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RESERVE

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OF MONTANA

MONTANA ADMINISTRATIVE REGISTER

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PAGES 174-256



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OF MONTANA

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 3

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing and where written comments may be submitted.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

In the matter of the proposed) NOTICE OF PUBLIC HEARING
adoption of new rules pertaining) ON THE PROPOSED ADOPTION
to the use of topical medications) OF NEW RULES PERTAINING TO
) THE USE OF TOPICAL
) MEDICATIONS

TO: All Interested Persons:

1. On March 5, 1992, at 10 o'clock a.m., a public hearing will be held in the downstairs conference room, Department of Commerce Building, 1424 - 9th Avenue, Helena, Montana, to consider the proposed adoption of rules pertaining to the use of topical medications by physical therapists.
2. The proposed new rules will read as follows:

"I USE OF TOPICAL MEDICATIONS (1) Topical medication prescribed on a specific or standing basis by a licensed medical practitioner may be obtained from a pharmacy certified under 37-7-321, MCA, by either:

(a) the licensed physical therapist directly, who will administer the topical medication for use in phonophoresis, iontophoresis, or direct application, under the prescription order of the licensed medical practitioner; or

(b) the patient directly, who will obtain the prescribed topical medication at a certified pharmacy and bring it directly to the physical therapist to be administered as part of a treatment plan.

(2) All prescribed topical medications, whether obtained by the physical therapist or patient directly, shall be stored at the physical therapist's place of business in compliance with proper storage guidelines under Title 37, Chapter 7, or otherwise developed by the board of pharmacy.

(a) Any particular requirements for storage as noted by the pharmacist must be followed.

(b) Topical medications shall be stored below 40 degrees centigrade (104 degrees fahrenheit), preferably between 15 degrees and 30 degrees centigrade (59 degrees and 86 degrees fahrenheit), unless otherwise specified.

(c) All topical medications obtained by the patient directly and brought to the physical therapist's place of business shall be returned to the patient's possession at the termination of treatment with the patient.

(d) No topical medications obtained by the patient directly may be transferred to or used in treatment of any other physical therapy patient.

(3) All topical medications must be administered by the physical therapist as prescribed by the medical practitioner and in accordance with any pharmacy guidelines given to the physical therapist or patient who obtained the topical medication directly.

(4) A copy of the written prescription specifying the proper use of the topical medication (direct application, phonophoresis or iontophoresis) must be retained in the patient's physical therapy medical records. A written prescription shall be present in each patient's chart indicating the topical medication to be applied."

Auth: Sec. 37-11-201, MCA; IMP, Sec. 37-11-106, MCA

"II TOPICAL MEDICATION PROTOCOLS (1) The following protocols apply to each classification and following list of topical medications for which a prescription is required under state or federal law:

(a) bacterial agents:

(i) action: interferes with functions of the cell wall membrane.

(ii) indication: topical treatment for dermal infections.

(iii) contraindications: hypersensitivity to the specific substance, concurrent use of curariform muscle relaxants and other relaxants and other neurotoxic drugs. Consult the current Physicians Desk Reference (PDR) for further specifics.

(iv) SSD, SSD-AF--Silver sulfadiazine; (Sulfamylon)--Mafenide acetate cream; Gentamicin Sulfate--(Garamycin); Mycostatin - (Nystatin)--(cream, powder, ointment); (Lotrisone)--Clotrimazole and betamethasone dipropionate; Polymyxin B Sulfate--(Cortisporin, Neosporin); Nystatin--(Nystex); (Bactroban)--Mupirocin; Neomycin Sulfate--(Cortisporin cream, NeoDecadron topical cream, Neosporin cream, Neo-Synalar cream); Unna Boot--Dome Paste (zinc).

(b) debriding agents:

(i) action: cleanse the surface of wounds of wound exudate, bacteria, and particulate contaminants.

(ii) indication: cleanse exudative wounds such as venous stasis ulcers, decubitus ulcers, infected traumatic and surgical wounds, and infected burns.

(iii) contraindications: Dextranomer should not be used with topical antibiotics or debriding enzymes and should not be used in deep fistulas or any body cavity from which complete removal is not assured. Fibrinolysin and Deoxyribonuclease Combined (Bovine), a debriding enzyme, should be used with precaution against allergic reactions, particularly in patients hypersensitive to materials of bovine origin or to mercury compounds. Consult the current PDR for specifics.

(iv) (Elastase)--Fibrinolysin and deoxyribonuclease; (Elastase-Chloromycetin)--Fibrinolysin and deoxyribonuclease with chloramphenicol; Debrisan--(Dextranomer).

(c) anesthetic agents:

(i) action: blocks both the initiation and conduction of nerve impulses by decreasing the neuron membranes permeability to sodium ions.

(ii) indication: relieve pain and inflammation associated with minor skin disorders and for acute inflammatory conditions (bursitis, tendonitis, TMJ pain).

(iii) contraindications: sensitivity to the topical anesthetic, local infections at the site of application, and

skin disorders, severe or extensive, especially if the skin is abraded or broken. Consult the current PDR for specifics.

(iv) (Fluori Methane)--Dichlorodifluoromethane 15%, trichloromonofluoromethane 85%; Lidocaine Hydrochloride; (Xylocaine)--Lidocaine Hydrochloride; (Chempad)--L Lidocaine, Menthol, H Hydrocortisone, Menthol, LH Lidocaine Hydrocortisone, Menthol; (Medipad)--L Lidocaine, Menthol, H Hydrocortisone, Menthol, LH Lidocaine Hydrocortisone, Menthol; (Ethyl Chloride)--Chloroethane; Menthol 0.8%--(Dermoplast, Medicores Derma-HC, Methalgen Cream, Panalgesic Gold cream-liniment, PrameGel, Nephro-Derm Cream); Dibucaine 1%--(Nupercainal cream and ointment, only 0.5%).

(d) anti-inflammatory agents (see adrenocorticosteroids)

(e) antispasmodic agents:

(i) action: forms strong drug-receptor complex at postganglionic parasympathetic neuroeffector sites in smooth muscle, cardiac muscle and exocrine glands, thereby blocking action of acetylcholine.

(ii) indication: reduce the volume of perspiration by inhibiting sweat gland secretions.

(iii) contraindications: some commercially available formulations may contain a sulfite that can cause allergic-type reactions in certain susceptible individuals. Consult the current PDR for specifics.

(f) adrenocorticosteroids:

(i) action: diffuses across cell membranes to complex with specific cytoplasmic receptors. The resulting complexes enter the nucleus, bind to DNA thereby irritating cytoplasmic synthesis of enzymes responsible for systemic effects of adrenocorticosteroid.

(ii) indication: anti-inflammatory (bursitis, tendonitis, myositis, arthritis), antipruritic and vasoconstrictor actions.

(iii) contraindications: special care must be exercised when these agents are used in children, growing adolescents, and pregnant women. Intolerance to adrenocorticosteroids, infection present at the treatment site not controlled by antibiotics, prolonged use, large areas, and occlusive dressings. Consult the current PDR for specifics.

(iv) Hydrocortisone Cream 10%, 1%; (Decadron)--Dexamethasone sodium phosphate; (Aristocort)--triamcinolone acetate; (Chempad)--L Lidocaine, Menthol, H Hydrocortisone, Menthol, LH Lidocaine Hydrocortisone, Menthol; (Medipad)--L Lidocaine, Menthol, H Hydrocortisone, Menthol, LH Lidocaine Hydrocortisone, Menthol; Dexamethasone--(Decaderm, Decadron); Betamethasone--(Alphatrex cream-ointment, Diprolene AF, Lotrisone cream, Maxivate cream-lotion-ointment, Psorion cream, Betatrex)."

Auth: Sec. 37-11-201, MCA; IMP, Sec. 37-11-106, 37-11-107, MCA

"III APPLICATION AND ADMINISTRATION OF TOPICAL MEDICATION

(1) All topical medication shall be applied or administered by a licensed physical therapist in accordance with Section 37-11-106, MCA, by:

(a) direct application,

(b) iontophoresis, or

(c) phonophoresis.

(2) All topical medication shall be applied or administered as prescribed by the licensed medical practitioner.

(3) All topical medication shall be applied or administered in accordance with generally accepted practices in the physical therapy field and in keeping with educational techniques in use at properly accredited APTA schools."

Auth: Sec. 37-11-201, MCA; IMP, Sec. 37-11-106, 37-11-107, MCA

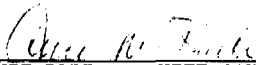
REASON: To implement Sections 37-11-106 and 37-11-107, MCA, mandated by the 1991 Montana Legislature.

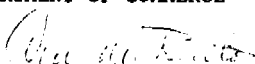
3. Interested persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Board of Physical Therapy Examiners, Lower Level, Arcade Building, 111 North Jackson, Helena, Montana, 59620-0407, no later than March 12, 1992.

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

BOARD OF PHYSICAL THERAPY
EXAMINERS
JOYCE DOUGAN, P.T., CHAIRMAN

BY:


ANNIE BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE


ANNIE BARTOS, RULE REVIEWER

Certified to the Secretary of State, February 3, 1992.

BEFORE THE BOARD OF PRIVATE SECURITY
PATROL OFFICERS AND INVESTIGATORS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed) NOTICE OF PROPOSED AMENDMENT
amendment of rules pertaining) OF 8.50.424 TEMPORARY EMPLOY-
to temporary employment, type) MENT WITHOUT IDENTIFICATION,
of sidearm and regulations of) 8.50.506 TYPE OF SIDEARM, AND
uniform) 8.50.432 REGULATIONS OF
) UNIFORM

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On March 14, 1992, the Board of Private Security Patrol Officers and Investigators proposes to amend the above-stated rules.

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

"8.50.424 TEMPORARY EMPLOYMENT WITHOUT IDENTIFICATION CARD The board may authorize a licensee to employ security guards or alarm installer employees temporarily without first obtaining an identification card under the following conditions:

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

(8) No person employed temporarily under this rule shall be armed or wear, carry, possess or have access to a firearm in the performance of his duties until the board has completed a preliminary background check."

Auth: Sec. 37-1-131, 37-60-202, MCA; IMP, Sec. 37-60-407, MCA

REASON: This proposed amendment protects the public by barring a person employed as a private investigator or security guard temporarily from carrying a firearm until the board has completed a preliminary background check and has determined that he can reasonably be trusted to safely carry a firearm.

"8.50.506 TYPE OF SIDEARM (1) Solid frame revolver or pistols capable of single and double-action fire. Caliber .38 357 (only 38 special ammunition will be used), 380, and 9 and 10 millimeter automatic with barrel length from two to six inches, revolvers with five or six-round cylinder, all-steel construction, (except model 39 Smith) fixed or adjustable sights will be approved by the board."

Auth: Sec. 37-60-202, MCA; IMP, Sec. 37-60-406, MCA

REASON: The amendment is being proposed to allow licensees the option of using the 10 millimeter as an approved sidearm as they have requested.

"8.50.432 REGULATIONS OF UNIFORM (1) and (2) will remain the same.

(3) All uniformed security guards shall wear a patch on their uniforms no less than one inch by three inches in size with the word 'security' in block letters of contrasting colors on the left breast pocket."

Auth: Sec. 37-60-202, MCA; IMP, Sec. 37-60-407, MCA

REASON: This amendment will assist the public in easily identifying private security guards by providing uniformity of emblems on security uniforms.

3. Interested persons may present their data, views or arguments concerning the proposed amendments in writing to the Board of Private Security Patrol Officers and Investigators, Lower Level, Arcade Building, 111 North Jackson, Helena, Montana 59620-0407, no later than March 12, 1992.

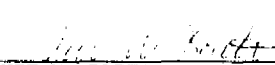
4. If a person who is directly affected by the proposed amendments wishes to present his data, views, or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit the request along with any comments he has to the Board of Private Security Patrol Officers and Investigators, Lower Level, Arcade Building, 111 North Jackson, Helena, Montana 59620-0407, no later than March 12, 1992.

5. If the Board receives requests for a public hearing on the proposed amendment from either 10 percent or 25, whichever is less, of those persons who are directly affected by the proposed amendments, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision or from an association having no less than 25 members who will be directly affected, a 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 21 based on the 211 licensees in Montana.

BOARD OF PRIVATE SECURITY
PATROL OFFICERS AND
INVESTIGATORS
GARY GRAY, PRESIDENT

BY: 

ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE


ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, February 3, 1992.

BEFORE THE BOARD OF RADIOLOGIC TECHNOLOGISTS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed) NOTICE OF PROPOSED AMEND-
amendment of a rule pertaining) MENT OF 8.56.608 RENEWALS
to renewals)

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On March 14, 1992, the Board of Radiologic Technologists proposes to amend the above-stated rule.
2. The proposed amendment will read as follows: (new matter underlined, deleted matter interlined)

"8.56.608 RENEWALS (1) Permits issued under section 37-14-306(1), MCA, shall expire on ~~December 31st~~ February 1 of each year.

(2) will remain the same."

Auth: Sec. 37-14-306, 37-14-310, MCA; IMP, Sec. 37-14-306, 37-14-310, MCA

REASON: The amendment is being proposed so that both radiologic technologists and permit holders renew their licenses at the same time.

3. Interested persons may present their data, views or arguments concerning the proposed amendment in writing to the Board of Radiologic Technologists, Lower Level, Arcade Building, 111 North Jackson, Helena, Montana 59620-0407, no later than March 12, 1992.

4. If a person who is directly affected by the proposed amendment wishes to present his data, views or arguments orally or in writing at a public hearing he must make written request for a hearing and submit the request along with any comments he has to the Board of Radiologic Technologists, Lower Level, Arcade Building, 111 North Jackson, Helena, Montana 59620-0407, no later than March 12, 1992.

5. If the Board receives requests for a public hearing on the proposed amendment from either 10 percent or 25, whichever is less, of those persons who are directly affected by the proposed amendment, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date.

Notice of the hearing will be published in the Montana
Administrative Register.

BOARD OF RADIOLOGIC TECHNOLOGISTS
JIM WINTER, CHAIRMAN

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, February 3, 1992.

BEFORE THE BOARD OF PASSENGER TRAMWAY SAFETY
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed) NOTICE OF PROPOSED AMENDMENT
amendment of a rule pertaining) OF 8.63.519 FEE AND ASSESS-
to fees) MENT SCHEDULE

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On March 14, 1992, the Board of Passenger Tramway Safety proposes to amend the above-stated rule.
2. The proposed amendment will read as follows: (new matter underlined, deleted matter interlined)

"8.63.519 FEE AND ASSESSMENT SCHEDULE (1) will remain the same.

(2) The assessment shall be ~~1/4~~ 1/8 of 1% on the gross receipts of all passenger tramways operated in Montana with minimum of \$100.00 per passenger tramway facility."

Auth: Sec. 23-2-714, 23-2-715, 23-2-721, MCA; IMP, Sec. 23-2-714, 23-2-715, 23-2-721, MCA

REASON: This amendment is necessary because gross receipts have increased at Montana ski areas. A lesser percentage of the total receipts is needed to be assessed to provide funding for the Board in order to keep fees commensurate with program area costs as mandated by section 37-1-134, MCA.

3. Interested persons may present their data, views or arguments concerning the proposed amendment in writing to the Board of Passenger Tramway Safety, Arcade Building, 111 North Jackson, Helena, Montana 59620-0407, no later than March 12, 1992.

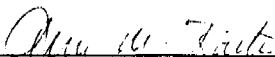
4. If a person who is directly affected by the proposed amendment wishes to present his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit the request along with any comments he has to the Board of Passenger Tramway Safety, Arcade Building, 111 North Jackson, Helena, Montana 59620-0407, no later than March 12, 1992.

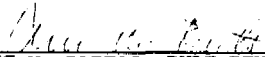
5. If the Board receives requests for a public hearing on the proposed amendment from either 10 percent or 25, whichever is less, of those persons who are directly affected by the proposed amendment, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date.

Notice of the hearing will be published in the Montana Administrative Register.

BOARD OF PASSENGER TRAMWAY SAFETY
TIM PRATHER, CHAIRMAN

BY:


ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE


ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, February 3, 1992.

BEFORE THE BOARD OF COUNTY PRINTING
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed	)	NOTICE OF PUBLIC HEARING
amendment of rules pertaining	)	ON THE PROPOSED AMENDMENT
to organization of board and	)	OF 8.91.101 ORGANIZATION
official publications and	)	OF BOARD AND 8.91.303
legal advertising	)	OFFICIAL PUBLICATIONS AND
	)	LEGAL ADVERTISING

TO: All Interested Persons:

1. On Thursday, March 12, 1992, at 1:30 p.m., a public hearing will be held in the downstairs conference room of the Department of Commerce building, 1424 - 9th Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules.

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

"8.91.101 ORGANIZATION OF BOARD (1) through (3) will remain the same.

~~(4) Personnel Roster Addresses of the Chairman and board members are as follows:~~

~~George Nicholas, Chairman, 109 Sioux Road, Fort Peck, Montana 59223~~

~~Frank Burke, 211 W. Relf, Glendive, Montana 59330~~

~~Wayne Groskrej, 1910 11th Ave. South, Great Falls, Montana 59401~~

~~Pierre Peres, 1101 Franklin, Fort Benton, Montana 59442~~

~~Frank Waldbillig, Jr., Philipsburg, Montana 59858."~~

Auth: Sec. 2-4-201, MCA; IMP, Sec. 2-4-201, MCA

REASON: The personnel roster is being deleted because it is obsolete. Since board members constantly change, the Board has decided not to publish names of the members in the rules in order to eliminate the need for constant amendments to this rule.

"8.91.303 OFFICIAL PUBLICATIONS AND LEGAL ADVERTISING

~~(1) For every folio or fraction thereof, not more than \$6.00 shall be paid for the first insertion thereof, and not more than \$4.00 per folio for each subsequent insertion thereof, required by law to be made. For rule and figure work, not more than \$8.00 per folio or fraction thereof, for the first insertion, and not more than \$4.00 per folio for each subsequent insertion thereof, required by law to be made. Rates to be purchased at the higher of:~~

(a) A per folio method like the one currently used with every folio or fraction thereof paid for at not more than \$8 for the first insertion and not more than \$6 for each subsequent insertion;

(b) The lowest classified advertising rate available to any other customer for a similar-sized advertisement published the same number of times.

(c) These subsections will become effective on July 1, 1992.

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

Auth: Sec. 7-5-2404, MCA; IMP, Sec. 7-5-2411, MCA

REASON: This amendment is being proposed at the request of the Montana Newspaper Association to more accurately reflect the cost of publishing notices.

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 County Printing, Department of Commerce, 1424 - 9th Avenue, Helena, Montana 59620, no later than March 12, 1992.

4. Annie M. Bartos, Chief Counsel, Department of Commerce, Helena, Montana, has been designated to preside over and conduct the hearing.

BOARD OF COUNTY PRINTING
JANE LOPP, CHAIRPERSON

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, February 3, 1992.

BEFORE THE OFFICE OF THE WORKERS' COMPENSATION JUDGE
OF THE STATE OF MONTANA

In the matter of	)	NOTICE OF PROPOSED
the amendment	)	AMENDMENT OF RULES
and adoption of	)	ARM 24.5.303, 24.5.308,
procedural rules.	)	24.5.331, 24.5.336,
		24.5.343, 24.5.344,
		24.5.348; and PROPOSED
		ADOPTION OF NEW RULES
		I AND II. No public
		hearing contemplated.

TO: All Interested Persons.

1. On April 1, 1992, the Office of the Workers' Compensation Judge proposes to amend and adopt new procedural rules of the Court.

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

24.5.303 SERVICE (1) - (5) Remain the same.

(6) The court will accept fax filings provided they contain an affirmation that the original document will be mailed that date by regular mail.

(a) If all other requirements are met, the date of filing relates back to the date of receipt of the fax.

(b) If the original document is not received within three days of receipt of the fax, the fax is stricken from the record as if never filed.

(c) When the original document is received and if identical to the fax document, it is substituted for the fax.

(62) Text remains the same just renumbered.

AUTH: Sec. 2-4-201, MCA IMP: Sec. 2-4-201, 39-71-2901, MCA

24.5.308 JOINING THIRD PARTIES (1) A party may ~~request motion~~ that a third party be joined in the dispute or controversy. The court may, for good cause shown, require the third party to become a party to the dispute or controversy, or the court may grant joinder on such terms and conditions as are necessary to protect the interests of the existing parties, including the interest of a speedy remedy, or the court may deny the ~~request motion~~.

(2) A ~~request motion~~ to join a third party may be made at any time up to ~~twenty~~ 20 days prior to trial. The motion shall be served on all parties and the proposed third party and filed with the court. Any party and the proposed third party to the dispute shall have 10 days from the date of service to file objections to the motion for joinder.

(3) Remains the same.

AUTH: Sec. 2-4-201, MCA IMP: Sec. 2-4-201, 39-71-2901, MCA

24.5.331 SUBPOENA (1) Every subpoena shall be issued by the clerk under the seal of the court, shall state the name of the court and the title of the action, and shall command each person to whom it is directed to attend and give testimony at a time and place therein specified. The clerk shall issue a subpoena, or a subpoena for the production of documentary evidence, signed, dated, and sealed but otherwise in blank, to a party requesting it, who shall fill it in before service.

(2) Remains the same.

(a) A subpoena which is issued to obtain health care information regarding a claimant need not comply with the 10 day notice requirement of section 50-16-536, MCA, however reasonable notice must be given to all parties or their counsel that health care information is being sought by way of subpoena. A party requesting the issuance of a subpoena directed to a health care provider must certify the need for such information under section 50-16-535, MCA.

(3) - (6) Remain the same.

AUTH: Sec. 2-4-201, MCA **IMP:** Sec. 2-4-201, 39-71-2901, MCA

24.5.336 FINDINGS OF FACT AND CONCLUSIONS OF LAW AND BRIEFS

(1) Remains the same.

(2) The court may require either or both parties to file findings of fact and conclusions of law. Requests that a decision not be certified as final pursuant to ARM 24.5.348(3) should ordinarily be included in the proposed findings of fact and conclusions of law, with the basis for the request set forth.

(3) and (4) Remain the same.

AUTH: Sec. 2-4-201, MCA **IMP:** Sec. 2-4-201, 39-71-2901, MCA

24.5.343 ATTORNEY FEES (1) In those cases where the claimant is awarded attorney fees pursuant to section 39-71-611 or 39-71-612, MCA, the court will indicate in its findings of fact and conclusions of law the basis for the award of reasonable costs and attorney fees, but the court will not determine the amount of the award until after the appeal period for its final decision has passed or after affirmation of its final decision on appeal, unless pursuant to ARM 24.5.348(2), the final decision is not certified as final.

(2) Remains the same.

(a) Within twenty 20 days following the expiration of the appeal period or affirmation on appeal of the court's final decision, or within 20 days after filing of the court's decision which pursuant to ARM 24.5.348(2) holds that the decision is not certified as final, claimant's attorney shall file with the court a claim for reasonable costs and attorney fees which shall contain the following:

(i) - (e) Remain the same.

AUTH: Sec. 2-4-201, MCA **IMP:** Sec. 2-4-201, 39-71-2901, MCA

24.5.344 PETITION FOR NEW TRIAL AND/OR REQUEST FOR AMENDMENT TO FINDINGS OF FACT AND CONCLUSIONS OF LAW (1)

After a trial, the court will issue an order or will issue findings of fact and conclusions of law and judgment setting forth the court's determination of the disputed issues. ~~The parties to the dispute may consider the order or the judgment as a final decision of the court for appeal purposes. A party to the dispute may request petition for a new trial or request amendment to the court's findings of fact and conclusions of law within twenty 20 days after the order or judgment is filed and, if any party submits such a request, the order or judgment issued by the court shall not be considered a final decision of the court for appeal purposes, served.~~

(2) If a request petition for a new trial or request for amendment is filed, the party requesting the new trial or amendment shall set forth specifically and in full detail the grounds upon which the party considers the request for a new trial, relief requested. An opposing party will have 10 days from the date of service pursuant to ARM 24.5.303(3) to respond.

(3) If a petition for a new trial or request for amendment is filed, the original order or judgment issued by the court shall not be considered the final decision of the court as of the day the new trial is denied, pending the denial or granting of the new trial or amendment.

(4) If a new trial is granted, the matter will be scheduled for trial pursuant to ARM 24.5.310. The matter will be determined by the testimony taken at the initial trial and at the new trial. After the new trial, the court will issue an order or findings of fact and conclusions of law and judgment setting forth the court's determination of the disputed issues.

AUTH: Sec. 2-4-201, MCA IMP: Sec. 2-4-201, 39-71-2901, MCA

24.5.348 CERTIFICATION OF DECISIONS, APPEALS TO SUPREME COURT

(1) Remains the same.
(2) ~~The court may certify its decision as final for purposes of appeal without a final determination of the amount of reasonable costs and attorney fees.~~

(3)(2) Text remains the same just renumbered.
(3) The court will certify its decisions as final without a determination of the amount of reasonable costs and attorney fees, except that:

(a) A party to the dispute may submit, with party's proposed findings and conclusions or otherwise at any time prior to issuance of the decision and certification, a request that the decision not be certified as final. Such a request must include a showing of the good cause upon which the request is based.

(b) The court in its discretion may grant the request, in which case the decision of the court shall not certify the judgment for purposes of appeal until the amount of the attorney fees and costs is determined.

(c) Regardless of whether or not the decision is certified as final for appeals purposes, ARM 24.4.344 shall still determine and limit the time within which to petition for new trial or request amendment to the court's findings of fact and conclusions of law.

AUTH: Sec. 2-4-201, MCA IMP: Sec. 2-4-201, 39-71-2901, MCA

3. The new rules as proposed provide the following:

I. WRIT OF EXECUTION (1) The procedure on execution, in proceedings supplementary to and in aid of a judgment, and in proceedings on and in aid of and supplementary to execution shall be in accordance with the statutes of the state of Montana that are applicable to executions in civil cases in district court, as set forth in Title 25, chapter 13, MCA, except that no writ of execution shall be issued until after the time has expired for requesting a rehearing or amendment of the court's decision.

(2) In aid of the judgment or execution, the judgment creditor or a successor in interest when that interest appears of record, may examine any person, including the judgment debtor, in the manner provided in these rules for taking depositions.

AUTH: Sec. 2-4-201, MCA IMP: Sec. 2-4-201, 39-71-2901, MCA

II. STAY OF JUDGMENT PENDING APPEAL (1) The party appealing a judgment of the workers' compensation judge may request a stay of execution of the judgment or order pending resolution of the appeal. A request for new trial and/or request for amendment to findings of fact and conclusions of law shall be deemed an automatic stay until the request is ruled upon.

(2) The appellant may request a stay by presenting a supersedeas bond to the workers' compensation judge and obtaining his approval of the bond. The bond must have two sufficient sureties or a corporate surety as authorized by law and must otherwise comply with the requirements of the Montana Rules of Appellant Civil Procedure.

(3) If it is shown to the satisfaction of the court by affidavit or certification of the department of labor and industry that adequate security exists for payment of the judgment, such as through bonds or other security deposits by the insurer with the department of labor and industry pursuant to sections 39-71-2106 or 39-71-2206, MCA, or if the appellant is the state of Montana or an officer or agency or governmental subdivision thereof, the court will waive the bond requirement.

(4) Except as provided for herein, the procedure for requesting a stay and posting a supersedeas bond will be the same as the procedure in Rule 7(b), Montana Rules of Appellate Procedure.

AUTH: Sec. 2-4-201, MCA IMP: Sec. 2-4-201, 39-71-2901, MCA

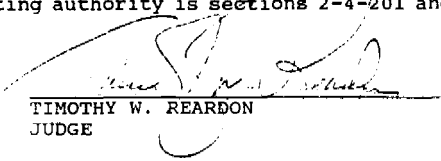
4. The rationale for amending and proposing these rules is to clarify certain aspects of the existing rules as determined by the court's rules committee in its annual review and to bring these rules into compliance with Supreme Court decisions regarding procedures and those changes to the workers' compensation act which were made by the legislature during the 1989 legislative session.

5. Interested parties may submit their data, views or arguments concerning these changes in writing to Workers' Compensation Court, 46 North Last Chance Gulch, P.O. Box 537, Helena, MT 59601-0537 on or before March 16, 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 Workers' Compensation Court, 46 North Last Chance Gulch, P.O. Box 537, Helena, MT 59601-0537, no later than March 16, 1992.

7. It has been determined that a change in the court rules could affect any injured worker in the state of Montana, therefore, if the agency receives requests for a public hearing on the proposed adoption from 25 persons who are directly affected by the proposed adoption; from the Administrative Code Committee of the legislature; or from a governmental subdivision or agency, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register.

8. The authority of the Court to make the proposed changes in the rules is based on and implements section 2-4-201, MCA. The implementing authority is sections 2-4-201 and 39-71-2901, MCA.



TIMOTHY W. REARDON
JUDGE

CERTIFIED TO THE SECRETARY OF STATE: February 4, 1992

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

In the matter of the	)	NOTICE OF PUBLIC HEARING ON
amendment of Rules	)	THE PROPOSED AMENDMENT OF
46.12.4008 and 46.12.4010	)	RULES 46.12.4008 AND
pertaining to post-	)	46.12.4010 PERTAINING TO
eligibility application of	)	POST-ELIGIBILITY
patient income to cost of	)	APPLICATION OF PATIENT
care	)	INCOME TO COST OF CARE

TO: All Interested Persons

1. On March 4, 1992, at 9:30 a.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana to consider the proposed amendment of Rules 46.12.4008 and 46.12.4010 pertaining to post-eligibility application of patient income to cost of care.

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

46.12.4008 POST-ELIGIBILITY APPLICATION OF PATIENT INCOME TO COST OF CARE Subsections (1) through (2)(a) remain the same.

(b) ~~\$40.00 personal needs allowance for the institutionalized individual;~~ a personal needs allowance of:

(i) \$90 for veterans receiving the minimum veterans administration aid and attendance allowance; or

(ii) \$40 for all other individuals.

Subsections (2)(c) through (9)(b)(i)(C) remain the same.

(ii) shelter expenses as defined in ARM 46.12.4010 which exceed 30% of the amount determined under ~~(5)(e)(ii)(A)~~ (9)(b)(i); minus

Subsection (9)(b)(iii) remains the same.

AUTH: Sec. 53-6-113 MCA

IMP: Sec. 53-6-131 MCA

46.12.4010 INSTITUTIONALIZED SPOUSE, DEFINITIONS

Subsections (1) through (1)(h)(iv) remain the same.

(v) ~~a monthly amount for major heating and cooling expenses for the community spouse's principal residence, unless such utility expenses are included in any other expense such as rent or a maintenance charge;~~ a monthly standard utility allowance (SUA) available only to households which incur central heating or central cooling costs separate from rent or mortgage. The SUA shall be \$225 and includes the cost of heating or cooling, water, sewerage, garbage and trash collections, cooking fuel, electricity not used to heat or cool the residence, and the basic service fee for a telephone.

AUTH: Sec. 53-6-113 MCA

IMP: Sec. 53-6-131 MCA

3. The amendment of ARM 46.12.4008(2)(b) is necessary to comply with Section 8003 of the Omnibus Reconciliation Act of 1990 (OBRA 90) which mandates that single Medicaid-eligible veterans be permitted to retain all of their Veterans Administration Aid & Attendance payments of \$90 per month for their personal needs. The current rule allows a personal needs allowance of \$40 to be deducted from the gross income of a single Medicaid recipient in calculating how much of the income must be paid to the nursing home for care. The rule is being amended to provide that single Medicaid-eligible veterans residing in nursing homes will be entitled to a personal needs allowance of \$90. The personal needs allowance for all others remains \$40.

The amendment of ARM 46.12.4008(9)(b)(ii) is necessary to correct an inaccurate reference to another section of the rule.

ARM 46.12.4010(1)(i)(v) is being amended to state more specifically the amount allowed for utilities in computing the shelter expenses of a spouse who remains in the community of a Medicaid-eligible nursing home resident. Utility expenses are one factor used to determine shelter expenses, which in turn are used to calculate the community spouse's income allowance. The community spouse's income allowance is then deducted from the gross income of the Medicaid recipient in determining how much the recipient must pay each month to the nursing home for care.

ARM 46.12.4010(1)(i)(v) currently states that a monthly amount for heating and cooling expenses for the community spouse's residence is an allowed shelter expense but does not specify what that amount is. The rule is being amended to specify what amount is allowed. This amendment does not reflect a change in policy but is necessary to specifically express the method being used by the department to compute the utility component of the community spouse's shelter expenses.

The rule is being amended to state that a standard utility allowance (SUA) of \$225 per month is allowed in calculating the shelter expenses of a community spouse who incurs central heating or central cooling expenses separate from the rent or mortgage payment. This standard utility allowance takes into consideration the cost of cooking fuel, electricity not used for heating or cooling, the basic service fee for a telephone, garbage and trash collection, water, and sewerage, as well as heating and cooling costs. These costs may not be separately claimed.

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 March 12, 1992.

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

David B. [illegible]
Rule Reviewer

[illegible]
Director, Social and Rehabilitation Services

Certified to the Secretary of State February 3, 1992.

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

In the matter of the	)	NOTICE OF PUBLIC HEARING ON
amendment of rule 46.12.4101	)	THE PROPOSED AMENDMENT OF
pertaining to qualified	)	RULE 46.12.4101 PERTAINING
medicare beneficiaries	)	TO QUALIFIED MEDICARE
	)	BENEFICIARIES

TO: All Interested Persons

1. On March 4, 1992, at 11:00 a.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana to consider the proposed amendment of rule 46.12.4101 pertaining to qualified medicare beneficiaries.

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

46.12.4101 QUALIFIED MEDICARE BENEFICIARIES, APPLICATION AND ELIGIBILITY FOR MEDICAID Subsections (1) and (1)(a) remain the same.

(b) meets the nonfinancial criteria in subsection (2) of this rule;

Subsection (1)(c) remains the same.

(d) has countable income ~~not in excess of 100% of the federal poverty income standard, as determined in accordance with this section;~~

(i) countable income may not exceed:

(A) 100% of the federal poverty income standard for state fiscal year 1991 and 1992;

(B) 110% of the federal poverty income standard for state fiscal year 1993 and 1994; and

(C) 120% of the federal poverty income standard for state fiscal year 1995 and years thereafter.

(2) When determining countable income, cost of living increases to the client's Title II social security benefits beginning with December of the previous year through the month after the official federal poverty standards are published shall be excluded.

Subsections (2) through (6) remain the same in text but will be renumbered (3) through (7).

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

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

3. This rule amendment will implement the increased income standards required by the Omnibus Budget Reconciliation Act of 1990 (OBRA 90) (42 U.S.C. §1396a(a)(10)(E) and 42 U.S.C. §1396d(p)). OBRA 90 increased the income standard for Qualified Medicare Beneficiaries (QMB) to 110% of

poverty beginning 1993 and 120% of poverty beginning 1995. Additionally, the rule will implement another requirement of OBRA 90 (42 U.S.C. §1396d(p)) providing that yearly cost of living adjustments to Social Security benefits of QMB recipients are excluded from countable income until the month after the federal poverty standards are published.

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 March 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 Shin
Rule Reviewer

John P. Hansen
Director, Social and Rehabilitation Services

Certified to the Secretary of State February 3, 1992.

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

In the matter of the	)	NOTICE OF PUBLIC HEARING ON
amendment of rules 46.15.102	)	THE PROPOSED AMENDMENT OF
and 46.15.103 pertaining to	)	RULES 46.15.102 AND
refugee assistance	)	46.15.103 PERTAINING TO
	)	REFUGEE ASSISTANCE

TO: All Interested Persons

1. On March 4, 1992, at 2:00 p.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana to consider the proposed refugee assistance.

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

46.15.102 REFUGEE CASH ASSISTANCE Subsections (1) through (1)(b) remain the same.

(i) has parole status as a refugee or asylee status under section 212(d)(5) of the Immigration and Nationality Act;

(ii) has been admitted as a conditional entrant under section 203(a)(7) of the Immigration and Nationality Act;

(iii) has been admitted as a refugee under section 207 of the Immigration and Nationality Act;

(iv) has been granted asylum under section 208 of the Refugee Immigration and Nationality Act of 1980;

Subsections (1)(b)(v) through (e) remain the same.

(2) RCA may be provided to eligible refugees during the twelve (12) eight month period beginning with the month of entry to the United States.

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

AUTH: Sec. 53-2-201 MCA

IMP: Sec. 53-2-201 MCA

46.15.103 REFUGEE MEDICAL ASSISTANCE (1) Medicaid Medical assistance will be provided to eligible refugees who qualify under subsections (2) or (3) for the eight month period beginning with the month of entry to the United States.

(a) All rules of the Medicaid program as found in ARM 46.12.101 through 46.12.217 apply.

(i2) For recipients of refugee cash assistance, the rules for AFDC related are categorically needy apply eligible for medical assistance.

(i23) For individuals Refugees not eligible for receiving refugee cash assistance due to excess income or resources, the rules for the medically needy apply, are eligible for refugee medical assistance provided they:

(a) are ineligible for medicaid but meet the financial eligibility requirements of the medically needy program as set forth in ARM 46.12.3803, 46.12.3804 and 46.12.3805;

(b) meet immigration status and identification requirements as set forth in ARM 46.15.102(b)(i) through (vii) or are the dependent children of, and part of the same filing unit as, individuals who meet these requirements;

(c) have not applied for, been denied or terminated from refugee cash assistance;

(d) provide the name of the resettlement agency which resettled them; and

(e) are not full-time students in institutions of higher education, except when enrollment in such an institution is approved by the state as part of an individual employability plan.

AUTH: Sec. 53-2-201 MCA

IMP: Sec. 53-2-201 MCA

3. Refugee Cash Assistance and Refugee Medical Assistance are authorized by the Immigration and Nationality Act and are administered by the Office of Refugee Resettlement (ORR) which is part of the Administration for Children and Families of the Department of Health and Human Services. Both programs are 100% federally funded. Section 412(a)(1) of the Immigration and Nationality Act provides that assistance will be provided to refugees only "to the extent of available appropriations."


The ORR has recently notified the department that due to limited funding for 1992, Refugee Cash and Medical Assistance will be provided only for the eight month period beginning with the first month the refugee entered the United States. ARM 46.15.102 and ARM 46.15.103 currently provide that eligibility for this assistance will be provided for a 12 month period beginning with the month the refugee entered the United States. The amendment of these rules is therefore necessary to limit both cash and medical assistance for these refugees to an eight month period.

Subsections (1)(b)(i) through (iv) of ARM 46.15.102 pertaining to the immigration status required to qualify for refugee cash assistance are also being amended to specify the applicable sections of the Immigration and Nationality Act.


ARM 46.15.103 as currently written does not put the public on notice of the specific eligibility requirements for Refugee Medical Assistance. The rule is therefore being amended to set forth specifically the eligibility requirements for this program. These changes do not represent a change in policy. Subsection (1)(a) has been deleted because it contained material which was not pertinent to Refugee Medical Assistance.

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 March 12, 1992.

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



Rule Reviewer



Director, Social and Rehabilitation Services

Certified to the Secretary of State February 3, 1992.

BEFORE THE DEPARTMENT OF AGRICULTURE
STATE OF MONTANA

In the matter of the adoption)	NOTICE OF ADOPTION OF
of New Rules pertaining to)	NEW RULES I-III, 4.12.1422
importation of Purple)	THROUGH 4.12.1424, PERTAINING
Loosestrife and Wand Loose-)	TO THE IMPORTATION OF PURPLE
strife and hybrids thereof)	LOOSESTRIFE AND WAND LOOSESTRIFE
into Montana)	AND HYBRIDS THEREOF INTO MONTANA

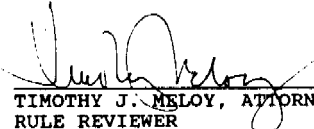
TO: All Interested Persons:

1. On December 26, 1991, the Department of Agriculture published a notice to adopt new rules I - III relating to the importation of purple and wand loosestrife and their hybrids into Montana at page 2535, issue number 24 of the 1991 Montana Administrative Register.

2. The department received a total of four comments. Three were in support of the rules as proposed. The fourth objected to the prohibition of the importation of purple loosestrife because in their experience, the plants are not a problem. The department disagreed for the reasons stated in the Notice of Proposed Adoption.

3. As a result of the written comments received on the public record and the department's review of the comments and the proposed rules, the department has adopted all the new rules as proposed.


E.M. SNORTLAND, DIRECTOR
DEPARTMENT OF AGRICULTURE


TIMOTHY J. MELOY, ATTORNEY
RULE REVIEWER
DEPARTMENT OF AGRICULTURE

Certified to the Secretary of State, January 27, 1992

BEFORE THE BOARD OF DENTISTRY
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the adoption) NOTICE OF ADOPTION OF NEW
of a new rule pertaining to) RULE I (8.16.723) MANAGE-
infectious wastes) MENT OF INFECTIOUS WASTES

TO: All Interested Persons:

1. On September 12, 1991, the Board of Dentistry published a notice of proposed adoption of the above-stated rule at page 1617, 1991 Montana Administrative Register, issue number 17.

2. The Board has adopted the rule as proposed but with the following changes:

"8.16.723 MANAGEMENT OF INFECTIOUS WASTES (1) will remain the same as proposed.

(2) Used sharps are properly packaged and labelled within the meaning of 75-10-1005(1)(a), MCA, when this is done as required by the occupational safety and health administration (OSHA) REGULATION CONTAINED IN 29 CFR 1910.1030, ADOPTED AND PUBLISHED IN THE FEDERAL REGISTER, VOLUME 56 NO. 235, ON DECEMBER 6, 1991 BEGINNING AT PAGE 64175, WHICH IS HEREBY INCORPORATED BY REFERENCE. COPIES OF THE FEDERAL REGULATION REFERENCED ABOVE AS WELL AS THE ADOPTION NOTICE SUPPORTING IT ARE AVAILABLE FOR PUBLIC INSPECTION IN THE OFFICES OF THE BOARD OF DENTISTRY, LOWER LEVEL, ARCADE BUILDING, 111 NORTH JACKSON, HELENA, MONTANA 59620-0407. ~~If OSHA has no such requirements, the dentist shall place them in a heavy, leakproof, puncture resistant cardboard box and secure the lid with reinforced strapping tape. The container shall bear the words "used dental sharps" on a distinctive label taped or securely glued on the container.~~

(3) THIS RULE WILL BE EFFECTIVE AS OF MARCH 6, 1992."

Auth: Sec. 37-1-131, 37-4-205, 75-10-1006; IMP, Sec. 75-10-1006, MCA

3. The Board has thoroughly considered all comments received. Those comments and the Board's responses thereto are as follows:

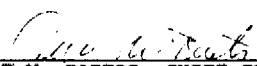
COMMENT: One comment was received from the staff of the Administrative Code Committee (ACC) asking if the Board, by its notice of proposed rule adoption, intended to enforce OSHA requirements. The staff of the ACC suggested that if it was indeed the intent of the Board to enforce OSHA requirements, that such requirements must be spelled out specifically within the confines of the adopted rule.

RESPONSE: The Board has amended the rule as proposed to include a specific citation to the Department of Labor's

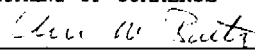
promulgated regulation regarding the packaging and disposal of used dental sharps which was published on December 6, 1991.

BOARD OF DENTISTRY
WAYNE L. HANSEN, D.D.S.,
PRESIDENT

BY:



ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE



ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, February 3, 1992.

BEFORE THE BOARD OF PASSENGER TRAMWAY SAFETY
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment	)	NOTICE OF AMENDMENT OF
of rules pertaining to ANSI	)	8.63.501 ADOPTION OF THE
standards and registration of	)	ANSI STANDARD AND 8.63.504
tramways	)	REGISTRATION OF NEW, RELO-
	)	CATED OR MAJOR MODIFICATIONS
	)	OF TRAMWAYS

TO: All Interested Persons:


1. On December 12, 1991, the Board of Passenger Tramway Safety published a notice of proposed amendment of the above-stated rules at page 2323, 1991 Montana Administrative Register, issue number 23.

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

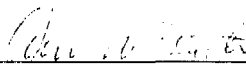
3. No comments or testimony were received.

BOARD OF PASSENGER TRAMWAY SAFETY
TIMOTHY M. PRATHER, CHAIRMAN

BY:



ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE



ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, February 3, 1992.

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

In the matter of the amendment)	NOTICE OF AMENDMENT OF
of rules relating to pupil)	RULES RELATING TO PUPIL
transportation)	TRANSPORTATION

To: All interested persons

1. On December 12, 1991, the Superintendent of Public Instruction published notice of public hearing on the proposed amendment of the rules referenced above at page 2325 of the 1991 Montana Administrative Register, issue number 23.

2. A public hearing was held on January 8, 1992, and was attended by only one person. The hearing was recorded and the tape is included in the file on this matter together with the report of the hearing officer. Formal comments were received in the form of written testimony and/or at the hearing.

3. After consideration of the comments received, the rules are being amended as proposed with those changes given below, new material underlined, deleted material interlined.

10.7.103 TRANSPORTATION REIMBURSEMENT ELIGIBILITY CRITERIA

Received no comments and is amended as proposed.

(AUTH: 20-3-106, 20-10-112, MCA; IMP: 20-10-121, 20-10-145 and 20-10-146, MCA)

10.7.104 CLAIM PROCEDURE Received no comments and is

amended as proposed.

(AUTH: 20-3-106, 20-10-112, MCA; IMP: 20-10-145, MCA)

10.7.105 PUPIL TRANSPORTATION CONTRACT (1) through (4) remains the same as proposed.

(5) The board of trustees is prohibited from issuing warrants on the transportation budget in the absence of a contract, ~~or in excess of a contract.~~

(6) State reimbursement is paid only on claims supported by valid contracts ~~in effect at the time of adoption of the transportation budget. The only exceptions are for contingency and/or emergency transportation for eligible transportees who become eligible after the adoption of the budget, as specified below.~~

(AUTH: 20-3-106, 20-10-112, MCA; IMP: 20-10-143, MCA)

COMMENT: OPI staff determined that "in excess of a contract" in paragraph (5) is in conflict with section 20-10-143, MCA.

RESPONSE: Amending rule to reflect comment.

COMMENT: OPI staff determined that language in paragraph (6) is contradictory to case law, Hernandez v. Havre School District 16A, 8 Ed Law 140 (OSPI 1989).

RESPONSE: Amending rule to reflect comment.

10.7.106 CONTRACTS WITH INDIVIDUAL FAMILIES (1) - (9) remains the same as proposed.

(10) Between July 1 and July 10, the county superintendent reviews the transportation budgets, together with any budgets of non-operating districts requiring transportation expenditures, and obtains therefrom the data needed to establish the county's responsibility for transportation reimbursement in the ensuing year; ~~the amount determined for elementary schools affects the county equalization level for elementary schools, while the amount determined for high schools must be raised by a county-wide tax levy.~~ In making these determinations, the county superintendent refers to the transportation contract forms to verify the amount to be budgeted for the county's obligation for transportation reimbursement.

(11) - (12) remains the same as proposed.

~~(13) Upon receipt of the approved rates, the county superintendent notifies the county treasurer of the name of the families, the district paying the transportation, and the amount of the approved rates.~~

(14)(13) remains the same as proposed.

(AUTH: 20-3-106, 20-10-112, MCA; IMP: 20-10-111, 20-10-112, MCA)

COMMENT: Gallatin County Superintendent Brown commented that the amount determined for elementary schools affecting the county equalization level for elementary schools is no longer correct since the county-wide transportation levy includes both elementary and high school county transportation amounts. She also indicated that the county treasurer does nothing with individual transportation contracts since the payment is to the individual school districts.

RESPONSE: Amending rule to reflect comments.

10.7.107 CONTINGENCY TRANSPORTATION Received no comments and is amended as proposed.

(AUTH: 20-3-106, 20-10-112, MCA; IMP: 20-10-124, 20-10-143, MCA)

10.7.108 BUS CONTRACTS Received no comments and is amended as proposed.

(AUTH: 20-3-106, 20-10-112, MCA; IMP: 20-10-124, 20-10-143, MCA)

10.7.109 BUS TRANSPORTATION REIMBURSEMENT-SCHOOL DISTRICT APPLICATION FOR REGISTRATION OF SCHOOL BUSES AND STATE REIMBURSEMENT Received no comments and is amended as proposed.
(AUTH: 20-3-106, 20-10-112, MCA; IMP: 20-10-112, MCA)

10.7.110 STANDARDS FOR SCHOOL BUSES (1) Section 20-10-141, MCA, establishes a schedule of bus transportation expenditures reimbursable from state funds ~~and specifies that reimbursable~~

~~bus transportation shall be in "...any vehicle...which complies with the bus standards established by the board of public education as verified by the Montana department of justice's semiannual inspection of school buses and the superintendent of public instruction."~~ Reimbursable bus transportation shall be made on vehicles that are in compliance with section 20-10-101, MCA.

(2) - (4) remains the same as proposed.

(AUTH: 20-3-106, 20-10-112, MCA; IMP: 20-10-111, 20-10-112, MCA)

COMMENT: Gallatin County Superintendent Brown commented that the rule as written was unclear and could be interpreted to mean that the superintendent of public instruction is verifying the bus standards.

RESPONSE: Amending rule to reflect comment.

10.7.111 QUALIFICATION OF BUS DRIVERS (1) remains the same as proposed.

(~~ia~~) have five years of licensed driving experience;
(~~iib~~) is not less than 18 years of age;
(~~iiic~~) be of good moral character;
(~~iivd~~) hold a driver's license with a commercial vehicle operator's endorsement;

(~~ve~~) have filed with the board of trustees a satisfactory report of a physical examination, signed by a licensed physician in the state of Montana, on a form provided by the superintendent of public instruction or the department of transportation (depending on whether the driver is applying for a Type 1 or Type 2 endorsement);

(~~vif~~) hold a valid basic first-aid certificate;
(~~viig~~) hold a valid certificate as evidence of meeting the above qualifications.

(2) The holding of a first-aid certificate is of no less importance than the other legally prescribed qualifications. Section 20-10-103, MCA, requires that "...he has completed a ~~standard basic~~ first-aid course and holds a valid ~~standard basic~~ first-aid certificate from an authorized instructor."

(3) - (6) remains the same as proposed.

(7) A school bus driver certificate remains valid until the earliest expiration date of the ~~chauffeur's license commercial vehicle operator's endorsement~~, the first-aid certificate, and/or physical examination. A new certificate must be issued to the driver when any of the above items expires and is renewed.

(8) remains the same as proposed.

(a) ~~Drivers without a current certificate with the office of public instruction at the time the state reimbursement is paid, -~~ With the exception of subsections (3) and (4), OPI will not be reimbursed for the routes driven by drivers without a current certificate on file with the office of public instruction at the time the state reimbursement is paid.

(b) The office of public instruction will verify that all

qualifications have been renewed upon expiration. If any license, certificate, or examination was expired for any period of time, the office of public instruction will withhold funding for the number of days the driver was not qualified.
(AUTH: 20-3-106, 20-10-112, MCA; IMP: 20-10-103, 20-10-112, MCA)

COMMENT: Gallatin County Superintendent Brown pointed out the rule should clarify that the school district be reimbursed for the route rather than the driver. She also asked is the first-aid certificate a basic or standard?

RESPONSE: Amending rule to reflect comment and changing "standard" to "basic."

COMMENT: OPI staff noticed that section 20-10-103, MCA, should have been included as authority. Staff also noticed that paragraph (1) was not outlined in the form set forth in ARM 1.2.519.

RESPONSE: Amending authority to include section 20-10-103, MCA, and paragraph (1).

COMMENT: OPI staff felt that the language in paragraph (7) should be consistent with that in section 20-10-103, MCA.

RESPONSE: Amending rule to be consistent with statute.

10.7.113 "TWO CONTRACT AMOUNT" REGULATION Received no comments and is amended as proposed.
(AUTH: 20-3-106, 20-10-112, MCA; IMP: 20-10-142, MCA)

10.7.114 SCHEDULE FOR TRANSPORTATION PAYMENTS Received no comments and is amended as proposed.
(AUTH: 20-3-106, 20-10-112, MCA; IMP: 20-10-142, MCA)

10.7.115 SCHEDULE FOR BUS TRANSPORTATION Received no comments and is amended as proposed.
(AUTH: 20-3-106, 20-10-112, MCA; IMP: 20-10-141, 20-10-142, MCA)

10.7.117 SCHOOL TRANSPORTATION CALENDAR Received no comments and is amended as proposed.
(AUTH: 20-3-106, 20-10-112, MCA; IMP: 20-10-112, 20-10-145, MCA)

10.7.118 SCHOOL TRANSPORTATION FORMS LISTED BY FORM NUMBER
(1) - (2)(a) remains the same as proposed.

(b) Forms supplied by the superintendent of public instruction.

(c) Copies of forms mailed to district officials by September 10 of each year.

(d) Forms completed by district officials, due to county superintendent's office by October 1.

(e) County superintendent uses form to verify accuracy of information submitted on TR-1.

(3) Form TR-4, Elementary and High School Individual Transportation Contract:

(a) - (b) remains the same as proposed.

(c) Copies of forms mailed to ~~county superintendents~~ district officials by April 15 of each year;

(d) - (f) remains the same as proposed.

(g) The contracts are processed, rated and approved by the superintendent of public instruction and the approved rates sent to the county superintendent and district and ~~family~~ by mid-October.

(4) - (4)(b)(i) same as proposed..

(ii) Second semester by May 15;

(c) - (e) remains the same as proposed.

(5) - (5)(b)(i) remains the same as proposed.

(ii) Second semester by May 15;

(c) - (e) remains the same as proposed.

(6) - (9)(d) remains the same as proposed.

(AUTH: 20-3-106, 20-10-112, MCA; IMP: 20-10-112, 20-10-145, MCA)

COMMENT: Missoula County Superintendent Vielleux commented that (2) above refers to subparagraphs (b)-(d) in the current rule when the current rule has (a) only. She also explained the inappropriateness of having copies of the forms mailed to county superintendents.

RESPONSE: Subparagraphs (2)(b) through (2)(d) were unintentionally omitted in the proposed notice, and are now inserted, as noticed above. Also, subparagraph (2)(e) was not identified as new in the proposed notice, and is amended to require district officials to provide copies of the TR-2 forms to the county superintendent for verification of information submitted on the TR-1 form. County superintendents are omitted in subsection (3)(c) to allow TR-4 forms to continue to be mailed to district officials.

COMMENT: Gallatin County Superintendent Brown commented that the word "individual" should be included when referring to form TR-4. She also requested in subparagraph (3)(c) to change to "school districts" instead of "county superintendents." Further, she commented that the new (7) was the current (9), not (8); the new (8) was the current (10), not (9); and the new (9) was the current (11), not (10).

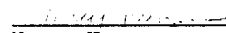
RESPONSE: Amending the rule to reflect the comments. The proposed numbering of subparagraphs (7) through (9) was published as the current (8) through (10) and should have been published as (9) through (11).

NOTES: Legislative Council staff requested that the authority for transportation rules, ARM 10.7.103 through 10.7.118, is amended to include section 20-10-112, MCA. This section gives

the Superintendent of Public Instruction the actual authority to adopt rules. Further, Eddy McClure elaborated on the statement of reasonable necessity for these rule changes, as follows: Several rules have not been amended since 1975 to implement statutory changes enacted by subsequent legislatures. Rule changes are necessary due to passage of SB 82 recommendations discussed during the 1991 interim study of the Legislative Oversight Committee on School Funding, and amendment recommendations of school district and county officials.

4. Based on the foregoing, the Superintendent of Public Instruction hereby amends the rules.



Betsy J. Lovitt
Rule Reviewer

Nancy Keenan
Superintendent
Office of Public Instruction

Certified to the Secretary of State February 3, 1992.

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

In the matter of the amendment) NOTICE OF AMENDMENT AND
and adoption of rules relating) ADOPTION OF RULES RELATING TO
to special accounting practices) SPECIAL ACCOUNTING PRACTICES

To: All interested persons

1. On December 12, 1991, the Superintendent of Public Instruction published notice of public hearing on the proposed amendment and adoption of the rules referenced above at page 2334 of the 1991 Montana Administrative Register, issue number 23.

2. A public hearing was held on January 8, 1992, and was attended by only one person. The hearing was recorded and the tape is included in the file on this matter together with the report of the hearing officer. Formal comments were received in the form of written testimony and/or at the hearing.

3. After consideration of the comments received, the rules are being amended and adopted as proposed with those changes given below, new material underlined, deleted material interlined.

10.10.301 FORMULA FOR CALCULATING REGULAR EDUCATION TUITION Received no comments and is amended as proposed.
(AUTH: 20-5-305, 20-5-312, MCA; IMP: 20-5-305, 20-5-312, 20-6-702, MCA)

RULE I (10.10.301A) DEFINITIONS Received no comments and is adopted as proposed.
(AUTH: 20-9-102, MCA; IMP: 20-9-102, MCA)

10.10.302 PAYMENT AND CLOSING OF PRIOR YEAR ACCRUED EXPENDITURES AND ENCUMBRANCES Received no comments and is amended as proposed.
(AUTH: 20-9-102, 20-9-201, MCA; IMP: 20-9-102, 20-9-201, 20-9-209, MCA)

10.10.309 DISTRIBUTION AND REAPPROPRIATION OF COUNTY-WIDE FUNDS (1) - (5)(b) remains the same as proposed.

(6) The cash balance in the elementary and high school county-wide retirement and transportation funds at fiscal year end must be reappropriated in the following fiscal year once distributions to school districts for the current and prior years are 100% of the total net district requirements and the reserve permitted by section 20-10-146, MCA, has been provided ~~for~~.

(AUTH: 20-9-102, MCA; IMP: 20-9-213, MCA)

COMMENT: Gallatin County Superintendent Brown pointed out that the word "for" needs to be eliminated in order to make the subparagraph correct.

RESPONSE: Amending the rule to reflect comment.

RULE II (10.10.310) UNOBLIGATED SPECIAL EDUCATION AND TUITION MONIES IN THE MISCELLANEOUS PROGRAMS FUND Received no comments and is adopted as proposed.
(AUTH: 20-9-102, MCA; IMP: 20-9-321, 20-9-507; MCA)

RULE III (10.10.311) BUS DEPRECIATION RESERVE FUND Received no comments and is adopted as proposed.
(AUTH: 20-9-102, MCA; IMP: 20-9-147, MCA)

10.10.501 COUNTY TREASURER'S FINANCIAL REPORTS Received comment and is adopted as proposed.
(AUTH: 20-9-102, 20-9-201, MCA; IMP: 20-9-121, 20-9-212, 20-9-442, MCA)

COMMENT: County Treasurer Cook commented that the rule needs rewording for clarification purposes to allow county treasurers to make corrections without reopening records for the previous year.


RESPONSE: The present wording allows the county treasurers to make corrections in the year the error is discovered rather than adjusting financial records which have been closed for a year. No change is necessary to allow the flexibility being requested.

10.10.504 FUNDING ADJUSTMENTS FOR PRIOR/CURRENT YEAR REPORTING ERRORS Received no comments and is amended as proposed.
(AUTH: 20-9-102, 20-9-201, MCA; IMP: 20-9-344, MCA)

4. Rule I will be codified as ARM 10.10.301A and Rules II and III will be codified as ARM 10.10.310 and 10.10.311.

5. Based on the foregoing, the Superintendent of Public Instruction hereby amends and adopts the rules.


Beda J. Lovitt
Rule Reviewer


Nancy Keenan
Superintendent
Office of Public Instruction

Certified to the Secretary of State February 3, 1992.

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

In the matter of the amend-) NOTICE OF AMENDMENT
ment of ARM 10.16.1314) OF ARM 10.16.1314 RELATING TO
SPECIAL EDUCATION TUITION RATES

To: All interested persons

1. On December 26, 1991, the Superintendent of Public Instruction gave notice of proposed amendment of ARM 10.16.1314, published at page 2551 of the 1991 Montana Administrative Register, issue number 24.

2. No public hearing was held nor was one requested. The Superintendent has received written and oral comments concerning this rule.

3. After consideration of the comments received, the rule is being amended as proposed with those changes given below, new material underlined, deleted material interlined.

10.16.1314 FORMULA FOR SPECIAL EDUCATION TUITION RATES

(1) - (1)(a)(i) remains the same as proposed.

(A) Regular tuition rate calculations are determined pursuant to section 20-95-305, MCA, and ARM 10.10.302~~1~~:

1. through 27. remains the same as proposed.

(ii) remains the same as proposed.

(A) Regular tuition rate calculations are determined pursuant to section 20-95-312, MCA, and ARM 10.10.302~~1~~.

1. through 23. remains the same as proposed.

(1)(a)(iii) through (1)(c~~b~~) remains the same as proposed.

(AUTH: 20-5-305, 20-5-312, MCA; IMP: 20-5-305, 20-5-312, MCA)

COMMENT: A representative from the field commented that there were improper referenced cites.

RESPONSE: Amending rule to change sections 20-9-305 and 20-9-312, MCA, to 20-5-305 and 20-5-312. Also changed ARM 10.10.302 to 10.10.301.


COMMENT: Sweet Grass County Superintendent Schott commented as to section (i)(A)14-"Regular tuition-Elementary," what is elementary? Does it mean that line 6 is actual expenditures per ANB, line 13 is state and county revenue per ANB, and line 14 is actual district expenditures less the state and county revenues per ANB? Also, in section (ii)(A)14-what is high school? This rule is confusing no definitions are given and it doesn't appear to say what it means, which would be very confusing to new district and county superintendents.

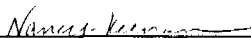
RESPONSE: This formula is an extract from ARM 10.10.301 and a clarification of sections 20-5-305 and 20-5-312, MCA. This puts statutory language into formula and must be read in conjunction with the statute that is being implemented.

COMMENT: Ned Laird of Billings Public Schools commented as to keeping the language in this Rule consistent with the language used in IDEA regarding the use of the word "handicapped."

RESPONSE: Agree that the language should be consistent with IDEA but doing so at this time would make the language inconsistent with the terminology currently defined in this chapter in the ARM. At such time when changes are made in the unit as a whole, changes will be made in this Rule to be consistent with the wording used in IDEA.

4. Based on the foregoing, the Superintendent of Public Instruction hereby amends the rule as proposed.


Beda J. Lovitt
Rule Reviewer


Nancy Keenan
Superintendent
Office of Public Instruction

Certified to the Secretary of State February 3, 1992.

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

In the matter of the amend-	)	NOTICE OF AMENDMENT, REPEAL
ment, repeal, and transfer of	)	AND TRANSFER OF RULES
rules relating to special	)	RELATING TO SPECIAL EDUCATION
education budgets	)	BUDGETS - ARM 10.16.2101
		THROUGH 10.16.2107 AND 10.16.2110

To: All interested persons

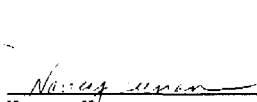
1. On December 26, 1991, the Superintendent of Public Instruction gave notice of proposed amendment, transfer and repeal of rules pertaining to special education budgets, published at page 2555 of the 1991 Montana Administrative Register, issue number 24.

2. No public hearing was held nor was one requested. The Superintendent has received no comments from the field concerning these rules.

3. Legislative Council staff commented that in the statement of reasonable necessity, OPI cited changes in legislation but did not identify the specific bills that required action. In response, that legislation is SB 17, HB 435 and HB 715, L. 1991.

4. Based on the foregoing, the Superintendent of Public Instruction hereby amends, repeals, and transfers the rules as proposed.


Bada J. Lovitt
Rule Reviewer


Nancy Keenan
Superintendent
Office of Public Instruction

Certified to the Secretary of State February 3, 1992.

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

In the matter of the amendment)
and adoption of rules relating)
to average number belonging)

NOTICE OF AMENDMENT AND
ADOPTION OF RULES RELATING TO
AVERAGE NUMBER BELONGING -
ARM 10.20.101, 102, 104


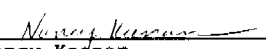
To: All interested persons

1. On December 12, 1991, the Superintendent of Public Instruction published notice of public hearing on the proposed amendment and adoption of the rules referenced above at page 2342 of the 1991 Montana Administrative Register, issue number 23.

2. A public hearing was held on January 8, 1992, and was attended by only one person. No comments were received in the form of written testimony nor at the hearing.

3. Rule I will be codified as ARM 10.20.104

4. Based on the foregoing, the Superintendent of Public Instruction hereby amends and adopts the rules as proposed.


Beda J. Lovitt
Rule Reviewer
Nancy Keenan
Superintendent
Office of Public Instruction

Certified to the Secretary of State February 3, 1992.

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

In the matter of the adoption of) NOTICE OF ADOPTION OF
rules relating to foundation) RULES RELATING TO FOUNDATION
payments) PAYMENTS - ARM 10.20.201,
10.20.202 AND 10.20.203

To: All interested persons

1. On December 12, 1991, the Superintendent of Public Instruction published notice of public hearing on the proposed adoption of the rules referenced above at page 2373 of the 1991 Montana Administrative Register, issue number 23.

2. A public hearing was held on January 8, 1992, and was attended by only one person. No comments were received at the hearing. Formal comments were received in the form of written testimony.

3. Legislative Council staff commented that it would be clearer if OPI, in the statement of reasonable necessity, would have stated that section 20-9-166, MCA, was amended by Senate Bill 17 (Chapter 767, L. 1991), requiring the Superintendent of Public Instruction to adopt rules.

4. Gallatin County Superintendent Brown commented that Rule III (1)(a)(ii) will allow school districts to receive their rightful ANB amount and subsequent foundation payment only if their enrollment is as great as the minimum ANB for the category. This is saying that if a school district added their ANB for the second semester of 1989-90, their ANB for the first semester of 1990-91, and this resulted in a 15 ANB to be paid in 1991-92 that the school district must have at least 14 enrolled to receive the foundation program schedule payment. What she perceives is that a school district has had the allowed ANB for calculation and for education, but this Rule will not pay the school district the foundation program schedule amount in 1991-92 unless the school district has 14 enrolled. She doesn't read this anywhere in sections 20-9-318 and 20-9-322, MCA. IN RESPONSE, Rule III (1)(a)(ii) applies to districts which qualify for funding for additional staff under section 20-9-318, MCA. The rule is intended to allow funding for additional staff only if the district maintains the qualifying enrollment in the year the funding applies. If the district's enrollment falls below the number required to qualify for a funding category in section 20-9-318, MCA, which includes funding for additional staff, the district would still be funded in the category for which it does qualify. The Rule ensures only those districts which qualify that year receive funding for additional staff. A 1989 legislative change caused foundation program funding to be based on ANB figures from a period which ends at least six months before the year being funded. The funding inequities caused by the time lag would not be removed by omitting this rule, since the funding would still not become available in the year the additional funding was needed. However, there is a vehicle for providing additional funding for an unusual enrollment increase when the district's enrollment exceeds 106% of the estimated

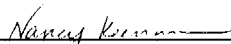
enrollment, as provided in section 20-9-314, MCA.

5. Rules I through III will be codified as ARM 10.20.201 through 10.20.203.

6. Based on the foregoing, the Superintendent of Public Instruction hereby adopts the rules as proposed.



Bedd J. Lovitt
Rule Reviewer



Nancy Keenan
Superintendent
Office of Public Instruction

Certified to the Secretary of State February 3, 1992.

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

In the matter of the amendment)	NOTICE OF AMENDMENT AND
and repeal of rules relating)	REPEAL OF RULES RELATING TO
to guaranteed tax base (GTB))	GUARANTEED TAX BASE (GTB)

To: All interested persons

1. On December 12, 1991, the Superintendent of Public Instruction published notice of public hearing on the proposed amendment and repeal of the rules referenced above at page 2346 of the 1991 Montana Administrative Register, issue number 23.

2. A public hearing was held on January 8, 1992, and was attended by only one person. The hearing was recorded and the tape is included in the file on this matter together with the report of the hearing officer. Formal comments were received in the form of written testimony and/or at the hearing.

3. After consideration of the comments received, the rules are being amended and repealed as proposed with those changes given below, new material underlined, deleted material interlined.

10.21.101 DEFINITIONS Received no comments and is amended as proposed.

(AUTH: 20-9-369, MCA; IMP: 20-9-366 through 20-9-369, MCA)

10.21.102 DATA USED IN GTB CALCULATIONS Received no comments and is repealed as proposed.

(AUTH: 20-9-369, MCA; IMP: 20-9-366 through 20-9-369, MCA)

10.21.103 CALCULATION OF MILL VALUES PER ANB AND GTB AID PAYMENTS (1) - (3)(a) remains the same as proposed.

(b) if the alleged error involves taxable valuation, the official shall contact the county assessor of ~~his~~ the county in writing by April 1, detailing the alleged error and requesting correction be made. Copies of the letter to the county assessor must be mailed to OPI and the Property Assessment Division, Department of Revenue, Steamboat Block Building, Helena Avenue, Helena, MT 59601. DOR will make any necessary change and notify OPI of the change, in writing, prior to April 15. Any changes received after April 15 will not be taken into account in establishing the final statewide, district, and county mill values per ANB.

(4) - (11)(c) remains the same as proposed.

(AUTH: 20-6-369, MCA; IMP: 20-9-366 through 20-9-369, MCA)

COMMENT: Gallatin County Superintendent Brown requested to move "his" and replace with the word "the."

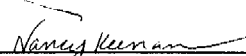
RESPONSE: Amending rule to specify "the."

10.21.104 DISTRIBUTION AND REVERSION OF GTB AID Received no comments and is amended as proposed.

(AUTH: Sec. 20-9-369, MCA; IMP, 20-9-366 through 20-9-369, MCA)

4. Based on the foregoing, the Superintendent of Public Instruction hereby amends and repeals the rules.



Beda J. Lovitt
Rule Reviewer

Nancy Keenan
Superintendent
Office of Public Instruction

Certified to the Secretary of State February 3, 1992.

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

In the matter of the amendment) NOTICE OF AMENDMENT AND
and adoption of rules relating) ADOPTION OF RULES RELATING TO
to spending and reserve limits) SPENDING AND RESERVE LIMITS

To: All interested persons

1. On December 12, 1991, the Superintendent of Public Instruction published notice of public hearing on the proposed amendment and adoption of the rules referenced above at page 2354 of the 1991 Montana Administrative Register, issue number 23.

2. A public hearing was held on January 8, 1992, and was attended by only one person. The hearing was recorded and the tape is included in the file on this matter together with the report of the hearing officer. Formal comments were received in the form of written testimony and/or at the hearing.

3. After consideration of the comments received, the rules are being amended and adopted as proposed with those changes given below, new material underlined, deleted material interlined.

10.22.101 DEFINITIONS Received no comments and is amended as proposed.
(AUTH: 20-9-102, MCA; IMP, 20-9-104, 20-9-315, MCA)

10.22.102 SPENDING LIMITS Received no comments and is amended as proposed.
(AUTH: 20-9-102, MCA; IMP: 20-9-315, MCA)

10.22.103 RESERVE LIMITS Received no comments and is amended as proposed.
(AUTH: 20-9-102, MCA; IMP: 20-9-104, 20-9-105, MCA)

10.22.104 UNRESERVED FUND BALANCE REAPPROPRIATED
(1) - (4)(a) remains the same as proposed.
(5) If a district has unreserved fund balance reappropriated remaining after fully funding the general fund budget amount in excess of the foundation program, its trustees shall notify the superintendent of public instruction by August 1. The amount remaining must be accounted for in a separate reserve account and reappropriated to be used for property tax relief in the subsequent school fiscal year. The balance in this separate reserve account may, when combined with the balance in the operating reserve account, exceed the reserve limit established in ARM 10.22.103(3).
(AUTH: 20-9-102, MCA; IMP: 20-9-104, 20-9-105, MCA)

COMMENT: Gallatin County Superintendent Brown pointed out that "superintendent" needs to be clarified.

RESPONSE: Amending rule to specify the "superintendent of Montana Administrative Register

3-2/13/92

public instruction."

RULE I (10.22.105) OVEREXPENDED BUDGETS Received no comments and is adopted as proposed.
(AUTH: 20-9-102, MCA; IMP: 20-3-332, 20-9-133, 20-9-315, MCA)

RULE II (10.22.106) PETITION TO INCREASE A DISTRICT'S GENERAL FUND BASE FOR THE PURPOSE OF CALCULATING THE GENERAL FUND BUDGET LIMITATION Received no comments and is adopted as proposed.
(AUTH: 20-9-102, MCA; IMP: 20-9-147, MCA)

RULE III (10.22.107) PETITION TO APPROPRIATE REVENUE TO FUND A PRIOR YEAR BUDGET AMENDMENT (1) A district may petition the superintendent of public instruction for approval to appropriate revenue in the ensuing school year to fund a prior year general fund budget amendment if expenditures authorized by the budget amendment resulted in a negative ending fund balance. The petition is necessary only when the district wishes to appropriate revenue in excess of the limitation in section 20-9-315, MCA. The amount appropriated under this subsection may not exceed the amount expended for the prior year budget amendment. If the prior year budget amendment is to be funded from a property tax levy, voter approval is required for any general fund levies in excess of the permissive levy authorized by section 20-9-145, MCA.
(AUTH: 20-9-102, MCA; IMP: 20-9-147, 20-9-315, MCA)

COMMENT: Bruce Moerer of MSBA commented that SB 17 repealed section 20-9-167, MCA, which gave county commissioners the authority to levy mills to fund a district's emergency budget amendment when other funds of the district were insufficient to fund the budget amendment. With the repeal of section 20-9-167, MCA, how does a district fund a general fund budget amendment that exceeds the general fund reserves of the district?

RESPONSE: Section 20-9-167, MCA, which gave county commissioners the authority to levy without voter approval to fund an emergency budget amendment, was repealed to make the law consistent with more recent statutes which require voter approval of any levies above the permissive levy. Rule III is being adopted to provide a mechanism for funding a prior year budget amendment with a voter-approved property tax levy in the ensuing school year. The Rule allows a school district to petition the Superintendent of Public Instruction to appropriate revenue above the general fund budget cap in the ensuing school year to fund the budget amendment to the extent that general fund reserves are insufficient to fund the budget amendment.

COMMENT: Frenchtown District Superintendent Nicosia asked what can a district do to replenish its reserves if it has used its reserves to fund a budget amendment? The 104% cap makes it difficult for a district to respond to emergencies without sacrificing funding for the ensuing year's budget.

RESPONSE: OPI has interpreted the statute to mean that revenue to replenish general fund reserves must be budgeted within the general fund budget limitation established in section 20-9-315, MCA. The only way a district, that has used its reserves to fund a budget amendment, can restore general fund reserves in the ensuing school fiscal year is within the general budget cap.


COMMENT: Roundup Chairperson Kuzara asked does the district have to use its reserves to fund a budget amendment? Can the district retain a minimum reserve percentage? Can the district assess a "one-time" levy in the ensuing school fiscal year to fund a budget amendment adopted in the current school fiscal year?

RESPONSE: A district must fully use its reserves to fund a budget amendment before it can impose a levy to fund the unfunded portion. There is no provision in law for a district to maintain a minimum reserve. Rule III has been added to provide for a "one-time," voter-approved levy in the ensuing year to fund the unfunded portion of a prior year's budget amendment.

4. Rules I through III will be codified as ARM 10.22.105 through 10.22.107.

5. Based on the foregoing, the Superintendent of Public Instruction hereby amends and adopts the rules.


Bada J. Lovitt
Rule Reviewer


Nancy Keenan
Superintendent
Office of Public Instruction

Certified to the Secretary of State February 3, 1992.

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

In the matter of the adoption)	NOTICE OF ADOPTION OF RULES
of rules relating to budget)	RELATING TO BUDGET AMENDMENTS
amendments)	

To: All interested persons

1. On December 12, 1991, the Superintendent of Public Instruction published notice of public hearing on the proposed adoption of the rules referenced above at page 2377 of the 1991 Montana Administrative Register, issue number 23.

2. A public hearing was held on January 8, 1992, and was attended by only one person. The hearing was recorded and the tape is included in the file on this matter together with the report of the hearing officer. Formal comments were received in the form of written testimony and/or at the hearing.

3. After consideration of the comments received, the rules are being adopted as proposed with no changes.

RULE I (10.22.201) AUTHORIZATION FOR BUDGET AMENDMENT
ADOPTION Received no comments and is adopted as proposed.
(AUTH: 20-9-102, MCA; IMP: 20-9-161 and 20-9-162, MCA)

RULE II (10.22.202) PETITION TO SUPERINTENDENT OF PUBLIC
INSTRUCTION Considered comments and is adopted as proposed.
(AUTH: 20-9-102, 20-9-163, MCA; IMP: 20-9-163, MCA)

COMMENT: Missoula County Superintendent Vielleux commented that Rule II describes the process for approval to adopt a budget amendment resolution. The statute governing this process, 20-9-163, MCA, requires the state superintendent to "promptly approve or disapprove the petition." It would be useful to have promptly defined. Perhaps the proposed language regarding base-building approval would also fit here, i.e., the superintendent of public instruction shall approve or disapprove the petition within 20 working days from the date of receipt of the request.

RESPONSE: The Office of Public Instruction has an internal policy of responding to budget amendment petitions within three weeks. This goal is stated in a "Budget Amendment Review Procedure." While it is important to have a goal for turn-around time, there are occasionally issues contained in budget amendment requests that take more time to review in discussions within the office and with the requesting district. The rules have not been amended to include a specific time limit.

RULE III (10.22.203) RESOLUTION FOR A BUDGET AMENDMENT
Received no comments and is adopted as proposed.
(AUTH: 20-9-102, 20-9-163, MCA; IMP: 20-9-163, MCA)

RULE IV (10.22.204) BUDGET AMENDMENT LIMITATION Received no comments and is adopted as proposed.

(AUTH: 20-9-102, MCA; IMP: 20-9-165, MCA)

RULE V (10.22.205) BUDGET AMENDMENT PREPARATION AND ADOPTION Received no comments and is adopted as proposed.

(AUTH: 20-9-102, MCA; IMP: 20-9-165, MCA)

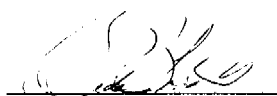
COMMENT: Missoula County Superintendent Vielleux commented that these rules regarding budget amendments for the most part restate statute for clarity. Since districts may rely on the administrative rules, the rules should include all statutory requirements. Specifically, the rules regarding notice in 20-9-164, MCA have been omitted.

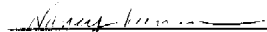
RESPONSE: Section 2-4-305(2), MCA, states that "[r]ules may not unnecessarily repeat statutory language." The statute regarding public notice is self-explanatory and does not require interpretation through rule. Rule I(4) states that districts "must comply with the statutes concerning the process for adoption of a budget amendment resolution and the public notice requirements." Rule II (4) states that "[i]f the petition is approved by the superintendent of public instruction, the trustees may adopt a resolution for a budget amendment and proceed with the steps required for the adoption of a budget amendment." These statements direct the district to consult the statute for public notice requirements.

NOTES: Legislative Council staff commented that neither sections 20-9-162 nor 20-9-165, MCA, provide express implied rulemaking authority to the Superintendent of Public Instruction. Eddy McClure suggested that section 20-9-102, MCA, be cited as authority. Also, OPI, in the statement of reasonable necessity, should have expressly stated that Senate Bill 17 (Chapter 767, L. 1991) amended section 20-9-163, MCA, to now require the Superintendent to approve or disapprove budget amendments.

4. Rules I through V will be codified as ARM 10.22.201 through 10.22.205.

5. Based on the foregoing, the Superintendent of Public Instruction hereby adopts the rules as proposed.


Beda J. Lovitt
Rule Reviewer


Nancy Keenan
Superintendent
Office of Public Instruction

Certified to the Secretary of State February 3, 1992.

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

In the matter of the amendment)	NOTICE OF AMENDMENT OF RULES
of rules relating to permis-	) RELATING TO PERMISSIVE AND
sive and voted amounts, and	) VOTED AMOUNTS, AND SCHOOL
school levies	) LEVIES

To: All interested persons

1. On December 12, 1991, the Superintendent of Public Instruction published notice of public hearing on the proposed amendment of the rules referenced above at page 2361 of the 1991 Montana Administrative Register, issue number 23.

2. A public hearing was held on January 8, 1992, and was attended by only one person. The hearing was recorded and the tape is included in the file on this matter together with the report of the hearing officer. Formal comments were received in the form of written testimony and/or at the hearing.

3. After consideration of the comments received, the rules are being amended as proposed with those changes given below, new material underlined, deleted material interlined.

10.23.101 DEFINITIONS (1) "Permissive amount" is the general fund budget amount that is in excess of the foundation program amount and ~~less~~ no more than 35% of the current year's foundation program plus 35% of the district's prorated cooperative allocation.

(2) - (9) remains the same as proposed.

(AUTH: 20-9-102, MCA; IMP: 20-9-145, 20-9-353, MCA)

COMMENT: Gallatin County Superintendent Brown pointed out that "less than" could be interpreted as "to be not 35%."

RESPONSE: Amending rule to state "no more" than 35%.

10.23.102 PERMISSIVE AMOUNT AND PERMISSIVE LEVY Received no comments and is amended as proposed.

(AUTH: 20-9-102, MCA; IMP: 20-9-145, 20-9-141, MCA)

10.23.103 VOTED AMOUNT AND VOTED LEVY Received no comments and is amended as proposed.

(AUTH: 20-9-102, MCA; IMP: 20-9-353, MCA)

10.23.104 RETIREMENT LEVIES (1) Net county retirement levy requirement for elementary and high school retirement funds is defined in ARM 10.23.101~~(10)~~(9).

(2) - (4)(b) remains the same as proposed.

(AUTH: 20-9-102, 20-9-369, MCA; IMP: 20-9-501, 20-9-368, MCA)

COMMENT: Reference needs to be made to (9) as (10) no longer exists.

RESPONSE: Making reference to ARM 10.23.101(9).

10.23.107 BASIC EQUALIZATION LEVY SHORTFALL (1) - (3) remains the same as proposed.

(a) The shortfall calculated in July of the current fiscal year (e.g., July 19X4) to determine whether a county experienced a shortfall in county equalization revenue during for the previous fiscal year (i.e., fiscal year 19X3), should include all distributions of penalties and interest during fiscal year 19X3. However, the shortfall calculation for 19X3 should not include distributions of delinquent/protested taxes levied prior to 19X3 (i.e., 19X2, 19X1, 19X0... taxes), unless the foundation programs for those tax years have already been funded 100%. See ARM 10.10.309.

(4) After reviewing the notification and concurring with the amount of the shortfall, OPI will increase the state equalization aid to all the districts in the county in the amount necessary to fully fund the percentage. This additional state equalization aid must be deposited to each school district's general fund by the county treasurer as ordered by the county superintendent.

(5) - (6) remains the same as proposed.
(AUTH: 20-9-102, MCA; IMP: 20-9-331, 20-9-333, MCA)

COMMENT: Havre District Clerk Floren commented that the use of "during" "could prohibit the penalties and interest applicable to taxes levied in an earlier year from being properly used to fund the earlier year, even if that earlier year's county equalization obligation has not been funded 100%."

RESPONSE: Amending the rule to reflect comment.

COMMENT: Missoula County Superintendent Vielleux commented that the July 31 deadline should be consistent throughout these rules.

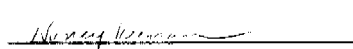
RESPONSE: The November 30 date was intentionally established to allow districts that are unable to meet the July 31 deadline additional time to issue notice of an equalization shortfall.

COMMENT: Gallatin County Superintendent Brown pointed out that this additional state equalization aid should be deposited on instructions from the county superintendent.

RESPONSE: Amending rule to say "as ordered by the county superintendent" for clarification purposes.

4. Based on the foregoing, the Superintendent of Public Instruction hereby amends the rules.


Beda J. Lovitt
Rule Reviewer


Nancy Keenan
Superintendent
Office of Public Instruction

Certified to the Secretary of State February 3, 1992.

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

In the matter of the adoption)	NOTICE OF ADOPTION OF
of rules relating to K-12)	RULES RELATING TO K-12
districts)	DISTRICTS

To: All interested persons

1. On December 12, 1991, the Superintendent of Public Instruction published notice of public hearing on the proposed adoption of the rules referenced above at page 2366 of the 1991 Montana Administrative Register, issue number 23.

2. A public hearing was held on January 8, 1992, and was attended by only one person. The hearing was recorded and the tape is included in the file on this matter together with the report of the hearing officer. Formal comments were received in the form of written testimony and/or at the hearing.

3. After consideration of the comments received, the rules are being adopted as proposed with those changes given below, new material underlined, deleted material interlined.

RULE I (10.30.401) DEFINITIONS Received no comments and is adopted as proposed.
(AUTH: 20-3-106, MCA; IMP: 20-6-701, MCA)

RULE II (10.30.402) CREATION OF K-12 DISTRICTS

(1) - (1)(a) remains the same as proposed.

(b) resolutions by ~~both~~ each of the boards of trustees of the elementary districts ~~and of the high school district with the same boundaries that would become part of a K-12 district,~~ if the boards are not joint; or

(1)(c) remains the same as proposed.

(2) Each resolution and petition must include the legal name of each of the districts, a statement that the two districts share the same boundaries, a statement of the combining of the bonded indebtedness of the districts through the assumption by the high school district of the bonded indebtedness of the elementary district upon attachment, and the effective fiscal year of the attachment, and a call for an election.

(3) - (4) remains the same as proposed.

(AUTH: 20-3-106, MCA; IMP: 20-6-701, MCA)

COMMENT: Reword to state "resolutions by each of the boards of trustees of the districts that would become part of a K-12 district, if the boards are not joint."

RESPONSE: Amending rule to take into consideration not only a single elementary and a high school without a joint board, but to include the potential for more than one elementary and high school or two K-12 districts planning for a K-12 district.

COMMENT: Need to add that each resolution and petition "must include" a "call for an election."

RESPONSE: Amending rule to include "a call for an election."

RULE III (10.30.403) TRANSITION TO K-12 DISTRICTS

(1) - (1)(a) remains the same as proposed.

(b) The officials of the elementary district trustees shall entrust the district official records and all district property and materials to the high school district trustees on July 1 of the effective fiscal year of the attachment of the districts;

(1)(c) - (4)(a) remains the same as proposed.

(b) For the purpose of determining guaranteed tax base aid, the permissive levy amount for a K-12 district, as well as the available non-levy revenue and unreserved fund balance which must be applied to reduce the permissive levy amount, will be prorated between elementary and high school programs using the ratio of elementary foundation schedule and special education amounts to the high school foundation schedule and special education amounts.

(i) remains the same as proposed.

	Elementary	H School	K-12
Total			
(A) - (F) remains the same as proposed.			
(G) <u>Non-Levy Revenue</u>			
<u>to be applied</u>			
<u>to Permissive Amount</u>			
(H) <u>Prorated Non-Levy Revenue</u>			
<u>Amounts in (G) times</u>			
<u>% established in (D)</u>			
(I) <u>Fund Balance Unreserved</u>			
(J) <u>Prorated Fund Balance</u>			
<u>Unreserved Amounts</u>			
<u>in (I) times %</u>			
<u>established in (D)</u>			

(AUTH: 20-3-106, MCA; IMP: 20-6-703, 20-6-711, MCA)

COMMENT: Need to address the concerns that supplies, equipment, materials, and other items be officially transferred.

RESPONSE: Amending rule to include "all district property and materials" following "district official records."

COMMENT: Add "the available non-levy revenue, and unreserved fund balance which must be applied to reduce the permissive levy amount" following "permissive levy amount for a K-12 district."

RESPONSE: Amending rule to distribute available revenue for the permissive range in a manner consistent with the proration of the permissive amount between elementary and high school programs.

RULE IV (10.30.404) K-12 DISTRICT EQUALIZATION FUNDING

(1) - (2) remains the same as proposed.

(3) The county superintendent will distribute county equalization funds to K-12 districts from the basic special tax for high school account. In the event all elementary and high

school districts in one county are K-12 districts, the county superintendent shall also distribute equalization funds to K-12 districts from the basic county tax for the elementary foundation program.

(AUTH: 20-3-106, MCA; IMP: 20-6-702, MCA)

COMMENT: To clarify how county equalization funds will be distributed if all the elementary and high school districts in the county are K-12 districts.

RESPONSE: Amending rule to reflect comment.

RULE V (10.30.405) K-12 DISTRICT ISSUANCE OF BONDS

(1) - (1)(b) remains the same.

(c) The total amount of a building reserve proposition for a K-12 district, for the purposes authorized in section 20-9-502, MCA, when added to the existing indebtedness of the district, may not exceed the limitations set forth in section 20-9-506, MCA.

(AUTH: 20-3-106, MCA; IMP: 20-9-406, MCA)

COMMENT: To clarify that the building reserve fund for K-12 districts must also be consistent with the limitations on bonded indebtedness pursuant to section 20-9-406, MCA.

RESPONSE: Amending rule to reflect comment.

RULE VI (10.30.406) EXCEPTIONS TO HIGH SCHOOL PROVISIONS

(1) - (1)(c) remains the same.

(d) The end-of-year fund balance of a K-12 school district lease or rental agreement fund which exceeds \$20,000 shall be transferred to the general fund of the district.

(AUTH: 20-3-106, MCA; IMP: 20-6-702, MCA)

COMMENT: Whitewater District Superintendent Cascaden commented that if budgets were combined in the creation of a K-12 district, whether all funds would be placed under their respective operating caps. Whitewater currently has an elementary and high school operating budget of \$10,000 each. Since he didn't think the combined amount of \$10,000 would be beneficial to the overall operation of his school, he questioned whether the total amount of \$20,000 could be used.

RESPONSE: Amending rule to clarify issues such as those presented in the comment.

RULE VII (10.30.407) DISSOLUTION OF K-12 DISTRICTS

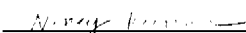
Received no comments and is adopted as proposed.

(AUTH: 20-3-106, MCA; IMP: 20-6-712, MCA)

4. Rules I through VII will be codified as ARM 10.30.401 through 10.30.407.

5. Based on the foregoing, the Superintendent of Public Instruction hereby adopts the rules as proposed.



Beda J. Lovitt
Rule Reviewer

Nancy Keenan
Superintendent
Office of Public Instruction

Certified to the Secretary of State February 3, 1992.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the amendment)	NOTICE OF ADOPTION OF
of Teacher Certification)	AMENDMENT OF ARM
)	10.57.102, 10.57.401,
)	10.57.402, 10.57.403
)	AND 10.57.404,
)	NEW RULE I (10.57.215)
)	RENEWAL REQUIREMENTS,
)	NEW RULE II
)	(10.57.216) RENEWAL
)	ACTIVITY APPROVAL,
)	NEW RULE III
)	(10.57.217) APPEAL
)	PROCESS, NEW RULE IV
)	(10.57.218) RENEWAL
)	UNIT VERIFICATION
)	AND THE REPEAL OF ARM
)	10.57.206 AND 10.57.207

To: All Interested Persons

1. On November 14, 1991, the Board of Public Education published a notice of proposed amendment concerning ARM 10.57.102, 10.57.401, 10.57.402, 10.57.403 and 10.57.404, and the adoption of new rules 10.57.215, 10.57.216, 10.57.217 and 10.57.218 as stated above and the repeal of ARM 10.57.206 and 10.57.207 on pages 2194-2200 of the 1991 Montana Administrative Register, Issue number 21.

2. The Board has amended the rules 10.57.401, 10.57.402, 10.57.403 and 10.57.404 and adopted new rules 10.57.217 and 10.57.218 as proposed:

3. The Board is adopting the rules as proposed with following changes:

10.57.102 DEFINITIONS (1) through (22) will remain the same.

(23) (d) will be renumbered (25).

10.57.215 RENEWAL REQUIREMENTS (1) through (3) will remain the same.

(4) The following restrictions on renewal activities apply:

(a) A renewal unit will be available only in whole units and in amount of five (5) units or more per approved activity.

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

10.57.216 RENEWAL ACTIVITY APPROVAL (1) To receive approval for a renewal activity, a request from an educational organization or agency, or from an individual applying for self-directed study, must be submitted to the office of public instruction at least 30 days prior to the start of the activity. Except that the Director of Certification may accept notification of the intent to apply, or applications, until at least 20 days prior to the start of the activity from March 1992 through March 1993. Courses from accredited college programs do not require approval as a renewal activity.

(2) through (7) remain the same.

4. At the public hearing which was held on December 6, 1991, five persons testified as proponents and no persons testified as opponents. There were no written comments received prior to December 16, 1991, the date on which the Board closed the hearing record.

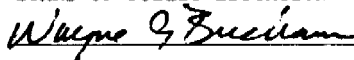
5. The reason for the change in the rule was amended as follows: The rule clarifies the intent of renewal activities. It requires that the activities be a planned and structured experience, of benefit to the certificate holder's professional relationships and exposure to a new idea or skill or an existing idea or skill. It broadens the scope of the activities and in addition to college credits, it includes workshops, mentorship supervision, organized curriculum development and self-directed study.

6. The new rule will simplify the recording process. Under the old rule "credits" were used for both college courses and equivalent renewal activities. This caused some confusion in concerning the equivalent nature of these activities. Under the new rule renewal activities will be recorded in renewal units rather than credits. The units will be based on hours of participation.

7. The new rule specifies a 30 day approval process and allows curriculum groups to review and make recommendations. This is a new requirement that will allow more peer review and insure adequate time for review prior to approval. Also, it adds a more extensive appeals process for denied applications.


BILL THOMAS, CHAIRPERSON
BOARD OF PUBLIC EDUCATION

BY:



Certified to the Secretary of State February 3, 1992.

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

In the matter of the) NOTICE OF AMENDMENT OF
amendment of Rule) ARM 26.4.1301A
26.4.1301A pertaining to)
the modification of)
existing coal and uranium)
permits)

TO: All Interested Persons

1. On October 31, 1991 the Board of Land Commissioners published notice of a proposed amendment to ARM 26.4.1301A, concerning revision of strip mine operating permits and coal test pit prospecting permits at page 1983 of the Montana Administrative Register, Issue No. 20.

2. The agency has amended the rule as proposed.

3. No comments or testimony were received.

4. The authority for the rule and amendment is section 82-4-205, MCA, and the rule implements section 82-4-221, MCA.

Dennis D. Casey
Dennis D. Casey, Commissioner

Reviewed by:

John F. North
John F. North
Chief Legal Counsel

Certified to the Secretary of State February 3, 1992.

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

In the matter of the	)	NOTICE OF THE AMENDMENT OF
amendment of rule 46.10.404	)	RULE 46.10.404 PERTAINING
pertaining to Title IV-A day	)	TO TITLE IV-A DAY CARE FOR
care for children	)	CHILDREN

TO: All Interested Persons

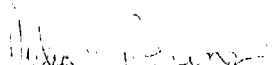
1. On December 26, 1991, the Department of Social and Rehabilitation Services published notice of the proposed amendment of rule 46.10.404 pertaining to Title IV-A day care for children at page 2590 of the 1991 Montana Administrative Register, issue number 24.

2. The Department has amended rule 46.10.404 as proposed.

3. No written comments or testimony were received.

4. This rule amendment supersedes the emergency amendment of rule 46.10.404 which provided the same decreases in day care rates. The emergency amendment took effect on December 2, 1991 and is still in effect. This rule amendment will be effective on February 14, 1992.


Rule Reviewer


Director, Social and Rehabilitation Services

Certified to the Secretary of State February 3, 1992.

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

In the matter of the	)	NOTICE OF THE AMENDMENT OF
amendment of rule 46.12.303	)	RULE 46.12.303 PERTAINING
pertaining to medicare	)	TO MEDICARE SIGNATURE
signature requirements	)	REQUIREMENTS

TO: All Interested Persons

1. On November 27, 1991, the Department of Social and Rehabilitation Services published notice of the proposed amendment of rule 46.12.303 pertaining to medicare signature requirements at page 2252 of the 1991 Montana Administrative Register, issue number 22.

2. The Department has amended rule 46.12.303 as proposed with the following changes:

46.12.303 BILLING, REIMBURSEMENT, CLAIMS PROCESSING, AND PAYMENT Subsections (1) through (4)(b) remain as proposed.

~~(c) stamped with a facsimile signature stamp. The stamp must be a facsimile likeness of the actual signature of the provider. The provider shall bear full responsibility for use of the stamp, by authorized or unauthorized persons, as though the provider has personally signed the claim form. SIGNED BY THE USE OF A FACSIMILE SIGNATURE STAMP OR A COMPUTER GENERATED, TYPED OR BLOCK LETTER SIGNATURE. PROVIDERS SUBMITTING OR CAUSING TO BE SUBMITTED A CLAIM USING A FACSIMILE, COMPUTER-GENERATED, TYPED OR BLOCK LETTER SIGNATURE SHALL BEAR FULL RESPONSIBILITY FOR SUBMISSION OF THE CLAIM AS THOUGH THE CLAIM WERE PERSONALLY SIGNED BY THE PROVIDER OR THE PROVIDER'S AUTHORIZED AGENT.~~

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

~~(c) stamped with a facsimile signature stamp. The stamp must be a facsimile likeness of the actual signature of the provider. The provider shall bear full responsibility for use of the stamp, by authorized or unauthorized persons, as though the provider has personally signed the claim form. SIGNED BY THE USE OF A FACSIMILE SIGNATURE STAMP OR A COMPUTER GENERATED, TYPED OR BLOCK LETTER SIGNATURE. PROVIDERS SUBMITTING OR CAUSING TO BE SUBMITTED A CLAIM USING A FACSIMILE, COMPUTER-GENERATED, TYPED OR BLOCK LETTER SIGNATURE SHALL BEAR FULL RESPONSIBILITY FOR SUBMISSION OF THE CLAIM AS THOUGH THE CLAIM WERE PERSONALLY SIGNED BY THE PROVIDER OR THE PROVIDER'S AUTHORIZED AGENT.~~

Subsections (6) through (14)(b) remain as proposed.

AUTH: Sec. 53-2-201 and 53-6-113 MCA
IMP: Sec. 53-6-101 and 53-6-111 MCA

3. The Department has thoroughly considered all commentary received:


COMMENT: Acceptable facsimile stamps should not be limited to an actual facsimile of provider's signature, but should include typeset stamps as well.

RESPONSE: The department has revised the rule to provide for the acceptance of typed, computer generated or block letter stamps. In order to insure that providers remain responsible for such claims, language has been added to subsections (4)(c) and (5)(c). Under the new rule, the department may recover overpayments from the provider or sanction a provider as though the claim had been personally signed by the provider or the provider's authorized representative. The provider is responsible to monitor and control claim submissions to assure that claims meet all program requirements. The fact that the claim was not personally signed or authorized by the provider will not excuse the provider from sanctions in appropriate cases or from recovery of an overpayment in any case.

COMMENT: Would the department accept signature stamps for employees authorized to sign claims on behalf of the Department of Corrections and Human Services?

RESPONSE: The department has revised the rule to provide for the acceptance of typed, computer generated, or block letter stamps. The Department of Corrections and Human Services' computer generated claims will be acceptable under the rule and signature stamps will not be required.


Rule Reviewer


Director, Social and Rehabilitation Services

Certified to the Secretary of State February 3, 1992.

VOLUME NO. 44

OPINION NO. 24

MOTOR VEHICLES - Operation of vehicle registered as collector's item;

MONTANA CODE ANNOTATED - Title 61, chapter 3, parts 3, 5; Title 15, chapter 6, part 2; section 61-3-411;

MONTANA LAWS OF 1955 - Chapter 123, section 1.

HELD: The phrase "general transportation purposes" found in section 61-3-411, MCA, includes driving related to employment, education, maintenance of a household, or similar activities not associated with the vehicle's status as a collector's item.

January 30, 1992

David N. Hull
Helena City Attorney
P.O. Box 534
Helena MT 59624

Dear Mr. Hull:

You have requested my opinion on the following question:

What is the meaning of the phrase "general transportation purposes," as used in section 61-3-411, MCA, which addresses registration of a motor vehicle owned and operated solely as a collector's item?

Section 61-3-411, MCA, provides:

Registration of a motor vehicle owned and operated solely as a collector's item. (1) An owner of a motor vehicle more than 30 years old, used solely as a collector's item and not for general transportation purposes, may file with the department an application for the registration of the motor vehicle. The application must be sworn to before an officer authorized to administer oaths. The application must state:

- (a) the name and address of the owner;
- (b) the name and address of the person from whom purchased;
- (c) the make, the gross weight, the year and number of the model, and the manufacturer's identification number and serial number of the motor vehicle; and

- (d) that the vehicle is owned and operated solely as a collector's item and not for general transportation purposes.
- (2) The registration fee for a motor vehicle registered under subsection (1) is:
 - (a) for a vehicle weighing 2,850 pounds or less, \$5; and
 - (b) for a vehicle weighing more than 2,850 pounds, \$10.
- (3) Upon receipt of the application for registration and payment of the registration fee, the department shall file the application and register the motor vehicle therein described in the manner specified in 61-3-101 and, unless the applicant chooses to exercise the option allowed in 61-3-412, shall deliver to the applicant:
 - (a) for a motor vehicle manufactured in 1933 or earlier, two license plates bearing the inscription "Pioneer--Montana" and the registration number; or
 - (b) for a motor vehicle manufactured in 1934 or later and more than 30 years old, two license plates bearing the inscription: "Vintage--Montana" and the registration number.
- (4) The year of issuance may not be shown on the plates.
- (5) Annual renewal of the registration of a motor vehicle registered under this section is not required, and the registration is valid as long as the vehicle is in existence; provided, however, that upon sale of the motor vehicle, the purchaser shall renew the registration and pay the license fees provided in subsection (2).

This statute generally provides for the registration of vehicles more than 30 years old, which will display either "Pioneer--Montana" or "Vintage--Montana" license plates. If the owner swears to the fact that the vehicle is "owned and operated solely as a collector's item and not for general transportation purposes," it is not required to be annually registered, and the registration need only be renewed upon a change of ownership. See § 61-3-411(5), MCA.

Although these vehicles are not explicitly exempt from taxation under Title 15, chapter 6, part 2, MCA, they are effectively exempt from taxation for several reasons. First, subsection (3)

of the statute at issue provides that a registration must be issued if the vehicle qualifies and the statutory registration fee is paid, without any language providing for the assessment or payment of property taxes. In addition, these registrations are handled directly by the Department of Justice under the statute, thus bypassing the normal method of vehicle registration and the attendant tax collection handled by county treasurer's offices in Montana. See Tit. 61, ch. 3, pts. 3, 5, MCA.

I understand that your question arises because of the differing opinions as to how these vehicles may be lawfully operated. The plain language of the statute allows operation as a "collector's item" and prohibits operation for "general transportation purposes." These terms are not defined in any prior Montana Attorney General's Opinions, statutes or reported cases and the legislative history of the statute is not helpful in regard to their specific meaning. I do note that the terms were included in the original legislation adopted in 1955. See 1955 Mont. Laws, ch. 123, § 1.

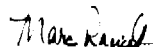
It would appear that the legislative determination to restrict operation of such a vehicle to use "as a collector's item" turns on the fact that the owner may obtain a long-term registration upon the one-time payment of either \$5 or \$10, as opposed to the yearly registration and tax payment required of the owner of any other privately-owned vehicle. This argues for a fairly inclusive definition of the phrase "general transportation purposes."

I find that driving related to employment, education, maintenance of a household, or similar activities would fall within the prohibited "general transportation purposes." Such vehicles may obviously be driven, but any driving must be strictly limited to the vehicle's status as a "collector's item." Thus, for example, driving such a vehicle to and from car club activities, exhibits, parades, or the display of a private collection would not be considered "general transportation purposes."

THEREFORE, IT IS MY OPINION:

The phrase "general transportation purposes" found in section 61-3-411, MCA, includes driving related to employment, education, maintenance of a household, or similar activities not associated with the vehicle's status as a collector's item.

Sincerely,



MARC RACICOT
Attorney General

BEFORE THE BOARD OF NURSING
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the petition	)	NOTICE OF PETITION FOR
for declaratory ruling on the	)	DECLARATORY RULING
role of licensed practical)	
nurses in intravenous therapy)	

1. On February 28, 1992, at 8:00 a.m., in the Rimini Room of the Park Plaza Hotel, 22 N. Last Chance Gulch, Helena, Montana, the Board of Nursing will consider a petition for declaratory ruling on the authority of licensed practical nurses to mix and administer intravenous antibiotic add-mixtures within their scope of practice.

2. The Petitioner is Margaret Norgaard, Administrator, Poplar Community Hospital and Nursing Home, Box 38, Poplar, MT 59255.

3. The Petitioner represents Poplar Community Hospital and Nursing Home. The hospital wants to use licensed practical nurses to mix and administer intravenous antibiotic add mixtures. The hospital provides training for these skills. The nurses and administration at the hospital have discussed the matter and are concerned about whether this activity for licensed practical nurses fits within their scope of practice as defined by Section 37-8-102(3)(b), MCA.

4. The statute as to which the Petitioner requests a ruling is Section 37-8-102(3)(b), MCA, which provides:

"'Practice of Practical Nursing' means the performance for compensation of services requiring basic knowledge of the biological, physical, behavioral, psychological and sociological sciences and of nursing procedures. Practical nursing practice utilizes standard procedures in the observation and care of the ill, injured, and infirm; in the maintenance of health; in action to safeguard life and health; and in the administration of medications and treatments prescribed by a physician, dentist, osteopath, or podiatrist authorized by state law to prescribe medications and treatments. These services are performed under the supervision of a registered nurse or a physician, dentist, osteopath, or podiatrist authorized by state law to prescribe medications and treatments."

5. The question presented for declaratory ruling by the agency is whether licensed practical nurses who are appropriately trained and certified through a state approved course may mix and administer intravenous antibiotic add-mixtures within their scope of practice as defined by the above-referenced statute.

6. The Petitioner contends that licensed practical nurses who are trained and certified through a state approved course should be authorized to mix and administer intravenous antibiotic add-mixtures within their scope of practice as defined by the above-referenced statute.

7. The Petitioner noted the following to be interested parties:

Margaret Norgaard, Administrator,	
Poplar Comm. Hospital & N.H.,	
Poplar, MT	
Roxy Bender, LPN,	Williston, ND
Ruth Trieder, LPN,	Williston, ND
Jan Beede, LPN,	Glasgow, MT
Cheryl Terzzel, LPN,	Glasgow, MT
Barb Matthews,	Wolf Pt., MT
Terry Mitchell,	Poplar, MT
Jack Dunn, RN,	Poplar, MT

The Board also notes that other hospitals, nursing homes, physicians, registered nurses, and licensed practical nurses may be similarly affected.

BOARD OF NURSING

BY:

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

Annie M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, February 3, 1992.

BEFORE THE BOARD OF NURSING
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the petition	)	NOTICE OF PETITION FOR
for declaratory ruling on the	)	DECLARATORY RULING
use of registered nurses as)	
first assistants in surgery)	

1. On February 28, 1992, at 8:00 a.m., in the Rimini Room of the Park Plaza Hotel, 22 N. Last Chance Gulch, Helena, Montana, the Board of Nursing will consider a petition for declaratory ruling on the use of registered nurses as first assistants in surgery.

2. The Petitioner is Marilyn B. Meyers, Operating Room Manager, Kalispell Regional Hospital, 310 Sunny View Lane, Kalispell, MT 59901.

3. The Petitioner represents Kalispell Regional Hospital. The hospital is considering the use of registered nurses as first assistants in surgery since reimbursement guidelines are being amended to not authorize use of surgeons as first assistants. The nurses, surgeons and administration at the hospital have discussed the matter and are concerned about whether this role for registered nurses fits within their scope of practice as defined by Section 37-8-102(3), MCA.

4. The statute as to which the Petitioner requests a ruling is Section 37-8-102(3)(a), MCA, which provides:

"'Practice of Professional Nursing' means the performance for compensation of services requiring substantial specialized knowledge of the biological, physical, behavioral, psychological and sociological sciences and of nursing theory as a basis for the nursing process. The nursing process is the assessment, nursing analysis, planning, nursing intervention, and evaluation in the promotion and maintenance of health; the prevention, casefinding, and management of illness, injury, or infirmity; and the restoration of optimum function. The term also includes administration, teaching, counseling, supervision, delegation, and evaluation of nursing practice and the administration of medications and treatments prescribed by physicians, dentists, osteopaths, or podiatrists authorized by state law to prescribe medications and treatments. Each registered nurse is directly accountable and responsible to the consumer for the quality of nursing care rendered...."

5. The question presented for declaratory ruling by the agency is whether the use of registered nurses as first assistants in surgery falls within their scope of practice as defined by the above-referenced statute.

6. The Petitioner has not expressed a specific position on the issue but the Board understands that the Petitioner is requesting a ruling the statute does authorize the use of registered nurses as first assistants in surgery.

7. The Petitioner noted the following to be interested parties:

Marilyn Meyers	Camille Scott
Operating Room Manager	Director of Nursing Services
Kalispell Regional Hospital	Kalispell Regional Hospital
310 Sunny View Lane	310 Sunny View Lane
Kalispell, MT 59901	Kalispell, MT 59901

The Board also notes that other hospitals, surgeons, and registered nurses practicing in surgery may be similarly affected.

BOARD OF NURSING

BY:

ANNIE M. BARTOS, CHIEF LEGAL COUNSEL
DEPARTMENT OF COMMERCE

ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, February 3, 1992.

BEFORE THE BOARD OF NURSING
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the petition	)	NOTICE OF PETITION FOR
for declaratory ruling on the	)	DECLARATORY RULING
role of licensed practical)	
nurses in rho-gam injections)	

1. On February 28, 1992, at 8:00 a.m., in the Rimini Room of the Park Plaza Hotel, 22 N. Last Chance Gulch, Helena, Montana, the Board of Nursing will consider a petition for declaratory ruling on the authority of licensed practical nurses to administer Rho-Gam injections to Rh negative postpartum patients within their scope of practice.

2. The Petitioner is Mary Hackett, OB Head Nurse, Marcus Daly Hospital, 1200 Westwood Dr., Hamilton, MT 59840.

3. The Petitioner represents Marcus Daly Hospital. The hospital wants to use licensed practical nurses to give Rho-Gam injections to Rh negative postpartum patients. The hospital will provide training for this skill if authorized. The nurses and administration at the hospital have discussed the matter and are concerned about whether this activity, which is administration of a blood product, fits within the scope of practice of a licensed practical nurse as defined by Section 37-8-102(3)(b), MCA.

4. The statute as to which the Petitioner requests a ruling is Section 37-8-102(3)(b), MCA, which provides:

"'Practice of Practical Nursing' means the performance for compensation of services requiring basic knowledge of the biological, physical, behavioral, psychological and sociological sciences and of nursing procedures. Practical nursing practice utilizes standard procedures in the observation and care of the ill, injured, and infirm; in the maintenance of health; in action to safeguard life and health; and in the administration of medications and treatments prescribed by a physician, dentist, osteopath, or podiatrist authorized by state law to prescribe medications and treatments. These services are performed under the supervision of a registered nurse or a physician, dentist, osteopath, or podiatrist authorized by state law to prescribe medications and treatments."

5. The question presented for declaratory ruling by the agency is whether licensed practical nurses who are appropriately trained can administer Rho-Gam injections to Rh negative postpartum patients within their scope of practice as defined by the above-referenced statute.

6. The Petitioner indicated that she is agreeable to allowing licensed practical nurses who are appropriately trained to administer Rho-Gam injections to Rh negative postpartum patients if the Board determines that it is within their scope of practice as defined by the above-referenced statute.

7. The Petitioner noted the following to be interested parties:

Mary Hackett, RN, Hamilton, MT
Cathy Wesley, DON, Hamilton, MT
John Bartos, Administrator
Marcus Daly Hospital,
Hamilton, MT

The Board also notes that other hospitals, physicians, registered nurses, and licensed practical nurses may be similarly affected.

BOARD OF NURSING

BY:

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

Annie M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, February 3, 1992.

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 December 31, 1991. This table includes those rules adopted during the period January 1, 1992 through March 31, 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 December 31, 1991, 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 1991 and 1992 Montana Administrative Registers.

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