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MONTANA ADMINISTRATIVE REGISTER

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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 10

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 The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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NOTICE SECTION

BEFORE THE DEPARTMENT OF AGRICULTURE
STATE OF MONTANA

In the matter of the proposed adoption of new rules I, II, III, IV, V, VI, VII and VIII pertaining to rinsing and disposal of pesticide containers.)	NOTICE OF PROPOSED ADOPTION OF NEW RULES PERTAINING TO RINSING AND DISPOSAL OF PESTICIDE CONTAINERS

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On June 25, 1994, the Department of Agriculture proposes to adopt new rules defining pesticide containers, requirements, rinsing, use of rinsates, recycling, disposal of other containers, burning or incineration of pesticide containers and handling pesticide containers being rinsed, recycled, reconditioned, disposed or refilled.

2. The proposed new rules will read as follows:

RULE I DEFINITION OF TERMS These definitions are intended to supplement all existing rules adopted under the Montana Pesticides Act, Title 80, chapter 8, MCA.

(1) "Empty pesticide container" means any pesticide container from which the pesticide contents have been removed by pouring, shaking, pumping, aspirating or by other means and in which no pesticide contents remain that can be practically removed by these or similar methods.

(2) "Pesticide container" means any package or packaging in which a pesticide is in contact with the inner surface. The term does not include any shipping material used to hold more than one pesticide container or a bulk container used for transporting or delivering a pesticide.

(3) "Rinsate" means any mixture of rinse material and the residual contents of an empty pesticide container that is produced in the process of rinsing an empty pesticide container.

(4) "Rinse material" means any liquid or other material permitted by the labeling or otherwise approved by the U.S. Environmental Protection Agency or the department to rinse empty pesticide containers.

(5) "Rinsed pesticide container" means an empty pesticide container that has been triple or power rinsed or rinsed by equivalent procedures as described in rule III.

(6) "Visible residue" means any rinsate with an amber, milky or other coloration associated with a specific pesticide.

AUTH: 80-8-105, MCA IMP: 80-8-105(3)(a), MCA

RULE II RINSING AND DISPOSAL REQUIREMENTS (1) These rules apply to any person handling, using, rinsing or disposing of pesticide containers. All pesticide labeling requirements, including any rinsing requirements, and these rules must be complied with when preparing and handling any pesticide container for disposal, recycling, refilling, or returning to the dealer, distributor or registrant. If the label instructions for rinsing or disposal of a pesticide container are different from these rules, the more restrictive requirement must be followed.

AUTH: 80-8-105, MCA IMP: 80-8-105(3)(a), MCA

RULE III RINSING EMPTY PESTICIDE CONTAINERS (1) All empty pesticide containers shall be triple or power rinsed or rinsed by equivalent procedures approved by the department except as exempted in (1)(a) and (b). Such rinsing shall occur within 48 hours of the time that the container is rendered empty. Containers should be rinsed immediately after being emptied and the rinsate used as diluent in pesticide applications.

(a) Aerosol containers, fiber drums with liners, paper, fiber and plastic bags, containers designated by label for refilling, water soluble containers and compressed gas cylinders are exempted from this rule. Rinsing instructions on the pesticide container label must be followed.

(b) Containers from retail pesticides labeled only for home, yard, and garden uses as set forth in ARM 4.10.502 are exempt from this rule. These containers should be rinsed according to the procedures of this rule.

(2) The following procedures are the standard for triple, power or equivalent rinsing:

(a) Triple rinse procedures:

(i) The minimum amount of rinse material for each rinse shall be based upon the container size as specified below:

container size	amount of rinse material
less than 5 gallons	1/4 of the container's volume
5 gallons or more	1/5 of the container's volume

(ii) The required amount of rinse material shall be added to the pesticide container. The lid or other closure device shall be secured and the container agitated to ensure contact of the rinse material with all inside surfaces.

(iii)The rinsate shall be poured from the container and the container allowed to drain for 30 seconds.

(iv) The rinse procedures shall be repeated a second and third time.

(v) The rinse procedure shall be repeated until no visible residue is present.

(b) Power rinse procedures:

(i) The minimum amount of rinse material shall be 1/2 the volume of the container.

(ii) The minimum pressure of the rinse material shall be 15 pounds per square inch.

(iii)The nozzle shall be capable of rinsing all inner surfaces of the container.

(iv) Rinsing shall continue until no visible residues are present.

(v) The container shall be drained for 30 seconds.

(c) Equivalent rinse procedures: Any person may apply for department approval of a procedure for rinsing pesticide containers. The application shall include:

(i) A narrative description of the procedure.

(ii) Laboratory analytical results that demonstrate that removal of residues is as effective as triple rinsing or power rinsing.

(iii)Documentation that the analytical methods are scientifically acceptable and results are statistically valid. This may include submittal of quality assurance/quality control documentation, policy and practices.

(iv) Information and data that illustrate that pesticide exposure to persons conducting the procedure is not greater than exposure from triple or power rinsing procedures.

(v) Information and data that illustrate that adverse effects to the environment are not greater than from triple or power rinsing procedures.

(vi) The department may deny or approve the request based upon the information from the applicant and from data and information from other sources. The department may also withdraw its approval should further information reveal that the procedure is not equivalent to accepted procedures, pesticide exposure is greater than previously believed or adverse environmental problems result.

AUTH: 80-8-105, MCA IMP: 80-8-105(3)(a), MCA

RULE IV USE OF RINSATES (1) Rinsates may be applied as pesticides provided that applicable label directions are followed for each registered pesticide in the rinsate.

(2) Rinsates may be used as a diluent in pesticide mixtures where:

(a) the pesticides in the rinsate and the mixture are the same or compatible;

(b) tank mixing is not prohibited by the pesticide labels;

(c) the application site is listed on each pesticide label.

(3) Disposal of rinsates is prohibited except as permitted by the label or by Title 75, chapter 10, MCA and rules adopted thereunder.

(4) Rinsates may be temporarily stored but shall not be stored longer than one year.

(a) The container(s) storing the rinsate must have the following information on a label attached to the container:

(i) The date that the rinsate was placed in the container;

(ii) the active ingredient(s) in the rinsate;

(iii)company name, trade name, formulation and Environment Protection Agency registration number for each product in the rinsate;

(iv) signal word; and

(v) name of responsible person(s).

(5) Rinsates must be used or disposed of in a manner that prevents any agricultural, environmental or human health problems.

AUTH: 80-8-105, MCA IMP: 80-8-105(3)(a), MCA

RULE V DISPOSAL AND RECYCLING OF METAL, GLASS OR PLASTIC PESTICIDE CONTAINERS (1) All rinsed pesticide containers shall be punctured or rendered unusable; and, within 90 days, disposed of in a sanitary landfill as a solid waste or sent to a department approved recycler or reconditioner if allowed by the label.

(2) Empty pesticide containers not required to be rinsed shall be disposed of within 7 days, preferably within 48 hours, following procedures in Rule VI.

(3) Containers authorized by the label for refilling are exempted from this rule.

AUTH: 80-8-105, MCA IMP: 80-8-105(3)(a), MCA

RULE VI DISPOSAL OF OTHER TYPES OF EMPTY PESTICIDE CONTAINERS (1) Aerosol pesticide containers shall be handled in the following manner:

(a) The cap shall be replaced.

(b) The container shall be wrapped in absorbent material.

(c) The container shall be discarded in a sanitary landfill.

(d) Aerosol containers shall not be punctured, burned or incinerated.

(2) Fiber drums with liners and paper or plastic bags shall be handled in the following manner:

(a) Clinging particles shall be loosened by shaking and tapping sides and bottom of the liner or bag and placed in application equipment.

(b) The drum and liner or bag shall be discarded in a sanitary landfill.

(3) Compressed gas cylinders shall be handled in the following manner:

(a) Label directions, precautions, and procedure for returning the container to the dealer, registrant or formulator shall be followed.

(4) Other pesticide containers not described in this rule must be disposed of according to the label directions.

AUTH: 80-8-105, MCA IMP: 80-8-105(3)(a), MCA

RULE VII BURNING OR INCINERATION OF PESTICIDE CONTAINERS (1) Incineration or burning pesticide containers or the use of an unapproved incinerator to burn or incinerate pesticide containers is prohibited except when such burning or incineration is approved by the Montana department of health and environmental sciences.

AUTH: 80-8-105, MCA IMP: 80-8-105(3)(a), MCA

RULE VIII HANDLING PESTICIDE CONTAINERS BEING RINSED, RECYCLED, RECONDITIONED, DISPOSED OR REFILLED (1) Any person rinsing or preparing a pesticide container for disposal, recycling, reconditioning or refilling must follow the personal protective procedures and precautions on the pesticide label. These may include use of non-absorbent gloves, coveralls, apron, hat and footwear; approved respiratory protection devices; and eye protection.

(2) No person shall use, reuse, offer for sale, exchange or give away an empty or rinsed pesticide container for any purpose, except as allowed by these rules.

(3) Any person licensed, certified or permitted under the Montana Pesticides Act or persons that are required to possess such credentials shall be responsible for training, supervising and monitoring employees or any other person involved with the rinsing and/or disposal of pesticide containers. The responsibilities include educating and training employees or other persons on labeling precautions and directions; the rules contained in this Sub-chapter; and appropriate measures to protect agriculture, human health and the environment.

(4) Empty or rinsed pesticide containers shall be stored within an enclosure that restricts entry by unauthorized persons. Transportation of empty or rinsed pesticide containers shall be in a manner that protects human health and the environment.

AUTH: 80-8-105, MCA IMP: 80-8-105(3)(a), MCA

REASON: These rules are being proposed to standardize and clarify procedures for rinsing pesticide containers and to establish requirements for disposition (disposal, recycling, or reconditioning) of rinsed containers. The department believes that these rules are necessary to prevent unnecessary pesticide residues in the environment that can result if containers are not rinsed prior to disposal or are improperly disposed. These rules should also provide more assurance to operators of sanitary landfills that pesticide containers being submitted for disposal contain minimal residues.

These rules are being proposed under authority of 80-8-105(3)(a) to restrict the methods of disposing of pesticide

containers in order to prevent damage or injury to persons, agriculture and the environment. These rules are separate from the disposal program referenced in 80-8-105(2)(r), MCA in that these rules implement a permanent requirement for the handling and disposal of empty pesticide containers. The rules being developed to implement 80-8-105(2)(r), MCA will terminate on June 30, 1999 and these rules will establish a temporary program under which a private contractor will accept pesticide containers and unusable pesticides from private persons and will dispose or recycle them.

These rules propose to implement as rules certain procedures that have generally been accepted as best management practices by the pesticide industry and the U.S. Environmental Protection Agency. Pesticide labels commonly require that empty containers be rinsed and disposed of following procedures proposed by these rules. Where such instructions appear on pesticide labels, state and federal laws require that the instructions be followed by users.

3. Interested persons may submit their written data, views, or arguments concerning these rules to Gary Gingery, Administrator, Department of Agriculture, Agricultural Science Division, P.O. Box 200201, Helena, MT 59620-0201, no later than June 23, 1994.

4. If persons who are directly affected by the proposed adoption wish to express data, views, and arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Gary Gingery, Administrator, Department of Agriculture, Agricultural Sciences Division, P.O. Box 200201, Helena, MT 59620-0201, no later than June 23, 1994.

5. If the department receives requests for a public hearing under section 2-4-315, MCA, on the proposed adoption, from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed rules; 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.

W. Ralph Peck, Administrator
DEPARTMENT OF AGRICULTURE

Timothy J. Meloy, Attorney
Rule Reviewer
DEPARTMENT OF AGRICULTURE

Certified to the Secretary of State Office May 16, 1994.

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

In the matter of the adoption of new rules regarding electronic filing of the appointment and termination of insurance producers	))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION

TO: All Interested Persons.

1. On Tuesday, June 21, 1994, at 10:00 o'clock a.m., MDT, a public hearing will be held at the Department of Revenue, 4th Floor, Director's Conference Room, 126 N. Sanders, Mitchell Building, Helena, Montana. The hearing will be to consider the proposed adoption of new rules regarding electronic filing of the appointment and termination of insurance producers.

2. The proposed new rules provide as follows:

RULE I DEFINITIONS For the purposes of this subchapter, the following terms have the following meanings:

(1) "Electronic filing" means submission to the department of appointment and termination requests by an insurer by means of telephonic transmission or magnetic media approved by the commissioner.

(2) "Non-electronic filing" means submission to the department of appointment and termination requests by means of paper forms approved by the commissioner.

AUTH: 33-1-313, 33-2-709, and 33-17-236, MCA
IMP: 33-2-708, 33-17-236 and 33-17-237, MCA

RULE II ALLOWABLE METHODS OF ELECTRONIC FILING

(1) The following forms of electronic filing of appropriate forms with the commissioner may be used:

(a) A software package, known as AppointPAK, developed and maintained by Pictorial, Inc., may be used. Insurers utilizing this method will need to contract with Pictorial, Inc., before they can transmit appointments and terminations electronically.

(b) Diskettes, MS DOS or PC DOS compatible magnetic media, 3.5 inch, double sided, high density, 2.0 mega bytes, may be used. Insurers utilizing this method will be provided diskettes containing data entry software which asks the user for the data needed by the department.

AUTH: 33-1-313, 33-2-709, and 33-17-236, MCA
IMP: 33-2-708, 33-17-236 and 33-17-237, MCA

RULE III PROCEDURES FOR ELECTRONIC FILING OF APPOINTMENTS (1) Insurers may file notices of appointments or documentation of products by the following electronic methods:

(a) AppointPAK filing must be made through the software and procedures established by the software vendor (Pictorial, Inc.), approved by the commissioner, and in the format required by the commissioner. Fees required under 33-2-708, MCA, must be remitted to the department the same day the request is transmitted to AppointPAK. A detailed statement indicating relationship of fees remitted to requests submitted must be included. Filings not accompanied by fee payments must be treated as void.

(b) Filings submitted by means of diskettes must be on diskettes provided for such purposes by the department and in the format required by the commissioner. Fees required under 33-2-708, MCA, must be remitted to the department with the diskettes. Filings not accompanied by fee payments must be treated as void.

(2) When proper electronic filings have been completed, the department will respond in the following manner:

(a) Notice of confirmation shall be returned to the insurer by the same electronic method used for the original filing. Notice of confirmation to the affected producer shall be by mail to the last address of record in the commissioner's office.

(b) Notice of denial shall be returned to the insurer by the same electronic method used in the original filing. The reason(s) for denial shall be indicated in the notice.

(c) A written notice of denial, including the reasons for the denial, shall be sent to both the insured and the producer in the regular course of the mail.

(3) If unlawful activity is alleged to have been involved leading to a termination of an appointment of a producer, the subsequent statements of facts, required by 33-17-231 and 33-17-237, MCA, must be submitted in writing. If the notice was made by diskette, the written statement must accompany the diskette containing the notice. AppointPAK notices requiring any related statements must be mailed to the department the same day. The written statements must include the same information as required on the most recently revised paper form approved by the commissioner.

(4) If unlawful activity is not involved in the termination, no additional information is required.

AUTH: 33-1-313, 33-2-709, and 33-17-236, MCA
IMP: 33-2-708, 33-17-236 and 33-17-237, MCA

3. REASON: These rules are being proposed because they are needed to implement Chapter 6 of the Special Laws of Montana of 1993.

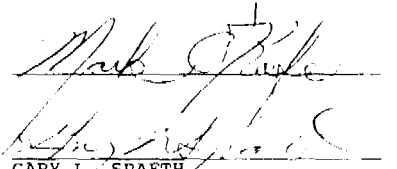
4. Interested persons may present their data, views, or arguments, either orally or in writing, at the hearing.

Written data, views, or arguments may also be submitted to Frank G. Coté, Deputy Commissioner of Insurance, P.O. Box 4009, Helena, Montana, 59604-4009, and must be received no later than June 28, 1994.

5. The State Auditor will make reasonable accommodations for persons with disabilities who wish to participate at this public hearing. If you request an accommodation, please do so by contacting the State Auditor's Office no later than 5:00 p.m., June 17, 1994, and advising the office of the nature of the accommodation needed. Please contact Frank G. Coté, Deputy Commissioner of Insurance, P.O. Box 4009, Helena, Montana, 59604-4009; telephone (406) 444-2997; toll free, dial 1 and then 800-332-6148; fax (406) 444-3497.

6. Gary L. Spaeth, P.O. Box 4009, Helena, Montana, 59604-4009, has been designated to preside over and conduct the hearing.

MARK O'KEEFE, State Auditor
and Commissioner of Insurance

By: 

GARY L. SPAETH
Rules Reviewer

Certified to the Secretary of State this 16th day of May, 1994.

BEFORE THE BOARD OF NURSING
AND THE BOARD OF MEDICAL EXAMINERS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed amendment of rules pertaining to prescriptive authority	))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF RULES PERTAINING TO PRESCRIPTIVE AUTHORITY

TO: All Interested Persons:

1. The notice of proposed board action published in the Montana Administrative Register on March 31, 1994, issue number 6, at page 615, is amended as follows due to a number of individuals requesting an opportunity to present data, views or arguments to the Board. In response to the requests, the Board has scheduled a hearing on the proposed rules and will open the rulemaking record to the date set forth below in order to receive additional comments.

2. On June 16, 1994, at 9:00 a.m., a public hearing will be held in the conference room of the Professional and Occupational Licensing Bureau, Arcade Building, 111 N. Jackson, Helena, Montana, to consider the proposed amendment of rules pertaining to prescriptive authority.

3. The language of the proposed amendments designated above, the reason for the proposed amendments and the authority of the Board to propose the amendments are the same as cited in the original notice.

4. Interested persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Lance Melton, Legal Counsel, Professional and Occupational Licensing Bureau, Arcade Building, 111 N. Jackson, P.O. Box 200513, Helena, Montana, to be received no later than 5:00 p.m., June 23, 1994.

5. Lance L. Melton, attorney, has been designated to preside over and conduct the hearing.

BOARD OF NURSING
BOARD OF MEDICAL EXAMINERS

BY: _____
ANNIE M. BARTOS, CHIEF COUNSEL

_____
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, May 16, 1994.

BEFORE THE BOARD OF SPEECH-LANGUAGE
PATHOLOGISTS AND AUDIOLOGISTS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed amendment of rules pertaining to fees and supervision	)))	NOTICE OF PROPOSED AMENDMENT OF 8.62.413 FEES AND 8.62.502 SCHEDULE OF SUPERVISION - CONTENTS NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On June 25, 1994, the Board of Speech-Language Pathologists and Audiologists proposes to amend the above-stated rules.

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

"8.62.413 FEES (1) through (11) will remain the same.

(12) Renewal fees will be ~~$25.00~~ $20.00."

Auth: Sec. 37-1-134, 37-15-202, MCA; IMP, Sec. 37-15-307, 37-15-308, MCA

REASON: The proposed amendment will lower the renewal fee by $5.00 to draw down the Board's cash balance and keep fees commensurate with costs as the statute requires.

"8.62.502 SCHEDULE OF SUPERVISION - CONTENTS (1) through (3) will remain the same.

(4) The supervisor must completed a mid-year verification form by February 25 of each year, on a form supplied by the board, to indicate continuing compliance with the schedule of supervision previously filed under (1) above."

Auth: Sec. 37-15-202, MCA; IMP, Sec. 37-15-102, 37-15-313, MCA

REASON: The proposed amendment will allow the Board to verify whether the proper number of hours of supervision are being completed for each aide, as there is currently no contact with the Board after the initial form filing in October. The amendment will also allow supervisors to inform the Board of changes in personnel and/or hours of employment by aides which occur throughout the year.

3. Interested persons may submit their data, views or arguments concerning the proposed amendments in writing to the Board of Speech-Language Pathologists and Audiologists, 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., June 23, 1994.

4. If a person who is directly affected by the proposed amendments wishes to present his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit the request along with any comments he has to the Board of Speech-Language Pathologists

and Audiologists, 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., June 23, 1994.

5. If the Board receives requests for a public hearing on the proposed amendments from either 10 percent or 25, whichever is less, of those persons who are directly affected by the proposed amendments, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 39 based on the approximately 388 licensees in the state of Montana.

BOARD OF SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS
JANE HUDSON, CHAIRMAN

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

_____
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, May 16, 1994.

BEFORE THE BOARD OF VETERINARY MEDICINE
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed amendment of rules pertaining to applications and the adoption of a new rule pertaining to infectious wastes	)))))	NOTICE OF PROPOSED AMENDMENT OF ARM 8.64.802 APPLICATIONS FOR CERTIFICATION - QUALIFICATION AND THE ADOPTION OF OF NEW RULE I MANAGEMENT OF INFECTIOUS WASTES

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On June 25, 1994, the Board of Veterinary Medicine proposes to amend and adopt the above-stated rules.

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

"8.64.802 APPLICATIONS FOR CERTIFICATION - QUALIFICATION

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

(4) Applicants shall submit a completed application with the proper fee as set forth in ARM 8.64.401 and supporting documents to the board office no later than August 1 to be eligible for the fall examination."

Auth: Sec. 37-18-202, MCA; IMP, Sec. 37-18-104, MCA

REASON: This amendment will provide a firm application deadline for embryo transfer examination candidates and will allow the Board sufficient time to make arrangements for the fall examination.

3. The proposed new rule will read as follows:

"I MANAGEMENT OF INFECTIOUS WASTES (1) Each veterinarian licensed by the board shall store, transport off the premises, and dispose of infectious wastes, as defined in 75-10-1003, MCA, in accordance with the requirements set forth in 75-10-1005, MCA.

(2) Used sharps are properly packaged and labelled within the meaning of 75-10-1005(1)(a), MCA, when this is done as required by the occupational safety and health administration (OSHA) regulation contained in 29 CFR 1910.1030, adopted and published in the Federal Register, volume 56 No. 235, on December 6, 1991 beginning at page 64175, which is hereby incorporated by reference. Copies of the federal regulation referenced above as well as the adoption notice supporting it are available for public inspection in the offices of the board of Veterinary Medicine, Lower Level, Arcade Building, 111 North Last Chance Gulch, Helena, Montana 59620-0513."

Auth: Sec. 37-1-131, 37-18-202, 75-10-1006, MCA; IMP, Sec. 75-10-1006, MCA

REASON: This proposed new rule will provide for infectious waste control for the veterinary profession as required by 75-10-1006, MCA.

4. Interested persons may submit their data, views or arguments concerning the proposed amendment and adoption in writing to the Board of Veterinary Medicine, Lower Level, Arcade Building, 111 North Last Chance Gulch, P.O. Box 200513, Helena, Montana 59620-0513, to be received no later than 5:00 p.m., June 23, 1994.

5. If a person who is directly affected by the proposed amendment and adoption 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 Veterinary Medicine, Lower Level, Arcade Building, 111 North Last Chance Gulch, P.O. Box 200513, Helena, Montana 59620-0513, to be received no later than 5:00 p.m., June 23, 1994.

6. If the Board receives requests for a public hearing on the proposed amendment and adoption 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 90 based on the 896 licensees in Montana.

BOARD OF VETERINARY MEDICINE
DON WOERNER, D.V.M., PRESIDENT

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

_____
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, May 16, 1994.

BEFORE THE BUILDING CODES BUREAU
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed amendment of a rule pertaining to the uniform building code	))))	NOTICE OF PROPOSED AMENDMENT OF 8.70.101 INCORPORATION BY REFERENCE OF UNIFORM BUILDING CODE

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On June 25, 1994, the Building Codes Bureau proposes to amend the above-stated rule.

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

"8.70.101 INCORPORATION BY REFERENCE OF UNIFORM BUILDING CODE (1) through (1)(c) will remain the same.

(d) Subsections (b) and (c) of section 304 of the Uniform Building Code, 1991 Edition, are amended to read as follows:

Sec. 304.(b) Permit fees. The fee for each permit shall be as set forth in Table No. 3-A.

Sec. 304.(c) Plan review fees: When a plan or other data are required to be submitted by subsection (b) of section 302, a plan review fee shall be paid. Said plan review fee shall be 25 percent of the building permit fee as set forth in Table No. 3-A. When only plan review services are provided, the plan review fee shall be 65% of the building permit fee as set forth in Table No. 3-A.

The determination of value or valuation under any of the provisions of this code shall be made by the building official. The value to be used in computing the building permit and building plan review fees shall be the total value of all construction work for which the permit is issued as well as all finish work, painting, roofing, electrical, plumbing, heating, air conditioning, elevators, fire-extinguishing systems and any other permanent equipment. Whenever the building official is in the state of Montana, acting through the department of commerce, building codes bureau, the value or valuation of a building or structure under any of the provisions of this code will be determined using the cost per square foot method of valuation and the cost per square foot figures for the type and quality of construction listed in the most current "Building Valuation Data" table published by "International Conference of Building Officials Building Standards" magazine, the trade magazine published by the international conference of building officials, as modified by the regional modifiers set forth in said "Building Valuation Data" table. The building codes bureau may, for public buildings or projects that exceed $25,000 in building value, use firm bids for establishing the building valuation as an alternative to using "Building

Valuation Data" table when such bids include all construction work associated with the building as described earlier in this section and the bidding process is determined as having been open and competitive. Valuation of projects may also be based on firm total project contract amounts if the entire project is contracted and such contracts cover all construction work associated with the building as described earlier in this section, provided this contracted valuation is less than 75% of the valuation as determined by use of "Building Valuation Data" table. Valuation of remodel and/or addition projects, where use of "Building Valuation Data" table is not appropriate, will be based on use of typical and reasonable construction costs. When only plan review fees are charged, the building valuation for determining fees will be based on the design professional's preliminary cost estimate, if such estimate is available or "Building Valuation Data" table, if such estimate is not available. For purposes of calculation of fees, the building valuation shall be rounded off to the nearest $1,000 and any calculated building and plan review fees shall be rounded off to the nearest $1. As provided in ARM 8.70.208, local governments certified to enforce the state building code may establish their own permit fees. Local governments may also establish their own method of building valuation. During the period commencing with the date upon which this amendment is effective and ending on June 30, ~~1994~~ 1996, the building permit fee above shall be reduced to a sum equal to 85% of the sum calculated above and no plan review fee shall be applied, except where plan review services only are provided the plan review fee shall remain 65% of the building permit fee as set forth in Table No. 3-A.

(e) Section 3305(h) Openings. 1. Doors. of the Uniform Building Code, of self-closing or automatic closing corridor doors to patient rooms does not apply to health care facilities as defined in section 50-5-101, Montana Code Annotated (MCA). Section 50-5-101, MCA, defines "health care facility" as any building used to provide health services, medical treatment, nursing, rehabilitative, or preventive care to persons. The term does not include offices of private physicians or dentists. The term includes but is not limited to ambulatory surgical facilities, health maintenance organizations, home health agencies, hospitals, infirmaries, kidney treatment centers, long-term care facilities, mental health centers, out-patient facilities, public health centers, rehabilitation facilities, and adult day-care centers.

(f) through (27) will remain the same."

Auth: Sec. 50-60-104, 50-60-203, MCA; IMP, Sec. 50-60-103, 50-60-104, 590-60-108, 50-60-109, 50-60-203, MCA

REASON: The Bureau is proposing this amendment to extend for two years the building permit fee reduction adopted in 1992. This is necessitated by the building boom which is generating excessive revenues.

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

Building Codes Bureau, 1218 E. Sixth Avenue, Helena, Montana 59620, to be received no later than 5:00 p.m., June 23, 1994.

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 Building Codes Bureau, 1218 E. Sixth Avenue, Helena, Montana 59620, to be received no later than 5:00 p.m., June 23, 1994.

5. If the Bureau 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.

BUILDING CODES BUREAU
JAMES F. BROWN, BUREAU CHIEF

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

_____
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, May 16, 1994.

BEFORE THE BOARD OF MILK CONTROL
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment of 8.86.301 as it relates to the establishment of the Class III for milk in the state; and the adoption of new rule I as it relates to the purchase and sale of surplus milk between distributors within the state	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND ADOPTION Docket #20-94

TO: All Licensees Under the Montana Milk Control Act (section 81-23-101, MCA, and following), and All Interested Persons:

1. On June 27, 1994, at 10:00 a.m., or as soon thereafter as possible, a public hearing will be held in the Department of Transportation auditorium, 2701 Prospect Avenue, Helena, Montana, to consider an amendment of ARM 8.86.301, section (8)(a) and the adoption of new rule I pertaining to the purchase and sale of surplus milk between distributors.

2. The hearing will be held in response to two separate petitions filed by the Montana Dairymen's Association (MDA).

3. The first MDA petition proposes to amend the rules as follows: (new matter underlined, deleted matter interlined)

"8.86.301 PRICING RULES (1) through (8) will remain the same.

(a) ~~Prices paid to producers for class III milk will be the last Chicago area butter price quote for the month (grade A, 92 score) as most recently reported by the United States department of agriculture, less ten percent (10%) and, in addition, when skim milk is utilized in this classification by any distributor, the last spray process nonfat milk solids price per pound quote for the month, the central states area, as most recently reported by the United States department of agriculture, plus a factor of $.0125 per pound for freight, multiplied by 8.2, less seventeen percent (17%).~~ Prices paid to producers for class III milk will be the last Washington area class III-A price quote for the month under federal order 124 as most recently reported by the United States department of agriculture (USDA). The class III-A price for the month is calculated by the USDA as the average western states nonfat dry milk price for the month, as reported by USDA, less 12.5 cents, times an amount computed by subtracting from 9 an amount calculated by dividing .4 by such nonfat dry milk price plus the butterfat differential times 35 and rounded to the nearest cent.

(b) through (13)(c) will remain the same."

Auth: Sec. 81-23-302, MCA; IMP, Sec. 81-23-302, MCA

REASON: The amendment of ARM 8.86.301(8)(a) is necessary so that class III milk will be priced at a level that is more

comparable to prices set in surrounding markets to Montana. Montana's class III price is currently significantly lower than surrounding markets, and this difference results in an inadequate class III price for Montana producers and a shifting of Montana-produced surplus milk to distant markets, resulting in inequities and inefficiencies in Montana's milk industry.

4. The proposed new rule as proposed by the Montana Dairymen's Association (MDA) provides as follows:

"I PURCHASE AND SALE OF SURPLUS MILK BETWEEN DISTRIBUTORS (1) A distributor with an available supply of milk that exceeds its class I and II Montana market needs shall make that surplus milk available to other distributors in Montana as requested by the other distributors to fulfill their class I and II Montana market needs.

(2) A distributor that has an inadequate supply of milk available from its Montana producers or other sources of supply within the state for its class I and II Montana market needs must, before it purchases or acquires any milk from another source, first purchase surplus milk that is available from a distributor under subsection (1) of this rule. However, a distributor who is unable to provide a bond or other undertaking as requested by the supplying distributor in accordance with subsection (4) of this rule is under no obligation to first purchase milk for its Montana class I and II market needs from that supplying distributor.

(3) A distributor needing surplus milk to fulfill its class I and II market needs in Montana shall request that surplus milk from another distributor be made available by submitting such request in writing to the other distributor at least five days before the first shipment of surplus milk is needed.

(4) The distributor purchasing surplus milk under this rule shall make payment therefor to the supplying distributor within 15 days of its delivery. The supplying distributor, at its option, may require that the purchasing distributor, before the surplus milk is delivered, provide a bond, deposit or other undertaking equal to the price to be paid by the purchasing distributor for the surplus milk to ensure payment.

(5) The price to be paid by the purchasing distributor to the supplying distributor shall be equal to the cost to the supplying distributor for the acquisition of such milk in accordance with the producer prices established under ARM 8.86.301.

(6) In addition to the price paid by the purchasing distributor for the surplus milk, the account of the supplying distributor in the settlement reserve fund established in 81-23-302(14), MCA, and administered under ARM 8.86.511 through 8.86.515 shall be credited with an upcharge amount calculated by the bureau chief to be equal to the actual cost, including storage, handling, transportation, overhead, and other costs, to the supplying distributor for handling and supplying the surplus milk. The amount of the upcharge may not exceed 45 cents per hundred weight. The bureau chief, if he deems it

appropriate and if he determines that the calculation of an upcharge on a case-by-case basis is impractical, may establish a uniform amount statewide or by distributor for this upcharge and include it in the periodic price announcements issued by the milk control bureau of the department for milk prices in the state.

(7) No distributor may make any commitment for the sale or disposition of milk surplus to its class I and II Montana market needs that would prevent it from making such surplus milk available to other distributors as set forth in this rule. However, nothing in this rule prohibits a distributor from completing its contractual obligations to provide milk for class III use pursuant to agreements that are in existence on the effective date of this rule.

(8) Shipments of milk to a purchasing distributor may originate from any plant or producer milk supplies of the supplying distributor, as deemed to be the most efficient method by the supplying distributor.

(9) A distributor shall provide the bureau chief with such records and documentation as the bureau chief deems necessary to ensure compliance with this rule."

Auth: Sec. 81-23-302, MCA; IMP, Sec. 81-23-302, MCA

REASON: The new rule is created to establish a "first call" provision so that Montana-produced surplus milk is utilized in Montana on a more efficient basis, rather than in distant markets, so that distant supplies of milk are not required to fulfill Montana's market needs when supplies are available in Montana. All of Montana's milk industry and the consumers will benefit if Montana-produced milk can be utilized for Montana's market needs. If adopted Rule I will become 8.86.302.

5. Persons known to have an interest in the proposals contained in this petition include all licensed producers, producer-distributors and distributors in the state of Montana.

6. Specific factors which the board will take into consideration in these proceedings will include, but not be limited to, the following:

a. current and prospective supplies of milk in relation to current and prospective demands for such milk for all purposes,

b. the price paid for class III milk in adjacent and surrounding states,

c. the prices for butter, non-fat dry milk and cheese,

d. the cost of transportation to move class III milk to other markets, and

e. the need, if any, for freight or transportation charges to be deducted by distribution for class III bulk milk.

7. Interested persons may participate and present data, views or arguments, either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Milk Control Bureau, 1520 East Sixth Avenue,

Room 50, P.O. Box 200512, Helena, Montana 59620-0512, to be received no later than 5:00 p.m., June 24, 1994.

8. The Department will appoint a hearing examiner to preside over and conduct the hearing at a later date.

MILK CONTROL BOARD
MILTON OLSON, CHAIRMAN

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

_____
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, May 16, 1994.

BEFORE THE DEPARTMENT OF
FAMILY SERVICES OF THE
STATE OF MONTANA

In the matter of the adoption of Rule I and Rule II pertaining to placement of children with out-of-state providers.	NOTICE OF PUBLIC HEARING ON THE PROPOSED ADOPTION OF RULE I AND RULE II PERTAINING TO PLACEMENT OF CHILDREN WITH OUT-OF-STATE PROVIDERS.

TO: All Interested Persons.

1. On June 22, 1994, at 1:30 p.m., a public hearing will be held in the second floor conference room of the Department of Family Services, 48 North Last Chance Gulch, Helena, Montana, to consider the adoption of Rule I and Rule II pertaining to placement of children with out-of-state providers.

The department will make reasonable accommodations to allow participation at the hearing of persons with disabilities. Any person wishing to request an accommodation should contact Randy Koutnik, P.O. Box 8005, Helena, Montana 59604, (406) 444-5900, to advise on what is needed.

2. The rules as proposed to be adopted read as follows:

Rule I. PLACEMENT OF CHILDREN WITH MULTIAGENCY SERVICE NEEDS WITH OUT-OF-STATE PROVIDERS, DEFINITIONS As used in this subchapter, the following definitions apply: (1) "Department" means the department of family services.

(2) "Placement by the department" means placement by the department of a child with multiagency service needs in the custody of the department or committed to the department pursuant to 41-3-403, 41-3-404, 41-3-406, or 41-5-523, MCA, with an out-of-state provider.

(3) "Out-of-state provider" means a residential treatment program that is an approved Montana medicaid provider of residential treatment or a program which is licensed in its state of residency to provide:

(a) shelter care;
(b) youth group home care;
(c) therapeutic youth group home care;
(d) therapeutic foster care;
(e) residential treatment as a child care agency; or
(f) an equivalent of the care described in this section.

(4) "Child with multiagency service needs" means a child as defined in 52-2-301, MCA.

AUTH: Sec. 52-2-308, MCA IMP: Sec. 52-2-301 through 307, MCA.

II. LIMITATIONS ON PLACEMENT OF CHILDREN WITH MULTIAGENCY SERVICE NEEDS WITH OUT-OF-STATE PROVIDERS (1) Placement of

children with multiagency service needs with out of state providers shall occur only according to the applicable provisions of the memorandum of understanding entered by the department, the department of social and rehabilitation services, the department of health and environmental services, the office of public instruction, the Montana board of crime control, and the department of corrections and human services, dated July 1, 1993.

(2) The department hereby adopts and incorporates the memorandum of understanding referred to in subsection (1) which sets forth the responsibilities, objectives and funding necessary for the member departments to establish and maintain a coordinated service system. A copy of the memorandum of understanding may be obtained upon request to the Department of Family Service, P.O. Box 8005, Helena, Montana 59604.

AUTH: Sec. 52-2-308, MCA IMP: Sec. 52-2-301 through 307, MCA.

3. The memorandum of understanding covers current procedures implementing §§ 52-2-301 to -307, MCA, under the authority of § 52-2-308, MCA. Therefore, the adoption and incorporation of the memorandum of understanding, through the proposed rule II, with the definitions set out in the proposed rule I, is reasonably necessary to fulfill the statutory mandate.

4. Interested persons may submit their data, views or arguments to the proposed amendment either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Office of Legal Affairs, Department of Family Services, 48 North Last Chance Gulch, P.O. Box 8005, Helena, Montana 59604, no later than June 27, 1994.

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

DEPARTMENT OF FAMILY SERVICES

Hank Hudson, Director

John Melcher, Rule Reviewer

Certified to the Secretary of State, May 16, 1994

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

In the matter of the amendment of rules 16.24.104-105, and 16.24.111 setting standards for the children's special health services program	NOTICE OF PUBLIC HEARING FOR PROPOSED AMENDMENT OF RULES (Children's Special Health Services)

To: All Interested Persons

1. On June 16, 1994, at 1:00 p.m., the department will hold a public hearing in Room C209, side 1, 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):

16.24.104 APPLICANT ELIGIBILITY (1) With the exception noted in (7) below, an applicant, to be eligible for CSHS benefits, must be:

(a) Remains the same.

(b) a resident of the state of Montana, as indicated by a street or rural route address where the applicant has a primary residence that meets the residence standards of 1-1-215, MCA;

(c)-(d) Remain the same.

(e) able to prove ineligibility for medicaid by completing a medicaid application and providing the department with a written medicaid denial or written determination of a medicaid incurment, if the applicant has an income meeting the eligibility requirements for medicaid, including the medically needy program, and is requesting CSHS services also covered by medicaid.

(2)-(7) Remain the same.

(8) Effective ~~August 16, 1992~~ [effective date of these amendments], the department hereby adopts and incorporates by reference the 1993 94 federal poverty income guidelines published by the U.S. department of health and human services in the February ~~12~~ 10, 1993 94, federal register [~~58 FR 8287~~ 59 FR 6277]. Copies of the federal poverty income guidelines may be obtained from the Family/Maternal and Child Health Services Bureau, CSHS Program, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620 [phone: (406) 444-3617].

AUTH: 50-1-202, MCA; IMP: 50-1-202, MCA

16.24.105 CSHS SERVICES (1)-(2) Remain the same.

(3)(a)-(f) Remain the same.

(g) speech, occupational, physical, or respiratory thera-

py for a condition that is not CSHS-eligible; ~~and~~

(h) services provided outside of Montana, unless the required service is not available in-state or, due to the vast distances within Montana, the requirement to obtain in-state services places an undue hardship on the family in question, particularly one that lives on a border with another state or a Canadian province. Exceptions to this rule will be made by the CSHS medical director after reviewing the issue in conjunction with an appropriate member of the CSHS advisory committee~~,~~; and

(i) treatment for cleft/craniofacial conditions that is not planned and recommended by a multi-disciplinary cleft/craniofacial team that meets American Cleft Palate-Craniofacial Association parameters.

(4) Remains the same.

AUTH: 50-1-202, MCA; IMP: 50-1-202, MCA

16.24.111 ADVISORY COMMITTEE (1)(a)-(c) Remain the same.

(d) will meet at least once per year; ~~and~~

(e) will advise the department concerning the financial eligibility limits for CSHS beneficiaries~~,~~; and

(f) will advise the department concerning the development and implementation of the "Follow Me" project, a project to prevent adverse outcomes and promote healthy growth and development in at-risk children.

AUTH: 50-1-202, MCA; IMP: 50-1-202, MCA

3. These amendments are necessary to update the reference to the federal poverty guidelines that are used as the basis for determining eligibility for the CSHS program, to clarify who is actually a resident of Montana for eligibility purposes, to ensure that an applicant eligible for CSHS due to having been denied eligibility for medicaid was denied medicaid strictly for financial reasons, to update the duties of the CSHS advisory committee, and to ensure that CSHS pays only for the most medically appropriate treatment of cleft/craniofacial conditions.

4. 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 Judith Wright, Children's Special Health Services Program, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620, and must be received no later than 5 p.m. June 23, 1994.

5. Ellie Parker has been designated to preside over and conduct the hearing.

ROBERT J. ROBINSON, Director

Certified to the Secretary of State May 16, 1994.

Reviewed by:

Eleanor Parker, DHES Attorney

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

In the matter of the proposed adoption of new rules I-XXII and the repeal of 16.32.380-388 dealing with licensure of personal care facilities.	NOTICE OF PUBLIC HEARING FOR ADOPTION OF NEW RULES AND REPEAL OF 16.32.380-388 (Personal Care)

To: All Interested Persons

1. On June 16, 1994, at 9:00 a.m., the department will hold a public hearing in Room C209 of the Cogswell Building, 1400 Broadway, Helena, Montana, to consider the adoption and repeal of the above-captioned rules.

2. The rules as proposed appear as follows:

RULE I APPLICATION OF RULES (1) [RULES II-XX and RULE XXII] apply to both Category A and Category B facilities.

(2) Category B facilities must meet the requirements of [RULE XXI] in addition to those contained in the rules cited in (1) above.

AUTH: 50-5-103, 50-5-227, MCA; IMP: 50-5-227, MCA

RULE II DEFINITIONS The following definitions apply in this subchapter:

(1) "Administrator" means the person responsible for the overall operations of a personal care facility.

(2) "Ambulatory" means a person is capable of self-mobility, either with or without mechanical assistance. If mechanical assistance is necessary, the person is considered ambulatory only if he/she can, without help from another person, utilize the mechanical assistance, exit and enter the facility, and access all common living areas of the facility.

(3) "Direct care staff" means a person or persons who directly assist residents with activities of daily living or other personal services and who are otherwise responsible for the health, safety, and welfare of the residents.

(4) "Health care professional" means a physician, a physician assistant-certified, a nurse practitioner, or a registered nurse practicing within the scope of his/her license.

(5) "Medically-related social services" means services provided by the personal care facility staff to assist residents in maintaining or improving their ability to manage their everyday physical, mental, and psychosocial needs.

(6) "Personal care facility" means a home or institution that is licensed to provide personal care to either category A or category B residents under 50-5-227, MCA.

(7) "Resident" means anyone accepted for care, through contractual agreement, in a personal care facility.
AUTH: 50-5-103, 50-5-227, MCA; IMP: 50-5-227, MCA

RULE III ADMINISTRATION (1) Each personal care facility shall employ an administrator, who must be in good physical and mental health, be of reputable and responsible moral character, and exhibit concern for the safety and well-being of residents, and who must:

(a) at all times be responsible for the personal care facility and ensure 24-hour supervision of the residents;

(b) have completed high school or have a general education development (GED) certificate;

(c) have knowledge of and the ability to conform to the applicable laws and rules governing personal care facilities;

(d) not be convicted of a crime involving violence, fraud, deceit, theft, or other deception for which he/she is still under state supervision;

(e) have knowledge of and the ability to deliver or direct the delivery of appropriate care to residents; and

(f) show evidence of at least 6 hours of annual continuing education in at least one of the following areas:

(i) resident and provider rights and responsibilities, abuse/neglect, or confidentiality;

(ii) basic principles of supervision;

(iii) skills for working with residents, families, and other professional service providers;

(iv) characteristics and needs of residents;

(v) community resources;

(vi) accounting and budgeting; or

(vii) basic emergency first aid.

(2) The owner of a personal care facility who meets the qualifications listed in (1) above may serve as the administrator.

(3) The administrator must do the following:

(a) oversee the day-to-day operation of the facility, including, but not limited to:

(i) services to residents;

(ii) maintenance of buildings and grounds;

(iii) record keeping; and

(iv) employing, training and/or supervising staff and volunteers;

(b) protect the safety and physical, mental, and emotional health of residents;

(c) be familiar with and assure compliance with these rules; and

(d) ensure that the current license(s) is posted at all times at a place in the facility that is conspicuous to the public.

(4) Either the administrator or a designated representative who meets the qualifications of the administrator must be awake and on duty at the facility at least 40 hours per week.

(5) In the absence of the administrator or his/her

designated representative and in order that service to residents is not interrupted, the duties of the administrator must be delegated to a responsible adult who:

(a) is able to read and write;

(b) is capable of protecting the physical and mental well-being of the residents; and

(c) is not a resident of the facility.

(6) The administrator or designated representative shall initiate transfer of a resident through the resident's physician and/or appropriate agencies when the resident's condition is not within the scope of services of the personal care facility.

(7) Whenever a resident needs nursing services, the administrator is responsible for coordinating with the nursing personnel providing those services to ensure that the following duties are carried out:

(a) implementing physician's orders;

(b) planning and directing the delivery of nursing care;

(c) treatments, procedures, and other services assuring that each resident's needs are met;

(d) care planning, based on orders and needs;

(e) notifying the resident's physician promptly when the resident is injured or when there is a sudden or marked change in a resident's signs, symptoms, or behavior;

(f) notifying the resident's family of injury to the resident or change in his/her signs, symptoms, or behavior, after notice has been provided pursuant to (7)(e) above; and

(g) providing adequate equipment to meet the needs of residents.

(8) If the facility cannot provide the care required by the resident, the administrator must notify the resident's family and physician and request that the family relocate the resident within 30 days. The resident has the right to appeal this decision by following the procedures outlined in [RULE XVII(2)(b)].

(9) The administrator of a personal care facility shall provide documented orientation to all employees that is appropriate to the employee's job responsibilities and includes, at a minimum:

(a) an overview of the facility's policies and procedures manual;

(b) a review of the employee's job description;

(c) services provided by the facility;

(d) the aging process and emotional problems of illness;

(e) simulated fire prevention, evacuation, and disaster drills;

(f) basic techniques of identifying and correcting potential safety hazards in the facility;

(g) emergency procedures, such as basic first aid and procedures used to contact outside agencies, physicians, and individuals; and

(h) information on resident rights.

(10) The administrator shall accept and retain only those residents whose needs can be met by the facility and who meet the acceptance criteria found in 50-5-226, MCA.

(11) The administrator shall review every accident and/or incident causing injury to a resident or employee and take appropriate corrective action.

(12) The administrator shall notify the state long-term care ombudsman, the department, and the nearest peace officer, law enforcement agency, or protective services agency whenever there is reason to believe that a resident has been subject to abuse, neglect, or exploitation. The administrator shall require and encourage the staff to report observations or evidence of abuse and shall investigate and take corrective action as indicated.

(13) The administrator shall ensure that the facility has a policies and procedures manual that governs the operations of the facility, and that the manual is available to and followed by all staff and is available to residents upon request.

(14) The administrator is responsible for maintaining adequate personnel records and must maintain a current list of the names, addresses, and telephone numbers of all employees, including substitute personnel.

(15) The administrator must ensure that the facility adopts a statement of resident rights that includes, at a minimum, the rights delineated in [RULE XVI], and must:

(a) post a copy of the statement of resident rights in a conspicuous place visible to the public;

(b) present the statement in a format that can be read easily by the residents and by the public; and

(c) ensure that the requirements of 50-5-1105, MCA, are met, and that the signed acknowledgment referred to therein is placed in the resident's record.

(16) The administrator must ensure that a resident who is ambulatory only with mechanical assistance is not housed above the ground floor of the facility.

AUTH: 50-5-103, 50-5-227, MCA; IMP: 50-5-227, MCA

RULE IV STAFFING (1) Each employee of the personal care facility must meet the following minimum qualifications:

(a) offer evidence of suitable character, temperament, experience, and ability to function in his/her appointed capacity;

(b) provide documentation from a physician that s/he is free from signs of communicable tuberculosis at time of employment and annually thereafter;

(c) be free from any medical condition, including drug or alcohol addiction, that limits the employee's ability to provide personal care services with reasonable skill and safety;

(d) be physically and mentally able to adequately and safely perform the assigned duties; and

(e) not be convicted of a crime involving violence, fraud, deceit, theft, or other deception for which the person

is still under state supervision.

(2) Direct care staff shall receive orientation as specified in the facility's policies and procedures manual and that is appropriate to the position, addresses facility policies in regard to the performance of duties, and, in addition to the information required by [RULE III(9)], includes, at a minimum:

(a) basic personal care procedures, including grooming and personal hygiene, and methods to foster residents' maximum independence in activities of daily living;

(b) basic techniques in observation of resident's mental and physical health;

(c) bowel and bladder care;

(d) assisting resident mobility, including transfer;

(e) techniques in lifting;

(f) methods of making residents physically comfortable;

(g) food, nutrition, and diet planning;

(h) health-oriented record keeping, including time/employment records and resident records; and

(i) assistance with medications.

(3) Employees may perform cooking, housekeeping, laundering, general maintenance, and office work. Any employee who might be responsible to deliver occasional direct care, however, is subject to the orientation and training requirements for direct care staff.

(4) There must be a personnel record for each employee that includes the employee's name, address, and social security number, his/her health records, an annual evaluation of performance, a record of the employee's previous experience, and documentation of orientation and on-the-job training, along with a signed acknowledgement by the employee that the training was provided and included specific mention of resident rights.

(5) The following rules must be followed in staffing the personal care facility:

(a) Staff members shall have knowledge of each resident's health conditions, the residents' needs, and any events about which the employee should notify the administrator or his/her designated representative;

(b) There must be sufficient staff on duty 24 hours a day to provide proper resident care and all related services, including but not limited to:

(i) maintenance of order, safety, and cleanliness;

(ii) assistance with medication regimens;

(iii) preparation and service of meals;

(iv) assistance with laundry; and

(v) assurance that each resident receives the kind and amount of supervision and care required to meet his/her basic needs;

(c) Adequate relief personnel must be available to allow uninterrupted services to residents during scheduled staff absences, off days, or rest periods;

(d) The staff shall provide for the care and safety of residents without abuse, exploitation or discrimination; and

(e) The individual in charge of each work shift shall have keys to all exit doors, medication cabinets, and resident records.

(6) Volunteers may be utilized in the facility but may not be included in the facility's staffing plan in lieu of facility employees. In addition, the use of volunteers is subject to the following:

(a) Volunteers must be supervised and be familiar with resident rights and the facility's policies and procedures manual; and

(b) Volunteers may not provide direct care to residents unless the volunteer meets the criteria of (1)(a)-(e) above and has completed all the orientation and training required of direct care staff under [RULE III(9)] and (2) above.

(7) Residents may participate voluntarily in performing household duties and other tasks suited to the individual resident's needs and abilities, but residents may not be used as substitutes for required staff.

AUTH: 50-5-103, 50-5-227, MCA; IMP: 50-5-227, MCA

RULE V RECREATIONAL ACTIVITIES (1) The facility shall provide a variety of regularly scheduled social and recreational activities to promote the physical, social, and mental well-being of each resident.

(2) This program must be appropriate to the needs and interests of each resident and shall involve available community resources to the extent possible.

(3) The facility shall provide sufficient indoor and outdoor space, equipment, and supplies to meet the recreational needs and interests of the residents.

AUTH: 50-5-103, 50-5-227, MCA; IMP: 50-5-227, MCA

RULE VI LAUNDRY (1) Laundry service must be provided by the facility, either on or off the facility site.

(2) If a health care facility processes its laundry on the facility site, it must:

(a) set aside and utilize an area solely for laundry purposes;

(b) equip the laundry room with a mechanical washer and a dryer vented to the outside, handwashing facilities, a fresh air supply, and a hot water supply system which supplies the washer with water of at least 110°F during each use;

(c) have a separate area or room designed for use as a laundry, including an area for sorting soiled and clean linen and clothing. No laundry may be done in a food preparation or dishwashing area;

(d) provide well-maintained containers to store and transport laundry that are impervious to moisture, keeping those used for soiled laundry separate from those used for clean laundry;

(e) dry all bed linen, towels, and wash cloths in the dryer;

(f) protect clean laundry from sources of contamina-

tion; and

(g) ensure that facility staff handling laundry cover their clothes while working with soiled laundry, use separate clean covering for their clothes while handling clean laundry, and wash their hands both after working with soiled laundry and before they handle clean laundry.

(3) If a personal care facility processes its laundry off the facility site, it must utilize a commercial laundry (not self-service) which satisfies the requirements of (2) above.

(4) Resident's personal clothing must be laundered by the facility unless the resident or the resident's family accepts this responsibility. If the facility launders the resident's personal clothing, the clothing must be marked with the resident's name and returned to the correct resident. Residents capable of laundering their own personal clothing and wishing to do so must be provided the facilities and necessary assistance.

AUTH: 50-5-103, 50-5-227, MCA; IMP: 50-5-227, MCA

RULE VII PHYSICAL PLANT (1) Each resident bedroom must satisfy the following requirements:

(a) No more than four residents may reside in a single bedroom;

(b) Exclusive of toilet rooms, closets, lockers, wardrobes, alcoves, or vestibules, each single bedroom must contain at least 100 square feet, and each multi-bedroom must contain at least 80 square feet per bed;

(c) Each resident must have a wardrobe, locker, or closet with minimum clear dimensions of 1'10" in depth by 1'8" in width, with a clothes rod and shelf placed to permit a vertically clear hanging space of 5' for full length garments;

(d) Each resident must have access to a toilet room without entering another resident's room or the kitchen, dining, or living areas.

(2) All rooms with toilets or shower/bathing facilities must be exhausted to the outside by a mechanical ventilation system.

(3) Ventilation in each resident bedroom shall occur via an open window to the outside, or with a mechanical venting system capable of providing two air changes per hour, with 20% of the air supply taken from the outside.

(4) Each resident in a personal care facility must be provided the following:

(a) a bed and bedside table or its equivalent with a drawer and washable top;

(b) individual towel rack;

(c) individual chair in his/her bedroom;

(d) separate drawer and wardrobe or closet space for each occupant in a bedroom;

(e) reading lamp or equivalent for each bed;

(f) mirror mounted on the wall or door at convenient height in each bedroom;

(g) clean, flame-resistant shades or equivalent for every bedroom window; and

(h) electric call system within reach of each resident bed and each toilet that will sound at an area that is staffed 24 hours a day.

(5) The facility must provide:

(a) living room reading lights, tables, chairs, and sofas;

(b) dining room furnishings that are well constructed and tables designed to accommodate wheel chairs;

(c) a toilet and sink in each toilet room;

(d) at least one toilet for every four residents;

(e) one bathing facility for every 12 residents;

(f) enough total living/recreational and dining room area to allow at least 30 square feet per resident;

(g) for each multiple-bed room, either flame-resistant cubicle curtains for each bed or movable flame-resistant screens to provide privacy upon request of a resident;

(h) grab bars at each toilet, shower, and tub with a minimum of 1-1/2" clearance between the bar and the wall and strength and anchorage sufficient to sustain a concentrated 250-pound load; and

(i) if a toilet grab bar assist is used over a toilet, it must be safely stabilized and secured in order to prevent mishap.

(6) Following the discharge of a resident, all of the equipment and bedding used by that resident must be cleaned and sanitized.

(7) Any provision of this rule may be waived at the discretion of the department if conditions in existence prior to the adoption of this rule or construction factors would make compliance extremely difficult or impossible.

AUTH: 50-5-103, 50-5-227, MCA; IMP: 50-5-227, MCA

RULE VIII ENVIRONMENTAL CONTROL (1) A personal care facility must be constructed and maintained so as to prevent the entrance and harborage of rats, mice, insects, flies, and other vermin.

(2) Hand cleansing soap or detergent and individual towels must be available at each sink in the facility. A waste receptacle must be located near each sink. Towels for common use are not permitted.

(3) A minimum of 10 foot candles of light must be available in all rooms and hallways, with the following exceptions:

(a) All reading lamps must have a capacity to provide a minimum of 30 foot candles of light;

(b) All toilet and bathing areas must be provided with a minimum of 30 foot candles of light;

(c) General lighting in food preparation areas must be a minimum of 30 foot candles of light; and

(d) Hallways must be illuminated at all times by at least a minimum of 5 foot candles of light at the floor.

AUTH: 50-5-103, 50-5-227, MCA; IMP: 50-5-227, MCA

RULE IX WRITTEN POLICIES AND PROCEDURES (1) The facility shall have a written policies and procedures manual that governs the operations of the facility and includes, at a minimum:

(a) a description of all services provided to residents;

(b) standards for provision of direct care;

(c) requirements for orientation of new staff members and volunteers;

(d) a disaster plan that includes an evacuation plan;

(e) standards for emergency first aid;

(f) infection control requirements that include, at a minimum, the standards in [RULE XII]; and

(g) standards for recording and addressing adverse reactions to medication, unexpected effects of medication, and medication errors.

AUTH: 50-5-103, 50-5-227, MCA; IMP: 50-5-227, MCA

RULE X RESIDENTIAL SERVICES (1) The personal care facility shall provide a clean and well-maintained home, free of unpleasant odors, that is safe and comfortable for residents and employees at all times.

(2) The facility shall have a written disaster plan in effect that includes an evacuation plan in event of fire, and that is available to all staff members. In addition, the facility must conduct an annual drill and maintain a written record of that drill.

(3) In the event of accident or injury to a resident requiring emergency medical, dental, or nursing care, or in the event of apparent death, the personal care facility shall:

(a) immediately make arrangements for emergency care and/or transfer to an appropriate place for treatment;

(b) immediately notify the resident's physician and next of kin or responsible party; and

(c) describe and document the injury, accident, or illness on a separate report.

(4) The facility shall stock and maintain appropriate first aid supplies in a single location.

(5) Appropriate emergency telephone numbers, including the poison control center number, must be prominently posted near facility telephones.

(6) Hot water temperature supplied to handwashing, bathing, and showering areas may not exceed 120°F.

(7) The following housekeeping rules must be followed:

(a) Supplies and equipment must be properly stored and conveniently located and must be on hand in a quantity sufficient to permit frequent cleaning of floors, walls, woodwork, windows, and screens;

(b) Housekeeping personnel must be trained in proper procedures for preparing cleaning solutions; cleaning rooms and equipment; and handling clean and soiled linen, trash, and trays;

(c) Cleaners used in cleaning bathtubs, showers, lava-

tories, urinals, toilet bowls, toilet seats, and floors must contain fungicides or germicides with current EPA registration for that purpose; and

(d) Garbage and trash must be stored in areas separate from those used for preparation and storage of food and must be removed from the facility daily. Garbage containers must be cleaned at least once a week.

(8) At all times, the facility shall keep a supply of clean linen in good condition that is sufficient to change beds often enough to keep them clean, dry, and free from odors. In addition, the facility must ensure that each resident is supplied with clean towels and washcloths that are changed at least twice a week, a moisture-proof mattress cover and mattress pad, and enough blankets to maintain warmth and comfort while sleeping.

(9) The facility must implement a maintenance program adequate to ensure that the facility and its equipment and grounds are clean and in good repair at all times for the safety and well-being of residents, staff, and visitors.

(10). The facility shall maintain a record of all repairs and services provided to maintain the facility.

(11) Temperature in resident rooms, bathrooms, and common areas must be maintained between 75°F and 80°F during the months from October to March and between 70°F and 75°F during the months from April to September.

(12) The facility shall provide or arrange for local transportation for each resident according to facility policy.

AUTH: 50-5-103, 50-5-227, MCA; IMP: 50-5-227, MCA

RULE XI PERSONAL SERVICES (1) Personal care assistance must be provided to each resident according to need, while encouraging the resident to maintain independence and a sense of self-direction. Assistance must include, but not be limited to:

(a) assisting with personal grooming such as bathing, handwashing, shaving, shampoo and hair care, nail filing or trimming, and dressing;

(b) assisting with oral hygiene or denture care;

(c) assisting with toileting and toilet hygiene;

(d) assisting with eating;

(e) assisting in the use of crutches, braces, walkers, wheelchairs, or prosthetic devices, including vision and hearing aids; and

(f) supervision with self-medication.

(2) Facility staff shall assist in arranging for medical or dental care, including transportation to and from the medical or dental facility.

(3) Facility staff shall administer emergency first-aid according to written policies and procedures.

AUTH: 50-5-103, 50-5-227, MCA; IMP: 50-5-227, MCA

RULE XII INFECTION CONTROL (1) A personal care facility must ensure that each of its employees provides the fa-

cility, prior to the time of employment, with documentation from a licensed physician stating that the employee is free from communicable tuberculosis, and with the same documentation annually thereafter.

(2) The facility must ensure that, at the time of admission and annually thereafter, a resident in a personal care facility provides documentation from a licensed physician showing that the resident is free from communicable tuberculosis.

(3) The personal care facility must establish and maintain infection control policies and procedures sufficient to provide a safe environment and to prevent the transmission of disease. Such policies and procedures must include, at a minimum, the following requirements:

(a) Any employee contracting a communicable disease that is transmissible to residents through food handling or direct care must not appear at work until the infectious diseases can no longer be transmitted. The decision to return to work must be made by the administrator in accordance with the policies and procedures instituted by the facility;

(b) If, after admission to the facility, a resident is suspected of having a communicable disease that would endanger the health and welfare of other residents, the administrator must contact the resident's physician and assure that appropriate safety measures are taken on behalf of that resident and the other residents.

(4) The facility, where applicable, shall comply with applicable statutes and rules regarding the handling and disposal of hazardous waste.

AUTH: 50-5-103, 50-5-227, MCA; IMP: 50-5-227, MCA

RULE XIII SOCIAL SERVICES (1) The personal care facility shall provide medically-related social services to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident.

(2) Social services provided by the facility must be included in the written policies and procedures manual.

(3) The facility, through appropriate training and education programs, must ensure that facility staff are prepared for their responsibilities to provide social services.

(4) Documentation of the social services provided to each resident must be included in the resident's record.

AUTH: 50-5-103, 50-5-227, MCA; IMP: 50-5-227, MCA

RULE XIV PETS (1) Unless the facility disallows it, residents in a personal care facility may keep household pets, including dogs, cats, birds, or fish, if permitted by local ordinance, subject to the following provisions:

(a) Pets must be clean and disease-free;

(b) The immediate environment of pets must be kept clean;

(c) Birds and fish must be kept in appropriate enclosures;

(d) Pets that are kept at the facility shall have docu-

mentation of current vaccinations, including rabies, as appropriate; and

(e) Iguanas, snakes, other reptiles, rodents, monkeys, ferrets, or other exotic pets may not be kept in a personal care facility.

(2) The administrator shall determine which pets may be brought into the facility. Upon approval of the administrator, family members may bring pets to visit if the pets are clean, disease-free, and vaccinated as appropriate.

(3) Facilities that allow birds shall have procedures that protect residents, staff, and visitors from psittacosis, ensure minimum handling of droppings, and require droppings to be placed in a plastic bag for disposal.

(4) Pets may not be permitted in food preparation, storage, or dining areas, or in any area where their presence would create a significant health or safety risk to others.
AUTH: 50-5-103, 50-5-227, MCA; IMP: 50-5-227, MCA

RULE XV FOOD SERVICE (1) The food service must establish and maintain standards relative to food sources; refrigeration; refuse handling; pest control; storage, preparation, procuring, serving, and handling food; and dishwashing procedures that are sufficient to prevent food spoilage and the transmission of infectious disease. These standards must include the following:

(a) Food must be obtained from sources that comply with all laws relating to food and food labeling;

(b) The use of home-canned foods is prohibited;

(c) If food subject to spoilage is removed from its original container, it must be kept sealed and labeled; and

(d) Food subject to spoilage must be dated.

(2) Foods must be served in amounts and a variety sufficient to meet the nutritional needs of each resident, and the facility must provide therapeutic diets when prescribed by the resident's physician. At least three meals must be served daily and at regular times, with not more than a 14-hour span between an evening meal and breakfast.

(3) Each meal shall include an alternate food or drink item from which the resident may choose.

(4) If a resident is unable to eat a meal or refuses to eat a meal, this non-participation must be documented in the resident's record.

(5) Menus must be written at least 1 week in advance to guide cooks in selecting, preparing, and serving food. Records of menus as served must be filed in the facility for 30 days after the date of service.

(6) Foods must be cut, chopped, and ground to meet individual needs.

(7) A minimum of a 1-week supply of non-perishable foods and a 2-day supply of perishable foods must be available on the premises.

(8) Potentially hazardous food, such as meat and milk products, must be stored at 45°F or below. Hot food must be kept a 140°F or above during preparation and serving.

(9) Freezers must be kept at a temperature of 0°F or below and refrigerators must be kept at a temperature of 45°F or below. Thermometers must be placed in the warmest area of the refrigerator and freezer to assure proper temperature.

(10) Employees shall maintain a high degree of personal cleanliness and shall conform to good hygienic practice during all working periods in food service.

(11) A food service employee, while infected with a disease in a communicable form that can be transmitted by foods, a carrier of organisms that cause such a disease, or afflicted with a boil, an infected wound, or an acute respiratory infection, may not work in the food service area in any capacity in which there is a likelihood of such person contaminating food or food-contact surfaces with pathogenic organisms or transmitting disease to other persons.

(12) Tobacco products may not be used in the food preparation or service areas.

AUTH: 50-5-103, 50-5-227, MCA; IMP: 50-5-227, MCA

RULE XVI RESIDENT RIGHTS (1) The facility shall adopt a statement of resident rights that includes, at a minimum, the statement of resident rights found at 50-5-1104, MCA, and must post such statement in accordance with 50-5-1105, MCA.

(2) Residents have the right to execute living wills and other advance health care directives, and to have those directives honored by the facility in accordance with law.

(3) The facility is responsible for reviewing resident rights and responsibilities with each resident annually, and must maintain a written record of this review.

AUTH: 50-5-103, 50-5-227, MCA; IMP: 50-5-227, MCA

RULE XVII RESIDENCY APPLICATION PROCEDURES (1) All facilities must develop a written application procedure for admission to the facility that includes at least the following:

(a) an application form requiring the prospective resident's name, address, sex, social security number, date of birth, marital status, insurance or financial responsibility information, religious affiliation, next of kin, and his/her physician's name, address, and telephone number; and

(b) a statement which informs the resident and the resident's physician, if applicable, of the requirements of 50-5-226, MCA.

(2) If the personal care facility determines that it may not admit the prospective resident based on 50-5-226, MCA, the following rules apply:

(a) The facility must provide written notice of rejection of the resident's application that includes:

(i) the grounds for the rejection;

(ii) the right to appeal the decision to the department within 15 days after the date of the written notice of rejection; and

(iii) the information that the appeal request must contain, as delineated in (b) below.

(b) A person appealing a rejection must send the department, within 15 calendar days after the date of written rejection, written notice containing the following:

(i) name of the individual concerning whom the screening decision was made;

(ii) name of the personal care facility affected;

(iii) grounds for the screening decision; and

(iv) statement of evidence contradicting the screening decision.

(c) Unless the appealing party agrees to a time extension, the director of the department of health and environmental sciences must make a final decision regarding the appeal within 15 working days after receipt of the notice.

(3) As part of the admission process, the facility must discuss with and provide to each resident a written resident-provider agreement which includes:

(a) criteria for transfer or discharge to another level of care;

(b) a description and cost of general services provided to all residents;

(c) availability and cost of additional non-licensed services;

(d) availability of skilled nursing or other professional services from a third-party provider;

(e) discussion of the residents' rights and responsibilities, including but not limited to house rules, the grievance policy, and policies regarding pets; and

(f) a listing of specific charges to be incurred for the resident's care, frequency of payment, and rules relating to non-payment.

(4) The resident-provider agreement must be signed by the administrator or his/her designated representative and the resident or his/her representative and will serve as acknowledgement that the resident has been informed of the information required to be contained in the agreement.

(5) A separate agreement must be signed by the resident or his/her representative for any third-party services, and must state the specific services contracted for, the costs of those services, and the individual(s) responsible for providing the services.

(6) When there are changes in services, financial arrangements, or in requirements governing the resident's conduct and care, a new resident/provider agreement must be executed or the original agreement must be updated and signed by the resident or his/her representative and by the administrator or his/her designated representative.

AUTH: 50-5-103, 50-5-226, 50-5-227, MCA; IMP: 50-5-226, 50-5-227, MCA

RULE XVIII RESIDENT RECORDS (1) At the time of admission, a separate record must be established for each resident, maintained in such a way as to preserve confidentiality, stored in a safe and secure manner, and retained at least 5 years following the resident's discharge, transfer, or

death.

(2) At the time of admission, the record shall include at least the following:

(a) all the information required in the application form under [RULE XVII];

(b) licensed health care professional's certification, as required by statute and/or rule;

(c) resident-provider agreement, with all information complete, as required by [RULE XVII];

(d) report of physical examination, with health history, list of current medications with instructions for their use, list of any therapeutic treatments or regimens, and description of any activity limitations; and

(e) inventory of personal possessions of significance, as stated by the resident or his/her representative.

(3) The record must be kept current and shall include at least the following:

(a) medication administration record, as called for in [RULE XIX];

(b) third-party agreements, if any, signed and dated;

(c) updates of resident-provider agreements, if any;

(d) resident's weight on admission and at least quarterly thereafter;

(e) personal/social information and preferences, such as food preferences, special interests and hobbies, or community and religious contacts;

(f) assessment records, if applicable;

(g) a progress note at least every 30 days, setting forth the resident's current condition, level of functioning, participation in activities, social interactions, problems noted, and concerns stated by family members or other visitors, if any;

(h) the resident's care plan;

(i) reports of significant events, such as change in resident's behavior, accidents, visits by or to a health care professional, and contacts with family members or another responsible party;

(j) any changes or recommendations in medical orders for care, including medication and treatments;

(k) record of services provided by third-party providers;

(l) dates of overnight absences from the facility;

(m) a record of communication between the facility and the resident or his/her representative concerning a change in the resident's status, need to discharge, or referrals directed toward continuity of care; and

(n) date and circumstances of final transfer, discharge, or death, including notice to responsible parties and disposition of personal possessions.

AUTH: 50-5-103, 50-5-227, MCA; IMP: 50-5-227, MCA

RULE XIX MEDICATIONS AND OXYGEN (1) The following rules govern the storage of medications at the facility:

(a) Except for the occasions when a resident is taking

his/her medication, that medication must be stored under lock and key at all times;

(b) With the exception stated in (3) below, all medication must be stored in the container dispensed by the pharmacy, or in the container in which it was purchased in the case of over-the-counter medication, with the label intact and clearly legible;

(c) A prescription medication for which the dose or schedule has been changed by the physician must be returned to the pharmacy for relabeling;

(d) Medications that require refrigeration must be segregated from food items and stored at temperatures between 36°F and 46°F; and

(e) No resident may be permitted to use another resident's medication.

(2) All Category A facility residents, as well as those Category B facility residents that are capable of doing so, must self-administer medication, and a staff member who is capable of reading medication labels must be made responsible for providing necessary assistance to the resident in taking his/her medication, including but not limited to:

(a) removing medication containers from storage;

(b) reminding residents to take their medications;

(c) assisting with removal of cap;

(d) guiding the hand of the resident;

(e) observing the resident take the medication; and

(f) assisting with removal of a medication from a container for a resident with a physical disability that prevents the resident from doing so independently.

(3) A licensed health care professional, working under third-party contract with a resident or employed by the facility, may:

(a) utilize daily dose containers to set up a 7-day supply of medications for residents requesting this service, after doing the following:

(i) verifying that all medications to be set up carry a physician's current order; and

(ii) setting up medications only from prescriptions in labeled containers dispensed by a registered pharmacist or from over-the-counter drug containers with intact, clearly readable labels.

(b) set up injectable medications up to 7 days in advance by drawing medication into syringes identified for content and resident.

(4) Medications appropriate for self-administration include but are not limited to the following:

(a) oral medications;

(b) eye, ear, and nose drops;

(c) externally applied creams, ointments, and medicated patches;

(d) suppositories and enemas;

(e) inhalers; and

(f) subcutaneous injections of insulin.

(5) The facility shall maintain for each resident a

medication administration record listing all medications used and all doses taken or not taken by the resident, and shall state the reason for omission of any scheduled dose of medication. This record shall include the following:

(a) any changes from the original prescription; and

(b) the reason that a p.r.n. (as needed) medication, including an over-the-counter medication, was used by a resident and the results obtained.

(6) Any adverse reaction, unexpected effects of medication, or medication error must be reported and addressed in a timely manner according to the facility's written policies and procedures manual.

(7) The following rules must be followed when oxygen is in use:

(a) Residents must be permitted to self-administer oxygen when prescribed by the physician;

(b) Oxygen tanks, when used, must be secured and properly stored at all times;

(c) No smoking may be allowed in rooms in which oxygen is used or stored, and such rooms must be posted with a conspicuous "No Smoking" sign; and

(d) The resident's use of oxygen must be documented in the resident's record.

AUTH: 50-5-103, 50-5-227, MCA; IMP: 50-5-227, MCA

RULE XX CONSTRUCTION (1) Any construction of or alteration, addition, or renovation to a personal care facility must meet all applicable local building and fire codes and be approved by the officer having jurisdiction to determine if the building codes are met by the facility and by the state fire marshal or his/her designee.

(2) A personal care facility must have an annual fire inspection conducted by the appropriate local authorities and maintain a record of such inspection for at least 1 year following the date of the inspection.

AUTH: 50-5-103, 50-5-227, MCA; IMP: 50-5-227, MCA

RULE XXI REQUIREMENTS FOR CATEGORY B FACILITIES ONLY (1) At the time of admission, the administrator shall assure that each resident is assessed, in writing, for at least the following:

(a) mobility;

(b) mental status, such as whether the person is confused, forgetful, withdrawn, prone to wander, or has other behavioral problems;

(c) physical status, such as whether the person has limited vision, hearing, speech, or similar problems;

(d) whether the person can self-administer medication, as addressed by [RULE XIX], or requires skilled nursing care;

(e) dietary needs and whether the person requires assistance in eating;

(f) personal hygiene needs, including whether the person is continent, uses special equipment, or needs personal assistance with bathing, dressing, and other similar needs;

and

(g) social needs, including personal interests and whether the person requires assistance in obtaining medical care or managing personal resources.

(2) Within 3 days after admission, the administrator shall assure that there is a plan of care for each resident and that the plan of care is available to and followed by all direct care staff. The plan of care must include but need not be limited to:

(a) a list of personal care services to be delivered to or performed on behalf of the resident;

(b) identification of the staff member(s) responsible to deliver each item of care;

(c) significant personal care preferences of the resident; and

(d) a list of critical observations or changes that a staff member is to report, and identification of the person who receives the report of significant events or changes.

(3) The facility shall develop its own policy regarding the contents of care plans that includes a requirement that all care plans be reviewed and updated at least yearly or more frequently, if necessary, to account for significant changes in a resident's physical, mental, or social condition or needs. In addition, at a minimum, the facility must comply with the following rules:

(a) Within 3 days after the admission of a resident, a licensed health care professional must visit the resident in the facility and develop a plan of care for that resident, which plan must be included in the resident's record; or

(b) If the resident has been living in a Category A facility, transfers to a Category B facility, and a licensed health care professional has visited the resident and prepared a plan of care within the 7 days prior to the date of transfer, that plan may be utilized to direct and manage the resident's care.

(4) If there is a significant change in a resident's condition, a licensed health care professional must conduct a re-assessment, documented by the facility, of the resident's needs and the facility's ability to meet those needs, and, if the facility is able to meet those needs, it must immediately develop a new plan of care for the resident.

(5) If the resident requires care or supervision by a licensed health care professional, the plan of care shall include the tasks for which the professional is responsible.

(6) A resident shall receive skin care that meets the following standards:

(a) The facility shall practice preventive measures to maintain a resident's skin integrity; and

(b) An area of broken or damaged skin must be reported within 24 hours to the resident's physician or to another licensed health care professional. Treatment must be as ordered by the physician or other licensed health care professional, and observations and care must be documented.

(7) In order to maintain each resident's normal bladder

and bowel functions, the facility shall provide individualized attention to each resident that meets the following minimum standards:

(a) The facility shall provide a resident who is incontinent of bowel or bladder adequate personal care services to maintain the person's skin integrity, hygiene, and dignity, and to prevent urinary tract infections; and

(b) Indwelling catheters are permissible, if the catheter care is taught and supervised by a licensed health care professional under a physician's order. Observations and care must be documented.

(8) Chemical or medical restraints ordered by the physician are permitted under the following conditions:

(a) A licensed health care professional must monitor the resident's response to use of the medication and communicate with the pharmacist and physician to implement a regimen that ensures the least medication and fewest negative consequences; and

(b) The resident must remain alert and interact with other residents.

(9) Protective devices may be used to prevent a resident from falling from a bed or chair. The least restrictive form of protective device that affords the resident the greatest possible degree of mobility must be used.

(10) Only soft, physical restraints ordered by the physician are permitted when needed to manage resident behavior that endangers themselves or others, and only under the following conditions:

(a) There must be a physician's order for the restraint, including the time period for use of physical restraint. A copy of this order must be included in the resident's record;

(b) The soft restraints must be applied by a licensed health care professional;

(c) A notation must be made in the resident's record showing the date, time, and reason restraints were used;

(d) Residents so restrained must be checked at least every 30 minutes and released during at least 10 minutes out of every 2 hours. These checks and releases must be recorded in the resident's record as they are completed; and

(e) If the resident does not respond within 3 days to the treatment prescribed by the physician, the resident must be re-evaluated by the physician to determine the continued appropriateness of the restraint and whether the facility can continue to provide appropriate care to the resident.

(11) Bedside rails for any resident may be used only on the written order of the resident's physician.

(12) In addition to the infectious disease control measures required by [RULE XII], the facility must establish and follow infection control policies and procedures adequate to assure a safe, sanitary, and comfortable environment to its residents and prevention of the development and transmission of disease and infection.

AUTH: 50-5-103, 50-5-226, 50-5-227, MCA; IMP: 50-5-226,

50-5-227, MCA

XXII FEES (1) The department shall collect fees for each license issued to a personal care facility at the rate specified in 50-5-202, MCA.

(2) The department shall collect the following fees for each inspection of a personal care facility:

(a) $70 per bed for a Category A facility;

(b) $90 per bed for a Category B facility.

(3) The department shall collect a fee of $100 from a personal care facility for each screening of a resident or prospective resident of that facility that is conducted by the department.

AUTH: 50-5-103, 50-5-227, MCA; IMP: 50-5-227, MCA

3. The rules to be repealed can be found at page 16-1501 through 16-1507 of the Administrative Rules of Montana, and are proposed for repeal because they will be replaced by the foregoing proposed new rules.

AUTH: 50-5-103, 50-5-227, MCA

IMP: 50-5-103, 50-5-106, 50-5-204, 50-5-225, 50-5-226, MCA

4. The department is proposing the above new rules because they are necessary to implement the new statutory criteria enacted by the 1993 legislature in Chapter 590 of the 1993 Session Laws, establish fees for inspections and patient screening, and update the standards generally.

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 Denzel Davis, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620, and must be received no later than 5:00 p.m., June 24, 1994.

6. Cynthia Brooks has been designated to preside over and conduct the hearing.

ROBERT J. ROBINSON, Director

Certified to the Secretary of State May 16, 1994.

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 16.20.202-205, 207, 208, 210-214, 216, 217, 222, 229, 234, 242, 251 and 261, and adoption of new rule I setting standards for public drinking water	)))))	NOTICE OF PUBLIC HEARING FOR PROPOSED AMENDMENT OF RULES AND ADOPTION OF NEW RULE I

(Drinking Water)

To: All Interested Persons

1. On July 15, 1994, at 8:00 a.m., or as soon thereafter as 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, which set standards to ensure and protect the quality of public water supplies.

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

16.20.202 DEFINITIONS In this subchapter and in Department Circulars PWS-1 (1994 edition), PWS-2 (1994 edition), PWS-3 (June 1991 edition) and PWS-4 (1994 edition), the following terms have the meanings or interpretations indicated below and must be used in conjunction with and supplemental to those definitions contained in 75-6-102, MCA.

(1) Remains the same.

(2) "Action level" means the concentration of lead or copper in water, as specified in section 3.0 of department Circular PWS-4 (1994 edition), that determines followup requirements that a water system is required to complete. Department Circular PWS-4 addresses various requirements for inorganic contaminants and is adopted by reference herein. A copy may be obtained by contacting the Department of Health and Environmental Sciences, Water Quality Division, Cogswell Building, Helena, MT 59620 (406) 444-2406.

(2)-(5) Remain the same but are renumbered (3)-(6).

~~(6) "Conventional filtration treatment" means a series of processes including coagulation, flocculation, sedimentation, and filtration that result in substantial particulate removal.~~

(7) Remains the same.

(8) "Conventional filtration treatment" means a series of processes including coagulation, flocculation, sedimentation, and filtration that result in substantial particulate removal.

(8)-(49) Remain the same but are renumbered (9)-(50).

AUTH: 75-6-103, MCA; IMP: 75-6-103, MCA

16.20.203 MAXIMUM INORGANIC CHEMICAL CONTAMINANT LEVELS

(1) ~~A community water system may not exceed the following maximum inorganic chemical contaminant levels:~~

~~Constituent~~	~~Level, milligrams per liter~~
~~(a) Arsenic~~	~~0.05~~
~~(b) Barium~~	~~1.~~
~~(c) Cadmium~~	~~0.010~~
~~(d) Chromium~~	~~0.05~~
~~(e) Lead~~	~~0.05~~
~~(f) Mercury~~	~~0.002~~
~~(g) Nitrate (as N)~~	~~10~~
~~(h) Selenium~~	~~0.01~~
~~(i) Silver~~	~~0.05~~
~~(j) Fluoride~~	~~4.0~~

~~(2) The MCL for nitrate (10 mg/l) in (1)(g) of this rule may not be exceeded by a non-community water system except that levels not to exceed 20 mg/l may be allowed in a non-community water system if:~~

~~(a) the supplier reports to the department that such water will not be available to children 6 months of age and younger,~~

~~(b) there will be continuous posting that the nitrate level exceeds 10 mg/l and the potential health effects of exposure,~~

~~(c) the department will be notified annually of levels which exceed 10 mg/l, and~~

~~(d) no adverse health effects will result.~~ Maximum contaminant levels for inorganic contaminants are set forth in the table below. The maximum contaminant levels apply to various public water supply systems as denoted in (2) of this rule.

Table I

Inorganic Contaminant	MCL (in mg/L)
(a) Fluoride	4.0
(b) Asbestos	7 million fibers/liter (longer than 10 μm)
(c) Barium	2
(d) Cadmium	0.005
(e) Chromium	0.1
(f) Mercury	0.002
(g) Nitrate	10 (as Nitrogen)
(h) Nitrite	1 (as Nitrogen)
(i) Total Nitrate + Nitrite	10 (as Nitrogen)
(j) Selenium	0.05
(k) Antimony	0.006
(l) Beryllium	0.004
(m) Cyanide (as free Cyanide)	0.2
(n) Nickel	0.1
(o) Thallium	0.002
(p) Arsenic	0.05
Inorganic Contaminant	**Action Level (in mg/L)**
(q) Lead	0.015
(r) Copper	1.3

(2)(a) The maximum contaminant levels for fluoride and arsenic apply only to community water systems.

(b) The maximum contaminant levels for nitrate, nitrite, and total nitrate + nitrite apply to all public water supply systems.

(c) The maximum contaminant levels and action levels for all other inorganic chemicals apply only to community water systems and non-transient non-community water systems.

(d) A public water supply system may not exceed a maximum contaminant level that applies to the system.

AUTH: 75-6-103, MCA; IMP: 75-6-103, MCA

16.20.204 MAXIMUM ORGANIC CHEMICAL CONTAMINANT LEVELS

(1) ~~A community water system may not exceed the following maximum organic chemical contaminant levels:~~

		~~Level, milligrams per liter~~
~~(a)~~	~~Endrin (1,2,3,4,10,10-hexachloro-6,7-epoxy-1,4,4a,5,6,7,8,8a-octahydro-1,4-endo, endo-5,8-dimethano naphthalene)~~	~~0.0002~~
~~(b)~~	~~Lindane (1,2,3,4,5,6-hexachlorocyclohexane, gamma isomer)~~	~~0.004~~
~~(c)~~	~~Methoxychlor (1,1,1-Trichloro-2,2-bis (p-methoxphenyl) ethane)~~	~~0.1~~
~~(d)~~	~~Toxaphene ($C_{10}H_{10}Cl_8$-Technical chlorinated camphene, 67-69 percent chlorine)~~	~~0.005~~
~~(e)~~	~~2,4-D (2,4-Dichlorophenoxyacetic acid)~~	~~0.1~~
~~(f)~~	~~2,4,5-TP Silves (2,4,5-Trichlorophenoxy-~~	~~0.01~~

~~propionic acid)~~ A community or non-transient non-community water system may not exceed the following maximum contaminant levels for synthetic organic contaminants:

Table II

Chemical Abstract Services No.	Contaminant	MCL in mg/L
(a) 15972-60-8	Alachlor	0.002
(b) 116-06-3	Aldicarb[1]	
(c) 1646-87-3	Aldicarb sulfoxide[1]	
(d) 1646-87-4	Aldicarb sulfone[1]	
(e) 1912-24-9	Atrazine	0.003
(f) 1563-66-2	Carbofuran	0.04
(g) 57-74-9	Chlordane	0.002
(h) 96-12-8	Dibromochloropropane	0.0002
(i) 94-75-7	2,4-D	0.07
(j) 106-93-4	Ethylene dibromide	0.00005
(k) 76-44-8	Heptachlor	0.0004
(l) 1024-57-3	Heptachlor epoxide	0.0002
(m) 58-89-9	Lindane	0.0002
(n) 72-43-5	Methoxychlor	0.04
(o) 1336-36-3	Polychlorinated biphenyls	0.0005
(p) 87-86-5	Pentachlorophenol	0.001
(q) 8001-35-2	Toxaphene	0.003
(r) 93-72-1	2,4,5-TP	0.05
(s) 50-32-8	Benzo[a]pyrene	0.0002
(t) 75-99-0	Dalapon	0.2
(u) 103-23-1	Di(2-ethylhexyl) adipate	0.4
(v) 117-81-7	Di(2-ethylhexyl) phthalate	0.006
(w) 88-85-7	Dinoseb	0.007
(x) 85-00-7	Diquat	0.02
(y) 145-73-3	Endothall	0.1
(z) 72-20-8	Endrin	0.002
(aa) 1017-53-6	Glyphosate	0.7
(ab) 118-74-1	Hexachlorobenzene	0.001
(ac) 77-47-4	Hexachlorocyclopentadiene	0.05
(ad) 23135-22-0	Oxamyl (Vydate)	0.2
(ae) 1918-02-1	Picloram	0.5
(af) 122-34-9	Simazine	0.004
(ag) 1746-01-6	2,3,7,8-TCDD (Dioxin)	3×10^{-8}

[1] The EPA has subjected the Aldicarb MCLs to an "administrative stay" as a result of litigation; therefore, these aldicarbs are presently unregulated.

(2) A community or non-transient non-community water system that uses unfiltered surface water or unfiltered groundwater under the direct influence of surface water as a source, or that serves a population of 10,000 or more individuals and adds a disinfectant to the water may not exceed the maximum contaminant level for total trihalomethanes of 0.10 mg/l.

(3) A community or non-transient non-community water system may not exceed the following volatile organic chemical (VOC) maximum contaminant levels:

Constituent	Level, milligrams per liter
(a) trichloroethylene (TCE)	0.005
(b) carbon tetrachloride	0.005
(c) vinyl chloride	0.002
(d) 1,2, dichloroethane	0.005
(e) benzene	0.005
(f) para-dichlorobenzene	0.075
(g) 1,1-dichloroethylene	0.007
(h) 1,1,1 trichloroethane	0.20

Table III

Chemical Abstract Services No.	Contaminant	MCL in mg/L
(a) 75-01-4	Vinyl Chloride	0.002
(b) 71-43-2	Benzene	0.005
(c) 56-23-5	Carbon tetrachloride	0.005
(d) 107-06-2	1,2-Dichloroethane	0.005
(e) 79-01-6	Trichloroethylene	0.005
(f) 106-46-7	para-Dichlorobenzene	0.075
(g) 75-35-4	1,1-Dichloroethylene	0.007
(h) 71-55-6	1,1,1-Trichloroethane	0.2
(i) 156-59-2	cis-1,2-Dichloroethylene	0.07
(j) 78-87-5	1,2-Dichloropropane	0.005
(k) 100-41-4	Ethylbenzene	0.7
(l) 108-90-7	Monochlorobenzene	0.1
(m) 95-50-1	o-Dichlorobenzene	0.6
(n) 100-42-5	Styrene	0.1
(o) 127-18-4	Tetrachloroethylene	0.005
(p) 108-88-3	Toluene	1
(q) 156-60-5	Trans-1,2-Dichloroethylene	0.1
(r) 1330-20-7	Xylenes (total)	10
(s) 75-09-2	Dichloromethane	0.005
(t) 120-82-1	1,2,4-Trichlorobenzene	0.07
(u) 79-00-5	1,1,2-Trichloroethane	0.005

AUTH: 75-6-103, MCA; IMP: 75-6-103, MCA

16.20.205 MAXIMUM TURBIDITY CONTAMINANT LEVELS

(1)(a) This section is ~~in effect until~~ applicable to:

~~(i) December 30, 1991, for public water supply systems that use unfiltered surface water or unfiltered groundwater under the direct influence of surface water, except that the department may apply the requirements of (2) of this section to a public water supply system if it determines that the system requires filtration;~~

~~(ii) June 29, 1993, for public water supply systems that use filtered surface water or filtered groundwater under the direct influence of surface water; and~~

~~(iii) either June 29, 1993, or until filtration is installed, whichever is later, for~~ public water supply systems

that use unfiltered surface water or unfiltered groundwater under the direct influence of surface water and ~~which~~ that the department has determined must install filtration. The requirements of this section do not apply to a public water supply system that has installed a department-approved filtration system.

(b) A public water supply system that uses surface water in whole or in part may not exceed the following maximum contaminant levels for turbidity measured at a representative entry point to the distribution system:

(i) ~~One~~ 1.0 nephelometric turbidity unit (NTU), as determined by a monthly average, except that a level not exceeding 5.0 ~~turbidity units~~ NTU may be allowed if the supplier of water can demonstrate to the department that the higher turbidity does not do any of the following:

(A)-(C) Remain the same.

(ii) ~~Five turbidity units~~ 5.0 NTU based on an average for 2 consecutive days.

(iii) Remains the same.

(2) This section applies to public water supply systems using surface water or groundwater under the direct influence of surface water ~~after the dates provided in (1) of this rule~~.

(a) For public water supply systems using conventional filtration treatment or direct filtration:

(i) The turbidity level of representative samples of the system's filtered water, measured at a representative entry point to the distribution system must be less than or equal to 0.5 ~~nephelometric turbidity unit (NTU)~~ in at least 95% of the measurements taken each month, and at no time exceed 1.0 NTU.

(ii) The turbidity level of representative samples of a system's effluent from individual filters, measured at a point prior to mixing with effluent from other filters or other sources, must be less than or equal to 0.5 NTU in at least 95% of the measurements taken each month, and at no time exceed 5.0 NTU. This requirement is not violated if the turbidity reading for the effluent from each individual filter is the first reading of the month that exceeds 0.5 NTU and the individual filter is taken off-line within 24 hours after the sample analysis that shows the exceedance.

(b) Remains the same.

(c) For systems using diatomaceous earth filtration:

(i) Remains the same.

(ii) The turbidity level of representative samples of a system's individual filter effluent, measured at a point prior to mixing with effluent from other filters or other sources, must be less than or equal to 1.0 NTU in at least 95% of the measurements taken each month. This requirement is not violated if the turbidity reading for the effluent from each individual filter is the first reading of the month that exceeds 1.0 NTU and the individual filter is taken off-line within 24 hours after the sample analysis that shows the exceedance.

(d)-(e) Remain the same.

(3) Remains the same.

(4) The department may invalidate a turbidity measurement based on documentation that demonstrates the exceedance was caused by turbidimeter performance difficulty or sample site location problems and that the measurements were not indicative of true water quality. If the department invalidates the turbidity reading on one of these bases, the turbidity reading may not be included in the 95% compliance calculations required under this rule.

AUTH: 75-6-103, MCA; IMP: 75-6-103, MCA

16.20.207 MAXIMUM MICROBIOLOGICAL CONTAMINANT LEVELS

(1) A public water supply system may not exceed the following maximum microbiological contaminant levels:

(a) For monthly and annual MCL's for microbiological contaminants:

(i) a system which collects at least 40 samples per month may have no more than 5.0% of the samples collected during a month analyzed as total coliform-positive;

(ii) a system which collects fewer than 40 samples/month may ~~have~~ have no more than one sample collected during a month analyzed as total coliform-positive;

(iii) a system may have no more than 10% of the samples collected within any consecutive 12-month period analyzed as total coliform-positive;

(iv) a system may have no more than 20% of the samples collected within any 12-month period either analyzed as total coliform-positive or invalidated by the laboratory because of heavy bacterial growth, confluent growth, TNTC non-coliform, or heterotrophic plate counts greater than 500 colony forming units per milliliter (cfu/ml);

(b) In addition to the requirements of (1)(a) above, a fecal coliform-positive repeat sample or E. coli-positive repeat sample, or any total coliform-positive repeat sample following a fecal coliform-positive or E. coli-positive routine sample is ~~prohibited~~ a violation of this rule. (For purposes of the public notification requirements in Department Circular PWS-2, (~~June 1991~~ 1994 edition), this is a violation that may pose an acute risk to health.)

(2) Remains the same.

(3) Failure to submit the required number of repeat samples for the public water supply system is a violation of the coliform bacteria MCL set forth in (1)(a) of this rule, and subjects the system to the required public notification as described in Department Circular PWS-2 (~~June 1991~~ 1994 edition), and additional routine sampling specified in ARM 16.20.210.

(4) The department hereby adopts and incorporates by reference Department Circular PWS-2 (1994 edition), which sets forth public notification requirements for suppliers. A copy may be obtained from the department's Water Quality Division, Cogswell Building, Capitol Station, Helena, MT 59620.

AUTH: 75-6-103, MCA; IMP: 75-6-103, MCA

16.20.208 TREATMENT TECHNIQUES--FILTRATION AND DISINFEC-

TION (1) ~~Beginning June 29, 1993, unless~~ Unless otherwise specified in these rules, each public water supply system with a surface water source or a groundwater source under the direct influence of surface water must provide treatment which meets the treatment technique requirements of this rule. The treatment technique requirements consist of installing and properly operating water treatment processes that reliably achieve:

(a)-(b) Remain the same.

(2) Remains the same.

(3)(a) A public water supply system using a surface source or a groundwater source under the direct influence of surface water is in violation of the treatment techniques requirement imposed by this rule if the system:

(i) Remains the same.

(ii) fails to install filtration by June 29, 1993, or 18 months after the department determines that filtration is required, whichever is later.

(b)-(c) Remain the same.

(4)(a) A supplier ~~for a public water supply system~~ that uses a surface water source and does not provide treatment by filtration must provide the disinfection treatment specified in Department Circular PWS-3 (June 1991 edition), beginning December 30, 1991, unless the department determines that filtration is required.

(b) A supplier ~~for a public water supply system~~ that uses a groundwater source under the direct influence of surface water and does not provide treatment by filtration must provide the disinfection treatment specified in Department Circular PWS-3 (June 1991 edition), beginning December 30, 1991, or 18 months after the department determines that the groundwater source is under the influence of surface water, whichever is later, unless the department has determined that filtration is required.

(c) A supplier ~~for a public water supply system~~ that uses a surface water source that provides filtration treatment or uses a groundwater source under the direct influence of surface water and provides filtration treatment must provide the disinfection treatment specified in (e) of this section beginning June 29, 1993, or beginning when filtration is installed, whichever is later. Failure to meet any requirement of this section after the specified date is in violation of the treatment technique requirements imposed by this rule.

(d)-(e) Remain the same.

(5) The department hereby adopts and incorporates by reference Department Circular PWS-3 (June 1991 edition), which sets forth criteria to avoid filtration of a surface water source or a groundwater source under the direct influence of surface water. A copy of Department Circular PWS-3 (June 1991 edition) may be obtained from the Department's Water Quality Division, Cogswell Building, Capitol Station, MT 59620.

AUTH: 75-6-103, MCA; IMP: 75-6-103, MCA

16.20.210 BACTERIOLOGICAL QUALITY SAMPLES (1)-(2) Remain the same.

(3) A supplier of a public water supply system that uses surface water or groundwater under the direct influence of surface water and does not practice filtration in compliance with department rules must collect at least one sample near the first service connection each day the turbidity level of the source water exceeds 1.0 NTU and have the sample analyzed for the presence of total coliforms bacteria. This requirement may be waived by the department for a public water supply system that uses surface water and does not practice filtration if the supplier is in compliance with a department administrative order, court order or court ordered consent decree to provide filtration and if the supplier agrees to comply with an alternative monitoring plan acceptable to the department. When one or more turbidity measurements in any day exceed 1.0 NTU, the supplier must collect this coliform bacteria sample within 24 hours of the first exceedance, unless the department determines that the system for logistical reasons outside the supplier's control cannot have the sample analyzed within 30 hours of collection. These sample results must be included in determining compliance with the MCL for microbiological contaminants under ARM 16.20.207.

(4) Remains the same.

(5) If a routine sample is total coliform-positive:

(a) the supplier ~~of the public water supply system~~ must begin submitting a set of repeat samples within 24 hours after notification of the positive result. A supplier that collects more than one routine sample per month must collect no fewer than three repeat samples for each total coliform-positive sample. A supplier who normally collects one routine sample per month or less must collect no fewer than four repeat samples for each total coliform-positive sample found. The department may extend the 24-hour limit for a specified time period if the supplier has a logistical problem in collecting the repeat samples that is beyond ~~his~~ the supplier's control. After a ~~system~~ supplier collects a routine sample and before the supplier learns the results of the analysis of that sample, if the supplier collects another routine sample or samples from within five service connections of the initial sample and the initial sample ~~or samples~~ after analysis is found to contain ~~coliforms~~ coliform bacteria, then the ~~system~~ supplier may count the subsequent sample or samples as a repeat sample instead of as a routine sample.

(b) Remains the same.

(c) The ~~system~~ supplier must collect all repeat samples on the same day, except that the department may allow a system with a single service connection to collect the required set of repeat samples over a 4-day period.

(d) If one or more repeat samples in the set is total coliform-positive, the supplier must collect an additional set of repeat samples in the manner specified in (5)(a)-(5)(c) of this rule. Collection of the additional samples must begin within 24 hours of receipt of notice of the positive result, unless the department extends the limit as provided in (5)(a) of this rule. The supplier must repeat this process until

either total ~~coliforms~~ coliform bacteria are not detected in one complete set of repeat samples or the supplier determines that the microbiological contaminant MCL specified in ARM 16.20.207 has been exceeded and notifies the department.

(e)-(f) Remain the same.

(6) A total coliform-positive sample that is invalidated according to this subsection may not be used to meet the minimum monitoring requirements of this section.

(a)-(b) Remain the same.

(c) A laboratory must invalidate a sample unless total ~~coliforms~~ coliform bacteria are detected, if the sample:

(i)-(iii) Remain the same.

(d) if the interference described in (c) above occurs, the supplier must collect another sample from the same location as the original sample within 24 hours after notification by the laboratory and have it analyzed for the presence of total ~~coliforms~~ coliform bacteria and ~~HPC~~ heterotrophic plate count. The ~~system~~ supplier must continue to re-sample within 24 hours of notification and have the samples analyzed until the system shows a valid result. The department may waive the 24-hour time limit on a case-by-case basis.

(7) Remains the same.

AUTH: 75-6-103, MCA; IMP: 75-6-103, MCA

16.20.211 CHEMICAL AND RADIOLOGICAL QUALITY SAMPLES

(1) Except as provided in (2) below, water ~~Water~~ served to consumers, which may be a mixture from several sources, must be analyzed for the following inorganic chemicals ~~every 3 years for community ground water supplies and annually for community surface water supplies. The scope of the analysis for a community water system must include all constituents indicated in ARM 16.20.203 and in the following list:~~ according to the requirements in section 4.1(E)(2) of Department Circular PWS-1 (1994 edition):

(a)-(g) Remain the same.

(h) ~~Potassium~~ Specific conductance

(i)-(j) Remain the same.

(k) ~~Total Dissolved Solids~~ Magnesium

~~(2)(a) A community water system utilizing surface water must be sampled every 3 years for the organic chemicals listed in ARM 16.20.204(1). Surface water samples for the organic chemicals listed in ARM 16.20.204(1) must be collected during that portion of the year when pesticides or herbicides are commonly in use in the area.~~

~~(b) Community and non-transient non-community systems must be monitored for volatile organic chemicals listed in ARM 16.20.204(3) and certain unregulated organic chemicals as specified in Department Circular PWS-1 (June 1991 edition).~~

(2) The department may waive the sampling and analysis requirement for any or all of these contaminants if the results of at least three consecutive samples demonstrate that further sampling is unnecessary.

(3)(a) A supplier shall sample and monitor its system for the following inorganic chemicals:

(i) the chemicals listed in ARM 16.20.203(1), Table I, as applicable, under intervals and methods specified in Department Circular PWS-1 (1994 edition);

(ii) lead and copper, as applicable and under intervals and methods specified in Department Circular PWS-4 (1994 edition); and

(iii) other water quality parameters as stated in and under intervals and frequencies specified in Department Circular PWS-4 (1994 edition).

(b) A supplier for a community or non-transient non-community water system must monitor its system for synthetic organic chemicals listed in ARM 16.20.204(1), volatile organic chemicals listed in ARM 16.20.204(3), and certain unregulated organic chemicals specified in Department Circular PWS-1 (1994 edition).

(c) A community water or non-transient non-community water system which either uses unfiltered surface water or unfiltered groundwater under the direct influence of surface water or serves a population of 10,000 or more individuals must be monitored by the supplier for total trihalomethanes if the system adds a disinfectant to the water supply.

(i) Remains the same.

(ii) The monitoring frequency may be reduced by the department to a minimum of one sample per quarter taken at a point in the distribution system reflecting the maximum residence time of the water in the system. This reduction in monitoring may be granted only if the data from at least one year of monitoring demonstrates that total trihalomethane concentrations will be consistently below 50% of the maximum contaminant level. After one full year of quarterly monitoring in which all sample results are less than 50% of the maximum contaminant level, systems serving fewer than 3300 persons may reduce their monitoring to once per year provided the sample is collected during the time of year and from a location most conducive for total trihalomethane formation.

(3)-(4) Remain the same but are renumbered (4)-(5).

~~(5) A test for nitrates must be made initially for all transient non-community and all non-transient non-community water supplies by June 24, 1979, and must be repeated at least once every 5 years. More frequent testing may be required for those supplies where the nitrate content approaches or exceeds the maximum contaminant level.~~

(6)-(7) Remain the same.

(8) The department hereby adopts and incorporates by reference Department Circular PWS-1 (1994 edition), which sets forth standards and monitoring requirements for other volatile organic chemicals, inorganic chemicals, and synthetic organic chemicals, and Department Circular PWS-4 (1994 edition), which sets forth standards and monitoring requirements for lead and copper. A copy of each may be obtained from the department's Water Quality Division, Cogswell Building, Capitol Station, Helena, MT 59620.

AUTH: 75-6-103, MCA; IMP: 75-6-103, MCA

16.20.212 SAMPLING AND REPORTING RESPONSIBILITY

(1)-(2) Remain the same.

(3) A supplier of a public water supply system that has exceeded the microbiological contaminant MCLs specified in ARM 16.20.207 must report the violation to the department no later than the end of the next business day after it learns of the violation, and notify the public in accordance with Department Circular PWS-2 (~~June 1991~~ 1994 edition).

(4) A supplier of a public water supply system that has failed to comply with a total coliform bacteria monitoring requirement, including the sanitary survey requirement stated in ARM 16.20.222, must report the monitoring violation to the department within 10 days after the ~~system~~ supplier discovers the violation, and notify the public in accordance with Department Circular PWS-2 (~~June 1991~~ 1994 edition).

(5) A supplier of a community water system must notify the public as specified in Department Circular PWS-2 (~~June 1991~~ 1994 edition) when the fluoride level exceeds 2.0 milligrams per liter (mg/l).

(6)-(10) Remain the same.

~~(11) The supplier of water is not required to report analytical results to the department in cases where the department's laboratory performs the analysis and reports the results to the department office which would normally receive such notification from the supplier.~~

~~(12)~~(11) A supplier of water, within 10 days of completion of each public notification required pursuant to these rules and Department Circular PWS-2 (~~June 1991~~ 1994 edition), shall submit to the department a representative copy of each type of notice distributed, published, posted, or made available to the persons served by the system or to the media.

~~(13)~~(12) Upon request by the department, a supplier of water shall timely submit to the department copies of any records required to be maintained by these rules.

(13) The department hereby adopts and incorporates by reference Department Circular PWS-2 (1994 edition), which sets forth public notification requirements for suppliers. A copy may be obtained from the department's Water Quality Division, Cogswell Building, Capitol Station, Helena, MT 59620.

AUTH: 75-6-103, MCA; IMP: 75-6-103, MCA

16.20.213 VERIFICATION SAMPLES (1) When the results of a chemical analysis for ~~the contaminants listed in ARM 16.20.203 and 16.20.204(1)(a)-(1)(f) or for~~ total trihalomethanes indicate that the level ~~of any constituent, except nitrate,~~ exceeds the maximum contaminant level, verification samples are required. Verification samples must be taken at the site where the sample that exceeded the MCL was taken. ~~Except for nitrate and nitrite, at~~ At least 3 verification samples must be collected within one month of the time the supplier of water receives notification that the first sample exceeded the maximum contaminant level. The arithmetic mean of the ~~4~~ original and verification samples taken at the site determines if the maximum contaminant level is exceeded.

~~(2) When the maximum contaminant level for nitrate is exceeded, an additional sample will be collected within 24 hours of notification. The mean of the 2 samples will determine if the maximum contaminant level is exceeded.~~

~~(3)~~(2) The department may require verification samples for positive or negative results of inorganic (except for lead and copper) and organic chemical analyses in accordance with Department Circular PWS-1 (~~June 1991~~ 1994 edition).

(3) The department may require verification samples for lead and copper in source water or applicable water quality parameters in accordance with Department Circular PWS-4 (1994 edition).

(4) The department hereby adopts and incorporates by reference Department Circular PWS-1 (1994 edition), which sets forth standards and monitoring requirements for volatile organic chemicals, inorganic chemicals and synthetic organic chemicals; and Department Circular PWS-4 (1994 edition), which sets forth standards and monitoring requirements for lead and copper. Copies of each may be obtained from the department's Water Quality Division, Cogswell Building, Capitol Station, Helena, MT 59620.

AUTH: 75-6-103, MCA; IMP: 75-6-103, MCA

16.20.214 SPECIAL SAMPLES (1) Under special conditions, additional samples may be required ~~from time to time~~ by the department. Such samples may be to determine adequacy of disinfection following line installation, replacement, or repair. Samples may also be required for determination of adequacy of source, storage, treatment or distribution of water to the public. The department may use these samples to determine compliance with ~~the microbiological contaminant~~ MCLs ~~specified in ARM 16.20.207~~, action levels, and treatment technique requirements, as set forth in this subchapter.

AUTH: 75-6-103, MCA; IMP: 75-6-103, MCA

16.20.216 CONTROL TESTS--GENERAL (1)-(3) Remain the same.

(4) Only the analytical methods specified in this section, or otherwise approved by the department, may be used to demonstrate compliance with the requirements of ~~these rules~~ this section:

(a)-(d) Remain the same.

(5) Measurements for pH, temperature, turbidity, and residual disinfectant concentrations for a community water supply must be conducted by a party certified under the provisions of Title 37, chapter 42, MCA. ~~Samples for total coliform analysis~~ Bacteriological samples for a community water system must be collected by a person approved by the department or ~~party~~ certified under the provisions of Title 37, chapter 42, MCA. Measurements for total ~~coliforms~~ coliform bacteria, fecal ~~coliforms~~ coliform bacteria, and ~~HPC~~ heterotrophic plate count must be conducted by an approved laboratory.

(6) The department hereby adopts and incorporates by reference the following:

(a) Method 214A (Nephelometric Method-Nephelometric Turbidity Units), pages 134-136, Standard Methods for the Examination of Water and Wastewater, 1985, American Public Health Association et al. (16th edition), which sets forth methods for determining turbidity.

(b) Method 408C (Amperometric Titration Method), pages 303-306, Method 408D (DPD Ferrous Titrimetric Method), pages 306-309, Method 408E (DPD Colorimetric Method), pages 309-310, and Method 408F (Leuco Crystal Violet Method), pages 310-313, Standard Methods for the Examination of Water and Wastewater (1985), American Public Health Association et al. (16th edition), which set forth methods for determining residual disinfection.

(c) Bader, H., Hoigne, J., "Determination of Ozone in Water by the Indigo Method: A Submitted Standard Method"; Ozone Science and Engineering, Vol. 4, pages 169-176, Pergamon Press Ltd. (1982), which sets forth methods for determining residual ozone concentration in water;

(d) Method 410B (Amperometric Method), pages 322-323, or Method 410C (DPD Method), pages 323-324, Standard Methods for the Examination of Water and Wastewater (1985), American Public Health Association et al. (16th edition), which sets forth methods for determining residual chlorine dioxide;

(e) Method 212 (Temperature), pages 126-127, Standard Methods for the Examination of Water and Wastewater (1985), American Public Health Association et al. (16th edition), which sets forth a method for determining residual temperature in water;

(f) Method 423, pages 429-437, Standard Methods for the Examination of Water and Wastewater (1985), American Public Health Association (16th edition), which sets forth a method for determining pH;

(g) Title 37, chapter 42, MCA, which sets forth requirements for water treatment plant operators.

(h) Copies of the documents described in (a)-(g) above may be obtained from the department's Water Quality Division, Cogswell Building, Capitol Station, Helena, MT 59620.

AUTH: 75-6-103, MCA; IMP: 75-6-103, MCA

16.20.217 CONTROL TESTS--SURFACE SUPPLIES (1) A supplier of water utilizing a water treatment plant for surface water or groundwater under the direct influence of surface water where the plant employs in its operation coagulation, settling, softening, or filtration, shall perform at least daily, unless otherwise specified, the following chemical control tests on the filtered water, list them on a report form approved by the department, and submit the completed form monthly to the department:

(a) Chlorine residual

(i) Remains the same.

~~(ii) Prior to June 29, 1993, chlorine residual determinations must be performed at least daily, one at the point of application and one in the distribution system.~~

(b)-(e) Remain the same.

(f) Turbidity

(i) Remains the same.

~~(ii) Prior to June 29, 1993, turbidity determinations must be performed at least daily, from a location representative of the water entering the distribution system. These values must be used to determine compliance with the turbidity MCL of ARM 16.20.205(1).~~

(2) A supplier of water utilizing surface water or groundwater under the direct influence of surface water which does not filter but which employs disinfection shall perform, at least daily, unless otherwise specified, the following chemical control tests on the treated water, list them on a report form approved by the department and submit the completed form monthly to the department:

(a)-(b) Remain the same.

(c) Turbidity.

(i) A supplier of water utilizing a surface source and not providing filtration treatment must ~~begin~~ monitor~~ing,~~ as specified in these rules and Department Circular PWS-3 (June 1991 edition), ~~beginning December 31, 1990,~~ unless the department has determined that filtration is required. The department may specify alternative monitoring requirements, as appropriate, until filtration is in place.

(ii) A supplier of water that uses a groundwater source under the direct influence of surface water and does not provide filtration treatment must begin monitoring as specified in Department Circular PWS-3 (June 1991 edition)~~, beginning December 31, 1990 or~~ 6 months after the department determines that the groundwater source is under the direct influence of surface water~~, whichever is later~~, unless the department has determined that filtration is required. If filtration is required, the department may specify alternative monitoring requirements, as appropriate, until filtration is in place.

(iii) Daily turbidity sampling requirements are applicable for public water supply systems not filtering and not required to filter through December 30, 1991. ~~Until December 30, 1991, results of these samples will be used for determining compliance with the turbidity MCL stated in ARM 16.20.205(1).~~

(iv) The monitoring frequency required in (2) of this rule may be reduced by the department for a non-community water system on a case-by-case basis.

(3) The department hereby adopts and incorporates by reference Department Circular PWS-3 (June 1991 edition), which sets forth criteria to avoid filtration of a surface water source or a groundwater source under the direct influence of surface water. A copy may be obtained from the department's Water Quality Division, Cogswell Building, Capitol Station, Helena, MT 59620.

AUTH: 75-6-103, MCA; IMP: 75-6-103, MCA

16.20.222 SANITARY SURVEYS (1) Public water supply systems must undergo an initial sanitary survey by June 29, 1994, for community systems and non-transient non-community systems, and by June 29, 1999, for transient non-community

water systems. Thereafter, transient non-community water systems must undergo another sanitary survey at least once every 5 years, and all other public water supply systems must undergo another sanitary survey at least once every 3 years. The department must review the results of each sanitary survey to determine whether the existing monitoring frequency is adequate and what additional measures, if any, the system needs to undertake to improve drinking water quality.

~~(a)~~(2) Sanitary surveys must be performed by the department or an agent approved by the department. The ~~system~~ supplier is responsible for ensuring the survey takes place.

AUTH: 75-6-103, MCA; IMP: 75-6-103, MCA

16.20.229 PUBLIC NOTIFICATION FOR COMMUNITY AND NON-COMMUNITY SUPPLIES (1) The owner or supplier of a public water supply system shall notify persons served by the system as specified in Department Circular PWS-2 (~~June 1991~~ 1994 edition) and the department as required under ARM 16.20.212 if the system:

(a)-(c) Remain the same.

(2) If a maximum contaminant level for a public water supply system is exceeded, the department may require a supplier of water to give additional public notice by newspaper advertisement, press release, or other appropriate means approved by the department. The department may waive this requirement if it determines that the violation has been corrected promptly after discovery, the cause of the violation has been eliminated, and there is no longer a risk to public health.

(3) If an imminent threat to public health occurs, the department may require any measure necessary to protect public health.

(4) The department hereby adopts and incorporates by reference Department Circular PWS-2 (1994 edition), which sets forth public notification requirements for public water supply system suppliers. A copy may be obtained from the department's Water Quality Division, Cogswell Building, Capitol Station, Helena, MT 59620.

AUTH: 75-6-103, MCA; IMP: 75-6-103, MCA

16.20.234 VARIANCE AND EXEMPTIONS FROM MAXIMUM CONTAMINANT LEVELS (MCL'S) FOR ~~VOLATILE ORGANIC CHEMICALS (VOC'S)~~ ORGANIC AND INORGANIC CHEMICALS AND FROM TREATMENT REQUIREMENTS FOR LEAD AND COPPER (1) The EPA has identified the ~~following~~ technologies listed in sections 6.1 and 6.2 of Department Circular PWS-1 (1994 edition) as the best available technology (BAT), treatment techniques, or other means available for achieving compliance with the maximum contaminant levels for inorganic chemicals listed in ARM 16.20.203 and for synthetic and volatile organic chemicals listed in ARM 16.20.204(1) and (3)~~:~~.

~~(a) removal using packed tower aeration; and~~

~~(b) removal using granular activated carbon (except for vinyl chloride).~~

(2) Suppliers of community water systems and non-transient non-community water systems must install or use any treatment method identified in ~~subsection (1)~~ Department Circular PWS-1 (1994 edition) as a condition for receiving a variance, except as provided in (3) below. If the system cannot meet the MCL after installation of the treatment method, that system ~~shall be~~ is eligible for a variance.

(3) The department may grant a variance from ARM 16.20.203 or 16.20.204 subject to the requirements of (4)-(8) of this rule.

(4) If a ~~system~~ supplier can demonstrate through comprehensive engineering assessments, which may include pilot plant studies, that the treatment methods identified in (1) of this rule would only achieve a de minimis reduction in contaminants, the department may issue a schedule of compliance that requires the system being granted the variance to examine other treatment methods as a condition of obtaining the variance.

(5) Remains the same.

(6) To avoid an unreasonable risk to health, ~~The~~ the department may require a public water supply system supplier to use:

(a) bottled water, point-of-use devices, or other means as a condition of granting a variance or an exemption from the requirements of section 3.0, Department Circular PWS-1 (~~June 1991~~ 1994 edition)~~, to avoid an unreasonable risk to health.~~;

(b) bottled water and point-of-use devices or other means, but not point-of-entry devices, as a condition for granting an exemption or variance from corrosion control treatment requirements for lead and copper in sections 5.1 and 5.2 of Department Circular PWS-4 (1994 edition); or

(c) point-of-entry devices as a condition for granting an exemption or variance from the source water and lead service line replacement requirements for lead and copper under sections 5.3 or 5.4 of Department Circular PWS-4 (1994 edition).

(7) Public water supply systems that use bottled water as a condition for receiving a variance or an exemption from the requirements of section 3.0 of Department Circular PWS-1 (~~June 1991~~ 1994 edition) or an exemption from the requirements of section 5.0 of Department Circular PWS-4 (1994 edition), must meet the following requirements:

(a) The supplier of water shall submit and obtain department approval of a monitoring program for bottled water. The monitoring program must provide reasonable assurance that the bottled water meets all MCLs. The supplier must monitor a representative sample of bottled water for all contaminants regulated under Department Circular PWS-1 (~~June 1991~~ 1994 edition), during the first quarter it supplies the bottled water to the public and annually thereafter. Results of the monitoring program must be provided to the department within 30 days after the end of the first quarter and thereafter within 30 days after the end of a 12-month period.

(b)-(d) Remains the same.

(8) Public water supply systems that use point-of-use devices as a condition for obtaining a variance or an exemption

from ARM 16.20.204 for volatile organic compounds must meet the following requirements:

(a)-(f) Remains the same.

(g) In requiring use of a point-of-entry device as a condition for granting an exemption or variance from the treatment requirements for lead and copper under sections 5.3 or 5.4 of Department Circular PWS-4 (1994 edition), the supplier must demonstrate to the department's satisfaction that use of the device will not cause increased corrosion of lead and copper bearing materials located between the device and the tap that could increase contaminant levels at the tap.

(9) The department hereby adopts and incorporates by reference Department Circular PWS-1 (1994 edition), which sets forth standards and other requirements for volatile organic chemicals, other organic chemicals, and inorganic chemicals; and Department Circular PWS-4 (1994), which sets forth standards and monitoring requirements for lead and copper. A copy of each may be obtained from the department's Water Quality Division, Cogswell Building, Capitol Station, Helena, MT 59620.

AUTH: 75-6-103, MCA; IMP: 75-5-103, MCA

16.20.242 DESIGNATED CONTACT PERSON (1)-(3) Remain the same.

(4) The department hereby adopts and incorporates by reference Title 37, chapter 42, MCA, which establishes requirements for operators of water treatment plants. A copy may be obtained from the department's Water Quality Division, Cogswell Building, Capitol Station, Helena, MT 59620.

AUTH: 75-6-103, MCA; IMP: 75-6-103, MCA

16.20.251 VARIANCE "B" (1)-(2) Remain the same.

(3) The department hereby adopts and incorporates by reference Department Circular PWS-3 (June 1991 edition), which sets forth criteria to avoid filtration of a surface water source or a groundwater source under the direct influence of surface water. A copy may be obtained from the department's Water Quality Division, Cogswell Building, Capitol Station, Helena, MT 59620.

AUTH: 75-6-103, MCA; IMP: 75-6-103, MCA

16.20.261 ADOPTION AND INCORPORATION BY REFERENCE

(1) The board hereby adopts and incorporates by reference:

(a) Department Circular PWS-1, ~~"Volatile Organic Chemical Standards and Monitoring Requirements for Other Organic Chemicals" (June 1991 edition)~~ "Standards and Monitoring Requirements for Volatile Organic, Inorganic, and Synthetic Organic Chemicals" (1994 edition), which sets forth standards and monitoring requirements for the foregoing chemicals;

(b) Department Circular PWS-2, "Public Notification Requirements for Public Water Supply System Suppliers" (~~June 1991~~ 1994 edition), which sets forth public notification requirements for public water supply system suppliers; ~~and~~

(c) Department Circular PWS-3, "Criteria to Avoid Filtra-

tion of a Surface Water Source or a Groundwater Source Under the Direct Influence of Surface Water" (June 1991 edition), which sets forth criteria to avoid filtration of a surface water source or a groundwater source under the direct influence of surface water; and

(d) Department Circular PWS-4, "Requirements for the Control of Lead and Copper" (1994 edition), which sets forth standards and monitoring requirements for lead and copper.

(2) Copies of the Department Circulars ~~referenced in these proposed rules~~ may be obtained by contacting the Water Quality ~~Bureau~~ Division, Montana Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, MT 59620, (406) 444-2406.

AUTH: 75-6-103, MCA; IMP: 75-6-103, MCA

RULE I DEPARTMENT RECORDKEEPING (1) The department shall maintain records regarding its public water supply program and make reports to the US Environmental Protection Agency concerning its program in a manner that is consistent with requirements set forth in 40 CFR 142.14 and 142.15.

(2) The department hereby adopts and incorporates by reference 40 CFR 142.14 and 142.15, which describe recordkeeping and reporting requirements for state drinking water programs. Copies may be obtained by contacting the Water Quality Division, Cogswell Building, Capitol Station, Helena, MT 59620, (406) 444-2406.

AUTH: 75-6-103, MCA; IMP: 75-6-103, MCA

3. The board is proposing these rules to further protect public health by assuring safe public drinking water for Montana consumers. The board is also proposing these amendments to the rules in order to comply with minimum federal requirements established under the Safe Drinking Water Act for control of lead and copper and Phase II and Phase V chemicals in public drinking water supplies. These requirements are mandated as a condition of delegation to the State of Montana responsibility for implementation of the federal safe drinking water program.

4. 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 Secretary, c/o Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620, provided they are received no later 5:00 p.m. on June 23, 1994.

5. Will J. Hutchison has been designated to preside over and conduct the hearing.

ROBERT J. ROBINSON, Director

Certified to the Secretary of State May 16, 1994.

Reviewed by:

Eleanor Parker, DHES Attorney

BEFORE THE BOARD OF CRIME CONTROL
DEPARTMENT OF JUSTICE
STATE OF MONTANA

In the Matter of the Amendment of Rules 23.15.102-103, 201-203, 302, 304, 306, 308, the Repeal of 23.15.104 and the Adoption of RULE I concerning Crime Victims Compensation	) NOTICE OF PROPOSED AMENDMENT,) REPEAL, AND ADOPTION OF RULES)))))

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On June 25, 1994, the Board of Crime Control proposes to amend the following rules regarding crime victim compensation.

2. The proposed amendments will read as follows:

23.15.102 GENERAL DEFINITIONS (1) through (4) remain the same.

(5) "Bodily injury" means a physical or mental trauma directly resulting from:

(a) a physical contact with the victim; or

(b) criminal acts of the offender which were directed toward the victim's person and the victim was aware of the actions at the time of such actions.

(6) "A law enforcement officer" includes personnel in youth court probation and child protective services.

AUTH: 53-9-104, MCA
IMP: 53-9-103, MCA

23.15.103 GOOD CAUSE EXTENSIONS TO CLAIM FILING AND REPORTING TO LAW ENFORCEMENT LIMITS (1) Factors considered when determining whether "good cause" exists for extending the one-year time limit for filing a claim, or for ~~failing to~~ reporting criminally injurious conduct to a law enforcement ~~officer~~ within 72 hours after its occurrence include, but are not limited to the following:

(a) age of the victim when the crime occurred;

(b) whether the delay in filing or reporting was reasonable, considering the circumstances of the crime and the resulting injuries to the victim~~.~~;

(c) physical or mental incapacity; or

(d) failure of law enforcement or prosecutors to notify the victim about crime victim compensation.

~~(2) Good cause may not be based upon the following factors:~~

~~(a) the victim's lack of knowledge of the Crime Victims Compensation Act;~~

~~(b) the victim's lack of knowledge of injuries received in the crime;~~

~~(c) the victim's lack of knowledge that a criminally injurious conduct occurred;~~

~~(d) the victim's inability to identify the offender;~~

~~(e) the failure of collateral sources to provide compensation to the victim.~~ There is no good cause to extend the time limit if the claim is filed more than 5 years after the latest date the claim could have been filed in accordance with 53-9-125(1), MCA.

AUTH: 53-9-104, MCA
IMP: 53-9-125, MCA

23.15.104 INTERESTS OF JUSTICE Proposed for repeal. Text can be found at page 23-469.

AUTH: 53-9-104, MCA
IMP: 53-9-125, MCA

23.15.201 CLAIM AND INITIAL DETERMINATION (1) through (3) remain the same.

(4) A request for benefits under 53-9-128, MCA, is an application for compensation. The person applying for benefits is subject to all the requirements of the Crime Victims Compensation Act and Administrative Rules of Montana for the Crime Victims Compensation Act.

(4 5) The division will issue its initial determination accepting, denying, or reconsidering claims for compensation benefits.

AUTH: 53-9-104, MCA
IMP: 53-9-121, 53-9-124, 53-9-127, MCA

23.15.202 REQUEST FOR HEARING (1) The claimant has the right to request an informal hearing within 30 days of any written determination regarding compensability of a claim. The unit may ~~hold~~ request an informal hearing on its own initiative. The right to proceed further is waived unless the request for an informal hearing is received by the unit within 30 days after the initial determination is mailed.

(2) The claimant's request must be in writing and state the action the claimant wishes the division to take and the reasons the division should take such action.

(3) The unit's administrative officer will review the request and all relevant evidence provided by the claimant, and ~~determine~~ recommend whether if a hearing should be held or a revised order issued.

AUTH: 53-9-104, MCA
IMP: 53-9-122, 53-9-130, 53-9-131, MCA

23.15.203 HEARING (1) ~~If the administrative officer determines a hearing will be held, the division administrator will act as the hearing examiner. If the division administrator is unavailable or otherwise unable to the act as hearing examiner, t~~The administrator ~~will~~ may act as the hearing examiner or appoint a hearing examiner.

(2) through (6) remain the same.

AUTH: 53-9-104, MCA
IMP: 53-9-122, 53-9-130, 53-9-131, MCA

23.15.302 PAYMENT OF CLAIMS (1) remains the same.

(2) Medical and/or burial expenses are paid to the service providers, unless the claimant has paid the expenses, in which case payment is made to the claimant. The amount of the payment is based on the usual and customary rates established by the insurance compliance bureau, division of workers' compensation. Charges for private rooms and special nurses are paid only if ordered by the attending physician. The claimant is responsible for charges for treatment of conditions or injuries that are not a direct result of the criminally injurious conduct.

~~(a) Benefits are not payable for replacement costs of eyeglasses unless the injuries require a change in prescription or require the wearing of eyeglasses when the victim did not formerly wear eyeglasses.~~

~~(b)~~ Reasonable burial expenses include a marker for the grave.

(3) Children and retired persons are considered employable but unemployed for the purpose of computing their benefits under 53-9-128~~(7)(a)~~, MCA.

(4) Payment will not be made for medical expenses for treatment obtained more than 5 years after the last date of treatment.

(5) Payment will not be allowed for duplicate medical treatments received on the same day, except in an emergency.

AUTH: 53-9-104, MCA
IMP: 53-9-128, MCA

23.15.304 MEDICAL INFORMATION (1) through (3) remain the same.

(4) If the claimant is requesting compensation benefits to pay for costs of medical treatment, the claimant may initially select the physician to provide treatment, but the claimant must obtain prior approval from the unit before receiving treatment from another physician, except in an emergency. Unless the claimant obtains such prior approval, benefits to pay the cost of treatment may be disallowed. The attending physician is responsible for the type, duration, and frequency of treatment. If the attending physician refers the claimant to another physician the claimant must obtain prior approval from the unit for the referral visits and treatment, except in an emergency, or the cost of treatment may be disallowed.

(5) Except under (3), initial liability for expenses is the responsibility of the claimant.

AUTH: 53-9-104, MCA
IMP: 53-9-104, 53-9-123, 53-9-127, MCA

23.15.306 MENTAL HEALTH ~~COUNSELORS~~ THERAPISTS (1) The rules governing physicians apply to mental health ~~counselors~~ therapists, subject to restrictions in this rule.

(2) A mental health ~~counselor~~ therapist must be one of the following to receive payment from the crime victims fund:

(a) medical doctor;
(b) licensed clinical psychologist;
(c) licensed social worker;
(d) licensed professional counselor;

(e) mental health center.

(3) Payment for mental health counseling is limited to 12 consecutive months or $2000.00 billable services, whichever limit is reached first. Extension of the time or money limit may be requested by the claimant. An extension may be granted after review of the entire course of treatment, including but not limited to case notes and treatment plans. The reviewer will be a qualified therapist chosen by the crime victims unit who will make recommendations to deny or grant any extension of treatment and the length of the extension.

AUTH: 53-9-104, MCA
IMP: 53-9-128, MCA

23.15.308 CONTRIBUTION (1) ~~Contribution results in denial or reduction of benefits.~~ A victim contributed to the infliction of death or bodily injury with respect to which a claim is made if the victim's actions ~~brought about to any degree~~ are causally connected to the resulting injuries and such injuries were reasonably foreseeable ~~by the victim~~ at the time of his or her contributing actions.

AUTH: 53-9-104, MCA
IMP: 53-9-125, MCA

3. The following rule is proposed for adoption to address issues of reconsideration of claims.

RULE I. RECONSIDERATION UNDER 53-9-130, MCA (1) The division may reconsider a claim at the request of the claimant when no informal hearing under 53-9-122, MCA, was held, and when the time for requesting such hearing has expired.

(2) A claimant may request a reconsideration only upon presentation of newly discovered evidence which could not have been previously discovered with reasonable diligence.

(3) A claimant's request for a reconsideration must:

(a) be in writing;

(b) state the reason why the division's prior decision should be reconsidered; and

(c) explain why an informal hearing under 53-9-122, MCA, was not requested or held.

(4) The unit's administrative officer will review the request and all relevant evidence provided by the claimant and recommend whether the request should be granted or denied.

(5) The recommendation will be reviewed by the division administrator who may concur or modify the recommendation.

(6) A reconsideration may be done at any time if requested by the crime victims unit. The request will be reviewed as provided in (5).

AUTH: 53-9-104, MCA
IMP: 53-9-130, MCA

4. These rules are proposed for amendment, adoption, and repeal to bring them into conformance with a review by the Crime Victims Compensation Task Force, a special task force created by the Board of Crime Control. The proposed rules are to improve efficiency and effectiveness of crime victims compensation.

5. Interested parties may submit their data, views, or arguments concerning the proposed rules in writing to Edwin L. Hall, Executive Director, Board of Crime Control, 303 North Roberts, Helena, Montana, 59620, no later than June 23, 1994.

6. If a person who is directly affected by the proposed rules wishes to submit his data, or express views and arguments orally or in writing at a public hearing, he must make a written request for a hearing and submit this request, along with any written comments he has to Edwin L. Hall, Executive Director, Board of Crime Control, 303 North Roberts, Helena, Montana, 59620, no later than June 23, 1994.

7. If the agency receives requests for a public hearing on the proposed rules from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed rules; from the Administrative Code Committee of the Legislature; from a governmental subdivision, or agency; or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 12.

BOARD OF CRIME CONTROL
EDWIN L. HALL, Executive Director

By: Edwin L. Hall
EDWIN L. HALL, Executive Director
BOARD OF CRIME CONTROL
DEPARTMENT OF JUSTICE

Certified to the Secretary of State, May 16 1994

Rule Reviewer

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

In the matter of the adoption of Rules I through IX pertaining to child support enforcement suspension of licenses process	)))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED ADOPTION OF RULES I THROUGH IX PERTAINING TO CHILD SUPPORT ENFORCEMENT SUSPENSION OF LICENSES PROCESS

TO: All Interested Persons

1. On June 21, 1994, at 1:30 p.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana to consider the proposed adoption of Rules I through IX pertaining to child support enforcement suspension of licenses process.

The Department of Social and Rehabilitation Services will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you request an accommodation, contact the department no later than 5:00 p.m. on June 10, 1994, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970.

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

[RULE I] PURPOSE STATEMENT (1) The purpose of this subchapter is to facilitate the implementation of the process to suspend licenses for nonsupport as provided in section 40-5-701 et seq., MCA and establishing criteria for claiming hardship and requesting an immediate stay of suspension.

AUTH: Sec. 40-5-713 MCA
IMP: Sec. 40-5-713 MCA

[RULE II] DEFINITIONS For the purposes of this subchapter, the following definitions apply:

(1) "CSED" means child support enforcement division.

(2) "Financial hardship payment plan" means a plan offered to the obligor by the CSED for agreement which provides for monthly support arrears payments by the obligor in a lesser amount than under a standard payment plan and which, upon approval by the CSED office of the administrative law judge, stays further license suspension proceedings.

(3) "Resultant hardship" means a hardship an obligor may claim at the time of or after the license suspension hearing, based on the impact of a license suspension on the obligor, to

legal dependents residing in obligor's household, to obligor's employees, or to persons, business or other entities served by the obligor.

(4) "Standard payment plan" means a plan offered to the obligor by the CSED for agreement which provides for monthly support payments by the obligor and which, upon approval by the CSED office of the administrative law judge, stays further license suspension proceedings.

AUTH: Sec. 40-5-713 MCA
IMP: Sec. 40-5-710 and 40-5-713 MCA

[RULE III] CRITERIA FOR STANDARD PAYMENT PLAN (1) A standard payment plan agreement must contain, but is not limited to, the following:

(a) sufficient security to ensure compliance with the support order;

(b) an acknowledgement by the obligor of the amount of the unpaid support debt;

(c) the obligor's agreement to pay each month an amount which equals current support plus at least 1/24 or more of the arrears debt;

(d) voluntary or involuntary income withholding where applicable;

(e) the obligor's waiver of a right to assert the affirmative defense of the statute of limitations to the collection of the debt not barred by a statute of limitations at the time the notice of intent to suspend was issued;

(f) an agreement that entry into a standard payment plan does not reduce the arrears obligation but only the payments toward the arrears debt;

(g) an agreement that a standard plan does not limit the CSED's right to pursue collection of the arrears by other means;

(h) an agreement that the obligor gives up his or her right to an administrative fair hearing; and

(i) an agreement that the obligor gives up his or her right to have a district court review the decision of the CSED hearing officer.

AUTH: Sec. 40-5-713 MCA
IMP: Sec. 40-5-710 and 40-5-713 MCA

[RULE IV] FINANCIAL HARDSHIP PAYMENT PLAN (1) A financial hardship payment plan may temporarily reduce the monthly amount of money to be paid by the obligor toward delinquent support arrears amounts which would otherwise be due under the terms of a standard payment plan. All other requirements of a standard payment plan apply to a financial hardship payment plan.

(2) Circumstances justifying a financial hardship include, but are not limited to a showing of:

(a) extraordinary costs or expenses for special medical, dental, and mental health needs have been incurred by the obligor or the obligor's dependents; that these costs are actually being paid by the obligor; and that the obligor is not being reimbursed by insurance;

(b) special costs or expenses which are directly related to the obligor's ability to earn income available for direct payment or withholding, and which, if not paid, would result in a major loss of income. For example, if the obligor is a taxi driver who needs an operable vehicle to make money to pay support and the engine needs major repairs, a short term financial hardship payment plan may be appropriate; or

(c) total income of the obligor's household is below the United States poverty guidelines for an equivalent sized household.

AUTH: Sec. 40-5-713 MCA
IMP: Sec. 40-5-710 and 40-5-713 MCA

[RULE V] EFFECT OF FINANCIAL HARDSHIP PAYMENT PLAN DETERMINATION (1) A pending financial hardship payment plan determination does not stay or delay hearings on, or implementation of, license suspension, absent a stay or continuance issued by the CSED administrative hearing officer.

(2) A request for a financial hardship payment plan determination on each claimed incident of hardship may be made at any time, without regard to whether a license suspension proceeding is pending or has been previously implemented.

(3) A financial hardship payment plan applies only to the amount to be withheld to defray accumulated interest, fees, if any, and delinquent support amounts owed. It does not affect the amount of the obligor's current support obligation.

(4) Whenever the CSED has determined that a financial hardship payment plan is appropriate, the CSED hearing officer shall consider the financial hardship payment plan and either approve or disapprove the plan.

AUTH: Sec. 40-5-713 MCA
IMP: Sec. 40-5-710 and 40-5-713 MCA

[RULE VI] PROCEDURES FOR DETERMINING FINANCIAL HARDSHIP PAYMENT PLAN TERMS (1) The CSED will use the following procedures as a guideline for the exercise of its discretion in determining the payment terms of a financial hardship payment plan:

(a) the obligor must request a financial hardship determination in writing to the CSED office issuing the notice of intent to suspend stating the reasons a hardship adjustment is appropriate and the length of time it should remain in effect. The CSED will determine if the obligor is eligible for a reduction of the amount which would normally be paid or

withheld, under a standard payment plan, to defray the support delinquency and interest and fees, if any;

(b) the standard for determining the amount of the monthly payment toward support debt under a financial hardship payment plan will take into consideration the total net income and assets of the obligor and obligor's current household, the United States poverty index promulgated each year by the United States office of management and budget, the actual amount of allowable special expenses described in [Rule IV], and other support obligations for dependents not in obligor's household;

(c) the CSED will determine the length of time the financial hardship determination will continue, based on the information provided by the obligor. The hardship determination period will not exceed two years unless there are extraordinary circumstances. The financial hardship payment plan will terminate at the end of the determined period, cessation of the financial hardship condition, or upon modification of the obligor's current/future support obligation, whichever occurs first. In the event the financial hardship condition continues after the end of such period, it shall be the obligor's duty to request further review prior to the date of expiration;

(d) only one request for a financial hardship determination is available to the obligor for each claimed incident of financial hardship. Further review will not be granted except upon a showing of circumstances not existing at the time of the original determination; and

(e) if the obligor disagrees with the CSED's financial hardship determination, the license suspension process will proceed to hearing, if the obligor has timely requested a hearing pursuant to the requirements of section 40-5-703, MCA.

AUTH: Sec. 40-5-713 MCA
IMP: Sec. 40-5-710 and 40-5-713 MCA

[RULE VII] PROCEDURES AND CRITERIA FOR RESULTANT HARDSHIP (1) The obligor must make a written claim for a resultant hardship to the CSED office of the administrative law judge. The obligor must mail a copy of claim to the CSED office issuing the notice of intent to suspend.

(2) The burden is on the obligor to prove that the claimed resultant hardship is not merely an inconvenience to the obligor, but is a tangible circumstance that would endanger or otherwise result in irreparable harm to the obligor's household, employees, legal dependents or other persons, businesses or entities served by the obligor.

AUTH: Sec. 40-5-713 MCA
IMP: Sec. 40-5-710 and 40-5-713 MCA

[RULE VIII] STAY OF LICENSE SUSPENSION (1) A stay of a license suspension may be issued by the CSED office of the

administrative law judge at any time subsequent to receipt in the CSED office of the administrative law judge of a written claim of resultant hardship or a written motion for a stay pending a financial hardship payment plan determination.

(2) The CSED office of the administrative law judge may issue an immediate stay if the hearing officer determines a reasonable chance of irreparable harm exists if a stay is not issued prior to a hearing on the resultant hardship claim or motion for a stay.

(3) Only one request for stay is available to the obligor for each claimed incident of financial or resultant hardship.

AUTH: Sec. 40-5-713 MCA
IMP: Sec. 40-5-710 and 40-5-713 MCA

[RULE IX] CONTESTED CASE HEARING PROCEDURES (1) Except as otherwise provided in these rules or the authorizing statutes, administrative hearings shall be requested and conducted as provided in Title 46, chapter 30, subchapter 6.

AUTH: Sec. 40-5-713 MCA
IMP: Sec. 40-5-703 and 40-5-713 MCA

3. The Department of Social and Rehabilitation Services proposes to adopt rules as reasonably necessary to implement and administer the provisions of Chapter 523, Laws of Montana, 1993. These laws, set forth at sections 40-5-701 through 40-5-713, MCA provide for the suspension of state-issued licenses of a child support obligor for non-payment of child support.

These rules explain the circumstances when, an obligor who is delinquent in the payment of child support, may avoid the suspension of his/her state-issued license. The standard payment plan and the financial hardship payment plan are described in the proposed rules. Extraordinary expenses related to special medical, dental and mental health needs are recognized as necessary reasons to reduce the monthly amount paid toward delinquent support arrears and thus, allow the obligor to avoid license suspension. The resultant hardship that license suspension will have upon the obligor's household, dependents, employees, businesses, etc. will also be considered in determining whether a significant hardship exists to justify a stay of the license suspension.

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 June 23, 1994.

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 May 16, 1994.

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

In the matter of the adoption of Rules I through X and the amendment of rule 46.30.1101 pertaining to review and modification of support orders	)))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED ADOPTION OF RULES I THROUGH X AND THE AMENDMENT OF RULE 46.30.1101 PERTAINING TO REVIEW AND MODIFICATION OF SUPPORT ORDERS

TO: All Interested Persons

1. On June 21, 1994, at 1:30 p.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana to consider the proposed adoption of Rules I through X and the amendment of rule 46.30.1101 pertaining to review and modification of support orders.

The Department of Social and Rehabilitation Services will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you request an accommodation, contact the department no later than 5:00 p.m. on June 10, 1994, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970.

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

[RULE I] AVAILABILITY OF REVIEW (1) The CSED will conduct administrative reviews of support orders if 30 months have elapsed since establishment of the order or most recent review and a material change of circumstances has occurred.

(2) The CSED will deny a request for review and will not conduct a periodic review and modification of a support order if any of the following conditions exist:

(a) less than 30 months have elapsed since establishment of the order or the most recent review and no material change of circumstances has occurred. For purposes of this rule, a significant change of circumstances includes, but is not limited to:

(i) an increase or decrease in a parent's net income of 25% or more;

(ii) one or more of the children have been adopted, attained the age of majority, become otherwise emancipated or died;

(iii) one or more of the children have moved from one parent's home to the home of the other parent. The move must be made with the intent that it be permanent and be:

(A) evidenced by the written consent of the other parent;

(B) ordered by a court of competent jurisdiction; or

(C) demonstrated to have continued for 90 days prior to the request for review and modification.

(iv) a child has developed special needs, as defined in the child support guidelines, which were not considered in the original order;

(v) social security benefits which were not considered in the original order are being paid to the children;

(vi) the order was set without reference to the guidelines; or

(vii) a parent has become a recipient of public assistance on behalf of a child;

(b) the CSED does not have an open IV-D case after the procedures in [Rule III] have been completed;

(c) the state of Montana does not have or cannot obtain personal or subject matter jurisdiction over a necessary party;

(d) the address of a necessary party has not been verified;

(e) review and adjustment services are being provided by another IV-D agency;

(f) a modification or adjustment action is pending in another forum, and activity has occurred within the last 6 months; or

(g) the support order will terminate within 6 months after the date the request for review is received by the CSED review and modification unit.

(3) For purposes of this subchapter a review is conducted by an arbitrator and is referred to in these rules as a settlement conference.

AUTH: Sec. 40-5-202 MCA
IMP: Sec. 40-5-202 MCA

[RULE II] RIGHT TO HEARING ON DENIAL (1) When a review is denied under [Rule I], the parents shall each have the right to request a hearing on whether the review was properly denied. The request for hearing shall be made to the CSED office of the administrative law judge, and must be received within 30 days after service of a notice concerning review request upon the parent requesting a hearing. The hearing shall be conducted in the same manner as a hearing under [Rule IX].

AUTH: Sec. 40-5-202 MCA
IMP: Sec. 40-5-202 MCA

[RULE III] PROCEDURE FOR TERMINATING REVIEW AFTER CLOSURE OF IV-D CASE (1) If a IV-D case is closed while a review or review request is pending, the CSED will mail notice to the other party offering the opportunity to apply for support enforcement services.

(2) If a new IV-D referral or an application for support enforcement services is not received by the CSED within 20 calendar days of the date the notice was received by the party, the review will be dismissed or the review request denied.

(3) If a new IV-D referral or an application for support enforcement services is received by the CSED within 20 calendar days of the date the notice was received by the party, the review will continue from the point at which the IV-D case was closed.

(4) No additional or duplicate fees for performing the administrative review and modification will be charged in a case re-opened under this section.

(5) This section does not apply when closure is the result of a good cause determination by the appropriate agency under 42 CFR part 433.147 or 45 CFR parts 232.40 through 232.49 that support enforcement may not proceed without risk of harm to the child or caretaker relative.

AUTH: Sec. 40-5-202 MCA
IMP: Sec. 40-5-202 MCA

[RULE IV] CHOICE OF LAW (1) All reviews and modifications under this subchapter will be conducted using Montana law, rules, procedures and child support guidelines.

(2) Any disputes about the effect or interpretation of Montana law, rules or procedures shall, if possible, be resolved with reference to the interpretations of the courts of Montana.

AUTH: Sec. 40-5-202 MCA
IMP: Sec. 40-5-202 MCA

[RULE V] TIME FRAME DETERMINATIONS (1) For purposes of determining time frames in reviews and modifications conducted under this subchapter, the following provisions apply:

(a) a request for review is received when the CSED review and modification unit has sufficient information to determine if review is available under [Rule I];

(b) the CSED shall take no action on a review or modification while the procedures under [Rule III] are being performed. The time provided for the performance of procedures under [Rule III] shall not be counted in any determination of time frames;

(c) a review is complete when the department's proposed modification is issued under [Rule VII], or upon the agreement of the parties to the proper amount of support under the child support guidelines; or

(d) a modification is complete when the hearing officer's order is entered under [Rule IX], or an order is entered by the CSED upon the agreement of the parties.

AUTH: Sec. 40-5-202 MCA
IMP: Sec. 40-5-202 MCA

[RULE VI] REQUESTS FOR DISCOVERY (1) Requests for discovery by parents in administrative review and modification cases must be received in the CSED office of the administrative law judge on or before the 10th day after service of a review notice and order to produce upon the parent requesting discovery.

(2) Requests for discovery by the CSED must be received in the CSED office of the administrative law judge on or before the 10th day prior to the settlement conference.

(3) Requests for discovery may be denied for untimeliness or for other good and reasonable cause.

AUTH: Sec. 40-5-202 MCA
IMP: Sec. 40-5-202 and 40-5-273 MCA

[RULE VII] SETTLEMENT CONFERENCE (1) In accordance with ARM 46.30.1101 and [Rule I] the CSED will determine if a review is appropriate. If it is determined appropriate:

(a) it shall issue an order to the parties:

(i) advising them that a settlement conference to discuss the proper amount of the support order will be conducted by the CSED;

(ii) ordering the parents to complete and submit a Montana child support guidelines financial affidavit, along with copies of their federal income tax returns for the preceding 2 years and their latest pay stub;

(iii) advising them of the discovery period provided in [Rule III(1)(a)].

(2) Upon the completion of discovery, but no sooner than 30 calendar days after service of the settlement conference notice and order to produce, the CSED will issue an order to the parties:

(a) requiring them to appear at a settlement conference; and

(b) advising them that all exhibits must be submitted for exchange at least 10 days prior to the date of the settlement conference.

(3) The settlement conference will be recorded, and shall be conducted by the CSED via telephone conference. At the request of a party and upon a showing that the party's case was substantially prejudiced by the lack of an in-person settlement conference the CSED may, at the close of a telephone hearing, grant a de novo in-person settlement conference.

(4) In a settlement conference under this subchapter, the CSED shall have the same powers and duties as a hearing officer under subchapter 6 of this chapter.

(5) If the parties are unable to reach an agreement on the proper amount of child support due under the Montana child support guidelines or the availability of health insurance, the CSED will issue a proposed modification containing findings of fact, conclusions of law and a proposal increasing or decreasing the support order or finding that the support order should not be modified.

(6) The CSED's findings of fact shall be conclusive unless a party requests a modification hearing within 30 days as provided in [Rule IX].

AUTH: Sec. 40-5-202 MCA
IMP: Sec. 40-5-202 MCA

[RULE VIII] NEGLIGIBLE CHANGE (1) If the difference between the existing support order and the proposed adjustment is less than $25.00 per month, the change may be considered negligible and the child support provisions of the existing support order need not be modified.

(2) Provisions in the existing order for the medical needs of the child may be modified even if the change in the child support amount is negligible.

AUTH: Sec. 40-5-202 MCA
IMP: Sec. 40-5-202 MCA

[RULE IX] MODIFICATION HEARING (1) A party aggrieved by the determination of the CSED at the settlement conference may request a hearing on the proposed modification.

(2) The request for hearing must be received in the office of the administrative law judge within 30 days after the notice of proposed modification is received by the party requesting a hearing.

(3) The record at the modification hearing shall consist of the record of the settlement conference, and the testimony, exhibits or arguments presented at the time of the modification hearing.

(4) After the modification hearing, the hearing officer shall enter an order:

(a) adopting the findings of fact and conclusions of law and ordering modification of the support obligation in accordance with the CSED's proposed modification;

(b) changing all or any part of the CSED's findings of fact, conclusions of law, Montana child support guidelines calculations or determinations on variances from the guidelines and ordering modification of the support obligation accordingly;

(c) rejecting the CSED's findings, conclusions, calculations and variances in whole or in part, making new findings of

fact and conclusions of law and ordering modification of the support obligation accordingly; or

(d) remanding the matter to the CSED with instructions for further review investigation or settlement conference.

(5) The hearing officer's determination after a modification hearing constitutes a final agency decision subject to judicial review under Title 2, chapter 4, part 6, MCA.

AUTH: Sec. 40-5-202 MCA
IMP: Sec. 40-5-272 and 40-5-273 MCA

[RULE X] ADDITIONAL HEARING PROCEDURES (1) To the extent they are not inconsistent with the provisions of this subchapter, the overall hearing procedures set forth in subchapter 6 of this chapter are applicable to settlement conferences and modification hearings.

AUTH: Sec. 40-5-202 MCA
IMP: Sec. 40-5-273 MCA

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

46.30.1101 MODIFICATION OF SUPPORT ORDERS (1) The CSED will conduct a review and modification of a support order which it is enforcing:

(~~1~~a) At the request of ~~either~~ the IV-D agency of another state, an obligor or obligee, and upon a verified written petition showing a material change of circumstances as defined in [Rule I(1)(b)], a showing that the support order is inconsistent with the Montana child support guidelines, or if the obligor is not required to get and keep health insurance for the child whenever it is available through employment or union; ~~, the CSED will review a support order which the CSED is enforcing for possible modification. The material change of circumstances necessary to invoke such review are:~~

(b) At 30 month intervals after establishment of the order or the most recent review in any case in which support rights are assigned under section 53-2-613, MCA; or

~~(a) a change in employment status;~~

~~(b) a change in prevailing economic conditions;~~

~~(c) chronic ill health of the obligor, obligee, or the child;~~

~~(d) personal injury or disability;~~

~~(e) a change in net income of the obligor or obligee greater than 10 percent;~~

~~(f) a permanent change in custody of a child;~~

~~(g) additions or decreases in either the obligor's or obligee's or both of their family sizes.~~

(2c) ~~If the CSED determines from a petition that a material change of circumstances exists or i~~If the CSED finds on

its own motion with reference to CSED written procedures that a modification may be appropriate.~~, the CSED shall examine the financial circumstance of the obligee and the obligor. When the examination tends to show with reference to the child support guidelines developed under 40-5-209, MCA, that the support order should be adjusted by at least 25 percent or $25 per month, whichever is greater, the CSED shall:~~

~~(a) for support orders established under 40-5-225, MCA, order the non-petitioning party or parties to show cause at an administrative hearing why the support order should not be prospectively modified in accordance with the guidelines; and~~

~~(b) for support orders established by a district court, make application to the district court as provided for by 40-5-208(2)(b)(iii), MCA.~~

~~(3) After service of a show cause order under (2)(a) of this rule, to contest a proposed modification a non-petitioning party must request a hearing within 20 days. Failure to request a hearing within the 20 day period shall be deemed an admission that the modification is well taken and thereafter the modification may be summarily ordered by the hearing officer.~~

AUTH: Sec. 40-5-202 MCA
IMP: Sec. 40-5-226 MCA

4. On December 28, 1992, the United States Department of Health and Human Services published its final regulations implementing section 103(c) of the Family Support Act of 1988 (P.L. 100-485, codified at 42 U.S.C. § 666(a)(10)(B) and (C), effective October 13, 1993). The Child Support Enforcement Division (CSED) proposes amendment of ARM 46.30.1101 and new rules I through X to change department procedures in accordance with the federal requirements, allowing periodic review and adjustment of orders to meet child support and health insurance guidelines. The proposed rules are necessary in order to allow the department to process requests for review and adjustment of orders in a more efficient and timely manner. The proposed rules provide for improved services to obligors and obligees in CSED cases by simplifying and expediting the procedures for review and adjustment of orders. Procedures for requesting a review, issuance of subpoenas and agreement to adjust support orders are simplified. A new procedure, i.e. settlement conferences, will reduce the number of administrative hearings in contested cases through the use of arbitration.

The proposed change is necessary to conform Montana policies and procedures to federal requirements. Failure to conform to federal requirements will result in immediate imposition of monetary sanctions consisting of reduction of federal funding for the Aid to Families with Dependent Children program.

In addition, federal audit standards require the CSED to meet stringent case processing regulations and time deadlines. The case processing regulations require CSED to review and adjust the orders in all open AFDC, IV-E foster care and medicaid-only cases at least once every 3 years. In calendar year 1994, approximately 3,500 orders will have to be reviewed under this requirement. In addition, over 500 requests for review are currently pending. All reviews and adjustments must be completed within 6 months under federal deadline regulations. In order to meet these standards, the CSED needs efficient, speedy procedures for processing reviews and adjustments. The proposed rules are needed to implement the CSED's expedited procedures, developed after intensive study of the best practices of other states.

5. 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 June 23, 1994.

6. 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 May 16, 1994.

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

In the matter of the adoption of Rule I and the amendment of rules 46.10.314, 46.10.402, 46.10.408 and 46.10.409 pertaining to transitional child care	)))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED ADOPTION OF RULE I AND THE AMENDMENT OF RULES 46.10.314, 46.10.402, 46.10.408 AND 46.10.409 PERTAINING TO TRANSITIONAL CHILD CARE

TO: All Interested Persons

1. On June 15, 1994, at 10:00 a.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana to consider the proposed adoption of Rule I and the amendment of rules 46.10.314, 46.10.402, 46.10.408 and 46.10.409 pertaining to transitional child care.

The Department of Social and Rehabilitation Services will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you request an accommodation, contact the department no later than 5:00 p.m. on June 6, 1994, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970.

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

[RULE I] DEFINITIONS For purposes of this chapter, the following definitions apply:

(1) "Assistance unit" means a person or persons who live together as a family, who are related by blood, marriage or adoption, all of whom meet the eligibility requirements for AFDC and have their needs included in the assistance grant.

(2) "Caretaker relative" means a person within a specified degree of kinship to the dependent child as set out in ARM 46.10.302, who lives with the dependent child and exercises care and control over the child.

(3) "Dependent child" means a person who:

(a) meets the age requirements set out in ARM 46.10.301;

(b) is needy;

(c) is deprived of parental support or care due to any of the causes set out in ARM 46.10.303; and

(d) lives with a specified relative as set forth in ARM 46.10.302.

(4) "Grant" means the monthly cash payment to the AFDC assistance unit.

(5) "Needy" means lacking income and resources sufficient to provide a reasonable subsistence according to the assistance standards and resource limits contained in ARM 46.10.403 and 46.10.406.

(6) "Parental support" means financial support from a parent sufficient to met the subsistence needs of the child or children, as determined by the assistance standards contained in ARM 46.10.403.

(7) "Principal wage earner" means the parent in a family applying for or receiving an AFDC-unemployed parent assistance grant who earned the most gross income during the 24-month period immediately preceding the month of application, or the parent designated by the department in a case where both parents earned the same amount in the 24-month period immediately preceding the date of application.

AUTH: Sec. 53-4-212 and 53-4-719 MCA
IMP: Sec. 53-4-211 and 53-4-703 MCA

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

46.10.314 CHILD SUPPORT PROGRAM (1) Subject to the exception provided in subsection (~~7~~8), for each AFDC and AFDC-related medicaid only case where deprivation of parental support is based on absence of a parent from the home as a condition of eligibility, the applicant or recipient must:

Subsections (1)(a) and (1)(b) remain the same.

(2) "Child support rights" means a child's legal entitlement to cash assistance from a parent with whom the child does not live.

(3) "Medical support rights" means a child's legal entitlement to health insurance coverage and/or assistance with medical expenses from a parent with whom the child does not live.

(~~2~~4) The department of social and rehabilitation services hereby adopts and incorporates by reference 45 CFR 232.40 through 232.43, as amended through October 1, 1993, pertaining to good cause for refusal to cooperate. Copies of 45 CFR 232.40 through 232.43, as amended through October 1, 1993, may be obtained from the Department of Social and Rehabilitation Services, Office of Legal Affairs, P.O. Box 4210, Helena, MT 59604-4210. Good cause exists in the following circumstances:

Subsections (2)(a) through (3)(b) remain the same in text but are renumbered (4)(a) through (5)(b).

(~~4~~6) There shall be no denial, delay or discontinuance of assistance pending a determination of good cause for refusal to cooperate if the applicant or recipient has complied with the requirements of paragraph (~~3~~5) above. However, the department may recover amounts paid pending determination if no good cause is found and the applicant continues to refuse to cooperate.

Subsections (5) through (8) remain the same in text but are renumbered (7) through (10).

AUTH: Sec. 53-4-211, 53-4-212 and 53-6-113 MCA
IMP: Sec. 53-4-211 and 53-4-231 MCA

46.10.402 STANDARD OF ASSISTANCE AND ASSISTANCE UNIT

Subsection (1) remains the same.

(2) ~~An assistance unit is composed of persons whose needs are met by the grant amount who form a family group, and all of whom meet the requirements for AFDC.~~ Parents and all minor siblings living with the dependent child must be included in the assistance unit unless the individual fails to meet nonfinancial criteria. A separate grant amount shall be computed for each assistance unit regardless of the number of units in a household with the exception of a dual stepparent household as defined in ARM 46.10.305. Dual stepparent assistance units must be combined as one and issued one grant.

AUTH: Sec. 53-4-212 and 53-4-241 MCA
IMP: Sec. 53-4-211 and 53-4-241 MCA

46.10.408 TRANSITIONAL CHILD CARE, REQUIREMENTS

~~(1) Transitional child care, if necessary to permit a member of the AFDC family to accept or retain employment, and if requested, shall be provided to needy families with dependent children:~~

~~(a) under age 13; or~~

~~(b) age 13 or older if:~~

~~(i) the child is physically or mentally incapable, as determined by a physician or licensed or certified psychologist, of caring for himself; or~~

~~(ii) if under the supervision of the court and who would be a dependent child except for the receipt of benefits under supplemental security income under Title XVI or foster care under Title IV-E of the Social Security Act.~~

(1) A family which is no longer eligible for AFDC qualifies for transitional child care assistance if:

(a) a qualifying child as defined in subsection (2) of this rule is present in the home;

(b) the family meets the requirements of subsection (3) of this rule;

(c) the family's income does not exceed the maximum income specified for that size family in the sliding fee scale contained in ARM 46.10.409;

(d) child care is necessary in order for a member of the family to accept or retain employment; and

(e) the family requests assistance and provides verification of income necessary to determine eligibility.

(2) A qualifying child is one who meets the definition of a dependent child in Rule I except that the child is not needy and is:

(a) under age 13; or

(b) age 13 or older if:

(i) the child is physically or mentally incapable of caring for himself, as determined by a physician or licensed or certified psychologist; or

(ii) under the supervision of the court and would be a dependent child except for the receipt of supplemental security income benefits under Title XVI or foster care benefits under Title IV-E of the Social Security Act.

(~~2~~3) ~~The family is~~ To be eligible for transitional child care ~~if~~ assistance, a family must:

(a) ~~the family~~ have ceased to be eligible for AFDC because of either:

Subsections (1)(a)(i) and (1)(a)(ii) remain the same.

(iii) increased income from employment or increased hours of employment~~,~~; and

(b) ~~the family~~ have received AFDC in at least three (3) of the six (6) months immediately preceding the first month of ineligibility~~; and~~.

~~(c) the family requests transitional child care benefits, provides required information and meets application standards.~~

(~~3~~4) Eligibility for transitional child care begins with the first month which the family is ineligible for AFDC~~, for~~ due to reasons ~~included~~ specified in subsection (~~2~~3)(a)(i), (ii) or (iii) and continues for a period of 12 consecutive months unless ~~the caretaker relative~~:

(a) the caretaker relative terminates employment without good cause; ~~or~~

(b) the caretaker relative fails to cooperate ~~in establishing payments and enforcing~~ with child support ~~obligations,~~ requirements;

(c) the child is no longer deprived of parental care or support, except in the case of a family which qualified for AFDC based on the unemployment of the parent; or

(d) the caretaker relative fails to pay the child care provider the family's co-payment.

Subsection (4) remains the same in text but is renumbered (5).

(a) If the family reestablishes eligibility for AFDC, a new 12 month period of eligibility for transitional child care may be established if the family meets the conditions of eligibility found in subsections (1), ~~and~~ (2) and (3) above.

AUTH: Sec. 53-4-212 MCA
IMP: Sec. 53-4-701 and 53-4-716 MCA

46.10.409 SLIDING FEE SCALE FOR TRANSITIONAL CHILD CARE

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

(2) The department will pay the portion of the family's child care costs, based on the established reimbursement rates for the appropriate type of care, which the family is not required to pay pursuant to subsection (1) of this rule. If an overpayment occurs for any reason, the family is required to repay to the department the amount which was overpaid.

AUTH: Sec. 53-4-212 and 53-4-719 MCA
IMP: Sec. 53-4-716 and 53-4-701 MCA

4. The Department of Social and Rehabilitation Services (the department) provides transitional child care (TCC) assistance to participants of the Aid to Families with Dependent Children (AFDC) program who lose their financial assistance because of increased hours or earnings from employment or as a result of the loss of income disregards used in computing eligibility due to the expiration of time limits on such disregards. TCC assistance is available for 12 months from the date of ineligibility for AFDC financial assistance.

Like the AFDC program, TCC assistance is a federally funded program which must be administered by the states in accordance with federal requirements in order to receive federal funding. The Administration for Children and Families (ACF) of the U.S. Department of Health and Human Services is the federal agency which administers the TCC program. Recently representatives of the ACF reviewed the state of Montana's TCC program and identified several omissions from the department's administrative rules governing TCC assistance.

The amendment of ARM 46.10.408 and 46.10.409 governing TCC is therefore necessary in order to make the changes required by the ACF. Specifically, ARM 46.10.408(3) currently states that a family which qualifies for TCC will be eligible for a period of 12 consecutive months unless the caretaker relative terminates employment without good cause or fails to cooperate with child support requirements.

However, there are several other reasons why a family may lose eligibility for TCC assistance during the 12-month period of potential eligibility which are not currently addressed in the rule. Subsection (3) of ARM 46.10.408 is thus being amended to provide that eligibility can also be terminated if there is no longer a child in the household who is deprived of parental care or support or if the family fails to pay their child care provider their share of the fees for care provided.

ACF also noted that the rules must specify that a family which receives more TCC assistance than it is entitled to for any reason is required to repay the overpayment to SRS. Subsection

(2) of ARM 46.10.409 is therefore being amended to state that all overpayments are required to be repaid.

The department is also taking this opportunity to re-organize subsection (1) of ARM 46.10.408 and make other minor changes in the wording of ARM 46.10.408. These changes do not indicate any change in policy but are merely intended to make its meaning clearer.

A number of terms are used in Title 46, Chapter 10, pertaining to Aid to Families with Dependent Children (AFDC), which are currently not defined. The adoption of a general definitions rule is necessary to ensure that the meaning of these terms used in the AFDC rules is clear. It should be noted that the AFDC rules already contain many definitions pertaining to terms used in a particular subchapter rather than throughout the chapter. These definitions will remain in the subchapters to which they are pertinent.

Additionally, the definition of "assistance unit" has been deleted from ARM 46.10.402(2) and moved to the new definitions rule. ARM 46.10.314 also has been amended to include definitions of the terms "child support rights" and "medical support rights". Since these terms are used only in ARM 46.10.314, they are defined in that rule rather than in the general definitions rule.

The department is also amending ARM 46.10.314 to incorporate by reference the federal regulations pertaining to good cause for refusal to cooperate with child support requirements at 45 CFR 232.40 through 232.43. This is necessary because ARM 46.10.314 contains only a broad outline of the good cause policy and does not put the public on notice of the details of the good cause policy contained in the federal regulations. This deficiency in the rule came to light when the other changes to ARM 46.10.314 were being made, which is why the federal regulations are being incorporated at this time.

5. 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 June 23, 1994.

6. 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 May 16, 1994.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 2.21.137 and 2.21.144 relating to Sick Leave	))))	NOTICE OF AMENDMENT OF ARM 2.21.137 AND 2.21.144 RELATING TO SICK LEAVE

TO: All Interested Persons.

1. On March 17, 1994, the Department of Administration published notice of the proposed amendment to ARM 2.21.137 and 2.21.144 pertaining to sick leave at page 480 of the 1994 Montana Administrative Register, issue number 5.

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

2.21.137 SICK LEAVE REQUESTS (1) - (6) Same as proposed rule.

(7) The agency may require an employee to be examined by a licensed physician or a licensed practitioner of the agency's choice. A medical examination must be job-related and consistent with business necessity. ~~The need for the examination may result from some evidence of problems related to job performance or safety, or an examination may be necessary to determine whether individuals in physically demanding jobs continue to be fit for duty.~~ The agency shall pay the costs of such an examination.

(Auth. 2-18-604, MCA; Imp. 2-18-618, MCA)

2.21.144 INDUSTRIAL ACCIDENT (1) Same as proposed rule.

(a) Sick leave may be used and counted toward the required six-day waiting period. Departments should notify the state compensation insurance fund of approved sick leave benefits paid in this situation.

(b) Same as proposed rule.

(Auth. 2-18-604, MCA; Imp. 2-18-618, MCA)

3. Three comments were received.

COMMENT: A person asked whether the addition of the new language in ARM 2.21.137 would now require agencies to pay for the medical certification which can be required for paid sick leave.

RESPONSE: It is our interpretation that the new language does not change ARM 2.21.137, which allows an agency to require an employee to obtain and pay the cost of a medical certification as a condition for the use of paid sick leave, not as a condition of continued employment.

COMMENT: Some of the new language included in ARM 2.21.137 (7) appears to be outside the scope of the rule. A separate rule should be developed which includes that language.

RESPONSE: The language was removed and a new rule will be developed.

COMMENT: In ARM 2.21.144 (1)(a), it was suggested that the entire name for state compensation insurance fund be inserted.

RESPONSE: The entire name was inserted into the rule.

By: _____
Lois Menzies, Director
Department of Administration

_____
Dal Smilie, Chief Legal Counsel
Rule Reviewer

Certified to the Secretary of State May 16, 1994.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 2.21.704 relating to Leave of Absence Without Pay	))))	NOTICE OF AMENDMENT OF ARM 2.21.704 RELATING TO LEAVE OF ABSENCE WITHOUT PAY

TO: All Interested Persons.

1. On March 17, 1994, the Department of Administration published notice of the proposed amendment to ARM 2.21.704 pertaining to leave of absence without pay at page 483 of the 1994 Montana Administrative Register, issue number 5.

2. The agency has amended the rule as proposed.

3. No testimony or comments were received.

By: _____
Lois Menzies, Director
Department of Administration

_____
Dal Smilie, Chief Legal Counsel
Rule Reviewer

Certified to the Secretary of State May 16, 1994.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 2.21.903, 2.21.909 and 2.21.912 relating to Leave of Absence Due to Disability and Maternity	)))))	NOTICE OF AMENDMENT OF ARM 2.21.903, 2.21.909 AND 2.21.912 RELATING TO LEAVE OF ABSENCE DUE TO DISABILITY AND MATERNITY

TO: All Interested Persons.

1. On March 17, 1994, the Department of Administration published notice of the proposed amendment to ARM 2.21.903, 2.21.909, 2.21.912 pertaining to leave of absence due to disability and maternity at page 473 of the 1994 Montana Administrative Register, issue number 5.

2. The agency has amended the rules as proposed.

3. No testimony or comments were received.

By: Lois Menzies
Lois Menzies, Director
Department of Administration

Dal Smilie
Dal Smilie, Chief Legal Counsel
Rule Reviewer

Certified to the Secretary of State May 16, 1994

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 2.21.1604 and 2.21.1606 relating to Alternate Work Schedules	)))))	NOTICE OF AMENDMENT OF ARM 2.21.1604 and 2.21.1606 RELATING TO ALTERNATE WORK SCHEDULES

TO: All Interested Persons.

1. On March 17, 1994, the Department of Administration published notice of the proposed amendment to ARM 2.21.1604 and 2.21.1606 pertaining to alternate work schedules at page 476 of the 1994 Montana Administrative Register, issue number 5.

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

2.21.1604 ELIGIBILITY (1) Same as proposed rule.

(2) Provisions of this policy apply only to alternate work schedules requested by the employee and not to work schedules established by management. Nothing in this policy limits the authority of the department to establish or change work schedules as necessary for the successful operation of ~~agency~~ department programs.

(3) Approval of an alternate schedule request for an employee is at the department's discretion, based on the considerations listen in ARM 2.21.1605 and 2.21.1606 and any other factors which the ~~agency~~ department deems appropriate.

(4) An ~~alternative~~ alternate work schedule should be considered when ~~an agency~~ department is required to make a reasonable accommodation to a known physical or mental limitation of an otherwise qualified individual with a disability unless to do so would impose an undue hardship on the agency. Approval for an ~~alternative~~ alternate work schedule under these conditions is not subject to the limitations in ARM 2.21.1605.

(5) Same as proposed rule.

(Auth. 2-18-102, MCA; Imp. 2-18-102, MCA)

3. No testimony or comments were received. The changes noted above make terminology consistent.

By: Lois Menzies
Lois Menzies, Director
Department of Administration

Dal Smilie
Dal Smilie, Chief Legal Counsel
Rule Reviewer

Certified to the Secretary of State May 16, 1994.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 2.21.3702, 2.21.3703, 2.21.3708, 2.21.3709, 2.21.3712, 2.21.3713, 2.21.3715, 2.21.3719, 2.21.3720, 2.21.3721, 2.21.3724, 2.21.3726, 2.21.3728, 2.21.3735 and adoption of ARM 2.21.3704 relating to recruitment and selection	)	NOTICE OF AMENDMENT OF ARM 2.21.3702, 2.21.3703, 2.21.3708, 2.21.3709, 2.21.3712, 2.21.3713, 2.21.3715, 2.21.3719, 2.21.3720, 2.21.3721, 2.21.3724, 2.21.3726, 2.21.3728, 2.21.3735 AND ADOPTION OF 2.21.3704 RELATING TO RECRUITMENT AND SELECTION

TO: All Interested Persons.

1. On March 17, 1994, the Department of Administration published notice of the proposed amendment to ARM 2.2.3702, 2.21.3703, 2.21.3708, 2.21.3709, 2.21.3712, 2.21.3713, 2.21.3715, 2.21.3719, 2.21.3720, 2.21.3721, 2.21.3724, 2.21.3726, 2.21.3728, 2.21.3735 and adoption of 2.21.3704 pertaining to recruitment and selection at page 487 of the 1994 Montana Administrative Register, issue number 5.

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

2.21.3702 POLICY AND OBJECTIVES (1) Same as proposed rule.

(2) Nothing in these rules is intended to:

(a) limit a department's discretion to select a recruitment method for a vacancy, including, but not limited to, internal recruitment, promotion, reassignment or training assignment, ~~external to the~~ job registry recruitment, or external to the general public recruitment provided the department follows applicable rules for whichever method is selected; or

(b) Same as proposed rule.

(3) Remains the same.

(Auth. 2-18-102, MCA;Imp. 2-18-102, 2-18-1201 et seq., MCA)

One comment was received.

COMMENT: A request was made to rename the step in the selection procedure called "external to job registry" because it is confusing when we also refer to "external to the general public" which is a separate step.

RESPONSE: We agree. This step has been renamed "job registry recruitment" throughout these rules.

2.21.3703 DEFINITIONS (1) - (10) Same as proposed rule.

(11) "Selection procedures" means procedures to evaluate applicants' qualifications as they relate to the knowledge,

skills and abilities and education and experience for a job. These may include, but are not limited to:

(a) Performance tests--evaluate an applicant's knowledge, skill, or ability on a task very similar or identical to that required on the job, such as a typing test or driving test.

(b) Physical tests--generally include endurance and strength measurements.

(c) Reference checks--are inquiries that relate to an applicant's possession of job-related qualifications and are made by persons able to evaluate the applicant's job-related qualifications, such as a former or current supervisor.

(d) Structured interviews--consist of job-related questions or situations asked to assess an applicant's knowledge, skills, and/or abilities to perform the job. Questions or situations may be administered in oral or written form.

(e) Supplement questions--describe a specific area of the job in detail and ask applicants to describe their knowledge, skills and abilities, training and/or experience as it relates to the specific area.

(f) Training and experience evaluations--examine an applicant's education, training and/or experience as they relate to the job.

(g) Written tests--are paper-and-pencil exams that evaluate job-related qualifications and may include, but are not limited to, true or false, multiple choice, fill-in-the-blank or essay items.

(h) Work samples--are products that result from an applicant's efforts and are representative of the applicant's level of competence in a specific area(s). A work sample may be requested at the time of application or may be requested later in the process. Examples include a budget or a work plan that was prepared by the applicant, a legal brief or computer program written by the applicant or a thesis or educational paper written by the applicant. A written work sample may be used to evaluate an applicant's written communication skills, when appropriate.

(12) Same as proposed rule.

(Auth. 2-18-102, MCA; Imp. 2-18-102, MCA)

Two comments were received.

COMMENT: Removing "any interested" from phrase "any interested persons" in the definition of external recruitment was suggested.

RESPONSE: The department disagrees. One objective of state's recruitment is to actively recruit persons who are really interested and well matched for positions. For this reason, we have issued guidelines on writing vacancy announcements that contain extensive information about the position.

COMMENT: Adding a brief definition of "job registry recruitment" was suggested.

RESPONSE: The department disagrees. Because the State Employee Protection Act, 2-18-1201 et seq., MCA, will sunset on June 30, 1995, we have attempted to restrict the definition of terms related solely to the act in one new rule.

2.21.3704 JOB REGISTRY PROGRAM (1) Same as proposed rule.

(2) For purposes of administering this rule, the following definitions apply:

(a) "Agency" means, as provided in 2-18-1202, MCA, a department, board, commission, office, bureau, institution, or unit of state government recognized in the state budget, but does not include the Montana university system.

~~(a)~~(b) "Employee" means, as provided in 2-18-1202, MCA, "a person employed by the state who has achieved permanent status, as defined in 2-18-101, MCA or employed by the senate or house of representatives during the 53rd legislature for a period of at least 8 continuous weeks."

(b) relettered as (c) and remains the same.

~~(c)~~(d) "Effective date of lay-off" means the date determined by the agency to be the end of employment for an employee, allowing adequate time for appropriate notice before ~~notification prior to~~ lay-off.

(3) Same as proposed rule.

(4) ~~When posting positions, departments~~ Agencies must follow this procedure~~:~~ when posting positions.

(a) This step is called internal to ~~department~~ agency recruitment ~~posting.~~ ~~-~~ An ~~department~~ agency may post a vacant position internally to the ~~department~~ agency in compliance with ~~department~~ agency policy or a provision of a collective bargaining agreement. The ~~department~~ agency shall notify employees laid off from the ~~department~~ agency of internal vacant positions for 1 calendar year from the effective date of lay-off. If a selection is not made internally, the ~~department~~ agency shall post the vacancy externally to the job registry program.

(b) This step is called ~~External to~~ job registry ~~posting~~ recruitment.~~-~~ An ~~department~~ agency shall post all permanent and temporary vacant positions, except positions exempt under 2-18-103 and 2-18-104, MCA, ~~externally~~ to the job registry program before posting to the general public. Current employees of the ~~department~~ agency may not be considered with job registry applicants at this step. Seasonal positions are excluded if the ~~department~~ agency is re-employing an employee who was terminated at the expiration of seasonal employment.

(c) This step is called ~~External to~~ general public recruitment ~~posting~~ ~~-~~ An ~~department~~ agency may post a vacant position externally to the general public if there are no qualified participants on the job registry or the ~~department~~ agency does not hire a referred job registry participant for documented, job-related reasons.

(5) Within 3 working days of receiving notice of a vacant position, the job registry coordinator shall contact the ~~department~~ agency personnel officer with one of the following options:

(a) No qualified participants are listed on the job registry and the ~~department~~ agency is authorized to post externally to the general public.

(b)- (c) Remain the same.

(6) An ~~department~~ agency shall determine if the referred participants are qualified. An ~~department~~ agency may hire with or without a competitive selection process for participants who are referred from the job registry. An ~~department~~ agency may use its usual selection procedures, such as supplement questions, ~~a~~ structured interview, performance test, or reference checks for participants ~~who are referred from the job registry~~. Because recruitment from the job registry program is not a solicitation for applications from the general public, veterans', handicapped persons' and Indian employment preferences do not apply.

(7) ~~If, from a review of the placement files, a department determines that there are possible qualified participants on the job registry for a vacant position, t~~The ~~department~~ agency shall hire one of the participants unless the selection procedures define the participant as not qualified or there is a bona fide occupational qualification that the participant does not meet.

(8) If two or more participants listed on the job registry are equally qualified for a vacant position, the ~~department~~ agency shall select the participant with the longest continuous state government service.

(9) An ~~department~~ agency is encouraged to establish a training assignment, according to state policy, whenever possible to assist in hiring employees who have been laid off.

(10) An ~~department~~ agency should notify all referred participants if a job registry participant is selected or if an department agency is going to recruit externally to the general public.

(11) An agency should notify the job registry coordinator when an offer to hire is made or when a referred job registry participant is hired. An agency should also contact the job registry coordinator when the agency reinstates or rehires a participant who was laid off from the agency.

(12) An employee may remain on the job registry through June 30, 1995 or until employment at a grade equal to the position from which the employee was laid off is secured, whichever occurs first. This ends the employee's participation on the job registry. Acceptance of a permanent position at a lower grade or acceptance of a seasonal or a temporary position does not end an employee's right to continue participation in the job registry program.

~~(11)~~ (13) An ~~department~~ agency is encouraged to adopt a selection review procedure to resolve complaints from job registry participants who are not selected for positions.

(Auth. 2-18-102, MCA; Imp. 2-18-102, 2-18-1201 et seq., MCA)

Four comments were received.

COMMENT: The State Employee Protection Act, 2-18-1201 et seq., MCA, includes a specific definition of the term "agency"

which is used for purposes of administering the act. In other rules, the term "department" is more appropriately used.

RESPONSE: The department has made this change.

COMMENT: It was suggested the department use the term "recruitment" rather than "posting" to describe the steps in the recruitment process.

RESPONSE: The department has made this change.

COMMENT: The Department of Administration in the ongoing administration of the job registry program has identified problems not addressed in the original notice.

RESPONSE: These problems are addressed with the addition of (11) and (12) of this rule.

2.21.3708 EXTERNAL RECRUITMENT (1) External recruitment must be used if a selection is not made through internal recruitment, a training assignment or ~~pursuant to~~ job registry recruitment, as explained in ARM 2.21.3704 ~~new Rule 1~~. The vacancy announcement must be sent to the job service for each permanent and seasonal position that is opened to external recruitment.

(2) through (7) Same as proposed rule.

(Auth. 2-18-102, MCA; Imp. 2-18-102, MCA)

Two comments were received.

COMMENT: A request was made to change the wording in (1) to make clearer the role and importance of the job registry.

RESPONSE: The department has used the suggested language.

COMMENT: It was questioned whether the term "training assignment" is needed in this rule because training assignments are to be considered in internal recruitment and in job registry recruitment.

RESPONSE: The department believes the term "training assignment" is needed in the external recruitment rule. A department may use a training assignment when recruiting externally, even if the department has considered a training assignment in internal and job registry recruitment.

2.21.3715 EQUAL EMPLOYMENT OPPORTUNITIES (1) and (2) Same as proposed rule.

(3) At any step in the recruitment and selection process and ~~I~~in accordance with the Americans with Disabilities Act of 1990, a department is required to make a reasonable accommodation to a known physical or mental limitation of an otherwise qualified individual unless to do so would impose an undue hardship. ~~A reasonable accommodation may be required at any step of~~ Steps in the recruitment and selection process may

include ~~such as when~~ submitting an application, interviewing, testing, etc. Reasonable accommodation requests may be evaluated on a case-by-case basis.

(Auth. 2-18-102, MCA; Imp. 2-18-102, MCA)

One comment was received.

COMMENT: We received a request to clarify when and how a request for reasonable accommodation should be evaluated and implemented by supervisors.

RESPONSE: We agree and made the appropriate change.

3. Two general comments were received.

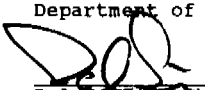
COMMENT: A commenter from a department with agencies allocated to the department for administrative purposes only (attached-to agencies) requested that the department of administration use the term "agency" rather than "department" to refer to covered governmental units throughout its rules adopted under the authority of 2-18-102, MCA. The commenter was concerned the attached-to agencies would somehow escape coverage by the rules.

RESPONSE: In the adoption of these rules, the department of administration relies on the definitions of "department" and "department head" found in 2-15-102, MCA, rather than on the definition of "agency" found in this part. While "agency" is defined more widely to include "department," the term also includes divisions, bureaus and units of the executive branch. There is no definition of "agency head" which corresponds with "department head." Because the term "agency head" could be construed to mean the head of a smaller unit of state government than a department and because the department of administration only intends to delegate to the "department head" the authority to implement these rules, the terms "department" and "department head" are appropriate. The department to which an agency is allocated retains the authority to provide staff for the agency (2-15-121, MCA), and the authority to administer the personnel rules flows through the department head and may be delegated by him or her, as provided in 2-15-112, MCA.

COMMENT: Some of the proposed changes in ARM 2.21.3703 and 2.21.3704 do not comply with the required style for administrative rules.

RESPONSE: The department made several changes in these rules to comply with the required style for writing administrative rules.

By 
Lois Menzies, Director
Department of Administration


Dal Smilie, Chief Legal Counsel
Rule Reviewer

Certified to the Secretary of State May 16, 1994

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 2.21.5006, 2.21.5007, 2.21.5009, 2.21.5011, and adoption of New Rules I and II relating to Reduction in Work Force	)))))	NOTICE OF THE AMENDMENT OF ARM 2.21.5006, 2.21.5007, 2.21.5009, 2.21.5011 AND ADOPTION OF NEW RULES I (2.21.5007A) AND II (2.21.5007B) RELATING TO REDUCTION IN WORK FORCE

TO: All Interested Persons.

1. On March 17, 1994, the Department of Administration published notice of the proposed amendment to ARM 2.21.5006, 2.21.5007, 2.21.5009, 2.21.5011 and adoption of New Rules I and II pertaining to reduction in work force at page 498 of the 1994 Montana Administrative Register, issue number 5.

2. The agency has adopted the rules as proposed, with the following changes:

2.21.5007A BENEFITS FOR EMPLOYEES LAID OFF BEFORE APRIL 22, 1993 (1) - (15) Same as proposed rule.

(16) Veteran's employment preference, ~~and~~ handicapped person's employment preference, and Indian employment preference must be applied, when appropriate.

(Auth. 2-18-102, MCA; Imp. 2-18-102 and 2-18-111, MCA)

2.21.5009 REDUCTION IN FORCE REGISTRY (1) Same as proposed rule.

(2) Participation in the ~~job~~ reduction in force registry is voluntary on the part of the employee.

(3) The ~~job~~ reduction in force registry coordinator shall maintain placement files on all registry participants. These files must be made available to hiring officials seeking to fill vacant positions. It is the responsibility of the employee who has been laid off to insure that his or her placement file is accurate and information is up-to-date.

(4) Same as proposed rule.

(Auth. 2-18-102, MCA; Imp. 2-18-102 and 2-18-1203, MCA)

2.21.5011 CLOSING (1) An employee may file a grievance under the grievance policy, ARM 2.21.8010 et seq., based on receipt of a written notice of layoff due to reduction in force.

(1) Renumbered (2) and remains the same.

(Auth. 2-18-102, MCA; Imp. 2-18-102, MCA)

3. Three comments were received.

COMMENT: The new rule, ARM 2.21.5007A, should include a statement about Indian hiring preference.

RESPONSE: The language was added to the rule.

COMMENT: The language in ARM 2.21.5009(2) - (3) is confusing because it refers to the job registry rather than the reduction in force registry.

RESPONSE: The language was changed in both sections to "reduction in force registry."

COMMENT: A request was made that a statement be added to the rule to make it clear that employees who are served with a RIF notice may file a grievance.

RESPONSE: The statement was added to ARM 2.21.5011, Closing.

By _____
Lois Menzies, Director
Department of Administration

_____
Dal Smilie, Chief Legal Counsel
Rule Reviewer

Certified to the Secretary of State May 16, 1994.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 2.21.8011 relating to Grievances	))))	NOTICE OF AMENDMENT OF ARM 2.21.8011 RELATING TO GRIEVANCES

TO: All Interested Persons.

1. On March 17, 1994, the Department of Administration published notice of the proposed amendment to ARM 2.21.8011 pertaining to grievances at page 485 of the 1994 Montana Administrative Register, issue number 5.

2. The agency has amended the rule as proposed.

3. No testimony or comments were received.

By: _____
Lois Menzies, Director
Department of Administration

_____
Dal Smilie, Chief Legal Counsel
Rule Reviewer

Certified to the Secretary of State May 16, 1994.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 2.21.8109 relating to Equal Employment Opportunity/Affirmative Action	)))))	NOTICE OF AMENDMENT OF ARM 2.21.8109 RELATING TO EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION

1. On March 17, 1994, the Department of Administration published notice of the proposed amendment to ARM 2.21.8109 pertaining to equal employment opportunity/affirmative action at page 478 of the 1994 Montana Administrative Register, issue number 5.

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

2.21.8109 AGENCY PROGRAM (1) The department director or head of each agency is responsible for the implementation of that agency's equal employment opportunity/affirmative action program. Agencies covered by this rule are all executive branch departments~~, those agencies allocated to the state board of education under 2-15-1511, MCA, and those institutions under the department of institutions listed in 53-1-202, MCA~~.

(2) through (8) Remain the same as proposed.

3. No testimony or comments were received. The change made in ARM 2.21.8109 removes redundant information from the rule.

By: Lois Menzies
Lois Menzies, Director
Department of Administration

Dal Smilie, Chief Legal Counsel
Rule Reviewer

Certified to the Secretary of State May 16, 1994.

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

In the matter of the amendment of rules 2.55.320, 2.55.324, 2.55.327, and 2.55.402 pertaining to the method for assignment of classifications of employments, premium ratesetting, construction industry premium credit program, and medical deductible.	)	NOTICE OF AMENDMENT

TO: All Interested Persons:

1. On March 31, 1994, the State Compensation Insurance Fund published notice of the amendment to rules 2.55.320, 2.55.324, 2.55.327, and 2.55.402, concerning the method for assignment of classifications of employments, premium ratesetting, construction industry premium credit program, and medical deductible, at page 597 of the 1994 Montana Administrative Register, issue number 6.

2. The Board has amended the following rules as proposed:

2.55.320 METHOD FOR ASSIGNMENT OF CLASSIFICATION
AUTH: Sec. 39-71-2315 and 39-71-2316.
IMP: 39-71-2211, 39-71-2311 and 39-71-2316.
2.55.324 PREMIUM RATESETTING
AUTH: Sec. 39-71-2315 and 39-71-2316.
IMP: 39-71-2211, 39-71-2311 and 39-71-2316.
2.55.327 CONSTRUCTION INDUSTRY PREMIUM CREDIT PROGRAM
AUTH: Sec. 39-71-2315 and 39-71-2316.
IMP: 39-71-2211, 39-71-2311 and 39-71-2316.
2.55.402 MEDICAL DEDUCTIBLE
AUTH: 39-71-2315 and 39-71-2316.
IMP: 39-71-434, 39-71-2311, 39-71-2316.

3. No comments or testimony were received.

Dal Smilie, Chief Legal Counsel
Rule Reviewer

Rick Hill
Chairman of the Board

Nancy Butler, General Counsel
Rule Reviewer

Certified to the Secretary of State May 16, 1994.

BEFORE THE BOARD OF NURSING
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment of rules pertaining to advanced practice registered nurses, executive director, examinations, inactive status, and schools, and the adoption of new rules pertaining to clinical nurse specialists and delegation of nursing tasks	NOTICE OF AMENDMENT AND ADOPTION OF RULES PERTAINING TO THE PRACTICE OF NURSING

TO: All Interested Persons:

1. On January 27, 1994, the Board of Nursing published a notice of public hearing on the proposed amendment and adoption of rules pertaining to the practice of nursing at page 100, 1994 Montana Administrative Register, issue number 2. The hearing was held on February 28, 1994, at 9:00 a.m. in the conference room of the Professional and Occupational Licensing Bureau, Helena, Montana.

2. The Board has amended ARM 8.32.305, 8.32.402, 8.32.403, 8.32.408, 8.32.409, 8.32.410, 8.32.412, 8.32.413, 8.32.416, 8.32.425, 8.32.603, 8.32.604, and 8.32.806, and has adopted new rules III (8.32.1702), VII (8.32.1706), VIII (8.32.1707), X (8.32.1709) exactly as proposed. The Board has amended ARM 8.32.304 and adopted new rule I (8.32.307), II (8.32.1701), IV (8.32.1703), V (8.32.1704), VI (8.32.1705), IX (8.32.1708), XI (8.32.1710), XII (8.32.1711), and XIII (8.32.1712), as proposed but with the changes shown below. The Board has renoticed the amendment of ARM 8.32.1501, 8.32.1502, 8.32.1504, 8.32.1505, 8.32.1506, 8.32.1507, 8.32.1508, 8.32.1509 and 8.32.1510, at page 615, 1994 Montana Administrative Register, issue number 6.

"8.32.304 ADVANCED PRACTICE NURSING TITLE (1) through (1)(d) will remain the same as proposed.

(2) Advanced practice registered nurses who are recognized in the state of Montana may only practice as an advanced practice registered nurse in the clinical area of specialty practice in which they have national certification according to the SCOPE, standards, or description of practice as defined ~~set~~ by the following certifying bodies:

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

(c) ~~nurses association of American college of obstetricians and gynecologists~~ ASSOCIATION OF WOMEN'S HEALTH, OBSTETRIC AND NEONATAL NURSES,

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

(f) association of gerontological nurses~~.~~,

(g) AMERICAN ACADEMY OF NURSE PRACTITIONERS."

Auth: Sec. 37-8-202, MCA; IMP, Sec. 37-8-202, MCA

"8.32.307 CLINICAL NURSE SPECIALIST PRACTICE (1) through (1)(c) will remain the same as proposed.

(d) implement therapeutic interventions based on the clinical nurse specialist's area(s) of expertise, including, but not limited to direct nursing care, PERFORMING, ORDERING, RECEIVING AND INTERPRETING diagnostic procedures, ~~prescription of therapies,~~ counseling and/or teaching;

(e) through (g) will remain the same as proposed."

Auth: Sec. 37-8-202, MCA; IMP, Sec. 37-8-202, MCA

"8.32.1701 PURPOSE (1) Every nurse is accountable as an individual for practicing according to the statutes and rules for nursing in Montana. Each nurse is responsible and accountable for ~~the nature and quality of all nursing care provided under her/his direction~~ DELEGATION IN COMPLIANCE WITH THIS SUB-CHAPTER.

(2) will remain the same as proposed."

Auth: Sec. 37-8-202, MCA; IMP, Sec. 37-8-202, MCA

"8.32.1703 DEFINITIONS The following words and terms as used in this chapter have the following meanings:

(1) "Activities of daily living" means the daily routine non-skilled activities performed for grooming, toileting, and ambulation such as bathing, dressing, grooming, routine hair and skin care, meal preparation, ORAL feeding, exercising, toileting, transfer/ambulation, and assistance with self-administered medications.

(2) through (9) will remain the same as proposed."

Auth: Sec. 37-8-202, MCA; IMP, Sec. 37-8-202,MCA

"8.32.1704 SETTINGS WHERE DELEGATING IS APPROPRIATE

(1) Delegation of nursing tasks by nurses to unlicensed persons ~~are~~ IS permitted in the following settings only:

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

(c) community based residential settings not subject to the licensure requirements of a health care facility as found in 50-5-101, MCA, ~~except as specifically provided as follows:~~

(i) and (ii) will remain the same as proposed but will be renumbered (d) and (e).

(2) through (2)(b) will remain the same as proposed."

Auth: Sec. 37-8-202, MCA; IMP, Sec. 37-8-202, MCA

"8.32.1705 CRITERIA FOR DELEGATION - DELEGATION OF NURSING TASKS TO UNLICENSED PERSONS SHALL COMPLY WITH THE FOLLOWING CRITERIA (1) through (5)(b) will remain the same as proposed.

(c) supervise the performance of the delegated nursing task in accordance with ARM 8.32.1706;

~~(d) be accountable and responsible for the delegated task;~~

(e) will remain the same but will be renumbered (d).

~~(f)~~ (e) document the unlicensed persons's competency in performing the task, teaching, supervision, evaluation,and outcome in the ~~patient record~~ CLIENT FILE.

(6) and (7) will remain the same as proposed."

Auth: Sec. 37-8-202, MCA; IMP, Sec. 37-8-202, MCA

"8.32.1708 NURSING TASKS RELATED TO ADMINISTRATION OF MEDICATIONS THAT MAY BE DELEGATED (1) and (2) will remain the same as proposed.

(3) The following activities related to medication administration may not be delegated except as provided in ~~new rule X of this chapter~~ SUBSECTION (4) BELOW:

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

Auth: Sec. 37-8-202, MCA; IMP, Sec. 37-8-202, MCA

"8.32.1710 PATIENT HEALTH TEACHING AND HEALTH COUNSELING (1) It is the responsibility of the nurse to promote patient education and to involve the patient and significant others in implementation of APPROPRIATE health goals.

(2) will remain the same as proposed."

Auth: Sec. 37-8-202, MCA; IMP, Sec. 37-8-202, MCA

"8.32.1711 LIABILITY (1) will remain the same as proposed.

~~(2) Delegatees are accountable for accepting the delegation and for his/her own actions in carrying out the act and may be liable for his/her actions.~~"

Auth: Sec. 37-8-202, MCA; IMP, Sec. 37-8-202, MCA

"8.32.1712 TASKS WHICH MAY BE ROUTINELY ASSIGNED TO AN UNLICENSED PERSON IN ANY SETTING WHEN A NURSE-PATIENT RELATIONSHIP EXISTS (1) The following are tasks that are not within the exclusive scope of a licensed nurse's practice and may be within the scope of sound nursing practice to be assigned to an unlicensed person. Assignment is defined at ~~new rule II~~ ARM 8.32.1703, and is determined by the licensed nurse if in her/his nursing judgment the health and welfare of the patient would be protected and the task could safely be assigned to an unlicensed person. Changes in the patient's condition may require that tasks assigned may need to be changed when they can no longer be safely performed by an unlicensed person.

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

(e) ORAL feeding, cutting up food, or placing of meal trays,

(f) through (h)(iv) will remain the same as proposed.

(v) holding and assisting the patient in drinking fluid to assist in the swallowing of oral medications~~.~~;

(vi) ASSISTING WITH REMOVAL OF A MEDICATION FROM A CONTAINER FOR RESIDENTS WITH A PHYSICAL DISABILITY WHICH PREVENTS INDEPENDENCE IN THE ACT."

Auth: Sec. 37-8-202, MCA; IMP, Sec. 37-8-202, MCA

3. The statement of reasonable necessity in the original notice was insufficient and the Board is expanding on it as follows: The change in the term from nurse specialist to advanced practice registered nurse is necessary to maintain consistency with statutory language which was changed under Senate Bill 121 of the 1993 general legislative session.

There are some minor language changes that are necessary to further clarify Board intent with regard to existing rules.

The rules adding provisions relating to clinical nurse specialists are necessary to define the education requirements and other qualifications applicable to clinical nurse specialists which were first recognized under Senate Bill 121 of the 1993 general legislative session.

The change in the term "executive secretary" to "executive director" is necessary to maintain consistency with statutory language which was changed under Senate Bill 121 of the 1993 general legislative session.

The new rules on delegation are being implemented to carry out a legislative mandate to develop such rules as provided in Senate Bill 121 of the 1993 general legislative session. The rules are necessary to give specific guidance to licensees and unlicensed persons as to which nursing tasks may be delegated, appropriate settings for delegation, training and supervision of the unlicensed person for which the nurse is responsible, limitations on delegation, and tasks which are not solely nursing tasks and may thus be routinely assigned by a nurse when a nurse/patient relationship exists.

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

I. ADVANCED PRACTICE RULES:

A) 8.32.304:

COMMENT NO. 1: Teresa Henry, Chair of the Government Relations Committee of the Montana Nurses Association (MNA), appeared at the hearing and presented oral testimony regarding the proposed changes and additions to the advanced practice rules. Ms. Henry suggests that the proposed changes to ARM section 8.32.304(2) be changed to insert the word "scope," after "according to the", and to insert the phrase "or description of practice as defined" immediately after the word "standards", and to delete the word "set". The MNA suggests that subsection (2)(c) of 8.32.304 be changed to reflect the current name of the organization listed, which is now called the Association of Women's Health, Obstetric and Neonatal Nurses. The MNA suggests that a new subsection (g) be added to 8.32.304(2), to recognize the American Academy of Nurse Practitioners. The MNA notes that starting this summer, this certifying agency will give certifying exams and require Master's preparation for nurse practitioners.

RESPONSE: The comments are accepted as presented.

COMMENT NO. 2: Patricia Loge appeared at the hearing and presented oral testimony regarding the proposed changes and additions to the advanced practice rules. Ms. Loge stated her general support for the proposed changes and the revisions suggested by the MNA. Ms. Loge urged the Board to include a scope of practice in the proposed rule changes on advanced practice.

RESPONSE: Please see response to comment 1 above.

COMMENT NO. 3: Jacqueline Clemens, APRN, submitted

written comments regarding the proposed rule changes and additions to the advanced practice rules. Many of Ms. Clemens comments concurred with those submitted by the MNA. Ms. Clemens also suggests that the words "but not limited to" in ARM 8.32.304(2) should remain to meet a changing profession. Ms. Clemens states that in any case the American Academy of Nurse Practitioners should be added to subsection (2). Ms. Clemens states that the AANP administers a difficult examination, and certifies family nurse practitioners.

RESPONSE: The Board will continue with its decision to strike "but not limited to", as the Board needs to review certifying agencies before approving of same. The AANP was added in response to this comment, and comments above.

COMMENT NO. 4: Jane Mitchell, RNC, NP, submitted written comments urging the Board of Nursing to retain nurse specialist licensing and issues under the Board of Nursing, and not under the Board of Medical Examiners.

RESPONSE: The Board intends to continue to regulate advanced practice, as provided by law.

COMMENT NO. 5: Stan Hall, President, Montana Nurse Practitioner State Interest Group, submitted written comments expressing general support for the proposed changes to the advanced practice rules, incorporating comments submitted by Teresa Henry.

RESPONSE: Comment Noted.

B. 8.32.1501-1510

COMMENT No. 6: Jerome Loendorf, legal counsel to the Montana Medical Association (MMA), appeared at the hearing and presented oral testimony regarding the proposed changes and additions to the advanced practice rules.

MMA also states that the portion of the rule notice proposing to amend ARM sections 8.32.1501 through 1510 should be stricken from the rule notice, as such rules relate to prescriptive authority, which should be addressed jointly by the Boards of Nursing and Medical Examiners.

RESPONSE: The portion of the rules from 8.32.1501 through 1510 are deleted from this notice, and have been re-noticed jointly with the Board of Medical Examiners.

COMMENT NO. 7: John Burke, Vice President of Nursing, St. Patrick Hospital, submitted written comments regarding the proposed changes and additions to the advanced practice rules. Mr. Burke expressed his support for the rule changes, but states that 8.32.1501 fails to clearly delineate the specific qualifications necessary for a clinical nurse specialist to function on this level.

RESPONSE: The changes to this rule have been stricken from this notice in response to the comments of Mr. Loendorf above.

C. New Rule I

COMMENT NO. 8: MMA states that Rule I, defining the

functions of a clinical nurse specialist, appears to go beyond its statutory authority in allowing the "prescription of therapies." MMA states that prescriptive authority must be granted jointly by the Boards of Nursing and Medical Examiners, and that reference to such authority in this proposed rule should be stricken.

RESPONSE: The Board has deleted the words "prescription of therapies" from the definition of clinical nurse specialist as suggested by Mr. Loendorf.

COMMENT NO. 9: The MNA suggests that the definition of clinical nurse specialist at proposed new rule I be changed by inserting the phrase "performing, ordering, receiving, and interpreting" before the words "diagnostic procedures", and that the words "and medications" be added in immediately after the word "therapies".

RESPONSE: The comments are accepted as presented, with the exception of the suggestion for adding the word "medications" after "therapies". The words "prescription of therapies" were deleted in response to comments immediately above.

II. DELEGATION RULES:

A) General Comments:

COMMENT NO. 10: Lynne Bryant, RN, CNP, submitted a written comment registering her general support for the proposed rule changes and proposed new rules in the above-entitled rule notice.

RESPONSE: Comment Noted.

COMMENT NO. 11: Ellie Hardy, RN, NP, submitted a written comment registering her general support for the proposed rule changes and proposed new rules, with revisions as presented by the Montana Nurses Association.

RESPONSE: Comment Noted.

COMMENT NO. 12: Cindy Shaw, Sunrise Retirement Center, Lewistown, Montana, submitted a written comment registering her general support for the proposed delegation rules.

RESPONSE: Comment Noted.

COMMENT NO. 13: Joe Todisco, of LIFTTI, Billings, Montana (Mr. Todisco), submitted written comments on the proposed delegation rules. Mr. Todisco questions whether there are capability determination guidelines. Mr. Todisco questions how capability can be judged if there are no guidelines.

RESPONSE: Capability is covered in the language relating to task-specific, patient-specific, delegatee-specific. The responsibility rests with the licensed nurse, as it would in other circumstances.

COMMENT NO. 14: John Kinna, Interim Superintendent of the Montana School for the Deaf and the Blind (Mr. Kinna)

submitted written comments on the proposed delegation rules. Mr. Kinna requests whether the reference to the term "nurse" includes both registered professional and licensed practical nurses.

RESPONSE: The term nurse includes both licensed practical nurses and registered professional nurse, while acting within the appropriate scope of practice.

COMMENT NO. 15: The Health Facilities Division of the Montana Department of Health (Health Facilities Division) submitted written comments and presented oral testimony on the proposed delegation rules. The written comments stated generally that the Board of Nursing should draft rules on a broader spectrum than included in the proposed rules on delegation. Specific comments were also presented as set forth herein.

RESPONSE: The Board has limited delegation to administration of medications in order to review how the process works with administration of medications. After review of the process, the Board will re-evaluate the possibility for expansion of delegation to other tasks.

COMMENT NO. 16: Zara D. Frank, Executive Director, Special Training for Exceptional People, Billings, Montana (Ms. Frank), submitted written comments on the proposed delegation rules. Ms. Frank states that all staff who currently administer medications are required to have successfully passed the medication certification examination. Ms. Frank states that her facility would be unable to fund licensed nursing care to train and supervise the administration of medications for children who require such medications daily.

RESPONSE: Unlicensed personnel are authorized to assist in the self-administration of medications without delegation from a licensed nurse, but not to administer the medications. Administration of medications can be conducted by unlicensed personnel only under delegation from a licensed nurse. With respect to the issue of cost, these rules do not require any facility to utilize delegation procedures. The facility could simply continue with assistance of self-administration of medications. If administration occurs, however, the administration of medications by unlicensed personnel would require that a licensed nurse delegate such action. The cost issue is at the facility's choice. There is a distinction between assistance in self-administration of medications and actual administration of medications. Facilities should review their policies to ensure compliance with Montana law in this respect.

COMMENT NO. 17: The Department of Social and Rehabilitative Services (SRS) submitted written comments on the proposed delegation rules. SRS states that several of the provisions would cause a significant financial impact on programs of the Department, and would insert nursing presence into non-nursing circumstances. The Department suggests that the proposed rules contradict state and federal legal

authorities governing programs under the supervision of SRS.

SRS states that the rationale for the proposed rules is inadequate, and should be augmented in the adoption notice with specificity as to each substantive change. SRS suggests that the rules will obligate nurses to extend their authority into areas where nursing supervision is unnecessary and inappropriate.

RESPONSE: Please refer to Board's response to comment 7 immediately above with respect to cost issue. The issue of contradiction with other laws will be addressed in more specific comments of SRS below (Comment 5, Rule IX). The Board disagrees that these rules insert nursing into non-nursing areas. The administration of medications is specifically identified as a nursing task in Section 37-8-102, MCA. With respect to the issue of rationale, the Board agrees. The rationale for the rules will be augmented in the adoption notice as requested by SRS.

COMMENT NO. 18: Representatives of the Montana Association of School Nurses (MASN) submitted written comments and oral testimony regarding the proposed rules on delegation. MASN expressed its general support for the proposed rules, with suggested changes as noted in this report.

RESPONSE: Comment noted.

COMMENT NO. 19: Robert Runkel, Director of Special Education, Office of Public Instruction (OPI), submitted written comments and oral testimony expressing OPI's general support for the proposed delegation rules, with additions as noted in this report.

RESPONSE: Comment noted.

COMMENT NO. 20: Katherine Kelker, Executive Director of Parents, Let's Unite for Kids (PLUK), submitted written comments expressing support for the negotiating process that the board undertook in developing the proposed rules, and for the substance of the rules as proposed.

RESPONSE: Comment noted.

COMMENT NO. 21: Phil Campbell, Director of Member Rights, Montana Education Association (MEA), submitted written comments and oral testimony expressing support for the proposed delegation rules. MEA expressed its opposition to and urged the Board's rejection of any attempt to reduce standards or exempt standards for individuals who would perform nursing tasks without the proper training and license.

RESPONSE: Comment noted.

COMMENT NO. 22: Ben J. Rossetto, MD, submitted written comments expressing his support for the use of unlicensed care givers under supervision.

RESPONSE: Comment noted.

COMMENT NO. 23: Jerome Loendorf, legal counsel to the Montana Medical Association (MMA), appeared at the hearing and presented oral testimony regarding the proposed delegation

rules. MMA states that the rules are unnecessarily detailed and frustrate the intent of the legislature. MMA states that the requirements of the rules will make it so that it is easier for the nurse to simply perform the task herself rather than delegate the task under the requirements of the proposed rules.

RESPONSE: The statutory authority grants the Board the discretion to write rules on delegation of nursing tasks. The intent is not frustrated, as delegation is permitted under these rules. The rules are detailed in order to provide sufficient guidance to a licensed nurse and unlicensed individual as to how delegation needs to be carried out.

B) Rule II: Purpose

COMMENT NO. 24: Rose Hughes, Executive Director, Montana Health Care Association (MHCA) submitted written comments and oral testimony on the proposed delegation rules. MHCA suggests that this rule creates liability for individual nurses beyond what is intended in the law. MHCA notes that the statute applies such responsibility on the registered professional nurse, but not on the licensed practical nurse. MHCA also suggests that subsection (2) of this rule enacts an unworkable standard, the impact of which will be to discourage delegation.

RESPONSE: The Board agrees with Ms. Hughes comment with respect to subsection (1), and has amended the rule as shown above. The requirement of delegation by task, patient and unlicensed person is necessary to provide adequate protection of the patient and to ensure adequate training and monitoring. The requirement protects individualized patient care for the client and continuity of patient care.

C) Rule III: Nursing Tasks which may be Delegated

COMMENT NO. 25: Diane Fladmo, Coordinator, Prairie View Special Services Cooperative, (Ms. Fladmo), submitted written comments on the proposed delegation rules. Ms. Fladmo suggests that nursing tasks which may be delegated be expanded to include clean intermittent catheterization, suctioning, and gastrostomy (tube) feeding.

RESPONSE: The Board at this time is writing rules for delegation of one task in order to evaluate the delegation of this task (administration of medications) before expanding to other tasks. The tasks suggested by Ms. Fladmo are noted and will be included in any discussion regarding proposed expansion of delegation to other tasks.

COMMENT NO. 26: The Health Facilities Division expressed general support for the inclusion of administration of medications as a task that may be delegated.

RESPONSE: Comment noted.

COMMENT NO. 27: Rick Thompson, Program Director of the Hi-Line Home Programs, Inc. (Mr. Thompson), submitted written comments on the proposed delegation rules. Mr. Thompson

states that the proposed rule lacks clarity, because it does not address whether feeding procedures by a g-tube are determined to be administration of medications. Mr. Thompson suggests that tube feedings could be construed as a feeding task that could be routinely assigned under Rule XIII.

RESPONSE: The Board agrees that there is potential for confusion between this rule and rule XIII with respect to the issue of feeding through a g-tube. The Board will add in the word "oral" before "feeding" in the definition of Activities of Daily Living (Rule IV(1)). The Board will also add the word "oral" before "feeding" in Rule XIII(e).

COMMENT NO. 28: SRS suggests that this rule be deleted, as it contends that the rule is in conflict with other proposed rules. SRS suggests that there is no distinction in the proposed rules between the terms "delegate" and "assign", and that if a distinction is intended, it is not apparent within the rules.

RESPONSE: The Board disagrees with this comment, and rejects the suggestion to delete the rule. The rule is necessary to give the licensed nurse specific direction on what can be delegated. In addition, there is a clear distinction between delegation and assignment, that is readily apparent from a reading of the separate definitions for the terms.

COMMENT NO. 29: MASN and OPI suggest appointment of a task force to begin work on expanding the delegation authority to include other tasks such as clean intermittent catheterization, suctioning, and g-tube feeding. MASN, OPI, the Family/Maternal and Child Health Bureau, and Elaine Fordyce also suggest appointment of a second task force to complete an evaluation of the delegation of medication administration within one year (MASN) or nine months (OPI) of implementation.

RESPONSE: The Board intends to conduct an evaluation of the delegation of medication administration, and to involve interested parties as part of that evaluation. Upon conclusion of such evaluation, the Board will study the possibility for expansion to other tasks.

COMMENT NO. 30: MHCA suggests that administration of medications is an appropriate task for delegation, but that delegation should be accomplished through training, certification, and testing. MHCA suggests that this would eliminate the task-specific, patient specific process that MHCA finds unworkable, and would ensure adequate training of unlicensed persons who administer medications.

RESPONSE: The certification of medication aides is not under the purview of delegation of nursing tasks, as such certification would eliminate the need for delegation, and would create a new category of licensure not authorized by the statutory authority of the Board. The Board intends to continue with a requirement of delegation that is task, patient and unlicensed person specific, as such requirements

are necessary for protection of the consumer.

D) Rule IV: Definitions

COMMENT NO: 31: SRS suggests that the term "assignment" should be deleted or changed. SRS seeks clarification of what is meant by the term "activity", contained within the definition of "supervision". SRS seeks clarification on what is meant by "common nursing functions", included in the definition of "unlicensed person". SRS suggests that if there are substantive differences between nursing tasks; functions; activities; practice; and intervention, the tasks should be defined separately. SRS also suggests that the terms "ambulation", "socialization activities", "nursing care plan", and "medication" should be defined in this section.

RESPONSE: The Board believes that the term "assignment" is necessary to distinguish between tasks that may be delegated by a licensed nurse and those tasks that do not require delegation. The terms suggested for further definition are terms used consistently in the nursing profession, and do not require definitions, as these rules are written to guide the conduct of licensed nurses. The terms "assignment" and "delegation" were adopted from the National Council of State Boards of Nursing's position paper on delegation, and are used nationally.

COMMENT NO. 32: B.J. Archambault, Nurse Consultant to the Family/Maternal and Child Health Bureau of the Department of Health (Family/Maternal and Child Health Bureau) submitted written comments on the proposed rule changes. Family/Maternal and Child Health Bureau states that there is a typographical error in subsection (9), with respect to a misspelling of the word complimentary.

RESPONSE: Typographical error will be corrected.

E) Rule V: Settings where Delegation is Appropriate

COMMENT NO. 33: Mr. Kinna suggests that the School for the Deaf and Blind be specifically listed in Section V (Settings where delegation is appropriate).

RESPONSE: The School for the Deaf and the Blind is currently covered as an appropriate setting for delegation under Rule V(1)(a), as a school. Thus, there is no reason to specifically list the School for the Deaf and Blind separately.

COMMENT NO. 34: William F. Diers, President of Kalispell Regional Hospital (Mr. Diers), submitted written comments on the proposed delegation rules. In addition, oral testimony was presented in line with Mr. Diers' written comments by 6 individuals at the rule hearing on February 28, 1994. These individuals suggest that dialysis treatments should be included as appropriate for delegation of nursing tasks. They suggest that there are federal standards of care in place for renal dialysis facilities that adequately protect the public. They stated that federal standards require oversight of a

licensed individual, and that the Montana Medicaid program has established a precedent by paying for non-licensed, but trained persons who function in these duties with supervision available through telecommunication. They state that the exclusion of dialysis technicians from the delegation rules would place an immense burden on rural patients who rely on home dialysis for continued health. They state that delegation of such duties to trained, certified dialysis technicians is currently approved by statute in 28 states, by administrative discretion in another 16 states, and prohibited in only 2 states.

RESPONSE: The Board is not prepared to immediately include dialysis as an additional task that may be delegated, as dialysis involves more than administration of medications as provided herein. The Board will, however, review further information with respect to dialysis to determine the possibility for possible expansion of delegation after reviewing the success of delegation with respect to administration of medications. The Board sees this issue as something that may need to be addressed by legislation.

COMMENT NO. 35: Robert and Carolyn Rauschendorfer (Mr. and Mrs. Rauschendorfer) submitted written comments expressing support for board of nursing control over the issue of delegation. The Rauschendorfers expressed their agreement with the process for delegation required in the proposed rules with respect to criteria and liability remaining with the licensed nurse. The Rauschendorfers question, however, whether the schools are an appropriate setting for delegation.

RESPONSE: The Board believes that the schools are appropriate settings for delegation, when delegation is accomplished as provided in these rules.

COMMENT NO. 36: The Health Facilities Division suggests that Intermediate Care Facilities for the Mentally Retarded, the Montana State Hospital at Warm Springs, Home Services provided by hospice and home health agencies, and Personal Care Attendant Programs be included as appropriate settings for delegation.

RESPONSE: Home services provided by hospice and home health agencies and personal care attendant programs are included as appropriate settings. The Board has changed subsections (1)(c)(i) and (ii) to subsections (1)(d) and (1)(e) to clarify its intent in this regard. The Board disagrees with the suggestion for delegation in ICF's and the Montana State Hospital in Warm Springs, and believes that such facilities are appropriately excluded under (1)(c). Both are in-patient institutions in which nursing care is readily available.

COMMENT NO. 37: Claire Highland, BSN, MA, submitted written comments and verbal testimony on the proposed delegation rules. Ms. Highland suggests that the health care options for older individuals needs to be considered in determining appropriate settings. Ms. Highland suggests that a personal care home, and an adult foster care home be

included as appropriate settings.

RESPONSE: Personal care homes and adult foster care homes are included, as specified in the response to comment 4 immediately above.

COMMENT NO. 38: Medicaid Services Division Staff, Department of Social and Rehabilitation Services (Medicaid Services Division), submitted written comments on the proposed delegation rules. Medicaid Services Division seeks clarification on whether personal care facilities are included as an appropriate setting under subsection (1)(c)(i), or excluded as an appropriate setting under subsection (2)(b).

RESPONSE: Please see response to comment 4 above.

COMMENT NO. 39: SRS suggests that the intent of subsection (1)(c) is unclear and needs to be changed. SRS suggests that if the intent is to provide that delegation is prohibited in personal care and hospice settings, that it should be specified in the list in section (2). If, on the other hand, the intent is to designate personal care homes and hospice settings as appropriate settings for delegation, they should be listed as subsections (1)(d) and (1)(e). SRS also suggests that day service settings should be added to the rule. SRS states that "are" in subsection (1) should be changed to "is", and that the term "never appropriate" in subsection (2) should be changed to read "is not permitted."

RESPONSE: Please see response to comments 4 and 5 above. "Are" has been changed to "is" in subsection (1) as recommended. With respect to changing the language, the Board is satisfied with the existing language, and the comment suggests a change that does not effect a change in substance. With respect to day service settings, such settings are subject to license laws under (1)(c), and the Board believes that such settings have been appropriately excluded from the delegation of nursing tasks.

COMMENT NO. 39A: Eunice Ash, Billings, Montana, submitted written comments and oral testimony in opposition to the use of delegation in Personal Care Homes. Ms. Ash states that she believes that there is substantial risk involved in delegating nursing tasks.

RESPONSE: The Board is comfortable with delegation as provided in the proposed rules, and intends to continue with such rules in the personal care settings.

COMMENT NO. 40: MHCA suggests that this section be stricken in its entirety. MHCA states that there is no rationale for limiting the settings in which delegation is appropriate. MHCA suggests that under the current version of the rule, a secretary could administer medications, but a trained, certified nurse aide could not do so in a nursing home, in spite of having greater training than the secretary, and regardless of the condition of the patient. MHCA states that delegation pursuant to standards set by the board should be safe in any setting. Specifically, MHCA requests that the

prohibition on delegation in nursing homes be stricken. The MMA presented similar comments at the hearing, and suggested that physicians' offices are appropriate settings for delegation.

RESPONSE: The Board disagrees that there is no rationale for limiting delegation to specific settings. Delegation is proposed for settings where there is a lack of trained personnel to undertake nursing tasks. Settings where there are adequate numbers of trained professionals are not appropriate for delegation. Acuity of care is also a factor in certain instances.

F) Rule VI: Criteria for Delegation

COMMENT NO. 41: Ardis Stockton, Executive Director, Residential Support Services, Inc., Billings, Montana, (Ms. Stockton) submitted written comments on the proposed delegation rules. Ms. Stockton requests clarification on whether subsection (5)(f) requires a facility to keep documentation of the unlicensed person's competency in the patient care chart instead of the unlicensed person's personnel file. Ms. Stockton also seeks clarification as to what type of competency tests the Board is requiring, and whether such standards go beyond the Medication Certification currently in practice at the facility.

Ms. Stockton also seeks clarification as to subsection (7), and whether this subsection means that only one staff person may perform a delegated task. If only one person may carry out the delegated task, Ms. Stockton requests accommodation for shift changes.

RESPONSE: The Board notes that the requirement of where the documentation of competency must be located is clearly stated in the rule. The rule does not prohibit such documentation from being stored in other locations as well. Competency is determined by each licensed nurse in each instance in which delegation takes place. The Board believes that the rules provide for shift changes. The licensed nurse would simply have to train each person that would undertake delegated tasks.

COMMENT NO. 42: The Health Facilities Division states that the criteria for delegation is problematic with frequent personnel changes prevalent in many settings. The Health Facilities Division suggests that a separate, less stringent option be added for delegation of nursing tasks to certified nurse assistants.

RESPONSE: The Board does not find it appropriate to differentiate between different types of unlicensed persons. Each must be delegated the task pursuant to the provisions of the delegation rules, as each lacks the necessary training to perform nursing tasks without delegation of such tasks.

COMMENT NO. 43: The Medicaid Services Division poses questions as follows:

1. what constitutes a "reasonable prudent nurse?

2. what is considered to be "within the scope of sound nursing judgment?"

3. who enforces and how is enforcement accomplished?

The Medicaid Services Division notes a typographical error at subsection (5)(c), which should state "supervise" instead of "supervise".

RESPONSE: The questions have been considered by the Board. The questions do not constitute arguments against adoption of the rules, however, and will not be addressed as a comment against adoption. Questions on interpretation may be dealt with through the declaratory ruling process, or through an agenda item at a Board meeting. Parties with interpretive questions should direct inquiries to staff for the Board. The typographical error has been corrected so that the word now reads "supervise".

COMMENT NO. 44: SRS seeks clarification as to whether proposed rule VI governs only the administration of medications, or whether it also applies to all tasks listed under proposed rule XIII. SRS suggests that "act" in subsection (1) should be changed to "task." SRS suggests that subsection (5)(f) should be clarified to state whether it is the nurse's or the unlicensed person's teaching, supervision and evaluation that must be documented.

RESPONSE: There is a difference between delegation and assignment, as specified herein. Thus, rule VI does not apply to non-nursing tasks detailed in rule XIII. The Board will change "act" to "task" as suggested. The Board does not believe that subsection (5)(f) needs further clarification. The rule clearly states that the unlicensed person's training must be documented.

COMMENT NO. 45: MHCA states that the criteria set forth in this rule are cumbersome, poorly defined, and impose liability on nurses not envisioned in the statutes. MHCA suggests that no nurse in his or her right mind would delegate under these standards. Thus, according to MHCA, the legislature's intent will be defeated with these rules.

RESPONSE: The legislative intent is met, as provided in response to earlier comments herein. A licensed nurse under these rules is responsible for compliance with such rules. A violation of these rules will result in disciplinary action against the licensed nurse. Such responsibility does not add an additional burden on a nurse not envisioned in the statute. Each nurse must comply with all statutes and rules governing the practice of nursing. This is all that these rules require. The board will eliminate subsection (5)(d) from Rule VI, however, as such requirement is already required in other portions of the rules.

COMMENT NO. 46: Elaine Fordyce (Ms. Fordyce) appeared at the hearing and presented oral testimony on the proposed delegation rules. Ms. Fordyce, and the Family/Maternal and Child Health Bureau suggest that the rule be changed to provide for an alternate supervising registered nurse, and require that either the original or alternate nurse be

available by phone or in person at all times.

RESPONSE: The Board does not believe that there is a need for an alternate nurse, as such nurse would not likely have sufficient knowledge regarding the delegation of the task. Each licensed nurse must be responsible for the training and supervision of each unlicensed individual to whom a nursing task is delegated.

COMMENT NO. 47: The Family/Maternal and Child Health Bureau suggests that subsection (5)(c) be changed to state patient record/student permanent file.

RESPONSE: Subsection (5)(f) will be changed to state that documentation will be included in the "client file".

G) Rule VII: Supervision

COMMENT NO. 48: Mr. Todisco seeks clarification of the rules on what is meant by use of the terms, "proximity" and "availability" in proposed rule VII(1)(d) & (2). Mr. Todisco suggests that if a nurse cannot be reached when the treatment needs to be delivered to the consumer, the treatment cannot be delivered until such time as the nurse can be reached, and that this process defeats the purpose of training an unlicensed individual to perform a particular task.

Mr. Todisco suggests that personal monthly visits (New proposed rule VII(3)) are intrusive and unnecessary in many situations. Mr. Todisco suggests that phone contact by the delegating nurse should be adequate, and suggests that the rule require the unlicensed person to contact the nurse in the case of any irregularities.

RESPONSE: The Board notes that a licensed nurse does not have to be contacted each time a medication is administered. The rule provides for latitude in nursing judgment to determine proximity and availability. The Board finds personal monthly visits to be necessary for adequate assessment.

COMMENT NO. 49: The Health Facilities Division requests clarification as to how this rule provides for the resident who returns to a setting in which delegation is allowed, from the hospital with medications and instructions to start taking the medications upon arrival at the setting. How is a nurse to effect the required evaluation of the unlicensed person soon enough to allow the resident to be administered the medication by the unlicensed individual?

RESPONSE: The nurse is responsible for resolving such difficulties. The qualifications and conditions on delegation are required to protect the consumer. If such a situation does not allow for delegation under the rules, it is not appropriate for delegation.

COMMENT NO. 50: Paul Peterson, President Elect, Coalition of Montanans Concerned With Disabilities (Mr. Peterson) submitted written comments on the proposed delegation rules. Mr. Peterson states that the proposed rules do not support the changes in OBRA "93" regulations, which "totally eliminates the requirement for nurse supervision" for

personal assistant services. Mr. Peterson suggests that the requirements for supervision and evaluation will place demands on a shrinking Medicaid budget, resulting in more cuts in needed services. Mr. Peterson also suggests that the supervision requirements will inhibit the development of additional health-care settings due to added costs, thus restricting the full range of long term care options for the consumer.

Mr. Peterson suggests implementation of a program that would allow unlicensed persons to become trained and certified to perform tasks such as insulin or other routine injections, administration of oral medications, and tube feedings.

RESPONSE: Delegation applies only to nursing tasks, which at this time may be performed only by licensed nurses. Delegation provides for administration of oral medications, which was previously against the law. Thus, these rules do not restrict any practice that is currently in place unless such practice is already in violation of the law. Delegation is not required in assistance in self-administration of medications. The Board does not have the authority to certify unlicensed persons to perform nursing tasks, so the suggestion for certification of such individuals is not possible. Future expansions of delegation to tasks suggested in this comment will be considered after review of delegation of administration of oral medications.

COMMENT NO. 51: The Medicaid Services Division poses questions as follows:

1. How did the Board arrive at a requirement of monthly supervisory visits?
2. Who is financially responsible for the supervisory visits?

Medicaid Services Division suggests that monthly visits are excessive.

RESPONSE: The questions have been considered by the Board. The questions do not constitute arguments against adoption of the rules, however, and will not be addressed as a comment against adoption. Questions on interpretation may be dealt with through the declaratory ruling process, or through an agenda item at a Board meeting. Parties with interpretive questions should direct inquiries to staff for the Board. The Board finds monthly visits to be necessary to provide adequate oversight of the act of delegation.

COMMENT NO. 52: SRS suggests that the supervision requirement is so burdensome that it will require that the nurse basically be available on staff at all times. SRS seeks clarification as to whether proposed rule VII governs only the administration of medications, or whether it also applies to all tasks listed under proposed rule XIII. SRS seeks clarification as to what is meant by the phrase "unless otherwise provided in this section." SRS also suggests that administration of medications should be exempted from the delegation requirement, pursuant to section 53-20-204, MCA.

RESPONSE: As stated earlier in response to other

comments, there is a marked difference between delegation and assignment. Administration of medications, in addition, is different from assistance in the self-administration of medication. Assistance in self-administration of medications does not require delegation.

H) Rule VIII: Nursing Functions

COMMENT NO. 53: SRS seeks clarification as to what is meant by "nursing care plan." SRS suggests that the term be clarified to preclude an interpretation that the nursing care plan includes "activities of daily living." SRS also questions whether the individual nurse or the board will determine which tasks require "nursing knowledge, judgment and skill."

RESPONSE: The Board does not believe that the term "nursing care plan" needs further clarification with respect to "activities of daily living" in rule XIII. Activities of daily living are specifically listed in rule XIII as one of the tasks "that are not within the exclusive scope of a licensed nurse's practice." The Board also believes that the rule itself determines which nursing functions require nursing knowledge, judgment and skill. With respect to the questions posed, the questions have been considered by the Board. The questions do not constitute arguments against adoption of the rules, however, and will not be addressed as a comment against adoption. Questions on interpretation may be dealt with through the declaratory ruling process, or through an agenda item at a Board meeting. Parties with interpretive questions should direct inquiries to staff for the Board.

I) Rule IX: Nursing Tasks Related to Administration of Medications that may be delegated

COMMENT NO. 54: Mr. Kinna seeks clarification as to whether rule IX (Nursing tasks that may be delegated) includes use of a g-tube.

RESPONSE: As previously stated, the administration of oral medications is the only nursing task that may be delegated under these rules. Other tasks, such as feeding through a g-tube, will be considered by the Board for inclusion after completion of a study of the effect of delegation of administration of oral medications. The Board also notes that administration of medications through a tube inserted into a cavity of the body is specifically listed as a task that may not be delegated.

COMMENT NO. 55: The Health Facilities Division suggests that this rule is overly restrictive. It suggests that administration of medications by injection of pre-prepared insulin doses, use of skin patches for transdermal delivery, and eye drops be included as tasks appropriate for delegation. It also suggests that the rule does not address administration of over the counter medications ordered by a physician or purchased by the resident or family, and seeks clarification.

RESPONSE: Over the counter medications and prescribed

medications are both still medications. Both require delegation. Other tasks beyond oral medications will be considered after review of delegation with respect to administration of oral medications.

COMMENT NO. 56: Mike Hanshew, Developmental Disabilities Division of the Department of Social and Rehabilitation Services (Mr. Hanshew), submitted written comments regarding the proposed delegation rules. Mr. Hanshew expressed support for, and his belief that there is a requirement of "delegation of more invasive procedures such as tube feeding and injections."

RESPONSE: Tube feedings and injections may not be delegated at this time. Only oral medications are allowed for delegation at this time.

COMMENT NO. 57: The Medicaid Services Division poses questions as follows:

1. Does delegation apply to over the counter medications? (also posed by SRS in separate comments)
2. Does (3)(c) include nebulizers such as those used for allergies or asthma?
3. Does (3)(d) include tube feeding that does not include a medication?
4. Does (4)(a), allowing the delegation of pharmacy prepared inhalant dispenser, in contradiction with (3)(c)?
5. Does (4)(d) include glycerine suppositories as well as prescribed medicated suppositories?
6. Is the exclusion of eye drops and topical medications intentional? If so, why?

RESPONSE: As stated above, over the counter medications and prescribed medications are both still medications. Both require delegation. The Board believes that the rule specifically answers the questions posed by Medicaid Services Division. The questions have been considered by the Board. The questions do not constitute arguments against adoption of the rules, however, and will not be addressed as a comment against adoption. Questions on interpretation may be dealt with through the declaratory ruling process, or through an agenda item at a Board meeting. Parties with interpretive questions should direct inquiries to staff for the Board.

COMMENT NO. 58: SRS states that the proposed rules do not address the relationship of the rules to SRS rules at 46.8.109, which allows assistance in the administration of medications. SRS states that the proposed rules appear to make the administration of medications to any persons subject to the supervision of a nurse. SRS suggests that the rules be changed to clearly state that they do not govern activities authorized under 53-20-204, MCA. SRS also suggests a correction in the cross reference to proposed rule X in subsection (3), as rule X provides tasks that may not be delegated. SRS questions whether the intended reference was to proposed rule XIII.

RESPONSE: SRS is seemingly confused with the distinction

between assistance in self-administration of medications and administration of medications. Assistance in the self-administration of medications does not require delegation. Thus, the Board's proposed rules in this notice do not conflict with the SRS rules on assistance in the self-administration of medications. The Board agrees that the cross-reference to rule X is incorrect, and has changed the cross reference language from subsection (3) of rule IX to reflect that the cross reference is to subsection (4) of rule IX.

COMMENT NO. 59: Ms. Fordyce suggests the addition of a subsection (e), stating that measuring a prescribed amount or liquid medication or breaking a tablet for administration is not calculation of medication and dosage. The Family/Maternal and Child Health Bureau concurred in this comment.

RESPONSE: The Board disagrees. The acts proposed in this comment do specifically involve calculation of medication and dosage.

J) Rule X: General Nursing Tasks that may not be Delegated

COMMENT NO. 60: Mr. Todisco suggests that if rule X(1)(c) prohibits the delegation of inserting catheters or changing foley catheters, that such rule contradicts rule XIII(d), which allows the assignment of personal hygiene and elimination duties.

RESPONSE: The Board disagrees that there is any conflict between these rules. Personal hygiene and elimination do not include invasive procedures.

COMMENT NO. 61: The Health Facilities Division suggests that installation of tube feedings into a g-tube, care of a decubitus of a patient, fingerstick and use of a glucose meter, and simple enemas should be included in tasks that may be delegated.

RESPONSE: The Board has limited delegation to administration of oral medications. Other tasks will be considered for possible inclusion after conclusion of a study on the effects of delegation of administration of oral medications.

COMMENT NO. 62: The Medicaid Services Division suggests striking the words "are not within the scope of nursing judgment to delegate", and replacing with "may not be delegated." Medicaid Services also questions whether the dressing or cleansing of penetrating wounds or deep burns is considered to be a non-sterile procedure.

RESPONSE: The Board will continue with the existing language, as the comment does not propose a substantive change in the existing language. Dressing and cleansing of penetrating wounds is considered to be a sterile procedure, and a task that may not be delegated.

COMMENT NO. 63: MHCA states that this section is unnecessary, given the fact that proposed rule III lists the

only task that may be delegated. MHCA states that the rule may, in some instances, assign to the exclusive domain of licensed nurses tasks that are not considered to be nursing tasks. MHCA cites non-medicated enemas, and taking of temperatures rectally as tasks commonly performed by certified nursing assistants, but that could be construed as "invasive" procedures under this rule.

RESPONSE: The board finds this rule to be necessary to give clarification as to what types of medications may be administered, and to place appropriate limitations on such. The Board does consider enemas and the taking of temperatures rectally to be invasive procedures.

K) Rule XI: Patient Health/Teaching and Health Counseling

COMMENT NO. 64: The Health Facilities Division suggests the insertion of the term "appropriate" or "individual" immediately prior to the term "health goals", on the grounds that health goals are not universal in their application.

RESPONSE: The Board will add the word "appropriate" as suggested.

COMMENT NO. 65: The Medicaid Services Division suggests that the following language be stricken:

"Unlicensed individuals may provide information to the patient . . . "

It suggests that it is not the responsibility of the nurse to prohibit others from providing information.

RESPONSE: The language will remain. The language does not prohibit an unlicensed person from providing information. It simply requires that the ultimate responsibility for providing correct information rests with the licensed nurse.

COMMENT NO. 66: SRS questions what is meant by the terms "patient health teaching and health counseling" in subsection (2), and whether it includes such matters as food preparation and storage, dental care, grooming, cleanliness, and sex education. SRS suggests the deletion of subsection (2), contending that it can be interpreted to reserve to nurses tasks that are legitimately handled by trained direct care personnel.

RESPONSE: The questions have been considered by the Board. The questions do not constitute arguments against adoption of the rules, however, and will not be addressed as a comment against adoption. Questions on interpretation may be dealt with through the declaratory ruling process, or through an agenda item at a Board meeting. Parties with interpretive questions should direct inquiries to staff for the Board. The Board finds subsection 2 to be necessary to advise the licensed nurse of his or her responsibility with respect to patient health teaching.

L) Rule XII: Liability

COMMENT NO. 67: The Health Facilities Division suggests that standards for training and competence need to be applied

universally to the act of delegation, and suggests the Department of Health's nurse aide/home health aide certification program as a guideline for such standards. It suggests that such standards may provide for greater access of the nurse to insurance for the act of delegation. It also suggests that the documentation of training should remain in the possession of the nurse under the proposed rules, as the nurse is the individual who carries the responsibility.

RESPONSE: The board finds that standards for training of unlicensed persons may differ from person to person, and may not be sufficient when applied universally. The Board also notes that it does not have the jurisdiction to require certain training of the unlicensed individual, but only to require what a licensed nurse must do before delegating a task.

COMMENT NO. 68: Ms. Highland states that a nurse involved in the act of delegation needs to have flexibility in the act of delegation, and standards that recognize professional knowledge, integrity, and discretion of the licensed nurse. Ms. Highland also suggests that a copy of these rules be submitted to the insurance industry to see if the standards for delegation are insurable, and that the information received from the insurance companies be included in the newsletter. Ms. Highland also submitted a proposed policy for delegation.

RESPONSE: The Board has written the rules with concern for public safety rather than from a cost perspective.

COMMENT NO. 69: SRS suggests that the rule be clarified as to its purpose and implications. SRS questions whether the Board of Nursing has the authority to create a tort action or a standard of liability. SRS suggests that subsection (2) should be removed, as it addresses matters which are not within the purview of the Board of Nursing (concurred in by MHCA).

RESPONSE: Subsection (2) will be deleted as suggested.

COMMENT NO. 70: MHCA states that subsection (1) expands liability for the nurse beyond what is envisioned in the pertinent statute.

RESPONSE: This rule simply requires compliance with the delegation rules, and does not expand liability beyond the statute. If a licensed nurse fails to comply with these rules, the nurse will be responsible for such actions, under the Board's disciplinary authority.

M) Rule XIII: Assignment of Tasks

COMMENT NO. 71: Mr. Todisco seeks clarification on what is meant by Rule XIII:

Section (1)(a) non-invasive/non-sterile treatments;
Section (1)(b)(iii) environmental conditions;
Section (1)(d) personal hygiene and elimination; and
Section (1)(f) socialization activities.

RESPONSE: The questions have been considered by the

Board. The questions do not constitute arguments against adoption of the rules, however, and will not be addressed as a comment against adoption. Questions on interpretation may be dealt with through the declaratory ruling process, or through an agenda item at a Board meeting. Parties with interpretive questions should direct inquiries to staff for the Board.

COMMENT NO. 72: Mr. Kinna seeks clarification as to what the standards are for permitting an individual to self-medicate, and what kind of records must be kept regarding self-medication.

RESPONSE: The standards for self-medication are not included in these rules, as self-medication does not require delegation. Mr. Kinna may want to contact SRS for information regarding their rules on assistance of self-administration of medications.

COMMENT NO. 73: The Health Facilities Division suggests that the following be inserted as an addition to subsection (h)(iv):

"assisting with removal of a medication from a container for residents with a disability which prevents independence in the act"

The Health Facilities Division makes this suggestion based upon its observation, during surveys, of individuals who lack dexterity or voluntary control to remove tablets from a container, such as someone with parkinson's disease.

RESPONSE: The Board agrees with the suggestion of the Health Facilities Division, with an exception. The Board believes that a person may have a mental disability that prevents the person from exercising independence in the act of taking medication. The Board is not comfortable with the notion that such an individual can participate sufficiently in the medication administration process to be involved in self-administration. The Board does, however, see the point that there may be lucid individuals who are physically disabled, but who are completely able to capably request that a pill be removed from a bottle. The Board will adopt the comment, with the insertion of the word "physical" immediately preceding the word "disability".

COMMENT NO. 74: Ms. Frank suggests that non-invasive tasks such as collecting, reporting, and documentation of data, vital signs, height, and weight are activities that do not require training, evaluation and supervision of a licensed nurse.

RESPONSE: There is a clear difference between delegation and assignment. These tasks are identified as tasks that, when a nurse-patient relationship exists, may be assigned by a nurse without the training, supervision, etc. necessary in the delegation of tasks. When a nurse-patient relationship does not exist these tasks may be carried out by an unlicensed individual without control or supervision of a licensed nurse.

COMMENT NO. 75: Mr. Hanshew expressed concern that proposed rule XIII could be interpreted as requiring that a

nurse "assign" each task included in the rule, including the task of assisting in the self-administration of medications, which would contradict SRS rules on assisting in self-administration.

RESPONSE: The Board notes that tasks listed in this rule do not have to be assigned by a licensed nurse in every instance. The language of the rule clearly states that such tasks may be routinely assigned where a nurse-patient relationship exists. The Board's intent is not to require that any time an unlicensed person undertakes any of the listed tasks that a nurse first assign such task. The listed tasks are identified as tasks that may be performed by an unlicensed person.

COMMENT NO. 76: The Medicaid Services Division seeks clarification on what constitutes a nurse-patient relationship. It suggests removing the entire section, and contends that the section inappropriately requires delegation and supervision of the listed tasks by a licensed nurse, and is in conflict with the intent of OBRA.

RESPONSE: The Board notes that the section has nothing to do with delegation, and that the listed tasks may be performed by an unlicensed person without following the rules relating to delegation. OBRA does not restrict the Board of Nursing's ability to regulate the profession of nursing in the State of Montana.

COMMENT NO. 77: SRS suggests that this rule inappropriately defines all tasks within the rule as nursing tasks, even though such tasks are not nursing tasks and may be performed by unlicensed individuals. SRS is concerned that this rule will form a basis for a legal assertion that a nurse must be involved in all the identified tasks. SRS suggests that the reference to "assignment" being defined at rule II should be changed to note that it is defined at rule IV. SRS suggests that there is no significant difference between the terms "assignment" and "delegation" in the rules. SRS questions whether assignment and delegation are the same thing, and suggests that if the terms are intended to be treated separately, that the definitions be changed to reflect the difference.

RESPONSE: The Board disagrees with SRS' assertion. The listed tasks do not require the involvement of a licensed nurse. When a licensed nurse is involved, however, the nurse-patient relationship exists. In such instances, the rule provides that a licensed nurse may routinely assign such tasks without following delegation guidelines. The Board agrees with the comment regarding the change in reference from rule II to rule IV. The rule has been changed as suggested in this regard.

COMMENT NO. 78: MASN suggests that it appears that administration of medications could be assigned rather than delegated, and suggests limiting assignment to activities of daily living in the school setting.

RESPONSE: The administration of medications may not be assigned under this rule. The assistance of self-

administration of medications may be assigned. The Board believes that the rule is correct as stated, and appropriately distinguishes between administration of medications and assistance in self-administration of medications.

COMMENT NO. 79: MHCA states that performance of the listed tasks by unlicensed persons, whether or not supervised by a licensed nurse, is not prohibited by the nurse practice act or any other Montana statute. Thus, according to MHCA, the necessity for the rule is in question.

RESPONSE: The necessity for the rule is to give adequate guidance to a licensed nurse as to what may be delegated and what may be routinely assigned. Such tasks are not within the sole province of a licensed nurse, as stated by MHCA.

BOARD OF NURSING
NANCY HEYER, RN, CNA, PRESIDENT

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

_____
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, May 16, 1994.

BEFORE THE BOARD OF CRIME CONTROL
DEPARTMENT OF JUSTICE
STATE OF MONTANA

In the Matter of the Adoption of new Rules I-X (23.14.801 through 23.14.810) and new Rule XI (23.14.420), the Amendment of Rules 23.14.401, 404-408, 411-413, 415-416 and 419, and the Repeal of Rules 23.14.417-418 regarding Peace Officers Standards and Training	)))))))	NOTICE OF ADOPTION, AMENDMENT AND REPEAL OF RULES

TO: All Interested Persons:

1. On April 14, 1994, the Board of Crime Control published notice of proposed adoption, amendment and repeal of rules concerning peace officers standards and training policies, at page 893 of the 1994 Montana Administrative Register, issue number 7.

2. The rules proposed for adoption were adopted with clarification of wording in Rule IV to read as follows.

23.14.804 COMMENCEMENT OF FORMAL PROCEEDINGS FOR SUSPENSION OR REVOCATION OF CERTIFICATION (1) Formal proceedings may be commenced only after the filing of a complaint as described in these rules, the director's determination that formal proceedings are necessary, and the board's issuance of a written order to show cause and notice of opportunity for hearing.

(2) ~~In~~ If the director determines that formal proceedings are necessary, the respondent must be afforded reasonable notice. The order and notice shall contain at least:

(a) The name and address of the complainant;

(b) A statement, in plain language, of the nature and circumstances of the incident complained of;

(c) Reference to the particular section(s) of the statutes or rules alleged to have been violated;

(d) A statement of the time, place and nature of the hearing; and

(e) A statement that failure to answer the complaint may result in default.

(3) The respondent or his counsel may examine the original complaint unless the ~~director~~ presiding officer determines that the demand of individual privacy clearly exceeds the merits of public disclosure.

(4) In formal proceedings, the respondent must file an answer, or be in default. The answer shall contain at least:

(a) ~~A request for~~ An acknowledgement of the time and place of the hearing; and

(4)(b) through (11) remain the same.

3. The rules have been amended as proposed with only the wording change from "police officer" to "peace officer" in Rule 23.14.415 to maintain consistency.

23.14.415 CODE OF ETHICS (1) and (2) remain the same.

(3) The law enforcement code of ethics: (a) A ~~police~~ peace officer acts as an official representative of government who is required and trusted to work within the law. The officer's powers and duties are conferred by statute. The fundamental duties of a ~~police~~ peace officer include serving the community, safeguarding lives and property, protecting the innocent, keeping the peace, and ensuring the rights of all to liberty, equality and justice.

(b) A ~~police~~ peace officer shall perform all duties impartially, without favor or affection or ill will and without regard to status, sex, race, religion, political belief or aspiration. All citizens will be treated equally with courtesy, consideration and dignity. Officers will never allow personal feelings, animosities or friendships to influence official conduct. Laws will be enforced appropriately and courteously and, in carrying out their responsibilities, officers will strive to obtain maximum cooperation from the public. They will conduct themselves in appearance and deportment in such a manner as to inspire confidence and respect for the position of public trust they hold.

(c) A ~~police~~ peace officer will use responsibly the discretion vested in the position and exercise it within the law. The principle of reasonableness will guide the officer's determinations and the officer will consider all surrounding circumstances in determining whether any legal action shall be taken. Consistent and wise use of discretion, based on professional policing competence, will do much to preserve good relationships and retain the confidence of the public. There can be difficulty in choosing between conflicting courses of action. It is important to remember that a timely word of advice rather than arrest - which may be correct in appropriate circumstances - can be a more effective means of achieving a desired end.

(d) A ~~police~~ peace officer will never employ unnecessary force or violence and will use only such force in the discharge of duty as is reasonable in all circumstances. Force should be used only with the greatest restraint and only after discussion, negotiation and persuasion have been found to be inappropriate or ineffective. While the use of force is occasionally unavoidable, every ~~police~~ peace officer will refrain from applying the unnecessary infliction of pain or suffering and will never engage in cruel, degrading, or inhuman treatment of any person.

(e) Whatever a ~~police~~ peace oficer sees, hears, or learns of, which is of a confidential nature, will be kept secret unless the performance of duty or legal provision requires otherwise. Members of the public have a right to security and privacy, and information obtained about them must not be improperly divulged.

(f) A ~~police~~ peace officer will not engage in acts of corruption or bribery, nor will an officer condone such acts by other ~~police~~ peace officers. The public demands that the integrity of ~~police~~ peace officers be above reproach. ~~Police~~ Peace officers must avoid any conduct that might compromise integrity and thus undercut the public confidence in a law enforcement agency. Officers will refuse to accept any gifts, presents, subscriptions, favors, gratuities, or promises that could be interpreted as seeking to cause the officer to refrain from performing official responsibilities honestly and within the law. ~~Police~~ Peace officers must not receive private or special advantage from their official status. Respect from the public cannot be bought; it can only be earned and cultivated.

(g) ~~Police~~ Peace officers will cooperate with all legally authorized agencies and their representatives in the pursuit of justice. An officer or agency may be one among many organizations that may provide law enforcement services to a jurisdiction. It is imperative that a ~~police~~ peace officer assist colleagues fully and completely with respect and consideration at all times.

(h) ~~Police~~ Peace officers will be responsible for their own standard of professional performance and will take every reasonable opportunity to enhance and improve their level of knowledge and competence. Through study and experience, a ~~police~~ peace officer can acquire the high level of knowledge and competence that is essential for the efficient and effective performance of duty. The acquisition of knowledge is a never-ending process of personal and professional development that should be pursued constantly.

(i) ~~Police~~ Peace officers will behave in a manner that does not bring discredit to their agencies or themselves. A ~~police~~ peace officer's character and conduct while off duty must always be exemplary, maintaining a position of respect in the community in which he or she lives and serves. The officer's personal behavior must be beyond reproach.

AUTH: 44-4-301, MCA. IMP: 44-4-301, MCA.

4. The changes were made in response to comments received from the Legislative Council. No other comments were received.

BOARD OF CRIME CONTROL
EDWIN L. HALL, Executive Director

By: Edwin L Hall
EDWIN L. HALL, Executive Director
BOARD OF CRIME CONTROL
DEPARTMENT OF JUSTICE

Rule Reviewer

Certified to the Secretary of State, May 16 1994

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION of NEW RULE I ARM 42.31.309; II ARM 42.31.310; III ARM 42.31.311; IV ARM 42.31.312; V ARM 42.31.313; VI ARM 42.31.314; VII ARM 42.31.315; VIII ARM 42.31.316; and NEW RULE IX ARM 42.31.317 relating to Regulation of Cigarette Marketing	NOTICE OF THE ADOPTION of NEW RULE I ARM 42.31.309; II ARM 42.31.310; III ARM 42.31.311; IV ARM 42.31.312; V ARM 42.31.313; VI ARM 42.31.314; VII ARM 42.31.315; VIII ARM 42.31.316; and NEW RULE IX ARM 42.31.317 relating to Regulation of Cigarette Marketing

TO: All Interested Persons:

1. On February 14, 1994, the Department published notice of the proposed adoption of New Rules I (ARM 42.31.309); II (ARM 42.31.310); III (ARM 42.31.311); IV (ARM 42.31.312); V (ARM 42.31.313); VI (ARM 42.31.314); VII (ARM 42.31.315); VIII (ARM 42.31.316) and IX (ARM 42.31.317) relating to cigarettes and cost showing for regulation of marketing by the Income and Miscellaneous Tax Division at pages 375 of the 1994 Montana Administrative Register, issue no. 4.

2. A public hearing was held on March 21, 1994, 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 proposed rules should contain a preamble with policy considerations.

RESPONSE: This would be repetitious, as a Declaration of Policy is contained in 16-10-102, MCA.

COMMENT: A wholesaler or retailer must have at least a 12-month operating history in Montana before a cost showing could be submitted. The CLT-4 (state corporation tax return) must be included with any cost showing.

RESPONSE: Rules encompassing these comments would be detrimental to free-trade, impede interstate commerce, and may be unconstitutional.

COMMENT: There should be an expiration for the cost showing, a so called "cap period."

RESPONSE: The department does not have statutory authority to limit the term of the cost showing.

COMMENT: The rules should limit the number of cost showings a business could initiate in a year.

RESPONSE: There is no limit proscribed in the statute. A limitation would exceed the statute.

COMMENT: The department should bill the petitioner for the expenses incurred by the department.

RESPONSE: The department does not have statutory authority to levy the fees requested in this comment.

COMMENT: The Robinson/Packman Act should be enough deterrent to prevent unfair trade practices.

RESPONSE: Robinson/Packman does not preclude Montana from having a specific trade regulation statute.

COMMENT: The time frame needs to be shortened to ensure the information submitted is still representative.

RESPONSE: The time frame includes an appeal process which is necessary to allow participation by all affected parties.

COMMENT: Requiring a cost showing to be submitted within 90 days of the analysis period will effectively limit cost showings to once a year if an income tax return must be included.

RESPONSE: It is not necessary for the income tax return to cover the same period of time as the cost showing petition. The rules require the most recent tax return to be submitted. If the supporting documents filed with the petition meet the 90-day criteria, the cost showing is considered timely.

COMMENT: Rule IV, subsection (2) states "[t]he state of Montana is considered one market." This is correct, but is contradicted by Rule V which requires cost data for a company's entire operation.

RESPONSE: Rule IV, subsection (2) has been taken out of context. This rule is intended to clarify that there will be one minimum price in the State of Montana. If a cost showing is successful, competitors throughout the State of Montana will be able to adjust their sales price. Rule V relates to the cost showing. The statute mandates that the petitioner submit information related to 100% of the petitioner's total operation. It is intended that this information will be used to insure that all costs related to the petitioner's cigarette operations are reflected properly.

COMMENT: In the basic cost determination, direct and indirect costs must be determined on a per unit basis.

RESPONSE: The formula provides a general framework for computing the cost of doing business. Rule V speaks to the allocation methods that may be used by the petitioner. It is not our intention to limit the petitioner's method of allocation as long as the method is allowed for income tax reporting purposes.

COMMENT: The rules should address the department's role in analyzing a petition, i.e., the department's assessment of an incomplete petition and review for satisfactory proof of a lower cost of doing business. The analysis is particularly important if the affected parties do not request a hearing on the petition.

RESPONSE: Rule II requires the petitioner to submit CT-210 and all supporting documentation. Rule V addresses the information that must be submitted. The department will review the documentation to ensure the petition is complete.

COMMENT: The definition of "invoice cost of cigarettes to

the wholesaler" varies significantly from the definition found in the statute 16-10-103(2), MCA; replacement cost as an aspect of the lower basic cost of cigarettes is not addressed.

RESPONSE: The definition provided in the proposed rules addresses replacement cost. Replacement cost is still predicated on the manufacturers' list prices. Section 16-10-204(2), MCA, does not allow discounts of any kind to be used in determining the cost of cigarettes.

COMMENT: Current cost showing statutes require the use of accounting methods and standards used for "income tax reporting purposes" not generally accepted accounting methods or other methods.

RESPONSE: The department has amended the proposed rules deleting references to generally accepted accounting principles and other methods.

COMMENT: The rules need to be clarified for those aggrieved by an order of the department granting or denying a petition for approval of a lower than statutory presumed cost of doing business.

RESPONSE: The department has amended the proposed rules deleting the reference to Title 15, Chapter 1, part 2 in Rule IV(3).

COMMENT: "Cash discount" and "trade discount" are incorrectly defined.

RESPONSE: The department has amended the proposed rules to define the terms in accordance with the Internal Revenue Regulations.

COMMENT: The definition of "Affected Person" should not include a trade association of wholesalers or retailers.

RESPONSE: The department has deleted "trade association of wholesalers or retailers" from the definition.

COMMENT: The department should pay an outside expert to review any cost showings.

RESPONSE: The department is not funded to hire an outside expert to review cost showings. The department has the necessary expertise to review cost showings but may hire an expert if a particular case requires it.

COMMENT: Certain technical amendments should be made to clarify or expand on the existing rules. Pre-opening expenses should be defined; the term "manufacturer's list cost" should be used instead of "manufacturer's base price;" the term his/her should be removed from the rules; and the word "shall" should be used when referring to the formula.

RESPONSE: The department has added a definition to the proposed rules to define "manufacturer's base price." While the "trade discount" definition was amended deleting the reference to "manufacturer's base price," these rules will be promulgated in Chapter 31, sub-part 3 which does reference the term (minimum price calculation). Because terminology seems to be varied, the definition will lend clarification to the administrative rules dealing with cigarette marketing as a whole.

Pre-opening expenses is a generally understood term and

better addressed on a case-by-case basis. The term his/her has been removed from the rules. Requiring the use of the formula when another may suffice is not reasonable. The rules have not been amended to reflect these suggested technical amendments.

COMMENT: The petition must be considered public information. The Montana constitution grants its citizens the "right to know" what is going on in their government and the right to participate in and throughout the governmental process.

COMMENT: The public's right to know should be balanced by the petitioner's privacy through the petitioner's right to request a protective order pursuant to the provisions of Rule 26(a) of the M.R.Civ.P., and the form of protective order outlined by the Montana Supreme Court in Mountain States Telephone and Telegraph Company v. Department of Public Service Regulation, 634 P.2d 181 (1981).

COMMENT: Proposed Rule II and III(5) call for dissemination of a wide range of protected and confidential information. The disclosure of this confidential information to a petitioner's competitors and to the public violates the petitioning company's constitutional property and privacy rights and may violate the Commerce Clause of the United States Constitution. The least burdensome and most narrowly tailored regulation which allows the department to review the petition and still protect privacy interests is to require a petitioner to pay for an independent expert to review the petition instead of allowing the parties or their attorneys and experts to review the petition.

COMMENT: Information should not automatically be considered public. The applicant should be allowed to file a motion for protective order upon submitting a petition, thereby creating a window of protection. The information would then be presumed to be proprietary, private and confidential until the hearings examiner could rule on the protective order.

RESPONSE: The following response applies collectively to the four comments listed above. The department is very concerned about confidentiality and privacy issues. We recognize the conflict between the public's right to know and the right of privacy which are both part of the Montana Constitution. The department must balance these constitutional mandates. In deciding how to balance these constitutional provisions we look for guidance to the Montana Supreme Court. The commentators appear to agree that the Montana Supreme Court decision in Mountain States Telephone and Telegraph Company v. Department of Public Service Regulation 194 Mont. 277, 634 P.2d 181 (1981) is relevant. However, the parties disagree on whether the facts before the department are analogous to the facts in Mountain States.

The only real dispute by the commentators on confidentiality concerns whether a protective order such as the one sanctioned by the Montana Supreme Court will provide sufficient protection for trade secret information. A protective order is attached to the Mountain States decision.

It provides that the parties to the hearing have access to the confidential information. However, the access is restricted to their attorneys and their experts. The parties themselves, including officers, directors or employees were not allowed access to the trade secret information. One commentator does not believe that Mountain States and the protective order used in that case are relevant to the case before the department because each case is fact specific. Further, the commentator does not believe that the competitors of a petitioning company have a legitimate interest in reviewing the petition.

The department believes that Mountain States is the most relevant court decision to the facts of the situation before it. In both this case and the case before the court, the issue is whether a party to an administrative proceeding should have access to confidential information held by another party. The department does disagree with the assertion that competitors to the petitioner do not have a legitimate interest in the information in the petition. Therefore, the department will rely on Mountain States for guidance.

The department does not believe it is appropriate to adopt a rule requiring payment of an additional fee for an independent entity rather than the competitors to review the information as suggested by one of the commentators. The business entities which compete with the petitioner have an interest in reviewing and commenting on the petition. They are uniquely qualified to provide analysis and comment concerning the petition. As businesses involved in the same business as the petitioner, their input will be valuable to the department in making a decision on the petition. If necessary, the department may hire an independent expert to assist it in doing its independent analysis. However, the analysis and comment of the other business entities is a necessary part of the department's independent review.

The department will add an additional rule which will allow any party who believes that information contained in their petition should be treated confidentially and request the department to treat it confidentially by adopting a protective order. The department will treat the information as confidential and not reveal any of the information to anyone outside the department until such time as a Hearings Examiner can be appointed and after an opportunity for hearing, issue a decision on the confidentiality of the information submitted. If the Hearings Examiner agrees that the information is confidential, the Hearings Examiner will be urged to issue a protective order which protects the information from being revealed to any of the petitioner's competitors. The rule will suggest that a protective order similar to the one issued in Mountain States should be issued in order to protect the confidential information from competitors. In other words, attorneys and experts for the parties should have access to the information but employees, officers, directors and others directly associated with the competing company will not see the

information. It is important to protect the confidentiality of trade secret information from competitors. The protective order sanctioned in Mountain States should accomplish this purpose.

4. The Department adopts Rule VI ARM 42.31.314 as proposed.

5. As a result of the comments received the Department has amended the remaining rules which were proposed and adopted a New Rule IX ARM 42.31.317 as follows:

RULE I (ARM 42.31.309) DEFINITIONS (1) As used in this subchapter the following definitions apply in addition to those found in 16-10-103, MCA:

(a) "Affected Person" means a licensed Montana wholesaler or retailer of cigarettes ~~or a trade association of wholesalers or retailers~~.

(b) "Cash discount" means a ~~discount based on the terms of a sale or a purchase, sales or distribution incentive, including any discount or allowance granted for an electronic transfer of money, offered as an inducement to the purchaser to encourage prompt payment~~ REDUCTION IN THE INVOICE OR PURCHASE PRICE ATTRIBUTABLE TO PAYMENT WITHIN A PRESCRIBED TIME PERIOD.

(c) through (g) remain the same.

(h) "Trade discounts" ~~are those price reductions which are offered by a cigarette manufacturer and represent a reduction in the manufacturer's base price of the item being purchased~~ REPRESENT ADJUSTMENTS TO THE PURCHASE PRICE GRANTED BY A VENDOR. THE DISCOUNT MAY VARY DEPENDING UPON THE QUANTITY OF PURCHASES, OR OTHER FACTORS ESTABLISHED BY THE VENDOR. IF A DISCOUNT IS ALWAYS ALLOWED IRRESPECTIVE OF TIME OF PAYMENT, IT IS CONSIDERED TO BE A TRADE DISCOUNT.

(I) "MANUFACTURER'S BASE COST" MEANS THE MANUFACTURER'S LIST COST PER UNIT, BEFORE ANY CASH OR TRADE DISCOUNTS ARE APPLIED.

RULE II (ARM 42.31.310) PETITION REQUIREMENTS (1) remains the same.

(2) A wholesaler or retailer who is licensed for business in Montana, may submit a petition for approval of lower cost and actual cost data for a period ending no more than 90 days prior to the submission of the petition. The actual cost data must be in sufficient detail to determine the petitioner's true costs of doing business in Montana. UNLESS DETERMINED TO BE CONFIDENTIAL PURSUANT TO ARM 42.31.317, Ppetitioner must timely provide complete copies and all supporting documentation to all interested parties upon request.

RULE III (ARM 42.31.311) HEARINGS AND APPEALS (1) Within 30 days of receipt of the petition and supporting information for approval of a lower cost, the department shall notify

affected persons of the filing of the proposed lower cost petition by publication in the Montana Administrative Register and direct mailing to those who have indicated to the department a desire to receive such information. UNLESS DETERMINED TO BE CONFIDENTIAL PURSUANT TO ARM 42.31.317, ~~T~~the petition will be available for review in income and miscellaneous tax division of the department which is located in the Sam W. Mitchell building, Helena, Montana or a complete copy may be obtained by contacting petitioner.

(2) through (5) remains the same.

RULE IV (ARM 42.31.312) ORDER OF APPROVAL OF A LOWER COST

(1) and (2) remain as proposed.

(3) Appeal rights are contained in Title 2, Chapter 4 and ~~Title 15, Chapter 1, Part 2~~ MCA.

RULE V (ARM 42.31.313) COST DATA AND ANALYSIS (1) In establishing the actual cost of doing business, cost data analysis shall contain sufficient information to show one hundred percent (100%) allocation of all costs of the company's total operations. Indirect costs must be allocated to all products based ~~either on the proportion of total dollar volume of cigarette inventory at the location for the period in question to total dollar volume of all inventory for said location and period, or upon generally accepted accounting principles regularly employed by the petitioner~~ ON A METHOD CONSISTENT WITH THOSE REQUIRED FOR INCOME TAX REPORTING. The wholesaler or retailer shall annotate the actual cost data shown on the latest filed federal income tax return (including federal schedules) submitted to the department to demonstrate how such costs have been allocated in calculating the petitioner's cost of doing business.

(2) and (3) remain the same.

RULE VII (ARM 42.31.315) GUIDELINES FOR WHOLESALERS

(1) Cost to the wholesaler shall mean the basic cost of cigarettes to the wholesaler as defined in the Montana Cigarette Sales Act plus the cost of doing business by the wholesaler as evidenced by the accounting standards and methods regularly employed ~~on a consistent basis by the wholesaler in their determination of costs for the purpose of federal income tax reporting or for the purpose of determining accounting income in accordance with generally accepted accounting principles and standards~~ BY THE WHOLESALER FOR INCOME TAX REPORTING PURPOSES.

(2) remains the same.

(3) All indirect overhead costs including any pre-opening and central and regional administrative expenses shall be allocated to petitioned location based ~~either on the proportion of total dollar volume of cigarette inventory at the location for the period in question to total dollar volume of all inventory for said location and period, or upon generally accepted accounting principles regularly employed by the~~

~~petitioner~~ ON A METHOD CONSISTENT WITH THOSE REQUIRED FOR INCOME TAX REPORTING. All revenues and expenses paid or incurred shall be properly matched for the analysis period.

RULE VIII (ARM 42.31.316) GUIDELINES FOR RETAILERS (1) Cost to the retailer shall mean the basic cost of cigarettes to the retailer as defined in the Montana Cigarette Sales Act plus the cost of doing business by the retailer as evidenced by the accounting standards and methods regularly employed ~~on a consistent basis by the retailer in his/her determination of cost for the purpose of federal income tax reporting or for the purpose of determining income in accordance with generally accepted accounting principles~~ and standards BY THE RETAILER FOR INCOME TAX REPORTING PURPOSES.

(2) remains the same.

(3) All indirect overhead costs including any pre-opening and central and regional administrative expenses shall be allocated to the Montana location based ~~either on the proportion of total dollar volume of cigarette inventory at the location for the period in question to total dollar volume of all inventory for said location and period, or upon generally accepted accounting principles regularly employed by the petitioner~~ ON A METHOD CONSISTENT WITH THOSE USED FOR INCOME TAX REPORTING. All revenues and expenses paid or incurred shall be properly matched for the analysis period.

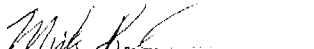
RULE IX (ARM 42.31.317) PROTECTIVE ORDER FOR CONFIDENTIAL INFORMATION (1) If the petitioner believes that the petition and/or any information attached to the petition is confidential and should not be treated as public information, he may request that the information be considered confidential when it is submitted. When the department receives such a request, it shall treat the specified information as confidential until such time as the department through a hearings examiner, or otherwise, can review the information and determine whether the request is appropriate.

(2) If the department determines that the specified information is confidential, it shall protect the information through a protective order issued by the hearings examiner, the director, or his designee. The department shall use the protective order sanctioned by the Montana Supreme Court in Mountain States Telephone and Telegraph Company v. Department of Public Service Regulation, 194 Mont. 277, 634 P.2d 181 (1981), as a guide in fashioning a protective order. The order is an appendix to the opinion. In particular, if the department determines that the specified information is confidential trade secret information, the department will use the protective order to ensure that competitors are not allowed access to the information. Access to the information will be restricted to attorneys and if appropriate, experts who are not employees, officers, or directors of the competitors or an association of competitors.

AUTH: Sec. 16-10-104, MCA; IMP: Article II, section 9 and 10, Montana Constitution and Sec. 16-10-103 and 16-10-301, MCA.

6. Therefore, the Department adopts the rules with the amendments listed above.

CLEO ANDERSON
Rule Reviewer



MICK ROBINSON
Director of Revenue

Certified to Secretary of State May 16, 1994.

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

In the matter of the petition for declaratory ruling regarding the licensing requirement for Investigators of the Federal Defenders of Montana, Inc.	)))))	NOTICE OF PETITION FOR DECLARATORY RULING

1. On July 14, 1994 at 8:00 a.m., in the Presidential Boardroom, Kwataqnuk resort, 303 US Highway 93 East, Polson Montana, the Board of Private Security Patrol Officers and Investigators will consider a petition for declaratory ruling on whether investigators working for the Federal Defenders of Montana, Inc. are exempt from licensure under the Board's statutes and rules.

2. The Petitioner's name and address is: Federal Defenders of Montana, Inc., 9 Third Street North, Suite 302, Great Falls, Montana 59401. Petitioner maintains branch offices at: 214 North 24th Street, Billings, Montana 59101 and 46 North Last Chance Gulch, 2nd Floor, Helena, Montana 59601.

3. Petitioner is a non-profit corporation, formed under the laws of the State of Montana. The Petitioner's purpose is to provide legal representation and auxiliary services to those charged with or under investigation for federal offenses who the United States District Court for the District of Montana determines are financially unable to afford counsel. See Title 18 United States Code, 3006A(a). Upon approval by the United States District Court, Petitioner offers assistance to indigent federal *habeas corpus* litigants, including those under a sentence of death. See 18 U.S.C. §3006A(b). Pursuant to the United States District Court plan, part of Petitioner's purpose is the management and training of, and assistance to, criminal defense lawyers in private practice who have been selected by the United States District Court as members of the Criminal Justice Act Panel. Additionally, the plan calls for Petitioner to provide educational programs for law students and qualified criminal defense attorneys to advance the cause of criminal defense in the State of Montana. Petitioner seeks to provide these services consistent with limited federal funding.

The corporation employs investigators to gather evidence and to assist these attorneys in defense of indigent clients and federal *habeas corpus* litigants. This petition is filed on behalf of Petitioner's investigators, who work solely on behalf of, and under the direction of, the Chief Federal Defender and Assistant Federal Defenders to achieve its purpose.

4. The statute as to which Petitioner seeks declaratory ruling is Title 37, Chapter 60 (Private Investigators and Patrol Officers), 37-60-301; the regulations as to which the Petitioner seeks declaratory ruling are the regulations of the

Board of Private Security Patrol Officers and Investigators, Rules 8.50.101 through 8.50.903.

5. The question presented for declaratory ruling is whether the investigators employed by the Federal Defenders of Montana, Inc., while performing their official duties for Petitioner, should be required to be licensed under the statute and/or exempt from the reach and sanctions of both the statute and regulations promulgated pursuant thereto.

6. Petitioner requests a declaratory rule by the Board that the investigators employed by the Federal Defenders of Montana, Inc., while engaged in their official duties for and on behalf of that organization, are by definition not subject to the licensing requirements of Title 37, Chapter 60 (Private Investigators and Patrol Officers) and the regulations of the Board of Private Security Patrol Officers and Investigators. In the alternative, Petitioner requests a declaratory rule by the Board that Petitioner's investigators are exempt, pursuant to the provisions of 37-60-105(1)(a); (1)(b)(iii); (4)(b); and/or (9).

7. Petitioner knows of no other party similarly affected.

8. Interested persons may submit their data, views or arguments, either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Private Security Patrol Officers and Investigators, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, to be received no later than 5:00 p.m., June 23, 1994.

BOARD OF PRIVATE SECURITY PATROL OFFICERS AND INVESTIGATORS

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

_____
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, May 16, 1994.

BEFORE THE BOARD OF NURSING
DEPARTMENT OF COMMERCE
STATE OF MONTANA

****

In the matter of the petition for declaratory ruling on the artificial rupture of membranes by registered professional nurses under physician order	* * * * *	DECLARATORY RULING

****

INTRODUCTION

1. On November 24, 1993, the Board of Nursing received a completed Petition for Declaratory Ruling from Nancy Greer, Birthing Center Manager of Kalispell Regional Hospital, regarding the authority of registered professional nurses to perform artificial rupture of membranes of a woman in labor upon the order of the attending physician.

2. On January 27, 1994, the Board of Nursing published a Notice of Petition for Declaratory Ruling setting forth the facts and issues presented and establishing a hearing date of February 18, 1994. This notice was published in the 1994 Montana Administrative Register, Issue 2, page 178.

3. On February 18, 1993, at 8:00 a.m., in the conference room of the Professional and Occupational Licensing Bureau, 111 North Jackson, Arcade Building, Lower Level, Helena, Montana, the Board of Nursing considered a petition for declaratory ruling on artificial rupture of membranes by registered professional nurses under physician order.

The Question Presented

4. Petitioner requested a ruling on whether it is within the scope of the RN practice act for registered professional nurses to artificially rupture the membrane during a woman's labor when done upon written order from the attending physician.

Summary of Comments Received

5. The following individuals submitted written comments, and/or appeared in person, as noted, and submitted comments on the petition in the above-entitled matter.

Nancy Greer, petitioner, appeared at the Board's hearing on her petition, and presented testimony in support of a declaratory ruling that the artificial rupturing of membranes is within the scope of practice for a registered professional nurse under the order of the attending physician. Ms. Greer stated that a very small percentage of membranes rupture on their own. Ms. Greer stated that registered professional nurses in the states of Washington, Oregon, and Colorado are all authorized to perform this procedure under order from the attending physician. Ms. Greer stated that allowing the procedure to be performed by a registered professional nurse increases the convenience to the patient while maintaining

protection of the patient as well.

Barbara Booher, Executive Director of the Montana Nurses Association, appeared at the Board's hearing on the above-entitled petition, and presented informational testimony on standards that exist in the industry on a registered professional nurse performing this procedure under the order of the attending physician.

Camille Scott, Vice President of Clinical Services at Kalispell Regional Hospital, and Chris Ward, Clinical Practitioner at St. Peter's Hospital, Helena, Montana, appeared separately at the Board's hearing on the above-entitled matter, and presented testimony of general support for a declaratory ruling that would authorize the artificial rupturing of membranes by a registered professional nurse under the order of the attending physician.

Kathy Anderson, Pediatrics Department Director of Northern Montana Hospital, and Dr. Charles B. Ludden, of Northwest Women's Health Care, presented written comments expressing general support for a declaratory ruling that would authorize the artificial rupturing of membranes by a registered professional nurse under the order of the attending physician.

Applicable Law

6. Section 37-8-102(3)(a), defines the practice of professional nursing as follows:

(a) "Practice of professional nursing" means the performance for compensation of services requiring substantial specialized knowledge of the biological, physical, behavioral, psychological, and sociological sciences and of nursing theory as a basis for the nursing process. The nursing process is the assessment, nursing analysis, planning, nursing intervention, and evaluation in the promotion and maintenance of health; the prevention, casefinding, and management of illness, injury, or infirmity; and the restoration of optimum function. The term also includes administration, teaching, counseling, supervision, delegation, and evaluation of nursing practice and the administration of medications and treatments prescribed by physicians, dentists, osteopaths, or podiatrists authorized by state law to prescribe medications and treatments. Each registered nurse is directly accountable and responsible to the consumer for the quality of nursing care rendered. As used in this subsection (3)(a):

(i) "nursing analysis" is the identification of those client problems for which nursing care is indicated and may include referral to medical or community resources;

(ii) "nursing intervention" is the implementation of a plan of nursing care necessary to accomplish defined goals."

7. Under ARM 8.32.1403(4), the registered nurse shall:
(4) implement the strategy of care by:
(a) initiating nursing interventions through;
(i) giving direct care,
(ii) assisting with care,
(iii) delegating care,
(iv) collaboration and/or referral when appropriate.
(b) providing an environment conducive to safety and health,
(c) documenting nursing interventions and responses to care to other members of the health team;

(d) communicating nursing interventions and responses to care to other members of the health team.

8. Under ARM 8.32.1404(3), the registered nurse shall:
(4) obtain instruction and supervision as necessary when implementing nursing techniques or practices.

Declaratory Ruling

1. The term "professional nursing", as found at section 37-8-101(5)(b), is defined as including the administration . . . of . . . treatments prescribed by physicians, advanced practice registered nurses, dentists, osteopaths, or podiatrists authorized by state law to prescribe medications and treatments. The artificial rupturing of membranes of a woman in labor by a registered nurse, when performed pursuant to the requirements of section 37-8-101(5)(b), and in compliance with the applicable law as cited herein, is within the scope of a properly trained registered nurse's practice.

2. Under ARM 8.32.1404(3), a registered nurse is to obtain instruction and supervision as necessary when implementing nursing techniques or practices. The Board of Nursing interprets this section to require adequate training of a registered nurse prior to performing the artificial rupturing of membranes of a woman in labor. A registered nurse must complete training, involving both didactic and preceptored components. The training must afford opportunities to assess complications and appropriate application of treatments. In addition, the practice of artificially rupturing membranes of a pregnant women may be done only on the order of the attending physician. The Board notes that the petitioner has assured that each registered professional nurse performing this procedure will be observed a minimum of three times by a physician before performing this procedure on their own. The Board also notes that petitioner has assured that registered professional nurses will not perform this procedure until after completion of extensive orientation on the obstetrical unit.

3. A registered nurse, in order to continue with the practice of artificially rupturing membranes of a woman in labor, must maintain proficiency. This may be done through, among other methods, continued education, demonstration, & Quality Assurance monitoring.

4. Any interested parties may request judicial review of this declaratory ruling by filing a petition for judicial review in a District Court of the State of Montana within thirty (30) days of the publication of this ruling pursuant to Section 2-4-501 and 2-4-702, MCA.

DONE this 29th day of April, 1994.

Nancy Heyer RN CNA

Nancy Heyer, RN, CNA, President
Montana Board of Nursing

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 March 31, 1994. This table includes those rules adopted during the period April 1, 1994 through June 30, 1994 and any proposed rule action that was pending during the past 6-month period. (A notice of adoption must be published within 6 months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through March 31, 1994, 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 April, 1994, are published. Vacancies scheduled to appear from June 1, 1994, through August 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 May 13, 1994.

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 FROM APRIL, 1994

Appointee	Appointed by	Succeeds	Appointment/End Date
Board of Dentistry (Commerce)			
Dr. Mary Youngbauer	Governor	Hanson	4/12/1994
Forsyth			3/29/1999
Qualifications (if required): dentist			
Board of Sanitarians (Commerce)			
Ms. Denise Moldroski	Governor	Chance	4/12/1994
Superior			7/1/1994
Qualifications (if required): registered sanitarian			
Board of Speech Pathologists and Audiologists (Commerce)			
Ms. Kay Carrier	Governor	Roy	4/7/1994
Laurel			12/31/1996
Qualifications (if required): speech pathologist			
Ms. Lynn Harris	Governor	Clark	4/7/1994
Miles City			12/31/1996
Qualifications (if required): audiologist			
Council on Physical Fitness and Sports (Governor)			
Ms. Mary Kay Bennett	Governor	not listed	4/11/1994
Helena			7/12/1995
Qualifications (if required): public member			
Ms. Jeri Domme	Governor	not listed	4/11/1994
Helena			7/12/1995
Qualifications (if required): public member			
Mr. Ron Egeland	Governor	not listed	4/11/1994
Billings			7/12/1995
Qualifications (if required): public member			

BOARD AND COUNCIL APPOINTEES FROM APRIL, 1994

Appointee	Appointed by	Succeeds	Appointment/End Date
Council on Physical Fitness and Sports (Governor) cont.			
Mr. Todd Foster Great Falls Qualifications (if required): public member	Governor	not listed	4/11/1994 7/12/1995
Mr. Dick Harte Bozeman Qualifications (if required): public member	Governor	not listed	4/11/1994 7/12/1995
Ms. Malia Kipp Missoula Qualifications (if required): public member	Governor	not listed	4/11/1994 7/12/1995
Ms. Cindy Lewis Helena Qualifications (if required): public member	Governor	not listed	4/11/1994 7/12/1995
Mr. Robert W. Moon Helena Qualifications (if required): public member	Governor	not listed	4/11/1994 7/12/1995
Mr. Bob Norbie Great Falls Qualifications (if required): public member	Governor	not listed	4/11/1994 7/12/1995
Dr. Arnold Olsen Helena Qualifications (if required): public member	Governor	not listed	4/11/1994 7/12/1995
Mr. Tom Osborne Billings Qualifications (if required): public member	Governor	not listed	4/11/1994 7/12/1995

BOARD AND COUNCIL APPOINTEES FROM APRIL, 1994

Appointee	Appointed by	Succeeds	Appointment/End Date
Council on Physical Fitness and Sports (Governor) cont.			
Mr. Hal Rawson Helena Qualifications (if required): public member	Governor	not listed	4/11/1994 7/12/1995
Mr. Pat Rummerfield Colstrip Qualifications (if required): public member	Governor	not listed	4/11/1994 7/12/1995
Mr. Spencer Sartorius Helena Qualifications (if required): public member	Governor	not listed	4/11/1994 7/12/1995
Dr. Brian Sharkey Missoula Qualifications (if required): public member	Governor	not listed	4/11/1994 7/12/1995
Ms. Judy Spolstra Bozeman Qualifications (if required): public member	Governor	not listed	4/11/1994 7/12/1995
Dr. Manuel White Helena Qualifications (if required): public member	Governor	not listed	4/11/1994 7/12/1995
Mr. Joe Wren Butte Qualifications (if required): public member	Governor	not listed	4/11/1994 7/12/1995

BOARD AND COUNCIL APPOINTEES FROM APRIL, 1994

Appointee	Appointed by	Succeeds	Appointment/End Date
Public Housing Task Force (Administration)			
Ms. Toni Austad	Governor	not listed	4/13/1994
Great Falls			0/0/0
Qualifications (if required): ex-officio			
Ms. Bonnie Bacon	Governor	not listed	4/13/1994
Great Falls			0/0/0
Qualifications (if required): ex-officio			
Tourism Advisory Council (Commerce)			
Mr. Joe Wilson	Governor	Johnson	4/5/1994
Forsyth			1/1/1996
Qualifications (if required): represents Innkeepers Association			

VACANCIES ON BOARDS AND COUNCILS -- June 1, 1994 through August 31, 1994

Board/current position holder	Appointed by	Term end
Aging Advisory Council (Governor)		
Mr. Roland F. Kennerly, Browning	Governor	7/18/1994
Qualifications (if required): member from Region VII		
Mr. Dwight MacKay, Billings	Governor	7/18/1994
Qualifications (if required): member from Region II		
Ms. Molly L. Munro, Great Falls	Governor	7/18/1994
Qualifications (if required): member from Region VIII		
Agricultural Development Council (Agriculture)		
Mr. Everett Snortland, Conrad	Governor	7/1/1994
Qualifications (if required): Director of Department of Agriculture		
Alfalfa Leaf-Cutting Bee Advisory Council (Agriculture)		
Mr. Gill M. Sorg, Wolf Point	Governor	7/1/1994
Qualifications (if required): alfalfa seed grower		
Board of Banking (Commerce)		
Mr. Tom Ryan, Hamilton	Governor	7/1/1994
Qualifications (if required): public member from Congressional District 1		
Mr. Jerry L. Wiedebush, Plentywood	Governor	7/1/1994
Qualifications (if required): officer of state bank & from Congressional District 2		
Board of Barbers (Commerce)		
Ms. Amy S. Adler, Drummond	Governor	7/1/1994
Qualifications (if required): licensed barber		
Board of Dentistry (Commerce)		
Ms. Michele G. Kiesling, Helena	Governor	7/1/1994
Qualifications (if required): licensed dental hygienist		

VACANCIES ON BOARDS AND COUNCILS -- June 1, 1994 through August 31, 1994

Board/current position holder	Appointed by	Term end
Board of Hearing Aid Dispensers (Commerce)		
Dr. Wilson Higgs, Kalispell	Governor	7/1/1994
Qualifications (if required): otolaryngologist		
Mr. James Lopez, Kalispell	Governor	7/1/1994
Qualifications (if required): hearing aid dispenser		
Mr. Byron Randall, Kalispell	Governor	7/1/1994
Qualifications (if required): hearing aid dispenser		
Board of Landscape Architects (Commerce)		
Ms. Jean Stephenson, Helena	Governor	7/1/1994
Qualifications (if required): public member		
Mr. Patrick A. Thomas, Kalispell	Governor	7/1/1994
Qualifications (if required): licensed landscape architect		
Board of Morticians (Commerce)		
Mr. Guy W. Miser, Fort Benton	Governor	7/1/1994
Qualifications (if required): licensed mortician		
Board of Nursing (Commerce)		
Ms. Helen Carey, Boulder	Governor	7/1/1994
Qualifications (if required): public member		
Ms. Laura A. Lenau, Miles City	Governor	7/1/1994
Qualifications (if required): registered nurse		
Ms. Blanche Proul, Anaconda	Governor	7/1/1994
Qualifications (if required): public member		
Ms. Suzzie Thomas, Stevensville	Governor	7/1/1994
Qualifications (if required): licensed practical nurse		

VACANCIES ON BOARDS AND COUNCILS -- June 1, 1994 through August 31, 1994

Board/current position holder	Appointed by	Term end
Board of Pharmacy (Commerce)		
Mr. Robert J. Kelley, Helena	Governor	7/1/1994
Qualifications (if required): pharmacist		
Mr. H. Dean Mikes, Jr., Missoula	Governor	7/1/1994
Qualifications (if required): hospital pharmacist		
Board of Physical Therapy Examiners (Commerce)		
Ms. Charlotte Fannon, Billings	Governor	7/1/1994
Qualifications (if required): physical therapist		
Board of Private Security Patrol Officers and Investigators (Commerce)		
Mr. Jeffrey "Jeff" T. Patterson, Missoula	Governor	8/1/1994
Qualifications (if required): private investigator		
Mr. Joseph H. Servel, Missoula	Governor	8/1/1994
Qualifications (if required): licensed private investigator		
Sheriff Bill Slaughter, Bozeman	Governor	8/1/1994
Qualifications (if required): sheriff		
Mr. Randy Vogel, Billings	Governor	8/1/1994
Qualifications (if required): city policeman		
Chief David C. Ward, Billings	Governor	8/1/1994
Qualifications (if required): city police member		
Board of Professional Engineers and Land Surveyors (Commerce)		
Mr. Richard A. "Dick" Ainsworth, Missoula	Governor	7/1/1994
Qualifications (if required): professional and practicing land surveyor		
Mr. Daniel F. Prill, Great Falls	Governor	7/1/1994
Qualifications (if required): professional engineer		

VACANCIES ON BOARDS AND COUNCILS -- June 1, 1994 through August 31, 1994

Board/current position holder	Appointed by	Term end
Board of Public Accountants (Commerce)		
Ms. Shirley Warehime, Helena	Governor	7/1/1994
Qualifications (if required): certified public accountant		
Board of Radiologic Technologists (Commerce)		
Ms. Sandra Curtiss, Havre	Governor	7/1/1994
Qualifications (if required): radiological technologist		
Board of Regents of Higher Education (Education)		
Mr. Shane Coleman, Bozeman	Governor	6/1/1994
Qualifications (if required): full-time student at unit of higher education		
Board of Sanitarians (Commerce)		
Ms. Denise Moldroski, Superior	Governor	7/1/1994
Qualifications (if required): registered sanitarian		
Board of Veterinary Medicine (Commerce)		
Mr. Don E. Woerner, Laurel	Governor	7/31/1994
Qualifications (if required): veterinarian		
Board of Water Well Contractors (Natural Resources and Conservation)		
Mr. Wes Lindsay, Clancy	Governor	7/1/1994
Qualifications (if required): licensed water well contractor		
Burial Preservation Board (Commerce)		
Mr. Germaine DuMonteir, Pablo	Governor	8/22/1994
Qualifications (if required): representative of Little Shell Tribe		
Mr. Gilbert Horn, Harlem	Governor	8/22/1994
Qualifications (if required): representative of Gros Ventre & Assiniboine Tribes		
Mr. Mickey Nelson, Helena	Governor	8/22/1994
Qualifications (if required): representative of Montana Coroners' Assoc.		

VACANCIES ON BOARDS AND COUNCILS -- June 1, 1994 through August 31, 1994

Board/current position holder	Appointed by	Term end
Burial Preservation Board (Commerce) cont.		
Mr. Richard Periman, Butte	Governor	8/22/1994
Qualifications (if required): representative of Montana Archaeological Assoc.		
Mr. John Pretty On Top, Crow Agency	Governor	8/22/1994
Qualifications (if required): representative of Crow Tribe		
Mr. John Sunchild, Box Elder	Governor	8/22/1994
Qualifications (if required): representative of Chippewa-Cree Tribe		
Child Care Advisory Council (Social and Rehabilitation Services)		
Ms. Jean Broadhead, Gardiner	Governor	6/30/1994
Qualifications (if required): child care provider		
Ms. Clarice Cryder, Billings	Governor	6/30/1994
Qualifications (if required): parent representative		
Mr. Mike Dellwo, Clancy	Governor	6/30/1994
Qualifications (if required): parent representative		
Mr. David Lockie, Bozeman	Governor	6/30/1994
Qualifications (if required): parent member		
Ms. Mary Jane Standaert, Helena	Governor	6/30/1994
Qualifications (if required): parent representative		
Ms. Mildred Wehrman, Billings	Governor	6/30/1994
Qualifications (if required): child care provider		

VACANCIES ON BOARDS AND COUNCILS -- June 1, 1994 through August 31, 1994

Board/current position holder	Appointed by	Term end
Committee on Telecommunication Services for the Handicapped (Social and Rehabilitation Services)		
Ms. Sheri Devlin, Billings	Governor	7/1/1994
Qualifications (if required): represents Department of Social and Rehabilitation Services		
Mr. Eric Eck, Helena	Governor	7/1/1994
Qualifications (if required): representative of Public Service Commission		
Mr. Norm Eck, Helena	Governor	7/1/1994
Qualifications (if required): not handicapped and is a senior citizen		
Ms. Barbara Ranf, Helena	Governor	7/1/1994
Qualifications (if required): representative of local exchange company		
Historical Society Board of Trustees (Education)		
Mr. William R. Mackay, Roscoe	Governor	7/1/1994
Qualifications (if required): none specified		
Ms. Susan R. McDaniel, Miles City	Governor	7/1/1994
Qualifications (if required): none specified		
Library Services Advisory Council (Education)		
Ms. Brenda Grasmick, Helena	Director	6/1/1994
Qualifications (if required): represent state agency libraries		
Ms. Andrine Haas, Glendive	Director	6/1/1994
Qualifications (if required): represent academic libraries		
Mr. Joseph Hathaway, Glendive	Director	6/1/1994
Qualifications (if required): represents public library service users in Golden Plains Federation		

VACANCIES ON BOARDS AND COUNCILS -- June 1, 1994 through August 31, 1994

Board/current position holder	Appointed by	Term end
Library Services Advisory Council (Education) cont.		
Ms. Jane Howell, Billings	Director	6/1/1994
Qualifications (if required): represents Montana Library Association		
Ms. Margaret Kernan, Helena	Director	6/1/1994
Qualifications (if required): represents school libraries		
Rep. Ray Peck, Havre	Director	6/1/1994
Qualifications (if required): represents the legislature		
Ms. Carolyn Salansky, Dupuyer	Director	6/1/1994
Qualifications (if required): represents public library service users in Pathfinder Federation		
Ms. Deborah Schlesinger, Helena	Director	6/1/1994
Qualifications (if required): represents federation coordinators		
Ms. Phyllis Sundberg, Bridger	Director	6/1/1994
Qualifications (if required): represents public library service users in S. Central Federation		
Ms. Margaret Webster, Billings	Director	6/1/1994
Qualifications (if required): represents special libraries		
Montana Historical Society Board of Trustees (Education)		
Ms. Marjorie W. King, Winnett	Governor	7/1/1994
Qualifications (if required): public member		

VACANCIES ON BOARDS AND COUNCILS -- June 1, 1994 through August 31, 1994

Board/current position holder	Appointed by	Term end
Montana Mint Committee (Agriculture)		
Mr. Philip Clarke, Columbia Falls	Governor	7/1/1994
Qualifications (if required): active mint grower		
Mr. Mark Ficken, Kalispell	Governor	7/1/1994
Qualifications (if required): active mint grower		
Petroleum Tank Release Compensation Board (Health and Environmental Sciences)		
Mr. Ron Guttenberg, Glasgow	Governor	6/30/1994
Qualifications (if required): public member		
Mr. Gary Tschache, Bozeman	Governor	6/30/1994
Qualifications (if required): representative of service station dealers		
Teachers' Retirement Board (Administration)		
Mr. W. Craig Brewington, Fort Benton	Governor	7/1/1994
Qualifications (if required): member of teaching profession		
Tourism Advisory Council (Commerce)		
Mr. Terry Abelin, Bozeman	Governor	7/1/1994
Qualifications (if required): representative of Yellowstone Country and skiing		
Mr. Henry Gehl, Lewistown	Governor	7/1/1994
Qualifications (if required): Montana Chamber representative		
Mr. Herbert Leuprecht, Butte	Governor	7/1/1994
Qualifications (if required): representative of Gold West Country		
Ms. Barbara Moe, Great Falls	Governor	7/1/1994
Qualifications (if required): representative of Russell Country		
Mr. Art Peterson, Billings	Governor	7/1/1994
Qualifications (if required): representative of Yellowstone Country and camping		

VACANCIES ON BOARDS AND COUNCILS -- June 1, 1994 through August 31, 1994

Board/current position holder	Appointed by	Term end
Tourism Advisory Council (Commerce) cont.		
Ms. Velda Shelby, Ronan	Governor	7/1/1994
Qualifications (if required): Native American		
Mr. Roman I. Zylawy, Jr.,	Governor	7/1/1994
Qualifications (if required): representative of Yellowstone Country and skiing		
Western Interstate Commission on Higher Education (Education)		
Ms. Emily Swanson, Bozeman	Governor	6/19/1994
Qualifications (if required): public member		
Wheat and Barley Committee (Agriculture)		
Mr. Larry Barber, Coffee Creek	Governor	8/20/1994
Qualifications (if required): Republican from District V, Fergus County		
Mr. Stephen P. McDonnell, Three Forks	Goveronr	8/20/1994
Qualifications (if required): represents District VI and a Democrat		
Mr. Richard E. Sampsen, Dagmar	Governor	8/20/1994
Qualifications (if required): represents District I and Democrat		