MONTANA ADMINISTRATIVE REGISTER

1993 ISSUE NO. 20
OCTOBER 28, 1993
PAGES 2462-2579

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 20

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing and where written comments may be submitted.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

In the matter of the proposed amendment of ARM 2.21.1812 relating to the Exempt Compensatory Time	)	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF ARM 2.21.1812 RELATING TO THE EXEMPT COMPENSATORY TIME

TO: All Interested Persons.

1. On November 18, 1993, at 1:00 p.m. in Room 136 Mitchell Building, Helena, Montana, a public hearing will be held to consider the proposed amendment of ARM 2.21.1812 relating to the exempt compensatory time.

The department of administration will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you request an accommodation, contact the department no later than 5:00 p.m. on November 16, 1993, to advise us of the nature of the accommodation that you need. Please contact the State Personnel Division, Attn: Linda Davis, Room 130, Mitchell Building, Helena, MT. 59620; telephone (406) 444-3871; TT (406) 444-1421; FAX (406) 444-2812.

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

2.21.1812 EXEMPT EMPLOYEES AND EXEMPT COMPENSATORY TIME (1) - (5) Remain the same.

(6) A maximum of 120 hours of exempt compensatory time may be carried over from one calendar year to the next. A determination of excess exempt compensatory time will be made as of the end of the first pay period which extends into the next calendar year. The employee must take off all excess compensatory time during the first 90 days of the next calendar year or forfeit the excess hours, except when the department head or designee extends the forfeiture deadline provided in paragraph (7) ~~or grants an exception provided in paragraph (8)~~.

(7) ~~When~~ In the first 90 days of the calendar year ~~are a peak work period for the agency~~, the department head or a designee may extend the number of days the employee has to use excess compensatory time prior to forfeiture. The employee is required to make a reasonable written request to take the time off. Reasonable at a minimum would allow sufficient notice to take the accrued exempt compensatory time off before the forfeit date. The agency may grant the request to take the time off before the forfeit date or grant an extension. The extension must be made in writing not later than March 31 each year. The length of this extension is up to the discretion of the department head or designee, ~~but may~~ not to exceed December 31 each year ~~an 180 additional days~~. Any excess compensatory time not taken by December 31 is forfeited.

(8) ~~Until October 1, 1991, a department head or designee may approve an exception to the forfeiture requirement provided in paragraph (6) of this rule. 1991 is the last year department~~

~~heads or designee may make exceptions to the forfeiture requirement. The authority in paragraph (7) to make extensions to the forfeiture deadline will not be affected. Such an extension may be approved to deal with special and unique circumstances which represent periodic or temporary situations that can not be adequately addressed by other management actions. When an exception to the forfeiture requirement is approved in advance by the department head or designee, the employee shall not forfeit excess exempt compensatory time hours during the calendar year. All exceptions or extensions should be made in writing no later than March 31 each year.~~ Excess exempt compensatory time for which an extension was granted in calendar year 1993, and for which an employee was not afforded a reasonable opportunity to take the time off, may be reinstated at the discretion of the department head or designee. The reinstated time will be treated as excess exempt compensatory time in calendar year 1994.

(9) - (14) Remain the same.

(Auth. 2-18-618, MCA; Imp. 2-18-618, MCA)

3. It is reasonably necessary to amend this rule because as currently written, the rule does not meet the objective of providing greater flexibility in scheduling time for exempt, salaried employees and does not allow sufficient time to take off excess compensatory time and avoid forfeiture of time.

4. Linda S. Davis, Equal Employment Opportunity Program Coordinator, State Personnel Division, Department of Administration, Room 130 Mitchell Building, Helena, Montana 59620, has been designated to preside over and conduct the hearing.

5. Interested persons may submit their data, views or arguments concerning the proposed amendments to Mark Cress, Administrator, State Personnel Division, Department of Administration, Room 130 Mitchell Building, Helena, Montana 59620 no later than November 26, 1993.

Persons with disabilities who need an alternative accessible format of this rule notice, or who require some other reasonable accommodation in order to participate in the rule making process should contact the State Personnel Division, Department of Administration, Attn: Linda Davis, Room 130, Mitchell Building, Helena, MT. 59620; telephone (406) 444-3871; TT (406)444-1421; FAX (406)444-2812.

Dal Smilie, Chief Legal Counsel
Rule Reviewer

Lois A. Menzies, Director
Department of Administration

Certified to the Secretary of State October 18, 1993.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the proposed amendment of ARM 2.21.3607, 2.21.3609 and 2.21.3616 relating to Veterans' Employment Preference	))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF ARM 2.21.3607, 2.21.3609 AND 2.21.3616 RELATING TO VETERANS' EMPLOYMENT PREFERENCE

TO: All Interested Persons.

1. On November 18, 1993, at 1:00 p.m. in Room 136 Mitchell Building, Helena, Montana, a public hearing will be held to consider the proposed amendment of ARM 2.21.3607, 2.21.3609 and 2.21.3616 relating to veterans' employment preference.

The department of administration will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you request an accommodation, contact the department no later than 5:00 p.m. on November 16, 1993, to advise us of the nature of the accommodation that you need. Please contact the State Personnel Division, Attn: Ms. Constance Enzweiler, Room 130, Mitchell Building, Helena, MT. 59620; telephone (406) 444-3871; TT (406) 444-1421; FAX (406) 444-2812.

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

2.21.3607 ELIGIBLE VETERAN (1)(a) - (1)(c) Remain the same.

(1)(d) have "served more than 180 consecutive days [on active duty in the armed forces], other than for training, or

(e) as a member of a reserve component under an order of active duty pursuant to 10 U.S.C. 672(a), (d), or (g), 10 U.S.C. 673, or 10 U.S.C. 673b served on active duty during a period of war or in a campaign or expedition for which a campaign badge is authorized and was discharged or released from duty under honorable conditions."

(Auth. 39-29-112, MCA; Imp. 39-29-101, MCA)

2.21.3609 ELIGIBLE RELATIVE (1) - (2) Remain the same.

(3) An eligible mother must:

(a) be the mother of a veteran who ~~lost his life~~ died under honorable conditions while serving in the armed forces or the mother of a service-connected permanently and totally disabled veteran if:

(i) ~~her husband~~ the mother's spouse is totally and permanently disabled; or

(ii) ~~she~~ the mother is the widow of the father of the veteran and has not remarried.

(Auth. 39-29-112, MCA; Imp. 39-29-101 and 39-29-102, MCA)

2.21.3616 CLAIMING PREFERENCE -- DOCUMENTATION AND VERIFICATION (1) - (7)(d) Remain the same.

(e) from an eligible mother of a deceased veteran or disabled veteran, a document from the U.S. veteran's administration certifying that the veteran, as provided in 39-29-101, MCA, "lost his life under honorable conditions while serving in the armed forces," or a document certifying, as required in 39-29--101, MCA, that the veteran has a service-connected permanent and total disability. The veteran's mother ~~shall~~ must also certify in writing that ~~her husband~~ the mother's spouse is permanently and totally disabled or that her husband is deceased and she has not remarried;

(7)(f) - (10) Remain the same.

(10) - (11) Remain the same.

(Auth. 39-29-112, MCA; Imp. 39-29-103, MCA)

3. It is reasonably necessary to amend these rules because the 1993 Legislature in H.B. 159 amended the Veterans' Employment Preference Act 39-29-101 et seq., MCA, by revising the definition of "veteran." The amended definition conforms with the definition of a veteran in federal law, which now includes a person in a reserve component of the armed forces called to active duty for campaigns such as Operation Desert Shield and Operation Desert Storm.

4. Constance Enzweiler, Personnel Policy Specialist, State Personnel Division, Department of Administration, Room 130 Mitchell Building, Helena, Montana 59620, has been designated to preside over and conduct the hearing.

5. Interested persons may submit their data, views or arguments concerning the proposed amendments to Mark Cress, Administrator, State Personnel Division, Department of Administration, Room 130 Mitchell Building, Helena, Montana 59620 no later than November 26, 1993.

Persons with disabilities who need an alternative accessible format of this rule notice, or who require some other reasonable accommodation in order to participate in the rule making process should contact the State Personnel Division, Department of Administration, Attn: Ms. Constance Enzweiler, Room 130, Mitchell Building, Helena, MT. 59620; telephone (406) 444-3871; TT (406)444-1421; FAX (406)444-2812.

Dal Smilie, Chief Legal Counsel
Rule Reviewer

Lois Menzies, Director
Department of Administration

Certified to the Secretary of State October 18, 1993.

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

In the matter of the adoption of new rules implementing a continuing education program for insurance producers and consultants	)))))	NOTICE OF PUBLIC HEARING

TO: All Interested Persons.

1. On November 29, 1993, at 2:00 o'clock p.m., MDT, a public hearing will be held in Room 13 of the Sam W. Mitchell Building, 125 Roberts Street, Helena, Montana. The hearing will be to consider the proposed adoption of new rules implementing a continuing education program for insurance producers and consultants, including standards for approval of courses of instruction, review of programs, qualifications of instructors, examination standards, standards for disciplining course providers, procedure for extending time for course completion and applicable fees.

2. The proposed new rules provide as follows:

RULE I SCOPE OF RULES (1) These rules apply to continuing education programs for insurance producers and consultants, and include course content, qualifications of instructors, instructional format, courses and materials, review and approval procedures, application forms and fees.

AUTH: 33-1-313 and 33-17-1206, MCA
IMP: 33-17-1203 and 33-17-1204, MCA

RULE II DEFINITIONS For the purposes of this sub-chapter, the following terms have the following meanings:

(1) "Accredited educational institution" means an institution of higher learning that is certified by its appropriate regional accrediting agency to meet that agency's prescribed standards.

(2) "Approved continuing education course" means any course, seminar or program of instruction that has been approved by the commissioner for presentation as part of the continuing education requirements for licensees.

(3) "Certificate of completion" means a document issued by the course provider to the licensee signifying satisfactory completion of a course and reflecting credit hours earned by the licensee.

(4) "Classroom setting" means a course format in which a body of students meet to study the same course materials under the direction of the same approved instructor.

(5) "Credit hour" means the value assigned to a course by the commissioner, upon review and approval of course materials and content outline.

(6) "Hour" means 60 minutes of time, of which at least 50 minutes must be of continuous instruction.

(7) "Incidental sale of credit life and disability insurance" means, for the purposes of determining which licensees must complete continuing education requirements, cumulative annual premiums for a calendar year sold in an amount less than $5000.00.

(8) "Licensee" means an individual required to be licensed under Title 33, chapter 17, parts 2, 4 or 5, MCA, except for those licensees involved in the incidental sale of credit life and disability insurance.

(9) "Proctor" means a person who monitors the attendance and conduct of course participants, but who does not participate in course presentations, activities or discussions or complete any required examinations.

(10) "Significant change" means a change in two or more of the following course elements:

(a) course goals or objectives;
(b) major course topic(s);
(c) course length;
(d) syllabus or course outline;
(e) teaching method; or
(f) examination method.

AUTH: 33-1-313 and 33-17-1206, MCA
IMP: 33-17-1203 and 33-17-1204, MCA

RULE III COURSE SUBMISSIONS (1) Submissions for approval of courses must include at least the following information:

(a) the name of the sponsoring organization;
(b) the title of the course;
(c) the proposed date(s) of offering;
(d) course goals and objectives;
(e) major course topic(s);
(f) course length;
(g) practical and academic experience of each faculty member to teach the subject assigned;
(h) how the course enhances the ability of a producer to provide insurance services to the public effectively;
(i) a discussion of the relationship of the subject matter to professional ethics;
(j) a list of other states that have approved the course and the credits granted the course in other states;
(k) a syllabus or course outline;
(l) a summary of each course outline element;
(m) method of instruction, such as classroom, correspondence, videotape, audiotape, teleconference, etc;
(n) method of administering examinations, if any;
(o) method of attendance verification;
(p) method of student record maintenance;
(q) instructor qualifications;
(r) a designated contact person; and
(s) a written explanation of test security measures.

(2) Requests for approval of courses must be filed with the commissioner no less than 60 days prior to the anticipated starting date of the course.

(3) Accredited university or college courses will be allowed 15 continuing education credits for each semester credit and 10 continuing education credits for each quarter credit.

(4) Charges for courses must be clearly disclosed to students before enrollment.

(a) If a course is cancelled for any reason, all charges are refundable in full, unless the refund policy is clearly defined in the enrollment application.

(b) In all instances, the charges must be refunded within 45 days of cancellation.

(c) In the event a course is postponed for any reason, students must be given the choice of attending the course at a later date or having their charges refunded in full. The charges must be refunded within 45 days of postponement unless the sponsor is notified that the student has chosen to participate in the postponed course.

(d) A sponsor may have a refund policy addressing a student's cancellation or failure to complete a course, as long as that policy is made clear to potential students.

(5) A course provider must provide proof of course completion to each course participant who successfully completes the approved course of study.

(6) Course providers who add qualified course instructors after a course is approved must submit the name(s) of those instructors to the commissioner prior to the course offering.

(7) A course provider may not schedule more than eight hours of class time in one day.

(8) Course approval is for a period of two years following the course approval date.

(9) Course providers must resubmit courses for new review and certification whenever significant changes in course content are made.

(10) Course submissions that substantially or entirely address the following general course topics may be approved for reduced credit hours:

(a) psychology;
(b) motivation;
(c) prospecting;
(d) supportive office skills;
(e) time management;
(f) agent recruiting;
(g) computer training or programming;
(h) computer science;
(i) required pre-license training; or
(j) securities, other than variable contracts.

(11) The number of credit hours assigned to a course will normally be based upon the classroom or contact time.

(12) Based on the evaluation of the course submitted, the number of credit hours assigned may, for some courses, be less than the total amount of time spent by the licensee in the course.

(13) No activity may be advertised as having been approved for credit until the sponsor receives written approval from the commissioner.

AUTH: 33-1-313 and 33-17-1206, MCA
IMP: 33-17-1204, MCA

RULE IV QUALIFICATIONS FOR INSTRUCTORS (1) In order for a course to be approved, all involved instructors must meet the following qualifications:

(a) Hold a high school diploma or equivalent certificate; and

(b) Have experience in at least one of the following:

(i) Have three or more years of managerial, supervisory, technical, or teaching experience in the insurance lines the individual plans to teach; or

(ii) Have appropriate national designations; or

(iii) Have been approved on an exception basis by the commissioner.

(2) No person will be qualified as an instructor who:

(a) Has had an insurance producer's or consultant's license suspended or revoked in Montana or any other state; or

(b) At the time of submission, has any outstanding fines for insurance-related disciplinary offenses imposed by the commissioner or by any regulatory authority in any other state.

(3) The character of an instructor, based on such information as prior felony and administrative history, may be considered in deciding instructor qualifications.

(4) Licensees teaching or lecturing approved courses will be credited with two times the number of approved credit hours of courses they instruct.

(5) Proctors will not earn continuing education credit for their services.

AUTH: 33-1-313 and 33-17-1206, MCA
IMP: 33-17-1203 and 33-17-1204, MCA

RULE V EXAMINATIONS (1) Except as provided in (5) below, all courses must include an examination which requires a passing score to qualify for a certificate of completion.

(2) For each approved course, the sponsoring organization must maintain a pool of tests sufficient to maintain the integrity of the testing process.

(3) Examinations must be administered, monitored, graded, and the results recorded by the sponsoring organization.

(4) Completed tests will be retained by the sponsoring organization for a period of not less than 12 months and must not be returned to any licensee.

(5) Courses taught by an approved instructor in a classroom setting are exempted from the examination requirement.

AUTH: 33-1-313 and 33-17-1206, MCA
IMP: 33-17-1204, MCA

RULE VI CERTIFICATION REQUIREMENTS FOR LICENSEES AND LIMIT ON CREDIT FOR COURSES REPEATED (1) Each licensee subject to these rules must file an appropriate certificate of completion and pay the required certification fee each year in the first six months of the calendar year for courses completed in the preceding year. Such certification must be submitted on a schedule established on forms supplied by the commissioner, and completed in their entirety.

(2) Producers and consultants may not earn credit for any courses repeated as either student or instructor within a 2-year period.

AUTH: 33-1-313 and 33-17-1206, MCA
IMP: 33-17-1203 and 33-17-1204, MCA

RULE VII EXTENSIONS OF TIME FOR COURSE COMPLETIONS (1) A licensee may request an extension of the period for required credit hour completion prior to the annual filing deadline.

(2) Each request for an extension of time must be in writing and must include a narrative description of the reasons for the request and any available documentation to support the request.

(3) Upon a finding of good cause, the commissioner may extend the time for the licensee to complete the requirement.

(4) The licensee's licenses and appointments will remain in effect during the extension period.

AUTH: 33-1-313 and 33-17-1206, MCA
IMP: 2-4-631 and 33-17-1205, MCA

RULE VIII NON-RESIDENT REQUIREMENTS (1) A non-resident licensee whose state of residence imposes continuing education requirements similar to those of Montana, may comply with Montana's continuing education requirement by submitting a completed compliance certification form and a letter of certification from the resident state confirming compliance in that state.

(2) Non-resident licensees from states that do not require continuing education must meet the requirements of this state.

AUTH: 33-1-313 and 33-17-1206, MCA
IMP: 33-17-1203 and 33-17-1204, MCA

RULE IX COURSE AUDIT (1) The commissioner or members of the commissioners staff may audit courses approved for the continuing education program on a no-fee basis and as a regular part of course review, with or without notice to the course provider.

(2) Course provider records must be made available to the commissioners staff for audit, at department request.

AUTH: 33-1-313 and 33-17-1206, MCA
IMP: 33-17-1203, 33-17-1204 and 33-17-1205, MCA

RULE X SANCTIONS AGAINST COURSES AND COURSE PROVIDER SUSPENSION (1) Approval of a program may be revoked or placed under probationary approval if the commissioner determines that:

(a) The program teaching method or program content no longer meet the standards of these rules or have been significantly changed without approval of the commissioner; or

(b) The course provider certifies that an individual has completed a program in accordance with the standards established for certification or completion of the program, when in fact the individual has not done so; or

(c) Individuals who have satisfactorily completed the program in accordance with the standards established for certification or completion were not so certified by the program or instructor; or

(d) The instructor or sponsoring organization no longer meets the standards of these rules, has had a license revoked or placed under probationary approval, or lacks education or experience in the subject matter of the proposed courses.

(2) Reinstatement of a revoked or probationary approval may be made upon proof satisfactory that the conditions responsible for the revocation or probationary approval have been corrected and the provider is not otherwise disqualified.

(3) The commissioner reserves authority to issue a cease and desist order under 33-1-318, MCA, in appropriate urgent cases.

AUTH: 33-1-313 and 33-17-1206, MCA
IMP: 33-17-1204 and 33-17-1205, MCA

RULE XI FEES SCHEDULE

(1) Licensees:

(a) Filing annual certification of course completion . . . . . $ 25.00

(b) Late renewal fee . . . . . $ 50.00

(2) Course providers:

(a) Submission of a course or program for review and initial biennial certification . . . . . $ 75.00

(b) A maximum submission fee of $1,500.00 may be charged a course provider during a biennium for initial review of courses.

(3) Accredited educational institutions are exempt from fee requirements for courses provided for credit.

(4) All fees are non-refundable.

AUTH: 33-1-313 and 33-12-1206, MCA
IMP: 33-2-708, MCA

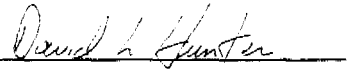
REASON: These rules are being proposed because they are needed to implement and finance the continuing education program for insurance producers and consultants created by Chapter 622, Laws of 1993. The rules are expressly authorized by sections 33-17-1206 and 33-2-708, MCA.

3. Interested persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Frank Cote', Deputy Commissioner of Insurance, P.O. Box 4009, Helena, Montana 59604, and must be received no later than November 30, 1993.

4. The State Auditor will make reasonable accommodations for persons with disabilities who wish to participate at this public hearing. If you request an accommodation, please contact the State Auditor's Office not later than 5:00 p.m., November 22, 1993, and advise the office of the nature of the accommodation needed. Please contact Frank Cote', Deputy Commissioner of Insurance, P.O. Box 4009, Helena, Montana 59604; telephone (406) 444-2997; toll free dial 1 and then 800-332-6148; fax (406) 444-3497.

5. Geoffrey L. Brazier, 516 Harrison Avenue, Helena, Montana 59601, has been designated to preside over and conduct the hearing.

DAVID L. HUNTER
Deputy State Auditor

By 

Geoffrey L. Brazier
Rules Reviewer

Certified to the Secretary of State this 18th day of October, 1993.

BEFORE THE BOARD OF DENTISTRY
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed amendment of rules pertaining to dental hygienists, use of auxiliary personnel and dental hygienists and exemptions and exceptions	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF 8.16.602 ALLOWABLE FUNCTIONS FOR DENTAL HYGIENISTS, 8.16.707 USE OF AUXILIARY PERSONNEL AND DENTAL HYGIENISTS AND 8.16.1005 EXEMPTIONS AND EXCEPTIONS

TO: All Interested Persons:

1. On November 20, 1993, at 9:00 a.m., a public hearing will be held in the conference room of the Professional and Occupational Licensing Bureau, Lower Level, Arcade Building, 111 North Jackson, Helena, Montana, to consider the proposed amendment of rules pertaining to dental hygienists and dental auxiliaries.

2. The proposed amendments will read as follows:

"8.16.602 ALLOWABLE FUNCTIONS FOR DENTAL HYGIENISTS ~~AND DENTAL AUXILIARIES~~ (1) Allowable functions for the dental hygienist practicing under the supervision of a licensed dentist shall include all reversible dental procedures in which the hygienist was instructed and qualified to perform in an accredited school of dental hygiene, except placing and carving restorations which are not temporary in nature.

(2) will remain the same.

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

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

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

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

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

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

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

~~(g) placing and removing rubber dams;~~

~~(h) placing and removing matrices;~~

~~(i) collecting patient data;~~

~~(j) polishing amalgam restorations;~~

~~(k) placing and removing temporary restorations with hand instruments only;~~

~~(l) monitoring a patient who has been prescribed and administered nitrous oxide by a licensed dentist; and~~

~~(m) coronal polishing at the direction of the dentist, that is not identified as, or submitted for payment as, a prophylaxis. As used herein, "coronal polishing" means a procedure limited to the removal of plaque and stain from the exposed tooth surfaces, utilizing an appropriate polishing~~

~~mechanism and polishing agent. No dentist shall allow a dental assistant to practice coronal polishing until the dental assistant has successfully completed a course of instruction approved by the board. This rule will be effective July 1, 1990.~~

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

~~(a) taking intraoral photographs;~~

~~(b) exposing and developing extraoral x-ray films if qualified by successful completion of the examination administered by the Montana dental association;~~

~~(c) taking wax bites;~~

~~(d) placing and removing orthodontic separators;~~

~~(e) removing excess supragingival cement after cementation of bands using hand instruments only;~~

~~(f) pre-fitting orthodontic bands with no cementation;~~

~~(g) performing oral inspection for oral hygiene, loose brackets, wires and ties;~~

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

~~(i) fitting and adjusting headgears with no activation;~~

~~(j) removing orthodontic archwires;~~

~~(k) removing loose orthodontic bands;~~

~~(l) placing and removing ligature ties;~~

~~(m) performing intraoral bending of sharp wires;~~

~~(n) performing extraoral finishing of fractured edges on removable appliances; and~~

~~(o) coronal polishing of teeth only in preparation for placement of orthodontic brackets and bands.~~

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

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

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

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

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

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

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

~~(10)~~ (3) Prophylaxis is defined as ~~the removal of accumulated matter, deposits, accretions or stains from the natural and restored surfaces of exposed teeth which may include root planing and soft tissue curettage as ordered by the dentist~~ a preventive dental health process by which gingival irritants including any existing combination of calculus deposits, plaque, materia alba, accretions, and stains are removed supragingivally and/or subgingivally from the natural and restored surfaces of exposed teeth by a method or methods determined to be most suitable for the patient by an appropriately licensed practitioner.

(4) Coronal polishing is defined as a dental procedure limited to the utilization of abrasive agents on the coronal surfaces of natural and restored teeth for the purpose of plaque and extrinsic stain removal. Coronal polishing by itself, without an appropriately licensed practitioner inspecting for and removing any calculus or other gingival irritants deemed necessary for removal by an appropriately licensed practitioner, shall not be construed as an oral prophylaxis."

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

REASON: Some confusion had existed with the phrasing of subsection (1) as it had been written. This proposed amendment clarifies that a dental hygienist can place temporary restorations.

The Board is also proposing to delete the "laundry list" of allowable functions for dental auxiliaries found in existing subsections (3) through (6). The Board does not have statutory authority to certify dental auxiliaries in "coronal polishing" or "radiography." By deleting current subsections (3) through (9), the employing dentist becomes liable for all functions performed by unlicensed auxiliaries. The dentist is licensed by the Board, therefore the Board can impose disciplinary sanctions against a dentist who allows an unlicensed auxiliary to perform any function specifically prohibited by Title 37, chapter 4. Subsections (7) through (9) will be modified and noticed as new rules under ARM 8.16.707.

The definitions of "prophylaxis" and "coronal polishing" are being modified. Research and technology are rapidly changing the methods of practice of dentistry and dental hygiene. The definition of "prophylaxis" is modified to allow for changes that are taking place in the professions. Modification of the definition of "coronal polishing" is being proposed to clarify that coronal polishing, by itself, is not a prophylaxis. A prophylaxis is to be performed only by a

dentist or dental hygienist, and need not include coronal polishing. If coronal polishing is indicated to be necessary this may be delegated, but the dentist or dental hygienist must examine the patient for and remove any calculus or other gingival irritants. Section 37-4-408, MCA, is being removed as an authority section because the rule no longer pertains to dental auxiliaries, only dental hygienists.

"8.16.707 USE OF AUXILIARY PERSONNEL AND DENTAL HYGIENISTS (1) will remain the same.

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

(3) No dentist may employ, supervise, or use more dental auxiliary personnel or dental hygienists than he can reasonably supervise consistent with his ethical and professional responsibilities.

(4) It is the responsibility of the employing dentist to see that the auxiliary's and/or dental hygienist's qualifications are in compliance with the statutes and rules of the Montana State Board of Dentistry.

(5) In accordance with ARM 16.40.603, (department of health and environmental sciences) a practitioner licensed to use or direct the use of an x-ray producing device must assure that the radiation source under the practitioner's jurisdiction is used only by individuals competent to use it. The allowable auxiliary expanded duty function of making radiograph exposures must be performed under the direct supervision of a licensed dentist. The auxiliary shall have either graduated from an accredited program of dental assisting, dental hygiene, or dentistry, or have successfully completed a written and practical examination approved by the board. A list of board approved examination will be kept on file in the board office. No dentist shall allow a dental auxiliary in his/her employ to expose radiographs without having first determined that said dental auxiliary has qualified as specified above, except during the period fulfilling educational requirements, provided such period does not exceed six months. The licensed dentist employer will maintain proof of auxiliary qualifications on the office premises, and will submit such proof to the board upon request."

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

REASON: New subsections (2), (3) and (4) make the dentists responsible for the proper supervision of their unlicensed auxiliaries and the licensed dental hygienists working in their offices. New subsection (5) is an amendment similar to current regulation found at ARM 8.16.602(5), which has been proposed to be deleted in its current form. The language proposed for adoption in subsection (5) above will remove the x-ray certification process for unlicensed dental auxiliaries. The Board proposes the amendment because its certification process is an extension of authority. The new rule as

proposed will allow unlicensed auxiliaries who are graduates of an accredited school of dental assisting to expose radiographs, upon request of a licensed dentist and under the direct supervision of that licensed dentist.

"8.16.1005 EXEMPTIONS AND EXCEPTIONS (1) and (2) will remain the same.

(3) Inactive dental and dental hygiene licensees shall be exempt from the continuing education requirements so long as the license remains on inactive status. Inactive licensees seeking to convert to an active status must comply with ARM 8.16.408 or 8.16.607."

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

REASON: This amendment is being proposed to avoid undue hardship on inactive practitioners; to attempt to reduce the workload of the board's administrative staff and to avoid a conflict with existing rules concerning conversion of "inactive" to "active" status licensees.

3. Interested persons may present their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may be also be submitted to the Board of Dentistry, Lower Level, Arcade Building, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, to be received no later than 5:00 p.m., November 26, 1993.

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

BOARD OF DENTISTRY
SCOTT ERLER, D.D.S., PRESIDENT

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

Annie M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, October 18, 1993.

BEFORE THE BOARD OF DENTISTRY
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed amendment of rules pertaining to prohibition, permits required for administration, minimum qualifying standards, minimum monitoring standards, facility standards, on-site inspection of facilities	)))))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF RULES PERTAINING TO THE ADMINISTRATION OF ANESTHESIA AND SEDATION BY DENTISTS

TO: All Interested Persons:

1. On November 20, 1993, at 11:00 a.m., a public hearing will be held in the conference room of the Professional and Occupational Licensing Bureau, Lower Level, Arcade Building, 111 North Jackson, Helena, Montana, to consider the proposed amendment of rules pertaining to the administration of anesthesia and sedation by dentists.

2. The proposed amendments will read as follows:

"8.16.901 PROHIBITION (1) and (2) will remain the same.

(3) Performing anesthetic procedures after the effective date of this rule without an appropriate permit ~~or at a nonqualified facility~~ will be interpreted by the board as unprofessional conduct under ARM 8.16.722~~(1)(c)~~. This is an interpretive subsection."

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

REASON: The Board is proposing to eliminate the facility permit requirement. Section 37-4-511, MCA, speaks to people, and not facilities, being permitted. The facility requirement appears to be an extension of authority.

"8.16.902 PERMITS REQUIRED FOR ADMINISTRATION ~~OR FACILITY~~ (1) and (2) will remain the same.

(3) ~~The facility in which general anesthesia or conscious sedation is administered during dental procedures must hold a valid permit issued by the board upon finding the facility to meet the standards in ARM 8.16.905. The fee for a facility permit is the inspection or reinspection fee provided in ARM 8.16.908.~~ The board may grant to a licensed dentist, upon receipt of an application and payment of the initial inspection fee, a temporary permit authorizing the dentist to administer general anesthesia or conscious sedation for a period not to exceed 120 days or until the inspectors are able to make the inspection, whichever event occurs first. This temporary permit is not renewable."

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

REASON: The facility requirement appears to be an extension of authority. The Board is proposing a temporary permit which would require an immediate application by the dentist verifying that the applicant has met the minimum qualifications. The application would place the Board on notice that the dentist is or will be administering anesthesia which gives the Board more control over the licensee and the administration of anesthesia in Montana dental offices. The temporary permit would provide 120 days leeway which would allow the dentist adequate time to make all necessary arrangements for the on-site inspection.

Section 37-4-401 is being deleted from the authority section because that section relates to the practice of dental hygiene; this rule does not apply to the practice of dental hygiene.

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

(2) Dentists providing general anesthesia or conscious sedation must present ~~competent~~ evidence of successful completion of an advanced course in cardiac life support within the three most recent years. As used in this subchapter, the terms "general anesthesia" and "conscious sedation" do not include "nitrous oxide/oxygen sedation" used alone or in conjunction with a single oral sedative agent.

(3) will remain the same.

~~(a) A dentist licensed to practice in Montana who can demonstrate competence and skill in administering conscious sedation by virtue of experience or comparable alternative training shall be permitted by the board to use conscious sedation. Applicants under this rule, must have experience in using conscious sedation for the prior three (3) years on a routine basis and without significant anesthetic complications.~~

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

(4) With respect to nitrous oxide/oxygen sedation used alone or in conjunction with a single oral sedative agent, no dentist shall use nitrous oxide/oxygen on a patient unless he has completed a course of instruction of at least fourteen (14) clock hours of didactic and clinical training. This instruction must include didactic and clinical instruction in an accredited dental school, hospital, or dental society sponsored course, and must include instruction in the safety and management of emergencies."

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

REASON: ACLS certification is no longer being granted. Successful completion of ACLS requires passage of an examination. It is believed that ACLS prepares the dentist to handle adverse reactions in his office should they occur. Mandating successful completion of an examination enhances the health and safety of the patient. The Board wishes to clarify that use of an oral sedative in conjunction with nitrous oxide/oxygen does not constitute the administration of

"general anesthesia" or "conscious sedation." The Board proposes to eliminate the grandfathering clause in subsection (3)(a), which was used when the anesthesia statutes were first enacted. The licensee could qualify for a conscious sedation permit if he or she routinely used conscious sedation for the past three years and used it without incident.

Section 37-4-401 is being deleted from the authority section because that section relates to the practice of dental hygiene; this rule does not apply to the practice of dental hygiene.

"8.16.904 MINIMUM MONITORING STANDARDS (1) through (b)(i) will remain the same.

(ii) ~~Precordial stethoscope used to monitor respiratory rate and pulse rate~~ Pulse oximetry; and

(iii) and (iv) will remain the same.

(v) Continuous monitoring of skin and mucosal color, ~~and~~ (vi) Defibrillator; and

(vi) will remain the same but will be renumbered (vii).

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

(iii) ~~A precordial stethoscope used to continually monitor respiration and pulse rate, and~~ Pulse oximetry,

(iv) Continuous monitoring skin and mucosal color,

(v) Electrocardiac monitoring, and

(vi) Defibrillator.

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

(3) Minimum standards for monitoring nitrous oxide/oxygen sedation used alone or in conjunction with a single oral sedative agent shall include the following:

(a) will remain the same."

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

REASON: The proposed amendments will require monitoring general anesthesia and conscious sedation with a pulse oximeter and defibrillator. Monitoring with these machines meets the standard of care as determined by the American Society of Anesthesiology and the Board believes that the same standard of care should be established for the state of Montana. Requiring these machines will improve safety and patient care. Again the Board is clarifying that use of an oral sedative in conjunction with nitrous oxide/oxygen does not constitute the administration of "general anesthesia" or "conscious sedation."

"8.16.905 FACILITY STANDARDS (1) through (1)(f) will remain the same.

(g) a ~~precordial stethoscope~~ pulse oximeter; and

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

(b) ~~precordial stethoscope~~ pulse oximeter;

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

(3) During dental procedures the facility must be staffed by supervised monitoring personnel all of which are capable of handling procedures, problems, and emergency incidents and ~~be certified~~ have successfully completed ~~in~~ basic life support;

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

~~(iv) The dentist and the anesthesia monitor must be certified in ACLS (advanced cardiac life support).~~

(b) With respect to light general anesthesia, in addition to the dentist and dental assistant, there must be one person present whose duties are to monitor vital signs. This person must be ~~certified~~ trained in basic life support ~~and have been examined by the board or its agents in life support skills and have demonstrated a level of proficiency satisfactory to the board. The dentist using light general anesthesia must also be ACLS (advanced cardiac life support) certified~~ and their task dedicated to monitoring.

(c) When conscious sedation is used, the dentist shall be qualified and permitted to administer the drugs and appropriately monitor the patient, and have successfully completed an advanced course in cardiac life support. In addition to the dentist, at least one other person on staff and present in the office must ~~be qualified in~~ have successfully completed basic life support.

(4) A facility in which nitrous oxide/oxygen, used alone or in conjunction with a single oral sedative agent, is administered must contain a minimum of equipment and supplies appropriate to meet emergencies."

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

REASON: As stated under the proposed amendment of ARM 8.16.904, monitoring with a pulse oximetry machine meets the standard of care established by the American Society of Anesthesiology. The Montana Board believes the same standard of care should be established and therefore proposes pulse oximetry monitoring. As previously stated, ACLS certification is no longer granted. Successful completion of ACLS sets the highest standard requirement available. The Board also proposes to clarify that with respect to light general anesthesia the person trained to monitor shall limit his or her function solely to monitoring.

"8.16.906 ON-SITE INSPECTION OF FACILITIES (1) Each facility where conscious sedation or general anesthesia is to be provided shall be initially inspected by a team appointed by the board prior to the initial issuance of ~~any~~ the appropriate permit to administer anesthesia on the premises, and at intervals not to exceed five (5) years. Adequacy of the facility and competency of the anesthesia team will be evaluated by the inspection team. The inspection team shall consist of at least two (2) individuals. Any dentist whose facility is to be inspected shall be notified at least 30 days prior to the inspection and the names of the inspection team shall be provided to him.

(2) through (4) remain the same.

(5) Five year reinspections may be performed by one inspector unless the dentist being inspected requests two inspectors."

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

REASON: In an attempt to reduce costs associated with the five-year reinspection, the Board proposes that reinspections be conducted by one inspector instead of two. However, if the dentist scheduled for inspection wants two inspectors, two inspectors will be sent. The facility is inspected only to determine that all required equipment is present; the Board will no longer be issuing facility permits. The Board will use the inspector's findings regarding the presence or absence of the required equipment in deciding whether to grant a permit to the practitioner.

3. Interested persons may present their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may be also be submitted to the Board of Dentistry, Lower Level, Arcade Building, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, to be received no later than 5:00 p.m., November 26, 1993.

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

BOARD OF DENTISTRY
SCOTT ERLER, D.D.S., PRESIDENT

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

_____
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, October 18, 1993.

BEFORE THE BOARD OF OCCUPATIONAL THERAPY PRACTICE
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed amendment of a rule pertaining to unprofessional conduct	NOTICE OF PROPOSED AMENDMENT OF 8.35.408 UNPROFESSIONAL CONDUCT

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On November 27, 1993, the Board of Occupational Therapy Practice proposes to amend the above-stated rule.

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

"8.35.408 UNPROFESSIONAL CONDUCT (1) through (9) will remain the same.

(10) Obtaining or attempting to obtain compensation by fraud or deceit.

(11) Engaging in assault and battery of patients or others with whom the practitioner has a professional relationship.

(12) Engaging in sexual misconduct or abuse involving patients or others with whom the practitioner has a professional relationship.

(13) Being convicted of a crime, the circumstances of which substantially relate to the practice of occupational therapy or indicate an inability to engage in the practice of occupational therapy safely, proficiently and or competently.

(14) Inaccurately recording, falsifying or otherwise altering any record of a patient or health care provider.

(15) Failing to maintain proper records including but not limited to falsifying patient's records or intentionally charting incorrectly; charging the patient for services or equipment not rendered and misrepresentation of services to third party payers.

(16) Intentionally making or filing a false or misleading report or failing to file a report when it is required by law or third person, or intentionally obstructing or attempting to obstruct another person from filing such report.

(17) Improper use of evaluation or treatment modalities resulting in physical injury to the patient or client.

(18) Failure to cooperate with an investigation authorized by the board by refusing to respond to a complaint filed by a patient or refusing to comply with an administrative subpoena obtained by the board.

(19) Promotion for personal gain of any unnecessary or inefficacious device, treatment, procedure or service."

Auth: Sec. 37-1-131, 37-24-201, 37-24-202, MCA; IMP, Sec. 37-24-309, MCA

REASON: These amendments are intended to address areas of conduct the board feels are unprofessional in nature but which are not currently prohibited by Board rules.

3. Interested persons may submit their data, views or arguments concerning the proposed amendment in writing to the Board of Occupational Therapy Practice, Lower Level, Arcade Building, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, to be received no later than 5:00 p.m., November 26, 1993.

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 Occupational Therapy Practice, Lower Level, Arcade Building, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, to be received no later than 5:00 p.m., November 26, 1993.

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. Ten percent of those persons directly affected has been determined to be 23 based on the 229 licensees in Montana.

BOARD OF OCCUPATIONAL THERAPY PRACTICE

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

Ann M Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, October 18, 1993.

BEFORE THE BOARD OF OPTOMETRISTS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed amendment of rules pertaining to therapeutic pharmaceutical agents and approved drugs	))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF 8.36.801 THERAPEUTIC PHARMACEUTICAL AGENTS AND 8.36.804 APPROVED DRUGS

TO: All Interested Persons:

1. On December 3, 1993, at 11:00 a.m., a public hearing will be held in the downstairs conference room of the Department of Commerce building, 1424 Ninth 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)

"8.36.801 THERAPEUTIC PHARMACEUTICAL AGENTS (1) will remain the same.

(a) A certificate of competency for use of therapeutic pharmaceutical agents will be issued by the board of ~~optometrists~~ optometry to those doctors of optometry who have successfully taken a required course and passed a required examination, or successfully passed an examination of the international association of boards of examiners in optometry. The fee will be determined by the board.

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

(2) Optometrists will be held to the same medical and legal standards of care as medical doctors."

Auth: Sec. 37-10-202, MCA; IMP, Sec. 37-10-304, MCA

REASON: This rule revises the name of the Board so that it reflects a recent statutory change in the title of the Board. Subsection (2) is proposed to be adopted in order to advise practicing optometrists who have been qualified to use therapeutic agents of the standard of care they are expected to meet. The Board believes that individuals wishing to use therapeutic agents should consider themselves to be guided by the same standard as physicians.

"8.36.804 APPROVED DRUGS (1) through (1)(c) will remain the same.

(d) Anti-inflammatory agents~~, except corticosteroids~~

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

Auth: Sec. 37-10-202, MCA; IMP, Sec. 37-10-101, 37-10-304, MCA

REASON: The proposed amendment removes language that prohibits optometrists from treating patients with corticosteroids. The 1993 Legislature revised the definition of the practice of optometry contained in section 37-10-101, MCA, to remove a prohibition on optometrists from using

corticosteroids. This proposed amendment merely makes the regulations consistent with that statutory amendment.

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 Optometrists, Lower Level, Arcade Building, 111 North Jackson, P.O. Box 200513, Helena, Montana, 59620-0513, no later than November 26, 1993.

4. Robert Verdon, attorney, has been designated to preside over and conduct the hearing.

BOARD OF OPTOMETRY
PAUL L. KATHEREIN, O.D.,
PRESIDENT

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

_____
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, October 18, 1993.

BEFORE THE BOARD OF RESPIRATORY CARE PRACTITIONERS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed amendment of a rule pertaining to definitions and the adoption of a new rule pertaining to the use of pulse oximetry	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF 8.59.402 DEFINITIONS AND THE ADOPTION OF NEW RULE I GUIDELINES FOR USE OF PULSE OXIMETRY

TO: All Interested Persons:

1. On December 1, 1993, at 9:00 a.m., a public hearing will be held in the conference room of the Professional and Occupational Licensing Bureau, 111 North Jackson, Helena, Montana, to consider the proposed amendment and adoption of the above-stated rules.

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

"8.59.402 DEFINITIONS (1) through (2)(d) will remain the same.

(3) The board defines "clinical supervision" as the availability of a licensed respiratory care practitioner for purposes of immediate communication and consultation ~~with the student or temporary permit holder during the course of treatment by the student or temporary permit holder~~."

Auth: Sec. ~~37-28-102~~, 37-28-104, MCA; IMP, Sec. 37-28-101, 37-28-102, MCA

REASON: This rule is proposed to be amended to recognize the instances in which individuals other than students or temporary permit holders may be performing pulse oximetry under proposed new rule I. In such cases, those individuals also need to be subject to clinical supervision of a respiratory care practitioner. Section 37-28-102, MCA, is being deleted from the authority section because it is a definition section and contains no rulemaking authority.

3. The proposed new rule will read as follows:

"I GUIDELINES FOR USE OF PULSE OXIMETRY (1) The Montana board of respiratory care practitioners recognizes the AARC (American association of respiratory care) clinical practice guidelines for pulse oximetry as the standard for the use of pulse oximetry in the practice of respiratory care in Montana and considers the use of pulse oximetry limited to the following persons:

(a) a licensed respiratory care practitioner;

(b) unlicensed personnel trained in the technical operation of pulse oximeter, oxygen delivery devices and related equipment, measurement of vital signs, and record keeping may perform and record results of pulse oximetry but

must be under clinical supervision of a licensed respiratory care practitioner.

(2) The board adopts by reference the AARC clinical practice guidelines for pulse oximetry PO 1.0 - 13.2 as the standard for the use of pulse oximeters and considers their use to be appropriately limited as set forth above. A copy of such standards is available from the board office."

Auth: Sec. 37-28-104, MCA; IMP, Sec. 37-28-102, MCA

REASON: This new rule is necessary to provide the consumer with the utmost in respiratory care. It requires that pulse oximetry for diagnostic purposes be conducted by a respiratory care practitioner or other health care professionals, as are exempted by the statutes governing respiratory care. This rule will allow unlicensed individuals to perform pulse oximetry for recordkeeping purposes, but only under the supervision of such licensed personnel.

4. Interested persons may present their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to the Board of Respiratory Care Practitioners, Lower Level, Arcade Building, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, to be received no later than 5:00 p.m., November 26, 1993.

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

BOARD OF RESPIRATORY CARE PRACTITIONERS
RICH LUNDY, PRESIDENT

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

Ann M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State October 18, 1993.

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

In the matter of proposed new Rule I relating to water quality permit and degradation authorization fees	))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION OF NEW RULE I

(Water Quality Bureau)

To: All Interested Persons

1. On November 19, 1993, at 10:00 a.m., the board will hold a public hearing in Room C209 of the Cogswell Building, 1400 Broadway, Helena, Montana, to consider adoption of the above referenced rule.

2. New Rule I appears as follows:

RULE I PERMIT APPLICATION, DEGRADATION AUTHORIZATION, AND ANNUAL PERMIT FEES (1) The purpose of this rule is to establish fee schedules for use in determining fees to be paid to the department under 75-5-516, MCA. There are three types of fees imposed under this rule: a permit application fee, a degradation authorization fee, and an annual permit fee.

(2)(a) A person who applies for a permit, certificate, license, or other authorization required by rule under 75-5-201 or 75-5-401, MCA, or for a modification or renewal of any of these authorizations, shall pay to the department a permit application fee as determined under (3)(a) and (c) of this rule.

(b) A person whose activity requires an application to degrade state waters under 75-5-303, MCA, and subchapter 7 of this chapter shall submit a degradation authorization fee with the application, as determined under (3)(b) and (c) of this rule.

(c) A person who holds a permit, certificate, license, or other authorization required by rule under 75-5-201 or 75-5-401, MCA, shall pay to the department an annual permit fee as determined under (3)(d) of this rule.

(3)(a) The permit application fee is the sum of the fees for the applicable parts or sub-parts listed in this subsection. Payment of the permit application fee is due upon submittal of the application. The fee schedule for new or renewal applications for a Montana pollutant discharge elimination system permit under subchapter 13 of this chapter, a Montana ground water pollution control system permit under subchapter 10 of this chapter, or any other authorization under 75-5-201, 75-5-401, MCA, or rules promulgated under these authorities, is set forth below as schedule I:

Schedule I
Application Fee per Discharge Point,
Point Source, or Source at the Facility

Publicly Owned Treatment Works (POTW) or other Domestic Wastewater Plant	
Without Significant Industry *	$ 250
With Significant Industry *	$1000
Industrial	
Individual Storm Water/Ground Water/Pit Water	$1000
Noncontact Cooling Water	$ 500
Wastewater: With Any Complex Organics, or With Any Other Toxic and Deleterious Substance At a Level >50% Long-term (Chronic) Standard	$5000
Wastewater without Complex Organics or any Other Toxic and Deleterious Substance at a Level >50% Long-term (Chronic) Standard	$2500
General Permits	
Feed Lots, Fish Farms, Suction Dredges, Construction Dewatering, 16.20.633(3)(a) Authorizations	$200
Produced Water, Cleanups, Gravel Washing, Industrial Stormwater, Construction Stormwater	$ 500

* "Significant industry" means the POTW has a pretreatment program or receives discharge from a pretreatment categorical industry.

(b) The degradation authorization fee is the sum of the fees for the applicable parts or sub-parts listed in this subsection. Payment of the degradation authorization fee is due upon submittal of the applications. The fee schedule for new or renewal authorizations to degrade state waters under subchapter 7 of this chapter is set forth in Schedule II, as follows:

Schedule II
Review of Authorizations to Degrade

Domestic Sewage Treatment Plant	$2500
Industrial Activity Reviews	
With any toxic and deleterious substance at a level >50% (chronic) standard	$5000
Without any toxic and deleterious substance at a level >50% (chronic) standard	$2500

Subdivisions	
1-9 lots	$ 120/lot
10+ lots	$ 200/lot
(maximum fee)	$5000/subdivision

(c) For purposes of (a) and (b) above, if a resubmitted application or petition contains substantial changes that require the application or petition to be reviewed again, the department may require an additional application fee to be paid before any further substantive review. The additional fee must be calculated in the same manner as the original fee, and based on those parts of the application that must be reviewed again because of the change. The department shall give written notice of the assessment within 30 days after receipt of the resubmittal and provide for appeal as specified under (e) below.

(d)(i) The annual permit fee is the sum of the fees for the applicable parts or sub-parts listed in this subsection. This subsection (i) must be used to determine the total annual fee, unless the minimum fee determined under (ii) below is a higher amount. The annual permit fee is determined by applying Schedule III to the facility under permit:

Schedule III
Average Discharge Flow Rate Fee
Per Million Gallons of Wastewater Discharged Per Day on an Average Annual Basis, per Point Source Discharge

POTW or other Domestic Sewage Plant	
Without Significant Industry	$2000
With Significant Industry	$2500
Industrials	
Individual Storm Water/Ground Water/Pit Water	$2000*
Noncontact Cooling Water	$ 500
Wastewater:	
With Any Complex Organics, or With Any Other Toxic and Deleterious Substance At a Level >50% Long-term Chronic Standard	$2500
Wastewater without Complex Organics or any Other Toxic and Deleterious Substance at a Level >50% Long-term Chronic Standard	$2500
General Permits	
Feed Lots, Fish Farms, Suction Dredges, Construction Dewatering, Construction Stormwater*	$ 250
Produced Water, Cleanups, Gravel Washing, Industrial Stormwater	$2000

* Multiple stormwater points are limited to the 5 points

yielding the highest fees.

(ii) The minimum annual permit fee to be charged per discharge point or point source at a facility regardless of the wastewater flow is set forth in Schedule IV, as follows:

Schedule IV
Minimum Annual Fee per Discharge
Point or Point Source

POTW or other Domestic Sewage Plant	
Without Significant Industry	$ 250
With Significant Industry	$1000
Industrials	
Individual Storm Water/Ground Water/Pit Water	$1000
Noncontact Cooling Water	$ 250
Wastewater: With Any Complex Organics, or With Any Other Toxic and Deleterious Substance At a Level >50% Long-term Chronic Standard	$2500
Wastewater without Complex Organics or any Other Toxic and Deleterious Substance at a Level >50% Long-term Chronic Standard	$2500
General Permits	
Feed Lots, Fish Farms, Suction Dredges, Construction Dewatering, Construction Stormwater	$ 250
Produced Water, Cleanups, Gravel Washing, Industrial Stormwater	$ 500

(iii) A facility that consistently discharges effluent at less than or equal to one-half of its permit limit concentration, using the previous year's discharge data, is entitled to a 25% reduction in its annual permit fee. Proportionate reductions in annual fee of up to 25% may be given to facilities that consistently discharge effluent at levels between 50% and 100% of their permit limit concentrations. The annual average of the percentage of use of each parameter limit will be used to determine an overall percentage. A new permittee is not eligible for fee reduction in its first year of operation. A permittee with a violation of any permit limit during the previous year is not eligible for fee reduction.

(iv) The annual permit fee is assessed for each state fiscal year. The fee for the fiscal year must be received by the department by no later than March 1 following the commencement of the fiscal year. The fee must be paid by a check or money order made payable to the state of Montana, Department of Health and Environmental Sciences.

(4) If a person assessed a fee under (3) of this rule

fails to pay the fee within 90 days after the due date for payment, the department may:

(a) impose an additional assessment consisting of 15% of the fee plus interest on the required fee computed at the rate established under 15-31-510(3), MCA; or

(b) suspend the processing of the application for a permit or authorization or, if the nonpayment involves an annual permit fee, suspend the permit, certificate, license or other authorization for which the fee is required. The department may lift the suspension at any time up to one year after the suspension occurs if the holder has paid all outstanding fees, including all penalties, assessments, and interest imposed under this subsection.

(5) The department shall give written notice to each person assessed a fee under this rule of the amount of fee that is assessed and the basis for the department's calculation of the fee. This notice must be issued at least 30 days prior to the due date for payment of the assessment.

(6)(a) Persons assessed a fee under (3) of this rule, may appeal the department's fee assessment to the board within 20 days after receiving written notice of the department's fee determination. The appeal to the board must include a written statement detailing the reasons why the permit holder or applicant considers the department's fee assessment to be erroneous or excessive.

(b) If part of the department's fee assessment is not in dispute in an appeal filed under (a) above, the undisputed portion of the fee must be paid to the department upon written request of the department.

(c) The contested case provisions of the Montana Administrative Procedure Act, provided for in Title 2, chapter 4, part 6, MCA, apply to a hearing before the board under this section. AUTH: 75-5-516, MCA; IMP: 75-5-516, MCA.

3. The proposed adoption of new Rule I would prescribe fee schedules that apply to three types of water quality permit fees: a fee on applications for water quality permits, a fee on applications to degrade state waters, and an annual fee on holders of water quality permits. The proposed rule also provide an administrative appeal process for persons who dispute fee assessments made by the Department of Health and Environmental Sciences. The Board is proposing this new rule in order to implement legislation enacted by the 1993 Legislature (now 75-5-516, MCA, enacted by HB 388). The legislation was intended to enable the Department of Health and Environmental Sciences to independently fund and implement a state water quality permitting system that achieves the policies and requirements of Title 75, chapter 5, MCA. By establishing a fee system, the department will be able to retain its primacy agreement with the U.S. Environmental Protection Agency to administer major portions of the federal Clean Water Act within Montana.

4. Interested persons may submit their data, views, or arguments concerning the proposed adoption, either orally or

in writing, at the hearing. Written data, views, or arguments may also be submitted to Yolanda Fitzsimmons, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620, no later than 5:00 p.m. November 25, 1993.

5. W.D. Hutchison has been designated to preside over and conduct the hearing.

RAYMOND W. GUSTAFSON, Chairman
BOARD OF HEALTH AND
ENVIRONMENTAL SCIENCES

by _____
ROBERT J. ROBINSON, Director

Certified to the Secretary of State October 18, 1993.

Reviewed by:

_____
Eleanor Parker, DHES Attorney

BEFORE THE BOARD OF PARDONS
OF THE STATE OF MONTANA

In the matter of the Proposed revision of the Rules of the Board of Pardons	))))	NOTICE OF PROPOSED REVISION OF RULES (ARM Title 20, Subchapters 3-11) NO PUBLIC HEARING CONTEMPLATED

TO: ALL INTERESTED PERSONS

1. At its regular meeting on September 29, 1993, in Deer Lodge, Montana, the Board of Pardons proposed to revise its rules now published at pages 20-253 through 20-280 of the Administrative Rules of Montana.

2. Since rule-making by the Board is exempted from the notice and comment or opportunity for hearing requirements of the Montana Administrative Procedure Act, this notice is published in the Administrative Register as a courtesy to those persons who may wish to offer comments and suggestions before the Board makes its final decision.

3. The text of the proposed major revision will be mailed to each Clerk of the District Court, the Montana Defender Project, UM School of Law, the Montana State Prison law library, Montana Attorney General, and the American Civil Liberties Union. This text will be mailed to any other person who requests a copy by writing to the Legal Counsel, Department of Corrections and Human Services, 1539 11th Avenue, Helena, Montana 59620, or to the Montana Board of Pardons.

4. Many of the changes are proposed merely to arrange the rules more logically or to conform to amendments of the statutes enacted in legislative sessions and more clearly outline the activities of the Board.

5. Comments and suggestions concerning the proposed revision will be considered by the Board of Pardons if sent prior to November 29, 1993, to: John G. Thomas, Chair, Board of Pardons, 300 Maryland Avenue, Deer Lodge, Montana 59722.

6. Authority to adopt the proposed changes is based upon Section 46-23-218, MCA. Imp. 46-23-218, MCA.

JOHN G. THOMAS, Chair
Montana Board of Pardons

RICK DAY, Director
Department of Corrections
and Human Services

JAMES B. OBIE
Rule Reviewer

Certified to the Secretary of State October 18th, 1993.

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

In the matter of the adoption of a new rule pertaining to rental rates for grazing leases and licenses, rental rates for cabinsite leases and fees for general recreational use licenses.	NOTICE OF PUBLIC HEARING

To: All Interested Persons

1. On November 23, 1993, the Department of State Lands and Board of Land Commissioners will hold a hearing to consider adoption of a new rule setting the minimum rental rates for state grazing leases and licenses, state cabinsite leases and recreational use licenses. The hearing will be held at the auditorium of the Scott Hart Building, 303 North Roberts, Helena, Montana at 1:30 pm.

2. The proposed new rule provides as follows:

RULE I. RENTALS AND FEES FOR GRAZING, CABINSITES, AND GENERAL RECREATIONAL USE LICENSE

(1) For grazing leases and licenses issued or renewed after July 1, 1993, the minimum per annum rental rate is six times the average price per pound of beef cattle on the farm in Montana for the previous year multiplied by the animal unit month carrying capacity of the land. This rate shall continue through the last day of February following the effective date of any new rule or rule amendment that establishes a different minimum rental rate.

(2) For each cabinsite lease that is, after July 1, 1993, renewed or subject to rental readjustment in accordance with the provisions of the lease, the annual rental fee shall be 3½% of the appraised value of the cabinsite as determined by the department of revenue or $150, whichever is greater. This rate shall continue through the last day of February following the effective date of any new rule or amendment to this rule that establishes a different minimum rental rate.

(3) For each cabinsite lease that is issued after July 1, 1993, the department may accept no bid that is below 3½% of the appraised value of the cabinsite as determined by the department of revenue or $150, whichever is greater. Any rate that is established by competitive bidding remains in effect until superseded by adoption of a higher minimum lease rate for cabinsites and homesites by the board through adoption of a new rule or an amendment to this rule. That rate becomes effective on the first day of March following the effective date of the rule.

(4) For license years beginning after February 28, 1994, the price for a recreational use license issued pursuant to 77-1-801, MCA, is $5.00. This price is applicable to the sale of each

recreational use license that is sold before the effective date of any new rule or amendment to this rule that establishes a different fee.

AUTH. 77-1-209, 77-1-106 and 77-1-804, MCA, IMP. Secs. 77-6-502, 77-6-205, 77-1-208, and 77-1-802, MCA.

3. Under Chapter 586, Laws of 1993, the Board of Land Commissioners must by rule establish minimum rental rate for grazing lease and licenses, cabinsite leases, and recreational use licenses. These rates must be established after receiving recommendations from the State Land Board Advisory Council. This council will not make recommendations in time to adopt rules for the 1994 lease year, which begins on March 1, 1994. The proposed rule is necessary to provide rental and license rates to be charged for the use of state lands until the Advisory Council provides its recommendations and the Board adopts permanent rules. The charging of rentals and license fees is necessary in order for the Board and the Department to comply with its constitutional and statutory mandates to obtain income for the various trusts that they administer.

4. Interested persons may present their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to Bud Clinch, Commissioner, Department of State Lands, PO Box 201601, Helena MT 59620-1601 no later than November 29, 1993. To guarantee consideration of written data, views or arguments must be postmarked by November 29, 1993.

5. Bud Clinch has been designated to preside over and conduct the hearing.

Reviewed by:

John F. North
Chief Legal Counsel

Arthur R. Clinch
Commissioner

Certified to the Secretary of State on October 18, 1993.

BEFORE THE DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION OF THE STATE OF MONTANA

In the matter of the repeal of chapter 17 and chapter 18 and proposed adoption of new rules pertaining to renewable resource grant and loan program	))))	NOTICE OF PUBLIC HEARING ON THE REPEAL OF CHAPTER 17 AND CHAPTER 18 AND PROPOSED ADOPTION OF NEW RULES I THROUGH VI

To: All Interested Persons.

1. On November 18, 1993, at 1:30 p.m. in the Director's conference room, Department of Natural Resources and Conservation, 1520 East Sixth Avenue, Helena, Montana, the Department of Natural Resources and Conservation will hold a hearing to consider the repeal of chapter 17 and chapter 18 in their entirety and adoption of new rules relating to the renewable resource grant and loan program.

2. The Department of Natural Resources and Conservation will make reasonable accommodations for persons with disabilities who wish to participate in this hearing. If you need an accommodation, contact the department no later than 5:00 p.m., November 16, 1993, to advise of the nature of accommodation you need. Please contact the Conservation and Renewable Resource Division, ATTN: Jeanne Doney, PO Box 202301, Helena, MT 59620-2301; telephone (406) 444-6699, TDD (406) 444-6873; FAX (406) 444-6721.

3. The department proposes to repeal rules 36.17.101 through 36.18.503. The text of these rules appear in the Administrative Rules of Montana on pages 36-346 through 36-388. The rules to be repealed are the following:

36.17.101 Policy and Purpose of Rule AUTH: 85-1-612, MCA; IMP: 85-1-601 and 85-1-612, MCA

36.17.102 Definitions AUTH: 85-1-612, MCA; IMP: 85-1-609 and 85-1-610, MCA

36.17.103 Eligibility for Program AUTH: 85-1-612, MCA; IMP: 85-1-605 and 85-1-606, MCA

36.17.201 Processing and Action on Proposed Projects or Activities AUTH: 85-1-612, MCA; IMP: 85-1-605, 85-1-606 and 85-1-608 through 85-1-612, MCA

36.17.202 Statement of Intent for Loans and Grants AUTH: 85-1-612, MCA; IMP: 85-1-608 and 85-1-612, MCA

36.17.203 Application Content for Loans and Grants AUTH: 85-1-612, MCA; IMP: 85-1-609 and 85-1-610, MCA

36.17.204 Technical Feasibility of Projects and Activities AUTH: 85-1-612, MCA; IMP: 85-1-609 and 85-1-610, MCA

36.17.205 Economic Feasibility of Projects and Activities AUTH: 85-1-612, MCA; IMP: 85-1-609, MCA

36.17.206 Environmental Acceptability of Projects and Activities AUTH: 85-1-612, MCA; IMP: 85-1-609, MCA

36.17.207 Financial Feasibility for Loans AUTH: 85-1-612, MCA; IMP: 85-1-609, MCA

36.17.208 Compliance with Statutes and Rules AUTH: 85-1-612, MCA; IMP: 85-1-610, MCA

36.17.301 Solicitation of Views From Other Interested Parties AUTH: 85-1-612, MCA; IMP: 85-1-611, MCA

36.17.302 Ranking of Feasible Projects or Activities to Determine Funding Priorities AUTH: 85-1-612, MCA; IMP: 85-1-606, MCA

36.17.303 Reporting and Monitoring Procedures AUTH: 85-1-612, MCA; IMP: 85-1-612 and 85-1-616, MCA

36.17.401 Servicing of Loans AUTH: 85-1-612, MCA; IMP: 85-1-612, 85-1-615 and 85-1-616, MCA

36.17.402 Interest Rates for Loans AUTH: 85-1-612, MCA; IMP: 85-1-613, MCA

36.17.403 Security for Loans AUTH: 85-1-612, MCA; IMP: 85-1-613 and 85-1-615, MCA

36.17.501 Use of Funds for Grants Versus Loans AUTH: 85-1-612, MCA; IMP: 85-1-612 and 85-1-616, MCA

36.17.502 Fees AUTH: 85-1-612, MCA; IMP: 85-1-612 and 85-1-616, MCA

36.17.503 Forms AUTH: 85-1-612, MCA; IMP: 85-1-612, MCA

36.18.101 Policy and Purpose of Rules AUTH: 90-2-108 and 90-2-111, MCA; IMP: 90-2-101, 90-2-108 and 90-2-111, MCA

36.18.102 Definitions AUTH: 90-2-108 and 90-2-111, MCA; IMP: 90-2-103, 90-2-108, and 90-2-111, MCA

36.18.103 Application Procedure AUTH: 90-2-108 and 90-2-111, MCA; IMP: 90-2-104, 90-2-107, 90-2-108 and 90-2-111, MCA

36.18.104 Statement of Intent For Loans and Grants AUTH: 90-2-108 and 90-2-111, MCA; IMP: 90-2-103, 90-2-108, 90-2-111 and 90-2-113, MCA

36.18.105 Application Content For Loans and Grants AUTH: 90-2-108, 90-2-111 and 90-2-113, MCA; IMP: 90-2-103, 90-2-108, 90-2-111 and 90-2-113, MCA

36.18.201 Technical Feasibility of Projects AUTH: 90-2-108 and 90-2-111, MCA; IMP: 90-2-103, 90-2-108, 90-2-111 and 90-2-113, MCA

36.18.202 Economic Assessment of Projects AUTH: 90-2-108 and 90-2-111, MCA; IMP: 90-2-103, 90-2-108, 90-2-111 and 90-2-113, MCA

36.18.203 Environmental Compatibility of Projects AUTH: 90-2-108 and 90-2-111, MCA; IMP: 90-2-103, 90-2-108 and 90-2-111, MCA

36.18.204 Financial Feasibility for Loans AUTH: 90-2-108, MCA; IMP: 90-2-103 and 90-2-108, MCA

36.18.205 Legal AUTH: 90-2-108 and 90-2-111, MCA; IMP: 90-2-103, MCA

36.18.301 Ranking of Feasible Projects or Activities to Determine Funding Priorities AUTH: 90-2-108 and 90-2-111, MCA; IMP: 90-2-107 and 90-2-111, MCA

36.18.302 Criteria AUTH: 90-2-108 and 90-2-111, MCA; IMP: 90-2-103, 90-2-107, 90-2-111 and 90-2-113, MCA

36.18.303 Reporting and Monitoring Procedures AUTH: 90-2-108 and 90-2-111, MCA; IMP: 90-2-108, 90-2-110, and 90-2-111, MCA

36.18.401 Financial Arrangements For Loans AUTH: 90-2-108, MCA; IMP: 90-2-108 through 90-2-110, MCA

36.18.402 Interest Rates For Loans AUTH: 90-2-108, MCA; IMP: 90-2-108, MCA

36.18.403 Security For Loans AUTH: 90-2-108, MCA; IMP: 90-2-108 and 90-2-109, MCA

36.18.501 Use of Funds For Grants Versus Loans AUTH: 90-2-108 and 90-2-111, MCA; IMP: 90-2-107 and 90-2-111, MCA

36.18.502 Fees AUTH: 90-2-108 and 90-2-111, MCA; IMP: 90-2-103, 90-2-108, 90-2-110 and 90-2-111, MCA

36.18.503 Forms AUTH: 90-2-108 and 90-2-111, MCA; IMP: 90-2-108 and 90-2-111, MCA

4. The department proposes to adopt rules as follows:

RULE I. APPLICATION FEES (1) Applicants shall submit an application fee with each application.

(2) Public applicants shall pay a $250.00 non-refundable application fee for each grant, small loan and/or large loan application submitted.

(3) Private applicants shall pay a $150.00 non-refundable application fee for each grant and/or loan application submitted.

AUTH: 85-1-612, MCA; IMP: 85-1-612 and 85-1-616, MCA

RULE II. APPLICATION FORM AND CONTENT (1) Public grant and/or loan applicants and private grant and/or loan applicants shall submit applications in the form prescribed and according to guidelines published by the department. Application guidelines may be obtained and completed applications must be submitted with supporting documentation, to the Resource Development Bureau, Conservation and Resource Development Division, Department of Natural Resources and Conservation, P.O. Box 202301, 1520 East Sixth Avenue, Helena, MT 59620-2301. The applicant shall submit additional information and documentation to the department if the application is incomplete. AUTH: 85-1-612, MCA; IMP: 85-1-612 and 85-1-616, MCA

RULE III. RANKING CRITERIA TO BE USED TO EVALUATE PUBLIC GRANT APPLICATIONS AND PRIORITIZE PUBLIC GRANTS RECOMMENDED FOR FUNDING (1) Public grant applications are evaluated and ranking points awarded by the department. Applicants shall gain points for proposals that establish the project's approach has technical merit and that the project will:

(a) implement an action identified as a priority in the state water plan adopted by the department, support water storage priorities, preserve farmland or be located on family farmland;

(b) initiate the use of water reserved under Montana law or help resolve Native American/federal reserved water rights;

(c) conserve, develop, manage, or protect a water and/or other renewable natural resource;

(d) be multi-purpose, used by the public, have public support, have co-funding from non-state funds in an amount greater than the grant request, or will be a source of new, permanent jobs.

(2) Applicants shall lose points when adverse environmental impact and/or poor financial feasibility are indicated.

(3) Tie-breaker points may be added for otherwise high scoring proposals that will also mitigate human health or safety problems or show that, without grant funds, the project cannot be accomplished by the applicant.

(4) Applicants shall be assigned a net ranking score based on all points gained or lost. Ranking scores will be used to determine department funding recommendations and incorporated in a report to the legislature recommending public grant applications for funding and the amount of grant award suggested. Funding recommendations are made to maximize benefit to Montanans and will be based on the total amount of grant funds available, the amount of grant funds requested, the total project cost, availability and amount of other funding, and affordability data presented in the grant application or gathered in the application review. AUTH: 85-1-612, MCA; IMP: 85-1-601, 85-1-605, 85-1-612, and 85-1-616, MCA

RULE IV. APPLICATION OF CRITERIA FOR AWARD OF GRANTS AND LOANS TO PRIVATE APPLICANTS (1) Funds for private grants are limited by legislative appropriation.

(a) Applicants shall request funds for only those projects where need and/or urgency is established.

(b) Applicants shall not request grant funding for feasibility studies, research and/or public information efforts.

(c) To be recommended for private project grant funds, an application must establish that the applicant is not a public entity; the proposed project is eligible for funding; the proposed project will be technically, financially and environmentally feasible; and the situation if left uncorrected either would create a human health or safety crisis or would cause significant damage to the environment.

(2) To be recommended for private project loan funds:

(a) an application must establish that the applicant is not a public entity; the proposed project is eligible for funding; and the proposal will be technically, financially and environmentally feasible.

(b) the applicant shall provide a current financial statement, budget documentation and other documentation requested by the department to allow a full assessment of financial feasibility; evidence of the applicant's authority to seek loan funding for the proposed project; and a sworn statement that there is no litigation threatened or pending challenging the applicant's authority to undertake the project or to incur the debt. AUTH: 85-1-612, MCA; IMP: 85-1-610, 85-1-612, and 85-1-616, MCA

RULE V. TERMS AND CONDITIONS FOR GRANT AND LOAN AGREEMENTS (1) Successful public or private grantees shall enter into an agreement with the department. The agreement will contain clear specifications for the work to be completed; and a budget, consistent with the grant application, outlining the total funds to be spent, including those that will be provided as matching funds.

(a) The grantee shall document all project costs to be paid or reimbursed, and those to be credited as matching contributions.

(b) Grant funds that are not spent for the approved project must be returned to the renewable resource state special revenue account for use as directed by appropriation.

(2) For successful public loans, the borrower shall enter into a bond purchase agreement with the department prior to project construction. The Agreement will:

(a) require the borrower to adopt a bond resolution which contains the specific requirements and covenants with respect to the project financed from the loan proceeds; and

(b) stipulate conditions for purchase by the department of the applicant's bond or bond anticipation note, with the amount specified; terms of repayment and interest rates and fees to be paid by the borrower; clear specifications for the work to be completed; insurance requirements and inspection requirements; and conditions for the disbursal of funds.

(3) For successful private loans, the borrower shall furnish title insurance showing ownership of land, mortgages, encumbrances, or other lien defects and shall enter into a loan agreement with the department prior to project construction or equipment purchase.

(a) The agreement will specify the loan administration fee, contain clear specifications for the work to be completed; stipulate a budget to be consistent with the application; specify provisions for the disbursement and repayment, including principal and interest, of loan funds; describe the collateral provided to secure the loan; and prescribe remedies for borrower delinquency or default in repayment. AUTH: 85-1-612, MCA; IMP: 85-1-605, 85-1-613, 85-1-616, and 85-1-617, MCA

RULE VI. ARRANGEMENTS FOR OBTAINING SECURITY INTERESTS

(1) For loans to private applicants the borrower shall provide security which is at least equal to 125% of the principal value of the loan.

(2) Private borrowers shall provide security with:

(a) a first or second real estate mortgage;

(b) an assignment of accounts receivable;

(c) certificates of deposit or similar securities;

(d) a turn off authority; or

(e) other security as accepted by the department.

(3) The private borrower, at the department's request, shall provide an appraisal of the real property used as security for the loan.

(4) A partial release of lien may be granted by the department upon written request of the private borrower if the remaining security is at least equal to 125 percent of the outstanding principal value of the loan and the department establishes that the loan will remain adequately secured.

(5) The private borrower shall be apprised of state law governing foreclosure on delinquent loans at the time of loan closure. AUTH: 85-1-612, MCA; IMP: 85-1-613, 85-1-615 and 85-1-616, MCA

5. The department proposes the repeal of Title 36 chapters 17 and 18 in their entirety because they describe the water development and the renewable resource development programs respectively. Through a change in the law, these programs have been combined and replaced by the renewable resource grant and loan program described in new rules proposed for adoption based on new rule making authority.

6. New rules are proposed for adoption in order to provide procedural direction to those persons interested in obtaining either a grant or a loan under the renewable resource grant and loan program. The rules also provide the standards for the evaluation of applications for such grants and loans.

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

Jeanne Doney
Department of Natural Resources and Conservation
1520 E. Sixth Avenue
Helena, Montana 59620

no later than November 26, 1993.

8. The authority of the department to make the adoption is based on section 85-1-612, MCA, and the rules implement sections 85-1-601 through 85-1-631, MCA.

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

Mark A. Simonich
MARK A. SIMONICH, DIRECTOR

Donald D. MacIntyre
DONALD D. MACINTYRE, RULE REVIEWER

Certified to Secretary of State October 18, 1993.

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

In the matter of the amendment of rules 46.10.304A, 46.10.811 and 46.10.839 pertaining to AFDC unemployed parents	)))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF RULES 46.10.304A, 46.10.811 AND 46.10.839 PERTAINING TO AFDC UNEMPLOYED PARENTS

TO: All Interested Persons

1. On November 17, 1993, 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 46.10.304A, 46.10.811 and 46.10.839 pertaining to AFDC unemployed parents.

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

46.10.304A UNEMPLOYED PARENT Subsections (1) through (3) remain the same.

(4) In an AFDC-UP ~~two-parent~~ household, only one parent must meet the criteria of this rule.

(a) Both parents in an AFDC-UP ~~two-parent~~ household are required to participate or be available to participate in a JOBS program in accordance with ARM 46.10.811 beginning with the date of application and continuing as long as the household receives AFDC-UP, unless good cause exists or he or she meets an exemption criteria in accordance with ARM 46.10.805. ~~Failure to comply may subject the household to the sanctions in ARM 46.10.839.~~

(b) Failure to satisfactorily participate in the JOBS program without good cause after application but prior to authorization of benefits will result in a denial of eligibility.

(c) After eligibility is established, satisfactory participation in the JOBS program is required before payment of the AFDC-UP benefit will be made unless there is good cause for the failure to participate.

(d) Failure to satisfactorily participate in the JOBS program after eligibility has been established and payment of AFDC-UP has begun will subject the household to the sanctions set forth in ARM 46.10.839.

~~(5) In conformity with Chapter No. 53 of the 1985 49th Legislature, this rule shall be effective March 11, 1985.~~

(5) For purposes of this part "good cause" is as defined in ARM 46.10.837.

AUTH: Sec. 53-4-212 MCA
IMP: Sec. 53-4-201 and 53-4-231 MCA

46.10.811 UNEMPLOYED PARENTS TRACK PARTICIPATION AND OTHER REQUIREMENTS Subsections (1) through (8) remain the same.

(9) Participation or availability to participate in JOBS is required beginning with the date of application and continuing as long as the family receives AFDC-UP.

(a) Failure to satisfactorily participate prior to authorization of benefits will result in a denial of eligibility.

(b) After eligibility is established, satisfactory participation in the JOBS-UP program is required before payment of the AFDC-UP benefit will be made.

AUTH: Sec. 53-4-212 and 53-4-719 MCA
IMP: Sec. 53-2-201, 53-4-211, 53-4-215, 53-4-703, 53-4-706, 53-4-707 and 53-4-720 MCA

46.10.839 SANCTIONS (1) Failure to satisfactorily participate in the JOBS program without good cause after application but prior to authorization of benefits will result in denial of eligibility for AFDC-UP.

(2) After eligibility for AFDC-UP is established, satisfactory participation in the JOBS program is required before payment of the AFDC-UP benefit will be made unless good cause exists for the failure to satisfactorily participate.

Subsections (1) through (4) remain the same in text but are renumbered (3) through (6).

AUTH: Sec. 53-4-212 and 53-4-719 MCA
IMP: Sec. 53-2-201, 53-4-211, 53-4-215, 53-4-706, 53-4-707 and 53-4-717 MCA

3. ARM 46.10.304A(4) and ARM 46.10.811 set forth certain eligibility requirements for the Aid to Families with Dependent Children--Unemployed Parent (AFDC-UP) program. One of these requirements is participation in the Job Opportunity and Basic Skills (JOBS) program unless the parents have exempt status. Currently AFDC-UP recipients who are required to participate in JOBS do not begin their participation until after they have begun receiving assistance. If they fail to participate as required they are subject to sanction as prescribed in ARM 46.10.839 which results in the reduction of the household's grant.

Federal law governing the AFDC program at 42 U.S.C. § 607 permits but does not mandate that states adopt pay after performance requirements. As allowed by 42 U.S.C. § 607, the 1993 Montana Legislature in House Bill 2, Chapter 623, Section 15, required the Department to implement a pay-after-performance policy for AFDC-UP recipients beginning January 1, 1994.

The amendment of ARM 46.10.304A, 46.10.811, and 46.10.839 is necessary to implement the mandated change in policy whereby a family applying for AFDC-UP benefits will not be approved for assistance and receive their first grant until after they have begun participation in JOBS. Also, subsection (5) of ARM 46.10.304A is being deleted because it is no longer relevant. It provided an effective date for the rule when it was adopted in 1985.

4. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Russell E. Cater, Chief Legal Counsel, Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, MT 59604-4210, no later than November 26, 1993.

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 October 18, 1993.

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

In the matter of the amendment of rules 46.12.510 through 46.12.513, 46.2.202 and 46.12.509A pertaining to swing-bed hospital services	)))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF RULES 46.12.510 THROUGH 46.12.513, 46.2.202 and 46.12.509A PERTAINING TO SWING-BED HOSPITAL SERVICES

TO: All Interested Persons

1. On November 17, 1993, at 1:30 p.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana to consider the proposed amendment of rules 46.12.510 through 46.12.513, 46.2.202 and 46.12.509A pertaining to swing-bed hospital services.

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

46.12.510 SWING-BED HOSPITALS, DEFINITION (1) A swing-bed hospital is a hospital which ~~has been~~ is medicare-certified to provide posthospital SNF care as defined in 42 CFR 409.20. ~~and medicaid patient beds interchangeably as either hospital beds or skilled or intermediate nursing care beds and which meets the requirements of ARM 46.12.511.~~

(2) Swing-bed hospital services are services provided in accordance with these rules by a swing-bed hospital which meets the swing-bed hospital participation requirements specified in these rules.

AUTH: Sec. 53-2-201 and 53-6-113 MCA
IMP: Sec. 53-2-201, 53-6-101, 53-6-111, 53-6-113 and 53-6-141 MCA

46.12.511 SWING-BED HOSPITALS, PROVIDER PARTICIPATION REQUIREMENTS (1) ~~A hospital which desires t~~To participate and be reimbursed as a swing-bed hospital service provider in the Montana medicaid program, a hospital must meet all of the following requirements:

(a) The hospital is a swing-bed hospital as defined in ARM 46.12.510. ~~must be certified by the federal health care financing administration and the state department of health and environmental sciences to provide long-term care services for skilled and intermediate care patients as described in 42 CFR 409.20. The department hereby adopts and incorporates herein by reference 42 CFR 409.20, which is a federal regulation defining skilled nursing services, copies of which may be obtained from the Department of Social and Rehabilitation Services, P.O. Box 4210, 111 Sanders, Helena, Montana 59604-4210.~~

(b) The hospital ~~must have~~ has fewer than fifty (50) hospital beds~~, excluding beds for newborns and beds for intensive care patients.~~ and has provided written assurance to the Health Care Financing Administration that the hospital will not operate over 49 hospital beds, including swing-beds, except in connection with a catastrophic event.

(i) The hospital bed count is determined by excluding from the total licensed hospital beds:

(A) beds which because of their special nature would not be available for swing-bed use, such as newborn and intensive care beds;

(B) beds included in a separately certified skilled nursing facility or nursing facility;

(C) beds included in a distinct part psychiatric or rehabilitation unit; and

(D) beds which the department determines are not consistently staffed and utilized by the hospital, as demonstrated by the hospital's staffing schedules and census records for the 12 months immediately preceding application for enrollment as a medicaid swing-bed hospital services provider.

(c) The hospital ~~must be~~ is located in ~~an~~ a rural area of the state. A rural area is an area which is not designated as "urbanized" by the most recent official census. A copy of the bureau of the census listing of urbanized areas is available upon request from the Medicaid ~~Bureau~~ Services Division, Department of Social and Rehabilitation Services, P.O. Box 4210, 111 Sanders, Helena, Montana 59604-4210.

~~(d) The hospital must meet the conditions and standards of participation for skilled and intermediate care nursing homes, as stated in 42 CFR, part 405, subpart K and 42 CFR, part 442, subpart F. The department hereby adopts and incorporates herein by reference 42 CFR 405, subpart K and 42 CFR, part 442, subpart F, which are the federal medicare conditions of participation for skilled nursing facilities and the federal medicaid standards of participation for intermediate care facilities other than facilities for the mentally retarded, respectively. Copies of these federal regulations may be obtained from the Department of Social and Rehabilitation Services, Medicaid Services Division, P.O. Box 4210, 111 Sanders, Helena, Montana 59604-4210.~~

(~~e~~d) The hospital ~~must be granted~~ has a certificate of need from the state department of health and environmental sciences to provide ~~long term care~~ swing-bed hospital services ~~and also be certified by the medicare program to provide such services~~.

(~~f~~e) The hospital ~~shall~~ does not have in effect a twenty-four (24) hour nursing waiver ~~grant as defined in~~ under the provisions of 42 CFR 488.54(c). ~~405.1910(c), which is a federal regulation which the department hereby adopts and incorporates by reference. The incorporated regulation allows for a waiver of the requirement of 24-hour nursing service; copies of the~~

~~regulation may be obtained from the Department of Social and Rehabilitation Services, Medicaid Services Division, P.O. Box 4210, 111 Sanders, Helena, Montana 59604-4210.~~

(~~g~~f) ~~The hospital shall not have terminated providing swing-bed services~~ The hospital's medicare or medicaid swing-bed certification or approval has not been terminated within two (2) years prior to the application for ~~a certificate of need to provide~~ enrollment as a medicaid swing-bed hospital services provider.

(g) The hospital meets the requirements of subsection (2).

(h) The hospital has applied for and the department has approved enrollment in the medicaid program as a medicaid swing-bed hospital services provider.

(i) As a condition of granting enrollment approval or of allowing continuing enrollment, the department may require a hospital to submit documentation or information relating to participation requirements.

(ii) The department may terminate a provider's swing-bed hospital services provider enrollment if it determines that the hospital is not in compliance with any of the requirements of this section.

(~~h~~2) The swing-bed hospital ~~shall~~ must be in substantial compliance with the ~~requirements for skilled nursing facilities with respect to patient's rights, specialized rehabilitation services, dental services, social services, patient activities and discharge planning as required in 42 CFR 405, subpart K, which federal regulation has been incorporated herein by reference at ARM 46.12.511.~~ following requirements:

(a) A provider must protect and promote the rights of each resident, including each of the following rights:

(i) The resident has a right to a dignified existence, self-determination, and communication with and access to persons and services inside and outside the provider's facility.

(ii) The resident has the right to be fully informed of the resident's total health status, including but not limited to medical condition, in language that the resident can understand.

(iii) The resident has the right to refuse treatment, to refuse to participate in experimental research, and to formulate an advance directive as specified in 42 CFR 483.10(b)(8). The department hereby adopts and incorporates by reference 42 CFR 483.10(b)(8). A copy of 42 CFR 483.10(b)(8) may be obtained from the Medicaid Services Division, Department of Social and Rehabilitation Services, 111 Sanders, P.O. Box 4210, Helena, Montana 59604-4210.

(iv) The provider must:

(A) Inform each resident who is entitled to medicaid benefits, in writing, at the time of admission to the swing-bed or, when the resident becomes eligible for medicaid of:

(I) The items and services that are included in the swing-bed per diem rate for which the resident may not be charged, i.e., those items included in nursing facility services

under ARM 46.12.1222(14) or ancillary services under ARM 46.12.1245(1); and

(II) Those other items and services that the provider offers and for which the resident may be charged, and the amount of charges for those services; and

(B) Changes made to the items and services specified in (I) and (II).

(v) The resident has the right to:

(A) Choose a personal attending physician;

(B) Be fully informed in advance about care and treatment and of any changes in that care or treatment that may affect the resident's well-being; and

(C) Unless adjudged incompetent or otherwise found to be incapacitated under state law, participate in planning care and treatment or changes in care and treatment.

(vi) The resident has the right to personal privacy and confidentiality of personal and clinical records.

(A) Personal privacy includes accommodations, medical treatment, written and telephone communications, personal care, visits, and meetings of family and resident groups. The right of personal privacy does not require the provider to provide a private room for each resident;

(B) The resident may approve or refuse the release of personal and clinical records to any individual outside the facility, except when the resident is transferred to another health care institution or record release is required by law.

(vii) The resident has the right to:

(A) Refuse to perform services for the facility;

(B) Perform services for the facility, if the resident chooses, when:

(I) The facility has documented in the plan of care the need or desire for work;

(II) The plan specifies the nature of the services performed and whether the services are voluntary or paid;

(III) Compensation for paid services is at or above prevailing rates; and

(IV) The resident agrees to the work arrangement described in the plan of care.

(viii) The resident has the right to privacy in written communications, including the right to:

(A) send and promptly receive mail that is unopened; and

(B) have access to stationery, postage, and writing implements at the resident's own expense.

(ix) The resident has the right and the facility must provide immediate access to any resident by the following:

(A) subject to the resident's right to deny or withdraw consent at any time, immediate family or other relatives of the resident; and

(B) subject to reasonable restrictions and the resident's right to deny or withdraw consent at any time, others who are visiting with the consent of the resident.

(x) The resident has the right to retain and use personal possessions, including some furnishings and appropriate clothing, as space permits, unless to do so would infringe upon the rights or health and safety of other residents.

(xi) The resident has the right to share a room with a spouse when married residents live in the same facility and both spouses consent to the arrangement.

(xii) The resident has the following transfer and discharge rights. Transfer and discharge includes movement of a resident to a bed outside of the swing-bed hospital facility whether or not that bed is in the same physical plant. Transfer and discharge does not refer to movement of a resident to a bed within the same certified facility.

(A) The facility must permit each resident to remain in the facility and may not transfer or discharge the resident from the facility unless any one or more of the following apply:

(I) The transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the facility;

(II) The transfer or discharge is appropriate because the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility;

(III) The safety of individuals in the facility is endangered;

(IV) The health of individuals in the facility would otherwise be endangered;

(V) The resident has failed, after reasonable and appropriate notice, to pay for (or to have paid under medicare or medicaid) a stay at the facility. For a resident who becomes eligible for medicaid after admission to a facility, the facility may charge a resident only allowable charges under medicaid;

(VI) The facility ceases to operate; or

(VII) An appropriate nursing facility bed is available within a twenty-five (25) mile radius of the swing-bed hospital, as provided in ARM 46.12.512.

(B) When the facility transfers or discharges a resident, the facility must document the reason for transfer or discharge in the resident's clinical record. The documentation must be made by the resident's physician when transfer or discharge is necessary under paragraphs (xii)(A)(I) or (xii)(A)(II) of this section, or a physician when transfer or discharge is necessary under paragraph (xii)(A)(IV) of this section.

(C) Before a facility transfers or discharges a resident, the facility must:

(I) notify the resident and, if known, a family member or legal representative of the resident of the transfer or

discharge and the reasons for the move in writing and in a language and manner they understand;

(II) record the reasons in the resident's clinical record; and

(III) include in the notice the items described in paragraph (E) of this section.

(D) Notice of transfer or discharge must be made by the facility at least 30 days before the resident is transferred or discharged except when:

(I) The safety of individuals in the facility would be endangered;

(II) The health of the individuals in the facility would be endangered;

(III) The resident's health improves sufficiently to allow a more immediate transfer or discharge;

(IV) An immediate transfer or discharge is required by the resident's urgent medical needs;

(V) A resident has not resided in the facility for 30 days; or

(VI) Transfer is required within 72 hours because an appropriate nursing facility bed is available within a twenty-five (25) mile radius of the swing-bed hospital. In such cases, the facility must provide notice within 24 hours of determining that the nursing facility bed is available.

(E) The written notice must include the following:

(I) The reason for transfer or discharge;

(II) The effective date of transfer or discharge;

(III) The location to which the resident is transferred or discharged;

(IV) A statement that the resident has the right to appeal the action to the fair hearings office at the department of social and rehabilitation services;

(V) The name, address and telephone number of the long term care ombudsman in the governor's office on aging; and

(VI) For nursing facility residents with developmental disabilities and nursing facility residents who are mentally ill, the mailing address and telephone number of the Montana Advocacy Program, Inc.

(F) A facility must provide sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility.

(xiii) The resident has the right to be free from any physical or chemical restraints imposed for purposes of discipline or convenience, and not required to treat the resident's medical symptoms.

(xiv) The resident has the right to be free from verbal, sexual, physical, and mental abuse, corporal punishment, and involuntary seclusion.

(xv) The facility must develop and implement written policies and procedures that prohibit mistreatment, neglect, and

abuse of residents and misappropriation of resident property. The facility must:

(A) not use verbal, mental, sexual, or physical abuse, corporal punishment, or involuntary seclusion;

(B) not employ individuals who have been found guilty of abusing, neglecting, or mistreating residents by a court of law, or have had a finding entered into the nurse aide registry concerning abuse, neglect, mistreatment of residents or misappropriation of their property;

(C) report any knowledge it has of actions by a court of law against an employee, which would indicate unfitness for service as a nurse aide or other facility staff to the nurse aide registry maintained by the department of health and environmental sciences;

(D) ensure that all alleged violations involving mistreatment, neglect, or abuse, including injuries of unknown source, and misappropriation of resident property are reported immediately to the administrator of the facility, the long-term care ombudsman, and the department of health and environmental sciences in accordance with 52-3-811 MCA;

(E) have evidence that all alleged violations are thoroughly investigated, and must prevent further potential abuse while the investigation is in progress; and

(F) ensure that the results of all investigations must be reported to the administrator of the facility and to the department of health and environmental sciences in accordance with 52-3-811 MCA within 5 working days of the incident, and if the alleged violation is verified appropriate corrective action must be taken.

(b) The facility must provide for an ongoing program of activities designed to meet the interests and the physical, mental, and psychosocial well-being of each resident.

(i) The activities program must be directed by a qualified professional who:

(A) is a qualified therapeutic recreation specialist or an activities professional who is licensed or registered and is eligible for certification as a therapeutic recreation specialist or as an activities professional by a recognized accrediting body on or after October 1, 1990;

(B) has 2 years of experience in a social or recreational program within the last 5 years, 1 of which was full-time in a patient activities program in a health care setting;

(C) is a qualified occupational therapist or occupational therapy assistant; or

(D) has completed a training course approved by the state.

(c) The facility must provide medically-related social services to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident.

(d) When the facility anticipates discharge a resident must have a discharge summary that includes:

(i) A recapitulation of the resident's stay;

(ii) A final summary of the resident's status to include:

(A) medically defined conditions and prior medical history;

(B) medical status measurement;

(C) physical and mental functional status;

(D) sensory and physical impairments;

(E) nutritional status and requirements;

(F) special treatments or procedures;

(G) mental and psychosocial status;

(H) discharge potential;

(I) dental condition;

(J) activities potential;

(K) cognitive status; and

(L) drug therapy.

(iii) A post-discharge plan of care that is developed with the participation of the resident and family, which will assist the resident to adjust to the new living environment.

(e) If specialized rehabilitative services such as but not limited to physical therapy, speech-language pathology, occupational therapy, and mental health rehabilitative services for mental illness and mental retardation, are required in the resident's comprehensive plan of care, the facility must provide the required services, or obtain the required services from an outside resource from a provider of specialized rehabilitative services.

(i) Specialized rehabilitative services must be provided under the written order of a physician by qualified personnel.

(f) The facility must assist residents in obtaining routine and 24-hour emergency dental care.

(i) The facility must, if necessary, assist the resident in making appointments, and by arranging for transportation to and from the dentist's office.

(ii) The facility must promptly refer residents with lost or damaged dentures to a dentist.

AUTH: Sec. 53-6-113 and 53-2-201 MCA
IMP: Sec. 53-6-101, 53-6-111, 53-6-113, 53-6-141 and 53-2-201 MCA

46.12.512 SWING-BED HOSPITALS, ~~PROCEDURES~~ SPECIAL SERVICE REQUIREMENTS (1) Before admitting a medicaid recipient to a swing-bed, the swing-bed hospital must meet all of the following requirements:

(a) the hospital must have provided medically necessary inpatient hospital care to the individual immediately preceding admission to the swing-bed;

(b) the hospital must obtain a prescreening by a department long-term care specialist to determine the level of care

required by the patient's medical condition. Medicaid will not reimburse a provider for swing-bed hospital services provided to a medicaid recipient admitted to a swing-bed unless the recipient meets the nursing facility level of care requirements specified in 46.12.1305. The swing-bed hospital must ensure that form SRS-MA-62, "screening notification," is completed by the department prescreening team to document the level of care determination.

(~~1~~c) ~~The swing-bed hospital will have the responsibility of determining whether a skilled or intermediate~~ Except when a waiver is obtained under subsection (3), the hospital must determine that no appropriate nursing ~~care~~ facility bed is available to the medicaid patient within a twenty-five (25) mile radius of the swing-bed hospital ~~before admitting a medicaid patient to a swing-bed~~. The hospital ~~will be~~ is required to maintain written documentation ~~consisting~~ of ~~written~~ inquiries to nursing ~~homes inquiring as to~~ facilities about the ~~present and future~~ availability of a nursing ~~home~~ facility bed and indicating that if a bed is not available, the hospital will provide swing-bed services to the patient. The swing-bed hospital is encouraged to enter into availability agreements with medicaid-participating nursing facilities in its geographic region that require the nursing facility to notify the hospital of the availability of nursing facility beds and dates when beds will be available.

(i) For purposes of this section, an "appropriate" nursing facility bed is a bed in a medicaid-participating nursing facility which provides the level of care required by the recipient's medical condition.

Subsection (2) remains the same.

(3) The requirements of subsection (1)(c) and (2) apply regardless of the 30-day notice requirement generally applicable to transfers and discharges under 46.12.511(2)(a)(xii). When an appropriate nursing facility bed is or becomes available, the provider must provide notice as required by 46.12.511(2)(a)(xii)(D)(VI) and must otherwise comply with the requirements of 46.12.511(2)(a)(xii) to the extent practicable in the time available before transfer to the nursing facility bed.

(4) A provider may request a waiver of the determination requirement of subsection (1)(c) or the transfer requirement of subsection (2) when the recipient's attending physician verifies in writing that either the recipient's condition would be endangered by transfer to an appropriate nursing facility bed within a twenty-five (25) mile radius of the swing-bed hospital or that the individual has a medical prognosis that his or her life expectancy is 6 months or less if the illness runs its normal course.

(a) The waiver request and physician's written verification must be submitted to the Medicaid Services Division, Department of Social and Rehabilitation Services, P.O. Box 4210, 111 N. Sanders, Helena, Montana 59604-4210. Waiver approvals

granted by county offices will not be valid or effective for purposes of this section.

(b) The waiver request and physician's written verification must be received by the medicaid services division within 5 working days of admission to the swing-bed or within 5 days of availability of an appropriate nursing facility bed and the provider must obtain written approval from the medicaid services division prior to billing for services provided after the date of admission to the swing-bed or the date of availability of an appropriate nursing facility bed.

(~~3~~5) The department may retrospectively review the use of swing-bed services provided to medicaid patients and may deny payments when it is determined that ~~a nursing home bed was available within twenty-five (25) miles of the hospital that provided the swing-bed service.~~ the requirements of this section were not met.

~~(4) Medicaid applicants and recipients must be prescreened and meet the level of care requirements (skilled or intermediate) in order for the provider to be reimbursed by medicaid. The level of care requirements are contained in ARM 46.12.1301. It is the swing-bed hospital's responsibility to make the referral for prescreening prior to placement in the swing-bed and to ensure that a form SRS-EA-61 "screening notification" is completed by the prescreening team to document the level of care determination.~~

~~(5) A waiver of the twenty-five (25) mile requirement may be obtained by submitting written verification from the recipient's attending physician that either:~~

~~(a) The recipient's condition will be endangered by a transfer to a nursing facility within a twenty-five (25) mile radius; or~~

~~(b) The recipient's condition is terminal.~~

~~(i) The request for waiver and the written verification must be sent to the Medicaid Services Division, Department of Social and Rehabilitation Services, P.O. Box 4210, 111 Sanders, Helena, Montana 59604-4210.~~

AUTH: Sec. 53-6-113 and 53-2-201 MCA
IMP: Sec. 53-6-101, 53-6-111, 53-6-113, 53-6-141 and 53-2-201 MCA

46.12.513 SWING-BED HOSPITALS, REIMBURSEMENT (1) Montana medicaid will ~~R~~reimburse~~ment for~~ swing-bed hospitals ~~that provide~~ as provided in this section for swing-bed hospital services ~~will be based on the current medicare swing-bed rate.~~ provided in accordance with all applicable swing-bed hospital service requirements specified in 46.12.510 through 513 and subject to all other applicable laws and regulations.

~~(2) Reimbursement to swing-bed hospitals will only be made for medicaid patients when appropriate skilled or intermediate~~

~~nursing care is not available within a twenty-five (25) mile radius of the swing-bed hospital.~~

~~(3) Reimbursement for swing-bed services will only be granted for eligible medicaid recipients occupying beds certified for swing bed use through the certificate of need process by the Montana department of health and environmental sciences.~~

(2) For swing-bed hospital services, the Montana medicaid program will pay a provider a per diem rate as specified in subsection (a) for each medicaid patient day, plus additional reimbursement for separately billable items as provided in subsection (b).

(a) The swing-bed hospital services per diem rate is the average medicaid per diem rate paid to nursing facilities under 46.12.1226 for routine services furnished during the calendar year immediately previous to the year in which the swing-bed hospital services are provided. Nursing facility routine services are those services included in the definition of "nursing facility services" specified at 46.12.1222(14).

(b) Separately billable items are those items specified in 46.12.1245. Swing-bed hospital service providers will be reimbursed for separately billable items at the rates specified in 46.12.1245 and subject to the requirements of 46.12.1245.

(c) The Montana medicaid program will not reimburse swing-bed hospital service providers for items billable to residents as specified in 46.12.1246.

~~(4)~~ (3) For purposes of reporting costs under 46.12.509, inpatient hospital services providers which also provide swing-bed hospital services shall allocate hospital inpatient general routine service ~~c~~costs associated with swing-bed~~s~~ hospital services ~~shall be allocated~~ on the medicare "carve out" method ~~in which the revenues from swing beds will be subtracted from the cost of routine hospital care in accordance with part 1, section 2230.4 of the health insurance manual HIM-15, which is a manual published by the United States department of health and human services, social security administration, which provides guidelines and policies for determining the reasonable cost of provider services furnished under the Health Insurance for the Aged Act of 1965 as amended.~~ as specified in 42 CFR 413.53(a)(2). The department hereby adopts and incorporates by reference 42 CFR 413.53(a)(2). A copy of ~~HIM-15, Part 1, §2230.4~~ 42 CFR 413.53(a)(2) may be obtained from the Medicaid Services Division, Department of Social and Rehabilitation Services, P.O. Box 4210, 111 Sanders, Helena, Montana 59604-4210.

(4) Providers must bill for all services and supplies in accordance with the provisions of ARM 46.12.303. The department's fiscal agent will pay a provider on a monthly basis the amount determined under these rules upon receipt of an appropriate billing which reports the number of patient days of swing-bed hospital services provided to authorized medicaid recipients during the billing period.

~~(5) Reimbursement for ancillary services provided to medicaid patients in swing-beds will be based on direct costs incurred by the hospital to provide these services with no additional indirect costs added on. Ancillary services shall be those services defined in ARM 46.12.1205(2)(a) and routine services shall be those services defined in ARM 46.12.1202 (2)(a).~~

(5) Swing-bed hospital service providers may appeal adverse determinations by the department through the administrative review and fair hearing procedures specified in 46.12.509A.

AUTH: Sec. 2-4-201, 53-6-113 and 53-2-201 MCA
IMP: Sec. 2-4-201, 53-6-101, 53-6-111, 53-6-113, 53-6-141 and 53-2-201 MCA

46.2.202 OPPORTUNITY FOR HEARING Subsections (1) through (3) remain the same.

(4) Medical assistance providers of inpatient psychiatric services for individuals under age 21, inpatient hospital services, outpatient hospital services, swing-bed hospital services, federally qualified health center services and case management services for high risk pregnant women contesting adverse department actions, other than medical assistance providers appealing eligibility determinations as a real party in interest, shall be granted the right to a hearing as provided in ARM 46.12.509A.

Subsections (5) and (6) remain the same.

AUTH: Sec. 2-4-201, 41-3-1142, 53-2-201, 53-2-606, 53-2-803, 53-3-102, 53-4-111, 53-4-212, 53-4-403, 53-4-503, 53-5-304, 53-6-111, 53-6-113, 53-7-102 and 53-20-305 MCA
IMP: Sec. 2-4-201, 41-3-1103, 53-2-201, 53-2-306, 53-2-606, 53-2-801, 53-4-112, 53-4-404, 53-4-503, 53-4-513, 53-5-304, 53-6-101, 53-6-111, 53-6-113 and 53-20-305 MCA

46.12.509A ADMINISTRATIVE REVIEW AND FAIR HEARING PROCESS (1) The following administrative review and fair hearing process applies to providers of inpatient and outpatient hospital services, swing-bed hospital services, inpatient psychiatric services for individuals under age 21, targeted case management and federally qualified health center services.

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

AUTH: Sec. 2-4-201 and 53-6-113 MCA
IMP: Sec. 2-4-201, 53-2-201, 53-2-606, 53-6-101, 53-6-111, 53-6-113 and 53-6-141 MCA

3. The proposed changes specify requirements for participation and reimbursement under the medicaid swing-bed hospital program. The changes conform the rules to current federal requirements and to department policy and procedure. The

current rules do not accurately or completely reflect current federal regulations or current department policies and procedures. The proposed changes are necessary to correct these deficiencies and to make the rule language more direct and clear.

The proposed changes to 46.12.510 are necessary to define the terms "swing-bed hospital" and "swing-bed hospital services." The current rule language "use medicaid patient beds interchangeably as either hospital beds or skilled or intermediate nursing care beds" has been misinterpreted to mean that hospital beds could be used as nursing facility beds whenever the facility chose and that such beds could be used in the same manner as nursing facility beds. The proposed changes are necessary to prevent such mistaken interpretations. The proposed rule reflects the fact that swing beds are licensed hospital beds which have also been medicare-certified to provide posthospital skilled nursing facility (SNF) care as defined in 42 CFR 409.20. The proposed rule also reflects the fact that swing-bed hospital services are not inpatient hospital services, subacute hospital services or nursing facility services, but rather are a separate and distinct service provided to patients who require nursing facility level of care. The proposed changes to this rule section are necessary to specify that services are not reimbursable swing-bed hospital services unless provided by a swing-bed hospital which meets the specified participation requirements and unless the service requirements specified in the rules are met.

The proposed changes to 46.12.511 are necessary to state clearly and completely the requirements for participation in the medicaid program as a swing-bed hospital services provider. The current rule omits reference to some current requirements contained in department policy and federal regulation, and also fails to clearly state some of the participation requirements. The necessity of the specific changes to 46.12.511 is as follows.

The proposed changes to 46.12.511(1) are necessary to specify that both participation and reimbursement depend upon meeting the requirements in this section as well as other sections of the rules.

The proposed change to 46.12.511(1)(a) is necessary to specify that the hospital must be a swing-bed hospital as defined in the previous rule section. The proposed change is also necessary to delete the outdated and obsolete statement of the medicare certification requirement contained in the current rule. The proposed changes would also delete the inappropriate and unnecessary incorporation by reference of 42 CFR 409.20. The Health Care Financing Administration (HCFA) and the Montana

Department of Health and Environmental Sciences (DHES) determine whether to grant hospital swing-bed certification. The department does not apply 42 CFR 409.20 or grant or deny certifications. A reference to the regulation is contained in proposed 46.12.510 merely for purposes of identifying the specific type of certification required.

The proposed changes to 46.12.511(1)(b) are necessary to specify the standards used by the department to determine whether a hospital has fewer than 50 beds. The proposed rule would add a requirement that the hospital has provided written assurance to HCFA regarding operation of fewer than 50 hospital beds, except in connection with a catastrophic event. This written assurance is also required by HCFA for hospitals with fewer than 50 beds participating in medicare swing-bed program. By adding this requirement, the proposed rule will allow the department to obtain additional assurance that the hospital meets and will continue to meet the bed-count requirement. The department would be able to request a copy of the assurance letter under the provisions of proposed 46.12.511(1)(h)(i). The proposed language in 46.12.511 (1)(b)(i)(A) through (D) is necessary to specify the type of beds which are not included as hospital beds for purposes of the fewer than 50 bed requirement.

The proposed changes are necessary to delete current 46.12.511 (1)(d). The federal participation requirements have changed since the current rule was adopted and the change is necessary to update the rule to reflect current requirements, which are stated in proposed subsection (2). The proposed changes to current 46.12.511(1)(e) are necessary to make clear and consistent the terminology of the rule ("swing-bed hospital" services rather than "long-term care" services) and to delete the unnecessary repetition of the medicare certification requirement, already specified in proposed 46.12.510.

The proposed changes to current 46.12.511(1)(f) are necessary to correct an outdated and now incorrect reference to the federal regulation regarding 24-hour nursing waivers. Although the federal regulation is incorporated in the current rule, it is unnecessary to incorporate by reference 42 CFR 488.54(c). The Health Care Financing Administration (HCFA) and the Montana Department of Health and Environmental Sciences (DHES) determine whether to grant such waivers to hospitals. The department does not apply 42 CFR 488.54(c) or grant or deny 24-hour nursing waivers. A reference to the regulation is included in the proposed rule merely for purposes of identifying the type of waiver described.

The proposed changes to current 46.12.511(1)(g) are necessary to more accurately specify that the hospital's swing-bed certification of approval must not have been terminated in the prior two-

year period. The current rule language might be construed to mean only that the hospital voluntarily terminated service provision. This provision is modeled after the federal medicare regulation, and the intent of this rule is that there has been no termination of certification or approval to provide swing-bed services. Such termination could be voluntary or involuntary under the proposed rule. The proposed changes to this subsection are also necessary to specify that the two-year period is that period immediately prior to application for medicaid enrollment, rather than application for a certificate of need. The hospital may have been granted a certificate of need many years earlier but may not have participated in the medicaid swing-bed program. The proposed rule more logically requires examination of the two-year period immediately before enrollment.

The addition of proposed subsection (g) is necessary to specify that the requirements of proposed subsection (2) are a condition of participation in the medicaid swing-bed hospital services program.

The addition of proposed subsection (h) through (h)(ii) is necessary to specify that a swing-bed hospital must specifically enroll in the medicaid program as a swing-bed hospital services provider. Under the current rule, some providers have sought swing-bed reimbursement without enrollment and have argued that the rules do not require a hospital already enrolled as an inpatient hospital services provider to enroll as a swing-bed provider. The proposed rule will clearly state the department's current policy that separate enrollment as a swing-bed hospital services provider is required before any medicaid swing-bed hospital services are provided or any medicaid reimbursement is allowed. The proposed changes are also necessary to specify that the department must approve enrollment. The proposed language would allow the department to require submission of documentation or information to substantiate compliance with participation requirements, both at the time of enrollment and at other times to monitor ongoing compliance. Proposed subsection (h)(ii) states directly what currently is implied in the rules, that the department may terminate enrollment if a provider is not in compliance with the participation requirements.

The proposed changes to current 46.12.511(1)(h) and the addition of proposed subsection (2) are necessary to specify the particular federal participation requirements applicable to swing-bed hospital service providers. Federal regulations at 42 CFR 482.66(b) indicate that some but not all of the requirements applicable to nursing facilities also must be met by swing-bed hospital service providers. The department's communications with participating providers have indicated that providers are

not aware of the specific requirements which apply. Some providers appear to believe that because the service is provided in a hospital bed, none of the resident rights or other similar nursing facility requirements apply. To avoid confusion, the department proposes to state these requirements specifically in the medicaid rules. Under federal regulations, these same requirements must be met for medicare certification, but do not necessarily receive the attention the department believes is required to protect medicaid residents and to assure that they receive the type and quality of care required by their medical condition and that their broader needs (e.g., social, dental, etc.) are also addressed as the law requires. Federal law requires and the department believes that these requirements must be met to assure the minimal quality of care provided to and the dignity of medicaid recipients admitted to swing-beds while awaiting availability of a nursing facility bed. By including these requirements in the rule, the department intends to call these requirements more closely to the attention of providers and to inform providers that the department independently may enforce these requirements as a condition of participation in the medicaid swing-bed program. The proposed language of subsection (2) is also necessary to interpret and adapt the requirements more specifically for the Montana medicaid program where appropriate. For example, the proposed changes clarify that 30-day notice is not required where the patient is to be transferred within 72 hours to an available nursing facility bed. The proposed rule specifies a different notice requirement applicable in such circumstances.

The proposed changes to 46.12.512 are necessary to specify the requirements for admitting and continuing to serve a medicaid recipient in a hospital swing-bed. Because there has been some confusion about the requirements under the current rules, the proposed changes are necessary to state clearly the applicable requirements. Also, not all of the department's current policy requirements are contained in the current rule.

The proposed rules continue the current policy of requiring discharge or transfer when an appropriate nursing facility bed is or becomes available. Under the proposed rules, the hospital or swing-bed hospital must discharge or transfer to an available nursing facility bed, even though the patient may object. Medicaid will not reimburse the provider if these discharge and transfer requirements are not met.

Proposed subsection (1) is necessary to specify that certain requirements must be met before admitting the patient to a swing-bed. The addition of proposed subsection (1)(a) is necessary to include in the rule current department policy which allows admission to a swing-bed only immediately following an inpatient hospital stay in the same facility. This is also a medicare

requirement. By definition, swing-bed hospital services are "posthospital" services. This requirement reflects department policy that a recipient requiring nursing facility level of care is best served in a nursing facility which is required to provide or arrange provision of the full array of services necessary to meet the recipient's physical, mental and psychosocial needs. A swing-bed is not a nursing facility bed, and is not required to provide the full array of services required in a nursing facility. Thus, use of swing-beds is limited to cases where a patient has been in an inpatient hospital bed in the facility, now requires nursing facility level of care and an appropriate nursing facility bed is not available within a 25-mile radius of the hospital. Medicaid will not reimburse for swing-bed services where the patient was admitted directly from outside the facility as a swing-bed patient.

The changes in proposed 46.12.512(1)(b) are necessary to move the prescreening requirement to a more logical location in the rule section and to specify clearly that it is the provider's responsibility to initiate and obtain the prescreening prior to admission to a swing-bed. This section also clearly states the requirement that the swing-bed patient must meet the nursing facility level-of-care requirements.

The proposed changes to current subsection (1) are necessary to clearly state the requirement that the hospital determine before admission to a swing-bed that a nursing facility bed is not available for the patient. The changes are necessary to specify that inquiries need not be written but must be documented in writing. The proposed changes also are necessary to add language encouraging facilities to enter into availability agreements with nursing facilities. The proposed changes also include a reference to the subsection of the rule which allows a waiver of the determination requirement under specified circumstances. Proposed subsection 46.12.512(1)(c)(i) is necessary to define an "appropriate" nursing facility bed for purposes of this rule section.

The addition of proposed subsection (3) is necessary to specify that the 30-day notice requirement for transfer or discharge under proposed 46.12.511(2) does not prevent discharge or transfer as required under 46.12.512(1)(c) or (2). In such cases, the proposed rule will require facilities to provide notice within 24 hours of learning of the available nursing facility bed and to comply with the other transfer and discharge requirements to the extent practicable under the circumstances. Providers have a responsibility to prepare patients in advance for such a transfer or discharge. This preparation should begin before admission to a swing-bed, when the facility has a responsibility to explain that admission is temporary and that transfer will be required when a nursing facility bed becomes

available. The patient's needs are not served when the transfer requirement is discussed at a late hour after the patient has been led to expect that they can stay in the swing-bed as long as they require nursing care. After being admitted to a swing-bed, the patient should be informed periodically of the progress being made in arranging a nursing facility placement.

Proposed subsection (4) is necessary to restate more clearly the current waiver provision and to describe what is referred to in the current rule as a "terminal" medical condition. The addition of subsections (a) and (b) is necessary to specify the procedures which must be followed to obtain a waiver from the department.

The proposed changes to current subsection (3) are necessary to specify that the department may review swing-bed services retrospectively to determine compliance with all requirements, not only the transfer requirement. Because of the large number of claims, the department cannot review manually all claims prior to payment. To do so would greatly delay payments to providers. The department relies to a large extent upon voluntary compliance by providers and the certifications required on billing statements. Therefore, the fact that a provider has submitted a claim and received payment does not imply that the department has determined that all requirements were met. For various reasons, later review of claims may occur. If such review reveals that any requirements were not met, reimbursement may be recovered by the department. This is true for all medicaid services, but is restated here as a reminder of the importance of full compliance.

Current subsections (4) and (5) are deleted because they are replaced by proposed subsections (1)(b) and (3).

The proposed changes to 46.12.513 are necessary to specify the methodology for determining the reimbursement available for swing-bed hospital services and requirements which must be met to receive such reimbursement. The current rule is outdated and does not reflect the rate methodology contained in the medicaid state plan or currently used by the department.

The proposed changes to subsection (1) are necessary to specify that reimbursement is available only when all applicable medicaid requirements are met (e.g., ARM 46.12.510 through 513, 46.12.101 and 102, 46.12.301 through 315, etc.) and to delete the reference to the medicare swing-bed rate, which does not apply. The proposed changes to subsection (2) and (3) are necessary to delete language which is merely repetitive of other rule language, but this deletion is not intended to indicate that the requirements are repealed.

The addition of proposed subsection (2) through (2)(c) is necessary to specify the reimbursement payable for swing-bed hospital services. The proposed rule is consistent with current department practice and the medicaid state plan.

The proposed changes to current subsection (4) are necessary to more clearly state the circumstance to which the subsection applies and to replace the outdated reference to the HIM-15 with an incorporation by reference of the controlling federal regulation.

The addition of proposed subsection (4) is necessary to specify billing procedures and the manner in which the department's fiscal agent will process claims. The proposed changes to current subsection (5) are necessary to delete provisions incorporated in proposed subsection (2)(b).

The proposed addition of 46.12.513(6) and the proposed changes to 46.2.201 and 46.12.509A are necessary to specify the administrative review and fair hearing procedures available to swing-bed hospital service providers.

The proposed changes will be effective January 1, 1994. The Medical Care Advisory Council will be notified of the proposed changes on December 9, 1993. The department estimates that there will be no increase or decrease in annual aggregate expenditures as a result of the proposed changes. Interested parties may obtain a copy of this notice at their local county office of human services.

4. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Russell E. Cater, Chief Legal Counsel, Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, MT 59604-4210, no later than November 26, 1993.

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

Russell E. Cater
Rule Reviewer

Director, Social and Rehabilitation Services

Certified to the Secretary of State October 18, 1993.

BEFORE THE BOARD OF THE
STATE COMPENSATION INSURANCE FUND
OF THE STATE OF MONTANA

In the matter of the adoption of a New Rule relating to establishing criteria for assessing a premium surcharge	NOTICE OF ADOPTION OF NEW RULE I (2.55.404)

TO: All Interested Persons:

1. On September 16, 1993, the Board published notice of the proposed adoption of new rule I (2.55.404) pertaining to establishing criteria for assessing a premium surcharge at pages 2060 through 2062 of the 1993 Montana Administrative Register, Issue No. 17. The hearing was held on October 6, 1993 at 2:00 p.m. in Helena, Montana.

2. After consideration of the comments received on the proposed new rule (2.55.404), the Board has adopted the rule as proposed with the following change:

"RULE I (2.55.404) SCHEDULED RATING - HIGH LOSS MODIFIER" ~~RULE I PREMIUM SURCHARGE~~

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

COMMENT: The State Fund Underwriting Department staff recommended the title "Premium Surcharge" be replaced with "Scheduled Rating - High Loss Modifier". This title is more descriptive as this modifier and others are included in the general heading of "Scheduled Rating" in the State Fund Underwriting Manual. Also, the high loss modifier will be shown on the insured's payroll and premium reports as a "scheduled rating" factor under the general heading of "Premium Modifiers".

RESPONSE: The Board accepts the comment, and approves the title as amended above.

4. The authority of the State Compensation Insurance Fund to adopt the proposed rule is based on sections 2-4-201, 2-3-103, and 39-71-2316, MCA and the rule implement sections 2-4-201, 2-3-103, 39-71-2311, 39-71-2316, MCA.

Dal Smilie, Chief Legal Counsel
Rule Reviewer

Rick Hill
Chairman of the Board

Nancy Butler, General Counsel
Rule Reviewer

Certified to the Secretary of State October 18, 1993.

BEFORE THE DEPARTMENT OF
FAMILY SERVICES OF THE
STATE OF MONTANA

In the matter of the amendment of Rules 11.7.601, 11.7.602, and 11.7.608, and the repeal of 11.7.611 pertaining to foster care support services.	NOTICE OF AMENDMENT OF RULES 11.7.601, 11.7.602, AND 11.7.608, AND THE REPEAL OF 11.7.611 PERTAINING TO FOSTER CARE SUPPORT SERVICES

TO: All Interested Persons

1. On September 16, 1993, the Department of Family Services published notice of the proposed amendment of Rules 11.7.601, 11.7.602, and 11.7.608, and the repeal of 11.7.611 pertaining to foster care support services at page 2080 of the 1993 Montana Administrative Register, issue number 17.

2. The department has amended the rules, and repealed the rule as proposed with the following change:

11.7.601 FOSTER CARE SUPPORT SERVICES, PURPOSE (1) The purpose of this subchapter is to establish eligibility criteria for foster care support services. Payment for foster care support services may be made on behalf of foster children who require diapers, clothing, respite care, transportation (other than medically-related transportation) and other specific special services which are not available from other sources.

3. The department received a comment from the Legislative Council on behalf of the Administrative Code Committee.

COMMENT: The rule changes appear to conflict with the requirement of Section 41-3-1103, MCA, that the department pay for transportation of children in foster care.

However, the Legislative Council plans to recommend against objection by the Administrative Code Committee given the laudable goal of this rule-making.

RESPONSE: The department is only dropping the requirement for medically-related transportation to aid in implementation of the legislative mandate that all available federal funds (in this case, Medicaid funds) be used to pay foster care expenses. In this notice, ARM 11.7.601 is further amended to clarify this point.

The department takes the position that elimination of medically-related transportation from foster care support services rules is within its authority. First, simple repetition of statutory duties in rules is prohibited. Section 2-4-305, MCA. Second, the department must administer all State and Federal funds for foster children. This statutory duty must be read with the duty to pay

for foster care transportation. If the department and the Department of Social and Rehabilitation Services cannot utilize available Medicaid funds for medically-related transportation, then the duty to provide transportation and the duty to administer the Federal and State Medicaid funds cannot be harmonized.

DEPARTMENT OF FAMILY SERVICES

Hank Hudson, Director

John Melcher, Rule Reviewer

Certified to the Secretary of State, October 18, 1993.

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

In the matter of the amendment of ARM 16.8.701, 1401, 1407, 1414, 1423-1425, 1427-1428, and new rules I-XXXIV dealing with air quality permitting, prevention of significant deterioration, permitting in nonattainment areas, source testing protocol and procedure, and wood waste burners.	NOTICE OF AMENDMENT OF 16.8.1401, 1407, 1414, 1423-1425, 1427-1428, AND ADOPTION OF NEW RULES XXII & XXIII (16.8.1429 AND 16.8.1430)

(Air Quality Bureau)

To: All Interested Persons

1. On June 24, 1993, the board published notice of the proposed amendment and adoption of the above-captioned rules at page 1264 of the 1993 Montana Administrative Register, issue number 12.

2. The board has amended a portion of the rules, 16.8.1401, 1407, 1414, 1423-1425, and 1427-1428 and adopted new rules XXII and XXIII with no changes, leaving the balance of the proposed rulemaking for future action.

3. No comments were received on the portion of the rules that were amended and adopted.

RULE XXII (16.8.1429) INCORPORATIONS BY REFERENCE

RULE XXIII (16.8.1430) DEFINITIONS

RAYMOND W. GUSTAFSON, Chairman
BOARD OF HEALTH AND
ENVIRONMENTAL SCIENCES

by _____
ROBERT J. ROBINSON, Director

Certified to the Secretary of State October 18, 1993.

Reviewed by:

_____
Eleanor Parker, DHES Attorney

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

In the matter of the amendment of rules 16.8.1903 and 16.8.1905 dealing with air quality operation and permit fees	NOTICE OF AMENDMENT OF RULES (Air Quality)

To: All Interested Persons

1. On August 12, 1993, the department published notice of the proposed amendment of rules 16.8.1903 and 16.8.1905, at page 1807 of the Montana Administrative Register, issue number 15.

2. The board has amended the rules as proposed.

3. The department received one comment on the fee rules.

COMMENT: The legislature authorized the collection of an additional $517,413 in fee revenues to fund activities associated with the passage of HB 318 and the implementation of a permitting program to meet the requirements of Title V of the federal Clean Air Act. In so doing the cost of emitting a ton of NOX or VOC is being increased from $1.00 per ton to $2.14 per ton, etc. When operating permits are being submitted on existing "grandfathered" sources under the Title V requirements, will these sources be assessed a permit application fee as well as an operation fee for the life of the source? If so, won't there be considerably more revenue collected than the legislature authorized based on these existing sources needing permits. Where will this money go?

REPLY: In both rules 16.8.1903 and 16.8.1905 there is a section that reads as follows: "However, nothing in these rules may be deemed to allow the department to collect more than one fee simultaneously." If the department receives an application fee for emissions from a source, it may not collect an operating fee for the same emissions for the year an application fee was submitted. Therefore existing sources will be assessed only one fee.

The department does not anticipate collecting more revenue than authorized by the legislature. However, if more revenue is collected than what the legislature authorized, the additional revenue will be credited against the amount authorized for the following year.

BOARD OF HEALTH AND
ENVIRONMENTAL SCIENCES
RAYMOND W. GUSTAFSON, Chairman

By: ROBERT J. ROBINSON, Director

Certified to the Secretary of State October 18, 1993.

Reviewed by:

Eleanor Parker, DHES Attorney

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the proposed adoption of a rule prescribing the affidavit form for an indigence financial statement.	))))	NOTICE OF ADOPTION

TO: All Interested Persons.

1. On July 15, 1993, the department published notice of the proposed adoption of new Rule I at page 1465, Montana Administrative Register, Issue No. 13, establishing the affidavit form for a financial statement for poor persons to submit to the court or administrative tribunal prior to approval of indigence status.

2. The agency has adopted Rule I with the following changes:

Rule I (23.2.301) Affidavit of Indigence

AFFIDAVIT OF INDIGENCE
AND ORDER

ANSWER ALL QUESTIONS. USE N/A IF NOT APPLICABLE

STATE OF MONTANA)
: ss.
County of _____)

I, _____, being first duly sworn, depose and say: That I have a good cause of action or defense but am unable to pay the costs or get security to secure the cause of action or defense ~~and~~. I request the court or administrative tribunal to waive the costs and approve indigence status. I declare the following:

~~1. Name _____ DOB _____~~
~~2. Address _____~~
~~3. Telephone _____ Single Married Separated Divorced~~
~~4. Employed: Yes No Self Employed Yes No~~
~~a. Employer's Name & Address _____~~
~~b. Your employment income? Monthly $ _____~~
~~5. If unemployed, when last employed _____ Job _____~~
~~6. Dependents? Spouse _____ Number of children _____~~
~~Others (Specify) _____~~
~~7. If married, is spouse employed? Yes No~~
~~a. Employer's Name & Address _____~~
~~b. Spouse's employment income? Monthly $ _____~~

~~Does spouse have any other income? Monthly $_____~~
~~(Example: support payments, alimony, interest, rent income, workers' compensation, unemployment, social security)~~

~~8. Do you have any other income from other sources?~~
~~Yes___ No___~~
~~Monthly $_____ Sources_____~~
~~_____. (Example: workers' compensation, unemployment, social security, support, alimony, interest, rent income)~~

~~9. Do you have a car? Yes____ No____ Is it paid for?~~
~~a. If not, how much do you owe? $_____~~
~~b. Year, Make and Model_____~~

~~10. Do you own any land or other real estate, or are you buying any? Yes_____ No_____~~
~~a. What is its approximate value? $_____~~
~~b. How much did you pay for it? $_____~~
~~When?_____~~
~~c. Is it paid for? Yes_____ No_____~~
~~d. If not, how much do you owe? $_____~~

~~11. Do you have any: a. Cash or savings? Yes_____ No_____~~
~~Amount? $_____ Bank_____~~
~~b. Checking accounts? Yes____ No____ Amount? $_____~~
~~c. Stocks or bonds? Yes____ No____ Value? $_____~~
~~d. Other property? Yes____ No____ Value? $_____~~
~~(Trailer, boat, camper, cycle, guns, tools, collections, etc.)~~
~~Describe:_____~~
~~_____~~

I. PERSONAL INFORMATION

Name_____
Address_____
Telephone _____ Birthdate_____ Age____SSN_____
Employed Yes_____ No_____ Self-Employed Yes _____ No _____
Employer's name & address _____
_____
Month last employed _____Job _____
Single_____ Married_____ Divorced_____ Separated _____
Dependents? Spouse _____ Number of children _____
Spouse's name _____
Spouse's birthdate _____ Age ____ Spouse's SSN _____
Spouse's employer & address _____
_____
Are you sharing expenses with anyone? Yes _____ No _____
Explain _____
Are you sharing income with anyone? Yes _____ No _____
Explain _____

II. INCOME

Income available:

My wages or salary $_____ AFDC $_____
Other wages/salary $_____ Unemployment $_____
Workers' Comp $_____ SSI $_____
Food Stamps $_____ Medicaid $_____
Pension $_____ Retirement $_____
Child support $_____ Other Income $_____
Total Household Income:
Last month $_____ Previous 12 months $_____

III. ASSETS

A. Motor vehicles? Yes_____ No_____ How many?_____
Spouse's motor vehicles_____
Is/are vehicle(s) paid for? Yes_____ No_____
If not, how much do you owe? $_____ Year, make and model_____

B. Do you or your spouse own any land or other real estate or are you or your spouse buying any? Yes _____ No _____
What is the approximate value?_____
How much did you pay for it?_____ When?_____
Is it paid for? Yes _____ No _____ If not, how much do you or your spouse owe?_____

C. Checking accounts? Yes _____ No _____ $_____
Savings accounts? Yes _____ No _____ $_____
Bank_____
Stocks or bonds? Yes _____ No _____ $_____
Wages due but not yet received $_____
Money owed to me or my spouse $_____
Guns, boats, sporting equipment, trailer, camper, or tools $_____
Stereo or TV $_____
Furniture & appliances $_____
Other personal property $_____
Specify:_____

IV. OBLIGATIONS/DEBTS

Do you or your spouse have any outstanding debts or obligations: (specify and list amount):

_____

I further declare that I am the person named above, that I have read the foregoing questions and information and know the same to be true of my own knowledge, AND THAT IF ANY PART OF THE ABOVE IS MADE FALSELY I AM SUBJECT TO PROSECUTION FOR PERJURY.

_____
Signature of Requestor

SUBSCRIBED AND SWORN TO before me this _____ day of _____, 19_____.

_____
Notary Public for the State of Montana
Residing at _____, Montana
My Commission expires _____

O R D E R

Indigence status is hereby denied/granted.

DATED: _____

_____
Judge/Administrative Officer

AUTH: Mont. Code Ann. § 25-10-404
IMP: Mont. Code Ann. § 25-10-404

COMMENT:

A written comment was received from Patrick A. Chenovick, Court Administrator. He provided a copy of an indigence form recently adopted by the Supreme Court Commission on Courts of Limited Jurisdiction and suggested we adopt it.

RESPONSE:

The form used by the courts of limited jurisdiction has much of the same information as the form proposed by the department but it is easier to read. Therefore the court form has been synthesized with the proposed form. The resulting form is designed to include the strengths of both.

By: _____
Joseph P. Mazurek

_____
Rule Reviewer

Certified to the Secretary of State 10/15, 1993.

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

In the matter of the amendment of A.R.M. 26.3.180, 26.3.182 and 26.3.186, pertaining to recreational use of state lands and A.R.M. 26.3.157, pertaining to posting of state lands to prevent trespass.	NOTICE OF AMENDMENT OF A.R.M. 26.3.180, 26.3.182, AND 26.3.157

TO: All Interested Persons

1. On July 15, 1993, the Department of State Lands and Board of Land Commissioners published notice of proposed amendment of ARM 26.3.180 and 26.3.182, pertaining to the definition of recreational use of state lands; ARM 26.3.186, pertaining to application of block management restrictions to state lands; and ARM 26.3.157, regarding posting of state lands at page 1471 of the 1993 Montana Administrative Register, Issue No. 13.

2. The agency has determined not to amend A.R.M. 26.3.186. The agency has amended A.R.M. 26.3.180, 26.3.182, and 26.3.157 with the following changes:

26.3.180 OVERVIEW OF RECREATIONAL USE RULES (1) ARM 26.3.183 through ARM 26.3.198 regulate the recreational use of state lands administered by the department of state lands. These lands are commonly referred to as "trust lands" and appear in light blue on most land status maps.

(2) Recreational use is divided into three categories as follows:

(a) General recreational use - This use is generally defined as licensed hunting, ~~hunting related activities, and~~ HUNTING RELATED ACTIVITIES, fishing, hiking, ~~horseback riding,~~ and bird-watching. This is more specifically defined in ARM 26.3.182(11). It requires purchase of a recreational use license. Detailed procedures and restrictions are contained in ARM 26.3.183 through ARM 26.3.197.

(b) Special recreational use - This use is defined in ARM 26.3.182(21) and requires a special recreational use license. These kinds of uses include commercial or concentrated use as defined in 77-1-101(5), MCA. Detailed provisions are contained in ARM 26.3.198.

(c) Other recreational use - Types of recreational use not within the definitions of general recreational use or special recreational use, such as ~~hiking~~ non-commercial berry picking, do not require a recreational use or special recreational use license from the department. On leased state land, however, permission must be secured in accordance with ARM 26.3.157.

AUTH: 77-1-209 and 77-1-804, MCA.
IMP: 77-1-101, MCA.

26.3.182 DEFINITIONS Wherever used in ARM 26.3.180 through ARM 26.3.198, unless a different meaning clearly appears from the context:

(1) through (10) remain the same.

(11) "General recreational use" means fishing, ~~and~~ hunting for game for which a hunting license is required by the department of fish, wildlife and parks, hiking, ~~horseback riding,~~ and bird-watching. It also includes accompanying a person who is hunting or fishing for the purpose of assisting that person. Day horseback use in conjunction with hunting and fishing is included as general recreation use. ~~General recreational use includes scouting for big game on leased land if conducted during the weekend and the day before the beginning of any hunting season during which the recreationist intends to hunt.~~ GENERAL RECREATIONAL USE INCLUDES SCOUTING FOR BIG GAME ON LEASED LAND IF CONDUCTED DURING THE WEEKEND AND THE DAY BEFORE THE BEGINNING OF ANY HUNTING SEASON DURING WHICH THE RECREATIONIST INTENDS TO HUNT.

(12) through (21) remain the same.

AUTH: 77-1-209, 77-1-804, MCA.
IMP: 77-1-101, MCA.

26.3.157 RESERVATIONS (1) and (2) remain the same.

(3) The state reserves the right to sell or otherwise dispose of any interest other than that for which the lessee or licensee has leased or licensed the premises, including hunting or fishing access privileges on state land; however, the lessee may post state land ~~with signs provided by the department~~ USING BLUE PAINT to prevent trespass by unauthorized persons. ~~The lessee~~ BUT may not use any other method, including orange paint, to post state land. POSTING WITH BLUE PAINT MUST MEET THE SAME REQUIREMENTS AS ARE IMPOSED BY 45-6-201, MCA, FOR POSTING OF PRIVATE LAND WITH FLUORESCENT ORANGE PAINT.

AUTH: 77-1-209, MCA. IMP: 77-1-202, MCA.

3. The following is a summary of the comments received on each proposed amendment and the agency's responses to those comments:

I. COMMENTS ON AMENDMENTS TO 26.3.180(2)(c) and 26.3.182(11). (DEFINITION OF GENERAL RECREATIONAL USE)

1. **COMMENT:** A number of commenters objected to the inclusion of horseback riding as part of the definition of "general recreational use". Reasons cited for opposing the inclusion were: potential for cattle rustling; disturbance of livestock; introduction of noxious weeds; potential for stampeding due to cattle being unfamiliar with horses; increased weeds because of horse droppings containing weed seed; harassment by horseback riders attempting to rope cattle; problems with gates being left open; that a single horse will break off as much grass as two or three cattle can eat.

RESPONSE: Many of the impacts described could not be remedied through site specific closure. Because of the potential for these impacts, the Board cannot find that horseback riding is compatible with the use of state land and has not expended the definition of "general recreational use" to include horseback riding.

2. **COMMENT:** (a) A number of state lessees opposed expansion of the definition, stating that the Department requires them to control weeds, maintain fences, and to prevent and suppress fires. They maintain that expansion of the definition would deprive them of the ability to comply with this requirement.

(b) A number of lessees expressed concern about increased litter, pollution, weeds and soil erosion.

(c) Year around use would be detrimental to the lessees' ability to manage the state land.

(d) A number of persons commented that hiking, horseback riding and bird watching are not compatible with livestock operations. They cited a number of reasons: most cattle are afraid of strangers and recreationists by water sources would keep cattle from watering; hiking among yearling steers that are ready to be sold would decrease their sale weight.

(e) The proposed expansion increases the chances for theft of the lessee's improvements.

(f) The proposed expanded use leaves too many unresolved conflicts between lessees and recreationists. These conflicts would decrease the value of grazing leases and would not be compensated through the sale of recreational use licenses.

(g) The new rule changes will create more problems and be a nightmare to enforce.

(h) Proposed amendments would hinder livestock operations and degrade grazing conditions which would lessen the value of the lease. The fair market value of leases will diminish and approach the rates charged by the BLM and the USFS.

(i) Expanded uses will increase the lessees' management duties for grazing activities, increase potential for harassment and increase the potential for users inexperienced in livestock behavioral characteristics to be injured.

(j) The proposed expanded uses may be acceptable on some state leases and not on others.

(k) If the expanded uses are authorized, the cost of administering the program will exceed the revenues generated by the increased license sales.

(l) Hikers carry weed seeds and will increase weed problems on state lands.

(m) The costs of grazing and management will be increased with the expanded definition. These costs should be either borne by the state or the lessee should be compensated by reducing the lease rental rate.

(n) Permission has usually been granted for the uses now being proposed for licensing.

(o) If the rules are changed, where's the incentive for the lessee to do a good job of managing and caring for the land?

(p) If the definition is expanded, recreationists should be required to share the expense of repair of damages.

(q) There's not a lot of demand for hiking, horseback riding and bird watching on leased lands and therefore, there's no need to expand the definition.

(r) The long term productivity will be degraded if the definition is expanded.

RESPONSE: After consideration of the testimony and written comments, both for and against the proposed amendment, the agency has determined to amend the definition of "general recreational use" to include hiking and bird watching.

Amendment of the definition provides greater recreational use of state land and is in keeping with the concept of multiple use. Environmental and management problems that result from the expanded use would be less than those associated with horseback riding and can be remedied through the site-specific closure mechanism contained in the existing law and rules. The lease should therefore not be devalued and lease revenue should not decrease. Although administration costs will probably increase, revenues from expanded recreational use license sales should also increase. The allegation that increased costs will exceed increased revenues is unsubstantiated and, in the opinion of the Board, is not sufficient grounds to prevent amendment of the rules to include hiking and bird watching. Therefore, the Board finds that hiking and bird watching are compatible with the use of state land.

Because ARM 26.3.180(3) summarizes 26.3.157(3), ARM 26.3.180(3) has been amended to conform to the amendments to 26.3.157(3)

3. **COMMENT:** (a) The definition of general recreational use was limited to hunting and fishing under HB778, which was only passed one year ago and was a result of a compromise between sportsmen and the lessees. The definition should not be changed now. The federal government is in the process of changing policy for grazing fees and predator control and adjustment of the recreational rules is untimely at best.

(b) The present rules shouldn't be amended for at least five years, or ten years.

RESPONSE: The comment mischaracterizes HB778, which defines "general recreational use" as "non-commercial and non-concentrated hunting, fishing, and other activities determined by the board to be compatible with the use of state land." (emphasis supplied) Thus, HB778 allows the Board to expand the definition of general recreational use at any time upon a determination that the expanded use is compatible with the use of state land.

4. **COMMENT:** Several commentors stated that expansion of the definition of general recreational use will result in the closure of private lands.

RESPONSE: The Department has no control over what may occur on private lands. The Department must consider the compatibility of expansion of the definition with existing uses of state lands.

5. **COMMENT:** The public has plenty of other recreational opportunities on other federal public land and state parks.

RESPONSE: The issue of the use and amount of other lands available for recreational purposes is not of consideration in this matter. The issue at hand is to consider whether the proposed additional recreational activities on state trust lands are compatible with existing uses of these lands.

6. **COMMENT:** A number of the lessees expressed concern that they would be liable for the injuries to recreationists which were incurred while recreating on state land.

RESPONSE: Section 70-16-302, MCA, provides that a lessee is responsible for injury to person or property of a person who is engaging on recreational use of land only if the injury is the result of the lessee's wilful or wanton misconduct. Therefore, a lessee will be liable for injury to person or property only if that injury is intentionally inflicted.

7. **COMMENT:** If the definition is expanded, recreationists should be required to post a bond or cash deposit to insure compensation to the lessee for loss of forage or time spent remedying negative impacts from recreational use.

RESPONSE: The law currently contains several mechanisms to remedy these problems. Lessees can request site-specific closure and may receive compensation for damage to cattle and improvements. The law entitled recreationists to engage in general recreational use upon purchase of a license. The Department does not have authority to impose a bonding requirement.

8. **COMMENT:** When lessees pay for the grazing lease, they own the grass and anyone who damages it is destroying private property.

RESPONSE: Hiking and bird watching will, in most instances, cause minimal damage to forage. Horseback riding, which has greater potential for demanding forage available to the lessee, has not been included in the definition.

9. **COMMENT:** Expansion of the definition infringes on the lessee's privacy.

RESPONSE: The Department has in ARM 26.3.157, and in the lease agreement itself, reserved the right to allow entry onto leased land by persons other than the lessee. Therefore, the lessee's right of privacy is limited and would not be infringed upon by the rule either as proposed or adopted.

10. **COMMENT:** Hiking is too broad of a term and anyone could claim they were doing this activity at any time.

RESPONSE: All that is allowed under this activity is walking for recreational purposes. Hiking does not include activities such as varmint hunting, rock hounding, mountain biking, or motorcycle riding.

11. **COMMENT:** Because of budget constraints, hearings should not be held on changes to the rules every year.

RESPONSE: Rule 26.3.197(5), ARM specifically allows for petitioning to amend the definition of general recreational use. The Administrative Procedure Act also allows for petitions to change any administrative rule. The rule and statute require that the Commissioner must consider such petitions and bring them before the Board. If the Board determines that the petition has merit, formal rulemaking must be commenced.

12. **COMMENT:** These demands are those of an elitist few and will result in additional demands in the future. The interests of our school children are not well served by catering to this elite few bent on reserving trust lands for recreational use.

RESPONSE: It is speculative to assume that the requests represent only the wishes of those specific individuals or organizations who submitted the petition that led to the proposed rules. The current proposals and any other proposal must be considered on their own merits. Furthermore, it cannot be assumed that submittal of these requests will automatically result in additional future requests, although the right to do so is granted in both statute and rule. The purpose of the petitions was not to "reserve" the trust lands for these purposes, but rather to allow the uses to be conducted in conjunction with existing uses of the lands.

13. **COMMENT:** State land is not "public" land in the same sense as federal land.

RESPONSE: State Lands are not "public" lands in the same sense as federal lands. The Montana Constitution Article X, Section 11 states, "All lands of the state that have been or may be granted by congress, or acquired by gift or grant or devise from any person or corporation, shall be public lands of the state. They shall be held in trust for the people, to be disposed of as hereafter provided, for the respective purposes for which they have been granted, donated or devised." Essentially all of the state lands administered by the Department were granted to the state from the federal government at statehood (through the Enabling Act) to generate revenue for the support of the common schools and other state educational institutions.

14. **COMMENT:** Several commentors noted that many persons recreating on the state lands last year did not have the necessary recreational use license.

RESPONSE: Although 29,009 general recreational use licenses were sold in 1992, the Department anticipated that confusion and unfamiliarity with the newly-implemented recreational access program during its first year would result in less than 100 percent compliance. Information and enforcement efforts were primarily directed to educate lessees and recreationists about their responsibilities under the new law and rules. As a result of increased awareness through public information and enforcement efforts, compliance is expected to increase in 1993 and subsequent years.

15. **COMMENT:** If new rules are adopted, the state should hire a full time person for each lease to control these problems.

RESPONSE: Currently, there are approximately 10,000 surface leases for trust lands. It would be impossible to implement this proposal because of budgetary and personnel constraints and unrealistic to assume that every lease will be impacted by increased use.

16. **COMMENT:** Expansion of general recreational use jeopardizes the property rights of surrounding landowners because of fires that recreationists may start.

RESPONSE: Persons engaged in general recreational use are not authorized to camp, to engage in off-road motor vehicle use or to use open fires. The potential for wildfires started by these persons is therefore very limited.

17. **COMMENT:** Who is responsible for damage by unkept campfires?

RESPONSE: All fires, permitted or otherwise, if allowed to escape, constitute negligence and the responsible party may be held liable for associated fire suppression costs, property damage, and may be subject to civil and criminal penalties. However, persons engaged in general recreational use are not authorized to camp or use an open fire.

18. **COMMENT:** The current recreational use program has resulted in very few complaints and should be retained as is.

RESPONSE: Only 17 formal complaints were documented by DSL during 1992. However many license vendors, DFWP game wardens, recreationists, and lessees informally expressed frustration, confusion, and dissatisfaction with some provisions of the program. This spring, upon receipt of five formal petitions to amend current rules, the Department was obligated to present them to the Board for their consideration. After hearing arguments related to each petition, the Board rejected two of the petitions, but felt that the other three proposed changes were worthy of public debate through this rulemaking proceeding. For these reasons contained in the response to Comment #2, the definition has been expanded to include hiking and bird watching.

19. **COMMENT:** All bills that would have expanded the definition of general recreational use in the 1993 Legislature died and the Board should not now expand the definition by rule.

RESPONSE: A major reason the proposed bills failed was that the existing rules contain a specific provision (26.3.197(5)) for considering the expansion of the definition. It was felt that since this provision exists it was not necessary to amend the law. Therefore, it is appropriate for the Board to consider expansion of the definition.

20. **COMMENT:** Who's responsible for off-road vehicle use?

RESPONSE: Off-road motor vehicle use is prohibited in 26.3.186(1)(a)(1).

21. **COMMENT:** Who pays for damages to livestock harassed by dogs?

RESPONSE: The recreationist would be responsible to the lessee for damage to livestock caused by the recreationist's dogs.

22. **COMMENT:** The presence of livestock in CRP is prohibited under agreement with the lessee, the Department and the ASCS.

RESPONSE: The grazing of livestock on CRP lands is prohibited by the CRP contract. The ASCS has informed the Department that day use by horses is considered incidental and will not constitute a violation of the CRP contract.

23. **COMMENT:** The increased usage will increase the number of damage claims on adjacent private lands.

RESPONSE: Damage to adjacent private lands can be controlled and alleviated by the private landowner adequately marking the boundaries of his or her private land to prevent unauthorized entry and usage of these lands and by monitoring, documenting, and reporting violations to the proper enforcement authorities. Furthermore, the damage compensation fund for recreational use only provides compensation for damage to improvements or personal property on state lands. Therefore, that fund would not be diminished because of damage on private lands.

24. **COMMENT:** The proposed amendments are narrow in scope and don't reflect the geographic diversity of the state leased land.

RESPONSE: Site-specific geographic conditions can be taken into account through the site-specific closure process.

25. **COMMENT:** The boundaries of many state lands are not marked and controlling trespass would be made much more difficult.

RESPONSE: Bills introduced during the 1993 legislative session regarding marking the boundaries of state lands failed largely due to the cost of accurately marking the boundaries. Many boundaries are currently unmarked and would require legal surveys to correctly determine the boundary. The revised amendments may increase the likelihood of trespass. However, the lessee or grazing licensee has the authority to post the state land and require permission for entry for recreational purposes other than hunting and fishing. In addition, a private landowner has the prerogative to post his or her property boundaries to prevent trespass.

26. **COMMENT:** A lessee is entitled to the same rights as any other lessor of real property.

RESPONSE: Under A.R.M. 26.3.157(3), the Department reserves the right to sell or otherwise convey to another person use of the land for any purpose that has not already been conveyed. To the extent that a private lessor does not reserve this right, the rights of the private lessee are greater than the rights of a state lessee.

27. **COMMENT:** The damage reimbursement account will run out of money very quickly and the lessee will have to bear these costs and will not be compensated.

RESPONSE: See response to Comment 23.

28. **COMMENT:** Heavy use of state land will drive the game onto private land where hunting opportunities may be limited.

RESPONSE: Under current rules, there is no limitation on the number of hunters or fishermen who may be on legally accessible state trust lands at any given time, unless the lands are enrolled in a block management program. Therefore, there is no assurance that the number of game animals on the tract will not be directly affected by a recreational use/acreage-habitat ratio. The adverse impacts should be minimal given the fact that it is unlikely that numbers of hikers and bird watchers would be significant.

29. **COMMENT:** Have the lessee help with enforcement by requiring the recreational licensee to contact the lessee and to show their license.

RESPONSE: Under ARM 26.3.192, a lessee may require a person who wishes to engage in general recreational use on state land to first notify the lessee that he or she will recreate on the state land and to advise the lessee of his or her name, address, and recreational use license number.

30. **COMMENT:** The use of state land should also include camping and other recreational uses.

RESPONSE: The proposed amendments deal with hiking, bird watching and horseback riding. In order to allow for public comment, consideration of any other uses must be included in another rulemaking proceeding.

II. COMMENTS ON AMENDMENT TO 26.3.157(3) (ORANGE PAINT)

1. **COMMENT:** (a) Another color of paint should be used instead of signs.

(b) Paint is more cost effective because of minimal maintenance costs.

(c) Many commentors recommended blue paint because it conforms to the color used to designate state lands on land status maps.

(d) Another suggestion was to use metal triangles with blue paint which would be made by the prison, with the lessees and the Department splitting the cost.

RESPONSE: The agency recognizes the cost effectiveness of paint rather than signs and the benefits of using blue rather than orange paint. Use of blue paint is consistent with state land designation on land status maps. Other posting methods are less efficient and more costly. For these reasons, the Board has adopted an amendment to the ARM 26.3.157 which provides for posting with blue paint.

2. **COMMENT:** Signs should not be required because they can be vandalized easily. Also, paper signs do not weather well.

RESPONSE: The agency agrees and the adopted rule addresses this problem.

3. **COMMENT:** The Department should pay for the signs.

RESPONSE: The adopted rule eliminates the need for signs.

4. **COMMENT:** The posting of state lands was heavily debated during the last legislature so why is it being brought up again?

RESPONSE: The agency agrees with the commentor that the use of orange paint to post state lands is confusing to recreationists. The adopted rule facilitates posting by lessees, resolves confusion about land ownership, and is consistent with the use of land status maps.

III. COMMENTS ON AMENDMENT TO 26.3.186(1) (BLOCK MANAGEMENT)

1. **COMMENT:** The block management area (BMA) program is improving in consistency and accountability and is very popular with sportsmen and landowners. The proposed amendment to 26.3.186 should not be adopted.

RESPONSE: The BMA program is administered by Department of Fish, Wildlife & Parks (DFWP). DFWP's field administration shows promise of improvement through consistent program application statewide and improved accountability through signature and administrative review of enrollment forms/contract. These actions should assist with program popularity and acceptance by sportsmen and landowners. Furthermore, DSL and DFWP have implemented policies and procedures that DFWP must complete prior to including any state land within a BMA contract. These include a new contract enrollment form that clearly includes a non-discrimination clause; written rules for a BMA; development of a sportsmen complaint procedure; and DSL involvement in the review and approval process. These will improve communication and information exchange between agencies. They will also provide base information to sportsmen concerning state land in a BMA. Therefore, the proposed amendment to 26.3.186 has not been adopted.

2. **COMMENT:** Many comments were received which indicated if the proposal to amend the recreational use program rules relating to block management were approved, private land would be closed to recreationists or leased out commercially.

RESPONSE: The proposed amendment has not been adopted.

3. **COMMENT:** The present BMA program results in greater hunting experience and increased hunting opportunity.

RESPONSE: Both quality of hunting experience and opportunity will not be impacted by rejection of the proposed amendment.

4. **COMMENT:** Adoption of the proposed amendment may result in deterioration or damage to landowner/sportsman relations.

RESPONSE: The proposed amendment has been rejected.

5. **COMMENT:** Adoption of the proposed amendment will result in a reduction of the lessees' ability to manage hunter numbers, period of use and harvest levels.

RESPONSE: The proposed amendment has not been adopted. The lessee retains the option to manage hunter numbers, period of use and game harvest levels on state land under block

management agreements as long as the Department of State Lands has reviewed and approved the BMA plan in advance of implementation. Legally accessible state lands are subject to public notice and opportunity for comment prior to adoption.

6. **COMMENT:** The present BMA rules require permission from the lessee or BMA manager and should be continued.

RESPONSE: This will not change due to the decision for rejection of the amendment proposal. Permission to recreate within a BMA is often a program requirement.

7. **COMMENT:** The present BMA program provides landowner/lessee more management flexibility for livestock movement and grazing use.

RESPONSE: Landowner/lessee livestock flexibility and grazing use by season or pasture will not be impacted by rejection of the amendment.

8. **COMMENT:** The proposed rule change will result in withdrawal of state tracts from the BMA program, which will negatively impact management of the ranch as a whole hunting unit.

RESPONSE: Currently a ranch or group of ranches is usually managed as a recreational unit under the BMA program. This will not change with rejection of the amendment.

9. **COMMENT:** The effectiveness of the BMA program is threatened by having unmanaged tracts inter-mixed with managed tracts. The proposed rule change will result in damage to the BMA program.

RESPONSE: The effectiveness of the BMA program should be improved by rejection of the proposed amendment and completion of the requirements of the newly implemented block management enrollment policies and procedures. The BMA program should improve in consistency, accountability and program quality.

10. **COMMENT:** There should be more inter-agency cooperation and communication prior to including state land in a BMA.

RESPONSE: DSL and DFWP have implemented policies and procedures that DFWP must complete prior to including any state land within a BMA contract. These will improve communication and information exchange between agencies. It will also provide base information to sportsmen concerning state land in a BMA.

11. **COMMENT:** Administration of the BMA program needs to be consistently and fairly implemented throughout Montana and adequate information provided to recreationists.

RESPONSE: The proposed amendment has been rejected based upon DFWP's acceptance and implementation of DSL policies and procedures for inclusion of state land within a BMA along with development and utilization of a statewide BMA enrollment/contract form that clearly contains a non-discrimination clause, statement of rules for the specific BMA and development of some mechanism that provides a way to lodge complaints. Specific enrollment/contract information will be available in DSL area offices.

12. **COMMENT:** Most BMA do not allow bird hunting and therefore the proposed amendment should be adopted.

RESPONSE: Species limitations are specific to each BMA contract. Upland game bird, turkey and waterfowl hunting may or may not be allowed within a BMA. Proposals to include state lands in BMAs are subject to review and approval by DSL prior to enrollment. In addition, legally accessible state lands are subject to public notice and opportunity for comment prior to adoption.

13. **COMMENT:** BMA restrictions are causing the school trust to lose revenue.

RESPONSE: There is no documented evidence to support this statement. Loss of revenue, if any, due to BMA restrictions, is minimal and compensation to the trusts through enhanced management and protection outweighs the minimal loss of revenue.

14. **COMMENT:** Block management does not consider handicapped people at all.

RESPONSE: A specific BMA may or may not have special provisions for the handicapped. Rejection of the amendment proposal will not affect this. DFWP is responsible for administration of the handicapped hunter program and determining the qualifications for inclusion into the program.

15. **COMMENT:** It's redundant to open state lands by law for hunting and then put them in a BMA.

RESPONSE: House Bill 778 specifically provides the statutory authority to include state land in a BMA.

16. COMMENT: Sportsmen will not allow lessees to enroll prime habitat state lands in a BMA. Therefore, it is unnecessary to propose legally accessible state lands be considered for inclusion into the block management program.

RESPONSE: The inclusion of state land within a BMA will continue when approved by the Department of State Lands. Accessible state land proposed for inclusion in a new or existing but modified BMA contract will provide for public comment. The comments will be reviewed and used when making the decision to include or to reject inclusion of the state land in the BMA.

Reviewed by:

John F. North
Chief Legal Counsel

Arthur R. Clinch
Commissioner

Certified to the Secretary of State October 18, 1993.

VOLUME NO. 45 OPINION NO. 14

ATTORNEYS - Full-time county attorney, attorney fees from private company for work on city/county bond issue;
ATTORNEYS' FEES - Full-time county attorney, fees from private company for work on city/county bond issue;
COUNTY ATTORNEYS - Full-time, attorney fees from private company for work on city/county bond issue;
MONTANA CODE ANNOTATED - Sections 7-4-2511(2), 7-4-2704, 7-4-2706, 7-4-4606;
OPINIONS OF THE ATTORNEY GENERAL - 43 Op. Att'y Gen. No. 75 (1990).

HELD: A full-time county attorney serving as city attorney pursuant to an interlocal agreement may not personally receive attorney fees from a private company for work performed on a city/county bond issue.

October 14, 1993

Mr. John S. Forsythe
Rosebud County Attorney
Drawer 69
Forsyth, MT 59327-0069

Dear Mr. Forsythe:

You have requested my opinion on a question I have phrased as follows:

> May a full-time county attorney serving as city attorney pursuant to an interlocal agreement receive a fee, in addition to his county attorney salary, for work performed on a city/county bond issue?

You are the full-time county attorney for Rosebud County. You have informed me that you are also acting as city attorney for the City of Forsyth pursuant to an interlocal agreement between the city and the county. The interlocal agreement provides that you will receive no salary in addition to your county attorney salary for your services as city attorney.

You have attached to your request a copy of Resolution No. 1993-R3 wherein the Forsyth city council passed a resolution providing:

> WHEREAS, the City of Forsyth, Rosebud County and Puget Sound Company have agreed to the sharing of the fee for the issuance of refunding bonds for Puget Sound Company in the amount of approximately $23,460,000.00,

> NOW THEREFORE BE IT RESOLVED that the fee rate of $1.50/$1,000.00 of bonds issued is hereby approved. The City of Forsyth and Rosebud County shall share equally (50/50) in said fee. Puget Sound Company will pay all attorney fees and out-of-pocket expenses necessarily incurred in connection with the bond issuance.

Although you receive no remuneration for acting as city attorney, the City has agreed to allow you personally to receive attorney fees from the Puget Sound Company for work performed on the bond issue.

Your status as a full-time county attorney compels me to conclude that you may not personally receive the attorney fees from the Puget Sound Company. Mont. Code Ann. § 7-4-2511(2) states:

> No salaried county officer may receive for his own use any fees, penalties, or emoluments of any kind, except the salary as provided by law, for any official service rendered by him. Unless otherwise provided, all fees, penalties, and emoluments of every kind collected by a salaried county officer are for the sole use of the county and must be accounted for and paid to the county treasurer as provided by subsection (1) and credited to the general fund of the county.

In Platz v. Hamilton, 201 Mont. 184, 653 P.2d 144 (1982), the Montana Supreme Court held that the execution of passport applications, a function of the clerk of district court authorized by federal law, was not an official duty imposed upon a clerk of district court by state statute. The Court held that, since the legislature had not enacted a specific statute with regard to the disposition of the passport fees, the clerk could retain the fees for her personal use and was not required to remand them to the county general fund. Compare 43 Op. Att'y Gen. No. 75 (1990). If the law set forth in Platz were the only law applicable to your situation, the issue would be resolved by a determination of whether or not the legal services provided in connection with the city/county bond issue were outside the scope of a county attorney's legally prescribed duties.

However, another prohibition comes into play when analyzing fees paid to a full-time county attorney. Montana law specifically prohibits a full-time county attorney from engaging in the private practice of law or sharing directly or indirectly in the profits of any private practice of law, except for self-representation, or for a limited time following election or appointment to close an existing private practice. Mont. Code Ann. §§ 7-4-2704(2), -2704(4), and -2706 (1991).

In State v. Holman Aviation Co., 176 Mont. 31, 575 P.2d 923 (1978), the Montana Supreme Court, in an overtime wage claim

case brought under the federal Fair Labor Standards Act, upheld a district court order and judgment awarding back wages and penalties, and $100 in attorney fees to an aggrieved employee. The Court noted that the attorney fees "must be paid into the Cascade County general fund and not given to the Cascade County attorney as private attorney fees. Because Cascade County is a county with a population in excess of 30,000 people, the Cascade County attorney is prohibited from receiving profits from the private practice of law." 176 Mont. at 36, 575 P.2d at 926. This prohibition also applies to a full-time county attorney in a county with a population of less than 30,000. Mont. Code Ann. § 7-4-2706(1).

The statutory scheme is clear. In a county with a population in excess of 30,000, or in smaller counties where the office of county attorney is established as a full-time position pursuant to Mont. Code Ann. § 7-4-2706, the county attorney is required to devote full time to the discharge of his duties and he is to be paid by the county full-time pay for full-time work. In my opinion, the "private practice" generally prohibited by Mont. Code Ann. § 7-4-2704 encompasses any legal work performed by a full-time county attorney which is outside his official duties. Conversely, if the legal work is considered part of his official duties, a full-time county attorney may not accept a fee for the work because he may not receive any fees or emoluments of any kind, except the salary as provided by law, for any official service rendered by him.

Thus, it is my opinion that you may not personally retain the legal fees paid by the Puget Sound Company. If the services provided are beyond your "official duties" as county attorney, they constitute "private practice of law" from which you are prohibited by Mont. Code Ann. § 7-4-2704. If the services are part of your "official duties," your compensation for them is limited to your salary as county attorney, and any additional fees you receive must be paid over to the county under Mont. Code Ann. § 7-4-2511(2).

My opinion is unchanged by your status as city attorney for the City of Forsyth. It is true that a county attorney may be retained to provide legal services to a third-class city in certain cases. Mont. Code Ann. § 7-4-4606. However, the county attorney provides those services by virtue of his or her office as county attorney. The statute does not authorize the county attorney to contract with the city as a private attorney. See Mont. Code Ann. § 7-4-4606 ("A third class city may retain the county attorney to provide legal services . . . either by an interlocal cooperation agreement or by mutual consent by the governing bodies of the city and county") (emphasis added). When a full-time county attorney undertakes performance of the duties of a city attorney under this statute, those duties become a part of the county attorney's "official duties" for which the county attorney receives full-time compensation.

To the extent that a full-time county attorney is doing legal work for the city, he or she is not devoting full time to the county, and it necessarily follows under Mont. Code Ann. § 7-4-2511(2) that any compensation paid for his or her work for the city should be paid over to the county general fund. In my opinion, any attorney fees paid by the Puget Sound Company should be paid to the county general fund.

THEREFORE, IT IS MY OPINION:

A full-time county attorney serving as city attorney pursuant to an interlocal agreement may not personally receive a fee from a private company for work performed on a city/county bond issue.

Sincerely,

JOSEPH P. MAZUREK
Attorney General

jpm/kcs/brf

NOTICE OF FUNCTIONS OF ADMINISTRATIVE CODE COMMITTEE

The Administrative Code Committee reviews all proposals for adoption of new rules, amendment or repeal of existing rules filed with the Secretary of State, except rules proposed by the Department of Revenue. Proposals of the Department of Revenue are reviewed by the Revenue Oversight Committee.

The Administrative Code Committee has the authority to make recommendations to an agency regarding the adoption, amendment, or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. In addition, the Committee may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt or amend a rule.

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

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

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

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

Use of the Administrative Rules of Montana (ARM):

Known Subject Matter	1. Consult ARM topical index. Update the rule by checking the accumulative table and the table of contents in the last Montana Administrative Register issued.
Statute Number and Department	2. Go to cross reference table at end of each title which lists MCA section numbers and corresponding ARM rule numbers.

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies which have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through June 30, 1993. This table includes those rules adopted during the period July 1, 1993 through September 30, 1993 and any proposed rule action that is pending during the past 6 month period. (A notice of adoption must be published within 6 months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through June 30, 1993, 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 1993 Montana Administrative Register.

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BOARD APPOINTEES AND VACANCIES

House Bill 424, passed by the 1991 Legislature, directed that all appointing authorities of all appointive boards, commissions, committees and councils of state government take positive action to attain gender balance and proportional representation of minority residents to the greatest extent possible.

One directive of HB 424 was that the Secretary of State publish monthly in the ***Montana Administrative Register*** a list of appointees and upcoming or current vacancies on those boards and councils.

In this issue, appointments made in September, 1993, are published. Vacancies scheduled to appear from November 1, 1993, through January 31, 1994, are also listed, as are current recent vacancies due to resignations or other reasons.

Individuals interested in serving on a new board should refer to the bill that created the board for details about the number of members to be appointed and qualifications necessary.

Each month, the previous month's appointees are printed, and current and upcoming vacancies for the next three months are published.

IMPORTANT

Membership on boards and commissions changes constantly. The following lists are current as of October 5, 1993.

For the most up-to-date information of the status of membership, or for more detailed information on the qualifications and requirements to serve on a board, contact the appointing authority.

BOARD AND COUNCIL APPOINTEES: SEPTEMBER, 1993

Appointee	Appointed by	Succeeds	Appointment/End Date
Agricultural Land Valuation Advisory Committee (Revenue)			
Mr. Jerry Allen Hamilton Qualifications (if required): public member	Governor	not listed	9/13/1993 1/1/1995
Mr. Jim Almond Billings Qualifications (if required): represents grazing interests	Governor	not listed	9/13/1993 1/1/1995
Ms. Marge Boulware Miles City Qualifications (if required): represents multiple use farmers/ranchers	Governor	not listed	9/13/1993 1/1/1995
Mr. Earl Bricker Moore Qualifications (if required): represents non-irrigated cropland users	Governor	not listed	9/13/1993 1/1/1995
Mr. Michael Grove White Sulphur Springs Qualifications (if required): represents financial institution	Governor	not listed	9/13/1993 1/1/1995
Mr. Chase Hibbard Helena Qualifications (if required): legislator	Governor	not listed	9/13/1993 1/1/1995
Ms. Carol Irvin Columbia Falls Qualifications (if required): represents urban interests	Governor	not listed	9/13/1993 1/1/1995
Senator Greg Jergeson Chinook Qualifications (if required): legislator	Governor	not listed	9/13/1993 1/1/1995

BOARD AND COUNCIL APPOINTEES: SEPTEMBER, 1993

Appointee	Appointed by	Succeeds	Appointment/End Date
Agricultural Land Valuation Advisory Committee (Revenue) cont.			
Ms. Mona L. Nutting Red Lodge Qualifications (if required): represents local government	Governor	not listed	9/13/1993 1/1/1995
Mr. John Stienbasser Sidney Qualifications (if required): public member	Governor	not listed	9/13/1993 1/1/1995
Mr. Bob Story, Jr. Park City Qualifications (if required): represents individual water users	Governor	not listed	9/13/1993 1/1/1995
Mr. Myles Watts Bozeman Qualifications (if required): not specified	Governor	not listed	9/13/1993 1/1/1995
Mr. Jerry Nypen Fairfield Qualifications (if required): represents organized irrigation district water users	Governor	not listed	9/13/1993 1/1/1995
Board of Barbers (Commerce)			
Ms. Adeline Fisher Butte Qualifications (if required): public member	Governor	Beck	9/27/1993 7/1/1996
Board of Crime Control (Justice)			
Mr. Ken Stuker Helena Qualifications (if required): educator with interest & knowledge in prevention/education as it relates to justice issues	Governor	Keenan	9/7/1993 1/1/1997

BOARD AND COUNCIL APPOINTEES: SEPTEMBER, 1993

Appointee	Appointed by	Succeeds	Appointment/End Date
Board of Physical Therapy Examiners (Commerce)			
Mr. Robert Bruce Bowman	Governor	Dougan	9/27/1993
Lewistown			7/1/1996
Qualifications (if required): physical therapist			
Board of Sanitarians (Commerce)			
Ms. Pat Switzer	Governor	Sampson	9/7/1993
Richey			7/1/1996
Qualifications (if required): public member			
ICC for State Prevention Programs (Governor)			
Ms. Julie D. Halberg	Governor	not listed	9/8/1993
Helena			7/1/1995
Qualifications (if required): exper. in private or nonprofit provision of prevention program			
Ms. Marilyn Thornquist Chakos	Governor	not listed	9/8/1993
Billings			7/1/1995
Qualifications (if required): exper. in private or nonprofit provision of prevention program			
Teachers' Retirement Board (Administration)			
Ms. Sharon Oftedal	Governor	not listed	9/27/1993
Miles City			7/1/1997
Qualifications (if required): public member			

VACANCIES ON BOARDS AND COUNCILS -- November 1, 1993 through January 31, 1994

Board/current position holder	Appointed by	Term end
Air Pollution Control Advisory Council (Health and Environmental Sciences)		
Mr. Ronald E. Burnam, Billings Qualifications (if required): practicing physician	Governor	11/8/1993
Mr. Clifford Cox, Winston Qualifications (if required): agricultural representative	Governor	11/8/1993
Mr. Ed Handl, Butte Qualifications (if required): chemical engineer	Governor	11/8/1993
Mr. Rodney A. James, Butte Qualifications (if required): practicing registered professional chemical or environment engineer	Governor	11/8/1993
Mr. Terry Konkright, Superior Qualifications (if required): manufacturing industry	Governor	11/8/1993
Mr. Stephen L'Heureux, Great Falls Qualifications (if required): urban planning consultant	Governor	11/8/1993
Mr. Joe Nelson, Walkerville Qualifications (if required): labor representative	Governor	11/8/1993
Mr. Martin Perga, Laurel Qualifications (if required): representative of fuel industry	Governor	11/8/1993
Dr. Earl Pruyn, Missoula Qualifications (if required): practicing veterinarian	Governor	11/8/1993
Mr. Paul Sawyer, Butte Qualifications (if required): conservationist	Governor	11/8/1993

VACANCIES ON BOARDS AND COUNCILS -- November 1, 1993 through January 31, 1994

Board/current position holder	Appointed by	Term end
Alfalfa Seed Committee (Agriculture)		
Mr. Jack Delp, Hardin	Governor	12/21/1993
Qualifications (if required): actively engaged in alfalfa seed business		
Mr. Tom Helm, Miles City	Governor	12/21/1993
Qualifications (if required): actively engaged in alfalfa seed business		
Mr. Kenneth M. Sagmiller, Ronan	Governor	12/21/1993
Qualifications (if required): actively engaged in alfalfa seed business		
Appellate Defender Commission (Administration)		
Mr. Mark Parker, Billings	Governor	1/1/1994
Qualifications (if required): attorney		
Board of Chiropractors (Commerce)		
Dr. Dwayne Steven Borgstrand, Red Lodge	Governor	1/9/1994
Qualifications (if required): practicing chiropractor from Northwest College of Chiropractors		
Board of Occupational Therapy Practice (Commerce)		
Ms. Arlene Mathews, Helena	Governor	12/31/1993
Qualifications (if required): public member		
Board of Passenger Tramway Safety (Commerce)		
Mr. Guy F. Huestis, Great Falls	Governor	1/1/1994
Qualifications (if required): engineer		
Mr. Cresap S. McCracken, Great Falls	Governor	1/1/1994
Qualifications (if required): attorney		

VACANCIES ON BOARDS AND COUNCILS -- November 1, 1993 through January 31, 1994

Board/current position holder	Appointed by	Term end
Board of Physical Therapy Examiners (Commerce)		
Mr. John Delano, Helena Qualifications (if required): public member	Governor	1/1/1994
Dr. John Halseth, Great Falls Qualifications (if required): physician	Governor	1/1/1994
Board of Speech Pathologists and Audiologists (Commerce)		
Mr. Carl H. Clark, Kalispell Qualifications (if required): audiologist	Governor	12/31/1993
Mr. Christian D. Grover, Helena Qualifications (if required): audiologist	Governor	12/31/1993
Ms. Jane L. Hudson, Billings Qualifications (if required): speech pathologist	Governor	12/31/1993
Ms. Beverly Roy, Fort Shaw Qualifications (if required): speech pathologist	Governor	12/31/1993
Children's Trust Fund Board (Social and Rehabilitation Services)		
Ms. Gail Flack, Hardin Qualifications (if required): member	Governor	1/1/1994
Ms. Karen Ortman, Glasgow Qualifications (if required): member	Governor	1/1/1994

VACANCIES ON BOARDS AND COUNCILS -- November 1, 1993 through January 31, 1994

Board/current position holder	Appointed by	Term end
Developmental Disabilities Planning and Advisory Council (Social and Rehabilitation Services)		
Sen. Delwyn Gage, Cut Bank Qualifications (if required): state senator	Governor	1/1/1994
Rep. Betty Lou Kasten, Brockway Qualifications (if required): state representative	Governor	1/1/1994
Job Training Coordinating Advisory Council (Labor and Industry)		
Ms. M. Colleen Allison, Columbia Falls Qualifications (if required): none specified	Governor	12/3/1993
Mr. Forrest "Buck" Boles, Helena Qualifications (if required): none specified	Governor	12/3/1993
Ms. Barbara Campbell, Deer Lodge Qualifications (if required): none specified	Governor	12/3/1993
Ms. Helen Kellicut, Deer Lodge Qualifications (if required): none specified	Governor	12/3/1993
Mr. Marvin McMichael, Missoula Qualifications (if required): none specified	Governor	12/3/1993
Mr. Jack E. Sands, Billings Qualifications (if required): none specified	Governor	12/3/1993
Rep. Chuck Swysgood, Dillon Qualifications (if required): none specified	Governor	12/3/1993
Sen. Gene Thayer, Great Falls Qualifications (if required): none specified	Governor	12/3/1993

VACANCIES ON BOARDS AND COUNCILS -- November 1, 1993 through January 31, 1994

Board/current position holder	Appointed by	Term end
Judicial Nomination Commission (Judicial)		
Ms. Charmaine R. Fisher, Billings Qualifications (if required): lay member	Governor	1/1/1994
Mr. Robert F. James, Great Falls Qualifications (if required): none specified	Director	1/1/1994
Mr. C. W. Leaphart, Jr., Helena Qualifications (if required): none specified	Director	1/1/1994
Mr. M. James Sorte, Wolf Point Qualifications (if required): none specified	Chief Justice	1/1/1994
Management Development Advisory Council (Administration)		
Mr. David Darby, Helena Qualifications (if required): state employee member	Director	1/1/1994
Mental Health Planning & Advisory Council (Corrections & Human Services)		
Rep. John Brenden, Scobey Qualifications (if required): represents consumers	Director	12/1/1993
Ms. Mary Dalton, Helena Qualifications (if required): represents Medicaid	Director	12/1/1993
Ms. Liza Dyrdahl, Malta Qualifications (if required): represents consumers	Director	12/1/1993
Ms. Judith Ann Filbert, Livingston Qualifications (if required): represents consumers	Director	12/1/1993
Ms. Florence Foster, East Helena Qualifications (if required): parent of consumer	Director	12/1/1993

VACANCIES ON BOARDS AND COUNCILS -- November 1, 1993 through January 31, 1994

Board/current position holder	Appointed by	Term end
Mental Health Planning & Advisory Council (Corrections & Human Services) cont.		
Mr. Mike Fraser, Helena	Director	12/1/1993
Qualifications (if required): represents consumers		
Ms. Kayleen Jones, Billings	Director	12/1/1993
Qualifications (if required): parent of consumer		
Ms. Kimberly Kradolfer, Helena	Director	12/1/1993
Qualifications (if required): represents Justice		
Mr. John Lynn, Missoula	Director	12/1/1993
Qualifications (if required): Mental Health Service Provider		
Ms. Margaret Murphy, Billings	Director	12/1/1993
Qualifications (if required): parent of consumer		
Sen. Dennis G. Nathe, Redstone	Director	12/1/1993
Qualifications (if required): legislator		
Mr. Roger Pederson, Helena	Director	12/1/1993
Qualifications (if required): represents Housing		
Ms. Barbara Sample, Billings	Director	12/1/1993
Qualifications (if required): parent of consumer		
Ms. Helen Sampsel, Miles City	Director	12/1/1993
Qualifications (if required): parent of consumer		
Ms. Dorothy Sowa, Great Falls	Director	12/1/1993
Qualifications (if required): advocate for elderly		
Mr. Randy Vetter, Warm Springs	Director	12/1/1993
Qualifications (if required): represents Mental Health		

VACANCIES ON BOARDS AND COUNCILS -- November 1, 1993 through January 31, 1994

Board/current position holder	Appointed by	Term end
Mental Health Planning & Advisory Council (Corrections & Human Services) cont.		
Mr. Michael Waldo, Bozeman Qualifications (if required): represents Education	Director	12/1/1993
Mr. Gary Walsh, Helena Qualifications (if required): represents Children's Services	Director	12/1/1993
Mr. Don Wetzel, Harlem Qualifications (if required): advocate for Native Americans	Director	12/1/1993
Ms. Peggy Williams, Clancy Qualifications (if required): represents Vocational Rehab.	Director	12/1/1993
Montana State Lottery Commission (Commerce)		
Mr. David Kasten, Brockway Qualifications (if required): public member	Governor	1/1/1994
Mr. Loren J. O'Toole II, Plentywood Qualifications (if required): attorney	Governor	1/1/1994
Mr. Gary Rebal, Great Falls Qualifications (if required): public member	Governor	1/1/1994
Mr. Ward Shanahan, Helena Qualifications (if required): attorney	Governor	1/1/1994
Peace Officers Standards and Training Advisory Council (Justice)		
Sheriff Lee Edmisten, Sheridan Qualifications (if required): sheriff	Governor	12/31/1993
Colonel Robert Griffith, Helena Qualifications (if required): none specified	Governor	12/20/1993

VACANCIES ON BOARDS AND COUNCILS -- November 1, 1993 through January 31, 1994

Board/current position holder	Appointed by	Term end
Peace Officers Standards and Training Advisory Council (Justice) cont.		
Mr. Robert A. Harvie, Bozeman Qualifications (if required): none specified	Governor	12/20/1993
Mr. William F. Heinecke, Belgrade Qualifications (if required): none specified	Governor	12/20/1993
Mr. Donald R. Houghton, Bozeman Qualifications (if required): none specified	Governor	12/20/1993
Chief Robert Jones, Great Falls Qualifications (if required): none specified	Governor	12/20/1993
Mr. Erwin Kent, Helena Qualifications (if required): represents Fish, Wildlife and Parks	Governor	12/31/1993
Mr. R.F. "Dick" Labbe, Deer Lodge Qualifications (if required): none specified	Governor	12/20/1993
Commissioner Mike Matthews, Billings Qualifications (if required): none specified	Governor	12/20/1993
Mr. Dennis McCave, Billings Qualifications (if required): none specified	Governor	12/20/1993
Mr. Troy W. McGee, Sr., Helena Qualifications (if required): none specified	Governor	12/20/1993
Mr. Christopher Miller, Deer Lodge Qualifications (if required): none specified	Governor	12/20/1993
Mr. Greg Noose, Bozeman Qualifications (if required): none specified	Governor	12/20/1993

VACANCIES ON BOARDS AND COUNCILS -- November 1, 1993 through January 31, 1994

Board/current position holder	Appointed by	Term end
Peace Officers Standards and Training Advisory Council (Justice) cont.		
Mr. Gary Olson, Glendive Qualifications (if required): none specified	Governor	12/20/1993
Ms. Donna "Midge" Warrington, Great Falls Qualifications (if required): none specified	Governor	12/20/1993
State Banking Code Advisory Council (Commerce)		
Mr. Ron Ahlers, Bozeman Qualifications (if required): none specified	Governor	12/3/1993
Ms. Annie M. Bartos, Helena Qualifications (if required): none specified	Governor	12/3/1993
Mr. George Bennett, Helena Qualifications (if required): none specified	Governor	12/3/1993
Mr. Charles A. Brooke, Helena Qualifications (if required): none specified	Governor	12/3/1993
Mr. Sidney K. Brubaker, Terry Qualifications (if required): none specified	Governor	12/3/1993
Mr. Gary Carlson, Helena Qualifications (if required): none specified	Governor	12/3/1993
Mr. Paul Caruso, Jr., Helena Qualifications (if required): none specified	Governor	12/3/1993
Mr. Ronald J. Haugen, Billings Qualifications (if required): none specified	Governor	12/3/1993

Board/current position holder	Appointed by	Term end
State Banking Code Advisory Council (Commerce) cont.		
Mr. Jack Hensley, Kalispell Qualifications (if required): none specified	Governor	12/3/1993
Rep. David Hoffman, Sheridan Qualifications (if required): none specified	Governor	12/3/1993
Mr. Donald W. Hutchinson, Helena Qualifications (if required): none specified	Governor	12/3/1993
Mr. Ed Lamb, Great Falls Qualifications (if required): none specified	Governor	12/3/1993
Sen. R.J. "Dick" Pinsoneault, St. Ignatius Qualifications (if required): none specified	Governor	12/3/1993
Mr. Bill Ruegamer, Billings Qualifications (if required): none specified	Governor	12/3/1993
Mr. Phil Sandquist, Bozeman Qualifications (if required): none specified	Governor	12/3/1993
Ms. Barbara J. Spilker, Helena Qualifications (if required): none specified	Governor	12/3/1993
Mr. John Sullivan, Kalispell Qualifications (if required): none specified	Governor	12/3/1993
Mr. Roger Tippy, Helena Qualifications (if required): none specified	Governor	12/3/1993