MONTANA ADMINISTRATIVE REGISTER

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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 7

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 The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

In the matter of the adoption of a rule related to acquiring services to operate the State Employees' Charitable Giving Campaign	)))))))	NOTICE OF PROPOSED ADOPTION OF A RULE RELATED TO ACQUIRING SERVICES TO OPERATE THE STATE EMPLOYEES' CHARITABLE GIVING CAMPAIGN NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On June 3, 1999, the Department of Administration proposes to adopt a rule related to acquiring services to operate the State Employees' Charitable Giving Campaign.

2. The proposed rule provides as follows:

RULE I THE STATE EMPLOYEES' CHARITABLE GIVING CAMPAIGN

(1) The state employees' charitable giving campaign (SECGC) may procure supplies or services costing $15,000 or less using a purchase technique that best meets the campaign's needs.

(Auth. 18-4-221, MCA; Imp. 18-4-221, MCA)

3. The State Employees' Charitable Giving Campaign is the only employer-authorized solicitation by non-profit groups of state employees at work. The Department of Administration appoints an advisory council to oversee the campaign and needs to acquire certain services to administer it. Specific services are required to organize the fund-raising campaign and to collect and disburse funds raised by the campaign. All of the costs of providing these services come from employee contributions. In the interest of maintaining accountability, the department is proposing this rule to place a limit on the amount of employee funds expended without a competitive process.

4. The State Personnel Division maintains an interested persons list and sends copies of proposed rule notices to everyone on the list. Anyone wishing to be placed on the list may contact the division at (406) 444-3871 or send a request to State Personnel Division, PO Box 200127, Helena, MT 59620-0127 and ask to be placed on the interested persons list for proposed rule changes.

5. Interested persons may submit their data, views, or arguments concerning the proposed rule to Gale Kuglin, Personnel Policy Coordinator, State Personnel Division, Department of

Administration, PO Box 200127, Helena, Montana 59620-0127. Electronic responses may be sent to gkuglin@state.mt.us. All responses must be received no later than May 10, 1999.

6. If a person who is directly affected by the proposed adoption wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Gale Kuglin at the address listed above. The comments must be received no later than May 10, 1999.

7. If the agency receives requests for a public hearing on the proposed adoption from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed adoption; from the administrative rules review committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be at least 25 state employees based on the more than 250 SECGC contributors annually.

8. Alternative accessible formats of this document will be provided upon request. Persons who need an alternative format of this rule notice, or who require some other reasonable accommodation in order to participate in this process, should contact Gale Kuglin, at the address given in paragraph 5 above, by telephone at (406)444-3984, or by electronic mail at gkuglin@state.mt.us. For those with a TDD, relay service is available by dialing 1-800-253-4091.

BY: _____ _____

Dal Smilie
Rule Reviewer

Lois Menzies
Director

Certified to the Secretary of State March 26, 1999

BEFORE THE BOARD OF NURSING
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed amendment of rules pertaining to prohibited IV therapies	)))	NOTICE OF PROPOSED AMENDMENT OF ARM 8.32.1409 PROHIBITED IV THERAPIES

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On May 8, 1999, the Board of Nursing proposes to amend the above-stated rule.

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

"8.32.1409 PROHIBITED IV THERAPIES (1) through (1)(b)(xvii) will remain the same.

~~(c) performance of sticks, blood draws, flushes of central and arterial lines; or~~

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

Auth: Sec. 37-8-415, MCA; IMP, Sec. 37-8-415, MCA

REASON: This amendment is being proposed to delete ARM 8.23.1409(1)(c). The language in (1)(c) should have been proposed for deletion in MAR Notice No. 8-32-42 published in issue number 5 of the 1998 Montana Administrative Register. The language in (1)(c) was added as a function licensed practical nurses are allowed to perform in the amendment of 8.32.1408 in MAR Notice No. 8-32-42.

3. Interested persons may submit their data, views or arguments concerning the proposed amendment in writing to the Board of Nursing, 111 N. Jackson, P.O. Box 200513, Helena, Montana 59620-0513, or by facsimile to (406) 444-1667, to be received no later than 5:00 p.m., May 6, 1999.

4. If a person who is directly affected by the proposed amendment wishes to present his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit the request along with any comments he has to the Board of Nursing, 111 N. Jackson, P.O. Box 200513, Helena, Montana 59620-0513, or by facsimile to (406) 444-1667, to be received no later than 5:00 p.m., May 6, 1999.

5. If the Board receives requests for a public hearing on the proposed amendment from either 10 percent or 25, whichever is less, of those persons who are directly affected by the proposed amendment, from the Administrative Rule Review Committee of the legislature, from a governmental agency or subdivision or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in

the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 330 based on the 3300 licensees in Montana.

6. Persons who wish to be informed of all Board of Nursing administrative rulemaking proceedings, or other administrative proceedings, may be placed on a list of interested persons by advising the Board in writing at 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513 or by phone at (406) 444-2071.

BOARD OF NURSING
KIM POWELL, RN, BSN, CEN
PRESIDENT

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

_____
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, March 26, 1999.

BEFORE THE BOARD OF VETERINARY MEDICINE
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed amendment of a rule pertaining to unprofessional conduct and the proposed adoption of a new rule pertaining to record-keeping standards	) NOTICE OF PROPOSED AMENDMENT) OF ARM 8.64.508 UNPROFESSIONAL) CONDUCT AND THE ADOPTION OF) NEW RULE I RECORD-KEEPING) STANDARDS)

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On May 8, 1999, the Board of Veterinary Medicine proposes to amend and adopt the above-stated rules.

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

"8.64.508 UNPROFESSIONAL CONDUCT For the purposes of implementing the provisions of 37-1-319, MCA, the board defines "unprofessional conduct" as follows:

(1) through (13) will remain the same.

(14) Violating the required standards of veterinary medical record-keeping.

Auth: Sec. 37-1-131, 37-1-319, 37-18-202, MCA; IMP, Sec. 37-1-131, 37-1-316, 37-1-319, ~~37-18-311~~, MCA

REASON: The proposed amendment to ARM 8.64.508 will add "violation of the required veterinary medical record-keeping standards" to the definition of unprofessional conduct to clarify, to the licensees and the public, the expected minimum standards licensees in this area of practice are expected to meet. Numerous record-keeping irregularities have been noted by the Board through its review of complaints and the Board is currently without the means to address the deficiencies of record-keeping by these professionals. This amendment will allow the Board to pursue disciplinary action when standards violations are identified.

3. The proposed new rule will read as follows:

"I RECORD-KEEPING STANDARDS (1) The required standards of veterinary medical record keeping are as follows:

(a) Patient medical records, either written or electronic, shall be maintained for every animal accepted and treated as an individual patient by a veterinarian, and for every animal group (e.g. herd, litter, flock) treated by a veterinarian. These records shall be maintained and stored in an orderly manner lending itself to retrieval.

(b) When appropriate, licensees may substitute the words "herd," "flock" or other collective term in place of the word "patient" of this section. Records to be maintained on these animals may be kept in a daily log, or the billing records,

provided that the treatment information that is entered is adequate to substantiate the identification of these animals and the medical care provided. In no case does this eliminate the requirement to maintain drug records as specified by state and federal law and board rules.

(c) The following data shall be clearly noted:

(i) name, address and phone number of owner or agent;

(ii) description, sex (if readily determinable), breed and age of or description of group;

(iii) date animal or group was seen, admitted, discharged;

(iv) results of examination, condition, diagnoses suspected;

(v) all medication, treatment, prescriptions or prophylaxis given, including amount and frequency for both inpatient and outpatient care;

(vi) diagnostic and laboratory tests or techniques utilized, and results of each.

(d) Veterinarians who practice with other veterinarians shall indicate by recognizable means on each patient's or animal group's medical record any treatment he/she has performed, or which he/she has directed support personnel to perform.

(e) All radiographs shall be permanently labeled to identify the veterinarian or premise, the patient, the owner, the date and anatomical orientation.

(f) Medical records of both individual and group patients shall be maintained for a minimum of three years after the last visit.

(g) Consent forms, if used, should be part of the medical record.

Auth: Sec. 37-1-131, 37-1-319, 37-18-202, MCA; IMP, Sec. 37-1-131, 37-1-316, 37-1-319, MCA

REASON: The new rule is being proposed to establish minimum standards of record-keeping for veterinarians. During the complaint process and while conducting Board business, members have encountered client records of varying quality. By implementing this rule, the Board is setting forth the minimum standards required for veterinary record-keeping both to protect the licensees and the consumer.

4. Interested persons may submit their data, views or arguments concerning the proposed amendment and adoption in writing to the Board of Veterinary Medicine, 111 N. Jackson, P.O. Box 200513, Helena, Montana 59620-0513, or by facsimile to (406) 444-1667, to be received no later than 5:00 p.m., May 6, 1999.

5. If a person who is directly affected by the proposed amendment and adoption wishes to present his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit the request along with any comments he has to the Board of Veterinary Medicine, 111 N. Jackson, P.O. Box 200513, Helena, Montana 59620-0513, or

by facsimile to (406) 444-1667, to be received no later than 5:00 p.m., May 6, 1999.

6. If the Board receives requests for a public hearing on the proposed actions from either 10 percent or 25, whichever is less, of those persons who are directly affected by the proposed actions, from the Administrative Rule Review Committee of the legislature, from a governmental agency or subdivision or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 94 based on the 941 licensees in Montana.

7. Persons who wish to be informed of all Board of Veterinary Medicine administrative rulemaking proceedings, or other administrative proceedings, may be placed on a list of interested persons by advising the Board in writing at 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513 or by phone at (406) 444-5436.

BOARD OF VETERINARY MEDICINE
DON SMITH, DVM, 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, March 26, 1999.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the proposed amendments of 17.8.601, 17.8.606, 17.8.610, 17.8.611, 17.8.612, and 17.8.613 pertaining to open burning	)))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENTS (AIR QUALITY)

TO: All Interested Persons

1. On May 17, 1999, at 1:30 p.m., the Board will hold a public hearing in Room 35 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendments 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., May 5, 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.

17.8.601 DEFINITIONS (1) "Best available control technology" (BACT) means those techniques and methods of controlling emission of pollutants from an existing or proposed open burning source which limit those emissions to the maximum degree which the department determines, on a case-by-case basis, is achievable for that source, taking into account impacts on energy use, the environment, and the economy, and any other costs, including cost to the source.

(a) Such techniques and methods may include the following:

(i) scheduling of burning during periods and seasons of good ventilation~~;~~

(ii) applying dispersion forecasts~~;~~

(iii) utilizing predictive modeling results performed by and available from the department to minimize smoke impacts~~;~~

(iv) limiting the amount of burning to be performed during any one time~~;~~

(v) using ignition and burning techniques which minimize smoke production~~;~~

(vi) selecting fuel preparation methods that will minimize dirt and moisture content~~;~~

(vii) promoting fuel configurations which create an adequate air to fuel ratio~~;~~

(viii) prioritizing burns as to air quality impact and assigning control techniques accordingly~~;~~ and

(ix) promoting alternative treatments and uses of materials to be burned.

(b) For essential agricultural open burning or prescribed

wildland open burning during September, October, or November, BACT includes burning only during the time periods specified by the department, which may be determined by calling ~~(406) 444-3454~~ the department ~~or~~ at (800) 225-6779.

(c) For prescribed wildland open burning during December, January or February, BACT includes burning only during the time periods specified by the department, which may be determined by calling ~~(406) 444-3454~~ the department at (800) 225-6779.

(2) through (11) Remain the same.

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

17.8.606 MINOR OPEN BURNING SOURCE REQUIREMENTS (1) and (2) Remain the same.

(3) During September, October, or November, to conduct essential agricultural open burning or prescribed wildland open burning, a minor open burning source must adhere to the time periods set for burning by the department that are available by calling ~~(406) 444-3454~~ the department ~~or~~ at (800) 225-6779.

(4) through (4)(a)(ii) Remain the same.

(iii) adhere to the time periods set for burning by the department that are available by calling ~~(406) 444-3454~~ the department at (800) 225-6779.

(b) Inside the eastern Montana open burning zone, a minor open burning source need only notify the department by telephone of any burning prior to ignition. Burning is allowed when ventilation conditions are good or excellent~~, as forecast by the national weather service. These forecasts are available from the national weather service offices in Billings and Great Falls~~. Ventilation conditions are determined by the department using a ventilation index, which is defined as the product of the mixing depth in feet at the time of the daily maximum temperature, times the average transport wind in knots through the mixed layer divided by 100. Good or excellent ventilation conditions exist when the ventilation index is 400 or higher. Forecasts of ventilation conditions may be obtained by calling the department at (800) 225-6779.

(5) and (6) Remain the same.

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

17.8.610 MAJOR OPEN BURNING SOURCE RESTRICTIONS

(1) through (4)(a) Remain the same.

(b) ~~receive and adhere to~~ comply with the conditions in any air quality open burning permit issued to it by the department, which will be in effect for 1 year from its date of issuance or another time frame as specified in the permit by the department; and

(5) Remains the same.

AUTH: 75-2-111, 75-2-203, MCA; IMP: 75-2-203, 75-2-211, MCA

17.8.611 EMERGENCY OPEN BURNING PERMITS (1) Remains the same.

(2) Oral authorization to conduct emergency open burning may be ~~requested from~~ granted by the department ~~by telephone~~.

~~(406) 444-3454,~~ upon ~~providing~~ receiving the following information:

(2)(a) through (d) Remain the same.

(2)(e) the date and time of the proposed burn; ~~and~~

(f) the date and time that the spill or incident giving rise to the emergency was first noticed; and

(f) Remains the same, but is renumbered (g).

(3) Remains the same.

AUTH: 75-2-111, 75-2-203, MCA; IMP: 75-2-203, 75-2-211, MCA

17.8.612 CONDITIONAL AIR QUALITY OPEN BURNING PERMITS

(1) through (5) Remain the same.

(6) The department may place any reasonable requirements in a conditional air quality open burning permit that the department determines will reduce emissions of air pollutants or minimize the impact of emissions, and the recipient of a permit must adhere to those conditions. For a permit granted under (4)(a) of this rule, BACT for the year covered by the permit will be specified in the permit; however, the source may be required, prior to each burn, to receive approval from the department of the date of the proposed burn to ensure that good ventilation exists and to assign burn priorities if other sources in the area request permission to burn on the same day. Approval may be requested by calling the department at ~~(406) 444-3454~~ (800) 225-6779.

(7) through (10) Remain the same.

AUTH: 75-2-111, 75-2-203, MCA; IMP: 75-2-203, 75-2-211, MCA

17.8.613 CHRISTMAS TREE WASTE OPEN BURNING PERMITS

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

(b) a provision that the source may be required, prior to each burn, to receive approval from the department of the date and time of the proposed burn to ensure that good ventilation exists and to assign burn priorities, if necessary. Approval may be requested by calling the department at ~~(406) 444-3454~~ (800) 225-6779.

(6) through (8) Remain the same.

AUTH: 75-2-111, 75-2-203, MCA; IMP: 75-2-203, 75-2-211, MCA

3. The Board is proposing amendments to the open burning rules administered by the Department of Environmental Quality.

Existing rules contain certain references that are no longer accurate. Specifically current rules contain a phone number for the Department that is no longer valid, and refer minor open burners to the National Weather Service for dispersion forecasts when the National Weather Service no longer provides this information. The Board proposes to delete these references in ARM 17.8.601, 17.8.606, and 17.8.611 through 17.8.613. In the absence of dispersion forecasts by the National Weather Service, the Board proposes to define ventilation conditions in the rule, using a recognized measuring system known as a ventilation index.

The proposed amendment to ARM 17.8.610(4)(b) would allow

major open burning permits to be issued for a period other than 1 year. By current rule these permits are required to be valid for 1 year, and the standard practice has been to issue these permits on September 1. If a permit is appealed, issuance of the permit may be delayed beyond the fall open burning season, even though the Board may ultimately uphold the Department's decision to issue the permit. Revising the term of these permits to a calendar year basis is necessary to allow time to resolve an appeal prior to the open burning season. To accomplish this, the Department must issue the next round of permits for 16 months. The proposed amendment would allow for this change in permit duration.

Under current rules, to obtain an emergency open burning permit, the applicant is required to provide information concerning the location, date and time of the burn, amount of material to be burned, absence of alternative disposal methods, and existence of an immediate threat to human health and safety and safety to plant or animal life. The Department must receive the information it needs to determine if an emergency exists that warrants telephone authorization to conduct emergency open burning. Existing rules do not require the applicant to provide the date and time that the spill or incident giving rise to the emergency was first noticed. Without this information the Department is unable to confirm that conditions exist which constitute a genuine emergency, justifying approval of an emergency open burning permit over the phone. The Board proposes to add this requirement to ARM 17.8.611.

The Board is also proposing minor editorial revisions to ARM 17.8.610 and 17.8.611 to make the rules easier to read. These revisions are not intended to change the meaning of the rules.

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 May 24, 1999. To be guaranteed consideration, the comments must be postmarked on or before that date.

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

BOARD OF ENVIRONMENTAL REVIEW

by *Joe Gerbase*
JOE GERBASE, Chairperson

Reviewed by:

David Rusoff
David Rusoff, Rule Reviewer

Certified to the Secretary of State, March 26, 1999.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of amendment of 17.8.301, 17.8.342 and 17.8.704 pertaining to maximum achievable control technology (MACT) approval for hazardous air pollutants	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT (Air Quality)

TO: All Interested Persons

1. On May 18, 1999, at 10 a.m. or as soon thereafter as the matter may be heard, the Board will hold a public hearing in Room 35 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed 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., May 10, 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.

17.8.301 DEFINITIONS For purposes of this subchapter, the following definitions apply:

(1) "112(g) exemption" means a document issued by the department on a case-by-case basis, finding that a major source of HAP meets the criteria contained in 40 CFR 63.41 (definition of "construct a major source", (2)(i) through (vi)), and is thus exempt from the requirements of 42 USC 7412(g).

(1) through (3) Remain the same, but are renumbered (2) through (4).

(5) "Beginning actual construction" means, in general, initiation of physical on-site construction activities of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures.

(5) Remains the same, but is renumbered (6).

(7) "Construct a major source of HAP" means:

(a) to fabricate, erect, or install a major source of HAP; or

(b) to reconstruct a major source of HAP, by replacing components at an existing process or production unit that in and of itself emits or has the potential to emit 10 tons per year of

any HAP, or 25 tons per year of any combination of HAP, whenever:

(i) the fixed capital cost of the new components exceeds 50% of the fixed capital cost that would be required to construct a comparable process or production unit; and

(ii) it is technically and economically feasible for the reconstructed major source to meet the applicable maximum achievable control technology emission limitation for new sources established under 40 CFR 63 Subpart B.

(4) Remains the same, but is renumbered (8).

(9) "Greenfield site" means a contiguous area under common control that is an undeveloped site.

(10) "Hazardous air pollutant" ("HAP") means any air pollutant listed in or pursuant to 42 USC 7412(b).

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

(12) "Major source of HAP" means:

(a) at any greenfield site, a stationary source or group of stationary sources which is located within a contiguous area and under common control and which emits or has the potential to emit 10 tons per year of any HAP or 25 tons per year of any combination of HAP; or

(b) at any developed site, a new process or production unit which in and of itself emits or has the potential to emit 10 tons per year of any HAP or 25 tons per year of any combination of HAP.

(13) "Maximum achievable control technology" ("MACT") means the emission limitation which is not less stringent than the emission limitation achieved in practice by the best controlled similar source, and which reflects the maximum degree of reduction in emissions that the department, taking into consideration the cost of achieving such emission reduction, and any non-air quality health and environmental impacts and energy requirements, determines is achievable by the constructed or reconstructed major source of HAP.

(7) Remains the same, but is renumbered (14).

(15) "Notice of MACT approval" means a document issued by the department containing all federally enforceable conditions necessary to enforce MACT or other control technologies such that the MACT emission limitation is met.

(16) "Process or production unit" means any collection of structures and/or equipment, that processes, assembles, applies, or otherwise uses material inputs to produce or store an intermediate or final product. A single facility may contain more than one process or production unit.

(8) through (12) Remain the same, but are renumbered (17) through (21).

AUTH: 75-2-111, 75-2-203, 75-2-204, MCA; IMP: 75-2-203, MCA

17.8.342 EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES (1) The owner or operator of any

affected source, as defined and applied in 40 CFR Part 63, shall comply with the requirements of 40 CFR Part 63, incorporated by reference in ARM 17.8.302. All references in 40 CFR Part 63, Subpart B to "permitting authority" refer to the Montana department of environmental quality ("department").

(2) Any owner or operator who constructs a major source of HAP is required to obtain from the department a notice of MACT approval or a 112(g) exemption pursuant to this rule, prior to beginning actual construction, unless:

(a) the major source has been specifically regulated or exempted from regulation under a standard issued pursuant to 42 USC 7412(d), (h), or (j) and incorporated into 40 CFR Part 63;

(b) the owner or operator of the major source has already received all necessary air quality permits for such construction, as of [the effective date of this rule]; or

(c) the major source has been excluded from the requirements of 42 USC 7412(g) under 40 CFR 63.40(c), (e) or (f).

(3) Unless granted a 112(g) exemption under (5) below, at least 180 days prior to beginning actual construction, an owner or operator who constructs a major source of HAP shall apply to the department for a notice of MACT approval. The application must be made on forms provided by the department, and must include all information required under 40 CFR 63.43(e).

(4) When acting upon an application for a notice of MACT approval, the department shall comply with the principles of MACT determination specified in 40 CFR 63.43(d).

(5) The owner or operator of a new process or production unit which in and of itself emits or has the potential to emit 10 tons per year of any HAP or 25 tons per year of any combination of HAP, may apply to the department for a 112(g) exemption, if the process or production unit meets the criteria contained in 40 CFR 63.41 (definition of "construct a major source", (2)(i) through (vi)). Application must be made on forms provided by the department, at least 180 days prior to beginning actual construction. The applicant shall include such information as may be necessary to demonstrate that the process or production unit meets the criteria referenced herein.

(6) As further described below, and except as expressly modified by this rule, the procedural requirements of ARM Title 17, chapter 8, subchapter 7 apply to an application for a notice of MACT approval or 112(g) exemption. For purposes of this rule:

(a) all references in applicable provisions of ARM Title 17, chapter 8, subchapter 7 to "permit" or "air quality preconstruction permit" or "air quality permit" mean "notice of MACT approval" or "112(g) exemption," as appropriate;

(b) all references in applicable provisions of ARM Title 17, chapter 8, subchapter 7 to "new or altered source" mean "major source of HAP."

(7) The following sections of ARM Title 17, chapter 8, subchapter 7 govern the application, review, and final approval or denial of a notice of MACT approval or 112(g) exemption: ARM 17.8.710(1) through (3), 17.8.710(5), 17.8.710(6), 17.8.716, 17.8.717, 17.8.720, and 17.8.730.

(8) The department shall notify the applicant in writing of any final approval or denial of an application for a notice of MACT approval or 112(g) exemption.

(9) A notice of MACT approval must contain the elements specified in 40 CFR 63.43(g). The notice shall expire if fabrication, erection, installation or reconstruction has not commenced within 18 months of issuance, except that the department may grant an extension which may not exceed an additional 12 months.

(10) An owner or operator of a major source of HAP that receives a notice of MACT approval or a 112(g) exemption from the department shall comply with all conditions and requirements contained in the notice of MACT approval or 112(g) exemption.

(11) If a standard is promulgated pursuant to 42 USC 7412(d), (h) or (j), before the date an applicant for a notice of MACT approval or 112(g) exemption has received a final and legally effective determination for a major source of HAP subject to the standard, the applicant shall comply with the promulgated standard.

(12) If a standard is promulgated pursuant to 42 USC 7412(d), (h) or (j), after the owner or operator of a major source of HAP subject to the standard has received a notice of MACT approval, the department shall issue an initial operating permit or reopen an existing operating permit pursuant to ARM Title 17, chapter 8, subchapter 12, as appropriate, consistent with the requirements of 40 CFR 63.44.

(13) The department may revoke a notice of MACT approval or 112(g) exemption if it determines that the notice or exemption is no longer appropriate because a standard has been promulgated pursuant to 42 USC 7412(d), (h) or (j). In pursuing revocation, the department shall follow the procedures specified in ARM 17.8.732.

AUTH: 75-2-111, 75-2-203, 75-2-204, MCA; IMP: 75-2-203, 75-2-204, 75-2-211, MCA

17.8.704 GENERAL PROCEDURES FOR AIR QUALITY PRECONSTRUCTION PERMITTING (1) through (5) Remain the same.

(6) Any source which is a "major source of HAP" as defined in ARM 17.8.301(12) is subject to the provisions of ARM 17.8.342.

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

3. The Board is proposing these amendments to maintain state primacy under the federal Clean Air Act Amendments of 1990. Pursuant to 42 USC 7412, the Department is required to

hazardous air pollutants (HAPs). Under section 7412(g), the Department is required to implement a program to regulate the construction or reconstruction of major sources of HAPs, until applicable emission standards are promulgated. On December 27, 1996, the Environmental Protection Agency (EPA) published the preamble and final rules regarding the construction or reconstruction of major sources of HAPs. 61 Fed. Reg. 68384. The EPA rules may be found at 40 CFR 63.40, et. seq. The amendments proposed by the Board in this Notice create an approval process administered by the Department to regulate the construction or reconstruction of major sources of HAPs. The policy of the state legislature is for the state to obtain, and maintain, primacy for the state's environmental programs. The proposed amendments are necessary to maintain an approvable Air Toxics and Title V Permitting Program. The failure to adopt these amendments may result in the loss of primacy and the imposition of economic sanctions on the state by EPA.

To protect public health, EPA is developing emission standards for certain categories of major sources of HAPs, generally defined as any source with the potential to emit 10 tons per year of any HAP or 25 tons per year of any combination of HAPs. The standards will require the application of stringent pollution controls in the form of Maximum Achievable Control Technology ("MACT"). While EPA has issued many MACT standards, a large number of categories of major sources of HAPs remain to be regulated.

The proposed amendments regulate the construction or reconstruction of major sources of HAPs on a case-by-case basis until an applicable MACT standard is promulgated. The amendments require anyone who constructs or reconstructs a major source of HAPs to obtain approval from the Department prior to beginning such activity. The Department makes a source-specific MACT determination, and issues a Notice of MACT Approval. The process tracks the general air quality preconstruction permitting process, and includes public notice and comment. A similar process exists for obtaining an exemption from these requirements if the source meets specific criteria contained in federal regulations.

The proposed amendments represent the minimum program necessary to obtain EPA approval of the State's program under section 7412(g). The Board is not proposing alternative rules because the adoption of rules at least as stringent as the EPA rules is required for EPA approval. Although the EPA rules provide for alternative processes for implementing the requirements of section 7412(g) at the state level, the Board is proposing to implement this program using the procedures from the existing air quality preconstruction permitting program. The Board believes this approach is consistent with the expressed intent of the 1993 Legislature that section 7412(g) be implemented through section 75-2-211, MCA.

The proposed amendments also clarify that, for purposes of applying the requirements of 40 CFR Part 63 (previously adopted by the Board), references in those rules to "permitting authority" mean the Department. This is necessary to prevent confusion regarding implementation of the rules at the state level.

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 May 28, 1999. To be guaranteed consideration, the comments must be postmarked on or before that date.

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

BOARD OF ENVIRONMENTAL REVIEW

by *Joe Gerbase*
JOE GERBASE, Chairperson

Reviewed by:

David Rusoff
David Rusoff, Rule Reviewer

Certified to the Secretary of State March 26, 1999.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the adoption of NEW RULE I and amendment of 17.38.101 and 17.38.249 pertaining to public water and sewage system requirements	))))))	NOTICE OF PUBLIC HEARINGS ON PROPOSED ADOPTION AND AMENDMENT (PUBLIC WATER SUPPLY)

TO: All Interested Persons

1. The Board of Environmental Review will hold multiple public hearings to consider the proposed adoption and amendment of the above-captioned rules. The Board will hold a hearing in Helena, Montana on May 20, 1999, at 10 a.m. in Room 111 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana. The Board will hold a hearing in Missoula, Montana on May 24, 1999, at 2 p.m. in Room 201 of the Missoula County Courthouse, 200 West Broadway, Missoula, Montana. Finally, the Board will hold a hearing in Billings, Montana on May 27, 1999, at 2 p.m. in Room 108 of the Department's Regional Office, Airport Industrial Park, IP-9, 1371 Rimtop Drive, Billings, Montana.

The Board will make reasonable accommodations for persons with disabilities who wish to participate in these hearings. If you need an accommodation, contact the Board no later than 5 p.m., May 10, 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 adopted, appears as follows:

RULE I OWNERSHIP OF SYSTEM (1) Public water supply systems must be owned by an individual, a water and sewer district, an incorporated city or town, a county or city-county government, or a private entity currently incorporated in accordance with Montana laws and regulations. Within 30 days after a change in ownership occurs, the new owner of a public water supply system shall notify the department, in writing, of the new owner's name, mailing address, telephone number, and the designated contact person as required by ARM 17.38.249.
AUTH: 75-6-103, MCA; IMP: 75-6-103, MCA

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

17.38.101 PLANS FOR PUBLIC WATER SUPPLY OR WASTEWATER SYSTEM (1) through (4) Remain the same.

(4)(a) The design report, plans and specifications for ~~a~~ community water systems must be prepared and designed by a professional engineer in accordance with the format and criteria set forth in Circular ~~WQB-1~~ DEQ-1, "Montana Department of ~~Health and~~ Environmental ~~Sciences~~ Quality Standards for Water Works", ~~1992~~ 1999 edition.

(b) The design report, plans and specifications for non-community water systems must be prepared in accordance with the format and criteria set forth in Circular ~~WQB-3~~ DEQ-3, "Montana Department of ~~Health and~~ Environmental ~~Sciences~~ Quality Standards for Small Water Systems", ~~1992~~ 1999 edition. The department or a delegated division of local government may require the plans and specifications for such a system to be prepared by a professional engineer when the complexity of the proposed system warrants such engineering (e.g., systems using gravity storage, pressure booster/reduction stations, or disinfection facilities).

(c) The design report, plans and specifications for all wastewater systems, except ~~non-community sewage systems and other~~ public subsurface sewage treatment systems, must be prepared and designed by a professional engineer in accordance with the format and criteria set forth in department Circular ~~WQB-2~~ DEQ-2, "Montana Department of ~~Health and~~ Environmental ~~Sciences~~ Quality Design Standards for Wastewater Facilities," ~~1995~~ 1999 edition. The design report, plans and specifications for a wastewater system must also be designed to protect public health and ensure compliance with the Montana Water Quality Act, Title 75, chapter 5, MCA, and rules adopted under the act, including ARM Title 17, chapter 30, subchapter 7.

(4)(d) through (f) Remain the same.

(g) The applicant must identify to the satisfaction of the department or a delegated division of local government that a legal entity exists ~~which~~ that is responsible for the ownership, maintenance, operation and perpetuation of the public water supply system or wastewater system. Public systems must be owned by an individual, a water and sewer district, an incorporated city or town, a county or city-county government, or a private entity currently incorporated in accordance with Montana laws and regulations. If a change of ownership occurs, the new owner of the public water supply system shall notify the department, in writing, within 30 days after the change of ownership occurs. If a responsible entity ceases to exist, the system will be considered a non-complying system.

(5) and (6) Remain the same.

(7) Unless the applicant has ~~commenced~~ completed the construction, alteration, or extension of a public water supply or wastewater system within ~~2~~ 3 years after the department or a delegated unit of local government has issued its written approval, the approval ~~shall be deemed~~ is void and a design report, plans and specifications ~~shall~~ must be resubmitted as

required by (4) of this rule with the appropriate fees specified in this subchapter. The department may grant a completion deadline extension if the applicant requests an extension in writing and demonstrates adequate justification to the department.

(8) Remains the same.

(9) Prior to commencing use of a new public system, or any portion of a new public system, the applicant shall certify by letter to the department that the system, or portion of the system constructed to that date, was built in accordance with approved plans and specifications. As-builts for the new system, or portion of the new system constructed to that date, must be submitted to the department within 90 days after the system has been placed into use. For new systems designed by a professional engineer, a professional engineer shall submit the certification letter and as-builts. Within 90 days after construction ~~is~~ has been completed upon an existing public water supply system or wastewater system, or upon an extension of or addition to such a system, the applicant shall certify to the department or a delegated division of local government that the construction, alteration, or extension was completed in accordance with the plans and specifications approved by the department. ~~In cases where the~~ For systems ~~was~~ designed by a professional engineer, the applicant shall submit a professional engineer's certification that the construction, alteration or extension was completed in accordance with the plans and specifications approved by the department. This certification shall be accompanied by a complete set of "as built" drawings signed by the applicant or, ~~in cases where the~~ for systems ~~is~~ designed by an engineer, signed by the professional engineer, and an operation and maintenance manual if applicable.

(10) The applicant shall submit documentation indicating commitment to retain a qualified professional to provide certification that the system was built in conformance with the approved plans and specifications. If the system was designed by a professional engineer, the documentation must indicate that the certification will be provided by a professional engineer.

(10) and (11) Remain the same, but are renumbered (11) and (12).

~~(12)~~ (13)(a) The department hereby adopts and incorporates by reference the following publications:

(i) Department of ~~Health and~~ Environmental ~~Sciences'~~ Quality Circular ~~WQB-1~~ DEQ-1, ~~1992~~ 1999 edition, which sets forth the requirements for the design and preparation of plans and specifications for public water supply systems.

(ii) Department of Environmental Quality Circular ~~WQB-2~~ DEQ-2, ~~1995~~ 1999 edition, which sets forth the requirements for the design and preparation of plans and specifications for sewage works.

(iii) Department of ~~Health and~~ Environmental ~~Sciences'~~

Quality Circular ~~WQB-3~~ DEQ-3, ~~1992~~ 1999 edition, which sets forth minimum design standards for small water systems.

(13)(a)(iv) through (b) Remain the same.

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

17.38.249 DESIGNATED CONTACT PERSON (1) The supplier of a community or non-transient non-community system shall retain a certified operator to perform monitoring and reporting in accordance with the requirements of this subchapter. The certified operator must be in responsible charge of the public water supply system in accordance with Title 37, chapter 42, MCA.

(1) through (4) Remain the same, but are renumbered (2) through (5).

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

4. Under the Safe Drinking Water Amendments of 1996, states are required to adopt capacity development rules by October 1, 1999, for new community and non-transient non-community water systems. Capacity development means acquisition and maintenance of adequate technical, managerial, and financial capabilities to enable water systems to consistently provide safe drinking water.

States that do not comply with the October 1, 1999, deadline will lose 20% of their drinking water state revolving funds for FY 1999. The Montana Drinking Water State Revolving Fund Program (DWSRF) would lose approximately $1.5 million for fiscal year 1999. States will continue to be penalized in the following amounts if capacity development rules are not adopted:

FY 2000 - 20% or approximately $1.5 million for Montana DWSRF

FY 2001 - 20% or approximately $1.9 million for Montana DWSRF

FY 2002 - 20% or approximately $1.9 million for Montana DWSRF

FY 2003 - 20% or approximately $2.0 million for Montana DWSRF

The proposed rule and circular changes are necessary to ensure long-term stability of new water and wastewater systems. The proposed changes are necessary to promote better designed water systems and ensure that new systems can provide adequate water, both in quantity and quality, for human consumption. The proposed changes are necessary to promote better planning of new wastewater systems, thereby reducing the potential for premature system failure and degradation of state waters. By requiring long-term planning, the proposed rule and circular changes would also help prevent violations by public systems.

The Board is proposing to place technical, managerial, and financial capacity development requirements in the Public Water

Supply Rules (ARM Title 17, chapter 8, subchapter 1), and in Department circulars for community water systems and non-community non-transient water and wastewater systems, incorporated by reference in ARM 17.38.101.

The Board is proposing additional changes to the Public Water Supply Rules (subchapters 1 and 2) and Department circulars WQB-1, WQB-2 and WQB-3, incorporated by reference in the rules, to reflect the Department's new name, for internal consistency, to correct minor typographical and grammar errors, to conform the rules and circulars to current rule drafting style, and to make the rules and circulars easier to read and more understandable. These editorial amendments are not intended to change the meaning of the rules or circulars.

The Board is proposing new Public Water Supply (PWS) circulars PWS-5 and PWS-6 and is proposing to incorporate those circulars by reference into existing circulars WQB-1 and WQB-3. PWS-5 would require evaluation of new community and non-transient non-community groundwater systems for the presence of groundwater under the direct influence of surface water. PWS-6 would require new community and non-transient non-community water systems to prepare a source water protection delineation.

The proposed new rule, rule amendments, circular amendments and new circulars are further summarized below. For more detailed information regarding the specific proposed changes to the existing circulars and for more detailed information regarding the new circulars, copies of the circulars may be obtained from the Department upon request.

Rule Changes

The Board is proposing to amend ARM 17.38.101 to rename circulars WQB-1, WQB-2, and WQB-3 as Department of Environmental Quality DEQ-1, DEQ-2, and DEQ-3 respectively, and to eliminate reference to the no longer existing Water Quality Bureau (WQB).

The Board is proposing to amend ARM 17.38.101(4)(g), to further define the entities that may own and operate public systems, to require notice to the Department if change of ownership occurs, and to classify a system as non-compliant if a responsible entity ceases to own and operate the system. These amendments would address the managerial capacity of a system and are necessary to ensure that responsible entities own and maintain public systems.

The Board is proposing to amend ARM 17.38.101(7) to require completion of a public system within 3 years. Applicants would be required to resubmit plans for review and approval for systems not completed within 3 years after approval unless the Department grants an extension. Currently, the rule requires resubmission of a design report, plans, and specifications for approval if construction is not commenced within 2 years.

However, construction may be commenced and not be completed for several years. The proposed amendment would address the technical capacity of a new system and is necessary to ensure that new systems are constructed in accordance with the Department's most current design criteria.

The Board is proposing to amend ARM 17.38.101(9) to require the applicant or a professional engineer to notify the Department prior to commencing use of a new system. This requirement is necessary to allow the Department to maintain current records and establish monitoring schedules for new systems. This requirement is also necessary to increase the technical capacity of systems by improving monitoring of new systems.

The Board is proposing to add a new subsection (10) to ARM 17.38.101 to require applicants to provide documentation that a qualified professional or professional engineer will be retained to certify as-builts of the system. This requirement is necessary to ensure the technical capacity of systems and to provide assurance to the Department that a qualified professional will oversee construction.

The Board is proposing to add a new subsection (1) to ARM 17.38.249 to require a certified operator for community and non-transient non-community systems in accordance with Title 37, chapter 42, MCA. This revision is necessary to clarify that community and non-transient non-community water suppliers are required to retain a certified operator. Currently, the public water supply rules do not clearly require these types of water suppliers to retain certified operators although certified operators are required under Title 42, chapter 37, MCA.

The Board is proposing NEW RULE I to prevent unincorporated associations of property owners from acting as owners of public water supply systems. Private homeowners' or water users' associations are often approved by the Department as public water supply system owners when new public water supply systems are approved. These associations lapse into unincorporated status if annual fees and a list of association officers are not provided to the Secretary of State's office. Unincorporated associations are not recognized under the law as "persons". Individual members whose views or wishes are not articulated or acted upon by the association representatives may be denied due process under standard departmental enforcement actions and civil litigation must be handled as a class action. With an unincorporated association, ownership and responsibility for compliance are unclear. This unincorporated status has provided enforcement difficulties for the Department in two recent enforcement actions. Proposed NEW RULE I is necessary to alleviate these problems.

Circular Changes

The Board is proposing to rename Department circulars WQB-1, WQB-2, and WQB-3 as DEQ-1, DEQ-2, and DEQ-3, and to change references in the circulars to the former Department of Health and Environmental Sciences (DHES) to refer to DHES' successor, the Department of Environmental Quality (DEQ). The Board is proposing to substitute "the Department" for "WQB". These changes are necessary because DHES and the Water Quality Bureau no longer exist.

The Board is proposing new policy statements in DEQ-1 to address alternative technologies recently approved for water systems by the Environmental Protection Agency (EPA). WQB-1 does not currently provide design guidelines for new alternative technologies, however, the Department has received proposals to use these alternative technologies. The Department needs design guidelines to properly review and evaluate these new technologies. The new version of "Recommended Standards for Water Works (RSWW)", 1997 Edition (water system design standards prepared and used by Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, New York, Ohio, Ontario, Pennsylvania, and Wisconsin), referred to below as the "parent document," addresses alternative technologies in the form of policy statements. Adoption of these policy statements is necessary to enable the Department to assess the integrity of proposed alternative technologies.

The Board is proposing to replace the current policy in WQB-1 on the use of packaged water treatment plants with the "Pre-Engineered Water Treatment Plants" policy in RSWW. The RSWW policy is more comprehensive than the existing policy in WQB-1 and provides additional criteria for use of pre-engineered water treatment plants.

WQB-1 does not have a policy on reverse osmosis. RSWW includes a policy on reverse osmosis that provides specific criteria for the application and design of reverse osmosis systems. The Board is proposing to add this policy from RSWW to DEQ-1.

WQB-1 does not include a policy on automated or unattended surface water treatment plants. RSWW includes a policy that provides specific criteria for the application and design of automated or unattended surface water treatment plants. The Board is proposing to add this policy from RSWW to DEQ-1.

WQB-1 does not include design guidelines for the use of bag and cartridge filters, an alternative treatment technology accepted by EPA. RSWW includes a policy that provides specific criteria for the application and design of bag and cartridge filters. The Board is proposing to add this policy from RSWW to DEQ-1.

WQB-1 does not include design guidelines for the use of chloramine disinfectant, a technology accepted by EPA. RSWW includes a policy that provides specific criteria for the application and design of chloramine disinfectant systems. The

Board is proposing to add this policy from RSWW to DEQ-1.

WQB-1 does not include design guidelines for the use of membrane filtration for surface water sources, a technology accepted by EPA. RSWW includes a policy that provides specific criteria for the application and design of membrane filtration systems for surface water sources. The Board is proposing to add this policy from RSWW to DEQ-1.

WQB-1 currently includes a policy on the use of ozonation. RSWW includes an updated policy that provides specific criteria for the application and design of ozonation systems. The Board is proposing to replace the current policy on WQB-1 with the updated policy from RSWW.

WQB-1 does not include design guidelines for the nitrate removal systems using sulfate selective anion exchange resin. RSWW includes a policy that provides specific criteria for the application and design of nitrate removal systems using sulfate selective anion exchange. The Board is proposing to add this policy from RSWW to DEQ-1.

DEQ-1, Section 1.1, and DEQ-3, Section 1.1

The Board is proposing to amend these sections to require new systems (community and non-transient non-community) to address capacity issues and to require existing systems to comply only with the applicable parts of the section.

DEQ-3, Sections 1.1.1.a, b, and c

The Board is proposing to amend these sections, regarding design report requirements, to conform to DEQ-1. The information that would be required is necessary to allow proper review of a water system. For public systems, the proposed amendments would provide necessary information for the public water supply inventory.

DEQ-1, Section 1.1.1.d and DEQ-3, Section 1.1.1.d

The Board is proposing to add these sections to require all new systems to address capacity as specified in new Appendix A of DEQ-1 and DEQ-3. Appendix A would require applicants to provide managerial, technical, operational, maintenance, and financial capacity information to allow the Department to assess the capacity of the proposed system. EPA regulations require capacity information to be provided on new community and non-transient non-community systems.

DEQ-1, Sections 1.1.8.2(i) and 3.2.2.1(c), and DEQ-3, Sections 1.1.6(f) and 3.2.2.1(c)

The Board is proposing to add these sections to require

assessment of groundwater source water supplies to determine if the groundwater is under the influence of surface water. This requirement is part of technical capacity requirements and is necessary to ensure adequate water quality. Treatment or system modifications may be required if the groundwater source is influenced by surface water. New circular PWS-5 would provide guidance on determining whether groundwater sources are under the influence of surface water.

DEQ-1, Sections 1.1.8.2(j), 3.2.3.1 and 3.2.3.2, and DEQ-3, Sections 1.1.6(g), 3.2.3.1 and 3.2.3.2

The Board is proposing to amend these sections to require a source water protection assessment when groundwater sources are proposed, to demonstrate that the proposed well location can be protected to ensure water quality. The Board is proposing new circular PWS-6 to provide guidance in assessing new public groundwater sources. This assessment requirement is part of the technical capacity requirements that EPA has mandated states develop to delineate and assess public water supply sources by the year 2003.

The Board is also proposing to amend section 3.2.3.2 of these circulars to refer to groundwater mixing zones as defined in ARM 17.30.517 and to prevent the zone of influence of a well from being in a groundwater mixing zone. This amendment is necessary for consistency with proposed changes in subdivision rules.

The Board is proposing to amend section 3.2.3.1 of the circulars to increase the setback distance between proposed wells and sewers from 50 to 100 feet. This setback distance will apply to all sewer lines, septic tanks, holding tanks, and any structure used to convey or retain wastewater. Amending the setback distance is necessary for consistency with the 100-foot protection radius already required under section 3.2.3.2.

DEQ-1, Section 1.1.13

The Board is proposing to amend this section to refer to financial information required under Appendix A as part of the financial capacity requirements.

DEQ-3, Section 1.2.2(b)

The Board is proposing to amend this section to require identification of potential and existing sources of contamination within 500 feet of a source instead of the present 250-foot requirement. This increase is necessary to protect groundwater sources and would address the technical capacity of a new transient non-community system.

DEQ-1, Section 1.7, and DEQ-3, Section 9

The Board is proposing to amend these sections to allow the Department to grant only limited deviations. The Department does not have the authority to grant general deviations, which apply to all applications and situations. Granting a general deviation would constitute rulemaking, which may be conducted only by the Board pursuant to formal rulemaking procedures.

DEQ-1, Sections 2.5, 3.2.2.1(b), 3.2.2.2(a) and 3.2.2.3, and DEQ-3, Sections 3.2.2.1(b) and 3.2.2.2(a)

The Board is proposing to amend these sections by changing "DHES" to "Department of Public Health and Human Services" (DPHHS) because DPHHS now is the agency responsible for laboratory certification.

DEQ-1, Section 3.1.3, and DEQ-3, Section 3.2.2

The Board is proposing to amend these sections to further define minimum treatment requirements by referring to the maximum contaminant levels for drinking water specified in ARM Title 17, chapter 38, subchapter 2. This amendment is necessary to give the Department authority to require treatment of groundwater.

DEQ-1, Sections 3.2, 3.2.2.2(b), and 3.2.4.1(e), and DEQ-3, Sections 3.2, 3.2.2.2(b), and 3.2.4.1

The Board is proposing to amend these sections to require that the reviewing authority review proposed well locations for approval prior to wells being drilled. Under the proposed amendments, the reviewing authority could also require submission of pump test and water quality test results prior to system approval, to verify adequate water quantity and quality. The Department's ability to assess well locations, water quality, and water quantity prior to system approval is necessary to ensure technical capacity of new systems.

DEQ-1, Section 3.2.1.1, and DEQ-3, Section 3.2.1.1

The Board is proposing to amend these sections to further define source capacity by requiring applicants to evaluate both source development and system storage to demonstrate adequate water quantity.

DEQ-1, Section 3.2.2

The Board is proposing to amend this section to provide the Department with authority to require treatment on a case-by-case

basis to ensure compliance with ARM Title 17, chapter 38, subchapter 2. EPA's capacity requirements include provisions to ensure that all developed water sources are suitable for human consumption. This includes requiring treatment, when necessary, to ensure compliance with Title 17, chapter 38, subchapter 2.

DEQ-3, Section 3.2.2.2

The Board is proposing to delete reference to radiological characteristics. Federal regulations do not address the radiological characteristics of non-community water systems. The Board has determined that it is not necessary for the state rules to be more stringent than federal regulation on this issue.

DEQ-1, Section 3.2.4.1.d, and DEQ-3, Section 3.2.4.1.d

The Board is proposing to amend these sections to clarify that pump tests must be conducted at 1.5 times the pump capacity instead of at the design pumping rate. The Board is proposing to further amend this section in DEQ-3 to allow reduced pumping rates and an alternative test on a case-by-case basis. Some systems, particularly transient non-community systems, experience large peak demands but should be allowed to conduct the pump test at a reduced rate. This modification would allow more cost-effective pump tests and reduce the amount of water lost during a pump test.

DEQ-1, Section 4.3

The Board is proposing to amend this section to require disinfection when chemicals are introduced to a water supply for treatment. This requirement is necessary to ensure that drinking water quality standards are met.

DEQ-1, Section 4.3.2(d)

The Board is proposing to amend this section to incorporate the contact times for chlorine specified in EPA guidance. This amendment is necessary to assist designers in establishing the proper contact time.

DEQ-1, Section 6.3

The Board is proposing to amend this section to provide that additional pumping capacity may be required if adequate storage is not available to meet maximum daily pumping demands. Currently, it is not clear that pumping capacity and storage must meet maximum daily pumping demands and it is necessary to revise this section for clarity.

DEQ-1, Section 8.0.1

The Board is proposing to amend this section to include slip-lining as an alternative for water main improvements to provide design criteria for slip-lining. This amendment is necessary because slip-lining has been proposed for distribution systems and the Department lacks any design criteria for slip-lining.

DEQ-1, Section 8.6.4

The Board is proposing to amend this section to grant the review engineer authority to approve main separation deviations, within the parameters of deviations previously approved by the Department, instead of having requests for these deviations routed to the Department's Deviation Committee. This amendment is necessary to expedite review time.

DEQ-1, Section 8.8.1, and DEQ-3, Section 8.5.1

The Board is proposing to amend these sections to further define cross-connections and to refer to recently adopted cross-connection rules for public systems in ARM Title 17, chapter 38, subchapter 3. These rules were recently adopted by the Board and provide specific criteria for addressing, minimizing, or eliminating cross-connections. Reference to these rules is necessary to ensure that readers are aware of them.

DEQ-1, Section 8.10

The Board is proposing to amend this section to encourage new systems to provide individual meters on service connections. However, the amendment would not mandate installation of individual meters. EPA's capacity requirements include this provision, which encourages better operation of a system, particularly when establishing rates for a system.

DEQ-1, Section 8.12, DEQ-3, Section 8.7

The Board is proposing to add this section to specify standards for water main abandonment. The Department currently lacks any standards for main abandonment. These standards are necessary to ensure that mains are properly abandoned to prevent cross-connections in the distribution systems.

DEQ-2, Section 11.12

This section addresses the informational requirements for

engineering reports. The Board is proposing to amend the section to require more detail in the planning document and provide a better basis for design. This amendment is necessary to provide the town/owner with adequate information for decision making. Because this information is already required for some of the funding agencies, these changes are also necessary to provide for more conformity of wastewater facility plans and engineering reports. This addition is also a requirement in the parent document, the "Recommended Standards for Wastewater Facilities".

DEQ-2, Section 11.28

This section addresses the informational requirements for facility plans. The Board is proposing to amend the section to require more detail in the planning document to provide a better basis for design. This amendment is necessary to provide the town/owner with adequate information for decision making. Because this information is already required for some of the funding agencies, these changes are also necessary to provide for more conformity of wastewater facility plans and engineering reports. This amendment is also a recommendation in the parent document.

DEQ-2, Section 24

This section specifies the procedure for granting deviations from the standards. The Board is proposing to amend the section to allow the Department to grant only limited deviations. The Department does not have the authority to grant general deviations, which apply to all applications and situations. Granting a general deviation would constitute rulemaking, which may be conducted only by the Board pursuant to formal rulemaking procedures.

DEQ-2, Section 33.41

This section mandates the minimum slopes for installation of sewer mains. As currently written, separate sentences in the standard specify that sewers "shall" and "should" comply with the minimum slopes specified in the chart included in the standard. The Board is proposing to amend the section by deleting terms that may indicate that the standard is only a recommendation. This amendment is necessary to clarify that the standard is mandatory rather than a recommendation.

DEQ-2, Section 33.95

The Board is proposing to add this section to specify requirements for service connections to sewer mains. The

amendment would require that service connections be watertight, that they not protrude into the sewer main, and that the material used be compatible with the main and be corrosion-proof. This new section is necessary to mitigate maintenance difficulty due to blockages caused by protrusions and to minimize infiltration into sewer lines that can affect treatment efficiency and effluent quality. Also, this section is a requirement in the parent document.

DEQ-2, Section 38.2

This section specifies the setback distances between public water supply wells and proposed sewer lines. This distance applies to all sewer lines, septic tanks, holding tanks, and any structure used to convey or retain wastewater. The Board is proposing to amend the section by extending the required setback distance from 50 feet to 100 feet. This amendment is necessary for consistency with the protection radius already required under Section 3.2.3.2 of circular WQB-1 (now DEQ-1).

DEQ-2, Section 41.4

The Board is proposing to add this new section to specify safety requirements for wastewater pumping stations. The section would require provision of equipment for confined space entry. The proposed new section would be consistent with the safety requirements specified in Section 57 of the circular for wastewater treatment works, but would extend the requirement to lift stations. This proposed section is necessary for consistency with OSHA and state rules regarding protection of public health and the safety of operation and maintenance personnel. Also, the section is a requirement in the parent document.

DEQ-2, Section 42.25

The Board is proposing to add this new section to specify construction material requirements for wastewater pumping stations. The section would require use of corrosion resistant materials. This section is necessary because the highly corrosive nature of wastewater has been a maintenance problem at many pump stations and corrosion can shorten the life of the system. Also, this addition is a requirement in the parent document.

DEQ-2, Section 56.13

This section addresses disinfection at wastewater treatment works during power outages. The Board is proposing to amend the section to add a requirement that systems that dechlorinate

provide continuous dechlorination during power outages. This requirement is necessary to protect aquatic life from chlorine toxicity. Also, this requirement is a requirement in the parent document.

DEQ-2, Section 56.23

This section specifies requirements for indirect connections to potable water supplies in a plant. The Board is proposing to amend the section to clarify that either a combination of a break tank, pressure pump, and pressure tank must be used or a backflow preventer valve must be installed. This amendment is necessary for clarification but is not intended to change the meaning of the section.

DEQ-2, Section 56.61(a)

This section addresses flow measurement for wastewater systems. The current section requires measurement of plant influent or effluent flow. The Board is proposing to amend the section to require installation of measurement devices for both plant influent and effluent flow. Effluent flow measurement is necessary for compliance with MPDES permit requirements. Influent flow measurement is also necessary to allow owners and operators to verify hydraulic and organic loading to the treatment facilities. This is especially important in troubleshooting unit process upsets and in determining available treatment capacities for communities that are experiencing significant growth. Having both influent and effluent measurement capabilities is necessary to verify that a treatment system is not leaking partially-treated wastewater into state waters. Also, because most discharge permits require compliance with certain "percent removal" criteria, it is necessary to know both influent and effluent concentrations and flow.

DEQ-2, Section 72.222

This section includes a table that specifies the design standards for the final clarifier for activated sludge systems. The Board is proposing to amend the table by adding a row to the table to address systems that add chemicals for phosphorus removal and that have an effluent phosphorus limit of 1 mg/l or less. This loading standard is necessary to ensure required performance of clarifiers when stringent phosphorus limits are applied. Also, this addition is a requirement in the parent document.

DEQ-2, Section 86.7

This section regulates disposal of sludge. The current

section mandates that land applied sludge be incorporated into the soil the same day the sludge is delivered to the disposal site. The Board is proposing to amend the section to recommend, rather than require, that land applied sludge be incorporated into the soil the same day it is delivered. This change would be consistent with EPA sludge regulations. The Board has determined that it is not necessary for this section to be more stringent than federal regulations because the federal land application method is sufficient to provide treatment of applied sludge and protect the environment.

DEQ-2, Section 87.22

This section addresses slope and flushing requirements for sludge piping. The current section recommends draining and flushing of discharge lines. The Board is proposing to amend the section to require draining and flushing. This amendment is necessary because blockages in sludge lines present difficulty in operation and can also cause decay in the lines, resulting in build-up of hazardous gases, and the possibility of explosions. Also, this change is a requirement in the parent document.

DEQ-2, Section 88.233

This section addresses sludge drying bed underdrains. The Board is proposing to amend the section by adding design criteria, including criteria for minimum slope and spacing of lateral tiles and installation requirements. These amendments are necessary to provide more guidance for design. Also, these changes are a recommendation in the parent document.

DEQ-2, Section 88.235

The Board is proposing to add this new section to address the seal for sludge drying beds. The proposed section would require sludge drying beds be sealed in a manner approved by the Department so that seepage is not allowed to infiltrate to the groundwater. This amendment is necessary to protect groundwater and, also, is a requirement in the parent document.

DEQ-2, Section 89.12(h)

This section addresses sludge storage and disposal. The Board is proposing to add a new subsection requiring consideration of pathogen and vector attraction reduction in designing sludge storage sites for land application systems. This amendment is necessary to protect public health and would be consistent with federal regulations. Also, this new subsection is a requirement in the parent document.

DEQ-2, Section 92.12

This section addresses process selection for activated sludge systems. The Board is proposing to amend the section by adding a paragraph discussing sequencing batch reactors and providing for Department approval on a case-by-case basis. This amendment is necessary because the circular lacks any guidance for this relatively new technology. Also, this addition is a requirement in the parent document.

DEQ-2, Section 92.332(a)

This section addresses diffused air systems for activated sludge plants. The Board is proposing to amend the section by adding a provision specifying that, when alpha and beta factors are not available, wastewater transfer efficiency is assumed to be no greater than 50%. This amendment is necessary because the circular currently lacks guidance on this issue. Also, this addition is a requirement in the parent document.

DEQ-2, Section 93.2

This section provides a recommended distance between wastewater lagoons and habitation. In the past there has been confusion as to whether this section mandates or recommends a 1/4 mile minimum distance. This amendment is necessary to clarify that the provision is a recommendation. The Board is also proposing to amend the section to add a recommendation that the designer consider vector transport, odor, and public safety when deciding on a location for a lagoon. This amendment is necessary to ensure that designers are aware that these factors should be considered.

DEQ-2, Table 93-1, Footnote 2

This table specifies the design standards for facultative lagoons. The Board is proposing to add language clarifying that footnote 2 refers to "primary cell detention time".

DEQ-2, Section 93-1, Footnote 6

The Board is proposing to add this new footnote to address the configuration of total retention lagoon systems. The proposed new footnote would add design requirements specifying that there be at least two cells and that the water surface in the primary treatment cell remain at a minimum level to permit adequate biological treatment. The new footnote would require that the treatment cell retain at least 2 feet of effluent in the primary cell so that the sludge and untreated effluent is not exposed to the air. These amendments are necessary to

improve treatment efficiency by ensuring that there are separate treatment cells and evaporation cells and to protect public health from the risk of contact with untreated or partially-treated human waste in "dry" lagoons.

DEQ-2, Table 93-1, Footnote 7

The Board is proposing to add this new footnote to clarify that the maximum allowable leakage per year from facultative ponds is less than the 6 inch per year standard when 6 inches would result in a violation of the nondegradation regulations. This new footnote is necessary to ensure that designers are aware that the nondegradation rules may mandate a lower maximum leakage.

DEQ-2, Table 93-2, Footnote 1

This table specifies the design standards for aerated ponds. The Board is proposing to amend the footnote to require that the outlet area of all final settling ponds have a quiescent zone of at least 1 to 2 days of hydraulic detention time for settling solids. Currently, the circular requires a quiescent zone, but lacks a prescribed minimum volume. The proposed amendment is necessary to ensure adequate settling.

DEQ-2, Table 93-2, Footnote 8

The Board is proposing to add this new footnote to clarify that the maximum allowable leakage per year from aerated ponds is less than the 6 inch per year standard when 6 inches would result in a violation of the nondegradation regulations. This new footnote is necessary to ensure that designers are aware that the nondegradation rules may mandate a lower maximum leakage.

DEQ-2, Section 93.422

This section addresses testing requirements for pond liners. The Board is proposing to add a requirement that would require testing to take place at the maximum operating depth. This amendment is necessary to ensure that tests closely represent conditions under which the system will operate.

DEQ-2, Section 93.423

This section specifies requirements for uniformity and slope of lagoon bottoms. The Board is proposing to amend the section to allow sloped lagoon bottoms when synthetic liners are installed. Air entrapment beneath lagoon liners can cause failure of the liners. The proposed amendments are necessary to

allow trapped gases to escape from beneath synthetic liners as groundwater rises.

DEQ-2, Section 93.442(a)(1) and (2)

These sections address control structures and interconnecting piping. Section 93.442(a)(1) currently recommends that takeoffs be submerged. The Board is proposing to amend the section to require that takeoffs be submerged. This amendment is necessary because it is necessary to draw effluent from below the water surface where algae may exist.

The Board is proposing to amend Section 93.442(a)(2) to clarify that only the final pond takeoff must meet the location criteria specified in the section. This amendment is necessary to clarify that the location criteria apply only to the final pond.

DEQ-2, Section 102.2

This section addresses chlorination dosage. The Board is proposing to amend the section to require submission of the rationale for design and design considerations. Currently, the circular lacks guidance on this issue. The revision is necessary to provide designers that specify chlorination systems with the specific information required for review of these systems. The additional information required under the proposed revision would allow more thorough and efficient review of disinfection systems by the Department. Also, this addition is a requirement in the parent document.

DEQ-2, Section 104

This section addresses ultraviolet radiation disinfection (UVRD). The Board is proposing to amend the section by adding language specifying the critical parameters for UVRD units. This amendment is necessary to ensure that designers consider these parameters. The Board is also proposing to amend the section by adding design standards including specification of a minimum of two banks of lights, removable units, design for plug flow and water level control for open channel designs. This amendment is necessary because the circular lacks guidance or minimum standards for these systems, which are becoming more prevalent in Montana. Also, these provisions are requirements in the parent document.

DEQ-2, Section 111.31

This section addresses liquid chemical feed equipment for phosphorus removal systems. The Board is proposing to add a sentence requiring that chemical feed equipment be capable of

meeting maximum dosage for design conditions. This amendment is necessary to ensure that systems are capable of handling design flows. Also, this addition is a requirement in the parent document.

DEQ-2, Appendix B.61

Appendix B provides design standards for spray irrigation of wastewater effluent. Section B.61 currently provides that wastewater is considered adequately disinfected if the median number of fecal coliform organisms does not exceed 23 per 100 milliliters, as determined from the last 7 days for which analysis has been completed. This coliform count was a typographical error in the original document and the appendix should have read 200 per 100 milliliters. The Board is proposing to correct this error by increasing the number of allowed organisms to 200.

The Board is also proposing to amend the section to add a requirement for at least a 50-foot buffer zone between irrigation sites and public use areas or dwellings if low trajectory nozzles are used. This amendment is necessary to protect public health. Human exposure to treated effluent with the prescribed coliform count could result in diarrhea and lead to dehydration, especially in infants or individuals with poor health.

DEQ-2, Appendix B.71

The Board is proposing to add this new section in place of the current section B.63, which requires a distance of at least 200 feet between spray irrigation and water supply wells or surface waters. The new numbering is necessary to clarify that the section applies to all spray irrigation sites. The new section would decrease the distance required between spray irrigation and water supply wells from 200 feet under the current section B.63 to 100 feet. This amendment is necessary for consistency with other statutes and rules implemented by the Department. The new section would provide for case-by-case determinations of the required distance of spray irrigation from surface water, based on the quality of effluent and level of disinfection, rather than the set 200-foot distance required under the current section B.63. This amendment would allow for discretion in setting the distance based on treatment and disinfection of the effluent and is necessary to ensure that an appropriate distance is determined.

DEQ-2, Appendix C.21

Appendix C provides design standards for alternative sewer systems. The Board is proposing to add a new section C.21 to

specify that small diameter gravity sewer systems may be used only for septic tank effluent. Under the proposed amendment, small diameter sewer pipe could be used in systems in which solids have been removed by a septic tank. This amendment is necessary to prevent misapplication of the design standards, which could result in plugging of small diameter pipe by normal wastewater solids.

DEQ-2, Appendix D

Appendix D provides standards for rapid infiltration basins. The Board is proposing to amend section D.1 of the appendix by adding a paragraph notifying applicants that a discharge permit may be required for this type of system and referring applicants to the appropriate rules for more information. These amendments are necessary to alert applicants to these other existing requirements.

DEQ-2, Appendix E

The Board is proposing this new appendix to specify criteria for addressing capacity development and financial viability for new wastewater treatment systems. The Board is proposing to add the appendix to maintain consistency throughout the Department circulars because the proposed rule revisions would affect both water and wastewater systems. Also, new community and non-transient non-community water systems will need to address capacity requirements and these proposed systems are typically associated with a new community or non-transient non-community wastewater system. New community and non-transient non-community wastewater systems should address capacity to ensure the longevity of the wastewater system. The information requested in Appendix E would clearly define the financial information that must be submitted for review and approval of a new community and non-transient non-community wastewater system.

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 May 28, 1999. To be guaranteed consideration, the comments must be postmarked on or before that date.

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

BOARD OF ENVIRONMENTAL REVIEW

by *Joe Gerbase*
JOE GERBASE, Chairperson

Reviewed by:

David Rusoff
David Rusoff, Rule Reviewer

Certified to the Secretary of State March 26, 1999.

BEFORE THE ATTORNEY GENERAL
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 1.3.101, 1.3.102, 1.3.201, 1.3.202, 1.3.203, 1.3.204, 1.3.205, 1.3.206, 1.3.207, 1.3.208, 1.3.209 and 1.3.210, the model rules of procedure and the amendment of the sample forms attached to the model rules.	)	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On April 30, 1999 at 10:00 a.m., a public hearing will be held in the auditorium of the Scott Hart Building at 303 North Roberts, Helena, Montana, to consider the amendment of the Administrative Rules of Montana, 1.3.101 and 1.3.102, the Attorney General's Model Rules of Procedure, 1.3.201 through 1.3.210, and the amendment of the sample forms attached to the model rules.

The Department of Justice will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you request an accommodation, contact the department no later than 5:00 p.m. on April 20, 1999, to advise us of the nature of the accommodation that you need. Please contact Melanie Symons, Department of Justice, 215 North Sanders, P.O. Box 201401, Helena, MT 59620-1401; telephone (406)444-2026; FAX (406)444-3549.

2. The rules proposed to be amended provide as follows: (text of rule with stricken matter interlined, new matter underlined):

1.3.101 INTRODUCTION AND DEFINITIONS ~~All section numbers refer to~~ (1) Montana statutes are referred to collectively as the Montana Code Annotated. The term "MCA" is the abbreviation for Montana Code Annotated.

(2) Section 2-3-103~~(1)~~, MCA, directs each agency to adopt procedural rules to facilitate public participation in agency actions that are of significant interest to the public.

(3) "Agency" is defined by ~~section~~ 2-3-102~~(1)~~, MCA. Note that exceptions to the term "agency" are fewer under this section than under the Montana Administrative Procedure Act, ~~section~~ 2-4-102~~(2)~~, MCA.

(4) "Agency action" is defined by ~~section~~ 2-3-102~~(3)~~, MCA, ~~+~~ with exceptions ~~are~~ listed in ~~section~~ 2-3-112, MCA. ~~An appendix of sample forms follows the text of the rules.~~

(5) The term "register" refers to the Montana Administrative Register.

(6) "Sample form" is defined as a reference guide that depicts standard boilerplate language and layout for notices published in the register. An appendix of sample forms follows

the text of the rules.

AUTH: 2-4-202, MCA
IMP: 2-4-202, MCA

1.3.102 MODEL RULE 1 NOTICE OF AGENCY ACTION THAT IS OF SIGNIFICANT INTEREST TO THE PUBLIC (1) and (1)(a) remain the same.

(b) a notice of the proposed agency action published in the ~~Montana~~ Rregister in accordance with sample form 1~~, infra~~. The agency may grant or deny an opportunity for hearing, except a hearing is required if the proposed action is the adoption of rules in an area of significant interest to the public.

(2) For purposes of (1)(b) only, significant interest to the public is defined at 2-4-102, MCA, as matters an agency knows to be of widespread citizen interest.

AUTH: 2-4-202, MCA
IMP: 2-4-202, 2-4-302, MCA

1.3.201 INTRODUCTION AND DEFINITIONS (1) ~~All section numbers refer to~~ Montana statutes are referred to collectively as the Montana Code Annotated. The term "MCA" is the abbreviation for Montana Code Annotated.

(2) The Montana Administrative Procedure Act is referred to as "the Act" and includes ~~sections~~ 2-4-101 through 2-4-711, MCA. The Act outlines procedures that agencies must follow when:

(a) through (2) remain the same except (2) is renumbered (3).

(4) The term "register" refers to the Montana Administrative Register.

AUTH: 2-4-202, MCA
IMP: 2-4-202, MCA

1.3.202 APPLICATION OF MONTANA ADMINISTRATIVE PROCEDURE ACT (1) The Act applies to all state agencies as defined in ~~section~~ 2-4-102~~(2)~~, MCA. Note that the state board of pardons and parole is subject to only the sections enumerated in ~~sections~~ 2-4-103, 2-4-201, 2-4-202 and 2-4-306, MCA, and the requirement that its rules be published.

AUTH: 2-4-202, MCA
IMP: 2-4-202, MCA

1.3.203 ORGANIZATIONAL RULE (1) and (2) remain the same.

(3) The organizational rule should contain the following as illustrated by sample form 2~~, infra~~:

(a) through (c) remain the same.

AUTH: 2-4-202, MCA
IMP: 2-4-202, MCA

1.3.204 RULEMAKING, INTRODUCTION (1) remains the same.

(2) See ~~section~~ 2-4-102~~(10)~~, MCA, for the definition of

"rule". Because of the difficulty in determining whether an agency action falls within the definition of rule, construe the exceptions narrowly and if in doubt, consult legal counsel. Interpretative rules are statements issued by an agency to advise the public of the agency's construction of the statutes and rules which it administers. Interpretive rules may be made under the express or implied authority of a statute, but are advisory only and do not have force of law.

(3) Substantive rules must implement either:

(a) a statute which clearly and specifically includes the subject matter of the rule as a subject upon which rules can be adopted;

(b) subject matter which is clearly and specifically included in a statute to which the agency's rulemaking authority extends; or

(c) an agency function which is clearly and specifically included in a statute to which the agency's rulemaking authority extends. 2-4-305(3), MCA.

(3) remains the same but is renumbered (4).

~~( )~~(a) Notice of proposed agency action. ~~See~~ Model Rule 3.

(i) notice in the register;

(ii) notice to sponsor as required;

(iii) notice to interested persons; and

(iv) statement of reasonable necessity for the proposed action.

~~( )~~(b) Opportunity to be heard.

(i) The agency ~~must~~ shall allow at least 28 days from the publication of the original notice of proposed action for interested persons to submit comments in writing to the agency. The agency may extend the response time in the event an amended or supplemental notice is filed;

(ii) The agency shall schedule an oral hearing at least 20 days from the publication of the notice of proposed action if the proposed rules affect matters which are of significant interest to the public as defined at 2-4-102(12), MCA;

(iii) Except where the proposed rules affect matters which are of significant interest to the public or otherwise required by law, ~~an agency must hold~~ a public hearing must be held only if ~~it's~~ the agency's proposed action affects a substantive rule and a hearing is requested by either:

(a) through (c) remain the same but are renumbered (A) through (C).

~~(d)~~(D) the appropriate administrative rule review ~~code~~ committee of the legislature. ~~See~~ Model Rule 4.

~~( )~~(c) Agency action. ~~See~~ Model Rule 5.

(5) Pursuant to 2-4-302, MCA, the agency shall create and maintain a list of interested persons and the subject(s) of their interest. Persons submitting a written comment or attending a hearing must be informed by the agency of the list and be provided an opportunity to place their names on the list.

~~(4)~~(6) In the event of imminent peril to the public health, safety, or welfare, t~~T~~emporary emergency rules may be adopted without prior notice or hearing or after abbreviated procedures. However, special notice must be given the appropriate administrative rule review committee. ~~This is~~

~~discussed in~~ Model Rule 6.

(7) In the event a statute is effective prior to October 1 of the year of enactment, temporary rules may be adopted with abbreviated notice or hearing, but with at least 30 days notice, and are effective through October 1 of that year. Model Rule 6.

AUTH: 2-4-202, MCA
IMP: 2-4-202, 2-4-302, 2-4-303, 2-4-305, MCA

1.3.205 MODEL RULE 2 RULEMAKING, PETITION TO ~~PROMULGATE~~ ADOPT, AMEND OR REPEAL RULE (1) Section 2-4-315, MCA, authorizes an interested person or member of the legislature acting on behalf of an interested person when the legislature is not in session, to petition an agency to ~~promulgate~~ adopt, amend or repeal a rule.

(a) The petition shall be in writing, signed by or on behalf of the petitioner and shall contain, as illustrated by sample form 3, ~~infra~~, a detailed statement of:

(i) and (ii) remain the same.

(iii) the rule petitioner requests the agency to ~~promulgate~~ adopt, amend or repeal. Where amendment of an existing rule is sought, the rule shall be set forth in the petition ~~in full~~ with ~~matter~~ proposed deletions ~~to be deleted therefrom~~ interlined and proposed additions ~~thereto shown by underlining~~ underlined; and

(iv) remains the same.

(b) Legislators may petition an agency on behalf of interested parties through an informal letter or memorandum. The petition should include the name of the person or a description of a class of persons on whose behalf the legislator acts. Petitions filed by the appropriate administrative rule review ~~code~~ committee of the legislature need not be brought on the behalf of any specifically interested party. Any petition from the legislature or its members should comply with (1)(a)(iii) and (iv) of this rule.

(2) and (3) remain the same.

~~(a) must make a timely ruling on the petition pursuant to section 2-4-315.~~

~~(b)~~(a) may, but is not required to, schedule a hearing or oral presentation of petitioner's or interested person's views ~~if the agency wishes to hear petitioner orally.~~ to assist in developing the record;

~~(c)~~(b) ~~must~~ shall, within 60 days after date of submission of the petition~~er~~, either:

(i) issue an order denying the petition; ~~, stating its reasons for the denial, and mail a copy to the petitioner and all other persons upon whom a copy of the petition was served;~~ or

(ii) remains the same.

(4) A decision to deny a petition or to initiate rulemaking proceedings must:

(a) be in writing;

(b) be based on record evidence, including any information submitted by petitioner, the agency and interested persons; and

(c) include the reasons for the decision.

AUTH: 2-4-202, MCA
IMP: 2-4-202, 2-4-315, MCA

1.3.206 MODEL RULE 3 RULEMAKING, NOTICE (1) How notice is given. ~~Section~~ 2-4-302, MCA.

(a) An agency shall notify the chief sponsor of any legislation when the agency begins work on the initial rule proposal implementing one or more sections of that legislation. If a proposed rule implements more than one bill, the chief sponsor of each bill must be notified. 2-4-302(2), MCA.

(a) remains the same but is renumbered (b).

(c) An agency shall post the notice on the state electronic bulletin board or other available electronic communications system. Posting on the agency's home page is adequate.

(d) Within 3 days of publication pursuant to ARM 1.3.206(1)(b), an agency shall send copies of the notice:

(i) to all interested persons; and

(ii) to the chief sponsor of the legislation being implemented, if the notice is the initial rule proposal regarding that legislation. 2-4-302(2), MCA. If a proposed rule implements more than one bill, the chief sponsor of each bill must receive a copy of the notice.

(e) Former legislators who wish to receive notice of initial proposals must keep their name, address, and telephone number on file with the secretary of state. Agencies proposing rules shall consult that listing. 2-4-302(8), MCA.

(b) and (c) remain the same but are renumbered (f) and (g).

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

(i) As illustrated by sample forms 4, ~~infra~~, the notice must include:

(A) through (II) remain the same.

(III) The agency shall include in its notice an easily understood statement of reasonable necessity which contains the principle reasons and the rationale for each proposed rule. One statement may cover several proposed rules if appropriate, and if the language of the statement clearly indicates which rules it covers. An inadequate statement of reasonable necessity cannot be corrected in an adoption notice. The corrected statement of reasonable necessity must be included in a new notice of proposed action.

(IV) The agency shall include in its notice information describing the interested persons list and explaining how persons may be placed on that list. 2-4-302, MCA.

(III) remains the same but is renumbered (V).

(B) through (b) remain the same.

(i) As illustrated by sample forms 5 through 8, ~~infra~~, the notice must include:

(A) remains the same.

(B) a statement that any interested person desiring to express or submit ~~his~~ data, views or arguments at a public hearing must request the opportunity to do so, and that if 10% or 25, whichever is less, of the persons directly affected; or a governmental subdivision or agency; or an association having not less than 25 members who will be directly affected; or the

legislature's appropriate administrative rule review ~~code~~ committee request a hearing, a hearing will be held after appropriate notice is given. Reference to the appropriate administrative rule review ~~code~~ committee is unnecessary if the full legislature, by joint resolution, has ordered the repeal of a rule;

(C) a statement of the number of persons which constitutes 10% of those directly affected ~~who constitute 10%~~;

(D) and (E) remain the same.

(c) Notice of public hearing when a hearing has been properly requested. When a hearing has been properly requested, the agency ~~must~~ shall mail notice of the hearing to persons who have requested a public hearing~~,~~ ~~section~~ 2-4-302, MCA. Also, notice must be published in the ~~Montana Administrative~~ Register. ~~Section~~ 2-4-302(2), MCA.

(i) As illustrated by sample form 10, ~~infra,~~ the notice ~~must~~ shall ~~include notice~~ state that the hearing is being held upon request of the requisite number of persons designated in the original notice, ~~section~~ 2-4-302(4), MCA; or the appropriate administrative rule review ~~code~~ committee of the legislature, ~~section~~ 2-4-402(3)~~(c)~~, MCA; or a governmental agency or subdivision~~,~~; or an association.

AUTH: 2-4-202, MCA
IMP: 2-4-202, 2-4-302, 2-4-305, MCA

1.3.207 MODEL RULE 4 RULEMAKING, OPPORTUNITY TO BE HEARD

(1) Written comment.

(a) When the subject matter of a proposed rule is not of significant interest to the public, or an agency is not otherwise required and does not wish to hold a public hearing, written comments must be permitted. The ~~the~~ person designated in the notice to receive written comments from interested persons shall review all submissions within a reasonable time after the period for comment has ended. ~~Section~~ 2-4-305(1), MCA. That person then shall prepare and submit a written summary of the comments ~~and submit this report~~ to the rule maker.

(b) The agency shall notify all persons who submit written comments that a list of interested persons exists and provide each commenter the opportunity to have their name added to that list.

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

(ii) At the commencement of the hearing, the presiding officer shall ask that any persons wishing to submit data, views or arguments orally or in writing submit ~~his~~ their name, address, affiliation, whether ~~he~~ they favors or opposes the proposed action, and such other information as may be required by the presiding officer for the efficient conduct of the hearing. The presiding officer shall provide an appropriate form for submittal of this information. The presiding officer may allow telephonic testimony at the hearing.

(iii) At the opening of the hearing, the presiding officer shall:

(A) read or summarize the notice that has been given in

accordance with Model Rule 3~~,~~; ~~and shall~~

(B) read the "Notice of Function of Administrative ~~Code~~ Rule Review Committee" appearing in the register; and

(C) inform persons at the hearing of the interested persons list and provide interested parties the opportunity to have their names placed on that list.

(iv) through (3) remain the same.

AUTH: 2-4-202, MCA
IMP: 2-4-202, 2-4-302, 2-4-305, MCA

1.3.208 MODEL RULE 5 RULEMAKING, AGENCY ACTION

(1) ~~Introduction.~~ Thirty days after publication of notice and following receipt of the presiding officer's report, the rule maker may adopt, amend or repeal rules covered by the notice of intended action. ~~Section~~ 2-4-302(2), MCA.

(2) Notice of rulemaking. Upon adoption, amendment or repeal of a rule, the agency ~~must~~ shall file notice of its action with the secretary of state. ~~Section~~ 2-4-306~~(1)~~, MCA.

(a) As illustrated by sample form 13, ~~infra,~~ the notice must include:

(i) through (iii) remain the same.

(3) Objection by the an administrative rule review committee.

(a) If the appropriate administrative rule review committee objects to a proposed notice of adoption, the proposed rules cannot be adopted until either:

(i) notification of withdrawal of the objection; or

(ii) publication of the last issue of the register before expiration of the 6-month period during which the adoption notice must be published.

(b) If the agency adopts the rule to which the appropriate administrative rule review committee objects, the adopted rule cannot become effective until either:

(i) withdrawal of the objection;

(ii) amendment of the rule to meet the concerns of the committee; or

(iii) the day after final adjournment of the regular session of the legislature that begins after the notice proposing the rule was published.

~~(3)~~(4) Effective Date. Absent objection by the appropriate administrative rule review committee, the ~~The~~ agency action is effective on the day following publication of the notice in the ~~Montana Administrative R~~register unless a later date is required by statute or specified in the notice.

AUTH: 2-4-202, MCA
IMP: 2-4-202, 2-4-305, MCA

1.3.209 MODEL RULE 6 RULEMAKING, TEMPORARY EMERGENCY RULES AND TEMPORARY RULES

(1) Temporary Emergency Rules.

~~(1)~~(a) If an agency finds that circumstances exist that truly and clearly constitute an imminent peril to the public health, safety, or welfare, that the circumstances cannot be

averted or remedied by any other administrative act, and that the circumstances requires ~~adoption of a rule~~ a rulemaking action upon fewer than 30 days notice, it may adopt a temporary emergency rule without prior notice or hearing or, as illustrated by sample form 14, ~~infra~~, upon any abbreviated notice and hearing that it finds practicable. ~~Section~~ 2-4-303(1), MCA.

~~(2)~~(b) To adopt an emergency rule the agency must:

~~(a)~~(i) ~~F~~file with the secretary of state a copy of the emergency rule containing ~~and~~ a statement in writing of its reasons for finding that an imminent peril to the public health, safety, or welfare requires adoption of a rule upon fewer than 30 days notice. ~~Section~~ 2-4-306(4)~~(b)~~, MCA.

(ii) provide special notice of its intent to the appropriate administrative rule review committee which is normally accomplished by the secretary of state's office providing a copy to the legislative services division.

~~(b)~~(iii) ~~T~~take appropriate and extraordinary measures to make emergency rules known to persons who may be affected by them, ~~section~~ 2-4-306(4)~~(b)~~, MCA, including delivery of copies of the rule to a state wire service and to any other news media the agency considers appropriate. ~~Section~~ 2-3-105, MCA.

(c) An agency's reasons for adopting a temporary emergency rule are subject to judicial review. In order to pass judicial review, the notice of adoption shall, standing on its own, provide compelling reasons for the emergency rule.

~~(3)~~(d) ~~Effective date of emergency rule.~~ An temporary emergency rule becomes effective immediately upon filing a copy with the secretary of state or on a stated date following publication in the ~~Montana Administrative R~~register ~~or immediately upon filing with the secretary of state~~. ~~Section~~ 2-4-306(4)~~(b)~~, MCA.

~~(4)~~(e) ~~Duration of emergency rule.~~ An emergency rule may be effective for a period not longer than 120 days, and may not be renewed. The agency may, however, adopt an identical, permanent rule after notice and hearing in accordance with Model Rules 2 through 5. ~~Section~~ 2-4-303(1), MCA.

(2) Temporary Rules.

(a) Temporary rules implementing a statute which becomes effective prior to October 1 of the year of enactment may be adopted through abbreviated procedures determined practicable by the agency.

(b) The temporary rules cannot become effective until at least 30 days after the notice of proposal to adopt is published.

(c) The temporary rules expire October 1 of the year adopted.

(d) Permanent rules can be adopted during the period that the temporary rules are effective.

AUTH: 2-4-202, MCA
IMP: 2-4-202, 2-4-303, 2-4-306, MCA

1.3.210 MODEL RULE 7 RULEMAKING, BIENNIAL REVIEW

(1) Each agency ~~must~~ shall at least biennially review its

rules to determine whether any rule should be adopted or any existing rule should be modified or repealed. ~~Section~~ 2-4-314, MCA.

AUTH: 2-4-202, MCA
IMP: 2-4-202, MCA

3. Many of the sample forms referred to in the model rules are proposed to be amended to conform with current requirements and to more clearly illustrate proper formats. Proposed amendments include reference to requirements imposed by the Americans with Disabilities Act; information regarding interested persons lists and how to be put on those lists; notification to bill sponsors of proposed rules implementing their legislation; more detailed statements of reasonable necessity; and reference to the appropriate administrative rule review committee rather than the Administrative Code Committee. Due to the volume of changes, the expense of publication, and fiscal constraints, the proposed forms are not being published in the Montana Administrative Register. However, copies of the proposed forms will be mailed to each department in state government and to each agency's rule reviewer. Others may obtain a copy of the proposed forms by contacting Melanie Symons, Assistant Attorney General, 215 N. Sanders, Helena, MT 59620-1401, (406) 444-5880 (telephone), (406) 444-3549 (FAX).

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

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

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

1997 Mont. Law ch. 489, § 2 requires that an agency post notice

of its intended action on the state electronic bulletin board, or other electronic communications system available to the public. (Mont. Code Ann. § 2-4-302(2)(c).) ARM 1.3.206(1)(c).

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

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

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

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

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

1997 Mont. Laws ch. 489 expands on the reasons why and process by which temporary emergency rules are adopted. Adoption of a temporary emergency rule requires "circumstances that truly and clearly constitute an existing imminent peril to the public health, safety, or welfare." The published statement of reasons must stand on its own merits for purposes of judicial review. Hearings on whether such circumstances exist must be given priority over all other matters. Notice must be given to the Administrative Code Committee (now appropriate administrative

rule review committee), and must be liberally disseminated. ARM 1.3.209(2) is proposed to clarify the difference between temporary emergency and temporary rules. (Mont. Code Ann. § 2-4-303.) ARM 1.3.204(6) and (7), 1.3.209.

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

1997 Mont. Laws ch. 335 adopts processes by which the Administrative Code Committee (now appropriate administrative rule review committee) may postpone the adoption and delay the effective date of a new rule, or the amendment or repeal or an existing rule. (Mont. Code Ann. § 2-4-305.) ARM 1.3.208(3).

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

5. 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 Melanie Symons, Department of Justice, 215 North Sanders, P.O. Box 201401, Helena, MT 59620-01401, and must be received no later than May 6, 1999.

6. Melanie Symons, Department of Justice, 215 North Sanders, P.O. Box 201401, Helena, MT 59620-1401 has been designated to preside over and conduct the hearing.

By: Chris D. Tweeten, Chief Counsel
for JOSEPH P. MAZUREK
Attorney General

By: Melanie A. Symons
MELANIE A. SYMONS
Rule Reviewer

Certified to the Secretary of State on March 26, 1999

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
OF THE STATE OF MONTANA

In the matter of the proposed amendment of ARM 24.16.9003 and 24.16.9007, and the incorporation by reference to federal Davis-Bacon wage rates	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF ARM 24.16.9003 and 24.16.9007

TO ALL INTERESTED PERSONS:

1. On April 30, 1999, at 10:00 a.m., a public hearing will be held in room 104 of the Walt Sullivan Building (Department of Labor and Industry Building), 1327 Lockey, Helena, Montana, to consider amending ARM 24.16.9003, regarding calculation of fringe benefits, and ARM 24.16.9007, regarding incorporation of federal Davis-Bacon rates for heavy and highway construction services.

2. The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you request an accommodation, contact the Department by not later than 5:00 p.m., April 26, 1999, to advise us of the nature of the accommodation that you need. Please contact the Office of Research and Analysis, Job Service Division, Attn: Ms. Kate Kahle, P.O. Box 1728, Helena, MT 59624-1728; telephone (406) 444-3239; TTY (406) 444-0532; fax (406) 444-2638.

3. The Department proposes to amend the rules as follows: (deleted material stricken, new material underlined)

24.16.9003 ESTABLISHING THE STANDARD PREVAILING RATE OF WAGES AND FRINGE BENEFITS (1) and (2) Remain the same.

(3) Based on survey data collected by the department of labor and industry, for each district, the commissioner will compile fringe benefit information for a given occupation by district that reflects fringe benefits actually paid to workers engaged in public works and in private or commercial projects. Fringe benefit rates for each occupation will be set for health and welfare, pension, vacation, and training using the following procedure:

(a) If a minimum of 5,000 reported hours exists for the occupation within the district, and each fringe benefit reported for a given occupation has ~~at least~~ more than 50% of the total number of hours submitted for that occupation, a weighted average of the fringe benefits based on the number of hours reported will be used to calculate the district prevailing fringe benefit rates.

(b) If less than 5,000 hours for the occupation is reported, or a given fringe benefit for the occupation does not have ~~at least~~ more than 50% of the total number of hours submitted for that occupation, the commissioner will use

existing collective bargaining agreements for the district that were effective during the survey period to determine fringe benefit rates for the occupation.

(c) If a collective bargaining agreement does not exist for the occupation, and a minimum of 5,000 hours are reported in the combined contiguous districts, hours will be totaled for contiguous district fringe benefits. Each fringe benefit must be represented by ~~at least~~ more than 50% of the total number of hours submitted in contiguous districts for that occupation for fringe benefit rates to be set. A weighted average fringe benefit rate for the district based on hours will be computed using data submitted from all contiguous districts. Districts and their contiguous districts are the same as provided by (2)(c) of this rule.

(d) If contiguous district fringe benefit data does not sum to a minimum of 5,000 hours, or does not have more than 50% of the total number of hours in contiguous districts submitted for that occupation, statewide weighted average fringe benefit rates will be calculated for the occupation.

(e) Remains the same.

(4) through (9) Remain the same.

AUTH: 18-2-431, MCA
IMP: 18-2-401, 18-2-402, 18-2-403, and 18-2-411, MCA

24.16.9007 ADOPTION OF STANDARD PREVAILING RATE OF WAGES

(1) The commissioner's determination of minimum wage rates, including fringe benefits for health and welfare, pension contributions and travel allowance, by craft, classification or type of worker, and by character of project, for building construction services and nonconstruction services are adopted in accordance with the Montana Administrative Procedure Act and rules implementing the Act.

(a) A notice of proposed adoption of the commissioner's determination is published in the Montana Administrative Register approximately 30 to ~~45~~ 75 days prior to adoption, according to regular publication dates scheduled in ARM 1.2.419.

(b) through (f) Remain the same.

(2) The standard prevailing rate of wages for heavy construction and highway construction services are periodically set at the same rate as those established by the federal government for heavy and highway construction projects in Montana subject to the Davis-Bacon Act.

(a) Pursuant to the provisions of section 8(2), Chapter 522, Laws of 1997, in order to maintain uniformity between pay rates on federal and state or local heavy and highway construction projects, the commissioner may temporarily adopt newly revised federal Davis-Bacon heavy and highway rates applicable to Montana without the need for formal rulemaking. In the event the commissioner makes a temporary adoption of revised rates, the commissioner will promptly undertake formal rulemaking to adopt those revised rates by incorporation of those rates by reference. The commissioner will promptly give notice to interested parties of the temporary adoption and the proposed formal adoption of newly revised rates.

(b) Adopted wage rates are effective until superseded and replaced by a subsequent temporary or formal adoption by the commissioner as described in (2)(a).

(c) The wage rates applicable to a particular heavy or highway construction project are those in effect at the time the bid specifications are advertised.

(d) The current heavy construction and highway construction services rates are contained in the October 9, 1998, version of "The State of Montana Prevailing Wage Rates - Heavy and Highway Construction" publication, except that the zone pay provisions on pages iii, 2, and 14 of that publication are changed so that travel pay is determined by measuring the road miles over the shortest practical maintained route from the nearest county courthouse listed on pages 2 and 14, or the employee's home, whichever is closer, to the center of the job.

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

AUTH: 18-2-431 and 2-4-307, MCA
IMP: 18-2-401 through 18-2-432, MCA, and section 8, Chap. 522, L. of 1997

REASON: There is reasonable necessity to amend ARM 24.16.9003 regarding calculation of fringe benefits, in order to have the rates reflect the majority of the fringe benefits paid in a district. The existing language only requires 50% of the hours, which is not a majority of the hours in the district.

There is reasonable necessity to amend ARM 24.16.9007 regarding adoption of federal Davis-Bacon rates for Montana in order to implement provisions of Chapter 522, Laws of 1997 (House Bill 407). Pursuant to section 8 of Chap. 522, L. 1997, the Department (via the Commissioner) was granted the power to adopt, on a temporary basis, prevailing wages rates for heavy and highway construction that match federal Davis-Bacon Act rates for Montana. Because the federal government does not go through rulemaking when setting Davis-Bacon Act prevailing wage rates for heavy and highway construction in Montana, the Department is unable to undergo formal rulemaking within the time between when the federal government announces revised rates and the date those revised rates go into effect. The amendments provide a method for formal adoption of the federal rates following a temporary adoption by the Commissioner.

4. Interested parties may submit their data, views, or comments, either orally or in writing, at the hearing. Written data, views, or comments may also be submitted to:

Kate Kahle
Office of Research and Analysis
Job Service Division
Department of Labor and Industry
P.O. Box 1728
Helena, Montana 59624-1728

so that they are received by not later than 5:00 p.m., May 7, 1999.

5. The Department maintains a number of mailing lists of interested persons regarding a variety of topics. For more information about the mailing lists, or to have your name and address added to any or all of the interested persons lists, please contact Mark Cadwallader, Office of Legal Services, P.O. Box 1728, Helena, MT 59624-1728; telephone (406) 444-4493; TTY (406) 444-0532.

6. The Department is not required to comply with the provisions of 2-4-302, MCA, regarding notification of the bill sponsor about the proposed action regarding this rule.

7. The Department proposes to make these amendments effective on July 1, 1999; however, the Department reserves the right to make some or all of the amendments effective on a later date.

8. The Hearings Bureau of the Centralized Services Division of the Department has been designated to preside over and conduct the hearing.

Kevin Braun,
Rule Reviewer

Patricia Haffey, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State: March 26, 1999.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
OF THE STATE OF MONTANA

In the matter of the amendment of Montana's prevailing wage rates, pursuant to ARM 24.16.9007	))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT OF PREVAILING WAGE RATES-NON-CONSTRUCTION SERVICES

TO ALL INTERESTED PERSONS:

1. On April 30, 1999, at 9:30 a.m., a public hearing will be held in room 104 of the Walt Sullivan Building (Department of Labor and Industry Building), 1327 Lockey, Helena, Montana, to consider proposed amendments to the prevailing wage rate rule, ARM 24.16.9007. The Department proposes to incorporate by reference the 1999 non-construction services rates.

2. The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you request an accommodation, contact the Department by not later than 5:00 p.m., April 26, 1999, to advise us of the nature of the accommodation that you need. Please contact the Office of Research and Analysis, Job Service Division, Attn: Ms. Kate Kahle, P.O. Box 1728, Helena, MT 59624-1728; telephone (406) 444-3239; TTY (406) 444-0532; fax (406) 444-2638.

3. The Department of Labor and Industry proposes to amend the rule as follows: (new matter underlined, deleted matter interlined)

24.16.9007 ADOPTION OF STANDARD PREVAILING RATE OF WAGES

(1) Remains the same.

(a) through (e) Remain the same.

(f) The current non-construction services rates are contained in the ~~1997~~ 1999 version of "The State of Montana Prevailing Wage Rates-Non-construction Services ~~Service Occupations~~" publication.

(2) and (3) Remain the same.

AUTH: 18-2-431 and 2-4-307, MCA
IMP: 18-2-401 through 18-2-432, MCA

REASON: Pursuant to 18-2-402 and 18-2-411(b)(5), MCA, the Department is updating the standard prevailing wages for non-construction services occupations. The Department updates the prevailing wages for these non-construction services occupations every two years. There is reasonable necessity to amend the prevailing wages for non-construction services, which were last updated in 1997. Use of prevailing wage rates is required in public contracts by 18-2-422, MCA.

4. Interested parties may submit their data, views, or comments, either orally or in writing, at the hearing. Written data, views, or comments may also be submitted to:

Kate Kahle
Office of Research and Analysis
Job Service Division
Department of Labor and Industry
P.O. Box 1728
Helena, Montana 59624-1728

so that they are received by not later than 5:00 p.m., May 7, 1999.

5. The Department maintains a number of mailing lists of interested persons regarding a variety of topics. For more information about the mailing lists, or to have your name and address added to any or all of the interested persons lists, please contact Mark Cadwallader, Office of Legal Services, Department of Labor and Industry, P.O. Box 1728, Helena, MT 59624-1728; telephone (406) 444-4493; TTY (406) 444-0532.

6. The Department is not required to comply with the provisions of 2-4-302, MCA, regarding notification of the bill sponsor about the proposed action regarding these rules.

7. The Department proposes to make this amendment effective July 1, 1999.

8. The Hearings Bureau of the Centralized Services Division of the Department has been designated to preside over and conduct the hearing.

Kevin Braun,
Rule Reviewer

Patricia Haffey, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State: March 26, 1999.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
OF THE STATE OF MONTANA

In the matter of the proposed amendment of ARM 24.30.102, related to occupational safety and health standards for public sector employment	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT OF ARM 24.30.102

TO ALL INTERESTED PERSONS:

1. On April 30, 1999, at 1:30 p.m., a public hearing will be held in the first floor conference room at the Walt Sullivan Building (Dept. of Labor and Industry Building), 1327 Lockey Street, Helena, Montana, to consider the amendment of ARM 24.30.102, to generally incorporate by reference the current version of federal health and safety regulations.

2. The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you request an accommodation, contact the Department by not later than 5:00 p.m., April 26, 1999, to advise us of the nature of the accommodation that you need. Please contact the Employment Relations Division, Safety Bureau, Attn: Mr. Dave Folsom, P.O. Box 1728, Helena, MT 59624-1728; telephone (406) 444-6418; TTY (406) 444-5549; fax (406) 444-4140. Persons with disabilities who need an alternative accessible format of this document in order to participate in this rule-making process should contact Mr. Folsom.

3. The Department of Labor and Industry proposes to amend the rule as follows: (new matter underlined, deleted matter interlined)

24.30.102 OCCUPATIONAL SAFETY AND HEALTH CODE FOR PUBLIC SECTOR EMPLOYMENT (1) Section 50-71-311, MCA, of the Montana Safety Act provides that the department of labor and industry may adopt, amend, repeal and enforce rules for the prevention of accidents to be known as "safety codes" in every employment and place of employment, including the repair and maintenance of such places of employment to render them safe. The federal Occupational Safety and Health Act of 1970 does not include safety standards coverage for employees of this state or political subdivisions of this state. It is the intent of this rule that public sector employees of this state and political subdivisions of this state shall be protected to the greatest extent possible by the same safety standards for employments covered by the federal Occupational Safety and Health Act of 1970. The department is therefore adopting by reference certain occupational safety and health standards, adopted by the United States Secretary of Labor under the Occupational Safety and Health Act of 1970. The department has determined, with the assent of the secretary of state, that publication of the rules

would be unduly cumbersome and expensive. Copies of the rules adopted by reference are available and may be obtained at cost from the Montana Department of Labor and Industry, P.O. Box 1728, Helena, Montana 59624, or the Superintendent of Documents, United States Government Printing Office, 941 North Capitol Street, Washington, D.C. 20401.

(2) As used in the rules adopted by reference in (3) below, unless the context clearly requires otherwise, the following definitions apply:

(a) "Act" means the Montana Safety Act (50-71-101 through 50-71-334, MCA).

(b) "Assistant secretary of labor" or "secretary" means the commissioner of the Montana department of labor and industry.

(c) "Employee" or "public sector employee" means every person in this state, including a contractor other than an independent contractor, who is in the service of a public sector employer, as defined below, under any appointment or contract of hire, expressed or implied, oral or written.

(d) "Employer" or "public sector employer" means this state and each county, city and county, city school district, irrigation district, all other districts established by law and all public corporations and quasi public corporations and public agencies therein who have any person in service under any appointment or contract of hire, expressed or implied, oral or written.

(3) The department of labor and industry hereby adopts a safety code for every place of employment conducted by a public sector employer. This safety code adopts by reference the following occupational safety and health standards found in the Code of Federal Regulations, as of July 1, ~~1997~~ 1998:

(a) Title 29, Part 1910;

(b) the provisions of 29 CFR 1910.146 appendix C, example 1, part A, as mandatory provisions that are applicable to all confined spaces; and

(c) Title 29, Part 1926.

(4) All sections adopted by reference are binding on every public sector employer even though the sections are not separately printed in a separate state pamphlet and even though they are omitted from publication in the Montana Administrative Register and the Administrative Rules of Montana. The safety standards adopted above and printed in the Code of Federal Regulations, Title 29, as of July 1, ~~1997~~ 1998, are considered under this rule as the printed form of the safety code adopted under this subsection, and shall be used by the department and all public sector employers, employees, and other persons when referring to the provisions of the safety code adopted under this subsection. All the provisions, remedies, and penalties found in the Montana Safety Act (50-71-101 through 50-71-334, MCA) apply to the administration of the provisions of the safety code adopted by this rule.

(5) For convenience, the federal number of a particular section found in the Code of Federal Regulations should be used when referring to a section in the safety code adopted in (3)

above. The federal number is to be preceded by the term (5). Thus, when section 1910.27 of the Code of Federal Regulations pertaining to fixed ladders is to be referred to or cited, the correct cite would be "subsection (5) 1910.27 of section 24.30.102 ARM" or "ARM 24.30.102(5) 1910.27".
AUTH: 50-71-311, MCA
IMP: 50-71-311 and 50-71-312, MCA

REASON: The proposed amendments to this rule are reasonably necessary to incorporate by reference the current federal rules promulgated by the Occupational Safety and Health Administration (OSHA). The Department finds that it is reasonably necessary to annually update this rule to ensure that public sector employers and employees have essentially the same duties and protections that apply to employers and employees in the private sector. The current version of the state rule incorporates the 1997 version of the federal rules. In the past year, there have been some significant changes in CFR parts 1910 and 1926. The July 1, 1998, version is proposed for incorporation by reference because it is the most recent version generally available in printed form, and was published by the U.S. Government Printing Office in printed form on or about January 1, 1999.

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:

John Maloney, Bureau Chief
Safety Bureau
Employment Relations Division
Department of Labor and Industry
P.O. Box 1728
Helena, Montana 59624-1728

and must be received by no later than 5:00 p.m., May 7, 1999.

5. In addition to the publication of this notice in the Montana Administrative Register, an abbreviated Notice of Public Hearing is being published in one or more daily newspapers of general circulation in this state, as required by 50-71-302, MCA. Persons interested in viewing or obtaining a copy of the abbreviated Notice of Public Hearing published in a newspaper should contact Mr. Folsom at the address listed in paragraph 2 of this Notice.

6. The Department maintains a number of mailing lists of interested persons regarding a variety of topics. For more information about the mailing lists, or to have your name and address added to any or all of the interested persons lists, please contact Mark Cadwallader, Office of Legal Services, P.O. Box 1728, Helena, MT 59624-1728; telephone (406) 444-4493; TTY (406) 444-0532.

7. The Department is not required by 2-4-302, MCA, to notify any bill sponsor about the proposed action regarding this rule action.

8. The Department proposes to make this amendment effective June 1, 1999; however, the Department reserves the right to make the amendments effective at a later date, or not at all.

9. The Hearings Bureau of the Centralized Services Division of the Department has been designated to preside over and conduct the hearing.

Kevin Braun,
Rule Reviewer

Patricia Haffey, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State: March 26, 1999.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
OF THE STATE OF MONTANA

In the matter of the proposed amendment of ARM 24.35.202, 24.35.205, 24.35.213, 24.35.301 and 24.35.303, all related to the independent contractor central unit	)))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF ARM 24.35.202, 24.35.205, 24.35.213, 24.35.301 AND 24.35.303

TO ALL INTERESTED PERSONS:

1. On April 30, 1999, at 2:00 p.m., or as soon thereafter as is possible, a public hearing will be held in room 104 of the Walt Sullivan Building (Department of Labor and Industry Building), 1327 Lockey Street, Helena, Montana, to consider the amendment of ARM 24.35.202, 24.35.205, 24.35.213, 24.35.301 and 24.35.303, all related to the operation of the Department's independent contractor central unit.

2. The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you request an accommodation, contact the Department by not later than 5:00 p.m., April 26, 1999, to advise us of the nature of the accommodation that you need. Please contact the Employment Relations Division, Attn: Ms. Linda Wilson, P.O. Box 8011, Helena, MT 59604-8011; telephone (406) 444-6531; TTY (406) 444-5549; fax (406) 444-4140. Persons with disabilities who need an alternative accessible format of this document in order to participate in this rule-making process should contact Ms. Wilson.

3. The Department of Labor and Industry proposes to amend its rules as follows: (new material underlined, deleted material interlined)

24.35.202 DETERMINATIONS REGARDING EMPLOYMENT STATUS

(1) through (4) Remain the same.

(5) ICCU determinations regarding employment status are binding on the department and on any other agency which elects to be included as a member of the department's ICCU, subject to the limitations contained in ARM 24.35.205(3)., as well as on all similarly situated individuals in the employer's business. This does not include any agency which is merely appearing before the ICCU as a party in an employment status case (for example the state compensation insurance fund), and has not elected to be included as a member of the ICCU.

AUTH: 39-3-202, 39-3-403, 39-51-301, 39-51-302 and 39-71-203, MCA

IMP: 39-3-208, 39-3-209, 39-3-210, 39-51-201, 39-51-203, 39-71-120 and 39-71-415, MCA

24.35.205 BINDING NATURE OF DETERMINATIONS REGARDING EMPLOYMENT STATUS (1) Unless appealed pursuant to ARM 24.35.206, written determinations issued by the ICCU are binding on all parties with respect to employment status issues under the jurisdiction of the department of labor and industry and the jurisdiction of any other agency which elects to be included as a member of the ICCU. These determinations may affect a party's liability in matters related to unemployment insurance, the uninsured employers' fund, ~~the underinsured employers' fund,~~ wage and hour issues, state income tax withholding and old fund liability tax.

(2) through (4) Remain the same.

AUTH: 39-3-202, 39-3-403, 39-51-301, 39-51-302 and 39-71-203, MCA
IMP: 39-3-212, 39-51-1109, 39-71-120 and 39-71-415, MCA

24.35.213 APPEAL OF FINDINGS, CONCLUSIONS AND DECISION ON EMPLOYMENT STATUS (1) through (3) Remain the same.

(4) If the appeals referee's findings of fact, conclusions of law and decision concerns a determination regarding an uninsured employers' fund ~~or underinsured employers' fund~~ penalty issue, the appeal will be to the Montana workers' compensation court, pursuant to 39-71-504 and 39-71-532, MCA.

(5) Remains the same.

AUTH: 39-3-202, 39-3-403, 39-51-301, 39-51-302 and 39-71-203, MCA
IMP: 2-4-611, 2-4-623, 39-3-216, 39-51-1109, 39-71-415, 39-71-504, 39-71-532 and 39-71-2401, MCA

24.35.301 DEFINITION OF INDEPENDENT CONTRACTOR

(1) Remains the same.

(2) For independent contractor determinations made pursuant to 39-71-120, MCA, the above two-part test is augmented by the requirement that the individual also receive "an exemption granted under 39-71-401(3) or elect to be bound personally and individually by the provisions of a workers' compensation plan." Rules regarding the exemption process are located at ARM Title 24, chapter 35, subchapter 1.

AUTH: 39-3-202, 39-3-403, 39-51-301, 39-51-302 and 39-71-203, MCA
IMP: 39-3-201, 39-51-201, 39-51-204, 39-71-120 and 39-71-401(3), MCA

24.35.303 DEFINITION OF INDEPENDENT CONTRACTOR--INDEPENDENTLY ESTABLISHED BUSINESS (1) To be an independent contractor, an individual must be engaged in an independently established trade, occupation, profession or business. An independently established business may exist if the individual:

(a) through (j) Remain the same.

(k) has an independent contractor exemption or is bound personally and individually by the provisions of a workers' compensation plan as required by ~~39-71-120 and~~ 39-71-401(3), MCA;

(l) and (m) Remain the same.

(2) Remains the same.

AUTH: 39-3-202, 39-3-403, 39-51-301, 39-51-302 and 39-71-203, MCA
IMP: 39-3-201, 39-51-201, 39-51-204, 39-71-120 and 39-71-401(3), MCA

Reason: There is reasonable necessity to amend ARM 24.35.202 in order to clarify that the independent contractor central unit (the ICCU) will make determinations regarding not only named individuals, but also any similarly situated individual. The term "similarly situated individual" is defined in ARM 24.35.201(8). The inclusion of the phrase does not preclude a putative employer from challenging the determination as to any specific individual, whether named by the ICCU or not in its determination.

There is reasonable necessity to amend ARM 24.35.205 and 24.35.213 in order to delete the reference to the underinsured employers' fund, which was eliminated pursuant to Chap. 172, L. of 1997 and Chap. 310, L. of 1997.

There is reasonable necessity to amend ARM 24.35.301 and 24.35.303 in order to clarify that an individual may be in compliance with the Workers' Compensation Act as an independent contractor by either obtaining an exemption or by being personally bound for coverage under the Act. The amendments are necessary to implement provisions of Chap. 548, L. of 1997, which changed the definition of an independent contractor for purposes of the Workers' Compensation Act by eliminating the requirement in 39-71-120(1), MCA, that an independent contractor obtain an exemption.

4. The use of the phrase "remains the same" is encouraged by the Secretary of State in order to improve readability by highlighting the proposed changes in a rule and also to lower the cost of rule-making. Any person wishing to obtain the full text of any Department rule proposed for amendment in this Notice may do so by contacting Ms. Wilson (identified in paragraph 2, above), identifying the rule(s) sought, and requesting a copy.

5. 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:

Keith Messmer, Bureau Chief
Workers' Compensation Regulations Bureau
Employment Relations Division
Department of Labor and Industry
P.O. Box 8011
Helena, Montana 59604-8011

and must be received by no later than 5:00 p.m., May 7, 1999.

6. The Department maintains a number of mailing lists of interested persons regarding a variety of topics. For more information about the mailing lists, or to have your name and address added to any or all of the interested persons lists, please contact Mark Cadwallader, Office of Legal Services, P.O. Box 1728, Helena, MT 59624-1728; telephone (406) 444-4493; TTY (406) 444-0532.

7. The Department has complied with the provisions of 2-4-302, MCA, and notified the bill sponsor about the proposed action regarding these rule amendments.

8. The Department proposes to make the amendments effective as soon as feasible.

9. The Hearings Bureau of the Legal/Centralized Services Division of the Department has been designated to preside over and conduct the hearing.

Kevin Braun,
Rule Reviewer

Patricia Haffey, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State: March 26, 1999.

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

In the matter of the amendment of 37.12.310 and 37.12.311 pertaining to laboratory licensure fees and the duration of a license	))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENTS

TO: All Interested Persons

1. On April 28, 1999, at 2:00 p.m., a public hearing will be held in the auditorium of the Department of Public Health and Human Services Building, 111 N. Sanders, Helena, Montana to consider the proposed amendment of the above-stated rules.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you request an accommodation, contact the department no later than 5:00 p.m. on April 20, 1999, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970.

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

37.12.310 ~~FEE FOR LICENSE APPLICATION~~ LICENSURE FEES ~~(1) A fee of $250 must be submitted to the department with an application or applications for a microbiology or chemical license or both.~~ (1) The following fees must be submitted to the department, under the circumstances noted, by laboratories conducting analyses of public water supplies:

(a) $250 with an application for an initial microbiology or chemistry license or renewal of a microbiology or chemistry license;

(b) $150 for an inspection to determine if the holder of a provisional license qualifies for a full license;

(c) $250 plus expenses for a second inspection during the 3 year term of a license that is necessary for approval of a new laboratory location; there is no charge for one inspection during the term of the license;

(d) $300 annually for a chemistry license;

(e) $200 annually for a microbiology license;

(f) $125 per day for training in the environmental laboratory;

(g) $250 per day, plus travel expenses of environmental

laboratory staff, for on site training and technical assistance by the environmental laboratory;

(h) $60 per hour or part thereof for each hour in excess of 1 hour per year for telephone consultation provided by the environmental laboratory. The fee and the hourly calculation apply separately to the areas of microbiology and chemistry, and there is no charge for up to 1 hour per year of consultation in each of those areas.

AUTH: Sec. 50-1-202, MCA
IMP: Sec. 50-1-202, MCA

37.12.311 DURATION OF LICENSE (1) through (1)(b) remain the same.

(c) The laboratory remits to the department the appropriate ~~application~~ annual licensure fee and any other fees due pursuant to ARM 37.12.310.

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

(c) The laboratory remits to the department the appropriate annual licensure fee or fees due pursuant to ARM 37.12.310.

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

3. The amendments to ARM 37.12.310 are necessary to set fees for the various steps required to maintain licensure at the amounts determined by the environmental laboratory to be necessary to cover its costs to administer those steps, such as inspections. Alternative means of funding were not considered, since 50-1-202(17), MCA requires the department to set fees covering its actual costs. The fee schedule was not included in the rule when it was initially adopted February 11, 1999, because at that time Constitutional Initiative 75 (CI-75) was in effect and precluded the department, without a public vote, from fully complying with the requirements of 50-1-202(17), MCA. Therefore, the rule included only the licensure fee that was already in effect in the preexisting licensure rules. Since CI-75 was invalidated by the Supreme Court on February 23, 1999, the department may now comply with the terms of 50-1-202(17), MCA and set the fees for the services provided by its laboratory in administering the licensing program at its actual cost.

The amendments to ARM 37.12.311 are necessary to reflect the additional fees imposed by the amendments to ARM 37.12.310.

4. Interested persons may submit their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Kathy Munson, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 202951, Helena, MT 59620-2951, no later than May 6, 1999. The Department also maintains lists of persons

interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write the person at the address above.

5. The Office of Legal Affairs, Department of Public Health and Human Services has been designated to preside over and conduct the hearing.

Dawn Sliva
Rule Reviewer

Laurie Ekanger
Director, Public Health and Human Services

Certified to the Secretary of State March 26, 1999.

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

In the matter of the amendment of 16.38.307 pertaining to state laboratory fees for analyses	))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Interested Persons

1. On April 28, 1999, at 1:30 p.m., a public hearing will be held in the auditorium of the Department of Public Health and Human Services Building, 111 N. Sanders, Helena, Montana to consider the proposed amendment of the above-stated rule.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you request an accommodation, contact the department no later than 5:00 p.m. on April 20, 1998, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970.

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

16.38.307 LABORATORY FEES FOR ANALYSES (1) Fees for clinical analyses performed by the laboratory of the department of public health and human services are as follows, with the exception noted in (3) below:

(a)	Air mold spores	$15.00
(b)	Atypical pneumonia panel	76.50
(c)	Autoclave, sterility check	15.00
(d)	Bacteriologic~~-~~ enteric panel	36.50
(e)	Bacteriology culture, identification	26.50
(f)	Blood-borne exposure panel	48.00
(g)	Blood lead	15.00
(h)	C. Difficile cytotoxin	24.60
(i)	Chlamydia, direct probe	12.20
(j)	Chlamydia, gene amplification	18.75
(k)	Chronic fatigue panel	54.00
(l)	EHEC toxin	19.60
(m)	Encephalitis panel	54.00
(n)	Exantham panel	51.35
(o)	FTA	24.70
(p)	Fungal culture	28.16

(q)	GC + chlamydia, direct probe	21.80
(r)	GC + chlamydia, amplification	35.00
(s)	Hepatitis panel (acute)	54.00
(t)	Hepatitis C	26.50
(u)	Hepatitis B, anti HbsAb	17.80
(v)	Hepatitis B, anti HBsAg	15.80
(w)	Herpes simplex culture	24.50
(x)	HIV screen, serum	12.80
(y)	HIV screen, oral fluid	24.60
(z)	HIV viral load	120.00
(aa)	HIV western blot	44.00
(ab)	Misc. direct Ag detection	17.60
(ac)	Misc. serologies	15.20
(ad)	Misc. serologies, IgG + IgM	42.50
(ae)	Newborn screening	35.50
(af)	Newborn screening + CF	55.30
(ag)	Newborn screening, monitor	19.80
(ah)	Parasite identification	21.20
(ai)	Prenatal, short panel	30.00
(aj)	Prenatal + HIV	35.00
(ak)	Respiratory, long panel	76.50
(al)	Respiratory, short panel	54.00
(am)	Rubella screen	14.60
(an)	Syphilis screen	14.60
(ao)	Tb direct amplification	140.00
(ap)	Tb screen	35.20
(aq)	Tick-borne panel	54.00
(ar)	TORCH short panel	54.00
(as)	TORCH + Parvovirus	62.50
(at)	Viral culture	28.20

(2) Effective ~~July 1, 1997~~ June 4, 1999, fees for environmental analyses performed by the laboratory of the department of public health and human services are as follows, with the exceptions noted in (3) and (4) below:

~~Alkalinity~~	~~$12.60~~
~~Aluminum~~	~~8.00~~
~~Ammonia~~	~~12.60~~
~~Antimony~~	~~15.00~~
~~Arsenic~~	~~15.00~~
~~Barium~~	~~8.00~~
~~Beryllium~~	~~8.00~~
~~Bismuth~~	~~8.00~~
~~BOD~~	~~30.00~~
~~Boron~~	~~8.00~~
~~Cadmium~~	~~15.00~~
~~Calcium~~	~~8.00~~
~~Carbamate pesticides~~	~~75.00~~
~~Chloride~~	~~17.40~~
~~Chlorinated pesticides~~	~~150.00~~
~~Chlorophenoxy herbicides~~	~~180.00~~
~~Chromium~~	~~15.00~~

~~Cobalt~~	~~8.00~~
~~COD~~	~~35.00~~
~~Color~~	~~20.00~~
~~Conductivity~~	~~6.00~~
~~Copper~~	~~8.00~~
~~Cyanide~~	~~35.00~~
~~Dyed fuel, combo~~	~~60.00~~
~~Dyed fuel, color~~	~~15.00~~
~~Dyed fuel, sulfur~~	~~20.00~~
~~Dyed fuel, adulteration~~	~~30.00~~
~~Fluoride~~	~~15.00~~
~~Fuels, BTEX~~	~~90.00~~
~~Hardness~~	~~16.00~~
~~Hexavalent chromium~~	~~25.00~~
~~HI vols, sulfur + nitrate~~	~~30.00~~
~~Iron~~	~~8.00~~
~~Kjeldahl nitrogen~~	~~25.00~~
~~Lead~~	~~10.00~~
~~Lyophilize, sample~~	~~7.50~~
~~Magnesium~~	~~8.00~~
~~Manganese~~	~~8.00~~
~~Mercury~~	~~36.00~~
~~Metals scan~~	~~20.00~~
~~Microwave digestion~~	~~14.40~~
~~Molybdenum~~	~~8.00~~
~~Nickel~~	~~8.00~~
~~Nitrate + nitrite~~	~~12.60~~
~~Nitrite~~	~~12.60~~
~~Oil and grease~~	~~40.00~~
~~Organohalide pesticides~~	~~120.00~~
~~Ortho phosphorus~~	~~12.60~~
~~PCBs~~	~~120.00~~
~~Pentachlorophenol~~	~~180.00~~
~~pH~~	~~6.00~~
~~Potassium~~	~~8.00~~
~~Residue~~	~~15.00~~
~~Selenium~~	~~15.00~~
~~Semi-volatile organics~~	~~240.00~~
~~Silicon~~	~~8.00~~
~~Silver~~	~~8.00~~
~~Sodium~~	~~8.00~~
~~Strontium~~	~~8.00~~
~~Sulfate~~	~~17.40~~
~~Sulfide~~	~~35.00~~
~~Thallium~~	~~15.00~~
~~Tin~~	~~8.00~~
~~TOC~~	~~26.00~~
~~Total suspended solids~~	~~23.00~~
~~Total phenolics~~	~~25.00~~
~~Total phosphorus~~	~~21.50~~
~~Trihalomethanes~~	~~90.00~~
~~Turbidity~~	~~6.00~~

~~Volatile organic compounds~~ ~~140.00~~
~~Volatile suspended solids~~ ~~22.40~~
~~Water, bacteriology~~ ~~16.50~~
~~Zinc~~ ~~8.00~~

(a) Fees for nutrient analyses are as follows:

(i) Nitrate plus nitrate as N	$ 12.60
(ii) Nitrite	12.60
(iii) Ortho phosphorus	12.60
(iv) Soluble phosphorus	12.60
(v) Total ammonia as N	12.60
(vi) Total phosphorus	21.50
(vii) Total kjeldahl nitrogen	25.00

(b) Fees for metal analysis by ICP are as follows:

(i) Aluminum	$ 8.00
(ii) Antimony	8.00
(iii) Arsenic	8.00
(iv) Barium	8.00
(v) Beryllium	8.00
(vi) Bismuth	8.00
(vii) Boron	8.00
(viii) Calcium	8.00
(ix) Cadmium	8.00
(x) Cobalt	8.00
(xi) Copper	8.00
(xii) Chromium	8.00
(xiii) Dust wipes	10.00
(xiv) Iron	8.00
(xv) Lead	8.00
(xvi) Lithium	8.00
(xvii) Magnesium	8.00
(xviii) Manganese	8.00
(xix) Metals scan	30.00
(xx) Molybdenum	8.00
(xxi) Nickel	8.00
(xxii) Potassium	8.00
(xxiii) Silicon	8.00
(xxiv) Silver	8.00
(xxv) Sodium	8.00
(xxvi) Strontium	8.00
(xxvii) Tin	8.00
(xxviii) Titanium	8.00
(xxix) Vanadium	8.00
(xxx) Zinc	8.00
(xxxi) Other metals	10.00

(c) Fees for metals analyses by graphite furnace that are requested for lower limits are as follows:

(i) Antimony	$ 15.00
(ii) Arsenic	15.00
(iii) Cadmium	15.00
(iv) Chromium	15.00
(v) Copper	15.00
(vi) Lead	15.00

(vii) Selenium	15.00
(viii) Silver	15.00
(ix) Thallium	15.00
(x) Zinc	30.00
(xi) Other metals	20.00
(d) Fees for organic analyses are as follows:	
(i) Organic analyses in drinking water:	
(A) Benzene	$ 70.00
(B) 505 - Organohalide pesticides	150.00
(C) 508 - Chlorinated pesticides	150.00
(D) 515-2 - Chlorophenoxy herbicides	180.00
(E) 515-2C - Chlorophenoxy herbicides composited	60.00
(F) 525 - Synthetic organic compounds	240.00
(G) 531 - Carbamate pesticides	150.00
(H) 531C - Carbamate pesticides composited	60.00
(I) Haloacetic acids	140.00
(J) Trihalomethanes	90.00
(K) VOC - volatile organic compounds	110.00
(ii) For organic analyses in other substrates, EPA 600 and 8000 series, the fees are:	
(A) Benzene	$100.00
(B) Organohalide pesticides	200.00
(C) Chlorinated pesticides	200.00
(D) Chlorophenoxy herbicides	230.00
(E) Synthetic organic compounds	300.00
(F) Carbamate pesticides	200.00
(G) Haloacetic acids	180.00
(H) Trihalomethanes	130.00
(I) VOC - volatile organic compounds	160.00
(e) Fees for fuel analyses are as follows:	
(i) Blue dye in fuel	$ 7.50
(ii) Red dye in fuel	7.50
(iii) Dyed fuel combo	60.00
(iv) Diesel characterization	30.00
(v) Sulfur by XRF	20.00
(f) Fees for commons are as follows:	
(i) Alkalinity	$ 12.60
(ii) Chloride	17.40
(iii) Conductivity	6.00
(iv) Fluoride	15.00
(v) pH	6.00
(vi) Sulfate	17.40
(vii) TDS	23.00
(viii) TSS	8.00
(ix) Volatile suspended solids	22.40
(g) Fees for air quality analyses are as follows:	
(i) Dustfall	$ 30.00
(ii) Fiberglass hi vol filters	7.00
(iii) PM 10	7.00
(iv) PM 2.5	15.00
(v) PM 2.5p	20.60
(vi) Lead analysis on filters	17.00

(h) Fees for miscellaneous tests are as follows:	
(i) Acidity	$ 12.60
(ii) Ash free dry mass - small volume samples	22.40
(iii) Ash free dry mass - large volume samples	32.00
(iv) BOD	35.00
(v) Chlorophyll	35.00
(vi) CBOD	30.00
(vii) COD	35.00
(viii) Color	20.00
(ix) Cyanide - drinking water	35.00
(x) Hardness	18.00
(xi) Hexavalent chromium	25.00
(xii) Mercury	36.00
(xiii) Mercury composited	12.60
(xiv) Oil and grease	45.00
(xv) Phenol	25.00
(xvi) Sulfide	35.00
(xvii) TOC	26.00
(xviii) Turbidity	6.00
(xix) Hourly chemist rate	60.00
(i) Fees for microbiology testing are as follows:	
(i) Total coliform	$ 16.50
(ii) Fecal coliform - membrane filtration	16.50
(iii) Fecal coliform - sludge	35.00
(iv) Heterotrophic plate count	16.50
(j) Fees for special handling are as follows:	
(i) Rush fee - FAX	$ 3.00
(ii) Rush fee - per sample order	10.00
(A) additional per analyte	+2.00
(iii) Microwave digestion	17.00
(iv) Lyophilization	5.00
(v) Nutrient extraction	10.00
(vi) Total metals digestion	15.00
(vii) Substrate processing, sediment fee	10.00 min
(viii) Supplies purchasing	Cost +15%
(ix) VOC extraction - TCLP	50.00
(x) Metals extraction - TCLP	45.00

(3) remains the same.

(4) Fees for analyses other than those listed in (1) and (2) of this rule will be established at the level of comparable analyses or by calculating the chemists' hourly charge for time worked, if there is no comparable analysis.

AUTH: Sec. 50-1-202, MCA
IMP: Sec. 50-1-202, MCA

3. Revision of the fees for analyses performed by the department's laboratory is required by 50-1-202(17), MCA to reflect the actual costs of the tests or services provided and to ensure, as required by the same provision of the law, that the fees do not exceed the cost of performing the tests or services. The new list of fees reflects the actual cost to the

department of the analyses ordinarily performed by the environmental laboratory. The proposed new (4) was necessary to indicate how the cost would be appropriately calculated for analyses the laboratory is asked to do that are so uncommon that they are not on the list. Alternative fees or options were not considered because 50-1-202(17), MCA requires fees to be based on actual cost only.

4. Interested persons may submit their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Kathy Munson, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 202951, Helena, MT 59620-2951, no later than May 6, 1999. The Department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write the person at the address above.

5. The Office of Legal Affairs, Department of Public Health and Human Services has been designated to preside over and conduct the hearing.

Rule Reviewer

Director, Public Health and Human Services

Certified to the Secretary of State March 26, 1999.

BEFORE THE COMMISSIONER OF POLITICAL PRACTICES
OF THE STATE OF MONTANA

In the matter of the amendment of rules 44.10.321, 44.10.323, 44.10.411, and 44.10.531 pertaining to reporting of contributions and expenditures	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT OF RULES

TO: All Interested Persons

1. On June 15, 1999, at 10:00 a.m., a public hearing will be held in the Public Employees Retirement Division Conference Room at 1712 9th Avenue, Helena, Montana, to consider the proposed amendment of rules 44.10.321, 44.10.323, 44.10.411, and 44.10.531 pertaining to reporting of contributions and expenditures.

2. The proposed amendments provide as follows (new text is underlined; text to be deleted is interlined):

44.10.321 CONTRIBUTION-DEFINITION (1) For the purposes of Title 13, chapters 35 and 37, MCA, and these rules, the term "contribution" as defined in ~~section~~ 13-1-101~~(3)~~, MCA, includes, but is not limited to:

(a) Each contribution as listed in ~~section~~ 13-37-229, MCA~~,~~;

(b) The purchase of tickets or admissions to, or advertisements in journals or programs for testimonial or fund raising events, including, but not limited to dinners, luncheons, cocktail parties, and rallies held ~~for the~~ to support or ~~opposition of~~ oppose a candidate, issue, or political committee~~,~~;

(c) A candidate's own money used on behalf of his candidacy, except as provided in ~~section~~ 13-1-101~~(7)(b)(ii)~~ (6)(b)(iv) and (10)(b)(ii), MCA~~,~~; and

(d) An in-kind contribution, as defined in ~~subsection~~ (2) of this rule.

(2) The term "in-kind contribution" means the furnishing of services, property, or rights without charge or at a charge which is less than fair market value to a candidate or political committee for the purpose of supporting or opposing any candidate, ballot issue or political committee, except as provided in ~~section~~ 13-1-101~~(3)(a)(iii)~~ (6)(a)(iii) and ~~(b)(i)~~ (6)(b)(i), MCA.

(a) remains the same.

(i) Forgiveness of any loan to or debt of a candidate or political committee~~,~~;

(ii) Payment of a loan or other debt by a third person~~,~~;

(iii) An expenditure made at the behest of a candidate or political committee~~,~~ as specified in ARM 44.10.517~~,~~;

(iv) A "coordinated expenditure" as defined in ARM 44.10.323(4); and

(v) The cost of distributing, republishing or reproducing campaign material (print or broadcast) produced or prepared by a candidate or political committee unless the distribution, republication or reproduction costs are a communication by a membership organization or corporation under 13-1-101(6)(b)(iii) or (10)(b)(iv), MCA.

(3) remains the same.

AUTH: 13-37-114, MCA
IMP: 13-1-101(6), MCA

44.10.323 EXPENDITURE-DEFINITION (1) For the purposes of Title 13, chapters 35 and 37, MCA, and these rules, the term "expenditure" as defined in ~~section~~ 13-1-101~~(7)~~, MCA, includes, but is not limited to:

(a) Each expenditure as listed in ~~section~~ 13-37-230, MCA~~;~~;

(b) Expenses incurred by a candidate or political committee with respect to polls, surveys, and the solicitation of funds~~;~~;

(c) Expenses incurred in support of or opposition to the drafting, printing, distribution and collection of signatures for any petition for nomination or a statewide ballot issue~~;~~;

(d) A candidate's own expense, except as provided in ~~section~~ 13-1-101~~(7)(b)(ii)~~ (6)(b)(iv) and (10)(b)(ii), MCA~~;~~;

(e) Payment of interest on a loan or other credit received~~;~~;

(f) An in-kind expenditure, as defined in ~~subsection~~ (2) of this rule.

(2) The term "in-kind expenditure" means the furnishing of services, property, or rights ~~of a candidate or political committee~~ without charge or at a charge which is less than fair market value to a person, candidate, or political committee for the purpose of supporting or opposing any person, candidate, ballot issue or political committee, except as provided in ~~section~~ 13-1-101~~(3)(a)(iii)~~ (6)(a)(iii) and ~~(7)(b)(i)~~ (6)(b)(i), MCA.

(a) An "in-kind" expenditure"~~,~~ includes, but is not limited to, the forgiveness of any loan or debt owed to a candidate or political committee.

(3) "Independent expenditure" means an expenditure for communications expressly advocating the success or defeat of a candidate or ballot issue which is not made with the cooperation or prior consent of or in consultation with, or at the request or suggestion of, a candidate or political committee or an agent of a candidate or political committee. An ~~independent expenditures~~ independent expenditure shall be reported as ~~prescribed~~ provided in ARM 44.10.531.

(4) "Coordinated expenditure" means an expenditure made in cooperation with, consultation with, at the request or suggestion of, or the prior consent of a candidate or political committee or an agent of a candidate or political committee. A coordinated expenditure shall be reported as an in-kind contribution as provided in ARM 44.10.511 and 44.10.513.

AUTH: 13-37-114, MCA
IMP: 13-1-101(10), MCA

44.10.411 INCIDENTAL POLITICAL COMMITTEE, FILING SCHEDULE, REPORTS (1) ~~Except as provided in (2), an~~ An incidental committee shall file a statement of organization ~~and periodic reports according to the schedule set forth in 13-37-226(2)(a) through (f), MCA.~~ as required by 13-37-201, MCA. After filing a statement of organization, an incidental political committee shall file periodic reports as provided in this rule.

(2) Except as provided in (1) and (3), an incidental committee shall file periodic reports two days before the deadlines specified in 13-37-226(2)(a), (b), (c), (e) and (f), MCA, when applicable. The commissioner will prepare and distribute a schedule of filing deadlines for incidental committees and other committees under this subsection and 13-37-226(2), MCA.

~~(2)~~(3) Except as provided in ~~(2)~~(3)(a), an incidental committee that makes contributions or expenditures to a state district candidate, to a local candidate or issue, or to a political committee that is specifically organized to support or oppose a state district candidate or a local candidate or issue, shall file ~~a statement of organization and period~~ periodic reports ~~according to the schedule set forth~~ two days before the deadlines specified in 13-37-226(3)(a) ~~through (c),~~ and (b), MCA.

(a) and (b) remain the same.

~~(3)~~(4) An incidental committee that makes contributions or expenditures in connection with a statewide issue or a candidate for statewide office or a state district office must file the reports required by ~~(1)~~ this rule even if its contributions or expenditures do not exceed $500.

~~(4)~~(5) Incidental committees that receive contributions that are earmarked for a specified candidate, ballot issue, or petition for nomination must report the contributions pursuant to 13-37-229, MCA, and ARM 44.10.511 and 44.10.519. A contribution to an incidental committee is earmarked if it meets the criteria set forth in ARM 44.10.519(1), and the exemptions described in ARM 44.10.519(1)(a) do not apply to such contributions received by incidental committees.

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

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

AUTH: 13-37-114, MCA
IMP: 13-37-226(6), MCA

44.10.531 EXPENDITURES, REPORTING (1) and (2) remain the same.

(3) Expenditures made from the petty cash fund need not be reported, except that an accounting shall be maintained pursuant to ARM 44.10.503~~, subsection (3)(a)~~.

(4) Independent expenditures, as defined in ARM 44.10.323, shall be reported in accordance with the procedures for reporting other expenditures. In addition, a person making an

independent expenditure shall report the name of the candidate or committee the independent expenditure was intended to benefit, and the fact that the expenditure was independent. The candidate or political committee benefiting from the independent expenditure does not have to report the expenditure.

AUTH: 13-37-114, MCA
IMP: 13-37-230, MCA

3. The amendments are proposed as a provision of a settlement between the Commissioner of Political Practices and the Defendants in Ed Argenbright v. Montanans for Clean Water/for I-122, et al., Montana First Judicial District, Lewis and Clark County, Cause No. BDV 9700629. The purpose of the proposed amendments is to provide guidance to future ballot issues and candidate campaigns regarding reporting of contributions and expenditures.

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 Linda L. Vaughey, Commissioner of Political Practices, P.O. Box 202401, 1205 Eighth Avenue, Helena, Montana 59620-2401, and must be received no later than June 28, 1999.

5. The Commissioner of Political Practices maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their names added to the list shall make a written request which includes the name and mailing address of the person to receive notice. Such written request may be mailed or delivered to the Commissioner of Political Practices at P.O. Box 202401, 1205 Eighth Avenue, Helena, MT 59620-2401, or faxed to (406) 444-1643, or may be made by completing a request form at any rules hearing held by the Commissioner of Political Practices.

6. Jim Scheier has been designated to preside over and conduct the hearing.

By: Linda L. Vaughey
LINDA L. VAUGHEY
Commissioner

By: Jim Scheier
Jim Scheier
Assistant Attorney General
Rule Reviewer

Certified to the Secretary of State March 26, 1999.

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

In the matter of the proposed amendment of Rule 6.6.4001 pertaining to the valuation of securities	NOTICE OF AMENDMENT

TO: All Interested Persons:

1. On January 28, 1999, the state auditor and commissioner of insurance of the state of Montana published notice of proposed amendment of Rule 6.6.4001 pertaining to the valuation of securities other than those specifically referred to in statutes. The notice was published at page 205 of the 1999 Montana Administrative Register, issue number 2.

2. The agency has amended Rule 6.6.4001 exactly as proposed.

3. No comments or testimony were received.

MARK O'KEEFE
STATE AUDITOR AND
COMMISSIONER OF INSURANCE

By: David L. Hunter
David L. Hunter
Deputy State Auditor

By: Russell B. Hill
Russell B. Hill
Rules Reviewer

Certified to the Secretary of State this 22nd day of March, 1999.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of 17.24.101 through 17.24.103, 17.24.108, 17.24.115 through 17.24.119, 17.24.121, 17.24.128, 17.24.129, 17.24.132 through 17.24.134, 17.24.136, 17.24.137, 17.24.140 through 17.24.146, 17.24.153, 17.24.159, 17.24.165, 17.24.181 and 17.24.185, and the repeal of 17.24.151 and 17.24.152 pertaining to hard rock mining reclamation	)	NOTICE OF AMENDMENT AND REPEAL (HARD ROCK)

TO: All Interested Persons

1. On September 9, 1998, the Board of Environmental Review published notice of public hearing on the proposed amendment and repeal of rules outlined above at page 2376 of the 1998 Montana Administrative Register, Issue No. 17. On November 19, 1998, the Board of Environmental Review published supplemental notice of public hearing on the proposed amendment and repeal outlined above at page 2994 of the 1998 Montana Administrative Register, Issue No. 22.

2. The Board has amended rules 17.24.101, 17.24.103, 17.24.108, 17.24.115, 17.24.116, 17.24.118, 17.24.119, 17.24.121, 17.24.128, 17.24.129, 17.24.132, 17.24.133, 17.24.136, 17.24.137, 17.24.140 through 17.24.146, 17.24.153, 17.24.159, 17.24.165, 17.24.181, and 17.24.185 and repealed rules 17.24.151 and 17.24.152 as proposed.

3. The Board has amended the following rules as proposed with the following changes. Matter to be added is underlined. Matter to be deleted is interlined.

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

(1) through (22) Remain as proposed.

(23) "Small miner" ~~means, as~~ is defined in 82-4-303, MCA~~, a person that engages in the business of mining or reprocessing of tailings or waste materials and who meets the following criteria:~~

~~(a) A small miner may not hold an operating permit under 82-4-335, MCA, except for a small miner's cyanide permit or a permit issued pursuant to 82-4-335, MCA, that does not exceed 100 acres. Any such permit may be amended to add new disturbance areas, but the total area permitted for disturbance may not exceed 100 acres at any time.~~

~~(b) A small miner may conduct:~~

~~(i) an operation that results in not more than 5 acres of the earth's surface being disturbed and unreclaimed; or~~

~~(ii) two operations that disturb and leave unreclaimed less than 5 acres per operation if the respective mining properties are the only operations engaged in by the person and are at~~

~~least 1 mile apart at their closest point~~

~~(e) The department shall, in computing the area covered by the operation:~~

~~(i) exclude access or haulage roads that are required by a local, state, or federal agency having jurisdiction over the road to be constructed to certain specifications if the agency notifies the department in writing that the agency desires to have the road remain in use and will maintain the road after mining ceases; and~~

~~(ii) exclude access roads for which the person has submitted a bond to the department in the amount of the estimated total cost of reclamation along with a description of the location of the road and the specifications to which it will be constructed.~~

(24) and (25) Remain as proposed.

AUTH: 82-4-321, MCA; IMP: 82-4-303, 82-4-305, 82-4-309, 82-4-310, 82-4-331(2), MCA

17.24.117 PERMIT CONDITIONS (1) through (1)(b) Remain as proposed.

(1)(c) Except as provided in ARM ~~17.24.144(6)~~ 17.24.144(1)(f) and 17.24.146(2), the permittee shall maintain in effect at all times a bond in the amount established by the department. Upon failure of the permittee to maintain such bond coverage because of expiration or cancellation of bond, the permit is suspended and the permittee shall cease mining operations until substitute bond is filed with and approved by the department.

AUTH: 82-4-321, MCA; IMP: 82-4-335, 82-4-336 and 82-4-351, MCA

17.24.134 ENFORCEMENT: ASSESSMENT AND WAIVER OF PENALTIES (1) and (1)(a) Remain as proposed.

(1)(a)(i) If the violation created a situation in which the health or safety of the public or the environment was or could have been harmed, up to $1,000 may be assessed, depending upon the extent and gravity of such harm. If the violation created an imminent danger to the health or safety of the public or caused significant actual environmental harm, as documented by the department, up to $5,000 may be assessed.

(1)(a)(ii) through (d) Remain as proposed.

(1)(e) and (2) Remain as proposed, but are renumbered (2) and (3).

~~(3)~~ (4) Using the best information reasonably available to it at the time of calculating the penalties, ~~T~~the department shall determine any economic benefit or savings that the violator gained as a result of the violation ~~using the best information reasonably available to it at the time of calculating the penalties~~. If the amount of penalties calculated pursuant to (1) ~~and (2)~~ through (3) is less than the economic benefit or savings, the department ~~shall~~ may increase the penalty to ~~equal the lesser of~~ compensate for all or a portion of the economic benefit not exceeding:

~~(a) the economic benefit or savings; or~~

~~(b)~~ the total maximum penalties for the violation and days of violation assessable under ~~(1)(c)~~ (2).

(4) and (5) Remain as proposed, but are renumbered (5) and (6).

AUTH: 82-4-321 and 82-4-361, MCA; IMP: 82-4-361, MCA

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

COMMENT #1: The definition of "small miner" in ARM 17.24.102(23) should be organized in a manner that more closely follows the statutory definition. While it would appear that all applicable information is contained in the rule definition it does not seem to be as clear as that contained in the statute.

RESPONSE: The Board agrees that the definition should be organized differently if it is retained. However section 2-4-305(2), of the Montana Administrative Procedure Act provides that "[r]ules may not unnecessarily repeat statutory language." The term "small miner" is defined in 82-4-303, MCA. The rule has therefore been amended to simply reference the statute.

COMMENT #2: The economic benefit language added in ARM 17.24.134 seems to go beyond explanation and seems to set by rule a no economic benefit requirement for any violation. We find the structure of this section to be quite confusing and have several specific concerns. The current language seems to provide too much discretion in the determination of penalty amounts. The determination that an action has caused "significant" actual environmental harm is quite subjective. Criteria for such a determination should be included. Other statutes administered by the Department utilize a matrix of conditions that provide a less subjective decision.

RESPONSE: Amendments to 82-4-361, MCA, passed by the 1995 Legislature direct the Department, when determining a penalty, to take into account the economic benefit or savings, if any, to the violator resulting from the violation. The proposed rule provided that, in addition to a gravity component, a penalty must, within the limits of the maximum statutory penalty amount, include an economic benefit component to penalize the violator for any avoided or delayed costs resulting from the violation. However, the statute does not require the Department to recover all economic benefit. In fact, in view of the $1,000 per day statutory maximum penalty, a requirement to recover all economic benefit would result in imposition of the statutory maximum penalty in many enforcement actions regardless of the degree of negligence or seriousness of the environmental harm. The Board has therefore modified the rule to authorize but not require the Department to recoup all or a portion.

Use of the term "significant" conforms to the language and intent of the statute, which allows the Department discretion in

making a determination of significance with regard to environmental harm. There are many kinds of acts and omissions that might constitute a violation of the Metal Mine Reclamation Act and that might cause harm to the environment, from acts in contravention to statute or rule to acts contrary to permitted or stipulated permits or licenses. It would not be effective to attempt to develop a matrix that would predict every kind of violation that might occur and assign threshold values to unpredictable occurrences. The Department should, however, be required to document the environmental harm when the higher penalty level is invoked. To this end, ARM 17.24.134(1)(a)(i) is amended to include the statement "as documented by the department".

Finally, the Board has changed 17.24.134(3) by moving a clause in the first sentence from the end of the sentence to the beginning of the sentence. The change is made for clarity and makes no substantive change.

COMMENT #3: Provisions have been included in ARM 17.24.181(1) to recognize the voluntary mitigation measures taken by a violator. However, although the total penalty amount may be quite substantial, it would appear that only $200 may be deducted from the total penalty amount. Such a limit seems overly conservative.

RESPONSE: The citation in the comment is incorrectly given as ARM 17.24.181(1). The penalty provisions discussed in this section are penalty amounts per violation or per day of violation, as noted in ARM 17.24.134(2) and in 82-4-361, MCA. Therefore, if a violation warrants a decrease in penalty based on criteria found in these sections, that decrease would also apply on a per day basis. The daily penalty would be decreased by that amount, which could result in a substantial dollar amount.

5. The Board has also made an administrative correction to ARM 17.24.117(1)(c). The reference to ARM 17.24.144(6) was incorrect. It was changed to reflect the correct subsection, ARM 17.24.144(1)(f). This change does not change the meaning of the rule.

6. The Board has made a correction to ARM 17.24.134. Subsection (1)(e) has been renumbered as (2) for consistency with the numbering of the rest of the rule, and subsequent section numbers have been revised to reflect this change.

BOARD OF ENVIRONMENTAL REVIEW

by *Joe Gerbase*
JOE GERBASE, Chairperson

Reviewed by:

David Rusoff
David Rusoff, Rule Reviewer

Certified to the Secretary of State March 26, 1999.

BEFORE THE DEPARTMENT OF TRANSPORTATION
OF THE STATE OF MONTANA

In the matter of the adoption of new rules I through IV, the amendment of rules 18.9.306, 18.10.102 through 18.10.105, 18.10.121, 18.10.201, 18.10.202, 18.10.301, 18.10.302, 18.10.313, 18.10.314, 18.10.321 through 18.10.324, 18.10.404, 18.10.406 and 18.10.407 and the repeal of rules 18.10.101, 18.10.122, 18.10.123, 18.10.203, 18.10.303, 18.10.311, 18.10.312, 18.10.401 through 18.10.403, 18.10.405, 18.10.408, 18.10.501 and 18.10.502 concerning the Special Fuel Users Tax, Dealers and LPG Tax	NOTICE OF ADOPTION OF NEW RULES I THROUGH IV (18.9.322, 18.9.323, 18.9.324, 18.10.106), AMENDMENT OF 19 RULES AND REPEAL OF 14 RULES

TO: All Interested Persons.

1. On October 22, 1998, the Department of Transportation published notice of the proposed adoption of new rules I through IV, amendment of 19 rules and repeal of 14 rules concerning the special fuel users tax, dealers and LPG tax at page 2797 of the 1998 Montana Administrative Register, issue number 20.

2. A public hearing was held on November 25, 1998, where testimony was presented in support of the adoption of the new rules, and amendment and repeal of existing rules. Three written comments and one phone call concerning the rule notice were received prior to the hearing. The following comments were received concerning the rule notice.

3. A comment from William B. Gray, Excise Tax Manager for Sinclair Oil Corporation suggested the following amendment to (4) of proposed new rule I (18.9.322):

RULE I (18.9.322) OFF-HIGHWAY VEHICLE/EQUIPMENT

(1) through (3) same as proposed.

(4) In order to obtain a refund for off-road or off-highway equipment fueling at a service station, the station must identify on the invoice, receipt or statement the off-road or off-highway piece of equipment being fueled.

Comment: Mr. Gray, suggested the above change to (4) because an increasing amount of business is done using fleet cards, 24 hour fueling and unattended pumps. It is common for fleets to

receive detailed monthly statements of their purchases, rather than detailed invoices at the point of sale.

Response: The department has made the change as suggested.

4. No comments were received concerning proposed new rule II (18.9.323) and it has been adopted as proposed.

5. The following changes have been made to proposed new rule III (18.9.324) (new matter underlined, deleted material interlined, added material in ALL CAPS):

RULE III (18.9.324) DYED SPECIAL FUEL (1) The department ~~incorporates by reference~~ HAS ADOPTED the FOLLOWING PROVISIONS ~~United States department of the treasury, internal revenue service regulations~~ relating to dye color and concentration requirements for tax-exempt diesel fuel, excluding buses and governmental vehicles~~, as set forth in 26 CFR part 48 (4-1-97 edition)~~. ~~A copy of the CFR may be obtained from Legal Services, Montana Department of Transportation, P.O. Box 201001, Helena, MT 59620-1001.~~

(1)(a) through (4) same as proposed.

(5) Contractors may not store and/or use dyed diesel in equipment, motor vehicles, and stationary engines used upon public roads and/or within MDT project limits as defined in 15-70-321, MCA. Contractors in violation of this section are subject to penalties ~~for each vehicle~~ upon conviction as defined in 15-70-330, MCA, and may be suspended for up to 6 months from participating in future MDT contracts.

(6) The dye must be injected by means of a mechanical injection process to diesel fuel at the terminal rack. All dyed special fuel sold in, imported to, or exported from the state of Montana shall have dye added in accordance with federal requirements of type and quantity and will be injected by mechanical injection systems OR BY A SYSTEM APPROVED BY THE DEPARTMENT.

(7) through (7)(d) same as proposed.

Comment: William B. Gray, Excise Tax Manager for Sinclair Oil Corporation, asked that (6) of proposed new rule III be struck in its entirety. He said that this provision is based on IRS proposed regulations which have not been adopted because of objections from industry.

Response: The department amended (1) to exclude the reference to the CFR because the substance of those regulations is found in (1)(a) through (6). The department amended (5) to clarify that equipment, motor vehicles, and stationary engines fall under this penalty provision. In addressing Mr. Gray's comment concerning (6), the department has inserted the words "or by a system approved by the department." While the comment by Mr. Gray may be correct as to the status of the IRS proposed regulations, the department needs to be assured that the means used to dye fuel is accurate. The amendment allows a

distributor to use other systems after review and approval by the department.

6. No comments were received concerning proposed new rule IV (18.10.106) and the proposed amendments to 18.9.306 and 18.10.102. They have been adopted and amended as proposed.

7. The following comment was received concerning the proposed amendments to 18.10.103 DETERMINATION OF PUBLIC ROADS AND HIGHWAYS:

Comment: Jacque Christofferson, Vice President of Christofferson Logliners, Inc., wrote expressing her concern that logging trucks would no longer be eligible for off-road refunds.

Response: The department responded by stating that logging trucks would still be eligible to receive off-road refunds. The rule has been amended as proposed.

8. No comments were received concerning the amendments to 18.10.104. It has been amended as proposed.

9. William B. Gray, Excise Tax Manager for Sinclair Oil Corporation, wrote concerning the proposed amendment of 18.10.105 WHAT CONSTITUTES SPECIAL FUEL.

Comment: He suggested deleting the word "kerosene" because of significant problems in enforcement, administration of the law, and in marketing and supply. He said the industry is addressing these issues through many channels, including possible legislation at the federal level to correct the situation.

Response: Kerosene falls under the definition of special fuel in Montana. Statutory change would be needed to delete "kerosene" from the definition of special fuel. The rule has been amended as proposed.

10. The following comment was received concerning 18.10.121 QUARTERLY REPORTS - TAX PAYMENT:

Comment: George L. Jensen, President, L.S. Jensen & Sons, Inc., wrote to request that the rule be changed to read "fiscal" quarter and not "calendar" quarter. His reasons were that it would mirror the federal reporting requirements, reduce additional hours of reporting for businesses that are not on a calendar quarter, and spread out the influx of reporting and payment to the state to more evenly distribute it throughout the year.

Response: Section 15-70-325, MCA, states that tax returns shall be filed on the calendar quarter. A change to "fiscal" quarter would require statutory change. Therefore, the department has amended 18.10.121 as proposed.

11. No comments were received concerning the proposed amendments to 18.10.201 and 18.10.202. They have been amended as proposed.

12. The following changes have been made to 18.10.301 PERMIT REQUIRED (new matter underlined, deleted material interlined, added material in ALL CAPS):

18.10.301 PERMIT REQUIRED (1) Any person who uses special fuel to ~~propel a motor vehicle upon the highways of~~ perform public WORKS contracts ~~work~~ and ~~all~~ crushing, paving, and grinding ON ALL PUBLIC WORKS contracts, regardless of the bid amount, in this state is required to ~~make written application for and~~ obtain a special fuel user's permit.

(2) same as proposed.

Comment: John Richards of Seeley Lake suggested that 18.10.301 be amended to clarify that a special fuel permit is required only for public agency contracts and not private contracts. He also said a commercial source (permanent pit) should be exempt.

Response: The department has added language to (1) to clarify that a special fuel permit is required only for public agency contracts. Concerning an exemption for a commercial pit, an exemption is not available to use clear fuel when performing public works contracts.

13. No comments were received concerning the amendments to 18.10.302, 18.10.313, 18.10.314, 18.10.321, 18.10.322 and 18.10.323 and they have been amended as proposed.

14. Kevin Mohl of A-1 Paving, Inc., wrote with the following comment concerning 18.10.324 FAILURE TO MAINTAIN RECORDS:

Comment: He requested that the rule be changed to allow refunds based on acceptable record keeping based on gallons per hour in lieu of the miles per gallon.

Response: The department has addressed Mr. Mohl's concern in both the proposed rule and legislation introduced in the 1999 Session of the Montana Legislature. The proposed amendment to 18.10.324(4) which states "or other available information for special fuel usage" will be used by the department when other alternative fuel consumption methods are used. In addition, House Bill 630 proposed by the department amends sections 15-70-224 and 15-70-363, MCA, to insert language to the effect that when records are not available, an average of 4 miles per gallon or other methods that have been found acceptable may be used by the department to determine fuel use. Rule 18.10.324 has been amended as proposed.

15. A comment from William B. Gray, Excise Tax Manager for Sinclair Oil Corporation, suggested the following amendment to (1) of 18.10.404 SELLER INVOICES (new matter underlined, deleted material interlined, added material in ALL CAPS):

18.10.404 SELLER INVOICES (1) Any invoice, ~~or receipt~~ OR STATEMENT ~~shall be issued at the time of each fuel disbursement.~~ used to support any special fuel user's records ~~Each of these invoices shall be pre numbered, identifying the seller by business name and location, and shall indicate~~ must contain the following:

(1)(a) through (2) same as proposed.

Comment: Mr. Gray, suggested the above change to (1) because an increasing amount of business is done using fleet cards, 24 hour fueling and unattended pumps. It is common for fleets to receive detailed monthly statements of their purchases, rather than detailed invoices at the point of sale.

Response: The department has made the change as suggested.

16. No comments were received concerning the amendments to 18.10.406 and 18.10.407 and they have been amended as proposed.

17. No comments were received concerning the proposed repeal of 18.10.101, 18.10.122, 18.10.123, 18.10.203, 18.10.303, 18.10.311, 18.10.312, 18.10.401, 18.10.402, 18.10.403, 18.10.405, 18.10.408, 18.10.501 and 18.10.502 and they have been repealed as proposed.

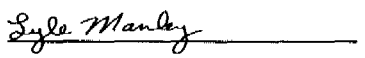
18. Lynn Ruf of Oftedal of Miles City, Montana, wrote with two questions concerning the proposed rules. The first question was whether a special fuel user's license would still be required and whether a contractor would be penalized if equipment were brought into Montana from another state if the tanks still contained dyed diesel when it arrived on site for a job.

Response: The department's response to the first question posed is that a special fuel license is still required by statute. The rules clarify but do not change the law. In response to Ms. Ruf's second question, the department suggests that taxed fuel be used at all times in the equipment and then the taxpayer apply for refunds for off-road use when appropriate. This would alleviate the concerns about whether the equipment would be in compliance in Montana.

MONTANA DEPARTMENT OF TRANSPORTATION

By: Marvin Dye

MARVIN DYE, Director



Lyle Manley, Rule Reviewer

Certified to the Secretary of State March 26, 1999.

BEFORE THE DEPARTMENT OF TRANSPORTATION
OF THE STATE OF MONTANA

In the matter of the adoption of new rules I through V setting forth procedures for Dealers of Compressed Natural Gas (CNG) and Liquefied Petroleum Gas (LPG)	))))	CORRECTED NOTICE OF ADOPTION OF NEW RULES (18.10.503 THROUGH 18.10.507)

TO: All Interested Persons.

1. On March 25, 1999, the Department of Transportation published a notice at page 515 of the Montana Administrative Register, Issue No. 6, of the adoption of new rules I through V concerning procedures for dealers of compressed natural gas (CNG) and liquefied petroleum gas (LPG).

2. The notice of adoption incorrectly set forth the numbers assigned to the new rules. The correct rule numbers are set forth below:

Rule I (18.10.503)	CNG AND LPG DEALER LICENSE
Rule II (18.10.504)	MONTHLY TAX RETURNS
Rule III (18.10.505)	DEALER RECORDS--AUDIT
Rule IV (18.10.506)	DEALER INVOICES
Rule V (18.10.507)	CNG OR LPG DEALER'S BOND

3. Replacement pages for the corrected notice of adoption will be submitted to the Secretary of State on March 31, 1999.

MONTANA DEPARTMENT OF TRANSPORTATION

By: Marvin Dye

MARVIN DYE, Director

Lyle Manley

Lyle Manley, Rule Reviewer

Certified to the Secretary of State March 26, 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 ADOPTION

TO: ALL INTERESTED PERSONS:

1. On February 11, 1999, the department of livestock published notice of the proposed adoption of new Rules I through XI concerning chronic wasting disease (CWD). Notice was published at page 265 of the 1999 Montana Administrative Register, Issue No. 3.

2. The department has adopted the following new rules as proposed: RULE I (32.4.1301), RULE III (32.4.1303), RULE IV (32.4.1304), RULE V (32.4.1309), RULE VI (32.4.1310), RULE VII (32.4.1311), RULE VIII (32.4.1312), RULE IX (32.4.1313), RULE X (32.4.1319), and RULE XI (32.4.1320).

3. The department has adopted NEW RULE II with the following changes: (text of rule with matter stricken interlined and new matter added, then underlined)

NEW RULE II (32.4.1302) REQUIREMENTS FOR MANDATORY SURVEILLANCE OF MONTANA GAME FARM CERVIDAE FOR CHRONIC WASTING DISEASE

(1) through (3)(b)(iii) same as proposed rule.

(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. If it is determined by the state veterinarian there has been no compromise in the surveillance status of the herd, this criteria may be waived in the application for a waiver to CWD surveillance.

(v) There have been no breaches in perimeter fence integrity that may have compromised the CWD surveillance status on the game farm herd.

(3)(c) through (5) same as proposed rule.

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

4. The following comments were received and appear with the responses:

COMMENT 1:

Under NEW RULE II(1), who is going to conduct the inspections and when must they be conducted? Some individuals do not have handling facilities and must sedate the animals which could be dangerous to the animals if a complete inventory check of all identification is done annually.

RESPONSE 1:

A department designated agent will conduct the inspections. ARM 32.4.101(7) defines "department designated agent." The department will determine who conducts game farm animal inspections through policy and not rule.

As a condition of licensing, each game farm is required to have a handling device of a size appropriate for the species of animal and must provide for the safety of the animal and the handler (ARM 32.4.801). Failure to have such a device is a violation of game farm regulations. The ability to sedate an animal to facilitate handling them does not fulfill the requirements of ARM 32.4.801.

The department recognizes that these animals are more easily worked at various times of the year. NEW RULE II, as written, allows the department the latitude to work the animals at different times of the year. The game farm licensee may request the department conduct the inventory during the time of year he feels is most appropriate considering his herd management and handling abilities. However, upon request by the department, ARM 32.4.302(1)(c) states the game farm licensee shall present the game farm animals for inspection under the conditions where the designated agent can safely read all marks and identification.

COMMENT 2:

To present the entire herd for inspection annually is costly to the producer and may cause injuries to animals.

RESPONSE 2:

Before the department can assign a CWD monitored herd status to each game farm (NEW RULE III), the department must determine if the game farm has complied with the mandatory surveillance requirements in these rules. The department has determined that the annual whole herd inventory will provide the department this information. The game farm industry at a national level supports the annual whole herd inventory and requests that a state or federal personnel or veterinarian verify the inventory. The department will review each game farm's management plan and operation and department records to determine whether an individual animal inspection is necessary or if the animal inventory can be completed by a census or checking Montana official ear tags as defined in ARM 32.4.101(22).

Each licensed game farm is required to have a handling device of a size appropriate for the species of animal and must provide for the safety of the animal and the handler (ARM 32.4.801).

COMMENT 3:

NEW RULE II should be changed to require the licensee to check his herd once a month and report any sick animals to the designated agent of the department. Animals that die should be reported to the Helena office within 1 day of death.

RESPONSE 3:
87-4-415, MCA requires the reporting of dead animals to the department within 1 working day of the discovery of the death. The department assumes that the licensee is checking his herd more often than once a month and upon the discovery of a sick animal would contact his veterinarian for a medical consultation. ARM 32.4.1002 requires any person, including the licensee, who believes the game farm animals have been exposed to a contagious disease to notify the department (Helena) immediately. Prior to the department granting a monitored herd status to the game farm herd (NEW RULE III), the department must determine if the individual has complied with the requirements of the rule. The annual whole herd inventory is a means of determining compliance and an annual check (not monthly) was determined by the department to be appropriate.

COMMENT 4:
Reindeer should not be included in the CWD testing requirements.

RESPONSE 4:
Reindeer are members of the Cervidae family and because transmission of CWD has been shown to only occur in members of the Cervidae family, the department finds it necessary to include reindeer in these rules because they are "potentially" susceptible to the disease. There has not been an incidence of CWD in reindeer, but until additional numbers of animals are submitted for testing, the department cannot rule out the possibility that it may occur. Reindeer are eligible for consideration for a waiver to the testing.

COMMENT 5:
Animals that are harvested as trophy hunts or slaughtered for meat should have minimum testing requirements.

RESPONSE 5:
The department may consider a waiver request for these animals under NEW RULE II(3)(b). Waivers will not be granted by the department unless the criteria under NEW RULE II(3) are met.

COMMENT 6:
Deer should be excluded from testing except those harvested as trophy hunts. The market value of a deer is $100/head. The value of the animal is less than the cost of the testing.

RESPONSE 6:
The incidence of CWD in wild deer in endemic areas of Colorado and Wyoming exceeds the incidence in elk. The mandatory surveillance rules were drafted to determine the incidence of CWD in game farm Cervidae. The department cannot omit a species based on the cost of sampling. The department

may consider a waiver request for individual animals under NEW RULE II(3)(b).

COMMENT 7:
NEW RULE II(3)(b) allows the department to grant waivers to tissue sample submission if strict conditions are met by the licensee.
Numerous comments were received requesting that the department grant no waivers for CWD testing.

RESPONSE 7:
The department considered the comments, but determined that a change in the rule is not warranted. The rule as drafted, allows the department to determine circumstances under which a waiver from CWD test requirements could be granted. After a period of surveillance, if CWD is not confirmed on any Montana game farms, or additional game farms in other states or provinces, it may be scientifically defensible to reduce the surveillance requirements. A waiver would not be granted to an entire herd nor any herd identified as an affected, exposed or a trace herd. A waiver would not be granted if any cervid in the requesting herd is exhibiting clinical signs suggestive of CWD.

COMMENT 8:
NEW RULE II(3) requires sample submission from animals 16 months of age or greater (CWD test eligible cervids) that die for any reason. Numerous comments were received requesting tissue submission from all game farm animals that die.

RESPONSE 8:
CWD has not been identified in animals less than 18 months of age. The department has determined the testing of animals less than 16 months of age is not scientifically justified at this time.

COMMENT 9:
NEW RULE II(3)(b)(ii) states that for consideration for a waiver the animal must have resided on the requesting game farm for a period of 12 months. Does this mean that you have to wait until an animal is 12 months of age to move it?

RESPONSE 9:
This rule does not have any affect on the ability of an individual to sell or move an animal. This rule determines which animals are eligible for a waiver from CWD testing. Animals less than 16 months of age are not required to be tested. An animal less than 6 months of age that is a natural addition to a herd would have the same CWD surveillance status as the dam or herd of origin.

COMMENT 10:
NEW RULE II(3)(b)(iv) states the department cannot grant a waiver to CWD testing requirements if there have been

documented cases of ingress by wild cervids or egress of game farm animals within the 18 months preceding the request.

A commentator requested the language be changed from "wild cervids" to "game animals."

RESPONSE 10:

The department considered the comment, but determined the change is not appropriate. NEW RULE II(3)(b)(iv) was based on the potential disease risk to game farm animals when exposed to wild cervids either by ingress of wild cervids or egress of game farm cervids. Since CWD is endemic in wildlife populations in some areas of the United States, it is considered a "wildlife disease." The CWD status of Montana wild cervids has not been determined at this time. Surveillance is underway, but results are not known.

In addition to cervids, the term "game animal" includes bears, mountain lions, antelope, wild buffalo, mountain sheep and mountain goats. These animals have not been documented to be affected with CWD and therefore, at this time, the department considers there to be no risk of game farm cervids contracting CWD from these animals.

The licensee's general reporting requirement for the ingress and egress of animals is outlined in ARM 12.6.1538. The NEW RULE II does not change or supplement those requirements.

COMMENT 11:

If an egress of game farm animals occurred due to vandalism and the animals were recaptured with a minimal possibility of commingling with wildlife, the licensee should not be penalized and denied a waiver request.

RESPONSE 11:

The department considered the comment. The intent of the rule is to determine if there has been a compromise in the CWD surveillance status of the game farm cervid herd that may have resulted from contact with wild cervids of unknown CWD status. The department is adopting NEW RULE II(3)(b) with the following changes:

NEW RULE II(3)(b)(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. If it is determined by the state veterinarian there has been no compromise in the surveillance status of the herd, this criteria may be waived in the application for a waiver to CWD surveillance.

NEW RULE II(3)(b)(v) There have been no breaches in perimeter fence integrity that may have compromised the CWD surveillance status of the game farm herd.

COMMENT 12:

NEW RULE II(3)(c) allows the state veterinarian to place additional requirements on a licensee if a waiver to CWD testing requirements is granted. A comment was received to

strike this section of the rules.

RESPONSE 12:
The department considered the comment, but has determined this language is necessary to allow the state veterinarian to define the circumstances under which a waiver may be granted. This section empowers the state veterinarian to make additional requirements of a licensee if a waiver to the mandatory CWD surveillance is given.

COMMENT 13:
NEW RULE V(2)(a) allows the department to require additional identification on an imported animal to enhance trace back capabilities. The department was requested to change the word "enhance" to "ensure."

RESPONSE 13:
The department considered this option when drafting the rule. It was determined that identification requirements could enhance trace back, but could not be certain to ensure trace back.

COMMENT 14:
NEW RULE V(2)(b) states that an animal must have resided in the exporting herd for a minimum of 12 months prior to importation or that a complete, satisfactory animal movement history be provided to the department.

Numerous comments received asked the department to restrict movement of an animal that has not resided in the exporting herd for a period of 48 months or have been in a surveillance program for a minimum of 48 months. An additional comment received requested that each exporting herd must be "surveillance certified."

RESPONSE 14:
The intent of this section is to reduce the unknown, and if possible, exposure of an animal to CWD if it moves through multiple herds (prior to importation). It would be difficult to determine the exposure status of an animal that has moved multiple times in one year. This statement does not imply that one can determine the presence or absence of CWD in the individual animal, but it does allow the department to review the CWD surveillance status of the exporting herd for the 12 month surveillance period immediately prior to importation. Upon arrival, the animal will enter Montana's mandatory CWD surveillance program.

ARM 32.4.502(1)(c) prohibits the importation of wild or captive elk, mule deer and whitetail deer from a geographic area or game farm where CWD is endemic or has been diagnosed. The ongoing CWD surveillance on game farms provides a measure of assessment of risk that will be used in determining whether game farm animals can be imported to Montana.

The concept of a "certification program for CWD" was discussed by the department. Without a live animal test that

documents a statistical degree of accuracy and specificity, one cannot provide a certification statement regarding the disease status of these animals. Therefore, the department is proposing a level of surveillance that reflects the number of years the herd has been surveyed for CWD. The department will apply requirements of the Montana mandatory surveillance program when interpreting other state's programs and herd status and determining the eligibility of an animal for importation to Montana.

COMMENT 15:
NEW RULE V(3) gives the state veterinarian the authority to deny importation from states that do not have the ability to confine, control and extirpate disease within their state. A request was made to change the proposed language "may deny" to "must."

RESPONSE 15:
The fact that a particular state has no authority to confine, control and extirpate disease within their state does not necessarily mean that the particular state has the disease problem being addressed here. If there is no documented incidence of CWD or trace back or affected herds which have been exposed to the disease, there is no reason to require the denial of importation of animals from that state. In fact, to deny importation for no valid reason is a form of discrimination which would not be defensible in Court.

COMMENT 16:
A comment was received that no importation of cervids be allowed into the state of Montana until such time as a live test could be developed. The commentor stated that 87-4-424, MCA mandates the department to restrict the importation of cloven-hoofed ungulates that pose a threat to native wildlife or livestock through parasites or disease.

RESPONSE 16:
Section 87-4-424, MCA does require the department to restrict importation of animals that have been determined through scientific investigation to pose a threat to native wildlife or livestock through parasites or disease. The department cannot impose a moratorium on importation of cervids without a defensible justification based on scientific investigation. The scientific documentation does not exist at this time. The incidence of CWD has been documented on 6 game farms and is endemic in wildlife in Colorado and Wyoming. ARM 32.4.502(1)(c) restricts the importation of wild or captive elk, mule deer, and whitetail deer from a geographic area or game farm where CWD is endemic or has been diagnosed.

COMMENT 17:
Under NEW RULE VI the specific tissues required to be submitted isn't identified. What tissue is required to be submitted and why isn't it listed in the rules for clarity?

RESPONSE 17:
Several different diagnostic procedures for CWD have been developed using tissue samples from a specific area in the brain. But research is also pursuing the possibility of diagnostic tests that use blood, third eye lid lymph tissues and other tissues. The department wanted to leave the determination of what tissue samples are appropriate to the state veterinarian and to empower him to be able to change the tissue sample requirements as the scientific procedures are developed.

COMMENT 18:
NEW RULE VII identifies requirements for the management of herds in Montana that are identified as trace herds. Numerous comments were received that requested the length of the hold order placed on these herds be changed from 12 months to 48 months.

RESPONSE 18:
The department carefully reviewed the requirements of the proposed rule. It is important to realize CWD has not been diagnosed within a trace herd. Because the herd has possibly been exposed to CWD, the rule as drafted places the entire herd under a hold order for 12 months. During this period of time the department will complete an epidemiological investigation of the herd and identify high-risk animals within the herd. Based upon the epidemiological investigation, the rule gives the department the authority to extend the hold order from a mandatory 12 months to 48 months on high-risk animals. Most game farms are of small acreage with close animal confinement and under these conditions the entire herd may be identified as "high-risk." A situation could exist where the entire herd is not determined to be "high-risk." The rule as drafted gives the department the ability to respond to both circumstances. The department considered the above comment, but has determined the rule as drafted allows consideration of site specific conditions which is crucial in disease management.

COMMENT 19:
As used in NEW RULE VII, the definition of "high-risk" animals is too arbitrary.

RESPONSE 19:
The department considered the comment, but feels the identification of high-risk animals will be unique to each game farm evaluated. Different management and record keeping practices, animal movement histories and individual game farm designs and pasture locations make each game farm unique from a disease transmission perspective. The epidemiological investigation of the game farm and current scientific knowledge of CWD will be crucial components when making the determination of which animals are "high-risk animals." The department will maintain a policy which identifies criteria to

be reviewed when making such a determination.

COMMENT 20:

NEW RULE VIII addresses management of a herd where CWD has been diagnosed, and the state veterinarian has determined the possibility of CWD transmission to other animals within the herd is of a low probability. NEW RULE IX addresses the management of a herd where CWD has been diagnosed and where there is a higher level of probability that CWD may have been transmitted to other animals in the herd.

The commentators requested NEW RULE IX be deleted and that the department make no distinction between the management of a CWD affected herd based on the "probability of transmission."

The commentators also requested the quarantine period for any herd where CWD has been diagnosed is requested be changed from the proposed 12 months to 48 months.

RESPONSE 20:

The department recognizes that epidemiologically one must assess the potential for disease transmission within a herd before making a determination on how to manage the herd from a disease perspective. The department has determined that it is appropriate to draft the disease management of the herds in NEW RULE VIII and NEW RULE IX based on the probability of disease transmission because this approach allows the department to take into consideration site specific conditions.

As written, if it is determined that there is a low probability of disease transmission within the herd, the high-risk animals are restricted from movement for a total of 48 months.

If it is determined there is a probability of disease transmission, the department proposes to place the high-risk animals under quarantine for 12 months and then under a hold order for an additional 36 months. Animals under quarantine have very strict isolation and management requirements. Placement of animals under a hold order prevents commingling and reduces animal contact, but does not require the same terms of isolation and management as a quarantine. As mentioned previously, a farm of small acreage and close animal confinement will most often have all animals identified as high-risk.

COMMENT 21:

Numerous comments were received stating that the department should include a sunset provision for CWD surveillance if CWD is not documented on any additional game farms in Montana or other states or provinces.

RESPONSE 21:

Other states or provinces may require ongoing surveillance for CWD as an import requirement. For Montana game farm cervids to be eligible for export, whole herd

surveillance of all animals 16 months of age or older that die may be required.

The department included waiver provisions in the rules that will enable the department to respond to this issue. The department also has the ability to modify or repeal rules through the procedures outlined in the Montana Administrative Procedure Act.

COMMENT 22:

Compensation for condemned animals should be at fair market value. If an animal is sacrificed and CWD is not found, who will compensate the animal owner?

RESPONSE 22:

This comment is not within the scope of the statutory authority and rules.

COMMENT 23:

Hold orders and quarantines need to be kept strictly confidential. The release of such information could permanently damage a rancher's ability to conduct business. The reduction of a herd status to "CWD monitored, status pending" will also negate any measure of confidentiality.

RESPONSE 23:

The Montana Constitution addresses the right of individual privacy in Article II, Section 10 and the public's right to know in Article II, Section 9. The department must consider each request for information on a case-by-case basis and will refer all requests for information to legal counsel for review and a legal determination on whether the information is considered "public information."

COMMENT 24:

Concern was expressed that if wild cervids are included in the definition of Cervidae (NEW RULE I(2)), the scope of all subsequent rules would include wild Cervidae. In particular, concern was raised that the testing and mandatory surveillance requirements would be applied to wild cervids.

RESPONSE 24:

The department's intent is to include wild cervids in the importation requirements of these rules. The "catch phrases" on the proposed rules specifically address which animals fall under the scope of the rule. For example, NEW RULES II, III, and IV specifically address game farm cervids and NEW RULE XI specifically addresses captive Cervidae owned by or in the possession of zoos, individuals or other public facilities not licensed as game farms. However, NEW RULE V does include all of the animals listed in the NEW RULE I(2) definition which includes wild cervids. Only in the definition and import rules is the term "wild cervids" present and applicable. It would appear that as used in these proposed rules, the term "wild cervids" is specifically and deliberately stated.

Therefore, it would be unnecessary to change the definition as proposed.

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 March 26, 1999.

NOTICE OF FUNCTIONS OF ADMINISTRATIVE RULE REVIEW COMMITTEE

Interim Committees and the Environmental Quality Council

Administrative rule review is a function of interim committees and the Environmental Quality Council (EQC). These interim committees and the EQC have administrative rule review, program evaluation, and monitoring functions for the following executive branch agencies and the entities attached to agencies for administrative purposes.

Business and Labor Interim Committee:

- Department of Agriculture;
- Department of Commerce;
- Department of Labor and Industry;
- Department of Livestock;
- Department of Public Service Regulation; and
- Office of the State Auditor and Insurance Commissioner.

Education Interim Committee:

- State Board of Education;
- Board of Public Education;
- Board of Regents of Higher Education; and
- Office of Public Instruction.

Children, Families, Health, and Human Services Interim Committee:

- Department of Public Health and Human Services.

Law, Justice, and Indian Affairs Interim Committee:

- Department of Corrections; and
- Department of Justice.

Revenue and Taxation Interim Committee:

- Department of Revenue; and
- Department of Transportation.

State Administration, Public Retirement Systems, and Veterans' Affairs Interim Committee:

- Department of Administration;
- Department of Military Affairs; and
- Office of the Secretary of State.

Environmental Quality Council:

- Department of Environmental Quality;
- Department of Fish, Wildlife, and Parks; and
- Department of Natural Resources and Conservation.

These interim committees and the EQC have the authority to make recommendations to an agency regarding the adoption, amendment, or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. They also may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt, amend, or repeal a rule.

The interim committees and the EQC welcome comments and invite members of the public to appear before them or to send written statements in order to bring to their attention any difficulties with the existing or proposed rules. The mailing address is PO Box 201706, Helena, MT 59620-1706.

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

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

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

Use of the Administrative Rules of Montana (ARM):

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

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies which have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through December 31, 1998. This table includes those rules adopted during the period January 1, 1999 through March 31, 1999 and any proposed rule action that was pending during the past 6-month period. (A notice of adoption must be published within 6 months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through December 31, 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.

To aid the user, the Accumulative Table includes rulemaking actions of such entities as boards and commissions listed separately under their appropriate title number. These will fall alphabetically after department rulemaking actions.

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