MONTANA ADMINISTRATIVE REGISTER

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing and where written comments may be submitted.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

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BEFORE THE BOARD OF ALTERNATIVE HEALTH CARE
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed amendment of rules pertaining to certification for specialty practice, conditions which require physician consultation, and the proposed adoption of new rules pertaining to continuing education	NOTICE OF PROPOSED AMENDMENT AND ADOPTION OF RULES PERTAINING TO MIDWIVES AND NATUROPATHIC PHYSICIANS

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On December 24, 1993, the Board of Alternative Health Care proposes to amend and adopt rules pertaining to midwives and naturopathic physicians.

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

"8.4.404 CERTIFICATION FOR SPECIALTY PRACTICE OF NATUROPATHIC CHILDBIRTH ATTENDANCE (1) through (e) will remain the same.

(f) Certificates of specialty practice shall expire concurrently with the licensee's naturopathic physician's license, and shall be renewed, as outlined in the general naturopathic physician's license renewal section, upon receipt of the renewal fee set by the board and submission of ~~12~~ 5 hours of board-approved continuing education credits in obstetrics in addition to the 15 continuing education credits required for naturopathic physician renewal."

Auth: Sec. 37-26-201, MCA; IMP, Sec. 37-26-304, MCA

REASON: The proposed amendment will clarify the total of 20 continuing education hours for licensees with the childbirth specialty practice certificate, through the requirement of 5 continuing education hours in obstetrics, in addition to the 15 continuing education hours required for annual renewal.

"8.4.506 CONDITIONS WHICH REQUIRE PHYSICIAN CONSULTATION OR TRANSFER OF CARE (1) If the following conditions are present in a client, the direct entry midwife shall attempt to consult a physician and/or transfer care to a physician. A certified nurse midwife or licensed direct entry midwife shall also be consulted if appropriate attempts to consult a physician have been unsuccessful. Documentation of the condition, recommendation (including continuation of care by the licensed direct-entry midwife, if appropriate) and treatment must be maintained in the client records. Conditions include, but are not limited to the following:

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

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

REASON: The proposed amendment will allow consultations with certified nurse midwives or other direct entry midwives, as some areas of the state experience difficulties in obtaining medical physician consultations. The proposed amendment will also clarify what the consultation should produce, especially a recommendation as to whether continued care by the licensee is appropriate.

3. The proposed new rules will read as follows:

"I MIDWIVES CONTINUING EDUCATION REQUIREMENTS (1) In accordance with 37-27-105(h), MCA, the Montana board of alternative health care hereby establishes requirements for the continuing education of licensed direct-entry midwives as a condition of license renewal. Training for entry into the field is not considered adequate assurance of continued competence throughout a direct-entry midwives career. Fulfillment of continuing education requirements is viewed as one necessary vehicle for maintaining standards of professional practice and for assuring the public of a high standard of midwifery services.

(2) The board/staff will not preapprove continuing education programs or sponsors. Qualifying criteria for continuing education are specified in these rules. It is the responsibility of the licensees to select quality programs that contribute to their knowledge and competence which also meet these qualifications.

(a) The continuing education program must meet the following criteria:

(i) The activity must have significant intellectual or practical content. The activity must deal primarily with substantive midwifery issues as contained in the scope of practice of direct-entry midwifery in Montana. In addition, the board may accept continuing education activities from other professional groups or academic disciplines if the licensee demonstrates that the activity is substantially related to his or her role as a midwife. A continuing education program is defined as a class, institute, lecture, conference, workshop, cassette, or video tape.

(ii) The activity itself must be conducted by an individual or group qualified by practical or academic experience.

(iii) All acceptable continuing education courses must issue a program or certificate of completion containing the following information: full name and qualifications of the presentor; title of the presentation attended; number of hours and date of each presentation attended; name of sponsor; and description of the presentation format.

(iv) Excluded are programs that solely promote a company, individual, or product (hosted programs are not approved), CPR programs (required for licensure) and programs whose subject is practice economics, except those programs specifically dealing with workers' compensation or public health.

(b) Implementation for continuing education shall be as follows:

(i) One continuing education credit shall be granted for each hour of participation in the continuing education activity excluding breaks and meals. Continuing education activities and courses taken after January 1, 1992, will be accepted by the board of alternative health care for the initial reporting period ending April 30, 1994. Thereafter, a licensed direct-entry midwife must earn at least 14 continuing education credits within the 12 months prior to renewal on April 30 of each year. A maximum of two credits by cassette or video tape will be allowed.

(ii) No continuing education is required for direct-entry midwives renewing their license for the first time.

(iii) All licensed direct-entry midwives must submit to the board, on the appropriate year's license renewal, a report summarizing their obtained continuing education credits. The board will review these reports prior to October 30 of that same year and notify the licensee regarding his/her noncompliance. Licensees found to be in noncompliance with the requirement will be asked to submit to the board for approval a plan to complete the continuing education requirements for licensure. Prior to the next consecutive year's license renewal deadline, those licensees who were found to be in noncompliance will be formally reviewed to determine their eligibility for license renewal. Licensees, who at this time have not complied with continuing education requirements, will not be granted license renewal until they have fulfilled the board-approved plan to complete the requirements. Those not receiving notice from the board regarding their continuing education should assume satisfactory compliance. Notices will be considered properly mailed when addressed to the last known address on file in the board office. No continuing education used to complete delinquent continuing education plan requirements for licensure may be used to meet the continuing education requirements for the next continuing education reporting period.

(iv) If a licensee is unable to acquire sufficient continuing education credits to meet the requirements, he or she may request a waiver. All requests for waiver will be considered by the board of alternative health care and evaluated on an individual basis.

(v) It is the responsibility of the licensee to establish and maintain detailed records of continuing education compliance (in the form of programs and certificates of attendance) for a period of two years following submission of a continuing education report.

(vi) From the continuing education reports submitted each year, the board will randomly audit 5% of the reports and request certificates of completion for continuing education credits reported."

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

REASON: The proposed new rule will set forth the board's continuing education program for direct-entry midwives and inform licensees of the continuing education procedures and requirements for annual license renewal.

"II NATUROPATHIC PHYSICIAN CONTINUING EDUCATION REQUIREMENTS (1) In accordance with 37-26-201(9), MCA, the Montana board of alternative health care hereby establishes requirements for the continuing education of licensed naturopaths as a condition of license renewal. Training for entry into the field is not considered adequate assurance of continued competence throughout a naturopath's career. Fulfillment of continuing education requirements is viewed as one necessary vehicle for maintaining standards of professional practice and for assuring the public of a high standard of naturopathic services.

(2) The board/staff will not preapprove continuing education programs or sponsors. Qualifying criteria for continuing education are specified in these rules. It is the responsibility of the licensees to select quality programs that contribute to their knowledge and competence which also meet these qualifications.

(a) The continuing education program must meet the following criteria:

(i) The activity must have significant intellectual or practical content. The activity must deal primarily with substantive naturopathic issues as contained in the scope of practice of naturopathy in Montana. In addition, the board may accept continuing education activities from other professional groups or academic disciplines if the licensee demonstrates that the activity is substantially related to his or her role as a naturopath. A continuing education program is defined as a class, institute, lecture, conference, workshop, cassette, or video tape.

(ii) The activity itself must be conducted by an individual or group qualified by practical or academic experience.

(iii) All acceptable continuing education courses must issue a program or certificate of completion containing the following information: full name and qualifications of the presentor; title of the presentation attended; number of hours and date of each presentation attended; name of sponsor; and description of the presentation format.

(iv) Excluded are programs that promote a company, individual, or product (hosted programs are not approved), and programs whose subject is practice economics except those programs specifically dealing with workers' compensation or public health.

(b) Implementation for continuing education shall be as follows:

(i) One continuing education credit shall be granted for each hour of participation in the continuing education activity excluding breaks and meals. Continuing education activities and courses taken after January 1, 1992, will be accepted by the board of alternative health care for the initial reporting period April 30, 1994. Thereafter, a licensed naturopath must earn at least 15 continuing education credits within the 12 months prior to renewal on April 30 of each year. (Five must be in pharmacy, five additional in obstetrics if licensee has childbirth specialty certificate.)

A maximum of two credits by cassette or video tape will be allowed.

(ii) No continuing education is required for naturopaths renewing their license for the first time.

(iii) All licensed naturopaths must submit to the board, on the appropriate year's license renewal, a report summarizing their obtained continuing education credits. The board will review these reports prior to October 30 of that same year and notify the licensee regarding his/her noncompliance. Licensees found to be in noncompliance with the requirement will be asked to submit to the board for approval a plan to complete the continuing education requirements for licensure. Prior to the next consecutive year's license renewal deadline, those licensees who were found to be in noncompliance will be formally reviewed to determine their eligibility for license renewal. Licensees, who at this time have not complied with continuing education requirements, will not be granted license renewal until they have fulfilled the board-approved plan to complete the requirements. Those not receiving notice from the board regarding their continuing education should assume satisfactory compliance. Notices will be considered properly mailed when addressed to the last known address on file in the board office. No continuing education used to complete delinquent continuing education plan requirements for licensure may be used to meet the continuing education requirements for the next continuing education reporting period.

(iv) All licensees holding a certification for specialty practice of naturopathic childbirth attendance must complete an additional 5 hours of continuing education in obstetrics annually to continue certification, for a total of 20 hours.

(v) If a licensee is unable to acquire sufficient continuing education credits to meet the requirements, he or she may request a waiver. All requests for waiver will be considered by the board of alternative health care and evaluated on an individual basis.

(vi) It is the responsibility of the licensee to establish and maintain detailed records of continuing education compliance (in the form of programs and certificates of attendance) for a period of two years following submission of a continuing education report.

(vii) From the continuing education reports submitted each year, the board will randomly audit 5% of the reports and request certificates of completion for continuing education credits reported."

Auth: Sec. 37-26-201, MCA; IMP, Sec. 37-26-201, MCA

REASON: The proposed new rule will set forth the Board's continuing education program for naturopathic physicians and inform licensees of the continuing education procedures and requirements for annual license renewal.

4. Interested persons may submit their data, views or arguments concerning the proposed amendments and adoptions in

writing to the Board of Alternative Health Care, 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., December 22, 1993.

5. If a person who is directly affected by the proposed amendments and adoptions 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 Alternative Health Care, 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., December 22, 1993.

6. If the Board receives requests for a public hearing on the proposed amendments and adoptions from either 10 percent or 25, whichever is less, of those persons who are directly affected by the proposed amendments and adoptions, 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 4 based on the 37 licensees in Montana.

BOARD OF ALTERNATIVE HEALTH CARE
MICHAEL BERGKAMP, CHAIRMAN

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

_____
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, November 15, 1993.

BEFORE THE BOARD OF REALTY REGULATION
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 8.58.419 GROUNDS FOR LICENSE DISCIPLINE - GENERAL PROVISIONS - UNPROFESSIONAL CONDUCT

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On December 24, 1993, the Board of Realty Regulation proposes to amend the above-stated rule.

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

"8.58.419 GROUNDS FOR LICENSE DISCIPLINE - GENERAL PROVISIONS - UNPROFESSIONAL CONDUCT (1) through (3)(m) will remain the same.

(n) A licensee shall disclose the fact that he/she is a licensee when the licensee first seeks information about any property, whether for the licensee's own account or as agent for another.

(n) through (af) will remain the same but will be renumbered (o) through (ag).

(4) and (5) will remain the same."

Auth: Sec. 37-1-131, 37-1-136, 37-51-203, MCA; IMP, Sec. 37-51-201, 37-51-202, 37-51-321, MCA

REASON: This amendment is being proposed to clarify that licensees must disclose the licensing status when making inquiries regarding property for sale, lease, etc. The Board believes the public is potentially harmed when real estate licensees negotiate for property without disclosing their status of licensees thus putting the other party on notice that the licensee has a special knowledge of real estate transactions.

3. Interested persons may submit their data, views or arguments concerning the proposed amendment in writing to the Board of Realty Regulation, 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., December 22, 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 Realty Regulation, 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., December 22, 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 520 based on the 5200 licensees in Montana.

BOARD OF REALTY REGULATION
JACK K. MOORE, CHAIRMAN

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

Annie M Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, November 15, 1993.

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

In the matter of the amendment of rule 16.28.1005 containing TB control requirements for schools and day care facilities	NOTICE OF PROPOSED AMENDMENT OF RULE NO PUBLIC HEARING CONTEMPLATED (Tuberculosis)

To: All Interested Persons

1. On December 27, 1993, the department intends to amend the above-captioned rule concerning measures required to prevent the spread of tuberculosis in schools and day care facilities.

2. The rule, as proposed to be amended, appears as follows (new material is underlined; material to be deleted is interlined):

16.28.1005 EMPLOYEE OF SCHOOL -- DAY CARE FACILITY CARE PROVIDER (1) With the exceptions specified in (2) and (3) below:

(a) No public or private school, as defined in ~~20-5-402, MCA~~ (10) below, or school cooperative may initially employ or continue to employ a person unless that person has provided the school, the cooperative, or the district to which the school belongs with:

(i)-(ii) Remain the same.

(b) Remains the same.

(2)-(9) Remain the same.

(10) For purposes of this rule:

(a) the term "school" includes both a preschool, as defined in 20-5-402, MCA, and a place or institution for the teaching of individuals, the curriculum of which is comprised of the work of any combination of kindergarten through grade 12, and does not include a postsecondary school as defined in 20-5-402, MCA;

(b) the term "employ" includes contracting with either an individual or a business or other entity for the services of the entity's employees.

(10) Remains the same but is renumbered (11).

AUTH: 50-1-202, 50-17-103, 52-2-735, MCA
IMP: 50-1-202, 50-17-103, 52-2-735, MCA

3. The proposed amendments are necessary to correct an oversight that occurred when this rule was amended in December, 1992, to conform the reference to "school" in the rule to changes made by the Montana Legislature in the "school" definition in the school immunization statutes. As a consequence, postsecondary schools became unintentionally subject to the TB control requirements. Since the type of close, long-term exposure

conducive of transmission of TB is common to preschools and elementary and secondary schools, but uncommon in postsecondary schools, and since children, rather than the adults attending postsecondary schools, are the most vulnerable to TB, postsecondary schools should not be subject to the rule.

In addition, the definition of "employ" is proposed to be included in order to eliminate confusion about whether people hired through a firm (e.g. school bus drivers) or individual independent contractors were covered by the rule. The clarification is necessary because school children face an equivalent risk of infection from such people as from teachers and other individuals more easily understood to be "employees".

4. Interested persons may submit their written data, views, or arguments concerning this proposed rule amendment to Ellie Parker, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620, no later than December 23, 1993.

5. If a party who is directly affected by the proposed amendment wishes to express his or her data, views, and arguments orally or in writing at a public hearing, s/he must make written request for a hearing and submit this request along with any written comments s/he has to Ellie Parker, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620, no later than December 23, 1993.

6. If the department receives a request for a public hearing on the proposed amendments, from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendments; from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not fewer 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 in excess of 25, based on the large number of postsecondary school employees within Montana.

ROBERT J. ROBINSON, Director

Certified to the Secretary of State November 15,1993 .

Reviewed by:

Eleanor Parker, DHES Attorney

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

In the matter of the adoption of new rules I through IX and the repeal of rules 16.20.701 through 16.20.705 regarding implementation of the Water Quality Act's nondegradation policy	NOTICE OF PUBLIC HEARING FOR PROPOSED ADOPTION OF NEW RULES AND REPEAL OF EXISTING RULES (Water Quality Nondegradation)

To: All interested Persons

1. On December 17, 1993, at 8:00 a.m., the board will hold a public hearing in Room C209 of the Cogswell Building, 1400 Broadway, Helena, Montana to consider the adoption of new rules and the repeal of existing rules, as referenced above, implementing the state Water Quality Act's nondegradation policy.

2. The rules, as proposed to be adopted, appear as follows:

RULE I PURPOSE (1) The purpose of this subchapter is to prohibit degradation of high quality state waters, except in certain limited circumstances, by implementing the nondegradation policy set forth in 75-5-303, MCA, and providing criteria and procedures for:

(a) determining which activities will degrade high quality waters;

(b) department review and decision making;

(c) determining the required water quality protection practices if degradation is authorized; and

(d) public review and appeal of department decisions.

AUTH: 75-5-301, 75-5-303, MCA; IMP: 75-5-301, MCA

RULE II DEFINITIONS Unless the context clearly states otherwise, the following definitions, in addition to those in 75-5-103, MCA, apply throughout this subchapter (Note: 75-5-103, MCA, includes definitions for "degradation", "existing uses", "high quality waters", and "parameter"):

(1) "Bioconcentrating parameters" means the parameters listed in department circular WQB-7 which have a bioconcentration factor greater than 300.

(2) "Carcinogenic parameters" means the parameters listed as carcinogens in department circular WQB-7.

(3) "Detectable" means the ability to detect a change in the value of a parameter in the receiving water with a 99% level of confidence that the change is greater than zero, based on the procedures which will yield the lowest detection level,

either those established in 40 CFR Part 136, as it existed on July 1, 1992, or procedures approved by the department.

(4) "Existing water quality" means the quality of the receiving water, including chemical, physical, and biological conditions immediately prior to commencement of the proposed activity or that which can be adequately documented to have existed on or after July 1, 1971, whichever is the highest quality.

(5) "Ground water" means water occupying the voids within a geologic stratum and within the zone of saturation.

(6) "Harmful parameters" means the parameters listed as harmful in department circular WQB-7.

(7) "Highest statutory and regulatory requirements" means all applicable effluent limitations, water quality standards, permit conditions, water quality protection practices, or reasonable land, soil, and water conservation practices. It also means compliance schedules or corrective action plans for the protection of water issued under order of a court, department, or board of competent jurisdiction.

(8) "High quality waters" is defined in 75-5-103(9) and does not include class I surface waters (ARM 16.20.623) or class IV ground waters (ARM 16.20.1002(d)).

(9) "Load" means the mass of a parameter per unit of time.

(10 "Montana pollutant discharge elimination system" or "MPDES" means the permit system developed by the state of Montana for controlling the discharge of pollutants from point sources into state waters, pursuant to ARM Title 16, chapter 20, subchapter 13.

(11) "Montana ground water pollution control system" or "MGWPCS" means the permit system developed by the state of Montana for controlling the discharge of pollutants into state ground water, pursuant to ARM Title 16, chapter 20, subchapter 10.

(12) "Nutrients" means total inorganic phosphorus and total inorganic nitrogen.

(13) "New or increased source" means an activity resulting in a change of existing water quality occurring on or after April 29, 1993. The term does not include the following:

(a) sources from which discharges to state waters have commenced or increased on or after April 29, 1993, provided the discharge is in compliance with the conditions of, and does not exceed the limits established under or determined from, a permit or approval issued by the department prior to April 29, 1993;

(b) nonpoint sources discharging prior to April 29, 1993, where reasonable land, soil, and water conservation practices have been implemented and the discharge does not impact existing or anticipated uses;

(c) withdrawals of water pursuant to a valid water right existing prior to April 29, 1993; and

(d) activities or categories of activities causing nonsignificant changes in existing water quality pursuant to [Rule VII], [Rule VIII], or 75-5-301(5)(c), MCA.

(14) "Nonpoint source" means a diffuse source of pollutants resulting from the activities of man over a relatively large area, the effects of which normally must be addressed or controlled by a management or conservation practice.

(15) "Outstanding resource waters" or "ORW" means all state waters that are located in national parks, national wilderness or primitive areas. ORW also means state waters that have been identified as possessing outstanding ecological, recreational or domestic water supply significance and subsequently have been classified as an ORW by the board.

(16) "Permit" means either an MPDES permit or an MGWPCS permit.

(17) "Surface waters" means any water on the earth's surface including, but not limited to, streams, lakes, ponds, and reservoirs and irrigation drainage systems discharging directly into a stream, lake, pond, reservoir or other water on the earth's surface. Water bodies used solely for treating, transporting or impounding pollutants are not considered surface water for the purposes of this subchapter.

(18) "Toxic parameters" means the parameters listed as toxins in department circular WQB-7 and those parameters for which there are specific numerical limits in the surface water quality standards (ARM 16.20.601 et seq) and the ground water quality standards (ARM 16.20.1001 et seq).

(19)(a) The board hereby adopts and incorporates by reference:

(i) Department circular WQB-7, entitled "Montana Numerical Water Quality Standards" (1993 edition), which establishes limits for toxic, carcinogenic, bioconcentrating, and other harmful parameters in water; and

(ii) 40 CFR Part 136, as they existed on July, 1992, which contain guidelines establishing test procedures for the analysis of pollutants.

(b) Copies of this material may be obtained from the Water Quality Bureau, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620.

AUTH: 75-5-301, 75-5-303, MCA; IMP: 75-5-303, MCA

RULE III NONDEGRADATION POLICY - APPLICABILITY AND LIMITATION (1) The provisions of this subchapter apply to any activity of man resulting in a new or increased source which may cause degradation.

(2) Department review of proposals for new or increased sources will determine the level of protection required for the impacted water as follows:

(a) For all state waters, existing and anticipated uses and the water quality necessary to protect those uses must be maintained and protected.

(b) For high quality waters, degradation may be allowed only according to the procedures in [RULE VI]. These rules apply to any activity that may cause degradation of high quality waters, for any parameter, unless the changes in existing water quality resulting from the activity are deter-

mined to be nonsignificant under [Rules VII or VIII]. If degradation of high quality waters is allowed, the department will assure that within the United States Geological Survey Hydrologic Unit upstream of the proposed activity, there have been achieved the highest statutory and regulatory requirements for all point and nonpoint sources.

(c) For outstanding resource waters, no degradation is allowed.

(3) The department will comply with the provisions of the Montana Environmental Policy Act in the implementation of this subchapter.

AUTH: 75-5-301, 75-5-303, MCA; IMP: 75-5-303, MCA

RULE IV INFORMATIONAL REQUIREMENTS FOR NONDEGRADATION SIGNIFICANCE/AUTHORIZATION REVIEW (1) Any person proposing an activity which may cause degradation is responsible for compliance with 75-5-303, MCA, and may either determine for themselves that the proposed activity will not cause significant changes in water quality, after measuring the activity against the standards contained in [Rules VII or VIII], or submit an application to the department, pursuant to (2) below, for the department to make the determination.

(2) Any person proposing an activity or class of activities which may cause degradation may complete a department "Application for Determination of Significance". Information required on the application includes but is not limited to the following:

(a) quantity and concentration of the parameters expected to change as a result of the proposed activity;

(b) length of time that the water quality is expected to be changed;

(c) character of the discharge;

(d) an analysis of the existing water quality of the receiving water, and any other downstream or downgradient waters which may be impacted, including natural variations and fluctuations in the parameter(s) which may change as a result of the proposed activity;

(e) proposed water quality protection practices.

(3) The department will review the application and make a determination whether the proposed change in water quality is nonsignificant according to [RULES VII or VIII] within 60 days of receipt of the completed application.

(4) Whenever the department determines that a proposed activity will not result in degradation, the department may require monitoring to verify compliance with this subchapter and 75-5-303, MCA.

(5) Whenever the department determines that a proposed activity will result in degradation, the applicant shall complete an application to degrade state waters if the applicant decides to proceed with the proposed activity as planned. The department will not begin review of the application until the required fee has been paid to the department.

(6) In order to provide the information that is required for the department to determine whether or not degradation is

necessary because there are no economically, environmentally, and technologically feasible alternatives to the proposed activity that would result in no degradation, an application to degrade state waters shall include, but not be limited to, the following, when applicable:

(a) a complete description of the proposed activity;

(b) the proposed effluent or discharge limitation(s);

(c) a statement of reasons for the proposed effluent or discharge limitation(s);

(d) an analysis of alternatives to the proposed activity, consistent with accepted engineering principles, demonstrating there are no economically, environmentally, and technologically feasible alternatives that are less-degrading or non-degrading. The analysis must be limited to only those alternatives that would accomplish the proposed activity's purpose;

(e) an analysis of the existing water quality of the receiving water and any other downstream or downgradient waters which may be impacted, including natural variations and fluctuations in the water quality parameter(s) for which an authorization to degrade is requested;

(f) the concentration, likely environmental fate, biological effects, and load for each parameter in the discharge likely to degrade existing water quality;

(g) the distribution of existing flows and their expected frequency;

(h) an analysis demonstrating the expected surface or ground water quality for all alternatives considered in (d) above;

(i) an analysis of the ground water flow system, including water-bearing characteristics of subsurface materials, rate and direction of ground water flow, and an evaluation of surface and ground water interaction;

(j) data concerning cumulative water quality effects of existing and authorized activities;

(k) a proposed monitoring and reporting plan that will determine the actual water quality changes.

(7)(a) To determine whether or not the proposed activity will result in important economic or social development that exceeds the benefit to society of maintaining existing high-quality waters and exceeds the costs to society of allowing degradation of high-quality waters, the department shall require the following:

(i) an analysis demonstrating the extent to which the proposed activity producing lower water quality would result in important economic or social development; and

(ii) an analysis demonstrating the present and future costs to society caused by the proposed lowered water quality.

(b) Factors which may be considered in the above analyses include, but are not limited to, changes, during and after the activity, in any of the categories listed below:

(i) employment;

(ii) production;

(iii) fiscal balance of the state or local government;

(iv) effects on public health or environment;

(v) housing;
(vi) resource utilization and depletion;
(vii) intrinsic values;
(viii) opportunity values; or
(ix) social or cultural values.

(8) To determine whether or not existing and anticipated uses will be fully protected, the department shall require the following information:

(a) a showing that the change will not result in violations of Montana water quality standards outside of a mixing zone; and

(b) an analysis of the impacts of the proposed water quality changes on the existing and anticipated uses of the impacted state water.

(9) To demonstrate the least degrading water quality protection practices will be fully implemented prior to, during, and after the proposed activity, the applicant shall provide to the department a complete description and schedule for implementation of the water quality protection practices associated with the proposed activity and a viable plan showing the ability to implement the water quality protection practices.

(10) Any application submitted pursuant to this subchapter must comply with the signature and certification requirements of ARM 16.20.1311.

(11) The department shall notify the applicant in writing within 60 days after receipt of an application to degrade state waters that the application does or does not contain all the information necessary for the department's nondegradation review. If the information from the supplemental submittal and any subsequent supplemental submittal is inadequate, the department shall notify the applicant in writing, within 30 days after receipt of the supplemental submittal, what additional information must be submitted. In any review subsequent to the first, the department may not make a determination of incompleteness on the basis of a deficiency which could have been noted in the first review.

(12) The board hereby adopts and incorporates by reference ARM 16.20.1311, which sets forth signature and certification requirements for MPDES permit applications. A copy of ARM 16.20.1311 may be obtained from the Water Quality Bureau, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, MT 59620.

AUTH: 75-5-301, 75-5-303, MCA; IMP: 75-5-303, MCA

RULE V DEPARTMENT PROCEDURES FOR NONDEGRADATION REVIEW

(1) Upon a determination by the department that an application to degrade state waters required under this rule is complete, the department will prepare a preliminary decision either authorizing degradation or denying the application to degrade according to the procedures in [Rule VI].

(2) An application to degrade state waters will be denied unless the applicant has affirmatively demonstrated and the department finds, based on a preponderance of evidence, the

proposed activity to be in full compliance with 75-5-303, MCA, using the standards set out in (3)-(6) below. The department shall consider an analysis by the applicant and any substantive relevant information either submitted by the public or otherwise available.

(3) To determine that degradation is necessary because there are no economically, environmentally, and technologically feasible alternatives to the proposed activity that would result in no degradation, the department shall consider the following:

(a) In determining economic feasibility:

(i) any non-degrading or less-degrading alternative water quality protection practices which are less than 110% of the present worth of capital and operating costs of the water quality protection practices proposed by the applicant will be considered economically feasible without further assessment by the department;

(ii) for any non-degrading or less-degrading alternative water quality protection practices which are equal to or exceed 110% of the present worth of capital and operating costs of the water quality protection practices proposed by the applicant, the department will determine the economic feasibility of the alternative water quality protection practices by considering any relevant factors.

(b) In order to determine the environmental feasibility of an alternative, the department will consider whether such alternative practices are available and consistent with the protection of the environment and public health.

(c) In order to determine technological feasibility of an alternative, the department will consider whether such alternative practices are available and consistent with accepted engineering principles.

(4)(a) To determine that the proposed activity will result in important economic or social development that exceeds the benefit to society of maintaining existing high-quality waters and exceeds the costs to society of allowing degradation of high-quality waters, the department shall consider the following:

(i) an analysis of the extent to which the proposed activity would result in important economic or social development, including an analysis of the costs and benefits to society.

(ii) an analysis of the loss or costs to society resulting from the lower water quality.

(b) Factors which may be considered in the analyses in (a) above include, but are not limited to changes in any of the categories listed below:

(i) employment;

(ii) production;

(iii) fiscal balance of the state or local government;

(iv) effects on public health or environment;

(v) housing;

(vi) resource utilization and depletion;

(vii) intrinsic values;

(viii) opportunity values; or
(ix) social and cultural values.
(5) To determine that existing and anticipated uses of the receiving waters will be fully protected and that water quality standards will not be violated as a result of the proposed degradation, the department shall consider all available information.
(6) In order to authorize degradation under this rule, the department must determine that the least degrading water quality protection practices determined by the department to be economically, environmentally, and technologically feasible will be implemented prior to, during, and after the proposed activity until the degradation no longer occurs.
(7) The department shall make its preliminary decision either authorizing degradation or denying the application to degrade within 180 days after receipt of a complete application from the applicant. This time period may be extended upon agreement of the applicant or whenever an environmental impact statement must be prepared pursuant to Title 75, chapter 1, parts 1 and 2, MCA.
(8) To the maximum extent possible, the department will coordinate any application to degrade state waters with the permitting and approval requirements of other laws or programs administered by the department or by any other local, state, or federal agency.
AUTH: 75-5-301, 75-5-303, MCA; IMP: 75-5-303, MCA

RULE VI DEPARTMENT PROCEDURES FOR ISSUING PRELIMINARY AND FINAL DECISIONS REGARDING AUTHORIZATIONS TO DEGRADE (1) A preliminary decision to deny or authorize degradation must be accompanied by a statement of basis for the decision and, if applicable, a detailed statement of conditions imposed upon any authorization to degrade.
(2) The preliminary decision must include the following information, if applicable:
(a) a description of the proposed activity;
(b) the level of protection required, e.g. for high-quality waters or ORW;
(c) a determination that degradation is or is not necessary based on the availability of economically, environmentally and technologically feasible alternatives that will prevent degradation;
(d) a determination of economic or social importance;
(e) a determination that all existing and anticipated uses will or will not be fully protected;
(f) the amount of allowed degradation;
(g) a description of the required water quality protection practices;
(h) a description of all monitoring and reporting requirements; and
(i) a description of any mixing zone the department proposes to allow.
(3) A statement of basis for the decision must be prepared for every preliminary decision. In general, the

statement of basis must briefly set forth the principal facts and significant factual, legal, methodological or policy questions considered in preparing the authorization. The statement of basis must include, when applicable:

(a) a description of the proposed activity which is the subject of the authorization;

(b) the type and quantity of degradation which will result if the proposed activity is authorized;

(c) a summary of the basis for the conditions imposed in any preliminary decision, including references to applicable statutory or regulatory provisions;

(d) a summary and analysis of alternatives to the proposed activity;

(e) a description of the procedures for reaching a final decision on the draft authorization including:

(i) the beginning and ending dates of the comment period and the address where comments will be received;

(ii) procedures for requesting a hearing; and

(iii) any other procedures by which the public may participate in the final decision;

(f) name and telephone number of a person to contact for additional information; and

(g) reasons supporting the preliminary decision.

(4) The preliminary decision, accompanying statement of basis, and, if applicable, the statement of conditions imposed, must be publicly noticed and made available for public comment for at least 30 days but not more than 60 days prior to a final decision. In providing public notice, the department shall comply with the following:

(a) Procedures for public notice set forth in ARM 16.20.1334; and

(b) Procedures for the distribution of information set forth in ARM 16.20.1021.

(5) During the public comment period any interested person may submit written comments on the preliminary decision and may request a public hearing. A request for a public hearing must be in writing and must state the nature of the issues proposed to be raised in the hearing. The department shall hold a hearing if it determines that there may be a significant degree of public interest in the preliminary decision. Any public hearing conducted under this subsection is not a contested case hearing under the provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, MCA.

(6) Within 60 days after the close of the public comment period, the department shall issue a final decision accompanied by a statement of basis for the decision and, if applicable, a statement of conditions. The final decision and statement of basis will be prepared according to the requirements of (2) and (3) of this rule. In addition, the statement of basis for a final decision must include the following:

(a) which provisions, if any, of the preliminary decision have been changed in the final decision and the reasons for the change; and

(b) a description and response to all substantive

comments on the preliminary decision raised during the public comment period or during any hearing.

(7) Upon issuing a final decision, the department shall notify the applicant and each person who has submitted written comments or requested notice of that decision. The notice must include reference to the procedures for appealing the decision. The final decision is effective upon issuance.

(8) The board hereby adopts and incorporates by reference ARM 16.20.1334, which sets forth procedures for issuing public notices of MPDES permit applications and hearings, and ARM 16.20.1021 which sets forth requirements for distribution and copying of public notices and permit applications. Copies of ARM 16.20.1334 and 16.20.1021 may be obtained from the Water Quality Bureau, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620. AUTH: 75-5-301, 75-5-303, MCA; IMP: 75-5-303, MCA

RULE VII CRITERIA FOR DETERMINING NONSIGNIFICANT CHANGES IN WATER QUALITY (1) The following criteria will be used to determine whether certain activities or classes of activities will result in nonsignificant changes in existing water quality due to their low potential to affect human health or the environment. These criteria consider the quantity and strength of the pollutant, the length of time the changes will occur, and the character of the pollutant. Except as provided in (2) below, changes in existing surface or ground water quality resulting from the activities that meet all the criteria listed below are nonsignificant, and are not required to undergo review under 75-5-303, MCA:

(a) Activities that would increase or decrease the mean annual flow by less than 15%;

(b) Discharges containing carcinogenic or parameters with a bioconcentration factor greater than 300 at concentrations less than or equal to the concentrations of those parameters in the receiving water;

(c) Discharges containing toxic parameters or total inorganic phosphorus, except as specified in (d) and (e) below, which will not cause detectable increases from the existing water quality outside of a mixing zone designated by the department;

(d) Changes in the concentration of nitrogen in ground water which will not impair existing or anticipated beneficial uses, where water quality protection practices approved by the department have been fully implemented, and where the sum of the resulting concentrations of nitrate, nitrite, and ammonia, all measured as nitrogen, outside of any applicable mixing zone designated by the department, will not exceed 2.50 milligrams per liter, as long as such changes will not result in a detectable change in the nitrogen concentration in any perennial surface water;

(e) Changes in concentration of total inorganic phosphorus in ground water if water quality protection practices approved by the department have been fully implemented and if an evaluation of the phosphorus adsorptive capacity of the

soils in the area of the activity indicates that phosphorus will be removed for a period of fifty years prior to a discharge to any surface waters;

(f) Changes in the quality of water for any harmful parameter for which water quality standards have been adopted other than nitrogen, phosphorous, and carcinogenic, bioconcentrating, or toxic parameters, in either surface or ground water, if the changes outside of a mixing zone designated by the department are less than 10% of the applicable standard and the existing water quality level is less than 40% of the standard;

(g) Changes in the quality of water for any parameter for which there are only narrative water quality standards if the changes will not have a measurable effect on any existing or anticipated use or cause measurable changes in aquatic life or ecological integrity.

(2) Notwithstanding compliance with the criteria of (1) above, the department may determine that the change in water quality resulting from an activity which meets the criteria in (1) above is degradation based upon the following:

(a) cumulative impacts or synergistic effects;

(b) secondary byproducts of decomposition or chemical transformation;

(c) substantive information derived from public input;

(d) changes in flow;

(e) changes in the loading of parameters;

(f) new information regarding the effects of a parameter; or

(g) any other information deemed relevant by the department and that relates to the criteria in (1) above.

(3) The department may determine that a change in water quality resulting from an activity or category of activities is not significant based on information submitted by an applicant that demonstrates conformance with the guidance found in 75-5-301(5)(c), MCA.

AUTH: 75-5-301, 75-5-303, MCA; IMP: 75-5-303, MCA

RULE VIII CATEGORIES OF ACTIVITIES THAT CAUSE NONSIGNIFICANT CHANGES IN WATER QUALITY (1) The following categories or classes of activities have been determined by the department to cause changes in water quality that are nonsignificant due to their low potential for harm to human health or the environment and their conformance with the guidance found in 75-5-301(5)(c), MCA:

(a) Activities which are nonpoint sources of pollution on land where reasonable land, soil, and water conservation practices are applied and existing and anticipated beneficial uses will be fully protected;

(b) Use of agricultural chemicals in accordance with a specific agrichemical management plan promulgated under 80-15-212, MCA, if applicable, or in accordance with a U.S. EPA approved label and where existing and anticipated uses will be fully protected;

(c) Changes in existing water quality resulting from an

emergency or remedial activity that is designed to protect public health or the environment and is approved, authorized, or required by the department;

(d) Use of drilling fluids, sealants, additives, disinfectants and rehabilitation chemicals in water well or monitoring well drilling, development, or abandonment, if used according to department-approved water quality protection practices (ARM 16.21.601, et seq. and ARM 16.21.801, et seq.);

(e) Short-term changes in existing water quality which last less than 60 days resulting from activities authorized by the department pursuant to 75-5-308, MCA;

(f) Domestic sewage treatment systems which discharge to ground water and which are designed, constructed, and operated in accordance with applicable department standards (ARM 16.16.302, 16.16.304, and/or 16.20.401); and where the resulting concentration, outside of any applicable mixing zones designated by the department, will not exceed 2.50 mg/l (nitrogen compounds measured as nitrogen) as long as the changes caused by such systems will not result in a detectable change in the nitrogen concentration in any perennial surface water;

(g) Domestic sewage treatment systems in areas in which the existing nitrogen concentration in ground water is over 2.50 mg/l; which discharge to ground water an effluent with nitrogen concentrations no greater than 30 mg/l or at least 50% nitrogen removal from the raw state; and where the resulting concentration, outside of any applicable mixing zone designated by the department, will not exceed 5.00 mg/l (nitrogen compounds measured as nitrogen), as long as the changes caused by such systems will not result in a detectable change in the nitrogen concentration in any perennial surface water;

(h) Land application of animal waste, domestic septage, or waste from public sewage treatment systems or other wastes containing nutrients where wastes are land applied in a beneficial manner, application rates are based on a complete agronomic uptake of applied nutrients and other parameters will not cause degradation;

(i) Incidental leakage of water or wastewater from sources utilizing best practicable control technology designed and constructed in accordance with ARM 16.20.401-405;

(j) Discharges of water from monitoring well or water well tests, hydrostatic pressure and leakage tests, or wastewater from the disinfection or flushing of water mains and storage reservoirs conducted in accordance with department approved water quality protection practices;

(k) Oil and gas drilling activities performed in accordance with ARM 36.22.101, et seq.;

(l) Short-term changes in existing water quality resulting from ordinary and everyday activities of humans or domesticated animals, including but not limited to recreational activities such as boating, hiking, fishing, wading, swimming and camping, fording of streams or other bodies of water by vehicular or other means, and drinking from or crossing of streams or other bodies of water by livestock and other

domesticated animals;

(m) Coal and uranium prospecting performed in accordance with ARM 26.4.1001, et seq.

(2) No application need be made to the department for a determination of whether a water quality change is nonsignificant if the activity causing the change is listed in (1) above. AUTH: 75-5-301, 75-5-303, MCA; IMP: 75-5-303, MCA

RULE IX IMPLEMENTATION OF WATER QUALITY PROTECTION PRACTICES

(1) The owner of a new or increased source for which no water quality protection practices are approved by the department must design and submit a viable plan for implementation of the necessary water quality protection practices for department review, modification, and approval prior to implementation. AUTH: 75-5-301, 75-5-303, MCA; IMP: 75-5-303, MCA

3. Rules 16.20.701 through 16.20.705, which can be found on pages 16-973 through 16-979 of the Administrative Rules of Montana, are proposed to be repealed because they are being completely replaced by the proposed new rules contained in this notice.

AUTH: 75-5-201, MCA
IMP: 75-5-303, 75-5-401

4. The proposed rules establish criteria and procedures for decisions by the department regarding implementation of the state's nondegradation policy and are undertaken in response to actions taken by the 1993 Legislature (Senate Bill 401). The rules contain guidance for determining which activities result in nonsignificant changes in water quality such that those activities will not be subject to the requirements established under 75-5-303, MCA. In addition, the proposed rules establish procedures and criteria for department review and decision-making relating to authorizations to degrade state waters, including a determination of important economic and social development and provision of procedures for appealing agency decisions.

These proposed rules are necessary to respond to action taken by the 1993 Legislature, which authorized rules implementing the 1993 session's amendments to the nondegradation policy and expressly required the adoption of objective criteria and guidelines for agency actions either granting or denying permission to degrade state waters.

5. Interested persons may submit their data, views, or arguments concerning the proposed rules, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Yolanda Fitzsimmons, Board of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620, no later than December 22, 1993.

6. 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 November 15, 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 16.20.603, 616-624, and 641, concerning surface water quality standards	))))	NOTICE OF PUBLIC HEARING FOR PROPOSED AMENDMENT OF RULES 16.20.603, 16.20.616-624, AND 16.20.641

(Water Quality)

To: All Interested Persons

1. On December 17, 1993, at 8:00 a.m, or as soon thereafter as it may be heard, the board will hold a public hearing in Room C209 of the Cogswell Building, 1400 Broadway, Helena, Montana, to consider the amendment of the above-captioned rules.

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

16.20.603 DEFINITIONS In this subchapter the following terms have the meanings indicated below and are supplemental to the definitions given in section 75-5-103, MCA:

(1) Remains the same.

(2) "Bioconcentrating parameters" means the parameters listed in department circular WQB-7 which have a bioconcentration factor greater than 300.

(3) "Carcinogenic parameters" means the parameters categorized as carcinogens in department circular WQB-7.

(2)-(9) Remain the same but are renumbered (4)-(11).

~~(10) "Gold Book levels" means the freshwater acute or chronic levels or the levels for water and fish ingestion that are listed in Update Number Two (5/1/87) of Quality Criteria for Water 1986 (EPA-440/5-86-001). Gold Book levels are used throughout this subchapter to determine the maximum allowable concentrations of toxic or deleterious substances.~~

(12) "Harmful parameters" means parameters listed as harmful in department circular WQB-7.

(11)-(24) Remain the same, but are renumbered (13)-(26).

~~(25)~~(27) "Toxic ~~or deleterious substances~~ parameters" means those ~~substances listed~~ parameters listed as toxins in ~~Quality Criteria for Water 1986 (EPA 440/5-86-001, the "Gold Book") and Update Number Two (5/1/87) of the Gold Book, for which limits are not listed in ARM 16.20.616 through 16.20.641~~ department circular WQB-7.

(26)-(27) Remain the same, but are renumbered (28)-(29).

~~(28)~~(30) The board hereby adopts and incorporates by

reference ~~herein Quality Criteria for Water 1986 (EPA 440/5-86-001, the "Gold Book") and Update Number Two (5/1/87) of the Gold Book~~ department circular WQB-7, entitled "Montana Numerical Water Quality Standards" (1993 edition), which ~~sets forth water quality levels~~ which establishes limits for toxic ~~or deleterious substances~~, carcinogenic, bioconcentrating, and other harmful parameters in water. Copies of ~~this material~~ circular WQB-7 may be obtained from the Water Quality Bureau, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620.

~~(29)~~(31) The board hereby adopts and incorporates by reference the department's surface water mixing zone implementation guide, which contains criteria to be used to determine the mixing zones appropriate to different sets of conditions. A copy of the implementation guide may be obtained from the department's Water Quality Bureau, Cogswell Building, Capitol Station, Helena, Montana 59620-0902 [phone: (406) 444-2406]. AUTH: 75-5-201, 75-5-301, MCA; IMP: 75-5-301, MCA

16.20.616 A-CLOSED CLASSIFICATION (1)-(2) Remain the same.

(3) No person may violate the following specific water quality standards for waters classified A-Closed:

(a)-(g) Remain the same.

(h) No increases of carcinogenic, bioconcentrating, toxic or ~~other deleterious substances~~ harmful parameters, pesticides and organic and inorganic materials, including heavy metals, above naturally occurring concentrations, are allowed.

(i) Remains the same.

AUTH: 75-5-201, 75-5-301, MCA; IMP: 75-5-301, MCA

16.20.617 A-1 CLASSIFICATION (1)-(2) Remain the same.

(3) No person may violate the following specific water quality standards for waters classified A-1:

(a) Remains the same.

(b) Dissolved oxygen concentration must not be reduced below ~~7.0 milligrams per liter~~ the levels given in department circular WQB-7.

(c)-(g) Remain the same.

(h)(i) Concentrations of carcinogenic, bioconcentrating, toxic, or ~~deleterious substances~~ harmful parameters which would remain in the water after conventional water treatment may not exceed the maximum ~~contaminant~~ levels set forth in ~~the U.S. EPA National Primary Drinking Water Regulations (40 CFR Part 141, 7/1/86 ed.) or the U.S. EPA National Secondary Drinking Water Regulations (40 CFR Part 143, 7/1/86 ed.). Concentrations of toxic or deleterious substances also may not exceed Gold Book levels~~ department circular WQB-7.

(ii) Dischargers issued permits under ARM Title 16, chapter 20, subchapter 9, shall conform with ARM Title 16, chapter 20, subchapter 7, the nondegradation rules, and may not cause receiving water concentrations to exceed ~~Gold Book~~ the maximum levels contained in department circular WQB-7 when stream flows equal or exceed the design flows specified in ARM 16.20.631(4).

(iii) When ~~Gold Book~~ levels in department circular WQB-7 are used as the basis for discharge permit limits for waters with a hardness of less than 20 mg/l (as $CaCO_2$), the limits for metals ~~are~~ will be based on a hardness of 20 mg/l. If site-specific criteria are developed as the basis for discharge permit limits, using the procedures given in the Water Quality Standards Handbook (U.S. EPA, Dec. 1983), the limits so developed ~~are~~ may be used as permit limits instead of ~~Gold Book~~ the levels in department circular WQB-7.

(iv) Remains the same.

(4) The board hereby adopts and incorporates herein by reference the following:

(a) ~~U.S. EPA National Primary Drinking Water Regulations, 40 CFR Part 141, 7/1/86 ed., which sets forth federal drinking water standards;~~

~~(b) U.S. EPA National Secondary Drinking Water Regulations, 40 CFR Part 143, 7/1/86 ed., which sets forth federal secondary drinking water criteria;~~

~~(c) Quality Criteria for Water 1986 (EPA 440/5-86-001, the "Gold Book") and Update Number Two (5/1/87) of the Gold Book, which set forth water quality levels for toxic or deleterious substances~~ Department circular WQB-7, entitled "Montana Numerical Water Quality Standards" (1993 edition), which establishes limits for toxic, carcinogenic, bioconcentrating, and other harmful parameters in water; and

(d)-(e) Remain the same, but are relettered (b)-(c).

AUTH: 75-5-201, 75-5-301, MCA; IMP: 75-5-301, MCA

16.20.618 B-1 CLASSIFICATION (1) Remains the same.

(2) No person may violate the following specific water quality standards for waters classified B-1:

(a) Remains the same.

(b) Dissolved oxygen concentration must not be reduced below ~~7.0 milligrams per liter~~ the levels given in department circular WQB-7.

(c)-(g) Remain the same.

(h)(i) Concentrations of carcinogenic, bioconcentrating, toxic or ~~deleterious substances~~ harmful parameters which would remain in the water after conventional water treatment may not exceed the maximum ~~contaminant~~ levels set forth in ~~the U.S. EPA National Primary Drinking Water Regulations (40 CFR Part 141, 7/1/86 ed.) or the U.S. EPA National Secondary Drinking Water Regulations (40 CFR Part 143, 7/1/86 ed.). Concentrations of toxic or deleterious substances also may not exceed Gold Book levels~~ department circular WQB-7.

(ii) Dischargers issued permits under ARM Title 16, chapter 20, subchapter 9, shall conform with ARM Title 16, chapter 20, subchapter 7, the nondegradation rules, and may not cause receiving water concentrations to exceed ~~Gold Book~~ the maximum levels specified in department circular WQB-7 when stream flows equal or exceed the design flows specified in ARM 16.20.631(4).

(iii) When ~~Gold Book~~ levels specified in department circular WQB-7 are used as the basis for discharge permit limits for waters with a hardness of less than 20 mg/l (as

$CaCO_2$), the limits for metals ~~are~~ will be based on a hardness of 20 mg/l. If site-specific criteria are developed as the basis for discharge permit limits, using the procedures given in the Water Quality Standards Handbook (U.S. EPA, Dec. 1983), the limits so developed ~~are~~ may be used as permit limits instead of ~~Gold Book~~ the levels in department circular WQB-7.

(iv) Remains the same.

(3) The board hereby adopts and incorporates herein by reference the following:

(a) ~~U.S. EPA National Primary Drinking Water Regulations, 40 CFR Part 141, 7/1/86 ed., which sets forth federal drinking water standards;~~

~~(b) U.S. EPA National Secondary Drinking Water Regulations, 40 CFR Part 143, 7/1/86 ed., which sets forth federal secondary drinking water criteria;~~

~~(c) Quality Criteria for Water 1986 (EPA 440/5-86-001, the "Gold Book") and Update Number Two (5/1/87) of the Gold Book, which set forth water quality levels for toxic or deleterious substances~~ Department circular WQB-7, entitled "Montana Numerical Water Quality Standards" (1993 edition), which establishes limits for toxic, carcinogenic, bioconcentrating, and other harmful parameters in water; and

(d)-(e) Remain the same, but are relettered (b)-(c).

AUTH: 75-5-201, 75-5-301, MCA; IMP: 75-5-301, MCA

16.20.619 B-2 CLASSIFICATION (1) Remains the same.

(2) No person may violate the following specific water quality standards for waters classified B-2:

(a) Remains the same.

(b) Dissolved oxygen concentration must not be reduced below ~~7.0 milligrams per liter from October 1 through June 1 nor below 6.0 milligrams per liter from June 2 through September 30~~ the levels given in department circular WQB-7.

(c)-(g) Remain the same.

(h)(i) Concentrations of carcinogenic, bioconcentrating, toxic or ~~deleterious substances~~ harmful parameters which would remain in the water after conventional water treatment may not exceed the maximum ~~contaminant~~ levels set forth in ~~the U.S. EPA National Primary Drinking Water Regulations (40 CFR Part 141, 7/1/86 ed.) or the U.S. EPA National Secondary Drinking Water Regulations (40 CFR Part 143, 7/1/86 ed.). Concentrations of toxic or deleterious substances also may not exceed Gold Book levels~~ department circular WQB-7.

(ii) Dischargers issued permits under ARM Title 16, chapter 20, subchapter 9, shall conform with ARM Title 16, chapter 20, subchapter 7, the nondegradation rules, and may not cause receiving water concentrations to exceed ~~Gold Book~~ the maximum levels specified in department circular WQB-7 when stream flows equal or exceed the design flows specified in ARM 16.20.631(4).

(iii) When ~~Gold Book~~ levels in department circular WQB-7 are used as the basis for discharge permit limits for waters with a hardness of less than 20 mg/l (as $CaCO_2$), the limits for metals ~~are~~ will be based on a hardness of 20 mg/l. If site-specific criteria are developed as the basis for discharge

permit limits, using the procedures given in the Water Quality Standards Handbook (U.S. EPA, Dec. 1983), the limits so developed ~~are~~ may be used as permit limits instead of ~~Gold Book~~ the levels in department circular WQB-7.

(iv) Remains the same.

(3) The board hereby adopts and incorporates herein by reference the following:

(a) ~~U.S. EPA National Primary Drinking Water Regulations, 40 CFR Part 141, 7/1/86 ed., which sets forth federal drinking water standards;~~

~~(b) U.S. EPA National Secondary Drinking Water Regulations, 40 CFR Part 143, 7/1/86 ed., which sets forth federal secondary drinking water criteria;~~

~~(c) Quality Criteria for Water 1986 (EPA 440/5-86-001, the "Gold Book") and Update Number Two (5/1/87) of the Gold Book, which set forth water quality levels for toxic or deleterious substances~~ Department circular WQB-7, entitled "Montana Numerical Water Quality Standards" (1993 edition), which establishes limits for toxic, carcinogenic, bioconcentrating, and other harmful parameters in water; and

(d)-(e) Remain the same, but are relettered (b)-(c).

AUTH: 75-5-201, 75-5-301, MCA; IMP: 75-5-301, MCA

16.20.620 B-3 CLASSIFICATION (1) Remains the same.

(2) No person may violate the following specific water quality standards for waters classified B-3:

(a) Remains the same.

(b) Dissolved oxygen concentration must not be reduced below ~~5.0 milligrams per liter~~ the levels specified in department circular WQB-7.

(c)-(g) Remain the same.

(h)(i) Concentrations of carcinogenic, bioconcentrating, toxic, or ~~deleterious substances~~ other harmful parameters which would remain in the water after conventional water treatment may not exceed the maximum ~~contaminant~~ levels set forth in ~~the U.S. EPA National Primary Drinking Water Regulations (40 CFR Part 141, 7/1/86 ed.) or the U.S. EPA National Secondary Drinking Water Regulations (40 CFR Part 143, 7/1/86 ed.). Concentrations of toxic or deleterious substances also may not exceed Gold Book levels~~ department circular WQB-7.

(ii) Dischargers issued permits under ARM Title 16, chapter 20, subchapter 9, shall conform with ARM Title 16, chapter 20, subchapter 7, the nondegradation rules, and may not cause receiving water concentrations to exceed ~~Gold Book~~ the maximum levels specified in department circular WQB-7 when stream flows equal or exceed the design flows specified in ARM 16.20.631(4).

(iii) When ~~Gold Book~~ levels contained in department circular WQB-7 are used as the basis for discharge permit limits for waters with a hardness of less than 20 mg/l (as $CaCO_2$), the limits for metals ~~are~~ will be based on a hardness of 20 mg/l. If site-specific criteria are developed as the basis for discharge permit limits, using the procedures given in the Water Quality Standards Handbook (U.S. EPA, Dec. 1983), the limits so developed ~~are~~ may be used as permit limits

instead of ~~Gold Book~~ the levels specified in department circular WQB-7.

(iv) Remains the same.

(3) The board hereby adopts and incorporates herein by reference the following:

(a) ~~U.S. EPA National Primary Drinking Water Regulations, 40 CFR Part 141, 7/1/86 ed., which sets forth federal drinking water standards;~~

~~(b) U.S. EPA National Secondary Drinking Water Regulations, 40 CFR Part 143, 7/1/86 ed., which sets forth federal secondary drinking water criteria;~~

~~(c) Quality Criteria for Water 1986 (EPA 440/5-86-001, the "Gold Book") and Update Number Two (5/1/87) of the Gold Book, which set forth water quality levels for toxic or deleterious substances~~ Department circular WQB-7, entitled "Montana Numerical Water Quality Standards" (1993 edition), which establishes limits for toxic, carcinogenic, bioconcentrating, and other harmful parameters in water; and

(d)-(e) Remain the same, but are relettered (b)-(c).

AUTH: 75-5-201, 75-5-301, MCA; IMP: 75-5-301, MCA

16.20.621 C-1 CLASSIFICATION (1) Remains the same.

(2) No person may violate the following specific water quality standards for waters classified C-1:

(a) Remains the same.

(b) Dissolved oxygen concentration must not be reduced below ~~7.0 milligrams per liter~~ the levels given in department circular WQB-7.

(c)-(g) Remain the same.

(h)(i) Concentrations of carcinogenic, bioconcentrating, toxic, or ~~deleterious substances~~ harmful parameters may not exceed levels which render the waters harmful, detrimental or injurious to public health. Concentrations of toxic ~~or deleterious substances~~ parameters also may not exceed ~~Gold Book~~ the levels specified in department circular WQB-7.

(ii) Dischargers issued permits under ARM Title 16, chapter 20, subchapter 9, shall conform with ARM Title 16, chapter 20, subchapter 7, the nondegradation rules, and may not cause receiving water concentrations to exceed ~~Gold Book~~ the maximum levels specified in department circular WQB-7 when stream flows equal or exceed the design flows specified in ARM 16.20.631(4).

(iii) When ~~Gold Book~~ levels in department circular WQB-7 are used as the basis for discharge permit limits for waters with a hardness of less than 20 mg/l (as $CaCO_2$), the limits for metals ~~are~~ will be based on a hardness of 20 mg/l. If site-specific criteria are developed as the basis for discharge permit limits, using the procedures given in the Water Quality Standards Handbook (U.S. EPA, Dec. 1983), the limits so developed ~~are~~ may be used as permit limits instead of ~~Gold Book~~ the levels in department circular WQB-7.

(iv) Remains the same.

(3) The board hereby adopts and incorporates ~~herein~~ by reference the following:

(a) ~~Quality Criteria for Water 1986 (EPA 440/5-86-001,~~

~~the "Gold Book") and Update Number Two (5/1/87) of the Gold Book, which set forth water quality levels for toxic or deleterious substances~~ Department circular WQB-7, entitled "Montana Numerical Water Quality Standards" (1993 edition), which establishes limits for toxic, carcinogenic, bioconcentrating, and other harmful parameters in water; and

(b)-(c) Remain the same.

AUTH: 75-5-201, 75-5-301, MCA; IMP: 75-5-301, MCA

16.20.622 C-2 CLASSIFICATION (1) Remains the same.

(2) No person may violate the following specific water quality standards for waters classified C-2:

(a)-(g) Remain the same.

(h)(i) Concentrations of carcinogenic, bioconcentrating, toxic, or ~~deleterious substances~~ harmful parameters may not exceed levels which render the waters harmful, detrimental or injurious to public health. Concentrations of toxic ~~or deleterious substances~~ parameters also may not exceed ~~Gold Book~~ the levels specified in department circular WQB-7.

(ii) Dischargers issued permits under ARM Title 16, chapter 20, subchapter 9, shall conform with ARM Title 16, chapter 20, subchapter 7, the nondegradation rules, and may not cause receiving water concentrations to exceed ~~Gold Book~~ the maximum levels specified in department circular WQB-7 when stream flows equal or exceed the design flows specified in ARM 16.20.631(4).

(iii) When ~~Gold Book~~ levels in department circular WQB-7 are used as the basis for discharge permit limits for waters with a hardness of less than 20 mg/l (as $CaCO_2$), the limits for metals ~~are~~ will be based on a hardness of 20 mg/l. If site-specific criteria are developed as the basis for discharge permit limits, using the procedures given in the Water Quality Standards Handbook (U.S. EPA, Dec. 1983), the limits so developed ~~are~~ may be used as permit limits instead of ~~Gold Book~~ the levels specified in department circular WQB-7.

(iv) Remains the same.

(3) The board hereby adopts and incorporates ~~herein~~ by reference the following:

(a) ~~Quality Criteria for Water 1986 (EPA 440/5-86-001, the "Gold Book") and Update Number Two (5/1/87) of the Gold Book, which set forth water quality levels for toxic or deleterious substances~~ Department circular WQB-7, entitled "Montana Numerical Water Quality Standards" (1993 edition), which establishes limits for toxic, carcinogenic, bioconcentrating, and other harmful parameters in water; and

(b)-(c) Remain the same.

AUTH: 75-5-201, 75-5-301, MCA; IMP: 75-5-301, MCA

16.20.623 I CLASSIFICATION (1) Remains the same.

(2) No person may violate the following specific water quality standards for waters classified I:

(a)-(g) Remain the same.

(h)(i) No discharges of toxic, ~~or deleterious substances~~ carcinogenic, or harmful parameters may commence or continue which lower or are likely to lower the overall water quality of

these waters.

(ii) Remains the same.

(iii) Beneficial uses are considered supported when the concentrations of toxic, ~~or deleterious substances~~ carcinogenic, or harmful parameters in these waters do not exceed ~~Gold Book~~ the levels specifed in department circular WQB-7 when stream flows equal or exceed the flows specified in ARM 16.20.631(4) or, alternatively, for aquatic life when the concentrations do not exceed site-specific criteria developed using the procedures given in the Water Quality Standards Handbook (U.S. EPA, Dec. 1983).

(iv) Limits for toxic, ~~or deleterious substances~~ carcinogenic, or harmful parameters in new discharge permits issued pursuant to the MPDES rules (ARM Title 16, chapter 20, subchapter 9) are the larger of either ~~Gold Book~~ the levels specified in department circular WQB-7 or one-half of the mean in-stream concentrations immediately upstream of the discharge point.

(3) The board hereby adopts and incorporates ~~herein~~ by reference the following:

(a) ~~Quality Criteria for Water 1986 (EPA-440/5-86-001, the "Gold Book") and Update Number Two (5/1/87) of the Gold Book, which set forth water quality levels for toxic or deleterious substances~~ Department circular WQB-7, entitled "Montana Numerical Water Quality Standards" (1993 edition), which establishes limits for toxic, carcinogenic, bioconcentrating, and other harmful parameters in water; and

(b)-(c) Remain the same.

AUTH: 75-5-201, 75-5-301, MCA; IMP: 75-5-301, MCA

16.20.624 C-3 CLASSIFICATION (1) Remains the same.

(2) No person may violate the following specific water quality standards for waters classified C-3:

(a) Remains the same.

(b) Dissolved oxygen concentration must not be reduced below ~~5.0 milligrams per liter~~ the levels specified in department circular WQB-7.

(c)-(g) Remain the same.

(h)(i) Concentrations of carcinogenic, bioconcentrating, toxic, or ~~deleterious substances~~ harmful parameters which would remain in the water after conventional water treatment may not exceed the maximum ~~contaminant~~ levels set forth in ~~the National Primary Drinking Water Regulations (40 CFR Part 141), 7/1/86 ed. Concentrations of toxic or deleterious substances also may not exceed Gold Book levels~~ department circular WQB-7.

(ii) Dischargers issued permits under ARM Title 16, chapter 20, subchapter 9, shall conform with ARM Title 16, chapter 20, subchapter 7, the nondegradation rules, and may not cause receiving water concentrations to exceed ~~Gold Book~~ the maximum levels specified in department circular WQB-7 when stream flows equal or exceed the design flows specified in ARM 16.20.631(4).

(iii) When ~~Gold Book~~ levels in department circular WQB-7 are used as the basis for discharge-permit limits for waters with a hardness of less than 20 mg/l (as $CaCO_3$), the limits for

metals ~~are~~ will be based on a hardness of 20 mg/l. If site-specific criteria are developed as the basis for discharge-permit limits, using the procedures given in the Water Quality Standards Handbook (U.S. EPA, Dec. 1983), the limits so developed ~~are~~ may be used as permit limits instead of ~~Gold Book~~ the levels specified in department circular WQB-7.

(iv) Remains the same.

(3) The board hereby adopts and incorporates ~~herein~~ by reference the following:

(a) ~~U.S. EPA National Primary Drinking Water Regulations, 40 CFR Part 141, 7/1/86 ed., which sets forth federal drinking water standards;~~

~~(b) Quality Criteria for Water 1986 (EPA 440/5-86-001, the "Gold Book") and Update Number Two (5/1/87) of the Gold Book, which set forth water quality levels for toxic or deleterious substances~~ Department circular WQB-7, entitled "Montana Numerical Water Quality Standards" (1993 edition), which establishes limits for toxic, carcinogenic, bioconcentrating, and other harmful parameters in water; and

(c)-(d) Remain the same, but are relettered (b)-(c).

AUTH: 75-5-201, 75-5-301, MCA; IMP: 75-5-301, MCA

16.20.641 RADIOLOGICAL CRITERIA (1) No person may cause radioactive materials in surface waters to exceed the levels specified in department circular WQB-7.~~:~~

~~(a) Be present in any amount which reflects failure in any case to apply all controls which are physically feasible;~~

~~(b) Exceed a concentration of 5 pCi/L of total Radium 226 plus Radium 228;~~

~~(c) Exceed a concentration of 8 pCi/L of total Strontium 90;~~

~~(d) Be present in the water or in sediments in amounts which could cause harmful accumulations of radioactivity in plants, wildlife, stock or aquatic life;~~

~~(e) Exceed the radiological limits established in the U.S. EPA National Primary Drinking Water Regulations (40 CFR Part 141, 7/1/86 ed.).~~

(2) The board hereby adopts and incorporates ~~herein~~ by reference ~~U.S. EPA National Primary Drinking Water Regulations, 40 CFR Part 141, 7/1/86 ed.~~ department circular WQB-7, entitled "Montana Numerical Water Quality Standards" (1993 edition), which ~~sets forth federal drinking~~ establishes limits for toxic, carcinogenic, bioconcentrating, and other harmful parameters in water ~~standards~~. Copies of ~~this material~~ the circular may be obtained from the Water Quality Bureau, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620.

AUTH: 75-5-201, 75-5-301, MCA; IMP: 75-5-301, MCA

4. The board is proposing these amendments to the rules in order to update the water quality standards in order to bring them into compliance with federal requirements (thereby ensuring the state is the primary enforcer of water quality standards within Montana), make them more understandable, and

coordinate them with the proposed changes in the nondegration rules.

5. Interested persons may submit their data, views, or arguments concerning the proposed amendments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Yolanda Fitzsimmons, Board of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620, no later than December 22, 1993.

6. 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
Department of Health and
Environmental Sciences

Certified to the Secretary of State November 15, 1993.

Reviewed by:
_____
Eleanor A. Parker, DHES Counsel

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

In the matter of the amendment, repeal and adoption of procedural rules.	))))	NOTICE OF PROPOSED AMENDMENT OF RULES ARM 24.5.301, 24.5.302, 24.5.303, 24.5.308, 24.5.309, 24.5.310, 24.5.311, 24.5.316 24.5.317, 24.5.318, 24.5.326, 24.5.334, 24.5.343, and 24.5.344, REPEAL OF RULE ARM 24.5.304 and PROPOSED ADOPTION OF NEW RULE I. NO PUBLIC HEARING CONTEMPLATED.

TO: All Interested Persons.

1. On January 10, 1994, the Office of the Workers' Compensation Judge proposes to amend, repeal and adopt new procedural rules of the Court.

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

24.5.301 PETITION FOR TRIAL (1)(a) through (e) Same.

(f) a statement that the petitioner has freely exchanged all available pertinent medical records with the ~~defendant~~ respondent pursuant to ARM 24.5.317 and will continue to do so;

~~(g) the identity of the attorney representing the petitioner, if any, including the attorney's name, address and telephone number must appear in the upper left hand corner of the first page;~~

(~~h~~g) a list of ~~individuals who are~~ petitioner's potential witnesses~~, for the petitioner~~ and a ~~short~~ summary of the subject matter of their anticipated testimony ~~information known by each individual~~;

(~~i~~h) Language remains the same.

(~~j~~i) Language remains the same.

(2) Alternative pleading is permissible.

(~~2~~3) There is no filing fee. Petitions and all other materials are to be filed with the Clerk of Court at ~~46 North Last Chance Gulch,~~ 1625 11th Avenue, P.O. Box 537, Helena, Montana 59624-0537. The party should file an original and five copies of the petition and should indicate the names and addresses of all adverse parties to be served. ~~The clerk will issue a receipt for each document filed.~~ Failure to comply with subsections (1) and (~~2~~3) of this rule will result in the document being returned to the petitioner.

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

24.5.302 RESPONSE TO PETITION (1) Within ~~twenty~~ 20 days after the service of a petition, a~~n answer~~ response shall be served upon the petitioner and filed with the court by the

~~defendant~~ respondent. ~~which~~ The response shall include the following information:

(a) a short, plain statement of the ~~defendant's~~ respondent's contentions;

(b) a statement of those facts which respondent believes to be uncontested;

(~~b~~c) a list of ~~individuals who are~~ respondent's potential witnesses ~~for the defendant~~ and a ~~short~~ summary of the subject matter of their anticipated testimony ~~information known by each individual~~;

(~~c~~d) a list of written documents relating to the claim which may be introduced as evidence by the ~~defendant~~ respondent~~.~~ ; and

(e) a statement that the respondent has exchanged all available pertinent medical records with the petitioner pursuant to ARM 24.5.317 and will continue to do so.

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

24.5.303 SERVICE AND COMPUTATION OF TIME (1) The court will serve the furnished copies of the petition upon adverse parties and others, as designated in the petitioner's instructions, by mailing them at Helena, Montana, with first class postage prepaid. If the respondent ~~unless the petitioner or defendant~~ is an unrepresented claimant or anyone other than an insurer, then ~~in which event~~ the petition shall ~~will~~ be mailed ~~to such claimant~~ by certified mail with return receipt requested. Where service is made by certified mail and a signed return receipt is not received by the court within 14 days, the court may order the petitioner to serve the petition in accordance with Rule 4(B) M. R. Civ. P. The petitioner is responsible for providing correct names and addresses of all parties to be served.

(2) Same.

(3) Whenever a party has the right or is required to do some act within a prescribed period of time after the service of a notice or other paper upon ~~him~~ the party and the notice or paper is served by mail, ~~three~~ 3 days shall be added to the prescribed period.

(4) In computing the time for any response as provided for in these rules, weekends and holidays shall be included. If a deadline falls on a weekend or holiday the deadline is the next work day.

(~~4~~5) Language remains the same.

~~(5) All pleadings and documents filed with the court shall be typewritten or legibly printed on eight and one-half by eleven inch paper~~.

(6) and (a) Same.

(b) If the original document is not received within ~~three~~ 3 days of receipt of the fax, the fax is stricken from the record as if never filed.

(c) Same.

(7) Every pleading, motion, or other paper of a party represented by an attorney shall be signed by at least one attorney of record in his/her individual name, whose address shall be stated. A party who is not represented by an attorney

shall sign ~~his~~ the pleading, motion, or other paper and state his/her address. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. The signature of an attorney or party constitutes a certificate ~~by him~~ that ~~he~~ the attorney has read the pleading, motion, or other paper; that to the best of his/her knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. If a pleading, motion, or other paper is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant. If a pleading, motion, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney fee.
AUTH: Sec. 2-4-201, MCA IMP: Sec. 2-4-201, 39-71-2901, MCA

24.5.308 JOINING THIRD PARTIES (1) ~~A party may motion that a third party be joined in the dispute or controversy. The court may, for good cause shown, require the third party to become a party to the dispute or controversy, or the court may grant joinder on such terms and conditions as are necessary to protect the interests of the existing parties, including the interest of a speedy remedy, or the court may deny the motion.~~ The joinder of parties shall be governed by the considerations set forth in Rules 19, 20 and 21 of the M. R. Civ. P.

(2) Unless otherwise permitted by order of the court, ~~A~~ a motion to join a third party ~~may~~ must be made ~~at any time up to 20 days prior to trial.~~ within 30 days of the filing of the petition. The motion shall be filed and served on all parties and the proposed third party ~~and filed with the court~~. Any party and the proposed third party ~~to the dispute~~ shall have 10 days from the date of service to file objections to the motion ~~for joinder~~. The court may, for good cause shown, grant joinder on such terms and conditions as are necessary to protect the interests of the existing parties, including the interest of a speedy remedy.

(3) If the joinder of a third party results in the trial being vacated and good cause is shown, the court may order that the insurance company ~~on~~ alleged to be at risk at the time of the accident ~~alleged by the claimant to be responsible for his disability,~~ to pay benefits pending the trial. ~~That~~ Such insurer has a right to seek indemnity from the responsible insurer if it is later determined that it was not responsible.
AUTH: Sec. 2-4-201, MCA IMP: Sec. 2-4-201, 39-71-2901, MCA

24.5.309 INTERVENTION (1) Intervention in a pending proceeding shall be governed by the considerations set forth in Rule 24 paragraphs (a) and (b) of the M. R. Civ. P.

~~(1)~~(2) ~~Anyone may move to intervene and become a party in a matter that is set for trial before the court. The party moving for intervention shall serve a copy of the motion to intervene and supporting brief or affidavit upon all parties.~~ Unless otherwise permitted by order of the court, a motion to intervene must be filed within 30 days of the filing of the petition. The motion shall state the grounds upon which intervention is sought. A copy of the motion, supporting brief and any affidavits shall be served upon all parties. Any party to the dispute shall have ~~ten~~ 10 days following service to file an answering brief. The court, in its discretion, will determine whether or not to allow intervention.

(3) If intervention results in the trial being vacated and good cause is shown, the court may order that the insurance company alleged to be at risk at the time of the accident to pay benefits pending the trial. Such insurer has a right to seek indemnity from the responsible insurer if it is later determined that it was not responsible.

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

24.5.310 TIME AND PLACE OF TRIAL GENERALLY (1) through (3)(i) Same.

(4) Upon receipt of a petition regarding a dispute ~~and~~ meeting the requirements of these rules, the court will issue a scheduling order fixing deadlines for discovery, the filing of pretrial motions, preparation of a pretrial order, and other pretrial matters, setting the date of the final pretrial conference, and setting a trial ~~in the area where the accident occurred and in the place designated in subsection (3) of this rule and~~ at a time that will allow ~~sixty~~ 75 days notice to be given of the trial. The court may, for good cause, hold a trial over to the next regular trial date ~~in or for the area~~.

~~(5) For petitions filed for an injury which occurred on or after July 1, 1987, and as provided by law, the sixty days notice requirement set forth in ARM 24.5.310(4) does not apply if the parties have completed the mediation proceedings required by statute or if an appeal is filed from a final department order.~~

~~(6) Following the completion of the mediation procedures by the department of labor and industry and upon the taking of an appeal from a final department order, all time deadlines to comply with the procedural rules of the court shall be set by the court on an individual case basis.~~

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

24.5.311 EMERGENCY TRIALS (1) Trials may be held by the court upon less than ~~sixty~~ 75 days notice when good cause is shown. Such trials shall be termed "emergency trials". Facts constituting the emergency must be set forth in the petition in sufficient detail for the court to determine whether an actual emergency exists. The court, on its own motion, may set a trial

as an emergency trial. When an emergency trial is ordered, the court shall give reasonable notice of the time and place for a pretrial conference and for the trial.
AUTH: Sec. 2-4-201, MCA IMP: Sec. 2-4-201, 39-71-2901, MCA

24.5.316 MOTIONS (1) ~~When a petition for trial has been filed, a~~ Unless a different time is specified in these rules, the time for filing any motion to amend a pleading, to dismiss, to quash, ~~or~~ for ~~other~~ summary ruling, to compel, for a protective order, in limine, or for other relief shall be fixed by the court in a scheduling or other order. ~~filed in writing on or before the date set for pretrial conference, unless allowed at a later time for good cause shown.~~

(2) When an appeal is taken from a final order of the department of labor and industry~~'s final order, pursuant to ARM 24.5.350~~, unless a different time is fixed by order of the court any motion related to the appeal must be filed and served prior to the date for submission of briefs.

(~~2~~3) Every motion shall be in writing and accompanied by ~~Upon filing a motion, the moving party shall also file~~ a supporting brief. The brief may be accompanied by appropriate supporting documents~~, or~~ and affidavits. ~~, and failure to do so shall be deemed an admission that the motion is without merit.~~ An adverse party shall file an answer brief, which also may be accompanied by appropriate documents and affidavits, within ~~have~~ 10 days. ~~following service of the motion within which to file an answering brief or affidavit. Failure to file an answering brief may be deemed an admission that the motion has merit. A reply brief may be filed no later than five days from the date of service of the answer of the adverse party. Unless otherwise ordered, oral argument will not be permitted upon pretrial motions.~~ Within 5 days thereafter the moving party may file a reply brief. The filing deadlines set in this rule may be changed by order of the court.

(4) Failure to file briefs may subject the motion to summary ruling. Failure of the moving party to file a brief with the motion shall be deemed an admission that the motion is without merit. Failure of the adverse party to timely file an answer brief may be deemed an admission that the motion is well taken. Reply briefs are optional and failure to file a reply brief will not subject the motion to summary ruling.

(5) Unless otherwise ordered, oral argument will not be permitted. Unless oral argument is ordered, or unless the time is enlarged by the court, the motion is deemed submitted at the expiration of any of the applicable time limits. If oral argument is ordered the motion will be deemed submitted at the close of argument unless the court orders additional briefs, in which case the motion will be deemed submitted at the time set for filing of the final brief.

(~~3~~6) An application for an extension of time for filing briefs or affidavits shall be made in writing but may be filed by fax. ~~on a motion~~ An application for extension may be granted by the court ~~upon oral application~~ without notice to the adverse party only upon the applicant's written certification that an

attempt has been made to contact the adverse party. ~~However, w~~ Whenever ~~such~~ an ex parte extension has been granted, the moving party shall immediately advise the adverse party of the new due date. Except under extraordinary circumstances, extensions of more than 10 days from the original due date shall not be granted.

(4~~7~~) Nothing in this rule shall be construed to preclude the filing or presentation of motions or objections related to evidentiary and other matters arising at trial. ~~of discovery or evidence at any time, or for summary ruling at the conclusion of trial. Summary ruling in this context refers to ruling by the trier of fact that the substantial and credible evidence of record permits only one determination of a contested issue or issues presented to the court, and does not refer to bench rulings, which are governed by ARM 24.5.335, rather than this rule.~~

(8) Motions regarding discovery, procedure and similar pretrial issues may be presented informally by telephone conference call. The moving party shall arrange the call and for the participation of all parties. The court may designate a hearing examiner to preside and decide the motion. The court may make an oral ruling or direct that the motion be presented in writing and briefed. Any oral order shall thereafter be confirmed by written order.

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

24.5.317 MEDICAL RECORDS (1) Prior to any scheduled trial and within the time set by the scheduling or other order of the court, the parties shall exchange all medical records in their possession relating to the claimant's condition, other than records of professional consultants who have not examined the claimant and who will not be witnesses at trial or whose records a party does not intend to offer into evidence. ~~based upon examination of the claimant.~~ Failure to exchange any medical record~~, whether or not based on an examination,~~ by the exchange deadline shall preclude its use at trial, except by stipulation of the parties or for good cause ~~as set forth in subsection (4)~~.

(2) Any party who intends to object to the authenticity or genuineness of any medical record, or to its admissibility pursuant to Rule 803(6) Mont. R. Evid., shall make such objections in writing, identifying each medical record to which an objection is made and the particular objections to the record. The objections shall be served upon the adverse party within 5 business days after the deadline for the final exchange of medical records, or within such other time fixed by the scheduling or other order of the court. Failure to object to a medical record in the manner and within the time specified by this rule shall be deemed a waiver of any objection to the record on grounds of authenticity or hearsay and shall operate as an admission by the party that the record is authentic and admissible pursuant to Rule 803(6) Mont. R. Evid. Where a timely objection under this rule is served, the party offering a medical record to which the objection is made shall comply with provisions of the Mont. R. Evid. relating to foundation and

hearsay. However, this rule shall have the same effect as a request for admission under Rule 36 M. R. Civ. P., and a party who thereafter successfully offers the medical record at trial may apply to the court for an order requiring the objecting party to pay reasonable expenses incurred in authenticating the record and/or establishing its admissibility under Rule 803(6), Mont. R. Evid., including reasonable attorney's fees. The court shall award such reasonable expenses unless it finds that there was a good and substantial reason for the objection. ~~Medical records based on an examination of the claimant and exchanged by the parties or their attorneys by the exchange deadline are admissible without the necessity of foundation testimony. A party may object to those reports being admitted into evidence and the objecting party will be allowed to depose or subpoena the author of any such records for purposes of cross-examination. An objecting party may subpoena the author for trial, or deposition before or subsequent to the trial as provided in ARM 24.5.322(1).~~

(3) ~~Subsection (2) applies only to admissibility. All o~~Other objections, such as relevance and materiality, are not subject to subsection (2) ~~preserved and may be raised as in any other proceeding~~.

~~(4) Medical records exchanged after the exchange deadline may be admitted into evidence only if stipulated to by the parties, or by the laying of the proper foundation by the proponent of the record. Upon proper motion and for good cause shown, the court, in its discretion may permit a post-trial deposition under this section.~~

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

24.5.318 PRETRIAL CONFERENCE AND ORDER (1) A final pretrial conference shall precede every trial unless otherwise ordered by the court.

(2) Same.

(3) In the discretion of the court in appropriate circumstances, a pretrial conference may be conducted by a telephone conference call. ~~At the time of the conference the court will rely on the information included in the petition for trial and the response to petition. A party may supplement its list of witnesses and exhibits up to the exchange deadline.~~

(4) At the time of the pretrial conference the parties shall present a final pretrial order in the form provided in subsection (5). In the event of a dispute as to the content of the final pretrial order, the dispute shall be presented at the pretrial conference for resolution.

~~(4) Oral motions may be made and argued during the pretrial conference, and when appropriate will be ruled on by the hearing examiner.~~

(5) ~~The court shall designate one of the parties to prepare a pretrial order which recites the actions taken at the pretrial conference. These~~ The pretrial order must be signed by all parties ~~and submitted to the court for approval. The pre-trial order shall supersede all other pleadings~~ and shall set forth the following:

(a) a statement of jurisdiction pursuant to the appropriate statutes ~~and rules~~;

(b) a list of all pending motions ~~made by any party; if ruled on at the pre-trial conference, the disposition~~;

(c) any uncontested facts;

(d) any stipulations between the parties;

(e) a statement of the issues to be determined by the court;

(f) the petitioner's and ~~defendant's~~ respondent's contentions;

(g) ~~identification~~ a list of all exhibits to be offered by ~~a~~ each party, including the grounds of any objections an adverse party may have to the admission of particular exhibits; ~~Exhibits which are stipulated into evidence, shall be attached to the final pretrial order.~~

(h) the identity of all witnesses who may be called, including the name, address, and occupation of each witness, and the subject matter of the testimony each witness will be called to give;

~~(i) pretrial discovery desired, e.g., depositions and interrogatories; and~~

(i) any unusual legal or evidentiary issues; and

(j) the estimated length of trial.

(6) Upon approval by the court the pretrial order shall supersede all other pleadings and shall govern the trial proceedings. Amendments to the pretrial order shall be allowed by either stipulation of the parties or leave of court for good cause shown.

(7) All exhibits which will be offered at trial shall be numbered consecutively using numbers and shall be provided to the court at the time of the pretrial conference.

(8) Upon request an earlier preliminary pretrial conference may be scheduled and held to address any discovery or other issues encountered by the parties.

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

24.5.326 FAILURE TO MAKE DISCOVERY--SANCTIONS (1) If a party fails to respond to discovery pursuant to these rules, or makes evasive or incomplete responses to discovery, or objects to discovery, the party seeking discovery may move for an order compelling responses. ~~Upon filing such motion, the moving party shall also file a supporting brief or affidavit and failure to do so shall be deemed an admission that the motion is without merit. An adverse party shall have ten days following service of the motion within which to file an answering brief or affidavit. A reply brief may be filed no later than five days from the date of service of the answer of the adverse party. Unless ordered by the court, oral argument will not be permitted in motions to compel discovery.~~ With respect to a motion to compel discovery, the court may impose such sanctions as it deems appropriate, including, but not limited to, awarding the prevailing party attorney fees and reasonable expenses incurred in obtaining the order or in opposing the motion. If the party shall fail to make discovery following issuance of an order

compelling responses, the court may order such sanctions as it deems required and just under the circumstances.
AUTH: Sec. 2-4-201, MCA IMP: Sec. 2-4-201, 39-71-2901, MCA

24.5.334 SETTLEMENT CONFERENCE (1) In its discretion, the court may, either on its own motion or upon request of any party, order a settlement conference at any time before decision in any case pending before the court. Such settlement conference will normally be conducted by ~~the person who will hear the case, and~~ a hearing examiner appointed by the court or, if the parties agree, by an outside mediator. In the event an outside mediator is used, the parties shall share and pay the expense of hiring the mediator. The conference may be ~~either~~ in person or by conference telephone call at a time and place as the court may direct. ~~The purpose of the settlement conference is to encourage and facilitate the settlement of disputes and controversies pending before the court.~~ The court may direct that the person with ultimate settlement authority for each party be present at the conference.
AUTH: Sec. 2-4-201, MCA IMP: Sec. 2-4-201, 39-71-2901, MCA

24.5.343 ATTORNEY FEES (1) through (2)(a) Same.
(i) a verified copy of ~~his~~ the attorney fee agreement with the claimant,
(ii) and (iii) Same.
(iv) the attorney's claim concerning his/her hourly fee.
(b) Within 20 days, fFollowing the filing of a claim for costs and attorney fees, any party to the dispute may file an objection to the reasonableness of the claimed costs and fees, specifically identifying the objectionable portions of the claim and stating the reasons for the objection. General allegations to the effect that the award is unreasonable shall not be sufficient.
(c) through (e) Same.
AUTH: Sec. 2-4-201, MCA IMP: Sec. 2-4-201, 39-71-2901, MCA

24.5.344 PETITION FOR NEW TRIAL AND/OR REQUEST FOR AMENDMENT TO FINDINGS OF FACT AND CONCLUSIONS OF LAW (1) through (3) Same.
(4) If a new trial is granted, the matter will be scheduled for trial pursuant to ARM 24.5.310. As determined by the court, the matter ~~will~~ may be decided ~~determined by~~ based on the testimony taken at the initial trial and at the new trial, or by a de novo trial. After the new trial, the court will issue an order or findings of fact and conclusions of law and judgment setting forth the court's determination of the disputed issues.
AUTH: Sec. 2-4-201, MCA IMP: Sec. 2-4-201, 39-71-2901, MCA

3. The proposed new rule follows:

NEW RULE I: FORM OF PAPER PRESENTED FOR FILING (1) All documents filed with the court shall be typewritten or legibly printed on 8½ x 11 unnumbered, unlined paper.

(2) The name of the attorney, if any, representing a petitioner or a respondent together with telephone number and a complete mailing address, must appear in the upper left hand corner of the first page of any pleading filed with the court.

(3) All documents shall be on standard quality, opaque, unglazed, acid-free recycled paper, and be a minimum of 25% cotton fiber content and a minimum of 50% recycled content, of which 10% shall be post-consumer waste.

(4) All documents filed with the court shall be single spaced with double spacing between paragraphs and printed on one side only.

(5) At the bottom of the second and all subsequent pages, the title of the pleading and the page number must appear as a footer.

(6) Lines 1 through 7 of the right one-half of page 1 shall be left blank for the use of the clerk.

(7) Nonconforming papers may not be filed without leave of the court or in the case of an unrepresented claimant.

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

4. The rule as proposed to be repealed follows:

24.5.304 ALTERNATIVE PLEADING can be found on page 24-167 of the Administrative Rules.

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

5. The rationale for amending these rules is to place emphasis on the application of the Rules of Evidence; to clearly set forth deadlines; to expand the time between the filing of a petition and trial, which will enable the parties to complete discovery prior to a trial; to give the court sufficient time to rule on pretrial motions; to reference the application of the M.R. Civ. P in circumstances regarding joinder and intervention and to specifically address procedures which must be followed in trial preparation. The proposed new rule sets forth the format and requirements for pleadings and other documents which are filed in the court. The repeal of ARM 24.5.304 is a simplification, as the information in the rule is transferred to the rule regarding petitions. These changes were discussed and a consensus of the court's rules committee was obtained at the annual review. The terminology is changed in the court captions with the identification of claimant and insurer being deleted and reference made to petitioner and respondent. The rules are written as gender neutral.

6. Interested parties may submit their data, views or arguments concerning these changes in writing to Workers' Compensation Court, 1625 Eleventh Avenue, P.O. Box 537, Helena, MT 59601-0537 on or before December 22, 1993.

7. If a person who is directly affected by the proposed adoption wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to the Workers' Compensation Court, 1625 Eleventh Avenue, P.O. Box 537, Helena, MT 59601-0537, no later than December 22, 1993.

8. If the agency receives requests for a public hearing on the proposed rules from 25 persons or 10%, which ever is less, of the persons who are directly affected by the proposed rules, from the Administrative Code Committee of the legislature, or from a governmental subdivision or agency, or from another association not having 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 more than twenty-five.

CLARICE BECK
RULE REVIEWER

MIKE McCARTER
JUDGE

CERTIFIED TO THE SECRETARY OF STATE: November 15, 1993
DATE

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

In the matter of the amendment of rule 46.12.3002 pertaining to determination of eligibility for medicaid disability aid	)))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF RULE 46.12.3002 PERTAINING TO DETERMINATION OF ELIGIBILITY FOR MEDICAID DISABILITY AID

TO: All Interested Persons

1. On December 14, 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 rule 46.12.3002 pertaining to determination of eligibility for medicaid disability aid.

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

46.12.3002 DETERMINATION OF ELIGIBILITY Subsections (1) through (1)(a) remain the same.

(i) ~~sixty~~ 90 days for applicants on the basis of disability; and

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

(2) denials or determinations of disability made by the U. S. social security administration (SSA) will be accepted by the department unless one of the following conditions exist:

(a) the individual has not applied to SSA for supplemental security income (SSI) cash benefits, or is found ineligible for SSI for a reason other than a disability;

(b) the individual has applied both to SSA for SSI and to the department for medicaid, but SSA has not made a disability determination within 90 days from the date of the individual's application for medicaid; or

(c) the individual has applied for medicaid as a non-cash recipient; and

(i) alleges a disabling condition different from, or in addition to that considered by SSA in making its determination; or alleges more than 12 months after the most recent SSA determination denying disability that his condition has changed or deteriorated since that SSA determination and further alleges a new period of disability which meets the durational requirements of the Social Security Act, and has not applied to SSA for a determination with respect to these allegations; or

(ii) alleges less than 12 months after the most recent SSA determination denying disability that his condition has changed or deteriorated since that SSA determination, alleges a new period of disability which meets the durational requirements of the Social Security Act and has applied to SSA for reconsideration or reopening of its disability decision and SSA refused to

consider the new allegations.

(3) Determinations of disability will be made in accordance with the requirements applicable to disability determinations under the Supplemental Security Income Program specified in 20 CFR, Part 416, Subpart I (1993). The department hereby adopts and incorporates by reference 20 CFR, Part 416, Subpart I (1993). A copy of these federal regulations may be obtained from the Department of Social and Rehabilitation Services, P.O. Box 4210, 111 N. Sanders, Helena, Montana 59604-4210.

(4) If the department bases its disability determination upon the decision made by the social security administration the medicaid applicant is limited to appealing the decision through the SSA procedures for hearing and appeals. If the department makes a decision of disability on its own as set forth under the circumstances stated in subsection (2) of this rule the medicaid applicant has a right of appeal through the department's fair hearing process.

Subsections (2) through (4)(e) remain the same in text but will be renumbered (5) through (6)(e).

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-6-131, 53-6-132 and 53-6-133 MCA

3. The "General Relief Medical" program was repealed (effective July 1, 1993) by passage of House Bill No. 427 during the 1993 session of the Montana legislature. This program was also known as the "State Medical" program in state-assumed counties or "county medical" program in counties that are not state-assumed. The General Relief Medical programs did not receive any federal funding.

The Department of Social & Rehabilitation Services also administers the Montana Medicaid program. The federal government pays approximately 72% of the funding for services provided under the Montana medicaid program. Prior to July 1, 1993, it was to the state's advantage to provide quick determinations of medicaid eligibility. This would enable the state to provide medical services with federal funding under medicaid rather than general relief medical. Thus, the department contracted with a private company for determinations of disability in accordance with federal rules.

The department spent approximately $175,000 during fiscal year 1993 for determinations of medicaid disability. It was believed that these expenses would be less than the services that would otherwise be paid out of the state and county funded general relief programs. This incentive no longer exists now that the legislature has eliminated the General Relief program.

The vast majority of individuals applying for medicaid (based upon a disability) are also applying for social security or supplemental security income. Federal law (42 CFR 435.540) requires the medicaid agency to use the same definition and criteria for determining disability as that which is used by the Social Security Administration. When the department originally contracted for medicaid disability determinations, the Social Security Administration (SSA) was routinely taking more than 90 days to reach an initial determination. (Federal law requires medicaid determinations of disability to be made within 90 days.) Now, the initial determinations of disability by the Social Security Administration are taking 60 days or less. Thus, the quicker response has negated one of the reasons for the separate private contract.

The Omnibus Reconciliation Act (OBRA) of 1990 gave to the states the option of making their own determinations of medicaid disability rather than waiting for a determination by SSA. These determinations are valid until SSA has reached a "final" determination of disability. (A final determination is not made until after a hearing decision and Social Security Appeals Board decision are rendered, if the claimant appeals the "initial" determination.) The department, however, has decided not to exercise independent authority to make disability determinations as permitted by OBRA.

The legislative repeal of general relief and the quicker disability determinations by SSA has eliminated the need for a separate contractor to work with the department in making disability determinations independent of the initial determinations made by SSA. Therefore, the department is changing its procedures. The department will now await the decisions made by SSA before making a decision on medicaid disability applications. Although this is an internal management procedure, and not technically required to be adopted as a rule, the department seeks to receive comments on this change.

The proposed amendment to ARM 46.12.3002 incorporates this change in policy which began on July 1, 1993, i.e. the date general relief medical was repealed. The department did not previously have a rule explaining the internal process for reviewing claims for medicaid based upon a disability. This policy change will not apply to applications made prior to July 1st. This amended rule does not change the definition of a disability. The department still follows the required federal rules.

The proposed rule amendment also extends the period for which the department has to make a disability determination. This is being changed from 60 to 90 days to coincide with the requirements of federal law set forth at 42 CFR 435.911.

The proposed rule amendment also makes several exceptions to the general rule which will allow the department to await the determinations made by SSA. These exceptions include situations when SSA has not made their decision within 90 days, instances where the applicant for medicaid has not applied for supplemental security income benefits, or situations where the applicant has alleged that the disabling condition has changed or deteriorated since SSA made its determination. These exceptions are being adopted in order to follow the requirements of federal law set forth at 42 CFR 435.541.

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 December 22, 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 November 15, 1993.

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

In the matter of the amendment of 2.43.302, 2.43.452 and 2.43.453 to clarify return to work provisions of retirement incentive program	))))	NOTICE OF ADOPTION OF RULES ADMINISTERING THE STATE'S RETIREMENT INCENTIVE PROGRAM

TO: All Interested Persons.

1. On September 16, 1993, the Public Employees' Retirement Board published notice of a public hearing on the proposed amendment to rules concerning Montana's retirement incentive program in the Montana Administrative Register, Issue number 17, starting at page 2057 and inclusive of page 2059.

2. On October 18, 1993 at 9:00 am in the Board Meeting Room of the Public Employees' Retirement Division, 1712 Ninth Avenue, Helena, Montana, a public hearing was held pursuant to the August 26, 1993 notice. No oral testimony or written comments were received at this hearing.

3. The following written comments were received by the Board:

COMMENT: Amendment to rule 2.43.302. Add the definition for the term "same jurisdiction".

RESPONSE: "Same jurisdiction" is defined in statute (19-3-908(6) MCA and it is inappropriate to adopt definitions by rule which are found in statute.

COMMENT: Amendment to rule 2.43.452(2). Suggested the term "employment" should be changed to "an employee".

RESPONSE: Since "service" is the subject of the sentence, "employment" rather than "an employee" is correct.

COMMENT: Amendment to rule 2.43.452.(3). The reporting requirements to collect statistical data to analyze the affects of HB 517 will be unduly burdensome to a private employer.

RESPONSE: "Employer" is defined in retirement statutes as "a governmental entity participating in a retirement system enumerated in 19-2-302 on behalf of its eligible employees," (19-2-303(18) MCA). The data collection requirements are not made of private employers.

COMMENT: The record keeping requirements appear to be excessive and place an unfair burden on government agencies and independent contractors. Agencies are unlikely to have detailed information concerning independent contractors or their employees who have not worked for the reporting agency. This

will create significant record keeping requirements and many agencies will not have sufficient resources to handle the increased burden.

RESPONSE: The record keeping requirements for employers are similar to those already required by statute. The additional information needed is only available from the agency and should not significantly increase the record keeping burden, since this information is of a one time nature and not ongoing. The agency is only required to report on contract employees when contracted services previously performed by the agency were not able to be performed by the agency due to staff reductions caused by the incentive. The agency may require this information be provided by contractors as part of the contract.

4. The Board has amended the rules as proposed.

By: Terry Teichrow
Terry Teichrow, President
Public Employees' Retirement Board

Dal Smilie, Chief Legal Counsel
Rule Reviewer

Certified to the Secretary of State on November 9, 1993.

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

In the matter of the adoption of new rules establishing accreditation fees for annual continuation of authority; defining "money market funds" as they relate to investments by farm mutual insurers; the amendment to rules to remove limitations on the issuance of credit life and credit disability insurance to joint debtors; the amendment of a rule prohibiting discrimination in determining eligibility for personal automobile insurance; the repeal of a rule relating to wage assignments; and the repeal of rules relating to voluntary payroll deductions	NOTICE OF ADOPTION

To: All Interested Persons.

On September 30, 1993, the state auditor and commissioner of insurance of the state of Montana published notice of public hearing with respect to the proposed adoption of new rules establishing accreditation fees for annual continuation of authority and defining "money market funds" as they relate to investments by farm mutual insurers; the proposed amendment of rules to remove limitations on the issuance of credit life and credit disability insurance to joint debtors; the proposed amendment of a rule prohibiting discrimination in determining eligibility for personal automobile insurance; the proposed repeal of a rule relating to wage assignments; and the proposed repeal of rules relating to voluntary payroll deductions. The notice was published at page 2163 of the 1993 Montana Administrative Register, issue number 18.

1. The agency has adopted the new rules I (6.6.4101) and II (6.6.4002) as proposed.

2. The agency has adopted the text of new rule I (6.6.4101) as proposed, but has changed the catchphrase thereof as follows (material stricken is interlined; new matter added is underlined): 6.6.4101 ACCREDITATION FEES ~~SCHEDULE~~

3. The agency has amended ARM 6.6.1101, 6.6.1103 and 6.6.3303 as proposed.

4. The agency has repealed ARM 6.14.101 and 6.14.201 through 6.14.208 as proposed.

5. A public hearing on the proposed rules, rule amendments, and repeal of rules was held October 21, 1993. Three interested persons attended the hearing, one of whom spoke in support of proposed amendments to ARM 6.6.1101 and 6.6.1103. Another person contended that the proposed amendment to ARM 6.6.3303 is not adequate to end the confusion which has been an

ongoing source of controversy within the automobile insurance industry. He offered some proposed rule revisions which he later withdrew in favor of submitting a petition at a later date to amend all of the rules in sub-chapter 33 of the insurance department's administrative rules. There were no other data, views, or arguments submitted, either orally or in writing.

6. COMMENT: In contemplating how the catchphrase to ARM 6.6.4101 would appear in the Administrative Rules of Montana, the agency felt that the catchphrase was too broad and did not anticipate the possibility of future rules establishing fees or fee schedules.

7. The agency, having thoroughly considered the submissions received, adopts the rules, rule amendments and repeal of rules as proposed, but with the revised catchphrase for ARM 6.6.4101.

State Auditor and
Commissioner of Insurance

By _____
Mark O'Keefe

_____
Geoffrey L. Brazier
Rules Reviewer

Certified to the Secretary of State this 15th day of November, 1993.

BEFORE THE BOARD OF CLINICAL LABORATORY SCIENCE PRACTITIONERS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the adoption of new rules pertaining to clinical laboratory science	))))	NOTICE OF ADOPTION OF NEW RULES PERTAINING TO CLINICAL LABORATORY SCIENCE PRACTITIONERS

1. On September 16, 1993, the Board of Clinical Laboratory Science Practitioners published a notice of proposed adoption of rules pertaining to clinical laboratory science practitioners, at page 2065, 1993 Montana Administrative Register, issue number 17.

2. The Board has adopted new rules I (8.13.101), II (8.13.201), III (8.13.202) and IV (8.13.301) exactly as proposed. The Board has adopted new rules V through VIII (8.13.302 through 8.13.305) and IX (8.13.401) as proposed but with the following changes:

"8.13.302 LICENSING BY RECIPROCITY (1) will remain the same as proposed.

(a) The applicant must cause his original state, territory or country of licensure to provide the board with official written verification of THE APPLICANT'S current licensure on an official form; and

(b) will remain the same as proposed."

Auth: Sec. 37-34-201, MCA; IMP, Sec. 37-34-201, 37-34-305, MCA

"8.13.303 FEES (1) through (2)(d) will remain the same as proposed.

(e) LICENSURE BY reciprocity fee 75.00

(f) will remain the same as proposed."

Auth: Sec. 37-34-201, MCA; IMP, Sec. 37-34-201, MCA

"8.13.304 RENEWAL (1) All clinical laboratory science practitioners' licenses will expire on May 1 of each year, commencing in the year 1995. A renewal notice will be sent by the board to each license holder to the last address in the board's files NO LATER THAN FEBRUARY 1 OF EACH YEAR. Failure to receive such notice shall not relieve the license holder of his obligation to pay renewal fees in such a manner that they are received by the department on or before the renewal date. All licensees must submit the proper renewal fee and any other forms or documents required by the board.

(2) will remain the same as proposed.

(3) ~~Any licensee who fails to pay renewal fees in such a manner that they are received by the department on or before the renewal date shall pay a late renewal fee. Any person failing to renew a license within 45 days of the expiration date will be considered to have forfeited the license.~~ IF A LICENSE FEE IS RECEIVED BY THE DEPARTMENT AFTER THE RENEWAL DATE, THE LICENSEE SHALL PAY A LATE RENEWAL FEE. ANY PERSON FAILING TO RENEW A LICENSE WITHIN 45 DAYS OF THE EXPIRATION DATE WILL BE CONSIDERED TO HAVE FORFEITED HIS OR HER LICENSE.

Thereafter, the individual shall be treated as a new applicant for licensure, and shall be required to comply with all statutes and rules relating to new applicants for a license."

Auth: Sec. 37-34-201, MCA: IMP, Sec. 37-34-305, MCA

"8.13.305 MINIMUM STANDARDS FOR LICENSURE (1) will remain the same as proposed.

(a) Applicants for a license as a clinical laboratory scientist must have graduated from an accredited college or university with a baccalaureate degree with at least 36 semester or 54 quarter hours in the physical and biological sciences. The applicant must also have passed a generalists examination offered by ~~either the NCA (national certification agency for medical laboratory personnel) or the ASCP (American society of clinical pathologists)~~ A NATIONAL CERTIFYING BODY FOR CLINICAL LABORATORY SCIENTISTS.

(b) Applicants for a license as a clinical laboratory specialist must have graduated from an accredited college or university with a baccalaureate degree with at least 36 semester or 54 quarter hours in the physical and biological sciences. The applicant must also have passed a specialist examination offered by ~~either the NCA (national certification agency for medical laboratory personnel), ASCP (American society of clinical pathologists) or the ASM (American society of microbiologists)~~ A NATIONAL CERTIFYING BODY FOR CLINICAL LABORATORY SPECIALISTS. The following are areas of clinical laboratory science for which the board will grant a specialist's license:

(i) through (vi) will remain the same as proposed.

(c) Applicants for a license as a clinical laboratory technician must have graduated with an associate degree or possess 60 semester or 90 quarter hours in a science-related discipline, or completed a military medical laboratory training program of at least 12 months in duration. The applicant must also have passed a technician examination offered by ~~either the NCA (national certification agency for medical laboratory personnel), ASCP (American society of clinical pathologists), or the AMT (American medical technologists)~~ A NATIONAL CERTIFYING BODY FOR CLINICAL LABORATORY SCIENCE TECHNICIANS."

Auth: Sec. 37-34-201, MCA; IMP, Sec. 37-34-303, MCA

"8.13.401 UNPROFESSIONAL CONDUCT For the purpose of implementing the provisions of section 37-34-306, MCA, the board defines "unprofessional conduct" as follows:

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

(3) having a clinical laboratory science or related license denied FOR A REASON THAT WOULD BE A REASON FOR DISCIPLINARY ACTION AGAINST A LICENSEE IN THIS STATE, OR suspended, revoked, placed on probation, or voluntarily surrendered in another jurisdiction;

(4) through (13) will remain the same as proposed."

Auth: Sec. 37-34-201, MCA; IMP, Sec. 37-34-306, MCA

3. The Board has thoroughly considered all comments and testimony received. Those comments and the Board's responses follow: (Many of the comments received focus on perceived problems that deal with the statutes set forth in Title 37, Chapter 34, MCA. The Board has no authority to change the statutes as set by the legislature. Statutory issues must be addressed by the Legislature. Thus, those comments that address statutory issues at the hearing are not addressed in this adoption notice. Only the issues pertaining to the proposed rules are addressed.)

COMMENT: Anne Weber, President of the Montana Society for Medical Technology, appeared and commented on the rules, both in writing and orally. Ms. Weber expressed concern over the lack of procedures in the rules for specifics on the grandfathering provision. Ms. Weber provided suggestions, in writing, for procedures that could be enacted by rule.

Ms. Weber also made suggestions for changes in style to new rules V(1)(a) Licensing by Reciprocity, and VII(3) Renewal.

RESPONSE: The Board believes that proposed new rule IV adequately addresses the application process, and has developed a form requiring verification of employment for individuals seeking licensure under the grandfathering provision of section 37-34-304(1), MCA. Thus, the Board is adopting new rule IV as originally proposed.

COMMENT: Ms. Weber suggested defining "level of practice" more clearly to determine which type of license will be issued to an individual seeking licensure.

RESPONSE: The Board finds that the level of practice is adequately defined in the statute under the definitions of clinical laboratory scientist, clinical laboratory specialist, and clinical laboratory technician, found at section 37-34-103(4),(5) & (6), MCA. Ms. Weber's suggestion that an individual must perform high complexity testing in order to qualify for licensure as a clinical laboratory scientist or specialist contradicts the statutory definitions which require that the individual perform any clinical laboratory test, along with other qualifications.

With respect to Ms. Weber's suggestions on the renewal fee, the Board finds the current status of the fees are adequate as described. Rule VI clearly states that the original fee is $90.00, and that the renewal fee will be $30.00 dollars in subsequent years. The Board also notes that the reciprocity fee constitutes the entire fee for an individual seeking licensure by reciprocity. The fee is $75.00 dollars due to a reduced cost of processing associated with the reciprocity licensing. The Board has added the words, "licensure by" to the front of Rule VI(2)(e) as shown above, to better clarify this intent.

With respect to Ms. Weber's suggestions on proposed changes to Rules V(1)(a) and VII(3), the Board agrees that such changes provide better clarification of Board intent. These rules have been modified in accordance with Ms. Weber's suggestions as shown above.

COMMENT: Larry Goss, member of the Clinical Laboratory Manager's Association and supervisor of a rural hospital laboratory, appeared and commented on the rules, both in writing and orally. Mr. Goss expressed concern over the personnel shortage in rural settings, and requested that the Board consider relaxing the educational requirements for licensure in its rules and statutes. Mr. Goss expressed that he believed that federal guidelines (CLIA 88) adequately cover personnel qualifications without additional requirements, and suggested that the rural hospitals be surveyed regarding personnel shortages before the Board enacts licensure requirements.

RESPONSE: Mr. Goss' statements focus on problems that he has with the statutes set forth in Title 37, Chapter 34, MCA. The Board has no authority to change the statute as set by the legislature.

COMMENT: Larry Miller, a consultant from Spokane, Washington for St. Johns Lutheran Hospital and Libby Clinic, appeared and commented on the rules orally. Mr. Miller expressed concern over whether an individual performing consulting functions would be subject to the licensure requirements of the statutes and rules of the Board. Mr. Miller also wanted clarification on reciprocity. Mr. Miller suggested that reciprocity be extended to individuals who have been practicing in states that do not require licensure.

RESPONSE: A consultant would be subject to licensure under section 37-34-103 (3)(a): Clinical Laboratory Science Practitioner definition.

With respect to Mr. Miller's suggestions on reciprocity, reciprocity is available only to individuals who qualify under section 37-34-304(3), MCA. This section of the law requires that an individual must be licensed in another state, territory, or country to be eligible for reciprocity in this state.

COMMENT: Brian Sanders, government liaison, laboratory manager, and technical consultant to small hospitals, appeared and commented on the rules orally. Mr. Sanders also submitted written testimony from Marsha Waterman of the Montana Chapter of the Clinical Laboratory Management Association. Mr. Sanders questioned whether an application fee would be refunded if denied. Mr. Sanders also mentioned that the Board should develop rules for continuing education.

RESPONSE: The application fee would not be refunded, as the process of reviewing the application requires the same amount of time whether the individual is eventually granted or denied a license. With respect to Mr. Sanders' suggestion that the Board adopt rules for continuing education, the Board will develop such rules in the near future.

COMMENT: Chuck Brown, a lab manager from Choteau, Montana, expressed his concern over the costs of training for rural settings. Mr. Brown stated that he would like the Board to scrutinize continuing education credits carefully before enacting a rule on the topic. Mr. Brown stated that the Board

should consider allowing continuing education by video, with attendance certified by the hospital. Mr. Brown stated that continuing education should be set up with the rural hospitals' special needs in mind.

RESPONSE: As stated above, the Board will be developing rules for continuing education in the near future.

COMMENT: Mr. Brown further stated his opposition to the definition of immoral or unprofessional conduct as currently written. Mr. Brown stated his belief that conduct outside of the work place should not impact on the individual's license.

RESPONSE: With respect to Mr. Brown's comments on unprofessional conduct, the Board believes that the rules are appropriate as stated. The conduct of a licensed individual outside of the work place may still raise concerns regarding his or her ability to safely practice clinical laboratory science.

COMMENT: Kip Smith, Director of development for the Montana Primary Care Association, appeared and commented both in writing and orally. Mr. Smith stated that he believed that individuals working in rural areas should be exempt from the licensure requirements pursuant to section 37-34-302(2)(g), but that such exemption was not provided in the Board's proposed rules. Mr. Smith also stated that he wanted the rules to reflect that there is a grandfather provision in the statute. Mr. Smith stated his belief that this should be accomplished by including section 37-34-301, 37-34-302, 37-34-304, 37-34-306-308, as part of the rules.

Mr. Smith also questioned the fees were set on actual costs of the program. Mr. Smith suggested that the difference between the temporary and reciprocity fees could be construed as a method of discouraging temporary licenses. Mr. Smith also questioned whether the Board could pro-rate the license fee if an individual first becomes licensed with six or less months left in the year.

Mr. Smith commented on the unprofessional conduct rules. Mr. Smith suggested that the rule providing for unprofessional conduct if denied in another jurisdiction should be stricken, or modified to reflect that the denial must be for reasons that would constitute a basis for disciplinary action against a licensee.

RESPONSE: With respect to Mr. Smith's opposition to the licensure requirement for clinical laboratory science, the Board does not have the ability to change the licensure requirement, which is set by statute.

With respect to Mr. Smith's suggestion that the rules adopt sections of the statute, the Board is unable to unnecessarily repeat statutory language, pursuant to section 2-4-305, MCA. The statutes as written are in place and are valid without reference in the rules.

With respect to Mr. Smith's questions regarding fees, it is the Board's intent that the individual previously practicing on a temporary license will be required to pay the licensure fee upon full licensure. In addition, the Board notes that it is not attempting to discourage temporary

licensure. The temporary fee is higher than the reciprocity fee because it allows the individual to practice for a period of 15 months, and involves greater administrative processing. Also, the Board is unwilling to prorate the license fee depending on month of application.

With respect to Mr. Smith's concern regarding when renewal notices would be sent, the Board has changed Rule VII(1) as shown above to reflect that the renewal notice will be sent to licensees no later than February 1 preceding the May 1 renewal date.

With respect to Mr. Smith's concern regarding unprofessional conduct, the Board has changed Rule IX(3) to reflect that denial of a license will be unprofessional conduct only if denied for a reason that would be a reason for disciplinary action against a licensee in this state.

COMMENT: Robert Olsen, President of the Montana Hospital Association, appeared and commented both in writing and orally. Mr. Olsen suggested that the grandfathering provision in the statute needed further clarification in the rules as to how the procedure would be implemented. Mr. Olsen also stated his belief that the current rules do not provide for a temporary license for a supervisor, and that a supervisor would have to take the licensure examination to become licensed, notwithstanding the grandfathering provisions. Mr. Olsen requested, in addition, that the required examinations be made available at least quarterly to allow expeditious licensing.

Mr. Olsen commented on reciprocity for Canadians. Mr. Olsen suggested that the rule on reciprocity should be amended to specify that Canadian-trained workers would be granted reciprocity in Montana. Mr. Olsen also suggested reciprocity should be granted to individuals who have satisfied the qualification processes of CLIA.

Mr. Olsen commented on the unprofessional conduct rules. Mr. Olsen followed Mr. Smith's suggestion with respect to denial of licensure in another state being cause for disciplinary action here.

RESPONSE: With respect to Mr. Olsen's comments regarding the grandfathering provisions, the Board finds that the statute adequately specifies how the grandfathering language from section 37-34-304(1) will be implemented. This section requires that the applicant submit documentation, verified by oath of the requisite qualifications.

With respect to Mr. Olsen's suggestion on the availability of examinations, the Board does not administer the examinations and does not control when the examinations are offered. The statute, section 37-34-303, MCA, allows the board to approve certifying examinations, which it has done in proposed rule number VIII. When these examinations are offered is a decision of the certifying agency, and is not under the control of the Board.

With respect to Mr. Olsen's suggestion that the rule be changed to state that reciprocity will be granted to Canadians, the Board declines to modify the proposed rules. The standard for reciprocity is determined by the statute,

section 37-34-304(3), MCA. The statute requires that the other state, territory or country grant similar privileges to Montana licensees. Thus, if Canada offers reciprocity to Montana licensees, the Board will offer reciprocity to licensees from Canada. The Board does not have the authority to change this statutory requirement. In addition, the Board does not have the authority to offer reciprocity to individuals credentialed by CLIA, as the statute limits reciprocity to individuals licensed in another state, jurisdiction, or country.

COMMENT: Bob Barraugh, of UBS in Billings, Montana, appeared and commented orally on the proposed new rules. Mr. Barrow was concerned about a twelve-month federal military program named HEW not being recognized for educational credit for a technician license. Mr. Barrow also questioned whether two licenses are required if an individual seeks to upgrade from a technician to a specialist or scientist.

RESPONSE: The Board notes that an HEW-certified individual may qualify for a license under the grandfathering provision of section 37-34-304(1), MCA. Individuals submitting applications after the expiration of the grandfathering deadline of October 1, 1994, however, will be subject to the licensure requirements for education and examination applicable to all candidates. The Board further notes that it currently provides for technician licensing if the candidate has completed a 12-month program offered by the military and passed the appropriate examination.

COMMENT: Marsha Waterman, Administrative Director of the Medical Reference Laboratories, Inc., submitted written comments on the proposed new rules. Ms. Waterman expressed concern over the lack of rules on continuing education credit. Ms. Waterman suggested that documentation for purposes of grandfathering should be better defined than currently defined in the statute at section 37-34-304, MCA. Ms. Waterman suggested a synopsis of hours and duties, and a signed statement of verification by the laboratory director.

Ms. Waterman suggested that the unprofessional conduct rules should be limited to actions of the professional while performing his or her job.

Ms. Waterman suggested that the minimum standards for certifying agencies should include all certifying agencies in existence. Ms. Waterman suggests that failure to include all certifying agencies is discriminatory.

RESPONSE: With respect to Ms. Waterman's comments regarding recognition of certifying agencies, the Board has changed new proposed rule VIII to reflect that passage of an examination offered by any national certifying agency for clinical laboratory science practitioners will be accepted.

COMMENT: Written comments were received on September 23, 1993 from K.D. Schuldheisz, a CT certified by the ASCP and IAC. Schuldheisz expressed concern that the cytotechnologists were left out of the proposed rules of the Board. Schuldheisz suggests that a cytotechnologist should have requirements of

graduation from a school of cytotechnology and certification in cytology by an approved certifying agency.

Schuldheisz states that CLIA does not require a baccalaureate degree for cytotechnologists, even if the individual is practicing in a supervisory role. Schuldheisz contends that requiring a baccalaureate degree for a cytotechnologist is unfair.

RESPONSE: Schuldheisz's statements focus on problems that he has with the statutes set forth in Title 37, Chapter 34, MCA. The Board has no authority to change the statute as set by the legislature.

COMMENT: Written comments were received on October 18, from Fred Ricks, MT, with the ASCP. Mr. Ricks contends that the rules do not address mandatory rulemaking pursuant to section 37-34-201, MCA. Mr. Ricks states that the law is vague and needs to be clarified by the Board's rules. Mr. Ricks also poses a number of questions on enforcement, continuing education, the exemptions of the statute for practice of other licensed professions, and the difference between a technologist and a technician.

RESPONSE: The Board is working on additional rules. The proposed new rules included in this notice constitute the first stage in this process.

COMMENT: Written comments were received on October 18, from Dana Nichols, BS, CT with the ASCP. Ms. Nichols states that cytotechnologists were included in the licensing act for unjust reasons. Ms. Nichols states that cytotechnology is a specialized field, and that no one should be allowed to practice cytotechnology except for a person who has a baccalaureate degree, completion of a twelve month training program, and who has passed the ASCP exam. Ms. Nichols states that cytotechnologists are adequately addressed by the CLIA regulations, and that the new licensure requirement is a form of taxation without representation. Ms. Nichols questions whether a cytotechnologist is on the Board.

RESPONSE: Ms. Nichols' statements focus on problems that she has with the statutes set forth in Title 37, Chapter 34, MCA. The Board has no authority to change the statute as set by the legislature.

COMMENT: Written comments were received on October 18, 1993, from Jack L. Exley, M.D., Absarokee Medical Clinic. Mr. Exley states that Montana's regulation of clinical laboratory science practitioners is an unnecessary duplication of regulation currently in place under CLIA. Mr. Exley contends that the licensure requirement will result in a decline in the quality of care available in rural settings, due to an increase in costs of compliance.

RESPONSE: The Board finds that proposed new rule VIII (8.13.305) adequately addresses such qualifications as originally proposed.

BOARD OF CLINICAL LABORATORY
SCIENCE PRACTITIONERS
JOANN SCHNEIDER, CHAIRMAN

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

_____
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, November 15, 1993.

BEFORE THE BOARD OF REAL ESTATE APPRAISERS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment of rules pertaining to examinations, experience requirements, education requirements and fees and the repeal of a rule pertaining to agricultural certification	NOTICE OF AMENDMENT OF 8.57.403 EXAMINATION, 8.57.405 EXPERIENCE REQUIREMENTS, 8.57.408 EDUCATION REQUIREMENTS FOR RESIDENTIAL CERTIFICATION AND 8.57.412 FEES AND THE REPEAL OF 8.57.410 AGRICULTURAL CERTIFICATION

TO: All Interested Persons:

1. On September 30, 1993, the Board of Real Estate Appraisers published a notice of proposed amendment and repeal at page 2170, 1993 Montana Administrative Register, issue number 18.

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

3. No comments or testimony were received.

BOARD OF REAL ESTATE APPRAISERS
PAT ASAY, CHAIRMAN

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

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

Certified to the Secretary of State, November 15, 1993.

BEFORE THE FINANCIAL DIVISION
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment of a rule pertaining to banks - reserve requirements and the adoption of new rules pertaining to investment in corporate stock, investments of financial institutions, limitations on loans and loans to a managing officer, officer, director or principal shareholder	NOTICE OF AMENDMENT OF 8.80.101 BANKS - RESERVE REQUIREMENTS AND THE ADOPTION OF NEW RULES PERTAINING TO INVESTMENTS AND LOANS

TO: All Interested Persons:

1. On July 29, 1993, the Financial Division published a notice of public hearing on the proposed amendment and adoption of the above-stated rules at page 1599, 1993 Montana Administrative Register, issue number 14. The public hearing was held on August 20, 1993, in Helena, Montana.

2. The hearing on the proposed new rule pertaining to corporate credit unions (new rule V) was continued to October 22, 1993. A notice of this hearing continuation was published at page 2198, 1993 Montana Administrative Register, issue number 18. The adoption of new rule V regarding credit unions is not included in this adoption notice. The Financial Division has amended ARM 8.80.101 and adopted new rule II (8.80.107) exactly as proposed and has adopted new rules I (8.80.106), III (8.80.108) and IV (8.80.109) as proposed but with the following changes:

"8.80.106 INVESTMENT IN CORPORATE STOCK (1) will remain the same as proposed.

(a) ~~A bank service corporation owned, wholly or partially, by one or more state chartered banks, will be subject to review and supervision by the department.~~ THE DEPARTMENT ADOPTS THE DEFINITION OF BANK SERVICE CORPORATION DEFINED BY 12 USC 1861 AS 'A CORPORATION ORGANIZED TO PERFORM SERVICES AUTHORIZED BY THIS ACT, ALL OF THE CAPITAL STOCK OF WHICH IS OWNED BY ONE OR MORE INSURED BANKS.'

(b) through (xi) will remain the same as proposed.

(2) As provided by section 32-1-422, MCA, a bank may invest in the stock of certain corporations. ~~The investment in any approved corporation shall be limited to:~~

~~(a) the minimum number of shares of stock, or~~

~~(b) the minimum dollar value of such shares necessary for the bank to participate in the services or programs offered by the corporation.~~ THE INVESTMENT IN THE STOCK OF ANY APPROVED CORPORATION SHALL BE LIMITED TO:

(a) THE GREATER OF 5% OF A BANK'S UNIMPAIRED CAPITAL AND SURPLUS;

(b) THE MINIMUM NUMBER OF SHARES NECESSARY TO PARTICIPATE IN GOVERNMENT SPONSORED ENTERPRISES; OR

(c) THE MINIMUM DOLLAR VALUE OF SUCH SHARES NECESSARY FOR THE BANK TO PARTICIPATE IN THE SERVICES OR PROGRAMS. THIS

LIMITATION SHALL BE EXCLUSIVE OF ALL ACCRUED OR DECLARED STOCK DIVIDENDS GENERATED BY SUCH CORPORATE STOCK.

(3) and (3)(a) will remain the same as proposed."

Auth: Sec. 32-1-422, MCA; IMP, Sec. 32-1-422, MCA

"8.80.108 LIMITATIONS ON LOANS In the context of the following rule, the following definitions apply:

(1) and (1)(a) will remain the same as proposed.

(b) ~~"Control" means one or more persons acting in concert, who directly or indirectly own, control, or have the power to vote 25% or more of the voting or nonvoting stock of an organization or common enterprise. This may be further construed to include any other circumstances whereby a controlling influence is exercised over an organization.~~ "CONTROL" MEANS THE OWNERSHIP OR BENEFICIAL CONTROL OF 50% OF THE CORPORATE STOCK, OR MORE, BUT SHALL BE CONSTRUED TO BE A LESSER PERCENTAGE OF OWNERSHIP IF CONTROL IS EVIDENT TO BANK MANAGEMENT. IN NO CASE WOULD CONTROL BE DEEMED TO EXIST FOR THIS SECTION WHEN A PERSON OWNS OR CONTROLS LESS THAN 25% OF THE CORPORATION'S STOCK. THE AGGREGATION OF CERTAIN LOANS TO SHAREHOLDERS AND THEIR CORPORATIONS SHALL INCLUDE THOSE WHERE A PERSON IS DEEMED TO CONTROL THE ENTERPRISE.

(i) through ((3)(b) will remain the same as proposed.

(c) ~~undisbursed portions of construction, operating, or other lines of credit, not to exceed limits established by written agreement~~ UNDISBURSED PORTIONS OF CONSTRUCTION, OPERATING, OR OTHER LINES OF CREDIT, NOT TO EXCEED LIMITS ESTABLISHED BY WRITTEN AGREEMENT, AND SHALL BE INCLUSIVE OF, BUT NOT LIMITED TO THE "ADVANCED PORTIONS" OF ALL LOANS, BUT SHALL BE LIMITED TO THOSE CONTRACTUALLY DESCRIBED ADVANCE LIMITATIONS THAT OCCUR AS PART OF A CREDIT GRANTING CONTRACT.

(d) through (g) will remain the same as proposed.

(4) ~~The amount of loans or extensions of credit guaranteed wholly or partially, in writing, by a person will be included when calculating that person's liability to a bank for lending limit purposes.~~ A GUARANTEED LOAN OR EXTENSION OF CREDIT SHALL BE AGGREGATED WITH A GUARANTOR'S OTHER LOANS AND EXTENSIONS OF CREDIT, ONLY IF THE GUARANTOR RECEIVES A BENEFIT AS THE RESULT OF THE GUARANTEE. THE TERM "BENEFIT" IS DEFINED AS A SUM OF MONEY, A FINANCIAL CONSIDERATION, OR SOMETHING OF TANGIBLE VALUE."

Auth: Sec. 32-1-432, MCA; IMP, Sec. 32-1-432, MCA

"8.80.109 LOANS TO A MANAGING OFFICER, OFFICER, DIRECTOR OR PRINCIPAL SHAREHOLDER OF A BANK (1) through (3)(d) will remain the same as proposed."

Auth: Sec. 32-1-465, 32-1-467, MCA; IMP, Sec. 32-1-467, MCA

3. The Board has thoroughly considered all comments and testimony received. Those comments and the Board's responses thereto follow:

New Rule I (8.80.106)

COMMENT: A change was recommended in the definition of bank service corporation to be that found in the Bank Service Corporation Act of 1962, cited at 12 USC 1861. The inclusion of this definition would clarify the rule and make it consistent with federal statutes.

RESPONSE: The Department concurs. The Department adopts the definition of bank service corporation defined by 12 USC 1861 as "a corporation organized to perform services authorized by this Act, all of the capital stock of which is owned by one or more insured banks."

COMMENT: Three comments addressed the proposed maximum level of stock holdings:

(1) The limitation of shares of stock or the minimum dollar value of such shares for a bank to participate would be more restrictive for state banks than presently allowed for national banks under 12 USC 24(7th), Revised Statutes, Section 5136. State Banks should be permitted to invest up to 5% of capital and unimpaired surplus as the level permitted for national banks.

(2) If the bank owned Federal Home Loan Bank ("FHLB") stock, the proposed limitation to a minimum investment in stock for FHLB program participation would exclude potential beneficial tax treatment on dividends paid by the FHLB in the form of stock. Forced redemption of quarterly stock dividends would result. A permissible limit should be established similar to that applicable to holding FRB stock.

(3) The proposed rule would limit a state bank's investment in government sponsored enterprises. The investment of any approved corporation should be limited to the greater of (a) 5% of bank's unimpaired capital and surplus; or (b) the minimum number of shares necessary for program participation; or (c) the minimum dollar value of such shares necessary for the bank to participate in services or programs.

RESPONSE: The proposed rule has been amended as shown above.

New Rule III (8.80.108)

COMMENT: The effect of the proposed rule would be to place a state chartered bank at a competitive disadvantage versus other bank and non-bank competitors, and would be restrictive on a borrower's access to credit. The definition of a loan should be limited to only those advanced portions of all loans, extensions of credit, and commitments to lend or extend credit.

RESPONSE: The Department concurs, and modifies the definition of a loan and extension of credit shall be inclusive of, but not limited to the "advanced portions" of all loans; but shall be limited to those contractually described advance limitations that occur as part of a credit granting contract.

COMMENT: A divergence from the Office of the Comptroller of the Currency's ("OCC's") lending standards may occur with this rule, and referenced OCC's regulation, cited as 12 CFR 32.5(b)(1), that includes a 50% ownership level to establish control. OCC's view of aggregations of loans from common enterprises is a view generally shared by the Department. Implementing a control definition level of 25% is unfair. The impact of such a rule would decrease a bank's ability to lend money to its agricultural and commercial customers. Loans and extensions of credit to corporations should be considered loans and extensions of credit to corporate stockholders only if the stockholder owns, or beneficially controls, more than 50% of the voting stock of the corporation.

Another comment provided that the OCC's model on overall limits on loans to any one individual was not an ideal model. Regarding the definition of "control" as it related to an affiliated corporation for over-all lending purposes: Commenter envisioned problems of implementation relating to a sub-chapter S corporation, if the 25% control definition was used. The OCC uses a 50% level of stock ownership as part of its control definition, a definition the commenter believed an ordinary person would understand. As a result, a higher ceiling of initially 50% was recommended that perhaps could be reduced over a period of time.

RESPONSE: The rule has been amended as shown above in response to these comments.

COMMENT: The proposed rule requires that all guarantees given by an individual add towards the aggregate lending limit applied against that person and his various interests. The requirements which govern national banks permit a bank to generally exclude guarantees by a person whose sole connection with the credit is as a guarantor or endorser and who does not receive any of the proceeds or benefit from the proceeds of the loan.

RESPONSE: The rule has been amended as shown above in response to this comment.

New Rule IV (8.80.109)

COMMENT: This rule should conform with the Federal Reserve System's "Reg O". The proposed rule should be amended to utilize a definition of unimpaired surplus consistent with "Reg. O's" definition. Although "Reg. O" restricted its tenets to managing officers, the proposed new rule extended "by mistake" to directors, and also included other officers, and principal shareholders. The Department should restrict its rule to the managing officer. "Grandfather rights" regarding a state bank's lending to its directors and their interests should be included. The Department must limit its rulemaking to those areas authorized by statute.

RESPONSE: The proposed definition of unimpaired capital and surplus remains. No definition of "unimpaired surplus" exists in "Reg. O". It is noted that while the Office of the Comptroller of the Currency does have such a definition/regulation, its other supplemental definitions and

regulations are narrower in interpretation. The proposed rule conforms with statute. There is no statutory authority to restrict the rule to managing officer. No statutory authority allows the Department to "grandfather" a bank's lending to its directors. The Department operates within the general and specific rulemaking authority permitted by statute.

COMMENT: Language contained in the recommendations of the Montana State Banking Code Advisory Council was deleted from the law. Inclusion of "directors" as it pertains to directors who are not managing officers, will cause problems in existing lending relations. The proposed rule utilized the term "managing officer", rather than "executive officer". The rule should be amended to reflect the definitions of "executive officer" and "extension of credit" found in "Reg. O". The rule should allow a twenty-four month transition period to October 1, 1995, within which loans and extensions of credit to outside directors (or principal shareholders) would come into compliance. The purpose of the extension would be to allow the Legislature to reconvene in January 1995, and to amend Section 467 of the law by deleting "directors" and limiting the section to "managing officers".

RESPONSE: The statute expressly provides that 32-1-467 applies to "managing officer and directors". The definition in the rules is in conformance with statute. The Department is satisfied with its definition of "extension of credit."

No statutory authority exists to allow a twenty-four month transition or phase-in period.

FINANCIAL DIVISION
DONALD HUTCHISON, COMMISSIONER

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

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

Certified to the Secretary of State, November 15, 1993.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the amendment of Teacher Certification	)))	NOTICE OF AMENDMENT OF ARM 10.57.211 TEST FOR CERTIFICATION

To: All Interested Persons

1. On July 15, 1993 the Board of Public Education published notice of proposed amendment concerning ARM 10.57.211 Test for Certification on page 1463 of the Montana Administrative Register, issue number 13.

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

10.57.211 TEST FOR CERTIFICATION (1) through (1)(a) will remain the same.

(b) upon the recommendation of an employing district/school administrator and chairperson or corresponding governing board offical, applicants who show evidence of successful completion (grade C or above) in specific college level coursework within a state approved teacher education program in the area(s) of weakness identified by the national teacher examination ~~student~~ examinee score report;

(i) the area(s) of weakness identified by the ~~testing service~~examinee score report must be provided to the office of public instruction by the applicant, at which time the director of teacher education and certification will confirm ~~or recommend~~ in writing the specific course (s) to be taken which would qualify ~~for the equivalent of~~ as an alternative to successful completion of the exam;

(ii) evidence of successful course completion must be presented to the office of public instruction, certification division, ~~within two (2) years of the last recorded unsuccessful attempt, or~~ within two (2) years of the effective date of this rule;

(iii) will remain the same.

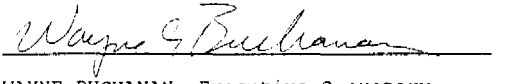
(iv) upon application, holders of class 5 certification at the time of this rule change may apply this criteria as justification for renewal under ARM 10.57.405(a).

(2) through (3) will remain the same.

AUTH: Sec. 20-2-121, 20-4-102 IMP: Sec. 20-4-102

3. The board has proposed this amendment to the rule because the present system of requiring teachers and specialists to achieve a passing score on the National Teachers Examination (NTE) prior to obtaining a Montana teaching certificate has been problematic to successfully employed teachers and specialists. In addition, some successfully practicing teachers and specialists from other states have had difficulty with this requirement because of the time

elapsed since their college preparation. This rule change would give individuals who are successfully employed teachers and specialists, but have not passed the NTE, another avenue to certification.



WAYNE BUCHANAN, Executive Secretary
Board of Public Education

Certified to the Secretary of State on 11/15/93.

BEFORE THE STATE LIBRARY COMMISSION
OF THE STATE OF MONTANA

In the matter of the amend- ment of 10.101.101 pertaining to the organization of the State Library Agency	))))	NOTICE OF AMENDMENT of ARM 10.101.101 RELATING TO THE ORGANIZATION OF THE STATE LIBRARY AGENCY

TO: All Interested Persons

1. On July 15, 1993, the State Library commission published notice of the amendment of 10.101.101 pertaining to the organization of the State Library agency at p. 1461 of the Montana Administrative Register, issue no. 13.

2. A public hearing was held on August 14, 1993. There was testimony from one proponent and one neutral party.

3. The State Library commission has amended 10.101.101 AGENCY ORGANIZATION as follows:

(1) through (3)(a) remain as in the current rule.
(3)(b) remains as proposed.
(3)(c) remains as in the current rule.
(3)(d) was added as proposed.
(4) and (5) remain as in the current rule.

Richard T. Miller, Jr.
State Librarian
Rule Reviewer

Certified to the Secretary of State November 15, 1993.

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

In the matter of the amendment of rules 16.14.502, 706, and 708 and the repeal of 16.14.517, dealing with municipal solid waste management.	NOTICE OF AMENDMENT OF ARM 16.14.502, 706, and 708 AND REPEAL OF 16.14.517 (Solid Waste)

To: All Interested Persons

1. On September 30, 1993, the department published notice of the proposed amendment of rule 16.14.502, 706, and 708 and the repeal of rule 16.14.517 at page 2203 of the 1993 Montana Administrative Register, issue number 18.

2. The department has amended the rules as proposed with the following changes: (new material is underlined):

16.14.502 DEFINITIONS In addition to the terms defined in 75-10-203, MCA, as used in this subchapter, the following terms shall have the meanings or interpretations shown below:

(1)-(17) Same as proposed.

(18) "Floodplain" means the lowland and relatively flat areas adjoining inland waters, including flood-prone areas of offshore islands, that are inundated by the 100-year flood.

(19)-(55) Same as proposed.

16.14.706 SAMPLING AND ANALYSIS PLAN Same as proposed.

16.14.708 DEFINITION OF EXTENT OF CONTAMINATION Same as proposed.

3. ARM 16.14.517 is repealed as proposed.

4. No one provided comments during the public meeting held on October 20, 1993 at 9 a.m. in Room C209 of the Cogswell Building, 1400 Broadway, Helena, MT. One written comment was received during the 30-day public comment period. A summary of the comment and the department's response follows.

Comment: The department was urged to adopt the rules so that the EPA could approve Montana's application for primacy in the field of solid waste management.

Response: The department accepts the comment and proposes that the rule changes be adopted.

5. The department noticed a typographical error during the comment period in the definition of "floodplain". The word "waters" was inadvertently omitted from the definition. The word is replaced in order for the definition to more closely

conform with the EPA definition of "floodplain".

ROBERT J. ROBINSON, Director

Certified to the Secretary of State November 15, 1993 .

Reviewed by:

Eleanor Parker, DHES Attorney

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the adoption, amendment, and repeal of rules regulating public gambling	))))	NOTICE OF ADOPTION, AMENDMENT, AND REPEAL OF RULES REGULATING PUBLIC GAMBLING

TO: All Interested Persons.

1. On August 26, 1993, the Department of Justice published a notice of public hearing on the proposed adoption, amendment, and repeal of rules regulating public gambling at page 1974 of the 1993 Montana Administrative Register, Issue No. 16.

2. The hearing was held on September 20, 1993, at 9:00 a.m., in Room 108, State Capitol Building, Helena, Montana.

3. The Department has adopted rules IV (23.16.126), VI (23.16.130), VII (23.16.1001), VIII (23.16.1709), IX (23.16.1914), X (23.16.1915), XI (23.16.204), XIII (23.16.3502); amended ARM 23.16.107, 23.16.116, 23.16.1202, 23.16.1716, 23.16.1719, 23.16.1802, 23.16.1826, 23.16.1916, 23.16.1917, 23.16.1918, 23.16.1927, 23.16.1940, 23.16.2401, 23.16.2406; and repealed ARM 23.16.1808 as proposed.

4. The Department adopts the remaining rules with the following changes:

23.16.101 DEFINITIONS As used throughout this subchapter, the following definitions apply:

(1) through (6) remain as proposed.

~~(7) "Gift enterprise" means a scheme, by whatever name known, for the disposal or distribution of property by chance among persons who have qualified to obtain the property to be awarded by purchasing or agreeing to purchase goods or services. The existence of a gift enterprise is not affected by the price or value of the goods or services which are purchased.~~

(8) through (13) are renumbered (7) through (12) and remain as proposed.

~~(14)~~ (13) "Person" means either a natural or an artificial person, and includes all partnerships, corporations, associations, clubs, fraternal orders, religious organizations, or charitable organizations. A separate person exists when a partner in a partnership changes, any shareholder(s) in a closed corporation changes, or 5% or more of the interest in a publicly traded corporation is transferred to or from a single individual.

(15) is renumbered (14).

23.16.103 INVESTIGATION OF APPLICANTS, FINGERPRINTS MAY BE REQUIRED - DISCLOSURE FROM NONINSTITUTIONAL LENDER

(1) through (3) remain as proposed.

~~(4) In addition to the aforementioned information the following information must be submitted, if the noninstitutional source is a publicly traded corporation:~~

~~(a) personal history statements on all officers, directors,~~

~~and shareholders owning 5% or more of the corporate lender;~~

~~(b) an authorization to disclose form completed in the name of the corporate lender.~~

(5) is renumbered (4) and remains as proposed.

RULE I (23.16.105) WITHDRAWAL OF APPLICATION

(1) remains as proposed.

(2) The department may, in its discretion, grant the request with or without prejudice. If the Division's decision to grant a request to withdraw an application is made with prejudice, it must be based on a finding that the application is made with intentional disregard of the gambling laws of Montana. This decision is subject to challenge pursuant to the Montana Administrative Procedure Act.

(3) remains as proposed.

RULE II (23.16.111) REAPPLICATION RULE (1) Any person whose application has been denied is not eligible to apply again for licensing or approval until after expiration of one year from the date of such denial, unless the department advises that the denial is without prejudice as to reapplication. If the Division's decision to grant a request to withdraw an application is made with prejudice, it must be based on a finding that the application is made with intentional disregard of the gambling laws of Montana. This decision is subject to challenge pursuant to the Montana Administrative Procedure Act.

23.16.115 DEFINITIONS Unless the context requires otherwise, the following definitions apply to ARM 23.16.116 through 23.16.120:

~~(1) "Contingent ownership" means a type of ownership interest that may be acquired based on future events and includes but is not limited to: purchase options, loan guarantees and the continued responsibility for repayment of debts for assets of the gambling operation by a former owner.~~

(2) through (4) are renumbered (1) through (3) and remain as proposed.

~~(5)~~(4) "Loan" means a written ~~sum of money let out by a lender to a borrower to be repaid. The loan must be evidenced by a lending instrument, which must state the amount of principal and the interest rate, a schedule of payments, the terms of any guarantee or security interest; contain the names and signatures of the parties to the agreement; and provide for at least a minimal repayment of principal on at least an annual basis. The obligation may not be avoided without resulting in the loss of acquired equity~~ contract by which one delivers a sum of money to another and the latter agrees to return at a future time a sum equivalent to that which he/she borrowed. The department will evaluate a transaction to determine if it is a loan using standards in the uniform commercial code, the internal revenue code and generally accepted commercial lending

practices. Loans will also be evaluated in the context of overall financing of the business to determine that a loan rather than an ownership interest exists.

~~(5)~~(5) "Management agreement" means a contract between the licensee and a person to whom management duties are assigned, ~~i.e.~~ e.g. supervision of personnel, bookkeeping and ordering goods or supplies. The agreement may not transfer an ownership interest in the licensed operation or limit or relieve the licensee of record from the responsibilities of ownership. Bonuses or bonus-type payments based on job performance are not considered ownership interests if they are provided in conjunction with a reasonable salary base and are not based solely on a percentage of video gambling machine revenue.

~~(7)~~(6) "Manager" means a person employed by the licensee to whom overall management responsibilities have been assigned.

(8) remains as proposed, but renumbered (7)

~~(9)~~(8) "Security interest" means an interest that is reserved or created by an agreement that secures payment or performance of an obligation. ~~In no case may a security interest be placed on an asset of the licensed gambling operation for the payment or performance of an obligation of a person other than the licensee. The security agreement may not grant a secured interest beyond the scope of the obligation for which the security interest is applied, (i.e. security interests placed on assets for performance under a lease obligation must limit the secured interest to obligations under the lease only and must not unreasonably restrict the licensee's use of his asset(s).~~

(10) and (11) remain as proposed, but renumbered (9) and (10)

23.16.117 TRANSFER OF INTEREST TO A STRANGER TO THE LICENSE (1) through (8)(a)(i) remain as proposed.

(ii) ~~the foreclosure takes place within six months of the original sale or transfer from the former licensee~~ the foreclosure takes place within five (5) years or half the term of the contract, whichever is less; an amended license application is required up to two years following the sale; after two years, a new license application is required including all applicable fees, but the business will be allowed to operate as long as the owner meets the criteria contained in subsections (1), (iii) and (v);

(iii) and (iv) remain as proposed;

(v) the former licensee has notified the department of the foreclosure at the time the foreclosure is executed; notification must be made within five (5) business days of execution and an application must be received by the department within 30 days following notification; failure to notify the department within this time frame may result in department action to cause gambling operations to cease immediately.

(8)(b) and (9) remain as proposed.

23.16.120 LOANS TO LICENSEES (1) through (4)(b) remain

as proposed.

(c) at least twice each month, the route operator must reconcile the amount of prizes paid out with the cash remaining in the change bank. If the amount of prizes paid out cannot be reconciled with the cash remaining in the change bank, the route operator must analyze and document the difference. Any material differences must be immediately reported to the department. (For the purposes of this rule, material difference means any amount greater than ~~1%~~ 5% of the value of the change bank loan or $100, whichever is less.) A record of the reconciliations and analysis of material differences must be maintained for a period not less than three years; and

(d) remains as proposed.

(5) Prior department approval is not required on loans made between closely related licensed operators under the following conditions:

(a) both licensed operators must have the same majority ownership. For the purposes of this rule the "same majority ownership" means the same individual or group of individuals owning a greater than 50% interest in both licensed operations;

(b) through (d) remain as proposed;

(e) failure to maintain adequate records or notify the department of material differences ~~and investigations findings~~ will subject the licensees to administrative action.

(6) remains as proposed.

RULE III (23.16.125) CHANGE OF LIQUOR LICENSE TYPE (1) Except as provided in ARM 23.16.115(10), ~~an owner of a gambling operator license may not change the type of his alcoholic beverage license without submitting an amended gambling license application and obtaining department approval~~ when an owner of a gambling operator license changes the type of alcoholic beverage license, the owner must submit an amended gambling license application and obtain department approval.

(2) remains as proposed.

RULE V (23.16.301) MERCHANDISE PRIZES AND SHAKE-A-DAY GAMES (1) In the case of merchandise prizes authorized in shake-a-day games (excluding shaking for a drink or music), those prizes may not exceed the value of the pot. ~~In the case of merchandise prizes authorized in shake a day games, those prizes must be purchased at retail value, from the money paid to play the shake a day game.~~

~~(2) In no case may the house purchase the merchandise prizes to be used in a shake a day game from funds other than those paid to play the game.~~

23.16.1101 CARD GAME TOURNAMENTS (1) Card game tournaments which involve consideration im order to play and the chance of winning something of value are gambling activities. Publicly played card game tournaments involving gambling

activity are limited to the card games known as bridge, cribbage, hearts, panguingue, pinochle, pitch, poker, rummy, solo, and whist as described by ARM 23.16.1202. ~~Gambling card games must be played either in live card game format or the card game tournament format.~~

(2) If a licensed operator with a permit for operating at least one live card game table on his premises wishes to conduct a card game tournament using more tables than the number for which he has permits, the operator shall submit an application to the department for a card game tournament permit. Form 14, the card game tournament permit application, is available from the department upon request. The application must include:

(2)(a) through (2)(j) remain as proposed.

(3) The card game tournament application must be received by the department at least five (5) days before the start of the tournament allowing sufficient time for processing.

(4) through (10) remain as proposed.

23.16.1201 DEFINITIONS As used throughout this subchapter, the following definitions apply:

(1) through (5) remains the same.

~~(6) "Card game tournament" means either:~~

~~(a) a card game competition conducted on tables exceeding in number those tables for which permits have been issued; or~~

~~(b) a card game competition where:~~

~~(i) an entry fee is charged;~~

~~(ii) tournament rules allow for re-entry by eliminated participants;~~

~~(iii) a rake-off is not taken;~~

~~(iv) prizes are awarded at the end of the tournament rather than the pot being awarded after a hand; or~~

~~(v) the face value of the chips or points does not govern the value of the pot or prize awarded at the end of the tournament.~~

(6) through (12) remain (6) through (12) instead of (7) through (13) as proposed.

~~(14) "Live card game" means a card game that is played:~~

~~(a) in public;~~

~~(b) between persons;~~

~~(c) on the premises of a licensed gambling operator or in a senior citizen center; and~~

~~(d) no entry fee is charged and the face value of the chips or points governs the value of the pot, which is awarded after each hand.~~

(13) through (19) remain (13) through (19) instead of (15) through (21).

23.16.1822 PERMIT NOT TRANSFERABLE (1) remains as proposed.

(2) When, during the first quarter of the permit year, a gambling operation changes ownership and the application for a

new gambling operator license has been approved, the permit fee ~~to relicense~~ for the machines on the premises is $25 per machine if the $200 licensing fee has already been paid for that machine for the permit year.

(3) through (5) remain as proposed.

23.16.1827 RECORD RETENTION REQUIREMENTS (1) through (2)(d) remain as proposed.

(e) a three-way reconciliation of the total actual cash count required in (2)(d), and the total cash activity reflected by both the electronic and mechanical meter readings required in (2)(b) and (c). The three totals, actual cash, electronic readings, and mechanical readings must be calculated and reconciled for the same time period and must be completed at least once every two weeks. Any material difference must be documented and the reason for the difference substantiated. A material difference means a difference in the amount of cash counted and cash reflected by the meters that is ~~greater than 1%~~ the lesser of 5% of the total monies placed in the machines during the reconciliation time period or $100. If the difference is due to gambling device malfunction(s), the device(s) must be taken out of play, repaired and service form(s) submitted to the department, before the machine is returned to play. Following a material difference, the operator/route operator must maintain documentation of the cash count required by (2)(d) by individual machine until notification is submitted to the department to substantiate that the malfunction has been corrected.

(3) through (5) remain as proposed.

23.16.1901 GENERAL SPECIFICATIONS OF VIDEO GAMBLING MACHINES (1) Each video gambling machine model or modification must:

(a) be inspected in the state for approval and licensure by the department. The department may inspect any machine sold or operated in the state. Any approval granted by the department to a person is not transferable. The department must be allowed immediate access to each machine. Keys to allow access to a machine for purposes of inspection may be provided to the department or must be immediately available ~~and located~~ at the premise. Machines for which a substantial modification or a series of minor modifications whose total result is substantial must meet all of the specific law or rule requirements in effect at the time of submission. Only those machines which are owned or operated in Montana, and to which the submitted modification will be applied are required to meet those specifications in effect at time of submission. The department's determination that a modification is substantial may be contested pursuant to the Montana Administrative Procedure Act;

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

23.16.1925 POSSESSION OF UNLICENSED MACHINES BY MANUFACTURER, ~~SUPPLIER~~, DISTRIBUTOR, ROUTE OPERATOR, OWNER, OR REPAIR SERVICE (1) A manufacturer, ~~supplier~~, distributor, route operator, owner, or repair service may possess or own unlicensed machines, logic boards, meters, and machine components which conform to the statutory requirements and rules relating to electronic video gambling machines. Such machines possessed or owned may not be operated except when inspected, licensed, and placed on a licensee's premises.

23.16.2004 IMPORTATION OF ILLEGAL GAMBLING DEVICES (1) Before a manufacturer licensed under 23-5-152, MCA, may import an illegal gambling device into the state, he shall submit to the department form 22. Form 22, when submitted to the department is an application for approval to import illegal gambling devices ~~and/or components~~; when completed by the department and returned, serves as a certificate of approval to import illegal gambling devices ~~and/or components~~ into the state.

(2) through (2)(a) remain as proposed.

(i) the illegal devices that contain components that will be imported and used by the licensee to manufacture an illegal device for export from the state; or

(ii) remains as proposed.

(b) manufacturer, model number, and serial number ~~(if applicable)~~ of each device ~~and/or component~~;

(c) current location of devices ~~and/or components~~;

(d) total number of devices ~~and/or components~~ in shipment;

(e) and (f) remain as proposed.

(g) destination of devices ~~and/or components~~.

(3) remains as proposed.

RULE XII (23.16.3501) DEPARTMENT APPROVAL OF PROMOTIONAL GAMES OF CHANCE, DEVICES OR ENTERPRISES (1) through (3) remain as proposed.

(4) No devices ~~or enterprises~~ may be played prior to department approval.

RULE XIV (23.16.3801) REVIEW OF CARNIVAL GAMES (1) Carnival games that are intended to be operated at a fair or carnival may be submitted to the department for analysis with the purpose of determining if the games meet the requirements of 23-6-102, MCA. No games shall be authorized unless specifically approved by the department following a review of the game and how it is played. The department may authorize a game not listed in ~~23-6-401~~ 23-6-104, MCA, if, after careful review, it can be demonstrated that winning is ~~in no way~~ not contingent upon lot or chance and is ~~entirely~~ based upon the skill of the player as defined under 23-6-104(2)(h)(xiv). No device, machine, instrument, apparatus, contrivance, scheme, or system which meets the definition of gambling as in 23-5-

12(11), MCA, shall be approved.

(2) through (5) remain as proposed.

5. The Department thoroughly considered all oral and written comments received. The following are responses to those comments by rule number.

COMMENT: 23.16.101 (7) "Gift Enterprise": The representative from the Montana Tavern Association, (hereinafter referred to as the MTA), Mark Staples, suggested that there be a change in this definition since simply visiting or being present on the premises does not, in and of itself, connote an agreement to purchase goods. Rich E. Miller, Best Bet Casino, Helena, stated in his written comments that House Bill 372 had a clear and precise definition of "Gift Enterprise." He stated that this rule should be abandoned and the statutory language should be applied correctly and faithfully. Tom Hopgood, representing the Gaming Industry Association (hereinafter referred to as the GIA) at the hearing stated that the Department should strike this rule since the underlying statute is clear.

RESPONSE: The wording of the proposed rule caused significant confusion. The statutory language may provide adequate definition, making any rule change at this time unnecessary. The Department will delete this proposed rule change.

COMMENT: 23.16.101 (14) "Person": The representative from the MTA voiced his concern that a small corporation might easily have 5% or more of its interest transferred on a busy trading day. The MTA believed this should be eliminated.

RESPONSE: To clarify the meaning of the rule, the Department identified stock transfers as occurring to or from a single individual.

COMMENT: 23.16.103 (4): The representatives of the MTA and GIA stated that this rule ignored the rise of finance corporations as arms of publicly traded corporations. They suggested that this rule would burden the Department with personal history statements. Rich Miller stated in his written comments that this rule requires clarification and a re-write. Larry Akey, representative from the Montana Coin Machine Operators Association (hereinafter referred to as MCMOA) requested that the Department delay adoption of this rule pending further review.

RESPONSE: This rule addressed non-institutional loans and publicly traded corporations. The Department will be proposing additional rules regarding publicly traded corporations in the near future. This proposed rule change will be deferred until that time and Section 4 will be deleted.

COMMENT: RULE I (23.16.105) WITHDRAWAL OF APPLICATION: The representatives from the MTA and GIA were concerned with the "with prejudice" versus "without prejudice" designations. They suggested language to add criteria to determine when the Department will grant withdrawals with prejudice. The representative from the GIA also stated that it would be helpful to spell it out that an applicant has the right to appeal a finding of prejudice in the withdrawal of his application. Rich Miller stated in his written comments that for the protection of the Department and the applicants, limits and conditions on the exercise of discretion should be clearly cited.

RESPONSE: The Department agrees that the addition of criteria to be used in granting a withdrawal with prejudice will be added to the rule. In addition, the rule will refer to the applicant's rights under the Montana Administrative Procedure Act.

COMMENT: RULE II (23.16.111 (1)) REAPPLICATION RULE: The representative from the GIA commented on the need for protection against the arbitrary use of the rule.

RESPONSE: The Department agrees to refer to the applicant's rights under the Montana Administrative Procedure Act.

COMMENT: 23.16.115 (1) "Contingent Ownership": A written statement opposing this definition was received from Tom Hopgood GIA. He argued that the definition was extremely broad and that it would be difficult to enforce and impossible to comply with. The representative from the MTA was concerned that investigations of a contingent owner may be duplicative. Rich Miller stated in his written comments that this definition was very broad and open to many interpretations and that clarity of scope and intent is required in this section.

RESPONSE: The Department will defer adoption of this proposed rule until further evaluation has been completed.

COMMENT: 23.16.115 (5) "Loan": The representative from the MTA stated that he was aware that the Department was contemplating applying IRS, UCC, and other standard financial definitions and agreed with this interpretation. The representative from the GIA questioned whether the proposed definition required the payment of interest. He suggested that all a loan requires is an absolute promise by the borrower to repay the principal. Both representatives suggested changing the last sentence of this rule to allow for the extension of payments on a loan. Both representatives requested that the Department continue to evaluate loan agreements on a case by case basis. Rich Miller stated in his written comments that the definition of a loan is adequately addressed in UCC statutes and rules which should be accepted by the Department.

RESPONSE: The Department agrees with the suggestion that the rule refer to the definition of loans under 31-1-101, MCA.

However, to provide some guidelines for approval or disapproval, reference will be made to the Uniform Commercial Code, IRS regulations and commercially accepted banking practices.

COMMENT: 23.16.115 (6) "Management Agreements": The representative of the MTA suggested that this rule be redrafted to state that a manager who has "overall" duties over the individual duties listed would be subject to a management agreement. He also stated that the last sentence of the proposed rule would disallow any profit-sharing program with management and suggested clarification of this. The representative from the GIA stated that the Department should allow profit sharing as a component of management compensation as long as the manager is employed in a bona fide management position and the compensation has a reasonable relation to the duties performed. Rich Miller in his written comments stated that this definition was too broad in scope. He suggested that persons possessing the power to hire and fire employees would be a better measure of what constitutes a manager than the stated criteria.

RESPONSE: The Department agrees that a provision for bonuses or profit sharing plans should be allowed provided that these plans do not represent the acquisition of an ownership interest.

COMMENT: 23.16.115 (7) "Manager": The representative of the MTA stated that there needed to be clarification of the management responsibilities and suggested the addition of the word "overall" before "management."

RESPONSE: The Department agrees that clarification of what constitutes management responsibilities would be made by stating that "manager" refers to someone having "overall" management responsibilities.

COMMENT: 23.16.115 (9) "Security Interest": The representative of the MTA stated that this rule seems to be such a restraint on normal financial procedures that the only corrective measure that can be taken would be to delete it entirely. The representative of the GIA agreed with Mr. Staples comments and indicated that the proposed rule ignores the widespread use of wrap-around contracts for financing the purchase of a business. He strongly suggested that the Department rewrite this rule.

RESPONSE: The Department will defer adoption of this proposed rule until further evaluation has been completed.

COMMENT: 23.16.117 (8)(ii): Both the MTA representative and Mr. Lynn Seeley requested a period of either five years or half the life of the contract in this rule. Rich Miller stated in his written comments that eighteen months would be a much more reasonable time frame. The representative from the GIA

agreed that the six month period is unrealistic and suggested removal of this section.

RESPONSE: With regards to transfers of ownership resulting from foreclosure on a contract for deed, the Department agrees that the six month time period proposed in the rule does not reflect actual experience in this area. The Department agrees that the time period can be lengthened as requested in the public hearing as long as the State can be assured that no strangers to the license will result, that notification of foreclosure will be prompt, and that the Department's costs to conduct any investigations can be recovered.

23.16.117 (8)(v): In addition, this rule will be changed to reflect the changes in subjection (8)(ii).

COMMENT: 23.16.120 LOANS TO LICENSEES (4)(c): Rich Miller stated in his written comments that a difference of 1% triggering reports to the Department would create a blizzard of paperwork for both the operator and the Department. He suggested that 5% would be a more realistic figure. The representative from the MCMOA suggested the same 5% or $100 figure.

RESPONSE: The Department agrees that an acceptable standard for material differences in cash amounts is 5% or $100, whichever is the lesser.

COMMENT: 23.16.120 LOANS TO LICENSEES (5)(a): The representative from the GIA stated at the hearing that as proposed this rule is confusing, should be rephrased and that "majority ownership" should be defined.

RESPONSE: The Department has defined majority ownership as the same individual or group of individuals owning a greater than 50% interest in the licensed operations.

COMMENT: 23.16.120 LOANS TO LICENSEES (5)(e): The representative from the GIA stated that this rule is vague and ambiguous.

RESPONSE: The Department agrees that the sentence is confusing. The rule will be changed to strike out the words "and investigations findings."

COMMENT: RULE III (23.16.125) CHANGE OF LIQUOR LICENSE TYPE: Gary Blewett, Administrator, Liquor Division, stated in his written comments that the language in Rule III suggests that a liquor licensee would be prohibited from changing the liquor license type unless the Department approved it. He suggested that the rule be revised to use the same sentence structure as in Rule IV to avoid possible misunderstanding.

RESPONSE: The Department has adopted this suggestion.

COMMENT: RULE V (23.16.301) MERCHANDISE PRIZES AND SHAKE

-A-DAY GAMES: The representative from the MTA stated that the law was perfectly clear and that this area did not justify this kind of scrutiny. The representative from the GIA stated that this rule effectively prohibits the inception of shake-a-day games and suggested the withdrawal of this proposed rule. Rich Miller stated in his written comments that the proposed rule would effectively outlaw Shake-A-Days. He suggested that the statute is clear is concise and that the rule should be stricken entirely.

RESPONSE: Most comments indicate that the wording in the proposed rule was confusing, resulting in a misunderstanding of the Department's intent. However, the Department does need to make it clear that the statute does not allow additional funds to be added to the pot to purchase merchandise prizes, and the rule will be rewritten accordingly.

COMMENT: RULE VI (23.16.130) TRANSFERS OF OWNERSHIP INTERESTS IN LOCATIONS THAT DO NOT POSSESS AN ON PREMISE CONSUMPTION ALCOHOL BEVERAGE LICENSE GRANDFATHERED FOR THE PURPOSE OF OBTAINING PERMITS TO OPERATE VIDEO GAMBLING MACHINES: Mr. Casey, GIA, stated that this rule should be removed in its entirety. He stated that the Department does not have the authority to take away the ability of a purchaser of a business described in 23-5-611, MCA, to continue to operate video gambling machines.

RESPONSE: The Department disagrees with comments regarding the need for this rule; continued confusion over the intent of the 1989 and 1993 legislation concerning grandfathered locations clearly indicates the need for clarification by rule. In addition, the rule is needed to provide a process for change of ownership form.

COMMENT: 23.16.1101 CARD GAME TOURNAMENTS and 23.16.1201 DEFINITIONS": Jerry Fuller, Cardroom Manager, Oxford, Missoula, stated in his written comments that he is concerned about the wording of this proposed rule. Ida Dagen, Ida's Palace Cardroom, stated that she had the same concerns at the rule hearing. They both were concerned that discontinuation of their weekly tournaments would reduce the number of table permits needed and reduce dealer employment.

RESPONSE: The questions received led the Department to defer any rule changes until further evaluation on the conduct of tournaments and the application of the proposed rule to promotional type activities.

COMMENT: 23.16.1716 SPORTS TAB CARD MANUFACTURER LICENSE, RULE IX DISTRIBUTOR'S LICENSE, AND RULE X ROUTE OPERATOR'S LICENSE: The representative from the GIA stated a concern that members may be exposed to multiple licensing fees. He suggested these rules be rephrased and the Department be directed to waive the application license and processing fees in the event of an

application made by a party who is already licensed.

RESPONSE: The Department indicated in testimony before legislative committees that it would not use multiple applications by the same company for these types of licenses as an opportunity to require multiple fees. The discretionary language contained in the rule allows the Department to make the determination to waive fees on a case-by-case basis to insure that the applicant is substantially the same company. Therefore, the Department disagrees that the rule should be changed to make the waiver imperative.

COMMENT: 23.16.1822 PERMIT NOT TRANSFERABLE: The representative from the GIA stated that the proposed rule needed to be reworded to reflect the intent of the authorizing statute.

RESPONSE: The words "to relicense" will be deleted and replaced with the word "for."

COMMENT: 23.16.1827 RECORD RETENTION REQUIREMENTS (2)(a): The representative from the MCMOA requested in his written comments that the Department change this rule to require printing the lifetime audit ticket at least once every two weeks. He also requested that the "material difference" be 5% or some dollar threshold.

RESPONSE: The Department believes that requiring lifetime audit tickets to be printed out each week is still necessary to enable the Department to discover discrepancies in audit tape and meter readings. Changing this to once every two weeks will greatly increase the amount of time it takes the Department to find the source of discrepancies. It is critical that the Department have the best information available to determine that the proper amount of taxes have been paid.

COMMENT: 23.16.1827 RECORD RETENTION REQUIREMENT (2)(e): The representative of the MTA stated that he believed that the 1% difference which would trigger submittal of documentation and substantiation should be expanded to 5% or a significant dollar amount to justify the work that would ensue for both the operator and the Department.

RESPONSE: The Department agrees that an acceptable standard for material differences in cash amounts is 5% or $100, whichever is the lesser.

COMMENT: 23.16.1901 GENERAL SPECIFICATIONS OF VIDEO GAMBLING MACHINES: The representatives of the MTA and GIA stated that having keys available within two hours of a request should satisfy both the Department's needs and the security concerns of vendors and operators without the necessity of leaving keys on the premises. The representative of the GIA also suggested that the provision allowing keys to be provided to the Department be retained. Rich Miller also made that suggestion. Rich Miller stated in his written comments that

requiring keys to be on the premises and "immediately available" would expose every operator to employee theft and is unreasonable in the extreme. The representative of the MCMOA strenuously objected to the adoption of the proposed amendment for the same reasons stated by Mr. Miller.

RESPONSE: The Department needs some assurance that access to machines will be immediate for the purposes of enforcement; in addition, to avoid lengthy waiting times that waste staff resources, and to provide system integrity, the Department needs immediate access. The Department also has concerns about the State's liability in retaining keys at the request of machine owners. However, the Department agrees that the present discretionary language in the rule can be retained while a policy is developed that addresses all these concerns. It is the Department's intention to put this policy into effect as soon as possible.

COMMENT: 23.16.1917 GENERAL REQUIREMENTS OF MANUFACTURERS, DISTRIBUTORS AND ROUTE OPERATORS OF VIDEO GAMBLING MACHINES OR PRODUCERS OF ASSOCIATED EQUIPMENT (3), (5): The representative from the MCMOA suggested deleting "coin operator" from this rule.

RESPONSE: The Department agrees that the term "coin operator" is redundant and can be deleted.

COMMENT: 23.16.1918 VIDEO GAMBLING MACHINES TESTING FEES (2): The representative of the MTA wanted to know why there was a 25% per hour fee increase. Mr. Casey, GIA, stated in his written comments that the Department needs to provide justification for this increase.

RESPONSE: The Department believes operational cost increases since the original fee was set in 1989 justify the increase in the fee from $40 to $50. Such increases include: salary adjustments, increased rent and facility overhead, and higher equipment costs; these increases range from 10% to 41% over the period between 1989 and 1993. The Department also anticipates the need for equipment replacement in the near future. For comparative purposes, the other labs in the United States have the following charges: State of Nevada, $50/hour; State of New Jersey, $75/hour; private laboratory, New Jersey, $125/hour.

COMMENT: 23.16.2004 IMPORTATION OF ILLEGAL GAMBLING DEVICES: The Department received a comment that inclusion of machine parts in the approval process is cumbersome and not necessary.

RESPONSE: Existing rules and statutes provide the authority the Department needs to require approval of devices or devices in a nearly completed state. Therefore, all references in this rule to components will be deleted.

COMMENT: RULE XI (23.16.204) PROCEDURE FOR ADMISSION OF HEARSAY EVIDENCE: The Department received a comment from Tom Richardson at the hearing that this rule could delay the hearing process to allow for hearsay evidence.

RESPONSE: The Department believes that the deadlines in the rule are reasonable and that the rule should not be changed.

COMMENT: RULE XII (23.16.3501) DEPARTMENT APPROVAL OF PROMOTIONAL GAMES OF CHANCE, DEVICES OR ENTERPRISES: The representative from the MTA stated that this rule needed to be clarified to say that no devices or enterprises associated with promotional games of chance may be played prior to Department approval. Mr. Casey, GIA, stated in his written comments that this rule would pose problems for the Department and be an extreme inconvenience to the operators. He suggested that this rule be rewritten as it is impractical.

RESPONSE: Guidelines for evaluating promotional games will be developed and made available to licensees. Devices will require prior approval.

COMMENT: RULE XIV (23.16.3801) REVIEW OF CARNIVAL GAMES (1): Dennis Casey, GIA, stated at the hearing that most, if not all, of the games which are now listed and described in 23-6-104 could not be continued at carnivals or fairs if the proposed language is adopted because they do contain elements of chance and are not "entirely based upon the skill of the player." He suggested that the Department modify the definition of skill for this rule. Rich Miller stated in his written comments that this rule was written contrary to statute and suggested striking language in section one of the rule.

RESPONSE: The Department believes that chance or lot should not impact the outcome of the game in that it is possible for a skilled player to win. The Department agrees that the statutory language in House Bill 191, amending 23-6-104, MCA, concerning games of skill, can be incorporated into this rule.

By: _____
JOSEPH P. MAZUREK
Attorney General

By: _____
CHRIS TWEETEN
Chief Deputy Attorney General
Rule Reviewer

Certified to the Secretary of State November 15, 1993.

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

In the matter of the amendment of rule related to liability of workers for medical expenses for workers' compensation purposes	) NOTICE OF AMENDMENT OF) ARM 24.29.1402,) PAYMENT OF MEDICAL CLAIMS))

TO ALL INTERESTED PERSONS:

1. On August 12, 1993, the Department published notice at pages 1870 to 1871 of the Montana Administrative Register, Issue No. 15, to consider the amendment of the above-captioned rule.

2. On September 3, 1993, a public hearing was held in Helena concerning the proposed rule at which oral and written comments were received. Additional written comments were received prior to the closing date of September 10, 1993.

3. After consideration of the comments received on the proposed rule amendments, the Department has amended the rule as proposed, with the following changes:

24.29.1402 PAYMENT OF MEDICAL CLAIMS (1) Payment of medical claims shall be made in accordance with the schedule of nonhospital medical fees and the hospital rates adopted by the department.

(2) ~~No fee or charge shall be payable by the injured worker for treatment of injuries sustained if liability is accepted by the insurer.~~ The insurer shall make timely payments of all medical claims for which liability is accepted.

(3) Payment of private room charges shall be made only if ordered by the treating physician.

(4) Special nurses shall be paid only if ordered by the treating physician.

(5) For claims arising before July 1, 1993, no fee or charge shall be payable by the injured worker for treatment of injuries sustained if liability is accepted by the insurer.

(6) For claims arising on or after July 1, 1993, no fee or charge other than:

(A) the co-payment provided by 39-71-704, MCA ~~(1993)~~;

(B) THE CHARGES FOR A NON-PREFERRED PROVIDER, AFTER NOTICE IS GIVEN AS PROVIDED IN 39-71-1102, MCA; OR

(C) THE CHARGES FOR MEDICAL SERVICES OBTAINED FROM OTHER THAN A MANAGED CARE ORGANIZATION, ONCE AN ORGANIZATION IS DESIGNATED BY THE INSURER AS PROVIDED IN 39-71-1101, MCA,

shall be payable by the injured worker for treatment of injuries sustained if liability is accepted by the insurer. The decision whether to require a co-payment rests with the insurer, not the medical provider. If the insurer does not require a co-payment by the worker, the provider may not charge or bill the worker any fee. The insurer must give enough ADVANCE notice to KNOWN medical providers that it will require co-payments from a worker

so that the provider can make arrangements with the worker to collect the co-payment.

AUTH: Sec. 39-71-203, MCA IMP: Sec. 39-71-704, MCA

4. The Department has thoroughly considered the comments and testimony received on the proposed rule. The following is a summary of the comments received, along with the Department's response to those comments:

Comment: The State Compensation Insurance Fund (State Fund) commented that ARM 24.29.1402 (6) should list all the other situations where an injured worker might have to pay a fee for medical services, not just the co-payment.

Response: The Department agrees with the comment and has amended the rule accordingly.

Comment: The State Fund commented that subsection 6 of the rule should be clarified to specify that the injured worker is liable for paying the fees if the treating physician violates the prohibition against self-referral.

Response: Section 39-71-1108, MCA, provides that neither the injured worker or the insurer is liable for fees when the treating physician violates the statute.

Comment: The State Fund commented that the requirement of advance notification of providers that a co-payment is due from the injured worker is not required by statute. The Montana Self-Insurers Association also made the same general comment.

Response: The Department believes that it is appropriate that the insurer give notice to both the injured worker and the injured worker's known medical providers that the insurer will not be paying the entire medical bill and that the worker must contribute a co-payment. Section 39-71-704, MCA, is silent as to any party having to provide notification of the applicability of co-payments. Co-payments are a new concept in workers' compensation, and represent a substantial change in the law. The Department believes that advance notice should be given that co-payments will be required from the injured worker.

The Department believes that the insurer is in the best position to give notice. One insurer might decide that it will not require co-payments in some claims, while another insurer may enforce co-payments in all claims. Providers may not know at the time of the second visit who is the insurer, and what policy applies. The advance notification requirement allows providers the opportunity to collect the co-payment at the time services are provided. Likewise, injured workers (who may be totally disabled and not working) should be made aware that they have a responsibility to pay for a portion of their medical expenses in advance of incurring those expenses. To clarify

when the notice must be given, the Department has added the word "advance" to the last sentence in subsection (6).

Comment: The State Fund also commented that providing notice to providers is impossible if the insurer is not aware of the existence of the provider.

Response: The Department has amended the rule to require that notice needs only to be sent to providers who are known to be rendering services to the injured worker.

5. The amendments to this rule are effective December 1, 1993.

David A. Scott
Rule Reviewer

Laurie Ekanger, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State: November 15, 1993.

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

In the matter of the amendment of rule related to travel expense reimbursements for workers' compensation purposes	) NOTICE OF AMENDMENT OF ARM 24.29.1409, TRAVEL EXPENSE REIMBURSEMENTS

TO ALL INTERESTED PERSONS:

1. On August 12, 1993, the Department published notice at pages 1872 to 1875 of the Montana Administrative Register, Issue No. 15, to consider the amendment of the above-captioned rule.

2. On September 3, 1993, a public hearing was held in Helena concerning the proposed rule at which oral and written comments were received. Additional written comments were received prior to the closing date of September 10, 1993.

3. After consideration of the comments received on the proposed rule, the Department has amended the rule as proposed, with the following changes:

24.29.1409 TRAVEL EXPENSE REIMBURSEMENT (1) For claims arising before July 1, 1989, Reimbursement for travel expenses shall be determined as follows:

(a) Personal automobile and private airplane mileage expenses shall be reimbursed at the current rates specified for state employees. Prior authorization from the insurer is required for the use of a private airplane. Total reimbursable automobile miles shall be determined according to the most direct highway route between the injured worker's residence and the provider.

(b) Expenses for eligible meals shall be reimbursed at the meal rates established for state employees.

(c) Actual out-of-pocket receipted lodging expenses incurred by injured workers shall be reimbursed up to the maximum amounts established for state employees. Lodging in those areas specifically designated as high cost cities shall be reimbursed at actual cost. Any claim for receipted or high cost lodging reimbursement must be accompanied by an original receipt from a licensed lodging facility. If the injured worker stays in a non-receiptable facility, or fails to obtain a receipt, the reimbursement is the amount set for state employees for non-receipted lodging.

(d) Miscellaneous transportation expenses, such as taxi fares or parking fees, are reimbursable and must be supported by paid receipts.

(e) Requests for travel reimbursement must be made within a reasonable time following the date(s) the travel was incurred.

(2) For claims arising during the period July 1, 1989, through June 30, 1993, reimbursement for travel expenses shall be determined as follows:

(a) Personal automobile and private airplane mileage expenses shall be reimbursed at the current rates specified for state employees. Prior authorization from the insurer is required for the use of a private airplane. Total reimbursable automobile miles shall be determined according to the most direct highway route between the injured worker's residence and the provider. When the travel coincides in whole or in part with the injured worker's regular travel to or from ~~his~~ the worker's employment, the coincident mileage may be subtracted from the reimbursable mileage. For each calendar month, the first fifty (50) miles of automobile mileage is not reimbursable.

(b) Expenses for eligible meals shall be reimbursed at the meal rates established for state employees.

(c) Actual out-of-pocket receipted lodging expenses incurred by injured workers shall be reimbursed up to the maximum amounts established for state employees. Lodging in those areas specifically designated as high cost cities shall be reimbursed at actual cost. Any claim for receipted or high cost lodging reimbursement must be accompanied by an original receipt from a licensed lodging facility. If the injured worker stays in a non-receiptable facility, or fails to obtain a receipt, the reimbursement is the amount set for state employees for non-receipted lodging.

(d) Miscellaneous transportation expenses, such as taxi fares or parking fees, are reimbursable and must be supported by paid receipts.

(e) Claims for reimbursement of travel expenses must be submitted within 90 days of the date the expenses are incurred, on a form furnished by the insurer. CLAIMS FOR REIMBURSEMENT THAT ARE NOT SUBMITTED WITHIN 90 DAYS MAY BE DENIED BY THE INSURER.

(3) For claims arising on or after July 1, 1993, travel expenses are not reimbursed unless the travel is at the request of the insurer. Travel is "at the request of the insurer" when the insurer directs the claimant to: change treating physician; ~~to~~ attend an independent medical examination; ~~to~~ use a preferred provider; or ~~to~~ be treated by a managed care organization. If travel expenses are to be reimbursed, then reimbursement shall be determined as follows:

(a) Personal automobile and private airplane mileage expenses shall be reimbursed at the current rates specified for state employees. Prior authorization from the insurer is required for the use of a private airplane. Total reimbursable automobile miles shall be determined according to the most direct highway route between the injured worker's residence and the provider. For each calendar month, the first fifty (50) miles of automobile mileage is not reimbursable. In addition, travel within the community in which the worker resides shall not be reimbursed. For the purposes of this rule, the community in which the worker resides is the town or city served by the post office which serves the worker's residence, regardless of where the worker receives mail.

(b) Expenses for eligible meals shall be reimbursed at the meal rates established for state employees.

(c) Actual, out-of-pocket, receipted lodging expenses incurred by injured workers shall be reimbursed up to the maximum amounts established for state employees. Lodging in those areas specifically designated as high cost cities shall be reimbursed at actual cost. Any claim for receipted or high cost lodging reimbursement must be accompanied by an original receipt from a licensed lodging facility. If the injured worker stays in a non-receiptable facility, or fails to obtain a receipt, the reimbursement is the amount set for state employees for non-receipted lodging.

(d) Miscellaneous transportation expenses, such as taxi fares or parking fees, are reimbursable and must be supported by paid receipts.

(e) Claims for reimbursement of travel expenses must be submitted within 90 days of the date the expenses are incurred, on a form furnished by the insurer. CLAIMS FOR REIMBURSEMENT THAT ARE NOT SUBMITTED WITHIN 90 DAYS MAY BE DENIED BY THE INSURER.

~~(2)~~(4)(a) Preauthorized expenses incurred for direct commercial transportation by air or ground, including rental vehicles, shall be reimbursed when no other less costly form of travel is available to the injured worker, or when less costly forms of travel are not suitable to the injured worker's medical condition.

(b) If an injured worker chooses to use commercial transportation when a less costly form of travel suitable to his medical condition is available, reimbursement shall be made according to the rates associated with the least costly form of travel.

~~(3) Claims for reimbursement of travel expenses must be submitted within 90 days of the date the expenses are incurred, on a form furnished by the insurer.~~

~~(4)~~(5) The department shall make available to interested parties the specific information referenced in this rule concerning rates for transportation, meals, and lodging; meal time ranges; and designations of high cost cities. The department shall inform interested parties in a timely manner of all applicable updates to this information.

AUTH: Sec. 39-71-203, MCA IMP: Sec. 39-71-704, MCA

4. The Department has thoroughly considered the comments and testimony received on the proposed rule. The following is a summary of the comments received, along with the Department's response to those comments:

Comment: The State Compensation Insurance Fund (State Fund) commented that the rule should make it clear that for claims arising after July 1, 1989, failure to request travel expense reimbursement within 90 days of the travel acts as a waiver of the reimbursement. The State Fund offered suggested wording for

subsections 2(e) and 3 (e). The Montana Self-Insurers Association made the same general comment.

Response: The Department agrees with the comments and has amended the rule accordingly, although with different wording than suggested.

Comment: The State Fund commented that subsection 3 of the rule should be clarified to specify that travel is paid only when travel to a preferred provider or a managed care organization is at the request of the insurer.

Response: The Department agrees with the comments and has amended the rule by changing the punctuation accordingly.

Comment: The Montana Municipal Insurance Authority and the Montana Association of Counties commented that they did not see the need for three versions of the rule that differ according the date of injury, nor why the "50 mile deductible" did not apply to pre-July 1, 1989, claims.

Response: Three versions of the rule are needed because the law governing reimbursement of travel expenses has changed. Because the statutes in effect on the date of the injury apply to determine benefit entitlement, the Department rules must be date-sensitive. The "50 mile deductible" is a product of the Department's rule on travel expenses, and acts as a limitation on benefit entitlement. Because the Department did not have authority to make rules regarding travel reimbursement until that power was granted to it by the 1989 Legislature, effective July 1, 1989, the "50 mile deductible" cannot properly be applied to pre-July 1, 1989, claims.

Comment: Alexis, a claims adjusting firm, commented that the Department lacks authority to make rules concerning travel for pre-July 1, 1989, claims, and disagreed with the Department's reading and interpretation of Lovell v. State Fund, WCC No. 9204-6432.

Response: The Department's rules for pre-July 1, 1989, claims merely restate the case law requirements established by the Workers' Compensation Court for determining how insurers are to pay travel expenses in pre-July 1, 1989, claims. See, e.g., Nelson v. Intermountain Ins. Co., WCC No. 8407-2530 (December 6, 1984). The Department believes that it is appropriate to include the pre-July 1, 1989, requirements in the rules so that interested parties can find the relevant information in one place. The Department has again reviewed the law and stands by its reading of the Lovell decision.

Comment: Alexis questioned what was meant by "coincident" mileage and requested clarification in the rule.

Response: The language related to coincident mileage was not proposed to be amended. The Department believes that it would be contrary to the intent of the Montana Administrative Procedure Act to substantively change the phrasing of the rule regarding "coincident mileage." However, as clarification, coincident mileage is that distance actually traveled by a claimant to work, when the claimant also that day sees a health care provider for treatment of the job-caused injury or condition. It does not refer to mileage that a totally disabled worker would customarily drive to the workplace, "but for" the disabling condition.

Comment: Alexis commented that future public hearings should not be scheduled on a Friday before a three or four day weekend.

Response: The Department will keep this comment in mind when scheduling future hearings on other rules.

5. The amendments to this rule are effective December 1, 1993.

David A. Scott
Rule Reviewer

Laurie Ekanger, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State: November 15, 1993.

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

In the matter of the amendment of rules related to selection of treating physician for workers' compensation purposes	) NOTICE OF AMENDMENT OF) ARM 24.29.1504, DEFINITIONS;) 24.29.1511, SELECTION OF) PHYSICIAN; AND ADOPTION OF) NEW RULE I [24.29.1510]

TO ALL INTERESTED PERSONS:

1. On August 12, 1993, the Department published notice at pages 1878 to 1880 of the Montana Administrative Register, Issue No. 15, to consider the amendment of the above-captioned rules and the adoption of new rule I.

2. On September 3, 1993, a public hearing was held in Helena concerning the proposed rules at which oral and written comments were received. Additional written comments were received prior to the closing date of September 10, 1993.

3. After consideration of the comments received on the proposed rules, the Department has amended the rules as proposed, with the following changes:

24.29.1504 DEFINITIONS Same as proposed.

24.29.1511 SELECTION OF PHYSICIAN FOR CLAIMS ARISING BEFORE JULY 1, 1993 (1) Although section 33-22-111, MCA, provides freedom of choice in selection of a physician, workers' compensation and occupational disease case law also recognizes that a worker must select a single physician who is responsible for the overall medical management of the workers' condition. That physician is known as the treating physician. For claims arising before July 1, 1993, the worker may select any person ~~who is defined as a physician by 33-22-111, MCA~~ LICENSED AS ONE OF THE FOLLOWING PROVIDERS as that worker's initial "treating physician":

(A) PHYSICIAN;
(B) PHYSICIAN ASSISTANT-CERTIFIED;
(C) DENTIST;
(D) OSTEOPATH;
(E) CHIROPRACTOR;
(F) OPTOMETRIST;
(G) PODIATRIST;
(H) PSYCHOLOGIST; OR
(I) ACUPUNCTURIST.

(2) and (3) remain the same.

AUTH: Sec. 39-71-203, MCA IMP: Sec. 39-71-704, MCA

4. The Department has adopted the new rule exactly as proposed. The new rule will be known as 24.29.1510, Selection of Physician for Claims Arising On or After July 1, 1993.

5. The Department has thoroughly considered the comments and testimony received on the proposed rules. The following is a summary of the comments received, along with the Department's response to those comments:

Comment: The State Compensation Insurance Fund (State Fund) commented that ARM 24.29.1511 should not be amended, except as to the catchphrase, and perhaps to remove the reference to section 33-22-111. The State Fund noted that § 33-22-111 does not apply to Plan No. 1 (self-insurers) and Plan No. 3 (the State Fund), and commented on the effect of Senate Bill 347 (Chapter 628, L. 1993) on § 33-22-111.

Response: The Department has amended the rule to clarify that from those classes of health care providers identified by section 33-22-111, MCA, an injured worker may select a "treating physician". The rule, as amended, does not reference the statute in question, and instead lists the classes of providers.

6. The amendments and new rule are effective December 1, 1993.

David A. Scott
Rule Reviewer

Laurie Ekanger, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State: November 15, 1993.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION of NEW RULE I (42.2.701) relating to Tax Information Provided to the Department of Revenue	NOTICE OF THE ADOPTION of NEW RULE I (42.2.701) relating to Tax Information Provided to the Department of Revenue

TO: All Interested Persons:

1. On June 10, 1993, the Department published notice of the proposed adoption of Rule I (42.2.701) relating to tax information provided to the Department of Revenue at page 1192 of the 1993 Montana Administrative Register, issue no. 11.

2. A public hearing was held on July 1, 1993, where written and oral comments were received.

3. Oral and written comments received during and subsequent to the hearing are summarized as follows along with the response of the Department:

COMMENT: The Montana Association of Beer and Wine Wholesalers, Anheuser-Busch Companies and Spirits West opposed section (5)(a)(iii) of the rule concerning public access to beer and wine reports. Four specific reports have been available in the past:

1. beer wholesaler monthly excise taxes paid;
2. wine distributors monthly excise taxes paid;
3. brewers and beer importers monthly reports of shipment volumes into Montana; and
4. wineries monthly reports of shipment volumes into Montana.

The commentators believed that these reports should continue to be available to the public. They believe the reports are important to industry members to determine market information which they need. They argue that the information is not protected by the constitutional right of privacy because the information was available and the taxpayers were aware that it was available.

RESPONSE: Although these reports are taken directly from tax returns, the department has determined that the first two reports (beer wholesalers and wine distributors) are public. However, the second two reports (breweries and wineries) are not public information and will be kept confidential to protect the privacy interests of the taxpayers.

The reports were made available to the public. The taxpayers themselves received a copy of the first two reports and were aware that other taxpayers received a copy. However, the third and fourth reports were not made as readily available to other taxpayers. Although they were formerly considered

public only a few people reviewed the list. There is no evidence that the majority of taxpayers were aware that the information was being furnished to other taxpayers.

The department sent letters to the taxpayers listed in the reports. The letters asked the taxpayers if they would agree to waive their right of privacy concerning the reports. The response was:

REPORT	YES	NO	NO RESPONSE
1. (beer wholesaler)	37	6	2
2. (wine distributor)	23	3	0
3. (brewery)	20	23	5
4. (winery)	57	129	21

Clearly the vast majority of taxpayers on the first two reports wanted to receive the reports. They agreed to waive their privacy right. However, the majority of the breweries and the wineries did not wish to waive their privacy right. This indicates that the information on the third and fourth reports is more sensitive. It also indicates that the majority of these taxpayers have an expectation of privacy.

The department will provide the requested information for all of those people who agreed to waive their right of privacy.

COMMENT: The E. & J. Gallo Winery commented that the rule is necessary to protect the privacy of its business affairs. They state that they have an expectation of privacy despite the fact that it may have been ignored at times. They also state that public disclosure serves no state purpose.

RESPONSE: The department accepts these comments and has addressed most of these concerns in the above response. The comment that disclosure serves no state purpose is important. If a privacy interest is found, the merits of public disclosure must be weighed against that right. We agree with the commentator that the merits of public disclosure seem relatively small.

The only state purpose for public disclosure is for budgets or for oversight. Clearly it is necessary that some entity be able to review the Department of Revenue's actions. The Legislative Auditor has the ability to review all information in the possession of the department under the same restrictions that the department is under. In addition, the Legislative Fiscal Analyst can review this information for budget purposes.

COMMENT: The State Tax Appeal Board commented that the department is keeping the Realty Transfer Certificates confidential which makes the property reappraisal process confidential.

RESPONSE: The Montana legislature has determined that Realty Transfer Certificates are confidential. § 15-7-308, MCA. The

proposed rule does not address situations where a statute declares a document to be confidential. The proposed rule only deals with those situations where no statute exists. Therefore, no amendments are necessary to the rule as a result of the comments.

The department is doing everything it can to make the reappraisal process as open as possible given the statutory restriction. All taxpayers have the right to see any and all information that was used to determine their reappraised value.

COMMENT: Members of the Revenue Oversight Committee commented on the rule at their meetings on June 14, 1993, and September 17, 1993. Some of the comments were similar to those stated in the first comment above.

Other comments concerned the change in legal position regarding natural resource taxes. The department has been providing a quarterly summary of the coal severance tax returns for each taxpayer for several years. The report listed quantities of coal sold at each mine as well as the contract sales price. It was provided to the Legislative Council and the Montana Coal Council, among others. Some members of the committee felt that the report should continue to be provided because there was no expectation of privacy on the part of the taxpayers.

In addition, at least one member felt that the severance tax was like a property tax. In the case of property taxes most information is available. Also, there was some concern that the Legislature needs to have this information for budget purposes and that the department should wait to adopt a rule until the legislature had an opportunity to address the issue.

RESPONSE: The comments regarding the beer and wine reports have been addressed in the response to the first comment.

The department will provide certain reports prepared from the natural resource tax returns. In particular, we will provide oil and gas volume information to the Board of Oil and Gas Conservation, and we will provide a quarterly summary of coal information to the public. The coal severance tax summary report will be changed so it no longer lists contract sales price for individual taxpayers. The information will include volume (tons) for each taxpayer and a statewide average sales price.

The reason that the oil and gas information is being provided is that it has been published by the Board of Oil and Gas Conservation for some time and is only volume information. The published information does not contain sensitive information. In addition, the fact that the information has been published for a long period of time indicates that there is very little, if any, expectation of privacy. An expectation of privacy is required to make information confidential.

The reason that the coal severance tax report is being changed is that the old report contained information which is

sensitive. Although this information was previously made public, the companies still assert that the information is sensitive. The Montana Coal Council stated at the Revenue Oversight Committee meeting that today's market is more competitive than it used to be, and the information is more sensitive than it used to be. Sensitive financial information can be used by competitors to the disadvantage of taxpayers. One taxpayer is competing for customers and at the present time only has one customer. The information previously furnished will thus reveal the selling price of this companies' one remaining contract. The release of this information would clearly be detrimental to this taxpayer.

The reasons that this information is not like most property tax information (net and gross proceeds taxes are property taxes) is that it is much more sensitive. Most property tax information is descriptive of particular real or personal property. It does not include financial information of a sensitive nature. If it does include such sensitive information, it may be confidential.

The Legislature will continue to receive the information necessary to do budgets through the Legislative Fiscal Analyst. In addition, the Legislative Auditor can review tax returns and other confidential documents. However, the fiscal analyst and auditor are required to maintain the confidentiality of the information they receive. They can use it for whatever purpose is necessary but are not allowed to make taxpayer specific information public.

The department cannot wait to adopt a policy until the legislature acts, because it must address these issues as they arise and apply existing law. The department could wait to adopt a rule but it would still have to make decisions on what documents are open to public access and which ones are confidential. The difference is that it would be making these decisions without informing the public. In following the rulemaking process, the department is informing both the public and the Legislature of its legal interpretation. The Legislature, now that it is aware of the department's legal interpretation, can make any change it wishes.

COMMENT: The Montana Coal Council supported confidentiality of tax returns and information from tax returns. As stated in the above response, they believe the information is sensitive and could be used to the economic disadvantage of a taxpayer by a competitor. They also request that the Resource Indemnity Trust Tax be included with the other taxes in (5)(a)(i).

RESPONSE: The comments are accepted. See above response. The Resource Indemnity Trust Tax is not included because the legislature has adopted a policy of keeping this information confidential pursuant to § 15-38-109, MCA. The opinion is only intended to address those areas where the legislature has not specifically addressed the issue.

4. As a result of the comments received the department has amended the rule as follows:

NEW RULE I (42.2.701) ~~TREATMENT OF~~ PUBLIC ACCESS TO TAXPAYER INFORMATION (1) The Montana Constitution guarantees individuals and corporations the right to privacy in Article II, Section 10. Under this provision of the Constitution, and in conjunction with various statutes in the Montana Code Annotated, the department will protect the privacy interests of taxpayers with regard to information they submit to the department.

(a) A protected privacy interest exists when a person expects the information they submit to remain private and that expectation of privacy is reasonable by ~~social~~ SOCIETAL standards.

(b) It is generally accepted that most taxpayers have a reasonable expectation that income and financial data and other information provided to the department will remain private, unless courts or the legislature ~~has~~ HAVE specifically recognized that the information is subject to public disclosure.

(2) The Montana Constitution guarantees the public's right to know. The right to know provision of the Montana Constitution is intended to keep the public informed about the workings of state government. The public's right to know must be balanced against the individual right of privacy.

(3) Information, such as tax returns, that taxpayers are required to provide to the department, and department prepared documents, such as audit reports, that identify taxpayers are confidential, unless it is clear that a taxpayer does not have a protected privacy interest in information found in the documents. ~~If there is any doubt as to whether or not a taxpayer has a protected privacy interest in the information, the department will resolve the doubt in favor of privacy.~~

(4) Documents prepared by the department that do not identify taxpayers and their associated private information are not confidential and will be released.

(5) (a) The department considers the following to be confidential information based on the Montana Constitution:

(i) tax returns, CERTAIN reports and audits for natural resource taxes such as net and gross proceeds and severance taxes;

(ii) tax returns, CERTAIN reports and audits for miscellaneous taxes such as cigarettes, lodging facilities, and dangerous drugs; and

(iii) tax returns, CERTAIN reports and audits of alcoholic beverage taxes.

(b) The department considers the following to not be confidential information based on the Montana Constitution:

(i) information describing the physical characteristics of property OR OTHER INFORMATION which is used to determine values for property tax assessments. EXAMPLES INCLUDE PERSONAL PROPERTY REPORTS, REAL PROPERTY RECORD CARDS, AND ALLOCATION

REPORTS;

(ii) information the department obtains from public sources rather than the taxpayer; and

(iii) statistical compilations of confidential information which do not identify SENSITIVE INFORMATION ABOUT taxpayers. EXAMPLES OF THESE INCLUDE OIL AND GAS QUANTITY REPORTS PROVIDED TO THE BOARD OF OIL AND GAS CONSERVATION, COAL PRODUCTION REPORTS WHICH DO NOT IDENTIFY TAXPAYERS, AND MASKED INDIVIDUAL INCOME TAX INFORMATION WHICH DOES NOT IDENTIFY TAXPAYERS.

(c) The list of taxes is not intended to be all inclusive but simply provide examples of information which is not covered by a specific statute. Statutes which require confidentiality ~~will be~~ ARE presumed ~~to be~~ constitutional.

(6) Confidential information ~~may~~ MUST be provided to the taxpayer themselves, or to their designee. Requests for this information must be submitted by the taxpayer in writing to the department. These requests will be maintained in the files of the department.

AUTH: 15-1-201, MCA; IMP: Montana Constitution, Art. II, Sections 8, 9, & 10; Attorney General Opinions 38-59 and 39-17; 2-4-501; 2-4-623; 2-6-109; 15-7-308; 15-30-303; 15-31-507; 15-35-205; 15-38-109; 15-50-205; 15-50-206; 15-50-207; 16-3-211; 16-3-404; 16-11-120; and 16-11-122, MCA.

5. Therefore, the department adopts the rule with the amendments listed above.

Valerie Hatfield for
CLEO ANDERSON
Rule Reviewer

MICK ROBINSON
Director of Revenue

Certified to Secretary of State November 15, 1993.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT of ARM 42.35.211; 42.35.213; 42.35.231; 42.35.317; 42.36.211 and the REPEAL of ARM 42.35.232; 42.35.233; and 42.35.234 relating to Inheritance Taxes	NOTICE OF THE ADOPTION of the AMENDMENT to ARM 42.35.211; 42.35.213; 42.35.231; 42.35.317; 42.36.211 and the REPEAL of 42.35.232; 42.35.233; and 42.35.234 relating to Inheritance Taxes

TO: All Interested Persons:

1. On September 16, 1993 the Department published notice of the proposed amendment of ARM 42.35.211, 42.35.213, 42.35.231, 42.35.317 and 42.36.211 and the repeal of ARM 42.35.232, 42.35.233 and 42.35.234 relating to inheritance tax at page 2109 of the 1993 Montana Administrative Register, issue no. 17.

2. Written comments were received from Junkermier, Clark, Campanella, Stevens, P.C. Those comments and the Department's responses are as follows:

COMMENT: The proposed amendments to ARM 42.35.211(2) regarding definitions should be made more specific. Judicial interpretation could change the meaning, especially when a person gives away all of their estate, and later acquires additional assets either from making a second fortune or they themselves inherit significant assets from an unknown party.

RESPONSE: In ARM 42.35.211(2) a suggestion was made that a definition of "final distribution" should be more specific. The inheritance is imposed only on transfers specified in 72-16-301(1), MCA. This is the criteria used to determine whether a transfer is taxable. Although the definition of "final distribution" may be used in different contexts, "final distribution of estate property", for inheritance tax purposes, means the transfers specified in § 72-16-301(1), MCA.

COMMENT: Please expand on the amendment to ARM 42.35.231(2)(b). We see this rule as not contemplating certain examples which the example "A" does not address. In the example, what happens if "A" dies first? Would these gifts be added back to "A's" estate?

RESPONSE: ARM 42.35.231(2)(b) was rewritten to clarify the last sentence of 72-16-303(2), MCA, which deals with the valuation of property acquired as joint tenancy with the right of survivorship. The example used in this rule illustrates what portion of the joint tenancy property would be included in a donee's or an heir's estate. The questions asked regarding this section of the rule are: (1) what would happen if "A" died prior

to "B", "C", or "D" and, if so, (2) would these gifts be added back into "A"'s estate. The answer is that ARM 42.35.211 would still apply. If the gift was made within 3 years of "A"'s death, this property would be included in "A"'s estate (as a contemplation of death transfer). If the gift was made prior to 3 years from "A"'s death, then the gift would not be included in "A"'s estate.

COMMENT: It appears that the amendment to ARM 42.35.231(3) is a retroactive application. Is this correct?

RESPONSE: ARM 42.35.231(3) was rewritten to conform to a Supreme Court Decision (State of Montana v. Dwyer) and the resulting legislative changes. The legislation, that changed the prior joint tenancy law to the current law, went into effect October 1, 1989. Prior to this date, all joint tenancy transfers were taxable as ruled under the Dwyer decision. After this date, all joint tenancy transfers are taxable under the current legislation.

COMMENT: Is the amendment to ARM 42.35.231(3)(b) trying to include transfers to a spouse as a gift in contemplation of death? If so, we disagree.

RESPONSE: ARM 42.35.231(3)(b) again deals with the Dwyer decision and the subsequent legislative changes. This rule does not deal with contemplation of death transfers. ARM 42.35.211 deals with contemplation of death transfers. Any transfer to a spouse within 3 years from the decedent's date of death (even though completely exempt for inheritance tax purpose) is a contemplation of death transfer (§ 72-16-301(3), MCA).

COMMENT: What are the amendments to ARM 42.35.231(3)(b) and (4) trying to accomplish?

RESPONSE: ARM 42.35.231(3)(a) and (b) are rules written to show the tax treatment of joint tenancy transfers when the decedent died prior to October 1, 1989. ARM 42.35.231(4) was written to show the tax treatment of joint tenancy transfers when the decedent died on or after October 1, 1989.

3. The Department has amended and repealed the rules as proposed.

CLEO ANDERSON
Rule Reviewer

MICK ROBINSON
Director of Revenue

Certified to Secretary of State November 15, 1993.

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

In the matter of the amendment of rules 46.12.507, 46.12.1021, 46.12.1022 and 46.12.1025 pertaining to medicaid coverage and reimbursement of ambulance services	)))))	NOTICE OF THE AMENDMENT OF RULES 46.12.507, 46.12.1021, 46.12.1022 AND 46.12.1025 PERTAINING TO MEDICAID COVERAGE AND REIMBURSEMENT OF AMBULANCE SERVICES

TO: All Interested Persons

1. On September 30, 1993, the Department of Social and Rehabilitation Services published notice of the proposed amendment of rules 46.12.507, 46.12.1021, 46.12.1022 and 46.12.1025 pertaining to medicaid coverage and reimbursement of ambulance services at page 2218 of the 1993 Montana Administrative Register, issue number 18.

2. The Department has amended rules 46.12.507, 46.12.1021 and 46.12.1025 as proposed.

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

46.12.1022 AMBULANCE SERVICES, REQUIREMENTS These requirements are in addition to those contained in ARM 46.12.301 through 46.12.~~309~~308310.

Subsections (1) through (7) remain as proposed.

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

4. The Department has thoroughly considered all commentary received:

COMMENT: The proposed rule erroneously indicates that the first sentence of current ARM 46.12.1022 refers to ARM 46.12.301 through 46.12.309. The notice of public hearing indicates that the department proposes to delete ARM 46.12.309 and insert ARM 46.12.308. This appears to be an error, because ARM 46.12.309 would apply to medicaid providers generally.

RESPONSE: The department agrees. The current rule refers to ARM 46.12.301 through 46.12.308. The amendment was intended to change the reference to ARM 46.12.308 to ARM 46.12.309. A review of the cited rules indicates that the correct reference is ARM 46.12.310. The language of the rule has been modified to correct this citation, so that the reference is to all generally

applicable provider requirements in ARM Title 46, chapter 12, sub-chapter 3.

COMMENT: The department cited section 53-6-141, MCA as a statute implemented by proposed ARM 46.12.507. Section 53-6-141, MCA has been repealed.

RESPONSE: The department agrees. The citation to this section must remain in the implementing citations for historical purposes, but should not have been underlined.

COMMENT: We support the proposed rules. We would like to point out, however, that under the proposed rules, there will be no incentive to use ground transportation to return neonates back home to transferring facilities. Ground transportation is often more appropriate and economical, but is not used because reimbursement is not allowed for a nurse to provide care during transport. The state could save thousands of dollars by allowing additional reimbursement for specialized transport teams. Further, such teams are needed and should be reimbursable when ground transportation is the only available transportation, such as in cases of bad weather. Also, the $1.70 per mile does not cover the costs of air ambulance services. We hope these issues can be brought to the forefront in future discussions.

RESPONSE: Ambulance service reimbursement includes payment for ambulance attendants who must be certified in accordance with state law, and who must be prepared to provide the basic or advance life support services required for the patient. The department at this time does not believe further reimbursement under the ambulance service program is warranted for hospital nursing staff to accompany patients in transport. However, we believe consideration should be given to addressing this issue in terms of reimbursements for hospital services. We encourage the commentor to continue discussions with the department's medicaid hospital services section staff on this issue.

Current reimbursement for ambulance services is a base rate of $140 for basic life support (air or ground) and $178 for advance life support (air or ground). Additional reimbursement for mileage is allowed at $2.50 per mile for ground transportation. Medicaid pays additional reimbursement for certain non-reusable and disposable supplies such as oxygen, gauze and dressings.

5. The proposed changes relating to reimbursement of neonates and pregnant women as an outpatient hospital service will be effective retroactively beginning November 1, 1993. These changes will have no adverse impact, but rather will benefit both medicaid recipients and providers. The remaining proposed changes will be effective January 1, 1994.

Rule Reviewer

Director, Social and Rehabilitation Services

Certified to the Secretary of State November 15, 1993.

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 September 30, 1993. This table includes those rules adopted during the period October 1, 1993 through December 31, 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 September 30, 1993, this table and the table of contents of this issue of the MAR.

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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 October, 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: OCTOBER, 1993

Appointee	Appointed by	Succeeds	Appointment/End Date
Alfalfa Seed Committee (Agriculture)			
Mr. Jack Delp	Governor	not listed	10/21/1993
Hardin			12/21/1996
Qualifications (if required): represents Alfalfa Seed Growers Association			
Mr. Tom Helm	Governor	not listed	10/21/1993
Miles City			12/21/1996
Qualifications (if required): represents Montana Seed Growers Association			
Mr. Kenneth M. Sagmiller	Governor	not listed	10/21/1993
Ronan			12/21/1996
Qualifications (if required): represents Montana Seed Trade Association			
Appellate Defender Commission (Administration)			
Mr. Rick Holden	Governor	McElwain	10/6/1993
Glendive			1/1/1995
Qualifications (if required): public member			
Board of Chiropractors (Commerce)			
Mr. Ronald Remick	Governor	reappointed	10/21/1993
Havre			10/6/1996
Qualifications (if required): public member			
Board of Landscape Architects (Commerce)			
Ms. Shelley Engler	Governor	Lutz	10/4/1993
Bozeman			7/1/1997
Qualifications (if required): licensed landscape architect			
Ms. Diana Penwell	Governor	Selstad	10/4/1993
Havre			7/1/1997
Qualifications (if required): public member			

BOARD AND COUNCIL APPOINTEES: OCTOBER, 1993

Appointee	Appointed by	Succeeds	Appointment/End Date
Board of Medical Examiners (Commerce)			
Dr. Daniel Charles Brooke Miles City Qualifications (if required): doctor of medicine	Governor	Burleigh	10/6/1993 9/1/1997
Ms. Pamela D. Gilbert Bozeman Qualifications (if required): public member	Governor	Broderick	10/6/1993 9/1/1997
Mrs. Lillian LaCroix Missoula Qualifications (if required): public member	Governor	reappointed	10/6/1993 9/1/1997
Ms. Linda Melich Lewistown Qualifications (if required): licensed nutritionist	Governor	Brown	10/6/1993 9/1/1997
Board of Outfitters (Commerce)			
Mr. Kurt Hughes Miles City Qualifications (if required): representative of District 5	Governor	Kelly	10/21/1993 10/1/1996
Ms. Rita Orr Libby Qualifications (if required): public member	Governor	Willits	10/21/1993 10/1/1996
Mr. Jerry Wells Helena Qualifications (if required): represents Department of Fish, Wildlife & Parks	Governor	reappointed	10/21/1993 10/1/1996

BOARD AND COUNCIL APPOINTEES: OCTOBER, 1993

Appointee	Appointed by	Succeeds	Appointment/End Date
Board of Psychologists (Commerce)			
Dr. James Murphy Bozeman Qualifications (if required): licensed psychologist	Governor	Schulberg	10/20/1993 9/1/1998
Ms. JoAnn Witt Carter Qualifications (if required): public member	Governor	Omang	10/20/1993 9/1/1998
Board of Radiologic Technologist (Commerce)			
Ms. Judy Martz Butte Qualifications (if required): public member	Governor	Metz	10/4/1993 7/1/1996
Ms. Debbie Sanford Lewistown Qualifications (if required): limited permit technologist	Governor	reappointed	10/4/1993 7/1/1996
Ms. Cynthia L. Smith Billings Qualifications (if required): radiologic technologist	Governor	Anderson	10/4/1993 7/1/1996
Dr. Dennis S. Yutani Glasgow Qualifications (if required): medical doctor	Governor	Wolf	10/4/1993 7/1/1996
Board of Veterinary Medicine (Commerce)			
Dr. Robert P. Myers Bozeman Qualifications (if required): licensed veterinarian	Governor	Johnson	10/20/1993 7/31/1998

BOARD AND COUNCIL APPOINTEES: OCTOBER, 1993

Appointee	Appointed by	Succeeds	Appointment/End Date
Capital Finance Advisory Council (Administration)			
Mr. James M. Kaze	Director	not listed	10/26/1993
Havre			4/5/1994
Qualifications (if required): none specified			
Child Care Advisory Council (Family Services)			
Ms. Mary Jane Standaert	Governor	Dellwo	10/21/1993
Helena			6/30/1994
Qualifications (if required): parent representative			
Committee on Telecommunication Services for the Handicapped (Social and Rehabilitation Services)			
Mr. James L. Allen	Governor	Almdale	10/21/1993
Lolo			7/1/1996
Qualifications (if required): handicapped member			
Community Service Advisory Council (Governor)			
Ms. Susan Callaghan	Governor	not listed	10/4/1993
Butte			7/1/1995
Qualifications (if required): represents business			
Ms. Nancy Coopersmith	Governor	not listed	10/4/1993
Helena			7/1/1995
Qualifications (if required): represents Office of Public Instruction			
Mr. George Dennison	Governor	not listed	10/4/1993
Missoula			7/1/1995
Qualifications (if required): represents University Systems			
Ms. Gertrude Downey	Governor	not listed	10/4/1993
Butte			7/1/1995
Qualifications (if required): represents non-profit organization			

BOARD AND COUNCIL APPOINTEES: OCTOBER, 1993

Appointee	Appointed by	Succeeds	Appointment/End Date
Community Service Advisory Council (Governor) cont.			
Ms. Patricia J. Gunderson Belgrade Qualifications (if required): represents labor	Governor	not listed	10/4/1993 7/1/1995
Ms. Meredith Hariton Missoula Qualifications (if required): represents program participants, ages 16 thru 29	Governor	not listed	10/4/1993 7/1/1995
Ms. Kay Hopkins Kalispell Qualifications (if required): represents public	Governor	not listed	10/4/1993 7/1/1995
Ms. Jan Kenitzer Baker Qualifications (if required): represents public	Governor	not listed	10/4/1993 7/1/1995
Ms. Billie Krenzler Billings Qualifications (if required): represents local government	Governor	not listed	10/4/1993 7/1/1995
Mr. Joe R. Lovelady Helena Qualifications (if required): entity receiving asst. under Domestic Volunteer Service Act	Governor	not listed	10/4/1993 7/1/1995
Major Loren Oelkers Helena Qualifications (if required): represents Department of Military Affairs	Governor	not listed	10/4/1993 7/1/1995
Mr. Andy Oldenburger Manhattan Qualifications (if required): represents public	Governor	not listed	10/4/1993 7/1/1995

BOARD AND COUNCIL APPOINTEES: OCTOBER, 1993

Appointee	Appointed by	Succeeds	Appointment/End Date
Community Service Advisory Council (Governor) cont.			
Mr. Arnie Olsen	Governor	not listed	10/4/1993
Butte			7/1/1995
Qualifications (if required): represents Fish, Wildlife and Parks			
Ms. Kathy Sova Ramirez	Governor	not listed	10/4/1993
Helena			7/10/1995
Qualifications (if required): represents non-profit organization			
Mr. Bob Simoneau	Governor	not listed	10/4/1993
Helena			7/1/1995
Qualifications (if required): represents Department of Labor and Industry			
Ms. Clara Spotted Elk	Governor	not listed	10/4/1993
Colstrip			7/1/1995
Qualifications (if required): represents Tribal Government			
Mr. Charles McCarthy	Governor	not listed	10/4/1993
Helena			7/1/1995
Qualifications (if required): represents Department of Family Services			
Education Advisory Council (Office of Public Instruction)			
Mr. Kim Kuzara	Governor	McElwain	10/21/1993
Roundup			5/1/1995
Qualifications (if required): school board member			

BOARD AND COUNCIL APPOINTEES: OCTOBER, 1993

Appointee	Appointed by	Succeeds	Appointment/End Date
Family Support Services Advisory Council (Social and Rehabilitation Services)			
Ms. Kathy Cashell	Governor	not listed	10/21/1993
Butte			9/30/1994
Qualifications (if required): family/consumer representative			
Ms. Christine Gutschenritter	Governor	not listed	10/21/1993
Great Falls			9/30/1994
Qualifications (if required): MSDB representative			
Ms. Janice Lane	Governor	not listed	10/21/1993
Forsyth			9/30/1994
Qualifications (if required): family/consumer representative			
Ms. Colleen Thompson	Governor	not listed	10/21/1993
Glasgow			9/30/1994
Qualifications (if required): Headstart representative			
Independent Living Advisory Council (Social and Rehabilitation Services)			
Ms. Ellen Alweis	Director	not listed	10/1/1993
Billings			10/1/1995
Qualifications (if required): none specified			
Ms. Kathy Collins	Director	not listed	10/1/1993
Helena			10/1/1995
Qualifications (if required): none specified			
Ms. June Hermanson	Director	not listed	10/1/1993
Polson			10/1/1995
Qualifications (if required): none specified			
Ms. Jan LaValley-Miller	Director	not listed	10/1/1993
Great Falls			10/1/1995
Qualifications (if required): none specified			

BOARD AND COUNCIL APPOINTEES: OCTOBER, 1993

Appointee	Appointed by	Succeeds	Appointment/End Date
Independent Living Advisory Council (Social and Rehabilitation Services) cont.			
Mr. Jim Marks	Director	not listed	10/1/1993
Missoula			10/1/1995
Qualifications (if required): none specified			
Mr. Mike Mayer	Director	not listed	10/1/1993
Missoula			10/1/1995
Qualifications (if required): none specified			
Job Training Coordinating Advisory Council (Labor and Industry)			
Ms. Judy Birch	Governor	not listed	10/13/1993
Helena			7/1/1995
Qualifications (if required): represents state or local government			
Mr. Peter Blouke	Governor	not listed	10/13/1993
Helena			7/1/1995
Qualifications (if required): represents state or local government			
Mr. Rick Day	Governor	not listed	10/13/1993
Helena			7/1/1995
Qualifications (if required): represents state or local government			
Ms. JoEllen Estenson	Governor	not listed	10/13/1993
Columbia Falls			7/1/1995
Qualifications (if required): represents state or local government			
Mr. Jim Fitzpatrick	Governor	not listed	10/13/1993
Helena			7/1/1995
Qualifications (if required): represents labor/community-based organizations			
Mr. Hank Hudson	Governor	not listed	10/13/1993
Clancy			7/1/1995
Qualifications (if required): represents state or local government			

BOARD AND COUNCIL APPOINTEES: OCTOBER, 1993

Appointee	Appointed by	Succeeds	Appointment/End Date
Job Training Coordinating Advisory Council (Labor and Industry) cont.			
Ms. Sue Matthews Miles City Qualifications (if required): represents labor/community-based organizations	Governor	not listed	10/13/1993 7/1/1995
Mr. Steve P. Nelson Bozeman Qualifications (if required): represents labor/community-based organizations	Governor	not listed	10/13/1993 7/1/1995
Mr. Randy Siemers Billings Qualifications (if required): represents labor/community-based organizations	Governor	not listed	10/13/1993 7/1/1995
Ms. Sherry Stevens Wulf Kalispell Qualifications (if required): represents labor/community-based organizations	Governor	not listed	10/13/1993 7/1/1995
Sen. Mignon Waterman Helena Qualifications (if required): represents general public	Governor	not listed	10/13/1993 7/1/1995
Mr. Noel Williams Eureka Qualifications (if required): represents state or local government	Governor	not listed	10/13/1993 7/1/1995
Rep. Karyl Winslow Billings Qualifications (if required): represents general public	Governor	not listed	10/13/1993 7/1/1995
Ms. Barbara Campbell Deer Lodge Qualifications (if required): represents business	Governor	not listed	10/13/1993 7/1/1995

BOARD AND COUNCIL APPOINTEES: OCTOBER, 1993

Appointee	Appointed by	Succeeds	Appointment/End Date
Job Training Coordinating Council (Labor and Industry) cont.			
Ms. Jane Delong	Governor	not listed	10/13/1993
Helena			7/1/1995
Qualifications (if required): represents business			
Ms. Helen Kellicut	Governor	not listed	10/13/1993
Deer Lodge			7/1/1995
Qualifications (if required): represents business			
Mr. Bob Marks	Governor	not listed	10/13/1993
Clancy			7/1/1995
Qualifications (if required): represents business			
Ms. Felicity McFerrin	Governor	not listed	10/13/1993
Helena			7/1/1995
Qualifications (if required): represents labor/community-based organizations			
Mr. David Owen	Governor	not listed	10/13/1993
Helena			7/1/1995
Qualifications (if required): represents business			
Ms. Diane Ruff	Governor	not listed	10/13/1993
Billings			7/1/1995
Qualifications (if required): represents business			
State Employee Group Benefits Advisory Council (Administration)			
Ms. Cindy Anders	Director	not listed	10/8/1993
Helena			9/1/1995
Qualifications (if required): none specified			
Mr. Mark Cress	Director	not listed	10/8/1993
Helena			9/1/1995
Qualifications (if required): none specified			

BOARD AND COUNCIL APPOINTEES: OCTOBER, 1993

Appointee	Appointed by	Succeeds	Appointment/End Date
State Employee Group Benefits Advisory Council (Administration) cont.			
Ms. Nancy Ellery Helena Qualifications (if required): none specified	Director	not listed	10/8/1993 9/1/1995
Mr. Dave Evenson Helena Qualifications (if required): none specified	Governor	not listed	10/8/1993 9/1/1995
Ms. Debbie Gebase Boulder Qualifications (if required): none specified	Director	not listed	10/8/1993 9/1/1995
Mr. Ken Givens Helena Qualifications (if required): none specified	Governor	not listed	10/8/1993 9/1/1995
Mr. Curt Nichols Helena Qualifications (if required): none specified	Director	not listed	10/8/1993 9/1/1995
Mr. Jim Penner Helena Qualifications (if required): none specified	Governor	not listed	10/8/1993 9/1/1995
Mr. William Salisbury Helena Qualifications (if required): none specified	Director	not listed	10/8/1993 9/1/1995
Mr. Thomas Schneider Helena Qualifications (if required): none specified	Director	not listed	10/8/1993 9/1/1995

BOARD AND COUNCIL APPOINTEES: OCTOBER, 1993

Appointee	Appointed by	Succeeds	Appointment/End Date
State Tax Appeal Board (Administration)			
Ms. Patti Foster Townsend Qualifications (if required): public member	Governor	McNaught	10/21/1993 3/1/1995
Mr. Patrick E. McKelvey Helena Qualifications (if required): none specified	Governor	not listed	10/21/1993 0/0/0

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	Governor	1/1/1994
Qualifications (if required): public member		
Dr. John Halseth, Great Falls	Governor	1/1/1994
Qualifications (if required): physician		
Board of Speech Pathologists and Audiologists (Commerce)		
Mr. Carl H. Clark, Kalispell	Governor	12/31/1993
Qualifications (if required): audiologist		
Mr. Christian D. Grover, Helena	Governor	12/31/1993
Qualifications (if required): audiologist		
Ms. Jane L. Hudson, Billings	Governor	12/31/1993
Qualifications (if required): speech pathologist		
Ms. Beverly Roy, Fort Shaw	Governor	12/31/1993
Qualifications (if required): speech pathologist		
Children's Trust Fund Board (Social and Rehabilitation Services)		
Ms. Gail Flack, Hardin	Governor	1/1/1994
Qualifications (if required): member		
Ms. Karen Ortman, Glasgow	Governor	1/1/1994
Qualifications (if required): member		

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 Qualifications (if required): represents consumers	Director	12/1/1993
Ms. Kayleen Jones, Billings Qualifications (if required): parent of consumer	Director	12/1/1993
Ms. Kimberly Kradolfer, Helena Qualifications (if required): represents Justice	Director	12/1/1993
Mr. John Lynn, Missoula Qualifications (if required): Mental Health Service Provider	Director	12/1/1993
Ms. Margaret Murphy, Billings Qualifications (if required): parent of consumer	Director	12/1/1993
Sen. Dennis G. Nathe, Redstone Qualifications (if required): legislator	Director	12/1/1993
Mr. Roger Pederson, Helena Qualifications (if required): represents Housing	Director	12/1/1993
Ms. Barbara Sample, Billings Qualifications (if required): parent of consumer	Director	12/1/1993
Ms. Helen Sampsel, Miles City Qualifications (if required): parent of consumer	Director	12/1/1993
Ms. Dorothy Sowa, Great Falls Qualifications (if required): advocate for elderly	Director	12/1/1993
Mr. Randy Vetter, Warm Springs Qualifications (if required): represents Mental Health	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. 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

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