MONTANA ADMINISTRATIVE REGISTER

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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 Joint Resolution directing an agency to adopt, amend, or repeal 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 existing or proposed rules. The address is Room 138, State Capitol, Helena, Montana 59601.

INFORMATION REGARDING THE RECODIFICATION OF THE ADMINISTRATIVE RULES OF MONTANA

The recodification of the administrative rules is complete as of July 1, 1980. The complete reprint and distribution of the newly recodified set of the Administrative Rules of Montana (ARM) should be accomplished by September, 1980. The provisions of the law relating to recodification are found in Title 2, Chapter 4, MCA - the Montana Administrative Procedure Act. This act will be included in Volume 1, Title 1, Chapter 7, of the ARM.

Title Assignments - All title assignments remain the same with the exception of Title 10 - Education. This title has been expanded to include: Superintendent of Public Instruction, Board of Public Education, State Library Commission and the Montana Arts Council. Each of the above named agencies is assigned separate chapters in Title 10. Title 48, originally assigned to the Superintendent of Public Instruction and the Board of Public Education, is deleted.

New Numbering System - A new three-part numbering system was adopted during recodification (Example - 44.1.1101). The number to the far left designates the title number assigned to a department, the number between the periods designates the chapter number, and the number to the far right indicates the subchapter number with the last two numbers indicating the individual rule number.

New Rules or Rule Changes Published in the Montana Administrative Register (MAR) During Transition Period - During the transition period from July 1, 1980, until the distribution of

the newly recodified set of ARM, users will not have ready access to the language of the recodified rules. During this period, rulemaking agencies will publish in the MAR the entire language of a proposed new rule either in the notice or adoption stage, with the exception of an adoption by reference.

The proposed amendment of a recodified rule will contain the entire language of the rule with interlining and underlining to indicate the changes made to the rule. If the language of a recodified rule appears in the Montana Administrative Register, then the issue and page number where the rule is found will be listed. In this case, only the amended language may be published. The new three-part number will be listed.

In the case of a proposed repeal of a recodified rule, the agency will list the new three-part number followed in parenthesis by the old rule number assigned before recodification, and the page number in the ARM where the rule can be found. If substantive changes were made to the rule during the period that replacement pages were not furnished to the ARM, then the page number in the MAR will also be listed where the changes can be found.

Please direct questions relating to recodified rules to the affected agency or to the Administrative Rules Bureau, Secretary of State's office, Room 202, Capitol Building, Helena, Montana 59601.

NOTICE: The July 1977 through June 1980 Montana Administrative Registers have been placed on microfiche. For information, please contact the Secretary of State, Room 202, Capitol Building, Helena, Montana 59601.

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 15

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BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of ADOPTION OF RULES relating to employee performance appraisal.	NOTICE OF PUBLIC HEARING FOR ADOPTION OF RULES FOR PERFORMANCE APPRAISAL

TO: All Interested Persons:

1. On September 17, 1980 at 7:00 p.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building at Helena, Montana, to consider the adoption of rules which establish a system of performance appraisal for state employees.

2. The proposed rules do not replace or modify any section currently found in the Montana Administrative Code.

3. The proposed rules provide as follows:

RULE I DEFINITIONS As used in this sub-chapter, the following definitions apply:

(1) "Appraiser" means an employee's immediate supervisor or person with the responsibility for assigning, directing, reviewing and evaluating the employee's work.

(2) "Performance standard" means the level of performance considered acceptable against which an employee's actual performance can be measured.

RULE II APPRAISAL PROCESS (1) The performance of each permanent employee who has completed probation shall be appraised during established appraisal periods of no more than one year's duration.

(2) The performance appraisal of permanent probationary employees shall be completed at or before the end of the probationary period. The appraisal period should begin before the second month of employment.

(3) Seasonal employees who are scheduled to work at least six months in a year and who are expected to return in subsequent seasons shall be appraised at least once during the employment season.

(4) Temporary and intermittent employees need not be given performance appraisals.

(5) When a new appraiser is appointed, the appraisal period shall begin anew.

(6) At the beginning of each appraisal period the appraiser shall inform the employee of the duties and responsibilities for which performance will be appraised, their order of priority and the performance standards for each. Identifying and prioritizing duties and responsibilities and developing performance standards may be done jointly with the employee or employees.

(7) During the appraisal period the appraiser shall either directly observe and note the employee's performance of each specified duty and responsibility or note performance from review of reports, logs or other work samples. Incidents of poor performance that will contribute to an unacceptable performance rating should be identified to the employee as observed or at intervals far enough in advance to allow the employee to improve performance prior to the written evaluation. The appraiser should communicate with the employee on an ongoing basis both about observed superior and deficient performance and adjust the originally-selected performance standards, job duties and responsibilities for any significant changes in work assignment.

(8) At the end of the appraisal period the appraiser shall determine whether the employee's performance on each specified duty/responsibility was outstanding, above standard, standard (met the performance standard), needs improvement or was unacceptable.

(9) These determinations and comments supporting them shall be stated in a written appraisal and signed by the appraiser.

(10) A post-appraisal meeting shall be held privately with the employee to review the written appraisal. The meeting should be as constructive as possible and concentrate on both superior and deficient performance, employee training needs and desires, employee career objectives and ways of improving agency operations. The post-appraisal meeting may be combined with a pre-appraisal planning session for the next appraisal period.

(11) The employee shall be asked to sign a statement on the appraisal document indicating that it was reviewed with the employee and if the employee refuses, the appraiser shall note the refusal on the appraisal document.

(12) The employee shall be advised of the right to submit a written rebuttal to the appraisal.

RULE III PERFORMANCE STANDARDS (1) The appraiser shall establish equivalent performance standards for all employees performing equivalent duties which:

(a) must be expressed as a product to be produced (quality or quantity), result to be achieved or other consequence to be brought about or specific job behavior to be displayed; and

(b) may not be expressed as personal traits.

(2) When making personnel decisions, the assumption may not be made that performance ratings assigned to two or more employees by different appraisers can be meaningfully compared, since performance standards may vary according to the appraiser.

RULE IV REVIEW (1) The written appraisal and employee rebuttal, if any, shall be reviewed by the supervisor's immediate supervisor or other appropriate agency authority for compliance with procedural steps and/or application of performance standards.

(2) The reviewer may not change the appraisal by substituting the reviewer's judgment for that of the appraiser.

(3) When serious procedural errors or misapplication of performance standards are made which could significantly distort the written appraisal, the appraisal shall be invalidated and the errors or misapplication corrected for the next appraisal period.

RULE V GRIEVANCE (1) If the employee disagrees with the appraisal, the employee has the right to submit a written rebuttal to be attached to the document.

(2) The employee may grieve the appraisal in accordance with Rules ARM 2.21.8001 through 2.21.8009, relating to grievances, if:

(a) adverse employment actions are taken as a result of the appraisal;

(b) employee believes the appraisal was conducted in an unlawfully discriminatory manner; or

(c) the employee believes the appraiser made critical procedural errors in evaluating the employee's performance.

(3) Grievable procedural errors are:

(a) failure of the appraiser to inform the employee of the duties and responsibilities to be assessed and the performance standards for each at the beginning of the appraisal period;

(b) failure of the appraiser to make written comments explaining ratings other than standard, needs improvement or above standard, (supporting comments should be made for all ratings);

(c) failure of the appraiser to provide the employee with an opportunity to review ratings and supporting comments, when completed;

(d) failure of the appraiser to advise the employee of the right to submit a written rebuttal to be attached to the original copy of the written appraisal, (the notice of the right to file a rebuttal on the second page of the employee performance form is sufficient notice of the right to submit a rebuttal);

(e) failure of the appraiser to have written appraisal and rebuttal, if any, reviewed by a superior; or

(f) failure of the appraiser to make a copy of the written appraisal available to the employee for the employee's personal records.

(3) Probationary employees may not grieve the appraisal unless alleging discrimination.

RULE VI RECORDS (1) A copy of the written performance appraisal, attached documentation and rebuttal statement, if any, shall be given to the employee.

(2) The original copy shall be retained in the employee's personnel file for a minimum of three years and may be used for appropriate personnel decisions during that period. After the last date it was used in an employment decision, the form shall be retained as an inactive record for two years.

(3) Supervisors shall keep appraisal information confidential, except:

(a) in discussion with superiors;

(b) in discussion with prospective employers of the employee (when other than state agencies, this must be authorized by the employee); and

(c) when disclosure is required in administrative or court procedings.

RULE VII CLOSING (1) These rules shall be followed unless they conflict with negotiated labor contracts, which shall take precedence to the extent applicable.

(2) Forms mentioned are available from the department of administration publications and graphics division.

4. The department is proposing these rules to establish functional minimum requirements for implementation of performance appraisal systems as required in House Joint Resolution 13; to ensure collection of objective performance information on which fair and effective personnel decisions can be based, including training, discipline, promotion and merit awards; to improve performance through enhanced supervisory/employee communication concerning job duties and responsibilities and through recognition of good performance; and to promote greater agency effectiveness through periodic review of employee duties and responsibilities to ensure consistency with agency objectives.

5. Interested persons may present their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted by September 17, 1980, to:

Patricia Moore, Administrator
Personnel Division
Department of Administration
Room 130, Mitchell Building
Helena, MT 59601

6. Joyce Brown, Supervisor, Equal Employment Opportunity/Policy Development Section, Employee Relations Bureau, has been designated to preside over and conduct the hearing.

7. The authority of the agency to make the proposed rules is based on section 2-18-102, MCA.

Dave Lewis

Dave Lewis, Director
Department of Administration

Certified to the Secretary of State August 5, 1980.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the REPEAL OF RULES and the ADOPTION OF NEW RULES relating to the administration of sick leave.	))))	NOTICE OF PROPOSED REPEAL OF RULES RELATING TO SICK LEAVE AND ADOPTION OF NEW REVISED RULES NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On September 16, 1980, the Department of Administration proposes to repeal Rules ARM 2.21.101 through 2.21.120 (ARM 2-2.14(20)-S14250 through 2-2.14(20)-S14460), which pertain to sick leave and adopt new rules in this matter.

2. The rules proposed to be repealed are on pages 2-555 through 2-567 (pages 2-28.28 through 2-28.36) of the Administrative Rules of Montana.

3. The proposed rules provide as follows:

RULE I SHORT TITLE (1) This sub-chapter may be cited as the Sick Leave policy.

RULE II DEFINITIONS As used in this sub-chapter, the following definitions apply:

(1) "Break in service" means absence from state employment for more than five working days in a row without an approved leave of absence or resulting from termination or resignation.

(2) "Continuous employment" means (for purposes of the qualifying period) working within the same jurisdiction without a break in service or without a continuous absence without pay of more than 15 working days.

(3) "Immediate family" means the employee's spouse and any member of the employee's household, or any parent, child, grandparent, grandchild or corresponding in-law.

(4) "Qualifying period" means a 90-day period during which an employee must be continuously employed to be eligible to use sick leave credits.

(5) "Sick leave" means a leave of absence with pay for a medical condition of the employee, for a medical condition or death of an immediate family member or other relative, and for funeral attendance.

(6) "Sick leave credits" means the earned number of sick leave hours an employee is eligible to use upon completion of the qualifying period.

(7) "Transfer" means an agency-to-agency employment change in the same jurisdiction without a break in service.

RULE III CONDITIONS FOR USE OF SICK LEAVE An employee may use sick leave credits for:

(1) illness;

(2) injury;

(3) medical disability;

(4) maternity-related disability, including pre-natal care, birth, miscarriage, abortion, or other medical care for either employee or child;

(5) quarantine resulting from exposure to a contagious disease;

(6) medical, dental, or eye examination or treatment;

(7) care of or attendance to an immediate family member for above and care of or attendance to another relative for above at the agency's discretion; and

(8) death or funeral attendance.

RULE IV ACCRUAL AND USE OF SICK LEAVE CREDITS (1) As provided in 2-18-618, MCA, all employees:

(a) whether permanent, temporary, seasonal, part-time, or intermittent, are eligible to earn sick leave credits;

(b) accrue sick leave credits from the first day of employment; and

(c) must be continuously employed for the qualifying period of 90 calendar days to use sick leave.

(2) A seasonal employee's accrued sick leave credits may be:

(a) carried over to the next season if management has a continuing need for the employee; or

(b) paid out as a lump-sum to the employee when the season ends.

(3) When a seasonal employee carries over vacation leave credits, employment in two or more seasons is continuous employment and can be counted toward the 90-day qualifying period provided a break in service does not occur.

(4) Seasonal employees must immediately report back for work when operations resume to avoid a break in service.

(5) After receipt of a lump-sum payment or after a break in service, a seasonal employee must begin anew the qualifying period to use sick leave.

(6) An employee simultaneously employed in two or more positions in the same or in different agencies:

(a) will accrue sick leave credits in each position according to the number of hours worked, except overtime hours; and

(b) may only use credits from the position in which the credits are earned and with approval of the supervisor or appropriate authority for that position.

RULE V CALCULATION OF SICK LEAVE CREDITS (1) As provided in 2-18-618, MCA, sick leave credits are "earned at the rate of 12 working days for each year of service" for full-time employees and are prorated for part-time employees.

(2) If an employee is regularly scheduled to work 80 hours or more in a period:

(a) the employee accrues 3.69 hours of sick leave credits a pay period; and

(b) the sick leave credits are to be rounded to two digits beyond the decimal point and carried in the employee's account in that configuration.

(3) If the employee is regularly scheduled to work less than 80 hours in a pay period or works intermittently:

(a) the employee accrues .046 hours of sick leave credits for each hour worked; and

(b) the sick leave credits are to be rounded to two digits beyond the decimal point and carried in the employee's account in that configuration.

(4) As provided in 2-18-618, MCA, "sick leave credits shall be credited at the end of each pay period."

(5) As provided in 2-18-618, MCA, there is no restriction as to the number of hours of sick leave credits that may be accumulated, nor to the number of accrued sick leave credits that may be used for a bona fide employee illness or disability, provided that the qualifying period has been completed.

RULE VI PROHIBITED USE OF SICK LEAVE CREDITS (1) Unaccrued sick leave credits may not be advanced, nor may sick leave credits be used before an employee has been employed for the qualifying period.

(2) An employee is not entitled to both paid sick leave and workers' compensation payments; an employee injured on the job has the option of taking either sick leave or workers' compensation payments.

RULE VII RATE OF SALARY COMPENSATION (1) An employee on authorized sick leave is entitled to the employee's normal gross salary.

RULE VIII SICK LEAVE REQUESTS (1) To apply for sick leave an employee must:

(a) complete a standard request form and submit it to the employee's immediate supervisor or appropriate authority;

(b) submit anticipated requests for sick leave on the standard form as early as practical;

(c) inform his supervisor or appropriate authority of the absence as soon as practical and not wait until he returns to work, when advance notice is not possible; and

(d) receive approval in advance for medical, dental, and eye examination appointments.

(2) The employee's immediate supervisor or the appropriate authority must review and approve the use of accrued sick leave credits, if not at the time the employee submits the request, then at least at the end of each pay period.

(3) The employee's immediate supervisor or the appropriate authority:

(a) may require medical certification of sick leave charged against any sick leave credits in the form of a physician's statement;

(b) must inform the employee in advance of return to work if a physician's statement is required; and

(c) must require certification of maternity-related disabilities in the same manner and under the same conditions as certification for other disabilities.

RULE IX SICK LEAVE RECORDS To maintain sick leave records:

(1) documentation of an employee's sick leave credits earned and sick leave credits used must be maintained by each agency;

(2) documentation must contain sufficient detail so that improper use of sick leave credits can be discovered and corrected;

(3) sick leave credits used must be recorded to the nearest one-half hour when fractions of hours are used;

(4) at the end of each calendar year, new employee leave records must be created;

(5) once a year the employee must be notified of the amount of sick leave credits accrued and used and verify that the balance is accurate:

(6) carry-over of sick leave credits is computed on a calendar-year basis; and

(7) employee leave records must be retained for a minimum of 3 years.

RULE X SICK LEAVE ON HOLIDAYS (1) Sick leave taken over a holiday may not be charged to an employee's sick leave for that day.

RULE XI SICK LEAVE ACCRUAL DURING LEAVES OF ABSENCE WITHOUT PAY (1) An employee earns sick leave credits while in a leave-of-absence-without-pay status of 15 continuous working days or less, as provided in 2-18-618, MCA.

(2) If an employee does not work the qualifying period and takes leave without pay exceeding 15 continuous working days, the employee must begin anew the qualifying period to use sick leave credits. However, the employee would not lose any accrued sick leave credits, but would just be ineligible to use any earned sick leave credits until after working 90 continuous days.

RULE XII LUMP-SUM PAYMENT UPON TERMINATION (1) As provided in 2-18-618(5), MCA, when an employee terminates employment with an agency, the employee is entitled to a lump-sum payment equal to one-fourth of the compensation the employee would have received if the employee had used the credits, provided the employee has worked the qualifying period.

(2) As required by 2-18-618(6), MCA, "an employee who receives a lump-sum payment . . . and is again employed by any agency shall not be credited with any sick leave for which the employee has previously been compensated."

(3) The computation value of unused sick leave is based on the employee's salary rate at the time of termination.

(4) As provided in 2-18-618(5), MCA, "accrual of sick leave credits for calculating the lump-sum payment . . . begins July 1, 1971."

(5) The payment is the responsibility of the last employing agency from which the employee is terminating.

(6) As provided in 2-18-618(5), MCA, employees retain sick leave credits earned before July 1, 1971, if recorded by the agency prior to that date.

(7) Sick leave credits earned prior to July 1, 1971, can be transferred between agencies, but are not eligible for lump-sum payment when an employee terminates.

(8) Sick leave credits earned prior to July 1, 1971, must be used first.

RULE XIII TRANSFERS (1) As required by 2-18-618(5), MCA, if "an employee transfers between agencies . . . ," the employee may not receive cash compensation for unused sick leave credits, and the receiving agency assumes the liability for the accrued sick leave credits transferred with the employee.

(2) If a break in service occurs during a transfer between agencies, the employee must receive a lump-sum payment for accrued sick leave credits earned after July 1, 1971, and must begin anew the qualifying period at the new agency.

(3) If an employee transfers to a different jurisdiction the employee must receive a lump-sum payment for sick leave credits and the employee must work the qualifying period in the new jurisdiction to be eligible to use any sick leave.

RULE XIV ABUSE OF SICK LEAVE (1) As provided in 2-18-618, MCA, "abuse of sick leave is cause for dismissal and forfeiture of the lump-sum payment."

(2) Abuse of sick leave is misrepresentation of the actual reason for charging an absence to sick leave.

(3) Improper absences may be charged to available compensatory time or leave without pay.

(4) Any charges of sick leave abuse that result in an employee's dismissal and forfeiture of the lump-sum payment are subject to that agency's grievance procedure.

RULE XV CLOSING (1) This sub-chapter shall be followed unless it conflicts with negotiated labor contracts, which will take precedence to the extent applicable.

(2) The form mentioned is available from the department of administration, publications and graphics division.

4. The rules are proposed to be repealed and replaced in order to implement changes in 2-18-618, MCA, which became effective July 1, 1979, and for clarity.

5. Interested parties may submit their data, views or arguments concerning the proposed repeal and adoption in writing no later than September 12, 1980, to:

Patricia Moore, Administrator
Personnel Division
Department of Administration
Room 130, Mitchell Building
Helena, MT 59601

6. If the agency receives requests for a public hearing on the proposed repeal and adoption from either 10% or 25, whichever is less, of the persons directly affected, 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 25 persons.

7. The authority of the agency to make the proposed repeal of these rules and adoption of new rules is based on section 2-18-604, MCA, and the section implements sections 2-18-615 and 618, MCA.

Dave Lewis

Dave Lewis, Director
Department of Administration

Certified to the Secretary of State August 5, 1980.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the REPEAL RULES and the ADOPTION OF NEW RULES relating to the administration of annual vacation leave.	NOTICE OF PROPOSED REPEAL OF RULES RELATING TO ANNUAL VACATION LEAVE AND ADOPTION OF NEW REVISED RULES NO PUBLIC HEARING CONTEMPLATED.

TO: All Interested Persons:

1. On September 16, 1980, the Department of Administration proposes to repeal Rules ARM 2.21.201 through 2.21.214 (ARM 2-2.14(14)-S14090 through 2-2.14(14)-S14240), which pertain to vacation leave and to adopt new rules in this matter.

2. The rules proposed to be repealed are on pages 2-593 through 2-600 (pages 2-28.20 through 2.28.27) of the Administrative Rules of Montana.

3. The proposed rules provide as follows:

RULE I SHORT TITLE (1) This sub-chapter may be cited as the Vacation Leave Policy.

RULE II DEFINITIONS As used in this sub-chapter the following definitions apply:

(1) "Break in service" means an absence from state employment for more than 5 working days in a row without an approved leave of absence or resulting from termination or resignation.

(2) "Continuous employment" means (for purposes of the qualifying period) working within the same jurisdiction without a break in service of more than 5 working days or without a continuous absence without pay of more than 15 working days.

(3) "Jurisdiction" means the sphere of authority of any state, county or city government.

(4) "Qualifying period" means a 6 calendar month period an employee must be continuously employed to be eligible to use vacation leave credits or to be eligible for a lump-sum payment upon termination for unused vacation leave credits.

(5) "Transfer" means an agency-to-agency employment change in the same jurisdiction without a break in service.

(6) "Vacation leave" means a leave of absence with pay requested by the employee for rest and relaxation or personal business and taken with the employer's approval.

(7) "Vacation leave credits" means the earned number of vacation hours an employee is eligible to use upon completion of the qualifying period.

RULE III ACCRUAL AND USE OF VACATION LEAVE CREDITS

(1) As provided in 2-18-611, MCA, all employees:

(a) whether permanent, temporary, intermittent, or seasonal, are eligible to earn vacation leave credits;

(b) accrue vacation leave credits "from the first day of employment"; and

(c) must be "continuously employed for the qualifying period of 6 calendar months" to use vacation leave.

(2) A seasonal employee's accrued vacation leave credits may be:

(a) carried over to the next season if management has a continuing need for the employee; or

(b) paid out as a lump-sum payment to the employee when the season ends.

(3) When a seasonal employee carries over vacation leave credits, employment in two or more seasons is continuous employment and can be counted toward the 6-month qualifying period, provided a break in service does not occur.

(4) As required by 2-18-611(2), MCA, seasonal "employees must immediately report back for work when operations resume to avoid a break in service."

(5) After receipt of a lump-sum payment or after a break in service, a seasonal employee must begin anew the qualifying period to use vacation leave.

(6) An employee simultaneously employed in two or more positions in the same or in different agencies:

(a) will accrue vacation leave credits in each position according to the number of hours worked, except overtime hours;

(b) must use vacation leave credits only from the position in which the credits are earned and with approval of the supervisor or appropriate authority for the position; and

(c) will forfeit credits which exceed the maximum allowed on an apportioned basis in proportion to the balance of vacation credits for each position.

RULE IV CALCULATING ANNUAL VACATION LEAVE CREDITS

(1) As provided in 2-18-612, MCA, "vacation leave credits are earned at a yearly rate calculated" according to "the following schedule, which applies to the total years" of employment with all agencies and jurisdictions, whether or not the employment is interrupted:

RATE EARNED SCHEDULE

Years Of Employment	Working Days Credit Per Year
1 day through 10 years	15
10 years through 15 years	18
15 years through 20 years	21
20 years on	24

(2) As provided by 2-18-611, MCA, for calculating years of employment, 2,080 hours of employment equals 1 year.

(3) Time in an approved continuous leave of absence without pay may be credited toward years of employment for the first year, but not after that time.

(4) As required by 2-18-614, MCA, the period of absence from employment with an agency for military service during a war or national emergency, including 90 days thereafter, shall be honored for computing years of employment for purposes of the rate earned schedule.

(5) It is the employee's responsibility to supply documentation of any previous employment time or military service time to be counted toward the rate earned schedule.

RULE V PAY PERIOD ACCRUAL OF VACATION LEAVE CREDITS

(1) If the employee is regularly scheduled to work 80 hours or more in a pay period, the employee accrues the number of hours of vacation leave credits indicated in the following schedule:

FULL-TIME PAY PERIOD SCHEDULE

No. of Years of Employment	80 hours or more in pay status per pay period
0-10 years	4.62 hours
10-15 years	5.54 hours
15-20 years	6.46 hours
20 on	7.38 hours

(2) If the employee is regularly scheduled to work less than 80 hours in a pay period or works on an intermittent basis, the employee accrues the number of hours of vacation leave credits calculated by using the applicable amount from the following schedule multiplied by the hours worked:

PART-TIME PAY PERIOD SCHEDULE

No. of Years of Employment	Less than 80 hours in pay status per pay period
0-10 years	.058 x no. hours
10-15 years	.069 x no. hours
15-20 years	.081 x no. hours
20 on	.092 x no. hours

(3) When recording annual leave credits, they are to be rounded to two digits beyond the decimal point and carried in each employee's account in that configuration.

(4) Vacation leave earned shall be credited at the end of each pay period.

RULE VI MAXIMUM VACATION LEAVE CREDITS (1) As provided in 2-18-614, MCA, an employee may, without restriction, carry over into the next calendar year twice the annual vacation leave credits the employee could earn in 1 year according to the rate earned schedule. Any additional accumulated credits are excess vacation leave credits and must be used in the first 90 days of the next calendar year or be forfeited.

(2) The calculation of excess vacation leave credits which must be used within the first 90 days of a calendar year will be made as of the end of the first pay period of that calendar year.

RULE VII PROHIBITED USE OF VACATION LEAVE CREDITS (1) Unaccrued vacation leave credits may not be advanced.

(2) Vacation leave credits may not be used before the employee has been employed for the qualifying period.

RULE VIII RATE OF SALARY COMPENSATION (1) An employee on authorized vacation leave is entitled to the employee's normal gross salary.

RULE IX VACATION LEAVE REQUESTS (1) As provided in 2-18-616, MCA, the dates when annual vacation leaves are granted must "be determined by agreement between each employee and" the employee's "employing agency," according "to the best interests" of the employer and employee.

(2) To apply for vacation leave an employee must complete a standard request form and submit it to the employee's immediate supervisor or appropriate authority in advance of the leave whenever practical.

(3) The vacation leave must be approved or denied in writing by the immediate supervisor or appropriate authority.

RULE X VACATION LEAVE RECORDS (1) Documentation of an employee's vacation leave credits earned and vacation leave credits used must be maintained by each agency.

(2) Vacation leave credits used must be recorded to the nearest one-half hour when fractions of hours are used.

(3) At the end of each calendar year, new employee leave records must be created.

(4) Once a year, an employee must be notified of the amount of vacation leave credits accrued and used and verify that the balance is accurate.

(5) Carry-over of vacation leave credits is computed on a calendar year basis.

(6) Employee leave records must be retained for a minimum of 3 years.

RULE XI VACATION LEAVE ON HOLIDAYS (1) Vacation leave taken over a legal holiday may not be charged to an employee's vacation leave for that day.

RULE XII ABSENCE DUE TO ILLNESS (1) As provided in 2-18-615, MCA, unused vacation leave credits may not be used when absence from employment is due to illness, unless the employee approves.

RULE XIII VACATION LEAVE ACCRUAL DURING LEAVES OF ABSENCE WITHOUT PAY (1) An employee is entitled to earn annual vacation leave credits while in a leave-without-pay status of 15 continuous working days or less.

(2) If an employee does not work the qualifying period and takes a leave without pay exceeding 15 continuous working days the employee must begin anew the qualifying period to use vacation leave credits, but does not lose any accrued vacation leave credits. However, the employee may not use any earned vacation leave credits until after working 6 continuous months.

RULE XIV LUMP-SUM PAYMENT UPON TERMINATION (1) When an employee terminates employment with an agency, the employee is entitled to cash compensation for unused vacation leave upon the date of termination, providing:

(a) the reason for termination does not reflect discredit on the employee; and

(b) the employee has worked the qualifying period.

(2) The computation value of unused vacation leave is based on the employee's salary rate at the time of termination.

RULE XV USING ACCRUED VACATION TO DELAY EFFECTIVE DATE OF TERMINATION (1) An employee in good standing may elect to use accrued vacation leave credits to delay the effective date of termination and should notify the agency at least 2 weeks in advance of the time the leave will begin of the employee's desire to exercise this option.

(2) An employee who elects to remain on the agency payroll by taking accrued vacation leave continues to earn annual vacation leave credits, sick leave credits, and applicable holiday pay until the employee's last day of paid employment.

(3) The agency shall set a termination date for the employee who wants to delay the effective date of termination by using vacation leave credits. That date is calculated on the basis on the number of vacation leave credits the employee already has accrued, plus the number the employee will accrue while using vacation leave to delay the effective date of termination.

(4) If for some reason, vacation time is not used fully because some other type of approved leave is used instead (e.g., sick leave), the employee will no longer be in a pay status on the agency-determined termination date. The employee must receive a cash out for any remaining vacation leave credits.

(5) Once an employee electing to receive a cash-out selects a final termination date, accrual of benefits stops after that date and the employee may not use any further vacation leave credits.

(6) If an employee stops working and does not select an acceptable final termination date, the department director or designated authority shall decide the final date of termination.

RULE XVI TRANSFERS (1) As required by 2-18-617, MCA, if an employee transfers between agencies, the employee may not receive cash compensation for unused vacation leave credits. "In such a transfer the receiving agency assumes the liability for the accrued vacation leave credits transferred with the employee."

(2) If a break in service occurs during a transfer between agencies or if an employee transfers to a different jurisdiction, the employee must receive a cash-out for vacation leave credits and begin anew the qualifying period for use of leave at the new agency or jurisdiction.

RULE XVII CLOSING (1) This sub-chapter shall be followed unless it conflicts with negotiated labor contracts, which shall take precedence to the extent applicable.

4. The rules are proposed to be repealed and replaced with reworded rules to implement changes in 2-18-611, 612 and 617, MCA, which became effective July 1, 1979, and for clarity.

5. Interested parties may submit their data, views or arguments concerning the proposed repeal and adoption in writing no later than September 12, 1980, to:

Patricia Moore, Administrator
Personnel Division
Department of Administration
Room 130, Mitchell Building
Helena, MT 59601

6. If the agency receives requests for a public hearing on the proposed repeal and adoption from either 10% or 25, whichever is less, of the persons directly affected, 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 25 persons.

7. The authority of the agency to make the proposed repeal of these rules and adoption of new rules is based on section 2-18-604, MCA, and the rules implement sections 2-18-611, 612, and 614-617, MCA.

Dave Lewis

Dave Lewis, Director
Department of Administration

Certified to the Secretary of State August 5, 1980.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the REPEAL OF) RULES and the ADOPTION OF NEW) RULES relating to moving) and relocation expenses for) state employees.)	NOTICE OF PROPOSED REPEAL OF RULES RELATING TO MOVING AND RELOCATION EXPENSES AND ADOPTION OF NEW REVISED RULES NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On September 16, 1980, the Department of Administration proposes to repeal Rules ARM 2.21.4903 through 2.21.4905 (ARM 2-2.14(36)-S14620 through 2-2.14(36)-S14640), which pertain to moving and relocation expenses for state employees and adopt new rules in this matter.

2. The rules proposed to be repealed are on pages 2-1259 through 2-1260 (pages 2-28.51 through 2-28.52) of the Administrative Rules of Montana.

3. The proposed rules provide as follows:

RULE I SHORT TITLE (1) This sub-chapter may be cited as the Moving and Relocation Expense Policy.

RULE II DEFINITIONS As used in this sub-chapter, the following definitions apply:

(1) "Moving and relocation expenses" means the cost to move an employee's household belongings either by commercial moving company or by personal means and living expenses incurred during exploratory trips.

(2) "Eligible employee" means an employee who at the request of the agency moves to another geographic location.

(3) "Commercial moving company" means a legally contracted transfer and storage corporation governed by federal tariff rates and regulated by the public service commission and which also may be a company authorized to give a preference in price to the state of Montana.

(4) "Preference in price" means a reduced tariff rate which some commercial moving companies may elect to offer to the state for employee moves which are initiated by the state.

(5) "Military tariff rate" means a type of preference in price which some commercial moving companies may elect to offer to the state for employee moves which are initiated by the state.

RULE III ARRANGEMENTS FOR MOVE (1) The employing agency will pay the moving and relocation expenses of an employee for packing and moving household and personal belongings by commercial moving company up to, but not exceeding, the maximum allowable weight of 12,000 pounds.

(2) To assist in establishing the most favorable tariff rate for an employee move by commercial moving company, the agency must submit a requisition (Form 221A) to the department of administration, purchasing division. Such requisition must contain the employee's name, agency, origin, destination, and anticipated dates the move is to take place. Names of commercial moving companies capable of performing the move may be included as suggested vendors.

(3) If time or other circumstances do not allow formal bidding, the agency may contact appropriate movers directly to obtain quotations, which may incorporate a preference in price allowed to the State of Montana.

(4) Whenever possible, the agency should secure the military tariff rate from a prospective commercial moving company.

(5) If a commercial moving company provides the State of Montana any preference in price, that company must file a courtesy copy of the bill of lading with the public service commission, citing the state as authorizing the move.

(6) Trailer or truck rental for moving purposes may be authorized. A mileage allowance at the prevailing rental rate a mile for miles driven, not to exceed the actual rate, will be paid if a rental truck or trailer or a private truck or trailer are used to make the move.

(7) The actual cost of unblocking, blocking, unhooking, and hooking and transportation will be paid for a mobile home, if by PSC-certified carrier.

(8) The state will not pay the cost of storage.

RULE IV EXPLORATORY TRAVEL (1) The agency will pay an employee according to the travel rules in ARM, Title 2, chapter 4, see b-chapter 1, for food and lodging during exploratory trips to the new location.

(2) If the new location is not within reasonable commuting distance of the old location, the employee may be paid for travel, lodging and meals during the exploratory trips, not to exceed 3 days and 2 nights, for the purpose of seeking a home at the new location.

(3) If the new location is within reasonable commuting distance of the old location and does not require overnight lodging, an employee will be paid for travel and meals for up to 3 round trips for the purpose of seeking a home at the new location.

RULE V TIME ALLOTTED TO MOVE (1) As soon as a transfer has been confirmed, the employing agency must inform the employee of how much time may be used to accomplish the move or make exploratory trips to the new location. Per diem for the actual move will be paid for up to 3 days and 2 nights, with one-way distance paid for mileage.

RULE VI SALARY PAYMENTS (1) The employee is paid normal salary at a regular time rate and accrues all benefits for exploratory trips or during the actual move. Under no circumstance may the employee be paid compensatory time or overtime during exploratory trips or the move.

RULE VII CLOSING (1) This sub-chapter shall be followed unless it conflicts with negotiated labor contracts, which will take precedence to the extent applicable.

(2) Forms mentioned are available from the department of administration, publications and graphics division.

4. The rules are proposed to be repealed and replaced in order to clarify procedures concerning obtaining bids for moves by commercial moving companies.

5. Interested parties may submit their data, views or arguments concerning the proposed repeal and adoption of the rules in writing no later than September 12, 1980, to:

Patricia Moore, Administrator
Personnel Division
Department of Administration
Room 130, Mitchell Building
Helena, MT 59601

6. If the agency receives requests for a public hearing on the proposed repeal and adoption from either 10% or 25, whichever is less, of the persons directly affected, 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 25 persons.

7. The authority of the department to make the proposed rules is based on section 2-18-102, MCA, and the rules implement section 2-18-102, MCA.

Dave Lewis

Dave Lewis, Director
Department of Administration

Certified to the Secretary of State August 5, 1980.

BEFORE THE BOARD OF LAND COMMISSIONERS
AND DEPARTMENT OF STATE LANDS
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 26.4.1233, 1236, 1238, 1241, and 1242 relating to the reclamation of abandoned coal mined lands	NOTICE OF PROPOSED AMENDMENT OF ARM 26.4.1233, 1236, 1238, 1241, and 1242 Abandoned Coal Mined Lands NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On September 15, 1980 the Board of Land Commissioners and Department of State Lands proposes to amend ARM 26.4.1233 by adding an "or" and thereby correcting a typographical error in the original rule, ARM 26.4.1236 by providing that notice of intent to enter lands may be given by posting when the address of the landowner is unknown, ARM 26.4.1238 by providing that title to acquired lands shall be in the state and shall be recorded, ARM 26.4.1241 by providing that acquired lands may be sold only if retention is not in the public interest, and by requiring that newspaper notice of the land disposition hearing be given and that comments and the hearing be recorded, and ARM 26.4.1242 by providing that liens shall be satisfied at first transfer of the liened property.

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

26.4.1233 ABANDONED MINE LAND RECLAMATION: ELIGIBLE LANDS AND WATER Lands and water within Montana are eligible for abandoned mine land reclamation activities if:

(1) they were mined for coal or affected by coal mining processes;

(2) they were mined prior to August 3, 1977, and left or abandoned in either an unreclaimed or inadequately reclaimed condition; and

(3) there is no continuing responsibility for reclamation by the operator, permittee, or agent of the permittee under state or federal statutes or as a result of bond forfeiture. Bond forfeiture renders lands or water ineligible only if the amount forfeited is sufficient to pay the total cost of the necessary reclamation. In cases where the forfeited bond is insufficient to pay the total cost of reclamation, additional monies from the fund may be sought.

26.4.1236 ABANDONED MINE LAND RECLAMATION: CONSENT TO ENTER LANDS (1) The department shall take all reasonable actions to obtain written consent from the owner of record of the land or property to be entered in advance of such entry. The consent shall be in the form of a signed

statement by the owner of record or his authorized agent which, as a minimum, includes a legal description of the land to be entered, the projected nature of work to be performed on the lands and any special conditions for entry. The statement may not include any commitment by the department to perform reclamation work nor to compensate the owner for entry.

(2) If the owner of the land to be entered for purpose of study or exploration will not provide consent to entry, the department may give notice in writing to the owner of its intent to enter for purposes of study and exploration to determine the existence of adverse effects of past coal mining practices which may be harmful to the public health, safety, or general welfare. The notice ~~may~~ shall be by mail, return receipt requested, to the owner, if known, and shall include a statement of the reasons why entry is believed necessary. If the owner is not known, or the current mailing address of the onwer is not known, or the owner is not readily available, the notice shall be posted in one or more places on the property to be entered where it is readily visible to the public and advertised once in a newspaper of general circulation in the locality in which the land is located. Notice shall be given at least 30 days before entry.

(3) The department shall give notice of its intent to enter for purposes of conducting reclamation at least 30 days before entry upon the property. The notice shall be in writing and shall be mailed, return receipt requested, to the owner, if known, with a copy of the findings required by 82-4-239(4). If the owner is not known or the current mailing address of the owner is not known, notice shall be posted in one or more places on the property to be entered where it is readily visible to the public and advertised once in a newspaper of general circulation in the locality in which the land is located. The notice posted on the property and advertised in the newspaper shall include a statement of where the findings required by this rule may be inspected or obtained.

26.4.1238 ABANDONED MINE LAND RECLAMATION: PROCEDURES FOR ACQUISITION (1) The department shall obtain an appraisal of the fair market value of all land or interest in land to be acquired from a professional appraiser. The appraisal shall state the fair market value of the land as adversely affected by past mining and shall otherwise conform to the requirements of the handbook on "uniform appraisal standards for federal land acquisitions" (inter-agency land acquisition conference, 1973).

(2) When practical, acquisition shall be by purchase from a willing seller. The amount paid for interests acquired

shall reflect the fair market value of the interests as adversely affected by past mining.

(3) When necessary, land or interests in land may be acquired by condemnation. Condemnation procedures shall not be started until all reasonable efforts have been made to purchase the land or interests in lands from a willing seller.

(4) When acquiring land under this part the board shall comply, at a minimum and to the extent applicable, with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. 4601, et seqi 41 CFR Part 114-50; Solicitor of the Interior's regulations for Approval of Title to Lands and Condemnation, I SRM 6.1 et seq; and regulations of the Attorney General under Order No. 440-70 dated October 2, 1970, establishing standards for title approval of lands to be acquired for federal public purposes.

(5) Title to all interests acquired shall be in the name of the state and shall be recorded with the appropriate county clerk and recorder.

26.4.1241 ABANDONED MINE LAND RECLAMATION: DISPOSITION OF RECLAIMED LANDS (1) Prior to the disposition of any land acquired under this rule the board shall:

(a) publish a notice which describes the proposed disposition of the land in a newspaper of general circulation within the area where the land is located for a minimum of 4 successive weeks. The notice shall provide at least 30 days for public comment and state where copies of plans for disposition of the land may be obtained or reviewed and the address to which comments on the plans should be submitted; the notice shall also state that a public hearing will be held if requested by any person;

(b) after 30 days notice thereof in a newspaper of general circulation in the area, hold a public hearing if requested as a result of the public notice, which hearing shall be scheduled at a time and place that affords local citizens and governments the maximum opportunity to participate; all comments received at the hearing shall be recorded;

(c) make a written finding that the proposed disposition is appropriate considering all comments received and consistent with any local, state, or federal laws or regulations which apply.

(2) The board may transfer, with approval of the regional director, the administrative responsibility for land acquired under this part to any agency or political subdivision of the state with or without cost to that agency. The agreement, including amendments, under which a transfer is made shall specify:

(a) the purposes for which the land may be used consistent with the authorization under which the land was

acquired; and

(b) that the administrative responsibility for the land will revert to the department if, at any time in the future, the land is not used for the purposes specified.

(3) The board with the approval of the regional director may sell land acquired under this part by public sale if retention is not in the public interest and if such land is suitable for industrial, commercial, residential, or recreational development and if such development is consistent with local, state, or federal land use plans for the area in which the land is located. Land shall be sold for not less than fair market value under a system of competitive bidding which includes at a minimum:

(a) publication of a notice once a week for 4 weeks in a newspaper of general circulation in the locality in which the land is located; the notice shall describe the land to be sold, state the appraised value, state any restrictive covenants which will be condition of the sale and state the time and place of the sale; and

(b) provisions for sealed bids to be submitted prior to the sale date followed by an oral auction open to the public.

(4) All monies received from disposal of land under this subsection shall be deposited in the fund.

26.4.1242 ABANDONED MINE LAND RECLAMATION: RECLAMATION ON PRIVATE LAND (1) Reclamation activities may be carried out on private land if a consent to enter is obtained under Rule 26.4.1236 or if entry is made under section 82-4-239(4).

(2)(a) A notarized appraisal of the full market value of private land to be reclaimed shall be obtained by the board from an independent professional appraiser. Such appraisal shall meet the quality of appraisal practices found in the handbook on "uniform appraisal standards for federal land acquisitions" (interagency land acquisitions' conference 1973). The appraisal shall be obtained before any reclamation activities are started, unless the work must start without delay to abate an emergency. If work must start because of an emergency, the appraisal shall be completed at the earliest practical time and before related nonemergency work is commenced. The appraisal shall state the full market value of the land as adversely affected by past mining.

(b) An appraisal of the full market value of all land reclaimed shall be obtained after all reclamation activities have been completed. The appraisal shall be obtained in accordance with paragraph (a) of this subsection and shall state the market value of the land as reclaimed.

(c) The landowner is to be provided with a statement of the increase in market value, an itemized statement of reclamation expenses and notice of whether a lien will or will not be filed in accordance with section 82-4-239(5).

(d) Appraisals for privately owned land which fall under Rules 26.4.1237 through 26.4.1239 and this rule may be obtained from either an independent or staff professional appraiser.

(3) The department may place a lien against land reclaimed if the reclamation results in an increase in the fair market value based on the appraisals obtained under subsection (2) above.

(i) A lien shall not be placed against the property of a surface owner who acquired title prior to May 2, 1977, and who did not consent to, participate in, or exercise control over the mining operation which necessitated the reclamation work.

(ii) The department may waive filing of the lien if the cost of filing it, including indirect costs to the department, exceeds the increase in fair market value as a result of reclamation activities.

(iii) The department may waive filing of the lien if the reclamation work performed on private land primarily benefits health, safety or environmental values of the greater community or area in which the land is located, or if reclamation is necessitated by an unforeseen occurrence and the work performed to restore that land will not result in a significant increase in the market value of the land as it existed immediately before the occurrence.

(b) If a lien is to be filed, the department shall, within 6 months after completion of the reclamation work, file a statement in the office of the county clerk and recorder of the county in which the property is located. Such statement shall consist of an account of monies expended for the reclamation work, together with notarized copies of the appraisals obtained under Rule 26.4.1236.

(4) The department shall maintain or renew a lien on private property from time to time as may be required under law and shall satisfy the lien at time of transfer of ownership.

(5) Monies derived from the satisfaction of liens established under this rule shall be deposited in the Montana abandoned mine reclamation fund.

3. These amendments are merely a codification of procedures the department is required to follow by 30 CFR 874.12(a)(3), 877.13(c), 879.12(f), 879.15(a), 879.15(g)(1) and 882.14(a) and which the department intended to follow in administration of its abandoned coal mined land program.

Publication of the procedures as rules binds the department to these procedures, informs the public, and complies with Office of Surface Mining requests that the procedures be codified.

4. Interested parties may submit their data, views, or arguments concerning the proposed rules to John F. North, Chief Legal Counsel, Department of State Lands, Capitol Station, Helena, Montana 59601 no later than September 12, 1980.

5. If a person who is directly affected, an association having members who are directly affected, or a governmental subdivision or agency wishes to express its data, views, and arguments orally or in writing at a public hearing, he or it must make written request for a hearing and submit this request to John F. North, Chief Legal Counsel, Department of State Lands, Capitol Station, Helena, Montana 59601 no later than September 12, 1980.

6. If the department 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, or from an association have not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be more than 25 persons based on the 400 potential coal projects.

7. The authority of the board and department to adopt the proposed amendments is contained in sections 82-4-204 and 205 MCA and implement section 82-4-239.

By _____
Leo Berry, Jr., Commissioner
Department of State Lands

Certified to the Secretary of State August 5, 1980.

BEFORE THE BOARD OF LAND COMMISSIONERS
AND DEPARTMENT OF STATE LANDS
OF THE STATE OF MONTANA

In the matter of the ADOPTION OF RULES regarding award of costs, expenses and attorney fees in administrative proceedings, issuance of cessation orders under the Strip and Underground Mine Reclamation Act	))))))	NOTICE OF PROPOSED ADOPTION OF RULES Award of Costs, Expenses, and Attorney Fees and Cessation Orders NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On September 15, 1980, the Board of Land Commissioners and Department of State Lands propose to adopt rules outlining the situations in which attorney fees, costs, and expenses may be awarded in administrative proceedings under the Montana Strip and Underground Mine Reclamation Act and providing procedures for petitioning for such an award. On the same date the board and department propose to adopt a rule clarifying the Commissioner of State Lands' existing authority to require, pursuant to a cessation order issued under the Montana Strip and Underground Mine Reclamation Act, use of existing or additional personnel or equipment where cessation would not abate the imminent danger or harm in the most expeditious manner physically possible.

2. The proposed rules provide as follows:

RULE I LITIGATION EXPENSES: WHEN DEPARTMENT MAY AWARD (1) Whenever any final order is issued at the request of any person other than the permittee, permit applicant, or the department as a result of any administrative proceeding under the act, appropriate and reasonable costs, expenses, and attorney fees incurred for or in connection with that person's participation in those proceedings may be assessed against either party.

(2) Whenever any final order is issued in any administrative proceeding under the act at the request of the permittee, permit applicant, or the department, appropriate and reasonable costs, expenses and attorney fees incurred by the permittee, permit applicant, or the department for or in connection with participation in the proceeding may be assessed against any party if it is demonstrated that the party participated in the proceeding in bad faith and for the purpose of harassing or embarrassing the permittee, permit applicant, or the department.

RULE II LITIGATION EXPENSES: FILING OF PETITION The petition for an award of costs, expenses, and attorney fees must be filed within 45 days of receipt of such order. Failure to make a timely filing of the petition constitutes a waiver of the right to such an award.

RULE III LITIGATION EXPENSES: CONTENTS OF PETITION AND ANSWER (1) A petition for costs, expenses, or attorney fees shall include the name of the person from whom costs and expenses are sought and the following shall be submitted in support of the petition:

(a) an affidavit setting forth in detail all costs and expenses including attorney fees reasonably incurred for or in connection with, the person's participation in the proceedings;

(b) receipts or other evidence of such costs and expenses; and

(c) where attorney fees are claimed, evidence concerning the hours expended on the case, the customary commercial rate of payment for such services in the area, and the experience, reputation and ability of the individual or individuals performing the services.

(2) Any person served with a copy of the petition shall have 30 days from service of the petition within which to file an answer to such petition.

RULE IV CESSATION ORDERS: ADDITIONAL AFFIRMATIVE OBLIGATIONS If a cessation order will not completely abate the imminent danger or harm in the most expeditious manner physically possible, the commissioner or his authorized representative shall impose affirmative obligations on the person to whom it is issued to abate the condition, practice, or violation. The order shall specify the time by which abatement shall be accomplished and may require, among other things, the use of existing or additional personnel and equipment.

RULE V BONDING: EXEMPTION FOR STATE AGENCIES AND POLITICAL SUBDIVISIONS (1) The department may require agencies and political subdivisions of the state to file bonds for non-test pit prospecting operations.

(2) Agencies and political subdivisions of the state must file a bond that meets the requirements of section 82-4-223 and Rules 26.4.1101 through 1120 before the department may issue a mining permit or test pit prospecting permit.

3. These rules are proposed to comply with the conditions imposed by the Secretary of Interior upon the approval of Montana's permanent program under Public Law 95-87. The approval and conditions appear in the April 1, 1980 Federal Register at page 21560.

4. Interested parties may submit their data, views, or arguments concerning the proposed rules to John F. North, Chief Legal Counsel, Department of State Lands, Capitol Station, Helena, Montana 59601 no later than September 12, 1980.

5. If a person who is directly affected, an association having members who are directly affected, or a governmental subdivision or agency wishes to express its data, views, and arguments orally or in writing at a public hearing, he or it must make written request for a hearing and submit this request to John F. North, Chief Legal Counsel, Department of State Lands, Capitol Station, Helena, Montana 59601 no later than September 12, 1980.

6. If the department 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, or from an association have 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 12 persons based on 120 permittees.

7. The authority of the board and department to adopt the proposed rules is contained in section 82-4-204 and 205 MCA. Rules I, II and III implement section 82-4-251(7). Rule IV implements section 82-4-251(1).

By: _____
Leo Berry, Jr., Commissioner
Department of State Lands

Certified to the Secretary of State August 5, 1980.

BEFORE THE BOARD OF LAND COMMISSIONERS
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 26.4.223, 228, and 231, relating to the reclamation of abandoned opencut mined lands	NOTICE OF PROPOSED AMENDMENT OF ARM 26.4.223, 228, and 231 Abandoned Mined Land Reclamation Opencut NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On September 15, 1980, the Board of Land Commissioners proposes to amend ARM 26.4.223 by adding an "or" and thereby correcting a typographical error in the original rule, ARM 26.4.228 that title to acquire lands shall be in the state and shall be rocorded, and ARM 26.4.231 by providing that acquired lands may be sold only if retention is not in the public interest and by requiring that newspaper notice of the disposition hearing be given.

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

26.4.223 ABANDONED MINE LAND RECLAMATION: ELIGIBLE LANDS AND WATER Lands and water within Montana are eligible for abandoned mine land reclamation activities if:

(1) they were subject to opencut mining or affected by opencut mining processes;

(2) they were mined prior to August 3, 1977, and left or abandoned in either an unreclaimed or inadequately reclaimed condition;

(3) there is no continuing responsibility for reclamation by the operator, contractee, or agent of the contractee under state or federal statutes or as a result of bond forfeiture. Bond forfeiture renders lands or water ineligible only if the amount forfeited is sufficient to pay the total cost of the necessary reclamation. In cases where the forfeited bond is insufficient to pay the total cost of reclamation, additional monies from the fund may be sought; and

(4) the department finds in writing that:

(a) the conditions of subsections (1), (2), and (3) of this rule have been met;

(b) the reclamation has been requested by the governor;

(c) all reclamation with respect to abandoned coal mine land and water has been accomplished within Montana or the opencut mining reclamation is necessary for the protection of the public health and safety; and

(d) monies allocated to Montana under 30 CFR 872.11(b)(2) and (3) are available for the work.

26.4.228 ABANDONED MINE LAND RECLAMATION: PROCEDURES FOR ACQUISITION (1) The department shall obtain an appraisal of the fair market value of all land or interest in land to be acquired from a professional appraiser. The appraisal shall state the fair market value of the land as adversely affected by past mining and shall otherwise conform to the requirements of the handbook on "Uniform Appraisal Standards for Federal Land Acquisitions" (Inter-Agency Land Acquisition Conference 1973.)

(2) Acquisition shall be by purchase from a willing seller. The amount paid for interests acquired shall reflect the fair market value of the interests as adversely affected by past mining.

(3) When acquiring land under this part the board shall comply, at a minimum and to the extent applicable, with the uniform relocation assistance and real property acquisition policies act of 1970, 42 U.S.C. 4601, et seq; 41 CFR Part 114-50; solicitor of the interior's regulations for approval of title to lands and condemnation, I SRM 6.1 et seq; and regulations of the attorney general under order no. 440-70 dated October 2, 1970, establishing standards for title approval of lands to be acquired for federal public purposes.

(4) Title to all interests acquired shall be in the name of the state and shall be recorded with the appropriate county clerk and recorder.

26.4.231 ABANDONED MINE LAND RECLAMATION: DISPOSITION OF RECLAIMED LANDS (1) Prior to the disposition of any land acquired under Rules 26.4.228 and 229 the board shall:

(a) publish a notice which describes the proposed disposition of the land in a newspaper of general circulation within the area where the land is located for a minimum of 4 successive weeks. The notice shall provide at least 30 days for public comment and state where copies of plans for disposition of the land may be obtained or reviewed and the address to which comments on the plans should be submitted. The notice shall also state that a public hearing will be held if requested by any person;

(b) after 30 days notice thereof in a newspaper of general circulation in the area, hold a public hearing if requested as a result of the public notice, which hearing shall be scheduled at a time and place that affords local citizens and governments the maximum opportunity to participate; all comments received at the hearing shall be recorded;

(c) make a written finding that the proposed disposition is appropriate considering all comments received and consistent with any local, state, or federal laws or regulations which apply.

(2) The board may transfer, with approval of the

regional director, the administrative responsibility for land acquired under this part to any agency or political subdivision of the state with or without cost to that agency. The agreement, including amendments, under which a transfer is made shall specify:

(a) the purposes for which the land may be used consistent with the authorization under which the land was acquired; and

(b) that the administrative responsibility for the land will revert to the department if, at any time in the future, the land is not used for the purposes specified.

(3) The board with the approval of the regional director may sell land acquired under this part by public sale if retention is not in the public interest, if such land is suitable for industrial, commercial, residential, or recreational development and if such development is consistent with local state, or federal land use plans for the area in which the land is located. Land shall be sold for not less than fair market value under a system of competitive bidding which includes at a minimum:

(a) publication of a notice once a week for 4 weeks in a newspaper of general circulation in the locality in which the land is located. The notice shall describe the land to be sold, state the appraised value, state any restrictive convenants which will be condition of the sale and state the time and place of sale; and

(b) provisions for sealed bids to be submitted prior to the sale date followed by an oral auction open to the public.

(4) All monies received from disposal of land under this rule shall be deposited in the fund.

3. The amendments are merely a codification of procedures the department is required to follow by 30 CFR 874.12 (a)(3), 879.12(f), 879.15(a), 879.15(g), and 882.14(a) and which the department intends to follow in administration of its abandoned opencut mined land program. Publication of the procedures as rules binds the department to the procedures, informs the public and complies with Office of Surface Mining requests that the procedures be codified.

4. Interested parties may submit their date, views, or arguments concerning the proposed rules to John F. North, Chief Legal Counsel, Department of State Lands, Capitol Station, Helena, Montana 59601 no later than September 12, 1980.

5. If a person who is directly affected, an association having members who are directly affected, or a governmental subdivision or agency wishes to express its date, views, and arguments orally or in writing at a public hearing, he or it must make written request for a hearing and submit this

request to John F. North, Chief Legal Counsel, Department of State Lands, Capitol Station, Helena, Montana 59601 no later than September 12, 1980.

6. If the department 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, or from an association have 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 two persons, based on an estimate there are no more than 20 eligible opencut mined lands projects in the state.

7. The authority of the board to adopt the proposed amendments is contained in section 82-4-422 MCA and implements section 82-4-424.

By: _____
Leo Berry, Jr., Commissioner
Department of State Lands

Certified to the Secretary of State August 5, 1980.

BEFORE THE BOARD OF LAND COMMISSIONERS
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 26.4.123, 128, and 131, relating to the reclamation of abandoned hard mined lands	)	NOTICE OF PROPOSED AMENDMENT OF ARM 26.4.123, 128, and 131 Abandoned Hard Rock Mined Land Reclamation
	)	NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On September 15, 1980, the Board of Land Commissioners proposes to amend ARM 26.4.123 by adding an "or" and thereby correcting a typographical error in the original rule, ARM 26.4.128 that title to acquire lands shall be in the state and shall be recorded, and ARM 26.4.131 by providing that acquired lands may be sold only if retention is not in the public interest and by requiring that newspaper notice of the disposition hearing be given.

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

26.4.123 ABANDONED MINE LAND RECLAMATION: ELIGIBLE LANDS AND WATER

Lands and water within Montana are eligible for abandoned mine land reclamation activities if:

(1) they were mined for metal (hard rock) materials or affected by metal (hard rock) mining processes;

(2) they were mined prior to August 3, 1977, and left or abandoned in either an unreclaimed or inadequately reclaimed condition;

(3) there is no continuing responsibility for reclamation by the operator, permittee, or agent of the permittee under state or federal statutes or as a result of bond forfeiture. Bond forfeiture renders lands or water ineligible only if the amount forfeited is sufficient to pay the total cost of the necessary reclamation. In cases where the forfeited bond is insufficient to pay the total cost of reclamation, additional monies from the fund may be sought; and

(4) the department finds in writing that:

(a) the conditions of subsections (1), (2), and (3) of this rule have been met;

(b) the reclamation has been requested by the governor;

(c) all reclamation with the respect to abandoned coal mine land and water has been accomplished within Montana or the metal (hard rock) reclamation is necessary for the protection of the public health and safety; and

(d) monies allocated to Montana under 30 CFR 872.11(b)(2) and (3) are available for the work.

26.4.128 ABANDONED MINE LAND RECLAMATION: PROCEDURES FOR ACQUISITION (1) The department shall obtain an appraisal of the fair market value of all land or interest in land to be acquired from a professional appraiser. The appraisal shall state the fair market value of the land as adversely affected by past mining and shall otherwise conform to the requirements of the handbook on "Uniform Appraisal Standards for Federal Land Acquisitions" (Inter-Agency Land Acquisition Conference 1973.)

(2) Acquisition shall be by purchase from a willing seller. The amount paid for interests acquired shall reflect the fair market value of the interests as adversely affected by past mining.

(3) When acquiring land under this part the board shall comply, at a minimum and to the extent applicable, with the uniform relocation assistance and real property acquisition policies act of 1970, 42 U.S.C. 4601, et seq; 41 CFR Part 114-50; solicitor of the interior's regulations for approval of title to lands and condemnation, I SRM 6.1 et seq; and regulations of the attorney general under order no. 440-70 dated October 2, 1970, establishing standards for title approval of lands to be acquired for federal public purposes.

(4) Title to all interests acquired shall be in the name of the state and shall be recorded with the appropriate county clerk and recorder.

26.4.131 ABANDONED MINE LAND RECLAMATION: DISPOSITION OF RECLAIMED LANDS (1) Prior to the disposition of any land acquired under Rules 26.4.128 and 129, the board shall:

(a) publish a notice which describes the proposed disposition of the land in a newspaper of general circulation within the area where the land is located for a minimum of 4 successive weeks. The notice shall provide at least 30 days for public comment and state where copies of plans for disposition of the land may be obtained or reviewed and the address to which comments on the plans should be submitted. The notice shall also state that a public hearing will be held if requested by any person;

(b) after 30 days notice thereof in a newspaper of general circulation in the area, hold a public hearing if requested as a result of the public notice, which hearing shall be scheduled at a time and place that affords local citizens and governments the maximum opportunity to participate; all comments received at the hearing shall be recorded;

(c) make a written finding that the proposed disposition is appropriate considering all comments received and consistent with any local, state, or federal laws or regu-

lations which apply.

(2) The board may transfer, with approval of the Regional Director, the administrative responsibility for land acquired under this part to any agency or political subdivision of the state with or without cost to that agency. The agreement, including amendments, under which a transfer is made shall specify:

(a) the purposes for which the land may be used consistent with the authorization under which the land was acquired; and

(b) that the administrative responsibility for the land will revert to the department if, at any time in the future, the land is not used for the purposes specified.

(3) The board with the approval of the Regional Director may sell land acquired under this part by public sale if retention is not in the public interest and if such land is suitable for industrial, commercial, residential, or recreational development and if such development is consistent with local, state, or federal land use plans for the area in which the land is located. Land shall be sold for not less than fair market value under a system of competitive bidding which includes at a minimum:

(a) publication of a notice once a week for 4 weeks in a newspaper of general circulation in the locality in which the land is located. The notice shall describe the land to be sold, state the appraised value, state any restrictive covenants which will be condition of the sale, and state the time and place of sale; and

(b) provisions for sealed bids to be submitted prior to the sale date followed by an oral auction open to the public.

(4) All monies received from disposal of land under this rule shall be deposited in the Fund.

3. The amendments are merely a codification of procedures the department is required to follow by 30 CFR 874.12 (a)(3), 879.12(f), 879.15(a), 879.15(g), and 882.14(a) and which the department intends to follow in administration of its abandoned hard rock mined land program. Publication of the procedures as rules binds the department to the procedures, informs the public and complies with Office of Surface Mining requests that the procedures be codified.

4. Interested parties may submit their data, views, or arguments concerning the proposed rules to John F. North, Chief Legal Counsel, Department of State Lands, Capitol Station, Helena, Montana 59601 no later than September 12, 1980.

5. If a person who is directly affected, an association having members who are directly affected, or a governmental subdivision or agency wishes to express its data, views, and

arguments orally or in writing at a public hearing, he or it must make written request for a hearing and submit this request to John F. North, Chief Legal Counsel, Department of State Lands, Capitol Station, Helena, Montana 59601 no later than September 12, 1980.

6. If the department 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, or from an association have not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be more than 25 based on the fact that 300 potential hard rock AML projects have been identified.

7. The authority of the board and department to adopt the proposed amendments is contained in section 82-4-321 MCA. The amendments implement section 82-4-311.

By: _____
Leo Berry, Jr., Commissioner
Department of State Lands

Certified to the Secretary of State August 5, 1980.

BEFORE THE BOARD OF LAND COMMISSIONERS
AND DEPARTMENT OF STATE LANDS
OF THE STATE OF MONTANA

In the matter of amendment of ARM 26.4.405, 26.4.1118 and 26.4.1201, relating to procedures for permit review, site inspections, and bond forfeiture of bonds, all under the Strip and Underground Mine Reclamation Act	NOTICE OF PROPOSED AMENDMENT OF RULES 26.4.405, 26.4.1118, and 26.4.1201 (Procedures under Strip and Underground Mine Reclamation Act) NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On September 15, 1980, the Board of Land Commissioners and Department of State Lands propose to adopt rules requiring the department to publish notice of its decision on mine or test pit prospecting permit applications and to give written notice of those decisions to local government officials, to provide that the department must inspect for compliance with statutes, rules, and permit provisions instead of inspect to insure "substantial compliance, and to clarify that bond liability for all applicable requirements rather then only hydrologic balance requirements applies to the entire permit area.

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

26.4.405 FINDINGS AND NOTICE OF DECISION (1) If an informal conference is held, the department shall give its written findings to the permit applicant and to each person who is a party to the conference, approving, modifying or denying the application in whole, or in part, and stating the specific reasons therefor in the decision.

(2) If no informal conference has been held, the department shall give its written findings to the permit applicant, approving, modifying or denying the application in whole, or in part, and stating the specific reasons in the decision.

(3) Simultaneously with distribution of the written findings under (2) and (3) above, the department shall:

(a) give a copy of its decision to each person or government official who filed a written objection or comment with respect to the application, and

(b) publish a summary of the decision in a newspaper of general circulation in the general area of the proposed project.

26.4.1118 BONDING: EFFECT OF FORFEITURE (1) The written determination to forfeit all or part of the bond, including the reasons for forfeiture and the amount to be forfeited, shall be a final decision by the department.

(2) The department may forfeit any or all bond deposited for an entire permit area. Liability under any bond, including separate bond increments or indemnity agreements applicable to a single operation shall extend to the entire permit area ~~with respect to protection of the hydrologic balance~~.

26.4.1201 FREQUENCY OF INSPECTIONS ~~(1)~~ The department shall conduct an average of at least one partial inspection of each mining operation per month and at least one complete inspection of each mining operation per calendar quarter and such periodic partial or complete inspections of prospecting operations as are necessary ~~to ensure substantial compliance with~~ to enforce the act, the rules adopted pursuant thereto, and the respective permit.

3. The amendments to 26.4.1118 and 1201 are proposed to comply with the conditions imposed by the Secretary of Interior upon the approval of Montana's permanent program under Public Law 95-87. The approval and conditions appear in the April 1, 1980 Federal Register at page 21560. The amendments to 26.4.405 reflect existing procedure upon which the Secretary's approval was based. Those procedures are also required by 30 C.F.R. 786.23(e).

4. Interested parties may submit their data, views, or arguments concerning the proposed rules to John F. North, Chief Legal Counsel, Department of State Lands, Capitol Station, Helena, Montana 59601 no later than September 12, 1980.

5. If a person who is directly affected, an association having members who are directly affected, or a governmental subdivision or agency wishes to express its data, views, and arguments orally or in writing at a public hearing, he or it must make written request for a hearing and submit this request to John F. North, Chief Legal Counsel, Department of State Lands, Capitol Station, Helena, Montana 59601 no later than September 12, 1980.

6. If the department 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, or from an association have 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 12 persons based on approximately 120 permit holders.

7. The authority of the board and department to adopt the proposed amendments is contained in section 82-4-204 and 205 MCA. ARM 26.4.405 implements sections 82-4-226 and 231. ARM 26.4.1118 implements sections 82-4-223, 232, and 235. ARM 26.4.1201 implements section 82-4-205(5).

By: _____
Leo Berry, Jr., Commissioner
Department of State Lands

Certified to the Secretary of State August 5, 1980.

STATE OF MONTANA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING
BEFORE THE BOARD OF ARCHITECTS

IN THE MATTER of the proposed) NOTICE OF PROPOSED AMENDMENT
Amendment of ARM 40.4.407 con-) OF ARM 40.4.407 EXAMINATIONS
cerning examinations)

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On September 13, 1980, the Board of Architects proposes to amend ARM 40.4.407 concerning examinations.

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

"40.4.407 EXAMINATIONS (1) Applicants for examination shall be issued cards or letters of admission as approved by the board, for presentation to the board on arrival for the examinations at the examination room.

(2) Circulars of information as published and from time to time amended by the National Council of Architectural Registration Boards, relating to educational preparation, practical experience, examinations, grading and re-takes shall constitute the minimum standards of the Montana board of architects.

(3) The board of architects hereby adopts and incorporates the Intern-Architect Development Program (IDP) manual of the National Council of Architectural Registration Boards as listed in circular of information no. XI. Copies of the circular are available through the board office, Lalonde Building, Helena, Montana 59601.

(a) The IDP is a procedure for assisting interns in meeting the board's training requirements and standards."

3. The board is proposing the amendment to assist interns architects to better prepare themselves for their careers as registered architects and to recognize the Intern-Architects' professional development by compling a continuing, comprehensive record of their internship experience. The board also wishes to assure Intern-Architects of a range of experience that will qualify them adequately to take the professional examination.

4. Interested persons may submit their data, views or arguments concerning the proposed amendment in writing to the Board of Architects, Lalonde Building, Helena, Montana 59601 no later than September 11, 1980.

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 written comments he has to the Board of Architects, Lalonde Building, Helena, Montana 59601 no later than September 11, 1980.

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 will be 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.

7. The authority of the board to make the proposed amendment is based on section 37-65-303 MCA and implements the same.

BOARD OF ARCHITECTS
MARTIN W. CRENNEN, A.I.A.
PRESIDENT

BY: 
ED CARNEY, DIRECTOR
DEPARTMENT OF PROFESSIONAL
AND OCCUPATIONAL LICENSING

Certified to the Secretary of State, August 5, 1980.

STATE OF MONTANA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING
BEFORE THE BOARD OF DENTISTRY

IN THE MATTER of the Proposed) Adoption of rules of profes-) sional conduct)	NOTICE OF PROPOSED ADOPTION OF RULES OF PROFESSIONAL CONDUCT

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On September 13, 1980, the Board of Dentistry proposes to adopt rules of professional conduct.

2. The rules as proposed will read as follows:

"I. SERVICE TO THE PUBLIC AND QUALITY OF CARE (1) The dentist's primary obligation of service to the public shall include the delivery of quality care, competently and timely, within the bounds of the clinical circumstances presented by the patient. Quality of care shall be a primary consideration of the dental practitioner.

II. PATIENT SELECTION (1) While dentists, in serving the public, may exercise reasonable discretion in selecting patients for their practices, dentists shall not refuse to accept patients into their practice or deny dental service to patients because of the patient's race, creed, color, sex or national origin.

III. PATIENT RECORDS (1) Dentists are obliged to safeguard the confidentiality of patient records. Dentists shall maintain patient records in a manner consistent with the protection of the welfare of the patient. Upon request of a patient or another dental practitioner, dentists shall provide any information that will be beneficial for the future treatment of that patient.

IV. COMMUNITY SERVICE (1) Since dentists have an obligation to use their skills, knowledge and experience for the improvement of the dental health of the public and are encouraged to be leaders in their community, dentists in such service shall conduct themselves in such a manner as to maintain or elevate the esteem of the profession.

V. EMERGENCY SERVICE (1) Dentists shall be obliged to make reasonable arrangements for the emergency care of their patients of record.

(2) Dentists shall be obliged when consulted in an emergency by patients not of record to make reasonable arrangements for emergency care. If treatment is provided, the dentist, upon completion of such treatment, is obliged to return the patient to his or her regular dentist unless the patient expressly reveals a different preference.

VI. CONSULTATION AND REFERRAL (1) Dentists shall be obliged to seek consultation, if possible, whenever the welfare of patients will be safeguarded or advanced

by utilizing those who have special skills, knowledge and experience.

(2) When patients visit or are referred to specialists or consulting dentists for consultation:

(a) The specialists or consulting dentists upon completion of their care shall return the patient, unless the patient expressly reveals a different preference, to the referring dentist, or if none, to the dentist of record for future care.

(b) The specialists shall be obliged when there is no referring dentist and upon a completion of their treatment to inform patients when there is a need for further dental care.

VII. USE OF AUXILIARY PERSONNEL (1) Dentists shall be obliged to protect the health of their patient by only assigning to qualified auxiliaries those duties which can be legally delegated. Dentists shall be further obliged to prescribe and supervise the work of all auxiliary personnel working under their direction and control.

VIII. JUSTIFIABLE CRITICISM AND EXPERT TESTIMONY (1) Dentists shall be obliged to report to the appropriate reviewing agency instances of gross and/or continual faulty treatment by other dentists. If there is evidence of such treatment, the patient should be informed. Dentists shall be obliged to refrain from commenting disparagingly without justification about the services of other dentists. Dentists may provide expert testimony when that testimony is essential to a just and fair disposition of a judicial or administrative action.

IX. REBATE AND SPLIT FEES (1) Dentists shall not accept or tender "rebates" or "split fees".

X. EDUCATION (1) The privilege of dentists to be accorded professional status rests primarily in the knowledge, skill and experience with which they serve their patients and society. All dentists, therefore, have the obligation of keeping their knowledge and skill current.

XI. GOVERNMENT OF A PROFESSION (1) Every profession owes society the responsibility to regulate itself. Such regulation is achieved largely through the influence of the professional societies. All dentists, therefore, have the dual obligation of making themselves a part of a professional society and of observing its rules of ethics.

XII. RESEARCH AND DEVELOPMENT (1) Dentists have the obligation of making the results and benefits of their investigative efforts available to all when they are useful in safeguarding or promoting the

health of the public.

XIII. DEVICES AND THERAPEUTIC METHODS (1) Except for formal investigative studies, dentists shall be obliged to prescribe, dispense or promote only those devices, drugs and other agents whose complete formulae are available to the dental profession. Dentists shall have the further obligation of not holding out as exclusive any device, agent, method or technique.

XIX. PATENTS AND COPYRIGHTS (1) Patents and copyrights may be secured by dentists provided that such patents and copyrights shall not be used to restrict research or practice.

XX. PROFESSIONAL ANNOUNCEMENT (1) In order to properly serve the public, dentists should represent themselves in a manner that contributes to the esteem of the profession. Dentists should not misrepresent their training and competence in any way that would be false or misleading in any material respect. (see rule ARM XXVI.

XXI. ADVERTISING (1) Although any dentist may advertise, no dentist shall advertise or solicit patients in any form of communication in a manner that is false or misleading in any material respect.

XXII. NAME OF PRACTICE (1) Since the name under which a dentist conducts his practice may be a factor in the selection process of the patient, the use of a trade name or an assumed name that is false or misleading in any material respect is unethical.

(2) Use of the name of a dentist no longer actively associated with the practice may be continued for a period not to exceed one year. (see rule ARM XXVI.

XXIII. ANNOUNCEMENT OF SPECIALIZATION AND LIMITATION OF PRACTICE (1) This rule and rules XXIV through XXVI are designed to help the public make an informed selection between the practitioner who has completed an accredited program beyond the dental degree and a practitioner who has not completed such a program.

(2) The special areas of dental practice approved by the American Dental Association and the designation for ethical specialty announcement limitation of practice are: dental public health, endodontics, oral pathology, oral and maxillofacial surgery, orthodontics, pedodontics (dentistry for children), periodontics and prosthodontics.

(3) Dentists who choose to announce specialization should use "specialist in" and shall limit their practice exclusively to the announced special area(s) of dental practice, provided at the time of the announce-

ment such dentists have met in each approved specialty for which they announce the existing educational requirements and standards set forth by the American Dental Association.

(4) Dentists who use their eligibility to announce as specialists to make the public believe that specialty services rendered in the dental office are being rendered by qualified specialists when such is not the case are engaged in unethical conduct. The burden of responsibility is on specialists to avoid any inference that general practitioners who are associated with specialists are qualified to announce themselves as specialists.

XXIV. GENERAL STANDARDS (1) The following are included within the standards of the American Dental Association for determining what dentists have the education experience and other appropriate requirements for announcing specialization and limitation of practice:

(a) The special area(s) of dental practice and an appropriate certifying board must be approved by the American Dental Association.

(b) Dentists who announce as specialists must have successfully completed an educational program accredited by the Commission on Dental Accreditation, two or more years in length, as specified by the Council on Dental Education or be diplomates of a nationally recognized certifying board.

(c) The practice carried on by dentists who announce as specialists shall be limited exclusively to the special area(s) of dental practice announced by the dentist.

XXV. STANDARDS FOR MULTIPLE-SPECIALTY ANNOUNCEMENTS (1) Educational criteria for announcement by dentists in additional recognized specialty areas are the successful completion of an educational program accredited by the Commission on Dental Accreditation in each area for which the dentist wishes to announce.

(2) Dentists who completed their advance education in programs listed by the Council on Dental Education prior to the initiation of the accreditation process in 1967 and who are currently ethically announcing as specialists in a recognized area may announce in additional areas provided they are educationally qualified or are certified diplomates in each area for which they wish to announce. Documentation of successful completion of the educational program(s) must be be submitted to the appropriate constituent society. The documentation must assure that the duration of the program(s) is a minimum of 2 years

except for oral and maxillofacial surgery which must have been a minimum of 3 years in duration.

XXVI. GENERAL PRACTITIONER ANNOUNCEMENT OF SERVICES

(1) General dentists who wish to announce the services available in their practices are permitted to announce the availability of those services so long as they avoid any communications that express or imply specialization. General dentists shall also state that the services are being provided by general dentists. No dentist shall announce available services in any way that would be false or misleading in any material respect. The phrase "practice limited to" shall be avoided.

(a) Advertising, solicitation of patients or business, or other promotional activities by dentists or dental care delivery organizations shall not be considered unethical or improper, except for those promotional activities which are false or misleading in any material respect. Notwithstanding any of these rules of professional conduct or other standards of dentist conduct which may be differently worded, this shall be the sole standard for determining the ethical propriety of such promotional activities. Any provision of an American Dental Association constituent or component society's code of ethics or other standard of dentist conduct relating to dentists' or dental care delivery organizations' advertising, solicitation, or other promotional activities which is worded differently from the above standard shall be deemed to be in conflict with the rules of professional conduct.

3. The board is proposing the adoption of the above rules of professional conduct to define what is meant by unprofessional conduct as per section 37-4-321 MCA.

4. Interested persons may submit their data, views or arguments concerning the proposed adoption in writing to the Board of Dentistry, Lalonde Building, Helena, Montana 59601 no later than September 11, 1980.

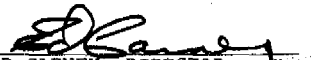
5. If a person who is directly affected by the proposed adoption wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to the Board of Dentistry, Lalonde Building, Helena, Montana 59601 no later than September 11, 1980.

6. If the board receives requests for a public hearing on the proposed adoption from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed adoption; from the Administrative 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 10.

7. The authority of the board to make the proposed adoption is based on section 37-4-321 (4) MCA and implements the same.

BOARD OF DENTISTRY
WILLIAM G. THOMAS, D.D.S.,
PRESIDENT

BY: 
ED CARNEY, DIRECTOR
DEPARTMENT OF PROFESSIONAL
AND OCCUPATIONAL LICENSING

Certified to the Secretary of State, August 5, 1980.

STATE OF MONTANA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING
BEFORE THE STATE ELECTRICAL BOARD

IN THE MATTER of the Proposed Amendment of ARM 40.16.402 concerning application Approval	NOTICE OF PROPOSED AMENDMENT OF ARM 40.16.402 APPLICATION APPROVAL

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On Sept. 13, 1980, the State Electrical Board proposes to amend ARM 40.16.402 concerning applications.

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

"40.16.402 APPLICATION APPROVAL (1) The practical experience requirement set forth in sections 37-68-304 305 MCA, shall be of such nature as is satisfactory to the board.

(a) The board will only accept electrical experience in the construction field. Maintenance work which is exempt under section 37-68-103 MCA will not be accepted towards fulfillment of the practical experience requirement.

(2) All applications shall be approved or disapproved on a case by case basis as the board may deem proper."

3. The board is proposing the amendment because they feel maintenance work is exempt from the licensure requirements of the statutes and those persons performing such work are not receiving the full, well-rounded training required for licensure. They feel they cannot accept such as fulfillment of the practical experience requirement.

4. Interested persons may submit their data, views or arguments concerning the proposed amendment in writing to the State Electrical Board, Lalonde Building, Helena, Montana 59601 no later than September 11, 1980.

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 written comments he has to the State Electrical Board, Lalonde Building, Helena, Montana 59601 no later than September 11, 1980.

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.

7. The authority of the board to make the proposed amendment is based on section 37-68-201 MCA and implements sections

37-68-304 and 305 MCA.

STATE ELECTRICAL BOARD
KENNETH OLSEN, PRESIDENT

BY: 
ED CARNEY, DIRECTOR
DEPARTMENT OF PROFESSIONAL
AND OCCUPATIONAL LICENSING

Certified to the Secretary of State, August 5, 1980

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

In the matter of the repeal of Rule 46.12.519 (46-2.10(18)-S11440(1)(p)) and the adoption of rules all pertaining to medical assistance, podiatry services	)))))	NOTICE OF PUBLIC HEARING ON THE REPEAL OF RULE 46.12.519 AND THE ADOPTION OF NEW RULES ALL PERTAINING TO PODIATRY SERVICES

TO: All Interested Persons

1. On September 8, 1980, at 9:00 a.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services building, 111 Sanders, Helena, Montana, to consider the repeal of Rule 46.12.519 and the adoption of three new rules pertaining to medical assistance, podiatry services.

2. The proposed rules will replace the rule proposed to be repealed. The rule proposed to be repealed can be found on page 46-1261 of the Administrative Rules of Montana.

3. The proposed rules provide as follows:

RULE I PODIATRY SERVICES, DEFINITION (1) Podiatry services are those services provided by individuals under state law to practice podiatry which are within the scope of the practices of his profession.

RULE II PODIATRY SERVICES, REQUIREMENTS (1) These requirements are in addition to those contained in ARM 46.12.301 through 45.12.308.

(2) Utilization and peer review of podiatry services shall be conducted by the designated review organization.

RULE III PODIATRY SERVICES REIMBURSEMENT/GENERAL REQUIREMENTS AND MODIFIERS (1) Payments for podiatry services will be the lesser of usual and customary charges which are reasonable, the amount payable by medicare, or the following fee schedule. Services paid by report (BR) will be paid at 70% of all Montana podiatrist's 1980 usual and customary charges for the specified service.

(2) MODIFIERS

Listed services and procedures may be modified under certain circumstances. When applicable, the modifying circumstance should be identified by the addition of the appropriate modifier code, which is a two digit number placed after the usual procedure number from which it is separated by a hyphen.

If more than one modifier is used, the "Multiple Modifiers" code placed first after the procedure code indicates that one or more additional modifier codes will follow. All procedures where a modifier is used may be paid By Report (BR). Modifiers commonly used are as follows:

-22 Unusual Services: When the service(S) provided is greater than that usually required for the listed procedure, it may be identified by adding modifier '-2' to the usual procedure number. A report may also be appropriate. (Pertains to Medicine, Anesthesia, Surgery, Radiology, and Pathology and Laboratory.)

-23 Unusual Anesthesia: Periodically, a procedure, which usually requires either no anesthesia or local anesthesia, because of unusual circumstances must be done under general anesthesia. This circumstance may be reported by adding the modifier '-23' to the procedure code of the basic service. (Pertains to Anesthesia, Surgery.)

-26 Professional Component: Certain procedures (eg, laboratory, radiology, specific diagnostic services) are a combination of a podiatric component and a technical component. When the podiatric component is reported separately, the service may be identified by adding the modifier '-26' to the usual procedure number. (Pertains to Medicine, Surgery, Radiology, and Pathology and Laboratory.)

-30 Anesthesia Service: The anesthesia service may be identified by adding the modifier '-30' to the usual procedural code number of the basic service. (Pertains to Anesthesia.)

-47 Anesthesia by Surgeon: When regional or general anesthesia is provided by the surgeon, it may be reported by adding the modifier '-47' to the basic service. (This does not include local anesthesia.) (Pertains to Anesthesia, and Surgery.)

-50 Multiple or Bilateral Procedures: When multiple or bilateral procedures are provided at the same operative session, the first major procedure may be reported as listed. The secondary or lesser procedure(s) may be identified by adding the modifier '-50' to the usual procedure number(s). (Pertains to Surgery, and Radiology.)

-52 Reduced Services: Under certain circumstances a service or procedure is partially reduced or eliminated at the podiatrist's election. Under these circumstances the service provided can be identified by its usual procedure number and the addition of the modifier '-52', signifying that the service is reduced. This provides a means of reporting reduced services without disturbing the identification of the basic service. (Pertains to Medicine, Anesthesia, Surgery, Radiology, and Pathology and Laboratory.)

-54 Surgical Care Only: When one podiatrist performs a surgical procedure and another provides preoperative and/or postoperative management, surgical services may be identified by adding the modifier '-54' to the usual procedure number. (Pertains to Surgery.)

-55 Postoperative Management Only: When one podiatrist performs the postoperative management and another podiatrist has performed the surgical procedure, the postoperative component may be identified by adding the modifier '-55' to the usual procedure number. (Pertains to Medicine, and Surgery.)

-56 Preoperative Management Only: When one podiatrist performs the preoperative care and evaluation and another podiatrist performs the surgical procedure, the preoperative component may be identified by adding the modifier '-56' to the usual procedure number. (Pertains to Medicine, and Surgery.)

-66 Surgical Team: Under some circumstances, highly complex procedures (requiring the concomitant services of several podiatrists, plus other highly skilled, specially trained personnel and various types of complex equipment) are carried out under the 'surgical team' concept. Such circumstances may be identified by each participating podiatrist with the addition of the modifier '-66' to the basic procedure number used for reporting services. (Pertains to Surgery.)

-75 Concurrent Care. Services Rendered by More than One Podiatrist: When the patient's condition requires the additional services of more than one podiatrist, each podiatrist may identify his or her services by adding the modifier '-75' to the basic service performed. (Pertains to Medicine, Anesthesia, Surgery, and Radiology.)

-76 Repeat Procedure by Same Podiatrist: The podiatrist may need to indicate that a procedure or service was repeated

subsequent to the original service. This may be reported by adding the modifier '-76' to the procedure code of the repeated service (Pertains to Medicine, Surgery, and Radiology.)

-77 Repeat Procedure by Another Podiatrist: The podiatrist may need to indicate that a basic procedure performed by another podiatrist had to be repeated. This may be reported by adding modifier '-77' to the repeated service. (Pertains to Medicine, Surgery, and Radiology.)

-80 Assistant Surgeon: Surgical assistant services may be identified by addint the modifier '-80' to the usual procedure number(s). (Pertains to Surgery.)

-81 Minimum Assistant Surgeon: Minimum surgical assistant services are identified by adding the modifier '-81' to the usual procedure number. (Pertains to Surgery.)

-90 Reference (Outside) Laboratory: When laboratory procedures are performed by a party other than the treating or reporting podiatrist, the procedure may be identified by adding the modifier '-90' to the usual procedure number. (Pertains to Medicine, Surgery, Radiology, and Pathology and Laboratory.)

-99 Multiple Modifiers: Under certain circumstances two or more modifiers may be necessary to completely delineate a service. In such situations modifier '-99' should be added to the basic procedure, and other applicable modifiers may be listed as a part of the description of the service. (Pertains to Medicine, Anesthesia, Surgery, and Radiology.) (History: Sec. 53-6-113 MCA; IMP, Sec. 53-6-113 and 53-6-141 MCA; NEW, 1980 MAR, p. 1808, Eff. 6/27/80.)

RULE IV PODIATRY SERVICES REIMBURSEMENT/MEDICINE PROCEDURES

(1) OFFICE PODIATRIC MEDICAL SERVICES

New Patient

90000 Brief service - $15.57

90010 Limited service - $23.34

90015 Intermediate service - $38.91

90020 Comprehensive service - $54.49

Established Patient

90030 Minimal service - $6.23

90040 Brief service - $9.34

90050 Limited service - $12.45

90060 Intermediate service - $15.57

90070 Extended service - $23.34

90080 Comprehensive service - $38.91

(2) HOME PODIATRIC MEDICAL SERVICES

New Patient

90100 Brief service - $23.34

90110 Limited service - $31.12

90115 Intermediate service - $38.90

90117 Extended service - 46.68

Established Patient

90130 Minimal service - $11.67

90140 Brief service - $15.56

90150 Limited service - $23.34

90160 Intermediate service - $27.23

90170 Extended service - $31.12

(3) HOSPITAL PODIATRIC MEDICAL SERVICES

New and Established Patient

Initial Hospital Care

90200 Brief history and examination, initiation of diagnostic and treatment programs, and preparation of hospital records - $23.34

90215 Intermediate history and examination, initiation of diagnosis and treatment programs, and preparation of hospital records - $33.73

90220 Comprehensive history and examination, iniitation of diagnostic and treatment programs, and preparation of hospital records - $54.47

Subsequent Hospital Care

90240 Brief service - $9.34

90250 Limited service - $11.80

90260 Intermediate service - $23.34

90270 Extended service - $31.13

90280 Comprehensive service - $31.13

(4) SKILLED NURSING, INTERMEDIATE CARE, AND LONG-TERM CARE FACILITIES

New or Established Patient

Initial Care

90300 Brief history and physical examination, initiation of diagnostic and treatment programs, and preparation of hospital records - $23.34

90315 Intermediate history and physical examination, initiation of diagnostic and treatment programs, and preparation of hospital records - $38.91

90320 Comprehensive history and physical examination, initiation of diagnostic and treatment programs, and preparation of hospital records - $54.46

Subsequent Care

90340 Brief service - $9.34

90350 Limited service - $15.57

90360 Intermediate service - $23.34

90370 Extended service - $31.12

(5) NURSING HOME, BOARDING HOME, DOMICILIARY, OR CUSTODIAL CARE MEDICAL SERVICES

New Patient

90400 Brief services - $23.34

90410 Limited service - $31.13

90415 Intermediate service - $38.91

90420 Comprehensive service - BR

Established Patient

90430 Minimal service - $11.67

90440 Brief service - $15.57

90450 Limited service $23.34

90460 Intermediate service - $23.34

90470 Extended service - $31.13

(6) EMERGENCY DEPARTMENT PODIATRIC MEDICAL SERVICES

New Patient

90500 Minimal service - $6.22

90505 Brief service - $15.57

90510 Limited service - $23.34

90515 Intermediate service - $38.91

90517 Extended service - $46.68

Established Patient

90530 Minimal service - $6.22

90540 Brief service - $9.33

90550 Limited service - $12.24

90560 Intermediate service - $15.55

90570 Extended service - $23.34

(7) CONSULTATIONS

90600 Limited consultation - $23.34

90605 Intermediate consultation - $31.13

90610 Extensive consultation - $33.74

90620 Comprehensive consultation - $54.47

90630 Complex consultation $54.47

Other Procedures

90699 Unlisted medical service, general - BR

(8) IMMUNIZATION INJECTIONS

90720 Immunizations, each (includes supply of materials); tetanus toxoid, - $4.40

(9) THERAPEUTIC INJECTIONS

90782 Therapeutic injection of medication (specify); subcutaneous or intramuscular - $6,23

90784 Intravenous - $11.12

90788 Intramuscular injection of antibiotic (specify) - $6.23

(10) CARDIOVASCULAR PODIATRIC MEDICAL SERVICES

Podiatric Vascular Studies

93700 Peripheral vascular disease study - BR - not to exceed -$94.62

93725 Plethysmography, regional - BR - not to exceed - $37.85

93740 Temperature gradient studies - BR - not to exceed - $26.49

93762 Thermogram, peripheral - BR

93770 Determination of venous pressure - $7.78

(11) OTHER PODIATRIC PROCEDURES

93799 Unlisted cardiovascular service or procedure (see guidelines) - BR

(12) MISCELLANEOUS PODIATRIC DIAGNOSTIC SERVICES

95831 Muscle testing, manual, per extremity with report - $12.45

95842 Muscle testing, electrodiagnosis (reaction of degeneration, chromaximetry, strength duration curve or cathode/tetanus ratio), one extremity, any one method - $18.68

95843 each additional method - $18.68

95851 Range of motion measurements and report, each extremity (independent procedure) - $12.45

95860 Electromyography, one extremity and related paraspinal area - $62.25

95861 Two extremities and realted paraspinal area - $93.37

95900 Nerve conduction velocity study, motor or sensory, each nerve - $24.89

95905 Contralateral nerve - $18.67

95910 Nerve conduction velocity study, motor and sensory, each nerve - $43.56

95915 Contralateral nerve - $37.34

95920 Nerve conduction velocity study, additional ipsolateral or contralateral nerve - $24.89

95930 Achilles reflex response, electrical recording (ART) (For ultrasonsography, see 76500-76999) - $7.78

95999 Unlisted micellaneous diagnostic service or procedure (see guidelines) - BR

(13) PODIATRIC PHYSICAL MEDICINE, MODALITIES

97000 Office visit with one of the following modalities to one area:

Hot or cold packs - $9.34
Traction, mechanical - $9.34
Electrical stimualtion (unattended) - $9.34
Vasopneumatic devices - $9.34
Paraffin bath - $9.34
Microwave - $9.34
Whirlpool - $9.34
Diathermy - $9.34
Infrared - $9.34
Ultraviolet - $9.34

97050 Office visit with tow or more modalities to same area - $10.11

Procedures

97100 Office visit with one of the following procedures to one area, initial 30 minutes:

Therapeutic exercises - $12.45
Neuromuscular re-education - $12.45
Funcitonal activities - $12.45
Gait training - $12.45
Electrical stimulation (manual) - $12.45
Lontophoresis - $12.45
Traction, manual - $12.45
Massage - $12.45
Contrast Baths - $12.45
Ultrasound - $12.45

97101 Each addtional 15 minutes - $3.89

97200 Office visit, including combination of any modality(s) and procedure(s), initial 30 minutes - $12.45

97201 each additional 15 minutes - $3.89

Test and Measurements

97700 Office visit, including one of the following tests and measurements, with report, initial 30 minutes - $18.68
Orthotic checkout - $18.68 Prosthetic chekout - $18.68

97701 each additional 15 minutes - $9.34

97720 Extremity testing for strength, dexterity or stamina, initial 30 minutes - $18.67

97721 each additional 15 minutes - $9.34

97740 Kinetic activities to increase coordintation, strength and/or range of motion, one area (any two extremities or trunk), initial 30 minutes - $18.67

97741 each additional 15 minutes - $9.34

97742 Foot imprints and/or outlines. Independent procedure for prescribing for planter foot pads or plates or for evaluating surface contact areas of feet - $11.67

97743 Foot, ankle and leg measurements, including foot imprints and outlines of feet for prescribing of orthotics, prosthetics or custom-hand made shoes for orthopedic foot deformities - $38.90

(14) PODIATRIC ORTHOMECHANICAL SERVICES AND PROCEDURES

Ankle-Foot Orthoses

97750 Ankle-foot orthoses, spring wire type with shoe attachment - BR

97754 Ankle-joint orthoses, flexible or static posterior, molded plastic shell with foot plate insert, (specify when cast by orthotist) - BR

97757 Ankle brace without modification, with or without stays (stock item), single - $11.67

Metal Foot Plates

97758 Shaeffer plate or any other custom made made metal plate (custom made to model), single - $38.90

97759 Shaeffer plate (custom made to model) pair - $77.80

97766 Mobilization of toe or toe-joint by use of an ortho-digital traction device (toe aligning sling) made to plaster model for the correctionof hallux valgus, hammer toe, underlapping or overlapping toe, etc., single - $31.12

97767 same as for 97766 but for pair - $62.24

Thermoplastic Plastes, (Biochemical)

97768 Stabilization and/or mobilization of foot by use of a thermoplastic orthotic (custom made to model and biomechanically), with forefoot post, single - $38.90

97769 same as for 97768 but for pair - $77.90

97770 Addition of rearfoot post, single - $7.78

97771 Addition of rearfoot post, pair - $15.56

97772 Addition of forefoot post, single - $7.78

97773 Addition of forefoot post, pair - $15.56

97774 Stabilization of heel by use of heel stabilizer, made to plaster model, single - $38.90

97775 same as for 97774 but for a pair - $77.80

97776 Heel stabilizer, (plastic heel cup), stock item, single - $3.89

97777 Same as 97776 but for a pair - $7.78

Shoes

97785 Stabilization and/or mobilization of foot by use of exterior modifications to shoes such as orthopedic heels, comma bars, heel or sole wedges, etc. pair; or buildup for shortage, per shoe - $15.56

97786 Stabilization and restoration of balance to feet, ankles and superstructure by use of custom built shoes made to models, measurements, imprints and orthotic fittings and adjustments for shortage of foot and/or leg, pair - BR

Molded Inlay (Balance Inlays)

97795 The stabilization, balance and mobilization of the foot, partial or total by use of a full extension or partial molded inlay made to foot models with an elevation up to 3/4" and with a matching insert as an interior shoe modification. Removable type, (all types of balance inlays, Bergmann, Levy, Grachman, Contur-A-Mold, Molded Latex, etc.) Single with matching insert or a pair - $77.80

Shoe Modifications, Interior (Shoe paddings, etc.)

97796 The stabilization and removal of pressure form the affected areas of the feet by use and application of accommodative shoe paddings to the interior of the shoe, pair - $15.56

97797 Stabilization, equilibrium and restoration of balance to the feet and legs by use of an interior modification for the shoe by means of a removable insert formed as a prosthetic for amputation of toe, toes or forefoot. Single with matching insert to balance the normal foot - BR

Splints, Mechanical

97798 Mobilization and/or partial immobilization of joint motions in foot and leg by use of one of the following types of splints attached to shoes and adjusted to shoes and adjusted as indicated for the specific deformity:

Brachman splint - $38.90
Denis-Browne splint - $38.90
Filauer splint - $38.90
Ganley splint - $38.90
Gottler splint - $38.90
Friedman splint - $38.90
Single splint - $38.90

Splint, Molded

97801 Immobilization, total or partial of foot and/or ankle by use of splints, such as a posterior molded splint, made of plaster, metal or acrylic (plastic) type of material and attached to the foot and leg. Below knee splint, single, independent procedure - BR

97802 Immobilization, total or partial of foot and toes by use of a Plantar Full Extension molded splint, made of either plaster, metal or acrylic forms of material and attached to the foot for other surgical conditions, Single - BR

Cast Impressions and Models

97803 Plaster foot cast, negative impression, of a toe or part of the foot, as an independent procedure for prescribing of an orthotic or prosthetic. Single - $15.56

97804 Same as 97803 but for a pair - $31.12

RULE V PODIATRY SERVICES REIMBURSEMENT/PODIATRIC SURGERY PROCEDURES

(1) INTEGUMENTARY SYSTEM

(a) Skin, Subcutaneous and Areolar Tissues

Incision

10000 Incision and drainage of infected or noninfected sebaceous cyst, one lesion - $11.93

10001 Second lesion - $5.96

10002 over two, each additional lesion - $2.98

10003 I & D Sebaceous cyst & removal of sac - $17.89

10060 Incision and drainage of abscess, eg, carbuncle, and other cutaneous or subcutaneous abscesses, simple - $11.93

10061 complicated - BR

10100 Drainage of onychia or paronychia - $11.93

10101 mulitiple or complicated - BR

10120 Incision and removal of foreign body, subcutaneous tissues, simple - $11.93

10121 complicated - BR

10140 Drainage of hematoma, simple, subcutaneous or subungual - $11.93

10141 Complicated - BR

10160 Puncture aspiration of abscess or hematoma or large bulla - $8.95

Excision-Debridement

11000 Debridement of extensive eczematous or infected skin up to 10% of body surface (eg. Tinea Pedis, eczema, etc.) - $11.93

11040 Debridement of abrasions, simple - $8.95

11041 Debridement of abrasion, extensive or complecated - BR

11050 Debridement of keratotic lesions (eg. Keratodermia, intractible plantar keratosis, porokeratosis, clavi, callosities, etc.) one leg (under Anathesia) - $11.93

11051 Same as in 11050 but 2-4 lesions, one leg - $5.96

11052 more than 4 lesions, one leg - $5.96

11100 Biopsy, excision of skin, subcutaneous tissue (including simple closure), unless otherwise listed (independent procedure), one - $17.90

11101 each additional lision - $8.95

Excision-Benign Lesions

11200 Excision, skin tags, multiple fibrotaneous tags, any area up to 15 - $11.93

11201 each additional ten lesions - $5.96

11420 Excision, benign lesions unless listed elswhere), feet, lesion deameter up to o.5 cm - $23.86

11421 Lesion, diameter 0.5 to 1.0 cm - $29.82

11422 Lesion, diameter 1.0 to 2.0 cm - $35.80

11423 Lesion, diameter 2.0 to 3.0 cm - BR

11424 Lesion, diameter 3.0 to 4.0 cm - BR

11426 Lesion, diameter greater than 4.0 cm - BR

11620 Excision, malignant lesions, feet lesion diameter up to 0.5 cm - $58.46

11621 Lesion, diameter 0.5 to 1.0 cm - $89.49

11622 Lesion, diameter 1.0 to 2.0 cm - $119.32

11660 Excision, malignant lesions, lesion diameter more than 2.0 cm complicated or unusually located, any area of foot or ankle - BR

(b) Nails

11700 Debridement nails, manual, five or less - $8.94

11701 each additional five or less - $4.47

11710 Debridement nails, electric grinder, finve or less - $11.93

11711 each additional five or less - $5.96

11730 Avulsion, nail plate, partial, simple, single - $11.93

11731 second nail plate - $5.96

11732 each additional nail plate - $2.98

11733 Avulsion nail plate - complete simple, single - $11.93

11734 second nail plate and all additionals - $5.96

11740 Evacuation of Subungual henatema - BR

11750 Excision nail and/or nail matrix, partial, eg., ingrown or deformed nail, for permanent removal - $59.66

11751 Excision nail & less matrix complete for permanent removal - $89.49

11755 Excision, complete (total) of nail, nail bed and/or nail fold, with excision of matirx and with partial ostectomy of distal phalanx and plasty of toe (onychectomy with dactyloplasty or terminal Symes), unilateral, single toe - $120.61

11756 Excision, partial to nail fold or nail lip (paraungual tissues) only: eg., onychoplasty to nail fold or lip, one side of toe (one nail margin), unilateral, single toe - $59.66

11760 Reconstruction nail bed, simple - BR

11762 complicated - BR

(c) Introduction

11900 Injection, intralesional, up to and including seven lesions - $11.93

11901 more than seven lesions - $21.47

(d) Repair-Simple

12041 Linear repair, simple up to 2.5 cm - $17.89

12042 2.5 to 7.5 cm - $23.34

12044 7.5 to 12.5 cm - $59.66

12045 12.5 to 20.0 cm - BR

(e) Repair-Complex

13120 Linear repair, complex up to 2.5 cm - $53.69

13121 2.5 tp 7.5 cm - $89.49

13122 greater than 7.5 cm - BR

(f) Adjacent Tissue Transfer or Rearrangement

14040 Adjacent tissue transfer or rearrangement, defect up to 10 sq. cm. feet - $238.63

14041 Admacent tissue transfer or rearrangement, defect between 10 and 30 sq cm. feet - $298.29

14042 Adjacent tissue transfer or rearrangement, more than 20 sq cm unusual or complicated, any area or foot or ankle - BR

(g) Free Skin Grafts

15000 Excisional preparation or creation of recipient site by excision of essentially intact skin (including subcutaneous tissues), scar, or other lesion prior to repair with free skin graft (list as separate service in addition to skin graft) - BR

15050 Pinch, split, or full thickness graft to cover small ulcer, tip of digit, or other minimal open area up to defect size 2 cm diameter - $35.79

15100 Split graft, feet (except multiple digits), up to 100 sq cm (except 15050) - $178.97

15101 each additional 100 sq cm or part thereof - $35.79

15240 Full thickness graft, free, including direct closure of donor site, feet up to 20 sq cm - $238.64

15241 each additional 20 sq cm - $119.29

15440 Porcine skin dressing for skin defect - $29.82

(h) Pedicle Flaps (Skin and deep tissues)

15510 Formation of tube pedicle without transfer, or major delay of large flap without transfer, feet - $208.80

15550 Primary attachment of oprn tubed pedicle flap to recipient site requiring minimal preparation, feet (except 15580) - $268.46

15620 Intermediate delay of any flay, primary delay of small flap or sectioning pedicle of tubed or direct flap feet Iexcept 15625) - $176.97

15720 Excision of lesion and/or excisional preparation of recipient site and attachement of direct or tubed pedicle flap, feet - $477.26

(i) Micellaneous Procedure

15785 Abrasion of skin for removal of scars, tattoos, actinic changes (keratoses), primary or secondary regional - $119.29

15791 Superficial chemosurgery (acid peel) regional, foot and/or ankle - BR

(j) Burns Local Treatment

16000 Initial treatment, first degree burn, when no more than local treatment required - $8.95

16010 Dressings and/or debridement, initial or subsequent, under anesthesia, small - $23.86

16015 Under anesthesia, large, or with major debridement, per one-half hour - $59.65

16020 Without anesthesia, office or hospital, small - $10.12

17100 Electorsurgical desitution or chemocautery (mono-bitrickloroacetic acid, phenol) or cryocautery (liquid N_2, CO_2) of benigh or quiescent premalignant lesions of skin, with or without curettage, one lesion - $11.93

17101 second lesion - $5.96

17102 Over two lisions, each additional lesion - $2.98

17105 complicated lesion(s) - BR

17110 flat (plane, juvenile) warts or molluscum contagiosum, milia, up to 15 - $11.93

17120 (Retreatment same as office visit) Destruction of nail root andmatrix with partial or total excisionor evulsion of nail using one of the following methods: Negative galvanism, electrocoagulation, fulguration or

dessication, phenolization, cryotherapy (CO_2, N_2), or with power surgical drill or burr. Unilateral, single toe, one nail margin - $59.66

17121 each additional side - $29.83

17125 total nail - $59.65

17340 Cryotherapy (CO2 slush, liquid N2) - $8.95

17380 Electrolysis epilation each 1/2 hour - $17.90

17499 Unlisted Procedure, integumentary system (see Guidelines) - BR

(k) Incision

20000 Incision of superficial soft tissue abscess secondary to osteomyelitis or other cause - $11.93

20005 deep or complicated - BR

20010 with perfusion technique - BR

20040 Drainage of infected bursa - $17.89

20043 Paracentesis (puncture or neddling) of bursa for aspiration or irrigation - $14.91

20046 Drainage of single infected space of foot, (lumbrical, midplantar, etc. with or without sheath involvement, in hospital - BR

(l) Excision

20200 Biopsy, muscle, superficial - $35.79

20205 deep - $71.59

20220 Biopsy, trochar, bone, superficial - $35.79

20230 Biopsy for synovial membrane - BR

(m) Introduction or Removal

20500 Injection of sinus tract, therapeutic (Independent Procedure) - $11.93

20520 Removal of foreign body in muscle, simple - $35.97

20525 deep or complicated - BR

20550 Injection, tendon sheath, ligament or trigger points - $11.95

20600 Arthrocentesis, aspiration or injection, small joint, eg., toes - $$8.94

20605 intermediate joint or bursa, eg, tarsal joint or ankle joint - $11.93

20650 Insertion of wire or pin for skeletal traction, including removal (Independent Procedure) - $35.79

20660 Application of tongs or halo, including removal (Independent Procedure) - $89.47

20665 Removal of tongs or halo applied by another physician - $8.94

20670 Removal of buried wire, pin or screw, superficial (Independent Procedure) - $17.89

20680 deep, buried, wire, pin screw, metal band, nail rod, or plate - $107.38

(n) Grafts or Implants

20900 Obtaining bone for graft minor or small, dowel or button, any donor area of foot ar ankle - $71.57

20902 Major or large - $143.18

20924 Obtaining tendon for graft, transferred from distant part - BR

20926 Obtaining other tissues for graft, eg., paratenon, fat dermis - $ BR

20240 Biopsy, bone, excisional, superficial 3.o - $89.47

27605 Tenotomy, Achilles tendon, subcutaneous (Independent Procedure) - $29,82

27610 Arthrotomy, (capsulotomy), ankle, with exploration, drainage or removal of loose or foreign body - $268.46

27612 posterior capsular release, with or without Achilles tendon lengthening (see also 27685) - $298.29

(o) Excision

27620 Arthrotonmy (capsulotomy) ankle, for biopsy - $268.40

27625 for synovectomy - $357.94

27626 for synovectomy, including teno synovectomy - $363.92

27630 Excision of lesion of tendon, sheath or capsule (cyst or ganglion) - $107.38

27635 Excision or curettage of bone cyst or benign tumor, tibia or fibula at ankle - $298.29

27637 with primary autogenous graft (includes obtaining graft) - $387.77

27638 with primary homogenous graft - $387.77

27640 Excision of bone, partial (craterization, saucerization, or diaphysectiomy) for osteomyelitis, tibial malleolus or fibular malleolus - $357.94

27645 Resection, radical for tumor, tibial malleolus or fibularmalleolus - BR

27647 Astragalus or calcaneus - BR

(p) Introduction and/or Removal

27648 Injection procedure for ankle arthrography - $29.82

(q) Repair Revision or Reconstruction

27649 Repair of deep wound, ankle, involving fascia, muscle, artery and/or tendon and/or nerve - BR

27650 Suture, primary, ruptured Achilles tendon - $328.12

27652 with graft (includes obtaining graft) - $417.60

27658 Repair or suture of tendon, primary (without free graft) leg, flexor, single - $178.97

27659 secondary with or without free graft - $238.63

27664 extensor, single, primary - BR

27665 Repair extensor tendon secondary with or without free graft - $178.97

27675 Repair dislocated personal tendons without fibular osteotomy - BR

27676 with fibular osteotomy - BR

27680 Tenolysis, leg, including tibia, fibula and ankle, flexor, single - $149.15

27681 multiple, through same incision - $178.97

27685 Lengthening or shortening of tendon, including tibia, fibula, and ankle, flexor, single (independent procedure) - $208.80

27686 Multiple, through same incision (the toe extensors are considered as a group to be a single tendon when transplanted into midfoot) - BR

27688 Tenoplasty for lengthening or shortening of tendon of great toe unilateral, (Independent Procedure) - BR

27689 Tenoplasty for lengthening or shortening of tendon, single, of any of lesser toes (Independent Procedure) - BR

27690 Transfer or transplant of tendon, with muscle redirection or rerouting, single, superficial, eg. anterior tibial or extensors into midfoot - $238.63

27691 anterior tibial or posterior tibial through interosseous space - 298.29

27692 each additional tendon - $59.63

27695 Suture, primary, torn, ruptured or severed ligament, ankle, collateral - $298.29

27696 both collateral ligaments - $417.60

27698 secondary repair, collateral ligament (eg., Watson-Jones or Evans Procedures) - 417.60

27700 Arthoplasty, ankle - BR

27702 with implant ("total ankle") - BR

27704 Removal of ankle implant - BR

27705 Osteotomy, tibial malleolus - $357.94

27707 Osteotomy, fibular malleolus - $208.80

27709 Osteotomy, tibial and fibular malleoli - $417.60

(r) Fractures and/or Dislocations

27760 Conservative treatment, tibia, distal extremity. (Medial malleolus fracture closed (without reduction) - BR

27762 Closed manipulative reduction, tibia, distal extremity (medial malleolus) fracture closed - $89.47

27764 Manipulative reduciton, tibia, distal extremity (medial malleolus) fracture open with uncomplicated soft tissue closure - $131.24

27766 Open reduction and fixation, tivia, distal extremity (medial malleolus) fracture closed or open - $268.46

27786 Conservative treatment, fibula, distal extremity, (Lateral malleolus) fracture closed - BR

27788 Closed manipulative reduction, fibula, distal extremity (lateral malleolus) fracture closed - $89.47

27790 Manipulative reduction, fibula, distal extremity (lateral malleolus) fracture open with uncomplicated soft tissue closure - $119.29

27792 Open reduction with fixation, fibula, distal extremity (lateral malleolus) fracture closed or open - $268.42

27808 Conservative treatment, ankle, bimalleolar fracture (including Potts) closed (without reduction) - BR

27810 Closed manipulative reduction, ankle, bimalleolar fracture (including Potts) closed - $149.15

27812 Manipulative reduction, ankle, bimalleolar fracture (including Potts) open with uncomplicated soft tissue closure - $193.89

27814 Open reduction, ankle, bimalleolar fracture (including Potts) open or closed with or without internal/ external skeletal fixation - $357.94

27816 Conservative treatment, ankle, trimalleolar fracture closed (without reduciton) - BR

27818 Closed manipulative reduction, ankle, trimalleolar fracture, closed - $178.97

27820 Manipulative reduction, ankel, treimaleolar fracture open, with uncomplicated soft tissue closure - $208.80

27822 Open reduction, ankle, trimaleolar fracture closed or open with or without internal/extenal skeletal fixation - $432.52

27840 Manipulative reduction, ankle dislocation closed, without anesthesia - BR

27842 requiring anesthesia - $59.65

27844 Manipulative reduction, ankle dislocation open, with uncomplicated soft tissue closure - $95.45

27846 Open reduction, ankle dislocation, closed or open - $357.94

27848 Open reduction and fixation, distal tibiofibular joint dislocation (ankle mortise) closed or open - $268.46

(s) Manipulation

27860 Manipulation of ankle under general anethesia (including application of traction or other fixation apparatus) - $29.83

(t) Arthrodesis

27870 Fusion, ankle - $507.09

(2) FOOT INCISION

(a) Miscellaneous

27899 Unlisted procedure, leg or ankle - BR

28001 Incision and drainage, infected bursa - BR

28002 Deep infection, below fascia, requiring deep dissection, with or without tendon sheath involvement; single bursal space, specify - BR

28003 multiple areas - BR

28004 miltiple areas with suction irrigation - BR

28005 Incision, deep, with opening of bone cortex for osteomyelitis or bone abscess; - BR

28006 with suction irrigation - BR

28008 Fasciotomy, plantar and/or toe, subcutaneous - $71.59

28010 Tenotomy subcutaneous, toe single - $23.86

28011 multiple - $35.79

28020 Arthrotomy, (capsulotomy, with exploration, drainage or removal of loose or foreign body, intertarsal or tarsometatarsal joint - $178.97

28022 metatarsophalangeal joint - $107.38

28024 interphalangeal joint (toe) - $71.58

28030 Neurectomy of intrinsic musculature of foot - BR

28035 Tarsal tunnel release (posterior tibial Nerve decompression) - BR

(b) Excision

28050 Arthrotomy for synovial biopsy, intertarsal or tarsometatarsal joint - $178.97

28052 metatarsophalangeal joint - $107.38

28054 interphalangeal joint (toe) - 71.58

28060 Fasciectomy, excision of plantar fascia, partial (independent procedure) - $178.97

28062 radical (independent procedure) - BR (For plantar fasciotomy, see 28250)

28070 Synovectomy, intertarsal or tarsometatarsal joint - $178.97

28072 metatarsophalangeal joint - $107.38

28080 Excision of Morton's neuroma, single, each - $107.38

28086 Synovectomy, tendon sheath; flexor - BR

28088 extensor - BR

28090 Excision of lesion of tendon or fibrous sheath or capsula (cyst or ganglion), foot - $107.38

28092 toes - $71.58

28100 Excision or curettage of bone cyst or benign tumor, astragalus or oscalcis - $178.97

28102 with iliac or other autogenous bone graft (includes obtaining graft) - $208.80

28103 with homogenous bone graft - $208.80

28104 Excision or curettage of bone cyst or benign tumor, tarsal or metatarsal bones, except astragalus or oscalcis - $143.80

28106 with iliac or other autogenous bone graft (includes obatining graft) - 167.04

28107 with homogenous bone graft - BR

28108 Excesion or curettage of bone cyst or benign tumor, phalanges - $107.38

28109 with homogenous bone graft - BR

28110 Ostectomy, partial excision of fifth metatarsal head, bunionette (independent procedure) - $71.57

28111 Ostectomy; complete excision of first metatarsal head - BR

28112 other metatarsal head (second, third or fourth) - $119.29

28113 fifth metatarsal head - $119.19

28114 all metatarsal heads with partial proximal phalangectomies (Clayton type procedure) - $357.94

28116 Ostectomy, excision of tarsal coalition - $208.80

28118 Ostectomy, calcaneous; partial (Cotton scoop type proceudre) - $208.80

28119 for spur, with or without plantar fascial release - BR

28120 Partial excision of bone (craterization, saucerization, sequestrectomy, or diaphysectomy) for osteopmyelitis, talus, or calcaneous; - $178.97

28121 with suction irrigation - BR

28122 Partial excision of bone (craterization, sauceriation, or diaphysectomy) for osteomyelitis, tarsal or metatarsal bone, except talus or calcaneus; - $143.18

28123 with suction irrigation - BR

28124 phalanx - $107.86

28126 Condylectomy, phalangeal base, single toe - BR

28130 Astragalectomy - $298.29

28135 Calcanectomy - BR

28140 Metatarsectomy - $178.97

28150 Phalangectomy - $107.36

28153 Resection, head of phalanx - $119.32

28160 Hemiphalangectomy or interphalangeal joint excision, single - $89.47

28162 Ostectomy, total of accessory ossicle os vesalianum - $107.38

28163 of os trigonum - $119.32

28164 of os tibiale externum - $143.18

28165 of supernumerary ossicle from metatarsophalangeal joint - 107.38

28166 of supernumerary ossicle from interphalangeal joint - $89.48

28170 Resection, radical, for tumor, foot - BR

(c) Introduction and/or removal

28180 Injection procedure for arthrography of any one joint of the foot; - $29.82

(d) Repair, Revsion, or Reconstruction

28195 Repair of deep wound, foot, involving fascia, muscle, artery and/or tendon and/or nerve - BR

28200 Repair or suture of tendon, primary or secondary, without free graft, foot flexor, single - $178.97

28202 secondary with free graft (includes obtaining graft) - $238.64

28208 Repair or suture of tendon, extensor, foot single, primary or secondary - $83.50

28210 secondary, with graft (includes obtaining graft) - $119.29

28216 Repair of ruptured or divided fascia or aponeurosis; fasciorrhaphy (e.g., of plantar fascia, plantar or dorsal aponeurosis) - BR

28220 Tenolysis, flexor, foot, single - $149.12

28222 multiple (through same incision) - $178.94

28225 Tenolysis, extensor, foot, single - $83.50

28226 multiple, (through same incision) - $107.38

28230 Tenotomy, open, flexor, foot, single or multiple (independent Procedure) - $$89.47

28232 toe, single (independent procedure) - $41.76

28234 Tenotomy, open, extensor, foot or toe - $29.83

28236 Transfer of tendon, anterior tibial into tarsal bone (Lowman-Young type operation) - BR

28238 Advancement of posterior tibial tendon, with excision of accessory scaphoid bone (kidner type operation) - BR

28239 Kidner procedure with regrooving of medial malleolus for replacement of tendon - BR

28240 Tenotomy or release, abductor hallucis muscle (McCauley type operation) - $107.36

28250 Division of plantar fascia and muscle, Steindler stripping (Independent Procedure) - $178.97

28260 Capsulotomy, midfoot, medial release only (Independent Procedure) - BR

28261 with tendon length - BR

28262 Extensive, including posterior talotibial capsulotomy and tendon(s) lengthening, as for resistiant club foot deformity - BR

28263 Desmotomy with plasty of spring ligament (plantar calcaneonavicular ligament; Mercado type operation - BR

28264 Capsulotomy, midtarsal (Heyman type operation) - $357.94

28270 Capsulotomy for contracture, metatarsophalangeal joint, with or without tenorrhaphy (Independent Procedure) - $89.47

28272 interphalangeal joint (Independent Procedure) - $41.75

28280 Webbing operation (creating syndactylism of toes) for soft corn (Kelikian type operation) - $107. 36

28285 Hammer toe operation, one toe, e.g., interphalangeal fusion, filleting, phalangectomy (Independent Procedure) - $143.18

28286 for 'cock-up' fifth toe with plastic skin closure (Ruiz-Mora type operation) - $143.18

28287 Arthroplasty, metatarsophalangeal joint of a lesser toe, (e.g., for repair of partial or total subluxation. Also see 28112) - $143.18

28288 Ostectomy, partial, exostectomy or condylectomy, single, metatarsal head, second through fifth, each metatarsal head, (separate procedure) - BR

28290 Correction of hallux valgus (bunion) by exostectomy, capsuloplasty, etc., (Silver type operation or any modification thereof) - $143.18

28292 by arthroplasty, (partial ostectomy, capsuloplasty, capsulorrhaphy, etc.) metatarsophalangeal

joint of hallux (Keller, McBride, Mayo, or Stone type operation) - $208.80

28293 resection of joint with implant - BR

28294 with tendon transplants (Joplin type operation) - $283.37

28296 with metatarsal osteotomy (Mitchell, Lapidus, Reverdin, or similar type operation) - $283.37

28298 correction by phalangeal osteotomy (Akin) - $238.63

28299 by other methods (e.g., double osteotomy) - $343.03

28300 Osteotomy, including internal fixation, os calcis (Dwyer or Chambers type operation) - $283.37

28302 astragalus (Talus) - $268.46

28304 other midtarsal bones - $238.63

28305 other midtarsal bones, with autogenous graft (Fowler type operation), includes obtaining graft - BR

28306 metatarsals, base or shaft, single, for shortening or angular correction, first metatarsal - $208.80

28308 other metatarsals, base or shaft, single, for shortening or angular correction (e.g. dorsal, abductory or adductory wedge osteotomies) - 167.04

28309 other metatarsals, mutiple, for cavus foot (Swanson type operation) - BR

28310 proximal phalanx, first toe, for shortening, angular or rotational correction - $83.52

28312 other phalanges, any toe, for shortening, angular or rotational correction - $59.65

28314 Osteotomy, for lengthening of a metatarsal bone, single, unilateral (includes obtaining graft) - $208.80

28320 Repair of nonunion or malunion tarsal bones (of calcis, astragalus) - BR

28322 metatarsal, with or without bone graft (includes obtaining graft) - $143.18

28330 Repair for syndactyly of two toes (e.g., freeing of webbed toes with flaps) - $238.64

28331 with use of skin grafts (includes obtaining grafts) - BR

28335 Repair for freeing toes from surgical syndactylia, with flaps, great toe with second toe; - $238.64

28336 with use of skin grafts (includes obtaining graft) - BR

(e) Fraction and/or Dislocation

28400 Conservative treatment, os calcis, fracture closed (without reduction) - BR

28405 Closed manipulative reduction, including Cotton or Bohler type reduction, os calcis, fracture closed - BR

28410 Manipulative reduction, os calcis, fracture open, with uncomplicated soft tissue closure - BR

28415 Open reduction, os calcis, fracture closed or open, with or without internal/external skeletal fixation - $298.29

28420 with primary iliac or other autogenous bone graft (includes obtaining graft) - $432.52

28430 Conservative treatment, astragalus, fracture closed (without reduction) - BR

28435 Closed manipulative reduction, astragalus, fracture closed - $89.48

28440 Manipulative reduction, astragalus, fracture open, with uncomplicated soft tissue closure; - $119.31

28445 Open reduction, astragalus, fracture closed or open, with or without internal/external skeletal fixation - $298.29

28450 Conservative treatment, tarsal bone(s) (except astragalus and os calcis fracture(s) closed) - BR

28455 Closed manipulative reduction, tarsal bone(s) (except astragalus and os calcis, fracture(s) closed) - $59.65

28460 Manipulative reduction, tarsal bone(s) (except astragalus and os calcis), fracture open, with uncomplicated soft tissue closure) - $89.47

28465 Open reduction, tarsal bone(s) (except astragalus and os calcis), fracture closed or open, with or without internal/ external skeletal fixation - $178.97

28470 Conservative treatment, metatarsal(s) closed (without reduction) - BR

28475 Closed maipulative reduction, metatarsal(s), fracture(s), closed - $65.62

28480 Manipulative reduction, metatarsal(s), fracture(s), open with uncomplicated soft tissue closure; - $89.47

28485 Open reduction, metatarsal(s), fracture(s), closed or open, with or without internal/external skeletal fixation - $178.97

28490 Conservative treatment, phalanx or phalanges, great toe fracture closed (without reduction) - BR

28495 Closed manipulative reduction, phalanx or phalanges, great toe, fracture closed; - $35.79

28500 Manipulative reduction, phalanx or phalanges, great toe, fracture open, with uncomplicated soft tissue closure - $53.69

28505 Open reduction, phalanx or phalanges, great toe, fracture closed or open, with or without internal/ exteranl skeletal fixation - $107.38

28510 Conservative treatment, phalanx or phalanges, other than great toe, fracture closed (without reduction) - BR

28515 Closed manipulative reduction, phalanx or phalanges, other than great toe, fracture closed; - $29.83

28520 Manipulative reduction, phalanx or phalanges, other than great toe, fracture open, with uncomplicated soft tissue closure; - $47.72

28525 Open reduction phalanx or phalanges, other than great toe fracture closed or open with or without internal/ external skeletal fixation; - $89.49

28540 Manipulative reduction, tarsal bone, dislocation closed, without anesthesia - $21.48

28545 requiring anesthesia - $59.65

28550 Manipulative reduction, tarsal bone, dislocation open with uncomplicated soft tissue closure; - $83.50

28555 Open reduction, tarsal bone, dislocation closed or open, with or without internal/external fixation, skeletal - $178.97

28570 Manipulative reduction, astragalotarsal joint, dislocation closed, without anesthesia; - $29.83

28575 requiring anesthesia; - $71.57

28580 Manipulative reduction, astragalotarsal joint, dislocation open, with uncomplicated soft tissue closure; - $95.45

28585 Open reduction, astragalotarsal joint, dislocation closed or open, with or without internal/external skeletal fixation; $298.29

28600 Manipulative reduction, tarsometatrasal joint, dislocation closed, without anesthesia; - $21.47

28605 requiring anesthesia - $59.65

28606 Treatment of closed tarsometatarsal joint dislocation with percutaneous skeletal fixation - BR

28610 Manipulative reduction, tarsometatarsal joint, dislocation open, with uncomplicated soft tissue closure; - $83.50

28615 Open reduction, tarsometatarsal joint, dislocation closed or open with uncomplicated soft tissue closure; - $178.97

28630 Manipulative reduction, metatarsolphalangeal joint, dislocation closed, without anesthesia; - BR

28635 requiring anethesia - BR

28640 Manipulative reduction, metatarsophalangeal joint, dislocation open, with uncomplicated soft tissue closure; - $59.65

28645 Open reduction, metatarsophalangeal joint, dislocation closed, or open with or without internal/external skeletal fixation; - $119.29

28660 Manipulative reduction, interphalangeal joint, dislocation closed, without anesthesia; - $21.47

28665 requiring anesthesia - $35.79

28670 Manipulative reduction, interphalangeal joint, dislocation open, with uncomplicated soft tissue closure; - $47.73

28675 Open reduction, interphalangeal joint, dislocation closed or open, with or without internal/external skeletal fixation; - $71.57

(f) Manipulation

28690 Manipulation of toe, one or more, where no other surgical procedure is performed (with or without anesthesia), and includes traction, splinting or fixation apparatus (Independent Procedure) - $59.66

(g) Arthrodesis

28705 Pantalar arthrodesis; - $566.74

28707 Arthrodesis, intra- or extra-articular, intertarsal (talonavicular, calcaneocuboid or talocalcaneal), single joint; - $328.13

28708 Arthrodesis, double intertarsal joints, (talocalcaneal, talonavicular, calcaneocuboid, any combination) - $417.62

28715 Triple arthrodesis; - $447.43

28725 Subtalar arthrodesis (includes Grice type procedure) - $357.94

28728 Arthroesis, subastragular - BR

28730 Arthrodesis, midtarsal or tarsometatarsal, multiple or transverse; - $328.12

28735 with osteotomy, as for flat foot correction - $417.60

28737 Arthrodesis, navicular-cuneiform, with tendon lengthening and advancement (Miller type operation) - BR

28740 Arthrodesis, midtarsal or tarsometatarsal, single joint - $268.46

28750 Arthrodesis, great toe, metatarsolphalangeal joint $208.80

28755 interphalangeal joint - $119.31

28760 interphalangeal joint, with reduction of attachment of extensor hallucis longus (Jones type operation) - $178.97

28765 Arthrodesis, lesser toe, metatarsolphalangeal joint, single - $148.18

28770 Arthrodesis, lesser toe, interphalangeal joint, without tendon transfer, single; - $113.35

(h) Miscellaneous

28899 Unlisted procedure, foot or toes - BR

(i) Casts

29345 Application of long leg cast (thigh to toes); - $32.80

29355 walker or ambulatory type - $38.78

29358 Application of long leg cast brace - BR

29365 Application of cylinger cast (thigh to ankle) - $29.83

29405 Application of short leg cast (below knee to toes); -$23.86

29425 walking or ambulatory type - $29.83

29450 Application of clubfoot cast with molding or manipulation, long or short leg; unilateral - $11.94

29455 bilateral - $23.86

29460 Application of forefoot cast - $14.91

(j) Splints

29505 Application of long leg splint (thigh to ankle or toes) - $21.47

29515 Application of short leg splint (calf to foot) - $17.90

(k) Strapping - Any Age

29540 Strapping, ankle - $8.95

29545 Strapping, foot - $8.95

29550 Strapping, toe - $5.96

29580 Strapping, Unna boot - $11.94

29590 Denis-Browne splint strapping - BR

(l) Removal or Repair

29705 Removal or bivalving full leg cast, below knee cast, ankle cast or foot cast - BR

29730 Windowing of cast - $7.16

29740 Wedging of cast (except clubfoot casts) - $8.95

29750 Wedging of cluboot cast, unilateral - $8.95

29751 bilateral - $11.94

(m) Other Procedures

29799 Unlisted procedures, musculoskeletal system (see guidelines) - BR

(n) Cardiovasular System

Venous

36470 Injection of sclerosing solution, single vein; - $8.35

36471 multiple veins, same leg (includes ankle) - $11.94

(o) Arterial

36600 Arterial puncture, withdrawal of blood for dianosis - $5.96

37799 Unlisted podiatric procedure, cardiovascular system (see guidelines) - BR

(p) Nervous System

Peripheral Nerves
Injection (Nerve Block)
Anesthetic Agent, Diagnostic or Therapeutic

64450 Injection anesthetic agent, peripheral nerve or branch; - $17.90

(q) Exploration, Neurolysis or Nerve Decompression

64702 Neurolysis, digit; - $143.18

64704 Neurolysis, nerve of foot; - $238.63

64722 Decompression; unspecified nerve(s) (specify) - BR

64726 Decompression, plantar digital nerve - BR

64727 Neurolysis, internal with or without microdissection (list separately as E4727 in addition to code number of neurolysis) - BR

(r) Excision

Somatic Nerves

64774 Excision of traumatic neuroma, cutaneous nerve, surgically identifiable; - $89.50

64776 digital nerve, one or both, same digit; - $89.50

64778 digital nerve, each additional digit (list separately by this number) - BR

64782 foot - $178.97

64783 foot each additional nerve, except same digit (list separately by this number) - BR

64787 Insertion of plastic cap on nerve end - BR

64788 Excision of neurofibroma or neurolemmoma; cutaneous nerve - $178.97

64790 major peripheral nerve - BR

64792 extensive (including malignant type) - $596.57

Repair (Neurorrhaphy)

64830 Microdissection and/or microrepair of nerve (list separately using 64830 in addition to code for nerve repair - BR

64831 Suture of nerve (neurorrhaphy), digital, foot, one nerve; - $298.29

64832 each addtional digital nerve - $35.79

64834 Suture of one nerve, foot, sensory - $238.63

64840 Suture of nerve, foot, posterior tibial nerve primary or secondary; - BR

64837 suture of each addtional nerve, foot - BR

Other Procedures

64999 Unlisted procedure, nervous system (see guidelines) - BR

Diagnositc Radiology

(For biomechanical determinaition and diagnositic evaluation)

73500 Radiologic examiniation, hip, unilateral, one view; - $19.46

73510 complete, minimum of two views - $24.29

73520 Radiologic examination, hips, bilateral, minimum of two views, of each hip, including anteroposterior view of pelvis; - $37.35

73540 Radiologic examination, pelvis and hips, infant or child minimum of two views; - $24.89

73550 Femur, anteroposterior and lateral views; - $23.34

73560 Radiologic examination, knee, anteroposterior and lateral views - $17.12

73570 knee, three or more views - $24.89

73590 Radiologic examination, tibia and fibula, anterio-posterior and lateral views; - $18.68

73592 lower extremity, infant, minimum of two views - $18.68

73600 Radiologic examination, ankle, anteroposterior and lateral views; - $17.12

73610 complete, minimum of three views; - $23.34

73620 Radiologic examination, foot, anteroposterior and lateral views; - $15.57

73630 complete, minimum of three views; - $16.86

73650 Radiologic examination, os calcis, minimum of two views; - $17.12

73660 toe or toes, minimum of two views - $14.00

(s) Miscellaneous

76020 Radiologic examination, bone age studies, - $23.34

76040 bone length studies (orthoroentgenogram) - $38.91

76080 Radiologic examination, fistual or sinus tract study, supervision and interpretation only; - $46.69

76081 complete procedure - BR

76127 Procedures using Polaroid or similar photographic media - BR

76130 Radiologic examination at bedside or in operating room, not otherwise specified - BR

76134 in home - BR

76137 outside regular hours - BR

76140 Consultation on x-ray examination made else where, written report; - BR

76300 Themography - BR

76499 Unlisted diagnostic radiologic procedure (see guide-lines) - BR

(t) Peripheral Vascular System

76900 Periperhal flow study (Doppler), arterial - $58.36

76910 venous - $58.36

76920 arterial and venous (76900 and 76910 combined) - $70.42

(u) Micellaneous

76970 Ultrasound study follow-up (not listed above) - BR

76999 Unlisted diagnostic ultrasound examination (see guidelines) - BR

(v) Microbiology

87081 Culture, all other sources, screening only, for single organsim per plate or tube; - $5.19

87085 including sensitivity study, up to 20 disks; - $16.20

87101 Culture, fungi, isolation, skin; - $6.16

87102 other source - $7.46

87106 definitive identification - $12.32

87205 Smear, primary source, with interpretation; routine stain for bacteria, fungi, or cell types - $6.50

4. The Department proposes to repeal Rule 46.12.519 because it is to be replaced by proposed Rule I of this notice, therefore, making it redundant.

5. The Department is proposing these rules to specify the services covered under the medical assistance program and to establish a fee schedule to allow for effective budgetary controls.

6. Interested parties may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to the Office of Legal Affairs, P. O. Box 4210, Helena, Montana 59601, no later than September 12, 1980.

7. Joyce Andrus, Office of Legal Affairs, Box 4210, Helena, Montana 59601, has been designated to preside over and conduct the hearing.

8. The authority of the agency to repeal Rule 46.12.519 and make the proposed rules is based on Section 53-6-113 MCA and the rules implement Section 53-6-101 and 53-6-141 MCA.

BY: Jon A. Meredith
Director, Social and Rehabilitation Services

Certified to the Secretary of State August 5, 1980

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

In the matter of the adoption of rules to define the handicapping conditions "Deaf-Blind) and Multihandicapped" which pertain to special education children.	NOTICE OF THE ADOPTION OF RULES PERTAINING TO THE DEFINITIONS OF "DEAF-BLIND" RULE 10.16.212 and "MULTI-HANDICAPPED" RULE 10.16.213

TO: All Interested Persons:

1. On May 15, 1980 the superintendent of public instruction published a notice of a proposed adoption of rules concerning the definitions of handicapping conditions "Deaf-Blind" and "Multihandicapped" which pertains to special education children at page 1479 of the 1980 Montana Administrative Register, issue number 9.

2. The superintendent has adopted the rule as proposed.

3. On October 22, 1979, a public hearing was held to consider the adoption of the rules and testimony was heard. The time period lapsed and the rules were submitted again on May 15, 1980. The following comments were received at the October 22, 1979 hearing.

COMMENT: The superintendent has superceded her authority to define handicapping categories which are not established in state law. Regulation is established by what is in law and is demonstrated in how the other definitions are established. The law should be changed before the regulations are adopted.

RESPONSE: The office does not concur. Under state law one of the duties of the superintendent is to administer the policies adopted by the board of public education. Sec. 20-7-402 M.C.A. The Board policy requires correct identifications of handicaps and proper educational placement. Rule ARM 10.60.102(1) 10.61.103(3).

A primary purpose for including all handicapping conditions is for reporting purposes. The Federal Child Counts taken annually on December 1 are the basis for generating federal funding. These counts require the state to report numbers of handicapped children being served in special education by each of eleven recognized handicapping conditions. At present, federal child count reporting forms by regulation include categories for multihandicapped and deaf-blind. The adoption of this rule will bring Montana in line with federal regulations as well as board policy.

In general, the definitions currently found in state law parallel the federal regulations adopted in 1977. 45C.F.R. 121a.5. However, the state law was passed before the federal regulations were approved in their final form. Therefore the definitions "deaf-blind" and "multihandicapped" were not incorporated into state law. At the time the state law was passed, it was not yet evident these definitions would appear in federal regulations.

The superintendent is adopting the definitions "deaf-blind" and "multihandicapped" in order to match state regulations to federal regulations.

COMMENT: A child identified as "multihandicapped" or "deaf-blind" could be segregated into special classes when in fact the child's appropriate placement might be in a class which is not specifically designed to meet the identified handicap.

RESPONSE: The identification of a child as "deaf-blind" or "multihandicapped" does not determine the mode of services to be provided. The definitions are intended to allow an identification which will allow proper placement based on the services required for each child so identified.

COMMENT: Is it the intent of the definitions to narrow or broaden the scope of possible services to individuals in these categories?

RESPONSE: The intent of the definitions is to provide more leeway in identifying a child's handicapping condition(s) in order to assure proper services. The intent is not to narrow or broaden the scope of possible services.

COMMENT: Does a "slow learner" qualify under the definition "multihandicapped" if he/she has another handicapping condition?

RESPONSE: "Slow learner" is not presently a defined handicapping condition so does not qualify under the definition "multihandicapped."

COMMENT: The definition "multihandicapped" assumes that education classes are designed categorically which is not the case. The basic needs of multihandicapped children require a range of special services such as occupational therapy, physical therapy, speech and language, etc. A definition should take these conditions into consideration.

RESPONSE: The office agrees that the needs of multihandicapped children require a range of special services. It does not concur that the definitions are intended to determine the mode of services required. As stated in the preceding responses, the intent is to provide more leeway in identifying handicapping conditions.

COMMENT: Can the label "multihandicapped" be applied to learning disabled who also have accompanying speech and language problems or orthopedic problems? Some of the examples stated in the regulation seem to imply that perhaps mental retardation of necessity is one of the primary handicapping conditions. Is this true?

RESPONSE: Multihandicapped refers to concomitant impairments, the combination of which creates educational problems of such severe nature that a total integrated program of special education and related services are necessary to meet the needs of the child. Therefore, although a multihandicapped child may have specific learning disabilities the existence of a learning disability plus another handicapping condition is not sufficient to justify identification of a child as "multihandicapped." A multihandicapped child typically cannot be appropriately served via services designed specifically for a specific handicapping condition but rather must be provided a total therapeutic environment. For example, a child who can be

served via a resource room for a learning disability or who is educationally mentally retarded and receives speech therapy for an articulation problem would not be classified as multihandicapped. However, a child who is severely retarded with concomitant severe language deficits requiring a comprehensive program would be multihandicapped.

Ordinarily the classification of "multihandicapped" would not be applied to learning disabled children who also have accompanying speech and language problems or orthopedic problems. In a rare case, however, the term might be applied to such a combination.

Typically a multihandicapped condition would appear in connection with mental retardation. Although the term multihandicapped would often be used in connection with mental retardation, mental retardation is not of necessity one of the primary handicapping conditions.

The term "multihandicapped" does not apply to a deaf-blind child.

COMMENT: If a learning disabled child is also eligible for services under the "multihandicapped" designation, what are the implications regarding the two percent limit for learning disabled children currently in effect?

RESPONSE: Typically there would be very few learning disabled children who would be identified as "multihandicapped." (See above). In any event, the two percent limitation would not be a problem because in September 1977, the two percent limitation requirements were deleted from federal regulations. Although the two percent limitation is still required by state regulation, any potential conflicts may be eliminated by amending the state regulation. In addition, if a child is identified as learning disabled with a concomitant impairment, the child would not be subject to the two percent limitation.

No comments opposing the adoption were received after the May 15, 1980 publication. One comment was received favoring it.

BY Phillip Ward, Jr.
PHILLIP WARD, JR.
Department Administrator
Office of Public Instruction

Certified to the Secretary of State _____, 1980.

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

In the matter of the amendment of Rule ARM 10.16.1805 Supervisors of Special Education to allow the addition of one-half or three-quarter time supervisors of special education	NOTICE OF THE AMENDMENT OF RULE ARM 10.16.1805 PERTAINING TO SUPERVISORS OF SPECIAL EDUCATION

TO: All Interested Persons:

1. On May 15, 1980, the superintendent of public instruction published notice of a proposed amendment to rule ARM 10.16.1805 concerning supervisors of special education at page 1476 of the 1980 Montana Administrative Register, issue number 9.

2. The superintendent has amended the rule as proposed.

3. On October 22, 1979, a public hearing was held to consider the amendment of the rule and testimony was heard. The time period for adoption of the rule lapsed and the rule was submitted again in May 15, 1980. The following comments and responses include the testimony given at the October 22, 1979 hearing.

COMMENT: Allowing a part-time supervisor will virtually destroy the cooperatives because now the medium size schools (1,000-2,500 students) will go it alone making it totally impossible for any of the other schools to muster enough students or staff to get a full time director.

RESPONSE: The office does not concur. The function of the cooperatives is to provide a full range of services that would otherwise be unavailable to a smaller school. The office does not feel that providing more flexiblity in staffing will undermine the overall function of the cooperatives.

COMMENT: Special education supervisors are not required by accreditation standards. Therefore a district doesn't need to have one, so why lower the standard? Part-time supervisors will not be well trained or qualified to direct special education programs.

RESPONSE: The office does not concur. The proposed rule in no way lessens the standard for supervisors of special education. Although a district is not required to employ a special education supervisor, any such person so employed on a full or part-time basis is required to meet the same standard of training-endorsement as they otherwise would have to meet. The intent of this rule is to encourage districts to employ qualified supervisors in areas not now having special education supervision.

COMMENT: If exceptional circumstances exists, the office of public instruction can make an exception to the rules on a yearly basis. There is no need for a change in regulations because the school district can accomplish the same result using Rule ARM 10.16.102(3).

RESPONSE: The office does not concur. Adoption of the regulation would reduce the number of yearly requests. The

need for part-time supervision has continued for several years, therefore does not qualify as a special circumstance. The cited rule should only be used in special circumstances.

COMMENT: The provision which allows a part-time supervisor in addition to a full time supervisor should be retained. The provision which allows a part-time supervisor when there are insufficient numbers to require a full time supervisor should be dropped.

RESPONSE: The office does not concur. In many instances smaller rural schools which do not meet the minimum requirements for a full time supervisor cannot have special education supervision unless part-time supervisors are permitted.

COMMENT: The only result of this rule is the lessening of services to handicapped children.

RESPONSE: The office does not concur. State and federal law require that special education students receive adequate instruction. Allowing the employment of part-time supervisors is intended to give the local districts more flexibility in balancing instructional and supervisory staff.

COMMENT: Part-time supervisors will reduce the quality of services in that there will be far fewer opportunities to insure adequate record keeping and program implementation, not to mention compliance with the state regulations.

RESPONSE: The office does not concur. In larger schools the employment of part-time supervisors will lessen the workload of full time supervisors who have numbers of personnel or students well over the minimum required. This will increase the likelihood of adequate supervision of record keeping, program implementation and will more likely insure compliance with special education laws. In smaller schools it will allow supervision where none was possible prior to establishment of this rule.

BY Phillip Ward Jr.
PHILLIP WARD, JR.
Department Administrator
Office of Public Instruction

Certified to the Secretary of State, August 5, 1980.

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

In the matter of the repeal of ARM 16.8.801, 16.8.803, 16.8.804 (16-2.14(1)-S14040) Ambient Air Quality Standards and the adoption of new rules relating to ambient air quality standards	NOTICE OF THE REPEAL OF RULES ARM 16.8.801, 16.8.803. 16.8.804 (16-2.14(1)-S14040) AND THE ADOPTION OF NEW RULES RELATING TO AMBIENT AIR QUALITY STANDARDS

TO: All Interested Persons

1. On February 14, 1980, the Board of Health and Environmental Sciences ("Board") published notice of the proposed repeal of ARM 16-2.14(1)-S14040 and the adoption of new rules relating to ambient air quality standards at pages 456-462 of the 1980 Montana Administrative Register, issue Number 3.

2. The Board has repealed ARM rules 16.8.801, 16.8.803, 16.8.804 (ARM 16-2.14(1)-S14040) as proposed.

RULE I PURPOSE The Board has adopted this rule as proposed.

RULE II DEFINITIONS The Board has adopted the rule with the following changes:

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

(4) "Annual average" means an arithmetic average of all valid recorded averages of any 12 consecutive calendar months provided that:

(a) at least ~~forty~~ forty-five 24-hour average recorded values are necessary and each of these values must be separated from the previous value by at least 6 days, or

(b) at least ~~5840~~ 6570 hourly average valid recorded values are necessary with a minimum of 400 of such values recorded in each of the 12 consecutive calendar months.

(5)-(17) Same as proposed rule.

(18) "Monthly average" means an arithmetic average of all valid recorded values of fluoride in forage samples collected in accordance with the department's approved forage sampling protocol during any calendar month. The minimum number of such valid recorded values shall be four, provided that each of these four values must be separated from the previous value by at least six days.

~~(18)~~ (19) "Ninety day average" means an arithmetic average of all valid recorded values during any ninety consecutive days. The minimum number of valid recorded values shall be ten provided that each of these values must be separated from the previous value by at least six days.

~~(19)~~ (20) "Nitrogen dioxide" means the gas having the molecular composition of one nitrogen atom and two oxygen atoms.

~~(20)~~ (21) "Ozone" means the gas having the molecular

composition of three oxygen atoms.

~~(21)~~ (22) "Particle scattering coefficient" means the fractional change in the light intensity per meter of sight path due to particulate matter.

~~(22)~~ (23) "Particulate matter" means any material, except water in an uncombined form, that is or has been airborne and exists as a liquid or a solid at standard conditions.

~~(23)~~ (24) "Parts per billion" (ppb) means a concentration of an air contaminant numerically equal to the volume of a gaseous air contaminant present in one billion volumes of air at the same conditions of temperature and pressure.

~~(24)~~ (25) "Parts per million" (ppm) means a concentration of an air contaminant numerically equal to the volume of a gaseous air contaminant present ir one million volumes of air at the same conditions of temperature and pressure.

~~(25)~~ (26) "Standard conditions" means a temperature of 25° Celsius and a pressure of 760 millimeters of mercury.

~~(26)~~ (27) "Sulfur dioxide" means the gas having the molecular composition of one sulfur atom and two oxygen atoms.

~~(27)~~ (28) "Thirty-day average" means an arithmetic average of all recorded values during any consecutive thirty days, but not less than twenty valid twenty-four hour average recorded values or an integral sample of more than twenty days.

~~(28)~~ (29) "Twenty-four hour average" means an arithmetic average of each valid recorded value during any consecutive twenty-four hours, but not less than eighteen valid hourly averages or an integral sample of more than eighteen hours.

~~(29)~~ (30) "Valid recorded value" means data recorded, collected, transmitted and analyzed as required by Rule IV of this sub-chapter.

~~(30)~~ (31) "Year" means any 12 consecutive months.

RULE III ENFORCEABILITY The Board adopted this rule as proposed.

RULE IV METHODS AND DATA The Board adopted this rule with the following change:

Except as otherwise provided in this sub-chapter, all sampling and data collection, recording, analysis and transmittal, including but not limited to site selection, calibrations, precision and accuracy determinations must be performed as specified in Title 40, Part 58, (Appendices A through E), Code of Federal Regulations (1979). Any valid recorded value at any one monitoring device which exceeds the applicable ambient air quality standard shall constitute an exceedance at that monitoring location but not at any other monitoring location and permitted exceedances shall be applicable to each monitoring location. If a valid recorded value comprises in

whole or in part an exceedance of an ambient air quality standard, such recorded value shall not comprise in whole or in part an exceedance of the same ambient air quality standard.

RULE V AMBIENT AIR QUALITY STANDARDS FOR CARBON MONOXIDE The Board adopted this rule as proposed.

RULE VI ~~AMBIENT AIR QUALITY STANDARDS FOR FLUORIDES~~ FLUORIDE IN FORAGE

~~(1) No person shall cause or contribute to concentrations of fluorides in the ambient air or in forage which exceed any of the following standards:~~

~~(a) Hydrogen fluoride~~

~~(i) Twenty-four hour average: 1 part per billion hydrogen fluoride, 24 hour average, not to be exceeded more than once per year;~~

~~(ii) Thirty-day average: 0.30 parts per billion hydrogen fluoride, 30 day average, not to be exceeded more than once per year.~~

~~(b) Fluoride in or on forage: 35 micrograms per gram fluoride in or on forage, annual average, with no monthly average to exceed 50 micrograms per gram.~~

~~(2) Measurement method for hydrogen fluoride: For determining compliance with this rule, concentrations of hydrogen fluoride shall be measured by the double tape sampler, as more fully described in "Methods of Air Sampling and Analysis, Second Edition" (1977) Method No. 42222-02-72T, as modified by the addition of a heated stainless steel sample inlet line, with the NaOH impregnated tape analyzed by the semiautomated method discussed in "Methods of Air Sampling and Analysis, Second Edition" (1977) Method No. 122-2-02-68T, section 7.3, or by an approved equivalent method.~~

(1) No person shall cause or contribute to concentrations of fluoride in or on forage which exceed the following standard:

(a) Monthly average: 20 micrograms per gram.

~~(3)~~ (2) Sampling method for fluoride in or on forage: For determining compliance with this rule, concentrations of fluorides in or on forage shall be determined from forage collected according to a sampling protocol approved by the department and analyzed by the semiautomated method, as more fully described in "Methods of Air Sampling and Analysis, Second Edition" (1977), Method No. 122-2-02-68T, provided that the surfaces of the plant material are not to be washed, or by an approved equivalent method.

RULE VII AMBIENT AIR QUALITY STANDARD FOR HYDROGEN SULFIDE The Board adopted this rule as proposed.

RULE VIII AMBIENT AIR QUALITY STANDARD FOR LEAD The Board adopted this rule as proposed.

RULE IX AMBIENT AIR QUALITY STANDARDS FOR NITROGEN OXIDE The Board adopted this rule as proposed.

RULE X AMBIENT AIR QUALITY STANDARD FOR OZONE The Board adopted this rule as proposed.

RULE XI AMBIENT AIR QUALITY STANDARD FOR SETTLED PARTICULATE MATTER The Board adopted this rule as proposed.

RULE XII AMBIENT AIR QUALITY STANDARDS FOR SULFUR DIOXIDE The Board adopted this rule with the following changes:

(1) No person shall cause or contribute to concentrations of sulfur dioxide in the ambient air which exceed any of the following standards:

(a) Hourly average: 0.50 parts per million, 1-hour average, not to be exceeded more than ~~once per year~~, 18 times in any twelve consecutive months;

(b) Same as proposed.

(c) Same as proposed.

(2) Same as proposed.

RULE XIII AMBIENT AIR QUALITY STANDARDS FOR TOTAL SUSPENDED PARTICULATE MATTER The Board adopted this rule as proposed.

RULE XIV AMBIENT AIR QUALITY STANDARD FOR VISIBILITY The Board adopted this rule with the following changes:

(1) Same as proposed rule.

(a) Same as proposed rule.

(2) The provisions of subsection (1) are applicable only in Class I areas as are ~~and as may be~~ designated under the Montana Clean Air Act rules, ~~ARM 16-2.14(1)-S1418~~, Prevention of Significant Deterioration, [~~recodified as~~ Title 16, Chapter 8, sub-chapter 9, ARM] ~~of the Montana Clean Air Act rules~~ on the effective date of this rule. Areas redesignated Class I subsequent to the effective date of this rule shall be subject to the provisions of subsection (1) only upon a finding by the board that visibility is an important attribute of such area.

(3) Same as proposed rule.

3. Summaries of comments and testimony on the proposed rules in addition to the Board's responses are as follows:

RULE II DEFINITIONS

SECTION: Generally
COMMENTORS: Air Resources (Cenex), Conoco
COMMENT: The language used to define averaging times would allow use of data from only about two-thirds of the averaging period, thereby narrowing the data base and effectively making the standard more stringent. In addition, since these monitoring frequencies contain large differences from federal (EPA) requirements, two sets of books will be required and the acceptability of the Montana state implementation plan (SIP) will be jeopardized. The definitions should be revised to allow omission of not less than 10% of the data for contiguous time periods within an averaging period.
RESPONSE: The averaging period definitions clearly state that all valid recorded values constitute the value for the particular averaging period. The minimum numbers of values specified in the averaging period definitions are included only to allow for occasional equipment failure or variation in measurement.

The Board agrees with the Department that, while a blanket requirement for 90% data sampling is not necessary, a requirement of 75% data collection is proper in the case of the annual average so that seasonal variations may be taken into account. A similar requirement is not necessary for shorter averaging periods. Therefore, the definition of "annual average" is revised to read: "'Annual average' means an arithmetic average of all valid recorded values of any 12 consecutive calendar months provided that: (a) at least forty-five (45) 24-hour average recorded values are necessary and each of these values must be separated from the previous value by at least six (6) days, or (b) at least 6570 hourly averages recorded values are necessary, with a minimum of 400 such values recorded in each of the 12 consecutive calendar months."

Finally, the data requirements for state and federal standards will be virtually the same and will not require two sets of books. Nor will the state ambient standards be part

of the Montana state implementation plan (SIP).

SECTION: Generally
COMMENTOR: Stauffer Chemical Company
COMMENT: There is no definition for "monthly average" applicable to the fluoride in forage standard.
RESPONSE: The following definition of monthly average is added to Rule II: "'Monthly average' means an arithmetic average of all recorded values of fluoride in forage samples collected during any calendar monthly in accordance with the Department's approved sampling protocol. The minimum number of such valid recorded values shall be four (4), provided that each of these four (4) values must be separated from the previous value by at least six (6) days."

SUBSECTION (18)
COMMENTOR: Larry Allen
COMMENT: The ninety (90) day averaging period used for the lead standard requires less data than that necessary for the thirty (30) day averaging period.
RESPONSE: The measurement method for lead is the high volume sampler, operated every sixth day while the 30-day hydrogen fluoride standard uses the tape sampler which is operated every day. The difference in measurement methods explains the different data requirements. The data required will yield representative averages for both the 90-day and 30-day averaging periods.

SUBSECTION (18)
COMMENTOR: ASARCO
COMMENT: The 90-day averaging period for lead should not be substituted for the calendar quarter average since it will require fifteen times more paperwork.
RESPONSE: The Department is already equipped to perform such computations with a minimal increase in time or effort.

SUBSECTION (28)
COMMENTOR: Exxon
COMMENT: The 24-hour standard for total suspected particulate matter does not have a federal calculation method since it uses a 24-hour composite sample.

RESPONSE: The apparent inconsistency lies in the sampling method. In addition to the high-volume sampler, particulate may be measured by a beta-counting device. Should the latter become an equivalent method, the state standard will have provided for its recognition.

SECTION: Generally
COMMENTOR: Air Resources (Cenex)
COMMENT: The Department's definitions of averaging periods are often inconsistent with those required under the measurement method specified in the rules for particular pollutants. The sampling times and averaging periods should be coordinated and standardized.
RESPONSE: The ability of measurement methods and their associated instrumentation to record with precision is not complete. Since occasional variations in sampling frequency are advisable, automatic coordination of measurements required by sampling periods and averaging periods is not provided for in the air quality rules.

SUBSECTION (5)
COMMENTOR: Air Resources
COMMENT: The broad definition of "Approved Equivalent Method" will operate to bypass the precise measuring methods developed by EPA and instrument manufacturers. This definition does not contemplate any procedure to ensure that "other methods" are consistent with federal methods.
RESPONSE: EPA methods will be used for all criteria pollutants. Equivalent methods for non-criteria pollutants must be approved by the Department.

SUBSECTION (2)
COMMENTOR: Jennifer O'Laughlin
COMMENT: The definition of "ambient air" should be reconsidered to assure protection of workers from non-work exposure to air pollutants.
RESPONSE: Establishment of a statewide standard geared to varying levels of occupational exposure is not feasible. The standards will prevent exposure to elevated off-site levels of pollutants.

RULE III ENFORCEABILITY

COMMENTORS: Anaconda Copper Company, Cenex, Exxon, Conoco.
COMMENT: The ambient standards were not intended by the Legislature to be enforceable and should be goals and guidelines as they were declared to be when originally adopted by the Board in 1967.
RESPONSE: Ambient air quality standards are properly set as maximum permissible concentrations of pollutants in the air and should be enforceable.
COMMENTORS: Anaconda Copper Company, ASARCO, Cenex, Exxon, Conoco, Montana Power Company
COMMENT: If they are to be enforceable, air quality standards should be enforced only through the device of emission standards. A source in compliance with an emission standard should not be potentially liable for violations of an ambient air quality standard.

Direct enforcement (use of administrative and judicial remedies) of air quality standards is improper both legally and as a practical, cost-effective enforcement approach. Rule III should be revised to limit the available enforcement techniques to emission standards only.
RESPONSE: The Board overrules the suggestion. Administrative and judicial remedies are provided by the Montana Clean Air Act as useful and proper complements to emission standards in the enforcement of air quality standards.

Multiple source areas generally entail more complex technical questions associated with enforcement of air pollution regulations and generally require more attention and effort regardless of which enforcement approach is followed. In some other cases, direct enforcement of air quality standards can be especially useful. Selection of specific enforcement methods for individual cases is the responsibility of the Department.
COMMENTOR: Exxon
COMMENT: One objection to the "emission standards only" approach to enforcement is that the public might not be protected from elevated pollutant levels pending reformulation of an emission standard. The Montana Clean Air Act's emergency provisions could be used during such periods.
RESPONSE: The emergency provisions are designed for

short-term situations and do not lend themselves to use over longer periods of time.
COMMENTOR: Cenex
COMMENT: The direct enforcement approach will have substantial financial impacts, especially in multiple source areas. The costs will fall not only on industrial sources but will also affect non-industrial sources such as area sources of particulate, county and city roads, homeowners, automobile owners and other sources of urban pollutants. The standards should be enforced only by emission standards to avoid this cost and confusion.
RESPONSE: Enforcement of air pollution regulations in multiple source areas is generally more complex than in other areas. Some increase in costs may be associated with direct enforcement. The manner in which the Department responds to particular cases of ambient noncompliance depends upon considerations such as the nature of the source, the nature and severity of the noncompliance, the available enforcement options, and so on. Workable methods to control nonpoint pollution have been implemented in the state. Federal and state standards for urban pollutants have existed for many years. Availability of administrative and judicial remedies is unlikely to result in public confusion.
COMMENTOR: ASARCO, Conoco, Exxon
COMMENT: Many of the industrial sources in the state have expended substantial funds to control emissions as part of the state implementation plan (SIP) to meet national ambient standards. These compliance plans were agreements relied on by sources and the Board should allow sources complying with such emission limitations a grace period of ten (10) years rather than requiring such sources to institute immediately additional control programs to comply with new more stringent air quality standards. Alternatively, sources should be given some time to submit a compliance schedule to develop a logical attainment program. Either of such periods would protect sources from instantaneous civil and criminal penalties.
RESPONSE: The emission reduction plans agreed to by some of the state's major polluters are not contracts but are conditions for continued operation of a facility not in compliance with an applicable law or regulation.

Some sources in the state have operated for many years in noncompliance with the state's rule on ambient air quality standards. The Board has determined not to

delay the effective date of its rules on air quality standards. The Montana Clean Air Act designates the Department with selecting proper methods of enforcing Board rules. In the event that any further controls may be necessary for a source to achieve the state's standards, the Department may require a compliance plan and attainment schedule as one of its enforcement options.

RULE IV METHODS AND DATA
COMMENTOR: ASARCO
COMMENT: The sulfur dioxide standards should be made less stringent because of the altitude at which most Montanans live. Since most citizens live well above sea level, they will inhale about 20% less sulfur dioxide than they would at sea level.
RESPONSE: The Board accepts the Department's position that considerations of measurement and of physiological changes at higher altitudes undermine this theoretical argument as a basis for adopting less stringent ambient standards.
COMMENTOR: Peter Rice, Environmental Information Center
COMMENT: Measurement of sulfur dioxide should include the use of sulfation plates which provide a handy and inexpensive method especially useful in a state like Montana.
RESPONSE: The sulfation plate method is not yet sufficiently proven as a reliable regulatory mechanism.
COMMENTOR: Stauffer Chemical Company
COMMENT: The analytical method used to measure ambient fluoride levels in the vicinity of the Stauffer plant is imprecise and prevents accurate estimations or projections of hydrogen fluoride in the area.
RESPONSE: The Board accepts the Department's substantial concurrence with the comment and has deferred adoption of an ambient standard for hydrogen fluoride pending resolution of questions concerning the dual tape sampler.
COMMENTOR: Department of Health and Environmental Sciences
COMMENT: On its own initiative, the Department proposed a minor amendment to Rule IV to reflect EPA policy on network determinations of violations.

RESPONSE: The Board accepts the Department's revisions and agrees that Rule IV should be revised to read as follows:

RULE IV METHODS AND DATA

Except as otherwise provided in this sub-chapter, all sampling and data collection, recording, analysis, and transmittal, including but not limited to site selection, calibrations, precision and accuracy determinations must be performed as specified in Title 40, Part 58, (Appendices A through E), Code of Federal Regulations (1979). Any valid recorded value at any one monitoring device which exceeds the applicable ambient air quality standard shall constitute an exceedance at that monitoring location but not at any other monitoring location and permitted exceedances shall be applicable to each monitoring location. If a valid recorded value comprises in whole or in part an exceedance of an ambient air quality standard, such recorded value shall not comprise in whole or in part an additional exceedance of the same ambient air quality standard.

RULE V AMBIENT AIR QUALITY STANDARDS FOR CARBON MONOXIDE

SUBSECTION (1) (a)
COMMENTOR: Air Resources (Cenex)
COMMENT: The extrapolation of animal data to humans has never been proven and should not be used to support the standard.
RESPONSE: Exposure of animals to lower carbon monoxide concentrations is relevant to a determination of the effect of low levels of carboxyhemoglobin.
COMMENTOR: IR&T (Exxon and Conoco)
COMMENT: There is no justification for selection of 2% carboxyhemoglobin as the level not to be exceeded nor is the susceptible population defined.
RESPONSE: Carboxyhemoglobin levels of 3-5% have been associated with decreased physical capacity for exercise and increased errors in mental activity in general and sensitive populations. There is uncertainty in specifying concentrations of carboxyhemoglobin below which no effect on human health will occur. The size of the susceptible population may be large since it may include pregnant women, angina patients, men with incipient coronary artery

disease, and those with chronically impaired lung function.

SUBSECTION (1) (a)
COMMENTOR: Air Resources (Cenex)
COMMENT: The Board should not vary from the federal standard where the Department's use of the Coburn-Foster-Kane equation is unclear.
RESPONSE: There is no basis for the assertion that the Coburn-Foster-Kane equation was improperly applied.

SECTION: Generally
COMMENTOR: IR&T (Exxon and Conoco)
COMMENT: The rationale for tailoring the standard to air elevation of 3000 feet should be based upon careful analysis of the relative proportions of the state's population residing at this elevation. An elevation-specific regional approach has been used for the Lake Tahoe region of California and would be appropriate for Montana.
RESPONSE: The Board disagrees that such an approach is needed for Montana since there are few problems with carbon monoxide in the higher elevation cities of Montana. Billings, at an altitude of 3100 feet, is representative of urban areas experiencing elevated levels of carbon monoxide in the state and has been used to derive the standard.

SECTION: Generally
COMMENTOR: IR&T (Exxon and Conoco)
COMMENT: The actual dose (mg CO/kg body weight) of inhaled atmospheric carbon monoxide is less at higher altitudes. Therefore, the Board should adopt altitude-adjusted one-hour standards for the state such that a standard of 23 parts per million would apply to sea level areas, 26 parts per million at 3000 feet, and 28 parts per million at 5000 feet.
RESPONSE: Less oxygen is available for respiration at higher altitudes. Carbon monoxide may be expected to aggravate this oxygen deficiency. Since carbon monoxide and high altitude have an additive effect upon oxygen availability, standards should not be less stringent at higher altitudes.

RULE VI STANDARD FOR FLUORIDE IN FORAGE

COMMENTOR: Stauffer Chemical
COMMENT: The analytical method used to measure ambient fluoride levels in the vicinity of the Stauffer plant has proven to be imprecise and has prevented accurate estimations or projections of hydrogen fluoride in the area.
RESPONSE: The Board accepts the Department's substantial concurrence with the comment and has deferred adoption of an ambient standard for hydrogen fluoride pending resolution of questions concerning the dual tape sampler. The Department is committed to prepare hydrogen fluoride standards for proposed adoption within one year.
COMMENTOR: Stauffer Chemical Company
COMMENT: While the proposal to use an annual average in combination with a maximum monthly average is conceptually sound, the actual levels proposed are unnecessarily stringent. Currently available literature clearly indicates that a standard of 40 parts per million annual average, 60 parts per million two-month average, and 80 parts per million one-month average would fully protect livestock from impairment of performance thereby preventing economic losses to owners.
RESPONSE: The Board overrules the suggestion. The proposal in the comment apparently derives from controlled feeding experiments, the results of which do not take into account the stress to which field cattle are subject. Moreover, the use of an annual average, even accompanied by a maximum monthly average of 50 parts per million allows for the high variability in actual forage fluoride levels over a period of time and may significantly fail to reflect actual levels of fluoride ingested. An annual average, therefore, would be less protection than a monthly average and so has not been selected by the Board for use in the standard.

Field studies of cattle fluorosis in several states, including Montana, strongly suggest that a forage standard of 20 to 30 parts per million is necessary to protect cattle from excessive injury from fluoride. Severe fluorosis has been observed when forage fluoride levels averaged less than 30 parts per million and there is some evidence that severe effects may be observed when fluoride in forage is as low as 10 parts per million.

For these reasons, the Board cannot endorse the 40-60-80 standard suggested by the commentor. The Board

accepts the conclusions of other researchers who have recommended that fluoride in forage not exceed levels of from 20 to 25 parts per million and adopts a standard of 20 micrograms per gram, monthly average.

SECTION (1) (b)
COMMENTOR: Stauffer Chemical Company
COMMENT: The only data submitted to the Board shows that current forage fluoride levels in the Ramsay area are significantly higher than the Department's proposed standard. Since accumulated levels may decrease over time, the Board should at least defer adoption of the proposed standards until compliance with the standard may be thorougly evaluated.

Stauffer has proposed a scientifically based standard that would protect cattle and the Company would continue to compensate area ranchers until economic damage has ceased.

The forage sampling protocol should be subject to rulemaking and should be adopted as an integral part of the forage standard. (Also recommended by Anaconda Aluminum Company.)
RESPONSE: The Board has determined that significant effects on cattle may be expected at the levels recommended by the Department. While the Board is directed by the Montana Clean Air Act to balance welfare interests, the Board will not by rule formally endorse fluoride levels recognized as inadequate to protect cattle in the state. The Board also concludes that privately negotiated agreements for compensation do not relieve it of adopting standards to protect affected cattle to the extent practicable.

There are two existing major sources of fluoride in the state. Although the Department has projected that the Anaconda Aluminum Company would comply with its proposed forage standard, there is no indication that cattle ranching is at all affected in the vicinity of the plant. The fluoride emissions of Stuaffer Chemical Company have had a substantial impact on cattle ranching in the area of Ramsay, Montana.

Stauffer's request for deferral of a standard is based upon the company's representation that current levels of forage fluoride will prevent it from meeting either the Department's proposal or the Company's own less stringent proposal. It is fully inappropriate to defer adoption of a forage standard for an indefinite time in order to project compliance with standards determined by the Board to be substantially inadequate to protect cattle. Therefore, in order to protect cattle affected by fluoride emissions of existing and future sources, the Board is adopting a standard of 20 micrograms per gram, monthly average.

The Board agrees with the Department that the protocol by which sampling of forage is to be conducted is not appropriate for inclusion in the forage standard itself. Rather, the Department should review information pertinent to the Board's findings and should design and approve a forage sampling protocol to carry out the primary intent of the Board which is the protection of cattle in the areas surrounding the State's major sources of flouride emissions.

SECTION (1) (b)
COMMENTOR: Stauffer Chemical Company
COMMENT: One alternative to be considered by the Board is to adopt a standard for a forage season average covering the months of June through October. These are the months when livestock are able to forage and are not being fed and when pasture grasses are growing and are cut for feeding.
RESPONSE: The Board overrules the suggestion. The five months period is not the only time during the year when vegetation is foraged nor may it be assumed that plant uptake occurs only from June through October. Moreover, it may not be assumed that the physical deposition of fluoride on plants is not important in determining the actual levels ingested.
COMMENTOR: Karen Zackheim
COMMENT: The Board should adopt a "maximum allowable" standard to limit the highest level of fluoride ingested. A standard utilizing monthly, bimonthly and annual averaging periods was proven inadequate to prevent fluorotic damage to cattle.
RESPONSE: The Board has determined that a one-month

average would not allow excessively high levels and will adequately limit exposure to fluoride in forage.

SECTION (1) (b)
COMMENTORS: Tri-County Anti-Pollution Association, Dr. Paul Bissonette, Powell County Planning Board
COMMENT: The likelihood that Rocky Mountain Phosphate Company near Garrison, Montana, will be reopened raises the possibility that severe economic impact to area ranchers will be repeated. The Board must consider this likelihood and should adopt a forage standard that will minimize the expansion of fluoride contamination to Montana cattle.
RESPONSE: Many considerations, including the potential impact of future sources, have been taken into account by the Board in adopting the forage standard.

RULE VII AMBIENT AIR QUALITY STANDARD FOR HYDROGEN SULFIDE

SECTION (1) (a)
COMMENTOR: Ronald Erickson, numerous citizen statements at public hearings
COMMENT: Given the serious psychological and sociological impacts of hydrogen sulfide on a community, a stringent standard for hydrogen sulfide such as that set in California (0.03 ppm) should be adopted. A stringent standard would also minimize hydrogen sulfide emissions from future coal conversion facilities in eastern Montana.
RESPONSE: A standard that would guarantee no public annoyance would have to be below the threshold of perception which is approximately 0.005 parts per million. The annoyance which could occur a few times per year under an 0.05 parts per million standard is balanced against the costs of control potentially associated with a more stringent standard.

New sources of hydrogen sulfide emissions are subject to the best available control technology (BACT) requirements of the state's air quality permit rule. Such controls will not only assure compliance with the standard but may also be expected to control emissions to keep ambient hydrogen sulfide levels well below the 0.05 parts per million standard.

SECTION (1) (a)

COMMENTORS: Air Resources (Cenex)
COMMENT: The standard apparently includes a safety factor of 3-6 to reach a level well below the concentrations suggested in the studies cited. This is inconsistent with the health protection factors used in other standards.
RESPONSE: Since the standard necessary to prevent adverse health responses (0.10 to 0.20 parts per million) would not be sufficient to prevent public annoyance, a more stringent standard of 0.05 parts per million was selected. It is not based upon a margin of safety but rather results from a balancing of welfare objectives.

SECTION (1) (a)
COMMENTOR: Air Resources (Cenex)
COMMENT: The objective of preventing odor nuisances is already served adequately by the state's odor nuisance. Reliance on the odor nuisance would be less costly and more effective than an air quality surveillance system.
RESPONSE: In comparison to the objective findings of hydrogen sulfide monitoring devices, the odor nuisance regulation is relatively subjective. Both of these methods are useful in the prevention of public annoyance.

SECTION (1) (a)
COMMENTOR: Air Resources (Cenex), Larry Zink (Montana Sulfur and Chemical Company)
COMMENT: The formal considerations of practicability presented by the Department do not provide an adequate basis for the adoption of a standard.
RESPONSE: A detailed formal analysis of all possible sources and all potential instances of additional control is not a condition to the adoption of a standard. Installation of significant additional controls across the state is not likely to be necessary. The potential control costs necessary to limit emissions to a point where there would be significantly fewer or no annoyance effects would not be practicable. Instances of significant personal and community annoyance will be prevented by the standard.

RULE VIII AMBIENT AIR QUALITY STANDARDS FOR LEAD

SUBSECTION (1) (a)
COMMENTORS: ASARCO
COMMENT: The author of one of the major studies underlying the proposed lead standard has executed an affidavit stating that a mathematical error was made in the study which importantly affects its results. The lead standard should not be adopted until this issue is resolved.
RESPONSE: The Board accepts the substance of the affidavits of the two co-authors of the study, both disputing that a major discrepancy exists and reaffirming the study's results.
COMMENTOR: Air Resources
COMMENT: Several of the studies supporting the proposed standard of 1.5 mg/dl are limited in their value as the basis for the standard.
RESPONSE: The group of studies upon which the standard is based report coherent, consistent physiological changes related to lead levels in the blood. Few scientific studies are conducted under perfect conditions.
COMMENTOR: Larry Allen
COMMENT: Recent findings of the Center for Disease Control (CDC) point to at least 35 ug/dl as the proper threshold level for a protective lead standard, not 40 ug/dl as established by the Department.
RESPONSE: The threshold necessary for a protective standard is between 35 and 45 ug/dl according to studies cited by the commentor and by the Department. The CDC recommendation of 30 ug/dl was associated with concomitant levels of erythocyte protoporphyron (EP) of 109 ug/dl and therefore, is essentially in agreement with the mean value of 40 ug/dl as found by the Department
COMMENTOR: Larry Allen, League of Women Voters, Environmental Information Center, oral statements from citizens.
COMMENT: The standard of 1.5 ug/dl would leave 5-8% of the children in East Helena statistically unprotected according to a model which was developed outside of Montana.

RESPONSE: Whether a child will be at risk to airborne lead is dependent upon the interrelationship of levels of air lead, soil lead and blood lead, and upon the effects of blood lead on particular individuals. The standard has taken all such factors into account and will not leave members of the public unprotected. Limitations of using a model derived from lead studies in the Silver Valley of northern Idaho are outweighed by the value offered in developing a standard for Montana.

COMMENTOR: Air Resources, ASARCO

COMMENT: The use of a sliding 90-day average rather than a calendar quarter average has no health basis and will only serve greatly to increase the potential number of potential violations per year.

RESPONSE: Lead accumulation in the body does not occur on a calendar basis and the 90-day average is based on simple biological principles. While opportunities to violate the standard will increase, only four violations per year could at most occur since any violation must cover 90 days of valid recorded values.

RULE IX AMBIENT AIR QUALITY STANDARDS FOR NITGROGEN DIOXIDE

SECTION (1) (a)

COMMENTORS: IR&T (Exxon and Conoco), Air Resources (Cenex), Montana Power Company

COMMENT: The scientific studies constituting the basis for the level of apparent health response were either methodically flawed (e.g., failed to account for other variables), inappropriately used (e.g., extrapolation of animal studies to man), or had not been confirmed. There is not sufficient evidence at this time to indicate either the need for a short-term standard or the appropriate level of any such standard. Adoption of a short-term standard should be deferred at least until the federal Environmental Protection Agency makes its final decision on a proper standard.

RESPONSE: Although no one study has unequivocally indicated a specific level of apparent health response, the Board disagrees that it should defer adoption of a standard until the federal EPA takes final action. The short-term standard is based upon three different areas of scientific inquiry including experiments involving bacterial infection in animals, respiratory illness among children living in

homes with gas stoves, and frequency of attacks among asthmatics. The Board accepted the Department's assessment that these three lines of evidence, taken as a whole, not only indicated the appropriateness of a short-term standard but also suggested a narrow range of low level concentrations at which health responses were to be expected.

SUBSECTION (1) (a)
COMMENTORS: IR&T (Exxon and Conoco), Air Resources (Cenex), Environmental Information Center, Northern Plains Resource Council

COMMENT: The derivation of the margin of safety provided in the short-term standard is inconsistent with those for other pollutants since the standard was apparently established at a level less stringent than the level of apparent health response.
RESPONSE: The Board accepts the Department's clarification of the rationale used to derive the margin of safety in this case. Specifically, nitrogen dioxide differs from most other pollutants in that it is unlikely to cause acute responses. Rather, repeated low-level exposure to the pollutant renders those exposed to it susceptible to other challenges (e.g., bacteria, proximity of asthmatic attack) thereby posing a risk to health. By reducing the frequency and intensity of brief exposures to allow levels of nitrogen dioxide, a proper margin of safety is included in the standard.
COMMENTOR: Northern Plains Resource Council
COMMENT: Nitrogen dioxide levels will be increasing in the state particularly in eastern Montana as energy resources are developed. Nitrogen oxides are known or suspected to have serious direct and synergestic impacts on agricultural crops at levels below the standards. The standards may therefore allow significant economic losses to Montana agriculture.
RESPONSE: Economic losses to agriculture are not expected to result from nitrogen dioxide levels allowed by the standards. Current data also indicate that the standards will prevent economic damage to crops from nitrogen dioxide in combination with other pollutants.

RULE X AMBIENT AIR QUALITY STANDARDS FOR OZONE

SUBSECTION (1) (a)
COMMENTORS: IR&T (Exxon, Conoco), Air Resources (Cenex)
COMMENT: The federal standard for ozone has recently been relaxed from 0.08 parts per million to 0.12 parts per million using the same data base upon which the standard of 0.10 parts per million is based. The federal standard expressly provides a margin of safety to protect health and may confidently be adopted by the Board.
RESPONSE: One of the Environmental Protection Agency's own scientific panels recommended retention of the original 0.08 parts per million. Since most of the studies conducted so far on ozone have involved healthy subjects, and since effects have been observed at from 0.15 to 0.20 parts per million, the federal standard of 0.12 parts per million provides little, if any, margin of safety. States may reach different conclusions about scientific data and are free to set ambient air standards more stringent than the federal standards.
COMMENTORS: IR&T (Exxon and Conoco), Air Resources (Cenex)
COMMENT: While the level of apparent health response seems to be appropriate, the studies upon which it is based involve population groups deemed most sensitive to ozone: asthmatics and persons undergoing physical exercise. This reduces the uncertainty and allows for less of a margin of safety in deriving the standard.
RESPONSE: The Board disagrees that the margin of safety provided by the standard is excessive. Of the relatively few subjects studied, most have been healthy persons. There is no certainty that measured lung function changes, if experienced repeatedly by healthy persons, cannot lead to lung disease or accelerated aging in the lung. Nor can it be stated that persons with existing heart or lung impairment are not particularly sensitive to oxidant exposure. The margin of safety selected will afford protection to the potentially large number of persons sensitive to the pollutant.

SECTION (1) (a)
COMMENTOR: IR&T (Exxon and Conoco)
COMMENT: The fact that conditions in the state are unfavorable to ozone production justifies a small margin of

safety. Moreover, there are no sufficient scientific grounds to show that a standard of 0.10 parts per million provides a greater margin of safety than does the federal standard of 0.12 parts per million.

RESPONSE: The Board agrees that, if conditions in the state were more favorable to ozone production, an even wider margin of safety would be necessary. Sufficient scientific precision exists to have allowed the EPA to differentiate between 0.10 ppm and 0.12 ppm and to have allowed the commentor to recommend the federal standard. To the extent that scientific precision may be lacking, prudent health practice demands that uncertainties be resolved in favor of protection.

COMMENTOR: Northern Plains Resource Council

COMMENT: A standard of 0.10 parts per million will probably allow damages to agricultural crops in the state. Moreover, ozone levels in the state are not as low as suggested by the Department. Since 1977, ozone levels in Billings are some of the highest in the nation.

RESPONSE: There is limited evidence suggesting the potential for some injury to plants at ozone levels lower than the standard of 0.10 parts per million, particularly if large amounts of other pollutants are present. The Board accepts the Department's evaluation that, although occasional high readings may occur in metropolitan Billings, the unfavorable conditions for ozone production in the state make it unlikely that ozone will pose even a minor threat to Montana vegetation. The Board has determined that the standard of 0.10 parts per million will protect both human health and welfare interests.

COMMENTOR: IR&T (Exxon and Conoco)

COMMENT: Since the one-hour standard of 0.10 parts per million is at the lower range of effects for agricultural crops it contains a margin of safety and does not justify the setting of a standard at that level. A cost benefit analysis would place an appropriate ozone standard near the federal standard.

RESPONSE: The Montana Clean Air Act requires the protection of both human health and welfare. The standard of 0.10 parts per million is derived from an evaluation of the pollutant's effects on human health. Current understanding of the pollutant indicates that the standard will also prevent damage to the state's welfare interests including vegetation.

RULE XI AMBIENT AIR QUALITY STANDARD FOR SETTLED PARTICULATE MATTER

COMMENTOR: Westmoreland Resources, Inc.

COMMENT: There is no reason to extend the application of the settled particulate standard to rural areas since the dust in such areas is commonplace and usually arises from agricultural operations which are exempt from the ambient air quality standard. The settled dust standard, if retained at all, should only apply to residential and industrial areas and should not be tightened by use of a 30-day averaging period.

RESPONSE: Differentiating between "rural," "industrial" and "residential" areas is difficult, particularly for purposes of applying a settled dust standard and therefore the distinction has been removed from the standard.

The specific limitation on dustfall concentrations has been associated with public annoyance and is intended to prevent such annoyance regardless of where it occurs. Agricultural operations are not exempt from the ambient air quality standards. Replacement of the 3-month average with a 30-day averaging period will allow more prompt action on complaints and relieve the public from extended periods of annoyance.

RULE XII AMBIENT AIR QUALITY STANDARDS FOR SULFUR DIOXIDE

SECTION: Generally

COMMENTOR: Cenex

COMMENT: The Board should not adopt standards for sulfur dioxide until the federal EPA issues its criteria document for sulfur oxides and makes its scientific determinations regarding the standards actually necessary to protect health and welfare.

RESPONSE: EPA's External Draft Criteria Document for Particulate Matter and Sulfur Oxides has recently been issued. The preliminary scientific findings of this comprehensive survey confirm the validity of the Department's conclusions and proposed standards and present a consensus that the proposed standards are not overly stringent in meeting the goal of protecting human health.

The Board does not agree that it should defer adoption of state standards until some indefinite time when EPA makes a final determination.

SECTION (1) (a)
COMMENTORS: ASARCO, Anaconda Copper Company, IR&T, Air Resources, Cenex
COMMENT: The scientific basis of the level of apparent health response is highly questionable. The transient, minor functional changes observed at sulfur dioxide levels in the range of 1 part per million are mere physiological changes and should not be considered adverse health effects. No basis exists for a different conclusion concerning persons with chronic disease.

There is evidence that no effects are seen when subjects are exposed to much higher levels of sulfur dioxide, even for extended periods of time. The Board should not attempt to prevent insignificant physiological reponses.
RESPONSE: While some studies have failed to observe effects, most controlled laboratory studies of the effects of low levels of sulfur dioxide have used healthy test subjects and have observed measurable changes in lung function. The Board agrees that the physiological reponses in healthy persons exposed to sulfur dioxide levels of from 0.75 to 3.0 parts per million are probably of minimal health significance. However, persons with impaired heart or lung function have little or no functional reserve and are far more likely to experience clinical symptoms as a result of exposure to the same levels of the pollutant.

In addition, little is known about the long term effect on healthy persons of the observed minor physiological response when repeated over years of exposure.

In summary, the effects occurring in the range of 1 part per million cannot properly be disregarded as insignificant to public health.

SECTION (1) (a)
COMMENTORS: Anaconda Copper Company, ASARCO, IR&T (Exxon and Conoco), Air Resources (Cenex) and others
COMMENT: The alleged uncertainty concerning possible

effects below the level of 1 part per million is exaggerated. Much research exploring the potential for the effects of sulfur dioxide in the lower range of concentrations has failed to indicate such effects. There is simply no basis to conclude that sensitive persons may experience effects below the levels that produce physiological responses in normal subjects.
RESPONSE: Although few experiments have utilized vulnerable individuals as test subjects, the limited evidence now available suggests that vulnerable individuals will respond to levels of sulfur dioxide even lower than 1 part per million. In addition, controlled laboratory experiments have observed pulmonary function changes in healthy persons in response to 1 part per million sulfur dioxide for exposures as brief as 10-30 minutes. A one-hour standard set at the level of the observed effect would allow the effects to occur. Therefore, the one-hour standard must be set below 1 part per million, the level of the observed effect.

SECTION (1) (a)
COMMENTOR: ASARCO
COMMENT: Many of the persons particularly susceptible to air pollution spend most of their time indoors where sulfur dioxide levels are lower. This provides a margin of safety for such persons, and allows for less of a margin of safety in an ambient standard.
RESPONSE: Not all sensitive persons spend their time indoors as is the case, for example, with adolescent asthmatics who are otherwise healthy. While other persons with impaired health may spend substantial time indoors, they may be expected to be more physically active when they go outdoors and hence have an increased rate of respiration. Consequently, their effective exposure to ambient pollution is increased and the need for a margin of safety remains.

SECTION (1) (a)
COMMENTOR: Anaconda Copper Company
COMMENT: The one-hour standard for sulfur dioxide ignores the unique, cyclical nature of the ore smelting process and allowance should be made for a limited number of excursions above the standard. In this way, smelters will not have

to redesign equipment to meet an absolute standard, and a small number of excursions will not jeopardize health.
RESPONSE: The Board acknowledges that the smelting process does have unique emissions characteristics which render compliance with a short term standard problematic. The Department has reviewed the data submitted by the state's two primary nonferrous smelters and estimates that the facilities could respectively experience a maximum of 14 and 18 excursions per year above the one-hour standard. The number of excursions in the range necessary for the smelters to comply with the one-hour standard would require compliance with the standard approximately 99.8% of the hours during the year.

The margin of safety for the one-hour standard was selected to limit the exposure of persons with impaired health to levels of pollution that produce minimal responses in healthy persons and to protect the general public from brief exposures in the range of 0.75 to 1 part per million. The health effects giving rise to concern for this one-hour period are not life threatening as they may be for example in the case of angina patients exposed to levels of carbon monoxide in excess of the carbon monoxide standard. Rather, they may cause an aggravation of existing symptoms or may cause significant effects over the long term if there is chronic and repeated low level exposure. Since the acute responses associated with exposure to low levels of sulfur dioxide are not life threatening and since chronic and repeated exposures will still be prevented, a standard allowing 18 excursions per year will still require compliance 99.8% of the time and will not result in any significant reduction in the margin of safety. Rather than relaxing the standard to a level approaching that where effects have been observed, the Board determines that a limited number of excursions of the one-hour standard should be permitted.

RULE XII

SUBSECTION (1) (b)
COMMENTORS: Anaconda Copper Company, ASARCO, IR&T, Cenex, Air Resources
COMMENT: There is some evidence that adverse effects on the health of vulnerable individuals may be observed when the 24-hour average sulfur dioxide concentration exceeded 0.19 ppm coincident with particulate levels above 250 ug/m^3, 24-hour average, or measured by the British

Smoke Method. By applying a margin of 2, the Department has ignored (1) the probability that both sulfur dioxide and particulate must be present to produce effects, (2) that sensitive individuals were involved in the studies on which the Department's level of apparent health response (0.19-0.25 ppm) was based and (3) that the overwhelming scientific consensus, including the Natural Research Council report on sulfur dioxides, supports the current federal 24-hour standard of 0.14 ppm as fully protective of health.
RESPONSE: Since there is no substantial evidence that the effects associated with elevated levels of sulfur dioxide cannot occur without high concentration of particulate matter, the Board concludes that a margin of safety must be set for sulfur dioxide alone without regard to the presence of particulates. Although sensitive persons were subjects in the epidimeological studies germane to the level of apparent health response, other studies have observed effects at concentrations below those cited without any apparent threshold. A real possibility exists that significant effects may occur at levels below the level of apparent health response. The EPA and the Sulfur Oxides Committee of the National Research Council acknowledge that health related responses may be observed at the current federal 24-hour standard of 0.14 ppm. The current federal standard therefore contains no margin of safety.

SUBSECTION (1) (c)
COMMENTORS: Anaconda Copper Company, ASARCO, IR&T, Cenex, Air Resources
COMMENT: The consensus among experts who have reviewed the scientific literature is that the lowest annual average sulfur dioxide concentration at which effects have been definitely seen is around 0.04 ppm in conjunction with particulate matter above 200 ug/m^3 annual average. The margin of safety used to derive the standard of 0.02 ppm ignores (1) the probability that particulate matter must be present to produce effects and (2) the fact that the current federal standard of 0.03 ppm is already set well below the level of the Department's level of apparent health response.
RESPONSE: Epidemiological studies have not yet provided a full clarification of the respective roles of sulfur dioxide and particulate matter and until such relationships are well understood, a standard for sulfur dioxide alone is clearly indicated. While the federal standard is set

below the level where there is indisputable evidence of health effects, substantial uncertainty remains in identifying the long term concentrations of sulfur dioxide that will not adversely effect public health. The potential effects and the size of the affected population could be significant.

COMMENTORS: McCone Agricultural Protection Organization, Northern Plains Resource Council, Three Corners Boundary Association, Environmental Information Center, Carolyn Johns, Peter Rice, numerous citizens offering similar comments

COMMENT: The sulfur dioxide standards of 0.5 parts per million, one-hour average, 0.10 parts per million, 24-hour average, and 0.02 parts per million, annual average will allow injury to the state's agricultural and indigenous plant life. Standards of 0.10 parts per million, annual mean, 0.05 parts per million, 24-hour mean, and 0.25 parts per million, one-hour mean, would provide minimal protection for Montana plant communities.

RESPONSE: The Board agrees that more stringent standards for sulfur dioxide would afford greater protection from potential effects of low levels of the pollutant. The Board does not, however, apply a margin of safety for the protection of welfare interests and has concluded that the standards adopted are sufficient to prevent damage to the state's vegetation and other welfare interests.

COMMENTOR: IR&T (Exxon and Conoco), ASARCO, Anaconda Copper Company, Air Resources (Cenex)

COMMENT: There is no evidence to warrant the setting of sulfur dioxide standards below current federal standards. Each of the standards proposed by the Department contains a considerable margin of safety to justify a standard below the damage threshold concentrations indicated by the large majority of studies. Standards should not attempt to limit concentrations of a pollutant to levels that might be harmful to only a few sensitive individuals under conditions ideal to injury.

RESPONSE: The Board disagrees that current federal standards are adequate to protect vegetation. Numerous studies have observed injury at levels below the federal standards. The Montana Clean Air Act requires the Board to adopt air quality standards to protect human health and welfare. The

standards are adopted to provide adequate protection of health and welfare, including vegetation, from sulfur dioxide pollution.

COMMENTORS: Northern Plain Resource Council, Environmental Information Center

COMMENT: The standards do not consider the synergistic effects that sulfur dioxide combined with other pollutants may have on vegetation.

RESPONSE: To the extent that synergistic effects have been reliably ascertained the standards have taken them into account.

RULE XIII AMBIENT AIR QUALITY STANDARD FOR TOTAL SUSPENDED PARTICULATE MATTER

SECTION (1) (a)

COMMENTORS: Anaconda Copper Company, Air Resources (Cenex), IR&T (Exxon and Conoco)

COMMENT: There is no scientific basis for the 24-hour standard of 200 ug/m^3. The Department's level of apparent health response of 300 ug/m^3 ignores the fact that the lowest daily levels at which health effects have been reliably shown in sensitive individuals is 320-350 ug/m^3 in the presence of 500 ug/m^3 (0.19 ppm) sulfur dioxide. Moreover, the margin of safety used to lower the standard 200 ug/m^3 is based upon studies that provide no reliable evidence whatever that effects will be observed below 320-350 ug/m^3 in conjunction with 0.19 parts per million of sulfur dioxide. The current federal 24-hour standard of 260 ug/m^3 is well within a conservative level and should protect public health with wholly adequate margins of safety.

RESPONSE: The Board overrules the suggestion. The level of apparent health response of approximately 300 ug/m^3 is based upon a valid conversion from measurements of particulate matter by the British Smoke (BS) method. Health responses observed from 24-hour exposures to 300 ug/m^3 of suspended particulate matter include a reduced capacity for exercise and a decline in health among persons with heart and lung impairment and an increase in asthma attacks among asthmatics.

Other studies have observed less dramatic

health responses at significantly lower levels with no apparent threshold. Although these studies are not conclusive, they are strongly suggestive that there is not an effects threshold for particulate matter. These studies cannot be dismissed or ignored in deriving a standard that affords an adequate margin of safety. Since there has not yet been a reliable identification of a level of particulate below which human health effects do not occur, a margin of safety such as that included in the proposed standard is necessary.

SECTION (1) (a)
COMMENTOR: IR&T (Exxon and Conoco)
COMMENT: There is greater uncertainty concerning the health effects of particulate matter than there is for sulfur dioxide. Therefore, a greater margin of safety should logically be applied to the particulate standard than is applied to the sulfur dioxide standards. While the federal standards appear consistent in this regard, the opposite appears to be the case with the proposed Montana standards. The federal standard for particulate matter is adequate and should be adopted.
RESPONSE: The Board overrules the suggestion. Since the majority of epidemiological experiments involved cases where both sulfur dioxide and particulate matter were present, both the data base and the level of the data base for each and the level of uncertainty for each is comparable. Therefore, the margin of safety for the Montana standards has been consistently applied.

SECTION (1) (a)
COMMENTORS: Anaconda Copper Company, IR&T (Exxon and Conoco), Air Resources (Cenex)
COMMENT: Many of the studies cited as the basis for the 24-hour standard observed health effects associated with both sulfur dioxide and particulate matter.
RESPONSE: Epidemiological studies have not yet provided a full clarification of the respective roles of sulfur dioxide and particulate matter and until such relationships are well understood, a standard for total suspended particulate is indicated.

SECTION (1) (b)

COMMENTORS: Anaconda Copper Company, Montana Power Company, Air Resources (Cenex), IR&T (Exxon and Conoco)

COMMENT: There is no justification for changing the annual total suspended particulate matter of 75 ug/m^3 from a geometric mean to an arithmetic mean. The only effect will be to make the standard more stringent with no discernible benefit to be gained except administrative convenience. The geometric average should be retained. If the Board wishes to use an arithmetic average, then the standard should be set at an appropriate higher level, about 88 ug/m^3

RESPONSE: The Board disagrees. The geometric average does not specifically determine any public health related parameter. By contrast, the arithmetic average is related to the total dose of a pollutant to which a receptor is exposed over a given time period. The arithmetic average therefore reflects more accurately the liklihood of health and environmental effects. The rationale for preferring the arithmetic average over the geometric average is clear.

SECTION (1) (b)

COMMENTOR: Anaconda Copper Company

COMMENT: Since a portion of a TSP measurement will be made up of large nonrespirable particles, the TSP measured will already include a considerable margin of safety. Even assuming a respirable fraction as high as 75%, the federal standard of 260 ug/m^3 would limit respirable particles to 195 ug/m^3, a level below the Department's own recommended standard and below the lowest level at which health effects have been seen (250 ug/m^3 BS). This clearly indicates the adequacy of the current federal standard.

RESPONSE: The Board disagrees and accepts the Department's position that the 75% should be applied not to the federal standard (260 ug/m^3) but to the level of apparent health response (300 ug/m^3). If this approach is taken, then a fine particle standard of 150 ug/m^3 and a total suspended particulate standard of 200 ug/m^3 would be indicated. Therefore, the federal standard does not contain the margin of safety as suggested.

RULE XIV AMBIENT AIR QUALITY STANDARD FOR VISIBILITY

SECTION (1) (a)

COMMENTOR: Montana Power Company

COMMENT: The visibility Standard of $3x10^{-5}$ particle scattering coefficient is unprecedented. No other state has such a standard.
RESPONSE: California and Nevada have "prevailing visibility" standards similar in intent and stringency to the Montana standard. Federal regulations have recently been proposed requiring states to submit plans to address visibility degradation.

SECTION (1) (a)
COMMENTOR: Montana Power Company
COMMENT: How can the visibility standard be enforced since many activities such as slash burning and natural emissions from trees will be implicated. No discussion of the costs of enforcement is provided by the Department.
RESPONSE: Natural background levels of pollutants cannot be controlled by a visibility standard but neither are naturally occurring phenomena likely to violate the standard. Enforcement of the annual average visibility standard will be similar to that for other standards thereby requiring identification of sources and development of emission standards and control strategies, etc. Since imminent federal regulations will likely regulate the same activities, development of enforcement techniques is inevitable. A qualitative discussion of affected activities was included and cost-effective methods of enforcement may be expected to be developed as visibility programs evolve.

SECTION (1) (a) (2)
COMMENTOR: Westmoreland Resources, Inc.
COMMENT: The proposed visibility standard will apparently apply to any and all Class I areas whether or not visibility is an important value in that area. This is inconsistent with the original scope of visibility protection.
RESPONSE: The Board agrees and has included a provision whereby areas redesignated Class I subsequent to the effective date of the rule will be subject to the visibility standard upon a finding by the Board that visibility is an important attribute in that area.

SECTION (1) (a)

COMMENTOR: Westmoreland Resources, Inc.
COMMENT: The Department has presented no basis whatsoever for the selection of a particular standard and the selection of $3x10^{-5}$ particle scattering coefficient is wholly arbitrary.
RESPONSE: The specific standard is based upon the known relationships between decreases in atmospheric clarity and human perception of visibility. It is true that many factors affect visibility but the scattering and absorption of light by gases and particles is the major component of visibility degradation. The integrating nephelometer measures the scattering of light which is far more important than absorption of light in Class I areas.

SECTION (1) (a)
COMMENTORS: Montana Power Company, ASARCO, Westmoreland Resources, Inc., Anaconda Copper Company
COMMENT: The proposed visibility standard is not supported by any historical baseline data obtained in Class I areas in Montana. Nor is there any analysis of what the impact on energy development within the state may be.
RESPONSE: Although the available data base on particle light scattering in Montana's Class I areas is not sufficient to demonstrate conclusively that present scattering coefficient values will meet the standard, it appears highly likely that such areas are currently within the standard. Expansion of data collection is expected to confirm this projection. Given both current pollutant levels in the state and the location of present Class I areas, no present impact of any significance upon energy development may be anticipated. Many considerations, including federal visibility regulation, will affect the extent and nature of energy development in the state.

SECTION (3)
COMMENTORS: Westmoreland Resources, Inc., IR&T, Peabody Coal Company
COMMENT: The nephelometer measures particulate concentrations only at a particular point within a Class I area and therefore cannot possibly protect against plume blight which interferes with vistas. Moreover, EPA's recently proposed visibility program takes a radically different

approach from the Department's since the new proposal stresses the visual experience rather than relying on a numerical standard and the program applies only to major emitting sources rather than to all sources as is the case with the proposed Montana standard. The Board should not adopt a visibility standard until EPA's specific requirements are imposed on all states.

RESPONSE: The Board disagrees that EPA's recent proposals constitute a radically different approach but rather introduce a phased program which initially focuses on major emitting sources. Given the limitations of each approach to measuring visibility, there is no basis to assume that EPA will not accept the integrating nephelometer which, if properly sited, can be representative of observed visibility.

Moreover, the proposed Montana standard is not designed simply to anticipate compliance with EPA's regulations but derives primarily from the mandate of the Montana Clean Air Act to advance the welfare interests of the state including the enhancement of the natural attractions of the state. The initial emphasis chosen by EPA does not necessarily reflect the problems or the objectives in Montana. The Board concludes that commencement of the state's own program is an important step toward visibility protection, a requirement of both federal and state law.

SUBSECTION (3)

COMMENTORS: ASARCO, Anaconda Copper Company

COMMENT: The visibility regulation itself should contain specific technical information concerning the operation of the integrating nephelometer since the reference method provides a range of choices in terms of sensitivity and wave length response.

RESPONSE: The Board acknowledges the importance of such information. However, the Board does not agree that adjustments of such a precise nature should be adopted by rule but rather should be rigorously specified within the Departments's procedures manual.

4. The following numbers are assigned to the rules: Rule I--16.8.805; Rule II--16.8.806; Rule III--16.8.808; Rule IV--16.8.809; Rule V--16.8.811; Rule VI--16.8.813; Rule VII--16.8.814; Rule VIII--16.8.815; Rule IX--16.8.816; Rule X--16.8.817; Rule XI--16.8.818; Rule XII--16.8.820; Rule XIII--16.8.821; Rule XIV--16.8.822.

John F. McGregor, Chairman

BY: Rita Ann Sheehy

Certified to the Secretary of State August 4, 1980

STATE OF MONTANA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING
BEFORE THE BOARD OF HORSE RACING

In the matter of the amendment of ARM 40-3.46(6)-S46010 subsection (63)(k) (40.20.808) concerning general conduct of racing (Objections - protests	NOTICE OF AMENDMENT OF ARM 40-3.46(6)-S46010 subsection (63)(k) GENERAL CONDUCT OF RACING (40.20.808 OBJECTIONS - PROTESTS)

TO: All Interested Persons:

1. On June 26, 1980, the Board of Horse Racing published a notice of proposed amendment of arm 40-3.46(6)-S46010 subsection (63)(k) concerning general conduct of racing, (40.20.808 Objections - Protests) at pages 1693 & 1694, 1980 Montana Administrative Register, issue number 12.

2. The board received one letter, from Mr. Murdo Campbell protesting the proposed amendment. Campbell felt that the board should maintain the rule as written but with further definition as stated in Rules of Racing from the states of Washington, Idaho and Colorado. Campbell further objected to the proposed change as vesting to much authority and discretion in the stewards.

In addition to the reasons stated in the notice of proposed amendment, the board responds that the amendment is well taken and that the objection is without merit. The board would point out that under the current rules and in particular ARM 40-3.46(6)-S4690 (40.20.609), the stewards have discretion to rule accordingly when one or more gates fail to open. The scheme of the horse racing regulatory statutes and rules is to place the steward in the position of the board on the track to make decisions which require immediate rulings covering a potential multitude of facts, situations, and problems.

With this in mind, the board feels that the discretion is not misplaced, and makes this amendment, as noticed, to conform this rule with the above stated existing rule.

3. No other comments or testimony were received. The reasons for the amendment are those stated in the notice and those stated above.

BOARD OF HORSE RACING
JOSEPH MURPHY, D.D.S., CHAIRMAN

BY: _____
ED CARNEY, DIRECTOR
DEPARTMENT OF PROFESSIONAL
AND OCCUPATIONAL LICENSING

Certified to the Secretary of State, August 5, 1980.

VOLUME NO. 38 OPINION NO. 93

ALCOHOL - Alcohol intoxication as a crime or element of a crime not punishable under state law;
ALCOHOLIC BEVERAGES - Reasonable time, place, and manner restrictions on the use of alcoholic beverages in public places allowable under state law;
CITIES AND TOWNS - City and town ordinances may not punish public intoxication unless such ordinances fall within the statutory exceptions;
MONTANA CODE ANNOTATED - Sections 53-24-101, 53-24-102, 53-24-106, 53-24-107.

HELD: 1. The disorderly conduct and public drunkenness ordinances in Glasgow violate sections 53-24-106 and 53-24-107, MCA.

2. The open container ordinance in Glasgow is valid.

22 July 1980

James D. Rector, Esq.
City Attorney
Glasgow, Montana 59230

Dear Mr. Rector:

You have requested my opinion concerning:

> Whether certain Glasgow city ordinances pertaining to disorderly conduct, public drunkenness, and open containers are in conflict with sections 53-24-101, 102, 106, and 107 MCA.

The above mentioned MCA sections are part of the chapter on Alcoholism and Drug Dependence. Section 53-24-102 sets forth the rationale behind the chapter.

> It is the policy of the State of Montana to recognize alcoholism as an illness and that alcoholics and intoxicated persons may not be subject to criminal prosecution because of their consumption of alcoholic beverages... (Emphasis added.)

With that general policy set forth, the chapter sets out the following guidelines. Section 53-24-106, MCA, provides:

> (1) No county, municipality, or other political subdivision may adopt or enforce a local law [or] ordinance ... that includes drinking, being a common drunkard, or being found in an intoxicated condition as one of the elements of the offense giving rise to a criminal or civil penalty or sanction.

Subsection (2) of this statute excepts certain conduct from the above proscription and allows regulation as to time, place, manner, and use of alcoholic beverages.

In addition, section 53-24-107, MCA, provides that:

> A person who appears to be intoxicated or incapacitated by alcohol in public commits no criminal offense solely by reason of being in such condition but may be detained by a peace officer for the person's own protection.

Evaluating the Glasgow ordinances under these sections it is clear that Section 14-1.1(10) - Disorderly Conduct, and Section 14-4 - Public Drunkenness, are invalid. Section 14-1.1(10) provides:

> (a) A person commits the offense of disorderly conduct if he knowingly disturbs the peace within the boundaries of the city of Glasgow by ...
> (10) Appearing in a public place in a state of visible intoxication as a result of the use of alcohol or any dangerous drug so as to create a risk to himself or others, or conducting himself in an offensive manner.

With regard to the reference in subsection (10) to alcohol intoxication, the ordinance is void under the state statutes cited above. In the same way, section 14-4 impermissibly punishes alcohol related offenses. That ordinance reads:

> Every person who may be found drunk or intoxicated in any street or public place within the limits of the city, or, while in a drunken or intoxicated condition, intrudes upon any private premises against the assent of the owner or occupant thereof, or in such condition annoys or frightens any passerby upon the streets, alleys, or sidewalks, or in such condition may be found sleeping in any

> public place without the assent of the owner or occupant thereof shall be deemed guilty of violating this code. ...

All of the violations contained within the above ordinances punish public intoxication, whether as an element of the offense, e.g., trespassing while intoxicated, or by itself, e.g., being drunk on a public street. They are, therefore, in contravention of the state statutes.

The third ordinance in question, the Open Container Law, Section 4-20, is valid. Subsection (2) of section 53-24-106, MCA, reads in part:

> Nothing in this section affects any law, ordinance, resolution, or rule ... regarding the sale, purchase, dispensing, possessing, or use of alcoholic beverages at stated times or places. ...

The open container ordinance in Glasgow relates specifically to the possession and use of alcoholic beverages in public places. The city is free to regulate that use. The ordinance provides in pertinent part:

> Public drinking and public display and exhibitionism of beer or liquor ... is hereby prohibited and it shall be unlawful for any person to engage in public drinking as herein defined within the limits of the city of Glasgow, Montana; and it shall be unlawful for any person to engage in public display or exhibitionism of beer or liquor as herein defined within the city limits of Glasgow, Montana.

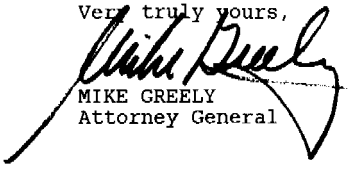
Section 40-20(2), then, is a reasonable time, place and manner regulation as allowed by section 53-24-106(2), MCA.

THEREFORE, IT IS MY OPINION:

1. The disorderly conduct and public drunkenness ordinances in Glasgow violate sections 53-24-106 and 53-24-107, MCA.

2. The open container ordinance in Glasgow is valid.

Very truly yours,



MIKE GREELY
Attorney General

VOLUME NO. 38 OPINION NO. 94

THIS OPINION SUPERCEDES VOLUME 38, OPINION NO. 77, WHICH IS WITHDRAWN.

POLICE - Responsibility for costs of analysis of evidence requested by county attorney.
MONTANA CODE ANNOTATED - Sections 7-4-2712, 7-4-2716, 7-6-2426(2), 7-32-4101.

HELD: The county bears the financial responsibility for charges incurred at the request of the county attorney after arrest by city police for the preservation and preparation of evidence to be used in felony cases.

31 July 1980

Charles A. Graveley, Esq.
Lewis & Clark County Attorney
Lewis & Clark County Courthouse
Helena, Montana 59601

David N. Hull, Esq.
Deputy City Attorney
P.O. Box 534
Helena, Montana 59601

Dear Sirs:

You have requested my opinion on a question which I have phrased as follows:

> Which governmental entity -- state, county, or city -- bears the financial responsibility for costs incurred at the request of the county attorney after arrest by city police in the investigation of felony offenses against the laws of the State of Montana?

Your letters pose a hypothetical example in which, after arrest, the county attorney requests that a vehicle be impounded and certain items of evidence be forwarded to a laboratory for scientific and handwriting analysis.

Initially, it is clear that the costs of criminal investigation are not the responsibility of the state. Montana law generally makes the detection, investigation, and prosecu-

tion of crime a local function. While Montana has a State Criminal Investigation Bureau, Title 44, Chapter 2, MCA, it functions to provide expert assistance upon request by primarily local agencies charged with the responsibility of investigating criminal activity. Section 44-2-115, MCA. I am aware of no statutory or constitutional authority for assessing the costs of investigation against the State, nor is there a fund in the State Treasury from which such costs could be paid. I therefore conclude that the costs of criminal investigation by local law enforcement officers are not chargeable to the State.

As a general rule, enforcement of state law is a county responsibility. The county attorney serves as the prosecuting attorney. Sections 7-4-2712, 7-4-2716, MCA. The county attorney's expenses are a county charge. Section 7-6-2426(2), MCA. However, cities also have some responsibility in the enforcement of state laws. Section 7-32-4101, MCA, requires each city and town to organize and maintain a municipal police force, and the Montana Supreme Court has recognized that municipal police officers, as peace officers, are obligated to enforce the state's laws within their territorial jurisdictions. State ex rel. Quintin v. Edwards, 38 Mont. 250, 265-66, 99 P. 940 (1909); see also Andrieux v. City of Butte, 44 Mont. 557, 560, 121 P. 291 (1912).

These responsibilities overlap. Investigation and the gathering of evidence, generally accepted as police functions, are responsibilities which are often inseparable from the county attorney's prosecutorial function. See Hicks v. Orange County Board, 69 Cal.App.3d 340, 238 Cal. Rptr. 101, 108 (1977). My research has disclosed no provision of state law nor decision of the Montana Supreme Court specifying who must pay the expenses incurred in carrying out these responsibilities. My understanding is that most counties and cities in the state have not encountered any serious conflict in deciding who must bear costs of the sort you have described. I do not wish to disturb the cooperative relationships that have been established in those counties and cities. However, it is my opinion that the expenses detailed in your letters, incurred at the request of the county attorney, are properly chargeable to the county. When city police marshal evidence in preparation for trial at the county attorney's request, the resultant expenses are "necessarily incurred" by them, as agents of the county attorney, "in criminal cases arising within the county." When such expenses are incurred directly by the county

attorney, they are explicitly a county charge under section 7-6-2426(2), MCA. See 10 OP. ATT'Y GEN. NO. 63; 8 OP. ATT'Y GEN. NO. 419 (1920); 5 OP. ATT'Y GEN. NO. 377 (1913); 2 OP. ATT'Y GEN. NO. 5 (1906). Reason does not compel the conclusion that the expense may be shifted to the city merely because the city police act as the agents who incur the expense.

Please bear in mind the limited scope of this opinion. It applies only in those cases where a duty to prosecute rests with the county attorney and expenses are incurred by the city at his request after an arrest has been made. I do not suggest that a city may request reimbursement from the county for salaries of police officers who investigate felony crimes or for the cost of facilities necessarily maintained by the city as an incident to their criminal investigation responsibilities.

THEREFORE, IT IS MY OPINION:

> The county bears the financial responsibility for charges incurred at the request of the county attorney after arrest by city police for the preservation and preparation of evidence to be used in felony cases.

Very truly yours,

MIKE GREELY
Attorney General