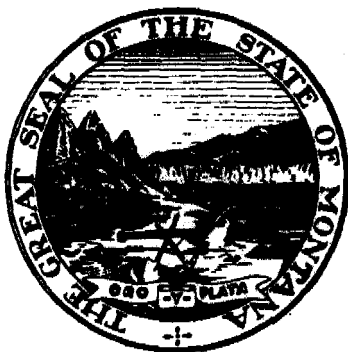


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MONTANA ADMINISTRATIVE REGISTER

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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 16

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing and where written comments may be submitted.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

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In the matter of the proposed amendment of rules pertaining to medical examiners)
) NOTICE OF PUBLIC HEARING
) ON PROPOSED AMENDMENT OF
) RULES PERTAINING TO
) MEDICAL EXAMINERS

1. On September 14, 1988, at 10:00 a.m., a public hearing will be held in room C-209, Cogswell Building, 1400 Broadway, Helena, Montana, to consider the proposed amendment of 8.28.904, 8.28.905, 8.28.906, 8.28.907, 8.28.908, 8.28.909, 8.28.1010, 8.28.1011, 8.28.1012, 8.28.1013, 8.28.1014, 8.28.1109, 8.28.1110, 8.28.1111, 8.28.1112, 8.28.1114, 8.28.1122, 8.28.1123, and 8.28.1124.

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

"8.28.904 DEFINITIONS (1) through (4) will remain the same.

(5) Candidate means a student who has completed one of the levels of training in accordance with these rules and who has been recommended by the Course-Committee Medical Advisor/Medical Director to the board for certification examination.

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

(10) Course committee means those individuals officially recognized by the board to assist a medical advisor or medical training director in the management of an advanced EMT course.

(11) Course coordinator means a person who has completed the appropriate training management course developed and conducted by the bureau, and recommended to the board by the bureau, and is authorized by the board every two years. He/she is under the supervision of a medical advisor and medical training director/advisor.

(12) through (16) will remain the same.

(17) Emergency medical technician (EMT) means all pre-hospital emergency care personnel who are board and registry certified or certified as EMT-defibrillation by the board.

(18) will remain the same.

(a) Emergency medical technicians - intermediate (EMT-I) means an EMT who has successfully completed those portions of the national standard paramedic curriculum which deal with:

{+}---roles-and-responsibilities

(iii) ---anatomy-and-physiology

+iii+--medical-terminology-and-patient-assessment

(iv) ---shock

~~(v)---fluid-and-electrolytes-and-fluid-replacement including peripheral-IV-lines-and-pneumatic-anti-shock garment-~~

~~(vi)---respiratory-care-including-oxygen administration,-positive-pressure-ventilation-and esophageal-airway-maintenance-device-~~ individual who has successfully completed the national training course Emergency Medical Technician-Intermediate (U.S. department of transportation), including the optional skills of endotracheal intubation and defibrillation, and is certified by the board and registry.

(b) Emergency medical technician - paramedic (EMT-P) means an individual who has successfully completed ~~all the modules in~~ the National Training Course Emergency Medical Technician - Paramedic (U.S. department of transportation), and is certified by the board and registry.

(19) Emergency medical technician-defibrillatorion (EMT-D) means an EMT-basic who has successfully completed the EMT-D curriculum as developed by the bureau and approved by the board and who is certified by the board.

(20) through (21) will remain the same.

(22) Instructor means a person who is recommended by the ~~course-committee~~ medical advisor or medical director, and approved by the board to teach in an approved EMT training program, and who shall be capable of performing patient care techniques required in the portion of the curriculum which he is recommended to teach.

(23) through (24) will remain the same.

(a) On-line medical control means to provide 24-hours, 7-days-per-week medical direction, advice, or orders to advanced EMT's ~~in-the-field-via-direct-patient-side communication within an approved advanced service, and originating-from-the-medical-control-facility.~~ On-line medical direction is supervised by off-line medical director.

(b) will remain the same.

(25) Medical control facility means a Montana licensed hospital in which on-line medical control may originates and shall have the following:

~~(a)---Patient-side communications with all advanced EMT's functioning within the an approved service areas.~~

~~(b)---For-EMT-P-services,-provide-24-hours-physician radio-coverage--For-EMT-I-services,-provide-24-hour physician/surrogate-radio-coverage-~~

(26) through (27)(c) will remain the same.

~~(28)---Module-means-a-unit-of-the-advanced-EMT curriculum-~~

(29) will remain the same but will be renumbered (28).

~~(30)---Patient-side-communication-means-direct-voice communication-which-originate-at-the-side-and-site-of-the ill-or-injured-patient-and-terminates-with-the-delivery of-the-patient-to-a-receiving-hospital--Patient-side communications-must-be-conducted-by-telephone-or-on-a-radio frequency-spectrum-licensed-by-the-FEE-and-approved-by-the~~

~~EMS-bureau--The-system-configuration-must-be-approved-by the-bureau.~~

~~431+ (29)~~ Protocol means a written standardized manner of administering patient care filed with and approved by the board and approved by the medical advisor/director, and local hospital medical staffs.

~~(32) through (33)~~ will remain the same but will be renumbered (30) and (31).

~~434+ (32)~~ Service area means the geographic boundary in which the advanced EMT service provides service. ~~Patientside-radio-communications-must-be-maintained-over-98% of-the-geographic-service-area.~~

~~435+--State-ambulance-trip-report-form-means-a-form developed-and-produced-by-the-bureau-to-preserve-minimum uniform-documentation-of-pre-hospital-care-provided-at-the basic-and-advanced-life-support-levels.~~

~~436+ (33)~~ Student means an individual who meets all student prerequisites and who is selected and approved by the ~~course-committee~~ medical advisor/medical training director to participate in the training program.

~~(37) through (40)~~ will remain the same but will be renumbered (34) through (37)."

Auth: 37-1-131, 50-6-203, MCA Imp: 50-6-203, MCA

REASON: To make definitions coincide with proposed modifications in the remainder of the rules including the elimination of the EMT course committee. Minor changes are made (e.g. the definition of module) to reflect changes in definitions at the national level.

To modify the definition of the intermediate level of advanced EMT training "to coincide with the new national training curriculum and include the skills of endotracheal intubation and defibrillation." These changes have been recommended by respective provider organizations and provide greater flexibility and additional options for local EMS providers.

Modifications of the communications and medical control definitions substantially reduce existing requirements making progression to advanced EMT training more attainable in Montana.

To eliminate requirement for using state ambulance trip report form and increasing flexibility for local areas to use the patient documentation form they prefer.

"8.28.905 EMERGENCY MEDICAL SERVICES BUREAU - DUTIES

(1) through (f) shall remain the same.

~~(g)--develop-and-produce-state-ambulance-trip-report forms-appropriate-for-each-level-of-pre-hospital-care;~~

~~(h) will remain the same but will be renumbered (g)."~~

Auth: 37-1-131, 50-6-203, MCA Imp: 50-6-203, MCA

REASON: Eliminating the requirement for local programs to use the state ambulance trip report form eliminates the need for the state to provide this form.

"8.28.906 APPLICATION - PROGRAM APPROVAL (1) No person, corporation, partnership or any other organization may initiate or conduct any program of EMT instruction until the board has approved an application submitted by a course committee. A copy of the written approval shall be provided to each student prior to initiation of training. The application for an EMT-B training program shall come from the EMT-B program medical director rather than a course committee. Coordination with existing course committees is recommended.

(2) A course committee seeking to establish a program shall complete an application form approved by the board and shall submit it to the bureau. The application for an EMT-B training program shall come from the EMT-B program medical director.

(3) Upon receipt of an application, the board and/or bureau may request from the course committee or for an EMT-B program from the EMT-B program medical director, any information reasonably necessary for a proper evaluation of the proposed program including, but not limited to information concerning:

(a) the eligibility of student(s) or the qualifications of the medical director, medical advisor, course coordinator, instructor, student(s) and clinical preceptor; and

(b) the adequacy of proposed teaching facilities and training aids.

(4) (3) The board may request the bureau to make an on-site evaluation of the proposed training program/sites. The applicant shall pay to the bureau a fee for the on-site visit in an amount sufficient to compensate the actual costs of such visit as determined by the bureau.

(5) (4) Within 30 60 days from receipt of the application or, if additional information is requested, within 30 60 days from receipt of such information, the board shall in writing request additional information, or approve or reject the application.

(6) (5) through (b) will remain the same.

(7) (6) The board shall hear grievances and complaints and conduct inquiries regarding the conduct and performance of EMT's, local program management and quality control and shall take appropriate action thereon. The board may appoint a screening and probable cause committee to evaluate complaints and questionable license applications. This committee may recommend to the board whether there is probable cause to conduct a formal investigation or whether to close the file."

Auth: 37-1-131, 50-6-203, MCA Imp: 50-6-203, 50-6-204, 50-6-205, MCA

REASON: This rule is being amended to do away with course committees because many course committees do not appear to be working well. Amendments will provide additional flexibility for the initiation of local training programs.

Existing regulations allow for the board to request the bureau make an on-site inspection of training programs. However, the bureau is unable to conduct on-site inspections within existing budget limitations. Provisions are made for charging the applicant for the cost of the on-site inspection.

There are no EMTs serving on the board. To provide for adequate peer review, and to determine if a complaint has sufficient probable cause for a formal board action, provisions are made for a "screening and probable cause committee."

"8.28.907 CANDIDATES - CERTIFICATION (1) will remain the same.

(2) Prior to the completion of their required emergency care experience and after completion of all other certification requirements for their respective levels of certification, the board may provisionally certify basic, defibrillation or advanced EMTs. Provisionally certified EMTs are not eligible for recertification. The provisionally certified EMTs are subject to all other rules pertaining to their level of certification including acts allowed."

Auth: 37-1-131, 50-6-203, MCA Imp: 50-6-203, 50-6-204, 50-6-205, MCA

REASON: This clarifies a "catch 22" in the existing regulations and makes these regulations consistent with those of the registry - the national certifying body used by the board. Candidates are required to have six (6) months experience prior to being certified; however, they have no way to get the six months experience until they are certified. This would allow for provisional certification so they can gain the six (6) months experience. They will be allowed to function fully at their respective level of provisional certification.

"8.28.908 REE+PROE+TY EQUIVALENCY (1) through (b) will remain the same.

(c) is recommended by the course-committee-and-the local-medical advisor or medical director or, in the case of EMT-B, is recommended by the EMT-B program medical director.

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

(b) is recommended for certification by the course committee-and-by-the-local medical advisor or medical director or-in-the-case-of-EMT-B, if recommended-by-the EMT-B-program-medical-director.

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

(c) is recommended by the course-committee-and-the local medical advisor or medical director.

(4) Individuals fulfilling the requirements of 8.28.908(1)(a) & (c) or 8.28.908 (2)(a) & (b) may perform in accordance with 8.28.1010 until they successfully complete the Montana certification requirements, until they are no

longer eligible for reciprocity, or until they have failed to meet certification requirements.

(a) individuals shall not function in accordance with 8.28.1010 until they have been notified, in writing, by the bureau,

(b) the bureau shall notify the individuals when they have completed the reciprocity requirements or when they are ineligible for reciprocity.

(5) No individual may function as an EMT, nor represent himself as an EMT until he is certified by the board, or comply with 8.28.908(4).

(4) through (5)(c) will remain the same, but will be renumbered as (6) through (7)(c)."

Auth: 37-1-131, 50-6-203, MCA Imp: 50-6-203,
50-6-204, 50-6-205, MCA

REASON: This rule deals primarily with honoring equivalent training from another state. Consequently, the title is changed to EQUIVALENCY.

Minor changes are made to the rule to reflect elimination of the requirement for a course committee at the basic EMT level.

To increase flexibility and to promote interstate movement of EMTs, this amendment establishes procedures for EMTs, with equivalent training, to function as EMTs in Montana until they complete the Montana EMT certification procedures.

"8.28.909 SUSPENSION OR REVOCATION OF CERTIFICATION

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

(2) Any person having knowledge that an EMT-basic has engaged or is engaging in any of the acts listed in subsection (1) above shall notify the local medical advisor who shall in-cooperation-with-the-course-committee investigate the allegation. All complaints received about an individual EMT's performance shall be forwarded to the board and bureau along with a record of any action taken by the-course-committee. A copy shall be provided to the EMT.

(a) Any person having knowledge that an EMT-basic has engaged or is engaging in any of the acts listed in subsection (1) above or who otherwise has a complaint about an EMT's performance, or about a course-committee medical advisor may also notify the board.

(3) Any person having knowledge that an EMT-defibrillation or EMT-advanced has engaged, or is engaging in any of the acts listed in subsection (1) above shall notify the local medical director or-EMT-B-program medical-director who shall investigate the allegation. All complaints received about an individual EMT's performance shall be forwarded to the board and bureau along with a record of any action taken by-the-course-committee-or-for EMT-B's, by-the-EMT-B-program-medical-director. A copy shall be provided to the EMT. The medical director or EMT-B-program-medical-director may temporarily suspend the

certification of an EMT-advanced or EMT-defibrillation, and may allow the EMT-advanced or EMT-defibrillation to practice at a basic level until a final ruling by the board.

(a) Any person having knowledge that an EMT-advanced or EMT-defibrillation has engaged or is engaging in any acts listed in subsection (1) above or who otherwise has a complaint about an EMT's performance, or about a course committee medical director may also notify the board.

(4) will remain the same.

(5) Upon referral to the board of an allegation under subsection (2) or (3) above, or by an interested party, the board may initiate an investigation and may request the assistance of the bureau. Within 30 days of such request, the bureau shall prepare a written report of the findings and recommendations to the board. The board may appoint a screening and probable cause committee to evaluate complaints and questionable license applications. This committee may recommend to the board whether there is probable cause to conduct a formal disciplinary procedure or whether to close the file.

(6) Within 30 days from receipt of the bureau's report and/or the probable cause/screening committee's report and considering the recommendations of the medical advisor, or medical director, ~~EMT-B program medical director and/or course committee~~, the board shall issue its findings and an appropriate order, providing a copy thereof to the EMT in question. Unless appealed under subsection (8) (7) below, such order becomes final within 30 days.

(7) through (d) will remain the same."

Auth: 37-1-131, 50-6-203, MCA Imp: 37-1-131, 50-6-203, 50-6-204, 50-6-205, MCA

REASON: These revisions reflect the eliminating of the requirement for a course committee at the basic EMT level. There are no EMTs serving on the board. To provide for adequate peer review, and to determine whether there is sufficient probable cause for a formal board action, provisions are made for a "screening and probable cause committee".

"8.28.1010 EMT - BASIC: ACTS ALLOWED (1) through (a) will remain the same.

(b) may not perform any skill defined as an advanced technique by the U.S. department of transportation emergency medical technician paramedic training curriculum ~~except that an EMT-basic may apply pneumatic counter pressure devices (MAST) in compliance with additional local training as approved by the board and approved protocols.~~"

Auth: 37-1-131, 50-6-203, MCA Imp: 50-6-204, MCA

REASON: The pneumatic counter pressure device (MAST) trousers are eliminated from the rules because they are now a portion of the national curriculum for basic EMT training

and are covered under section (a) of these rules. This deletion eliminates redundancy.

"8.28.1011 EMT - BASIC: COURSE REQUIREMENTS

(1) A basic EMT course shall be managed by a course committee coordinator under the supervision of a medical advisor and shall:

(a) will remain the same.

(b) be completed within 7 10 months of the date the course commences;

(c) through (2) (c) will remain the same.

~~(3) The course committee of a basic EMT course shall include, but not be limited to:~~

~~(a) the medical advisor;~~

~~(b) the course coordinator~~

~~(c) a registered nurse licensed in Montana who provides emergency care;~~

~~(d) pre-hospital emergency care provider (an EMT basic is required after the first course);~~

~~(4) (3) The course coordinator shall, under the supervision of the medical advisor and the course committee:~~

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

~~(5) The course committee shall:~~

~~(a) provide direction and technical advice to the course and continuing education;~~

~~(b) assist in classroom and clinical instruction as appropriate;~~

~~(c) participate in student evaluation;~~

~~(d) participate in the performance evaluation of practicing EMT's;~~

~~(e) participate in review of student applications and selection;~~

~~(f) assure the availability of a local program of continuing education for EMT's;~~

~~(g) recommend candidates for certification or recertification to the board by endorsement on the application or certification form;~~

~~(h) approve or disapprove faculty selections recommended by the course coordinator;~~

~~(i) review results of interim exams;~~

~~(j) receive complaints regarding an individual basic EMT's performance; investigate such complaints and submit copies of the complaints and their disposition to the board and to the bureau."~~

Auth: 37-1-131, 50-6-203, MCA Imp: 50-6-203, 50-6-204, MCA

REASON: The EMT course committee has not been used effectively in most communities. Eliminating this requirement will provide increased flexibility to local areas in the establishment of EMT training programs. The local medical advisor will be the primary person overseeing

the quality of EMT training in conjunction with EMT course coordinator.

"8.28.1012 EMT - BASIC: STUDENT PREREQUISITES

- (1) will remain the same.
- (a) be 18 years of age or older ~~at the beginning of the course when they apply for certification,~~
- (b) be a high school graduate or equivalent ~~when they apply for certification;~~
- (c) be approved for admission by the local course medical advisor ~~in consultation with the course committee;~~
- (d) will remain the same."

Auth: 37-1-131, 50-6-203, MCA Imp: 50-6-203,
50-6-204, MCA

REASON: These revisions provide additional flexibility by clarifying the minimum age requirements.

"8.28.1013 EMT - BASIC: CERTIFICATION (1) through

- (a) will remain the same.
- (b) successfully complete a board approved EMT program within 2 years prior to of the examination date including ~~attending 98% of the classes and making up all lessons missed;~~
- (c) ~~are recommended by the local medical advisor;~~
- (c) through (f) will remain the same but will be renumbered (d) through (g) ."

Auth: 37-1-131, 50-6-203, MCA Imp: 50-6-203,
50-6-204, MCA

REASON: These changes are made consistent with the elimination of the course committee and to clarify that the EMT training program must be completed prior to the examination.

"8.28.1014 EMT - BASIC: RECERTIFICATION (1) through

- (b) will remain the same.
- (c) has been evaluated and recommended for recertification by their ~~local course committee and~~ medical advisor.
- (d) through (f) will remain the same."

Auth: 37-1-131, 50-6-203, MCA Imp: 50-6-203,
50-6-204, MCA

REASON: This minor change is consistent with eliminating the requirement for a course committee.

"8.28.1109 EMT - ADVANCED: ACTS ALLOWED

- (1) The emergency medical technician - intermediate (EMT-I) may perform all acts allowed the EMT-basic and the EMT-defibrillation and, when properly trained, certified and functioning within an approved service and when directed to perform a specific act by medical control also may:
- (a) through (d) will remain the same.

(e) perform endotracheal intubation.

(2) The emergency medical technician-paramedic (EMT-P) may perform all acts allowed the EMT-basic, the EMT-defibrillation and the EMT-I and, when properly trained, certified, and functioning within an approved service and when directed to perform a specific act by medical control and within approved protocols also may:

(a) will remain the same.

(b) administer medications as the following list of drugs approved by use specified by the board protocol:

(i)-----medium-acting-barbiturates
(ii)-----lidocaine-(Xylocaine)
(iii)-----Morphine-Sulfate
(iv)-----Diazepam-(Valium)
(v)-----Calcium-Gluconate
(vi)-----Calcium-Chloride
(vii)-----Ipecac
(viii)-----Saline
(ix)-----Dextrose---5%---50%
(x)-----bactated-Ringers
(xi)-----Atropine-Sulfate-(Atropine)
(xii)-----Epinephrine-(Adrenalin)
(xiii)-----Furosemide-(Lasix)
(xiv)-----Naloxone-(Narcan)
(xv)-----Aminophylline
(xvi)-----Diphenhydramine-HEB-(Benadryl)
(xvii)-----Isoproterenol-(Isuprel)
(xviii)-----Dopamine-(Intropin)
(xix)-----Metaraminol-(Aramine)
(xx)-----Norepinephrine-(Nevarterenol/levophed)
(xxi)-----Sodium-Bicarbonate
(xxii)-----Nitroglycerin
(xxiii)-----Propranolol-(Inderal)
(xxiv)-----Procainamide-(Pronestyl)
(xxv)-----Hydralazine-(Apresoline/Hyperstat)
(xxvi)-----Phenytoin-Sodium-(Dilantin)
(xxvii)-----Mannitol
(xxviii)-----Pitocin
(xxvix)-----Edecrin
(xxx)-----Bebutres-(Bebutamine)
(xxxi)-----Nipride-(Nitroprusside)
(xxxii)-----Decadron-(Corticosteroids)
(xxxiii)-----Digitalis-(Digoxin, Digifoxin)
(xxxiv)-----Quintidine
(xxxv)-----Bretylum-Tosylate-(Bretylol)

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

(d) insert catheter and/or Heimlich valve for tension pneumothorax relief:

(e) through (4) will remain the same.

(a) When he has patient-side voice contact with on-line medical control and is directed to perform a specific act;

(b) or, when he is initiating formally adopted, written protocols of the medical director (approved by

the hospital medical staff(s)) prior to initiating voice communications in-only-the-pulseless,-non-breathing-patient providing that

(5)--When-patient-side-communications-cannot-be established-within-the-service-area-and-where-the-medical director-has-authorized-by-written-policy,-and-EMT-advanced may-initiate-treatment-according-to-approved-written standing-protocols-provided-that:

(a) voice contact with on-line medical control is made by the most expedient means possible after the initiation of treatment;

(b)--within-24-hours-from-the-time-such-emergency technique-is-performed,-the-EMT-advanced-submits-a-full written-report-to-the-board-through-the-bureau-on-forms designated-by-the-bureau-describing-the-circumstances;

(c)--if-in-more-than-10%-of-the-total-advanced calls-per-year,-patient-side-communications-cannot-or-was not-established,-the-service-shall-be-reinspected-for conformance;

(6) and (7) will remain the same but will be renumbered (5) and (6).

(8) (7) An EMT-P may not perform any act determined by-the-medical-director-to-be beyond the EMT-P acts allowed, nor may he/she function outside his/her approved advanced EMT service, and medical control."

Auth: 37-1-131, 50-6-203, MCA Imp: 50-6-203, 50-6-205, MCA

REASON: Endotracheal intubation is added as a skill to the intermediate level of advanced EMT training. This is based on review of the literature by the medical community and determining that endotracheal intubation can have very positive impacts on patient care with minimal risk. It is the "gold standard" or airway management.

Because available drugs and medications change so frequently, the entire list of approved drugs is eliminated. Allowed drugs will be determined by protocol approved by the program's medical director and the board.

Existing radio communications requirements are too stringent. This amendment lessens the communications requirements while still providing for medical control and quality assurance. This should promote expanded advanced life support training in rural Montana.

"8.28.1110 EMT - ADVANCED: COURSE REQUIREMENTS

(1) An EMT-advanced course shall be managed by a course coordinator (who is not a student in this class) under the supervision of a medical training director and shall:

(a) will remain the same.

(b) provide clinical experience as specified in the approved curriculum and in accordance with board specified criteria provided to the medical director with the application forms;

(c) provide for the teaching of all required material ~~in each module that is approved for presentation;~~

(d) will remain the same.

(e) be approved by the board prior to beginning instruction ~~--- a written copy shall be provided to each student prior to the initiation of the training;~~

(f) will remain the same.

(i) EMT-Intermediate course - 6 (12) months from starting date of course;

(ii) EMT-Paramedic - 18 (22) months from starting date of course;

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

(g) critique patient care during training and assure maintenance of written documentation of same on forms designated by the board;

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

(j) ~~in conjunction with the course committee;~~ recommend to the board candidates for certification.

(3) through (5)(d) will remain the same.

~~(e)---recommend candidates for certification to the medical training director by endorsement of applications for certification;~~

(f) will remain the same but will be renumbered (c).

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

(b) access to mannequins, A-V equipment, A-V soft goods and expendable supplies/equipment as specified in the EMT-Paramedic Intermediate course guide;

(c) sufficient patient volume to allow students to complete all clinical experience within 6 8 months of the course starting date;

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

(e) sufficient clinical experience with an instructor/student ratio of no more than 1:2, at least one instructor for every two students and which provides sufficient numbers of each of the following supervised experiences to demonstrate student proficiency and accuracy in the completion of all clinical objectives specified in the EMT-Intermediate curriculum and in compliance with board specified criteria.

~~(i)---patient examination and documentation of findings;~~

~~(ii)---patient interview for pertinent medical/social history and documentation of findings;~~

~~(iii)---peripheral IV insertions on live patients and documentation of the procedure;~~

~~(iv)---peripheral IV maintenance; adding; changing; or disconnecting IV fluids with appropriate documentation;~~

~~(v)---airway management including oropharyngeal and endotracheal suctioning with appropriate documentation;~~

~~(vi)---placement of esophageal obturator airways in live patients with appropriate documentation;~~

~~(vii)---venipuncture for obtaining venous blood specimen with appropriate documentation;~~

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

(c) sufficient patient volume to allow students to complete all clinical experiences within 18 22 months of the starting date of the course;

(d) will remain the same.

(i) emergency department with 24-hours; in-house emergency physician staffing,

(ii) through (ix) will remain the same.

(e) clinical experience provided with at least one instructor for every two students an-instructor/student ratio-of-no-more-than-1:2;

(f) will remain the same."

Auth: 37-1-131, 50-6-203, MCA Imp: 50-6-203, 50-6-205, MCA

REASON: The length of time for the completion of classes is extended to provide increased flexibility to rural areas relying predominantly on volunteer personnel.

Modifications are made to reflect a standard, stand alone curriculum for the Intermediate level of advanced EMT training. Previously, this was just extracted from the national paramedic curriculum.

"8.28.1111 EMT - ADVANCED: STUDENT ELIGIBILITY

(1) will remain the same.

(a) be 19 years of age or older at-the-beginning-of the-course when they apply for certification;

(b) be a high school graduate or equivalent when they apply for certification;

(c) be board certified as a Basic-EMT or EMT-D in Montana;

(d) will remain the same.

(e) be accepted by the medical training director and course-committee;

(2) will remain the same.

(a) be 19 years of age or older at-the-beginning-of the-course when they apply for certification;

(b) be a high school graduate or equivalent when they apply for certification;

(c) be board certified as a basic EMT, EMT-D or EMT-Intermediate in Montana;

(d) provide that he/she is currently providing pre-hospital emergency care at the basic, defibrillation or intermediate level;

(e) be accepted by the medical training director and course-committee."

Auth: 37-1-131, 50-6-203, MCA Imp: 50-6-203, 50-6-205, MCA

REASON: Minor wording changes to clarify the intent of the rules.

"8.28.1112 EMT - ADVANCED: CERTIFICATION

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

(b) attend and successfully complete an approved advanced EMT program within 2 years prior to the examination date and participate in all of the required classes and board specified clinical experience, both in-hospital and pre-hospital;

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

Auth: 37-1-131, 50-6-203, MCA Imp: 50-6-203,
50-6-205, MCA

REASON: This amendment is to require that the student not only attend, but also successfully complete, a training program prior to taking the state examination. This clarifies the intent of the rule.

"8.28.1114 EMT - ADVANCED: SERVICE APPROVAL

(1) will remain the same.

(a) A service approval shall be valid for at least 1 year but less than two (2) years from the date of approval and shall expire on October 30.

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

(a) The board may request the bureau to make on-site evaluation of the proposed service. The applicant shall pay to the bureau a fee for the on-site visit in an amount sufficient to compensate the actual costs of such visit as determined by the bureau.

(4) Within 90 days from receipt of the application or, if additional information is requested, within 90 days from receipt of such information, the board shall in writing request additional information, approve or reject the application for an advanced EMT service. The bureau may issue service approval pending board action.

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

(6) The board shall hear grievances and complaints and conduct inquiries regarding the conduct and performance of advanced EMT's, local service management and quality control and shall take appropriate action thereon. The board may appoint a screening and probable cause committee to evaluate complaints. This committee may recommend to the board whether there is sufficient probable cause to proceed with a formal investigation or to close the file.

(a) through (7) (iv) will remain the same.

(v) advanced EMT representative from each participating service who is currently providing care in the service area.

(vi) will remain the same.

(b) The committee shall be under the direction and supervision of the off line medical director and shall, when requested by the medical director:

(i) through (8) (ii) will remain the same.

~~{iii} provide for designated medical control facility;~~

~~{iv} (iii) provide for patient-side communications with field units as provided in 8.28.1114(8)(b),~~

~~{v} (iv) provide for protocols,~~

~~(b)--sufficient-personnel-to-assure-24-hours-service availability-consistent-with-acts-allowed,-and-as-adopted-by the-board;~~

(c) will remain the same but will be renumbered (b).

(i) provide for a designated service area dependent upon-patient-side-radio-communications-capability.

(ii) for an intermediate service there shall be two-way communications approved by the bureau from the EMT-Intermediate with a 24 hour physician staffed emergency department, or if two-way communications from field cannot be established with a 24 hour physician staffed emergency department the EMT-Intermediate may receive medical control from an approved communications system with:

(A) a hospital emergency department (registered nurse who provides medical control through approved written protocols, has supplemental training and is approved by the medical director), or

(B) a physician approved by the medical director.

(iii) for a paramedic service there shall be two-way communications approved by the bureau from the EMT-Paramedic with a 24 hour physician staffed emergency department, or if two-way communications from the field cannot be established with a 24 hour physician staffed emergency department the EMT-Paramedic may receive medical control from an approved communications system with:

(A) a hospital emergency department (physician only), or

(B) a physician approved by the medical director.

~~(iii) will remain the same but will be renumbered (iv).~~

~~(d) through (H) will remain the same.~~

(I) Endotracheal tubes - 2 full sets, infant through adult:

(J) Laryngoscopes - 1 handle, 1 set of blades infant through adult.

(ii) through (Q) will remain the same.

(R) Drugs Medications (as allowed-in-service-approval specified by protocol)

(S) through (e)(i) will remain the same.

~~(iii)-provide-designated-emergency-vehicles-for-initial responder~~

~~(f) will remain the same.~~

~~(iii)-provide-mutual-aid-agreements-that-provide-for-24 hours,-7-days-a-week-coverage-with-all-licensed-pre-hospital EMS-providers-in-and-bordering-the-designated-service-area. These-agreements-shall,-as-a-minimum,-include-the-following:~~

~~(A)--defined-primary-and-secondary-geographic-response areas;~~

~~(B)--defined-initiation-of-mutual-aid-agreements;~~

~~(ii) will remain the same but will be renumbered (i).~~

~~(A) through (B) will remain the same.~~

~~(iii)-provide-a-mutual-aid-agreement-among-all receiving-hospitals-within-or-adjacent-to-designated-service area--These-agreements-shall,-as-a-minimum-include:~~

~~{A}--a-distribution-plan-for-patients-to-be-initiated
by-medical-control;"~~

Auth: 37-1-131, 50-6-203, MCA Imp: 50-6-203,
50-6-205, MCA

REASON: Clarification of the length of service approval is so all services expire at the same time. This makes it easier for the services to remember and is easier for the state to administer.

In the event the application is not clear, and the board wishes to have additional information prior to making a decision, an on-site inspection is to be requested. This makes the service approval rule consistent with the training approval.

There are no EMTs serving on the board. To provide for adequate peer review, and to determine if a complaint has sufficient probable cause for a formal board action, provisions are made for a "screening and probable cause committee".

Previous communications requirements were too restrictive. These rules provide greater flexibility while still assuring adequate medical control.

Many of the mutual aid provisions are eliminated from the service approval requirements because they are too onerous. They should be a matter of local concern rather than state regulation.

"8.28.1122 EMT - DEFIBRILLATION: STUDENT ELIGIBILITY

(1) will remain the same.

(a) currently certified as an EMT-basic by the board, or have completed a board approved EMT program and/or be eligible for the EMT-basic examination;

(b) will remain the same."

Auth: 37-1-131, 50-6-203, MCA Imp: 50-6-203,
50-6-204, MCA

REASON: To allow EMT candidates to take EMT defibrillation course in conjunction with their EMT basic course.

"8.28.1123 EMT - DEFIBRILLATION: CERTIFICATION

(1) through (2) (a) will remain the same.

(b) successfully complete an approved training program prior to two years of the examination date and continuing, prior to certification, to maintain eligibility for the examination by completing the bi-monthly continuing education requirements of (3)(a)(b)(c)(d) of this section;

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

(3) The EMT-defibrillation must every-other-month attend a continuing education sessions at intervals specified by the board and approved by the EMT-defibrillation program medical director in which the EMT-defibrillation must:

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

(d) documentation shall be completed on forms provided by the bureau and shall be sent to the bureau following said ~~bi-monthly~~ continuing education sessions.

(4) If an EMT-D does not attend the ~~bi-monthly~~ required continuing education session, the EMT-D physician program medical director shall not allow the individual to perform defibrillation until (3)(a)(b)(c) above have been demonstrated to the EMT-D physician program medical director's satisfaction. The EMT-D program medical director shall be responsible for maintaining records of all ~~bi-monthly continuing education~~ sessions and who is allowed to function under protocol."

Auth: 37-1-131, 50-6-203, MCA Imp: 50-6-203,
50-6-204, MCA

REASON: Since this is a relatively new program, experience has not yet taught us the most effective time interval for demonstration of proficiency. This amendment would allow the board to establish that time interval based upon research and experience.

"8.28.1124 EMT - DEFIBRILLATION: SERVICE APPROVAL

(1) will remain the same.

(a) A service approval shall be valid for at least 1 year but less than two (2) years from the date of approval and shall expire on October 30;

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

(4) Within 90 days from receipt of the application or, if additional information is requested, within 90 days from receipt of such information, the board shall in writing request additional information, approve or reject the application for an EMT-defibrillation service. The bureau may issue service approval pending board action.

(5) through (7)(k) will remain the same."

Auth: 37-1-131, 50-6-203, MCA Imp: 50-6-203,
50-6-204, MCA

REASON: Clarification of the length of service approval is so all services expire at the same time. This makes it easier to the services to remember and is easier for the state to administer.

3. Interested persons 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 Emergency Medical Services Bureau, Room C-204, Cogswell Building, 1400 Broadway, Helena, Montana 59620, no later than September 22, 1988.

4. Geoffrey L. Brazier has been designated to preside over and conduct the hearing.

BOARD OF MEDICAL EXAMINERS
DR. THOMAS MALEE, PRESIDENT

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

Certified to the Secretary of State, August 15, 1988.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF SOCIAL WORKERS AND PROFESSIONAL COUNSELORS

In the matter of the proposed) NOTICE OF PROPOSED AMENDMENT
amendment of a rule pertaining) OF 8.61.1201 LICENSURE
to licensure requirements) REQUIREMENTS

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On September 24, 1988, the Board of Social Work Examiners and Professional Counselors proposes to amend the above-stated rule.

2. The proposed amendment of 8.64.1201 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at page 8-1673 and 8-1674, Administrative Rules of Montana)

8.61.1201 LICENSURE REQUIREMENTS (1) For the purpose of section 37-23-202, MCA, a planned graduate program of study is one which includes ~~study that is primarily counseling in nature is one which shows evidence of 66% of the credits within the program~~ 90 quarter hours, primarily counseling in nature, nine quarter hours of which were earned in an advanced counseling practicum which resulted in a graduate degree from an institution accredited to offer a graduate program in counseling. An institution accredited to offer such a degree program is a college or university accredited by various associations of colleges and secondary schools. This list is available at the board office. Credits are will be accepted in the following areas:

(a) and (b) will remain the same.

(c) supervised counseling experience (this practicum ~~must be supervised at the ratio of at least one hour of one to one supervision for every 10 hours of experience in the setting shall be practica taken at the graduate school level which includes supervision by a counselor educator with a minimum of one hour of face-to-face consultation with the supervisor for every 10 hours of practicum site experience~~) and at least six hours of the following:

(i) through (viii) will remain the same.

(2) "Advanced counseling practicum" shall include practica taken at the graduate school level which includes supervision by a counselor educator with a minimum of one hour of face-to-face consultation with the supervisor for every 10 hours of practicum site experience.

(3) "2,000 hours" is defined as 2,000 clock hours of experience working in a counseling setting. Supervised experience in practica and/or internships taken at the graduate level may be utilized. The supervision acceptable for job/internship experience shall include a minimum of one hour of face-to-face consultation with the supervisor for

every 20 hours of job/internship experience. Some examples of acceptable experience would be:

(a) A 40 hour per week job/internship which provides two hours of individual supervision each week would accumulate 2,000 supervised hours in 50 weeks to equal the 10/1 ratio, or

(b) A 20 hour per week job/internship which provides one hour of individual supervision each week would accumulate 2,000 supervised hours in 100 weeks to equal the 20/1 ratio.

(4) If an applicant fails the examination, he/she may retake the examination upon payment of the exam fee of \$75.00."

Auth: 37-1-131, 37-23-103, MCA Imp: 37-23-202, MCA

REASON: The rule is being amended to clarify and implement recent statutory standards.

3. Interested persons may submit their data, views or arguments concerning the proposed amendment in writing to the Board of Social Work Examiners and Professional Counselors, 1424 - 9th Avenue, Helena, Montana 59620-0407, no later than September 22, 1988.

4. If a person who is directly affected by the proposed amendment wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any comments he has to the Board of Social Work Examiners and Professional Counselors, 1424 - 9th Avenue, Helena, Montana 59620-0407, no later than September 22, 1988.

5. If the board receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of those persons who are directly affected by the proposed amendment, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision or from an association having no less than 25 members who will be directly affected, a public hearing will be held at a later date. Notice of hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 41 based on the 413 licensees in Montana.

BOARD OF SOCIAL WORK AND
PROFESSIONAL COUNSELORS
PATRICK KELLY, CHAIRMAN

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

Certified to the Secretary of State, August 15, 1988.

STATE OF MONTANA
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION
BEFORE THE BOARD OF WATER WELL CONTRACTORS

In the matter of the proposed)	NOTICE OF PUBLIC HEARING ON
adoption of monitoring well)	THE PROPOSED ADOPTION OF
construction standards)	MONITORING WELL CONSTRUCTION
)	STANDARDS

TO: All Interested Persons:

1. On Friday, September 30, 1988, at 9:00 a.m., a public hearing will be held in Main Conference Room of the Lee Metcalf Building of the Department of Natural Resources and Conservation Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed adoption of the above-stated rules.

2. The proposed rules do not replace or modify any existing rules of the Board of Water Well Contractors. The proposed rules will read as follows:

"1. DEFINITIONS The following definitions shall apply for monitoring well construction:

(1) 'Abandoned well' means a well whose use has been permanently discontinued, or which is in such disrepair that its continued use for the purpose of monitoring groundwater is impractical. Wells which have not been monitored for more than three years shall be deemed abandoned unless written permission is obtained from the board to maintain the well. A properly abandoned well will not produce water nor serve as a channel for movement of water.

(2) 'Annular space' means the space between two concentric tubes or casings, or between the casing and the borehole wall.

(3) 'Aquifer' means any underground geological structure or formation which is capable of transmitting water in usable amounts.

(4) 'Artesian' means a condition in an aquifer wherein groundwater is confined under pressure by an overlying geologic unit of relatively lower permeability.

(5) 'Bentonite' means a highly plastic, highly absorbent colloidal clay composed largely of the mineral montmorillonite.

(6) 'Borehole' means an open or cased subsurface hole created by drilling.

(7) 'Casing' means tubing which is installed to counteract caving and isolate the zone being monitored of a drilled hole.

(8) 'Casing, protective' means a section of pipe or tubing that is placed over the well casing at the surface to provide structural protection to the well and restrict unauthorized entrance into the well.

(9) 'Casing, surface' means a single section of tubing used to stabilize a borehole near the surface during and following the drilling of the hole.

(10) 'Cement' means Portland Cement, usually furnished in 94 pound bags.

(11) 'Confined groundwater' means groundwater within a geologic unit(s) that is under pressure significantly greater than atmospheric pressure; the upper limit of the geologic unit being the bottom of a zone of distinctly lower hydraulic conductivity than that of the geologic unit(s) in which the confined water occurs.

(12) 'Confining bed' means a layer of geologic materials having very low hydraulic conductivity that hampers the movement of water into and out of an aquifer.

(13) 'Contamination' means the degradation of natural water quality as a result of man's activities. There is no indication of specific limits, since the degree of permissible contamination depends upon the intended use, or uses, of the water.

(14) 'Cuttings' means fragments or particles of soil or rock, with or without free water, created during the drilling of a borehole.

(15) 'Deionized water' means water that contains less than 50 milligrams per liter of dissolved solids.

(16) 'Drilling fluid' means a liquid or gas which may be used in the drilling operation to remove cuttings from the borehole, to clean and cool the bit, to reduce friction between the drill stem and the borehole wall, and to seal the borehole to prevent loss of drilling fluids.

(17) 'Flowing well' means a well from which water flows from the casing top under natural hydro-dynamic pressure.

(18) 'Gravel pack' means the principal filter pack of a well or monitoring device.

(19) 'Groundwater' means water encountered below ground surface.

(20) 'Grout' means an impervious or low permeable inorganic material used for the purpose of preventing interaquifer contamination and/or surface water infiltration. The term includes:

(a) Asphaltic Concrete: Mixture of dense graded sand or sand and gravel and asphalt cement with less than 8% air voids.

(b) Bentonite clay grout: A mixture of at least 1.5 pounds of bentonite clay per gallon of potable water.

(c) Bentonite pellets and chips: Particles of bentonite passing a 3/4-inch sieve and retained on a #4 sieve.

(d) Compacted clay cuttings: Uncontaminated cuttings, a sample of which can be rolled into a thread of 1/8 in diameter or smaller, compacted to a density of at least equal to the formation from which they were cut. Bentonite powder passing a #200 sieve may be mixed with the cuttings. When attempting to roll the thread, particles of sand and gravel larger than a #40 sieve may be removed.

(e) Cuttings slurry grout: A mixture of uncontaminated water and a minimum of 15% solids by weight consisting of uncontaminated clay or shale cuttings, and a minimum of 10% bentonite by weight. The mixture shall have a unit weight of at least 9.00 pounds per gallon.

(f) Granular bentonite: Bentonite in sand size particles, most of which passes a #4 sieve and most of which are retained on a #200 sieve.

(g) Neat cement grout: A mixture of not more than six gallons of potable water per 94-pound sack of Portland cement. Up to five pounds of bentonite clay per sack of cement may be added. When bentonite is added, the quantity of water may be increased 0.1 gallon for each pound of bentonite per sack of cement. Commercial fly ash may be substituted on a weight basis for up to half of the Portland cement.

(h) Portland Cement Concrete: Mixture of sand, Portland cement, potable water, and 4 to 8% air. May contain gravel. Fly ash may be substituted for up to 25% of the Portland cement. Shall contain at least six sacks of cement per cubic yard and have a 28-day compressive strength of at least 4,000 psi.

(21) 'Grouting' means the operation by which grout material is placed in the borehole.

(22) 'Hazardous' means a condition where materials or fluids contain sufficient types and amounts of biological, chemical, or physical (including radiological) agents which are likely to cause human illness, disorders, or disability. These include, but are not limited to, pathogenic viruses, bacteria, parasites, toxic chemicals and radioactive isotopes.

(23) 'Hydraulic conductivity' means a property of the geological material expressing the relative ease with which water flows through the geological material in response to a differential in total hydraulic head.

(24) 'Hydraulic gradient' means the rate of change in total head per unit of distance of flow in a given direction.

(25) 'Injection well' means a well utilized for injecting fluids or gases into geologic materials.

(26) 'Leachate' means contaminated water resulting from the passage of direct precipitation, surface water, or groundwater through waste.

(27) 'Lysimeter' means a device used to obtain soil moisture samples above the water table.

(28) 'Monitoring well' means a well that is used for monitoring ground water quality or flow direction, but is not used for withdrawing ground water for purposes other than water quality sampling or pump testing.

(29) 'Monitoring Well Log Report form' means the form required by the department of natural resources and conservation to be filed for each monitoring well completed.

(30) 'Neutron tube' means tubing installed in a borehole for the purpose of measuring soil-water content by neutron moderation techniques. Neutron tubes are constructed of a variety of materials, including plastic, fiberglass, fluorocarbons, or metal.

(31) 'Non-biodegradable fluidizing admixtures' means grout additives that provide temporary reduction of gel strength by dispersing the clay particles. Non-biodegradable limits the use to only those additives not subject to biological decomposition. Natural and synthetically produced natural polymers are biodegradable and may not be used. Totally synthetic polymers

must be used with care, and only after determining that they are chemically acceptable can they be introduced into fresh water systems.

(32) 'Non-hydrologic geotechnical' means the purpose of the hole is not to collect hydrologic information. Geotechnical is information on geological, geochemical, and geophysical conditions.

(33) 'Observation well' is a well designed to measure the exact depth to the water table. An observation well is often screened or perforated across the water table.

(34) 'Packer' means a transient or dedicated device placed in a well, which plugs or seals a portion of the well or well annulus at a specific level.

(35) 'Permeability' means a measure of relative ease with which a porous medium can transmit a liquid under a potential gradient. It is a property of the medium that is dependent upon the shape, size, and degree of interconnection of the pores.

(36) 'Piezometer' is a well designed to measure the hydraulic potential (water level elevation) at a specific point in the subsurface.

(37) 'Radius of influence' means the radial distance from the center of a pumped well to the point where there is no lowering of the water table or potentiometric surface (the edge of the cone of depression).

(38) 'Recovery well' means a well installed to recover contaminants that have been introduced into the ground water table, but is not used for monitoring ground water quality or flow direction.

(39) 'Saline seep' means an artificially created ground water system of poor quality, created by a change in the land use, which generally occurs in materials of very low transmissivity.

(a) 'Saline seep well' means a well used for recharge area identification and for monitoring water table levels.

(40) 'Static water level' means the elevation of the top of a column of water in a well, which is no longer influenced by effects of installation, pumping, or other temporary conditions. Static water levels are transitory and therefore will change due to temporal and seasonal effects.

(41) 'Surfactants' mean synthetic detergents.

(42) 'Transmissivity' means the rate at which water of prevailing kinematic viscosity is transmitted through a unit width of an aquifer under a unit hydraulic gradient.

(43) 'Tremie pipe' means a pipe or tube that is used to transport grout or other material from above ground surface into a borehole annulus of a monitoring well or other groundwater monitoring device.

(44) 'Unconfined aquifer' means an aquifer in which hydrostatic pressures at the water table are equal to atmospheric pressure. In unconfined aquifers, the water table is exposed to the atmosphere through openings in the overlying materials.

(45) 'Vapor detection well' means a well or borehole used to obtain soil-gas samples above the water table.

(46) 'Water cement ratio' means the proportion of the weight of mixing water to the weight of cement.

(47) 'Water table' means the surface in an unconfined aquifer at which the pressure is atmospheric. This level is determined at a location by the static water level in a monitoring well or piezometer screened across the top of the zone of saturation.

(48) 'Well screen' means pipe or cylindrical tubing with slots of a uniform width, orientation, and spacing.

(49) 'Zone of saturation' means a hydrologic zone below the water table in which the interstices are filled with groundwater."

Auth: 37-43-202, MCA Auth. extension: Sec. 11, Ch. 278, L. 1985, Eff. 7/1/85 Auth. extension: Sec. 19, Ch. 538, L. 1987, Eff. 7/1/87 Imp: 37-43-202, MCA

"II. EXCLUSIONS Exclusions from these construction standards include the following wells:

- (1) recovery wells;
- (2) all wells less than 10 feet deep;
- (3) vapor detection wells that do not penetrate the water table;

- (4) lysimeters;
- (5) neutron tubes;
- (6) injection wells for the oil and gas industry;
- (7) holes drilled for non-hydrologic geotechnical information.

- (8) piezometers and observation wells in dams;
- (9) monitoring wells installed under the authority of another governmental agency where the construction standards of that agency are more stringent than these rules; and

- (10) special cases, with prior approval of the board."

Auth.: 37-43-202, MCA Auth. extension: Sec. 11, Ch. 278, L. 1985, Eff. 7/1/85 Auth. extension: Sec. 19, Ch. 538, L. 1987, Eff. 7/1/87 Imp: 37-43-202, MCA

"III. MONITORING WELL CONVERSION A well used for monitoring purposes may not be converted to a water supply well, unless it meets minimum water well construction standards (Title 36, chapter 21, sub-chapter 5, ARM), has board approval, and complies with the department of natural resources and conservation's water rights statutes. (Title 85, chapter 2, MCA)."

Auth.: 37-43-202, MCA Auth. extension: Sec. 11, Ch. 278, L. 1985, Eff. 7/1/85 Auth. extension: Sec. 19, Ch. 538, L. 1987, Eff. 7/1/87 Imp: 37-43-202, MCA

"IV. MONITOR WELL CONSTRUCTION MATERIALS (1) The well screen configuration, construction, and type of material used should be based on the in-field environmental and physical conditions.

- (2) Drilling fluids which will contaminate the aquifer shall not be used.

- (3) In areas of known contamination, materials which will not corrode in the environment in which they are placed shall be used.

(4) The well screen and well casing shall be new and be of sufficient structural strength to protect the integrity of the well."

Auth.: 37-43-202, MCA Auth. extension: Sec. 11, Ch. 278, L. 1985, Eff. 7/1/85 Auth. extension: Sec. 19, Ch. 538, L. 1987, Eff. 7/1/87 Imp: 37-43-202, MCA

"V. SEAL/MATERIALS (1) The intent of this rule is to provide protection to the ground water at least equal to the soil or rock profile penetrated by the borehole or excavation. More stringent standards set by other local, state, or federal agencies shall be followed when applicable.

(2) Acceptable seals for rotary or dug holes (air, fluid, auger (solid and hollowstem) backhoe) include:

(a) above the water table:

(i) neat cement grout or Portland cement concrete

(ii) bentonite clay grout

(iii) cuttings slurry grout

(iv) compacted clay cuttings

(v) pre-wetted granular or powdered bentonite

(vi) compacted asphaltic concrete

(vii) other materials or methods with board approval

(b) below the water table:

(i) neat cement grout, tremied or pumped

(ii) bentonite clay grout, tremied or pumped

(iii) cuttings slurry grout, tremied or pumped

(iv) bentonite pellets or chips

(v) other materials or methods with board approval

(3) For driven wells acceptable seals are granular or powdered bentonite.

(4) Jetted or other installation methods are not recommended for monitoring well use and will be considered only on an application basis."

Auth.: 37-43-202, MCA Auth. extension: Sec. 11, Ch. 278, L. 1985, Eff. 7/1/85 Auth. extension: Sec. 19, Ch. 538, L. 1987, Eff. 7/1/87 Imp: 37-43-202, MCA

"VI. INSTALLATION OF SEALS (1) In installing and developing a monitoring well, care shall be taken to preserve the natural barriers to ground-water movement between aquifers. All grouting shall be performed by adding the mixture from the bottom of the space to be grouted toward the surface in one continuous operation, except for driven wells.

(2) The minimum grout thickness shall be one and one-half inches around the outside of the casing on all sides, except for driven wells.

(3) For driven wells, granular or powdered bentonite shall be fed alongside the casing.

(4) A minimum of at least two feet of seal material shall be placed. Seal material shall extend down to within five feet of the zone being monitored. In sand and gravel formations, a minimum of 10 feet of surface seal shall be used, except when the zone of monitoring is higher.

(5) If the borehole will be advanced through a confining bed immediately below a contaminated aquifer, a casing shall be sealed into the top of the confining bed prior to advancing the borehole through the confining bed. All contaminated tools, drilling fluids, and down-hole equipment shall be cleaned or treated prior to advancing the borehole through the confining bed.

(6) A monitoring well encountering an artesian condition shall be sealed and controlled in the same manner as an artesian water well (ARM 36.21.658)."

Auth.: 37-43-202, MCA Auth. extension: Sec. 11, Ch. 278, L. 1985, Eff. 7/1/85 Auth. extension: Sec. 19, Ch. 538, L. 1987, Eff. 7/1/87 Imp: 37-43-202, MCA

"VII PREVENTION OF CONTAMINATION BY EQUIPMENT

(1) Preventive measures shall be performed to ensure against contamination from equipment used to install or sample monitoring wells. Particular care must be exercised when equipment used to install or sample monitoring wells in contaminated environments is subsequently used to install production wells for domestic use.

(2) When practicable or feasible, monitoring well installation should proceed from areas with no or low levels of contamination to areas with higher levels of contamination.

(3) If contamination is detected during installation of a monitoring well, down-hole equipment should be decontaminated before use on another well or at another site. Appropriate methods of cleaning or decontamination will depend upon the level and type of contaminants, but may include steam cleaning, rinsing with uncontaminated water, or thorough cleaning with surfactants and deionized water.

(4) Contamination of down-hole equipment on the drill rig itself by hazardous materials requires thorough cleaning to prevent transport of hazardous contaminants to other locations. On-site decontamination may be necessary under particularly hazardous conditions."

Auth.: 37-43-202, MCA Auth. extension: Sec. 11, Ch. 278, L. 1985, Eff. 7/1/85 Auth. extension: Sec. 19, Ch. 538, L. 1987, Eff. 7/1/87 Imp: 37-43-202, MCA

"VIII SITE PROTECTION AND SECURITY (1) The top of the well shall be fitted with a tight fitting slip cap, threaded plug or cap, or locking cap. Monitoring wells within the radius of influence of a well used as a domestic supply well and hydraulically connected to the aquifer from which the well is drawing water shall have a locking cap or be surrounded by a fenced controlled enclosure.

(2) The following are suggested methods for site protection:

(a) If the well is cased with metal and completed above the ground surface, a lockable watertight cap may be welded to the top of the casing.

(b) If the well is not cased with metal and completed above the ground surface, a metal protective casing may be installed around the well. The protective casing may extend at least six inches above the top of the well casing and at least two feet into the ground. A lockable cap may be welded to the top of the protective casing.

(c) If the well is completed below ground surface, a lockable 'water-meter cover,' or equivalent, may be installed around the well. The cover must be designed to withstand the maximum expected loadings. A watertight seal on the casing itself shall be installed to prevent the inflow of surface water. Drains may be provided, when feasible, to keep water out of the well and below the well cap.

(3) The well(s) completed above ground may be protected from damage by one of the following suggested methods:

(a) Three metal posts at least three inches in diameter may be installed in a triangular array around the casing. Each post may extend at least three feet above and below the ground surface.

(b) A reinforced concrete pad may be installed to prevent freeze/thaw cracking of the surface seal. When a concrete pad is used, the annular seal shall be contiguous to the concrete pad.

(c) Other methods agreed upon by the well owner and the monitoring well constructor may be used.

(4) The final surface should be sloped away from the monitoring well. If slabs or pavements prevent this, the surface should be sealed with at least four inches of Portland cement or asphaltic concrete. A surface condition which allows surface runoff to run down the side of the casing or borehole is unacceptable and shall be repaired."

Auth.: 37-43-202, MCA Auth. extension: Sec. 11, Ch. 278, L. 1985, Eff. 7/1/85 Auth. extension: Sec. 19, Ch. 538, L. 1987, Eff. 7/1/87 Imp: 37-43-202, MCA

" IX MONITORING WELL REPORTS (1) A licensed monitoring well constructor shall prepare a monitoring well report form for each monitoring well drilled. The monitoring well constructor shall supply copies of the report to the monitoring well owner and the department of natural resources and conservation within 60 days of completing the well. The monitoring well constructor shall retain a copy as a record in his files."

Auth.: 37-43-202, MCA Auth. extension: Sec. 11, Ch. 278, L. 1985, Eff. 7/1/85 Auth. extension: Sec. 19, Ch. 538, L. 1987, Eff. 7/1/87 Imp: 37-43-202, MCA

3. Chapter 538, Laws of 1987 required the Board of Water Well Contractors to adopt rules governing the construction, use, and abandonment of monitoring wells. Abandonment rules are not fully addressed at this time. Additional rules on abandonment will be proposed in October. An Advisory Task Force Committee was set up to draft proposed rules. Besides the Board of Water Well Contractor members, the advisory task force consisted of hydrogeologists, professional engineers, hydrologists, members from the mining industry, water well contractors and other

interested persons. Seven meetings were held. Other monitoring well construction standards were reviewed. The task of the Advisory Committee and the Board of Water Well Contractors was complicated by the need to write rules that addressed the construction of monitoring wells, but which would not become too restrictive in a field containing many variables. Monitoring well construction varies from site to site. Procedures which will be satisfactory on one site may not work on another site. As a result, the preceding proposed rules are not specific in nature. The board's opinion, however, is that the proposed rules are in the best interests of the public, the industry, provide protection of the groundwater resource and also comply with the legislative mandate.

4. Interested parties may present their data, views and arguments, either orally or in writing at the hearing. Written data, comments or arguments may also be submitted to the Board of Water Well Contractors, 1520 East Sixth Avenue, Helena, Montana 59620, no later than September 22, 1988.

5. Jim Madden, Attorney, Department of Natural Resources and Conservation, will preside over and conduct the hearing.

BOARD OF WATER WELL CONTRACTORS
WESLEY LINDSAY, CHAIRMAN

BY: Larry Fasbender
LARRY FASBENDER, DIRECTOR
DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

Certified to the Secretary of State, August 15, 1988.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMEND-	)	NOTICE OF PROPOSED AMENDMENT
MENT of ARM 42.17.133 relat-	)	of ARM 42.17.133 relating to
ing to Withholding Rates For	)	Withholding Rates For Supple-
Supplemental Wages.	)	mental Wages.

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On October 3, 1988, the Department of Revenue proposes to amend ARM 42.17.133 relating to Withholding Rates For Supplemental Wages.

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

42.17.133 - TREATMENT OF SUPPLEMENTAL WAGES (1) If supplemental wages, such as bonuses, commissions, or overtime pay, are paid at the same time as regular wages, the tax to be withheld should be determined as if the total of the supplemental and the regular wages were a single wage payment for the regular payroll period.

(2) If the supplemental wages are paid at a different time, the employer may determine the tax to be withheld by adding the supplemental wages either to the regular wages for the current payroll period or to the regular wages for the last preceding payroll period within the same calendar year.

(3) In lieu of the above, the employer may withhold on supplemental wages at the rate of 4% 6%. AUTH, 15-30-305 MCA; IMP, 15-30-201(4) MCA.

3. The withholding rate on supplemental wages was not updated at the same time that other schedules were changed because of uncertainty over the full ramifications of tax reform. Experience has shown six percent to be a proper supplemental withholding rate.

4. 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 September 23, 1988.

5. If a person who is directly affected by the proposed amendments wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Cleo Anderson at the above address no later than September 23, 1988.

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


JOHN D. LaFAVER, Director
Department of Revenue

Certified to Secretary of State 8/15/88.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION)	NOTICE OF PUBLIC HEARING on
of Rule I relating to Appor-)	the PROPOSED ADOPTION of Rule
tionment Formula Exclusions.)	I relating to Apportionment
)	Formula Exclusions.

TO: All Interested Persons:

1. On September 21, 1988, at 1:30 p.m., a public hearing will be held in the 4th Floor Conference Room of the Mitchell Building at Helena, Montana, to consider the adoption of rule I, relating to Apportionment Formula Exclusions.

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 - APPORTIONMENT FORMULA - EXCLUSIONS (1) If a taxpayer has property, payroll or sales assignable under 15-31-305 through 15-31-311 MCA and attendant regulations to a location where it is not taxable under 15-31-303 MCA, the property, payroll or sales assigned to that location shall be excluded from the apportionment formula.

(2) For purposes of determining whether a taxpayer is taxable in a location, ARM 42.26.209 through 42.26.212 and ARM 42.23.118 through 42.23.120 will apply. (AUTH, Secs. 15-31-313 and 15-32-501, MCA; IMP, Secs. 15-31-305 through 15-31-311, MCA.)

4. The Department is proposing rule I to require the elimination from the apportionment formula, any property, payroll, or sales assigned to a location in which the taxpayer does not have a taxable nexus. Only by requiring all multistate taxpayers to be 100 percent accountable for the assignment of the apportionment factors among locations in which they have a taxable nexus, can Montana be assured of receiving its proper share of income.

This rule eliminates the possibility of a taxpayer assigning income to "nowhere" locations where it does not engage in business. Rather, this "nowhere" income is apportioned to all states where the taxpayer conducts business. This is one of the underlying principles of the Uniform Division of Income Tax Purposes Act.

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:

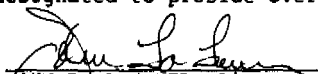
Cleo Anderson
Department of Revenue
Office of Legal Affairs
Mitchell Building
Helena, Montana 59620

no later than September 30, 1988.

16-8/25/88

MAR Notice No. 42-2-422

6. Eric 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 8/15/88.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT)	NOTICE OF PUBLIC HEARING on
of ARM 42.25.501 relating to)	the PROPOSED AMENDMENT of ARM
Coal Sales Revenue.)	42.25.501 relating to Coal
)	Sales Revenue.

TO: All Interested Persons:

1. On September 21, 1988, at 3:30 pm, a public hearing will be held in the 4th Floor Conference Room of the Mitchell Building, at Helena, Montana, to consider the amendment of ARM 42.25.501 relating to Coal Sales Revenue.

2. The amendment as proposed provides as follows:

42.25.501 DEFINITIONS (1) "Agreement not at arm's length" is defined as an agreement between two parties when there are business relationships other than the agreement between the buyer and seller which in the opinion of the department have influenced the sales price.

(2) "Contract-revenue" "Coal sales value" is defined as the total receipts or accruals from all sales of coal during the reporting period and may include a value imputed by the department.

(3) "Contract sales price" is defined as FOB-mine price less production taxes included by the producer in the sales price to pay taxes on production or a price imputed by the department of revenue according to ARM 42.25.512. includes all compensation received in any form for coal purchased except amounts charged to pay production taxes and the deductible portion of federal, state and Indian royalties. It includes revenue received from purchasers for initial coal sales billings, Btu premiums, cost escalation adjustments, sampling and analysis, and any other miscellaneous payments related to the sale of coal. It also includes purchasers' payments of, or reimbursement for, any expenses typically incurred by the coal producer. Alternatively contract sales price may be based on a price imputed by the department of revenue according to ARM 42.25.512.

(a) "Take or pay penalties" are includable in contract sales price to the extent the take or pay amount exceeds the producers actual costs incurred as a result of the purchaser's failure to take the minimum contract tonnage. Amounts over and above these costs will be termed reimbursement for unearned quantity or volume discounts. These amounts will be included as part of the contract sales price for the coal purchased during the time period in which the take or pay amount accrued.

(b) "Options and other lump sum payments" will be reviewed in the context of current market conditions to determine whether the payments are to be included in the contract sales price. The department will consider the current supply versus demand

for coal, the purchaser's capacity to utilize optioned amounts, and corresponding declines in other coal costs to the purchaser and any other relevant criteria when making the determination. The department will determine these payments are includable as part of the contract sales price in the instance the substance of the transaction is to provide the producer additional compensation for coal currently being purchased. Taxpayers may request a declaratory ruling relating to these payments in accordance with Section 2-4-501 MCA.

(4) "FOB mine price" is defined as contract-revenue coal sales value exclusive of all shipping expenses or any other expense incurred by the producer after the coal has been crushed to size and loaded for shipment.

(5) "Market value" is defined as an amount determined by multiplying "FOB mine price" of a similar ton of coal, as fixed on the market place, by the number of tons of coal sold.

(6) "Production taxes" is are defined as the resource indemnity trust tax, severance tax, and the gross proceeds tax, black lung tax and the federal reclamation fee. AUTH, 15-23-108 MCA; IMP, 15-35-102 MCA.

4. The Department is proposing these amendments because Contract sales price as defined in 15-35-102, MCA, merely states that it is the price of coal extracted and prepared for shipment less certain deductions. More guidance is needed as to what specifically is included in the price of coal. This is especially important now that many coal supply agreements are being amended or rewritten in response to changing market conditions.


Section 15-35-102(5) MCA allows a deduction for "taxes paid on production". The federal black lung tax and reclamation fee were added to the rule listing the deductible taxes.

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 September 23, 1988.

6. Paul Van Tricht, 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 the Secretary of State 8/15/88.

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

In the matter of the amend-	)	NOTICE OF PUBLIC HEARING ON THE
ment of Rules 46.12.3601	)	PROPOSED AMENDMENT OF RULES
and 46.12.3603 pertaining	)	46.12.3601 AND 46.12.3603
to non-institutionalized	)	PERTAINING TO NON-INSTITUTION-
SSI-related individuals and	)	ALIZED SSI-RELATED INDIVIDUALS
couples	)	AND COUPLES

TO: All Interested Persons

1. On September 14, 1988, at 9:00 a.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana, to consider the proposed amendment of Rules 46.12.3601 and 46.12.3603 pertaining to non-institutionalized SSI-related individuals and couples.

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

46.12.3601 GROUPS COVERED, NON-INSTITUTIONALIZED SSI-RELATED INDIVIDUALS AND COUPLES Subsections (1) through (2)(d) remain the same.

(e) Widow(er)s who no longer receive SSI benefits or state supplemental payments as a result of becoming entitled to and receiving title II benefits. Coverage is limited to individuals who are:

(i) between the ages of 60 and 65;
(ii) eligible for and receiving early widow(er)'s benefits from social security;

(iii) ineligible for SSI benefits or state supplemental payments due to receipt of social security early widow(er)'s benefits; and

(iv) not entitled to medicare part A (hospital insurance).

Subsections (3) through (4)(b)(ii) remain the same.

AUTH: Sec. 53-6-113 MCA

IMP: Sec. 53-6-131 MCA

46.12.3603 FINANCIAL REQUIREMENTS, NON-INSTITUTIONALIZED SSI-RELATED INDIVIDUALS AND COUPLES Subsections (1) and (2) remain the same.

(a) Notwithstanding the above and in accordance with ARM 46.12.3601(2)(b), (c), and (d) and (e) for purposes of this coverage group:

Subsections (2)(a)(i) and (ii) remain the same.

(iii) the January 1, 1984, increase in social security disabled widow's and widower's benefits caused by an elimination factor for individuals who became entitled to said

benefits before age 60 will be excluded from unearned income; and

(iv) title II early widow(er)'s benefits for individuals who meet eligibility criteria at ARM 46.12.3601(2)(e) will be excluded from unearned income.

Subsections (2)(b) through (4)(a) remain the same.

AUTH: Sec. 53-2-201, 53-6-113 and 53-6-402 MCA; AUTH Extension, Sec. 2, Ch. 77, L. 1985, Eff. 10/1/85; Sec. 113, Ch. 609, L. 1987, Eff. 10/1/87; Sec. 4, Ch. 329, L. 1987, Eff. 10/1/87


IMP: Sec. 53-2-201, 53-6-101, 53-6-131 and 53-6-402 MCA

3. Section 9116 of the federal Omnibus Budget Reconciliation Act of 1987 amended Section 1634 of the Social Security Act by extending Medicaid coverage to a new group of Title II beneficiaries. This change is proposed to ensure state policy conforms to changes in the Medicaid program.

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 September 22, 1988.

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

6. These rule changes will be applied retroactively to July 1, 1988.



Director, Social and Rehabilitation Services

Certified to the Secretary of State August 9, 1988.

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

In the matter of the amend-	)	NOTICE OF PUBLIC HEARING ON
ment of Rule 46.12.501 and	)	THE PROPOSED AMENDMENT OF
adoption of Rules I and II	)	RULE 46.12.501 AND ADOPTION
pertaining to Medicaid reim-	)	OF RULES I AND II PERTAIN-
bursement for non-hospital	)	ING TO MEDICAID REIMBURSE-
laboratory and radiology	)	MENT FOR NON-HOSPITAL
services	)	LABORATORY AND RADIOLOGY
	)	SERVICES

TO: All Interested Persons

1. On September 14, 1988, 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 Rule 46.12.501 and adoption of Rules I and II pertaining to Medicaid reimbursement for non-hospital laboratory and radiology services.

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

46.12.501 SERVICES PROVIDED Subsections (1) through (1)(b) remain the same.
(c) ~~other~~ non-hospital laboratory and x-ray services;
Subsections (1)(d) through (2) remain the same.

AUTH: Sec. 53-2-201 and 53-6-113 MCA; AUTH Extension,
Sec. 4, Ch. 329, L. 1987, Eff. 10/1/87
IMP: Sec. 53-6-101, 53-6-103 and 53-6-141 MCA

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

RULE I NON-HOSPITAL LABORATORY AND RADIOLOGY (X-RAY) SERVICES, REQUIREMENTS (1) "Non-hospital laboratory and radiology (x-ray) services" are professional and technical laboratory and radiology services which are either:

(a) ordered and provided by a physician, or other licensed practitioner of the healing arts within the scope of his practice as defined by state law;

(b) ordered and provided under the direction of a physician; or

(c) ordered and billed by a physician but provided by an independent laboratory.

(2) Non-hospital laboratory and radiology (x-ray) services may be provided in an office or similar facility other than a hospital outpatient department or clinic.

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

RULE II NON-HOSPITAL LABORATORY AND RADIOLOGY (X-RAY) SERVICES, REIMBURSEMENT

(1) These reimbursement requirements are in addition to those contained in ARM 46.12.2003.

(2) Independent laboratory services must meet the following requirements to receive medicaid reimbursement:

(a) the independent laboratory service must be certified by medicare;

(b) the independent laboratory service must meet any state licensing requirements for laboratory facilities; and

(c) the independent laboratory service must have been ordered by a physician licensed to practice in Montana.

(3) Independent radiology (x-ray) services must meet the following requirements to receive medicaid reimbursement:

(a) the independent radiology service must meet any state licensing requirements for radiology facilities;

(b) the independent radiology service must be ordered by a licensed physician;

(c) technical components of diagnostic and therapeutic radiology services must be performed under the supervision of a physician; and

(d) the physician with supervisory responsibilities for the radiology services must meet state licensing requirements; and

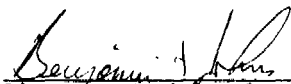
(e) technical components of the radiology (x-ray) service must be billed by and reimbursed to the supervising physician.

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

4. These proposed rule adoptions are necessary because radiology related laboratory services are a specific Medicaid service and need to be more clearly defined. To ensure equitable reimbursement, the proposed reimbursement system for radiology services will provide that the department will pay the same amount whether a physician provides the total radiology service or the service is provided in part by a physician and in part by a laboratory.

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 the Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana 59604, no later than September 22, 1988.

6. The Office of Legal Affairs, Department of Social and Rehabilitation Services has been designated to preside over and conduct the hearing.

for 

Director, Social and Rehabilitation Services


Certified to the Secretary of State August 15, 1988.

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

In the matter of the proposed	)	NOTICE OF ADOPTION
amendment of ARM 6.2.122 per-	)	OF AMENDMENT
taining to temporary cease and	)	OF ARM 6.2.122
desist orders.)	

TO: All Interested Persons.

1. On June 23, 1988, the State Auditor and Commissioner of Securities (commissioner) published a notice of public hearing on proposed amendment of ARM 6.2.122 at page 1233 of the 1988 Montana Administrative Register, issue no. 12.
2. The commissioner has adopted the amendment as proposed.
3. The commissioner received no comments regarding the proposed amendment.


Andrea "Andy" Bennett
State Auditor and
Commissioner of Securities

Certified to the Secretary of State on August 15, 1988.

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

In the matter of the proposed	)	AMENDED NOTICE OF
amendment of ARM 6.10.101	)	ADOPTION OF AMENDMENT OF
through ARM 6.10.124 and the	)	ARM 6.10.101, 6.10.122,
proposed adoption of rules on	)	AND ARM 6.10.125
whole mortgages and certificates)	
of deposit)	

TO: All Interested Persons.

1. On May 26, 1988, the State Auditor and Commissioner of Securities (commissioner) published notice of the proposed amendment, adoption, and repeal of the above rules at page 918 of the 1988 Montana Administrative Register, issue number 10. On August 11, 1988, the commissioner published notice of adoption of amendment and repeal of the above rules at page 1803 of the 1988 Montana Administrative Register, issue no. 15.

2. The adopted rules are corrected as follows:

6.10.101 APPLICABILITY OF SUB-CHAPTER (1) same as adopted.

(2) Except as provided in ARM 6.10.124, ARM 6.10.103 does not apply to any exempt securities or exempt transactions, as set forth in 30-10-104 and 30-10-105, MCA. ~~ARM 6.10.122~~ 6.10.122 does not apply to securities exempt under 30-10-104(1), MCA.

6.10.122 BROKER-DEALER BOOKS AND RECORDS (1) Except as provided in subsection ~~(4)~~ (5), each broker-dealer registered in this state shall make and keep all books and records in conformity with Securities Exchange Act of 1934, regulation 240.17a-3. In addition, each broker-dealer registered in this state must make and keep those books and records required to be made and kept by any self regulatory organization of which it is a member and by any federal government agency with which it is registered or licensed.

(2) through (5) same as adopted.

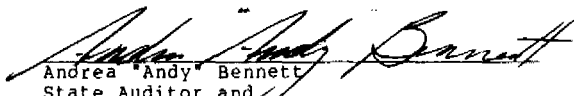
6.10.125 FOREIGN SAVINGS AND LOAN ASSOCIATION EXEMPTION

(1)(a) through (1)(b) same as adopted.

(c) in the case of a certificate of deposit, the sums representing the certificate of deposit are fully insured by the federal savings and loan insurance corporation.

3. ARM 6.10.101(2) is amended to correct a typographical error which made ARM 6.10.123 not apply to certain exempt securities when the intent was to make ARM 6.10.122 not apply to those securities. ARM 6.10.122(1) is amended to correct the failure to change "subsection (4)" to "subsection (5)" after

ARM 6.10.122(4), as proposed, was adopted as ARM 6.10.122(5).
ARM 6.10.125(1)(c) is amended to clarify that the condition
listed in it applies only to a certificate of deposit.


Andrea Andy Bennett
State Auditor and
Commissioner of Securities

Certified to the Secretary of State August 15, 1988.

BEFORE THE DEPARTMENT OF
FAMILY SERVICES OF THE
STATE OF MONTANA

In the matter of amendment	)	NOTICE OF THE AMENDMENT OF
of Rules 11.9.105 and	)	RULES 11.9.105 AND 11.9.107
11.9.107 pertaining to	)	PERTAINING TO ELIGIBILITY
eligibility for residential	)	FOR RESIDENTIAL ALCOHOL AND
alcohol and drug treatment	)	DRUG TREATMENT PAYMENTS
payments)	

TO: All Interested Persons

1. On July 14, 1988, the Department of Family Services published notice of the proposed amendment of Rules 11.9.105 and 11.9.107 pertaining to eligibility for residential alcohol and drug treatment payments at page 1306 of the 1988 Montana Administrative Register, issue number 13.

2. The Department has amended the following rules as proposed:

11.9.105 ELIGIBILITY FOR SERVICES

AUTH: Sec. 41-3-1103, MCA; AUTH Extension, Sec. 113. Ch. 609, L. 1987, Eff. 10/1/87
IMP: Sec. 41-3-1103

11.9.107 DETERMINATION OF INDIGENCY

AUTH: Sec. 41-3-1103, MCA; AUTH Extension, Sec. 113. Ch. 609, L. 1987, Eff. 10/1/87
IMP: Sec. 41-3-1103

3. The Department has received and considered comments in support of the amendments from the Department of Institutions.

Mary Walsh for
Eugene Huntington
Director, Department of Family
Services

Certified to the Secretary of State August 15, 1988.

BEFORE THE FISH AND GAME COMMISSION
OF THE STATE OF MONTANA


In the matter of the	)	NOTICE OF AMENDMENT OF
proposed amendment of	)	ARM 12.6.901 ESTABLISHING
ARM 12.6.901	)	A 10 HORSEPOWER LIMIT ON
		CARPENTER LAKE

TO: All Interested Persons

1. On July 14, 1988 the Fish and Game Commission gave notice of proposed amendment to Rule 12.6.901 establishing a 10 horsepower limit on Carpenter Lake, on page 1308 of the Montana Administrative Register, issue number 13.

2. No public hearing was held nor was one requested. The commission has received no written or oral comments concerning these rules.

3. Based on the foregoing, the commission hereby adopts the rule as proposed.



Robert Jensen, Chairman
Fish and Game Commission

Certified to the Secretary of State August 15, 1988.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT) NOTICE OF THE AMENDMENT of ARM
of ARM 42.25.1101 and 42.32.101) 42.25.1101 and 42.32.101 rel-
relating to Scoria and Traver-) ating to Scoria and Travertine
tine for RITT and Net Proceeds.) for RITT and Net Proceeds.

TO: All Interested Persons:

1. On May 26, 1988, the Department of Revenue published notice of the proposed amendment of ARM 42.25.1101 and 42.32.101 relating to Scoria and Travertine for RITT and Net Proceeds at page 955 of the 1988 Montana Administrative Register, issue no. 10.

2. A public hearing was held on June 29, 1988 where written and oral comments were received.

3. As a result of the comments received the Department has amended ARM 42.25.1101 and ARM 42.32.101 as proposed.


4. No oral comments were presented at the hearing. Written comments received subsequent to the hearing are summarized as follows along with the response of the Department:

COMMENT: The legislature did not intend Scoria to be subject to the Resource Indemnity Trust Tax and did not include it within the terms used in the legislation.

RESPONSE: Scoria is a nonrenewable merchantable product extracted from the surface or subsurface of the State of Montana and as such is subject to tax. Scoria has been sold in Montana for use as landscaping material and also for use in road construction as a substitute for gravel. There is no question that it is merchantable.

COMMENT: Scoria is not a mineral. It is a common substance which may be used in road construction as a substitute for sand and gravel.

RESPONSE: Scoria has also been recognized as a mineral by the Internal Revenue Service. Section 613(B) of the Internal Revenue Code allows a percentage depletion allowance for solid minerals. Scoria is specifically mentioned as a mineral subject to depletion in that section. It should also be noted that sand and gravel are also subject to the RITT according to the district court decision in Tressler-Lowe v. Department of Revenue.


JOHN D. LAFAVER, Director
Department of Revenue

Certified to Secretary of State 8/15/88.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT)	NOTICE OF THE AMENDMENT of
of ARM 42.25.1115 relating to)	ARM 42.25.1115 relating to
Deduction For New Reduction)	Deduction For New Reduction
Equipment Related To Mines Net)	Equipment Related to Mines
Proceeds.)	Net Proceeds.

TO: All Interested Persons:

1. On May 26, 1988, the Department of Revenue published notice of the proposed amendment of ARM 42.25.1115 relating to Deduction For New Reduction Equipment Related To Mines Net Proceeds at page 945 of the 1988 Montana Administrative Register, issue no. 10.

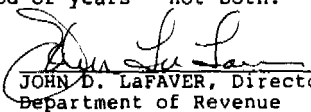
2. A public hearing was held on June 29, 1988 where written and oral comments were received.

3. As a result of the comments received the Department has amended ARM 42.25.1115 as proposed.

4. Oral and written comments received during and subsequent to the hearing or in written form are summarized as follows along with the response of the Department:

COMMENT: Mineral producers should be allowed to deduct 100% of the cost of replacement equipment in the year the equipment is purchased and then also be allowed to amortize that same cost and deduct additional amounts each year the equipment is in service.

RESPONSE: The Legislature did not intend to allow a double deduction for these equipment costs. All deductible costs for the mines net proceeds are either deductible in the year incurred or amortized over a period of years - not both.


JOHN D. LAFAVER, Director
Department of Revenue

Certified to Secretary of State 8/15/88.

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

In the matter of the adop-	)	NOTICE OF THE ADOPTION AND
tion of Rules 46.8.1301,	)	AMENDMENT OF RULES PERTAIN-
46.8.1302, 46.8.1304,	)	ING TO THE REPORTING AND
46.8.1305, 46.8.1307,	)	HANDLING OF INCIDENTS RELAT-
46.8.1308 and 46.8.1309 and	)	ING TO RECIPIENTS OF DEVEL-
amendment of Rule 46.8.102	)	OPMENTAL DISABILITY SERVICES
pertaining to the reporting)	
and handling of incidents)	
relating to recipients of)	
developmental disability)	
services)	

TO: All Interested Persons

1. On January 14, 1988, the Department of Social and Rehabilitation Services published notice of the proposed adoption of Rules (I) 46.8.1301, (II) 46.8.1302, (III) 46.8.1304, (IV) 46.8.1305, (V) 46.8.1307, (VI) 46.8.1308 and (VII) 46.8.1309 and amendment of Rule 46.8.102 pertaining to the reporting and handling of incidents relating to recipients of developmental disability services at page 39 of the 1988 Montana Administrative Register, issue number 1.

On February 25, 1988, the Department published MAR Notice No. 46-2-531 which was an interim notice responding to comments received up to that time at page 381 of the 1988 Montana Administrative Register, issue number 4.

2. The Department has adopted Rule (V) 46.8.1307, INCIDENT REPORTING AND HANDLING, INVESTIGATIONS; Rule (VI) 46.8.1308, INCIDENT REPORTING AND HANDLING, CONFIDENTIALITY; and Rule (VII) 46.8.1309, INCIDENT REPORTING AND HANDLING, CLIENT ABUSE OR CLIENT PROBLEM BEHAVIOR as proposed on the interim notice.

3. The Department has amended ARM 46.8.102 as proposed on the first notice with the following changes:

46.8.102 DEFINITIONS For purposes of this chapter, the following definitions apply:

(1) "Accreditation organization" means an organization recognized by rule which establishes and publishes standards relating to the quality of services provided by providers of services to ~~developmentally-disabled~~ persons WITH A DEVELOPMENTAL DISABILITY, analyzes compliance with those standards and accredits providers based on those standards.

Subsections (2) and (3) remain as proposed.

(4) "Adult habilitation services" means the provision to ~~developmentally-disabled~~ adults WITH DEVELOPMENTAL DISABILITIES in non-residential settings of functional training and

habilitation including basic life skills, pre-vocational skills, work activities and sheltered employment skills and other skills prerequisite or integral to vocational activities and which facilitate movement of persons to increasingly higher levels of independence.

(5) "Adult intensive training community homes services" means those facilities licensed in accordance with section 53-20-301, et seq., MCA providing habilitation and intensive residential training services to FOR two to eight persons with intensive need who are 16 years of age and older.

Subsections (6) through (15) remain as proposed.

(16) "Family training and support services" means the provision of general information, TRAINING and IN-HOME support services to natural, ADOPTIVE and foster families to assist in the development and care of a ~~developmentally-disabled-or-"at-risk"~~ child WITH DEVELOPMENTAL DISABILITIES OR "AT RISK" OF BECOMING DEVELOPMENTALLY DISABLED.

Subsection (17) remains as proposed.

(18) "Incidents" means acts or omissions not otherwise permitted which result or may result in physical or emotional harm to a person or which intentionally deprive a person of acknowledged rights, INCLUDING, BUT NOT LIMITED TO: The following are included within this definition:

- (a) death of a client;
- (b) harm or illness of a client requiring hospitalization;
- (C) COMPLAINTS OR ILLNESS OF AN EXTENDED NATURE;
- ~~(d) medical treatment of a client;~~
- (e) harm of a staff member due to actions of a client;
- (c) suicide attempts by a client;
- ~~(f) a placement in a long term care facility~~ A SUBSTANTIAL CHANGE IN A CLIENT'S RESIDENTIAL OR VOCATIONAL PLACEMENT without approval of the client's individual habilitation planning team;
- (g) alleged unlawful activities affecting a client;
- (h) client abuse;
- (i) client's rights violations;
- (j) an unaccounted for absence of the client; or
- (K) SIGNIFICANT PROPERTY DAMAGE; OR
- ~~(KL) any behavior requiring the use of an emergency procedure as provided for in ARM 46.8.1201 et seq.~~

Subsections (19) through (24) remain as proposed.

(25) "Senior adult community homes services" means those facilities licensed in accordance with section 53-20-301, et seq., MCA providing age appropriate residential and habilitation services to FOR two to eight older persons.

(26) "Senior day services" means the provision to older ~~developmentally-disabled~~ adults WITH DEVELOPMENTAL DISABILITIES in non-residential settings of functional training and age appropriate activities including organized group activities, maintenance of previously acquired self-help and social skills, and formal training in leisure-type activities.

Subsections (27) through (30) remain as proposed.

AUTH: Sec. 53-20-204 MCA; AUTH Extension, Sec. 1, Ch. 426, L. 1987, Eff. 10/1/87; Sec. 113, Ch. 609, L. 1987, Eff. 10/1/87

IMP: Sec. 53-20-203, 53-20-204 and 53-20-205 MCA

4. The Department has adopted the following rules as proposed with the following changes:

46.8.1301 INCIDENT REPORTING AND HANDLING, PURPOSE

(1) These rules govern the reporting and handling of incidents which harm or could result in harm to ~~developmentally-disabled~~ persons WITH A DEVELOPMENTAL DISABILITY who are recipients of services funded by the developmental disabilities program of the department of social and rehabilitation services.

(a) Incidents constituting abuse and neglect of a child as defined in 41-3-102 MCA or abuse, neglect and exploitation of an older person as defined in 53-5-503 MCA are subject to the statutory and rule provisions governing the reporting, investigation and protection of those persons.

(b) The roles of the department of family services in case management and protective services for ~~developmentally disabled~~ persons WITH A DEVELOPMENTAL DISABILITY, abused and neglected children and abused, neglected and exploited older persons necessitate the provisions of these rules relating to those responsibilities.

(c) Incidents constituting abuse, neglect and exploitation of a ~~developmentally-disabled~~ person WITH A DEVELOPMENTAL DISABILITY are to be reported as provided for in 53-20-402 MCA, to the department of family services.

AUTH: Sec. 53-20-204 MCA

IMP: Sec. 53-20-205 MCA

46.8.1302 INCIDENT REPORTING AND HANDLING, POLICY

(1) A provider must have a policy of incident reporting and handling.

(2) An incident handling and reporting policy must assure that incident handling and reporting:

(A) is conducted as provided for in this rule;

(B) provides for the confidentiality of client identity and information;

(C) meets any standards, if applicable, for group home licensing at ARM 11.18.199 et seq.;

(D) meets any applicable program standards provided at ARM 46.8.901 et seq.;

(E) meets any applicable aversive procedure standards provided at ARM 46.8.1201 et seq.

(3) An incident ~~handling--and~~ reporting AND HANDLING policy must PROVIDE:

~~(a)--classify-incidents-according-to-the-seriousness-of-the-harm-or-threatened-harm-to-the-client-or-others;~~

(bA) provide for emergency procedures for contacting provider staff and others responsible for making any necessary decisions;

(eB) provide guidance as to appropriate emergency procedures to be utilized;

(dC) provide for the preservation of information or items that may be needed in reporting or investigating an incident; and

(eD) provide for a system of tracking and discovering patterns of incidents.

(4) The policy must provide staff training and orientation on a continuing and consistent basis regarding these rules;

(A) THE RULES ON INCIDENT REPORTING AT ARM 46.8.102 ET SEQ.;

(B) the rules on aversive procedures at ARM 46.8.1201 et seq.;

(C) the provider's policy on client abuse and rights violations; and

(D) measures necessary to protect the rights and interests of clients who are considered to be "at risk"; AND

(E) THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES AND DEPARTMENT OF FAMILY SERVICES PROCEDURES FOR INVESTIGATING SUSPECTED CLIENT ABUSE AND NEGLECT IN SERVICES FUNDED BY THE DIVISION.

AUTH: Sec. 53-20-204 MCA

IMP: Sec. 53-20-205 MCA

46.8.1304 INCIDENT REPORTING AND HANDLING--REPORTING

(1) An incident involving a client of developmental disabilities services must be reported in writing and submitted in the format requested by the department to the department of family services' case manager and to the responsible division staff on the first working day following the incident.

(2) VERBAL NOTIFICATION MUST BE GIVEN ON SUSPECTED ABUSE AND NEGLECT AS DEFINED IN THE CLIENT RIGHTS POLICY.

(23) An incident report ~~will~~ MUST MINIMALLY include the client's name and address, the time and date of the incident, a description of the incident, the names of staff and other persons present and responding to the incident, and the response of the staff and others to the incident.

(34) Any suspected abuse and neglect of a child or suspected abuse, neglect and exploitation of a person 60 years of age or older must be reported to the department of family services case manager or designee and the county attorney.

AUTH: Sec. 53-20-204 MCA
IMP: Sec. 53-20-205 MCA

46.8.1305 INCIDENT REPORTING AND HANDLING, DEATH, SUICIDE ATTEMPT, UNACCOUNTED FOR ABSENCE, EMERGENCY HOSPITALIZATION OR INCARCERATION (1) The provider must notify the following persons upon the death, suicide attempt, unaccounted for absence, emergency hospitalization, ~~placement in a long-term-care-facility~~ SUBSTANTIAL CHANGES IN A CLIENT'S RESIDENTIAL OR VOCATIONAL PLACEMENT without I.H.P. team approval or incarceration of a client:

(a) the ~~department-of-family-services~~ case manager or designee;

Subsections (1)(b) through (2)(b) remain as proposed.

AUTH: Sec. 53-20-204 MCA
IMP: Sec. 53-20-205 MCA

5. The Department has thoroughly considered all commentary received:

COMMENT: The definition of "incident" for the purpose of this rule should include significant property damage.

RESPONSE: Significant property damage has been added to the definition of "incident".

COMMENT: These proposed rules do not provide a useful format for use in the field.

RESPONSE: The rules as adopted are to provide explicit authority for the reporting of incidents to the Department and to direct the maintenance of incident policies by providers. The Department will provide a field oriented document which will provide procedural materials and interpretation.

COMMENT: The rules should specify the departmental staff who are primarily responsible for receipt of reports.

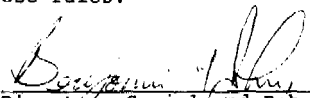
RESPONSE: Reporting is to division staff generally. State or local protocols will be sent to providers suggesting the sequence of reporting to local division departmental staff.

COMMENT: Case management is not always the responsibility of the Department of Family Services.

RESPONSE: References to the Department of Family Services have been deleted.

COMMENT: These rules should note the statutory requirements and responsibilities for the reporting and investigation of child and elder abuse and neglect.

RESPONSE: The proposed rules were extensively modified in the interim notice to identify the reporting and other requirements of 41-3-101, MCA et seq. relating to child abuse and 53-5-501, MCA et seq. relating to elder abuse. Rule VII (1) as originally proposed and retained states that the rules for incident reporting are not to be administered in derogation of the provisions of 43-3-101, MCA et seq. and 53-5-501, MCA et seq. Current protocols between the Department and the Department of Family Services for the conduct of investigations of incidents are unaffected by these rules.



Director, Social and Rehabilitation Services

Certified to the Secretary of State August 15, 1988.

VOLUME NO. 42

OPINION NO. 103

EDUCATION - Attendance standards and tuition requirements for Canadian and other out-of-district elementary and high school students;
SCHOOL BOARDS - Attendance standards and tuition requirements for Canadian and other out-of-district elementary and high school students;
SCHOOL DISTRICTS - Attendance standards and tuition requirements for Canadian and other out-of-district elementary and high school students;
SUPERINTENDENT OF PUBLIC INSTRUCTION - Attendance standards and tuition requirements for Canadian and other out-of-district elementary and high school students;
MONTANA CODE ANNOTATED - Sections 1-2-107, 20-3-324(23), 20-5-303, 20-5-305, 20-5-312, 20-5-313(2);
MONTANA CONSTITUTION - Article X, section 8;
OPINIONS OF THE ATTORNEY GENERAL - 40 Op. Att'y Gen. No. 69 (1984).

HELD: A school district's board of trustees may, in its discretion, accept as elementary and high school students Canadian residents who wish to attend school in Montana. The trustees are also authorized to exercise discretion in granting a waiver of tuition to these and all other out-of-district students. If the trustees choose to charge tuition, sections 20-5-305 and 20-5-312, MCA, must be referred to in setting the amount of tuition.

2 August 1988

Susan Loehn
Lincoln County Attorney
Lincoln County Courthouse
Libby MT 59923

Dear Ms. Loehn:

You have asked my opinion on several issues which I have phrased as follows:

1. May the trustees of a school district accept as elementary and high school

students Canadian residents who wish to attend school in Montana?

2. If the trustees have such authority, are they required to charge tuition of Canadian and other out-of-district students, or may the trustees waive tuition requirements?
3. If the trustees charge tuition, which statutes govern the tuition rates to be set?

You explain in your request that there is a practice in Lincoln County of allowing Canadian residents to cross the international border and attend elementary and high school in Montana under local agreements which waive tuition requirements. This practice is also followed by other Montana counties bordering Canada and is reciprocated by Canada when Montana school children attend Canadian schools. The Office of Public Instruction condones these agreements, which have been in effect for over 40 years.

Your first question is whether the school board of trustees has the authority to accept as elementary and high school students Canadian residents who wish to attend school in Montana. There are no United States-Canadian treaties or formal agreements addressing this matter, and Montana's statutes do not specifically address the issue. However, Montana's statutes contain general provisions authorizing the local school boards of trustees to exercise their discretion in permitting attendance of out-of-district students and in setting the tuition for those students. This delegation of authority gives the trustees considerable discretion within the confines of the provisions of Title 20, MCA. State ex rel. Ronish v. School District, 136 Mont. 453, 348 P.2d 797 (1960).

The provisions of Title 20, MCA, have as their foundation Article X, section 8 of the Montana Constitution, which vests supervision and control of schools in each school district to an elected board of trustees. Though the board of trustees is statutorily directed to follow the rules of the superintendent of public instruction and the policies of the board of public education (§ 20-3-324(23), MCA), the trustees are

given considerable discretion in their acceptance of out-of-district students and administration of the tuition provisions.

For example, section 20-5-303, MCA, addressing attendance and tuition agreements for elementary students, states in part:

(1) No provision of this title shall be construed to deny a parent the right to send his child, at his own expense, to any elementary school of a district other than his resident district when the parent has agreed to pay the tuition acceptable to the trustees of the district where the school is located. The trustees of the district where the school is located may allow the attendance of a child under the provisions of this section at their discretion. When the attendance is approved, the trustees shall charge tuition at the same rate prescribed by 20-5-305 reduced by any amount which is uniformly waived by the trustees for all tuition payments. [Emphasis supplied.]

Sections 20-5-312(3)(c) and 20-5-313(2), MCA, address acceptance and tuition for out-of-district high school students. Section 20-5-313(2), MCA, states, in pertinent part:

(2) No provision of this title shall be construed to deny a parent the right to send his child, at his own expense, to any high school outside of his district of residence when the parent agrees to pay the tuition acceptable to the trustees of the high school district operating such high school. When the attendance is approved, the parent shall pay tuition at the rate fixed by the trustees.

Section 20-5-312(3)(c), MCA, states:

(3) Before July 15, the trustees shall report to the county superintendent of the county in which the district is located:

....

(c) the amount, if any, of each pupil's tuition payment that the trustees, in their discretion, shall have the authority to waive[.] [Emphasis supplied.]

The above-quoted statutes specifically ensure that the board of trustees is permitted to exercise discretion on the issues of attendance and tuition.

Hence, based upon the broad grant of authority given to the trustees, I conclude that the trustees may accept Canadian residents as students. I also find that the trustees may waive their tuition, but note the provision in section 20-5-303, MCA (affecting elementary students), that requires the trustees to uniformly waive a like amount of all tuition payments, a requirement which includes all out-of-district elementary students. (There is no such requirement of uniformity in the tuition agreement statutes for high school students.)

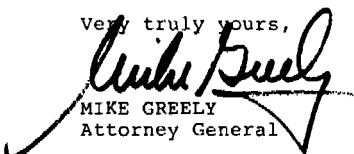
Your final question is: If the trustees charge tuition, which statutes govern the tuition rates to be set? Section 20-5-305, MCA, sets out the formula to be used by the attended district in setting the amount of tuition to be paid for elementary students. Section 20-5-312, MCA, sets out the formula to be used by the attended district in setting the amount of tuition to be paid for high school students. I recognize that these statutes are not specifically applicable to the agreements reached between local Montana boards of trustees and their Canadian counterparts. However, unless a contrary intention appears, statutes relating to the same subject matter should be interpreted consistently. § 1-2-107, MCA; State ex rel. McHale v. Ayers, 111 Mont. 1, 105 P.2d 686 (1940); 40 Op. Att'y Gen. No. 69 at 273 (1984).

THEREFORE, IT IS MY OPINION:

A school district's board of trustees may, in its discretion, accept as elementary and high school students Canadian residents who wish to attend school in Montana. The trustees are also authorized to exercise discretion in granting a waiver of tuition to these and all other out-of-district students. If the trustees choose to charge tuition, sections 20-5-305 and 20-5-312,

MCA, must be referred to in setting the amount of tuition.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Mike Greely", written over a horizontal line.

MIKE GREELY
Attorney General

VOLUME NO. 42

OPINION NO. 104

FIRE DEPARTMENTS - Responsibilities of fire service organizations in responding to hazardous materials incidents;

FIRE MARSHAL - Rulemaking authority concerning the responsibilities of fire service organizations in responding to hazardous materials incidents;

HAZARDOUS WASTE - Responsibilities of fire service organizations in responding to hazardous materials incidents;

ADMINISTRATIVE RULES OF MONTANA - Section 23.7.111(1);

MONTANA CODE ANNOTATED - Sections 7-33-2104, 7-33-2202, 7-33-4104, 10-3-105(4)(a), (b), (j), (k), 10-3-301, 10-3-302(1), 10-3-401, 50-3-102(2), 50-3-103, 75-10-701 to 75-10-715, 75-10-701(5), 75-10-702, 75-10-711;

UNITED STATES CODE - 42 U.S.C. §§ 11001 to 11050, 42 U.S.C. § 11003(c)(2), 42 U.S.C. § 11003(e).

- HELD: 1. Any fire service organization may be assigned to respond to hazardous materials incidents if the supervising entity instructs the organization to so respond.
2. Designation of fire service organizations as first responders to hazardous materials incidents is a matter to be included in the state and local disaster and emergency plans.
3. The State Fire Marshal does not have authority to promulgate regulations on the subject of which fire service organizations should respond to hazardous materials incidents and when such responses should occur.

9 August 1988

Ray E. Blehm Jr.
State Fire Marshal
Room 371, Scott Hart Building
303 North Roberts
Helena MT 59620

Dear Mr. Blehm:

16-8/25/88

Montana Administrative Register

You have requested my opinion on three questions which I have phrased as follows:

1. What types of fire service organizations may be assigned to respond to hazardous materials incidents?
2. Who is responsible for designation of fire service organizations as first responders to hazardous materials incidents?
3. May the State Fire Marshal, through use of his rulemaking authority, direct which fire service organizations should respond to hazardous materials incidents?

The State's fire protection laws are found in Title 7, chapter 33, and Title 50, chapter 3, MCA. The method of administering a fire service organization is controlled by statute and depends upon the type of organization. See 16A McQuillin, Municipal Corporations §§ 45.04, 45.05 (3d ed. 1984). For example, rural fire districts are operated either by the board of county commissioners or by a fire district board, while municipal fire departments are administered by the chief of the fire department. §§ 7-33-2104, 7-33-4104, MCA. Similarly, the control of a volunteer fire service organization depends upon what type of organization it is. In a municipality, the volunteer fire department serves under the supervision of the chief of the fire department. § 7-33-4109(5), MCA. County or district rural fire chiefs appointed by the governing body direct the operation of volunteer rural fire control crews. § 7-33-2202, MCA.

The fire protection statutes do not specify the duties of firefighters, whether volunteers or paid employees. Basically, the duties of firefighters consist of following the instructions of their supervisors when these instructions relate to fire protection and prevention. Firefighters' responsibilities include inspection of sites where combustible or hazardous materials are located. Rosenbauer, Introduction to Fire Protection Law 81-82 (1978). Moreover, the Uniform Fire Code, adopted by the State Fire Marshal pursuant to section 50-3-103(4), MCA, and section 23.7.111(1), ARM, gives the supervisor at a fire scene the authority to

direct the investigation of hazardous conditions in addition to the extinguishment of fires. Unif. Fire Code, art. 10, div. 1, sec. 10.101. Accordingly, unless otherwise provided by law, the decision to order a firefighter to respond to or investigate a hazardous materials incident is within the discretion of the supervising entity of each fire service organization.

With respect to your second question, the responsibility for designation of fire service organizations as first responders to hazardous materials incidents depends upon the terms of any plans or agreements entered into by the supervising entities of the participating fire service organizations. In this regard, it is necessary to consider other statutes which may impinge upon the role of fire service organizations in responding to hazardous materials incidents.

Sections 75-10-701 to 715, MCA, authorize the Montana Department of Health and Environmental Sciences (the Department of Health) to "take remedial action to prevent or alleviate release of hazardous or deleterious substances into the environment." 1985 Mont. Laws, ch. 711. "'Remedial action' includes all investigation, monitoring, cleanup, restoration, abatement, removal, replacement, and other actions necessary or appropriate to respond to a release" of a hazardous substance. § 75-10-701(5), MCA. The Department of Health is authorized to adopt rules for implementing its responsibilities in this area. § 75-10-702, MCA.

Disaster and emergency services are the subject of Title 10, chapter 3, MCA, much of which was enacted as the Montana Disaster Act of 1977. The 1977 Act contemplates the preparation of a comprehensive disaster and emergency plan which provides for cooperation and coordination with local jurisdictions. § 10-3-301, MCA. The comprehensive state plan is to be prepared and carried out by the Division of Disaster and Emergency Services (the Division), which is a part of the Department of Military Affairs and is responsible to the Governor. §§ 10-3-302(1), 10-3-303(1), MCA. The Division has the responsibility for coordinating all local emergency plans and directing all response activities as authorized by the Governor. § 10-3-105(4)(a), (b), (j), (k), MCA.

Local jurisdictions must also prepare disaster and emergency plans in accordance with and in support of the State's plan. These local plans must set forth the emergency responsibilities of all local agencies, as well as the disaster chain of command. § 10-3-401, MCA.

In addition, local plans for handling emergencies and disasters involving hazardous materials must be prepared by local emergency response commissions pursuant to a federal law, commonly referred to as the Emergency Planning and Community Right-to-Know Act of 1986. 42 U.S.C. §§ 11001 to 11050. These plans must include the methods and procedures to be followed for responding to the release of hazardous substances. 42 U.S.C. § 11003(c)(2).

All of these areas of the law are relevant to your inquiry. A "hazardous materials incident," as that phrase is used in your opinion request, may fit the descriptions of a "release" of a hazardous material under sections 75-10-701 to 715, MCA, and the federal Emergency Planning and Community Right-to-Know Act of 1986, as well as a "disaster" under Title 10, chapter 3, MCA. Thus, these statutes must be kept in mind when considering the role of fire service organizations in responding to hazardous materials incidents. The plans for designating first responders to such incidents would necessarily require coordination and consistency among the various plans, all of which contemplate review and direction by the State. See §§ 75-10-711, 10-3-105(4)(a), (j), (k), MCA; 42 U.S.C. § 11003(e). The plans must also be consistent with any rules promulgated by the State Fire Marshal under section 50-3-103, MCA.

An Attorney General's Opinion is obviously not the proper vehicle for determining which fire service organizations should be designated as first responders to hazardous materials incidents, since that question will depend upon the provisions of the many emergency plans formulated by state and local governments.

Your third question concerns whether the State Fire Marshal may, through rulemaking, prescribe which fire service organizations should respond to hazardous materials incidents. The statutes do not give the Fire Marshal express rulemaking authority on this specific subject, although he is given general rulemaking

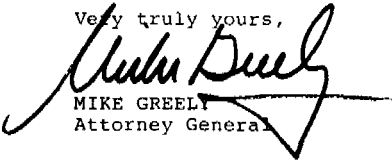
authority in the areas of fire prevention and use and storage of hazardous chemicals. See §§ 50-3-102(2), 50-3-103, MCA.

Administrative rules must be strictly confined within applicable legislative guidelines. Bick v. State, Dept. of Justice, Div. of Motor Vehicles, 43 St. Rptr. 2331, 2332, 730 P.2d 418, 420 (1986). While the Fire Marshal has general rulemaking authority under section 50-3-103, MCA, the subject of which fire service organizations should respond and when such responses should occur is one within the authority of the supervising entity, to be addressed in state and local disaster and emergency plans, as discussed above.

THEREFORE, IT IS MY OPINION:

1. Any fire service organization may be assigned to respond to hazardous materials incidents if the supervising entity instructs the organization to so respond.
2. Designation of fire service organizations as first responders to hazardous materials incidents is a matter to be included in the state and local disaster and emergency plans.
3. The State Fire Marshal does not have authority to promulgate regulations on the subject of which fire service organizations should respond to hazardous materials incidents and when such responses should occur.

Very truly yours,



MIKE GREELY
Attorney General

VOLUME NO. 42

OPINION NO. 105

CITIZENSHIP - Applicant for gambling license in Title 23, MCA, must meet both United States citizenship and Montana residency requirements;
GAMBLING - Applicant for gambling license in Title 23, MCA, must meet both United States citizenship and Montana residency requirements;
LICENSES - Applicant for gambling license in Title 23, MCA, must meet both United States citizenship and Montana residency requirements;
LOCAL GOVERNMENT - Applicant for gambling license in Title 23, MCA, must meet both United States citizenship and Montana residency requirements;
MONTANA CODE ANNOTATED - Sections 13-1-111, 16-4-408, 23-5-322, 23-5-422;
MONTANA CONSTITUTION - Article IV, section 2;
MONTANA LAWS OF 1974 - Chapters 293, 294;
MONTANA LAWS OF 1975 - Chapter 387;
REVISED CODES OF MONTANA, 1947 - Section 4-412 (1975 supp.).

HELD: The language in sections 23-5-322 and 23-5-422, MCA, requires that an applicant for a gambling license meet both United States citizenship and Montana residency requirements. An alien who has resided in the state for 18 years does not meet both requirements and should be denied a license.

12 August 1988

James L. Tillotson
City Attorney
P.O. Box 1178
Billings MT 59103

Dear Mr. Tillotson:

You have requested my opinion on a confusing portion of the statutes which allow cities to issue gambling licenses for card games, bingo and raffles. In pertinent part, both sections 23-5-322 and 23-5-422, MCA, similarly provide that:

[N]o license may be issued to:

....

(e) a person who is not a citizen of the United States and who has not been a resident of the state of Montana for at least 1 year immediately preceding the filing of the application for license[.]

Your specific question concerning these statutes is as follows:

Do sections 23-5-322 and 23-5-422, MCA, allow issuance of a gambling license to a legal alien who has been residing in Montana for 18 years?

The language used in the statutes is awkward and confusing, and I am unable to find any court decisions which are of assistance in interpreting it. Part of the confusion in the language arises from the use of the double negative (no license ... issued to a person ... not a citizen). Dropping the double negative for the purpose of analysis, the framework of the statute becomes more clear: A license ... may be issued ... to a person who ... is a citizen of the United States ... and ... is a resident of the state. Under that construction of the statute a person would have to be both a citizen of the United States and a resident of the state of Montana in order to qualify for licensing.

The language in question here was incorporated into comprehensive pieces of legislation which authorized limited and controlled gambling in Montana after the adoption of a new state constitution in 1972. Montana Card Games Act, 1974 Mont. Laws, ch. 293; Bingo and Raffles Law, 1974 Mont. Laws, ch. 294. The licensing provision in the gambling laws was based largely on the licensing requirements which then existed under the liquor laws. The specific language involved in this opinion request was adopted verbatim from the licensing portion of the liquor laws. § 4-412, R.C.M. 1947 (1973 supp.).

However, in 1975 the Legislature passed a bill "to recodify and generally revise the alcoholic beverage control laws." 1975 Mont. Laws, ch. 387. In section 90 of the law, now codified at section 16-4-401, MCA, the

previous language was changed to an affirmative statement which reads in pertinent part:

The department must find ... that:

(2) the applicant is a resident of the state and is qualified to vote in a state election.

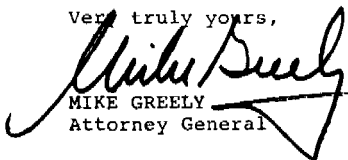
1975 Mont. Laws, ch. 387, § 90 (now contained in section 16-4-401, MCA). Since a person must be a citizen of the United States in order to vote in a state election (§ 13-1-111, MCA; Mont. Const. art. IV, § 2), the two-pronged test of state residency and national citizenship was preserved. What is important for our purposes is that in this clarifying act the Legislature clearly established that a person must be both a United States citizen (voter) and a resident of Montana to qualify. By inference, this result is what the Legislature had meant by its previous, less exact, language.

It is also relevant that in interpreting the language in the liquor regulations, the Department of Revenue's position during the administration of the previous language was that a person must meet both requirements in order to obtain a license. Letter from Tom Mulholland, deputy administrator of the Liquor Division of the Department of Revenue, to Attorney General Greely (July 19, 1988).

THEREFORE, IT IS MY OPINION:

The language in sections 23-5-322 and 23-5-422, MCA, requires that an applicant for a gambling license meet both United States citizenship and Montana residency requirements. An alien who has resided in the state for 18 years does not meet both requirements and should be denied a license.

Very truly yours,



MIKE GREELY
Attorney General

VOLUME NO. 42

OPINION NO. 106

CONSERVATION DISTRICTS - Application of Streambed Act permit process to irrigator constructing diversion dike;
LAND USE - Application of floodplain and floodway management statutes to irrigator constructing diversion dike;

NATURAL RESOURCES - Application of Streambed Act and floodplain and floodway management statutes to irrigator constructing diversion dike;

SOIL AND WATER CONSERVATION - Application of Streambed Act permit process to irrigator constructing diversion dike;

WATER AND WATERWAYS - Application of Streambed Act and floodplain and floodway management statutes to irrigator constructing diversion dike;

MONTANA CODE ANNOTATED - Sections 75-7-103(5)(b), 76-5-101, 76-5-103(1), 76-5-404, 76-5-404(3)(b);

OPINIONS OF THE ATTORNEY GENERAL - 41 Op. Att'y Gen. No. 62 (1986).

HELD: The construction of a diversion dike with heavy equipment requires either a 310 permit or an approved operation plan under the Natural Streambed and Land Preservation Act of 1975. When this work is performed within a designated floodplain or floodway, the construction additionally requires a permit from the responsible political subdivision.

15 August 1988

Jim Nugent
Missoula City Attorney
201 West Spruce
Missoula MT 59802-4297

Dear Mr. Nugent:

On August 2, 1988, you wrote this office requesting an opinion on the following question:

What are the meanings of the phrases "historic maintenance" and "maintenance of an obstruction" as they appear in the Natural Streambed and Land Preservation Act of 1975

and the floodplain and floodway management statutes, respectively?

Your concerns arise out of two recent diversion operations in which local ditch companies have used heavy equipment to construct earthen dikes in an attempt to divert water from the low water level of the Clark Fork toward their headgates. In one instance the ditch company has constructed a 125-foot dike that is claimed to be an extension of a dike that previously existed during a period of low water. Neither company has applied for either a 310 permit or a floodplain permit. You have essentially asked whether this practice would constitute a permissible maintenance of a diversion structure.

This question may be answered in part by reference to a previously issued opinion of this office. In 41 Op. Att'y Gen. No. 62 (1986) I was asked by the Powell County Attorney whether the Natural Streambed and Land Preservation Act of 1975 (hereinafter Streambed Act) required an irrigator to apply for a 310 permit before machinery could be used to maintain or improve an earthen diversion dam. My response to that question was that a 310 permit application was required.

Following the issuance of my opinion, the Legislature in 1987 amended the Streambed Act to provide a process whereby irrigators who customarily clean and maintain their streambed diversions may avoid the annual burden of a 310 permit application. The amendment language provides:

Project does not include customary and historic maintenance and repair of existing irrigation facilities:

(i) that do not significantly alter or modify the stream in contravention of 75-7-102; or

(ii) for which a plan of annual operation has been submitted to and approved by the district. The plan is subject to future review and approval by the district at its option. Any modification to the plan must have prior approval of the district.

§ 75-7-103(5)(b), MCA. Thus, large-scale diversion works which significantly alter the streambed require the submittal and approval of an operation plan. Diversion work that alters the streambed and is conducted in the absence of an approved operation plan constitutes a project which requires a 310 permit.

The broader question of the meaning of "historic maintenance" is not easily answered. While the Legislature in 1987 contemplated grandfathering the status quo practice of irrigators maintaining their diversions on an annual basis, the statute and its legislative history are silent as to the exact parameters of historic maintenance. The determination of what maintenance would qualify for management by an operation plan is best made on a case-by-case basis by the local conservation district, as the matter is largely factual in nature.

My 1986 opinion did not address the application of the floodplain and floodway management statutes, §§ 76-5-101 to 406, MCA. These provisions are directed generally at preventing and alleviating flooding threats to life, health, and property. § 76-5-101, MCA. As such, the floodplain statutes act independently of the Streambed Act; compliance or noncompliance with one act does not obviate the need for compliance with the other act. Included in the statutory proscriptions for a designated floodplain or floodway is the permitless construction of an artificial obstruction, § 76-5-404, MCA. An artificial obstruction is defined as follows:

"Artificial obstruction" means any obstruction which is not a natural obstruction and includes any dam, wall, riprap, embankment, levee, dike, pile, abutment, projection, revetment, excavation, channel rectification, bridge, conduit, culvert, building, refuse, automobile body, fill, or other analogous structure or matter in, along, across, or projecting into any floodplain or floodway which may impede, retard, or change the direction of the flow of water, either in itself or by catching or collecting debris carried by the water, or that is placed where the natural flow of the water would carry the same downstream to the damage or detriment of either life or property.

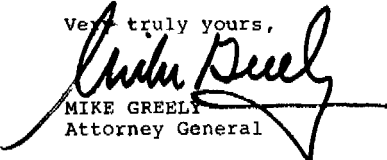
§ 76-5-103(1), MCA. Certain exemptions are provided in the statutes including "maintenance of an obstruction." § 76-5-404(3)(b), MCA. Apparently the ditch companies responsible for the recent diversion work contend that their projects constitute maintenance of prior obstructions.

The new construction and creation of earthen dikes cannot be equated with the clear meaning of "maintenance of an obstruction." Webster's New Twentieth Century Dictionary, at page 1087, defines maintenance as "upkeep, support, defense." Implicit in this definition is the notion that the obstruction be existing; the diversion work here, though, has created an obstruction where, prior to such work, none existed. High water levels routinely erode minor diversion obstructions that have been historically used by the irrigators of our state. The Streambed Act as amended in 1987 now provides an operation plan process for maintaining those historic diversions outside the 310 permit process. However, the floodplain and floodway management statutes do not recognize a similar process and, regardless, the extended diversion dikes on the Clark Fork represent new construction that enlarges rather than maintains prior obstructions.

THEREFORE, IT IS MY OPINION:

The construction of a diversion dike with heavy equipment requires either a 310 permit or an approved operation plan under the Natural Streambed and Land Preservation Act of 1975. When this work is performed within a designated floodplain or floodway, the construction additionally requires a permit from the responsible political subdivision.

Very truly yours,



MIKE GREELY
Attorney General

NOTICE OF FUNCTIONS OF ADMINISTRATIVE CODE COMMITTEE

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

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

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

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

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

Use of the Administrative Rules of Montana (ARM):

- | | |
|-------------------------------------|---|
| Known
Subject
Matter | 1. Consult ARM topical index.
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 March 31, 1988. This table includes those rules adopted during the period March 31, 1988 through June 30, 1988 and any proposed rule action that is pending during the past 6 month period. (A notice of adoption must be published within 6 months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through March 31, 1988, this table and the table of contents of this issue of the MAR.

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