MONTANA ADMINISTRATIVE REGISTER

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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 10

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing and where written comments may be submitted.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

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NOTICE SECTION

BEFORE THE FINANCIAL DIVISION
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed amendment of a rule pertaining to dollar amounts to which consumer loan rates are to be applied	))))	NOTICE OF PROPOSED AMENDMENT OF 8.80.307 DOLLAR AMOUNTS TO WHICH CONSUMER LOAN RATES ARE TO BE APPLIED

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On July 1, 1990, the Financial Division proposes to amend the above-stated rule.

2. The proposed amendment of 8.80.307 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at page 8-2353, Administrative Rules of Montana)

8.80.307 DOLLAR AMOUNTS TO WHICH CONSUMER LOAN RATES ARE TO BE APPLIED (1) The dollar amounts in the following statutory sections are changed to the new designated amounts as follows:

Authority	Stated Amount	Changed Designated Amount
Section 32-5-201(4)	$1,000.00	~~$1,300.00~~ $1,400.00
Section 32-5-302(3)	$ 300.00	~~$ 390.00~~ $ 420.00
	$1,000.00	~~$1,300.00~~ $1,400.00
	$2,500.00	~~$3,250.00~~ $3,500.00
Section 32-5-306(7)	$ 300.00	~~$ 390.00~~ $ 420.00

Auth: Sec. 32-5-104, MCA; IMP, Sec. 32-5-104, MCA

REASON: These amendments are needed because section 32-5-104, MCA, mandates that certain dollar amounts in Title 32, chapter 5 be changed from time to time in response to changes in one of the U.S. Consumer Price Indexes, and that the dollar amount changes are to be announced by rule. The reference Consumer Price Index has changed a sufficient amount to require amendments to ARM 8.80.307.

3. Interested persons may submit their data, views or arguments concerning the proposed amendment in writing to the Financial Division, 1520 East 6th, Room 50, Helena, Montana 59620, no later than July 1, 1990.

4. If a person who is directly affected by the proposed amendment wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit the request with any comments he has to the Financial Division, 1520 East 6th, Room 50, Helena, Montana 59620, no later than July 1, 1990.

5. If the Division receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is

less, of those persons who are directly affected by the proposed amendment, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision or from an association having no less than 25 members who will be directly affected, a public hearing will 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 2 based the 17 licensees in Montana.

FINANCIAL DIVISION
CHUCK BROOKE, DIRECTOR
DEPARTMENT OF COMMERCE

BY: _____
ANDY POOLE, DEPUTY DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, May 21, 1990.

BEFORE THE FISH AND GAME COMMISSION
OF THE STATE OF MONTANA

In the matter of the Proposed amendment of ARM 12.6.901 Water Safety Regulations	)))	NOTICE OF PROPOSED AMENDMENT OF ARM 12.6.901 ESTABLISHING A NO-WAKE RESTRICTION BELOW CANYON FERRY DAM

NO PUBLIC HEARING CONTEMPLATED

TO: All interested persons

1. On July 2, 1990, the Montana Fish and Game Commission proposes to amend 12.6.901 to establish a no-wake restriction below Canyon Ferry Dam.

2. The proposed rule will read as follows:

12.6.901 WATER SAFETY REGULATIONS (1) through (c) Hill County remain the same.

Lewis & Clark County: (A) on Canyon Ferry Reservoir: Yacht Basin, Cave Bay, Little Hellgate, Magpie Bay & Carp Bay within 300 feet of dock or as buoyed;

(B) on Canyon Ferry Reservoir: from Canyon Ferry dam to Riverside Boat ramp;

~~(B)~~ (C) on Hauser Reservoir: Lakeside marina and Black Sandy beach within 300 feet of the docks or as buoyed;

~~(C)~~ (D) on upper Holter Lake: Gates of Mountains marina within 300 feet of docks or as buoyed;

~~(D)~~ (E) on Holter Lake: bureau of land management boat landing as buoyed, Juniper Bay, Log Gulch, Departure Point, Merriweather Camp, and Holter Lake lodge docks.

Lincoln County through (2) remains the same.

AUTH: 87-1-303, 23-1-106(1) IMP: 87-1-303, 23-1-106(1)

3. This rule is being amended to establish a no-wake regulation below Canyon Ferry dam to provide for public safety because of heavy boat congestion.

4. Interested parties may submit their data, views or arguments concerning the proposed rules in writing to Erv Kent, Administrator, Enforcement Division, Department of Fish, Wildlife and Parks, 1420 East Sixth, Helena, Montana, 59620, no later than June 28, 1990.

5. If a person who is directly affected by the proposed adoption wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Erv Kent, Administrator, Enforcement Division,

Department of Fish, Wildlife and Parks, 1420 East Sixth, Helena, Montana, 59620, no later than June 28, 1990.

6. If the agency receives requests for a public hearing on the proposed adoption from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed adoption; from the Administrative Code Committee of the legislature; from a governmental 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.

K.L. Cool, Secretary
Montana Fish and Game
Commission

Certified to the Secretary of State May 21, 1990.

BEFORE THE FISH AND GAME COMMISSION
OF THE STATE OF MONTANA

In the matter of the proposed)
repeal of ARM rule 12.9.205) NOTICE OF PUBLIC HEARING
Manhattan Game Preserve)

TO: All interested persons

1. On June 21, 1990 at 7:00 o'clock p.m., a public hearing will be held at Montana Department of Fish, Wildlife and Parks Region 3 Headquarters, 1400 South 19th, Bozeman, Montana 59715 to consider the repeal of the Manhattan Game Preserve.

2. The rule proposed to be repealed is on page 12-612 of the Administrative Rules of Montana.

3. The Manhattan Game Preserve was established by the Fish and Game Commission a number of years ago to protect and preserve wildlife. Landowners within the preserve have petitioned the Commission to abandon the preserve to address the increased deer numbers, predator control, and loss of traditional methods of rodent control.

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 Don Childress, Administrator, Wildlife Division, Department of Fish, Wildlife and Parks, 1420 East Sixth, Helena, Montana, 59620, no later than June 28, 1990.

5. Don Childress has been designated to preside over and conduct the hearing.

6. The authority of the department to make the proposed repeal is based on section 87-5-402(3), MCA, and the rule implements section 87-5-402(3), MCA.

K.L. Cool, Secretary
Montana Fish and Game
Commission

Certified to the Secretary of State May 21, 1990.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
OF THE STATE OF MONTANA

In the matter of the amendment of Montana's prevailing wage rates, pursuant to Rule 24.16.9007	)))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENTS OF PREVAILING WAGE RATES

TO: All Interested Persons:

1. On Wednesday, June 20, 1990, at 1:00 p.m., a public hearing will be held in the first floor conference room, Room 111, of the Department of Natural Resources and Conservation, 1520 E. Sixth Avenue, Helena, Montana, to consider proposed amendments to the prevailing wage rates.

2. The Department of Labor and Industry hereby proposes to adopt and incorporate by reference the "State of Montana Prevailing Wage Rates - Building Construction" which sets forth the building construction prevailing wage rates proposed to be effective August 1, 1990. A copy of the prevailing wage rates may be obtained from the Research and Analysis Bureau, Employment Policy Division, Department of Labor and Industry, P.O. Box 1728, Helena, Montana 59624.

3. Interested parties may submit their data, views, or comments, either orally or in writing, at the hearing. Written data, views, or comments may also be submitted to the Research and Analysis Bureau, Employment Policy Division, Department of Labor and Industry, P.O. Box 1728, Helena, Montana 59624.

4. The Hearings Unit of the Legal Services Division, Department of Labor and Industry, P.O. Box 1728, Helena, Montana 59624, has been designated to preside over and conduct the hearing.

5. The authority of the department to adopt the proposed rates is based on 18-2-431 and the amended rates implement 18-2-402 and 2-4-307.

Mario A. Micone, Commissioner
Department of Labor and Industry

Certified to the Secretary of State: May 21, 1990

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

In the matter of the amendment of Rules 46.12.802 and 46.12.806 pertaining to prosthetic devices, durable medical equipment and medical supplies	)))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF RULES 46.12.802 AND 46.12.806 PERTAINING TO PROSTHETIC DEVICES, DURABLE MEDICAL EQUIPMENT AND MEDICAL SUPPLIES

TO: All Interested Persons

1. On June 21, at 10:00 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 46.12.802 and 46.12.806 pertaining to prosthetic devices, durable medical equipment and medical supplies.

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

46.12.802 PROSTHETIC DEVICES, DURABLE MEDICAL EQUIPMENT, AND MEDICAL SUPPLIES, GENERAL REQUIREMENTS Subsections (1) and (2) remain the same.

(a) A copy of the prescription must be attached to the claim and indicate the diagnosis, the medical necessity, and projected length of need for prosthetic devices, durable medical equipment and medical supplies. Prescriptions for medical supplies used on a continuous basis shall be renewed by a physician at least every ~~six months~~ twelve months.

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

(c) A statement of medical necessity for the rental of medical equipment, excluding oxygen equipment, shall indicate the length of time the equipment will be needed. All prescriptions shall be signed and dated.

(d) No more than one month's medical supplies may be provided to a medicaid recipient based on the physician's orders.

Subsections (3)(a) and (3)(b) remain the same.

(c) Payment for provider's travel.

(d) Electric wheelchairs for nursing home residents.

Original subsection (3)(c) remains the same in text but is recategorized as subsection (3)(e).

AUTH: 53-6-113 MCA
IMP: 53-6-101 MCA

46.12.806 PROSTHETIC DEVICES, DURABLE MEDICAL EQUIPMENT, AND MEDICAL SUPPLIES, FEE SCHEDULE

~~(1) MEDICAID FEE SCHEDULE FOR RENTAL/PURCHASE OF PROSTHETIC DEVICES, DURABLE MEDICAL EQUIPMENT AND MEDICAL SUPPLIES.~~

~~{ * DENOTES AUTHORIZATION REQUIRED PRIOR TO SERVICE OR DELIVERY OF ITEM.}~~
~~{** DENOTES AUTHORIZATION REQUIRED PRIOR TO PAYMENT.}~~

~~ITEM~~	~~RENTAL~~	~~MONTHLY PURCHASE~~
~~Surgical Supplies~~		
~~Syringes —~~		
~~Insulin (glass)/each~~	~~$~~	~~.24~~
~~Tuberculin (glass)/each~~	~~$~~	~~.24~~
~~General (glass)/each~~		~~BR~~
~~Special (glass)/each~~	~~$~~	~~13.31~~
~~Insulin (disposable)/each~~	~~$~~	~~.24~~
~~Tuberculin (disposable)/each~~	~~$~~	~~.24~~
~~General (disposable)/each~~	~~$~~	~~.32~~
~~Special (disposable)/each~~	~~$~~	~~.32~~
~~Asepto syringes/each~~	~~$~~	~~.28~~
~~Needles~~		
~~Regular (permanent)/each~~	~~$~~	~~.21~~
~~Regular (disposable)/each~~	~~$~~	~~.28~~
~~Special (permanent)/each~~	~~$~~	~~.24~~
~~Special (disposable)/each~~	~~$~~	~~.36~~
~~Analysis Reagents and Equipment~~		
~~Tes-tape~~	~~$~~	~~4.40~~
~~Clinitest tablets/each~~	~~$~~	~~.05~~
~~Clinitest tablets (foil roll)/each~~	~~$~~	~~.07~~
~~Clinitest set~~		~~BR~~
~~Monolet lancets~~		~~BR~~
~~Combistix strip~~	~~$~~	~~.04~~
~~Uristix strips~~		~~BR~~

~~ITEM~~	~~MONTHLY RENTAL~~	~~PURCHASE~~
~~Acetest tablets~~	~~$~~	~~.10~~
~~Acetest tablets roll/per tablet~~	~~$~~	~~.10~~
~~Clinitest strips/each~~	~~$~~	~~.07~~
~~Albustix~~		~~BR~~
~~Ketostix strips~~	~~$~~	~~.10~~
~~Diastix~~	~~$~~	~~.07~~

Glucometer		BR *
Keto-diastix		$ .12
Urinetest		BR
Dextristix		$ .53
Autoclix		BR
Labstix		BR
Blood pressure kit		BR
Chemstrip		$ .51
Glucoscan meter kit		BR
Visidex		BR
Dextrostix		BR
Glucostix		BR

Durable Sick Room Apparatus

Cane, regular		$ 13.20
Cane, quad		$ 36.14
Crutches, stand, wood	$ 6.60	$ 24.15
Crutches, stand, metal		$ 30.25
Crutches, for arm	$ 14.52	$ 58.08

ITEM	MONTHLY RENTAL	PURCHASE
Crutches, special	$ 15.73	$ 31.46
Dialysis equipment	BR	BR *
Hospital bed, standard with mattress	$ 42.90 **	$ 906.60 *
Hospital bed, electric with mattress	$ 89.10 **	$1,264.18 *
Hospital bed, standard, side rails/ per rail		$ 60.50
Hospital bed, electric, side rails/ per rail		$ 60.50
Postural drainage board		$ 54.45
Alternating pressure pad		$ 36.30
Alternating pressure pad with pump		$ 369.53 *
Jobst pressure pump	$ 48.40	--
Bathtub lift	BR	BR *
Hoyer lift	$ 60.50	$ 635.25 *
Seat lift	$ 60.50	$1,155.55 *
Standard commode	$ 14.30	$ 78.65
Wheeled commode	$ 17.30	$ 121.00

General Equipment

Bed pan, regular	$ 12.25
Bed pan, fracture	$ 8.46
Thermometer, fever/each	$ 1.76
Emesis basin	$ 7.70
Urinal, female, metal	$ 32.25
Urinal, male, metal	$ 37.40
Heating pad	$ 19.29

ITEM	MONTHLY RENTAL	PURCHASE
Traction, hip		BR
Traction, neck		$ 29.04
Whirlpool bath (portable)		$ 352.00*
Sitz bath		$ 60.50
Cervical collar		$ 23.60
Foot Cradle		BR
Trapeze bar with stand	$ 29.70	
Trapeze bars	$ 14.30	
Walker, regular	$ 17.60	$ 66.50
Walker, wheeled	$ 20.90	$ 169.40
Wheelchair, standard folding	$ 54.45 **	$ 687.50 *
Wheelchair, standard hospital	$ 42.35	$ 399.30 *
Wheelchair, standard with accessory	$ 54.45	$ 830.50 *
Wheelchair, standard motor	$ 60.50 **	$1,712.26 *
Wheelchair, child, folding	$ 25.20	$ 605.00 *
Wheelchair, child, with accessory	$ 31.46	$ 487.30 *
Wheelchair, custom special	$ 40.40 **	$1,070.85 *
Wheelchair accessory		BR
Wheelchair repair		BR
Waterpik		$ 43.51
Bathtub stool		$ 55.66
Flotation cushion wheelchair/each		$ 33.00
Bathtub seat		$ 78.03
Bathtub rails/each BR, not to exceed		$ 40.65

ITEM	MONTHLY RENTAL	PURCHASE
Raised toilet seat	$ 8.47	$ 55.33
Ostomy and Urostomy		
Ostomy pouch, self administered		$ 12.10
Disposable colostomy bags		BR
Disposable colostomy appliance accessory		$ 17.51
Disposable colostomy appliance		BR
Colostomy shield appliance		$ 8.47
Colostomy irrigating appliance		$ 7.26
Colostomy irrigate accessory		$ .81
Colostomy appliance (non-disposable)		BR
Colostomy appliance accessory		$ 6.00
Disposable ileostomy appliance		$ 48.91
Disposable ileostomy accessory		$ 38.67
Disposable urostomy bags/each		$ 1.71
Stomahesive powder or paste		BR
Disposable diapers		BR
Male urinal, complete/each		$ 10.73
Urinal bag (each)		$ 3.49
Suspensory (for use with urinal)		$ 22.95
Disposable urinal collect bag/each		$ 3.49

~~Urinal accessories (drainage tube)~~	~~$ 8.78~~
~~Bedside collect unit, complete~~	~~$ 10.96~~
~~Bedside drainage bags~~	~~$ 7.02~~
~~Incontinance clamp~~	~~$ 34.71~~

~~ITEM~~	~~MONTHLY RENTAL~~	~~PURCHASE~~
~~Urethral catheter with tray (rubber silicone)/each~~		~~$ 5.47~~
~~Urethral catheter, each~~		~~$ .85~~
~~Indwelling catheter (Foley, balloon retention)/each~~		~~$ 8.31~~
~~Colon tube/per foot~~		~~BR~~
~~Gastric tubes/per foot~~		~~$ .50~~
~~Syringe tubing~~		~~BR~~
~~Installment DME or machine set up~~		~~BR~~

~~OXYGEN AND OXYGEN EQUIPMENT~~

~~Ultrasonic nebulizer~~	~~$ 54.45 *~~	~~$ 514.25 *~~
~~Oxygen concentrator~~	~~$ 290.40 *~~	
~~Linde reservoir~~	~~$ 48.40 *~~	
~~Linde walker unit~~	~~$ 42.35 *~~	
~~Liberator~~	~~$ 66.55 *~~	
~~Liberator/stroller~~	~~$ 108.90 *~~	
~~P.C.U. container~~	~~$ 48.40 *~~	
~~L.V. 160~~	~~$ 42.35 *~~	
~~Cylinder~~	~~$ 7.26 *~~	
~~Oxygen tent~~	~~$ 36.30 *~~	
~~Porta-carry unit with E tank/reg.~~	~~$ 24.20 *~~	
~~Asthamastix~~	~~BR~~	~~BR~~
~~IPPB, air/oxygen~~	~~$ 66.00~~	~~$ 508.20 *~~
~~Pulmonaide~~	~~BR~~	

~~ITEM~~	~~MONTHLY RENTAL~~	~~PURCHASE~~
~~Portabird~~	~~$ 47.66~~	~~$ 572.00 *~~
~~Handevent~~	~~$ 60.50~~	~~$ 125.84~~
~~Respirator~~	~~$ 54.45~~	~~$ 477.95 *~~
~~Mada Duo-pak (with adjustable flow regulator)~~	~~$ 30.25~~	~~$ 230.69 *~~
~~Lifesaving unit 5000~~	~~$ 29.04~~	~~$ 154.50~~
~~Lifesaving unit 5010~~	~~$ 29.04~~	~~$ 203.28 *~~
~~Regular humidifier unit~~		~~$ 20.30~~
~~D, E or K cylinder~~		~~BR *~~
~~D or E cylinder (fill)~~		~~$ 8.30 *~~
~~K cylinder (fill)~~		~~$ 25.30 *~~
~~Vaporizer, steam type~~		~~$ 14.47~~
~~Humidifier~~		~~$ 32.19~~
~~Vaporizer, cool-type~~		~~$ 24.02~~
~~Handheld nebulizer~~		~~$ 7.21~~

~~02 liquid per pound~~	~~$ 1.25 A~~
~~02 gas per cubic foot~~	~~$ .10 A~~
~~IPPB Kit~~	~~BR~~
~~Cannula~~	~~$ 2.75~~
~~Connective tubing/per foot~~	~~$ .48~~
~~Portable aspirator~~	~~$ 10.96~~
~~Connectors~~	~~$ .97~~
~~Face mask~~	~~$ 3.03~~
~~Mouth piece~~	~~$ .73~~
~~Nasal catheter~~	~~$ 1.64~~

~~ITEM~~	~~MONTHLY RENTAL~~	~~PURCHASE~~
~~Disposable IPPB tubing~~		~~$ 4.24~~
~~Disposable humidifiers~~		~~$ 1.73~~
~~Extension hoses~~		~~$ 1.82~~
~~Mada plastic nebulizer W mask & tube~~		~~$ 7.26~~
~~Nasal 02 kit~~		~~$ 10.15~~
~~02 tubing~~		~~$ 2.12~~
~~Oxygen regulator~~	~~$ 20.35~~	~~$ 130.00~~
~~Aquapak~~		~~$ 4.54~~

~~Anatomical Supports~~

~~Arm sling~~	~~$ 3.96~~
~~Wrist splint~~	~~$ 18.94~~
~~Arm splint~~	~~$ 9.68~~
~~Finger splint~~	~~$ .91~~
~~Leg splint~~	~~$ 32.63~~
~~Appliances, surgical~~	~~BR~~
~~Post hernia truss~~	~~$ 12.69~~
~~Scrotal truss~~	~~$ 47.55~~
~~Umbilical truss~~	~~BR~~
~~Shoulder brace~~	~~$ 16.94~~
~~Sacroiliac support~~	~~$ 14.58~~
~~Lumbosacral support (corsets)~~	~~$ 102.85~~
~~Hinged joint steel knee cap~~	~~BR~~
~~Acrylic neck brace~~	~~$ 29.04~~
~~Ankle brace~~	~~BR~~

~~ITEM~~	~~MONTHLY RENTAL~~	~~PURCHASE~~
~~Knee brace~~		~~$ 16.89~~
~~Wrist brace~~		~~BR~~
~~Corsets~~		~~$ 72.60~~
~~Abdominal support~~		~~$ 13.92~~
~~Dorso lumbar support~~		~~$ 113.52~~
~~Mastectomy support~~		~~$ 30.25~~
~~Orthopedic brace~~		~~BR~~
~~Foam cervical collar~~		~~$ 11.44~~
~~Dennis Brown splint~~		~~$ 24.20~~

~~Orthopedic shoes, brace~~		~~$ 221.74~~ *
~~Orthotic appliances~~		~~BR~~
~~Orthotic appliance repair~~		~~BR~~
~~Girdle attachment brace~~		~~BR~~
~~Rib belt~~		~~BR~~
~~Repair of prosthesis~~		~~BR~~
~~Repair orthopedic appliance~~		~~BR~~
~~Elastic supports~~		~~BR~~
~~Elastic stockings (sheer type)~~		~~$ 27.06~~
~~Jobst stockings~~		~~BR~~
~~Elastic stockings (surgical type)~~	~~$ 27.06~~	

~~Other Supplies and Equipment~~

~~Apnea Monitor~~	~~$ 200.00~~ *
~~Gel cushion~~	~~$ 46.53~~
~~Enema supplies~~	~~$ 12.10~~

~~ITEM~~	~~MONTHLY RENTAL~~	~~PURCHASE~~
~~Allergenic extract~~		~~BR~~
~~Injection supplies~~		~~BR~~
~~Isotopes~~		~~$ 52.37~~
~~Eye prosthesis~~		~~$ 363.00~~ *
~~Overbed table~~		~~$ 13.92~~
~~Foam cushion~~		~~$ 10.84~~
~~Water mattress~~	~~$ 42.35~~	~~$ 105.60~~
~~Foam mattress~~		~~$ 76.45~~
~~Tracheotomy tubes~~		~~$ 12.10~~
~~Stump sox/pair~~		~~$ 16.50~~
~~Protective helmet~~		~~$ 29.15~~
~~Transfer board~~		~~$ 13.75~~
~~Helping Hand~~		~~$ 24.20~~
~~Disposable gloves/each~~		~~$ .09~~
~~Gauze, bandages, tape~~		~~BR~~
~~Rest On foam pads~~		~~$ 4.38~~
~~Disposable under pads/each~~		~~$ .32~~
~~Sheepskin~~		~~BR~~
~~Oversponges/each~~		~~$ .07~~
~~Arm sling~~		~~$ 3.96~~
~~Dermacin~~		~~$ 2.42~~
~~Parenteral and enteral feeding equipment and supplies~~		~~BR~~
~~Shipping and delivery charges~~		~~BR~~

(1) The Montana medicaid program effective July 1, 1990 will reimburse prosthetic devices, durable medical equipment and medical supplies in accordance with the codes and fees in the pricing manual for prosthetic devices, durable medical equipment, and medical supplies. The Montana medicaid program for payment for prosthetic devices, durable medical equipment, and medical supplies adopts and incorporates by reference the pricing manual for prosthetic devices, durable medical equip-

ment and medical supplies adopted and published by the department on July 1, 1990. Copies of the pricing manual may be obtained from the Department of Social and Rehabilitation Services, 111 Sanders, P.O. Box 4210, Helena, Montana 59604-4210.

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-6-101 MCA

3. The adoption in rule of the specific codes and fees for prosthetic devices, durable medical equipment and medical supplies would be voluminous and difficult due to the hundreds of procedures and the several sources upon which they are based. The department is adopting and incorporating in ARM 46.12.806, a pricing manual developed and published by the department that incorporates all the necessary codes and fees. Each time the pricing manual is updated, notice will be given by amendment of the rule. The fees in the pricing manual include the 2% increase in reimbursement for fiscal year 1991 appropriated by the 1989 Montana legislature. The pricing manual will be provided to all providers of the services. ARM 46.12.802 is being amended to provide cost control on the use of medical supplies, to eliminate reimbursement of provider travel, and to place in a rule the longstanding policy denying reimbursement of electrical wheelchairs for nursing home residents.

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, MT 59604-4210, no later than June 30, 1990.

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

6. Rule 46.12.806 will be applied retroactively to July 1, 1990.

Julia E. Rokus
Director, Social and Rehabilitation Services

Certified to the Secretary of State May 21, 1990.

BEFORE THE PUBLIC EMPLOYEES' RETIREMENT BOARD
OF THE STATE OF MONTANA

In the matter of the amendment of 2.43.302, 2.43.404, 2.43.406, 2.43.418, 2.43.420, 2.43.423, 2.43.430, 2.43.431, 2.43.603, 2.43.605, 2.43.715, AND 2.43.716; the adoption of new rules 2.43.432, 2.43.433, 2.43.506, 2.43.609 and 2.43.610 and the repeal of ARM 2.43.416, 2.43.417, 2.43.701, 2.43.702, 2.43.703, 2.43.704, 2.43.705, 2.43.706, 2.43.707, 2.43.708, 2.43.709, 2.43.710 and 2.43.712.	NOTICE OF THE AMENDMENT, ADOPTION AND REPEAL OF RULES RELATING TO MONTANA'S RETIREMENT SYSTEMS AND THE STATE SOCIAL SECURITY PROGRAM

TO: All Interested Persons.

1. On December 7, 1989, the Public Employees' Retirement Board published notice of the proposed amendment, adoption and repeal of the above rules concerning Montana's retirement systems and the state Social Security program in the Montana Administrative Register, issue number 23.

2. The board has amended with the following changes:

2.43.430 OUT-OF-STATE PUBLIC SERVICE

(1) A statutorily eligible member must apply, in writing, to the retirement division, supplying the following information:

(a)-(b) same as proposed rule.

(c) certification by the member's former public employer that the member was employed with the employer prior to the employer's adoption of a public retirement system, the dates of employment, full- or part-time employment status, ~~and~~ weekly or monthly hours of employment (if part-time), date employer adopted a public retirement system, and name of the public retirement system adopted.

(2)-(5) same as proposed rule.

3. The board has adopted with the following changes:

Rule III (2.43.609) POST RETIREMENT ADJUSTMENT

(1) same as proposed rule.

(2) Eligibility for post-retirement adjustments for the PERS, Game Wardens' and Sheriff's Retirement System will be ~~made~~ determined as of June 30th of each year that investment earnings are available for that purpose.

(3) Adjustments to the benefits of eligible ~~members and beneficiaries~~ recipients, determined in (2) above, will be ~~made~~ paid beginning in the ~~January~~ succeeding January. ~~each fiscal year in which investment income was sufficient to provide for the post-retirement adjustments.~~

(4) same as proposed rule.

4. The agency has amended, adopted and repealed the remaining rules as proposed.

5. Written testimony from the Public Employees' Retirement Division suggested the changes adopted in Rule 2.43.430 and Rule III. In addition, written comments were received from Leo Berry representing the Association of Retired Montana Public Employees suggesting Rule III was ambiguous as originally noticed. His suggestions for the need to clarify eligibility and payment dates for the post-retirement adjustments have merit and the rule has been clarified.

6. The adoption, amendment and repeal of these rules will be effective on July 1, 1990.

7. The authority for the rules are found in sections 19-1-201, 19-3-304, 19-5-201, 19-6-201, 19-7-201, 19-8-201, 19-9-201, and 19-13-202, MCA, and the rules implement Title 19, Sections 1,3,5,6,7,8,9, and 13, MCA.

By: _____
Mona Jamison, President
Public Employees' Retirement Board

Certified to the Secretary of State on May 22, 1990.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF CHIROPRACTORS

In the matter of the general revision and amendment of rules pertaining to license applications, educational standards for licensure, license examinations, temporary permits, renewals, unprofessional conduct standards, reinstatement of licenses, and disciplinary actions; repeal of a rule pertaining to recordation of license, and adoption of new rules pertaining to definitions and record keeping	)))))))))))	NOTICE OF AMENDMENT, REPEAL, AND ADOPTION OF RULES PERTAINING TO THE PRACTICE OF CHIROPRACTIC

TO: All Interested Persons:

1. On February 8, 1990, the Board of Chiropractors published a notice of proposed amendment, repeal and adoption of rules pertaining to the practice of chiropractic, at page 258, 1990 Montana Administrative Register, issue number 3.

2. The Board amended ARM 8.12.603, 8.12.604, 8.12.606, and 8.12.609, and adopted new rule I. (8.12.614) exactly as proposed. The Board amended 8.12.612 as proposed but changed the implementing section from 37-12-411 to 37-1-136, 37-12-321, and 37-12-322, MCA, and repealed 8.12.602 as proposed but added the authority section 37-12-201, MCA. The Board amended ARM 8.12.601 and 8.12.607 with the following changes:

"8.12.601 APPLICATIONS, EDUCATIONAL REQUIREMENTS
(1) will remain as proposed.
(2) Official transcripts from all colleges and chiropractic college diploma shall accompany the application AND BE SUBMITTED DIRECTLY TO THE OFFICE OF THE BOARD.
(3) through (6) will remain as proposed."
Auth: Sec. 37-1-131, 37-1-134, 37-12-201, MCA; IMP, Sec. 37-1-131, 37-12-201, 37-12-302, 37-12-304, MCA

"8.12.607 UNPROFESSIONAL CONDUCT For the purpose of implementing the provisions of section 37-12-321(14), MCA, the board defines "conduct unbecoming a person licensed to practice chiropractic or detrimental to the best interests of the public" as follows:
(1) through (12)(b) will remain as proposed.
(c) a female attendant is REQUIRED TO BE present at all times the patient is examined and the coccyx adjustment is being performed BY A MALE CHIROPRACTOR.
(13) will remain as proposed."
Auth: Sec. 37-1-136, 37-12-201, MCA; IMP, Sec. 37-12-321, 37-12-322, MCA

3. Comments received were from the staff of the Administrative Code Committee and are as follows:

COMMENT: Proposed new language "submitted directly to the office of the board" was not underlined. Also, section 37-1-134, MCA, was listed as an authority section and no rulemaking authority is in that section.
RESPONSE: The new language is now underlined as shown above. Section 37-1-134, MCA, is entitled "Licensing boards to establish fees commensurate with costs." This section does give the Board the authority to establish fees and subsections 8.12.601(5) and (6) establish application fees and examination fees. Since subsections (5) and (6) were renumbered this section was listed as an authority section.

COMMENT: It was noted that ARM 8.12.607 lists 37-12-411, MCA, as an implemented section; there is no such section. It was also noted that the board might wish to clarify in subsection (12)(c) of that same rule that a female attendant is required to be present only if the chiropractor is a male.
RESPONSE: The Board concurred and the correct implemented sections should be 37-12-321 and 37-12-322, MCA. The Board concurred with the comment relating to subsection (12)(c) and added the clarifying language as shown above.

COMMENT: It was noted that ARM 8.12.612 lists 37-12-411, MCA, as an implemented section. That section is nonexistent.
RESPONSE: The Board concurred and the correct implemented sections should be 37-12-321 and 37-12-322, MCA.

COMMENT: The authority section was not shown in the repeal of 8.12.602.
RESPONSE: The Board concurred. The authority section for the repeal is 37-12-201, MCA.

4. No other comments or testimony were received.

BOARD OF CHIROPRACTORS

BY: _____
ANDY POOLE, DEPUTY DIRECTOR

Certified to the Secretary of State, May 21, 1990.

BEFORE THE LOCAL GOVERNMENT ASSISTANCE DIVISION
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the adoption by reference of a new rule for the administration of the 1990 federal community development block grant program	)))))	NOTICE OF ADOPTION OF 8.94.3706 INCORPORATION BY REFERENCE OF RULES FOR THE ADMINISTRATION OF THE 1990 FEDERAL COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) PROGRAM

TO: All Interested Persons:

1. On April 12, 1990, the Department of Commerce published notice of a public hearing on the proposed adoption by reference of the above-stated rule at page 682, 1990 Montana Administrative Register, issue number 7.

2. The hearing was held on May 3, 1990, at 1:30 p.m., in Room C-209 of the Cogswell Building in Helena, Montana.

3. The Department has adopted ARM 8.94.3706 essentially as proposed. However, in response to comments received at the hearing and during the public comment period, the Department has modified the 1990 Application Guidelines with respect to the use of CDBG funds for infrastructure improvements in support of local economic development activities and with respect to reapplication by currently funded grantees. These modifications are discussed more fully in item 4, below. Copies of the final wording of the Guidelines may be obtained from the Local Government Assistance Division, Department of Commerce, Capitol Station, Helena, Montana 59620.

4. Four persons presented oral testimony at the hearing. In addition, the Department received five written comments during the comment period provided under the Administrative Procedure Act. Summaries of the principal comments regarding the 1990 Application Guidelines and Administration Manual and the Department's responses thereto follow:

COMMENT: The Department has narrowed the focus of the CDBG program's economic development category so as to primarily provide loans to for-profit businesses. This emphasis discourages the use of CDBG funds for infrastructure improvements to promote economic development.

RESPONSE: The proposed CDBG guidelines for the economic development category state at page three, under the heading "A. ELIGIBLE ACTIVITIES," that, "Typical eligible activities that fall within the CDBG economic development category include: land acquisition, public facilities and other improvements in support of economic development, such as water and sewer lines, and access roads ...." The wording in this paragraph has remained virtually unchanged for several years. However, to eliminate any misunderstanding, the Department has included additional language to make clear that CDBG funds can be used for infrastructure improvements in support of local economic development activities. Under federal law, if a local government proposes to assist a for-profit entity with

CDBG funds, whether by extending low interest loans to the business or by providing needed infrastructure, the local government must provide adequate financial information to document that the assistance is necessary and appropriate in view of the public benefit that will result from it. The review process for either form of assistance to a for-profit business is essentially the same.

COMMENT: The Department should continue to allow local governments to retain program income generated by CDBG projects if they can show that they have the capacity to manage the funds properly.

RESPONSE: The Department concurs. Since the Department began administering the CDBG program in 1982, all communities that have received grants for projects which have generated program income have been allowed to retain the funds to support further community and economic development efforts. No change is proposed with respect to program income.

COMMENT: The Department has proposed to remove all restrictions on current grantees' reapplying for new CDBG grants except that the reapplicant be on schedule with the previous project and have no serious unresolved monitoring or audit problems. This policy would be appropriate with respect to public facilities projects but might create problems in connection with housing rehabilitation projects. Because of their complexity, it might be reasonable to limit communities to only one housing rehabilitation project every two years.

The proposed policy might also cause such intense competition for housing rehabilitation projects that new communities will have even more difficulty obtaining funding. The more experienced and sophisticated communities would compete successfully every year, increasing the possibility that housing rehabilitation would become limited to these communities.

RESPONSE: See composite response to following comment.

COMMENT: Contrary to the view expressed in the immediately preceding comment, the Department should adopt its proposal to allow communities which are currently receiving CDBG funding from previous years' grants to apply for 1990 grants if the communities are meeting the implementation schedule for their present grant. Under the Department's current policy, much-needed projects for unincorporated areas in a county have been barred from grant competition because an existing CDBG project in another unincorporated community has been delayed by forces beyond the county's control.

RESPONSE: Since 1982, Montana's CDBG guidelines have incorporated minimum standards of performance which must be met in order for a previous grant recipient to reapply for CDBG funds. This requirement has provided a strong incentive for grant recipients to complete their projects on a timely

basis. The U.S. Department of Housing and Urban Development (HUD) is placing increasingly heavy emphasis on the need for CDBG recipients to promptly complete their projects. In recognition of this emphasis and in view of the comments summarized above, the Department has concluded that it should not adopt the revised reapplication requirement as originally proposed.

Instead, for the housing and public facilities categories, the Department will retain the requirement that recipients of a CDBG award from the 1989 program will not be eligible to reapply until 75% of the nonadministrative funds from the award have been drawn down or until all activities have been completed. However, to increase flexibility for potential grant applicants, the Department will eliminate the set percentage draw down requirements for recipients of CDBG awards from earlier years. These pre-1989 recipients will be eligible to reapply if their projects are in compliance with the implementation schedules contained in their CDBG contracts and if there are no unresolved audit or monitoring findings for the earlier projects.

5. No other testimony or comments were received.

6. The reasons for and against adopting the rules are embodied in the comments and responses in item 4, above.

LOCAL GOVERNMENT ASSISTANCE
DIVISION
DEPARTMENT OF COMMERCE

BY: _____
ANDY POOLE, DEPUTY DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, May 21, 1990.

BEFORE THE MONTANA BOARD OF SCIENCE
AND TECHNOLOGY DEVELOPMENT
STATE OF MONTANA
DEPARTMENT OF COMMERCE

In the matter of the adoption of new rules and repeal of rules pertaining to loans made by the Montana Board of Science and Technology Development	))))))	NOTICE OF ADOPTION OF NEW RULES AND REPEAL OF ARM 8.122.101; 8.122.201 THROUGH 8.122.203; 8.122.401 THROUGH 8.122.445 PERTAINING TO LOANS MADE BY THE MONTANA BOARD OF SCIENCE AND TECHNOLOGY DEVELOPMENT

TO: All Interested Persons:

1. On March 15, 1990, the Montana Board of Science and Technology Development published a notice of public hearing on the proposed adoption of Rules I (8.122.102), II through IV (8.122.204 through 8.122.206), V through XX (8.122.601 through 8.122.616); and repeal of the above-stated rules, at page 428 of the Montana Administrative Register, issue no. 5. The hearing was held on April 20, 1990.

2. No comments or testimony were received.

3. The Board has adopted and repealed the rules exactly as proposed.

MONTANA BOARD OF SCIENCE AND
TECHNOLOGY DEVELOPMENT
CHASE T. HIBBARD, CHAIRMAN

BY: _____
ANDY POOLE, DEPUTY DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, May 21, 1990.

BEFORE THE DEPARTMENT OF
FAMILY SERVICES OF THE
STATE OF MONTANA

In the matter of the repeal of Rule 11.5.605 pertaining to access to department records	)))))	NOTICE OF REPEAL OF RULE 11.5.605 PERTAINING TO ACCESS TO DEPARTMENT RECORDS.

TO: All Interested Persons

1. On April 12, 1990, the Department of Family Services published notice of the proposed repeal of Rule 11.5.605 pertaining to access to department records at page 693 of the 1990 Montana Administrative Register, issue number 7.

2. The Department has repealed Rule 11.5.605 as proposed.

3. No written comments or testimony were received.

Director, Department of Family Services

Certified to the Secretary of State May 15, 1990.

BEFORE THE MONTANA FISH AND GAME COMMISSION

In the matter of the amendment of ARM 12.6.901; establishing no-wake speed on Whitefish River	NOTICE OF AMENDMENT TO ARM 12.6.901 PERTAINING TO WATER SAFETY REGULATIONS

TO: All Interested Persons:

1. On March 15, 1990, the Montana Fish and Game Commission (Commission) published notice of a proposed amendment of Rule 12.6.901 concerning water safety regulations that would establish a no-wake speed restriction on the Whitefish River between its confluence with Whitefish Lake and the JP Road bridge. The notice was published at page 452 of the 1990 Montana Administrative Register, issue number 5.

2. A public hearing was held on April 10, 1990, in Whitefish, Montana.

3. A report summarizing the public comment was prepared and submitted to the Commission and the Department of Fish, Wildlife and Parks (Department).

4. The Department recommended to the Commission that the proposed amendment be adopted.

5. After considering the public comment and the Department's recommendation the Commission approved the amendment as proposed.

6. The Commission responds to the comments opposing the adoption as follows:

COMMENT: One person opposed the adoption of the rule on the grounds that there was no danger to other users from speeding boats and jet-powered-personal watercraft because sunken logs on the river prevent speeding and children could be restricted to the supervised city beach.

RESPONSE: The Department and all other individuals commenting on the rule believe that speeding boats and jet-powered-personal watercraft pose a danger to the recreational users of the section of the Whitefish River under consideration in the proposed rule. The Department and these commentators believe the no-wake restriction is a reasonable compromise. The Commission agrees and finds that speeding boats and jet-powered-personal watercraft do create potentially dangerous situations, that the adoption of the no-wake speed restriction addresses those concerns for safety, and that the adoption of the amendment is a reasonable and safe accommodation of all interests on this section of the Whitefish River.

K.L. Cool, Secretary
Montana Fish and Game
Commission

Certified to the Secretary of State May 21, 1990.

BEFORE THE MONTANA FISH AND GAME COMMISSION

In the matter of the adoption of ARM 12.6.904 and the amendment of ARM 12.6.801 - Montana Power Company Dams	NOTICE OF ADOPTION OF ARM 12.6.904 AND AMENDMENT OF ARM 12.6.801

TO: All Interested Persons:

1. On March 15, 1990, the Department of Fish, Wildlife and Parks (Department) published notice of proposed adoption of Rule 12.6.904 (RULE I) concerning use restrictions at Montana Power Company dams and amendment of ARM 12.6.801 concerning boating closures. The notice was published at page 449 of the 1990 Montana Administrative Register, issue number 5.

2. A public hearing was held on April 5, 1990, in Helena, Montana.

3. A report summarizing the public comment was prepared and submitted to the Commission and the Department.

4. The Department recommended to the Commission that the proposed adoption and amendment be adopted.

5. After considering the public comment and the Department's recommendation the rules have been adopted and amended as proposed.

6. Comment: The only comment received was from James Ferguson who spoke in favor of the proposed adoption concerning use restrictions at Montana Power Company dams. No other comments were received.

K.L. Cool, Secretary
Montana Fish and Game
Commission

Certified to the Secretary of State May 21, 1990.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment) of Rule 24.29.1415 pertaining) to the impairment rating) dispute procedure)	NOTICE OF AMENDMENT OF ARM 24.29.1415 PERTAINING TO THE IMPAIRMENT RATING DISPUTE PROCEDURE

TO: All Interested Persons:

1. On March 15, 1990, the Department of Labor and Industry published notice of public hearing on the proposed amendment of ARM 24.29.1415 pertaining to the impairment rating dispute at page 456 of the 1990 Montana Administrative Register, issue No. 5.

2. The Department has amended the rule with the following changes:

24.29.1415 IMPAIRMENT RATING DISPUTE PROCEDURE

(1) An evaluator must be a qualified physician licensed to practice in the state of Montana under Title 37, chapter 3, MCA, and board certified or board eligible in his area of specialty appropriate to the injury of the claimant~~.~~, except that if the claimant's treating physician is a chiropractor, the evaluator may be a chiropractor who is certified as an impairment evaluator under Title 37, chapter 12, MCA. The claimant's treating physician may not be one of the evaluators to whom the claimant is directed by the department.~~--an evaluator.- The division will develop a list of evaluators which may include those physicians nominated by the board of medical examiners.~~

(2) The ~~division~~department ~~will~~shall arrange evaluations as close to the claimant's residence as reasonably possible.

(3) The ~~division~~department ~~will~~shall give written notice to the parties of the time and place of the examination. If the claimant fails to give 48 hours notice of his inability to attend the examination, he is liable for payment of the evaluator's charges~~, incurred, except for good cause shown.~~

(4) The ~~division~~department may request a party to submit all pertinent medical documents including any previous impairment evaluations to the selected evaluator.

(5) Any party wanting to provide information to an evaluator or inquire about the status of an evaluation shall do so only through the ~~division~~department.

(6) The impairment evaluators shall operate according to the following procedures:

(a) The evaluator shall submit a report of his findings to the ~~division~~department, claimant and insurer within fifteen (15) days of the date of the examination.

(b) If another evaluation is requested within 15 days after the first evaluator mailed the first report, the ~~division~~department ~~will~~shall select a second evaluator who ~~will~~shall render an impairment evaluation of the claimant.

(c) The second evaluator shall submit a report of his findings to the ~~division~~ department, claimant and insurer, within fifteen (15) days of the date of the examination.

(d) The ~~division~~ department shall submit both reports to the third evaluator, who shall then submit a final report to the ~~division~~ department, claimant and insurer within thirty (30) days of the date of the examination or, if no examination is conducted, within thirty (30) days of receipt of the first and second evaluation reports from the department. The final report must certify that the other two evaluators have been consulted.

(e) If neither party disputes the rating in the final report, the insurer shall begin paying the impairment award, if any, within 45 days of the third evaluator's mailing of the report.

(f) Either party may dispute the final impairment rating by filing a petition with the workers' compensation court within fifteen (15) days of the third evaluator's mailing of the report.

AUTH: Section 39-71-203 MCA
IMP: Section 39-71-711 MCA

3. Comments and Responses: Written comments were received from two parties. Additional oral comments were received at the hearing from two parties. The comments refer to the proposed amendment as published on March 15, 1990.

1. Individuals who do not have general medical training and specific medical training in the areas addressed in the Guides to the Evaluation of Permanent Impairment should not be allowed to use the Guides for medical-legal purposes. Chiropractors do not have the background to address the issue of impairment rating using medical and medical specialty guidelines.

Response. Section 39-71-711, MCA allows chiropractors to act as impairment evaluators in certain circumstances, rendering impairment ratings based on the Guides.

2. The words "at the time of the evaluation" should be added to the fifth line of subsection (1) of the proposed amended rule, after the words "the claimant's treating physician".

Response. The words "if the claimant's treating physician is a chiropractor" are taken directly from the statute. The use of the present tense in this clause clearly indicates that treating physician means the treating physician at the time the evaluator is selected. Addition of the suggested words would not clarify the rule.

3. The specific Department of Commerce rules providing for certification of chiropractors as impairment evaluators should be added to the proposed amended rule by reference.

Response. The certification process and requirements adopted by the Department of Commerce will not affect the impairment rating dispute procedure addressed in the proposed amended rule. Section 39-71-711, MCA requires only that chiropractors acting as impairment evaluators be certified under Title 37, Chapter 2; further specifics regarding such certification are neither necessary nor appropriate in ARM 24.29.1415.

4. The proposed amended rule should establish procedures for obtaining, updating, and distributing to insurers a list of chiropractors certified as impairment evaluators.

Response. A list of chiropractors certified as impairment evaluators will be available from the Department of Commerce, Board of Chiropractors upon request. The automatic distribution of new versions of the list to all insurers and adjusters by the Department of Labor and Industry is neither required nor suggested by statute. Such an activity would be secondary to the Department's administration of the dispute procedure and is not an appropriate subject for administrative rule.

5. The proposed amended rule should state when and under what circumstances the Department will make arrangements for evaluations.

Response. The statute requires only that the Department adopt rules setting forth "the qualifications of evaluators and the locations of examinations". In conformity with subsection (2) and (3) of the rule, the Department distributes an information sheet explaining in detail how, when, and under what circumstances impairment evaluations are arranged. The information sheet is sent to all parties in an impairment rating dispute.

6. In the fifth line of subsection (3) of the proposed amended rule the word "incurred" is redundant and should be deleted.

Response. The word "incurred" has been deleted.

7. The procedure described in subsection (6) is awkward and time-consuming and actually provides for four impairment evaluations. The proposed amended rule should specify acceptable reasons for requesting additional evaluations.

Response. Subsection (6) provides for a possible total of three evaluations, as does the statute. (No evaluations are implied by a petition to the Workers' Compensation Court.) The statute clearly allows for dispute of the first evaluator's rating by either party for any reason. Any restriction on a party's right to dispute the first rating under subsection (6) would be in conflict with the statute.

8. The last sentence in subsection (1) of the proposed amended rule is unclear; it can be interpreted to mean that an impairment rating rendered by the claimant's treating physician is not valid. If the intention is only that the Department may not choose the claimant's treating physician as one of its evaluators under the dispute procedure, then the language in subsection (1) should be changed to make that clear.

Response. The sentence has been revised as suggested.

9. The proposed amended rule should specify what party is responsible for payment for the second and third evaluations under the dispute procedure.

Response. Specific payment responsibilities are addressed in section 39-71-711(5), MCA. Also, the information sheet the Department distributes to all parties contains a table showing the payment responsibility associated with each step of the process. Additionally, all of the Department's standard letters and memoranda within a particular dispute process identify the payors responsible for succeeding evaluations.

4. The authority for the rule is section 39-71-203, MCA, and the rule implements section 39-71-711, MCA.

Mario A. Micone, Commissioner
Department of Labor and Industry

Certified to the Secretary of State: May 21, 1990

BEFORE THE BOARD OF LAND COMMISSIONERS
AND DEPARTMENT OF STATE LANDS
OF THE STATE OF MONTANA

In the matter of the adoption of new Rules I through VII authorizing permitting and requiring reclamation of hard rock mills and operations that reprocess tailings and waste rock from previous operations	)))))))	NOTICE OF ADOPTION OF RULES

To: All Interested Persons

1. On February 8, 1990, the Board of Land Commissioners and the Department of State Lands published notice of public hearing on adoption of new rules concerning permitting of hard rock mills and the reprocessing of hard rock waste rock and tailings at page 267 of the 1990 Montana Administrative Register, issue number 3.

2. The Board and Department have adopted the rules with the following changes:

RULE I (26.4.160) MILLS AND REPROCESSING OPERATIONS; DEFINITIONS

As used in this subchapter and the Act, unless the context clearly indicates otherwise, the following additional definitions apply:

(1) "Alternate land use" means, with regard to a mill facility, reclamation of a site to an alternative postmining land use where the following conditions are met:

(a) The proposed postmilling land use is compatible with adjacent land use, and applicable landowner authorization.

(b) Retention of the structure is consistent with the proposed postmining land use. This shall be documented through inclusion of a schedule showing how the proposed use will be achieved within a reasonable time after milling and will be sustained.

(c) Plans for alternate land use must be integrated with the requirements of Rule V for the grading and revegetation of the surrounding area.

(d) Plans must document, if appropriate, that financing, attainment, and maintenance of the alternative land use is feasible.

(e) The proposed use will:

(i) not present actual or probable hazard to public health or safety;

(ii) comply with the air and water quality acts; and

(iii) minimize adverse effects on fish, wildlife, and related environmental values.

(2) "Contingency plan" means, with regard to spilled process solution, a plan which includes, but is not limited

to, steps for containment, neutralization, and removal, and identification of any associated training needs.

(3) "Description of ~~E~~existing environment" means a description with appropriate maps of the condition of the proposed project area prior to exploration or operation. The description shall provide but not be limited to a discussion which characterizes ~~of~~ each of the following:

(a) geology;
(b) soils;
(c) vegetation, including, but not limited to, canopy cover, diversity, use, and productivity;
(d) wildlife;
(e) hydrology (surface and groundwater characteristics, quantity, quality, and use), including maps which identify springs, seeps, and wells within one mile of the permit boundary and three miles down gradient unless a lesser distance is justified and agreed to by the department;
(f) air quality and climate;
(g) aquatic biology;
(h) land use and ownership;
(i) recreation;
(j) cultural/historic resources identified as a result of inventory and of file searches conducted by the State Historic Preservation Office;
(k) noise;
(l) transportation;
(m) aesthetics.

(4)~~(2)~~ "Expansion of a mill facility" means ~~the increase in disturbed surface area, design capacity or addition of new structures~~ disturbance of an area not previously disturbed by the milling operation, and, in the case of a waste dump, tailing impoundment, or similar facility, a change in the design capacity that will result in an increase in land disturbance at an existing mill facility. When disturbance of an area not previously disturbed by the operation occurs at a dump, impoundment or similar facility, the Department may regulate the previously disturbed area to the extent necessary to achieve reclamation of the expansion area.

(5)~~(3)~~ "Facility" means any building, impoundment, embankment, waste or tailings disposal site, or other man-made structure associated with a particular activity. Mill facility means a mill and associated structures, disturbance and development.

(6)~~(4)~~ "Mill" means any facility for ore, tailings, or waste rock processing and disposal. This term does not include smelting, or refining facilities, sample collection processes, and pilot testing performed pursuant to an exploration license.

(7)~~(5)~~ "Plan" means that information submitted to the department pertaining to a proposed or ongoing milling related activity which utilized narratives, engineering designs, maps, cross-sections, or other documentation which adequately describes the activity.

~~(8)(6)~~ "Reclamation" means removal of facilities ~~removed~~, unless an alternate land use is approved and the regrading, contouring, and revegetation of disturbed land. For the purpose of ~~these regulations~~Rules II through VI, reclamation shall be deemed complete when the disturbed land is restored to a comparable utility and stability as that of adjacent areas, except for open pits and rock faces which may not be feasible to reclaim. Reclamation of previously disturbed areas is required only to the extent feasible given the pre-existing condition of the site.

(9) "Reclamation to the extent practicable and feasible" means, with regard to reprocessing of waste rock and tailings:

(a) where waste rock and tailings have previously been reclaimed under this part, compliance with the standards set for an operating permit;

(b) where waste rock and tailings have not previously been subject to the reclamation requirements of this part and are to be redisturbed under the proposed permit, the following:

(i) reclamation of any reprocessed waste rock and tails and associated facilities consistent with the standards of this definition;

(ii) salvage and replacement of available soil or suitable materials;

(iii) use of suitable materials at the surface of any reprocessed waste rock to the extent practicable;

(iv) grading of slopes to a stable angle, treating with appropriate soils amendments and vegetating with a perennial seed mix;

(v) amending and seeding the regraded site such that utility is improved over that which existed prior to reprocessing;

(vi) preservation of water quality at least to the level that existed prior to reprocessing.

AUTH: Sec. 82-4-321, MCA; IMP: Sec. 82-4-335, 82-4-336, 82-4-337, MCA.

RULE II (26.4.161) MILLS: APPLICABILITY OF RULES TO MILLS

(1) Rules I through VI apply to all mills under permit pursuant to Title 82, Chapter 4, part 3, MCA, on June 1, 1990, to all mills constructed or beginning operation after June 1, 1990, and to the expansion of any mill facility or complex concluded after June 1, 1990.

(2) For mills under permit on June 1, 1990 existing bond must be ~~upgraded~~ updated at the time of the next ~~mine~~ permit amendment, unless the department requires earlier updating or an operator chooses to ~~upgrade~~ update the mill permit information and bond prior to that time. Prior to ~~upgrading~~ updating information, the operator shall meet with the department to determine the appropriateness of the requirements in Rule IV to the specific situation. Any requirement determined not applicable shall be documented in the permit with the reasons for the determination.

(3) Mills constructed as a part of a new mining operation must be permitted under the mine operating permit using the information required in Rules III-VI.

AUTH: Sec. 82-4-321, MCA; IMP: Sec. 82-4-304, MCA

RULE III (26.4.162) MILLS: OPERATING PERMIT APPLICATION

(1) Any person wishing to operate a mill or disturb land in anticipation of construction or operation of a mill must obtain an operating permit for each mill ~~operation and associated facilities~~ complex on a form prescribed by the department before disturbance of land in anticipation of construction or operation of the mill or associated facilities.

(2) Prior to receiving an operating permit, the applicant must:

(a) pay a $25.00 filing fee to the department unless the mill application is associated with and submitted concurrently with a new operating permit application submitted under 82-4-335, MCA;

(b) indicate the proposed date for commencement of milling and the minerals to be milled;

(c) provide a detailed map using a USGS topographic base to scale of 1" = 400' or less, for the mill area and area to be disturbed. The map must locate and identify streams and proposed roads, railroads, conveyors, and utility lines in the immediate area;

(d) file a reclamation bond pursuant to section 82-4-338, MCA.

(e) file an operating plan; and

(f) file a reclamation plan.

(3) The department shall provide public notice of mill applications, consistent with 82-4-353, MCA.

AUTH: Sec. 82-4-321, MCA; IMP: Sec. 82-4-335, MCA

RULE IV (26.4.163) MILLS: OPERATING PLANS

(1) An application for an operating permit pursuant to Rule III must ~~file~~ contain an operating plan that contains each of the following:

(a) a description of the existing environment;

(b) a plan of operations that includes:

(i) all of the matters required by section 82-4-335 (3)(d)(e)(f)(g)(h)(i)(j)(k), MCA, excepting the mine map;

(ii) maps enhancing narratives which use the same base and scale as required by Rule III(2)(c); where appropriate;

(iii) a description of the design, construction, and operation of the mill, tailings, and waste rock disposal facilities;

(iv) a list of equipment and chemicals to be used in the operation by location and task;

(v) a description of all buildings and ~~an estimation~~ identification of ~~maximum~~ mill design capacity;

(vi) a description of topsoil salvage and stockpiling activities;

~~(vii) if the mill is proposed to be operated in conjunction with a mine operated by applicant, personnel requirements by location and task for construction and operation phases. (Operations meeting the definition of "large scale mineral development" in 90-6-302, MCA, must also comply with the Hard Rock Impact Act, Title 90, Chapter 6, part 3, MCA;~~

~~(viii)~~ (vii) a description of the general chemical processes and the purpose and amount and source of water used in the operation and ~~its source~~ the amount and disposition of any process waste water or solutions to be disposed;

~~(ix)~~ (viii) a description of the power needs and source(s) ~~should be provided~~, including fuel storage sites;

~~(x)~~ (ix) sewage treatment and facilities and solid waste disposal sites;

~~(xi)~~ (x) a description of the transportation network to be used or built during the construction and operation phases, and a listing of the type and amount of traffic at mill capacity;

~~(xii)~~ (xi) a description of the fire protection plan and the toxic spill contingency plan and a certification that notice of the filing of the plan has been provided to the State Fire Marshall;

~~(xiii)~~ (xii) plans describing the design and operation of all diversions and impounding structures and sediment control. Descriptions shall be detailed enough to provide an accurate depiction of the safety, utility and stability of such structures;

~~(xiv)~~(xiii) a discussion of predicted noise levels by activities during construction and operational phases;

~~(xv)~~(xiv) a discussion of the potential and known archaeological and cultural values in the area ~~to be developed~~of potential environmental effect for the project and a discussion of how such values are to be given consideration;

~~(xvi)~~(xv) provisions for the prevention of wind erosion of all disturbed areas;

~~(xvii)~~(xvi) a description of the provisions for protection of off site flora and fauna;

~~(xviii)~~(xvii) plans for the monitoring of groundwater and surface water ~~during the life of the project~~ until continuous compliance with water quality standards is demonstrated, and ~~together with~~ a contingency plan in case of accidental discharge describing remedial action in cases requiring emergency action;

~~(xix)~~(xviii) a plan for the protection of topsoil stockpiles from erosion and contamination; and

~~(xx)~~(xix) a listing of known sources and volumes of incoming ore, tailings, or waste rock.

(c)(i) anticipated employment including both direct and onsite contract employees;

(ii)~~(vii)~~ if the mill is proposed to be operated in conjunction with a mine operated by applicant, personnel requirements by location and task for construction and operation phases. (Operations meeting the definition of

"large scale mineral development" in 90-6-302, MCA, must also comply with the Hard Rock Impact Act, Title 90, Chapter 6, part 3, MCA);

(2) Annual reports must be submitted consistent with 82-4-339, MCA, and include in addition:

(a) sources and volumes of incoming ore;

(b) volumes of tailings or waste generated;

(c) water monitoring report;

(d) remaining waste and tails capacity.

(3) Plans submitted under Rules III, IV, and V, must be consistent with plans filed with other permitting authorities.

AUTH: Sec. 82-4-321, MCA; IMP: Sec. 82-4-335, MCA

RULE V (26.4.164) MILLS: RECLAMATION PLANS

(1) An application for an operating permit pursuant to Rule III must contain a plan that provides for the reclamation of all the land to be disturbed by the proposed milling operation and associated activities. The plan must, at a minimum, include the following:

(a) all of the requirements of a reclamation plan set forth in section 82-4-303(13)(a) and (d) through (h), MCA, 82-4-336 and ARM 26.4.106;

(b) a regrading plan which leaves all disturbed areas in a stable configuration and which ~~is in conformity~~conforms with the proposed subsequent use of the land after reclamation. The department may require the use of cross-sections, topographic maps or detailed ~~prose~~ narrative, or a combination of these, to ensure that the application adequately describes the proposed topography of the reclaimed land. All reclaimed slopes on materials potentially ~~deleterious to the environment~~acid or toxic forming shall be graded ~~at a 3h:1v or lesser slope~~ to assure future erosion of acid and toxic forming materials offsite is prevented using prudent slope angle and length;

(c) a description of the manner in which the soil materials will be redistributed from the stockpiles to the area to be reclaimed (e.g. truck/loader, scrapers), to provide for adequate revegetation;

(d) a description of the methods by which surface and groundwater will be restored or maintained to meet the criteria of Title 75, Chapters 5 and 6, as amended, or rules adopted pursuant to these laws, including methods used to monitor for accidental discharge of objectionable ~~a neutralization plan for any undesirable~~(potential toxic or acid-producing) materials, plans for detoxification or neutralization of such materials, and remedial action plans for control and mitigation of discharges to surface or ground water;

(e) a plan for the reestablishment of vegetation which ~~is in conformity~~ conforms with the proposed subsequent use of the land after reclamation. Such revegetation plan must consider the following:

(i) The first objective in revegetation is to stabilize the area as quickly as possible after it has been disturbed.

Plants that will give a quick, protective cover ~~erand~~ those that will enrich the soil ~~shall~~ must be given priority. Plants reestablished must be in keeping with the intended reclaimed use of the land.

(ii) Appropriate revegetation ~~shall~~ must be accomplished as soon after necessary grading as possible; however, revegetation must be performed in the proper season in accordance with accepted agricultural and reforestation practices.

(iii) In the event that any of the above revegetation efforts are unsuccessful, the permittee ~~must~~ shall seek the advice of the department and make ~~a second~~additional attempts, incorporating such changes and additional procedures as may be expected to provide satisfactory revegetation;

(f) a schedule describing the manner and deadlines for the removal of facilities, including but not limited to the removal of buildings or related structures, or a plan meeting the requirements for alternative land use.

(2) The department may require additional measures necessary to ensure that the disturbed area is reclaimed in accordance with the act.

AUTH: Sec. 82-4-321, MCA; IMP: Sec. 82-4-335 and 82-4-336, MCA.

RULE VI (26.4.167) MILLS: CESSATION OR COMPLETION OF OPERATION

(1) Milling operations are presumed completed or ceased and thus are subject to the reclamation time schedule outlined in the approved reclamation plan when the mill has ceased operations for a period of 2 years or more. A permittee may rebut this assumption by providing evidence satisfactory to the department, consistent with ARM 26.4.108(2), that the operations have not in fact been abandoned or completed.

(2) Reclamation plans must provide that all discharges from completed operations or operations in a state of temporary cessation will be consistent with provisions of ARM 26.4.109

AUTH: Sec. 82-4-321, MCA; IMP: Sec. 82-4-341, MCA.

RULE VII: (26.4.168) REPROCESSING OF WASTE ROCK AND TAILINGS

This rule is adopted as proposed.

3. At the public hearing and during the comment period, the Board and Department received written, oral, or both written and oral comments from the following persons:

NAME	AFFILIATION OR ADDRESS
Constance M. Cole	Pegasus Gold Corporation
Michael Lorang	Cyprus Industrial Minerals Company
Steven L. Pilcher	Dept. of Health & Environmental Science
M. K. Botz	Hydrometrics, Inc.
Donald E. Jenkins	Golden Sunlight Mines, Inc.
Mary B. Tallmann	Pony

Gary Langley	Montana Mining Association
Thomas P. Lonnie	Bureau of Land Management
Ward Shanahan	Cyprus Industrial Minerals Co.\ Montana Talc Company/Pfizer Inc.
Ray Blehm	State Fire Marshall
Ray Tillman	Montana Resources
Florence Ore	Pony (for herself)
Florence Ore	Northern Plains Resource Council
David Zimmerman	The Concerned Citizens of Pony
Jerry Haack	Pfizer, Inc.
Katherine M. Huppe	State Historic Preservation Office
Bruce Farling	Clark Fork Coalition
Carol Ferguson	Dept. of Commerce/Hard Rock Mining Impact Board
Thomas M. Malloy	New Butte Mining, Inc.
Garry L. Preston	Montana Independent Miners
Tim Watrud	Montana Talc Company
Darrell Scharf	Golden Sunlight Mines, Inc.

A summary of the comments and the Board and Department's responses to those comments are as follows: (All references in Comments are to numbering in rules as originally proposed. References in Responses are generally to numbering in revised rules.)

GENERAL COMMENTS

COMMENT: A time limit for administrative review of mill permit applications and amendments is needed. An unspecified and open time limit would not be conducive to agency handling of the permits in a reasonable time. (Hydrometrics).
RESPONSE: A permit for a mill is an operating permit and the time limits of 82-4-337, MCA apply. No limit is necessary in the rules.

COMMENT: How does the Department see the coordination of compliance efforts between itself and the Department of Health and Environmental Sciences' Water Quality Bureau regarding compliance with the Groundwater Permit requirements, and MPDES permits? (Pegasus).
RESPONSE: Mills regulated under these rules are not required to have a groundwater permit. Coordination with regard to any required MPDES permit would be coordinated pursuant to the existing Memorandum of Understanding.

COMMENT: Improvements in bonding to enhance industry responsibility, such as specific bonding for protection and cleanup of water resources, specific bonding for toxic chemical use based on volume and risk factors, periodic review of bonding levels, holding bonds for longer time frames to insure system stability after permanent shutdown, and public notice and opportunity for comment on bond release. (Zimmerman).
RESPONSE: Under 82-4-338, MCA, the Department is required to bond for the cost of reclamation. This includes the cost of implementation of the contingency plan. That statute

guarantees the public the right to a hearing before bond is released.

COMMENT: The possibility of permit denial where reclamation is not physically or economically feasible, where loss or reduction of long range productivity of water resources or agricultural areas would occur, where these activities would jeopardize threatened or endangered species, or where adverse effects of the proposed facility on scenic, historic, archeological, cultural, or land values would outweigh the benefits of the mining operation. (Zimmerman).
RESPONSE: Section 82-4-351, MCA, sets the standards for permit denial to be when reclamation will not occur or when air or water quality standards would be violated. The Department cannot expand the statutory basis for denial in these rules.

COMMENT: For reference, you might perhaps want to take a look at the 1985 proposed rewrite of the Rules (26.4.101) which contains some useful language and which tends to refocus the entire body of the rules in a more integrated fashion. (Shanahan).
RESPONSE: Adoption of the 1985 draft rules would have required amendment of the hard rock rules generally. While this should be undertaken, it was beyond the capacity of the Hard Rock Bureau given its current permit application review activities. Integration will occur with the general rule revision pursuant to HB 581 (1989 Session).

COMMENT: The rules go beyond intent of the 1985 bill. Keep final rules within intent not based on emotions. (Montana Mining Assoc., Sharf).
RESPONSE: The Department has endeavored to implement and not expand upon the 1985 law. Specific issues are addressed within.

COMMENT: The 1989 Legislature passed HB 680 which we supported. That bill dealt with small miner cyanide operations. The Department should avoid overlap with this bill. (Montana Mining Assoc.).
RESPONSE: Under 82-4-305, MCA, small miners are exempt from these rules and are subject to HB 680 and rules that will be adopted to implement that bill.

COMMENT: Although you refer to "offsite" and "custom" mills in the letters and statements, nowhere in the draft can I find these words. (Ore).
RESPONSE: Mills associated with a permitted mine have been required to be permitted since passage of the Hard Rock Act in 1971. The 1985 law brought off-site and custom mills under the law. These rules implement both statutes and therefore apply to all hard rock mills (except mills operated by small miners pursuant to a small miner exclusion statements), not just custom or off-site mills.

RULE I

COMMENT: Section (1) should require that the baseline social and economic information should be provided along with other baseline data. (Ferguson).
RESPONSE: It is not necessary to require this information in an application because this information is not required by the Hard Rock Act and is readily available from other agencies when necessary for MEPA compliance.

COMMENT: Can the definition of "existing environment" in (1) be worded to define the area of influence of a project, eg., vicinity of the project or within one mile of the proposed project? (DHES).
RESPONSE: The area of influence varies with site specific proposals and conditions. A specific distance that would apply in all instances, regardless of project size or scope, would be inappropriate. Rule I is a topical list. The steps necessary to define what is needed for each discipline are to be addressed site specifically in consultation with the Department. Also, the term "existing environment" has been changed to "description of the existing environment" for editorial reasons.

COMMENT: In (1)(e) (now (3)(e)), a characterization of ground and surface water flow systems and water (chemistry) quality should be added. (DHES).
RESPONSE: The proposed modifications have been incorporated into Rule I(3)(e).

COMMENT: Paragraph (1)(i) should be amended to include socio-economics including recreational opportunities. (DHES).
RESPONSE: This information is readily available from existing state, federal, and local resources and is not specific to the project area. In addition, large-scale mineral operators would supply this information pursuant to the Hard Rock Impact Act.

COMMENT: Does (1)(k) regarding noise require documentation of ambient decibels? (DHES).
RESPONSE: Not unless it is a site-specific concern.

COMMENT: Does (1)(l) regarding transportation refer to the vicinity of the project or only within the permit boundary? (DHES).
RESPONSE: This refers to specific hauling and access routes leading to the proposed permit area as well as pre-existing roads within the proposed permit area.

COMMENT: In (2) you have defined "expansion of a mill facility" not only to include an increase in disturbed surface area, but also to include an increase in design capacity or addition of new structures at an existing mill facility. This not only goes beyond your authority, it is expressly intended

to subject process improvements of any kind to regulation and bonding under the Mine Reclamation Act, whether or not they have any relationship to disturbed surface area. (Cyprus, Montana Talc).

The talc producers believe that Rule I should be amended by deleting certain language in (2) and deleting in its entirety and rewriting subparagraph 2 as follows:

> (2) "Expansion of a mill facility" means an increase in disturbed surface area at an existing mill facility, the result of which extends outside the horizontal perimeter of the existing mill site and the land or surface area within that site, and will include but not be limited to any building, impoundment, embankment, waste or tailings disposal site, or other man-made structure associated with the mill facility.

(Shanahan).

RESPONSE: The Department agrees that the proposed language is overly broad. The definition has been amended to limit the Department's jurisdiction to situations in which there will be an increase in disturbed area.

COMMENT: Please add to (2) "expansion of a mill facility" the installation of new process facilities, process changes or process modifications. (DHES).

RESPONSE: To the extent these activities will result in new disturbance, they are covered by the proposed definition. If they do not result in new disturbed land, they cannot be covered.

COMMENT: Section (2) should not apply to an expansion of already permitted sites. (MRI).

RESPONSE: Under 82-4-303(13), MCA, the reclamation plan must cover all disturbed land. An expansion outside a permitted area cannot occur until the permit area is expanded. An expansion inside a permit area may occur as long as it is described in the operating and reclamation plans.

COMMENT: Use of the word "structure" in (2) must be clarified. Every time a new shed, pipeline, or other small unit or piece of equipment is added in the mill it should not be "an expansion of a mill facility". The expansion should be keyed to significance of the quantity and quality of the mill output to the tailings pond. Also, there should be a limit for design capacity increases. Only significant increases should be considered such as an increase exceeding 20%. (Hydrometrics). The definition of "mill expansion" in (2) must further detail what is specifically meant by "the addition of new structures" which would require a pre-approved permit or permit amendment. (New Butte Mining).

RESPONSE: Pursuant to a previous comment, the definition has been amended to apply only in the case of disturbance of new acreage. This change limits the design capacity modifications

that constitute an expansion and eliminates the term "structures" from the definition.

COMMENT: The term "design capacity" in (2) should reflect the permitted capacity of a mill, or volumetric increase in a waste or tailings storage structure. (Pegasus).
RESPONSE: The term "design capacity" has been limited to apply only to dumps, impoundments, and similar facilities and then only to instances in which there will be an increase in disturbed area. It should be noted that this new language uses the future tense ("will"). The intention here is to require a permit when additional loading commences, even if new surface area is not immediately disturbed. The rationale is that, in order to ensure reclamation of the new area, reclamation of the entire dump or impoundment is necessary. Also added is language that applies this principle to expansions of dumps and impoundments not resulting from increases in design capacity.

COMMENT: The term "mill facility" in (2) needs to be more precisely defined. Under this definition, heap leach operations, process plants and various support structures would be defined as part of the mill facility. (Pegasus).
RESPONSE: This is the intent of the rule, particularly in the case where a heap leach is located with a mill rather than a mine.

COMMENT: Does the definition of facility in (2) include leaching facilities and process plants? The definition is too broad and non-specific in relation to the intent of the statute to apply to custom mills located off site. Embankments are often associated with sediment control structures rather than material processing, as alluded to by this definition. (Pegasus).
RESPONSE: If leaching facilities and process plants are associated with a mill they are intended to be covered by this definition. Sediment-control structures are required at mills and thus are associated with materials processing and must be properly designed, maintained, and reclaimed.

COMMENT: Many facilities which are not classified as mills are associated with ore processing. Such facilities include processing or testing laboratories, leach pads and process solution plants. Many of the terms defined in the draft rules have been defined in reference documents such as the U. S. Bureau of Mines "Glossary of Mining and Mining Related Terms." Such definitions would more probably reflect common usage of these terms and result in less confusion. The definition of "mill" in (4) should therefore be amended. (Pegasus).
RESPONSE: The definition used by the Department was intended to clarify the requirements of the act rather than to duplicate common usage. To the extent that no problem with the application of the proposed definition to its usage in the rules has been identified, no change has been made.

COMMENT: To the definition of "facility" in (3) please add roads. (DHES).
RESPONSE: A road is a man-made structure associated with a particular facility.

COMMENT: To the definition of "mill" in (4) please consider changing the definition to include: "any facilities used for ore, tailings or waste rock processing and disposal." (DHES).
RESPONSE: The Department agrees that this change would better implement the law. The change has been made.

COMMENT: The definition of "mill" in (4) needs more clarification. The terms "custom mill" and "offsite mill" are used interchangeably. An offsite mill is not necessarily a custom mill. Also, a custom mill can be onsite and part of an existing operation. We suggest wording similar to, "A custom mill means any facility for processing ore from two or more sources." (BLM).
RESPONSE: The term custom mill does not appear in the rules. The rules apply to all mines off-site or on-site, custom or non-custom, except a non-custom mill operated by a small miner pursuant to a small miner exclusion statement.

COMMENT: We assume your definition of "mill" in (4) (any facility for processing ore) includes heap and vat leach processes. You specifically excluded smelting and refining facilities from your definition. What are the permitting regulations for custom mills that recover gold/silver with an onsite smelter similar to that at the Golden Sunlight Mine? (BLM).
RESPONSE: A smelter is excluded unless it is constructed in an area that is otherwise within the permit area. The mill operator is not required to obtain a permit for it if it is constructed outside a mine or mill permit area.

COMMENT: Can the definition of "mill" in (4) be amended to include mill operators that may be eligible for the Small Miner Exclusion Statement and for small mills that use toxic chemicals? (DHES).
RESPONSE: No. Section 84-4-305, MCA, excludes non-custom mills operated by small miners from these rules. They are covered under 82-4-335(2) (HB 680, 1989 Legislature) and the rules that will be adopted to implement that statute, however.

COMMENT: A number of commenters stated that the definition of mill in (4) goes beyond the 1985 Legislature's intended scope of the mill bill. They contend that the bill was intended to apply only to custom and off-site mills that use cyanide or other hazardous reagents. (Montana Mining Assoc., Pfizer, Shanahan, Golden Sunlight, Cyprus, MRI). Several stated that to require mills that don't use cyanide to obtain a permit is discriminatory because other mill-type facilities, such as the ASARCO smelter at East Helena, are not required to obtain a permit. (Shanahan, Cyprus, Montana Mining Assoc., Pfizer). A

number of commenters stated that talc producers objected that the rules should not apply to them because their process involves an inert material and that air and water quality effects of their operations are already regulated. (Shanahan, Pfizer, Cypress, Montana Talc, Montana Mining Assoc., Zimmerman). One commenter stated that regulation of those mills is beyond the police power of the state. (Shanahan).
RESPONSE: The Department has reviewed the language and legislative history of the 1985 bill and is of the opinion that the bill covers and was meant to cover all hard rock mills not otherwise covered under the hard rock act except mills operated by small miners pursuant to a small miner exclusion statement. Of course, operating and reclamation requirements will be different for mills that do not use hazardous reagents.

COMMENT: The term "mill" in (4) should not include small mills such as used in research, schools and pilot tests. Commonly, a very small mill is used to test rock during mine feasibility studies. (Hydrometrics).
RESPONSE: Section 82-4-310, MCA, exempts sample collectors. Researchers fit under this description. Pilot tests can be performed under an exploration license. Those exemptions have been added to (4).

COMMENT: The definition of "mill" in (4) appears to cover mills in traditional mined areas--even those that have been permitted through other regulations promulgated under the Hardrock Mining Reclamation Act. This would place these operations under a dual set of standards and amount to a costly and confusing duplication of regulation. (Montana Mining Assoc., Golden Sunlight, Pegasus).
RESPONSE: This is not required. If a mill is already under permit in conjunction with a mine, a new permit is not required. Under Rule II, some updating of the operating plan and bond may be required, however. To ensure continuation of this procedure, section (3) has been added for new mining operations.

COMMENT: The definition of "mill reclamation" in (6) must be changed so as NOT to mandate the removal of ALL facilities. The rules must acknowledge the existence of pre-operational structures which may have been utilized by the mill, such as haul roads, access roads, rail facilities, electrical substations and transmission lines, mine dumps, tailings impoundments, water pipelines, etc. Similarly, the definition of "mill restoration to a comparable utility and stability as that of adjacent areas," must be clarified to address pre-operational impacts and alternative post-operational land uses. (New Butte).
RESPONSE: The definition of reclamation in (9) has been amended to provide that reclamation of a previously disturbed area is necessary only to the extent reasonably feasible given pre-existing conditions at the site. Because a mill operation

is not required to obtain a permit for an area that will not be disturbed, reclamation is not required. Also, (10) has been added and requires reclamation within the permit area only of disturbance by the permittee.

COMMENT: The proposed definition of reclamation in (6) should reflect the definition of reclamation already existing in promulgated rules. Requiring an operator to remove facilities exceeds the Department's authority to approve a post-mining land use which would incorporate such structures. (Pegasus).
RESPONSE: There is no definition of reclamation in the existing rules. The Act defines the contents of a reclamation plan. See Rule I(7)(8). A provision to allow mill structures to remain as part of the postmining land use has been added to Rule V(1)(f).

COMMENT: To the definition of "reclamation" in (6), please consider adding surface and ground water systems and geotechnical stability. "Reclamation shall be deemed complete..." by the Department when the disturbed land and water resources are reclaimed to a comparable utility and stability and quality as deemed acceptable by the Department except for open pits and rock faces. Add wording to allow an operator to demonstrate to the Department which reclamation methods may be best suited to a given disturbance. This would avoid some reclamation problems associated with "areas which may not be feasible to reclaim". (DHES).
RESPONSE: The definition of reclamation has been substantially amended by changing (9) and adding (10). Surface and groundwater systems are covered and need not be mentioned specifically. Alternate reclamation has been added to Rule V(1)(f). Section 82-4-336(7), MCA, sets the standard for reclamation as comparable stability and utility. Use of the term "quality", if it is meant to expand the reclamation requirement, may be beyond the Department's authority.

COMMENT: Please consider adding a definition for "Operator" is a person, group, corporation, partnership, small miner or miller, etc. (DHES).
RESPONSE: These rules use the term "person" which is used and defined in the Act. See 82-4-303(10), MCA. Definition and use of the term "operator" would therefore be superfluous. The definition of "person" is approximately the same as the definition suggested for operator.

RULE II

COMMENT: It's stated, "Rules I through VI apply to all mines under permit. . ." Does this include mills associated with a mine? (Ore).
RESPONSE: Yes, except for a mine operated under a small miner exclusion statement.

COMMENT: In (1) what permit do you mean, DHES as well as DSL? (Ore). This should be clarified. (New Butte Mining).
RESPONSE: The rule applies to permits issued under the Hard Rock Act. This clarification has been made.

COMMENT: A number of mining industry representatives objected to the inclusion of an entire mill site that would otherwise be grandfathered except for an expansion. They objected that the definition of expansion is overbroad.
RESPONSE: See response to similar comments made with regard to Rule I(1), the definition of "expansion of a mill facility."

COMMENT: In this section (2), it appears bonds will be reviewed for "upgrading" only when a permittee amends an operation. The rule should recognize also that bonds for all mills under permit, regardless of whether an amendment is proposed, be reviewed annually by DSL. Annual review helps ensure that sureties are adequate to cover increased costs from inflation and other economic circumstances affecting reclamation costs. We have been told that the bureau, as a matter of internal policy, already reviews mine bonds annually. Annual review for custom mills could occur on a calendar year basis, or review dates could coincide with the date these rules are finalized or when a permit is approved. (Clark Fork Coalition).
RESPONSE: Although the Department is attempting to review bonds periodically, it cannot make this a requirement in the rules when other statutorily mandated duties, such as permit review and environmental document preparation, may not leave sufficient staff time for a specific bond review schedule.

COMMENT: All mills under permit or to be constructed should be required to have a water quality permit and an operating permit plus be bonded. I believe with all three being required of all mills, the public is better protected from scams and insincere promoters. (Tallman).
RESPONSE: The Department can only regulate under the Hard Rock Act. Any request to amend DHES rules to expand the scope of the water quality permit requirement must be addressed to DHES.

COMMENT: As described in 82-4-304, these draft rules are clearly intended to apply to mills not located at a mine site, not all mills. This rule as written would exceed the Department's statutory authority. (Pegasus, Golden Sunlight)
RESPONSE: These rules implement Chapter 453, Laws of 1985 which applies to all mills, whether they be custom or non-custom mills, on-site or off-site, except for mills operated by small miners pursuant to a small miner exclusion statement. It is true that Section 82-4-304, MCA, applies only to off-site mills. This is because that section is a grandfather clause for off-site mills.

COMMENT: In (2), what does the term "upgraded" mean? The term "amendment" is not mentioned in either the Metal Mine Reclamation Act or its promulgated rules. This rule assumes that an existing, approved bond would be inadequate. It is restating the obvious to include a rule that the department has the authority to revise bond amounts. Existing language concerning bonding authority should be repeated or referenced. (Pegasus). Does "upgrade" mean "amend?" (DHES).
RESPONSE: The Department agrees that the term "upgraded" is too vague. The term has therefore been changed to "updated" to indicate that the bond level will be reviewed to determine whether any changed circumstances would dictate a change in the bond amount. Although the term "amended" is not defined, it has come to mean a change in permit boundaries or revision of the permit. This is the meaning of the term as used in this rule. The Department agrees that it is obvious that it has authority to adjust bond amounts. Inclusion of this authority in the rule puts operators on notice of this fact. If a general revision of the hard rock rules is accomplished, this provision will probably be included for review as well.

COMMENT: Amend (1) to read: "Rules I through . . . mills under permit or construction . . . and to the expansion or modification of the milling process . . ." (A mill can go from floatation to cyanide without expanding). (DHES). Also, at the May 21, 1990 Land Board meeting, the Attorney General suggested that the language be added to refer to the mine complex.
RESPONSE: Section (1) has been amended to more closely reflect the language of 82-4-304, MCA, and add the Attorney General's suggested language. Modifications are covered to the extent allowed by 82-4-304, MCA, through the reference in (1) to expansions.

COMMENT: What if there is no amendment? When must bond be upgraded in that instance? (DHES).
RESPONSE: The Department periodically reviews bonds to ensure adequacy. Language reflecting this practice has been added.

COMMENT: In (2), change "mine permit amendment" to "mill permit amendment." (BLM).
RESPONSE: All mills that were under permit on the effective date of the rules are under a mine permit because only mills operated in conjunction with a mine were required to obtain a permit prior to the effective date of these rules. The terminology in the proposed rule is therefore correct.

COMMENT: We suggest that (1) be amended to include all mills NOT under permit on that date. The mill in Pony currently occupies a loophole in Montana law, exempting it from Operating Permit and bonding requirements. We should hope that the new rules would bring all such operators into the system. (Zimmerman).

RESPONSE: Because of the grandfather clause in 82-4-304, MCA (last sentence), mills constructed and operating on the effective date of the rules cannot be covered. However, the proposed language has been modified to more accurately reflect the grandfather clause by adding "or beginning operation."

COMMENT: We would rewrite Rule II (1) as follows:
(1) Rules I through VI apply to all mills under permit on [the effective date of Rules I through VI], to all mills constructed under [the effective dates of Rules I through VI], and the expansion of any mill facility concluded after [the effective date of Rules I through VI] where proper reclamation is necessary to prevent undesirable land and surface water conditions detrimental to the general welfare, health, safety, ecology and property rights of the citizens of the State.
(Shanahan)
RESPONSE: Chapter 453, Laws of 1985, applies to all mills except those operated pursuant to a small miner exclusion statement. The proposed language would unduly restrict the Department's jurisdiction. However, the intent of the commenter appears to be to minimize requirements when impacts would be limited. Amendments to these rules that would accomplish these objectives have been added. These include the tightening of the definition of "expansion," the limitation of required reclamation at a previously disturbed site, and the clarification that a mill need not be torn down if another feasible use is identified.

COMMENT: These rules should not apply to mills that are already permitted. (MRI, Golden Sunlight).
RESPONSE: These rules do not require a new permit for mills already under permit. Section (2) does require some updating of information and bond in order to meet the standards of Rule IV. However, any substantive changes to operating or reclamation plans in existing reclamation plans could only be made with the permittee's consent or by involuntary amendment through 82-4-337(3), MCA.

COMMENT: At the May 21, 1990 Land Board meeting, the Attorney General moved and the Board approved revision of section (1) to reflect that construction-related disturbance triggers the permit requirement.
RESPONSE: The Board adopted the Attorney General's suggestion and section (1) has been amended accordingly.

RULE III

COMMENT: Mills associated with new mines should not be required to have a separate permit but the information should be included in the application for the mine operating permit under the Hard Rock Act. (Hydrometrics).

RESPONSE: This was the intent of the rules. Rules II(3) and III(2)(a) have been amended to clarify this.

COMMENT: There should be added to the information required to be on the map cultural resources as required under Rule III(2)(c). (SHPO).
RESPONSE: The Department agrees. This requirement has been added to Rules I(1) and III(2)(c).

COMMENT: In (2)(c) there should be a requirement that an operator request a files search and inventory recommendation from SHPO and include on the map cultural resource sites to the map. (SHPO).
RESPONSE: The rule has been amended to require identification of cultural resource sites identified by SHPO. If SHPO wishes to make an inventory recommendation, it may do so.

COMMENT: Maps submitted pursuant to (2)(c) should also include information on land ownership. (Clark Fork Coalition, Zimmerman).
RESPONSE: This is consistent with 82-4-335(3)(a), MCA. The requested amendment has been made to Rule I(4)(h).

COMMENT: If it takes 6 months to a year to receive either an operating permit or a relatively minor amendment to an existing permit, for such a common practice as reprocessing (or disturbing) their own waste rock or tailings, there will be many lost opportunities in the future for the mining industry and the State of Montana. (New Butte Mining).
RESPONSE: This rule applies to operation of hardrock mills, not to reprocessing areas. However, see response to similar comment on Rule VII.

COMMENT: According to House Bill 680, the rule should not apply to all mills but only to small miners which use cyanide ore - processing reagents. (Golden Sunlight).
RESPONSE: These rules were written pursuant to Chapter 453, Laws of 1985. The Department has not yet proposed rules to implement HB 680.

COMMENT: Amend (1) to state that the permits be in hand (not applied for) before any ground breaking. This would mean all ground water studies and all public input was complete. I feel that CMC of Pony risked their money in building before receiving the water quality permit - the permit would be awarded de facto. Other projects in this area have done the same - do it then ask permission. (Tallman, DHES).
RESPONSE: Section 82-4-335(1), MCA, provides that a mill operator may not commence operation or disturb land in anticipation of milling until a permit has been granted. Therefore no rule is necessary.

COMMENT: Section (1) implies that a separate operating permit would be required for any operation which includes a mill

facility, not only those facilities located separately from the mine site. In addition, the term associated facilities is not defined. A strict interpretation of this proposed rule would result in the preparation of four separate mill permit applications for Merrill-Crowe and carbon adsorption facilities at the Zortman/Landusky operations. (Pegasus).
RESPONSE: "Facility" is defined in Rule I(6). Under 82-4-335, MCA, an entire mine, mill, or mine/mill complex is to be covered in one permit. Section (1) has been amended accordingly.

COMMENT: Amend (2) as follows: "Prior to . . . receiving an operations permit, the following items must be submitted and approved by the Department.

(c) provide a detailed map, indicate the scale of the map (eg. no greater than 1" = 400'), and use a USGS topographic base... . The map...identify streams, springs, seeps and wells within a one mile of the permit boundary and three miles down gradient of the permit boundary, unless the Department agrees that a hydrologic boundary justifies a lesser distance." (DHES).
RESPONSE: The Department agrees and has adopted the suggested language.

COMMENT: There is no small miner provision built into Rule III for processing ore. (BLM).
RESPONSE: Section 82-4-303(14), MCA, which is the definition of "small miner," does not include a mill operator. It does include tailings or waste reprocessor and this is reflected in Rule VII(2).

COMMENT: The map in 2c should include the location of any town, inhabited property, and any recreational, private, or public use lands. (Zimmerman).
RESPONSE: The intent of the map required here is to describe the permit area. Maps required under Rule IV(1)(a) have the information you describe.

COMMENT: Regarding the requirement in (2)(b) to "indicate the proposed date for commencement of milling and minerals to be milled," a "Custom Mill" to be of real value, and one that would allow a fair return on the investment cannot be subject to any one type of mineral if that consideration is less than the total complex of metal bearing ores, including sulfides and oxides. Also, a "Custom Mill" will operate as ore availability is present, the life or duration of the mills life then would depend on its ability to accept any complex of ores. This may and normally would require some changes in how the ore is processed and what reagents will be used. (Independent Montana Miners).
RESPONSE: This requirement to include startup date serves as a workload management tool for the Department and informs the public as to the startup date. The requirement regarding minerals to be processed serves an informational function

also. Neither provision binds the operator as to future options.

COMMENT: Subsection (2)(c) requires the filing of an operating plan. A custom mill may have periods of down time due to the availability of ores to be processed. Therefore, reasonable latitude in this part would be required to fill the parameters of such an operation. (Independent Montana Miners).
RESPONSE: The operating plan, which is prepared by the operator can be written to give the operator the desired latitude.

RULE IV

COMMENT: Section (1) should read: "An application for an operating permit must file an operating plan, pursuant to Rule III, that contains each of the following: (DHES).
RESPONSE: The suggested language is already contained in (1).

COMMENT: Previously required operating plans have included equipment lists. Why is the additional identification of location and task required in (1)(b)(iv)? (Pegasus.)
RESPONSE: The intent for identifying location and task for chemicals and equipment is to verify the appropriateness of monitoring and contingency plans.

COMMENT: Paragraph (1)(b)(iv), which requires a list of equipment and chemicals used, should be expanded to include estimated application rates of chemicals. (Zimmerman).
RESPONSE: Application rates would vary with production. The combination of information required under (iv), (v) and (vii) would essentially provide the same information. In addition, the contingency plan required under (xi) would have to address the maximum amount of chemicals onsite. In that environmental protection is dependent on these maximums rather than on the application rate, this suggestion has not been adopted.

COMMENT: With regard to the (1)(b)(iv) requirement for "a list of equipment and chemicals to be used in the operation by location and task," and the description of chemical processes and water used in (1)(b)(viii), a "custom mill" would need reasonable latitude in this area. Although a cyanide process would not vary much, other leaching processes may vary due to the chemical composition of any ore that are known to vary. The use of chemical "reagents" also are subject to change to assure the highest recovery of the metals within the ore complex. Water use may vary to some extent. The size and type of equipment (milling machinery) can be determined to some reasonable degree as the proximity to the source mines is a basic factor. (Independent Montana Miners).
RESPONSE: The Department agrees that a great deal of variability would occur. Therefore the intent is to assure

simply that the Department understands the site-specific operation in enough detail to minimize the potential for risk to the environment and public health or safety.

COMMENT: In (1)(b)(v), unify the reference to mill capacity between design and maximum. (Pegasus).
RESPONSE: The Department has modified Rule IV(1)(b)(v) to identify mill design capacity, which the Department interprets to be the maximum capacity of a mill.

COMMENT: Amend (1)(b)(v) by adding "and duration of operation." (DHES).
RESPONSE: Duration estimates for hard rock mills are not useful numbers. Duration will be dependent on the rate of consumption of permitted disposal area - the rate of consumption will fluctuate from year to year. Permitting of additional disposal areas would further extend "duration."

COMMENT: Why is the requirement for information on personnel needs in (1)(vii) limited to mills "in conjunction with a mine operated by applicant?" All custom mills, regardless of whether operated in conjunction with a mine, should include in their operating plan projected personnel requirements by location and task for construction and operation phases. (Clark Fork Coalition).
RESPONSE: To be covered under the Hard Rock Impact Act, a mill must be associated with a mine. Discussions with the Department of Commerce, which administers the Hard Rock Impact Act, indicate that it is possible that a mill operated in conjunction with a hard rock mine by a person other than the owner or operator of the mine might be considered to be part of the mine development for purposes of the Hard Rock Impact Act. The language has therefore been retained but transferred to (c)(ii).

COMMENT: A six-month delay resulting from the need to modify the hard rock impact plan is unduly restrictive because of the dynamic nature of the mining industry. (New Butte Mining).
RESPONSE: The Department does not administer the Hard Rock Impact Act. This comment should be addressed to the Hard Rock Impact Board or Department of Commerce.

COMMENT: What processes are referenced in (1)(b)(viii)? There are lots of chemical processes in mills. The discussion should describe "general" chemical processes to produce a concentrate. (Hydrometrics).
RESPONSE: The Department intends to require only a discussion of general processes. Detailed chemical formulas would not necessarily serve a purpose but could be required on an "as needed" basis. Therefore your suggestion to qualify the requirements has been accepted.

COMMENT: Paragraph (1)(b)(viii) should be amended to read: "the purpose, amount and source of water . . . its source and

of any process wastewater or solutions to be disposed;" (DHES).
RESPONSE: The suggested amendment has been made to paragraph (1)(b)(vii) in order to assure all the information necessary to evaluate potential impacts to ground and surface waters is available.

COMMENT: Because of the (1)(b)(viii), (xii), and (xviii) requirements regarding chemical processes, fires, and spills the State Fire Marshall or other appropriate offices should receive notice of the filing of plans.
RESPONSE: Paragraph (1)(b)(xi) has been amended to require the applicant to notify the State Fire Marshall.

COMMENT: To (1)(b)(ix) add: "including fuel storage sites." (DHES).
RESPONSE: The suggested amendment has been adopted to assure that all potential sources of impacts to ground and surface waters have been identified.

COMMENT: Add to (1)(b)(x): "identification of water resources and uses within one mile of the permit boundary, a description of surface and ground water flow systems, chemical analyses of baseline water quality and projected impacts of the operation on the hydrologic system." (DHES).
RESPONSE: This is baseline information required under (1)(a), not part of on-site operations. The suggested language has therefore not been added.

COMMENT: The transportation information in (1)(b)(xi) should include an estimate of how the road network will be used. For example, a mill operator should be able to say beforehand how many trucks of certain sizes will be used each day. The number of trips and times of day for truck traffic should also be described. This would help clarify a common deficiency we have found in many mining applications when locals were concerned about increased vehicle traffic. (Clark Fork Coalition).
RESPONSE: The suggested language has been added.

COMMENT: Paragraph (1)(b)(xi) on transportation should be expanded to include routes, timing, and methods of transporting toxic chemicals and byproducts. (Zimmerman).
RESPONSE: The suggested language has not been added because method of transport is regulated by the Department of Transportation and timing would be evaluated under MEPA.

COMMENT: Included in (1)(b)(xii) should be a requirement of employee training for fire control and toxic spill response. The Pony mill is ¼ mile from town while the RFD (volunteer) is 6 miles away. Their response time would be crucial. (Tallman, Zimmerman).

RESPONSE: Under this rule, an applicant must have a plan that would work. Training of employees is inherent, as are other procedures and requirements that have not been listed.

COMMENT: In (1)(b)(xii), why include requirements for a fire protection plan that duplicates the inspection and compliance authority of other state and federal agencies. Why include a toxic spill contingency plan when the term "toxic" has not been defined. Handling and storage of hazardous materials should be regulated in accordance with Department of Health and Environmental Sciences statutes and regulations. (Pegasus).
RESPONSE: The requirement for a fire protection plan has been placed in the rule at the request of the State Fire Marshal and toxic spill contingency plan is to facilitate Department compliance with the Montana Environmental Policy Act and to document compliance with other statutes.

COMMENT: A number of comments suggested that (1)(b)(xiii) be amended by adding specific requirements for double synthetic liners of specified thickness, bentonite underdrains, leak detection systems, and containment facilities designed for 100-year, 24-hour precipitation events. (Zimmerman, Tallman, Northern Plains).
RESPONSE: The Department requires best management practices for mill facilities. These practices vary depending on the type of mill. They also vary over time. The described practices are currently best management practices for some types of cyanide heap leaching operations. However, best management practices will change with time. Also, the rules apply to many other types of milling processes. The Department has therefore chosen not to incorporate the suggested standards as rule but will continue to consider such requirements as necessary, given certain site-specific conditions.

COMMENT: In (1)(b)(xiii), delete "plans describing the . . ." . Begin with "Design specifications and operation of all surface water diversions, impoundments and erosion control methods. Descriptions shall be detailed to provide . . . safety, utility and stability. . ." (DHES).
RESPONSE: This comment has been adopted in part. Utility provides a substantive context for diversion structures. The other proposed modifications do not appear to substantively change this rule as proposed. Sediment control would be inclusive of water erosion control. Therefore the term sediment control has been retained as broader, more inclusive language. Other types of erosion are covered elsewhere in this rule.

COMMENT: Paragraph (1)(b)(xiii) would cover much of the concerns of the permitting agency and these details should be given sufficient detail so the permitting agency does not have

to continually query the permittee. (Independent Montana Miners).
RESPONSE: The Department agrees and will require detailed plans in accordance with (1)(b)(xii).

COMMENT: Add to (1)(b)(xiv): generated by "and proposed mitigation." (DHES).
RESPONSE: Requirements for mitigation of noise would be determined by OSHA and related agencies under MEPA. Site-specific mitigation may not be necessary.

COMMENT: The language in (1)(b)(xv) should be changed to specifically require a discussion of the identified and potential cultural resource values in the area of potential environmental effect. (SHPO).
RESPONSE: This information will assist the Department in its MEPA compliance and has therefore been incorporated.

COMMENT: In (1)(b)(xv), change "given consideration" to "considered." (DHES).
RESPONSE: The comment provides no suggestion for substantive change.

COMMENT: Add to (1)(b)(xvi): "provisions for prevention of wind and water erosion. . ." (DHES).
RESPONSE: Water erosion is covered under (1)(b)(xiv) dealing with sediment control.

COMMENT: Amend (1)(b)(xvii) to read: "a description of the provisions for protection of off-site local flora and fauna, including a threatened, rare and endangered species evaluation and inventory. (DHES).
RESPONSE: Inventory is required under (1)(a). The use of the term "offsite" designates a maximum impact boundary. Use of the term "local" would be redundant because wildlife that is not local at some time of the year cannot be impacted.

COMMENT: In (1)(b)(xviii) (now 1(b)(xvii)) is it sufficient to limit groundwater and surface water monitoring to the life of the facility? (Ferguson).
RESPONSE: This rule has been clarified to expressly provide that monitoring would continue until there was assurance that reclamation is successful and air and water quality are not being impacted.

COMMENT: Add to (1)(b)(xviii) the following: "a plan for monitoring . . . surface water potentially affected by the project and a contingency and remedial action plan for emergency response to accidental discharge." (DHES).
RESPONSE: The Department could not require monitoring of water that is not potentially affected. The suggested amendment is unnecessary.

COMMENT: In (1)(b)(xviii), we would also like to see specific information in each plan of operations for adequate contingency plans that include steps for containment, neutralization, and removal of any spilled process solution required by Rule IV(1)(b)(xviii). (Northern Plains).
RESPONSE: The suggested language has been added as Rule I(2) in the form of a definition of "contingency plan."

COMMENT: Add to (1)(b)(xix) a requirement that the plan for protection of topsoil include a plan for topsoil stabilization. (DHES).
RESPONSE: Stockpiles protected from erosion have been stabilized. Therefore the language "protected from erosion and contamination" has been retained.

COMMENT: Rather than sources and volumes of incoming ore, isn't the real concern in (1)(b)(xx) with its acid-generating potential and potential for impacts to surface and groundwater quality, and reclamation feasibility? Why not be more specific in requiring disclosure of physical or chemical analyses of ore? (Pegasus).
RESPONSE: The physical and chemical analysis of ore would be required under (1)(a). This requirement is for the purpose of assessing transportation impacts.

COMMENT: Add to (1)(b)(xx): "a list of known sources, volumes and lithology of incoming ore, tailings or waste rock." (DHES).
RESPONSE: Lithology is not necessary because the listing is for the purposes of determining transportation impacts. Omission of tailings and waste rock was an oversight and has been corrected.

COMMENT: We would also recommend the following additional requirements for operating plans: "Plans should be actual, not conceptual, and significant changes should require reapplication." (Zimmerman).
RESPONSE: The Department does not permit conceptual plans. A change in the application that is so major as to render the Department's previous analysis inadequate is deemed under 82-4-337(1)(a), MCA, to recommence the 30-day completeness review period. A major unanticipated change after MEPA public review would also trigger further MEPA analysis and public review.

COMMENT: Rule IV should require a minimum of one year baseline for the water study. (Zimmerman, Tallman). The Department should also consider whether the baseline was gathered during a dry weather cycle. (Tallman).
RESPONSE: The Department's plan of study guidelines set out the one-year criteria. This is appropriate guidelines because of the wide range of variability in site conditions and operational size which may make one year inappropriate in some circumstances. During the analysis of baseline and of operational designs the Department compares the baseline

findings to NOAA (National Oceanographic and Atmospheric Administration) data. Operational designs must take into account NOAA data. Site-specific data provide a range of variability around the NOAA data which must be accounted for.

COMMENT: As an alternative to (1)(b)(xx) (requiring monitoring of sources of ore coming to the mill), would it be appropriate to monitor where ore goes from the mine if that is easier than requiring the mill to keep track of the source of the ore? (Ferguson).
RESPONSE: Monitoring of ore as it leaves the mine is not required under the Metal Mine Reclamation Act. However it is appropriate to monitor incoming ore to a mill in order to evaluate tailings quality and to minimize problems tracking employment information, for the purpose of determining when an operator meets the definition of "large scale mineral development", as required under both the Metal Mine Reclamation Act and the Hard Rock Impact Act. This is incorporated in Rule IV(2).

RULE V

COMMENT: Amend (1) as follows: ". . . provides for the reclamation and mitigation of all the land and water to be disturbed . . . . The plan must, ~~at a minimum~~ include ~~the following~~:" (DHES).
RESPONSE: Because the meaning of the term "mitigation of the land" is unclear and because the Hard Rock Act requires reclamation, "mitigation" has not been added. The Hard Rock Act defines "disturbed land" as "that area of land or surface water disturbed." See 82-4-303(5), MCA. Thus, the term "land" includes surface water. Ground water is assumed to be included in "land" and is specifically addressed in (1)(d). The Department has chosen not to strike "at a minimum" because site-specific situations may require additional measures to be taken to achieve reclamation.

COMMENT: A number of persons stated that the 3:1 slope requirement in (1)(b) should be eliminated. They contended that there is no basis to conclude that reclamation will fail in all instances on a slope steeper than 3:1. Therefore, they maintain no specific minimum slope should be set and the slope should be determined based on site-specific technical data. (Montana Mining Assoc., New Butte, MRI, Pegasus). One person requested that the standard be the natural terrain. (Golden Sunlight). Another suggested that the requirement be: "graded to an angle that is necessary to achieve final reclamation (in most cases, 3h:1v or less)." (BLM). Another person suggested that the 3h:1v be changed to 2h:1v, but then commented that a requirement for gentler slopes is justified to reduce reclamation potential. The Department takes this comment to request less steep slopes and assumes the reference to 2h:1v is a typographical error. (Clark Fork Coalition).

RESPONSE: The Department agrees that the applicant should have the opportunity to demonstrate that site-specific considerations, such as climate, slope lengths, degree of acidity or toxicity, and amount of neutral growth medium available allow a slope greater than 3:1. The Department intends to continue to study this issue and may in the future propose a slope rule that would apply to both mine and mill reclamation.

COMMENT: Subsection (1)(b) should not be used to predetermine the acceptability of "proposed subsequent uses of the land after reclamation," as submitted in mill reclamation plans, for the economic, commercial and logistical reasons. (New Butte).
RESPONSE: Rule V has been amended to allow industrial post-mining land use that would not require destruction of mill buildings.

COMMENT: We would like the Department to change the wording "proposed subsequent use of the land after reclamation," to "pre-existing use of the land prior to the operation." We feel that the reclamation of the disturbed site should be based on the use of the land before the operation.

In some cases we realize that a new operation will have some old workings or tailings within its permitted area. The companies we have worked with have taken the responsibility to clean up these areas and incorporate the old tailings if necessary into the new impoundment. Our intention in recommending the above wording is not to discourage companies from reclaiming old tailings within their permitted areas. The intent is to encourage companies to reclaim the land so that it most closely resembles the natural contours existing before mining took place. (Northern Plains)
RESPONSE: Under 82-4-303(13)(a), an operator is allowed to submit a plan for a subsequent use of the land that is different from the pre-existing use. The Departments' rules must implement this provision. Therefore, the language suggested by the commenter cannot be adopted.

COMMENT: Revise (1)(b) to read: "a contouring plan . . . in a stable configuration and conforms with the proposed subsequent post-reclamation land use. . . . topographic maps or detailed narrative, ... All waste rock dumps, impoundments and disturbed side slopes shall be graded. . . ." (DHES).
RESPONSE: Some of your editorial comments have been adopted. The proposal to regrade waste rock dumps, impoundments, and disturbed side slopes is redundant with and less inclusive than the original language to require regrading of all disturbed areas, and therefore it has not been adopted. Further, the act requires the Department to respond to site-specific conditions wherein it may not be appropriate to grade all the disturbances you identified to 3:1 slopes regardless of size or quality.

COMMENT: The Department must further define what is meant by "any undesirable materials." in (1)(d). Additionally, the proposed rule must clarify what is meant by a "neutralization plan," because not all "undesirable materials" are capable of being "neutralized." (New Butte).
RESPONSE: The language has been changed by replacing the term objected to with "acid-or toxic-producing."

COMMENT: Compliance with Title 75, Chapter 6 precludes the degradation of the state's waters. The term "restore" in (1)(d) implies a permitted negative impact to water quality. The requirement for a neutralization plan should reflect the existing language in 82-4-335(3)(j). (Pegasus). Amend (1)(d) to read: ". . . surface and ground water quality and quantity shall be protected to ensure nondegradation and maintained . . . Title 75, Chapter 5 and 6; . . ." (DHES).
RESPONSE: DHES maintains that negative impact is allowed, though not necessarily desirable, within the permit boundary during operations, consistent with permit requirements. Therefore, the Department's intent is to assure restoration within the permit boundary such that after operations, compliance with the Water Quality Act would be maintained. Your suggestion to reflect the language of 82-4-335(3)(j), MCA in this rule has been adopted.

COMMENT: In (1)(e), the Department must not pre-determine the acceptability of "proposed subsequent uses of the land after reclamation," for the same economic, commercial and logistical reasons. (New Butte).
RESPONSE: Rule V has been amended to provide for industrial and other post-milling land uses.

COMMENT: Amend (1)(e) to read: ". . . proposed subsequent post-reclamation land use. The revegetation plan must consider the following: (DHES).
RESPONSE: The comment proposes no substantive change to the rule. No change has been made.

COMMENT: Amend (1)(e)(i) to read: "Revegetation to stabilize ... . Revegetation productivity and protective cover . . . that will enrich the soil. Long-term revegetation establishment . . . with the intended post-reclamation land use. (DHES).
RESPONSE: This comment appears to assume two-phase seeding which may, or may not, be appropriate to a specific site. Therefore, the Department has not distinguished between short-term and long-term goals, but only requires that the goals be met. Protective cover must be productive; therefore, productivity has not been highlighted in this rule. The comparable utility and stability requirements of 82-4-336, MCA, in paragraph (1)(a) also address productivity.

COMMENT: Rule V(e)(ii). The following statement in (e)(ii) should be more specific: "Appropriate revegetation shall be

accomplished as soon after necessary grading as possible; however, revegetation must be performed in the proper season in accordance with accepted agricultural and reforestation practices." We suggest a rule change with specific standards, such as "revegetation must be attempted before the end of the first growing season following grading; if grading is completed within the first two-thirds of a growing season, revegetation should begin immediately." In this case, a "growing season" would have to be defined; but in Montana, depending on the site, it would be somewhere between May and late September. (Clark Fork Coalition).
RESPONSE: Because summer seeding often fails, the Department has keyed the definition to standard accepted practice for the species in question. The existing language is therefore more conducive to successful reclamation and has been retained.

COMMENT: Amend (1)(e)(ii) to read: "Reclamation shall be concurrent with operations. However, . . . accepted agricultural, reclamation and . . . ." (DHES).
RESPONSE: Addition of "concurrent with" and "reclamation" would make no substantive changes in the rule.

COMMENT: We recommend requiring a description of a plan for weed control and requiring the use of certified seed with no greater than 1% weed content. (Zimmerman).
RESPONSE: Section 82-4-336(6), MCA, requires that revegetation be in accordance with county standards for weed control. The requirement need not be repeated in the rules.

COMMENT: In (1)(e)(iii) "unsuccessful" revegetation should be defined. What are the standards? We suggest some certifiable conditions (canopy cover, stocking level, percent bare area, etc.) be set down as revegetation objectives. The conditions should be achieved by a target time, perhaps two growing seasons following completion of reclamation. (Clark Fork Coalition).
RESPONSE: Success is defined in 82-4-336(7), MCA, as comparable stability and utility. Stocking levels are specific data presented in a reclamation plan. Baseline data would include canopy cover, diversity, and productivity (see Rule I(4)(c) modification made as a result of this comment) against which the reclamation plan would be compared. If a plan was unlikely to provide cover, diversity, and productivity comparable to baseline and adjacent areas - and consistent with use -- it would have to be modified. "Certifiable conditions" are an ongoing source of controversy. As a part of updating mining rules, however, the Department plans to evaluate the utility of certifiable conditions, which, if adopted, would apply to both mine and mill sites.

COMMENT: Amend (1)(e)(iii) to read: ". . . the department and continue until satisfactory vegetation is established." (DHES). We suggest that you do not set a limit on the number of revegetation attempts. (BLM).

RESPONSE: The rule has been amended to require additional attempts.

COMMENT: A number of commenters stated that (1)(f) should allow mill buildings to remain after closure if another use is feasible. (Montana Mining Assoc., MRI, New Butte, Pegasus, Shanahan).
RESPONSE: Sections 82-4-303(13)(a) and 82-4-336(3), MCA, allow this and the Department did not intend to preclude it. To clarify, a specific reference to alternative reclamation has been added to (1)(f) and a definition of the term has been added to Rule I(1).

COMMENT: Add to (1)(f): "deadlines for removal . . . related structures or pit filling and highwall shaping or grading." (DHES).
RESPONSE: There are no pits and highwalls at mills. See existing mining statutes and rules for pit and highwall reclamation.

RULE VI

COMMENT: Economic reasons may mandate that at the completion of an ore processing mill that the highest and best use of the property may be for some type of manufacturing. To destroy a plant for no apparent reason may not again be in the best interest of all involved. (Golden Sunlight, Cyprus).
RESPONSE: The rules have been modified. See Rules I(7) and V(1)(f).

COMMENT: Section (2) says "all discharges from completed operations or operations in a state of temporary cessation will be consistent with provisions of ARM 26.4.109." However, the metals mine rule it refers to covers only discharges from abandoned pits greater than 2 acres. The proposed rules, therefore, do not cover discharges or runoff from waste rock, mill spoils and tailings piles, or contaminated surface or ground water. ARM 26.4.109 also refers to compliance with MCA 75-5-306, which refers only to discharges from dams, and therefore it would have little relevance to custom mills. (Clark Fork Coalition).
RESPONSE: The cross reference to 26.4.109 makes the standards in that rule applicable to mills.

COMMENT: Add to (2): "... provide that process solution or water discharges ... with provisions of ARM 26.4.109 and the Montana Water Quality Act. (DHES).
RESPONSE: The requirement to comply with the Montana Water Quality Act appears in ARM 26.4.109.

COMMENT: I would certainly leave enough flexibility for present operators to reprocess existing site waste piles and tailings within their existing permitted area without applying for a permit under these rules. Any change in permitted

operations should fall under their present permit or amendments to their permits if required. (Montana Resources)
RESPONSE: Logistically, reprocessing of tailings within an existing permit boundary would be handled as an amendment to an operating permit. The Act requires an operating permit for mining, milling and reprocessing; it does not require a mining permit, a milling permit or a reprocessing permit, per se. Administratively the department would not split an operating permit into subsets for each activity.

RULE VII

COMMENT: This rule, as written, discourages large operators that have permits already from looking at reprocessing facilities within their own boundaries. The industry must be able to respond rapidly to market price fluctuations. (New Butte Mining).
RESPONSE: The rule has been modified to some extent; however the minimum requirements of the Act cannot be modified. Project-specific discussion with the Department may also result in project designs which enable a rapid response to fluctuations.

COMMENT: Rule VII(2). Not all small miners are exempt from obtaining an operating permit. According to HB 680 (1985 session), small miners who use cyanide and who did not have a small miner exemption prior to Jan. 1, 1990, must get a permit. Therefore, if their cyanide use is "mill" related, it would have to comply with these rules. (Clark Fork Coalition)
RESPONSE: These rules do not apply to small miners who must obtain a HB 680 operating permit to operate a cyanide mill. The Legislature intended that the application and permitting procedure for those persons be more abbreviated. Separate rules to implement HB 680 will be adopted in the future.

COMMENT: Section 1 must further clarify what is meant by, "reclamation to the extent practicable and feasible." (New Butte Mining, Inc.)
RESPONSE: A definition of this term has been added to Rule I.

COMMENT: The Department must clarify what is meant by "disturbing land," in (2) and should attempt to make the rules less burdensome on the larger miners and property owners who may have the greatest opportunity to successfully reclaim or recover mineral resources. (New Butte Mining, Inc.)
RESPONSE: Section 82-4-303(5), MCA, defines "disturbed land." A definition in the rules is therefore not necessary.

COMMENT: Rule VII is very confusing. Please clarify who is subject. How does subparagraph (2) relate to definition of applicability located earlier in the rules: How does this affect operators who desire to utilize old mill tailings for pad construction or road surfacing material? (Pegasus Gold Corporation)

RESPONSE: Rule VII applies to reprocessing of tailings and wastes. Rule VII is independent of Rules II through VI, which apply to mills. Use of tailings for pad construction and road surfacing is not reprocessing and is not covered by this rule.

COMMENT: To (1) add: "... apply to any operator who ... processes tailings... No land ... shall require reclamation." (DHES)
RESPONSE: The proper term under the Hard Rock Act is "person," not "operator." See 82-4-303(10), MCA. Substitution of "shall require reclamation" for "is subject to the act" has been rejected because it implies that operation requirements of the Act are applicable. This is not the case.

COMMENT: Do not exclude small miners from (2) because this will lead to the same loopholes as the small miner cyanide operations. (DHES).
RESPONSE: This exclusion is required by 82-4-305, MCA.

COMMENT: In (3) the term person should read "operator." (DHES).
RESPONSE: The term "person" must be used because the statutory permitting requirement, upon which these rules are based (82-4-335(1), MCA) uses this term.

COMMENT: Operations that reprocess waste rock and tailings should not be directly linked to the custom mill rules. It is conceivable that a reprocessing operation could incorporate a custom mill if ore was coming in from multiple sources but, more importantly, it is possible to have an operation utilizing a single source of ore that would not require a custom mill. Again, we are having problems with your definition of a custom mill. (BLM)
RESPONSE: Rule VII is meant to apply to areas from which wastes or tailings are removed by reprocessing operations. It does not apply to mills.

COMMENT: In (2) you indicate a small miner provision for operations that reprocess ore, but not for operations that process ore (see our comment on Rule III). (BLM).
RESPONSE: The definition of "small miner" in 82-4-303(14)(a), MCA, includes persons who reprocess tailings but does not include persons that conduct mill operations. The inclusion and exclusion are therefore proper.

COMMENT: The twelve-month retroactivity clause in (3) is not authorized by the statute. (Shanahan).
RESPONSE: The twelve-month clause provides a definition for a "new operation," which must obtain a permit before commencing reprocessing operations. Operations that are new operations (that have operated in the 12 months preceding the adoption of the rules) may continue to operate without a permit for 6 months while they apply for a permit. However, in either situation, areas affected by reprocessing that occurred prior

to the effective date of the rules is not covered and no question of retroactivity arises.

COMMENT: Rule VII is obviously directed right at Pfizer's flotation process that is being added to the Barrett Mill this week [2/28/90] near Dillon, thereby imposing delays and environmental requirements far beyond the intent of the Legislature. (Pfizer).
RESPONSE: Rule VII applies to sites at which tailings are removed for reprocessing, not to mills. The existing tailings at the Barrett Mill are already under permit. The cell flotation mill will be covered if it is not operational before the effective date of these rules.

4. The authority for the rules is contained in 82-4-321, MCA, and the rules implement 82-4-304, 82-4-335, 82-4-336, 82-4-337, and 82-4-341, MCA.

Dennis D. Casey, Commissioner

Certified to the Secretary of State May 21, 1990.

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

In the matter of the amendment of Rule 46.12.552 pertaining to reimbursement for home health services	))))	NOTICE OF THE AMENDMENT OF RULE 46.12.552 PERTAINING TO REIMBURSEMENT FOR HOME HEALTH SERVICES

TO: All Interested Persons

1. On March 15, 1990, the Department of Social and Rehabilitation Services published notice of the proposed amendment of Rule 46.12.552 pertaining to reimbursement for home health services at page 474 of the 1990 Montana Administrative Register, issue number 5.

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

46.12.552 HOME HEALTH SERVICES, REIMBURSEMENT

Subsections (1) through (5) remain as proposed.

(5~~6~~) Total ~~payment~~ charges for home health services may not exceed $400.00 per recipient per month~~, except with prior authorization by the department.~~ ~~unless the department approves the additional charges prior to the end of the month during which the services are to be delivered.~~, EXCEPT WITH PRIOR AUTHORIZATION BY THE DEPARTMENT.

~~(6)~~ and (7) remain as proposed.

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-6-101 and 53-6-131 MCA

3. The Department has thoroughly considered all commentary received:

COMMENT: The proposed rebasing of the home health indexed fee on 1989 cost data will address some of the past inadequacies. However, with no provisions for annual adjustments beyond 1991 (and only a 2% increase in 1991), we will soon be right back where we are now.

RESPONSE: The department feels that it addressed two major areas of concern by rebasing to 1989 cost data and allowing 2% increases above that for state fiscal years 1990 and 1991. First, we have set the index reimbursement rate for home health services at a more equitable level than the index level set in January, 1987 using inflated 1984 costs. Second, we have met the intent of the last legislature to hold program increases to 2% per annum in this biennium. Further, the department intends to request additional funds for increases in home health services.

COMMENT: The rule continues to apply the fee structure by category of service, rather than aggregate, as is done in the Medicare program. I would urge that the determination of reimbursement be based on aggregate service costs rather than by category of service.

RESPONSE: As indicated above, the department feels that it has revised the reimbursement as far as it can and still meet the intent of the last session of the legislature. That session directed the department, unless a program was specifically identified, to hold program budgets to an increase of 2%.

COMMENT: The monthly prior authorization of charges in excess of $400 continues to be a problem. The dollar amount has not changed since the prior authorization requirement was instituted.

RESPONSE: This comment is outside of the scope of this rule change. However, the department is currently re-evaluating both the level ($400) and the time frame (monthly) required for prior authorization. A decision will be made on this matter in the near future. Until this re-evaluation is completed, we will retain the current wording in ARM 46.12.552(6).

4. This rule will be applied retroactively to January 1, 1990.

Director, Social and Rehabilitation Services

Certified to the Secretary of State May 21, 1990.

NOTICE OF FUNCTIONS OF ADMINISTRATIVE CODE COMMITTEE

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

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

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

Definitions:

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

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

Use of the Administrative Rules of Montana (ARM):

Known Subject Matter

1. Consult ARM topical index. Update the rule by checking the accumulative table and the table of contents in the last Montana Administrative Register issued.

Statute Number and Department

2. Go to cross reference table at end of each title which list MCA section numbers and corresponding ARM rule numbers.

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies which have been designated by the Montana Procedure Act for inclusion in the ARM. The ARM is updated through March 31, 1990. This table includes those rules adopted during the period April 1, 1990 through June 30, 1990 and any proposed rule action that is pending during the past 6 month period. (A notice of adoption must be published within 6 months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through March 31, 1990, this table and the table of contents of this issue of the MAR.

This table indicates the department name, title number, rule numbers in ascending order, catchphrase or the subject matter of the rule and the page number at which the action is published in the 1989 and 1990 Montana Administrative Registers.

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