default supply service within the public utility's service area and provide benefits to customers choosing to become members of the cooperative that would not otherwise be available;

(b) will not negatively impact default service customers who choose not to become members of the cooperative; and

(c) will promote and facilitate the development of retail competition in the public utility's service area.

(3) The commission will notice receipt of an electricity buying cooperative's application for designation as a default supplier and provide interested parties an opportunity to submit comments and request a hearing, after which the commission may approve, modify or deny an electricity buying cooperative's plan for providing default supply service.

(4) Pursuant to 35-19-103, 69-8-201(3) and 69-8-403(1), MCA, an electricity buying cooperative designated by the commission as a default supplier shall come under the commission's regulatory jurisdiction with respect to the rates, terms and conditions of default electricity service.

AUTH: 69-8-403, MCA
IMP: 69-8-203 and 69-8-416, MCA

RULE VIII, DEFAULT SUPPLY RENEWABLE PORTFOLIO STANDARD

(1) Five percent of the electricity supply delivered by default suppliers to Montana customers must have been generated by a renewable energy resource as those resources are defined in (the disclosure and labeling rules).

AUTH: 69-8-403, MCA
IMP: 69-8-203 and 69-8-416, MCA

5. Rationale: The 1999 Legislature passed Senate Bill 406 (1999) ("Electricity Buying Cooperative Act") and House Bill 211 (1999) ("An act allowing a city, county, or consolidated government to become a default electricity supplier to residential and commercial customers of a public utility within the city's, county's or consolidated government's jurisdiction"). Senate Bill 406 requires the Commission to promulgate rules to implement licensing of default electricity suppliers. House Bill 211 requires the Commission to establish an application process and guidelines for the designation of one or more default supplier for the distribution area of each public utility.

The Commission has issued proposed draft rules on licensing and selection of default electricity suppliers to a substantial number of interested parties for comment. The Commission's proposed draft rules in this notice take into consideration the comments received on or before September 17, 1999. In addition to modifying the rules put out for informal

comment, the Commission proposes an Alternative B on the selection and licensing of default supplier(s). The Commission recognizes that there are multiple models for providing for default service and desires a full and diverse record from which to adopt final rules.

6. Interested persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments (original and 10 copies) may also be submitted to the Montana Public Service Commission, Legal Division, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, no later than November 4, 1999. (PLEASE NOTE: When filing comments pursuant to this notice please reference "Docket No. L-99.7.9-RUL.")

7. The Public Service Commission, a commissioner, or a duly appointed presiding officer may preside over and conduct the hearing.

8. The Montana Consumer Counsel, 616 Helena Avenue, P.O. Box 201703, Helena, Montana 59620-1703, phone (406) 444-2771, is available and may be contacted to represent consumer interests in this matter.

9. Both bill sponsor notification requirements of 2-4-302, MCA, apply and have been complied with.

10. The Public Service Commission maintains a list of persons interested in Commission rulemaking proceedings and the subject or subjects in which each person on the list is interested. Any person wishing to be on the list must make a written request to the commission, providing a name, address, and description of the subject or subjects in which the person is interested. Direct the request to the Public Service Commission, Legal Division, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601.

Dave Fisher, Chairman

Reviewed By Robin A. McHugh

CERTIFIED TO THE SECRETARY OF STATE SEPTEMBER 27, 1999.

BEFORE THE COMMISSIONER OF POLITICAL PRACTICES
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 44.10.331 regarding limitations on receipts from political committees	))))	NOTICE OF PROPOSED AMENDMENT NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On November 8, 1999, the Commissioner of Political Practices proposes to amend ARM 44.10.331, which applies limitations on receipts from political committees.

2. The Commissioner of Political Practices 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 Commissioner of Political Practices, 1205 8th Avenue, P.O. Box 202401, Helena, MT 59620-2401, telephone number (406) 444-2942 or by fax at (406) 444-1643, no later than October 12, 1999, to advise us of the nature of the accommodation that you need.

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

44.10.331 LIMITATIONS ON RECEIPTS FROM POLITICAL COMMITTEES

(1) Pursuant to the operation specified in 13-37-218 and 15-30-101(8), MCA, limits on total combined contributions from political committees other than political party committees to legislative candidates are as follows:

(a) a candidate for the state house of representatives may receive no more than ~~$1150~~ $1200;

(b) a candidate for the state senate may receive no more than ~~$1950~~ $2000.

(2) These limits apply to total combined receipts for the entire election cycle of ~~1998~~ 2000.

(3) Pursuant to 13-37-218, MCA, in-kind contributions must be included in computing these limitation totals.

AUTH: 13-37-114, MCA IMP: 13-37-218, MCA

4. ARM 44.10.331 is being amended because the aggregate limitation on contributions from political committees to candidates for the State House of Representatives and State Senate has been changed to reflect the current year's consumer price index as mandated by statute.

5. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to the Commissioner of Political Practices, 1205 8th Avenue, P.O. Box 202401, Helena, MT 59620-2401. Any comments must be received no

later than November 5, 1999.

6. If persons who are directly affected by the proposed amendment wish to express their data, views and arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to the Commissioner of Political Practices, 1205 8th Avenue, P.O. Box 202401, Helena, MT 59620-2401. A written request for hearing must be received no later than November 5, 1999.

7. If the Commissioner receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the appropriate administrative rule review committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 25 persons based on the 251 state legislative candidates in the 1998 election cycle.

8. The Commissioner of Political Practices maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their names 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 campaign practices and finance, lobbying, and ethics laws. Such written request may be mailed or delivered to the Commissioner of Political Practices at P.O. Box 202401, 1205 Eighth Avenue, Helena, MT 59620-2401, or faxed to (406) 444-1643, or may be made by completing a request form at any rules hearing held by the Commissioner of Political Practices.

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

By: Linda L. Vaughey
Linda L. Vaughey
Commissioner

By: Jim Scheier
Jim Scheier
Rule Reviewer
Assistant Attorney General

Certified to the Secretary of State September 27, 1999.

BEFORE THE TEACHERS' RETIREMENT BOARD
OF THE STATE OF MONTANA

In the matter of the adoption of new rule I, the amendment of rules 2.44.307, 2.44.401, 2.44.414, 2.44.506, 2.44.511, 2.44.515, 2.44.517 and 2.44.518 and the repeal of rules 2.44.404, 2.44.410, 2.44.415, 2.44.502, 2.44.503, 2.44.510, 2.44.516, and 2.44.519 pertaining to the Teachers' Retirement System.	NOTICE OF ADOPTION, AMENDMENT, AND REPEAL

TO: All Concerned Persons

1. On July 22, 1999, the Teachers' Retirement Board published a notice of proposed adoption of new Rule I, amendment of ARM 2.44.307, 2.44.401, 2.44.414, 2.44.506, 2.44.511, 2.44.515, 2.44.517 and 2.44.518 and the repeal of ARM 2.44.404, 2.44.410, 2.44.415, 2.44.502, 2.44.503, 2.44.510, 2.44.516, and 2.44.519 concerning the Teachers' Retirement System at page 1565 of the 1999 Montana Administrative Register, Issue Number 14.

2. The board has adopted new Rule I, ARM 2.44.416, exactly as proposed.

3. The board has amended ARM 2.44.401, 2.44.414, 2.44.506, 2.44.511, 2.44.517, and 2.44.518 as proposed and repealed ARM 2.44.404, 2.44.410, 2.44.415, 2.44.502, 2.44.503, 2.44.510, 2.44.516 and 2.44.519 as proposed. The proposed amendments to ARM 2.44.307 and 2.44.515 are not being adopted.

COMMENT 1: At the public hearing, a representative of the Teachers' Retirement Board stated that they had received several calls from members asking for clarification of the types of services that would be reportable and what would be diminutive. He suggested that the amendments to ARM 2.44.307(3) be revised to clarify that playground duty and/or lunchroom duty are to be reported provided the duties do not exceed more than one hour per day.

RESPONSE: Proposed amendments to ARM 2.44.307 have not been adopted.

COMMENT 2: Written comments were received from Mr. Kelly Jenkins, Legal Counsel, Public Employees' Retirement Board questioning what was intended by the proposed amendments to ARM 2.44.307. He also pointed out that the rule could conflict and be confused with 19-3-411, MCA which could require a teacher's aide once reported to PERS to continue to be reported to PERS for all non-instructional duties even if they are only an hour per day.

RESPONSE: The board agrees and has not adopted proposed amendments to ARM 2.44.307.

COMMENT 3: Written comments were received from teacher aides in Eureka public schools expressing support for ARM 2.44.307 and asking that the amendments be applied retroactively.

RESPONSE: Proposed amendments to ARM 2.44.307 have not been adopted.

COMMENT 4: At the public hearing, a representative of the Teachers' Retirement Board stated that ARM 2.44.515 was unworkable. As drafted, interest due on contributions not reported that are several years old could be avoided if the member and/or the employer remit the contributions due within 12 months of discovery of the error. In these cases, often the interest due exceeds the contributions due and waiving the interest could create large unfunded liabilities.

RESPONSE: Proposed amendments to ARM 2.44.515 have not been adopted.

By:

Dal Smilie, Chief Legal Counsel
Rule Reviewer

David L. Senn, Administrator
Teachers' Retirement System

Certified to the Secretary of State September 27, 1999.

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

In the matter of the amendment of ARM 6.6.126 pertaining to unethical practices	))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On June 17, 1999, the State Auditor's Office published notice of the proposed amendment of ARM 6.6.126 at page 1272 of the 1999 Montana Administrative Register, issue number 12.

2. The Department has amended ARM 6.6.126 exactly as proposed.

3. No comments or testimony were received.

MARK O'KEEFE, State Auditor
And Commissioner of Insurance

By: _____
Frank Cote'
Deputy Insurance Commissioner

By: _____
Gary L. Spaeth
Rules Reviewer

Certified to the Secretary of State September 27, 1999.

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

In the matter of the amendment of ARM 6.6.1105 pertaining to allowable exclusions and restrictions	))))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On June 17, 1999, the State Auditor's Office published notice of the proposed amendment of ARM 6.6.1105 at page 1274 of the 1999 Montana Administrative Register, issue number 12.

2. The Department has amended ARM 6.6.1105 exactly as proposed.

3. No comments or testimony were received.

MARK O'KEEFE, State Auditor
And Commissioner of Insurance

By: _____
Frank Cote'
Deputy Insurance Commissioner

By: _____
Gary L. Spaeth
Rules Reviewer

Certified to the Secretary of State September 27, 1999.

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

In the matter of the amendment of ARM 6.6.4102 pertaining to continuing education fees	))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

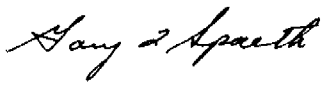
1. On June 22, 1999, the State Auditor's Office published notice of the proposed amendment of ARM 6.6.4102 at page 1600 of the 1999 Montana Administrative Register, issue number 14.

2. The Department has amended ARM 6.6.4102 exactly as proposed.

3. No comments or testimony were received.

MARK O'KEEFE, State Auditor
And Commissioner of Insurance

By: _____
Frank Cote'
Deputy Insurance Commissioner



By: _____
Gary L. Spaeth
Rules Reviewer

Certified to the Secretary of State September 27, 1999.

BEFORE THE BOARD OF SANITARIANS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment of rules pertaining to fees) NOTICE OF AMENDMENT OF 8.60.413 FEES

TO: All Concerned Persons

1. On May 20, 1999, the Board of Sanitarians published a notice of proposed amendment of the above-stated rule at page 999, 1999 Montana Administrative Register, issue number 10.

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

3. No comments were received.

BOARD OF SANITARIANS
DENISE MOLDROSKI, 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 27, 1999.

BEFORE THE BOARD OF SPEECH-LANGUAGE
PATHOLOGISTS AND AUDIOLOGISTS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment of rules pertaining to qualifications for probationary license and fees, and the adoption of a new rule pertaining to unlicensed person	NOTICE OF AMENDMENT OF 8.62.407 QUALIFICATIONS FOR PROBATIONARY LICENSE, 8.62.413 FEES AND ADOPTION OF A NEW RULE (8.62.505) UNLICENSED PERSON

TO: All Concerned Persons

1. On July 1, 1999, the Board of Speech-Language Pathologists and Audiologists published a notice of proposed amendment and adoption of the above-stated rules at page 1470, 1999 Montana Administrative Register, issue number 13.

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

3. No comments were received.

BOARD OF SPEECH-LANGUAGE
PATHOLOGISTS AND AUDIOLOGISTS
LYNN HARRIS, 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 27, 1999.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of amendment of 17.8.102, 17.8.103, 17.8.106, 17.8.202, 17.8.204, 17.8.206, 17.8.302 and 17.8.316 pertaining to air quality incorporation by reference rules	NOTICE OF AMENDMENT (AIR QUALITY)

TO: All Interested Persons

1. On June 3, 1999, the Board of Environmental Review published notice of the proposed amendment of ARM 17.8.102, 17.8.103, 17.8.106, 17.8.202, 17.8.204, 17.8.206, 17.8.302 and 17.8.316 pertaining to air quality incorporation by reference rules at page 1191 of the 1999 Montana Administrative Register, Issue No. 11.

2. The Board has amended ARM 17.8.102 and 17.8.302 as proposed.

3. The Board has amended ARM 17.8.103, 17.8.106, 17.8.202, 17.8.204, 17.8.206, and 17.8.316 with the following changes. The changes to the title and date of the Montana Source Test Manual reflect the Board's decision, as discussed below, to retain the current manual, until certain concerns have been addressed.

17.8.103 INCORPORATION BY REFERENCE (1) through (1)(j) remain as proposed.

(k) the Montana Source Testing Protocol and Procedures Manual (~~March 1999~~ July 1994 ed.), which is a department manual setting forth sampling and data collection, recording, analysis and transmittal requirements;

(l) the ~~EPA~~ Quality Assurance Handbook for Air Pollution Measurement Systems, Volume I: A Field Guide to Environmental Quality Assurance (EPA-600/R-94/038a, revised April 1994)~~; EPA~~ Quality Assurance Handbook for Air Pollution Measurement Systems, Volume II: Part 1 Ambient Air ~~Specific Methods~~ Quality Monitoring Program Quality System Development (EPA-~~600/R-94/038b~~ 454/R-98-004, revised ~~April 1994~~ August 1998); ~~EPA~~ Quality Assurance Handbook for Air Pollution Measurement Systems, Volume III: Stationary Source Specific Methods (EPA-600/R-94/038c, revised September 1994); and~~, EPA~~ Quality Assurance Handbook for Air Pollution Measurement Systems, Volume IV: Meteorological Methods (EPA-600/R-94/038d, March 1995), which is a federal agency manual setting forth sampling and data collection, recording, analysis and transmittal requirements;

(m) through (4) remain as proposed.

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

17.8.106 SOURCE TESTING PROTOCOL (1)(a) and (b) remain as proposed.

(c) Unless otherwise specified in the Montana Source Testing Protocol and Procedures Manual or elsewhere in this chapter, all emission source testing must be performed as specified in any applicable sampling method contained in: 40 CFR Part 60, Appendix A; 40 CFR Part 60, Appendix B; 40 CFR Part 61, Appendix B; 40 CFR Part 51, Appendix M; 40 CFR Part 51, Appendix P~~,~~ i and~~,~~ 40 CFR Part 63. Such emission source testing must also be performed in compliance with the requirements of the ~~EPA~~ Quality Assurance Handbook for Air Pollution Measurement Systems. Alternative equivalent requirements may be used if the department and the source have determined that such alternative equivalent requirements are appropriate, and prior written approval has been obtained from the department. If approval by the administrator of an alternative test method is required, that approval must also be obtained.

(d) remains as proposed.

(e) Any changes to the Montana Source Testing Protocol and Procedures Manual shall follow the appropriate rulemaking procedures.

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

17.8.202 INCORPORATION BY REFERENCE (1) and (1)(a) remain as proposed.

(b) ~~EPA~~ Quality Assurance Handbook for Air Pollution Measurement Systems, Volume I: A Field Guide to Environmental Quality Assurance, (EPA/600/R-94/038a, revised April 1994); ~~EPA~~ Quality Assurance Handbook for Air Pollution Measurement Systems, Volume II: Part 1 Ambient Air ~~Specific Methods~~ Quality Monitoring Program Quality System Development, (EPA/~~600/R-94/038b~~ 454/R-98-004, revised ~~April 1994~~ August 1998); ~~EPA~~ Quality Assurance Handbook for Air Pollution Measurement Systems, Volume III: Stationary Source Specific Methods, (EPA/600/R-94/038c, revised September 1994); and~~,~~ ~~EPA~~ Quality Assurance Handbook for Air Pollution Measurement Systems, Volume IV: Meteorological Methods, (EPA-600/R-94/038d, revised March 1995), a federal manual specifying sampling and data collection, recording, analysis and transmittal requirements;

(c) through (4) remain as proposed.

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

17.8.204 AMBIENT AIR MONITORING (1) remains as proposed.

(2) Except as otherwise provided in this chapter, or unless written approval is obtained from the department for an exemption from a specific part of the Montana Quality Assurance Project Plan, all sampling and data collection, recording, analysis, and transmittal, including but not limited to site selection, precision and accuracy determinations, data

validation procedures and criteria, preventive maintenance, equipment repairs, and equipment selection must be performed as specified in the Montana Quality Assurance Project Plan, incorporated by reference in ARM 17.8.202, except when more stringent requirements are determined by the department to be necessary pursuant to the ~~EPA~~ Quality Assurance Handbook for Air Pollution Measurement Systems, or 40 CFR Part 50, Part 53, and Part 58 also incorporated by reference in ARM 17.8.202, at which time the latter 2 documents shall be adhered to for the specific exception.

(3) remains as proposed.

AUTH: 75-2-111, MCA
IMP: 75-2-201, 75-2-202, MCA

17.8.206 METHODS AND DATA (1) Except as otherwise provided in this subchapter, or unless written approval is obtained from the department for an exemption from a specific part of the Montana Quality Assurance Project Plan, all sampling and data collection, recording, analysis and transmittal, including but not limited to site selection, calibrations, precision and accuracy determinations must be performed as specified in the Montana Quality Assurance Project Plan, incorporated by reference in ARM 17.8.202, except when more stringent requirements are contained in the ~~EPA~~ Quality Assurance Handbook for Air Pollution Measurement Systems or 40 CFR Part 50, Part 53, and Part 58, also incorporated by reference in ARM 17.8.202.

(2) and (3) remain as proposed.

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

17.8.316 INCINERATORS (1) through (4) remain as proposed.

(5) This rule applies to performance tests for determining emissions of particulate matter from incinerators. All performance tests shall be conducted while the affected facility is burning solid or hazardous waste representative of normal operation. Testing shall be conducted in accordance with ARM 17.8.106 and the Montana Source Testing Protocol and Procedures Manual.

(6) remains as proposed.

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

4. The board received the following comments; board responses follow:

COMMENT #1: A commentor submitted comments on the proposed revisions to ARM 17.8.103(1)(l), 106(1)(c), 202(1)(b), 204(2), and 206(1), which incorporate by reference the current edition of the "Quality Assurance Handbook for Air Pollution Measurement Systems", indicating that the title was incorrectly cited in the

proposed rule revisions.

RESPONSE: The commentor was correct and the Board has corrected the references to the "Quality Assurance Handbook for Air Pollution Measurement Systems" to reflect the accurate title of the handbook and the most recent revisions.

COMMENT #2: Two commentors objected to the proposed revision to ARM 17.8.103(1)(k), which incorporates by reference the revised version of the "Montana Source Testing Protocol and Procedures Manual". Specifically, these commentors disagreed with proposed revisions to sections 2.1.2.2 (process rate during testing) and 4.1.1 (compliance testing) of the Manual.

RESPONSE: The Board is not adopting the proposed incorporation by reference of the revised version of the "Montana Source Testing Protocol and Procedures Manual". There are remaining concerns regarding the content of the Manual by some affected parties that have yet to be resolved. Based on these concerns, the Board is deferring adoption of revisions to the Manual at this time. The Department will continue working with the Clean Air Act Advisory Committee to resolve remaining issues of concern prior to further action by the Board.

BOARD OF ENVIRONMENTAL REVIEW

by: *Joe Gerbase*
JOE GERBASE, Chairperson

Reviewed by:

John North
John North, Rule Reviewer

Certified to the Secretary of State September 27, 1999.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.8.504 and 17.8.505, pertaining to air quality permit application and operation fees	NOTICE OF AMENDMENT (AIR QUALITY)

TO: All Concerned Persons

1. On July 22, 1999, the Board of Environmental Review published notice of the proposed amendment of ARM 17.8.504 and 17.8.505, pertaining to air quality permit application and operation fees at page 1612 of the 1999 Montana Administrative Register, Issue No. 14.

2. The Board has amended ARM 17.8.504 as proposed.

3. The Board has amended ARM 17.8.505 with the following changes:

17.8.505 AIR QUALITY OPERATION FEES (1) remains as proposed.

(2) Fees shall be assessed under this rule for all sources of air contaminants described above in (1) that ~~are operating~~ meet that description as of January 1 of the calendar year in which fees are billed.

(3) through (5) remain as proposed.

(6) A separate air quality operation fee, as set forth in (5) above, is assessed for each source of air contaminants under (1), except that a source of air contaminants may not be required to pay more than one administrative fee if the facility is subject to more than one air quality permit issued by the department. The air quality operation fee charged may not exceed $250,000.00.

(7) through (9) remain as proposed.

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

4. The Board received the following comments; Board responses follow:

COMMENT #1: A commentor stated that many affected parties do not understand why the Board is eliminating the per-ton charge and changing to a flat fee system for air quality permit application fees but supports the move to a flat fee system.

RESPONSE: Determining the correct per-ton charge for new sources of air contaminants has been a recurring annual problem because the charge is based on an estimate of expected emissions. Most applications for a permit are incomplete because expected emissions are unknown at that time. The flat fee being adopted reflects the minimum resources required to process a permit

application and eliminates the problems associated with estimating expected emissions, including delays in issuance of permits.

COMMENT #2: A commentor stated that the phrase "operating as of January 1" in proposed ARM 17.8.505(2), regarding the sources required to pay the annual operating fee, may exclude sources that shut down for a few days and do not actually operate on January 1.

RESPONSE: The Board agrees that the proposed language might exempt sources from the operating fee requirement that are not actually "operating" on January 1. As discussed below in response to Comment #3 by the Department, the Board has revised this language.

COMMENT #3: The Department commented that it agrees with Comment #2. The Department recommended that the Board revise the language in ARM 17.8.505(2) to state that fees shall be assessed for all sources of air contaminants described above in ARM 17.8.505(1) (sources subject to, or required to obtain, an air quality permit) that meet that description as of January 1 of the calendar year in which fees are billed.

RESPONSE: The Board agrees and has made this revision.

COMMENT #4: The Department commented that the references in proposed ARM 17.8.505(6) to the air quality operation fee and the administrative fee portion of the operation fee may be confusing. The Department recommended that the Board revise ARM 17.8.505(6) to more clearly distinguish the total air quality operation fee (the flat administrative fee plus the per ton charge) from the flat administrative fee portion of the total fee.

RESPONSE: The Board agrees and the Board made these revisions.

BOARD OF ENVIRONMENTAL REVIEW

by: *Joe Gerbase*
JOE GERBASE, Chairperson

Reviewed by:

John North
John North, Rule Reviewer

Certified to the Secretary of State September 27, 1999.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.30.105 and 17.30.637 pertaining to certification options and general prohibitions to surface water quality standards and procedures	NOTICE OF AMENDMENT (WATER QUALITY)

TO: All Concerned Persons

1. On July 22, 1999, the Board of Environmental Review published notice of the proposed amendment of ARM 17.30.105 and 17.30.637 pertaining to certification options and general prohibitions to surface water quality standards and procedures at page 1608 of the 1999 Montana Administrative Register, Issue No. 14.

2. The Board has amended ARM 17.30.105 and 17.30.637 as proposed.

3. No comments or testimony were received.

BOARD OF ENVIRONMENTAL REVIEW

by: *Joe Gerbase*
JOE GERBASE, Chairperson

Reviewed by:

John F. North
John F. North, Rule Reviewer

Certified to the Secretary of State September 27, 1999.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of rules 17.30.602, 17.30.622 through 17.30.629, 17.30.702, and 17.30.1001 pertaining to the Montana surface water quality standards, the nondegradation rules, and the groundwater pollution control system rules	))))))))	NOTICE OF AMENDMENT (WATER QUALITY)

TO: All Concerned Persons

1. On March 25, 1999, the Board of Environmental Review published notice of the proposed amendment to ARM 17.30.602, 17.30.622 through 17.30.629, 17.30.702, and 17.30.1001 pertaining to Montana surface water quality standards, the nondegradation rules, and the groundwater pollution control system at page 477 of the 1999 Montana Administrative Register, Issue No. 6.

2. On July 22, 1999, the Board of Environmental Review published notice of a supplemental comment period on certain issues at page 1617 of the 1999 Montana Administrative Register, Issue No. 14.

3. The Board has amended ARM 17.30.602, 17.30.622 through 17.30.629, 17.30.702, and 17.30.1001 with the following changes.

17.30.602 DEFINITIONS In this subchapter the following terms have the meanings indicated below and are supplemental to the definitions given in 75-5-103, MCA:

(1) through (29) remain as proposed.

(30) The board hereby adopts and incorporates by reference department Circular WQB-7, entitled "Montana Numeric Water Quality Standards" (~~March~~ September 1999 edition), which establishes limits for toxic, carcinogenic, bioconcentrating, nutrient, and harmful parameters in water. Copies of Circular WQB-7 may be obtained from the Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901.

(31) remains as proposed.

AUTH: 75-5-201 and 75-5-301, MCA
IMP: 75-5-301, MCA

17.30.622 A-1 CLASSIFICATION STANDARDS (1) through (3) remain as proposed.

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

(a) department Circular WQB-7, entitled "Montana Numeric Water Quality Standards" (~~March~~ September 1999 edition), which establishes limits for toxic, carcinogenic, bioconcentrating, nutrient, and harmful parameters in water; and

(4)(b) and (c) remain as proposed.

AUTH: 75-5-201 and 75-5-301, MCA
IMP: 75-5-301, MCA

17.30.623 B-1 CLASSIFICATION STANDARDS (1) and (2) remain as proposed.

(3) The board hereby adopts and incorporates by reference the following:

(a) department Circular WQB-7, entitled "Montana Numeric Water Quality Standards" (~~March~~ September 1999 edition), which establishes standards for toxic, carcinogenic, bioconcentrating, nutrient, and harmful parameters in water; and

(3)(b) and (c) remain as proposed.

AUTH: 75-5-201 and 75-5-301, MCA
IMP: 75-5-301, MCA

17.30.624 B-2 CLASSIFICATION STANDARDS (1) and (2) remain as proposed.

(3) The board hereby adopts and incorporates by reference the following:

(a) department Circular WQB-7, entitled "Montana Numeric Water Quality Standards" (~~March~~ September 1999 edition), which establishes standards for toxic, carcinogenic, bioconcentrating, nutrient, and harmful parameters in water; and

(3)(b) and (c) remain as proposed.

AUTH: 75-5-201 and 75-5-301, MCA
IMP: 75-5-301, MCA

17.30.625 B-3 CLASSIFICATION STANDARDS (1) and (2) remain as proposed.

(3) The board hereby adopts and incorporates by reference the following:

(a) department Circular WQB-7, entitled "Montana Numeric Water Quality Standards" (~~March~~ September 1999 edition), which establishes standards for toxic, carcinogenic, bioconcentrating, nutrient, and harmful parameters in water; and

(3)(b) and (c) remain as proposed.

AUTH: 75-5-201 and 75-5-301, MCA
IMP: 75-5-301, MCA

17.30.626 C-1 CLASSIFICATION STANDARDS (1) and (2) remain as proposed.

(3) The board hereby adopts and incorporates by reference the following:

(a) department Circular WQB-7, entitled "Montana Numeric Water Quality Standards" (~~March~~ September 1999 edition), which establishes standards for toxic, carcinogenic, bioconcentrating, nutrient, and harmful parameters in water; and

(3)(b) and (c) remain as proposed.

AUTH: 75-5-201 and 75-5-301, MCA
IMP: 75-5-301, MCA

17.30.627 C-2 CLASSIFICATION STANDARDS (1) and (2) remain as proposed.

(3) The board hereby adopts and incorporates by reference the following:

(a) department Circular WQB-7, entitled "Montana Numeric Water Quality Standards" (~~March~~ September 1999 edition), which establishes standards for toxic, carcinogenic, bioconcentrating, nutrient, and harmful parameters in water; and

(3)(b) and (c) remain as proposed.

AUTH: 75-5-201 and 75-5-301, MCA
IMP: 75-5-301, MCA

17.30.628 I CLASSIFICATION STANDARDS (1) and (2) remain as proposed.

(3) The board hereby adopts and incorporates by reference the following:

(a) department Circular WQB-7, entitled "Montana Numeric Water Quality Standards" (~~March~~ September 1999 edition), which establishes standards for toxic, carcinogenic, bioconcentrating, nutrient, and harmful parameters in water; and

(3)(b) and (c) remain as proposed.

AUTH: 75-5-201 and 75-5-301, MCA
IMP: 75-5-301, MCA

17.30.629 C-3 CLASSIFICATION STANDARDS (1) and (2) remain as proposed.

(3) The board hereby adopts and incorporates by reference the following:

(a) department Circular WQB-7, entitled "Montana Numeric Water Quality Standards" (~~March~~ September 1999 edition), which establishes standards for toxic, carcinogenic, bioconcentrating, nutrient, and harmful parameters in water; and

(3)(b) and (c) remain as proposed.

AUTH: 75-5-201 and 75-5-301, MCA
IMP: 75-5-301, MCA

17.30.702 DEFINITIONS Unless the context clearly states otherwise, the following definitions, in addition to those in 75-5-103, MCA, apply throughout this subchapter (Note: 75-5-103, MCA, includes definitions for "degradation", "existing uses", "high quality waters", and "parameter."):

(1) through (23) remain as proposed.

(24)(a) The board hereby adopts and incorporates by reference:

(i) department Circular WQB-7, entitled "Montana Numeric Water Quality Standards" (~~March~~ September 1999 edition), which establishes limits for toxic, carcinogenic, bioconcentrating, nutrient, and harmful parameters in water; and

(24)(a)(ii) through (b) remain as proposed.

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

17.30.1001 DEFINITIONS For the purpose of this subchapter, the following definitions, in addition to those in 75-5-103, MCA, will apply:

(1) through (14) remain as proposed.

(15) "WQB-7" means department Circular WQB-7, entitled "Montana Numeric Water Quality Standards" (~~March~~ September 1999 edition), which establishes limits for toxic, carcinogenic, bioconcentrating, nutrient, and harmful parameters in water.

AUTH: 75-5-201 and 75-5-401, MCA
IMP: 75-5-301 and 75-5-401, MCA

4. The Board received comments to both the March 25, 1999, notice of proposed amendment and the July 22, 1999, notice of supplemental comment period. Comments and Board responses follow:

Responses to Comments pertaining to March 25, 1999, Notice of Proposed Amendment:

COMMENT #1: The Toxicity Equivalency Factor (TEF) method errs by assigning too little weight to certain variants of dioxin, principally those with a non-planar configuration.

Since the science of determining the relative toxicity of dioxins and furans is changing rapidly, WQB-7's dioxin listing will need to be updated periodically in order to incorporate the changes. The commentor encourages the Department to investigate ways to avoid repeated rule changes to WQB-7 solely for the purpose of updating references to EPA's documents of analytical methods.

Another commentor suggested broadening the rule language to include any future analytical method the EPA may adopt regarding dioxins and furans.

RESPONSE: The Board agrees that the TEF method addresses the toxicity of some of the many CDD/CDF congeners. The compounds that have been assigned a TEF factor are those with supporting information as of 1989, the date of the last method updates. The EPA has stated that it is committed to continued research in this area and will publish updates when appropriate. When the EPA publishes an updated TEF methodology the Board will consider it as part of its normal water quality standards review process.

Section 2-4-307(3), MCA, of the Montana Administrative Procedure Act (MAPA) requires state agencies to follow MAPA rulemaking procedures when adopting revisions to documents that have previously been incorporated by reference. For this reason, the Board cannot avoid future rulemaking procedures if it adopts revisions to EPA's documents describing analytical methods to measure dioxin.

COMMENT #2: A commentor requested that the comment period be extended because notice of the rulemaking was not received until April 6, 1999, which was not sufficient time to adequately prepare comments.

RESPONSE: Notice of the proposed rulemaking was mailed to those on the Department's interested persons list March 29, 1999, and legal notices were published in 7 newspapers with general distribution for 3 weeks beginning March 28, 1999. At the request of this commentor during the rule hearing, the public comment period was extended for 1 week to April 30, 1999.

COMMENT #3: The proposed amendments to dioxin standards were included in the notice for amending rules to clarify existing language; the amendments should be dealt with separately and an appropriate amount of time established for additional comment.

RESPONSE: Most of the language changes included in the notice to amend the dioxin standard modify the date of WQB-7 to reflect the updated version of WQB-7, which includes the new dioxin standard. These language changes are necessary to incorporate the proposed changes to the dioxin standards included in WQB-7 in the State's water quality standards rules.

Additional language was included clarifying the current definition of WQB-7. This clarifying amendment proposed to remove the modifier "other" from the phrase "and other harmful parameters in water", and does not interfere or conflict with the Board's proposal to amend the dioxin standard. Moreover, nothing in MAPA prohibits an agency from proposing substantive rule changes and proposing clarifying rule language in the same rule notice. Finally, additional time was provided to comment on all of the amendments being proposed.

COMMENT #4: The standard for 2,3,7,8-TCDD is listed in WQB-7 as 0.00000013 parts per billion (μg/l). The federal standard is 0.013 parts per quadrillion (ppq) or, using the scale that WQB-7 uses, 0.000000013 ppb (μg/l). Is it the intent of the state to use the value listed in WQB-7 for the numeric standard?

RESPONSE: Yes, the numeric standard for dioxin listed in WQB-7 reflects a risk of 1/100,000 as required by Section 75-5-301(2)(b)(i), MCA, of the Montana Water Quality Act. "Risk" as used here means that lifetime exposure will result in less than one excess case of cancer per 100,000 exposed persons. The federal number is based on a risk of 1/1,000,000.

COMMENT #5: Isomers of the dioxin/furan family other than 2,3,7,8-TCDD would be converted to a 2,3,7,8-TCDD form by multiplying any analytically determined concentration for a given isomer of dioxin or furan by its respective TEF thereby artificially synthesizing a mass of 2,3,7,8-TCDD that does not exist. The use of TEFs is a toxicological technique for estimating risks associated with exposure to mixtures of

Chlorinated Dibenzo-p-dioxins and Dibenzofurans, not for generating fictitious mass.

RESPONSE: The most toxic of the dioxin and dioxin-like compounds (congeners or furans) studied to date is 2,3,7,8-TCDD. Research has established that 17 dioxin-like compounds cause toxicity effects similar to 2,3,7,8-TCDD. The TEF is a method of measuring the toxicity of a mixture of these dioxin-like compounds that may be present in a sample to determine their toxicity relative to 2,3,7,8-TCDD.

The proposed method does not "synthesize a mass" of dioxin. Rather, the proposed method expresses the equivalent toxicity of a mixture of dioxin-like compounds in any given sample. The concentration or mass of these compounds existed prior to sampling, measurement, and determination of the equivalent toxicity.

COMMENT #6: As stated in EPA's National Recommended Water Quality Criteria, "States and Tribes should not selectively use endpoints, species, risk levels or exposure parameters in deriving criteria; this would not accurately characterize risk and would not result in criteria protective of designated uses." See 63 Fed. Reg. 68355 (1998).

The use of TEFs to convert concentrations for isomers of dioxins or dioxin-like compounds to a 2,3,7,8-TCDD mass basis is contrary to the EPA's own guidance as stated in its National Recommended Water Quality Criteria. See 63 Fed. Reg. 68355 (1998).

RESPONSE: Department staff has reviewed all of the guidance contained in EPA's National Recommended Water Quality Criteria, and believe that the proposed use of TEFs is consistent with that guidance. In addition, the TEF method for reporting dioxin and dioxin-like compounds has been proposed by EPA for use in the state of California, as described in Water Quality Standards; Establishment of Numeric Criteria for Priority Toxic Pollutants for the State of California; Proposed Rule. See 62 Fed. Reg. 42160 (1997). The TEF method for assessing the toxicity of a mixture of dioxin and dioxin-like compounds represents the best guidance available from the EPA to ensure aquatic life and human health are protected.

COMMENT #7: The proposed use of TEFs to convert concentrations for isomers of dioxins or furans to a 2,3,7,8-TCDD mass basis is contrary to the EPA's own guidelines. This process is prohibited by 75-5-203, MCA, which requires that the Board make specific findings prior to adopting standards more restrictive than federal standards.

Using the TEF method and maintaining the existing numeric standard is in effect making a standard that is more stringent than federal standards. The statement that the Board is not proposing to adopt a more stringent measurement method than comparable federal regulations (i.e. EPA guidance) is

misleading. It focuses only on the method of measurement and ignores the fact that the standard that would have to be met if this rule is adopted is more stringent.

RESPONSE: House Bill (HB) 521 (1995), codified in the Montana Water Quality Act at 75-5-203, MCA, requires the Board to make certain written findings after a public hearing and public comment prior to adopting a rule that is more stringent than a comparable federal standard or guideline.

In addition, 75-5-309, MCA, requires the Board to make certain written findings evaluating the environmental and public health information in the record prior to adopting a rule that is more stringent than corresponding draft or final federal regulations, guidelines, or criteria.

The proposed action would incorporate by reference revisions to Montana's numeric water quality standards listed in Department Circular WQB-7 (November 1998 edition), regarding dioxin. The numeric standard for dioxin in the current edition of WQB-7 refers to 2,3,7,8-Tetrachlorodibenzo-p-Dioxin (2,3,7,8-TCDD). The proposed amendment addresses other dioxin-like compounds, referred to as congeners that are often found with 2,3,7,8-TCDD. Like 2,3,7,8-TCDD, these congeners have carcinogenic characteristics and, in some instances, dominate the mixture. The proposed amendment addresses the additive effects of the congeners associated with 2,3,7,8-TCDD by adopting the U.S. Environmental Protection Agency's (EPA) method of measuring dioxin. This method is given in "Interim Procedures for Estimating Risks Associated with Exposures to Mixtures of Chlorinated Dibenzo-p-dioxin and -Dibenzofurans (CDDs and CDFs) and 1989 Update", EPA/625/3-89/016, March 1989.

Although the current numeric standard would not be changed, the standard would now apply to 17 dioxin and dioxin-like compounds present in a mixture by using the "Toxicity Equivalence Factors" and process given in the EPA publication. EPA has promulgated rules for states, which require the methods used in its 1989 publication when applying the criteria for dioxin. See 62 Fed. Reg. 42160, at 42179 (Aug. 5, 1997) and 40 CFR Part 132, App. F (1998). The Board is not proposing to adopt a more stringent measurement method than specified in EPA's 1989 publication. Since the proposed rules are not more stringent than comparable federal regulations or guidelines, no written findings are required under 75-5-203, MCA, and 75-5-309, MCA.

COMMENT #8: No two isomers of dioxin behave exactly the same and no two can meaningfully be reconstituted into a 2,3,7,8-TCDD form due to the inherent differences in each isomer's characteristics.

RESPONSE: The TEF method compares the dioxin-like toxicity of 17 dioxin and dioxin-like compounds to 2,3,7,8-TCDD and expresses the equivalent toxicity of the mixture. These dioxin and dioxin-like compounds are chemically different from each other, but cause similar biological responses. The TEF method measures

these similar toxic effects and cancer-causing responses.

COMMENT #9: There is no evidence that 2,3,7,8-TCDD converts or breaks down into other dioxin-like compounds in the environment. There are many instances of elements or compounds that break down in nature into other elements or compounds, but the resulting "daughters" of this process do not exhibit the same characteristics as the parent compound.

RESPONSE: Dioxin can be broken down by sunlight into other compounds (EPA/600/6-88/05CA, June 1994). In some cases compounds with many chlorine atoms attached may be transformed into simpler compounds with fewer chlorine atoms attached. However, most dioxin and dioxin-like compounds are very persistent in the environment. In most instances of environmental contamination by dioxin, dioxin-like compounds are found with 2,3,7,8-TCDD. The rationale for using the TEF method is to account for the additive effects of these compounds that are known to have toxic effects similar to 2,3,7,8-TCDD. An explanation of the TEF method of measuring these toxic effects is described in response to Comment #5 and #7.

COMMENT #10: Using the TEF method results in a standard that is broader in scope than the current dioxin standard listed in WQB-7, which has been adopted for 2,3,7,8-TCDD. The TEF method accounts for compounds that are not 2,3,7,8-TCDD and adds them together for an evaluation against the existing numeric criteria. This method results in broadening the existing standard, which is prohibited by 75-5-203, MCA.

For example, it would be possible for a full suite analysis of dioxin/furans to yield all non-detection limits. However, by applying the TEF method using the standard convention of 1/2 of the detection limit for non-detectable parameters, it would also be possible to exceed the numeric standard for dioxin without any evidence that dioxins or furans existed in the sample. This process is specifically prohibited by 75-5-203, MCA.

RESPONSE: Although the proposed TEF method broadens the range of dioxin and dioxin-like compounds that are measured for compliance with the numeric standard for dioxin listed in WQB-7, the proposed method is consistent with federal guidelines. See Response to Comment #7. Therefore, the provisions of 75-5-203, MCA, do not require the Board to make specific findings prior to adopting the TEF method.

In regard to the issue of detection limits, federal law requires that states adopt water quality standards based on the effect of a substance, not on its measurability. For dioxins and dioxin-like compounds, it is the effect of these substances, whether detectable or not, that may cause harm to human health or the environment. The TEF method is intended to protect humans and the environment from these harmful effects. Moreover, there are other numeric standards for carcinogens listed in WQB-7 that are below routine detection limits.

COMMENT #11: Has the Department conducted its own research to support or justify the proposed revisions to the standard for 2,3,7,8-TCDD?

RESPONSE: The Department has not conducted its own research of dioxin. The Department has relied upon EPA to conduct the research and provide guidance to the states on dioxin toxicity. The Department does have many years of experience with the types of dioxin and dioxin-like compounds released to the environment. This experience indicates that the TEF approach is appropriate for the regulation of these releases.

COMMENT #12: We question why the state of Montana is proceeding with this change without further consideration of the science and potential ramifications to incorporating this approach into the state's surface water quality standards.

The need to impose a new and more stringent statewide requirement, which may result in unnecessary and costly expenditures primarily at the request of Missoula County, is questioned.

RESPONSE: During the November 1998 Board hearing additional testimony was received that supported comments received during the August 1998 hearing that the water quality standard for dioxin should utilize the TEF method. A motion was heard and passed that directed the Department to proceed with rulemaking in regards to incorporating the TEF method into WQB-7. The Board believes that the method for measuring 2,3,7,8-TCDD and its congeners adopted by these amendments is scientifically warranted and will further the protection of the public. See the Response to Comment #11 above.

COMMENT #13: It is doubtful that this mathematical manipulation of analytical results for the sole purpose of generating an artificially derived mass of 2,3,7,8-TCDD would be legally defensible.

RESPONSE: The purpose of the TEF method is to measure the toxicity of a mixture of dioxin and dioxin-like compounds, not to create or generate an artificial mass of 2,3,7,8-TCCD. The method has been adopted by EPA for the Great Lakes Basin (40 CFR Part 132, App. F (1998)) and is recommended for adoption by EPA in the California Toxics Rule (62 Fed. Reg. 42160 (1997)). Since EPA continues to rely on the TEF method when promulgating water quality standards for other states, the Board believes the use of the TEF method in Montana is defensible.

COMMENT #14: It is not true that "dioxins" are among the most powerful human carcinogens known. EPA has classified dioxin as a "B2" (probable human) carcinogen not an "A" (human) carcinogen.

RESPONSE: The EPA includes dioxin on its priority pollutant list and in EPA/625/-89/016, Part II, pg. 3, states that the "EPA

classifies 2,3,7,8-TCDD as a 'B2' carcinogen with a potency of 1.6x10^5 (mg/kg-d)^-1, by far the most potent carcinogen yet evaluated by the Agency (US EPA, 1985). The chemical is also the most potent reproductive toxin yet evaluated by the Agency, with a Reference Dose (RfD) of 1pg/kg-d (US EPA, 1985)." These statements of EPA suggest that dioxin is a dangerous compound despite the fact that life-long effects on humans have not been conclusively established. In view of the uncertainty of its toxic effects on humans, the Board is proposing the adoption of the TEF method of measuring dioxin to ensure the protection of human health.

COMMENT #15: Montana's proposal to rely on EPA's "interim" technical support documents is of particular concern, because that document represents theoretical paradigms instead of accurate science. Montana is required to comply with § 304 of the Clean Water Act, which requires states to publish "criteria for water quality accurately reflecting the latest scientific knowledge on the kind and extent of all identifiable effects on health and welfare". Yet the technical support document being adopted by Montana states that "the method proposed may lack the scientific validity" and that the "procedure is not based on a thoroughly established scientific foundation." The Scientific Advisory Board that reviewed the document cautioned that the interim TEF method should be reserved for special situations where the extrapolations are consistent with existing animal data.

RESPONSE: Despite the acknowledged limitations of the method, EPA believes that the TEF approach is a reasonable method to address dioxins. The technical support document cited by the commentor states that: "These continuing elements of uncertainty in the TEF approach highlight the need to treat the approach as "interim", that is, one that needs to be further buttressed by experimental data and eventually replaced with a more direct biological assay. In spite of their acknowledged limitations, all of the groups listed above have endorsed the TEF approach as a feasible procedure for addressing a difficult environmental health problem at this time." (EPA/625/3-89/016, Part II, pg. 8). The TEF method is being proposed by EPA for use in the "California Toxics Rule" and has been adopted by EPA for use in the Great Lakes Basin (40 CFR 132). Thus the Board believes that the TEF method is valid and proper for measuring dioxin.

COMMENT #16: Even if there are valid animal studies, the assumption of toxicity equivalence is based on a number of questionable assumptions and scientific inconsistencies. The potential for differential bioavailability and metabolism for various dioxin compounds in fish is an enormous issue with respect to measuring compliance with a water quality based effluent limit developed to meet such a requirement. How will Montana regulate the discharge of a mix of substances when a very different mix ultimately shows up in fish, bearing little

resemblance to the relative proportions of the congeners that were regulated in effluent?

RESPONSE: This comment assumes that humans are exposed to dioxins primarily from the ingestion of fish. There are, however, other routes of exposure to dioxin that may affect human health. Dioxin may appear in ground or surface water that are potential sources for drinking water. Montana's water quality standards generally protect all waters for drinking supply purposes. Therefore, regardless of the bioavailability of dioxins through fish consumption, the Board believes that the TEF method of measuring dioxin is a valid approach.

COMMENT #17: Most of the human exposure and risk to PCDDs and PCDFs is from the ingestion of fish. The USEPA methodology cited in the notice only addresses "dose" (e.g., the congeners that are actually absorbed), not "exposure". What is ignored is (1) bioaccumulation in fish, the tissue of which will "selectively" accumulate only congeners that are "bioavailable", and (2) the metabolism and excretion of congeners by those fish. In other words, the state of Montana may end up regulating dioxin/furan congeners in an effluent that may have little propensity to accumulate in fish, and ultimately, pose a risk to humans. Should Montana pursue this methodology to derive water quality standards for PCDDs/PCDFs, the method should be limited to the 2,3,7,8-substituted congeners and, of those, only congeners that (1) have adequate, scientifically valid animal studies, and (2) are known to accumulate in edible fish and/or wildlife.

RESPONSE: This comment assumes that humans are exposed to dioxins primarily from the ingestion of fish. There are, however, other routes of exposure to dioxin that may affect human health. See Response to Comment #16.

In addition, research indicates that all of the 2,3,7,8-substituted congeners are selectively absorbed and retained in fish, humans, and other mammals even when the concentration of CDDs/CDFs are relatively low. Of the 210 known congeners, only 17 of these, which are referred to as the 2,3,7,8-substituted congeners, are given a TEF value greater than zero and are used to obtain the total equivalent toxicity. For these reasons, the Board does not agree that the use of these "substituted congeners" should be limited as the commentor suggests.

COMMENT #18: The commentor requests the Board conduct a review to determine if the proposed method can in fact detect dioxin compounds at the proposed concentration, or in all types of ground water or other potential sample sources.

Commercial analytical laboratories that analyze ground or surface water samples cannot meet the proposed standard where matrix interference prevents low level detection. Dioxin levels can be detected in clean drinking water at low concentrations.

The proposed amendment would result in a standard that

cannot be achieved by the cleanest waters. Available analytical methods cannot measure dioxin/furan concentrations, as calculated using the toxicity equivalence factors, as low as the numerical human health standards for surface water and ground water. The methods of measuring and calculating dioxin/furan concentrations for compliance purposes, along with the method of establishing the compliance limit, are complex and interrelated. The overall approach must be protective of human health and the environment, yet be scientifically defensible and achievable. The TEF method of calculating dioxin/furan concentrations, in conjunction with the numerical human health standards previously adopted will result in a standard that cannot be achieved in even the cleanest water.

RESPONSE: EPA requires that states adopt water quality standards based on the effect of a substance, not on its measurability. For dioxins and dioxin-like compounds, it is the effect of these substances, whether detectable or not, that may cause harm to human health or the environment. The TEF method of measuring dioxin and dioxin-like compounds is designed to protect humans from the toxic effect of these compounds.

COMMENT #19: One commentor questions the cost and need for a statewide rule that is primarily meant to deal currently with one area.

RESPONSE: The Board does not agree that the proposed rule is intended to address only one area of the state. Dioxin and dioxin-like compounds can potentially be a threat in many areas of the state, if they are released into surface or ground water. Montana's surface water quality standards are intended to protect all waters of the state "by protecting, maintaining, and improving the quality and potability of water for public water supplies, wildlife, fish and aquatic life, agriculture, industry recreation and other beneficial uses". See ARM 17.30.601. The Board believes the rule and circular changes support the stated policy set forth in Montana's water quality standards and that the amendments are necessary to do so.

Responses to Comments Pertaining to July 22, 1999, Notice of Supplemental Comment Period:

In the Notice of Supplemental Comment Period, the Board identified 10 issues on which it requested additional information from the Department. In addition, the public was invited to comment on those issues, and any other issues pertinent to this rulemaking. The issues identified by the Board are set forth below. The Board received comments from one member of the public and the Department. Comments received from the public are summarized below after each issue. Responses to both the Board's issue and the public's comment follow each issue/comment.

ISSUE (a): Would the use of the toxicity equivalancy factor (TEF) method be appropriate given that some dioxin/furan

congeners that do not have TEF values apparently impact important genetic process?

COMMENT #20: It would be inappropriate to selectively pick those isomers with established TEFs to include in the synthesis of a 2,3,7,8-TCDD mass, for the express purpose of comparing against the numeric standard for 2,3,7,8-TCDD. The concept of mathematically converting different isomers of dioxins or furans into another form (i.e. 2,3,7,8-TCDD) is at best ignoring fundamental scientific principles, and at worst totally bogus. In reviewing the basis for this type of approach, this methodology would succeed in setting the stage for creating situations of contamination at a level that does not exist. The ramifications could be potentially costly to any entity involved, without any direct analytical evidence of a problem.

RESPONSE: The TEF is a universally accepted way to estimate the toxicity of the group of complex chlorinated dibenzo-p-dioxins (CDDs) and chlorinated dibenzofurans (CDFs) compounds often referred to as congeners. This method is used by the USEPA, the Agency for Toxic Substances and Disease Registry (ATSDR), the World Health Organization (WHO), the international scientific community, and other states and countries in evaluating risks associated with these compounds and setting cleanup levels for them. We are not aware of any agency that does not use this method for these purposes.

These compounds typically occur in complex mixtures of several CDDs and CDFs with various structures. The most widely studied of these compounds is 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD). This compound, often called simply dioxin, represents the reference compound for this class of compounds because none of the other congeners have been shown to be more toxic than it is.

The TEF method assigns nonzero toxicity equivalence factors (TEFs) to all CDDs and CDFs with chlorine molecules attached or substituted in the 2,3,7, and 8 carbon molecule positions. The TEF for each congener is based on its potency relative to that of TCDD. CDDs and CDFs with chlorine molecules in these positions exhibit different effects on biological organisms than those with other structures. Because of these effects, the CDDs and CDFs with the 2,3,7,8 structure have been shown to be more toxic than those with other structures. In fact, these are the congeners that have been shown to cause cancer. Thus, the non-2,3,7,8 congeners require higher doses than the 2,3,7,8 congeners to produce toxic, non-carcinogenic effects. In addition, the congeners without the 2,3,7,8 structure are generally not present in media without those with the 2,3,7,8 structure. Therefore, TEF concentrations that are based on protective levels of the 2,3,7,8 congeners are also protective for the other congeners.

Recent evaluations by the WHO support the use of the TEF method. These evaluations have resulted in some recommended, slight modifications to the 1989 TEF method (increasing the pentaCDD TEF from 0.5 to 1 and decreasing the octaCDD and

octaCDF TEFs from 0.001 to 0.0001). However, the WHO has not recommended setting TEFs for any new CDDs or CDFs. The WHO has recommended TEFs for some polychlorinated biphenyls (PCBs); however, the Department is not proposing these at this time.

When the EPA and world health organizations adopt improved TEFs for these other dioxin-like compounds the Board can consider the changes and adopt the changes when they occur. The basic principle of the method is sound and flexible to adjust to new findings.

ISSUE (b): Section 75-5-203, MCA, provides that the Board may not adopt a rule that is more stringent than comparable federal regulations or guidelines unless the Board makes certain findings. Are there federal regulations or guidelines that are comparable to the proposed dioxin standards? If so, are the proposed standards more stringent than the federal regulations or guidelines?

COMMENT #21: To my knowledge, there are no existing Federal regulations or guidelines that support this methodology. The EPA may be a proponent for this approach, but I question why the EPA has not pursued development of individual standards for each isomer. However, as stated in my earlier comments, the Department's conclusion that the Board would not be adopting a more stringent measurement is very misleading since it focuses only on the method of measurement and does not acknowledge that the standard that would have to be met if this rule is adopted would be more stringent than at the present time.

RESPONSE: Although the proposed TEF method broadens the range of dioxin and dioxin-like compounds that are measured for compliance with the numeric standard for dioxin listed in WQB-7, the proposed method is not more stringent than federal guidelines. See Response to Comment #7. Therefore, the provisions of 75-5-203, MCA, do not require the Board to make specific findings prior to adopting the TEF method.

Again, the use of the TEF is a universally accepted way to estimate the toxicity of the group of complex chlorinated dibenzo-p-dioxins (CDDs) and chlorinated dibenzofurans (CDFs) compounds often referred to as congeners. This method is used by the USEPA, the Agency for Toxic Substances and Disease Registry, the World Health Organization (WHO), the international scientific community, and other states and countries in evaluating risks associated with these compounds and setting cleanup levels for them. We are not aware of any agency that does not use this method for these purposes.

ISSUE (c): Does 2,3,7,8-TCDD break down into other harmful dioxin/furans?

COMMENT #22: Where is the evidence that 2,3,7,8-TCDD decays into other forms of dioxin? The Department should cite the references that support this contention.

RESPONSE: Please see the responses to Comments #7 and #9 of the original comment period. As stated previously, CDDs and CDFs occur as mixtures of harmful congeners. The TEF method provides a means for evaluating the potential for harmful effects from exposure to these congeners. Despite a growing body of literature from laboratory, field, and monitoring studies examining the environmental fate and distribution of CDDs and CDFs, the fate of these environmentally ubiquitous compounds is not yet fully understood. However, the available evidence indicates that CDDs and CDFs, particularly the tetra- and higher chlorinated congeners, are extremely stable compounds under most environmental conditions, with environmental persistence measured in decades. The only environmentally significant transformation process for these congeners is believed to be photodegradation or photolysis of chemicals not bound to particles. The congeners have not been shown to break down into more harmful compounds, but rather what breakdown does occur reduces the concentrations of these hazardous compounds.

ISSUE (d): In some instances many of the dioxin/furan congeners in a sample are reported as "not detected". What value should be used for calculating a TEF in these cases?

COMMENT #23: TEFs are toxicity factors that have been determined via toxicological studies and are not recalculated from a concentration. In other words, TEFs are constants. Whenever "nondetects" are reported in an analysis, the nondetects should not be used in determining or calculating a mass or concentration of another congener. If it isn't there, it isn't there.

The Missoula City-County Health Department suggested use of one-half the detection for wastewater samples but not for relatively clean samples such as drinking water.

RESPONSE: The numeric value substituted for a "nondetect" depends on several things, including the number of samples collected and the degree of statistical confidence desired. Thus, this value must be determined on a case-by-case basis using statistical methods. The Department has appointed an internal task force that is developing criteria to deal with nondetect values.

ISSUE (e): Is the TEF method in conjunction with the dioxin standard and the common practice of using one half of the "detection limit" for analyses that are reported as less than values sensitive enough to determine compliance with permit limits and water quality standards in even the cleanest waters of the state.

COMMENT #24: The proposed method is overly sensitive to determining compliance with limits and/or water quality standards. By its proposed methodology, the Department would be creating something from nothing if nondetects were given an absolute value for purposes of calculating a mass of 2,3,7,8-

TCDD.

RESPONSE: The proposed TEF method for assessing the risk associated CDDs and CDFs is sensitive enough to permit compliance using the method described in Response to Comment #23 for nondetects. As indicated in the response to that comment, the Department does not always use one-half the detection limit for samples that are less than the detection limit. Rather, the Department assigns the value on a case-by-case basis in accordance with accepted statistical methods. These methods are designed to avoid creating false positive readings.

ISSUE (f): The department has referenced an EPA document published in March 1989 for the calculation of the dioxin TEF. That document is now 10 years old. Is it appropriate to use a 10 year-old document as the basis for the dioxin water quality standard?

COMMENT #25: It does not make sense to use a dated interim guidance document to establish present day standards. The science has progressed and more recent information should be reviewed prior to amending the rules. Why is there such a rush to adopt such a questionable rule? Further research should be made available to the Board before any action is taken.

RESPONSE: The 1989 document is the most up-to-date comprehensive document available. The EPA is continuing to review worldwide information about CDDs and CDFs to update its risk assessment procedures and develop water quality standards to protect human health and the environment. Two external review draft reports include Health Assessment Document for 2,3,7,8-Tetrachlorodibenzo-p-dioxin (TCDD) and Related Compounds, Volume III of III EPA/600/BP-92/001c, August 1994, and ESTIMATING EXPOSURE TO DIOXIN-LIKE COMPOUNDS VOLUME I: Executive Summary External Review Draft EPA/600/6-88/005Ca June 1994. Both documents cite the 1989 source document as the most up-to-date and only recommended procedure for assessing the risk of cancer from these compounds.

ISSUE (g): The TEF method for calculating the health risk associated with dioxins and furans considers 17 cogeners. Are any of the many other dioxin/furan compounds harmful to human health?

COMMENT #26: No public comment was received on this issue.

RESPONSE: Some of the data and findings of the international community researching dioxin-like compounds have found toxic and carcinogenic properties for additional congeners. The EPA has not adopted or revised the I-TEF values established in 1989.

ISSUE (h): The TEF method proposed by the Board relies on animal and laboratory studies of cellular and hormone response to dioxin and furan compounds rather than on direct

relationships of these compounds to human health risk. Is this approach appropriate?

COMMENT #27: No public comment was received on this issue.

RESPONSE: Nearly all the data on toxicity of any compound is a result of animal and laboratory studies of cellular and hormone response. Human data exists only for very few compounds like benzene and benzo(a)pyrene. The only reasonable way to study the effect chemicals have on human or animal populations is by using controlled experiments on cell and tissue cultures followed by experiments on laboratory animals. This data is then modified for application to humans. This is the standard approach toxicologists use for evaluating the toxicity of all compounds. The effects of chemicals on human populations may be assessed through environmental monitoring and direct or indirect measurement and comparison of impacted and unimpacted (sometimes a gradation of impact) population health data. However, this information is difficult to interpret because it is not from a controlled experiment. Toxicologists must rely on controlled experiments for reliable data.

ISSUE (i): Commentors have stated that the rule amendments were proposed because of ground water contamination from the Missoula White Pine and Sash facility. Is the potential for dioxin contamination at other locations great enough to justify adoption of the proposed dioxin standards?

COMMENT #28: The Board should not adopt statewide standards based upon isolated incidents. It is more appropriate to deal with specific sites based on evaluation of the site conditions and circumstances similar to how superfund sites are handled. In other words, on a "case-by-case" basis.

RESPONSE: A number of sites have known or potential dioxin contamination. These sites include Kalispell Pole and Timber, Pine Tree Timber, S&W Sawmill, Berg Post and Pole, Davis Post Yard, Granite Timber, Creston Post and Pole, Real Log Homes, Wilsall PCB (closed), Joliet Weed Control District (closed), Flathead Post and Pole, Mercer Post Plant, Blackfeet Post and Pole, Beaver Wood Products, Larry's Post and Treating Co., J&N Post and Pole, Central Post and Treating, Alice Creek Post and Pole, Strongs Post Yard, Bass Creek Post and Pole, Marble Creek Post Yard, Muster's Post Yard, Kenison Pole Plant, Townsend Post and Pole, Railroad Tie Treating Yard, and Stone Container. Also, other active facilities that use pentachlorophenol may have dioxin contamination.

ISSUE (j): The rule amendments incorporate a 1989 EPA document entitled "Interim Procedures for Estimating Risks Associated with Exposures to Mixtures of Chlorinated Dibenzo-p-Dioxins and -Dibenzofurans (CDDs and CDFs) and 1989 Update". Is it appropriate to base a rule on an interim procedure document?

COMMENT #29: The term "interim" suggests that the information is not complete, there is an uncertainty to the process, and that additional efforts are warranted before a rule or standard is finalized. With this in mind, it is inadvisable to adopt the final rules as currently proposed.

RESPONSE: EPA is sometimes reluctant to designate guidance as final. However, this guidance has been widely used for nearly 10 years and no other guidance is available. Please see Response to Comment #25 above.

BOARD OF ENVIRONMENTAL REVIEW

by: *Joe Gerbase*
JOE GERBASE, Chairperson

Reviewed by:

John F. North
John F. North, Rule Reviewer

Certified to the Secretary of State September 27, 1999.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.30.602, 17.30.622 through 17.30.629, 17.30.702, and 17.30.1001 pertaining to trigger values	NOTICE OF AMENDMENT (WATER QUALITY)

TO: All Concerned Persons

1. On July 22, 1999, the Board of Environmental Review published notice of the proposed amendment of ARM 17.30.602, 17.30.622 through 17.30.629, 17.30.702, and 17.30.1001 pertaining to trigger values at page 1603 of the 1999 Montana Administrative Register, Issue No. 14.

2. The Board has amended ARM 17.30.602, 17.30.622 through 17.30.629, 17.30.702, and 17.30.1001 with the following changes.

17.30.602 DEFINITIONS In this subchapter the following terms have the meanings indicated below and are supplemental to the definitions given in 75-5-103, MCA:

(1) through (29) remain as proposed.

(30) The board hereby adopts and incorporates by reference department Circular WQB-7, entitled "Montana Numeric Water Quality Standards" (~~June~~ September 1999 edition), which establishes limits for toxic, carcinogenic, bioconcentrating, nutrient, and ~~other~~ harmful parameters in water. Copies of Circular WQB-7 may be obtained from the Department of Environmental Quality, PO Box 200901, Helena, MT 59620-0901.

(31) remains as proposed.

AUTH: 75-5-201, 75-5-301, MCA
IMP: 75-5-301, MCA

17.30.622 A-1 CLASSIFICATION STANDARDS (1) through (3) remain as proposed.

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

(a) department Circular WQB-7, entitled "Montana Numeric Water Quality Standards" (~~June~~ September 1999 edition), which establishes limits for toxic, carcinogenic, bioconcentrating, nutrient, and ~~other~~ harmful parameters in water; and

(b) and (c) remain as proposed.

AUTH: 75-5-201, 75-5-301, MCA
IMP: 75-5-301, MCA

17.30.623 B-1 CLASSIFICATION STANDARDS (1) and (2) remain as proposed.

(3) The board hereby adopts and incorporates by reference the following:

(a) department Circular WQB-7, entitled "Montana Numeric

Water Quality Standards" (~~June~~ September 1999 edition), which establishes standards for toxic, carcinogenic, bioconcentrating, nutrient, and harmful parameters in water; and

(b) and (c) remain as proposed.

AUTH: 75-5-201, 75-5-301, MCA
IMP: 75-5-301, MCA

17.30.624 B-2 CLASSIFICATION STANDARDS (1) and (2) remain as proposed.

(3) The board hereby adopts and incorporates by reference the following:

(a) department Circular WQB-7, entitled "Montana Numeric Water Quality Standards" (~~June~~ September 1999 edition), which establishes standards for toxic, carcinogenic, bioconcentrating, nutrient, and harmful parameters in water; and

(b) and (c) remain as proposed.

AUTH: 75-5-201, 75-5-301, MCA
IMP: 75-5-301, MCA

17.30.625 B-3 CLASSIFICATION STANDARDS (1) and (2) remain as proposed.

(3) The board hereby adopts and incorporates by reference the following:

(a) department Circular WQB-7, entitled "Montana Numeric Water Quality Standards" (~~June~~ September 1999 edition), which establishes standards for toxic, carcinogenic, bioconcentrating, nutrient, and harmful parameters in water; and

(b) and (c) remain as proposed.

AUTH: 75-5-201, 75-5-301, MCA
IMP: 75-5-301, MCA

17.30.626 C-1 CLASSIFICATION STANDARDS (1) and (2) remain as proposed.

(3) The board hereby adopts and incorporates by reference the following:

(a) department Circular WQB-7, entitled "Montana Numeric Water Quality Standards" (~~June~~ September 1999 edition), which establishes standards for toxic, carcinogenic, bioconcentrating, nutrient, and harmful parameters in water; and

(b) and (c) remain as proposed.

AUTH: 75-5-201, 75-5-301, MCA
IMP: 75-5-301, MCA

17.30.627 C-2 CLASSIFICATION STANDARDS (1) and (2) remain as proposed.

(3) The board hereby adopts and incorporates by reference the following:

(a) department Circular WQB-7, entitled "Montana Numeric Water Quality Standards" (~~June~~ September 1999 edition), which establishes standards for toxic, carcinogenic, bioconcentrating,

nutrient, and harmful parameters in water; and

(b) and (c) remain as proposed.

AUTH: 75-5-201, 75-5-301, MCA
IMP: 75-5-301, MCA

17.30.628 I CLASSIFICATION STANDARDS (1) and (2) remain as proposed.

(3) The board hereby adopts and incorporates by reference the following:

(a) department Circular WQB-7, entitled "Montana Numeric Water Quality Standards" (~~June~~ September 1999 edition), which establishes standards for toxic, carcinogenic, bioconcentrating, nutrient, and harmful parameters in water; and

(b) and (c) remain as proposed.

AUTH: 75-5-201, 75-5-301, MCA
IMP: 75-5-301, MCA

17.30.629 C-3 CLASSIFICATION STANDARDS (1) and (2) remain as proposed.

(3) The board hereby adopts and incorporates by reference the following:

(a) department Circular WQB-7, entitled "Montana Numeric Water Quality Standards" (~~June~~ September 1999 edition), which establishes standards for toxic, carcinogenic, bioconcentrating, nutrient, and harmful parameters in water; and

(b) and (c) remain as proposed.

AUTH: 75-5-201, 75-5-301, MCA
IMP: 75-5-301, MCA

17.30.702 DEFINITIONS Unless the context clearly states otherwise, the following definitions, in addition to those in 75-5-103, MCA, apply throughout this subchapter (Note: 75-5-103, MCA, includes definitions for "degradation", "existing uses", "high quality waters", and "parameter."):

(1) through (23) remain as proposed.

(24)(a) The board hereby adopts and incorporates by reference:

(i) department Circular WQB-7, entitled "Montana Numeric Water Quality Standards" (~~June~~ September 1999 edition), which establishes limits for toxic, carcinogenic, bioconcentrating, nutrient, and harmful parameters in water; and

(ii) through (24)(b) remain as proposed.

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

17.30.1001 DEFINITIONS For the purpose of this subchapter, the following definitions, in addition to those in 75-5-103, MCA, will apply:

(1) through (14) remain as proposed.

(15) "WQB-7" means department Circular WQB-7, entitled

"Montana Numeric Water Quality Standards" (~~June~~ September 1999 edition), which establishes limits for toxic, carcinogenic, bioconcentrating, nutrient, and harmful parameters in water.

AUTH: 75-5-201, 75-5-401, MCA
IMP: 75-5-301, 75-5-401, MCA

3. No comments or testimony were received.

BOARD OF ENVIRONMENTAL REVIEW

by: *Joe Gerbase*
JOE GERBASE, Chairperson

Reviewed by:

John F. North
John F. North, Rule Reviewer

Certified to the Secretary of State September 27, 1999.

BEFORE THE PETROLEUM TANK RELEASE COMPENSATION BOARD
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.58.101, 17.58.201, 17.58.301, 17.58.302, 17.58.311, 17.58.312, 17.58.313, 17.58.323, 17.58.325, 17.58.326, 17.58.331, 17.58.332, 17.58.333, 17.58.334, 17.58.335, 17.58.336, 17.58.337, 17.58.339, 17.58.340, 17.58.341, 17.58.342, and 17.58.343; and the repeal of 17.58.338 pertaining to procedures and criteria for compensation of petroleum tank remedial costs	NOTICE OF AMENDMENT (PETROLEUM BOARD)

TO: All Concerned Persons

1. On July 1, 1999, the Petroleum Tank Release Compensation Board published notice of public hearing on the proposed amendments and repeal outlined above at page 1475 of the 1999 Montana Administrative Register, Issue No. 13.

2. The Board has amended ARM 17.58.201, 17.58.301, 17.58.302, 17.58.311, 17.58.313, 17.58.323, 17.58.325, 17.58.326, 17.58.331 through 17.58.337, and 17.58.339 through 17.58.341 as proposed.

3. The Board has repealed ARM 17.58.338 as proposed.

4. The Board has amended ARM 17.58.101, 17.58.312, 17.58.342, and 17.58.343 with the following changes:

17.58.101 ORGANIZATION AND DUTIES OF BOARD (1) and (2) remain as proposed.

(3) The functions of the board are to provide a financial assurance mechanism, and to reimburse the owners or operators of eligible tanks for their expenditures in cleaning up releases and compensating third parties who live or own property near the tanks for bodily injury or property damage they may have sustained as a result of the releases. ~~The board shall develop mechanisms and procedures to ensure that corrective action plans are reviewed to determine that associated costs are reasonable and necessary.~~

(4) remains as proposed.

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

17.58.312 ELIGIBILTY REQUIREMENTS (1) and (2) remain as proposed.

(3) An owner or operator of a ~~petroleum storage~~ farm or residential tank listed below that was installed on or before April 27, 1995, is not eligible for reimbursement of otherwise eligible costs incurred after that date, unless the tank was

voluntarily removed on or before December 31, 1995:
(a) through (c) remain as proposed.

AUTH: 75-11-318, MCA
IMP: 75-11-308, MCA

17.58.342 OTHER CHARGES ALLOWED OR DISALLOWED
(1) through (3) remain as proposed.
(4) The presumptions made in (1) and (2) may be overcome ~~by evidence that the costs were actually, necessarily and reasonably incurred in furtherance of the approved corrective action plan~~ if specific circumstances warrant.

AUTH: 75-11-318, MCA
IMP: 75-11-318, MCA

17.58.343 REVIEW AND DETERMINATION OF THIRD PARTY DAMAGE COSTS (1) All claims for reimbursement of third party damages must be filed with the board. Upon receipt of the claim, the board shall determine if the claim is complete. The board shall advise the owner or operator of any incompleteness or deficiency which appears on the claim. The final review may be suspended pending the submission of additional information by the owner or operator.
(2) through (6) remain as proposed.

AUTH: 75-11-318, MCA
IMP: 75-11-309, MCA

5. The Board received the following comments; Board responses follow:

COMMENT #1: A proposed amendment to ARM 17.58.101(3) would require the Board to develop mechanisms and procedures to ensure that corrective action plans are reviewed to determine that associated costs are reasonable and necessary. This language is unnecessary, since these mechanisms are contained in the rules.

RESPONSE: The proposed language was intended to replace a repealed rule that delineated the responsibilities of the Department and Board regarding review of corrective action plans. See ARM 17.58.338, proposed for repeal because of the 1999 staff reorganization. However, the Board agrees that the proposed amendment duplicates statutory language. See Section 75-11-318(5)(c), MCA. Accordingly, the proposed amendment is deleted.

COMMENT #2: A proposed amendment to ARM 17.58.312(3) strikes the term "farm or residential tank" and replaces it with "petroleum storage tank". These two terms are not equivalent. The statute excludes certain farm and residential tanks from the definition of petroleum storage tanks. Sections 75-11-503(7) and 75-11-302(22), MCA.

RESPONSE: The proposed language is confusing, and the original language will be reinstated in response to the comment.

COMMENT #3: A proposed amendment to the definition of "tank" in ARM 17.58.311(20) would delete the reference to petroleum storage tanks as defined by statute. This broadens the definition so that it now includes farm and residential tanks, some of which are excluded by statute.

RESPONSE: Because the term "tank" is used in both the statute and the rules, the Board believes that a definition of "tank" is needed that refers only to the physical properties of tanks. The eligibility of releases from different categories of tanks is a matter that is addressed adequately in the statute and rules. Exclusions for certain farm and residential tanks are not affected by the amendment to this definition.

COMMENT #4: A proposed amendment to ARM 17.58.313 replaces the term "leaking tank" with "leaking petroleum storage tank". The term "leaking tank" should instead be replaced with "release", since under the statute "releases" are reviewed for eligibility, not leaking tanks.

RESPONSE: The Board agrees that a change from "leaking tank" to "release" would better reflect the terminology of the statute. However, this change is outside the scope of the proposed amendment. The public notice of the proposed amendments showed that the term "leaking tank" would be modified, but did not propose to replace the term with "release". The Board believes that the use of "release", in the narrow circumstances of this rule amendment, probably would not significantly alter the effect of the rule. However, the public should be allowed to comment on the change. Accordingly, the Board will defer action on this comment to a later rulemaking.

COMMENT #5: ARM 17.58.323(6) contains a delegation to staff of the Board's authority to determine eligibility for reimbursement of claims. This delegation is not authorized by statute, and may be unconstitutional. A procedure could perhaps be set up whereby the Board staff makes a decision concerning eligibility and the Board ratifies this decision.

RESPONSE: This comment raises a matter that is beyond the scope of the current amendments, which propose only to replace the term "executive director" with "board staff". The proposed amendment is necessary because the executive director position has been eliminated in the staff reorganization that was conducted pursuant to recent legislation.

On the question of delegation authority, the Board believes that delegation of initial eligibility determinations to Board staff is consistent with the constitution and applicable statutes, because the Board retains final authority to determine eligibility. It should also be noted that the scope of staff discretion to determine eligibility is limited, since there are

detailed eligibility guidelines contained in the statutes and rules. Also, as a practical matter, delegation is essential because the Board meets only periodically. Failure to delegate would cause unreasonable delay in processing of claims.

The Board is currently developing written guidance for staff regarding procedures for carrying out certain key delegated tasks. For eligibility decisions, these procedures include ratification by the Board. When the written guidance is final, the rules may be amended to refer to the specific procedures that the staff must follow. In the interim, however, no changes to the rule beyond those proposed will be made.

COMMENT #6: The comment about delegation authority is also made with respect to ARM 17.58.336, which authorizes Board staff to process and reimburse claims. Ratification by the Board would avoid the improper delegation issue.

RESPONSE: This comment also goes beyond the scope of the current amendments, which propose minor changes to staff claims processing procedures. ARM 17.58.336(3), which is the section of the rule that delegates claims reimbursement authority to staff, is not being amended at all in this rulemaking.

The Board believes that interim reimbursements by staff are necessary and proper, because the interim reimbursements are subject to final approval by the Board. As noted in the prior Response, the Board is developing specific guidance for staff regarding delegated functions. When this guidance is final, ARM 17.58.336 may be further amended to reflect the specific procedures.

COMMENT #7: In the proposed new subsection ARM 17.58.342(4), the reference to subsection (1) should be eliminated. Also, the language of the existing subsection (3) should be compared to the definitions of "reasonably, necessarily, and actually incurred" to avoid conflicts.

RESPONSE: ARM 17.58.342(1) lists types of charges that are presumed eligible for reimbursement. ARM 17.58.342(2) lists types of charges that are presumed not to be eligible. As the term "presume" implies, the Board can reach a different result if specific circumstances warrant. The proposed new subsection ARM 17.58.342(4) clarifies that the presumptions in (1) and (2) may be overcome by specific evidence.

The commentor is correct that the proposed amendment misstates the evidence required to rebut the presumption in (1). The amendment has been revised to state that the presumption in (1) may be overcome by evidence that the costs were not actually, necessarily, and reasonably incurred in furtherance of an approved corrective action plan.

Since (3) is not being amended in this rulemaking, the comment regarding that subsection is beyond the scope of this action. Subsection (3) identifies several types of charges that can be reimbursed only if the claimant obtains approval from Board staff prior to incurring the expense. The Board agrees

with the commentor that the staff can not approve these charges if they are not "reasonably, necessarily, and actually incurred". However, the Board believes that this requirement is adequately expressed in the statutes and current rules.

COMMENT #8: In the proposed amendments to ARM 17.58.343, it is suggested that the reference to "claims" for third party damages may be confused with a complaint for third party damages. It may be advisable to use the term "claim for reimbursement of third party damages".

RESPONSE: The Board agrees that the "claims" contemplated in this rule are not claims brought to the Board directly by third parties, but claims brought to the Board by an applicant who has reimbursed a third party for damages. The amendment is modified accordingly.

COMMENT #9: ARM 17.58.341 sets out a procedure in which the Board staff approves contractors' rates. The Board may determine its own allowable reimbursement rates, but it should not be determining rates for goods and services. These are functions of a free market system. The limit of the Board's involvement should be to assist parties in locating service providers. The Board should also consider an appeal process for its rate determinations. ARM 17.58.342 identifies types of charges that are presumed eligible or not eligible for reimbursement. Any presumption that a rate is unreasonable should be reviewed by an independent body. Rates and presumptions should not be set by the Board.

RESPONSE: These comments pertain to matters that are outside the scope of the present rulemaking, which makes minor changes to the rules regarding procedures for establishing eligible rates and charges. The Board is reviewing its procedures for establishment of rates and may propose rules in the future on that subject. These comments will be more fully considered at that time.

COMMENT #10: All government operations regarding fuel systems, including underground systems, should be separately regulated. Disclosure of all activities regarding government fuel systems should also be required, to avoid conflicts of interest.

RESPONSE: This comment addresses matters outside the scope of the present rulemaking.

Reviewed by: PETROLEUM TANK RELEASE COMPENSATION BOARD

John F. North by: *Tim Hornbacher*

John F. North, Rule Reviewer TIM HORNBACHER, Chair

Certified to the Secretary of State September 27, 1999.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 23.14.401, adding two members to the Peace Officers Standards and Training Advisory Council	)))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On August 12, 1999, the Department of Justice published a notice of proposed amendment of ARM 23.14.401 concerning the addition of two members to the Peace Officers Standards and Training Advisory Council at pages 1734 to 1738 of the 1999 Montana Administrative Register, Issue Number 15.

2. The department has amended ARM 23.14.401 as proposed.

3. No comments or testimony were received.

By: Chris D. Tweeten, Chief Counsel
JOSEPH P. MAZUREK
Attorney General
Department of Justice

Melanie Symons
Melanie Symons, Rule Reviewer

Certified to the Secretary of State September 27, 1999

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

In the matter of the repeal of ARM 36.12.801 through 36.12.809 pertaining to new appropriation verification procedures	))))	NOTICE OF REPEAL

TO: All Concerned Persons

1. On August 26, 1999, the Department of Natural Resources and Conservation published notice of the proposed repeal of ARM 36.12.801 through 36.12.808 concerning new appropriation verification procedures at page 1796 of the 1999 Montana Administrative Register, Issue Number 16.

2. The agency has repealed ARM 36.12.801 through 36.12.808 as proposed. In addition, it has repealed ARM 36.12.809.

AUTH: Sec. 2-4-201, MCA
IMP: Sec. 85-2-314, 85-2-315, 85-2-402, MCA

3. The agency has thoroughly considered all commentary received. The comments received and the department's response to each follow:

COMMENT: The agency noted that ARM 36.12.809 pertaining to administrative hearing and final action was inadvertently omitted from the original Notice of Proposed Repeal.

RESPONSE: The agency intended to repeal Sub-Chapter 8 in its entirety and has included ARM 36.12.809 in the repeal.

DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

By: Donald D. MacIntyre
DONALD D. MACINTYRE
Rule Reviewer

By: Arthur R. Clinch
ARTHUR R. CLINCH
Director

Certified to the Secretary of State September 27, 1999.

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

In the matter of the the adoption of rules I through XXV, and the repeal of ARM 46.10.303 and 46.10.307 pertaining to AFDC foster care	))))))	CORRECTED NOTICE OF ADOPTION AND REPEAL

TO: All Interested Persons

1. On May 6, 1999, the Department of Public Health and Human Services published notice of the proposed adoption and repeal of the above-stated rules at page 964 of the 1999 Montana Administrative Register, issue number 9, and on July 1, 1999, notice of the adoption and repeal on page 1514 of the 1999 Montana Administrative Register, issue number 13, pertaining to foster care.

2. This corrected notice is being filed to correct an error in RULE XX (ARM 37.49.502).

3. The rule is corrected as follows:

37.49.502 IV-E FOSTER CARE ELIGIBILITY: EXCLUDED RESOURCES

(1) through (1)(r) remain as adopted.

(s) any unspent portion of an earned income tax credit (EITC) advance payment or refund, in the first month after the month in which it is received; pursuant to ARM 37.49.412, EITC ~~pavements~~ payments and refunds are excluded as earned income in the month of receipt;

(1)(t) and (1)(u) remain as adopted.

AUTH: Sec. 53-2-201 and 53-6-113, MCA
IMP: Sec. 53-2-201 and 53-6-131, MCA

4. The correction noted in this notice is the result of an inadvertent typo made by the Department in the previous rulemaking notices. The word "pavement" in ARM 37.49.502(1)(s) should have been "payment".

5. All other rule changes adopted and repealed remain the same.

Rule Reviewer

Director, Public Health and Human Services

Certified to the Secretary of State September 27, 1999.

BEFORE THE COMMISSIONER OF POLITICAL PRACTICES
OF THE STATE OF MONTANA

In the matter of the amendment of rules 44.10.321, 44.10.323, 44.10.411, and 44.10.531 pertaining to reporting of contributions and expenditures	)))))	NOTICE OF AMENDMENT OF RULES

TO: All Concerned Persons

1. On April 8, 1999, the Commissioner of Political Practices published a notice of public hearing on the proposed amendment of rules pertaining to reporting of contributions and expenditures at page 635 of the 1999 Montana Administrative Register, issue number 7.

2. On June 15, 1999, at 10:00 a.m., a public hearing was held in the Public Employees Retirement Division Conference Room at 1712 9th Avenue, Helena, Montana. Written comments were accepted through June 28, 1999.

3. After consideration of the comments received, the Commissioner has amended the rules as proposed.

4. Interested persons appeared at the hearing and submitted oral and written comments. The Commissioner has thoroughly considered the comments received. Those comments, and the Commissioner's responses thereto, are as follows:

COMMENT #1: The definition of "in-kind contribution" in ARM 44.10.321 should be changed to clarify that it does not include attendance at meetings or presentations sponsored by a candidate or political committee by a person who does not contribute advice or information to the sponsoring candidate or political committee.

RESPONSE: The Commissioner has considered this comment but determines that a provision such as that proposed is unnecessary. The Legislature has defined the term "contribution," in 13-1-101, MCA, and the definition excludes certain specific activities. ARM 44.10.321 provides additional guidance regarding activities that are considered contributions. Attendance at meetings or presentations sponsored by a candidate or political committee may constitute a contribution, depending on the specific factual circumstances. If there is a question whether or not a contribution has resulted from a particular activity, that determination will be made on a case by case basis.

COMMENT #2: The addition of "coordinated expenditure," as defined in the amended version of ARM 44.10.323, to the list of "in-kind contributions" in ARM 44.10.321(2) is

unnecessary and blurs the distinction between contributions and expenditures.

RESPONSE: This change is consistent with case law regarding coordinated expenditures, and with the interpretations of the Commissioner's office regarding this issue. See, e.g., Colorado Republican Federal Campaign Comm. v. FEC, 518 U.S. 604, 617-18 (1996); Buckley v. Valeo, 424 U.S. 1, 45-46 (1976). Rather than blurring the distinction between contributions and expenditures, the amendments clarify that expenditures that are determined to have been coordinated with a candidate or political committee will be considered contributions.

COMMENT #3: The amendment adding subsection (v) to ARM 44.10.321(2) may result in a contribution to the candidate or political committee even if the distributing, republishing, or reproducing of campaign material is done without the knowledge or consent of the candidate or committee.

RESPONSE: This amendment makes it clear that such activities will be considered a contribution unless the distribution, republication, or reproduction is confined to the members, stockholders, or employees of a membership organization, as described in 13-1-101, MCA. This is consistent with Montana law and the past practice of the Commissioner's office. Reading the amendment within the context of the entire rule ensures that no "in-kind contribution" will occur unless the services, rights, or property are furnished "to a candidate or political committee . . . ." (Emphasis added). ARM 44.10.321(2). Thus, if the distribution, republication, or reproduction is done without the knowledge or consent, and entirely independent of the candidate or committee, there is no contribution, but instead an independent expenditure.

By: Linda L. Vaughey
Linda L. Vaughey
Commissioner

By: Jim Scheier
Jim Scheier
Rule Reviewer
Assistant Attorney General

Certified to the Secretary of State September 27, 1999.

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.

To aid the user, the Accumulative Table includes rulemaking actions of such entities as boards and commissions listed separately under their appropriate title number. These will fall alphabetically after department rulemaking actions.

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