RESERVE

MONTANA ADMINISTRATIVE REGISTER

1980 ISSUE NO. 19
PAGES 2684-2844

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.

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. 19

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BEFORE THE WORKERS' COMPENSATION COURT
OF THE STATE OF MONTANA

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TO: All Interested Persons

1. On November 15, 1980, the Workers' Compensation Court proposes to amend the procedural rules of the Court.

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

2.52.201 PETITION FOR TRIAL Subsections (1)(a), (1)(b), (1)(c) and (1)(d) Same as existing rule.

(e) A statement that the petitioner has freely exchanged all available medical reports with the defendant~~,~~ ~~and~~ pursuant to ARM 2.52.212 and will continue to do so. ~~Medical reports are not to be attached to the petition.~~

(2) There is no filing fee. Petitions and all other matters are to be filed with the Clerk of Court at 1422 Cedar-Airport Way, P. O. Box 4127, Helena, MT 59601. The party should file an original and as many copies of the petition as are necessary to serve adverse parties. Include the names and addresses of parties to be served. The Clerk will issue a receipt for all documents filed. Request for an emergency ~~hearing~~ trial should be in the petition. (ARM 2.52.209.) Request for venue other than as set forth in ARM 2.52.208(3) and (5) should be included in the petition.

2.52.202 ANSWERS (1) A party may answer a petition for ~~hearing~~ trial within 20 days of receipt of the petition or the Court may demand a written answer to a petition from a party at any time before the ~~hearing~~ trial date. All answers shall respond in detail to each matter asserted by the petitioner and to each issue that the petitioner has requested that the Court ~~make a determination~~ determine.

(2) Before answering and within 10 days of receipt of the petition, a party may demand, upon application, ~~within 10 days of receipt of the petition,~~ a more definite and detailed petition. ~~before answering the petition, and~~ The Court shall determine whether the application must be complied with. The party answering will send a copy of the answer to the adverse party.

2.52.204 ALTERNATIVE PLEADING (1) Pleading in the alternative is permissible in petitions for ~~hearing~~ trial and in answers.

2.52.206 JOINING THIRD PARTIES (1) A party may request that a third party be joined in the dispute or controversy and the Court may, ~~on~~ for good cause shown, require the ~~a~~ third party to become a party to the ~~a~~ dispute or controversy. The Court may require a third party to answer in detail a petition for ~~hearing~~ trial or an answer.

2.52.207 INTERVENTION (1) Anyone may request to intervene and become a party in a matter that is ~~coming to hearing~~ set for trial before the Court. The applicant requesting intervention shall serve a copy of the motion to intervene upon all parties. The motion shall state the grounds upon which ~~why~~ intervention is sought. The Court, in its discretion, will determine whether or not to allow intervention of the applicant and shall notify the applicant and all parties of its decision.

2.52.208 TIME AND PLACE OF TRIAL GENERALLY Subsections (1) through (5) Same as existing rule.

(6) Upon receipt of a petition meeting the requirements of these rules, the Court will set a trial for the area where the accident occurred and at a time that will allow 30 days notice to be given of the trial. However, the Court may, for good cause, hold a trial over to the next regular trial date in or for the area. ~~Any petition filed less than 30 days before the beginning of a week designated for trials in that area, but filed early enough so that at least 10 days notice of a pretrial conference can be given to the defendant, will be scheduled for pretrial conference during the setting for that area.~~

2.52.209 EMERGENCY ~~HEARINGS~~ TRIALS (1) Emergency ~~hearings~~ trials may be ~~granted~~ held by the Court ~~upon~~ when good cause is shown and after ~~due~~ notice of a time and place for trial ~~set~~ is given by the Court. The Court on its

own motion, may set a ~~hearing~~ trial as an emergency ~~hearing~~ trial and designate the time and place for a pretrial conference and for the ~~of hearing~~ trial.

2.52.210 SETTING TIME AND PLACE OF ~~HEARING~~ TRIAL BY STIPULATION OR IN BEST INTERESTS OF COURT (1) Upon stipulation of the parties and consent of the Court, a ~~hearing~~ trial may be ~~had~~ held at any time in any area, including an area other than the area where the accident occurred. When in the best interests of the Court's duties the Court deems a particular area the place to hold a trial, it may order the trial held in that area.

2.52.212 MEDICAL REPORTS (1) Prior to any scheduled trial, there must be an exchange between the parties to the dispute of medical reports and other medical information based upon examination of the claimant. Other than by the laying of a proper foundation at the time of trial medical reports will only be accepted by the Court as evidence if stipulated to by the parties. ~~may be submitted as evidence by stipulation between parties~~

2.52.213 PRETRIAL CONFERENCE (1) Same as existing rule.

(2) The Court shall ~~make~~ designate one of the parties to prepare ~~an~~ a Pretrial Order which recites the actions taken at the pretrial conference. ~~and shall set forth the following:~~ This Pretrial Order must be signed by both parties and submitted to the Court for approval. The Pretrial Order shall supersede all other pleadings and shall set forth the following:

Subsections (a) through (i) Same as existing rule.

2.52.214 DEPOSITIONS (1) Depositions of witnesses and parties ~~who cannot be available at the time of the trial~~ may be taken prior to trial in accordance with the procedures set forth in Rule 30, M.R.Civ.P. (1979), or depositions may be taken subsequent to a trial with the approval of the Court. The cost of the depositions shall be borne by the party requesting the depositions. Rule 32(a)(3), M.R.Civ.P. (1979), is not applicable to actions in the Workers' Compensation Court, and the deposition of a witness~~,~~ ~~whether~~ or ~~not~~ a party~~,~~ may be used by any party for any purpose if the Court finds that the interests of justice would be served thereby.

(2) Objections (other than as to form) to questions or answers in a deposition taken prior to a trial shall be made

by motion at the outset of the trial. If a deposition is taken subsequent to a trial, then any objections must be submitted to the Court by a date which the Court shall determine at the time the request to take the post trial deposition is granted.

2.52.215 INTERROGATORIES (1) A party may serve upon an adverse party at any time after a ~~hearing~~ trial has been set written interrogatories to be answered by a party served. Interrogatories may not be served within 20 days of the date ~~a hearing is~~ set for trial. The interrogatories shall be answered separately and fully in writing under oath. The answers shall be signed by the person making them, and the party upon whom the interrogatories have been served shall serve a copy of the answers on the party submitting the interrogatories and on the Court within 20 days after the service of the interrogatories unless the Court on motion and notice and for good cause shown lengthens or shortens the time.

(2) A party may by motion and within 10 days of receipt of the interrogatories request the Court to order any interrogatories in a set or an entire set of interrogatories as invalid because of annoyance, expense, embarrassment, oppression, irrelevance, or other good cause. ~~If the Court orders the interrogatories invalid,~~ The party does not have to answer ~~the~~ any interrogatories ordered invalid.

(3) Same as existing rule.

2.52.219 INFORMAL DISPOSITION (1) In the discretion of the Court, informal disposition~~, in the discretion of the Court,~~ may be made of a dispute or controversy by stipulation, agreed settlement, consent order, or default.

2.52.222 ~~REHEARING~~ NEW TRIAL (1) ~~The Court will,~~ After ~~the hearing~~ a trial, the Court will issue an order or will issue findings of fact and conclusions of law and ~~an order~~ judgment setting forth the Court's determination of the disputed issues. The parties to the dispute may consider ~~this~~ the order or the judgment as a final decision of the Court for appeal purposes. ~~However, any~~ A party to the dispute may request a ~~rehearing~~ new trial before the Court within 20 days after ~~a party receives~~ receipt of a copy of the order or judgment, and if any party submits a request for ~~rehearing~~ a new trial, the order or judgment issued by the Court shall not be considered a final decision of the Court for appeal purposes.

(2) If a request for a ~~rehearing~~ new trial is filed, the ~~parties~~ party requesting the new trial ~~rehearing~~

shall set forth specifically and in full detail the grounds upon which the party considers the order or judgment to be incorrect. If the Court denies the request for the new trial ~~rehearing~~, the original order or judgment issued by the Court shall be considered the final decision of the Court as of the day the new trial ~~rehearing~~ is denied. If a new trial ~~rehearing~~ is granted, the matter will be scheduled ~~set~~ for trial pursuant to ARM 2.52.208. The matter will be determined by the testimony taken at the initial trial and the new trial ~~rehearing~~. After the new trial ~~rehearing~~ the Court will issue ~~the final~~ an order or findings of fact and conclusions of law and judgment setting forth the Court's determination of the disputed issues.

(3) If a new trial ~~rehearing~~ is not requested within 20 days after a party receives a copy of the order or judgment, the Court shall order the file sent to the Division of Workers' Compensation, subject to any order the Court may make in the future.

(4) Same as existing rule.

2.52.225 APPEALS REGARDING CRIME VICTIMS' COMPENSATION, OCCUPATIONAL DISEASE CLAIMS, AND SUBROGATION Subsections (1) through (4) Same as existing rule.

(5) If, before the date set for ~~hearing~~, trial, application is made to the Court for leave to present additional evidence, and it is shown to the satisfaction of the Court that the additional evidence is material and that there were good reasons for failure to present it in the proceedings before the Division, the Court may order that the additional evidence be presented to the Court.

(6) The ~~hearing~~ trial regarding the petition shall be set with other proceedings in accordance with ARM 2.52.208.

(7) Same as existing rule.

(8) ARM 2.52.222, relating to ~~rehearings~~, new trials, applies to decisions under this rule. However, the decision of the Court may or may not be in the form of findings of fact or conclusions of law.

3. The rationale for amending these rules is to clarify certain aspects of the present rules as determined by the Court's annual review and to conform to the Court's responses to comments as published in MAR Issue No. 18, dated September 25, 1980.

4. Interested parties may submit their data, views or arguments concerning these changes in writing to Workers' Compensation Court, 1422 Cedar-Airport Way, P. O. Box 4127, Helena, Montana 59601, by November 13, 1980.

5. The authority of the Court to make the proposed changes in the rules is based on and implements 2-4-201 MCA.

William E. Hunt
WILLIAM E. HUNT
JUDGE

CERTIFIED TO THE SECRETARY OF STATE: October 7, 1980
DATE

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

In the matter of the repeal of rule 10.16.802, concerning establishment of an individual district special education program	NOTICE OF PROPOSED REPEAL OF RULE 10.16.802 (Establishing Special Education Program) NO PUBLIC HEARING CONTEMPLATED

To: All Interested Persons:

1. On November 15, 1980 the superintendent of public instruction proposes to repeal 10.16.802 concerning establishment of individual district special education program.

2. The rule proposed to be repealed is on page 10.232 of the Administrative Rules of Montana.

3. The agency proposes to repeal the rule because some of the language is a repetition of language currently in statute. Some of the concepts from the rule have been included as part of the amendment of 10.16.801. The concepts in 10.16.802 (1)(a)(b) concerning mandatory programs are clarified in the proposed amendment to 10.16.801(2)(a). The concepts in 10.16.802(2)(3) concerning permissive programs are clarified in the proposed amendment to 10.16.801(3). The concept in 10.16.802(4) has been transferred to 10.16.801(4).

4. Interested parties may submit their data, views or arguments concerning the proposed repeal in writing to Shirley M. Miller, Office of Public Instruction, Director of Special Education, Helena, Montana, 59601 no later than November 13, 1980.

5. If a person who is directly affected by the proposed repeal wishes to express his data, views and arguments orally or in writing at a public hearing, he must make a written request for a hearing and submit this request along with any written comments to Shirley M. Miller, Office of Public Instruction, Director of Special Education, Helena, Montana, 59601 no later than November 13, 1980.

6. If the agency receives a request for a public hearing on the proposed repeal from either 10 percent or 25, whichever is less, of the persons who are affected by the proposed repeal; from the administrative code committee of the legislature, from a governmental subdivision or agency; or from an association having not less than 25 member 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 over a thousand persons based on the number of special education personnel and parents of special education children in Montana.

7. The authority of the agency to make the proposed repeal is based on section 20-7-402(2), 20-7-403(2)(7) MCA.

The rule implements sections 20-7-412, 20-7-411, 20-7-414 MCA.

ALVE THOMAS
Deputy Superintendent
Authorized Representative

Certified to the Secretary of State 9/30/80

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

In the matter of the amendment of Rule 10.16.801 concerning establishment of a special education program	))))	NOTICE OF THE PROPOSED AMENDMENT OF RULE 10.16.801 (Establishment of Special Education Program)

NO PUBLIC HEARING CONTEMPLATED

To: All Interested Persons:

1. On November 15, 1980 the superintendent of public instruction proposes to amend rule 10.16.801 concerning establishment of a special education program.

2. The rule as proposed to be amended provides as follows: 10.16.801 ESTABLISHMENT OF SPECIAL EDUCATION PROGRAM

~~(1) All handicapped children in Montana are entitled to a free appropriate public education provided in the least restrictive setting. To the maximum extent appropriate, handicapped children, including children in public or private institutions or other care facilities, shall be educated with children who are not handicapped. Separate schooling or other removal of handicapped children from the regular educational environment may occur only when the nature or severity of the handicap is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.~~

(1) Pursuant to M.C.A. 20-7-411(1), all handicapped children in Montana are entitled to a free appropriate education in the least restrictive setting.

(2) ~~After September 1, 1977, the~~ The board of trustees of every school district must provide~~, or establish and maintain,~~ a special education program ~~herein defined,~~ as defined in the Special Education Regulations, for handicapped children between the ages of six and eighteen inclusive. ~~After September 1, 1980, such services shall be provided for all handicapped children between the ages of three and 21 inclusive.~~ Mandatory programs must be approved by the board of trustees and the superintendent of public instruction.

(a) Group or individual programs may be established.

(b) ~~The board of trustees of any~~ A school district may meet its obligation to serve handicapped persons by establishing its own special education program, or by establishing or participating in a cooperative special education program.

(3) Programs may be established for handicapped children between the ages of 0 through 5 and nineteen through twenty-one. Permissive programs must be approved by the board of trustees and the superintendent of public instruction. Permissive programs may be established for the purposes listed in M.C.A. 20-7-412(3)(a)(b)(c).

(4) Refer to 20-7-412(3) concerning a school district's obligations to nonhandicapped children in a similar age group.

(5) Refer to 20-7-412(4) M.C.A. which in some cases, permits an agency to contract with a school district to provide services for handicapped persons.

3. 10.16.801 and 10.16.802 are being combined to provide one clear rule. Subsection (1) of 10.16.801 has been amended to eliminate unnnecessary repetition of statutory language. Subsection (2) of 10.16.801 has been amended to conform to House Bill 624 which makes a school district's provision of special education programs permissive in certain cases. The rule is designed to clarify for which age groups special education is mandatory and for which ages special education is permissive under Montana laws.

Subsection 2(a)(b) of the proposed amendment is a rephrase of 10.16.802(a)(b) and 10.16.801(3) respectively.

Subsection (3) brings the provision of 10.16.802(2) into agreement with House Bill 624. Repetition of statutory language has been eliminated by incorporating the list of purposes in 20-7-212(2)(a)(b)(c) M.C.A.

Subsections (4) and (5) of the proposed amendment are included to draw attention to applicable portions of statutes which deal with the obligation to provide services to the handicapped.

4. Interested parties may submit their data, views or arguments concerning the proposed amendments in writing to Shirley M. Miller, Office of Public Instruction, Director of Special Education, Helena, Montana, 59601 no later than November 13, 1980.

5. If a person who is directly affected by the proposed amendment wishes to express his data, views and arguments orally or in writing at a public hearing, he must make a written request for a hearing and submit this request along with any written comments to Shirley M. Miller, Office of Public Instruction, Director of Special Education, Helena, Montana, 59601 no later than November 13, 1980.

6. If the agency receives a request for a public hearing on the proposed amendment from either 10 percent or 25, whichever is less, of the persons who are affected by the proposed amendment; from the administrative code committee of the legislature, from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be more than a thousand persons based on the number of special education personnel and parents of special education children in Montana.

7. The authority of the agency to make the proposed amendment is based on section 20-7-402(2), 20-7-403(2)(7) M.C.A. The implementing authority is 20-7-412, 20-7-411, 20-7-414, M.C.A.

Alve Thomas

ALVE THOMAS
Deputy Superintendent
Authorized Representative

Certified to the Secretary of State 9/30/80

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

In the matter of the amendment of Rule 10.16.2004 authorizing preschool special education programs	NOTICE OF PROPOSED AMENDMENT OF RULE 10.16.2004 (Preschool Programs) NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On November 15, 1980 the superintendent of public instruction proposes to amend rule 10.16.2004 which authorizes preschool programs.

2. The rule as proposed to be amended provides as follows: 10.16.2004 PRESCHOOL PROGRAMS

(1) Education programs may be developed for preschool handicapped children age ~~three~~ 0 through five providing the district obtains prior written approval from the superintendent of public instruction.

~~(2)--Approved procedures for preschool handicapped children are:~~

~~(a) The school district is to submit a letter to the office of public instruction requesting permission to operate a program. The letter should briefly describe the program, identification process and/or number of handicapping conditions to be treated;~~

~~(b)--a program unit application, Part B, is to be submitted for each professional staff member.~~

(2) The program must be included in the district's approved budget.

(3) Preschool programs may be established for the purposes listed in MCA 20-7-212(2)(a)(b)(c).

(4) Pursuant to 20-7-443, 20-7-431, and 20-7-442, M.C.A., financial assistance is available for preschool special education programs.

(3) The rule is amended to correspond to House Bill 624 making the school district provision of special education programs permissive in certain cases. The old subsections 2(a)(b) are deleted because they do not accurately reflect current application procedures.

Subsection (3) and (4) are included to draw attention to Montana statutes which apply to the establishment of preschool special education programs.

4. Interested parties may submit their data, views or arguments concerning the proposed amendments in writing to Shirley Miller, Office of Public Instruction, Director of Special Education, Helena, Montana, 59601 no later than November 13, 1980.

6. If the agency receives a request for a public hearing on the proposed amendment from either 10 percent or 25, whichever is less, of the persons who are affected by the proposed amendment; from the administrative code committee of the legislature, from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly

affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be more than a thousand persons based on the number of special education personnel and parents of special education children in Montana.

7. The authority of the agency to make the proposed amendment is based on section 20-7-402(2), 20-7-403(2)(7) MCA. The implementing authority is 20-7-443, 20-7-442, 20-7-412, 20-7-414, 20-7-431 MCA.

Alve Thomas

ALVE THOMAS
Deputy Superintendent
Authorized Representative

Certified to the Secretary of State 9/30/80

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

In the matter of the amendment of rules 10.16.801 (Establishment of Special Education Program) and 10.16.802 (Establishment of Individual District Special Education Program) and 10.16.2004 (Preschool Programs).	NOTICE OF VACATION OF MAR NOTICE NO. 10-2-26, 10-2-27, 10-2-28

To: All Interested Persons

1. On July 17, 1980 the superintendent of public instruction published a notice of proposed amendment of rules 10.16.801, Establishment of Special Education Program, 10.16.802, Establishment of Individual District Special Education Program and 10.16.2004, Preschool Programs, at pages 2166 to 2171 of the 1980 Montana Administrative Register, Issue No. 13.

2. The superintendent vacates the above mentioned notices. Amendments to 10.16.2004 and 10.16.801 are noticed in this register. A notice of repeal for 10.16.802 is also noticed in this register. The applicable notice numbers are 10-2-26, 10-2-27, 10-2-28.

Alve Thomas

ALVE THOMAS
Deputy Superintendent
Authorized Representative

Certified to the Secretary of State 9/30/80.

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

In the matter of the amendment of Rules 10.44.201(6), 10.44.202(2)(d) and 10.44.202(3) specifying criteria for eligibility of vocational education programs for weighted cost funding.	)))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT OF RULES 10.44.201 AND 10.44.202 FOR VOCATIONAL AGRICULTURE IN SECONDARY SCHOOLS

TO: All Interested Persons

1. Following is the schedule of public hearings to consider the amendment of rules 10.44.201 and 10.44.202.

DATE	TIME	SITE	CITY
11/17/80	7:30 p.m.	Custer County HS Library	Miles City
11/17/80	7:30 p.m.	Room 102, C.M. Russell HS	Great Falls
11/18/80	7:30 p.m.	High School Auditorium	Wolf Point
11/18/80	7:30 p.m.	2nd Floor Auditorium - Livingston Middle School	Livingston
11/18/80	7:30 p.m.	Lecture Room, Polson HS	Polson

2. The proposed amendments replace present rules 10.44.201(6); 10.44.202(2)(d) and 10.44.202(3) found in the Administrative Rules of Montana. As proposed, the amendments provide local boards of trustees more control over the scheduling of vocational agriculture programs and of travel funds provided instructors for supervising students summer programs. They also make Future Farmers of America Chapter activities an integral part of an approvable program, but make student participation in Future Farmers of America optional for students. Further, the proposed amendments enable the superintendent of public instruction to reduce funding for approved programs of less than ten and one-half (10½) months duration.

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

10.44.201 GENERAL REQUIREMENTS. (1) The program's primary objective may be that of developing skills leading to employment as well as advanced vocational training.

(2) Specific objectives shall be defined for skills to be developed and related to a specific occupation by U. S. Office of Education course code number.

(3) The program shall be based on the vocational education need of students in the area. A needs assessment shall be made during initial planning. Program information shall be projected for a five-year period.

(4) Programs must be developed and conducted in consultation with an advisory committee. The committee shall include members of both sexes from business, industry and labor. It should represent a cross section of men and women active in the occupation. Minorities residing in the area served by the committee must be represented appropriately.

(5) Instruction shall be based on an analysis of the skills and knowledge required in the occupation.

(6) The program ~~must~~ shall develop leadership and character through activities that accommodate ~~the~~ students' transitions from school to jobs. ~~-Vocational-student-organizations--(Future-Farmers-of-America-(FFA)-and-Distributive-Education---Clubs-of-America-(DECA)-are-required-for-vocational-agriculture and-marketing-and-distributive-education.--Student-organiza----tions-are-highly-recommended.--~~ All students vocational organizations are considered to be an integral part of vocational education instruction.

(7) Provision shall be made for vocational guidance and shall include, but not be limited to, occupational information and career counseling.

(8) Students shall be selected for enrollment on the basis of their interest in the occupation and their ability to profit from the instruction. Prerequisite courses shall be required which provide students with information and experiences to make sound choices of occupations and advanced training.

(9) Instructors shall be occupationally competent and certified in the vocation to be taught.

(10) Instructional equipment and facilities shall be comparable to those used in the occupation; adequate for the maintenance of acceptable educational, health and safety standards; and capable of accommodating male, female and handicapped students.

(11) Provisions shall be made for job placement, annual follow-up of program completers and program evaluation.

(12) The maximum number of students per class shall be determined by the work being done, equipment being used, ease of supervision, safety factors, space and resources available, and the need for individual student instruction. Class size maximums are given for each program under its specific requirements. Approval for a larger class must be obtained in advance and will be granted only when evidence that adequate provisions have been made to ensure that the larger number will not hinder the success of the program. Deficiencies in some cases may dictate a small number of students per class.

(13) Programs shall be planned with regard for how they will relate to other employment and training programs conducted in the area.

(14) Provisions shall be made to ensure equal access to all programs by female, male and handicapped students; to review, evaluate and replace sex-biased learning materials; to make facilities and equipment available for all students; to provide guidance and counseling, especially for students choosing to enter non-traditional occupations; and to seek job placement dependent on the students' abilities, needs and interests rather than on cultural or sex stereotypes. Applications shall describe procedures in effect or ones that will be put into effect to ensure that these requirements are met.

(15) The school shall participate in the Montana Vocational Education Information System by providing information as required.

(16) Each program shall conduct a yearly self-evaluation and submit a copy to the office of public instruction. The program shall cooperate with the office of public instruction

in a thorough team evaluation which shall be conducted at least every five years.

(17) Local educational agencies shall use vocational education funds to supplement (add to, enhance) local funds to improve vocational programs. Funds will not be approved when it has been determined that supplanting (replacing) of local funds will occur. A school shall not decrease the amount spent in the vocational programs from one year to the next, figured either on an aggregate or per student basis, unless "unusual circumstances" exist, such as large expenditures in previous years for equipment.

(18) Accounting procedures must use standard school accounting codes. A yearly certified expenditure report will be submitted showing the actual expenditure of funds compared to the last approved budget. Records will be kept locally for audits. These records will include invoices, purchase orders, warrant numbers and other documents. Records for funded programs by six-digit course codes will be separated from non-funded programs. (History: Sec. 20-7-301(7) MCA; IMP, Sec. 20-7-303 MCA; NEW, 1979 MAR pp. 1130-1143, Eff. 9/28/79, AMD, 1980 MAR p. 134, Eff. 1/18/80.)

10.44.202 AGRICULTURE EDUCATION PROGRAMS. (1) The United States Office of Education course codes for Agriculture Education programs are:

(a) 01.0100 Agriculture Production
(b) 01.0200 Agricultural Supplies and Services
(c) 01.0300 Agricultural Mechanics
(d) 01.0400 Agricultural Products
(e) 01.0500 Ornamental Horticulture
(f) 01.0600 Agricultural Resources
(g) 01.0700 Forestry

(2) All students enrolled in vocational agricultural classes 9-12 are required to plan and conduct occupational experience programs under the direct supervision of a vocational agriculture teacher.

(a) The duration of programs shall be two or more years, with four years recommended.

(b) Classes shall meet a minimum of 270 minutes per week. Longer blocks of time are encouraged at the eleventh- and twelfth-grade level.

(c) The maximum class size per instructor shall be twenty students. Student-teacher ratio shall not exceed 60 to 1.

(d) Instructors shall hold a Montana class 1, 2, or 5 teaching certificate with endorsement in agriculture (61). The instructor must have had one year of agricultural occupational experience within the past five years. ~~Travel funds must be provided by the district in addition to the instructor's salary in order that the teacher may supervise and coordinate the occupational experience phase of the program.~~ Travel funds should be provided by the local district in accord with district policy so that the instructor may supervise and coordinate the occupational experience phase of the program. ~~Instructors shall be employed for a minimum of ten and one-half months, with at least four weeks at the end of the school year and two weeks before the start of the school year to supervise the students occupational experience programs.~~ It is strongly recommended that

vocational agriculture/agribusiness programs be conducted for a minimum of ten and one-half months. That portion of the program conducted during the summer, if a summer program is deemed appropriate and necessary to meet the needs of local vocational agriculture students, shall be scheduled by the local board of trustees to best meet these students' needs. All portions of a vocational agriculture program must be supervised by an instructor qualified in vocational agriculture. Because the funding level for vocational agriculture was based on the additional cost of a one and one-half month extenstion of teaching contract(s), any board of trustees offering less than a one and one-half month extended instructor(s) contract will receive a lower level of state reimbursement for an approved vocational agriculture program.

10.44.202(3) Future Farmers of America (FFA) ~~must be conducted as part of the program, service as an activity~~, is an integral part of vocational agriculture/agribusiness program. Student membership in FFA is left to the discretion of the individual student. The ~~teacher~~ instructor of vocational agriculture / agribusiness shall serve as advisor to the local FFA Chapter. ~~All programs of vocational agriculture/agribusiness must maintain a local chapter in good standing with the state and national FFA organizations.~~ It is strongly recommended that all programs of secondary vocational agriculture/agribusiness maintain a functional FFA chapter in good standing with the state and national FFA organizations. (History: Sec. 20-7-301(7) MCA, IMP, Sec. 20-7-303 MCA; NEW 1979 MAR pp. 1130-1143, Eff. 9/28/79, AMD 1980 MAR p. 134, Eff. 1/18/80.)

4. The superintendent is proposing these amendments in compliance with rules 1.3.205 and 10.2.101 providing for agency response to petition for rulemaking. In accordance with 1.3.206(c) i.e., the superintendent has initiated rulemaking procedures in accordance with the Administrative Procedures Act. This action is taken in response to petitioners' claims that the rules conflict with duties and responsibilities assigned local boards of trustees by law, particularly the responsibility for setting the terms of teacher contracts and rates for travel reimbursement for personnel in school districts. The petitioner further claims that rule 10.44.202(3) exceeds the superintendent's rulemaking authority in mandating an extracurricular activity. The proposed amendments result from the superintendent's efforts to resolve these claims through informal procedures.

5. Interested persons may present their data, views or agruments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Dr. Larry Key, Administrator, Department of Vocational and Occupational Services, Office of Public Instruction, State Capitol, Helena, Montana 59601.

6. The following persons will preside at the hearings: Dr. Larry Key, Ms. Betty Lou Hoffman and Mr. Larry Johnson. The address for each is as follows: Office of Public Instruction, State Capitol, Helena, MT 59601. Dr. Key will preside

at Great Falls and Polson; Mr. Johnson, at Miles City and Wolf Point; and Ms. Hoffman, at Livingston.

7. The authority of the superintendent of public instruction to make the proposed amendment is based on section 20-7-301(7) MCA and the rules implement section 20-7-303 MCA.

Phillip Ward Jr.

PHILLIP WARD, JR.
Authorized Representative
OFFICE OF PUBLIC INSTRUCTION

Certified to the Secretary of State October 7, 1980

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the amendment of Rule 10.57.105 Certification of Non-Citizens.	))))	NOTICE OF PROPOSED AMENDMENT OF RULE 10.57.105 NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On December 8, 1980, the Board of Public Education proposes to amend Rule 10.57.105, Certification of Non-Citizens.

2. The rule proposed to be amended provides in summary that:

10.57.105 CERTIFICATION OF NON-CITIZENS (1) remains the same.

(2)(a) remains the same.

(2)(b) Limitations: A maximum of five (5) years of class 5 certification is allowed under State Board of Public Education policies. Candidates who have held class 5 provisional certification for five (5) years and have not ~~become United States citizens~~ formally applied to become United States citizens will not be eligible for further Montana certification until such time as they are granted citizenship. A non-citizen who has formally applied for citizenship and has not received it within one year from the date of application, shall provide evidence to the board of public education of the reasons that citizenship has not been obtained before further certification can be considered.

(3) Class 5 provisional (specialist) certificate may be issued to an applicant qualified for class 6 certification except for United States citizenship. No more than four (4) renewals of the class 5 will be granted unless the procedure for citizenship in (2)(b) is followed. If coursework is needed in addition to citizenship to qualify for a class 6, that coursework must be completed before the first class 5 renewal can be processed. Subsequent renewals will be for citizenship only. Upon attaining the necessary coursework and citizenship, the applicant may apply for the class 6 certificate.

3. This rule is proposed to be amended because it presently does not provide for waivers if a person has not been granted citizenship due to procedural delays or other reasons when he has expressed a willingness to obtain citizenship.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to Chairman Marjorie W. King, Board of Public Education, 33 South Last Chance Gulch, Helena, Montana 59601, at any time prior to November 17, 1980.

5. If a person who is directly affected by the proposed amendment wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Chairman Marjorie W. King, Board of Public Education, 33 South Last Chance Gulch, Helena, Montana 59601, no later than November 17, 1980.

6. If the agency receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendment; from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be one (1) person based on approximately ten (10) non-citizens presently holding class 5 provisional certificates.

7. The authority of the agency to make the proposed amendment is based on Section 20-2-121, 20-4-102 MCA; IMP, 20-4-105, MCA.

Marjorie W. King

MARJORIE W. KING, CHAIRMAN
BOARD OF PUBLIC EDUCATION

BY: Marilyn Miller
Assistant to the Board

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

In the matter of the repeal of rule 16.10.1002 [formerly ARM 16-2.14(2)-S14140] relating to railway stations and cars	NOTICE OF PROPOSED REPEAL OF ARM 16.10.1002 [formerly 16-2.14(2)-S14140] (Railway Stations and Cars) NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On November 17, 1980, the department proposes to repeal rule 16.10.1002 (formerly 16-2.14(2)-S14140) relating to railway stations and cars.

2. The rule proposed to be repealed can be found on pages 16-461 through 16-474 (formerly 16-92 through 16-95) of the Administrative Rules of Montana.

3. The rule is proposed to be repealed because it is obsolete for all practical purposes. The number of passenger railway stations in Montana has decreased to a point where it would be impractical and inappropriate to maintain and implement a program for inspection, and there is no longer a need for state regulation of passenger cars since they are under the control of the federal government.

4. Interested persons may submit their data, views, or arguments concerning the proposed repeal in writing to Robert L. Solomon, Department of Health and Environmental Sciences, Cogswell Building, Capitol Complex, Helena, MT., 59601, no later than November 14, 1980.

5. If a person who is directly affected by the proposed repeal 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 Robert L. Solomon at the above address no later than November 14, 1980.

6. If the department receives requests for a public hearing on the proposed repeal from 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 more than 25 persons.

7. The authority of the department to repeal the proposed rule is based on section 50-1-203, MCA.

A. C. KNIGHT, M.D., Director

Certified to the Secretary of State October 7, 1980

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

In the matter of the repeal of rules 16.42.103 and 16.42.104, regulating laser energy restrictions and threshold limit charts	))))	NOTICE OF PUBLIC HEARING ON REPEAL OF RULES ARM 16.42.103 and 16.42.104 (Laser Energy Restrictions, Threshold Limit Charts)

TO: All Interested Persons

1. On November 21, 1980, at 9:00 a.m., or as soon thereafter as the matter can be heard, a public hearing will be held in the auditorium of the Montana State Department of Highways building, at 2701 Prospect Avenue, Helena, Montana, to consider the repeal of rules 16.42.103 and 16.42.104.

2. The rules to be repealed can be found on pages 16-2402 through 16-2439 of the Administrative Rules of Montana.

3. Rule 16.42.103 is proposed to be repealed because the Department of Health and Environmental Sciences' Occupational Health Bureau, the agency responsible for administering it, does not have the resources to keep up with the state of the art of lasers and because the federal government may exercise its jurisdiction to regulate lasers. Rule 16.42.104 is proposed to be repealed because the threshold limit charts presently found in that rule would generally be incorporated by proposed amendments noticed out today, into rules 16.42.101 and 16.42.102 with the exception of the charts pertaining to lasers. Rule 16.42.103 is proposed to be repealed and therefore the threshold limit charts for lasers in rule 16.42.104 should also be repealed.

4. Interested persons may present their data, views or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to C.W. Leaphart, Jr., 1 N. Last Chance Gulch, Helena, Montana, no later than November 15 1980.

5. C. W. Leaphart, Jr., has been appointed to preside over and conduct the hearing.

6. The authority of the Board to repeal these rules is based on sections 50-70-106, 50-70-113, MCA, implementing sections 50-70-103, 50-70-106 and 50-70-113, MCA.

John F. McGregor
JOHN F. McGREGOR, M.D., Chairman

By Rita Ann Sheehy
RITA ANN SHEEHY

Certified to the Secretary of State October 7, 1980

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

In the matter of the amendment of rule 16.42.101 regulating occupational noise	)))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT OF RULE 16.42.101 (Occupational Noise)

TO: All Interested Persons

1. On November 21, 1989, at 9:00 a.m., or as soon thereafter as the matter can be heard, a public hearing will be held in the auditorium of the Montana State Department of Highways building, at 2701 Prospect, Helena, Montana, to consider the amendment of ARM 16.42.101.

2. The proposed amendment replaces present rule 16.42.101 found in the Administrative Rules of Montana combining it with applicable parts of rule 16.42.104.

3. The rule is proposed to be amended as follows:

16.42.101 OCCUPATIONAL NOISE ~~(1)--No person shall cause, suffer, allow, or permit noise exposure or exposures to any worker employed at any work place which exceed those values listed in Section A, Table I of the "Threshold Limit Values of Physical Agents".~~

~~(2)--When any worker employed at any work place is subjected to noise levels exceeding those listed in Table I of the "Threshold Limit Values of Physical Agents", feasible administrative or engineering control shall be utilized. If such controls fail to reduce sound levels within the levels of said Table I, personal protective equipment shall be provided and used to reduce noise levels within the levels indicated in Table I.~~

(1) The purpose of this rule is to establish maximum noise exposure levels that represent conditions under which it is believed that nearly all workers may be repeatedly exposed without adverse effect on the ability to hear and understand normal speech. The public should note that the United States Occupational Safety and Health Act (OSHA) may have pre-empted the application of this rule to some work places.

(2) As used in this rule, the following definitions apply:

(a) "ANSI" means the American National Standards Institute of 1430 Broadway, New York, New York, 10018.

(b) "Continuous noise" means those variations of noise levels that involve maxima at intervals of one per second or less.

(c) "Impact or impulsive noise" means those variations

of noise levels that involve maxima at intervals of greater than one per second.

(3) For purposes of determining compliance with this rule, noise levels shall be determined by a sound level meter satisfactory to the department which operates on the decibels A-weighting network (dbA) with slow meter response. Inquiries as to whether a particular meter is satisfactory may be answered by contacting the Occupational Health Bureau, Environmental Sciences Division, Montana Department of Health and Environmental Sciences, Cogswell Building, Capitol Complex, Helena, Montana, 59601, telephone 449-3671.

(4) No person may cause or permit the exposure of any worker employed at any work place to noise levels in excess of the maximum noise exposure levels listed in subsection (6) of this rule.

(5) When any worker employed at any work place is exposed to noise levels exceeding those listed in subsection (6) of this rule, feasible administrative or engineering controls shall be utilized by the employer to reduce the noise levels. If such controls fail to reduce the worker's exposure to noise levels within the maximum permissible noise exposure levels listed in subsection (6) of this rule, personal hearing protective equipment shall be provided by the employer to the worker and used to reduce the noise exposure level to within the maximum permissible noise exposure levels listed in subsection (6) of this rule.

(6) The maximum permissible noise exposure levels to which a worker may be exposed are as shown in the following table:

Continuous or Intermittent Noise Exposures

Duration per day in hours	Noise level (dbA)
8	90
6	92
4	95
3	97
2	100
1 1/2	102
1	105
3/4	107
1/2	110
1/4	115

(a) These values apply to the total time of exposure per working day regardless of whether this is one continuous exposure or a number of short-term exposures but does not apply to impact or impulsive type of noises.

(b) When the daily noise exposure of a worker is composed of two or more periods of noise exposure of different levels, their combined effect should be considered rather than the individual effect of each. If the sum of the following

fractions: $C_1/T_1 + C_2/T_2 \ldots C_n/T_n$ exceeds unity (1), then the mixed exposure should be considered to exceed the maximum permissible exposure rate. C_n indicates the total time of exposure at a specified noise level, and T_n indicates the total time of exposure permitted at that level. Noise exposures of less than 90 dbA do not enter into the above calculations. No worker may be exposed to continuous noise in excess of 115 dbA for any duration.

(c) A worker's exposure to impact or impulse noise shall not exceed 140 decibels (dbA) peak sound pressure level.

4. The Board is proposing to amend this rule at the request of the Department's Occupational Health Bureau in order to clarify the application of the existing rule and combine the table from ARM 16.42.104 dealing with threshold limit values for noise into one rule.

5. Interested persons may present their data, views or arguments either orally or in writing at the hearing. Written data, view or arguments may also be submitted to C. W. Leaphart, Jr., 1 N. Last Chance Gulch, Helena, Montana, no later than November 17, 1980.

6. C. W. Leaphart, Jr., 1 N. Last Chance Gulch, Helena, Montana, has been appointed by the Board to preside over and conduct the hearing.

7. The authority of the Board to make the proposed amendment is based on sections 50-70-106, 50-70-113, MCA, and the rule implements section 50-70-113 and 50-70-103(8), MCA.

John F. McGregor
JOHN F. McGREGOR, M.D., Chairman

By Rita Ann Sheehy
RITA ANN SHEEHY

Certified to the Secretary of State October 7, 1980

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

In the matter of the amendment of rule 16.42.102 regarding occupational air contaminants	)))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT OF ARM 16.42.102 (Occupational Air Contaminants)

TO: All Interested Persons

1. On November 21, 1989, at 9:00 a.m., or as soon thereafter as the matter can be heard, a public hearing will be held in the auditorium of the Montana State Department of Highways building, at 2701 Prospect, Helena, Montana, to consider the amendment of ARM 16.42.102.

2. The proposed amendment replaces present rule 16.42.102 found in the Administrative Rules of Montana. The proposed amendment will update the Montana standards and bring them into conformity with regulations of the United States Occupational Safety and Health Act.

3. The rule is proposed to be amended as follows:

16.42.102 OCCUPATIONAL AIR CONTAMINANTS ~~(1) No person shall cause, suffer, allow, or permit an exposure or exposures to any worker employed at any work place by inhalation, ingestion, skin absorption, or contact to any material or substance at a concentration above those specified in Table II of the "Threshold Limit Values of Airborne Contaminants".~~

~~(2) To achieve compliance with Table II of the "Threshold Limit Values of Airborne Contaminants", feasible administrative or engineering controls must first be determined and implemented in all cases. In cases where protective equipment is also necessary, it shall be provided for and used. Protective equipment must be approved by a competent industrial hygienist or other technically qualified source.~~

(1) The purpose of this rule is to establish maximum threshold limit values for air contaminants under which it is believed that nearly all workers may be repeatedly exposed day after day without adverse health effects.

(a) The public is advised that regulations adopted by the United States Secretary of Labor pursuant to the federal Occupational Safety and Health Act (OSHA) may have pre-empted the application of some of these standards to certain workers in Montana. For those air contaminants for which an OSHA standard has been adopted, the OSHA standard applies to all workers in Montana except workers of state and local governments whose coverage is excluded by federal law and those workers whose work place is not of sufficient size to subject

it to OSHA. For those air contaminants for which no OSHA standard has been adopted, the threshold limit values adopted by this rule apply to all workers in Montana.

(b) Threshold limit values for air contaminants are established in this rule as ceiling ("C") values, or as time-weighted average values.

(2) As used in this rule, the following definitions apply in addition to those in section 50-70-103, MCA:

(a) "ANSI" means the American National Standards Institute, of 1430 Broadway, New York, New York, 10018.

(b) "Ceiling value" or an air contaminant preceded by a "C" means that for that air contaminant a threshold limit value has been established in this rule which value cannot be exceeded at any time, even briefly.

(c) "mg/m^3" means approximate milligrams of particulate per cubic meter of air.

(d) "mppcf" means millions of particles per cubic feet of air based on impinger samples counted by light-field technics.

(e) "ppm" means parts of vapor or gas per million parts of contaminated air by volume at 25° Celsius and 760 mmHg pressure.

(f) "Time weighted average value" means that for an air contaminant for which such threshold limit value has been established in an 8-hour work shift a worker may be exposed to a single brief concentration which exceeds this value so long as the average 8-hour cumulative exposure as computed by the formula in subsection (4) does not exceed this value.

(3) When any worker employed at any work place is or would be exposed to an air contaminant exceeding the threshold limit values of this rule, the employer shall determine and implement feasible administrative or engineering controls first to reduce the air contaminant levels. If such controls fail to reduce the worker's exposure to air contaminant levels within the threshold limit values of this rule, personal protective equipment shall be provided by the employer for the worker and used to reduce the worker's exposure to air contaminants within the levels permitted by this rule. All personal protective equipment used for purposes of this rule must be approved for each particular use by a competent industrial hygienist or other technically qualified person. Whenever respirators are used as personal protective equipment, they must be satisfactory to the department. Questions as to whether respirators are satisfactory may be answered by contacting the Department's Occupational Health Bureau, Cogswell Building, Capitol Complex, Helena, Montana, 59601, phone 449-3671.

(4) A worker's exposure to any air contaminant listed in Tables I, II, or III of this rule shall be limited in

accordance with the requirements of this subsection. The exposure of a worker is to be calculated in relation to a single air contaminant and also in relation to a combination or mixture of air contaminants in an 8-hour period.

(a) An employer shall use the following formula to compute a worker's cumulative or time weighted average exposure to a single air contaminant during an 8-hour work shift:

(i) E = CaTa + CbTb + ... CnTn/8. "E" is the equivalent exposure for the working shift; "C" is the concentration during any period of time T where the concentration remains constant; and "T" is the duration in hours of the exposure at the concentration C. An employer shall not allow the value of E to exceed the 8-hour time weighted average limit in Tables I, II or III of this rule for the material involved.

(ii) To illustrate the formula prescribed in subsection (i), note that isoamyl acetate has an 8-hour time weighted average limit of 100 ppm in Table I. Assume that an employee is subject to the following exposure: 2 hours exposure at 150 ppm; 2 hours exposure at 75 ppm; 4 hours exposure at 50 ppm. Substituting this information in the formula, we have 2 x 50 + 2 x 75 + 4 x 50/8 = 81.25 ppm. Since 81.25 ppm is less than 100 ppm, the 8-hour time weighted average limit, the exposure is acceptable.

(b) An employer shall use the following formula to compute a worker's cumulative or time weighted average exposure to a mixture or combination of air contaminants during an 8-hour work shift:

(i) $Em = C_1L_1 + C_2L_2 + ... C_nL_n$. "Em" is the equivalent exposure for the mixture; "C" is the concentration of a particular air contaminant; and "L" is the threshold limit value for that contaminant from Tables I, II, or III of this rule. An employer shall not allow the value of Em to exceed unity (1).

(ii) The following example illustrates the formula prescribed in subsection (i). Assume that a worker was exposed to actual concentrations of 500 ppm of Acetone as listed in Table I, 45 ppm of 2-Butanone as listed in Table I, and 40 ppm of Toluene as listed in Table II, during an 8-hour period. The 8-hour time weighted average exposure limits for these air contaminants are 1000 ppm, 200 ppm, and 200 ppm, respectively. Putting this data into the formula, Em = 500/1000 + 45/200 + 40/200, or 0.925. Since Em is less than unity (1), the exposure of the worker to the combination or mixture of air contaminants is acceptable.

(5) No person may cause or permit the exposure of any worker employed at any work place by inhalation, ingestion, skin absorption or contact to air contaminant levels in excess of the threshold limit values listed in this rule. Compliance with this rule shall be determined by calculating the worker's exposure to air contaminants as individual substances

or as the exposure to a mixture of substances according to the formulas stated in subsection (4).

(a) The threshold limit values in Table I of this rule are to be interpreted as follows:

(i) A worker's exposure to any air contaminant in Table I, the name of which is preceded by a "C", e.g., C Boran trifluoride, shall at no time exceed the threshold limit value listed which is expressed as a ceiling value for that air contaminant.

(ii) A worker's exposure to any material in Table I, the name of which is not preceded by a "C", shall not exceed the threshold limit value which is expressed as an 8-hour time weighted average.

(b) The threshold limit values in Table II of this rule are to be interpreted as follows:

(i) A worker's exposure to any air contaminant listed in Table II, in any 8-hour work shift of a 40-hour work week, shall not exceed the 8-hour time weighted average limit given for that air contaminant in Table II.

(ii) A worker's exposure to an air contaminant listed in Table II shall not exceed at any time during an 8-hour shift the acceptable ceiling concentration limit given for an air contaminant in Table II, except for a time period, and up to a concentration not exceeding the maximum duration and concentration allowed in the column under "acceptable maximum peak above the acceptable ceiling concentration for an 8-hour shift."

(iii) To exemplify subsection (i) and (ii), during an 8-hour shift, a worker may be exposed to a concentration of Benzene above 25 ppm, but never above 50 ppm, only for a maximum period of 10 minutes. Such exposure must be compensated by exposures to concentrations less than 10 ppm so that the cumulative exposure for the entire 8-hour work shift does not exceed a time weighted average of 10 ppm.

(c) The threshold limit values in Table III of this rule are to be interpreted as follows:

(i) A worker's exposure to any air contaminant listed in Table III, in any 8-hour work shift of a 40-hour work week, shall not exceed the 8-hour time weighted average limit given for that air contaminant in Table III.

(ii) For respirable quartz of crystalline silica, the percentage of crystalline silica in the formula for mppcf is the amount determined from airborne samples, except in those instances in which other methods have been shown to the department's satisfaction to be applicable.

(iii) For respirable quartz of crystalline silica, both concentration and percent quartz for the application of the limit of mg/m^3 are to be determined from the fraction passing a size-selector with the following characteristics in Table A.

TABLE A

Aerodynamics diameter (unit density sphere)	Percent passing selector
2	90
2.5	75
3.5	50
5.0	25
10	0

(iv) For non-asbestos forms of talc for silicates, the mppcf threshold limit value is to be used where less than 1% quartz exists but if greater than 1% quartz exists, the quartz threshold limit value in Table III is to be used.

(v) For all types of asbestos, the fibers per cubic centimeter level in Table III is to be determined by using the membrane filter method at 400 to 450 x (magnification) (4 millimeter objective) with phase contrast illumination.

(vi) An mppcf measurement may be converted into million particles per cubic meter and particles per C.C. by multiplying it by a factor of 35.3.

(d) The threshold limit values for air contaminants are listed in the following tables:

[NOTE: All of the following is new material. It is easier to read without underscoring, and therefore is not underscored.]

TABLE I

Air Contaminant	ppm	mg/m^3
Abate		15
Acetaldehyde	200	360
Acetic acid	10	25
Acetic anhydride	5	20
Acetone	1,000	2,400
Acetonitrile	40	70
Acetylene dichloride, see 1, 2-Dichloroethylene		
Acetylene tetrabromide	1	14
Acrolein	0.1	0.25
Acrylamide - Skin	---	0.3
Acrylonitrile - Skin	20	45
Aldrin - Skin	---	0.25
Allyl alcohol - Skin	2	5
Allyl chloride	1	3
C Allyl glycidyl ether (AGE)	10	45
Allyl propyl disulfide	2	12

[NOTE: All of the following is new material. It is easier to read without underscoring, and therefore is not underscored.]

TABLE I - Continued

Air Contaminant	ppm	mg/m^3
2-Aminoethanol, see Ethanolamine		
2-Aminopyridine	0.5	2
Ammonia	50	35
Ammonium sulfamate (Ammate)	---	15
n-Amyl acetate	100	525
sec-Amyl acetate	125	650
Aniline - Skin	5	19
Anisidine (o-,p-isomers) - Skin	---	0.5
Antimony and compounds (as Sb)	---	0.5
ANTU (alpha naphthyl thiourea)	---	0.3
Arsenic and compounds (as As)	---	0.5
Arsine	0.05	0.2
Azinphos-methyl - Skin	---	0.2
Barium (soluble compounds)	---	0.5
p-Benzoquinone, see Quinone		
Benzoyl peroxide	---	5
Benzyl chloride	1	5
Biphenyl, see Diphenyl		
Bisphenol A, see Diglycidyl ether		
Boron oxide	---	15
Boron tribromide	1	10
C Boron trifluoride	1	3
Bromine	0.1	0.7
Bromine pentafluoride	0.1	0.7
Bromoform - Skin	0.5	5
Butadiene (1,3-butadiene)	1,000	2,200
Butanethiol, see Butyl mercaptan		
2-Butanone	200	590
2-Butoxy ethanol (Butyl Cellosolve) - Skin	50	240
Butyl acetate (n-butyl acetate)	150	710
sec-Butyl acetate	200	950
tert-Butyl acetate	200	950
Butyl alcohol	100	300
sec-Butyl alcohol	150	450
tert-Butyl alcohol	100	300
C Butylamine - Skin	5	15
C tert-Butyl chromate (as CrO_3) - Skin	---	0.1

[NOTE: All of the following is new material. It is easier to read without underscoring, and therefore is not underscored.]

TABLE I - Continued

Air Contaminant	ppm	mg/m^3
n-Butyl glycidyl ether (BGE)	50	270
Butyl mercaptan	10	35
p-tert-Butyltoluene	10	60
Calcium arsenate	---	1
Calcium oxide	---	5
Camphor	2	---
Carbaryl (Sevin®)	---	5
Carbon black	---	3.5
Carbon dioxide	5,000	9,000
Carbon monoxide	50	55
Chlordane - Skin	---	0.5
Chlorinated camphene - Skin	---	0.5
Chlorinated diphenyl oxide	---	0.5
Chlorine	1	3
Chlorine dioxide	0.1	0.3
C Chlorine trifluoride	0.1	0.4
C Chloroacetaldehyde	1	3
a-Chloroacetophenone (phenacylchloride)	0.05	0.3
Chlorobenzene (monochlorobenzene)	75	350
o-Chlorobenzyliden malononitrile (OCBM)	0.05	0.4
Chlorobromomethane	200	1,050
2-Chloro-1,3-butadiene, see Chloroprene		
Chlorodiphenyl (42 percent Chlorine) - Skin	---	1
Chlorodiphenyl (54 percent Chlorine) - Skin	---	0.5
1-Chloro,2,3-epoxypropane, see Epichlorhydrin		
2-Chloroethanol, see Ethylene chlorohydrin		
Chloroethylene, see Vinyl chloride		
C Chloroform (trichloromethane)	50	240
1-Chloro-1-nitropropane	20	100
Chloropicrin	0.1	0.7
Chloroprene (2-chloro-1,3-butadiene) - Skin	25	90
Chromium, sol. chromic, chromous salts as Cr	---	0.5
Metal and insol. salts	---	1

[NOTE: All of the following is new material. It is easier to read without underscoring, and therefore is not underscored.]

TABLE I - Continued

Air Contaminant	ppm	mg/m^3
Coal tar pitch volatiles (benzene soluble fraction) anthracene, BaP, phenanthrene, acridine, chrysene, pyrene	---	0.2
Cobalt, metal fume and dust	---	0.1
Copper fume	---	0.1
Dusts and mists	---	1
Cotton dust (raw)	---	1
Crag® herbicide	---	15
Cresol (all isomers) - Skin	5	22
Crotonaldehyde	2	6
Cumene - Skin	50	245
Cyanide (as CN) - Skin	---	5
Cyanogen	10	20
Cyclohexane	300	1,050
Cyclohexanol	50	200
Cyclohexanone	50	200
Cyclohexene	300	1,015
Cyclopentadiene	75	200
2,4-D	---	10
DDT - Skin	---	1
DDVP, see Dichlorvos		
Decaborane - Skin	0.05	0.3
Demeton® - Skin	---	0.1
Diacetone alcohol (4-hydroxy-4-methyl-2-pentanone)	50	240
1,2-diaminoethane, see Ethylenediamine		
Diazomethane	0.2	0.4
Diborane	0.1	0.1
1,2-dibromoethane, see Ethylene dibromide, Table III		
Dibutyl phosphate	1	5
Dibutylphthalate	---	5
C Dichloroacetylene	0.1	0.4
C o-Dichlorobenzene	50	300
p-Dichlorobenzene	75	450
Dichlorodifluoromethane	1,000	4,950
1,3-Dichloro-5,5-dimethyl hydantoin	---	0.2

[NOTE: All of the following is new material. It is easier to read without underscoring, and therefore is not underscored.]

TABLE I - Continued

Air Contaminant	ppm	mg/m^3
1,1-Dichloroethane.	100	400
1,2-Dichloroethane, see Ethylene dichloride, Table III		
1,2-Dichloroethylene.	200	790
C Dichloroethyl ether - Skin.	15	90
Dichloromethane, see Methylenechloride		
Dichloromonofluoromethane	1,000	4,200
C 1,1-Dichloro-1-nitroethane.	10	60
1,2-Dichloropropane, see Propylene-dichloride		
Dichlorotetrafluoroethane	1,000	7,000
Dichlorvos (DDVP) - Skin.	---	1
Dieldrin - Skin	---	0.25
Diethylamine.	25	75
Diethylamino ethanol - Skin	10	50
C Diethylene triamine - Skin.	10	42
Diethylether, see Ethyl ether		
Difluorodibromomethane.	100	860
C Diglycidyl ether (DGE).	0.5	2.8
Dihydroxybenzene, see Hydroquinone		
Diisobutyl ketone	50	290
Diisopropylamine - Skin	5	20
Dimethoxymethane, see Methylal		
Dimethyl acetamide - Skin	10	35
Dimethylamine	10	18
Dimethylaminobenzene, see Xylidene		
Dimethylaniline (N-dimethylaniline) - Skin	5	25
Dimethylbenzene, see Xylene		
Dimethyl 1,2-dibromo-2,2-dichloroethyl phosphate, (Dibrom).	---	3
Dimethylformamide - Skin.	10	30
2,6-Dimethylheptanone, see Diisobutyl ketone		
1,1-Dimethylhydrazine - Skin.	0.5	1
Dimethylphthalate	---	5
Dimethylsulfate - Skin.	1	5
Dinitrobenzene (all isomers) - Skin . .	---	1
Dinitro-o-cresol - Skin	---	0.2
Dinitrotoluene - Skin	---	1.5

[NOTE: All of the following is new material. It is easier to read without underscoring, and therefore is not underscored.]

TABLE I - Continued

Air Contaminant	ppm	mg/m^3
Dioxane (Diethylene dioxide) - Skin	100	360
Diphenyl	0.2	1
Diphenylmethane diisocyanate, see Methylene bisphenyl isocyanate (MDI)		
Dipropylene glycol methyl ether - Skin	100	600
Di-sec, octyl phthalate (di-2-ethyl-hexylphthalate)	---	5
Endosulfan (Thiodan ®)	---	0.1
Endrin - Skin	---	0.1
Epichlorhydrin - Skin	5	19
EPN - Skin	---	0.5
1,2-Epoxypropane, see Propyleneoxide		
2,3-Epoxy-1-propanol, see Glycidol		
Ethanethiol, see Ethylmercaptan		
Ethanolamine	3	6
2-Ethoxyethanol - Skin	200	740
2-Ethoxyethylacetate (Cellosolve acetate) - Skin	100	540
Ethyl acetate	400	1,400
Ethyl acrylate - Skin	25	100
Ethyl alcohol (ethanol)	1,000	1,900
Ethylamine	10	18
Ethyl sec-amyl ketone (5-methyl-3-heptanone)	25	130
Ethyl benzene	100	435
Ethyl bromide	200	890
Ethyl butyl ketone (3-Heptanone)	50	230
Ethyl chloride	1,000	2,600
Ethyl ether	400	1,200
Ethyl formate	100	300
C Ethyl mercaptan	10	25
Ethyl silicate	100	850
Ethylene chlorohydrin - Skin	5	16
Ethylenediamine	10	25

[NOTE: All of the following is new material. It is easier to read without underscoring, and therefore is not underscored.]

TABLE I - Continued

Air Contaminant	ppm	mg/m^3
C Ethylene glycol dinitrate and/or Nitroglycerin - Skin	0.2	1
Ethylene glycol monomethyl ether acetate, see Methyl cellosolve acetate		
Ethylene imine - Skin	0.5	1
Ethylene oxide	50	90
Ethylidine chloride, see 1,1-Dichloroethane		
N-Ethylmorpholine - Skin	20	94
Ferbam	---	15
Ferrovanadium dust	---	1
Fluoride (as F)	---	2.5
Fluorine	0.1	0.2
Fluorotrichloromethane	1,000	5,600
Formic acid	5	9
Furfural - Skin	5	20
Furfuryl alcohol	50	200
Glycidol (2,3-Epoxy-1-propanol)	50	150
Glycol monoethyl ether, see 2-Ethoxyethanol		
Guthion ®, see Azinphosmethyl		
Hafnium	---	0.5
Heptachlor - Skin	---	0.5
Heptane (n-heptane)	500	2,000
Hexachloroethane - Skin	1	10
Hexachloronaphthalene - Skin	---	0.2
Hexane (n-hexane)	500	1,800
2-Hexanone	100	410
Hexone (Methyl isobutyl ketone)	100	410
sec-Hexyl acetate	50	300
Hydrazine - Skin	1	1.3
Hydrogen bromide	3	10
C Hydrogen chloride	5	7
Hydrogen cyanide - Skin	10	11
Hydrogen fluoride	3	2
Hydrogen peroxide (90%)	1	1.4
Hydrogen selenide	0.05	0.2
Hydroquinone	---	2
Indene	10	45
Indium and compounds, as In		0.1

[NOTE: All of the following is new material. It is easier to read without underscoring, and therefore is not underscored.]

TABLE I - Continued

Air Contaminant	ppm	mg/m^3
C Iodine	0.1	1
Iron oxide fume	---	10
Iron salts, soluble as Fe	---	1
Isoamyl acetate	100	525
Isoamyl alcohol	100	360
Isobutyl acetate	150	700
Isobutyl alcohol	100	300
Isophorone	25	140
Isopropyl acetate	250	950
Isopropyl alcohol	400	980
Isopropylamine	5	12
Isopropylether	500	2,100
Isopropyl glycidyl ether (IGE)	50	240
Ketene	0.5	0.9
Lead	---	0.15
Lead arsenate	---	0.15
Lindane - Skin	---	0.5
Lithium hydride	---	0.025
L.P.G. (liquified petroleum gas)	1,000	1,800
Magnesium oxide fume	---	15
Malathion - Skin	---	15
Maleic anhydride	0.25	1
C Manganese	---	5
Mesityl oxide	25	100
Methanethiol, see Methyl mercaptan		
Methoxychlor	---	15
2-Methoxyethanol, see Methyl cellosolve		
Methyl acetate	200	610
Methyl acetylene (propyne)	1,000	1,650
Methyl acetylene-propadiene mixture (MAPP)	1,000	1,800
Methyl acrylate - Skin	10	35
Methylal (dimethoxymethane)	1,000	3,100
Methyl alcohol (methanol)	200	260
Methylamine	10	12
Methyl amyl alcohol, see Methyl isobutyl carbinol		
Methyl (n-amyl) ketone (2-Heptanone)	100	465
C Methyl bromide - Skin	20	80
Methyl butyl ketone, see 2-Hexanone		

[NOTE: All of the following is new material. It is easier to read without underscoring, and therefore is not underscored.]

TABLE I - Continued

Air Contaminant	ppm	mg/m^3
Methyl cellosolve - Skin.	25	80
Methyl cellosolve acetate - Skin. . . .	25	120
Methyl chloroform	350	1,900
Methylcyclohexane	500	2,000
Methylcyclohexanol.	100	470
o-Methylcyclohexanone - Skin.	100	460
Methyl ethyl ketone (MEK), see 2-Butanone		
Methyl formate.	100	250
Methyl iodide - Skin.	5	28
Methyl isoamyl ketone	100	475
Methyl isobutyl carbinol - Skin	25	100
Methyl isobutyl ketone, see Hexone		
Methyl isocyanate - Skin.	0.02	0.05
C Methyl mercaptan.	10	20
Methyl methacrylate	100	410
Methyl propyl ketone, see 2-Pentanone		
C a-Methyl styrene.	100	480
C Methylene bisphenyl isocyanate (MDI).	0.02	0.2
Molybdenum:		
Soluble compounds.	---	5
Insoluble compounds.	---	15
Monomethyl aniline - Skin	2	9
C Monomethyl hydrazine - Skin	0.2	0.35
Morpholine - Skin	20	70
Naphtha (coaltar)	100	400
Naphthalene	10	50
Nickel carbonyl	0.001	0.007
Nickel, metal and soluble cmpds, as Ni.	---	1
Nicotine - Skin	---	0.5
Nitric acid	2	5
Nitric oxide.	25	30
p-Nitroaniline - Skin	1	6
Nitrobenzene - Skin	1	5
p-Nitrochlorobenzene - Skin	---	1
Nitroethane	100	310
Nitrogen dioxide.	5	9
Nitrogen trifluoride.	10	29
Nitroglycerin - Skin.	0.2	2

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TABLE I - Continued

Air Contaminant	ppm	mg/m^3
Nitromethane	100	250
1-Nitropropane	25	90
2-Nitropropane	25	90
Nitrotoluene - Skin	5	30
Nitrotrichloromethane, see Chloropicrin		
Octachloronaphthalene - Skin	---	0.1
Octane	500	2,350
Oil mist, mineral	---	5
Osmium tetroxide	---	0.002
Oxalic acid	---	1
Oxygen difluoride	0.05	0.1
Ozone	0.1	0.2
Paraffin wax fume	---	0.2
Paraquat - Skin	---	0.5
Parathion - Skin	---	0.1
Pentaborane	0.005	0.01
Pentachloronaphthalene - Skin	---	0.5
Pentachlorophenol - Skin	---	0.5
Pentane	1,000	2,950
2-Pentanone	200	700
Perchloroethylene, see Tetrachloroethylene, Table III		
Perchloromethyl mercaptan	0.1	0.8
Perchloryl fluoride	3	13.5
Petroleum distillates (naphtha)	500	2,000
Phenol - Skin	5	19
p-Phenylene diamine - Skin	---	0.1
Phenyl ether (vapor)	1	7
Phenyl ether-biphenyl mixture (vapor)	1	7
Phenylethylene, see Styrene		
Phenyl glycidyl ether (PGE)	10	60
Phenylhydrazine - Skin	5	22
Phosdrin (Mevinphos ®) - Skin	---	0.1
Phosgene (carbonyl chloride)	0.1	0.4
Phosphine	0.3	0.4
Phosphoric acid	---	1
Phosphorus (yellow)	---	0.1
Phosphorus pentachloride	---	1
Phosphorus pentasulfide	---	1
Phosphorus trichloride	0.5	3

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TABLE I - Continued

Air Contaminant	ppm	mg/m^3
Phthalic anhydride	2	12
Picric acid - Skin	---	0.1
Pival ® (2-Pivalyl-1,3-indandione)	---	0.1
Platinum (Soluble salts) as Pt	---	0.002
Propargyl alcohol - Skin	1	---
Propane	1,000	1,800
n-Propyl acetate	200	840
Propyl alcohol	200	500
n-Propyl nitrate	25	110
Propylene dichloride	75	350
Propylene imine - Skin	2	5
Propylene oxide	100	240
Propyne, see Methylacetylene		
Pyrethrum	---	5
Pyridine	5	15
Quinone	0.1	0.4
RDX - Skin	---	1.5
Rhodium, Metal fume and dusts, as Rh	---	0.1
Soluble salts	---	0.001
Ronnel	---	10
Rotenone (commercial)	---	5
Selenium compounds (as Se)	---	0.2
Selenium hexafluoride	0.05	0.4
Silver, metal and soluble compounds	---	0.01
Sodium fluoroacetate (1080) - Skin	---	0.05
Sodium hydroxide	---	2
Stibine	0.1	0.5
Stoddard solvent	500	2,950
Strychnine	---	0.15
Sulfur dioxide	5	13
Sulfur hexafluoride	1,000	6,000
Sulfuric acid	---	1
Sulfur monochloride	1	6
Sulfur pentafluoride	0.025	0.25
Sulfuryl fluoride	5	20
Systox, see Demeton ®		

[NOTE: All of the following is new material. It is easier to read without underscoring, and therefore is not underscored.]

TABLE I - Continued

Air Contaminant	ppm	mg/m^3
2,4,5-T	---	10
Tantalum	---	5
TEDP - Skin	---	0.2
Tellurium	---	0.1
Tellurium hexafluoride	0.02	0.2
TEPP - Skin	---	0.05
C Terphenyls	1	9
1,1,1,2-Tetrachloro-2,2-difluoroethane	500	4,170
1,1,2,2-Tetrachloro-1,2-difluoroethane	500	4,170
1,1,2,2-Tetrachloroethane - Skin	5	35
Tetrachloromethane, see Carbon tetrachloride		
Tetrachloronaphthalene - Skin	---	2
Tetraethyl lead (as Pb) - Skin	---	0.075
Tetrahydrofuran	200	590
Tetramethyl lead (as Pb) - Skin	---	0.075
Tetramethyl succinonitrile - Skin	0.5	3
Tetranitromethane	1	8
Tetryl (2,4,6-trinitrophenylmethylnitramine) - Skin	---	1.5
Thallium (soluble compounds) - Skin as Tl	---	0.1
Thiram	---	5
Tin (inorganic compds, except oxides)	---	2
Tin (organic compounds)	---	0.1
C Toluene-2,4-diisocyanate	0.02	0.14
o-Toluidine - Skin	5	22
Toxaphene, see Chlorinated camphene		
Tributyl phosphate	---	5
1,1,1-Trichloroethane, see Methyl chloroform		
1,1,2-Trichloroethane - Skin	10	45
Titanium dioxide	---	15
Trichloromethane, see Chloroform		
Trichloronaphthalene - Skin	---	5
1,2,3-Trichloropropane	50	300
1,1,2-Trichloro 1,2,2-trifluoroethane	1,000	7,600
Triethylamine	25	100
Trifluoromonobromomethane	1,000	6,100
Trimethyl benzene	25	120

[NOTE: All of the following is new material. It is easier to read without underscoring, and therefore is not underscored.]

TABLE I - Continued

Air Contaminant	ppm	mg/m^3
2,4,6-Trinitrophenol, see Picric acid		
2,4,6-Trinitrophenylmethylnitramine, see Tetryl		
Trinitrotoluene - Skin	---	1.5
Triorthocresyl phosphate	---	0.1
Triphenyl phosphate	---	3
Tungsten and compounds, as W		
Soluble	---	1
Insoluble	---	5
Turpentine	100	560
Uranium (soluble compounds)	---	0.05
Uranium (insoluble compounds)	---	0.25
C Vanadium:		
V_2O_5 dust	---	0.5
V_2O_5 fume	---	0.1
Vinyl benzene, see Styrene		
Vinylcyanide, see Acrylonitrile		
Vinyl toluene	100	480
Warfarin	---	0.1
Wood dust	---	5
Xylene (xylol)	100	435
Xylidine - Skin	5	25
Yttrium	---	1
Zinc chloride fume	---	1
Zinc oxide fume	---	5
Zirconium compounds (as Zr)	---	5

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TABLE II

Air Contaminant	8-hour time weighted average	Acceptable ceiling concentration	Acceptable maximum peak above the acceptable ceiling concentration for an 8-hour shift	
			Concentration	Maximum duration
Benzene	10 ppm	25 ppm	50 ppm	10 minutes
Beryllium and beryllium compounds	2 $\mu g/m^3$	5 $\mu g/m^3$	25 $\mu g/m^3$	30 minutes
Cadmium dust	0.2 mg/m^3	0.6 mg/m^3		
Cadmium fume	0.1 mg/m^3	0.3 mg/m^3		
Carbon disulfide	20 ppm	30 ppm	100 ppm	30 minutes
Carbon tetrachloride	10 ppm	25 ppm	200 ppm	5 minutes in any 4 hours
Chromic acid and chromates		0.1 mg/m^3		
Ethylene dibromide	20 ppm	30 ppm	50 ppm	5 minutes
Ethylene dichloride	50 ppm	100 ppm	200 ppm	5 minutes in any 3 hours
Formaldehyde	3 ppm	5 ppm	10 ppm	30 minutes
Hydrogen sulfide	10 ppm	20 ppm	50 ppm	10 minutes only if no other measurable exposure occurs
Mercury		0.1 mg/m^3		
Mercury, organo (alkyl)		0.04 mg/m^3		
Methyl chloride	100 ppm	200 ppm	300 ppm	5 minutes in any 3 hours
Methylene chloride	500 ppm	1,000 ppm	2,000 ppm	5 minutes in any 2 hours
Styrene	100 ppm	200 ppm	600 ppm	5 minutes in any 3 hours
Tetrachloroethylene	100 ppm	200 ppm	300 ppm	5 minutes in any 3 hours
Toluene	200 ppm	300 ppm	500 ppm	10 minutes
Trichloroethylene	100 ppm	200 ppm	300 ppm	5 minutes in any 2 hours

[NOTE: All of the following is new material. It is easier to read without underscoring, and therefore is not underscored.]

TABLE III - MINERAL DUSTS

Air Contaminant	Millions of particles per cubic foot of air (mppcf)	Milligrams per cubic meter (mg/m^3)
Silica:		
Crystalline:		
Quartz (respirable).	$\frac{250}{\%SiO_2 + 5}$	$\frac{10\ mg/m^3}{\%\ SiO_2 + 2}$
Quartz (total dust).		$\frac{30\ mg/m^3}{\%\ S_2O_2 + 2}$
Cristobalite: Use ½ the value calculated from the count or mass formulae for quartz.		
Tridymite: Use ½ the value calculated from the formulae for quartz.		
Amorphous, including natural diatomaceous earth.	20	$\frac{80\ mg/m^3}{\%\ SiO_2}$
Silicates (less than 1% crystalline silica):		
Mica	20	
Soapstone.	20	
Talc (non-asbestos form) . .	20	
Talc (fibrous). Use asbestos limit.		
Tremolite (see talc, fibrous)		
Portland cement.	50	
Graphite (natural).	15	
Coal dust (respirable fraction less than 5% SiO_2)		$2.4\ mg/m^3$ or $\frac{10\ mg/m^3}{\%\ SiO_2 + 2}$
For more than 5% SiO_2. . .		
Inert or Nuisance Dust:		
Respirable fraction	15	$5\ mg/m^3$
Total dust.	50	$15\ mg/m^3$
	Fibers per cubic centimeters (fcm^3)	
Asbestos (all types) (asbestos fibers = asbestos fibers longer than 5 micrometers)	2	

4. The Board is proposing this amendment to its rule at the request of the Department of Health and Environmental Sciences' Occupational Health Bureau to transfer the threshold limit values for air contaminants from rule 16.42.104 while updating them and adding standards to bring the Montana standards in general conformity with those of the Occupational Safety and Health Administration and the American Conference of Governmental Industrial Hygiene.

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 and received by C. W. Leaphart, Jr., 1 N. Last Chance Gulch, #6, Helena, Montana, 59601, no later than November 15, 1980.

6. C. W. Leaphart, Jr., has been designated to preside over and conduct the hearing.

7. The authority of the Board to make the proposed amendment is based on sections 50-70-106, 50-70-113, MCA, implementing sections 50-70-103, 50-70-106, and 50-70-113, MCA.

John F. McGregor
JOHN F. McGREGOR, M.D., Chairman

By Rita Ann Sheehy
RITA ANN SHEEHY

Certified to the Secretary of State October 7, 1980

BEFORE THE DEPARTMENT OF LIVESTOCK
STATE OF MONTANA

In the matter of the amendment of rule 32.3.401 requring a reduced dose of Brucella abortus vaccine in cattle.	))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT OF RULE 32.3.401 (Official Brucellosis Vaccination)

TO: All Interested Persons

1. On November 20, 1980 at 3:00 p.m. a public hearing will be held in the Bridger Room of the City Center Motel, at Bozeman, Montana, to consider the amendment of rule 32.3.401.

2. The proposed amendment would require the use of a reduced dose of Brucella abortus Strain 19 vaccine in cattle. Other changes have been made for clarification.

3. On September 9, 1980 the Board of Livestock adopted an emergency rule instructing the State Veterinarian to adopt usage of the reduced dose of Brucella abortus strain 19 vaccine.

The rule as proposed to be amended provides as follows: (deleted material interlined, new material underlined.)

32.3.401 DEFINITIONS

Paragraphs (1) through (4) remain the same.

"(5) An "official vaccination" for bovine brucellosis is the subcutaneous inocculation of a female bovine by a deputy state veterinarian, or other persons approved by the state veterinarian, with a Brucella abortus vaccine licensed by the veterinary biologics division, United States department of agriculture, ~~by a deputy state veterinarian.~~ The vaccine will contain 300 million to 3 billion live organisms per dose. The female bovine animal ~~of a dairy breed~~ must be 2 4 through ~~6~~ 12 months (~~60~~ 120 to ~~179~~ 365 days) of age ~~or the female bovine animal of a beef breed shall be 2 through 10 months (60 to 299 days)~~ of age at the time of vaccination with a licensed Brucella abortus vaccine. An official vaccination shall include proper permanent identification of the animal at the time of vaccination and the issuance of a completed form SV-64."

Paragraphs (6) through (18) remain the same.

"(19) "Official vaccination" for ram epididymitis is the inoculation of the male sheep at weaning age or older, by a deputy state veterinarian, with a ram epididymitis organism vaccine approved by the Montana department of livestock, animal health division, ~~by a deputy state veterinarian.~~ Official vaccination includes permanent identification of the animal at the time of vaccination and the issuance of a completed vaccination form prescribed by the department."

4. The department is proposing this amendment to its rule because the old high dose vaccination was creating problems in controlling the disease rather than helping the cattle herds. This resulted because the blood tests currently in use for the diagnosis of Brucellosis do not distinguish between antibodies induced by vaccination, and those induced by the actual disease. Persistent antibody levels were the problem associated with the use of the high dose vaccine. This resulted in herds being unnecessarily quarantined and retested when their problem in reality was an infection caused by Strain 19 vaccine. By reducing the dose of vaccine this will give better protection and eliminate the problem of blood test reactions. This program change will hasten the ultimate eradication of brucellosis as a threat to man and cattle in Montana.

5. Interested persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to James W. Glosser, D.V.M., Administrator and State Veterinarian, Animal Health Division, Department of Livestock, Helena, MT 59601, no later than November 13, 1980.

6. The hearing will be before the Board of Livestock, Robert G. Barthelmess, Chairman presiding.

7. The authority of the department to make the proposed amendment is based on section 81-2-102 MCA and the same section is being implemented.

Robert G. Barthelmess
ROBERT G. BARTHELMESS
Chairman, Board of Livestock

BY: JAMES W. GLOSSER, D.V.M.
Administrator & State Veterinarian

Certified to the Secretary of State October 7, 1980.

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

IN THE MATTER of the proposed Amendments of ARM 40.30.403 concerning re-examinations for registered nurses; 40.30.404 concerning re-examinations for practical nurses; and 40.30.1002 through 40.30.1009 concerning standards for Montana schools of practical nursing; and adoption of a new rule concerning these standards.	NOTICE OF PROPOSED AMENDMENTS OF ARM 40.30.403 RE-EXAMINATION - REGISTERED NURSE; 40.30.404 RE-EXAMINATION - PRACTICAL NURSE; 40.30.1002 through 40.30.1009 STANDARDS FOR MONTANA SCHOOLS OF PRACTICAL NURSING and PROPOSED ADOPTION OF A NEW RULE CONCERNING THE ABOVE STANDARDS NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On November 15, 1980, the Board of Nursing proposes to amend rules ARM 40.30.403 concerning re-examinations for registered nurses; 40.30.404 concerning re-examinations for practical nurses; and 40.30.1002 through 40.30.1009 concerning standards for Montana schools of practical nursing and proposes to adopt a new rule concerning the standards for Montana schools of practical nursing.

2. The proposed amendment of 40.30.403 and 40.30.404 will delete the current rules in their entirety. The current rules are located at pages 40.525 through 40.527 of the Administrative Rules of Montana. The proposed new language will read as follows:

"40.30.403 RE-EXAMINATION - REGISTERED NURSE (1) Candidates may take the licensing examination three times in a three year period, commencing from the first eligible exam.

(2) Failure to successfully pass the licensing examination the third time, the candidate will not be admitted to further registered nurse examinations in Montana.

(3) The fee for repeating the examination will be $35.00.

40.30.404 RE-EXAMINATION - PRACTICAL NURSE (1) Candidates may take the licensing examination three times in a three year period, commencing from the first eligible exam.

(2) Failure to successfully pass the licensing examination the third time, the candidate will not be admitted to further licensed practical nurse examinations in Montana.

(3) The fee for repeating the examination will be $35.00."

3. The board is proposing the amendments to up-date the rules for re-examination of licensure candidates for professional or practical nursing and to remove the mandatory remedial preparation following a second failure. As remedial preparation

for re-examination is believed to be an individual's responsibility, the trend is to challenge this regulatory authority of Boards of Nursing. The board also feels by changing the number of times a candidate may write the examination to three, they will be more effective in assuring the safety of life and health through qualified practitioners.

4. The authority of the board to make the proposed changes is based on section 37-8-202(2) MCA and implements the same.

5. The proposed amendments of ARM 40.30.1002 through 40.30.1009 will delete the contents of the current rules in their entirety. Changes in catchphrases will be reflected in the new material. The current rules are located at pages 40-555 through 40-560.

"40.30.1002 DEFINITIONS (1) Board: The Montana state board of nursing, practical nursing administration.

(2) The practice of practical nursing: is the performance for compensation in the care of the ill, injured or infirm, of acts selected by and performed under the direction of a registered nurse, or a person licensed in this state to prescribe such medications and treatments, and not requiring the substantial specialized skill, judgment and knowledge required in professional nursing. (section 37-8-102 (3)(b) MCA)

(3) School (program): An educational unit responsible for preparing persons for practice as practical nurses qualified to write the state licensing examination.

(4) Approved school (program): A school which has met the requirements of the law and the minimum standards approved and specified by the Montana state board of nursing as outlined in these rules.

(5) Conditionally approved school (program): A school which fails to meet requirements of the law and of the board and has been given a definite time in which to meet the requirements.

(6) Initially approved school (program): A school which has met the requirements of the law and the board but which has not been in operation long enough to qualify for full approval.

(7) Governing body (controlling body): The institution responsible for the operation of the school.

(8) Faculty: Body of persons to whom are entrusted the administration and instructions of the school.

(9) Curriculum: The total learning experience organized in a systematic manner.

(10) Requirements: The minimum standards which schools must meet in order to be approved. The words shall or will designate the statements of requirements.

~~40.30.1003 APPROVAL OF PARENT INSTITUTION~~ PHILOSOPHY AND OBJECTIVES (1) The school shall have a clearly defined statement of philosophy and objectives that is consistent with the philosophy of the governing body.

(2) The objectives shall be consistent with the philosophy and shall describe the competencies of the graduate of the program.

(3) The philosophy and objectives formulated and adopted by the practical nursing faculty shall be used in developing, implementing and evaluating the total program.

40.30.1004 ADMINISTRATION AND ORGANIZATION OF ~~THE SCHOOL~~ (1) Educational institutions conducting programs shall be approved by the appropriate state, regional or national accrediting agencies.

(2) All facilities conducting or cooperating to provide clinical experiences shall be approved by the appropriate state agency.

(3) The organization and administration of the nursing program shall be consistent with those of other programs in the institutions.

(4) There shall be written organizational plans which clearly define relationships of the nursing program to the governing body, to other departments in the institution and to other institutions and agencies used by the nursing program.

(5) The administration of the governing body shall appoint one nursing instructor as coordinator or director. The coordinator/director will have sufficient time provided for carrying out administrative responsibilities. Instructional assignments of the coordinator/director will be consistent with the span or degree of administrative responsibility.

(6) The governing body shall establish formal relationships with agencies used for clinical learning experiences. Such agreements shall be in writing, shall clearly define the respective responsibilities and shall provide for periodic review and renewal.

(7) There shall be adequate financial resources for effective operations of the program:

(a) A separate annual budget for the nursing program shall be provided.

(b) The nurse faculty member responsible for the coordination/direction of the program shall actively participate in the preparation and control of the annual budget.

40.30.1005 FACULTY (1) There shall be an adequate well qualified faculty to meet the educational needs of the program.

(2) Nursing faculty members shall be graduates of approved schools of professional nursing and shall be currently licensed to practice nursing in Montana. Each faculty member shall have academic preparation and experience as follows:

(a) The coordinator/director of the program shall have a minimum of a baccalaureate degree in nursing supplemented by courses in curriculum development; principles and methods of teaching and measurement; and evaluation. The coordinator/director shall have had at least two years experience in registered nursing practice within the last five years and at least two years teaching experience in nursing education.

(b) The nurse faculty members shall have a minimum of a baccalaureate degree in nursing supplemented by courses in principles and methods of teaching and measurement and evaluation. Faculty members shall have had at least two years experience in registered nursing practice within the last five years.

(3) All non-nurse faculty shall have academic and professional education and experience in the field of their specialization.

(4) Faculty work loads are equitable and shall allow time for classes and lab preparation, teaching, program revision, improvements of teaching methods, guidance of students, participation in faculty organization and committees, attendance at professional meetings and participation in continuing education activities.

(5) There shall be a ratio of no more than 10 students for each faculty person in the clinical area at any given time.

(6) Written job specifications including responsibilities and qualifications shall be available for each position.

(7) Personnel policies shall be in writing and shall include selection, appointment, and promotion, salary increments, teaching load, faculty development and welfare.

(8) Regularly scheduled meetings shall be held by the nursing faculty and minutes shall be on file.

(9) At the time of employment, each faculty member shall file a faculty qualification record on the required form with the board. Any changes in faculty qualifications shall be included with the school's annual report.

40.30.1006 STUDENTS (1) Requirements for admission shall be consistent with the policies of the governing body and shall include a high school diploma or it's equivalent.

(2) Classes shall be admitted only at regular intervals and each class should consist of not less than 10 students.

(3) Policies consistent with those of the governing body shall be in writing regarding re-admission of students and admission by transfer.

(4) Student progress shall be reviewed periodically to substantiate retention in the nursing program.

(5) Policies providing for student welfare as related to counseling and guidance, health and financial aid shall be available.

(6) Requirements for graduation shall be in writing. Upon successful completion of the program, the student shall receive a certificate or diploma from the governing body.

40.30.1007 CURRICULUM (1) Program length shall be based upon completion of the approved curriculum within the structure and the framework of the governing body and be consistent with the philosophy and objectives of the program.

(2) The study, development, implementation and evaluation of the nursing curriculum shall be the responsibility of the practical nursing faculty.

(3) The philosophy and objectives of the nursing program shall serve as the basis for development, implementation and evaluation of the curriculum.

(4) The curriculum shall be divided into identifiable areas of content which provide a progressive development of knowledge, skills and attitudes.

(5) The choice and placement of courses, selection of learning activities and the organization of these shall provide continuity, sequence and integration in the total curriculum.

(6) Learning experiences shall reflect written behavioral objectives.

(7) The program shall include practical nursing theory and guided clinical practice based on the broad areas of the nursing model and essential to current practice in practical nursing.

40.30.1008 ~~GRADUATION~~ RESOURCES AND FACILITIES

(1) Classrooms, laboratories, conference rooms and instructional offices shall be adequate in size, number and type and shall provide an environment conducive to learning.

(2) Library resources and instructional resources shall be adequate and appropriate to meet the needs of students and faculty.

(3) Clinical facilities shall be selected to provide learning experiences sufficient to achieve the objectives of the program. Consideration shall be given to the philosophy and objectives of care in the facility, environment conducive to learning, learning experiences available and quality and quantity of the professional

and supportive staff.

(4) Secretarial and other supporting services will be sufficient to the needs of the program.

40.30.1009 RECORDS AND PUBLICATIONS (1) The school bulletin shall be current and will accurately describe the school and the nursing program.

(2) An adequate record system that provides information about the school, faculty, students and graduates with provision for the protection of records against loss, destruction, and unauthorized use will be maintained."

6. The proposed adoption of a new rule to the above standards will read as follows:

"40.30.1010 EVALUATION (1) Provisions shall be made for periodic systematic evaluation of the curriculum and all other aspects of the nursing program.

(2) Periodic and continuous evaluation of the student's progress shall be defined and implemented."

7. The board is proposing the amendments and adoption to up-date the standards to keep pace with trends in nursing education and to assure graduates of these programs will be prepared to meet society's needs for quality nursing care. The amendments have also been made to delete obsolete statements, re-group the standards under more appropriate major headings, consolidate several single statements and to extend and clarify other statements.

8. The authority of the board to make the proposed amendments and adoption is based on section 37-8-202(2) MCA and implements the same section.

9. Interested parties may submit their data, views or arguments concerning the proposed amendments and adoption in writing to the Board of Nursing, Lalonde Building, Helena, Montana 59601 no later than November 13, 1980.

10. If a person who is directly affected by the proposed amendments and 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 Nursing, Lalonde Building, Helena, Montana 59601 no later than November 13, 1980.

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

12. The authority and implementing sections are listed after the proposed changes.

BOARD OF NURSING
JANIE CROMWELL, R.N., PRESIDENT

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

Certified to the Secretary of State, October 7, 1980.

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

In the matter of the amendment of Rule 46.12.1201 (46-2.10(18)-S11451A), Rule 46.12.1202 (46-2.10(18)-S11451B), Rule 46.12.1204 (46-2.10(18)-S11451D), Rule 46.12.1205 (46-2.10(18)-S11451E), and Rule 46.12.1206 (46-2.10(18)-S11451F) pertaining to the reimbursement for skilled nursing and intermediate care services, reimbursement method and procedures.	)))))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT OF RULE 46.12.1201, RULE 46.12.1202, RULE 46.12.1204, RULE 46.12.1205 AND RULE 46.12.1206 FOR REIMBURSEMENT FOR SKILLED AND INTERMEDIATE CARE SERVICES, REIMBURSEMENT METHOD AND PROCEDURE

TO: All Interested Persons

1. On November 6, 1980, at 9 a.m. a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, at 111 Sanders, Helena, Montana, to consider the amendment of Rule 46.12.1201, Rule 46.12.1202, Rule 46.12. 1204, Rule 46.12.1205, and Rule 46.12.1206 pertaining to reimbursement for skilled nursing and intermediate care services.

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

46.12.1201 ~~CLOSEOUT OF PRIOR RULES SINCE APRIL 1, 1978 AND TRANSITION~~ TRANSITION FROM RULES IN EFFECT SINCE APRIL 1, 1979 ~~(1) The rules in effect between April 1, 1978 and March 31, 1979, provide for determining prospective rates based on costs presented in cost reports ending March 31, 1978. The department will process and settle the March 31, 1978, cost reports and provide the appropriate reimburse- ment for the period April 1, 1978 through March 31, 1979.~~

~~(2) The prospective rates determined under rules in effect between April 1, 1978 and March 31, 1979, are hereby modified to allow for inflationary adjustment not anticipated when the April 1, 1978 rules were established. The prospective rates established for April 1, 1978, will be adjusted October 1, 1978 and January 1, 1979, to reflect the changes in the CPI and MPI during the months following April 1, 1978, that were not anticipated in the 7.5 percent adjustment percentage determined in rule 46-2.10(18)-S11450D(2)(a)(i)(ab) of the April 1, 1978 rules. The annualized adjustment percentage to be effective October 1, 1978, has been determined to be 9.2 percent, and the annualized adjustment percentage to be effective January 1, 1979, has been determined to be 9.3 percent. These percentages will be multiplied by the average of per diem adjusted operating costs as determined in rule 46-2.10(18)-S11450D(2)(a)(i)(aa) of the governing rules in effect between April 1, 1978 and March 31, 1979 which, in turn, is~~

~~added to per diem property costs as determined in rule 46-2-10(18)-S11450D(2)(b)(i) of the governing rules in effect between April 1, 1978 and March 31, 1979 to yield the prospective rate effective October 1, 1978 and January 1, 1979.~~

~~(3) Beginning April 1, 1979 rules 46-2-10(18)-S11451A through 46-2-10(18)-S11451F are hereby promulgated and implemented. Rules 46-2-10(18)-S11450A through 46-2-10(18)-S11450K as set forth in the administrative register of Montana at pages 46-94-7H through 96-947Q are hereby specifically repealed as of April 1, 1979.~~

(1) The rules in effect between April 1, 1979 and December 31, 1980 provide for determining a prospective rate based on prior fiscal year's costs. Those rules further provide for determining rates under an alternative rate review process.

(2) A facility which has entered into an agreement for rate review prior to December 31, 1980, will continue under that agreement for the period covered by the agreement. A facility which has not requested a rate review by December 31, 1980, shall receive a rate determined under the rules that follow.

(3) These rules shall be effective January 1, 1981.

46.12.1202 PURPOSE AND DEFINITIONS (1) Reasonable cost related reimbursement for skilled nursing and intermediate care facility services is mandated by section 249 of Public Law 92-603, the 1972 amendment to the Social Security Act.

(a) The purpose of the following rules is to meet the requirements of Title XIX including section 249 of Public Law 92-603 and 42 CFR 447 et seq, while treating the eligible recipient, the provider of services, and the department fairly and equitably.

(b) The rates determined under the following rules exclude costs estimated to be in excess of those necessary in the efficient delivery of needed health services, but shall not be set lower than the level which the department reasonably finds to be adequate to reimburse in full actual allowable costs of a provider operating economically and efficiently and having no deficiencies~~.~~ which would result in decertification. A provider will be defined to be operating efficiently if he is a prudent and cost conscious buyer. A prudent and cost conscious buyer not only refuses to pay more than the going price for a service or item, he also seeks to minimize costs. The department defines a provider to be operating economically if the actual allowable costs for a rate year have increased from the applicable prior fiscal year at a rate which is no more than the rate of change in the trend factor (see ARM 46.12.1204(3)(d)) for the same period.

The department defines a provider to have no deficiencies if that provider holds a current certification for participation in the medicaid program issued by the Montana department of health and environmental sciences.

(c) The rules for determining rates and the rate setting methodology may be amended or revised from time to time, but such amendments or revisions will become effective only after members of the public have had adequate opportunity to review and comment according to procedures established under Montana state law.

(d) The department will pay providers the amounts determined under these rules on a monthly basis upon receipt of an appropriate billing representing the determined rates applied to eligible recipients.

(2) As used in these rules governing nursing home care reimbursement the following definitions apply:

~~(a) "CPI" means the all items figure from the consumer price index for all urban consumers published monthly by the bureau of labor statistics, U.S. department of labor.~~

(a) "CPI" means the consumer price index for all urban consumers published monthly by the bureau of labor statistics, U.S. department of labor. CPI-all means the all items figure. CPI-food means the food at home item. CPI-other means the CPI all items figure excluding the food item and the shelter item.

(b) "Labor index" means the average hourly earnings, of production or nonsupervisory workers of nursing and personal care facilities published by the bureau of labor statistics, U.S. department of labor. Such earnings amount shall be utilized as an index.

(c) "Department" means the Montana department of social and rehabilitation services.

(d) "Facility" means a long-term care facility which provides skilled nursing or intermediate care, or both to two or more persons and which is licensed as such by the Montana department of health and environmental sciences.

(e) "Patient day" means an individual present and receiving services in a nursing home facility for a whole 24-hour period. Even though an individual may not be present for a whole 24-hour period on day of admission, such day will be considered a patient day. When department rules provide for the reservation of a bed for a patient who takes a temporary leave from a facility to be hospitalized or make a home visit, such whole 24-hour periods of absence will be considered patient days.

~~(f) "HIM 15" means provider reimbursement manual, health insurance manual 15, part 1, 1967.~~

~~(g) "HIM 16" means the audit manual for extended care facilities under the Health Insurance for the Aged Act, Title XVIII.~~

~~(h)~~ (f) "Routine nursing care services" means skilled or intermediate nursing care as defined in rules for nursing home care in ARM 46.12.555 and 46.12.556.

~~(i)~~ (g) "ICF/MR" means a facility certified by the Montana department of health and environmental sciences to provide intermediate care for patients who are mentally retarded. ~~according to federal regulations under 42 CFR 442.400.~~

~~(j)~~ (h) "Owner" means any person, agency, corporation, partnership or other entity which has an ownership interest, including a leasehold or rental interest, in assets used to provide nursing care services pursuant to an agreement with the department.

~~(k)~~ (i) "Provider" means any person, agency, corporation, partnership or other entity which has entered into an agreement with the department for the providing of nursing care services.

~~(l)~~ (j) "Administrator" means the person, including an owner, salaried employee, or other provider, with day-to-day responsibility for the operation of the facility. In the case of a facility with a central management group, the administrator, for the purpose of these rules, may be some person (other than the titled administrator of the facility), with day-to-day responsibility for the nursing home portion of the facility. In such cases, this other person must also be a licensed nursing home administrator.

~~(m)~~ (k) "Related parties" for purposes of interpretation hereunder, shall include the following:

(i) An individual or entity shall be deemed a related party to his spouse, ancestors, descendants, brothers and sisters, or the spouses of any of the above, and also to any corporation, partnership, estate, trust, or other entity in which he or a related party has a substantial interest or in which there is common ownership.

(ii) A substantial interest shall be deemed an interest directly or indirectly, in excess of ten percent (10%) of the control, voting power, equity, or other beneficial interest of the entity concerned.

(iii) Interests owned by a corporation, partnership, estate, trust, or other entity shall be deemed as owned by the stockholders, partners, or beneficiaries.

(iv) Control exists when an individual or entity has the power, directly or indirectly, whether legally enforceable or not, to significantly influence or direct the actions or policies of another individual or entity, whether or not such power is exercised.

(v) Common ownership exists when an individual has substantial interests in two or more providers or entities serving providers.

~~(n)~~ (l) "Fiscal year" and "fiscal reporting period" both mean the facility's internal revenue tax year.

~~(o)~~ (m) "Property Costs" are amounts allowable for facility or equipment depreciation, interest on loans for a facility or equipment, and leases or rental of a facility or equipment.

~~(p)~~ (n) "Operating costs" are the difference between total allowable cost and property costs.

~~(q)~~ (o) "Certificate of Need" is the authorization to proceed with the making of capital expenditures under Section 1122, Title XI of the Social Security Act, and sections 50-5-101 through 50-5-307 MCA.

~~(r)~~ (p) "New facility" means an entirely newly-constructed facility which has not provided nursing care services long enough to have a cost report with a complete audit as provided under ARM 46.12.1205(6) covering a twelve-month fiscal reporting period.

~~(s)~~ (q) "New provider" means a provider who acquires ownership or control of a skilled nursing or intermediate care facility whether by purchase, lease, rental agreement, or in any other way, subsequent to the effective date of this rule.

~~(t) "Date of interest" is the date to be used in determining changes in the prospective rate. When computing changes in the CPI the dates of interest are the beginning date of a prospective rate period and the ending date of a prospective rate period. The date of interest related to adding a trend factor to cost per day is the beginning date of a prospective rate period.~~

~~(u) References to laws and regulations refer to citations current as of March 20, 1979.~~

(r) "Rate year" means the provider's fiscal year for which an interim rate is being issued.

(s) Nominal charge means a charge by a government facility to a private patient which amounts to less than half of the actual allowable costs per day for the rate year.

(t) "Estimated economic life" means the estimated remaining period during which the property is expected to be economically usable by one or more users, with normal repairs and maintenance, for the purpose for which it was intended when built.

(u) The laws and regulations and federal policies cited in this sub-chapter shall mean those laws and regulations which are in effect as of October 22, 1980.

46.12.1204 REIMBURSEMENT METHOD AND PROCEDURES (1) Reimbursable Cost. Reimbursable cost is the amount the department pays for routine nursing home services provided to a medicaid patient. Reimbursable cost for the applicable period is determined by multiplying the prospective rate times medicaid patient days and deducting therefrom the amount a patient participates in the cost of care.

(2) Prospective Rates. Prospective rates are the rates on record with the department's fiscal intermediary as of March 31, 1979, or the rates determined as follows, whichever are higher. Prospective rates shall be announced no later than the beginning date of the period for which the prospective rate is to be effective, unless a prospective rate is determined through the alternative rate review process according to rule ARM 46.12.1204.

(a) The prospective rate for each facility is the sum of its cost per day (see ARM 46.12.1204(2)(e)), a trend factor (see ARM 46.12.1204(2)(d)), adjustments for property cost increases (see ARM 46.12.1204(2)(i)), a performance incentive factor (see ARM 46.12.1204(2)(f)), and an occupancy adjustment factor (see ARM 46.12.1204(2)(c)). The prospective rates are subject to a maximum prospective rate (see ARM 46.12.1204 (2)(g)) and to private pay limitations (see ARM 46.12.1204 (2)(h)). Prospective rates are effective for periods beginning on or after April 1, 1979, and will be updated by the trend factor at the beginning of each six-month period thereafter, or until rebasing under ARM 46.12.1204(2)(b) establishes a new initial date.

(b) Prospective rates are based on cost reports that represent nursing home costs for facilities participating in the program during a base period. The initial base period will include the most recent fiscal year cost report ending on or before November 30, 1977 for each facility participating in the program during that period. Rates beginning on April 1, 1979 will be based on cost reports from this initial base period. Subsequent base periods will be established when the

end date of the oldest cost report used to establish rates is more than three years old. (For example, the oldest cost reports used for the initial base period will be three years old on December 31, 1979. A more current base period will be established upon which to determine rates effective January 1, 1980.)

(c) Cost per day is the allowable cost for a facility divided by related total patient days.

(i) A facility's cost per day for the initial base period shall be computed utilizing the most recent cost report of the facility ending on or before November 30, 1977. Those facilities not having submitted cost reports from which the department can obtain the requisite cost information will be assigned an estimated cost per day as determined by the department. This estimate will be revised based on a cost report containing the requisite information to be filed no later than October 1, 1979. If such a cost report is not made available by that date, the provider's total reimbursement shall be withheld. Any amounts withheld under these circumstances will be payable to the provider upon submission of cost report containing the requisite information and applicable to the base period then in effect.

(ii) Each facility's cost per day for subsequent base periods shall be based on cost reports applicable to that particular base period.

(iii) If the total patient days represented in the cost report used to determine cost per day represents an occupancy rate of less than 50 percent, property cost per day for that cost report will be computed on the basis of 50 percent occupancy.

(d) The trend factor is an amount that is added to cost per day at a date of interest to reflect changes in the CPI and labor index. This factor is determined by deriving the mean operating cost per day from the costs per day determined in ARM 46.12.1204(2)(c) after such costs per day have been adjusted by the CPI and labor index to the end date of the base period. The mean operating cost per day is multiplied by a percentage based 30% on the CPI percentage change between two dates of interest and 70% on the labor index percentage change between the same two dates of interest to yield the trend factor percentage. The change in the CPI and labor index is determined by using the index established for the fourth month previous to the date of interest. For example, to determine the trend factor percentage to be applied to prospective rates beginning on October 1, 1979, the index for the months ending July 31, 1977 (four months before the cost report date of November 30, 1977) and May 31, 1979 (four months before the date of interest, October 1, 1979), would be used.

(e) The occupancy adjustment factor is an amount that

will be added to or deducted from a facility's next prospective rate should the occupancy rate during any six-month period after April 1, 1979 vary more than three percentage points from the occupancy rate used to determine a facility's base period cost per day. Any computations under this section shall be subject to the 50 percent occupancy factor as described in ARM 46.12.1204(2)(e)(iii). This factor will be determined as follows:

(i) The percentage of variance in total patient days for each period shall be determined. Such percentage shall be reduced by 56 percent, which is deemed to be the portion related to costs that vary with occupancy.

(ii) When the prospective rate is being updated as called for in ARM 46.12.1204(2)(d) the prospective rate will be increased or decreased by the adjusting percentage determined in (2)(e)(i) of this rule.

(iii) All providers shall submit monthly occupancy reports on forms provided by the department. These reports shall be filed within 15 days of the close of each month. If the report is late and not received by the next date of reimbursement, the provider's total reimbursement shall be withheld. All amounts so withheld will be payable to the provider upon submission of a complete and accurate occupancy report.

(f) The performance incentive factor is determined by a facility's relation to the 90th percentile of costs per day. If the facility's cost per day is at or above the 90th percentile, its performance incentive factor is zero. If the facility's cost per day is less than the 90th percentile, the performance incentive factor is 50 percent of the difference between the 90th percentile of all costs per day and its cost per day up to $1.50 per patient day.

(g) The maximum prospective rate that will be allowed any facility is the cost per day as adjusted by ARM 46.12.1204 (2)(d) that is applicable to the facility that is at the 90th percentile.

(h) The prospective rate for any facility shall not exceed private pay limitations, except that a state or county facility charging nominally is not subject to the private pay limitation. The weighted average charges for similar nursing care services to private paying patients in effect any time during the period for which the prospective rate applies shall be used in determining whether the prospective rate is limited or not. The provider shall be responsible for notifying the department immediately if or when the prospective rate exceeds the private pay rate.

(i) Prospective rates shall be adjusted for property cost increases needed for routine nursing care services implemented after the period covered by the cost report used to

determine cost per day in ARM 46.12.1204(2)(e) provided those increases have been approved through the certificate of need process. Cost per day in ARM 46.12.1204(2)(e) shall be adjusted accordingly. However, the cost per day so adjusted shall be subject to the same performance incentive factor determined in ARM 46.12.1204(2)(f) and the maximum prospective rate in ARM 46.12.1204(2)(g) during the interim between rebasing dates.

(j) New facilities participating for the first time in the program will be given an initial prospective rate based on an evaluation of a budget and a staffing pattern report submitted on forms provided by the department. The budget will be evaluated in terms of rates currently in effect for similar size facilities participating in the program. The staffing pattern will be evaluated in terms of the staffing requirements of the department of health and environmental sciences. However, the provider may request that the department perform a patient assessment and facility evaluation to determine actual staff needs. Unless justification for a variance is explicitly demonstrated and accepted by the department, the new facility will receive the same rate for similar size facilities. Once the facility has provided the department with a twelve-month cost report acceptable for use in determining prospective rates, submission of budgets for rate determination will no longer be required.

(k) An individual who is a new provider by reason of his purchase or lease of a facility which is currently participating in the program will be given an initial prospective rate based on an evaluation of a budget and a staffing pattern report submitted on a form provided by the department. The budget will be evaluated in terms of rates in effect for the prior provider. The staffing pattern will be evaluated in terms of the staffing requirements of the department of health and environmental sciences. However, the provider may request that the department perform a patient assessment and facility evaluation to determine actual staff needs. Unless justification for a variance is explicitly demonstrated in the budget and accepted by the department, the new provider will receive the same rate as the prior provider. Once the new provider has provided the department with a twelve-month cost report acceptable for use in determining prospective rates, submission of budgets for rate determination will no longer be required.

(3) Intermediate Care Facilities for the Mentally Retarded. If a facility is certified to provide care for patients under federal and state ICF/MR regulations, then the reimbursable cost for the facility shall be allowable costs

covering the period of reimbursement, subject to the limits provided below.

(a) An ICF/MR shall receive interim rates based on estimated costs. The rates shall be determined for an ICF/MR's fiscal year and shall be developed in two parts.

(i) Part one shall identify routine nursing care services and determine a rate for this part that shall not exceed the prospective rate for such services during the same period that would be allowed under ARM 46.12.1204(2).

(ii) Part two shall identify services applicable to the mentally retarded patients over and above the costs of routine nursing care services, and determine a rate for these incremental ICF/MR services, provided the estimated costs for such services are deemed reasonable and necessary.

(iii) Cost of providing services to patients will be reimbursed according to the appropriate interim rates depending on what level of care has been established for each patient by the Montana foundation for medical care.

(b) Interim rates may be updated from time to time.

(i) Part one rates will be updated for rebasing or other adjustments as provided in ARM 46.12.1204(2).

(ii) Part two rates will be updated upon request from a facility provided sufficient documentation is submitted to support the necessity of an increase.

(c) Final reimbursement will be determined when cost reports for the period have been audited according to ARM 46.12.1205(6). Reimbursement attributable to routine nursing care services shall be limited to the reimbursement that would be allowed for the same period according to ARM 46.12.1204(2). Reimbursement attributable to ICF/MR services over and above those allowed as routine nursing care services shall be paid as allowable costs determined under ARM 46.12.1204(4), however, these payments will not exceed the amount that would be paid under the medicare principles of provider reimbursement.

(4) Allowable Cost. Allowable costs for cost reports with ending dates before April 1, 1979 shall be determined according to rules for allowable cost then in effect. Allowable costs for cost reports with ending dates after April 1, 1979 will be determined in accordance with HIM 15 subject to the exceptions and clarifications herein provided, including the following.

(a) Return on equity will not be an allowable cost.

(b) Costs incurred in the provision of routine nursing care services to the extent such costs are reasonable and necessary are allowable. Routine services include regular room, dietary services, nursing services, minor medical and surgical supplies, and the use of equipment and facilities. Examples of routine nursing care services are.

(1) Reimbursement is the amount the department pays for routine nursing home services provided to a medicaid patient. Reimbursement for the rate year is determined by multiplying the retrospective rate times medicaid patient days and deducting therefrom the amount each patient participates in the cost of care. During the rate year, an interim rate shall be the basis for determining the estimated payment for each month. At the close of the rate year, the department shall reconcile the amount paid on the interim basis with the reimbursement due according to ARM 46.12.1204(3). Overpayments will be recovered in accordance with ARM 46.12.1205(8).

(2) The interim rate shall be determined as follows unless a provider enters into an agreement for rate review according to rule ARM 46.12.1204(7). The interim rate shall be announced no later than the beginning of the rate year and shall be in effect for the provider's fiscal year. Interim rates are subject to private pay limitations (see ARM 46.12.1204(3)(f)), a maximum reimbursable operating cost (see ARM 46.12.1204 (3)(c)), and property cost limitations (see ARM 46.12.1204(5)(c)).

(a) The interim rate for each facility is the sum of its cost per day (see ARM 46.12.1204(3)(e)), a trend factor (see ARM 46.12.1204(3)(d)), an adjustment for property cost increases (see ARM 46.12.1204(2)(b)), and an estimation of the performance incentive factor, if applicable (see ARM 46.12.1204(3)(b)(i)).

(b) An adjustment for property cost increases shall be made for property cost increases incurred after the fiscal year covered in the cost report used to determine cost per day in ARM 46.12.1204(3)(e). However, such property cost increases shall be subject to limits on allowable costs as set forth in ARM 46.12.1204(5). Those increases must have been approved through the certificate of need process and must be related to routine nursing care services. Cost per day in ARM 46.12.1204(3)(e) shall be adjusted accordingly.

(c) In calculating the interim rate the department will include an estimate of the performance incentive factor as derived in ARM 46.12.1204(3)(b)(i). For the purpose of making this estimate, the allowable costs from the applicable prior fiscal year as adjusted by a trend factor (see ARM 46.12.1204 (3)(d) shall be used in determining the amount of the performance incentive factor. The department will reconcile this estimated performance incentive factor with the actual allowable performance incentive factor upon audit of the cost report for the rate year.

(d) New facilities participating for the first time in the program will be given an initial interim rate based on an

evaluation of a budget and a staffing pattern report submitted on forms provided by the department. The budget will be evaluated in terms of rates currently in effect for similar size facilities participating in the program. The staffing pattern will be evaluated in terms of the staffing requirements of the department of health and environmental sciences. Unless justification for a variance is explicitly demonstrated in the budget and accepted by the department, the new provider will receive the same rate for similar size facilities. Once the provider has provided the department with a twelve month cost report acceptable for use in determining interim rates, submission of budgets for rate determination will no longer be required.

(f) A new provider, who by reason of his purchasing or leasing of a facility which is currently participating in the program, will be given an initial interim rate based on an evaluation of a budget and a staffing pattern report submitted on a form provided by the department. The budget will be evaluated in terms of rates in effect for the prior provider. The staffing pattern will be evaluated in terms of the staffing requirements of the department of health and environmental sciences. Unless justification for a variance is explicitly demonstrated in the budget and accepted by the department, the new provider will receive the same rate as the prior provider. Once the new provider has provided the department with a twelve month cost report acceptable for use in determining interim rates, submission of budgets for the rate determination will no longer be required.

(3) Retrospective Rate. The retrospective rate shall be issued upon audit of a cost report for the rate year and shall be determined as follows:

(a) The retrospective rate for not-for-profit facilities shall be the lesser of the actual allowable cost per day experienced during a provider's rate year or the actual allowable cost from the applicable prior fiscal year plus a trend factor (see ARM 46.12.1204(3)(d)).

(i) To the extent that an interim rate is based on a cost report which did not include return on net invested equity as an allowable cost, the interim rate shall be adjusted to allow for the inclusion of this cost when necessary in calculating the retrospective rate.

(b) The retrospective rate for for-profit facilities shall be the lesser of the actual allowable costs per day experienced during the provider's rate year plus a performance incentive factor (see ARM 46.12.1204(b)(i)) or the actual allowable cost from the applicable prior fiscal year plus a trend factor (see ARM 46.12.1204(3)(d) plus a performance incentive factor (see ARM 46.12.1204(3)(b)(i)).

(i) The performance incentive factor is the amount which is added to a for-profit facility's retrospectively determined

rate if the facility meets the department's definition of cost containment. A facility shall have met the definition of cost containment if its operating cost per day is less than the maximum reimbursable operating cost per day as defined in ARM 46.12.1204(3)(c).

(ii) The performance incentive factor for a facility is determined by the relationship of its allowable operating cost per day in the rate year to the allowable operating costs per day of all participating Montana facilities from the applicable prior fiscal year plus a trend factor (see ARM 46.12.1204(d)). A facility with operating costs per day which are equal to or less than the 66th percentile of all reported costs plus the applicable trend factor shall receive a performance incentive factor of $1.50 per patient day. A facility with operating costs per day which fall between the 66th percentile and the 76th percentile of all reported operating costs per day plus the applicable trend factor shall receive a performance incentive factor of $1.00 per patient day. A facility with operating costs per day which are equal to or greater than the 76th percentile of all reported costs per day plus the applicable trend factor, but which are less than the maximum reimbursable cost per day, shall receive a performance incentive factor of $0.50 per patient day.

(c) The maximum reimbursable operating cost per day is the operating cost which is the 90th percentile operating cost of all Montana facilities participating in the program in the applicable prior fiscal year plus the applicable trend factor (see ARM 46.12.1204(d)). For rates effective January 1, 1981, the 90th percentile cost shall be derived from all audited cost reports submitted for fiscal years ending in 1979. Subsequent 90th percentile costs shall be derived from cost reports with ending dates no more than two years prior to the beginning of the rate year.

(d) The trend factor is the amount which is added to the cost per day from the applicable prior fiscal year to account for the effects of inflation on operating costs in the rate year. The trend factor is determined by multiplying the indicator of inflation times the operating cost per day for the applicable prior fiscal year. The indicator of inflation is the sum of 15 percent of the change in CPI-food, 15 percent of the change in CPI-other, and 70 percent of the change in the labor index. These indexes are further defined in ARM 46.12.1202. The change in these indexes is the percentage change between the midpoint of the applicable prior fiscal year and the midpoint of the rate year.

(i) Interim Rate. For the purpose of determining the trend factor to be included in the interim rate, the percentage change in the indexes between the midpoint of the applicable prior period and the midpoint of the rate year will be extrapolated from the most currently available data on each index.

(ii) Retrospective Rate. For the purpose of determining the trend factor to be included in the retrospective rate, the actual percentage change in the indexes from the midpoint of the applicable prior fiscal year to the midpoint of the rate year will be used unless the percentage change determined according to ARM 46.12.1204(3)(d)(i) is higher. If the trend factor determined in ARM 46.12.1204(3)(d)(i) is higher, then the trend factor for the retrospective rate will be the trend factor used in determining the interim rate.

(e) Cost per day is the allowable cost for a facility as determined by ARM 46.12.1205 divided by related total patient days.

(i) A facility's cost per day for the initial interim rate shall be computed utilizing the most recent audited cost report of the facility for a fiscal year ending on or before December 31, 1979. Costs shall not be taken from cost reports which are submitted more than two years prior to the rate year for the purpose of computing an interim rate.

(ii) Each facility's cost per day for the retrospectively determined allowable costs will be taken from the cost report for the rate year for which the applicable interim rate was issued.

(iii) If a facility has increased its bed capacity with newly licensed beds on or after January 1, 1981 and if the facility has an occupancy rate which is less than 90 percent of capacity, then an adjusted occupancy rate shall be used in determining cost per day. The adjusted occupancy rate will be calculated as the actual occupancy plus 50 percent of the difference between 90 percent occupancy and the actual occupancy.

(iv) Facilities which have not increased bed capacity on or after January 1, 1981 shall have an occupancy adjustment if the occupancy rate for the facility is less than 50 percent of capacity. The property cost of these facilities will be computed based on 50 percent of capacity. Operating costs will be determined based on actual occupancy.

(f) The rate for any facility shall not exceed private pay limitations, except that a state or county facility charging nominally is not subject to private pay limitations. The weighted average charges for similar nursing care services to private pay patients in effect during a rate year shall be used in determining whether the rate is limited or not. The provider shall be responsible for informing the department's fiscal intermediary immediately if the rate exceeds the private pay rate.

(4) Intermediate Care Facilities for the Mentally Retarded. If a facility is certified to provide care for patients under federal and state ICF/MR regulations, then the retrospective rate for the facility shall be determined according to ARM 46.12.1204(3) with the following exception.

(a) Actual allowable costs shall be determined in two parts.

(i) Part one costs will be those costs associated with routine nursing care for intermediate care patients.

(ii) Part two costs will be those costs associated with services required by and provided to mentally retarded patients incremental to routine nursing care of intermediate care patients. Such incremental services are defined in 42 CFR, Part 442, Subpart G, Sections 411, 456-464 472, 475, 477 and 489 which are federal regulations setting forth standards for intermediate care facilities for the mentally retarded, and which regulations the department hereby adopts and incorporates herein by reference. A copy of the above-cited regulations may be obtained from the Department of Social and Rehabilitation Services, P.O. Box 4210, 111 Sanders, Helena, Montana 59601. Providers must be able to document in a manner acceptable to the department the method of determining those incremental costs for the purpose of cost reporting.

(iii) The allowable operating costs determined in ARM 46.12.1204(4)(a)(i) shall be the only costs limited to the maximum allowable operating cost per day (see ARM 46.12.1204 (3)(c)). In addition, those costs shall be the only allowable operating costs used in determining the performance incentive factor (see ARM 46.12.1204(3)(b)(i)).

(b) The interim rate will be issued according to ARM 46.12.1204(2) except that there will be one interim rate issued for skilled and intermediate care patients served by the provider and another interim rate issued for ICF/MR patients. The basis for these interim rates will be allowable costs from the applicable prior fiscal year as determined in ARM 46.12.1204(3)(d).

(5) Allowable Cost. Allowable costs for cost reports with ending dates before January 1, 1981 shall be determined according to the rules for allowable costs then in effect. The department hereby adopts and incorporates herein by reference the health insurance manual HIM-15, which is a manual published by the United States department of health and human services, social security administration, which provides guidelines and policies to implement medicare regulations which set forth principles for determining the reasonable cost of provider services furnished under the health insurance for Aged Act of 1965, as amended. A copy of the HIM-15 may be obtained from the Department of Social and Rehabilitation Services, P.O. Box 4210, 111 Sanders, Helena, Montana 59601. Allowable costs for cost reports with ending dates subsequent to January 1, 1981, will be determined in accordance with HIM 15 subject to the exceptions and clarifications herein provided, including the following:

(a) Return on net invested equity will be an allowable cost for the profit facilities.

(b) Cost incurred in the provision of routine nursing care services to the extent such costs are reasonable and necessary are allowable. Routine services include a regular medically necessary room, dietary services, nursing services, minor medical and surgical supplies, and the use of equipment and facilities. Examples of routine nursing care services are:

(i) all general nursing services including but not limited to administration of oxygen and related medications, hand-feeding, incontinent care, tray service, and enemas;

(ii) items furnished routinely and relatively uniformly to all patients without charge, such as patient gowns, water pitchers, basins and bed pans;

(iii) items stocked at nursing stations or on the floor in gross supply and distributed or used individually in small quantities without charge, such as alcohol, applicators, cotton balls, bandaids, antacids, aspirin (and other non-legend drugs ordinarily kept on hand), suppositories, and tongue depressors;

(iv) items which are used by individual patients which are reusable and expected to be available, such as ice bags, bed rails, canes, crutches, walkers, wheelchairs, traction equipment, and other durable medical equipment;

(v) special dietary supplements used for tube feeding or oral feeding such as elemental high nitrogen diet; and

(vi) laundry services whether provided by the facility or by a hired firm, except for patients' personal clothing which is dry cleaned outside of the facility.

~~(c) Allowable property cost shall be limited to the property cost per day for the 90th percentile facility identified in cost reports for Montana facilities participating in the medicaid program during a base period. The initial base period shall utilize those cost reports filed with the department that demonstrate the requisite data and are the most recent twelve-month cost reports available through November 30, 1977. Subsequent base periods will use the same cost reports used for rebasing in ARM 46.12.1204(2)(b). In order to apply the property cost limit test, the 90th percentile property cost per day from the most recently available base period shall be indexed using the GPI to the end date of the cost report being reviewed, which amount shall then limit the property cost per day in the cost report being reviewed. That portion of property costs related to a certificate of need under ARM 46.12.1204(2)(i) shall not be subject to this property cost limit until the next rebasing date.~~

(c) Allowable property costs shall be limited in the following manner:

(i) The capitalized cost of a facility including the building, leasehold improvements, and fixed equipment shall not exceed the indexed cost per bed of the most recently newly

constructed facility participating in the Medicaid program which was licensed due to new construction and approved according to the certificate of need process. The basis for indexing the cost per bed of this newly constructed facility shall be the index for construction costs as prepared by marshall valuation service. The indexing period shall be from the year of construction to the rate year.

(ii) The capitalized cost of movable equipment shall not exceed the fair market value of the asset at the time of acquisition.

(iii) Property related interest, whether actual interest or imputed interest for capitalized leases, shall not exceed the interest rates available to commercial borrowers from established lending institutions at the date of asset acquisition or at the inception of a lease.

(iv) Leases shall be capitalized according to generally accepted accounting principles. Noncapitalized lease costs shall not exceed the sum of the cost per bed as determined according to ARM 46.12.1204(5)(c)(i) plus the applicable interest as determined according to ARM 46.12.1204(5)(c)(iii).

(v) Depreciation of real property, but not movable equipment, reported in cost report periods with beginning dates on or after January 1, 1981, shall be based on estimated economic useful lives which have been established by an acceptable appraisal prepared by an appraisal expert as defined in HIM 15 which has been incorporated by reference into this rule (see ARM 46.12.1204(5)). A copy of the appraisal must accompany the cost report. The cost of the original appraisal to determine economic useful life shall be an allowable cost, but the cost of an appraisal to determine the value of assets shall not be an allowable cost.

(d) Administrators' compensation:

(i) Administrators' compensation is limited to the amounts allowed according to HIM 15, which has been incorporated by reference into this rule (see ARM 46.12.1204(5)).

(ii) Administrators' compensation and the reporting of administrators' compensation shall include:

(A) salary amounts paid to the administrator for managerial, administrative, professional and other services;

(B) employee benefits excluding employer contributions required by state or federal law--FICA, WCI, FUI, SUI. For a self-employed administrator, an amount equal to what would have been the employer's contribution for FICA and WCI may be excluded from such employee benefits;

(C) deferred compensation either accrued or paid;

(D) supplies, services, special merchandise, and the cost of assets paid or provided for the personal use or benefit of the administrator;

(E) wages of a domestic or other employee who works in the home of the administrator;

(F) personal use of a car owned by business;

(G) personal life, health, or disability insurance premium paid;

(H) a portion of the physical plant occupied as a personal residence;

(I) other types of remuneration, compensation fringe benefits or other benefits whether paid, accrued, or contingent.

(e) Employee benefits:

(i) Employee benefits are defined as amounts paid to or on behalf of an employee, in addition to direct salary or wages, and from which the employee or his beneficiary derives a personal benefit before or after the employee's retirement or death.

(ii) All employer contributions which are required by state or federal law, including FICA, WCI, FUI, SUI are allowable employee benefits. In addition, employee benefits which are uniformly applicable to all employees are allowable. A bona fide employee benefit must directly benefit the individual employee, and shall not directly benefit the owner, provider or related parties.

(iii) Costs of activities or facilities which are available to employees as a group, such as condominiums, swimming pools or other recreational activities, are not allowable.

(iv) For purposes of this subsection, an employee is one from whose salary or wages the employer is required to withhold FICA. Stockholders who are related parties to the corporate providers, officers of a corporate provider, and partners owning or operating a facility are not employees even if FICA is withheld for them.

(v) Paid vacation and sick leave shall be considered employee benefits to the extent that the facility has in effect a written policy which is uniformly applicable to all employees within a given class of employees, and paid vacation and sick leave are reasonable in amount.

(f) Bad debts, charity and courtesy allowances are deductions from revenue and shall not be allowable as costs.

(g) Revenues received for services or items provided to employees and guests are recoveries of cost and shall be deducted from the related cost.

(h) Dues, membership fees or subscriptions to organizations unrelated to the provider's provision of nursing care services are not allowable costs.

(i) Charges for services of a chaplain are not an allowable cost.

(j) Fees for management or professional services (e.g., management, legal, accounting or consulting services) are allowable to the extent they are identified to specific ser-

vices, and the hourly rate charged is reasonable in amount. In lieu of compensation on the basis of an hourly rate, the provider may compensate for professional services on the basis of a reasonable retainer agreement which specifies in detail the services to be performed. Documentation that such services were in fact performed shall be provided by the provider. No cost in excess of the agreed upon retainer fee shall be allowed for services specified under the fee.

(k) ~~Transportation costs for travel related to patient care are allowable in accordance with internal revenue guide lines for items of expense.~~ Travel costs related to patient care are allowable to the extent that such costs are allowable under Sections 162 and 274 of the internal revenue codes and section 1.162-2 of the income tax regulations, which are federal statutes and regulations dealing with allowable travel expenses and transportation costs. The above-cited sections of the internal revenue code and income tax regulations are hereby adopted and incorporated herein by reference. A copy of the statutes and regulations may be obtained from the Department of Social and Rehabilitation Services, P.O. Box 4210, 111 Sanders, Helena, Montana 59601. Vehicle operating costs will be pro-rated between business and personal use based on mileage logs or a prior approved percentage derived from a sample mileage log or other method acceptable to the department. For vehicles used primarily by the administrator, any portion of vehicle costs disallowed on pro-ration shall be included as compensation subject to the limits specified in ARM 46.12.1204 (4)(d). Depreciation shall be allowed on a straight-line basis (subject to salvage value) with a minimum of 3 years. Depreciation and interest or comparable lease costs may not exceed $2,400 per year. Other reasonable vehicle operating expenses will be allowed. Public transportation costs will be allowable at tourist or other available commercial rate (not first class).

(l) Purchases from related parties. Costs applicable to services, facilities and supplies furnished to a provider by parties related to that provider shall not exceed the lower of costs to the related party or the price of comparable services, facilities or supplies purchased elsewhere. Providers shall identify such related parties and costs in the annual cost report. The department hereby adopts and incorporates herein by reference ~~(~~42 CFR 447.284(a) and (b)~~)~~, which is a federal regulation setting forth limits on costs of purchases from related organizations. A copy of the regulation may be obtained from the Department of Social and Rehabilitation Services, P.O. Box 4210, 111 Sanders, Helena, Montana 59601.

~~(5)~~ (6) Ancillaries. Ancillary medical supplies and services are not allowable costs. The provider shall be paid for ancillary medical supplies and services in addition to the

reimbursement rate determined by this rule provided that the ancillary medical supplies and services have been previously authorized by the Montana foundation for medical care to signify that the item is medically necessary and the bills for these items have the authorization on the face of the claim form. Payment for ancillary medical supplies and services are limited to the medical supplies and services needed to provide nursing care to patients who are required by doctor's orders to receive extraordinary care, and shall be the actual cost the provider incurred. The provider must maintain a separate cost center or centers for ancillary medical supplies and services. Revenues received from the department and/or patients for ancillary medical supplies or services are recoveries of cost and shall be deducted from the related cost when determining allowable cost. Any cost remaining after offsetting the related revenues must be eliminated from the cost report before determining allowable costs.

Ancillary medical supplies and services shall be billed by the provider licensed to provide such supplies or services and shall be designated on bills using codes established by the department and are limited to the following: oxygen (code 932-3308-00), wheelchairs customized with special design for a unique condition (code 932-3242-00), wheelchairs that are standard but motorized (code 932-3237-00), wheelchairs for children and are motorized (code 932-3241-00), helmets (code 932-3315-00), disposable colostomy appliances (code 932-4210-00), colostomy shield appliances (code 932-4213-00), disposable lelostomy appliances (code 932-4219-00), catheters (urethral, rubber or silicone) (code 932-4233-00), catheters (indwelling Foley balloon retention) (code 932-4234-00), miscellaneous catheters (code 932-4235-00), scrotal truss (code 932-6101-00), umbilical truss (code 932-6102-00), shoulder braces (code 932-6103-00), sacroiliac supports (code 932-6104-00), lumbosacral supports (code 932-6105-00), post hernia truss (code 932-6106-00), hinged joint steel knee cap (code 932-6707-00), wrist support leather (code 932-6108-00), corsets (code 932-6109-00), abdominal supports (code 932-6110-00), dorso lumbar supports (code 932-6111-00), orthopedic braces (code 932-6113-00), elastic stockings (sheer type, Jobst or comparable) (code 932-6201-00), elastic stockings (surgical type, Jobst or comparable) (code 932-6201-00), prescription drugs; occupational, speech, physical and other therapy; x-rays; supplies that are not required as a part of routine nursing care services for a particular patient and not otherwise compensated under ARM 46.12.1204.

~~(6)~~ (7) Reviews and Adjustments of Rates. The department will review a rate determined under ARM 46.12.1204 for a possible increase if it is found that the established rate is set below the minimum level defined in ARM 46.12.1202.

(a) A rate may be reviewed according to this rule if a provider submits to the department a rate review application and supportive documents which:

(i) references a letter of warning from the state department of health and environmental sciences that the facility is in jeopardy of being decertified as a provider of nursing home care to medicaid patients due to certain specified deficiencies, and/or

(ii) provides documentation which clearly indicates that the established rate affects facility revenues to such an extent that reductions in essential services will be necessary and will very likely, in the provider's opinion, cause deficiencies that could lead to decertification by the department of health and environmental sciences;

(iii) details total revenue estimates for the period using private and established medicaid and non-medicaid rates and patient occupancy projections;

(iv) provides detailed expenditure projections according to line items mutually acceptable to the provider and the department along with supporting documentation justifying each item;

(v) provides other normally available information that the department may request in support of its review efforts.

(b) Within 14 days of receipt of a rate review application according to ARM 46.12.1204~~(6)~~(7)(a), the department will determine, based on the rate review application, the documentation provided and other information available to the department, whether the circumstances warrant rate review.

(i) The department will reject an application for rate review if substantial evidence shows that the established rate is not set below the minimum level defined in ARM 46.12.1202 (1). The department will use measurable indices of central tendency for facility cost centers and staff volumes to make this determination.

(ii) If the provider is not satisfied with the departmental decision to reject a request for rate review, such provider may seek a fair hearing in accordance with ARM 46.12.1206.

(c) If the department determines that a rate should be reviewed, the department will negotiate an interim prospective rate with the provider, which rate will be in effect from the first day of the quarter in which the review application is received by the department until such time as it takes to review the adequacy of the established rate and effect a rate revision should such be the result of the review. In no case, will the negotiated interim rate exceed 120% of the rate on record with the department's fiscal intermediary on the day previous to the beginning of the state's fiscal quarter in which the request for rate review is initiated according to ARM 46.12.1204~~(6)~~ (7) (a).

(d) The budget period to be used for the review and rate setting will include at least one fiscal year for any provider who is determined to be eligible for rate review. If extraordinary or unanticipated circumstances dictate, a request for a budget amendment can be submitted and a revised prospective rate determined. A longer budget period may be included if it is mutually agreeable to the department and the provider. All of the items submitted for the purposes of review shall be evaluated for reasonableness and cost relatedness, the conclusions of which are subject to administrative and judicial review.

(e) After determining the necessary costs that will contribute to economic and efficient operation during the budget period, the department will add the performance incentive factor calculated according to ARM 46.12.1204~~(2)(f)~~ (3)(b)(i) and recommend to the provider a rate that will reasonably compensate those necessary costs. Should the provider disagree with the recommended rate, the provider may seek a fair hearing according to ARM 46.12.1206.

(f) The rate determined according to ARM 46.12.1204~~(6)~~ (7)(e) will be made effective for the budget period used to conduct the review. Three months prior to the end of the budget period used to conduct the review, the provider may apply for a new review according to ARM 46.12.1204~~(6)~~(7)(a) to become effective the following fiscal year, or continue with the rate established under ARM 46.12.1204~~(6)~~(7)(e) until the rates established under ARM 46.12.1204~~(2)~~(1) may be found to be adequate.

(g) If the interim prospective rate determined in ARM 46.12.1204(6)(c) is found to produce an overpayment or underpayment with respect to the rate determined through review for the period the interim rate was in effect, then the overpayment or underpayment will be administered according to ARM 46.12.1205(8)(b) through (g). As thorough examinations of and limits on staffing patterns will be accomplished prior to full facility evaluation, no recovery of directly patient care related staffing salary amounts shall be undertaken following the review process. In addition, recovery of nondirectly patient care related staffing salary sums shall be effected only upon completion of administrative and judicial review of such contested amounts.

~~(7)~~ (8) Reimbursement for Authorized Absence.

(a) No payment or subsidy will be made to a nursing home for holding a bed while the recipient is receiving medical services elsewhere, such as in a hospital except in a situation where a nursing home is full and has a waiting list of potential residents. A nursing home will be considered full if ~~its~~ all beds are occupied or being held for a patient temporarily in a hospital. In this exceptional instance, a payment may be made for holding a bed while the resident is

temporarily receiving care in a hospital, is expected to return to the nursing home, and the cost of holding the nursing home bed will evidently be less costly than the possible cost of extending the hospital stay until an appropriate nursing home bed would otherwise become available. Furthermore, payment in this exceptional instance, may be made only upon approval from the director of the department or his designee.

(b) Reimbursement will be made to a nursing home for reserving a bed while the recipient is temporarily absent if the recipient's plan of care provides for therapeutic home visits. A total of 24 days annually will be allowed for therapeutic home visits. The facility is responsible for notifying the department on a form provided by the department when a resident leaves the facility for a therapeutic home visit. Reimbursement for therapeutic home visits will not be allowed unless the form is filed with the department. Absences are restricted to no more than 72 consecutive hours per absence. Additional days and longer hours per absence may be allowed if determined medically appropriate and prior authorized by the director of the department or his designee.

46.12.1205 COST REPORTING The procedures and forms for maintaining cost information and reporting are as follows:

(1) Accounting Principles. Generally accepted accounting principles shall be used by each provider to record and report costs. As part of the cost report these costs will be adjusted in accordance with these rules to determine allowable costs.

(2) Method of Accounting. The accrual method of accounting shall be employed, except that, for governmental institutions that operate on a cash method or a modified accrual method, such methods of accounting will be acceptable.

(3) Cost Finding. Cost finding means the process of allocating and prorating the data derived from the accounts ordinarily kept by a provider to ascertain its costs of the various services provided. In preparing cost reports, all providers shall utilize the step down method of cost finding described at 42 CFR 405.453(d)(1) which ~~is hereby incorporated and made a part of this rule by reference.~~ the department hereby adopts and incorporates herein by reference. 42 CFR 405.453(d)(1) is a federal regulation setting forth a method for allocating the cost of nonrevenue-producing centers which they serve. A copy of the regulation may be obtained from the Department of Social and Rehabilitation Services, P.O. Box 4210, 111 Sanders, Helena, Montana 59601. Notwithstanding the above, distinctions between skilled nursing and intermediate care need not be made in cost finding.

(4) Uniform Financial and Statistical Report. Provider costs are to be reported based upon the provider's fiscal year using the financial and statistical report form provided by the department. The use of the department's financial and statistical report form is mandatory for participating facilities. These reports shall be complete and accurate; incomplete reports or reports containing inconsistent data will be returned to the provider for correction.

(a) Filing period -- Cost reports must be filed within 90 days after the end of the provider's fiscal year.

(b) Late filing -- In the event a provider does not file within 90 days of the closing date of its fiscal year, or files an incomplete cost report, an amount equal to 10 percent of the provider's total reimbursement for the following month shall be withheld by the department. If the report is overdue or incomplete a second month, 20 percent shall be withheld. For each succeeding month the report is overdue or incomplete, the provider's total reimbursement shall be withheld. All amounts so withheld will be payable to the provider upon submission of a complete and accurate cost report. Unavoidable delays may be reported with a full explanation and a request made for an extension of time limits prior to the filing deadline. However, there is a maximum limitation of a 30-day extension.

(c) Cost reports shall be executed by the individual provider, a partner of a partnership provider, the trustee of a trust provider, or an authorized officer of a corporate provider. The person executing the reports shall sign under penalties of false swearing, that he has examined the report including accompanying schedules and statements, and that to the best of his knowledge and belief, the report is true, correct, and complete, and prepared consistent with governing laws and regulations.

(d) Cost reports shall be signed by the preparer stating that the report has been prepared based on all information of which he has knowledge. The preparer shall be deemed to be any individual who prepares for compensation any cost reports or a portion thereof. If more than one individual participates in preparation of the report, each participating individual shall sign as preparer. Clerical assistants who furnish typing, reproducing, or other routine assistance shall not be deemed preparers.

(5) Maintenance of Records. Records of financial and statistical information supporting cost reports shall be maintained by the provider and the department for three years after the date a cost report is filed, or the date the cost report is due, whichever is later.

(a) Each provider facility will maintain, as a minimum, a chart of accounts, a general ledger and the following supporting ledgers and journals: revenue, accounts receivable,

cash receipts, accounts payable, cash disbursements, payroll, general journal, patient census records identifying the level of care of all patients individually, all records pertaining to private pay patients and patient trust funds.

(b) To support allowable costs, all business records of any related party, including any parent or subsidiary firm, which relate to a provider under audit, shall be available at the facility for audit. To support allowable costs, the owner's or related party's personal financial records relating to the facility shall be made available for audit.

(c) Cost information as developed by the provider shall be current, accurate and in sufficient detail to support payments made for services rendered to beneficiaries and recorded in such a manner to provide a record which is auditable through the application of reasonable audit procedure. This includes all ledgers, books, records and original evidence of cost (purchase requisitions, purchase orders, vouchers, checks, invoices, requisitions for materials, inventories, labor time cards, payrolls, bases for apportioning costs, etc.) which pertain to the determination of reasonable cost.

(d) All of the above records and documents shall be available at the facility at all reasonable times after reasonable notice and subject to inspection, review or audit by the department, the federal department of health, education and welfare, the Montana legislative auditor, and other appropriate governmental agencies. Upon refusal of the provider to make available and allow access to the above records and documents, the costs which are based upon the withheld data will be deemed unsupported and not allowable for reimbursement purposes. If payments have been made based upon interim information the applicable amounts shall be recovered by the department. In addition, the department may at its option terminate any such contracts between the department and provider if any such records and documents are withheld.

~~(e) The data contained in the cost reports is financial information particular to the facility and therefore is confidential and exempts such information from disclosure under the Freedom of Information Act.~~

(6) Audits. Department audit staff will perform a desk review of cost statements prior to rate setting and may conduct on-site audits of provider records. ~~Where appropriate, audit procedures defined in the HIM 15 shall be adopted by the department but the department shall not be confined to these guidelines and may utilize other methods.~~ Such audits shall be conducted in accordance with audit procedures developed by the department.

(a) Desk review of cost reports will determine the adjustments to be applied to reported costs for rate determination. Incomplete reports, or inconsistency in reported

costs will cause the return of the cost report to the facility for correction and may result in withholding payment as set forth in the (4)(b) of this rule. Department audit staff will conduct a desk review of each cost report within six months of its receipt to verify, to the extent possible, that the provider has provided a complete and accurate report that complies with federal requirements cited under 42 CFR 447.274 which the department hereby adopts and incorporates by reference. 42 CFR 447.274 is a federal regulation which sets forth provider cost report requirements. A copy of the above-cited regulation may be obtained from the Department of Social and Rehabilitation Services, P.O. Box 4210, 111 Sanders, Helena, Montana 59601.

(b) On-site audits of provider detailed records shall be made to assure validity of reports, costs and statistical information in conformity with federal laws and regulations. The department hereby adopts and incorporates herein by reference ~~(42 CFR 447.292 and 42 CFR 447.293)~~, which are federal regulations setting forth criteria for audits of providers' cost reports. A copy of the above-cited regulations may be obtained from the Department of Social and Rehabilita-tion Services, P.O. Box 4210, 111 Sanders, Helena, Montana 59601. Audits will meet generally accepted auditing standards. Audits of providers' cost reports, financial records and other pertinent data will be adequate to verify that the provider has included only those expense items that are specified as allowable costs under ARM 46.12.1204(4) in compiling the costs of services, that the provider has accurately determined allowable costs in compliance with federal requirements cited under 42 CFR 447.274(b) (1), which has been incorporated by reference into this rule (see ARM 46.12.1205(6)(a)), that the provider has accurately attributed allowable costs to costs of services according to federal requirements cited under 42 CFR 447.274(b)(2), and that the provider's allowable costs are reasonable. Section 42 CFR 447.274(b)(2) has been incorporated by reference into this rule (see ARM 46.12.1205(6)(a)). On-site audits of the financial and statistical records will be conducted at a minimum of one-third of the facilities each year until all providers are audited by December 31, 1980. After that time, on-site audits will be conducted yearly in at least 15 percent of the facilities. Ten percent of these facilities will be selected using factors established by the department. The remaining five percent will be chosen at random.

~~(c) On conclusion of a review of a cost report, an exit conference may be held in which evidential facts can be submitted and reviewed, following which a summary of findings and recommendations shall be mailed to the provider.~~

(c) On conclusion of a review of a cost report, the department shall send the provider the results of the review.

Upon request by the provider within fifteen days of the receipt of these results, the department will hold an exit conference for the purpose of reviewing these results, following which a summary of the department's findings and recommendations will be mailed to the provider.

(d) Upon conclusion of each on site audit the department audit staff will submit an audit report to the medical assistance bureau. The report will meet generally accepted auditing standards and will state the auditor's opinion as to whether, in all material respects, the cost report submitted by the provider has included only those expense items that are specified as allowable costs under ARM 46.12.1204(4) in compiling the costs of services, and have been accurately determined allowable costs in compliance with federal requirements cited under 42 CFR 447.274(b)(1), which has been incorporated by reference into this rule (see ARM 46.12.1205(6)(a)). The department will keep audit reports on file for at least 3 years after receipt.

~~(7) Administrative Review. Within 10 days of receipt of the written findings or recommendations the provider may detail in writing any objections or justifications concerning the findings, and may also request a conference. The conference shall be held no later than 30 days after the department receives the provider's written objections and justifications, and the request for a conference. The department's medical assistance bureau shall conduct the conference based on audit findings and recommendations and the provider's written objections and justifications. No later than 60 days following receipt of the written objections and justifications, or the conference, whichever is later, the department's medical assistance bureau, after consultation with the audit bureau and the office of legal affairs, shall mail a written final determination concerning the provider's objections and justifications, and the position the department takes concerning the audit findings.~~

(7) A provider may object to audit findings through the administrative review process according to ARM 46.12.1206.

(8) Overpayment and Underpayment.

(a) Where the department finds that the prospective rate was based on an erroneous cost report resulting in overpayment, the department will correct the rate and notify the provider of overpayment.

(b) In the event of an overpayment the department will, within 30 days after the day the department notifies the provider that an overpayment exists, adjust the provider's rate and arrange to recover the overpayment by set-off against amounts paid under the adjusted rate or by repayments by the provider.

(c) If an arrangement for repayment cannot be worked out within 30 days after notification of the provider, the depart-

ment will make deductions from rate payments with full recovery to be completed within 120 days from date of the initial request for payment. Recovery will be undertaken even though the provider disputes in whole or in part the department's determination of the overpayment. In the discretion of the department such recovery may be delayed in whole or in part if a request for fair hearing under ARM 46.12.1206 has been made.

(d) Errors in cost report data identified by the provider may be corrected and given consideration for rate adjustment if submitted within 30 days after rate notification. Adjustments will also be made for computational errors in rate determination review by the department.

(e) In the event an underpayment has occurred, the department will reimburse the provider promptly following the department's determination of error.

(f) Court or administrative proceeding for collection of overpayment or underpayment shall be commenced within five years following the due date of the original cost report or the date of receipt of a complete cost report whichever is later. In the case of a reimbursement or payment based on fraudulent information, recovery of overpayment may be undertaken at any time. Court costs, including attorneys' fees, in connection with court or administrative proceedings shall be deemed allowable only when approved by the court or hearings officer.

(g) The amount of any overpayment constitutes a debt due the department as of the date of initial request for payment and may be recovered from any person, party, transferee, or fiduciary who has benefited from the payment or a transfer of assets.

(h) The department will account for overpayments found in audits and confirmed by administrative review under ARM 46.12.1205(7) or fair hearing under ARM 46.12.1206. Such overpayments will be accounted for in the department's quarterly statement of expenditures no later than the second quarter following the quarter in which the overpayment was found and/or confirmed.

46.12.1206 ~~FAIR-HEARING--PROCEDURES~~ ADMINISTRATIVE REVEIW AND FAIR HEARING PROCEDURES ~~(1) Fair hearing. In the event the provider does not agree with the rates determined following review by the department, the following fair hearing procedures will apply.~~

(1) Administrative Review. Within 15 days of receipt of the department's written findings, recommendations, or rate, the provider may detail in writing any objections or justifications concerning the findings and may also request an administrative conference. Within the 15 days a provider may request an extension of up to 30 days for submission of

objections and justifications. The department may grant further extensions for good cause shown. The conference shall be held no later than 30 days after the department receives the provider's written objections and justifications and the request for a conference. The department's medical assistance section shall conduct the conference based on it's findings and recommendations and the provider's written objections and justifications. No later than 60 days following receipt of the written objections and justifications, or the conference, whichever is later, the department's medical assistance section, after consultation with the audit bureau and the office of legal affairs, shall mail a written determination concerning the provider's objections and justifications and the position the department takes concerning the findings.

(2) Fair Hearing. In the event the provider does not agree with rates determined following administrative review by the department, the following fair hearing procedures will apply.

(a) The written request for a fair hearing shall be mailed or delivered to the Department of Social and Rehabilitation Services, Hearings Officer, P.O. Box 4210, Helena, Montana, 59601.

(b) The request shall be signed by the provider or his designee.

(c) The fair hearing request must be received not later than the ~~60th calendar day following the date of the rate notification, or within 30 days of a review conference. If it is filed later, justification for the delay must be given to the hearings officer who, for good cause, may waive the time limit.~~ 30th calendar day following the date of the department's written administrative review determination.

(d) The fair hearing request shall identify the individual settlement items and amount in disagreement, give the reasons for the disagreement, and furnish substantiating materials and information.

(e) The hearings officer or board will provide copies of requests, notices and written decisions to the department's director, audit bureau, medical assistance bureau, and office of legal affairs.

(f) Within ten days of receipt of the request, the hearings officer shall notify the provider and other parties of the time and place for the prehearing conference, which shall be within 30 days of the receipt of the request. The notice will state the purpose of the prehearing conference and the issues to be resolved, stipulated to, or excluded. The hearings officer may waive the prehearing conference.

(g) Within ten days after the prehearing conference or its waiver, the hearings officer shall notify the provider and other parties of the time and place for the hearing, which shall be within 60 days of the receipt of the request.

(h) The hearings officer will reduce his decision to writing within ten days of completion of the hearing based upon evidence and other material.

(2) Appeal. In the event the provider or department disagrees with the hearings officer's decision, a notice of appeals may be submitted to the hearings office for forwarding to the board of social and rehabilitation appeals within ten days of the hearings officer's decision. The notice of appeals shall set forth the specific grounds for appeal.

(a) All evidence in the record and offers of proof shall be transmitted to the board by the hearings officer. The decision of the board shall be based solely on the record transmitted by the hearings officer. A legal brief or a legal argument based on the record may be presented personally or through a representative of the provider or the department to the board.

(b) The board shall reduce its decision to writing and mail copies to the providers within ten days of completion of the hearing. The provider shall be notified of its right to judicial review under the provisions of title 2, chapter 4, part 7, MCA.

3. The department is proposing these amendments to its rules for the following reasons: The Denver Regional Office of the Health Care Financing Administration has determined that Rule 46.12.1204(2)(f) must be amended to comply with federal regulations regarding nursing home reimbursement. Rule 46.12.1201 is being amended to clarify the transition process to these proposed rules. Rules 46.12.1202, Rule 46.12.1204, Rule 46.12.1205 and Rule 46.12.1206 are being amended to minimize the need for rate review. Rule 46.12.1204(5)(c) is being amended to provide a more equitable method of determining property costs reimbursement.

4. Interested persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana, 59601, no later than November 14, 1980.

5. The Office of Legal Affairs, Department of Social and Rehabilitation Services, 111 sanders, Helena, Montana, 59601 has been designated to preside over and conduct the hearing.

6. The authority of the agency to make proposed amendments is based on Section 53-6-113 MCA, and the rule implements Section 53-6-141 MCA.

By: Jon A. Meredith
Director, Social and
Rehabilitation Services

Certified to the Secretary of State October 3, , 1980.

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

In the matter of the amendment of Rules 46.12.556 and 46.12.557 pertaining to personal care services in a recipient's home	) NOTICE OF PROPOSED AMENDMENT OF RULES 46.12.556 AND 46.12.557 PERTAINING TO PERSONAL CARE SERVICES IN A RECIPIENT'S HOME.) NO PUBLIC HEARING CONTEMPLATED.

TO: All Interested Persons

1. On November 18, 1980, the Department of Social and Rehabilitation Services proposes to amend Rules 46.12.556 and 46.12.557 pertaining to personal care services in a recipient's home.

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

46.12.556 PERSONAL CARE SERVICE, REQUIREMENTS These requirements are in addition to those contained in ARM 46.12.301 through 46.12.308.

(1) Personal care service in a recipient's home must be prescribed by a physician in accordance with a plan of treatment.

(2) Personal care service must be supervised by a registered nurse.

(3) The personal care service provider cannot be a family member and must meet the following criteria:

(a) mental competency and the physical ability to perform required personal care services;

(b) ability to read and write;

(c) ability to communicate with the recipient and speak English;

~~(c)~~ (d) willingness to accept training and supervision of a registered nurse.

46.12.557 PERSONAL CARE SERVICE, REIMBURSEMENT (1) Payment for personal care service shall be minimum wage plus 15 percent in lieu of fringe benefits~~.~~ except where exigent circumstances exist, a reasonable payment rate may be negotiated between the department and the provider.

(2) On a ~~daily~~ weekly basis, payment shall not exceed 80 percent of the cost of nursing home per diem~~.~~ except when prior authorized.

(3) Payment for registered nurse supervision shall be:

(a) skilled nursing service rate established by a fee schedule when provided by a licensed home health agency under contract with the department; ~~or~~

(b) $7.50 per hour when provided by an independent registered nurse~~r~~; or

(c) where exigent circumstances exist, a reasonable payment rate may be negotiated between the department and the provider.

3. The proposed amendment is necessary to allow the Department to provide necessary personal care services that require special expertise that are not available at the normal reimbursement rate. The amendment also requires a personal care provider to be able to communicate with the recipient, even when the recipient's primary language is other than English or the recipient is deaf.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to the Office of Legal Affairs of the Department of Social and Rehabilitation Services, P. O. Box 4210, Helena, MT 59601, no later than November 13, 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 Office of Legal Affairs, P. O. Box 4210, Helena, MT 59601 no later than November 13, 1980.

6. If the agency receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendment; from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 1,118 persons based on a department budget analysis that shows a total of 11,184 Medicaid recipients.

7. The authority of the agency to make the proposed amendment is based on Section 53-6-113 MCA, and the rule implements Sections 53-6-101 and 53-6-141 MCA.

Jon A. Meredith
Director, Social and Rehabilitation Services

Certified to the Secretary of State October 3, 1980.

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

In the matter of the amendment of Rule 46.10.508 pertaining to AFDC Unearned Income	) NOTICE OF PROPOSED AMENDMENT OF RULE 46.10.508 PERTAINING TO AFDC UNEARNED INCOME. NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On November 18, 1980, the Department of Social and Rehabilitation Services proposes to amend Rule 46.10.508 pertaining to AFDC unearned income.

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

46.10.508 SPECIALLY TREATED UNEARNED INCOME (1) The types of income listed below shall be treated as follows:

(a) Lump sum payments are considered as income ~~for only the month after the ten-day notification to the recipient of the grant amount change~~ on a prospective basis in the initial two months and on a retrospective basis after the first two months. After ~~this month~~ the initial two months, any sum that is retained will be considered against the property resources limitation. The following are examples of lump sum payments: social security, veteran's benefits, unemployment compensation, railroad retirement or disability, worker's compensation.

(b) Remains the same.

(c) Remains the same.

(d) Remains the same.

3. The rule is proposed to be amended to comply with 45 CFR Section 233.24 through 45 CFR Section 233.26. These sections specify that eligibility may be computed prospectively for the initial two months and retrospectively after the initial two months.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to the Office of Legal Affairs of the Department of Social and Rehabilitation Services, P. O. Box 4210, Helena, MT 59601, no later than November 13, 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 Office of Legal Affairs, P. O. Box 4210, Helena, MT 59601 no later than November 13, 1980.

6. If the agency receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendment; from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 640 persons based on a department budget analysis that shows a total of 6,400 AFDC recipients.

7. The authority of the agency to make the proposed amendment is based on Section 53-4-212 MCA, and the rule implements Sections 53-4-231 and 53-4-241 MCA.

Jon A. Meredith
Director, Social and Rehabilitation Services

Certified to the Secretary of State October 7, 1980.

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

In the matter of the amendment of Rule 46.12.102, the repeal of 46.12.701 and the adoption of two rules all pertaining to medical assistance, outpatient drugs	)))))))	NOTICE OF PUBLIC HEARING FOR THE AMENDMENT OF RULE 46.12.102, THE REPEAL OF 46.12.701 AND THE ADOPTION OF RULES ALL PERTAINING TO MEDICAL ASSISTANCE

TO: All Interested Persons

1. On November 10, 1980, at 9:00 a.m. a public hearing will be held in the auditorium of the SRS building, 111 Sanders, Helena, Montana, 59601 to consider the amendment of 46.12.102, the repeal of 46.12.701 and the adoption of rules all pertaining to medical assistance, outpatient drugs.

2. The rule proposed to be repealed is on page 46-1398 of the Administrative Rules of Montana.

3. The proposed amendment and adoption of rules replaces present Rule 46.12.701 found in the Administrative Rules of Montana which is being repealed.

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

46.12.102 MEDICAL ASSISTANCE, DEFINITIONS Subsections (1) through (20) remain the same.

(21) Outpatient drugs means drugs which are obtained outside of a hospital.

(22) Maximum allowable cost (MAC) is the upper limit the department will pay for drugs in accordance with 42 CFR 447.331 which is a federal regulation dealing with limits of payment. The department hereby adopts and incorporates 42 CFR 447.331 by reference. A copy of the above-cited regulation may be obtained from the department of Social and Rehabilitation Services, Economic Assistance Division, 111 Sanders, Helena, Montana, 59601.

(23) Estimated acquisition cost is the cost for drugs for which no MAC price has been determined. The estimated acquisition cost is established and adjusted monthly by the department upon notification of drug prices by pharmacies or legitimate pharmacy supplies.

5. The rules as proposed to be adopted provide as follows:

RULE I OUTPATIENT DRUGS, REQUIREMENTS These requirements are in addition to those contained in ARM 46.12.301 through 46.12.308.

(1) Drugs may not be filled or refilled without the authorization of the physician.

(2) The department will participate only in the payment of drugs which require a prescription and those over-the-counter drugs which are insulin, antacids or laxatives.

(3) The inappropriate use of drugs, as determined by professional review, may result in the imposition of a limitation upon the quantities of medications which are payable by the medical assistance program. Retroactive limitation will not be applied, unless the involved pharmacy has knowledge or can reasonably be expected to have had knowledge of the inappropriate use of drugs by the recipient.

(4) Each prescription shall be dispensed in the quantity ordered by a physician.

(a) Prescriptions for chronic conditions for which a physician has not ordered a specific quantity shall be dispensed in quantities of 100 or a minimum of one month's supply of medication.

(b) Prescriptions for acute conditions for which a physician has not ordered a specific quantity shall be dispensed in sufficient quantities to cover the period of time for which the condition is being treated except for injectable antibiotics, which may be dispensed in sufficient quantities to cover a three day period.

RULE II OUTPATIENT DRUGS, REIMBURSEMENT (1) Drugs will be paid for on the basis of the Montana "estimated acquisition cost" or the "maximum allowable cost", plus a dispensing fee established by the department, or the providers "usual and customary charge" whichever is lower; except that the "maximum allowable cost" limitation shall not apply in those cases where a physician certifies in writing that in his medical judgement a specific brand name drug is medically necessary for a particular patient. An example of an acceptable certification would be the notation "brand necessary".

(2) The dispensing fee for filling prescriptions shall be determined for each pharmacy provider annually. The dispensing fee shall include the average sum of the individual provider's direct and indirect costs which can be allocated to the filling of prescriptions, plus an additional sum as an incentive factor, which shall be 7 1/2% of the average of all Montana pharmacy prescription charges for the year the cost survey is conducted. If the individual provider's usual and customary average dispensing fee for filling prescriptions is less than the foregoing method of determining the dispensing fee, then the lesser dispensing fee shall be applied in the computation of the payment to the pharmacy provider. The cost

of filling a prescription shall be determined from the Montana dispensing cost survey. A copy of the Montana dispensing cost survey form is available upon request from the department. This Montana dispensing cost survey shall outline the information used in determining the actual average cost of filling a prescription for each pharmacy. Failure to submit the cost survey form properly completed will result in the assignment of the minimum dispensing fee offered. Out-of-state providers will be assigned the average of dispensing fees offered to in-state providers. The average cost of filling a prescription will be established on the basis of a determination of all direct and indirect costs that can be allocated to the cost of the prescription department and that of filling a prescription. If there is questionable information supplied on the cost survey form, the current "Lilly Digest" will be used in determining reasonableness of this information. The dispensing fees assigned shall range between a minimum of $2.00 and a maximum of $3.75.

(3) "Unit dose" prescriptions will be paid by a separate dispensing fee assigned to that pharmacy. This "unit dose" dispensing fee will be based upon the average additional cost of packaging supplies and materials which are directly related to filling "unit dose" prescriptions, and are documented by each individual pharmacy, plus the regular dispensing fee allowed.

(4) Each recipient must pay to the pharmacist 50¢ per prescription, except for two prescriptions received in any single month, which are exempt from the 50¢ co-payment.

6. The purpose of the proposed amendment of one rule, repeal of one rule and adoption of two new rules is to continue the Department's plan to simplify and clarify its rules. A further purpose is to raise the dispensing average fee for prescription drugs from $2.65 to $3.07 as a result of a survey the Department requested from the Montana State Pharmaceutical Association. The dispensing fee has been frozen since May of 1976.

7. Interested persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Office of Legal Affairs, P. O. Box 4210, Helena, Montana 59601, no later than November 14, 1980.

8. The Office of Legal Affairs, P. O. Box 4210, Helena, Montana 59601 has been designated to preside over and conduct the hearing.

9. The authority of the agency to make the proposed amendment, repeal and adoption is based on section 53-6-113 MCA, and the rule implements sections 53-6-101 and 53-6-141 MCA.

Jon A. Meredith
Director, Social & Rehabilitation Services

Certified to the Secretary of State October 6, 1980.

BEFORE THE MERIT SYSTEM COUNCIL
OF THE STATE OF MONTANA

In the matter of the adoption and amendment of rules governing the operation of the Montana Merit System	)))	NOTICE OF ADOPTION AND AMENDMENT OF RULES GOVERNING THE OPERATION OF THE MONTANA MERIT SYSTEM

TO: All Interested Persons.

1. On June 26, 1980, the Merit System Council published notice of a proposed adoption and amendment of rules governing the operation of the Montana Merit System at pages 1631 - 1659 of the 1980 Montana Administrative Register, issue number 12.

2. The agency has adopted Rule I Definitions (ARM 2.23.306), Rule II Other Leaves (ARM 2.23.610), and Rule III Training (ARM 2.23.611) as proposed. The agency has amended the rules as proposed, except for the following changes (note, the rules proposed to be amended, as noticed in the 1980 MAR, pages 1631-1659, issue number 12, were noticed therein using the old ARM numbering system. To avoid confusion here, the changes shown below will be shown using the rules and rule numbering system as shown in the 1980 MAR, issue number 12.):

a.) Rule ARM 2-3.34(38)-S34300 (proposed amendment noticed at pages 1633-1635, 1980 MAR, issue number 12) was amended with the following changes:

2-3.34(38)-34300 PURPOSE OF THE MONTANA STATE MERIT SYSTEM (1)-(2) amended as proposed.

(3) Discrimination against any person in recruitment, examination, appointment, assignment, training, evaluation, promotion, retention, discipline, or any other aspect of personnel administration because of race, color, religion, creed, political ideas, political belief, sex, age, marital status, physical or mental handicap, national origin, ancestry, or other nonmerit factors except as otherwise provided in 2-3.34(50)-S34410 (i)(h), will be prohibited except where specific age, sex, or physical requirements constitute a bona fide occupational qualification necessary to proper and efficient administration.

(4)-(5) amended as proposed.

b.) Rule ARM 2-3.34(42)-S34350 (proposed amendment noticed at pages 1633-1635, 1980 MAR, issue number 12) was amended with the following changes:

2-3.34(42)-S34350 POSITIONS TO WHICH THE MONTANA MERIT SYSTEM APPLIES (1) amended as proposed.

(2)(a)-(2)(d) amended as proposed.

(2)(e) bona fide part-time ~~employees who work~~ positions with work schedules of less than 20 hours per week, and bona fide part-time county disaster and emergency services/civil defense ~~employees who work~~ positions with work schedules of less than 40 hours per week;

(2)(f)-(2)(j) amended as proposed.

(3)-(4) amended as proposed.

(5) ~~Career~~ Current management employees ~~assigned~~ who accept appointments to exempt policy determining and advocacy, confidential, and other key positions may be reinstated to the employees former class of position or a comparable position under the following conditions:

(a) the position must be vacant.

(b) the employee must meet current minimum qualifications for the position.

(c) amended as proposed.

c.) Rule 2-3.34(46)-S34390 (proposed amendment noticed at pages 1633-1635, 1980 MAR, issue number 12) was amended with the following changes:

2-3.34(46)-S34390 EXAMINATIONS (1)-(3) amended as proposed.

(4)(a)-(4)(c) amended as proposed.

(4)(d) Competitors will be allowed to review their examination papers in the presence of a merit system bureau staff member and within the confines of the merit system bureau. Only the examination answer sheet may be reviewed. Test booklets and test questions may not be reviewed. Answer sheets or other materials which could reveal the contents of the examination may not leave the possession of the merit system bureau or be copied. If a covered position has only one (1) written examination or structured oral interview, the competitor may not retake the examination until 6 months after the date of the ~~examination or~~ answer sheet review, except when an examination procedure specifically allows for an examination retake within a shorter period of time.

(5)-(7) amended as proposed.

d.) Rule 2-3.34(46)-S34400 (proposed amendment noticed at pages 1633-1635, 1980 MAR, issue number 12) was amended with the following changes:

2-3.34(46)-S34400 REGISTERS (1) amended as proposed.
(2) Registers will be in effect for two (2) years from the date established unless they are extended or cancelled by the ~~Administrator~~ chief of the merit system bureau. The ~~Administrator~~ chief may consider a register to be temporarily exhausted if fewer than ~~three~~ five eligibles are available from it. If the ~~Administrator~~ chief cancels a register within two years he or she must notify all eligibles remaining on it.
(3)-(6) amended as proposed.

e.) Rule 2-3.34(54)-S34430 (proposed amendment noticed at pages 1633-1635, 1980 MAR, issue number 12) was amended with the following changes:

2-3.34(54)-S34430 APPOINTMENTS (1) amended as proposed.
(2)(a) amended as proposed.
(2)(b) in making appointments, appointing authorities will provide equitable treatment to all certified eligibles and consider agency affirmative action plans and veterans' and disabled civilian preference ~~must be granted in accordanee with~~ provided in 10-2-201 through 10-2-206 MCA.
(2)(c)-(2)(d) amended as proposed.
(3) In filling temporary positions eligible applicants who have indicated willingness to accept temporary employment will be certified from the appropriate register, using the same certification procedure as for probationary appointments. Temporary appointments may not continue for more than ~~six (6)~~ 9 months in a twelve (12) month period, and eligibles may not be given successive temporary appointments. A full time equivalent position (FTE) may not be filled with successive temporary appointments. All temporary appointments must have prior approval of the ~~Merit System Administrator~~ chief of the merit system bureau.
(4)-(5) amended as adopted.
(6) Lists, composed of the names of persons who have been permanent, probationary, or temporary employees appointed in accordance with this rule for at least three (3) months and who have indicated to the ~~Administrator~~ chief of the merit system bureau willingness to accept intermittent employement, will be prepared by the ~~Administrator~~ chief. Such lists, arranged according to class of position, will be known as reserve lists. If the work of an agency demands the services of a person for intermittent periods, the appointing authority may select a person from a reserve list for a class of position. An appointment may be made to a vacancy in the specific class of position for which the reserve list was established, as well as to a vacancy in a related lower class of position, without

regard to the standing of the persons on the reserve list, and without prior clearance of the ~~Administrator~~ chief, but such appointment will be reported to the ~~Administrator~~ chief. An intermittant appointment to a higher class of position, however, will not be made from any list of a lower class position. When reserve lists become exhausted, appointments will be made in accordance with other provisions of this Rule. The period of intermittent service will not constitute a part of the probationary period. In no case will intermittent employment of an individual continue longer than ninety (90) working days in succession or exceed a total of ~~six (6)~~ 9 months during a twelve (12) month period.

(7) amended as proposed.

f.) Rule 2-3.34(54)-S34440 (proposed amendment noticed at pages 1633-1635, 1980 MAR, issue number 12) was amended with the following changes:

2-3.34(54)-S34440 CAREER ADVANCEMENT (1)(2)
(3) amended as proposed.
(4) delete. Renumber subsequent subsections accordingly.
(5) amended as proposed.

g.) Rule 2-3.34(54)-S34460 (proposed amendment noticed at pages 1633-1635, 1980 MAR, issue number 12) was amended with the following changes:

2-3.34(54)-S34460 REASSIGNMENTS (1) ~~Approval:~~ employees may ~~not~~ be temporarily ~~reassigned to a higher class of position than that currently held by the employee without prior approval of the merit system council~~ promoted or assigned an acting appointment as defined in the pay plan rules. ~~Reassignments~~ temporary promotions may not exceed twelve (12) months in duration. Authority to certify eligibility for temporary promotions and acting appointments may be delegated to the agency subject to post audit by the merit system bureau.

3. No adverse comments or testimony were received except as follows:

a) A written request was received from Dave Fuller, Commissioner of Labor and Industry, requesting a change in length of temporary and intermittent appointments from six to 9 months during a twelve month period. The merit system council accepted his suggestion and incorporated it in the adopted amendments.

b) Written comments were received from Robert J. Dunn, Director of the U.S. Office of Personnel Management, Rocky Mountain Region, Denver, Colorado concerning exemptions from Merit System coverage of bona fide part-time positions, guaranteed reinstatement rights for management employees, race (sex) conscious centification, and equal treatment of certified eligibles. All the suggested rule changes proposed by Mr. Dunn were accepted by the Merit System Council and incorporated in the adopted amendments except his suggestion relating to guaranteed reinstatement rights and race(sex) conscious certification.

The suggestion for quaranteed reinstatement rights for management employees who accept appointments to exempt positions was rejected by the council because this proposal was too rigid. The Council adopted a rule which would permit the reinstatement with no absolute guarantees.

Mr. Dunn suggested that the proposed race (sex) conscious certification rule be deleted because race and sex are non-merit factors described in the Council rule on Prohibition of Discrimination, and because the Federal Merit System standards provide for selective certification only for bona fide occupational qualifications. The council decided to adopt the race (sex) conscious certification rule and amend the Prohibition of Discrimination rule to allow race (sex) conscious certification only for occupations for which a utilization analysis shows an underutilization of minorities and women and where agency affirmative action plans call for appropriate steps to relieve an apparent imbalance. Adoption of this rule reduces the possible adverse impact of current examination procedures on women and minorities.

By _____
Charles J. Seifert
Chairman, Merit System Council

Certified to the Secretary of State Oct. 3rd, 1980.

BEFORE THE GOVERNOR
STATE OF MONTANA

In the matter of the adoption of rules implementing the Governor's emergency powers during electricity shortages	))))	NOTICE OF THE ADOPTION OF RULES PERTAINING TO ELECTRICITY SHORTAGES

TO: All Interested Persons

1. On May 15, 1980, the Governor published notice of hearings to consider the proposed adoption of rules implementing the Governor's emergency powers during electricity shortages at pages 1332 through 1347 of the 1980 Montana Administrative Register, issue number 9. Public hearings were held at which time oral and written testimony was taken on June 4, 1980, in Missoula, on June 5, 1980, in Helena, and on June 9, 1980, in Billings. Written testimony was accepted until July 31, 1980.

2. The Governor has adopted the rules as proposed except for Rules I, II, IV, VI, X, XI, and XV through XX which the Governor has adopted with the following indicated changes:

RULE I PURPOSES (1) These rules describe procedures implementing the governor's emergency powers under Title 90, Chapter 4, part 3, MCA, in the event of electricity supply shortages. These rules apply only to the production, sale, and use of electricity.

(2) The purposes of these rules are to:

(a) establish functions to be undertaken by public and private entities during an energy supply alert or emergency;

(b) establish principles to guide actions during an energy supply alert or emergency;

(c) establish minimum activities for utilities and local governments to adopt during an energy supply alert or emergency, thus minimizing public confusion by providing an advance indication of those actions most likely to be undertaken;

(d) establish procedures for the monitoring and enforcement of mandatory curtailment activities during an energy supply emergency; and

(e) establish a procedure for administering appeals, adjustments, and exemptions from mandatory curtailment activities during an energy supply emergency.

RULE II DEFINITIONS As used in these rules, the following definitions apply:

(1) "Authority" means the civil authority empowered to implement mandatory curtailment.

(2) "Base period" means the corresponding billing period in the twelve month period ending immediately before implementation of voluntary curtailment.

(3) "Base period consumption" means base period energy adjusted for variations in temperature and rainfall.

(4) ~~(3)~~ "Base period energy" means the energy consumed by a customer during a base period.

(5) ~~(4)~~ "Conservation" means the wise and efficient use of electrical energy to eliminate waste.

(6) "Consumption" means the use of electric energy measured in kilowatt hours (kwh).

(7) ~~(5)~~ "Current usage" means the energy consumed by the customer during the most recent billing cycle.

(8) ~~(6)~~ "Curtailment" means the action of reducing the demand for or consumption of or both demand for and consumption ~~use~~ of electric ~~energy~~ service by voluntary and mandatory measures that are in addition to any conservation presently employed. Curtailment measures may affect convenience, comfort, service delivery, and employment.

(9) ~~(7)~~ "Customer" means any individual, partnership, corporation, firm, governmental entity, or organization supplied with electric service at one location and one point of delivery. Service furnished to a customer at one location through more than one meter regardless of rate classifications or schedules shall be deemed service to one customer.

(10) ~~(8)~~ "Deficient utility" means a utility which under identified probabilities is expected to ~~have an~~ experience energy usage or capacity demands in excess of ~~greater than~~ its resources.

(11) "Demand" means the rate at which electric energy is delivered, expressed in kilowatts (k_w), or kilovolt ampere, or other suitable units, at a given instant or averaged over a designated time period.

(12) "Energy division" means the energy division of the Montana department of natural resources and conservation.

(13) "Energy emergency" and "energy supply alert" as used herein means either or both a shortage of energy or demand capacity.

(14) ~~(9)~~ "Excess energy utility" means a utility which under identified probabilities is expected to ~~have an~~ experience energy supply and resource capacity in excess of expected consumption and ~~greater than its~~ demand.

(15) ~~(10)~~ "Excess usage" means demand or consumption or both in excess of ~~usage greater than~~ base period ~~energy~~ demand or consumption or both less any curtailment requirement.

(16) ~~(11)~~ "Local government" means any county, city, town, municipal corporation, or other political subdivision of the state.

(17) ~~(12)~~ "Major use customer" means a customer who used more than 75,000 KWH in any billing month ~~in~~ during the base period, or who is estimated to use more than 75,000 KWH (without curtailment) in any billing month ~~in~~ during the twelve month period ~~after~~ following the base period.

(18) ~~(13)~~ "Major resource" means a generating unit with a rated capability of 100 megawatts or greater.

(19) ~~(14)~~ "Media" means ~~the use of~~ any or all of: radio, television, newspapers, publications and any vehicle of communication used to contact the customer.

(20)~~(15)~~ "Priority loads" means loads necessary for the public health, safety, and welfare as enumerated in Rule XVI.

(21)~~(16)~~ "Region" means the area ~~including~~ comprised of service areas of the utilities in the northwest power pool and in the midcontinent area power pool.

(22)~~(17)~~ "Utility" means any investor-owned utility, joint operating agency, municipal utility, public utility district, or cooperative which engages in or is authorized to engage in the activity of generating, transmitting, or distributing energy in this state.

RULE IV UTILITY CURTAILMENT PLANS (1) Upon promulgation of these rules, utilities supplying electricity in Montana shall submit a curtailment plan modeled on the procedures outlined in these rules within ~~90~~ 180 days. Each utility's curtailment plan shall include the following information:

(a) description of the utility's power resources and obligations including peak and average, firm and interruptible loads;

(b) description of the measures the utility will take to curtail its own uses of electricity under stage 1 of a supply alert as specified in Rule X and the estimated energy savings from these measures;

(c) description of the voluntary conservation measures the utility will recommend to its customers under stages 1 and 2 of a supply alert as specified in Rules X and XI;

(d) identification of priority load customers, description of the utility's ability to isolate and maintain service to these customers in the event of stage 3 of an energy emergency as described in Rule XV, and the notification procedure the utility will follow prior to any unavoidable curtailment;

(e) description of the monitoring procedures the utility will follow and the methodology that will be used to estimate energy savings in each stage of a supply alert and emergency;

(f) identification of the utility's major use customers and their average consumption;

(g) identification of the utility's supply obligations by customer class and approximate number of customers in each class; and

(h) the proposed membership for the utility's adjustment committee as specified in Rule XX(2)(a).

(2) The curtailment plan described in subsection (1) may contain additional provisions to reflect the particular circumstances of the utility.

(3) Each utility's curtailment plan shall be reviewed by the governor or his designee and the energy policy committee established under Section 90-4-303, MCA.

(4) Following acceptance of the curtailment plan, the utility shall keep the plan in reserve for implementation upon declaration of an energy supply alert or emergency.

(5) Utilities may be ~~requested~~ required to update their curtailment plans periodically to reflect current or changed con-

ditions.

RULE VI EVALUATING INFORMATION (1) The energy division shall evaluate the information provided under Rule V and may recommend the voluntary curtailment provisions of an energy supply alert if unacceptably high probabilities of future mandatory curtailment exist.

(a) In evaluating the data provided under Rule V(1) the energy division may recommend:

(i) stage 1 voluntary curtailment actions when there is a 40% probability that stage 1 mandatory curtailment will be imposed in the current or ensuing July-June period, and

(ii) stage 2 voluntary curtailment actions when there is a 60% probability of implementing stage 1 mandatory curtailment in the current or ensuing July-June period.

(b) In evaluating the data provided under Rule V(2), the level of voluntary curtailment recommended will depend on the severity of the shortage.

(2) The energy division may recommend declaration of an energy emergency and imposition of mandatory curtailment measures if unacceptably high probabilities of future inability to meet regional firm energy or capacity requirements exists or if an individual utility cannot meet its firm loads.

(a) In evaluating the data provided under Rule V(1) the energy division may recommend:

(i) stage 1 mandatory curtailment measures when there is a 20% probability of depleting the generating capability of regional reservoirs before the next April 30;

(ii) stage 2 mandatory curtailment measures when there is a 40% probability of depleting the generating capability of regional reservoirs before the next April 30; and

(iii) stage 3 mandatory curtailment provisions when the region's reservoir generating capability is in imminent danger of being depleted and greater curtailment is required than has been achieved or is attainable under stages 1 and 2 of mandatory curtailment.

(b) In evaluating the data provided under Rule V(2) the level of mandatory curtailment recommended will depend on the severity of the shortage.

RULE X SUPPLY ALERT STAGE 1 (1) Stage 1 of a supply alert is intended to ~~bring energy~~ balance electric supply ~~and~~ with demand and consumption ~~into balance~~ without eliminating employment or curtailing commercial operations or industrial production.

(2) In stage 1 of a supply alert the governor may issue orders to direct any state or local governmental agency to implement curtailment action or provide information relating to the consumption of energy. The governor may also request utilities and electricity consumers to take voluntary action to alleviate the shortage. In implementing this rule the governor may initiate the following measures:

(a) direct each state agency and local government institution to curtail and request each utility to curtail its own uses of electricity;

(b) request each utility to seek voluntary curtailment of use in all large buildings;

(c) request each utility to seek voluntary curtailment of use by its major use customers;

(d) utilize media pronouncements to request all consumers to curtail electricity use. The utility, in consultation with local government, should support these requests and recommend specific measures to be taken by all customers. Such measures shall not be as stringent as those measures set forth in Rule XI(2)(d) under stage 2 of a supply alert;

(e) request each deficient utility to replace, by purchase or other means, energy included in its planned resources but not generated due to outages of its major resources; and,

(f) direct the department of health and environmental sciences to examine all restrictions relating to air quality where electricity use could be affected directly or offset by other fuels and to recommend to the governor what action should be taken, if any, in each stage of a supply alert and emergency.

(3) Compliance with the provisions of subsection (2) is at the customers' discretion; utilities and local governments act in advisory and informational capacity and are self-monitoring for their own compliance.

(4) Enforcement of the provisions of subsection (2) is not applicable.

RULE XI SUPPLY ALERT STAGE 2 (1) Stage 2 of a supply alert is a more intensive effort to ~~bring energy~~ balance electric supply ~~and~~ with demand and consumption ~~into balance~~ without eliminating employment or curtailing commercial operations or industrial production.

(2) In stage 2 of a supply alert the governor may direct further implementation of the stage 1 curtailment program as follows:

(a) continued self-curtailment by utilities and governmental units;

(b) continued requests for voluntary curtailment in large buildings and ~~from~~ by major use customers;

(c) urgent requests for voluntary curtailment by all customers;

(d) media publications by utilities and government units of specific measures affecting electric energy consumption which should be undertaken by all customers. These measures include, but are not limited to, the following conservation activities:

(i) 65 degrees F maximum thermostat setting for daytime space heating;

(ii) 55 degrees F maximum thermostat setting for nighttime space heating;

(iii) 85 degrees F maximum thermostat setting for space cooling;

(iv) 105 degrees F maximum thermostat setting for water heating;

(v) line drying of clothes;

(vi) elimination of:

(A) outdoor decorative lighting;

(B) window display, outdoor display, area and sign lighting, except during nighttime hours when the place of business is open. At all times, such lighting should be reduced to the lowest possible level; and,

(C) parking lot lighting, except during nighttime hours when the place of business is open and then only to the levels required for safety and security; and,

(e) further request deficient utilities to purchase all available electric energy in amounts needed to offset deficits.

(3) Compliance with the provisions of subsection (2) is at the customers' discretion; utility and local government are self-regulating and act in an advisory and information role, but the urgency of the situation should be stressed.

(4) Enforcement of the provisions of subsection (2) is not applicable.

RULE XV ENERGY EMERGENCY STAGE 3 (1) Actions required in stage 3 of an energy emergency shall emphasize minimizing unemployment and other economic and social dislocations while preserving the generation, transmission and distribution system and bringing loads into balance with available supply.

(2) In stage 3 of an energy emergency the governor may issue orders as described in Section 90-4-310, MCA to:

(a) direct further implementation of programs, controls, standards, and priorities for the production, allocation and consumption of energy;

(b) direct further implementation of regional programs and agreements for the purpose of coordinating energy programs in the region;

(c) curtail usage by fixed percentages of specified large industrial customers if such curtailment is necessary to balance regional loads and resources;

(d) cease operations of specified large industrial customers after advance notice has been given to permit an orderly shutdown of operations;

~~(e) interrupt the service of all customers on a rotating basis. These service interruptions shall be imposed equally, and to the extent necessary to achieve the required reduction of energy consumption. To the extent possible, public notice shall be given before such procedures are imposed. To the extent practical, priority loads shall not be interrupted,~~

~~(f)~~(e) direct the implementation of other appropriate emergency actions.

(3) Where monitoring is required, each utility shall monitor compliance by its customers of the directives of stage 3 of an energy emergency as set forth in Rule XVIII.

(4) Termination of operations as required under subsection (2) shall be carried out by utilities and government entities as specified by the governor.

(5) Enforcement of the provisions of subsection (2) shall be carried out as set forth in Rule XIX.

~~(5)~~(6) Procedures for appeals and adjustments to mandatory action taken under subsection (2) are set forth in Rules XX and XXI.

RULE XVI PRIORITY LOAD CUSTOMERS - EXEMPTION PROCEDURE (1) Certain customers set out below because of the critical nature of their operations shall be exempt from stage 2 mandatory curtailment once the customer has demonstrated to its utility that all non-essential electrical energy use has been eliminated:

(a) public health and safety functions such as:

(i) hospitals, nursing homes, and other health care facilities;

(ii) police and fire stations~~,~~ ~~and~~, and traffic signals;

(iii) sewage treatment and domestic water treatment installations;

(b) emergency services including essential communication facilities~~,~~ and telephone networks;

(c) governmental operations~~,~~, not including schools;

(d) public mass transit operations including, but not limited to, airports;

(e) food production and processing facilities including irrigation;

(f) energy supply and storage facilities such as:

(i) refineries;

(ii) oil and gas pipelines;

(iii) coal handling facilities; and,

(iv) wood waste processing and handling facilities associated with energy production; and

(g) mining~~.~~, not including mine construction.

(2) Each utility shall to the extent feasible identify and notify its priority load customers prior to declaration of an energy supply emergency. A priority load customer listing shall be submitted to the energy division.

(3) If stage 2 of an energy emergency is implemented, the utility adjustment committee as outlined in Rule XX(2)(a) shall grant exemption of priority load customers that appear on the approved list, provided the applicant has demonstrated that all non-essential electrical energy use has been eliminated. No priority load exemptions shall be granted unless an application is filed by the applicant and the applicant appears on the approved list. Appeals from the committee decision shall be to the state appeals board as provided for in Rule XIX(2)(b).

RULE XVII NON-PRIORITY LOAD APPELLANTS An aggrieved customer may seek a non-priority load exemption from the provisions of stage 2 of an energy emergency by filing application with the utility adjustment committee as specified in Rule XX (1)(a).

The committee shall make initial rulings on such applications. In cases where the customer wishes to appeal the initial ruling, the committee shall forward the application to the state appeals board as specified in Rule XX (1)(b) and assist in gathering information and evaluating the applications. The state appeals board shall recommend to the governor either approval, denial, or approval with conditions of the application for non-priority exemption based upon the following criteria:

(1) curtailment would result in unreasonable exposure to health or safety hazards;

(2) curtailment would result in extreme economic hardship relative to the amount of energy saved;

(3) curtailment would be counter-productive for efficient energy use or energy production; and

(4) all non-essential electrical energy use has been eliminated.

RULE XVIII MONITORING

. . .

(3) In stage 1 of an energy emergency:

(a) each utility shall be prepared to monitor customer compliance on the basis of comparing current energy usage with the applicable base period energy consumption and any possible reduction in use. Each utility shall be prepared to monitor major use customers on a monthly basis. Monitoring procedures shall be tested and operational in anticipation of stage 2 of an energy emergency being initiated;

. . .

(4) In stage 2 of an energy emergency:

(a) all customers shall be required to curtail usage by the percentage declared necessary to bring supply and demand into balance. Each utility shall monitor compliance by its customers. Subject to adjustments as set forth in Rule XXI, monitoring shall be on the basis of comparing current energy usage with the applicable base period energy consumption less the required curtailment.

. . . .

RULE XIX ENFORCEMENT In an energy supply alert or energy emergency the public service commission, local governments and utilities shall cooperate in implementing the enforcement measures described in this rule as directed by the governor.

(1) In stages 1 and 2 of a supply alert:

(a) self-regulation and compliance is required by government institutions; and,

(b) utility and individual customer compliance with actions requested is at utility and customer discretion.

(a) if a complaint regarding violation of operating hours

is filed with local government and the complaint is substantiated, the local government shall notify the retail, commercial, industrial or governmental establishment of such complaint and indicate that the supplying utility shall be requested to monitor energy consumption; and,

(b) The utility shall be prepared to monitor and record energy consumption of the customer and notify such customer that if stage 2 emergency actions are instituted, such customer shall be monitored on an individual basis rather than be subject to sampling procedures.

(3) In stage 2 of an energy emergency each utility shall establish a curtailment target as directed by the governor for all customers being monitored. The actual energy consumption of a customer shall be compared with the base period consumption less the required percentage curtailment (target) to determine customer compliance. (To the extent possible prior to an emergency, utilities should inform customers of what their consumption patterns have been and indicate what reductions may be required if emergency curtailment activities are ever instituted. This will promote an awareness of energy use and may promote conservation.) If a customer's actual consumption is above the target, then the customer may be penalized.

(4) During the first month of monitoring under stage 2 of an energy emergency, the utility shall notify all customers of surcharge rates for excess consumption and provide a description of the appeals procedure outlined in Rule XX. An appeal may result in an adjustment to the customer's base period, in which case no surcharge shall be assessed for the month in question. If no adjustments are merited and energy consumption exceeds the target, imposition of excess energy surcharge rates shall be directed by the governor.

(5) During an energy supply emergency, the rate setting procedures for any surcharge shall be coordinated and accelerated by the public service commission. The following surcharge provisions for excess usage are recommended:

(a) apply surcharges to entire bill:

(i) first month of excess use, 25% surcharge;

(ii) second consecutive month of excess use ~~after first fined month~~, 50% surcharge;

(iii) third consecutive month of excess use ~~after first fined month~~, 100% surcharge; and

(iv) after the ~~fourth~~ third consecutive month of excess use ~~after first fined month~~, service termination for the period required to generate the target savings required in the previous ~~five~~ three months of noncompliance.

(b) apply surcharge only to excess use ~~of~~ on the following percent basis:

Percent of Excess Use	Surcharge on Excess per KWH
0 - 10%	$0.04
11 - 25%	$0.045

26 - 50%	$0.05
51 - 100%	$0.06

(6) The expenses incurred by a utility subject to the rate regulatory jurisdiction of the public service commission in acquiring demand or energy under a direction or request issued under Rules X, XI, XIII, XIV or XV should be considered for separate and immediate pass through to consumers by the public service commission.

RULE XX APPEALS

. . .

(b) A state appeals board shall be established consisting of 12 members: the administrator of the energy division or his designee who shall serve as chairman, the chairman of the psc or his designee, and one representative appointed by the energy policy committee from each of the following groups-rural electric cooperatives, investor-owned utilities, county and municipal government, commercial and industrial users, and four citizens at large. The state appeals board shall:

(i) hear appeals from utility adjustment committee actions;

(ii) make recommendations to the governor on adjustments to base period energy of major use customers;

(iii) make recommendations to the governor on ~~non-priority load-appellants~~ appeals of denial of priority load status;

(iv) act on adjustments to scheduling of curtailment by non-major use customers; and,

(v) make recommendations to the governor on adjustments to scheduling of curtailment by major use customers.

. . . .

3. The Governor designated the Department of Natural Resources and Conservation (DNRC) to conduct the hearings on these proposed rules and to respond to the oral and written comments received. The following are summaries of the comments received and DNRC's responses to those comments.

RULE I

COMMENT: A single jurisdictional statement should be added to the paragraph, indicating that the rules apply only to electricity.

RESPONSE: The suggestion is accepted.

RULE II

COMMENT: "Consumption" should be defined as the use of electric energy measured in kilowatt-hours, and "demand" should be defined

as the rate at which electric energy is delivered, expressed in kilowatts or kilovolt amperes.

RESPONSE: This suggestion is accepted.

COMMENT: The rules should be written throughout to account for emergency shortages of both energy and capacity as either one might require curtailment actions by utilities.

RESPONSE: This suggestion is accepted and the wording amended accordingly in the definitions (Rule II) and throughout.

COMMENT: The definition of "customer" should be changed to eliminate the single delivery point reference, on the ground that receipt of service within the state by an entity should make that entity a customer, regardless of location.

RESPONSE: This suggestion is not accepted. It would mean that some firms with service at several locations may qualify as major use customers that would not have under the old definition. It is felt that service at different locations should be treated separately for curtailment purposes.

COMMENT: The definition of a utility should be expanded to include any entity engaged in generating, transmitting, or distributing electricity.

RESPONSE: This suggestion is rejected as there is no intent to include persons or firms generating electricity for their own use.

COMMENT: A definition of base period consumption should be made which would account for year to year climatic variations.

RESPONSE: This suggestion was accepted.

RULE III No comments received.

RULE IV

COMMENT: The time allowed, after the adoption of the rules, for utilities to submit curtailment plans should be extended.

RESPONSE: This suggestion is accepted. The period is lengthened from 90 days to 180 days.

RULE V, VI

COMMENT: Means should be provided for determining shortages and declaring emergencies in individual utility service areas.

RESPONSE: This is already present in the Rules V(2), VI (1)(b), and VI(2).

RULE VI

COMMENT: The Northwest Power Pool(NWPP) has evolved mechanisms for predicting when curtailments were likely to be necessary, and the rules should reflect their expertise.

RESPONSE: The wording in Rule VI is taken from language developed by NWPP, and that organization is expected to supply the estimates of the probability of shortfalls. Therefore the suggestion is rejected.

RULE VII

COMMENT: The determination of an energy supply alert should

involve coordination with power supply agencies and utilities rather than state agencies and consumers.

RESPONSE: DNRC agrees that close coordination with power supply agencies and utilities is required and feels that the rules reflect this. State agency involvement is necessary if the authority of the state is to be lent to curtailment actions and the imposition of penalties.

RULE VIII No comments received.

RULE IX No comments received.

RULE X

COMMENT: Curtailment plans should be embodied in the tariff schedule filed with the Public Service Commission.

RESPONSE: This procedure is not ruled out by the procedures set up under these rules; however, there is an intent to centralize state involvement in energy emergency management, to the extent possible, in the Energy Division. Therefore the proposal is rejected.

RULE XI No comments received.

RULE XII No comments received.

RULE XIII No comments received.

RULE XIV

COMMENT: Curtailments should be made on a minimum standards approach rather than a base period usage approach.

RESPONSE: DNRC considers that the base period approach, suitability adjusted for climatic variations, will be easier and quicker to implement. A minimum standards approach in the interest of fairness, could be the basis for dealing with appeals and adjustments by the appropriate bodies under Rule XVII (4). Therefore the proposal is rejected.

RULE XV

COMMENT: Rolling blackouts or interruptions would be very difficult to implement without cutting off priority customers, since the latter are scattered around the distribution system.

RESPONSE: DNRC accepts this suggestion and deletes the reference to rotating interruptions.

COMMENT: The rules should define the length of interruptions for rotating interruptions.

RESPONSE: See response to previous comment.

RULE XVI

COMMENT: A number of requests for priority status for additional classes of users were received:

(a) Telephone Systems

RESPONSE: DNRC agrees that all communication networks should be treated as priority users on the grounds that the costs of identifying priority communications would be unwarran-

ted given the total use of electricity in this section.

(b) Coal Mine Construction

RESPONSE: DNRC feels that while coal mining should not be interrupted to reduce electricity use during periods of shortage, coal mine construction should not qualify as a priority use, since temporary curtailment would reduce neither current energy supplies nor vital services. Therefore the proposal is rejected.

(c) Schools

RESPONSE: DNRC feels that short run curtailments of electricity use in schools would not disrupt any vital services. The proposal is therefore rejected.

(d) Traffic Signals

RESPONSE: DNRC agrees that traffic signals should constitute a priority use as an essential public service.

RULE XVII

COMMENT: The first review of applications for non-priority load exemptions from the provisions stage 2 of an energy emergency should be made by the utility. The utility is directly acquainted with the customer and his use requirements and should take responsibility for initial review. Only those appeals and exemption requests which cannot be resolved at this level should be submitted to the state for resolution.

RESPONSE: DNRC agrees with this suggestion. Given the present knowledge of the utilities of their customers it would be unnecessarily duplicative and costly for the state to be involved at the initial review stage.

RULE XVIII

COMMENT: Monitoring would be costly and the funds should be provided by the state.

RESPONSE: DNRC recognizes that there will be costs imposed by these rules and an attempt has been made in writing them to hold these costs down when possible. There is no way to allocate funds in the rulemaking process, any relief would have to be sought in the legislature.

COMMENT: Monitoring of major use customers should be on a monthly basis, with all others monitored by random sampling.

RESPONSE: DNRC agrees, and this is embodied in the draft rules in Rule XVIII (4)(b), with the exception that monthly monitoring is required of customers previously in violation.

RULE XIX

COMMENT: Base period consumption should be adjusted for weather variations.

RESPONSE: DNRC agrees with this suggestion. See the response to question 5 on Rule II.

COMMENT: Sanctions should be imposed by the relevant state authorities rather than by the utilities.

RESPONSE: DNRC feels that the authority of the state is lent to the sanctions through the adoption of these rules and the adoption by the PSC of a penalty schedule. Since the utility bills represent an existing method for imposition of sanctions that would be costly to reproduce, the suggestion is not accepted.

COMMENT: Language should be included in the rules recommending to the PSC that any costs incurred by utilities to acquire capacity or energy from other utilities under these rules be passed through to consumers by the PSC.

RESPONSE: DNRC agrees that this suggestion would be helpful if language were written that required prior consultation on the cost of available resources and if the pass through was net of any penalty collections. This language has been inserted in the rules.

GENERAL COMMENTS:

COMMENT: Language should be inserted making it mandatory that utilities with excess resources share them with deficient utilities.

RESPONSE: DNRC feels such language is unnecessary in view of the utility industry's past willingness to share resources.

COMMENT: The Governor should undertake interstate negotiations on regionwide sharing of resources.

RESPONSE: DNRC agrees that regionwide sharing is essential in any local or regional shortage. Regionwide negotiations have been underway for some time within the industry. While it would not be appropriate in these rules to mandate negotiations on interstate sharing, wording has been inserted to ask the Governor to request the cooperation of other Governors in the region.

COMMENT: These rules should specify exactly what is the responsibility of each agency.

RESPONSE: DNRC feels this is a very good idea but that it would be better done in a set of guidelines than in the rules themselves.

COMMENT: The rules impose significant costs on the utilities, which will ultimately be passed on to consumers. Funds should be made available by the state for planning and implementation.

RESPONSE: See the response to question XVIII (1).

4. The new rules are assigned to the following numbers in the ARM: Rule I (14.8.201); Rule II (14.8.202); Rule III (14.8.203); Rule IV (14.8.204); Rule V (14.8.205); Rule VI (14.8.206); Rule VII (14.8.210); Rule VIII (14.8.211); Rule IX (14.8.212); Rule X (14.8.213); Rule XI (14.8.214); Rule XII (14.8.218); Rule XIII (14.8.219); Rule XIV (14.8.220); Rule XV (14.8.221); Rule XVI (14.8.225); Rule XVII (14.8.226); Rule XVIII (14.8.227); Rule XIX (14.8.228); Rule XX (14.8.229); and, Rule XXI (14.8.230).

5. The governor may adopt the proposed rules under the authority granted by Section 90-4-316, MCA, and the rules implement Title 90, Chapter 4, Part 3, MCA.

Thomas L. Judge, Governor
State of Montana
State Capitol
Helena, MT 59601

Certified to the Secretary of State October 1, 1980.

BEFORE THE GOVERNOR
STATE OF MONTANA

In the matter of the adoption of rules implementing the Governor's emergency powers during petroleum fuels shortages	)))))	NOTICE OF THE ADOPTION OF RULES PERTAINING TO PETROLEUM SHORTAGES

TO: All Interested Persons

1. On May 15, 1980, the Governor published notice of hearings to consider the proposed adoption of rules implementing the Governor's emergency powers during petroleum fuels shortages at pages 1348 through 1357 of the 1980 Montana Administrative Register, issue number 9. Public hearings were held at which time oral and written testimony was taken on June 4, 1980, in Missoula, on June 5, 1980, in Helena, and on June 9, 1980, in Billings. Written testimony was accepted until June 30, 1980.

2. The Governor has adopted the rules as proposed except for Rules I, V, and XII through XVI which the Governor had adopted with the following indicated changes:

RULE I PURPOSE These rules describe procedures implementing the governor's emergency powers under Title 90, Chapter 4, part 3, MCA, in case of shortages of motor gasoline, middle distillates or aviation gasoline. These rules contain guidelines that the governor ~~shall~~ may follow in dealing with petroleum fuel shortages.

RULE V PUBLIC SECTOR SUPPLY ALERT PROCEDURES The governor may implement the following procedures that apply to the public sector in a motor gasoline supply alert:

(1) State agencies and local governments shall ~~reduce miles driven~~ reduce gasoline consumption, measured in gallons, each month by employees on governmental business in comparison with the corresponding month of the previous year by a percentage as determined by the governor in an executive order. The governor may designate a more appropriate comparison period or may adjust comparison period ~~mileage~~ gasoline consumption, measured in gallons, in appropriate cases as he sees fit.

(2) Each agency and local government shall report monthly ~~mileage figures~~ gasoline consumption.

(3) Heads of state agencies ~~and local government~~ shall issue written reprimands to employees found guilty (includes forfeiting bonds) of exceeding the statewide 55 mph highway speed limit while on state business and shall discharge employees found guilty of three such offenses.

(4) Administrators of state and local governmental motor pools shall institute and operate a system for ensuring car pooling whenever possible.

(5) Heads of state agencies and local governments shall encourage employees to walk or bicycle to and from work by providing incentives for their doing so.

(6) State agencies with employees in Helena shall stagger the work hours of their Helena employees to reduce traffic congestion. Schedules shall be arranged so that approximately one-third of each Helena office's employees will be on each of the following shifts:

(a) 7 a.m. to 11 a.m. -- 12 p.m. to 4 p.m.

(b) 7:30 a.m. to 11:30 a.m. -- 12:30 p.m. to 4:30 p.m.

(c) 8 a.m. to 12 p.m. -- 1 p.m. to 5 p.m.

(7) Parking at all state, school, city, and university system parking lots shall be restricted to:

(a) give preference to carpools;

(b) give preference to vanpools;

(c) attempt to achieve a 50% reduction in commuter use of vehicles.

(8) State agencies and local governments shall schedule all meetings, hearings, and other proceedings in the location and at the time that will minimize passenger car travel.

(9) State and local government employees shall substitute telephone and mail communication for travel whenever possible.

(10) When travel is essential, state and local government employees shall use public transportation whenever feasible.

RULE XII PUBLIC SECTOR ENERGY EMERGENCY PROCEDURES The governor may implement the following procedures which apply to the public sector in a motor gasoline energy emergency:

(1) All state agencies shall reduce ~~motor-vehicle-mileage driven-by~~ gasoline consumption, measured in gallons, in private and state-owned vehicles used for state business up to 50 percent as compared to the same month of the previous year.

(2) The work week of state employees shall change to a four-day work week of 10 hour days. The Governor may request employees to observe one no driving day on the days off.

(3) Parking at all state, school, city, and university system parking lots shall be restricted at least 50%. Parking preference shall be given to carpools and vanpools.

RULE XIII PRIVATE SECTOR EMERGENCY PROCEDURES The governor may implement the following procedures which apply to the private sector in a motor gasoline energy emergency:

(1) The governor may request implementation of company plans to reduce gasoline consumed in company travel by 25%.

(2) Gasoline retailers shall comply with the following rules:

(a) Each gasoline retailer shall clearly post by signs legible from off the premises stating the days and hours gasoline will be dispensed to the general public, including, but not limited to, which weekend day and time the station will be open.

(b) Each gasoline retailer shall open at the hour posted

pursuant to subsection (2)(a) on each Saturday of the month if the number of his station's street address is odd or on each Sunday of the month if the number of his station's street address is even and shall dispense gasoline to the public until he has sold at least one-sixth of his weekly gasoline allocation.

(c) Subsection (2)(b) shall not apply to any gasoline retailer who:

(i) is out of gasoline because of late delivery or inadequate supply; or

(ii) as a normal business practice ~~prior to February 1, 1979~~ during the six months preceding the declaration of a motor gasoline energy emergency remained closed on Saturday and Sunday.~~; or~~

~~(iii) had a gasoline sales volume of less than 750,000 gallons in 1978.~~

(d) A retailer with an odd numbered street address station location may for bonafide religious reasons open on Sunday instead of Saturday, and a retailer with an even numbered street address station location may for bonafide religious reasons open on Saturday instead of Sunday.

(e) In order to gain an exemption from all or part of subsection (2)(b) because of either normal business practice or bonafide religious reasons, the retailer shall first file with the administrator of the Energy Division of the Department of Natural Resources and Conservation a statement setting forth the basis for the exemption.

(3) An odd-even day gasoline dispensing system as described in Rule XIV shall be established.

(4) At the retail level, no more than two gallons of gasoline may be dispensed into a separate container, and no more than one separate container may be used in a single transaction. This does not apply to containers used for a commercial purpose such as containers used to fuel commercial landscaping and gardening equipment, construction equipment, ~~or~~ electrical generators, or containers designed for use on a boat.

(5) No retail gasoline sales may be made for vehicles having four cylinders in an amount less than $5.00 and in an amount less than $7.00 for vehicles having more than four cylinders. Minimums may be adjusted upward if considered necessary. This sale does not apply to container sales or to sales for vehicles with gas tank capacity of less than 8 gallons, for motorcycles, mopeds, or scooters, or for emergency vehicles.

(6) Unless otherwise specified, the provisions of subsections (2) through (5) apply to vehicle operators, employees of gasoline retailers, and gasoline retailers. A violation of these regulations may result in a criminal charge under Section 90-4-319, MCA. Local authorities shall be responsible for monitoring and enforcing these regulations. Any violation should be reported to local law enforcement officials.

RULE XIV ODD-EVEN DAY GASOLINE DISPENSING SYSTEM

The procedure for dispensing gasoline on odd and even numbered

days shall be as follows:

(1) At the retail level, gasoline may be dispensed on odd numbered days of the month only to vehicles with odd license plate numbers and on even numbered days only to vehicles with even license plate numbers, except as provided in subsection (2). For purposes of this rule, personalized license plates shall be considered to be plates with an odd number and vehicles without permanent registration shall be considered to have plates with an even number.

(2) The following vehicles may be supplied with gasoline on any day:

(a) vehicles with out-of-state license plates;

(b) vehicles driven by persons whose residences as shown on their driver's licenses are more than 100 miles distant from the place of gasoline purchase;

(c) public transportation vehicles, including, but not limited to, school buses, taxis, buses, and vehicles rented for less than 30 days;

(d) U. S. postal service vehicles;

(e) emergency vehicles, including:

(i) any publicly-owned ambulance, lifeguard or life-saving equipment, or any privately owned ambulance used to respond to emergency calls;

(ii) any publicly-owned vehicle operated by the following persons, agencies, or organizations:

(A) any fire department vehicles of any public agency or municipality;

(B) any police department, including those of the Montana state university system, sheriff's department (including search and rescue vehicles on official business), or the Montana highway patrol; and

(C) peace officer personnel of the department of institutions;

(iii) any vehicle owned by the state or any bridge and highway district and equipped and used either for fighting fires, towing or servicing other vehicles, caring for injured persons, or repairing damaged lightening or electrical equipment or emergency maintenance;

(iv) any state-owned vehicle used in responding to emergency fire, rescue, or communications calls and operated by any public agency (including disaster and emergency services) or industrial fire department;

(v) any state-owned vehicle operated by a fish, wildlife and park warden;

(vi) other emergency repair and service vehicles whether public or private used for functions directly related to the protection of life, property, or public health;

(vii) vehicles operated in an emergency situation in the judgment of the gasoline retailer;

(viii) doctors' and nurses' vehicles when used for professional purposes;

(f) vehicles operated by handicapped persons who have

no practical alternative to auto transportation;

(g) motorcycles, mopeds, and similar two-wheel vehicles; and

(h) vehicles being used for commercial purposes according to the following identifying criteria:

(i) vehicles which by their design, size, or recognizable company identification are obviously being used for commercial purposes;

(ii) vehicles which are owned and operated as part of a company vehicle fleet as may be determined by company marking or the vehicle's registration;

(iii) individually-owned vehicles used for commercial purposes, as evidenced by the presence of a specialized equipment, instruments, tools of the trade or profession, supplies or other material which cannot be readily carried on by the vehicle operator on public transportation, or any other evidence that it is necessary to use the vehicle for commercial purposes; and

(j) vehicles operated by the United States department of justice.

(3) In months which have 31 days, gasoline may be dispensed to any vehicle on the 31st day of the month, or in a leap year, gasoline may be dispensed to any vehicle on the 29th day of February.

(4) Operators of vehicles exempt from this rule under subsection (2) are urged to purchase gasoline only on appropriate alternate days whenever possible.

RULE XV ENERGY EMERGENCY PROCEDURES - MIDDLE DISTILLATES Upon declaring the existence of a middle distillate energy emergency, the governor, with the advice of the energy policy committee, shall select and implement any combination of the procedures described in Rule XVI and XVII as he considers appropriate. The Governor may modify any procedure described in Rules XVI and XVII as he considers necessary or as the circumstances of the middle distillate emergency change. Any energy supply alert measures in effect at the time the energy emergency is declared shall remain effective except as ordered by the governor.

RULE XVI PUBLIC SECTOR ENERGY EMERGENCY PROCEDURES The governor may implement the following procedures which apply to the public sector in a middle distillate energy emergency:

(1) Thermostats on space heating systems whether in public or private buildings including all residences may not be set higher than 65 degrees F for daytime space heating and may not be set higher than 55 degrees F for nighttime space heating.

(a) An exemption to the mandatory thermostat set back in residences will be granted in any situation where the health of individuals will be affected by the set back requirements.

(b) Private and public buildings, other than residences, are exempt from the set back requirements for the following reasons:

(i) the buildings are occupied at night; or
(ii) equipment, materials or processes require specified temperatures to prevent damage.

(2) All schools using middle distillates for heating fuel ~~will~~ must close.

(3) The governor may request the department of military affairs to reduce middle distillate consumption to an absolute minimal level and to make product available when and where possible.

(4) The governor may curtail or suspend those procedures or requirements that result in consumption of middle distillates and that are not considered to be an essential use for purposes of the public health and safety of the citizenry of Montana.

3. The following are summaries of the comments received and the Department's responses to those comments:

RULE I PURPOSE

(1) COMMENT: It would be more appropriate to use the wording ". . . the Governor may follow. . ." rather than ". . . the Governor shall follow. . ."

RESPONSE: The rule is changed to read ". . . the Governor may follow. . ."

RULE II DEFINITIONS

No comments received.

RULE III NOTIFICATION OF THE EXISTENCE OF AN ENERGY SUPPLY ALERT OR ENERGY EMERGENCY

No comments received.

RULE IV ENERGY SUPPLY ALERT PROCEDURES - MOTOR GASOLINE

No comments received.

RULE V PUBLIC SECTOR SUPPLY ALERT PROCEDURES

(1) COMMENT: Sections (1) and (2) require state and local governments to report monthly mileage figures and to reduce monthly mileage by a to be determined percentage in comparison to the same period in the previous year. Monthly mileage is not available for the city of Billings and mileage does not include non-vehicular usage of fuels. The same thing could be accomplished by using total number of gallons used.

RESPONSE: Section (1) is changed to read ". . . shall reduce gasoline consumption, measured in gallons, each. . ." ". . . adjust comparison period gasoline consumption, measured in gallons, in . . ."

Section (2) is changed to read ". . . shall report monthly gasoline consumption."

Rule XII Section (1) is changed to read ". . . reduce gasoline consumption, measured in gallons, in private and state-owned. . ."

(2) COMMENT: Section (3) requires discharging local government employees for exceeding the 55 mph speed limit while on official business. This provision interferes with local government's authority to deal with personnel and could provide problems with collective bargaining agreements.

RESPONSE: Section (3) is changed to read "Heads of state agencies shall . . ."

(3) COMMENT: Section (6) should be changed to four 10-hour days with uniform starting and ending time.

RESPONSE: This provision is contained in Rule XII.

RULE VI PRIVATE SECTOR SUPPLY ALERT PROCEDURES

(1) COMMENT: One commentor submitted comments on the proposed DOE rules and asked us to consider the appropriate comments. The proposed state rules do not contain many of the provisions that were contained in the DOE rules, therefore comments to these DOE provisions are not applicable.

RESPONSE: Because none of the problems mentioned in the comments appear in the rules there is no reason to make any changes.

RULE VII ENERGY SUPPLY ALERT PROCEDURES - MIDDLE DISTILLATES

No comments received.

RULE VIII PUBLIC SECTOR SUPPLY ALERT PROCEDURES

No comments received

RULE IX PRIVATE SECTOR SUPPLY ALERT PROCEDURES

No comments received.

RULE X ENERGY SUPPLY ALERT PROCEDURES - AVIATION GASOLINE

(1) COMMENT: Commercial operations in Section (2) should be defined as to priority.

RESPONSE: Priorities will be assigned to commercial operations when a crisis arises. Assigning priorities in the rules would eliminate the flexibility that is necessary to deal with a shortage. The proposal is therefore rejected.

RULE XI ENERGY EMERGENCY PROCEDURES - MOTOR GASOLINE

No comments received.

RULE XII PUBLIC SECTOR ENERGY EMERGENCY PROCEDURES

No comments received.

RULE XIII PRIVATE SECTOR EMERGENCY PROCEDURES

(1) COMMENT: Concern was expressed over Section (2) which requires gasoline retailers to open on either Saturday or Sunday. It was suggested that this provision be eliminated.

RESPONSE: Forcing retailers to stay open on Saturday or Sunday is not intended to be a permanent situation. The mandatory opening on weekends is only during a severe energy supply emergency in which a high priority must be placed on public

interest. There are several provisions for exemptions to this rule. The proposal is therefore rejected.

The Department review resulted in a recommended amendment to handle changes in ownership or other changing circumstances. Section (2)(c)(ii) is changed to read ". . . practice during the six months preceding the declaration of a motor gasoline energy emergency remained. . ."

(2) COMMENT: It should be made clear in Section (2) that gasoline retailers are not going to remain open if they cannot obtain adequate supply.

RESPONSE: Section (2)(c)(i) is changed to read ". . . is out of gasoline because of late delivery or inadequate supply;"

(3) COMMENT: It seems impossible to define a proper cutoff level for the exemption in Section (2)(c)(iii). To eliminate complications and challenges to the exemption the section should be eliminated completely.

RESPONSE: Section (2)(c)(iii) is eliminated from rules.

(4) COMMENT: The portable container restriction in Section (4) is designed to eliminate hoarding by automobile drivers. Similar rules in other states have been enacted but it is not the intent to include fuel tanks for outboard motors. To eliminate the problem with outboard fuel tanks and to still eliminate hoarding it is suggested that outboard fuel tanks be specifically eliminated.

RESPONSE: Section (4) is changed to read ". . . equipment, electric generators, or containers designed for use on a boat."

RULE XIV ODD-EVEN DAY GASOLINE DISPENSING SYSTEM

(1) COMMENT: Comments were received that were directed to DOE's emergency rules asking that commercial vehicles be exempted from the odd-even system.

RESPONSE: Commercial vehicles are exempt from the odd-even system; therefore, no change is required.

(2) COMMENT: The United States Department of Justice requested that their law enforcement vehicles be able to obtain gasoline at any time to avoid hampering federal law enforcement missions. The problem only occurs in a few areas where there are no federal gasoline pumps available.

RESPONSE: Section (2)(j) is added to the rules. The new section reads: "vehicles operated by the United States department of justice."

(3) COMMENT: The odd-even system does nothing for conservation and would be difficult for self-service stations with a single attendant to administer.

RESPONSE: The odd-even system is designed to reduce gasoline lines which may occur in urban areas, not to create conservation. It is felt that it is no real problem for a single attendant to administer the system. Since no viable alternative has been suggested there is no reason to change the odd-even system.

(4) COMMENT: Several groups wanted their vehicles included in the exemptions to the odd-even system.

RESPONSE: Vehicles used for commercial purposes are already exempted from the odd-even requirement.

RULE XV ENERGY EMERGENCY PROCEDURES - MIDDLE DISTILLATE

(1) COMMENT: Under the proposed rule the Governor is given authority to modify any procedure he considers necessary, but it is unclear which procedures he is able to modify. To clarify the procedures which can be modified it is suggested that after the word "procedure" the words "described in Rules XVI and XVII" be added.

RESPONSE: The rule is changed to read ". . . modify any procedure described in Rules XVI and XVII as he. . ."

RULE XVI PUBLIC SECTOR ENERGY EMERGENCY PROCEDURES

(1) COMMENT: Residences should be exempt from the thermostat requirements in Section (1) because the number of exemptions tnat would be necessary are significant and enforcement would be difficult.

RESPONSE: It is recognized that there are problems with mandatory thermostat set back requirements in residences, but it is felt a mandatory measure will result in a higher degree of compliance than would be a strictly voluntary measure. A subsection (a) is added to allow exemptions for health reasons and reads: "(a) An exemption to the mandatory thermostat set back in residences will be granted in any situation where the health of individuals will be affected by the set back requirements."

(2) COMMENT: Many buildings are used 24 hours a day, like a fire station, and reducing the thermostat to 55 degrees for nighttime space heating may be extremely uncomfortable. The rules should be changed to include only unoccupied buildings.

RESPONSE: Subsection (b) is added to cover exemptions for nonresidential buildings and reads "(b) Private and public buildings, other than residences, are exempt from the set back requirements for the following reasons:

(i) the buildings are occupied at night; or

(ii) equipment, materials, or processes require specified temperatures to prevent damage."

(3) COMMENT: The rules do not identify essential commercial and industrial users and coal producers should be included as essential.

RESPONSE: There is apparently confusion on the part of the commentor because the only reference to essential use is dealing with the public sector. Nowhere do the rules require any particular commercial use to be curtailed in the private sector.

RULE XVII PRIVATE SECTOR ENERGY EMERGENCY PROCEDURES

(1) COMMENT: The request that trucks carry return loads in Section (3) might cause liability in terms of product quality rules.

RESPONSE: The wording in Section (3) is not mandatory. The rule asks that trucks be requested to carry return loads.

RULE XVIII ENERGY EMERGENCY PROCEDURES - AVIATION FUEL
No comments received.

GENERAL COMMENTS:
(1) COMMENT: The rules impose burdens on local governments without resources to accomplish the tasks.
RESPONSE: It is recognized that this is a problem but monies are not appropriated in the rulemaking process.

4. The new rules are assigned to the following numbers in the ARM: Rule I (14.8.101); Rule II (14.8.102); Rule III (14.8.103); Rule IV (14.8.104); Rule V (14.8.105); Rule VI (14.8.106); Rule VII (14.8.107); Rule VIII (14.8.108); Rule IX (14.8.109) Rule X (14.8.110); Rule XI (14.8.121); Rule XII (14.8.122); Rule XIII (14.8.123); Rule XIV (14.8.124); Rule XV (14.8.125); Rule XVI (14.8.126); Rule XVII (14.8.127); and Rule XVIII (14.8.128).

5. The Governor adopts the proposed rules under the authority granted by Section 90-4-316, MCA, and the rules implement Title 90, Chapter 4, part 3, MCA.

Thomas L. Judge, Governor
State of Montana
State Capitol
Helena, MT 59601

Certified to the Secretary of State October 1, 1980.

BEFORE THE DEPARTMENT OF COMMUNITY AFFAIRS
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 22.6.101 through 22.6.3003 [22-2.4B(1)-S400 through 22-2.4B (30)-S4100] prescribing minimum requirements for subdivision regulations and regulating the form, accuracy, and descriptive content of records of survey	NOTICE OF REPEAL OF RULES 22.6.606 [22-2.4B(6)-S420 (3)], 22.6.607 [22-2.4B (6)-S420(4)], AND THE AMENDMENT OF RULES 22.6. 1008 [22-2.4B(10)-S4010], 22.6.3001 [22-2.4B(30)-S4080], 22.6.3002 [22-2.4B (30)-S4090], AND 22.6.3003 [22-2.4B(30)-S4100]

TO: All Interested Persons:

1. On June 26, 1980, the Montana Department of Community Affairs published notice of the proposed repeal and amendment of rules relating to the administration of the Montana Subdivision and Platting Act at page 1677 of the 1980 Montana Administrative Register, issue number 12.

2. The Department has repealed and amended the rules as proposed with the modifications noted below:

A. 22.6.606 [22-2.4B(6)-S420(3)] PROCEDURES FOR CONDOMINIUM DEVELOPMENTS is repealed as proposed.

B. 22.6.607 [22-2.4B(6)-S420(4)] PROCEDURES FOR DIVISIONS OF LAND EXEMPTED FROM PUBLIC REVIEW AS SUBDIVISIONS is repealed as proposed.

C. 22.6.1008 [22-2.4B(10)-S4010] PARK AND OPEN SPACE REQUIREMENTS is amended as proposed.

D. 22.6.3001 [22-2.4B(30)-S4080] UNIFORM STANDARDS FOR MONUMENTATION:

(1) Subparagraph (1)(a) is amended to define "monument" and "permanent monument" as proposed.

(2) The proposed amendment of subparagraph (c) concerning the time within which monuments must be set is withdrawn.

E. 22.6.3002 [22-2.4B(30)-S4090] UNIFORM STANDARDS FOR CERTIFICATES OF SURVEY:

(1) Subparagraph (1)(b) concerning the material to be used for certificates of survey is amended as proposed.

(2) Subparagraph (2)(1) is amended to read as follows:

"A ~~metes-and-bounds~~ legal description of the perimeter boundary of the tract surveyed."

(3) Proposed amendment which would have created a new subparagraph (2)(n) requiring certification from the Department of Health and Environmental Sciences is withdrawn.

(4) Subparagraph (3) is amended as proposed

F. 22.6.3003 [22-2.4B(30)-S4100] UNIFORM STANDARDS FOR FINAL SUBDIVISION PLATS

(1) Subparagraph (1)(b) is amended as proposed.

(2) Subparagraph (2)(o) is amended to read as follows:

"A ~~metes-and-bounds~~ legal description of the perimeter boundary of the tract surveyed."

3. On July 23, 1980, a public hearing was held to consider the repeal and amendment of the rules. The Department

has fully considered oral and written comments received both at this hearing and during the period following the hearing. Following is a statement of the principal reasons presented by interested persons for and against the proposed repeal and amendment of the rules. Where applicable the statement includes the Department's reasons for overruling the considerations urged against the proposed action.

A. 22.6.606 [22-2.4B(6)-S420(3)] PROCEDURES FOR CONDOMINIUM DEVELOPMENTS is repealed as proposed.

Comment: The repeal of this rule is desirable because it will "end some of the present confusion." Also a condominium is a form of real property ownership and should not be subject to regulation as a land use.

Comment: Although the repeal of the rule may be desirable, DCA's regulations should provide for the local regulation of condominium subdivisions.

Response: Rule 22.6.1803, which is unaffected by the repeal of 22.6.606, established requirements for the review of condominium developments.

B. 22.6.607 [22-2.4B(6)-S420(4)] PROCEDURES FOR DIVISIONS OF LAND EXEMPTED FROM PUBLIC REVIEW AS SUBDIVISIONS is repealed as proposed.

Comment: It is desirable to repeal the portion of this rule which requires local governing bodies to adopt criteria for determining when exemptions from subdivision review are being used for purposes of evading the Subdivision and Platting Act because the state, through its legislative or executive branch, and not local government should bear this responsibility. Statewide uniformity in implementing the Subdivision and Platting Act can be achieved only if there are state level standards for the use of the exemptions.

Response: Although it may be desirable to have uniformity in the administration of the Subdivision Act's exemption provisions, the Act gives DCA authority to adopt uniform statewide rules only with respect to surveying matters. The Attorney General has indicated that local governing bodies, rather than DCA, have the burden of determining whether exemptions from subdivision review have been properly invoked (37 OP. Att'y Gen. No. 41).

Comment: The repeal of the rule relating to the use of the exemptions would hamper efforts of local governing bodies to control abuses of the exemptions. Without the DCA rule local governments who wanted to adopt guidelines for exemptions would have to do so by amending their subdivision regulations (a process that takes a significant length of time) rather than by simply adopting a resolution as they now can.

Response: As discussed more fully in the notice (MAR Notice 22-3, 12-6/26/80) of the public hearing on this change, DCA believes that the repeal of this rule will create no legal impediment to the adoption of local criteria for using the exemptions. As to the manner of adopting these criteria DCA believes that, with or without rule 22.6.607, local criteria may be validly adopted only by following the procedures set out in the Act for amending subdivision regulations.

Comment: DCA has incorrectly interpreted the refusal of the 1977 and 1979 Legislatures to restrict the use of the exemptions as an indication that the exemptions, as written, accurately reflect legislative intent and are having the desired practical effect. The fact that the Legislative Code Committee has never questioned the rule in question amounts to implicit endorsement of it.

Response: In State ex rel Swart v. Casne (172 Mont. 302, 564 P.2d 983) DCA made the similar argument that under 2-4-412, MCA, an administrative rule which has been submitted to the Legislature for review and which the Legislature has not repealed is valid. The Montana Supreme Court's rejection of this argument suggests that the Legislature's failure to repudiate the rule in question must be deemed to be of little probative value.

Comment: The Attorney General has upheld the validity of the rule proposed for repeal.

Response: The rules reviewed by the Attorney General in 1977 were the predecessors of the rule proposed for repeal and differed from it substantially. For example they did not contain a requirement that local governing bodies adopt criteria for determining whether exemptions have been properly invoked. Furthermore, the Attorney General did not consider the "contiguous tract" portion of the occasional sale rule and addressed the present famly conveyance exemption rule only hypothetically. Consequently his opinion cannot be considered a general endorsement of the rule now in question.

C. 22.6.1008 [22-2.4B(10)-S4010] PARK AND OPEN SPACE REQUIREMENTS is amended as proposed. No comments or testimony concerning this proposal were received.

D. 22.6.3001 [22-2.4B(30)-S4080] UNIFORM STANDARDS FOR MONUMENTATION --

(1) Subparagraph (1)(a) amended to define "monument" and "permanent monument" as proposed. No comments concerning this proposal were received.

(2) The proposed amendment of subparagraph (c) concerning the time within which monuments must be set is withdrawn.

Comment: Deferred monumentation has worked successfully in Nevada for years. If a surveyor fails to set monuments within the period specified by the proposed rule, he would be subject to disciplinary action. A bonding requirement might be imposed on surveyors who have failed in the past to set monuments in a timely fashion.

Comment: Deferred monumentation is undesirable for the following reasons:

1. Because structures are often erected on tracts of land within six months of their sale, the proposed rule change would greatly increase the potential for building encroachments and boundary line disputes.

2. Deferred monumentation would become the rule rather than the exception, lot buyers will find themselves having to commission costly resurveys at their own expense when surveyors fail to set monuments within the specified time.

3. Lenders and title companies would find it difficult to provide their services in the absence of proper monumentation.

4. Many boundary conflicts will result if new surveys are juxtaposed to existing parcels without the actual relocation of earlier monuments.

Response: The several disadvantages of deferred monumentation clearly outweigh any benefit to be realized therefrom.

E. 22.6.3002 [22-2.4B(30)-S4090] UNIFORM STANDARDS FOR CERTIFICATES OF SURVEY

(1) Subparagraph (1)(b) concerning the material to be used for certificates of survey is amended as proposed --

Comment: There is some concern that mylar may not be as durable and may not microfilm as well as cloth-backed surveys.

Response: There appears to be a general feeling among clerks and recorders and surveyors that the mylar material is a satisfactory substitute for cloth backing. This fact coupled with the reported difficulty encountered in obtaining cloth-backed material justifies the optional use of mylar.

(2) Subparagraph (2)(1) is amended to read as follows:

"A **metes-and-bounds** legal description of the perimeter boundary of the tract surveyed."

Comment: The present rule which requires that metes-and-bounds descriptions be superimposed over regular aliquot parts of sections has resulted in incorrect or conflicting legal descriptions of property. The proposed rule will help avoid the errors and confusion that result from repeatedly recopying metes-and-bounds descriptions.

Comment: The present rule sets the stage for errors in conveyancing because reported distances and courses may vary from survey to survey while monuments do not move. A parcel of land should not be given a different legal description every time it is surveyed, but that is the result of the present rule.

Comment: Although a metes-and-bounds description of an aliquot tract is often redundant, it is not, if accurate, considered incorrect and is desirable.

Comment: Metes-and-bounds descriptions of resurveyed aliquot part tracts are needed to determine what variations exist between the dimensions of the actual parcel and the nominal or theoretical dimensions of the parcel. Under the proposed amendment those persons who require metes-and-bounds description of the parcel will have to derive their own from the filed plat or certificate of survey. Errors will result from this practice as well as multiple legal descriptions for the same parcel. The use of shortened aliquot legal descriptions may result in fewer recopying errors, but the magnitude of those errors will be greater than with errors in metes-and-bounds descriptions.

Response: Public officials, title insurers, and surveyors who may be concerned with actual dimensions of aliquot parcels have ready access to the public land records and can easily generate the necessary descriptions from survey drawings. Because these descriptions will not be used in conveying the parcels, as they would be if they were required on plats and surveys, they cannot contribute to or cause discrepancies in chains of title.

DCA is unconvinced that errors made in recopying aliquot part description would necessarily be of greater magnitude than those made in recopying metes-and-bounds descriptions.

(3) Proposed amendment which would have created a new subparagraph (2)(n) requiring certification from the Department of Health and Environmental Sciences -- withdrawn at the request of DHES.

(4) Subparagraph (3) amended as proposed (see comments and responses under item B, above).

F. 22.6.3003 [22-2.4B(30)-S4100] UNIFORM STANDARDS FOR FINAL SUBDIVISION PLATS

(1) Subparagraph (1)(b) amended as proposed (see comments and responses under item E(1), above).

(2) Subparagraph (2)(o) amended to read as follows: (see comments and responses under item E(2), above)

"A ~~metes-and-bounds~~ legal description of the perimeter boundary of the tract surveyed."

Harold A. Fryslie, Director
Department of Community Affairs

Certified to the Secretary of State October 1, 1980

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
DIVISION OF WORKERS' COMPENSATION
OF THE STATE OF MONTANA

In the matter of the amendment of Rule 24.30.701 (formerly 24-3.18AI(1)-S1800), regarding fired pressure vessels.	NOTICE OF THE AMENDMENT OF RULE 24.30.701 (FORMERLY 24-3.18AI(1)-S1800) RELATING TO FIRED PRESSURE VESSELS

TO: All Interested Persons.

1. On April 24, 1980, the division of workers' compensation published notice of a proposed amendment to rule 24.30.701 (formerly 24-3.18AI(1)-S1800) concerning fired pressure vessels at page 1249 of the 1980 Montana Administrative Register, issue number 8.

2. The division has amended the rule as proposed in the notice and added additional rules as follows:

24.30.701 FIRED PRESSURE VESSELS -- DEFINITIONS As used in these rules, unless the context requires otherwise, the following definitions apply.

(1) "Alteration" means a structural modification of, or a departure from, an original design or existing construction.

(2) "Approved" means approved by the division of workers' compensation.

(3) "ASME" means the American Society of Mechanical Engineers.

(4) "Automatic operation of a boiler" means the full control of feed water and fuel in order to maintain the pressure and temperature within the limits set.

(5) "Boiler" means a closed vessel intended for use in heating liquids by the application of heat to generate steam or other vapor to be used externally to itself and shall include hot water heating boilers and hot water supply boilers. A pressure vessel in which an organic fluid is vaporized by the application of heat resulting from the combustion of fuel (solid, liquid, gaseous) shall be constructed under the provisions of the ASME code. Vessels in which vapor is generated incidental to the operation of a process system, containing a number of pressure vessels such as used in chemical and petroleum manufacture, are not covered by the rules of Section 1 of the ASME code. The division hereby adopts and incorporates herein by reference the codes of the American Society of Mechanical Engineers setting forth the standards for fired pressure vessels. A copy of the ASME codes may be inspected at the Division of Workers' Compensation, 815 Front Street, Helena, Montana 59601, and obtained at cost from ASME.

(6) "Condemned boiler" means a boiler that has been inspected and declared unsafe by the division which has applied a stamping or marking designating its condemnation.

(7) "Division" means the Division of Workers' Compensation of the Montana Department of Labor and Industry.

(8) "Existing boiler installation" means any boiler constructed, installed, placed in operation, or contracted for prior to the effective date of these rules.

(9) "External boiler inspection" means an inspection which does not include examination of the internal surface of a boiler and shall preferably be an in-operation inspection.

(10) "High temperature water boiler" means a water boiler intended for operation at pressures in excess of 160 psi or temperatures in excess of 250° F.

(11) "Hot water supply boiler" means a boiler used to supply hot water intended primarily for domestic use or commercial service rather than for space heating at a pressure and temperature not exceeding 160 psi and 250° F., respectively.

(12) "Inspection certificate" means the certificate issued by the division to the owner or user following an inspection by a state boiler inspector.

(13) "Internal boiler inspection" means an inspection made when a boiler is shut down and open to permit inspection of the internal surfaces of the boiler.

(14) "Lap seam crack" means the typical crack frequently found in the lap seams extending parallel to the longitudinal joint and located either between or adjacent to rivit holes.

(15) "Low pressure steam heating boiler" means a steam boiler operated at pressures not exceeding 15 psi.

(16) "Low pressure hot water heating boiler" means a hot water boiler operated at pressures not exceeding 160 psi and temperatures not exceeding 250° F.

(17) "Major repairs" as used herein shall be considered as repairs upon which the strength of a boiler would depend.

(18) "Nonstandard boiler" means a boiler that does not bear the stamp of the State of Montana, ASME, or National Board Inspection Code, or the stamp of any state which has adopted a standard of construction equivalent to that required by the State of Montana.

(19) "Operating certificate" means a certificate issued by the division to the owner or user following an inspection by a special boiler inspector.

(20) "Owner" means any person firm, corporation, state, county or municipality owning or possessing for operation any boiler within this state.

(21) "Power boiler" means a steam boiler operating at a pressure of more than 15 psi.

(22) "Reinstalled boiler" means a boiler removed from its original setting and reerected at the same location or erected at a new location without change of ownership.

(23) "Secondhand boiler" means a boiler of which both the location and ownership have been changed after primary use.

(24) "Special boiler inspector" means an inspector, employed by an insurance company, holding a Montana certificate issued by the Division.

(25) "State boiler inspector" means any person or persons employed by the division for the purpose of inspecting boilers.

(26) "Standard boiler" means a boiler which bears the stamp of the State of Montana or of another state which has adopted a standard of construction equivalent to that required by the State of Montana, or bears the stamp of the ASME or the National Board.

(27) "User" means any person, firm, corporation, state, county or municipality operating any boiler within this state.

24.30.702 CERTIFICATION OF SPECIAL BOILER INSPECTOR (1) Application for certification of any employee as a special inspector is made on forms provided by the Division of Workers' Compensation, Bureau of Safety and Health, 815 Front Street, Helena, Montana 59601. A photostatic copy of the applicant's National Board commission must be attached to the completed application. Certificates issued by the Division of Workers' Compensation shall be held at the office requesting certification, and a file record shall be kept at the division's office.

(2) Identification Cards. A numbered Montana identification card will be issued for each inspector and forwarded with the certification to the office making the request.

(3) Valid Periods. The certificate and identification card are valid for an indefinite period, unless suspended or revoked for cause. The certificate and identification card shall be returned to the Division when the inspector to whom the same was issued is no longer in the employ of the company.

24.30.703 INSPECTION (1) Each insurance company employing certified special inspectors shall, within 30 days following the internal or external boiler inspection, file a report of such inspection on each separate boiler in its separate and named building with the division's Safety and Health Bureau, 815 Front Street, Helena, Montana 59601.

(2) All power boilers shall be inspected internally at least every 12 months. An external inspection should be made annually, approximately 6 months from the date of the internal inspection.

(3) All heating boilers shall be inspected externally annually. Low pressure steam boilers shall be inspected internally every 2 years.

(4) Hot water heating boilers and hot water supply boilers shall be inspected internally every 3 years when construction will permit.

(5) Effective August 1, 1976, it is requested that only copies of the certificate inspection report be forwarded to the State of Montana, namely:

(a) High pressure boilers: Certificate inspection at the time of the required annual internal inspection.

(b) Low pressure, hot water heating, and hot water supply boilers: Certificate inspection at the time of the required annual inspection.

(c) Exceptions to the above will be:
(i) any conditions, repairs, or recommendations that affect the safe operation of the boiler that were noted at the time of a noncertificate inspection,
(ii) any inspection of A boiler,
(iii) a grace period of 2 months beyond the periods specified in subsections (2), (3), and (4) of this rule.

24.30.704 BOILERS EXEMPTED FROM INSPECTION (1) These rules do not apply to boilers under federal control, steam heating boilers operated at not over 15 psi gauge pressure in private residences or apartments of 6 or less families, hot water heating or supply boilers operated at not over 250° F. when in private residences or apartments of 6 or less families.
(2) Hot water supply boilers that do not exceed any of the following are exempt from inspections: heat input of 400,000 BTU per hour, water temperature of 210° F., nominal water containing capacity of 120 gallons. However, such hot water supply boilers shall be equipped with safety devices.

24.30.705 HYDROSTATIC TEST A hydrostatic test shall be performed whenever it is considered necessary by the inspector, or for reasons presented to the division in writing by the owner or user.

24.30.706 MANUFACTURERS' DATA REPORTS Manufacturers' data reports on boilers which are to be operated at pressures in excess of 15 psi unless exempted by the act, shall be filed with the division.

24.30.707 SPECIAL DESIGNED BOILERS (1) Special designed boiler means a boiler not ASME code stamped or National Board stamped.
(2) Details of a boiler of special design shall be submitted to and approved by the division before construction of the boiler is started.

24.30.708 APPLICATION OF STATE SERIAL NUMBERS At the time of the first inspection, all steel boilers must be stamped with the serial number of the State of Montana, preceded by letters "MTB" and the letters and figures shall not be less than 5/16". All cast iron boilers shall have securely attached to the front of the boiler a 1" x 3-1/2" metal tag which shall have stamped upon it the Montana "MTB" numbers.

24.30.709 INSPECTION REPORTS Special boiler inspectors

shall submit to the Division an inspection report on each boiler subject to the inspection within 30 days after completion of the inspection. Complete data shall be submitted on each nonstandard boiler on National Board Form NB-5 at the time of the first internal inspection. Subsequent internal inspections shall be reported on National Board Form NB-6. On all standard boilers, the first and subsequent internal inspection shall be reported on National Board Form NB-6.

24.30.710 EXTERNAL AND INTERNAL INSPECTIONS TO BE REPORTED External and internal inspections shall be reported immediately to the division on National Board Form NB-6 when hazardous conditions affecting the safety of the boiler exist.

24.30.711 INSURANCE COMPANIES TO NOTIFY THE DIVISION OF NEW, CANCELLED, OR NOT RENEWED RISKS All insurance companies shall notify the division within 30 days of all boiler risks written, cancelled, or not renewed.

24.30.712 INSURANCE COMPANIES TO NOTIFY DIVISION OF DEFECTIVE BOILERS If a special boiler inspector, upon inspection of a boiler, finds that the boiler or any of its parts are in such condition that his company refuses or suspends insurance, the company shall immediately notify the division.

24.30.713 OWNER TO NOTIFY THE DIVISION IN CASE OF ACCIDENT When an accident occurs which renders a boiler inoperative, the owner or user shall notify the division as soon as is practical.

24.30.714 VALIDITY OF OPERATING CERTIFICATE An operating certificate issued for a boiler is valid only if the boiler for which it was issued continues to be insured by an authorized insurance company or until the expiration date.

24.30.715 SUSPENSION OF OPERATING OR INSPECTION CERTIFICATE If upon inspection, a boiler is found to be in such condition that it is unsafe to operate, the operating or inspection certificate shall be suspended by the division.

24.30.716 CONDEMNED BOILERS Any boiler inspected and declared unsafe by the division shall be stamped with an arrowhead stamp having an overall length of 1/2" and a width of 3/8" on either side of the letters "XXX" and the letters "MTB" substantially as follows, which designates a condemned boiler: "----------XXXMTBXXX----------".

24.30.717 NONSTANDARD BOILERS Unless approved by the division, operation of a nonstandard boiler in this state is prohibited.

24.30.718 SECONDHAND BOILERS Before a secondhand boiler can be operated in this state, an inspection shall be made by a state boiler inspector or by a special boiler inspector.

24.30.719 REINSTALLED BOILERS In any case where a boiler is reinstalled, the fittings and appliances shall comply with the ASME Code, Sections I and IV, 1977. The division hereby adopts and incorporates herein by reference the codes of the American Society of Mechanical Engineers setting forth the standards for fired pressure vessels. A copy of the ASME codes may be inspected at the Division of Workers' Compensation, 815 Front Street, Helena, Montana 59601, and obtained at cost from ASME.

24.30.720 REPAIRS TO CONFORM TO ASME CODE Repairs to boilers and their parts shall conform to the appropriate sections of the ASME Code, Sections I, IV and IX, 1977. The division hereby adopts and incorporates herein by reference the codes of the American Society of Mechanical Engineers setting forth the standards for fired pressure vessels. A copy of the ASME codes may be inspected at the Division of Workers' Compensation, 815 Front Street, Helena, Montana 59601, and obtained at cost from ASME.

24.30.721 CONTROLS Automatically fired boiler controls must be such that the operation follows the demand without interruption. Manual restart may be required when the burner is off because of low water, flame failure, or power failure.

24.30.722 SAFETY AND RELIEF VALVES Safety and relief valves shall not be set in excess of that stated on the certificate.

24.30.723 INSPECTION OF BOILERS All boilers shall be prepared for the inspection, or hydrostatic test whenever necessary, by the owner or user within a reasonable period of time of the date specified by the inspector.

24.30.724 PRESCRIBED METHOD OF OWNER PREPARATION FOR INTERNAL INSPECTION (1) The owner or user shall prepare a boiler for internal inspection in the following manner:

(a) Prior to draining of the boiler, the boiler shall be allowed to cool, and the water then shall be drawn off and the boiler thoroughly washed of all loose sludge and sediment.

(b) All manhole and handhole plates, washout plugs, and plugs in water column connections considered necessary for adequate inspection shall be removed, and the furnace and combustion chambers thoroughly cooled and cleaned.

(c) All grates of internally fired boilers shall be removed where applicable and required by the division.

(d) At each annual inspection, brick work shall be removed as required by the inspector in order to determine the

condition of the boiler, headers, furnace, supports, or other parts.

(e) The steam gauge shall be removed for testing.

(f) Any leakage of steam or hot water into the boiler shall be cut off by disconnecting the pipe or valve at the most convenient place.

24.30.725 FAILURE TO PROPERLY PREPARE FOR INTERNAL INSPECTION If a boiler has not been properly prepared for an internal inspection or the owner or user fails to comply with the requirements for hydrostatic test as set forth in the rules, the inspector may refuse to make the inspection or test, and the operating or inspection certificate shall be withheld until the owner or user complies with the requirements.

24.30.726 LAP SEAM CRACKS The shell or drum of a boiler in which a lap seam crack is discovered along a longitudinal riveted joint shall be permanently discontinued from use.

24.30.727 HYDROSTATIC PRESSURE TESTS A hydrostatic pressure test when applied, shall not exceed 1-1/2 times the maximum allowable working pressure of the boiler.

24.30.728 LOW WATER FUEL CUTOFF All automatically fired steam boilers shall be equipped with a low water fuel cutoff. All automatically fired hot water heating and hot water supply boilers in excess of 400,000 BTU per hour input shall be equipped with a low water fuel cutoff. A flow-sensing cutoff device shall be provided on forced flow boilers.

24.30.729 SAFETY APPLIANCES The resetting of safety valves shall be done in the presence of an inspector except the prohibition may be waived upon application to the division if the work is performed under the supervision of persons who by training and experience are suitably qualified, and the valves sealed.

24.30.730 NEW INSTALLATIONS OF BOILERS No boiler, except reinstalled boilers and those exempted shall hereafter be installed in this state unless it has been constructed, inspected, and stamped and is approved, registered, and inspected in accordance with the requirements of these rules.

24.30.731 MONTANA MAY ACCEPT OTHER STATE-STAMPED BOILERS A boiler having the standard stamping of another state that has adopted a standard of construction equivalent to the standard of the State of Montana may be accepted by the division.

24.30.732 NEW INSTALLATIONS TO BE INSPECTED Upon completion of the new installations, all boilers shall be inspected by a state boiler inspector or a special boiler inspector.

24.30.733 EXISTING INSTALLATIONS OF BOILERS The maximum allowable working pressure for standard boilers shall be determined in accordance with these rules and regulations.

24.30.734 CAST IRON HEADERS AND MUD DRUMS The maximum allowable working pressure on a water tube boiler, the tubes of which are secured to cast iron or malleable iron headers, or which have cast iron mud drums, shall not exceed 160 psi.

24.30.735 SAFETY VALVE REQUIREMENTS (1) The use of weighter-lever safety valves is prohibited and the valves shall be replaced by safety valves that conform to the requirements of the ASME Code, Sections I and IV, 1977. The division hereby adopts and incorporates herein by reference the codes of the American Society of Mechanical Engineers setting forth the standards for fired pressure vessels. A copy of the ASME Codes may be inspected at the Division of Workers' Compensation, 815 Front Street, Helena, Montana 59601, and obtained at cost from ASME.

(2) Safety valves having either the seat or disc of cast iron shall not be used. Safety valves shall be designed and installed in such a manner as to prevent accumulation and storage of water or condensate on the discharge side of the seat or disc. Top discharge safety valves shall not be used.

(3) Each boiler shall have at least one safety valve and if it has more than 500 sq. ft. of water heating surface, it shall have two or more safety valves.

(4) The method of computing the steam generating capacity of the boiler shall be as given in the ASME Code, Sections I and IV, 1977. (See subsection (1) of this rule.)

(5) The safety valve or valves shall be connected to the boiler, independent of any other steam connection, and attached as close as possible to the boiler, without unnecessary interventing pipe or fittings.

(6) No valve of any description shall be placed between the safety valve and the boiler, nor on the discharge pipe between the safety valve and the atmosphere. All safety valve discharge piping shall be vented to the exterior of the building or a safe place of discharge and shall be full size and fitted with an open drain to prevent water lodging in the upper part of the safety valve or discharge pipe. When an elbow is placed on a safety valve outlet, the discharge pipe shall be securely anchored and supported. All safety valve discharges shall be so located or piped as not to endanger persons using walkways or platforms used to control the main valves of boilers or steam headers.

(7) The safety valve capacity of each boiler shall be such that the safety valve or valves will discharge all the steam that can be generated by the boiler without allowing the pressure to rise more than 6% above the highest pressure to which any valve is set and in no case to more than 6%

above the maximum allowable working pressure. ASME Code, Section I, 1977. (See subsection (1) of this rule.)

(8) The safety valve capacity for each steam boiler shall be such that with the fuel burning equipment installed, and operated at maximum capacity, the pressure cannot rise more than 5 psi (34 k-Pa) above the maximum allowable working pressure. ASME Code, Section IV, 1977. (See subsection (1) of this rule.)

(9) For each boiler, one or more safety valves on the boiler proper shall be set at or below the maximum allowable working pressure. If additional valves are used, the highest pressure setting shall not exceed the maximum allowable working pressure by more than 3%. The complete range of pressure settings of all the saturated steam safety valves on a boiler shall not exceed 10% of the highest pressure to which any valve is set. ASME Code, Section 1, 1977. (See subsection (1) of this rule.)

24.30.736 RELIEF VALVES (1) Each hot water heating or hot water supply boiler shall have one or more relief valves of the spring-loaded type without disc guides on the pressure side of the valve.

(2) The valves shall be set to relieve at a pressure at or below the maximum allowable working pressure of the boilers and arranged so that they cannot be reset to relieve at a higher pressure of the boiler. When more than one safety relief valve is used on either hot water heating or hot water supply boilers, the additional valve or valves shall be officially rated and may be set within a range not to exceed 6 psi gauge above the maximum allowable working pressure of the boiler up to and including 60 psi gauge and 10% for those having a maximum allowable working pressure exceeding 60 psi gauge. Each relief valve shall have a substantial device which will positively lift the disc from its seat at least 1/16" when there is no pressure on the boiler.

(3) These valves shall be rated to relieve the maximum BTU rating of the boiler and shall bear the ASME or National Board stamp.

24.30.737 FUSIBLE PLUGS Fire-actuated fusible plugs, if used, shall conform to the requirements of the ASME Code, Section I, 1977. The division hereby adopts and incorporates herein by reference the codes of the American Society of Mechanical Engineers setting forth the standards for fired pressure vessels. A copy of the ASME Codes may be inspected at the Division of Workers' Compensation, 815 Front Street, Helena, Montana 59601, and obtained at cost from ASME.

24.30.738 WATER COLUMNS, GAUGE GLASSES AND GAUGE COCKS (1) Power boilers. No outlet connections, except for damper regulator, feed water regulator, low water fuel cutoff,

drains, steam gauges, or such apparatus that does not permit the escape of an appreciable amount of steam or water therefrom, shall be placed on the piping that connects the water column to the boiler. The minimum size of the steam and water connection to the water column shall be provided with a valve drain of at least 3/4" pipe size, the drain to be piped to a safe location. All fittings used in connection with water column piping shall be crosses or tees (no elbows permitted) with plugged or capped openings provided to facilitate inspection.

(2) Power boilers. Each boiler shall have 3 or more gauge cocks, located within the range of the visible length of the water glass, except when the boiler has 2 water glasses with independent connections to the boiler, located on the same horizontal line and not less than 2 feet apart. Boilers not over 36" in diameter in which the heating surface does not exceed 100 sq. ft. need to have 2 gauge cocks.

(3) Power boilers. For all installations where the water gauge glass or glasses are more than 30 feet above the boiler operating floor, water level indicating or recording gauges may be installed at eye level from the operating floor.

(4) Low pressure steam heating boilers. Each steam boiler shall have at least one water gauge (glass) with the lowest visible part above the heating surfaces in the primary combustion chamber. When the heating surfaces above the low water line may be injured by contact with gases or high temperature, the water gauge glass shall be raised until the lowest visible part of the gauge glass is above such heating surface.

24.30.739 STEAM GAUGES (1) Each steam boiler shall have a steam gauge connected to the steam space or to the water column or its steam connection. The steam gauge shall be connected to a syphon or equivalent device of sufficient capacity to keep the gauge tube filled with water and so arranged that the gauge cannot be shut off from the boiler except by a cock placed near the gauge and provided with a tee or lever handle arranged to be parallel to the pipe in which it is located when the cock is open.

(2) The dial of the steam gauge shall be graduated to approximately double the pressure at which the safety valve is set but in no case to less than 1-1/2 times this pressure.

(3) When a steam gauge connection longer than 10 feet becomes necessary, a shutoff valve may be used near the boiler provided the valve is of the outside screw and yoke type and is locked open. The line shall be ample size with provisions for free blowing.

(4) Each boiler shall be provided with a nipple and globe valve, no less than 1/4" in size, connected to the steam space for the exclusive purpose of attaching a test gauge when

the boiler is in service so that the accuracy of the boiler steam gauge may be ascertained.

24.30.740 STOP VALVES (1) Power boilers. No outlet connections, except for damper regulator, feed water regulator, low water fuel cutoff, drains, steam gauges, or such apparatus that does not permit the escape of an appreciable amount of steam or water therefrom, shall be placed on the piping that connects the water column to the boiler. The minimum size of the steam and water connection to the water column shall be provided with a valve drain of at least 3/4" pipe size, the drain to be piped to a safe location. All fittings used in connection with water column piping shall be crosses or tees (no elbows permitted) with plugged or capped openings provided to facilitate inspection.

(2) Power boilers. Each boiler shall have 3 or more gauge clocks, located within the range of the visible length of the water glass, except when the boiler has 2 water glasses with independent connections to the boiler, located on the same horizontal line and not less than 2 feet apart. Boilers not over 36" in diameter in which the heating surface does not exceed 100 sq. ft. need to have 2 gauge cocks.

(3) Power boilers. For all installations where the water gauge glass or glasses are more than 30 feet above the boiler operating floor, water level indicating or recording gauges may be installed at eye level from the operating floor.

(4) Low pressure steam heating boilers. Each steam boiler shall have at least one water gauge (glass) with the lowest visible part above the heating surfaces in the primary combustion chamber. When the heating surfaces above the low water line may be injured by contact with gases or high temperature, the water gauge glass shall be raised until the lowest visible part of the gauge glass is above such heating surface.

24.30.741 STEAM GAUGES (1) Each steam boiler shall have a steam gauge connected to the steam space or to the water column or its steam connection. The steam gauge shall be connected to a syphon or equivalent device of sufficient capacity to keep the gauge tube filled with water and so arranged that the gauge cannot be shut off from the boiler except by a cock placed near the gauge and provided with a tee or level handle arranged to be parallel to the pipe in which it is located when the cock is open.

(2) The dial of the steam gauge shall be graduated to approximately double the pressure at which the safety valve is set but in no case to less than 1-1/2 times this pressure.

(3) When a steam gauge connection longer than 10 feet becomes necessary, a shutoff valve may be used near the boiler provided the valve is of the outside screw and yoke type and is locked open. The line shall be ample size with provisions

for free blowing.

(4) Each boiler shall be provided with a nipple and glove valve, no less than 1/4" in size, connected to the steam space for the exclusive purpose of attaching a test gauge when the boiler is in service so that the accuracy of the boiler steam gauge may be ascertained.

24.30.742 STOP VALVES (1) Power boilers. Each steam discharge outlet from a boiler, except safety valve connections, shall be fitted with a stop valve located as close as practicable to the boiler. When a stop valve is located so that water can accumulate, ample drains shall be provided. The drainage shall be piped to a safe location and shall not be discharged on the top of the boiler or its setting.

(2) Power boilers. When power boilers provided with manholes are connected to a common steam main, the steam connection from each boiler shall be fitted with 2 stop valves having an ample free blow drain between them. The discharge of this drain shall be visible to the operator while manipulating the valves and shall be piped clear of the boiler setting. The stop valves shall consist preferably of one automatic nonreturn valve, set next to the boiler, and a second valve of the outside screw and yoke type.

(3) Low pressure heating boilers. If a boiler may be closed off from the heating system by closing a steam stop valve, there shall be a check valve in the condensate return line between the boiler and the system.

(4) Low pressure heating boilers. If any part of a heating system may be closed off from the remainder of the system by closing a steam stop valve, there shall be a check valve in the condensate return pipe between the boiler and the system.

24.30.743 BLOW-OFF PIPING The construction of the setting around each blow-off pipe shall permit free expansion and contraction. Careful attention shall be given to the problem of sealing these setting openings without restricting the movement of the blow-off piping.

24.30.744 REPAIRS AND RENEWALS OF BOILER FITTINGS AND APPLIANCES Whenever repairs are made to fittings or appliances or it becomes necessary to replace them, the work shall comply with the ASME Code, Sections I, IV and IX, 1977, for new installations. The division hereby adopts and incorporates herein by reference the codes of the American Society of Mechanical Engineers setting forth the standards for fired pressure vessels. A copy of the ASME codes may be inspected at the Division of Workers' Compensation, 815 Front Street, Helena, Montana 59601, and obtained at cost from ASME.

24.30.745 PRESSURE ON CAST IRON BOILERS The maximum

allowable working pressure for any cast iron boiler shall be 15 psi gauge, for steam boilers, and not exceeding 160 psi gauge and temperatures not exceeding 250° F. for hot water boilers.

24.30.746 ASME CODE BOILERS The maximum allowable working pressure of a boiler built in accordance with the ASME Code, Sections I and IX, 1977, shall not exceed the pressure indicated by the manufacturer's identification stamp or cast upon the boiler or upon a plate secured to it. The division hereby adopts and incorporates herein by reference the codes of the American Society of Mechanical Engineers setting forth the standards for fired pressure vessels. A copy of the ASME Codes may be inspected at the Division of Workers' Compensation, 815 Front Street, Helena, Montana 59601, and obtained at cost from ASME.

24.30.747 NONCODE RIVETED BOILERS The maximum allowable working pressure on the shell on a noncode riveted heating boiler shall be determined in accordance with existing installations, power boilers, except that the maximum allowable working pressure of a steam heating boiler shall not exceed 15 psi nor a hot water boiler exceed 160 psi at a temperature not exceeding 250° F.

24.30.748 EXISTING INSTALLATIONS OF POWER BOILERS (1) The maximum allowable working pressure for standard boilers shall be determined in accordance with the applicable provisions of the edition of the ASME Code, Sections I and IV, 1977, under which they were constructed and stamped. The division hereby adopts and incorporates herein by reference the codes of the American Society of Mechanical Engineers setting forth the standards for fired pressure vessels. A copy of the ASME Codes may be inspected at the Division of Workers' Compensation, 815 Front Street, Helena, Montana 59601, and obtained at cost from ASME.

(2) The maximum allowable working pressure on the shell of a nonstandard boiler or drum shall be determined by the strength of the weakest section of the structure computed from the thickness of the plate, the tensile strength of the plate, the efficiency of the longitudinal joint or tube ligaments, the inside diameter of the weakest course and the factor of safety allowed by these rules and regulations:

$$\frac{TS \times t \times E}{R \times FS} = \text{Maximum allowable working pressure in psi}$$

Where

TS = ultimate tensile strength of shell plates, psi

t = minimum thickness of shell plate, in weakest course in inches

E = efficiency on longitudinal joint

For riveted construction, E shall be determined by rules given in paragraph P-181 of ASME boiler construction code for power boilers. For tube ligaments, E shall be determined by rules in paragraphs P-192 and P-193 of ASME boiler construction code for power boilers. The division hereby adopts and incorporates herein by reference the codes of the American Society of Mechanical Engineers setting forth the standards for fired pressure vessels. A copy of the ASME codes may be inspected at the Division of Workers' Compensation, 815 Front Street, Helena, Montana 59601, and obtained at cost from ASME.

For seamless construction, E shall be considered 100%.

R = inside radius of the weakest course of the shell or drum in inches.

FS = factor of safety permitted.

(2) Tensile strength. When the tensile strength of steel or wrought iron shell plates is not known it shall be taken as 55,000 psi for steel and 45,000 for wrought iron.

(3) Crushing strength of mild steel. The resistance to crushing of mild steel shall be taken at 95,000 psi of cross sectional area.

(4) Strength of rivets in shear. When computing the ultimate strength of rivets in shear, the following values in psi of the cross sectional area of the rivet shank shall be used:

	PSI
Iron rivets in single shear	38,000
Iron rivets in double shear	76,000
Steel rivets in single shear	44,000
Steel rivets in double shear	88,000

When the diameter of the rivet holes in the longitudinal joints of a boiler is not known the diameter and cross sectional area of rivets, after driving, may be selected from the following table or as ascertained by cutting out one rivet in the body of the joint:

TABLE OF RIVETS BASED ON PLATE THICKNESS

Thickness of plate	1/4"	9/32"	5/16"	11/32"	3/8"	13/32"
Diameter of rivet after driving	11/16"	11/16"	3/4"	3/4"	13/16"	13/16"

Thickness of plate	7/16"	15/32"	1/2"	9/16"	5/8"
Diameter of rivet after driving	15/16"	15/16"	15/16"	1-1/16"	1-1/16"

(5) Factors of safety. The following factors of safety shall be increased by the inspector if the condition and safety of the boiler demand it. The lowest factor of safety permissible on existing installations shall be 4.5 excepting for horizontal return tubular boilers having continuous longitudinal

lap seams more than 12 feet in length where the factor of safety shall be 8, and when this latter type of boiler is removed from its existing setting, it shall not be reinstalled for pressure in excess of 15 psi. Reinstalled or secondhand nonstandard boilers all have a minimum factor of safety of 6 when the longitudinal seams are of lap riveted construction, and a minimum factor of safety of 5 when the longitudinal seams are of butt and double strap construction.

24.30.749 REPAIRS AND RENEWALS OF FITTINGS AND APPLIANCES Whenever repairs are made to fittings or appliances or it becomes necessary to replace them, the work shall conform to the ASME Code, Sections I, IV and IX, 1977. The division hereby adopts and incorporates herein by reference the codes of the American Society of Mechanical Engineers setting forth the standards for fired pressure vessels. A copy of the ASME codes may be inspected at the Division of Workers' Compensation, 815 Front Street, Helena, Montana 59601, and obtained at cost from ASME.

3. On May 23, 1980, a public hearing was held by the division of workers' compensation regarding the adoption of the foregoing rules. The division has thoroughly considered all verbal and written commentary received:

Comment:

Why do the regulations exempt buildings such as the Billings Federal Building?

Response:

Section 50-74-103, Montana Code Annotated, specifically exempts workers under federal control from the operation of the division's rules.

Comment:

Why is there a requirement for yearly inspection of all boilers and why no consideration of the type of boilers, type of system and BTU outputs.

Response:

Section 50-74-209, Montana Code Annotated, requires a yearly inspection of all boilers except those exempted under Section 50-74-103, MCA. Also, upon written application, the division may extend the time for inspection.

Comment:

The proposed amendments establish codes for new construc-

tion. Installation should be under the requirements of the Building Codes Division. Language dealing with installation requirements clearly indicates the rules deal with installation requirements.

Response:

Section 50-74-101, Montana Code Annotated, states: "The division of workers' compensation shall formulate definitions and rules for the safe construction, installation, operation, inspection and repair of equipment under this chapter."

Comment:

Why don't the proposed rules cover the gas fired furnaces?

Reponse:

Gas fired heaters are not covered under the ASME code, but are provided for in the Uniform Mechanical Code which is not handled by the division of workers' compensation.

Comment:

In defining a standard boiler the proposal would require that the boiler bear the stamp of the state and the stamp of the ASME or National Board, and the definition of a nonstandard boiler indicates it is a boiler which does not bear the state stamp, ASME, or National Board stamp. It is suggested that the word "and" in the definition of standard boiler be replaced with the word "or".

Response:

The proposed change was adopted in defining a standard boiler.

Comment:

The requirement that a boiler be inspected internally every twelve months could cause energy disruption as well as economic loss to Montana Power Company, and it was suggested that the grace period under exceptions be modified to provide that the inspection take place every twelve months to the extent possible, taking into account reasonable and necessary operating conditions of the owner.

Response:

The requirement of yearly inspections is mandated by statute. The statute also provides that longer inspection

intervals be allowed upon written application by the owner. This allowance for a longer inspection interval should accommodate any difficulty that may arise.

Comment:

The proposed rule dealing with stop valves on power boilers does not include references to prime mover installation and therefore deviates from the standard practice used on major boilers with prime mover installations in this state which conform to the ASME Code.

Response:

The division does not directly govern new boiler installations by rule because of a conflict with the Department of Administration over jurisdiction over new boilers. It is anticipated that the conflict will be resolved shortly and the comments concerning installation will be considered.

Comment:

The proposed rules for safety valve tolerance of 6% of the highest pressure to which any valve is set, and if additional safety valves are used the highest pressure setting shall not exceed the maximum allowable working pressure by more than 3% are too stringent for low pressure boilers and to meet these requirements would be needlessly costly. Recommend that a tolerance of 2 psi be allowed.

Response:

The division has amended the proposal dealing with safety valves to provide that the proposed rule apply to ASME Code Section I, 1977, and inserted new language to apply to safety valve capacity of steam boilers to provide that the pressure not rise more than 5 psi above the maximum allowable working pressure under ASME Code, Section IV, 1977.

Comment:

In the section requiring the owner to notify the division immediately in case of an accident, it is proposed that the notice be given within 24 hours.

Response:

The division amended the language to provide that notice of an accident be given as soon as is practical. This will allow an owner to be protected in the event the accident occurs on a weekend or holiday.

Comment:

Suggest that the words "automatic fired boiler" be inserted in the language dealing with boiler controls.

Response:

The suggested changes were adopted into the section on controls.

Comment:

In the section of the rules dealing with the owner's responsibility in preparing a boiler for internal inspection, it is suggested that the language requiring all grates of internally fired boilers to be removed be amended to allow that the removal of the grates only be done where considered necessary for adequate inspection.

Response:

The division has changed the section to require that the grates of internally fired boilers to be removed where applicable. The division can direct where this procedure is necessary.

Comment:

The proposed rules should include sections on the firing device on boilers especially in the case of natural gas. There are no existing codes covering the firing devices (burners) and it could be handled by the division.

Response:

The division's rules are patterned after the ASME Code as required by Section 50-74-101, Montana Code Annotated. Burners are not in the ASME Code so the division does not get involved in that.

Comment:

The proposed rules refer to the 1977 edition of the ASME Code. Why not use the 1980 edition?

Response:

The 1980 edition of the ASME Code is not available prior to July 1, 1980. The code is revised and reissued every 3 years. Therefore, 1977 is the most recent prior to 1980. The division's proposed rules were published and distributed prior

to July 1. The public hearing on the rules was held on May 23, 1980. The division felt that it could not publish proposed rules and hold a public hearing on those rules based on a standard not yet adopted and issued. It was felt that the proposed rules had to be based on the existing code, or the 1977 edition. Additionally, it was felt that substantive differences between the 1977 and 1980 ASME Codes would be minimal. The division feels that the 1977 edition is a marked improvement over the existing rules and will adequately serve the division's purpose.

Comment:

There are substantial differences between the proposed rules of the division pursuant to the ASME Code and the Uniform Mechanical Code requirement which has been adopted by the Department of Administration as it pertains to boilers. This is particularly so in the requirement of installation of boilers. There is a real need for just one agency to have absolute control over boilers and not two agencies. The Department of Administration believes the Division of Workers' Compensation should have the entire function.

Response:

There is some conflict between the standards. The statutory mandates dealing with new equipment installation are confusing. The Division has tried where possible to minimize rules pertaining to installation of boilers, but Section 50-74-101, MCA, is mandatory that the division formulate definitions and rules pertaining to the safe construction, installation, operation, inspection and repair of boilers. This is a conflict which we feel can be worked out between the two agencies so that the public is protected. If the function of absolute control over new boiler installation is given to the Division of Workers' Compensation, then additional rules would be necessary.

DAVID E. FULLER, Commissioner
Department of Labor and Industry

Certified to the Secretary of State October 6, 1980

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

In the matter of the Amendment) of ARM 40.12.811 concerning) Manager operators)	NOTICE OF AMENDMENT OF ARM 40.12.811 MANAGER OPERATOR

TO: All Interested Persons:

1. On August 28, 1980 the Board of Cosmetologists published a notice of proposed amendment of ARM 40.12.811 concerning manager operators at pages 2481 and 2482, 1980 Montana Administrative Register, issue number 16.

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

3. No comments or testimony were received.

DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING
BEFORE THE STATE ELECTRICAL BOARD

In the matter of the amendment) of ARM 40.16.402 concerning) application approval)	NOTICE OF AMENDMENT OF ARM 40.16.402 APPLICATION APPROVAL

TO: All Interested Persons:

1. On August 14, 1980, the State Electrical Board published a notice of proposed amendment of ARM 40.16.402 concerning applications at pages 2351 and 2352, 1980 Montana Administrative Register, issue number 15.

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

3. No comments or testimony were received.

DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING
BEFORE THE BOARD OF SANITARIANS

In the matter of the Amendments) of ARM 40.58.407 (4) concerning) applications and ARM 40.58.410) (4) concerning minimum standards) for registration)	NOTICE OF AMENDMENT OF ARM 40.58.407 APPLICATIONS AND ARM 40.58.410 MINIMUM STANDARDS FOR REGISTRATION

TO: All Interested Persons:

1. On August 28, 1980, the Board of Sanitarians published a notice of proposed amendments of ARM 40.58.407 (4) concerning applications and ARM 40.58.410 (4) concerning minimum standards for registration at pages 2483 through 2485, 1980 Montana Administrative Register, issue number 16.

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

3. One comment was received in the form of a phone call from the office of the Administrative Code Committee requesting

that it be noted that the implementation section for rule ARM 40.58.407 Applications include both sections 37-40-302 and 304 MCA. No other comments or testimony were received. The board has amended the rules for those reasons stated in the notice.

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

Certified to the Secretary of State, October 7, 1980.

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

In the matter of the amendment of Rule 46.10.317 pertaining to AFDC protective and vendor payments	)))	NOTICE OF THE AMENDMENT OF RULE 46.10.317 PERTAINING TO AFDC PAYMENTS.

TO: All Interested Persons

1. On August 28, 1980, the Department of Social and Rehabilitation Services published notice of a proposed amendment of Rule 46.10.317 pertaining to AFDC protective and vendor payments at page 2490 of the 1980 Montana Administrative Register, issue number 16.

2. The agency has amended the rule as proposed.

3. No comments or testimony were received.

In the matter of the adoption of Rule 46.10.109 pertaining to citizenship and alienage requirements for AFDC	))))	NOTICE OF THE ADOPTION OF RULE 46.10.109 PERTAINING TO CITIZENSHIP AND ALIENAGE REQUIREMENTS FOR AFDC

TO: All Interested Persons

1. On August 28, 1980, the Department of Social and Rehabilitation Services published notice of a proposed adoption of Rule 46.10.109 pertaining to citizenship and alienage requirements for AFDC at page 2495 of the 1980 Montana Administrative Register, issue number 16.

2. The agency has adopted the rule as proposed.

3. No comments or testimony were received.

In the matter of the amendment of Rule 46.4.209 pertaining to child and youth development program, auditing procedures, federal name change	)))))	NOTICE OF THE AMENDMENT OF RULE 46.4.209 PERTAINING TO THE CHILD AND YOUTH DEVELOPMENT PROGRAM

TO: All Interested Persons

1. On August 28, 1980, the Department of Social and Rehabilitation Services published notice of a proposed amendment of Rule 46.4.209 pertaining to the child and youth development program, auditing procedures, federal name change at page 2488 of the 1980 Montana Administrative Register, issue number 16.

2. The agency has amended the rule as proposed.

3. No comments or testimony were received.

In the matter of the repeal of Rule 46.5.119 pertaining to services provided for unmarried parents	))))	NOTICE OF THE REPEAL OF RULE 46.5.119 PERTAINING TO SERVICES PROVIDED FOR UNMARRIED PARENTS

TO: All Interested Persons

1. On August 28, 1980, the Department of Social and Rehabilitation Services published notice of a proposed repeal of Rule 46.5.119 pertaining to services provided for unmarried parents at page 2486 of the 1980 Montana Administrative Register, issue number 16.

2. The agency has repealed the rule as proposed.

3. No comments or testimony were received.

Jon A. Meredith
Director, Social and Rehabilitation Services

Certified to the Secretary of State October 7, 1980.

SOCIAL AND
REHABILITATION SERVICES

EMERGENCY RULE TO AMEND

Statement of reasons for emergency.

The Department finds it must take immediate steps to enable non-English speaking recipients to be able to communicate enough to receive necessary medical services.

A large number of non-English speaking refugees live in or near Missoula. Present funding for interpretive communications services will run out October 1, 1980. Federal review and interpretation of possible replacement funding sources was very slow in coming causing the present emergency.

The Department will immediately notice up this rule change through the normal rulemaking process.

46.12.556 PERSONAL CARE SERVICE, REQUIREMENTS These requirements are in addition to those contained in ARM 46.12.301 through 46.12.308.

(1) Personal care service in a recipient's home must be prescribed by a physician in accordance with a plan of treatment.

(2) Personal care service must be supervised by a registered nurse.

(3) The personal care service provider cannot be a family member and must meet the following criteria:

(a) mental competency and the physical ability to perform required personal care services;

(b) ability to read and write;

(c) ability to communicate with the recipient and speak English;

(e) (d) willingness to accept training and supervision of a registered nurse. (History: Sec. 53-6-113 MCA; IMP, Sec. 53-6-101 and Sec. 53-6-141 MCA; NEW, 1980 MAR, p. 1105, Eff. 3/28/80.)

46.12.557 PERSONAL CARE SERVICE, REIMBURSEMENT (1) Payment for personal care service shall be minimum wage plus 15 percent in lieu of fringe benefits, except where exigent circumstances exist, a reasonable payment rate may be negotiated between the department and the provider.

(2) On a ~~daily~~ weekly basis, payment shall not exceed 80 percent of the cost of nursing home per diem, except when prior authorized.

(3) Payment for registered nurse supervision shall be:

(a) skilled nursing service rate established by a fee schedule when provided by a licensed home health agency under contract with the department;

(b) $7.50 per hour when provided by an independent registered nurse~~,~~; or

(c) where exigent circumstances exist, a reasonable payment rate may be negotiated between the department and the provider. (History: Sec. 53-6-113 MCA; IMP, Sec. 53-6-101 and Sec. 53-6-141 MCA; NEW, 1980 MAR, p. 1105, Eff. 3/28/80.)

Jan A. Meredith
Director, Social and Rehabilitation Services

Certified to the Secretary of State October 3, 1980.

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

In the matter of the amendment of Rule 46.12.2002 pertaining to physician services, requirements (abortions)	))))	NOTICE OF THE EFFECTIVE DATE OF THE AMENDMENT OF RULE 46.12.2002 PERTAINING TO MEDICAL SERVICES, ABORTION REQUIREMENTS

TO: All Interested Persons

1. The effective date of the amendment of Rule 46.12.2002 originally noticed at page 2241 of the 1980 Montana Administrative Register, issue number 14 and finally noticed at page 2664 of the 1980 Montana Administrative Register, issue number 18, is September 26, 1980.

2. Normally the effective date for a rule is the day after publication in the Montana Administrative Register. The effective date for the amendment in Rule 46.12.2002 was to be the effective date of the U.S. Supreme Court's decision eliminating federal financial participation for some Medicaid abortions. The U.S. Supreme Court handed down that decision on September 18, 1980, after the amended rule was filed with the Secretary of State but before it could legally become effective. The first date after the U.S. Supreme Court's decision that the amended rule could be effective is September 26, 1980.

Jon A. Meredith
Director, Social and Rehabilitation Services

Certified to the Secretary of State October 7, 1980.

BEFORE THE HUMAN RIGHTS COMMISSION

OF THE STATE OF MONTANA

In the Matter of the Petition for a Declaratory Ruling by the Employment Security Division, as to the Applicability of Section 49-2-303(1), MCA, Covering Age Discrimination to Job Orders for Truck Drivers.	)	DECLARATORY RULING

On October 26, 1979, the Employment Security Division of the Department of Labor and Industry applied to the Human Rights Commission for a declaratory ruling that would allow the petitioner to accept, advertise, and refer job orders from commercial carriers for truck drivers over 25 years of age. Petitioner wishes to know whether it may accept, advertise, and refer to such orders when they request drivers over 25 years of age, or whether such action by Petitioner would be in violation of section 49-2-303(1), MCA.

On December 6, 1979, a public hearing was held. The Commission hereby makes the following findings and conclusions:

FINDINGS

1. Petitioner operates the Montana Employment Service. In the process of labor exchange, job orders are received from commercial carriers for truck drivers. Petitioner wishes to know whether it may accept, advertise, and refer to such orders when they request drivers over 25 years of age, or whether such action by Petitioner would be in violation of section 49-2-303 (1), MCA.

2. Some statistics indicate that nationwide, drivers of all vehicles under 25 have a statistically greater chance of being in an accident than drivers of all vehicles over 25.

3. Federal Motor Carrier Safety Regulations issued by the Department of Transportation require drivers of certain types of vehicles engaged in interstate commerce to be over 21.

4. No witnesses appeared at the hearing to present evidence in support of the allegation of paragraph 3 of the Petition that the age limit above 25 is a bona fide occupational qualification.

CONCLUSIONS

1. Section 49-2-303(1)(c), MCA, forbids Petitioner from printing or circulating, or causing to be printed or circulated, a job order which expresses a limitation as to age unless based upon a bona fide occupational qualification. The rules for age discrimination as a reasonable demand for employment are set

forth in ARM 24.9.1403.

2. A job order requesting a driver over 25 years of age is violative of section 49-2-303(1), MCA, unless a bona fide occupational qualification is shown. The burden of proving a bona fide occupational qualification is on the party alleging it.

3. Sufficient evidence was not presented for the Commission to conclude that in all cases in which job orders for commercial carrier drivers are received by Petitioner, the requirement of being over 25 years of age is a bona fide occupational qualification.

4. When a job order for a commercial carrier driver is received by Petitioner, and contains a requirement that the driver be over 25 years of age, Petitioner may be in violation of section 49-2-303(1), MCA, by printing or circulating, or causing to be printed or circulated, such a job order.

5. Petitioner is not in violation of section 49-2-303(1), MCA, by accepting, advertising, or referring to job orders which contain limitations required by the Federal Motor Carrier Safety Regulations.

6. Except as is noted in Conclusion No. 5 above, nothing in this ruling shall be construed as determining whether or not any particular age requirement used by any particular motor carrier in employment of its drivers is or is not in violation of section 49-2-303(1), MCA.

DATED this 7th day of December, 1979.

Karen S. Townsend

KAREN S. TOWNSEND, Chair

Certified to the Secretary of State September 18, 1980.

DECLARATORY RULING
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING
BOARD OF REALTY REGULATION

In the matter of the petition of David L. Shoemaker, a licensed real estate salesman, for a declaratory ruling on the effective date of a salesman's license	DECLARATORY RULING

On August 8, 1980, broker David L. Shoemaker petitioned the Board for a declaratory ruling that a salesman's license is effective from the time the Board issues said license. The petition recited that the Board had issued a saleman's license to one of petitioner's employees on Friday, May 2, 1980; that petitioner came to the Board's office in Helena that same May 2 to pick up his employee's license and was told that the license had been issued and placed in the mail earlier that day, and that petitioner then returned to Great Falls and utilized the employee's services as a salesman the weekend of May 3-4, 1980. On Monday, May 5, 1980, the license arrived in the mail and was duly posted on petitioner's office wall as required by 37-51-305 MCA.

The Great Falls Board of Realtors received a complaint that petitioner had assisted an unlicensed person in solicitation of sale and listing of real estate, considered the complaint and the foregoing facts, and found petitioner to have acted unethically in the matter. Petitioner then sought the ruling of this Board as to whether the course of conduct stated herein violated the Real Estate License Act.

The Board gave notice to the petitioner and the Great Falls Board of Realtors that it would consider the petition during its meeting scheduled for September 16, 1980. At that time, neither party having attended, the Board considered the petition and voted to grant the requested ruling.

It was noted that the Board's predecessor, the Board of Real Estate, had construed the Real Estate License Act to require any license (broker's or saleman's) to be on the wall before the licensee could commence working at the licensed activity. While section 37-51-308 MCA does provide in pertinent part that "the original license of each salesman associated or under contract with the broker shall be prominently displayed in the office," the statute must be interpreted with reference to all its parts. Section 37-51-310 MCA states in part: "Failure to remit annual fees before January 1 automatically cancels the license, but otherwise the license remains in effect continuously from the date of issuance unless suspended or revoked by the Board for just cause" (emphasis added). This Board is persuaded that the latter section more clearly expresses the legislative intent as to when a licensee may begin working.

This ruling does not apply to broker's licenses. The Board declined to admonish the Great Falls Board of Realtors, as

requested by petitioner, on the grounds that the Great Falls Board had correctly applied the prior interpretation of this issue.

DONE at Helena, Montana, September 16, 1980.

BOARD OF REALTY REGULATION
DEXTER DELANEY, CHAIRMAN

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

VOLUME NO. 38 OPINION NO. 107

ELECTIONS - Voter registration;
ELECTIONS - Access to voter registration cards;
ELECTIONS - Registration by mail;
ELECTIONS - Duty of election administrator regarding voter registration;
MONTANA CODE ANNOTATED - Section 13-2-203(2).

HELD: Any restriction on the availability of forms for voter registration by mail violates the provisions of section 13-2-203(2), MCA.

19 September 1980

Honorable Frank Murray
Secretary of State
State Capitol
Helena, Montana 59601

Dear Mr. Murray:

You have requested my opinion regarding the availability of voter registration cards pursuant to the provisions of section 13-2-203(2), MCA. That section provides:

> REGISTRATION BY MAIL. (2) The election administrator shall send registration forms for mail registrations to all qualified individuals requesting them and shall, in addition, arrange for the forms to be widely and conveniently available within the county. The mail registration form shall be designed as prescribed by the secretary of state. [Emphasis supplied.]

The language of the statute is clear. Election administrators are required to make registration forms "widely and conveniently" available. Where legislative language is clear and unambiguous, the plain meaning of the words used must be adopted. Dunphy v. Anaconda, 151 Mont. 76, 438 P.2d 660 (1968).

The section was originally enacted as part of an act to encourage voter registration by allowing registration by mail. Laws of Montana (1975), ch. 396. The registration process was greatly simplified. Any registered voter within the county can register new voters. All the process requires is that the form be completed, signed by both the

newly registered voter and the witness, and mailed to the county election office. The last Legislature added the requirement that the election administrator make the forms for mail registration widely and conveniently available. Laws of Montana (1979), ch. 571.

Any restriction on the availability of voter registration cards conflicts with the legislative intent and violates the provisions of the statute. Individual voters can register new voters without being designated as deputy registrars. Election administrators cannot place arbitrary limits on the availability of voter registration forms either to individuals or political interest groups such as political parties, labor unions, or political action committees. It is clear from the legislative history of the act that it was the Legislature's intent to eliminate complicated and technical registration requirements to ensure Montana citizens easier access to the electoral process.

THEREFORE, IT IS MY OPINION:

Any restriction on the availability of forms for voter registration by mail violates the provisions of section 13-2-203(2), MCA.

Very truly yours,

MIKE GREELY
Attorney General

VOLUME NO. 38 OPINION NO. 108

SUBDIVISIONS - Divisions of lots within a city or town, resubdivisions;
CITIES AND TOWNS - Subdivisions, divisions of land, resubdivisions;
MONTANA CODE ANNOTATED - Section 76-3-207(2).

HELD: A platted city does not constitute a platted subdivision for purposes of applying section 76-3-207(2), MCA.

25 September 1980

Norbert F. Donahue, Esq.
Kalispell City Attorney
P.O. Box 1035
Kalispell, Montana 59901

Dear Mr. Donahue:

You have requested my opinion on a question which I have phrased as follows:

> Does a city constitute a platted subdivision so that a division of one lot or small parcel therein constitutes a resubdivision under 76-3-207(2), MCA?

The problem described in your letter concerns the situation in which a lot or small parcel within the city is divided in half and sold. The city first learns of the division when a building permit is applied for on the half that is sold. Some of these divided lots have no street access which makes providing services such as fire protection and garbage collection, as well as tax collection, difficult.

You have suggested that a platted city itself represents a subdivision, and that therefore an action which results in an increase in the number of lots within the city or which redesigns or rearranges six or more lots within the city must be reviewed as a subdivision pursuant to the mandate of 76-3-207(2), MCA.

I am unable to concur in this suggestion. While a city and a subdivision may both be platted, a city does not fit within the statutory definition of the term "subdivision." Section 76-3-103(15) defines that term as follows:

> "Subdivision" means a division of land or land so divided which creates one or more parcels containing less than 20 acres, exclusive of public roadways, in order that the title to or possession of the parcels may be sold, rented, leased, or otherwise conveyed and shall include any resubdivision and shall further include any condominium or area, regardless of its size, which provides or will provide multiple space for recreational camping vehicles, or mobile homes.

Clearly a city is not a "division of land or land so divided," nor is a city organized or operated so that "title to or possession of the parcels may be sold." They are two entirely separate entities. If a city were a subdivision, then any addition thereto such as by annexation would have to comply with such requirements as park dedication (76-3-606), local review as a subdivision (76-3-601) and state sanitary restrictions (76-4-101 et seq.). This is clearly not the case. I also note that House Bill 528, rejected by the Legislature in 1977, would have amended the statutes to accomplish just what you suggest.

The problems you have raised, however, can be controlled under existing law without indulging in the argument that a platted city is equivalent to a platted subdivision. A division of a lot within a city to transfer one or more parcels less than twenty acres clearly fits within the definition of the term "subdivision" as quoted above. Since that is true, such a division is subject to local review unless it qualifies for an exemption under 76-3-207(1). If it does, the notice problem should be cured by 76-3-301(2) which requires the clerk and recorder to notify the governing body of any land division falling under the exemptions described by 76-3-207(1). The problems you described such as proper street access are susceptible to regulation under existing zoning powers.

THEREFORE, IT IS MY OPINION:

> A platted city does not constitute a platted subdivision for purposes of applying section 76-3-207(2), MCA.

Very truly yours,

MIKE GREELY
Attorney General