

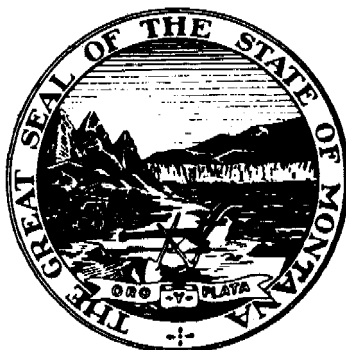
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MONTANA ADMINISTRATIVE REGISTER

1989 ISSUE NO. 21
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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 21

OF MONTANA

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing and where written comments may be submitted.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

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STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF HORSE RACING

In the matter of the proposed)	NOTICE OF PUBLIC HEARING ON
amendment and adoption of)	THE PROPOSED AMENDMENT AND
rules pertaining to simulcast)	ADOPTION OF RULES PERTAINING
horse racing and simulcast)	TO SIMULCAST HORSE RACES AND
race meets under the pari-)	RACE MEETS
mutuel system of wagering)	

TO: All Interested Persons:

1. On November 30, 1989, at 9:00, a.m., a public hearing will be held in the downstairs conference room of the Department of Commerce building, 1424 - 9th Avenue, Helena, Montana, to consider the amendment and adoption of rules pertaining to simulcast race meets.

2. The Board is proposing to amend ARM 8.22.301 Introduction, 8.22.501 Definitions, 8.22.503 Annual License Fees, 8.22.601 General Provisions, 8.22.608 Security Director, 8.22.613 Director of Racing, 8.22.1501 General Provisions, 8.22.1601 General Rules, 8.22.1602 Duties of the Licensee, 8.22.1623 Bonus for Owners of Montana Breds, 8.22.1624 Portion of Exotic Wagering for Purses, and is proposing to adopt new rules relating to Directors of Simulcast Networks, Directors of Simulcast Facilities, General Provisions for Simulcast Racing, and Providing a Portion of Exotic Simulcast Wagering on Live Races for Purses.

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

"8.22.301 INTRODUCTION (1) Unless inconsistent with Chapter 2, these additional rules 8.22.301 through 8.22.320 shall also be incorporated in the procedural rules. If any section, subsection, sentence, clause, or phrase of rules 8.22.301 through 8.22.320, be for any reason held to be invalid, such holding shall not affect the validity of the remaining portion of the total rules. The Montana state board of horse racing hereby declares that it would have passed and adopted rules 8.22.301 through 8.22.320 in each section, subsection, sentence, clause of phrase, separately and irrespective of the fact that any one or more of them be held invalid.

(2) Unless otherwise expressly provided, these rules apply with equal effect to live races and simulcast races and parimutuel wagering thereon."

Auth: Sec. 23-4-104, 23-4-202, MCA; IMP, Sec. 23-4-104, 23-4-202, MCA;

"8.22.501 DEFINITIONS (1) through (49) will remain the same.

(50) Simulcast network licensee - An association licensed by the board to receive and/or originate intrastate simulcast race signals and relay them to licensed simulcast facilities; in certain instances, to receive interstate race

signals and relay them to licensed simulcast facilities; and to manage statewide wagering pools on simulcast races.

(51) Simulcast facility licensee - A local fair board or an association approved by a local fair board which operates a simulcast facility licensed by the Board. The simulcast facility may be located either at a race track or at an outside location, and is deemed to be an extension of the host track during intrastate wagering and an extension of the simulcast network licensee during interstate wagering.

(52) Track licensee - A corporation, association, firm, political subdivision (fair board), or individual(s) licensed by the Board to conduct live parimutuel horse racing at a race track."

Auth: Sec. 23-4-104, 23-4-202, MCA; IMP, Sec. 23-4-104, 23-4-202, MCA

"8.22.502 LICENSES ISSUED FOR CONDUCTING PARIMUTUEL WAGERING ON HORSE RACING MEETINGS (1) Every license to hold a race meeting, live or simulcast, is granted by the Board upon the condition that the licensee shall enforce the laws of Montana and shall observe and enforce all rules of racing and the Board directives. Failure to comply may constitute sufficient cause for revocation of license by the Board.

(2) Any corporation, association, organization, political subdivision (fairs), partnership or individual desiring to conduct parimutuel wagering on live or simulcast horse race or races or to engage in horse race meetings shall apply to the Board for dates and a license.

(3) will remain the same.

(4) The application for a license to conduct a live or simulcast meeting with parimutuel wagering during the next succeeding season of racing must be filed with the Secretary of the Board over the signature of the applicant or the signature of an executive officer of the applicant no later than September 1, unless, for good cause shown, the Board shall otherwise permit.

(5) The applicant shall specify the days on which such races or meetings are to be held, the name or names of the applicant or applicants desiring the license together with the location and the enclosure where the same are to be held, and if the applicant desires the use of a parimutuel system in connection with such races the application shall so specify and state the terms upon which parimutuel tickets and certificates are to be sold. If the application is for a license to conduct a live race meeting and the applicant desires to use the parimutuel system in connection with simulcast interstate races, intrastate races and/or races of national prominence, the application shall specify which simulcast races it desires to use the parimutuel system with. The Board may require additional data and information in writing or it may require the applicant to appear before it. Each application to conduct a race meeting will be handled on an individual basis by the Board, and the Board will approve those race meetings it deems appropriate. The scope of the applicant's operation and plant facilities will determine the

Board-requirements-for: Each application to conduct a live race meeting shall include:

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

(c) a description of medical and veterinarian facilities;

(d) a description of lodging facilities; and

(e) a description of protective facilities.

(6) Each application to conduct a simulcast race meeting will be handled on an individual basis by the board. Each application for a simulcast network or simulcast facility license shall include:

(a) proof of financial stability;

(b) names of stockholders, firm members, association members, directors and executive officers;

(c) a description of facilities and equipment;

(d) a description of security facilities and measures;
and

(e) copies of all contracts for simulcast broadcasting of races and parimutuel systems.

(f) A simulcast network license applicant must also demonstrate the ability to operate statewide parimutuel pools on races that are conducted out of state.

46+ (7) The Board may refuse to issue a license to conduct a live race meeting whenever, in its judgment, such refusal shall appear to be in the interest of Montana horse racing and the general public. Attention will be given to the following considerations:

(a) through (e) will remain the same."

(8) The board may refuse to issue a license to conduct a simulcast race meeting whenever, in its judgment, such refusal shall appear to be in the best interest of Montana horse racing and the general public. Attention will be given to the following considerations:

(a) the best interests of live racing facilities in Montana;

(b) avoidance of competition between licensees which may cause hardship or be counterproductive or wasteful;

(c) extent of community support for the promotion and continuance of the race meeting;

(d) the experience, past record and present status of individuals identified with the business of the applicant, which demonstrate that the applicant is likely to conduct its business in compliance with the laws.

47+ (9) If there shall be two or more applications requesting licenses to conduct live race meetings on one or more identical dates the applicants shall be notified and a hearing will be held in conformity with subchapter 3 hereof. If the Board refuses to allot dates or issue a license for a race meeting for any reasons other than conflicting dates, the applicant refused dates or a license may appeal to the board and then a hearing will be held in conformity with subchapter 3 hereof. Criteria for the award of race meetings and race dates when there are two or more applications for identical date shall include, but not limited to, the following:

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

(10) If there shall be two or more applications requesting licenses to conduct simulcast race meetings on one or more identical dates in the same county, the applicants will be notified and a hearing will be held in conformity with subchapter 3 hereof. If the board refuses to issue a license for a simulcast race meeting, the applicant refused a license may appeal to the board and then a hearing will be held in conformity with subchapter 3 hereof. Criteria for the award of simulcast race meetings and simulcast race dates when there are two or more applications for identical dates in the same county shall include, but not be limited to, the following;

(a) interest of the state;
(b) the best interest of live racing facilities within the state;
(c) the best interest of the simulcast facility owner;
(d) good-will of the applicant;
(e) simulcast facilities;
(f) geography and location;
(g) experience, skill and integrity in management;
(h) financial stability of applicant;
(i) opportunity for the sport of horse racing to develop;
(j) hardship that may be caused by awarding overlapping simulcast race dates;
(k) extent of community support for the promotion and continuance of simulcast race meets or simulcast race dates;
(l) character and reputation of the individuals identified with the undertaking; and
(m) tenure of simulcast race meets being considered.
(n) No applicant has a vested right to race dates. The board may award all, none or part of the race dates applied for. No single criterion is compelling or binding on the board.

48+ (11) Every track licensee shall have on file with the Board at least ten (10) days prior to the opening of any race meeting, copies of the following:

(a) through (c) will remain the same.
(d) --Any request by a licensee to relinquish or cancel dates allotted to said licensee, shall be filed in writing with the Board within thirty (30) days after the final awarding of dates for the ensuing racing season. --Failure of a licensee to conduct racing on all dates allotted to the licensee by the Board thereafter shall subject the licensee to a fine not to exceed the sum of \$500.00 per day for each racing day allocated and not used, unless such non-use or cancellation of racing was due to fire, riot, strike, inclement weather, act of God, or other cause deemed excusable by the Board of Horse Racing.

(12) Every simulcast network and simulcast facility licensee shall have on file with the board at least ten (10) days prior to the opening of any race meeting, copies of an adequate public liability insurance contract covering all persons who may be in attendance at the facility, and an adequate accident insurance contract covering all employees working at the facilities;

49+ (13) No license or any part thereof is transferable or assignable without the express written consent of the Board. No license, or any part thereof, is refundable.

(14) Any request by a licensee to relinquish or cancel dates allotted to said licensee shall be filed in writing with the board within thirty (30) days after the final awarding of dates for the ensuing racing season. Failure of a licensee to conduct racing on all dates allotted to the licensee by the board thereafter shall subject the licensee to a fine not to exceed the sum of \$500.00 per day for each racing day allocated and not used, unless such non-use or cancellation of racing was due to fire, riot, strike, inclement weather, act of god, or other causes deemed excusable by the board of horse racing.

410+ (15) Each licensee shall submit to the Board for approval a list of racing officials indicating the position they are to fill and shall include relevant personal data on each individual sufficient to permit processing and licensing. The list shall be submitted in writing and at least thirty (30) days prior to the first day of scheduled racing except for good cause shown. All additions or changes in the list of officials and employees shall be immediately reported in writing to the Board. No racing official shall be qualified to act until he shall have been approved by the Board and then except in cases of emergency the licensee may employ a substitute official to be approved by the Board within 24 hours.

411+ (16) Each track licensee shall employ the following officials:

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

(17) Each simulcast network licensee shall employ the following officials:

(a) a director of simulcast network; and

(b) a parimutuel manager.

(18) Each simulcast license facility licensee shall employ the following officials:

(a) a director of the facility;

(b) a parimutuel manager or money room manager;

(c) parimutuel employees; and

(d) a chief of security.

(e) One person may hold more than one license and serve more than one official position under this provision, except where the board determines to the contrary.

(12) through (17) will remain the same but will be renumbered (19) through (24).

418+ (25) A track licensee shall conduct live parimutuel horse racing only between the hours of 12 noon and sunset unless otherwise specifically authorized by the Board.

(19) and (20) will remain the same but will be renumbered (26) through (27).

421+ (28) Post-time of the first race at each live race meeting must be approved by the Board.

422+ (29) Each track licensee shall file with the Board the condition of races it proposes to hold, together with the stake and purse schedule, no later than December 1st. In

any stakes race, futurity, maturity, derby and/or added money event, the conditions for said races shall be submitted to the Board for approval prior to circulation of any such information by a licensee. The names of all persons, firms or corporations contributing any or all of the purse money must be listed and the amount contributed specified.

423+ (30) Each track licensee conducting a live race meeting shall provide and maintain, each day that their tracks may be opened for racing horses, both a man human ambulance and a horse ambulance equipment and ready for immediate duty, thirty (30) minutes prior to the first race and until after completion of the last race.

424+ (31) Each track licensee conducting a live race meeting shall provide adequate first aid and medical facilities for patrons and participants. The Board may at any time require the expansion of these facilities. The extent of first aid and medical or hospital facilities required shall be considered on an individual basis by the Board.

425+ (32) Each track licensee shall promptly pay all purse money and all Montana breeders' awards and in no event shall the payment of the winning purse be delayed more than five (5) days after the licensee is notified to release the purse by the stewards. All other purse payments shall be made or made available within 48 hours after they have been earned. All breeders' awards shall be paid within thirty (30) days after they have been earned.

(26) through (42) will remain the same but will be renumbered (33) through (49)."

Auth: Sec. 23-4-104, 23-4-201, 23-4-202, 37-1-131, MCA; IMP, Sec. 23-4-104, 23-4-201, 23-4-202, MCA

"8.22.503 ANNUAL LICENSE FEES The following fees shall be charged annually:

(1) through (1)(u) will remain the same.	
(v) <u>director of simulcast network</u>	\$25.00
(w) <u>parimutuel manager at simulcast network</u>	\$20.00
(x) <u>director at simulcast facility</u>	\$25.00
(y) <u>parimutuel manager or money room manager at simulcast facilities</u>	\$20.00
(z) <u>parimutuel employees at simulcast facility</u>	\$ 5.00
(aa) <u>chief of security at simulcast facilities</u>	\$25.00
(17) will remain the same."	

Auth: Sec. 23-4-104, 23-4-201, 37-1-134, MCA; IMP, Sec. 23-4-104, 23-4-201, 37-1-134, MCA

"8.22.601 GENERAL PROVISIONS (1) through (2)(u) will remain the same.

(v) outrider;
(w) director of simulcast network; and
(x) director of simulcast facility.
(3) will remain the same.
(4) No official specified in ARM 8.22.601(2)(a) through 4v+ (x) may serve in his official capacity in regard to any race meet at which a horse owned by him, his spouse or his

child living in the same household, or in which he has a financial interest is entered in a race at such meet.

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

Auth: Sec. 23-4-104, 23-4-202, 37-1-131, MCA; IMP, Sec. 23-4-104, 23-4-201, 23-4-202, 37-1-131, MCA

"8.22.608 SECURITY DIRECTOR (1) The Security Director shall be responsible for maintaining security at the race track or simulcast facility. He shall be in charge of the backstretch if at a race track, and the parimutuel area, and is authorized to provide for the removal of unauthorized persons from restricted areas and for the removal of persons causing disturbances upon the premises of the race track or simulcast facility."

Auth: Sec. 23-4-104, 23-4-202, MCA; IMP, Sec. 23-4-104, 23-4-201, 23-4-202, 37-1-131, MCA

"8.22.613 DIRECTOR OF RACING (1) Each track licensee shall name a Director of Racing. It shall be the Director's duty to coordinate the activities of the various racing officials serving at the meet and to act as a liaison between the licensee and the Board and its representative."

Auth: Sec. 23-4-104, 23-4-202, MCA; IMP, Sec. 23-4-104, 23-4-201, 23-4-202, 37-1-131, MCA

"8.22.1501 GENERAL PROVISIONS (1) and (2) will remain the same.

(3) No person shall knowingly or intentionally make and submit or cause to be submitted to any racing official any false or intentionally misleading affidavit sworn statement.

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

(25) Any person ejected from the grounds of a race meeting or simulcast facility shall be denied admission to said grounds or facility until permission for reentering has been obtained from the Board.

(26) through (30) will remain the same.

(31) No person licensed by this Board shall knowingly transmit or allow to be transmitted by telephone, telegraph, teletype, semaphore, signal device, radio, television, or visual communication from within the enclosure of the track to any person or receiving device beyond the enclosure of the track, the result of any race until at least 15 minutes after said race is declared official, with the exception of the final race of the program and any simulcast races provided for and regulated hereunder unless specifically provided by the Board.

(32) will remain the same."

Auth: Sec. 23-4-104, 23-4-202, MCA; IMP, Sec. 23-4-104, 23-4-202, MCA

"8.22.1601 GENERAL RULES (1) will remain the same.

(2) The Board shall have a representative(s) to be known as a Parimutuel Supervisor Auditor(s) who shall be stationed at any licensed tracks during the time of their live race meets and/or at the location of the technical operations

of the network simulcast licensee, and may also include roving auditors at the locations of one or more simulcast facilities. His Their duties shall be to direct and supervise the conduct of the mutual department operations during each live or simulcast race meeting. He They shall be given free access to all of the records, books and papers of the any association under jurisdiction of the Board and to any room or enclosure of the any association at any and all times. The officers and employees of the all associations shall promptly give the such supervisor auditors such information as he they may request from time to time, and shall freely and fully cooperate with him them in every way so that he they may be certain that the mutual department is operations are being properly and efficiently operated in strict accordance with the laws and rules of the Board. If he the auditors finds defects in the parimutuel operations, he-has they have the authority to stop wagering until remedied.

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

Auth: Sec. 23-4-104, 23-4-202, MCA; IMP, Sec. 23-4-104, 23-4-202, 23-4-301, 23-4-302, 23-4-303, MCA

"8.22.1602 DUTIES OF THE LICENSEE (1) through (11) remain the same.

(12) At the discretion of the Board, a licensee including a simulcast network or facility licensee may be required to furnish a blanket fiduciary bond before issuance of a license to operate a race meet.

(13) Wherever economically possible the licensee, including a simulcast network or facility licensee, shall may be required (at the discretion of the board) to furnish a certified or licensed public accountant, licensed to practice in the state of Montana and the accountant shall have the following duties:

(13)(a) through (15) will remain the same.

(16) The A licensee shall must deposit all receipts by the next banking day and submit to the Board, statements showing parimutuel receipts, percentages retained, and such other information as may be required for the proper administration of the law. Said information shall be submitted within five (5) days after the close of the meeting. The supervisor of parimutuel betting must be given access to the books of the licensee for this purpose.

(16)(a) through (19) will remain the same."

Auth: Sec. 23-4-104, 23-4-202, MCA; IMP, Sec. 23-4-104, 23-4-202, 23-4-301, 23-4-302, 23-4-303, MCA

"8.22.1623 BONUS FOR OWNERS OF MONTANA BREDS (1) In accordance with section 23-4-202 (4), MCA, licensees shall pay to the department, within five (5) days after the date collected, an additional 2% of all betting money derived from exotic wagering on races, including simulcast races, which shall be set aside, placed in, and distributed from, the Board's agency fund account. 30% of the amount thus set aside shall be used by the Board of Horse Racing to defray administrative costs and shall be transferred to the Board's

earmarked revenue account. The balance shall be used and distributed as bonuses to licensed owners of Montana bred horses pursuant to section 23-4-304 (2), MCA.

(2) through (4) will remain the same."

Auth: Sec. 23-4-104, 23-4-202, MCA; IMP, Sec. 23-4-104, 23-4-202, 23-4-304, MCA

4. The proposed new rules will read as follows:

"I. DIRECTOR OF SIMULCAST NETWORK (1) Each holder of a simulcast network license shall name a director of simulcast network. It shall be this director's duty to coordinate the selection and transmittal of races and parimutuel information from originating tracks to simulcast facilities. He shall act as a liaison between the simulcast network licensee, the simulcast facility licensees, the licensed race tracks, and the board and its representatives, and shall supervise the management of the statewide wagering pools and assure that parimutuel statutes and rules are complied with and that moneys are correctly deposited and paid."

Auth: Sec. 23-4-104, 23-4-202, 37-1-131, MCA; IMP, Sec. 23-4-104, 23-4-202, 23-4-301, MCA

"II. DIRECTOR OF SIMULCAST FACILITY (1) Each holder of a simulcast facility license shall name a director of simulcast facility for its facility. It shall be this directors' duty to coordinate the selection and transmittal of races and parimutuel information for the simulcast facility. He shall act as liaison between the simulcast facility licensee, the simulcast network licensee, host tracks and the board and its representatives."

Auth: Sec. 23-4-104, 23-4-202, 37-1-131, MCA; IMP, Sec. 23-4-104, 23-4-202, 23-4-301, MCA

"III. GENERAL PROVISIONS (1) Simulcast facilities shall run the same race cards as the host tracks run, except as permitted by the Board.

(2) For out-of-state races simulcast in Montana, sub-chapters 16 and 18 hereof will apply with respect to exotic wagering.

(3) The Board reserves the authority to require that incoming simulcast signals of any specific race or race meet be in cryptic form.

(4) If a video simulcast signal or part of a video signal is lost prior to race being run, but the audio signal continues, parimutuel wagering may continue provided that the odds display is available.

(5) If all video and audio simulcast signals are lost prior to post time, and until the race is run, the Board through its parimutuel supervisor reserves the authority to decide whether parimutuel wagering should continue, provided, however that all wagers made prior to the loss of all such signals shall remain in the pool and winning tickets may be paid therefrom."

Auth: Sec. 23-4-104, 23-4-202, MCA; IMP, Sec. 23-4-104, 23-4-202, MCA

"IV. PORTION OF EXOTIC WAGERING FOR PURSES

(1) In accordance with section 23-4-202 (4), MCA, 2% of exotic wagering on live racing shall be immediately and equally distributed to all purses for the race day except purses of stakes races."

Auth: Sec. 23-4-104, 23-4-202, MCA; IMP, Sec. 23-4-104, 23-4-202, MCA

REASON: These amendments and new rules are mandated by the legislature with the enactment of Chapter 557 of the Laws of 1989.

5. Interested persons may present their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to the Board of Horse Racing, Lee Metcalf Building, 1520 East Sixth Avenue, Room 50, Helena, Montana 59620, no later than December 7, 1989.

6. Geoffrey L. Brazier, of Helena, Montana, has been designated to preside over and conduct the hearing.

BOARD OF HORSE RACING
CHUCK O'REILLY, CHAIRMAN

BY: 

MICHAEL L. LETSON, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, October 30, 1989.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF HORSE RACING

In the matter of the proposed	) NOTICE OF PUBLIC HEARING ON
adoption of new rules pertaining	) THE PROPOSED ADOPTION OF
to superfecta sweepstakes and	) NEW RULES PERTAINING TO
tri-superfecta wagering	) HORSE RACING

TO: All Interested Persons:

1. On November 30, 1989, at 9:00, a.m., a public hearing will be held in the downstairs conference room, Department of Commerce building, 1424 - 9th Avenue, Helena, Montana, to consider the adoption of rules pertaining to superfecta sweepstakes and tri-superfecta wagering.

2. The proposed new rules will read as follows:

"1. SUPERFECTA SWEEPSTAKES (1) The superfecta sweepstakes is a contract by the purchaser of a ticket combining four horses in a single race, selecting the four horses that will subsequently finish first, second, third, and fourth, in exact order, as officially posted.

(2) The superfecta sweepstakes is not a parlay, and has no relation to, or connected with, the win, place and show pools, and will be calculated as a separate pool.

(3) Coupled entries and fields are prohibited in superfecta sweepstakes races.

(4) Superfecta sweepstakes tickets shall be sold only by the licensee through parimutuel machines programmed to print all selections on one ticket.

(5) In the event of a scratch in the superfecta sweepstakes, all tickets which include a scratched horse are eliminated from further participation, will be refunded, and the money deducted from the gross pool.

(6) In the event of a dead heat, or dead heats, all superfecta sweepstakes tickets selecting the correct order of finish, counting the horses in the dead heat as finishing in either position dead heated, shall be winning tickets. All combinations as above described shall be divided into separate pools, calculated as place a place pool, and paid off accordingly.

(7) If any tickets are sold on the winning combination of the superfecta sweepstakes, the net pool shall have added to it all carryover monies from previous superfecta sweepstakes races, and then shall be equally divided among those ticket holders.

The following five subsections ((8), (9) and (10) and Alternate (8) and (9)) contain two separate proposals for dealing with the event that there are no winners under the superfecta wagering feature. One proposal has a carryover provision, and the other does not. Subsections (8), (9) and (10) pertain to carryover provisions and Alternate (8) and (9) pertain to non-carryover provisions.

(8) If no tickets are sold on the winning combination of the superfecta sweepstakes, then the net pool shall be divided into two separate pools. Seventy (70) percent of the net pool shall be paid into a pool known as the JACKPOT, and carried over to the next regularly scheduled Superfecta sweepstakes race. The remaining thirty (30) percent of the net pool shall be paid into a pool known as the SUPERFECTA CONSOLATION pool, and this pool equally divided among those ticket holders who correctly selected the first three finishers in exact order. If no ticket has been sold correctly selecting the first three finishers in exact order, then the superfecta consolation pool shall be equally divided among those ticket holders who correctly selected the first two finishers in exact order. If no ticket has been sold correctly selecting the first two finishers in exact order, then the superfecta consolation pool shall be paid to those ticket holders who correctly selected the winning horse. In the event no ticket has been sold correctly selecting the winning horse to finish first, then the entire superfecta sweepstakes gross pool (excluding any monies carried over from previous superfecta sweepstakes race) shall be paid into the pool known as the JACKPOT.

(9) If less than four horses finish, payoff shall be made from the superfecta consolation pool only, and shall be made to the holders of tickets correctly selecting the actual finishing horses in exact order, ignoring the balance of the selection. In this event, the JACKPOT will be carried over to the next regularly scheduled superfecta sweepstakes race.

(10) In the event the accumulated jackpot has not been distributed prior to the closing day of the meeting in which the jackpot was generated, then the accumulated jackpot and the net pool in the superfecta sweepstakes shall be distributed to closing day holders of superfecta sweepstakes tickets who correctly select the first four official finishers in exact order; or, if no ticket is sold as above described, to those who correctly select the first three finishers in exact order; or, if no ticket is sold as above described, to those who correctly selected the first two finishers in exact order; or, if no ticket is sold as above described, to those who correctly selected the winning horse to finish first. In the event no ticket has been sold correctly selecting the winning horse to finish first, then the gross superfecta sweepstakes pool will be refunded, and the jackpot distributed equally to all closing day superfecta sweepstakes ticket holders.

(ALTERNATE 8) If there is a failure to select, in order, the first four horses, pay-off shall be made on superfecta tickets selecting the first three horses, in order; failure to select the first three horses pay-off to superfecta tickets selecting the first two horses, in order; failure to select the first two horses, pay-off to superfecta tickets selecting the winner to win; failure to select the winner to win shall cause a refund of all superfecta tickets.

(ALTERNATE 9) If less than four horses finish, pay-off shall be made on tickets selecting the actual horses in order, ignoring the balance of the selection.

(11) Superfecta sweepstakes race shall consist of eight (8) starters and two (2) also-eligibles, and if the race falls below the above level it will be at the board's discretion whether to permit superfecta wagering on this race.

(12) Superfecta tickets shall be sold in not less than two dollar denominations and only from machines capable of issuing four numbers.

(13) This rule shall be prominently displayed throughout the betting area of each track conducting the superfecta and printed copies of this rule shall be distributed by the track to patrons upon request."

Auth: Sec. 23-4-104, 23-4-202, MCA ; IMP, Sec. 23-4-104, 23-4-202, 23-4-301, MCA

"VI. TRI-SUPERFECTA WAGERING (1) No tri-superfecta wagering shall be conducted without permission of the board. The races in which the tri-superfecta parimutuel wagering will be permitted shall only be those designated by the board and a separate pool shall be established therefor.

(2) The tri-superfecta is a form of parimutuel wagering in which the bettor selects the three horses which will finish first, second and third in the first of the two designated races in the exact order of finish as officially posted and must select the four horses which will finish first, second, third and fourth in the second of two designated races, in the exact order of finish as officially posted.

(3) Each bettor purchasing tri-superfecta tickets shall designate his three selections as the first three horses to finish in that order in the first race of the two designated races.

(4) After the wagering closes for the first half of the tri-superfecta the remaining pool will then be divided into two separate pools termed "first part of the divided pool" and "second part of the divided pool." The first part of the divided pool will be a percentage of the remaining pool determined by the association with approval of the board. The second part of the divided pool will be the amount remaining after the first part of the divided pool has been deducted.

(5) The monies in the first part of the divided pool will be distributed to the holders of the tri-superfecta tickets selecting the first three horses in order, on the first designated tri-superfecta race, in accordance with established parimutuel practice.

(6) The second part of the divided pool will be placed in a separate pool to be distributed to the holders of "second half" tri-superfecta tickets selecting the first four horses in order as officially posted on the second designated tri-superfecta race, in accordance with established parimutuel practice.

(7) In the first half of the tri-superfecta only, if there is a failure to select the first three horses in exact order of finish as officially posted, the first part of the divided pool shall be distributed and exchanges made on tri-superfecta tickets selected in the following order of priority:

- (a) first, second and fourth;
- (b) first, third and fourth;
- (c) second, third and fourth;
- (d) first, second and fifth;
- (e) first, third and fifth;
- (f) first, fourth and fifth;
- (g) and sequentially thereafter.

(8) After the official declaration of the first three horses to finish in the first race of the tri-superfecta, each bettor having a first half winning tickets as determined by subsection (7) shall exchange such winning tickets at the windows for both the monetary value established by the mutuel department and the tri-superfecta exchange ticket and at such time, shall select the four horses to finish in the second race of the tri-superfecta in the exact order as officially posted. No further money shall be required of the holders of the winning first half tickets in order to make the exchange.

(9) No tri-superfecta exchange ticket for the second race shall be issued except upon surrender of the tri-superfecta ticket from the first race as described in these rules. All windows for the purpose of cashing and exchanging winning tri-superfecta tickets shall be open for the purpose of making the exchange as described only after the first race has been declared official and all windows shall close at the start of the second race of the tri-superfecta.

(10) If a winning tri-superfecta ticket from the first race is not presented for cashing and exchange within the time provided, the bettor may still collect the monetary value attached to the ticket but forfeits all rights to any distribution of the second race tri-superfecta pool.

(11) If a horse is scratched in the first race of the tri-superfecta, all tri-superfecta tickets on the scratched horse will be refunded. If a horse is scratched in the second half of the tri-superfecta, public announcements will be made and reasonable time will be given for the exchange of tickets on the scratched horses. If, due to a late scratch in the first half of the tri-superfecta, the field becomes less than seven, all money into the tri-superfecta on that program will be refunded and the tri-superfecta for that program shall be declared "off." If, due to a late scratch in the second half of the tri-superfecta the field becomes less than seven, those persons with valid exchange tickets will be entitled to the remaining amount of that program's divided pool which shall be divided into equal amounts relative to the number of valid exchange tickets. The jackpot pool will remain undistributed and be carried over to the next tri-superfecta program.

(12) In the event of a dead heat or dead heats in either the first or second race of the tri-superfecta, all tri-superfecta tickets selecting the correct order of finish, counting a horse in a dead heat as finishing in any position dead heated, shall be winning tickets. In the case of the dead heat occurring on the first half, the payoff shall be calculated as a place pool. In the case of the dead heat occurring in the second half, contrary to the usual parimutuel

practice, the aggregate number of winning tickets shall be divided into the net pool and paid the same payoff price.

(13) After the first race of the tri-superfecta is declared official, the second part of the divided pool shall be combined with the amount carried over from previous programs of the tri-superfecta to create the "jackpot" pool. The total jackpot pool shall be distributed equally between all of the tri-superfecta tickets for the second race of the tri-superfecta accurately selecting the first four finishers in the exact order of finish as officially posted.

(a) In the event that there is no tri-superfecta ticket issued accurately selecting the first four finishers of the second race of the tri-superfecta in the exact order of finish as officially posted, 50% of the jackpot pool shall be distributed equally to the holders of tri-superfecta tickets accurately selecting the first three finishers of the second race of the tri-superfecta in the exact order of finish as officially posted. The remaining 50% of the jackpot pool shall be held for the next consecutive tri-superfecta program and combined with that program's second part of the divided pool to form the next jackpot pool.

(b) In the event that there is no tri-superfecta exchange ticket issued accurately selecting the first three finishers of the second race of the tri-superfecta as officially posted, then the entire jackpot pool shall be held over for the next consecutive tri-superfecta program and combined with that program's second part of the divided pool to form that program's jackpot pool.

(14) In the event that racing is canceled for any program prior to the running of the second half of the tri-superfecta, or if less than four horses finish in the second race of the tri-superfecta, or the racing officials declare the second half "no race," then the second part of the program's divided pool will be evenly distributed to all tri-superfecta exchange tickets and the carry over jackpot pool will remain undistributed and be carried over to the next tri-superfecta program.

(15) Not more than one race shall elapse between the race designated as the first half of the tri-superfecta and the race designated as the second half of the tri-superfecta.

(16) Coupled entries and mutuel fields are prohibited in tri-superfecta races.

(17) Fields for tri-superfecta races shall contain no less than seven horses.

(18) Tri-superfecta wagers shall be made in denominations of \$2.00 only.

(19) On the closing day of the meeting, the current jackpot pool, including the second part of the divided pool from the closing program, if any, shall be distributed in the following manner to tickets on the second designated tri-superfecta race in that program:

(a) divided equally among those tickets correctly designating the first four finishers in exact order as officially posted;

(b) if no ticket is issued as above described, then equally divided among tickets correctly designating the first three finishers in exact order as officially posted (win-place-show-all);

(c) if no ticket is issued as above described, then equally divided among tickets correctly designating the first two finishers in exact order as officially posted (win-place-all-all);

(d) if no ticket is issued as above described, then equally divided among tickets correctly designating the winner to win as officially posted (win-all-all-all);

(e) if no ticket is issued as above described, then equally divided among all second half tri-superfecta tickets."

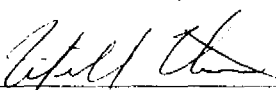
Auth: Sec. 23-4-104, 23-4-202, MCA; IMP, Sec. 23-4-104, 23-4-202, 23-4-301, MCA

REASON: The new rules were requested by track management, horsemen groups and parimutuel advisors to allow the tracks another form of exotic wagering which will provide added revenue to the tracks.

5. Interested persons may present their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to the Board of Horse Racing, Lee Metcalf Building, 1520 East Sixth Avenue, Room 50, Helena, Montana 59620, no later than December 7, 1989.

6. Geoffrey L. Brazier, of Helena, Montana, has been designated to preside over and conduct the hearing.

BOARD OF HORSE RACING
CHUCK O'REILLY, CHAIRMAN

BY: 
MICHAEL L. LETSON, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, October 30, 1989.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF SPEECH/LANGUAGE PATHOLOGISTS
AND AUDIOLOGISTS

In the matter of the proposed) NOTICE OF PUBLIC HEARING ON
amendment, repeal and adoption) THE PROPOSED AMENDMENT,
of rules pertaining to speech/) REPEAL AND ADOPTION OF RULES
language pathology and audio-) PERTAINING TO SPEECH/
logy) LANGUAGE PATHOLOGY AND
) AUDIOLOGY

1. On November 29, 1989, at 9:00, a.m., a public hearing will be held in the downstairs conference room of the department of commerce building, 1424 - 9th Avenue, Helena, Montana, to consider the proposed amendment, repeal and adoption of the following rules.

2. The rules being proposed for amendment are 8.62.404, 8.62.413, 8.62.501, 8.62.502 and are as follows: (new matter underlined, deleted matter interlined)

"8.62.404 EXAMINATIONS (1) The-board-shall-require
under-37-15-304-MCA, aApplicants shall be administered to
take the national examination offered through the National
Teacher Examinations, Educational Testing Service, Princeton,
New Jersey.

(2) through (4) will remain the same."

Auth: Sec. 37-1-131, 37-15-202, MCA; IMP, Sec.
37-15-304, MCA

REASON: This amendment is being proposed to delete an unnecessary repetition of statutory language.

"8.62.413 FEES (1) through (7) will remain the same.

(8) A fee of \$10.00 will be charged for late
registration of speech/language pathologist and/or audiologist
aides.

(8) through (11) will remain the same but will be renumbered (9) through (12)."

Auth: Sec. 37-1-134, 37-15-202, MCA; IMP, Sec.
37-15-307, 37-15-308, MCA

REASON: This fee is being proposed to make fees commensurate with program area costs.

8.62.501 SUPERVISOR-RESPONSIBILITY FOR-AIDE (1) All
persons working in the capacity of a speech pathology or
audiology aide must be under the direct supervision of a fully
licensed speech pathologist or audiologist. This supervisor
assumes full legal and ethical responsibility for the tasks
performed by the aide and for any services or related
interactions with a client.

(2)--The-fully-licensed-speech-pathologist-or-audiologist
who-supervises-one-or-more-aides-should-have-a-commitment-to

~~working with and utilizing the services of the aides. This supervisor should have training in the supervisory skills necessary to work with the aides. The work setting of the supervisor must allow for adequate direct and indirect supervision and monitoring of the aides. When aides are providing direct services under a licensed supervisor to individuals under 18 years of age, the supervisor is responsible for so informing, in writing, the parent, guardian, surrogate parent or person acting as a parent of a child in the absence of a parent or guardian.~~

~~(3) The supervisor is responsible for insuring that the aide is adequately trained for the tasks he/she will perform."~~

~~Auth: Sec. 37-15-202, MCA; IMP, Sec. 37-15-102, MCA~~

REASON: This amendment is being proposed to make Montana rules uniform with other states and to clarify the responsibility of supervisors, including informing parents of the supervisor/aide relationship.

"8.62.502 SCHEDULE OF SUPERVISION - CONTENTS (1) For monitoring purposes, the supervisor must develop and register with the board, on forms supplied by the board, an acceptable schedule of supervision. The schedule of supervision must be periodic, comprehensive and sufficiently documented so as to provide disinterested third parties adequate justification for assuming that the well-being of the client is paramount; complete an aide registration form supplied by the board. This must include an acceptable schedule of supervision.

(2) The schedule of supervision must contain a job description for the aide and the aide's name if available.

(2) (3) It is recognized that the time commitments of a supervisor to an aide may vary. However, the schedule of supervision must include direct supervision for approximately 20% of the clinical contact time of the aide for the initial year of the aide's employment. For the following years, the direct supervision time shall be developed by the supervisor on an individual basis. In all cases a portion of the contacts must be in person, but other avenues of contact may be made. Aides must be supervised approximately 20% of the client contact time, of which ten percent (10%) must be direct contact.

(4) In addition, if there is a significant change in the direction of therapy, such as long or short range therapy goal modification or disagreement between the supervisor and aide, the modification or problem must become a matter of record so as to provide disinterested third parties adequate information for making a judgement regarding the merits of the situation.

(3) (5) The schedule of supervision must be signed by the proposed supervisor and by a responsible representative of the employing agency. The schedule must be reviewed and approved by the board before the delivery of services by the aide annually by October 31. Aides employed after October 31 shall work no more than 30 calendar days without registering with the Board."

~~Auth: Sec. 37-15-202, MCA; IMP, Sec. 37-15-102, MCA~~

REASON: This amendment is being proposed to clarify the process for registering the supervisor/aide relationship and to make clear that the registration forms must be submitted to the Board by October 31 on an annual basis.

"8.62.702 DEFINITIONS (1) Unless the context requires otherwise, in this subchapter the following definitions apply:

(a) "Academic course work" means formal educational activity ~~in the basic sciences or in~~ clearly related to the contemporary practice of speech/language pathology or audiology offered by a recognized post-secondary training institution documented by transcript or grade sheet.

(b) "Approved sponsor program" means any continuing education activity sponsored by an organization, agency or other entity which has been approved by the continuing education board of the American speech-language-hearing association documented by the confirmation sheet.

(c) ~~"board" means the board of speech pathologists and audiologists provided for in section 2-15-1849, MEA;~~ "Un-sponsored continuing education unit" means an educational activity that is directly oriented to improving the licensee's professional competence and is not obtained through approved sponsor programs or academic course work documented on forms provided by the board.

(d) will remain the same.

(i) one continuing education unit received in an ASHA approved sponsor program shall be considered 10 continuing education units for purposes of this subchapter.

(ii) 1 quarter credit hour of academic course work shall be considered 10 continuing education units and 1 semester credit hour of academic course work shall be considered ~~13~~ 15 continuing education units.

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

Auth: Sec. 37-15-202, MCA; IMP, Sec. 37-15-309, MCA

REASON: This amendment is being proposed to delete unnecessary repetition of a statute, to clarify the definition of an "un-sponsored continuing education unit", and to clarify what is satisfactory documentation of continuing education units.

"8.62.703 CONTINUING EDUCATION REQUIRED - WHEN (1) All licensees applying to the board for renewal of their license shall provide proof of the following appropriate continuing education units: Documentation of continuing education units must be provided when applying for licensure renewal no later than February 1 of each odd numbered year.

(2) Continuing education units are required as follows:

(a) speech/language pathology or audiology - 40 continuing education units, at least 25 of which must be obtained through approved sponsor programs or academic course work, for all renewals due on July 1, 1984.

(b) dual licensure - 50 continuing education units, 25 in each area. Fourteen CEU's in each area must be sponsored.

~~(b)--for renewals starting October 31, 1986, each licensee will be required to submit evidence of 40 hours of continuing education units, as set out in ARM 8.62.704.~~

(c) ~~For renewals thereafter, 40 hours of continuing education units will be required to be submitted no later than October 31, of each even-numbered year.~~ New licensees' continuing education units will be prorated accordingly.

(3)~~(2)~~ Credit will be granted only for educational activities undertaken during the 2 year period for which continuing education is to be submitted. ~~++r-10/31/86, 10/31/88+~~

(4) Licensees who serve as instructors in approved sponsor programs or academic courses may be allowed appropriate credit for the program's first presentation only. No credit will be allowed for repeat sessions."

Auth: Sec. 37-15-202, MCA; IMP, Sec. 37-15-309, MCA;

REASON: This amendment is being proposed to delete a conflict with statutory amendments, to update the requirements for continuing education units for dual licensees and to give recognition for continuing education to instructors.

3. The following rules are being proposed for repeal: 8.62.408 through 8.62.412 located on pages 8-1693 through 8-1700, Administrative Rules of Montana; 8.62.414 through 8.62.417 located at pages 8-1701 through 8-1704, Administrative Rules of Montana; 8.62.503 located at page 8-1712, Administrative Rules of Montana; 8.62.704 and 8.62.705 located at page 8-1720, Administrative Rules of Montana. The authority section is 37-15-202, MCA for all rules is and the implementing section was listed as section 37-15-303, MCA for ARM 8.62.408 through 8.62.412; sections 37-15-202 and 37-15-321, MCA, for ARM 8.62.414; section 37-15-321, MCA, for ARM 8.62.415 through 8.62.417; section 37-15-102, MCA for ARM 8.62.503; and section 37-15-309, MCA for ARM 8.62.704 and 8.62.705.

REASON: These rules are being proposed for repeal because they are in conflict with, and extensions of, statutory authority.

4. The proposed new rules will read as follows:

"1. UNPROFESSIONAL CONDUCT For the purpose of implementing the provisions of section 37-15-321, MCA, the board defines "unprofessional conduct" as follows:

(1) Any act involving moral turpitude, dishonesty, or corruption relating to the practice of speech/language pathology or audiology whether the act constitutes a crime or not. If the act constitutes a crime, conviction in a criminal proceeding is not a condition precedent to disciplinary action. Upon such a conviction, however, the judgment and sentence is conclusive evidence at the ensuing disciplinary hearing of the guilt of the license holder or applicant of the crime described in the indictment or information, and of the

person's violation of the statute on which it is based. For the purpose of this section, conviction includes all instances in which a plea of guilty is the basis for the conviction and all proceedings in which the sentence has been deferred or suspended.

(2) Violation of any state or federal statute or administrative rule regulating the practice of speech/language pathology or audiology, including any statute or rule defining or establishing standards of patient care or professional conduct or practice;

(3) Advertising which is false, fraudulent, or misleading;

(4) Resorting to fraud, misrepresentation or deception in the examination or treatment of a person or in billing or reporting to a person, company, institution or organization;

(5) Incompetence, negligence, or use of any practice or procedure in the practice of the profession which creates an unreasonable risk of physical or mental harm or serious financial loss to the client;

(6) Malpractice, or an act or acts below the standard of care for speech/language pathologists or audiologists whether actual physical or mental injury or harm was suffered by any client;

(7) Suspension, revocation or restriction of the individual's license to practice the profession by competent authority in any state, federal, or foreign jurisdiction for reasons that would be grounds for disciplinary sanction in this jurisdiction. A certified copy of the order or agreement being conclusive evidence of the revocation, suspension or restriction.

(8) Failure to cooperate with an investigation by:

(a) not furnishing any papers or documents;

(b) not furnishing in writing a full and complete explanation covering the matter contained in the complaint; or

(c) not responding to subpoenas issued by the board or the department, whether or not the recipient of the subpoena is the accused in the proceedings.

(9) Interfering with an investigation or disciplinary proceeding by wilful misrepresentation of facts or by the use of threats or harassment against any patient, client or witness to prevent them from providing evidence in a disciplinary proceeding or any other legal action;

(10) Failing to make available copies of documents in the possession and under the control of the licensee, as per the appropriate health care records acts;

(11) Failure to comply with an order issued by the board or an assurance of discontinuance entered into with the board;

(12) Any of the following:

(a) practice beyond the scope of practice encompassed by the license;

(b) practice beyond the level of practice for which the licensee is trained;

(c) accepting and performing occupational responsibilities which the licensee knows or has reason to know that he or she is not competent to perform;

(d) failing to refer patient or client to qualified professional when such advise or service is called for.

(13) Violation of statutory child abuse and elderly abuse reporting requirements;

(14) The wilful betrayal of a practitioner-patient privilege as provided by law;

(15) Guaranteeing the results of any speech or hearing therapeutic procedure;

(16) Failing to adequately supervise auxiliary staff to the extent that the client's health or safety is at risk;

(17) Aiding or abetting an unlicensed person to practice when a license is required;

(18) Practicing as a speech/language pathologist or audiologist while license is suspended, revoked or not currently renewed;

(19) Wilful or repeated violations of rules established by any health agency or authority of the state or a political subdivision thereof."

Auth: Sec. 37-1-131, 37-15-202, MCA; IMP, Sec.

37-15-321, MCA

REASON: This rule is being proposed to implement section 37-15-321, MCA.

"II. ETHICAL STANDARDS (1) For the purpose of implementing sections 37-15-202(1)(e) and 37-15-321(1)(b), MCA, the board hereby adopts by reference the standards of ethical practice of the American Speech/Language Hearing Association. A copy of those standards may be obtained from the Board of Speech/Language Pathologists and Audiologists, 1424 - 9th Avenue, Helena, Montana 59620-0407."

Auth: Sec. 37-15-202, MCA; IMP, Sec. 37-15-202,

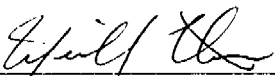
37-15-321, MCA

REASON: This rule is being proposed for adoption to delineate the ethical standards which govern the professional conduct of speech/language pathologists and audiologists and in turn protect the public's health, safety and welfare.

5. Interested persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Board of Speech/Language Pathologists and Audiologists, 1424 - 9th Avenue, Helena, Montana 59620-0407, no later than December 7, 1989.

6. Geoffrey L. Brazier, Helena, Montana, has been designated to preside over and conduct the hearing.

BOARD OF SPEECH/LANGUAGE
PATHOLOGISTS AND AUDIOLOGISTS
GENE BUKOWSKI, CHAIRMAN

BY: 

MICHAEL L. LETSON, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, October 30, 1989.

BEFORE THE DEPARTMENT OF
FAMILY SERVICES OF THE
STATE OF MONTANA

In the matter of the	)	NOTICE OF PUBLIC HEARING ON
adoption of RULE	)	PROPOSED ADOPTION OF RULES
I and RULE II	)	I AND II;
and the amendment of	)	AND THE PROPOSED AMENDMENT
Rules 11.16.120,	)	OF RULES 11.16.120,
11.16.123, 11.16.126,	)	11.16.123, 11.16.126,
11.16.130, 11.16.133,	)	11.16.130, 11.16.133,
11.16.141, 11.16.143,	)	11.16.141, 11.16.143,
11.16.147, 11.16.153,	)	11.16.147, 11.16.153,
11.16.160 and 11.16.163	)	11.16.160 AND 11.16.163
pertaining to the	)	PERTAINING TO THE LICENSURE
licensure of adult foster	)	OF ADULT FOSTER CARE HOMES
care homes)	

TO: All Interested Persons

1. On December 4, 1989, at 10:00 a.m., a public hearing will be held in the conference room of Department of Family Services, 48 North Last Chance Gulch, Helena, Montana to consider the amendment of Rules 11.16.120, 11.16.123, 11.16.126, 11.16.130, 11.16.133, 11.16.141, 11.16.143, 11.16.147, 11.16.153, 11.16.160 and 11.16.163 and adoption of new rules I and II pertaining to licensure of adult foster care homes.

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

RULE I ADULT FOSTER HOME, MEDICATION (1) All residents must take their own medications.

(2) The licensee shall, as necessary, be responsible for providing assistance to the resident in taking his medications, including but not limited to:

(a) reminding resident to take medications;

(b) assisting with the removal of a cap; or

(c) assisting with the removal of a medication from a container for residents with a disability which prevents performance of this act.

(d) observing the resident take the medication.

(3) If the licensee must assist the resident in taking medicine in any way, the licensee shall assure that a medication record is kept noting the doses taken and not taken.

(4) The medication record shall indicate the reason for the omission of any dose of medication.

(5) Prescription drugs shall be purchased from a licensed pharmacy, labeled with the name, address and telephone number of the pharmacy, name of the resident, name and strength of the drug, direction for use, date filled, prescription number and name of physician and expiration date. Controlled substances shall have a warning label on the bottle.

(6) There shall be a locked storage space provided for

resident's medication.

(7) All medication shall be left in the container in which it was provided to the resident by the pharmacist or physician.

(8) If the resident is not able to do so, the licensee shall destroy all discontinued prescriptions. Documentation of disposition including resident's name, name of drug, quantity and prescription number shall be signed by the licensee disposing of the medication. This documentation shall be filed in the resident's record.

(9) Over the counter drugs shall be locked up and made available only to the resident who purchased them.

AUTH: Sec. 53-5-304, MCA

IMP: Sec. 53-5-303 and 53-5-313, MCA

RULE II ADULT FOSTER HOME, THIRD PARTY PROVIDERS

(1) It is recognized that residents may require temporary in-home services from third party providers. The following third party services are allowed in adult foster care homes:

(a) If the home operator who is the only service provider in the home becomes temporarily incapacitated (two weeks or less), a home attendant, personal care attendant or other qualified person may come into the home to provide the needed services.

(b) If a resident's physician prescribes temporary (less than 30 days) in-home skilled nursing services to prevent the resident's hospital confinement, skilled nursing services may be provided in the adult foster home for a period not to exceed 30 days.

(c) If a current resident requires hospice services, such services may be provided in the adult foster care home for an indefinite period.

(2) The third party in-home skilled nursing services or hospice services shall not exceed two hours per day per resident.

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

RULE 11.16.120 ADULT FOSTER HOME, PURPOSE

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

(4) The licensing requirements for operating an adult foster home do not apply to persons in a mutual or shared living arrangement.

AUTH: Sec. 53-5-304, MCA

IMP: Sec. 53-5-303, MCA

RULE 11.16.123 ADULT FOSTER HOME, DEFINITIONS

Subsections (1) through (7) remain the same.

(8) "Mutual or shared living" means that two or more persons voluntarily agree to live together and share expenses and responsibilities. This relationship implies a balance of shared responsibilities and expenses.

Subsection (8) is renumbered (9), but otherwise remains the same.

AUTH: Sec. 53-5-304, MCA

IMP: Sec. 53-5-303, MCA

RULE 11.16.126 ADULT FOSTER HOME, LICENSE REQUIRED

(1) Every adult foster home ~~shall~~ must be licensed by the department.

(2) Any person, group or corporation which establishes or operates an adult foster care home without a license from the department is in violation of law and subject to prosecution.

AUTH: Sec. 53-5-304, MCA

IMP: Sec. 53-5-311 and 53-5-314, MCA

RULE 11.16.130 ADULT FOSTER HOME, LICENSING PROCEDURES

Subsection (1) remains the same.

(2) Upon receipt of application, the department shall conduct a study and evaluation of the home and applicant within 30 days to determine if the home and applicant comply with the licensing requirements. Within 60 days of receipt of application the department shall make a final determination of whether the home will be licensed.

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

(5) After denial of an initial application, an applicant who does not meet the standards set forth in these rules can reapply when those standards are complied with. The department will respond within 30 days of the new application.

Subsection (5) is renumbered (6), but otherwise remains the same.

AUTH: Sec. 53-5-304, MCA

IMP: Sec. 53-5-303 and 53-5-312, MCA

RULE 11.16.133 ADULT FOSTER HOME, LICENSE REVOCATION, DENIAL OR SUSPENSION (1) The department may deny, revoke or suspend an adult foster home license by written notification to the licensee specifying the reasons for denial revocation or suspension within 30 days of if the department's determination

that:

Subsections (1)(a) through (c) remain the same.

(d) the licensee or other persons in the home may pose a risk or threat to the safety or welfare of any resident of the home.

(2) The department must deny a license if:

(a) any adult foster care resident of the home requires physical restraint.

(b) any adult foster care resident of the home will need to be carried from the home during any emergency which requires evacuation.

Subsection (2) is renumbered (3), but otherwise remains the same.

(4) If the department finds that a current licensee who is operating an adult foster care home is out of compliance with the standards set forth in these rules, the department will not revoke or deny renewal of the license if the following conditions are met:

(a) the standards out of compliance do not eminently threaten the life or health of the residents;

(b) the standards out of compliance can be corrected within 30 days;

(c) the licensee submits a written correction plan within 15 days of the department's notification of non-compliance specifying how compliance will be made within 30 days; and

(d) the department approves the correction plan.

AUTH: Sec. 53-5-304, MCA

IMP: Sec. 53-5-303 and 53-5-312, MCA

RULE 11.16.141 ADULT FOSTER HOME RECORDS

Subsections (1) through (4)(f) remain the same.

(g) any individual record of prescribed medication taken or not taken.

Subsection (g) is changed to (h), but otherwise remains the same.

AUTH: Sec. 53-5-304, MCA

IMP: Sec. 53-5-303 and 53-5-313, MCA

RULE 11.16.143 ADULT FOSTER HOME, ENVIRONMENTAL REQUIREMENTS

Subsections (1) through (7)(b) remain the same.

~~(c) a minimal clear floor space of 7' x 9' shall be provided for a single bed room, 13' x 9' for a double bed room,~~

~~and 13' x 17' for a three bed room. The space does not include closet space exclusive of toilet rooms, closets, lockers, wardrobes, alcoves or vestibules each resident's bedroom shall have 80 square feet per each bed placed in that bedroom;~~

Subsections (7) (d) through (11) remain the same.

AUTH: Sec. 53-5-304, MCA
IMP: Sec. 53-5-303, MCA

RULE 11.16.147 ADULT FOSTER HOME, OTHER SAFETY REQUIREMENTS

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

(6) a staff person must have either visual or auditory contact, at least every 30 seconds, with any resident who is able to bathe unassisted but has a condition which may render them physically and/or mentally helpless.

Subsection (6) is renumbered (7) but otherwise remains the same.

~~(8) Medication shall be kept in original container, labeled with the original prescription label and shall be kept where access is available only to the person for whom the medication is prescribed.~~

~~(a) A daily record of medication taken should be kept by the resident or the licensee if the resident is not able to keep the record.~~

AUTH: Sec. 53-5-304, MCA
IMP: Sec. 53-5-303 and 53-5-313, MCA

RULE 11.16.153 ADULT FOSTER HOME, PROGRAM

Subsections (1) through (6) remain the same.

(7) If a resident requires assistance in bathing, the person assisting should be of the same sex whenever possible. If not possible, appropriate covering shall be used to assure the resident's privacy.

Subsections (7), (8), (9) (10) (11) (12) (13) and (14) are renumbered (8), (9), (10), (11), (12), (13), (14) and (15) but otherwise remain the same.

AUTH: Sec. 53-5-304, MCA
IMP: Sec. 53-5-303, MCA

RULE 11.16.160 ADULT FOSTER HOME, PLACEMENT

Subsection (1) through (1)(d) remain the same.

(e) As part of the written agreement for residents not placed by the department, the licensee will state the policy for refunding the resident's payments.

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

AUTH: Sec. 53-5-304, MCA

IMP: Sec. 53-5-303, MCA

RULE 11.16.163 ADULT FOSTER HOME, FOSTER PARENTS

Subsections (1) through (1)(d) remain the same.

(e) Any applicant, licensed foster parent, member of the foster home household, or staff member may be asked to sign an authorization of release of criminal record information if the department believes that the person may pose a risk or threat to the safety or welfare of any resident of the home.

AUTH: Sec. 53-5-304, MCA

IMP: Sec. 53-5-303, MCA

4. Interested parties may submit their data, views and arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Office of Legal Affairs, Department of Family Services, P.O. Box 8005, Helena, Montana 59604, no later than December 8, 1989.

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

Robert J. Quinn
Director, Department of Family
Services

Certified to the Secretary of State October 30, 1989.

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

In the matter of the adoption of) NOTICE OF PUBLIC HEARING
rules I through XXXVIII relating to) ON PROPOSED ADOPTION OF
licensing of emergency medical) NEW RULES FOR LICENSING
services, and the repeal of) OF EMERGENCY MEDICAL
ARM 16.30.101 through 16.30.1002.) SERVICES
AND THE REPEAL
OF ARM 16.30.101
THROUGH 16.30.1002
(Emergency Medical Services)

To: All Interested Persons

1. On the following dates, times, and locations, the Department of Health and Environmental Sciences will hold public hearings in Glendive, Lewistown, and Missoula to consider the adoption of the above-captioned rules and the repeal of ARM 16.30.101 through 16.30.1002, all relating to licensing of emergency medical services:

November 29, 1989, 7:00 pm: Courtroom, Dawson County Courthouse, 207 West Bell, Glendive.

November 30, 1989, 7:00 pm: Courtroom, Fergus County Courthouse, 712 West Main, Lewistown.

December 4, 1989, 7:00 pm: Commissioner meeting room, Room 201, second floor, Courthouse Annex, Missoula County Courthouse, 200 Pine Street entrance, Missoula.

2. The proposed rules replace ARM sections 16.30.101 through 16.30.1002, currently found in the Administrative Rules of Montana.

3. The rules proposed to be repealed can be found on pages 16-1351 through 1370 of the Administrative Rules of Montana.

4. The rules, as proposed, appear as follows:

RULE I. DEFINITIONS The following definitions apply in this sub-chapter:

(1) "Advanced life support service" means an emergency medical service which has the capacity to provide care at the EMT-paramedic equivalent level.

(2) "Advanced life support (ALS) kit" means all of the following equipment and supplies:

(a) an EMT-intermediate kit, with the exception that the monitor/defibrillator must have a self contained monitor, ECG strip writer, and quick look paddles;

(b) five each of three assorted sizes of needles;

(c) two each of three assorted sizes of syringes;

(d) medications consistent with the level of service and as identified in protocols.

(3) "Advisory committee" means the department advisory committee specified in section 50-6-324, MCA.

(4) "Ambulance service" means an emergency medical ser-

vice that utilizes an ambulance.

(5) "Basic equipment kit" means all of the following equipment and supplies:

- (a) two air occlusive dressings;
- (b) one blood pressure manometer with adult, extra large adult, and pediatric cuffs;
- (c) one stethoscope;
- (d) five dressings (assorted);
- (e) two pairs of exam gloves;
- (f) one pair of safety glasses to provide splash protection for the emergency care provider;
- (g) one surgical mask;
- (h) one oral glucose;
- (i) one flashlight;
- (j) four soft roller bandages;
- (l) four rolls of adhesive tape of assorted sizes;
- (m) four triangular bandages;
- (n) four oropharyngeal airways of assorted child and adult sizes;
- (o) one mouth to mask resuscitator with one-way valve, oxygen inlet and oxygen connecting tubing;
- (p) one bulb syringe or equivalent suction apparatus;
- (q) one portable oxygen system containing at least 200 liters of oxygen and with regulator and flowmeter;
- (r) one adult and one pediatric oxygen mask;
- (s) one nasal oxygen cannula;
- (t) one pair of scissors;
- (u) one pair of heavy leather gloves;
- (v) one helmet for personnel that is capable of protection from head injury;
- (w) paper and pen or pencil.

(6) "Basic life support service" means an emergency medical service capable of providing care at the basic life support level.

(7) "Defibrillator with dual channel recording capabilities" means a device, approved by the department, capable of continuously recording the electrocardiogram and simultaneously recording the events at the scene, and shall be portable, self-contained, DC powered, and capable of defibrillation according to the defibrillation protocol, either manually, semi-automatically or automatically.

(8) "Defibrillation protocol" means a uniform protocol for an EMT-defibrillation equivalent or EMT-intermediate equivalent functioning within an emergency medical service, adopted by the Montana board of medical examiners for statewide use, specific to the type of defibrillator being used, signed by the off-line medical director, and approved by the local hospital(s) medical staff or executive committee of the medical staff(s) in the community or nearest community in which the EMT-defibrillation or EMT-intermediate service is based.

(9) "Emergency medical technician-basic (EMT-basic)" means an individual who is certified as an EMT-basic by the Montana board of medical examiners.

(10) "Emergency medical technician-basic (EMT-basic)"

equivalent" means:

(a) from January 1, 1990, through December 31, 1992, one of the following:

- (i) EMT-basic;
- (ii) EMT-defibrillation;
- (iii) EMT-intermediate;
- (iv) EMT-paramedic;
- (v) registered nurse;

(b) from January 1, 1993, on, one of the following:

- (i) EMT-basic;
- (ii) EMT-defibrillation;
- (iii) EMT-intermediate;
- (iv) EMT-paramedic;
- (v) grandfathered nurse;
- (vi) registered nurse with supplemental training.

(11) "Emergency medical technician-defibrillation (EMT-defibrillation)" means a person certified as an emergency medical technician-defibrillation by the Montana board of medical examiners.

(12) "Emergency medical technician-defibrillation (EMT-defibrillation) equivalent" means:

(a) from January 1, 1990, through December 31, 1992, one of the following:

- (i) EMT-defibrillation;
- (ii) EMT-intermediate;
- (iii) EMT-paramedic;
- (iv) registered nurse who has written authorization from

the off-line medical director to perform defibrillation according to protocol;

(b) after January 1, 1993, one of the following:

- (i) EMT-defibrillation;
- (ii) EMT-intermediate;
- (iii) EMT-paramedic;
- (iv) grandfathered nurse;
- (v) registered nurse with supplemental training.

(13) "Emergency medical technician-intermediate (EMT-intermediate)" means a person certified as an emergency medical technician-intermediate by the Montana board of medical examiners.

(14) "Emergency medical technician-intermediate (EMT-intermediate) equivalent" means:

(a) from January 1, 1990, through December 31, 1992, one of the following:

- (i) EMT-intermediate;
- (ii) EMT-paramedic;
- (iii) registered nurse who has written authorization from

the off-line medical director to perform at the EMT-intermediate level;

(b) from January 1, 1993, on, one of the following:

- (i) EMT-intermediate;
- (ii) EMT-paramedic;
- (iii) grandfathered nurse;
- (iv) registered nurse with supplemental training.

(15) "Emergency medical technician-paramedic (EMT-paramedic)" means:

medic)" means a person certified as an emergency medical technician-paramedic by the Montana board of medical examiners.

(16) "Emergency medical technician-paramedic (EMT-paramedic) equivalent" means:

(a) from January 1, 1990, through December 31, 1992, one of the following:

(i) EMT-paramedic;
(ii) registered nurse who has written authorization from the off-line medical director to perform at the EMT-paramedic level;

(b) from January 1, 1993, on, one of the following:

(i) EMT-paramedic;
(ii) grandfathered nurse;
(iii) registered nurse with supplemental training.
(17) "EMT-defibrillation life support service" means an emergency medical service capable of providing care at the EMT-defibrillation equivalent level.

(18) "EMT-D defibrillation kit" means the following equipment and supplies:

(a) one defibrillator with dual channel recording capabilities;

(b) electrodes sufficient for two patients; and

(c) a patient cable.

(19) "EMT-intermediate kit" means all of the following equipment and supplies:

(a) a total of 1000 cc's of dextrose, 5% in water;

(b) a total of 2000 cc's of lactated Ringers solution;

(c) a total of 1000 cc's of normal saline IV solution;

(d) one intravenous administration set, minidrip;

(e) two intravenous administration sets, standard;

(f) three each of four different gauge, catheter over the needle, sets;

(g) two IV tourniquets;

(h) one esophageal obturator airway;

(i) one adult pneumatic anti-shock garment;

(j) alcohol and betadine swabs;

(k) two sets of four different sized endotracheal tubes;

(l) one laryngoscope handle and two blades;

(m) the EMT-D defibrillation kit.

(20) "EMT-intermediate life support service" means an emergency medical service which is capable of providing care at the EMT-intermediate equivalent level.

(21) "FAA" means the federal aviation administration.

(22) "First responder" means a person who has first responder status by virtue of complying with department guidelines for attaining such status.

(23) "First responder-ambulance" means a person who has first responder-ambulance status by virtue of complying with department guidelines for attaining such status.

(24) "Grandfathered advanced first aid" means:

(a) from January 1, 1990, through December 31, 1992, a person certified in:

(i) American red cross advanced first aid and emergency care; and

(ii) cardiopulmonary resuscitation according to current American heart association standards; and

(b) on or after January 1, 1990, a person:

(i) certified in American red cross advanced first aid and emergency care;

(ii) certified in cardiopulmonary resuscitation according to current American heart association standards; and

(iii) who was continuously a member of a licensed emergency medical service from July 1, 1992, through December 31, 1992.

(25) "Grandfathered nurse" means a registered nurse who is continuously a member of a licensed emergency medical service from July 1, 1992, through December 31, 1992, and who may provide services up to a level equal to the highest level of service they provided during the period from July 1 through December 31, 1992.

(26) "Level of service" means either basic life support, EMT-defibrillation life support, EMT-intermediate life support, or advanced life support services.

(27) "Medical control" means the provision of direction, advice, and/or orders by a physician to personnel of an emergency medical service. Medical control includes:

(a) "On-line medical control", which means the provision of medical direction, advice, and/or orders to emergency care providers while on a call and functioning with a licensed EMT-defibrillation, EMT-intermediate, or advanced life support service. On-line medical control is supervised by the off-line medical director.

(b) "Off-line medical control", which means the provision of overall medical direction and advice to an emergency medical service.

(28) "Non-transporting medical unit" means an aggregate of persons who are organized to respond to a call for emergency medical services and to treat a patient until the arrival of an ambulance. A non-transporting medical unit:

(a) consists of more than a single individual;

(b) provides coverage and response, as a group, to a defined geographic area;

(c) is organized, as a group, to provide a medical response to emergencies as its primary objective;

(d) is routinely dispatched to emergency medical calls; and

(e) offers to provide a medical response to other organizations or the public.

(29) "Off-line medical director" means a physician who:

(a) is responsible and accountable for the overall direction and supervision of an emergency medical service at the EMT-defibrillation, EMT-intermediate, or advanced life support level;

(b) is responsible for the proper application of patient care techniques and the quality of care provided by the emergency medical services personnel at the EMT-defibrillation, EMT-intermediate, or advanced life support level;

(c) has been approved in writing by medical staff of each local hospital, or executive committee of each medical staff,

to function as medical director; and

(d) approves all protocols for use by emergency medical services personnel functioning in an EMT-defibrillation, EMT-intermediate, or advanced life support service.

(30) "Permit" means the sticker affixed to a ground ambulance or a certificate placed in an air ambulance indicating the ambulance vehicle has met the requirements of these rules.

(31) "Protocol" means a set of written, standardized guidelines for administering patient care, at an EMT-intermediate or advanced life support level, and approved by the department, by the off-line medical director, and the medical staff or executive committee of the medical staff of each local hospital in the community in which the service is based or the community closest to the service's home base.

(32) "Provisional license" means an emergency medical service license of limited duration which is granted by the department.

(33) "Safety and extrication equipment kit" means the following equipment and supplies:

(a) a total of five pounds of ABC fire extinguisher;
(b) one short immobilization device with patient securing materials;

- (c) three rigid cervical collars of assorted sizes;
- (d) one phillips screwdriver;
- (e) one straight blade screwdriver;
- (f) one spring loaded center punch;
- (g) one crescent wrench;
- (h) one pair pliers;
- (i) one hacksaw and blade.

(34) "Stipulations" mean those conditions specified by the department at the time of licensing which must be met by the applicant in order to be licensed as an emergency medical service.

(35) "Supplemental training" means a training program for registered nurses utilized by an emergency medical service which:

(a) complements their existing education and results in knowledge and skill objectives comparable to the level of EMT training corresponding to the level at which the service is licensed; and

(b) is certified by the emergency medical service's medical director as having knowledge and skill objectives based on standard national curricula.

(36) "Surrogate" means a registered nurse, licensed in Montana, who:

(a) relays medical control orders consistent with the protocols established for a licensed EMT-intermediate life support service;

(b) is capable of demonstrating all of the skills required for the EMT-intermediate level;

(c) is approved by and is responsible to the off-line medical director.

(37) "Temporary permit" means a written authorization of limited duration indicating an ambulance vehicle may be used by

a licensed ambulance service until a permit can be issued.

(38) "Temporary work permit" means a written authorization granted by the Montana board of medical examiners for a person who is eligible to take a Montana EMT certification exam to function as an EMT until the results of their examination are known.

(39) "Transportation equipment kit" means the following equipment and supplies:

(a) one suction unit, either portable or permanently installed, which operates either electrically or by engine vacuum and includes all necessary operating accessories;

(b) an oxygen supply administration system containing a minimum of 1000 liters of oxygen;

(c) one sterile disposable humidifier;

(d) one rigid pharyngeal suction tip;

(e) one long spinal immobilization device with patient securing materials;

(f) one lower extremity traction device;

(g) two lower extremity rigid splints;

(h) two upper extremity rigid splints;

(i) one ambulance cot with at least two restraining straps and, with the exception of an air ambulance litter, four wheels and the capability of elevating the head; and

(j) clean linen for the primary cot and for replacement.

(40) "Type of service" means either an air ambulance fixed wing, air ambulance-rotor wing, ambulance-ground, or non-transporting medical unit.

AUTH: 50-6-323, MCA; IMP: 50-6-323, MCA

RULE II LICENSE TYPES AND LEVELS (1) A license will be issued for, and authorize performance of, emergency medical services of a specific type and at a specific level.

(2) Each type of service may be licensed at any level.

AUTH: 50-6-323, MCA; IMP: 50-6-306, 50-6-323, MCA

RULE III LICENSE APPLICATION REQUIREMENTS (1) An application for a license to conduct an emergency medical service, including the renewal of a license, must be made on forms specified by the department, accompanied by the license fee, and, with the exceptions noted in (b) and (c) below, received by the department:

(a) not less than 30 days prior to the commencement of a new emergency medical service or the expiration of the license, in the case of an application for renewal;

(b) for licenses to commence January 1, 1990, by December 31, 1989; and

(c) in the case of non-transporting medical units, rotor wing air ambulance services, and fixed wing air ambulance services existing on January 1, 1990, by March 30, 1990.

(2) Except for the period of January 1, 1990, to June 30, 1990, within 30 days from receipt of an emergency medical service license application or, if the department requests additional information about the application, within 30 days from receipt of that information, the department shall either:

- (a) issue the license;
 - (b) issue the license with stipulations;
 - (c) issue a provisional license; or
 - (d) deny the license.
- (3) The department may deny an emergency medical services license if:
- (a) the application does not provide all of the requested information; or
 - (b) there is evidence that the applicant is not complying with these rules.
- (4) Except for the period of January 1, 1990, through June 30, 1990, if the department does not take action on the application within 30 days after its receipt, the emergency medical services license must be issued unless the applicant is known to be in violation of these rules.
- (5) Except for the year beginning January 1, 1990, the department shall inspect each emergency medical service prior to issuing a license. If an inspection cannot be conducted, the department may issue a provisional license until an inspection can be completed.
- (6) To establish staggered terms of licensing:
- (a) Every emergency medical service that submits a completed license application to the department before or during 1990 will be assigned a number in the chronological order its application is received by the department, an odd-numbered service will receive a license expiring December 31, 1990, and an even-numbered service will receive a license expiring December 31, 1991;
 - (b) When the department receives a completed license application for a new emergency medical service after December 31, 1990, it will assign that service a number in the manner described in (a) above, an odd-numbered service will be issued a license expiring December 31 of the year in which it was issued, and an even-numbered service will be issued a license expiring December 31 of the year following the year in which it was issued.
- (c) License renewals will be for two-year periods, and will expire on December 31 of the second year of the period.
- (7) No person may:
- (a) advertise the provision of an emergency medical service without first having obtained a license from the department; or
 - (b) advertise, allow advertisement of, or otherwise imply provision of emergency medical services at a level of care higher than that for which the service is licensed.
- (8) If an emergency medical service from another state identifies Montana as part of its service area, and if it regularly provides an initial emergency medical services response into Montana, the emergency medical service must obtain a Montana emergency medical services license as provided by these rules, unless the other state's licensing standards are essentially comparable to those of Montana, in which case the department may license these services through a reciprocal agreement with the other state.

(9) An emergency medical service responding into Montana to transfer patients from a Montana medical facility to a non-Montana medical facility, is not required to obtain a Montana license.

(10) If a licensed emergency medical service is not reasonably available, the occasional and infrequent transportation by other means is not prohibited.

(11) In a major catastrophe or major emergency when licensed ambulances are insufficient to render services required, non-licensed emergency medical services may be used.

AUTH: 50-6-323, MCA; IMP: 50-6-306, 50-6-313, 50-6-323, MCA

RULE IV AMBULANCE PERMITS (1) No ambulance may be utilized by an emergency medical service until the department has inspected the ambulance; found it is, at the time of inspection, in compliance with these rules; and issued a permit to the emergency medical service for the ambulance. The department may issue a temporary permit, by mail or otherwise, until an inspection can be completed.

(2) The ambulance permit must be displayed either on or in the ambulance as the department directs.

(3) The department may revoke the ambulance permit at any time if the vehicle is no longer in compliance with these rules.

AUTH: 50-6-323, MCA; IMP: 50-6-323, MCA

RULE V WAIVERS (1) A request for a waiver of any licensing requirement, pursuant to 50-6-325, MCA, must be submitted to the department on a form specified by the department.

(2) An emergency medical service that is issued a waiver must notify the department of any change in the circumstances which originally justified the waiver.

(3) If the department denies or revokes a waiver, the affected emergency medical service may appeal the decision to the board if it files a written request for a hearing with the board within 30 days after the date of service of notice of the denial or cancellation of the waiver.

AUTH: 50-6-323, MCA; IMP: 50-6-325, MCA

RULE VI ADVISORY COMMITTEE (1) An advisory committee will consist of a physician appointed by the department and one representative of each type and level of service licensed, selected from a group of individuals who have expressed an interest in serving on the committee and who have completed and returned the forms specified by the department, with adequate consideration to demographics and geographics.

(2) Members of the committee shall serve two or three year terms with the initial terms of membership randomly assigned.

(3) The committee may conduct its business by a meeting or, when appropriate, by a telephone conference call.

AUTH: 50-6-323, MCA; IMP: 50-6-324, MCA

RULE VII SANITATION (1) Each emergency medical service

must develop and adhere to a written service sanitation policy that includes at least a method to dispose of contaminated materials, as well as the following standards:

(a) Products for cleaning shall contain a recognized, effective germicidal agent;

(b) Disposable equipment must be disposed of after its use;

(c) Any equipment that has come in contact with body fluids or secretions must be cleaned with a recognized germicidal/viricidal product;

(d) Linen must be changed after every use;

(e) Oxygen humidifiers must be single service and disposable; and

(f) Needles must not be recapped, bent, or broken, and must be disposed of in a container that provides protection to personnel from a needle puncture.

(2) The interior of an ambulance, including all storage areas, must be kept clean and free from dirt, grease and other offensive matter.

AUTH: 50-6-323, MCA; IMP: 50-6-323, MCA

RULE VIII COMMUNICATIONS (1) A ground ambulance must have a VHF mobile radio, and an air ambulance have a VHF portable radio with a minimum of frequency 155.280 MHz.

(2) Effective January 1, 1996:

(a) a ground ambulance must have a VHF mobile radio, and an air ambulance must have a VHF portable radio, each with a minimum of the following:

(i) dual tone multi-frequency encoder;

(ii) frequency 155.280 MHz;

(iii) frequency 155.340 MHz;

(iv) frequency 155.475 MHz; and

(v) frequency 153.905 MHz.

(b) a non-transporting unit must have the capability of providing at least one radio at every emergency medical scene with a minimum of the following:

(i) frequency 155.280 MHz;

(ii) frequency 155.340 MHz; and

(iii) frequency 153.905 MHz.

(3) An emergency medical service must have current legal authorization to use each of the frequencies required above.

AUTH: 50-6-323, MCA; IMP: 50-6-323, MCA

RULE IX AMBULANCE SPECIFICATIONS--GENERAL (1) A new ambulance, except one that was in service in Montana in a licensed ambulance service on or before January 1, 1990, must have the following:

(a) a patient envelope, available at all times for the primary patient, above the upper torso and head and providing a minimum rectangle of space above the stretcher that is free of all projections and encumbrances, with an allowance for the curvature of the fuselage of an aircraft and the following dimensions:

(i) 18 inches wide;

- (ii) 28 inches high;
- (iii) 30 inches long;
- (b) additional contiguous space above the lower extremities which provides a minimum rectangle of space above the stretcher with the following dimensions:
 - (i) 18 inches wide;
 - (ii) 18 inches high;
 - (iii) 42 inches long;
- (c) space available for the attendant above the stretcher, free of all projections and encumbrances, with the following dimensions:
 - (i) 14 inches wide;
 - (ii) 18 inches long;
 - (iii) 28 inches above the patient cot;
- (d) attendant space available at the head or either side of the patient envelope;
- (e) a patient compartment isolated throughout the medical mission so that:
 - (i) the medically related activities do not interfere with the safe operation of the ambulance;
 - (ii) the vehicle controls and radios are physically protected from any intended or accidental interference by the secured patient; and
 - (iii) the driver or pilot's out-of-ambulance vision is protected from the reflections of cabin lighting by a blackout curtain, a permanently installed partition, or lighting in blue or red, none of which may interfere with the safe operation of the ambulance.
- (2) All ambulances must be equipped with:
 - (a) seat belts for the driver, attendants, and seated patients; and safety belts to secure the patient to the cot;
 - (b) a mechanism of securing the cot;
 - (c) interior lighting in the patient compartment sufficient to allow visual determination of the patient's condition and vital signs.

AUTH: 50-6-323, MCA; IMP: 50-6-323, MCA

RULE X AMBULANCE SPECIFICATIONS--GROUND AMBULANCES

- (1) By January 1, 1993, all ground ambulances must have the following markings and emblems:
 - (a) The word "ambulance" must be affixed in mirror image in reflectorized lettering, centered above the grill on the front of the vehicle;
 - (b) The word "ambulance" must be affixed to the rear of the vehicle in reflectorized lettering.
- (2) The required markings may not appear on non-licensed ambulances, with the exception of those ambulances temporarily in transit within the state.
- (3) An ambulance must be equipped with operational emergency lighting and siren.
- (4) All new ambulances, except those in service in Moñtana on or before January 1, 1990, must be equipped with audible backup warning devices.

AUTH: 50-6-323, MCA; IMP: 50-6-323, MCA

RULE XI AMBULANCE SPECIFICATIONS--AIR AMBULANCE (1) A rotor wing air ambulance must be fitted with an FAA-approved, externally mounted, searchlight of at least 300,000 candle power, capable of being controlled by the pilot without removing his hands from the flight controls, with a minimum motion of 90 degrees vertical and 180 degrees horizontal.

(2) The stretcher for the air ambulance must be secured by an FAA-approved method and must meet FAA static test load factors as specified in 14 CFR Section 43.13(b).

(3) The entrance in an ambulance for patient loading must be constructed so that under normal circumstances the stretcher does not require excessive tilting or rotation around the pitch or roll axis.

(4) The department hereby adopts and incorporates by reference 14 CFR Section 43.13(b), containing federal standards for air ambulance stretchers. A copy of 14 CFR 43.13(b) may be obtained from DHES' Emergency Medical Services Bureau, Cogswell Building, Capitol Station, Helena, Montana 59620; or from the Federal Aviation Administration, Helena, Montana 59601 [phone: 449-5290].

AUTH: 50-6-323, MCA; IMP: 50-6-323, MCA

RULE XII SAFETY--GENERAL (1) All ambulance vehicles and all emergency medical services equipment must be maintained in a safe and operating condition.

(2) Each emergency medical service must establish written policies and procedures for, and maintain written documentation of, the preventive maintenance of ambulances and emergency medical equipment.

(3) All oxygen cylinders must be secured so that they will not roll, tip over, or become projectiles in the event of a sudden vehicular maneuver.

(4) Emergency medical services personnel must be alert and capable during an emergency response.

AUTH: 50-6-323, MCA; IMP: 50-6-323, MCA

RULE XIII SAFETY--GROUND AMBULANCE SERVICES (1) An emergency medical service must take measures to assure that the carbon monoxide level in a ground ambulance does not exceed 10 parts per million accumulation at the head of the patient stretcher, including the following:

(a) continuously maintaining, in the patient compartment near the patient's head, a disposable carbon monoxide detector, approved by the department, which is capable of immediately detecting a dangerous rise in the carbon monoxide level;

(b) writing on the detector the date of its placement, and replacing the detector prior to the expiration date;

(c) keeping replaced detectors for a period of three years.

(2) Windshields must be free from all cracks within the windshield wiper coverage area.

(3) Tires must have at least 4/32 inch of tread depth, measured at two points not less than 15 inches apart in any

major tread groove at or near the center of the tire.

(4) No one may smoke in a ground ambulance.

AUTH: 50-6-323, MCA; IMP: 50-6-323, MCA

RULE XIV SAFETY--AIR AMBULANCE (1) Each stretcher support must have, as a minimum, FAA-approved provisions for securing a 95th percentile adult American male patient, consisting of individual restraints across the chest and legs, and, with the exception of rotor-wing ambulances, a shoulder harness that meets FAA technical service order standards.

(2) In rotor-wing ambulances, high pressure containers and lines for medical gases may not be positioned in the scatter zone of the engine turbine wheels, unless adequate protection is provided to prevent penetration by turbine blade and wheel parts.

(3) Survival gear applicable to the needs of the area of operation and the number of occupants, must be carried on board and appropriately maintained.

(4) Any modifications to the interior of an aircraft to accommodate medical equipment must have FAA approval and be maintained to FAA standards.

(5) No one may smoke in an air ambulance.

(6) An emergency medical service must take measures to assure that the carbon monoxide level does not exceed 10 parts per million accumulation at the head of the patient stretcher or in the pilot's compartment, including the following:

(a) continuously maintaining, in the patient compartment near the patient's head and in the pilot's compartment near the pilot's head, disposable carbon monoxide detectors, approved by the department, which are capable of immediately detecting a dangerous rise in the carbon monoxide level;

(b) writing on each of the detectors the date of its placement, and replacing it prior to the expiration date;

(c) keeping replaced detectors for a period of three years after the date of their replacement.

AUTH: 50-6-323, MCA; IMP: 50-6-323, MCA

RULE XV OTHER REQUIREMENTS--NON-TRANSPORTING SERVICES

(1) A non-transporting unit must:

(a) Assure that patients are not transported by a non-licensed ambulance service, unless a licensed service is not reasonably available;

(b) Assure either that the patient is always transported by an ambulance service licensed to provide at least the same level of patient care commenced by the non-transporting service or that the ambulance service carries the personnel and equipment of the non-transporting service with the patient to the hospital if a level of care has commenced which the ambulance service cannot legally continue;

(c) Have a written dispatch policy and procedure coordinated with a licensed ambulance service.

AUTH: 50-6-323, MCA; IMP: 50-6-323, MCA

RULE XVI OTHER REQUIREMENTS--AMBULANCE SERVICES (1) If

an ambulance service publicly advertises a telephone number to receive calls for emergency assistance, that telephone number must be answered 24 hours a day, 7 days per week.

(2) An ambulance service may transport patients who are receiving care at a higher level than the level for which the service is licensed if:

(a) The higher level of care is initiated by a licensed emergency medical service authorized to perform that level of care; and

(b) The personnel and the equipment of the emergency medical services licensed at the higher level accompany the patient in the ambulance.

(3) An ambulance service may perform inter-facility (including between a physician's office and hospital) transfers at a higher level of care than the level to which the service is licensed if personnel trained and legally authorized to provide the higher level of care, as well as appropriate equipment, accompany the patient in the ambulance to assure continuity of patient care.

(4) Ambulance services may use only those vehicles which have received either a permit or a temporary permit from the department.

AUTH: 50-6-323, MCA; IMP: 50-6-323, MCA

RULE XVII OTHER REQUIREMENTS--AIR AMBULANCE SERVICE

(1) An air ambulance service must be licensed under current 14 CFR Part 135 of the FAA rules.

(2) The department hereby adopts and incorporates by reference 14 CFR Part 135, which sets forth federal licensure requirements for air ambulance services. A copy of 14 CFR Part 135 may be obtained from the Emergency Medical Services Bureau of the Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620; or from the Federal Aviation Administration, Helena, Montana 59601 [phone: 449-5290].

AUTH: 50-6-323, MCA; IMP: 50-6-323, MCA

RULE XVIII EQUIPMENT (1) A basic equipment kit must be in each ground ambulance and available to each non-transporting unit and air ambulance on every call.

(2) When table I below shows that a transportation equipment kit or safety and extrication kit is required, it must be physically in each ground ambulance at all times and available to each air ambulance on every call.

(3) Neither an EMT-D defibrillation kit, an EMT-intermediate kit, nor an advanced life support kit need be permanently stored on or in an ambulance or non-transporting unit, but may be kept separately in a modular, pre-packaged form, so long as it is available for rapid loading and easy access at the time of an emergency response.

(4) If table I below shows that an EMT-intermediate kit or an advanced life support kit is required, but the off-line medical director notifies the department in writing that an item of equipment or supplies in the relevant kit will not be

used in the emergency medical service, that item will not be required for licensure and the service may not use that item when providing emergency care.

(5) Table I below shows the equipment kit which is required for licensure at each of the various types and levels of emergency medical services:

[basic=basic equipment kit; transport=transportation equipment kit; safety=safety and extrication kit; EMT-D=EMT-D defibrillation kit; EMT-I=EMT-intermediate kit; ALS=advance life support kit]

TABLE I
Equipment kit

	Basic	Transport	Safety	EMT-D	EMT-I	ALS
Non-transport-basic	x					
Non-transport-defib	x			x		
Non-transport-interm.	x				x	
Non-transport-ALS	x					x
Ambulance-basic	x	x	x			
Ambulance-defib	x	x	x	x		
Ambulance-intermed.	x	x	x		x	
Ambulance-ALS	x	x	x			x
Air (rotor)-basic	x	x	x			
Air (rotor)-defib	x	x	x	x		
Air (rotor)-interm.	x	x	x		x	
Air (rotor)-ALS	x	x	x			x
Air (fixed)-basic	x	x				
Air (fixed)-defib	x	x		x		
Air (fixed)-interm.	x	x			x	
Air (fixed)-ALS	x	x				x

AUTH: 50-6-323, MCA; IMP: 50-6-323, MCA

RULE XIX RECORDS AND REPORTS (1) Each emergency medi-

cal service must maintain a trip report for every run in which patient care was offered or provided, which contains at least the following information:

(a) identification of the emergency medical services provider;

(b) date of the call;

(c) patient's name and address;

(d) type of run;

(e) identification of all emergency medical services providers, riders, trainees, or service personnel officially responding to the call;

(f) the time:

(i) the dispatcher was notified;

(ii) the emergency medical service was notified;

(iii) the emergency medical service was enroute;

(iv) of arrival on the scene;

(v) the service departed the scene or turned over the patient to an ambulance service;

(vi) of arrival at receiving hospital, if applicable;

(g) history of the patient's illness or injury, including the findings of the physical examination;

(h) treatment provided or offered by the emergency medical services personnel, including, when appropriate, a record of all medication administered, the dose, and the time administered;

(i) record of the patient's vital signs, including the time taken, if applicable;

(j) utilization of on-line medical control, if applicable;

(k) destination of the patient, if applicable.

(2) Trip reports may be reviewed by the department.

(3) Copies of trip reports must be maintained by the service for a minimum of seven years.

(4) Each emergency medical service must provide the department with a quarterly report, on a form provided by the department, that specifies the number and types of runs occurring during the quarter, the type of emergency, and the average response times.

(5) In addition to the requirements in (1)(a)--(i) above, any type of service functioning at the EMT-defibrillation level or the EMT-intermediate level must assure that their medical director reviews every run necessitating use of a defibrillator and that the appropriate forms, transcriptions, and EKG's are submitted to the department.

(6) As soon as practicable, an ambulance service must provide a copy of the trip report to the hospital that receives the patient.

AUTH: 50-6-323, MCA; IMP: 50-6-323, MCA

RULE XX PERSONNEL REQUIREMENTS--GENERAL (1) Each emergency medical service must meet the following personnel standards:

(a) All personnel functioning on the emergency medical service must have current certificates, licenses, proof of

training or evidence of legal authorization to function, or a temporary work permit for a given level of certification or licensure;

(b) All emergency medical personnel must provide care which conforms to the general standard of care expected of persons who are comparably trained, certified, or licensed;

(c) Emergency medical services personnel may use only that equipment and perform those skills for which they are trained, certified, or licensed and legally permitted to use;

(d) Advanced first aid and emergency care personnel may use oxygen and suction but not pneumatic anti-shock trousers;

(e) With the exception of a physician or the circumstances described in [Rule XVI(3)], no attempt may be made by personnel to provide a level of care higher than the level and type for which the emergency medical service is licensed, even though individual members of the emergency medical services may have a higher level of certification; and

(f) The emergency medical service is not operated in a manner which presents a risk to, threatens, or endangers the public health, safety, or welfare.

(2) With the exception of a physician or the circumstances described in [Rule XVI(3)], an individual with a level of certification higher than the level of service license may function only to the level of the service license.

(3) An EMT-defibrillation equivalent may perform under a defibrillation protocol only if acting under the authority of a licensed EMT-defibrillation life support, EMT-intermediate life support, or advanced life support service.

(4) All ambulances must have at least one of the required personnel attending the patient, and, when providing care at an EMT-defibrillation, EMT-intermediate, or advanced life support level, the person certified at the corresponding level must attend the patient.

AUTH: 50-6-323, MCA; IMP: 50-6-323, MCA

RULE XXI PERSONNEL: BASIC LIFE SUPPORT NON-TRANSPORTING UNIT (1) From January 1, 1990, through December 31, 1995, at least one of the following individuals must be on each call:

- (a) grandfathered advanced first aid;
- (b) first responder;
- (c) EMT-basic equivalent; or
- (d) physician.

(2) After January 1, 1996, at least one of the following individuals must be on each call:

- (a) grandfathered advanced first aid;
- (b) first responder;
- (c) EMT basic equivalent; or
- (d) physician.

AUTH: 50-6-323, MCA; IMP: 50-6-323, MCA

RULE XXII PERSONNEL: EMT-DEFIBRILLATION LIFE SUPPORT NON-TRANSPORTING UNIT (1) An EMT-defibrillation life support non-transporting unit must:

- (a) meet the personnel requirements of a basic life sup-

port non-transporting unit contained in [Rule XXI]; and

(b) when responding at the EMT-defibrillation level, ensure that at least one emergency medical technician defibrillation equivalent is on the call.

AUTH: 50-6-323, MCA; IMP: 50-6-323, MCA

RULE XXIII PERSONNEL: EMT-INTERMEDIATE LIFE SUPPORT NON-TRANSPORTING UNIT (1) An EMT-intermediate life support non-transporting unit must:

(a) meet the personnel requirements of a basic life support non-transporting unit contained in [Rule XXI]; and

(b) when responding at the EMT-intermediate level, ensure that at least one EMT-intermediate equivalent is on the call.

AUTH: 50-6-323, MCA; IMP: 50-6-323, MCA

RULE XXIV PERSONNEL: ADVANCED LIFE SUPPORT NON-TRANSPORTING UNIT (1) An advanced life support non-transporting unit must:

(a) meet the personnel requirements of a basic life support non-transporting unit contained in [Rule XXI]; and

(b) when responding at the advanced life support level, ensure that at least one EMT-paramedic equivalent is on the call.

AUTH: 50-6-323, MCA; IMP: 50-6-323, MCA

RULE XXV PERSONNEL: BASIC LIFE SUPPORT GROUND AMBULANCE SERVICE (1) From January 1, 1990, through December 31, 1995, a basic life support ground ambulance service must ensure that at least two of the following individuals are on each call:

(a) grandfathered advanced first aid;

(b) first responder-ambulance;

(c) EMT-basic equivalent; or

(d) physician.

(2) After January 1, 1996, a basic life support ground ambulance service must ensure that at least two of the following individuals are on each call, with the proviso that having only two first responders-ambulance on a call is not allowed:

(a) grandfathered advanced first aid;

(b) first responder-ambulance;

(c) EMT-basic equivalent; or

(d) physician.

AUTH: 50-6-323, MCA; IMP: 50-6-323, MCA

RULE XXVI PERSONNEL: EMT-DEFIBRILLATION GROUND AMBULANCE SERVICE (1) An EMT-defibrillation ground ambulance service must:

(a) meet the personnel requirements of a basic life support ground ambulance service contained in [Rule XXV]; and (b) when responding at the EMT-defibrillation level, ensure that one of the required personnel is an EMT-defibrillation equivalent.

AUTH: 50-6-323, MCA; IMP: 50-6-323, MCA

RULE XXVII PERSONNEL: EMT-INTERMEDIATE GROUND AMBULANCE

SERVICE (1) An EMT-intermediate ground ambulance service must:

(a) meet the personnel requirements of a basic life support ground ambulance service contained in [Rule XXV]; and (b) when responding at the EMT-intermediate level, ensure that one of the required personnel is an EMT-intermediate equivalent.

AUTH: 50-6-323, MCA; IMP: 50-6-323, MCA

RULE XXVIII PERSONNEL: ADVANCED LIFE SUPPORT GROUND AMBULANCE SERVICE (1) An advanced life support ground ambulance service must:

(a) meet the personnel requirements of a basic life support ground ambulance service contained in [Rule XXV]; and (b) when responding at the advanced life support level, ensure that one of the required personnel is an EMT-paramedic equivalent.

AUTH: 50-6-323, MCA; IMP: 50-6-323, MCA

RULE XXIX PERSONNEL: AIR AMBULANCE--GENERAL (1) All air ambulance personnel who are added to the roster of the service after January 1, 1993, must be certified by their local medical director as having completed the knowledge and skill objectives of an aeromedical training program approved by the department, with the exception that a new employee may function as an air ambulance attendant for a maximum of one year without this aeromedical training.

(2) During inter-facility transfers by air ambulance, the service medical director may specify the level of training personnel in attendance must have in order to match the medical needs of the patient, with the proviso that subsection (1) above must still be complied with.

AUTH: 50-6-323, MCA; IMP: 50-6-323, MCA

RULE XXX PERSONNEL: BASIC LIFE SUPPORT AIR AMBULANCE SERVICE (1) A basic life support air ambulance must meet the personnel requirements of a basic life support ground ambulance contained in [Rule XXV], with the exception that only one person is required in addition to the pilot.

AUTH: 50-6-323, MCA; IMP: 50-6-323, MCA

RULE XXXI PERSONNEL: EMT-DEFIBRILLATION LIFE SUPPORT AIR AMBULANCE SERVICE (1) In addition to the pilot, one EMT-defibrillation equivalent is required.

AUTH: 50-6-323, MCA; IMP: 50-6-323, MCA

RULE XXXII PERSONNEL: EMT-INTERMEDIATE LIFE SUPPORT AIR AMBULANCE SERVICE (1) In addition to the pilot, one EMT-intermediate equivalent is required.

AUTH: 50-6-323, MCA; IMP: 50-6-323, MCA

RULE XXXIII PERSONNEL: ADVANCED LIFE SUPPORT AIR AMBULANCE SERVICE (1) In addition to the pilot, one EMT-paramedic equivalent is required.

AUTH: 50-6-323, MCA; IMP: 50-6-323, MCA

RULE XXXIV MEDICAL CONTROL--GENERAL (1) Each emergency medical service at the EMT-defibrillation, EMT-intermediate, or advanced life support level shall have:

- (a) an off-line medical director;
- (b) a written plan, approved by the department, for on-line medical control;
- (c) protocols consistent with the level of service and approved by the department; and
- (d) written procedures for the security and replacement of all medications.

AUTH: 50-6-323, MCA; IMP: 50-6-323, MCA

RULE XXXV MEDICAL CONTROL: EMT-DEFIBRILLATION (1) An emergency medical service licensed for defibrillation must follow the defibrillation protocol.

- (2) The medical director shall:

- (a) review every EMT-defibrillation run as soon as possible, and send to the department, within one month after the date the run occurred, the transcription, EKG's, and completed department run report forms for the run;

- (b) assure that the hospital medical staff(s) most often receiving patients from the emergency medical service are aware of the EMT-defibrillation service and protocols.

AUTH: 50-6-323, MCA; IMP: 50-6-323, MCA

RULE XXXVI MEDICAL CONTROL: EMT-INTERMEDIATE (1) An EMT-intermediate life support service must have either:

- (a) a two-way communications system, approved by the department, between the EMT-intermediate service personnel and a 24-hour physician-staffed emergency department; or

- (b) if two-way communications from the field cannot be established with a 24-hour physician-staffed emergency department, on-line medical control of the EMT-intermediate service personnel through a department-approved communications system with either:

- (i) a surrogate functioning from a hospital emergency department, or

- (ii) a physician approved by the off-line medical director.

- (2) An emergency medical service licensed at an EMT-intermediate life support level must follow the defibrillation protocol whenever defibrillation services are called for.

AUTH: 50-6-323, MCA; IMP: 50-6-323, MCA

RULE XXXVII MEDICAL CONTROL--ADVANCED LIFE SUPPORT

- (1) An advanced life support service must have either:

- (a) a two-way communications system, approved by the department, between the advanced life support service personnel and a 24-hour physician-staffed emergency department; or

- (b) if two-way communications from the field cannot be established with a 24-hour physician-staffed emergency department, medical control of the advanced life support personnel through an approved communications system with either:

- (i) a hospital emergency department (physician only); or

(ii) a physician approved by the medical director.

AUTH: 50-6-323, MCA; IMP: 50-6-323, MCA

RULE XXXVIII APPEAL FROM ORDER (1) An order issued by the department may be appealed to the board of health and environmental sciences if the person named in the order submits a written request for a hearing before the board.


(2) In order for the hearing request to be effective, the written request must be received by the department within 30 calendar days after the date a notice of violation and order is served upon the person requesting the hearing.

AUTH: 50-6-323, MCA; IMP: 50-6-323, 50-6-327, MCA

5. The rules proposed to be adopted are necessary to implement a complete and wide-ranging revision of the statutes relating to licensure of emergency medical services during the 1989 Legislature, via Senate Bill 407. The rules proposed to be repealed, on the other hand, implement the ambulance service licensure statutes as they stood prior to the 1989 legislative changes, are therefore obsolete, and will be replaced by the new rules proposed for adoption.

6. Interested persons may submit their data, views, or arguments concerning the proposed rules, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Robert L. Solomon, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620, no later than December 7, 1989.

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


DONALD E. PIZZINI, Director

Certified to the Secretary of State October 30, 1989 .

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

In the matter of the adoption of	)	NOTICE OF PUBLIC HEARING
rules I through V relating to	)	ON PROPOSED ADOPTION OF
reports by emergency care personnel	)	NEW RULES FOR
of exposure to infectious disease	)	REPORTS OF UNPROTECTED
and subsequent control measures.	)	EXPOSURE TO INFECTIOUS
	)	DISEASE

(Emergency Medical Services)

To: All Interested Persons

1. On the following dates, times, and locations, the Department of Health and Environmental Sciences will hold public hearings in Glendive, Lewistown, and Missoula to consider the adoption of the above-captioned rules relating to reports by emergency care personnel of their exposure to infectious disease and subsequent control measures:

November 29, 1989, 7:00 pm: Courtroom, Dawson County Courthouse, 207 West Bell, Glendive.

November 30, 1989, 7:00 pm: Courtroom, Fergus County Courthouse, 712 West Main, Lewistown.

December 4, 1989, 7:00 pm: Commissioner meeting room, Room 201, second floor, Courthouse Annex, Missoula County Courthouse, 200 Pine Street entrance, Missoula.

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

3. The rules, as proposed, appear as follows:

RULE I TRANSMITTABLE INFECTIOUS DISEASES (1) The following infectious diseases are designated as having the potential of being transmitted to emergency services providers through an unprotected exposure described in [Rule II]:

(a) human immunodeficiency virus infection (AIDS or HIV infection);

(b) hepatitis B;

(c) hepatitis, non-A non-B;

(d) communicable pulmonary tuberculosis;

(e) meningococcal meningitis;

AUTH: 50-16-705, MCA; IMP: 50-16-701, 50-16-705, MCA

RULE II REPORTABLE UNPROTECTED EXPOSURE (1) The types of exposures to the infectious diseases specified in [Rule I] that may be reported to a health care facility by an emergency services provider are:

(a) any person to person contact in which a co-mingling of respiratory secretion (saliva and sputum) of the patient and the emergency services provider may have taken place;

(b) transmittal of the blood or bloody body fluids of the patient onto the mucous membranes of the emergency services

provider (mouth, nose, eyes) and/or into breaks in the skin of the emergency services provider;

(c) transmittal of other body fluids (urine, semen, breast milk, tears, vaginal secretion, amniotic fluid, feces, wound drainage, or cerebral spinal fluid) onto the mucous membranes of the emergency services provider;

(d) any non-barrier protected contact of the emergency services provider with the mucous membranes or non-intact skin of the patient.

AUTH: 50-16-705, MCA; IMP: 50-16-701, 50-16-705, MCA

RULE III UNPROTECTED EXPOSURE FORM (1) A report of unprotected exposure must be filed on a form approved by the department, entitled "Report of Unprotected Exposure", and containing the following:

(a) name, address, and phone number(s) of the emergency services provider who sustained an unprotected exposure;

(b) date and time of the unprotected exposure;

(c) a narrative description of the events surrounding the unprotected exposure, and a detailed description of how the exposure took place;

(d) the name and, if available, the date of birth of the patient;

(e) the name of the hospital receiving the patient;

(f) the name of the emergency services organization with which the individual filing the report is affiliated;

(g) the signature of the emergency services provider filing the report.

(2) A copy of the required form is available from the department's emergency medical services bureau, Cogswell Building, Capitol Station, Helena, Montana 59620 [phone: 406-444-3895].

AUTH: 50-16-705, MCA; IMP: 50-16-702, 50-16-705, MCA

RULE IV RECOMMENDED MEDICAL PRECAUTIONS AND TREATMENT

(1) At a minimum, a health care facility that notifies a person who has filed a report of unprotected exposure that he/she in fact has been exposed to one of the diseases listed in [Rule I] should recommend to that person the medical precautions and treatment:

(a) specified in Control of Communicable Diseases in Man, An Official Report of the American Public Health Association, 14th Edition, 1985; and

(b) other additional medical precautions and treatment provided to the facility by the department, if any.

(2) Whenever changes in the standards cited in (1) above become nationally acceptable and recommended, the department will provide health care facilities with those changes, and those facilities should in turn recommend the updated precautions and treatment to persons filing reports of unprotected exposure.

(3) The department hereby adopts and incorporates by reference "Control of Communicable Diseases in Man, An Official Report of the American Public Health Association", 14th

edition, 1985, which lists and specifies control measures for communicable diseases. A copy of "Control of Communicable Diseases in Man" may be obtained from the American Public Health Association, 1015 15th Street NW, Washington, D.C. 20005.

AUTH: 50-16-705, MCA; IMP: 50-16-703, 50-16-705, MCA

RULE V OTHER REQUIREMENTS (1) If an emergency services provider has filed a report of unprotected exposure with a health care facility, and if the patient has been transferred to another health care facility, the initial health care facility must forward the report of unprotected exposure to the final receiving health care facility.

(2) An emergency services provider wishing to file a report of unprotected exposure with a health care facility should, but is not required to, do so within 72 hours of the unprotected exposure.

(3) The unprotected exposure form shall be valid only for the admission and health care facility stay corresponding to the incident which generated the unprotected exposure.

(4) Upon receipt by a health care facility of an unprotected exposure report form, the health care facility employee initially receiving the form must sign it and provide a copy to the emergency services provider submitting the form.

(5) Each health care facility must maintain a permanent record of all unprotected exposure report forms it receives. The record must contain at least the following information:

- (a) name of the patient;
- (b) name of the emergency services provider;
- (c) date and time the form was received;
- (d) whether the patient had one of the infectious diseases specified in [Rule I];
- (e) if an infectious disease designated in [Rule I] was diagnosed, the dates the emergency services provider was notified by telephone and in writing; and
- (f) other hospitals, if any, to which the form was transferred.

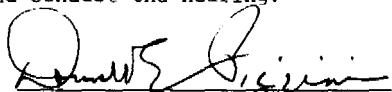
AUTH: 50-16-703, 50-16-705, MCA; IMP: 50-16-702, 50-16-703, MCA

4. The rules proposed to be adopted are necessary to implement Senate Bill 454, passed by the 1989 Legislature, which requires the department to adopt rules relating to reports that may be filed by emergency medical personnel who fear that, due to the nature of the conditions under which they gave treatment to a patient on the way to a health care facility, they may have been exposed to an infectious disease, and setting up procedures by which such personnel may receive necessary medical information if they have in fact been exposed.

5. Interested persons may submit their data, views, or arguments concerning the proposed rules, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Robert L. Solomon, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station,

Helena, Montana 59620, no later than December 7, 1989.

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


DONALD E. PIZZINI, Director

Certified to the Secretary of State October 30, 1989.

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

In the matter of the adoption of	)	NOTICE OF PUBLIC HEARING
rules I through III relating to	)	ON PROPOSED ADOPTION OF
procedures for emergency medical	)	NEW RULES ESTABLISHING
service personnel to withhold life-	)	LIVING WILL PROCEDURES
sustaining procedures from living	)	FOR EMERGENCY MEDICAL
will declarants	)	SERVICES PERSONNEL

(Emergency Medical Services)

To: All Interested Persons

1. On the following dates, times, and locations, the Department of Health and Environmental Sciences will hold public hearings in Glendive, Lewistown, and Missoula to consider the adoption of the above-captioned rules establishing procedures allowing emergency medical personnel to observe the wishes of patients who have declared, through a living will, their desire to have life-sustaining procedures withheld under certain circumstances:

November 29, 1989, 7:00 pm: Courtroom, Dawson County Courthouse, 207 West Bell, Glendive.

November 30, 1989, 7:00 pm: Courtroom, Fergus County Courthouse, 712 West Main, Lewistown.

December 4, 1989, 7:00 pm: Commissioner meeting room, Room 201, second floor, Courthouse Annex, Missoula County Courthouse, 200 Pine Street entrance, Missoula.

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

3. The rules, as proposed, appear as follows:

RULE I DEFINITIONS (1) "Comfort one" means a comprehensive, state-wide program of identifying, providing palliative care and withholding resuscitative measures to terminally ill patients who have declared living wills or for whom a physician has issued a do-not-resuscitate order. Comfort one may also be used as an identifying term in educational programs for pre-hospital care providers, patients, physicians, hospital, hospice, home health and other medical personnel.

(2) "Comfort one form" means a uniform, single form for state-wide use, approved by the department, indicating either that a valid and current declaration pursuant to 50-9-103, MCA, has been executed and that the declarant is a qualified patient, or that a physician has issued a do-not-resuscitate order for the patient. The form must contain the following:

(a) name, sex, and birth date of the patient;

(b) signature of the patient's attending physician or representative of a licensed hospice program in which the patient is enrolled;

(c) comfort one logo;

(d) the method by which a declaration may be revoked, if desired; and

(e) an explanation of comfort one, including the actions emergency care providers will take when presented with comfort one identification.

(3) "Comfort one card" means a uniform state-wide identification card, approved by the department, indicating that a comfort one form has been issued to the patient and containing the following identifying information:

(a) name, sex, and birth date of the patient;

(b) comfort one logo;

(c) signature of the patient's attending physician or representative of a licensed hospice program in which the patient is enrolled; and

(d) the method by which a declaration may be revoked, if desired.

(4) "Comfort one logo" means a standard, statewide graphic display, including the words "comfort one", approved by the department, which must be displayed on comfort one forms, cards, necklaces, and bracelets.

(5) "Comfort one necklace or bracelet" means a necklace or bracelet of uniform state-wide design, approved by the department, and indicating that a comfort one form has been issued to the patient. The comfort one necklace or bracelet must prominently display the comfort one logo and may only be issued to patients on verification that they have a comfort one form.

AUTH: 50-9-110, MCA; IMP: 50-9-102, MCA

RULE II LIVING WILL PROTOCOL (1) Under the following circumstances, emergency medical services personnel must follow the protocol approved by the board of medical examiners for withholding life-sustaining procedures from a patient:

(a) The identity of the patient has been clearly established and the personnel have been presented with:

(i) a comfort one form for the patient;

(ii) a comfort one card for the patient; or

(iii) a written do-not-resuscitate (DNR) order signed and dated by a physician.

(b) An unresponsive person is wearing a comfort one necklace or bracelet (no further identification is necessary).

(c) A physician's do-not-resuscitate order has been presented, but only when:

(i) the order is in writing and the personnel have a copy of the order or have seen the order; or

(ii) a physician issues a verbal order directly to the emergency medical services personnel.

(2) The living will protocol may also be designated the "comfort one protocol".

AUTH: 50-9-110, MCA; IMP: 50-9-102, MCA

RULE III SOURCES OF COMFORT ONE IDENTIFICATION

(1) Comfort one forms, cards, necklaces, and bracelets may be obtained only through:

(a) physicians;

- (b) licensed hospice programs;
 - (c) licensed home health agencies;
 - (d) hospitals;
 - (e) skilled nursing facilities;
 - (f) long term care facilities; and
 - (g) any other agency specifically approved by the department.
- AUTH: 50-9-110, MCA; IMP: 50-9-102, MCA

4. The rules proposed to be adopted are necessary to implement House Bill 422, passed by the 1989 Legislature, which authorizes the department to adopt rules implementing that bill by setting up a system to clearly identify living will declarants for emergency medical service personnel, allowing them to withhold life-sustaining procedures as the declarants desire, and clarifying the circumstances under which EMS personnel must withhold those procedures.

5. Interested persons may submit their data, views, or arguments concerning the proposed rules, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Robert L. Solomon, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620, no later than December 7, 1989.

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


DONALD E. PIZZINI, Director

Certified to the Secretary of State October 30, 1989.

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

In the matter of the adoption of	)	NOTICE OF PUBLIC HEARING
rules I through XXXII relating	)	FOR PROPOSED ADOPTION OF
to asbestos control	)	RULES I THROUGH
	)	XXXII RELATING TO
	)	ASBESTOS CONTROL

(Occupational Health)

To: All Interested Persons

1. On November 30, 1989, at 10:00 A.M., the department will hold a public hearing in Room C209 of the Cogswell Building, 1400 Broadway, Helena, Montana, to consider the adoption of the above-captioned rules, relating to regulation of asbestos abatement projects.
2. The proposed rules do not replace or modify any section currently found in the Administrative Rules of Montana.
3. The rules, as proposed, appear as follows:

RULE I APPLICABILITY AND PURPOSE (1) Except as otherwise specifically provided, this sub-chapter applies to all persons or entities engaged in an asbestos-related occupation, persons in charge of asbestos abatement projects, and persons who offer course work for accreditation of persons engaged in asbestos abatement projects.

(2) The purpose of these rules is to regulate and establish criteria for asbestos abatement practices and to require state-wide standards for accreditation of persons in asbestos-type occupations, for approval of course work, and for a fee and permit system.

AUTH: 75-2-503, MCA; IMP: 75-2-503, MCA

RULE II DEFINITIONS For purposes of this sub-chapter and unless otherwise indicated, the following terms shall have the meanings or interpretations given to them in this section and must be used in conjunction with the definitions contained in section 75-2-502, MCA.

(1) "Approved asbestos disposal facility" means a properly operated and licensed class II landfill as described in ARM 16.14.504.

(2) "Asbestos abatement" means the repair, enclosure, encapsulation, removal, and disposal of friable asbestos-containing material or asbestos containing material which may become friable as a result of or during the removal, repair, enclosure, disposal, or encapsulation process.

(3) "Asbestos abatement project" means the encapsulation,

enclosure, removal, repair, renovation, placement in new construction, demolition of friable or potentially friable asbestos-containing material in a building or other structure, or the transportation or disposal of friable or potentially friable asbestos-containing material. The term does not include a project that involves less than 3 square feet in surface area or 3 linear feet of thermal system insulation.

(4) "Asbestos abatement project designer" means any individual who develops the plans, specifications, and designs for an asbestos abatement project.

(5) "Asbestos abatement supervisor" means any individual who provides supervision and direction to workers engaged in asbestos removal, encapsulation, enclosure and/or repair. Asbestos abatement supervisors may include individuals with the position title of foreman, working foreman, construction superintendent, or leadman as designated in collective bargaining agreements.

(6) "Asbestos-containing material (ACM)" means a material or a product containing greater than one percent asbestos.

(7) "Asbestos abatement contractor" means any partnership, firm, association, business, sole proprietorship, or individual that contracts to perform asbestos abatement for another.

(8) "Asbestos inspector" means any individual who inspects buildings or structures for asbestos-containing materials.

(9) "Asbestos management planner" means any individual who develops plans for the management of asbestos-containing materials.

(10) "Asbestos-type occupation" means an inspector, management planner, project designer, contractor, supervisor, or worker for an asbestos abatement project.

(11) "Asbestos abatement worker" means any individual other than those listed in subsections (5), and (7) through (10) and not otherwise excluded from regulation under Rule III who is engaged in an asbestos abatement project.

(12) "CFR" means the Code of Federal Regulations published by the U.S. government printing office.

(13) "Demolition" means the wrecking or removal of any load-supporting structural component of a building or the wrecking, removal, or handling of related building or structural materials.

(14) "Encapsulation" means a method of asbestos abatement that includes the treatment of asbestos-containing materials with a sealant material that completely surrounds or embeds asbestos fibers in an adhesive matrix to prevent the release of asbestos fibers. A bridging encapsulant creates a membrane over the surface, while penetrating encapsulant permeates asbestos containing material and binds the material's components together.

(15) "Enclosure" means a method of asbestos abatement that includes the construction of a permanent, airtight impermeable barrier other than sealant around asbestos-containing material to prevent the release of asbestos fibers into the

air.

(16) "Friable" means easily crumbled, pulverized, or reduced to powder by hand pressure.

(17) "Friable asbestos-containing material" means any material containing more than 1 percent asbestos by weight applied on ceilings, walls, structural members, piping, duct work, or any other part of a structure which when dry may be crumbled, pulverized, or reduced to powder by hand pressure. The term includes non-friable asbestos-containing material after such previously non-friable material becomes damaged to the extent that when dry it may be crumbled, pulverized, or reduced to powder by hand pressure.

(18) "Non-occupational setting" means an environment in which the occupants during the course of daily work or activities are not handling, working with, or being exposed to asbestos resulting from an asbestos abatement project.

(19) "Person" means an individual, partnership, corporation, sole proprietorship, firm, enterprise, franchise, association, state or municipal agency, political subdivision of the state, or any other entity.

(20) "Response action" means a method including removal, encapsulation, enclosure, repair, operation, and maintenance that protects health and the environment from friable asbestos-containing materials.

(21) "School" means an institution for the teaching of children that is established and maintained under the laws of the state of Montana at public and/or private expense.

(22) "TWA" (time weighted average) means an average of concentrations of airborne contaminants averaged over a specified period of time. The mathematical formula for a TWA standard is:

$$E = \frac{Ca Ta + Cb Tb + \dots + Cn Tn}{8}$$

(a) where Ca represents a constant concentration over a time of Ta measured in hours and Cb represents other constant concentration over another time period Tb (hours), etc.

(23) "TWA" (time weighted average) standard" means the maximum allowable level of airborne contaminants averaged over a specified period of time.

(24) "TEM" means transmission electron microscopy.

(25) "PCM" means phase contrast microscopy.

AUTH: 75-2-503, MCA; IMP: 75-2-503, MCA

RULE III EXCLUSIONS (1) A private homeowner conducting, on his own, an asbestos abatement project in his/her private residence where the sole use of such residence is as the homeowner's domicile, is not subject to the provisions of this subchapter during the period that asbestos-containing material is present on the homeowner's private property and the homeowner controls or maintains the asbestos-containing material.

(2) A private homeowner as described in subsection (1) is subject to state and federal requirements for proper packaging, transport, and delivery to an approved asbestos disposal facility of asbestos containing material.

AUTH: 75-2-503, MCA; IMP: 75-2-503, MCA

RULE IV EVALUATION OF ASBESTOS HAZARDS IN STRUCTURES
OTHER THAN PUBLIC OR PRIVATE ELEMENTARY OR SECONDARY SCHOOLS

(1) In a structure other than a public or private elementary or secondary school, if the owner or other similarly placed person in charge of the structure chooses to evaluate the asbestos hazard in the structure through the use of an asbestos inspector, the asbestos hazard must be evaluated by the asbestos inspector according to the methods contained in 40 CFR 763.85, 1988 edition, (inspections and reinspection), 40 CFR 763.86, 1988 edition, (sampling), 40 CFR 763.87, 1988 edition, (analysis), and 40 CFR 763.88, 1988 edition (assessment). The asbestos inspector is solely responsible for failure to follow these inspection methods. The owner may be responsible under Rule VIII for hiring an asbestos inspector who is not accredited.

(2)(a) Air sampling may not be used by the asbestos inspector as the sole means of evaluating the asbestos hazard in a structure but may be used in conjunction with the methods used in subsection (1) of this rule.

(b) If air sampling is conducted, a comprehensive visual assessment must be used as a part of the asbestos hazard evaluation.

(c) The recommended maximum level for airborne fibers indoors in a non-occupational setting should not exceed 0.01 fibers per cubic centimeter of air (f/cc) for an average of five samples collected in a structure during normal conditions of building operation.

(d) Each sample must represent an eight hour time weighted average (TWA).

(e) For each sample collected, the minimum volume of air drawn through the collecting filter must be 1,199 liters of air for 25 mm filters, or 2,799 liters of air for 37 mm filters.

(f) Analysis is to be done by phase contrast microscopy (PCM) utilizing the National Institute of Occupational Safety and Health (NIOSH) 7400 method published in the NIOSH Manual of Analytical Methods, 3rd edition, second supplement, August 1987.

(3) The department hereby adopts and incorporates herein by reference 40 CFR 763.85 through 40 CFR 763.88, 1988 edition, which pertain to, respectively, methods of inspections and reinspection, sampling, analysis, and assessment of asbestos standards; and, the National Institute of Occupational Safety and Health (NIOSH) Manual of Analytical Methods, 3rd edition, second supplement, August 1987, which contains a description of the 7400 analytical method. A copy of each can be obtained from the Occupational Health Bureau at the Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620.

AUTH: 75-2-503, MCA; IMP: 75-2-503, MCA

RULE V CLEARING ASBESTOS ABATEMENT PROJECTS IN STRUCTURES
OTHER THAN PUBLIC OR PRIVATE ELEMENTARY OR SECONDARY SCHOOLS

(1)(a) At the conclusion of any asbestos abatement project performed in a structure other than a public or private elementary or secondary school, the asbestos abatement contractor or the person in charge of the asbestos abatement project, such as the owner or manager of a structure, shall ensure that the maximum allowable indoor concentration for airborne fibers in a non-occupational setting is not more than 0.01 fibers per cubic centimeter of air (f/cc), represented by an average of the results of five air samples.

(b) Five air samples must be collected by the individual described in subsection (2) below to test for maximum allowable concentration.

(c) Collection must involve aggressive air sampling techniques such as use of leaf blowers and/or fans placed in a setting sufficient to create maximum air disturbance.

(d) Each sample shall represent an eight hour time weighted average (TWA).

(e) For each sample collected, the minimum volume of air drawn through the collecting filter must be 1,199 liters of air for 25 mm filters or 2,799 liters of air for 37 mm filters.

(f) Analysis will be done by phase contrast microscopy (PCM) utilizing the National Institute of Occupational Safety and Health 7400 method contained in the NIOSH Manual of Analytical Methods, 3rd edition, second supplement, August 1987.

(2)(a) Air samples must be collected by an asbestos abatement contractor, asbestos abatement supervisor, an engineer, or industrial hygienist who is not employed by, or contractually associated with the asbestos abatement contractor or individual in charge of completing the asbestos abatement project.

(b) This requirement does not apply to a holder of an annual permit who receives a permit which contains a condition that contractors contractually associated with the facility will collect air samples but that asbestos health and safety personnel employed by the permit holder will monitor air sampling and ensure that air samples are collected properly. (See Rule XXII(4)).

(3)(a) In the event that the maximum allowable limit for airborne fibers is exceeded, the asbestos abatement contractor or the person in charge of the asbestos abatement project shall ensure that further evaluation is conducted on air samples, using TEM analysis as outlined in 40 CFR 763.90(i), 1988 edition.

(b) The individual(s) referred to in subsection (2) above must conduct the air sampling and TEM analysis. If the TEM analysis indicates that the air concentration inside is higher than the air concentration outside, as specified in 40 CFR 763.90(i), 1988 edition, then the asbestos abatement contractor or person in charge of the asbestos abatement project must repeat the cleaning effort or response action until it is complete. A response action is complete when the requirements of the TEM analysis are met or when the air concentration is below .01 f/cc as determined by the PCM analysis.

(c) The PCM analysis method is contained in 29 CFR 1910

or 29 CFR 1926.58, 1988 edition, or in the NIOSH 7400 method, published in the NIOSH Manual of Analytical Methods, 3rd edition, second supplement, August 1987.

(d) The department may grant a waiver from subsection (3)(a) through (c) in the event that an environment is chronically contaminated by fibers and it is determined that the asbestos fiber content does not exceed the maximum allowable concentration as outlined in 40 CFR 763.90(i), 1988 edition.

(e) This determination in subsection (3)(d) must be demonstrated by the person in charge of the asbestos abatement permit by establishing a history of the percentage of asbestos fibers contained in samples taken in that environment. The history must be established using a method of sampling and analysis established by the department. The average percentage of asbestos fibers in the air samples taken during the history period must be applied as a percentage factor against the total fiber concentration shown in the PCM analysis to determine the concentration of airborne asbestos fibers.

(f) This determination may also be made by any means demonstrated to the satisfaction of the department by the person in charge as providing protection of the public health and safety equivalent to the standards contained in the analyses.

(4) The department hereby adopts and incorporates herein by reference the National Institute of Occupational Safety and Health (NIOSH) Manual of Analytical Methods, 3rd edition, second supplement, August 1987, which contains a description of the 7400 Analytical Method; 40 CFR 763.90(i), 1988 edition, which sets forth standards for completion of response actions; 29 CFR 1910 and 29 CFR 1926.58, 1988 edition, which pertain to asbestos standards for general industry and the construction industry respectively. A copy of each can be obtained from the Occupational Health Bureau at the Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620.

AUTH: 75-2-503, MCA; IMP: 75-2-503, MCA

RULE VI EVALUATION OF ASBESTOS HAZARDS IN PUBLIC OR PRIVATE ELEMENTARY OR SECONDARY SCHOOLS

(1) In a public or private elementary school, the asbestos hazard must be evaluated by the school by the appropriate person accredited in an asbestos-type occupation according to the method outlined in 40 CFR 763.85, 1988 edition, (inspections and reinspection); 40 CFR 763.86, 1988 edition, (sampling); 40 CFR 763.87, 1988 edition, (analysis); 40 CFR 763.88, 1988 edition, (assessment); and 40 CFR 763.90, 1988 edition, (response actions).

(2) The department hereby adopts and incorporates herein by reference 40 CFR 763.85 through 40 CFR 763.88, 1988 edition, and 40 CFR 763.90, 1988 edition, which pertain to, respectively, inspections and reinspection, sampling, analysis, assessment, and response actions. Copies of each may be obtained from the Occupational Health Bureau, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620.

AUTH: 75-2-503, MCA; IMP: 75-2-503, MCA

RULE VII CLEARING ASBESTOS ABATEMENT PROJECTS IN PUBLIC OR PRIVATE ELEMENTARY OR SECONDARY SCHOOLS (1) A public or private elementary or secondary school shall ensure that at the conclusion of any asbestos abatement project performed within a public or private elementary or secondary school structure, inspections and/or sampling techniques, analytical techniques (PCM and TEM), phasing in of transmission electron microscopy (TEM) analysis, and visual inspection are performed and these techniques and analysis are performed in accordance with 40 CFR 763.90 (i), 1988 edition.

(2) The department hereby adopts and incorporates herein by reference 40 CFR 763.90(i), 1988 edition, which sets forth requirements for completion of response actions, a copy of which may be obtained from the Occupational Health Bureau, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620.

AUTH: 75-2-503, MCA; IMP: 75-2-503, MCA

RULE VIII REQUIREMENTS OF ACCREDITATION AND PERMITTING FOR PERSONS ENGAGED IN AN ASBESTOS-TYPE OCCUPATION (1) After January 1, 1990, a person may not:

(a) engage in an asbestos-type occupation unless accredited in that occupation by the department pursuant to Rule IX;

(b) conduct an asbestos abatement project without a permit from the department as required in Rule XXI, or violate the conditions of the permit; or

(c) employ under supervision, an individual in an asbestos-type occupation not accredited in that occupation by the department or directly sub-contract with an asbestos contractor for an asbestos abatement project if such asbestos contractor is not accredited by the department.

AUTH: 75-2-503, MCA; IMP: 75-2-503, 75-2-511, MCA

RULE IX ACCREDITATION OF ASBESTOS INSPECTOR; ASBESTOS MANAGEMENT PLANNER; ASBESTOS ABATEMENT PROJECT DESIGNER; ASBESTOS ABATEMENT CONTRACTOR; ASBESTOS ABATEMENT SUPERVISOR; AND ASBESTOS WORKER (1) A person seeking accreditation as an asbestos inspector, an asbestos management planner, an asbestos abatement project designer, an asbestos abatement contractor, an asbestos abatement supervisor, or an asbestos abatement worker must:

(a) successfully complete a training course approved by the department according to the table set forth in subsection (2) of this rule and pass an examination approved by the department; or

(b) have successfully completed, prior to January 1, 1990, the appropriate asbestos-related training course offered for each occupation listed in subsection (1) of this rule, which course must be approved by the USEPA; and

(c) submit to the department a properly completed application form provided by the department, together with a fee as specified in Rule XXIX and a copy of a certification of satisfactory completion from the appropriate department approved

course.

(2) The following asbestos-type occupations must complete the following corresponding training course approved by the department:

<u>Asbestos Related Occupation</u>	<u>Certified Course by the Department</u>
asbestos inspector	3-day training course
asbestos management planner	2-day training course
asbestos abatement project designer ...	3-day training course
asbestos abatement contractor	4-day training course
asbestos abatement supervisor	4-day training course
asbestos worker	3-day training course

AUTH: 75-2-503, MCA; IMP: 75-2-503, 75-2-511, MCA

RULE X RENEWAL OF ACCREDITATION (1) Except as specified in subsection (2), accreditation for each asbestos-type occupation referred to in Rule IX must be renewed annually by each accredited person on or before the one-year anniversary date of completion of the appropriate course which the person took for accreditation.

(2) An accreditation may be renewed within 90 days after the one-year anniversary date referred to in subsection (1) upon submission of a properly completed application form, a copy of a refresher course referred to in Rule XX, certification of satisfactory completion of the appropriate course, and the approved fee to the department.

(3) A person may not engage in an asbestos-type occupation after the expiration of his/her accreditation until such accreditation is renewed under subsections (1) and (2) by the department.

(4) Each person must submit an application to the department for renewal with the appropriate fee as specified in Rule XXIX and a copy of the certificate documenting the successful completion of the required refresher course for each discipline as set forth in subsections (5) through (7).

(5) Each applicant for renewal in each asbestos-type occupation, except the asbestos inspector, shall attend a 1-day refresher course which is approved by the department for the specific discipline.

(6) Asbestos inspectors shall attend a half-day refresher course approved by the department;

(7) Asbestos management planners shall attend the half-day asbestos inspector refresher course plus an additional half-day refresher course on management planning approved by the department.

AUTH: 75-2-503, MCA; IMP: 75-2-503, 75-2-511, MCA

RULE XI TRAINING COURSE AND EXAMINATION REQUIREMENTS

(1) After January 1, 1990, a person may not offer a training course providing the knowledge necessary for the accreditation of any asbestos-type occupation unless the department has approved the training course and examinations given as a part of, and at the end of, the course.

(2) To obtain department approval for a training course,

each course must address the topics and subject matter listed in Rules XIV through XVIII.

(3) For purposes of Rules XIV through XVIII, a day of training equals eight (8) hours, including short breaks and a one hour lunch.

AUTH: 75-2-503, MCA; IMP: 75-2-503, 75-2-511, MCA

RULE XII APPLICATION FOR ACCREDITATION OF A TRAINING COURSE; CERTIFICATION (1) A person may apply for approval of a training course by submitting by certified mail to the department, Bureau of Occupational Health, all of the following:

(a) a properly completed written application on forms provided by the department;

(b) a curriculum which satisfactorily addresses the course subject matter and topics as specified in this sub-chapter;

(c) a copy of the course examination and all course materials (written and visual);

(d) a copy of an unused or blank certification of satisfactory completion to be used for certification at the end of the course;

(e) a list of instructors and documentation of the instructors' qualifications;

(f) a description of hands-on training to be used in the course;

(g) a course schedule indicating time allotted and the instructor for each subject;

(h) the appropriate fee due the department for review of the course, set forth in Rule XXIX;

(i) documentation of EPA course approval if the course is approved by the EPA under the Asbestos Hazard Emergency Response Act (AHERA) 15 U.S.C. 2643 (1986).

(2) A person providing a training course for an asbestos-type occupation shall provide a certificate with the elements contained in subsection (1)(d) above to all trained persons who successfully complete the training course and the examination. The certificate shall be numbered and shall include:

(a) the person's name and address;

(b) the name and address of the training course sponsor;

(c) the signature of one course instructor;

(d) inclusive dates of the training course;

(e) the name or title of the training course;

(f) the name and address of the organization which has approved the training course;

(g) a statement that the trainee, by name, has successfully passed the examination for the course; and,

(h) a date indicating when the certificate expires.

AUTH: 75-2-503, MCA; IMP: 75-2-503, 75-2-511, MCA

RULE XIII COURSE APPROVAL (1) Training courses, training course materials, and examinations must be reviewed and approved by the department prior to the offering of the course, materials, and examination to the public.

(2) All training course materials and examinations must

be submitted to the department at least 45 calendar days prior to the proposed date of course presentation.

(3) The department must be automatically notified of any changes in the content of training courses or examinations. If there is any change in content of a course or examination, the department approval of these changes must be obtained prior to accreditation of such course or examination.

(4) Audits of approved training courses and examinations must be conducted by the department on a biannual basis; subsequent to implementation of any course changes, the department shall audit the training course. Department audits shall result in levying of the appropriate fee as set forth in Rule XXXI.

(5) The department personnel must be afforded the opportunity to audit any and all asbestos training courses offered for accreditation of asbestos-type occupations without tuition or cost of materials to the department personnel.

AUTH: 75-2-503, MCA; IMP: 75-2-503, 75-2-511, MCA

RULE XIV ASBESTOS INSPECTOR'S COURSE (1) A three-day training course given to provide the training component necessary for accreditation of an asbestos inspector shall include lectures, demonstrations, 4 hours of hands-on training, individual respirator fit testing, course review, and a written examination which adequately tests for knowledge of subjects covered in the course.

(2) The asbestos inspectors shall adequately address the following topics and subject matter within each topic:

(a) Background information on asbestos including identification of asbestos, examples and discussion of the uses and locations of asbestos in buildings, and physical appearance of asbestos.

(b) Potential health effects related to asbestos exposure, including the nature of asbestos-related diseases; routes of exposure; dose-response relationships and the lack of a safe exposure level; the synergistic effect between cigarette smoking and asbestos exposure; the latency period for asbestos-related diseases; and a discussion of the relationship of asbestos exposure to asbestosis, lung cancer, mesothelioma, and cancer of other organs.

(c) Functions, qualifications and role of inspectors, including discussions of prior experience and qualifications for inspectors and management planners; discussions of the functions of an accredited inspector as compared to those of an accredited management planner, and discussion of the inspection process, including inventory of asbestos-containing material (ACM) and physical assessment.

(d) Legal liabilities and defenses, including comparative responsibilities of the asbestos inspector and the asbestos management planner; a discussion of comprehensive general liability policies, claims-made and occurrence policies, environmental and pollution liability policy clauses; applicable state of Montana liability insurance requirements; and bonding and the relationship of insurance availability to bond availability.

lity.

(e) Understanding the interrelationship between building systems, including:

(i) an overview of common building physical plan layout;
(ii) heat, ventilation and air conditioning (HVAC) system types, physical organization, and where asbestos is found on HVAC components;

(iii) building mechanical systems, their types and organization, and where to look for asbestos on such systems;

(iv) inspecting electrical systems, including appropriate safety precautions; and

(v) reading blueprints and as-built drawings.

(f) Public/employee/building occupant relations, including notifying employee organizations about the inspection; signs to warn building occupants; tact in dealing with occupants and the press; scheduling of inspections to minimize disruption; and education of building occupants about actions being taken.

(g) Pre-inspection planning and review of previous inspection records, including scheduling the inspection and obtaining access building record review; identification of probable homogeneous areas from blueprints or as-built drawings; consultation with maintenance or building personnel; review of previous inspection, sampling, and abatement records of a building; and the role of the asbestos inspector in exclusions for previously performed inspections.

(h) Inspecting for friable and non-friable asbestos-containing material (ACM) and assessing the condition of friable ACM, including procedures to follow in conducting visual inspections for friable and non-friable ACM; types of building materials that may contain asbestos; touching materials to determine friability; open return air plenums and their importance in heat, ventilation, and air-conditioning (HVAC) systems; assessing damage, significant damage, potential damage, and potential significant damage; amount of suspected ACM, both in total quantity and as a percentage of the total area; type of damage; accessibility; material's potential for disturbance; known or suspected causes of damage or significant damage; and deterioration as assessment factors.

(i) Bulk sampling/documentation of asbestos, including detailed discussion of the "Simplified Sampling Scheme for Friable Surfacing Materials" (EPA 560/5-85-030a October 1985); techniques to ensure sampling in a randomly distributed manner for friable surfacing materials; sampling of non-friable materials; techniques for bulk sampling; sampling of thermal system insulation and sampling equipment the inspector should use; patching or repair of damage done in sampling; an inspector's repair kit; discussion of polarized light microscopy; choosing an accredited laboratory to analyze bulk samples; and quality control and quality assurance procedures.

(j) Inspector respiratory protection and personal protective equipment, including classes and characteristics of respirator types; limitations of respirators; proper selection, inspection, donning, use, maintenance, and storage procedures

for respirators; methods for field testing of the facepiece-to-face seal (positive and negative pressure fitting tests); qualitative and quantitative fit testing procedures; variability between field and laboratory protection factors; factors that alter respirator fit (e.g., facial hair); the components of a proper respiratory protection program; selection and use of personal protective clothing; and use, storage, and handling of non-disposable clothing.

(k) Recordkeeping and writing the inspection report, including labeling of samples and keying sample identification to sampling location; sample labeling recommendations; detailing of ACM inventory; photographs of selected sampling areas and examples of ACM condition; and information required for inclusion in the management plan by the Toxic Substances Control Act (TSCA), Title II, section 203 (i)(1), Pub. L. No. 99-519, et. seq., and 40 CFR 763.80 through 40 CFR 763.99, 1988 edition.

(l) Regulatory review, including EPA worker protection requirements found at 40 CFR Part 763, subpart G, 1988 edition; TSCA Title II, Pub. L. No. 99-519, et. seq.; Occupational Safety and Health Administration (OSHA) asbestos construction standard, 29 CFR 1926.58, 1988 edition; OSHA respirator requirements found at 29 CFR 1910.134, 1988 edition; the friable ACM in schools rule found at 40 CFR Part 763, subpart F, 1988 edition; applicable state and local regulations; and differences in federal/state requirements where they apply and the effects, if any, on public and non-public schools.

(m) Field trip, including a field exercise which includes a walk-through inspection; on-site discussion on information-gathering and determination of sampling locations; on-site practice in physical assessment; and classroom discussion of field exercise.

(n) A review of key aspects of the training course.

(3) The department hereby adopts and incorporates by reference EPA 560/5-85-030a October 1985, which sets forth a detailed discussion of the simplified sampling scheme for friable surfacing materials; TSCA Title II, Pub. L. No. 99-519, et. seq., and 40 CFR 763.80 through 40 CFR 763.99, 1988 edition, which set forth requirements for the management of asbestos in schools; 40 CFR Part 763, subparts F and G, 1988 edition, 29 CFR 1926.58, 1988 edition, and 29 CFR 1910.134, 1988 edition, which set forth requirements for asbestos worker protection and the management of asbestos in schools. A copy of each may be obtained from the Occupational Health Bureau, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620.
AUTH: 75-2-503, MCA; IMP: 75-2-503, 75-2-511, MCA

RULE XV ASBESTOS MANAGEMENT PLANNERS COURSE (1) A two-day training course to provide the training component necessary for accreditation of an asbestos management planner shall include lectures, demonstrations, course review, and a written examination which adequately tests for knowledge of subjects covered in the course.

(2) The course for accreditation of an asbestos management planner must adequately address the following topics and subject matter within each topic:

(a) Course overview, including the role of the management planner; operations and maintenance programs; setting work priorities; and protection of building occupants.

(b) Evaluation/interpretation of survey results, including review of the Toxic Substance Control Act (TSCA) Title II requirements for inspection and management plans as given in section 203(i)(1) of TSCA Title II, Pub. L. No. 99-519, et. seq., and 40 CFR 763.85 through 40 CFR 763.93, 1988 edition; summarized field data and laboratory results; and comparison between field inspector's data sheet with laboratory results and site survey.

(c) Hazard assessment, including amplification of the difference between physical assessment and hazard assessment; the role of the management planner in hazard assessment; explanation of significant damage, damage, potential damage, and potential significant damage; use of a description (or decision tree) code for assessment of ACM; assessment of friable ACM; and, the relationship of accessibility, vibration sources, use of adjoining space, and air plenums and other factors to hazard assessment.

(d) Legal implications, including liability; insurance issues specific to planners; liabilities associated with interim control measures, in-house maintenance, repair, and removal; and use of results from previously performed inspections.

(e) Evaluation and selection of control options, including overview of encapsulation, enclosure, interim operations and maintenance, and removal; advantages and disadvantages of each method; response actions described via a decision tree or other appropriate method; work practices for each response action; staging and prioritizing of work in both vacant and occupied buildings; and the need for containment barriers and decontamination in response actions.

(f) Role of other professionals, including use of industrial hygienists, engineers, and architects in developing technical specifications for response actions; any requirements that may exist for architect sign-off of plans; and team approach to design of high-quality job specifications.

(g) Developing an operations and maintenance plan, including purpose of the plan; discussion of applicable USEPA guidance documents; what actions should be taken by custodial staff; proper cleaning procedures; steam cleaning and high efficiency particulate aerosol (HEPA) vacuuming; reducing disturbance of ACM; scheduling operation and maintenance for off-hours; rescheduling or cancelling renovation in areas with ACM; boiler room maintenance; disposal of ACM; in-house procedures for ACM-bridging and penetrating encapsulants; pipe fittings; metal sleeves; polyvinyl chloride (PVC), canvas, and wet wraps; muslin with straps; fiber mesh cloth; mineral wool and insulating cement; discussion of employee protection programs and staff training; and a case study in developing an operation and

management plan (development, implementation process, and problems that have been experienced).

(h) Regulatory review, including focusing on the Occupational Safety and Health Administration (OSHA) asbestos construction standard found at 29 CFR 1926.58, 1988 edition; the National Emission Standards for Hazardous Air Pollutants (NESHAPS) found at 40 CFR Part 61, subparts A (general provisions) and M (National Emission Standards for Asbestos), 1988 edition; EPA Worker Protection requirements found at 40 CFR Part 763, subpart G, 1988 edition; TSCA Title II, Pub. L. No. 99-519, et. seq.; and applicable state regulations.

(i) Recordkeeping for the management planner, including use of a field inspector's data sheet along with laboratory results; on-going recordkeeping as a means to track asbestos disturbance; and procedures for recordkeeping.

(j) Assembling and submitting the management plan, including management plan requirements in TSCA Title II section 203(i)(1), Pub. L. No. 99-519, et. seq., and 40 CFR Part 763, 1988 edition; and the management plan as a planning tool.

(k) Financing abatement actions, including economic analysis and cost estimates; development of cost estimates; present costs of abatement versus future operations and maintenance costs; and grants and loans under the Asbestos School Hazard Abatement Act, 20 U.S.C. 4011, et. seq.

(3) A review of key aspects of the training course.

(4) The department hereby adopts and incorporates by reference TSCA Title II section 203(i)(1), Pub. L. No. 99-519, et. seq., and 40 CFR 763.85 through 40 CFR 763.93, 1988 edition, which set forth requirements for inspection and management plans for asbestos in schools; 29 CFR 1926.58, 1988 edition; 40 CFR Part 61, subparts A and M, 1988 edition; 40 CFR Part 763, 1988 edition, subpart G; and TSCA Title II, Pub. L. No. 99-519, et. seq., which set forth requirements for asbestos worker protection, asbestos emissions, and management of asbestos in schools, respectively; and 20 U.S.C. 4011, et. seq., which sets forth requirements for grants and loans under the asbestos school hazard abatement act. A copy of each may be obtained from the Occupational Health Bureau, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620.

AUTH: 75-2-503, MCA; IMP: 75-2-503, 75-2-511, MCA

RULE XVI ASBESTOS ABATEMENT PROJECT DESIGNER'S COURSE

(1) A three-day training course to provide the training component necessary for accreditation of an asbestos abatement project designer shall include lectures, demonstrations, a field trip, course review, and a written examination which adequately tests for knowledge of subjects covered in the course.

(2) The course for accreditation of an asbestos project designer shall adequately address the following topics:

(a) Background information on asbestos, including identification of asbestos; examples and discussion of the uses and locations of asbestos in buildings; and the physical appearance

of asbestos.

(b) Potential health effects related to asbestos exposure, including the nature of asbestos-related diseases; routes of exposure; dose-response relationships and the lack of a safe exposure level; the synergistic effect between cigarette smoking and asbestos exposure; the latency period of asbestos-related diseases; and a discussion of the relationship between asbestos exposure and asbestosis, lung cancer, mesothelioma, and cancer of other organs.

(c) Overview of abatement construction projects, including abatement as a portion of a renovation project; Occupational Safety and Health Administration (OSHA) requirements for notification of other contractors on a multi-employer site, which requirements are set forth at 29 CFR 1926.58, 1988 edition.

(d) Safety system design specifications, including construction and maintenance of containment barriers and decontamination enclosure systems; positioning of warning signs; electrical and ventilation system lock-out; proper working techniques for minimizing fiber release; entry and exit procedures for the work area; use of wet methods; use of negative pressure exhaust ventilation equipment; use of high efficiency particulate aerosol (HEPA) vacuums; proper clean-up and disposal of asbestos; work practices as they apply to encapsulation, enclosure, and repair; use of glove bags and a demonstration of glove bag use.

(e) Field trip, including a visit to an abatement site or other suitable building site, on-site discussions of abatement design, building walk-through inspection, and discussion following the walk-through.

(f) Employee personal protective equipment, including the classes and characteristics of respirator types; limitations of respirators; proper selection, inspection, donning, use, maintenance, and storage procedures; methods for field testing of the facepiece-to-face seal (positive and negative pressure fitting tests); qualitative and quantitative fit testing procedures; variability between field and laboratory protection factors; factors that alter respirator fit (e.g., facial hair); components of a proper respiratory protection program; selection and use of personal protective clothing; use, storage, and handling of non-disposable clothing; and regulations covering personal protective equipment.

(g) Additional safety hazards, including hazards encountered during abatement activities and how to deal with them, such as electrical hazards, heat stress, air contaminants other than asbestos, fire and explosion hazards.

(h) Fiber aerodynamics and control, including aerodynamic characteristics of asbestos fibers; importance of proper containment barriers; settling time for asbestos fibers; wet methods in abatement; aggressive air monitoring following abatement; aggressive air movement and negative pressure exhaust ventilation as a clean-up method.

(i) Designing abatement solutions, including discussions of removal, enclosure, and encapsulation methods; and asbestos

waste disposal.

(j) Budgeting/cost estimation, including development of cost estimates; present costs of abatement versus future operations and maintenance costs; and setting priorities for abatement jobs to reduce cost.

(k) Writing abatement specifications, including means and methods specifications versus performance specifications; design of abatement in occupied buildings; modification of guide specifications to a particular building; worker and building occupant health/medical considerations; replacement of ACM with non-asbestos substitutes; and clearance of work area after abatement; air monitoring for clearance.

(l) Preparing abatement drawings, including use of as-built drawings; use of inspections photographs and on-site reports; and particular problems in abatement drawings.

(m) Contract preparation and administration.

(n) Legal/liabilities/defenses, including insurance considerations; bonding; hold harmless clauses; use of abatement contractor's liability insurance; and claims-made versus occurrence policies.

(o) Replacement of asbestos with asbestos-free substitutes.

(p) Role of other consultants, including development of technical specification sections by industrial hygienists or engineers; and the multi-disciplinary team approach to abatement design.

(q) Occupied buildings, including special design procedures required in occupied buildings; education of occupants; extra monitoring recommendations; staging of work to minimize occupant exposure; and scheduling of renovation to minimize exposure.

(r) Relevant federal, state, and local regulatory requirements, procedures and standards, including:

(i) requirements of the Toxic Substance Control Act (TSCA) Title II, Pub. L. No. 99-519, et. seq., and 40 CFR 763, 1988 edition;

(ii) 40 CFR Part 61, National Emission Standards for Hazardous Air Pollutants (NESHAPS), subparts A (general provisions) and M (national emission standard for asbestos), 1988 edition;

(iii) OSHA standards for permissible exposure to airborne concentrations of asbestos fibers and respiratory protection found in 29 CFR 1910.134, 1988 edition;

(iv) EPA worker protection rule, found at 40 CFR Part 763, subpart G, 1988 edition; and

(v) the OSHA asbestos construction standard found at 29 CFR 1926.58, 1988 edition.

(s) A review of key aspects of the training course.

(3) The department hereby adopts and incorporates by reference 29 CFR 1926.58, 1988 edition, which pertains to OSHA asbestos standards for the construction industry; TSCA Title II, Pub. L. No. 99-519, et. seq.; 40 CFR 763, 1988 edition; 40 CFR Part 61, subparts A and M, 1988 edition; 29 CFR 1910.134, 1988 edition; 40 CFR Part 763, subpart G, 1988 edition; and 29

CFR 1926.58, 1988 edition, which set forth, respectively, requirements for management of asbestos in schools, asbestos emissions, asbestos worker protection, and asbestos standards for the construction industry. A copy of each may be obtained from the Occupational Health Bureau, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620.

AUTH: 75-2-503, MCA; IMP: 75-2-503, 75-2-511, MCA

RULE XVII ASBESTOS ABATEMENT CONTRACTOR'S AND SUPERVISOR'S COURSE: (1) A four-day training course given to provide the training component necessary for accreditation of an asbestos abatement contractor and/or an asbestos abatement supervisor shall include lectures, demonstrations, 6 hours of hands-on training, individual respirator fit testing, course review, and a written examination which adequately tests for knowledge of subjects covered in the course.

(2) The course for accreditation of an asbestos abatement contractor or an asbestos abatement supervisor shall adequately address the following topics and subject matter within each topic:

(a) The physical characteristics of asbestos and asbestos-containing materials, including identification of asbestos, aerodynamic characteristics, typical uses, physical appearance, a review of hazard assessment considerations, and a summary of abatement control options.

(b) Potential health effects related to asbestos exposure, including the nature of asbestos-related diseases; routes of exposure; dose-response relationships and the lack of a safe exposure level; synergism between cigarette smoking and asbestos exposure; and the latency period for disease.

(c) Employee personal protective equipment, including classes and characteristics of respirator types; limitations of respirators and their proper selection, inspection, donning, use, maintenance, and storage procedures; methods for field testing of the facepiece-to-face seal (positive and negative pressure fitting tests); qualitative and quantitative fit testing procedures; variability between field and laboratory protection factors; factors that alter respirator fit (e.g., facial hair); the components of a proper respiratory protection program; selection and use of personal protective clothing; use, storage, and handling of non-disposable clothing; and regulations covering personal protective equipment.

(d) State-of-the-art work practices, including proper work practices for asbestos abatement activities; descriptions of proper construction and maintenance of barriers and decontamination enclosure systems; positioning of warning signs; electrical and ventilation system lockout; proper working techniques for minimizing fiber release; use of wet methods; use of negative pressure ventilation equipment; use of high efficiency particulate air (HEPA) vacuums; proper clean-up and disposal procedures; work practices for removal, encapsulation, enclosure, and repair; emergency procedures for sudden releases; potential exposure situations; transport and disposal proce-

dures; and recommended and prohibited work practices. Discussion of new abatement-related techniques and methodologies may be included.

(e) Personal hygiene, including entry and exit procedures for the work area; use of showers; avoidance of eating, drinking, smoking, and chewing (gum or tobacco) in the work area; and potential exposures, such as family exposure.

(f) Additional safety hazards, including hazards encountered during abatement activities and how to deal with them, such as electrical hazards, heat stress, air contaminants other than asbestos, fire and explosion hazards, scaffold and ladder hazards, slips, trips, and falls, and confined spaces.

(g) Medical monitoring, including Occupational Safety and Health Administration (OSHA) requirements for a pulmonary function test, chest x-rays, and a medical history for each employee.

(h) Air monitoring, including procedures to determine airborne concentrations of asbestos fibers; a description of aggressive sampling; sampling equipment and methods; reasons for air monitoring; types of samples; and interpretation of results, specifically from analysis performed by polarized light, phase-contrast, and electron microscopy analyses.

(i) All relevant federal, state, and local regulatory requirements, procedures, and standards, including:

(i) requirements of the Toxic Substance Control Act (TSCA) Title II, Pub. L. No. 99-519, et. seq., and 40 CFR Part 763, 1988 edition;

(ii) 40 CFR Part 61, National Emission Standards for Hazardous Air Pollutants (NESHAPS), subparts A (general provisions) and M (national emission standard for asbestos), 1988 edition;

(iii) the OSHA asbestos construction standard found in 29 CFR 1926.58, 1988 edition;

(iv) OSHA standards for permissible exposure to airborne concentrations of asbestos fibers and respiratory protection found in 29 CFR 1910.134, 1988 edition;

(v) EPA worker protection requirements found in 40 CFR Part 763, subpart G, 1988 edition.

(j) Respiratory protection programs and medical surveillance programs.

(k) Insurance and liability issues, including contractor issues; worker's compensation coverage and exclusions; third-party liabilities and defenses; insurance coverage and exclusions.

(l) Recordkeeping for asbestos abatement projects, including records required by federal, state, and local regulations; and records recommended for legal and insurance purposes.

(m) Supervisory techniques for asbestos abatement activities, including supervisory practices to enforce and reinforce the required work practices and discourage unsafe work practices.

(n) Contract specifications, including discussion of key elements that are included in contract specifications.

(c) A review of key aspects of the training course.

(3) The department hereby adopts and incorporates by reference TSCA Title II, Pub. L. No. 99-519, et. seq.; 40 CFR Part 763, 1988 edition; 40 CFR Part 61, subpart A and M, 1988 edition; 29 CFR 1926.58, 1988 edition; and 29 CFR 1910.134, 1988 edition, which set forth, respectively, requirements for asbestos management in schools, asbestos emissions, worker protection, asbestos standards for the construction industry, and asbestos standards for general industry. A copy of each may be obtained from the Occupational Health Bureau, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620.

AUTH: 75-2-503, MCA; IMP: 75-2-503, 75-2-511, MCA

RULE XVIII ASBESTOS ABATEMENT WORKER'S COURSE (1) A

three-day training course to provide the training component necessary for accreditation of an asbestos abatement worker shall include lectures, demonstrations, 6 hours of hands-on training, individual respirator fit testing, course review, and a written examination which adequately tests for knowledge of subjects covered in the course.

(2) The course for accreditation of an asbestos abatement worker shall adequately address the following topics:

(a) Physical characteristics of asbestos, including identification of asbestos, aerodynamic characteristics, typical uses, physical appearance, and a summary of abatement control options.

(b) Potential health effects related to asbestos exposure, including the nature of asbestos-related diseases, routes of exposure, dose-response relationships and the lack of a safe exposure level; synergism between cigarette smoking and asbestos exposure; and the latency period for disease.

(c) Employee personal protective equipment, including classes and characteristics of respirator types; limitations of respirators and their proper selection, inspection, donning, use, maintenance, and storage procedures; methods for field testing of the facepiece-to-face seal (positive and negative pressure fitting tests); qualitative and quantitative fit testing procedures; variability between field and laboratory protection factors; factors that alter respirator fit (e.g., facial hair); the components of a proper respiratory protection program; selection and use of personal protective clothing; use, storage, and handling of non-disposal clothing; and regulations covering personal protective equipment.

(d) State-of-the-art asbestos abatement practices, including descriptions of proper construction and maintenance of barriers and decontamination enclosure systems; positioning of warning signs; electrical and ventilation system lock-out; proper working techniques for minimizing fiber release; use of wet methods; use of negative pressure ventilation equipment; use of high efficiency particulate air (HEPA) vacuums; proper clean-up and disposal procedures; work practices for removal, encapsulation, enclosure, and repair; emergency procedures for sudden releases; potential exposure situations; transport and

disposal procedures; and recommended and prohibited work practices.

(e) Personal hygiene, including entry and exit procedures for the work area; use of showers; avoidance of eating, drinking, smoking, and chewing (gum or tobacco) in the work area; and potential exposures, such as family exposure.

(f) Additional safety hazards, including hazards encountered during abatement activities and how to deal with them, such as electrical hazards, heat stress, air contaminants other than asbestos, fire and explosion hazards, scaffold and ladder hazards, slips, trips, and falls, and confined spaces.

(g) Medical monitoring, including Occupational Safety and Health Administration (OSHA) requirements for a pulmonary function test, chest x-rays and a medical history for each employee.

(h) Air monitoring, including procedures to determine airborne concentrations of asbestos fibers, focusing on how personal air sampling is performed and the reasons for it.

(i) Establishment of respirator protection programs.

(j) Relevant federal, state, and local regulatory requirements, procedures and standards, with particular attention directed at relevant EPA, OSHA, and state regulations concerning asbestos workers.

(k) A review of key aspects of the training course.

AUTH: 75-2-503, MCA; IMP: 75-2-503, 75-2-511, MCA

RULE XIX EXAMINATIONS (1) Regarding the examinations given as a part of each course referred to in Rules XIV through XVIII, the following requirements must be met in each discipline:

(a) For asbestos inspectors, the examination given must include 50 multiple choice questions with a passing score of at least 70 percent.

(b) For asbestos management planners, the examination given must include 50 multiple choice questions with a passing score of at least 70 percent.

(c) For asbestos abatement project designers, the examination given must include 100 multiple choice questions with a passing score of at least 70 percent.

(d) For asbestos abatement contractors and supervisors, the examination given must include 100 multiple choice questions with a passing score of at least 70 percent.

(e) For asbestos abatement workers the examination given must include 50 multiple choice questions with a passing score of at least 70 percent.

(2) All examinations for each asbestos-type occupation must be closed book.

AUTH: 75-2-503, MCA; IMP: 75-2-503, 75-2-511, MCA

RULE XX REFRESHER COURSES (1) After January 1, 1990, a person may not offer a refresher course providing the knowledge necessary for renewal of accreditation under Rule X unless the department has approved the refresher course.

(2) As a condition of approval of a refresher course for

each asbestos-type occupation, the refresher course must discuss changes in federal and state regulations, developments in state-of-the-art procedures, and review key aspects of the initial training course.

(3) Refresher courses must be approved by the department through submission to the department of a completed application form furnished by the department together with a fee as set forth in Rule XXX. The application form will require information regarding the subject matter to be taught in the refresher course, the course materials to be used, the instructors teaching the refresher course, and instructors' qualifications.

AUTH: 75-2-503, MCA; IMP: 75-2-503, 75-2-511, MCA

RULE XXI ASBESTOS ABATEMENT PROJECT PERMITS (1) No person in charge of an asbestos abatement project may engage in the asbestos abatement project after January 1, 1990 without an asbestos abatement project permit issued by the department. No person in charge of an asbestos abatement project may perform work after January 1, 1990 on asbestos-containing material which is an integral part of a continuous surface exceeding 3 square feet or 3 feet of thermal system insulation per calendar year without an asbestos abatement project permit issued by the department.

(2) In order to obtain an asbestos abatement project permit, a person must submit to the department, by certified mail, all of the following:

(a) A properly completed application for a permit on forms provided by the department;

(b) A description of the structure and the asbestos abatement project to be performed, and exact dates the asbestos work will be performed;

(c) A signed statement that all work performed under authorization of the requested permit will be performed in accordance with 29 CFR 1926.58, 1988 edition, including all appendices, and with 40 CFR Part 763, 1988 edition, 40 CFR 763.120, 1988 edition, 40 CFR 763.121, 1988 edition, and 40 CFR 763.124, 1988 edition.

(d) A list of accredited asbestos abatement workers and asbestos abatement supervisors who will be performing functions on the project, including their accreditation ID number and course sponsor;

(e) A signed statement indicating that removed asbestos will be disposed of at an approved asbestos disposal facility, the name and location of the facility, and the entity which has approved the asbestos disposal facility; and

(f) The required fee to be paid to the department for issuance of a permit as set forth in Rule XXVIII.

(3) All asbestos abatement projects shall be performed in accordance with 29 CFR 1926.58, 1988 edition, including all appendices, and with 40 CFR 763.120, 1988 edition, and 40 CFR 763.121, 1988 edition.

(4) All asbestos removed during an asbestos abatement project must be properly disposed of in an approved asbestos

disposal facility. Proper disposal must be done in accordance with the provisions outlined in Federal Register Vol. 54, No. 6 (January 10, 1989).

(5) Application for an asbestos abatement project permit does not relieve the applicant of responsibility with regard to any applicable federal or state notification requirements.

(6) If the time during which an asbestos abatement project is to be performed changes, the asbestos contractor shall notify the department of such change by telephone at least 24 hours prior to:

(a) implementation of the new scheduled date; or

(b) the original scheduled date, whichever comes first. This notification must be followed by written notification to the department of the newly scheduled dates within 72 hours of the telephone call. If the dates are substantively different, the department may require the permit holder to amend his permit.

(7) For an asbestos abatement project which costs \$3000 or less, the department shall issue an asbestos abatement project permit within 7 calendar days following the receipt of a properly completed permit application and the required fee under Rule XXVIII.

(8) No person engaged in a permitted asbestos abatement project may violate the conditions of the permit.

(9) The department hereby adopts and incorporates by reference 29 CFR 1926.58, 1988 edition, including all appendices; 40 CFR Part 763, 1988 edition, 40 CFR 763.120, 1988 edition, 40 CFR 763.121, 1988 edition, and 40 CFR 763.124, 1988 edition, which set forth requirements for asbestos standards for the construction industry and worker protection; and Federal Register Vol. 54, Nov. 6 (January 10, 1989) which sets forth requirements for transportation and disposal of asbestos-containing material. A copy of each may be obtained from the Occupational Health Bureau, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620.

AUTH: 75-2-503, MCA; IMP: 75-2-503, 75-2-511, MCA

RULE XXII ANNUAL PERMITS

(1) The owner and/or operator of a facility that maintains an asbestos health and safety program which incorporates standard operating procedures for employees involved in asbestos abatement projects in accordance with 29 CFR 1926.58, 1988 edition, including all appendices, and with 40 CFR 763.120, 1988 edition, 40 CFR 763.121, 1988 edition, and 40 CFR 763.124, 1988 edition, and which facility continuously employs asbestos workers accredited by the department, may apply to the department for an annual permit for the facility. An annual permit authorizes the facility to conduct asbestos abatement projects within the confines of the facility's controlled area during the period for which the permit is in force.

(2) The owner and/or operator of a facility which contracts with outside contractors for performance of asbestos abatement projects within the confines of the facility's con-

trolled area may apply for an annual permit for the facility. As conditions for the annual permit, an outside contractor and his employees must be made subject to the facility's health and safety program, and the application must meet all other requirements for an annual permit. An annual permit may retain only one primary contractor as a condition to the initial annual permit. An annual permit does not apply to asbestos abatement projects being performed by contractors who are not named on the annual permit. The owner or operator of a facility may apply for an amendment to an annual permit in which the permit holder would be allowed to retain additional outside contractors or to change the primary contractor named on the initial annual permit. Application for amendment to an annual permit is subject to a fee as outlined in Rule XXVIII and must be submitted in writing to the department.

(3) The owner and/or operator of a facility may apply to the department on its permit application for the right to collect air samples through a contractor who is contractually related to the facility, contrary to the provisions of Rule V(2)(a), if the owner and/or operator agrees as a condition of the permit to direct health and safety personnel to monitor air sampling and to ensure that air samples are collected properly.

(4) Receipt of an annual permit does not relieve the holder of the permit from compliance with state and federal requirements pertaining to asbestos abatement project notification.

(5) A facility owner and/or operator must make application for renewal of an annual permit on an annual basis.

(6) The owner and/or operator of a facility making application for an annual permit must submit to the department, by certified mail, all of the following:

(a) A properly completed application on forms provided by the department;

(b) A description of the structure and the asbestos work to be performed, and a copy of the facility's health and safety program on asbestos;

(c) A signed statement that all work performed under authorization of the requested annual permit will be performed in accordance with 29 CFR 1926.58, 1988 edition, including all appendices, and with 40 CFR 763.120, 1988 edition, and 40 CFR 763.121, 1988 edition.

(d) A signed statement indicating that all work will be performed by asbestos abatement workers and supervisors accredited by the department;

(e) A signed statement indicating that removed asbestos will be disposed of at an approved disposal facility, the name and location of the facility, and the entity which has approved the facility; and

(f) The required fee for receipt of a permit from the department as set forth in Rule XXVIII.

(7) The department hereby adopts and incorporates by reference 29 CFR 1926.58, 1988 edition, 40 CFR 763.120, 1988 edition, 40 CFR 763.121, 1988 edition, and 40 CFR 763.124, 1988 edition, which set forth, respectively, requirements for asbes-

tos standards for the construction industry and worker protection. A copy of each may be obtained from the Occupational Health Bureau, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620.
AUTH: 75-2-503, MCA; IMP: 75-2-503, 75-2-504, MCA

RULE XXIII EMERGENCY ASBESTOS PROJECT PERMITS (1) In an emergency situation where there is an immediate danger to life, health or the environment, property, or facility operation, a person seeking a permit shall provide the department an application for an asbestos abatement project permit within five days of the initiation of the project. The application shall be accompanied with a description of the emergency situation and the reasons why the permit was not sought prior to initiation of the project. This rule does not apply to a facility operating with a valid annual permit.
AUTH: 75-2-503, MCA; IMP: 75-2-503, MCA

RULE XXIV ASBESTOS ABATEMENT PROJECT CONTROL MEASURES
(1) An accredited asbestos abatement supervisor shall be physically present at all times at the work-site where a permitted asbestos abatement project is being performed. The asbestos abatement supervisor must be accessible to all workers.
(2) On-site air monitoring must be conducted by an accredited contractor/supervisor.
AUTH: 75-2-503, MCA; IMP: 75-2-503, MCA

RULE XXV RECORDKEEPING (1) A person performing an asbestos abatement project shall retain a record of each asbestos abatement project and shall make the record available to the department at any reasonable time.
(2) Records required by this sub-chapter must be kept for a minimum of 30 years. These records shall include but not be limited to the following:
(a) The name, address, and accreditation ID number of the individual who supervised the asbestos abatement project, and of each employee or agent who worked on the project;
(b) The location and description of the project and the amount of asbestos that was enclosed, removed, or encapsulated;
(c) The starting and completion dates of each instance of enclosure, removal, or encapsulation;
(d) A summary of the procedures that were used to comply with all applicable standards;
(e) The name and address of each asbestos disposal site where the waste which contained asbestos was deposited. Holders of annual permits are not required to maintain records (designating where wastes are deposited) pertaining to specific asbestos abatement projects, but holders of annual permits shall maintain records of each shipment of waste containing asbestos;
(f) A receipt from the asbestos disposal site indicating the amount of asbestos that was deposited at the asbestos dis-

posal site and the date of the deposit. Holders of annual permits are not required to maintain records pertaining to specific asbestos abatement projects, but shall maintain records for each shipment of waste containing asbestos;

(g) Transportation manifest records as outlined in Federal Register Vol. 54, No. 6 (January 10, 1989).

(3) The department hereby adopts and incorporates by reference Federal Register Vol. 54, Nov. 6 (January 10, 1989) which pertains to transportation and disposal of asbestos containing materials. A copy of Federal Register Vol. 54, No. 6 (January 10, 1989) may be obtained from the Occupational Health Bureau, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620.

AUTH: 75-2-503, MCA; IMP: 75-2-503, 75-2-513, MCA

RULE XXVI INSPECTIONS (1) A person performing or in charge of an asbestos abatement project shall:

(a) Afford the department, at all reasonable times, the opportunity to inspect the site of the asbestos abatement project; and

(b) Make records maintained pursuant to this sub-chapter available to the department upon reasonable request for inspection and copying.

(2) Department inspectors may consult privately with workers concerning matters of occupational exposure to asbestos and other matters related to the applicable provisions of this sub-chapter, to the extent the inspectors deem necessary for the conduct of an effective and thorough inspection.

(3) Accreditation credentials and a photo ID of persons involved in an asbestos abatement project must be available at the asbestos abatement project site at all times and must be made available to the department upon request for inspection.

(4) For the purposes of payment of a fee for receipt of a permit, the fee paid for receipt of a permit may cover one inspection of an asbestos abatement project being conducted by the department as a component of the permitting process. If any additional inspections are conducted by the department, the person in charge of the asbestos abatement project or the asbestos contractors must pay an additional inspection fee to the department as set forth in Rule XXVIII.

AUTH: 75-2-503, MCA; IMP: 75-2-503, MCA

RULE XXVII RECIPROCITY (1) Each applicant for accreditation in an asbestos-type occupation who is accredited in another state may request accreditation from the department based upon accreditation requirements of the state where the applicant is accredited. The department shall evaluate the requirements for accreditation in the other state, and may provide an accreditation if the requirements for accreditation in the other state are equal to, or more stringent than, the accreditation requirements under this sub-chapter.

AUTH: 75-2-503, MCA; IMP: 75-2-503, MCA

RULE XXVIII FEES FOR PERMITS (1) Applicants for permits must pay a permit fee to the department upon application for a permit as follows:

(a) asbestos abatement project permit:

(i) contract volume for asbestos abatement range:

\$0-\$3,000 3% of contract volume
\$3,001-\$10,000 \$15 plus 2.5% of contract volume
\$10,001-\$50,000 \$40 plus 2.25% of contract volume
\$50,001-\$100,000 \$165 plus 2% of contract volume
\$100,001-\$500,000 \$665 plus 1.5% of contract volume
greater than \$500,000 \$3,165 plus 1% of contract volume

(b) annual permit \$1,000

(c) annual permit with one outside contractor ... \$1,500

(d) additional inspections of asbestos abatement project premises \$300

(e) amendments to annual permit \$300

AUTH: 75-2-503, MCA; IMP: 75-2-503, 75-2-504, MCA

RULE XXIX ACCREDITATION & ACCREDITATION RENEWAL APPLICATIONS (1) All persons seeking accreditation in an asbestos-type occupation or renewal of accreditation in an asbestos-type occupation must pay a fee for accreditation or renewal for each accreditation or renewal as follows:

(a) asbestos inspector \$100

(b) asbestos management planner \$100

(c) asbestos abatement project designer \$100

(d) asbestos contractor \$100

(e) asbestos abatement supervisor \$ 50

(f) asbestos worker \$ 25

(2) For accreditation and renewal in more than one discipline with an application for each simultaneously submitted to the department, the fee is \$200 or the total of the individual discipline fees, whichever is less.

AUTH: 75-2-503, MCA; IMP: 75-2-503, MCA

RULE XXX COURSE APPROVAL (1) All persons seeking approval of courses must pay to the department the following amounts:

(a) course approval \$750

(b) course changes \$300

AUTH: 75-2-503, MCA; IMP: 75-2-503, MCA

RULE XXXI COURSE AUDITS (1) All audits of approved training courses and refresher courses are subject to the following fees, which must be paid by persons offering such courses to the department after the audit:

(a) asbestos inspector course \$600

(b) asbestos management planner course \$425

(c) asbestos abatement project designer course \$600

(d) asbestos abatement contractor/supervisor course \$1,200

(e) asbestos abatement worker course \$600

(f) two or more courses presented in conjunction . \$1,500
(g) refresher course \$500
AUTH: 75-2-503, MCA; IMP: 75-2-503, MCA

RULE XXXII. PENALTY (1) In addition to all statutory remedies available upon discovering a violation of this subchapter or of sections 75-2-501 through 75-2-514, MCA, the department may initiate a compliance action in the form of a written administrative order, which order shall cite the violation, state the required corrective action, and state any administrative action which is being taken by the department, if any, actions which may include suspension, denial, revocation of a person's accreditation, or issuance of an order to stop work on the asbestos abatement project.

(2) If a violation is deemed severe in the opinion of the department, a written order stating the violation and establishing the corrective action may be issued to the asbestos abatement project supervisor at the work site.

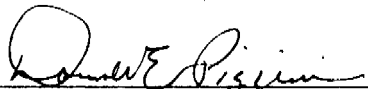
(3) If violations in a written order are not corrected, or if other requirements of an order issued by the department are not adhered to, the department may seek civil and criminal penalties as provided for in statute.

AUTH: 75-2-503, MCA; IMP: 75-2-503, 75-2-514, MCA

4. These rules are being proposed to implement the department's rulemaking and administrative responsibilities under sections 75-2-501 through 75-2-514, MCA, and to bring the department into compliance with federal law.

5. Interested persons may submit their data, views, or arguments concerning the proposed rules, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Tom Ellerhoff, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620, no later than December 7, 1989.

6. Tom Ellerhoff, at the above address, has been designated to preside over and conduct the hearing.


DONALD E. PIZZINI, Director

Certified to the Secretary of State October 30, 1989.

BEFORE THE DEPARTMENT OF INSTITUTIONS
OF THE STATE OF MONTANA

In the matter of the proposed)	NOTICE OF PROPOSED AMENDMENT
amendment of Rule 20.7.102)	OF RULE 20.7.102, Prisoner
which sets forth the prisoner)	Application Procedure, Gen-
application procedure for the)	eral Statute Requirement
supervised release program.)	
)	No Public Hearing
)	Contemplated

TO: All Interested Persons

1. On December 21, 1989, the Department of Institutions proposes to amend rule 20.7.102 which sets forth the prisoner application procedure for the supervised release program.

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

20.7.102 PRISONER APPLICATION PROCEDURE, GENERAL STATUTE REQUIREMENTS (1) Any prisoner confined in the state prison, except a prisoner serving a sentence imposed under 46-18-202(2), may make an application to participate in the supervised release program:

(a) remains the same.
(b) remains the same.
(c) if he has served at least one-half of the time required to be considered for parole and not more than 1524 months remain before he is eligible for parole if his date of crime is after October 1, 1981.

(2) Grid Classification Instruments - the prisoner will be rated by a scored profile charts of risk behavioral and needs social issues. In order to be eligible the applicant must achieve ~~66% of the total possible score~~ a score within the minimum risk category. A score of 0-7 on the risk scale and 0-14 on the needs scale constitute a minimum classification. An applicant must obtain a minimum score on each scale. Applicants who qualify may then appear before the board for a subjective interview. Criteria are:

{a} Institutional-adjustment-
{b} Work-habits-when-employed-
{c} Positive-support-systems-
{d} Drug-and-alcohol-history-
{e} Community-risk-
{f} Escapes-
{g} Responsibility-for-self-
{h} Consumer/domestic-skills-
{i} Age-Factor-
{j} Item-(d)-above-will-not-be-computed-as-part-of-the
grid-factors-when-interviewing-an-applicant-for-a-drug/alcohol
treatment-programs-

(a), (b), and (c) remain the same.

(3)(4) The ~~grid-scoring~~ classification system will not be used under the following special conditions:

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

AUTH: 46-23-405 MCA

IMP: 46-23-411 MCA

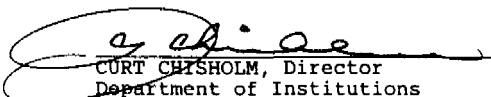
3. It is anticipated that the proposed rule change will result in increased participation in the supervised release program. The classification system proposed was designed with the guidance of the National Institute of Corrections and is based in sound research which reliably predicts risk of future criminal behavior. The previous "grid" eliminated most applicants due to a non-scientific emphasis on a few sociological factors.

4. Interested parties may submit their data, views, or arguments concerning the proposed amendments in writing to the Legal Unit, Department of Institutions, 1539 11th Avenue, Helena, Montana 59620, no later than December 11, 1989.

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 the Legal Unit, Department of Institutions, 1539 11th Avenue, Helena, Montana 59620, no later than December 11, 1989.

6. If the Department receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendment; from the Administrative Code Committee of the legislature, from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 118 persons based on 1,078 inmates at Montana State Prison, 52 inmates at Womens Correctional Center and 54 inmates at Swan River Forest Camp.

7. The authority of the agency to make the proposed amendments is based on Section 46-23-405 MCA, and the rule implements Sections 46-23-405, 411 MCA, and 53-1-501, MCA.


CURT CHRISTHOLM, Director
Department of Institutions

Certified to the Secretary of State
October 30th, 1989.

21-11/9/89

MAR Notice No. 20-7-5

In the matter of the) NOTICE OF
adoption of rules) PUBLIC HEARING
regulating gambling)

1. On December 11, 1989, at 8:30 a.m., a public hearing will be held in room 325 of the state capitol in Helena, Montana, to consider the adoption of new gambling rules.

3. The proposed rules provide as follows:

(1) "Applicant" means a person who has applied for a license issued by the department under Title 23, chapter 5, MCA.

(3) "Dealer" means a person who:

(b) may accept wagers and dispense winnings in a card

(5) "Gambling license" means any license issued by the
tment pursuant to Title 23, chapter 5, MCA.

(7) "Manufacturer/distributor" means a person who:

(b) purchases or obtains from another person equipment of any kind for use in gambling activities and sells, leases, or otherwise furnishes this equipment to another person.

(9) "Operator" means a person who operates or controls use in public a gambling device or gambling enterprise.

IMP: Sec. 23-5-112, MCA.

RULE II APPLICATION FOR GAMBLING LICENSE - LICENSE FEE

(1) Every person working as a dealer, operator, manufacturer/distributor, or manufacturer of illegal gambling devices as defined by Title 23, chapter 5, MCA, and by these rules must have a valid license issued by the department.

(2) An application for a gambling license must be submitted to the department of justice, gambling control division, on forms prescribed by the department and described herein. The application is not complete unless it is signed and dated by the applicant and contains all information, statements, documentation, and fees required by the department.

(3) The application must contain a document authorizing the disclosure of confidential information which must be signed and dated by the applicant whose signature must be attested to before a notary public for the state of Montana.

(4) Any first year license fee required by Title 23, chapter 5, MCA, must accompany each application.

(5) Applicants for specific types of gambling licenses issued by the department must comply with any special requirements contained in rules applicable to those licenses.

AUTH: Sec. 23-5-115(2), MCA.

IMP: Sec. 23-5-115(3), MCA.

RULE III INVESTIGATION OF APPLICANTS, FINGERPRINTS MAY BE REQUIRED (1) An applicant for a gambling license must make full disclosure of all information required by the department, these rules, and Title 23, chapter 5, MCA.

(2) The department may, at its discretion, require additional information, documentation, or disclosure from an applicant for a gambling license. This information may include fingerprints.

AUTH: Sec. 23-5-115(2), MCA.

IMP: Sec. 23-5-308, MCA.

RULE IV PROCESSING OF GAMBLING LICENSE APPLICATION

(1) Upon receipt of an application for a gambling license, the department must make a thorough investigation as to the qualifications of the applicant for licensure. If, upon conclusion of such investigation, the applicant appears qualified under the law, a license must be issued if all requirements of the law and these rules are fulfilled.

(2) The department may consider the same matters, conditions, and qualifications for renewal of a gambling license as for the original application.

AUTH: Sec. 23-5-115(2), MCA.

IMP: Sec. 23-5-115(3), MCA.

RULE V GROUNDS FOR DENIAL OF GAMBLING LICENSE (1) The department may deny initial issuance or renewal of a gambling license or, if issued, suspend or revoke such license when it can be demonstrated an applicant or holder of such license has:

(a) concealed, failed to disclose, or otherwise attempted to mislead the department with respect to any material fact

contained in the application or investigation for a gambling license or license renewal application; or

(b) purposely or knowingly failed to comply with Title 23, chapter 5, MCA, or these rules; or

(c) been convicted of committing, conspiring, or attempting to commit any felony, gambling-related misdemeanor, or other crime which is contrary to the declared policy of the state of Montana with regard to gambling; or

(d) been placed and remains in actual or constructive custody of any federal, state, or local law enforcement authority or court for any felony, gambling-related misdemeanor, or other crime which is contrary to the declared policy of the state of Montana with regard to gambling; or

(e) purposely or knowingly possessed or permitted to remain in or upon any premise licensed for gambling activity any device designed for the purpose of cheating or manipulating the outcome of any gambling activity or gambling enterprise authorized by Title 23, chapter 5, MCA; or

(f) purposely or knowingly committed, attempted, or conspired to commit theft or embezzlement against a gambling licensee or gambling enterprise; or

(g) been convicted in any jurisdiction of any offense involving or relating to gambling; or

(h) been prohibited by a governmental authority from being present upon the premises of any gambling establishment or gambling enterprise or any establishment where pari-mutual wagering is conducted for any reason relating to improper gambling activities or any illegal act;

(i) failed to cooperate with any legislative investigative committee or other officially constituted body acting on behalf of the United States or any state, county, or municipality which seeks to investigate crimes relating to gambling, corruption of public officials, or any organized criminal activities;

(j) had any action taken against a gambling license by any agency of the state of Montana or other jurisdiction; or

(k) failed to meet other qualifications for licensure as set forth in section 23-5-176, MCA.

(2) A person whose gambling license application has been denied for other than technical defects in the application may not reapply for a license for a period of one year from the date of denial.

(3) A person whose gambling license has been revoked may not reapply for a license for a period of one year from the date of the revocation.

AUTH: Sec. 23-5-115(2), MCA.

IMP: Sec. 23-5-115(3), MCA.

RULE VI. RECOURSE IN CASES OF DENIAL OR NON-PENEWAL OF GAMBLING LICENSE - HEARING, JUDICIAL REVIEW (1) Upon

completion by the department of its investigation of an applicant's qualifications for licensure, the department shall notify the applicant in writing of its intended action. If the

applicant then desires a hearing, he must submit a written request to the department within 20 days. An applicant's request for hearing must state whether he waives or invokes the confidentiality requirements of section 23-5-115(6), MCA.

(2) Upon receipt by the department of a written request for hearing, all proceedings involving the denial or non-renewal of a gambling license shall be conducted in accordance with the Montana Administrative Procedure Act and the attorney general's Model Rules of Procedure.

AUTH: Sec. 23-5-115(2), MCA.

IMP: Sec. 23-5-115(3), MCA.

RULE VII RENEWAL OF GAMBLING LICENSE (1) Renewal of an existing gambling license must be accomplished by submitting a renewal application on forms prescribed by the department. A renewal application is not complete unless it is signed and dated by the applicant and contains all information, statements, and documentation required by the department.

(2) The renewal license fee required by Title 23, chapter 5, MCA, must accompany each renewal application.

AUTH: Sec. 23-5-115(2), MCA.

IMP: Sec. 23-5-115(3), MCA.

RULE VIII INSPECTION OF LICENSED PREMISES, RECORDS, AND DEVICES (1) Any licensed premise where gambling-related activity is conducted or any premise connected to the operation of a licensed gambling-related activity shall at all times be open to inspection by the department or local law enforcement official in order to determine compliance with the law of Montana and rules of the department.

(2) At any time during which a licensed gambling activity is being operated upon a premise, the department may enter upon the premise without advance notice and:

(a) inspect the records related to the operation of any license gambling activity;

(b) inspect, including the dismantling of, all pieces of equipment and parts thereof, or devices of any nature, which are being used to conduct the licensed activity; and

(c) make a count of all monies involved in the operation of the licensed activity located on the premise.

AUTH: Sec. 23-5-115(2), MCA.

IMP: Sec. 23-5-115(3), MCA.

RULE IX CREDIT PLAY PROHIBITED All playing of games of chance must be on a cash basis. No credit may be extended to any player. Consideration to play a game of chance must be paid in full, in cash, in advance of any play. No operator may grant a loan of any kind at any time to a player or permit a deferred payment including post-dated checks or engage in any similar practice.

AUTH: Sec. 23-5-115(2), MCA.

IMP: Sec. 23-5-115(3), MCA.

RULE X ADMINISTRATIVE PROCEDURE (1) Upon completion by the department of its investigation of any proposed variant of a legal gambling activity or any suspected violation of Title 23, chapter 5, parts 1 through 6, MCA, or the rules of the department, the department shall notify the person involved of its intended action. If the person involved then desires a hearing, he must submit a written request to the department within 20 days.

(2) Upon receipt by the department of a written request for hearing, all proceedings involving the proposed variant of a legal gambling activity or the alleged violation shall be conducted in accordance with the Montana Administrative Procedure Act and the attorney general's Model Rules of Procedure.

(3) If requested, judicial review shall be conducted in accordance with section 23-5-137, MCA, and the Montana Administrative Procedure Act. In cases of conflict, section 23-5-137, MCA, shall prevail.

AUTH: Sec. 23-5-115(2), MCA.

IMP: Sec. 23-5-115(3), MCA.

RULE XI APPLICATION FOR DEALER LICENSE (1) The application for a dealer license must contain a temporary dealer license form which, when accompanied by a receipt for certified mail, will serve as a temporary dealer license pending the issuance of an annual dealer license.

(2) Applications for dealer licenses are available only at driver examination stations. At the time an application for a dealer license is obtained by an applicant, the applicant must appear in person and present photographic verification of his identity to an authorized representative of the driver services bureau. The authorized representative of the driver services bureau must:

(a) record the verified identity of the applicant on the temporary dealer license form portion of the application and sign and date said form;

(b) assign an identification number to the applicant and record this number in the proper locations on the application; and

(c) obtain a photograph of the applicant utilizing the assigned identification number in a manner which will identify the applicant for future issuance of an annual dealer license as described by these rules.

(3) The first year license fee required by Title 23, chapter 5, MCA, must accompany each application.

AUTH: Sec. 23-5-115(2), MCA.

IMP: Sec. 23-5-308, MCA.

RULE XII DEALER LICENSE (1) A dealer license issued by the department must be in the form of a laminated identification card and must contain the following information:

- (a) on the front of the license:
 - (i) a photograph of the person to whom the license is issued;
 - (ii) the first name, middle initial, and last name of the person to whom the license is issued; and
 - (iii) the assigned license number and expiration date specific to the person to whom the license is issued.
- (b) on the back of the license:
 - (i) the home address, height, weight, eye color, hair color, date of birth, sex, and social security number of the person to whom the license was issued.
 - (2) Every dealer license expires annually on the licensee's birthday, and in no case less than 12 months from the date of issuance.

AUTH: Sec. 23-5-115(2), MCA.

IMP: Sec. 23-5-308, MCA.

RULE XIII TEMPORARY DEALER LICENSE (1) A temporary dealer license obtained by an applicant pursuant to these rules is valid only when attached to a receipt for certified mail which has been postmarked by the United States Postal Service at the time the application for dealer license is sent to the department.

(2) The temporary dealer license expires at midnight on the 90th day following the date of the postmark displayed on the receipt for certified mail.

AUTH: Sec. 23-5-115(2), MCA.

IMP: Sec. 23-5-308(5), MCA.

RULE XIV PROCESSING OF DEALER LICENSE APPLICATION RENEWAL, OR REPLACEMENT (1) In every case in which application is made to the department for a dealer license, the department will, within ninety (90) days:

- (a) issue a dealer license to the applicant; or
- (b) deny a dealer license to the applicant.
- (2) An application to renew a gambling license must be received by the department prior to the expiration date of the license. An application not postmarked by the date of expiration will result in expiration of the gambling license and will require the expired license holder to reapply for a new original license in the manner required by these rules.
- (3) Replacement of a gambling license is accomplished by following the new license procedure and including a \$10 fee.

AUTH: Sec. 23-5-115(2), MCA.

IMP: Sec. 23-5-308(5), MCA.

RULE XV CONFISCATION OF TEMPORARY DEALER LICENSE (1) A temporary dealer license may be immediately confiscated by authorized representatives of the department when the following conditions can be demonstrated:

- (a) The holder of such license has been placed or remains in actual or constructive custody as a result of any felony or

gambling-related misdemeanor and is awaiting trial on such criminal charges; or

(b) The holder of such license has not affixed the certified mail receipt to the license as required by these rules; or

(c) A certified mail receipt is affixed to such license but displays no postmark as required by these rules; or

(d) The license has expired; or

(e) The department has denied a dealer license to the holder of such a license; or

(f) The department has returned an incomplete dealer license application and the applicant has not acted within 15 days of mailing by the department to correct the deficiency.

(2) An applicant whose temporary dealer license has been confiscated under these rules may appeal the confiscation through the provision of the Montana Administrative Procedure Act.

AUTH: Sec. 23-5-115(2), MCA.

IMP: Sec. 23-5-308(5), MCA.

RULE XVI POSSESSION OF DEALER LICENSE (1) A dealer license must be carried on the licensee's person while on duty in a gambling premise.

(2) Every person in possession of a dealer license must surrender such license to any peace officer of the state of Montana upon request for the purpose of inspecting said license and identifying the licensee.

AUTH: Sec. 23-5-115(2), MCA.

IMP: Sec. 23-5-308(5), MCA.

RULE XVII DEALER LICENSE SPECIFIC TO THE PERSON NAMED THEREON (1) A dealer license is specific to the person named on the face of the license and must not be displayed by anyone other than the licensee.

(2) A dealer license displayed by anyone except the licensee is subject to confiscation by federal, state, or local law enforcement office charged with the responsibility of investigating gambling activities.

(a) Any confiscated dealer license must be sent to the department along with a report detailing the circumstances of the seizure.

(b) Upon receipt of a confiscated dealer license and the accompanying report, the department must immediately begin an investigation into the circumstances for the purposes of determining whether a violation of Title 23, chapter 5, MCA, or these rules occurred.

AUTH: Sec. 23-5-115(2), MCA.

IMP: Sec. 23-5-308(5), MCA.

RULE XVIII DEFINITIONS As used throughout this subchapter, the following definitions apply:

(1) "Applicant" means a person who has applied for an operator license issued by the department under Title 23, chapter 5, MCA.

(2) "Department" means the department of justice unless otherwise specifically stated.

(3) "Provisional operator license" means a license issued provisionally by the department to make available to the public for play a gambling device or gambling enterprise.

AUTH: Sec. 23-5-115(2), MCA. JMP: Sec. 23-5-176 & 177, MCA.

RULE XIX APPLICATION FOR OPERATOR LICENSE (1) All applicants for operator licenses issued by the department must submit the following information:

(a) name(s), addresses, telephone numbers, and social security numbers; history of gambling licensure with any federal, state, or local agency; civil and criminal record; and record of residence and employment of the business owners for the last 15 years.

(b) the applicant's most recent financial statements with the application form. Statements submitted to state and federal income tax agencies as part of the most recent tax returns are acceptable;

(c) the amounts and sources of all business financing, along with the terms of each loan agreement;

(d) the following ownership/management information, as applicable:

(i) if the business is a sole proprietorship, the above-cited information must be submitted on the proprietor; or

(ii) if the business is a partnership, the information must be submitted on each general and limited partner; or

(iii) if the business is a closely-held or subchapter s corporation, the information on each shareholder, and each officer and director if not the same; or

(iv) if the business is a publicly-traded corporation, the names of each shareholder owning 5 percent or more of the company stock and the corporate officers and board of directors; or

(v) if the applicant is a nonprofit corporation or association, the information must be submitted on the applicable managing body, i.e., board of directors or steering committee; or

(vi) if the owner(s) acquires the services of a gaming manager or management firm, the information must not only be submitted on the owner but the manager or firm as well; and

(e) the following information regarding employees and business associates:

(i) the full name and address of every person employed by the applicant in a gambling-related activity in Montana on a salary or commission basis;

(ii) every person who has any right to share in the profits of the gambling operation including assignees, landlords, or otherwise, to whom any interest or share of profits has been pledged as security for a debt or deposited as security for the performance of any act or to secure the performance of a contract of sale;

(iii) a list of those with options to purchase a share of the business.

(2) Operator licenses must be renewed annually by completing forms prescribed by the department.

AUTH: Sec. 23-5-115(2), MCA. IMP: Sec. 23-5-176 & 177, MCA.

RULE XX INVESTIGATION OF APPLICANTS, ADDITIONAL INFORMATION MAY BE REQUIRED (1) The department may require access to all of the applicant's financial records to evaluate statements and support documentation supplied with the background application form.

AUTH: Sec. 23-5-115(2), MCA. IMP: Sec. 23-5-176 & 177, MCA.

RULE XXI PROVISIONAL OPERATOR LICENSE (1) The department may issue to an applicant for an operator license a provisional license pending the results of the investigation of the applicant's suitability for licensure. A provisional license will be revoked upon a determination that the applicant does not qualify for licensure. Upon a final determination that the applicant does qualify for licensure the department will issue an order removing the license from provisional status.

(2) A person granted a provisional operator license by the department must comply with all laws of the State of Montana and rules of the department.

AUTH: Sec. 23-5-115(2), MCA. IMP: Sec. 23-5-176 & 177, MCA.

RULE XXII CHANGES IN OWNERSHIP REPORTING (1) With the exception of subsection (2) a new application for licensure must be submitted with each change in ownership.

(2) With regard to publicly traded corporations, changes are subject to the limitations contained in these rules.

(3) All new officers and directors must be reported to the department within 30 days of the date of change.

(4) As defined in Rule XIX, all new owners, officers, and directors are subject to the same background information requirements specified previously in this subsection. Applications are subject to license denial if the changes in ownership do not meet with department approval.

AUTH: Sec. 23-5-115(2), MCA. IMP: Sec. 23-5-176 & 177, MCA.

RULE XXIII DEFINITIONS As used throughout this subchapter, the following definitions apply:

(1) "Ante" means the amount of money or chips each player places into the pot before the first deal of each game.

(2) "Authority reference" means Official Poker Rulebook, copyright 1988, Las Vegas Hilton, except for sections E, F, and H and Scarne's Encyclopedia of Card Games by John Scarne, pages 18 through 276. These books will be used by the department as the authority on how to play authorized card games. The sections of the books cited as authority will not apply where there is a conflict with state law or department rule.

(3) "Banking game" means a game where there is a fund against which everyone has the right to bet, the bank taking all that is lost by the bettors and paying all that is won. The test of such a game is whether the banker pays winnings and suffers losses. The game is not a banking game where the players bet against each other and settle with each other. Games in which any portion of the games includes betting against a fund are considered banking games.

(4) "Blind bet" means the money a player places into the pot before looking at his or her cards.

(5) "To burn a card" means to discard a card from the top of the deck and place it face down on the table according to house rules.

(6) "Cap card" means a blank card placed on the bottom of the deck.

(7) "Card table" or "live card game table" means a table licensed by the department on which no more than one authorized card game is played at a time.

(8) "Cutting card" means a blank card inserted by a player at the point where the player wishes the dealer to make a cut.

(9) "Dead card or hand" means a card or hand ruled out of play and ineligible to win any part of the pot.

(10) "Fouled hand" means a hand that either has an improper number of cards or has come in contact with discards.

(11) "Game" means a period in a session of play, from which emerges a winner(s).

(12) "Hand" means the cards dealt to or drawn by a player or the period of time in poker between dealing of the cards and winning of the pot.

(13) "House player" means any person who has a financial relationship with a dealer or an operator including, but not limited to, shills, proposition players, employees, or independent contractors.

(14) "Operator" means an individual licensed to conduct public gambling pursuant to Title 23, chapter 5, MCA.

(15) "Player" means a natural person participating in a live card game specifically authorized in Title 23, chapter 5, MCA, and described by these rules.

(16) "Poker" means a card game played by at least two players who bet against each other and settle with each other and not against the house. Poker is dealt by one dealer on a

card table. A player bets on the cards (hand) the player holds. There may be an initial ante round and/or blind bet by the players. After the players receive their starting cards, there are one or more betting rounds. After all the dealing of cards and betting has occurred for a pot and there are two or more players still in contention, there is a showdown based on a maximum of five cards. The object of the game is for a player to win the pot either by making a bet no other player is willing to match or by having the best hand as described in these rules.

(17) "Pot" means all the bets placed by the players collected together.

(18) "rake" means a set fee or percentage of the pot assessed by an operator for providing the services of a dealer, table, and location for public play.

(19) "Showdown" means the hands shown by all players remaining in the game.

(20) "Table stakes" means the amount of chips or cash in front of the player prior to the beginning of a hand.

AUTH: Sec. 23-5-115(2), MCA.

IMP: Sec. 23-5-311, MCA.

RULE XXIV TYPES OF CARD GAMES AUTHORIZED (1) The following card games are authorized by law and must be played only in the manner set out for that game in the applicable authority reference:

(a) general poker rules, practices, and the games of Texas Hold'em, Draw Poker, Omaha, Seven Card Stud, and their variations according to Official Poker Rulebook, Copyright 1988, Las Vegas Hilton, except for sections E, F, and H; and

(b) other poker variations, Bridge, Cribbage, Hearts, Panguingue, Pinochle, Pitch, Rummy, Solo, and Whist, according to Scarne's Encyclopedia of Games by John Scarne, page 18 through 276.

(2) Card games not specifically authorized herein are prohibited.

(3) The department may approve other proposed variations of card games authorized by Title 23, chapter 5, MCA. Persons submitting card games for approval must provide the following information to the department:

(a) A complete description of the play of game, including but not limited to, the ranking of cards, betting procedures, number of cards in the showdown, and role of the house in the game; and

(b) The history of game.

(4) The department may require an actual demonstration of any game submitted for approval.

(5) Upon completion by the department of its investigation of a proposed card game variation, the department shall notify in writing the person submitting the card game variation of its intended action. If the person then desires a hearing, he or she must submit a written request to the department within 30 days. From that point onward, all

proceedings shall be conducted in accordance with the Montana Administrative Procedure Act and the attorney general's Model Rules of Procedure.

(6) No variations other than those authorized by the department may be played prior to department approval.

(7) Each licensed operator may establish rules of conduct for the card players on its premises.

AUTH: Sec. 23-5-115(2), MCA.

IMP: Sec. 23-5-311, MCA.

RULE XXV RANKING OF POKER CARDS AND HANDS (1) The cards in poker are ranked ace, king, queen, jack, ten, nine, eight, seven, six, five, four, three, deuce. The ace is the highest ranked card in high poker and is ranked lower than a deuce in low poker.

(2) The hands in poker are ranked and defined as follows from highest to lowest:

(a) Five of a kind - four cards of the same rank and a wild card.

(b) Straight flush - five cards of the same suit in sequence. An ace high straight flush is a "royal flush."

(c) Four of a kind - four cards of the same rank.

(d) Full house - three cards of the same rank and two cards of another rank.

(e) Flush - five cards of the same suit.

(f) Straight - five cards in sequence.

(g) Three of a kind - three cards of the same rank.

(h) Two pair - two cards of the same rank and two cards of another rank.

(i) One pair - two cards of the same rank.

(j) Highest card - the highest ranking card in the hand of five unmatched cards.

(3) If two or more hands are tied in the ranking, the hand with the highest rank matched card or cards wins. Otherwise the tie must be broken by the rank of the unmatched cards in the hand.

(4) In the event hands are identical in all aspects except for the suit, players shall evenly divide the pot.

(5) Wild cards may be used in poker.

AUTH: Sec. 23-5-115(2), MCA.

IMP: Sec. 23-5-311, MCA.

RULE XXVI POKER CARDS - PHYSICAL CHARACTERISTICS

(1) The cards used in the game of poker must be one complete standard deck of 52 cards plus joker(s).

(2) The design on the backs of each card in the deck must be identical and no card may contain any marking, symbol, or design that will enable a player to know the identity of any element printed on the face of the card or that will in any way differentiate the back of that card from any other card in the deck. The backs of the cards may contain a logo.

(3) No operator or dealer may use cards that are taped, defaced, bent, crimped, or deformed in any manner.

AUTH: Sec. 23-5-115(2), MCA.

IMP: Sec. 23-5-311, MCA.

RULE XXVII POKER CHIPS - VALUE AND PHYSICAL CHARACTERISTICS

(1) Each poker chip used must be either clearly and permanently impressed, engraved, or imprinted on one side with a specific value of the chip or colored so as to clearly denote the value of the chip. At the operator's discretion, the other side of the chip may have the operator's name represented by a related design, symbol, abbreviation, or other identification which would differentiate the operator's chips from those being used by every other operator.

(2) Each denomination of poker chip must have a different primary color from the other denominations of chips. Each operator may, at its discretion, utilize contrasting secondary colors for any inlays on each denomination of poker chip.

(3) The value and colors of the poker chips must be conspicuously posted within sight of the card table.

(4) Poker chips must be sold for cash only and no credit of any nature may be extended to a person purchasing chips.

(5) The operator must redeem on demand its own chips for cash at the value for which they were sold.

AUTH: Sec. 23-5-115(2), MCA.

IMP: Sec. 23-5-311, MCA.

RULE XXVIII WAGERS TO BE MADE WITH POKER CHIPS OR CASH ONLY

All wagers must be made with poker chips or cash.

AUTH: Sec. 23-5-115(2), MCA.

IMP: Sec. 23-5-311, MCA.

RULE XXIX PERSONS NOT TO BRING THEIR OWN CARDS OR POKER CHIPS No person may bring to the card table or introduce into a poker game any playing card or cards or any poker chip or chips other than those obtained from the operator.

AUTH: Sec. 23-5-115(2), MCA.

IMP: Sec. 23-5-311, MCA.

RULE XXX PROCEDURE FOR ACCEPTING CASH AT THE POKER TABLE Each dealer who receives currency from a player at a poker table for exchange for poker chips shall observe the following procedures and requirements:

(1) The currency must be spread on the top of the poker table by the dealer accepting it, in full view of the player who presented it.

(2) The amount of currency must be verbalized by the dealer accepting it.

AUTH: Sec. 23-5-115(2), MCA.

IMP: Sec. 23-5-311, MCA.

RULE XXXI PLAYER RESTRICTIONS (1) There must be at least two players.

(2) No player in a poker game may play other than the player's own hand.

(3) A player shall only play one hand and the player shall make all decisions without advice from any person.

(4) No player may provide any information to any person regarding the player's live or folded hand. No person may provide any information to any other person regarding a player's live or folded hand.

AUTH: Sec. 23-5-115(2), MCA. IMP: Sec. 23-5-311, MCA.

RULE XXXII USE OF DEVICE PROHIBITED It is unlawful for any player to use any device to assist in keeping track of the cards played.

AUTH: Sec. 23-5-115(2), MCA. IMP: Sec. 23-5-311, MCA.

RULE XXXIII SPECIAL POLICIES Each operator may establish rules of conduct for the players and spectators on its licensed premise as long as the operator's rules do not conflict with state law or administrative rule.

AUTH: Sec. 23-5-115(2), MCA. IMP: Sec. 23-5-311, MCA.

RULE XXXIV DEALER RESTRICTIONS Licensed dealers shall have no financial interest, directly or indirectly, in the outcome of any game which they deal.

AUTH: Sec. 23-5-115(2), MCA. IMP: Sec. 23-5-311, MCA.

RULE XXXV HOUSE PLAYERS (1) The operator or dealer must identify house players upon request.

(2) House players may be used by the operator only for the purpose of starting and/or maintaining sufficient number of players in the card game.

AUTH: Sec. 23-5-115(2), MCA. IMP: Sec. 23-5-311, MCA.

RULE XXXVI DECKS - SHUFFLE AND CUT OF THE CARDS (1) The operator must have two separate decks of cards available at each table. The color of the backs of the cards of the two decks must be a different predominant color. Any player may request that the dealer change decks. If such a request is made, the dealer must switch the use of decks at the end of that hand.

(2) Immediately prior to commencement of play of each game, the dealer must, in front of the players, shuffle all cards so that they are randomly intermixed.

(3) The dealer must cut the cards. The dealer must restack the cards with the former bottom part of the deck on top. Then the dealer must place a cutting card or cap card on the bottom of the deck to conceal the last card.

(4) The dealer at least once per shift must count cards in the deck and sort them on the table to verify the deck is complete.

AUTH: Sec. 23-5-115(2), MCA.

IMP: Sec. 23-5-311, MCA.

RULE XXXVII ANTE, BLIND BET (1) A player may ante for each hand by placing a bet on the table in front of him or her before the first card of the game is dealt. Then, the dealer shall sweep the antes and place them in the pot. Once the first card has been dealt, the ante may not be altered.

(2) For a blind bet to be part of any game, it must be announced prior to beginning the deal. A blind bet may be used in addition to an ante.

AUTH: Sec. 23-5-115(2), MCA.

IMP: Sec. 23-5-311, MCA.

RULE XXXVIII RAKE (1) The rake may be a percentage of the pot or a set fee established by the house and must be clearly posted. The rake must remain in a designated area until the pot is awarded. The chip tray cannot be used as a designated rake area. After the pot is awarded, the rake must then be placed in a segregated area or drop box near the dealer.

(2) A percentage rake must be pulled from the pot in an obvious manner following the completion of each betting round.

(3) A percentage rake must be calculated based on the amount bet in each round and placed in a designated rake area which is clearly visible to all players.

AUTH: Sec. 23-5-115(2), MCA.

IMP: Sec. 23-5-312, MCA.

RULE XXXIX OPERATION OF THE GAMES (1) Play must always proceed in a clockwise direction, with each player's turn to act following the person on the player's immediate right.

(2) The operator may set a minimum buy-in for each game. The operator must announce the length of time a player may leave the game and still be considered part of the same playing session.

(3) The dealer must advise each new player of rules of the game being played prior to the ante.

(4) A player may not remove any of his or her chips from the table until the player quits the game. However, a player may use chips to pay for other goods or services in the premises.

(5) Players may only purchase additional chips between hands.

(6) Concealed chips may not be used in play for a game.

(7) Only poker chips and/or cash on the table (table stakes) at the start of a hand may be in play for that pot.

AUTH: Sec. 23-5-115(2), MCA.

IMP: Sec. 23-5-311, MCA.

RULE XL FOULED HANDS (1) A player is responsible for taking reasonable steps to protect his/her hand by holding on to it or by placing one or more chips on it. A player who fails to take reasonable steps to protect his or her hand shall

have no relief if that hand is "fouled" as defined in this subsection, or is accidentally taken in by the dealer. A fouled hand or a hand accidentally taken by the dealer is a dead hand, as defined in this subsection.

(2) A protected hand may not be ruled fouled by accidental contact with discards unless it is impossible to completely reconstruct. A player who has a protected hand taken in by the dealer or fouled by discards through no fault of the player is entitled to be refunded from the pot all the chips the player put in the pot on that game. In disputed cases, the dealer's decision is final.

AUTH: Sec. 23-5-115(2), MCA.

IMP: Sec. 23-5-311, MCA.

RULE XLI THE DEAL (1) Each card dealt must be the top card of the deck. The order of future ownership of cards that will be in play is not to be disturbed at any time during the deal of a game.

(2) When the dealer burns a card, it must be placed facedown on the table before dealing any round of cards. Burned cards must be kept separate from the discards throughout the hand.

(3) A player facing a bet who announces a fold shall have a dead hand.

(4) All pots must be awarded by the dealer only. When the dealer has awarded the pot and it has been taken in by that player without a claim made against it, the award stands. No player may make an agreement with any other player regarding the pot. Each game must be played to conclusion and the pot awarded to the actual winning player.

(5) The dealer may place a maximum time limit on players during which time a player must act on his or her hand. At the lapse of the time limit, if there has not been a bet to the player, the player must check; if there has been a bet to the player, the player's hand is dead. However, the dealer shall provide a reasonable warning to the player prior to the application of this subsection.

AUTH: Sec. 23-5-115(2), MCA.

IMP: Sec. 23-5-311, MCA.

RULE XLII BETTING (1) A player who unintentionally puts less chips into the pot than are needed to call a bet must either complete the call or withdraw his or her chips and fold.

(2) If an improper number of chips are bet by a player and the dealer puts the player's chips into the pot without making an immediate objection, it must be considered a bet by the player.

(3) A player must place his entire bet in front of the player at one time. Unless a player has failed to place the necessary amount of chips to call a bet or to signify a raise, the player may not place additional chips into the pot (no string bets).

(4) A player confronted by a bet larger than the player's table stakes may "call" with the amount of chips in front of the player ("all in" bet). The excess part of the bet is either returned to the bettor(s) or used to form a side pot with another player or players by matching the amount called.

AUTH: Sec. 23-5-115(2), MCA.

IMP: Sec. 23-5-311, MCA.

RULE XLIII IMPROPER DEAL (1) A card improperly dealt faceup, flashed as it is dealt so a player might know its identity, a joker dealt when the joker is not being used in the game, or a downcard dealt off the table is considered an exposed card. A card exposed by a player is not an exposed card. An exposed card must be replaced.

(2) A misdeal shall cause all the cards to be returned to the dealer for a redeal.

AUTH: Sec. 23-5-115(2), MCA.

IMP: Sec. 23-5-311, MCA.

RULE XLIV POSTING OF RULES (1) At least the following rules must be posted in a clear, legible manner at each card table or in such a conspicuous location that the player at a card table can readily read such rules.

- (a) Games to be played.
- (b) Betting limits of the games.
- (c) Ante or blind bets (if any).
- (d) Number of raises.
- (e) Minimum buy-in.
- (f) \$300 pot limit.
- (g) Rake percentage or set fee.
- (h) Check and raise (yes or no).
- (i) Designated wild card(s).
- (j) No side bets (except in cases of all-in bets).
- (k) No credit, no passing chips.
- (l) Maximum number of players.
- (m) Players must be 18 years old.
- (n) Players may request that house players be identified.

(2) When the operator chooses to make a general house rule, that house rule shall be posted on the premises where it can be clearly seen by players in the card game to which it applies.

AUTH: Sec. 23-5-115(2), MCA.

IMP: Sec. 23-5-313, MCA.

RULE XLV CARD GAME TOURNAMENTS (1) Card game tournaments which involve consideration in order to play and the chance of winning something of value are gambling activities. Publicly played card game tournaments involving gambling activity are limited to the card games known as bridge, cribbage, hearts, panguingue, pinochle, pitch, poker, rummy, solo, and whist as described by Rule XXIV.

(2) Card game tournaments involving gambling activity where the house does not collect a rake or other fee will be

allowed with prior written notice to and approval by the department. A licensed operator must submit a request to conduct a card game tournament involving gambling activity to the department. The request must specify the licensed operator's name, the operator license number, location, and game to be played. A request to conduct a card game tournament must specify the number of tournament tables as well as the location and date(s) of the tournament. A request to conduct a card game tournament must be received by the department at least 10 days prior to the event and be accompanied by a \$10 processing fee.

(3) A licensed dealer is not required to personally conduct card game tournaments. However, in the case of card game tournaments, at least one licensed dealer must be present on the premises to oversee the conduct of the games.

(4) The only consideration that may be paid by a tournament participant is an entry fee. Winners are determined by points accumulated during the course of a game. Prizes cannot exceed \$300 and must be awarded following each game. Games or prizes cannot be combined so as to increase the ultimate prize awarded. All tournament rules must be posted and clearly visible to all players.

(5) In the case of card game tournaments, the games must be conducted for no more than 72 consecutive hours and there must be at least one licensed card table on the premises. An operator may conduct up to 12 card game tournaments per year.

(6) The department's letter of approval must be posted and clearly visible to the public. Each approval is specific to an operator, location, and for no more than a 72-hour period. Publicly played card game tournaments involving gambling activity must comply with the requirements of Title 23, chapter 5, MCA, and the rules of the department.

AUTH: Sec. 23-5-115(2), MCA.

IMP: Sec. 23-5-311, MCA.

RULE XLVI PLAY OF SUCCESSIVE KENO GAMES (1) A player may play successive keno games by paying for the games in advance only if he or she remains on the licensed premises. A player requesting to play multiple and successive keno is limited to the number of successive games allowed by the house. All games must be paid for in advance and any and all prizes won must be personally claimed by the player after the last game paid for and before the next game begins. Failure to personally claim prizes won by the player after the multiple games played will result in forfeiture of any prizes won.

(2) Any licensee allowing play of successive keno games must clearly post the house limits as to the number of successive games allowed, the requirement for payment in advance for the number of games to be played, the requirement to remain on the licensed premises while the games are played, and the requirement to personally claim any prizes before leaving the premises.

(3) In no case may prizes won on previous games be automatically carried forward to extend play for games beyond the number indicated when the player paid the caller.

(4) Recordkeeping for the play of successive games must be in accordance with these rules.

RULE XLVII DEFINITIONS (1) "Master square" means that portion of the sports pool card divided into smaller squares or spaces representing the chances purchased by the participants.

(2) "Sports event" means a game, race, or athletic contest, not including elementary or high school contests.

(3) "Sports pool" means a gambling activity using a card with a master square with the names or initials of the participants in the pool written within each square or space. Consideration, in money, is paid for each square or space by the participant for the chance to win money or other item of value on any sports event wherein the contestants in such event are natural persons or animals.

AUTH: Sec. 23-5-115(2), MCA.

IMP: Sec. 23-5-503, MCA.

RULE XLVIII SPORTS POOL CARD (1) The master square of the card must be divided into smaller squares arranged in horizontal rows and vertical columns.

(a) There may be no more than one sports event per master square.

(b) The numbers for each horizontal row and vertical column must be randomly assigned after all squares have been sold and prior to the beginning of the sports event.

(c) Each square or space must be represented by a number from both the horizontal row and vertical column.

(2) The card shall, in advance of any sale of any chance, clearly indicate:

(a) The name of the sports event covered by the card.

(b) The total number of chances that must be sold in order to fill in all the squares or spaces.

(c) The cost to the participant for each chance to participate in the sports pool.

(d) The total amount to be paid to each winner.

(e) The intervals that a pay-out will be made and the amount of each pay-out.

(f) The name of the person conducting the sports pool.

(g) The value of each individual prize and the total value of all prizes.

(3) After each prize is awarded, the names of the winners of each prize must be prominently displayed on each card.

(4) After the card is prominently and visibly displayed for the sale of a chance to play, it must not be removed from the premises conducting the sports pool for 30 days after the event.

AUTH: Sec. 23-5-115(2), MCA.

IMP: Sec. 23-5-503, MCA.

RULE XLIX SALE OF CHANCES (1) The total cost of a chance to participate shall not exceed five dollars (\$5) per chance and must be paid in cash at time the square or chance is selected.

(2) If, at the time of the event, all chances on the sports pool card are not sold, the persons who have paid for a chance to play shall be entitled to a full refund or must be allowed to transfer the chance to another sports pool currently advertised on the same premise where they purchased the chance on the uncompleted sports pool. If a participant cannot be located for a refund or transfer of the chance to another sports pool card prior to the event, the full purchase price of the chances purchased shall be retained by the premise for refund to the participant.

(3) The sports pool shall not be conducted if any chance remains unsold at the time the sports event is commenced.

(4) The sports event must not be changed to another sports event in order to allow the sale of all available chances.

AUTH: Sec. 23-5-115(2), MCA.

IMP: Sec. 23-5-503, MCA.

RULE L PRIZES (1) The prizes awarded to the winner or winners of a sports pool may be cash or merchandise but must not exceed a total value of \$500.

(a) Where the prize awarded is merchandise, the purchase price paid for the item(s) of the merchandise prize is considered to be the value of the prize. Proof of the purchase price of the item(s) of the merchandise prize shall be retained for a period of 30 days from the event.

(b) Subject to subsection (2), if the value of the merchandise prize is less than the amount of money paid by all participants for the chance to participate, the person conducting the sports pool shall award the balance to the winner(s).

(2) A nonprofit organization may retain up to 50 percent of the value of a sports pool; however, the nonprofit organization must maintain and open to inspection upon reasonable demand records to verify that the retained portion of the sports pool is used to support charitable activities.

AUTH: Sec. 23-5-115(2), MCA.

IMP: Sec. 23-5-503, MCA.

4. The department is proposing these rules in order to implement section 23-5-115(2), MCA.

5. Interested persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Robert J. Robinson, Administrator, Gambling Control Division, 2687 Airport Road, Helena, Montana, 59620, no later than December 20, 1989.

6. Robert J. Robinson, Administrator, Gambling Control Division, has been designated to preside over and conduct the hearing.

7. The authority of the department to make the proposed rules is based on section 23-5-115(2), MCA, and the rules implement sections 23-5-110 through 23-5-509, MCA.

By: Marc Racicot
MARC RACICOT
Attorney General

Certified to the Secretary of State October 26, 1989.

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
amendment of 36.21.415 con-) THE PROPOSED AMENDMENT OF
cerning fees) 36.21.415 FEE SCHEDULE

TO: ALL INTERESTED PERSONS:

1. On December 1, 1989, at 9:30 a.m., a public hearing will be held in the Director's Conference Room of the Department of Natural Resources and Conservation Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment of the fee schedule.

2. The proposed amendment will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at pages 36-393.16 and 36-393.17, Administrative Rules of Montana)

"36.21.415 FEE SCHEDULE

(1) Application and examination	
(a) Contractors	\$250
(b) Drillers	-299 150
(c) Monitoring well constructor	110 150
(2) Re-examination	
(a) Water Well Contractor -and	150 125
(b) <u>Water Well</u> driller	75
<u>(c) Monitoring well constructor</u>	75
(3) Renewal	
(a) Contractor	125 115
(b) Driller	90 75
<u>(c) Monitoring well constructor</u>	115
(4) ..."	

Auth: 37-43-202, MCA; Imp. 37-43-202(8), 303, 307, MCA.

3. The proposed amendment to the fee schedule provides for a renewal fee and a reexam fee for monitoring well constructors. It also changes the fee structure for water well contractors and drillers exams, reexams, and renewals. The fees are set based on the Boards budget of \$38,214. The direct and indirect costs of administering the program were calculated out based on program area costs. A complete breakdown is available from the Board office.

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 December 7, 1989.

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

BOARD OF WATER WELL CONTRACTORS
WESLEY LINDSAY, CHAIRMAN

BY: 
KAREN BARCLAY, DIRECTOR
DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

Certified to the Secretary of State, October 30, 1989.

BEFORE THE BOARD OF OIL
AND GAS CONSERVATION
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENTS)
OF RULES PERTAINING TO ISSUANCE)
OF OIL AND GAS DRILLING)
PERMITS, PUBLIC NOTICE)
REQUIREMENTS, CHANGE OF)
OWNERSHIP REQUIREMENTS AND BOND)
RELEASE.

NOTICE OF PUBLIC
HEARING ON PROPOSED
AMENDMENTS OF RULES
36.22.307, 36.22.601,
36.22.604(1) and (3),
36.22.605, and
36.22.1308(3), (4).

TO: All Interested Persons:

1. On November 30, 1989 at 8:00 a.m. a public hearing will be held in the Billings Petroleum Club, Sheraton Hotel, Billings Montana, to consider amendments to rules 36.22.307, 36.22.601, 36.22.604(1) and (3), 36.22.605 and 36.22.1308(3) and (4).

2. The proposed amendments replace present rules found in the Administrative Rules of Montana beginning on page 36-409.

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

36.22.307 ADOPTION OF FORMS The forms hereinafter listed are hereby adopted and made a part of these rules for all purposes, and the same shall be used as herein directed in giving notice and in making reports and requests to the board. Copies of printed forms will be supplied by the board on request. Address requests for forms to: Board of Oil & Gas Conservation, 1520 East Sixth Avenue, Helena, Montana 59620-2301.

Subsections (1) through (23) remain the same.

(24) Form No. 20 Notice of Intent to Change Operator
(25) Form No. 21 Application for Release of Well
from Bond

(26) Form No. 22 Application for Permit

AUTH: Sec. 82-11-111, MCA

IMP: Sec. 2-4-201, MCA

36.22.601 NOTICE OF INTENTION AND PERMIT TO DRILL (1) No person shall commence the drilling of an oil or gas well or stratigraphic test well or core hole without first giving to the board--written notice--of intention--to drill on Form No. 22 filing an application for permit to drill on Form No. 22 and obtaining a drilling permit from the board. If the proposed well or hole is not located within the boundaries of a delineated field for which, after public hearing, an order has been entered by the board that drilling permits may issue for locations within that field without further public hearing, the applicant must:

(a) At its own expense, cause publication of notice in a format prescribed by the board in one issue of a newspaper in general circulation in the county where the proposed well or

hole is located; and

(b) File ~~proof~~ of such publication in the form of an affidavit of the publisher.

(2) Prior to the commencement of recompletion operations on any oil or gas well, notice shall likewise be delivered to the board of such intention on Form No. 2, and approval shall be obtained.

(3) When a permit is sought for a 320 acre drilling or spacing unit, the notice Form No. 22 as filed with the board shall include a description of the lands to be included.

(4) If the staff determines that a person applying for a drilling permit or approval of recompletion operations is not in substantial compliance with the board's rules governing any of the applicant's operations in Montana, the staff may refer the request for a permit to the board which shall then, after notice and hearing, determine if the permit should be granted and, if so, under what conditions. The staff of the board shall refer an application for permit to drill to the board for notice and public hearings if:

(a) An interested person shall, as to any application for permit to drill for which published notice is required, file in the form hereinafter set forth a written demand for an opportunity to be heard concerning such application; or

(b) The staff determines that a person applying for a drilling permit or approval of recompletion operations is not in substantial compliance with the board's rules governing the applicant's operations in Montana; or

(c) The planned drilling operations require further environmental review.

(5) In those instances where such requests for a permit to drill have been the subject of notice and public hearing, the board shall, after such hearing, either:

(a) Enter its order granting such permit under such conditions as the board shall find proper and necessary; or

(b) Enter its order denying the application for the permit.

(6) A demand for opportunity to be heard concerning any application for permit to drill for which published notice is required must:

(a) Be in writing; and

(b) Set forth the name, address, and telephone number of each party making the demand, and their ownership interest, if any, in the lands surrounding the drill site; and

(c) Set forth the specific reasons why the party requests a hearing regarding the issuance of the proposed drilling permit; and

(d) Be received by the board no later than seven (7) days after the date of the publication of the notice. Service of such demand may be made on the board personally, by mail, or by FAX transmission; and

(e) Be simultaneously served upon the applicant for the permit by written copy mailed or FAX transmitted to the address or number set forth in the published notice. A certificate of

such service must accompany the demand as filed with the board.

(7) Surface owner concerns which are subject to the provision of 82-10-504, MCA (Surface Damage and Disruption Payments) will not be the subject of a public hearing before the board.

AUTH: Sec. 82-11-111, MCA IMP: Sec. 82-11-122, 2-3-101 through 2-3-221, 2-4-303, and 2-4-601 through 2-4-631, MCA

36.22.604 PERMIT ISSUANCE - EXPIRATION - EXTENSION (1) If the notice no written demand for hearing has been filed within seven (7) days following the date of publication of the notice as specified in ARM 36.22.601 and the planned drilling operations do not require further environmental review, and the application complies in all respects with the applicable rules of the board, a permit shall be issued promptly by the petroleum engineer or his authorized agent.

(3) If drilling is not commenced, no such permit to drill shall be valid after the expiration of a period of six months from the date of the issuance thereof by the board or its authorized agents. Any permittee who fails to commence drilling within the six months period of the permit must file a new Notice of--Intention to--Drill application for permit to drill and pay the fee therefor.

Subsections (2) and (4) remain the same.

AUTH: Sec. 82-11-111, MCA IMP: Sec. 82-11-122, 82-11-134, 2-3-101 through 2-3-221, 2-4-303, and 2-4-601 through 2-4-631, MCA

36.22.605 TRANSFER OF PERMITS

Paragraph 1 and Subsection (1) remain the same.

(2) If, while a well is being drilled, the person holding a permit disposes of his interests in the well, he shall submit a written statement on Form 2 within 10 days after the rights are disposed of to the board requesting that the permit be transferred to the person who has acquired the well comply with the transfer requirements set forth in ARM 36.22.1308.

AUTH: Sec. 82-11-111, MCA IMP: Sec. 82-11-122 and Sec. 82-11-134, MCA

36.22.1308 PLUGGING AND RESTORATION BOND

Subsections (1), (2) and (5) remain the same.

(3) Said bond shall remain in force and effect until:

(a) The plugging and restoration of the surface has been approved by the board, or

(b) A new bond is filed by a successor in interest and approved by the board, or

(c) Application for release of well from bond on Form No. 21 is filed and the bond is released by the board.

(4) Transfer of property does not in itself release the bond. A report of change of ownership notice of intent to change operator shall be filed on Form No. 2 20 by the new owner of any drilling or completed well. Said report notice shall include the name and address of both the new and previous

owners; the effective date of the change of ownership and all information pertinent to the name and location of the well. Such notice shall all information required thereon and contain the endorsement of both the transferor and transferee accepting liability under his bond for plugging and restoration of the well. When the board has approved the transfer, the transferor is released from the responsibility of plugging the well. The transfer is not effective until approved by the board.
AUTH: 82-11-111, MCA IMP: 82-11-123, MCA


4. The reason for the amendment of ARM 36.22.307 is to add three new forms. Form 20 is a specific form for the change of operator and the instructions thereon clearly state the rules governing change of operators, a matter which has caused some confusion in the past. Form 21 is required by the provisions of Chapter 530, Laws of 1989 (H.B. 143). Form 22 sets forth the information by ARM required in a drilling permit application by amended ARM 36.22.601.

The amendments to ARM 36.22.601, 36.22.604 and 36.22.605 contain the standard for public notice of and public opportunity to be heard concerning applications for drilling permits. These amendments are necessary to bring the board's permit procedures into compliance with the provisions of Chapter 3 of Title 2, MCA, mandating public participation in governmental procedures.

The changes to ARM 36.22.1308 are to clarify the requirement that both the new operator and the former operator of a well must join in a request for change of operator and that the transfer and the release of the former operator's bond are not effective until the board approves them.

5. Interested persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Dee Rickman, 1520 East Sixth Avenue, Helena, Montana 59620-2301 no later than December 8, 1989.

6. James C. Nelson, Chairman of the Board of Oil and Gas Conservation, has been designated to preside over and conduct the hearing.


Dee Rickman, Executive Secretary
Board of Oil and Gas Conservation

Certified to the Secretary of State, October 30, 1989.

BEFORE THE DEPARTMENT
OF PUBLIC SERVICE REGULATION
OF THE STATE OF MONTANA

In the Matter of Proposed	)	NOTICE OF PROPOSED AMENDMENT
Amendment of Rules 38.4.105,	)	OF RULES REGARDING INTRA-
38.4.127, 38.4.132, 38.4.136,	)	STATE RAIL RATE PROCEEDINGS
and 38.4.148 Regarding Intra-)	
state Rail Rate Proceedings	)	NO PUBLIC HEARING
	)	CONTEMPLATED

TO: All Interested Persons

1. On December 11, 1989 the Department of Public Service Regulation proposes to adopt amendments to rules regarding standards and procedures for regulation of intrastate rail rates. The Department proposes to amend rules 38.4.105, 38.4.127, 38.4.132, 38.4.136 and 38.4.148.

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

38.4.105 NOTICE PERIOD FOR FILING RAILROAD TARIFFS

(1) Except as otherwise provided in paragraph (d) (e), the notice period for filing with this commission railroad tariffs which contain new or changed rates, classifications, rules, practices or other provisions shall be as follows:

(a) Tariffs on independently established new rates may become effective upon one day notice.

(b) Any tariff changes to independently established rates, rules or provisions which effect a reduction in the value of service or an increase in a rate shall be on file at least seven work days before the effective date.

(c) Except as provided in (a) and (b) for independently established rates, in (e) for joint rate surcharges or cancellations, and in (f) for railroad contracts, tariffs shall be on file at least 20 days prior to the effective date for rates or provisions on new service or changes resulting in increased rates or decreased value of service.

(d) Except as provided in (a) and (b) for independently established rates, in (e) for joint rate surcharges or cancellations, and in (f) for railroad contracts, tariffs shall be on file at least 10 days prior to the effective date for changes resulting in decreased rates or changes resulting in neither increases nor reductions.

(e) A rail carrier applying a surcharge or cancelling joint rates pursuant to 49 U.S.C. § 10705a shall file a notice with this commission at least 45 days prior to its effective date.

~~(a) -- The tariff shall be on file with this Commission at least 20 days prior to its effective date for rates or provisions published in connection with new service or changes resulting in increased rates or decreased value of service.~~

~~(b) -- The tariff shall be on file with this Commission at least 10 days prior to its effective date for changes resulting in decreased rates or increased value of service, or changes resulting in neither increases nor reductions.~~

~~(c) -- The tariff shall be on file with this Commission at least 45 days prior to its effective date for joint rate surcharges and cancellations filed pursuant to the provisions of 49 U.S.C. Sec. 10705a.~~

(d) (f) Railroad contracts shall be filed with this Commission pursuant to the provisions of ARM 38.4.141.
AUTH: Sec. 69-2-101, MCA; IMP, Secs. 69-1-102, 69-14-111 and 69-14-301, MCA

38.4.127 GEOGRAPHIC COMPETITION (1), (2)(a), (b) No changes.

(c) that the product available from each source or required by each destination is the same or a suitable substitute.

(3) through (4) No changes.

AUTH: Sec. 69-2-101, MCA; IMP, Secs. 69-1-102, 69-14-111 and 69-14-301, MCA

38.4.132 ZONE OF RATE FLEXIBILITY (1) Base rates increased by the quarterly rail cost adjustment factor may not be found to exceed a reasonable maximum for the transportation involved. Complaints against rate increases effected under subsection (c) and (d) of pursuant to 49 U.S.C. Sec. 10707a shall be considered pursuant to provisions of subsection (e) of said section.

AUTH: Sec. 69-2-101, MCA; IMP, Secs. 69-1-102, 69-14-111 and 69-14-301, MCA

38.4.136 NONAPPLICABILITY (1) No change.

(a) general rate increases under 49 U.S.C. Sec. 10706;

(b) and (c) No changes.

AUTH: Sec. 69-2-101, MCA; IMP, Secs. 69-1-102, 69-14-111 and 69-14-301, MCA

38.4.148 LIMITATION ON AGRICULTURAL EQUIPMENT AND RELIEF (1) through (3) (a) No changes.

(b) the commission on its own initiative considers granting such relief; or and

(c) No change.

AUTH: Sec. 69-2-101, MCA; IMP, Secs. 69-1-102, 69-14-111 and 69-14-301, MCA

3. Rationale: The Public Service Commission is proposing adopting these amendments in order to refine its rules regarding intrastate rail rates to comply with the recertification process under the Staggers Act of 1980, Public Law 96-448. Under Ex Parte No. 388A, decided July 17, 1989, the Interstate Commerce Commission (ICC) requires all states desiring to retain jurisdiction over intrastate rail rates to resubmit their standards and procedures to the ICC as amended in accordance with Federal law pursuant to ICC requirements subsequent to their certification. The State of Montana must resubmit for certification by December 30, 1989. These amendments

incorporate standards and procedures consistent with the Interstate Commerce Act.

4. Interested parties may submit their data, views or arguments concerning the proposed amendments in writing to Denise Peterson, Public Service Commission, 2701 Prospect Avenue, Helena, Montana 59620-2601 no later than December 8, 1989.

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 public hearing and submit this request along with any written comments he has to Denise Peterson, Public Service Commission, 2701 Prospect Avenue, Helena, Montana 59620-2601, no later than December 8, 1989.

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 amendment; from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 25 persons based upon all rail carrier customers in the state of Montana.

7. The Montana Consumer Counsel, 34 West Sixth Avenue, Helena, Montana, (406) 444-2771, is available and may be contacted to represent consumer interests in this matter.


CLYDE JARVIS, Chairman

CERTIFIED TO THE SECRETARY OF STATE OCTOBER 30, 1989.


Reviewed By

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMEND-	)	NOTICE OF PROPOSED AMENDMENT
MENT of ARM 42.27.102	)	of ARM 42.27.102 relating to
relating to Distributors	)	Distributors Bond for
for Motor Fuels.	)	Motor Fuels.

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On December 22, 1989, the Department of Revenue proposes to amend ARM 42.27.102 relating to the Distributors Bond for Motor Fuels.

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

42.27.102 DISTRIBUTOR'S BOND (1) Gasoline distributors must furnish the department of revenue a corporate surety bond executed by the distributor as principal with a corporate surety authorized to transact business in this state or other collateral security or indemnity. The total amount of bond or collateral security or indemnity shall be equivalent to twice the distributor's estimated monthly gasoline tax, but never less than \$2,000 and in no case greater than \$500,000 \$100,000, except as provided in subsection (2)(3).

(2) The Department may require a distributor who has in the previous 12 month period been delinquent for more than 10 days for more than one reporting period or has given the state a non-sufficient fund check, to post an additional bond not to exceed the distributor's estimated monthly gasoline tax.

(2)(3) Upon written application by a distributor and the showing of good cause, the department may, at its discretion, accept a bond or collateral security or indemnity in an amount less than twice the distributor's estimated monthly gasoline tax if the distributor reports and pays its tax more frequently than monthly. For example, if the distributor pays his tax weekly, his bond would be twice the estimated weekly tax payment. In no instance will the amount of the bond be less than twice the distributor's estimated tax payment. (AUTH. Sec. 15-70-104, MCA; IMP. Sec. 15-70-204, MCA.)

3. This amendment is necessary to comply with an agreement made by the Director of Revenue to reduce the bond requirement to not be greater than \$100,000. Section 2 is added to insure the collection of gasoline taxes from distributors who have a history of delinquent tax payments or a tax payment made with a non-sufficient fund check.


4. Interested parties may submit their data, views, or arguments concerning the proposed amendment in writing to:

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

no later than December 7, 1989.

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 December 7, 1989.

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.


DENIS ADAMS, Director
Department of Revenue

Certified to Secretary of State October 30, 1989.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT) NOTICE OF PROPOSED AMENDMENT
of ARM 42.15.106 relating to) of ARM 42.15.106 relating to
Personal Income Tax Surcharge.) Personal Income Tax Surcharge.

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On December 22, 1989, the Department of Revenue proposes to amend ARM 42.15.106 relating to a Personal Income Tax Surcharge.

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

42.15.106 10% INCOME TAX SURCHARGE (1) For tax years 1987 and 1988 individuals, estates, and trusts must add to their computed tax a 10% surtax.

(2) For tax years beginning on or after January 1, 1990 but before January 1, 1991, individuals, estates, and trusts must add to their computed tax a 5% surtax.

~~(2)~~ (3) The surtax is added before the tax on lump sum distributions is calculated and before any credits against the tax are claimed.

~~(3)~~ (4) When an amended tax return is filed for the tax years 1987 and 1988, the appropriate surtax shall be applied in the same manner as provided in ~~(2)~~. (AUTH. Sec. 15-30-305, MCA. IMP. Sec. 15-30-108, MCA.

3. ARM 42.157.106 is proposed to be amended because the 1989 Special Session enacted legislation creating a 5% surtax on all individuals, trusts, and estates for the 1990 tax year. This amendment is necessary to clarify what income the 5% surtax will apply to.

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 December 7, 1989.

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 December 7, 1989.

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.


DENIS ADAMS, Director
Department of Revenue

Certified to Secretary of State October 30, 1989.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT) NOTICE OF PROPOSED AMENDMENT
of ARM 42.17.105 relating to) of ARM 42.17.105 relating to
Computation of Withholding) Computation of Withholding
Taxes.) Taxes.

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On December 22, 1989, the Department of Revenue proposes to amend ARM 42.17.105 relating to Computation of Withholding Taxes.

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

42.17.105 COMPUTATION OF WITHHOLDING (1) The amount of tax withheld per payroll period shall be calculated according to the following four-step formula:

(a) $Y = PZ$

where Z is the individual's gross earnings for the payroll period; and

Y is the individual's annualized gross earnings.

In these calculations, the quantity P (number of payroll periods during the year) has one of the following values:

Annual payroll period $P = 1$

Monthly payroll period $P = 12$

Semimonthly payroll period $P = 24$

Biweekly payroll period $P = 26$

Weekly payroll period $P = 52$

(b) $T = Y - 1400N$

where T is the annualized net gross income; and

N is the number of withholding exemptions claimed.

If T in Step (b) is less than or equal to 0, then the amount to be withheld during the pay period is 0. If T is greater than 0, then the annualized tax liability is calculated using:

(c) $X = A + B(T-C)$ where X is the individual's annualized tax liability the parameters A , B and C are chosen from the following rate schedule:

At-least	But-Less-Than	-----A	-----B	---C
\$-----0	---\$-6,590	\$-----0	-----2.6%	\$-----0
---6,590	---14,600	---171.34	-----4.4%	---6,590
---14,600	---32,000	---523.78	-----6.1%	---14,600
---32,000-and-over		---1,585.18	-----6.5%	---32,000

At Least	But Less Than	A	B	C
\$ 0	\$ 6,590	\$ 0	2.7%	\$ 0
6,590	14,600	171.34	4.6%	6,590
14,600	32,000	523.78	6.4%	14,600
32,000 and over		1,585.18	6.8%	32,000

(d) $W = \frac{X}{P}$

where W is the amount to be withheld for the payroll period;
X is the annualized tax liability; and
P is the number of payroll periods during the year.

(2) This rule is effective for tax periods beginning January 1, 1989 January 1, 1990. (AUTH. Sec. 15-30-305 MCA; IMP, Secs. 15-30-108 and 15-30-202 MCA.)

3. These amendments to ARM 42.17.105 are proposed because the 1989 Special Session of the Legislature enacted a 5% surtax for income earned or received in 1990. The withholding rates must reflect the legislation.


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 December 7, 1989.

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 December 7, 1989.

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.


DENIS ADAMS, Director
Department of Revenue

Certified to Secretary of State October 30, 1989.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPT-	)	NOTICE OF PUBLIC HEARING ON
MENT of Rule I relating to	)	PROPOSED ADOPTION OF RULE I
Property Tax for Co-op	)	relating to Property Tax for
Vehicles.	)	Co-op Vehicles.

TO: All Interested Persons:

1. On December 1, 1989, at 10:00 a.m., a public hearing will be held in the Fourth Floor Conference Room of the Mitchell Building, at Helena, Montana, to consider the adoption of Rule I relating to Property Tax for Co-op Vehicles.

2. The rule as proposed is as follows:

RULE I CO-OP VEHICLES (1) All vehicles except automobiles and trucks 1 ton and under owned and used by co-ops pursuant to 15-6-135(1), MCA, shall be valued and taxed as class 5 property.

(2) Automobiles and trucks 1 ton and under shall be valued and taxed in accordance with 61-3-503 and 61-3-504, MCA. (AUTH. Sec. 15-30-305, MCA; IMP. Sec. 15-6-135, MCA.)

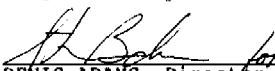
3. Rule I is proposed because of a change in department policy, tax appeals and a settlement with representatives of co-ops.

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:

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

no later than December 8, 1989.

5. R. Bruce McGinnis, Tax Counsel, Department of Revenue, Office of Legal Affairs, has been designated to preside over and conduct the hearing.


DENIS ADAMS, Director
Department of Revenue

Certified to Secretary of State October 30, 1989.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amend-	)	NOTICE OF PROPOSED AMENDMENT
ment of ARM 1.2.419 regard-	)	OF ARM 1.2.419 FILING, COMPIL-
ing scheduled dates for the	)	ING, PRINTER PICKUP AND
Montana Administrative	)	PUBLICATION FOR THE MONTANA
Register	)	ADMINISTRATIVE REGISTER

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On December 9, 1989, the office of the Secretary of State proposes to amend ARM 1.2.419 regarding the scheduled dates for the Montana Administrative Register.

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

1.2.419 FILING, COMPILING, PRINTER PICKUP AND PUBLICATION SCHEDULE FOR THE MONTANA ADMINISTRATIVE REGISTER

(1) The scheduled filing dates, time deadlines, compiling dates, printer pickup dates and publication dates for material to be published in the Montana Administrative Register are listed below:

198990 Schedule

<u>Filing</u>	<u>Compiling</u>	<u>Printer Pickup</u>	<u>Publication</u>
January 32	January 43	January 54	January 1211
January 1615	January 1716	January 1817	January 2625
January 3029	January 3130	February-1	February 98
		January 31	
February 1912	February 1413	February 1514	February 2922
March 65	March 76	March 87	March 1615
March 2019	March 2120	March 2221	March 3029
April 32	April 43	April 54	April 1912
April 1716	April 1817	April 1918	April 2726
May 17	May 28	May 39	May 1117
May 1521	May 1622	May 1723	May 2531
June 54	June 65	June 76	June 1514
June 1918	June 2019	June 2120	June 2928
June-30 July 2	July 53	July 65	July 1912
July 1716	July 1817	July 1918	July 2726
August 76	August 87	August 98	August 1716
August 2120	August 2221	August 2322	August 3130
September 54	September 65	September 76	September 1413
September 1817	September 1918	September 2019	September 2827
October 21	October 32	October 43	October 1211
October 1615	October 1716	October 1817	October 2625
October-30	October-31	November-1	November-9

November 195	November 147	November 158	November 2215
November 2719	November 2820	November 2921	December-7
			<u>November 29</u>
December 113	December 124	December 135	December 2113
<u>December 17</u>	<u>December 18</u>	<u>December 19</u>	<u>December 27</u>

(2) remains the same.

AUTH: 2-4-312, MCA

IMP: 2-4-312, MCA

3. The rule is proposed to be amended to set dates pertinent to the publication of the Montana Administrative Register during 1990.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to:

Kathy Lubke, Bureau Chief
Administrative Rules Bureau
Secretary of State
Room 225
Capitol Building
Helena, MT 59620

no later than December 7, 1989.


MIKE COONEY
Secretary of State

Dated this 30th day of October, 1989

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

In the matter of the	)	NOTICE OF PUBLIC HEARING ON
amendment of Rule	)	THE PROPOSED AMENDMENT OF
46.12.402 pertaining to	)	RULE 46.12.402 PERTAINING
Medicaid sanctions for	)	TO MEDICAID SANCTIONS FOR
intermediate care facilities	)	INTERMEDIATE CARE FACILI-
for the mentally retarded	)	TIES FOR THE MENTALLY
	)	RETARDED

TO: All Interested Persons

1. On November 29, 1989, 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 46.12.402 pertaining to Medicaid sanctions for intermediate care facilities for the mentally retarded.

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

46.12.402 SANCTIONS Subsections (1) through (1)(i) remain the same.

(j) Proposal for a permanent reduction of the number of beds in an intermediate care facility for the mentally retarded (ICF/MR). This alternative form of sanction may be initiated by the provider or at the request of the department. It is only available to an ICF/MR. A proposal for reduction may be requested if deficiencies exist but there is no immediate threat to the health and safety of clients currently under care. A reduction plan must be part of an effort to correct deficiencies as expeditiously as possible, but under no circumstances may the plan or deficiencies extend beyond 36 months. Reduction plans submitted by the provider must:

(i) Identify the number of clients and their service needs on a client-by-client basis for home or community services, and a timetable for providing such services in 6-month intervals beginning on the date that the reduction plan is approved by the state;

(ii) Describe the methods used to select clients for home or community services and develop alternative home and community services to effectively meet the client's needs;

(iii) Describe the safeguards that will be applied to protect the client's health and welfare while receiving home or community services including adequate standards for participation by client's, their families, and providers and assuring that the community residences in which these clients are placed meet applicable state and federal licensure and certification requirements;

(iv) Provide that clients who are eligible for medical assistance will, at their option, be placed in another setting (or another part of the ICF/MR so as to retain their eligibility for medical assistance or provide that medical care will be paid by the provider;

(v) Specify the actions to protect the health and safety of the clients remaining in the ICF/MR while the reduction plan is in effect;

(vi) Provide that the staff to client ratio will be the higher of the ratio described in the standards for ICF's/MR found at 42 CFR 483.430 or the ratio which was in effect at the time the survey was conducted. The department hereby adopts and incorporates by reference 42 CFR 483.430, as amended through October 1, 1989. A copy of 42 CFR 483.430 may be obtained from the Department of Social and Rehabilitation Services, 111 Sanders, P.O. Box 4210, Helena, Montana 59604-4210; and

(vii) Provide for the protection of the staff affected by the reduction plan by arrangements to preserve staff rights and benefits, training and retraining of staff as necessary, redeploying staff to community settings under the reduction plan, and making maximum efforts to secure employment for existing staff without guaranteeing employment.

Original subsection (l)(j) remains the same in text but will be recategorized as subsection (l)(k).


AUTH: Sec. 53-6-111 and 53-6-113 MCA
IMP: Sec. 53-6-111 MCA

3. Currently, the Montana Medicaid program must terminate providers or deny payments to new patients for a period of 11 months if the provider is unable to comply with certification standards. Federal regulations allow for a reduction plan for an ICF/MR facility as an alternative to other sanctions. Incorporation of this proposed option into state regulation will allow the state to impose an alternative sanction which will better serve the needs of the clients and the state. The goal of a reduction plan would be to reduce the number of residents served in a facility so that the facility will be able to focus resources to enable them to come into compliance with certification standards. Discretion would still rest with the Department of Social and Rehabilitation Services to approve or disallow the facility's proposed reduction plan.

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 59604-4210, no later than December 7, 1989.

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



Director, Social and Rehabilitation Services

Certified to the Secretary of State October 30, 1989.

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

In the matter of the amend-	)	NOTICE OF PUBLIC HEARING
ment of Rules 46.12.1011,	)	ON THE PROPOSED AMENDMENT
46.12.1012 and 46.12.1015	)	OF RULES 46.12.1011,
pertaining to specialized	)	46.12.1012 and 46.12.1015
nonemergency medical	)	PERTAINING TO SPECIALIZED
transportation	)	NONEMERGENCY MEDICAL
	)	TRANSPORTATION

TO: All Interested Persons

1. On December 5, 1989, 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 46.12.1011, 46.12.1012 and 46.12.1015 pertaining to specialized nonemergency medical transportation.

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

46.12.1011 SPECIALIZED NONEMERGENCY MEDICAL TRANSPORTATION, DEFINITIONS Subsection (1) remains the same.

(2) "Wheelchair bound" means individuals cannot mobilize without a wheelchair and are not able to get into or out of the wheelchair without assistance.

AUTH: Sec. 53-6-113 MCA

IMP: Sec. 53-6-101 and 53-6-141 MCA

46.12.1012 SPECIALIZED NONEMERGENCY MEDICAL TRANSPORTATION, REQUIREMENTS Subsection (1) remains the same.

(a) Individuals receiving this service must have a handicap or physical limitation that causes them to be wheelchair bound and that precludes their use of usual forms of transportation in order to obtain medical services.

Subsection (1)(b) remains the same.

(c) All services must be prior authorized by the local county director prior to reimbursement.

(2) No payment will be made for specialized nonemergency medical transportation service in cases where some less costly means of transportation could be utilized without endangering the patient's health, whether or not such transportation is actually available.

AUTH: Sec. 53-6-113 MCA

IMP: Sec. 53-6-101 and 53-6-141 MCA

46.12.1015 SPECIALIZED NONEMERGENCY MEDICAL TRANSPORTATION, REIMBURSEMENT (1) The department will pay the ~~lowest~~ lower of the following for specialized nonemergency medical transportation services which are not also covered by medicare:

(a) the provider's actual {submitted} charge for the service; or

(b) the department's fee schedule contained in this rule.

(2) The department will pay the lowest of the following for specialized nonemergency medical transportation services which are also covered by medicare:

(a) the provider's actual {submitted} charge for the service;

(b) the amount allowable for the same service under medicare; or

(c) the department's fee schedule contained in this rule.

Original subsections (2) and (3) remain the same in text but will be recategorized as subsections (3) and (4).

(a) Transportation under 16 miles.....\$ 9.6087 one way
\$16.94 17.63
round trip

Transportation over 16 miles.....\$.6162 per mile

Waiting time for transportation
over 16 miles.....\$ 4.0493 per hour
Computed in 15
minute increments
or fraction
thereof

Waiting time for under 16 miles....No payment

When one way transportation is
over 16 miles and the unloaded
miles exceeds ten percent of the
loaded miles, the miles from the
departure point to the pick-up
point plus the miles from the de-
livery point to the departure
point shall be paid for at the
rate of.....\$.3132 per mile

Original subsections (3) (b) and (3) (c) remain the same in text but will be recategorized as (4) (b) and (4) (c).

AUTH: Sec. 53-6-113 MCA

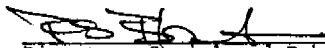
IMP: SFC. 53-6-101 and 53-6-141 MCA

3. The proposed 2% increase effective July 1, 1989, is required by House Bill 100 of the 1989 Montana Legislature. The definition of "wheelchair bound" clarifies department policy and would help prevent inappropriate utilization of the services.

4. The department proposes to apply the amendments to ARM 46.12.1015, which would implement the proposed 2% increase, retroactive to July 1, 1989. The other amendments proposed herein would apply prospectively only.

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 December 7, 1989.

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



Director, Social and Rehabilitation
Services

Certified to the Secretary of State October 30, 1989.

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

In the matter of the	)	NOTICE OF PUBLIC HEARING ON
proposed amendment of Rules	)	THE PROPOSED AMENDMENT OF
46.12.1201, 46.12.1204,	)	RULES 46.12.1201,
46.12.1205 and 46.12.1206	)	46.12.1204, 46.12.1205 and
pertaining to reimbursement	)	46.12.1206 PERTAINING TO
of nursing facilities for	)	REIMBURSEMENT OF NURSING
nurse aide wage increases	)	FACILITIES FOR NURSE AIDE
and oxygen equipment,	)	WAGE INCREASES AND OXYGEN
incorporation of the patient	)	EQUIPMENT, INCORPORATION OF
assessment manual and other	)	THE PATIENT ASSESSMENT
matters	)	MANUAL AND OTHER MATTERS

TO: All Interested Persons

1. On December 5, 1989, at 1:30 p.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana to consider the proposed amendment of Rules 46.12.1201, 46.12.1204, 46.12.1205 and 46.12.1206 pertaining to reimbursement of nursing facilities for nurse aide wage increases and oxygen equipment, incorporation of the patient assessment manual and other matters.

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

46.12.1201 PAYMENT RATES FOR SKILLED NURSING AND INTER-MEDIATE CARE SERVICES Subsections (1) through (3)(c) remain the same.

(f) $S(2) = \text{the lower of } 8.39 \text{ or } S + 4(F \times 12) \text{ divided by } 365$ ~~$x-1-1037$~~

where:

F is $((B \text{ divided by } D) \times .80)$ amortized over 360 months at 12% per annum.

D is the number of licensed beds in the facility.

B is the total allowable remodeling costs as defined in ARM 46.12.1202(2)(t).

Subsections (3)(g) through (3)(k)(iv) remain the same.

AUTH: Sec. 53-6-113 MCA

IMP: Sec. 53-6-141 MCA

46.12.1204 PAYMENT RATE Subsections (1) through (2)(b) remain the same.

(3) The calculated property rate is the result of computing the formula:

(a) $M = N \times Z$ except for facilities extensively remodeled or with new beds constructed after July 1, 1984.

$M = N(1) \times Z$ for facilities with new beds constructed after July 1, 1984,

$M = N(2) \times Z$ for facilities extensively remodeled after July 1, 1984.

where:

M is the property rate per day of service,

N is the provider's property rate as of 6/30/85. For entire facilities built after 6/30/85

N is \$7.60.

For facilities new to the program constructed prior to 6/30/82 a 6/30/85 rate will be computed according to property rules effective 6/30/85. That rate will be carried forward using $M = N \times Z$

$N(1) = \text{the lower of } 8.39 \text{ or } ((A \times D) + (B \times 7.60)) \text{ divided by } (A + B) \times 1.1037$

$N(2) = \text{the lower of } 8.39 \text{ or } D \times 1.1037 + ((F \times 12) \text{ divided by } 365).$

where:

A is the total square footage of the original nursing facility structure.

B is the square footage added to the nursing facility with the construction of new beds.

D is the property rate as of 6/30/85 for the original structure.

F is $((G \text{ divided by } H \times .80) \text{ amortized over } 360 \text{ months at } 12\% \text{ per annum.})$

H is the total number of licensed beds in the nursing facility after extensive remodeling.

G is total allowable remodeling costs.

Z is 1.1037.

Subsections (4) through (6)(d) remain the same.

(7) Payment for nurse aide wage increases.

(a) The payment for nurse aide wage increases for those nurse aides who have completed all training and competency evaluation requirements mandated under the Federal Omnibus Budget Reconciliation Act of 1987 may not be distributed as part of the reimbursement formula for routine operating and property costs. The payment is not available for increases paid to nurse aides for services performed prior to January 1, 1990.

(i) The payment for nurse aide wage increases will include the portion of the wage increase paid to nurse aides which is directly related to successful completion of a training and competency evaluation program certified by the department of health and environmental sciences. Payment will not include wage increases tied to a cost of living adjustment or a union scale increase.

(ii) Providers must document and submit to the department information on nurse aides employed by each provider. Required information must be submitted monthly on reporting/billing forms provided by the department and must include: nurse aide name, certification date, date of hire/termination, wage amount paid prior to and after certification, hours

worked during the period, and the effective date of the wage increase. Following receipt of the provider's reporting/billing forms, the department will compute the payment due the provider under subsection (b) and will submit to the department's fiscal agent a claim adjustment form directing payment to the provider.

(iii) Payment is limited to the medicaid share of the nurse aide wage increase based on the percentage of medicaid utilization at each facility computed from form SRS-MA14 (Nursing Home Patient Census/Revenue) of the most recently submitted facility cost report on file with the department.

(b) the formula for computing the payment attributable to nurse aide wage increases is as follows:

$$I \times H = D$$

where:

$$(C - P) \times U = I, \text{ such that}$$

if I is less than .20, $I = I$

if I is greater than or equal to .20, $I = .20$

where:

I = Medicaid percentage of the increase in wages/benefits tied to certification;

P = Previous hourly rate of pay and benefits prior to certification;

C = Current hourly rate of pay and benefits after certification;

H = Hours worked at increased hourly rate;

U = Medicaid utilization percentage (form SRS-MA14) medicaid days/total days; and

D = Payment amount for each nurse aide.

The sum of D for all nurse aide wage increases for the provider will equal the total payment to the provider for the month.

(c) Nursing facilities will be required to keep documentation to support hours and wages reported to the department regarding nurse aide wage increases. This documentation is subject to audit and evaluation in accordance with ARM 46.12.1208 requirements. If the department determines that documentation is not adequate to support the claim for nurse aide wage increases, or that an overpayment has otherwise occurred, the amounts paid under this subsection will be subject to recovery in accordance with ARM 46.12.1209. A provider may object to the payment amount determined by the department or to an overpayment determination by the department through the administrative review and hearing process set forth in 46.12.1210.

AUTH: Sec. 53-6-113 MCA

IMP: Sec. 53-6-141 MCA

46.12.1205 PAYMENT PROCEDURES Subsections (1) through (2) (a) (cvix) remain the same.

(cvx) effective on or after October 1, 1989, oxygen concentrators and portable oxygen units (cart, E tank and regulators) may be billed if prior authorized by the department.

(A) To obtain prior authorization:

(I) The maximum monthly payment rate for the provider will be the invoice cost of the unit divided by its estimated useful life as determined by the department. The provider must submit documentation of the cost and useful life of the concentrator or portable oxygen unit to the medicaid program. A copy of the purchase invoice must be included for authorization.

(II) Payment will be allowable only if a certificate of medical necessity indicating the PO2 level or oxygen saturation level is attached. The certificate of need must meet or exceed medicare criteria for authorization. This certificate of medical need must be signed and dated by the patient's physician.

(III) The provider must attach to its billing claim a copy of the prior authorization form and the certificate of medical necessity.

(IV) The provider is responsible for maintenance costs and operation of the concentrator or portable oxygen unit to insure it is functioning properly. Such costs are considered to be covered by the provider's per diem rate.

Subsections (2)(b) through (2)(h) remain the same.

(i) Providers may bill the department separately for nurse aide wage increases in accordance with ARM 46.12.1204 (7).

Subsections (3) through (8) remain the same.

AUTH: Sec. 53-6-113 MCA

IMP: Sec. 53-6-141 MCA

46.12.1206 PATIENT ASSESSMENTS, STAFFING REPORTS AND DEFICIENCIES (1) Each provider will report to the department each month the care requirements for each medicaid resident in the facility on the forms provided and according to in accordance with the patient assessment manual and instructions supplied by the department. The patient assessment manual dated October 1989, is hereby adopted and incorporated herein by reference. A copy of this manual is available from the Department of Social and Rehabilitation Services, 111 Sanders, P.O. Box 4210, Helena, MT 59604-4210.

Subsections (2) through (9)(d) remain the same.

AUTH: Sec. 53-6-113 MCA

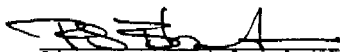
IMP: Sec. 53-6-141 MCA

3. These proposed rule changes will provide a distribution methodology to distribute funding available for nurse aide salary increases after January 1, 1990. This increase is

applicable only to salary increases paid to nurse aides who have completed all training and competency evaluation requirements mandated under the Federal Omnibus Budget Reconciliation Act of 1987. The funding impact is \$390,209 for fiscal year 1990 or about 20 cents per hour. The department will adopt a revised Patient Assessment manual dated October 1989, and will incorporate this manual by reference into the nursing facility reimbursement rules. This manual provides instructions and information concerning the completion and interpretation of long term care abstracts that are submitted on each medicaid nursing home resident. The department will permit nursing facilities to bill for oxygen concentrators and portable oxygen units as an allowable nursing home ancillary service. Prior authorization and certification of medical necessity are required prior to payment. The department will eliminate the redundant use of the inflationary index from the property formula computation. This elimination will cause no change in how the property rate is computed but will serve to clarify the formula.

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 59604-4210, no later than December 7, 1989.

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



Director, Social and Rehabilitation Services

Certified to the Secretary of State October 30, 1989.

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

In the matter of the	)	NOTICE OF PUBLIC HEARING ON
amendment of Rules	)	THE PROPOSED AMENDMENT OF
46.12.102, 46.12.402,	)	RULES 46.12.102, 46.12.402,
46.12.403 and 46.12.409	)	46.12.403 and 46.12.409
pertaining to medicaid	)	PERTAINING TO MEDICAID
provider sanctions	)	PROVIDER SANCTIONS

TO: All Interested Persons

1. On November 29, 1989, at 3:00 p.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana to consider the proposed amendment of Rules 46.12.102, 46.12.402, 46.12.403 and 46.12.409 pertaining to medicaid provider sanctions.

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

46.12.102 MEDICAL ASSISTANCE, DEFINITIONS

~~(18)~~ "Department" remains the same.

~~(21)~~ "Medically necessary service" or "services" means a service reimbursable under ARM, Title 46, chapter 12, subchapters 5, 7, 8, 9 and 20 or any service listed separately on a hospital claim which is reasonably calculated to prevent, diagnose, correct, cure, alleviate, or prevent the worsening of conditions in a patient which:

(a) endanger life; ~~or~~

(b) cause suffering or pain; ~~or~~

(c) result in illness or infirmity; ~~or~~

(d) threaten to cause or aggravate a handicap; or

(e) cause physical deformity or malfunction and, there is no other equally effective, more conservative, or substantially less costly course of treatment more suitable for the recipient requesting the service or, when appropriate, no treatment at all.

~~(13)~~ "Experimental services" ~~or~~ means services which are generally regarded by the medical profession as unacceptable treatment. These services will not be considered medically necessary for the purpose of the medical assistance program. ~~(A)~~ Experimental services are procedures and items, including prescribed drugs, considered experimental by the U.S. department of health and human services or the department's designated review organization or procedures and items approved by the U.S. department of health and human services for use only in controlled studies to determine the effectiveness of such services.

~~(11)~~ "Emergency service" remains the same.

(223) "Montana medicaid program" means the Montana medical assistance program authorized by sections 53-6-101 through 53-6-144, ~~53-6-201 and 53-6-202 et seq.~~ MCA and 42 USC 1396 et seq.

(430) "Provider" remains the same.

(538) "Third party" remains the same.

(640) "Valid and proper claim" remains the same.

(79) "Designated review organization" remains the same.

(85) "Affiliates" remains the same.

(931) "Provider agreement" remains the same.

(1016) "Fiscal agent" remains the same.

(1135) "Suspension of payments" remains the same.

(1234) "Suspension" ~~of participation~~ means an exclusion from participation in the medicaid program for a specified period of time.

(1337) "Termination" ~~from participation~~ means an exclusion from participation in the medicaid program.

(1441) "Withholding of payments" remains the same.

~~(15) Grounds for sanctions are fraudulent, abusive, or improper activities engaged in by providers of medical assistance services.~~

(1618) "Intern" remains the same.

(1732) "Resident" remains the same.

(1819) "License" remains the same.

(197) "Certification" remains the same.

(2028) "Outpatient drugs" remains the same.

(2120) "Maximum allowable cost" ~~or "MAC"~~ ~~is means~~ the upper limit the department will pay for multi-source drugs. In order to establish base prices for calculating the maximum allowable cost, the department hereby adopts and incorporates by reference the methodology for limits of payment set forth in 42 CFR 447.331 and 447.332 (1988). The maximum allowable cost for multiple source drugs will not exceed the total of the dispensing fee established by the department and an amount that is equal to 150 percent of the price established under the methodology set forth in 42 CFR 447.331 and 447.332 for the least costly therapeutic equivalent that can be purchased by pharmacists in quantities of 100 tablets or capsules or, in the case of liquids, the commonly listed size. If the drug is not commonly available in quantities of 100, the package size commonly listed will be the accepted quantity. A copy of the above-cited regulations may be obtained from the Department of Social and Rehabilitation Services, Economic Assistance Division, P.O. Box 4210, Helena, Montana, 59604-4210.

(2212) "Estimated acquisition cost" ~~or "EAC"~~ ~~is means~~ the cost of drugs for which no MAC price has been determined. The EAC is the department's best estimate of what price providers are generally paying in the state for a drug in the package size providers buy most frequently. The EAC for a drug is the direct price (DP) charged by manufacturers to retailers. If there is no available DP for a drug or the

department determines that the DP is not available to providers in the state, effective January 1, 1988, the FAC is the average wholesale price (AWP) less 10 percent. The department uses the DP and AWP as weekly reported or calculated by the American druggist blue book data center or any other industry accepted data center under contract with the department or its fiscal agent.

(2315) "Family size" means Ffor SSI-related medically needy, ~~family size means~~ the number of eligible individuals and responsible relatives living in the same household unit. Ineligible persons living in the same household who are not responsible relatives are not counted when determining family size. For AFDC-related medically needy, family size means the number of eligible individuals in the same household unit. Ineligible persons living in the same household, including ineligible responsible relatives, are not counted in determining family size.

(2422) "Medically needy" remains the same.

(2514) Families and children means ~~refers to~~ eligible members of families with dependent children who are financially eligible under AFDC-related rules in subchapters 34, 38, and 40. In addition, this group includes individuals under 21 who are not dependent children but who are financially eligible under the above-cited subchapters. It does not include individuals under age 21 whose eligibility for medicaid is based on the blindness or disability; for these individuals, the SSI-related rules in subchapters 36, 38, and 40 apply.

(266) "Categorically needy" remains the same.

(273) "AFDC" remains the same.

(2833) "SSI" remains the same.

~~(297) --Optional-state-supplement-means-a-cash-payment-made by-the-department,-under-ARM-46-9-201-through-205,-to-an-aged, blind-or-disabled-individual;~~

(3026) "OAA" remains the same.

(312) "AB" remains the same.

(321) "AABD" remains the same.

(334) "APTD" remains the same.

(3427) "OASDI" remains the same.

(3529) "Professional component" remains the same.

(36) "Technical component" remains the same.

(3739) "Total value" remains the same.

(3810) "Electronic media claims" remains the same.

(17) "Immediate jeopardy" or "immediate threat" means a situation in which a nursing facility's noncompliance with one or more conditions of participation or standards poses a serious threat to patients' or clients' health or safety such that immediate corrective action is necessary. There is no substantive difference between immediate jeopardy and immediate threat.

(24) "New admission" means the admission of a medicaid client who has never been in the facility or, if previously admitted, had been discharged or had voluntarily left the facility. The term does not include the following:

(a) Individuals who were in the facility before the effective date of denial of payment for new admissions, even if they become eligible for Medicaid after that date; or

(b) Individuals who, after a temporary absence from the facility, are returned to beds reserved for them in accordance with department policy.

(25) "Nursing facility" means a facility licensed by the Montana department of health and environmental sciences to provide skilled or intermediate nursing care under the supervision of a licensed registered nurse.

AUTH: Sec. 53-6-113 MCA;

IMP: Sec. 53-6-101, 53-6-106, 53-6-107, 53-6-131 and 53-6-141 MCA

46.12.402 SANCTIONS Subsections (1) through (1)(f) remain the same.

~~(g) One hundred percent review of the provider's claims prior to payment.~~

(hg) Referral to the department of revenue for any action deemed necessary.

(ih) In addition to the sanctions listed above, nursing facilities shall be subject to the following: long-term care facilities shall be subject to termination of participation when the deficiencies resulting from failure to meet conditions or standards of participation pose immediate jeopardy or the denial of payments for new admissions if the facility's deficiencies resulting from failure to meet conditions or standards of participation do not pose immediate jeopardy. Federal laws regarding termination from participation and intermediate sanctions provided in 42 U.S.C. 1396a(i), 42 CFR 442.27, and 42 CFR 442.117 through 442.119 are hereby incorporated by reference. A copy of 42 U.S.C. 1396a(i), 42 CFR 442.27, and 42 CFR 442.117 through 442.119 may be obtained from the Department of Social and Rehabilitation Services, P.O. Box 42107, Helena, Montana 59620, or

(i) withholding of payments for new client admissions for up to eleven months;

(ii) a civil monetary penalty up to \$1000 per day, with interest at the rate of 12% until the amount owing is paid in full; and

(iii) appointment by the department of temporary management;

(A) while improvements are being made to bring the facility into compliance with applicable standards or conditions of participation; or

(B) to implement an orderly closure of the facility.

(4i) Notification to the public of sanctions taken against a provider.

AUTH: Sec. 53-2-201, 53-2-803, 53-4-111, 53-6-108, 53-6-111 and 53-6-113 MCA

IMP: Sec. 53-2-306, 53-2-801, 53-4-112, 53-6-106, 53-6-107 and 53-6-111 MCA

46.12.403 FACTORS GOVERNING IMPOSITION OF SANCTION

(1) The decision to impose sanctions and which sanctions to impose shall be within the discretion of the department ~~except as provided in subsection (3).~~ (2) The following factors shall be considered in determining the sanction to be imposed:

- (a) seriousness of the offense(s);
- (b) extent of violations;
- (c) history of prior violations;
- (d) prior imposition of sanctions;
- (e) harm to the client for past or current violations of

department rules as set forth in ARM 46.12.401;

(f) cost savings to the provider for failure to comply with department rules;

- (g) prior provision of provider education;
- (h) provider willingness to comply with program rules;
- (i) whether a lesser sanction will be sufficient to remedy the problem;
- (j) actions taken or recommended by peer review groups or licensing boards.

(2) The department will impose a sanction upon a provider no less stringent than that imposed by the United States government for violations of laws pertaining to the medicare program under title XVIII of the social security act.

~~(3) Where a provider has been found by a court of competent jurisdiction in either a civil or criminal proceeding to have defrauded the Montana medical assistance program, or has been previously suspended due to program abuse, or has been terminated from the medicare program for fraud or abuse, the department may terminate the provider from the medical assistance program;~~

AUTH: Sec. 53-2-201, 53-2-803, 53-4-111, 53-6-108, 53-6-111 and 53-6-113 MCA

IMP: Sec. 53-2-306, 53-2-801, 53-4-112, 53-6-106, 53-6-107 and 53-6-111 MCA

46.12.409 FAIR HEARING PROCEDURES Subsections (1) through (1)(c) remain the same.

(d) The procedures governing termination or denial of payments for new admissions imposed upon a nursing facility shall include the criteria listed above and the provisions of 42 CFR 431.151 through 431.154 and 42 CFR 442.117 through 442.119 as amended, October 1, 1989. The department hereby

adopts and incorporates by reference 42 CFR 431.151 through 431.154 and 42 CFR 442.117 through 442.119. A copy of 42 CFR 431.151 through 431.154 and 42 CFR 442.117 through 442.119 may be obtained from the Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana 59604-4210.

Original subsections (1)(d) through (1)(f) remain the same in text but will be recategorized as subsections (1)(e) through (1)(g).

Subsection (2) remains the same.

AUTH: Sec. 53-6-108, 53-6-113 and 53-2-201 MCA


IMP: Sec. 53-2-201, 53-6-106, 53-6-107, 53-6-111 and 53-6-141 MCA

3. Nursing home reform provisions of the Omnibus Budget Reconciliation Act (OBRA) of 1987 requires new enforcement remedies. These new remedies are intended to result in faster correction of deficiencies to further ensure the health and safety of residents of nursing facilities. States are required to establish the new remedies, by statute or regulation, by October 1, 1989. House Bill 452 passed by the Montana 51st Legislature enacted Section 53-6-107, MCA to incorporate the new remedies into state statute. The new penalties impose a civil monetary penalty, with interest, which may not exceed \$1,000 for each day that a nursing facility is substantially out of compliance with conditions, standards, or requirements of Medicaid participation. Other penalties include the appointment of temporary management to oversee the operation of the facility during closure or while improvements are being made to bring the facility into compliance.

These rules also alphabetize the definitions in 46.12.102 and update the appeal procedure for providers in 46.12.409 as required by federal law.

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 December 7, 1989.

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



Director, Social and Rehabilitation Services

Certified to the Secretary of State October 30, 1989.

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

In the matter of the	)	NOTICE OF PUBLIC HEARING ON
adoption of Rule I,	)	THE PROPOSED ADOPTION OF
amendment of Rules	)	RULE I, AMENDMENT OF RULES
46.25.101, 46.25.722,	)	46.25.101, 46.25.722,
46.25.725, 46.25.728,	)	46.25.725, 46.25.728,
46.25.730, 46.25.731 and	)	46.25.730, 46.25.731 and
46.25.742, and the repeal of	)	46.25.742, AND THE REPEAL
Rule 46.25.732 pertaining to	)	OF RULE 46.25.732
general relief	)	PERTAINING TO GENERAL
	)	RELIEF

TO: All Interested Persons

1. On December 5, 1989, at 11:00 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 adoption of Rule I, amendment of Rules 46.25.101, 46.25.722, 46.25.725, 46.25.728, 46.25.730, 46.25.731 and 46.25.742, and the repeal of Rule 46.25.732 pertaining to general relief.

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

RULE I TRANSITION-TO-WORK ALLOWANCE (1) Transition-to-work allowances will be provided to the extent that appropriations are available. When the appropriated funds are expended, transition-to-work allowances will no longer be provided.

(2) As an alternative to the programs and services described in ARM 46.25.731 and 46.25.732, a transition-to-work allowance will be provided to recipients of general relief assistance for basic necessities who have obtained employment out of state.

(3) Persons who would have been determined eligible for general relief assistance for basic necessities, had an application been made, are also eligible for the transition-to-work allowance.

(4) The transition-to-work allowance shall not be provided to persons that are eligible for emergency assistance under the aid to families with dependent children program, persons who are interstate transients, persons eligible for a relocation allowance while participating in a program under the job training partnership act (JTPA) or persons that are under penalty as described in ARM 46.25.733.

(5) Transition-to-work allowance shall be limited to the following:

(a) Transportation by the least expensive means available to assist the person to relocate to the nearest point out of state where it is documented that employment has been obtained.

(b) Relocation expenses to assist the person to relocate to the nearest point out of state where it is documented that employment has been obtained.

(6) Transition-to-work allowance shall not exceed the household monthly income and resource standard found in ARM 46.25.727 except as described in subsection (7) of this rule.

(7) The department may designate that the limit to the transition-to-work allowance described in subsection (6) of this rule, be exceeded if:

(a) transportation and relocation expenses exceed the household monthly income and resource standard found in ARM 46.25.727; or

(b) nonpayment of the additional transportation and relocation expenses would hinder relocation.

(8) Transportation and relocation expenses of the transition-to-work allowance under this rule shall not exceed the household monthly income standard found in ARM 46.25.744(5).

(9) All persons in a household which elect to receive the transition-to-work allowance are ineligible for general relief assistance for basic necessities for a period of 16 months.

(10) The period of ineligibility does not preclude eligibility for general relief medical assistance.

(11) A person who utilizes the transition-to-work allowance defined in this rule is not eligible for the one additional month of general relief medical assistance as described in ARM 46.25.744(4).

AUTH: Sec. 53-3-201 MCA

IMP: Sec. 53-3-205 MCA

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

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

(1) "Assessment" means the determination initial finding of a person's employability classification by the presence or absence of serious barriers to employment or chemical dependency, of what services and activities the structured job search and training program can offer to enable a participant to obtain employment

~~(2) "Barriers to employment" means limitations such as parental status, criminal records, lack of child care and physical or mental status which preclude or hinder an individual from seeking, obtaining and retaining employment.~~

Subsection (3) remains the same.

(4) "Chemical dependency" means current drug usage, prescription or non-prescription, or alcohol usage which

interferes with the ability to establish or maintain employment.

Subsections (4) through (8) remain the same in text but will be recategorized as subsections (5) through (9).

(912) "Employability plan" means an individualized plan of action to get a job jointly developed by the project work program employment specialist and client after the initial month of participation in the project work program training components. ~~a written plan which outlines the steps necessary to obtain employment;--The employability plan must, at a minimum, include assessment of job readiness and skills, barriers to employment,--specific employment and training needs,--services identified to meet needs and transition steps to employment~~

(13) "GRA/PWP employment specialist" means the person who acts as the single point of entry into the project work program. The CRA/PWP employment specialist:

(a) recommends to the county office of human services whether general relief assistance for basic necessities applicants are exempt, unemployable or employable; and

(b) refers all employable general relief assistance for basic necessities applicants to project work program training components and monitors their continued participation and provides project work program reports to county office of human services.

~~(10)--"Extended--job--search"--means--a--program--component that--combines--the--use--of--individual--job--search,--counseling, workfare--and--remedial--and--job--skills--training--to--assist--in obtaining--employment;~~

Subsection (11) remains the same in text but will be recategorized as subsection (19).

Subsection (12) remains the same in text but will be recategorized as subsection (14).

(15) "General relief assistance benefit month" means any month for which a general relief for basic necessities benefit check has been or will be issued. Pro-rated benefits for a month count as one benefit month, regardless of the number of days included.

Subsection (13) remains the same in text but will be recategorized as subsection (16).

Subsection (14) remains the same in text but will be recategorized as subsection (17).

(1518) "Good cause" means the test used to determine whether a general relief for basic necessities claimant has failed to comply with project work or other employment related requirements. ~~inability--to--participate--because--of--circumstances--beyond--the--person's--control--and--includes,--but--is--not limited--to:~~

(a) ~~illness--of--the--participant;~~ Reasons for failure to comply with either project work program or other employment related requirements may include, but are not limited to:

(i) illness of the individual;
(ii) serious illness of a household member which requires the person's presence;
(iii) unanticipated emergencies;
(iv) the person's incarceration or court appearance;
(v) an employer practicing unlawful discrimination;
(vi) harassment or mistreatment;
(vii) the verifiable cost of employment exceeds amount of income received; and
(viii) working conditions that are dangerous to health and safety.

~~(b) -- illness of another household member sufficiently serious to require the presence of the participant; or~~
~~(c) -- an unanticipated emergency as determined by the county director.~~

Subsection (16) remains the same in text but will be recategorized as subsection (20).

(17) "Eligible members" are those persons who meet the non-financial criteria for general relief assistance for basic necessities or general relief medical in a financially eligible household.

(11) "Employability classification" means a person has been determined as employable, unemployable or exempt from project work program participation.

Subsection (18) remains the same in text but will be recategorized as subsection (21).

Subsection (19) remains the same in text but will be recategorized as subsection (22).

Subsection (20) remains the same in text but will be recategorized as subsection (23).

Subsections (21) remains the same in text but will be recategorized as subsection (2).

~~(22) -- "Indigent" or "misfortunate" means a person who is lacking the means, financial or otherwise, by which to prevent destitution for himself and others dependent upon him for basic necessities and who is otherwise eligible for assistance under this chapter.~~

Subsection (23) remains the same in text but will be recategorized as subsection (24).

(2425) "Job readiness training" means training which teaches a person how to get a job. It includes instruction in how to look for a job, what type of job to look for, and development of work maturity skills. It includes efforts to secure employment using skills learned. Job readiness may include orientation to the world of work, labor market and occupational information, values clarification and personal understanding, career planning and decision making, job seeking skills, counseling, and limited testing and assessment. a program component that uses motivational counseling, job development and referral, practicing and coaching of telephone and interview techniques, refinement of job hunting skills, classroom training, peer support and group job search to assist a recipient in obtaining employment.

(2526) "Job skills training" means JTPA classroom, work experience, or on-the-job training, designed to give persons the information and technical skills necessary to perform a job or group of jobs. ~~training that is necessary to raise the functional skill level of participants to the point at which they can successfully enter employment.~~

Subsection (26) remains the same in text but will be recategorized as subsection (27).

Subsection (27) remains the same in text but will be recategorized as subsection (28).

(29) "Overcoming Chemical Dependency" means programs and/or training components to assist persons to overcome drug and/or alcohol dependency. It may include, but is not limited to, inpatient or outpatient recovery programs, other primary treatment programs, counseling to overcome denial, formal aftercare plans, and on-going support groups such as Alcoholics and Narcotics Anonymous.

(30) "Peer counseling" means a training program designed to help persons overcome social, personal and other barriers in order to get a job. Peer counseling may include, but is not limited to, mentor relationships with regularly scheduled meeting times, support group meetings with topics such as: success stories from previous general relief for basic necessities recipients, obsessive/compulsive behavior, and social skills development.

Subsection (28) remains the same in text but will be recategorized as subsection (31).

(32) "Project work program training components" means all project work program activities available to employable persons and employable persons with serious barriers. These training components include, but are not limited to, structured job search, supervised job search, work experience, job skills training, job readiness, remedial education, peer counseling, and overcoming chemical dependency.

(33) "Project Work Program (PWP)" means the state of Montana's employment and training program that all general relief assistance for basic necessities persons are referred to.

(34) "Relocation expenses for transition-to-work allowance" means meals, lodging and other expenses to assist persons to relocate out-of-state for employment purposes.

(2935) "Remedial education" means training designed to enhance employability by upgrading basic skills through remedial education coursework. Coursework may include, but is not limited to, math, reading, communication, social studies, consumer education, GED preparation and English as a second language. It may also include training provided in the primary language of the person with limited English proficiency. ~~that is necessary to raise the functional educational level of a participant to the point at which they can successfully enter employment.~~

Subsection (30) remains the same in text but will be recategorized as subsection (36).

Subsection (31) remains the same in text but will be recategorized as subsection (37).

(38) "Serious barriers to employment" means a limitation in obtaining employment resulting from:

(a) lack of work skills, experience or training;

(b) failure to attain a high school education or its equivalent; or

(c) illiteracy.

Subsection (32) remains the same in text but will be recategorized as subsection (39).

(340) "Structured job search and--training" means a classroom approach to getting a job, where persons attend eight hours a day and make employer contacts in a concentrated effort to secure employment. Structured job search may include, but is not limited to, instruction in job seeking skills such as writing resumes, filling out applications, learning telephone techniques and interviewing skills; receiving counseling and other activities to refine work maturity skills; and receiving limited job readiness training. Structured job search will not contain any testing and assessment designed to identify aptitudes and/or barriers. a-program-consisting-of-three-components---assessment-and-testing,--job-readiness-and-extended-job-search.

Subsection (34) remains the same in text but will be recategorized as subsection (41).

(42) "Supervised job search" means a monitored, self-directed approach to getting a job. A person must report each day to inform the supervised job search training component operator of their daily job search plan, which must include employer contacts as part of a concentrated effort to secure employment. A person must report at the end of the day also. Supervised job search may include, but is not limited to, instruction in job seeking skills, counseling, refinement of work maturity skills, limited job readiness training excluding testing and assessment designed to identify aptitudes and/or barriers.

(3543) "Testing" means the use of an instrument (such as GATB, BOLT, TABE, MMPI, etc.) the-general-aptitude-testing-battery-and/or-the-specific-aptitude-test-battery-to-develop-a-set-of-steps-to-accomplish-the-goal-of-employment to determine a person's skill and/or knowledge level.

Subsection (36) remains the same in text but will be recategorized as subsection (47).

(44) "Transportation expense for transition-to-work allowance" means the least expensive means available to relocate a person out-of-state for employment purposes.

(45) "Transition-to-work allowance" means the payment for transportation and relocation expenses for persons who have obtained employment out-of-state.

(46) "Work experience" means a non-JTPA job skills training component where persons physically report to pre-selected worksite to perform duties of a particular position.

AUTH: Sec. 53-2-201, 53-3-102, 53-2-803, 53-3-109 and 53-3-114 MCA

IMP: Sec. 53-2-201, 53-2-301, 53-2-802, 53-3-109, 53-3-304 and 53-3-305 MCA

46.25.722 PROVISION AND VERIFICATION OF ELIGIBILITY INFORMATION Subsections (1) through (3)(g) remain the same.

(h) citizenship or proof of legal status;

(i) identity.

Subsections (4) and (5) remain the same.

AUTH: Sec. 53-2-201, 53-2-803 and 53-3-114 MCA

IMP: Sec. 53-3-109 and 53-3-205 MCA

46.25.725 INCOME Subsection (1) remains the same.

(a) The portion of student's educational grants and deferred educational loans which is provided for particular educational costs specified by the department is exempt.

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

AUTH: Sec. 53-2-201, 53-2-803 and 53-3-114 MCA

IMP: Sec. 53-3-205 MCA

46.25.728 INCOME AND RESOURCE COMPUTATION Subsections (1) through (5)(c) remain the same.

(6) When two or more households share living space and are each applying for general relief assistance for basic necessities, they shall be treated as one household for grant computation purposes.

(7) Issuance of benefit checks will be as follows:

(a) for all claimants of general relief assistance for basic necessities, who did not receive a general relief assistance for basic necessities benefit payment in the previous month, benefits will not be paid until after ten days of participation in project work program have been completed;

(b) for successive months, all benefits will be issued on the last working day prior to the 16th of the month.

AUTH: Sec. 53-2-201, 53-2-803 and 53-3-114 MCA

IMP: Sec. 53-3-109, 53-3-205, 53-3-206, 53-3-209 and 53-3-311 MCA

46.25.730 PERIODS OF ELIGIBILITY FOR GENERAL RELIEF ASSISTANCE Subsections (1) and (2) remain the same.

(a) Continued eligibility can be established by monthly filing by the client on a form designated by the department.

Subsection (3) remains the same.

(a) no longer meets eligibility criteria; or

(b) received general relief assistance by means of fraud or mistake; or

(c) accepts a transition-to-work allowance as described in RULE I.

(4) Length of general relief assistance for basic necessities eligibility period shall be determined by a person's employability classification and willingness to participate, or actual participation in training programs.

(a) Persons exempt from project work program participation may receive general relief assistance for basic necessities for six months in any twelve month period.

(b) Unemployable persons may receive general relief assistance for as long as they remain eligible.

(c) employable persons may receive general relief assistance for basic necessities for four months in any twelve month period unless:

(i) serious barriers to employment have been identified and the person is willing to participate in a training program designed to help overcome the barrier(s). Employable persons with serious barriers may receive general relief assistance for basic necessities for six months in any twelve month period.

(ii) chemical dependency has been established and the person is undergoing active treatment in an approved program. Employable persons with chemical dependency may receive general relief assistance for basic necessities for nine months in any twelve month period.

(A) Chemically dependent persons are eligible for a one-time additional extended benefit period while undergoing approved treatment.

AUTH: Sec. 53-2-201, 53-2-803 and 53-3-114 MCA

IMP: Sec. 53-3-206, 53-3-209, and 53-3-321 MCA

46.25.731 STRUCTURED JOB SEARCH AND TRAINING PROGRAM

~~{1}--Recipients of general relief assistance, unless exempted elsewhere in this rule, are required to participate in the structured job search and training program. The program shall consist of 3 components:~~

~~{a}--assessment and testing;~~

~~{b}--job readiness; and~~

~~{c}--extended job search;~~

~~{2}--All recipients, unless qualified under the exemptions listed for the workfare program found in ARM 46.25.732(2), must enroll and cooperate as directed by the~~

department-in-the-assessment-and-testing-component-and-in-the preparation-of-the-employability-plan;

(3)--All-recipients-who-have-completed-the-requirements of-subsection-(2)-of-this-rule-must-participate-in-the-job readiness-component-for-at-least-80-hours-in-any-five-week period-designated-by-the-department-and-spend-at-least-eight (8)-hours-per-week-in-a-supervised-effort-to-find-employment;

----(a)--if-a-recipient's-employability-plan-identifies-ex- ceptional-need-that-would-prevent-successful-job-placement during-the-job-readiness-component-and-that-can-be-reasonably addressed-by-participating-in-one-or-more-of-the-activities described-in-subsection-(4)-of-this-rule, the-recipient-may-be permitted-to-temporarily-postpone-participation-in-the-readi- ness-component;

(4)--All-recipients-who-have-completed-the-job-readiness component-shall-participate-for-six-(6)-consecutive-months-in the-extended-job-search-component;--They-must:

----(a)--continue-to-spend-at-least-eight-(8)-hours-per-week in-a-supervised-effort-to-find-employment; and

(b)--participate-for-32-hours-per-week, as-called-for-in their-employability-plan;-in:

(i)--remedial-education;

(ii)--counseling;

(iii)--job-skills-training;

(iv)--workfare; or

(v)--job-seeking-or-other-related-activities;

(5)--A-recipient-who-has-participated-in-the-components found-in-subsections-(2),-(3)-and-(4)-of-this-rule, but-whose participation-ends-prior-to-completion-of-all-of-the-compo- nents, shall-be-required-to-reenter-the-program--starting-at the-beginning-of-the-first-unfinished-component--and-complete all-remaining-components;

(6)--The-following-supportive-services, if-necessary-to overcome-barriers-to-employment-specified-in-a-recipient's employability-plan, may-be-provided:

(a)--Child-care;

(i)--payment-shall-not-exceed-the-limits-established-in ARM-46-10-404(g),-(h)-and-(j);

(ii)--payments-shall-be-made-to-a-registered-provider after-submission-to-the-department-of-a-bill-signed-by-the provider-listing-dates-of-service-and-stating-names-of-child- ren-cared-for;

(b)--Transportation;

(i)--payment-will-be-made-for-only-the-least-expensive means;

(ii)--payment-will-be-made-only-for-recipients-who-live one-or-more-miles-from-the-work-site-or-service-unit;

(iii)--use-of-private-transportation-will-be-reimbursed-at the-rate-of-\$.185-per-mile-up-to-a-maximum-of-\$10.00-per-day for-each-recipient-participating-in-the-structured-job-search training-and-work-program;

~~(c) -- Work clothing:
(i) -- where necessary, up to \$100.00 toward the purchase of work clothing will be made through a vendor payment;
(d) -- Haircut:
(i) -- up to \$10.00 of the \$100.00 available for work clothing may be utilized to pay for one haircut during the program;~~

~~(e) -- Other:
(i) -- a maximum of \$15.00 per recipient may be spent to obtain necessary employment and training items such as school transcripts, birth certificates, driver's license and application fees;~~

(1) All claimants for general relief assistance for basic necessities will be referred to the project work program (PWP). Project work consists of two parts:

(a) the general relief assistance for basic necessities/project work program employment specialist; and
(b) the project work program training components.

(2) Claimants will report to the general relief assistance for basic necessities/project work program employment specialist for initial recommendation of employable, unemployable or exempt classification.

(3) All claimants of general relief assistance for basic necessities regardless of their recommended status or employability classification must participate in project work program fully for ten (10) days prior to a general relief assistance for basic necessities check being issued.

(a) All persons recommended as exempt will be referred back to the county office of human services. The following persons are exempt from project work:

(i) primary caretaker of child(ren) under 6 years old;
(ii) children under the age of 16;
(iii) persons over age 16, who are fulltime high school students actively pursuing a degree or its equivalency; or
(iv) persons enrolled fulltime in a JTPA or other job training program certified by the department of labor and industry.

(b) All persons recommended as unemployable will be referred back to the county office of human services for SSI application process and monitoring. Unemployable persons are those who:

(i) are at least 55 years old and have a limited ability to obtain or retain suitable employment because of advanced age; or

(ii) have been determined infirm by the department contract physician. A person claiming to be infirm shall be referred to the contract physician by the general relief assistance for basic necessities project work program employment specialist;

(c) Employable persons are all those not determined unemployable or exempt.

(i) All employable persons will be immediately referred to project work program training components.

(ii) All employable persons must participate forty (40) hours per week in project work training components.

(4) Project work program training components are mandatory for all employable applicants for, or recipients of, general relief assistance for basic necessities.

(a) After referral to project work program, initial month participation for all persons recommended as employable consists of structured and/or supervised job search and work experience:

(i) no barriers shall be identified; and

(ii) emphasis shall be on getting a job.

(b) After initial month participation, all participants who have not secured fulltime employment shall meet with general relief assistance for basic necessities/project work program employment specialist to jointly develop an employability development plan (EDP). The EDP shall identify:

(i) whether or not the participant has serious barriers to employment. Serious barriers are:

(A) lack of work skills, experience or training necessary to secure employment;

(B) failure to obtain a high school education or its equivalent; or

(C) illiteracy.

(ii) whether or not the participant is chemical dependent;

(iii) whether or not the client is willing to participate in training component designed to assist them overcome serious barriers; or if they are chemically dependent, whether or not they are participating in an approved program to overcome dependency;

(iv) what steps need taken in order to facilitate the participant's entry into employment; or

(c) Successive months participation for employable persons with serious barrier or chemical dependencies consist of at least eight (8) hours a week must be spent in a job search training component. The other thirty-two (32) hours per week will be spent participating in a combination of components as described in the employability development plan.

(i) For employable participants with no barriers successive months participation shall consist of some or all of the following training components:

(A) structured job search;

(B) supervised job search;

(C) work experience;

(D) job readiness training; and

(E) other training components as described in the county plan.

(ii) Successive months participation for employable participants with serious barriers or chemical dependency shall consist of some or all of the following training components:

- (A) structured job search;
- (B) supervised job search;
- (C) work experience;
- (D) job readiness training;
- (E) job skills training;
- (F) remedial education;
- (G) overcoming chemical dependency;
- (H) peer counseling; and
- (I) other training components as described in the county

plan.

(iii) Persons with serious barriers identified in the EDP must be willing to participate in a component to assist them to overcome that barrier to be eligible for an additional two months of general relief assistance for basic necessities benefits.

(iv) Persons with chemical dependency, as identified in EDP, must be participating in an approved program to assist them overcome their dependency to be eligible for additional two months of general relief assistance for basic necessities benefits.

(4) Upon application for general relief assistance for basic necessities, persons who have previously been referred to (or enrolled in) the project work program, shall be required to start the entire project work program process again.

(5) The following supportive services, if necessary for participant's search for employment, will be provided:

- (a) transportation;
- (b) haircuts;
- (c) clothing;
- (d) child care; and
- (e) any other time necessary to search for employment.

(6) In the initial month of the project work program, each participant may be provided up to \$25.00 in supportive service payments if need for such services is identified in the intake interview.

(a) After the initial month of project work program, each participant may receive up to \$75.00 per month supportive service payments, if exceptional need is identified in their employability development plan.

(b) Supportive service payments may be made to the participant or actual service provider.

(c) Childcare payments are excluded from the above supportive service limits. If childcare is necessary for participation in project work, up to \$160.00 per child per month may be provided. Childcare payments must be made by voucher to the childcare provider.

(d) A participant may be provided ten cents (10¢) per mile for actual miles driven:

(i) transportation is determined to be a necessary support service;

(ii) the participant uses their own vehicle for transportation; and

(iii) the total claimed does not exceed the limits on reimbursement set above.

(7) All employable claimants of general relief assistance for basic necessities shall be required to register for employment at the local job service office, maintain an active job registration file, and accept any available employment for as long as they continue to receive general relief assistance for basic necessities benefits.

AUTH: Sec. 53-2-201, 53-2-803 and 53-3-114 MCA

IMP: Sec. 53-2-822, 53-3-304 and 53-3-305 MCA

46.25.742 PERIODS OF ELIGIBILITY FOR GENERAL RELIEF MEDICAL Subsections (1) through (3) remain the same.

(a) no longer meets eligibility criteria; or

(b) received assistance by means of fraud or mistake;

or

(c) accepts a transition-to-work allowance as described in RULE I.

AUTH: Sec. 53-2-201, 53-2-803 and 53-3-114 MCA

IMP: Sec. 53-3-206 and 53-3-209 MCA

4. ARM 46.25.732 as proposed to be repealed is on pages 46-7931 and 46-7932 of the Administrative Rules of Montana.


AUTH: Sec. 53-2-803, 53-2-201 and 53-3-114 MCA

IMP: Sec. 53-2-822, 53-3-304 and 53-3-305 MCA

5. This adoption and these amendments are necessary to implement SB 101 and 128. Those bills passed by the 51st Montana Legislature limit the length of time that employable persons can receive General Relief Assistance for Basic Necessities. While limiting the periods of eligibility, the legislature provided a more comprehensive and intensive work training program and the rules effectuate that mandate.

6. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana 59604, no later than December 7, 1989.

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



Director, Social and Rehabilitation Services

Certified to the Secretary of State October 30, 1989.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the proposed	)	NOTICE OF ADOPTION
adoption of rules relating to the	)	OF ARM 4.12.1501 THRU
production of mint	)	4.12.1506 RELATING TO
	)	THE PRODUCTION OF
		MINT

TO: All Interested Persons

1. On September 28, 1989, the Department of Agriculture published a notice of proposed adoption of the above-stated rules at page 1374-1375, 1989 Montana Administrative Register, Issue number 18.
2. The Department of Agriculture has adopted the rules exactly as proposed.
3. No comments or testimony were received.



E. M. Snortland, Director
Department of Agriculture

Certified to the Secretary of State, October 30, 1989.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF HEARING AID DISPENSERS

In the matter of the amendment	)	NOTICE OF AMENDMENT OF
of rules pertaining to trainee-	)	8.20.401 TRAINEESHIP
ship, fees, address change,	)	REQUIREMENTS AND STANDARDS,
record retention, ethics, dis-	)	8.20.402 FEES, 8.20.405
ciplinary actions; repeal of a	)	NOTIFICATION OF ADDRESS
rule pertaining to hearings;	)	CHANGE, 8.20.407 RECORD
and the adoption of a new rule	)	RETENTION, 8.20.408 CODE OF
pertaining to testing pro-	)	ETHICS, 8.20.411 DISCI-
cedures	)	PLINARY ACTIONS - FINES;
	)	REPEAL OF 8.20.410
	)	HEARINGS; AND THE ADOPTION
	)	OF NEW RULE I. (8.20.412)
	)	MINIMUM TESTING AND
	)	RECORDING PROCEDURES

TO: All Interested Persons:

1. On June 15, 1989, the Board of Hearing Aid Dispensers published a notice of proposed amendment and adoption of the above-stated rules at page 694, 1989 Montana Administrative Register, issue number 11. Seventeen requests for public hearing were received and the Board published a notice of public hearing on August 17 at page 1069, 1989 Montana Administrative Register, issue number 15. The hearing was held on September 22, 1989.

2. The Board amended and adopted the rules as proposed but with the following changes:

"8.20.401 TRAINEESHIP REQUIREMENTS AND STANDARDS

(1) will remain as proposed.

(a) peruse every fitting made by the trainee. The supervisor shall approve the selection of the ear mold, aid and choice of ear to fit prior to fitting, during the trainee's first 60 days of the training period.

(b) through (6) will remain as proposed.

(7) A licensed hearing aid dispenser who sponsors a trainee is directly responsible and accountable under the disciplinary authority of the board for the conduct of the trainee in his training activities ~~as-if-the-conduct-were licensee's-own.~~

~~(8) -- For the purposes of section 37-16-405, MCA, the word "supervision" will be applied to include:~~

~~(a) -- direct and regular observation and instruction of a trainee by a licensed hearing aid dispenser who is available for prompt consultation and treatment; and~~

~~(b) -- "general supervision" means oversight by a licensed hearing aid dispenser of those tasks and procedures that do not require the physical presence of the licensed dispenser on the premises; -- However, the trainee must remain under the licensed hearing aid dispenser's direction, control, responsibility and evaluation."~~

Auth: Sec. 37-16-202, MCA; IMP, Sec. 37-16-301, 37-16-405, MCA

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"I. (8.20.412) MINIMUM TESTING AND RECORDING PROCEDURES

(1) through (1)(b) will remain as proposed.

(c) Speech reception threshold and discrimination testing must be conducted under quite conditions in an environment not to exceed 55 dBA ambient noise level, consistent with OSHA standards, with appropriate masking.

(d) will remain as proposed.

(2) Reference The licensee shall follow federal food and drug administration regulations on required referral of clients to a medical doctor under certain conditions.

(3) through (3)(c) will remain as proposed.

(d) Whether the test equipment was calibrated in SPL or HTL.

(4) will remain as proposed."

Auth: Sec. 37-16-202, MCA; IMP, Sec. 37-16-202, 37-16-411, MCA

4. All comments received have been thoroughly considered. Those comments and the board's responses thereto are as follows:

COMMENTS REGARDING 8.20.401: Two comments were received in support of the proposed rule amendments in the form proposed.

Staff of the Administrative Code Committee, Lee E. Micken and Hank Hudson, Legal Services Developer, Senior's Office, Legal and Ombudsman Service, each saw a need to clarify which tasks may be performed under "supervision" and "general supervision."

Lyle E. Green, of Beltone HAS, Missoula, suggested revisions which included limiting the number of trainees per licensee to two, because it is impossible to give "hands-on" supervision to more than two trainees at a time; requiring that quarterly reports of supervision include lists of persons served during the first six months of training; and not making direct supervision so stringent as to deprive people in rural areas of service.

Richard Benjamin, of Beltone HAS, Missoula, also advocated clarification of "supervision" and "general supervision," and suggested that the rules should require trainees to spend the first six months of training in the office before going into the field, saying that this requirement would be by way of "direct supervision."

Mr. David E. Evans, on behalf of the Montana Hearing Aid Society and his company, Hearing Aid Institute, generally opposed amendments to this rule, arguing that the rule in its present form is adequate, that the proposed amendments create new conduct standards for dispensers, and that "pre-approval" requires physical presence of the dispenser, which gives an unreasonable competitive advantage to persons who dispense out of office over those that service rural Montana.

Mr. William V. Fowler, Licensee, of Missoula, Montana, felt that the proposed "pre-approval" feature of subsection (2)(c) should not be adopted because it puts an impossible burden upon supervisors and trainees when the trainee is in the field. He also suggested revision of subsection (2)(b) to provide that supervisors have physical contact with all customers of trainees who experience difficulty in wearing their aids. He also commented that present subsection (7) should be deleted and suggested alternative language for proposed subsection (8), which is an attempt to define "supervision" and "direct supervision."

RESPONSE: The board recognizes that it may not be the appropriate time to attempt to define "supervision," that personal supervision of trainees in the field under all conditions may be unrealistic, that proposed alternatives for making clear that the supervisor is accountable for the trainee's training activity are acceptable and that most of the comments are well taken and should be reflected in the board's rules. Accordingly, the board is not adopting the proposed "pre-approval" requirement or the proposed definitions of supervision. But it is adopting suggested alternatives.

However, the board rejects Mr. Benjamin's suggestion that trainee's be required to spend six months in the office before going into the field, because the subject is covered by section 37-16-405(2)(b), MCA, and Mr. Fowler's suggestion that subsection (7) be deleted from the rule, because that subject was not noticed for consideration in these proceedings.

COMMENTS REGARDING 8.20.402: William Fowler provided written comment stating that the proposed rule change was acceptable.

Staff of the Administrative Code Committee commented that implementing section 37-16-407, MCA, does not relate to application or re-exam fees.

RESPONSE: The board concurred with the staff of the ACC and will make the correction.

COMMENTS REGARDING 8.20.408: Five written comments were received in favor of the proposed amendment.

COMMENTS REGARDING 8.20.410: No written comments were received. An oral statement was received from Mr. Fowler expressing concern that this rule was the only place most dispensers were aware of their opportunity for hearing, as the Administrative Procedure Act is not always available to the public.

RESPONSE: The board considered Mr. Fowler's comment, but felt that the rule is redundant. The Administrative Procedure Act is referred to in section 37-16-412, MCA. Therefore it is in

the booklet containing the Practice Act and the board's rules which is provided to all licensees and interested persons.

COMMENTS REGARDING NEW RULE I. (8.20.412): Lee E. Micken commented that the standard of 250 hertz contained in proposed subsection (1)(a) should be deleted, because invalid threshold measurements often result at that frequency when testing in a non-sound-treated environment; that the phrase "speech reception thresholds" should be deleted from proposed subsection (1)(c), since valid measurements often cannot be determined in a non-sound-treated environment; and that proposed subsection (3)(d) should be revised to read "whether the test equipment was calibrated in SPL or HTL."

Mr. Evans commented that the phrase "under quiet conditions" in proposed subsection (1)(c) is too vague and ambiguous.

Mr. Fowler commented that the entire proposed subsection should be deleted from the proposed rule because of vagueness.

Mr. Green suggested that, as a substitute for, or alternative to, "quite conditions," the board could substitute "in an environment not to exceed 55 dBA ambient noise level, consistent with OSHA standards, with appropriate masking."

Mr. Green also commented that proposed subsection (2) could be clarified by substituting the word "Follow" for the word "Reference" at the beginning of the sentence.

RESPONSE: With one exception, the board generally agrees with the comments and adopts the suggested revisions, as they will make the board's rule clearer. However, the board declined to delete the 250 hertz standard from proposed subsection (1)(a), because it felt that this standard is an important tool in determining the need for hearing aids.

5. No other comments or testimony were received.

BOARD OF HEARING AID DISPENSERS

BY: 

MICHAEL L. LETSON, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, October 30, 1989.

BEFORE THE STATE LIBRARY COMMISSION
STATE OF MONTANA

In the matter of the	)	NOTICE OF ADOPTION
adoption of Rule I	)	OF RULE I (10.102.4001)
pertaining to reim-	)	PERTAINING TO REIMBURSEMENT
bursement to librar-	)	TO LIBRARIES FOR
ies for interlibrary	)	INTERLIBRARY LOAN
loans)	

To: All Interested Persons

1. On July 27, 1989, the State Library commission published notice of the proposed adoption of Rule I, Reimbursement to Libraries for Interlibrary Loans, at p. 956 of the Montana Administrative Register, issue no. 14.

2. A public hearing was held on August 16, 1989. There was testimony from two proponents.

3. The State Library Commission has adopted this rule as Rule I (10.102.4001), with the following changes:

(1)(a) through (2)(a) remain as proposed.

(2)(a)(i) This rate is based upon ~~the~~ an estimated number of annual interlibrary loans in Montana and available funds.

(2)(a)(ii) This rate may be adjusted if deemed necessary by the state library, by dividing ~~the~~ any remaining funds by the number of interlibrary loans claimed for reimbursement.

(2)(b) A form for requesting reimbursement will be issued by the state library. No reimbursement shall be made to any library which does not use the reimbursement form to submit its reimbursement request, and ~~or~~ which fails to meet specified submittal deadlines for such requests.

(2)(c) remains as proposed.

(2)(d) Reimbursements will be made within 30 working days ~~of the end of each calendar quarter~~ after the submittal date.

(2)(e)(i) through (2)(e)(ii) remain as proposed.

(2)(e)(iii) Interlibrary loans, when completed via telefacsimile means, also count as reimbursable interlibrary loans. Costs associated with such telefacsimile transmission are chargeable if such transmission was specified by the requesting library. Such transmissions qualify as special handling.

(2)(e)(iv) remains as proposed.

(2)(f) Providers of interlibrary loan are expected to follow the law in relation to copyright. ~~Each is responsible for compliance with the law.~~

(2)(g) through (2)(h) remain as proposed.

By: Richard T. Miller, Jr.
Richard T. Miller, Jr.
State Librarian

Certified to the Secretary of State October 30, 1989

21-11/9/89

Montana Administrative Register

BEFORE THE DEPARTMENT OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of a proposed) NOTICE OF ADOPTION OF RULE
rule regulating Livestock) 32.15.901 Relative to
requiring notice of change
of Agent Employment Status

TO: All Interested Persons

1. On May 11, 1989, the Board of Livestock published a Notice of a Proposed Rule at pages 511 and 512, 1989 Montana Administrative Register, Issue number 9.
2. The Board has adopted the rules exactly as proposed.
3. No comments or testimony were received.

BOARD OF LIVESTOCK
NANCY ESPY, CHAIRMAN

BY: Lon Mitchell
LON MITCHELL, Staff Attorney
Department of Livestock

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

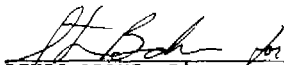
IN THE MATTER OF THE AMENDMENT)	NOTICE OF THE AMENDMENT of
of ARM 42.17.114 and 42.17.116)	ARM 42.17.114 and 42.17.116
relating to W-2 Filing Dates)	relating to W-2 Filing Dates
for Withholding Taxes.)	for Withholding Taxes.

TO: All Interested Persons:

1. On August 31, 1989, the Department published notice of the proposed amendment to ARM 42.17.114 and 42.17.116 relating to W-2 Filing Dates for Withholding Taxes at page 1268 of the 1989 Montana Administrative Register, issue no. 16.

2. No comments were received.

3. The Department amends ARM 42.17.114 and 42.17.116 as proposed.



DENIS ADAMS, Director
Department of Revenue

Certified to Secretary of State October 30, 1989.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA


IN THE MATTER OF THE ADOPTION	)	NOTICE OF THE ADOPTION of
of Rule I (ARM 42.28.123)	)	Rule I (ARM 42.28.123)
Supporting Documentation for	)	Supporting Documentation
Bad Debt Credit.	)	for Bad Debt Credit.

TO: All Interested Persons:

1. On August 31, 1989, the Department of Revenue published notice of the proposed adoption of Rule I (ARM 42.28.123) relating to Supporting Documentation for Bad Debt Credit on Special Fuel Dealers at page 1262 of the 1989 Montana Administrative Register, issue no. 16.

2. No public comments were received. The rule has been adopted with the following change:

RULE I (42.28.123) SUPPORTING DOCUMENTATION FOR BAD DEBT CREDIT (1) A claim for credit for taxes paid on accounts for which the special fuel dealer received no compensation must be accompanied by documents or copies of documents showing that the accounts were worthless and claimed as bad debts on the distributor's special fuel dealers federal income tax return. Any further information pertaining to claim shall be furnished as required by the Department.


DENIS ADAMS, Director
Department of Revenue

Certified to Secretary of State October 30, 1989.

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

In the matter of the	)	NOTICE OF THE AMENDMENT OF
amendment Rules 46.12.505	)	RULES 46.12.505 AND
and 46.12.2013 pertaining to	)	46.12.2013 PERTAINING TO
reimbursement for certified	)	REIMBURSEMENT FOR CERTIFIED
registered nurse	)	REGISTERED NURSE
anesthetists' services	)	ANESTHETISTS' SERVICES

TO: All Interested Persons

1. On August 17, 1989, the Department of Social and Rehabilitation Services published notice of the proposed amendment of Rules 46.12.505 and 46.12.2013 pertaining to reimbursement for certified registered nurse anesthetists' services at page 1171 of the 1989 Montana Administrative Register, issue number 15.

2. The Department has amended Rules 46.12.505 and 46.12.2013 as proposed.

3. The Department has thoroughly considered all commentary received:

COMMENT: When does the department intend to implement a fee schedule for certified registered nurse anesthetists (CRNA) services? The department should consider actual hospital costs in setting fees for CRNA services.

RESPONSE: The current CRNA rule does not contain a fee schedule, but allows for reimbursement at 65.2% of billed charges, but not more than 80% of the physician's fee. Anesthesia services provided by a physician are also reimbursed at 65.2% of billed charges. The department will be evaluating the reimbursement for anesthesia services and determining a different pricing methodology for these services within the next year. It is likely that a fee schedule for CRNA services will be developed at that time. At that time, the department will consider using actual hospital costs as a factor in setting fees. The department will be required to amend these rules when implementing fee schedules for both physician and CRNA services. The department staff will work with the respective provider groups in the developmental stages of designing the fee schedule. The department staff will also review Medicare's recently implemented fee schedule for anesthesia services.


COMMENT: The rate structure that is adopted for CRNA reimbursement must reflect the need for adequate access to service particularly in rural areas. The development of the rate should reflect the cost of the care.

RESPONSE: No changes are presently being proposed to the rate structure for CRNA services. When adequate information is gathered to evaluate and set fees for CRNA services, public notice will be made and a rule hearing will be scheduled.

COMMENT: Concern was raised regarding the retroactive application of the rule to July 1, 1989. Will providers have to rebill services provided after July 1, 1989?

RESPONSE: The rule was made retroactive because of the various methods of billing currently used by providers. The intent of the change is to coordinate the billing system with that used by Medicare. The department does not wish to create additional administrative burdens with this change, but rather is attempting to prevent problems with billing. No rebilling of services is required, although providers may resubmit billings back to July 1 if they wish. Some hospitals have already obtained CRNA numbers and have billed for services using these numbers. Other facilities have continued to bill for services on the UB-82. The department will accept other methods until November 30, 1989. At that time providers without exception will be required to obtain a CRNA number to bill for services and no pass through will be allowed for services provided after that date.

4. This amendment will be applied retroactively to July 1, 1989.



Director, Social and Rehabilitation Services

Certified to the Secretary of State _____ October 30 _____, 1989.

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

In the matter of the	)	NOTICE OF THE AMENDMENT OF
amendment of Rules	)	RULES 46.12.570, 46.12.571
46.12.570, 46.12.571 and	)	and 46.12.573 PERTAINING TO
46.12.573 pertaining to	)	CLINIC SERVICES PROVIDED BY
clinic services provided by	)	PUBLIC HEALTH DEPARTMENTS
public health departments)	

TO: All Interested Persons

1. On August 17, 1989, the Department of Social and Rehabilitation Services published notice of the proposed amendment of Rules 46.12.570, 46.12.571 and 46.12.573 pertaining to clinic services provided by public health departments at page 1168 of the 1989 Montana Administrative Register, issue number 15.

2. The Department has amended Rule 46.12.573 as proposed.

3. The Department has amended the following rules as proposed with the following changes:

46.12.570 CLINIC SERVICES, DEFINITIONS Subsections (1) through (5)(b) remain as proposed.

(c) "PROTOCOLS" MEAN WRITTEN PLANS DEVELOPED BY A PUBLIC HEALTH CLINIC IN COLLABORATION WITH PHYSICIAN AND NURSING STAFF SPECIFYING THE NURSING PROCEDURES TO BE FOLLOWED IN GIVING A SPECIFIC EXAM, OR PROVIDING CARE FOR PARTICULAR CONDITIONS. PROTOCOLS MUST BE UPDATED AND APPROVED BY A PHYSICIAN AT LEAST ANNUALLY.

AUTH: Sec. 53-6-113 MCA

IMP: Sec. 53-6-101 and 53-6-141 MCA

46.12.571 CLINIC SERVICES, REQUIREMENTS Subsections (1) through (9)(b)(i)(A) remain as proposed.

(B) by a public health nurse under a physician's immediate supervision. This means the physician has seen the patient and ordered the services except that a minimal service does not require the physician to see the patient. MINIMAL SERVICES ARE COVERED WHEN PROVIDED BY A LICENSED REGISTERED NURSE UNDER PROTOCOLS PROVIDED BY A PHYSICIAN AFFILIATED WITH THE PUBLIC HEALTH DEPARTMENT. PROTOCOLS SHALL BE UPDATED AT LEAST ANNUALLY.

Subsection (9)(b)(ii) remains as proposed.

AUTH: Sec. 53-6-113, MCA

IMP: Sec. 53-6-101 and 53-6-141 MCA

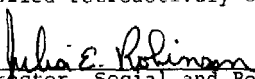
4. House Bill 524 of the 1989 Montana Legislature established health services provided under a physician's order by a public health department as a mandatory medicaid service. In order to implement this law, ARM 46.12.570, 46.12.571 and 46.12.573 are being revised to list services provided by a public health department as a clinic service, describe the limitations on these services and the method of reimbursing public health departments for these services. The proposed services stay within the scope of currently covered services. This will assure that the amount, duration and scope of medicaid services is not impacted as provided for in the fiscal note attached to the law.

5. The Department has thoroughly considered all commentary received:

COMMENT: The department should allow coverage of certain services provided by Licensed Registered Nurses under standing orders of a physician. The services should include immunizations.

RESPONSE: The department concurs. ARM 46.12.571(9)(b) will be modified to allow coverage of minimal physicians' services provided by licensed registered nurses under protocols with a physician. Minimal services would include: routine immunizations; blood pressure determinations; removal of sutures from lacerations; and other services that would meet physicians' current procedural terminology (CPT-4) guidelines for minimal services contained in the 1989 edition. As part of this change, protocols are defined in ARM 46.12.570.

6. These rules will be applied retroactively October 1, 1989.



Director, Social and Rehabilitation Services

Certified to the Secretary of State October 30, 1989.

On August 17, 1989 at page 1204 of the Montana Administrative Register, Issue No. 15, Opinion 25 was published. A mistake was found in the second paragraph on the fourth page of this opinion. The correct version of the paragraph is as follows:

The Buyer's Affidavit and Certification contains the purchase price of the residence and the borrower's annual household income. In addressing the first step of the test, it is my opinion that in this context the purchase price of the house presents minimal privacy demands. See 39 Op. Att'y Gen. No. 17 at 62 (1981). On the other hand, I conclude that a statement of the borrower's annual household income is a matter of individual privacy. When the borrower submits the financial information to the Board, he has an expectation that the information will be used by the administering agency for purposes of the MCC program, but that it will not be disclosed to the general public.

VOLUME NO. 43

OPINION NO. 40

COUNTY ATTORNEYS - Authority to act in proceedings for involuntary commitment of alcoholic;
MONTANA CODE ANNOTATED - Sections 7-4-2711 to 7-4-2717, 53-24-302;
OPINIONS OF THE ATTORNEY GENERAL - 43 Op. Att'y Gen. No. 15 (1989), 41 Op. Att'y Gen. No. 22 (1985), 40 Op. Att'y Gen. No. 27 (1983).

- HELD: 1. A county attorney does not have authority to file a petition for the involuntary commitment of an alcoholic pursuant to section 53-24-302, MCA.
2. A county attorney does not have authority to represent a spouse, guardian, relative, certifying physician, or the chief of an approved public treatment facility in a proceeding for the involuntary commitment of an alcoholic under section 53-24-302, MCA.

October 20, 1989

Mike Salvagni
Gallatin County Attorney
Law and Justice Center
615 South 16th Street
Bozeman MT 59715

Dear Mr. Salvagni:

You have requested my opinion concerning the following questions:

1. Does a county attorney have the authority to file a petition for the involuntary commitment of an alcoholic pursuant to section 53-24-302, MCA?
2. Does a county attorney have the authority to represent a spouse, guardian, relative, certifying physician, or the chief of an approved public treatment facility in a proceeding for the involuntary commitment of an alcoholic under section 53-24-302, MCA?

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Section 53-24-302, MCA governs the involuntary commitment of alcoholics, and provides in pertinent part:

(1) A person may be committed to the custody of the department by the district court upon the petition of his spouse or guardian, a relative, the certifying physician, or the chief of any approved public treatment facility. The petition shall allege that the person is an alcoholic who habitually lacks self-control as to the use of alcoholic beverages and that he has threatened, attempted, or inflicted physical harm on another and that unless committed is likely to inflict physical harm on another or is incapacitated by alcohol.

This provision explicitly lists those parties who may file a petition for commitment of an alcoholic. The list does not include county attorneys. In fact, county attorneys are not mentioned anywhere in the statutory scheme for involuntary commitment of alcoholics. A threshold rule of statutory construction is that where statutory language is clear and unambiguous, the statute speaks for itself and there is no need to engage in further construction. Blake v. State, 44 St. Rptr. 580, 584, 735 P.2d 262, 265 (1987); Yearout v. Rainbow Painting, ___ Mont. ___, 719 P.2d 1258, 1259 (1987). The plain and unambiguous language of section 53-24-302, MCA, compels my conclusion that county attorneys are not authorized to file petitions for the involuntary commitment of alcoholics.

Regarding your second question, the Legislature has specifically enumerated the duties of county attorneys in sections 7-4-2711 to 2716, MCA. Those statutes do not authorize a county attorney to provide legal representation in an action for the commitment of an alcoholic. In addition, section 7-4-2717, MCA, directs county attorneys to perform other duties as prescribed by law. However, as previously noted, section 53-24-302, MCA, does not authorize a county attorney to assist or participate in the involuntary commitment of an alcoholic.

In contrast, county attorneys are specifically authorized to file petitions in child abuse, neglect, and dependency proceedings, and to represent the Department of Family Services during the course of those proceedings. Tit. 41, ch. 3, pt. 4, MCA; 42 Op. Att'y Gen. No. 45 (1987). County attorneys also have explicit statutory authorization to file petitions for the

involuntary commitment of persons who are seriously mentally ill, § 53-21-121, MCA, and petitions for a finding that a person is incapacitated, § 72-5-315, MCA. The fact that the Legislature has specifically provided authority for county attorneys to act in these proceedings, but has remained silent regarding their authority to act in proceedings for the commitment of alcoholics, indicates that the Legislature did not intend to extend authority to county attorneys to act in proceedings for the commitment of alcoholics. Cf. 40 Op. Att'y Gen. No. 27 at 107 (1983) (the Legislature's specific enumeration of a county attorney's duties, but its silence on the subject of rural improvement districts, makes clear that the Legislature did not intend that county attorneys have the duty to represent rural improvement districts); 41 Op. Att'y Gen. No. 22 at 77 (1985) (in the absence of a specific statutory mandate, the county attorney is not the legal advisor to a district board of health); 43 Op. Att'y Gen. No. 15 (1989) (fact that Legislature has specifically imposed a duty on county attorneys to legally represent certain political subdivisions, but has remained silent on subject with respect to other political subdivisions, evinces legislative intent that county attorneys may represent a particular political subdivision only when there exists specific statutory authorization providing for that representation).

THEREFORE, IT IS MY OPINION:

1. A county attorney does not have authority to file a petition for the involuntary commitment of an alcoholic pursuant to section 53-24-302, MCA.
2. A county attorney does not have authority to represent a spouse, guardian, relative, certifying physician, or the chief of an approved public treatment facility in a proceeding for the involuntary commitment of an alcoholic under section 53-24-302, MCA.

Sincerely,



MARC RACICOT
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 September 30, 1989. This table includes those rules adopted during the period October 1, 1989 through December 31, 1989 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 September 30, 1989, this table and the table of contents of this issue of the MAR.

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