MONTANA ADMINISTRATIVE REGISTER

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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 20

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing, and where written comments may be submitted.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

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the repeal of ARM 2.21.605 through 2.21.610 and 2.21.616, and the adoption of rules relating to the administration of holidays for state employees	) NOTICE OF PUBLIC HEARING ON THE PROPOSED REPEAL OF ARM 2.21.605 THROUGH 2.21.610 AND 2.21.616, AND THE ADOPTION OF RULES RELATING TO HOLIDAYS FOR STATE EMPLOYEES

To: All Interested Persons.

1. On November 19, 1987, at 12:15 p.m., in Room 136, Mitchell Building, Helena, Montana, a public hearing will be held to consider the repeal of ARM 2.21.605 through 2.21.610, and 2.21.616 relating to holidays for state employees and the adoption of new rules.

2. The rules proposed to be repealed are on pages 2-677 through 2-683 of the Administrative Rules of Montana.

3. The proposed rules provide as follows:

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

(Auth. 2-18-102, 2-18-604, MCA; IMP. 1-1-216 2-18-102, 2-18-603, MCA)

RULE II POLICY AND OBJECTIVES (1) It is the policy of the state of Montana to provide an eligible employee with holiday benefits for legal state holidays.

(2) It is the objective of this policy to establish:

(a) eligibility requirements an employee must meet to receive holiday benefits;

(b) uniform procedures for calculating holiday benefits; and

(c) uniform procedures for calculating pay and paid time off, for work performed on the day a holiday is observed.

(Auth. 2-18-102, 2-18-604, MCA; IMP. 1-1-216 2-18-102, 2-18-603, MCA)

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

(1) "Full-time employee" means as provided in 2-18-601(5), MCA "an employee who normally works 40 hours a week."

(2) "Heritage day" means a holiday as provided in 1-1-216 (11), MCA, "to be observed annually on a date determined by the governor for the executive, legislative, and judicial branches of state government, including the Montana university system."

(3) "Holiday" means a legal state holiday as provided in 1-1-216, MCA. A holiday begins at midnight and ends at 11:59 p.m.

(4) "Holiday benefits" means compensation paid to an eligible employee when the state observes a legal state holiday. Compensation is pay at the regular rate up to eight hours or equivalent paid time off up to eight hours.

(5) "Intermittent employee" means an employee who does not work a regular schedule. An intermittent employee works on an as-needed basis or occasional basis, and has no expectation to work unless the agency has a specific need.

(6) "Normally works" means the employee works a regular schedule which is anticipated to last longer than one pay period. A regular schedule is a work schedule set by the agency for which an employee is either expected to work or use approved leave.

(7) "Part-time employee" means as provided in 2-18-601 (4), MCA "an employee who normally works less than 40 hours a week."

(8) "Premium pay" means compensation paid to an employee covered by the Fair Labor Standards Act (FLSA) at 1 1/2 times the regular rate only for hours worked on a holiday.

(Auth. 2-18-102, 2-18-604, MCA; IMP. 1-1-216
2-18-102, 2-18-603, MCA)

RULE IV HOLIDAYS (1) "The following are legal state holidays," as provided in 1-1-216, MCA:

(a) New Year's Day, January 1;

(b) Lincoln and Washington's Birthdays, the third Monday in February;

(c) Memorial Day, the last Monday in May;

(d) Independence Day, July 4;

(e) Labor Day, the first Monday in September;

(f) Columbus Day, the second Monday in October;

(g) Veteran's Day, November 11;

(h) Thanksgiving Day, the fourth Thursday in November;

(i) Christmas Day, December 25;

(j) State General Election Day; and

(k) Heritage Day, to be observed annually on a date determined by the governing body of each political subdivision for the purpose of that political subdivision and by the governor for the executive, legislative, and judicial branches of state government, including the Montana university system.

(2) "If any holiday . . . falls upon a Sunday, the Monday following is a holiday," as provided in 1-1-216, MCA. When a holiday falls on a Saturday, the holiday shall be observed on the preceding Friday.

(3) The employee shall receive holiday benefits and pay for work performed on the day the holiday is observed, unless the employee is scheduled or required to work on the actual holiday. If the employee is scheduled or required to work on the actual holiday, the actual holiday shall be considered as the holiday for purposes of calculating holiday benefits and pay for work performed on a holiday. The employee will receive either holiday benefits for working on the day the holiday is observed or for working on the actual holiday, but not both.

(4) State primary election days are not state holidays.

(5) Martin Luther King, Jr., day is not a legal holiday in Montana for which holiday benefits are provided. State offices will be open on this day. It is an official day of observance on which, as provided in 1-1-216, MCA, "all Montanans are urged to reflect on the contributions of this man to American society."

(Auth. 2-18-102, 2-18-604, MCA; IMP. 1-1-216 2-18-102, 2-18-603, MCA)

RULE V HOLIDAY BENEFITS (1) An eligible employee shall receive holiday benefits for legal state holidays. This benefit is paid time off or compensation paid at the regular rate. Holiday benefits shall not exceed eight hours per holiday.

(2) Holiday benefits are calculated based on an employee's regular schedule. For purposes of this policy, changes to an employee's schedule which extend beyond one pay period are changes to the regular schedule. An employee's regular schedule may be changed in ways including, but not limited to:

(a) a change initiated by management, or

(b) a change initiated by an employee; such as, requests to work fewer hours on an ongoing basis; or requests to use leave without pay, by itself or in combination with accrued paid leave.

(3) An employee must be in a pay status either the last regularly scheduled working day before or the first regularly scheduled working day after a holiday is observed to be eligible to receive holiday benefits.

(4) An employee shall not receive holiday benefits if:

(a) the employee is a new employee to state government and begins work on the day after a holiday is observed; or

(b) the employee is reinstated or re-employed following a reduction in force, returns to work following a leave of absence without pay of more than one pay period, or is called back to a seasonal position on the day after a holiday is observed.

(Auth. 2-18-102, 2-18-604, MCA; IMP. 1-1-216 2-18-102, 2-18-603, MCA)

RULE VI HOLIDAY BENEFITS FOR FULL TIME EMPLOYEES (1) A full-time employee whose regular schedule calls for the employee to work on the day a holiday is observed shall receive 8 hours of holiday benefits. The employee usually receives the holiday off; however, management reserves the right to require an employee to work on the day a holiday is observed. The employee shall be compensated for work performed on a holiday, as provided in Rule IX.

(2) A full-time employee whose schedule calls for a day off on the day a holiday is observed, as provided in 2-18-603, MCA, "shall be entitled to receive a day off with pay on the day preceding the holiday or on another day following the holiday in the same pay period" or as requested by the employee and approved by the supervisor, "whichever allows a day off in addition to the employee's regularly scheduled days off . . ."

If a day off can not be provided, the agency may provide 8 hours of pay at the regular rate.

(Auth. 2-18-102, 2-18-604, MCA; IMP. 1-1-216
2-18-102, 2-18-603, MCA)

RULE VII HOLIDAY BENEFITS FOR PART-TIME AND JOB SHARE EMPLOYEES (1) As provided in 2-18-603, MCA, "part-time employees receive holiday benefits on a prorated basis . . ."

(2) Holiday benefits shall be an average of the employee's hours regularly scheduled to work in the pay period. To find the average, the number of hours regularly scheduled to work in a pay period shall be divided by 10 (the number of working days in a pay period). Holiday benefits shall not exceed 8 hours.

(3) If the pay period in which the holiday falls is not characteristic of the employee's regular schedule, the agency has the discretion to approximate the employee's schedule for purposes of determining holiday benefits.

(4) The employee usually receives the holiday off; however, management reserves the right to require a part-time employee to work on the day a holiday is observed. The employee shall receive holiday benefits as provided in this rule and shall be compensated for work performed on a holiday as provided in Rule IX.

(Auth. 2-18-102, 2-18-604, MCA; IMP. 1-1-216
2-18-102, 2-18-603, MCA)

RULE VIII HOLIDAY BENEFITS FOR EMPLOYEES WHO WORK ON AN INTERMITTENT BASIS (1) An employee who only works on an intermittent or as-needed basis as defined in Rule III (5) is not eligible for holiday benefits.

(2) An intermittent employee who receives approval to work on a holiday shall be paid at the regular rate for all hours actually worked on the holiday.

(Auth. 2-18-102, 2-18-604, MCA; IMP. 1-1-216
2-18-102, 2-18-603, MCA)

RULE IX PAY FOR WORK PERFORMED ON A HOLIDAY (1) An employee who is covered by the Fair Labor Standards Act (FLSA) and who receives approval to work on the day a holiday is observed shall be paid for all hours actually worked. In addition to the holiday benefit provided for in Rule V the employee shall receive either (a) or (b) below, at management's discretion.

(a) If the holiday benefit is a paid day off to be taken at a later date, the employee shall receive pay at the regular rate for every hour worked on the holiday.

(b) If the holiday benefit is to be pay, but no day off, the employee shall receive premium pay (regular rate time 1 1/2) for every hour worked on the holiday.

(2) Hours worked on a holiday may result in more than 40 hours in a pay status during the workweek. An employee shall not receive both premium pay and overtime pay for the hours worked on a holiday. If the agency provides pay at the regular

rate for hours worked on the holiday or paid time off on an hour-for-hour basis, the employee shall receive overtime or nonexempt compensatory time for the hours over 40 in a workweek, in compliance with the overtime and nonexempt compensatory time policy, ARM 2.21.1701 et seq. (Also found at policy 3-0210, Montana operations manual, volume III.)

(3) An employee who is exempt from the FLSA, and who receives approval to work on the holiday will receive compensatory time equivalent to the number of hours worked. The employee will not receive cash compensation.

(4) Equivalent paid time off for work performed on a holiday may be taken at a later date upon request by the employee and approval of the supervisor. When an employee requests to take the hours off, where the interest of the state requires the employee's attendance, the state's interest overrides the employee's.

(Auth. 2-18-102, 2-18-604, MCA; IMP. 1-1-216 2-18-102, 2-18-603, MCA)

RULE X SPECIAL SITUATIONS (1) The method used to calculate holiday pay for an employee who works four, 10-hour days, part-time, or in a job share situation may result in the employee's total earnings for the pay period being more or less than normal.

(a) If the employee would be eligible to receive additional pay due to the holiday, the agency may require the employee to take off an equivalent number of hours without pay in the same workweek to maintain a consistent paycheck.

(b) If the employee would receive less pay than usual, at the agency's discretion, the employee could work additional hours in the same pay period to make up the difference or could take annual leave or accrued compensatory time.

(2) When a transfer between agencies is effective immediately prior to a holiday, the agency to which the employee transfers shall pay for the holiday.

(Auth. 2-18-102, 2-18-604, MCA; IMP. 1-1-216 2-18-102, 2-18-603, MCA)

RULE XI CLOSING (1) This policy shall be followed unless it conflicts with negotiated labor contracts, or specific statutes, which shall take precedence.

(Auth. 2-18-102, 2-18-604, MCA; IMP. 1-1-216 2-18-102, 2-18-603, MCA)

4. New rules are proposed to provide a reliable procedure for consistent calculation of holiday benefits, a consistent method for calculation of pay for work performed on a holiday, and to incorporate into rule interpretations necessary to deal with unusual situations.

An overall policy and objectives statement is proposed in Rule II. Rule III adds definitions of critical terms, such as "holiday," "holiday benefit," "normally works," and "premium pay." Rules IV and V list the actual holidays and establish the

basic holiday benefit. Rules VI, VII, and VIII explain how to apply the basic benefit to employees who work full-time, part-time, in a job share or on an intermittent basis. Rule IX deals with the separate issue of how to pay an employee who actually works on a holiday. Rule X, Special Situations, addresses some common questions which until now have been dealt with through interpretation.

5. Each time a holiday is observed, each state employee's benefit may change from the previous holiday, because his schedule has changed, because he usually would have a day off on the holiday anyway, or because he works on the holiday. The current rules are proposed for repeal because historically they have not provided enough guidance for consistent administration of holiday benefits. Each time a holiday is observed, the Department of Administration receives calls requesting interpretations of the holiday policy from managers, payroll clerks, and from employees. Changes to the rules are necessary to provide a clear picture of what a holiday is, what a holiday benefit is, who is eligible for benefits, and how to calculate that benefit. Calculating pay for actual hours worked on a holiday versus the benefit employees receive because there is a holiday is the largest source of questions and inconsistent administration of holidays. The current rules do not clearly answer these critical questions. The proposed new rules, which were developed with the assistance of agency personnel officers, should answer them.

Rule IV incorporates amendments to 1-1-216, MCA, the list of legal holidays adopted by the 1987 Legislature.

The proposed rules reduce the reliance on the body of interpretation which has grown up around the current policy. Administration of holidays will be more uniform, if the interpretations are incorporated into the rules.

6. Interested parties may submit their data, views or arguments concerning the proposed adoption of rules in writing to:

Laurie Ekanger, Administrator
State Personnel Division
Department of Administration
Room 130, Mitchell Building
Helena, Montana 59620

no later than November 27, 1987.

7. Linda Kaiser, Personnel Policy Coordinator, State Personnel Division, Department of Administration, Mitchell Building, Helena, Montana 59620, has been designated to preside over and conduct the hearing.

8. The authority of the agency to make the proposed repeal and adoption is based on 2-18-102, and 2-18-604, MCA, and the rules implement 1-1-216, 2-18-102, and 2-18-603, MCA.

BY: Ellen Feaver

Ellen Feaver, Director
Department of Administration

Certified to the Secretary of State October 19, 1987

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the adoption of new rules pertaining to the administration of the honey bee program	)))))	NOTICE OF THE PROPOSED ADOPTION OF RULES PERTAINING TO THE ADMINISTRATION OF THE HONEY BEE PROGRAM NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On November 30, 1987, the Department of Agriculture proposes to adopt new rules to implement changes to the honey bee program.

2. The text of the rules reads as follow:

RULE I DEFINITIONS (1) Unless the context requires otherwise the following definitions apply:

(a) Approved Annual Survey: Means an annual state or province wide survey conducted for honeybee tracheal mites in a regulated area approved by the department.

(b) Department means: The Montana Department of Agriculture.

(c) Infested states: Means states or provinces designated by the director of the department as being infested with the honeybee tracheal mite.

(d) Mite Inspection Certificate: Means a certificate or document issued by the agency responsible for honeybee inspection in the state of origin.

(e) Non-infested state: Means a state or province not designated as being an infested state.

(f) Quarantined areas: Means any state, province, county, or area designated by the director of the department as being infested with honeybee tracheal mites.

(g) Regulated area: Means all states of the United States of America outside of Montana and all provinces of Canada.

(h) Regulated articles: Means bees or queen bees of the genus Apis a/k/a/ honeybees found in live bee hives, colonies or packages. Also included are combs, used hives and any other equipment used in association with honeybees except when free of live bees for a period of four days prior to entry into Montana.

AUTH: 80-6-201 MCA IMP: 80-6-201

RULE II RESTRICTIONS ON THE MOVEMENT OF REGULATED ARTICLES FROM A REGULATED AREA INTO MONTANA (1) The department shall for the purposes of a quarantine, review the results of approved annual surveys to determine which states or provinces suffer from infestations. In order for the survey to be considered valid it must be conducted using the following survey methods:

(a) 10% of the apiaries randomly selected in the state or province shall be sampled;

(b) one sample is required per apiary or one sample per each 100 hives in the apiary;

(c) The sample should be taken from 10% of the hives in the apiary but not from less than five hives. If the apiary consists of less than five hives the sample should be taken uniformly from each hive.

(d) each sample shall consist of 500 honeybees;

(e) 50 bees per sample shall be analyzed for honeybee tracheal mites.

(2) Any alternative survey method or variation may be used if approved by the department. If a state or area within a state does not have an approved survey such state or area must meet the same importation requirements as an infested state.

AUTH: 80-6-201 MCA IMP: 80-6-201 and 80-6-202 MCA

RULE III IMPORTATION OF REGULATED ARTICLES FROM NON-INFESTED STATES (1) Regulated articles imported from non-infested states may be transported into Montana without mite inspection certificates.

AUTH: 80-6-201 MCA IMP: 80-6-201 and 80-6-202

RULE IV IMPORTATION OF REGULATED ARTICLES FROM INFESTED STATES (1) Regulated articles from infested states may be imported into Montana when one of the following conditions are met:

(a) When the regulated articles are accompanied by a mite inspection certificate indicating that they are apparently free from mite infestation.

(b) When the regulated articles are imported according to the conditions set forth in Rule VI.

AUTH: 80-6-201 MCA; IMP: 80-6-201 and 80-6-202 MCA.

RULE V MITE INSPECTION CERTIFICATE (1) The required mite inspection certificate shall be valid for a period of nine months from the date of issuance.

(2) The mite inspection certificate shall be in addition to or part of the certificate of health required in section 80-6-202 MCA. The certificate shall be based upon the following survey and analysis method:

(a) The honeybees to be moved into Montana shall be sampled;

(b) One sample is required for each 50 hives;

(c) 10% of hives in the apiary must be sampled with a minimum of at least five hives per bee yard;

(d) 500 honeybees are required per sample;

(e) 100 honeybees of each sample shall be analyzed for honeybee tracheal mites.

(f) Alternative survey methods or variations of this method may be used only upon approval of the Montana Department of Agriculture.

(g) Purchased queens and package bees can only be imported under this provision.

AUTH: 80-6-201 MCA IMP: 80-6-201 and 80-6-201 MCA

RULE VI ALTERNATIVE METHOD OF IMPORTATION OF RESTRICTED ARTICLES (1) When the regulated articles, excluding purchased queens and package bees, are imported under the following conditions;

(a) The importing beekeeper must apply for and obtain a Permit to Import Honeybees from mite infested states from the department at least two weeks prior to importing beehives from an infested state.

(b) The beekeeper requesting the permit must agree in writing to all the terms of this quarantine.

(c) All beehives imported under a permit must be netted while being transported in Montana.

(d) Upon arrival in Montana all beehives are automatically quarantined on their respective registered apiary locations.

(e) Any beekeeper who has a registered apiary within three miles of a quarantined apiary may request that the beehives in the quarantined apiary be sampled and analyzed for the presence of honeybee tracheal mites.

(f) The beekeeper making the original request for sampling shall pay an inspection fee of $27.00 per sample.

(g) The sampling and analysis procedure shall be the same as for a mite inspection certificate.

(2) If honeybee tracheal mites are found in the sampled apiary the owner or manager of the infested beehives shall:

(a) Within 48 hours of notification that the beehives are infested, move the infested beehives to a registered apiary which is three or more miles away from apiaries registered by other beekeepers.

(b) The owner or manager of the infested bee yard may move beehives back into the sampled apiary after verification by analysis that the replacement hives are not infested with honeybee tracheal mites.

(c) The owner or manager shall pay an inspection fee of $27.00 per sample for any samples taken to verify replacement beehives.

AUTH: 80-6-201 IMP: 80-6-201, 80-6-202 and 80-6-311 MCA.

RULE VII TRANSPORTATION OF REGULATED ARTICLES THROUGH INFESTED STATES (1) Regulated articles which are merely transported through honeybee tracheal mite quarantined areas without delay or exposure to mites shall not be denied entry through or into Montana if all requirements of these rules and Montana's beekeeping law are met.

AUTH: 80-6-201 MCA; IMP: 80-6-201 and 80-6-202 MCA.

3. A serious epidemic has affected bees in other states in that acaraphis woodi also known as honeybee tracheal mites have infected colonies of bees in states throughout the United States and other countries. This infestation is spreading quickly and represents a clear and present danger to the production of honey. In recognition of this danger the Montana State Beekeepers Association has petitioned the Department of Agriculture to issue quarantine

regulation rules for importing bees from states having diseased honeybees and bees. The rules establish a workable method of controlling parasites and pathogens. Therefore these a rules are necessary to implement the statutory changes made by the 1987 legislature so as to protect the honey bee industry.

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 November 27, 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 November 27, 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 49 persons based on 495 beekeepers.

7. These rules are authorized under section 80-6-201 MCA. They implement sections 80-6-201, 80-6-202, and 80-6-311 MCA.

Keith Kelly
Director

Certified to the Secretary of State October 19, 1987.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the adoption of new rules pertaining to the the regulation of noxious weed seeds and seed merchandising licenses.	) NOTICE OF PUBLIC HEARING ON THE) PROPOSED ADOPTION OF RULES) PERTAINING TO THE REGULATION OF) NOXIOUS WEED SEEDS AND RELATED) MATTERS, REPEALING 4.5.110)

TO: All Interested Persons:

1. On November 30, 1987 at 10:00 a.m. in room 225, Agriculture/Livestock Building, Helena, Montana, a public hearing will be held to consider the adoption of new rules to implement designations and limitations of noxious weed seeds and establishing the time for the license year.

2. The proposed rules do not replace or modify any section currently found in the Administrative Rules of Montana. ARM 4.5.110, proposed for repeal, can be found on page 4-106 of the Administrative Rules of Montana.

3. The text of the rules reads as follows:

Rule I LICENSE YEAR (1) All licenses are issued on a fiscal year basis and expire on June 30 of each year.

AUTH:80-5-206 IMP:80-5-202

RULE II PROHIBITED NOXIOUS WEED SEEDS (1) Seeds offered for sale or sold shall not contain any of the following prohibited noxious weed seeds:

(a) Leafy Spurge (Euphorbia ensula)
(b) Russian Knapweed (Centaurea repens)
(c) Canada Thistle (Cirsium arvense)
(d) Hoary Cress (Cardaria draba)
(e) Quackgrass (Agropyron repens)
(f) Perennial Sowthistle (Sonchus arvensis)
(g) Field Bindweed (Convolvulus arvensis)
(h) Dalmation Toadflax (Linaria dalmatica)

AUTH:80-5-112 IMP:80-5-105, and 80-5-201

Rule III RESTRICTED NOXIOUS WEED SEEDS (1) Seeds offered for sale or sold shall not contain the following restricted noxious weed seeds in quantities in excess of those listed below:

Common Name	Species	No of seeds per Pound
(a) Dyers Woad	(Isatis tinctoria)	0
(b) Spotted Knapweed	(Centaurea maculosa)	0
(c) Wild Oats	(Avena fatria)	45
		(of grass seed)
		9
		(of cereal seed)
(d) Dodder	(Cuscuta spp.)	18

(e)	Common Crupina	(Crupina vulgaris)	9
(f)	St. Johnswort	(Hyperecum perforatum)	27
(g)	Tansy Ragewort	(Seneceo jacobaea)	9
(h)	Curley Dock	(Rumex crespus)	45
(i)	Jointed Goatgrass	(Aegilops cylindrica)	18
(j)	Persian Darnel	(Lolium persicum)	18
(k)	Diffused Knapweed	(Centaurea diffusa)	0
(l)	Yellow Starthistle	(Centaurea solstitialis)	18
(m)	Rush Skeletonweed	(Chondrilla juncea)	9
(n)	Yellow Toadflax	(Linaria vulgaris)	9

AUTH:80-5-112, IMP:80-5-105, and 80-5-120
4.5.110 is proposed for repeal.
Auth:8-7-802 MCA IMP:80-7-801(3) and 80-7-812 MCA

4. The department finds it necessary to implement these rules in order to meet the legislative mandate of determining the the lists of prohibited and restricted noxious weed seeds regulated in the Seed Act. The department establishes these lists to prevent the spread of economic harmful noxious weeds in the state of Montana. Rule 4.5.110 is being repealed because of changes to the statutes make it nugatory.

5. Interested persons may submit their data, views, or comments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to O. Roy Bjornson, Department of Agriculture, Agriculture/Livestock Building, Capitol Station, Helena, Montana, 59620, no later than December 4, 1987.

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

7. These rules are authorized under section 80-5-206 and 80-5-112 MCA. They implement sections 80-5-120, 80-5-105 and 80-5-202 MCA.

Keith Kelly
Director

Certified to the Secretary of State October 19, 1987.

BEFORE THE DEPARTMENT OF AGRICULTURE
STATE OF MONTANA

In the matter of the amendment of Rule 4.4.302 and new rules relating to the administration of state hail insurance	)))))	NOTICE OF PROPOSED AMENDMENT OF RULE 4.4.302 AND NEW RULES RELATING TO THE ADMINISTRATION OF CLAIMS AGAINST STATE HAIL INSURANCE NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On November 30, 1987, the Department of Agriculture proposes to amend rule 4.4.302 and propose new rules to revise the procedures for administration of claims for hail insurance.

2. The rule as proposed to be amended provides as follows: 4.4.302 AT LEAST 5% LOSS NEEDED (1) If any insured claims a loss and no appreciable part of any field shows a loss of at least 5%, the insured may be required to pay the adjusting expense. All loss claims must be filed with the State Board of Hail Insurance at Helena within ~~three (3)~~ fourteen (14) days after the storm. ~~If notice of loss is not received within three (3) days, the cost of the adjustment may, at the discretion of the board, be charged to the claimant, unless the board deems the delay excusable.~~ If any insured grain has been damaged by hail and is ripe enough to harvest before the adjuster appears, the insured may proceed with his harvesting with the exception that he must leave fair, representative samples in each field as directed on the hail loss report form and on the acknowledgement of loss form.

AUTH: Sec. 80-2-201, MCA; IMP; 80-2-244, MCA

Rule I REQUEST FOR INSURANCE ON HAIL DAMAGED GRAIN (1) A producer may request insurance for a crop that has already had hail damage if they comply with the following;

(a) The request must be made on a form furnished by the department;

(b) The form must be completed in full and signed;

(c) The first loss may not have more than a 25% loss caused by hail;

(d) NO HAIL LOSS WILL BE AWARDED ON THE CROP UNTIL THE FIFTH DAY AFTER THE PREVIOUS DAMAGE.

(e) The insured producer shall be charged the regular maximum rate for insurance on the sound portion of the crop remaining after the first damage, and if the crop should later be totally destroyed, the producer will be paid the full amount of insurance as shown in the policy.

AUTH: 80-2-201 MCA, IMP; 80-2-201 and 80-2-203, MCA, 80-2-205 MCA.

Rule II PAYING 100% WHEN THE LOSS SHOWS AT LEAST 95% OR ABOVE ACTUAL LOSS (1) The state hail insurance will pay the producer 100 percent of the payable amount when the adjuster shows by count that the loss is 95 percent or above. AUTH: 80-2-201 MCA, IMP: 80-2-201 AND 80-2-244 MCA.

Rule III DISPUTED APPRAISAL (1) If a party files a claim and is dissatisfied with the determination of the final determination of the adjustment, the party may appeal the determination pursuant to 80-2-201 and 80-2-243 MCA.

(2) In the case where another insurance company is involved, the board reserves the right to make its own adjustment or have the final say in the settlement of the portion involving state hail insurance.
AUTH: 80-2-201 MCA, IMP: 80-2-201 and 80-2-244 MCA.

3. These rules are necessary in order to facilitate better administration of claims presented to State Hail Insurance. These procedures insure fair and orderly handling of claims.

4. Interested persons may submit their data, views, or comments concerning the proposed amendment to the rule to Bruce Meyer, Department of Agriculture, Agriculture/Livestock Building, Capitol Station, Helena, Montana, 59620, no later than November 27, 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 Bruce Meyer, Department of Agriculture, Agriculture/Livestock Building, Helena, Montana, 59620 no later than November 27, 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 304 persons based on 3038 policy holders in 1987.

7. The authority of the department to make the proposed amendment on sections 80-2-201, MCA and the rule implements section 80-2-201, 80-2-203, 80-2-205, 80-2-243, and 80-2-244, MCA.

Keith Kelly
Director
Department of Agriculture

Certified to the Secretary of State October 19, 1987

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

In the matter of the adoption of rules pertaining to independent liability funds	))))	NOTICE OF PUBLIC HEARING

TO: All Interested Persons

1. On November 30, 1987, at 9:00 a.m., a public hearing will be held in Room 160 of the Mitchell Building at Helena, Montana, to consider the adoption of rules pertaining to independent liability funds.

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

3. The text of the proposed rules is as follows:

RULE I PURPOSE AND APPLICABILITY (1) The purpose of these rules is to protect members of the public who deal with business entities that have elected to insure their third-party liabilities or any portion thereof through the use of independent liability funds as authorized by the Independent Liability Fund Act by:

(a) regulating the registration and annual reporting of data pertinent to the inviolability and health of independent liability funds;

(b) regulating the responsible administration of independent liability funds;

(c) providing for the coordination of efforts between the department of revenue and the commissioner to assure the inviolability and health of independent liability funds;

(d) providing mechanisms for the sanctioning of independent liability funds that do not comply with the Independent Liability Fund Act or these rules or that are not inviolable, healthy, or secure.

(2) Rules I through VII apply to independent liability funds, as defined in the Independent Liability Fund Act, except to the extent they conflict with statutory requirements. Statutory requirements prevail over conflicting rules.

(3) These rules are not exclusive. The commissioner may also consider other provisions of the Montana Insurance Code that apply to the circumstances or situations addressed herein. The rights provided by these rules are in addition to and do not prejudice any other rights granted to third party liability claimants under statutes, common law, or other Administrative Rules of Montana.

AUTH: 33-27-104, MCA; IMP: Title 33, chapter 27, MCA

RULE II DEFINITIONS As used in Rules I through VII and Title 33, chapter 27, MCA, the following definitions apply unless the context requires otherwise:

(1) "Health" means that assets in an independent liability fund are really worth the amount assigned to them

and that all investments and assets contained in an independent liability fund meet the criteria established by 33-2-501, 33-2-502, and Title 33, chapter 2, part 8, MCA, and have been properly valued as investments and assets of that nature would be valued under 33-2-532, MCA. "Health" does not mean that the investments and assets contained in an independent liability fund are sufficient to cover claims.

(2) "Inviolability" means that the business entity establishing the independent liability fund has provided security, third-party oversight, or both, in accordance with these rules so as to satisfy the commissioner that the investments and assets that comprise the independent liability fund cannot be misappropriated or dissipated in violation of the requirements of the laws governing independent liability funds.

(3) "Secure" means that there is a reasonable expectation that an independent liability fund will remain inviolable over the time period it is to remain available to pay the costs of third-party liability claims.

(4) "Viable" means the reasonable expectation that the investments and assets that make up an independent liability fund will retain their value or increase in value over the time period they are to remain available to pay the costs of any third-party liability claim.

AUTH: 33-27-104, MCA; IMP: Title 33, chapter 27, MCA

RULE III REGISTRATION OF INDEPENDENT LIABILITY FUNDS

(1) On or before February 1 of each year, or within one calendar month of the end of the business entity's fiscal year, the business entity shall provide the commissioner with the following information on a form prescribed by the commissioner:

(a) name of the business entity;

(b) if a corporation, the state where it is incorporated;

(c) the address and telephone number of its principal place of business;

(d) the name of its staff member responsible for handling independent liability fund questions;

(e) the name, address, and telephone number of its third-party administrator;

(f) if it has no third-party administrator, the name, address, and telephone number of its in-house administrator;

(g) the name, address, and telephone number of the surety insurer for the in-house administrator;

(h) a copy of the bond issued on the in-house administrator;

(i) all relevant information regarding the investments & assets that make up the bond of the independent liability fund, including the type of contribution, the amount, the date of its acquisition, the actual physical location of the asset or investment, its acquisitions of independent liability fund assets or investments during the year, its disposals of independent liability fund assets or investments during the year, and any other documentation that the commissioner considers necessary or relevant.

(2) The commissioner shall report failure to comply with the above registration requirement to the department of revenue. The department of revenue may disallow a business entity's deduction for an independent liability fund if the business entity fails to comply with the registration requirement or these rules.

AUTH: 33-27-104, MCA; IMP: Title 33, chapter 27, MCA

RULE IV ADMINISTRATION OF INDEPENDENT LIABILITY FUNDS A business entity may use one of the two following methods to administer its independent liability fund:

(1) A third party having no close connection with the business entity may administer the fund, provided that the third party is either a trust company registered in the state of Montana to conduct such business or a person or entity bonded by an authorized surety insurer for the full amount, including principal and interest, of the funds contained in the independent liability fund.

(2) An in-house officer or employee of the business entity may administer the fund if the officer or employee is bonded by an authorized surety insurer for the full amount including principal and interest, of the funds contained in the independent liability fund. If an in-house officer or employee administers the independent liability fund:

(a) that officer or employee must have exclusive control of the assets or investments contained in the independent liability fund;

(b) the business entity shall file a copy of the bond insuring the officer or employee with the commissioner; and

(c) the surety insurer issuing the bond shall notify the commissioner in writing 30 days before the effective date of a cancellation of the bond.

(3) Both in-house and third-party administrators shall cooperate fully with the commissioner in providing proof of the security or bond covering the investments, assets, and interest contained in the independent liability funds.

(4) An asset or investment contained in the independent liability fund may not be used or removed from the fund without prior notification to the commissioner with full explanation of the need for the transfer and a clear statement of the financial reasoning behind the transfer.

(5) A business entity using an independent liability fund shall obtain adequate insurance coverage for each insurable asset contained in the independent liability fund.

AUTH: 33-27-104, MCA; IMP: Title 33, chapter 27, MCA

RULE V OVERSIGHT OF INDEPENDENT LIABILITY FUNDS (1) The commissioner shall at all times be allowed access to any records of a business entity that bear upon the health, inviolability, authenticity, viability, and security of that entity's independent liability fund.

(2) A business entity using an independent liability fund shall be required to execute any documents necessary to give the commissioner access to records of a third-party relating to that entity's independent liability fund assets and investments.

(3) A business entity using an independent liability

fund shall bear the costs of any review, investigation, or examination of its independent liability fund conducted by the commissioner or her authorized agents.

AUTH: 33-27-104, MCA; IMP: Title 33, chapter 27, MCA

RULE VI DISCLAIMER OF LIABILITY Neither the state of Montana nor the commissioner is liable to any third-party should an independent liability fund not be available to meet the demands of a third-party claim, even if the commissioner might have known that the independent liability fund was not healthy, viable, secure, or inviolate.

AUTH: 33-27-104, MCA; IMP: Title 33, chapter 27, MCA

RULE VII PENALTIES The commissioner may, after having conducted a hearing pursuant to 33-1-701, impose a fine in the amount and manner prescribed by 33-1-317, MCA

AUTH: 33-27-104, MCA; IMP: Title 33, chapter 27, MCA

4. The proposed rules are reasonably necessary to implement Title 33, chapter 27, MCA, and to "establish criteria for ascertaining the inviolability and health of each independent liability fund" as required by 33-27-104(2), MCA.

5. Interested persons may present oral or written comments at the hearing or submit written comments to Kathy M. Irigoin, Mitchell Building, P.O. Box 4009, Helena, Montana, 59604, by November 27, 1987.

6. Tanya M. Ask will preside over the hearing.

7. The commissioner's authority to adopt the rules is 33-27-104, MCA; the rules implement Title 33, chapter 27, MCA.

Andrea "Andy" Bennett
State Auditor and
Commissioner of Insurance

Certified to the Secretary of State October 19, 1987.

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

In the matter of the proposed adoption of rules pertaining to the periodic payment of QUARTERLY premium taxes	)))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED ADOPTION OF RULES REQUIRING PAYMENT OF PREMIUM TAX

To: All Interested Persons

1. On November 30, 1987, at 10:00 a.m., a public hearing will be held in Room 270 of the Mitchell Building, at Helena, Montana, to consider the adoption of rules pertaining to the periodic payment of premium taxes.

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

3. The text of the proposed rules is as follows:

Rule I PURPOSE The purpose of these rules is to implement 33-2-705(7), MCA, allowing the commissioner to adopt rules to establish a quarterly schedule for payment of the premium tax during the year in which the tax liability is accrued.

AUTH: 33-2-705(7), MCA; IMP: 33-2-705(7), MCA.

Rule II APPLICABILITY AND SCOPE These rules apply to all insurers required to pay premium tax pursuant to 33-2-705(2), MCA. If these rules conflict with, or are found by a court of competent jurisdiction to be in conflict with, 33-2-705, MCA, the statute will control the collection of the premium tax.

AUTH: 33-2-705(7), MCA; IMP: 33-2-705(7), MCA.

Rule III EFFECTIVE DATE Beginning April 15, 1988, and thereafter, every insurer shall remit to the commissioner its premium tax in accordance with these rules.

AUTH: 33-2-705(7), MCA; IMP: 33-2-705(7), MCA.

Rule IV METHODS OF CALCULATION (1) Every insurer shall pay its quarterly premium tax obligation as follows:

(a) pay an amount equal to 100% of its prior calendar year premium tax in four equal payments, or

(b) pay an amount equal to 90% of its current year premium tax obligation, as calculated pursuant to 33-2-705(2), MCA, in four equal payments.

AUTH: 33-2-705(7), MCA; IMP: 33-2-705(7), MCA.

Rule V PAYMENT DATES The payment dates of the equal quarterly premium tax payments are as follows: first payment due April 15; second payment due June 15; third payment due September 15; and fourth payment due December 15.

AUTH: 33-2-705(7), MCA; IMP: 33-2-705(7), MCA.

Rule VI ADJUSTMENTS Over the course of the calendar year, the insurer shall make the periodic payments in the amounts specified by Rule IV. Any adjustments in the amounts paid must be made in conjunction with the filing of the report and payment of tax on March 1 of each year. Any credit must be carried forward and used to offset future periodic payments.

AUTH: 33-2-705(7), MCA; IMP: 33-2-705(7), MCA.

Rule VII CESSATION OF BUSINESS If an insurer, on a form approved by the commissioner and under oath, notifies the commissioner that it is no longer writing new or renewing existing insurance policies of any type in the state, the commissioner may waive the periodic payment requirements established in these rules.

AUTH: 33-2-705(7), MCA; IMP: 33-2-705(7), MCA.

RULE VIII APPLICATION FOR REFUND If an insurer, on a form approved by the commissioner and under oath, notifies the commissioner that it is entitled to a refund, the commissioner may authorize a refund. An insurer is not entitled to receive interest on the refund.

AUTH: 33-2-705(7), MCA; IMP: 33-2-705(7), MCA.

Rule IX PENALTY Any insurer who is late in making or does not pay the quarterly premium tax as set forth in these rules is subject to the penalties in 33-2-705(5) and (6), MCA.

AUTH: 33-2-705(7), MCA; IMP: 33-2-705(7), MCA.

4. The proposed rules are reasonably necessary to effectuate 33-2-705(7), MCA. The commissioner is granted rule-making authority by the Legislature to gain the benefits of accelerated premium tax collection.

5. Interested persons may present oral or written comments at the hearing or submit written comments to James Borchardt, State Auditor's Office, Mitchell Building, P.O. Box 4009, Helena, Montana 59604, by November 27, 1987.

6. James Borchardt will preside over the hearing.

7. The commissioner's authority to adopt the proposed rules is 33-2-705(7), MCA; the rules implement 33-2-705(7), MCA.

Andrea "Andy" Bennett
State Auditor and
Commissioner of Insurance

Certified to the Secretary of State October 19, 1987.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF OUTFITTERS

In the matter of the proposed transfer, amendment and adoption of rules pertaining to outfitters	)	NOTICE OF PROPOSED TRANSFER AND AMENDMENT OF 12.6.501 (8.39.401) THROUGH 12.6.517 (8.39.417) AND THE ADOPTION OF NEW RULES I. BOARD ORGANIZATION, II. PROCEDURAL RULES, AND III. PUBLIC PARTICIPATION RULES CONCERNING OUTFITTERS

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On November 30, 1987, the Board of Outfitters proposes to transfer, amend and adopt the above stated rules.

2. The proposed new rules will read as follows:

"I BOARD ORGANIZATION (1) The board of outfitters hereby adopts and incorporates the organizational rules of the department of commerce listed at Chapter 1 of this title."

Auth: 2-4-201(1), MCA Imp: 2-4-201(1), MCA

"II PROCEDURAL RULES (1) The board of outfitters hereby adopts and incorporates the procedural rules of the department of commerce as listed in Chapter 2 of this title."

Auth: 2-4-201(2), 37-47-201(5)(b), MCA Imp: 2-4-201(2), 37-47-201(5)(b), MCA

"III PUBLIC PARTICIPATION RULES (1) The board of outfitters hereby adopts and incorporates by this reference the citizen participation rules of the department of commerce as listed in Chapter 2 of this title."

Auth: 2-3-103, 37-47-201(5)(a), MCA Imp: 2-3-103, 37-47-201(5)(a), MCA

3. The references to department in these rules will be changed to board to bring the terminology into harmony with the legislative establishment of the board of outfitters and its assignment to the department of commerce.

4. Title 87, Chapter 4 has been recodified as Title 37, Chapter 47, MCA. These cites will be changed on the rules when replacement pages are done.

5. The proposed amendment of 12.6.502 (8.39.402) will read as follows: (new matter underlined, deleted matter interlined)

"8.39.402 OUTFITTER STANDARDS (1) through (c) will remain the same.

(d) The applicant has furnished proof of liability insurance for the outfitting services he provides. Minimum

insurance will be $10,000 for property damage, $100,000 for personal injury to one person, and a total of $300,000 for personal injury to more than one person. The verification of insurance certificate shall be submitted to the ~~department~~ board by renewal application. ~~(Effective January 1, 1983).~~

(2) Applicants taking the written outfitter examination must file a completed application with fee a minimum of ~~7~~ 30 days prior to the examination. Applications with fee must be filed ~~in the administrative regions where the written outfitter examination will be taken or in the Helena office, Enforcement Division when the examination is taken there~~ with the board.

(3) The written outfitter examination shall be given ~~at each region (Kalispell, Missoula, Bozeman, Great Falls, Billings, Glasgow, Miles City) once a year in January. The examination will be offered once a month~~ at the Helena office on the second Tuesday of January, April, July and October ~~each month, except no examinations will be conducted in Helena during the months of September, October and November.~~ The written test shall be administered by ~~the Supervisor of Outfitting or by enforcement~~ personnel designated by the ~~director~~ board. Applicants will be advised by mail of success or failure.

(4) and (5) will remain the same."

Auth: 37-47-201, MCA Imp: 37-47-302, 37-47-305, 37-47-306, MCA

6. The proposed amendment of 12.6.503 (8.39.403) will read as follows: (new matter underlined, deleted matter interlined)

"8.39.403 OUTFITTER EQUIPMENT AND SUPPLIES (1) An outfitter shall own or control under written leave the following equipment:

(a) through (d) will remain the same.

(2) All new applicants, resident and nonresident, must have their outfitting equipment available for inspection by ~~Montana Department of Fish, Wildlife, and Parks law enforcement~~ board personnel at time and place designated by the ~~department~~ board prior to issuance of license. Inspection shall be mandatory."

Auth: 37-47-201, MCA Imp: 37-47-403, 37-47-404, MCA

7. The proposed amendment of 12.6.508 (8.39.408) will read as follows: (new matter underlined, deleted matter interlined)

"8.39.408 RECORDS (1) True, complete, and accurate outfitter records, as defined herein, will be filed with the ~~department regional supervisor for the region in which the outfitter is licensed~~ board. Such records must be filed relating to the license year immediately preceding the expiration date of the outfitter's license. No outfitter's

license may be renewed unless such records are those which contain:

(a) through (h) will remain the same.

(2) Prior to the filing of records, as herein required, and at all reasonable times, each outfitter shall make available for inspection and inquiry by ~~enforcement~~ board personnel ~~of the department~~, all or any portion of his records or information required to be in such records as hereinabove provided. The said records shall at all times be maintained as confidential information and no part of same shall be released to persons or organizations outside the ~~department~~ board unless such release is first approved by the ~~director~~ board, or required by law."

Auth: 37-47-201, MCA Imp: 37-47-403, 37-47-404, MCA

8. The proposed amendment of 12.6.512 (8.39.412) will read as follows: (new matter underlined, deleted matter interlined)

"8.39.412 LICENSING OF GUIDES AND ENFORCEMENT OF GUIDE LICENSE (1) The employing outfitter or applicant must submit the completed professional guide license application with fee to the ~~department regional office administering the outfitter and professional guide license~~ board.

(2) The application will be considered submitted on the date postmarked or, if hand delivered, on the date received ~~at the regional office~~ by the board for the purposes of section ~~84-4-130(1)~~ 37-47-304(1), MCA.

(3) The ~~director~~ board will as soon as reasonably possible after the submittal of an application for a professional guide license either issue or deny the license and advise the applicant and endorsing outfitter.

(4) and (5) will remain the same."

Auth: 37-47-201, MCA Imp: 37-47-403, 37-47-404, MCA

9. The proposed amendment of 12.6.517 (8.39.417) will read as follows: (new matter underlined, deleted matter interlined)

"8.39.417 DEFINITION OF HUNTING SUCCESS FOR ADVERTISING (1) will remain the same.

(a) Hunting success may only be expressed in terms of a kill percentage as reflected by the outfitter reports required ~~under ARM 12.6.508~~.

(b) will remain the same.

(2) Advertisement of hunting success by any outfitter contrary to this rule shall constitute fraudulent, untruthful or misleading advertising ~~within the meaning of Section 87-4-141(3), MCA, and false or misleading advertising within the meaning of Section 87-4-122(6)~~."

Auth: 37-47-201, MCA Imp: 37-47-302, 37-47-341, MCA

10. Proposed rules I., II., and III. are needed to comply with 2-4-201(1), MCA, requiring rules of organization and procedure.

The proposed amendment of 12.6.502 (8.39.402) is needed to effectively and efficiently administer the required examination in a fashion commensurate with the resources available to the board.

The proposed amendment of 12.6.503 (8.39.403) is needed to enable the required inspection of outfitter equipment and supplies to produce sufficient substantiating proof that the equipment will be available to and remain in the control of the outfitter for the period of time in which the outfitter is reasonably expected to have such control.

All other proposed amendments are needed to bring terminology of the rules into harmony with the legislative establishment of the board of outfitters and its assignment to the department of commerce.

11. Interested persons may submit their data, views or arguments concerning the proposed amendments and adoptions in writing to the Board of Outfitters, 1424 9th Avenue, Helena, Montana 59620, no later than November 26, 1987.

12. If a person who is directly affected by the proposed amendments and adoptions 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 Outfitters, 1424 9th Avenue, Helena, Montana 59620, no later than November 26, 1987.

13. If the board receives requests for a public hearing on the proposed amendments and adoptions from either 10% or 25, whichever is less, of those persons who are directly affected by the proposed amendments and adoptions, 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 180 based on the 1800 licensees in Montana.

BOARD OF OUTFITTERS
RONALD CURTISS, CHAIRMAN

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

Certified to the Secretary of State, October 19, 1987.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE MONTANA BOARD OF INVESTMENTS

In the matter of the proposed amendments and adoption of rules pertaining to definitions, applications, and tax credits	NOTICE OF PROPOSED AMENDMENT OF 8.97.802 DEFINITIONS, 8.97.803 APPLICATION PROCEDURE TO BECOME A "CERTIFIED MONTANA CAPITAL COMPANY, 8.97.804 APPLICATION PROCEDURE TO BECOME A "QUALIFIED MONTANA CAPITAL COMPANY, 8.97.805 COMPLETED APPLICATION DATE, 8.97.807 RESERVATION OF TAX CREDITS, 8.97.808 ALLOCATION OF TAX CREDITS AND THE PROPOSED ADOPTION OF NEW RULE I. RESERVATION OF TAX CREDITS NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On November 28, 1987, the Montana Board of Investments proposes to amend the above-stated rules.

2. The proposed amendment of 8.97.802 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at page 8-3517, Administrative Rules of Montana)

"8.97.802 DEFINITIONS (1) through (1)(a) will remain the same.

(b) 'administrator' means the administrative officer of the ~~Montana--economic--development--board--created--in--sections 2-15-1806-and-2-15-1807,-MCA;~~ office of development finance of the board of investments;

(c) 'board' means the Montana ~~economic-development-board created-in-section-2-15-1807,-MCA;~~ board of investments;

(d) 'company' means a profit or non-profit entity organized and existing under the laws of Montana, created for the purpose of making venture or risk capital available for qualified investments. Companies include, but are not limited to a profit or non-profit corporation, partnership, association, trust, United States small business administration ~~503~~ 504 corporation, or United States small business administration small business investment company.

(1)(e) through (2) will remain the same."

Auth: 90-8-105, MCA AUTH Extension, Sec. 5, Ch. 583, L. 1987 Imp: 90-8-101, 90-8-104, 90-8-201, 90-8-202, MCA

3. The proposed amendment of 8.97.803 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at pages 8-3517 through 8-3520, Administrative Rules of Montana)

"8.97.803 APPLICATION PROCEDURE TO BECOME A 'CERTIFIED' MONTANA CAPITAL COMPANY (1) through (d) will remain the same.

(e) information and evidence that the applicant's purpose is to ~~encourage--and--assist--in--the--creation,--development,-and-expansion-of-Montana-based-businesses-and--to-provide--maximum-opportunities-for-the-employment-of-Montanans-by-making-venture-capital-available--to--sound--Montana--small-businesses;~~ increase the general economic welfare of the state of Montana by making investment capital available to businesses in Montana;

(f) through (o) will remain the same.

(p) the amount of equity capitalization up to $1,500,000 raised ~~after~~ between April 18, 1987 and June 30, 1987 and the amount of equity capitalization up to $3,000,000 raised after June 30, 1987 that the company expects to qualify for the tax credits provided for in section 90-8-202, MCA.

(2) The form for applying to become a certified Montana capital company may be obtained from the administrator~~,-Montana-Economic-Development-Board,-c/o-the-Montana-Department-of-Commerce,-1424-9th-Avenue,-Helena,-Montana-59620,-and-shall-be-filed-at-the-same-address~~.

(3) through (6) will remain the same.

(7) The board, at its next regular meeting, after an application is designated completed by the administrator, shall designate as "certified" Montana capital companies those companies which are development corporations created pursuant to Title 32, Chapter 4, MCA, and those companies which the board determines are organized for the purpose of ~~encouraging-and-assisting-in-the-creation,-development,-and--expansion--of-Montana--based-businesses-and-to-provide-maximum-opportunities-for-the-employment-of--Montanans--by--making--venture--capital-available--to--sound--Montana-small-businesses;~~ increasing the general economic welfare of the state by making investment capital available to businesses in Montana.

(8) The board shall notify the applicants of its action designating "certified" Montana capital companies and the notice shall specify the level of equity capitalization that the applicant expects to qualify for the tax credits provided under section 90-8-202, MCA. ~~The--specification--of---the-expected---level---of---capitalization--does--not--reserve--an-equivalent-level-of-tax-credits-because-tax-credits--shall--be-distributed-as-provided-in-rule-8.97.807.~~

(9) will remain the same."

Auth: 90-8-105, MCA AUTH Extension, Sec. 5, Ch. 583, L. 1987 Imp: 90-8-202, 90-8-204, MCA

4. The proposed amendment of 8.97.804 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at pages 8-3520 and 8-3521, Administrative Rules of Montana)

"8.97.804 APPLICATION PROCEDURE TO BECOME A 'QUALIFIED' MONTANA CAPITAL COMPANY (1) and (a) will remain the same.

(b) any changes, new information or evidence regarding items (b) through (g) of 8.97.803(1), ARM, of the company's application to become a 'certified' capital company;

(c) through (d) will remain the same.

(2) The form for applying to become a qualified Montana capital company may be obtained from the administrator, ~~Montana Economic Development Board, c/o the Montana Department of Commerce, 1424 9th Avenue, Helena, Montana 59620, and shall be filed at the same address.~~

(3) through (7) will remain the same.

~~(8) Upon designation as a 'qualified' Montana capital company, the board shall reserve available tax credits for those investors in the 'qualified' company whose investments are documented in the company's application to become qualified. These reserved tax credits shall be distributed as provided in ARM 8.97.807.~~ The administrator may, in his discretion require the company to submit a plan detailing how the company plans to raise capital.

~~(9) The reservation of tax credits expires if the credits are not used within one year of the date reserved or within one year of the effective date of this subsection, whichever is longer. Those credits will thereafter be available to any qualified company pursuant to ARM 8.97.807.~~

~~(10) The board shall notify the applicants of its action and the notice shall specify the level of capitalization that the applicant expects to qualify for tax credits provided in section 90-8-302, MCA. The specification of the expected level of capitalization does not reserve an equivalent level of tax credit, because tax credits shall be distributed as provided in ARM 8.97.807.~~

~~(11)~~ (9) The board shall suspend qualification of companies when all available tax credits have been distributed."

Auth: 90-8-105, MCA AUTH Extension, Sec. 5, Ch. 583, L. 1987 Imp: 90-8-202, 90-8-204, MCA

5. The proposed amendment of 8.97.805 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at page 8-3521, Administrative Rules of Montana)

"8.97.805 COMPLETED APPLICATION DATE (1) will remain the same.

(2) The date a completed amended application is received by the board is the date used to determine tax credits, in accordance with ARM 8.97.808(2), for those tax credits sought by the amended application which are in addition to those sought by the earlier application or applications of the company."

Auth: 90-8-105, MCA AUTH Extension, Sec. 5, Ch. 583, L. 1987 Imp: 90-8-201, 90-8-202, 90-8-204, MCA

6. The proposed amendment of 8.97.807 will read as follows: (new matter underlined, deleted matter interlined)

(full text of the rule is located at pages 8-3521 ad 8-3522, Administrative Rules of Montana)

"8.97.807 ALLOCATION OF TAX CREDITS (1) through (c) will remain the same.

(2) The board shall quarterly allocate available tax credits to the investors in qualified companies in the order the companies' completed applications for designation as 'qualified' capital companies were received by the board and within the amount specified for each company in the certificate of ~~'certification'---and~~ 'qualification'. Priorities for tax credits among investors in an individual company shall be determined by earliest investment date.

(3) and (4) will remain the same.

(5) All tax credits available during the period before June 30, 1985 and the period between July 1, 1985 and June 30, 1987 and all tax credits available after July 30, 1987 shall be allocated by the board sequentially as determined by this section.

~~(6)--The-board-shall-quarterly-beginning-April--1,--1984,-notify--certified--and--qualified--companies--of-the-amount-of-undistributed-tax-credits.--When-all--tax--credits--authorized-under--section--90-8-202,-MCA,-are-allocated,-the-board-shall,-within--ten--days,--notify---all---certified---and---qualified-companies."~~

Auth: 90-8-105, MCA AUTH Extension, Sec. 5, Ch. 583, L. 1987 Imp: 90-8-202, MCA

6. The proposed adoption of new rule I. will read as follows:

"I RESERVATION OF TAX CREDITS (1) If, as part of the qualification procedure outlined in ARM 8.97.804, a 'certified' company submits a plan for raising capital that the administrator determines to be reasonable, and there are tax credits not otherwise reserved or allocated, the administrator shall reserve tax credits for investors and potential investors in the company up to and including the maximum amount of the tax credits allowed by law.

(2) The reservation of tax credits expires if the credits are not allocated within one year of the date reserved unless extended for good cause by the administrator or within one year of the effective date of this subsection, whichever is longer. Those credits will thereafter be available to any qualified company pursuant to these rules."

Auth: 90-8-105, MCA AUTH Extension, Sec. 5, Ch. 583, L. 1987 Imp: 90-8-202, MCA

7. These amendments and adoption are being proposed to conform the rules to recent legislative enactments and to make the rules more workable for Montana capital companies and the state of Montana.

8. Interested persons may submit their data, views or arguments concerning the proposed amendments and adoption in writing to the Montana Board of Investments, Capitol Station, Helena, Montana 59620, no later than November 26, 1987.

9. If a person who is directly affected by the proposed amendments and adoption wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any comments he has to the Montana Board of Investments, Capitol Station, Helena, Montana 59620, no later than November 26, 1987.

10. If the board receives requests for a public hearing on the proposed amendments and adoption from either 10% or 25, whichever is less, of those persons who are directly affected by the proposed amendments and adoption, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision, or from an association having 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.

MONTANA BOARD OF INVESTMENTS
JOSEPH REBER, CHAIRMAN

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

Certified to the Secretary of State, October 19, 1987.

BEFORE THE DEPARTMENT OF
FAMILY SERVICES OF THE
STATE OF MONTANA

In the matter of the amendment of Rule 11.7.501 pertaining to foster care review committees	))))	NOTICE OF PROPOSED AMENDMENT OF RULE 11.7.501 PERTAINING TO FOSTER CARE REVIEW COMMITTEES. NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On November 29, 1987, the Department of Family Services proposes to amend Rule 11.7.501 which pertains to Foster Care Review Committees.

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

11.7.501 FOSTER CARE REVIEW COMMITTEE (1) The committee will conduct a review of any child placed in a licensed ~~family foster home, a child care agency, group home or treatment~~ youth care facility if the child is placed under the supervision of the department or placed by the department or the department pays for the care of the child.

(2) At least one committee shall be appointed in each judicial district in the state by the youth court judge in consultation with the department.

(3) The committee shall be composed of not less than ~~four~~ five nor more than seven members including: persons meeting the requirements of section 41-3-1115(1), MCA.

~~(a) a representative of the department;~~

~~(b) a representative of the youth court;~~

~~(c) someone knowledgeable in the needs of the children in foster care placements not employed by the youth court or department;~~

~~(d) a representative of a local school district;~~

~~(e) the foster parent of the child whose care is under review, if there is one. The foster parent's appointment is effective only for and during that review.~~

(4) ~~Three of the four required~~ A majority of committee members must be in attendance to constitute an official review.

(a) A chairperson shall be selected by the committee prior to each meeting.

Subparagraphs (5) and (6) remain the same.

AUTH: Sec. 41-3-1115(4), MCA
IMP: Sec. 41-3-1115, MCA

3. Rationale: The proposed amendments are needed to conform the rules to a recent legislature enactment requiring the appointment of someone knowledgeable about Indian culture and family matters to the foster care review committee when the child under review is an Indian child. Ch. 260, L. 1987. Since the department was not granted an extension of its Rule making authority in Ch. 260, L. 1987, the department is adopting the language of the statute in the rule to make the existing rule consistent with Section 41-3-1115, MCA, as amended by Ch. 260, L. 1987. Other amendments to the rule are being made to remove duplicative and unnecessary language.

4. Interested parties may submit their data, views, or arguments concerning the proposed amendment in writing to the Legal Unit, Department of Family Services, P.O. Box 8005, Helena, Montana 59604, no later than November 27, 1987.

5. If the agency receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 52 persons based on 526 Indian children who were placed in foster care during 1986.

Director, Department of Family Services

Certified to the Secretary of State October 19, 1987.

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

In the matter of the amendment of rules 16.44.102, 16.44.104, 16.44.109, 16.44.118, 16.44.202, 16.44.322, 16.44.351, 16.44.504, 16.44.508, 16.44.610, 16.44.802, 16.44.803, 16.44.804, 16.44.805, 16.44.806, 16.44.807, 16.44.808, 16.44.809, 16.44.810, 16.44.812, 16.44.813, 16.44.814, 16.44.822, & the adoption of NEW RULES I-XIV	NOTICE OF PUBLIC HEARING FOR AMENDMENT AND ADOPTION OF RULES (Hazardous Waste Mgt)

To: All Interested Persons

1. On November 30, 1987, at 9:00 a.m., a public hearing will be held in Room C209 of the Cogswell Building, 1400 Broadway, Helena, Montana, to consider the amendment of the above-captioned rules.

2. The proposed amendments and new rules implement federal regulatory changes pertaining to closure and post-closure requirements and to access to public records; the amendments and new rules also implement state legislative changes pertaining to transfer facilities and commercial transfer facilities holding hazardous wastes for 10 days or less. Finally, minor clerical changes are adopted.

3. The new rules and the rules as proposed to be amended, appear as follows (new material is underlined; material to be deleted is interlined):

16.44.102 INCORPORATIONS BY REFERENCE

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

(5) Text same as existing rule; only the changes are included in the table below:

State Rule	Federal Rule Incorporated	Notation of Most Recent Changes to Federal Rules
16.44. . . .	40 CFR . . .	
351	Part 261, Appendices I, II, III, and X	NC
352	Part 261, Appendices ~~I~~, ~~II~~, ~~III~~, ~~VII~~ and VIII	Chlorinated hydrocarbons; dioxin wastes; solvents.
802	264.228, ~~and~~ 264.258, 265.228, and 265.258	Codification of HSWA language.

803	264.112, 264.117-264.120, 265.112, 265.117-265.120	NC
804	264.111-~~265.115~~264.115, 264.178, 264.197, 264.228, 264.258, 264.280, 264.310, 264.351, 264.143(f)(3), 265.111-265.115, 265.178, 265.197, 265.228, 265.258, 265.280, 265.310, 265.351, 265.381, and 265.404	Codification of HSWA language.
805	~~Subpart G, which includes~~ 264.117-264.120, ~~264.178, 264.197~~, 264.228, 264.258, 264.280, 264.310, ~~264.351~~264.145(f)(5), 265.117-265.120, 265.228, 265.258, 265.280, 265.310	Codification of HSWA language.

NC - Refers to no change in the material which is being incorporated by reference from the time of the last formally noticed incorporation by reference.

HSWA - Refers to the Hazardous and Solid Waste Act of 1984 which amends the Resource Conservation and Recovery Act of 1976, as amended in 1980.

(6) Same as existing rule.

AUTHORITY: 75-10-405, MCA

AUTH. EXT.: Sec. 3, Ch. 109, L. 1985; Sec. 7, Ch. 633, L. 1985; Sec. 3, Ch. 336, L. 1987; Sec. 3, Ch. 562, L. 1987

IMPLEMENTING: 75-10-405, MCA

16.44.104 PERMITTING REQUIREMENTS: EXISTING AND NEW HWM FACILITIES (1) Same as existing rule.

(2) At any time after adoption of final facility standards, the owner and operator of an existing HWM facility may be required to submit Part B of the permit application. Any owner or operator shall be allowed at least six months from the date of request to submit Part B of the application. Any owner or operator of an existing HWM facility may voluntarily submit Part B of the application any time after adoption of final facility standards. Notwithstanding the above, any owner or operator of an existing HWM facility must submit a Part B permit application in accordance with the dates specified in ARM 16.44.105~~(5)~~(6). Any owner or operator of a land disposal facility in existence on the effective date of statutory or regulatory amendments under RCRA defined in ARM 16.44.202 that render the facility subject to the requirement to have a permit must submit a Part B application in accordance with the dates specified in ARM 16.44.105~~(5)~~(6).

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

AUTHORITY: 75-10-405, MCA

AUTH. EXT.: 75-10-405: Sec. 3, Ch. 109, L. 1985; Sec. 7,

Ch. 633, L. 1985; Sec. 3, Ch. 336, L. 1987; and Sec. 3, Ch. 562, L. 1987. 75-10-406: Sec. 3, Ch. 336, L. 1987.
IMPLEMENTING: 75-10-405, 75-10-406, MCA

16.44.109 CONDITIONS OF PERMITS The following conditions apply to all HWM permits, and shall be incorporated into the permits either expressly or by reference. If incorporated by reference a specific citation to these rules must be given in the permit.

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

(19) An annual report must be submitted covering facility activities as specified in ARM ~~16.44.643~~ 16.44.703.

(20)-(23) Same as existing rule.

AUTHORITY: 75-10-405, MCA
AUTH. EXT.: 75-10-405: Sec. 3, Ch. 109, L. 1985; Sec. 7, Ch. 633, L. 1985; Sec. 3, Ch. 336, L. 1987; and Sec. 3, Ch. 562, L. 1987. 75-10-406: Sec. 3, Ch. 336, L. 1987.
IMPLEMENTING: 75-10-405, 75-10-406, MCA

16.44.118 MINOR MODIFICATIONS OF PERMITS

(1) Same as existing rule.

(2) Minor modifications may only:

(a)-(c) Same as existing rule.

(d) allow for a change in ownership or operational control of a facility where the department determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility~~, coverage, and liability~~ between the current and new permittees has been submitted to the department. Changes in the ownership or operational control of a facility may be made if the new owner or operator submits a revised permit application no later than 90 days prior to the scheduled change. When a transfer of ownership or operational control of a facility occurs, the old owner or operator shall comply with the requirements of subchapter 8 of this chapter, until the new owner or operator has demonstrated to the department that he is complying with the requirements of that subchapter. The new owner or operator must demonstrate compliance with subchapter 8 requirements within six months of the date of the change in the ownership or operational control of the facility. Upon demonstration to the department by the new owner or operator of compliance with subchapter 8, the department shall notify the old owner or operator in writing that he no longer needs to comply with subchapter 8 as of the date of the demonstration;

(e)-(n) Same as existing rule.

(3) Same as existing rule.

AUTHORITY: 75-10-405, MCA
AUTH. EXT.: 75-10-405: Sec. 3, Ch. 109, L. 1985; Sec. 7, Ch. 633, L. 1985; Sec. 3, Ch. 336, L. 1987; and Sec. 3, Ch. 562, L. 1987. 75-10-406: Sec. 3, Ch. 336, L. 1987.
IMPLEMENTING: 75-10-405, 75-10-406, MCA

16.44.202 DEFINITIONS In this chapter, the following terms ~~shall~~ have the meanings or interpretations shown below:

(1) Same as existing rule.

(2) "Active life" of a facility means the period from the initial receipt of hazardous waste at the facility until the department receives certification of final closure.

~~(2)~~-~~(4)~~(3)-(5) Same as existing rule.

~~(5) "Base-year" means the calendar year immediately preceding a given registration year.~~

~~(6)~~-~~(11)~~ Same as existing rule.

(12) "Commercial transfer facility" means a transfer facility owned or operated by a commercial for-hire transporter and in which the major purpose of the commercial transfer facility is the collection, storage, and transfer of hazardous wastes; that is, over fifty percent (50%) of the materials moved through the commercial transfer facility are hazardous wastes, or greater than one-hundred (100) tons of materials moved through the commercial transfer facility per year are hazardous wastes. Here, the term "commercial for-hire transporter" refers to a transporter which conducts transportation activity on a commercial basis, as opposed to a transporter which is one and the same business entity as the generator.

~~(12)~~-~~(30)~~(13)-(31) Same as existing rule.

(32) "Final closure" means the closure of all hazardous waste management units at the facility in accordance with all applicable closure requirements so that hazardous waste management activities subject to subchapters 1, 6, and 7 of this chapter are no longer conducted at the facility.

~~(31)~~-~~(40)~~(33)-(42) Same as existing rule.

~~(41) "Inactive generator" means a generator who either produced no hazardous wastes during the most recent base year or whose only hazardous wastes were wastes identified in subsection (2)(b), (c), or (d) of ARM 16.44.404.~~

~~(42)~~-~~(67)~~(43)-(68) Same as existing rule.

~~(68)~~(69) "Partial closure" means the closure of a ~~discrete part of~~ hazardous waste management unit at a facility that contains other active hazardous waste management units in accordance with the applicable closure requirements of subchapters 6 or 7 of this chapter. For example, partial closure may include the closure of a ~~surface impoundment, a landfill cell, or a land treatment unit~~ tank (including its associated piping and underlying containment systems), landfill cell surface impoundment, waste pile, or other hazardous waste management unit, while other ~~parts~~ units of the same facility continue in operation ~~or will be placed in operation in the future~~.

~~(69)~~-~~(88)~~(70)-(89) Same as existing rule.

~~(89)~~(90) "Transfer facility" or "hazardous waste transfer facility" means any ~~transportation related facility~~ transporter-owned or operated land, structure, or improvement, including loading docks, parking areas, ~~storage areas~~ holding sites, and other similar areas used for the transfer and temporary storage of hazardous wastes and where shipments of hazardous waste are held temporarily for a period of 10 days or less

during the normal course of transportation, up to but not including the point of ultimate treatment, storage, or disposal.

~~(90)~~ ~~(101)~~(91)-(102) Same as existing rule.

~~(102)~~(103) "Waste management unit" or "hazardous waste management unit" means ~~a single operational unit which is a part of a facility and is used for hazardous waste treatment, storage or disposal. Examples of waste management units include surface impoundments, tanks, waste piles, landfill cells, incinerators and containers storage areas~~ a contiguous area of land on or in which hazardous waste is placed, or the largest area in which there is significant likelihood of mixing hazardous waste constituents in the same area. Examples of hazardous waste management units include a surface impoundment, a waste pile, a land treatment area, a landfill cell, an incinerator, a tank and its associated piping and underlying containment system, and a container storage area. A container alone does not constitute a unit; the unit includes containers and the land or pad upon which they are placed.

~~(103)~~-~~(106)~~(104)-(107) Same as existing rule.

AUTHORITY: 75-10-405, MCA

AUTH. EXT.: 75-10-405: Sec. 3, Ch. 109, L. 1985; Sec. 7, Ch. 633, L. 1985; Sec. 3, Ch. 336, L. 1987; and Sec. 3, Ch. 562, L. 1987. 75-10-406: Sec. 3, Ch. 336, L. 1987.

IMPLEMENTING: 75-10-405, 75-10-406, MCA

16.44.322 CHARACTERISTIC OF CORROSIVITY (1) A waste exhibits the characteristic of corrosivity if a representative sample of the waste has either of the following properties:

(a) it is aqueous and has a pH less than or equal to 2 or greater than or equal to 12.5, as determined by a pH meter using the test method specified in "Test Methods for ~~the Evaluation of~~ Evaluating Solid Waste, Physical/Chemical Methods", second edition;

(b) it is a liquid and corrodes steel (SAE 1020) at a rate greater than 6.35 mm (0.250 inch) per year at a test temperature of 55° C. (130° F.) as determined by the test method specified in "Test Methods for ~~the Evaluation of~~ Evaluating Solid Waste, Physical/Chemical Methods, second edition."

(c) The department hereby adopts and incorporates herein by reference "Test Methods for ~~the Evaluation of~~ Evaluating Solid Waste, Physical/Chemical Methods", second edition, which is published by EPA. "Test Methods for ~~the Evaluation of~~ Evaluating Solid Waste, Physical/Chemical Methods", second edition, is a ~~the~~ publication setting forth EPA's standard test methods for determination of, among other things, hazard waste characteristics of solid waste. A copy of "Test Methods for ~~the Evaluation of~~ Evaluating Solid Waste, Physical/Chemical Methods", second edition, may be obtained from the Solid and Hazardous Waste Bureau, Department of Health and Environmental Sciences, Helena, Montana 59620.

(2) Same as existing rule.

AUTHORITY: 75-10-405, MCA

AUTH. EXT.: Sec. 3, Ch. 109, L. 1985; Sec. 7, Ch. 633, L.

1985; Sec. 3, Ch. 336, L. 1987; Sec. 3, Ch. 562, L. 1987
IMPLEMENTING: 75-10-405, MCA

16.44.351 REPRESENTATIVE SAMPLING METHODS; EP TOXICITY TEST PROCEDURES; CHEMICAL ANALYSIS TEST METHODS; AND TESTING METHODS (1) For the purposes of this chapter, the department hereby adopts and incorporates herein by reference the following (the correct CFR edition is listed in ARM 16.44.102):

(a)-(d) Same as existing rule.

(e) "Test Methods for ~~the-Evaluation-of~~ Evaluating Solid Waste, Physical/Chemical Methods", second edition, ~~which-is~~ an EPA publication setting forth standard sampling, extraction, and analytical test methods for the national hazardous waste program.

(2) A copy of Appendix I, Appendix II, Appendix III, and Appendix X of 40 CFR Part 261 and "Test Methods for ~~the-Evaluation-of~~ Evaluating Solid Waste, Physical/Chemical Methods", second edition, may be obtained from the Solid and Hazardous Waste Bureau, Department of Health and Environmental Sciences, Cogswell Building, Helena, Montana 59620.

~~(3)---A-person-desiring-to-use-an-alternative-sampling method-shall-submit-to-the-department-a-written-request-for-approval-of-the-proposed-method.~~

AUTHORITY: 75-10-405, MCA
AUTH. EXT.: Sec. 3, Ch. 109, L. 1985; Sec. 7, Ch. 633, L. 1985; Sec. 3, Ch. 336, L. 1987; Sec. 3, Ch. 562, L. 1987
IMPLEMENTING: 75-10-405, MCA

16.44.504 ~~TRANSFER~~ APPLICABILITY OF FACILITY REQUIREMENTS (1) A ~~transporter-who-stores~~ transfer facility as defined in ARM 16.44.202 which receives manifested shipments of hazardous waste in containers meeting the requirements of ARM 16.44.410 ~~at-a-transfer-facility-for-a-period-of-ten-days-or-less~~ is not subject to regulation under subchapters 1, 6, 7, or 8 of this chapter with respect to the storage of those wastes, but the transfer facility is subject to the applicable requirements of ARM 16.44.508(2), and NEW RULES I, II, III, and IV.

(2) A commercial transfer facility as defined in ARM 16.44.202 is subject to ARM 16.44.508(2), to NEW RULES I, II, III, IV, and V, and to the public hearing requirements of section 75-10-441, MCA.

(3) A facility which operates separately from a generator and which stores or collects hazardous wastes for more than 10 days and therefore becomes subject to permitting and regulation under subchapters 1, 6, 7, or 8, is subject to the public hearing requirements of section 75-10-441, MCA.

AUTHORITY: 75-10-405, MCA
AUTH. EXT.: Sec. 3, Ch. 109, L. 1985; Sec. 7, Ch. 633, L. 1985; Sec. 3, Ch. 336, L. 1987; Sec. 3, Ch. 562, L. 1987
IMPLEMENTING: 75-10-405, MCA

16.44.508 RECORDKEEPING (1) Same as existing rule. (2) For all hazardous waste shipments which are transported to a transfer facility as defined in ARM 16.44.202, the manifest copies required under section (1) of this rule must be maintained on file at the transfer facility location. These may be either original carbon copies or, where all original carbon copies are maintained by the transporter in a central location, photocopies of the pertinent manifests.

~~(2)~~-~~(5)~~(3)-(6) Same as existing rule.

AUTHORITY: 75-10-405, MCA

AUTH. EXT.: Sec. 3, Ch. 109, L. 1985; Sec. 7, Ch. 633, L. 1985; Sec. 3, Ch. 336, L. 1987; Sec. 3, Ch. 562, L. 1987

IMPLEMENTING: 75-10-405, MCA

NEW RULE I TRAINING OF TRANSFER FACILITY PERSONNEL (1) Transfer facility personnel shall successfully complete a program of classroom instruction or on-the-job training that teaches them to perform their duties in compliance with the requirements of this rule and NEW RULES II, III, and IV.

(2) At a minimum, the training program must be designed to ensure that transfer facility personnel are able to respond to emergencies by familiarizing the transfer facility personnel with emergency procedures, emergency equipment, and emergency systems.

(3) Transfer facility personnel shall successfully complete the required training program within six months after the effective date of this rule or six months after the date of their employment or assignment to a facility, whichever is later. Employees hired after the effective date of this rule may not work in unsupervised positions until they have completed the required training.

(4) Transfer facility personnel shall take part in an annual review of the initial training required in section (1) of this rule.

(5) The owner or operator of the transfer facility shall maintain the following documents and records at the facility:

(a) the job title for each position at the transfer facility related to hazardous waste management, and the name of the employee filling each job;

(b) a written description of the type and amount of both introductory and continuing training that will be given to each person filling a position related to hazardous waste management; and

(c) records that document that the training or job experience required under sections (1) and (2) of this rule has been given to, and completed by, transfer facility personnel.

(6) Training records on current personnel must be kept until closure of the transfer facility. Training records on former employees must be kept for at least three years from the date the employee last worked at the transfer facility. Personnel training records may accompany personnel transferred within the same company.

AUTHORITY: 75-10-405, MCA

AUTH. EXT.: Sec. 3, Ch. 109, L. 1985; Sec. 7, Ch. 633, L. 1985; Sec. 3, Ch. 336, L. 1987; Sec. 3, Ch. 562, L. 1987
IMPLEMENTING: 75-10-405, MCA

NEW RULE II TRANSFER FACILITY SECURITY REQUIREMENTS (1) The owner or operator of a transfer facility or its employees shall prevent the unknowing entry, and minimize the possibility for the unauthorized entry, of persons or animals onto portions of the transfer facility where temporary hazardous waste storage actually occurs.

(2) These security measures must be performed unless the owner or operator demonstrates to the department's satisfaction that possible physical contact with or disturbance of the waste containers will not have adverse health or environmental effects.

AUTHORITY: 75-10-405, MCA
AUTH. EXT.: Sec. 3, Ch. 109, L. 1985; Sec. 7, Ch. 633, L. 1985; Sec. 3, Ch. 336, L. 1987; Sec. 3, Ch. 562, L. 1987
IMPLEMENTING: 75-10-405, MCA

NEW RULE III EMERGENCY PREPAREDNESS, PREVENTION, AND RESPONSE AT TRANSFER FACILITIES (1) Transfer facility owners and operators shall comply with the emergency preparedness and prevention requirements set forth in Subpart C of 40 CFR Part 265.

(2) Transfer facility owner/operators shall further comply with the following emergency planning and response requirements:

(a) At all times during which hazardous wastes are temporarily stored at the transfer facility there must be an emergency coordinator or a trained designee who is on the premises or on call and available to respond to an emergency by reaching the facility within a short period of time. The emergency coordinator shall coordinate all emergency response measures specified in subsection (2)(c) of this rule.

(b) The transfer facility owner/operator shall post the following information next to the telephone:

(i) the name and telephone number of the emergency coordinator;

(ii) the location of fire extinguishers and spill control material and, if present, fire alarm;

(iii) the telephone number of the local fire department, unless the transfer facility has a direct alarm; and

(iv) the name, address, and U.S. EPA identification number of the transfer facility.

(c) The emergency coordinator or his designee must respond to any emergencies that arise by formulating a contingency plan under the guidelines of 40 CFR Part 265, Subpart D, and by making appropriate responses. Appropriate responses include the following:

(i) In the event of a fire, the emergency coordinator shall call the fire department or attempt to extinguish the

fire using a fire extinguisher.

(ii) In the event of a spill, the emergency coordinator shall first determine whether the conditions under (iii) below apply and, if so, the emergency coordinator shall follow the steps in (iii); then the emergency coordinator shall contain the flow of hazardous waste to the extent possible, and as soon as is practicable, appropriately clean up the hazardous waste and any contaminated materials or soil.

(iii) In the event of a fire, explosion, spill or other release which could threaten human health or when the emergency coordinator has knowledge that a spill has reached surface water, the emergency coordinator shall immediately notify the National Response Center (using the 24-hour toll-free telephone number 800-424-8802) and the department (using the 24-hour telephone number 406-444-6911). The notifications must include the following information:

(A) the name, address, and U.S. EPA identification number of the transfer facility;

(B) the date, time, and type of incident (e.g., spill or fire);

(C) the quantity and type of hazardous waste involved in the incident;

(D) the extent of injuries, if any; and

(E) the estimated quantity and disposition of recovered materials, if any.

(3) The department hereby adopts and incorporates herein by reference 40 CFR Part 265, Subparts C and D. The correct CFR edition is listed in ARM 16.44.102. Subparts C and D are federal agency rules pertaining to preparedness, prevention, contingency plans, and emergency procedures for releases of hazardous wastes. A copy of 40 CFR Part 265, Subparts C and D, or any portion thereof, may be obtained from the Solid and Hazardous Waste Bureau, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620.

AUTHORITY: 75-10-405, MCA
AUTH EXT.: Sec. 3, Ch. 109, L. 1985; Sec. 7, Ch. 633, L. 1985; Sec. 3, Ch. 336, L. 1987; Sec. 3, Ch. 562, L. 1987
IMPLEMENTING: 75-10-405, MCA

NEW RULE IV TRANSFER FACILITY CONTAINER HANDLING REQUIREMENTS (1) During hazardous waste unloading, transfer, and loading operations, each hazardous waste container must be visually inspected for evidence of corrosion, pressure buildup, physical damage, or leakage. Questionable containers must be set aside for further evaluation and possible repackaging and/or return to the waste generator. Leaking containers may not be loaded back onto a transportation vehicle, trailer, or railcar unless and until they are properly packaged, labeled, and marked according to ARM 16.44.410 through 16.44.412.

(2) All handling of hazardous waste containers must be conducted in a manner which minimizes the risk of leaks, spills, releases, or similar accidents. Hazardous waste con-

tainers must not be opened unless necessary to correct container damage or leakage of the contents, and the generator's consent must be obtained for any necessary repackaging.

(3) Loading docks, temporary container storage areas, and areas where transfer of hazardous wastes occurs must have a base or floor which is smooth, free of cracks or gaps, and sufficiently impervious to contain leaks or spills until the spilled material is detected and removed. Temporary storage areas must be designed with a containment system having sufficient capacity to contain, at a minimum, three times the volume of the largest container which will be stored there. Any leaks or spills which do occur must be promptly cleaned up by the transfer facility operator.

(4) Containers of ignitable or reactive waste must be handled and stored in a manner so as to prevent accidental ignition or reaction of the waste. Specifically, such waste containers must be separated and protected from sources of ignition or reaction (e.g., open flames, sparks, cigarette smoke, cutting and welding activities, hot surfaces, frictional heat, spontaneous ignition, and radiant heat). "NO SMOKING" signs must be conspicuously placed wherever there is or may be a hazard from ignitable or reactive wastes.

AUTHORITY: 75-10-405, MCA
AUTH. EXT.: Sec. 3, Ch. 109, L. 1985; Sec. 7, Ch. 633, L. 1985; Sec. 3, Ch. 336, L. 1987; Sec. 3, Ch. 562, L. 1987
IMPLEMENTING: 75-10-405, MCA

NEW RULE V COMMERCIAL TRANSFER FACILITY ANNUAL REPORT

(1) The owner or operator of a commercial transfer facility as defined in ARM 16.44.202 shall prepare and submit a written annual report to the department by March 1 of each year. The report must cover transfer facility activities during the previous calendar year, and must include the following information:

(a) the EPA identification number, name, and address of the transfer facility;

(b) the calendar year covered by the report;

(c) the EPA identification number of each hazardous waste generator whose wastes were handled at the transfer facility during the year;

(d) a description and the quantity of each hazardous waste the commercial transfer facility handled during the year, listed by name of each generator who was the source of the hazardous waste;

(e) the name and EPA identification number of each hazardous waste management facility receiving the wastes described in subsection (1)(d) of this rule, and the listing of hazardous wastes shipped to each facility; and

(f) a certification signed by the owner or operator of the transfer facility or his authorized representative, worded as follows:

"I certify under penalty of law that I have personally examined and am familiar with the information

submitted in this and all attached documents, and where I haven't personally obtained the information, I have made inquiry of those individuals immediately responsible for obtaining the information, about the truth and accuracy of the information contained in this document. I certify that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

AUTHORITY: 75-10-405, MCA
AUTH. EXT.: Sec. 3, Ch. 109, L. 1985; Sec. 7, Ch. 633, L. 1985; Sec. 3, Ch. 336, L. 1987; Sec. 3, Ch. 562, L. 1987
IMPLEMENTING: 75-10-405, MCA

16.44.610 CHANGES DURING TEMPORARY PERMITTING (INTERIM STATUS) (1)-(3) Same as existing rule.

(4) Changes in the ownership or operational control of a permitted existing facility may be made if the new owner or operator submits a revision of the information required by ARM 16.44.605(2) no later than 90 days prior to the scheduled change. When a transfer of ownership or operational control of a facility occurs, the transferring owner or operator shall comply with the requirements of subchapter 8 of this chapter until the new owner or operator has demonstrated to the department that it is complying with that subchapter. The new owner or operator shall demonstrate compliance with subchapter 8 financial requirements within six months of the date of the change in the ownership or operational control of the facility. All other duties imposed by ARM 16.44.609 are transferred effective immediately upon the date of the change of ownership or operational control of the facility. Upon demonstration to the department by the new owner or operator of compliance with subchapter 8 the department shall notify the transferring owner or operator in writing that it no longer needs to comply with ARM 16.44.609 as of the date of demonstration.

(5) Same as existing rule.

AUTHORITY: 75-10-405, MCA
AUTH. EXT.: 75-10-405: Sec. 3, Ch. 109, L. 1985; Sec. 7, Ch. 633, L. 1985; Sec. 3, Ch. 336, L. 1987; and Sec. 3, Ch. 562, L. 1987. 75-10-406: Sec. 3, Ch. 336, L. 1987.
IMPLEMENTING: 75-10-405, 75-10-406, MCA

16.44.802 APPLICABILITY OF FINANCIAL REQUIREMENTS (1)-(2) Same as existing rule.

(3) Except as provided in section (1), the requirements of this subchapter, with respect to post-closure care, apply to:

(a) disposal facilities; and

(b) piles and surface impoundments from which the owner or operator intends to remove the wastes at closure, to the extent that these post-closure requirements are made applicable

to such facilities in 40 CFR 264.228 and 40 CFR 264.258, or 40 CFR 265.228 and 40 CFR 265.258.

(4) Same as existing rule.

(5) The department hereby adopts and incorporates herein by reference 40 CFR 264.228, ~~and~~ 40 CFR 264.258, 40 CFR 265.228, and 40 CFR 265.258, which are federal agency rules setting forth closure and post-closure care standards for, respectively, surface impoundments and waste piles for permitted or interim-status facilities. The correct CFR edition is listed in ARM 16.44.102. Copies of 40 CFR 264.228, ~~and~~ 40 CFR 264.258, 40 CFR 265.228, and 40 CFR 265.258 may be obtained from the Solid Waste Management Bureau, Department of Health and Environmental Sciences, Cogswell Building, Helena, Montana, 59620.

AUTHORITY: 75-10-405, MCA

AUTH. EXT.: Sec. 3, Ch. 109, L. 1985; Sec. 7, Ch. 633, L. 1985; Sec. 3, Ch. 336, L. 1987; Sec. 3, Ch. 562, L. 1987

IMPLEMENTING: 75-10-405, MCA

16.44.803 DEFINITIONS (1) In this subchapter, the following terms ~~shall~~ have the meanings or interpretations shown below:

(a) "Closure plan" means the plan for closure prepared in accordance with the requirements of 40 CFR Section 264.112 or 40 CFR 265.112.

(b)-(c) Same as existing rule.

~~(d) "Independently audited" refers to an audit performed by an independent certified public accountant in accordance with generally accepted auditing standards.~~

(d) "Parent corporation" means a corporation which directly owns at least 50 percent of the voting stock of the corporation which is the facility owner or operator; the latter corporation is deemed a "subsidiary" of the parent corporation.

(e) "Post-closure plan" means the plan for post-closure care prepared in accordance with the requirements of 40 CFR Section 264.117 through 264.120, or 40 CFR 265.117 through 265.120.

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

(4) The department hereby adopts and incorporates herein by reference 40 CFR 264.112 and 40 CFR 264.117 through 264.120 which are federal agency rules setting forth, respectively, requirements for facility closure plans and post-closure plans. The department also adopts and incorporates herein by reference 40 CFR 265.112 and 40 CFR 265.117 through 265.120, which are federal agency rules setting forth, respectively, requirements for facility closure plans and post-closure plans, and post-closure plans for interim-status facilities. The correct CFR edition is listed in ARM 16.44.102. A copy of 40 CFR 264.112 and 40 CFR 264.117 through 264.120, 40 CFR 265.112, and 40 CFR 265.117 through 265.120, or any portion thereof, may be obtained from the Solid Waste Management Bureau, Department of Health and Environmental Sciences, Cogswell Building, Helena, Montana 59620.

AUTHORITY: 75-10-405, MCA
AUTH. EXT.: Sec. 3, Ch. 109, L. 1985; Sec. 7, Ch. 633, L. 1985; Sec. 3, Ch. 336, L. 1987; Sec. 3, Ch. 562, L. 1987
IMPLEMENTING: 75-10-405, MCA

16.44.804 COST ESTIMATE FOR FACILITY CLOSURE (1) The owner or operator of a hazardous waste management facility permitted under subchapter 1 of this chapter must have a detailed written estimate, in current dollars, of the cost of closing the facility in accordance with the requirements in 40 CFR 264.111 through 264.115 and applicable closure requirements in 40 CFR 264.178, 264.197, 264.228, 264.258, 264.280, 264.310, and 264.351. The owner or operator of a hazardous waste management facility with a temporary permit (interim status) under subchapter 6 of this chapter must have a detailed written estimate, in current dollars, of the cost of closing the facility in accordance with the requirements in 40 CFR 265.111 through 265.115 and applicable closure requirements in 40 CFR 265.178, 265.197, 265.228, 265.258, 265.280, 265.310, 265.351, 265.381, and 265.404.

(a) The estimate must equal the cost of final closure at the point in the facility's ~~operating~~ active life when the extent and manner of its operation would make closure the most expensive, as indicated by its closure plan.

(b) The closure cost estimate must be based on the costs to the owner or operator of hiring a third party to close the facility. A third party is a party who is neither a parent nor a subsidiary of the owner or operator. The owner or operator may use costs for on-site disposal if he can demonstrate that on-site disposal capacity will exist at all times over the life of the facility.

(c) The closure cost estimate may not incorporate any salvage value that may be realized with the sale of hazardous wastes, facility structures or equipment, land, or other assets associated with the facility at the time of partial or final closure.

(d) The owner or operator may not incorporate a zero cost for hazardous wastes that might have economic value.

(2) ~~The owner or operator must adjust the closure cost estimate for inflation within 30 days after each anniversary of the date on which the first closure cost estimate was prepared. The adjustment must be made as specified in subsections (2)(a) and (b) of this rule.~~ During the active life of the facility, the owner or operator shall adjust the closure cost estimate for inflation within 60 days prior to the anniversary date of the establishment of the financial instrument(s) used to comply with ARM 16.44.801. For owners and operators using the financial test or corporate guarantee, the closure cost estimate must be updated for inflation within 30 days after the close of the firm's fiscal year and before submission of updated information to the department as specified in 40 CFR 264.143(f)(3). The adjustment may be made by recalculating the maximum costs of closure in current dollars, or by using an inflation factor

derived from the annual Implicit Price Deflator for Gross National Product as published by the U.S. Department of Commerce in its Survey of Current Business, as specified in subsections (2)(a) and (2)(b) of this rule. The inflation factor is the result of dividing the latest published annual deflator by the deflator for the previous year.

(a)-(b) Same as existing rule.

(3) ~~The owner or operator must revise the closure cost estimate whenever a change in the closure plan increases the cost of closure.~~ During the active life of the facility, the owner or operator shall revise the closure cost estimate no later than 30 days after the department has approved the request to modify the closure plan, if the change in the closure plan increases the cost of closure. The revised closure cost estimate must be adjusted for inflation as specified in section (2) of this rule.

(4) Same as existing rule.

(5) The department hereby adopts and incorporates herein by reference 40 CFR Sections 264.111 through 264.115, 40 CFR 264.178, 264.197, 264.228, 264.258, 264.280, 264.310, and 264.351 and all of the corollary sections for interim-status facilities: 40 CFR Sections 265.111-265.115, 265.178, 265.197, 265.228, 265.258, 265.280, 265.310, and 265.351. The correct CFR edition is listed in ARM 16.44.102. 40 CFR 264.111 through 264.115 and 40 CFR 265.111 through 265.115 are federal agency rules setting forth general closure requirements applicable to all hazardous waste management facilities. 40 CFR 264.178, 264.197, 264.228, 264.258, 264.280, 264.310 and 264.351, and 40 CFR 265.178, 265.197, 265.228, 265.258, 265.280, 265.310, and 265.351 are federal agency rules setting forth specific closure requirements for different types of waste management units and address, respectively, closure of container storage areas, closure of tanks, closure of surface impoundments, closure of waste piles, closure of land treatment units, closure of landfills, and incinerator closure. The department also hereby adopts and incorporates herein by reference 40 CFR 264.143(f)(3), which is a federal agency rule pertaining to a letter by a chief financial officer, a report of a certified public accountant on financial statements, and a report by the certified public accountant regarding data in the letter by the chief financial officer. A copy of ~~40 CFR Sections 264.111 through 264.115, 40 CFR 264.178, 264.197, 264.228, 264.258, 264.280, 264.310, and 264.351,~~ all of these sections, or any part thereof, may be obtained from the Solid Waste Management Bureau, Department of Health and Environmental Sciences, Cogswell Building, Helena, Montana, 59620.

AUTHORITY: 75-10-405, MCA

AUTH. EXT.: Sec. 3, Ch. 109, L. 1985; Sec. 7, Ch. 633, L. 1985; Sec. 3, Ch. 336, L. 1987; Sec. 3, Ch. 562, L. 1987

IMPLEMENTING: 75-10-405, MCA

16.44.805 COST ESTIMATE FOR POST-CLOSURE CARE (1) The owner or operator of a temporarily permitted (interim status)

hazardous waste management facility subject to post-closure monitoring or maintenance requirements must have a detailed written estimate, in current dollars, of the annual cost of post-closure monitoring and maintenance of the facility in accordance with the applicable post-closure requirements in 40 CFR ~~--264.117--through--264.120,--264.228,-264.258,-264.280,-and 264.310~~ 40 CFR 265.117 through 265.120, 265.228, 265.258, 265.280, and 265.310. The owner or operator of a disposal surface impoundment, land treatment, or landfill unit, or of a surface impoundment or waste pile required under 40 CFR 264.228 and 264.258 to prepare a contingent closure and post-closure plan, must have a detailed written estimate, in current dollars, of the annual cost of post-closure monitoring and maintenance of the facility in accordance with the applicable post-closure requirements in 40 CFR 264.117 through 264.120, 264.228, 264.258, 264.280, and 264.310.

(a) The post-closure cost estimate must be based on the costs to the owner or operator of hiring a third-party to conduct post-closure care activities. A third party is a party who is neither a parent nor a subsidiary of the owner or operator.

(b) The post-closure cost estimate is calculated by multiplying the annual post-closure cost estimate by the number of years of post-closure care required under ~~Subpart G of~~ 40 CFR Part 264 117 or 40 CFR 265 117.

(2) During the ~~operating~~ active life of the facility, the owner or operator ~~must~~ shall adjust the post-closure cost estimate for inflation within ~~30--days--after--each--anniversary-of the-date-on-which-the-first-post-closure-cost-estimate-was-prepared~~ 60 days prior to the anniversary date of the establishment of the financial instrument(s) used to comply with ARM 16.44.801. For owners or operators using the financial test or corporate guarantee, the post-closure cost estimate must be updated for inflation within 30 days after the close of the firm's fiscal year and before the submission of updated information to the department as specified in 40 CFR 264.145(f)(5), which is also incorporated by reference in ARM 16.44.811. The adjustment ~~must-be-made-as-specified-in-subsections--(2)(a)-and (b)-of-this-rule,~~ may be made by recalculating the post-closure cost estimate in current dollars or by using an inflation factor derived from the ~~annual~~ most recent Implicit Price Deflator for Gross National Product as published by the U.S. Department of Commerce in its Survey of Current Business, as specified in subsections (2)(a) and (2)(b) of this rule. The inflation factor is the result of dividing the latest published annual deflator by the deflator for the previous year.

(a) The first adjustment is made by multiplying the post-closure cost estimate by the inflation factor. The result is the adjusted post-closure cost estimate.

(b) Subsequent adjustments are made by multiplying the latest adjusted post-closure cost estimate by the latest inflation factor.

(3) ~~The-owner-or-operator--must--revise--the-post-closure cost-estimate--during-the--operating-life-of-the-facility-when-~~

~~ever a change in the post-closure plan increases the cost of post-closure care.~~ During the active life of the facility, the owner or operator shall revise the post-closure cost estimate no later than 30 days after a revision to the post-closure plan which increases the cost of post-closure care. If the owner or operator has an approved post-closure plan, the post-closure cost estimate must be revised no later than 30 days after the department has approved the request to modify the plan, if the change in the plan increases the cost of post-closure care. The revised post-closure cost estimate must be adjusted for inflation as specified in section (2) of this rule.

(4) The owner or operator ~~must~~ shall keep the following at the facility during the operating life of the facility:

(a) the latest post-closure cost estimate prepared in accordance with sections (1) and (3) of this rule; and

(b) when this estimate has been adjusted in accordance with section (2) of this rule, the latest adjusted post-closure cost estimate.

(5) The department hereby adopts and incorporates herein by reference ~~40 CFR Subpart G, which includes~~ Sections ~~264.140~~ 264.117 through 264.120, and 40 CFR Sections 264.228, 264.258, 264.280 and 264.310. ~~40 CFR Subpart G, which includes sections 264.140~~ Sections 264.117 through 264.120 are federal agency rules setting forth general post-closure care requirements applicable to all disposal facilities. ~~The correct CFR edition is listed in ARM 16.44.102.~~ 40 CFR 264.228, 264.258, 264.280 and 264.310 are federal agency rules setting forth specific post-closure requirements for different types of disposal units and address, respectively, post-closure care of surface impoundments, post-closure care of waste piles, post-closure care of land treatment units and post-closure care of landfills. The department adopts and incorporates herein by reference the corollary sections pertaining to interim-status facilities: 40 CFR 265.117-265.120, 265.228, 265.258, 265.280, and 265.310. 40 CFR 264.145(f)(5) pertaining to submission of updated information within 90 days after the close of each succeeding fiscal year is also incorporated by reference herein. The correct CFR edition for these sections is listed in ARM 16.44.102. A copy of ~~40 CFR 264.117 through 264.120, 264.228, 264.258, 264.280 and 264.310,~~ these sections, or any portion thereof, may be obtained from the Solid Waste Management Bureau, Department of Health and Environmental Sciences, Cogswell Building, Helena, Montana 59620.

AUTHORITY: 75-10-405, MCA

AUTH EXT.: Sec. 3, Ch 109, L. 1985; Sec. 7, Ch. 633, L. 1985; Sec. 3, Ch. 336, L. 1987; Sec. 3, Ch. 562, L. 1987

IMPLEMENTING: 75-10-405, MCA

16.44.806 CLOSURE AND/OR POST-CLOSURE TRUST FUND

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

(10) After beginning partial or final closure or post-closure, an owner or operator or any other person authorized to perform closure or post-closure, may request reimbursement for

closure or post-closure expenditures by submitting itemized bills to the department. ~~Within 60 days after receiving bills for closure or post-closure activities, the department will determine whether the closure or post-closure expenditures are in accordance with the closure or post-closure plan or otherwise justified, and if so, it will instruct the trustee to make reimbursement in such amounts as the department specifies in writing. If the department has reason to believe that the cost of closure will be significantly greater than the value of the trust fund, it may withhold reimbursement of such amounts as it deems prudent until it determines, in accordance with ARM 16.44.814 that the owner or operator is no longer required to maintain financial assurance for closure or post-closure.~~ The owner or operator may request reimbursements for partial closure only if sufficient funds are remaining in the trust fund to cover the maximum costs of closing the facility over its remaining operating life. Within 60 days after receiving bills for partial or final closure activities or post-closure activities, the department will instruct the trustee to make reimbursements in those amounts as the department specifies in writing, if the department determines that the partial or final closure expenditures or post-closure expenditures are in accordance with the approved plan, or otherwise justified. If the department has reason to believe that the maximum cost of closure over the remaining life of the facility or the cost of post-closure activities will be significantly greater than the value of the trust fund it may withhold reimbursements of such amounts as it deems prudent until it determines, in accordance with ARM 16.44.814 that the owner or operator is no longer required to maintain financial assurance for final closure of the facility or for post-closure care activities. If the department does not instruct the trustee to make such reimbursements, it will provide the owner or operator with a detailed written statement of reasons.

(11) Same as existing rule.

AUTHORITY: 75-10-405, MCA

AUTH. EXT.: Sec. 3, Ch. 109, L. 1985; Sec. 7, Ch. 633, L. 1985; Sec. 3, Ch. 336, L. 1987; Sec. 3, Ch. 562, L. 1987

IMPLEMENTING: 75-10-405, MCA

16.44.807 SURETY BOND GUARANTEEING PAYMENT INTO A CLOSURE AND/OR POST-CLOSURE TRUST FUND

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

(4) The bond must guarantee that the owner or operator will:

(a) Same as existing rule.

(b) fund the standby trust fund in an amount equal to the penal sum within 15 days after an order to begin final closure ~~is~~ issued by the department becomes final, or within 15 days after an order to begin final closure is issued by a state court or other court of competent jurisdiction; or

(c) Same as existing rule.

(5)-(9) Same as existing rule.

AUTHORITY: 75-10-405, MCA
AUTH. EXT.: Sec. 3, Ch. 109, L. 1985; Sec. 7, Ch. 633, L. 1985; Sec. 3, Ch. 336, L. 1987; Sec. 3, Ch. 562, L. 1987
IMPLEMENTING: 75-10-405, MCA

16.44.808 SURETY BOND GUARANTEEING PERFORMANCE OF CLOSURE AND/OR POST-CLOSURE (1)-(2) Same as existing rule.

(3) The owner or operator who uses a surety bond to satisfy the requirements of this subchapter must also establish a standby trust fund. Under the terms of the bond, all payments made thereunder will be deposited by the surety directly into the standby trust fund in accordance with instructions from the department. This standby trust must meet the requirements specified in ARM 16.44.806, except that:

(a) Same as existing rule.

(b) unless the standby trust fund is funded pursuant to the requirements of this rule, the following are not required by these rules:

(i) Same as existing rule.

(ii) updating of Schedule A of the trust agreement (see ARM 16.44.823(1)) to show current closure and/or post-closure cost estimates;

(iii)-(iv) Same as existing rule.

(4) Same as existing rule.

(5) Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond. Following a final administrative determination by the department that the owner or operator has failed to perform final closure and/or post-closure care in accordance with the approved closure plan and/or post-closure plan and other permit requirements when required to do so, under the terms of the bond the surety will perform final closure and/or post-closure care as guaranteed by the bond or will deposit the amount of the penal sum into the standby trust fund.

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

AUTHORITY: 75-10-405, MCA
AUTH. EXT.: Sec. 3, Ch. 109, L. 1985; Sec. 7, Ch. 633, L. 1985; Sec. 3, Ch. 336, L. 1987; Sec. 3, Ch. 562, L. 1987
IMPLEMENTING: 75-10-405, MCA

16.44.809 CLOSURE AND/OR POST-CLOSURE LETTER OF CREDIT (1)-(7) Same as existing rule.

(8) Following a final administrative determination by the department that the owner or operator has failed to perform final closure or post-closure in accordance with the approved closure or post-closure plan and other permit requirements when required to do so, the department may draw on the letter of credit.

(9)-(10) Same as existing rule.

AUTHORITY: 75-10-405, MCA
AUTH. EXT.: Sec. 3, Ch. 109, L. 1985; Sec. 7, Ch. 633, L.

1985; Sec. 3, Ch. 336, L. 1987; Sec. 3, Ch. 562, L. 1987
IMPLEMENTING: 75-10-405, MCA

16.44.810 CLOSURE AND/OR POST-CLOSURE INSURANCE (1)-(4) Same as existing rule.

(5) After beginning partial or final closure and/or post-closure, an owner or operator or any other person authorized to perform closure and/or post-closure may request reimbursement for closure and/or post-closure expenditures by submitting itemized bills to the department. The owner or operator may request reimbursements for partial closure only if the remaining value of the policy is sufficient to cover the maximum costs of closing the facility over its remaining operating life. Within 60 days after receiving bills for closure and/or post-closure activities, the department will determine whether the closure and/or post-closure expenditures are in accordance with the approved closure or post-closure plan or are otherwise justified, and if so, the department will instruct the insurer to make reimbursement in such amounts as the department specifies in writing. If the department has reason to believe that the maximum cost of closure over the remaining life of the facility, or the post-closure costs, will be significantly greater than the face amount of the policy, the department may withhold reimbursement of such amounts as the department deems prudent until the department determines, in accordance with ARM 16.44.814, that the owner or operator is no longer required to maintain financial assurance for final closure of the facility or for post-closure care. If the department does not instruct the insurer to make such reimbursements, it will provide the owner or operator with a detailed written statement of reasons.

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

AUTHORITY: 75-10-405, MCA
AUTH. EXT.: Sec. 3, Ch. 109, L. 1985; Sec. 7, Ch. 633, L. 1985; Sec. 3, Ch. 336, L. 1987; Sec. 3, Ch. 562, L. 1987
IMPLEMENTING: 75-10-405, MCA

16.44.812 USE OF MULTIPLE FINANCIAL MECHANISMS (1) An owner or operator may satisfy the requirements of this subchapter by establishing more than one financial mechanism per facility. These mechanisms are limited to trust funds, surety bonds guaranteeing payment into a trust fund, letters of credit, and insurance. The mechanisms must be as specified in ARM 16.44.806, 16.44.807, 16.44.809, and 16.44.810 respectively, of this subchapter, except that it is the combination of mechanisms, rather than the single mechanism, which must provide financial assurance for an amount at least equal to the current closure and/or post-closure cost estimates. If an owner or operator uses a trust fund in combination with a surety bond or a letter of credit, he may use the trust fund as the standby trust fund for the other mechanisms. A single standby trust fund may be established for two or more mechanisms. The department may use any or all of the mechanisms to provide for

closure and/or post-closure care of the facility.
AUTHORITY: 75-10-405, MCA
AUTH. EXT.: Sec. 3, Ch. 109, L. 1985; Sec. 7, Ch. 633, L. 1985; Sec. 3, Ch. 336, L. 1987; Sec. 3, Ch. 562, L. 1987
IMPLEMENTING: 75-10-405, MCA

16.44.813 USE OF A FINANCIAL MECHANISM FOR MULTIPLE FACILITIES (1) An owner or operator may use a financial assurance mechanism specified in this subchapter to meet the requirements of this subchapter for more than one facility. Evidence of financial assurance submitted to the department must include a list showing, for each facility, the EPA identification number, name, address, and the amount of funds for closure and/or post-closure care assured by the mechanism. The amount of funds available through the mechanism must be no less than the sum of funds that would be available if a separate mechanism had been established and maintained for each facility. In directing funds available through the mechanism for closure and/or post-closure of any of the facilities covered by the mechanism, the department may direct only the amount of funds designated for that facility, unless the owner or operator agrees to the use of additional funds available under the mechanism.
AUTHORITY: 75-10-405, MCA
AUTH. EXT.: Sec. 3, Ch. 109, L. 1985; Sec. 7, Ch. 633, L. 1985; Sec. 3, Ch. 336, L. 1987; Sec. 3, Ch. 562, L. 1987
IMPLEMENTING: 75-10-405, MCA

16.44.814 RELEASE OF OWNER OR OPERATOR (1) Within 60 days after receiving certifications from the owner or operator and an independent registered professional engineer that final closure has been accomplished in accordance with the approved closure plan, the department will notify the owner or operator in writing that he is no longer required by this subchapter to maintain financial assurance for final closure of ~~that particular~~ the facility, unless the department has reason to believe that closure has not been in accordance with the approved closure plan. The department will provide the owner or operator a detailed written statement of any such reason to believe that closure has not been in accordance with the approved closure plan.

~~(2) When an owner or operator has completed, to the satisfaction of the department, all post-closure care requirements in accordance with the post-closure plan, the department will, at the request of the owner or operator, notify him~~ (2) Within 60 days after receiving certifications from the owner or operator and an independent registered professional engineer that the post-closure care period has been completed for a hazardous waste disposal unit in accordance with the approved plan, the department will notify the owner or operator in writing that he is no longer required by this subchapter to maintain financial assurance for post-closure care of ~~the particular facility~~

unit, unless the department has reason to believe that post-closure care has not been in accordance with the approved post-closure plan. The department will provide the owner or operator a detailed written statement of any such reason to believe that post-closure care has not been in accordance with the approved post-closure plan.

AUTHORITY: 75-10-405, MCA
AUTH. EXT.: Sec. 3, Ch. 109, L. 1985; Sec. 7, Ch. 633, L. 1985; Sec. 3, Ch. 336, L. 1987; Sec. 3, Ch. 562, L. 1987
IMPLEMENTING: 75-10-405, MCA

16.44.822 PERIOD OF COVERAGE ~~(1)--An-owner-or-operator must-continually-provide-liability--coverage-for--a-facility-as required-by--this-subchapter-until-certifications-of-closure-of the-facility--as-specified-in-40-CFR-264.115,--are-received-and approved-by-the-department.~~

~~(2) The-department--hereby-adopts-and-incorporates-herein by-reference-40-CFR-264.115-which-is-a-federal-agency-rule-setting-forth--requirements-for-certifications-that-a-HWM-facility has-been-properly-closed.--The-correct-CFR-edition-is-stated-in ARM-16.44.102.----Copies--of-40-CFR-264.115-may-be-obtained-from the-Solid-and-Hazardous-Waste-Bureau,-Department-of--Health-and Environmental--Sciences,--Cogswell--Building,--Capitol-Station, Helena,-Montana-59620.~~

(1) Within 60 days after receiving certifications from the owner or operator and an independent registered professional engineer that final closure has been completed in accordance with the approved closure plan, the department will notify the owner or operator in writing that he is no longer required by this subchapter to maintain liability coverage for that facility, unless the department has reason to believe that closure has not been in accordance with the approved closure plan.

AUTHORITY: 75-10-405, MCA
AUTH. EXT.: Sec. 3, Ch. 109, L. 1985; Sec. 7, Ch. 633, L. 1985; Sec. 3, Ch. 336, L. 1987; Sec. 3, Ch. 562, L. 1987
IMPLEMENTING: 75-10-405, MCA

(The following rules are proposed as a new subchapter.)

NEW RULE VI PURPOSE The purpose of this subchapter is to insure that information obtained by the department regarding facilities and sites used for the treatment, storage and disposal of hazardous wastes as those terms are defined in ARM 16.44.202 is available to the public.

AUTHORITY: 75-10-405, MCA
AUTH. EXT.: Sec. 3, Ch. 109, L. 1985; Sec. 7, Ch. 633, L. 1985; Sec. 3, Ch. 336, L. 1987; Sec. 3, Ch. 562, L. 1987
IMPLEMENTING: 75-10-405, MCA

NEW RULE VII DEFINITIONS In this subchapter the following definitions apply:

(1) "Board" means the Board of Health and Environmental Sciences provided for in 2-15-2104.

(2) "Department" means the Department of Health and Environmental Sciences provided for in 2-15-2104.

(3) "Facility" means all contiguous land and structures other appurtenances and improvements on the land used for treating, storing or disposing of hazardous waste. A facility may consist of several treatment, storage, or disposal operational units.

(4) "Record" means any paper, writing, photograph, sound or magnetic recording, drawing, form, book, correspondence, microfilm, magnetic tape, computer storage media, map or other document or other similar mechanism regardless of physical form or characteristics by which information has been preserved that has been made or acquired by the department or department employees in connection with the transaction of official business preserved for informational value or as evidence of a transaction and all other records or documents required by law to be filed with or kept by the department.

AUTHORITY: 75-10-405, MCA
AUTH. EXT.: Sec. 3, Ch. 109, L. 1985; Sec. 7, Ch. 633, L. 1985; Sec. 3, Ch. 336, L. 1987; Sec. 3, Ch. 562, L. 1987
IMPLEMENTING: 75-10-405, MCA

NEW RULE VIII RECORDS AVAILABLE AUTOMATICALLY (1) Any written request for the following types of records routinely distributed by the department shall be honored automatically: finalized press releases, copies of rules, educational materials, including pamphlets, and copies of speeches which have been delivered to the public.

AUTHORITY: 75-10-405, MCA
AUTH. EXT.: Sec. 3, Ch. 109, L. 1985; Sec. 7, Ch. 633, L. 1985; Sec. 3, Ch. 336, L. 1987; Sec. 3, Ch. 562, L. 1987
IMPLEMENTING: 75-10-405, MCA

NEW RULE IX FORM OF REQUEST (1) A request for information pertaining to a facility under this subchapter must be made in writing, must reasonably describe the records sought in a way that will permit their identification, and should be addressed to the Solid and Hazardous Waste Bureau, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620.

AUTHORITY: 75-10-405, MCA
AUTH. EXT.: Sec. 3, Ch. 109, L. 1985; Sec. 7, Ch. 633, L. 1985; Sec. 3, Ch. 336, L. 1987; Sec. 3, Ch. 562, L. 1987
IMPLEMENTING: 75-10-405, MCA

NEW RULE X PRIVILEGED BUSINESS INFORMATION (1) Any hazardous waste management facility which deems information which it submits to the department as confidential shall, prior to submission of the information to the department, label the

information as confidential and/or obtain a protective order prohibiting disclosure to the public. Any information which is not confidential must be disclosed to the public upon request.

AUTHORITY: 75-10-405, MCA
AUTH. EXT.: Sec. 3, Ch. 109, L. 1985; Sec. 7, Ch. 633, L. 1985; Sec. 3, Ch. 336, L. 1987; Sec. 3, Ch. 562, L. 1987
IMPLEMENTING: 75-10-405, MCA

NEW RULE XI DEPARTMENT DECISION TO ANSWER REQUEST

(1) The department shall, within 10 business days of a request for records pertaining to facilities, issue a written statement to the requestor stating which of the requested records, if any, will not be released and the reason for the denial of the request, including, if applicable, the need of the department to resolve a claim for confidentiality. It shall be understood that any other records not designated as non-releasable shall be provided by the department to the requestor.

(2) To the extent that records are required to be made available for public inspection, the department may inform the requestor that the records are available for inspection and where copies may be obtained.

(3) There shall be excluded from the period of 10 business days (or any extension thereof) any time which elapses between the date that a requestor is notified by the department that his request does not reasonably identify the records sought, and the date that the requestor furnishes a reasonable identification.

(4) There shall be excluded from the period of 10 working days (or any extension thereof) any time which elapses between the date that a requestor is notified by the department that payment of fees is required, and the date that the requestor pays (or makes arrangements to pay) such charges.

(5) The department may under unusual circumstances as outlined below extend the basic 10-day period established in section (1) to an additional 10 business days. To indicate that it will be using an extension, the department must furnish written notice to the requestor stating the reasons for the extension and the date by which the department expects to issue the determination. Unusual circumstances justifying an extension are:

(a) there is a need to search for and collect the requested records from separate facilities;

(b) extra time is needed to search for and collect the requested records because of the volume of the request; or

(c) consultation with another agency having a substantial interest in the determination is necessary.

(6) Failure of the department to issue a determination within the 10-day period or any extension constitutes a final agency decision appealable to the board.

AUTHORITY: 75-10-405, MCA
AUTH. EXT.: Sec. 3, Ch. 109, L. 1985; Sec. 7, Ch. 633, L. 1985; Sec. 3, Ch. 336, L. 1987; Sec. 3, Ch. 562,

L. 1987
IMPLEMENTING: 75-10-405, MCA

NEW RULE XII APPEAL (1) Each written notice by the department of its decision to deny a request for a record shall state the reasons for the denial and the opportunity for the requestor to appeal the initial denial to the board by sending a written appeal within 30 days of receipt of the determination.

(2) The decision of the board on appeal shall be made on the next regularly scheduled meeting of the board following the appeal request.

(3) Failure of the board to issue a decision within the prescribed time period in section (2) constitutes a final agency decision and is a basis for judicial review.

(4) If a requestor chooses to appeal from the decision of the board, the requestor must file a petition in district court within 30 days after service of the final agency decision according to 2-4-702. The review of the district court shall be a de novo review.

AUTHORITY: 75-10-405, MCA
AUTH. EXT.: Sec. 3, Ch. 109, L. 1985; Sec. 7, Ch. 633, L. 1985; Sec. 3, Ch. 336, L. 1987; Sec. 3, Ch. 562, L. 1987
IMPLEMENTING: 75-10-405, MCA

NEW RULE XIII FEES FOR SEARCHING AND COPYING (1) The fees for copying records shall be 25¢ per page.

(2) This fee may be reduced or waived by the department if furnishing the information can be considered as primarily benefitting the general public.

AUTHORITY: 75-10-405, MCA
AUTH. EXT.: Sec. 3, Ch. 109, L. 1985; Sec. 7, Ch. 633, L. 1985; Sec. 3, Ch. 336, L. 1987; Sec. 3, Ch. 562, L. 1987
IMPLEMENTING: 75-10-405, MCA

NEW RULE XIV ATTORNEYS FEES (1) Reasonable attorneys fees and costs may be assessed by the reviewing court to the party who substantially prevails on judicial review.

AUTHORITY: 75-10-405, MCA
AUTH. EXT.: Sec. 3, Ch. 109, L. 1985; Sec. 7, Ch. 633, L. 1985; Sec. 3, Ch. 336, L. 1987; Sec. 3, Ch. 562, L. 1987
IMPLEMENTING: 75-10-405, MCA

4. The department is proposing these amendments and new rules in order to effect changes in the state program consistent with federal regulatory changes and with state legislative changes in the hazardous waste regulatory program.

5. Interested persons may submit their data, views, or arguments concerning the proposed amendments and new 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 November 30, 1987.

6. 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 October 19, 1987.

BEFORE THE DEPARTMENT OF INSTITUTIONS
OF THE STATE OF MONTANA

In the matter of the proposed amendments of Rules 20.3.202, 20.3.203, 20.3.208, 20.3.209, 20.3.212 through 20.3.216, 20.3.401, 20.3.403 through 20.3.406, 20.3.408 through 20.3.414, 20.3.501, 20.3.503, 20.3.504.	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENTS OF ARM 20.3.202, 20.3.203, 20.3.208, 20.3.209, 20.3.212 through 20.3.216, 20.3.401, 20.3.403 through 20.3.406, 20.3.408 through 20.3.414, 20.3.501, 20.3.503, 20.3.504.
Certification and evaluation of alcohol programs	Certification and evaluation of alcohol programs

TO: All Interested Persons

1. On Monday, November 30th at 10:00 a.m. a public hearing will be held in the Conference Room of the Central Office of the Department of Institutions, at 1539 11th Avenue, Helena, Montana to consider the amendment of rules 20.3.202, 20.3.203, 20.3.208, 20.3.209, 20.3.212, 20.3.213, 20.3.214, 20.3.215, 20.3.216, 20.3.401, 20.3.403, 20.3.404, 20.3.405, 20.3.408, 20.3.409, 20.3.411, 20.3.412, 20.3.413, 20.5.414, 20.3.501, 20.3.503, 20.3.504.

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

20.3.202 DEFINITIONS In addition to the terms defined in Section 53-24-103 MCA,

(1) ~~"ADAD" means alcohol and drug abuse division of the department of institutions~~. ADIS means the alcohol and drug information system.

(2) through (28) remain the same.

(29) "Document(able)(ed)", means a person who by position is found credible by ~~ADAD~~ the department (e.g. a program director, personnel manager, program board officer) will sign a form attesting the dates, hours, and job titles reported for salaried employment or annual clock hours of service per year for volunteers, etc., as required. For academic work this would be an official transcript. For workshop, it would be a record of the training or affidavit.

(30) "State accepted program", means a program reviewed and accepted by ~~ADAD~~ the department to provide chemical dependency services.

(31) and (32) remain the same.

(33) "Training day" means a training day is ~~six-to-eight~~ ten hours of continuous training. When dates and hours are available, ~~points~~ credit will be granted. ~~for each full day, provided days average at least six hours. When hours alone are given, days will be established by division of six (6).~~

(34) "Approved list" means the listing of ~~ADAD~~ the department approved workshops relevant to chemical dependency personnel and trainers who possess the

qualifications to train such personnel.

(35) "Field" means all persons currently employed in a state accepted program, serving as a board member of such a program, serving on any state level advisory board for ~~ADAD~~ the department, or employed directly or on contract by ~~ADAD~~ the department.

(36) and (37) remain the same.

(38) "Panelist" means a person serving on an ~~endorsement~~ oral examination panel.

(39) remains the same.

~~40) "Endorsement" means three areas: chemical dependency counseling, prevention and education, and management supervision.~~

40 (41) "Capacity grace period" means if, through lack of capability or other reason, ~~ADAD~~ the department is unable to accommodate an applicant for testing, a grace period will be granted to operate on registration alone until applicant can be tested.

41 through 43 remain the same but will be renumbered.

AUTH: 53-24-105 MCA IMP: 53-24-204 MCA

20.3.203 DEPARTMENT PROCEDURES FOR APPROVAL OF CHEMICAL DEPENDENCY TREATMENT PROGRAMS

(1) remains the same.

(2) Chemical dependency treatment programs seeking departmental approval of one or more of the services shall submit written application to ~~the ADAD of~~ the department on a form provided by ~~ADAD~~ the department.

(a) remains the same.

(3) through (6) remain the same.

(7) If written documents submitted to the department do not meet the requirements of these rules and regulations, ~~ADAD~~ the department shall notify the applicant in writing. The applicant shall have 30 days from date of ~~ADAD~~ notification to respond in writing to the content of the notice. If a response is not received within 30 days, the department may refuse to grant approval and shall notify the applicant in writing of the action taken. If written documents submitted to the department do meet the requirements of these rules and regulations, the department shall have the program inspected to ensure compliance with the requirements of these rules and regulations. After inspection, the ~~ADAD~~ department shall either approve the program to provide one or more of the services listed in this section, or refuse to grant approval. The ~~ADAD~~ department shall send written notification of ~~department~~ approval of the program as an approved chemical dependency treatment program or shall send written notification of the deficiencies which resulted in the refusal to grant approval.

(8) through (10) remain the same.

AUTH: 53-24-105 MCA IMP: 53-24-208 MCA

20.3.208 ALL PROGRAMS - ORGANIZATION AND MANAGEMENT

(7)(a) through (e) remain the same.

(f) Adequate staff to meet client requests for services and professional counseling staff/client ratios are at an acceptable level as determined by ~~ADADs~~ the department.

(g) through (p) remain the same.

AUTH: 53-24-105 MCA IMP: 53-24-208 MCA

20.3.209 ALL PROGRAMS - PERSONNEL, STAFF DEVELOPMENT AND CERTIFICATION

(1) through (8) (c) remain the same.

(d) Volunteer hours are documented as per ~~ADAD~~ ADIS reporting procedures.

(8) (e) through (9) (b) remain the same.

(c) An outline of the practicum has been reviewed by ~~ADAD~~ the department.

AUTH: 53-24-105 MCA IMP: 53-24-204 MCA

20.3.212 DETOXIFICATION (EMERGENCY CARE) COMPONENT REQUIREMENTS

(1) through (6) remain the same.

(7) Client recordkeeping and reporting requirements specific to the detoxification component shall include:

(a) ~~ADAD~~ ADIS admission/discharge forms.

(7) (b) through (8)(b)(iv) remain the same.

AUTH: 53-24-105 MCA IMP: 53-24-208 MCA

20.3.213 INPATIENT - HOSPITAL COMPONENT REQUIREMENTS

(1) through (5) remain the same.

(6) Client recordkeeping requirements specific to the inpatient care component shall include:

(a) ~~ADAD~~ ADIS admission and discharge forms.

(b) through (7)(b)(iv) remain the same.

AUTH: 53-24-105 MCA IMP: 53-24-208 MCA

20.3.214 INPATIENT - FREE STANDING CARE COMPONENT REQUIREMENTS

(1) through (5) remain the same.

(6) Client recordkeeping and reporting requirements specific to the inpatient - free standing care component shall include:

(a) ~~ADAD~~ ADIS admission/discharge forms.

(b) through (7)(b)(iv) remain the same.

AUTH: 53-24-105 MCA IMP: 53-24-208 MCA

20.3.215 INTERMEDIATE CARE (TRANSITIONAL LIVING) COMPONENT REQUIREMENTS

(1) through (5) remain the same.

(6) Client recordkeeping and reporting requirements specific to the intermediate component shall include:

(a) ~~ADAD~~ ADIS admission/discharge form.
(b) through (7)(b)(i) remain the same.

AUTH: 53-24-105 MCA IMP: 53-24-208 MCA

20.3.316 OUTPATIENT COMPONENT REQUIREMENTS
(1) through (4) remain the same.
(5) Client recordkeeping and reporting requirements specific to the outpatient care component.
(a) ~~ADAD~~ ADIS admission/discharge forms.
(5) (b) through (6)(b)(i) remain the same.

AUTH: 53-24-105 MCA IMP: 53-24-208 MCA

20.3.401 SYSTEM OVERVIEW (1) Certification is based on a point system. Points are given for work experience, college coursework, structured workshop training, performance on a written examination, and an oral examination ~~in each endorsement area. In addition to the above, chemical dependency counseling endorsement requires~~ and performance on a taped work sample. (2) Each person registering for certification will be required to pay a written examination fee at the time of registration to the department or a designated agency. The examination fee will reflect the cost of the exam.

Table 1. System Overview

Basic Requirements	1. Work experience plus 2. Academic coursework plus 3. Structured workshop plus 4. Written examination plus 5. Oral examination ~~in each endorsement area~~ plus
~~Additional requirements for Certified Counselor~~	6. Performance on a taped work sample.

AUTH: 53-24-105 MCA IMP: 53-24-204 MCA

20.3.403 WORK EXPERIENCE (1) Twelve (12) points are awarded for every documentable year of full time "equivalent" (FTE) work experience completed as a counselor, educator, supervisor, or administrator working in an alcohol or drug program. A maximum of 65 points can be earned from such documented work experience. One (1) point will be given for each FTE of work in an alcohol or drug program. ~~In some other job title except (e.g., secretary, aide) except medial titles, to a maximum of five (5) points.~~ Actual time spent providing direct counseling services to chemically dependent clients will be counted on a

commensurate basis. Two (2) points will be given for every documentable year of service as an active volunteer assisting in an alcohol or drug program; ~~. "Twelve-Step"-work with alcoholics anonymous, or outreach programs targeted to drug or alcohol programs sponsored by a charitable, religious, or medical group~~. One (1) point will be given for each year of service on the governing body of an alcohol or drug program. Up to 20 points can be earned from such volunteer plus governing body work. No more than 65 points can be counted toward the basic certificate from all types of experience combined.

(2) Internships and practicum beyond the baccalaureat level will be counted as work experience.

~~(2)~~ and (3) remain the same but will be renumbered.

Table 2. Work Experience Summary

Criteria	Point Formula	Maximum
Employment in professional position	12 per FTE year	65
~~Employment in non-custodial, non-professional position~~	~~1 per FTE year~~	~~5~~
Active volunteer work	2 per year)	20
Governing body service	1 per year)	
Combined Maximum experience points allowed		65
Required Minimum		-0-

AUTH: 53-24-105 MCA IMP: 53-24-204 MCA

20.3.404 ACADEMIC WORK (1) One and one-quarter (1¼) points will be given for each documentable academic quarter hour of credit earned for coursework, subject only to the limit of sixty-five (65) points for academic coursework on the general certificate in the areas of: psychology, social work, sociology, counseling, pharmacology and specific drug/alcohol coursework. One and one-quarter (1¼) points will be given for each documentable academic quarter hour of credit, but not to exceed a total of six (6) points for each area, or fifteen (15) for all areas, in the areas of: ~~pharmacy,~~ biology, anthropology, educational methods, and business administration (including economics and accounting.) Semester credit will be calculated on a commensurate basis.

Table 3. Coursework Summary

Criteria	Point Formula	Maximum
College coursework in approved fields - documented Psychology Social Work Counseling Pharmacology Sociology Specific Drug/ Alcohol Courses	1½ per academic quarter hour without area limits	65
~~Pharmacy/Pharmacology/~~Chemistry Philosophy Anthropology Educational Methods Business Biology	1½ per academic quarter hour with 6 hour per area limit	15
Combined Maximum for academic study		65
Required Minimum		-0-

AUTH: 53-24-105 MCA IMP: 53-24-204 MCA

20.3.405 STRUCTURED WORKSHOP TRAINING (1) One (1) point per six (6) hours of training will be granted for each day of approved structured workshop training. To qualify for credit, such workshops must be at least one day (six hours minimum), and considered appropriate by ~~APAP,~~ the department.

(2) Training must be documented by supplying an original (or a certified copy of a certificate of completion signed by the trainer and/or an official of the training organization.) All workshop training completed after implementation of certification must be approved in advance by ~~APAP~~ the department to gain certification points.

(3) ~~local in-service~~ Structured workshop training qualifies for points (or hours) only when it is:

(a) structured training equaling one or more 6-8 10 hour days in length;

(b) ~~offered in a continuous block,~~ organized in agenda format which outlines the specific breakdown of training hours;

(c) ~~is an approvable topic,~~ predicated on a statement of goals and objectives;

(d) ~~is offered~~ conducted by an approved trainer.

~~Other types of in-service offerings are credited as part of the work experience points earned. (Four 2 hour sessions~~

~~devoted-to-one-subject-is-the-equivalent-of-one-8-hour session.)--To-gain-certification-points,-all-in-service training-must-have-ADAD-prior-approval.~~

(e) pertinent to the field of chemical dependency;

(f) monitored via sign-in sheets to document attendance.

(4) In-service training qualifies for certification credit within the following criteria:

(a) provision of in-service training is in blocks of at least one (1) hour;

(b) topics for in-service are pertinent to the field of chemical dependency, directly related to job function and geared toward staff development;

(c) conducted by an outside trainer and/or expert; member of the established inservice training department; or a staff member who has expertise in the specific area, researched the topic and prepared a structured outline of the presentation.

(d) attendance logs are kept and a cumulative record of in-service is maintained on each employee. This record is signed by an official of the program responsible for monitoring in-service.

(e) A maximum of five (5) points or 30 hours will be allowed for in-service training.

(f) in-service training curriculum must be approved by the department to ensure compliance.

~~(4)~~ (5) Specialized trainee/intern practicums for which academic credit is not received qualify for points. This program would consist of lectures and structured practical experience which is competency based.

~~(5)~~ (6) Up to sixty-five (65) points may be granted for any approved workshop training. Fourteen (14) points or 84 hours to twenty-eight (28) points or 168 hours are required for continuing education in a four (4) year period.

Table 4. Structured Workshop Summary

Criteria	Point Formula	Maximum
Any structured workshop with title, description, outcome objectives, and training on the ADAD approved list	1 point per 6 hours ~~1-for-each-calendar day-of-training~~	65
Required Minimum		-0-

AUTH: 53-24-105 MCA IMP: 53-24-204 MCA

20.3.406 WRITTEN EXAMINATION (1) Each year written examinations will be offered by ~~ADAD~~ the department. Fifty

(50) points are available on these exams. To be certified a minimum of 35 points must be earned. Each applicant may attempt these exams to either meet the minimum or to increase overall point total. However, the exam score of record is the most recent score.

(2) remains the same.

AUTH: 53-24-105 MCA IMP: 53-24-204 MCA

20.3.408 ~~ENDORSEMENT-AREAS~~ ORAL EXAMINATION (1) An oral examination can earn up to fifty (50) points.

(2) Anyone in registry categories A or B is eligible to take the ~~endorsement-area~~ oral examination upon successful completion of the written exam.

~~(3) Up to fifty (50) endorsement points may be counted toward the basic certificate.~~

~~Table 7. Endorsement Areas~~

Area	Criteria	Allowed Maximum	Required Minimum
~~Chemical Dependency Counseling~~	Oral Examination	50	35
~~Education Prevention~~	Same as Chemical Dependency		
~~Management Supervision~~	Same as Chemical Dependency		
~~Minimum Points to be endorsed in each area~~			35
~~Maximum Endorsement Points toward initial certification~~		50	

AUTH: 53-24-105 MCA IMP: 53-24-204 MCA

20.3.409 BASIC CERTIFICATION (1) Basic certification thus requires earning a minimum of 200 points from a rather unlimited pool of resources. Of these 200 points, 35 must come from the written examination, 35 from an ~~endorsement area~~, oral examination, and 35 from performance ratings.

Table 8. Overall Points Summary

	Available	Maximum Can Count	Minimum Required
Work Experience	Unlimited	65	-0-
College Course Work	Unlimited	65	-0-
Structured Workshop-approved	Unlimited	65	-0-
Written Examination	50	50	35
Work Performance Sample	50	50	35
~~Endorsement Areas~~	~~150~~	~~50~~	~~35~~
Oral Examination	50	50	35

AUTH: 53-24-105 MCA IMP: 53-24-204 MCA

20.3.410 REGISTRY PROCESS (1) The first step in the certification process is being placed on a registry. A registry is developed in steps.

(a) Upon written request, a registration form will be sent to applicant. Address request to ADAD, Department of Institutions, 1539 11th Avenue, Helena, MT 59620.

(b) The registration form and the examination fee must be received by the department or a designated agency before A a complete set of forms and instructions are sent to each applicant. ~~for~~ Applicants must then submit~~ting~~ documentation ~~or~~ of experience, education, and training necessary to place him/her into the proper registry category. ~~These are the same forms needed for certification.~~ A category cannot be assigned until documentation is received.

(c) remains the same.

AUTH: 53-24-105 MCA IMP: 53-24-204 MCA

20.3.411 PERFORMANCE ON WORK SAMPLE (1) remains the same.

(2) Applicants should make every effort to submit a tape of an actual counseling session with a real client as five (5) points will be subtracted from the scores of all role play counseling sessions. All tapes from persons employed in the field must be sent in by the director of the applicant's program ~~by certified mail~~ along with a signed ~~and notarized~~ statement from the program director attesting the nature of the submitted tapes (role play or real clients) and that the counselor named is the counselor executing the session on the tape. Each tape (can be one physical tape with a different session on each side) must be clearly labeled with the applicant's name, program where taped, the session number (1st, 10th, etc.) ~~with the client if a real client or with "role play" if not a true client,~~ and the type of client (drug, alcohol, impacted family member) and the type of session (individual, couples, family.) If role

played, the name of the person playing the client should be given. Security will be maintained and confidentiality assured.

~~(3)----Persons--not--currently--employed--in--the--field should-contact-the-director-of-any-state-accepted-program;-(a list-is-available-from-ADAD)-and-ask-either-to-be-allowed-to sign-on-as-a-volunteer-and-execute-actual-counseling-sessions for-submission,-or-to-have-a-role-play-set-up-with-a-staff member-playing-the-client.--Program-directors-are-under-no obligation-to-assist-in-this-fashion.--If-local-arrangements cannot-be-made,-applicants-should-contact-ADAD-in-Helena, training-and-certification-section,-and-a-role-play-will-be set-up-in-Helena.~~

~~(4)----Work--samples--must--be--mailed--from--a--program director-by-certified-mail-in-the-same-way-as--described above-for-persons-employed-in-the-field.--Outside-applicants must-reimburse-the-local-program-for-the-mailing,-notary, and-other-costs.--The-exception-would-be-where-the-session was--role-played--at--ADAD--in--Helena.---In-this-case,--the supervising-staff-would-attest-to-the-validity-of-the-tapes.~~

~~(5)~~ (3) Tapes are rated by three judges on a rating sheet covering a range of "desirable" counselor characteristics. One judge is an ADAD department staff professional with a counseling background, two judges from the field, usually one of these judges will have a background primarily derived from experience and workshop training, and the other a background primarily derived from formal higher education. Judges rate each tape separately. Judges travel to Helena and rate work samples periodically (e.g. semi-monthly or quarterly) as the flow of applications demands.

~~(6)~~ (4) The score is the average score from the judges.

AUTH: 53-24-105 MCA IMP: 53-24-204 MCA

ORAL EXAMINATION PANEL

20.3.412 ~~ENDORSEMENT-AREAS-CERTIFICATION (1) Endorsement--area--attainment--is--through--performance--on--an oral-examination.~~

~~(2)~~ (1) Each area panel is composed of three persons. One person is the ADAD department certified "resident expert" in the endorsement field.

~~(3)~~ (2) Additionally, two certified panel members will be selected by ADAD department; one whose skills are derived largely from experience and workshop training, and one who has considerable academic background.

~~(4)~~ (3) Field panelists serve a maximum of two consecutive years.

~~(5)~~ (4) A master list of fifteen (15) to twenty-five (25) questions and model answers is developed. ~~for-each-area.~~ Panelists question the applicant for thirty (30) minutes drawing three (3) questions from this list. The applicant is then excused and panelists may discuss the applicant among themselves prior to each panelist making their own

private ratings.

AUTH: 53-24-105 MCA IMP: 53-24-204 MCA

20.3.413 CONTINUING EDUCATION (1) Once certified, the individual will be required to earn ~~ten (10)~~ seven (7) points per year on the average; averages being run ~~three (3)~~ four (4) years for a total of 28 points. Points can come from FTE work experience up to ~~fifteen (15)~~ fourteen (14) points, workshop or academic courses taken within each 3 4-year period. A certified chemical dependency counselor employed full-time would need to receive three and one-half (3.5) points or 21 hours of training per year for a total of fourteen (14) points or 84 hours in four (4) years.

(2) Extensions beyond the four (4) years will not be allowed, effective January 1, 1988.

(3) Criteria for continuing education are previously stated in 20.3.404 through 405. All documentation of continuing education must be received by the department, one month prior to the expiration date listed on the certificate.

AUTH: 53-24-105 MCA IMP: 53-24-204 MCA

20.3.414 LOSS OF CERTIFICATION (1) Certification may be lost or suspended in the following manner:

(a) ~~By not meeting continuing education requirements. In this case, a warning is given with a one year period to make up any deficiencies. If not made up in one year, the certificate is suspended until the requirements are brought up to date.~~ Certified counselors, who allow their certification to expire due to failure to meet continuing education requirements. In this case, the individual, must reapply and successfully complete the current certification requirements which include the entire examination process, in order to reinstate their certification.

(b) remains the same.

AUTH: 53-24-105 MCA IMP: 53-24-204 MCA

20.3.501 CHEMICAL DEPENDENCY EDUCATIONAL COURSES

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

(b) Initial fees (as of the effective date of this rule) and future fee increases must be reviewed and approved by ~~Alcohol and Drug Abuse Division (ADAD),~~ of the department.

(c) remains the same.

AUTH: 53-24-105 MCA IMP: 53-24-204 MCA

20.3.503 EDUCATIONAL COURSE REQUIREMENTS FOR DUI OFFENDERS (ACT PROGRAM)

(1) through (5) (b) remain the same.

(c) Staff responsible for the educational course component (level II), must receive a DUI specific training course within six months from the date of hire and also be certified or eligible ~~in the prevention/education endorsement~~

~~area or~~ as a chemical dependency counselor as defined in ARM 20.3.401 - 416.

(6) remains the same.

(7)(b) through (7)(i) remain the same.

AUTH: 53-24-105 MCA IMP: 53-24-204 MCA

20.3.504 EDUCATION COURSE REQUIREMENTS FOR MIP OFFENDERS (MIP PROGRAM)

(1) through (3) remain the same.

(4) Staff requirements shall include:

(a) Staff responsible for providing the MIP course must be certified or eligible in chemical dependency counseling ~~or prevention and education endorsement areas~~ as defined in ARM 20.3.401 - 416.

(5) and (6) remain the same.

AUTH: 53-24-105 MCA IMP: 53-24-204 MCA

3. The department is proposing these rules to enhance the quality, professional competency, time and cost efficiency of the system, and would reflect administrative changes.

4. Interested parties may submit their data, views, or arguments, either orally or in writing at the public hearing. Written data, views, or arguments may also be submitted to the Legal Unit, Department of Institutions, 1539 11th Avenue, Helena, Montana 59620, no later than November 30, 1987.

5. The Legal Unit of the Department of Institutions has been designated to preside over and conduct the public hearing.

CARROLL SOUTH, Director
Department of Institutions

Certified to the Secretary of State October 19, 1987.

BEFORE THE WORKERS' COMPENSATION DIVISION
OF THE DEPARTMENT OF LABOR AND INDUSTRY
OF THE STATE OF MONTANA

In the matter of the Adoption of a Rule regarding Hospital Rates.	)))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION OF RULE

TO ALL INTERESTED PERSONS:

1. On November 20, 1987, at 9:30 a.m., a public hearing will be held in Room 303 of the Workers' Compensation Building, 5 South Last Chance Gulch, Helena, Montana, to consider the proposed adoption of a rule regarding hospital rates.

2. The rule as proposed to be adopted provides:

RULE I RATES FOR HOSPITAL SERVICES (1) Beginning January 1, 1988, hospital rates payable by workers' compensation insurers shall not exceed those rates prevailing in the hospital in effect on January 1, 1988.

(2) Rates for hospital services must be furnished to the division no later than December 31, 1987, on division-approved forms. All rate filings will be subject to division approval.

(3) An insurer is not obligated to pay more than the maximum rate filed with the Division for the particular services rendered, or the prevailing rates in the hospital in effect on January 1, 1988, for services not provided for in the hospital's rate filing. Any new service not being provided on or before January 1, 1988, must be filed with the division accompanied by a detailed explanation of such service.

(4) The division may in its discretion conduct audits of any hospital's financial records, for hospitals required to file rates with the division, to determine proper reporting of rate filings. Each hospital filing rates with the division must retain records for at least five (5) years substantiating such rates were those in effect on January 1, 1988.

(5) The division may develop new, amended or modified rules governing rates for hospital services.

3. The rationale for adopting this rule is to establish rates for hospital services for injured workers as required by Section 39-71-704(3), MCA, as amended by Section 25 of Chapter 464 of Laws of 1987.

4. This rule is authorized by Section 39-71-203, MCA, as amended by Section 5 of Chapter 464 of Laws of 1987 and extended by Section 69 of Chapter 464 of Laws of 1987.

BEFORE THE WORKERS' COMPENSATION DIVISION
OF THE DEPARTMENT OF LABOR AND INDUSTRY
OF THE STATE OF MONTANA

In The Matter of Amendment and adoption of Rules regarding Self-Insurers	))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF AND ADOPTION OF RULES REGARDING SELF-INSURERS

TO: ALL INTERESTED PERSONS

1. On September 10, 1987, the Workers' Compensation Division published notice of proposed amendment and adoption of rules regarding self-insurers at pages 1540 through 1548 of 1987 Montana Administrative Register Issue No. 17. The Notice provided that no public hearing was contemplated but interested persons could request a hearing in writing by October 8, 1987.

2. The Montana Self-Insurers Association, an association having not less than 25 members who will be directly affected, submitted a written request prior to October 8, 1987, that a hearing be held on the proposed amendment and adoption of rules.

3. On November 20, 1987, at 9:45 a.m., a public hearing will be held in Room 303 of the Workers' Compensation Building, 5 South Last Chance Gulch, Helena, Montana, to consider the proposed amendment of rules and adoption of a new rule as follows:

24.29.702A SOLVENCY AND ABILITY TO PAY (1) Proof of solvency and financial ability to pay compensation, benefits and liabilities is required. Employers or groups of employers electing to be self-insured must demonstrate financial stability by providing audited financial statements that upon analysis indicate sufficient security, as determined by the division, to protect the interests of injured workers. These shall consist of analysis of financial conditions, current and historical, including, but not limited to, the following factors: quick ratio, current ratio, current liabilities to net worth, current liabilities to inventory, total liabilities to net worth, fixed assets to net worth, collection period, inventory turnover, assets to sales, sales to net working capital, accounts payable to sales, return on sales, return on assets, return on net worth, contingent liabilities, comparison to industry standards, income from ongoing operations and corporate bond rating. Only an employer or group of employers meeting financial standards acceptable to the division shall be granted permission to be bound as a plan no. 1 self-insurer.

AUTH: 39-71-203, MCA, as amended by Sec. 5, Ch. 464, L. 1987;
AUTH EXT.: Sec. 4, Ch. 480, L. 1985;
IMP: 39-71-403, 39-71-2101, 39-71-2102 and 39-71-2103, MCA.

24.29.702B WHEN SECURITY REQUIRED (1) Security must be deposited with the division by the employer or group of employers on order of the division under the following conditions:

~~(c)~~(a) Every employer or group of employers must deposit security with the division. The deposit requirement may be waived in whole or in part by the division for individual employers OR GROUPS OF EMPLOYERS only who provide substantive evidence that the full amount of the deposit is not needed. This evidence shall consider criteria for solvency and ability to pay as set forth in ARM 24.29.702A. ~~A group of employers exclusively comprised of political subdivisions may be required to deposit security under this rule.~~

~~(a)~~(b) The employer or group of employers no longer has the solvency or ability to pay compensation, benefits, and liabilities as determined under standards applied in ARM 24.29.702A.

~~(b)~~(c) The employer or group of employers does not have sufficient securities on deposit with the division under section 39-71-2107, MCA, to meet current liabilities, in addition to all other liabilities.

AUTH: 39-71-203, MCA, as amended by Sec. 5, Ch. 464, L. 1987;
AUTH EXT.: Sec. 4, Ch. 480, L. 1985 and Sec. 69, Ch. 464, L. 1987;
IMP: 39-71-403, 39-71-2106, and 39-71-2107, MCA.

24.29.702C SURETY BOND SECURITY DEPOSIT -- AMOUNTS REQUIRED (1) When security is required under ARM 24.29.702B, the division will require that ~~surety bonds~~ such security be deposited in the following amounts:

(a) Under ARM 24.29.702B(1)(a), the amount shall be the greater of: $250,000 or an average of the workers' compensation liabilities incurred by the employer in Montana for the past 3 calendar years.

~~(a)~~(b) Under ARM 24.29.702B(1)~~(a)~~(b), the amount shall be equivalent to the employer's or group of employers' total workers' compensation and occupational disease liabilities.

~~(b)~~(c) Under ARM 24.29.702B~~(b)~~(c), the amount shall be in an amount which, in the division's judgment, provides reasonable protection and guaranty of the payment of outstanding liabilities.

~~(c) Under ARM 24.29.702B(c), the amount shall be a minimum of $500,000 or 110% of the group of employers'~~

~~cumulative average paid losses over the four previous years, whichever is greater, and shall be no less than the retention amount of the group of employers' excess insurance.~~

AUTH: 39-71-203, MCA, as amended by Sec. 5, Ch. 464, L. 1987;
AUTH EXT.: Sec. 4, Ch. 480, L. 1985 and Sec. 69, Ch. 464, L. 1987;
IMP: 39-71-403, 39-71-2106, and 39-71-2107, MCA.

24.29.702D SURETY BONDS -- CRITERIA (1) Surety bonds are required under ARM 24.29.702C(a) and (c) above. When a surety bond is required, the following criteria shall apply:

(a) The division shall accept a surety bond only from companies certified by the United States Department of Treasury as "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies," as published in the most recent Federal Register, which is published annually every July 1, copies are available from the Division of Workers' Compensation, 5 South Last Chance Gulch, Helena, Montana, 59601, and the Superintendent of Documents, United States Government Printing Office, Washington, D.C., 20402. Surety must specify agreement to provide a claims guarantee payment bond.

(b) A bond replaced with another surety bond must be in identical form, be of the same coverage amount and contain inclusive dates of surety coverage. The division must be advised immediately of such a change.

(c) Surety bonds shall name the Montana division of workers' compensation as obligee and be held by the division. Upon discontinuance of self-insured status for any reason, the division shall hold surety bonds of that employer as reserves for all outstanding workers' compensation liabilities. The division shall retain surety bonds until it is satisfied that all liabilities have been met or are properly reserved. In the event liabilities have not been met, the division shall disburse the proceeds of such surety bonds to the maximum extent possible to workers' compensation claimants and providers.

(d) The bond must include a statement that the bonding company is required to give thirty (30) days notice of its intent to terminate future liability to both the principal and the division. However, the bonding company shall not be relieved of liability for injuries occurring prior to the date of termination.

(e) A surety bond shall be issued on the form prescribed by the division as set forth in appendix A.

(2) When the division determines an employer or group has lost its solvency or ability to pay under ARM

24.29.702B(1)(b), or the employer has provided substantive evidence that it has attempted and has been unable to obtain a surety bond, an employer may deposit any other security described in section 39-71-2106(3), MCA, with the division's prior approval.

AUTH: 39-71-203, MCA, as amended by Sec. 5, Ch. 464, L. 1987;
AUTH EXT.: Sec. 4, Ch. 480, L. 1985;
IMP: 39-71-403, 39-71-2106, and 39-71-2107, MCA.

24.29.702E EXCESS INSURANCE (1) Specific excess and aggregate excess insurance shall be required of all employers and groups of employers electing coverage under plan no. 1 as a proof of financial ability to pay compensation benefits and other liabilities. Aggregate excess insurance will be required of all employers or groups of employers but may be waived by the division for individual employers who provide substantive evidence the policy is not needed. This evidence shall consider diversification of risk, type of industry, financial resources, self-insured retention levels, policy limits of the specific excess policy, safety program, loss experience and other appropriate factors as determined relevant by the division. The contract or policy of specific excess insurance and aggregate excess insurance shall comply with all of the following:

(a) It is issued by a carrier licensed in the United States with a Best's Rating of A+, A or B+. Excess coverage issued by a carrier not rated by Best's will be considered for approval in the discretion of the division.

(b) It is not cancelable or nonrenewable unless written notice by registered or certified mail is given to the other party to the policy and to the division not less than thirty (30) days before termination by the party desiring to cancel or not renew the policy.

(c) Any contract or policy containing ~~any type of~~ a commutation clause shall provide that any commutation effected thereunder shall not relieve the underwriter or underwriters of further liability in respect to claims and expenses unknown at the time of such commutation or in regard to any claim apparently closed at the time of initial commutation which is subsequently reopened by or through a competent authority. If the underwriter proposes to settle a liability for future payments payable as compensation for accidents or occupational diseases occurring during the term of the policy by the payment of a lump sum to the employer or group of employers to be fixed as provided in the commutation clause of the policy, then not less than thirty (30) days prior notice to such commutation shall be given by the underwriter(s) or its (their) agent by registered or certified mail to the division. If any commutation is effected, the division

shall have the right to direct such sum be placed in trust for the benefit of the injured employee(s) entitled to such future payments of compensation.

(d) If an employer or group of employers becomes insolvent and is unable to make benefit payments, the excess carrier shall make such payments to claimants as would have been made by the excess carrier to the employer, after it has been determined the retention level has been reached on the excess contract, as directed by the division.

(e) All of the following shall be applied toward the reaching of retention level in the excess insurance contract:

(i) payments made by the employer or group of employers;

(ii) payments due and owing to claimant by the employer or group of employers; and

(iii) payments made on behalf of the employer or group of employers by any surety bond under a bond required by the division as defined in ARM 24.29.702C.

(f) Copies of ~~a certificate~~ the certificates and policies of the specific excess insurance and aggregate excess insurance shall be filed with the division for a determination that ~~together with a certification~~ such policy fully complies with the provisions of the Workers' Compensation and Occupational Disease Acts and these rules.

AUTH: 39-71-203, MCA, as amended by Sec. 5, Ch. 464, L. 1987;
AUTH EXT.: Sec. 4, Ch. 480, L. 1985;
IMP: 39-71-403, 39-71-2101, 39-71-2102, and 39-71-2103, MCA.

24.29.702F INITIAL ELECTION -- INDIVIDUAL EMPLOYERS (1) An individual employer initially electing to be bound as a self-insurer must provide the following:

(a) a completed application on forms provided by the division;

(b) audited financial statements for the last two (2) years;

(c) proof that it has been in business for a period of not less than five (5) years; however,

(i) an employer in business less than five (5) years may be considered if its liability is guaranteed by a parent corporation which has been in business for a period of not less than five (5) years;

(ii) an employer whose liability is guaranteed by a parent corporation must provide a corporate resolution and an agreement of assumption and guarantee of workers' compensation liabilities on forms prescribed by the division as set forth in appendices B and C.

(d) evidence that it has obtained an insurance policy of specific excess and aggregate excess insurance with

policy limits, nature of coverage and retention amounts acceptable to the division, as required in ARM 24.29.702E. Excess insurance must be managed by a third-party administrator. Evidence must include the administrator's approved specific and aggregate self insured retention and maximum policy limits;

(e) evidence that it had a minimum of 100 employees per year over the preceding two (2) years; however, an employer with ~~a minimum of~~ less than 100 employees per year over the preceding two (2) years may be considered if its liability is guaranteed by a parent corporation which has a minimum of 100 employees per year and at least two (2) years' experience as a self-insurer in another state and is guaranteeing the employer's liability as provided in ARM 24.29.702F (c) (ii);

(f) a loss run and summary from insurance carriers who provided its coverage during the preceding four (4) years showing each individual claim, date of injury, type of injury, compensation and medical benefits paid to date and amount reserved for future liability;

(g) evidence that its internal or contracted claims adjustment service is in compliance with ARM 24.29.804;

(h) evidence that it has an effective safety program;

(i) a surety bond in an amount as required in ARM 24.29.702C;

(j) certification that the self-insurance plan is not funded by a regulated or unregulated insurance company;

(k) evidence that internal policies and procedures are satisfactory to administer a self-insurance program.

AUTH: 39-71-203, MCA, as amended by Sec. 5, Ch. 464, L. 1987;
AUTH EXT.: Sec. 4, Ch. 480, L. 1985;
IMP: 39-71-403, 39-71-2101, 39-71-2102, and 39-71-2103, MCA.

24.29.702G INITIAL ELECTION -- GROUP OF EMPLOYERS

(1) An employer initially electing to be bound as a group self-insurer must provide the following:

(a) a completed application on forms provided by the division;

(b) a list of all individual employers making up the group;

(c) a signed copy of the by-laws adopted by the group and all documents pertaining to formation, operation and contractual arrangements including amendments and addenda;

(d) a copy of an agreement signed by each individual employer showing:

(i) each employer's agreement to accept joint and several liability for all obligations incurred by the group;

(ii) provisions for addition of a new member to the self-insurance group;

(iii) provisions for withdrawal of a member from the self-insurance group;

(iv) provision for power of attorney between the individual employers and the self-insurance group.

(e) a copy of the last two years' audited financial statements of each individual employer participating in the group and such copy must be submitted for any individual employer joining the group at any time after the group's mutual election;

(f) evidence that each employer in the group has been in business for a period of not less than five (5) years;

(g) evidence that the group had a combined minimum of 100 employees per year over the preceding two (2) years;

(h) a loss run and summary from insurance carriers who provided coverage to each employer in the group during the preceding four (4) years showing each individual claim, date of injury, type of injury, compensation and medical benefits paid to date and amount reserved for future liability;

(i) evidence that it has an insurance policy of specific excess and aggregate excess insurance with policy limits and retention amounts acceptable to the division, as required in ARM 24.29.702E. Excess insurance must be managed by a third-party administrator. Evidence must include the administrator's approved specific and aggregate self insurance retention and maximum policy limits;

(j) a surety bond in an amount as required in ARM 24.29.702C.

(k) evidence of its internal or contracted claims adjustment service in compliance with ARM 24.29.804;

(l) identification of the financial institution the group will use to deposit and withdraw funds for purposes of paying compensation;

(m) an explanation of how claims reserves will be established on each case and the method of review to assure accuracy and adequacy of the amount of the reserves;

(n) a composite listing of the estimated annual gross premium to be paid by each member of the association;

(o) a projection of administrative expenses for the first year of operation as an amount and as a percentage of the annual premium;

(p) evidence that the group has an effective safety and loss control program;

(q) evidence that internal policies and procedures are satisfactory to operate a group self-insurance program;

(r) resolution by each member authorizing participation in the program;

(s) resolution designating authorized signatures for participation in the program.

AUTH: 39-71-203, MCA, as amended by Sec. 5, Ch. 464, L. 1987;
AUTH EXT.: Sec. 4, Ch. 480, L. 1985;
IMP: 39-71-403, 39-71-2101, 39-71-2102, 39-71-2103, and 2106, MCA.

24.29.702H PERMISSION (1) When the division finds the employer or group of employers to have the necessary finances, proof of solvency and financial ability as required in ARM 24.29.702A, ~~and~~ security deposited with the division ~~if~~ as required, ~~and~~ proof of excess insurance as required in ARM 24.29.702E, and proof of compliance with requirements of ARM 24.29.702F or 24.29.702G, it will issue the employer or group of employers an order granting permission to carry on business as a self-insurer from the date the finding is made through the remaining portion of the fiscal year within which the election of this plan is made, or through the ensuing fiscal year when the employer or group of employers renews this election. An election under this plan is effective only for the period specified in the order or until the order is revoked in accordance with ARM 24.29.702L.

AUTH: 39-71-203, MCA, as amended by Sec. 5, Ch. 464, L. 1987;
AUTH EXT.: Sec. 4, Ch. 480, L. 1985;
IMP: 39-71-403, 39-71-2101, 39-71-2102, and 39-71-2103, MCA.

24.29.702I RENEWAL REQUIRED (1) An employer or group of employers who has effectively elected to be bound by plan no. 1 may renew the election for the next ensuing fiscal year, by meeting all the requirements of ARM 24.29.702 and 24.29.702A by April 30th each year.

(2) At any time the division receives a notification of change as required under (NEW RULE I), renewal may be required for the remainder of the fiscal year.

(3) If an employer or group of employers does not renew its election, the employer or individual employer of a group must elect to be bound by compensation plan no. 2 or plan no. 3.

AUTH: 39-71-203, MCA, as amended by Sec. 5, Ch. 464, L. 1987;
AUTH EXT.: Sec. 4, Ch. 480, L. 1985;
IMP: 39-71-403, and 39-71-2104, MCA.

24.29.702L SUSPENSION AND REVOCATION OF PERMISSION (1) The division will revoke its order granting permission to carry on business as a self-insurer after determining that the employer or group of employers no longer has the necessary financial resources and ability to pay the compensation, benefits and all liabilities

which have been or are reasonably likely to be incurred during the period the employer or group of employers has been a self-insurer and through the remaining fiscal year. The division may suspend the permission to operate as a self-insurer because of changes in status outlined under (NEW RULE 1) or on good cause shown pending a hearing and decision on whether the permission should be revoked. The division's revocation order is not effective unless contested case procedures have been conducted in accordance with ARM 24.29.207. An employer or individual employers of a group of employers whose permission to carry on business as a self-insurer has been revoked must elect to be bound by compensation plan no. 2 or plan no. 3 on the effective date of such revocation.

AUTH: 39-71-203, MCA, as amended by Sec. 5, Ch. 464, L. 1987;
AUTH EXT.: Sec. 4, Ch. 480, L. 1985;
IMP: 39-71-403, and 39-71-2105, MCA.

24.29.702M TERMINATION BY SELF-INSURER (1) Any employer or group of employers operating as a self-insurer under plan no. 1 which terminates its self-insurer status, or the self-insurer status of any or all of its subsidiaries, or members, for any reason, must notify the division in writing of its intent to terminate twenty (20) days before such termination. Until all liabilities have been discharged, a terminated employer or group of employers shall continue to be subject to the provisions of these rules regarding self-insurers. An employer, or individual employers of a group of employers, who terminates as a self-insurer, but continues to operate in business must elect to be bound by compensation plan no. 2 or plan no. 3 on the termination.

AUTH: 39-71-203, MCA, as amended by Sec. 5, Ch. 464, L. 1987;
AUTH EXT.: Sec. 4, Ch. 480, L. 1985 and Sec. 69, Ch. 464, L. 1987;
IMP: 39-71-403, 39-71-2101 through 39-71-2109, MCA.

NEW RULE I NOTIFICATION OF CHANGES (1) The self-insured employer or group of employers shall notify the insurance compliance bureau, division of workers' compensation in writing

(a) 30 days prior to implementing changes that may affect its self-insurance status including but not limited to:

(i) ownership or membership,
(ii) name,
(iii) legal status,
(iv) numbers or locations of employees covered in Montana self-insurance program, or

(v) other changes in the policies, procedures or administration of its self-insurance program;

(b) within 30 days of:

(i) adverse change in financial status,

(ii) significant increase in liabilities, or

(iii) reductions, shutdowns, suspensions, closures or strikes of Montana operations.

AUTH: 39-71-203, MCA, as amended by Sec. 5, Ch. 464, L. 1987;

AUTH EXT.: Sec. 4, Ch. 480, L. 1985 and Sec. 69, Ch. 464, L. 1987;

IMP: 39-71-403, and 39-71-2101 through 39-71-2109, MCA.

4. The rationale for adopting and amending the above-referenced rules is to clarify requirements for certification and review of self-insurers in order to assure that workers' compensation benefits will be properly paid to injured workers. The rules 24.29.702B and 24.29.702C are also being amended to conform with the mandatory deposit requirements established in the amendment of 39-71-2106, MCA, by Section 51 of Chapter 464 of Laws of 1987.

5. The adoption and amendment of these rules is authorized by Section 39-71-203, MCA, as amended by Section 5 of Chapter 464 of Laws of 1987 and extended by Section 69 of Chapter 464 of laws of 1987. These rules implement Sections 39-71-403 and 39-71-2101 through 39-71-2109, MCA.

6. Steven J. Shapiro, Chief Legal Counsel of the Division acting as Hearing Examiner, will preside over and conduct the hearing.

7. Interested parties may submit their data, views or arguments concerning these changes either orally or in writing at the hearing. Written arguments, views or data may also be submitted to Steven J. Shapiro, Chief Legal Counsel, Workers' Compensation Division, 5 South Last Chance Gulch, Helena, Montana, 59601, no later than November 27, 1987.

ROBERT J. ROBINSON
Administrator

CERTIFIED TO THE SECRETARY OF STATE: October 19, 1987.

BEFORE THE DEPARTMENT OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the amendment of rules 32.3.1203, 32.3.1204 and 32.3.1207 for the purpose of updating rabies procedures.	))))	NOTICE OF PROPOSED AMENDMENT OF RULES 32.3.1203, 32.3.1204 AND 32.3.1207 "RABIES" NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On November 29, 1987 the Board of Livestock proposes to amend rules 32.3.1203, 32.3.1204, and 32.3.1207.

2. The proposed amendments provide as follows:

32.3.1203 ISOLATION OF RABID OR SUSPECTED RABID ANIMALS

(1) Any rabid or clinically suspected rabid animal must be isolated in strict confinement under proper care and under observation of a deputy state veterinarian, in a pound, veterinary hospital, or other adequate facility in a manner approved by the state veterinarian ~~and may not be killed or released for at least 10 days after onset of symptoms suggestive of rabies~~. If professional veterinary evaluation warrants, the animal may be humanely destroyed and brain or other appropriate tissues handled in accordance with 32.3.1207. The animal may be handled in accordance with the NASPHV Compendium of Animal Rabies Control or other subsequently developed scientifically acceptable procedure recognized by the National Association of State Public Health Veterinarians, Inc. (NASPHV).

Auth: 81-2-102, MCA IMP: 81-2-102, MCA

32.3.1204 ISOLATION OF BITING ANIMALS

(1) Upon consideration of the discretion and advice of the local health officer, any animal which bites or otherwise exposes a person may be isolated in strict confinement in a place and manner described in ARM 32.3.1203 and observed for at least 10 days after the day of infliction of the bite.

(2) remains the same.

(3) If any sign of illness develops in the isolated animal it is to be evaluated by a deputy state veterinarian and if in his judgment it is warranted, the animal may be humanely destroyed and the brain or other suitable tissue tested in a qualified laboratory for rabies. Any stray or unwanted wild or domestic animal that bites a person may be killed immediately and the head submitted to a laboratory for a rabies examination.

Auth: 81-2-102, MCA IMP: 81-2-102, MCA.

32.3.1207 LABORATORY EXAMINATION REQUIRED

(1) ~~Brains~~ Brain or other appropriate tissues of animals which have been destroyed because of suspected rabies or those which have died from suspected rabies must be forwarded, in an approved manner, immediately to ~~the Montana department of~~

~~livestock, animal health division, diagnostic laboratory at Bozeman~~ a qualified laboratory to have tests for rabies applied.

Auth: 82-2-102 IMP: 82-2-102

3. These amendment(s) are being proposed because of the seriousness of the disease and because of the need to allow for and to contemplate scientific advances in the detection areas of the disease.

4. Interested parties may submit their data, views or arguments concerning the proposed amendments in writing to Les Graham, Executive Secretary to the Board of Livestock, Capitol Station, Helena, Montana 59620, no later than November 28, 1987.

5. If a person who is directly affected by the proposed rules 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 Les Graham, Executive Secretary to the Board of Livestock, no later than November 28, 1987.

6. If the Board receives requests for a public hearing on the proposed amendment(s) from either 10% or 25, whichever is less, of those persons who are directly affected by the proposed amendment(s), 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 hearing will be published in the Montana Administrative Register.

Nancy Espy, Chairman
Board of Livestock

BY: Les Graham
Les Graham, Executive Secretary
To the Board of Livestock

Certified to the Secretary of State October 19, 1987.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION) of Rules I through VIII) relating to Purchasing &) Distribution of Liquor &) Table Wine Products.)	NOTICE OF PUBLIC HEARING on the PROPOSED ADOPTION of Rules I through VIII relating to Purchasing & Distribution of Liquor & Table Wine Products.

TO: All Interested Persons:

1. On November 23, 1987, at 10:00 a.m., a public hearing will be held in the Fourth Floor Conference Room of the Mitchell Building, at Helena, Montana, to consider the adoption of rules I through VIII, relating to purchasing and distribution of liquor and table wine products.

2. The proposed rules I through VIII do not replace or modify any section currently found in the Administrative Rules of Montana.

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

RULE I DEFINITIONS (1) As used in this subchapter, the following definitions apply:

(a) "Annual net profit" means a product's net profit per unit multiplied by the product's units of sale for a 12-month period. The net profit per unit is calculated by subtracting from the most recent retail selling price of a product as determined in ARM 42.11.104, the cost of goods (vendor's product price and freight), liquor division expenses, and taxes. Liquor division expenses are allocated to each product on a fixed amount per liter plus a percentage overhead on the cost of goods.

(b) "Delist" means to remove a product from all but the "special order" categories of availability that are designated in Rule III.

(c) "List" means to establish a product's availability according to one of the classifications in Rule III.

(d) "Product" means a unique brand of liquor or table wine in one bottle size, differentiated from other products of the same brand and size by vendor's price, weight or product bottle shape.

(2) Other words and phrases used in these rules shall have the meaning ascribed to them in the Administrative Rules of Montana, Title 42, Chapter 11, as amended, or the Montana Alcoholic Beverage Code, as amended, and if not defined therein have their usual and customary meaning. AUTH, Sec. 16-1-303 MCA; IMP, Secs. 16-1-103, 16-1-104 and 16-1-302 MCA.

RULE II POLICY (1) Any liquor or table wine product that the department can obtain without prohibitive inventory investment or freight charges will be made available for sale through state liquor stores in a manner consistent with the demand for and profitability of each product and consistent with

distribution limitations established in the alcoholic beverage code.

(2) Notwithstanding any other criteria in this subchapter, products which are packaged, labeled or advertised in a manner that tends to blur the distinction between alcoholic and nonalcoholic products by emphasizing the features that are normally associated with nonalcoholic products and minimizing their alcoholic content will not be made available for sale. AUTH, Sec. 16-1-303 MCA; IMP, Secs. 16-1-103, 16-1-104 and 16-1-302 MCA.

RULE III PRODUCT AVAILABILITY (1) Liquor and table wine products will be made available for sale in the following classifications:

(a) A "regular" product or a "test market" product will be so designated in the liquor division's quarterly price list, have sufficient supply maintained in the warehouse to fill orders with no more than 3% back orders in a month (unless the vendor or transporter causes a shortage), and be eligible for at least one facing on state liquor store shelves depending on demand for the product in a store and alcoholic beverage code distribution limitations for table wine.

(b) A "variable supply" product will be so designated in the liquor division's quarterly price list, will have supply maintained in the warehouse on a limited basis with no commitment to a minimum service level, and will be eligible for no more than one facing on selected state liquor shelves depending on demand for the product in a selected store and alcoholic beverage code distribution limitations for table wine.

(c) A "special order" product will not be published in the liquor division's quarterly price list, will not have supply maintained in the warehouse but will only be available on an order-by-order basis, and will not be placed on any state liquor store shelves but will only be sold by the case as arranged in the special order.

(d) A "warehouse supply" product will be so designated in the liquor division's quarterly price list, will have supply maintained in the warehouse to satisfy approximately 12 single bottle requests per month with no commitment to a minimum service level, and will not be placed on any state liquor store shelves but will only be sold through the state liquor store as specified on the store order form.

(e) A "seasonal" product will not be published in the liquor division's quarterly price list but will be noticed in a supplemental requisition for merchandise, will not have supply maintained in the warehouse but will have orders distributed to state liquor stores to meet the estimated seasonal demand, and will be eligible for shelf and/or floor display in state liquor stores depending on expected demand for the product in a store.

(f) A "promotional" product will not be published in the liquor division's quarterly price list but will be noticed in a supplemental requisition for merchandise, will not have supply maintained in the warehouse but will only be received and shipped in the quantity approved for the promotion, and will be eligible for shelf and/or floor display in state liquor stores in the quantity and for the period approved for the promotion.

(g) A "collectible" product will be so designated in the liquor division's quarterly price list, will be purchased for limited distribution in less-than-full-case quantities to provide access to collectors based upon past sales histories to similarly designed collectibles with no commitment to a minimum service level, and will be eligible for shelf display in state liquor stores depending on expected demand for the product in a store. AUTH, Sec. 16-1-303 MCA; IMP, Secs. 16-1-103, 16-1-104 and 16-1-302 MCA.

RULE IV PRODUCT LISTING (1) A product will be listed or retained as a "regular" product if it meets the minimum sales standards in RULE V unless it only meets those standards temporarily as a result of closeout or overstock sales in accordance with RULE VII.

(2) A product will be listed as a "test market" product if the liquor division receives a written proposal that:

(a) is for a product that has not been listed as a "regular" product or submitted as a proposed "test market" product during the 3 years prior to receipt of the proposal and is not for a product in the 50 milliliter size;

(b) is submitted by a vendor who has a Montana vendor permit in accordance with ARM 42.11.213 and has at least one representative registered in accordance with ARM 42.11.205 and 42.11.211;

(c) convincingly demonstrates that the product can be reasonably expected to meet the minimum sales standards in RULE V within 18 months of the listing's effective date;

(d) convincingly demonstrates that the vendor and the vendor's registered representative have enough resources to carry out the proposed promotion, taking into consideration promotional and maintenance responsibilities for other products;

(e) has no major obstacles to merchandising the product;

(f) is approved according to procedures in RULE VI; and

(g) provides the following information for each product by bottle size:

(i) a complete standard quotation and specification form signed by the vendor or an officer of the vendor which references the National Alcoholic Beverage Control Association control state code for the product, makes the price firm for the first 3 months following the effective date of the listing, and provides an agreement that subsequent price increases will be noticed not less than 60 days prior to the price list effective date;

(ii) a list of the test market locations proposed for the new product and the expected initial order amount at each location;

(iii) a description of the promotions specific to each location that the vendor and the vendor's registered representative will undertake during the 18-month test market period; and

(iv) any information that the vendor or its registered representative has to convincingly demonstrate that the listing requirements in (c) and (d) will be met.

(3) A product will be listed as a "variable supply" product if it is not listed as a "regular" product or a "test market" product but has a sales volume higher than can be efficiently

managed under the "special order", "warehouse supply", "seasonal" or "promotional" classifications.

(4) A product will be listed as a "special order" product if the product is not listed in another classification other than as a "warehouse supply" product, and a state liquor store manager or agent has submitted a special order retail price request or special order form with an agreement signed by a customer to pay for the entire quantity ordered on delivery.

(5) A product will be listed as a "warehouse supply" product if it is not listed in another classification other than as a "special order" product, can be reasonably expected to achieve one turn of inventory in a year or the warehouse already holds a case or more of the product, and is approved according to procedures in RULE VI.

(6) A product will be listed as a "seasonal" product if it has met or it can be convincingly demonstrated that the product can be reasonably expected to meet the minimum seasonal sales standard in RULE V by the close of the coming sales season and:

(a) the vendor has provided a picture and complete description along with the standard quotation and specification form signed by the vendor or an officer of the vendor, which is completed for the proposed product, references the National Alcoholic Beverage Control Association control state code, and makes the price firm for the first 3 months following the effective date of the listing;

(b) there are no major obstacles to merchandising the product; and

(c) the product is approved according to procedures in RULE VI.

(7) A liquor product will be listed as a "promotional" product if the liquor division receives a written proposal that:

(a) is for a liquor product that is in the 50, 200, or 375 milliliter sizes, and has a larger size listed as a "regular" product or as a "test market" product;

(b) is submitted by a vendor who has a Montana vendor permit in accordance with ARM 42.11.213 and has at least one representative registered in accordance with ARM 42.11.205 and 42.11.211;

(c) convincingly demonstrates that the product can be reasonably expected to improve the sales of the larger size product by the close of the promotional period;

(d) convincingly demonstrates that the vendor and the vendor's registered representative have enough resources to carry out the proposed promotion, taking into consideration promotional and maintenance responsibilities for other products;

(e) has no major obstacles to merchandising the product;

(f) is approved according to procedures in RULE VI; and

(g) provides the following information for each product by bottle size:

(i) a completed standard quotation and specification form signed by the vendor or an officer of the vendor which references the National Alcoholic Beverage Control Association control state code for the product, makes the price firm for the first 3 months following the effective date of the listing, and provides

an agreement that subsequent price increases will be noticed not less than 60 days prior to a price list effective date;

(ii) a list of the test market locations proposed for the new product and the expected initial order amount at each location;

(iii) a description of the promotions specific to each location that the vendor and the vendor's registered representative will undertake during the 18-month test market period; and

(iv) any information that the vendor or its registered representative has to convincingly demonstrate that the listing requirements in (c) and (d) will be met.

(8) A liquor product that is designed as a collector's item will be listed as a "collectible" product if it can be convincingly demonstrated that the product can be reasonably expected to achieve one turn of inventory in a year, there are no major obstacles to merchandising the product, the product is approved according to procedures in Rule VI, and

(a) the vendor has provided a picture or brochure which contains a complete and authentic description of the container and a standard quotation and specification form signed by the vendor or an officer of the vendor, which is completed for the proposed product, references the National Alcoholic Beverage Control Association control state code, makes the price firm for the first 3 months following the effective date of the listing, or

(b) a state liquor store manager or agent has submitted a special order retail price request and special order form with an agreement signed by a customer to purchase one of the "collectibles" on delivery. AUTH, Sec. 16-1-303 MCA; IMP, Secs. 16-1-103, 16-1-104 and 16-1-302 MCA.

RULE V MINIMUM SALES STANDARDS (1) To be listed as a "regular" product, a liquor or table wine product must achieve 100 cases of sales or $1,000 annual net profit in the 12-month period prior to preparation to publish the liquor division's quarterly price list.

(2) To be listed as a "seasonal" product, a liquor or table wine product must have achieved 25 cases of sales or $250 annual net profit in the 3-month sales season prior to preparation for publication of the liquor division's quarterly price list applicable to the coming sales season or be projected to achieve these amounts in the coming season. AUTH, Sec. 16-1-303 MCA; IMP, Secs. 16-1-103, 16-1-104 and 16-1-302 MCA.

RULE VI PRODUCT APPROVAL PROCEDURES (1) A liquor division listing committee is established for the purpose of reviewing written product proposals for "test market", "seasonal", "promotional", "warehouse supply" and "collectible" products as required in RULE IV and recommending to the liquor division administrator their approval or denial according to criteria in RULE IV.

(a) The committee is composed of the liquor division assistant administrator, stores bureau chief, warehouse bureau chief, purchasing and distribution bureau chief, and one representative from the Montana tavern association.

(b) The assistant administrator shall chair committee meetings, assure full consideration is given to each proposal in light of criteria in RULE IV, and bring the committee to a consensus decision about each proposal.

(c) The purchasing and distribution bureau chief shall receive all proposals to be considered by the committee and submit to the committee only those that are complete according to the requirements in RULE IV. The purchasing and distribution bureau chief shall also prepare an independent analysis of each proposal that is accepted as complete in which the probable effects on inventory, sales, and variety of products in the system are explained.

(d) The stores bureau chief shall prepare an independent analysis of each proposal that is accepted as complete in which the probable effects on merchandising in stores and by retail licensees will be explained. In preparation of the report, the stores bureau chief will consult with a representative sample of store managers, agents, and retail licensees.

(e) The listing committee will meet regularly once a month on the last Monday of the month (or the following working day if that is a holiday) unless the assistant administrator determines that there are no product proposals ready for review. A product proposal shall be deemed ready for review after the independent analysis required in (c) and (d) are completed and the purchasing and distribution bureau chief has submitted the proposal to each listing committee member 2 working days in advance of the meeting. The assistant administrator may call a special meeting of the listing committee when extraordinary circumstances require consideration of listing a "seasonal", "promotional", "warehouse supply", or "collectible" product.

(2) Any proposals which require listing committee review that are received too late for the purchasing and distribution bureau chief or the store's bureau chief to adequately prepare for the next meeting shall be held over to the following meeting.

(3) When determining whether a listing proposal has convincingly demonstrated that the requirements in Rule IV will be met, the listing committee shall consider the factors in (a) through (e):

(a) the product's sales history elsewhere in the United States;

(b) the vendor's or vendor's registered representative's written explanation of why the product should do well in Montana;

(c) the projected sales by month for the first two years following the proposed listing's effective date, with the projection differentiated for sales to licensees and walk-in trade at state liquor stores;

(d) the product's expected impact on the market share of other products in the proposed product's sales category by the close of the 18-month test market period; and

(e) the product's placement in test market locations, the initial order amount for each location, and the vendor's planned product promotions for each location.

(4) If a majority of the listing committee determines during its review that additional information is needed before a consensus can be reached, the approval process will be suspended until the assistant administrator can solicit and obtain the information. The approval process will resume when the assistant administrator determines that the information has been obtained or is not readily available; and

(5) If a majority of the listing committee determines during its review that the vendor's proposal did not provide sufficient information to determine whether the proposal convincingly demonstrated that the requirements in Rule IV will be met and could have been reasonably expected to do so, the assistant administrator shall return the proposal to the vendor or the vendor's registered representative with instructions about what deficiencies must be overcome before the committee will consider the proposal.

(6) Proposals which require approval in RULE IV shall be approved if the liquor division listing committee reaches a consensus that the written proposal meets all of the criteria in RULE IV or shall be disapproved if the committee reaches a consensus that one or more of the criteria were not met and if the liquor division administrator concurs. If the committee cannot reach a consensus, the administrator shall review the proposal and decide.

(7) The purchasing and distribution bureau chief shall implement the results of the approval process by notifying the vendor's representative in writing concerning the disposition of a proposal or the requesting state liquor store manager or agent concerning the disposition of a "warehouse supply" or "collectible" order and, if approved, shall publish the product's listing in the liquor division's quarterly price list.

(8) The effective date of a new listing is the effective date of the next liquor division quarterly price list that will be published 60 days or more after a new product is approved. Quarterly price list effective dates are February 1, May 1, August 1, or November 1. AUTH, Sec. 16-1-303 MCA; IMP, Secs. 16-1-103, 16-1-104 and 16-1-302 MCA.

RULE VII DELISTING, REVISED LISTING, CLOSEOUT AND OVERSTOCK

(1) A listed product that no longer meets the minimum sales standard in RULE V will be listed in a classification commensurate with its sales volume unless the sales volume is projected to be less than that for a "warehouse supply" product, in which case the product will be delisted and closed out in accordance with ARM 42.11.104(6).

(2) A product that a vendor discontinues and is not marketed by another vendor will be delisted and closed out in accordance with ARM 42.11.104(6).

(3) Inventory in excess of the projected 12 months of sales for a product will be treated as overstock in accordance with ARM 42.11.104(6).

(4) The effective date of a delisting, revised listing, closeout sale or overstock sale is as soon as written notice can be disseminated to state liquor stores. AUTH, Sec. 16-1-303 MCA; IMP, Secs. 16-1-103, 16-1-104 and 16-1-302 MCA.

RULE VIII TRANSITIONAL RULE (1) For the purpose of phasing in the removal of a product from the "regular" category, the annual net profit for a product shall be:

(a) $250 for the liquor division price list that will be effective on February 1, 1988 and May 1, 1988;

(b) $500 for the liquor division price list that will be effective on August 1, 1988 and November 1, 1988;

(c) $750 for the liquor division price list that will be effective on February 1, 1989 and May 1, 1989; and

(d) as in RULE V for the liquor division price list that will be effective on August 1, 1989 and for each price list thereafter.

(2) For purposes of listing new products, the annual net profit in RULE V shall be effective for the liquor division price list that follows the effective date of this rule. AUTH, Sec. 16-1-303 MCA; IMP, Secs. 16-1-103, 16-1-104 and 16-1-302 MCA.

4. The Department is proposing rules I through VIII for the following reasons:

Rule I is necessary to define terms unique to this subchapter. This will avoid confusion about the terms when they appear in several places in the other rules.

Rule II is a rule regarding department policy concerning the purchasing and distributing of products which provides the basis used to define the other rules and controls their meaning if there is any question of interpretation or intention.

Rule III is necessary in order to keep product inventory at a level and in a location commensurate with demonstrated sales volume or profitability. Several distribution categories for making products available to the public are defined.

Rules IV and V are necessary to define for vendors, store managers/agents, licensees or members of the public the requirements and criteria that are used to make a product available.

Rule VI is necessary to describe for interested parties the procedures that will be used to determine whether or not a new product will be approved for distribution.

Rule VII is necessary to describe for interested parties the method of adjusting a product's distribution in response to declining sales volume or profitability.

Rule VIII is necessary because without it more products would be closed out than is intended. Phasing in the annual net profit criteria will mitigate the impact of closeout and overstock sales on other products. Phasing in the delisting or revised listing of products over a year and one-half period is considered a reasonable transition period to minimize the impact on products with good demand and still clear the system of excess inventory.

5. 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:

Cleo Anderson
Department of Revenue
Office of Legal Affairs
Mitchell Building
Helena, Montana 59620

no later than November 27, 1987.

6. Eric J. Fehlig, Tax Counsel, Department of Revenue has been designated to preside over and conduct the hearing.

JOHN D. LaFAVER, Director
Department of Revenue

Certified to Secretary of State 10/19/87.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE REPEAL of ARM 42.6.101 through 42.6.108 and PROPOSED ADOPTION of Rule I relating to the Scale of Suggested Minimum Contributions for Child Support)	NOTICE OF PUBLIC HEARING on the PROPOSED REPEAL of ARM 42.6.101 through 42.6.108 and PROPOSED ADOPTION of Rule I relating to the Scale of Suggested Minimum Contributions for Child Support.

TO: All Interested Persons:

1. On December 2, 1987, at 1:00 p.m., a public hearing will be held in the Fourth Floor Conference Room of the Mitchell Building, at Helena, Montana, to consider the repeal of ARM 42.6.101 through 42.6.108 and the adoption of rule I, relating to the Scale of Suggested Minimum Contributions for Child Support.

2. The proposed rules to be repealed are on pages 42-605 through 42-608 of the Administrative Rules of Montana.

3. The department proposes to repeal these rules because they wish to adopt the Child Support Guidelines approved and adopted by the Montana Supreme Court on January 13, 1987.

4. Rule I as proposed by the department provides as follows:

RULE I SCALE OF SUGGESTED MINIMUM CONTRIBUTIONS (1) For guidance in establishing the periodic payments that parents should be expected to contribute toward the support of their children, the Department of Revenue will use the Child Support Guidelines approved and adopted by the Montana Supreme Court in Order number 86-223, on January 13, 1987. These guidelines are hereby adopted and incorporated by reference. The Child Support Guidelines have been published in 44 State Reporter 828.

(2) A copy of the Child Support Guidelines may be obtained from the Child Support Enforcement Bureau, Old Livestock Building, Helena, Montana 59620. AUTH, Sec. 40-5-202(9) MCA; IMP, Secs. 40-5-214, 40-5-226(4) and 40-5-226(8) MCA.

5. The proposed rule is necessary to comply with the recommendation of the Montana Supreme Court that all judges and officials use the Child Support Guidelines as adopted by the Supreme Court on January 13, 1987. The Supreme Court allowed a six month comment period before the guidelines would actually become final. That comment period ended on July 13, 1987. The Court did receive comments during this six month period. However, the department understands that at this time the Court does not plan to make any changes to the guidelines based on the comments which were received.

This rule will bring the department into conformity with the district courts of the state which are currently using the guidelines.

6. 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:

Cleo Anderson
Department of Revenue
Office of Legal Affairs
Mitchell Building
Helena, Montana 59620

no later than December 7, 1987.

6. Eric J. Fehlig, Tax Counsel, Office of Legal Affairs, Department of Revenue, has been designated to preside over and conduct the hearing.

JOHN D. LaFAVER, Director
Department of Revenue

Certified to Secretary of State 10/19/87.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION) of Rule I relating to Earned) Income for the Income Tax) Division.)	NOTICE OF PROPOSED ADOPTION of Rule I relating to Earned Income for the Income Tax Division.

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On November 28, 1987, the department proposes to adopt rule I, relating to earned income.

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

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

RULE I EARNED INCOME DEFINITION (1) In general the term "earned income" means:

(a) Wages, salaries, or professional fees, and other amounts received as compensation for personal services actually rendered; plus

(b) The amount of the taxpayer's net earnings from a trade or business which is wholly or partially subject to the federal self employment tax. AUTH, Sec. 15-30-305 MCA; IMP, Sec. 15-30-131 MCA.

4. The Department proposes to adopt rule I to define what earned income is for Montana purposes.

Rule I is necessary to explain what income is considered earned income for nonresidents since the statute allows certain nonresidents to prorate their itemized deductions according to the ratio that the taxpayer's Montana earned income bears to their federal earned income. State law ties the definition of earned income to a federal law that has been renumbered and that references other federal laws. Hence, state law does not provide a plain English definition of earned income for Montana purposes. Without a clear definition of earned income, itemized deductions allowed a nonresident are often miscalculated. Correcting the miscalculations incurs state administrative costs and imposes inconveniences on taxpayers. A rule will aid in preventing these problems. The definition of earned income above follows Internal Revenue Code, Section 32 with references to Internal Revenue Code, Section 1402(a). Section 32 is the renumbered Internal Revenue Code, Section 43, referenced in Montana law.

Example: Items which are subject to the self employment tax and are considered "earned income" are:

1. Sole proprietorship income
2. General partnership income
3. Farm income

Items which would not qualify as "earned income" are:

1. Dividends
2. Interest
3. Rental income from real estate
4. Limited partnership income
5. Sub-chapter S income

5. Interested parties may submit their data, views, or arguments concerning the proposed adoption in writing to:

Cleo Anderson
Department of Revenue
Office of Legal Affairs
Mitchell Building
Helena, Montana 59620

no later than November 27, 1987.

6. If a person who is directly affected by the proposed adoption wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Cleo Anderson at the above address no later than November 27, 1987.

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

JOHN D. LaFAVER, Director
Department of Revenue

Certified to Secretary of State 10/19/87.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION of Rules I through XI relating to Water's-Edge Election for Multinational Corporations for Corporation Taxes.	NOTICE OF PUBLIC HEARING on the PROPOSED ADOPTION of Rules I through XI relating to Water's-Edge Election for Multinational Corporations for Corporation Taxes.

TO: All Interested Persons:

1. On November 19, 1987, at 9:00 a.m., a public hearing will be held in Fourth Floor Conference Room of the Mitchell Building, at Helena, Montana, to consider the adoption of rules I through XI relating to Water's-Edge Election for Multinational Corporations for the Natural Resource and Corporation Tax Division of the Department of Revenue.

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

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

RULE I WATER'S-EDGE ELECTION (1) Only multinational corporations subject to the Montana corporate license tax may apportion income under a water's-edge, unitary combination method as set forth in 15-31-322, MCA. AUTH, Sec. 15-31-501 MCA, AUTH Extension, Sec. 9, Ch. 616, L. 1987, Eff. 10/1/87; IMP, Sec. 15-31-322 MCA.

RULE II DEFINITIONS (1) As used in these rules and 15-31-322, et seq., MCA, "unitary relationship" means a relationship between members of the water's-edge combined group sufficient to satisfy the definition of a "unitary business" pursuant to 15-31-301, MCA. AUTH, Sec. 15-31-501 MCA, AUTH Extension, Sec. 9, Ch. 616, L. 1987, Eff. 10/1/87; IMP, Sec. 15-31-322 MCA.

RULE III APPORTIONMENT FACTORS (1) For purposes of 15-31-322, MCA, the assignment of payroll and property is determined under the individual states' laws and regulations that set forth the apportionment formulas used to assign net income subject to taxes on or measured by net income. If a state does not impose a tax on or measured by net income, assignment is determined under this chapter.

(2) The apportionment provisions of Part 3 of Title 15, Chapter 31 and related regulations regarding the inclusion, valuation, and attribution of apportionment factors by location shall apply to the computation of Montana tax liability under a water's-edge election. Only property, payroll, and sales of corporations actually included in the water's-edge combined group shall be considered. AUTH, Sec. 15-31-501 MCA, AUTH Extension, Sec. 9, Ch. 616, L. 1987, Eff. 10/1/87; IMP, Sec. 15-31-323 MCA.

RULE IV WATER'S-EDGE ELECTION (1) To perfect a water's-edge election a taxpayer must file a written election with the department within the first 90 days of the tax year for which the election is to become effective. If the first tax period for which the election is to become effective is less than 90 days, the taxpayer will have until the end of the tax period to file the election. The written election shall be filed on forms provided by the department. The election form must disclose the taxpayer's identity and a complete listing of all affiliates owned in excess of 50%.

(2) Each election is binding for a 3 year renewable period and may only be revoked upon express written permission of the Department. AUTH, Sec. 15-31-501 MCA, AUTH Extension, Sec. 9, Ch. 616, L. 1987, Eff. 10/1/87; IMP, Sec. 15-31-324 MCA.

RULE V REVOCATION OR NON RENEWAL OF WATER'S-EDGE ELECTIONS (1) In granting a change in election, the department shall impose reasonable conditions necessary to prevent the avoidance of tax or clearly reflect income for the period the election was in effect. These conditions may include a requirement that income may require adjustment in the year the election is changed. These adjustments may involve the inclusion of dividends paid from income earned while a water's-edge election was in effect, which would have been included in determining the income of the taxpayer but for the existence of the water's-edge election. AUTH, Sec.15-31-501 MCA, AUTH Extension, Sec. 9, Ch. 616, L. 1987, Eff. 10/1/87; IMP, Sec. 15-31-324 MCA.

RULE VI DISREGARDING OR MODIFYING A WATER'S-EDGE ELECTION (1) A water's-edge election may be disregarded by the department if the corporation fails to comply substantially with the requirement to file domestic disclosure spreadsheets as required in Rule IX.

(2) The corporations includible in a water's-edge election may be modified by the department for the inclusion of additional unitary corporations as described in 15-31-322 MCA or the exclusion of non-unitary corporations. The modification cannot require the inclusion of any corporations not described in 15-31-322 MCA.

(3) The calculation of water's-edge combined income may be modified to reflect adjustments to transfer prices, royalty rates, allocation of common expenses, and similar adjustments necessary to reflect a proper apportionment of income. In the instance of a carry-forward of a net operating loss deduction from a period in which no water's-edge combination was filed, such loss must be computed on a basis consistent with the year to which the loss is carried.

(4) In calculating water's-edge combined apportionable income, transactions between or among any member of the water's-edge combined group and any other nonincluded affiliated corporation, whether domestic or foreign, must be restored if eliminated in the computation of federal net income of the water's-edge combined group. AUTH, Sec. 15-31-501 MCA, AUTH Extension Sec. 9,

Ch. 616, L. 1987, Eff. 10/1/87; IMP., Secs. 15-31-301, 15-31-322, 15-31-326 and 15-31-505 MCA.

RULE VII CERTAIN CORPORATIONS INCLUDABLE IN A WATER'S-EDGE COMBINED RETURN (1) Domestic International Sales Corporations (DISC) as defined in sections 991 through 994 of the Internal Revenue Code, and Foreign Sales Corporations, as defined in sections 921 through 927 of the Internal Revenue Code are included in a water's-edge return. DISC's are specifically taxable not withstanding the general exemptive language of 15-31-102, MCA.

(2) Foreign corporations if over 50% of the voting stock is owned directly or indirectly by a member of the includable group and if more than 20% of the average of its payroll and property is assignable to a location inside the United States are included in a water's-edge return. For purposes of computing this average the payroll factor provided for by 15-31-308, MCA, and the property factor as provided for by 15-31-306, MCA, shall be added together and divided by two, or by one if the denominator of either the property or payroll factor is zero. AUTH, Sec. 15-31-501 MCA, AUTH Extension, Sec. 9, Ch. 616, L. 1987, Eff. 10/1/87; IMP, Sec. 15-31-322 MCA.

RULE VIII TREATMENT OF DIVIDENDS FOR PURPOSES OF A WATER'S-EDGE COMBINED RETURN (1) Eighty percent of the dividends apportionable under this section are to be excluded from income subject to apportionment where:

(a) dividends received from foreign corporations, taxable for federal purposes, are considered to be income subject to apportionment;

(b) amounts included in income under sections 951 through 962 and 964 of the Internal Revenue Code are considered taxable foreign dividends;

(c) the after tax net income of United States corporations excluded from eligibility as affiliated corporations under Rule VII and possession corporations defined in sections 931 through 934 and 936 of the Internal Revenue Code, is considered to be a dividend for purposes of this section;

(i) In calculating the after tax net income, where the corporation is included in a federal consolidated income tax return, the consolidated tax liability shall be apportioned among the members of the group in accord with the ratio which that portion of the consolidated taxable income attributable to each member of the group having positive taxable income, bears to the total consolidated taxable income of all companies in the consolidated group having positive taxable income.

(ii) Where such corporations have no net income for the taxable year in question, the amount to be included as dividends received from corporations outside the United States shall equal zero.

(d) dividends between members in the water's-edge combinable group are eliminated from the calculation of apportionable income;

(e) Deemed dividend distributions pursuant to section 78 of the Internal Revenue Code are excluded from the calculation of apportionable income; and

(f) The limited inclusion of dividend income specified in this section is in lieu of attempts to allocate expenses attributable to the generation of such dividend income. For apportionment factor purposes only the dividend income considered to be business income shall be included in the receipts factor numerator or denominator as appropriate. AUTH, Sec. 15-31-501 MCA, AUTH Extension Sec. 9, Ch. 616, L. 1987, Eff. 10/1/87; IMP, Sec. 15-31-325 MCA.

RULE IX DOMESTIC DISCLOSURE SPREADSHEET (1) Electing corporations must file the domestic disclosure spreadsheet within 6 months of filing the federal income tax return. The disclosure spreadsheet filing must be accomplished on forms proscribed by the department. AUTH, Sec. 15-31-501 MCA, AUTH Extension Sec. 9, Ch. 616, L. 1987, Eff. 10/1/87; IMP, Sec. 15-31-326 MCA.

RULE X TAX RATES (1) Corporations electing a water's-edge filing method shall pay tax at the rate of 7% of their Montana Taxable Net Income. AUTH, Sec. 15-31-501 MCA, AUTH Extension Sec. 9, Ch. 616, L. 1987, Eff. 10/1/87; IMP, Sec. 15-31-121 MCA.

RULE XI APPLICABILITY (1) Water's-edge combinations as provided for in 15-31-322 MCA, are available to qualifying corporations for years beginning on or after January 1, 1988. AUTH, Sec. 15-31-501 MCA, AUTH Extension Sec. 9, Ch. 616, L. 1987, Eff. 10/1/87; IMP, Sec. 11, Ch. 616, L. 1987.

4. The Department is proposing rules I through XI for the following reasons:

Rule I is necessary to clarify that chapter 616 applies only to corporations that have multinational activities. A water's-edge election is not relevant to corporations which do not have activities beyond the water's-edge as defined in the law.

Rule II is necessary to clarify that Chapter 616, L. 1987 did not change the definition of a unitary relationship but rather changed how the apportionment formula can be applied to that operation.

Rule III is necessary to clarify the fact that the individual state laws in which a corporation conducts business shall be used in determining whether that corporation has at least 20% of its property and payroll in the United States. The rule also provides that the standard 3 factor apportionment formula and the related regulations shall be used in determining the Montana tax liability for those companies included in a water's-edge combined group. These rules follow the standard apportionment procedure under Montana law.

Rule IV is necessary to clarify when a water's-edge election must be filed with the department, what form such election must take, and how an election may be either renewed or revoked. The rule states that the taxpayer has 90 days in which to file an election. Allowing a taxpayer 90 days in which to file an election was determined by the department to be a reasonable length of time for filing such an election and is consistent with the federal policy of requiring various types of elections to be filed at the beginning of the tax year for which it is to become effective. Also, the 90 day period is reasonable since the election is only binding on the taxpayer for 3 years.

Rule V is necessary to clarify the conditions under which an election may be revoked by a taxpayer. The primary purpose of this rule is to establish the fact that no tax benefit shall be granted to a taxpayer that wishes to withdraw from a previously agreed upon 3 year election period.

Rule VI is necessary to clarify the conditions under which a water's-edge election may either be disregarded or modified by the department. The only time the department can disregard an election is when the taxpayer fails to comply with the spreadsheet disclosure requirements as set forth in the law. The law requires that a water's-edge election include all domestic corporations with at least 20% of their payroll and property in the United States and which are part of a unitary business. Consequently, the department must have the ability to either include or exclude corporations based upon whether they are part of a unitary business.

The law states that any dividends paid between members which are included in a water's-edge combined return must be eliminated from taxable income. This rule addresses the opposite situation and requires that transactions between corporations within and without a water's-edge combined report must be restored if eliminated in the computation of federal net income.

Rule VII clarifies that the general exemption for Domestic International Sales Corporations does not apply when a corporation makes a water's-edge election and clarifies how the apportionment formula shall be applied in those instances where the foreign corporation does not have either payroll or property.

Rule VIII is necessary to clarify the treatment of dividends under a water's-edge election. Subpart 1 follows the statute quite closely in describing the tax treatment for various types of dividend income. The law requires that 20% of the "after tax" net income of certain corporations be considered a deemed dividend subject to apportionment. If those corporations are included in a federal consolidated return, the taxpayer and the department must be able to determine the federal tax liability attributable to those corporations. This rule will allocate a portion of the consolidated federal tax liability to those

corporations based upon a ratio of the contributions to income of each corporation to the total income.

Rule IX is necessary to clarify when and how a domestic disclosure spreadsheet must be filed with the department.

Rule X is necessary to clarify the tax rate to be used by water's-edge electing corporations.

Rule XI is necessary to clarify the applicability date for water's-edge elections. Section 15-31-324 references a date of October 1, 1987, However, the applicability date of Chapter 616, L. 1987 is for tax years beginning after December 31, 1987. The applicability date is controlling.

5. 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:

Cleo Anderson
Department of Revenue
Office of Legal Affairs
Mitchell Building
Helena, Montana 59620

no later than December 1, 1987.

6. Eric J. Fehlig, Tax Counsel, Department of Revenue, Office of Legal Affairs, has been designated to preside over and conduct the hearing.

JOHN D. LaFAVER, Director
Department of Revenue

Certified to Secretary of State 10/19/87.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION of Rule I relating to Surtax on Corporations for Corporation Taxes.	NOTICE OF PUBLIC HEARING on the PROPOSED ADOPTION of Rule I relating to Surtax on Corporations for Corporation Taxes.

TO: All Interested Persons:

1. On November 19, 1987, at 11:00 a.m., a public hearing will be held in Fourth Floor Conference Room of the Mitchell Building, at Helena, Montana, to consider the adoption of rule I relating to Surtax on Corporations for the Natural Resource and Corporation Tax Division of the Department of Revenue.

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

3. The rule as proposed to be adopted provide as follows:

RULE I SURTAX (1) All corporations filing Montana corporate license or Montana corporate income tax returns for years beginning on or after January 1, 1988 but before December 31, 1988 shall pay an additional four percent (.04) surtax. The surtax is calculated by multiplying the otherwise calculated Montana tax liability by four percent (.04) to arrive at the surtax. The surtax is in addition to the regular tax liability and also applies to the $50 minimum corporation license tax. AUTH, Sec. 15-31-501 MCA, AUTH Extension Sec. 9, Ch. 616, L. 1987, Eff. 10/1/87; IMP, Sec. 15-31-121 MCA.

4. The Department is proposing rule I for the following reasons:

Rule I is necessary to clarify the tax period and method of calculation for the 4% surtax. As reflected in this proposal, the tax period during which the surtax will be in effect is the result of interpreting together two provisions of Ch. 616, L. 1987. These provisions state that the surtax is effective for "tax year 1988," and the entire law is applicable to "taxable years beginning after December 31, 1987." The proposed rule is a consistent interpretation of these two parts of the law.

5. 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:

Cleo Anderson
Department of Revenue
Office of Legal Affairs
Mitchell Building
Helena, Montana 59620

no later than December 1, 1987.

6. Eric J. Fehlig, Tax Counsel, Department of Revenue, Office of Legal Affairs, has been designated to preside over and conduct the hearing.

JOHN D. LaFAVER, Director
Department of Revenue

Certified to Secretary of State 10/19/87.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT) of ARM 42.17.105 relating to) to Computation of Withholding) Income Tax.)	NOTICE OF THE PROPOSED AMENDMEND of ARM 42.17.105 relating to Computation of Withholding Income Tax.

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On November 28, 1987, the Department proposes to amend ARM 42.17.105 relating to computation of withholding for income taxes.

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

42.17.105 COMPUTATION OF WITHHOLDING (1) The amount of tax withheld per payroll period shall be calculated according to the following four-step formula:

(a) $Y = PZ$

where Z is the individual's gross earnings for the payroll period; and
Y is the individual's annualized gross earnings.

In these calculations, the quantity P (number of payroll periods during the year) has one of the following values:

Annual payroll period	P = 1
Monthly payroll period	P = 12
Semimonthly payroll period	P = 24
Biweekly payroll period	P = 26
Weekly payroll period	P = 52

(b) $T = Y - 1400N$

where T is the annualized net gross income; and
N is the number of withholding exemptions claimed.

If T in Step (b) is less than or equal to 0, then the amount to be withheld during the pay period is 0. If T is greater than 0, then the annualized tax liability is calculated using:

(c) $X = A + B(T-C)$ where X is the individual's annualized tax liability the parameters A, B and C are chosen from the following rate schedule:

	ANNUALIZED NET GROSS INCOME T			
At least	But less than	A	B	C
$ 0	$ 6,590	$ 0	3.1%	$ 0
6,590	14,600	204.29	5.3%	6,590
14,600	32,000	628.82	7.3%	14,600
32,000 and over		1,899.02	7.8%	32,000

At Least	But Less Than	A	B	C
$ 0	$ 6,590	$ 0	2.9%	$ 0
6,590	14,600	191.11	4.8%	6,590
14,600	32,000	575.59	6.7%	14,600
32,000 and over		1,741.39	7.2%	32,000

(d) $W = \frac{X}{P}$

where W is the amount to be withheld for the payroll period;
X is the annualized tax liability; and
P is the number of payroll periods during the year.

(2) This rule is effective for ~~quarters~~ tax periods beginning ~~July 1, 1987~~ January 1, 1988. AUTH, Sec. 15-30-305 MCA; IMP, Secs. 15-30-108 and 15-30-202 MCA.

3. The proposed rule reduces withholding tax rates. This change is necessary because the 10% income surtax enacted by the 1987 Legislature will now be collected through withholding taxes over twelve months. Previously, the surtax for all of 1987 was collected in only the last six months of that year. Accordingly, the portion of the withholding tax rates reflecting the surtax have been cut in half.

The change from "quarters" to "tax periods" reflects the fact that some taxpayers are required to file on a weekly basis.

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 November 27, 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 Cleo Anderson at the above address no later than November 27, 1987.

6. If the agency receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendment; from the Administrative Code Committee of the Legislature; from a governmental subdivision, or agency; or from an association having 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.

JOHN D. LaFAVER, Director
Department of Revenue

Certified to Secretary of State 10/19/87.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amendment of rules regarding fees and subscription charges	)	NOTICE OF PROPOSED AMENDMENT OF ARM 1.2.421 SUBSCRIPTION TO THE ARM--COST AND ARM 1.2.423 AGENCY FILING FEES - NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On November 28, 1987, the office of the Secretary of State proposes to amend ARM 1.2.421 and ARM 1.2.423 regarding fees and subscription charges to the Montana Administrative Register and the Administrative Rules of Montana.

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

1.2.421 SUBSCRIPTION TO THE ARM--COST (1) The secretary of state is required by law, (2-4-312, MCA and 2-4-313, MCA) to distribute copies of the ARM and register and revisions thereto, free of charge, to certain federal, state and county agencies enumerated therein.

(2) The secretary is also authorized to make available ~~additional~~ copies of the ARM, register, and revisions thereto to the public at prices fixed to cover publication and mailing costs.

(3) ~~Beginning August 12, 1983,~~ The costs for the Administrative Rules of Montana and the Montana Administrative Register for calendar year 1988 are as follows:

(a) Administrative Rules of Montana - $350.00

(b) Four issues of updates to the Administrative Rules of Montana - ~~$150.00~~ $250.00

(c) Montana Administrative Register ~~-$225.00~~ $300.00

(d) Partial year subscriptions will be prorated.

(4) Extra title charges are as follows:

(a) Initial purchase of title, $50.00 except for two-part titles which may be purchased for $100.00 a title.

(b) Updates to extra titles will be $50.00 per calendar year per title.

(5) All purchase and subscription fees must be paid in advance.

AUTH: 2-4-306, 2-4-313, MCA IMP: 2-4-306, 2-4-313 MCA

1.2.423 AGENCY FILING FEES (1) Beginning ~~August 12, 1983,~~ January 1, 1988, all agencies will be required to pay a ~~$30.00~~$40.00 per page filing fee for all pages submitted which are applicable to the notice and rule section of the Montana Administrative Register. The secretary of state will bill monthly for all fees incurred by the agency.

AUTH: 2-4-306, 2-4-313 MCA IMP: 2-4-306, 2-4-313 MCA

3. The Secretary of State proposes to amend these rules because House Bill 901 of the 1987 Legislative Session deleted the requirement of a general fund transfer to pay for certain copies of the Montana Administrative Register and the Administrative Rules of Montana which resulted in the need for increases.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to:

Kathy Lubke, Bureau Chief
Administrative Rules Bureau
Secretary of State
Room 225
Capitol Building
Helena, MT 59620

no later than November 27, 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 Kathy Lubke, address given in paragraph 4, no later than November 27, 1987.

6. If the agency receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendment; from the Administrative Code Committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be more than 25 based on the subscribers to the MAR and ARM.

7. The authority of the Secretary of State to amend the rules is based on sections 2-4-306 and 2-4-313, MCA and implements the same.

JIM WALTERMIRE
Secretary of State

Dated this 19th day of October, 1987.

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

In the matter of the amendment of Rules 46.12.102, 46.12.702 and 46.12.703 pertaining to Medicaid reimbursement for multi-source drugs	)))))	NOTICE OF PUBLIC HEARING PERTAINING TO THE PROPOSED AMENDMENT OF RULES 46.12.102, 46.12.702 AND 46.12.703 PERTAINING TO MEDICAID REIMBURSEMENT FOR MULTI-SOURCE DRUGS

TO: All Interested Persons

1. On November 18, 1987, at 1:30 p.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 Rules 46.12.102, 46.12.702 and 46.12.703 pertaining to Medicaid reimbursement for multi-source drugs.

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

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

(21) Maximum allowable cost (MAC) is the upper limit the department will pay for multi-source drugs. ~~in accordance with 42 CFR 447.331 which is a federal regulation dealing with limits of payment.~~ In order to establish base prices for calculating the maximum allowable cost, ~~T~~the department hereby adopts and incorporates by reference the methodology for limits of payment set forth in 42 CFR 447.331 ~~by reference,~~ and 447.332. The maximum allowable cost for multiple source drugs will not exceed the total of the dispensing fee established by the department and an amount that is equal to 120 percent of the price established under the methodology set forth in 42 CFR 447.331 and 447.332 for the least costly therapeutic equivalent that can be purchased by pharmacists in quantities of 100 tablets or capsules or, in the case of liquids, the commonly listed size. If the drug is not commonly available in quantities of 100, the package size commonly listed will be the accepted quantity. A copy of the above-cited regulations may be obtained from the Department of Social and Rehabilitation Services, Economic Assistance Division, ~~111 Sanders,~~ P.O. Box 4210, Helena, Montana, ~~59601~~ 59604.

(22) Estimated acquisition cost (EAC) is the cost of drugs for which no MAC price has been determined. The EAC is the department's best estimate of what price providers are generally paying in the state for a drug in the package size providers buy most frequently. The EAC for a drug is the direct price (DP) charged by manufacturers to retailers. If

there is no available DP for a drug or the department determines that the DP is not available to providers in the state, effective January 1, 1988, the EAC is the average wholesale price (AWP)~~,~~ less 10 percent. The department uses the DP and AWP as weekly reported or calculated by the American druggist blue book data center or any other industry accepted data center under contract with the department or its fiscal agent.

~~(a)--Notwithstanding--the--above,--effective--December-1,-1986,-the-EAC--for-these-drugs-determined-by-the-department-to-be-unavailable-at-direct--prices-will--mean-the-AWP-calculated-by---the--American---druggist--blue--book---data--center---for-November-30,-1986.--This--EAC-will-remain-in-effect-until-such-time-as-the-increases-in-the--AWP-for-a-drug-exceed-10-percent-of--the--AWP--in--effect--on--November-30,--1986.----After--the-increases-in-the-AWP-exceed-the--10-percent-limit,--the-EAC-of-the--drug-will-be-allowed-to--increase--by-the-amount-that-the-sum-of--the-increases-exceeds-the-10-percent-of-the-AWP-determined-for-November-30,-1986.~~

Subsections (23) through (38) remain the same.

AUTH: Sec. 53-6-113 MCA; AUTH Extension, Sec. 2, Ch. 77, L. 1985, Eff. 10/1/85; Sec. 4, Ch. 329, L. 1987, Eff. 10/1/87
IMP: Sec. 53-6-101, 53-6-131 and 53-6-141 MCA

46.12.702 OUTPATIENT DRUGS, REQUIREMENTS (1) These requirements are in addition to those contained in ARM 46.12.301 through 46.12.308.

(2) Drugs may not be filled or refilled without the authorization of the physician~~,~~ or other licensed practitioner who is authorized by law to prescribe drugs and is recognized by the medicaid program.

Subsections (3) through (6)(b) remain the same.

AUTH: Sec. 53-6-113 MCA; AUTH Extension, Sec. 2, Ch. 77, L. 1985, Eff. 10/1/85; Sec. 4, Ch. 329, L. 1987, Eff. 10/1/87
IMP: Sec. 53-6-113, 53-6-101 and 53-6-141 MCA

46.12.703 OUTPATIENT DRUGS, REIMBURSEMENT (1) Drugs will be paid for on the basis of the Montana "estimated acquisition cost" or the "maximum allowable cost", plus a dispensing fee established by the department, or the provider's "usual and customary charge", whichever is lower; except that the "maximum allowable cost" limitation shall not apply in those cases where a physician or other licensed practitioner who is authorized by law to prescribe drugs and is recognized by the medicaid program certifies in ~~writing~~ their own handwriting that in ~~his~~ their medical judgement a specific brand name drug is medically necessary for a particular patient. An example of an acceptable certification would be the notation "brand necessary"~~,~~ or "brand required". A check-off box on a form or a rubber stamp is not acceptable.

Subsections (2) and (3) remain the same.

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

AUTH: Sec. 53-6-113 MCA; AUTH Extension, Sec. 2, Ch. 77, L. 1985, Eff. 10/1/85; Sec. 4, Ch. 329, L. 1987, Eff. 10/1/87
IMP: Sec. 53-6-101, 53-6-113 and 53-6-141 MCA

3. This proposal would: (1) assure the federal government that the federal reimbursement limits for multisource (generic) drugs are not being exceeded; (2) provide a less complicated and more accurate payment procedure for drugs based upon average wholesale price; (3) recognize that Medicaid providers other than physicians (i.e., dentists and podiatrists) can and do prescribe drugs; and (4) clarify rule language prohibiting certain additional frequent reimbursement to pharmacies which dispense drugs to nursing home residents.

These changes are proposed as cost containment measures. The data is not yet available to reliably estimate financial and budgetary impacts.

Copies of this notice are available for review at local human services offices and county welfare offices.

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 November 26, 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 October 19, 1987.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the amendment of Rules 2.5.201, 2.5.301, 2.5.402, 2.5.403, 2.5.502, 2.5.503, 2.5.601, 2.5.602, 2.5.603 and 2.5.604 pertaining to contracting for supplies and services	NOTICE OF THE AMENDMENT OF ARM 2.5.201, 2.5.301, 2.5.402, 2.5.403, 2.5.502, 2.5.503, 2.5.601, 2.5.602, 2.5.603, and 2.5.604, PERTAINING TO CONTRACTING FOR SUPPLIES AND SERVICES

TO: All Interested Persons.

1. On July 16, 1987, the Department of Administration published a notice to amend rules 2.5.201, 2.5.301, 2.5.402, 2.5.403, 2.5.502, 2.5.503, 2.5.601, 2.5.602, 2.5.603, and 2.5.604 pertaining to the contracting for supplies and services at page 1151 of the Montana Administrative Register, Issue No. 14.

2. The Department has amended rules 2.5.301, 2.5.402, 2.5.502, 2.5.503, 2.5.601, 2.5.602, 2.5.603 and 2.5.604 as proposed.

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

2.5.201 DEFINITIONS In these rules, words and terms defined in Title 18, Chapter 4, MCA, shall have the same meaning as in the statutes and, unless the context clearly requires otherwise or a different meaning is prescribed for a particular section, the following definitions apply:

Subsections (1) through (8) remain as proposed.

(9) "Montana-made" means manufactured or produced in the state and made with the use of parts, material, or supplies of which 50% or more were manufactured OR PRODUCED in this state; or employment of persons of whom 50% or more are bona fide residents of Montana as defined in 18-2-401, MCA.

Subsections (10) through (22) remain as proposed.

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

2.5.403 RESIDENT BIDDING PREFERENCES

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

(a) If Montana-made products are bid, REGARDLESS OF RESIDENCY OF VENDOR, add 5% to non-resident, non-Montana-made product bids; if no Montana-made products are involved, see (e) following:

(b) Remains as proposed.

(c) DISREGARD 5% PREFERENCE PENALTY ADDED IN (a) ABOVE ~~Eliminate 5% preference~~ for bids with Montana-made products if ~~they~~ BIDS WITH MONTANA MADE PRODUCTS are over 5% of non-resident, non-Montana-made product bids;

(d) DISREGARD 5% PREFERENCE PENALTY ADDED IN (a) ABOVE ~~Eliminate 5% preference~~ for bids with Montana-made products if over 3% of resident, bids with non-Montana-made product bids;

(e) If no BIDS FOR Montana-made products remain, ~~remove all preferences~~ DISREGARD PREFERENCES IN (a) AND (b) ABOVE and add 3% resident preference to non-resident bids.

~~(f)--If-a-certified-blind-vendor-preference-is-indicated, add-a-3%-preference-to-all-other-bidders,-as-defined-in 18-5-501-through-18-5-504,-MCA.~~

(4) "Montana-made" means manufactured or produced in this state and made with the use of parts, material, or supplies of which 50% or more were manufactured or produced in this state; OR EMPLOYMENT OF PERSONS OF WHOM 50% OF MORE ARE BONA FIDE RESIDENTS OF MONTANA AS DEFINED IN 18-2-401, MCA. "Non-resident bidder" means a bidder whose residence is not in this state as determined under 18-1-103.

3. The Department has amended the rules with slight modifications for clarity.

4. The Department received no written comments or testimony.

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

Ellen Feaver
Director
Department of Administration

Certified to the Secretary of State October 19, 1987

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the adoption of emergency rules creating a quarantine to prevent the entry of varroa mite infested honeybees into Montana	NOTICE OF ADOPTION OF EMERGENCY RULES ESTABLISHING A VARROA MITE - HONEYBEE QUARANTINE

TO: All Interested Persons:

1. On September 29, 1987, the USDA - Animal and Plant Health Inspection Service (APHIS) informed all states that an exotic pest of honeybees identified as Varroa Mites (Varroa Jacobsoni Oudemus) had been confirmed to be infesting beehives in Wisconsin. Varroa Mites are recognized by the USDA, the scientific community, and the beekeepers industry as being a very damaging parasite of honeybees. In parts of the world where the mite is present, such as Europe, Africa, and South America, it has become very difficult to produce honey because of the devastating damage the mites inflict on honeybees. Treatments to control the mites are not approved for use in the United States, are often ineffective, and are very expensive.

Since September 29, 1987, the Varroa Mite has also been found in Florida and Pennsylvania and apparently spread in the spring of 1987 by the sale and shipment of infested beehives, package bees, and queens. On October 1, 1987, and again on October 9, 1987. USDA-APHIS recommended that all states impose a moratorium on the movement of beehives until they could, through survey and inspection, determine the extent of this problem. Preliminary investigation has indicated that Varroa mite infested package bees may have been shipped to 22 states.

As the result of this recommendation and immediate threat to the Montana beekeepers industry, that the department deems it necessary to adopt a quarantine by rule on an emergency basis.

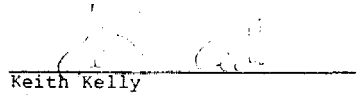
2. The text of the rules is as follows:

EMERGENCY: RULE I PURPOSE OF RULES (1) The purpose of these rules is to implement a quarantine to prevent the spread of Varroa Mites of honeybees into Montana. (History: AUTH 80-6-201, IMP, 80-6-201, 80-6-202, MCA)

EMERGENCY: RULE II QUARANTINE (1) All honeybees, beehives, package bees, queens and hive equipment originating in another state or country shall not be allowed entry into or through Montana without prior approval of the department. (History: AUTH 80-6-101, IMP, 80-6-201, 80-6-202, MCA)

3. The rationale for the proposed rules is set forth in the statement of reasons for emergency,

4. These rules are authorized under section 80-6-201 and 80-2-202 MCA. The emergency action is effective October 14, 1987.



Keith Kelly
Director

Certified to the Secretary of State October 14, 1987

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the adoption of new rules pertaining to the administration of the alfalfa leaf-cutting bee program	)))))	NOTICE OF ADOPTION OF RULES PERTAINING TO THE ADMINISTRATION OF THE ALFALFA LEAF-CUTTING BEE PROGRAM AND THE REPEAL OF RULES 4.12.1201, 4.12.1203 THROUGH RULE 4.12.1209

TO: All Interested Persons:

1. On August 13, 1987 the Montana Department of Agriculture published notice of hearing on the above stated rules at page 1232 of the Montana Administrative Register, issue number 15.

2. On September 8, 1987, at 10:00 a.m. at room 225 of the Agriculture/Livestock Building, Helena, Montana the Department of Agriculture held a hearing on proposed new rules to implement changes to the alfalfa leaf-cutting bee program.

3. The Department has repealed 4.12.1201, 4.12.1203 through 4.12.1209 and adopted the following rules as proposed:

RULE I (4.12.1220) PURPOSE OF RULES adopted as proposed.

RULE II (4.12.1221) REGISTRATION PROCEDURES AND FEES adopted as proposed.

RULE IV (4.12.1223) SAMPLING PROCEDURE FOR THE REGISTRATION OF BEES adopted as proposed.

RULE V (4.12.1224) OFFICIAL CERTIFICATION PROCEDURES AND FEES adopted as proposed.

RULE VI (4.12.1225) BEE SAMPLING PROCEDURE FOR THE CERTIFICATION OF BEES adopted as proposed.

RULE VIII (4.12.1227) IMPORTED ALFALFA LEAF-CUTTING BEES - CERTIFICATION adopted as proposed.

RULE X (4.12.1229) FEES ESTABLISHED FOR SERVICE SAMPLES adopted as proposed.

RULE XI (4.12.1230) DISEASE CONTROL - WILD TRAPPING PERMIT - FEE adopted as proposed.

4. The Department has adopted these rules as proposed with the following changes:

RULE III (4.12.1222) MINIMUM STANDARD FOR LEAF-CUTTING BEES REGISTERED BY THE DEPARTMENT (1) Alfalfa leaf-cutting bees registered with the department and determined as containing parasite infestation levels above 25% or pathogen levels

above 30% shall be designated as failing minimum standards. The bees shall be destroyed or exported from the state (under department supervision) within 30 days of the issuance of said designation. Equipment shall be placed under quarantine and properly sterilized using department approved procedures or exported (under department supervision) within 30 days of said designation.
AUTH: 80-6-1103, MCA IMP: 80-6-1103 and 80-6-1111 MCA.

4.12.1226 MINIMUM STANDARD FOR LEAF-CUTTING BEES CERTIFIED BY THE DEPARTMENT (1) The following bee certification standards apply to the official sample analyzed at a designated laboratory.

(a) Unconditional certification: Alfalfa leaf-cutting bees that have been officially examined and analyzed and determined to contain less than 10% composite infestation by parasites and contain 0% infestation by designated pathogens, shall be eligible for unconditional certification for:

(i) possession within the state,

(ii) for sale within or ~~without~~ outside the state,

(iii) import into the state of Montana.

Zero percent means nondetected within the official sample.

(b) remains the same

(2) remains the same

AUTH: 80-6-1103 MCA, IMP: 80-6-1103 and 80-6-1105 MCA.

4.12.1228 SALES OF BEES (1) All sales of bees within the state of Montana shall be reported to the department. These sales reports shall contain the name, address, pounds sold and location of the new owners. These sales shall be reported to the department within 30 days of sale.

(2) A sale of a person's entire inventory of bees shall be reported to the department.

AUTH: 80-6-1103, MCA IMP: 80-6-1105, MCA

5. The department received the following comments:

COMMENT: Out of state bee sales should not have to be reported. Also persons selling out their business should report the sale.

RESPONSE: The department agreed with the comment and changed the rules accordingly.

COMMENT: There should only be bee inspections and tests on bees being sold, not on persons holding bees for several years.

RESPONSE: The department believes that the program can not be administered properly if only those persons who sell bees are required to register with their bees being tested. In order to prevent the spread of bee disease or establish quarantine areas it is necessary to have all bees registered and tested.

COMMENT: Owners of bees with high infestation levels should have the option to either destroy the bees or sell them out of state to places where the infestations levels are equally high.

RESPONSE: The department agreed with the comment and changed the rules accordingly.

COMMENT: Rule VII (1)(a)(ii) is confusing.

RESPONSE: The department agreed and made a clarification correction.

COMMENT: The standard for importing bees is too high.

RESPONSE: The department has provisions for exceptions to the import standards. A producer may request an exception to the standard. This should resolve any problems with the high standards if the area where the relocating of bees has bees with infestations levels greater than or equal to the infestation levels of the bees being imported. But it is necessary to maintain the proposed standards in order to protect the areas with little or no infestation problems.

COMMENT: The legislative council suggested some changes with the references of authority.

RESPONSE: The department will incorporate the suggested authority changes in the replacement pages.

No other comments or testimony were received.

6. These rules are authorized under section 80-6-1103 MCA. They implement sections 80-6-1103, 80-6-1105, 80-6-1108 and 80-6-1109, 80-6-1111 MCA.

Keith Kelly
Director

Certified to the Secretary of State October 14, 1987.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE FINANCIAL DIVISION

In the matter of the amendment of a rule pertaining to applications	))))	NOTICE OF AMENDMENT OF 8.80.501 APPLICATION FOR SATELLITE TERMINAL AUTHORIZATION

TO: All Interested Persons:

1. On September 10, 1987, the Financial Division published a notice of proposed amendment of the above-stated rule at page 1527, 1987 Montana Administrative Register, issue number 17.

2. The division has amended the rule as proposed with the following changes: (new matter underlined, deleted matter interlined)

"8.80.501 APPLICATION FOR SATELLITE TERMINAL AUTHORIZATION (1) Application for authorization to install and maintain an automated teller machine may be filed by a financial institution, a business entity owned by a financial institution, or a business entity other than a financial institution. The application shall be made on forms provided by the department and shall contain the following information in addition to any other information which the department may determine to be necessary.

(a) and (b) will remain the same."

Auth: 32-6-401, MCA Imp: 32-6-202, MCA

3. The following comments were received from the Administrative Code Committee.

COMMENT: ARM 8.80.501(1), as proposed, should include the phrase "a business entity owned by a financial institution" to more completely state what kinds of businesses may install and maintain automated teller machines.

RESPONSE: The phrase was a part of the rule but was inadvertently omitted when the proposed amendments were drafted. The Financial Division agrees that the phrase should be included in the rule.

COMMENT: The statement of reasonable necessity was not sufficient in the proposed notice of amendment.

RESPONSE: The Financial Division concurs and the statement should read as follows: "Section 32-6-202, MCA, permits installation and maintenance of satellite terminals by businesses other than financial institutions. This rule refers only to such activities as conducted by financial institutions or their subsidiaries. The proposed amendment will provide for the installation and maintenance of satellite terminals by other businesses, as allowed by law."

4. No other comments or testimony were received.

FINANCIAL DIVISION

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

Certified to the Secretary of State, October 19, 1987.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE STATE BANKING BOARD

In the matter of the amendment of a rule pertaining to application procedures and the adoption of a new rule pertaining to chartering of state banks without notice	NOTICE OF AMENDMENT OF 8.87.203 APPLICATION PROCEDURE FOR A CERTIFICATE OF AUTHORIZATION FOR A STATE CHARTERED BANK AND THE ADOPTION OF NEW RULE I. (8.87.501) STATE BANK ORGANIZED FOR PURPOSE OF ASSUMING DEPOSIT LIABILITY OF ANY CLOSED BANK

TO: All Interested Persons:

1. On September 10, 1987, the State Banking Board published a notice of proposed amendment and adoption of the above-stated rules at page 1529, 1987 Montana Administrative Register, issue number 17.

2. The division amended and adopted the rules as proposed with the following changes: (new matter underlined, deleted matter interlined)

"I (8.87.501) STATE BANK ORGANIZED FOR PURPOSE OF ASSUMING DEPOSIT LIABILITY OF ANY CLOSED BANK ~~(1) The state banking board is empowered to issue a certificate of authorization without notice or hearing as required by section 32-1-204, MCA.~~ (2) through (6) will be renumbered (1) through (5)

(2) All provisions of ~~sub-chapter 2,~~ ARM 8.87.202 and ~~ARM~~ 8.87.203, application procedures, apply except subsection (1) (c) of 8.87.203, summary of evidence demonstrating reasonable public necessity and demand for a new bank; and subsection (4) of 8.87.203, notification to applicants to perfect application. ~~Sub-chapter 3, new bank charter,~~ The provisions of ARM 8.87.302, ~~8.87.303 and~~ through 8.87.304 also apply.

(3) will remain the same.

(4) If the bidder for the closed bank contemplates using an existing state bank to acquire assets and assume liabilities of a closed bank only ~~sub-chapter 3~~ ARM 8.87.303 applies.

(5) will remain the same.

(6) Approval of charter application under ~~ARM 8.87.501~~ this rule will be accomplished through a telephone conference call with a quorum of the board participating."

Auth: 32-1-204(6), MCA Imp: 32-1-204(6), MCA

3. The following comments were received from the staff of the Administrative Code Committee.

COMMENT: Subsection (1) of the proposed new rule should be eliminated because it is an unnecessary statutory reference to Section 32-1-204, MCA.

COMMENT: The proposed new rule contains a number of references to ARM subchapters. These references are too

general and should be deleted, leaving only the specific citation references.

RESPONSE: The Financial Division concurs with the comments and has changed the rule accordingly as shown above.

4. No other comments or testimony were received.

STATE BANKING BOARD
KEITH L. COLBO, CHAIRMAN

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

Certified to the Secretary of State, October 19, 1987.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE VIDEO GAMING CONTROL BUREAU

In the matter of the transfer and amendments of 42.7.101 (8.124.101) through 42.7.229 (8.124.229) and adoption of rules I. (8.124.108), II. (8.124.206), III. (8.124.207), IV. (8.124.208), V. (8.124.213), VI. (8.124.214), VII. (8.124.215) and VIII. (8.124.209) and the repeal of 42.7.104 (8.124.104), 42.7.121 (8.124.121), 42.7.225 (8.124.225), and 42.7.226 (8.124.226)	NOTICE OF TRANSFER AND AMENDMENTS OF 42.7.101 (8.124.101) THROUGH 42.7.229 (8.124.229) AND THE ADOPTION OF NEW RULES I. (8.124.108), II. (8.124.206), III. (8.124.207), IV. (8.124.208), V. (8.124.213), VI. (8.124.214), VII. (8.124.215) and VIII. (8.124.209) AND THE REPEAL OF 42.7.104 (8.124.104), 42.7.121 (8.124.121), 42.7.225 (8.124.225) and 42.7.226 (8.124.226)

TO: All Interested Persons:

1. On August 13, 1987, the Video Poker Gaming Control Bureau published notice of a public hearing on the proposed amendments and adoption of the above-stated rules at page 1258, 1987 Montana Administrative Register, issue number 15.

2. The hearing was held on September 2, 1987, at 9:30 a.m., in the Scott Hart Auditorium, 303 Roberts, Helena, Montana.

3. The Bureau has amended, adopted and repealed the rules as proposed with the following changes: (new matter underlined, deleted matter interlined)

"8.124.127 RECORD RETENTION REQUIREMENTS (1) Record requirements are as follows:

~~(1)~~ (a) Machine operation records must be maintained and made available for inspection by the department upon request. The records must provide all necessary information the department may require to ensure operation of machines in compliance with the law.

(2) through (d) will remain the same."

Auth: 23-5-605, MCA AUTH Extension, Sec. 11, Ch. 603, L. 1987 Imp: 23-5-605, MCA

"8.124.202 HARDWARE SPECIFICATIONS (1) through (14) will remain the same.

~~(15)--Each machine must print an audit ticket on a daily (24-hour) basis.~~

~~(16)--Each machine must print an audit ticket whenever the machine is powered up.~~

(17) through (21) will remain the same but will be renumbered as (15) through (19).

(20) The owner of a gaming machine that is capable of printing an audit ticket, must produce in each machine owned an audit ticket at least every seven days."

Auth: 23-5-605, MCA AUTH Extension, Sec. 11, Ch. 603, L. 1987; Sec. 2, Ch. 640, L. 1987; Sec. 10, Ch. 211, L. 1987 Imp: 23-5-606, 23-5-607, 23-5-609, MCA

"II (8.124.206) SOFTWARE SPECIFICATIONS FOR VIDEO BINGO MACHINES (1) through (c) will remain the same.

(d) The machine must freeze the field of numbers after they have been mixed and before the start of each game. The numbers will be drawn in order from the frozen ~~deck~~ field.

(e) through (p) will remain the same."

Auth: 23-5-605, MCA AUTH Extension, Sec. 11, Ch. 603, L. 1987 Imp: 23-5-609, MCA

"III (8.124.207) SOFTWARE SPECIFICATIONS FOR VIDEO KENO MACHINES (1) through (j) will remain the same.

~~(k) All cards played must be displayed on the screen.~~

(1) through (n) will remain the same but will be renumbered as (k) through (m).

(2) Specifications set forth in subsection (1)(b) and (c) are statutory specifications set forth in section 23-5-609(4)(b) and (c), MCA."

Auth: 23-5-605, MCA AUTH Extension, Sec. 11, Ch. 603, L. 1987 Imp: 23-5-609, MCA

"VIII (8.124.209) USED KENO MACHINES (1) through (2) will remain the same.

(3) This rule will be effective on July 1, 1988 unless otherwise modified."

Auth: 23-5-605, MCA AUTH Extension, Sec. 11, Ch. 603, L. 1987 Imp: 23-5-609, MCA

4. These changes are being made as a result of the comments referenced below that were taken under consideration by the Bureau.

COMMENT: The staff of the Administrative Code Committee noted that the authority and implementing sections appearing on the proposed notice were incorrect. They also noted that the authority extension was not included on the proposed rules.

RESPONSE: The Bureau concurred with the staff of the Administrative Code Committee. The text of the rules remains the same. The correct cites appear as follows:

8.124.102 DEFINITIONS: Auth: 23-5-605, MCA AUTH Extension, Sec. 11, Ch. 603, L. 1987, Sec. 10, Ch. 211, L. 1987 Imp: 23-5-607, 23-5-609, 23-5-610, 23-5-612, MCA

8.124.103 APPLICATION FOR LICENSE, LICENSE FEE, AND LICENSING REQUIREMENT: Auth: 23-5-605, MCA AUTH Extension, Sec. 11, Ch. 603, L. 1987, Sec. 3, Ch. 154, L. 1987 Imp: 23-5-602, 23-5-609, 23-5-612, MCA

8.124.106 DISTRIBUTION OF NET MACHINE INCOME TAX TO LOCAL GOVERNING BODY: Auth: 23-5-605, MCA AUTH Extension, Sec. 11, Ch. 603, L. 1987 Imp: 23-5-610, MCA

I. (8.124.108) LICENSES ISSUED UNDER TEMPORARY AUTHORITY: Auth: 23-5-605, MCA AUTH Extension, Sec. 11, Ch. 603, L. 1987 Imp: 23-5-605(2)(a), 23-5-611, 23-5-612, 23-5-617, 23-5-635, MCA

8.124.122 LICENSE NOT TRANSFERABLE: Auth: 23-5-605, MCA AUTH Extension, Sec. 11, Ch. 603, L. 1987 Imp: 23-5-605, 23-5-611, 23-5-612(1), MCA

8.124.123 EXPIRATION -- RENEWAL OF LICENSE: Auth: 23-5-605, MCA AUTH Extension, Sec. 11, Ch. 603, L. 1987 Imp: 23-5-605, 23-5-612(1), MCA

8.124.125 LICENSEE QUALIFICATIONS - DENIAL OF APPLICATION--NONRENEWAL OF LICENSE - FAIR HEARING -- JUDICIAL REVIEW: Auth: 23-5-605, MCA AUTH Extension, Sec. 11, Ch. 603, L. 1987, Sec. 3, Ch. 154, L. 1987 Imp: 23-5-605, 23-5-611, 23-5-612(1), MCA

8.124.126 QUARTERLY REPORTING REQUIREMENTS PENALTY FOR LATE FILING: Auth: 23-5-605, MCA AUTH Extension, Sec. 11, Ch. 603, L. 1987 Imp: 23-5-605(2)(b)(iv), 23-5-610, MCA

8.124.127 RECORD RETENTION REQUIREMENTS: Auth: 23-5-605, MCA AUTH Extension, Sec. 11, Ch. 603, L. 1987 Imp: 23-5-605, MCA

8.124.201 GENERAL SPECIFICATIONS OF VIDEO GAMING MACHINES: Auth: 23-5-605, MCA AUTH Extension, Sec. 11, Ch. 603, L. 1987 Imp: 23-5-602(2), (8), (9), (10), 23-5-606, 23-5-609, MCA

8.124.202 HARDWARE SPECIFICATIONS: Auth: 23-5-605, MCA AUTH Extension, Sec. 11, Ch. 603, L. 1987, Sec. 2, Ch. 640, L. 1987, Sec. 10, Ch. 211, L. 1987 Imp: 23-5-606, 23-5-607, 23-5-609, MCA

8.124.203 VIDEO DRAW POKER MACHINE SOFTWARE SPECIFICATIONS: Auth: 23-5-605, MCA AUTH Extension, Sec. 11, Ch. 603, L. 1987 Imp: 23-5-606, 23-5-607, MCA

II. (8.124.206) SOFTWARE SPECIFICATIONS FOR VIDEO BINGO MACHINES: Auth: 23-5-605, MCA AUTH Extension, Sec. 11, Ch. 603, L. 1987 Imp: 23-5-609, MCA

III. (8.124.207) SOFTWARE SPECIFICATIONS FOR VIDEO KENO MACHINES: Auth: 23-5-605, MCA AUTH Extension, Sec. 11, Ch. 603, L. 1987 Imp: 23-5-609, MCA

8.124.204 SOFTWARE INFORMATION TO BE PROVIDED TO THE DEPARTMENT: Auth: 23-5-605, MCA AUTH Extension, Sec. 11, Ch. 603, L. 1987 Imp: 23-5-605, 23-5-606, 23-5-607, MCA

8.124.205 RESTRICTIONS ON OPTIONAL GAME FORMAT OR FEATURES: Auth: 23-5-605, MCA AUTH Extension, Sec. 11, Ch. 603, L. 1987 Imp: 23-5-608, 23-5-609, MCA

IV. (8.124.208) GENERAL VIDEO GAMING MACHINE SOFTWARE SPECIFICATIONS: Auth: 23-5-605, MCA AUTH Extension, Sec. 11, Ch. 603, L. 1987 Imp: 23-5-606, 23-5-609, MCA

8.124.216 PROHIBITED MACHINES: Auth: 23-5-605, MCA AUTH Extension, Sec. 11, Ch. 603, L. 1987 Imp: 23-5-605, 23-5-606, 23-5-607, 23-5-608, 23-5-609, 23-5-613, MCA

8.124.221 REPAIRING MACHINES - APPROVAL: Auth: 23-5-605, MCA AUTH Extension, Sec. 3, Ch. 154, L. 1987, Sec. 11, Ch. 603, L. 1987 Imp: 23-5-609, MCA

8.124.222 DEPARTMENT INVESTIGATORS - PEACE OFFICER STATUS: Auth: 23-5-605, MCA AUTH Extension, Sec. 10, Ch. 211, L. 1987 Imp: 23-5-605, MCA

VI. (8.124.214) GENERAL REQUIREMENTS OF MANUFACTURERS, SUPPLIERS, AND DISTRIBUTORS OF VIDEO GAMING MACHINES OR PRODUCERS OF ASSOCIATED EQUIPMENT: Auth: 23-5-605, MCA AUTH Extension, Sec. 10, Ch. 317, L. 1987 Imp: 23-5-605(2), 23-5-625, 23-5-626, MCA

5. Sec. 11, Ch. 603, L. 1987 (Authority Extension) has been added to the following rules: 8.124.217, 8.124.218, 8.124.219, 8.124.220, 8.124.223, 8.124.224, 8.124.228, 8.124.229. The authority and implementing sections shown on the proposed notice are correct.

6. The following comments were also received.

COMMENT: Regarding new rule VIII (8.124.209) Used Keno Machines. Legislative intent was stated by Representatives Jerry Driscoll, "Bud" Gould, Bob Pavlovich, and Paul Pistoria. According to their testimony, the keno machines were to be given two years to operate in an "as is" condition. They stated the fact that the rule requiring four meters to verify the awarding of credits at 80% and revenue, went beyond the legislature's intent.

RESPONSE: The bureau believes that the grandfather provisions exempt the machines from meeting the requirements set forth in section 8 of HB 863. However, section 4 of that bill contains language that requires an awarding of credits at a rate of not less than 80%. The bureau feels this section is designed to establish a "fair game" standard for machines to meet. This standard was created to insure the player received this "fair game". The legislature, while having the opportunity to

exempt the "grandfather" machines from the 80% requirement, did not do so and the bureau, having received a supporting legal opinion, determined that in order to verify this requirement credits played and credits awarded meters were needed.

The bureau was given a tax collecting duty and assigned the task of collecting and distributing the 15% net machine income tax. In providing that duty, the legislature also drafted and approved, as part of this legislation, a statement of intent. This statement of intent reads as follows: "A statement of intent is required for this bill because section 3 gives the department authority to adopt rules concerning the administration of the video draw poker and keno machine net income tax. In promulgating rules, the department should consider the procedures and policies of other states that have instituted a similar tax on video gaming machines. The tax should provide an orderly and efficient method for inspection by the department of licensee records and of collecting the tax."

Based on this statement of intent and given the placement of these machines across the state, the bureau was not able to find similar tax collection situations. In reviewing other state gaming control tax collections, it learned the taxes are collected in a fairly strict manner. In order to have a basic tax record, the bureau feels it is imperative the machines have "coins in" and "credits paid" meters. It was based on these reasons the bureau drafted the emergency rule requiring 4 meters. The bureau has further proposed adopting this rule permanently.

However, given the testimony and the current unavailability of the machines, the bureau recommends placing an effective date of July 1, 1988 in this rule. Further, the bureau seeks to obtain a Declaratory Judgment from a court of competent jurisdiction as to whether or not section 8 exempts used machines from section 4 of HB 863. The bureau will adjust this rule to reflect that decision.

COMMENT: Regarding new rule VIII (8.124.209) Used Keno Machines. The bureau has included in machine specification sections of rules, requirements that the machine do the following:
1. Print an audit ticket every 24 hours and/or,
2. print an audit ticket every time the machine is powered up (turned on).
The testimony also reflected concern about this rule violating confidentiality laws passed by the 1987 legislature, and the fact these tickets would be printed, may create security violations.

RESPONSE: The bureau, in drafting this rule, considered the importance of protecting the state's share of the machine revenues. The bureau has recently learned of problems where the switches, which are designed to record accesses to the machine, have been disabled. When instructing the person to correct the deficiency, the party involved has responded by stating they would just shut down the machine, which has the same result as disabling the switches, causing a failure to record accesses to the cash and logic areas of the machines. The bureau also has attempted to conduct audits of machines currently in operation. This process has been made extremely difficult due to the lack of audit information. It is virtually impossible to successfully audit a machine record with a lack of audit data.

The industry has responded by expressing a concern that producing these tickets will allow the machines to become targets of criminal activities such as burglary. They have indicated that anyone having control over these tickets can determine when the time is best to commit a burglary etc. While such fears may have some validity, they may be over exaggerated. It would seem to the bureau the fact these machines can contain large sums of cash, in the form of coins, may be the larger motivation in committing a criminal offense that involves the machines. The machines are currently involved in burglaries and do not print the tickets; it is only speculation that the printing of these tickets will significantly increase this activity.

The comments also discussed this as being a violation of the confidentiality requirements established by HB 476. The bureau does not believe the printing of this ticket falls under that veil of confidentiality. The printing of this ticket is optional as to time allowing the licensee to have full control of the process as well as the disposition of the ticket. However, given the comments and testimony, the bureau is amending the rule. The bureau is replacing the requirement for a daily audit ticket and a power up audit ticket with a requirement for a machine owner to generate an audit ticket every seven days on each machine.

The bureau is adopting this modification to the proposed rule because the compelling interest to create a workable audit trail and to limit, as much as possible, the unreported accesses to the machines. The bureau believes this is consistent with the statement of intent on HB 863, which required the rules to provide an orderly and efficient method for inspection of licensee records.

COMMENT: Regarding new rule II (8.124.206) Software Specifications for Video Bingo Machines. The industry has commented that the drafted rules pertaining to bingo are too restrictive as to the game allowed. They have represented that bingo is, in reality, many different games and that the

legislature approved all these variations when they approved bingo.

RESPONSE: The bureau, in drafting this rule, reviewed the following reference sources:
1. The State of Louisiana electronic bingo laws and rules.
2. The State of Montana gambling laws.
3. The State of Nevada Gaming Control Board.
4. Scarne's Complete Book of Gambling.
5. Scarne's Encyclopedia of Gambling.

Generally, these sources describe bingo as being a form of a lottery game. There is, however, a game called bingo, which is what the bureau sought to define. The bureau believes that the game defined by the rules is bingo and is fully consistent with bingo as defined by the law. Further, the bureau believes that to go beyond this definition may allow games the legislature has not authorized. These could include certain games that might be considered electronic lottery.

The bureau is adopting the rule as proposed.

COMMENT: Regarding new rule III (8.124.207) Software Specifications for Video Keno Machines. There were comments concerning the fact that this rule, as written, does not allow for the play of the one spot bet in the electronic version of keno. The comments claimed this was unnecessary since the machine would play at an average rate of 80%.

RESPONSE: The bureau, in looking at software specifications, examined keno statistics. These statistics revealed that in a quarter game, the one spot bet would award credits at a rate of 75%, which would be below the statutory limit of 80%. While other bets may go below this percentage, it is possible through the pay table to be adjusted above the 80% level. However, any adjustment to the one spot could only move it from a 75% play to a 100% play. Since it is possible to play a one spot on a continuing basis, the player would not be playing the 80% game specified by the legislature. The one spot bet was eliminated for compliance with required percentage as well as player protection.

7. The bureau received written comments that included the same objections as indicated above. The bureau will respond to those written comments that were different.

COMMENT: An objection was made to the requirement of a non-removable identification device that would contain any other information required by the department.

RESPONSE: While not specifically stated, the department's requirements are the same as those found in Title 15, USCS 1173. The bureau is adopting the rule as proposed.

COMMENT: An objection was made to the rules requiring a machine pass a static discharge test, without notifying the persons affected of the exact nature of the test.

RESPONSE: The bureau has, and does, advise persons submitting a machine for testing of the static test. This has gone as far as demonstrating the test and providing the make, model, and manufacturer of the test equipment used in the testing procedure. The bureau is adopting the rule as proposed.

COMMENT: An objection was made that rules pertaining to bingo and keno were too restrictive in stating that each machine may only offer the game of keno, or in the case of bingo, the game of bingo.

RESPONSE: The bureau's rules reflect that each game must reside in a different machine; there are keno machines, bingo machines, and poker machines but not a keno, bingo, poker machine.

COMMENT: An objection was raised that the proposed rules require all keno cards to be displayed.

RESPONSE: The bureau recognizes the physical limitations of the machine and is removing the requirement for all keno cards to be displayed.

8. No other comments or testimony were received.

VIDEO GAMING CONTROL BUREAU

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

Certified to the Secretary of State, October 19, 1987.

BEFORE THE DEPARTMENT OF
FAMILY SERVICES OF THE
STATE OF MONTANA

In the matter of the adoption of rules 11.6.101 through 11.6.110 pertaining to the confidentiality of case records containing reports of child abuse and neglect	)))))	NOTICE OF THE ADOPTION OF RULES 11.6.101 THROUGH 11.6.110 PERTAINING TO THE CONFIDENTIALITY OF CASE RECORDS CONTAINING REPORTS OF CHILD ABUSE AND NEGLECT

TO: All Interested Persons

1. On July 16, 1987, the Department of Family Services published notice of the proposed adoption of Rules 11.6.101 through 11.6.110 pertaining to the confidentiality of case records containing reports of child abuse and neglect at page 949 of the 1987 Montana Administrative Register, issue number 13.

2. The Department has adopted the following rules as proposed.

Rule I 11.6.101 PURPOSE
Rule III 11.6.105 RECORDS

3. The Department has deleted the following rules as proposed.

Rule IV CONFIDENTIALITY
Rule VI PENALTY

4. The Department has adopted the following rules as proposed with the following changes:

11.6.102 [Rule II] DEFINITIONS Subsections (1)(a) through (1)(g) remain as proposed.

(h) "Person responsible for a child's welfare" means: THOSE PERSONS SPECIFIED IN SECTION 41-3-102(7), MCA.

Subsections (i) through (k) remain as proposed.

(l) "subject" means the child alleged to have been abused, dependent or neglected or ~~the~~ HIS parents ~~of the child~~, GUARDIAN OR OTHER PERSON RESPONSIBLE FOR THE CHILD'S WELFARE.

Subsection (m) remains as proposed.

(n) "unfounded report" means that, upon investigation, the investigating worker has determined that there is ~~no~~ reasonable cause to believe that the reported child abuse or neglect has NOT occurred.

Subsection (o) and (p) remain as proposed.

AUTH: Sec. 41-3-208 MCA; AUTH Extension, Sec. 2, Ch. 287, L. 1987, Eff. 3/21/87
IMP: Sec. 41-3-205 MCA

11.6.107 Rule V DISCLOSURE (1) Records may SHALL be disclosed to a ~~court for in camera inspection if relevant to an issue before it. The court may permit public disclosure if it finds such disclosure to be necessary for the fair resolution of an issue before it.~~ THOSE INDIVIDUALS OR ENTITIES REFERRED TO IN SECTION 41-3-205(2) AND (3), MCA, SUBJECT TO ANY LIMITATIONS IMPOSED BY THAT STATUTE. IN ADDITION, RECORDS SHALL BE DISCLOSED TO EMPLOYEES OF THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES IF DISCLOSURE IS NECESSARY FOR THE ADMINISTRATION OF PROGRAMS DESIGNED TO BENEFIT THE CHILD.

Subsections (2), (3) and (4) are deleted in their entirety.

AUTH: Sec. 41-3-208 MCA; AUTH Extension, Sec. 2, Ch. 287, L. 1987, Eff. 3/21/87
IMP: Sec. 41-3-205 MCA

11.6.109 [Rule VII] DISCLOSURE PROCEDURES
Subsection (1) remains as proposed.

(a) The department shall respond to a request for disclosure within ~~30~~ 15 WORKING days of the request.

Subsections (b) through (2)(a) remain as proposed.

(b) If the person or entity requesting disclosure is authorized by statute or these rules to receive the requested information, the department shall disclose the information to the requesting person or entity ~~as set for in Rule V~~.

Subsection (2)(b)(i) through (iii) remain as proposed.

AUTH: Sec. 41-3-208 MCA; AUTH Extension, Sec. 2, Ch. 287, L. 1987, Eff. 3/21/87
IMP: Sec. 41-3-205 MCA

11.6.110 [Rule VIII] AMENDMENT AND SEALING OF THE RECORD
Subsections (1) and (2) remain as proposed.

(3) Once sealed, the record shall not be disclosed to any person or entity except upon the written approval of the department director. PRIOR TO THE DEPARTMENT DIRECTOR ISSUING APPROVAL, THE DEPARTMENT SHALL NOTIFY THE SUBJECTS OF THE

RECORDS, AT THEIR LAST KNOWN ADDRESS, AND GIVE THEM AN OPPORTUNITY TO RESPOND TO THE REQUEST TO OPEN THE SEALED RECORD.

AUTH: Sec. 41-3-208 MCA; AUTH Extension, Sec. 2, Ch. 287, L. 1987, Eff. 3/21/87
IMP: Sec. 41-3-205 MCA

5. The 50th Legislature specified in its Statement of Intent upon passage of H.B. 605 that the Department of Family Services could adopt rules concerning the procedures or criteria for requesting and disclosing information, protecting the identity of persons named in the records, records and reports written by persons other than employees of the department, amending, correcting or expunging information in the records and approving or denying requests for disclosure of the records.

These rules are necessary to establish procedures for the disclosure of confidential case records containing reports of child abuse or neglect which was authorized by the passage of H.B. 605, Ch. 287, L. 1987.

6. A public hearing was held August 19, 1987. No persons testified. The following comments were received by the Department during the comment period. The Department has thoroughly considered all commentary received:

COMMENT: An attorney for the Administrative Code Committee submitted several comments regarding the fact that portions of the rules merely restate the statutory language and therefore are unnecessary.

RESPONSE: The Department agrees and has removed those provisions which merely restated the statutory language.

COMMENT: An attorney for the Administrative Code Committee noted that the rationale contained in the notice of proposed rulemaking was insufficient in that it failed to establish why these rules were necessary.

RESPONSE: The Department agrees and has restated the rationale.

The following comments were received from Victims of Child Abuse Laws (Vocal):

COMMENT: Rule II (1)(n) should be reworded to reflect an unfounded report will result when the investigating social worker has determined that there is reasonable cause to believe that the abuse or neglect has not occurred.

RESPONSE: The Department agrees and the rule has been changed.

COMMENT: Delete the definition of "unsubstantiated report" contained in Rule II(1)(o). If substantiating evidence is not found, the report should be "unfounded".

RESPONSE: There are cases where the investigating worker is unable to determine the proof of the report made, but is also unable to clearly find the report not founded. Those cases require a category of "unsubstantiated" since there is not reasonable cause to believe either that the abuse or neglect occurred or that the report was unfounded. The rule will remain as proposed.

COMMENT: Regarding Rule III (1) and (2), the department should consider records prepared by medical, psychological or other professionals or records received from another state as department property and should release said records without authorization from the professional or agency preparing the record.

RESPONSE: Many of the above mentioned records are received with an express statement on the records that they are confidential and are not to be released without written authorization. Since these records are not prepared by department employees, the department will not consider these records departmental property. Under Section 41-3-205, MCA, the department is authorized only to adopt rules pertaining to departmental records. Therefore, the rule will remain as proposed.

COMMENT: Regarding Rule V (2)(h), foster parents should have access to departmental records regarding the child for which they are providing for.

RESPONSE: Rule V(2)(h) has been deleted, however, Section 41-3-205(3)(b) allows for disclosure to licensed youth care facilities which include youth foster homes. Therefore, foster parents will have access to departmental records regarding the child for which they are providing care.

COMMENT: Rule V should specify that records may be disclosed to the subject of the report.

RESPONSE: Rule V(2)(d) and (e) have been deleted; however, section 41-3-205(3)(d) and (e) authorize disclosure to the child who is the subject of the report and to his parent or guardians. The statute does not authorize disclosure to persons named in the records who are neither the child who is the subject of the report or his parents or guardian.

COMMENT: Rule VII(1)(a) and (2) should require the department to respond to a request for disclosure within 10 days.

RESPONSE: The department will change the rule to reflect that the department shall respond within 15 working days. The department must have 15 working days to be able to process the request because of the time involved in removing the names of informants from the record and copying said record for disclosure. It is possible that the department may be able to provide the information in less than 15 working days if the record is not lengthy, but the department may need the full 15 working days to prepare the record for disclosure.

COMMENT: Rule VII(2)(b) should delete reference to the rules.

RESPONSE: Department agrees and will make revision.

COMMENT: Rule VII(2)(b)(iii) should require notification in writing of person requesting information within 10 days rather than 30 days.

RESPONSE: The department has deleted Rule VII(2)(b)(iii), to assure that the information will be prepared for disclosure within 15 working days of the date of request.

COMMENT: Rule VIII(3) should require that sealed records cannot be disclosed without the approval of the department director and the subject of the report.

RESPONSE: Although in many cases it will be impossible to locate the subjects of the records, the department will mail notice to the last known address of the subjects prior to unsealing the record. The subject will be allowed the opportunity to respond to the request to open a sealed record. The rule has been changed to require such notification.

Eugene Huntington
Director, Department of Family Services

Certified to the Secretary of State October 19, 1987.

BEFORE THE WORKERS' COMPENSATION DIVISION
OF THE DEPARTMENT OF LABOR AND INDUSTRY
OF THE STATE OF MONTANA

In the matter of the Adoption of a Rule regarding the Impairment Rating Procedure	)))	NOTICE OF ADOPTION OF RULE I - (24.29.1415)

TO ALL INTERESTED PERSONS:

1. On September 10, 1987, the Division of Workers' Compensation published Notice of the Proposed Adoption of a rule regarding an impairment rating dispute procedure at pages 1534 to 1535 of 1987 Montana Administrative Register Issue No. 17.

2. A public hearing was held on the proposed rule on October 1, 1987, at 11:00 a.m. in Room 303 of the Workers' Compensation Building, 5 South Last Chance Gulch, Helena, Montana, to receive comments on the proposed rule.

3. The division of Workers' Compensation adopts the rule as follows:

24.29.1415 IMPAIRMENT RATING DISPUTE PROCEDURE (1) An evaluator must be a qualified physician licensed to practice in the state of Montana under Title 37, chapter 3, MCA, and board certified OR BOARD ELIGIBLE in his area of specialty appropriate to the injury of the claimant. The claimant's treating physician may not be an evaluator. The division will develop a list of evaluators which may include those physicians nominated by the board of medical examiners.

(2) through (5) same as proposed rule.

(6)(a) through (c) same as proposed rule.

(d) The division shall submit both reports to the third evaluator, who shall then submit a final report to the division, claimant and insurer within thirty (30) days of the date of the examination. ~~The third evaluator must obtain division approval prior to seeking other consultation.~~ The final report must certify that the other two evaluators have been consulted.

(6)(e) through (f) same as proposed rule.

~~(7) If a claimant obtains an impairment rating from any physician other than his attending physician without prior approval of the insurer, the insurer is not liable for payment of either the physician's bill or the impairment rating.~~

4. The rationale for adopting this rule is to establish procedures for resolution of impairment rating disputes under the provisions of the Workers' Compensation

Act. This rule is necessary because Section 39-71-711(4), MCA, requires the division to adopt rule setting for the qualifications of evaluators and the locations of examinations. The rule is further needed to define processing of documentation.

5. This rule is authorized by Section 39-71-203, MCA, as amended by Section 5 of Chapter 464, of the Laws of 1987. This rule implements Section 39-71-711, MCA.

6. The following comments were received on the proposed rule and considered by the division:

COMMENT: Subsection (1) should provide that an evaluator may be a board eligible as well as a board certified physician in the appropriate area of specialty.

RESPONSE: Agreed. The rule is so amended.

COMMENT: The rule should include a preface section indicating that this impairment rating process is for the purpose of resolving disputes between the claimant and insurer.

RESPONSE: Section 39-71-711, MCA, clearly indicates that the purpose of the process is to resolve disputes over impairment ratings so such a preface is unnecessary.

COMMENT: The rule should specify who will pay for the expense of the evaluation and that the evaluation will be made at a reasonable charge.

RESPONSE: Section 39-71-711(5), MCA, indicates who will pay for the evaluations. The term of "reasonableness" is implied.

COMMENT: (Administrative Code Committee) The portion of (6)(d) which requires division approval for the third evaluator's consultation with another physician, although 39-71-711(3)(b)(ii), MCA, allows such consultation in the discretion of the evaluator.

RESPONSE: Agreed. The rule is so amended.

COMMENT: The rule should specify who pays transportation expenses for the evaluation.

RESPONSE: Transportation is an expense of the evaluations to be paid as provided for in 39-71-711(5), MCA.

COMMENT: The rule should indicate whether the insurer should pay compensation to the claimant for any wages lost in going to the evaluation.

RESPONSE: Section 39-71-711(5), MCA, does not give the division authority in this regard, but such compensation may be available under other statutes.

COMMENT: The portion of (7) indicating that the insurer is not liable for an impairment rating obtained by a claimant from a physician other than his attending physician without prior approval of the insurer, conflicts with 39-71-711(2), MCA, which allows a claimant or insurer to get rating from physician of the party's choice.

RESPONSE: Agreed. Subsection (7) will be deleted.

ROBERT J. ROBINSON
Administrator

CERTIFIED TO THE SECRETARY OF STATE: October 19, 1987.

BEFORE THE WORKERS' COMPENSATION DIVISION
OF THE DEPARTMENT OF LABOR AND INDUSTRY
OF THE STATE OF MONTANA

In the matter of the Adoption of Rules regarding Rehabilitation	)))	NOTICE OF ADOPTION OF RULE I - (24.29.1701), RULE II - (24.29.1702), RULE III - (24.29.1710), and RULE IV - (24.29.1705)

TO ALL INTERESTED PERSONS:

1. On September 10, 1987, the Division of Workers' Compensation published Notice of the Proposed Adoption of Rules regarding rehabilitation at pages 1536 to 1539 of 1987 Montana Administrative Register Issue No. 17.

2. A hearing was held on the proposed rules on October 1, 1987, at 10:00 a.m. in Room 303 of the Workers' Compensation Building, 5 South Last Chance Gulch, Helena, Montana, to receive comments on the proposed rules.

3. The division adopts the rules as proposed.

4. The rationale for adopting these rules is to establish procedures for the operation of rehabilitation panels and to detail substantive provisions of the Rehabilitations statutes within the Workers' Compensation Act. These rules are necessary to define proper presentation of documents, proper notice of panel functions, required contents of panel reports and conditions for use of auxiliary benefits.

5. These rules are authorized by Section 39-71-203, MCA, as amended by Section 5 and extended by Section 69 of Chapter 464, of the Laws of 1987. Rule I implements Sections 39-71-1014, 39-71-1015, and 39-71-1023, MCA. Rule II implements Sections 39-71-1015 to 39-71-1019, MCA. Rule II implements Section 39-71-1025, MCA. Rule IV implements Sections 39-71-1011 and 39-71-1012, MCA.

6. The following comments were received on the proposed rule and considered by the division:

COMMENT: Rule I seems to require designation of a rehabilitation provider for all injured workers although it should only be required for a "disabled worker."

RESPONSE: The rule clearly indicates that the designation is required for a "disabled worker" which is defined in 39-71-1011(2), MCA, as "...one who has a medically determined restriction resulting from a work-related injury that precludes the worker from returning to the job the worker held at the time of the injury."

COMMENT: Rule II(1)(c) requiring the insurer to provide three copies of the claimant's records to the

division is unnecessary.

RESPONSE: The insurer maintains a complete set of the claimant's medical, rehabilitation, and other pertinent records which must be provided by the insurer, as required by 39-71-1016(4), MCA, so a fully informed decision can be made on rehabilitation for the claimant. To expedite the process, a copy is required for each of the three panel members.

COMMENT: Rule II does not indicate when the panel will meet, whether the parties will be advised of requests for further information, whether the parties will be present at the panel meeting, whether the panel will hear witnesses, whether the division will set a date for the panel report, and whether the panels will be advised of extensions of the deadline for the panel report.

RESPONSE: The details of administration of the panel are left to the discretion of the division in 39-71-1016(1), MCA. As provided in 39-71-1016(5), MCA, "The panel may consult with the worker, insurer, medical and rehabilitation providers, and any other person and may have access to any information it considers pertinent to carry out its responsibility." Since the panel operates informally in an advisory capacity to the division, it will not conduct formal meetings or hearings, or call witnesses as such. The panel report and the division's order of determination will normally be issued within the 26-week period of total rehabilitation benefits provided for in 39-71-1023, MCA, and may be extended for good cause.

COMMENT: Rule III fails to state who is eligible for auxiliary rehabilitation benefits.

RESPONSE: Section 39-71-1025, MCA, indicates that auxiliary benefits are available to injured workers for rehabilitation purposes consistent with the goal and options set forth in 39-71-1012, MCA.

COMMENT: There should be a time limit for the use of auxiliary rehabilitation benefits spelled out in Rule III.

RESPONSE: The statutes do not impose a time limit on auxiliary benefits and they must be available as long as rehabilitation is appropriate.

COMMENT: (Administrative Code Committee) The division does not have authority to adopt Rule III.

RESPONSE: Section 39-71-1025, MCA, provides that an insurer may pay auxiliary rehabilitation benefits in order to help retrain, rehabilitate, or return a claimant to work. As in 39-71-704 (medical benefits) and 39-71-741 (lump sum conversion), there is an implied term that

"reasonable and necessary" benefits will be provided as required, rather than solely in the full discretion of the insurer. Section 39-71-1033 gives the division authority to resolve disputes regarding rehabilitation. Rule III (1)-(5) expands on the substance of the benefits. Rule III(6) indicates that when a question arises, the division will consider what is "reasonable and necessary" and make an order.

COMMENT: Rule IV defining "local job pool area" conflicts with the definition of local job pool in 39-71-1011(7), MCA.

RESPONSE: The rule clarifies the statutory definition consistent with the legislative intent.

ROBERT J. ROBINSON
Administrator

CERTIFIED TO THE SECRETARY OF STATE: October 19, 1987.

BEFORE THE WORKERS' COMPENSATION DIVISION
OF THE DEPARTMENT OF LABOR AND INDUSTRY
OF THE STATE OF MONTANA

In the matter of the Adoption of a rule regarding distribution of benefits from the Uninsured Employers Fund	))))	NOTICE OF ADOPTION RULE I - (24.29.2801)

TO ALL INTERESTED PERSONS:

1. On September 10, 1987, the Division of Workers' Compensation published notice of a public hearing on the proposed adoption of a permanent rule regarding distribution of benefits from the Uninsured Employers Fund at pages 1532-1533 of 1987 Montana Administrative Register Issue No. 17.

2. A public hearing was held on the proposed rule on October 1, 1987, at 9:00 a.m. in Room 303 of the Workers' Compensation Building, 5 South Last Chance Gulch, Helena, Montana. No public comments were received on the proposed rule at the hearing or in writing.

3. The Division of Workers' Compensation adopts the rule as proposed.

4. The rationale for adopting this rule is to establish a means for distribution of benefits from the Uninsured Employers Fund. This rule is authorized by Section 39-71-203, MCA, as amended by Section 5 of Chapter 464, of the Laws of 1987. This rule implements Section 39-71-503, MCA, as amended by Section 14 of Chapter 464 of the Laws of 1987.

ROBERT J. ROBINSON
Administrator

CERTIFIED TO THE SECRETARY OF STATE: October 19, 1987.

BEFORE THE WORKERS' COMPENSATION DIVISION
OF THE DEPARTMENT OF LABOR AND INDUSTRY
OF THE STATE OF MONTANA

In the matter of the Amendment and adoption of a Rule regarding Security Deposits of Plan Number Two Insurers	))))	NOTICE OF ADOPTION OF RULE I - (24.29.4001)

TO ALL INTERESTED PERSONS:

1. On September 10, 1987, the Division of Workers' Compensation published Notice of the Proposed Adoption of a rule regarding security deposits of Plan No. 2 insurers at pages 1549 to 1552 of 1987 Montana Administrative Register Issue No. 17.

2. The notice of proposed adoption of rule indicated that no public hearing was contemplated but set forth the means for making comments and requesting a hearing. There were not sufficient requests to schedule a hearing but written comments were received and are outlined below.

3. The division of Workers' Compensation adopts the rule as proposed.

4. The rationale for adopting this rule is to establish further requirements for security deposits of plan no. 2 insurers in order to insure that workers' compensation benefits will be properly paid to injured workers. This rule conforms with the mandatory deposit requirements established in 39-71-2206, MCA, as amended by Section 1 of Chapter 242 of Laws of 1987.

5. The adoption of this rule is authorized by Section 39-71-203, MCA, as amended by Section 5 of Chapter 464 of Laws of 1987, and extended by Section 2 of Chapter 242 of Laws of 1987. This rule implements Section 39-71-2206, MCA, as amended by Section 1 of Chapter 242 of Laws of 1987.

6. The following comments were received on the proposed rule and considered by the division:

COMMENT: The requirement that security deposits be maintained in Helena is contrary to the deposit provisions of 33-2-111(1)(b) in the Montana Insurance Code.

RESPONSE: Section 33-2-111, MCA, sets deposit requirements for insurers to transact business in Montana. In addition, Section 39-71-2206, MCA, requires a deposit to guarantee the payment of an insurer's workers' compensation liabilities. The deposits must be held in Helena in order to assure that they are readily available to the Division to pay benefits to claimants as the need arises.

COMMENT: The requirement of security deposits is a regulation of insurers which should be left to the insurance commissioner.

RESPONSE: The deposit made with the division is specifically required by 39-71-2206, MCA.

ROBERT J. ROBINSON
Administrator

CERTIFIED TO THE SECRETARY OF STATE: October 19, 1987.

BEFORE THE DEPARTMENT OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the amendment of rule 32.3.219 for the purpose of protecting the Montana swine industry against the importation of disease.	))))	NOTICE OF THE ADOPTION OF AMENDMENT(S) TO RULE 32.3.219 "SPECIAL REQUIREMENTS OF SWINE."

TO: All Interested Persons

1. On August 13, 1987, the Board of Livestock, through the Department of Livestock published notice of the proposed amendment of ARM 32.3.219 at pages 1291 and 1292, 1987 Montana Administrative Register, issue number 15.
2. The Board has amended and adopted the rules exactly as proposed.
3. No comments or testimony were received.

Nancy Espy
Nancy Espy, Chairman
Board of Livestock

BY: Les Graham
Les Graham, Executive Secretary
To the Board of Livestock

Certified to the Secretary of State, October 19, 1987.

VOLUME NO. 42 OPINION NO. 30

LEGISLATURE - Authority to pass 1987 Montana Laws, chapter 664;
LOCAL GOVERNMENT - Initiative No. 105 and 1987 Montana Laws, chapter 654 not repealed by 1987 Montana Laws, chapter 664;
STATUTES - Relationship between Initiative No. 105, 1987 Montana Laws, chapters 654 and 664, and sections 1-2-112 and 1-2-113, MCA;
WORKERS' COMPENSATION - Authority of Legislature to increase employer's payroll tax;
MONTANA CODE ANNOTATED - Sections 1-2-112, 1-2-113, 15-10-411, 15-10-412, 17-7-502, 39-71-2501 to 39-71-2504;
MONTANA LAWS OF 1987 - Chapters 654, 664;
OPINIONS OF THE ATTORNEY GENERAL - 42 Op. Att'y Gen. No. 21 (1987).

HELD: 1. The Legislature had the authority to pass 1987 Montana Laws, chapter 664 without giving local governments the ability to raise new revenues to pay for that liability.

2. Local governments must meet the requirements of both 1987 Montana Laws, chapter 664 and 1987 Montana Laws, chapter 654.

6 October 1987

David Gliko
City Attorney
P.O. Box 5021
Great Falls MT 59403

Patrick L. Paul
Cascade County Attorney
Cascade County Courthouse
Great Falls MT 59401

Gentlemen:

You have requested an opinion concerning:

1. Does the Legislature have the authority to impose a monetary obligation upon municipal and county governments without giving those governments the ability to raise revenue to pay for this liability?

2. If imposition of the monetary obligation is permissible, can municipalities and counties levy additional taxes to pay for this liability without reference to 1987 Montana Laws, chapter 654?

In the material accompanying your opinion request, you frame these questions in terms of House Bill 884 of the 1987 Montana Legislature (1987 Mont. Laws, ch. 664). That bill provided a supplemental funding source to cover the unfunded liability of the state workers' compensation insurance fund through an employer's payroll tax. I will answer your questions in the context of that Act.

Addressing your first question, I find no requirement in the Montana Constitution that the Legislature must provide local governments with a means of raising the revenue necessary to pay for new liabilities which it imposes on them. Such a requirement is found in sections 1-2-112 and 1-2-113, MCA, which apply to legislated expenditures which must be made by local governments and school districts, respectively. Those statutes state the following:

> Statutes imposing new local government duties. (1) Any law enacted by the legislature after July 1, 1979, which requires a local government unit to perform an activity or provide a service or facility which will require the direct expenditure of additional funds must provide a specific means to finance the activity, service, or facility other than the existing authorized mill levies or the all-purpose mill levy. Any law that fails to provide a specific means to finance any service or facility other than the existing authorized mill levies or the all-purpose mill levy is not effective until specific means of financing are provided by the legislature.

(2) The legislature may fulfill the requirements of this section by providing for an increase in the existing authorized mill levies or the all-purpose mill levy, special mill levies, or remission of money by the state of Montana to local governments; however, an increase in the existing authorized mill levies or the all-purpose mill levy or any special mill levy must provide an amount necessary to finance the additional costs and if financing is provided by remission of funds by the state of Montana, the remission shall bear a reasonable relationship to the actual cost of performing the activity or providing the service or facility.

(3) No subsequent legislation shall be considered to supersede or modify any provision of this section, whether by implication or otherwise, except to the extent that such legislation shall do so expressly.

(4) This section shall not apply to any law under which the required expenditure of additional local funds is incidental to the main purpose of the law.

§ 1-2-112, MCA.

Statutes imposing new duties on a school district to provide means of financing. (1) Any law enacted by the legislature after July 1, 1981, except any law implementing a federal law or a court decision, that requires a school district to perform an activity or provide a service or facility and that will require the direct expenditure of additional funds shall provide a specific means to finance the activity, service, or facility other than the existing property tax mill levy. Any law that fails to provide a specific means to finance such a service or facility is not effective until a specific means of financing meeting the requirements of subsection (2) is provided by the legislature.

(2) Financing must be by means of a remission of money by the state for the purpose of funding the activity, service, or facility. Financing must bear a reasonable relationship to the actual cost of performing the activity or providing the service or facility.

(3) No legislation passed and approved after October 1, 1981, supersedes or modifies any provision of this section, except to the extent that the legislation expressly does so.

(4) This section does not apply to any law under which the required expenditure of additional funds by the board of trustees is an insubstantial amount that can be readily absorbed into the budget of an existing program.

§ 1-2-113, MCA.

Examination of the legislative history of 1987 Montana Laws, chapter 664 reveals that the Legislature took the limitations of section 1-2-112, MCA, into account when it considered this bill. Minutes of the Senate Labor and Employment Committee, April 7, 1987, at 6. Subsection (4) of section 1-2-112, MCA, provides:

This section shall not apply to any law under which the required expenditure of additional local funds is incidental to the main purpose of the law.

As 1987 Montana Laws, chapter 664 says in pertinent part:

The purpose of this act is to provide a supplemental source of financing for the unfunded liability.

1987 Mont. Laws ch. 664, § 2(3). Since counties and municipalities are only one subgroup of the employers affected by the Act, it is clear that the required expenditure of additional funds by counties and municipalities is incidental to the main purpose of 1987 Montana Laws, chapter 664.

I conclude that the Legislature was correct in believing that section 1-2-112(4), MCA, rendered that statute inapplicable to 1987 Montana Laws, chapter 664. I find no other limitations on the Legislature that would prevent it from passing House Bill 884 without giving local governments the ability to raise revenue to pay the increased liability.

Your second question implicitly addresses the relationship between House Bill 884 and 1987 Montana Laws, chapter 654 (Senate Bill 71) and asks whether House Bill 884 amended or repealed Senate Bill 71 by implication. As I said recently in 42 Op. Att'y Gen. No. 21 (1987):

> Amendment or repeal by implication is not favored in Montana. Dolan v. School District No. 10, 195 Mont. 340, 346, 636 P.2d 825, 828 (1981). State ex rel. Mallott v. Board of Commissioners, 89 Mont. 37, 76, 296 P. 1, 11 (1930). The Montana Supreme Court has set the following standards for implied appeals:
>
> "We have said of implied repeals, in Box v. Duncan, 98 Mont. 216, 38 P.2d 986, 987: 'To make tenable the claim that an earlier statute was repealed by a later one, the two acts must be plainly and irreconcilably repugnant to, or in conflict with, each other; must relate to the same subject; and must have the same object in view.'"
>
> Chicago, Milwaukee, St. Paul & Pacific Railroad Co. v. Bennett, 145 Mont. 191, 195, 399 P.2d 986, 988 (1965). Thus, this and other cases establish a three-part test for repeal by implication: (1) The two acts must relate to the same subject; (2) the two acts must have the same object in view; and (3) the two acts must be plainly and irreconcilably in conflict. All three parts of the test must be met.

Applying this three-part test, I find that none of its elements is met here. Local governments must satisfy the requirements of both House Bill 884 and Senate Bill 71. As I also said in 42 Op. Att'y Gen. No. 21:

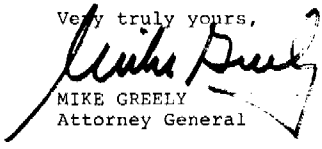
Local officials may necessarily have to reduce discretionary projects in order to perform duties that are statutorily required, but that was the case before I-105 or SB 71 and it remains so now.

THEREFORE, IT IS MY OPINION:

1. The Legislature had the authority to pass 1987 Montana Laws, chapter 664 without giving local governments the ability to raise new revenues to pay for that liability.

2. Local governments must meet the requirements of both 1987 Montana Laws, chapter 664 and 1987 Montana Laws, chapter 654.

Very truly yours,



MIKE GREELY
Attorney General

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

IN THE MATTER OF the Petition of Montana-Dakota Utilities Company (MDU) for a declaratory ruling on the proper gas transportation rate MDU should charge Cenex after October 11, 1987.	)))))	DECLARATORY RULING

On July 28, 1987, the Public Service Commission (Commission) received a Petition for Declaratory Ruling from Montana-Dakota Utilities Company (MDU). The specific question presented by MDU for a ruling is as follows:

> Pending the Commission's decision in [docket 87.1.8] should Montana-Dakota charge pursuant to Rate 82 or Rate 97 for the continuation of the transportation of natural gas to Cenex after October 11, 1987?

Proper notice of the Petition for Declaratory Ruling was issued and interested persons were given the opportunity to request a hearing and/or to submit comments. A hearing was not requested but comments were received from Exxon Corporation, Western Gas Processors, and the Montana Consumer Counsel.

MDU Rates 82 and 97 apply to the transportation of natural gas for industrial customers. In order to qualify for Rate 97 an MDU industrial customer must have a gas supplier that entered into an agreement with Williston Basin Interstate Pipeline (WBIP) under a WBIP FERC approved tariff prior to April 1, 1985. Farmers Union Central Exchange (Cenex) has such a supplier and thus qualifies for Rate 97. The supplier agreement with WBIP, however, terminates on October 11, 1987. MDU has been informed that the supplier and WBIP have agreed to renew and extend their transportation agreement. Therefore, MDU submitted a Petition for Declaratory Ruling in order to determine whether Rate 97 should be charged to Cenex subsequent to October 11, 1987.

The Commission can find nothing in the language of the Rate 97 tariff, nor in orders wherein Rate 97 was specifically approved or extended, that indicates that Rate 97 was to terminate on a specific date. In Docket 85.7.30, the last MDU general gas rate case, the Commission stated, in Order No. 5160b, paragraph 17, "The current price for Rate 97 ... will remain in effect, however, until such time as a more desirable method to compute transportation prices is proposed." In this Docket, No. 87.1.8, several MDU gas transportation customers are challenging the reasonableness of MDU's gas transportation tariffs. The Commission expects that the record that is developed in Docket No. 87.1.8 will allow it to make an informed determination of the reasonableness of MDU gas transportation rates. Until such a determination is made in this Docket, the

Commission finds that MDU should charge Cenex under Rate 97 for the continuation of transportation of natural gas to Cenex after October 11, 1987.

APPROVED BY THE COMMISSION OCTOBER 7, 1987.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

CLYDE JARVIS, Chairman

HOWARD L. ELLIS, Commissioner

JOHN B. DRISCOLL, Commissioner

TOM MONAHAN, Commissioner

ATTEST:

Ann Purcell
Acting Secretary

(SEAL)

NOTE: Any interested party may request the Commission to reconsider this decision. A motion to reconsider must be filed within ten (10) days. See 38.2.4806, ARM.

NOTICE OF FUNCTIONS OF ADMINISTRATIVE CODE COMMITTEE

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

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

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

Definitions:

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

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

Use of the Administrative Rules of Montana (ARM):

Known Subject Matter

1. Consult ARM topical index, volume 16. Update the rule by checking the accumulative table and the table of contents in the last Montana Administrative Register issued.

Statute Number and Department

2. Go to cross reference table at end of each title which list MCA section numbers and corresponding ARM rule numbers.

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies which have been designated by the Montana Procedure Act for inclusion in the ARM. The ARM is updated through June 30, 1987. This table includes those rules adopted during the period June 30, 1987 through September 30, 1987 and any proposed rule action that is pending during the past 6 month period. (A notice of adoption must be published within 6 months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through June 30, 1987, this table and the table of contents of this issue of the MAR.

This table indicates the department name, title number, rule numbers in ascending order, catchphrase or the subject matter of the rule and the page number at which the action is published in the 1987 Montana Administrative Register.

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