RESERVE

MONTANA ADMINISTRATIVE REGISTER

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ISSUE NO. 19

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing and where written comments may be submitted.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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BEFORE THE BOARD OF ALTERNATIVE HEALTH CARE
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed adoption of a rule pertaining to direct entry midwives	)))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED ADOPTION OF A RULE PERTAINING TO DIRECT ENTRY MIDWIFE EDUCATION STANDARDS

TO: All Interested Persons:

1. On November 17, 1992, at 9:00 a.m., a public hearing will be held in the downstairs conference room at the Department of Commerce building, 1424 -9th Avenue, Helena, Montana, at which the Board of Alternative Health Care will consider the proposed adoption of a new rule pertaining to direct entry midwife education standards.

2. The new rule will read as follows:

"I MINIMUM DIRECT ENTRY MIDWIFE EDUCATION STANDARDS

(1) The board may approve a direct entry midwife program or course of study which shall include instruction in a core program which requires each student to demonstrate competence in each of the following substantive content areas:

(a) antepartum care, including:

(i) preconceptional factors likely to influence pregnancy outcome;

(ii) basic genetics, embryology and fetal development;

(iii) anatomy and assessment of the soft and bony structure of the pelvis;

(iv) identification and assessment of the normal changes of pregnancy, fetal growth, and position;

(v) nutritional requirements for pregnant women and methods of nutritional assessment and counseling;

(vi) environmental and occupational hazards for pregnant women ;

(vii) education and counseling to promote health throughout the childbearing cycle;

(viii) methods of diagnosing pregnancy;

(ix) the etiology, treatment and referral, when indicated, of the common discomforts of pregnancy;

(x) assessment of physical and emotional status, including relevant historical and psycho-social data;

(xi) counseling for individual birth experiences, parenthood, and changes in the family;

(xii) indications for, risks and benefits of screening/diagnostic tests used during pregnancy;

(xiii) etiology, assessment of, treatment for, and appropriate referral for abnormalities of pregnancy;

(xiv) identification of, implications of and appropriate treatment for various STD/vaginal infections during pregnancy;

(xv) special needs of the Rh negative woman; and

(xvi) identification and care of women who are HIV positive, have hepatitis or other communicable and non-communicable diseases.

(b) intrapartum care, including:

(i) normal labor and birth processes;

(ii) anatomy of the fetal skull and its critical landmarks;

(iii) parameters and methods for assessing maternal and fetal status, including relevant historical data;

(iv) emotional changes and support during labor and delivery;

(v) comfort and support measures during labor, birth, and immediately postpartum;

(vi) techniques to facilitate the spontaneous vaginal delivery of the baby and placenta;

(vii) etiology, assessment of, appropriate referral or transport of and/or emergency measures (when indicated) for the mother or newborn for abnormalities of the four stages of labor;

(viii) anatomy, physiology, and supporting normal adaptation of the newborn to extrauterine life;

(ix) familiarity with medical interventions and technologies used during labor and birth; and,

(x) assessment and care of the perineum and surrounding tissues, including suturing necessary for perineal repair.

(c) postpartum care, including:

(i) anatomy and physiology of the postpartum period;

(ii) anatomy and physiology and support of lactation, and appropriate breast care and assessment;

(iii) parameters and methods for assessing and promoting postpartum recovery;

(iv) etiology and methods for managing the discomforts of the postpartum period;

(v) emotional, psycho-social and sexual changes which may occur postpartum;

(vi) nutritional requirement for women during the postpartum period;

(vii) etiology, assessment of, treatment for and appropriate referral for abnormalities of the postpartum period;

(viii) methods to assess the success of the breastfeeding relationship and identify lactation problems, and mechanisms for making appropriate referrals;

(ix) suturing necessary for episiotomy repair;

(x) dispensing and administering pitocin (intramuscular) postpartum; and,

(xi) dispensing and administering xylocaine (subcutaneous).

(d) neonatal care, including:

(i) anatomy and physiology of the newborn's adaptation and stabilization in the first hours and days of life;

(ii) parameters and methods for assessing newborn status, including relevant historical data at gestational age;

(iii) nutritional needs of the newborn;

(iv) ARM and MCA standards for an administration of prophylactic treatments commonly used during the neonatal period;

(v) ARM and MCA standards for, indications, risks and benefits of, and method of performing common screening tests for the newborn; and

(vi) etiology, assessment of (including screening and diagnostic tests), emergency measures and appropriate transport/referral or treatments for neonatal abnormalities.

(e) health and social sciences, including:

(i) communication, counseling and teaching techniques, including the areas of client education and interprofessional collaboration;

(ii) human anatomy and physiology relevant to human reproduction;

(iii) ARM and MCA standards of care, including midwifery and medical standards for women during the childbearing cycle;

(iv) inter-professional communication and collaboration with community health and social resources for women and children;

(v) significance of and methods for thorough documentation of client care though the childbearing cycle;

(vi) informed decision making;

(vii) health education, health promotion, and self care;

(viii) the principles of clean and aseptic techniques, and universal precautions;

(ix) psychosocial, emotional and physical components of human sexuality, including indications of common problems and method of counseling;

(x) ethical considerations relevant to reproductive health;

(xi) epidemiologic concepts and terms relevant to perinatal and women's health;

(xii) the principles of how to access and evaluate current research relevant to midwifery practice;

(xiii) family centered care, including maternal, infant and family bonding;

(xiv) identification of an appropriate referral of disease in women and their families; and,

(xv) the importance of accessibility, quality health care for all women that includes continuity of care, and special requirements for home births.

(2) The applicant shall submit certificates of completion or certified transcripts sent directly from the institution, as verification the education is equivalent to c exceeds the minimum direct entry midwife educational standarc required by the board's laws and rules.

(3) The applicant shall submit course and program descriptions, from the time of applicant's graduation or completion, found in pertinent institution catalogs and brochures, to verify the training received fulfills minimum direct entry midwife educational standards.

(4) The board reserves the right to evaluate individual applications as to their compliance with equivalent direct

entry midwife educational standards, on a case-by-case basis, in the sole discretion of the board.

Auth: Sec. 37-27-105, MCA; IMP, Sec. 37-27-201, MCA

REASON: The proposed rule will implement the educational requirements necessary for licensure for direct entry midwives mandated by the 1991 Legislature at Section 37-27-201, MCA.

3. Interested persons may present their data, views or arguments, either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Board of Alternative Health Care, Lower Level, Arcade Building, 111 North Jackson, Helena, Montana 59620-0407, to be received no later than 5:00 p.m., November 12, 1992.

4. Carol Grell, attorney, Helena, Montana, has been designated to preside over and conduct the hearing.

BOARD OF ALTERNATIVE HEALTH CARE
MICHAEL BERGKAMP, N.D., CHAIRMAN

BY: Annie M. Bartos
ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

BY: Annie M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, October 5, 1992.

BEFORE THE BOARD OF DENTISTRY
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed amendment of rules pertaining to introduction, dental auxiliaries, exams, licensure by credentials, unprofessional conduct, qualifying standards and the proposed adoption of new rules pertaining to dental auxiliaries and denturist interns	))))))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT AND ADOPTION OF RULES PERTAINING TO DENTISTS, DENTAL HYGIENISTS AND DENTURISTS

TO: All Interested Persons:

1. On November 6, 1992, at 9:00 a.m., a public hearing will be held in the Elkhorn A Room, Park Plaza, 22 North Last Chance Gulch, Helena, Montana, to consider the proposed amendment and adoption of rules pertaining to dentists, dental hygienists, dental auxiliaries and denturists.

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

"8.16.601 INTRODUCTION (1) ~~The rules of the board of dentistry apply in total to the dental hygienists. In addition, the below listed rules apply to the dental hygienists.~~ No provision in these rules shall be interpreted so as to conflict or be in contradiction with Montana statutes."

Auth: Sec. 37-1-103, MCA; IMP, Sec. 37-4-401, MCA

REASON: Clarifies that the statutes shall take precedence over the Board's regulations.

"8.16.602 ALLOWABLE FUNCTIONS FOR DENTAL HYGIENISTS ~~AND DENTAL AUXILIARIES~~ (1) will remain the same.

(2) "Prophylaxis" is defined as the removal of accumulated matter, deposits, accretions and stains from the natural and restored surfaces of exposed teeth which may include root planing and soft tissue curettage as ordered by the dentist.

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

~~(3) Allowable functions permitted for dental assistants practicing under the direct supervision of a licensed dentist without expanded duty training shall be the traditional duties allowed by custom and practice, including, but not limited to:~~

~~(a) taking impressions for study casts;~~

~~(b) removing sutures and dressing;~~

~~(c) applying topical anesthetic agents;~~

~~(d) providing oral health instructions;~~

~~(e) applying topical fluoride agents;~~

~~(f) removing excess cement from coronal surfaces of teeth;~~

~~(g) placing and removing rubber dams;~~
~~(h) placing and removing matrices;~~
~~(i) collecting patient data;~~
~~(j) polishing amalgam restorations;~~
~~(k) placing and removing temporary restorations with hand instruments only;~~
~~(l) monitoring a patient who has been prescribed and administered nitrous oxide by a licensed dentist; and~~
~~(m) coronal polishing at the direction of the dentist, that is not identified as, or submitted for payment as, a prophylaxis. As used herein, "coronal polishing" means a procedure limited to the removal of plaque and stain from the exposed tooth surfaces, utilizing an appropriate polishing mechanism and polishing agent. No dentist shall allow a dental assistant to practice coronal polishing until the dental assistant has successfully completed a course of instruction approved by the board. This rule will be effective July 1, 1990.~~

~~(4) In addition to the above listed allowable functions for dental assistants, below listed are allowable functions for orthodontic auxiliaries under the direct supervision of a dentist. All patients must be seen by a dentist at each regular visit to the dentist.~~

~~(a) taking intraoral photographs;~~
~~(b) exposing and developing extraoral x-ray films if qualified by successful completion of the examination administered by the Montana dental association;~~
~~(c) taking wax bites;~~
~~(d) placing and removing orthodontic separators;~~
~~(e) removing excess supragingival cement after cementation of bands using hand instruments only;~~
~~(f) pre-fitting orthodontic bands with no cementation;~~
~~(g) performing oral inspection for oral hygiene, loose brackets, wires and ties;~~
~~(h) applying topical fluoride agents;~~
~~(i) fitting and adjusting headgears with no activation;~~
~~(j) removing orthodontic archwires;~~
~~(k) removing loose orthodontic bands;~~
~~(l) placing and removing ligature ties;~~
~~(m) performing intraoral bending of sharp wires;~~
~~(n) performing extraoral finishing of fractured edges on removable appliances; and~~
~~(o) coronal polishing of teeth only in preparation for placement of orthodontic brackets and bands.~~

~~(5) To qualify to perform the expanded duties function of making radiograph exposures, the assistant shall sit for and successfully complete a written and practical examination administered by the Montana dental association under agreement with the board or have completed a radiograph course from an accredited school of dental assisting. No certification or licensure will be issued by the board. The association, however, will provide the board with a list of all assistants who have qualified. No dentist shall knowingly allow an assistant in his employ to perform the expanded duty function of making radiograph exposures without having first determined that said assistant has qualified as above specified.~~

~~(6) The requirements for expanded duty certification shall be as follows:~~

~~(a) the applicant shall have successfully completed a training program for dental assistants approved by the commission on accreditation of the American dental association or shall have completed the Colorado dental assistants training program prior to July 1, 1986; and~~

~~(b) the applicant shall sit for and successfully pass a written and practical examination administered by the Montana dental association under agreement with the board.~~

~~(7) The assignment of tasks or procedures to a dental auxiliary shall not relieve the dentist from personal liability for all treatment rendered the patient.~~

~~(8) No dentist may employ, supervise, or use more dental auxiliary personnel than he can reasonably supervise consistent with his ethical and professional responsibilities for the protection of the public health, safety and welfare.~~

~~(9) It is the responsibility of the employing dentist to see that the auxiliary's personal qualifications and certification are on record with Montana state board of dentistry.~~

~~(10) Prophylaxis is defined as the removal of accumulated matter, deposits, accretions or stains from the natural and restored surfaces of exposed teeth which may include root planing and soft tissue curettage as ordered by the dentist.~~"

Auth: Sec. 37-1-131, 37-4-205, ~~37-4-408,~~ MCA; IMP, Sec. 37-4-401, 37-4-405, ~~37-4-408,~~ MCA

REASON: The regulation has been proposed to be amended so that a clean separation is made between those functions that only a licensed dental hygienist may perform pursuant to statute and those functions allowed to be performed by unlicensed auxiliaries. The amendment is intended to resolve the problems that arise when duties for auxiliaries and hygienists are lumped together. Section 37-4-408, MCA, is being removed from the history note. That section provided rulemaking authority and was implemented by those sections being deleted from 8.16.602 above.

"8.16.605 DENTAL HYGIENIST EXAMINATION AND LICENSURE

(1) and (2) will remain the same.

~~(3) Examinees must furnish their own dental supplies for the examination.~~

(4) and (5) will remain the same but will be renumbered (3) and (4).

~~(6)~~ (5) (a) through (g) will remain the same.

(h) upon successful completion of the jurisprudence examination, a licensure fee.

(6) No licensed dental hygienist shall administer local anesthetic agents during a dental procedure or dental-surgical procedure unless and until he or she possesses a local anesthetic permit issued by the board. Application for a local anesthetic permit shall be made by letter to the board with proof of possession of a WREB local anesthetic

certificate and a current CPR certificate. Such permits shall be renewed every year."

Auth: Sec. 37-1-131, 37-4-205, 37-4-401, 37-4-402, 37-4-403, 37-4-406, MCA; IMP, Sec. 37-4-401, 37-4-402, 37-4-403, 37-4-404, MCA

REASON: The word jurisprudence is added to clarify which examination is being referred to in the rule. The rule also provides a mechanism by which hygienists may be permitted to administer local anesthesia. Currently these provisions are found in rules regarding the practice of dentistry, rather than that of dental hygiene.

"8.16.722 UNPROFESSIONAL CONDUCT (1) through (1)(o) will remain the same.

(p) Extracting teeth or performing dental treatment upon the written or verbal prescription of someone other than a licensed dentist.

(p) through (y) will remain the same but will be renumbered (q) through (z)."

Auth: Sec. 37-4-205, 37-4-321, 37-4-405, 37-4-408, MCA; IMP, Sec. 37-4-321, 37-4-405, 37-4-408, 37-4-511, MCA

REASON: The Board is concerned that some dentists may be allowing patients or other unqualified individuals to dictate dental treatment. Specifically the Board is confronted with a number of cases in which dentures have been constructed for a patient before the patient's teeth have been removed. Dentists may not remove such teeth merely upon the patient's demand; the dentist must perform and record the results of an examination. Only after the dentist's examination has revealed a dental reason requiring the treatment may the dentist proceed.

"8.16.902 PERMIT REQUIRED FOR ADMINISTRATION OR FACILITY (1) through (3) will remain the same.

~~(4) In order to administer local anesthetic agents under the direct supervision and authorization of a licensed dentist, a dental hygienist must posses a permit from the board to do so. Such a permit must be renewed every year.~~

~~(5) In order to obtain a permit the dental hygienist must make application to the board office and meet the minimum qualifying standards set forth in ARM 8.16.903.~~

Auth: 37-1-131, 37-4-205, 37-4-401, 37-4-511, MCA; IMP, 37-4-401, 37-4-511, MCA.

REASON: Subsections (4) and (5) are being deleted from 8.16.902 and transferred to section 8.16.605 as a new subsection (6), which specifically deals with dental hygienist examination and licensure requirements.

"8.16.903 MINIMUM QUALIFYING STANDARDS (1) through (3)(c) will remain the same.

~~(4) No licensed dental hygienist shall administer local anesthetic agents during a dental procedure or dental surgical procedure unless and until he or she possesses a local~~

~~anesthetic permit issued by the board. Application for a local anesthetic permit shall be made by letter to the board with proof of possession of a WRSB local anesthetic certificate and a current CPR certificate.~~

(5) will remain the same but will be renumbered (4)."

Auth: Sec. 37-1-131, 37-4-205, 37-4-401, 37-4-511, MCA; IMP, Sec. 37-4-401, 37-4-511, MCA

REASON: This section is being deleted and transferred to section 8.16.604(6) which specifically deals with dental hygienists being allowed to administer local anesthetic agents after being issued a permit by the Board.

3. The proposed new rule will read as follows:

"I ALLOWABLE FUNCTIONS FOR DENTAL AUXILIARIES (1) As used herein, "auxiliary" is any unlicensed personnel employed in the dental office, such as a dental assistant. All intra-oral tasks must be performed under the direct supervision of the licensed dentist employing the personnel.

(2) Allowable functions permitted for dental auxiliaries without expanded duty training shall be the traditional duties allowed by custom and practice, including, but not limited to:

(a) taking impressions for study casts,
(b) removing sutures and dressing,
(c) applying topical anesthetic agents,
(d) providing oral health instructions,
(e) coronal polishing.
(f) placing pit and fissure sealants,
(g) applying topical fluoride agents,
(h) removing excess cement from coronal surfaces of the teeth with hand instruments only,
(i) placing and removing rubber dams,
(j) placing and removing matrices,
(k) collecting patient data,
(l) polishing amalgam restorations,
(m) placing and removing temporary restorations with hand instruments only, and
(n) monitoring a patient who has been prescribed and administered nitrous oxide by a licensed dentist.

(3) Allowable functions for dental auxiliaries under the direct supervision of a licensed dentist who is treating an orthodontic patient, are listed below. All patients must be seen by a dentist at each regular visit to the dentist.

(a) all those duties permitted for dental auxiliaries listed in subsection (2) above, and
(b) taking wax bites,
(c) placing and removing orthodontic separators,
(d) prefitting orthodontic bands with no cementation,
(e) performing oral inspection for oral hygiene, loose brackets, wires and ties,
(f) fitting and adjusting headgear with no activation,
(g) removing orthodontic archwires,
(h) removing loose orthodontic bands,
(i) placing and removing ligature ties,
(j) performing intraoral bending of sharp wires,

(k) performing extraoral finishing of fractured edges on removable appliances, and

(l) coronal polishing.

(4) The allowable expanded duty function of making radiograph exposures requires passage of an examination and must be performed under the direct supervision of a licensed dentist. The auxiliary shall sit for and successfully complete a written and practical examination approved by the board or have completed a radiology course from an accredited school of dental assisting. No dentist shall allow a dental auxiliary in his employ to perform the expanded duty function of making radiograph exposures without having first determined that said dental auxiliary has qualified as above specified. The licensed dentist employer shall provide proof of auxiliary qualifications upon request from the board.

(5) The assignment of tasks or procedures to a dental auxiliary shall not relieve the dentist from personal liability for all treatment rendered the patient.

(6) No dentist may employ, supervise, or use more dental auxiliary personnel than he can reasonably supervise consistent with his ethical and professional responsibilities for the protection of the public health, safety and welfare.

(7) It is the responsibility of the employing dentist to see that the expanded duty dental auxiliary's qualifications are on record with the Montana state board of dentistry."

Auth: Sec. 37-1-131, 37-4-205, 37-4-408, IMP, Sec. 37-4-408

REASON: This rule is intended to set forth those tasks that a dental auxiliary may perform pursuant 37-4-408, MCA. The rule is similar to former provisions of 8.16.602 which is being proposed for amendment so as to separate the two occupations -- dental hygiene and dental auxiliary.

"II DENTURIST INTERN (1) To be eligible for internship, the applicant must have completed all requirements for licensure set forth in section 37-29-303(2)(a), MCA.

(2) A denturist intern is a person engaged in a clinical training program under the direct supervision of a licensed denturist. Such training program shall consist of 2000 clock hours of training and performance in at least the following fields of practice:

(a)(i)	patient charting	36 hours minimum
(ii)	operatory sanitation	36 hours minimum
(iii)	oral examination	36 hours minimum
(iv)	impressions, preliminary and final (pour models, custom trays)	36 hours minimum
(v)	bite registrations	12 hours minimum
(vi)	articulations	12 hours minimum
(vii)	set ups	12 hours minimum
(viii)	try ins	12 hours minimum
(ix)	processing (wax up, flask boil out, packing, grind-polish)	36 hours minimum
(x)	delivery-post adjustment	36 hours minimum

(b)	processed relines (1 plate - 1 unit)	24 units
(c)	tooth repairs	48 hours minimum
(d)	broken or fractured plates or partials	48 hours minimum

(3) An intern shall file a monthly report with the board, on a form provided by the department and attested to by his supervising denturist. The report shall state the number of hours or units completed in each field of practice identified in subsection (2) above.

(4) No licensed denturist may supervise more than one intern at a time.

(5) Each intern shall be provided a separate work station in the laboratory area, containing standard denturitry equipment, i.e., lathe, torch and storage space. Operatory facilities and other equipment will be shared with the intern. The intern shall provide his own necessary hand tools."

Auth: Sec. 37-1-131, 37-29-201, 37-29-303, MCA; IMP, Sec. 37-29-303

REASON: This rule establishes the criteria for an internship for denturitry candidates pursuant to section 37-29-303, MCA, which states that a candidate for licensure as a denturist must have completed an internship lasting one year.

4. Interested persons may present their data, views or arguments, either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Board of Dentistry, Lower Level, Arcade Building, 111 North Jackson, to be received no later than 5:00 p.m., November 12, 1992.

5. Robert P. Verdon, attorney, Helena, Montana, has been designated to preside over and conduct the hearing.

BOARD OF DENTISTRY
ROBERT W. RECTOR, DMD, PRESIDENT

BY: _____
ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

_____
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, October 5, 1992.

BEFORE THE BOARD OF DENTISTRY
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed amendment of a rule pertaining to renewal, and the proposed adoption of new rules pertaining to continuing education	) NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF 8.17.702 RENEWAL - CONTINUING EDUCATION AND THE ADOPTION OF NEW RULES PERTAINING TO CONTINUING EDUCATION FOR THE PRACTICE OF DENTISTRY, DENTAL HYGIENE AND DENTURITRY

TO: All Interested Persons:

1. On November 6, 1992, at 10:30 a.m., in the Elkhorn A Room at the Park Plaza Hotel, 22 North Last Chance Gulch, Helena, Montana, a public hearing will be held to consider the proposed amendment and adoption of rules pertaining to the practice of dentistry, dental hygiene and denturitry.

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

"8.17.702 RENEWAL -- ~~CONTINUING EDUCATION~~ (1) will remain the same.

~~(2) Correspondence courses or television programs are not acceptable for continuing education credit.~~

~~(3) A signed written report of attendance must be sent to the office of the board at the time the licensee renews his license reflecting the title of the course or seminar, dates of attendance, number of clock hours, licensee's name and address, and signature of instructor or monitor of the continuing education program.~~

~~(4) For those denturists licensed during the renewal year, the fulfillment of the continuing education requirement will not be required for the first year of licensure.~~

~~(5) It is the responsibility of each licensee to finance costs of continuing education.~~

(6) through (8)(e) will remain the same but will be renumbered (2) through (4)(e)."

Auth: Sec. 37-1-141, 37-29-201, MCA; IMP, Sec. 37-29-306, MCA

REASON: The sections being deleted above are being transferred to new rules pertaining to continuing education as set forth below. The Board feels including these subsections in the new rules will provide clarity.

3. The proposed new rules pertaining to dentistry and dental hygiene will be as follows:

"I DEFINITION OF CONTINUING EDUCATION (1) Continuing education consists of educational activities designed to:

(a) review existing concepts and techniques,

(b) convey information beyond the basic professional education, and

(c) update knowledge on advances in dental, medical, and dental hygiene sciences.

(2) Continuing education programs are designed for part-time enrollment and are usually of short duration, although longer programs with structured, sequential curricula may also be included within this definition. Continuing dental education programs do not lead to eligibility for ethical announcement or certification in a specialty recognized by the American dental association."

Auth: Sec. 37-4-205, 37-4-307, 37-4-406, MCA; IMP, Sec. 37-4-205, 37-4-307, 37-4-406, MCA

"II SUBJECT MATTER ACCEPTABLE FOR DENTIST AND DENTAL HYGIENIST CONTINUING EDUCATION (1) The board of dentistry shall determine the acceptability or unacceptability of hours that are claimed for continuing education credit. Determination of course acceptability rests with the board, and all decisions are final. Licensees are urged to obtain board approval of courses offered by entities not recognized by the board as approved sponsors, prior to taking the course. The "continuing education approval request form" is designed to collect data for the board to make an informed decision regarding the acceptability of continuing education courses. The form must be submitted a minimum of 60 days prior to the course date. The burden of proof regarding the acceptability of any continuing education course lies entirely with the licensee.

(2) Upon approval of a sponsor, an organization shall be exempt from the requirement of applying for approval of programs. The board, at any time, may re-evaluate and revoke the status of an approved sponsor. A list of organizations or groups which are approved as sponsors will be maintained in the office of the board.

(3) The following organizations are recognized as board-approved course sponsors:

(a) American dental association (ADA);

(b) American dental hygienists' association (ADHA);

(c) Constituent associations of the ADA and ADHA;

(d) Academy of general dentistry and its component academies;

(e) Accredited schools of dentistry and/or dental hygiene;

(f) Sponsoring organizations of the recognized specialty certifying boards.

(4) Additional organizations who wish to be course sponsors, are urged to apply for approval prior to course presentation. Application must be made to the board office a minimum of 60 days prior to the course date. A primary consideration in the evaluation of applications, shall be the previous experience of the organization in sponsoring and presenting continuing dental education activities.

(5) In order for specific course subject material to be acceptable for credit, the stated course objectives, overall curriculum design and course outlines should clearly establish

conformance with the following criteria:

(a) The subject matter contributes directly to the professional competence of the licensee, or patient care rendered by the licensee. This may include, but is not limited to, the following clinical subjects relating to the dental profession:

(i) oral surgery;
(ii) operative dentistry;
(iii) oral pathology;
(iv) preventive dentistry;
(v) orthodontics;
(vi) clinical patient management;
(vii) pedodontics;
(viii) oral biology;
(ix) periodontics;
(x) prosthodontics;
(xi) dental materials;
(xii) implantology;
(xiii) radiology;
(xiv) infection control;
(xv) endodontics; and
(xvi) management of medical emergencies.

(b) The information presented enables the licensee to enhance the dental health of the public.

(c) The licensee is able to apply the knowledge gained within his/her professional capacity.

(d) Instructors should be qualified with respect to program content and teaching methods used.

(e) Courses should be conducted in a setting physically suitable to the educational activity of the program."

Auth: Sec. 37-4-205, 37-4-307, 37-4-406, MCA; IMP, Sec. 37-4-205, 37-4-307, 37-4-406, MCA

"III REQUIREMENTS AND RESTRICTIONS (1) Each dentist and dental hygienist licensed to practice in the state of Montana shall have completed annually the following minimum number of continuing education credits of instruction in approved courses of continued education:

(a) Dentist - 20 per year. Dentists who have general anesthesia or conscious sedation permits must acquire these 20 continuing education credits in addition to those required for maintenance of those permits.

(b) Dental hygienist - 12 per year.

(2) For the purpose of compliance, one continuing education credit will be recognized for each sixty minutes of involvement. Credit will not be earned for time spent in introductory remarks, coffee and luncheon breaks, or business meetings.

(3) Continuing education credit may be secured by these methods:

(a) Lectures and/or clinical sessions offered by approved sponsors;

(b) Courses having received prior board approval;

(c) Study groups that fulfill the following criteria:

(i) The group consists of a minimum of four members;

(ii) Submits to the board:
(A) copy of charter or constitution,
(B) roster of officers,
(C) schedule of meeting dates,
(D) duration of meetings,
(E) brief summary of content of meetings, and
(F) method by which attendance is recorded and authenticated.

(d) A maximum each year of 8 credits for dentists, and 4 credits for dental hygienists is allowed for group study.

(e) Presentation (instruction) of approved dental or dental hygiene continuing education:

(i) Two continuing education credits are allowed for each hour of original presentation.

(ii) One credit will be given for each hour of presentation of essentially the same material.

(f) A maximum each year of ten credits for dentists and six credits for dental hygienists will be allowed in this manner.

(4) Courses that are unacceptable for continuing education credit include, but are not necessarily limited to, the following:

(a) Self-help/pop psychology (i.e. personal goal development, transactional analysis, assertiveness training);
(b) Legislative/political issues;
(c) Unproven modalities or experimental techniques;
(d) Basic science courses;
(e) Administrative issues (i.e., dental economics, group practice and incorporation, solo practice and partnerships, advertising);
(f) Basic life support/CPR;
(g) Advanced cardiac life support;
(h) Home study (i.e. videotapes, journals, etc.); and
(i) Practice management."

Auth: Sec. 37-4-205, 37-4-307, 37-4-406, MCA; IMP, Sec. 37-4-205, 37-4-307, 37-4-406, MCA

"IV REPORTING PROCEDURES (1) Continuing education credits may not be carried over from one licensing period to another. Continuing education credits are to be submitted with the dentist and dental hygiene license renewal, on the "Montana state board of dentistry continuing education report form". The individual licensee is responsible for maintaining official "proof of attendance" documents. Examples of acceptable proof of attendance documents include:

(a) "Proof of attendance" form with presenter's signature or sponsor's verification;
(b) Signed "academy of general dentistry" report form; and
(c) American dental association official verification of course attendance.

(2) Dentist and dental hygiene licensees, upon request of the board of dentistry, must be able to produce official proof of attendance in order to receive continuing education credit. Proof must be retained for a period of five years following course attendance."

Auth: Sec. 37-4-205, 37-4-307, 37-4-406, MCA; IMP, Sec. 37-4-205, 37-4-307, 37-4-406, MCA

"V EXEMPTIONS AND EXCEPTIONS (1) Licensees whose capacity to meet the continuing education requirements is restricted due to ill health or other extenuating circumstances may apply, in writing, to the board of dentistry for special consideration.

(2) New dentist and dental hygiene graduates shall be exempt from continuing education requirements for one renewal period following their initial licensure in Montana, however, they are encouraged to participate actively in continuing education programs.

(3) Licensees who hold an inactive status license are not required to submit a continuing education report form unless applying to convert to an active license. Licensees must comply with ARM 8.16.408 or 8.16.607 regarding conversion of an inactive status license to an active status license."

Auth: Sec. 37-4-205, 37-4-307, 37-4-406, MCA; IMP, Sec. 37-4-205, 37-4-307, 37-4-406, MCA

4. The proposed new denturitry rules will read as follows:

"VI CONTINUING EDUCATION IN DENTURITRY (1) Continuing education consists of educational activities designed to review existing concepts and techniques, to convey information beyond the basic denturitry education and to update knowledge on advances in denturitry.

(2) Continuing education programs are designed for part-time enrollment and are usually of short duration, although longer programs with structured, sequential curricula may also be included."

Auth: Sec. 37-29-201, MCA; IMP, Sec. 37-29-306, MCA

"VII SUBJECT MATTER ACCEPTABLE FOR DENTURIST CONTINUING EDUCATION (1) The board of dentistry shall determine the acceptability or unacceptability of hours that are claimed for continuing education credit. Determination of course acceptability rests with the board and all decisions are final. Licensees are urged to obtain board approval of courses prior to taking the course. The "continuing education approval request form" is designed to collect data for the board to make an informed decision regarding the acceptability of continuing education courses. The form must be submitted a minimum of 60 days prior to the course date. The burden of proof regarding the acceptability of any continuing education course lies entirely with the licensee.

(2) In order for specific course subject material to be acceptable for credit, the stated course objectives, overall curriculum design and course outlines should clearly establish conformance with the following criteria:

(a) The subject matter contributes directly to the quality of the patient care rendered by the licensee. This includes the following subjects as they relate to the practice of denturitry:

(i) head and oral anatomy and physiology;
(ii) oral pathology;
(iii) partial denture design and construction;
(iv) microbiology;
(v) radiology;
(vi) clinical dental technology;
(vii) dental laboratory technology;
(viii) asepsis;
(ix) clinical jurisprudence; and
(x) medical emergencies.

(b) The information presented enables the licensee to enhance the dental health of the public as it relates to denturitry.

(c) The licensee is able to apply the knowledge gained within his/her practice of denturitry.

(d) Instructors should be qualified with respect to program content and teaching methods used.

(e) Courses should be conducted in a setting physically suitable to the educational activity of the program."

Auth: Sec. 37-29-201, MCA; IMP, Sec. 37-29-306, MCA

"VIII REQUIREMENTS AND RESTRICTIONS (1) Each denturist licensed to practice in the state of Montana shall have completed annually a minimum of 12 continuing education credits of instruction in approved courses.

(2) For the purpose of compliance, one continuing education credit will be recognized for each sixty minutes of involvement. Credit will not be earned for time spent in introductory remarks, coffee and luncheon breaks, or business meetings.

(3) Correspondence courses or television programs are not acceptable for continuing education credit."

Auth: Sec. 37-29-201, MCA; IMP, Sec. 37-29-306, MCA

"IX REPORTING PROCEDURES (1) Continuing education credits may not be carried over from one licensing period to another. Continuing education credits are to be submitted with the denturist license renewal, on the "Montana state board of dentistry continuing education report form". A signed written report of attendance must accompany the renewal application. The report must include:

(a) title of the course or seminar;
(b) dates of attendance;
(c) number of clock hours;
(d) licensee's name and address;
(e) signature of the instructor or monitor of the continuing education program."

Auth: Sec. 37-29-201, MCA; IMP, Sec. 37-29-306, MCA

"X EXEMPTIONS AND EXCEPTIONS (1) Licensees whose capacity to meet the continued education requirements are restricted due to ill health or other extenuating circumstances may apply, in writing, to the board of dentistry for special consideration.

(2) For those denturists licensed during the renewal year, the fulfillment of the continuing education requirement

will not be required for the first year of licensure, however, they are encouraged to participate actively in continuing education programs."

Auth: Sec. 37-29-201, MCA; IMP, Sec. 37-29-306, MCA

REASON: The Board of Dentistry is proposing these new rules to make continuing education mandatory for all three licensing categories under the Board.

The enormous growth, volume, and variety of research with basic clinical and dental sciences continually introduces a great many improvements for the benefit of the public. In order to best serve their patients and society, all dental professionals have the obligation to keep their knowledge and skills current.

Many of the new procedures, drugs and materials are potentially hazardous if improperly applied. As a result, the dental professional's responsibility to remain current has assumed a critical position in the interest of the public safety and welfare.

It is the policy of the Montana State Board of Dentistry that a licensee shall be required to meet the standards and provisions of continuing education in order to retain a license in the state of Montana. Failure to comply will result in disciplinary action.

5. Interested persons may present their data, views or arguments, either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Board of Dentistry, Lower Level Arcade Building, 111 North Jackson, Helena, Montana 59260-0407, to be received no later than November 12, 1992.

6. Robert P. Verdon, attorney, Helena, Montana, has been designated to preside over and conduct the hearing.

BOARD OF DENTISTRY
ROBERT W. RECTOR, DMD
PRESIDENT

BY: Annie M. Bartos
ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

Annie M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, October 5, 1992.

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

In the matter of the amendment of rules 16.8.1004, 16.8.1423 and 16.8.1424 dealing with incorporating federal regulatory changes	))))	NOTICE OF PUBLIC HEARING FOR PROPOSED AMENDMENT OF RULES (Air Quality Bureau)

To: All Interested Persons

1. On November 20, 1992, at 9:00 a.m., the board will hold a public hearing in Room C209 of the Cogswell Building, 1400 Broadway, Helena, Montana, to consider the amendment of the above-captioned rules.

2. The proposed amendments would incorporate federal regulatory changes occurring since July 1, 1990, to the "Standard of Performance for New Stationary Sources" (NSPS) and the "Emission Standards for Hazardous Air Pollutants" (NESHAPs). In addition, these amendments clarify the use of the term "administrator" under both NSPS and NESHAPS, and update the department's authority for determining visibility impacts.

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

16.8.1004 VISIBILITY MODELS (1) All estimates of visibility impact required under this subchapter shall be based on those models contained in "Workbook for ~~Estimating Visibility Impairment" (EPA-450/4-80-031, November, 1980~~ Plum Visual Impact Screening and Analysis" (EPA-450/4-88-015, 1988). Equivalent models may be substituted if approved by the department.

(2) The board hereby adopts and incorporates by reference "Workbook for ~~Estimating Visibility Impairment" (EPA-450/4-80-031, November, 1980~~ Plum Visual Impact Screening and Analysis" (EPA-450/4-88-015, 1988) which is a federal agency publication setting forth methods by which estimates of visibility impairment may be made. A copy of "Workbook for ~~Estimating Visibility Impairment" (EPA-450/4-80-031, November, 1980~~ Plum Visual Impact Screening and Analysis" (EPA-450/4-88-015, 1988) ~~may be obtained from~~ is available for public review and copying at the Air Quality Bureau, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620.

AUTH: 75-2-111, 75-2-203, MCA IMP: 75-2-203, 75-2-204, 75-2-211, MCA

16.8.1423 STANDARD OF PERFORMANCE FOR NEW STATIONARY SOURCES (1) For the purpose of this rule, the following definitions ~~applies~~ apply:

(a) "Administrator", as used in 40 CFR Part 6, July 1, 1992, means the department, except in the case of those duties which cannot be delegated to the state by the U.S. Environmental Protection Agency, in which case "administrator" means the administrator of the U.S. Environmental Protection Agency.

~~(a)~~(b) "Stationary source" means any building, structure, facility, or installation which emits or may emit any air pollutant subject to regulation under the Federal Clean Air Act, 42 U.S.C. ~~§1857~~ 7407, et seq., as amended in ~~1977~~ 1990.

(2) The terms and associated definitions specified in 40 CFR §60.2, July 1, ~~1990~~ 1992, shall apply to this rule, except as specified in subsection (1)(a).

(3) The owner and operator of any stationary source or modification, as defined and applied in 40 CFR Part 60, July 1, ~~1990~~ 1992, shall comply with the standards and provisions of 40 CFR Part 60, July 1, ~~1990~~ 1992.

(4) For the purpose of this rule, the board hereby adopts and incorporates by reference 40 CFR Part 60, July 1, ~~1990~~ 1992, which pertains to standards of performance for new stationary sources and modifications. 40 CFR Part 60, July 1, ~~1990~~ 1992, is available for public inspection and copying at the Air Quality Bureau, Department of Health and Environmental Sciences, Cogswell Building, 1400 Broadway, Helena, Montana; at EPA's Public Information Reference Unit, 401 M Street SW, Washington, DC 20460; and at the libraries of each of the ten EPA Regional Offices. Copies are also available as supplies permit from the U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; and copies may be purchased from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

AUTH: 75-2-111, 75-2-203, MCA IMP: 75-2-203, MCA

16.8.1424 EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS

(1) For the purpose of this rule, the terms and associated definitions specified in 40 CFR §61.02, July 1, ~~1990~~ 1992, shall apply~~.~~, except that:

(a) "Administrator", as used in 40 CFR Part 6, July 1, 1992, means the department, except in the case of those duties which cannot be delegated to the state by the U.S. Environmental Protection Agency, in which case "administrator" means the administrator of the U.S. Environmental Protection Agency.

(2) The owner or operator of any existing or new stationary source, as defined and applied in 40 CFR Part 61, July 1, ~~1990~~ 1992, shall comply with the standards and provisions of 40 CFR Part 61, July 1, ~~1990~~ 1992.

(3) For the purpose of this rule, the board hereby adopts and incorporates by reference 40 CFR Part 61, July 1, ~~1990~~ 1992, which pertains to emission standards for hazardous air pollutants. 40 CFR Part 61, July 1, ~~1990~~ 1992, is available for public inspection and copying at the Air Quality Bureau, Department of Health and Environmental Sciences, Cogswell Building, 1400 Broadway, Helena, Montana 59620; at EPA's Public Information Reference Unit, 401 M Street SW, Washington, DC 20460; and at the libraries of each of the ten EPA Regional

Offices. Copies are also available as supplies permit from the U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; and copies may be purchased from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.
AUTH: 75-2-111, 75-2-203, MCA IMP: 75-2-203, MCA

4. The board is proposing these amendments to the rules in order to enhance Montana's air program and ensure primacy. The amendments are necessary because unless the department periodically updates its adoption of the pertinent provisions of the Code of Federal Regulations, the department's administration of the NSPS and NESHAPS programs may be revoked by the Environmental Protection Agency, and the primary responsibility for administering those air quality programs would revert to the federal government, rather than belong to the state. The same is true for the department's authority to protect visibility, and the proposed changes update this authority to ensure continued primacy in this area.

5. Interested persons may submit their data, views, or arguments concerning the proposed amendments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Yoli Fitzsimmons, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620, no later than November 18, 1992.

DENNIS IVERSON, Director

Certified to the Secretary of State October 5, 1992.

Reviewed by:

Eleanor L. Parker
Counsel for the Department

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the proposed adoption of Rules I through V pertaining to the implementation of an arrest numbering system and standardization of criminal history information collection	)))))))	NOTICE OF PROPOSED ADOPTION OF RULES I THROUGH V AND REPEAL OF 23.12.101 REGARDING DEPARTMENT OF JUSTICE STANDARDIZATION OF CRIMINAL HISTORY INFORMATION COLLECTION AND IMPLEMENTATION OF AN ARREST NUMBERING SYSTEM NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On November 16, 1992, the Department of Justice proposes to adopt the following rules concerning the implementation of an arrest numbering system and standardization of criminal history information collection.

2. The proposed rules will read as follows:

RULE I. DEFINITIONS Unless the context requires otherwise, the following definitions apply to [rules I through V]:

(1) "Arresting agency" means the law enforcement entity that initiates the restraint of or notification to an individual charged with a criminal offense.

(2) "Criminal case history and final disposition report" means a form used by arresting and judicial agencies and the department which contains necessary information to record the criminal proceedings and disposition subsequent to an arrest.

(3) "Criminal justice information network (CJIN)" means a telecommunications network used exclusively for the purpose of information exchange among the state's law enforcement agencies.

(4) "Custodial agency" means the law enforcement entity that maintains physical custody of an individual charged with a criminal offense.

(5) "Custodial arrest" means physical detention or confinement for a criminal offense in a jail or holding facility for a criminal offense.

(6) "Department" means the department of justice.

(7) "FBI fingerprint card" means the card provided by the federal bureau of investigation for recording of criminal justice fingerprints, identified as federal form number FD-249.

(8) "Inmate status" means when an individual sentenced to the department of corrections is on parole, work release, completes a sentence, is transferred to a half-way house, is on furlough, is transferred to another facility, is deceased, is issued a travel permit, or is discharged.

(9) "Montana arrest numbering system (MANS) number" means a computer generated number obtained through the criminal justice information network (CJIN). The arrest number provides a means to track each custodial or felony arrest and tie the

arrest to an individual as the case is processed through the criminal justice system. This number is a permanent identifier of the arrest and has no relationship to the number of charges.

(10) "Originating case agency (OCA) number" means a number not exceeding 12 characters that the arresting agency assigns to an individual following the individual's custodial or felony arrest.

(11) "Originating identifier (ORI) number" means a nine character identification number assigned by the federal bureau of investigation to a criminal justice agency. This number is uniquely assigned to the agency and is used as an identifier when transferring or receiving messages through the CJIN network.

(12) "Statute code charge" means the offense or offenses the individual has been charged with, whether a felony or misdemeanor, followed by a brief description of the crime.

(13) "State identification (SID) number" means a number assigned by the department to an individual following the individual's first custodial or felony arrest. The number remains uniquely assigned to an individual regardless of subsequent arrests.

AUTH: 44-5-105, MCA; IMP: 44-5-213, MCA

RULE II. MONTANA ARREST NUMBERING SYSTEM NUMBER TO BE ASSIGNED - CJIN

(1) Following a custodial or felony arrest the arresting agency or by agreement the custodial agency shall access the Montana arrest numbering system (MANS) through the CJIN and have a number assigned to that custodial or felony arrest. The courts shall not allow initial appearance of an individual that has been under custodial or felony arrest until the individual has been fingerprinted and a MANS number registered on the criminal case history and final disposition report form.

AUTH: 44-5-105, MCA; IMP: 44-5-213, MCA

RULE III. FINGERPRINT CARD (1) Whenever a person charged with a crime is fingerprinted under 44-5-202, MCA, two original FBI fingerprint cards, form number FD-249, must be completed by the arresting agency and submitted to the department.

(2) The completion of the card must follow procedures provided by the department.

(3) The block identified as "state usage" must contain the Montana Arrest Numbering System (MANS) number.

(4) If an individual appears before a court charged with a felony without a physical arrest the court shall at the time of the individuals first appearance before a district judge or justice of the peace order the individual to report to the appropriate law enforcement agency to be fingerprinted and assigned a MANS number. The individual shall report to the law enforcement agency at his own expense and at a time, date and place set by the court to be fingerprinted.

(5) Arresting, custodial and judicial agencies may enter into agreements to designate an agency or agencies responsible

for conveying fingerprint cards to the department.
AUTH: 44-5-105, MCA; IMP: 44-5-213, MCA

RULE IV. CRIMINAL CASE HISTORY AND FINAL DISPOSITION REPORT (1) Whenever an individual charged with a crime is fingerprinted under section 44-5-202, MCA, a criminal case history and final disposition report, form number CHRP1, made available by the department, must be initiated by the arresting agency. The report form or computer program design must be in a format approved by the department and must include the information designated on the form.

(2) The form must be completed according to the procedures prescribed by the department.

(a) The information pertaining to the individual and the initial charge(s) must be completed by the arresting agency and forwarded to the court of appropriate jurisdiction prior to the individual's initial appearance.

(b) The information pertaining to the court action and final disposition must be completed by the clerk of court or a similarly designated official prior to forwarding to the department.

(3) Following sentencing the clerk of the court shall forward a copy of a completed form number CHRP1 to the department within 15 days.

(4) Arresting, custodial and judicial agencies may enter into agreements to designate an agency or agencies responsible for conveying form number CHRP1 to the department.
AUTH: 44-5-105, MCA; IMP: 44-5-213, MCA

RULE V. CUSTODIAL FINGERPRINTS (1) Whenever an individual is incarcerated in the Montana state prison or the women's correctional center, the department of corrections and human services shall complete and submit to the department, two FBI fingerprint cards, form number FD-249.

(2) The FBI fingerprint card must be completed according the procedures prescribed by the department.

(3) The department of corrections and human services shall notify the department regarding the inmate status on a form prescribed by the department or according to an automated process as agreed to by both departments.
AUTH: 44-5-105, MCA; IMP: 44-5-213, MCA

3. The proposed rule for repeal follows. Full text is found on page 23-399, ARM.

23.12.101 FINAL DISPOSITION REPORTS
AUTH: 44-5-213; IMP: 44-5-213, MCA

4. In 1990 the Montana Department of Justice received a grant from the United States Department of Justice, Bureau of Justice Statistics, Office of Justice Programs to develop and implement systems and procedures designed to improve criminal history record information, to standardize collection of information within the criminal justice system including

corrections and the courts, and to improve accuracy, completeness and timeliness of criminal history record information residing at the centralized State repository. Pursuant to 44-2-201 through 206, MCA to ensure the effective cooperation of Montana law enforcement, the department of justice intends to adopt rules to implement an arrest numbering system and standardize criminal history information collection.

5. Interested parties may submit their data, views, or arguments concerning the proposed adoption of rules in writing to Anita Varone, c/o Criminal History Records Program, 303 North Roberts, Room 371, Helena, Montana 59620-1413, no later than November 13, 1992.

6. If a person who is directly affected by the proposed adoption wishes to submit data, or express views and arguments orally or in writing at a public hearing, the person must make a written request for a hearing and submit this request, along with any written comments to Anita Varone, c/o Criminal History Records Program, 303 North Roberts, Room 371, Helena, Montana 59620-1413, no later than November 13, 1992.

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

By: Marc Racicot
MARC RACICOT, Attorney General

Judy Browning
Rule Reviewer

Certified to the Secretary of State September 29, 1992.

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

In the matter of amendment of a rule to make consistent exclusions from the definition of employment in the unemployment insurance and workers' compensation acts 24.29.706	))))))	NOTICE OF EXTENSION OF COMMENT PERIOD

TO ALL INTERESTED PERSONS:

1. On July 30, 1992 the Department published notice of proposed rule making, as above described, in the Montana Administrative Register, pages 1573 through 1576, with a public hearing to be held on August 26, 1992. That hearing was continued.

2. On September 10, 1992 the Department published notice of the continuance of hearing and extension of comment period, as above described, in the Montana Administrative Register, page 1948, with the public hearing to be held on September 29, 1992. The public hearing was held as scheduled. In order to provide interested parties further opportunity to participate, the period in which to submit written comments is extended.

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

Legal Services Division
Hearing Unit
Department of Labor and Industry
Old Board of Health Building
1301 Lockey
Helena, MT 59620

by no later than November 13, 1992.

David A. Scott
Rule Reviewer

Mario A. Micone, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State: October 5, 1992

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of a rule and adoption of a rule regarding what is classified as wages for purposes of workers' compensation and unemployment insurance amending 24.11.814; new rule I.	NOTICE OF EXTENSION OF COMMENT PERIOD

TO ALL INTERESTED PERSONS:

1. On July 30, 1992 the Department published notice of proposed rule making, as above described, in the Montana Administrative Register, pages 1577 through 1579, with a public hearing to be held on August 26, 1992. That hearing was continued.

2. On September 10, 1992 the Department published notice of the continuance of hearing and extension of comment period, as above described, in the Montana Administrative Register, page 1949, with the public hearing to be held on September 29, 1992. The public hearing was held as scheduled. In order to provide interested parties further opportunity to participate, the period in which to submit written comments is extended.

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

Legal Services Division
Hearing Unit
Department of Labor and Industry
Old Board of Health Building
1301 Lockey
Helena, MT 59620

by no later than November 13, 1992.

David A. Scott
Rule Reviewer

Mario A. Micone, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State: October 5, 1992

BEFORE THE DEPARTMENT OF STATE LANDS
AND BOARD OF LAND COMMISSIONERS

In the matter of the adoption, of new Rules I through XI implementing regulations for forest practices in the streamside management zone.	))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED ADOPTION OF STREAMSIDE MANAGEMENT ZONE RULES

TO: All Interested Persons:

1. From November 4, 1992 through November 17, 1992, t Department of State Lands and the Board of Land Commissione will hold public hearings to consider adoption of Rules through XI implementing a law regulating forest practices in t streamside management zone (SMZ). The hearings will be held the following locations, dates, and times:

-Ashland at the Ashland Jr. High School, Auditorium, H 212 across from the U. S. Forest Service, on November 4 at 7:(p.m.

-Billings at Eastern Montana College, Student Union Buil ing, Lewis Room, 1500 N. 30th on November 5 at 7:00 p.m.

-Lewistown at Fergus County Complex, Basement Meeting Roo 121 Eighth Ave. South on November 10 at 7:00 p.m.

-Bozeman at County Courthouse, Community Room, 311 W. Ma St. on November 11 at 7:00 p.m.

-Missoula at Sentinel High School, Cafeteria, 901 Sou Avenue West on November 12 at 7:00 p.m.

-Kalispell at Cavanaugh's at Kalispell Center, Ballroom 20 N. Main St. on November 17 at 7:00 p.m.

2. The proposed new rules do not replace or modify a section currently found in the Administrative Rules of Montan

3. The proposed new rules provide as follows:

RULE I APPLICABILITY - DEFINITIONS - EFFECTIVE DATE

(1) [Rules I through XI] apply to forest practices co ducted within a timber sale in the streamside management zon Such practices, as defined at 77-5-302(3), MCA, include t following activities when conducted within a "timber sale" that term is defined below:

(a) the harvesting of trees;

(b) road construction or reconstruction associated w harvesting and accessing trees;

(c) site preparation for regeneration of a timber stan

(d) reforestation;

(e) management of logging slash.

(2) Wherever used in [these rules], unless a differe meaning clearly appears from the context:

(a) "Alternative practices" means forest practices co ducted in the SMZ that are different from the practices requi by the standards provided in 77-5-303, MCA, and are approved the department either by adoption of [these rules] or on a si specific basis upon application of the operator.

(b) "Broadcast burning" means spreading fire through

continuous fuel cover. The fuels consist of slash resulting from forest practices, surface litter, and duff. Fuels are left in place, fairly uniform, and ignited under certain conditions with the intent to meet planned management objectives in the desired area.

(c) "Class 1 stream segment" means a portion of stream that supports fish; or that contributes water during most years to a stream, lake, or other body of water that supports fish; or that has continuous surface flow during most of the year.

(d) "Class 2 stream segment" means a portion of stream which does not carry surface flow to a class 1 stream segment, lake, or other body of water during most years.

(e) "Clearcutting" means removal of virtually all the trees, large and small, in a stand in one cutting operation. Virtually all woody vegetation is removed from the site preparatory to establishment of new trees.

(f) "Construction" means cutting and filling of earthen material that results in a travel-way for wheeled vehicles.

(g) "Diameter at breast height" (abbreviated "dbh") means the diameter of a tree measured 4½ feet from the ground level. Ground level is the highest point of the ground touching the stem.

(h) "Established road" means an existing access or haul route for highway vehicles. It is passable with clearing of small woody vegetation and minor earthwork.

(i) "Hazardous or toxic material" means substances which by their nature are dangerous to handle or dispose of, or a potential environmental contaminant, and includes petroleum products, pesticides, herbicides, chemicals, and biological wastes.

(j) "Lake" means a body of water where the surface water is retained by either natural or artificial means, where the natural flow of water is substantially impeded, and which supports fish.

(k) "Ordinary high water mark" means the stage regularly reached by a body of water at the peak of fluctuation in its water level. The ordinary high water mark is often observable as a clear, natural line impressed on the bank. It may be indicated by such characteristics as terracing, changes in soil characteristics, destruction of vegetation, presence or absence of litter or debris, or other similar characteristics.

(l) "Other body of water" means ponds and reservoirs greater than 1/10th acre that do not support fish; and irrigation and drainage systems discharging directly into a stream, lake, pond, reservoir or other surface water. Water bodies used solely for treating, transporting, or impounding pollutants shall not be considered surface water.

(m) "Road" means a travel-way suitable for highway vehicles.

(n) "Salvage" means harvesting trees that have been killed or damaged or are in imminent danger of being killed or damaged by injurious agents other than competition between trees.

(o) "Sidecasting" means the act of moving excess earthen material over the side of a road.

(p) "Slash" means the woody debris that is dropped to the forest floor during forest practices. Timber slash consists of stems, branches, and twigs left behind after forest practices.

(q) "Slope distance" means the length of a line between two points on the land surface.

(r) "Stream", as defined at 77-5-302(7), MCA, means "a natural watercourse of perceptible extent that has a generally sandy or rocky bottom or definite banks and that confines and conducts continuously or intermittently flowing water."

(s) "Streamside management zone" or "zone" (abbreviated "SMZ"), as defined at 77-5-302(8), MCA, means "the stream, lake, or other body of water and an adjacent area of varying width where management practices that might affect wildlife habitat or water quality, fish, or other aquatic resources need to be modified. The streamside management zone encompasses a strip at least 50 feet wide on each side of a stream, lake, or other body of water, measured from the ordinary high-water mark, and extends beyond the high-water mark to include wetlands and areas that provide additional protection in zones with steep slopes or erosive soils."

(t) "Timber sale", as defined at 77-5-302(9), MCA, means "a series of forest practices designed to access, harvest, and regenerate trees on a defined land area for commercial purposes."

(u) "Wetlands" means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands include marshes, swamps, bogs, and similar areas.

(3) [Rules I through XI] shall become effective [60 days after publication in the Montana Administrative Register]. (AUTH: 77-5-307, MCA; IMP: 77-5-307, MCA.)

RULE II WIDTH OF STREAMSIDE MANAGEMENT ZONE - MARKING BOUNDARY (1) The slope of the SMZ is measured perpendicular to the stream or lake from the ordinary high water mark to a point 50 feet slope distance from the ordinary high water mark.

(2) The minimum SMZ width is 50 feet slope distance on each side of streams and lakes, measured from the ordinary high water mark, in all cases except:

(a) On class 1 stream segments and lakes where the slope of the SMZ is greater than 30% and the soil profile is mostly sand or silt, the minimum SMZ width is 100 feet; or

(b) On class 1 stream segments and lakes where the slope of the SMZ is greater than 40% and the timber harvest is to be conducted with ground skidding by wheeled or tracked equipment, the minimum SMZ width is 100 feet, regardless of soil type.

(c) Under the conditions described in (a) or (b) above, when an established road exists between 50 and 100 feet from the ordinary high water mark, the SMZ boundary is located at the toe of the road fill.

(d) Under the conditions described in (a) or (b) above, when the slope of the extended SMZ decreases to 15% or less at a location at least 50 feet slope distance from the ordinary

high water mark, and does not exceed 15% for at least an additional 30 feet slope distance from the ordinary high water mark, the SMZ boundary is located at the edge of the slope change.

(3) Where forest practices that are prohibited in the SMZ will be conducted adjacent to the SMZ boundary on a class 1 stream segment, the SMZ boundary must be clearly marked prior to conducting such practices. (AUTH: 77-5-307, MCA; IMP: 77-5-301, 302(8), MCA.)

RULE III BROADCAST BURNING (1) Broadcast burning in the SMZ is prohibited unless approved by the department under a site-specific alternative practice.

(2) The department may approve broadcast burning as a site-specific alternative practice when the use of a broadcast burn will conserve the integrity of the SMZ. In most cases this will require burning under conditions that produce low fire intensity in the SMZ. (AUTH: 77-5-307, MCA; IMP: 77-5-303, MCA.)

RULE IV EQUIPMENT OPERATION IN THE SMZ (1) Operation of wheeled or tracked equipment in the SMZ except on established roads is prohibited except as provided in this rule.

(2) As an alternative practice not requiring site-specific approval, an operator may operate wheeled or tracked equipment in the SMZ above the ordinary high water mark only under the following conditions:

(a) the ground must be covered with snow at least 24 inches deep or the ground must be frozen to a depth of more than 2 inches; and

(b) the residual stand of shrubs and trees must be protected and all stumps left in place; and

(c) such operations must not cause rutting of the soil and must otherwise conserve the integrity of the SMZ.

(3) The department may approve operation of wheeled or tracked equipment in the SMZ as a site-specific alternative practice only under conditions that:

(a) conserve the integrity of the SMZ, and

(b) do not cause rutting of the soil; and

(c) protect the residual stand of shrubs and trees.

(AUTH: 77-5-307, MCA; IMP: 77-5-303, MCA.)

RULE V RETENTION OF TREES IN THE SMZ - CLEARCUTTING (1) The forest practice of clearcutting is prohibited in the SMZ unless approved by the department under a site-specific alternative practice.

(2) Further, in order to provide large woody debris, stream shading, water filtering effects, and to protect stream channels and banks, merchantable and submerchantable trees must be retained in the SMZ on each side of streams, and along lakes and other bodies of water as follows:

(a) On class 1 stream segments and lakes:

(i) No more than 50% of the trees greater than or equal to 8 inches dbh may be removed in any one timber sale; and,

(ii) A minimum of 10 trees greater than or equal to 8

inches dbh must be retained in each 100 lineal feet of the SMZ.

(iii)If less than 10 trees greater than or equal to 8 inches dbh are present in any 100 lineal foot segment of the SMZ, then a minimum of 10 trees of the largest diameter available must be retained in that segment.

(iv) Trees retained must be representative of the species and size of trees in the pre-harvest stand.

(b) On class 2 stream segments and other bodies of water, 10 trees of any size must be retained in each 100 lineal feet of the SMZ.

(3) Trees retained pursuant to this rule may not be salvaged except under the following conditions:

(a) All standing live trees not requiring salvage, as defined in [Rule I(2)(n)], must be retained.

(b) If the minimum tree retention requirements of this rule are not met by standing live trees, then additional trees which are dead or fallen and which meet the size requirements of this rule must be retained to meet the minimum tree retention requirements in each 100 lineal feet of the SMZ.

(c) All trees that have fallen across or in the stream must be retained, unless salvage of such trees is approved as a site-specific alternative practice.

(4) Hardwood trees and snags meeting diameter standards of (2) above may be counted toward retention tree requirements in the same approximate proportion as their occurrence in the stand prior to commencement of forest practices.

(5) Shrubs and submerchantable trees must be protected and retained to the fullest extent possible when conducting forest practices in the SMZ.

(6) Trees retained pursuant to this rule must be distributed within the SMZ as guided by the following criteria:

(a) favor bank-edge trees;

(b) favor trees leaning toward the stream and those that cannot be felled without falling into the stream;

(c) concentrate retained trees within 50 feet of the stream where the SMZ is greater than 50 feet wide.

(7) All practices which deviate from the tree-distribution criteria provided in (2) and (6) above require approval as site-specific alternative practices. (AUTH: 77-5-307, MCA; IMP: 77-5-301, 303, MCA.)

RULE VI ROAD CONSTRUCTION IN THE SMZ (1) The construction of roads in the SMZ is prohibited except when necessary to cross a stream or wetland unless approved by the department under a site-specific alternative practice.

(2) Road fill material must not be deposited into the SMZ except as needed to construct crossings. (AUTH: 77-5-307, MCA; IMP: 77-5-303, MCA.)

RULE VII HAZARDOUS OR TOXIC MATERIALS (1) The handling, storage, application, or disposal of hazardous or toxic materials in the SMZ in a manner that pollutes streams, lakes, or wetlands or that may cause damage or injury to humans, land, animals, or plants is prohibited.

(2) Any application of herbicides or pesticides must be done in a manner that such materials are not introduced to streams, lakes, wetlands, or other bodies of water through surface runoff or sub-surface flow.

(3) Any application of herbicides or pesticides must be done in a manner which does not destroy vegetation in the SMZ to an extent which significantly impairs the capacity of the SMZ to provide shade or to act as an effective sediment filter.

(4) Any application of herbicides or pesticides in the SMZ must be in accordance with all label directions and in compliance with all applicable laws and regulations regarding the use of such material.

(5) Dust abatement agents which do not contain waste oil may be applied on roads in the SMZ provided that such material is not directly introduced into a stream, lake, or other body of water. (AUTH: 77-5-307, MCA; IMP: 77-5-303, MCA.)

RULE VIII SIDE-CASTING OF ROAD MATERIAL (1) The side-casting of road material into a stream, lake, wetland, or other body of water is prohibited in the SMZ. (AUTH: 77-5-307, MCA; IMP: 77-5-303, MCA.)

RULE IX DEPOSITING SLASH (1) Depositing slash in streams, lakes, or other bodies of water is prohibited unless approved by the department under a site-specific alternative practice. (AUTH: 77-5-307, MCA; IMP: 77-5-303, MCA.)

RULE X SKIDDING (1) Logs which are not fully suspended must not be skidded or yarded over or through streams unless approved by the department under a site-specific alternative practice. (AUTH: 77-5-307, MCA; IMP: 77-5-301, MCA.)

RULE XI SITE-SPECIFIC ALTERNATIVE PRACTICES (1) The owner or operator shall comply with the management standards stated in 77-5-303(1), MCA, and [these rules], unless approval has been obtained from the department for alternative practices designed for site-specific conditions encountered during a timber sale prior to conducting such practices.

(2) The department may approve a proposed alternative practice only if such practice would be otherwise lawful and the department determines with reasonable certainty that the proposed alternative practice would conserve the integrity of the streamside management zone and would not significantly diminish the function of the zone as stated in 77-5-301, MCA:

(a) to act as an effective sediment filter to maintain water quality;

(b) to provide shade to regulate stream temperature;

(c) to support diverse and productive aquatic and terrestrial riparian habitats;

(d) to protect stream channel and banks;

(e) to provide large, woody debris that is eventually recruited into a stream to maintain riffles, pools, and other elements of channel structure; and

(f) to promote floodplain stability.

(3) In order to obtain department approval of alternative practices, the owner or operator shall submit to the department an application describing the proposed practices and location. Applications must provide all data specified by the department and must be submitted on forms provided or approved by the department.

(4) Within 10 working days of receipt of the application for approval of alternative practices the department shall determine if the application is approved, approved with modification, disapproved, incomplete, requires additional information or environmental analysis, or requires a field review. The department shall notify the owner and the applicant of its decision in writing.

(5) If the department determines a field review is necessary, the field review must be made at a mutually agreeable time. The owner or his designee must be present at the field review.

(6) Within 10 working days after all necessary field review is complete, the department shall determine whether the application is approved, approved with modification, disapproved, incomplete, or requires additional information or environmental analysis. The department shall notify the owner and the applicant of its decision in writing.

(7) The department may notify the applicant that it declines to conduct further environmental analysis of an application if it determines that the proposed alternative practices are complex, or affect an environmentally sensitive area, or involve a high degree of uncertainty that the proposed alternative practices will have a significant impact on the quality of the human environment. In this case, the applicant may conduct further environmental analysis and submit documentation to the department. The department shall independently review any further environmental analysis and documentation of the proposed alternative practices provided by the applicant and may adopt such documentation if it is adequate under the Montana Environmental Policy Act (75-1-101 et seq., MCA) and rules adopted thereunder (ARM 26.2.628-663). If so adopted, the department may utilize such environmental documentation in further consideration of the application for alternative practices.

(8) In the event the department determines that an application for alternative practices may be of significant interest to the public, the time provided in this rule for considering such application may be extended an additional 45 days in order to allow time for the public to be notified and participate in the department's decision pursuant to 2-3-101 et seq. MCA and ARM 26.2.701-707.

(9) Persons applying for approval of alternative practices shall agree in writing that approved alternative practices, including any additional conditions imposed by the department, shall have the same force and authority as the standards contained in 77-5-303, MCA, and shall be enforceable by the department under 77-5-305, MCA, to the same extent as such standards. In determining whether to approve applications for alternative practices, the department may consider past violations of such

standards or of the requirements of previously approved alternative practices by the applicant.

(10) Authorization to conduct alternative practices is valid for 2 years from the date of approval or for such lesser period as may be specified by the department. (AUTH: 77-5-307, MCA; IMP: 77-5-302, 307, MCA.)

4. These rules are necessary to implement HB 731 enacted by the 1991 Legislature (Chapter 608, Laws 1991, 77-5-301 et seq., MCA) regulating forest practices in the streamside zone. Section 77-5-307, MCA, specifically directs the Department to adopt rules to implement, explain, and define the streamside management standards set out in Section 77-5-303, MCA, to provide alternative practices for those standards, and to otherwise regulate the harvest of timber in the streamside management zones in accordance with the purposes of the law as set out in 77-5-301, MCA.

5. Interested persons may present their data, views, or arguments either orally or in writing at the public hearings. Written data, views, or arguments may also be submitted to Dennis D. Casey, Commissioner, Department of State Lands, Capitol Station, Helena, Montana 59620 no later than November 19, 1992. To guarantee consideration, written data, views, or arguments must be postmarked by November 19, 1992.

6. The following Department of State Lands personnel have been designated to preside over and conduct the hearings:

Paul Klug, Chief, Service Forestry Bureau, Forestry Division

Jeff Jahnke, Assistant Administrator, Forestry Division

Don Artley, Administrator, Forestry Division

Assignments to specific hearing locations have not yet been made.

7. The authority of the agency to make the proposed rules is based on Section 77-5-307, MCA, and the rules implement Title 77, Chapter 5, Part 3, MCA.

Reviewed by:

John F. North
Chief Legal Counsel

Dennis D. Casey
Commissioner of State Lands

Certified to the Secretary of State October 5, 1992.

BEFORE THE DEPARTMENT OF STATE LANDS
AND BOARD OF LAND COMMISSIONERS

In the matter of ARM 26.4.301, 26.4.308, 26.4.314, 26.4.321, 26.4.405, 26.4.410, 26.4.505, 26.4.515, 26.4.601, 26.4.603, 26.4.605, 26.4.639, 26.4.646, 26.4.711, 26.4.725, 26.4.1006, 26.4.1014, 26.4.1212 and adoption of Rule I, regarding regulation of coal and uranium mining and prospecting.)	NOTICE OF PROPOSED AMENDMENT AND ADOPTION NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. At its December, 1992, meeting, which is currently scheduled for December 21, 1992, the Board of Land Commissioners and Department of State Lands propose to amend ARM 26.4.301, 26.4.308, 26.4.314, 26.4.321, 26.4.405, 26.4.410, 26.4.505, 26.4.515, 26.4.601, 26.4.603, 26.4.605, 26.4.639, 26.4.646, 26.4.711, 26.4.725, 26.4.1006, 26.4.1014, 26.4.1212 and adopt Rule I, all regarding regulation of coal and uranium mining and prospecting.

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

26.4.301 DEFINITIONS Sections (1) through (118) remain the same.

(119) "Test pit" means an excavation for prospecting by means other than drilling. Materials obtained from a test pit are used for testing purposes ~~or for the purpose of developing a market~~ and not for direct economic profit.

Sections (120) through (135) remain the same.

(AUTH: Sec. 82-4-204, 205, MCA; IMP, Sec. 82-4-203, MCA.)

26.4.308 OPERATIONS PLAN Each application must contain a description of the mining operations proposed to be conducted during the life of the mine within the proposed mine plan area, including at a minimum, the following:

Section (1) remains the same.

(2) a narrative, appropriate cross sections, design drawings and other specifications, as appropriate, explaining the construction, modification, use, maintenance, and removal of the following facilities (unless retention of such facilities is necessary for postmining land use as specified in ARM 26.4.762):

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

Sections (3) through (5) remain the same.

(AUTH: Sec. 82-4-204, 205, MCA; IMP, Sec. 82-4-222, MCA.)

26.4.314 PLAN FOR PROTECTION OF THE HYDROLOGIC BALANCE Sections (1) through (3)(c) remain the same.

(3)(d) provide a summary of the probable hydrologic consequences of the proposed mining operation, ~~,~~ including:

(i) whether adverse impacts may occur to the hydrologic balance;

(ii) whether acid-forming or toxic-forming materials that could result in the contamination of surface or ground water supplies are present;

(iii) whether the proposed operation may proximately result in contamination, diminution or interruption of an underground or surface source of water within the proposed permit or adjacent areas which is used for domestic, agricultural, industrial or other legitimate purpose; and

(iv) what impact the proposed operation will have on:

(A) sediment yields from the disturbed area;

(B) acidity, total suspended and dissolved solids, and other important water quality parameters of local impacts;

(C) flooding or streamflow alteration;

(D) ground water and surface water availability; and

(E) other characteristics as required by the department.

Sections (4) and (5) remain the same.

(AUTH: Sec. 82-4-204, 205, MCA; IMP, Sec. 82-4-222.)

26.4.321 TRANSPORTATION FACILITIES PLAN Sections (1) and (2) remain the same.

(3) The plans and drawings for each road shall be prepared by, or under the direction of, and certified by a qualified registered professional engineer, or a registered land surveyor, with experience in the design and construction of roads. The certification must state that t~~T~~he road designs ~~must~~ meet the performance standards outlined in ARM 26.4.601 through 26.4.606 and current prudent engineering practices. (AUTH: Sec 82-4-204, 205, MCA; IMP, Sec. 82-4-222.)

26.4.405 FINDINGS AND NOTICE OF DECISION Sections (1) through (5) remain the same.

(6) The department may not approve an application submitted pursuant to ARM 26.4.401(1) unless the application affirmatively demonstrates and the department's written findings confirm, on the basis of information set forth in the application or information otherwise available that is compiled by the department, that:

Subsections (a) through (k) remain the same.

(l) the applicant proposes to use existing structures in compliance with ARM ~~26.4.309~~ 26.4.1302.

Subsection (m) remains the same.

Sections (7) and (8) remain the same (AUTH: Sec. 82-4-204, 205, MCA; IMP, Sec. 82-4-226, 231.)

26.4.410 PERMIT RENEWAL Sections (1) through (4) remain the same.

(5) An operating permit need not be renewed for a site at which coal extraction, processing, and handling have been completed. Permit expiration does not relieve the operator of the duty to comply with the Act, this subchapter, and the permit and to retain the bond and liability insurance in full force and effect until final bond release. (AUTH: Sec. 82-4-204, 205,

MCA; IMP, Sec. 82-4-221, 226.)

26.4.505 BURIAL AND TREATMENT OF WASTE MATERIALS Sections (1) through (3) remain the same.

(4) Whenever waste is temporarily impounded:

(a) the impoundment must be designed and certified, constructed, and maintained:

(i) in accordance with ARM 26.4.603, 26.4.639, and 26.4.642 using current prudent-design standards; and

(ii) to control the probable maximum precipitation (PMP) of a 24-hour or greater event;

Subsections (b) and (c) and Section (5) remain the same. (AUTH: Sec. 82-4-204, 205, MCA; IMP, Sec. 82-4-231.)

26.4.515 HIGHWALL REDUCTION Section (1) remains the same.

(2) Highwall reduction alternatives may be permitted where the department determines that:

(a) they are compatible with the proposed postmining land use;

(b) they are stable, achieving a minimum static safety factor of 1.3; ~~and~~

(c) they will be backfilled to cover the uppermost mineable coal seam to a minimum depth of 4 feet;

(d) the highwall portion retained does not exceed pre-existing bluff lengths;

(e) it is necessary to replace bluff type habitats that existed in the natural topography prior to mining;

(f) the ends of the highwall portion retained will be contoured to blend into the surrounding topography with slopes not greater than 20 degrees; and

(g) they are in compliance with the applicable portions of ARM 26.4.821 through 26.4.824 and 26.4.313. (AUTH: Sec. 82-4-204, MCA; IMP, Sec. 82-4-232.)

26.4.601 GENERAL REQUIREMENTS FOR ROAD AND RAILROAD LOOP CONSTRUCTION Sections (1) through (4) remain the same.

(5) Following construction or reconstruction of each road, the permittee shall submit to the department a report, prepared by a qualified registered professional engineer or registered land surveyor experienced in the design and construction of roads, that the roads have been constructed or reconstructed in accordance with the plan approved pursuant to 26.4.321.

(6) All appropriate methods must be employed by the operator to prevent loss of haul or access road surface material in the form of dust.

(7)~~(6)~~ Immediately upon abandonment of any road or railroad loop, the area must be graded to approximate original contour and ripped, subsoiled or otherwise tilled in accordance with the approved plan. If necessary, embankment and fill materials must be hauled away and disposed of properly. All bridges and culverts must be removed and natural drainage patterns restored. The area must be resoiled, conditioned and seeded in accordance with sub-chapter 7. Adequate measures must be taken to prevent erosion by such means as cross drains,

dikes, water bars, or other devices. Such areas must be abandoned in accordance with all provisions of the Act and of the rules adopted pursuant thereto.

~~(8)(7)~~ Upon completion of mining and reclamation activities, all roads must be closed and reclaimed unless retention of the road is approved as part of the approved postmining land use pursuant to ARM 26.4.762 and the landowner requests in writing and the department concurs that certain roads or specified portions thereof are to be left open for further use. In such event, necessary maintenance must be assured by the operator or landowner and drainage of the road systems must be controlled according to the provisions of ARM 26.4.601 through 26.4.610. (AUTH: Sec. 82-4-204, MCA; IMP, Sec. 82-4-231, 232, MCA.)

26.4.603 EMBANKMENTS All embankments must be designed and certified by a registered professional engineer or registered land surveyor experienced in the design or earth and/or rock structures. Embankment sections must be constructed in accordance with the following provisions:

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

(9) ~~The minimum safety factor for all embankments must be 1.5 under any condition of loading likely to occur, or such higher factor as the department requires.~~ All embankments must have a minimum seismic safety factor of 1.2 and a minimum static safety factor of 1.5 under any condition of loading likely to occur, or such higher factor as the department determines to be reasonably necessary for protection of safety or property.

Sections (10) through (13) remain the same.

(AUTH: Sec. 82-4-204, MCA; IMP, Sec. 82-4-231, 232.)

26.4.605 HYDROLOGIC IMPACT OF ROADS AND RAILROADS LOOPS

Sections (1) and (2) remain the same.

(3)(a)(i) All access and haul roads must be adequately drained using structures such as, but not limited to, ditches, water barriers, cross-drains, and ditch-relief drainages. For ~~access and haul~~ roads that are to be maintained for more than six months and for all roads used to haul coal or spoil, water-control structures must be designed with a discharge capacity capable of passing the peak runoff from a 10-year, 24-hour precipitation event without impounding water at the entrance. Culverts with an end area of greater than 35 square feet and bridges with a span of 30 feet or less must be designed to safely pass a 25-year, 24-hour precipitation event. All other bridges must be designed to safely pass the 100-year, 24-hour precipitation event or greater event as specified by the department. Drainage pipes and culverts must be constructed to avoid plugging or collapse and erosion at inlets and outlets. Trash racks and debris basins must be installed in the drainage ditches wherever debris from the drainage area could impair the functions of drainage and sediment control structures. Culverts must be covered by compacted fill to a minimum depth of 1 foot. Culverts must be designed, constructed, and maintained to sustain the vertical soil pressure, the passive resistance of

the foundation, and the weight of vehicles to be used.

Paragraph (ii) remains the same.

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

(AUTH: Sec. 82-4-204, MCA; IMP, 82-4-231, 232.)

26.4.639 SEDIMENTATION PONDS AND OTHER TREATMENT FACILITIES Sections (1) through (9) remain the same.

(10) An appropriate combination of principal and emergency spillways must be provided to safely discharge the runoff from a ~~25-year~~ 100 year, 24-hour precipitation event, or larger event specified by the department. The elevation of the crest of the emergency spillway must be a minimum of 1 foot above the crest of the principal spillway. Emergency spillway grades and allowable velocities must be approved by the department.

Sections (11) through (17) remain the same.

(18) If a sedimentation pond has an embankment that is more than 20 feet in height, as measured from the upstream toe of the embankment to the crest of the emergency spillway, or has a storage volume of 20 acre-feet or more, the following additional requirements must be met:

~~(a) An appropriate combination of principal and emergency spillways that will discharge safely the runoff resulting from a 100-year, 24-hour precipitation event, or a larger event specified by the department must be provided;~~

(a)~~(b)~~ The embankment must be designed and constructed with a static safety factor of at least 1.5, and a seismic safety factor of at least 1.2. The department may designate higher safety factors to ensure stability;

(b)~~(c)~~ Appropriate barriers must be provided to control seepage along conduits that extend through the embankment; and

(c)~~(d)~~ The criteria of the mine safety and health administration as published in 30 CFR 77.216 and ARM 26.4.315 must be met.

Sections (19) through (25) remain the same.

(AUTH: Sec. 82-4-204, MCA; IMP, Sec. 82-4-231.)

26.4.646 SURFACE WATER MONITORING Sections (1) through (6) remain the same.

(7) Surface water monitoring must proceed through mining and continue until Phase IV bond release. The department may allow modification of the monitoring under the same criteria as are contained in 26.4.645(5). (AUTH: Sec. 82-4-204, 205, MCA; IMP, Sec. 82-4-231, 232.)

26.4.711 ESTABLISHMENT OF VEGETATION (1) A diverse, effective, and permanent vegetative cover of the same seasonal variety and utility as the vegetation native to the area of land to be affected must be established. This vegetative cover must also be capable of meeting the criteria set forth in 82-4-233, MCA and must be established on all areas of land affected except on road surfaces and below the low-water line of permanent impoundments that are approved as a part of the postmining land use. Vegetative cover is considered of the same seasonal variety if it consists of a mixture of species of equal or

superior utility when compared with the natural vegetation during each season of the year. Reestablished plant species must be compatible with the plant species of the area. Reestablished vegetation must meet the requirements of applicable state and federal laws and regulations governing seeds, poisonous and noxious plants and introduced species. For areas designated prime farmland that are to be revegetated to a vegetative cover as previously described in this rule, the requirements of ARM 26.4.811 and 26.4.815 must also be met. Vegetative cover and stocking and planting of trees and shrubs must not be less than that required to achieve the approved postmining land use. The department shall ~~make the necessary determinations~~ determine cover, planting, and stocking requirements based on local and regional conditions after consultation with and approval by the ~~appropriate state agencies~~ department of fish, wildlife, and parks and the administrator of the division of forestry of the department. (AUTH: Sec. 82-4-204, MCA; IMP, Sec. 82-4-233, 235.)

26.4.725 PERIOD OF RESPONSIBILITY (1) The minimum period of responsibility for reestablishing vegetation begins after the last seeding, planting, fertilizing, irrigating, or other activity related to final reclamation as determined by the department unless it can be demonstrated that such work is a normal husbandry practice that can be expected to continue as part of the postmining land use or if discontinuance of the practices after the liability period expires will not reduce the probability of permanent revegetation success. Normal husbandry practices are those approved by the federal regulatory authority as an amendment to the Montana state program approved pursuant to 30 U.S.C. 1253.

Section (2) remains the same.

(AUTH: Sec. 82-4-204, 205 MCA; IMP, Sec. 82-4-233, 235 MCA.)

26.4.1006 ROADS Sections (1) and (2) remain the same.

(3) Existing roads may be used for exploration in accordance with the following:

(a) All applicable federal, state, and local requirements must be met.

(b) Whenever the road is significantly altered, including, but not limited to, change of grade, widening, or change of route, the requirements of 26.4.601 through 26.4.607 must be met. ~~or~~ In addition, if use of the road contributes additional suspended solids to streamflow or runoff, ARM 26.4.1009 applies to all areas of the road that are altered or that result in additional contributions.

Subsection (c) remains the same.

Section (4) remains the same.

(AUTH: Sec. 82-4-204, MCA; IMP, Sec. 82-4-226, 231, 232, 233.)

26.4.1014 TEST PITS: APPLICATION REQUIREMENTS, REVIEW PROCEDURES, BONDING, AND ADDITIONAL PERFORMANCE STANDARDS

(1) In addition to all the other performance standards set forth in ARM 26.4.1005 through 26.4.1012, prospecting test pits

must also comply with the following requirements:

(a) Test pits or other excavations must be located out of stream channels (dry or flowing) unless otherwise approved by the department.

(b) Applications, permits, bonds, exploration activities, and related procedures, and reclamation relating to test pits or excavations that are to produce test shipments of minerals, must comply with sub-chapters 3 and 5 through ~~10~~ 9 and ARM 26.4.1101 through 26.4.1138 unless otherwise approved by the department and all relevant provisions of this subchapter.

(2) An application for a test pit prospecting permit must contain ~~an affidavit stating:~~

(a) ~~why~~ a demonstration that the test pit extraction method is necessary for development of a mining operation for which an operating permit application is to be submitted in the near future ~~and that the minerals are being extracted for testing purposes only.~~;

(b) a demonstration that any proposed commercial use or sale of mineral extracted during prospecting operations is solely for the purpose of testing the mineral;

(c) the name of the testing firm and the locations at which the mineral will be tested;

(d) if the mineral will be sold directly to, or commercially used directly by, the intended end user, a statement from the intended end user, or if the mineral is sold indirectly to the intended end user through an agent or broker, a statement from the agent or broker that includes:

(i) the specific reason for the test, including why the mineral may be so different from the end user's other mineral supplies as to require testing;

(ii) the amount of mineral necessary for the test and why a lesser amount is not sufficient; and

(iii) a description of the specific test that will be conducted;

(e) evidence that sufficient reserves of mineral are available to the person conducting exploration or its principals for future commercial use or sale to the intended end user, or agent or broker of such user identified above, to demonstrate that the amount of mineral to be removed is not the total reserve, but is a sampling of a larger reserve; and

(f) an explanation as to why other means of prospecting, such as core drilling, are not adequate to determine the quality of the mineral and the feasibility of developing a mining operation.

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

(AUTH: Sec. 82-4-204, 205, MCA; IMP, Sec. 82-4-226.)

26.4.1212 POINT SYSTEM FOR CIVIL PENALTIES AND WAIVERS

(1) The department shall assign points for each violation based upon the following criteria:

(a) History of recent violations. One point must be assigned for each violation contained in a notice of noncompliance and five points must be assigned for each violation contained in a cessation order. ~~Violations must be~~

~~counted for 1 year after the notice of noncompliance was issued. A violation for which the notice of noncompliance or cessation order has been vacated or which is subject to a pending administrative or judicial appeal must not be counted. Violations subject to administrative or judicial appeal must be counted for 1 year after resolution of the final appeal.~~ A violation may not be counted if the notice or order is subject to a pending administrative or judicial review or if the time to request review or to appeal any administrative or judicial decision has not expired. Thereafter it shall be counted for one year, except that no violation for which the notice or order has been vacated or dismissed may be counted.

Subsections (b) - (d) and Sections (2) - (5) remain the same. (AUTH: Sec. 82-4-204(3), 205(7), and 254(2), MCA; IMP, Sec. 82-4-254(2).)

3. The proposed rule would be inserted in ARM Title 26, Chapter 4 and provides as follows:

RULE I. REASSERTION OF JURISDICTION (1) Following final bond release pursuant to ARM 26.4.1114, 26.4.1115 and 26.4.1116, the department shall reassert jurisdiction under the act and this chapter if it is demonstrated that the bond release or statement of reasons made pursuant to 26.4.1115(4) was based upon fraud, collusion, or misrepresentation of a material fact. (AUTH: Sec. 82-4-205, MCA; IMP, Sec. 82-4-235, MCA.)

4. Rule I and the rule amendments are necessary to comply with directives of the Department of Interior, issued pursuant to 30 C.F.R. 732.17, requiring the Board to amend its coal mine regulatory rules to comply with the Surface Mine Control and Reclamation Act, P.L. 95-87, and federal regulations adopted pursuant to that act. In addition, several non-substantive changes are proposed to correct errors in or clarify the rules.

5. Interested parties may submit their data, views or arguments concerning the proposed rule in writing to Bonnie Lovelace, Chief, Coal and Uranium Bureau, Department of State Lands, Capitol Station, Helena, MT 59620. They must be postmarked or received no later than November 17, 1992.

6. If a person who is directly affected by the proposed adoption wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Bonnie Lovelace, Chief, Coal and Uranium Bureau, Department of State Lands, Capitol Station, Helena, MT 59620. A written request for hearing must be postmarked or received no later than November 17, 1992.

7. If the agency receives requests for a public hearing on the proposed adoption from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed adoption; from the administrative code committee of the

legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be one person based on 10 active coal mines in operation in Montana.

John F. North
Rule Reviewer

Dennis D. Casey
Commissioner

Certified to the Secretary of State October 5, 1992.

BEFORE THE DEPARTMENT
OF PUBLIC SERVICE REGULATION
OF THE STATE OF MONTANA

In the Matter of Proposed Adoption of Rules on Integrated Least Cost Planning for Electric Utilities and Proposed Amendment of Rules 38.5.1902 and 38.5.1905 Pertaining to Cogeneration and Small Power Production.	)))))))	NOTICE OF PUBLIC HEARING

TO: All Interested Persons

1. On August 27, 1992 the department published a notice at page 1846 of the Montana Administrative Register, Issue No. 16, of the proposed adoption and amendment of the above-captioned rules. The notice of proposed agency action is amended as follows because Montana Power Company, Montana-Dakota Utilities Company and PacifiCorp have requested a public hearing.

2. On November 10, 1992 at 10:00 a.m., a public hearing will be held in the Bollinger Room, Public Service Commission, 1701 Prospect Avenue, Helena, Montana, to consider the adoption of new rules establishing policy guidelines on integrated least cost resource planning for electric utilities in Montana and amendment of rules 38.5.1902 and 38.5.1905.

3. Interested persons may present their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to Robin A. McHugh, Staff Attorney, 1701 Prospect Avenue, Helena, Montana 59620, and must be received no later than November 12, 1992.

4. Chairman Danny Oberg has been designated to preside over and conduct the hearing.

5. The Montana Consumer Counsel, 34 West Sixth Avenue, Helena, Montana, (406) 444-2771, is available and may be contacted to represent consumer interests in this matter.

Danny Oberg, Chairman

Reviewed By

CERTIFIED TO THE SECRETARY OF STATE OCTOBER 5, 1992.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 1.2.419 regarding scheduled dates for the Montana Administrative Register	) NOTICE OF PROPOSED AMENDMENT OF ARM 1.2.419 FILING, COMPILING, PRINTER PICKUP AND PUBLICATION OF THE MONTANA ADMINISTRATIVE REGISTER

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On November 16, 1992, the office of the Secretary of State proposes to amend ARM 1.2.419 regarding the scheduled dates for the Montana Administrative Register.

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

1.2.419 FILING, COMPILING, PRINTER PICKUP AND PUBLICATION SCHEDULE FOR THE MONTANA ADMINISTRATIVE REGISTER

(1) The scheduled filing dates, time deadlines, compiling dates, printer pickup dates and publication dates for material to be published in the Montana Administrative Register are listed below:

199~~2~~93 Schedule

Filing	Compiling	Printer Pickup	Publication
January ~~6~~4	January ~~7~~5	January ~~8~~6	January ~~1~~614
January ~~1~~715	January ~~2~~119	January ~~2~~220	January ~~3~~028
February ~~3~~1	February ~~4~~2	February ~~5~~3	February ~~1~~311
February ~~1~~812	February ~~1~~916	February ~~2~~017	February ~~2~~725
March ~~2~~1	March ~~3~~2	March ~~4~~3	March ~~1~~211
March ~~1~~615	March ~~1~~716	March ~~1~~817	March ~~2~~625
April ~~6~~5	April ~~7~~6	April ~~8~~7	April ~~1~~615
April ~~2~~019	April ~~2~~120	April ~~2~~221	April ~~3~~029
May ~~4~~3	May ~~5~~4	May ~~6~~5	May ~~1~~413
May ~~1~~817	May ~~1~~918	May ~~2~~019	May ~~2~~827
June 1	June 2	June 3	June ~~1~~110
June ~~1~~514	June ~~1~~615	June ~~1~~716	June ~~2~~524
July ~~6~~2	July ~~7~~6	July ~~8~~7	July ~~1~~615
July ~~2~~019	July ~~2~~120	July ~~2~~221	July ~~3~~029
August ~~3~~2	August ~~4~~3	August ~~5~~4	August ~~1~~312
August ~~1~~716	August ~~1~~817	August ~~1~~918	August ~~2~~726
~~August 31~~			
September 3	September ~~1~~7	September ~~2~~8	September ~~1~~016
September ~~1~~420	September ~~1~~521	September ~~1~~622	September ~~2~~430
October ~~5~~4	October ~~6~~5	October ~~7~~6	October ~~1~~514
October ~~1~~918	October ~~2~~019	October ~~2~~120	October ~~2~~928

~~October 30~~
November 1 November 2 November ~~1~~3 November ~~1~~210
November ~~1~~615 November ~~1~~716 November ~~1~~817 November ~~2~~524
November~~3~~029 ~~December 1~~ December~~2~~1 December ~~1~~09
November 30
December ~~1~~413 December ~~1~~514 December ~~1~~615 December ~~2~~423

(3) remains the same.
AUTH: Sec. 2-4-312, MCA IMP, Sec. 2-4-312, MCA

3. The rule is proposed to be amended to set dates pertinent to the publication of the Montana Administrative Register during 1993.

4. Interested persons may submit their data, views or arguments concerning the proposed amendment in writing to:

Kathy Lubke, Chief
Administrative Rules Bureau
Secretary of State's Office
Room 225, Capitol Building
Helena, MT 59620
no later than November 13, 1992.

MIKE COONEY
Secretary of State

GARTH JACOBSON
Rule Reviewer

Dated this 5th day of October, 1992.

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

In the matter of the adoption of Rule I pertaining to statistical sampling audits	))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED ADOPTION OF RULE I PERTAINING TO STATISTICAL SAMPLING AUDITS

TO: All Interested Persons

1. On November 4, 1992, at 1:30 p.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana to consider the proposed adoption of Rule I pertaining to statistical sampling audits.

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

[RULE I] STATISTICAL SAMPLING AUDITS (1) At the option of the department, the amount of money erroneously paid to a provider for any given period of time may be determined by the use of statistical sampling and extrapolation, rather than by an audit of 100% of the claims submitted by the provider during the period of time under review.

(2) If the department chooses to use statistical sampling and extrapolation to determine an overpayment, it will not audit every claim for which the provider has been paid during the review period. Instead the department will use a statistical method to draw a random sample of claims for the review period time and will audit these claims. From the dollar amount overpaid to the provider in this sample, the department will calculate the provider's error rate. The department will then calculate the total overpayment for the review period using a computer program which incorporates a statistical formula.

(3) If the department chooses to use statistical sampling and extrapolation, it shall notify the provider of its intention to do so. When the sampling and extrapolation process is completed, the department shall provide the provider with information regarding the sample size, the sample selection method, and the formulas and calculations used in the extrapolation.

(4) It is presumed that the overpayment amount determined by the use of statistical sampling and extrapolation is correct. However, the provider may rebut this presumption by presenting evidence that the sampling and extrapolation process used by the department was invalid.

(5) A provider who disagrees with an overpayment determined by statistical sampling and extrapolation may appeal by means of the fair hearing procedures set forth in ARM 46.12.409.

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-6-101 and 53-6-111 MCA

3. The department is required by federal statute and regulations governing the Medicaid program at 42 U.S.C. 1396b (d)(2)(C) and 42 C.F.R. 433.312(a) respectively to recover all overpayments to Medicaid providers. It also has the authority to recover such overpayments pursuant to sections 53-6-101 and 53-6-111, MCA, and ARM 46.12.303(9)(c). The department's usual method of investigating a possible overpayment to a Medicaid provider is to audit all of the claims submitted by the provider during the period of time in question. Such an audit will show whether the provider was overpaid, and, if so, the amount of the overpayment which the department is entitled to recover.

However, in some cases it may be excessively burdensome to both the provider and the department to audit every claim, for example, due to the high volume of claims involved. Thus the department proposes in some cases to use a statistically sound method of random sampling to determine the provider's error rate, that is, the percentage of claims the provider submitted which resulted in an overpayment for the period of time in question. From this error rate the department can then project with a high degree of accuracy the total amount the provider has been overpaid for all claims in that period of time without the time-consuming and labor intensive task of auditing every claim submitted.

The adoption of this rule authorizing the use of statistical sampling and extrapolation will therefore allow the department to meet the requirement of recovering all Medicaid overpayments in a cost effective and timely manner.

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 Russell E. Cater, Chief Legal Counsel, Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, MT 59604-4210, no later than November 12, 1992.

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

Dawn Sliva
Rule Reviewer

Julia E. Robinson
Director, Social and Rehabilitation Services

Certified to the Secretary of State October 5, 1992.

BEFORE THE BOARD OF REALTY REGULATION
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment of a rule pertaining to applications for license	)	NOTICE OF AMENDMENT OF 8.58.406A APPLICATION FOR LICENSE--SALESPERSON AND BROKER

TO: All Interested Persons:

1. On July 30, 1992, the Board of Realty Regulation published a notice of proposed amendment of the above-stated rule at page 1545, 1992 Montana Administrative Register, issue number 14.

2. The Board has amended the rule exactly as proposed.

3. No comments or testimony were received.

BOARD OF REALTY REGULATION
JACK MOORE, CHAIRMAN

BY: Anne M. Bartos
ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

Anne M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, October 5, 1992.

BEFORE THE BOARD OF INVESTMENTS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the repeal and adoption of new rules pertaining to the Municipal Finance Consolidation Act	)))))	NOTICE OF REPEAL AND ADOPTION OF NEW RULES PERTAINING TO THE MUNICIPAL FINANCE CONSOLIDATION ACT (INCLUDING NEW RULES IMPLEMENTING THE INTERCAP PROGRAM)

TO: All Interested Persons:

1. On August 13, 1992, the Board of Investments (Board) published a notice of public hearing to consider the proposed repeal and adoption of new rules pertaining to the Municipal Finance Consolidation Act, including new rules implementing the Intercap Program, at page 1715, Montana Administrative Register, issue number 15. The reason for the proposed action to repeal and adopt new rules was that the programs under the Municipal Finance Consolidation Act (Title 17, Chapter 5, Part 16) have evolved enough so as to justify a rewrite of the implementing rules. The Board believes that the rules must reflect the current practices regarding the programs, and has repealed the rules accordingly.

2. The Board has repealed ARM 8.97.701 through 8.97.711 and 8.97.901 through 8.94.904 exactly as proposed. The Board has adopted proposed new rules I through X (ARM 8.97.715 through 8.97.724), XI through XVII (8.97.910 through 8.97.916) and XIX through XXI (8.97.918 through 8.97.920) exactly as proposed. The Board has adopted new rule XVIII (8.97.917) as proposed but with the following change:

"XVIII INTERCAP PROGRAM-GENERAL OBLIGATION BONDED DEBT - DESCRIPTION - REQUIREMENTS (1) and (1)(a) will remain the same as proposed.

(b) The loan limit may not exceed ~~$500,000~~ $1,000,000;

(c) will remain the same as proposed."

Auth: Sec. 17-5-1605, MCA; IMP, Sec. 17-5-1606, MCA

3. The Board has thoroughly considered all comments and testimony received. One individual submitted an oral and written comment. The comment and the Board's response is as follows:

COMMENT: Mr. David Ewer, Bond Program Officer, was the only individual who offered any testimony on the rule. Both his oral testimony and written comment pertained to proposed rule "XVIII INTERCAP PROGRAM-GENERAL OBLIGATION BONDED DEBT - DESCRIPTION - REQUIREMENTS." Mr. Ewer recommended that section (1)(b) of the rule be amended to increase the loan limit for general obligation bonded debt from $500,000 to $1,000,000. Mr. Ewer testified that general obligation debt of the cities, towns, counties and school districts is approved by a citizen vote and that the full faith and credit of the issuer backs the repayment. Mr. Ewer also testified that this form of debt is the safest that a bondholder can hold.

RESPONSE: For the reasons offered by Mr. Ewer to increase the loan limit for general obligation bonded debt, the Board amended the rule accordingly.

4. No other comments or testimony were received.

BOARD OF INVESTMENTS
WARREN VAUGHAN, CHAIRMAN

BY: Anne M. Bartos
ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

BY: Anne M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, October 5, 1992.

BEFORE THE DEPARTMENT OF
FAMILY SERVICES OF THE
STATE OF MONTANA

In the matter of the amendment of Rules 11.18.107, 11.18.113, 11.19.103, and 11.19.107 pertaining to licensing of community homes for the developmentally and physically disabled	NOTICE OF AMENDMENT OF RULES 11.18.107, 11.18.113, 11.19.103, AND 11.19.107 PERTAINING TO THE LICENSING OF COMMUNITY HOMES FOR THE DEVELOPMENTALLY AND PHYSICALLY DISABLED

TO: All Interested Persons

1. On April 16, 1992, the department published notice at page 741 of the 1992 Montana Administrative Register, issue no. 7, of the proposed amendment of Rules 11.18.107, 11.18.113, 11.19.103, and 11.19.107 pertaining to licensing of community homes for the developmentally and physically disabled. No hearing was contemplated.

2. Upon receipt of a request for hearing from the Department of Social and Rehabilitation Services, the department published notice of hearing on the above mentioned amendments on June 11, 1992, at page 1197 of the 1992 Montana Administrative Register, issue no. 11, setting a hearing date for July 7, 1992.

3. A public hearing was held on July 7, 1992, and was attended by department representatives, and by Sue Jackson, a representative from the Department of Social and Rehabilitation Services.

4. Rules 11.18.113 and 11.19.107 are amended as proposed. Rules 11.18.107 and 11.19.103 are amended as proposed, with the following changes:

11.18.107 LICENSE REQUIRED (1) The department will issue a license for a community home to any license applicant meeting requirements established by these rules. However, the department may waive in whole or in part procedures for verifying compliance with the requirements of these rules upon receiving written documentation that:

(a) another state agency has already licensed or otherwise approved the operation of the community home, or

(b) a national or state recognized certification process has already been completed and has resulted in certification, accreditation, or other approval of the operation of the community home.

(c) Waiver of procedures for checking compliance as provided in this subsection may occur only where procedures proposed to be waived are clearly already provided for in the accreditation or approval process relied on by the licensing representative. Waiver of procedures must not result in the reduction of standards

imposed through licensing requirements.

Subsections (2) through (8) remain the same.

AUTH: Sec. 53-20-305, MCA. IMP: Sec. 53-20-305, MCA.

11.19.103 PHYSICALLY DISABLED GROUP HOMES, LICENSE REQUIRED (1) The department will issue a license for a community home to any license applicant meeting requirements established by these rules. However, the department may waive in whole or in part procedures for verifying compliance with the requirements of these rules upon receiving written documentation that:

(a) another state agency has already licensed or otherwise approved the operation of the community home, or

(b) a national or state recognized certification process has already been completed and has resulted in certification, accreditation, or other approval of the operation of the community home.

(c) Waiver of procedures for checking compliance as provided in this subsection may occur only where procedures proposed to be waived are clearly already provided for in the accreditation or approval process relied on by the licensing representative. Waiver of procedures must not result in the reduction of standards imposed through licensing requirements.

Subsections (2) through (6) remain the same.

AUTH: Sec. 52-4-205, MCA. IMP: Sec. 52-4-203, MCA.

5. The department has thoroughly considered all written and verbal comments received:

COMMENT: The amendments should state more clearly that the department does not intend to reduce the requirements which must be met.

RESPONSE: The language added in the notice is intended to clarify that the department intends that all licensing requirements remain in effect and be enforced. The amendments provide for waiver of licensing "procedures" for checking compliance with requirements, they do not provide for waiver of the requirements themselves. To safeguard against an erroneous interpretation of the amendments, the additional language in this notice sets out that waiver of procedures may only occur where it is clear that checking for compliance with a particular requirement would be duplicative of efforts provided by an approving or accrediting agency or organization.

COMMENT: The amendments as proposed appear to jeopardize the assurances that the State of Montana provides to the federal Health Care Financing Administration concerning the health and safety of the residential facilities in which recipients of medicaid home and community services may reside.

RESPONSE: The language added in this notice is designed to ensure

that all licensing requirements continue in full force and effect. Therefore, the amendment will not jeopardize favorable federal review for implementation of state health and safety requirements.

COMMENT: Many health and safety issues addressed by existing licensing processes may be neglected if the rules are amended as proposed. In particular, nothing in the amendments indicates that on-site visits must occur.

RESPONSE: Nothing in the current rules requires on-site visits. What is required is a licensing study. As a matter of professional practice, an on-site inspection is required by department policy upon application or renewal of a license. To abrogate this requirement, a change in policy must occur.

COMMENT: Licensing of the homes is a cooperative effort between accrediting organziations and state/local agencies. The cooperative effort ensures that proper expertise is utilized. If on-site inspections by the sanitarian and fire marshal may be waived under the amendment, home safety may be endangered. Health and safety issues that are currently addressed will not be addressed under the amendments.

RESPONSE: The amendments, as clarified herein, are designed to recognize and utilize expertise outside the department. Requirements for inspections by sanitarians and representatives of the fire marshal are not affected by the amendments.

COMMENT: Problems with the amendments include:

1. DD Division of SRS only evaluates homes for training and contract programs. No environmental, safety, or comfort checks are performed.
2. No accreditation process may be relied on, in fact, accreditation processes rely on department licensing.
3. While there may be some duplication, no entity except the department evaluates these homes to ensure they provide a safe and comfortable setting for the disabled.

RESPONSE: The amendments are justified by the presence of some duplication. In the absence of accreditation or other state agency evaluation on a particular health or safety issue, department licensing representatives remain authorized to review the home as to compliance with licensing requirements covering that particular issue, and approve or deny based upon the licensing requirements.

COMMENT: National accreditation surveys done by the Accreditation Council or the Commission on Accreditation of Rehabilitation Facilities may occur as infrequently as every three years. Those reviewing for accreditation actually rely on licensing by the department in determining whether the home should receive accreditation. Moreover, surveys focus only on programmatic and training aspects of residential services, and facility reviews under the surveys are perfunctory. Similarly, the review of homes

by the DD Division of SRS, although occurring annually, covers safety issues in only a broad sense. Again, the focus is programs for the residents. Department licensing workers have appropriate knowledge of standards on safety, and the federal government relies on reports of department workers. The experience in licensing these facilities possessed by department workers is utilized under the current rules. The department workers provide an important balance to the system to ensure health and safety of individuals served under the contracts. The DD Division only reviews contracts with local providers to provide services.

RESPONSE: Under the amendments, licensing representatives may find that checks made through the surveys are appropriately relied on in regard to department program licensing requirements. Similarly, review by DD Division of SRS on an annual basis may provide some duplication of department licensing requirements on program and training issues. The department will continue to utilize experience of licensing workers through licensing of these facilities. The amendments do not propose to eliminate department licensing of the homes.

COMMENT: No duplication of services occurs because no other licensing or certification processes exist to replace current department licensing. SRS has no staff to perform licensing reviews. The amendments may undermine departmental duties imposed by statutes requiring that the department license homes.

RESPONSE: The amendments only give licensing representatives the option of foregoing duplication of procedures. Commentators have documented that some duplication exists. The department will continue to fulfill its statutory duties by licensing the homes.

DEPARTMENT OF FAMILY SERVICES

Tom Olsen, Director

John Melcher, Rule Reviewer

Certified to the Secretary of State, October 5, 1992.

BEFORE FISH, WILDLIFE AND PARKS COMMISSION
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 12.6.901 pertaining to the water safety regulations	)))))	NOTICE OF AMENDMENT OF RULE 12.6.901

To: All Interested Persons

1. On August 13, 1992, the Fish, Wildlife and Parks Commission (commission) proposed an amendment to rule 12.6.901 to adopt a water safety regulation on a portion of the Clearwater River by closing the designated section to all motor-propelled water craft. This notice was published at page 1727 of the 1992 Montana Administrative Register, issue number 15. The rule notice listed four other options that the commission was considering and asked for public comments on these options also. After considering the public comments, which are summarized in paragraph 3, the commission decided to adopt a no wake restriction. The commission determined that a no wake restriction would best address safety concerns with the least impact on present recreational users of motor-propelled water craft.

2. The commission has amended Rule 12.6.901 with the following changes:

12.6.901 WATER SAFETY REGULATIONS (1) remains the same.

(a) The following waters are closed to use for any motor-propelled water craft except in case of use for official patrol, search and rescue, maintenance of hydroelectric projects and related facilities with prior notification by the utility, or for scientific purposes, or for special events such as testing motorized watercraft by prior written approval of the director;

Beaverhead County:	(A)	Big Hole River
Big Horn County:	(A)	Arapooish fishing access area
	(B)	That portion of the Bighorn River from Afterbay Dam to the Big Horn access area.
Cascade County:	(A)	Smith River
	(B)	Pelican Point fishing access ponds
	(C)	That portion of the Missouri River from the Burlington Northern Railway Bridge No. 119.4 at Broadwater Bay in Great Falls to Black

		Eagle and that portion of the Missouri River from the Warden Bridge on 10th Avenue South in Great Falls to the floater take-out facility constructed near Oddfellows Park at Broadwater Bay as posted.
Custer County:	(A)	Branum Pond
Deer Lodge County:	(A)	Big Hole River
Gallatin County:	(A)	Bozeman Ponds
	(B)	East Gallatin Pond
Granite County:	(A)	Bear Mouth rest area pond
Hill County:	(A)	Bearpaw Lake
Jefferson County:	(A)	Park Lake
Lewis & Clark County:	(A)	Wood Lake
	(B)	Spring Meadow Lake
Madison County:	(A)	Big Hole River
Meagher County:	(A)	Forest Lake
	(B)	Smith River
Missoula County:	(A)	Frenchtown Pond
	(B)	Harpers Lake
	~~(C) The portion of Clearwater River from Boy Scout Road Bridge north of Seeley Lake to the mouth of Clearwater River at the north end of Seeley Lake~~	
Ravalli County:	(A)	Twin Lakes
Richland County:	(A)	Gartside Reservoir
Silver Bow County:	(A)	Big Hole River
Toole County:	(A)	Henry Reservoir
	(B)	Fitzpatrick Lake
Yellowstone County:	(A)	Lake Elmo

(b) remains the same.

(c) The following waters are limited to a controlled no wake speed. No wake speed is defined as a speed whereby there is no "white" water in the track or path of the vessel or in created waves immediate to the vessel:

Big Horn County:	(A)	Tongue River Reservoir as buoyed in the marina area at Campers Point;
Broadwater County:	(A)	on Canyon Ferry Reservoir: White Earth and Goose Bay, within 300 feet of dock or as buoyed;
Carbon County:	(A)	on Cooney Reservoir: all of Willow Creek arm as buoyed;
Daniels County:	(A)	Whitetail Reservoir;
Fergus County:	(A)	upper & lower Carter Ponds;
Flathead County:	(A)	on Flathead Lake: Bigfork Bay;
	(B)	Beaver Lake (near Whitefish) 5:00 a.m. to 10:00 a.m. and

7:00 p.m. to 11:00 p.m. each day;

(C) Whitefish River from its confluence with Whitefish Lake to the bridge on the JP Road;

Gallatin County: (A) on all of Hyalite Reservoir;

Hill County: (A) Beaver Creek Reservoir;

(B) Fresno Reservoir: the area around the Fresno boat club docks, public boat ramp area, swimming and beach area as buoyed and signed.

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 Boatramp;

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

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

(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: (A) Savage Lake during the hours of 5:00 a.m. to 10:00 a.m. and from 7:00 p.m. to 11:00 p.m. each day;

(B) Lake Koocanusa: Cripple Horse Bay, within 300 feet of dock or as buoyed.

Madison County: (A) on Harrison Lake (Willow Creek Reservoir): all of Willow Creek Arm and Norwegian Arm as buoyed 6:00 p.m. to 11 a.m.

Missoula County: (A) Clearwater River from the outlet of Seeley Lake to the first bridge downstream from Camp Paxson swim dock;

(B) on Holland Lake: Holland Lake Lodge and the Bay Loop campground within 300 feet or as buoyed.

(C) The portion of Clearwater River from Boy Scout Road Bridge

north of Seeley Lake to the mouth of Clearwater River at the north end of Seeley Lake

(d) through (2) remain the same.

3. The public comments received are as follows:

Comment: The Canoe Trail should be designated a non-motorized use area to provide a safe and quiet experience for users.

Response: The designation of a "No Wake Area" will address safety considerations and noise levels, since motorized craft will have to travel at the slowest speed possible to comply.

Comment: Motorized craft disturb the wildlife and reduce viewing opportunities.

Response: The Commission's authority to regulate use is limited to public health, public safety, and protection of property. Rulemaking authority does not address quality of recreation. The commission does not have data to support a finding of any negative impacts on wildlife resulting from motorized use.

Comment: Motorized craft create significant erosion of the banks and beaver and muskrat habitat is destroyed.

Response: A "no wake" designation addresses these concerns.

Comment: Common loons nest near the mouth of the river and motorized use presents a threat to loon chicks in this nursery area.

Response: This area is outside the proposed rule boundary; however, this concern is addressed for the river, because the "no wake" designation will allow the least potential for negative impacts.

Comment: Jet skis should be prohibited from using the river.

Response: The Commission's "no wake" designation applies to all water craft, and no distinction on type of craft is warranted.

FISH, WILDLIFE & PARKS COMMISSION

Robert N. Lane
Rule Reviewer

K.L. Cool
Secretary

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

In the matter of the amendment of rules 16.8.1307, 16.8.1308, and 16.8.1906, and the adoption of new Rule I dealing with open burning permit fees for conditional and emergency open burning permits.	NOTICE OF AMENDMENT OF RULES AND ADOPTION OF NEW RULE I (16.8.1907) (Air Quality)

To: All Interested Persons

1. On August 13, 1992, the department published a notice at page 1732 of the 1992 Montana Administrative Register, Issue No. 15, of the proposed amendment and adoption of the above-captioned rules.

2. The board has amended and adopted the rules as proposed with no changes.

3. No comments were received.

DENNIS IVERSON, Director

Certified to the Secretary of State October 5, 1992.

Reviewed by:

Eleanor Parker, Attorney

BEFORE THE DEPARTMENT OF CORRECTIONS AND
HUMAN SERVICES OF THE STATE OF MONTANA

In the matter of the amendments of ARM 20.7.201 through 20.7.203, setting forth the resident reimbursement at community correctional centers.	) NOTICE OF AMENDMENT) OF ARM 20.7.201) THROUGH 20.7.203.))

TO: ALL INTERESTED PERSONS

1. On July 16, 1992, the Department of Corrections and Human Services published a Notice of Proposed Amendment to ARM 20.7.201 through 20.7.203 concerning the resident reimbursement at community correctional centers at page 1454 of the Montana Administrative Register, issue number 13.

2. The Department of Corrections and Human Services has amended ARM 20.7.201 through 20.7.203 exactly as proposed.

3. The following comment was received.

Comment: The staff of the Administrative Code Committee stated the initial notice did not contain a sufficient statement of reasonable necessity.

Response: The necessity for the rule change is twofold:

1. Due to the recognition of pre-release as a viable option to imprisonment, the State Legislature, during the 1991 regular session, approved funding for the establishment of an additional pre-release center. This decision was further influenced by overcrowded conditions at the penitentiary. In the final hours of the session, $300,000 was removed from the appropriation in order to help balance the state budget. The expectation, however, was that a total of 150 private pre-release beds would be operational in Montana's communities as a result of the appropriation. Therefore, it is necessary and reasonable that the inmate's contribution toward the cost of subsistence be increased.

2. The rules were originally written and adopted in 1982. Inflation rates and economic conditions, including minimum wage, have substantially changed in eleven years and it is reasonable to expect those inmates living and working in Montana communities to contribute toward the cost of their care at a level considerably equal to that established in 1982.

JAMES B. OBIE
Rule Reviewer
Human Services

CURT CHISHOLM, Director
Department of Corrections &

Certified to the Secretary of State September 22nd 1992.

BEFORE THE DEPARTMENT OF CORRECTIONS
AND HUMAN SERVICES
STATE OF MONTANA

In the matter of the amendment of a rule pertaining to application for voluntary admissions to the state hospital	)))))	CORRECTED NOTICE OF ARM 20.14.302 DEFINITIONS (VOLUNTARY ADMISSIONS TO MONTANA STATE HOSPITAL)

TO: ALL INTERESTED PERSONS

1. On May 14, 1992, the Department of Corrections and Human Services published a notice of public hearing regarding the proposed amendment of the above-stated rule (MAR Notice No. 20-14-8) at page 979, 1992 Montana Administrative Register, issue number 9. The Department subsequently adopted the proposed amendment with changes at page 1483, 1992 Montana Administrative Register, issue number 13.

2. Language that was meant to be stricken from ARM 20.14.302 was inadvertently omitted from the Notice of Public Hearing and the Notice of Adoption. ARM 20.14.302 (8) will appear as follows in the replacement pages. (The language to be stricken is shown below.) Subsection (1) and (10) will remain the same as shown in the Notice of Public Hearing and the Notice of Adoption.

20.14.302 DEFINITIONS (1)...
(2) through (7) remain the same.
(8) Designee means a ~~professional~~ person ~~,~~ employed by the center, who is appointed by the director to act on his/her behalf for the purposes of this chapter.
(9) and (10) remain the same.

3. The replacement pages for this rule were submitted for the September 30, 1992, filing date.

CURT CHISHOLM, Director
Department of Corrections and
Human Services

JAMES OBIE
Rule Reviewer

Certified to the Secretary of State October 2, 1992.

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

In the matter of the adoption of [Rule I] 46.12.5001 through [Rule IV] 46.12.5004, [Rule V] 46.12.5007, [Rule VI] 46.12.5010, [Rule VII] 46.12.5011 and [Rule VIII] 46.12.5014 pertaining to the passport to health program	))))))))	NOTICE OF THE ADOPTION OF [RULE I] 46.12.5001 THROUGH [RULE IV] 46.12.5004, [RULE V] 46.12.5007, [RULE VI] 46.12.5010, [RULE VII] 46.12.5011 AND [RULE VIII] 46.12.5014 PERTAINING TO THE PASSPORT TO HEALTH PROGRAM

TO: All Interested Persons

1. On May 14, 1992, the Department of Social and Rehabilitation Services published notice of the proposed adoption of [Rule I] 46.12.5001 through [Rule IV] 46.12.5004, [Rule V] 46.12.5007, [Rule VI] 46.12.5010, [Rule VII] 46.12.5011 and [Rule VIII] 46.12.5014 pertaining to the passport to health program at page 998 of the 1992 Montana Administrative Register, issue number 9.

2. The department has adopted [RULE I] 46.12.5001, PASSPORT TO HEALTH PROGRAM: AUTHORITY; and [RULE VII] 46.12.5011, PASSPORT TO HEALTH PROGRAM: REIMBURSEMENT as proposed.

3. The department has adopted the following rules as proposed with the following changes:

[RULE II] 46.12.5002 PASSPORT TO HEALTH PROGRAM: DEFINITIONS (1) "Authorization" means THE PRIMARY CARE PROVIDER APPROVES DELIVERY TO AN ENROLLEE OF A SERVICE DEFINED IN [RULE V] 46.12.5007 PROVIDED BY ANOTHER PROVIDER AND provid~~ing~~ES the primary care provider's medicaid number or unique physician identifying number (UPIN) to ~~another~~ the other treating provider. THE PRIMARY CARE PROVIDER SHALL ESTABLISH PARAMETERS OF THE AUTHORIZATION.

Subsection (2) remains as proposed.

(3) "Clinic" means a federally-qualified health center, a rural health clinic, an Indian health service clinic on a reservation, or any other ~~public health entity~~ CLINIC AS DEFINED IN ARM 46.12.570 WHICH CAN MEET THE REQUIREMENTS OF [RULE VI] 46.12.5010.

Subsections (4) through (8) remain as proposed.

(9) "Primary care" means medical care provided at a person's first point of contact with the health care system, except for emergencies. It includes treatment of illness and injury, health promotion AND EDUCATION, identification of

persons at special risk, early detection of serious disease, PROMOTION OF PREVENTIVE HEALTH CARE, and referral to specialists when appropriate.

Subsections (10) and (11) remain as proposed.

AUTH: Sec. 53-2-201 and 53-6-113 MCA
IMP: Sec. 53-6-116 MCA

[RULE III] 46.12.5003 PASSPORT TO HEALTH PROGRAM: ELIGIBILITY Subsections (1) through (2)(j) remain as proposed.

(k) is exempted by the department from participation because of hardship; ~~or~~

(l) is receiving medicaid home and community services~~.~~; or

(m) IS IN THE MEDICAID RESTRICTED CARD PROGRAM.

Subsections (3) through (5) remain as proposed.

AUTH: Sec. 53-2-201 and 53-6-113 MCA
IMP: Sec. 53-6-116 and 53-6-117 MCA

[RULE IV] 46.12.5004 PASSPORT TO HEALTH PROGRAM: ENROLLMENT IN THE PROGRAM Subsections (1) and (2) remain as proposed.

(3) If the recipient does not choose a provider within ~~60~~ 30 days of the ~~initial~~ second notification, the department may designate a primary care provider for the recipient.

Subsection (4) remains as proposed.

(5) An enrollee may once a month choose a new primary care provider.

(a) The change is effective when the name of the new primary care provider appears on the enrollee's medicaid card.

(b) THE FREQUENCY OF A RECIPIENT'S REQUEST TO CHANGE PROVIDERS WILL BE MONITORED BY THE DEPARTMENT.

(c) A RECIPIENT WHO FREQUENTLY CHANGES PRIMARY CARE PROVIDERS WITHOUT GOOD CAUSE MAY BE REMOVED FROM THE PROGRAM AND BE PLACED IN THE MEDICAID RESTRICTED CARD PROGRAM AS PROVIDED IN ARM 46.12.216.

Subsection (6) remains as proposed.

AUTH: Sec. 53-2-201 and 53-6-113 MCA
IMP: Sec. 53-6-116 MCA

[RULE V] 46.12.5007 PASSPORT TO HEALTH PROGRAM: SERVICES Subsections (1) and (1)(a) remain as proposed.

(i) inpatient hospital services AS DEFINED IN ARM 46.12.503;

(ii) outpatient hospital EMERGENCY ROOM AND SURGERY services AS DEFINED IN ARM 46.12.506;

(iii) ambulatory surgical center services AS DEFINED IN ARM 46.12.570;

(iv) physician AND PHYSICIAN ASSISTANT services AS DEFINED IN ARM 46.12.2001;

(v) federally qualified health center services AS DEFINED IN ARM 46.12.1701;

(vi) rural health clinic services AS DEFINED IN ARM 46.12.1601;

(vii) nurse specialist services AS DEFINED IN ARM 46.12.2011;

(viii) Indian health clinic services; ~~and~~

(ix) the following EPSDT/kids count services for enrollees under 21 years of age:

(A) ADMISSION FOR inpatient psychiatric ~~treatment~~ FACILITY SERVICES AS DEFINED IN ARM 46.12.590;

(B) WELL CHILD screening services AS DEFINED IN ARM 46.12.514; and

(C) chiropractic services~~.~~ AS DEFINED IN ARM 46.12.515;

(x) PHYSICIAN SERVICES PROVIDED THROUGH A DEVELOPMENTAL DIAGNOSTIC CENTER AS DEFINED IN ARM 46.12.570;

(xi) PUBLIC HEALTH DEPARTMENTS AS DEFINED IN ARM 46.12.570; AND

(xii) ORGAN TRANSPLANTATION SERVICES AS DEFINED IN ARM 46.12.583.

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

(2) The primary care provider's authorization is not required for any OF THE FOLLOWING medicaid services; ~~not listed in (1).~~

(a) SWING BED HOSPITAL SERVICES AS DEFINED IN ARM 46.12.510;

(b) PODIATRY SERVICES AS DEFINED IN ARM 46.12.520;

(c) OUTPATIENT PHYSICAL THERAPY SERVICES AS DEFINED IN ARM 46.12.525;

(d) SPEECH THERAPY SERVICES AS DEFINED IN ARM 46.12.530;

(e) AUDIOLOGY SERVICES AS DEFINED IN ARM 46.12.535;

(f) HEARING AID SERVICES AS DEFINED IN ARM 46.12.540;

(g) OCCUPATIONAL THERAPY SERVICES AS DEFINED IN ARM 46.12.545;

(h) HOME HEALTH SERVICES AS DEFINED IN ARM 46.12.550;

(i) PERSONAL CARE SERVICES AS DEFINED IN ARM 46.12.555;

(j) HOME DIALYSIS SERVICES FOR END STAGE RENAL DISEASE AS DEFINED IN ARM 46.12.560;

(k) PRIVATE DUTY NURSING SERVICES AS DEFINED IN ARM 46.12.565;

(l) MENTAL HEALTH CENTERS AS DEFINED IN ARM 46.12.570;

(m) FAMILY PLANNING SERVICES PROVIDED BY A LOCAL DELEGATE AGENCY OF THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES AS DEFINED IN ARM 46.12.575;

(n) LICENSED CLINICAL PSYCHOLOGISTS SERVICES AS DEFINED IN ARM 46.12.580;

(o) LICENSED CLINICAL SOCIAL WORK SERVICES AS DEFINED IN ARM 46.12.585;

(p) DENTAL SERVICES AS DEFINED IN ARM 46.12.601;

(q) LICENSED PROFESSIONAL COUNSELOR SERVICES AS DEFINED IN ARM 46.12.620;

(r) OUTPATIENT DRUGS SERVICES AS DEFINED IN ARM 46.12.702;

(s) PROSTHETIC DEVICES, DURABLE MEDICAL EQUIPMENT AND MEDICAL SUPPLIES AS DEFINED IN ARM 46.12.801;

(t) OPTOMETRIC SERVICES AS DEFINED IN ARM 46.12.901;

(u) EYEGLASSES AS DEFINED IN ARM 46.12.911;

(v) TRANSPORTATION AND PER DIEM AS DEFINED IN ARM 46.12.1001;

(w) SPECIALIZED NONEMERGENCY MEDICAL TRANSPORTATION AS DEFINED IN ARM 46.12.1011;

(x) AMBULANCE SERVICES AS DEFINED IN ARM 46.12.1021;

(y) SKILLED CARE FACILITY SERVICES AS DEFINED IN ARM 46.12.1103;

(z) INTERMEDIATE CARE FACILITY SERVICES AS DEFINED IN ARM 46.12.1104;

(aa) INSTITUTION FOR MENTAL DISEASE SERVICES AS DEFINED IN ARM 46.12.1108;

(ab) HOME AND COMMUNITY SERVICES AS DEFINED IN ARM 46.12.1404;

(ac) FREESTANDING DIALYSIS CLINIC FOR END STAGE RENAL DISEASE SERVICES AS DEFINED IN ARM 46.12.1501;

(ad) CASE MANAGEMENT SERVICES AS DEFINED IN ARM 46.12.1903, 1916, 1926 AND 1935; AND

(ae) NONHOSPITAL LABORATORY AND RADIOLOGY (X-RAY) AS DEFINED IN ARM 46.12.2101.

(3) THE REQUIREMENT THAT SERVICES LISTED IN (1)(a) BE AUTHORIZED BY THE PRIMARY CARE PROVIDER DOES NOT REPLACE OR ELIMINATE OTHER REGULATORY OR STATUTORY REQUIREMENTS FOR OR LIMITS ON OBTAINING AND BEING REIMBURSED FOR MEDICAID SERVICES.

AUTH: Sec. 53-2-201 and 53-6-113 MCA
IMP: Sec. 53-6-116 MCA

[RULE VI] 46.12.5010 PASSPORT TO HEALTH PROGRAM: PRIMARY CARE PROVIDERS REQUIREMENTS Subsections (1) through (1)(b) remain as proposed.

(c) be a physician, nurse specialist, physician assistant or clinic; and

Subsections (1)(d) through (3) remain as proposed.

(4) AN INDEPENDENT NURSE PRACTITIONER MUST HAVE A PROTOCOL WITH A PHYSICIAN AS REQUIRED IN ARM 46.12.2011 AND A PHYSICIAN ASSISTANT MUST HAVE A UTILIZATION PLAN WITH A PHYSICIAN AS REQUIRED IN ARM 8.28.1501 ET SEQ.

(5) A PROVIDER SANCTIONED UNDER ARM 46.12.402 MAY BE PRECLUDED FROM ENROLLING IN THE PROGRAM OR, IF ALREADY ENROLLED IN THE PROGRAM, MAY BE DISENROLLED.

AUTH: Sec. 53-2-201 and 53-6-113 MCA
IMP: Sec. 53-6-116 MCA

[RULE VIII] 46.12.5014 PASSPORT TO HEALTH PROGRAM: ~~ADMINISTRATIVE RULE AND~~ FAIR HEARING ~~PROCEDURE~~ Subsection (1) remains as proposed.

AUTH: Sec. 53-2-201 and 53-6-113 MCA
IMP: Sec. 53-6-116 MCA

4. The department has thoroughly considered all commentary received:

Comments received were summarized and then grouped by category. Comments which were substantially similar were combined. The acronym "PCP" stands for primary care provider.

AUTHORIZATION OF CERTAIN SERVICES

COMMENT: Authorization of neurological services by the Primary Care Provider (PCP) should not be required.

RESPONSE: The department understands the desire to ensure recipients have access to specialty services when needed. However, the department believes the PCP will enhance appropriate use of the PASSPORT-managed services without denying access to those services when they are necessary. The department will not remove neurological services from the list of PASSPORT-managed services.

COMMENT: PCP authorization for obstetrical care and family planning should be required.

RESPONSE: These services are significantly underused and are seldom used inappropriately. The department would also be concerned that requiring authorization for these services may be construed as creating barriers to such care. Consequently, the department will not require authorization for these services under PASSPORT.

COMMENT: The exemptions for services such as optometry and physical therapy from prior authorization should be clearly stated.

RESPONSE: The department will clarify this point by listing in [Rule V] 46.12.5007 each Medicaid service which does not require PCP authorization.

COMMENT: Clarify whether the language in [Rule II(9)] 46.12.5002(9), "referral to specialists when appropriate" includes physical therapy.

COMMENT: As part of the PCP's responsibilities to oversee the health care of PASSPORT enrollees, the department expects the PCP to seek assistance or to refer patients to specialists for problems outside the scope of the PCP's practice. Referral may be for any service, whether PASSPORT-managed or not. Only the services listed in [Rule V(1)] 46.12.5007(1) require authorization. Receipt of physical therapy does not require PCP authorization.

COMMENT: Does PASSPORT eliminate the necessity for obtaining department authorization for physical therapy services in excess of 70 hours a year?

RESPONSE: No. In no case does the PASSPORT program replace or eliminate existing department requirements or limits on obtaining and being reimbursed for Medicaid service. The department has amended [Rule V] 46.12.5007 to clarify this.

COMMENT: PCP authorization for hospital reference laboratories and hospital outpatient departments should not be required.

RESPONSE: The department believes that PCP authorization for emergency room and surgical services in an outpatient service setting is necessary. PCP authorization for other outpatient services is not necessary. [Rule V] 46.12.5007, requiring authorization for outpatient hospital services, has been amended to limit this authorization to emergency room and surgical services.

COMMENT: Hospitals should be paid for services provided to determine whether a medical emergency exists.

RESPONSE: The department does not anticipate that PCPs will refuse to authorize services needed to determine if a medical emergency exists. If the PCPs denies authorization, hospitals retain the right to appeal the denial to the department.

COMMENT: PCP authorization for bona fide emergencies should not be required.

RESPONSE: The department does not anticipate any PCP refusing authorization for hospital services required to treat bona fide emergencies. In the event such a denial occurred, the hospital still retains the right to appeal the denial to the department.

COMMENT: PCP authorization for admission to inpatient psychiatric facilities should not be required or if authorization is required it should be limited to admission.

RESPONSE: The department has amended [Rule V] 46.12.5007 to specify that only admission to inpatient psychiatric facilities requires authorization. The department believes that PCP authorization is necessary for admission to inpatient psychiatric facilities but that it is not necessary for each component of the inpatient stay to these facilities.

COMMENT: Recipients should be allowed to get second opinions without PCP authorization.

RESPONSE: The department understands the concern about access to second opinions. However, it is unlikely providers would refuse the request for second opinions, especially given the liability concerns among medical professionals. Recipients may change PCPs if their PCP refuses to authorize a second opinion.

COMMENT: Emergency room treatment should be removed from the list of services requiring PCP authorization. At the least,

emergency room personnel should be given authority to authorize services during PCP non-office hours.

RESPONSE: The department is cognizant of the need to ensure access to emergency services for emergent or urgent conditions. However, the department wants to discourage inappropriate and costly use of emergency rooms for routine care. The department is undertaking several efforts to educate recipients about when to use the emergency room, the need to call the PCP for authorization, and the fact they are financially responsible for unauthorized services. The department believes that requiring authorization of this service will promote its appropriate use. PCPs are required by contract to provide 24 hour coverage for the purpose of approving services including emergency room services.

COMMENT: Requiring PCP authorization for county well-child clinic services and immunizations will erect a barrier to obtaining this type of care. In addition, county health departments provide immunizations very cheaply. The authorization process will shift use to private medical offices which will increase the cost of this service for Medicaid.

RESPONSE: The department is aware county health departments are often a major source of well-child care and immunizations. The department wants to promote the coordination of care for children. The PASSPORT provider agreement stipulates the PCP will provide or arrange for well-child care and immunizations. The PCP is free to refer children to county health departments for this care. A July 21, 1992 memorandum from Nancy Ellery, Administrator of the Medicaid Services Division, to interested parties discusses this issue in more detail. A copy of this memorandum may be obtained from the Medicaid Services Division. The department will monitor the impact of PASSPORT on the number of well-child visits Medicaid children receive and re-evaluate this policy if children are not receiving the care they need.

WHO CAN BE A PASSPORT PRIMARY CARE PROVIDER

COMMENT: Only physicians should be PCPs.

RESPONSE: While physicians are the most numerous source of primary care in Montana, primary care is available from other providers such as health clinics, physician assistants and nurse practitioners. This is especially true in less populated areas of the state where these other providers may be the only readily available sources of medical care. These other providers are required to have relationships with physicians. Health clinics are to be under the direction of a licensed physician per ARM 46.12.571(3). Mid-level practitioners are required by ARM 46.12.2011 and ARM 8.28.1501 et seq. to have a protocol or utilization plan with a physician. This ensures recipients who choose a mid-level practitioner will have the benefit of

physician oversight of their care and be able to be admitted to a hospital.

COMMENT: Mid-level practitioners should be allowed to participate as PCPs only if they practice under the supervision of a physician. The case management fee should go to the supervising physician, unless the mid-level practitioner is the sole provider for a community.

RESPONSE: Current regulations already require physician supervision of mid-level practitioners. While the Board of Nursing does not require this for nurse practitioners, Medicaid regulations do require a certified nurse practitioner practicing independently to have a protocol with a physician. The Board of Medical Examiners regulations require physician assistants to have a utilization plan with physicians.

The case management fee for mid-level practitioners who provide PASSPORT management services as an employee of a PASSPORT provider, either a physician or clinic, will be reimbursed to the PASSPORT provider. The case management fee for an independent nurse practitioner will be sent to the nurse practitioner. The case management fee for a physician assistant not employed by a physician will be sent to the physician assistant's employer, just as all other Medicaid reimbursement will be.

COMMENT: The department should ensure that a person or clinic enrolling as a PCP can provide all the usual primary care.

RESPONSE: The PCP provider agreement defines primary care. Providers signing the agreement are entering into a contractual agreement with the department. One of the terms of the provider agreement is that the provider agree to provide primary care as defined in the agreement. The department will allow subspecialists the opportunity to enroll as PASSPORT providers if they agree to provide primary care to their enrollees.

COMMENT: Physician assistants should be allowed to enroll directly as PASSPORT providers.

RESPONSE: The department has changed [Rule VI] 46.12.5010 to indicate that physician assistants may enroll directly as PCPs. As previously noted physician assistants must be supervised by a physician.

COMMENT: The rules define "clinic" too narrowly. Some existing clinics would not qualify under the definition.

RESPONSE: The definition of "clinic" for PASSPORT purposes corresponds to the definition of clinic for Medicaid purposes generally. Many clinics do not meet the Medicaid definition of clinic. Medical professionals within those clinics, however, may be able to enroll as PASSPORT providers on their own. They

would enroll as the same PASSPORT provider type as their Medicaid provider type.

COMMENT: The rules do not define "nurse specialist."

RESPONSE: The definition of "nurse specialist", defined for Medicaid purposes in ARM 46.12.2011, would be applicable to the PASSPORT program.

GENERAL PCP ISSUES

COMMENT: The definition of "primary care" should be more comprehensive.

RESPONSE: The department has added language to the definition of "primary care" in [Rule II) 46.12.5002 to include health education and promotion of preventive care.

COMMENT: The time for termination of care to a patient a PCP has requested to disenroll should be specified.

RESPONSE: This matter is addressed in Section VII(A)(2)(d) of the PASSPORT provider agreement. The PCP must request removal of a recipient by notifying the department in writing. The department then assists the recipient in selecting a new PCP as quickly as possible. The primary care provider must continue to provide patient management service until a recipient is placed with another provider.

COMMENT: Disability should be added as a basis for disenrolling as a PASSPORT provider.

RESPONSE: This matter is addressed in the PASSPORT provider agreement. The department has added "other sudden onset of a circumstance that prevents the PCP from fulfilling the conditions of this contract" to the reasons for which the provider agreement may be terminated immediately instead of with the usual 30 days notice.

COMMENT: The monthly list of enrollees should be sent to PCPs so they will receive it by the first of each month.

RESPONSE: To accomplish this, the department would have to send the list the last few days of the previous month. While this is feasible, the list sent would not be complete. Recipients who do not submit the correct documentation on time, but who are still eligible for Medicaid, would not appear on the list. The department intends to send as complete a list as possible on the first or second day of the month. Providers may check the TEAMS public access screen for instant, up-to-date confirmation of Medicaid eligibility and PASSPORT status. Providers may subscribe to the TEAMS public access screen by contacting Bill Ikard, OMAS, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, MT. 59604; (406) 444-1909.

COMMENT: The language currently in the provider agreement, requiring the PCP to assure 24-hour coverage, should be placed into rule.

RESPONSE: Since the PASSPORT provider agreement has the force of a contract, the department does not believe it is necessary to add this requirement to the rule. The department will educate both recipients and providers about the existence of this requirement.

COMMENT: The rules should have language providing the department with discretion to prevent providers under sanction in the Medicaid program from becoming PASSPORT providers.

RESPONSE: The department has amended [Rule VI] 46.12.5010 to add a provision providing that a sanctioned provider may be precluded from participating in the program or, if already enrolled in the program, disenrolled from the program.

HOW AUTHORIZATIONS AND REFERRALS WORK

COMMENT: Fraud can readily occur, if referrals and authorizations can be made verbally. There should be a better way of documenting referrals that is not burdensome.

RESPONSE: The department is cognizant that the verbal method may make it easier to fraudulently use referrals and authorizations. However, in researching methods used by other states, the only alternative appears to be written referral that must be submitted with the claim to be reimbursed. Problems with increased paperwork have been cited by Medicaid providers as a source of aggravation. The department has pledged to keep the paperwork to a minimum. If experience in Montana shows that a verbal referral system does not work, the department will reconsider this issue.

COMMENT: How frequently would a physical therapist need to renew authorization for services to a PASSPORT recipient?

RESPONSE: Since outpatient physical therapy services do not require PCP authorization, there is no need to renew authorization. With respect to services which require PCP authorization, there is no requirement that authorization be renewed on a regular basis. It is up to the PCP to define the parameters of referral and authorization.

COMMENT: When the PCP refers to a subspecialist, who then refers to another subspecialist, must the second specialist obtain authorization from the primary care provider or may the first specialist refer directly?

RESPONSE: The second subspecialist need not obtain referral directly from the PCP, as long as the first subspecialist

authorizes the referral. The second subspecialist will still need to put the patient's PCP's Medicaid provider number or UPIN on the claim form if billing for a PASSPORT-managed service.

COMMENT: "Authorization" should be clarified to include the approval of the services of another provider by the PCP.

RESPONSE: Language has been added to [Rule II(1)] 46.12.5002(1) to clarify that authorization concerns approval by the PCP of service provided by another provider.

RECIPIENT ENROLLMENT ISSUES

COMMENT: Allowing recipients to change PCPs once a month is excessive. It creates extra cost in transferring medical records and disrupts continuity of care. Changes should be restricted to once a year, unless the recipient petitions for a change and there is good cause for the change.

RESPONSE: The department realizes that allowing changes once a month may permit a recipient to change up to 12 times a year. However, experience in other states shows that after the first three or four months of recipient participation in coordinated care, less than 1% of recipients change. The department will closely monitor the frequency of and reasons for recipient requests for change. A recipient requesting changes three times within a six month period will be subject to department review. If review reveals the recipient is substituting "PASSPORT provider shopping" for "doctor shopping," the department retains the option to place the recipient in the restricted card program, in which the recipient's ability to change providers is limited.

COMMENT: A recipient who is terminated by a PCP should be assured that the department will not mandatorily assign the same PCP to the recipient.

RESPONSE: The department will take steps to ensure a recipient terminated by a PCP will not be mandatorily assigned to the same PCP. The department does not, however, believe it is necessary to put this assurance into a rule.

COMMENT: Recipients should be able to choose PCPs without strict limits such as the limitation of one change per month. Language could be added which locks in enrollees who switch PCPs to avoid managed care or who overuse services.

RESPONSE: The reason recipients are limited to changing once a month is that it takes at least one month for a change in PCP providers to be implemented. The department believes the proposed policy is generous. The department plans to monitor the impact of this limit and is willing to adjust it if experience warrants it.

MISCELLANEOUS

COMMENT: Instead of implementing primary care case management to address the problem of "doctor-hopping," the department should consider putting Medicaid recipients' pictures on the Medicaid card. This would prevent someone from fraudulently using someone else's Medicaid card.

RESPONSE: The problem of "doctor-hopping" does not necessarily involve the fraudulent use of Medicaid cards. Instead, it can stem from a variety of factors such as drug-seeking behavior or attempting to avoid detection of child abuse. Putting pictures of recipients on their Medicaid card may solve fraudulent use of Medicaid cards but not necessarily doctor-hopping.

COMMENT: What percent of Montana's physicians accept Medicaid? What percent of Montana's physicians do not accept Medicaid? What percent of Montana's physicians who accept Medicaid will not accept any new Medicaid recipients?

RESPONSE: The department does not have data on the percentage of all physicians who accept Medicaid. Research indicates approximately 76% of primary care physicians (pediatricians, family practitioners, obstetricians/gynecologists, and internists) are enrolled as Medicaid providers and 24% are not. The department has no data on the percentage of Montana physicians enrolled as Medicaid providers who will not accept any new Medicaid recipients.

COMMENT: What research has the department done to demonstrate how many more physicians will accept Medicaid as a result of being paid a monthly case management fee as PASSPORT proposes?

RESPONSE: The department has examined the experience of other states to determine whether primary care case management has improved access to physician and other services. The experience in other states indicates it does. States must document this fact to renew the federal waiver required to operate a coordinated care program.

COMMENT: What is the distribution of Medicaid patients per physician? What is the average number of Medicaid patients per physician? What is the mode number of Medicaid patients per physician?

RESPONSE: The department does not have access to this information. The department's paid claims information will not reveal whether physicians are billing for a patient they consider part of their caseload or are seeing on a referral basis.

COMMENTS: What research has the department conducted to determine why people change physicians? What is the breakdown and frequency of reasons?

RESPONSE: No research has been done on this topic.

COMMENTS: How much will it cost to implement and operate the PASSPORT program? Of that sum, how much will be given to primary care providers? How much will go to administration of the program? How much was allocated?

RESPONSE: The cost of developing the program and operating it for the two year waiver period is estimated to be $4,253,186. Of that sum, $875,819 is for administrative costs and $3,377,367 is for case management fees.

COMMENTS ON ISSUES OUTSIDE THE SCOPE OF THE PROPOSED RULE

COMMENT: The rule in Medicaid that restricts nurse specialist reimbursement to 80% of what physicians receive should be eliminated.

RESPONSE: This request is outside the scope of the proposed rules. The department does not anticipate that this rate of reimbursement will be changed.

COMMENT: The Medicaid requirement that nurse specialists have a protocol with a physician should be eliminated.

RESPONSE: This request is outside the scope of the proposed rule. However, the department notes that while this requirement is not in the Nurse Practice Act, it is unlikely that the requirement for a protocol would be eliminated for the Medicaid program, especially with the advent of the PASSPORT TO HEALTH program. While nurse practitioners can serve as PASSPORT providers, certain limitations on their practice necessitate the establishment of a protocol between a nurse practitioner and a physician. For example a nurse practitioner can not authorize certain services such as hospital admissions. It is important that PASSPORT recipients have access to hospital admissions.

COMMENT: Nurse specialists should be reimbursed a fee for dispensing drugs.

RESPONSE: This request is outside the scope of the proposed rule. In the Montana Medicaid program pharmacists are the only providers who may bill a dispensing fee. The department does not anticipate that reimbursement for dispensing fees will be allowed for providers other than pharmacists.

COMMENT: Referral by a nurse specialist to another nurse specialist should be allowed. Consultation with another nurse specialist should be reimbursed.

RESPONSE: This request is outside the scope of the proposed rule. The department does not anticipate that reimbursement for

nurse specialists will be changed to include consultation with other nurse specialists.

COMMENT: The restriction that nurse specialists must deliver services in a licensed facility except in emergency should be removed.

RESPONSE: This request is outside the scope of the proposed rule. The requirement that nurse specialist services be delivered in a licensed health care facility is in ARM 46.12.2013(8)(g). That rule concerns the provision of "delivery services" by a nurse specialist. "Delivery services" are defined at ARM 46.12.2011 as services necessary to protect the health and safety of the woman and fetus from the onset of labor through delivery. Consequently, the restriction noted by the commenter is limited to delivery services and does not apply generally. The department does not anticipate that the restriction applicable to delivery services will be removed.

Rule Reviewer

Director, Social and Rehabilitation Services

Certified to the Secretary of State October 5, 1992.

VOLUME NO. 44 OPINION NO. 40

COMMERCE, DEPARTMENT OF - Tourism advisory council and oversight of bed tax monies;
CORPORATIONS - Application of open meeting law to private nonprofit corporation that receives and spends tax monies;
OPEN MEETINGS - Application of open meeting law to private nonprofit corporation that receives and spends bed tax monies;
PUBLIC FUNDS - Bed tax monies as public funds for purposes of open meeting law;
RIGHT TO KNOW - Deliberations of private nonprofit organizations;
MONTANA CODE ANNOTATED - Sections 2-3-201, 2-3-203, 2-3-210, 2-15-1816, 15-65-101, 15-65-111, 15-65-122;
OPINIONS OF THE ATTORNEY GENERAL - 38 Op. Att'y Gen. No. 109 (1980).

HELD: The meetings of a local chamber of commerce or other organization recognized and acting as a nonprofit convention and visitors bureau which receives and spends bed tax funds must, as they pertain to the receipt and expenditure of bed tax monies, be open to the public in accordance with section 2-3-203, MCA.

September 21, 1992

Alan Elliott, Director
Department of Commerce
1424 Ninth Avenue
Helena MT 59620-0501

Dear Mr. Elliott:

Your predecessor requested my opinion regarding the following question which I have rephrased as follows:

> To what extent, if any, is a local chamber of commerce that receives and spends bed tax dollars subject to Montana's open meeting law, § 2-3-203, MCA?

In 1987, the Montana Legislature created the lodging facility use tax, commonly known as the "bed tax," for the purpose of generating funds to be expended for the promotion of Montana tourism and the promotion of Montana as a location for production of motion pictures and television commercials. §§ 15-65-101 to 131, MCA. The bed tax is imposed on those who use overnight public lodging facilities such as hotels, motels, and resorts at a rate of 4 percent of the amount charged by the lodging facility. §§ 15-65-101(3), 15-65-111, MCA.

Approximately 75 percent of the bed tax monies is distributed to the Montana Department of Commerce and approximately 25 percent is distributed to regional nonprofit tourism corporations and nonprofit convention and visitors bureaus in accordance with

formulas established by section 15-65-121(1), MCA. A nonprofit convention and visitors bureau (hereinafter referred to as a CVB) is a "nonprofit corporation organized under Montana law and recognized by a majority of the governing body in the city or consolidated city-county in which the bureau is located." § 15-65-101(4), MCA. The State Tourism Advisory Council oversees distribution of bed tax monies to each CVB, prescribing the allowable administrative expenses for which the monies may be used. § 2-15-1816(4)(a), (d), MCA. In order to receive bed tax monies, a CVB must submit an annual marketing plan for approval by the Tourism Advisory Council. § 15-65-122(2), MCA. The CVB also enters into a contract with the Department of Commerce which outlines the duties and responsibilities of the CVB in order to receive bed tax monies. Your question refers to local chambers of commerce which, typically, have been recognized by the governing bodies of Montana cities as the CVBs for their communities.

Section 2-3-203(1), MCA, provides:

> All meetings of public or governmental bodies, boards, bureaus, commissions, agencies of the state, or any political subdivision of the state or organizations or agencies supported in whole or in part by public funds or expending public funds must be open to the public.

The question here is whether a local chamber of commerce ("chamber") which has been recognized as a CVB and receives bed tax funds is subject to this provision of the open meeting law. A chamber, as a CVB, is an organization supported, at least in part, by bed tax monies which are public funds. Further, a chamber, as a CVB, decides how those public funds are spent. Under the plain language of the statute, it is my opinion that a local chamber of commerce, when acting as a CVB, is subject to the open meeting law.

This opinion is further supported by the intent and purpose of the open meeting law. The open meeting law is to be liberally construed and applies generally to agencies that "exist to aid in the conduct of the peoples' business." § 2-3-201, MCA. The expenditure of public funds for the purpose of developing tourism in Montana is "the conduct of the peoples' business," whether conducted by a public or a private nonprofit organization. As has been stated in a previous Attorney General's Opinion, "'The precise expenditure of public funds is simply not a private fact.'" 38 Op. Att'y Gen. No. 109 at 375, 377 (1980), quoting Penokie v. Michigan Technological University, 93 Mich. App. 650, 287 N.W.2d 304 (1980). Here, it is the CVB that determines, in the first instance, the manner and method of expenditure of bed tax monies. The CVB is not simply providing a service to the state as a private contractor might, but rather is acting as an agent under contract with the state to make decisions about how public funds are spent.

Further, by accepting public funds and deciding how those funds are to be spent, the CVB takes on the responsibility of accounting to the public for those funds. In Redding v. Brady, 606 P.2d 1193,

1196-97 (Utah 1980), the court reasoned that when an individual accepts state employment, that individual is no longer merely a private citizen, but a public servant in whose conduct and in whose salary the public has a legitimate interest. Similarly, a local chamber of commerce that is recognized as a CVB and accepts public funds is no longer merely a private nonprofit corporation, but an entity whose deliberations concerning the expenditure of public funds must be open to the public. See also Seghers v. Community Advancement, 357 So. 2d 626 (La. Ct. App. 1978) (private nonprofit corporation that was supported by and expended public funds and administered local antipoverty program was subject to state sunshine law); Arkansas Gazette Co. v. Southern State College, 620 S.W.2d 258 (Ark. 1981) (Intercollegiate Athletic Conference was supported by public funds and therefore subject to state freedom of information act).

You have also asked to what extent a local chamber, when acting as a CVB, would be subject to the open meeting law. In such circumstances, the chamber would be bound by the same expectations as any other public or governmental body. Thus, a meeting held by the chamber when acting as a CVB may be closed only if the demands of individual privacy of the chamber clearly exceed the merits of public disclosure. See Belth, 227 Mont. 341, 345, 740 P.2d 638, 641-43 (1987). It must be emphasized, however, that the presumption lies with openness and disclosure, and a meeting is presumed open unless an exception exists as defined in section 2-3-203, MCA.

THEREFORE, IT IS MY OPINION:

> The meetings of a local chamber of commerce or other organization recognized and acting as a nonprofit convention and visitors bureau which receives and spends bed tax funds must, as they pertain to the receipt and expenditure of bed tax monies, be open to the public in accordance with section 2-3-203, MCA.

Sincerely,

Marc Racicot

MARC RACICOT
Attorney General

VOLUME NO. 44 OPINION NO. 41

PUBLIC FUNDS - Allocation of Pub. L. No. 81-874 funds to operating budgets;
SCHOOL DISTRICTS - Repayment of improper transfers between budgeted funds;
SCHOOL DISTRICTS - Transferring monies from general fund to debt service fund;
MONTANA CODE ANNOTATED - Sections 20-9-141(1)(b)(i), 20-9-143, 20-9-145, 20-9-208(2), 20-9-301, 20-9-343(1)(a), 20-9-344, 20-9-353, 20-9-367(1), 20-9-368, 20-9-438(1), (2), 20-9-439, 20-9-440(2), 20-9-443;
OPINIONS OF THE ATTORNEY GENERAL - 38 Op. Att'y Gen. No. 97 (1980) (overruled in part);
UNITED STATES CODE - 20 U.S.C. §§ 236-240.

HELD: 1. A school district may not transfer monies from the general fund to the debt service fund, nor may a school district allocate monies from the general fund for payment of bond principal and interest.

2. A school district which improperly transferred monies from the general fund to the debt service fund or improperly allocated monies from the general fund for the payment of bond principal and interest must repay the state for any increase in guaranteed tax base aid that resulted from the improper transfer or allocation.

3. No statutory changes since the issuance of 38 Op. Att'y Gen. No. 97 (1980) have affected the basis for the opinion which held that under state law, a school district may deposit Pub. L. No. 81-874 monies into any operating budget. However, its conclusion that if the Pub. L. No. 81-874 monies are allocated to the general fund budget they must first be applied toward the permissive levy amount is incorrect, at least until Montana is certified under 20 U.S.C. § 240(d)(2)(i) as a state which may consider such monies in determining the amount of state aid available to a school district.

October 1, 1992

Nancy Keenan
Superintendent of Public Instruction
Room 106, State Capitol
Helena MT 59620-2501

Dear Superintendent Keenan:

You have requested my opinion concerning questions I have rephrased as follows:

1. May a school district transfer monies from its general fund to its debt service fund for the purpose of paying bond principal and interest, or alternatively, may a school district allocate monies within its general fund for the payment of bond principal and interest?

2. If either aspect of question No. 1 is answered in the negative, do sections 20-9-344 and 20-9-368, MCA, require the school district to reimburse the state for that portion of the improperly transferred monies which is attributable to guaranteed tax base aid received by the district?

3. Is 38 Op. Att'y Gen. No. 97 (1980) still valid in light of subsequent statutory amendments?

A general fund for each school district was authorized by statute "to finance those general maintenance and operational costs of a district not financed by other funds established for special purposes in this title." § 20-9-301(2), MCA. A general fund must be financed by "the foundation program revenues and may be supplemented by a permissive levy, voted levy, or other revenue, as provided by 20-9-145 and 20-9-353." § 20-9-301(3), MCA. A school district is also authorized to establish a debt service fund to provide payment of special improvement district assessments and bonded indebtedness incurred by the district. § 20-9-438(1), (2), MCA. A debt service fund is financed primarily through a school district levy. § 20-9-439, MCA.

During fiscal year 1991 some school districts budgeted for a transfer of cash from their general funds to their debt service funds. Several of the districts actually transferred the cash to pay the districts' bond principal and interest payments. Others paid their bond principal and interest payments directly from their general funds. These school districts, by transferring or using general fund monies, avoided the necessity of imposing a levy in fiscal year 1991 to raise revenue for their debt service funds. All of these districts used the "permissive amount," as defined in section 20-9-145, MCA, for support of their general funds and, because their mill values were less than the statewide average, received guaranteed tax base aid under section 20-9-368, MCA.

Your first question is whether a school district may either transfer funds from its general fund to its debt service fund or allocate monies within the general fund for the payment of bond principal and interest. I conclude that the school finance statutes do not permit such a transfer or allocation.

The school finance statutes are very detailed and specify the manner in which each budgeted fund is to be financed. As stated above, the purpose of a school district's general fund "is to finance those general maintenance and operational costs of a district not financed by other funds established for special

purposes in this title." § 20-9-301(2), MCA (emphasis added). A district's debt service fund is intended to be used for the payment of bond principal and its interest. § 20-9-440(2), MCA. When computing the levy requirement for a school district's debt service fund, the county superintendent must first determine the end-of-the-year balance in the fund, anticipated interest from the monies in the fund, and any other money anticipated by the trustees to be available in the debt service fund. § 20-9-439, MCA. No authority exists for financing the debt service fund from a transfer of monies from the general fund or by allocating monies in the general fund for payment of bond principal and interest. The only transfer of monies that the Legislature has allowed between these two funds is provided by section 20-9-443, MCA. This statute provides that when all of the bonds and their interest have been fully paid, the remaining money in the debt service fund shall be transferred to the general fund of the respective school district. § 20-9-443, MCA. No statute exists which contemplates the transfer of monies from the general fund to the debt service fund, and no statute exists which allows a school district to allocate monies in the general fund for the payment of bond principal and interest. Moreover, section 20-9-208(2), MCA, prohibits the transfer of budgeted amounts between funds unless specifically authorized by statute.

Because I conclude that the Montana statutes do not authorize the transfer of funds from a school district's general fund to its debt service fund for the payment of bond principal and interest, it is necessary to address whether the school districts mentioned in your opinion request must repay the state from revenue available to the debt service funds for any general fund revenues used to pay debt service obligations. Because the statutes do not allow the transfer of monies from the general fund to the debt service fund, they do not directly address the repayment of improperly transferred funds. However, under the facts you have outlined in your letter, the possibility exists that these particular school districts received more state equalization aid, in the form of guaranteed tax base aid ("GTBA"), than that to which they were entitled. This possibility exists because the school districts in effect may have had to increase the number of mills they levied for their general funds as a result of using general fund monies for payment of bond principal and interest. The number of permissive mills levied for the general fund determines the amount of guaranteed tax base aid a school district receives. § 20-9-367(1), MCA. The statutes do require that if a school district receives more state equalization aid than that to which it is entitled, it must refund the overpayment to the state. §§ 20-9-344(5), 20-9-368(4), MCA.

Whether the school districts mentioned in your opinion request actually received more GTBA than they should have requires a closer examination of their final budget reports for fiscal year 1991. In these reports, the general fund budget spending limit lists three components. Included among these components are the school districts' estimated receipts under Public Law No. 81-874 (codified

in 20 U.S.C. §§ 236-240) ("Pub. L. No. 81-874"). As discussed below in more detail, Montana law authorizes placement of Pub. L. No. 81-874 monies into any operating budget of a school district including its debt service fund. § 20-9-143, MCA. An examination of the school districts' final budget reports for fiscal year 1991 discloses that several of the school districts received Pub. L. No. 81-874 monies in excess of the amount transferred to their debt service funds for payment of bond principal and interest and placed those monies into their general funds. Thus, for state law purposes, these school districts did not benefit from the error by receiving more GTBA than allowed by state law because the amount of Pub. L. No. 81-874 monies they received and placed into the general fund adequately covered the amount they transferred to the debt service fund. I see no transgression of state law with respect to these districts' actions, although in the future the improper transfers should not occur. In contrast, one school district may have obtained more GTBA than allowed under Montana law since no Pub. L. No. 81-874 income is reflected on its budget report. This school district therefore may have received more GTBA than that to which it was entitled and, if overpayment has occurred, is required to reimburse the state for the GTBA overpayment. Whether any overpayment actually occurred is most appropriately determined by your office after consultation with the district and review of pertinent expenditure data. § 20-9-344, MCA.

The last question you have posed is whether 38 Op. Att'y Gen. No. 97 at 335 (1980), which concluded in part that school districts are allowed to deposit Pub. L. No. 81-874 revenue directly into budgeted funds, is still valid in light of the statutory changes since the issuance of the opinion. Section 20-9-143, MCA, then as now, states:

> Federal funds received by a district under the provisions of Title I of Public Law 81-874 or funds designated in lieu of such federal act by the congress of the United States may be allocated to the various operating budgets of the district by the trustees.

Thus, Montana statutes do not restrict the placement of Pub. L. No. 81-874 monies to any one budgeted fund. Former Attorney General Greely, however, also determined in that opinion that, if Pub. L. No. 81-874 monies are allocated to the general fund budget, they must first be applied toward the permissive levy amount. This aspect of the opinion is questionable, at least under present school finance statutes, because GTBA is a form of state equalization aid (§ 20-9-343(1)(a), MCA) and because Montana has not been certified under 20 U.S.C. § 240(d)(2)(i) as a state in which Pub. L. No. 81-874 monies may be included when determining the eligibility of a local educational agency for state aid. See, e.g., Carlsbad Union School District v. Rafferty, 429 F.2d 337, 339 (9th Cir. 1970); Douglas Independent School District v. Jorgenson, 293 F. Supp. 849, 852 (D.S.D. 1968); San Miguel Joint Union School District v. Ross, 118 Cal. App. 3d 82, 173 Cal. Rptr. 292 (1981).

Requiring a school district to apply such monies toward the permissive amount would reduce the GTBA otherwise available to the district and thereby jeopardize the district's eligibility for Pub. L. No. 81-874 assistance. See 20 U.S.C. § 240(d)(1). Consequently, while section 20-9-141(1)(b)(i), MCA, can be read to obligate a school district to apply Pub. L. No. 81-874 monies toward the permissive amount, I concur with the Office of Public Instruction regulations which recognize that districts have discretion in deciding whether to use federal impact aid for the purpose of eliminating or reducing the amount of a permissive levy. §§ 10.23.101(5), 10.23.102(6), ARM. I accordingly overrule 38 Op. Att'y Gen. No. 97 (1980) to the extent it suggests a contrary conclusion.

THEREFORE, IT IS MY OPINION:

1. A school district may not transfer monies from the general fund to the debt service fund, nor may a school district allocate monies from the general fund for payment of bond principal and interest.

2. A school district which improperly transferred monies from the general fund to the debt service fund or improperly allocated monies from the general fund for the payment of bond principal and interest must repay the state for any increase in guaranteed tax base aid that resulted from the improper transfer or allocation.

3. No statutory changes since the issuance of 38 Op. Att'y Gen. No. 97 (1980) have affected the basis for that opinion which held that under state law, a school district may deposit Pub. L. No. 81-874 monies into any operating budget. However, its conclusion that if the Pub. L. No. 81-874 monies are allocated to the general fund budget they must first be applied toward the permissive levy amount is incorrect, at least until Montana is certified under 20 U.S.C. § 240(d)(2)(i) as a state which may consider such monies in determining the amount of state aid available to a school district.

Sincerely,

Marc Racicot

MARC RACICOT
Attorney General

NOTICE OF FUNCTIONS OF ADMINISTRATIVE CODE COMMITTEE

The Administrative Code Committee reviews all proposals for adoption of new rules, amendment or repeal of existing rules filed with the Secretary of State, except rules proposed by the Department of Revenue. Proposals of the Department of Revenue are reviewed by the Revenue Oversight Committee.

The Administrative Code 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 lists 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 Administrative Procedure Act for inclusion in the ARM. The ARM is updated through June 30, 1992. This table includes those rules adopted during the period July 1, 1992 through September 30, 1992 and any proposed rule action that is pending during the past 6 month period. (A notice of adoption must be published within 6 months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through June 30, 1992, 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 1992 Montana Administrative Register.

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