MONTANA ADMINISTRATIVE REGISTER

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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 22

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing, and where written comments may be submitted.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

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STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF CHIROPRACTORS

In the matter of the proposed amendment of a rule pertaining to examinations) NOTICE OF PROPOSED AMENDMENT OF 8.12.603 EXAMINATION

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On December 28, 1987, the Board of Chiropractors proposes to amend the above-stated rule.

2. The proposed amendment will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at pages 8-357 and 8-358, Administrative Rules of Montana)

"8.12.603 EXAMINATION (1) Examination for licensure shall be made by the board according to the method deemed necessary to test the qualifications of applicants. ~~The written examination will consist of physical diagnosis, physiotherapy, orthopedics and x-ray.~~ An oral interview and practical demonstration may be required in addition to the minimum written examination. Part III, Clinical Competency examination of the National Board of Chiropractic Examiners will be accepted in lieu of the boards written examination. Applicants who have not passed Part III, will be required to take the written examination of the board.

(2) will remain the same.

(3) The department ~~secretary of the board~~ will keep examination papers on file for such a length of time as may be deemed necessary and/or one year. Those individuals who sat for the examination and were successful or unsuccessful shall be recorded in the minutes and become part of the permanent record.

(4) will remain the same."

Auth: 37-12-201, MCA Imp: 37-12-304, MCA

REASON: This amendment is being proposed to provide a validated examination, which will be accepted in the majority of states.

3. Interested persons may submit their data, views or arguments concerning the proposed amendment in writing to the Board of Chiropractors, 1424 9th Avenue, Helena, Montana 59620-0407, no later than December 25, 1987.

4. If a person who is directly affected by the proposed amendment wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any comments he has to the Board of Chiropractors, 1424 9th Avenue, Helena, Montana 59620-0407, no later than December 25, 1987.

5. If the board receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of those persons who are directly affected by the proposed amendment, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision or from an association having no less than 25 members who will be directly affected, a public 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 30 based on the 300 licensees in Montana.

BOARD OF CHIROPRACTORS
DEBBIE SORENSON, D.C.,
PRESIDENT

BY: Keith L. Colbo
KEITH L. COLBO, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, November 16, 1987.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF LANDSCAPE ARCHITECTS

In the matter of the proposed amendment of rules pertaining to examinations and renewals) NOTICE OF PROPOSED AMENDMENT OF 8.24.405 EXAMINATIONS, AND 8.24.406 RENEWALS

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On December 28, 1987, the Board of Landscape Architects proposes to amend the above-stated rules.

2. The proposed amendment of 8.24.405 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at page 8-789, Administrative Rules of Montana)

"8.24.405 EXAMINATIONS (1) through (4) will remain the same.

(a) The examination documents (test papers) will be retained in the examinee's file for a period of 2 years~~;-and then-destroyed,-subject-to-approval-by-the-Attorney-General~~.

(5) The examination required of applicants shall be the Uniform National Examination (UNE) ~~as--established--and~~ administered by ~~(BLARB--(Council--of---Landscape---Architects Registration--Boards)~~ the board. A minimum passing grade in each subject shall be determined by CLARB before registration will be issued.

~~(6)--The-written-examination-shall-cover-the-subjects--of history--and--theory--of--landscape--architecture--relative-to landscape-architectural-design;-site-planning-and-land-design; subdivision;--urban--design;--landscape-construction-materials and-methods;-grading-and-drainage;-plant-materials-suited--for use-in-Montana;-specifications-and-supervisory-practice;-and-a practical--knowledge--of--botany;--horticulture;--and--similar subjects--relating--to-the-practice-of-landscape-architecture. Total-examination-length-will-be-determined-by-BLARB.~~

(7) will remain the same but will be renumbered."

Auth: 37-66-202, MCA Imp: 37-66-305, MCA

REASON: The reasons for the proposed amendments are as follows: The Board is proposing the amendment to (4)(a) because the rule is in conflict with Records Management policies of the Department of Administration.

The amendment of (5) is being proposed to be in compliance with section 37-66-305(3) which states that the examination must be the Uniform National Examination (NE) and the board administers the examination in Montana, not CLARB.

The amendment of (6) is being proposed because section 37-66-305(3) provides for the Uniform National Examination

(UNE) prescribed by CLARB and this rule is not in accord with that statutory provision.

3. The proposed amendment of 8.24.406 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at pages 8-789 and 8-790, Administrative Rules of Montana)

"8.24.406 RENEWALS (1) ~~Certificates of registration are renewable on or before the last day of the month of June following their issuance or renewal and shall become invalid on that date unless renewed.~~ It shall be the duty of the board to notify every person registered under the act, of the date his certificate is required to be renewed for the 1 year period and the fee required for renewal. Such notice shall be mailed no later than May 30 of the current renewal year. Renewal may be affected at any time during the month of June by payment of the fee.

(2) The failure on the part of any registrant to renew his certificate annually in the month of June as required above shall not deprive such person of the right to renewal, but the fee to be paid for the renewal of a certificate after the month of June shall be increased by 10% for each month or fraction of a month that payment of renewal is delayed up to 6 months after which the registrant must reapply as a new applicant. The board will send registrants a notice of the expiration of the renewal grace period at least 30 days prior to its termination."

Auth: 37-66-202, MCA Imp: 37-1-134, 37-66-307, MCA

REASON: The reason for the proposed amendment is that the first sentence is redundant of section 37-66-307(1), MCA, and to set out late renewal requirements in a separate subsection to clarification to the licensee.

4. Interested persons may submit their data, views or arguments concerning the proposed amendments in writing to the Board of Landscape Architects, 1424 9th Avenue, Helena, Montana 59620-0407, no later than December 25, 1987.

5. If a person who is directly affected by the proposed amendments wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any comments he has to the Board of Landscape Architects, 1424 9th Avenue, Helena, Montana 59620-0407, no later than December 25, 1987.

6. If the board receives requests for a public hearing on the proposed amendments from either 10% or 25, whichever is less, of those persons who are directly affected by the proposed amendments, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision, or from an association having no less than 25 members who will be directly affected, a public 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 6 based on the 66 licensees in Montana.

BOARD OF LANDSCAPE ARCHITECTS
VALERIE TOOLEY, CHAIRMAN

BY: Keith L. Colbo
KEITH L. COLBO, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State November 16, 1987.

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

In the matter of the proposed amendment of a rule pertaining to fees) NOTICE OF PROPOSED AMENDMENT OF 8.28.420 FEE SCHEDULE

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On December 28, 1987, the Board of Medical Examiners proposes to amend the above-stated rule.

2. The proposed amendment will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at page 8-863, Administrative Rules of Montana)

"8.28.420 FEE SCHEDULE (1) The following fees will be charged:

(a)	Application fee - reciprocity or endorsement	~~$100.00~~	$200.00
(b)	will remain the same.		
(c)	Temporary locum tenens	~~40.00~~	50.00
(d)	Examination fee		
	Component I	~~190.00~~	240.00
	Component II	~~215.00~~	290.00
	Component I and II	~~340.00~~	465.00
(e)	Renewal fee (active)	~~50.00~~	125.00
(f)	Renewal fee (inactive)	~~5.00~~	50.00
(g)	Penalty fee	~~10.00~~	125.00"

Auth: 37-3-203, MCA Imp: 37-3-308, 37-3-313, MCA

3. The amendment is being proposed for the following reasons: (1) Impaired Physicians Program, mandated by the 50th Legislature, added approximately $60,000 in costs to our program; (2) Costs of examinations to the board have increased; (3) Legal costs have been increasing each year; (4) Section 37-1-134, MCA, requires all licensing boards to set fees commensurate with program area costs. For the past several years our expenditures have exceeded our income and now our cash reserve is getting low.

4. Interested persons may submit their data, views or arguments concerning the proposed amendment in writing to the Board of Medical Examiners, 1424 9th Avenue, Helena, Montana 59620-0407, no later than December 25, 1987.

5. If a person who is directly affected by the proposed amendment wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any comments he has to the Board of Medical Examiners, 1424 9th Avenue, Helena, Montana 59620-0407, no later than December 25, 1987.

6. If the board receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of those persons who are directly affected by the proposed amendment, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision or from an association having no less than 25 members who will be directly affected, a public 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 225 based on the 2,250 licensees in Montana.

BOARD OF MEDICAL EXAMINERS
THOMAS J. MALEE, M.D.
PRESIDENT

BY: Keith L. Colbo
KEITH L. COLBO, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, November 16, 1987.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF NURSING HOME ADMINISTRATORS

In the matter of the proposed amendment of a rule pertaining to examinations) NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF 8.34.414 EXAMINATIONS

TO: All Interested Persons:

1. On Monday, January 11, 1988, at 9:00 a.m., a public hearing will be held in the downstairs conference room at the Department of Commerce building, 1424 9th Avenue, Helena, Montana, to consider the amendment of the above-stated rule.

2. The proposed amendment of 8.34.414 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at pages 8-1040 and 8-1041, Administrative Rules of Montana)

"8.34.414 EXAMINATIONS (1) will remain the same.

(2) A signed physician's statement ~~of recent date~~ dated within 60 days of application attesting to applicant's physical and mental health will be accepted as evidence that the applicant is of sound physical and mental health.

(3) ~~Applicants for nursing home administrator examinations will be required to:~~ The instruction and training provided by section 37-9-301(1)(b), MCA, shall include successful completion, of at least:

(a) ~~have completed 2 years of formal education in an accredited college or university or have an associate degree from an accredited college or university,~~ 60 semester hours or 90 quarter hours in an accredited college or university or graduation from a nationally accredited school of nursing.

(b) ~~in addition, 2 years out of the last 4 years~~ The equivalent education, training and experience provided by section 37-9-301(1)(b), MCA must include at least 1 year out of the last 3 years of administrative experience in a hospital or nursing home ~~will be required~~ as an assistant administrator or director of nursing, or a one-year internship with a licensed nursing home administrator. There must be verification of the time completed, and a recommendation that the applicant be licensed. This must be from a person who has been a practicing administrator of a licensed long-term care facility for at least the past 3 years.

(c) Applicants holding a BA or BS degree in ~~hospital or nursing home administration~~ hospital administration; nursing home administration; or long-term care administration, will not be required to have working experience.

(4) through (6) will remain the same."

Auth: 37-9-203, MCA Imp: 37-9-203, MCA

3. The amendment of 8.34.414(2) is being proposed to insure that the Board receives a recent physician's statement.

The amendments of 8.34.414(3) are being proposed to clarify what course of instruction and training and what combinations of education, training or experience will be considered by the board to be satisfactory qualifications to take the licensing examination, and also to clarify "Health Services Administration", as this title covers various courses of instruction.

4. Interested persons may submit their data, views or arguments, either orally or in writing, at the hearing. Written data, views, and arguments may also be submitted to the Montana Board of Nursing Home Administrators, 1424 9th Avenue, Helena, Montana 59620, no later than Friday, January 15, 1988.

5. Martin Jacobson of Helena, Montana, will preside over and conduct the hearing.

BOARD OF NURSING HOME
ADMINISTRATORS
CAROL ANN ANDREWS, CHAIRMAN

BY: Keith L. Colbo
KEITH L. COLBO, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, November 16, 1987.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the amendment of Endorsement Information and Class 3 Administrative Certificate	NOTICE OF PROPOSED AMENDMENT OF RULE 10.57.301, ENDORSEMENT INFORMATION, AND RULE 10.57.403, CLASS 3 ADMINISTRATIVE CERTIFICATE

NO PUBLIC HEARING IS CONTEMPLATED.

TO: All Interested Persons

1. On December 28, 1987, the Board of Public Education proposes to amend rule 10.57.301, Endorsement Information, and rule 10.57.403, Class 3 Administrative Certificate.

2. The rules as proposed to be amended provide as follows:

10.57.301 ENDORSEMENT INFORMATION (1) and (2) remain the same.

(3) Appropriate teaching areas acceptable for certificate endorsement include: social science, history, economics, sociology, geography, political science, economics-sociology, history-political science, English, speech-communication, dramatics, journalism, elementary education, library (K-12), speech-drama, ~~latin~~, foreign language, mathematics, science, physical science, reading (K-12), physics, chemistry, biology, earth science, agriculture, industrial arts, home economics, distributive education, trade and industry, business education, business education with shorthand, music (K-12), art (K-12), physical education and health (K-12), health, guidance and counseling (K-12), special education (K-12), psychology.

(4) through (8) remain the same.

AUTH: Sec. 20-4-102 MCA
IMP: Sec. 20-4-103, 20-4-106 MCA

10.57.403 CLASS 3 ADMINISTRATIVE CERTIFICATE (1) through (2) remain the same.

(3) Renewal: Verification of one year of successful experience or the equivalent in the area of endorsement. ~~Effective September 1,~~ Beginning with those certificates expiring in 1992, six credits will also be required for renewal of an administrative certificate. Renewal credits consist of college credit, extension course credits and continuing education credits. Also acceptable are staff development credits, inservice training credit and local school district professional development credit, as approved by the office of public instruction (see ARM 10.57.206).

(4) Reinstatement: 6 quarter (4 semester) credits or one year experience or the equivalent earned within the 5-year period preceding the effective date of the certificate. Requirements must be met that are in force at the time of reinstatement. (See ARM 10.57.208 for reinstatement of certificates allowed to lapse 15 years or more.)

(5) through (8) remain the same.

AUTH: Sec. 20-4-106 MCA

IMP: Sec. 20-4-106, 20-4-106(1)(c), 20-4-108 MCA

3. These amendments have been proposed for the purpose of consistency with other rules currently being enforced and language clarification.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to Alan Nicholson, Chairman of the Board of Public Education, 33 South Last Chance Gulch, Helena, Montana 59620, no later than December 28, 1987.

5. If a person who is directly affected by the proposed amendment wishes to express their data, views and arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to Alan Nicholson, Chairman of the Board of Public Education, 33 South Last Chance Gulch, Helena, Montana 59620, no later than December 28, 1987.

6. If the Board receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendment; from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 178 as there are 1781 teachers applying for certificate endorsement.

ALAN NICHOLSON, CHAIRMAN
BOARD OF PUBLIC EDUCATION

BY: _____

Certified to the Secretary of State November 16, 1987.

BEFORE THE DEPARTMENT OF
FAMILY SERVICES OF THE
STATE OF MONTANA

In the matter of the amendment of Rule 11.12.101 and the repeal of Rule 11.7.109 pertaining to substitute care placement budgets	)))))	NOTICE OF THE AMENDMENT OF RULE 11.12.101 AND THE REPEAL OF RULE 11.7.109 PERTAINING TO SUBSTITUTE CARE PLACEMENT BUDGETS. NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On January 4, 1988, the Department of Family Services proposes to amend Rule 11.12.101 and repeal Rule 11.7.109 which pertain to substitute care placement budgets.

2. The rule as proposed to be amended provides as follows:

RULE 11.12.101 YOUTH CARE FACILITY, DEFINITIONS

Subsection (1)(a) through (l) remain the same.

~~(m)--"Placement budget" means a budget prepared by the department for each judicial district for the purpose of identifying the amount of funds to be used by the department for payment for the substitute care of youth in need of supervision and delinquent youth placed by the youth court in that judicial district.~~

Subsections (1)(n) through (q) will be renumbered and otherwise remain the same.

Subsection (2) remains the same.

AUTH: Section 112, Ch. 609, L. 1987
IMP: Section 112, Ch. 609, L. 1987

3. Rule 11.7.109 as proposed to be repealed is on pages 11-300 and 11-301 of the Administrative Rules of Montana.

AUTH: Section 112, Ch. 609, L. 1987
IMP: Section 112, Ch. 609, L. 1987

4. Rationale: The proposed amendments are needed to conform the rules to action taken by the 50th Legislature in repealing 41-3-1106 which authorized the preparation of placement budgets for each judicial district for substitute care of youth in need of supervision and delinquent youths.

5. Interested parties may submit their data, views, or arguments concerning the proposed amendment in writing to the Office Legal Affairs, Department of Family Services, 111

Sanders, P.O. Box 8005, Helena, Montana 59604, no later than December 29, 1987.

6. If a person who is directly affected by the proposed amendment wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a public hearing and submit this request, along with any written comments he has, to the Office of Legal Affairs, Department of Family Services, P.O. Box 8005, Helena, Montana 59604, no later than December 29, 1987.

7. If the agency receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 2 persons based on 20 juvenile probation offices preparing placement budgets.

Director, Family Services

Certified to the Secretary of State November 16, 1987.

BEFORE THE BOARD OF HEALTH AND ENVIRONMENTAL SCIENCES
OF THE STATE OF MONTANA

In the matter of the amendment of rules 16.8.937, 16.8.1402, 16.8.1423, and 16.8.1424, regarding air quality models, fuel burning equipment, new source performance standards, & emission standards for hazardous air pollutants	)	NOTICE OF PUBLIC HEARING ON AMENDMENT OF RULES
* * * * * * * * * * *		
In the matter of the amendment of the Lewis and Clark County Clean Air Ordinance	)	(Air Quality)

To: All Interested Persons

1. On January 15, 1988, at 8:30 a.m. or as soon thereafter as can be heard, a public hearing will be held in Room C209 of the Cogswell Building, 1400 Broadway, Helena, Montana, (a) to consider an amendment to ARM 16.8.1402 which clarifies the exclusion of residential stoves from this rule; (b) to consider changes proposed by Lewis and Clark County pursuant to Section 75-2-301, MCA, to its Clean Air Ordinance; and (c) to re-notice, for hearing, amendments to ARM 16.8.937, 16.8.1423, and 16.8.1424 (which were published in the Montana Administrative Register on June 11, 1987, on page 744, and which became effective on July 20, 1987) for compliance with the formal hearing requirements of 40 CFR 51.4 pertaining to adoption of rule changes which constitute revisions to the State Implementation Plan (SIP). It should be noted that additional changes to ARM 16.8.1423 and 16.8.1424 to clarify the applicability of these two rules to modification of stationary sources are proposed as set forth below for purposes of effecting changes to the state air quality regulatory program as well as for effecting changes which revise the SIP. The amendment to ARM 16.8.1402 is also intended to constitute a revision to the SIP.

2. The changes to the Lewis and Clark County Clean Air Ordinance consist of the following: (a) implementation of a year round visible emissions/opacity standard of 40%; (b) implementation of a provision enabling the county to declare air quality conditions as "poor" before total suspended particulate (TSP) levels actually reach the established concentration for the "poor" range of 100 $\mu g/m^3$ provided that meteorological conditions indicate that the 100 $\mu g/m^3$ will be exceeded if action is not taken; (c) a shortening of the monitoring and enforcement season by 2 months from October 1st through March 31st to November 1st to March 1st; the county would drop daily monitoring during October and March; (d) implementation of a technical change regarding correlation/quality control results; (e) deletion of a requirement for posting variances; (f) implementation of a technical change which clarifies the expira-

tion date of low income variances; and (g) implementation of a technical change which clarifies the frequency that persons can be cited for violations.

3. The proposed amendments (which are also SIP revisions), appear as follows (new material underlined; material to be deleted interlined; July, 1987, SIP revisions bolded):

16.8.937 AIR QUALITY MODELS (1) The board hereby adopts and incorporates by reference **"Guideline on Air Quality Models (Revised)" (Publication No. EPA 450/2-78-027R, July, 1986, Office of Air Quality Planning and Standards, Research Triangle Park, NC 27711)** which sets forth air quality modeling procedures including requirements for concentration estimates, air quality models, data requirements and model validation and calibration; **and** ARM 16.8.1107(2) and (3) which sets forth the provisions for public notice of the submittal of an application for an air quality permit, notice of the department's preliminary determination on the application for the air quality permit, and the public comment period. A copy of ARM 16.8.1107(2) and (3) may be obtained from the Air Quality Bureau, Department of Health and Environmental Sciences, Cogswell Building, Helena, Montana 59620. "Guideline on Air Quality Models **(Revised)" is** available for public inspection **and copying at the Air Quality Bureau, Department of Health and Environmental Sciences, Cogswell Building, 1400 Broadway, Helena, Montana 59620; and** at EPA's Public Information Reference Unit, **Room 2922, 401 M Street SW, Washington, DC 20460;** and at the libraries of each of the ten EPA Regional Offices. Copies are available as supplies permit from the Library Service Office (MD-35), U.S. Environmental Protection Agency, Research Triangle Park NC 27711; and copies may be purchased from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

(2) All estimates of ambient concentrations required under this rule must be based on the applicable air quality models, data bases, and other requirements specified in the **"Guidelines on Air Quality Models (Revised)" (Publication No. EPA 450/2-78-027R, July, 1986, Office of Air Quality Planning and Standards, Research Triangle Park NC 27711).**

(3) Where **a preferred** air quality impact model specified in the "Guideline on Air Quality Models **(Revised)**" is inappropriate, the model may be modified or another model substituted. Such a change must be subject to notice and opportunity for public comment under ARM 16.8.1107(2) and (3). Written approval of the EPA administrator must be obtained for any modification or substitution. Methods like those **referenced** in **"Guideline on Air Quality Models (Revised)", July, 1986,** should be used to determine the comparability of air quality models.

AUTH: 75-2-111, 75-2-203, MCA IMP: 75-2-202, 75-2-203, MCA

16.8.1402 PARTICULATE MATTER, FUEL BURNING EQUIPMENT

(1)-(3) Same as existing rule.

(4) This rule does not apply to emissions from residential solid fuel combustion devices such as fireplaces and wood and coal stoves.

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

16.8.1423 STANDARD OF PERFORMANCE FOR NEW STATIONARY SOURCES (1) Same as existing rule.

(2) All owners or operators of new stationary sources defined in 40 CFR 51.18(j)(1)(i) applied in 40 CFR 60.1 or of modifications as defined in 40 CFR 60.14 shall comply with the provisions of Title 40, Part 60, Code of Federal Regulations (CFR), **July 1, 1987.**

(3) For the purpose of this rule, the board hereby adopts and incorporate by reference Title 40, Section 51.18, Title 40, Part 60, CFR, which ~~sets forth~~ pertains to standards of performance for new stationary sources and modifications. Title 40, Section 51.18(j)(1)(i) and Part 60, CFR, ~~is~~are available for public inspection and copying at the Air Quality Bureau, Department of Health and Environmental Sciences, Cogswell Building, 1400 Broadway, Helena, Montana; at EPA's Public Information Reference Unit, Room 2922, 401 M Street SW, Washington, DC 20460; and at the libraries of each of the ten EPA Regional Offices. Copies are also available as supplies permit from the U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; and copies may be purchased from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

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

16.8.1424 EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS (1) Same as existing rule.

(2) The owner or operator of any **~~stationary~~** new source, as defined in 40 CFR 61.01, shall comply with the provisions of Title 40, Part 61, Code of Federal Regulations (CFR), **July 1, 1987.**

(3) Same as existing rule.

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

4. The board is proposing these amendments to the rules in order to refine portions of the Lewis and Clark County air quality program and to insure equivalency with the federal air quality program and to adopt changes which may be deemed to be formal revisions to the SIP.

5. Interested persons may submit their data, views, or arguments concerning the proposed amendments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Robert L. Solomon, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620, no later than January 11, 1988.

6. Robert L. Solomon, at the above address, has been designated to preside over and conduct the hearing.

John J. Drynan M.D. by William J. Opitz

JOHN J. DRYNAN, M.D., Director
by William J. Opitz, Deputy Director

Certified to the Secretary of State November 16, 1987.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the Matter of the repeal of ARM 23.4.101 through 23.4.136 and the adoption of new rules I through XI pertaining to alcohol analysis.	)	NOTICE OF PROPOSED REPEAL AND ADOPTION OF RULES PERTAINING TO ALCOHOL ANALYSIS NO PUBLIC HEARING CONTEMPLATED

TO: ALL INTERESTED PERSONS:

1. On December 31, 1987, the Department of Justice proposes to repeal ARM 23.4.101, 23.4.102, 23.4.103, 23.4.104, 23.4.105, 23.4.106, 23.4.107, 23.4.108, 23.4.109, 23.4.110, 23.4.111, 23.4.112, 23.4.113, 23.4.114, 23.4.115, 23.4.116, 23.4.117, 23.4.118, 23.4.119, 23.4.121, 23.4.131, 23.4.132, 23.4.133, 23.4.134, 23.4.135, and 23.4.136, pertaining to alcohol analysis.

2. The rules the Department proposes to repeal are on pages 23-323 to 23-333 of the Administrative Rules of Montana.

3. The Department proposes to adopt the following rules:

RULE I DEFINITIONS (1) Unless the context requires otherwise, the following definitions apply to this subchapter:

(a) "Blood" refers to whole blood which contains the cellular components and the serum of plasma of blood.

(b) "Breath" refers to that portion of exhaled alveolar lung air that is collected for alcohol analysis.

(c) "College of American pathologists" means the organization nationally recognized by that name with headquarters in Traverse City, Michigan, which surveys clinical laboratories upon their request and accredits clinical laboratories which it determines meet its standards and requirements.

(d) "Department" means the department of justice.

(e) "Division" means the forensic science division of the department of justice.

(f) "Joint commission on accreditation of hospitals" means the organization nationally recognized by that name with headquarters in Chicago, Illinois, that surveys health care facilities upon their request and grants accreditation status to any health care facility that it determines meets its standards and requirements.

(g) "Sample" means blood, breath, urine or other bodily substances to be analyzed for alcohol content pursuant to this subchapter.

(h) "Testing device" means any instrument or device used to determine the alcohol concentration in blood, breath, urine or tissue pursuant to this subchapter.

AUTH: 61-8-405(6), MCA IMP: 61-8-405(6), MCA

RULE II CERTIFICATION (1) Every person performing alcohol testing or analyses pursuant to the provisions of section 61-8-405, MCA, who is not an employee of one of the

laboratories exempted by NEW RULE III, must be certified by the division.

AUTH: 61-8-405(6), MCA IMP: 61-8-405(6), MCA

RULE III EXEMPTIONS (1) The following are exempt from the certification required by this subchapter:

(a) all clinical and hospital laboratories under the direct supervision of a pathologist or certified medical technologist which are either licensed by the Montana Department of Health and Environmental Sciences or accredited by the college of American pathologists, the joint commission on accreditation of hospitals, or some other similar health accrediting authority;

(b) a laboratory operated by the department.

AUTH: 61-8-405(6), MCA IMP: 61-8-405(6), MCA

RULE IV SUSPENSION OR REVOCATION OF CERTIFICATION (1) The department may suspend, modify, or revoke the certification of any person if:

(a) the certification was obtained falsely or deceitfully; or

(b) the certificate holder makes any false statement in the course of fulfilling any duty set by this subchapter; or

(c) the certificate holder violates any rule or order of the department under this subchapter.

AUTH: 61-8-405(6), MCA IMP: 61-8-405(6), MCA

RULE V TYPES OF BREATH-TESTING CERTIFICATION (1) Any person administering a breath alcohol test must be certified as an operator or as an operator supervisor. Certification as either an operator or an operator supervisor can be obtained only following successful completion of a course of study and examination administered by the division.

AUTH: 61-8-405(6), MCA IMP: 61-8-405(6), MCA

RULE VI RECERTIFICATION OF PERSONS PERFORMING BREATH ALCOHOL TESTS (1) Every certified operator and/or operator supervisor must renew certification with the division every three years from the date of initial certification.

AUTH: 61-8-405(6), MCA IMP: 61-8-405(6), MCA

RULE VII BREATH TEST RECORDS (1) An operator supervisor must be assigned to each location where breath tests are administered and will maintain the following records:

(a) records of tests administered and the results; and

(b) instrument inspection records.

(2) Such records shall remain at the agency where the breath testing is administered.

(3) Such records shall be available to the division for inspection upon request by the division.

(4) Noncompliance with this section does not affect the validity of a test administered at such a location.

AUTH: 61-8-405(6), MCA IMP: 61-8-405(6), MCA

RULE VIII REPORTING BREATH TEST RESULTS (1) Each operator supervisor who maintains breath test records pursuant to NEW RULE VII shall complete a monthly report form available from the division. The operator supervisor shall submit the form to the division not later than the tenth day of the month following the month of record.

AUTH: 61-8-405(6), MCA IMP: 61-8-405(6), MCA

RULE IX BREATH-TESTING INSTRUMENTS (1) All models of breath-testing instruments used to administer testing according to section 61-8-405, MCA, must be approved by the division. The models operated by certified operators and/or operator supervisors prior to and on the effective date of this rule are deemed approved by the division.

(2) Each breath-testing instrument must be inspected by the division, and the accuracy verified by the division, prior to installation of the instrument.

AUTH: 61-8-405(6), MCA IMP: 61-8-405(6), MCA

RULE X SURVEYS AND PROFICIENCY TESTS (1) Equipment and records used by nonexempt certified persons or persons applying for certification for blood testing are subject to on-site inspections by representatives of the division.

(2) The person shall accept from the division for analyses periodic evaluation samples and participate in a national blood alcohol proficiency testing program (i.e., program conducted by the college of American pathologists).

(3) A copy of the results of evaluation sample analyses and proficiency tests shall be sent to the division.

AUTH: 61-8-405(6), MCA IMP: 61-8-405(6), MCA

RULE XI BLOOD AND URINE TEST RECORDS (1) All nonexempt persons performing blood and urine tests and/or analyses shall maintain the following records:

(a) proof of certification;

(b) records of tests performed and the results; and

(c) records of maintenance of instrumentation.

AUTH: 61-8-405(6), MCA IMP: 61-8-405(6), MCA

4. Section 61-8-405(6), MCA, states that the Department of Justice "shall adopt uniform rules for the giving of blood alcohol tests and may require certification of training to

administer such tests." Thus, such certification requirements are to be set by the Department. Repeal of the current rules was deemed necessary because they are outdated, unnecessary, and inaccurate. The proposed new rules constitute the Department's attempt to set appropriate certification requirements and guidelines for sample taking.

5. Interested parties may submit their data, views, or arguments concerning the proposed rules in writing to Mike Greely, Attorney General, Justice Building, 215 North Sanders, Helena, Montana 59620-1401, no later than December 30, 1987.

6. If a person who is directly affected by the proposed repeal and 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 his request along with any written comments he has to Mike Greely, Attorney General, Justice Building, 215 North Sanders, Helena, Montana 59620-1401, no later than December 30, 1987.

7. If the agency receives requests for a public hearing on the proposed repeal and adoption from either 10 percent or 25, whichever is less, of the persons who are directly affected by the proposed repeal and adoption, or a request from a government subdivision or agency or from the administrative code committee or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. The new rules will affect licensed drivers in the state, law enforcement officials, and technicians who do alcohol analysis. Notice of the hearing will be published in the Montana Administrative Register.

8. The rules to be repealed implemented section 61-8-405, MCA, as will the new rules.

MIKE GREELY
Attorney General

Certified to the Secretary of State November 16, 1987.

BEFORE THE DEPARTMENT OF SOCIAL
AND REHABILITATION SERVICES OF THE
STATE OF MONTANA

In the matter of the repeal of Rule 46.12.315 pertaining to a prohibition of certain provider fee increases	)))))	NOTICE OF THE PROPOSED REPEAL OF RULE 46.12.315 PERTAINING TO A PROHIBITION OF CERTAIN PROVIDER FEE INCREASES - NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On December 31, 1987, the Department of Social and Rehabilitation Services proposes to repeal Rule 46.12.315 which pertains to a prohibition of certain provider fee increases.

2. Rule 46.12.315 as proposed to be repealed is on page 46-1185 of the Administrative Rules of Montana.

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-6-111 and 53-6-141 MCA

3. ARM 46.12.315 has been superceded by more recent legislative action and must, therefore, be repealed.

4. Interested parties may submit their data, views or arguments concerning the proposed repeal in writing to the Office of Legal Affairs, Department of Social and Rehabilitation Services, 111 Sanders, P.O. Box 4210, Helena, Montana 59604, no later than December 28, 1987.

5. If a person who is directly affected by the proposed repeal wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a public hearing and submit this request, along with any written comments he has, to the Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana 59604, no later than December 28, 1987.

6. If the agency receives requests for a public hearing on the proposed repeal from either 10% or 25, whichever is less, of the providers who are directly affected by the proposed action from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those providers directly

affected has been determined to be 4,230 providers based upon the number of Medicaid providers in Montana.

Director, Social and Rehabilitation Services

Certified to the Secretary of State _____, 1987.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of changes and additions to 2.5.201 through 2.5.603 as required by 50th Legislature's enactment of HB 180.	)NOTICE OF THE AMENDMENT)OF ARM 2.5.201 through)2.5.603.))

TO: All Interested Persons.

1. On June 25, 1987, The Department of Administration published a notice to amend rules 2.5.201 through 2.5.603 pertaining to the contracting for supplies and services at page 799 of the Montana Administrative Register, Issue No. 12.

2. The Department has amended rules 2.5.201 through 2.5.603 as proposed.

3. The Department received no written comments or testimony.

4. The authority of the Department to make the changes is based on Sections 18-4-113 and 18-4-221, MCA.

Ellen Feaver
Director
Department of Administration

Certified to the Secretary of State November 16, 1987

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE MONTANA ECONOMIC DEVELOPMENT BOARD

In the matter of the amendment) NOTICE OF AMENDMENT OF 8.
of a rule pertaining to loans) 97.409 LOAN PARTICIPATIONS

TO: All Interested Persons:

1. On September 24, 1987, the Montana Economic Development Board published a notice of proposed amendment of the above-stated rule at page 1609, 1987 Montana Administrative Register, issue number 18.

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

3. No comments or testimony were received.

BOARD OF INVESTMENTS
JOSEPH REBER, CHAIRMAN

By: Geoffrey L. Brazier
GEOFFREY L. BRAZIER, ATTORNEY
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, November 16, 1987.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the adoption of Student Transportation	NOTICE OF ADOPTION OF ARM 10.61.207 (RULE I) STUDENT TRANSPORTATION

TO: All Interested Persons

1. On August 27, 1987, the Board of Public Education published notice of a proposed adoption of ARM 10.61.207 (RULE I), Student Transportation, on page 1372 of the 1987 Montana Administrative Register, issue number 16.

2. The Board has adopted the rule as proposed with the following change:

(a) The Board was contacted by the Administrative Code Committee staff with comment that the authority and implementation of ARM 10.61.207 should be changed to 20-8-121, which is the new law. The Board agrees with the comment.

3. At the public hearing which was held September 16, 1987, no persons testified and no written comments were received prior to September 25, 1987, the date on which the Board closed the hearing record.

ALAN NICHOLSON, CHAIRMAN
BOARD OF PUBLIC EDUCATION

BY: _____

Certified to the Secretary of State November 16, 1987.

BEFORE THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES
OF THE STATE OF MONTANA

In the matter of the adoption of NEW RULES I through ~~KLIX~~ L; the amendment of rules 16.28.101, 16.28.201, 16.28.202, 16.28.301 - 16.28.304, 16.28.601 - 16.28.609, 16.28.611 - 16.28.612, 16.28.614, 16.28.617 - 16.28.619, 16.28.621 - 16.28.626, 16.28.628 - 16.28.632, 16.28.634 - 16.28.638, 16.28.1001 - 16.28.1003, 16.28.1005, 16.29.101, 16.29.102; and the repeal of rules ~~16.28.102~~, 16.28.401 - 16.28.404, 16.28.501 - 16.28.505, 16.28.610, 16.28.613, 16.28.615, 16.28.616, 16.28.620, 16.28.627, 16.28.633, 16.28.901 - 16.28.903, 16.28.1004, and 16.28.1101 - 16.28.1105; all concerning control measures to prevent the spread of communicable diseases	NOTICE OF ADOPTION, AMENDMENT, AND REPEAL OF RULES (Communicable Diseases)

To: All Interested Persons

1. On June 25, 1987, the department published notice of proposed adoption, amendment, and repeal of the above-captioned rules concerning control measures for communicable diseases, at page 816 of the 1987 Montana Administrative Register, issue number 12.

2. On July 16, 1987, the department published an interim notice responding to comments received through June, 1987, at page 964 of the 1987 Montana Administrative Register, issue number 13.

3. The department has adopted, amended, and repealed the rules as proposed, with the following changes, including the deletion of NEW RULES X, XXIII, XXIV, XXIX, XXX, XXXII, XXXIII, XXXVI, XXXVIII, and XLII (new text as of this notice is underlined, and text to be stricken is interlined; amendments from the initial and interim notices are incorporated, and section numbers are as amended; in rule 16.28.101, definitions, the numbering of the definitions may change):

16.28.101 DEFINITIONS Unless otherwise indicated, the following definitions apply throughout this chapter:

(1) "Blood and body fluid precautions" mean the following requirements to prevent spread of disease through contact with infective blood or body fluids:

(a) Same as proposed.

(b) Single-use gloves must be used if blood or body fluids, mucous membranes, or non-intact skin will be touched, items or surfaces soiled with blood or body fluids handled, and for performing vascular access procedures other than venipuncture; ~~and~~ the gloves must be changed before touching ano-

ther person and discarded in a manner preventing contact with them thereafter. (It is recommended, though not required, that single-use gloves coupled with proper aseptic procedures also be used for performing venipuncture.)

(c) Hands must be washed immediately after gloves are removed or if they are potentially contaminated with blood or body fluids and before touching another person.

(d) Same as proposed.

(e) ~~Needle-stick injuries~~ Injuries from needles or other sharp devices must be avoided; used needles must not be recapped, ~~or~~ bent, ~~and~~ or broken by hand, removed from disposable syringes, or otherwise manipulated by hand; after use, disposable syringes and needles, scalpel blades, and other sharp items must be placed in a prominently labeled, puncture-resistant container for disposal, located as closely as practicable to the use area; large-bore reusable needles must be placed in such a container for transport to the reprocessing area.

(f)-(h) Same as proposed.

(i) Masks and protective eyewear or face shields must be worn during procedures that are likely to generate droplets of blood or other body fluids.

(j) In areas where resuscitation is likely to be practiced (e.g. emergency rooms), mouthpieces, resuscitation bags, or other ventilation devices must be available.

(k) No one who has an exudative lesion or weeping dermatitis in an area likely to be touched may directly care for a patient or handle patient-care equipment.

(2)-(3) Same as proposed.

(4) "Cleaning" means ~~the removal~~ to remove from surfaces, by scrubbing and washing, as with hot water and soap or detergent, ~~of~~ infectious agents and ~~of~~ organic matter on which and in which infectious agents may be able to live and remain virulent.

(5)-(6) Same as proposed.

(7) ~~"Confidential case card" is the form provided by the department to report a case of a reportable disease.~~

(8)-(10) (to be renumbered) Same as proposed.

(11) ~~"Disinfection" means the destruction of infectious organisms outside of a human or animal body by chemical or physical means directly applied.~~

(12) ~~"Disinfestation" is the destruction by chemical or physical means of undesired animal forms on domestic animals or present upon the person or the clothing or in the environment of a human being.~~

(13)-(25) (to be renumbered) Same as proposed.

(26) ~~"Nosocomial infection" means an infection originating in a health care facility.~~

(27) ~~"Nosocomial outbreak" means an epidemic or suspected epidemic of nosocomial infections.~~

(28)-(34) (to be renumbered) Same as proposed.

(35) "Sexually transmitted disease" means AIDS, syphilis, gonococcal infection, chancroid, lymphogranuloma venereum, granuloma inguinale, or chlamydial genital infections.

(36)-(40) (to be renumbered) Same as proposed.

16.28.102 LOCAL BOARD RULES (Will NOT be repealed but will be retained without amendment.)

16.28.201 REPORTERS Same as proposed.

16.28.202 REPORTABLE DISEASES (1) The following communicable diseases are reportable:

(List same as proposed, with following changes:)

~~Herpes, genital~~
~~Histoplasmosis~~
~~Leptospirosis~~
~~Mononucleosis~~
~~Nongonococcal urethritis~~
~~Pediculosis (lice)~~
~~Ringworm epidemic~~
~~Scabies~~
~~Taeniasis~~

(2) Same as proposed.

NEW RULE I (to be codified as 16.28.203) REPORTS AND REPORT DEADLINES (1) Same as proposed.

(2) A county, city-county, or district health officer or his/her authorized representative must mail to the department the information required by NEW RULE II(1) for each suspected or confirmed case of one of the following diseases, within the time limit noted for each:

(a) Same as proposed.

(b) Within 7 calendar days after the date information about a case of one of the following diseases is received by the county, city-county, or district health officer:

(List same as proposed, with following changes:)

~~Histoplasmosis~~
~~Leptospirosis~~
~~Paratyphoid~~
~~Taeniasis~~
~~Toxic shock syndrome~~

(3) By Friday of each week during which a suspected or confirmed case of one of the diseases listed below is reported to the county, city-county, or district health officer, that officer or his/her authorized representative must mail to the department the total number of the cases of each such disease reported that week:

(List same as proposed, with following changes:)

~~Herpes, genital~~
~~Mononucleosis~~
~~Nongonococcal urethritis~~
~~Pediculosis (lice)~~
~~Ringworm epidemic~~
~~Scabies~~

(4)-(7) Same as proposed.

NEW RULE II (to be codified as 16.28.204) REPORT CONTENTS (1)-(2) Same as proposed.

(3) The information required by sections (1) ~~through (3)~~ and (2) of this rule must be supplemented by any other informa-

tion in the possession of the reporter which the department requests and which is related to case management, excepting, in the case of those who are HIV-positive, the name or any other information from which the individual in question might be identified.

(4)-(5) Same as proposed.

NEW RULE III (to be codified as 16.28.305) CONFIRMATION OF DISEASE (1)(a) Subject to the limitation in (b) below, if a local health officer receives information about a case of any of the following diseases, s/he or his/her authorized representative must ~~obtain and submit to the department~~ ensure that a specimen from the case is submitted to the department, which specimen will be analyzed to confirm the existence or absence of the disease in question:

(List same as proposed, with following change:)

~~Leptospirosis~~

(b) Same as proposed.

(2)-(4) Same as proposed.

16.28.301 SENSITIVE OCCUPATIONS Same as proposed.

16.28.302 FUNERALS Same as proposed.

16.28.303 TRANSPORTATION OF COMMUNICABLE DISEASE CASES (1) Neither an infected person with a communicable disease ~~subject to~~ for which subchapter 6 of this chapter prescribes isolation nor a contact made subject to quarantine by that subchapter may travel or be transported from one location to another without the permission of the local health officers with jurisdiction over the places of departure and arrival, except if, in the case of an infected person:

(a) ~~an~~ the infected person is to be admitted directly to a hospital for the treatment of the communicable disease, and

(b) both local health officers are satisfied that adequate precautions are taken to prevent dissemination of the disease by the infected person en route to the hospital.

16.28.304 IMPORTATION OF DISEASE (1) No person who has a reportable disease ~~and is infectious~~ for which subchapter 6 of this chapter prescribes isolation may be brought within the boundaries of the state without ~~the permission of~~ prior notice to the department and approval of measures to be taken within Montana to prevent disease transmission.

(2) Whenever a person knows or has reason to believe that an infected person, whether or not infectious, has been brought within the boundaries of the state, s/he shall report the name and location of the infected person to the department, with the exception of those individuals who are HIV-positive; in the latter case, only the information described in NEW RULE II(2) must be provided to the department.

NEW RULE IV (to be codified as 16.28.306) INVESTIGATION OF A CASE (1) Immediately after being notified of a case or an epidemic of a reportable disease, a local health officer must:

(a) Same as proposed.

(b) if s/he finds that the nature of the disease and the circumstances of the case or epidemic warrant such action:

(i)-(iii) Same as proposed.

(iv) notify contacts (for example, ~~morticians or~~ emergency responders) of the case and give them the information needed to prevent contracting the disease.

(c) Same as proposed.

(2) Same as proposed.

NEW RULE V (to be codified as 16.28.307) POTENTIAL EPIDEMICS Same as proposed.

NEW RULE VI (to be codified as 16.28.308) QUARANTINE OF CONTACTS -- NOTICE AND OBSERVATION Same as proposed.

NEW RULE VII (to be codified as 16.28.309) ISOLATION OF PATIENT -- NOTICE Same as proposed.

16.28.601 MINIMAL CONTROL MEASURES Same as proposed.

NEW RULE VIII (to be codified as 16.28.601A) ACQUIRED IMMUNE DEFICIENCY SYNDROME Same as proposed.

16.28.602 AMEBIASIS Same as proposed.

16.28.603 ANTHRAX Same as proposed.

16.28.604 BOTULISM -- INFANT BOTULISM Same as proposed.

16.28.605 BRUCELLOSIS Same as proposed.

NEW RULE IX (to be codified as 16.28.605A) CAMPYLOBACTER ENTERITIS Same as proposed.

~~NEW RULE X -- CANDIDIASIS~~ (DELETED)

NEW RULE XI (to be codified as 16.28.605B) CHANCROID Same as proposed.

NEW RULE XII (to be codified as 16.28.605C) CHICKENPOX Same as proposed.

NEW RULE XIII (to be codified as 16.28.605D) CHLAMYDIAL GENITAL INFECTION Same as proposed.

16.28.606 CHOLERA Same as proposed.

NEW RULE XIV (to be codified as 16.28.606A) COLORADO TICK FEVER Same as proposed.

NEW RULE XV (to be codified as 16.28.606B) CONJUNCTIVITIS EPIDEMIC Same as proposed.

NEW RULE XVI (to be codified as 16.28.606C) DIARRHEAL DISEASE OUTBREAK Same as proposed.

16.28.607 DIPHTHERIA Same as proposed.

16.28.608 ENCEPHALITIS Same as proposed.

NEW RULE XVII (to be codified as 16.28.608A) GASTROENTERITIS EPIDEMIC Same as proposed.

16.28.609 GIARDIASIS Same as proposed.

NEW RULE XVIII (to be codified as 16.28.609A) GONOCOCCAL INFECTION Same as proposed.

NEW RULE XIX (to be codified as 16.28.610A) GRANULOMA INGUINALE Same as proposed.

NEW RULE XX (to be codified as 16.28.610C) HANSEN'S DISEASE (LEPROSY) Same as proposed.

16.28.611 HEPATITIS TYPE A Same as proposed.

16.28.612 HEPATITIS TYPE B Same as proposed.

NEW RULE XXI (to be codified as 16.28.612A) HEPATITIS, NON-A NON-B Same as proposed.

NEW RULE XXII (to be codified as 16.28.612B) HEPATITIS, TYPE UNSPECIFIED Same as proposed.

~~NEW RULE XXIII HERPES, GENITAL (1) Drainage and secretion precautions must be observed in each acute case of genital herpes.~~

~~(2) A person who contracts genital herpes must be instructed to avoid sexual contact until after the lesions heal.~~

~~NEW RULE XXIV HISTOPLASMOSIS (1) Sputum or sputum soiled articles must be concurrently disinfected.~~

NEW RULE XXV (to be codified as 16.28.612C) INFLUENZA Same as proposed.

16.28.614 LEGIONELLOSIS Same as proposed.

~~16.28.616 LEPTOSPIROSIS (1) An inquiry must be made to determine the infected animal or contaminated water which is the source of the leptospirosis.~~

NEW RULE XXVI (to be codified as 16.28.616A) LISTERIOSIS EPIDEMIC Same as proposed.

NEW RULE XXVII (to be codified as 16.28.616B) LYME DISEASE Same as proposed.

NEW RULE XXVIII (to be codified as 16.28.616C) LYMPHOGRANULOMA VENEREUM Same as proposed.

16.28.617 MALARIA Same as proposed.

16.28.618 MEASLES -- RUBEOLA (1) A local health officer or the department shall impose modified isolation consisting of respiratory isolation of a measles case and quarantine of susceptible contacts whenever a suspected or confirmed case of measles occurs. If isolation and quarantine are imposed, the local health officer shall provide the notice required by NEW RULES VI and VII and make immunizations available~~,-free-of charge~~.

16.28.619 MENINGITIS -- BACTERIAL OR VIRAL Same as proposed.

~~NEW--RULE--XXIX--MENINGOCOCCAL--(1)--Articles--soiled-with nose-or-throat-discharges-must-be-concurrently-disinfected.~~

16.28.621 MUMPS Same as proposed.

~~NEW-RULE-XXX--NONGONOCOCCAL-URETHRITIS---(1)--The-infected individual-must--be-directed-to-avoid-sexual-contact-until-his/her-urethral-discharges-are-determined-to--be-no--longer-infectious.~~

NEW RULE XXXI (to be codified as 16.28.621A) OPHTHALMIA NEONATORUM Same as proposed.

16.28.622 ORNITHOSIS (PSITTACOSIS) Same as proposed.

~~NEW-RULE-XXXII--PARATYPHOID~~ (DELETED)

~~NEW-RULE-XXXIII--PEDICULOSIS---(1)--The-case--must-be-isolated-directed-to-refrain-from-having-intimate-contact-or-sharing-personal-items-with-another-person--for-24--hours-after-the application-of--an-effective--pediculosis-insecticide;-no-other precautions-are-necessary.~~

~~(2) Clothing,-bedding,-and-any-other-articles--which-were in-contact--with-the-case's-body-hair-must-be-concurrently-disinfected.~~

~~(3) If--the--particular--insecticide--initially--used-for treatment-is--not-ovicidal,-the-case-must-be-retreated-with-insecticide-7-10-days-after-the-initial-treatment-occurred.~~

~~(4) Close-contacts-must-be-examined-to--determine-if-they have-been-infected.~~

16.28.623 PERTUSSIS (WHOOPING COUGH) Same as proposed.

16.28.624 PLAGUE Same as proposed.

16.28.625 POLIOMYELITIS Same as proposed.

NEW RULE XXXIV (to be codified as 16.28.625A) Q-FEVER (QUERY FEVER) Same as proposed.

16.28.626 RABIES -- HUMAN Same as proposed.

NEW RULE XXXV (to be codified as 16.28.626A) RABIES EXPOSURE Same as proposed.

~~NEW--RULE--XXXVI---RINGWORM-EPIDEMIC---(1)--Infected-areas must-be-covered-and--concurrent--disinfection--for--disposal-of the-covers-used.~~

16.28.628 ROCKY MOUNTAIN SPOTTED FEVER Same as proposed.

NEW RULE XXXVII (to be codified as 16.28.628A) RUBELLA Same as proposed.

16.28.629 RUBELLA -- CONGENITAL Same as proposed.

16.28.630 SALMONELLOSIS (OTHER THAN TYPHOID FEVER)
(1) Same as proposed.
(2) Whenever a case of Salmonellosis exists:
(a) Same as proposed.
(b) the case must not be allowed to engage in a sensitive occupation until 2 successive ~~authentic~~ specimens of feces have been determined by a laboratory to be negative for Salmonella organisms, the first specimen of which is collected at least 48 hours after cessation of the therapy and the second not less than 24 hours thereafter; and
(c) Same as proposed.

~~NEW-RULE-XXXVIII---SEABIES---(1)--An-infested--person-must be--excluded--from--school--or--work-from-the-date-of-diagnosis until-24-hours-after-commencement-of-treatment.~~

16.28.631 SHIGELLOSIS (1) Same as proposed.
(2) A local health officer must not allow an infected person to engage in a sensitive occupation until 2 successive ~~authentic~~ specimens of feces taken at an interval of not less than 24 hours apart, beginning no earlier than 48 hours after cessation of specific therapy, have been determined to be free of Shigella organisms.

16.28.632 SMALLPOX (INCLUDING VACCINIA) Same as proposed.

NEW RULE XXXIX (to be codified as 16.28.632A) STAPHYLOCOCCAL EPIDEMIC Same as proposed.

NEW RULE XL (to be codified as 16.28.632B) STREPTOCOCCAL EPIDEMIC Same as proposed.

NEW RULE XLI (to be codified as 16.28.632C) SYPHILIS Same as proposed.

~~NEW RULE XLII TAENIASIS (1) Enteric precautions must be imposed until treatment is effective.~~

16.28.634 TRICHINOSIS Same as proposed.

NEW RULE XLIII (to be codified as 16.28.634A) TUBERCULOSIS Same as proposed.

16.28.635 TULAREMIA Same as proposed.

16.28.636 TYPHOID FEVER (1) Same as proposed.

(2) Enteric precautions must be imposed until specific therapy for the fever has been completed and no fewer than 3 successive ~~authentic~~ specimens of feces have been found negative for typhoid organisms, the first of which is taken one month after therapy is discontinued and followed by the other 2 at no less than 1-week intervals.

(3) Same as proposed.

16.28.637 TYPHUS FEVER (LOUSE-BORNE) Same as proposed.

16.28.638 YELLOW FEVER Same as proposed.

NEW RULE XLIV (to be codified as 16.28.638A) YERSINIOSIS Same as proposed.

NEW RULE XLV (to be codified as 16.28.638B) ILLNESS IN TRAVELER FROM FOREIGN COUNTRY Same as proposed.

16.28.1001 ISOLATION OF CASE -- TESTING AND QUARANTINE OF CONTACTS Same as proposed.

16.28.1002 TUBERCULOSIS -- COMMUNICABLE STATE Same as proposed.

16.28.1003 DIAGNOSIS Same as proposed.

16.28.1005 EMPLOYEE -- SCHOOLS -- DAY CARE FACILITY (1) A person employed in a public or private ~~institution for the teaching of individuals~~ school, the curriculum of which is comprised of the work of any combination of kindergarten through grade 12, or in a day care facility as defined in section 53-4-401, MCA, must receive tuberculin skin testing ~~either~~ between one year before ~~or within~~ and 7 days after commencing employment unless the person is a known tuberculin reactor, in which case section ~~(3)~~(4) applies.

(2) Each school and day care facility must keep documentation for each current employee of either the date, type, tester, and results of the tuberculin skin test, or the fact that section (4) applies.

~~(2)~~(3) Same as proposed.

~~(3)~~(4)(a) Same as proposed.

(b) If any of the conditions listed in subsection ~~(3)~~(a)

(4)(a) of this rule are present, the tuberculin-positive employee must be counseled that s/he is at relatively high risk of developing tuberculosis disease and that s/he should complete 6 months of chemoprophylaxis if s/he has not already done so, unless medically contraindicated according to the standards contained in "Treatment of Tuberculosis and Tuberculosis Infection in Adults and Children", a joint statement of the centers for disease control and the American thoracic society, adopted March, 1986.

(c) Further surveillance is not required of a tuberculin-positive employee with any condition listed in subsection ~~(3)(a)~~ (4)(a) of this rule who completes 6 months of chemoprophylaxis.

(d) A tuberculin positive employee with any of the conditions listed in subsection ~~(3)(a)~~ (4)(a) of this rule who does not complete 6 months of chemoprophylaxis, with the exception mentioned in subsection ~~(3)(c)~~ (4)(c) of this rule, must have a chest X-ray annually during his/her term of employment.

(e) A tuberculin-positive employee with none of the conditions listed in subsection (4)(a) of this rule or with a history of close exposure to a case of communicable pulmonary tuberculosis within the previous 2 years or a history of a negative tuberculin test within the previous 2 years may be released from further routine tuberculosis surveillance following 2 negative chest x-rays one year apart. However, if such an employee does not complete 6 months of chemoprophylaxis as well, s/he must be examined by a physician every 5 years after the second negative x-ray is taken to determine whether symptoms of tuberculosis exist.

~~(4)-(5)~~(5)-(6) Same as proposed.

NEW RULE XLVI (to be codified as 16.28.1006) TREATMENT STANDARDS Same as proposed.

AUTH: ~~2-4-308~~ 50-1-202 and 50-17-103, MCA

NEW RULE XLVII (to be codified as 16.28.1007) FOLLOW-UP AND REPORTING Same as proposed.

NEW RULE XLVIII (to be codified as 16.28.1008) SUBMISSION OF SPECIMENS Same as proposed.

NEW RULE XLIX (to be codified as 16.24.215) NEWBORN EYE TREATMENT Same as proposed.

16.29.101 DEFINITIONS Same as proposed.

16.29.102 DEATH FROM A SPECIFIED COMMUNICABLE DISEASE Same as proposed.

NEW RULE L (to be codified as 16.28.610B) HAEMOPHILUS INFLUENZA B INVASIVE DISEASE Same as proposed.

4. Additional comments and the department's responses:

a. Comment: Regarding sexually transmitted diseases, specific surveys are a better way to collect incidence data than through routine reporting, in part because some physicians and clinics deliberately do not report to the state or county health department when they think it is more effective to treat the patient and his/her partner directly, on the spot, and because the state does not appear to be doing much follow-up itself. Given the latter factor, STD cases, particularly cases of chlamydia, should be reported to the state or county only when the patient cannot be located for treatment or the partner is unlikely to be treated. The additional, unreimbursed, burden of reporting imposed on clinics who are already doing STD diagnosis and follow-up for which no one pays them is unjustifiable. Chlamydia reporting should be "requested" rather than required.

Response: All state and territories require STD reporting similar to Montana's requirements; surveys are costly and not necessarily representative of the general population. Through the reports it receives, DHES monitors state-wide trends and reports to the federal Centers for Disease Control statistics useful in national disease control planning. As for lack of follow-up by the state, follow-up is practically and legally primarily the responsibility of each local health officer. Therefore, the current reporting mechanism will be retained.

b. Comment: Reporting of genital herpes should be "requested" rather than required, or eliminated altogether, because the best control measure is education at the time of diagnosis by the health care provider and because case follow-up is less useful than it used to be.

Response: Genital herpes was deleted from the list of reportable diseases.

c. Comment: Chlamydia reporting should be "requested" rather than required.

Response: The purpose of rules is to set minimum, mandatory reporting and other control measures to protect public health. A "request" for a report when a doctor sees fit to provide one has no place in rules, so the amendment was rejected.

d. Comment: The familiar phrase "food handler" should be reinstated in the definition of "sensitive occupation", and the rule relating to sensitive occupations (16.28.101(34) and 16.28.301) for ease of reference.

Response: The rule appeared clear enough as it stood and was not amended further.

e. Comment: The phrase "careful surveillance" in 16.28.624 is redundant and its meaning should be clarified.

Response: The word "careful" is there strictly for emphasis on the need for surveillance, was not considered by the department to be redundant, and is retained.

f. Comment: What should be specified about control of a Hepatitis A virus case in a school setting?

Response: The enteric precautions mentioned already

are sufficient.

g. Comment: All individuals treated in emergency rooms for trauma or with an open wound or exterior body secretions should be tested for AIDS virus and hepatitis B, cost to the patient, in order to ensure emergency responders, morticians, etc., are notified in every case in which they are at risk, especially since local health officers might not know or notify all of the emergency responders affected in a given case.

Response: Blood and body fluid precautions should be routinely used as a preventive measure; in the event that those precautions are circumvented or not followed, the local health officer should try to get the voluntary consent of the patient to test his/her blood. In any event, it is the responsibility of the local health officer to track down everyone who may be exposed to a case.

h. Comment: A large number of people felt that the language in NEW RULE II(3) allowed DHES to request the names of HIV-positives even though the names are not required to be in the initial reports, and that 16.28.304 gave DHES the power to exclude from the state those with AIDS or exposed to the AIDS virus. They asked that both provisions be deleted or amended.

Response: NEW RULE II was amended to ensure the names of HIV-positives were not requested, and, in response to the second issue above, both 16.28.303 and 16.28.304 were amended to make the rules apply primarily to cases requiring quarantine or isolation, which AIDS and AIDS exposure currently do not, to substitute a notice requirement for the power to prohibit entry into the state, and to clarify that the department would not get the names of HIV-positives who have entered the state.

i. Comment: The definition of "local health officer" should be reinstated.

Response: Since "local health officer" is defined in 50-2-101, MCA, and the definition in the rule essentially reiterates that statutory language, the definition was not retained because state law prohibits reiteration in rules of statutory language.

j. Comment: In general, some of the reportable diseases, such as chickenpox, should not be reportable because they are too prevalent for a meaningful epidemiological response to be made, because no control strategy exists, or because they present no significant public health problem.

Response: The need for reporting of each of the reportable diseases listed was carefully considered, and, in addition to the reportable disease eliminated in the interim notice, deleted genital herpes, histoplasmosis, leptospirosis, nongonococcal urethritis, pediculosis, ringworm epidemic, scabies, mononucleosis, and taeniasis and their control measures. Chickenpox was retained because CDC recommends it, since discovery of a vaccine is apparently imminent.

k. Comment: The Legislative Council staff requested more appropriate authority for NEW RULE XLVI be substituted, since the code section currently cited does not give rule-making authority, even for advisory rules.

Response: The department adopted the suggested change in authority citations.

1. Comment: The definitions and control measures in Control of Communicable Diseases in Man (CCDM) should be used instead of those proposed because they are national standards and in order to prevent confusion on occasions when the state and CCDM standards are inconsistent.

Response: The minimum standards, while not containing everything in the CCDM, are rarely inconsistent with it and are intended to specify the minimum requirements which must be met in Montana. People other than health officers with ready access to the CCDM are also responsible for fulfilling the minimum standards, many of whom would find it difficult to lay hands on a CCDM for reference. The definitions in the rules were carefully examined to ensure no conflicts existed with CCDM, even though the wording may not precisely coincide. Finally, some of the control measures in the CCDM are not phrased in the mandatory language required of rules and are therefore inappropriate for wholesale adoption as standards. Therefore, substitution of the CCDM for the proposed definitions and control measures was not done. However, as a result of the suggestion and the reexamination of the definitions it generated, the definition of "blood and body fluid precautions" was expanded to more closely follow the "universal precautions" most recently prescribed by CDC.

m. Comment: The proposal sometimes requires health officers to enforce behavior, such as sexual abstention, which is not under the officers' control.

Response: The language referred to has been amended accordingly.

n. Comment: In NEW RULE IV(1)(b)(iv), use of morticians as examples of contacts is inappropriate because the definition of "contact" refers to individuals who have already been exposed to an infectious agent, which would not ordinarily be the case with morticians.

Response: "Morticians" was deleted as an example of a contact.

o. Comment: The meaning of "authentic" in the phrase "authentic specimens" in unclear in 16.28.630, 16.28.631, and 16.28.636.

Response: The department agreed the word was vague and unnecessary, so deleted it.

p. Comment: NEW RULE III should be amended so that it is clear that a new specimen need not be submitted to the department, that the health officer need not personally submit it, and that there are instances when one may not be available.

Response: The requested changes were made, with the exception of the last, which already is addressed in paragraph (3) of the rule.

q. Comment: The definition of "sexually transmitted disease" should include HIV-positives as well.

Response: Since the phrase is used in only one place in the rules [NEW RULE I(5)] under circumstances which should not include HIV-positivity, the amendment was not made. The department also reinstated the definition, since it had inadvertently been deleted.

r. Comment: Health officers should not be excluded from

AIDS and HIV-positive case information.

Response: No change was made, first because AIDS is reportable to the health officer, and second, because, in the case of HIV-positives, no control measures other than public education are now recommended.

s. Comment: It is burdensome to local health departments to require measles vaccine to be given free of charge.

Response: The department agreed and deleted the provision.

t. Comment: All communicable disease reporting should be by name and address.

Response: No change was made since HIV-positives are the only "disease" not so reported, and confidentiality considerations require no names or addresses be reported in that case as yet.

u. Comment: No public health or patient care advantage exists to justify requiring specimens from victims of amebiasis, granuloma inguinale, or lymphogranuloma venereum to be sent to DHES' laboratory for confirmation, especially since other clinical labs may have confirmed those diseases already.

Response: DHES retained the requirement because no lab in Montana other than DHES's is proficient in testing for those diseases since they are so rare, and because the department wants to be sure of their existence in order to prevent outbreaks.

v. The definitions of "confidential case card", "disinfections", "disinfestation", "nosocomial infection", and "nosocomial outbreak" were deleted as unnecessary because they no longer appear anywhere else in the rule package. The definition of "cleaning" was revised slightly to be a definition of "clean", since the latter and not the former is used in the rules.

w. Paratyphoid and toxic shock syndrome were deleted from NEW RULE I(2)(b) to conform to the interim notice's deletion of those diseases in other places in the rules.

x. Reexamination of 16.28.1005 regarding tuberculosis control resulted in editing for clarification (e.g. "school" instead of "institution for the teaching of individuals"); setting a one-year limit on the age of a TB test which would be acceptable for employment purposes; adding language clarifying that schools have to keep a record of the TB status of their employees; reinstating and updating a paragraph inadvertently deleted [(3)(e), now (4)(e)]; and correcting references to section (3) which should be section (4).

JOHN J. Drynan, M.D., Director
by William J. Opitz, Deputy Director

Certified to the Secretary of State November 16, 1987.

BEFORE THE DEPARTMENT
OF PUBLIC SERVICE REGULATION
OF THE STATE OF MONTANA

In the Matter of Repeal of ARM 38.5.1801 through 38.5.1811.	) NOTICE OF REPEAL OF PUBLIC) SERVICE COMMISSION RULES) PROHIBITING THE NONESSENTIAL) USE OF NATURAL GAS FOR) OUTDOOR LIGHTING

TO: All Interested Persons

1. On September 24, 1987, the Department of Public Service Regulation published notice of the proposed repeal of Rules 38.5.1801 through 38.5.1811 which prohibit the nonessential use of natural gas for outdoor lighting at pages 1616-1617 of the 1987 Montana Administrative Register, Issue No. 18.

2. The Commission has adopted the proposed repeal. Authority to repeal rules is contained at 69-3-102 and 69-3-103, MCA.

3. Comments: The repeal was requested by Montana-Dakota Utilities Company. Great Falls Gas Company submitted comments in support of the repeal.

CLYDE JARVIS, Chairman

CERTIFIED TO THE SECRETARY OF STATE NOVEMBER 16, 1987.

BEFORE THE DEPARTMENT
OF PUBLIC SERVICE REGULATION
OF THE STATE OF MONTANA

In the Matter of Amendment of Rule 38.5.2502(5) Pertaining to Responsibility for the Expense of Maintaining Water Utility Service Pipes from the Water Main to the Consumer's Property Line.	)))))	NOTICE OF AMENDMENT OF RULE 38.5.2502(5), PESPONSIBILITY FOR MAINTAINING WATER SERVICE LINES

TO: All Interested Persons

1. On September 24, 1987 the Department of Public Service Regulation published notice of the proposed amendment of rule 38.5.2502(5) regarding responsibility for the expense of maintaining water utility service pipes at pages 1614-1615 of the 1987 Montana Administrative Register, Issue No. 18.

2. The Commission has adopted the amendment as proposed.

3. Comments: Comments were received from the Legislative Council with respect to the authority for the issuance of this rule as well as the specific implementation citations. In response to these comments the Commission amends the authority and implementation for this rule as follows: AUTH: Sec. 69-3-102 and 69-3-103, MCA; IMP, Chapter No. 184, Montana Session Laws 1987, 69-3-102, MCA.

CLYDE JARVIS, Chairman

CERTIFIED TO THE SECRETARY OF STATE NOVEMBER 16, 1987.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the adoption of rules pertaining to fees for filing notice of agricultural lien and certificate of information obtained by public access, and the requirements of the format for the Notice of Agricultural Lien.	))))))	NOTICE OF ADOPTION OF RULES I - II 44.6.107 and 44.6.110 AND AMENDMENT FOR RULE 44.6.105 - Fees and Format for Filing Notice of Agricultural Lien and Certificate of Information Obtained by Public Access.

TO: All Interested Persons:

1. On September 10, 1987, the Secretary of State published notice of the proposed adoption and amendment of rules pertaining to fees and format for filing notice of agricultural liens and certificates of information obtained by public access, at page 1553 of the 1987 Montana Administrative Register, issue no. 17.

2. The Secretary of State has adopted and amended the rules as proposed.

3. No comments or testimony were received.

4. These rules will be effective December 1, 1987.

JIM WALTERMIRE
Secretary of State

Dated this 16th day of November, 1987

BEFORE THE DEPARTMENT OF SOCIAL
AND REHABILITATION SERVICES OF THE
STATE OF MONTANA

In the matter of the amendment of Rules 46.12.401, 46.12.402 and 46.12.404 pertaining to Medicaid sanctions	))))	NOTICE OF THE AMENDMENT OF RULES 46.12.401, 46.12.402 AND 46.12.404 PERTAINING TO MEDICAID SANCTIONS

TO: All Interested Persons

1. On July 16, 1987, the Department of Social and Rehabilitation Services published notice of the proposed amendment of Rules 46.12.401, 46.12.402 and 46.12.404 at page 1062 of the 1987 Montana Administrative Register, issue number 13.

2. The Department has amended Rule 46.12.404 as proposed.

3. The Department has amended the following rules as proposed with the following changes:

46.12.401 GROUNDS FOR SANCTIONING Subsections (1) through (1)(r) remain as proposed.

~~(19s)~~ Failure to correct deficiencies as defined by the ARM or federal regulation after receiving written notice of these deficiencies from the department, or the department of health and environmental sciences~~,~~, OR THE FEDERAL DEPARTMENT OF HEALTH AND HUMAN SERVICES. The standards set forth at 42 CFR Part 442 ~~and the Federal Long Term Care Survey Care Guidelines, dated September 1986,~~ AND THE AMENDMENTS PROPOSED TO THIS SECTION AS PUBLISHED IN THE FEDERAL REGISTER, VOL. 52, NO. 126 ON JULY 1, 1987, AT PAGE 24752 ET. SEQ. which identify deficiencies for providers of long term care facility services, are hereby incorporated by reference. A copy of 42 CFR Part 442 ~~and the Federal Long Term Care Survey Care Guidelines, dated September 1986,~~ AND THE AMENDMENTS PROPOSED TO THIS SECTION AS PUBLISHED IN THE FEDERAL REGISTER, VOL. 52, NO. 126 ON JULY 1, 1987, AT PAGE 24752 ET. SEQ. are available from the Department of Social and Rehabilitation Services, Economic Assistance Division, P.O. Box 4210, Helena, Montana 59620.

Subsections (1)(t) through (1)(z) remain as proposed.

AUTH: Sec. 53-2-201, 53-2-803, 53-4-111, 53-6-111 and 53-6-113 MCA; AUTH Extension, Sec. 1, Ch. 370, L. 1985, Eff. 10/1/85

IMP: Sec. 53-2-306, 53-2-801, 53-2-803, 53-4-112 and 53-6-111 MCA

46.12.402 SANCTIONS (1) The following sanctions may be invoked against providers based on the grounds specified in ARM 46.12.401~~:~~:

Subsections (1)(a) through (1)(h) remain as proposed.

(i) In addition to the sanctions listed above, long term care facilities shall be subject to termination of participation when the deficiencies resulting from ~~their~~ failure to meet conditions OR STANDARDS of participation or ~~standards~~ pose immediate jeopardy or the denial of payments for new admissions if the ~~facilities'~~ FACILITY'S deficiencies RESULTING FROM FAILURE TO MEET CONDITIONS OR STANDARDS OF PARTICIPATION do not pose immediate jeopardy. Federal laws regarding termination from participation and intermediate sanctions provided in 42 U.S.C. 1396a(I), 42 CFR 442.2, and 42 CFR 442.117 through 442.119 are hereby incorporated by reference. A copy of 42 U.S.C. 1396a(i), 42 CFR 442.2, and 42 CFR 442.117 through 442.119 may be obtained from the Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana 59620; or

(j) Notification to the public of sanctions taken against a provider.

AUTH: Sec. 53-2-201, 53-2-803, 53-4-111, 53-6-111 and 53-6-113 MCA

IMP: Sec. 53-2-306, 53-2-801, 53-4-112 and 53-6-111 MCA

4. The Department has thoroughly considered all commentary received:

COMMENT: The language relating to the intermediate sanction should parallel that of termination. It should be made clear that the intermediate sanction may only be imposed when deficiencies result in failure to meet conditions or standards of participation.

RESPONSE: The Department concurs and will revise the language in accordance with the suggestions made in the comment.

COMMENT: Are the September 1986 Federal Long Term Care Survey Care Guidelines referred to in the proposed rules the same as the final federal rules published on June 13, 1986?

RESPONSE: The final federal rules published June 13, 1986 established the resident outcomes, or PaCS, survey process. The September 1986 Long Term Care Survey Care Guidelines were the survey procedures developed in response to the PaCS regulations.

COMMENT: The June 13, 1986 federal rules were declared procedurally invalid by a Colorado federal district court in March 1987. As ordered by the court, a Notice of Proposed Rulemaking (NPRM) was published on July 1, 1987, with a comment period extending through September 29, 1987. Should invalid

rules be incorporated by reference, thus creating the need for a future amendment, or would it be better to withdraw the proposed ARM amendments until the new rule is finalized?

RESPONSE: The Department has incorporated by reference the amendments proposed to 42 CFR Part 442 as published in the Federal Register, Vol. 52, No. 126 on July 1, 1987, at page 24752 et. seq. The importance of rule authority for invoking intermediate sanctions mandates that these state rule amendments be made final. A future amendment to the incorporation by reference may be necessary to correlate with final federal regulations but is not anticipated.

COMMENT: Are sanctions to be imposed routinely? If sanctions are based solely upon jeopardy to the patient, what is the expected frequency?

RESPONSE: The Department expects that Medicaid providers will routinely be in compliance with the conditions and standards of participation rather than in a position of noncompliance. Therefore, imposition of intermediate sanction is expected to be an extraordinary occurrence.

COMMENT: Who makes the decision to impose sanctions?

RESPONSE: The Montana Department of Health and Environmental Sciences, which is the state survey agency, can recommend that an intermediate sanction be imposed based upon their survey of the provider. The decision to impose sanctions is made by the federal Department of Health and Human Services for duly certified skilled beds and by the Montana Department of Social and Rehabilitation Services for intermediate care beds and Medicaid-only certified skilled beds.

COMMENT: If a facility has an eleven-month sanction, can the facility call the Department of Health and Environmental Sciences for reinspection? What happens after eleven months?

RESPONSE: The provider may request a follow-up survey at any point during the sanction period. The sanction may then be ended and a new certification period established if the provider has come into compliance. The Department of Health and Environmental Sciences will automatically schedule a survey prior to the expiration of the sanction period and, based upon the results of the survey, the provider will either be recertified or terminated at the end of the eleven months.

COMMENT: What is the effect of intermediate sanctions on reimbursement?

RESPONSE: Medicaid payment is denied for new admissions to the facility during the sanction period. However, Medicaid payments can be made for services to residents who, prior to the sanction date, were covered by private payors and subsequently become eligible for Medicaid.

COMMENT: Is an exit interview required? If so, what is the procedure?

RESPONSE: An exit conference is required by federal regulation, at the conclusion of each survey. Deficiencies will be addressed at that time but the decision to recommend intermediate sanction may not have been made until the survey findings are reviewed subsequent to the date of the exit conference.

COMMENT: When does an intermediate sanction begin in relation to the time of the survey?

RESPONSE: Surveys are generally conducted sixty (60) days prior to the end of a certification period. However, an intermediate sanction may be imposed thirty (30) days from the date of the survey.

COMMENT: Will intermediate sanctions be imposed in Montana or will termination be the only option offered providers?

RESPONSE: Intermediate sanctions may be imposed in accordance with this administrative rule if conditions or standards of participation are not met but there is no immediate jeopardy. The decision will be made at either the federal or state level and providers will not be offered an option.

COMMENT: Is there a quota of sanctions expected by the federal government in Montana?

RESPONSE: The Department is unaware of a sanction quota expected by the federal government.

Director, Social and Rehabilitation Services

Certified to the Secretary of State December 16, 1987.

BEFORE THE DEPARTMENT OF SOCIAL
AND REHABILITATION SERVICES OF THE
STATE OF MONTANA

In the matter of the amendment of Rule 46.12.504 pertaining to inpatient hospital services, requirements	))))	NOTICE OF THE AMENDMENT OF RULE 46.12.504 PERTAINING TO INPATIENT HOSPITAL SERVICES, REQUIREMENTS

TO: All Interested Persons

1. On October 15, 1987, the Department of Social and Rehabilitation Services published notice of the proposed amendment of Rule 46.12.504 pertaining to inpatient hospital services, requirements at page 1762 of the 1987 Montana Administrative Register, issue number 19.

2. The Department has amended the following rule with the following changes:

46.12.504 INPATIENT HOSPITAL SERVICES, REQUIREMENTS

Subsections (1) through (3)(a) remain as proposed.

(i) For persons eligible for ~~or who have applied for~~ medicaid benefits prior to hospitalization, the provider must obtain authorization for each admission ~~and length of stay~~ from the department or its designee ~~for each admission~~ prior to or during the hospitalization;

Subsections (3)(a)(ii) through (4)(b) remain as proposed.

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-6-141 MCA

3. The Department has thoroughly considered all commentary received:

COMMENT: A comment was received from the Montana Hospital Association that the mandatory authorization of Medicaid recipients for hospitalization that must be obtained prior to or during hospitalization in order for medical payments to be made is an arbitrary reduction in benefits which allows for inadequate protection for hospitals. They proposed that the rule be amended to allow for retrospective review and payment of cases which did not receive pre or concurrent stay authorization.

RESPONSE: Mandatory pre or concurrent stay authorization of hospital admissions became effective 7/1/87. Prior to that time, the Department was reviewing both claims where the hospital failed to obtain the pre-authorization certification and claims of recipients who became retroactively eligible for Medicaid. A review of claims submitted in August 1986 revealed that 46% of these two claim types were being reviewed

because the providers failed to obtain authorization although the recipient was currently eligible for Medicaid. The Department denied 332 days for the time period 1/1/87 through 4/30/87, which has proven to be time consuming and, at times, expensive for both the providers and the Department. The Department believes that pre or concurrent stay review of admission appropriateness will provide better utilization control of hospital admissions and will enable the provider to know prior to performing a service whether it will be deemed medically necessary.

Verifying insurance coverage and/or Medicare or Medicaid coverage is a standard admission policy for hospitals and should present no undue hardship to the provider.

The Montana Legislature met in 1987 and directed the Department to require mandatory admission screening because of the aforementioned reasons.

The Department will continue to review cases of recipients who become eligible for Medicaid on a retroactive basis.

COMMENT: One commentor disagreed with the need to obtain authorization for admission and length of stay for special excluded units under the prospective payment system for the following reasons:

1) Lack of tested criteria for admission authorization and continued length of stay.

2) Lack of expertise on the reviewer's part for these excluded units.

3) Frequency of Departmental rule changes which is costly and cumbersome to the health care providers and effects the efficiency of handling Medicaid patients.

RESPONSE: The proposed rule change does not effect the screening requirements for hospital units excluded from the prospective payment system. Voluntary pre or concurrent admission and length of stay screening for all hospital admissions has been in effect since March 1, 1985, while mandatory screening for these areas has been in effect since July 1, 1987. This screening program has proven effective in monitoring hospital stays for medical necessity and the Department has no plans to drop this requirement.

The Department will address the commentors' three specific concerns below:

1) The only hospital units excluded from the Prospective Payment System are rehabilitation units. Admission criteria and length of stay criteria used in screening these cases was developed by Medicare and modified by the

State's peer review organization (PRO). This criteria is available to any provider upon request.

2) The Department currently contracts with the Montana/Wyoming Foundation for Medical Care, the State PRO, to perform admission and length of stay criteria. The Foundation is a physician based organization which has been performing hospital admission reviews for over 10 years.

3) The Department strives to balance federal requirements, legislative directives, and accessibility and quality of services for recipients with the needs of the health care providers. Administrative rules are drafted only in response to an identified need in these areas and are kept as simple and constant as we are able to.

COMMENT: One commentor questioned what the effective date of this proposed rule change will be.

RESPONSE: The effective date of this rule will be November 28, 1987, but it will be applied retroactively to October 1, 1987, as no provider or recipient benefits are reduced and this date corresponds with the implementation of the prospective payment system.

COMMENT: One commentor requested that the Department develop a Memorandum of Understanding such as is currently in place with the PRO for Medicare which would define the review process, the criteria, and review requirements.

RESPONSE: The Department currently has in place administrative rules, federal guidelines, provider manuals, and individual provider agreements which cover these areas. We see no benefit in enacting another agreement for either ourselves or the provider. The Department currently contracts with the Montana/Wyoming Foundation for Medical Care (PRO) to perform hospital pre and/or concurrent admission review.

As of 7/1/87, in accordance with ARM 46.12.504, all Medicaid recipients admitted to acute care hospitals must be screened during their stay, or payment cannot be made from Medicaid on their behalf. This screening is performed via the hospital or physician's office contacting the PRO by phone with the pertinent medical information needed to determine whether an admission is medically necessary or not. Specific guidelines for this process are contained in the Medicaid provider's manual which is provided to all Medicaid providers and is updated as the need arises. The PRO makes their assignment of length of stay for PPS exempt hospitals and units based on the average 50th percentile length of stay for the State of Montana. Cases which exceed the 50th percentile are reviewed again for individual specific circumstances.

Federal and State guidelines for reviewing Medicaid recipients specify that the service provided must be both medically necessary and provided in the most appropriate setting as specified in ARM 46.12.306 and 42 CFR 456.3. This criteria, along with exclusion of specific services, is applied to each review.

In addition, the Department contracts with each individual provider on an annual basis. We see no benefit in enacting another agreement for either ourselves or the provider.

COMMENT: Several providers have commented on inconsistencies in the Department's rule which require that applicants for Medicaid who have made such application prior to a hospitalization must obtain authorization for inpatient stays. They pointed out that the Medicaid applicant would not at this point know whether his/her application had been approved, would not have been instructed to inform providers of potential eligibility for Medicaid, and would not have a Medicaid card to show upon admission.

RESPONSE: The Department concurs that the mandatory screening of applicants in order to obtain payment for inpatient hospital services is unduly burdensome to the provider and will eliminate this requirement. We will continue to offer providers the option of screening applicants during their stay rather than on a retrospective basis to reduce delays in payment.

Director, Social and Rehabilitation Services

Certified to the Secretary of State November 16, 1987.

BEFORE THE DEPARTMENT OF SOCIAL
AND REHABILITATION SERVICES OF THE
STATE OF MONTANA

In the matter of the amendment of Rule 46.12.3803 pertaining to medically needy income standards	)))	NOTICE OF THE AMENDMENT OF RULE 46.12.3803 PERTAINING TO MEDICALLY NEEDY INCOME STANDARDS

TO: All Interested Persons

1. On October 15, 1987, the Department of Social and Rehabilitation Services published notice of the proposed amendment of Rule 46.12.3803 pertaining to medically needy income standards at page 1764 of the 1987 Montana Administrative Register, issue number 19.

2. The Department has amended Rule 46.12.3803 as proposed.

3. No written comments or testimony were received.

Director, Social and Rehabilitation Services

Certified to the Secretary of State December 16, 1987.

VOLUME NO. 42 OPINION NO. 34

COURTS, CITY - Jurisdiction of third offense DUIs;
COURTS, DISTRICT - Jurisdiction of third offense DUIs;
COURTS, JUSTICE - Jurisdiction of third offense DUIs;
CRIMINAL LAW AND PROCEDURE - City court's jurisdiction of third offense DUIs;
MOTOR VEHICLES - City court's jurisdiction of third offense DUIs;
MONTANA CODE ANNOTATED - Title 61, sections 3-10-303, 3-10-303(1), 3-11-102, 3-11-102(1), 3-11-103, 3-11-103(1), 45-2-101(36), 61-8-714(3);
MONTANA LAWS OF 1987 - Chapter 543;
OPINIONS OF THE ATTORNEY GENERAL - 42 Op. Att'y Gen. No. 12 (1987).

HELD: Section 3-11-102(1), MCA, as amended by 1987 Montana Laws, chapter 543, enables third offense DUIs to be prosecuted in city court as a violation of state law. If the offense has been adopted as a city ordinance, it may be prosecuted in city court as a violation of the city ordinance.

5 November 1987

Bruce E. Becker
Bozeman City Attorney
P.O. Box 640
Bozeman MT 59771-0640

Dear Mr. Becker:

You have requested my opinion on the following question:

> Whether a city court has jurisdiction over third offense DUIs without the necessity of adopting an ordinance under section 61-8-401(6).

This question requires analysis of the statutes governing jurisdiction of city, justice, and district courts, as well as the pertinent DUI statute in Title 61, MCA.

Criminal penalties for third offense DUIs are addressed in section 61-8-714(3), MCA:

> On the third or subsequent conviction, he shall be punished by imprisonment for a term of not less than 30 days, at least 48 hours of which must be served consecutively, or more than 1 year, to which may be added, in the discretion of the court, a fine of not less than $500 or more than $1,000. Notwithstanding any provision to the contrary providing for suspension of execution of a sentence imposed under this subsection, the imposition or execution of the first 10 days of the jail sentence imposed for a third or subsequent offense that occurred within 5 years of the first offense may not be deferred or suspended.

A third or subsequent DUI offense is a misdemeanor, with a minimum penalty of $500 and/or 30 days' imprisonment. See § 45-2-101(36), MCA ("'Misdemeanor' means an offense in which the sentence imposed upon conviction is imprisonment in the county jail for any term or a fine, or both, or the sentence imposed is imprisonment in the state prison for any term of 1 year or less").

The city court's jurisdiction is set forth in sections 3-11-102 and 3-11-103, MCA. Under section 3-11-103(1), MCA, the city court has exclusive jurisdiction of proceedings for violation of a city ordinance. Under section 3-11-102(1), MCA, the city court has concurrent jurisdiction with the justice court of all misdemeanors provided for in Title 3, chapter 10, part 3, MCA. This section was amended by the 1987 Legislature, 1987 Mont. Laws, ch. 543, to expand the city court's concurrent jurisdiction. Prior to the amendment, the city court's concurrent jurisdiction was limited to misdemeanors punishable by a fine not exceeding $500 and/or imprisonment not exceeding six months; thus, it had no jurisdiction of third offense DUIs charged under state law.

The city court's present jurisdiction of third offense DUIs charged under state law is obtained in a somewhat circuitous manner. As previously mentioned, the city court has concurrent jurisdiction with justice court of all misdemeanors provided for in Title 3, chapter 10,

part 3, MCA. Section 3-10-303(1), MCA, gives justice courts jurisdiction of all misdemeanors punishable by a fine not exceeding $500 and/or imprisonment not exceeding six months, and section 3-10-301(2), MCA, gives justice courts concurrent jurisdiction with the district courts of misdemeanors punishable by sentences exceeding $500 and/or six months. Thus, by operation of section 3-11-102(1), MCA, city courts and justice courts have concurrent jurisdiction of all misdemeanors, including third offense DUIs.

Prior to the 1987 legislative amendments, the city court had jurisdiction of a third offense DUI only if that offense was adopted as a city ordinance and prosecuted as such by the city attorney. § 61-8-401(6), MCA; 42 Op. Att'y Gen. No. 12 (1987). The 1987 amendment to section 3-11-102(1), MCA, enables the city to prosecute third offense DUIs in city court as violations of state law as well.

THEREFORE, IT IS MY OPINION:

Section 3-11-102(1), MCA, as amended by 1987 Montana Laws, chapter 543, enables third offense DUIs to be prosecuted in city court as a violation of state law. If the offense has been adopted as a city ordinance, it may be prosecuted in city court as a violation of the city ordinance.

Very truly yours,

MIKE GREELY
Attorney General

VOLUME NO. 42 OPINION NO. 35

NOTE - This Opinion Partially Overrules 37 Op. Att'y Gen. No. 59 (1977).
CONTRACTS - Applicability of resident bidder's preference to federally funded contracts;
UNITED STATES - Federal procurement regulations prohibiting restrictions on competitive bidding;
MONTANA CODE ANNOTATED - Sections 1-4-101, 18-1-102, 18-1-102(2)(b);
UNITED STATES CODE - 42 U.S.C. §§ 5301 to 5320;
OPINIONS OF THE ATTORNEY GENERAL - 37 Op. Att'y Gen. No. 59 (1977).

HELD: 1. The federal circular A-102 (1981), incorporated into the regulations of the United States Department of Housing and Urban Development, and section 18-1-102(2)(b), MCA, prohibit restriction of the competitive bidding process by resident bidder's preference, for state and local contracts funded in part by grants-in-aid from that agency.

2. 37 Op. Att'y Gen. No. 59 (1977) is overruled insofar as it conflicts with the holding of this opinion.

9 November 1987

Richard M. Weddle
Local Government and
Assistance Division
Department of Commerce
Cogswell Building, Room C-211
Helena MT 59620

Dear Mr. Weddle:

You have requested my opinion on the following question:

> Whether Montana's resident contractor bidder's preference must be applied to public works projects partially funded by the Department of Housing and Urban Development under the

federal Housing and Community Development Act of 1974.

Your request is made in view of 37 Op. Att'y Gen. No. 59 at 230 (1977), which you have asked me to clarify.

In analyzing your request it is necessary to review the recent developments in the pertinent federal procurement requirements.

In 1974 Congress enacted the Housing and Community Development Act, Pub. L. No. 93-383 (codified at 42 U.S.C. §§ 5301 to 5320). The Act was administered by the Department of Housing and Urban Development (HUD) which, until 1981, directly administered the Community Development Block Grant (CDBG) "Small Cities" Program established by the Act. In 1981 Congress amended the Housing and Community Development Act so as to authorize the states, at their option, to administer the Small Cities portion of the Act. HUD then promulgated a regulation permitting the participating states "a great degree of flexibility to design their method of distributing funds and to establish the policies and procedures for their programs." 46 Fed. Reg. 57256 (1981) (not codified).

This regulation provides in part: "[S]tates electing to follow the principles and procedures established under ... [Circular] A-102 will be considered in compliance with their accountability obligations under the Act." 46 Fed. Reg. 57256 (1981). Circular A-102 was published (in revised form) in 1981 by the federal Office of Management and Budget. It contains uniform administrative requirements for agencies participating in grants-in-aid programs with state and local governments. In its statement of purpose, it requires all federal agencies administering grants-in-aid to state, local, and federally recognized Indian tribal governments to comply with these requirements. The circular also expressly applies to the Community Development Block Grant Program. The State of Montana, Department of Commerce, adopted the provisions of Circular A-102 (1981) in order to be in full compliance with the Act.

Within Circular A-102 is a chapter on procurement standards, entitled "Attachment O." Section 2(b) of Attachment O provides: "Grantees [states] shall use

their own procurement procedures which reflect applicable State and local laws and regulations, provided that procurements for Federal Assistance Programs conform to the standards set forth in this Attachment and applicable Federal law." (Emphasis added.) Section 10 of Attachment O provides in part:

> All procurement transactions, regardless of whether by sealed bids or by negotiation and without regard to dollar value, shall be conducted in a manner that provides maximum open and free competition consistent with this Attachment. Procurement procedures shall not restrict or eliminate competition. Example of what is considered to be restrictive of competition include, but are not limited to: (1) placing unreasonable requirements on firms in order for them to qualify to do business; (2) noncompetitive practices between firms; (3) organizational conflicts of interest; and (4) unnecessary experience and bonding requirements. [Emphasis added.]

Section 11 of Attachment O provides in part:

> b. In competitive sealed bids (formal advertising), sealed bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is lowest in price.
>
> ....
>
> (2) If formal advertising is used for a procurement under a grant the following requirements shall apply:
>
> ....
>
> (d) A firm-fix-price [sic] contract award shall be made by written notice to that responsible bidder whose bid, conforming to the invitation for bids, is lowest. [Emphasis added.]

The requirements of competitive bidding contained in Circular A-102 (1981) make no allowance for bidder preferences; in fact, the language forbids any restriction of the competitive bidding process. Contracts may be awarded only to the lowest responsible bidder. In interpreting a statute or regulation, I am required to construe the plain and clear meaning of the language, and I may not insert matter that is not contained therein. § 1-4-101, MCA; Sutherland Statutory Construction § 31.06 (4th ed.).

Several federal agencies which are presently cosponsoring projects under Montana's CDBG program to develop and renovate domestic water supply and sewage disposal systems, have rejected the application of resident bidder's preferences. The United States Environmental Protection Agency, under its own rules as well as Circular A-102, is expressly prohibited from applying state and local bidder's preferences in its competitive bidding procedures for projects funded in whole or in part by that agency. 40 C.F.R. §§ 33.230(b)(4), 35.936-2(c) (1987). The United States Department of Agriculture, Farmers Home Administration, interprets its own regulations relating to procurement (the language of which is nearly identical to that of Circular A-102, Attachment O) to prohibit a resident bidder's preference as being restrictive to the required "open and free competition." 7 C.F.R. §§ 1942.18(J)(2), 1942.18(K)(2) (1987). Similarly, the federal Economic Development Administration, which also participates in CDBG projects, has advised your department that Circular A-102, Attachment O, prohibits the application of a resident bidder's preference to any project funded in part by that agency.

Because of the plain meaning of the language in Circular A-102, interpretations given the language by various federal agencies, and similar regulations adopted by those agencies, I conclude that Circular A-102, adopted by HUD, expressly prohibits any restriction on competitive bidding, and therefore prohibits the application of a resident bidder's preference to competitive bidding for state and local contracts funded by that agency's grant-in-aid programs.

This conclusion does not conflict with state law. Section 18-1-102, MCA, establishes Montana's resident

bidder's preference for public contracts, but it also provides in part:

> (2) The [resident bidder's] preferences in this section apply:
>
> (a) whether the law requires advertisement for bids or does not require advertisement for bids; and
>
> (b) to contracts involving funds obtained from the federal government unless expressly prohibited by the laws of the United States or regulations adopted pursuant thereto. [Emphasis added.]

I have concluded that the federal Circular A-102 prohibits federal agencies from participating in contracts obtained through bidding procedures that involve resident bidder's preferences. Therefore, under section 18-1-102(2)(b), MCA, the Montana resident bidder's preference may not apply to contracts involving funds obtained from HUD's grant-in-aid programs.

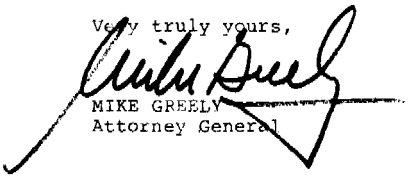
In 1977, I issued an opinion in which I concluded that the Rosebud County Water and Sewer District was required to apply the resident bidder's preference to a contract which was to be funded in part by a grant from HUD. 37 Op. Att'y Gen. No. 59 at 230 (1977). However, that opinion was issued prior to 1981. As I have concluded in this opinion, the federal requirements presently prohibit restriction of competition in the bidding process by resident bidder's preference. Therefore, 37 Op. Att'y Gen. No. 59 is overruled insofar as it conflicts with the holding of this opinion.

THEREFORE, IT IS MY OPINION:

1. The federal circular A-102 (1981), incorporated into the regulations of the United States Department of Housing and Urban Development, and section 18-1-102(2)(b), MCA, prohibit restriction of the competitive bidding process by resident bidder's preference, for state and local contracts funded in part by grants-in-aid from that agency.

2. 37 Op. Att'y Gen. No. 59 (1977) is overruled insofar as it conflicts with the holding of this opinion.

Very truly yours,



MIKE GREELY
Attorney General

VOLUME NO. 42 OPINION NO. 36

CONDEMNATION PROCEEDINGS - Status of federal condemnation proceedings as part of "the law of eminent domain" under section 76-3-201(1), MCA;
LAND USE - National forest land exchange as exempt from Subdivision and Platting Act requirements;
PROPERTY, REAL - National forest land exchange as exempt from Subdivision and Platting Act requirements;
SUBDIVISION AND PLATTING ACT - National forest land exchange as exempt from requirements of;
SUBDIVISION AND PLATTING ACT - Status of federal condemnation proceedings as part of "the law of eminent domain";
UNITED STATES - National forest land exchange as exempt from Subdivision and Platting Act requirements;
UNITED STATES - Status of federal condemnation proceedings as part of "the law of eminent domain" under section 76-3-201(1), MCA;
MONTANA CODE ANNOTATED - Title 70, chapter 30; sections 76-3-101 to 76-3-614, 76-3-103(3), 76-3-103(15), 76-3-105, 76-3-201(1), 76-3-301, 76-3-302, 76-3-504(1), 76-3-601(1), 76-3-604(2), 76-3-610(1), 76-3-612(1);
OPINIONS OF THE ATTORNEY GENERAL - 41 Op. Att'y Gen. No. 3 (1985);
UNITED STATES CODE - 16 U.S.C. § 485, 40 U.S.C. § 257, 43 U.S.C. § 1716, 43 U.S.C. § 1718;
UNITED STATES STATUTES AT LARGE - 45 Stat. 1145.

HELD: 1. The term "the law of eminent domain" in section 76-3-201(1), MCA, includes federal condemnation proceedings, and the exemption from coverage under the Montana Subdivision and Platting Act applies to a conveyance of land from a private owner to the United States Department of Agriculture pursuant to 16 U.S.C. § 485.

2. The filing and enforcement provisions of the Montana Subdivision and Platting Act are inapplicable to transactions in which the United States is the subdivider.

10 November 1987

Wm. Nels Swandal
Park County Attorney
Park County Courthouse
Livingston MT 59047

Dear Mr. Swandal:

You have requested my opinion concerning the following questions:

1. Is a conveyance of land from a private owner to the United States Department of Agriculture pursuant to 16 U.S.C. § 485 wholly exempted from coverage under the Montana Subdivision and Platting Act by section 76-3-201(1), MCA?

2. Is a conveyance of land between the United States Department of Agriculture and a private landowner pursuant to 43 U.S.C. § 1716 wholly exempted from the requirements of the Montana Subdivision and Platting Act?

With respect to the first question, I conclude that, because the land was subject to condemnation by the United States in the absence of an agreement and because the term "the law of eminent domain" in section 76-3-201(1), MCA, includes federal condemnation proceedings, the transaction is exempted from regulation under the Montana Subdivision and Platting Act, §§ 76-3-101 to 614, MCA (Act). As to the second question, I conclude that, because of the United States' general immunity from state regulation and the statute's wording, the Act's filing and enforcement provisions are inapplicable to a conveyance by the federal government pursuant to 43 U.S.C. § 1716.

The parcels of land involved in the first question total approximately 710 acres. A private landowner entered into an agreement with the United States Department of Agriculture under which the parcels were conveyed to the United States pursuant to 16 U.S.C. § 485 in exchange for certain federal lands and a sum of money. The

transaction in the second question involved the corresponding conveyance by the United States of those federal lands pursuant to 43 U.S.C. § 1716. Both transactions constituted a "division of land," as defined in section 76-3-103(3), MCA, of the Act, but whether either created a "subdivision" under section 76-3-103(15), MCA, cannot be determined from the deeds. Nonetheless, the distinction between "division of land" and "subdivision" status has principal importance only with respect to the substantive scope of the Act's regulation and, for present purposes, has no significance. See 41 Op. Att'y Gen. No. 3 (1985).

Relevant to this matter, however, are the Act's filing and enforcement provisions. Section 76-3-301(1), MCA, conditions transfer of title to subdivided lands upon filing of a final subdivision plat. Section 76-3-302, MCA, further proscribes a county clerk and recorder from recording "any instrument which purports to transfer title to or possession of a parcel or tract of land which is required to be surveyed by [the Act] unless the required certificate of survey or subdivision plat has been filed ... and the instrument of transfer describes the parcel or tract by reference to the filed certificate or plat." The Act may be enforced civilly by the county attorney under section 76-3-301(3), MCA, or criminally under section 76-3-105, MCA, against the subdivider. See §§ 76-3-504(1), 76-3-601(1), 76-3-604(2), 76-3-610(1), 76-3-612(1), MCA.

The first question is resolved by section 76-3-201(1), MCA. This provision states:

> Unless the method of disposition is adopted for the purpose of evading this chapter, the requirements of this chapter shall not apply to any division of land which:
>
> (1) is created by order of any court of record in this state or by operation of law or which, in the absence of agreement between the parties to the sale, could be created by an order of any court in this state pursuant to the law of eminent domain (Title 70, chapter 30)[.]

There is no dispute that the United States could have initiated a condemnation action in the United States

District Court for the District of Montana with respect to the conveyed property. 16 U.S.C. § 485; 40 U.S.C. § 257; Act of Jan. 30, 1929, Pub. L. No. 70-694, 45 Stat. 1145; see United States v. Threlkeld, 72 F.2d 464, 466 (10th Cir. 1934); United States v. Eighty Acres of Land, 26 F. Supp. 315, 320 (E.D. Ill. 1939); United States v. Graham & Irvine, 250 F. 499, 501-02 (W.D. Va. 1917); see also Albert Hanson Lumber Co. v. United States, 261 U.S. 581, 587 (1923). The question becomes, therefore, whether the agreement here is among those contemplated in section 76-3-201(1), MCA.

The question would be easily answered but for the parenthetical reference in section 76-3-201(1), MCA, to Title 70, chapter 30, since the United States District Court constitutes a "court in this state" and the resulting order would be "pursuant to the law of eminent domain[.]" It may nonetheless be plausibly argued that the parenthetical reference is intended to limit the scope of "the law of eminent domain" to actions maintained under Montana law and in state courts. Although this reading of section 76-3-201(1), MCA, is not without some force, I reject it as inconsistent with the purpose of the exemption.

The goal of statutory construction is to ascertain the Legislature's intent. E.g., Missoula County v. American Asphalt, Inc., 42 St. Rptr. 920, 922, 701 P.2d 990, 992 (1985); Keller v. Smith, 170 Mont. 399, 405, 553 P.2d 1002, 1006 (1976). Every effort must be made to discern that intent "from the plain meaning of the words of the statute" (Montana Tavern Association v. State ex rel. Department of Revenue, 43 St. Rptr. 2180, 2185, 729 P.2d 1310, 1316 (1986)), and, therefore, "[i]f the statute is plain, unambiguous, direct and certain, the statute speaks for itself and there is nothing left for the Court to construe" (Shannon v. Keller, 188 Mont. 224, 226, 612 P.2d 1293, 1294 (1980)). Where a provision is ambiguous, canons of statutory construction may be applied to assist in determining legislative intent. Missoula County v. American Asphalt, Inc., supra. Fundamental canons relevant here are that "the unreasonableness of the result produced by one interpretation is reason for rejecting it in favor of another that would produce a reasonable result," (Johnson v. Marias River Electric Cooperative, 41 St. Rptr. 1528, 1532, 687 P.2d 668, 671 (1984)), and that "[a] statute will not be interpreted to defeat its

evident object or purpose," (Lewis and Clark County v. State, 43 St. Rptr. 2150, 2154, 728 P.2d 1348, 1351 (1986)).

As stated above, section 76-3-201(1), MCA, would, but for the concluding parenthetical reference to Title 70, chapter 30, clearly include the present transaction. The parenthetical reference therefore raises the question of whether it was intended to limit the otherwise expansive term "the law of eminent domain" to proceedings under the Montana condemnation statute. Such a distinction, however, has no practical basis because federal and state condemnation proceedings have the same purpose and the same degree of finality and specificity with respect to judgments entered. This conclusion is underscored when section 76-3-201(1), MCA, is read as a whole since an actual Montana federal district court condemnation judgment, like that of a state district court, would satisfy the "order of any court of record in this state" portion of the subsection. It seems evident that section 76-3-201(1), MCA, is not designed to relegate federal condemnation proceedings or exchanges of land in contemplation thereof to a lesser status--a result naturally flowing from restricting the scope of "the law of eminent domain" to the provisions in Title 70, chapter 30. The more reasonable interpretation, therefore, favors application of the exemption.

Moreover, the rationale for the exemption in section 76-3-201(1), MCA, apparently relates to the nonconsensual nature of the division of land mandated by court order or, in a situation like that here, to the arguably coercive nature of an agreement entered into under threat of condemnation proceedings. This statutory purpose, of course, would not be furthered by a restrictive interpretation of "the law of eminent domain" since, irrespective of the entity asserting the eminent domain right or the forum where the right will be advanced, the element of coercion remains. Thus, aside from arbitrarily distinguishing between federal and state condemnation proceedings, a restrictive interpretation would run contrary to the reason for the exemption.

In sum, the parenthetical reference to Title 70, chapter 30 in section 76-3-201(1), MCA, does not limit the term "the law of eminent domain" to proceedings under the

state statute. The reference was intended only to designate that provision of Montana law which largely governs condemnation matters and was not designed to foreclose applicability of the exemption to agreements providing for divisions of land which could have been effected through federal condemnation proceedings.

There exists, in contrast, no statutory exemption with respect to the conveyance of lands by the United States in the second transaction. That conveyance, although integral to carrying out the first transaction, did not effect a division of land which, but for an agreement, could have been accomplished through a condemnation action, and none of the other express exemptions in section 76-3-201, MCA, or elsewhere in the Act applies.

Nonetheless, absent congressional authorization to the contrary, the Department of Agriculture is immune from direct enforcement of the Act because of general sovereignty principles. E.g., Seattle Master Builders Association v. Pacific Northwest Electric Power and Conservation Planning Council, 786 F.2d 1359, 1364 (9th Cir. 1986), cert. denied, 107 S. Ct. 939 (1987); United States v. Town of Windsor, 765 F.2d 16, 18 (2d Cir. 1985). Thus, to the extent section 76-3-301(1), MCA, requires the filing of a subdivision plat prior to valid transfer of title, such provision is inoperative as to the United States. See, e.g., In re American Boiler Works, Inc., 220 F.2d 319, 321 (3d Cir. 1955); In re Read-York, Inc., 152 F.2d 313, 316-17 (7th Cir. 1945); Texas v. United States Forest Service, 654 F. Supp. 289, 294 (S.D. Tex. 1986); United States v. South Carolina, 578 F. Supp. 549 (D.S.C. 1983). The Act's criminal and civil enforcement provisions in sections 76-3-105 and 76-3-301(3), MCA, are equally inoperative. Finally, because the Act's survey provisions cannot be enforced against the United States and, therefore, no survey is required, the county clerk and recorder may not refuse to accept the second transaction's deed for filing on the basis of section 76-3-302(1), MCA, as presently drafted.

THEREFORE, IT IS MY OPINION:

1. The term "the law of eminent domain" in section 76-3-201(1), MCA, includes federal condemnation proceedings, and the exemption from coverage under the Montana Subdivision

and Platting Act applies to a conveyance of land from a private owner to the United States Department of Agriculture pursuant to 16 U.S.C. § 485.

2. The filing and enforcement provisions of the Montana Subdivision and Platting Act are inapplicable to transactions in which the United States is the subdivider.

Very truly yours,

MIKE GREELY
Attorney General

VOLUME NO. 42 OPINION NO. 37

COUNTIES - Authority to establish separate health insurance plan for employees in collective bargaining unit;
EMPLOYEES, PUBLIC - County's authority to establish separate health insurance plan for employees in collective bargaining unit;
LABOR RELATIONS - County's authority to establish separate health insurance plan for employees in collective bargaining unit;
MONTANA CODE ANNOTATED - Title 39, chapter 31; sections 2-18-702(1), 39-31-305(2);
OPINIONS OF THE ATTORNEY GENERAL - 38 Op. Att'y Gen. No. 116 (1980), 38 Op. Att'y Gen. No. 20 (1979), 37 Op. Att'y Gen. No. 113 (1978), 37 Op. Att'y Gen. No. 54 (1977).

HELD: A county with general government powers may not establish a separate health benefit plan for certain employees in a collective bargaining unit when a county employee-wide group insurance plan adopted in accordance with section 2-18-702(1), MCA, already exists.

12 November 1987

David L. Nielsen
Valley County Attorney
Valley County Courthouse
Glasgow MT 59230

Dear Mr. Nielsen:

You have requested my opinion concerning the following question:

> May a county with general government powers agree with the collective bargaining representative of a group of its employees to establish a health benefit plan for such group which is separate from a health insurance plan adopted pursuant to section 2-18-702(1), MCA, for all county employees?

I conclude that a county with general government powers may not agree to a separate group health insurance plan.

Valley County is a general powers local government whose road and bridge department employees are represented for collective bargaining purposes by the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. The county and the union have recently negotiated a collective bargaining agreement which anticipates establishing a group health insurance plan for these workers. Presently all county employees, including those in the road and bridge department unit, are covered by a group health insurance plan entered into pursuant to section 2-18-702(1), MCA. The parties agreed that they would seek my opinion concerning the validity of the separate plan prior to its actual implementation.

Montana recognizes and protects the right of state and local government employees to organize themselves for collective bargaining purposes. See §§ 39-31-101 to 409, MCA. Central to this right is the employer's and labor organization's mutual obligation to bargain in good faith "with respect to wages, hours, fringe benefits, and other conditions of employment[.]" § 39-31-305(2), MCA. There is accordingly no dispute that group health insurance coverage is a mandatory subject of bargaining. See 38 Op. Att'y Gen. No. 20 at 71 (1979).

Nonetheless, it is equally well established that, when a particular employment condition for public employees has been legislatively set, it may not be modified through collective bargaining without statutory authorization. 38 Op. Att'y Gen. No. 116 at 408 (1980); 38 Op. Att'y Gen. No. 20; 37 Op. Att'y Gen. No. 113 at 486 (1978). This conclusion derives not from any express provision in the public employee bargaining statutes but from general principles of statutory construction. "Where one statute deals with a subject in general and comprehensive terms, and another deals with a part of the same subject in a more minute and definite way, the latter will prevail over the former to the extent of any necessary repugnancy between them." City of Billings v. Smith, 158 Mont. 197, 211, 490 P.2d 221, 229 (1971); accord Phillips v. Lake County, 43 St. Rptr. 1046, 1049, 721 P.2d 326, 330 (1986); In re Williams, 42 St. Rptr. 1800, 1803, 709 P.2d 1008, 1010 (1985); see generally

Tri-County Educators' Association v. Tri-County Special Education Cooperative No. 607, 225 Kan. 781, 594 P.2d 207, 209 (1979) ("[m]atters which have been fixed by statute or by constitution of this state are not negotiable under any circumstances"). The issue is whether the existence of a county-wide group health insurance plan under section 2-18-702(1), MCA, affects the county's authority to establish the less inclusive plan.

Section 2-18-702(1), MCA, states:

> All counties, cities, towns, school districts, and the board of regents shall upon approval by two-thirds vote of their respective officers and employees enter into group hospitalization, medical, health, including long-term disability, accident, and/or group life insurance contracts or plans for the benefit of their officers and employees and their dependents.

The language of this provision is mandatory and clearly contemplates, inter alia, county-wide group health insurance plans upon the necessary employee approval. See 37 Op. Att'y Gen. No. 54 at 213 (1977). The apparent purpose of employee-wide coverage is reduction of insurance costs through creation of a risk pool which is as large as possible. See Feb. 8, 1979 Minutes of Select Committee on Employee Compensation at 5-6. Irrespective of the precise reason for the comprehensive coverage requirement, the provision neither expressly nor impliedly authorizes excision of one employee group from that coverage merely because its terms and conditions of employment are subject to collective bargaining. Since section 2-18-702(1), MCA, is the more specific statute with respect to the issue presented and speaks in mandatory terms, I conclude that a county with general government powers may not enter into a group health insurance plan, separate from that covering its other employees, for individuals who are part of a collective bargaining unit. It must be emphasized, however, that such a county remains obligated to bargain over other health insurance matters, such as monetary coverage limits, deductible amounts, or the level of employee contributions, which may involve modification of an existing group plan.

THEREFORE, IT IS MY OPINION:

A county with general government powers may not establish a separate health benefit plan for certain employees in a collective bargaining unit when a county employee-wide group insurance plan adopted in accordance with section 2-18-702(1), MCA, already exists.

Very truly yours,

MIKE GREELY
Attorney General

VOLUME NO. 42 OPINION NO. 38

CRIMINAL LAW AND PROCEDURE - Sale of rifles and shotguns to residents of noncontiguous states;
FIREARMS - Sale to residents of noncontiguous states;
MONTANA CODE ANNOTATED - Sections 45-8-341, 45-8-342;
MONTANA LAWS OF 1969 - Chapter 87;
UNITED STATES CODE - 18 U.S.C. §§ 922, 923;
UNITED STATES STATUTES AT LARGE - 82 Stat. 1213 (1968), 100 Stat. 449 (1986).

HELD: Section 45-8-342, MCA, is not violated when a Montana firearms dealer sells a rifle or shotgun to a resident of a noncontiguous state.

13 November 1987

James C. Nelson
Glacier County Attorney
Glacier County Courthouse
Cut Bank MT 59427

Dear Mr. Nelson:

You have requested my opinion concerning the following question:

> Does section 45-8-342, MCA, prohibit a Montana gun dealer from selling rifles and shotguns to residents of noncontiguous states?

Montana statutes neither provide for licensure of gun dealers nor expressly condition sale of rifles or shotguns upon compliance with specified requirements. However, federal law does mandate the licensing of firearms dealers (18 U.S.C. § 923) and prohibits certain transactions involving the sale of firearms (18 U.S.C. § 922). Particularly relevant to your inquiry is 18 U.S.C. § 922(b)(3) (Cum. Supp. 1987) which currently states:

> It shall be unlawful for any licensed importer, licensed manufacturer, licensed dealer, or licensed collector to sell or

deliver--

....

(3) any firearm to any person who the licensee knows or has reasonable cause to believe does not reside in (or if the person is a corporation or other business entity, does not maintain a place of business in) the State in which the licensee's place of business is located, except that this paragraph (A) shall not apply to the sale or delivery of any rifle or shotgun to a resident of a State other than a State in which the licensee's place of business is located if the transferee meets in person with the transferor to accomplish the transfer, and the sale, delivery, and receipt fully comply with the legal conditions of sale in both such States (and any licensed manufacturer, importer or dealer shall be presumed, for purposes of this subparagraph, in the absence of evidence to the contrary, to have had actual knowledge of the State laws and published ordinances of both States), and (B) shall not apply to the loan or rental of a firearm to any person for temporary use for lawful sporting purposes[.]

The above provision was adopted in 1986 (Pub. L. No. 99-308, § 102, 100 Stat. 449, 451) and replaced, in relevant part, language which allowed only nonresident rifle or shotgun sales to individuals living in states contiguous to the location where the transaction occurred:

It shall be unlawful for any licensed importer, licensed manufacturer, licensed dealer, or licensed collector to sell or deliver--

....

(3) any firearm to any person who the licensee knows or has reasonable cause to believe does not reside in (or if the person is a corporation or other business entity, does not maintain a place of business in) the State in which the licensee's place of

business is located except that this paragraph (A) shall not apply to the sale or delivery of a rifle or shotgun to a resident of a State contiguous to the State in which the licensee's place of business is located if the purchaser's State of residence permits such sale or delivery by law, the sale fully complies with the legal conditions of sale in both such contiguous States, and the purchaser and the licensee have, prior to the sale, or delivery for sale, of the rifle or shotgun, complied with all of the requirements of section 922(c) applicable to intrastate transactions other than at the licensee's business premises, (B) shall not apply to the loan or rental of a firearm to any person for temporary use for lawful sporting purposes, and (C) shall not preclude any person who is participating in any organized rifle or shotgun match or contest, or is engaged in hunting, in a State other than his State of residence and whose rifle or shotgun has been lost or stolen or has become inoperative in such other State, from purchasing a rifle or shotgun in such other State from a licensed dealer if such person presents to such dealer a sworn statement (i) that his rifle or shotgun was lost or stolen or became inoperative while participating in such a match or contest, or while engaged in hunting, in such other State, and (ii) identifying the chief law enforcement officer of the locality in which such person resides, to whom such licensed dealer shall forward such statement by registered mail[.]

Pub. L. No. 90-618, Tit. I, § 101, 82 Stat. 1213, 1218 (1968) (codified in 18 U.S.C. § 922(b)(3) (1976)).

In response to the original version of 18 U.S.C. § 922(b)(3), the Legislature adopted 1969 Montana Laws, chapter 87 (codified in §§ 45-8-341 and 45-8-342, MCA). Section 45-8-341, MCA, authorizes the purchase by Montana residents of rifles or shotguns in contiguous states, and section 45-8-342, MCA, authorizes the purchase of such weapons in this state by residents of contiguous states. The latter provision reads:

> Residents of a state contiguous to Montana may purchase any rifle or rifles and shotgun or shotguns in Montana, provided that such residents conform to the applicable provisions of the federal Gun Control Act of 1968 and regulations thereunder, as administered by the United States secretary of the treasury, and provided further that such residents conform to the provisions of law applicable to such purchase in Montana and in the state in which such persons reside.

The evident purpose of sections 45-8-341 and 45-8-342, MCA, was to provide the affirmative state law authorization required under the earlier version of 18 U.S.C. § 922(b)(3) for rifle and shotgun sales to, inter alia, residents of contiguous states by Montana dealers.

Sections 45-8-341 and 45-8-342, MCA, reflect no intent to proscribe independently any form of rifle or shotgun sales. Consequently, while such sales to residents of noncontiguous states would have violated federal law prior to the 1986 amendment to 18 U.S.C. § 922(b)(3), they would not have subjected the dealer or purchaser to criminal liability under Montana law. The absence of state prohibition of sales to residents of noncontiguous states continues, and, irrespective of their legality under federal statutes, section 45-8-342, MCA, is not violated by such transactions.

THEREFORE, IT IS MY OPINION:

> Section 45-8-342, MCA, is not violated when a Montana firearms dealer sells a rifle or shotgun to a resident of a noncontiguous state.

Very truly yours,

MIKE GREELY
Attorney General

NOTICE OF FUNCTIONS OF ADMINISTRATIVE CODE COMMITTEE

The Administrative Code Committee reviews all proposals for adoption of new rules or amendment or repeal of existing rules filed with the Secretary of State. Proposals of the Department of Revenue are reviewed only in regard to the procedural requirements of the Montana Administrative Procedure Act. The Committee has the authority to make recommendations to an agency regarding the adoption, amendment, or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. In addition, the Committee may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt or amend a rule.

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

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

Definitions:

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

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

Use of the Administrative Rules of Montana (ARM):

Known Subject Matter

1. Consult ARM topical index, volume 16. 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 list 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 Procedure Act for inclusion in the ARM. The ARM is updated through June 30, 1987. This table includes those rules adopted during the period June 30, 1987 through September 30, 1987 and any proposed rule action that is pending during the past 6 month period. (A notice of adoption must be published within 6 months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through June 30, 1987, 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 1987 Montana Administrative Register.

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