MONTANA ADMINISTRATIVE REGISTER

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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 3

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 The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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

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NOTICE SECTION

BEFORE THE BOARD OF OUTFITTERS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed amendment of rules pertaining to licensure--renewal, guide or professional guide license, safety provisions, standards for outfitters, guides and professional guides - unprofessional conduct and misconduct	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF 8.39.508 LICENSURE--RENEWAL, 8.39.514 LICENSURE - GUIDE OR PROFESSIONAL GUIDE LICENSE, 8.39.704 SAFETY PROVISIONS, 8.39.709 STANDARDS FOR OUTFITTERS, GUIDES AND PROFESSIONAL GUIDES - UNPROFESSIONAL CONDUCT AND MISCONDUCT

TO: All Interested Persons:

1. On March 10, 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 amendments will read as follows: (new matter underlined, deleted matter interlined)

"8.39.508 LICENSURE--RENEWAL (1) and (1)(a) will remain the same.

(b) ~~a copy of the licensee's current basic first aid or cardiopulmonary resuscitation card (outfitters, guides, and professional guides)~~ an affidavit signed and notarized, verifying that the licensee has current first aid training and is able to produce a current first aid card upon request;

(1)(c) through (4) will remain the same."

Auth: Sec. 37-1-131, 37-47-201, MCA; IMP, Sec. 37-47-201, 37-47-302, 37-47-303, 37-47-304, 37-47-306, 37-47-307, 37-47-312, MCA

"8.39.514 LICENSURE - GUIDE OR PROFESSINAL GUIDE LICENSE

(1) will remain the same.

(2) A new, first time applicant who has not previously been licensed with the Montana board of outfitters must submit proof of current basic first aid ~~or cardiopulmonary resuscitation~~ certification no later than 90 days after the date of application.

(3) A new applicant who has previously been licensed with the Montana board of outfitters must submit proof of current basic first aid ~~or cardiopulmonary resuscitation~~ certification with his or her application.

(4) through (5)(d) will remain the same."

Auth: Sec. 37-1-131, 37-47-201, MCA; IMP, Sec. 37-47-201, 37-47-301, 37-47-307, MCA

"8.39.704 SAFETY PROVISIONS (1) Outfitters are required to hold a current basic first aid ~~or cardiopulmonary resuscitation~~ card at all times licensed.

(2) Except for the one-time, 90-day exemption provided for new, first-time applicants in ARM 8.39.514(2), guides and professional guides are required to hold a current basic first aid ~~or cardiopulmonary resuscitation~~ card at all times licensed.

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

Auth: Sec. 37-47-201, MCA; IMP, Sec. 37-47-201, MCA

"8.39.709 STANDARDS FOR OUTFITTERS, GUIDES, AND PROFESSIONAL GUIDES - UNPROFESSIONAL CONDUCT AND MISCONDUCT

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

(n) not employ or retain a new, first-time licensed guide or professional guide after the 90th day following the date of the guide's or professional guide's application for licensure without first confirming that the guide or professional guide has current basic first aid ~~or cardiopulmonary resuscitation~~ certification;

(o) not employ or retain a previously licensed guide or professional guide without first confirming that the guide or professional guide has current basic first aid ~~or cardiopulmonary resuscitation certification~~; or

(1)(p) through (3)(o) will remain the same."

Auth: Sec. 37-1-319, 37-47-201, 37-47-341, MCA; IMP, Sec. 37-1-312, 37-47-341, MCA

REASON: The Board is retaining the first aid requirement as it is clear such a requirement is necessary for protection of public health, safety and welfare. However, it is also sufficient if the licensee is able to demonstrate compliance when requested rather than every year at renewal time. This rule removes the burden from the licensee and the board and will only be required when the board requests demonstration of compliance.

The CPR requirement is being dropped as it is clear CPR in the field is minimally effectual and that first aid is a better method of protecting public health.

3. The Department of Commerce will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you wish to request an accommodation, contact the Department no later than 5:00 p.m., March 1, 1999, to advise us of the nature of the accommodation that you need. Please contact Debra Tomaskie, Board of Outfitters, 111 N. Jackson, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 444-3738; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 444-1667. Persons with disabilities who need an alternative accessible format of this document in order to participate in this rule-making process should contact Debra Tomaskie.

4. Interested persons may present their data, views or arguments either orally or in writing at the hearing. Written

data, views or arguments may also be submitted to the Board of Outfitters, 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., March 11, 1999.

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

6. Persons who wish to be informed of all Board of Outfitters 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, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513 or by phone at (406) 444-3738.

BOARD OF OUTFITTERS
ROBIN CUNNINGHAM, CHAIRMAN

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

Annie M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, January 29, 1999.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the adoption of new RULES I and II, and the amendment of ARM 17.8.1301, 17.8.1302, 17.8.1305, 17.8.1306, and 17.8.1310 through 17.8.1313, pertaining to air quality transportation and general conformity determinations	)	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION AND AMENDMENT (AIR QUALITY)

TO: All Interested Persons

1. On March 24, 1999, at 10 a.m. or as soon thereafter as the matter may be heard, the Board will hold a public hearing in Room 240 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed adoption and amendment of the above-captioned rules.

The Board will make reasonable accommodations for persons with disabilities who wish to participate in this hearing. If you need an accommodation, contact the Board no later than 5 p.m., February 25, 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.

2. The rules, as proposed to be adopted, appear as follows:

RULE I DEFINITIONS (1) For the purposes of this subchapter, terms have the meaning as defined in 40 CFR 93.152.

(2) For the purposes of this subchapter and 40 CFR Part 93, subpart B, as adopted by reference in this subchapter, the following additional definitions apply:

(a) "MPO" means metropolitan planning organization and is that organization designated as being responsible, together with the state, for conducting the continuing, cooperative, and comprehensive planning process under 23 USC 134 and 49 USC 1607. This includes the MPOs in Billings, Great Falls and Missoula, any successors to these MPOs, and any MPO that is subsequently created for any area.

(b) "State air quality agency" means the Montana department of environmental quality ("department" or "DEQ"), or its successor agency.

AUTH: 75-2-111, MCA; IMP: 75-2-202, MCA.

RULE II INCORPORATIONS BY REFERENCE (1) For the purposes of this subchapter, the board hereby adopts and incorporates herein by reference the following:

(a) 40 CFR Part 93, subpart B, which requires the conformity of general federal actions, other than those covered by subpart A, to state or federal implementation plans, with the following changes:

(i) the reference to 40 CFR Part 51, subpart T, in 40 CFR 93.153(a), is replaced by ARM 17.8.1301, et seq.

(ii) the references to 40 CFR Part 51, subpart T, and 40 CFR 93, subpart A, in 40 CFR 93.158(a)(5)(ii) are replaced by ARM 17.8.1301, et seq.

(iii) 40 CFR 93.160(f) is replaced by: "written commitments to mitigation measures must be obtained prior to a positive conformity determination and such commitments must be fulfilled."

(iv) 40 CFR 93.160(g) is replaced by: "Any agreements, including mitigation measures, necessary for a conformity determination will be both state and federally enforceable. Enforceability through the state implementation plan (SIP) will apply to all persons who agree to mitigate direct and indirect emissions associated with a federal action for a conformity determination."

AUTH: 75-2-111, MCA; IMP: 75-2-202, MCA.

3. The rules, as proposed to be amended, appear as follows. Matter to be added is underlined. Matter to be deleted is interlined.

17.8.1301 DEFINITIONS (1) For the purposes of this subchapter, terms have the meaning as defined in 40 CFR 93.101, except that the definition of "regionally significant project" is modified below.

(2) For the purposes of this subchapter and 40 CFR Part 93, subpart A, as adopted by reference in this subchapter, the following additional definitions apply:

(a) "Adoption or approval of a regionally significant project" means, for the purposes of 40 CFR 93.121, the first time action necessary to authorize a project occurs, such as the issuance of administrative permits for the facility or for construction of the facility, the execution of a contract to construct the facility, any final action of a board, commission or administrator authorizing or directing employees to proceed with construction of the project, or any written decision or authorization from the metropolitan planning organization or the local agency that the project may be adopted or approved.

(a) Remains the same, but is renumbered (b).

~~(b)~~ (c) "MPO" means a metropolitan planning organization created pursuant to 23 CFR Part 450, subpart C (Metropolitan Transportation Planning and Programming) for the purpose of carrying out transportation planning in urban areas. This includes the MPOs in Billings, Great Falls and Missoula, any successors to these MPOs, and any MPO that is subsequently created for any area.

(c) and (d) remain the same, but are renumbered (d) and (e).

~~(e)~~ (f) "State air quality agency" means the Montana department of environmental quality ("department" or "DEQ") or its successor agency.

~~(f)~~ (g) "State department of transportation" means the Montana department of transportation ("MDT") provided for in 2-15-2501, MCA, or its successor agency.

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

17.8.1302 INCORPORATIONS BY REFERENCE (1) For the purposes of this subchapter, the board hereby adopts and incorporates herein by reference the following:

(a) 40 CFR Part 93, subpart A, which sets forth the conformity to state or federal implementation plans of transportation plans, programs and projects developed, funded or approved under Title 23 USC or the Federal Transit Act~~,~~ with the following changes:

(i) 40 CFR 93.102(d) is not incorporated;

(ii) 40 CFR 93.105 is not incorporated. ARM 17.8.1305 and 17.8.1306 replace 40 CFR 93.105(b) and (c)(7). ARM 17.8.1310 replaces 40 CFR 93.105(c)(1) through (3), and (6). ARM 17.8.1311 replaces 40 CFR 93.105(c)(4) and (5). ARM 17.8.1312 replaces 40 CFR 93.105(d). ARM 17.8.1313 replaces 40 CFR 93.105(e). All references in the incorporated regulations are adjusted accordingly.

(iii) the second sentence of 40 CFR 93.112 is not incorporated.

(iv) 40 CFR 93.119(c)(2), after "calendar year 1990," is not incorporated.

(v) 40 CFR 93.122(a)(4)(ii) is rewritten "The written commitments to control measures that are not included in the transportation plan and transportation improvement program must be obtained prior to a conformity determination and such commitments must be fulfilled."

(vi) 40 CFR 93.125(c) is rewritten "Written commitments to mitigation measures must be obtained prior to a positive conformity determination and project sponsors must comply with such commitments."

~~(b) 60 FR 40098 which sets forth amendments to Subpart A: transition to the control strategy period; and~~

~~(c) 60 FR 57179 which sets forth amendments to Subpart A: miscellaneous revisions.~~

(2) Remains the same.

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

17.8.1305 CONSULTATION REQUIREMENTS: APPLICABILITY (1) The consultation procedures set out in this subchapter must be utilized by the department and local air quality agencies in developing applicable ~~implementation~~ air quality control plans, and by the federal highway administration (FHWA)

and federal transit administration (FTA), MDT, MPOs, and local transportation planning agencies in making conformity determinations or in deciding that a conformity determination is not necessary because a revision to a transportation plan or transportation improvement program ~~("TIP")~~ merely adds or deletes an exempt project listed in 40 CFR Part 93, subpart A.

(2) Tables A through E below identify the specific actions for which consultation is required under this subchapter, and ~~set out~~ specify the parties, timing, methods, and documentation required for ~~such~~ consultations.

TABLE A

ACTION: Research and Data Collection.

RESPONSIBLE ENTITY: MDT, DEQ, MPO, local air quality and transportation planning agencies.

Action Step	Consult with	When to Consult	Consultation Method	Consultation Documentation
1. Design/ scheduling/fund-ing of research and data collection for transportation related air quality inventories, transportation modeling, or planning efforts	Local air and transpor-tation agencies, MPO, DEQ, MDT	before starting research or data collection	letter of notification (meet at consulted agency request)	Not required
2. Completion of project	Same as above	project completion	distribute summary of findings	Not required

TABLE B
ACTION: Preparation or revision of emission inventory (involving transportation-related emission sources).
RESPONSIBLE ENTITY: Local air quality agency or DEQ.

Action Step	Consult with	When to Consult	Consultation Method	Consultation Documentation
1. Selection of methods, models, assumptions, data sources for determining transportation emissions	Local transportation and air agencies, MPO, DEQ, MDT, EPA, FHWA, FTA	Before starting analysis using these parameters	letter of notification (meet at consulted agency request)	Describe consultation, response, and response use in draft inventory
2. Release of draft emission inventory	Same as above	Release of draft inventory	distribution of draft inventory	Discuss in final inventory
3. Release of final emission inventory	Same as above	Release of final inventory	distribution of final inventory *	Not required

* If consultation on draft does not result in any revisions, distribution of a separate final document is not required. In this case consulted agencies may simply be notified that the draft has been adopted as final.

TABLE C

ACTION: Preparation or revision of ~~state implementation~~ air quality control plan ~~(SIP)~~.
RESPONSIBLE ENTITY: Local air quality agency or DEQ.

Action Step	Consult with	When to Consult	Consultation Method	Consultation Documentation
1. Selection of methods, models, assumptions, data sources for determining transportation-related emissions*	Local transportation and air ~~agency~~ agencies, MPO, DEQ, MDT, FTA, FHWA, EPA	Before starting analysis using these parameters	letter of notification (meet at consulted agency request)	Describe consultation, response, and response use in draft ~~SIP~~ control plan

Action Step	Consult with	When to Consult	Consultation Method	Consultation Documentation
2. Selecting transportation-related control strategies, transportation control measures (TCMs), and proposed transportation emissions budget	Same as above	Before strategy/ TCM selection and budget allocation	letter of notification (meet at consulted agency request)	Discuss in draft ~~SIP~~ control plan
3. Distribution of draft ~~SIP control~~ plan	same as above	Release of proposed ~~SIP~~ control plan	distribute proposed ~~SIP~~ control plan	Written response to consulted agency comment
4. State conflict resolution appeal period, per ARM 17.8.1312	Local transportation and air ~~agency~~ agencies, MPO, DEQ, MDT	Initiated by responsible entity written response to comments on draft	appeals to governor by consulted agencies	Discuss comments on draft, appeals (if any), and appeal resolution in final document
5. Adoption of final ~~SIP control~~ plan (emission budget determination)	Local transportation and air ~~agency~~ agencies, MPO, DEQ, MDT, FHWA, FTA, EPA	upon end of appeal period or resolution of any appeals	distribute final ~~SIP~~ control plan **	not required

* Consultation at this step is not required if these factors are unchanged from those used in an emission inventory on which consultation requirements were fulfilled.
** If consultation on draft does not result in an appeal to the governor or in any revisions to the draft, distribution of a separate final document is not required. In this case consulted agencies may simply be notified that the draft has been adopted as final.

TABLE D

ACTION: Transportation Conformity Determination (for Transportation Plan, Transportation Improvement Program (TIP), Transportation Project, and Hot-Spot Analyses.
RESPONSIBLE ENTITY: ~~Metropolitan planning office~~ MPO (MDT outside metropolitan areas and for issues covered in ARM 17.8.1310(1)(h) and (i)).

** NOTE ** For guidance relating to the specific action steps required for plan, TIP, project, or hot-spot analysis (and directions for accomplishing those steps) refer to 40 CFR Part 93.

Action Step	Consult with	When to Consult	Consultation Method	Consultation Documentation
1. Selection of methods, models, assumptions, data sources, and routes (including any minor arterials and projects otherwise exempted) to be used in emissions analysis*	Local transportation and air ~~agency~~ agencies, DEQ, MDT, FHWA, FTA, EPA	before starting analysis using these parameters	letter of notification (meet at consulted agency request)	Discuss consultation, response, and response use in draft determination
2. Identify projects to be included in the analysis (include exempt projects treated as non-exempt)*	same as above	upon initial selection and any revisions during analysis	same as above	Same as above
3. Determine TCM implementation status per 40 CFR 93.113*	same as above	before starting emission analysis	same as above	Discuss in draft conformity determination
4. Draft conformity determination release	same as above	before or with draft plan, TIP, or project document release	distribute determination	Written response to comment on draft determination

Action Step	Consult with	When to Consult	Consultation Method	Consultation Documentation
5. State conflict resolution appeal period, per ARM 17.8.1312	Local air and transportation ~~agency~~ agencies, MPO, DEQ, MDT	initiated by responsible entity written response to comments on draft determination	appeals to governor by consulted agencies	Discuss comments on draft, appeals (if any), and appeal resolution in final determination
6. Responsible entity final conformity determination	FHWA, FTA (notify local air and transportation ~~agency~~ agencies, MPO, DEQ, MDT)	upon conclusion of appeal period or resolution of any appeals	distribute and request concurrence from FHWA and FTA	Not required
7. Conformity determination concurrence by FHWA and FTA	Local air and transportation ~~agency~~ agencies, DEQ, MDT, FHWA, FTA, EPA	upon notice of FHWA and FTA concurrence	distribute final plan, TIP, or project document	Summarize consultation process and conformity determination in final plan, TIP, or project document

* Consultation on these steps will often be done concurrently.

TABLE E

ACTION: Determination that a transportation plan or TIP revision or amendment merely adds or deletes exempt projects listed in 40 CFR 93.134.

RESPONSIBLE ENTITY: ~~Metropolitan planning office~~ MPO or MDT.

Action Step	Consult with	When to Consult	Consultation Method	Consultation Documentation
1. Identification of projects included in the revision or amendment and initial finding that all are exempt and do not hinder TCM implementation	Local transportation and air ~~agency~~ agencies, DEQ, MDT, FHWA, FTA, EPA	upon preliminary determination that all projects are exempt	letter of notification (meet at consulted agency request)	describe consultation, response, and response use in notice of final determination
2. Determination that all included projects are exempt and do not interfere with TCM implementation	same as above	upon responsible entity determination	same as above	not required
OR 3. Determination that one or more included projects are not exempt or do interfere with TCM implementation	same as above	upon responsible entity determination	same as above	implement conformity determination process, per Table D

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

17.8.1306 CONSULTATION PROCEDURES (1) and (1)(a) Remain the same.

(b) The responsible entity shall provide sufficient information to provide a basis for meaningful consultation. If the supporting materials for a particular action are too voluminous for reasonable circulation, the responsible entity shall summarize and ~~indicate the~~ make ~~availability~~ available the ~~of~~ materials not circulated. The responsible entity shall

provide additional information upon request of a consulted agency.

(c) and (d) Remain the same.

(2) ~~On or before 60 days after the effective date of this rule, the department shall contact the federal, state and local government agencies anticipated to be involved in the actions requiring consultation pursuant to 40 CFR Part 93, subpart A or this subchapter. DEQ shall ascertain the organizational level within each such agency that will be responsible for coordinating the agency's consultation involvement. The department shall request each federal, state and local government agency to identify one contact office/official for all consultation contacts. DEQ shall compile a list of these contacts.~~ For purposes of consultation contacts, the department shall maintain a list of offices and officials from each federal, state and local government agency involved in actions requiring consultation pursuant to 40 CFR Part 93. The department shall distribute the list to all involved agencies, and update the list as necessary.

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

17.8.1310 SPECIAL ISSUES (1) In conducting consultations pursuant to ARM 17.8.1306, responsible entities shall ensure that the following special issues are addressed, when applicable:

(a) evaluating and choosing a model or models and associated methods and assumptions to be used in hot-spot analyses and regional emissions analyses (see Table D, action step number 1);

(b) determining which minor arterials and other transportation projects should be considered "regionally significant" for the purposes of regional emissions analysis (in addition to those functionally classified as principal arterial or higher or fixed guideway systems or extensions that offer an alternative to regional highway travel) (see Table D, action step number 1), and which projects should be considered to have a significant change in design concept and scope from the transportation plan or TIP (see Table D, action step number 2);

(c) evaluating whether projects otherwise exempted from meeting the requirements of 40 CFR Part 93, subpart A (see 40 CFR 93.134 and 93.135) should be treated as non-exempt in cases where potential adverse emissions impacts may exist for any reason (see Table E);

(d) determining, as required by 40 CFR 93.113(c)(1), whether past obstacles to implementation of transportation control measures ("TCMs") that are behind the schedule established in the applicable implementation plan have been identified and are being overcome, and whether state and local agencies with influence over approvals or funding for TCMs are giving maximum priority to approval or funding for TCMs. This process shall also consider whether delays in TCM implementation

necessitate revisions to the applicable implementation plan to remove TCMs or substitute TCMs or other emission reduction measures (see Table D, action step number 3);

~~(e) determining, as required by 40 CFR 93.129(b), whether a project is included in the regional emissions analysis supporting the currently conforming TIP, even if the project is not strictly "included" in the TIP for the purposes of MPO project selection or endorsement, and whether a project's design concept and scope have changed significantly from those included in the regional emission analysis, or in a manner which would significantly alter use of the facility;~~

~~(f)~~ (e) identifying, as required by 40 CFR 93.131(d), projects located at sites in PM_{10} nonattainment areas which have vehicle and roadway emission and dispersion characteristics which are essentially identical to those at sites which have violations verified by monitoring, and therefore require quantitative PM_{10} hot-spot analysis (see Table D, action step number 1);

(f) choosing conformity tests and methodologies for isolated rural nonattainment and maintenance areas as required by 40 CFR 93.109(g)(2)(iii) (see Table D, action step number 1);

(g) determining which transportation plan or TIP revisions or amendments merely add or delete exempt projects listed in 40 CFR Part 93, subpart A (see Table E);

(h) consulting on emissions analysis for transportation activities which cross the borders of MPOs or nonattainment areas or air basins (see Table D, action step number 1);

(i) whenever the MPO does not include the entire nonattainment or maintenance area, determining conformity of all projects outside the metropolitan area and within the nonattainment or maintenance area (see Table D, action step number 1);

(j) designing, scheduling, and funding research and data collection efforts and regional transportation model development by the MPO or MDT (e.g., household/travel transportation surveys) (see Table A, action step number 1).

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

17.8.1311 NOTICE REQUIREMENTS FOR NON-FHWA/FTA PROJECTS

(1) Any state or local agency having the authority for planning or approving the construction of non-~~federal highway administration/federal transit administration (FHWA/FTA)~~ transportation projects (including those by recipients of funds designated under Title 23 USC or the Federal Transit Act) shall ensure that the MPO and MDT are informed of project plans and plan changes on a timely basis. This requirement includes projects for which alternative locations, design concept and scope, or the no-build option are still being considered. Notice to the MPO and MDT must be in accordance with the following procedures:

(a) and (b) Remain the same.

(c) If a project has not been disclosed to the responsible entity in accordance with (a) above and is subsequently disclosed and determined to be regionally significant, the project must be deemed not to meet the requirements of 40 CFR ~~93.129~~ 93.121 for adoption, approval, or funding.
AUTH: 75-2-111, MCA; IMP, 75-2-202, MCA

17.8.1312 CONFLICT RESOLUTION (1) Conflicts among state agencies or between state agencies and an MPO or a local agency that arise during consultations conducted pursuant to this subchapter may be appealed to the governor as follows if the conflict cannot be resolved by the ~~heads of the~~ affected agencies~~. For conflicts involving such state or local entities, the following procedures apply~~:

(a) through (2) Remain the same.
AUTH: 75-2-111, MCA; IMP: 75-2-202, MCA

17.8.1313 PUBLIC CONSULTATION PROCEDURES (1) The following public consultation procedures must be adhered to during actions required by 40 CFR Part 93, subpart A, or this subchapter:

(a) Remains the same

(b) MPOs and MDT shall utilize a proactive public involvement process which provides opportunity for public review and comment by, at a minimum, providing reasonable public access to technical and policy information considered by the agency at the beginning of the public comment period and prior to taking formal action on ~~a~~ conformity determinations for all transportation plans and TIPs, consistent with the requirements of 23 CFR Part 450.316(b). Any charges imposed for public inspection and copying must be consistent with the fee schedule contained in 49 CFR 7.95, except that state agency charges must be consistent with the governor's April 9, 1996, or most current, guidelines for responding to requests for access to, and/or copying, of agency documents. In addition, ~~these~~ state agencies shall specifically address in writing all public comments that known plans for a regionally significant project that is not receiving FHWA or FTA funding or approval have not been properly reflected in the emissions analysis supporting a proposed conformity finding for a transportation plan or TIP. ~~These~~ State agencies shall also provide opportunity for public involvement in conformity determinations for projects where otherwise required by law.
AUTH: 75-2-111, MCA; IMP: 75-2-202, MCA

4. The Board proposes to adopt and incorporate by reference the latest revisions to the federal transportation conformity regulations and to adopt and incorporate by reference the federal general conformity regulations. The Federal Clean Air Act (CAA) requires the Environmental Protection Agency (EPA) to promulgate regulations to ensure that federal actions conform

to state implementation plans (SIPs), designed to eliminate, or reduce the severity and number of, violations of the national ambient air quality standards (NAAQS) and achieve expeditious attainment of such standards. EPA's transportation conformity regulations apply to all federal highway and transit transportation actions approved under the Federal Highway Act (23 USC 101, et seq.) or the Federal Transit Act (40 USC 1601, et seq.) that occur within an air quality nonattainment area. EPA's general conformity regulations apply to all federal actions, other than those related to highway and transit transportation, that occur within an air quality nonattainment area.

On November 30, 1993, EPA promulgated general conformity regulations, regarding direct and indirect air pollution emissions or their precursors that are reasonably foreseeable as a result of federal actions and can practicably be controlled by the federal agency responsible for those actions. On August 15, 1997, EPA promulgated revisions to its transportation conformity regulations. The revisions to the federal transportation conformity regulations provide state and local governments more authority in selecting the performance measures used as tests of conformity and more discretion when a transportation plan does not conform to an air quality control plan within the SIP.

The CAA requires each state to adopt the federal transportation and general conformity regulations and subsequent revisions and submit the state rules to EPA for approval as a SIP revision, to demonstrate protection of the NAAQS. Under the CAA, failure to adopt the federal conformity regulations may result in an EPA finding of SIP inadequacy and result in economic sanctions being placed on the state.

The Board is also proposing to make minor editorial revisions to the state transportation conformity rules to clarify the rules and make them easier to read.

5. Interested persons may submit their data, views or arguments concerning the proposed rules 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 April 2, 1999. To be guaranteed consideration, the comments must be postmarked on or before that date.

6. Jim Wheelis, Board Attorney, has been appointed to preside over and conduct the hearing.

Reviewed by: BOARD OF ENVIRONMENTAL REVIEW

David Rusoff By: *Joe Gerbase*

David Rusoff, JOE GERBASE, Chairperson
Rule Reviewer

Certified to the Secretary of State January 29, 1999.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of 17.38.215 pertaining to bacteriological quality samples for public water supply systems	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT (PUBLIC WATER SUPPLY)

TO: All Interested Persons

1. On March 23, 1999, at 2 p.m. or as soon thereafter as the matter may be heard, the Board will hold a public hearing in Room 240 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment of the above-captioned rule.

The Board will make reasonable accommodations for persons with disabilities who wish to participate in this hearing. If you need an accommodation, contact the Board no later than 5 p.m., March 15, 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.

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

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

(b) The supplier of water for a transient non-community water system shall sample according to the table in (a) above, except that:

~~(i) beginning August 1, 1990,~~ a supplier of water for a transient non-community water system that uses only groundwater that is not under the direct influence of surface water and serves a maximum daily population of 1,000 persons or fewer shall sample for coliform bacteria in each calendar ~~quarter~~ month during which the system provides water to the public unless ~~required to sample more frequently~~ allowed to sample quarterly as provided in (c) or (d) below. The department may not, however, grant permission to sample quarterly pursuant to (c) for a minimum of 24 months of system operation after a system initially becomes regulated under this rule.

~~(ii) uses surface water or groundwater under the direct influence of surface water must sample according to the table in (a) above.~~

(c) Upon the written request of the water supplier, the department may reduce the required sampling frequency for coliform bacteria for a transient non-community public water supply system that uses only groundwater and serves a maximum daily population of 1,000 persons or fewer to once in each calendar quarter during which the system provides water to the

public if the department determines that quarterly sampling is adequate to protect public health. This determination must be based upon the results of coliform bacteria samples from the past 24 months of system operation, sanitary surveys and any other information that indicates quarterly sampling is adequate.

(d) A water supplier who is allowed to sample quarterly pursuant to (c) above or who was authorized to conduct quarterly sampling on [the day before the effective date of this rule amendment] may continue to sample quarterly except that:

(i) if E. coli bacteria or other microorganisms commonly found only in the intestinal tract of warm-blooded animals are detected in coliform bacteria samples taken under the requirements of this chapter, the supplier shall sample at least monthly, or more frequently if required by the department, until valid samples that do not contain coliform bacteria have been taken for at least 12 consecutive months of system operation. However, if the department determines before expiration of the 12-month period that the source of the contamination has been positively identified and removed, the department may allow the supplier to monitor in accordance with (c) above.

(ii) if a maximum contaminant level violation occurs as a result of coliform bacteria samples taken under the requirements of this chapter, the supplier shall sample at least monthly, or more frequently if required by the department pursuant to (e) below, until valid samples that do not contain coliform bacteria have been taken for at least 12 consecutive months of system operation. If the department determines before expiration of the 12-month period that the source of the contamination has been positively identified and removed, the department may allow the supplier to monitor in accordance with (c) above.

(iii) a supplier who fails to submit the required routine or repeat samples in two or more quarters during any consecutive four calendar quarters of operation shall sample at least monthly for at least 12 consecutive months.

(iv) a supplier who constructs a system or system components without approval or who has modified a system without approval pursuant to 75-6-112, MCA, and ARM 17.38.101 shall sample at least monthly, or more frequently if required by the department pursuant to (e) below, until the supplier has submitted plans and specifications in accordance with 75-6-112, MCA, and ARM 17.38.101 and the system modifications have been approved and the department has reduced sampling frequency pursuant to (c) above.

(v) if the department determines and notifies a supplier that its source or distribution system is vulnerable to contamination based upon the results of a sanitary survey, sample analyses, technical investigations or other scientifically defensible information, the supplier shall sample at least monthly, or more frequently if required by the department pursuant to (e) below. If the department determines that the source of the contamination has been positively

identified and removed, the department may allow the supplier to monitor in accordance with (c) above.

(vi) a supplier that does not maintain or operate a system in accordance with the requirements of this chapter may be required to sample monthly, or more frequently if required by the department pursuant to (e) below, if the department determines that the violation may affect the microbiological quality of the water supply system. If the department determines that appropriate improvements in maintenance and operation have been implemented, it may allow the supplier to monitor in accordance with (c) above. A supplier shall implement any increase in sampling frequency immediately upon receipt of written notice of the increase from the department.

(e) The department may increase the required sampling frequency of any public water supply system based upon sampling results or other conditions that indicate a risk to the health of the water users. The department shall provide a written explanation to the supplier of any revised sampling requirements. A supplier shall implement any increase in sampling frequency immediately upon receipt of written notice of the increase from the department.

(2) through (8) Remain the same.

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

3. On June 25, 1998, ARM 17.38.215 was amended to reduce bacteriological sampling from monthly to quarterly for transient non-community public water supply systems that use groundwater and serve a maximum daily population of 1,000 people or fewer. (1998 Montana Administrative Register, page 1730) On August 3, 1998, the Missoula City-County Health Department (MCCHD) submitted a petition to the Board of Environmental Review to implement rulemaking. The petition requested amendments to the rule that would require transient non-community public water supply systems that use groundwater and serve a maximum daily population of 1,000 people or fewer to sample monthly, but it would allow systems that met certain criteria to monitor quarterly.

The Board denied the petition, primarily because agreement could not be reached over the quarterly monitoring criteria. However, the Board directed Department staff to meet with representatives of MCHHD and other interested parties to develop the criteria under which quarterly monitoring would be allowed. The Department has now done so and these proposed amendments are the result of those discussions.

The Board has determined that quarterly sampling as provided in the current rule may not adequately protect public health, and that monthly sampling should be the basic requirement. Groundwater flow directions may change locally in unconfined groundwater aquifers during a calendar quarter. Contaminants may be carried from a contaminant source toward a transient water supply well during a period of changing flow

direction. Similar risks may occur when groundwater levels rise in unconfined aquifers during periods of runoff in streams or during flood irrigation. Microbiological contaminants from nearby septic systems that have been adsorbed onto soil particles during periods of lower groundwater levels may be flushed into the groundwater as levels rise. These contaminants may then be transported seasonally into a transient water supply well during a period of higher groundwater levels. Quarterly sampling may not be sufficiently frequent to provide detection of contamination during one of these periods of higher risk before the public is unnecessarily exposed to waterborne disease.

Additionally, the Board has determined that quarterly monitoring will be protective for certain systems that have monthly sampling records for 24 months. Because of the cost associated with monthly sampling, the Board is proposing to allow those operators to apply for Department approval to decrease sampling frequency. The Board has determined that those operators whom the Department recently allowed to sample quarterly should be allowed to continue that sampling frequency because the Department allowed those persons to sample quarterly based on sampling records showing no apparent source contamination problems.

4. Interested persons may submit their data, views or arguments concerning the proposed rules 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 April 2, 1999. To be guaranteed consideration, the comments must be postmarked on or before that date.

5. Jim Wheelis, Board Attorney, has been appointed to preside over and conduct the hearing.

Reviewed by: BOARD OF ENVIRONMENTAL REVIEW

David Rusoff By: *Joe Gerbase*

David Rusoff, Rule Reviewer

JOE GERBASE, Chairperson

Certified to the Secretary of State January 29, 1999.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.8.705 and 17.8.733 and the repeal of 17.8.708, regarding de minimis changes that may be made to a facility without an application to revise the facility's air quality permit	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT (AIR QUALITY)

TO: All Interested Persons

1. On March 24, 1999, at 2 p.m. or as soon thereafter as the matter may be heard, the Board will hold a public hearing in Room 111 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment and repeal of the above-captioned rules.

The Board will make reasonable accommodations for persons with disabilities who wish to participate in this hearing. If you need an accommodation, contact the Board no later than 5 p.m., March 17, 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.

2. The rules, as proposed to be amended, appear as follows. Matter to be added is underlined. Matter to be deleted is interlined.

17.8.705 WHEN PERMIT REQUIRED--EXCLUSIONS (1) Except as hereafter specified, no person shall construct, install, alter or use any air contaminant source or stack associated with any source without first obtaining a permit from the department or the board. A permit is not required for the following:

(a) through (o) Remain the same.

(p) temporary process or emission control equipment, replacing malfunctioning process or emission control equipment, and meeting the requirements of ARM 17.8.110(7); ~~and~~

(q) routine maintenance, repair or replacement of equipment; and

(r) de minimis changes as specified below:

(i) construction or changed conditions of operation at a facility holding an air quality preconstruction permit issued under this chapter that do not increase the facility's potential to emit by more than 15 tons per year of any pollutant except:

~~(i)~~ (A) any construction or changed conditions of operation at a facility that would violate any condition in the facility's existing air quality preconstruction permit or any applicable rule contained in this chapter is prohibited, except

as provided in ~~ARM 17.8.733(1)(e)~~ (2) below;

~~(ii)~~ (B) any construction or changed conditions of operation at a facility that would qualify as a major modification of a major stationary source under subchapters 8, 9, or 10 of this chapter;

~~(iii)~~ (C) any construction or changed conditions of operation at a facility that would affect the plume rise or dispersion characteristics of the emissions in a manner which would cause or contribute to a violation of an ambient air quality standard or an ambient air increment, as defined in ARM 17.8.804; ~~and~~

~~(iv)~~ (D) any construction or improvement project with a potential to emit more than 15 tons per year may not be artificially split into smaller projects to avoid air quality preconstruction permitting under this subchapter~~.~~; and

(E) emission reductions obtained through offsetting within a facility are not included when determining the potential emission increase from construction or changed conditions of operation, unless such reductions are made federally enforceable.

(ii) Any facility making a de minimis change pursuant to (r)(i) above shall notify the department if the change would include a change in control equipment, stack height, stack diameter, stack flow, stack gas temperature, source location, or fuel specifications, or would result in an increase in source capacity above its permitted operation or the addition of a new emissions unit.

(iii) The following are excluded from the notice requirements of (r)(ii) above:

(A) day-to-day fluctuations of the parameters described in (r)(ii) above, occurring as a result of the design or permitted operations of the facility, including start-up and shutdown of emission sources at the facility; and

(B) addition, modification, or replacement of pumps, valves, flanges and similar emission sources. The department shall develop, maintain, and update a list of emission sources it believes qualify for exclusion from the notice requirements. Upon request, the department shall provide a copy of the list to interested persons.

(iv) If notice is required under (r)(ii) above, the permittee shall submit the following information to the department in writing 10 days prior to start-up or use of the proposed de minimis change or as soon as reasonably practicable in the event of an unanticipated circumstance causing the de minimis change:

(A) a description of the proposed de minimis change requiring notice, including the anticipated date of the change;

(B) sufficient information to calculate the potential emissions resulting from the proposed de minimis change; and

(C) if applicable, an explanation of the unanticipated circumstance causing the change.

(v) The notice requirements under (r)(iv) above do not supersede, or otherwise change, any requirements in 40 CFR Parts 60, 61, or 63.

(2) An air quality preconstruction permit may be modified pursuant to ARM 17.8.733(2), for changes made under (1)(r) above that would otherwise violate an existing condition in the permit. Conditions in the permit concerning control equipment specifications, operational procedures, or testing, monitoring, record keeping, or reporting requirements may be modified if the modification does not violate any statute, rule, or the state implementation plan. Conditions in the permit establishing emission limits, or production limits in lieu of emission limits, may be changed or added under (1)(r), if requested by the applicant.

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

17.8.733 MODIFICATION OF PERMIT (1) An air quality permit may be modified for the following reasons:

(a) Remains the same.

(b) changed conditions of operation at a source or stack which do not result in an increase in emissions because of the changed conditions of operation, except as provided under ARM 17.8.705(2). Except as provided under ARM 17.8.705(2), ~~A~~ a source may not increase its emissions beyond those found in its permit unless the source applies for and receives another permit in accordance with the procedures found in ARM 17.8.706, 17.8.710, 17.8.715 and 17.8.720, and with all applicable requirements in ARM Title 17, chapter 8, subchapter 8~~, or~~.

~~(c) changes made under ARM 17.8.705(1)(q) that would violate an existing condition in the air quality preconstruction permit. Conditions in the air quality preconstruction permit concerning control equipment specifications, operational procedures, or testing, monitoring, record keeping, or reporting requirements may be modified if the modifications do not violate any applicable requirement of any statute, rule or the state implementation plan. Conditions in the air quality preconstruction permit establishing emission limits, or production limits in lieu of emission limits, may not be changed or added under this rule.~~

(2) Remains the same.

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

3. ARM 17.8.708, as proposed to be repealed, may be found on page 17-440 of the Administrative Rules of Montana.

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

4. The Board is proposing to add a new subsection ARM 17.8.705(1)(q) to clarify that an air quality preconstruction permit is not required for routine maintenance, routine repair, or routine equipment replacement. This amendment is necessary to clarify that these activities do not constitute actions requiring a permit under Section 75-2-211, MCA, or ARM 17.8.705.

The Board is proposing to repeal ARM 17.8.708 and add the provisions of that rule, along with the provisions of ARM

17.8.733(1)(c), to ARM 17.8.705. These changes would place all of the requirements applicable to de minimis changes in one rule. Presently, these provisions are included in three separate rules. Combining the requirements in one rule is necessary to ensure that regulated entities have proper notice of the requirements and to ensure that all readers are aware of, and can understand, the requirements.

The Board is proposing to amend ARM 17.8.733(1)(b) to reference the de minimis requirements of ARM 17.8.705. This is necessary to avoid inconsistency between the two rules.

The Board is proposing to add a new subsection ARM 17.8.705(1)(r)(E) clarifying that only federally enforceable emission reductions obtained through offsetting may be considered when determining whether a change at a facility increases emissions by no more than 15 tons per year. This amendment is necessary to ensure that facilities do not violate federal or state requirements that are based on certain levels of potential emissions.

The Board is proposing to revise the current requirement of annual notice to the Department of de minimis changes to notice within 10 days prior to start-up or use of the proposed change, or as soon as reasonably practicable, when a change results from an unanticipated circumstance. This amendment is necessary to allow the Department to timely update permits, provide compliance assistance, and gather information for the Department's database. The Board is proposing to exclude addition, modification or replacement of certain minor emission sources, such as pumps, valves and flanges, from the notice requirement. Notice of such minor activities, which do not significantly affect air quality, would be unnecessary. The Board is proposing to specify the information that must be included in a notice of a de minimis change. These amendments are necessary to ensure that the Department has sufficient information to determine whether a change meets the requirements of a de minimis change and to allow the Department to make any necessary permit modifications.

5. Interested persons may submit their data, views or arguments concerning the proposed rules 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 April 2, 1999. To be guaranteed consideration, the comments must be postmarked on or before that date.

6. Jim Wheelis, Board Attorney, has been appointed to preside over and conduct the hearing.

Reviewed by: BOARD OF ENVIRONMENTAL REVIEW

David Rusoff By: *Joe Gerbase*
David Rusoff, JOE GERBASE, Chairperson
Rule Reviewer

Certified to the Secretary of State January 29, 1999.

BEFORE THE BOARD OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of proposed adoption of rules I through XI as they relate to chronic wasting disease	))))	NOTICE OF PUBLIC HEARING

TO: ALL INTERESTED PERSONS:

1. On March 12, 1999, at 7:00 p.m. the department of livestock will hold a public hearing in the Scott Hart Auditorium located in the Scott Hart Building at 301 N. Roberts St., in Helena, Montana to consider the adoption of new rules I through XI. These rules are proposed for adoption because the emergency rules imposed at page 3115 of the 1998 Montana Administrative Register, Issue No. 22, are due to expire.

2. The proposed new rules provide as follows:

NEW RULE I DEFINITIONS In this subchapter, the following terms have the meanings or interpretations indicated below and must be used in conjunction with and supplemental to those definitions contained in 87-4-406, MCA, ARM 32.4.101, and any subsequent department rule or order.

(1) "Animal" means a cervid.

(2) "Cervidae or cervid" means all members of the Cervidae family including deer, elk, moose, caribou, reindeer and related species and hybrids thereof. Cervidae includes wild cervids, those animals on game farms, and those animals owned by zoos and other public or private captive facilities not licensed as game farms.

(3) "Chronic wasting disease" or "CWD" means a transmissible spongiform encephalopathy of cervids.

(4) "CWD affected cervid" or "affected animal" means a cervid diagnosed with CWD based on laboratory procedures.

(5) "CWD affected cervid herd" or "affected herd" means a cervid herd from which any cervid has been diagnosed with CWD.

(6) "CWD exposed cervid" or "exposed animal" means a cervid that is from an affected herd or for which epidemiological investigation indicates contact with CWD affected cervids or contact with cervids from a CWD affected herd.

(7) "CWD exposed cervid herd" or "exposed herd" means cervids that are an affected herd or for which epidemiological investigation indicates contact with CWD affected cervids or contact with cervids from a CWD affected herd.

(8) "CWD monitored cervid herd" means a herd of game farm cervids that has complied with the CWD surveillance requirements outlined in NEW RULE II.

(9) "CWD monitored herd status" means a designation made by the department that indicates the number of years a game farm cervid herd has complied with CWD surveillance criteria.

(10) "CWD test eligible cervids" means cervids, excluding wild cervids, 16 months of age or greater that die for any reason.

(11) "CWD trace herd" or "trace herd" is a cervid herd where an affected animal resided within 36 months prior to its death, or any cervid herd which received animals from a CWD affected or exposed herd within 36 months of the death of a CWD affected animal.

(12) "Epidemiological investigation" means the scientific investigation conducted to determine the specific cause and source of a disease outbreak and to determine the population affected or exposed to the disease.

(13) "Exporting herd" means a herd of cervids in another state or province from which a Montana importation permit is requested to allow the shipment of cervids into Montana.

(14) "Herd of origin" means the herd into which an animal is born.

(15) "Herd plan" means a written herd management plan that is designed by the herd owner and the state veterinarian in which each participant agrees to undertake actions specified in the herd plan to prevent, control or eradicate chronic wasting disease from an affected, exposed or trace herd while reducing human or wildlife exposure to the disease. The herd plan will include, but is not limited to, the appropriate herd test or surveillance frequencies, tests to be employed, and any additional disease or herd management practices deemed necessary to prevent, control, or eradicate a disease from the herd in an efficient and effective manner.

(16) "High-risk animal" means a cervid that may have been exposed to chronic wasting disease. The state veterinarian will determine which animals within a herd are high-risk animals.

(17) "Hold order" means a restriction placed on an identified population of animals prohibiting their movement from the premise, a portion of a premise or contact with other animals on the premise.

AUTH: 81-2-103, MCA
IMP: 81-2-103, MCA

NEW RULE II REQUIREMENTS FOR MANDATORY SURVEILLANCE OF MONTANA GAME FARM CERVIDAE FOR CHRONIC WASTING DISEASE

(1) The licensee must present his entire herd annually for inspection by a designated agent of the department. The department will verify each game farm animal's identification and the game farm animal inventory must reconcile with the department's records.

(2) The licensee must report all game farm animal deaths

to the department (Helena office) within 1 day of the discovery of death as required by 87-4-415, MCA.

(3) Upon the discovery of dead cervids, the licensee must immediately request an inspection of the game farm animal as required by ARM 32.4.301. At the time of the inspection of the dead animal, the alternative livestock veterinarian shall remove the currently required tissue samples and/or specimens and submit them to a department approved laboratory for testing for chronic wasting disease (CWD).

(a) Tissue samples and/or specimens must be submitted from all CWD test eligible game farm cervids unless a waiver to tissue sample and/or specimen submission has been granted by the state veterinarian in accordance to (3)(b).

(b) The state veterinarian may, at his discretion, grant a waiver to tissue sample and/or specimen submission from game farm cervids if the following conditions are met:

(i) The licensee's herd is of CWD monitored herd status level I or greater (or the equivalent thereof), as required by NEW RULE III, and the animal has not had contact with animals of lesser status.

(ii) The animal for which a waiver is requested must have resided on the licensee's game farm for 12 months or have resided in the herd from which it is transported for a period of 12 months.

(iii) The licensee must be in compliance with all requirements of Title 87, chapter 4, part 4, MCA and rules promulgated pursuant to this part.

(iv) The licensed game farm must have no documented cases of ingress of wild cervids or egress of game farm animals within the 18-month period immediately preceding the request for a waiver.

(c) The state veterinarian may grant a waiver with stipulations that may include, but is not limited to, additional whole herd inspections. A waiver from CWD surveillance does not exempt the licensee from any other requirements for inspection or testing of game farm animals.

(d) The state veterinarian may not grant a waiver to the mandatory surveillance required in this rule for an entire herd or for a cervid from a herd that has been identified as a CWD affected, exposed or trace herd.

(e) The licensee is responsible for all costs incurred for the examination of game farm cervids, the inspection services, the collection and submission of tissue sample and/or specimens, and the laboratory diagnostic costs.

(4) Failure to comply with the requirements of this rule may result in the following:

(a) The monitored status of the herd may be reduced to "monitored, status unknown."

(b) The cervid herd may be placed under a hold order for 48 months.

(c) The department may consider failure to comply with

this rule as a violation of 87-4-427, MCA.

(5) Any person having knowledge that a game farm cervid has been diagnosed as affected with CWD or exposed to CWD must report that knowledge to the department as required by ARM 32.4.1001.

AUTH: 81-2-103, MCA
IMP: 81-2-103, MCA

NEW RULE III GAME FARM MONITORED HERD STATUS FOR CHRONIC WASTING DISEASE (1) The game farm cervid herd shall be assigned a monitored herd status by the department at the conclusion of each year of mandatory CWD surveillance as follows:

(a) "CWD monitored, status unknown" is the status of a herd prior to completion of the initial year of surveillance or the status of a herd that fails to meet the mandatory surveillance requirements in NEW RULE II.

(b) The "CWD monitored herd status," levels I through V are designations that correspond with the number of years of completed surveillance with no confirmation of CWD in the herd.

(i) Level I is the status of a herd after completion of one year of required surveillance.

(ii) Level II is the status of a herd after completion of two years of required surveillance.

(iii) Level III is the status of a herd after completion of three years of required surveillance.

(iv) Level IV is the status of a herd after completion of four years of required surveillance.

(v) Level V is the status of a herd after completion of five or more years of required surveillance.

(c) "CWD monitored, status pending" is the status of a herd that has been identified as a CWD affected, exposed, or trace herd.

AUTH: 81-2-103, MCA
IMP: 81-2-103, MCA

NEW RULE IV CHANGES IN MONITORED HERD STATUS FOLLOWING CERVID ADDITIONS TO A GAME FARM HERD (1) Additions to a cervid herd (interstate and intrastate) may alter the monitored herd status of the recipient herd as follows:

(a) If the added cervid is from a CWD monitored herd status equal to or greater than the recipient herd, the CWD monitored herd status of the recipient herd will remain the same.

(b) If the added cervid is from a herd with a CWD monitored herd status less than the recipient herd, the CWD monitored herd status of the recipient herd will be reduced to the status of the lowest status cervid added.

(c) A newly assembled herd, on premises where CWD has never been diagnosed, retains the CWD monitored herd status of the cervids purchased. If cervids are from different monitored status herds, the newly assembled herd has the CWD monitored herd status of the lowest status animal.

AUTH: 81-2-103, MCA
IMP: 81-2-103, MCA

NEW RULE V IMPORT REQUIREMENTS FOR CERVIDS (1) All imported cervids, including wild cervids, game farm and publicly or privately owned captive animals, must meet the import requirements of ARM Title 32, chapter 3, subchapter 2, Title 81, chapter 2, part 7, MCA, ARM 32.4.601, and any other rules or orders issued by the department under the authority of 81-2-103, MCA.

(2) The department may allow importation of cervids from other states or provinces if the following criteria are met:

(a) The animal has sufficient identification to enhance trace back capabilities.

(b) The animal has resided in the exporting herd for a minimum of 12 months immediately prior to importation or a satisfactory, complete animal movement history from herd of origin is provided to the department prior to importation into Montana.

(c) The exporting herd has participated in a CWD surveillance program that meets the department's requirements for a minimum of 12 months prior to importation into Montana.

(3) The state veterinarian may deny importation from states that do not meet the following requirements:

(a) the state of origin must have the legal means of control and/or disposition of CWD affected, exposed or trace herds;

(b) the state of origin must have the power and authority to quarantine CWD affected, exposed or trace herds; and

(c) if CWD has been confirmed in any herds within the state of origin, the state veterinarian of that state must have completed an epidemiological investigation and identified all CWD affected, exposed or trace herds.

(4) Documentation fulfilling the requirements of (1), (2) and (3) must be provided to the department at the time of application for an import permit.

AUTH: 81-2-707, MCA
IMP: 81-2-707, MCA

NEW RULE VI DIAGNOSTIC PROCEDURES FOR CWD (1) Tests for CWD must be conducted at a department approved laboratory.

(2) The tissue samples and/or specimens required under NEW RULE II shall be determined by the state veterinarian.

(3) The state veterinarian may approve new technology and test protocols for the detection of CWD as they are validated.

AUTH: 81-2-103, MCA
IMP: 81-2-103, MCA

NEW RULE VII MANAGEMENT OF GAME FARM CERVID HERDS IDENTIFIED AS CWD TRACE HERDS (1) The requirements for the disposition of game farm cervid CWD trace herds is as follows:

(a) The licensee must comply with CWD surveillance of the herd as outlined in NEW RULE II.

(b) The licensee shall present the entire herd for inspection and inventory within 30 days of notification by the state veterinarian.

(c) The state veterinarian or his designee shall complete an epidemiological investigation of the herd.

(d) The state veterinarian shall identify high-risk animals within the herd.

(i) The entire herd shall be placed under a hold order and shall be restricted from movement from the premise for a period of 12 months from the date of death of the CWD affected cervid traced to the herd.

(ii) The high-risk animals may be placed under an extended hold order or quarantine for a period of 48 months.

(iii) High-risk animals shall be restricted from contact with other animals in the herd.

(iv) The licensee may sacrifice all high-risk animals and submit tissue samples and/or specimens from each CWD test eligible animal in accordance to NEW RULE II. If all high-risk animals are sacrificed and no CWD positive animal is identified, the hold order on the remaining animals will be reviewed for release.

(e) The licensee shall meet with the state veterinarian and develop a herd plan within 30 days of the herd inventory and inspection date as required under (1)(b).

(f) The CWD monitored herd status will be designated as "CWD monitored, status pending" until the hold order is released.

AUTH: 81-2-103, MCA
IMP: 81-2-103, MCA

NEW RULE VIII MANAGEMENT OF GAME FARM CERVID HERDS WITH AT LEAST ONE ANIMAL DIAGNOSED WITH CWD AND WITH LOW PROBABILITY OF CWD TRANSMISSION (1) Disposition of cervid herds identified to have had a CWD affected animal, but with the low probability of CWD transmission within the herd is as follows:

(a) The licensee must comply with CWD surveillance of the herd as outlined in NEW RULE II.

(b) The licensee shall present the entire herd for inspection and inventory within 10 days of notification by the state veterinarian.

(c) The state veterinarian or his designee shall complete an epidemiological investigation of the herd.

(d) The state veterinarian shall identify high-risk animals within the herd.

(i) The entire herd shall be placed under quarantine and shall be restricted from movement from the premise for a period of 12 months from the date of death of the CWD affected cervid.

(ii) High-risk animals shall be restricted from contact with other animals in the herd.

(iii) After the 12-month quarantine period, high-risk animals shall placed under a hold order for an additional period of 36 months.

(iv) The licensee may sacrifice all high-risk animals and submit tissue samples and/or specimens from each CWD test eligible animal in accordance to NEW RULE II. If all high-risk animals are sacrificed and no CWD positive animal is identified, the restrictions placed on the remaining animals will be reviewed for release.

(e) The licensee shall meet with the state veterinarian and develop a herd plan within 30 days of the herd inventory and inspection date as required under (1)(b).

(f) The monitored herd status will be designated as "monitored, status pending" until the hold order is released.

AUTH: 81-2-103, MCA
IMP: 81-2-103, MCA

NEW RULE IX MANAGEMENT OF GAME FARM CERVID HERDS WITH AT LEAST ONE ANIMAL DIAGNOSED WITH CWD AND WITH THE PROBABILITY OF CWD TRANSMISSION (1) Disposition of cervid herds with a CWD confirmed diagnosis and the probability of CWD transmission within the herd is as follows:

(a) The licensee must comply with CWD surveillance of the herd as outlined in NEW RULE II.

(b) The licensee shall present the entire herd for inspection and inventory within 10 days of notification of the state veterinarian.

(c) The state veterinarian shall complete an epidemiological investigation of the herd.

(d) The state veterinarian shall identify high-risk animals within the herd.

(i) The entire herd shall be placed under a quarantine for a period of 36 months from the date of death of the last CWD affected animal.

(ii) High-risk animals shall be restricted from contact with other animals in the herd.

(iii) After the 36-month quarantine period, the high-risk

animals may be placed under a hold order for an additional 12 months.

(iv) The licensee may sacrifice all high-risk animals and submit tissue samples and/or specimens from each CWD test eligible animal in accordance to NEW RULE II. If all high-risk animals are sacrificed and no CWD positive animal is identified, the herd will remain under quarantine for 3 years from the last diagnosed case.

(e) The licensee shall meet with the state veterinarian and develop a herd plan within 15 days of the herd inventory and inspection date as required under (1)(b).

(f) The herd will be designated as "monitored, herd status pending."

AUTH: 81-2-103, MCA
IMP: 81-2-103, MCA

NEW RULE X ENHANCEMENT OF TRACE BACK AND OBSERVATION CAPABILITIES (1) All high-risk animals shall be identified with a unique, easily read identification tag provided by the department. This identification may be in addition to the game farm identification required in 87-4-414, MCA and subsequent rules.

(2) The state veterinarian may require a unique, individual tattoo to be placed on high-risk or quarantined animals, in addition to the herd tattoo required in 87-4-414, MCA and ARM 32.4.201.

AUTH: 81-2-103, MCA
IMP: 81-2-103, MCA

NEW RULE XI REQUIREMENTS FOR CAPTIVE CERVIDAE, OWNED BY OR IN THE POSSESSION OF ZOOS, INDIVIDUALS OR OTHER PUBLIC FACILITIES NOT LICENSED AS GAME FARMS (1) The owner or manager of a public or privately owned zoo or confinement facility not licensed as a game farm must comply with the requirements of NEW RULE II and NEW RULE V.

AUTH: 81-2-707, MCA
IMP: 81-2-707, MCA

3. Adoption of the new rules is necessary for the purpose of allowing the department of livestock the perceived need for flexibility in dealing with a disease scenario involving chronic wasting disease.

4. Interested parties may submit their data, views or arguments concerning the proposed new rules orally or in writing, at the hearing. Written data, views or arguments may also be submitted to the Department of Livestock, 301 N. Roberts St. - Room 307, PO Box 202001, Helena, MT 59620-2001.

Any comments must be received no later than March 13, 1999.

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

6. The board of livestock maintains a list of interested persons who wish to receive notices of rule making actions proposed by this department. 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. Such written request may be mailed or delivered to the Department of Livestock, 301 N. Roberts St. - Room 307, PO Box 202001, Helena, MT 59620-2001, or faxed to the office at (406)444-1929.

MONTANA BOARD OF LIVESTOCK
JOHN PAUGH, CHAIRMAN

By: _____
Marc Bridges, Acting Exec. Officer
Board of Livestock
Department of Livestock

By: _____
Lon Mitchell, Rule Reviewer
Livestock Chief Legal Counsel

Certified to the Secretary of State January 29, 1999.

BEFORE THE DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment of a rule pertaining to renewal dates) NOTICE OF AMENDMENT OF ARM 8.2.208 RENEWAL DATES

TO: All Interested Persons:

1. On December 3, 1998, the Department of Commerce published a notice of proposed amendment of the above-stated rule at page 3178, 1998 Montana Administrative Register, issue number 23.

2. The Department has amended the rule exactly as proposed.

3. No comments or testimony were received.

DEPARTMENT OF COMMERCE

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

Annie M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, January 29, 1999.

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

In the matter of the amendment of a rule pertaining to graduate training requirements for foreign medical graduates	NOTICE OF AMENDMENT OF ARM 8.28.403A GRADUATE TRAINING REQUIREMENTS FOR FOREIGN MEDICAL GRADUATES

TO: All Interested Persons:

1. On October 22, 1998, the Board of Medical Examiners published a notice of public hearing on the proposed amendment of the above-stated rule at page 2786, 1998 Montana Administrative Register, issue number 20. The hearing was held on November 12, 1998, in Helena, Montana.

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

3. No comments or testimony were received.

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

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

Annie M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, January 29, 1999.

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

In the matter of the adoption of a new rule pertaining to curriculum approval for applicants for acupuncture license	))))	NOTICE OF ADOPTION OF NEW RULE I (8.28.511) CURRICULUM APPROVAL

TO: All Interested Persons:

1. On November 5, 1998, the Board of Medical Examiners published a notice of public hearing on the proposed adoption of the above-stated rule at page 2936, 1998 Montana Administrative Register, issue number 21. The hearing was held on January 22, 1999, in Helena, Montana.

2. The Board has adopted the rule exactly as proposed.

3. The Board has thoroughly considered all comments and testimony received. Those comments, and the Board's responses thereto, are as follows:

COMMENT NO. 1: Several comments were received in support of the new rule.

RESPONSE: The Board acknowledged receipt of the comments.

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

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

Annie M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, January 29, 1999.

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

In the matter of the amendment of rules pertaining to definitions, unprofessional conduct and the adoption of a new rule pertaining to NCCPA certification	)	NOTICE OF AMENDMENT OF 8.28.1501 DEFINITIONS, 8.28.1522 UNPROFESSIONAL CONDUCT AND THE ADOPTION OF NEW RULE I (8.28.1523) MAINTAINING NCCPA CERTIFICATION

TO: All Interested Persons:

1. On October 22, 1998, the Board of Medical Examiners published a notice of public hearing on the proposed amendment and adoption of the above-stated rules at page 2783, 1998 Montana Administrative Register, issue number 20. The public hearing was held on November 12, 1998, in Helena, Montana.

2. The Board has amended ARM 8.28.1501 and 8.28.1522, and adopted new rule I (8.28.1523) exactly as proposed. ARM 8.28.1505 was not amended as proposed because the Board has determined that the amendment may be in conflict with CI-75 passed by a vote of the people of Montana on November 3, 1998.

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

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

Annie M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, January 29, 1999.

BEFORE THE BOARD OF SANITARIANS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment of rules pertaining to examinations and sanitarian-in-training	)))	NOTICE OF AMENDMENT OF ARM 8.60.410A EXAMINATION AND 8.60.415 SANITARIAN-IN-TRAINING

TO: All Interested Persons:

1. On November 5, 1998, the Board of Sanitarians published a notice of proposed amendment of the above-stated rules at page 2939, 1998 Montana Administrative Register, issue number 21.

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

3. The Board has thoroughly considered all comments and testimony received. Those comments, and the Board's responses thereto, are as follows:

COMMENT NO. 1: Commentor recommended a maximum number of four attempts to pass the examination to ensure that the sanitarian-in-training (SIT) passes the examination based upon skill rather than test familiarization.

RESPONSE: The Board agrees with the concept of limiting the number of examinations and that the current rule will meet that objective. As a practical matter, it would be impossible to take the sanitarian licensing examination more than four times a year. There is a one month period following application in which the examination is ordered and an examination time is set and, after the examination, a two-month waiting period for results totaling a three-month examination cycle. The maximum number of examination cycles in a one-year period is four.

COMMENT NO. 2: Commentor suggested that the board allow a six-month extension afterward in which the SIT could take the examination at the end.

RESPONSE: The Board rejects this comment. The comment, if adopted, would result in an 18-month exemption period. The Board is not willing to extend the period at this time.

BOARD OF SANITARIANS
DENISE MOLDROSKI, CHAIRMAN

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

Annie M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, January 29, 1999.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.8.321, regarding opacity limits and other requirements for kraft pulp mills	)	NOTICE OF AMENDMENT (AIR QUALITY)

TO: All Interested Persons

1. On September 10, 1998, the Board of Environmental Review published notice of public hearing on the proposed amendment outlined above at page 2398 of the 1998 Montana Administrative Register, Issue No. 17.

2. Three alternative amendments to the rule have been proposed. The three alternatives represent the proposed approach of Stone Container Corporation (ALTERNATIVE I), Missoula County (ALTERNATIVE II), and the Department of Environmental Quality (ALTERNATIVE III).

On October 9, 1998, the Board conducted a public hearing in Missoula for the purpose of receiving public comment. A transcript of the hearing was taken and it is included in the Board file on this matter. Substantial public input was received in the form of written comments and documentation submitted prior to, during, and after the public hearing, as well as oral comments submitted during the public hearing.

3. After consideration of the comments received, the Board has amended 17.8.321 with the changes identified below. Matter to be added is underlined. Matter to be deleted is interlined.

17.8.321 KRAFT PULP MILLS (1) through (8) Remain the same.

(9) No person may cause or authorize to be discharged into the outdoor atmosphere, from any recovery furnace installed after November 23, 1968, emissions that exhibit ~~30%~~ 20% opacity or greater averaged over 6 consecutive minutes for more than 6% of the 6-minute time periods during which a source is operating within any calendar quarter. ~~For recovery furnaces, this opacity limitation supersedes any other opacity limitation contained in this chapter, including ARM 17.8.304 and 17.8.340.~~

(10) No person may cause or authorize to be discharged into the outdoor atmosphere, from any recovery furnace installed after September 4, 1976, emissions that exhibit 20% opacity or greater averaged over 6 consecutive minutes for more than 3% of the 6-minute time periods during which a source is operating within any calendar quarter.

(11) For the purposes of this rule, excess opacity emissions means any 6-minute average opacity of 35% or greater for any recovery furnace installed on or before November 23, 1968, and 20% or greater for any recovery furnace installed after November 23, 1968.

(12) No person may cause or authorize to be discharged into

the outdoor atmosphere, from any recovery furnace subject to (9) or (10), emissions that exhibit 20% opacity or greater averaged over a 24-hour period, starting at 5 a.m. each calendar day.

(13) During any period of excess opacity emissions, any person subject to (8), (9), or (10) must operate the recovery furnaces and associated control equipment in accordance with good air pollution control practices for minimizing emissions.

~~(10)~~ (14) Any person subject to (8), ~~or~~ (9), or (10) of this rule shall install, calibrate, maintain, and operate a continuous opacity monitoring system (COMS) to monitor and record the opacity of emissions discharged into the atmosphere from any recovery furnace subject to this rule. ~~This~~ The COMS shall ~~comply~~ be installed, calibrated, maintained, and operated in compliance with the requirements of 40 CFR Part 60.13 and Appendix B thereto, performance specification 1. In addition, the COMS shall comply with any other requirements of 40 CFR Part 60 regarding the installation, calibration, maintenance, and operation of COMS for kraft pulp mill recovery furnaces and any other applicable requirement in this chapter regarding the installation, calibration, maintenance, and operation of COMS.

~~(11)~~ (15) COMS will be the primary measure of compliance with the opacity limits specified in (8), ~~or~~ (9), and (10) of this rule, except that ~~the department may use another appropriate method of determining compliance, as specified in the Montana source test protocol and procedures manual, including the test method contained in~~ 40 CFR Part 60, appendix A, method 9, may be used as a measure of compliance when ~~the department has~~ there is reason to believe that COMS data is not accurate or when COMS data is unavailable.

~~(12)~~ (16) Any person subject to ~~(10)~~ (14) of this rule shall report every time period of excess opacity emissions from any recovery furnace, as determined by the COMS or other compliance determination method as provided for in (15), and shall report every time period when the COMS was not operational. ~~For the purposes of this report, excess emissions means any 6-minute average opacity of 35% or greater for any recovery furnace installed on or before November 23, 1968, or 30% or greater for any recovery furnace installed after November 23, 1968.~~ These reports must be submitted on forms provided by the department and must be made in compliance with department procedures and applicable requirements for submittal of excess emissions reports. These reports must be submitted to the department quarterly, within 30 days after the end of each calendar quarter.

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

4. The Board received the following comments; Board responses follow:

COMMENT #1: Numerous commentors are disappointed that a 10% opacity standard is not one of the alternatives before the Board. These commentors, including several environmental

groups, support adoption of a 10% opacity standard for the #4 recovery furnace. On the last day of the comment period a petition was filed by Cold Mountain, Cold Rivers, Native Forest Network, and Montana Cheer, that presented a fourth alternative for the Board to consider: 10% opacity limit for the #4 recovery furnace, and 20% opacity limit for the #3 and #5 recovery furnaces and new recovery furnaces. According to petitioners, this alternative is supported by over 11,000 local citizens, 200 area businesses and 17 statewide citizen groups.

RESPONSE: The Board has separately addressed the petition filed by Cold Mountain, Cold Rivers, Native Forest Network, and Montana Cheer, and in an order dated December 15, 1998, has denied the petition. However, the petition was filed within the comment period, and the Board indicated that it will consider the petition and the proposal contained in the petition as a comment in this proceeding.

The Board has previously determined it is inappropriate to expand this proceeding to include the suggested fourth alternative. Accordingly, the Board generally characterizes these comments as urging the Board to reject the three alternatives proposed in this proceeding because they do not adequately protect public health. These commentors believe the proposed fourth alternative represents the type of limits that are necessary to achieve this goal. Proponents of these limits acknowledge the limits would require the addition of control equipment to the #4 recovery furnace at the Stone Container Corporation (Stone Container or Stone) facility, at a cost as high as $5 million dollars.

For various reasons, the Board disagrees that a 10% opacity standard is necessary to protect public health and the environment. The National Ambient Air Quality Standards (NAAQS) for PM-10 are the health-based standards currently in effect, and they include a margin of safety in part to account for scientific uncertainty. As described by the EPA representative, the State Implementation Plan (SIP) is the means by which the NAAQS are protected. The SIP, and local control plans, include those restrictions found in rules and regulations, and air quality permits issued on a facility-specific basis. Department representatives pointed out the existing PM-10 control plan for Missoula establishes enforceable mass particulate emission limits for various sources, including the recovery furnaces at Stone Container, and that these limits were sufficient to demonstrate attainment with the NAAQS.

The Board is cognizant that a more stringent opacity standard can further limit particulate emissions beyond those mass limits contained in the Stone air quality permit. Given the unique circumstances in Missoula (described below), this could offer further protection to public health and the environment beyond that assured by the NAAQS. However, and as discussed below, the future restrictions to be imposed for fine particulates and hazardous air pollutants are uncertain.

Further, the current control equipment on the recovery furnaces has tested 99.7% and 99.9+% collection efficiency for furnaces #4 and #5, respectively, and the recovery furnaces are relatively small contributors to current PM-10 ambient air levels in the designated Missoula nonattainment area. Although various commentors disagree on the actual contribution of PM-10 from the recovery furnaces, the estimates vary from negligible (less than 1%) to 3%. Accordingly, the Board is reluctant at this time to pick any opacity limit that would require significant capital expenditures for new pollution control equipment.

COMMENT #2: Many commentors suggest that the pending NAAQS for PM-2.5 should cause the Board to adopt the most stringent opacity limit. Some of these commentors point to a 1995-1996 analysis by the Missoula City-County Health Department (MCCHD) that showed the recovery furnaces to contribute 7% of total PM-2.5 emissions in the Missoula airshed. Similarly, other commentors focus on the fine particulates emitted by the recovery furnaces, and the propensity of these fine particulates to mix with other toxic substances. Several commentors advise erring on the side of stringency and requiring the most advanced current technology, since there is uncertainty surrounding the mechanisms by which pollution damages health.

RESPONSE: As noted by several commentors, including representatives of the MCCHD and EPA, it will be a few years before sufficient data have been collected to assess the compliance status of the Missoula area in regard to the PM-2.5 NAAQS. Although predictions of compliance were offered by Stone's consultant, the Board does not believe it is appropriate to engage in speculation regarding the potential for attainment or nonattainment.

The Board is sensitive to the effects of fine particulates on public health, particularly with regard to children, and the mixture of fine particulates with toxic substances. The Board's decision in this matter recognizes that the Missoula area has unique characteristics that can exacerbate air pollution. This concern is balanced against the regulatory uncertainty surrounding the PM-2.5 NAAQS and the regulation of hazardous air pollutants, Stone's relatively small contribution to current measured ambient levels, and the costs associated with requiring new control equipment.

COMMENT #3: Approximately 15 commentors express concerns that a more stringent opacity standard would adversely affect Stone Container's contribution to the local economy or would compel Stone Container to lay off employees. Some commentors fear Stone Container might cease operations if more stringent standards are imposed.

RESPONSE: The Board recognizes that environmental regulation can

have an economic impact. In this instance, and as described above, the Board does not believe it is appropriate to adopt an opacity standard that would require significant capital expenditures by Stone for new pollution control equipment. The opacity standard adopted by the Board is one which the Board believes is economically feasible and would not necessitate major capital investment. The amended rule may entail some minor operating changes, but the Board believes such changes would not significantly affect Stone's production costs, nor contribute to a corporate decision to cease operations or lay off employees.

COMMENT #4: Approximately 4 commentors believe air quality in the Missoula valley is currently much cleaner than in the past. These commentors assert that Stone is accomplishing the goal of cleaning up its emissions without being subjected to a more stringent standard.

RESPONSE: The Board does not believe the amended rule is a punitive measure, and points out that Stone has agreed to its adoption. The amended rule is an equipment-specific standard which, in its application to Stone, acknowledges the company's contribution to recent improvements in air quality, but recognizes the unique needs of the Missoula airshed.

COMMENT #5: Approximately 22 commentors express concerns regarding the adverse effects of air pollution on human health and the environment. Several testify to suffering illnesses they believed were linked to Stone's emissions, although many acknowledge the difficulty in establishing this connection, given the contribution of other sources. Others are concerned about visibility impairment during winter inversions. Many commentors emphatically urge the Board to avoid causing further degradation of air quality through the adoption of a less stringent rule.

RESPONSE: The Board agrees that further degradation of existing air quality in the Missoula valley must be avoided, and that the Missoula airshed has unique qualities that can make compliance with health-based standards more complex. Protecting public health and the environment is of paramount importance to the Board. As discussed below, the selected opacity standards are an incremental improvement over the former standards and will provide a proportional benefit to air quality.

COMMENT #6: Several commentors point out that other sources besides Stone Container are primarily responsible for particulate air quality problems in the Missoula valley. These commentors believe Stone Container's contribution is insignificant and that further tightening the opacity standard is without merit. In contrast, numerous other commentors question the equity of placing stringent air quality

restrictions on other sources, but not imposing strict standards upon Stone, the second largest stationary source of particulate in the valley.

RESPONSE: While the Board acknowledges Stone Container's contribution to particulate levels in the designated Missoula nonattainment area may be small, it is not insignificant. The equity issue is important, and Stone must do its part to further the goal of improving air quality in the Missoula airshed, commensurate with the facility's quantified contribution to particulate levels. Accordingly, the Board is adopting stricter opacity standards, but standards that are achievable using existing control technology. Further, under the amended rule Stone is required to use good air pollution control practices which will further the overall goal of improving air quality. The Board believes this rule represents a fair and equitable solution that balances these concerns.

COMMENT #7: Several commentors express their beliefs that exceedance allowances are inappropriate, and result in a substantial weakening of existing requirements in the State Implementation Plan (SIP). A few commentors raise the concern that exceedance allowances could result in unlimited pollution. Some commentors believe this could result in large mass particulate limit violations, and, possibly, violation of the NAAQS, with no enforcement recourse. Many of these commentors are also concerned about setting a precedent, which will then be sought by other sources. However, other commentors believe Stone Container will be unable to function without some kind of exceedance allowance.

RESPONSE: The Board believes that, given the nature of the kraft recovery process, the variability inherent in operation of the kraft recovery furnaces, and Stone's efforts to minimize that variability, it is reasonable to provide for an exceedance allowance, while further tightening the opacity standards. EPA's adoption of an exceedance allowance in New Source Performance Standards (NSPS) confirms the acceptability of this regulatory tool. The Board views these particular circumstances as extremely narrow and limited.

The Board does not agree that the exceedance allowance, as adopted in the final rule, will allow for conditions that could jeopardize compliance with the PM-10 NAAQS, or represents "backsliding" in the SIP. As noted above, the purpose of the SIP is to protect the NAAQS. As part of the Missoula control plan, Stone's air quality permit contains mass particulate emission limits for the recovery furnaces that are the basis for demonstrating attainment in the Missoula nonattainment area. These limits are not changed by the opacity standards, and are separately enforceable.

The relationship between the opacity and mass particulate limits supports the Board's decision. Much of the concern

expressed seemed to focus on the ability of Stone to exceed its daily and monthly average mass particulate emission limits at the #4 recovery furnace. According to data supplied by the Department, holding the #4 recovery furnace to a daily opacity limit of 20%, as in the amended rule, will keep the mass emissions well below the daily (1253 lbs./day) and monthly average (928 lbs./day) mass emission limits. Assuming a fairly constant correlation, this conclusion is also supported by the data provided by MCCHD. The Board believes that one practical effect of the daily cap will be to impose a measure of the operational restraint sought by MCCHD and other commentors (and reinforcing the requirement of good operating practices).

For the #5 recovery furnace, it is important to recognize that, under both the previous state rule (30%) and the current SIP allowable limit (NSPS at 35%, with 6% exceedance allowance), the mass particulate emission limits in the permit are more stringent. Even under the Department's original proposal (20% opacity with 1% exceedance allowance) this is the case. Under the amended rule, the opacity limit and the exceedance allowance have both been reduced from current and SIP (NSPS) limits, and further ratcheted down by the 20% daily cap. Extrapolating from the MCCHD data shows the gap between particulates emitted under the daily opacity limit and the daily mass limit (and monthly average mass limit) is narrowed under the amended rule. Although the #5 recovery furnace seems to generally operate below these limits, such a narrowing will also have the effect of requiring some operational restraint and reinforcing good operating practices.

New recovery furnaces will be subject to the same requirements as the #5 recovery furnace, a substantial reduction from the NSPS standards, which EPA has found appropriate for new sources of this type. At the same time, the retention of an exceedance allowance will help keep Stone, or any other owner/operator of a kraft recovery furnace, at par with competitors that are subject only to the NSPS requirements. Further, for such new sources the rule will not preclude further limits as may be necessary to comply with applicable health-based standards.

COMMENT #8: Several commentors contend that Stone Container's #4 kraft recovery furnace requires a new precipitator and that only a very stringent rule will force the company to consider such an upgrade. Some of these commentors point to Stone's use of the malfunction rule, which they contend is inappropriate, and further illustrates the inadequacy of the precipitator. Other commentors disagree, saying the recovery furnace performs erratically because of black liquor composition, not because it needs a new precipitator, and that Stone is unable to afford such an upgrade in equipment at this time.

RESPONSE: As noted above, the Board generally accepts Stone's explanation on the variability of the kraft recovery process.

The issue before the Board in this matter is not so much whether to force Stone to upgrade its current equipment, but whether the Board can adopt an opacity limit that will protect public health and the environment. As discussed above, the Board believes the amended rule meets this test.

The Board expresses no opinion on the adequacy of the current precipitator on the #4 recovery furnace. There is no dispute that, if the Board were to adopt a limit such as that proposed by Cold Mountain, Cold Rivers, Stone would be required to significantly upgrade pollution control. However, and as discussed above, the Board does not believe such action is appropriate at this time. Similarly, the Board expresses no opinion on the issue of Stone's compliance with the malfunction rule.

COMMENT #9: Some commentors indicate the current EPA proposal for hazardous air pollutants from kraft recovery furnaces (the proposed standard for Maximum Available Control Technology, or MACT) should serve as the basis for setting opacity limits on the recovery furnaces. Other commentors contend that the proposed MACT standard is inappropriate, but add that Stone is a significant source of toxic air pollutants, which would support the adoption of very stringent opacity limits.

RESPONSE: The Board agrees with the EPA representative's suggestion that the proposed MACT standard is too tentative to be used in this proceeding. At this point, the Board is reluctant to place substantial restrictions on Stone because of its emissions of hazardous air pollutants. EPA is currently engaged in an in-depth review of these pollutants, and the need for restrictions on kraft recovery furnaces as part of its responsibilities under the federal Clean Air Act. As noted above, the Board believes the amended rule strikes the appropriate balance between the unique needs of the Missoula airshed and the uncertainty regarding ongoing regulatory efforts (among other considerations).

COMMENT #10: A few commentors object that any tightening of the opacity limits in a rule applicable to kraft recovery furnaces cannot be adopted, as such rule would then be more stringent than comparable federal regulations or guidelines that address the same circumstances.

RESPONSE: The Board acknowledges HB 521 (codified at Section 75-2-207, MCA) prohibits adoption of state administrative rules which are more stringent than comparable federal regulations or guidelines that address the same circumstances, unless certain findings are made.

The record in this rulemaking proceeding indicates that a portion of the amended rule may result in imposition of a more stringent state standard than the present comparable federal standard for opacity from kraft pulp mill recovery furnaces

constructed or modified after September 24, 1976. The federal new source performance standard (NSPS) opacity limit for such recovery furnaces is 35%, with a 6% exceedance allowance. The amended rule contains opacity standards that are more stringent for these sources.

Considerable debate focused on whether or not the NSPS limit should be considered a "comparable federal regulation or guideline" for the #4 recovery furnace under HB 521. However, the Board concludes that it need not resolve the issue in this proceeding.

There is general agreement that an HB 521 analysis is necessary for the #5 recovery furnace. Even if the Board were to conduct an HB 521 analysis for the #4 recovery furnace, the analysis conducted below for the #5 recovery furnace would generally be applicable. The only difference would be that a quantifiable reduction in particulate emissions can be demonstrated for the #4 recovery furnace between NSPS and the amended rule.

The Board also rejects those comments urging the use of either the proposed federal MACT standards for kraft pulp mills, or the original opacity rules in the State Implementation Plan. The MACT standard is only a rule proposal, lacks the force of law, and is not a guideline since it may be changed and does not expressly direct compliance behavior in the interim. The SIP, as embodied in federal rule, is intended to reflect that mix of control measures that a state (in the first instance) determines are necessary to protect the NAAQS. In addition, state rules in the SIP are not nationally applicable, but may be enforced only in the state of origin.

After deliberation, the Board concludes that the amended rule, which tightens opacity limits at the #5 recovery furnace and new recovery furnaces, protects the public health or environment, can mitigate harm to the public health or environment, and is achievable under current technology.

For the #5 recovery furnace, and on its face, tightening an opacity limit from NSPS (35%/6% exceedance allowance) to 20%, and 3% exceedance allowance, represents a restriction on particulate emissions. (e.g., compare, Alternative I, Stone Container's Proposal, #4 Recovery at 35%/6%, to Alternative III, DEQ's Proposal, #4 Recovery at 20%/3%, from Stone Container's Allowable Emissions from Recovery Boilers Under Various Rule Options, attachment to testimony of Charles Homer). Imposition of the 20% daily cap further ratchets down daily emissions. (Id., compare, Alternative III, DEQ's Proposal, #4 Recovery at 20%/3%, to Current SIP Allowables, #4 Recovery at 20%). Extrapolating from the MCCHD and Department data shows the gap between particulates emitted under the daily opacity limit and the daily mass limit (and monthly average mass limit) is substantially narrowed under the amended rule (Id., also, Additional Comments of MCCHD, October 15, 1998, Kraft Recovery Boiler Mass Emission Estimates Under Various Opacity Rules). Such a narrowing will reinforce the requirement of good

operating practices. As described in testimony offered by the Department, such an effect will contribute to a reduction of particulate emissions under the mass emission limits. (transcript, pp. 150 through 151). In addition, and with respect to the #5 recovery furnace, substantially closing the gap between the opacity and mass emission limits will make the opacity limit a more viable tool for protecting the NAAQS (transcript, p. 150).

Absent a more stringent state rule, a new recovery furnace would be subject to the NSPS requirements (35%/6% exceedance). As noted above for the #5 recovery furnace, on its face the amended rule will further limit particulate emissions. At this time, Stone Container is the only facility in the state with kraft recovery furnaces. Accordingly, the amended rule represents a substantial reduction in particulate emissions from a potential future source in a sensitive airshed. In addition, the Board agrees with the Department that imposing a stringent opacity standard (such as that in the amended rule) will minimize visible emissions (and particulates) by ensuring that a recovery furnace and associated control equipment is properly operated and maintained (transcript, p. 144).

The sensitivity of the Missoula airshed was described in detail by several witnesses, including those from the MCCHD (transcript, pp. 102 through 105, 144, 116, 129 through 137, 209, 211, 219, and 248). The unique geography, weather patterns, including steady periods of inversion with an accumulation of air pollutants, deteriorating visibility, and current and projected growth, all combine to create conditions which justify ongoing efforts to control sources of particulate emissions, including the second largest stationary source of particulates in the valley (Id.)

Further, the mass of particulate is not the only factor influencing public health. Size and chemical content are also important. Particle size is important because very small particles can easily get past the body's defensive mechanisms and penetrate the lungs and small airways. Small particles can also serve as transport and delivery mechanisms for certain pollutants (Justification of Regulation Revisions, MCCHD, 10/16/98, p. 3; transcript, pp. 104 through 105). The recent EPA MACT proposal for kraft recovery furnaces, while only a proposed standard at this point, contains a thorough review of the hazardous air pollutants emitted from these sources, and the associated health effects from these pollutants. In addition, particulate emissions also contribute to decreasing visibility (Justification of Regulation Revisions, MCCHD, 10/16/98, pp. 4 through 5; transcript, p. 143).

The Board determined in a 1995 rulemaking that restricting particulate emissions from the #5 kraft recovery furnace would protect the public health or environment and would mitigate harm to the public health or environment. In making this determination, the Board referred to a 1994 article from the Annual Review of Public Health entitled Acute Respiratory

Effects of Particulate Air Emissions (also referenced in this record by the MCCHD Justification), other referenced studies, and the Board's experience in other proceedings (including the Billings SO2 SIP). While the Board recognizes that HB521 only requires it to find that the amended rule can mitigate harm, the Board incorporates this earlier finding into this decision. In the matter of the amendment of rules 16.8.1404, 16.8.1413 and 16.8.1429, dealing with opacity requirements at kraft pulp mills, dated July 31, 1995.

The comments submitted by Stone Container demonstrate that the standard contained in the amended rule for the #5 recovery furnace and new recovery furnaces are achievable under current technology (Supplemental Comments of Stone Container, Ed Scott, pp. 1-3).

Similarly, the comments submitted by Stone Container indicate the company would not be required to upgrade pollution control equipment or limit productivity for the #5 recovery furnace to meet the limits in the original DEQ proposal in this proceeding (20%/1% exceedance allowance) (Supplemental Comments of Stone Container, Ed Scott, p. 2). There is no information specifically addressing the costs associated with the specific requirements adopted by the Board (20%/3% exceedance allowance, 20% daily cap), but the operational data provided by the various commentors to this proceeding strongly suggest that new control equipment would not be required. Since Stone has agreed to the amended rule and waived its rights to raise an HB 521 challenge, the Board believes the amended rule will not impose any significant costs or productivity restrictions.

For new recovery furnaces, the amended rule will impose additional costs beyond those for recovery furnaces built in some other states (where those sources are subject only to NSPS opacity standards). However, no cost estimates were provided (Supplemental Comments of Stone Container, Ed Scott, p. 2).

Reviewed by: BOARD OF ENVIRONMENTAL REVIEW

David Rusoff
David Rusoff, Rule Reviewer

By: *Joe Gerbase*
JOE GERBASE, Chairperson

Certified to the Secretary of State January 29, 1999.

BEFORE THE BOARD OF PARDONS AND PAROLE
DEPARTMENT OF CORRECTIONS
OF THE STATE OF MONTANA

In the matter of the revision of ARM Title 20, Chapter 25, pertaining to the Board of Pardons and Parole	))))	NOTICE OF REPEAL, AMENDMENT AND ADOPTION OF RULES ARM TITLE 20, CHAPTER 25

TO: ALL INTERESTED PERSONS

1. On December 17, 1998, the Board of Pardons and Parole published a notice of proposed revision to its rules now published at pages 20-253 through 20-280 of the Administrative Rules of Montana at page 3248 of the 1998 Montana Administrative Register, issue no. 24.

2. The Board of Pardons and Parole has repealed the following rules as proposed: ARM 20.25.803, 20.25.1102, 20.25.1102A, 20.25.1102B, 20.25.1103, and 20.25.1104.

3. The Board of Pardons and Parole has amended the following rules as proposed: ARM 20.25.101, 20.25.201, 20.25.301, 20.25.302, 20.25.302A, 20.25.303, 20.25.304, 20.25.401, 20.25.501, 20.25.502, 20.25.504, 20.25.505, 20.25.602, 20.25.701, 20.25.702, 20.25.704, 20.25.801, 20.25.802, 20.25.901, 20.25.901A, 20.25.902 and 20.25.903. ARM 20.25.703 was amended as proposed but with a minor editorial change.

4. The Board of Pardons and Parole proposed a new definitions rule shown as 20.25.105 which is adopted as proposed but will be numbered 20.25.202.

CRAIG THOMAS
Executive Director
Board of Pardons and Parole

RICK DAY
Director
Department of Corrections

LOIS ADAMS
Rule Reviewer
Department of Corrections

Certified to the Secretary of State January 29, 1999

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

In the matter of the adoption of rules I through XXV and repeal of 17.82.101 through 17.82.126 pertaining to standards for licensing of laboratories conducting analyses of public water supplies	)))))))	NOTICE OF ADOPTION AND REPEAL

TO: All Interested Persons

1. On November 19, 1998, the Department of Public Health and Human Services published notice of the proposed adoption and repeal of the above-stated rules at page 3080 of the 1998 Montana Administrative Register, issue number 22.

2. The Department has adopted the rules II (37.12.304), IV (37.12.312), V (37.12.310), VI (37.12.313), VIII (37.12.314), IX (37.12.315), X (37.12.316), XII (37.12.325), XV (37.12.330), XX (37.12.337), XXI (37.12.338), and XXV (37.12.342) and repealed rules 17.82.101 through 17.82.126 as proposed.

3. The Department has adopted the following rules as proposed with the following changes from the original proposal. Matter to be added is underlined. Matter to be deleted is interlined.

[RULE I] (37.12.301) DEFINITIONS For the purpose of this subchapter:

(1) and (2) remain as proposed.

(3) "Bachelor degree or equivalent" means a college degree with the equivalent of 30 semester hours in a ~~specific scientific discipline~~ biological or physical science program or at least ~~four~~ 4 years of experience in a specific related scientific discipline.

(4) through (22) remain as proposed.

AUTH: Sec. 50-1-202, MCA
IMP: Sec. 50-1-202 and 75-6-106, MCA

[RULE III] (37.12.306) ~~LICENSURE DURATION~~: STANDARDS, INSPECTIONS AND TESTS REQUIRED FOR LICENSURE ~~(1) The duration of a microbiology or chemical license is 3 years from the date it is issued, unless terminated earlier.~~

(2) through (2)(c) remain as proposed, but are renumbered (1) through (1)(c).

AUTH: Sec. 50-1-202, MCA
IMP: Sec. 50-1-202 and 75-6-106, MCA

[RULE VII] (37.12.311) DURATION OF LICENSE (1) through (1)(b) remain as proposed.

(c) The laboratory remits to the department the appropriate ~~annual licensure~~ application fee ~~and any other fees due pursuant to [Rule V]~~.

(2) through (2)(b) remain as proposed.

(c) The laboratory remits to the department the appropriate ~~annual licensure~~ fee ~~or fees due pursuant to [Rule V]~~.

AUTH: Sec. 50-1-202, MCA
IMP: Sec. 50-1-202 and 75-6-106, MCA

[RULE XI] (37.12.324) REQUIRED NOTIFICATION OF CHANGES (1) Whenever a laboratory makes any change in personnel, equipment, or procedures that has a material effect on the analysis of analytes, the laboratory must notify the department of that fact within 30 days after making the change. A change in personnel is defined as the loss or replacement of the laboratory supervisor or a situation in which a trained and experienced analyst is no longer available to analyze a particular parameter for which licensure has been granted.

(2) remains as proposed.

AUTH: Sec. 50-1-202, MCA
IMP: Sec. 50-1-202 and 75-6-106, MCA

[RULE XIII] (37.12.326) CHANGE IN LOCATION (1) through (1)(c) remain as proposed.

(2) If, in view of the information received pursuant to (1) above, the department is satisfied that the laboratory can produce valid results at the new location, it shall ~~issue a conditional license for the laboratory~~ place conditions on the laboratory license as specified in ARM 37.12.324.

(3) through (6) remain as proposed.

AUTH: Sec. 50-1-202, MCA
IMP: Sec. 50-1-202 and 75-6-106, MCA

[RULE XIV] (37.12.327) ACCESS TO FACILITY AND RECORDS (1) A laboratory applying for a license and a licensed laboratory must allow department representatives access to the laboratory facility and public water supply records during laboratory operating hours to determine initial or continued compliance with this subchapter.

(2) Whenever possible, inspections will be scheduled in advance so that they do not interfere with routine laboratory operations. However, whenever necessary to protect public health, unannounced inspections will be conducted.

(3) If an unannounced inspection causes a business hardship or may result in harm to laboratory clients, the laboratory director will give the department notice of that fact

at the time of inspection and the department will make whatever accommodations may be made to alleviate the hardship or harm while still protecting public health.

AUTH: Sec. 50-1-202, MCA
IMP: Sec. 50-1-202 and 75-6-106, MCA

[RULE XVI] (37.12.320) PROFICIENCY TESTING (1) and (2) remain as proposed.

(a) whenever required by the EPA, enroll and participate in a proficiency testing program approved by the environmental laboratory for each analyte or interdependent analyte group, or, for each analyte or interdependent analyte group for which proficiency testing is not available or required, the laboratory must establish, maintain, and document the accuracy and reliability of its procedures through a quality assurance plan;

(b) participate in ~~more than one~~ at least two proficiency ~~testing program~~ tests annually to be evaluated to obtain or maintain approval to analyze an analyte or interdependent analyte group;

(2)(c) through (6) remain as proposed.

(7) The laboratory must participate in an authorized proficiency testing program for at least 12 months before changing to another proficiency testing provider for the analyte or interdependent analyte group ~~and must notify the department before changing enrollment in an authorized proficiency testing program~~, unless there are extenuating circumstances.

(8) A laboratory must notify and have approval from the department before changing enrollment in an authorized proficiency testing program, and if the reason for changing providers is a result of extenuating circumstances, the laboratory must also delineate the reasons for the requested change.

~~(8)~~(9) The department hereby adopts and incorporates by reference the acceptance limits for regulated parameters in chapter IV of the EPA laboratory certification manual (EPA 815-B-97-001, "Manual for the Certification of Laboratories Analyzing Drinking Water", March, 1997), which contains the critical elements for chemistry that a laboratory must meet, including the acceptance limits required by the EPA for metals, inorganics, volatic organic compounds, and synthetic organics in drinking water samples. A copy of chapter IV may be obtained from the Department of Public Health and Human Services, Operations and Technology Division, Environmental Laboratory, 1400 Broadway, Cogswell Building, P.O. Box 202951, Helena, Montana 59620-2951 [telephone: 406-444-3444].

AUTH: Sec. 50-1-202, MCA
IMP: Sec. 50-1-202 and 75-6-106, MCA

[RULE XVII] (37.12.305) PROCEDURE FOR LICENSURE (1) through (6) remain as proposed.

(a) the department will send the laboratory written notice of that fact, the grounds for the decision, and the right to submit a plan of correction within 30 days after receipt of the notice for minor deficiencies and within 15 days after receipt of the notice for major deficiencies;

(6)(b) through (7) remain as proposed.

(8) A license expires on the expiration date listed on the license, unless revoked earlier. To avoid a lapse in licensure, a laboratory must submit, on a form provided by the department, a completed application for renewal and the required fees for licensure prior to the expiration of the license.

AUTH: Sec. 50-1-202, MCA
IMP: Sec. 50-1-202 and 75-6-106, MCA

[RULE XVIII] (37.12.333) APPROVAL TO CONDUCT ANALYSES (1) through (4)(d) remain as proposed.

(e) documentation establishing the laboratory's method detection limit for ~~the~~ each chemical analyte.

(5) through (6)(c) remain as proposed.

AUTH: Sec. 50-1-202, MCA
IMP: Sec. 50-1-202 and 75-6-106, MCA

[RULE XIX] (37.12.336) QUALITY ASSURANCE (1) remains as proposed.

(2) The quality assurance program must address the type ~~and volume~~ of testing activities the licensed laboratory undertakes and how quality assurance activities may change with changes in sample volumes. The quality assurance program must include a quality assurance plan and documentation of quality assurance activities.

(3) through (5) remain as proposed.

AUTH: Sec. 50-1-202, MCA
IMP: Sec. 50-1-202 and 75-6-106, MCA

[RULE XXII] (37.12.345) CRITICAL ELEMENTS FOR CHEMISTRY LABORATORY LICENSURE (1) through (4)(a) remain as proposed.

(b) if operating the following, have the training noted, unless the department approves a specialized training course as a substitute:

(b)(i) through (7) remain as proposed.

AUTH: Sec. 50-1-202, MCA
IMP: Sec. 50-1-202 and 75-6-106, MCA

[RULE XXIII] (37.12.346) CRITICAL ELEMENTS FOR MICROBIOLOGY LABORATORY LICENSURE (1) through (5) remain as proposed.

(a) the first sentence of paragraph 6.4 is ~~amended to say,~~ replaced by the following:

"~~The time from sample collection to initiation of analysis for total coliforms, fecal coliforms, or E. coli in drinking water must not exceed 48 hours~~ The Total Coliform Rule (TCR), 40 CFR 141.21(f)(3), and EPA's Manual for the Certification of Laboratories Analyzing Drinking Water, Fourth Edition, March 1997, limit the time from sample collection to initiation of analysis to 30 hours. Public water systems (PWSs) must make every effort to meet the 30 hour holding time requirement. Laboratories may continue to analyze samples that are up to 48 hours old with the following two additional requirements:

1. Laboratories must flag samples that are greater than 30 and less than or equal to 48 hours old.

2. Laboratories must continue to invalidate a total coliform negative sample that shows signs of heterotrophic interference (40 CFR 141.21(c)(2)) regardless of the holding time. However, replacement samples may not exceed 30 hours."~~.~~; and

(5)(b) through (7) remain as proposed.

AUTH: Sec. 50-1-202, MCA
IMP: Sec. 50-1-202 and 75-6-106, MCA

[RULE XXIV] (37.12.341) REPORTING REQUIREMENTS (1) through (1)(b) remain as proposed.

(c) ~~If the membrane filter (MF) method shows contamination of a sample, the laboratory must notify the supplier immediately without waiting for the MF verification, and, after MF verification, the adjusted counts must be reported to the supplier~~ If a test shows a positive total coliform, fecal coliform, or E. coli result, a laboratory must immediately notify the supplier and within 24 hours notify the department of environemntal quality of that fact. A total coliform-positive result is based on a confirmed phase for the multiple tube fermentation technique and presence-absence (P-A) coliform test, or verified test for membrane filter technique. No requirement exists for confirmation of positive Colilert/Colisure tests, fecal coliform tests, or E. coli tests. In those rare cases where a presumptive total coliform-positive culture does not confirm or verify as such, but is found to be fecal coliform or E. coli positive, the sample is considered total coliform-positive and fecal coliform/E.coli positive;

(d) Written reports of contaminated microbiological samples must be sent to the department of environmental quality within 48 hours after the test is ~~performed~~ completed; and

(1)(e) remains as proposed.

AUTH: Sec. 50-1-202, MCA
IMP: Sec. 50-1-202 and 75-6-106, MCA

4. The department noticed that two rules, Rule III (37.12.306) and Rule VII (37.12.311), contained provisions concerning the duration of a license. In order to prevent

confusion, and because Rule VII (37.12.311) has the more specific provisions about license duration, Rule III (37.12.306) was amended to delete any reference to license duration.

5. The Department has thoroughly considered all commentary received. The comments received and the Department's response to each follow:

RULE I (37.12.301)

COMMENT #1: The department should define what "...a specific scientific discipline..." is and should allow two years of laboratory experience to substitute for no more than two years of course work in a specific scientific discipline.

RESPONSE: The department has changed the language so that the phrase "a specific scientific discipline" now reads "a biological or physical science program". The substituted language in the rule is more liberal than suggested by the commentor and allows appropriate experience to substitute for all educational requirements. This provision allows for the licensure of small laboratories with experienced personnel performing less complex analyses in remote areas where formally trained scientists may not be available.

RULE V (37.12.310)

COMMENT #2: The department should charge $250 per application for licensure.

RESPONSE: If the department charged $500 ($250 for microbiology and $250 for chemical analyses) for a dual application for both types of analyses, it would be charging more than under current rules without a prior public vote approving it and thereby be in violation of CI-75. Earlier versions of this rulemaking included new laboratory certification fees and an annual licensure fee. The expanded fee schedule was removed from the proposed rules shortly before submittal due to the passage of CI-75; what remains is equivalent to the fee required in the now repealed rule 17.82.115 and is therefore not a fee change that would be subject to CI-75. Commentors are correct that the department overlooked some other technical changes in language when the proposed new fees were removed. The department will charge $250.00 per application under the rule which provides a fee per application for microbiology or chemical license or both. The fee covers the licensure period, and is not an annual fee.

RULE VI (37.12.313)

COMMENT #3: The department should audit and inspect out-of-state laboratories to ensure that the requirements for

certification in other states are no less stringent than the requirements for resident laboratories in the state of Montana.

RESPONSE: Limited resources do not permit the state laboratory to perform on site inspections of out-of-state laboratories. The department accepts inspections by other EPA certified primacy laboratories which meet the same standards as the Montana state laboratory. We also accept certification by a NELAP authority, which enforces stricter standards than those proposed in this rule. The EPA strongly endorses reciprocity. Out-of-state laboratories must still meet the non-license application requirements of these rules and perform PE samples, and are subject to blind sampling to test for reliability.

COMMENT #4: The department should consider other national certification programs as the basis for licensing out-of-state laboratories.

RESPONSE: In order for the EPA to accept public water supply analyses from laboratories licensed by Montana, state licensure standards have to meet EPA's standards. Currently, the EPA accepts state licensure and/or NELAP. Other certification programs that may be endorsed by the EPA can be considered in future rule making.

RULE VII (37.12.311)

COMMENT #5: The department should clarify whether the $250 fee is an application fee or an annual licensure fee.

RESPONSE: The department has revised the rules accordingly.

COMMENT #6: The department should clarify if this is an annual cycle or a three-year cycle.

RESPONSE: The rule provides for a three-year cycle for inspections and licensure, with annual reviews of laboratory conditions and qualifications through a questionnaire.

RULE VIII (37.12.314)

COMMENT #7: The department should specify a time limit, such as 30 days, for notification after the fact of changes which have a material effect on analysis.

RESPONSE: There is no need to specify, in Rule VIII (37.12.314), a time limit for notification because the required time frame for notification is contained in Rule XI (37.12.324). The purpose of this rule (Rule VIII (37.12.314)) is to define the department's authority to place conditions on licenses and to outline the consequences of notifying the department of changes which have a material effect on analysis.

RULE XI (37.12.324)

COMMENT #8: The department should clarify what is considered a material effect on the analysis of analytes.

RESPONSE: The department has revised the rule to so provide by adding EPA language regarding major changes.

RULE XIII (37.12.326)

COMMENT #9: The department should not require a 90 day notice of a change in location. 30 or 60 days is more reasonable and practical.

RESPONSE: The department has revised the rule to provide for a minimum of 60 days notice. More notice is preferred. The department has limited resources to deal with licensure changes. Maximizing notice will give the department sufficient notice to minimize the chance that laboratory operations will be interrupted by licensure issues.

COMMENT #10: This rule references a conditional license. Conditional licenses are not defined anywhere in the rule.

RESPONSE: The department has removed the reference to conditional licenses and replaced it with placing conditions on the license.

RULE XIV (37.12.327)

COMMENT #11: The department should include prior notification requirements for its access to laboratory facilities and records.

RESPONSE: The comment was not accepted because unannounced inspections of laboratory facilities and records are needed to ensure the veracity of inspection results, and because, if the department has reason to believe that the performance of a laboratory is creating a public health risk, the department has the duty and obligation to take immediate steps to confirm or deny the existence of a threat.

COMMENT #12: The department should adopt a maximum inspection time for unannounced inspections and should allow for a postponement of the inspection if the laboratory does not have the capacity to respond immediately.

RESPONSE: The department has not added a maximum time for unannounced inspections because the time needed cannot be determined in advance and may vary widely from case to case. However, the department has added language to the rule which allows a laboratory director to give notice to the department

whenever the inspection is causing a business hardship and/or may result in harm to the business clients, whereupon the department will make whatever reasonable accommodations are possible while still protecting the public health.

COMMENT #13: The department should clarify that only records associated with public water supplies are subject to inspection.

RESPONSE: The department agrees and has added the descriptor "public water supply" to the word "records" in the rule. However, laboratory records cannot be altered for the purposes of inspection. If laboratories keep public and private water supply information on the same bench sheets or other types of documentation which must be inspected for licensure purposes, that information may been seen by inspectors.

RULE XV (37.12.330)

COMMENT #14: This rule is especially good and has been needed for a very long time.

RESPONSE: The department concurs.

COMMENT #15: The department should either absorb the cost of these analyses or scrap the blind sample requirement. This charge is not allowed by CI-75.

RESPONSE: The department believes that blind samples are an important tool in ensuring that licensed laboratories are performing accurate testing in protecting the public health. Blind samples are used when the department has reason to believe that routine samples may not be receiving the same attention and precision as PE samples. When PE samples arrive in the laboratory, everyone is aware of their arrival and the importance of producing accurate results. They are not always treated the same way routine samples are handled. Blind samples allow the department to confirm that PE samples and routine samples are receiving the same degree of precision and accuracy. Taxpayers and other laboratories should not have to absorb the cost of establishing competency in laboratories which produce questionable results. As for CI-75, since the requirement that blind samples be tested at no charge to the department does not generate revenue to the department, the department does not believe that this requirement violates the terms of CI-75.

COMMENT #16: The department is not qualified to produce PE samples.

RESPONSE: The department is not required to be a qualified producer of PE samples in order to produce blind samples, nor does the rule specify that the department laboratory produce the blind samples itself. The department may purchase PE samples

from authorized vendors and supply them anonymously to laboratories. These samples are not substituted for the EPA-required PE samples, nor are they required for licensure. Blind samples are one tool in determining overall laboratory competency and can alert the department to possible problems with the quality of a laboratory's analyses.

RULE XVI (37.12.320)

COMMENT #17: Is a PE sample required for each analyte for microbiology for each method?

RESPONSE: There are currently no EPA-required PE programs for microbiology. The department has clarified this rule by adding language to indicate that proficiency testing must be done whenever required by the EPA. Microbiology accuracy and reliability will be governed by the quality assurance plan until programs are required for proficiency testing.

COMMENT #18: This change has been needed for a long time.

RESPONSE: The department concurs.

COMMENT #19: For microbiology, it is difficult to document accuracy and reliability in a quality assurance plan. The PE samples and quality controls stated in the SOP's should suffice.

RESPONSE: The rule so provides. The quality assurance plan must state the assumptions and parameters which the laboratory adopts to ensure reliable results.

COMMENT #20: Several commentors questioned the necessity to participate in two proficiency testing programs.

RESPONSE: The department agrees. This language was intended to require two samples per year, not programs. The language has been changed to reflect the intent.

COMMENT #21: Having the PE provider provide results directly to the state could be a cost issue for the laboratories.

RESPONSE: In order to protect the public health and fulfill its obligations to the EPA, the department must be able to ensure that the results of PE sample testing have not been altered and that laboratories which produced inaccurate results did not perform repeat analyses and only report accurate results to the department. The only way to ensure the integrity of the test results is for the PE provider to report results directly to the licensing authority. Therefore, no change was made.

COMMENT #22: The department should prepare and provide forms for collecting and submitting the information required by this

rule.

RESPONSE: The department does not need to have a uniform set of forms used by every laboratory, and prefers to allow each laboratory to develop its own forms. In addition, it does not have the financial resources to provide the forms in instances where such uniformity is unnecessary. Laboratories can submit forms for approval with their quality assurance plans. The department may or may not choose to provide standardized forms for attestation. The requirements for attestation are contained in the rule.

COMMENT #23: The rule requires that only laboratory employees who perform analyses may generate or report results. It should also allow secretarial staff to print reports as well.

RESPONSE: No change was needed because the rule does not prohibit secretarial staff from printing results.

COMMENT #24: It may be a good idea for DPHHS to send EPA 815-B-97-001 to all certified laboratories within Montana since these rules refer to it as a primary reference.

RESPONSE: All certified laboratories received copies of Chapters IV and V of EPA 815-B-97-001 when the first draft of these rules was circulated in April of 1998. All laboratories seeking licensure will also receive a copy. The address included in the rule is supplied in accordance with state statutes and the rulemaking requirements of the Secretary of State.

COMMENT #25: The Commentor reiterates his opposition to blind samples and performing them at no charge to the department.

RESPONSE: See the response to Comment #15.

COMMENT #26: There should be flexibility in moving from one proficiency test provider to another. Firms go out of business, change price structures, lose their certification, etc.

RESPONSE: The department has changed the rule to allow flexibility in extenuating circumstances.

COMMENT #27: Concerning Rule XVI(4)(c)(37.12.320), one commentor suggested that the word "approved" be added to modify "bona fide laboratory employees" in order to prevent a laboratory from stretching the term to cover people such as those who make media or wash glassware.

RESPONSE: "Approved" was not added because the environmental laboratory does not approve laboratory personnel performing chemical analyses and because the balance of (4)(c) states that

the employees in question do "analyses on a day-to-day basis".

RULE XVII (37.12.305)

COMMENT #28: The department should provide forms for application.

RESPONSE: The rule requires that the department provide an application form.

COMMENT #29: The laboratory owner, director and quality assurance officer may be the same person.

RESPONSE: It may be acceptable for the laboratory owner, director and quality assurance officer to be the same person. The quality assurance plan must address the how the duties and responsibilities for quality assurance will be carried out in a small laboratory to the satisfaction of the department.

COMMENT #30: One Commentor strongly supports unannounced inspections and another Commentor strongly objects to unannounced inspections and access to non-regulated data.

RESPONSE: The department has a need to perform unannounced inspections of laboratory facilities and records in order to protect public health. If the department has reason to believe that the performance of a laboratory is creating a public health risk, the department has the duty and obligation to take immediate steps to confirm or deny the existence of a threat.

In Rule XIV (37.12.327), the department has added language to the rule which allows the laboratory director to give notice to the department that the inspection is causing a business hardship and/or will result in harm to the business clients. The department will make whatever reasonable accommodations are possible while still protecting the public health.

COMMENT #31: One Commentor strongly supports the department's position on scheduling licensure inspections and another supports summer inspections, more specifically in July.

RESPONSE: The rules are intended to outline standards for licensure and not the performance of the department's licensure division. Potential time lines for licensure are included only as a planning tool for laboratories. Nothing in the rule precludes the department from proceeding more quickly if resources are available. As for inspecting during the summer, the environmental laboratory's sampling volumes are highest in the summer months and do not easily allow for licensure inspections during that same period, so requiring inspections in the summer would be unduly burdensome.

COMMENT #32: The certification officer should be compelled to provide the laboratory with the results of an onsite audit within a specified time frame.

RESPONSE: The purpose of the rules, as prescribed by statute, is to outline standards that have to be met for licensure of laboratories and not to prescribe the performance of the department laboratory licensure section.

COMMENT #33: One Commentor requested that the time available to submit a plan of correction be extended to 30 days for minor deficiencies and remain at 15 days for major deficiencies.

RESPONSE: The department agrees and has changed the rule accordingly.

COMMENT #34: The department should provide a renewal form.

RESPONSE: The department agrees and added that the department will provide an application for renewal.

RULE XVIII (37.12.333)

COMMENT #35: Commentors supported and requested clarification regarding whether the rule allows for the use of defined substrate technology (Colilert).

RESPONSE: The rule allows the use of defined substrate technology (Colilert).

COMMENT #36: Method detection limits only apply to chemical analyses, whereas the rule appears to apply to more than chemical analyses.

RESPONSE: The department agrees and has changed the rule to clarify that point.

RULE XIX (37.12.336)

COMMENT #37: An out-of-state laboratory asserted that only SOP listings should be provided and questioned how this requirement would be applied to laboratories licensed by reciprocity.

RESPONSE: The department needs the actual SOPs for review for adequacy prior to conducting an inspection, not just the list of SOPs. As for reciprocity, the requirements of this section do not apply to laboratories licensed through reciprocity. Their original licensing authority is responsible for certifying the adequacy of their quality assurance program.

COMMENT #38: The language is too general. Terms are not defined and quality improvement is addressed before there is any

indication of unacceptable performance.

RESPONSE: The department believes that the language is clear. Terms are not defined because laboratories are required to define what these terms mean for their own laboratory considering the methods used, equipment utilized, and the proficiency of their staff. The department cannot define these parameters because of the variety of circumstances under which laboratories operate. The plan, as required by EPA, should include quality improvement activities which the laboratory will undertake if they discover problems with their analyses.

COMMENT #39: The quality assurance plan should not request information about the volume of tests performed, but rather how the laboratory will handle specific volumes of samples for quality assurance purposes.

RESPONSE: The department agrees and has changed the rule accordingly.

COMMENT #40: The quality assurance plan should allow for reference to SOP's for specific information.

RESPONSE: Where appropriate, the SOP's can be referenced. Not all of the necessary information will be contained in the SOP's.

RULE XX (37.12.337)

COMMENT #41: The Montana Safety Culture Act does not apply to businesses employing fewer than five people.

RESPONSE: The department agrees that the Montana Safety Culture Act does not apply to businesses employing fewer than five people, and the inclusion by reference of the standards in the act will not cause employers to be liable under the act who are not already subject to it. However, due to the nature of laboratory work and the extreme hazards laboratory employees face, the department elects to make the standards in the act a condition of licensure for all laboratories, not just those employing five people or more.

COMMENT #42: A commentor suggested that "chemical hygiene plan" is a rather unusual designation and that "chemical safety plan" would be more appropriate.

RESPONSE: The department did not make the change. The phrase is already in use, as the Montana Department of Labor requires "chemical hygiene plans" that consist of responsibility for chemical safety, chemical storage and usage, availability of protective personal devices, emergency procedures, chemical disposal, etc. In addition, should there be any question about its meaning, the term "chemical hygiene plan" is defined in Rule

I(37.12.301).

RULE XXII (37.12.345)

COMMENT #43: Special training should be substituted for some of the time requirements.

RESPONSE: The department has changed the rule to so provide.

COMMENT #44: Should color standards and ortho-phosphate testing be referred to in the licensure rules, and should the department define color standards?

RESPONSE: Ortho-phosphate is referenced in this rule because the EPA manual wrongly lists the test as a filtered test. The EPA manual color standard requirements are impractical for variable wavelength spectrophotometers. The specific checks and frequencies performed in each laboratory, as well as a list of the color standards to be used - which vary from test to test and with the equipment used - should be a part of the SOP, which is then approved by the department.

RULE XXIII (37.12.346)

COMMENT #45: The EPA requires a 30-hour hold time for microbiological samples. This rule allows a 48-hour hold time.

RESPONSE: Montana's vast geographical distances and limited transportation opportunities make it impossible for some areas of the state to comply with the EPA 30-hour hold time requirement for microbiology samples. Montana laboratories have traditionally exceeded the hold time for bacteriology samples with the knowledge and consent of both the EPA and the state's Department of Environmental Quality (DEQ). At the time of this rule making, we had posed this question to EPA and had not received any direction to the contrary. However, we have recently received new directives from EPA and those directives are now included in the rule.

RULE XXIV (37.12.341)

COMMENT #46: For chemical analysis, can the laboratory notify the water supplier within 24 hours of the completion of all testing rather than within 24 hours of a failed analysis? This might reduce resampling for public water suppliers.

RESPONSE: No. Protection of the public health requires the immediate reporting of any analyte which exceeds the DEQ reporting requirements. Chemistry panels may consist of numerous tests performed over a number of days or weeks. Reporting of contaminants in early testing must not be delayed until all tests are complete.

COMMENT #47: Does the requirement to directly report information to DEQ impact the confidentiality of information generated by the laboratory?

RESPONSE: It does, but where state policy provides, EPA requires laboratories to report sample results which would cause a system to be out of compliance directly to the proper authority, which in Montana's case is the Department of Environmental Quality.

COMMENT #48: The rule should more clearly define contamination for microbiological samples. Also, in Rule XXIV(1)(d) (37.12.341), is the word "performed" appropriate, or should it be "completed"?

RESPONSE: The language in Rule XXIV (1)(c) (37.12.341) has been replaced with EPA language which more clearly defines the reporting requirements for microbiology samples. In Rule XXIV(1)(d) (37.12.341), the word "performed" has been replaced with the word "completed".

COMMENT #49: One Commentor requested that the time for reporting written results of microbiological samples be extended to 10 days to improve efficiencies at DEQ.

RESPONSE: It is necessary for the department to receive information within five days so it can follow up on check and repeat samples to protect the public health. DEQ data entry staff are current in their processing and do not agree that efficiencies would be gained by lengthening the reporting period.

RULE XXV (37.12.342)

COMMENT #50: One commentor suggests that laboratories be allowed to report subcontracted results on their own reporting form while supplying DEQ with copies of the results from the laboratory actually performing the tests. This would protect the commercial position of the primary laboratory.

RESPONSE: Both Department of Public Health and Human Services and Department of Environmental Quality strongly hold that public water suppliers, not just DEQ, should know the identity and location of the laboratory performing tests they have submitted. In addition, transferring results from the original report to a second report from the primary laboratory may result in transcription errors. Therefore, the suggestion was not incorporated into the rule.

A number of other statements, opinions, and comments were determined to deal with operational matters and issues not related to the proposed rules. Therefore, it is not appropriate

to address them in this context, and the Department has elected not to respond.

Rule Reviewer

Director, Public Health and Human Services

Certified to the Secretary of State January 29, 1999.

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

In the matter of the amendment of rules 46.20.103, 46.20.114 and 46.20.123 pertaining to the Montana mental health access plan	))))	NOTICE OF AMENDMENT

TO: All Interested Persons

1. On December 17, 1998 the Department of Public Health and Human Services published notice of the proposed amendment of the above-stated rules at page 3258 of the 1998 Montana Administrative Register, issue number 24.

2. The Department has amended rules 46.20.103, 46.20.114 and 46.20.123 as proposed.

3. No comments or testimony were received.

Dawn Sloan
Rule Reviewer

Carroll Thompson
Director, Public Health and Human Services

Certified to the Secretary of State January 29, 1999.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT of ARM 42.20.454, 42.20.455, and 42.21.157; and REPEAL of ARM 42.21.304 relating to Real and Personal Property Tax Rules	NOTICE OF AMENDMENT AND REPEAL

TO: All Interested Persons:

1. On December 17, 1998, the Department published notice of the proposed amendment of ARM 42.20.454, 42.20.455, and 42.21.157; and repeal of ARM 42.21.304 relating to real and personal property tax rules at page 3263 of the 1998 Montana Administrative Register, issue no. 24.

2. No comments were received regarding these rules.

3. The Department has amended and repealed the rules as proposed.

Cleo Anderson

CLEO ANDERSON
Rule Reviewer

Mary Bryson

MARY BRYSON
Director of Revenue

Certified to Secretary of State January 29, 1999

NOTICE OF FUNCTIONS OF ADMINISTRATIVE CODE COMMITTEE

The Administrative Code Committee reviews all proposals for adoption of new rules, amendment or repeal of existing rules filed with the Secretary of State, except rules proposed by the Department of Revenue. Proposals of the Department of Revenue are reviewed by the Revenue Oversight Committee.

The Administrative Code Committee has the authority to make recommendations to an agency regarding the adoption, amendment, or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. In addition, the Committee may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt or amend a rule.

The Committee welcomes comments from the public and invites members of the public to appear before it or to send it written statements in order to bring to the Committee's attention any difficulties with the existing or proposed rules. The address is Room 138, Montana State Capitol, Helena, Montana 59620.

HOW TO USE THE ADMINISTRATIVE RULES OF MONTANA AND THE MONTANA ADMINISTRATIVE REGISTER

Definitions: Administrative Rules of Montana (ARM) is a looseleaf compilation by department of all rules of state departments and attached boards presently in effect, except rules adopted up to three months previously.

Montana Administrative Register (MAR) is a soft back, bound publication, issued twice-monthly, containing notices of rules proposed by agencies, notices of rules adopted by agencies, and interpretations of statutes and rules by the attorney general (Attorney General's Opinions) and agencies (Declaratory Rulings) issued since publication of the preceding register.

Use of the Administrative Rules of Montana (ARM):

Known Subject Matter	1. Consult ARM topical index. Update the rule by checking the accumulative table and the table of contents in the last Montana Administrative Register issued.
Statute Number and Department	2. Go to cross reference table at end of each title which lists MCA section numbers and corresponding ARM rule numbers.

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies which have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through September 30, 1998. This table includes those rules adopted during the period October 1, 1998 through December 31, 1998 and any proposed rule action that was pending during the past 6-month period. (A notice of adoption must be published within 6 months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through September 30, 1998, this table and the table of contents of this issue of the MAR.

This table indicates the department name, title number, rule numbers in ascending order, catchphrase or the subject matter of the rule and the page number at which the action is published in the 1998 and 1999 Montana Administrative Registers.

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