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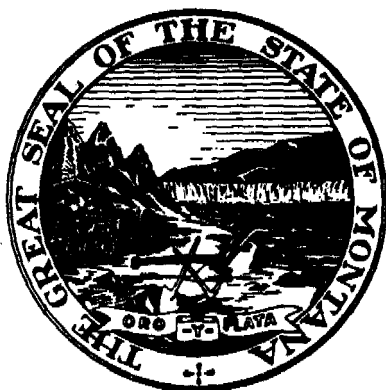
**JUL 7 1987**

**OF MONTANA**

**MONTANA  
ADMINISTRATIVE  
REGISTER**

**DOES NOT  
CIRCULATE**

**1987 ISSUE NO. 12  
JUNE 25, 1987  
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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 12

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing, and where written comments may be submitted.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

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STATE OF MONTANA  
DEPARTMENT OF ADMINISTRATION

In the matter of changes and additions to 2.5.201 through 2.5.603 as required by 50th Legislature's enactment of HB 180. )NOTICE OF PUBLIC HEARING ON )THE PROPOSED AMENDMENTS TO )2.5.201 through 2.5.603. )

TO: All Interested Persons.

On Thursday, July 23, 1987, at 1:00 p. m., a public hearing will be held in room 160, Sam W. Mitchell Building, 205 North Roberts Street, Helena, Montana, to consider the changes and additions to the above-stated rules.

2.5.201 DEFINITIONS (1) through (3) will remain the same.

(4) "Central Stores" or "Property and Supply Bureau" means the enterprise program operated by the Department which develops standard specifications, procures, warehouses and delivers certain common use supplies for using agencies.

(5) through (9) will remain the same.

(10) "Office Supply" means an item included under the office supply commodity class codes maintained by the department.

Specifically these class codes include:

(a) Class code #610-carbon paper and ribbons of all types.

(b) Class code #615-adder & calculator rolls; adhesives; binders; binder sheets; blotters & desk pads; office books; box files calendar pads & stands; chair mats; clipboards; typewriter correction materials & cleaners; brief covers & etc.; desk accessories; file cards, cases, dividers, labels, folders, & guides; index tabs; labels; letter openers & trays; list finders; pads & tablets; office machine pads; paper clips & fasteners; rubber bands & stamps; rulers, sheet protectors; staples; stock form copy sets & speed letters; tacks; tags; tape dispensers; and visible record flags, folders, hinges, signals strips & tabs.

(c) Class code #620-erasers, inks, leads, pens, and pencils.

(10) through (22) will remain the same but will be renumbered.

Auth: 18-4-221(1) MCA; IMP. HB 180, 50th Legislature, new section 3.

2.5.202 DEPARTMENT OF ADMINISTRATION RESPONSIBILITIES

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

(a) Term Contract; NOTE: Controlled items in commodity class codes 610, 615, and 620 need not be procured through term contracts when all of the following conditions are met and documented by the procuring agency.

(i) The item(s) must be procured from a Montana supplier.

(ii) The suppliers price is:

(A) Available to the public and is publicly advertised or listed in an established catalog.

(B) On file in the offices of the property and supply bureau prior to mailing of the invitation for bid for the items in the referenced commodity codes.

(C) Less than the price for which the item is available from the property and supply bureau.

(D) Meets or exceeds the specifications, terms, and delivery requirements of the item(s) through the property and supply bureau.

(E) The term contract has specific language excluding purchases made under conditions 2.5.202(4)(a).

(b) to remain the same.

(c) Central Stores. NOTE: Controlled items in commodity class codes 610, 615, and 620 need not be procured through central stores when all of the following conditions are met and documented by the procuring agency.

(i) The item(s) must be procured from a Montana supplier.

(ii) The suppliers price is:

(A) Available to the public and is publicly advertised or listed in an established catalog.

(B) On file in the offices of the property and supply bureau prior to mailing of the invitation for bid for the items in the referenced commodity codes.

(C) Less than the price for which the item is available from the property and supply bureau.

(D) Meets or exceeds the specifications, terms, and delivery requirements of the item(s) through the property and supply bureau.

(5) through (8) to remain the same.

Auth: 18-4-221(1) MCA; IMP. HB 180, 50th Legislature, new section 3.

2.5.301 DELEGATION OF PURCHASING AUTHORITY (1) through (2) will remain the same.

(3) Unless specifically addressed in a delegation agreement, using agencies must buy controlled items from the requisition time schedule, term contracts and central stores. Controlled items purchased through term contracts and central stores in commodity class codes 610, 615, and 620 need not be procured through the term contract or central stores when all of the following conditions are met and documented by the procuring agency.

(a) The item(s) must be procured from a Montana supplier.

(b) The suppliers price is:

(i) Available to the public and is publicly advertised or listed in an established catalog.

(ii) On file in the offices of the property and supply bureau prior to mailing of the invitation for bid for the

items in the referenced commodity codes.

(iii) Less than the price for which the item is available from the property and supply bureau.

(iv) Meets or exceeds the specifications, terms, and delivery requirements of the item(s) through the property and supply bureau.

(v) The term contract has specific language excluding purchases made under conditions 2.5.301(3)(a).

Using agencies can procure non-controlled items and controlled items not available from the above sources by the procedures established in these rules.

Auth: 18-4-221(1) MCA; IMP. HB 180, 50th Legislature, new section 3.

2.5.601 COMPETITIVE SEALED BIDS (1) through (10) will remain the same.

(11) Invitation for Bids for "Office Supplies". A Montana supplier's currently advertised or established catalog price, which is available to the public, may be registered as their bid if:

(a) It is designated as such with an explanatory letter.

(b) The items advertised or listed meet or exceed the specifications, terms, and delivery requirements of the invitation for bid.

(c) It is available for inspection to all prospective bidders in the office of the agency issuing the invitation for bid.

(d) It is received in the office of the property and supply bureau prior to the mailing of the invitation for bid and has been certified as to the exact time and date received by the bureau.

Auth: 18-4-221(1) MCA; IMP. HB 180, 50th Legislature, new section 3.

2.5.602 COMPETITIVE SEALED PROPOSALS (1) through (9) to remain the same.

(10) Competitive Sealed Proposals for "Office Supplies". A Montana supplier's currently advertised or established catalog price, which is available to the public, may be registered as their proposal if:

(a) It is designated as such with an explanatory letter.

(b) The items advertised or listed meet or exceed the specifications, terms, and delivery requirements of the invitation for bid.

(c) It is available for inspection to all prospective bidders in the office of the agency issuing the invitation for bid.

(d) It is received in the office of the property and supply bureau prior to the mailing of the invitation for bid and has been certified as to the exact time and date received by the bureau.

Auth: 18-4-221(1) MCA; IMP. HB 180, 50th Legislature, new section 3.

2.5.603 SMALL PURCHASES OF SUPPLIES AND SERVICES (1) through (7) to remain the same.

(8) Small purchases of supplies and services for

"office Supplies". A Montana supplier's currently advertised or established catalog price, which is available to the public, may be registered as their bid if:

(a) It is designated as such with an explanatory letter.

(b) The items advertised or listed meet or exceed the specifications, terms, and delivery requirements of the invitation for bid.

(c) It is available for inspection to all prospective bidders in the office of the agency issuing the invitation for bid.

(d) It is received in the office of the property and supply bureau prior to the mailing of the invitation for bid and has been certified as to the exact time and date received by the bureau.

Auth: 18-4-221(1) MCA; IMP. HB 180, 50th Legislature, new section 3.

2. These changes and additions are being proposed to implement the intent of HB 180 as passed by the 50th Legislature.

3. Interested persons may submit their data, views or arguments, either orally or in writing, at the hearing. Written data, views, and arguments may also be submitted to Mr. Jim Nelson, Administrative Officer, Property and Supply Bureau, Purchasing Division, Department Of Administration, 930 Lyndale Avenue, Helena, Montana, no later than 5 p. m. July 23, 1987.

4. Mr. Jim Nelson, Administrative Officer of the DOA Purchasing Division, will preside over and conduct the meeting.

DEPARTMENT OF ADMINISTRATION

*Ellen Feaver*  
\_\_\_\_\_  
ELLEN FEAVER, DIRECTOR



BEFORE THE DEPARTMENT OF AGRICULTURE  
STATE OF MONTANA

|                             |                          |
|-----------------------------|--------------------------|
| In the matter of adoption ) | NOTICE OF PUBLIC HEARING |
| of new rules relating )     | ON THE ADOPTION OF NEW   |
| to the assessment of fees ) | RULES PERTAINING TO      |
| for financial consulting )  | FINANCIAL CONSULTING AND |
| and debt mediation )        | VOLUNTARY AGRICULTURAL   |
| )                           | DEBT MEDIATION SERVICES  |

TO: All Interested Persons.

1. On July 27, 1987, at 1:30 p.m. in Room 225, Agriculture/Livestock Building, Helena, Montana, a public hearing will be held to consider the adoption of a new rule relating to assessing fees for financial consulting and voluntary agricultural debt mediation services.

2. The proposed rule does not replace or modify any section currently found in the Administrative Rules of Montana.

3. The proposed rule provides as follows:

Rule 1 FEES (1) Each farmer or rancher who requests and receives professional financial consulting services shall be charged a fee of up to 50 percent of the actual direct cost of such services. In no case will such fee exceed \$250.00.

(2) Each farmer or rancher and secured creditor participating in voluntary agricultural debt mediation shall be charged a fee based upon an equal pro rata share, determined by the number of participants in the mediation and the actual direct cost of such mediation. An individual participant in the mediation activities will not be charged more than 50 percent of the actual direct cost of the mediation. In no case will the fee charged to any farmer/rancher or secured creditor exceed \$300.00.

(3) The department shall send a notice or billing statement to the farmer/rancher or secured creditor as appropriate, within a reasonable time following receipt by the department of a final report indicating substantial completion of the financial consulting or debt mediation activity.

(4) Ability of the farmer/rancher or secured creditor to pay the maximum or a reduced fee shall be determined by the department based upon the financial condition, debts, assets, and cashflow of the respective farmer/rancher or secured creditor and the recommendation of the financial consultant and/or mediator.

AUTH: 80-13-104, MCA IMP: 80-13-111, MCA

4. The legislature amended the statutes to provide for fees to be collected by the department. The department found it necessary to implement the assessment provisions of the Agricultural Assistance Program in order to enable an equitable assessment of fees for services and to meet the legislature recommended budget for the program.

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 Michael E. Murphy, Agriculture/Livestock Building, Capitol Station, Helena, Montana, no later than July 28, 1987.

6. Garth Jacobson, Agriculture/Livestock Building, Capitol Station, Helena, Montana, has been designated to preside over and conduct the hearing.

7. The authority of the department to make the proposed rule is based on section 80-13-104, MCA and the rules implement 80-13-111, MCA.

By: 

Keith Kelly, Director  
Department of Agriculture

Certified to the Secretary of State June 15, 1987

BEFORE THE DEPARTMENT OF AGRICULTURE  
STATE OF MONTANA

|                       |   |                                |
|-----------------------|---|--------------------------------|
| In the matter of the  | ) | NOTICE OF PROPOSED AMENDMENT   |
| amendment of Rule     | ) | OF RULE 4.12.1806 PERTAINING   |
| 4.12.1806 generally   | ) | TO COLLECTION OF FEES FOR      |
| revising the fees for | ) | PRODUCE INSPECTIONS            |
| produce inspections   | ) | NO PUBLIC HEARING CONTEMPLATED |

TO: All Interested Persons.

1. On August 3, 1987, the Department of Agriculture proposes to amend rule 4.12.1806 which raises the fees for produce inspections.

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

4.12.1806 INSPECTION OF ALL FRUITS, VEGETABLES  
--COLLECTION OF FEES (1) All fruits and/or vegetables (with exception of cherries, potatoes and watermelons) - ~~2-5¢~~ 3.5¢ per unit ~~up-to-a-maximum-fee-of-\$20.00.~~

|             |   |
|-------------|---|
| Potatoes:   | Fresh shipments or lots, seed or tablestock (shipping point) <del>3¢</del> <u>4¢</u> per ewt <del>up-to-a-maximum-of-\$45.00</del> <u>hundred weight.</u> |
| Cherries:   | Fresh shipments <del>2-5¢</del> <u>17.5¢</u> per <del>package-or-lug-up-to-a-maximum-of-\$30.00</del> <u>hundred weight.</u>                              |
| Watermelon: | <del>3-5¢</del> <u>4.5¢</u> per hundred weight. <del>up-to-a-maximum-fee-of-\$20.00</del>   |

Additional inspection fee charges include:

Potato Tags - Minimum ~~3¢~~ 5¢/tag - (commercial or tablestock.)

Phytosanitary Certificate - Minimum of ~~\$3.00~~ \$5.00 and not to exceed ~~\$20.00~~ \$30.00.

State Lot Certificate - Minimum of ~~\$3.00~~ \$5.00. and ~~not-to-exceed-\$20.00.~~

STANDARDS COMMODITY PACKAGE WEIGHS AND COUNTS

| <u>COMMODITIES</u> | <u>LBS./CONTAINER/UNIT</u> |
|--------------------|----------------------------|
| Apples             | 40                         |
| Apricots           | 28                         |
| Avocados           | 60-70 count-lort.          |
| Blackberries       | 12- $\frac{1}{2}$ pt.      |
| Boysenberries      | 12- $\frac{1}{2}$ pt.      |
| Blueberries        | 12-12 oz.                  |
| Cantaloupes        | 20                         |
| Cherries           | 20                         |
| Cranberries        | 80                         |

COMMODITIES

LBS./CONTAINER/UNIT

|                     |                       |
|---------------------|-----------------------|
| Currants            | 12- $\frac{1}{2}$ pt. |
| Grapes              | 24                    |
| Grapefruit          | 35                    |
| Lemons              | 35                    |
| Nectarines          | 20                    |
| Oranges             | 37                    |
| Peaches             | 20                    |
| Pears               | 28                    |
| Pineapple           | 25 D. L. Count        |
| Plums - Prunes      | 30 & 28               |
| Raspberries         | 12- $\frac{1}{2}$ pt. |
| Rhubarb             | 20                    |
| Strawberries        | 9-12-12 oz.           |
| Tangerines          | 25                    |
| Tomatoes            | 28                    |
| Watermelons         | 100                   |
| Fruits, Misc.       | 50                    |
| Asparagus           | 30                    |
| Artichokes          | 15                    |
| Beans, Green        | 28                    |
| Beets               | 2 dozen               |
| Broccoli            | 25                    |
| Brussel Sprouts     | 25                    |
| Cabbage             | 50                    |
| Carrots             | 24                    |
| Cauliflower         | 28                    |
| Celery              | 45# stalk             |
| Corn, Green         | 5 dozen               |
| Cucumbers           | 30                    |
| Egg Plant           | 25                    |
| Endive              | 2 dozen               |
| Lettuce             | 30                    |
| Onions, Dry         | 50                    |
| Onions, Green       | 4 dozen - 30          |
| Parsley             | 12                    |
| Peas, Green         | 28                    |
| Peppers             | 28                    |
| Potatoes            | 100                   |
| Radishes            | 35                    |
| Spinach             | 8 oz. - 12 cart.      |
| Squash              | 100                   |
| Sweet Potatoes      | 40                    |
| Turnips - Rutabagas | 50                    |
| Vegetables, Mis.    | 50                    |
| Mushrooms           | 10                    |

AUTH: 80-3-110, MCA

IMP: 80-7-111, MCA

3. The 1987 Legislature mandated that the Department of Agriculture raise the fees for conducting the inspections so as to better reflect the cost incurred by the Department. The Department finds it necessary to raise the fees as proposed in order to meet the legislative mandate.

12-6/25/87

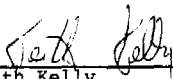
MAR Notice No. 4-14-25

4. Interested persons may submit their data, views, or comments concerning the proposed amendment to the rule to O. Roy Bjornson, Department of Agriculture, Agriculture/Livestock Building, Capitol Station, Helena, Montana, 59620, no later than July 31, 1987.

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 O. Roy Bjornson, Department of Agriculture, Agriculture/Livestock Building, Helena, Montana, 59620 no later than July 31, 1987.

6. If the agency receives requests for a public hearing on the proposed adoption from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed adoption, from the Administrative Code Committee of the legislature, from a governmental sub-division or agency, or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 10 persons based on 100 licensed wholesaler dealers.

7. The authority of the department to make the proposed amendment on section 80-3-110, MCA and the rule implements section 80-7-111, MCA.

  
\_\_\_\_\_  
Keith Kelly  
Director  
Department of Agriculture

Certified to the Secretary of State June 15, 1987.

STATE OF MONTANA  
DEPARTMENT OF COMMERCE  
BEFORE THE BOARD OF CHIROPRACTORS

|  |   |  |
|--|---|--|
| In the matter of the proposed amendment of 8.12.606 concerning renewals and the proposed adoption of a new rule concerning inactive status | ) | NOTICE OF PROPOSED AMENDMENT OF 8.12.606 RENEWALS - CONTINUING EDUCATION REQUIREMENTS, AND THE PROPOSED ADOPTION OF A NEW RULE PERTAINING TO INACTIVE STATUS |
|--|---|--|

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On July 27, 1987, the Board of Chiropractors proposes to amend and adopt the above-stated rules.

2. The proposed amendment of 8.12.606 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at page 8-359, Administrative Rules of Montana)

"8.12.606 RENEWALS - CONTINUING EDUCATION REQUIREMENTS

(1) through (3) will remain the same.

(4) Licensees who have not renewed by October 1 of each year shall pay a late renewal fee of \$15.00 \$35.00.

(5) Inactive status annual renewal fee of \$50.00 is due on or before September 1 of each year. The late fee provided in (4) is applicable to inactive practitioners."

Auth: 37-1-134, 37-12-201, MCA AUTH Extension, Sec. 4, Ch. 321, L. 1987 Imp: 37-1-134, 37-12-307, MCA

3. RATIONALE: The fee increases are proposed because increasing costs require increased revenue in order for the board to operate in a fiscally sound manner. The costs of processing renewals has also increased due to automated licensing system.

4. STATEMENT OF REASONABLE NECESSITY: Section 37-1-134, MCA, requires all licensing boards to set fees commensurate with program area costs. These are the fees the board has determined are necessary to cover administrative costs for the program area.

5. Proposed new rule I Inactive Status will read as follows:

"I. INACTIVE STATUS (1) 'Inactive practitioner' for purposes of these rules shall mean a practitioner who is not practicing chiropractic in the state of Montana and has applied for and been granted inactive status.

(2) Inactive practitioners do not have to meet continuing education requirements under 37-12-307, MCA and ARM 8.12.606.

(3) Applicants requesting inactive status must certify their intention to the board on a form prescribed by the board.

(4) Inactive practitioners intending to resume practice must first satisfy the following requirements for reinstatement:

(a) submit written application to the board on forms provided by the board;

(b) submit proof of completion of 12 hours of approved continuing education in the year preceding reinstatement; and

(c) submit a fee of \$150.00 to be paid with the request for reinstatement."

Auth: 37-1-134, 37-12-201, 37-12-307, MCA AUTH  
Extension, Sec. 4, Ch. 321, L. 1987 Imp: 37-1-134,  
37-12-201, 37-12-307, MCA

6. This rule is mandated by the legislature to set standards for inactive status.

7. Interested persons may submit their data, views or arguments concerning the proposed amendment and adoption in writing to the Board of Chiropractors, 1424 9th Avenue, Helena, Montana 59620-0407, no later than July 23, 1987.

8. If a person who is directly affected by the proposed amendment 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 comments he has to the Board of Chiropractors, 1424 9th Avenue, Helena, Montana 59620-0407, no later than July 23, 1987.

9. If the board receives requests for a public hearing on the proposed amendment and adoption from either 10% or 25, whichever is less, of those persons who are directly affected by the proposed amendment and adoption, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision, or from an association having no less than 25 members who will be directly affected, a public hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 28 based on the 280 licensees in Montana.

BOARD OF CHIROPRACTORS  
ROGER COMBS, D.C., PRESIDENT

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

Certified to the Secretary of State, June 15, 1987.

STATE OF MONTANA  
DEPARTMENT OF COMMERCE  
BEFORE THE BOARD OF PROFESSIONAL ENGINEERS  
AND LAND SURVEYORS

In the matter of the proposed amendment of 8.48.1105 concerning fees )  
NOTICE OF PROPOSED AMENDMENT )  
OF 8.48.1105 FEE SCHEDULE )

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On July 27, 1987, the Board of Professional Engineers and Land Surveyors proposes to amend the above-stated rule.

2. The proposed amendment of 8.48.1105 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at pages 8-1331 and 8-1332, Administrative Rules of Montana)

"8.48.1105 FEE SCHEDULE (1) through (4)(a) will remain the same.

(b) PE application and test (original) ~~\$-80.00~~ \$100.00

(c) PE app. and test for out-of-state ~~100.00~~ 120.00

EIT  
(d) will remain the same.

(e) LSIT application and test 40.00 50.00

(f) through (1) will remain the same."

Auth: 37-1-134, 37-67-202, MCA AUTH Extension, Sec. 20,  
Ch. 553, L. 1985 Imp: 37-67-303, 315, 320, 321, MCA

3. RATIONALE: The fee increases are proposed because increasing costs require increased revenue in order for the board to operate in a fiscally sound manner. The costs of the examinations have also increased.

4. STATEMENT OF REASONABLE NECESSITY: Section 37-1-134, MCA, requires all licensing boards to set fees commensurate with program area costs. These are the fees the board has determined are necessary to cover administrative costs for the program areas.

5. Interested persons may submit their data, views or arguments concerning the proposed amendment in writing to the Board of Professional Engineers and Land Surveyors, 1424 9th Avenue, Helena, Montana 59620-0407, no later than July 23, 1987.

6. If a person who is directly affected by the proposed amendment wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any comments he has to the Board of Professional Engineers and Land Surveyors, 1424 9th Avenue, Helena, Montana 59620-0407, no later than July 23, 1987.



7. If the board receives requests for a public hearing on the proposed adoption from either 10% or 25, whichever is less, of those persons who are directly affected by the proposed amendment, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision, or from an association having no less than 25 members who will be directly affected, a public hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 300 based on the 3000 licensees in Montana.

BOARD OF PROFESSIONAL ENGINEERS  
AND LAND SURVEYORS  
DICK GUENZI, CHAIRMAN

BY: Keith L. Colbo

KEITH L. COLBO, DIRECTOR  
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, June 15, 1987.

STATE OF MONTANA  
DEPARTMENT OF COMMERCE  
BEFORE THE AERONAUTICS DIVISION

In the matter of the proposed ) NOTICE OF PROPOSED AMENDMENT  
amendment of 8.106.602 con- ) OF 8.106.602 LIABILITY  
cerning liability insurance ) INSURANCE REQUIREMENTS

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On July 27, 1987, the Aeronautics Division proposes to amend the above-stated rule.

2. The proposed amendment will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at pages 8-3777 through 8-3779, Administrative Rules of Montana)

"8.106.602 LIABILITY INSURANCE REQUIREMENTS (1) Every commercial air operator shall procure and thereafter continue in effect, so long as such operator continues to offer his services for any commercial purpose for compensation, adequate protection against liability imposed by law upon such operator for the payment of damages for personal bodily injuries, including death resulting therefrom, and property damage as a result of an accident, subject however, to the following minimum limits:

(a) Aircraft with passenger seating capacity, 1 to 20 persons:

(i) Aircraft passenger bodily injury and death liability--a minimum of one for passenger seat of at least ~~\$50,000.00~~ \$75,000.00 and a minimum for each accident in any one aircraft of at least an amount equal to the total produced by multiplying ~~\$50,000.00-by-the-number-of-passenger-seats--in-the--aircraft~~ \$75,000.00 by 75% of the total number of passenger seats installed in the aircraft.

(ii) Aircraft bodily injury and death liability (excluding persons aboard aircraft)--a minimum of ~~\$50,000.00~~ \$75,000.00 for one person in one accident, and a minimum of ~~\$200,000~~ \$300,000.00 for each accident.

(iii) Aircraft property damage liability a minimum of \$100,000.00 for each accident.

(b) Aircraft with passenger seating capacity, 21 or more persons.

(i) Aircraft passenger bodily injury and death liability--a minimum of one passenger seat of at least ~~\$50,0000.00~~ \$75,000.00 and a minimum for each accident at any one aircraft of at least an amount equal to the total produced by multiplying ~~\$50,000.00-by-the-number-of-passenger-seats--in-the--aircraft~~ \$75,000.00 by 75% of the total number of passenger seats installed in the aircraft.

(ii) Aircraft bodily injury and death liability (excluding persons aboard aircraft)--a minimum of ~~\$50,000.00~~

\$75,000.00 for one person in one accident and a minimum of \$500,000 for each accident.

(iii) Aircraft property damage liability--minimum of \$500,000.00 for each accident.

(c) will remain the same.

(d) Aircraft transporting freight exclusively having a gross weight of 20,000 pounds or less (including agricultural aircraft).

(i) Aircraft bodily injury and death liability (excluding flight crew aboard aircraft)--a minimum of ~~\$50,000.00~~ \$75,000.00 for one person in one accident, and a minimum of ~~\$200,000.00~~ \$300,000.00 for each accident.

(ii) Aircraft property damage liability (excluding freight aboard aircraft)--a minimum of \$100,000.00 for each accident.

(e) Aircraft transporting freight exclusively having a gross weight of over 20,000 pounds (including agricultural aircraft).

(i) Aircraft bodily injury and death liability (excluding flight crew aboard aircraft)--a minimum of ~~\$50,000.00~~ \$75,000.00 for one person in one accident, and a minimum of \$500,000.00 for each accident.

(ii) Aircraft property damage liability (excluding freight aboard aircraft)--a minimum of \$500,000.00 for each accident."

Auth: 67-3-421, MCA Imp: 67-3-401, MCA

3. This amendment is being proposed to bring Montana's liability requirements for commercial air operations in line with federal rules.

4. Interested persons may submit their data, views or arguments concerning the proposed amendment in writing to the Aeronautics Division, Department of Commerce, P.O. Box 5178, Helena, Montana 59604, no later than July 23, 1987.

5. If a person who is directly affected by the proposed amendment wishes to express his data, views, or arguments orally or in writing a public hearing, he must make written request for a hearing and submit this request along with any comments he has to the Aeronautics Division, Department of Commerce, P.O. Box 5178, Helena, Montana 59604, no later than July 23, 1987.

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

-814-

be held at a later date. Notice of the hearing will be published in the Montana Administrative Register.

AERONAUTICS DIVISION

BY:

Keith P. Colbo  
KEITH L. COLBO, DIRECTOR  
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, June 15, 1987.

12-6/25/87

MAR Notice No. 8-106-3

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

|                      |   |                          |
|----------------------|---|--------------------------|
| In the matter of the | ) | <b>REVISED</b>           |
| amendment of ARM     | ) | NOTICE OF PUBLIC HEARING |
| 16.8.820 concerning  | ) | ON PROPOSED AMENDMENT    |
| ambient air quality  | ) | OF AIR QUALITY STANDARDS |
| standards for sulfur | ) | FOR SULFUR DIOXIDE       |
| dioxide              | ) |                          |

(Air Quality)

To: All Interested Persons

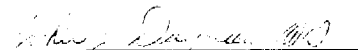
1. On June 11, 1987, at page 742 of the Montana Administrative Register, issue number 11, the board published a notice of a public hearing to be held July 10, 1987, to consider the revision of board rule 16.8.820, the state's ambient air quality standards for sulfur dioxide.

2. The hearing date and place have been changed to July 31, 1987, at 10:00 a.m., in the Mary Alice Fortin Health Conference Center, rooms A & C of the first floor of the new addition of the Deaconess Medical Center, 2813 9th Avenue, Billings, Montana. This time and place supercede the time and place specified in the board's earlier notice. No hearing will be conducted in Helena.

3. The revision to the rule is being proposed because of the recent enactment of the 50th Legislature, HB534, directing the Board to revise the state's 24-hour and annual standards for sulfur dioxide.

4. Interested parties may submit their data, views, or arguments concerning the proposed revision, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Robert L. Solomon, Department of Health and Environmental Sciences, Cogswell Building, Helena, Montana 59620, no later than July 31, 1987.

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

  
JOHN J. DRYNAN, M.D., Director  
Department of Health and  
Environmental Sciences

Certified to the Secretary of State June 15, 1987.

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

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

To: All Interested Persons

1. On July 15, 1987, at 1:30 p.m., a public hearing will be held in Room C-209 of the Cogswell Building, 1400 Broadway, Helena, Montana, to consider the adoption of new rules I through XLIX, which add control measures for communicable diseases which are not currently in the rules; add disease reporting requirements; transfer requirements for case investigation, potential epidemics, quarantines, and isolation from separate subchapters to a general subchapter with other general requirements; add TB treatment, follow-up, reporting, and diagnosis confirmation standards; and add specific prophylactic requirements to prevent blindness in newborns. The hearing will consider, as well, the amendment and repeal of the above-captioned rules.

2. The following proposed rules replace existing rules as follows: NEW RULE IV replaces rule 16.28.403 found at page 16-1212 of the Administrative Rules of Montana; NEW RULE V replaces rule 16.28.404 at page 16-1213; NEW RULE VI replaces 16.28.503 at page 16-1214; NEW RULE VII replaces 16.28.501 and 16.28.502 at pages 16-1213 and 16-1214; NEW RULE XI replaces rule 16.28.1101 at page 16-1250; NEW RULE XVIII replaces rule 16.28.1102 at page 16-1250; NEW RULE XIX replaces rule 16.28.1103 at page 16-1250; NEW RULE XX replaces rule 16.28.615 at page 16-1217; NEW RULE XXVIII replaces rule 16.28.1104 at page 16-1250; NEW RULES XXXI and XLIX replace rule 16.28.610 at page 16-1216; NEW RULE XXXV replaces rules 16.28.901-16.28.903 at pages 16-1241 and 16-1242; NEW RULE XLI replaces rule 16.28.1105 at page 16-1250. The rest of the proposed

rules do not replace or modify any section currently found in the Administrative Rules of Montana.

3. The proposed amendments affect the present rules of the same numbers found in the Administrative Rules of Montana. The proposed amendments would add and update definitions of terms applicable to communicable disease control; generally update the list of reportable communicable diseases and specific and general communicable disease control measures; consolidate and reorganize reporting requirements; clarify what a local health officer can and must do to control spread of communicable disease; and add hepatitis and AIDS to those diseases which, in case of death, require special handling of the body.

4. The rules proposed to be repealed can be found on the pages of the Administrative Rules of Montana, noted as follows: rule 16.28.102 at page 16-1207, rules 16.28.401 - 16.28.404 at pages 16-1212 and 16-1213, rules 16.28.501 - 16.28.505 at pages 16-1213 through 16-1215, rule 16.28.613 at page 16-1217, rule 16.28.615 at page 16-1217, rule 16.28.620 at page 16-1219, rule 16.28.627 at pages 16-1220 and 16-1221, rule 16.28.633 at page 16-1222, rules 16.28.901 - 16.28.903 at pages 16-1241 and 16-1242, rule 16.28.1004 at page 16-1248, and rules 16.28.1101-16.28.1105 at page 16-1250.

5. The proposed new rules and the rules proposed to be amended provide as follows (text in amended rules to be stricken is interlined, and new text is underlined):

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

(1) "Approved vaccine" means an immunizing agent approved by the Bureau of Biologics, Food and Drug Administration, U.S. Public Health Service.

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

(a) If soiling with blood or body fluids is likely, gowns must be used to cover clothes, worn only once, and laundered.

(b) Single-use gloves must be used if blood or body fluids will be touched, and discarded in a manner preventing contact with them thereafter.

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

(d) Articles contaminated with blood or body fluids must be discarded or disinfected.

(e) Needle-stick injuries must be avoided; used needles must not be recapped or bent and must be placed in a prominently labeled, puncture-resistant container for disposal.

(f) If a needle-stick injury occurs, the injured person must be evaluated to determine if hepatitis prophylaxis is needed or human immunodeficiency virus is a concern.

(g) Any blood spills must be cleaned up promptly with a solution of 5.25% sodium hypochlorite diluted 1:10 with water.

(h) A case must be restricted to a private room if his hygiene is poor, i.e. he does not wash hands after touching

infective material, contaminates the environment with infective material, or shares contaminated articles with other individuals who as yet have not contracted the disease in question; such a person may share a room with anyone else infected with the same organism.

42(3) "Carrier" means a person or animal who harbors a specific infectious agent without discernible illness and serves as a potential source of infection. A carrier may be "incubatory" (just before onset), "convalescent" (after clinical recovery), or "healthy" (no apparent illness at any time). The carrier state may be temporary or permanent.

43(4) "Case" means a person who has is confirmed or suspected to have a reportable disease.

44(5) "Cleaning" means the removal from surfaces, by scrubbing and washing, as with hot water and soap or detergent, of infectious agents and of organic matter on which and in which infectious agents may be able to live and remain virulent.

45(6) "Communicable disease" means an illness due or suspected to be due to a specific infectious agent or its toxic products, which results from transmission of that agent or its products to a susceptible host, directly or indirectly.

46(7) "Concurrent disinfection" means the use of disinfecting methods a method which will destroy any harmful infectious agents present immediately after the discharge of infectious material from the body of an infected person, or after the soiling of articles with such infectious discharges before there is opportunity for any other contact with them.

48 "Confidential case card" is the form provided by the department to report a case of a reportable disease.

47(9) "Contact" means a person or animal that has been in such had opportunity to acquire an infection due to its association with an infected person or animal or a contaminated environment as to have had opportunity to acquire the infection.

10) "Contamination" means the presence of a disease-causing agent upon a living body surface or within or upon any inanimate article or substance.

43(11) "Department" means the department of health and environmental sciences.

40(12) "Disinfection" means the destruction of infectious organisms outside of a human or animal body by chemical or physical means directly applied.

40(13) "Disinfection" is the destruction by chemical or physical means of undesired animal forms on domestic animals or present upon the person or the clothing or in the environment of an individual or on domestic animals a human being.

14) "Drainage and secretion precautions" mean the following requirements to prevent spread of disease through contact with purulent material from an infected body site:

(a) if soiling by the infective material is likely, gowns must be worn, used only once, and laundered.

(b) Single-use gloves must be used if infective material will be touched, and discarded in a manner preventing contact



with them thereafter.

(c) Anyone touching the case or potentially contaminated articles must wash his hands immediately afterward and before touching another person.

(d) Any article contaminated with infective material must be discarded or disinfected in a manner which prevents contact with the material thereafter.

(15) "Enteric precautions" mean the following requirements to prevent spread of disease through feces:

(a) Gowns must be used to cover clothes if soiling is likely, worn only once, and laundered.

(b) Single-use gloves must be used if infective material will be touched, and discarded in a manner preventing contact with them thereafter.

(c) Hands must be washed after touching the case or potentially contaminated articles and before touching another person.

(d) Articles contaminated with infective material must be discarded or disinfected.

(e) A case must be restricted to a private room if his hygiene is poor, i.e. he does not wash hands after touching infective material, contaminates the environment with infective material, or shares contaminated articles with other individuals who as yet have not contracted the disease in question; such a person may share a room with anyone else infected with the same organism.

443(16) "Epidemic" is an incidence of a disease or infection significantly exceeding the incidence normally observed in a specified population of people over a specific period of time. An "outbreak" is the same as an "epidemic".

443(17) "Health care facility" is a facility defined in section 50-5-101, MCA.

443(18) "Household contact" is a person or animal living within the household of an infected person.

443 "Infected" means diagnosed or believed to have a communicable disease.

443(19) "Infected person" means a person who harbors an infectious agent and who has either manifest disease or inapparent infection. An infectious person is one from whom the infectious agent can be naturally acquired.

443(20) "Infection" means the entry and development or multiplication of an infectious agent in the body of man or animals. Infection is not synonymous with infectious disease; the result may be inapparent or manifest. The presence of living infectious agents on the exterior surface of the body or upon articles of apparel or soiled articles is not infection, but contamination of such surfaces and articles.

443(21) "Infectious agent" means an organism, chiefly a microorganism, but including helminths, that is capable of producing an infection or infectious disease.

(22) "Infectious disease" means a clinically manifest disease of man or animals resulting from an infection.

(23) "Infectious person" means a person from whom another person may acquire an infectious agent by touch or proximity.

§24 "Isolation" means separation during the period of communicability of an infected or probably infected person from other persons, in such places and under such conditions approved by the department or local health officer and as will prevent preventing the direct or indirect conveyance of the infectious agent to persons who are susceptible to the infectious agent in question or who may convey the infection to others to the satisfaction of the department or the local health officer. Isolation may be either modified or strict, as defined below:

(a) "Modified isolation" means instruction by either the department, a local health officer, or an attending physician, directed to the infected person, any members of his family, and any other close contacts, in accordance with "Guidelines for Isolation Precautions in Hospitals" published by the Government Printing Office, July, 1983, setting restrictions on the movements of and contacts with the infected person and specifying whichever of the following are also appropriate:

- (i) tuberculosis isolation;
- (ii) respiratory isolation;
- (iii) enteric precautions;
- (iv) drainage and secretion precautions;
- (v) blood and body fluid precautions;

(b) "Strict isolation" includes the following measures:

(i) An infected person must be isolated behind a closed door in a separate bed in a room protected from potential vectors.

(ii) A person caring for an infected person must avoid coming into contact with any other person until every precaution required has been taken to prevent the spread of infectious material.

(iii) Each person caring for an infected person must wear a washable outer garment, mask, and gloves, and must thoroughly wash his hands with soap and hot water after handling an infected person or an object an infected person may have contaminated. Before leaving the room of an infected person, a person caring for an infected person must remove the washable outer garment and hang it in the infected person's room until the garment and room are disinfected.

(iv) An object which may have been contaminated by an infected person must be either thoroughly disinfected before it is removed from the infected person's room or bagged, labeled, and burned or decontaminated.

(v) Disposal of feces and urine of an infected person must be made by flushing them down a toilet attached to a municipal or other sewage system approved by the department.

(25) "Laboratorian" means any person who supervises or works in a laboratory.

§26 "Local health officer" means the city, county, or district health officer or department as defined in Title 59, Chapter 2, Montana Code Annotated.

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

§27 "Nosocomial outbreak" means an epidemic or sus-

pected epidemic of nosocomial infections. A "nosocomial infection" means an infection originating in a health-care facility.

(28) "Physician" means a person licensed to practice medicine in any jurisdiction in the United States or Canada.

(29) "Potential AIDS" means the condition in which an individual's blood contains the antibody to the human immunodeficiency virus (HIV).

(30) "Potential epidemic" means the presence or suspected presence of a communicable disease in a population where the number of susceptibles susceptible persons and the mode of transmission of the disease may cause further spread of that disease.

(31) "Quarantine" means restriction of freedom of movement for a period of time equal to the longest usual incubation period of the disease specified in such a manner as to prevent effective contact with an unexposed person or animal.

(a) "Modified quarantine" means partial restriction of freedom of movement of exposed persons; those measures required by a local health officer or the department to prevent transmission of disease to or by those individuals who have been or are otherwise likely to be in contact with an individual with a communicable disease.

(32) "Reportable disease" means any communicable disease, the occurrence or suspected occurrence of which is required by ARM 16.28.202 to be reported.

(33) "Respiratory isolation" means:

(a) the patient must be in a private room;

(b) any person in close contact with the patient must wear a mask;

(c) any person caring for the patient must thoroughly wash his hands after touching the patient or contaminated articles and before touching another person; and

(d) articles contaminated with infective material must be discarded or bagged, labelled for decontamination, and decontaminated.

(34) "Sensitive occupation" means employment in direct care of children, the elderly, or individuals who are otherwise at a high risk for disease or where disease spread could occur due to the nature of his/her work.

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

(36) "Surveillance" means review of person or animal to determine whether such person or animal has contracted a communicable disease; scrutiny of all aspects of occurrence and spread of a disease that are pertinent to effective control.

(37) "Susceptible" means having no insufficient resistance against a disease and consequently liable to contract the disease if exposed.

(38) "Suspected case" means a person whose medical history, signs, and symptoms suggest that he may have or may be developing a communicable disease.

(28) -- "Terminat-eleaning" -- means the-eleaning-of-the-per-sonat-e-clothing--and-immediate--physiat-environment--of-the-pa-tient-after-the-patient-is-no-longer-a-source-of-infection-

(29) "Venereat---disease"---means---syphitisr---gonorrhear-chancroidr---lymphogranuloma--venereumr---or---granuloma-inguinat-

(39) "Tuberculosis isolation" means:

(a) the patient must be in a private room which has ven-tilation to the outside and away from an enclosed area.

(b) If the infective organism can be spread by cough, a mask must be worn by anyone entering the patient's room; if the organism can be spread by fluid, a gown and gloves must be worn;

(c) any person caring for the patient must wash his hands after touching the patient or potentially contaminated articles and before touching another person; and

(d) all potentially contaminated articles must be cleaned, disinfected, or discarded.

(40) The department hereby adopts and incorporates by reference the "Guidelines for Isolation Precautions in Hospi-tals" published by the Government Printing Office July, 1983, which specifies precautions that should be taken to prevent transmission of communicable diseases. A copy of the "Guide-lines" may be obtained from the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161 (phone 703-487-4850).

AUTHORITY: 50-1-202, 50-2-116, MCA

IMPLEMENTING: 50-1-202, MCA

16.28.201 REPORTERS (1) A Any person, including but not limited to a physician, dentist, nurse, medical examiner, other health care practitioner, administrator of a health care facili-ty, public or private school administrator, superintendent or headmaster or administrator of a private school or laboratory an who knows or has reason to believe that a category-Ay--By--Cy or-B--reportable-diseasey--as-specified--in-ARM-16-28-202r case exists shall immediately report as-required-in-ARM-16-28-202 to a-ecet--health-officer-or-the-department- the information spe-cified in-

(a) [NEW RULE 1(2)] to the department alone, in the case of potential AIDS; or

(b) [NEW RULE 1(1)(a)-(c)] to the local health officer in every other case.

(2) A-person-administering-a-clinical-laboratory-in-which a-laboratory-examination-of-any-specimen-derived-from-the-human body-yields-microscopic-culturat--immunologicat-serologicat or--other-evidence--indicative-of-a-disease-listed-in-section (2)(c)-of-this-rule-shall-notify-the-ecet-health-department-or-the-department-

(a) A-notification-must-include-the-name-date-and-result of-the-test-performed-the-name-and-age-of-the-person-from-whom the-specimen--was--obtainedr--and--the-name-and-address-of-the physiat-en-for-whom-the-test-was-performed--Notification-may-be by-telephone--submission-of-a-legible-copy-of-the-laboratory reportr-or-submission-of-a-department-reporting-form--which-may

be obtained from the department.

(b) A laboratory notification submitted in accordance with this rule is confidential and is not open to public inspection.

(c) The diseases subject to notification under subsection (2) of this rule are:

Bruceella  
Gonorrhea  
Diphtheria  
Gonorrhea  
Granuloma inguinale  
Hepatitis A or B  
Leptospirosis  
Lymphogranuloma venereum  
Rubella (non-immune persons only)  
Salmonellosis  
Shigellosis  
Syphilis  
Tuberculosis  
Typhoid or paratyphoid fever

or any other disease listed in ARM-16-28-202(1) through (4).

(2) A local health officer must submit to the department, on the schedule noted in [NEW RULE 1], the information specified in [NEW RULE 1] concerning each confirmed or suspected case of which he is informed.

(3) A physician who diagnoses a case of acquired immune deficiency syndrome (AIDS) must submit to the department and the local health officer the report required by ARM-16-28-202(6)(c).

(4) A physician or laboratory laboratorian performing a blood test which shows the presence of the antibody to the human T-lymphotropic immunodeficiency virus type-III (HIV) must:

(a) Submit submit to the department, in addition to the report required by ARM-16-28-202(6)(d), and [NEW RULE 1(4)], the report required by [NEW RULE 1(8)] as well.

(b) Submit to the department laboratory a blood specimen from the person tested in order to confirm the test results.

(5) The administrator of a laboratory in which a test of blood is made to determine whether the antibody to the human T-lymphotropic virus type-III is present must submit to the department by the 15th day following the month in which the test was performed a report on a form supplied by the department indicating the number of tests with negative results for that antibody which were done during that month.

AUTHORITY: 50-1-202, 50-17-103, 50-18-105, MCA  
IMPLEMENTING: 50-1-202, 50-2-118, 50-17-103, 50-18-102, 50-18-106, MCA

16-28-202 REPORTABLE DISEASES (1) The following Reportable communicable diseases include are reportable:

(1) Category A diseases:  
Botulism, including infant botulism  
Cholera

Diphtheria  
Measles  
Plague  
Polio-myelitis-paralytic  
Polio-myelitis-non-paralytic  
Rabies-human  
Relapsing-fever-(louse-borne)  
Smallpox  
Typhus-(louse-borne)  
Yellow-fever

Category-A-diseases-also-include-an-undiagnosed-febrile-illness  
in-a-person-recently--returning-from-a-foreign-country-such-as  
Ebola-hemorrhagic-fever-lassa-fever-or-Marburg-virus-disease-  
(a) A-Category-A-disease-must-be-reported-within--6-hours  
of-diagnosis--to-a-local-health-office-followed-by-a-written  
report-submitted-within-48-hours--The-report-must-include-the  
name-address-and-telephone-number-of-the-infected-person-the  
name-address-and-telephone-number-of-the-reporter-and-the  
name-of-the-disease-

(2) Category-B-diseases-

Anthrax  
Amebiasis  
Brucellosis-(undulant-fever)  
Chancroid  
Encephalitis--or--encephalomyelitis--(post-infectious--  
arthropod-borne--other--or--unspecified)  
Glanders  
Gonococcal-disease-(including-gonorrhea)  
Granuloma-inguinale  
Hepatitis-type-A-(infectious)-type-B-(serum)------  
-unspecified-  
Legionnaires'-disease  
Leprosy  
Leptospirosis  
Lymphogranuloma-venereum  
Malaria  
Meningitis-aseptic-(viral)  
Meningococcal--disease--(meningococcal--meningococcal  
meningitis--or--other-illness)  
Mumps  
Ornithosis-(psittacosis)  
Rabies-animal-(specify-county-date)  
Rocky-Mountain-spotted-fever-(tick-borne-typhus)  
Rubella-(German-measles)  
Rubella-congenital  
Salmonellosis  
Shigellosis-(bacillary-dysentery)  
Syphilis  
Tetanus  
Trichinosis  
Tuberculosis-(including-non-pulmonary-and-atypical)  
Typhoid  
Typhoid-and-paratyphoid-Fever  
Whooping-cough-(the-illness-(pertussis))

(a) A-Category-B-disease-must-be-reported-within-24-hours  
of-diagnosis--to-a--local-health--officer--The-report-must-in-  
clude-the-name-of--the-infected--person--the--reporter--and--the  
disease--

(3) Category-B-diseases--

Chickenpox

Epidemic-gastroenteritis

Epidemic-keratoconjunctivitis

Food-borne

Influenza

Nosocomial

Pediculosis-(lice)

Ringworm-(dermatophytes)-

Scabies

Streptococcal--infections--(including--scarlet--fever--and--  
"strep-throat")

Suspected-non-polio-enteroviral-infections

Swimmer's-itch--cutaneous--larva-migrans

Water-borne

(a) Only-an-epidemic-of--a--Category--B--disease--must-be  
reported-to--a--local--health-officer--A-report-may-be-made-by  
mail--or--telephone-without--identification-of-an-infected-person--  
The-department-may-request-further-information--

(4) Category-B-diseases--

Animal-bites

Bacterial-meningitis-(other-than-meningococcal)

Celerado-tick-fever

Guillain-Barre-syndrome

Heavy-metal-poisoning--(lead--cadmium--arsenic-----  
--phosphorus--mercury--other)

Helminth-infestations

H-Fever

Reye's-syndrome

Rheumatic-fever-(acute)

Subacute-steroiding-papillophatitits-(SSPE)

Typhoid-murine

Viral-exanthem-in-pregnant-women

Exotic-diseases--(including-but-not-limited-to-metastasis  
histoplasmosis--coccidioidomycosis--coccidioidomycosis  
and-cryptococcosis)

(a) A-Category-B-disease-must-be-reported-within-24-hours  
of-diagnosis--to-a--local-health--officer--The-report-must-in-  
clude-the-name-of--the-infected--person--the--reporter--and--the  
disease--

(5)(a)--Category-E-diseases-and-conditions-are--

(i) Acquired-immune-deficiency-syndrome-(AIDS)

(ii) Potential-AIDS--as-indicated--by-the-presence-of-the  
human-T-lymphotropic-virus-type-III-antibody--

(b) A-category-E-disease-or-condition-must-be-reported-to  
the-department--and--in--the-case--of-AIDS--to-the-local-health  
officer-of-the-county-from-which--the-report--is-made--by-5:00  
p.m.--Friday--of-the-week-in-which-the-diagnosis-of-AIDS-is-made  
or-the-test-showing-potential-AIDS-is-performed--

(c) The-report-for-AIDS-must-include--the-information-re-

quired--by--the--department's--communicable-disease--confidential--  
case-report-form--available--from--the--department--

(d) The report of potential AIDS must include:

(i) --the date the test identifying the antibody was performed;

(ii) --the name and address of the reporter; and

(iii) --the initials of the person tested or any other identifier such as a number assigned by the reporter which does not reveal the name of the person tested;

(c) The name of any category--E case and the name and street address of the reporter of any such case are confidential and not open to public inspection.

Acquired immune deficiency syndrome (AIDS) or potential AIDS, as indicated by the presence of the human immunodeficiency virus antibody

Amebiasis

Anthrax

Botulism (including infant botulism)

Bruceellosis

Campylobacter enteritis

Candidiasis

Chancroid

Chickenpox

Chlamydial genital infection

Cholera

Colorado tick fever

Conjunctivitis epidemic

Diarrheal disease outbreak

Diphtheria

Encephalitis

Gastroenteritis epidemic

Giardiasis

Gonococcal infection

Gonococcal ophthalmia neonatorum

Granuloma inguinale

Hansen's disease (leprosy)

Hepatitis A, B, non-A non-B, or unspecified

Herpes, genital

Histoplasmosis

Influenza

Legionellosis

Leptospirosis

Listeriosis

Lyme disease

Lymphogranuloma venereum

Malaria

Measles (rubeola)

Meningitis, bacterial or viral

Mononucleosis

Mumps

Nongonococcal urethritis

Ornithosis (psittacosis)

Paratyphoid

Pediculosis (lice)



Pertussis (whooping cough)  
Plague  
Polomyelitis, paralytic or non-paralytic  
Q-fever  
Rabies or rabies exposure (human)  
Reye's syndrome  
Ringworm epidemic  
Rocky Mountain spotted fever  
Rubella (including congenital)  
Salmonellosis  
Scabies  
Shigellosis  
Smallpox (including vaccinia)  
Staphylococcal epidemic  
Streptococcal epidemic  
Swimmer's itch (cutaneous larva migrans)  
Syphilis  
Taeniasis  
Tetanus  
Toxic shock syndrome  
Trichinosis  
Tuberculosis  
Tularemia  
Typhoid fever  
Typhus  
Yellow fever  
Yersiniosis  
Illness occurring in a traveler from a foreign country  
An unusual outbreak of any communicable disease in Control of Communicable Diseases in Man, An Official Report of the American Public Health Association, 14th Edition, 1985.

(2) The department hereby adopts and incorporates by reference "Control of Communicable Diseases in Man, An Official Report of the American Public Health Association", 14th edition, 1985, which lists and specifies control measures for communicable diseases. A copy of "Control of Communicable Diseases in Man" may be obtained from the American Public Health Association, 1015 - 15th Street NW, Washington, D.C. 20005.

AUTHORITY: 50-1-202, 50-17-103, 50-18-105, 50-18-106, MCA  
IMPLEMENTING: 50-1-202, 50-2-118, 50-17-103, 50-18-102, 50-18-106, MCA

NEW RULE 1. REPORTS AND REPORT DEADLINES (1) A local health officer or his authorized representative must immediately report to the department by telephone the information cited in [NEW RULE 11(1)] whenever a case of one of the following diseases is suspected or confirmed:

Anthrax  
Botulism (including infant botulism)  
Diphtheria  
Measles (rubeola)  
Plague  
Rabies or rabies exposure (human)

Smallpox (including vaccinia)

Typhoid fever

(2) A local health officer or his authorized representative must mail to the department the information required by (NEW RULE 11(1)) for each suspected or confirmed case of one of the following diseases, within the time limit noted for each:

(a) On the same day information about a case of one of the following diseases is received by the local health officer:

Chancroid

Cholera

Diarrheal disease outbreak

Gastroenteritis epidemic

Gonococcal infection

Gonococcal ophthalmia neonatorum

Granuloma inguinale

Listeriosis

Lymphogranuloma venereum

Meningitis, bacterial or viral

Pertussis (whooping cough)

Polio myelitis, paralytic or non-paralytic

Rubella (including congenital)

Syphilis

Tetanus

Typhus

Yellow fever

Illness occurring in a traveler from a foreign country

An unusual outbreak of any communicable disease in Control of Communicable Diseases in Man, An Official Report of the American Public Health Association, 14th Edition, 1985.

(b) Within 7 calendar days after the date information about a case of one of the following diseases is received by the local health officer:

Acquired immune deficiency syndrome (AIDS)

Amebiasis

Brucellosis

Campylobacter enteritis

Candidiasis

Chlamydial genital infection

Encephalitis

Giardiasis

Hansen's disease (leprosy)

Hepatitis, A, B, non-A non-B, or unspecified

Histoplasmosis

Legionellosis

Leptospirosis

Lyme disease

Malaria

Mumps

Nongonococcal urethritis

Ornithosis (Psittacosis)

Paratyphoid

Q-fever

Reye's syndrome

Rocky Mountain spotted fever  
Salmonellosis  
Shigellosis  
Taeniasis  
Toxic shock syndrome  
Trichinosis  
Tuberculosis  
Tularemia  
Yersiniosis

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

Chickenpox  
Colorado tick fever  
Conjunctivitis epidemic  
Herpes, genital  
Influenza  
Mononucleosis  
Pediculosis (lice)  
Ringworm epidemic  
Scabies  
Staphylococcal epidemic  
Streptococcal epidemic  
Swimmer's itch (cutaneous larva migrans)

(4) Anyone, other than the local health officer, who reports a case of AIDS or potential AIDS must submit the report by 5:00 p.m. Friday of the week in which the diagnosis of AIDS is made or the test showing potential AIDS is performed.

(5) A laboratorian must submit to the department by the 15th day following each quarter a report on a form supplied by the department indicating the number of tests with negative or positive results which were done that quarter for tuberculosis or a sexually transmitted disease.

(6) A laboratorian in a laboratory in which a test of blood is made to determine whether the antibody to the human immunodeficiency virus (HIV) is present must submit to the department by the 15th day following the month in which the test was performed a report on a form supplied by the department indicating the number of tests with negative results for that antibody which were done during that month.

(7) The department hereby adopts and incorporates by reference "Control of Communicable Diseases in Man, An Official Report of the American Public Health Association", 14th edition, 1985, which lists and specifies control measures for communicable diseases. A copy of "Control of Communicable Diseases in Man" may be obtained from the American Public Health Association, 1015 - 15th Street NW, Washington, D.C. 20005.

AUTHORITY: 50-1-202, MCA  
IMPLEMENTING: 50-1-202, MCA

**NEW RULE 11 REPORT CONTENTS** (1) A report of a case of reportable disease which is required by [NEW RULE 1(1) or (2)] must include:

- (a) name and age of case;
- (b) dates of onset of disease and date disease reported to health officer;
- (c) whether or not the case is suspected or confirmed;
- (d) name and address of case's physician; and
- (e) name of reporter or other person the department can contact for further information regarding the case.

(2) A report of potential AIDS must include:

- (a) the date the test identifying the antibody was performed;
- (b) the name and address of the reporter; and
- (c) the initials of the person tested or any other identifier, such as a number, assigned by the reporter which does not reveal the name of the person tested.

(3) The information required by sections (1) through (3) of this rule must be supplemented by any other information in the possession of the reporter which the department requests.

(4) The laboratory reports required by [NEW RULE 1(5) and (6)] and the numerical report required by [NEW RULE 1(3)] need contain only the information specified in those sections.

(5) The name of any case of AIDS or potential AIDS and the name and address of the reporter of any such case are confidential and not open to public inspection.

AUTHORITY: 50-1-202, MCA

IMPLEMENTING: 50-1-202, MCA

**NEW RULE 111 CONFIRMATION OF DISEASE** (1) If a local health officer receives information about a case of any of the following diseases, he or his authorized representative must obtain and submit to the department a specimen from the case, which will be analyzed to confirm the existence or absence of the disease in question:

- Amebiasis
- Anthrax
- Botulism (including infant botulism)
- Brucellosis
- Chancroid
- Cholera
- Diarrheal disease epidemic
- Diphtheria
- Gonococcal infection in a person less than 14 years of age
- Granuloma inguinale
- Hansen's disease (leprosy)
- Influenza
- Leptospirosis
- Lymphogranuloma venereum
- Measles (rubeola)
- Ornithosis (Psittacosis)
- Pertussis (whooping cough)
- Plague
- Polio, paralytic or non-paralytic

Rabies (human)  
Rubella (including congenital)  
Shigellosis  
Smallpox (including vaccinia)  
Syphilis  
Tetanus  
Trichinosis  
Tuberculosis  
Tularemia  
Typhoid fever  
Typhus

Illness occurring in a traveler from a foreign country

(2) A laboratorian or any other person in possession of a specimen from a case of a disease listed in (1) above must submit it to the local health officer upon request.

(3) If no specimen from the case is otherwise available and the case refuses to allow a specimen to be taken for purposes of (1) above, the case will be assumed to be infected and must comply with whatever control measures are imposed by the department or local health officer.

(4) A physician or laboratorian performing a blood test which shows the presence of the antibody to the human immunodeficiency virus (HIV) must submit to the department laboratory a blood specimen from the person tested in order to confirm the test results.

AUTHORITY: 50-1-202, MCA

IMPLEMENTING: 50-1-202, MCA

#### 16.28.301 PUBLIC-FOOD-HANDLERS SENSITIVE OCCUPATIONS

(1) A local health officer or the department may restrict a person employed in direct care of children, the elderly, or individuals who are otherwise at a high risk for disease from practicing an occupation while infected by a reportable disease if, given the means of transmission of the disease in question, the nature of the person's work would tend to spread the disease.

(2) No infected infectious person may engage in any occupation involving the preparation, serving, or handling of food, including milk, to be consumed by others than his immediate family, until a local health officer determines him to be free of the infectious agent or incapable of transmitting unlikely to transmit the infectious agent due to the nature of his particular work.

AUTHORITY: 50-1-202, MCA

IMPLEMENTING: 50-1-202, MCA

16.28.302 FUNERALS (1) A funeral service for a person who died of a communicable reportable disease listed in ARM 16-28-202-(1)-(2) must be conducted in accordance with instructions of a local health officer.

(2) if a person dies from a disease requiring quarantine of contacts, a funeral service for that person may be open to the public may be permitted only if the casket remains closed and those contacts subject to the quarantine who attend

the funeral are segregated from the rest of those attending, public, unless these the contacts have been determined by a local health officer to be incapable of transmitting that the infection or disease which caused the death.

(3) Transportation of dead human bodies must be in accord with ARM 16.29.103.

AUTHORITY: 50-1-202, MCA

IMPLEMENTING: 50-1-202, MCA

#### 16.28.303 TRANSPORTATION OF COMMUNICABLE DISEASE CASES

(1) Neither an infected person with a communicable disease subject to isolation nor a contact subject to quarantine may travel or be transported from one location to another without the permission of a--local--health-officer--of-the-departure--and--a--local--health-officer--of-the-arrival--location; the local health officers with jurisdiction over the places of departure and arrival, except when if:

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

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

AUTHORITY: 50-1-202, 50-2-118, MCA

IMPLEMENTING: 50-1-202, 50-2-118, MCA

16.28.304 IMPORTATION OF DISEASE (1) No infected person who has a reportable disease and is infectious transmits the disease may be brought within the boundaries of the state without the permission of the department, and whenever

(2) Whenever a person knows or has reason to believe that an infected person, whether or not infectious, has been brought within such the boundaries of the state, he shall report the name and location of such the infected person to the department.

AUTHORITY: 50-1-202, MCA

IMPLEMENTING: 50-1-202, MCA

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

(a) Investigate and take whatever steps are necessary to prevent spread of the disease;

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

(i) examine or ensure that a physician examines any infected person in order to verify the diagnosis;

(ii) make an epidemiologic investigation to determine the source and possible spread of infection;

(iii) take appropriate steps to prevent or control the spread of disease; and

(iv) notify contacts (for example, morticians or emergency responders) of the case and give them the information

needed to prevent contracting the disease.

(c) Whenever the identified source of a reportable disease or a person infected or exposed to a reportable disease who should be quarantined or placed under surveillance is located outside of his jurisdiction:

(i) notify the department or the local health officer of the jurisdiction in which the source or person is located if within Montana; or

(ii) notify the department if the source or person is located outside of Montana.

AUTHORITY: 50-1-202, 50-2-118, 50-17-103, 50-18-105, MCA

IMPLEMENTING: 50-1-202, 50-2-118, 50-17-103, 50-17-105, 50-18-102, 50-18-107, 50-18-108, MCA

#### NEW RULE V. POTENTIAL EPIDEMICS

(1) Whenever a disease listed in NEW RULE 1(1) is confirmed or whenever any other communicable disease listed in Control of Communicable Diseases in Man, An Official Report of the American Public Health Association, 14th Edition, 1985, or other communicable disease which constitutes a threat to the health of the public becomes so prevalent as to endanger an area outside of the jurisdiction where it first occurred, the local health officer of the jurisdictional area in which the disease occurs must notify the department and cooperate with the department's epidemiologist or his representative to control the spread of the disease in question.

(2) The department hereby adopts and incorporates by reference "Control of Communicable Diseases in Man, An Official Report of the American Public Health Association", 14th edition, 1985, which lists and specifies control measures for communicable diseases. A copy of "Control of Communicable Diseases in Man" may be obtained from the American Public Health Association, 1015 - 15th Street NW, Washington, D.C. 20005.

AUTHORITY: 50-1-202, MCA

IMPLEMENTING: 50-1-202, 50-2-118, MCA

#### NEW RULE VI. QUARANTINE OF CONTACTS -- NOTICE AND OBSERVATION

(1) If a communicable disease requires quarantine of contacts, a local health officer or the department shall institute whatever quarantine measures are necessary to prevent transmission, specifying in writing the person or animal to be quarantined, the place of quarantine, the frequency with which possible or known contacts must be medically observed to determine if physiological signs of the disease are occurring, and the duration of the quarantine.

(2) A local health officer or the department must ensure such contacts are medically observed as frequently as necessary during the quarantine period.

AUTHORITY: 50-1-202, 50-2-118, 50-18-105, MCA

IMPLEMENTING: 50-1-202, 50-2-118, 50-18-102, 50-18-107, MCA

NEW RULE VII ISOLATION OF PATIENT -- NOTICE (1) When isolation of a patient is declared, the agency declaring the isolation must supply to the infected person in writing a description of the place of isolation, the length of the isolation period, and the name and title of the person declaring the isolation.

(2) A local health officer or the department may inspect the place of isolation during the period of isolation to determine compliance with the isolation.

AUTHORITY: 50-1-202, 50-2-118, 50-18-105, MCA

IMPLEMENTING: 50-1-202, 50-2-118, 50-18-102, 50-18-107, MCA

18.28.601 MINIMAL CONTROL MEASURES (1) This subchapter contains minimal control measures to prevent the spread of disease which must be employed by a local health officer, or an attending physician, or any other person caring for a person with a reportable disease.

(2) If a reportable disease is not listed in this subchapter, no minimum control measures for the disease are required.

AUTHORITY: 50-1-202, 50-2-118, 50-2-118, MCA

IMPLEMENTING: 50-1-202, 50-2-118, 50-2-118, MCA

NEW RULE VIII ACQUIRED IMMUNE DEFICIENCY SYNDROME-

(1) Whenever acquired immune deficiency infection occurs, blood and body fluid precautions must be used for the duration of the infection.

AUTHORITY: 50-1-202, 50-2-118, MCA

IMPLEMENTING: 50-1-202, 50-2-118, MCA

18.28.602 AMEBIASIS (1) Whenever a case of amebiasis occurs:

(a) No-isolation-or-quarantine-to Enteric precautions are required for a case of amebiasis.

(b) Feces must be disposed of by flushing down a toilet attached to a municipal or other sewage system approved by the department.

AUTHORITY: 50-1-202, 50-2-118, MCA

IMPLEMENTING: 50-1-202, 50-2-118, MCA

18.28.603 ANTHRAX (1) For a case of anthrax, the attending physician or local health officer shall impose modified isolation Whenever a case of anthrax occurs:

(a) If skin lesions exist, drainage and secretion precautions must be used until lesions are bacteriologically free of anthrax bacilli.

(b) All bodily discharges must be concurrently disinfected.

(2) Strict isolation, in accordance with subchapter 5-7 Rule 4, must be imposed for an upon each case of inhalation anthrax case.

(3) No quarantine of contacts is required.

AUTHORITY: 50-1-202, 50-2-118, MCA

IMPLEMENTING: 50-1-202, 50-2-118, MCA

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16.28.604 BOTULISM -- INFANT BOTULISM (1) ~~No isolation or quarantine is required for a case of botulism.~~ Concurrent disinfection of feces is required.

(2) A ~~The~~ local health officer shall make an immediate investigation of every case or suspected case of botulism in an effort to establish the diagnosis and determine the source.

(3) In the event that a commercial food product is suspected as the source, special instructions will be given by the department. The local health officer shall prevent distribution and consumption of the suspected food.

AUTHORITY: 50-1-202, 50-2-118, MCA

IMPLEMENTING: 50-1-202, 50-2-118, MCA

16.28.605 BRUCELLOSIS (1) ~~No isolation or quarantine is required for a case of brucellosis.~~ Drainage and secretion precautions must be used.

(2) Concurrent disinfection of purulent discharges is necessary.

AUTHORITY: 50-1-202, 50-2-118, MCA

IMPLEMENTING: 50-1-202, 50-2-118, MCA

NEW RULE IX CAMPYLOBACTER ENTERITIS (1) Enteric precautions must be observed.

(2) The local health officer may not allow an infected person to engage in a sensitive occupation as described in ARM 16.28.301 until stool specimens are clear of the organisms causing campylobacter diarrhea.

AUTHORITY: 50-1-202, 50-2-118, MCA

IMPLEMENTING: 50-1-202, 50-2-118, MCA

NEW RULE X CANDIDIASIS (1) Concurrent disinfection of secretions and contaminated articles is necessary.

AUTHORITY: 50-1-202, 50-2-118, MCA

IMPLEMENTING: 50-1-202, 50-2-118, MCA

NEW RULE XI CHANCROID (1) A person infected with chancroid must not engage in sexual contact until all chancroid lesions are healed.

AUTHORITY: 50-1-202, 50-2-118, 50-18-105, MCA

IMPLEMENTING: 50-1-202, 50-2-118, 50-18-102, MCA

NEW RULE XII CHICKENPOX (1) A child who contracts chickenpox must be excluded from school for one week after eruption first appears and be kept in strict isolation.

(2) A person susceptible to chickenpox must avoid contact with the case.

(3) The bodily discharges of a case must be concurrently disinfected.

AUTHORITY: 50-1-202, 50-2-118, MCA

IMPLEMENTING: 50-1-202, 50-2-118, MCA

NEW RULE XIII CHLAMYDIAL GENITAL INFECTION (1) An individual with a chlamydial genital infection must avoid sexual contact and undergo appropriate antibiotic therapy until discharges from his genitourinary tract are found to be non-infectious.

(2) It is recommended that any contact of the case also follow the requirements of subsection (1) above.

AUTHORITY: 50-1-202, 50-2-118, MCA

IMPLEMENTING: 50-1-202, 50-2-118, MCA

16.28.606 CHOLERA ~~testation-through-heep+tatization-may be required-for-a-case-of--cholera--but- strict--isolation-or quarantine-is--not-mandatory-~~ (1) Enteric precautions must be employed.

AUTHORITY: 50-1-202, 50-2-118, MCA

IMPLEMENTING: 50-1-202, 50-2-118, MCA

NEW RULE XIV COLORADO TICK FEVER (1) Blood and body fluid precautions must be employed.

(2) The infected person must not donate blood for four months after the date of diagnosis.

AUTHORITY: 50-1-202, 50-2-118, MCA

IMPLEMENTING: 50-1-202, 50-2-118, MCA

NEW RULE XV CONJUNCTIVITIS EPIDEMIC (1) Drainage and secretion precautions must be imposed until laboratory tests indicate what organism is responsible for the infection, after which those control measures must be taken which are specified for the organism involved in Control of Communicable Diseases in Man, An Official Report of the American Public Health Association, 14th Edition, 1985.

(2) The department hereby adopts and incorporates by reference "Control of Communicable Diseases in Man, An Official Report of the American Public Health Association", 14th edition, 1985, which lists and specifies control measures for communicable diseases. A copy of "Control of Communicable Diseases in Man" may be obtained from the American Public Health Association, 1015 - 15th Street NW, Washington, D.C. 20005.

AUTHORITY: 50-1-202, 50-2-118, MCA

IMPLEMENTING: 50-1-202, 50-2-118, MCA

NEW RULE XVI DIARRHEAL DISEASE OUTBREAK (1) Enteric precautions must be imposed on persons employed in sensitive occupations.

(2) Enteric precautions must be imposed until laboratory tests determine the etiologic agent involved, after which control measures must be imposed which are appropriate for that agent and set out in Control of Communicable Diseases in Man, An Official Report of the American Public Health Association, 14th Edition, 1985.

(3) The department hereby adopts and incorporates by reference "Control of Communicable Diseases in Man, An Official Report of the American Public Health Association", 14th edition, 1985, which lists and specifies control measures for

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communicable diseases. A copy of "Control of Communicable Diseases in Man" may be obtained from the American Public Health Association, 1015 - 15th Street NW, Washington, D.C. 20005.

AUTHORITY: 50-1-202, 50-2-118, MCA

IMPLEMENTING: 50-1-202, 50-2-118, MCA

16.28.607 DIPHTHERIA (1) For a confirmed case of diphtheria, the attending physician or local health officer shall impose strict isolation of an infected person must be imposed until 2 cultures, taken not less than 24 hours apart and not less than 24 hours after cessation of antimicrobial therapy, from nose and throat fail to show diphtheria bacilli, except that upon clinical recovery and when appropriate antibiotics have been used as therapy, modified respiratory isolation may be imposed instead of strict isolation, ending 14 days after the date administration of antibiotics commenced.

(2) All household contacts must be placed under modified quarantine until their nose and throat cultures are negative.

(3) All carriers must be treated unless medically contraindicated.

(4) A contact in a sensitive occupation must be excluded from work until he is determined not to be a carrier.

(5) The local health officer must initiate surveillance for susceptible contacts and must recommend immediate immunization to any such contact found.

AUTHORITY: 50-1-202, 50-2-118, MCA

IMPLEMENTING: 50-1-202, 50-2-118, MCA

16.28.608 ENCEPHALITIS (1) No isolation or quarantine is required for a case of encephalitis. The local health officer must search for undetected cases of encephalitis and vector mosquitoes.

AUTHORITY: 50-1-202, 50-2-118, MCA

IMPLEMENTING: 50-1-202, 50-2-118, MCA

NEW RULE XVII GASTROENTERITIS EPIDEMIC (1) Enteric precautions must be employed until laboratory tests indicate what organism is responsible for the infection, after which control measures must be taken which are specific for the organism in question.

AUTHORITY: 50-1-202, 50-2-118, MCA

IMPLEMENTING: 50-1-202, 50-2-118, MCA

16.28.609 GIARDIASIS (1) No isolation or quarantine is required for a case of giardiasis. Enteric precautions must be used by a case employed in a sensitive occupation until three post-treatment stool specimens are negative.

(2) Sources of infection must be sought, especially in the home, within the family, in food, and in water.

AUTHORITY: 50-1-202, 50-2-118, MCA

IMPLEMENTING: 50-1-202, 50-2-118, MCA

NEW RULE XVIII GONOCOCCAL INFECTION (1) A person who contracts genital gonococcal infection must be instructed to avoid sexual contact until 24 hours have passed after administration of an effective antibiotic.

(2) An individual who contracts the infection must be interviewed to determine who his contacts are, and those contacts should be examined and receive the medical treatment indicated by clinical and laboratory findings.

AUTHORITY: 50-1-202, 50-2-118, 50-18-105, MCA

IMPLEMENTING: 50-1-202, 50-2-118, 50-18-102, MCA

NEW RULE XIX GRANULOMA INGUINALE (1) Contact with lesions must be avoided until after the lesions are healed.

(2) Examination and epidemiological treatment of sexual contacts is recommended.

AUTHORITY: 50-1-202, 50-2-118, 50-18-105, MCA

IMPLEMENTING: 50-1-202, 50-2-118, 50-18-102, MCA

NEW RULE XX HANSEN'S DISEASE (LEPROSY) (1) For a case of Hansen's disease, modified isolation must be imposed if the infected person is infectious. The degree of isolation must be determined by the local health officer, who must be advised by a physician specially qualified to manage this disease.

AUTHORITY: 50-1-202, 50-2-118, MCA

IMPLEMENTING: 50-1-202, 50-2-118, MCA

16.28.611 HEPATITIS TYPE A (INFECTIOUS) (1) For a case of type A hepatitis, the attending physician or local health officer shall impose modified isolation until 3 days after the onset of jaundice. enteric precautions must be imposed until 5 days after the onset of jaundice.

(2) No quarantine of contact is required. An infected person may not engage in a sensitive occupation during the infectious period.

AUTHORITY: 50-1-202, 50-2-118, MCA

IMPLEMENTING: 50-1-202, 50-2-118, MCA

16.28.612 HEPATITIS TYPE B (SERUM) (1) For a case of type B hepatitis, the attending physician or local health officer shall impose modified quarantine for the duration of acute symptoms.

(a) Blood and body fluid precautions must be imposed until it is determined that viremia no longer exists.

(b) No quarantine of contacts if required. Contacts must be identified and advised how to prevent acquisition of the disease, given the nature of their relationship to the case.

AUTHORITY: 50-1-202, 50-2-118, MCA

IMPLEMENTING: 50-1-202, 50-2-118, MCA

NEW RULE XXI HEPATITIS, NON-A NON-B (1) For a case of non-A non-B hepatitis, the control standards set out in ARM 16.28.612 for hepatitis, type B, must be followed.

AUTHORITY: 50-1-202, 50-2-118, MCA

IMPLEMENTING: 50-1-202, 50-2-118, MCA

12-6/25/87

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NEW RULE XXII HEPATITIS, TYPE UNSPECIFIED (1) For a case of hepatitis, type unspecified, the control standards set out in ARM 16.28.612 for hepatitis, type B, must be followed.  
AUTHORITY: 50-1-202, 50-2-118, MCA  
IMPLEMENTING: 50-1-202, 50-2-118, MCA

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

(2) A person who contracts genital herpes must be instructed to avoid sexual contact until after the lesions heal.  
AUTHORITY: 50-1-202, 50-2-118, MCA  
IMPLEMENTING: 50-1-202, 50-2-118, MCA

NEW RULE XXIV HISTOPLASMOSIS (1) Sputum or sputum-soiled articles must be concurrently disinfected.  
AUTHORITY: 50-1-202, 50-2-118, MCA  
IMPLEMENTING: 50-1-202, 50-2-118, MCA

NEW RULE XXV INFLUENZA (1) Individuals who are at high risk for disease must be isolated, to the extent possible, from acutely ill or incubatory influenza cases.  
AUTHORITY: 50-1-202, 50-2-118, MCA  
IMPLEMENTING: 50-1-202, 50-2-118, MCA

16.28.614 ~~LEGIONNAIRES DISEASE~~ LEGIONELLOSIS (1) ~~No isolation or quarantine is required for a case of legionnaires disease--~~Drainage and secretion precautions must be observed for each case of legionellosis until that person is treated and his discharges are found to be no longer infectious.  
AUTHORITY: 50-1-202, 50-2-118, MCA  
IMPLEMENTING: 50-1-202, 50-2-118, MCA

16.28.616 LEPTOSPIROSIS (1) ~~No isolation or quarantine is required for a case of leptospirosis--~~A search must be made to determine the infected animal or contaminated water which is the source of the leptospirosis.  
AUTHORITY: 50-1-202, 50-2-118, MCA  
IMPLEMENTING: 50-1-202, 50-2-118, MCA

NEW RULE XXVI LISTERIOSIS EPIDEMIC (1) Surveillance of contacts must be conducted and identification of the disease source attempted.  
AUTHORITY: 50-1-202, 50-2-118, MCA  
IMPLEMENTING: 50-1-202, 50-2-118, MCA

NEW RULE XXVII LYME DISEASE (1) The local health officer must conduct studies to determine the source of the infection.  
AUTHORITY: 50-1-202, 50-2-118, MCA  
IMPLEMENTING: 50-1-202, 50-2-118, MCA

NEW RULE XXVII LYMPHOGRANULOMA VENEREUM (1) A person who contracts lymphogranuloma venereum must be instructed to avoid sexual contact until after the lesions heal.

(2) An individual who contracts the disease must be interviewed to determine who his contacts are, and those contacts should be examined and receive the medical treatment indicated by clinical and laboratory findings.

AUTHORITY: 50-1-202, 50-2-118, 50-18-105, MCA

IMPLEMENTING: 50-1-202, 50-2-118, 50-18-102, MCA

16.28.617 MALARIA (1) No isolation or quarantine is required for a case of malaria. A case of malaria should, to the extent possible, stay within a mosquito-proof area.

AUTHORITY: 50-1-202, 50-2-118, MCA

IMPLEMENTING: 50-1-202, 50-2-118, MCA

16.28.618 MEASLES -- RUBEOLA (1) The provisions of this rule apply to measles, exclusive of quarantine measures contained in other rules for control of communicable diseases.

(2) Unless otherwise specified for the purposes of this rule the following definitions apply:

(a) "immunity" means immunity to measles as demonstrated by:

(i) a school health record showing approved measles vaccine was administered;

(A) either in 1958 or later, or between 1966 and 1968 if the vaccine was a documented live-virus vaccine; and

(B) after the first birthday documented by the month day and year of administration of the vaccine except that only the month and year are necessary if the person was enrolled in any Montana school prior to August 1, 1980, or to a transferee into a Montana school from out of state;

(ii) a signed statement from a physician or his designee that the person has had measles disease indicating the month day and year of diagnosis except that only the month and year are necessary if the person was enrolled in any Montana school prior to August 1, 1980, or to a transferee into a Montana school from out of state;

(b) "Measles case" means a person suffering from measles from 6 days before the onset of rash to 5 days after the onset of rash;

(c) "Susceptible contact" means any person not able to demonstrate immunity who is less than 24 years of age and who has been exposed face-to-face to a measles case, or attends the same school as a case or rides the same school bus as a case;

(3) (1) A local health officer or the department may shall impose isolation of a measles case and quarantine based on the diagnosis of contacts whenever a suspected or confirmed case of measles occurs in one or more persons as confirmed by a physician. If isolation or quarantine is imposed, the local health officer shall post public notice of the effective date of the isolation and quarantine and make immunizations available, free of charge to extent of his resources upon request.

(a) A measles case must be isolated to his residence for

no less than 5 days following the onset of rash. The movements of other household contacts in or out of the residence are not restricted unless they are susceptible contacts. The local health officer shall advise the household contacts where the measles case is isolated to warn a person who is not immune against measles against entering the residence.

(b) A susceptible contact must be quarantined in his residence for no less than 14 calendar days after his last exposure to measles whether face-to-face with a measles case or by attendance at school or school-sponsored activities or any other setting where an exposure may have occurred. The movements of any other person in or out of the residence is not restricted.

(c) A susceptible contact may be released from quarantine to receive immunization against measles and may return to school and school-sponsored activities after having received measles immunization from a physician or local health officer and having submitted written documentation of such immunization to the school in accordance with the provisions of subchapter 7 of this chapter.

(4) If a school with a measles case allows a susceptible contact who receives immunization to attend classes, no student of that school may participate in an interscholastic event for 14 calendar days following the date of immunization of the susceptible contact student.

(2) Susceptible contacts who may be subjected to a quarantine include those individuals who cannot show evidence of immunization with a live vaccine after the first birthday or a previous medical diagnosis of measles.

AUTHORITY: 50-1-202, 50-2-118, MCA

IMPLEMENTING: 50-1-202, 50-2-118, MCA

16.28.619 ASEPTIC MENINGITIS -- BACTERIAL OR VIRAL MENINGITIS (1) No restriction or quarantine is required for a case of aseptic or viral meningitis must be kept in modified isolation during febrile illness or until the existence of bacterial meningitis is ruled out.

(2) Whenever a case of meningococcal meningitis, meningococcemia, or bacterial meningitis occurs:

(a) modified isolation must be imposed upon the case until 24 hours have passed since the initiation of antibiotic chemotherapy; and

(b) the local health officer must impose surveillance upon the case's household and other intimate contacts for a minimum of 10 days after the diagnosis of the case.

AUTHORITY: 50-1-202, 50-2-118, MCA

IMPLEMENTING: 50-1-202, 50-2-118, MCA

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

AUTHORITY: 50-1-202, 50-2-118, MCA

IMPLEMENTING: 50-1-202, 50-2-118, MCA

16.28.621 MUMPS (1) For a case of mumps, the attending physician or the local health officer shall impose modified isolation drainage and secretion precautions must be imposed until the fever and swelling of the salivary glands have disappeared.

(2) No quarantine is required.

AUTHORITY: 50-1-202, 50-2-118, MCA  
IMPLEMENTING: 50-1-202, 50-2-118, MCA

NEW RULE XXX NONGONOCOCCAL URETHRITIS (1) The infected individual must avoid sexual contact until his urethral discharges are determined to be no longer infectious.  
AUTHORITY: 50-1-202, 50-2-118, MCA  
IMPLEMENTING: 50-1-202, 50-2-118, MCA

NEW RULE XXXI OPHTHALMIA NEONATORUM (1) Whenever a case of ophthalmia neonatorum is confirmed:  
(a) drainage and secretion precautions must be imposed until 24 hours after administration of an antibiotic; and  
(b) concurrent disinfection of discharges is necessary.  
(2) Precautions which must be followed by any birth attendant to prevent ophthalmia neonatorum are contained in [NEW RULE XLIX].  
AUTHORITY: 50-1-202, 50-2-118, MCA  
IMPLEMENTING: 50-1-202, 50-2-118, MCA

16.28.622 PSITTACOSIS (ORNITHOSIS) (PSITTACOSIS)  
(1) For Respiratory precautions must be imposed upon a case of psittacosis ornithosis the attending physician or the local health officer shall impose modified isolation as long as the fever lasts.  
(2) No quarantine is required. The local health officer must inquire whether a bird epidemiologically linked to a case of ornithosis was obtained from an aviary, and, if so, determine the location of the aviary and report it to the Montana state veterinarian, department of livestock.  
AUTHORITY: 50-1-202, 50-2-118, MCA  
IMPLEMENTING: 50-1-202, 50-2-118, MCA

NEW RULE XXXII PARATYPHOID (1) Enteric precautions must be employed as long as the infectious agent persists in excreta.  
(2) An infected person may not work in a sensitive occupation so long as the infectious agent persists in that person's excreta.  
(3) A close contact of a case may not be employed in a sensitive occupation until cultures of at least two fecal specimens taken at least 24 hours apart are found free of the causative organism.  
AUTHORITY: 50-1-202, 50-2-118, MCA  
IMPLEMENTING: 50-1-202, 50-2-118, MCA



NEW RULE XXXIII PEDICULOSIS (1) The case must be isolated for 24 hours after the application of an effective pediculosis insecticide; no other precautions are necessary.

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

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

AUTHORITY: 50-1-202, 50-2-118, MCA

IMPLEMENTING: 50-1-202, 50-2-118, MCA

16-28-623 PERTUSSIS (WHOOPIING COUGH) (1) For a case of pertussis, the attending physician or local health officer shall impose modified isolation must be imposed upon a case of pertussis for 7 days after the start of antibiotic therapy, or 21 days after the date of diagnosis if no antibiotic therapy is given.

(2) No quarantine is required. Children exposed to pertussis who have no history of adequate immunization must be quarantined.

(3) Surveillance for susceptible contacts must be initiated and immediate immunizations recommended to identified susceptible contacts.

AUTHORITY: 50-1-202, 50-2-118, MCA

IMPLEMENTING: 50-1-202, 50-2-118, MCA

16-28-624 PLAGUE (1) For a case of plague the attending physician or local health officer shall impose Whenever a case of pneumonic plague exists:

(a) strict isolation for the pneumatic form of plague must be imposed for no less than 2-3 days following commencement of antibiotic therapy to which the infected person responds to treatment; and

(b) those who have been in household or face-to-face contact with the case must be placed on chemoprophylaxis and kept under surveillance for 7 days, or, if they refuse chemoprophylaxis, be kept in strict isolation with careful surveillance for 7 days.

(2) The attending physician or local health officer shall impose modified isolation for bubonic form of plague Whenever a case of bubonic plague exists, drainage and secretion precautions must be imposed until antibiotic therapy has been terminated and the lesions are bacteriologically negative for plague bacilli.

(3) No quarantine is required. Concurrent disinfection of discharges and bodily fluids must be done in all plague cases.

AUTHORITY: 50-1-202, 50-2-118, MCA

IMPLEMENTING: 50-1-202, 50-2-118, MCA

16.28.626 POLIOMYELITIS (1) For a case of poliomyelitis, the--attending-physician-or--local-health-officer-shall--impose--modified isolation must be imposed for 7 days from the onset of illness, or for the duration of fever, if longer.

(2) ~~No-quarantine-is-required-~~ Surveillance for susceptible contacts must be initiated and immunization recommended to them immediately.

AUTHORITY: 50-1-202, 50-2-118, MCA

IMPLEMENTING: 50-1-202, 50-2-118, MCA

NEW RULE XXXIV Q-FEVER (QUERY FEVER) (1) Respiratory precautions must be used.

(2) Bodily fluids must be concurrently disinfected.

AUTHORITY: 50-1-202, 50-2-118, MCA

IMPLEMENTING: 50-1-202, 50-2-118, MCA

16.28.626 RABIES -- HUMAN (1) For a case of human rabies, the--attending-physician--or--local-health-officer-shall--impose strict isolation must be imposed for the duration of the illness.

~~(2)--No-quarantine-is-required-~~

AUTHORITY: 50-1-202, 50-2-118, MCA

IMPLEMENTING: 50-1-202, 50-2-118, MCA

NEW RULE XXXV RABIES EXPOSURE (1) The following actions must be reported to the local health officer if they are committed by an animal other than a rodent whose species is significantly infected with rabies and that is not satisfactorily vaccinated against rabies as specified in ARM 32.3.1205:

(a) biting of a human being;

(b) contamination of a mucous membrane, scratch, abrasion, or open wound of a human by the saliva or other potentially infectious material from an animal that exhibits:

(i) paralysis or partial paralysis of the limbs;

(ii) marked excitation, muscle spasms, difficulty swallowing, apprehensiveness, delirium, or convulsions; or

(iii) unusual aggressive or unnatural behavior toward a person, animal, or inanimate object.

(2) The local health officer shall investigate each report of possible rabies exposure and gather, at a minimum, information about the circumstances of the possible rabies exposure; nature of the exposure; name, age, and address of the exposed individual; vaccination status of the animal in question; treatment of the exposed person; and eventual outcome for both animal and person involved.

(3) As soon as possible after receiving a report of possible rabies exposure, the local health officer must inform the exposed person or the individual responsible for that person if he is a minor whether or not treatment is necessary to prevent rabies.

(4) Whenever the circumstances described in section (1) occur, the local health officer must either isolate the animal in question for at least 10 days for observation at a pound, veterinary facility, or other adequate facility, or, if the

symptoms described in (i)(b)(i), (ii), and (iii) above exist, order the animal killed and the head sent to the department of livestock's diagnostic laboratory at Bozeman for rabies analysis. The local health officer may also order an animal killed subsequent to isolation, and the brain analyzed.

(5) Additional rabies reporting and control requirements are contained in ARM 32.3.1201 through 32.3.1207, rules of the department of livestock.

(6) The department hereby adopts and incorporates by reference ARM 32.3.1205, which contains the standards for proper vaccination against rabies. A copy of ARM 32.3.1205 may be obtained from the Department of Livestock, Animal Health Division, Scott Hart Building, Capitol Station, Helena, Montana 59620 (phone 406-444-2043).

AUTHORITY: 50-1-202, 50-2-118, MCA

IMPLEMENTING: 50-1-202, 50-2-118, MCA

NEW RULE XXXVI RINGWORM EPIDEMIC

(1) Cover infected areas and use concurrent disinfection for disposal of the covers.

AUTHORITY: 50-1-202, 50-2-118, MCA

IMPLEMENTING: 50-1-202, 50-2-118, MCA

18.28.628 ROCKY MOUNTAIN SPOTTED FEVER (1) ~~No quarantine--is required--for a case of rocky mountain spotted fever. Ticks removed from a case must be concurrently disinfected.~~

AUTHORITY: 50-1-202, 50-2-118, MCA

IMPLEMENTING: 50-1-202, 50-2-118, MCA

NEW RULE XXXVII RUBELLA

(1) Whenever necessary to protect a susceptible pregnant woman or to control an epidemic, isolation must be imposed on a case of rubella for 4 days after the onset of rash.

AUTHORITY: 50-1-202, 50-2-118, MCA

IMPLEMENTING: 50-1-202, 50-2-118, MCA

18.28.629 RUBELLA -- CONGENITAL RUBELLA

(1) ~~For a case of rubella, the attending physician or local health officer shall impose modified isolation for congenitally infected persons for the duration of hospitalization. Modified isolation must be imposed on any person with congenital rubella during the time they are hospitalized.~~

(2) ~~No quarantine--is required. Any susceptible contact of the person with congenital rubella must be identified, to the extent possible, and encouraged to undergo rubella immunization if not already immune.~~

AUTHORITY: 50-1-202, 50-2-118, MCA

IMPLEMENTING: 50-1-202, 50-2-118, MCA

18.28.630 SALMONELLOSIS (OTHER THAN TYPHOID FEVER)

(1) For purposes of this rule, "Salmonellosis" is any illness in which organisms of the genus Salmonella, except with the exception of the typhoid bacillus, have been isolated from

feces, blood, urine, or pathological material shall be reported as a Salmonella infection from a person.

(2) The attending physician or local health officer shall impose modified restriction whenever a case of Salmonellosis exists:

(a) enteric precautions must be imposed upon the case for the duration of the illness.

(b) the case must not be allowed to engage in a sensitive occupation until 2 successive authentic specimens of feces have been determined by a laboratory to be negative for Salmonella organisms, the first specimen of which is collected at least 48 hours after cessation of the therapy and the second not less than 24 hours thereafter; and

(c) stool cultures must be made for any family contacts of a case who are themselves involved in a sensitive occupation; if the culture is positive for Salmonella, the contact is subject to the requirements of (a) and (b) above.

(3) A local health officer may not allow an infested person to engage in any occupation involving the preparation, serving or handling of food, including milk, to be consumed by others than his immediate family, nor to engage in any occupation involving the care of children, until 2 successive authentic specimens of feces taken at an interval of not less than one week, beginning at least one week after cessation of specific therapy, have been determined by a laboratory to be negative for Salmonella organisms.

(4) Any person continuing to harbor Salmonella organisms one year after onset of illness is a chronic carrier. Any person who gives no history of having had Salmonellosis or who had the illness more than one year previously, who is found to harbor Salmonella organisms on 2 successive authentic specimens taken at least 48 hours apart is also a chronic carrier.

(5) Chronic carriers of Salmonella, other than the typhoid bacillus, must be restricted at the discretion of the local health officer.

(6) No quarantine of contacts is required.  
AUTHORITY: 50-1-202, 50-2-118, MCA  
IMPLEMENTING: 50-1-202, 50-2-118, MCA

NEW RULE XXXVIII SCABIES (1) An infested person must be excluded from school or work for 24 hours after commencement of treatment.

AUTHORITY: 50-1-202, 50-2-118, MCA  
IMPLEMENTING: 50-1-202, 50-2-118, MCA

16.28.631 SHIGELLOSIS ---BACTERIAL-DYSENTERY (1) For a case of shigellosis or bacterial dysentery, the attending physician or local health officer shall impose modified restriction enteric precautions must be imposed for the duration of the illness.

(2) A local health officer must not allow an infected person to engage in any sensitive occupation involving the preparation, serving, or handling of food, including milk, to be consumed by individuals other than his immediate family, nor

to engage in any occupation involving the care of children until 2 successive authentic specimens of feces taken at an interval of not less than one week apart, beginning at least one week after cessation of specific therapy, have been determined to be free of Shigella organisms.

(3) ~~No quarantine is required.~~

AUTHORITY: 50-1-202, 50-2-118, MCA

IMPLEMENTING: 50-1-202, 50-2-118, MCA

16.28.632 SMALLPOX (INCLUDING VACCINIA) (1) For a case of smallpox, ~~the attending physician or local health officer shall impose~~ strict isolation ~~in a hospital~~ must be imposed until the scabs have separated and the scars completely healed.

(2) A local health officer shall quarantine a household or casual contact for at least 16 days after last exposure, except that the local health officer may, when the infected person is properly isolated, release from quarantine a any person who ~~submit~~ submits to vaccination against smallpox and prove ~~proves~~ to the satisfaction of the local health officer that the vaccination is successful, or who provides other evidence of protection against smallpox which satisfies the local health officer. Persons shall remain in quarantine until released by the local health officer.

AUTHORITY: 50-1-202, 50-2-118, MCA

IMPLEMENTING: 50-1-202, 50-2-118, MCA

NEW RULE XXXIX STAPHYLOCOCCAL EPIDEMIC (1) To the extent possible, an infected person must avoid contact with infants and individuals at high risk for disease.

(2) Modified isolation must be imposed until the case has been treated with effective antibiotics for 48 hours.

AUTHORITY: 50-1-202, 50-2-118, MCA

IMPLEMENTING: 50-1-202, 50-2-118, MCA

NEW RULE XL STREPTOCOCCAL EPIDEMIC (1) To the extent possible, an infected person must avoid contact with infants and individuals at high risk for disease.

(2) Modified isolation must be imposed until the case has been treated with effective antibiotics for 48 hours.

AUTHORITY: 50-1-202, 50-2-118, MCA

IMPLEMENTING: 50-1-202, 50-2-118, MCA

NEW RULE XLI SYPHILIS (1) A person with a case of infectious syphilis must be instructed to refrain from sexual intercourse until the lesions heal and must either receive treatment or be isolated until he does.

(2) A person with syphilis must be interviewed to identify the following types of contacts, depending upon the disease stage in question:

(a) for primary syphilis, all sexual contacts during the 3 months prior to the onset of symptoms;

(b) for secondary syphilis, all sexual contacts during the 6 months preceding diagnosis;

(c) for early latent syphilis, those sexual contacts

during the year preceding diagnosis, if the time that primary and secondary lesions appeared cannot be established;

(d) for late latent syphilis, marital partners and children of infected mothers;

(e) for congenital syphilis, all members of the immediate family of the case.

(3) All identified contacts of confirmed cases of early syphilis must be examined to determine if they have syphilis and, if they do, must either receive treatment or be isolated until they receive treatment.

AUTHORITY: 50-1-202, 50-2-118, 50-18-105, MCA

IMPLEMENTING: 50-1-202, 50-2-118, 50-18-102, 50-18-107, MCA

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

AUTHORITY: 50-1-202, 50-2-118, MCA

IMPLEMENTING: 50-1-202, 50-2-118, MCA

16.28.634 TRICHINOSIS (1) ~~No-treatment-or-quarantine-is required-for-a-case-of-trichinosis-~~ Any person, other than the case, who may have eaten the infected food must be identified.

AUTHORITY: 50-1-202, 50-2-118, MCA

IMPLEMENTING: 50-1-202, 50-2-118, MCA

NEW RULE XLIII TUBERCULOSIS (1) Tuberculosis control measures are contained in subchapter 10 of this chapter.

AUTHORITY: 50-1-202, 50-2-118, MCA

IMPLEMENTING: 50-1-202, 50-2-118, MCA

16.28.635 TULAREMIA (1) ~~No-treatment-or-quarantine-is required-for-a-case-of-tularemia-~~ Drainage and secretion precautions must be followed whenever open lesions exist or lacrimal sacs are draining.

AUTHORITY: 50-1-202, 50-2-118, MCA

IMPLEMENTING: 50-1-202, 50-2-118, MCA

16.28.636 TYPHOID FEVER (1) The provisions of this rule apply to all forms of typhoid fever--including-paratyphoid fever.

(2) ~~The-attending-physician-or-treat-health-officer-shall impose-modified-quarantine-until~~ Enteric precautions must be imposed until specific therapy for the fever has been completed and no fewer than 2 3 successive authentic specimens of feces taken-at-an-interval-of-at-least-one-week-and-no-less-than-one week-after-discontinuation-of-specific-therapy, have been found negative for typhoid organisms, the first of which is taken one month after therapy is discontinued and the other two at intervals at least one week apart.

(3) The local health officer may not allow an infected person to engage in any sensitive occupation involving-the preparation-serving-or-handling-of-food-including-milk-for consumption-by-individuals-other-than-his-immediate-family until modified isolation has been terminated in accordance with subsection (2) of this rule.

12-6/25/87

MAR Notice No. 16-2-325

44) -- No quarantine is required.

AUTHORITY: 50-1-202, 50-2-118, MCA  
IMPLEMENTING: 50-1-202, 50-2-118, MCA

16.28.637 TYPHUS FEVER --- FLEA-BORNE --- (LOUSE-BORNE)

41) For a case of typhus fever, the attending physician or local health officer shall impose modified quarantine for the duration of the illness.

42) For flea-borne typhus fever, quarantine is not required.

683(1) For louse-borne typhus fever, a local health officer shall impose modified quarantine of household contacts until each person is free of lice and louse eggs.

AUTHORITY: 50-1-202, 50-2-118, MCA  
IMPLEMENTING: 50-1-202, 50-2-118, MCA

16.28.638 YELLOW FEVER (1) No isolation or quarantine is required for a case of yellow fever. Blood and body fluid precautions must be followed.

AUTHORITY: 50-1-202, 50-2-118, MCA  
IMPLEMENTING: 50-1-202, 50-2-118, MCA

NEW RULE XLIV YERSINIOSIS (1) Modified isolation must be imposed.

AUTHORITY: 50-1-202, 50-2-118, MCA  
IMPLEMENTING: 50-1-202, 50-2-118, MCA

NEW RULE XLV ILLNESS IN TRAVELER FROM FOREIGN COUNTRY-

(1) Isolation and quarantine must be imposed until the etiologic agent of the disease is determined, at which point control measures must be imposed which are prescribed for that etiologic agent in Control of Communicable Diseases in Man, An Official Report of the American Public Health Association, 14th edition, 1985.

(2) The department hereby adopts and incorporates by reference "Control of Communicable Diseases in Man, An Official Report of the American Public Health Association", 14th edition, 1985, which lists and specifies control measures for communicable diseases. A copy of "Control of Communicable Diseases in Man" may be obtained from the American Public Health Association, 1015 - 15th Street NW, Washington, D.C. 20005.

AUTHORITY: 50-1-202, 50-2-118, MCA  
IMPLEMENTING: 50-1-202, 50-2-118, MCA

16.28.1001 ISOLATION OF CASE -- TESTING AND QUARANTINE OF CONTACTS

(1) For a case of communicable tuberculosis, the attending physician or local health officer shall impose modified tuberculosis isolation as indicated by ARM 16-28-502 defined in ARM 16.28.101 must be imposed upon a case of communicable tuberculosis until the infected person is noncommunicable determined by the department or local health officer to be no longer communicable.

(2) The department or local health officer may require contacts of a case to be tested for tuberculosis infection.

(3) No quarantine of contacts is required unless the contact is in a communicable state.

AUTHORITY: 50-1-202, 50-2-118, 50-17-103, MCA; Ch. 61, Sec. 13, Laws of 1985

IMPLEMENTING: Sec. 50-1-202, 50-2-118, 50-17-102, 50-17-103, 50-17-105, MCA

16.28.1992 TUBERCULOSIS -- COMMUNICABLE STATE (1) A person has communicable tuberculosis if one of the following conditions exist:

(1)(a) The diagnosis of pulmonary tuberculosis has been established by the demonstration of M. tuberculosis in sputum, laboratory examination of sputa, gastric washings, bronchial washings, or pulmonary tissue by culture shows, in at least one

(2) When a positive smear for acid-fast bacilli has been demonstrated in body tissues or secretion and clinical findings are consistent with the diagnosis of tuberculosis until such time that the physician of the infected person presents evidence acceptable to the department that no growth was obtained by culture of the specimen which was positive on the smear or that the organisms cultured are mycobacteria other than M. tuberculosis the presence of either acid-fast bacilli or Mycobacterium tuberculosis (M. tuberculosis).

(3)(b) A chest X-ray shows changes characteristic of tuberculosis or until proven not to be tuberculosis by a negative tuberculin test or by bacteriologic or other appropriate studies.

(c) in the case of extrapulmonary tuberculosis, drainage from the extrapulmonary site is not being disposed of in accordance with drainage and secretion precautions.

(2) For purposes of this rule, a person diagnosed as having communicable tuberculosis will continue to be regarded as communicable until:

(a) a culture of the specimen which was positive for M. tuberculosis or acid-fast bacilli on a smear shows, in a manner acceptable to the department, either no bacterial growth or an organism other than M. tuberculosis, if the diagnosis was based on laboratory analysis of a smear for acid-fast bacilli;

(b) a tuberculin skin test is negative (induration is less than 5 millimeters or absent altogether) or sputa or gastric specimens taken on 3 consecutive days are found negative for acid-fast bacilli, if the diagnosis was based on chest x-ray results;

(4)(c) anti-tuberculosis drugs are being have been administered and the infected person has not as yet achieved bacteriologic negativity; tests of sputa or respiratory secretion specimens taken on 3 consecutive days are negative for acid-fast bacilli; or

(d) in the case of extrapulmonary tuberculosis, drainage from the extrapulmonary site is disposed of according to drainage and secretion precautions.

(5) Anti-tuberculosis drugs have been discontinued or taken irregularly during the prescribed period of therapy for active tuberculosis.



AUTHORITY: 50-1-202, 50-17-103, MCA; Ch. 61, Sec. 13, Laws of 1985  
IMPLEMENTING: 50-1-202, 50-17-103, MCA

16.28.1003 DIAGNOSIS (1) The procedure and tests needed to diagnose whether or not an individual is infected with tuberculosis or has it in its communicable state, taking into account that person's particular history, are those contained in "Diagnostic Standards and Classification of Tuberculosis and Other Mycobacterial Diseases", a 1981 publication of the American Thoracic Society.

(2) Examination of body tissues or secretions by microscopy and culture by a laboratory is required to establish the diagnosis of tuberculosis. It is recommended that at least 6 sputa, or gastric, or urine be negative for M. tuberculosis to rule out active disease. The growth of a single colony of M. tuberculosis is diagnostic.

(2) A person being treated, or recommended for treatment, with 2 or more anti-tuberculous drugs by a physician, is considered a case of communicable tuberculosis for the purposes of this subchapter--

(3) A minimum examination for communicable tuberculosis shall include:

(a) a tuberculin skin test;

(b) a chest X-ray; and

(c) history and physical examination by a physician.

(3) A tuberculin skin test shall be conducted as follows:

(a) an intra-dermal injection of 0.0001 milligrams (5 tuberculin units) in 0.10 cubic centimeters (cc) of sterile diluent; and

(b) a recordation of the size of the palpable induration in millimeters (mm) no less than 48 nor more than 72 hours following injection.

(i) A positive significant reaction is one in which the induration is not less than 40 mm.

(ii) An insignificant or negative reaction is one in which the induration is not present or, if present, is less than 5 mm.

(6) A variation of the test described in subsection (4) of this rule may be used to satisfy the requirements of subsection (3) of this rule if the variation is approved by a local health officer or the department.

(4) The department hereby adopts and incorporates by reference "Diagnostic Standards and Classification of Tuberculosis and Other Mycobacterial Diseases", a 1981 publication of the American Thoracic Society which specifies the diagnostic methodology appropriate for tuberculosis. A copy of the above publication may be obtained from the department's Preventive Health Services Bureau, Cogswell Building, Capitol Station, Helena, Montana 59620 (phone 406-444-4740).

AUTHORITY: 50-1-202, 50-17-103, 50-17-105, MCA; Ch. 61, Sec. 13, Laws of 1985  
IMPLEMENTING: 50-1-202, 50-17-103, 50-17-105, MCA

16.28.1005. EMPLOYEE -- SCHOOLS -- DAY CARE FACILITY

(1) A person employed in a public or private institution for the teaching of individuals, the curriculum of which is comprised of the work of any combination of kindergarten through grade 12, or in a day care facility as defined in section 53-4-401, MCA, must receive tuberculin skin testing either before or within 30 days after commencing employment unless the person is a known tuberculin reactor.

(2) If the employee's tuberculin skin test is negative, the employee need not receive further routine tuberculin testing unless he has frequent or close exposure to a person with a communicable pulmonary tuberculosis.

(3) (a) If the tuberculin skin test ~~is positive~~ results are significant or if the employee ~~is a known reactor~~ has ever, in the past, had a positive tuberculin reactor skin test with purified protein derivative and has not had adequate chemotherapy chemoprophylaxis, he must have ~~a chest X-ray and an evaluation be evaluated by a physician~~, either before or within 4 weeks after commencing employment, to ascertain whether or not he has any of the following conditions:

(i) ~~evidence of current or inadequately treated~~ chest x-rays indicative of tuberculosis disease, infection,

(ii) history of ~~close~~ exposure to a case of communicable pulmonary tuberculosis within the previous 2 years;

(iii) history of a negative tuberculin skin test within the previous 2 years;

(iv) severe or poorly controlled diabetes mellitus;

(v) disease associated with severe immunologic deficiencies (i.e., cancer, Reticuloendothelial disease);

(vi) immunosuppressive therapy (i.e., corticosteroids, ACTH, cytotoxins);

(vii) ~~gastrectomy or heavy alcohol intake~~

(viii) chronic obstructive pulmonary disease;

(ix) renal transplantation and/or

(x) ileal bypass surgery for obesity.

(b) If any of the conditions listed in subsection (3)(a) of this rule ~~except current disease~~ are present, the tuberculin-positive employee must be counseled that he is at relatively high risk of developing tuberculosis disease and that he should complete one year of ~~isoniazid~~ isoniazid chemoprophylaxis if he has not already done so, unless medically contraindicated. ~~If the employee has current tuberculosis disease, he must complete a course of chemotherapy with isoniazid and 2 anti-tuberculosis drugs as prescribed by a physician.~~

(c) Further surveillance is not required of a tuberculin positive employee with any condition listed in subsection (3)(a) of this rule who completes one year of ~~isoniazid~~ isoniazid chemoprophylaxis ~~or adequate anti-tuberculosis chemotherapy~~ if indicated.

(d) A tuberculin positive employee with any of the conditions listed in subsection (3)(a) of this rule who does not complete one year of ~~isoniazid~~ isoniazid chemoprophylaxis, with the exceptions mentioned in subsection (3)(c) of this rule, must have

a chest X-ray annually during the period his term of employment.

(c) A--tuberculin--positive--employee--with--none--of--the conditions--listed--in--section--(2)(a)--of--this--rule--or--with--a history--of--these--exposure--to--a--case--of--communicable--pulmonary tuberculosis--within--the--previous--2--years--or--a--history--of--a negative--tuberculin--test--within--the--previous--2--years--may--be released--from--further--routine--tuberculin--surveillance activities--following--completion--of--one--year--of--tuberculin--chemoprophylaxis--or--following--a--negative--yearly--chest--X--ray--.

(4) An employee--subject--to--the--provisions--of--this--rule with--a--positive--tuberculin--test--should--be--referred--to--his--physician--immediately--if--he--develops--symptoms--of--pulmonary--tuberculosis-- if an employee is diagnosed as having communicable tuberculosis or being infected with tuberculosis, the employee may not work in a school or daycare facility unless proper medical treatment is being followed and, if communicable, until he is no longer communicable.

(5) A--contact--investigation--must--be--conducted--by--a--local health--officer--of--employees--of--an--institution--or--day-care--facility--as--defined--in--subsection--(3)--of--this--rule--if--such--employees--have--been--exposed--to--a--case--of--communicable--tuberculosis--.

AUTHORITY: 50-1-202, 50-17-103, 53-4-506, MCA; Ch. 61, Sec. 13, Laws of 1985

IMPLEMENTING: 50-1-202, 50-17-103, 53-4-506, MCA

NEW RULE XLVI TREATMENT STANDARDS (1) It is the opinion of the department that medical treatment of tuberculosis, in order to meet currently acceptable medical standards, must be consistent with those standards contained in "Treatment of Tuberculosis and Tuberculosis Infection in Adults and Children", a statement adopted by the American Thoracic Society Board of Directors in March, 1986, and recommended by the Centers for Disease Control. A copy of the ATS tuberculosis treatment standards is available from the department's Preventive Health Services Bureau, Cogswell Building, Capitol Station, Helena, Montana 59620 (phone 406-444-4740).

AUTHORITY: 2-4-308, MCA. The rule is advisory only, but may be a correct interpretation of the law.

IMPLEMENTING: 50-17-102, 50-17-106, 50-17-107, 50-17-108, 50-17-112, 50-17-113, MCA

NEW RULE XLVII FOLLOW-UP AND REPORTING (1) The local health officer must ensure that each case of tuberculosis within his jurisdiction obtains the follow-up tests, treatment, and monitoring recommended by the American Thoracic Society and the Centers for Disease Control in their joint statements "Treatment of Tuberculosis and Tuberculosis Infection in Adults and Children", adopted March, 1986, and "Control of Tuberculosis", adopted March, 1983.

(2) The local health officer must submit a report to the department every 3 months documenting the course of treatment of each reported tuberculosis case within his jurisdiction.

(3) The department hereby adopts and incorporates by reference the portions of the joint statements of the American Thoracic Society and the Centers for Disease Control entitled "Treatment of Tuberculosis and Tuberculosis Infection in Adults and Children" (March, 1986) and "Control of Tuberculosis" (March, 1983), which specify the follow-up tests, treatment, and monitoring necessary to ensure adequate recovery from tuberculosis. A copy of each statement may be obtained from the department's Preventive Health Services Bureau, Cogswell Building, Capitol Station, Helena, Montana 59620 (phone 406-444-4740).

AUTHORITY: 50-1-202, 50-17-103, MCA; Ch. 61, Sec. 13, Laws of 1985

IMPLEMENTING: 50-1-202, 50-17-102, 50-17-105, MCA

NEW RULE XLVIII SUBMISSION OF SPECIMENS (1) Whenever a physician diagnoses a case of tuberculosis, he must ensure that a specimen from the case is sent to the department's microbiology laboratory.

(2) Whenever a laboratory finds a specimen test positive for M. tuberculosis or acid-fast bacilli, the laboratory must forward the specimen to the department's microbiology laboratory for confirmation of the results and drug susceptibility testing.

AUTHORITY: 50-1-202, 50-17-103, MCA; Ch. 61, Sec. 13, Laws of 1985

IMPLEMENTING: 50-1-202, 50-17-102, 50-17-103, MCA

NEW RULE XLIX NEWBORN EYE TREATMENT (1) A physician, nurse-midwife, or any other person who assists at the birth of any infant must, within the time limit stated in (3) below, instill or have instilled into each conjunctival sac of the newborn one of the following:

(a) erythromycin (0.5%) ophthalmic ointment or drops from single-use tubes or ampules;

(b) tetracycline (1%) ophthalmic ointment or drops from single-use tubes or ampules; or

(c) silver nitrate solution (1%) in single-dose ampules.

(2) A prophylactic agent referred to in (1) above may not be flushed from a newborn's eyes after instillation.

(3) The prophylactic agent must be administered to a newborn within one hour after its birth unless it is physically impossible to obtain the agent within that time, in which case the agent must be administered as soon as possible.

AUTHORITY: 50-1-202, MCA

IMPLEMENTING: 50-1-202, MCA

16.29.101 DEFINITIONS For the purpose of this chapter, the following definitions apply:

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

(6) "Specified communicable disease" means one of the following diseases:

(a) smallpox

(b) cholera

- (c) pneumonic plague
  - (d) lassa fever, ebola fever, Marburg virus disease, and any other undiagnosable febrile disease occurring shortly after returning from international travel;
  - (e) communicable pulmonary tuberculosis, as determined by a local health officer;
  - (f) acquired immune deficiency syndrome (AIDS);
  - (g) hepatitis B, non-A non-B, or unspecified.
  - (7) Same as existing rule.
- AUTHORITY: 50-1-202, MCA  
IMPLEMENTING: 50-1-202, MCA

16.29.102 DEATH FROM A SPECIFIED COMMUNICABLE DISEASE

(1) When a person dies or is suspected of dying of a specified communicable disease, the attending physician must notify a local health officer and the department of the death. The local health officer or the department must determine whether or not further examination of the body is necessary to establish the cause of death within reasonable medical certainty.

(2) If a person dies or is suspected of dying with a specified communicable disease that may be communicated to anyone handling the body, the local health officer must immediately inform the mortician or any other person handling the body (before or after death) of that fact and of the appropriate measures which should be taken to prevent transmission.

~~(2)~~ (3) As soon as reasonably possible following death or further examination required by a local health officer or the department, a human body dead of specified communicable disease must be embalmed. If embalming cannot be performed at the place of death, a local health officer or the department must be contacted for instructions on precautions to be observed in transporting the body to the place of embalming.

AUTHORITY: 50-1-202, MCA  
IMPLEMENTING: 50-1-202, MCA

6. The department is proposing the above rule changes to more adequately protect public health from the spread of communicable disease by updating the existing package of rules to take into account current, preferred, medical and public health practice; to ensure that communicable disease is adequately reported and that everyone who needs the information is informed of control measures that should be taken; and to consolidate, rearrange, and edit the rules so that they are more easily understood and used. In addition, in the case of the tuberculosis rules (subchapter 10), follow-up, reporting, and diagnosis confirmation rules were added, along with an interpretive rule incorporating preferred treatment standards, in response to legislation authorizing such rules, which was passed in 1985.

7. Interested persons may submit their data, views, or arguments concerning the proposed new rules, revisions, and repeal of rules, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to

Robert L. Solomon, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620, no later than July 23, 1987.

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

  
JOHN J. DRYNAN, M.D., Director

Certified to the Secretary of State June 15, 1987.

STATE OF MONTANA  
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION  
BEFORE THE BOARD OF NATURAL RESOURCES AND CONSERVATION

|                                  |   |                             |
|----------------------------------|---|-----------------------------|
| In the matter of the proposed    | ) | NOTICE OF PROPOSED          |
| amendments of ARM 36.12.101,     | ) | AMENDMENTS OF ARM 36.12.101 |
| ARM 36.12.102, ARM 36.12.103 and | ) | DEFINITIONS, ARM 36.12.102  |
| ARM 36.12.104 pertaining to      | ) | FORMS, ARM 36.12.103        |
| definitions, forms, fees, and    | ) | APPLICATION AND SPECIAL     |
| interim permits                  | ) | FEES, AND ARM 36.12.104     |
|                                  | ) | ISSUANCE OF INTERIM PERMITS |

NO PUBLIC HEARING CONTEMPLATED

TO: ALL INTERESTED PERSONS

1. On August 28, 1987 the Board of Natural Resources and Conservation proposes to amend rules 36.12.101, 36.12.102, 36.12.103, and 36.12.104.

2. The proposed amendment of ARM 36.12.101 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at page 36-239; Administrative Rules of Montana.)

"36.12.101 DEFINITIONS Unless the context requires otherwise, to aid in the implementation of the Montana Water Use Act and as used in these rules:

(1) . . .

(5) 'Existing right', in addition to the definition given the term by section 85-2-102(7) (8), MCA, includes any appropriation of water ~~commences~~ commenced prior to July 1, 1973, if completed according to the law as it existed when the appropriation was begun.

(6) . . .

(7) 'Combined appropriation' means an appropriation of water from the same source aquifer by two or more groundwater developments, the purpose of which, in the department's judgment, could have been accomplished by a single appropriation. Groundwater developments need not be physically connected nor have a common distribution system to be considered a 'combined appropriation.' They can be separate developed springs or wells to separate parts of a project or development. Such wells and springs need not be developed simultaneously. They can be developed gradually or in increments. The amount of water appropriated for the entire project or development from these groundwater developments in the same source aquifer is the 'combined appropriation.'

Auth: 85-2-113, MCA      Auth. Extension: Sec. 10, Ch. 535,  
L. 1987, Eff. 4/17/87      Imp. 85-2-306, MCA.

3. The Board proposes to amend rule 36.12.101 (5) to correct the statutory cite altered by legislative amendments and correct the proper form of the word "commence". Subsection (7) of the rule is added to provide a definition for "combined appropriation" necessary to administer the 1987 legislative amendment to 85-2-306 (1), MCA.

4. The proposed amendment of ARM 36.12.102 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at pages 36-239 and 36-240, Administrative Rules of Montana.)

"36.12.102 FORMS The following necessary forms for implementation of the act and these rules are available from the department of natural resources and conservation, 32 South Ewing, 1520 East 6th Avenue, Helena, Montana. The department may revise as necessary, the following forms to improve the administration of these rules and applicable water laws:

- (1) . . .
- ~~(10)~~ Form No. 609 'Application to Sever or Sell Appropriation Water Right'
- ~~(11)~~ (10) Form No. 611 'Objection to Application'
- ~~(12)~~ (11) Form No. 612 'Statement of Opinion'
- ~~(13)~~ (12) Form No. 613 'Fee Schedule for the Appropriation of Water in Montana'
- ~~(14)~~ (13) Form No. 614 'Statement of Conditional Agreement'
- (14) Form No. 615 'Water Conversion Table'
- (15) . . .
- (18) Form No. 619 'Cancellation of Recording of Certificate of Water Right'
- (19) . . .
- ~~(23)~~ Form No. 625 'Acknowledgment of Water Right Transfer'
- ~~(24)~~ (23) Form No. 630 'Petition to the Board of Natural Resources and Conservation for Controlled Groundwater Area'
- ~~(25)~~ (24) Form No. 631 'Petition to the Department of Natural Resources and Conservation to Adopt Rules to Reject Permit Applications, or Modify or Condition Permits Issued in a Highly Appropriated Water Basin or Subbasin'
- ~~(26)~~ (25) Form No. 632 'Certificate of Water Right (for perfected permits)'
- ~~(27)~~ (26) Form No. 633 'Certificate of Water Right' (for decreed water rights)"

Auth: 85-2-113, MCA      Auth. Extension: Sec. 22,  
Ch. 573, L. 1985, Eff. 7/1/85      Imp. 85-2-113, MCA.

5. The Board proposes to amend rule 36.12.102 in the first paragraph to correct the Department's new street address; by deleting subsection (10), since a 1985 legislative amendment to 85-2-402, MCA eliminated the requirement for sever-sell applications; subsection (14) is added to provide a form for the public with helpful water conversion factors and related information; subsection (18) is amended, since cancellation of



certificates are no longer recorded at the county courthouse; and deleting subsection (23), since the Department no longer administratively acknowledges water right transfers.

6. The proposed amendment of ARM 36.12.103 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at pages 36-241, 36-242, and 36-243, Administrative Rules of Montana.)

"36.12.103 APPLICATION AND SPECIAL FEES (1) A fee, if required, shall be paid at the time the permit, change or ~~sewer-seil~~, notice of completion, extension of time request, transfer certificate, or petition application (hereafter singularly or collectively referred to as application) is filed with the department. The department will not process any application without the proper filing fee. Failure to submit the proper application fee with an application or within 30 days after notice shall result in a determination that the application is not in good faith and does not show a bona fide intent to appropriate water for a beneficial use, and the application shall be terminated. A fee paid on an application is a one-time filing and processing fee paid at the time of making the application, and the fee will not be returned once the application has been filed with the department, except as noted below. If an applicant withdraws an application, he shall be entitled to a refund, or, if an applicant inadvertently files the wrong form, the applicant may apply the fee paid to the correct form for his purpose and pay the difference due or be entitled to a refund, if overpayment is made. However, no refund upon withdrawal or no exchanges of fees from one form to another or refund, if otherwise justified, will be made in any case once the newspaper publication of the application has been initiated, or substantial direct processing costs have been accrued in making the application correct and complete prior to publication or department waiver of publication. When an application needs to be republished due to an applicants error or request for republication, the applicant shall pay the direct cost of the new republication. The fees cover direct costs for newspaper publication, individual notices, issuance of certificates of water right on perfected permits, hearing costs, computer processing, and other miscellaneous direct costs connected with the permit process.

(a) . . .

(f) For an Application for Change of Appropriation Water Right, Form No. 606, there shall be a fee of \$50, except, for any change application concerning a replacement well or reservoir in the same source, there shall be a fee of \$10. when: (1) the change application concerns a replacement well or reservoir in the same source or (2) the change application is the result of a recommendation made during verification, there shall be a fee of \$10 in addition to the direct cost of giving notice, if the department determines it must be advertised.

(g) For an Application for Extension of Time, Form No. 607, there shall be a fee of \$25.

~~(g)~~ (h) For a Water Right Transfer Certificate, Form No. 608, there shall be a fee of \$10.

~~(h)~~ For an Application to Sever or Sell Appropriation Water Right, Form No. 609, there shall be a fee of \$50.

(1) . . .

(2) There shall be no fees charged for filing the following forms:

(a) Form No. 603, Well Log Report.

~~(b)~~ Form No. 607, Application for Extension of Time.

~~(c)~~ (b) Form No. 611, Objection to Application.

~~(d)~~ (c) Form No. 614, Statement of Conditional Agreement.

~~(e)~~ (d) Form No. 617, Notice of Completion of Permitted Water Development.

~~(f)~~ (e) Form No. 618, Notice of Completion of Change of Appropriation Water Right.

~~(g)~~ The following special fees must be paid for the described public services:

(a) For microfilm, reader-printer copies . . . . \$25  
per sheet.

(b) For photostatic copy, letter and legal size . \$15  
per sheet.

(c) For computer services requested . . . . reasonable  
costs

(d) For making a blueprint of any tracing . . . . \$1.00  
per sheet.

(e) For making a hearing transcript . . . . reasonable  
costs, not to exceed \$1.00  
per page.

(3) The department will charge special fees not to exceed reasonable amounts for the following services:

(a) Microfilm, reader-printer copies.

(b) Photostatic copies.

(c) Requested computer services.

(d) Blueprints or tracings.

(e) Hearing transcripts.

(f) Duplicating hearing tapes."

Auth. 85-2-113, MCA Auth. Extension: Sec. 22, Ch. 573,  
L. 1985, Eff. 7/1/85 and Sec. 10, Ch. 535, L. 1987, Eff. 4/17/87  
Imp. 85-2-312, MCA.

7. The Board proposes to amend rule 36.12.103 (1) by deleting reference to sever-sell applications, since the 1985 Legislature removed this type of application requirement, and the request for extension of time language is being added, due to the 1987 amendment to 85-2-312, MCA, which now requires an extensive notice procedure for extensions of time requests; subsection (1)(f) is being amended to clarify exceptions to the change application fee; subsection (1)(g) is being added to require a fee for public noticing requests for extensions of time as provided in 85-2-312, MCA, as amended in 1987; by deleting subsection (1)(h), since a 1987 amendment to 85-2-402 deleted the requirement for sever-sell applications; by deleting subsection (2)(b), since a fee is now proposed to be required for this form;

and subsection (3) is being amended to delete the specific special fee amounts to allow for flexibility in changing the fees to follow service charges consistent with the private business sector without competing with them, and (f) is being added so a service charge can be collected for requests for hearing tapes.

8. The proposed amendment of ARM 36.12.104 will read as follows: (new matter underlined, deleted matter interlined.)

"36.12.104 ISSUANCE OF INTERIM PERMITS (1) Pending final approval or denial of an application for a regular provisional permit, the department may, in its discretion and upon proper application, issue an interim permit authorizing an applicant to begin appropriating water immediately for testing purposes.

(a) The department may not issue an interim permit, unless there is substantial evidence information available to the department that the criteria for issuing a regular provisional permit under section 85-2-311, MCA will can not be met.

(b) An interim permit may be issued subject to any terms and conditions the department considers necessary to protect the rights of prior appropriators. Violation of a term or condition shall automatically void an interim permit.

~~(2)~~ An interim permit is subject to revocation by the department in accordance with section 85-2-314, MCA.

~~(3)~~ (2) The issuance of an interim permit does not entitle an applicant to a regular provisional permit, and approval of the application for a regular provisional permit is subject to the procedures and criteria set out in the act.

~~(4)~~ (3) A person may not obtain any vested right to an appropriation obtained under an interim permit by virtue of the construction of diversion works, purchase of equipment to apply water, planting of crops, or other action where the regular provisional permit is denied or is modified from the terms of the interim permit."

Auth: 85-2-113, MCA Imp. 85-2-113, MCA.

9. The Board proposes to amend rule 36.12.104 by clarifying the intent of 85-2-113, MCA, where it provides for appropriating water "immediately"; by clarifying that a "regular" permit is referred to in the statutes as a provisional permit; and that an interim permit can only be issued for testing the availability and properties of surface and ground water sources. The rule is being clarified, since the Department has experienced problems interpreting and administering the rule as presently written.

10. Interested persons may present their data, views, or arguments concerning the proposed adoption of amendments in writing to Ronald J. Guse, Administrative Officer, Water Rights Bureau, 1520 East 6th Avenue, Helena, Montana 59620-2301, no later than July 23, 1987.

11. If a person who is directly affected by the proposed adoption wishes to express his data, views, or arguments orally  
MAR Notice No. 36-12-6 . 12-6/25/87


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 Ronald J. Guse, Administrative Officer, Water Rights Bureau, 1520 East 6th Avenue, Helena, Montana 59620-2301, no later than July 23, 1987.

12. If the Board receives requests for a public hearing on the proposed adoption from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed adoption; from the Administrative Code Committee of the legislature; from a governmental 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. The number of persons to be possibly directly affected will be greater than 250.

BOARD OF NATURAL RESOURCES AND  
CONSERVATION

WILLIAM A. SHIELDS, CHAIRMAN

BY:

  
DONALD MACINTYRE,  
CHIEF LEGAL COUNSEL  
DEPARTMENT OF NATURAL RESOURCES  
AND CONSERVATION

Certified to the Secretary of State on June 15, 1987.

STATE OF MONTANA  
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION  
BEFORE THE BOARD OF NATURAL RESOURCES AND CONSERVATION

|                                |   |                                |
|--------------------------------|---|--------------------------------|
| In the matter of the proposed  | ) | NOTICE OF PUBLIC HEARING ON    |
| repeal of rule 36.20.101,      | ) | THE PROPOSED REPEAL OF RULE    |
| License and Permit Exemptions, | ) | 36.20.101, LICENSE AND PERMIT  |
| and proposed adoption of new   | ) | EXEMPTIONS, AND PROPOSED       |
| rules under Chapter 20 to      | ) | ADOPTION OF NEW RULES UNDER    |
| regulate weather modification  | ) | CHAPTER 20 TO REGULATE WEATHER |
| in Montana                     | ) | MODIFICATION IN MONTANA        |

To All Interested Persons:

1. On Thursday, July 16, 1987, at 9:00 a.m., a public hearing will be held in the Director's Conference Room of the Department of Natural Resources and Conservation Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed repeal and proposed adoption of the above-stated rules.

2. The proposed repeal of rule 36.20.101 repeals the rule in its entirety. The full text of the rule is located at page 36-391, Administrative Rules of Montana.

3. The rule is proposed for deletion because it will be replaced in its entirety with the proposed adoptions.

4. The proposed adoptions will read as follows:

I. WEATHER MODIFICATION - LICENSES AND PERMITS REQUIRED (1)

As required by section 85-3-201, MCA, any person who intends to engage in weather modification or control activities must receive authorization for such activities through a license and permit issued by the board. The purpose of these rules is to provide guidelines and procedures for preparing, processing, and acting upon applications for weather modification licenses and permits.

Auth: 85-3-102, MCA Imp: 85-3-201, MCA

II. DEFINITIONS Unless the context requires otherwise, in these rules:

(1) "Act" means Title 85, chapter 3, parts 1-3, MCA.

(2) "Applicant" means any natural person, political subdivision, public or private corporation, partnership, or other entity that wishes to obtain a weather modification license or permit, or a license or permit exemption.

(3) "Board" means the board of natural resources and conservation as provided in section 2-15-3302, MCA.

(4) "Department" means the department of natural resources and conservation as provided in section 2-15-3301, MCA.

(5) "License" means an authorization to supervise the conduct of an operation.

(6) "Operation" means a program of weather modification and control, including research and development projects, entered into for the purpose of producing or attempting to produce a certain modifying effect on weather conditions within a specified target area over a continuing time interval not exceeding 1 year.

(7) "Operational area" means a geographical area in which an operation will be conducted and any meteorological effects of an operation may reasonably be anticipated.

(8) "Permit" means an authorization to engage in a specific operation.

(9) "Research and development" means theoretical analysis, exploration and experimentation, and the extension of investigative findings and theories of a scientific and technical nature into practical application for experimental and demonstration purposes, including the development and testing of equipment, materials, and processes that are intended to produce a seeding effect.

(10) "Seeding" means the intentional introduction of artificial agents into the atmosphere for the purpose of affecting precipitation forms or atmospheric cloud forms that occur in the troposphere.

(11) "Target area" means a geographical area within which the intended effects of an operation are desired.

(12) "Weather modification" or "weather modification and control" mean changing or controlling or attempting to change or control, by artificial methods, the natural development of precipitation forms or atmospheric cloud forms, including fog, that occur in the troposphere.

Auth: 85-3-102, MCA Imp: 85-3-102, MCA

**III. LICENSES AND PERMITS - FORMS** (1) The necessary forms for the administration of these rules are available from the water resources division of the department, 1520 East Sixth Avenue, Helena, Montana 59620-2301. The following forms shall be used in the administration of these rules:

(a) Form No. 669-N-278, Application for Exemption from License or Permit Requirements;

(b) Form No. 670-N-278, Application for Weather Modification License;

(c) Form No. 671-N-278, Application to Renew License;

(d) Form No. 672-N-278, Application for Weather Modification Permit;

(e) Form No. 673-N-278, Notice of Intention to Modify Weather;

(f) Form No. 674-N-278, Weather Modification Operations Report; and

(g) Form No. 675-N-278, Completion Report on Weather Modification Operation.

Auth: 85-3-102, 202, 203, 206, MCA Imp: 85-3-102, 202, 203, 206, 208, 301, 302, MCA

**IV. LICENSES AND PERMITS - EXEMPTIONS** (1) The following activities are exempt from the license and permit requirements of the act and these rules:

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(a) laboratory research and experiments;  
(b) short-term activities of an emergency character for immediate protection against an imminent threat to life or property caused by fire, frost, sleet, or fog. Such activities do not include planned operations for the seasonal suppression of hail, fire, fog, frost, or tornadoes, or operations to end drought; and

(c) activities normally engaged in for purposes other than those of inducing, decreasing, or preventing precipitation or hail.

(2) The board may exempt research and development operations conducted by state and federal agencies, institutions of higher learning, and bona fide nonprofit research organizations and their agents from some or all of the license and permit requirements of the act and these rules. Applicants requesting an exemption from any of the license or permit requirements shall complete and submit Form 669-N-278 to the department. The applicant must explain the nature of the requested exemption and justify why such an exemption should be granted. Permit and license requirements may be exempted only if, in the discretion of the board, the benefits of granting an exemption significantly outweigh any threat to health, safety, welfare, or property that would otherwise be identified and minimized through the full application of these rules.

Auth: 85-3-102, 202, MCA Imp: 85-3-202, MCA

V. LICENSE APPLICATIONS (1) A license application shall include the following:

(a) a properly completed Form 670-N-278 including;

(i) a description of the education and experience of the person who will be responsible for the conduct of any operations of the applicant;

(ii) the names, addresses, and telephone numbers of three persons who will attest to the character, knowledge, and experience of the individual who will be responsible for the conduct of any operations of the applicant; and

(iii) a statement indicating if a weather modification license or a permit application, or a license or permit issued to the applicant by any jurisdiction has been denied or revoked, or if the renewal of any license or permit has been refused. If the answer is yes, the circumstances must be described in detail;

(b) a \$100 license fee as required by section 85-3-205, MCA.

(2) The department or board may, in their discretion, request clarification and elaboration of the information provided by the applicant in any of the application materials described in (1).

Auth: 85-3-203, MCA Imp: 85-3-203, 205, MCA

VI. LICENSE APPROVAL CRITERIA (1) The board shall issue a license to applicants that demonstrate competence in the field of weather modification and meteorology. If an applicant is an

organization, such competence must be demonstrated by the person who will be responsible for the conduct of any operation of the applicant.

(2) Competence in the field of weather modification and meteorology can be demonstrated by a minimum of one full year of experience in a responsible position involving the management and control of a weather modification operation(s) and one of the following:

(a) certification as a weather modification operator or manager by a nationally recognized professional society, agency, or organization; or

(b) four additional years experience in the conduct of weather modification operations; or

(c) a baccalaureate or graduate degree in engineering or a physical sciences field, plus two additional years experience in the conduct of weather modification operations; or

(d) a baccalaureate or graduate degree in engineering or a physical sciences field which includes the equivalent of at least twenty-five quarter credit hours of college course work in meteorology; or

(e) a baccalaureate or graduate degree in meteorology; or  
(f) an equivalent combination of education and experience as determined by the board.

(3) The board may also consider the applicant's history of performance and references in determining competency in the field of weather modification and meteorology.

Auth: 85-3-203, MCA Imp: 85-3-203, MCA

VII. LICENSE TERM AND RENEWAL (1) A license shall be valid for a period to expire at the end of the calendar year in which it is issued.

(2) A licensee may apply to have its license renewed by submitting to the department a properly completed Form 671-N-278 and payment of a \$100 license fee. An application for license renewal should be submitted to the department at least two months before the license expiration date.

(3) The board shall renew a license if the applicant continues to demonstrate competency in the field of weather modification and meteorology as provided in rule VI.

Auth: 85-3-203, MCA Imp: 85-3-204, MCA

VIII. LICENSE TERMINATION (1) After notice to the licensee and a reasonable opportunity for a hearing, the board may suspend, revoke, or refuse to renew any license if a licensee:

(a) no longer possesses the qualifications necessary to demonstrate competency in the field of weather modification and meteorology;

(b) violates the provisions of the act, these rules, the provisions of a license, or the conditions of a weather modification permit;

(c) fails to demonstrate competence in the management and control of an operation;

(d) is found to have used deceitful practices in promoting or conducting a weather modification operation; or

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(e) used fraud, misrepresentation, or deceit in obtaining a license or permit.

(2) Any suspension, revocation, or refusal to renew a license must be preceded by a hearing. The board may conduct such a hearing at any time, except the licensee shall be notified of the hearing by certified mail at least two weeks in advance of the hearing date.

Auth: 85-3-203, MCA Imp: 85-3-214, MCA

IX. PERMIT APPLICATIONS - GENERAL (1) A permit application shall include the following information:

- (a) a properly completed Form 672-N-278, including;
- (i) a detailed operating plan as required by rule XII;
- (ii) proof of financial responsibility as required by rule

XI;

(iii) the estimated cost of the operation for which the permit is being requested;

(iv) a statement indicating if a weather modification permit or similar authorization issued to the applicant by any jurisdiction has been revoked or suspended. If the answer is yes, the circumstances must be explained in detail; and

(v) a copy of informational material used by the applicant during the past year to promote its capabilities and activities in the field of weather modification as they relate to the proposed operation;

(b) a Notice of Intention, using Form 673-N-278 as required by rule X.

(2) An applicant for a permit must submit a fee amounting to 1 percent of the total estimated cost of the intended operation. The total fee shall be due and payable to the department no later than the date on which the permit is granted, unless the applicant:

(a) submits a payment amounting to at least 50 percent of the required fee; and

(b) provides the board with adequate security for the balance of the required fee. Such balance must be submitted to the department no later than 3 months following the termination date for the operation as authorized by the board.

(3) Applications shall be submitted to the department at least ninety days preceding the date on which the intended operation is to commence. To better assure that a permit application can be processed prior to the intended date of commencement, the applicant should consult with the department prior to permit application submittal regarding the probable need for an environmental impact statement pursuant to Title 75, chapter 1, MCA. If an environmental impact statement is likely to be required, the application should be submitted at least 180 days prior to the date on which the intended operation is to commence. All costs to the department of preparing an environmental impact statement are to be paid by the permit applicant in accordance with ARM 36.2.601 through 608.

(4) The department may, in its discretion, request clarification and elaboration of information provided by the applicant in any of the application materials described in (1).

Auth: 85-3-206, MCA Imp: 85-3-206, 208, 209, 211, 212, MCA

X. PERMIT APPLICATIONS - NOTICE OF INTENTION (1) A permit applicant shall file Form 673-N-278, Notice of Intention to Modify Weather, with the department at least ninety days prior to the intended commencement of the operation. A completed Form 673-N-278 shall contain the following information:

(a) the name, address, and telephone number of the permit applicant;

(b) the objective and a highlighted description of the intended operation;

(c) the name and address of the sponsor of the intended operation;

(d) a general description of the target area and operational area;

(e) the starting date and duration of the intended operation;

(f) the seeding agent(s) and rate(s) of use;

(g) the method(s) of delivering the seeding agent(s), and the intended location of ground-based seeding equipment or airborne seeding activity; and

(h) any suspension criteria proposed by the applicant and included in the detailed operation plan required by rule XII.

(2) Upon receipt of Form 673-N-278, the department shall publish the notice of intention at least once a week for two consecutive weeks in a newspaper published within any county wholly or partially within the operational area or having a general circulation in those counties. The department, in its discretion, may also issue a general news release regarding the permit application.

(3) The department may generally edit and revise the information provided in Form 673-N-278, include the time and place of any hearing or meeting to be conducted in accordance with rule XIII, and include the address of the department for the submission of public comments prior to publication.

(4) The applicant shall reimburse the department for the expenses associated with publishing the notice of intention.

Auth: 85-3-206, MCA Imp: 85-3-208, 209, MCA

XI. PERMIT APPLICATIONS - PROOF OF FINANCIAL RESPONSIBILITY (1) Proof of financial responsibility shall be made by showing to the satisfaction of the board that the applicant has the ability to respond in damages for liability which might result as a consequence of the intended operation. Such damages include, but are not limited to, losses from flood, lightning-induced fire, hail, or streambank erosion, including those losses that develop after the operation is concluded. Such proof may be shown by:

(a) presenting to the board a prepaid insurance policy or a corporate surety bond, or proof of purchase thereof, in the amount of \$1,000,000 and issued by a company against whom service of legal process may be made in Montana against liabilities resulting as a consequence of weather modification operations. This amount may be increased or decreased at the discretion of the board if greater or lesser liability could reasonably be attached to or result from the operation; or

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(b) depositing cash or negotiable securities with the board in the amount of \$1,000,000. This amount may be increased or decreased at the discretion of the board if greater or lesser liability could reasonably be attached to or result from the operation; or

(c) any other reasonable manner approved by the board.

(2) Cancellation of an insurance policy or corporate bond used to prove financial responsibility must be reported to the department immediately. The permit is automatically suspended upon the expiration of such insurance or bond. The permittee may request a hearing before the board or a designated hearings officer at any time before or after the suspension to show that the insurance policy or corporate bond is still in effect or to prove financial responsibility by other means in accordance with this rule. If the hearing is conducted by a designated hearings officer, the board shall meet to make a final decision as soon as possible. Such meetings may be held by telephone conference call.

Auth: 85-3-206, MCA Imp: 85-3-211, MCA

#### XII. PERMIT APPLICATIONS - OPERATING PLANS (1) A

completed Form 672-N-278 will include the following information:

(a) a general description of the nature and purpose of the operation;

(b) a discussion of the technical and scientific basis for the operation, including the physical hypotheses underlying the specific seeding methodology to be used;

(c) a legal description by township, range, and section, and a map of the target area and the operational area. The map shall also specify the intended location of ground-based seeding equipment, airborne seeding activity, and major monitoring devices for the operation;

(d) the location of the site from which management decisions for the operation would be made;

(e) a description of how the target area and operational area boundaries were determined;

(f) seeding agent(s), rate(s) of use, and method(s) of delivery;

(g) intended starting date and duration of the operation;

(h) a description of the meteorological data used to design the proposed operation, especially the period of record for which the data were collected, the location of data collection sites, and the frequency with which such data were collected;

(i) the frequency and means by which meteorological and related information needed to conduct and monitor the operation will be collected;

(j) a list of major equipment to be used in the operation, including, but not limited to, seeding equipment, weather forecasting instruments, seeding and cloud physics aircraft, radar systems, and radio communications equipment;

(k) the name and qualifications of the individuals who would be responsible for the day-to-day decisions needed to conduct the proposed operation;

(l) a listing of all key personnel necessary to conduct the operation;

(m) a description of the meteorological conditions or other criteria that would be used to determine when seeding operations would commence and be suspended;

(n) a description of the potential impacts of the intended operation upon other weather modification operations that may be in the vicinity or downwind of the proposed target area;

(o) a general assessment of potential environmental effects, both positive and negative, that could result from the operation, including, but not limited to, impacts on fish and wildlife, precipitation patterns, surface and ground water hydrology, and regional social and economic conditions; and

(p) a plan to generally assess the meteorological effects of the operation through the use of reasonably available information.

Auth: 85-3-206, MCA Imp: 85-3-206(1)(e), MCA

XIII. PERMIT APPLICATIONS - HEARINGS (1) If there appears to be considerable public interest in a proposed operation as evidenced by news articles, letters, phone calls or other means, the department and the board may consult on the need for a hearing on the permit application involved. If the board determines a hearing is needed to receive public comment on a proposed operation, the department shall conduct such hearing at a location in or near the operational area. Permit applicants shall be notified of the hearing at least two weeks prior to the hearing date.

(2) The date, time, and place of the hearing will be included in the Notice of Intention required by rule X, as well as in any general news release the department may issue regarding the proposed operation. If the decision to conduct a hearing is made after the notice of intention is published, public notice of the hearing will be made by means of a general news release.

(3) As provided in section 85-3-206, MCA, the department may assess the applicant for all or a portion of the costs incurred by the department in conducting a hearing.

(4) If the board determines that a hearing is not necessary, the department may conduct a public informational meeting in or near the operational area if deemed worthwhile. Notice of such a meeting may be included in the notice of intention or made by means of a general news release.

Auth: 85-3-206, MCA Imp: 85-3-206(2), MCA

XIV. PROCESSING APPLICATIONS - DEPARTMENT RESPONSIBILITIES (1) The department will, upon request, assist a permit applicant by responding to questions regarding the interpretation and requirements of these rules. The department may review draft applications prior to final submittal.

(2) Upon receipt of a final application, the department shall:

(a) review the application as required by Title 75, chapter 1, MCA and ARM 36.2.501 through 519;

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- (b) perform other analyses as necessary to evaluate an application and the information provided therein;
  - (c) publish the notice of intention as required by rule X; and
  - (d) hold hearings or meetings as provided by rule XIII.
- (3) Using the information provided in the application, the department's analysis of the application, the environmental review, and testimony from any hearing or meeting, the department shall present its recommendations to the board regarding:
- (a) the adequacy and reliability of the meteorological information and scientific basis upon which the operation is founded;
  - (b) the impacts and benefits that would be expected to result from the intended operation;
  - (c) the adequacy of the seeding suspension criteria proposed by the applicant as a safeguard against adverse impacts from the proposed operation;
  - (d) the demonstrated capability of the applicant to respond to damages that might result from the operation; and
  - (e) the need to develop and implement a plan for monitoring the operation.

Auth: 85-3-206, MCA Imp: 85-3-202, 206, 210, MCA

#### XV. ACTION ON PERMIT APPLICATIONS - BOARD DECISION

- CRITERIA (1) In making a decision on a permit application, the board shall consider all information available to it, including, but not limited to, the permit application, any hearing or meeting transcript, any environmental impact assessment, and the department's recommendations.
- (2) The board shall approve a permit if it finds that:
    - (a) the individual who will be responsible for the conduct of the proposed operation is, or will be, licensed as required by rules V through VIII;
    - (b) the notice of intention as required by rule X has been published;
    - (c) proof of financial responsibility as required by rule XI has been given;
    - (d) the fee for the permit has been paid or will be paid in accordance with rule IX (2); and
    - (e) the operation is determined to be for the general welfare and the public good because it meets each of the following criteria:
      - (i) the operating plan for the proposed operation adequately presents the scientific basis for the weather modification activity and demonstrates that the conduct of the operation and its effects would be effectively monitored and controlled;
      - (ii) the operation has the potential of producing benefits;
      - (iii) the operation is not expected to result in serious adverse impacts; and
      - (iv) the anticipated benefits of the operation outweigh the potential adverse impacts.

(3) In order to make the findings described in (2), the board may issue a permit subject to terms, conditions, restrictions, and limitations it considers necessary to assure that the operation would be for the general welfare and public good.

Auth: 85-3-206, MCA Imp: 85-3-202, 206, 212, MCA

XVI. PERMIT SUSPENSION AND REVOCATION (1) The board may suspend or revoke a permit for the following reasons:

- (a) failure to meet the terms and conditions of a permit;
- (b) violating any of the provisions of the act or these rules;
- (c) failure to demonstrate competency in the management and control of an operation;
- (d) use of deceitful practices in promoting or conducting a weather modification operation;
- (e) use of fraud, misrepresentation, or deceit in obtaining a license or permit; or
- (f) if the continued conduct of the operation threatens life or property.

(2) Except in the cases of (1)(f) above or rule XI(2), the department shall notify a permittee by certified mail of an opportunity for a hearing before the suspension or revocation of its permit becomes effective. Such notification must be received at least two weeks in advance of the hearing date.

(3) If, in the case of (1)(f), it is necessary to suspend a permit to protect against an imminent threat to life or property, the board chairman, or in the chairman's absence a designated board member, may authorize an immediate permit suspension by telephone. A hearing to determine if the suspension should be lifted or the permit modified or revoked must be held within two weeks of the effective date of the suspension. The board may appoint a hearings officer to conduct hearings in which testimony is received on the suspension or revocation of a weather modification permit. Upon reviewing the report of the hearings officer, the board shall meet to make a decision as soon as possible. Such meetings may be held by telephone conference call.

Auth: 85-3-206, MCA Imp: 85-3-214, MCA

XVII. RECORDS AND REPORTING (1) Every licensee shall keep and maintain a daily record of all operations conducted under each permit, showing:

- (a) the method(s) employed in delivering the seeding agent;
- (b) type of seeding equipment used;
- (c) kinds and amounts of seeding agents used;
- (d) times and places of seeding activities;
- (e) names and addresses of individuals participating or assisting in the operation; and
- (f) such information as may be required to monitor compliance with any condition of a permit.

(2) A form 674-N-278 shall be completed and filed with the department on a monthly basis for each permitted operation and for each exempted research and development operation.

(3) Every permittee shall complete and file a form 675-N-278 with the department at the end of the period for which the permit was issued.

(4) A permittee shall forward a copy of all forms prepared in compliance with federal weather modification rules and regulations to the department at the time such forms are submitted to the federal government.

(5) All records and reports in the custody of the department shall be open for public examination in accordance with Title 2, chapter 6, MCA.

Auth: 85-3-102, MCA Imp: 85-3-301, 302, 303, MCA

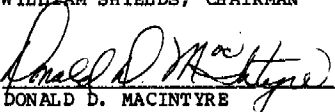
5. The Board of Natural Resources and Conservation is proposing the adoption of these rules to improve the administration of Title 85, chapter 3, parts 1-3, MCA. It is anticipated that in the future the number of weather modification operations will increase. Thus, the need for clearer guidelines and procedures for preparing, processing, and acting upon applications for weather modification licenses and permits and for monitoring these operations also increases. The Board has determined that this need is now large enough to justify the adoption of comprehensive rules as authorized by statute. A preliminary draft of these rules was distributed for review by potentially interested parties. The Board also examined a draft prior to this review and a subsequent draft that incorporated public comments. The rules as proposed in this notice are intended to provide reasonable guidelines for the operation of weather modification projects to the benefit of the state and to protect its citizens and environment from any unanticipated effects of weather modification operations.

6. Interested persons may present their data, views, and arguments concerning the proposed repeal and adoption of rules, either orally or in writing, at the hearing. Written data, comments, or arguments may also be submitted to the Department of Natural Resources and Conservation, 1520 East Sixth Avenue, Helena, Montana 59620-2301, no later than July 24, 1987.

7. Gerhard Knudsen, Supervisor, Water Planning Section, DNRC, Helena, will preside over and conduct the hearing.

BOARD OF NATURAL RESOURCES  
AND CONSERVATION  
WILLIAM SHIELDS, CHAIRMAN

BY:

  
DONALD D. MACINTYRE  
CHIEF LEGAL COUNSEL  
DEPARTMENT OF NATURAL RESOURCES  
AND CONSERVATION

Certified to the Secretary of State, June 15, 1987.

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

|                                       |                      |
|---------------------------------------|----------------------|
| In the Matter of Proposed Amendment ) | NOTICE OF PROPOSED   |
| of Rules Regarding the Filing by )    | AMENDMENT OF RULES   |
| Motor Carriers of Proof of )          | REGARDING THE FILING |
| Insurance. )                          | BY MOTOR CARRIERS OF |
| )                                     | PROOF OF INSURANCE   |
| )                                     | NO PUBLIC HEARING    |
| )                                     | CONTEMPLATED         |

TO: All Interested Persons

1. On July 31, 1987 the Department of Public Service Regulation proposes to amend rules 38.3.704 and 38.3.705.

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

38.3.704 AUTHORIZED INSURANCE COMPANIES AND COUNTER-SIGNATURE OF MONTANA AGENT CERTIFICATES OF INSURANCE

(1), (2) Remains the same.

(3) Certificates of insurance must be filed with the Commission. All certificates of insurance submitted by these insurance companies to this Commission on behalf of the respective carriers must be executed by the appropriate an authorized company representative and all certificates of insurance submitted for carriers holding Montana intrastate authority must be countersigned by a resident Montana agent for the respective insurance companies. AUTH: Sec. 69-12-201, MCA; IMP, Sec. 69-12-402, MCA

38.3.705 FORMS FOR CERTIFICATE OF INSURANCE (1) The following forms shall be utilized by the department and may be obtained from State Publishing Company, P.O. Box 4999, Helena, Montana 59604 the Transportation Division of the Commission, 2701 Prospect Avenue, Helena, Montana 59620-2601.

(a), (b) Remains the same.

(c) Form 5. Uniform Notice of Cancellation of Motor Carrier Insurance Policies, Stock Form K.

(d) Form 6. Uniform Motor Carrier Cargo Certificate of Insurance, Stock Form H.

(e) Form 7. Uniform Motor Carrier Bodily Injury and Property Damage Liability Certificate of Insurance, Stock Form E. AUTH: Sec. 69-12-201, MCA; IMP, Sec. 69-12-402, MCA

3. Rationale: The Public Service Commission is proposing this amendment in order to eliminate the requirement that certificates of insurance be countersigned by a resident Montana agent. The Commission believes this requirement is unnecessary to protect the shipping public in view of 33-17-1111(4), MCA, which provides that an insurance policy is not invalid without the required countersignature. Eliminating the requirement will facilitate efficient filing. It should be noted that the certificates of insurance will continue to state



that the original policy has been countersigned as required by law. To facilitate reporting, the Commission is also adopting the appropriate uniform insurance reporting forms as approved by the National Associate of Regulatory Utility Commissioners (NARUC), and found at 49 CFR §1023, app. (1986).

4. Interested parties may submit their data, views or arguments concerning the proposed amendments and adoptions in writing to Timothy P. Baker, Public Service Commission, 2701 Prospect Avenue, Helena, Montana 59620-2601, no later than July 27, 1987.

5. If a person who is directly affected by the proposed amendments and adoptions wishes to express his data, views and arguments orally, he must make written request for a public hearing and submit this request along with any written comments he has to Timothy R. Baker, Public Service Commission, 2701 Prospect Avenue, Helena, Montana 59620-2601, no later than July 27, 1987.

6. If the agency receives requests for a public hearing on the proposed amendments and adoptions from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendment or adoption; from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 700 persons based on the fact there are approximately 7,000 interstate carriers registered to operate in and through Montana.

7. The Montana Consumer Counsel, 34 West Sixth Avenue, Helena, Montana 59620 (Telephone 444-2771) is available and may be contacted to represent consumer interests in this matter.

  
CLYDE JARVIS, Chairman

CERTIFIED TO THE SECRETARY OF STATE JUNE 15, 1987.

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

|                             |   |                                 |
|-----------------------------|---|---------------------------------|
| IN THE MATTER OF THE AMEND- | ) | NOTICE OF PROPOSED AMENDMENT    |
| MENT of Rules 42.12.128     | ) | of Rules 42.12.128 and          |
| and 42.12.323 Pertaining to | ) | 42.12.323 Pertaining to Selling |
| Selling Beer.               | ) | Beer.                           |

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On July 30, 1987, the Department of Revenue proposes to amend rules 42.12.128 and 42.12.323 pertaining to Catering Endorsements and Permissible and Prohibited Activities regarding selling beer in grandstands.

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

42.12.128 CATERING ENDORSEMENT (1) and (2) remain the same.

(3) The holder of a catering permit may sell and serve all-alcoholic beverages at retail only at a booth, stand, or other fixed place of business within the exhibition enclosure, confined to specified premises or designated areas described in the application, and approved by the division. A holder of any such permit, or his agents or employees may also sell and serve beer in the grandstand or bleacher.

~~(3)~~(4) Licensees granted approval to cater such special events are subject to the provisions of 16-6-314, MCA, and ARM 42.13.101.

AUTH: 16-1-303 Ext. of Auth. Sec. 4, Ch. 180, L. 1987; IMP: 16-4-204 and 16-3-103.

42.12.323 PERMISSIBLE AND PROHIBITED ACTIVITIES (1) A special permit issued pursuant to 16-4-301(1), MCA, entitles the holder to sell and serve beer and/or table wine at retail only at a booth, stand, or other fixed place of business within the exhibition enclosure, confined to specified premises or designated areas, described in the application and approved by the division. A holder of any such permit, or his agents or employees may not hawk also sell and serve beer in the any grandstand or bleacher, or other area. Sale, service, and consumption of beer and/or table wine under a special permit is to be confined only to specified premises or designated areas approved by the division.

(2); (3) and (4) remain the same.

AUTH: 16-1-303, Ext. of Auth. Sec. 4, Ch. 180, L. 1987; IMPL: 16-3-103; 16-3-241 and 16-4-301.

3. Ch. 180, L. 1987 allows holders of special permits or catering endorsements to sell beer in the grandstand and bleacher area of a county fairground or public sports arena. The current rules either restrict or do not address the sale of beer in grandstand areas. The proposed amendments are

12-6/25/87

MAR Notice No. 42-2-344

necessary to allow for the selling of beer in grandstand or sports arena areas on the terms enacted by the 1987 legislative session. The rule includes an approval process required to confirm payment of fees, timely application for the permit, and signoffs by local inspectors and law enforcement officials.

4. Interested parties may submit their data, views, or arguments concerning the proposed amendment in writing to:


Cleo Anderson  
Department of Revenue  
Office of Legal Affairs  
Mitchell Building  
Helena, Montana 59620

no later than July 27, 1987.

5. If a person who is directly affected by the proposed amendments 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 Cleo Anderson at the above address no later than July 27, 1987.

6. If the agency receives requests for a public hearing on the proposed amendments from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed adoption; from the Administrative Code Committee of the Legislature; from a governmental subdivision, or agency; or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 25.

7. The authority of the Department to make the proposed amendments is based on 16-1-303, MCA and Auth. Ext. Sec. 4, Ch. 180, L. 1987 effective 10/1/87. The rules implement 16-3-103; 16-3-241; 16-4-204, 16-4-301, MCA.

  
JOHN D. LaFAVER, Director  
Department of Revenue

Certified to Secretary of State 6/15/87.

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

In the matter of the amend- ) NOTICE OF PUBLIC HEARING ON  
ment of Rule 46.12.3803 ) THE PROPOSED AMENDMENT OF  
pertaining to medically ) RULE 46.12.3803 PERTAINING  
needy income standards ) TO MEDICALLY NEEDY INCOME  
 ) STANDARDS

TO: All Interested Persons

1. On July 15, 1987, at 9:30 a.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana, to consider the proposed amendment of Rule 46.12.3803 pertaining to medically needy income standards.

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

46.12.3803 MEDICALLY NEEDY INCOME STANDARDS (1) Notwithstanding the provisions found in subchapter 2, the following table contains the amount of net income protected for maintenance by family size. The table applies to SSI and AFDC-related individuals and families.

MEDICALLY NEEDY INCOME LEVELS  
FOR SSI and AFDC-RELATED INDIVIDUALS  
AND FAMILIES

| <u>Family Size</u> | <u>Monthly<br/>Income Level</u> | <u>Quarterly<br/>Income Level</u> |
|--------------------|---------------------------------|-----------------------------------|
| 1                  | \$340.00                        | \$1,020.00                        |
| 2                  | 383.00                          | 1,149.00                          |
| 3                  | <del>404.00</del><br>408.00     | <del>1,212.00</del><br>1,224.00   |
| 4                  | <del>426.00</del><br>433.00     | <del>1,278.00</del><br>1,299.00   |
| 5                  | <del>501.00</del><br>507.00     | <del>1,503.00</del><br>1,521.00   |
| 6                  | <del>570.00</del><br>580.00     | <del>1,710.00</del><br>1,740.00   |
| 7                  | <del>642.00</del><br>654.00     | <del>1,926.00</del><br>1,962.00   |
| 8                  | <del>713.00</del><br>727.00     | <del>2,139.00</del><br>2,181.00   |
| 9                  | <del>785.00</del><br>762.00     | <del>2,355.00</del><br>2,286.00   |
| 10                 | <del>857.00</del><br>795.00     | <del>2,571.00</del><br>2,385.00   |
| 11                 | <del>929.00</del><br>826.00     | <del>2,787.00</del><br>2,478.00   |

12-6/25/87

MAR Notice No. 46-2-508

|    |                 |                 |
|----|-----------------|-----------------|
| 12 | <u>17001.00</u> | <u>37003.00</u> |
|    | 854.00          | 2,562.00        |
| 13 | <u>17073.00</u> | <u>37219.00</u> |
|    | 882.00          | 2,646.00        |
| 14 | <u>17145.00</u> | <u>37435.00</u> |
|    | 907.00          | 2,721.00        |
| 15 | <u>17217.00</u> | <u>37651.00</u> |
|    | 930.00          | 2,790.00        |
| 16 | <u>17289.00</u> | <u>37867.00</u> |
|    | 951.00          | 2,853.00        |

Subsection (1)(a) remains the same.

AUTH: Sec. 53-6-113 MCA


IMP: Sec. 53-6-101, 53-6-131, and 53-6-141 MCA

3. These rules are proposed to be changed to meet the federal requirement that medically needy monthly income levels be updated whenever AFDC levels are changed.

The change will be applied retroactively to August 1, 1987.

4. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana 59604, no later than July 23, 1987.

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

  
\_\_\_\_\_  
Director, Social and Rehabilitation Services

Certified to the Secretary of State June 15, 1987.

BEFORE THE MONTANA DEPARTMENT OF AGRICULTURE  
OF THE STATE OF MONTANA

|                            |   |                              |
|----------------------------|---|------------------------------|
| In the matter of the       | ) | NOTICE OF ADOPTION OF ARM    |
| adoption of the rules      | ) | 4.10.1701 THROUGH 4.10.1708  |
| for implementation of a    | ) | PROVIDING FOR THE IMPLEMENT- |
| rodenticide grants program | ) | ATION GRANTS PROGRAM AND THE |
|                            | ) | COLLECTION OF FEES           |

TO: All Interested Persons.

1. On May 14, 1987, the Department of Agriculture published notice of proposed new rules establishing a rodenticide grants program and the collection of fees, at page 510 of the 1987 Administrative Register, Issue No. 9.

2. The department has adopted the rules with the following changes.

4.10.1701 remains the same.

4.10.1702 DEALER RECORDS AND SURCHARGE ASSESSMENT (1)  
No Changes

(2) From the records submitted the department will prepare a list which will include the specific field rodenticides and the amount sold during the previous year for dealers of nongovernment field rodenticides and each dealer selling government manufactured field rodenticides. From this data the department will determine the surcharge to be assessed of each registrant and, in the case of government produced rodenticides, of each dealer. Once the surcharge assessment has been forwarded to the registrant or dealer, the registrant or dealer shall submit the surcharge payment within 30 days to the department.

AUTH: Section 6 SB 238 of the 1987 Session

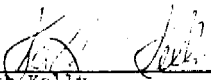
IMP: Section 6 SB 238 of the 1987 Session

4.10.1703 through 4.10.1708 remain the same.

3. The department received one response to the proposed rules from Dave Cogley of the Legislative Council. He commented that the rules should have more detail on the collection of the surcharge fee. The department agreed with his concern and added the above changes.

No other comments or testimony were received.

4. The authority for the new rules is Section 6 Senate Bill 238 of the 1987 legislative session, and the rules implement Sections 1, 4, 6 of SB 238 of the 1987 legislative session.

  
\_\_\_\_\_  
Keith Kelly  
Director  
Department of Agriculture

Certified to the Secretary of State June 15, 1987.

Montana Administrative Register

12-6/25/87

STATE OF MONTANA  
DEPARTMENT OF COMMERCE  
BEFORE THE BOARD OF MILK CONTROL

In the matter of the amendment ) NOTICE OF AMENDMENT OF RULE  
of rule 8.86.301 (6)(g), (7)(a)) 8.86.301 PRICING RULES  
and (8)(a) regarding special )  
wholesale prices and formulas )  
for fixing the class II and )  
III producer prices )  
 ) DOCKET #79-87

TO: All licensees under the Montana Milk Control Act  
(Section 81-23-302, MCA, and following), and to all  
interested persons:

1. On April 30, 1987, the Montana Board of Milk Control  
published notice of a proposed amendment of rule 8.86.301  
(6)(g), (7)(a) and (8)(a), relating to special wholesale  
prices and formulas for fixing the class II and III producer  
prices. Notice was published at page 402 of the 1987 Montana  
Administrative Register, issue No. 8, as MAR Notice No.  
8-86-20.

2. The Board has amended the rule exactly as originally  
proposed except for the following change:

"8.86.301 Pricing Rules

Subsections (1) through (6)(g) remain the same.

(i) Special wholesale prices for retail grocery stores  
will be based on the procedures provided in Subsections (A),  
(B) and (C) below. All milk purchased under one of the  
procedures indicated below must be paid within fifteen (15)  
days after invoicing unless there is a different time frame  
specified in the applicable rule section. Retailers are  
prohibited from purchasing milk at more than one level of  
service from any one distributor ~~or jobber and distributors~~  
are prohibited from offering more than one level of service to  
any one retailer in any single billing period. This does not  
prohibit a retailer from changing levels of service in  
subsequent billing periods.

(ii)..."

3. Only one written comment was received concerning the  
proposed amendment. The comment was not directed to the  
implementation of the rule as it was intended, but to the  
manner in which it was worded. The person commenting  
suggested that the language be changed so that distributors  
would be in violation, as well as retailers, since the  
distributors are the licensees and the only party subject to  
penalties under the Act. The paragraph was amended exactly as  
the person commenting had suggested because it was the intent  
of the Board of Milk Control that those persons who are in  
violation of the applicable section be subject to penalties as  
provided by law.

4. No other comments or testimony were received.

12-6/25/87

Montana Administrative Register

MONTANA BOARD OF MILK CONTROL  
CURTIS C. COOK, CHAIRMAN

BY: William E. Ross  
WILLIAM E. ROSS, CHIEF  
MILK CONTROL BUREAU

Certified to the Secretary of State June 15, 1987.



In the matter of the adoption ) NOTICE OF ADOPTION OF NEW  
of rules pertaining to the ) RULES PERTAINING TO ORGANI-  
operations of the Montana ) ZATION AND RULES IMPLEMENT-  
State Lottery Commission ) ING THE MONTANA STATE  
) LOTTERY

1. On April 20, 1987, the Montana State Lottery Commission published a notice of public hearing on the adoption of the above-stated rules at page 407, 1987 Montana Administrative Register, issue number 8. The hearing was held on Friday, May 22, 1987, at 10:00 a.m., in the conference room at 2525 North Montana, Helena, Montana.

2. The Commission has adopted new rules I (8.127.101), under Sub-Chapter 1; II (8.127.201) through IV (8.127.203) under Sub-Chapter 2; VII (8.127.402), VIII (8.127.403), and X (8.127.405) through XIII (8.127.408) under Sub-Chapter 4; XIV (8.127.601) through XVII (8.127.604), XIX (8.127.606) through XXIII (8.127.610), and XXV (8.127.612) under Sub-Chapter 6; XXVI (8.127.801) under Sub-Chapter 8; and XXVII (8.127.1001) through XXXII (8.127.1006) under Sub-Chapter 10 exactly as proposed.

3. The Commission has adopted new rules V (8.127.204) under Sub-Chapter 2; VI (8.127.401) and IX (8.127.404) under Sub-Chapter 4; XVIII (8.127.605) and XXIV (8.127.611) under Sub-Chapter 6; and XXXIII (8.127.1201) under Sub-Chapter 12 as proposed with the following changes:

(2) The director shall adopt regulations working papers for each instant game, including, but not limited to:

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

(4) The director shall adopt rules for each instant game, including, but not limited to:

(a) definition of winners:

(b) validation requirements;

(c) drawing eligibility;

(d) claim periods;

(e) prize restrictions; and

(f) other game-specific requirements.

~~(4) (5) Game regulations rules~~ are subject to the concurrence of the commission.

(5) (6) . . .

(6) (7) The lottery shall provide a type of ~~lotto~~ on-line game to the public whenever the director, with the concurrence of the commission, finds it feasible and in the best interest of the state."

Auth: 23-5-1007(2) and (8), MCA AUTH Extension, Sec. 13, Ch. 161, L. 1987 Imp: 23-5-1016, 23-5-1019, 23-5-1020, MCA

"8.127.401 RETAILER PLACES OF SALE (1) Lottery tickets or chances may be sold at any place of business in Montana that:

- (a) that is licensed by the lottery;
- (b) that is not engaged in business exclusively as a lottery ticket or chance sales agent;
- (c) that is not a mobile business;
- (d) whose owner is financially responsible;
- (e) that is accessible to the public;
- (f) whose owner has not been convicted of a felony or a gambling-related offense; ~~or~~ and
- (g) whose owner does not have a financial interest in any gaming supplier."

Auth: 23-5-1007(8), 23-5-1016(2), MCA AUTH Extension, Sec. 13, Ch. 161, L. 1987 Imp: 23-5-1016, 23-5-1019, 23-5-1020, MCA

"8.127.404 RETAILER REQUIRED RULE READING (1) will remain the same.

- (a) read the lottery law and the rules of the commission concerning retail licenses and be familiar with such law and rules;

- (b) sign ~~a certificate~~ an official log that he or she is familiar with the law and rules of the commission and agrees not to violate such law or rules."

Auth: 23-5-1007(8), MCA AUTH Extension, Sec. 13, Ch. 161, L. 1985 Imp: 23-5-1007(8), 23-5-1016(11) and (13), MCA

"8.127.605 EXPIRATION OF LICENSE (1) will remain the same.

- (2) If the director finds that the volume of licenses are is such that the expiration in any month or group of months creates a burden on the administration of the lottery, the director may issue licenses for a period greater than or less than one year for the purpose of staggering the expiration dates of licenses throughout the calendar year."

Auth: 23-5-1007(8), 23-5-1012(1)(c), MCA AUTH Extension, Sec. 13, Ch. 161, L. 1987 Imp: 23-5-1012(1)(c), MCA

"8.127.611 REVOCATION OR SUSPENSION OF LICENSE (1) will remain the same.

- (2) The director may, after a hearing before the commission, suspend or revoke a license for any of the following reasons:

- (a) through (4) will remain the same."

Auth: 23-5-1007(8), MCA AUTH Extension, Sec. 13, Ch. 161, L. 1987 Imp: 23-5-1016(3)(13), MCA

"8.127.1201 PRIZES (1) will remain the same.

(2) A winning ticket may be redeemed only by an individual--or an organization with a federal employer's identification number or by an individual.

(3) will remain the same.

(4) Unless otherwise provided in the regulations rules for a specific game, a claimant shall sign the back of a winning ticket and, for prizes over \$25.00, complete a claim form approved by the director.

(5) through (12) will remain the same."

Auth: 23-5-1007(8), MCA AUTH Extension, Sec. 13, Ch. 161, L. 1987 Imp: 23-5-1007(2)(3), 23-5-1022(3)(5), MCA

4. One comment was received from the Administrative Code Committee. They wanted the Commission to expand on the statement of reasonable necessity for the new rules. The Commission states that these rules were proposed under the authority of section 5, subsection 8, of Chapter 669, Laws of 1985; as extended by Sec. 13, Ch. 161, Laws of 1987. The Commission is mandated to adopt rules. The rules are necessary because the lottery will be conducting a business operating within the confines of state government. Lottery retailers are partners in that business. The rules are thus necessary to insure informed participation in the lottery business by the retailers and by the buying public.

5. No other comments or testimony were received.

MONTANA STATE LOTTERY  
COMMISSION

BY:

  
DIANA S. DOWLING, DIRECTOR

Certified to the Secretary of State, June 15, 1987.

BEFORE THE DEPARTMENT OF FISH, WILDLIFE AND PARKS  
OF THE STATE OF MONTANA

|                                      |   |                             |
|--------------------------------------|---|-----------------------------|
| In the matter of the                 | ) | NOTICE OF THE ADOPTION OF   |
| adoption of Rules I (12.2.401)       | ) | RULE I (12.2.421 THROUGH    |
| through Rule VII (12.2.427)          | ) | RULE VII (12.2.427)         |
| establishing fees for preparation    | ) | PROVIDING FOR COLLECTION    |
| of Environmental Impact Statements.) | ) | OF FEES FOR COSTS           |
|                                      | ) | ASSOCIATED WITH PREPARATION |
|                                      | ) | OF ENVIRONMENTAL IMPACT     |
|                                      | ) | STATEMENTS.                 |

1. On April 16, 1987, the Secretary of State published Notice of Proposed Adoption of Rules relative to the collection of fees for environmental impact statements, at Page 359 of the Montana Administrative Register, issue number 7.

2. The department has adopted 12.2.421 (Rule I), 12.2.423 (Rule III), 12.2.424 (Rule IV, 12.2.425 (Rule V), 12.2.426 (Rule VI) and 12.2.427 (Rule VII) as proposed.

3. The department has adopted 12.2.422 (Rule II) as proposed, except as follows:

12.2.422 (Rule II) PRELIMINARY COST ESTIMATE OF EIS-ESTIMATE OF PROJECT COST (1) If it is determined that an environmental impact statement is necessary, the department will make a preliminary estimate of the costs to compile the statement. This estimate will include a summary of the data and information, including salaries, equipment costs, printing and dissemination costs, and any other expense associated with the collection of data and information for the EIS and the printing and dissemination of the EIS.

(2) If the preliminary estimated costs of acquiring the data and information to prepare an EIS total more than \$2,500, the department will notify the applicant that a fee must be paid and will submit an itemized preliminary estimate of the cost of acquiring the data and information necessary to compile an EIS. The applicant will also be advised that a notarized and detailed estimate of the cost of the project being reviewed in the EIS must be submitted by the applicant within 15 days after receipt of the request. In addition, the applicant will be asked to describe the data and information available or being prepared by the applicants or by a federal or state agency which can possibly be used in the EIS. The applicant may indicate which of the department's estimated costs of acquiring data and information for the EIS would be duplicative or excessive.

(3) The estimated cost of a project submitted by the applicant as required by this rule will include, but is not limited to, an itemized list of the estimated construction, engineering, land acquisition, equipment, labor, materials, interest, inflationary, and contingency costs, showing various components and how those costs are calculated.

(4) Upon request, the applicant will be granted an extension of the 15 day time period for submission of an estimate of the project's cost and a critique of the department's preliminary EIS data and information accumulation cost assessment.

AUTH: 75-1-202, MCA, IMP: 75-1-202, MCA

4. The department received comments on the rules from Richland W. Goodard, representing Exxon Company, U.S.A. He made the following suggestions.

COMMENT: (12.2.422(2)) (Rule II(2)) should read, "...the applicant will be asked to describe the information available or being prepared by the applicants or by another federal or state agency which can possibly be used by the applicant."

RESPONSE: The department adopted this suggestion.

COMMENT: (12.2.422(3)) (Rule II (3)), concerning estimated costs of a project should only include items with the potential for causing environmental impacts, and, therefore, exclude such items as engineering, land acquisition, interest costs and inflationary costs.

RESPONSE: The department rejects this suggestion. Nothing in the legislation under which these rules are being adopted indicates that fees should be based on certain kinds of costs of a project, as opposed to other kinds of costs. Under the statute, size and complexity of the proposed project and the resulting expenses the agency will incur are the valid bases of the fees, with total costs of the project serving as a rough approximation for these elements of the environmental assessment process.

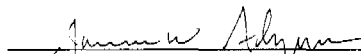
COMMENT: The basis of the fees should include only that part of the project located in Montana.

RESPONSE: The department rejects this suggestion. The department knows of no situation where fees would be based on other than the cost of the portion of a project located in Montana, although, theoretically at least, a project might straddle the state line. In such a case, the department believes statutory interpretation of Section 75-1-203, MCA, would be the appropriate means by which a fee issue would be resolved.

COMMENT: An "absolute cap on the maximum fee" should be established and it should be \$1.5 million.

RESPONSE: The department rejects this suggestion. The statute establishing maximum fees, Section 75-1-203, MCA, establishes no "absolute cap," and Exxon has offered no reason to establish one by rule.

5. In the original notice, the authority of the department to make the proposed (12.2.424 (Rule IV) was cited as Section 75-1-202, MCA, as was the implementing section. At the suggestion of the Legislative Council, the authorizing and implementing statute has been changed to 75-1-203, MCA.

  
James W. Flynn, Director  
Department of Fish, Wildlife and Parks

Certified to the Secretary of State, June 15, 1987.

BEFORE THE DEPARTMENT OF FISH, WILDLIFE AND PARKS  
OF THE STATE OF MONTANA

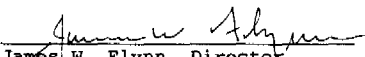
|                               |   |                             |
|-------------------------------|---|-----------------------------|
| In the matter of the          | ) | NOTICE OF THE ADOPTION OF   |
| adoption of Rule I (12.6.707) | ) | RULE I (12.6.707) EXCLUDING |
| relating to exceptions to the | ) | CERTAIN FLOTATION DEVICES   |
| statutory definition of       | ) | FROM THE STATUTORY          |
| "vessel".                     | ) | DEFINITION OF "VESSEL".     |

TO: All Interested Persons:

1. On March 26, 1987 the Department of Fish, Wildlife and Parks gave notice of proposed adoption of a new rule excluding certain flotation devices from the statutory definition of "vessel", on page 307 of the Montana Administrative Register issue number 6.

2. No public hearing was held nor was one requested. The Department of Fish, Wildlife and Parks has received no written or oral comments concerning this rule.

3. Based on the forgoing, the department hereby adopts the rule as proposed.

  
James W. Flynn, Director  
Department of Fish, Wildlife and Parks

Certified to the Secretary of State, June 15, 1987.

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

|                                 |                    |
|---------------------------------|--------------------|
| In the matter of adoption of )  | NOTICE OF ADOPTION |
| rules concerning mediation of ) | OF NEW RULES ARM   |
| workers' compensation )         | 24.28.101 THROUGH  |
| disputes )                      | 24.28.111          |

TO: All Interested Persons:

1. The 50th Legislature recently passed Senate Bill 315. That bill requires parties with certain disputes over workers' compensation benefits to submit the dispute to a Department of Labor and Industry mediator prior to petitioning the Workers' Compensation Court. On April 30, 1987, the Department of Labor and Industry published notice at page 454 of the 1987 Montana Administrative Register, issue number 8, of public hearing on the proposed adoption of rules setting forth the procedures through which mediation of workers' compensation disputes will proceed.

2. The Department held the following hearings on the proposed rules: May 28, 1987, 7:00 p.m., Student Union Building, Lewis and Clark Room, First Floor, Eastern Montana College, Billings, Montana; June 2, 1987, 2:00 p.m., SRS Auditorium, 111 North Sanders, Helena, Montana; June 4, 1987, 7:00 p.m., Outlaw Inn, Winchester Room, 1701 Highway 93 South, Kalispell, Montana.

3. The Department has adopted the following rules as proposed:

RULE I, 24.28.101 JURISDICTION; RULE II, 24.28.102 PARTIES, ATTENDANCE, REPRESENTATION; RULE III, 24.28.103 REQUESTS FOR MEDIATION; RULE V, 24.28.105 MOTIONS TO DISMISS FOR FAILURE TO MEET SETTLEMENT REQUIREMENTS; RULE VI, 24.28.106 MEDIATION CONFERENCES; RULE VII, 24.28.107 ROLE OF MEDIATOR - UNREPRESENTED CLAIMANT; RULE IX, 24.28.109 MEDIATOR'S REPORT OF NON-COOPERATION; RULE XI, 24.28.110 NOTICE TO MEDIATOR WHEN DISPUTE SETTLED; RULE XII, 24.28.111 TIME-COMPUTATION UNDER MEDIATION RULES;

4. The Department has adopted the remaining proposed rules with the following changes:

RULE IV, 24.28.104 TIME FRAMES FOR SETTLEMENT CONFERENCES - NOTICES (1) The mediator shall have 45 days from the date the mediation request was received by the department to hold mediation conferences. The mediator shall send notice to the parties identifying the following: issues to be mediated; information required prior to the time of the mediation conference; and the time and place of the mediation conference. The 45 day period may be extended by mutual agreement of the parties. If a party objects to a telephone mediation conference, the mediator may extend the 45 day period to 60 days if the mediator deems the extension necessary. If the mediator does not hold a mediation



conference within the time frames provided herein, the parties may proceed directly to workers' compensation court.

AUTH: Chap 464, Section 53(2), Laws of Montana, 1987 IMP:  
Chap 464, Section 57, Laws of Montana, 1987

RULE VIII, 24.28.108 MEDIATOR'S REPORT -

RECOMMENDATION (1) The parties and the mediator are encouraged to attempt to resolve issues at a mediation conference. If issues are not resolved at or before a mediation conference, the mediator shall issue a report as set forth in (2).

(2) Within 10 working days after a mediation conference, the mediator shall prepare a written report to the parties setting forth the mediator's recommended solution and the basis for the recommendation. If the mediator does not prepare a written report within 10 working days after a mediation conference, the parties may proceed directly to workers' compensation court. The mediator may also set forth alternative solutions. When parties have offered specific solutions which are not recommended by the mediator, the mediator shall explain why the solutions are not recommended. Within 45 days of the date of the mediator's report, each party shall notify the mediator whether the recommended solution, or an alternate solution, is accepted.

(3) If both parties cannot reach a solution after 45 days, either party may petition the workers' compensation court for a resolution of the dispute. Nothing in this rule shall prevent a party from petitioning the workers' compensation court prior to the expiration of the 45 days, if both parties agree that they cannot resolve the dispute.

AUTH: Chap 464, Section 53(2), Laws of Montana, 1987 IMP:  
Chap 464, Sections 55 and 57, Laws of Montana, 1987

5. The Department received testimony at hearings and written comments concerning its proposed rules. Summaries of these comments and the Department's responses follow:

(a) Several parties commented regarding the time limitation for mediation conferences established in ARM 24.28.104, the time limitation for issuance of a mediation report in ARM 24.28.108, and time limitation for issuance of a report of non-cooperation in ARM 24.28.109. Several comments indicated that the rules allow too much time for the mediator to schedule a conference and to issue a report. One comment indicated that the rules allow too little time for the mediator to schedule a conference and to issue a report. The Department believes that the proposed timelines are reasonable in light of the mediators' anticipated workload.

(b) One party objected to ARM 24.28.104 as allowing the mediator to request information which could cost claimants a significant amount. Chap 464, Section 55(2), Laws of

Montana, 1987, requires the mediator to assure that all relevant evidence is brought forth during the mediation process.

The rules cannot limit the scope of this evidence.

(c) One party commented that the rules should require the Division of Workers' Compensation to provide the mediator with a complete copy of a claimant's workers' compensation file. ARM 24.28.104 allows the mediator to obtain all relevant evidence necessary to conduct a mediation conference, including information in a claimant's Workers' Compensation Division file.

(d) One commentor objected to ARM 24.28.109, as allowing the mediator to issue a report of non-cooperation without specifying standards to determine if a party has cooperated. Chapter 464, Section 57(7)(b), Laws of Montana, 1987, specifies standards to determine if a party has cooperated. This section provides that a mediator may issue a report of non-cooperation if a party has failed to:

(i) supply information or offer a summary of the party's position as reasonably requested by the mediator;

(ii) attend scheduled mediation conferences unless excused by the mediator; or

(iii) listen to and review the information and position offered by the opposing party.

(e) One party commented that the rules should include a provision specifying that a workers' compensation judge may admit a mediator's report of non-cooperation into evidence to determine whether a claimant is entitled to attorney fees or a penalty. Chap 464, Section 56, Laws of Montana, 1987, provides that no court of law may admit a mediator's report into evidence.


(f) One party commented that the rules should specify that a party may proceed directly to workers' compensation court if the mediator does not comply with the timelines set forth in the rules. The Department agrees and has amended Sections 24.28.104 and 24.28.108 to so provide.

(g) Several comments urged the Department to include rules of discovery or to include a rule prohibiting discovery during the mediation process. Chapter 464, Sections 55(1), (2), Laws of Montana, 1987, provide that the mediator may facilitate the exchange of information between the parties and assure that all relevant evidence is brought forth during mediation. ARM 24.28.104 provides that the mediator may require the parties to provide information necessary for mediation. The mediator's ability to facilitate the exchange of information and to require parties to provide information obviates the necessity for discovery rules.

(h) One party objected to ARM 24.28.107 as not allowing the mediator to adequately assist an unrepresented claimant and not requiring the mediator to direct the

claimant to obtain legal representation if the mediator believes the claimant needs legal representation to successfully complete mediation. The Department believes that the rules provide adequate assistance to unrepresented claimants without compromising the mediator's impartial position.

(i) One party objected to the allowance of telephone conferences as violating a claimant's rights at the mediation conference. ARM 24.28.106 provides that mediation conferences may be conducted by telephone conference call. A mediator may conduct a telephone conference upon agreement of the parties. Since the mediator will conduct telephone conferences only upon agreement of the parties, this provision should not adversely affect the parties' rights.

  
M. M. HARTMAN, Commissioner  
Department of Labor & Industry

Certified to the Secretary of State 6/12/87.

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

|                             |   |                            |
|-----------------------------|---|----------------------------|
| In the matter of the amend- | ) | NOTICE OF THE AMENDMENT OF |
| ment of Rules 46.12.102 and | ) | RULES 46.12.102 AND        |
| 46.12.303 pertaining to     | ) | 46.12.303 PERTAINING TO    |
| electronic media claims     | ) | ELECTRONIC MEDIA CLAIMS    |
| submission in the Medicaid  | ) | SUBMISSION IN THE MEDICAID |
| program                     | ) | PROGRAM                    |

TO: All Interested Persons

1. On May 14, 1987, the Department of Social and Rehabilitation Services published notice of the proposed amendment of Rules 46.12.102 and 46.12.303 pertaining to electronic media claims in the Medicaid program at page 551 of the 1987 Montana Administrative Register, issue number 9.

2. The Department has amended Rule 46.12.102 as proposed.

3. The Department has amended Rule 46.12.303 as proposed with the following changes:

46.12.303 BILLING, REIMBURSEMENT, CLAIMS PROCESSING,  
AND PAYMENT Subsections (1) and (1)(a) remain as proposed.

(ab) ~~Except as provided in subsection (1)(a)(E) of this rule, All medicaid claims submitted to the Montana--medicaid program by individual practitioners and sole--proprietorships, whether--or--not--incorporated as a public service corporation, department are to be submitted on personally--signed--state approved--billing a state claim forms, either: or--they--shall not--be--considered--valid--and--proper--claims--~~

Subsections (1)(b)(i) through (7)(b) remain as proposed.

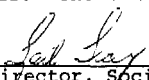
AUTH: Sec. 53-2-201 and 53-6-113 MCA

IMP: Sec. 53-6-101, 53-6-111 and 53-6-141 MCA

4. The Department has thoroughly considered all commentary received:

COMMENT: The reference in subsection (1)(b) of ARM 46.12.303 to an exception to usual claims submission requirements incorrectly refers to subsection (1)(d).

RESPONSE: The department agrees. The rule has been changed accordingly.

  
\_\_\_\_\_  
Director, Social and Rehabilitation Services

Certified to the Secretary of State June 15, 1987.

Montana Administrative Register

12-6/25/87

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

|                             |   |                             |
|-----------------------------|---|-----------------------------|
| In the matter of the amend- | ) | NOTICE OF THE AMENDMENT OF  |
| ment of Rules 46.12.204,    | ) | RULES 46.12.204, 46.12.501, |
| 46.12.501, 46.12.502,       | ) | 46.12.502, 46.12.515,       |
| 46.12.515, 46.12.541,       | ) | 46.12.541, 46.12.602,       |
| 46.12.602, 46.12.605,       | ) | 46.12.605, 46.12.702,       |
| 46.12.702, 46.12.703,       | ) | 46.12.703, 46.12.902,       |
| 46.12.902, 46.12.905 and    | ) | 46.12.905 AND 46.12.912     |
| 46.12.912 pertaining to     | ) | PERTAINING TO MEDICAID      |
| Medicaid Optional Services  | ) | OPTIONAL SERVICES AND       |
| and Co-payments             | ) | CO-PAYMENTS                 |

TO: All Interested Persons

1. On May 14, 1987, the Department of Social and Rehabilitation Services published notice of the proposed amendment of Rules as listed above pertaining to Medicaid Optional Services and Co-payments at page 560 of the 1987 Montana Administrative Register, issue number 9.

2. The Department has amended Rules 46.12.204, 46.12.501, 46.12.502, 46.12.515, 46.12.541, 46.12.602, 46.12.605, 46.12.702, 46.12.703, 46.12.902, 46.12.905 and 46.12.912 as proposed.

3. The Department has thoroughly considered all commentary received:

COMMENT: It was not the Legislature's intent to discontinue eyeglasses, hearing aids and dentures.

RESPONSE: The legislative subcommittee which considers the SRS Budget agreed to eliminate funding for these services. There followed numerous attempts in both houses of the Legislature to restore funding for these services, but none succeeded. Further, the Legislature failed to include language in House Bill 2, the general appropriations bill, which would prohibit the Department from increasing or decreasing the amount, scope and duration of services, as it had done in the previous biennium. Consequently, the Department must operate under state law which prohibits the Department from overspending its budget and provides, at 53-6-141, MCA: "If available funds are not sufficient to provide medical care for all eligible persons, the Department shall have the authority to set priorities to limit, reduce or otherwise curtail the amount, scope and duration of the medical care and services made available." The current projected budget shortfall of approximately \$11 million makes it necessary for the Department to exercise this authority.

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COMMENT: Eyeglasses, hearing aids and dentures are not "optional" services, but are services that meet very basic needs of individuals, whether they are Medicaid recipients or not.

RESPONSE: It is Montana's choice to contract with the Federal government to have a Medicaid program. Under this contract, the federal government pays approximately \$.70 of every dollar the state spends for covered medical care for eligible individuals. Under this contract, however, Montana must provide what is defined by federal law as the mandatory services -- for example, hospital services and physician services. Additionally, the state may provide, if it so chooses, any of the services defined by Federal law as optional -- for example, eyeglasses, hearing aids, and dentures. In other words, the state has the ability to eliminate such services as eyeglasses, hearing aids, and dentures without violating Federal law. It is further the intent of the Department to provide as many medical services as possible within the appropriation without denying essential life-threatening medical care.

COMMENT: Elimination of eyeglasses, hearing aids, and dentures discriminates against the disabled. This is unfair, when the able-bodied are still on Medicaid.

RESPONSE: These services are eliminated for all adult categories of eligibility -- SSI or aged, blind and disabled individuals and AFDC parents and caretakers. All groups draw on these services. Further, under Federal Medicaid law, AFDC parents, for example, who may be able-bodied, are a mandatory eligibility group. In other words, Federal Medicaid law prohibits elimination of eligibility for this group.

COMMENT: Overall, while these services -- eyeglasses, hearing aids, and dentures -- are not 100 percent life-threatening, their loss under the program will impact the quality of the recipients' lives.

RESPONSE: Legislative debate indicates that members of the Legislature were aware of this impact when they agreed to eliminate funding for eyeglasses, hearing aids, and dentures. The Department understands that, in struggling with these cuts, the Legislature was mindful of the minimum requirements of state law when it comes to the provision of medical care to the poor. Neither the Department nor the Legislature wants to eliminate services which are essential to the diagnosis and treatment of a "serious medical condition", as defined in 53-3-109, MCA. The Legislature, and the Department under its authority to curtail the program when funds are not adequate, has determined that eyeglasses, hearing aids, and dentures are not essential to the diagnosis and treatment of "a physical

condition that causes a serious health risk to a person and for which treatment is medically necessary, including pregnancy".

COMMENT: Though the Department has not eliminated diagnostic optometric procedures for adults, many will not seek, and therefore, will not receive these services. These adults will not make the effort to obtain prescriptions for glasses and other diagnostic procedures because the glasses themselves will not be paid for by Medicaid. Though the Department pursues legislative intent by eliminating eyeglasses, in effect the elimination of glasses will also eliminate prescriptions and other diagnostic procedures, which goes beyond legislative intent.

RESPONSE: The Department believes that any curtailment of services should not go any deeper than legislative and budgetary constraints require. On the one hand, the Department wants to encourage recipients to obtain prescriptions for glasses especially when they have arranged through other means the financing for the glasses. On the other hand, the Department wants the recipient to know that prescriptions for glasses are available and that other eye conditions may still be treated under remaining covered services. This can be done through recipient bulletins and through patient education by the optometrists. The Department will work to provide the necessary information to make the limitations on coverage understandable.

COMMENT: Recipients will not be able to afford eyeglasses, hearing aids or dentures without help from Medicaid. Group home clients, for example, may retain only \$40 per month of their SSI checks, and this money is needed for personal needs items, co-payments, and recreation. Sheltered workshop clients make minimal income.

RESPONSE: The Legislature and the Department are aware of the pressure this reduction places on personal needs monies. The Legislature did postulate that local service organizations might take on as projects providing funds for such items as eyeglasses, hearing aids and dentures. For this reason, the Legislature did not direct the Department to eliminate eyeglass prescriptions from the program, or audiology services which are a prerequisite to obtaining a hearing aid.

COMMENT: The chances of Medicaid recipients achieving independence and self-sufficiency are severely reduced by the elimination of eyeglasses, hearing aids and dentures. Without appropriate management strategies, hearing-impaired adults, for example, will simply fail to resolve their communication difficulties and be encouraged to seek additional and

comprehensive state support rather than to take the arduous road to self-sufficiency. The end result will be cost shifting to other agencies and/or institutional care.

RESPONSE: Both the Legislature and the Department has reviewed for possible elimination the full array of optional services available under Medicaid and has recognized the potential for cost shifting in any action to eliminate or curtail services. The elimination of certain services will result in greater cost shifting than the elimination of others. The Legislature and the Department saw less cost shifting occurring through the elimination of eyeglasses, hearing aids and dentures than, say, through the elimination of outpatient drugs. The Legislature itself could only agree on the elimination of eyeglasses, hearing aids and dentures.

COMMENT: The increase in outpatient drug co-payment is unacceptable because Medicaid recipients are often forced to continue paying the co-payment amount after they have reached the cap.

RESPONSE: Medicaid recipients are exempt from the co-payment requirement after their family has incurred total co-payments in the amount of \$127 per fiscal year. When this cap is reached, a letter is mailed to the recipient by the Department which, when shown to a provider along with the Medicaid ID card, tells the provider not to charge any co-payments. From this point on, the claims payment system no longer reduces the provider's reimbursement by the co-payment amount. If the provider does erroneously take a co-payment, the recipient may ask the provider to apply the amount to the co-payment charge of the next fiscal year.

COMMENT: A number of commenters, both recipient and provider, made suggestions for cost containment or counterproposals to the wholesale elimination of services. These included:

1. allow the purchase of eyeglasses every three years for adults instead of two;
2. double the co-payment on services;
3. have the recipient pay for their own hearing aid batteries;
4. require prior authorization of hearing aids, establish minimal guidelines for fittings, and/or provide monaural (single ear) hearing aid fittings in most cases;
5. negotiate with companies to purchase prepaid certificates for hearing aids;
6. consider limitations and controls on hearing aids used by other state Medicaid programs;




7. work with state provider associations to trim and refocus program coverage.

RESPONSE: The eliminated services will continue to be available to individuals under 21 through EPSDT. The Department therefore appreciates these suggestions and will pursue them with provider and recipient groups within the constraints of staffing resources and state and federal law.

COMMENT: Given the problems in the state's economy, it seems unwise to forgo \$2.4 million in federal funds to save \$1.0 million in state funds.

RESPONSE: This point was made before the Legislature. The federal funds must be matched. The Legislature believed that state revenues would be inadequate to meet the matching needs of the program if the program were not curtailed in some way.

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

  
\_\_\_\_\_  
Director, Social and Rehabilitation Services

Certified to the Secretary of State June 15, 1987.

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

|                             |   |                             |
|-----------------------------|---|-----------------------------|
| In the matter of the amend- | ) | NOTICE OF THE AMENDMENT OF  |
| ment of Rules 46.12.302,    | ) | RULES 46.12.302, 46.12.590, |
| 46.12.590, 46.12.591,       | ) | 46.12.591, 46.12.592 AND    |
| 46.12.592 and 46.12.599     | ) | 46.12.599 PERTAINING TO     |
| pertaining to inpatient     | ) | INPATIENT PSYCHIATRIC       |
| psychiatric services        | ) | SERVICES                    |

TO: All Interested Persons

1. On May 14, 1987, the Department of Social and Rehabilitation Services published notice of the proposed amendment of Rules 46.12.302, 46.12.590, 46.12.591, 46.12.592 and 46.12.599 pertaining to inpatient psychiatric services at page 554 of the 1987 Montana Administrative Register, issue number 9.

2. The Department has amended Rules 46.12.302, 46.12.590 and 46.12.599 as proposed.

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

46.12.591 INPATIENT PSYCHIATRIC SERVICES, PARTICIPATION REQUIREMENTS Subsections (1) through (1)(i) remain as proposed.

(7g) ~~be-in-compliance~~ COMPLY with:

Subsections (1)(g)(i) through (1)(i) remain as proposed.

(j) ~~AGREE TO indemnify the department in the event of a loss of federal financial participation.~~ FULL AMOUNT OF THE STATE AND FEDERAL SHARES OF ALL MEDICAID INPATIENT PSYCHIATRIC REIMBURSEMENT PAID TO THE FACILITY DURING ANY PERIOD WHEN FEDERAL FINANCIAL PARTICIPATION IS UNAVAILABLE DUE TO FACILITY FAILURE TO MEET THE CONDITIONS OF PARTICIPATION SPECIFIED IN SECTION 1861(F) OF THE SOCIAL SECURITY ACT, OR DUE TO OTHER FACILITY DEFICIENCIES OR ERRORS.

AUTH: Sec. 53-6-113 MCA

IMP: Sec. 53-6-141 MCA

46.12.592 INPATIENT PSYCHIATRIC SERVICES, REIMBURSEMENT

(i) ~~Reimbursement--for--services--will--be--on--a--retro-~~  
~~spective--basis.~~ The reimbursement period will be the provider's fiscal year. REIMBURSEMENT FOR SERVICES WILL BE AT COST ON A RETROSPECTIVE BASIS, SUBJECT TO AN UPPER LIMIT WHICH WILL BE THE LESSER OF:

(A) THE AMOUNT CHARGED TO THE MEDICAID PROGRAM;

(B) ALLOWABLE COSTS AS DESCRIBED IN SUBSECTION (2), SUBJECT TO THE CEILING DESCRIBED IN SUBSECTION (5); OR, IF APPLICABLE,

(C) THE MEDICARE RATE.

Subsections (2) through (8)(b) remain as proposed.

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

4. The Department has thoroughly considered all commentary received:

COMMENT: A provider commented that the existing rule is more restrictive than the federal statute and erroneous in requiring both Medicare (HCFA) certification and Joint Commission on Accreditation of Hospitals (JCAH) accreditation for Medicaid providers of inpatient psychiatric hospital services.

RESPONSE: The Department disagrees. The existing rule requires that a facility obtain HCFA certification and meet the requirements of 42 CFR, Part 441, Subpart D. Although Subpart D states that a facility must have JCAH accreditation, the HCFA Denver Regional Office has informed the Department that JCAH is no longer mandatory in spite of what the federal rule says. Therefore, in effect, the current Montana rule merely requires HCFA certification. The Department believes this requirement is reasonable and bears a rational relationship to the underlying federal purpose of providing the inpatient psychiatric hospital service. To determine what the federal purpose for this service is, the Department has considered the federal Medicaid definition for this service at 42 USC § 1396d(h).

Pursuant to 42 USC § 1396d(h), the Medicaid program adopts the Medicare definition of an inpatient psychiatric hospital at 42 USC § 1395x(f). To meet this definition, a facility must comply with the general hospital conditions of participation at 42 USC § 1395x(e)(3) through (9), and the special recordkeeping and staffing requirements of 42 USC § 1395x(f)(3) and (4).

The Department can only be certain that a facility actually meets all the conditions of participation when the facility is HCFA certified. HCFA has informed us that JCAH accreditation merely deems that the facility meets the general hospital conditions of participation. HCFA has not yet determined whether they will deem that JCAH accreditation is sufficient to meet the special staffing and recordkeeping requirements applicable to psychiatric hospitals. In any event, HCFA always has authority to look behind the deemed status of JCAH to determine whether in fact a psychiatric hospital actually meets the conditions of participation. It is assumed that HCFA would use the Medicare definition for inpatient psychiatric hospital services because this definition is referenced in the Medicaid statute at 42 USC § 1396d(h).

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For these reasons, the Department believes that the HCFA certification requirement under the existing rule is valid and not more restrictive than the federal statute. However, in order to allow providers greater flexibility in demonstrating that their facility and program meets the conditions of participation, the Department has proposed the amended rule allowing either JCAH accreditation or HCFA certification.

COMMENT: A provider requested that the Department apply the proposed rule retroactively to February 18, 1987.

RESPONSE: State Medicaid agencies must enter into an agreement with HCFA. This agreement is known as the State Plan. HCFA considers the departmental rules to be part of the State Plan. Amendments to the State Plan can only be made retroactive to the first day of the calendar quarter in which the amendment becomes effective. In this case, the first date of the quarter is April 1, 1987. The Department has added language to the rule notice identifying June 30, 1987 as the effective date and noting that the rule will be applied retroactively to April 1, 1987.

COMMENT: A provider asked whether certification by HCFA automatically qualifies the provider for participation in Medicare.

RESPONSE: It is the Department's understanding that once a facility has HCFA certification, they merely need to ask for a Medicare provider number in order to participate in Medicare.

COMMENT: A provider asked whether the Department would consider adding language to clarify that providers will not be required to indemnify the Department for loss of FFP as a result of departmental action or error.

RESPONSE: Appropriate language has been added to the rule to indicate that providers will only be required to indemnify the Department for lost FFP when the loss occurs due to the fault of the provider.

COMMENT: A provider asked whether the Medicare intermediary will work with the providers to set interim Medicaid reimbursement rates, and whether the Department is required to reimburse the providers at the Medicare determined interim rate.

RESPONSE: The Medicare intermediary will work with the providers to set the interim rates, and the Department will ordinarily use the interim rate determined by the intermediary

unless it is found that the interim rate substantially over-reimburses or under-reimburses the provider.

COMMENT: A provider wondered whether the Department would consider changing the \$25,000.00 charge covering audit and administrative functions for those providers who do not participate in Medicare.

RESPONSE: The Department has computed this charge on the best information and estimates available as to what it will cost to perform the audit and administrative functions customarily performed by the Medicare intermediary. If, in the future, it is determined that this amount is too high or too low, an appropriate amendment to the rule will be made at that time.

COMMENT: A provider suggested a wording change to ARM 46.12.591(1)(g) to conform the section with the lead in paragraph.

RESPONSE: The suggested change has been made.

COMMENT: One provider contacted the Department and expressed concern and confusion about the reimbursement portion of the rule, and specifically questioned whether providers would be cost limited on reimbursement.

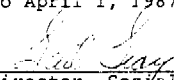
RESPONSE: The Department has reviewed the reimbursement portion of the rule and made appropriate changes to clarify that reimbursement is cost based with an upper limit set at the lesser of:

- (a) the amount charged to the Medicaid program;
- (b) allowable costs under ARM § 46.12.592(2) subject to the ceiling described in ARM § 46.12.592(5); or, if applicable,
- (c) the Medicare rate.

COMMENT: An attorney for the Legislative Council asked whether the addition of the word "hospital" in ARM § 46.12.590 and 46.12.591 was a substantive change.

RESPONSE: The Department has always interpreted this Medicaid optional service as being limited to inpatient psychiatric hospitals for children under 21. This reading comports with the language in the federal Medicaid statute at 42 USC § 1396d(a)(16) and 1396d(h). The addition of the word "hospital" merely clarifies that this service is only available in a hospital setting.

5. These rules will be effective June 30, 1987, and will be applied retroactively to April 1, 1987.

  
\_\_\_\_\_  
Director, Social and Rehabilitation Services

Certified to the Secretary of State June 15, 1987.

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

|                             |   |                            |
|-----------------------------|---|----------------------------|
| In the matter of the amend- | ) | NOTICE OF THE AMENDMENT OF |
| ment of Rule 46.12.504      | ) | RULE 46.12.504 PERTAINING  |
| pertaining to mandatory     | ) | TO MANDATORY SCREENING AND |
| screening and authorization | ) | AUTHORIZATION OF INPATIENT |
| of inpatient hospital       | ) | HOSPITAL SERVICES          |
| services                    | ) |                            |

TO: All Interested Persons

1. On May 14, 1987, the Department of Social and Rehabilitation Services published notice of the proposed amendment of Rule 46.12.504 pertaining to mandatory screening and authorization of inpatient hospital services at page 558 of the 1987 Montana Administrative Register, issue number 9.

2. The Department has amended the following rule as proposed with the following change:

46.12.504 INPATIENT HOSPITAL SERVICES, REQUIREMENTS

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

(iii) This authorization is not a guarantee of payment as medicaid policies, RULES AND REGULATIONS, client eligibility, or additional medical information on retrospective review may cause medicaid THE DEPARTMENT to refuse payment.

Subsections (4) through (4)(b) remain as proposed.

AUTH: Sec. 53-6-113 MCA

IMP: Sec. 53-6-141 MCA

3. The Department has thoroughly considered all commentary received:

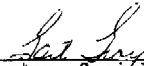
COMMENT: In subsection (3)(c)(iii), the meaning of the reference to "medicaid policies" is unclear and should be clarified.

RESPONSE: The Department agrees and has changed "policies" to "rules and regulations".

COMMENT: Are the mentally ill required to be pre-screened?

RESPONSE: The Department policy will continue to require that all recipients being treated in the inpatient hospital setting regardless of diagnosis must be screened for each admission prior to or during the hospitalization.

4. This rule change will be effective July 1, 1987.

  
\_\_\_\_\_  
Director, Social and Rehabilita-  
tion Services

Certified to the Secretary of State June 15, 1987.



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

|                              |   |                             |
|------------------------------|---|-----------------------------|
| In the matter of the         | ) | NOTICE OF THE ADOPTION OF   |
| adoption of Rules I through  | ) | RULES (I) 46.12.583, (II)   |
| III and the amendment of     | ) | 46.12.584 AND (III)         |
| Rules 46.12.102, 46.12.1001, | ) | 46.12.585 AND THE AMENDMENT |
| 46.12.1002 and 46.12.1005    | ) | OF RULES 46.12.102,         |
| pertaining to organ trans-   | ) | 46.12.1001, 46.12.1002 AND  |
| plantations, transportation  | ) | 46.12.1005 PERTAINING TO    |
| and per diem                 | ) | ORGAN TRANSPLANTATIONS,     |
|                              | ) | TRANSPORTATION AND PER DIEM |

TO: All Interested Persons

1. On May 14, 1987, the Department of Social and Rehabilitation Services published notice of the proposed adoption of Rules I through III and the amendment of Rules 46.12.102, 46.12.1001, 46.12.1002 and 46.12.1005 pertaining to organ transplantations, transportation and per diem at page 574 of the 1987 Montana Administrative Register, issue number 9.

2. The Department has amended Rules 46.12.102 and 46.12.1001 as proposed.

3. The Department has adopted Rule (I) 46.12.583, ORGAN TRANSPLANTATION, DEFINITIONS, as proposed.

4. The Department has adopted the following rules as proposed with the following changes:

RULE 46.12.584 ORGAN TRANSPLANTATION, REQUIREMENTS

(1) This rule provides the requirements for medicaid coverage of transplantations. These requirements in this rule are in addition to those contained in ARM 46.12.301 through 46.12.308.

(2) General requirements for medicaid coverage of transplantations are as follows:

(a) The transplantation must be determined to be medically necessary by the attending physician and the transplant physician.

(b) Prior authorization for out-of-state referral to a an out-of-state facility for an organ transplantation center must be obtained from the department or its designated review organization.

(c) The transplant candidate must meet the patient selection criteria set forth by the department's designated review organization, and the criteria specified in subsections (2) and (3) of this rule must be met.

(d) Covered transplantation services, as described in subsections (2)(e) and (2)(f) of this rule, are:

(i) allogenic bone marrow;

(ii) liver transplantation for children under the age of 18 years;

(iii) kidney, inclusive of thoracic duct drainage and dental exam;

(iv) heart;

(v) cornea;

(vi) histocompatibility testing procedures;

(vii) lymphocyte immune globulin preparation.

(2e) For coverage of various types of organ transplantations, including bone marrow, liver, kidney/renal, pancreas and neurovascular, the Department hereby adopts and incorporates by reference the following sections of the Health Insurance Manual 10 published by the health care financing administration of the United States department of health services. A copy of the cited sections of the health insurance manual 10 may be obtained from the Department of Social and Rehabilitation Services, Economic Assistance Division, 111 Sanders, Helena, Montana 59604.

Subsections (2) (a) through (3) remain as proposed in text but will be renumbered (1) (e) (i) through (1) (f).

AUTH: Sec. 53-6-113 MCA

IMP: Sec. 53-6-101, 53-6-131 and 53-6-141 MCA

#### 46.12.585 ORGAN TRANSPLANTATION, REIMBURSEMENT

(1) Physician services in organ transplantation will be reimbursed as defined provided for in ARM 46.12.2003.

(2) All hospital services for organ transplantation will be reimbursed as defined provided for in ARM 46.12.509.

AUTH: Sec. 53-6-113 MCA

IMP: Sec. 53-6-101, 53-6-131 and 53-6-141 MCA

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

#### 46.12.1002 TRANSPORTATION AND PER DIEM, REQUIREMENTS

Subsections (1) through (6) remain as proposed.

~~(7) When a recipient requires attendant care to obtain and return from hospitalization outside his own community, attendant per diem will be allowed during the hospitalization up to the maximum amount of one return round trip.~~

~~(8) This limit does not apply to transplantation candidate recipients and attendants if their presence is determined to be medically necessary. Prior approval by the department is required.~~

~~(87) When a recipient requires an attendant in order to travel for necessary hospital MEDICAL care outside his own community, the attendant's per diem will be allowed up to an amount not to REIMBURSE PER DIEM FOR ACTUAL EXPENSES UP TO~~

THE LIMITS IN ARM 46.12.1005(2). THE TOTAL PER DIEM REIMBURSEMENT FOR AN ATTENDANT WILL NOT exceed the maximum COST of one return round trip to the site of hospitalization MEDICAL CARE based on the lowest available fares. THIS MAXIMUM LIMIT DOES NOT APPLY TO ATTENDANTS FOR TRANSPLANTATION CANDIDATES/RECIPIENTS IF THE PRESENCE OF THE ATTENDANT IS DETERMINED TO BE MEDICALLY NECESSARY.

(A) PRIOR APPROVAL BY THE DEPARTMENT IS REQUIRED FOR REIMBURSEMENT OF ATTENDANTS FOR TRANSPLANTATION CANDIDATES/RECIPIENTS.

(98) Reimbursement of transportation by pressurized aircraft is ~~limited to transporting~~ ONLY AVAILABLE FOR THE TRANSPORTATION OF recipients whose physical health would be endangered if non-pressurized aircraft were used.

~~(99)~~ When IF a recipient dies enroute to or during treatment outside of his community, the cost of the recipient's transportation to the medical service ~~is allowed~~ WILL BE REIMBURSED. The cost of returning THE BODY OF a deceased recipient ~~is~~ WILL not ~~allowed~~ BE REIMBURSED.

AUTH: Sec. 53-6-113 MCA

IMP: Sec. 53-6-101 and 53-6-141 MCA

46.12.1005 TRANSPORTATION AND PER DIEM, REIMBURSEMENT

~~(1) --The department--will--pay--the--lower--of--the--following for transportation and per diem--not--also--covered--by--medicare: the provider's--actual--(submitted)--charge--for--the--service--or the department's--fee--schedule--contained--in--this--rule.~~

~~(2) --The department will pay the lowest of--the following for--transportation--and--per--diem--which--are--also--covered--by medicare--the provider's--actual--(submitted)--charge--for--the service, the amount allowable for the same service under medicare, or the department's fee schedule contained in the rule.~~

(1) TRANSPORTATION REIMBURSEMENT IS AS FOLLOWS:

(1a) The department will pay the lowest of the following REIMBURSEMENT rates for transportation services:

(ai) the provider's actual submitted charge;  
(bii) the amount allowable for the same service under medicare; or  
(ciii) the specified fees RATES for the following services:

- (A) A0170 personal or non-commercial ground vehicle mileage ..... current rate for state employees
- (B) A0150 regularly scheduled, air ..... usual & customary fee
- (C) A0110 regularly scheduled, ground, including taxis and limousine service ... usual & customary fee
- (D) A0221 pressurized air charter .....  
\$1.40 per statutory mile, round trip

(wF) A0040 non-pressurized air charter .....  
\$1.22 per statutory mile, round trip

~~(2)--After negotiation and approval by the department, the rates contained in subsection (1) of this rule may be exceeded for organ transplant candidates/recipients, donors and attendants when necessary to provide transportation commensurate with clients' health needs.~~

(b) THE REIMBURSEMENT AMOUNTS FOR ORGAN TRANSPLANT CANDIDATES/RECIPIENTS AND ATTENDANTS MAY EXCEED THE RATES IN SUBSECTION (1) OF THIS RULE IF DETERMINED BY THE DEPARTMENT TO BE NECESSARY TO PROVIDE TRANSPORTATION COMMENSURATE WITH THE CLIENT'S HEALTH NEEDS. ANY REIMBURSEMENT AMOUNTS IN EXCESS OF THE RATES IN SUBSECTION (1) OF THIS RULE MUST BE NEGOTIATED WITH AND APPROVED BY THE DEPARTMENT.

(2) PER DIEM REIMBURSEMENT IS AS FOLLOWS:

~~(3a) Per diem costs are reimbursed at actual expenses up to the department will pay the following specified fees. REIMBURSEMENT RATES FOR PER DIEM ITEMS:~~

(ai) A0180 breakfast (12:01 a.m. to 10:00 a.m.) . \$2.75  
(bi) A0190 lunch (10:01 a.m. to 3:00 p.m.) ..... \$3.30  
(ciii) A0200 dinner (3:01 p.m. to 12:00 a.m.) ..... \$6.60  
(div) A0210 per diem, including lodging ..... \$22.44

~~(3)--Per diem costs are reimbursed at actual expenses up to the maximum rates contained in this rule.~~

~~(4)--Reimbursement for non-regularly scheduled air transportation shall be \$1.22 per statutory mile for the round trip except as allowed below.~~

~~(a)--Reimbursement of transportation by pressurized aircraft is limited to transporting recipients whose physical health would be endangered if non-pressurized aircraft were used. Reimbursement shall be \$1.40 per statutory mile for the round trip.~~

(5b) The department's per diem fees REIMBURSEMENT RATES in subsection (3a) of this rule may be exceeded to meet per diem ACTUAL costs determined medically necessary to preserve the health condition of an organ TRANSPLANTATION candidate/recipient. Those REIMBURSEMENT AMOUNTS FOR per diem costs IN EXCESS OF THE RATES may be negotiated WITH AND APPROVED by the department to be reimbursed at the lowest of the following rates: BUT MAY NOT EXCEED

~~(1)--the 88th monthly benefit standard;~~

~~(11)--the per diem rates contained in subsection (3) of this rule; or~~

~~(111) the state employee out-of-state per diem REIMBURSEMENT rates, other than high cost areas. THE STATE EMPLOYEE OUT-OF-STATE PER DIEM RATES FOR HIGH COST AREAS ARE NOT APPLICABLE IN CALCULATING PER DIEM REIMBURSEMENT.~~

(6c) Per diem REIMBURSEMENT for the PER DIEM COSTS OF organ candidates/recipients, donors and attendants may be

extended for pre-surgical and post-surgical care if THE CARE IS determined TO BE medically necessary by the department.

(d) PER DIEM REIMBURSEMENT FOR ATTENDANTS MAY BE EXTENDED FOR PRE-SURGICAL AND POST-SURGICAL CARE OF THE ORGAN CANDIDATE/RECIPIENT IF THEIR PARTICIPATION IN THAT CARE IS DETERMINED TO BE MEDICALLY NECESSARY BY THE DEPARTMENT.

AUTH: Sec. 53-6-113 MCA

IMP: Sec. 53-6-101 and 53-6-141 MCA

5. The Department has thoroughly considered all commentary received:

COMMENT: The reasonable necessity for the proposed rules is unclear and should be clarified.

RESPONSE: The proposed rules and amendments concern Medicaid coverage of organ transplantations and of necessary transportation for Medicaid recipients and their attendants. The proposed rules will establish requirements for and amounts of reimbursement under the Montana Medicaid program.

Heart transplantation has recently become a regular covered service under federal authority. Previously, there was only state authority for coverage. The proposed rules further establish the necessary program authority for heart transplantation coverage.

Federal coverage, as defined for federal purposes, is adopted and incorporated by reference for organ transplantations provided to recipients under the State Medicaid program.

The amendments to the transportation rules provide for coverage of transportation for heart and other transplantation recipients. The amendments also generally clarify the rules concerning transportation coverage and reimbursement rates.

This rule will have no financial impact. The changes incorporated were fiscally accounted for in the legislative budgeting process.

COMMENT: The proposed rules format is not altogether clear.

RESPONSE: Department staff have reviewed the proposed rules. There have been several non-substantive changes made to the proposed rules.


Subsections (1) through (1)(c) of proposed Rule II have been substantially rewritten to clarify requirements which must be met prior to Medicaid reimbursement. Additionally, subsections (2)(d)(i) through (2)(d)(vii) have been added to

the rule to identify the organ transplants covered by Medicaid reimbursement. Subsections (1)(e) through (1)(e)(iii) and (1)(f) were subsections of the proposed rule which were merely renumbered.

The General Transportation sections in ARM 46.12.1002 and 46.12.1005 have been reformatted for clarity and consistency with other rules relating to Medicaid services. The procedure codes for billing of covered services have been added to facilitate use of the rule.

The coverage section for transportation and per diem necessary to obtain transplantation services has been moved to separate sections of ARM 46.12.1002 and 46.12.1005. This was done in order to clarify the separate limits related to transplantation services. The language on upper limits for per diem has been made specific. The original language was open to interpretation beyond the intent of the rule.

6. This rule will be effective July 1, 1987.

  
\_\_\_\_\_  
Director, Social and Rehabilitation Services

Certified to the Secretary of State June 15, 1987.

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

|                             |   |                            |
|-----------------------------|---|----------------------------|
| In the matter of the amend- | ) | NOTICE OF THE AMENDMENT OF |
| ment of Rules 46.12.1201,   | ) | RULES 46.12.1201,          |
| 46.12.1202, 46.12.1204,     | ) | 46.12.1202, 46.12.1204,    |
| 46.12.1205, 46.12.1206,     | ) | 46.12.1205, 46.12.1206,    |
| 46.12.1209 and 46.12.1210   | ) | 46.12.1209 AND 46.12.1210  |
| pertaining to nursing home  | ) | PERTAINING TO NURSING HOME |
| reimbursement               | ) | REIMBURSEMENT              |

TO: All Interested Persons

1. On May 14, 1987, the Department of Social and Rehabilitation Services Building published notice of the proposed amendment of Rules 46.12.1201, 46.12.1202, 46.12.1204, 46.12.1205, 46.12.1206, 46.12.1209 and 46.12.1210 pertaining to nursing home reimbursement at page 531 of the 1987 Montana Administrative Register, issue number 9.

2. The Department has amended Rules 46.12.1206, 46.12.1209 and 46.12.1210 as proposed.

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

46.12.1201 TRANSITION FROM RULES IN EFFECT SINCE  
JULY 1, 1983 APRIL 1, 1986

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

(a) For providers delivering services in long term care facilities who were owners on June 30, 1982, or for providers delivering services in long term care facilities who were not owners on June 30, 1982, until the June 30, 1982 provider changes:

RO=T, IF A-T IS LESS THAN 0

RO=A, ~~if A-T is equal to or greater than 0~~ IF A-T IS EQUAL TO OR GREATER THAN 0

RP=S, if M<sub>1</sub>-S is less than 0

RP=S(1) for providers delivering services in long term care facilities constructing new beds after July 1, 1984 where M<sub>1</sub>-S is less than or equal to 0

RP=S(2) for providers delivering services in long term care facilities extensively remodeled after July 1, 1984 where M<sub>1</sub>-S is less than or equal to 0

RP=M, if M-S is equal to or greater than 0

A change in provider will be considered to have occurred under any of the following circumstances:

(i) the addition or substitution of a partner HAVING A SUBSTANTIAL INTEREST IN THE PARTNERSHIP as permitted by applicable state law;

Subsections (3)(a)(ii) through (3)(a)(iv) remain as proposed.

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(b) For all other providers delivering services in long term care facilities and for all providers delivering services in long term care facilities newly constructed after June 30, 1982, regardless of provider:

$$RO=A$$
$$RP \equiv M$$

where:

R is the payment rate for the current year,

S-is-the--interim--property-rate-in-effect--on--June-30, 1982,--in-the-case-where-costs-to-a-facility-decrease--such-as through-refinancing-of-debt-or-the-renegotiation-of-a-lease,S will-be-based--on-actual-costs,--if-they-are-less---Decreased costs-due-to-the-normal-change-in-interest-and-principal-payments-over-the-terms-of-an-existing-mortgage-or-lease-will-not lead-to-an-adjustment-by-the-department. S IS THE INTERIM PROPERTY RATE IN EFFECT ON JUNE 30, 1982. IN THE CASE WHERE COSTS TO A FACILITY DECREASE SUCH AS THROUGH REFINANCING OF DEBT OR THE RENEGOTIATION OF A LEASE, S WILL BE BASED ON ACTUAL COSTS, IF THEY ARE LESS. DECREASED COSTS DUE TO THE NORMAL CHANGE IN INTEREST AND PRINCIPAL PAYMENTS OVER THE TERMS OF AN EXISTING MORTGAGE OR LEASE WILL NOT LEAD TO AN ADJUSTMENT BY THE DEPARTMENT.

S-is-the-lower-of-the-interim-property-rate-in-effect-on  
June-30,-1982,-or-the-provider's-actual-property-costs-per  
patient-day-based-on-the-provider's-fiscal-year-1985-cost  
report-indexed-to-June-30,-1987.--For-purposes-of-indexing,  
the-department-incorporates-by-reference-the-Health-Care  
Financing-Administration-(HCFA)-nursing-home-input-price-index  
which-was-specifically-designed-to-measure-cost-increases-in  
the-market-basket-of-goods-and-services-purchased-by-nursing  
homes.--The-HCFA-nursing-home-input-price-index-is-published  
in-the-annual-update-to-the-federal-register.--A-copy-of-the  
HCFA-nursing-home-input-price-index-as-amended-through  
June-30,-1987,-is-available-from-the-Department-of-Social-and  
Rehabilitation-Services,-Economic-Assistance-Division,-111  
Sanders,-Helena,-Montana,-59604.

~~In the case where costs to a facility decrease through refinancing of debt or the renegotiation of a lease, S will be based upon the lower of S determined as above or actual property costs per day beginning with the effective date of the refinancing or renegotiated lease.~~

~~S(1) = [(V x S) + (Y x 7.79 7.98 8.14 effective July 1, 1985 1987) AND 8.31 EFFECTIVE JULY 1, 1988)] and--7.98 effective-July-17-1986)] divided by (V + Y)~~

where:

- V is the total square footage of the original structure before construction of new beds.

Y is the square footage added to the facility as a result of the construction.

S(2) = the lower of 7.98 8.14 EFFECTIVE JULY 1, 1987 AND  
8.31 EFFECTIVE JULY 1, 1988 or S + ((F x 12) divided by 365)



x 1.025 ~~1.0506~~ 1.0716 effective July 1, ~~1985~~ 1987 ~~and 1.0506~~  
~~effective July 1, 1986~~ AND 1.093 EFFECTIVE JULY 1, 1988

where:

F is ((B divided by D) x .80) amortized over 360 months  
at 12% per annum.

D is the number of licensed beds in the facility.

B is the total allowable remodeling costs.

~~T is the interim operating rate plus estimated incentive~~  
~~factor in effect on June 30, 1982.~~ T IS THE INTERIM  
OPERATING RATE PLUS ESTIMATED INCENTIVE FACTOR IN EFFECT  
ON JUNE 30, 1982,

A is the operating rate effective July 1 of the current  
year in accordance with ARM 46.12.1204(2), and revised as  
of the effective date of a change which results in a  
change in rate or, at least annually, in accordance with  
ARM 46.12.1204(5). RATE REVISIONS EFFECTIVE AS OF A  
DATE OTHER THAN JULY 1 MAY OCCUR UNDER THE FOLLOWING  
CIRCUMSTANCES: A CHANGE IN THE NUMBER OF LICENSED,  
CERTIFIED BEDS OR A CHANGE IN PROVIDER OR DUE TO  
RETROACTIVE ADJUSTMENT OF THE PATIENT ASSESSMENT SCORE  
RESULTING FROM THE FIRST MONITOR OF A NEW PROVIDER  
OCCURRING AFTER THE NEW PROVIDER HAS BEEN IN THE MEDICAID  
PROGRAM FOR THREE MONTHS AND HAS HAD ITS INTERIM RATE SET  
BY USING THE STATEWIDE AVERAGE PATIENT ASSESSMENT SCORE.

M is the property rate effective July 1 of the current  
year in accordance with ARM 46.12.1204(3), and revised as  
of the effective date of a change which results in a  
change in rate or, at least annually, in accordance with  
ARM 46.12.1204(5). RATE REVISIONS EFFECTIVE AS OF A DATE  
OTHER THAN JULY 1 MAY OCCUR UNDER THE FOLLOWING  
CIRCUMSTANCES: CERTIFICATION OF NEWLY CONSTRUCTED BEDS  
OR COMPLETION OF A REMODELING PROJECT OR A CHANGE IN  
PROVIDER OR REFINANCING OF A MORTGAGE OR RENEGOTIATION OF  
A LEASE.

M<sub>1</sub> = the M calculated under ARM 46.12.1204(3) in effect  
6/30/85 times ~~1.0506~~ 1.0716 effective July 1, ~~1986~~ 1987  
AND TIMES 1.093 EFFECTIVE JULY 1, 1988.

AUTH: Sec. 53-6-113 MCA

IMP: Sec. 53-6-141 MCA

46.12.1202 PURPOSE AND DEFINITIONS Subsections (1)  
through (1)(w) remain as proposed.

(X) "SUBSTANTIAL INTEREST" IS DEFINED AS TWENTY FIVE  
PERCENT INTEREST OR GREATER.

(Y) "MAINTENANCE THERAPY AND REHABILITATION SERVICES"  
MEAN REPETITIVE SERVICES REQUIRED TO MAINTAIN FUNCTIONS WHICH  
DO NOT INVOLVE COMPLEX AND SOPHISTICATED THERAPY PROCEDURES OR  
THE JUDGMENT AND SKILL OF A QUALIFIED THERAPIST AND WITHOUT  
THE EXPECTATION OF SIGNIFICANT PROGRESS.

(w)(z) The laws and regulations and federal policies  
cited in this sub-chapter shall mean those laws and

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regulations which are in effect as of ~~April 1, 1986~~ July 1, 1987.

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

46.12.1204 PAYMENT RATE (1) A provider's payment rate is the sum of an operating rate and a property rate, provided in ARM 46.12.1201(3).

(2) The operating rate A, in dollars per patient-day, is given by: THE FOLLOWING EFFECTIVE JULY 1, 1987:

~~A=A(1), IF T<sub>1</sub> IS EQUAL TO OR GREATER THAN A(1), OR  
A=A(2), IF T<sub>1</sub> IS EQUAL TO OR LESS THAN A(2), OR  
A=T<sub>1</sub>, IF T<sub>1</sub> IS LESS THAN A(1) AND GREATER THAN A(2), OR  
A=A(3) IF THE FACILITY WAS CONSTRUCTED AFTER 6/30/82~~  
A=A(1), IF T<sub>1</sub> IS EQUAL TO OR GREATER THAN A(1), OR  
A=A(2), IF T<sub>1</sub> IS EQUAL TO OR LESS THAN A(2), OR  
A=T<sub>1</sub>, IF T<sub>1</sub> IS LESS THAN A(1) AND GREATER THAN A(2), OR  
A=A(3) IF THE FACILITY WAS CONSTRUCTED AFTER 6/30/82  
where:  
WHERE:

~~A(1) = B times ((C times ((\$28.80 + (\$54,627 divided by B) divided by .9) + E)) effective July 1, 1985 and B times ((C times ((\$28.12 + (\$54,627 divided by B) divided by .9) + E)) effective July 1, 1986~~  
A(1) = B TIMES ((C TIMES ((\$27.77 + (\$54,627 DIVIDED BY D) DIVIDED BY .9) + E), EFFECTIVE JULY 1, 1987

~~A(2) = B times ((C times ((\$26.06 + (\$54,627 divided by B) divided by .9) + E)) effective July 1, 1985 and B times ((C times ((\$26.74 + (\$54,627 divided by B) divided by .9) + E)) effective July 1, 1986~~  
A(2) = B TIMES ((C TIMES ((\$27.09 + (\$54,627 DIVIDED BY D) DIVIDED BY .9) + E), EFFECTIVE JULY 1, 1987

~~A(3) = B times ((C times ((27.43 + (\$54,627 divided by D) divided by .92) + E), THE OPERATING RATE A, IN DOLLARS PER PATIENT DAY, IS GIVEN BY THE FOLLOWING, EFFECTIVE JULY 1, 1988: A=B TIMES ((C TIMES ((27.43 + (\$54,627 DIVIDED BY D) DIVIDED BY .9) + E)~~  
A(3) = B times ((C times ((27.43 + (\$54,627 DIVIDED BY D) DIVIDED BY .92) + E), THE OPERATING RATE A, IN DOLLARS PER PATIENT DAY, IS GIVEN BY THE FOLLOWING, EFFECTIVE JULY 1, 1988: A=B TIMES ((C TIMES ((27.43 + (\$54,627 DIVIDED BY D) DIVIDED BY .9) + E)

B is the area wage adjustment for a provider,  
C is the inflation factor used to compute the per diem rates. The inflation factor is the factor necessary to calculate increases in R(1) such that, effective July 1, 1987, R(2) = R(1) x 1.02 and, effective July 1, 1988, R(2) = R(1) x 1.0404.

D is the number of licensed beds for a provider times 366 days,

or D is the number of licensed beds for a provider or 25, whichever is greater, times 366 for facilities newly constructed after June 30, 1985 or not in the program on June 30, 1985 or participating in the program with

greater than 25 licensed beds on June 30, 1985.

E is the patient care adjustment for a provider,

~~T<sub>i</sub> is C times the interim operating rate in effect on June 30, 1982, indexed to December 31, 1982.~~

T<sub>i</sub> IS C TIMES THE INTERIM OPERATING RATE IN EFFECT ON JUNE 30, 1982, INDEXED TO DECEMBER 31, 1982.

R(1) = The statewide weighted average per diem rate for R as of May JUNE 1, 1987.

R(2) = The statewide weighted average per diem rate for R indexed from R(1) by 1.02 effective July 1, 1987 and 1.0404 effective July 1, 1988.

Subsections (2)(a) through (3) remain as proposed.

(a)  $M = N \times Z$  except for facilities extensively remodeled or constructing with new beds constructed after July 1, 1984.

$M = N(1) \times Z$  for facilities constructing with new beds constructed after July 1, 1984.

$M = N(2) \times Z$  for facilities extensively remodeled after July 1, 1984.

where:

M is the property rate per day of service,

N is the ~~facility's~~ provider's property rate as of 6/30/85. For entire facilities built after 6/30/85

N is \$7.60. ~~for a facility of non-wood-frame construction, and \$7.60 for a facility of wood-frame construction.~~

For facilities new to the program constructed prior to 6/30/82 a 6/30/85 rate will be computed according to property rules effective 6/30/85. That rate will be carried forward using  $M = N \times Z$

N(1) is the lower of ~~7.98~~ 8.14 EFFECTIVE JULY 1, 1987 AND 8.31 EFFECTIVE JULY 1, 1988 or  $((A \times D) + B \times 7.60)$  divided by  $(A + B)$  ~~x 1.025 1.0506 1.0716~~ effective July 1, 1985 1987. ~~and 1.0506 effective July 1, 1986, AND 1.093 EFFECTIVE JULY 1, 1988~~

~~N(2) is B x 1.025 effective April 1, 1986 and 1.0506 effective July 1, 1986 + ((F x 12) divided by 365) where remodeling is completed during the 7/1/85 to 6/30/86 period.~~

N(2) = the lower of ~~7.98~~ 8.14 EFFECTIVE JULY 1, 1987 AND 8.31 EFFECTIVE JULY 1, 1988 or  $D \times 1.025$  ~~1.0506~~ 1.0716 effective ~~January~~ July 1, ~~1986~~ 1987 ~~and 1.0506 effective July 1, 1986 AND 1.093 EFFECTIVE JULY 1, 1988 + ((F x 12) divided by 365).~~ ~~x 1.025 when remodeling is completed during the 7/1/84 to 6/30/85 period.~~

where:

A is the total square footage of the original structure.

B is the square footage added with the construction of new beds.

D is the property rate as of 6/30/85 for the original structure.

F is ((G divided by H x .80) amortized over 360 months at 12% per annum.

H is the number of licensed beds in the facility.

G is total allowable remodeling costs.

Z is ~~1.025~~ ~~1.0506~~ 1.0716 effective July 1, ~~1985~~ 1987, and ~~1.0506--effective--July 1,--1986.~~ AND 1.093 EFFECTIVE JULY 1, 1988.

Subsections (4) through (5) remain as proposed.

AUTH: Sec. 53-6-113 MCA

IMP: Sec. 53-6-141 MCA

46.12.1205 PAYMENT PROCEDURES Subsections (1) through (2) (civil) remain as proposed.

(CVIV) ROUTINE NURSING SUPPLIES USED IN EXTRAORDINARY AMOUNTS AND PRIOR AUTHORIZED BY THE DEPARTMENT.

Subsections (2)(b) through (4) remain as proposed.

(5) No payment or subsidy will be made to a provider for holding a bed while the recipient is temporarily receiving medical services elsewhere, such as in a hospital, except in a situation where a provider is full and has a current waiting list of potential residents. The requirements of being full and maintaining a current waiting list applies to each hold bed day claimed for reimbursement. A provider will be considered full if all medicaid certified beds are occupied or being held for a patient recipient temporarily in-a-hospital receiving medical services elsewhere or away on a therapeutic home visit. A provider will also be considered full as to gender if all appropriate, available beds are occupied or being held. For example, if all beds are occupied or held except for one semi-private bed in a female room, the provider is full for purposes of hold days for male recipients. In this exceptional instance, a payment will be made for holding a bed while the resident is temporarily receiving care-in-a-hospital, medical services elsewhere, EXCEPT IN ANOTHER LONG TERM CARE FACILITY, is expected to return to the provider, and the cost of holding the bed will evidently be less costly than the possible cost of extending the hospital stay until an appropriate long term care bed would otherwise become available. The provider must provide documentation, upon request, that the absence is expected to be temporary and the anticipated duration of the absence. Temporary absences which are of indefinite duration should be followed up at least weekly by the provider in order to reasonably assure the department that the absence is indeed temporary. Furthermore, payment in this exceptional instance will be made only upon written approval from the director--of--the--department--or--his--designee. department's medicaid bureau. A request for nursing home bed reservation during a resident's temporary hospitalization medical leave in this instance must be submitted to the department on the appropriate forms provided by the department

within 90 days of the first day of the requested absence. The request form submitted to the department must be accompanied by a copy of the current waiting list applicable to each hold bed day claimed for reimbursement. In situations where conditions of billing for holding a bed are met, providers are required to hold the bed and may not fill the bed until these conditions are no longer met. The bed may not be filled unless prior approval is obtained from the department. In situations where conditions of billing for holding a bed are not met, providers must hold the bed and may not bill Medicaid for the hold bed day until all conditions of billing are met.

Subsections (6) and (7) remain as proposed.

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

4. The Department has thoroughly considered all commentary received:

COMMENT: The Department's proposed rebasing of the fixed and patient-day cost parameters in the payment formula should not be implemented without further analysis. 1985 cost reports do not reflect major cost increases due to the 1985 change in the patient assessment deficiency level, increased rates for Workers Compensation and changes in the federal survey and certification requirements. In addition, the fixed cost parameter has increased at a higher percentage rate than the patient-day cost parameter.

RESPONSE: 1985 cost reports, at least for calendar year providers, take into account the cost factors mentioned. The fixed cost parameter measures a crossing point while the patient-day parameter measures the slope of a regression line; therefore, a comparable percentage increase between these two factors is unlikely unless every provider's costs increased by the same percentage between 1980 and 1985. The various regression analyses have behaved in accordance with the results of the 1982 regression in terms of increases and decreases in the two factors as the correlation coefficient was raised. However, the Department believes that more complete audited and desk reviewed data should be compiled before rebasing is implemented.

COMMENT: The HCFA national market basket inflation index for skilled nursing facilities applied to rebasing does not consider the special circumstances peculiar to Montana.

RESPONSE: Agreed. Montana is considered only to the extent costs to Montana providers are reflected in the database used to determine the national HCFA nursing home index. The

Department is not aware of a similar specific index for either Montana or a region which includes Montana.

COMMENT: 1986 would be a more appropriate year for rebasing because of various factors, including a decrease in the number of available licensed personnel which has forced higher wages, admission of heavier care residents and increases in malpractice and director's liability insurance premiums.

RESPONSE: 1986 would be a more desirable year in terms of being more current. However, the date for receipt of calendar year cost reports and the lack of time in which to perform audits and desk reviews make use of this year impossible.

COMMENT: 1985 cost reports have not been sufficiently audited, or at last desk reviewed, to provide an adequate database.

RESPONSE: Department concurs and this is the primary reason for not including rebasing in the final rule.

COMMENT: The proposal to eliminate grandfathered operating rates should not be implemented because the few remaining providers affected by this provision will "catch up" with the system over the next two years.

RESPONSE: Some commenters stated that it is time for the payment system to operate as designed. Providers afforded the protection of grandfathering have had five years to increase efficiency and bring costs into line with the rest of the industry. However, due to the detrimental effect on rates for those providers still benefiting from grandfathered rates, elimination will be withdrawn from the final rule.

COMMENT: The proposed amendment to adjust certain grandfathered property rates should not be made. The Department and providers originally agreed that it was unfair to discontinue recognition of costs applicable to long term mortgages and lease agreements entered into under the cost-based reimbursement system. The current rule protects the Department if costs are reduced by renegotiating a lease or refinancing a mortgage.

RESPONSE: Several commenters supported the proposed adjustment as long as indexed costs were included in the payment rate. The proposed rule assures that long term mortgage and lease costs will be recognized if they were reported in the provider's 1985 cost report. The adjustment is proposed to apply only when 1985 property costs indexed forward to June 30, 1987 are less than the grandfathered rate. The margin between indexed costs and the grandfathered rate must be for reasons other than refinancing or renegotiation of a

lease in existence on June 30, 1982. However, the Department will remove this adjustment in the final rule due to the detrimental effect it may have on providers with protected rates.

COMMENT: When the prospective system was initiated, providers were promised that their property rates would not be reduced as a result of the rule change. If some rates are to be reduced to cost, then those providers whose property rates are less than cost need to be increased to meet them.

RESPONSE: The Department is unaware of any promise that grandfathered property rates would never be reduced. The concept of adjusting rates upward to cover indexed costs higher than the rate has merit should the Department propose to return to a cost-based reimbursement system. Return to such a system may not be in the best interests of cost containment. The Department will eliminate language in the final rule regarding adjustment to grandfathered property rates based upon actual costs.

COMMENT: The operating formula "band" should not be removed at this time. The band has been progressively reduced but elimination is detrimental to facilities deemed to be "high cost" in July, 1982. These providers have had small or no increases in rates during the past five years. The band must be maintained to mitigate the negative consequences of slight or negative rate changes and to narrow the range of rate increases and decreases.

Other comments suggested that the payment system is still in transition and does not adequately cover cost components even in its present form but addresses them better with retention of the band.

RESPONSE: Some commenters indicated that the "band" was originally implemented to minimize the impact of the prospective system. These commenters feel it should be removed because providers have had five years to bring costs in line with the rest of the industry.

The Department contends that the band unnecessarily broadens the definition of an economic and efficient provider by maintaining the relationship with 1982 rates. However, in order to minimize the impact of eliminating the band, it will be reduced to  $\pm 1.25\%$  for FY 88 and eliminated beginning July 1, 1988.

COMMENT: The Department should change the inflationary factors in the formulas to apply a 2% increase for both 1988 and 1989 to formula property rates rather than the 0% proposed on the property portion.

RESPONSE: The Department concurs and will insert these factors into the final rule.

COMMENT: Language has been added defining when a change of provider has occurred for purposes of discontinuing grandfathered rates. The Department is expanding the definition of a change of ownership to include circumstances that are not properly a change of ownership. The current rule provides appropriate protection for providers and the Department.

RESPONSE: The definition of ownership in the current rule is very broad and the Department is merely attempting to clarify for providers when a change is deemed to have occurred rather than expanding the definition to encompass more transactions then would be applicable under the current rule.

COMMENT: The Department has proposed that a provider who has a grandfathered property rate would lose that rate if the facility was leased to a different provider. The grandfathering should not be lost as long as the same person is still obligated to the property costs.

RESPONSE: The definition of ownership in the current rule, as applied to lessees, considers the transaction described as sufficient to end grandfathering. The proposed rule merely clarifies treatment of such a transaction in a more definitive manner.

COMMENT: Language proposed as to the effective date pertaining to a change in rates needs to be clarified. Does this language apply to a change resulting from patient assessment monitoring?

RESPONSE: The Department will make the language more specific. It applies to patient assessment monitoring only as related to initial monitors of new providers whose operating rate began with the statewide average PA score.

COMMENT: State institutions should continue to be included in the areas they are located for purposes of computing the geographic wage index. State institutions help drive up the cost of staff in the areas in which they are located. The institutions don't compete against each other but rather against those providers in their own locality.

RESPONSE: Several commenters stated that a specific wage index for state institutions may be appropriate provided that the wage indexes are computed as they have been in the past for all other providers. The Department concurs with these commenters and will continue to include the State institutions



in their respective wage areas for purposes of computing the index for each of the areas.

The State institutions will then be grouped into their own index to reflect the fact that their wage scales are restricted to the pay matrix applicable to State employees.

COMMENT: The geographic wage index has too much weight because it is multiplied by the entire formula. Only about seventy percent of operating costs are labor related so the index should only be applied to seventy percent of the operating formula.

RESPONSE: The geographic wage index does indeed have a significant impact in the rate formula and needs to be evaluated. However, the Department is not proposing a change to this part of the formula at this time.

COMMENT: The total rate inflator, R(2), effective July 1, 1988, should be 1.0404 instead of 1.04 to reflect a two percent statement average increase in FY 89 over the FY 88 statewide average.

RESPONSE: The Department concurs.

COMMENT: The proposal eliminates language relating to a property rate adjustment for additions or renovations of a facility. That language must be restored to provide appropriate adjustments to property rates.

RESPONSE: This elimination pertains only to ICF/MR providers which are not impacted by remodeling and new construction adjustments. This will have no effect on SNF and ICF providers.

COMMENT: Does the new language relating to prescreening constitute a change in policy that is not clearly defined?

RESPONSE: No. The intent of this reference is to remind providers of the requirement for prescreening in order for Medicaid payment to be authorized.

COMMENT: The proposal states that Medicaid payment for Medicare co-insurance days will be paid at the lower of the co-insurance rate or the provider's Medicaid rate. Will providers be able to bill separately for ancillaries included within the Medicare rate?

RESPONSE: Providers will be able to bill separately for ancillary costs not fully covered by Medicare payment. The proposed language pertains only to billing for routine services.

COMMENT: The Department should reinsert language allowing separate payment for routine nursing supplies used in extraordinary amounts and prior approved by the Department. Some patients require routine items in extraordinary and expensive amounts.

RESPONSE: The Department concurs and will reinsert into the final rule.

COMMENT: The terms "maintenance therapy" and "rehabilitation services" should be defined and clarified in correction with the routine therapy versus ancillary distinction.

RESPONSE: A definition has been added to the final rule.

COMMENT: The Department has indicated that bed hold days may be paid for if recipients are receiving medical services elsewhere. This should be clarified in connection with long term care facility services delivered by another provider.

RESPONSE: The Department will clarify this situation in the final rule.

COMMENT: For purposes of appeals of patient assessment monitor findings, only documentation available on the date of the initial monitor is to be considered. The Department should not limit in any way information a provider might present to demonstrate the accuracy or inaccuracy of a patient assessment abstract and related monitor.

RESPONSE: The Department intends this to apply to documentation which did not exist on the date of the initial monitor rather than documentation which was in existence but not reviewed.

COMMENT: We do not believe the Department should arbitrarily put a 92% occupancy factor into the rules. Without the inclusion of an incentive factor in the base or an additional efficiency factor, the Department would only succeed in reducing the incentive to operate at a high occupancy.

RESPONSE: The 92% occupancy factor is derived from 1985 cost report data and is consistent with prior years' cost report data. It serves primarily to increase the inflation factor necessary to calculate the two percent increase in the statewide average total rate. Due to the lack of complete audited or desk reviewed cost report data for 1985, this factor will not be updated and will remain at 90%.

COMMENT: The base period used in the operating rate formula is not a leap year. Therefore, 365 days should be used in the formula rather than 366.

RESPONSE: The Department has chosen to retain the present formula dating back to 1980, a leap year. The 366 days will remain in the old formula.

COMMENT: Two years ago, the Department inserted a minimum number of beds to be used in the bed computation in order to limit the base rate for small providers. The opposite is also true and the Department should institute a 110 bed maximum into the computation.

RESPONSE: The Department sees some merit in this concept; however, it will require more study and analysis to determine the most equitable maximum bed limit.

COMMENT: Neither the current rule nor the proposed rule adequately address the kept factors which effect the cost of providing care. A reimbursement system must be designed by SRS which accurately assesses patient acuity and reimburses nursing homes fairly for standardized resources consumed.

RESPONSE: The Department is willing to work with providers and their respective associations over the next two years to improve the payment system.

COMMENT: The current patient assessment system has no mechanism to increase reimbursement or to lower the decrease in reimbursement as the statewide average patient assessment score increases.

RESPONSE: The system was designed to distribute rates, as far as the PA adjustment is concerned, in accordance with each provider's relationship to the statewide average. The Department is not prepared at this time to alter the fundamentals of the patient assessment adjustment.

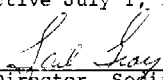
COMMENT: The factor for licensed hours to non-licensed hours should be updated.

RESPONSE: The Department intends to update this percentage annually based upon the most current and complete cost report data available.

COMMENT: Better documentation of patient care has impacted the statewide average patient assessment score. Perhaps regional differences should be taken into account rather than a statewide average.

RESPONSE: The Department is not prepared for such a change but is interested in the reasons for differences among geographic regions in the State.

5. These rules are effective July 1, 1987.

  
\_\_\_\_\_  
Director, Social and Rehabilitation Services

Certified to the Secretary of State June 15, 1987.

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

|                             |   |                            |
|-----------------------------|---|----------------------------|
| In the matter of the amend- | ) | NOTICE OF THE AMENDMENT OF |
| ment of Rule 46.25.731 per- | ) | RULE 46.25.731 PERTAINING  |
| taining to the Structured   | ) | TO THE STRUCTURED JOB      |
| Job Search, Training and    | ) | SEARCH, TRAINING AND WORK  |
| Work Program                | ) | PROGRAM                    |

TO: All Interested Persons

1. On May 14, 1987, the Department of Social and Rehabilitation Services published notice of the proposed amendment of Rule 46.25.731 pertaining to the Structured Job Search, Training and Work Program at page 529 of the 1987 Montana Administrative Register, issue number 9.

2. The Department has amended Rule 46.25.731 as proposed with the following changes:

46.25.731 STRUCTURED JOB SEARCH AND TRAINING PROGRAM

Subsections (1) through (6) (b) (i) remain as proposed.

(c) Work clothing+ ~~and haircut:~~

(i) ~~if unavailable from another source, WHERE NECESSARY, UP TO \$100.00 TOWARD THE PURCHASE OF WORK CLOTHING WILL BE MADE THROUGH A VENDOR PAYMENT. up to \$75.00 per recipient worth of work clothing may be purchased by the department;~~  
~~(iii) up to a maximum of \$100.00 per recipient of which \$10.00 may be used for a haircut;~~

~~(iii) will be provided only one-time to for each recipient.~~

(D) HAIRCUT:

(i) UP TO \$10.00 OF THE \$100.00 AVAILABLE FOR WORK CLOTHING MAY BE UTILIZED TO PAY FOR ONE HAIRCUT DURING THE PROGRAM.

(AE) Other:

(i) A maximum of \$15.00 PER RECIPIENT may be spent to obtain necessary employment and training items, such as school transcripts, birth certificates, driver's license and application fees.

AUTH: Sec. 53-2-201, 53-2-803 and 53-3-114 MCA; AUTH Extension, Sec. 3, Ch. 10, L. 1986 Sp. Sess., Eff. 7/1/86  
IMP: Sec. 53-2-822, 53-3-304 and 53-3-305 MCA

3. The Department has thoroughly considered all commentary received:

COMMENT: Is reimbursement available for public transportation?

RESPONSE: The rule amendment does not alter the availability of reimbursement for public transportation. The least expen-

sive means of transportation must be utilized.

COMMENT: Providers should be given more flexibility in the amounts of supportive services allowed.

RESPONSE: The Department feels that the limits provided are adequate and reasonable. Service providers are allowed discretion in the expenditures up to those limits.

COMMENT: Can participants in Project Work maximize their travel reimbursement by coming to the work site more often?

RESPONSE: Reimbursement at the rate designated in the rule will be provided for specific workfare assignments and for participation in activities as required in the Employability Development Plan.

COMMENT: Can workfare assignments be arranged to minimize transportation costs?

RESPONSE: The assignment of tasks should be primarily based upon employability needs of the individual. Those needs are reflected in the Employability Development Plan which effectively authorizes transportation. Consequently additional language is not necessary.

COMMENT: Does the Department plan to reimburse for transportation costs to workfare?

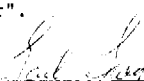
RESPONSE: Transportation reimbursement is to be provided for workfare participants subject to the limitation of this rule.

COMMENT: The added language concerning haircuts is not clear.

RESPONSE: The Department agrees and has rewritten that portion of the rule.

COMMENT: It is unclear what deficiencies the Montana Job Training Coordinating Council found with the Structured Job Search, Training and Work Program.

RESPONSE: The deficiencies were those specifically addressed in the proposed rule amendment and include a need to pay for additional transportation, necessary work clothing, a haircut and those needs listed as "other".

  
\_\_\_\_\_  
Director, Social and Rehabilitation Services

Certified to the Secretary of State June 15, 1987.

Montana Administrative Register

12-6/25/87

NOTICE OF FUNCTIONS OF ADMINISTRATIVE CODE COMMITTEE

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

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

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

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

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

Use of the Administrative Rules of Montana (ARM):

- |                                     |   |
|-------------------------------------|---|
| Known<br>Subject<br>Matter          | 1. Consult ARM topical index, volume 16. Update the rule by checking the accumulative table and the table of contents in the last Montana Administrative Register issued. |
| Statute<br>Number and<br>Department | 2. Go to cross reference table at end of each title which list MCA section numbers and corresponding ARM rule numbers.  |



ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies which have been designated by the Montana Procedure Act for inclusion in the ARM. The ARM is updated through March 31, 1987. This table includes those rules adopted during the period March 31, 1987 through June 30, 1987 and any proposed rule action that is pending during the past 6 month period. (A notice of adoption must be published within 6 months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through March 31, 1987, this table and the table of contents of this issue of the MAR.

This table indicates the department name, title number, rule numbers in ascending order, catchphrase or the subject matter of the rule and the page number at which the action is published in the 1987 Montana Administrative Register.

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