RESERVE

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MONTANA ADMINISTRATIVE REGISTER

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 The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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SPECIAL NOTICE AND TABLE SECTION

BEFORE THE BOARD OF PROFESSIONAL ENGINEERS AND LAND SURVEYORS DEPARTMENT OF COMMERCE STATE OF MONTANA

In the matter of the proposed amendment of rules pertaining to national associations and the complaint process	)))	NOTICE OF PROPOSED AMENDMENT OF 8.48.407 AFFILIATION WITH NATIONAL ASSOCIATIONS AND 8.48.1106 COMPLAINT PROCESS

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On July 23, 1994, the Board of Professional Engineers and Land Surveyors proposes to amend the above-stated rules.

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

"8.48.407 AFFILIATION WITH NATIONAL ASSOCIATIONS (1) The board may affiliate with the ~~National Council of Engineering Examiners~~ national council of examiners for engineering and surveying (NCEES). Any delegate or delegates to the council appointed by the board shall attend meetings of the council at the expense of the board."

Auth: Sec. 37-67-202, MCA; IMP, Sec. 37-67-202, MCA

REASON: The proposed amendment will reflect the name change of the national association from "National Council of Engineering Examiners" to "National Council of Examiners for Engineering and Surveying."

"8.48.1106 COMPLAINT PROCESS (1) Anyone wishing to enter a complaint against a registered professional engineer and/or land surveyor shall do so on a form ~~31072~~ prescribed by the board and furnished by the department.

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

(4) The board will employ the following complaint procedure: When ~~letters~~ an affidavit and complaint are received from an individual complaining about a registrant, the administrative assistant shall immediately send copies to the board members for review and shall provide the registrant with a copy of the ~~letter~~ affidavit and complaint, and request a written response within a time set by the board. ~~The administrative assistant will send a complaint affidavit form to the individual making the complaint and place the letter of complaint in the registrant's file. If no formal affidavit is received within 6 months from the date of mailing of the affidavit form, the letter of complaint shall be removed from the registrant's file.~~"

Auth: Sec. 37-67-202, MCA; IMP, Sec. ~~37-67-311,~~ 37-67-331, MCA

REASON: The proposed amendment will clarify the Board's complaint procedure by listing the affidavit requirement set

forth in Section 37-67-331, MCA, and stating the steps for review of the complaint by the Board and by the registrant against whom the complaint has been made.

3. Interested persons may submit their data, views or arguments concerning the proposed amendments in writing to the Board of Professional Engineers and Land Surveyors, 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., July 21, 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 Professional Engineers and Land Surveyors, 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., July 21, 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 731 based on the 7306 licensees in Montana.

BOARD OF PROFESSIONAL ENGINEERS
AND LAND SURVEYORS
DAN PRILL, CHAIRMAN

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

Annie M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, June 13, 1994.

BEFORE THE HARD-ROCK MINING IMPACT BOARD
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed amendment, repeal and adoption of rules pertaining to the administration of the Hard-Rock Mining Impact Act	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF ARM 8.104.101, 8.104.201, 8.104.202, 8.104.203, 8.104.204, 8.104.205, 8.104.206, 8.104.207, 8.104.208, 8.104.208A, 8.104.209, 8.104.210, 8.104.211, 8.104.212, 8.104.213, 8.104.214, 8.104.217, 8.104.302 AND 8.104.303; THE REPEAL OF ARM 8.104.211A AND 8.104.216 AND THE PROPOSED ADOPTION OF NEW RULES GOVERNING THE HARD-ROCK MINING IMPACT BOARD

TO: All Interested Persons:

1. On July 13, 1994, at 1:30 p.m., a public hearing will be held in the large downstairs conference room of the Department of Commerce building, 1424 Ninth Avenue, Helena, Montana, to consider the proposed amendment, repeal and adoption of rules governing the administration of the Hard-Rock Mining Impact Act.

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

"8.104.101 ORGANIZATION OF BOARD (1) The hard-rock mining impact board is created by ~~section~~ 2-15-1822, MCA, and appointed by the governor. By statute the board comprises five members, three of whom reside in an area impacted by large-scale mineral development. ~~No more than three~~ At least one members ~~may~~ must reside in ~~the same congressional~~ each district provided for in 5-1-102,MCA. The board consists of:

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

(2) Information or submissions: Inquiries regarding the board may be addressed to the ~~Administrative Office,~~ Hard-Rock Mining Impact Board, Department of Commerce, ~~Capitol Station~~ 1424 9th Avenue, P.O. Box 200501, Helena, Montana 59620-~~0401~~0501.

(3) Personnel roster:

Mike Manuel, Chairman, RR 1, Box 547, Fairfield, Montana 59436 - school district trustee.

James McCauley, Vice ~~Chairman,~~ P.O. Box 376, 621 N. Monroe, Boulder, Montana 59632 - ~~county commissioner~~ public member.

~~David R. Calahan, Vice Chairman, First Interstate Bank of Missoula, 101 E. Front St., Drawer B, Missoula, Montana 59806-4667 - member of financial institution.~~

Carol Kienenberger, P.O. Box 187, Dodson, Montana 59524 - county commissioner.

Roger W. Kornder, Box 512, Lincoln, Montana 59639 - representative of financial institution.

Frank Gardner, ~~3480 Quincy~~ 600 Shields, Butte, Montana 59701 - ~~industry~~ representative of industry.

~~Rick Young, HC 55, Box 327, Fishtail, Montana 59028 - public member.~~

(4) For administrative purposes the board is attached to the department of commerce. For staffing purposes the board is attached to the department's ~~community development~~ local government assistance division. A chart of the department's organization is found at page 8-13 of these rules and by this reference is made a part of the board's organizational rules."

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

REASON: The amendment in subsection (1) is required to bring this rule into conformance with section 2-15-1822(3)(b), MCA, which the 1993 Legislature amended (Sec. 5, Ch. 52, L. 1993) in response to Montana's loss of one of its two congressional seats. Other amendments reflect changes in Board membership and the organization of the Department of Commerce.

"8.104.201 PUBLIC PARTICIPATION (1) The hard-rock mining impact board hereby adopts and incorporates by reference ARM ~~8.2.101~~ 8.2.201 through 8.2.207 which sets forth the department of commerce's public participation rules. A copy of the rules may be obtained from the Hard-Rock Mining Impact Board, ~~Cogswell Bldg., Room C 211~~ Department of Commerce, 1424 9th Avenue, P.O. Box 200501, Helena, Montana 59620-0501."

Auth: Sec. 2-3-203, MCA; IMP, Sec. 2-3-103, MCA

REASON: The proposed amendments reflect the relocation of the Board's office.

"8.104.202 GENERAL PROCEDURAL RULES (1) The hard-rock mining impact board hereby adopts and incorporates by reference ARM 1.3.101 through 1.3.234 which sets forth the attorney general's model procedural rules. A copy of the model rules may be obtained from the Hard-Rock Mining Impact Board, Department of Commerce, 1424 9th Avenue, P.O. Box 200501, Helena, Montana 59620-~~04010~~0501. The board will treat the hearing provided for by ~~section~~ 90-6-307(4), MCA, as a contested case hearing under the model rules."

Auth: Sec. 90-6-305, MCA; IMP, Sec. 90-6-307, MCA

REASON: The proposed amendments reflect the relocation of the Board's office.

"8.104.203 FORMAT AND CONTENT OF PLAN (1) The format and substance of the plan ~~shall~~ must allow for a ready review and analysis of the plan, its several parts, and ~~their relationships to each other~~ how they relate to one another.

(2) The format of the plan ~~shall~~ must contain the following elements:

(a) will remain the same.

(b) a brief summary of the impact plan, which includes the schedule of impact payments and other commitments by the developer;

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

(4) The impact plan ~~shall~~ must contain, ~~at a minimum,~~ information specifically required by statute, information necessary to the implementation of statute, and information necessary to the review and implementation of the plan, including but not limited to:

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

(b) As required by 90-6-307(2), MCA, in the impact plan the developer shall commit itself to pay all of the increased capital and net operating cost to local government units that will be a result of the development, as identified in the impact plan, either from tax prepayments, as provided in 90-6-309, MCA, ~~special industrial educational~~ facility impact bonds, as provided in 90-6-310, MCA, or other funds obtained from the developer, and shall provide a time schedule within which it will do so. The plan may provide for funding from other revenue sources or funding mechanisms if the developer guarantees that the amount to be provided from these sources will be paid.

(c) If the plan provides for the prepayment of property taxes, the plan ~~shall~~ must specify the conditions under ~~and method by~~ which the recipient local government unit will credit prepaid taxes ~~are to be credited~~, as provided by 90-6-309(5), MCA, and ARM 8.104.215.

(d) will remain the same.

(e) The plan ~~shall~~ must define the following terms in a manner consistent with common usage and appropriate to the specific large-scale mineral development:

(i) "persons coming into the impacted area as a result of the development," as required for 90-6-307(1)(b), MCA;

(i) will remain the same but will be renumbered (ii).

~~(ii) if property taxes are to be prepaid, "commencement of mining", as required for 90-6-309(5), MCA;~~

(iii) will remain the same.

(f) In the plan the developer shall commit to notify the board and the affected local government units within 30 days of each applicable date identified in (e) of this subsection.

(g) If the mineral development will result in increased employment or increased local government costs in more than one county, the plan must identify the counties and evaluate the proportional impact to each county for purposes of 15-37-117, MCA.

(h) The plan must specify whether the developer will make impact payments directly to the affected local government unit or through the hard-rock mining impact board to be deposited to the impact fund of the affected local government unit."

Auth: Sec. 90-6-305, MCA; IMP, Sec. 90-6-307, MCA

REASON: The proposed amendments are of a minor stylistic and technical nature and, in the case of subsection (4)(b), reflect amendments to section 90-6-310, MCA, which expanded

the types of facilities which can be financed through the issuance of development impact bonds.

"8.104.204 ~~NOTIFICATION AND~~ SUBMISSION AND PROOF OF SUBMISSION OF PLAN (1) The developer shall submit 12 copies to the board and a sufficient number of copies to each affected county for distribution.

(2) The board will accept as proof of the date of receipt of an impact plan by an affected county a dated receipt, signed by an authorized representative of the county, confirming delivery of the plan by registered mail, hand delivery, or otherwise or an acknowledged statement by the developer certifying the date of delivery of the plan to the county."

Auth: Sec. 90-6-305, MCA; IMP, Sec. 90-6-307, MCA

REASON: The addition of new (2) is required to establish the date on which the 90-day plan review period will be deemed to have commenced.

"8.104.205 ~~PROOF~~ NOTICE OF ~~SUBMISSION~~ RECEIPT OF PLAN ~~TO AFFECTED COUNTIES~~ FOR REVIEW (1) ~~The board will accept as proof of the date of receipt of an impact plan by an affected county a dated receipt, signed by an authorized representative of the county, confirming delivery of the plan by registered mail, hand delivery, or otherwise or an acknowledged statement by the developer certifying the date of delivery of the plan to the county.~~ Upon receiving the submitted plan, the governing body of each affected county shall publish notice of its receipt of the plan at least once in a newspaper of general circulation in the county. The notice must appear in large, readable format and must specify where copies of the plan will be available for public review."

Auth: Sec. 90-6-305, MCA; IMP, Sec. 90-6-307, MCA

REASON: This proposed amendment reflects the notice requirement contained in 90-6-307(1), MCA.

"8.104.206 COMPUTATION OF TIME (1) In computing any period of time prescribed by ~~sections~~ 90-6-301 through ~~90-6-310~~ 90-6-311, MCA, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included unless it is a Saturday, Sunday or legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday or a holiday. Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon him and the notice or paper is served upon him by mail, 3 days ~~shall~~ will be added to the prescribed period."

Auth: Sec. 90-6-305, MCA; IMP, Sec. 90-6-307, MCA

REASON: The proposed amendments to this rule are technical and stylistic.

"8.104.207 CONTENTS OF OBJECTION TO PLAN (1) An objection to an impact plan submitted to the board ~~shall~~ must contain or show:

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

(d) the ~~government unit's contact person(s)~~ name, address, and phone number of the contact person(s) for the objecting local government unit(s);

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

(i) supportive data, information or analysis, including; ~~(j)~~ references to ~~other~~ related portions of the plan (giving page numbers), such as; ~~:~~

(i) through (v) will remain the same.

~~(k) additional relevant information;~~

(l) will remain the same but will be renumbered (j).

~~(m)~~ (k) a resolution dated and signed by the governing body of each objecting unit of local government confirming that the above statements appropriately reflect ~~their~~ its views and concerns.

(2) A form outlining the contents required by this rule is available from the ~~board's offices~~ board."

Auth: Sec. 90-6-305, MCA; IMP, Sec. 90-6-307, MCA

REASON: The proposed amendments to this rule are technical and stylistic.

"8.104.208 SUBMISSION OF OBJECTIONS TO BOARD (1) At least 15 copies of the objection(s) ~~shall~~ must be filed with the board and a copy filed with each affected local government unit."

Auth: Sec. 90-6-305, MCA; IMP, Sec. 90-6-307, MCA

REASON: The proposed amendment to this rule is stylistic.

"8.104.208A FILING OF OBJECTIONS DURING EXTENSION PERIOD (1) Only those affected local government units which have requested a 30-day extension of the initial review period pursuant to ~~section~~ 90-6-307 ~~(4)~~(6), MCA, may file objections to the plan during this extension. However, if an objection filed during this extension relates to the interests of a local government unit which did not request an extension, that unit will be allowed to comment on the objection, and any such comment may be considered by the board in subsequent proceedings concerning the objection."

Auth: Sec. 90-6-305, MCA; IMP, Sec. 90-6-307, MCA

REASON: The proposed amendment to this rule is stylistic.

"8.104.209 NOTIFICATION OF BOARD CONCERNING NEGOTIATIONS ON PLAN (1) By the end of the 30-day ~~negotiating~~ negotiation period described in ~~section~~ 90-6-307~~(4)~~(6), MCA, all affected parties shall notify the board in writing of the outcome of their negotiation efforts, ~~clarifying~~ specifying which objections have been resolved and how and which objections ~~still~~ remain in contention. The developer shall provide the board with any mutually agreed upon amendments to the plan. The official copy of the amendments ~~will~~ must bear the

signatures of the developer's authorized representative, the chairman of the elected governing body of each affected unit of local government, and the chairman of the elected governing body of the county verifying the concurrence of their units of local government with the negotiated amendments."

Auth: Sec. 90-6-305, MCA; IMP, Sec. 90-6-307, MCA

REASON: The proposed amendments to this rule are technical and stylistic.

"8.104.210 EX PARTE COMMUNICATIONS WITH BOARD MEMBERS

(1) will remain the same.

(2) During the 90-day review period and the 30-day negotiation period the board's staff may not communicate with any party concerning the substance of a plan. However, the staff may at any time, either on its own initiative or in response to a request, provide information concerning the technical compliance of a plan with statutes and board rules and the plan review process provided that the information does not relate to the substance or merits of a particular plan. The staff ~~shall~~ will maintain a log of any such contact."

Auth: Sec. 90-6-305, MCA; IMP, Sec. 90-6-307, MCA

REASON: The proposed amendments to this rule are stylistic.

8.104.211 IMPLEMENTATION OF APPROVED IMPACT PLAN

(1) ~~The hard rock mining impact account may receive direct industry monies in compliance with the commitment made by the developer in an approved impact plan, to enable the board to transmit payments as provided by the schedule specified in the approved impact plan. The board will distribute these monies to the appropriate affected local government units in accordance with the law and the approved impact plan.~~ The hard-rock mining impact account may receive direct industry monies, in accordance with the commitments made by the developer in an approved impact plan, and may receive money from the developer's financial guarantee to ensure payments consistent with the developer's commitments. If an approved plan provides that impact payments are to be made through the board, or if the board receives monies through the financial guarantee, the board will deposit these monies into the account, and will distribute the monies as provided by the impact plan to the county treasurer in the affected county to be credited to the impact fund of the affected local government unit. If the entire sum is not requested by, or under the plan committed to, the affected local government units, the board will revert the remainder, if any, to the developer.

~~(2) The board will notify the department of state lands if the mineral developer fails to comply with the terms of the approved impact plan.~~

~~(3)~~ (2) In implementing an approved impact plan, the affected local government units and the mineral developer shall establish procedures acceptable to the board for transmitting payments and providing information required by

~~statute or rule, including the following:~~. The procedures and information must include the following:

(a) Each local government unit entitled to receive grants or tax prepayments from a mineral developer as provided by an approved impact plan ~~shall~~ must establish an impact fund within its budget. The fund must be established and maintained in a manner consistent with accepted budgeting and accounting practices. The impact fund budget must reflect the tax prepayments, grants or other impact revenues to be received from the developer and the expenditures contemplated by the approved impact plan. Within the fund, tax prepayments must be distinguished from grants or contributions by a separate account, for purposes of identifying future tax crediting obligations.

(b) The governing body shall provide the board with a copy of that portion of the adopted budget~~, any~~ or budget amendment that is related to the impact plan and includes the impact fund, ~~the year-end budget report and~~ a copy of the resolution by which the governing body adopted the budget or budget amendment, and, upon request, the year-end budget report.

(c) The affected local governing body may request that the developer make such payments as are provided for in the approved impact plan and as are consistent with the adopted budget or budget amendment of the local government unit. The governing body shall send to the board a copy of each such payment request. Each request must identify the name of the local government unit making the request; the date of the request; the name of the mineral developer responsible for making the payment; the amount of the requested payment; whether the request is for a tax prepayment, grant, or other funds; the purpose of the payment as specified in the approved impact plan; and the sub-account within the impact fund for which the payment is intended. The request must refer to ~~those~~ the page or pages in the approved impact plan or its payment schedule on which the purpose of the expenditure and the financial commitment are specified. The request must bear the signatures of the governing body of the affected local government unit.

~~(d) If payment is to be made through the board, the board will deposit monies received from the developer into the hard rock mining impact account to the credit of the affected local government unit.~~ The board will transmit ~~such~~ payments made through the board upon written request from the governing body of the affected local government unit and upon receipt of that documentation specified in (c) above and in ARM ~~8.104.216~~ 8.104.211B.

(e) If the plan provides that payment is to be made by the developer directly to the county treasurer to be credited to the affected local government unit, the developer shall notify the board when the payment is made and the ~~local government~~ county treasurer shall notify the board when the payment is received. Each notice must contain or reference ~~that~~ the information required in (c) of this rule. Forms for requesting, making or acknowledging receipt of payment are available from the board~~'s offices~~.

(f) The mineral developer and the governing body of the affected local government unit shall provide the board with a copy of any ~~education~~ facility impact bond agreement ~~or other bond agreement~~ and guarantee entered into as a result of an approved impact plan within 15 days of their executing ~~such an~~ the agreement and guarantee. ~~This~~ The agreement and guarantee becomes part of the approved impact plan."

Auth: Sec. 90-6-305, MCA; IMP, Sec. 90-6-307, 90-6-310, MCA

REASON: The proposed amendments to this rule provide additional detail as to how impact payments, whether they are to be made through the Board or directly from the developer to the local government unit, are to be requested, transmitted, and accounted for. Subsection 2(f) reflects the amendments to 90-6-310, MCA, which expanded the types of facilities which can be financed through the issuance of development impact bonds.

8.104.212 ADOPTION OF POLICIES OR GUIDELINES (1) From time to time, the board may adopt policies or guidelines relating to its internal operations~~,~~; to the preparation, ~~or~~ content, review and implementation of impact plans~~,~~; ~~or~~ to the relationship between developers and local government units; or to other matters over which the board has administrative or quasi-judicial authority. These policies or guidelines, which will not have the force or effect of administrative rules, will be compiled and made available for public inspection at the board's ~~administrative~~ office."

Auth: Sec. 90-6-305, MCA; IMP, Sec. 90-6-307, MCA

REASON: The proposed amendments to this rule are of a minor technical nature.

8.104.213 MODIFICATION OF PLAN (1) and (1)(a) will remain the same.

(b) The copy filed with the board must bear the signatures of the authorized representatives of the developer ~~or its authorized representative~~ and of the governing body of each local government unit that is a party to the modification.

(c) If there is a need to modify the format of the plan and if the modification ~~of format~~ does not affect the substantive provisions of the plan, the governing body of the county may act on behalf of all local government units within the county when it concurs with the modification ~~to~~ of format.

(d) Any modification submitted less than 30 days prior to the end of the review period must carry with it a request from the local governing body for an extension which allows a 30-day review of the modification.

(e) All modifications must be incorporated into the plan before the board will approve ~~the plan~~ it. The modified plan must comply with the form and content requirements for an impact plan as provided by parts 3 and 4 of Title 90, chapter 6 of the Montana Code Annotated and by the administrative rules adopted by the ~~hard rock mining impact~~ board. In the

modified plan the table of contents, summary, schedule of payment, and, if a part of the plan, the developer's ~~statement of commitment~~ written guaranty~~,~~ must accurately contain and reflect the modifications. Obsolete material must be deleted from the plan through the use of replacement pages that contain and reflect the modifications or, if the use of replacement pages is not feasible, obsolete material must be deleted by specific reference.

(f) The board may allow revisions to format following the review or negotiation period, or an extension of either, to the extent that such revisions are necessary to incorporate the modifications into the plan ~~or an amendment to the plan~~ in order to comply with ARM 8.104.203."

Auth: Sec. 90-6-305, MCA; IMP, Sec. 90-6-307, MCA

REASON: The proposed amendments to this rule are of a minor technical nature.

"8.104.214 FINANCIAL GUARANTEE OF TAX PREPAYMENTS

(1) The financial guarantee required of a developer by ~~section~~ 90-6-309(3), MCA, to assure that property tax prepayments will be paid as needed by local government units must, at a minimum, meet the following requirements:

(a) The guarantee must cover the total amount of money the developer has committed to prepay with adequate provisions for any conditional payments provided for in the impact plan ~~and for any prepayments for future fiscal years~~. Both the total amount covered by the guarantee and the specific purpose of each prepayment must be specified with sufficient clarity that it can be determined that the guarantee corresponds with and is sufficient to ~~the~~ meet all prepayment commitments in the approved impact plan;

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

(d) The guarantee must be provided through a financially sound third-party financial institution that is acceptable to the board and in which the developer does not have a significant financial interest.

(2) will remain the same."

Auth: Sec. 90-6-305, MCA; IMP, Sec. 90-6-309, MCA

REASON: The proposed amendments to this rule are of a minor technical nature. The addition of new subsection (1)(d) simply incorporates into the rule a policy the Board has followed historically in determining what is an "appropriate financial institution" for purposes of section 90-6-309, MCA.

"8.104.217 CONTENTS OF PETITION FOR PLAN AMENDMENT

(1) Under certain circumstances the mineral developer or the governing body of an affected county (on its own behalf or on behalf of another affected government unit within the county) may petition the board to amend an approved impact plan. The requirements and procedures for petitioning to amend a plan are provided in ~~section~~ 90-6-311, MCA, and a petition for an amendment must ~~contain,~~ include or identify the following:

(a) when applicable, a copy of a resolution, dated and

signed by the governing body of each local government unit that is requesting the amendment, authorizing the county to submit the petition for the amendment of the impact plan;

(b) date of the petition;

(c) the name of the mineral developer;

(d) county in which mineral development is located;

(e) name, address, phone number and signature(s) of each petitioner (county and/or mineral developer);

(f) ~~the~~ all local government units believed by the petitioner to be affected by the proposed amendment;

(g) as required by ~~section~~ 90-6-311 (2), MCA, an explanation of the need for an amendment, a statement of the facts and circumstances underlying the need for an amendment, and a description of the corrective measures proposed by the petitioner;

(h) the costs and commitments identified in the approved plan which will be changed as a result of the proposed amendment, with the relevant ~~page citations to~~ pages in the plan cited;

(i) ~~any~~ other provisions of the approved plan which ~~will~~ may be changed by the proposed amendment, ~~and the numbers of~~ with the relevant pages cited ~~on which these provisions are found in the plan~~ and substitute language proposed that will make the plan consistent throughout;

(j) a statement as to which of the following is the legal basis for the petition:

(i) ~~That~~ the plan~~,~~ itself~~,~~ provides for amendment under certain conditions and that those conditions have been met~~.~~ ~~(The~~ with the conditions ~~must be~~ specified~~,~~ and the pages ~~of the plan~~ on which they are established ~~must be~~ cited~~,~~; ~~and~~ the petitioner must establish that the conditions have been met~~.)~~;

(ii) ~~T~~that employment at the large-scale mineral development is forecast to increase or decrease by at least 75 persons, as determined under ~~section~~ 90-6-302 (4), MCA, over or under the employment levels contemplated by the approved impact plan;

(iii) ~~T~~that the approved impact plan is materially inaccurate because of errors in assessment and that two years have not elapsed since the date the facility began commercial production~~.~~ ~~(The~~ with the date the facility began commercial production ~~must be~~ indicated~~.)~~; or

(iv) ~~T~~that the governing body of an affected county and the mineral developer are joining in the petition to amend the impact plan."

Auth: Sec. 90-6-305, MCA; IMP, Sec. 90-6-311, MCA

REASON: The proposed changes to this rule are technical and stylistic.

"8.104.302 CONTENT OF GRANT APPLICATIONS (1) will remain the same.

(2) Items to be included in the application will be the name of the applicant; a description of the proposed project; a discussion of the need the project is intended to meet; how the specific project will meet that need; local priority for the project and how that priority was established; the

relationship of the proposed project to a major hard-rock mineral development; the relationship of the proposed project to appropriate local plans; relevant budgetary information, including the estimated cost of the project and how it is to be financed initially and over time; a summary of current and projected revenues, revenue sources, expenditures, bonding capacity and indebtedness; and ~~such~~ any additional information ~~as~~ the board may consider appropriate to the specific type of application.

(3) Information about the grant program and the requisite forms will be made available from the board~~'s administrative office~~."

Auth: Sec. 90-6-305, MCA; IMP, Sec. 90-6-305, MCA

REASON: The proposed amendments to this rule are stylistic.

"8.104.303 SUBMITTAL DEADLINES (1) Applications ~~shall~~ must be submitted to the ~~administrative office~~ board no less than 30 days prior to board consideration. Exceptions may be made at the board's discretion."

Auth: Sec. 90-6-305, MCA; IMP, Sec. 90-6-305, MCA

REASON: The proposed amendments to this rule are stylistic.

3. The following rules are being proposed for repeal: 8.104.211A located on pages 8-3711 and 8-3712, Administrative Rules of Montana; and 8.104.216 located on page 8-3714, Administrative Rules of Montana. The authority sections for 8.104.211A were 90-6-305 and 90-6-307, MCA. The authority section for 8.104.216 was 90-6-305, MCA. The implementing sections were listed as 90-6-307, MCA, for 8.104.211A and 8.104.216.

REASON: To achieve a more logical organization the Board proposes to repeal the rules noted above but readopt them with new numbers and some minor modifications as discussed below.

4. The proposed new rules will read as follows:

"I EVIDENCE OF THE PROVISION OF SERVICE OR FACILITY

(1) For purposes of 90-6-307(12), MCA, the Board will accept as evidence that an affected local government unit is providing or is preparing to provide an additional service or facility provided for in an approved plan a letter from the governing body certifying that it is providing or preparing to provide the service or facility and specifying the date on which it is anticipated that the service or facility will be made available. A copy of the local government unit's impact fund budget or budget amendment, reflecting the proposed expenditure for the service or facility, and a copy of the resolution by which the governing body adopts the impact fund budget or budget amendment must accompany or precede the letter."

Auth: Sec. 90-6-305, MCA; IMP, Sec. 90-6-307, MCA

REASON: This rule is essentially the same as 8.104.216 which is proposed for repeal. The only additional material is the requirement that a copy of the resolution adopting the impact fund budget or budget amendment be included with a request for payment of impact funds. It is intended that this rule be renumbered 8.104.211B when adopted. The purpose of the renumbering is to organize the Board's administrative rules more logically.

"II PROVISION OF TAX CREDITS (1) As required by 90-6-309, MCA, each year after the start of production, the local government unit must provide for tax crediting as specified in the approved impact plan. A tax credit must be made from the local government fund that corresponds to the service for which the tax prepayment was made. A tax credit may not have the effect of shifting the impact cost over time to the non-developer local taxpayer. The credit may not exceed the tax obligation of the developer for that year. Tax crediting is limited to the productive life of the mine."

Auth: Sec. 90-6-305, MCA; IMP:, Sec. 90-6-309, MCA

REASON: This is a new rule describing the manner in which tax prepayments are to be credited back to the developer under 90-6-309(5), MCA. It is intended that this rule be numbered as 8.104.215 when adopted.

"III WAIVER OF IMPACT PLAN REQUIREMENT (1) The board will grant a waiver or a conditional waiver of the impact plan requirement to a large-scale mineral development permittee, as authorized by 90-6-307 (14), MCA, if:

(a) The permittee and the governing bodies of all potentially affected local government units, as identified by the board and the affected county or counties, notify the board in writing that:

(i) they do not anticipate a need to increase local government services and facilities as a result of the increase in employment identified in the permittee's annual report to the department of state lands; or

(ii) the anticipated increase in need for services and facilities is not expected to result in an increase in local government costs to the non-developer taxpayer, or that such costs will be paid by the developer under the terms of the conditional waiver;

(b) No potentially affected local government unit requests the board to deny the waiver or to require an impact plan; or

(c) Following a public hearing on the proposed waiver, or notice and opportunity for hearing, the board considers it unlikely that adverse fiscal impacts will affect any local government unit, either as a result of the increase in employment identified in the permittee's annual report, as required by 82-4-339, MCA, or as a result of the associated changes in the mining operation.

(2) Following its decision, the board will provide a copy of the waiver, conditional waiver or denial of waiver to the department of state lands, the permittee and the

potentially affected local government units identified by the board and the affected county or counties for purposes of 90-6-307(14), MCA."

Auth: Sec. 90-6-305, 90-6-307, MCA; IMP, Sec. 90-6-307, MCA

REASON: This rule, which establishes the criteria the Board will apply in granting a waiver of the impact plan requirement under 90-6-307(14), MCA, is essentially identical to 8.104.211A which is proposed for repeal. It is intended that this rule be renumbered as 8.104.218 when adopted. The purpose of this renumbering is to organize the Board's administrative rules more logically.

5. Interested persons may present their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to the Hard-Rock Mining Impact Board, Local Government Assistance Division, Department of Commerce, 1424 - 9th Avenue, P.O. Box 200501, Helena, Montana 59620-0501, to be received no later than 5:00 p.m., July 21, 1994.

6. Richard M. Weddle has been designated to preside over and conduct the hearing.

HARD-ROCK MINING IMPACT BOARD
MIKE MANUEL, CHAIRMAN

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

_____
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, June 13, 1994.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the adoption of the Hours and days of instruction	)))))	NOTICE OF PROPOSED AMENDMENT TO ARM 10.65.101 POLICY GOVERNING PUPIL INSTRUCTION-RELATED DAYS APPROVED FOR FOUNDATION PROGRAM CALCULATIONS No Public Hearing Contemplated

To: All Interested Persons

1. On July 28, 1994, the Board of Public Education proposes to amend ARM 10.65.101, Policy governing pupil instruction-related days approved for foundation programs calculations.

2. The rule as proposed provides as follows:

10.65.101 POLICY GOVERNING PUPIL INSTRUCTION-RELATED DAYS APPROVED FOR FOUNDATION PROGRAM CALCULATIONS (1) through (1)(c) will remain the same.

(d) Post-school record and report completion at the end of the pupil instruction year. This day may be divided so as to provide one-half day at the end of the semester or quarter.

AUTH: Sec. 20-2-121 IMP: Sec. 20-1-304

3. The board has proposed this rule because a number of school districts have requested the change in parent teacher conferences from the first and second semester to the first and third quarter in order to be more effective. This would allow remediation and would better benefit the student through the school year. This proposed change would allow school districts to have the option.

4. Interested parties may submit their data, views, or arguments concerning the proposed amendment in writing to Wilbur Anderson, Chairman, Board of Public Education, 2500 Broadway, Helena, MT 59620, no later than July 25, 1994.

5. If a person who is directly affected by the proposed amendment wishes to express their data, views or 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 they have to Wilbur Anderson, Chairman of the Board of Public Education, 2500 Broadway, Helena, MT 59620, no later than July 25, 1994.

6. If the Board receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendment; from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 50 as there are 500 school districts in Montana.

WAYNE BUCHANAN, Executive Secretary
Board of Public Education

Certified to the Secretary of State on 6/13/94.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the adoption of Accreditation Standards; Procedures	NOTICE OF PROPOSED AMENDMENT TO ARM 10.55.601 ACCREDITATION STANDARDS; PROCEDURES No Public Hearing Contemplated

To: All Interested Persons

1. On July 28, 1994, the Board of Public Education proposes to amend ARM 10.55.601, Accreditation Standards Procedures.

2. The rule as proposed provides as follows:

10.55.601 ACCREDITATION STANDARDS; PROCEDURES (1) through (4)(a) will remain the same.

(b) Effective January 1, 1994, schools unable, for financial reasons, to meet the requirements of ARM 10.55.709(2) or (3), 10.55.710(2), 10.55.902(5)(j) or 10.55.903(2)(i) may file an initial notice of deferral with the office of public instruction.

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

AUTH: Sec. 20-2-114 IMP: Sec. 20-2-121

3. The board has proposed this rule to include the smaller districts in the deferral process. When the deferral was first put into place it was an oversight not to include ARM 10.55.709 section (3).

4. Interested parties may submit their data, views, or arguments concerning the proposed amendment in writing to Wilbur Anderson, Chairman, Board of Public Education, 2500 Broadway, Helena, MT 59620, no later than July 25, 1994.

5. If a person who is directly affected by the proposed amendment wishes to express their data, views or 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 they have to Wilbur Anderson, Chairman of the Board of Public Education, 2500 Broadway, Helena, MT 59620, no later than July 25, 1994.

6. If the Board receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendment; from the Administrative Code Committee of the

legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 50 as there are 500 school districts in Montana.

WAYNE BUCHANAN, Executive Secretary
Board of Public Education

Certified to the Secretary of State on 6/13/94.

**BEFORE THE FISH, WILDLIFE, & PARKS COMMISSION
OF THE STATE OF MONTANA**

In the matter of the proposed adoption of new rules I through V and the repeal of ARM 12.9.501 through 12.9.507 relating to wildlife habitat	NOTICE OF PUBLIC HEARINGS

To: All Interested Persons

1. On July 19, 1994, at 7:00 p.m. public hearings will be held at the Department of Fish, Wildlife and Parks headquarters at 3201 Spurgin Road, Missoula, Montana, and 1420 East Sixth, Helena, Montana; and on August 4, 1994, at 7:00 p.m. at the Department of Fish, Wildlife and Parks headquarters, 2300 Lake Elmo Road, Billings, Montana, and at the Cottonwood Inn, Highway 2 East, Glasgow, Montana. The Fish, Wildlife and Parks Commission proposes to adopt new rules I through V making habitat protection a long-term and reliable part of Montana's conservation program, and repeal rules 12.9.501 through 12.9.507.

2. The new rules provide as follows:

RULE I MISSION (1) These rules establish the policy of the fish, wildlife and parks commission for the acquisition of wildlife habitat by the department of fish, wildlife and parks. This policy is popularly known as habitat Montana. Habitat Montana is a key tool in achieving the department's mission as stated in the vision document adopted by the commission in November, 1992:

(a) The Montana department of fish, wildlife and parks, and fish, wildlife and parks commission provide for the stewardship of the fish, wildlife, parks and recreational resources of Montana, while contributing to the quality of life for present and future generations.

(2) Through habitat Montana, the commission and department will establish a statewide wildlife habitat system which will conserve our wildlife resources and pass them intact to future generations.

AUTH: 87-1-241, MCA IMP: 87-1-241, 87-1-242, MCA

RULE II GOALS (1) The goals for habitat Montana are:

(a) conservation of Montana's wildlife populations and natural communities via management strategies that keep them intact and viable for present and future generations; maintain wildlife population levels that sustain or enhance current recreational opportunities; and maintain diverse geographic distribution of native wildlife populations and their habitats;

(b) conservation of Montana's land and water resources

in adequate quantity and quality to sustain ecological systems;

(c) implementation of habitat management systems that are compatible with and minimize conflicts between wildlife values and traditional agricultural, economic and cultural values. Habitat Montana will enhance Montana's quality of life and be compatible with the conservation of soil, water and existing biological communities.

AUTH: 87-1-241, MCA IMP: 87-1-241, 87-1-242, MCA

RULE III BENEFITS (1) The commission intends habitat Montana to deliver the following services and benefits:

(a) conserve and enhance land, water and wildlife;

(b) contribute to hunting and fishing opportunities;

(c) provide incentives for habitat conservation on private land;

(d) contribute to non-hunting recreation;

(e) protect open space and scenic areas; and

(f) maintain the local tax base, through payments in lieu of taxes for real estate, while demonstrating that productive wildlife habitat is compatible with agriculture and other land uses.

AUTH: 87-1-241, MCA IMP: 87-1-241, 87-1-242, MCA

RULE IV APPLICATION (1) While this habitat Montana policy specifically relates to funds acquired under 87-1-241 and 242, MCA, the Montana fish, wildlife and parks commission directs that these guidelines also apply, where appropriate, to all of the department's wildlife habitat acquisition programs. These include:

(a) moose and bighorn sheep habitat acquired with license auction funds;

(b) properties acquired in mitigation for habitat lost as a result of construction projects conducted by the Bonneville power administration and other agencies;

(c) waterfowl habitat.

AUTH: 87-1-241, MCA IMP: 87-1-241, 87-1-242, MCA

RULE V IMPLEMENTATION (1) The commission directs the department to complete a comprehensive statewide habitat plan and to execute that plan within the following parameters:

(a) The department will identify specific staff responsible for implementation of habitat Montana and establish procedures for accomplishing program goals.

(b) The department will develop draft criteria for identifying important habitats that are seriously threatened. The commission will adopt these criteria through a process that includes public review and comment.

(c) Utilizing the natural heritage database and information from other government agencies and cooperators, the department will identify habitat protection priorities within each eco-region. This analysis will recognize the contribution of habitat protected by other agencies and organizations. Regional habitat priorities will then be

compiled into a consolidated statewide plan.

(d) The department will develop uniform guidelines for the preparation of site-specific management plans. These criteria will be applicable to management of lands in which the department acquires an interest and to cooperative habitat projects located on lands in other ownership.

(e) Prior to acquiring any interest in land for the primary purpose of securing wildlife habitat, the department will comply with the requirements of 87-1-241, MCA (HB 526, Section 1), by conducting an environmental assessment analyzing:

(i) the wildlife populations and use currently associated with the property;

(ii) the potential value of the land for protection, preservation, and propagation of wildlife;

(iii) management goals proposed for the land and wildlife populations and, where feasible, any additional uses of the land such as livestock grazing or timber harvest;

(iv) any potential impacts to adjacent private land resulting from proposed management goals and plans to address such impacts;

(v) any significant potential social and economic impacts to affected local governments and the state, including but not limited to impacts on:

(A) tax revenue available for the operation of taxing jurisdictions within the county;

(B) services required to be provided by local governments;

(C) employment opportunities within the counties;

(D) local schools; and

(E) private businesses supplying goods and services to the community.

(vi) a land maintenance program to control weeds and maintain roads and fences; and

(vii) any other matter considered necessary or appropriate by the commission.

(f) The department will develop monitoring and evaluation systems to track program success as well as the public's changing desires.

(g) Leases and easements will be the preferred methods of habitat protection. Fee title acquisition will be the least-preferred alternative. However, as recognized by the legislature, the wishes of the landowner will also influence the method used. The most effective use of capital and operational funds must be determined on a case by case basis. The commission encourages the department to utilize other methods such as land exchanges, conservation buyers and easement exchanges to meet the habitat Montana program objectives.

(h) The department will use certified appraisals or other appropriate analysis performed by department staff to determine the value of land to be acquired.

(i) Funds for wildlife habitat acquisition shall be invested in habitat in a timely manner, as accrued.

(j) In some cases the mission of habitat Montana may be more efficiently accomplished through actions of non-profit organizations or other government agencies. To gain the greatest value from partnership opportunities, the department will establish procedures for working cooperatively with them.

(k) The department will establish procedures to account for habitat Montana income and expenditures through the state budget and account system (SBAS). In addition to project expenditures for which accounting reports are currently available, the department will account for administrative costs associated with implementation of this policy.

(l) The commission directs the department to emphasize continuing communication with the legislature, state land board and the public to maintain awareness of, and support for, habitat Montana.

(m) The commission expects to adopt a comprehensive statewide habitat plan, incorporating each of the above elements, prior to October, 1994. The review process for this draft plan will include a public comment period of at least 60 days in length.

AUTH: 87-1-241, MCA IMP: 87-1-241, 87-1-242, MCA

3. Rules 12.9.501, 12.9.502, 12.9.503, 12.9.504, 12.9.505, 12.9.506, 12.9.507, the rules proposed to be repealed, are on page 12-637 of the Administrative Rules of Montana.

AUTH: 87-1-241, MCA IMP: 87-1-241, 87-1-242, MCA

4. The rationale for the new rules is as follows: In the 1980's Montana Wildlife conservationists mounted an effort to make habitat protection a long-term and reliable part of Montana's conservation program. Funding for this program would come from increased license fees earmarked for acquisition and management of game ranges and threatened wildlife habitat.

The 1987 Legislature responded by passing House Bill 526 (87-1-241). In its final form, HB 526 extended habitat protection to both game and non-game species, encouraged use of conservation easements and leases as an alternative to fee title acquisition, and focused on the nonresident big game hunting license as the major funding source.

Based on 1993 license prices and sales, HB 526 generates about $2.75 million annually for habitat protection. The law stipulates that 80% of these earmarked funds be used for acquisition (including easements and leases). Half of the remaining 20% is put into an annual operation and maintenance budget (including payment in lieu of taxes) for acquired habitats and half is invested in an interest-earning account from which only the income may be used for operation and maintenance of these habitats.

All of the department's HABITAT MONTANA programs:

(a) Are funded by hunting license fees and federal excise taxes on the purchase of sporting goods -- not by state tax revenues;

(b) Make annual payments in lieu of taxes, equal to the amount that would be paid in real estate taxes, to support local government, as required by law;

(c) Protect threatened wildlife habitat, thereby benefitting both the hunting and non-hunting public.

5. Interested parties may submit their data, views or arguments, either orally or in writing, to Don Childress, Department of Fish, Wildlife and Parks, 1420 East Sixth, P.O. Box 200701, Montana 59620, no later than August 22, 1994.

6. The state of Montana makes reasonable accommodations for any known disability that may interfere with a person's ability to participate in state government. Persons needing an accommodation must notify the department, no later than July 15, 1994, to allow adequate time to make needed arrangements, by calling Don Childress or writing to him at the Department of Fish, Wildlife and Parks, 1420 East Sixth, P.O. Box 200701, Helena, Montana 59620-0701 to make your request known.

7. Curtis Larsen and Don Childress from the Department of Fish, Wildlife and Parks have been designated as hearing examiners.

Robert N. Lane
Rule Reviewer

Patrick J. Graham, Secretary
Montana Fish, Wildlife and Parks Commission

Certified to the Secretary of State June 13, 1994.

BEFORE THE DEPARTMENT OF FISH, WILDLIFE AND PARKS

OF THE STATE OF MONTANA

In the matter of the adoption of a rule classifying certain types of actions taken under the River Restoration Program as categorical exclusions	))))	NOTICE OF PROPOSED ADOPTION OF A RULE CLASSIFYING CERTAIN TYPES OF ACTIONS AS CATEGORICAL EXCLUSIONS

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On August 12, 1994, the Department of Fish, Wildlife and Parks proposes to adopt a rule which classifies certain types of actions taken under the River Restoration Program as categorical exclusions from the requirements of preparing an environmental impact statement or an environmental assessment under the Montana Environmental Policy Act and department rules 12.2.428 through 12.2.453.

2. The proposed rule provides as follows:

RULE I ACTIONS THAT QUALIFY FOR A CATEGORICAL EXCLUSION (1) The following types of actions do not individually, collectively, or cumulatively require the preparation of an environmental assessment or an environmental impact statement unless the action involves one or more of the extraordinary circumstances stated in (2) below:

(a) construction of riparian fences to protect streambanks;

(b) minor improvements in fish habitat by placement of habitat improvement structures;

(c) removal or modification of man-made obstructions in stream channels to provide or improve fish passage or to prevent loss of fish into diversions;

(d) clean up of trash or debris in the river corridor;

(e) vegetative bank stabilization projects;

(f) spawning channel development to provide additional habitat for reproduction;

(g) inventory, survey or engineering activities for design or development of plans for river restoration projects;

(h) maintenance or repair of existing river restoration projects.

(2) The preparation of an environmental assessment or an environmental impact statement will be required if the project involves any of the following:

(a) significant impacts to publicly owned parklands, recreation areas, wildlife refuges or significant historic sites;

(b) disturbance to a streambed that is significant enough to require a temporary exemption from water quality standards for turbidity;

(c) significant impact on air, noise, or water quality;

(d) significant impact on the human environment that may result in relocations of persons or business;

(e) substantial controversy on environmental grounds;

(f) any other kind of significant environmental impact, including cumulative or secondary impacts.

AUTH: 2-3-103, 2-4-201, MCA IMP: 2-3-104, 75-1-201, MCA

3. The Department is proposing this rule because the types of actions included in the rule are conducted specifically to improve aquatic environments by mitigating man caused alterations to streams. The objective of River Restoration projects is to return streams to a more natural condition. Projects are often sponsored or endorsed by local conservation organizations working cooperatively with a local landowner. The Department's experience with these types of actions (projects) is that impacts to the environment are positive and fish habitat and fish populations are enhanced. The projects are typically completed during low flow periods and require minimal disturbance to the channel. Negative impacts to the environment are minor and primarily temporary. The following descriptions offer more detail of typical actions taken under subsection (1) of the proposed rules:

(a) Construction of riparian fences to protect streambanks. Many Montana streambanks have been denuded, trampled, and damaged as a result of livestock having direct access to streams. Simply fencing off the riparian corridor greatly enhances riparian recovery. Riparian vegetation provides shade, stabilizes streambanks, enhances habitat for riparian dependent wildlife, and improves fish habitat. These projects typically involve installation of fencing 25 feet or more from the edge of the stream and planting of willows or other shrubs along the streambanks.

(b) Minor improvements in fish habitat by placement of habitat improvement structures. Streams that have been altered as a result of human activities often lack adequate instream structure to provide cover for fish. These streams can be enhanced by the careful placement of professionally designed structures, usually constructed of logs or rocks, within the river channel or along the banks. These structures provide deeper pools, underbank hiding cover, refuges from the current, and generally improve habitat diversity.

(c) Removal or modification of man-made obstructions in stream channels to provide or improve fish passage or to prevent loss of fish into diversions. In some instances, irrigation diversions or other instream barriers prevent the upstream and downstream movement of fish. Removal or modification of barriers often provides fish with access to essential spawning or overwintering areas and enhances fish production. Typical projects include installation of fish ladders that allow upstream movements of fish, installation of fish screens that are designed to prevent movement of fish into irrigation ditches or removal of barriers that serve no functional purpose.

(d) Clean up of trash or debris in the river corridor. Trash or debris in the stream corridor distracts from the natural pristine setting sought by recreationists. For example, old car bodies and other debris were once used for rip-rap. In some cases, these have been dislodged from the

bank and are present in the channel. Removal of this debris enhances river esthetics and eliminates hazards to floaters. In projects where debris is providing bank stability, it is typically replaced with vegetation or rip-rap.

(e) Vegetative bank stabilization projects. Banks of some Montana rivers and streams are unstable as a result of channelization or activities that have resulted in loss of woody vegetation from the banks. These banks can often be restabilized by resloping and revegetating.

(f) Spawning channel development to provide additional habitat for reproduction. Reproduction in some streams is limited by lack of spawning areas. Reproduction can sometimes be enhanced by adding suitable size gravels to side channels, bars, or other potential spawning sites.

(g) Inventory, survey or engineering activities for design or development of plans for river restoration projects. Some proposed projects require additional planning and engineering prior to implementation. The river restoration program sometimes funds these efforts.

(h) Maintenance or repair of existing river restoration projects. Routine repair and maintenance of river restoration projects is a requirement for funding.

Whenever projects have potential for significant negative impacts or where the Department is not certain of the impact, the Department will prepare either an environmental assessment or an environmental impact statement in compliance with Rules 12.2.428 through 12.2.453. Where other permits are required to conduct projects, the applicant will be required to obtain them before the project is implemented.

4. Interested parties may submit their data, views, or arguments concerning the proposed rules in writing to Larry G. Peterman, Administrator of the Fisheries Division, Department of Fish, Wildlife and Parks, 1420 East Sixth, P.O. Box 200701, Helena, Montana 59620-0701, no later than July 21, 1994.

5. If a person who is directly affected by the proposed adoption wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Larry G. Peterman, Administrator of the Fisheries Division, Department of Fish, Wildlife and Parks, 1420 East Sixth, P.O. Box 200701, Helena, Montana 59620-0701, no later than July 21, 1994.

Department of Fish, Wildlife and Parks

Robert N. Lane
Rule Reviewer

Patrick J. Graham
Director

Certified to the Secretary of State on June 13, 1994.

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

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

To: All Interested Persons

1. On August 1, 1994, the department intends to amend the above-captioned rule concerning measures required to prevent the spread of tuberculosis in schools and day care facilities.

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

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

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

(i)-(ii) Remain the same.

(b) Remains the same.

(2)-(9) Remain the same.

(10) For purposes of this rule:

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

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

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

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

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

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

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

4. Interested persons may submit their written data, views, or arguments concerning this proposed rule amendment to Ellie Parker, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620, no later than July 22, 1994.

5. If a party who is directly affected by the proposed amendment wishes to express his or her data, views, and arguments orally or in writing at a public hearing, s/he must make written request for a hearing and submit this request along with any written comments s/he has to Ellie Parker, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620, no later than July 22, 1994.

6. If the department receives a request for a public hearing on the proposed amendments, from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendments; from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not fewer than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be in excess of 25, based on the large number of postsecondary school employees within Montana.

ROBERT J. ROBINSON, Director

Certified to the Secretary of State June 13, 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 rule 16.8.1413 and 16.8.1429 dealing with opacity requirements at kraft pulp mills.	))))	NOTICE OF PUBLIC HEARING FOR PROPOSED AMENDMENT OF RULES

(Air Quality)

To: All Interested Persons

1. On July 15, 1994, at 1:00 p.m., the board will hold a public hearing in Room C209 of the Cogswell Building, 1400 Broadway, Helena, Montana, to consider the amendment of the above-captioned rules.

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

16.8.1413 ~~SULFUR EMISSIONS~~ KRAFT PULP MILLS (1) For the purposes of this rule, the following definitions apply:

(a) "Continual monitoring" means sampling and analysis, in a continuous or times sequence, using techniques which will adequately reflect actual emission levels or concentrations on a continuous basis.

(b) "Cross recovery furnace" means a furnace used to recover chemicals consisting primarily of sodium and sulfur compounds by burning black liquor which on a quarterly basis contains more than 7 weight percent of the total pulp solids from the neutral sulfite semichemical process and has a green liquor sulfidity of more than 28%.

(~~b~~ c) "Kraft mill" or "mill" means any pulping process which uses, for cooking liquor, an alkaline sulfate solution containing sodium sulfide.

(~~c~~ d) "Non-condensibles" means gases and vapors from the digestion and evaporation processes of a mill that are not condensed with the equipment used in those processes.

(~~d~~ e) "Parts per million" means parts of a contaminant per million parts of gas by volume.

(f) "Recovery furnace" means either a straight kraft recovery furnace or a cross recovery furnace, and includes the direct-contact evaporator for a direct-contact furnace.

(~~e~~ g) "Recovery furnace stack" means the stack from which the products of combustion from the recovery furnace are emitted to the ambient air.

(h) "Straight kraft recovery furnace" means a furnace used to recover chemicals consisting primarily of sodium and sulfur compounds by burning black liquor which on a quarterly basis contains 7 weight percent or less of the total pulp solids from the neutral sulfite semichemical process or has green

liquor sulfidity of 28% or less.

(f i) "Total reduced sulfur (TRS)" means hydrogen sulfide, mercaptans, dimethyl sulfide, dimethyl disulfide, and any other organic sulfides present.

(2)-(6) Remain the same.

(7) All TRS emission standards in this rule shall be based on average daily emissions. The limitations herein shall not preclude a requirement to install the highest and best practicable treatment and control available. New mills or mills expanding existing facilities may be required to meet more restrictive emission limits.

(8) No person may cause or authorize to be discharged into the outdoor atmosphere, from any recovery furnace installed after November 23, 1968, emissions which exhibit greater than 25% opacity averaged over 6 consecutive minutes. For recovery furnaces subject to this limit, this opacity limitation supersedes any other opacity limitation contained in this chapter, including ARM 16.8.1404.

(9) Any person subject to (8) above shall install, calibrate, maintain, and operate a continuous opacity monitoring system (COMS) to monitor and record the opacity of emissions discharged into the atmosphere from any recovery furnace installed after November 23, 1968. This COMS shall comply with the requirements contained in 40 CFR Part 60, section 60.13, 40 CFR Part 60 Appendix B, Performance Specification 1, and any other applicable requirement regarding the installation, calibration, maintenance, and operation of COMS. The span of the COMS must be set at 75% opacity.

(10) Compliance with the opacity standards contained in (8) above will be determined using the COMS, or the test method contained in 40 CFR Part 60, Appendix A, Method 9, as specified in the Montana source test protocol and procedures manual.

(11) Any person subject to (9) above, shall report periods of excess opacity determined by the COMS, and periods when the COMS was not operational. For the purposes of this report, excess opacity is defined as any 6-minute average opacity that exceeds 25%. These reports must be submitted on forms provided by the department and made in compliance with department procedures and requirements for the submission of excess emissions reports. These reports must be submitted to the department on a quarterly basis within 30 days of the end of each calendar quarter.

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

16.8.1429 INCORPORATIONS BY REFERENCE (1) Remains the same.

(2) For the purposes of this subchapter, the board hereby adopts and incorporates herein by reference the following:

(a) Remains the same.

(b) 40 CFR Part 60, Appendix A, Method 9, which sets forth a method for visual determination of the opacity of emissions from stationary sources;

(c) 40 CFR Part 60, Appendix B, performance specification 1, which sets forth specifications and test procedures for

opacity continuous emission monitoring systems in stationary sources:

(b)-(g) Remain the same but are renumbered (d)-(i).

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

3. The board is proposing these amendments to the rules in order to provide clarification of the appropriate opacity requirement for a certain age class of recovery furnaces at kraft pulp mills, and to provide greater consistency to the methods for monitoring the opacity of emissions from these sources. Stone Container has filed a Petition for Declaratory Ruling, challenging the Department's application of ARM 16.8.1404(2) to its number 4 recovery boiler. The Department has vigorously opposed the Stone petition, arguing that pursuant to ARM 16.8.1404(2), a recovery furnace installed after November 23, 1968, is subject to a twenty percent opacity limit, unless the recovery furnace is subject to New Source Performance Standards. Pursuant to ARM 16.8.1404(4)(d), a recovery furnace installed after November 23, 1968, and governed by applicable New Source Performance Standards is subject to a 35% opacity limit. The proposed amendment of these rules would result in a uniform opacity limit for this age class of recovery furnaces.

4. Interested persons may submit their data, views, or arguments concerning the proposed amendment, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Yolanda Fitzsimmons, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620, no later than July 25, 1994.

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

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

by _____
ROBERT J. ROBINSON, Secretary

Certified to the Secretary of State June 13, 1994.

Reviewed by:

_____
Eleanor Parker, DHES Attorney

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT) of ARM 42.16.104 relating to) Net Operating Loss Carryback))	NOTICE OF THE PROPOSED AMENDMENT of ARM 42.16.104 relating to Net Operating Loss Carryback

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On August 12, 1994, the Department of Revenue proposes to amend ARM 42.16.104 relating to net operating loss carryback.

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

42.16.104 INTEREST ON UNPAID TAX (1) through (4) remain the same.

(5) In the case where there is unpaid tax for a year which is reduced by the carryback of a subsequent year's net operating loss, interest on the unpaid tax runs up to the later of: (a) the due date of the loss year return, or (b) the date the loss year return is actually filed. This limited interest calculation applies only to the unpaid tax which is offset by the net operating loss carryback.

AUTH: Sec. 15-30-305 MCA; IMP: Sec. 15-30-142 MCA.

3. The proposed amendments to ARM 42.16.104 reflect what dates are used to calculate interest when there is a carryback of a net operating loss to the tax year which has been previously unpaid. A decision from the district court in **Alme v. Department of Revenue**, indicated the need for the amendments to the rule.

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

Cleo Anderson
Department of Revenue
Office of Legal Affairs
Mitchell Building
Helena, Montana 59620

no later than July 22, 1994.

5. If a person who is directly affected by the proposed amendments wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Cleo Anderson at the above address no later than July 22, 1994.

6. If the agency receives requests for a public hearing on the proposed amendments from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed

adoption; from the Administrative Code Committee of the Legislature; from a governmental subdivision, or agency; or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 25.

CLEO ANDERSON
Rule Reviewer

MICK ROBINSON
Director of Revenue

Certified to Secretary of State June 13, 1994

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT of ARM 42.23.606, 42.23.607, 42.23.608 and 42.23.609 relating to Estimated Tax Payments	NOTICE OF THE PROPOSED AMENDMENT of ARM 42.23.606, 42.23.607, 42.23.608 and 42.23.609 relating to Estimated Tax Payments

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On August 12, 1994, the Department of Revenue proposes to amend ARM 42.23.606, 42.23.607, 42.23.608, and 42.23.609 relating to estimated tax payments for corporations.

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

42.23.606 QUARTERLY ESTIMATED TAX PAYMENTS (1) Effective for tax years beginning after December 31, ~~1989,~~ 1993, every corporation ~~which can reasonably expect as provided in ARM 42.23.608, its annual corporation tax to be $5,000 or more must submit quarterly estimated tax payments.~~ must make estimated tax payments if its annual tax is $5,000 or more.

(2) The $5,000 threshold includes any applicable surtax.

~~(3) A corporation is not required to submit quarterly payments until they have reached the $5,000 threshold. For example, if a taxpayer's liability has not reached $5,000 by the end of the first three months of the taxable year, the taxpayer would not be required to submit a payment on the fifteenth day of the fourth month. If a taxpayers's liability has not reached $5,000 by the end of the fifth month, a payment would not be required on the fifteenth day of the sixth month. The first payment would be required on the first quarterly payment date following the month that the taxpayer has reached the $5,000 threshold. Section 15-31-502, MCA provides the percentages that must be used in submitting payments.~~

~~(4)~~ (3) If the $5,000 threshold is met, the taxpayer has the option of submitting 80% of the current year's tax liability in estimated payments or 100% of last year's liability provided that the preceding taxable year was a period of 12 months and a return was filed for the preceding taxable year. By submitting four equal quarterly payments totaling 100% of last year's tax liability, a taxpayer can ensure that no underpayment interest penalty will accrue, regardless of the current year's tax liability. Corporations that file the preceding year's return as an inactive corporation, or as a Subchapter S corporation, must submit 80% of the current year's tax liability in estimated payments if the $5,000 threshold is met.

AUTH: Sec. 15-31-501 MCA; IMP: Sec. 15-31-502 MCA.

42.23.607 COMPUTATION OF QUARTERLY ESTIMATED TAX UNDERPAYMENT INTEREST PENALTY (1) Except as provided in (2), a taxpayer is presumed to have earned its income evenly throughout the year. Accordingly, if the tax liability is ~~in excess of~~ $5,000 or more at the end of the year, the ~~total tax liability must be divided by 12 to determine which month the $5,000 threshold was met. The first quarterly payment date after the month the taxpayer reached the $5,000 threshold will be the date the first payment would be required. If payment was not submitted on that date, the underpayment interest penalty as described in 15-31-510, MCA, will begin to accrue.~~ taxpayer is required to make estimated tax payments as described in 15-31-502, MCA. If the payments are not made in accordance with 15-31-502, MCA, the taxpayer must complete form CLT-4-UT to compute the quarterly estimated tax underpayment interest penalty.

(2) The provisions of (1) will not apply if the taxpayer can establish that it did not earn its income evenly throughout the year. To do so, the taxpayer must complete form CLT-4-UT indicating when the income was earned. Approval of the calculations shown on the form rests with the department which can request additional information to support the calculations.

(3) If estimated payments are required to be submitted and those payments are ~~either~~ insufficient, not submitted or are not submitted timely, the 20% per annum underpayment interest penalty will be computed on ~~either~~ the lesser of 80% of the current year's liability or 100% of last year's liability, ~~whichever is less.~~ provided that the last year was a period of 12 months and the corporation filed a return.

AUTH: Sec. 15-31-501 MCA; IMP: Sec. 15-31-510 MCA.

42.23.608 BASIS FOR NOT WAIVING THE QUARTERLY ESTIMATED TAX UNDERPAYMENT INTEREST PENALTY (1) ~~Section 15-31-502, MCA, requires that a corporation compute its tax liability at the end of the third, fifth, eighth and eleventh months. If the tax liability has reached $5,000 on any of those dates, estimated payments must be submitted beginning with the fifteenth day of the following month. The requirement that a taxpayer must submit payments if it reasonably expects its tax liability to exceed $5,000 is based on these calculations. If a taxpayer can show that it performed these calculations during the year and the calculations reflect that the taxpayer did not reach the $5,000 threshold or that it began submitting quarterly payments at the point the calculations indicated that it did reach the $5,000 threshold, the underpayment interest penalty would not apply.~~ A taxpayer is not immune from the quarterly estimated payment requirement if the previous year's tax liability did not equal or exceed $5,000.

~~(2) The fact that a taxpayer's liability did not exceed $5,000 in the previous year is not support for not reasonably expecting this year's tax liability to exceed $5,000.~~

~~(3)~~ (2) A taxpayer is not immune from the quarterly estimated payment requirement simply because it did not ~~compute~~

~~its tax liability at the end of the third, fifth, eighth and eleventh months and consequently did not~~ know its tax liability until the end of the year.

~~(4)~~ (3) Lack of knowledge about the estimated payment requirement is not a basis for having the underpayment interest penalty waived.

~~(5) A taxpayer may submit four equal quarterly payments totalling 100% of last year's tax liability. This will eliminate the requirement of computing a tax liability at the end of the third, fifth, eighth and eleventh months and will also ensure that no underpayment interest penalty will accrue regardless of the current year's tax liability. This provision is only available if the prior tax period covered twelve months.~~

AUTH: Sec. 15-31-501 MCA; IMP: Secs. 15-31-502 and 15-31-510 MCA.

42.23.609 SHORT PERIOD RETURNS (1) ~~If a taxpayer has a tax period of less than twelve months, the payment dates listed in 15-31-502, MCA, would still apply to the extent the tax period covered that many months. For example, if the tax period was six months, the taxpayer would be subject to two installment payments, one on each of the fifteenth day of the fourth and sixth months.~~ Payments of estimated tax with respect to short taxable years are to be made at the times and in the amounts required for regular tax years as listed in 15-31-502, MCA, except that any installment that is not paid before the 15th day of the last month of the short taxable year must be paid on that date.

For Example: X, a calendar year corporation, changes to a fiscal year starting September 1. X was required to make estimated payments for the short tax year that runs from January 1 through August 31. X had to make two 25% installments of estimated tax, the first on or before April 15, and the second on or before June 15, and had to pay 50% of the estimated tax on or before August 15 (the 15th day of the last month of the short tax year), as the last installment.

(2) If the tax period was three months or less, there would be no quarterly estimated payment requirement.

~~(3) The percentage of estimated payment that must be submitted for a short period would be based upon the number of payments required to be submitted and the percentages listed in 15-31-502, MCA. For example, if the tax period was six months, two payments of 50% would be required. If the tax period was four months, one payment of 100% would be required.~~

AUTH: Sec. 15-31-501 MCA; IMP: Sec. ~~15-31-501~~ 15-31-502 MCA.

3. The Department is proposing to amend these rules to comply with the legislative amendments made to sections 15-31-502 and 15-31-510, MCA, during the 1993 legislative session. The proposed amendments delete language which was previously necessary to comply with the law and has since been amended

through statutory change. In addition, the amendments to ARM 42.23.609 will clarify the taxpayer's requirements for making estimated payments for short period returns.

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

Cleo Anderson
Department of Revenue
Office of Legal Affairs
Mitchell Building
Helena, Montana 59620

no later than July 22, 1994.

5. If a person who is directly affected by the proposed amendments wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Cleo Anderson at the above address no later than July 22, 1994.

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

CLEO ANDERSON
Rule Reviewer

MICK ROBINSON
Director of Revenue

Certified to Secretary of State June 13, 1994

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT of ARM 42.25.1201, 42.25.1206, and 42.25.1207; ADOPTION of RULES I through III; and REPEAL of ARM 42.25.1203, 42.25.1204, and 42.25.1205 relating to Horizontal Wells	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT of ARM 42.25.1201, 42.25.1206, and 42.25.1207; ADOPTION of RULES I through III; and REPEAL of ARM 42.25.1203, 42.25.1204, and 42.25.1205 relating to Horizontal Wells

TO: All Interested Persons:

1. On July 14, 1994, at 9:00 a.m., a public hearing will be held in the 4th Floor Conference Room of the Mitchell Building, at Helena, Montana, to consider the amendments of ARM 42.25.1201, 42.25.1206, and 42.25.1207; adoption of new rules I through III; and repeal of ARM 42.25.1203, 42.25.1204, and 42.25.1205 relating to horizontal wells.

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

42.25.1201 DEFINITIONS (1) remains the same.

~~(2) If a currently producing well which would not otherwise qualify for the new production exemption is deepened to begin producing from a new formation, the production is not considered new production.~~

~~(a) If a currently producing oil well which would not otherwise qualify for the new production exemption begins producing natural gas, the production is not considered new production.~~

~~(b) If a well qualifies for the new production exemption, all production from that well is exempt from the oil and gas severance tax for the first 24 months of production.~~

AUTH: Sec. 15-1-201 MCA; IMP: 15-36-121 MCA.

42.25.1206 AVERAGE DAILY WELL PRODUCTION CALCULATION (1) ~~In determining whether a lease or unit had an average daily production of 10 barrels of crude oil or less per well, only those wells that produced crude oil on the lease or unit during the prior calendar year shall be used in the calculation.~~

~~(2)~~ In determining whether a lease or unit has an average daily production of 60,000 cubic feet ~~or~~ of natural gas or less per well, only those wells that produced natural gas during the prior calendar year shall be used in the calculation.

AUTH: Sec. 15-1-201; IMP: Sec. 15-36-121 MCA.

42.25.1207 STRIPPER EXEMPTION IN EXCESS OF ACTUAL PRODUCTION ~~(1) If the average daily crude oil production for a qualifying stripper well is less than 5 barrels per day during the current quarter, the difference between the total production~~

~~for that well during the quarter and the stripper exemption (5 barrels per day times 90 days):~~

~~(a) cannot be offset against production during that quarter outside the geographic area (lease or unitized area) that was used to determine the stripper well status and production; and~~

~~(b) cannot be carried forward to a subsequent quarter or back to a previous quarter as either a credit or as negative production.~~

~~(2)~~ (1) If a natural gas well that had an average daily production of 60,000 cubic feet or less of natural gas for the previous calendar year produces an average of less than 30,000 cubic feet of natural gas daily during the current quarter, the difference between the total production from that well during the quarter and the exemption provided in 15-36-131~~(3)~~, MCA (30,000 cubic feet times 90 days):

(a) cannot be offset against production during that quarter from outside the geographic area (lease or unitized area) that was used to determine the "less than 60,000 cubic feet" status of the well and the production from that well; and

(b) cannot be carried forward to a subsequent quarter or back to a previous quarter as either a credit or as negative production.

AUTH: Sec. 15-1-201 MCA; IMP: Sec. 15-36-121 MCA.

3. The rules proposed to be repealed are as follows:

42.25.1203 REPORTING REQUIREMENT FOR NEW WELLS found at page 42-2581 of the Administrative Rules of Montana.

AUTH: Sec. 15-1-201 MCA; IMP: Secs. 15-23-601 and 15-36-121 MCA.

42.25.1204 NEW PRODUCTION TERMINATION found at page 42-2582 of the Administrative Rules of Montana.

AUTH: Sec. 15-1-201 MCA; IMP: Sec. 15-36-121 MCA.

42.25.1205 STRIPPER TERMINATION found at page 42-2582 of the Administrative Rules of Montana.

AUTH: Sec. 15-1-201 MCA; IMP: Sec. 15-36-121 MCA.

4. Proposed new rules I, II, and III do not replace or modify any section currently found in the Administrative Rules of Montana.

5. The rules as proposed to be adopted provide as follows:

NEW RULE I HORIZONTALLY COMPLETED OR RECOMPLETED WELLS

(1) For horizontally completed or horizontally recompleted wells the operator must provide to the department of revenue a copy of the horizontal certification from the board of oil and gas conservation. If the operator does not provide the certification, or the well is not certified by the board as horizontally completed or recompleted, the well will not qualify

for the 18 month exemption until such time as operator provides the certification to the department.

(2) Production from wells certified by the board to be horizontally completed will be exempt from the net proceeds tax for the first 18 months following the last day of the calendar month immediately preceding the month in which production for sale from a crude oil well is pumped or flows.

For Example: First production for sale from a horizontally drilled well is February 18, 1994. February 1994 will be considered as the first month of the 18 month exemption, and the last month of the exemption will be July 1995. The first month of taxable production in this example will be August 1995. The exemption period begins the month in which production for sale first occurs regardless of when the operator provides a copy of the certification notice to the department.

(3) Wells certified by the board to be horizontally recompleted and have not produced oil during the 5 years immediately preceding the month the well was horizontally recompleted will be exempt from the net proceeds tax for the first 18 months of production from the completion date on the certification notice from the board. If a well is in primary recovery when the 18 month exemption period has expired, the well will be classified as a net proceeds well, and the reporting and payment provisions of Title 15, chapter 23, part 6, MCA will apply.

(4) This section applies to a well reported as a net proceeds tax well prior to recompletion as a horizontal well. For wells certified by the board to be horizontally recompleted, and which have produced oil during the 5 years immediately preceding the month the well was horizontally recompleted, only the incremental production from horizontal recompletion will be exempt from the net proceeds tax for the first 18 months of production from the completion date noted on the certification notice from the board. The operator must provide a production decline rate approved by the board. If a well is in primary recovery when the 18 month exemption period has expired, the well will be classified as a net proceeds tax well, and the reporting and payment provisions of Title 15, chapter 23, part 6, MCA will apply.

(5) This section applies to a well reported as local government severance tax wells prior to recompletion as a horizontal well. Wells certified by the board to be horizontally recompleted and which have produced oil during the 5 years immediately preceding the month the well was horizontally recompleted, only the incremental production from horizontal recompletion will be exempt from the local government severance tax for the first 18 months of production from the completion date noted on the certification notice from the board. The operator must provide a production decline rate approved by the board. If a well is in primary recovery when the 18 month exemption period has expired, the well will be classified as a local government severance tax well, and the

reporting and payment provisions of Title 15, chapter 36, part 1, MCA will apply.

AUTH: Sec. 15-1-201 MCA; IMP: Secs. 15-6-208, 15-23-601, 15-23-602, 15-23-603, 15-23-607, 15-23-612, 15-36-101 MCA.

NEW RULE II QUALIFICATION OF NEW OR EXPANDED RECOVERY PROJECTS (1) For new or expanded enhanced recovery projects the operator must provide to the department of revenue the board's approval of the project and the designated area of the project. If a project has not been approved by the board, the operator will not be allowed to report and pay production taxes at the reduced rates for incremental production.

(2) A tax return shall be filed for the wells in each designated area. If the designated area for a new or expanded enhanced recovery project does not include all the wells reported as a lease or unit for tax purposes prior to the inception of the new or expanded enhanced recovery project, the wells not included in the designated area approved by the board will continue to be reported as a lease or unit for tax purposes and none of the production from wells outside the designated area can be reported as incremental.

(3) No production will qualify as incremental prior to January 1, 1994. For new or expanded projects commenced after January 1, 1994, approval should be obtained from the board for the project prior to the due date of any production tax returns. If, however, such approval is not received until after the returns are filed for any quarter the operator may file amended returns after the board has approved the project and established a production decline rate for the project.

AUTH: Sec. 15-1-201 MCA; IMP: Sec. 15-23-601, 15-23-602, 15-23-603, 15-23-607, 15-23-612, 15-36-101 MCA.

NEW RULE III ALLOCATION OF INCREMENTAL PRODUCTION (1) If the designated area of a new or expanded enhanced recovery project has wells reported for tax purposes prior to the inception of the new or expanded enhanced recovery project, both under the local government severance tax (old wells) and net proceeds tax (new wells), the operator must report and pay any tax due at the appropriate applicable rates on the non-incremental and incremental as local government severance tax and net proceeds. For the purposes of this rule, net proceeds includes production from horizontally completed wells after the 18 month exemption has expired.

(2) The amount of tax to be paid as local government severance and net proceeds will be based upon a production ratio determined each calendar year.

(a) Local Government Severance Tax ratio (LGST) will be computed by dividing incremental and non-incremental production for the previous calendar year from wells classified as local government severance tax wells by the total production for the previous calendar year from the designated area of the new or expanded recovery project.

(b) Net Proceeds Tax ratio (NPT) will be computed by dividing incremental and non-incremental production for the previous calendar year from wells classified as net proceeds wells by the total production for the previous calendar year from the designated area of the new or expanded recovery project.

(3) Incremental production to be reported as LGST and subject to tax rates imposed by 15-36-101, MCA is the amount of production computed when the LGST ratio determined above is multiplied times the total incremental production for the quarter. The amount of non-incremental LGST production to be reported and subject to tax rates imposed by 15-36-101, MCA is determined by subtracting the amount of LGST incremental production from the total LGST production.

(4) Incremental production to be reported as LGST and subject to tax rates imposed by 15-23-607, MCA is the amount of production computed when the NPT ratio determined above is multiplied times the total incremental production for the quarter. The amount of non-incremental net proceeds production to be reported and subject to tax rates imposed by 15-23-607, MCA is determined by subtracting the amount of net proceeds incremental production from the total net proceeds production.

(5) The value for all production (incremental and non-incremental) in a designated project will be based upon an average price for the production sold from the project during the quarter.

AUTH: Secs. 15-1-201 and 15-23-614 MCA; IMP: Secs. 15-23-601, 15-23-602, 15-23-603, 15-23-607, 15-23-612, and 15-36-101 MCA.

6. Chapter 9 of the November 1993 Special Session Laws provided for incentives to the oil industry for the employment of special types of technologies to discover new oil and costly methods of recovering additional oil from existing oil fields in Montana. This new tax law is a complex bill and rules are necessary to determine how oil production will be allocated between old wells (LGST) and new wells (Net Proceeds). Also, the rules provide the procedures producers must follow to qualify horizontal wells and enhanced recovery projects for the tax incentives.

These rules are being proposed in conjunction with rules being adopted by the Department of Natural Resources and Conservation, Oil and Gas Conservation Division. The Oil and Gas Division will be responsible for determining what qualifies as a secondary and tertiary recovery project, what the decline rates are for secondary and tertiary recovery projects, and what

the incremental increase in production has occurred as a result of the new secondary and tertiary projects. Also, the Oil and Gas Division will determine what qualifies as a horizontally drilled well. Once these determinations are made the Department of Revenue then can determine what tax rates are appropriate for the secondary and tertiary recovery projects, and the horizontally drilled wells.

The law these rules implement provides for lower rates of tax for increased production from secondary and tertiary recovery projects used to enhance oil production in Montana. Since the lower rates of tax only apply to incremental increase in production clear and concise regulations are necessary to define what production will be taxed at lower rates and what production will be taxed at the higher rates.

The new law also allows for a longer tax holiday for horizontally drilled wells. Horizontally drilled wells are to be exempt from the net proceeds tax for 18 months, versus a 12 months exemption for vertically drilled wells. Therefore, regulations are necessary to distinguish oil wells drilled horizontally from vertically drilled wells.

7. 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:

Cleo Anderson
Department of Revenue
Office of Legal Affairs
Mitchell Building
Helena, Montana 59620

no later than July 22, 1994.

8. Cleo Anderson, Department of Revenue, Office of Legal Affairs, has been designated to preside over and conduct the hearing.

CLEO ANDERSON
Rule Reviewer

MICK ROBINSON
Director of Revenue

Certified to Secretary of State June 13, 1994

BEFORE THE CLASSIFICATION AND RATING COMMITTEE
OF THE STATE OF MONTANA

In the matter of the amendment of rule 6.6.8301 concerning updating references to the NCCI Basic Manual for Workers' Compensation and Employers' Liability Insurance, 1980 ed.	))))))	NOTICE OF AMENDMENT OF RULE 6.6.8301

TO: All Interested Persons.

1. On March 31, 1994, the classification and rating committee published a notice of proposed amendment to rule 6.6.8301 concerning updating references to the NCCI Basic Manual for Workers' Compensation and Employers' Liability Insurance at page 608, 1994 Montana Administrative Register, issue number 6.

2. The classification and rating committee has approved the amendment as proposed.

3. No comments or requests for hearing were received regarding the proposed amendment.

4. The amendment becomes effective July 1, 1994.

Robert Carlson, Chairperson
Classification and Rating Committee

Gary Spaeth
Rule Reviewer
State Auditor's Office

Certified to the Secretary of State June 13, 1994.

BEFORE THE BOARD OF ATHLETICS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment of rules pertaining to licensing requirements, contracts and penalties, fees, and promoters	)	NOTICE OF AMENDMENT OF 8.8.2804 LICENSING REQUIREMENTS, 8.8.2805 CONTRACTS AND PENALTIES, 8.8.2806 FEES AND 8.8.3301 PROMOTER-MATCHMAKER

TO: All Interested Persons:

1. On April 28, 1994, the Board of Athletics published a notice of proposed amendment of the above-stated rules at page 985, 1994 Montana Administrative Register, issue number 8.

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

3. No comments or testimony were received.

BOARD OF ATHLETICS
ANDY VANDOLAH, CHAIRMAN

BY: Annie M. Bartos
ANNIE M. BARTOS, CHIEF COUNSEL
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Certified to the Secretary of State, June 13, 1994.

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

In the matter of the adoption of a new rule pertaining to continuing education	)))	NOTICE OF ADOPTION OF NEW RULE I (8.13.306) CONTINUING EDUCATION REQUIREMENTS

TO: All Interested Persons:

1. On March 31, 1994, the Board of Clinical Laboratory Science Practitioners published a notice of proposed adoption of the above-stated rule at page 611, 1994 Montana Administrative Register, issue number 6.

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

"8.13.306 CONTINUING EDUCATION REQUIREMENTS (1) through (1)(c) will remain the same as proposed.

(2) Continuing education may be obtained in any of the following settings, and subject to any listed conditions:

(a) Any continuing education ~~instruction~~ offered OR APPROVED by the American society of clinical pathologists (ASCP), national certifying agency (NCA), American medical technologists (AMT), American society of clinical laboratory science (ASCLS), national laboratory training network (NLTN), laboratory education for North Dakota (LEND), Colorado association for continuing medical laboratory eduction (CACMLE), American association of blood banks (AABB), American association of clinical chemists (AACC), ~~or~~ the American society for microbiologists (ASM), THE ASSOCIATION OF CYTOGENETIC TECHNOLOGISTS (ACT), THE INTERNATIONAL SOCIETY FOR CLINICAL LABORATORY TECHNOLOGY (ISCLT), THE AMERICAN ASSOCIATION OF BIOANALYSTS (AAB), MAYO MEDICAL LABORATORIES, PROFESSIONAL SOCIETIES IN ANY OF THE 50 STATES, OR THE CLINICAL LABORATORY MANAGEMENT ASSOCIATION (CLMA).

(b) College course work, approved by the board, which is germane to the profession and contributes directly to the professional competence of a clinical laboratory science practitioner, ~~provided that the course is clinical laboratory oriented,~~ and subject to the following limitations:

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

~~(d) Video or audio instruction, approved by one of the above agencies, will be accepted for not more than seven hours of such instruction out of the 14 hours required.~~

(3) through (d) will remain the same as proposed."

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

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

I. General Comments:

COMMENT 1: Susan Zanto appeared at the hearing and presented oral testimony and written comments regarding the

proposed rule. Ms. Zanto expressed her general support for the rule as proposed, and stated that the rule would not place an undue burden on any laboratorian in the state, whether located in a rural or urban setting.

RESPONSE: The Board has considered the comment and appreciates the support for the rule.

COMMENT 2: Michael Gard and three other individuals (hereinafter Mr. Gard) jointly submitted written comments on the proposed new rule. Mr. Gard suggests that the state legislation is an unnecessary infringement on the practice, and contends that licensure of CLSP's is already adequately governed by federal law.

RESPONSE: The Board disagrees with Mr. Gard's comment, and notes the state legislation is in place and may not be changed by the Board. The rule on continuing education has been developed pursuant to statutory authority to do so.

COMMENT 3: Valerie Boyer submitted written comments on the proposed rule, expressing her general support for the rule on continuing education as proposed.

RESPONSE: The Board has considered the comment and appreciates the support for the rule.

COMMENT 4: Hollis Lefever, M.D., submitted written comments on the proposed rule. Dr. Lefever states that the "legislation" is not needed, will not satisfy and clinical necessity, and will be another governmental law to increase the cost of providing health care.

RESPONSE: The Board disagrees with Dr. Lefever's comment, and notes the state legislation is in place and may not be changed by the Board. The rule on continuing education has been developed pursuant to a statutory mandate to do so.

II. Comments on rule 1(a)

COMMENT 5: Brian Guttermuth submitted written comments on the proposed rule. Mr. Guttermuth states that fourteen hours per year is too much, and presents an undue burden on a licensed CLSP. Kris Kramer submitted written comments on the proposed new rule on behalf of the North Valley Continuing Education Consortium (hereinafter Ms. Kramer) a private agency with membership of approximately seven hospitals and ten clinics. Ms. Kramer suggests that fourteen hours of continuing education is excessive in view of the demographics of the state, and suggests that the requirement be lowered. Michael Gard and four other individuals concurred with this section of Ms. Kramer's and Mr. Guttermuth's comments, and suggested that the requirement be lowered to between six and ten hours per year, or twenty hours over a two year period.

RESPONSE: With respect to the fourteen hour requirement, the statute requires that the board develop a rule on continuing education that requires fourteen hours of continuing education at a minimum. The Board has no authority to reduce this minimum by rule.

III. Comments on rule 1(b)

COMMENT 6: Virginia DeNeve and another individual submitted joint written comments on the proposed rule. Ms. DeNeve suggests deleting the part of the rule that allows for continuing education hours to be carried over from year to year.

RESPONSE: The Board disagrees with Ms. DeNeve's suggestion. The Board wishes to allow individuals to take the opportunity for longer seminars that may last longer than the fourteen hours required per year. The Board believes that the carry-over provision is necessary to encourage attendance at such seminars, and to allow necessary flexibility for licensed practitioners seeking continuing education opportunities.

IV. Comments on rule 2(a)

COMMENT 7: Linda Leshko and Karen Street appeared at the hearing and jointly presented oral testimony on the proposed rule. Ms. Leshko also submitted written comments along with two other cytogenetic technologists. Ms. Leshko suggests that subsection (2)(a) of the rule be changed by replacing the word "instruction" in line 1 of (2)(a) with the word "activities", and by adding the words "or approved" after the word "offered" in line 1 of (2)(a).

RESPONSE: The Board will delete the word "instruction", but will not replace it with any other word. The Board will add the words "or approved" as suggested.

COMMENT 8: Ms. Leshko suggests that subsection (2)(a) include reference to the Association of Cytogenetic Technologists (ACT), as that organization is the only organization that offers continuing education that is directly related to the field of cytogenetics.

RESPONSE: The Board agrees with Ms. Leshko's suggestion, and will add the ACT as suggested.

COMMENT 9: Mark Birenbaum submitted written comments on the proposed rule. Mr. Birenbaum suggests that the International Society for Clinical Laboratory Technology and the American Association of Bioanalysts should be included among the organizations listed in subsection (2)(a). Mr. Birenbaum states that ISCLT's continuing education programs are approved by CEPA (Continuing Education for Professional Advancement), that AAB's continuing education programs are approved by PEER (Professional/Education Renewal), and that continuing education programs from both ISCLT and AAB are approved by the State of California. Mr. Birenbaum also submitted a CEPA and a PEER application form for continuing education program approval.

RESPONSE: The Board agrees with Mr. Birenbaum's suggestion, and will add the ISCLT and the AAB as suggested.

COMMENT 10: Fred Ricks submitted written comments on the proposed rule. Mr. Ricks suggests that large hospitals such as St. Vincent's and Deaconess in Billings should be approved

by the Board under section (2)(a). Mr. Ricks states that Medical Reference Laboratories works in conjunction with St. Vincent's Hospital with a quarterly program that is administered by a Dr. Schultz. Mr. Ricks states that ARUP, Pathology Associates, and METPATH have similar programs in place. Marsha Waterman submitted written comments on the proposed rule concurring with Mr. Ricks' suggestions above. Ms. Waterman also suggests the addition of MetWest, and Great Falls Deaconess Hospital. Brian Sanders submitted written comments on the proposed rule concurring with the suggestions above. Mr. Sanders also suggests the addition of Columbus Hospital in Great Falls, Deaconess in Billings, St. James in Butte, St. Patrick's in Missoula, St. Pete's in Helena, and the Mayo Medical Laboratories in Rochester be added as approved agencies. Dr. John Smith also suggests that (2)(a) include professional societies in any of the 50 states.

RESPONSE: The Board disagrees with the comments on adding various hospitals and associations as approved agencies, with the exception of the Mayo Medical Laboratories and professional societies in any of the 50 states, both of which will be added to section (2)(a). The Board notes that hospitals and the listed agencies may not have the formal certification process in place for continuing education. The Board notes, in addition, that programs taught at such hospitals and agencies may still be approved for continuing education under section (2)(c), on a case-by-case basis.

COMMENT 11: Mr. Ricks suggests the addition of CLMA to section (2)(a) of the rule, and states that the Montana Chapter of CLMA has three meetings per year, and offers excellent educational programs at each of them. Mr. Gard, Mr. Bell, Ms. Waterman, and Brian Sanders concurred in this suggestion.

RESPONSE: The Board agrees with Mr. Ricks' comment, and will add the CLMA as suggested.

COMMENT 12: Mr. Ricks states that every lab and hospital is required to have specific training for OSHA requirements, and that many hospitals offer education programs to orientate personnel to all aspects of health care. Mr. Ricks also states that the Red Cross offers a number of programs that are brought to various cities, and that such programs usually get PACE credits. Tim Russell submitted written comments on the proposed new rule raising the same issues as those raised by Mr. Ricks immediately above. Mr. Russell seeks clarification as to whether education in such areas as CPR, OSHA, infection control and AIDS education will be given credit toward the fourteen hour requirement. Barbara Keever also submitted a concurring comment in this regard.

RESPONSE: The Board has considered the comment, and notes that any of the programs listed in comment 12 may be approved under section (2)(a) if approved by one of the listed agencies, or (2)(c), if relevant to the practice of a CLSP, upon a case-by-case approval of such by the Board.

COMMENT 13: Mr. Ricks states that instrument vendors such as Beckman, Coulter, and Sysmex give in-service training as well as formal schools for operation of specific equipment. Under section (2)(a) if approved by one of the listed agencies, or (2)(c), if relevant to the practice of a CLSP, upon a case-by-case approval of such by the Board.

RESPONSE: The Board has considered the comment, and notes that instrument training may be approved under section (2)(a) if approved by one of the listed agencies, or (2)(c), if relevant to the practice of a CLSP, upon a case-by-case approval of such by the Board.

COMMENT 14: Mr. Ricks suggests that continuing education should be based on an honor system, with a requirement of the professional's signature attesting to the fact that he or she had satisfied the continuing education credit requirements. Mr. Ricks suggests that a well-publicized random audit system of 5-10% would be sufficient to discourage abuse of the honor system, and suggests that violators should be fined or suspended.

RESPONSE: The Board is willing to consider using an honor system at some time in the future, but is unwilling to do so at this time. The Board may consider adding an honor system at a later date after reviewing the continuing education reporting process as currently proposed.

COMMENT 15: Ms. Hanson suggests that section (2)(a) include any group authorized by NCA to provide continuing education, and any professional laboratory organization, laboratory instrument manufacturer, or laboratory supplier.

RESPONSE: Please see responses to comment 7 with respect to NCA, comment 10 with respect to professional laboratory organizations, and comment 13 with respect to instrument manufacturers.

COMMENT 16: Rebecca Smith submitted written comments on the proposed rule. Ms. Smith states that a greater variety of programs and educational opportunities should be applicable toward the continuing education requirements, and should not be restricted to approved programs under (2)(a). Ms. Smith states that she believes that the rule is discriminatory against small rural hospitals and clinics, and urges the Board to take geographic factors into consideration in developing this rule.

RESPONSE: The Board disagrees with Ms. Smith's comment, and believes that the rules provide adequate flexibility to all practitioners, whether rural or urban. The Board notes, in addition, that continuing education is not restricted to courses offered or approved by certifying agencies. Section 2(c) provides for case-by-case approval of the Board for programs as well.

COMMENT 17: Brian Guttermuth submitted written comments on the proposed rule. Mr. Guttermuth states that he is opposed to a requirement that all continuing education hours would have to be obtained from a sponsoring agency.

RESPONSE: Please see response to comment immediately above. There is no requirement that all continuing education be obtained from a sponsoring agency.

V. Comments on rule 2(b)

COMMENT 18: Ms. Hanson suggests that the language "provided that the course is clinical laboratory oriented" is restrictive and should be removed. Ms. Hanson suggests that college courses on such topics as stress management, communication techniques, computer literacy, management techniques, accounting, finance, interpersonal relations, death and dying, and legal aspects of health care are all relevant to the practice of a CLSP, and should be given credit.

RESPONSE: The Board agrees with the comment, and will strike the language as suggested.

VI. Comments on rule 2(c)

COMMENT 19: Craig Bell submitted written comments on the proposed rule. Mr. Bell suggests that the rule provide for approximately 4-5 hours to be earned in non-sponsored continuing education activities, with a signed statement provided by the individual stating what was done and accompanied by documentation of attendance.

RESPONSE: The Board notes that section (2)(c) allows up to the total hours of continuing education required to be earned from a non-sponsored offering, provided that it is approved by the Board on a case-by-case basis.

COMMENT 20: Mr. Ricks states that membership to state or national organizations and receipt and reading of journals qualifies for continuing education credits in some states for the professions of nursing, MD's and MT's. Deborah Hanson submitted written comments on the proposed rule raising the same issues as those raised by Mr. Ricks immediately above. Ms. Hanson suggests that one or two continuing education hours should be granted for membership in a professional organization, due to the timely information and informal education these groups provide. Ms. Waterman submitted a concurring comment in this regard, suggesting that such membership should count for 20-25% of the requirements. Brian Sanders also submitted a concurring comment.

RESPONSE: The Board disagrees with the comment. Membership in a professional society does not provide adequate assurance that the licensed individual is obtaining a learning experience. In addition, there is no means of ensuring that the individual will take advantage of the learning opportunities provided through membership. The Board is also uncomfortable either encouraging or discouraging membership in private organizations.

COMMENT 21: John Smith, M.D. submitted written comments on the proposed rule. Dr. Smith requests that the Board account in its rule for medical doctors who may perform a few

simple laboratory procedures which pertain to a sub-specialty of CLSP, but who do not wish to attend courses that do not pertain to their sub-specialties as medical doctors.

RESPONSE: The Board notes that section 37-34-302(1), MCA, excludes physicians from the licensure requirements for a CLSP. Thus, a physician would not be required to comply with continuing education requirements for a CLSP, unless also licensed as a CLSP. If licensed as a CLSP, the physician would have to comply with continuing education credits as would any other licensed individual.

COMMENT 22: Ms. DeNeve suggests that pathologists and doctors' lectures or presentations that are oriented to Clinical Laboratory Science, and hospital workshops pertaining to professionalism, management, or clinical science should be given credit for continuing education. Ms. DeNeve also suggests that reading material that pertains to Clinical Laboratory Science be given credit with one hour of reading worth fifteen minutes of continuing education. Ms. DeNeve suggests a cap on the number of hours that could be gained through reading.

RESPONSE: The Board has considered the comment, and notes that any of the programs listed in comment 22 may be approved under section (2)(a) if approved by one of the listed agencies, or (2)(c), if relevant to the practice of a CLSP, upon a case-by-case approval of such by the Board.

VII. Comments on rule 2(d)

COMMENT 23: Susan Reavis submitted written comments on the proposed new rule. Ms. Reavis expressed her general approval of the rule as drafted. Ms. Reavis, however, seeks clarification as to whether the limitation on audio or video instruction in section (2)(d) applies when a graded examination is given after completion of the video or audio instruction.

RESPONSE: The Board notes that comment 23 and subsequent comments demonstrate substantial opposition to a limitation on video or audio instruction. Thus, the Board will delete subsection (2)(d).

COMMENT 24: Ms. Kramer seeks clarification as to what is meant by video or audio instruction in subsection (2)(d). Specifically, Ms. Kramer questions whether it could include interactive teleconferences, self-instructional material, or anything that is not directly participatory. Ms. Kramer states that this limitation would make it extremely difficult for CLSP's in rural settings to meet the continuing education requirements, and suggests that the limitation on such instruction be removed from the rule so that any program approved by one of the agencies in (2)(a) would be approved for all fourteen hours. Michael Gard, Deborah Hanson, Sharon Thompsen, Tim Russell, Barbara Keever, and Brian Sanders concurred with Ms. Kramer's comments on this section.

RESPONSE: Please see response to comment 23 above.

COMMENT 25: Ms. Waterman suggests the addition of a method of documentation for audio or video instruction, such as a certificate from the lending organization upon return of the material.

RESPONSE: Please see response to comment 23 above.

VIII. Comments on rule (3)

COMMENT 26: Ms. Kramer seeks clarification as to whether a CLSP who is an instructor for an intern enrolled in a recognized school for CLSP's can earn continuing education hours for his or her instruction of such student. Ms. Kramer also seeks clarification as to whether a CLSP can earn continuing education credit for time spent in training seminars to learn the specifics of an instrument or diagnostic tool.

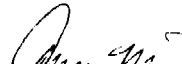
RESPONSE: The Board notes that Ms. Kramer's scenario regarding instruction would qualify for credit, provided that the instructor is not employed by a university or college, as restricted in section (3)(d).

IX. Comments on rule 3(d)

COMMENT 27: Ms. Hanson suggests the deletion of section (3)(d), claiming that the limitation is arbitrary, biased, and discriminatory.

RESPONSE: The Board disagrees with Ms. Hanson's suggestion. Continuing education credit will not be given for a licensed individual performing his or her job, whether as a teacher, a laboratory director, or other professional.

BOARD OF CLINICAL LABORATORY
SCIENCE PRACTITIONERS
JOANN SCHNEIDER, CHAIRMAN

BY: 
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Certified to the Secretary of State, June 13, 1994.

BEFORE THE BOARD OF COSMETOLOGY
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment, repeal and adoption of rules pertaining to the practice of cosmetology, manicuring and electrolysis	))))	NOTICE OF AMENDMENT, REPEAL AND ADOPTION OF RULES PERTAINING TO THE PRACTICE OF COSMETOLOGY, MANICURING AND ELECTROLYSIS

TO: All Interested Persons:

1. On February 24, 1994, the Board of Cosmetology published a notice of public hearing on the proposed amendment, repeal and adoption of rules pertaining to cosmetology, manicuring and electrolysis at page 331, 1994 Montana Administrative Register, issue number 4. The hearing was held on March 21, 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 8.14.601, 8.14.605 through 8.14.607, 8.14.801 through 8.14.803, 8.14.805 through 8.14.807, 8.14.813, 8.14.814, 8.14.817, 8.14.818, 8.14.902, and 8.14.904 through 8.14.906; repealed ARM 8.14.808, 8.14.907 through 8.14.909 and 8.14.1003; and adopted new rules I (8.14.1005) and II (8.14.402) exactly as proposed. The Board has amended ARM 8.14.401, 8.14.602, 8.14.603, 8.14.608, 8.14.815, 8.14.816, 8.14.903 and 8.14.1004 as proposed but with the following changes: (The authority and implementing sections will remain the same as proposed in the original notice.)

"8.14.401 GENERAL REQUIREMENTS (1) All persons engaged in the practice or teaching of cosmetology must display their cosmetology license in a conspicuous place at their work station. THE ADDRESS ON PERSONAL LICENSES MAY BE COVERED.

(2) will remain the same as proposed."

"8.14.602 INSPECTION (1) through (4) will remain the same as proposed.

(5) The floor plan of the school shall indicate the number of students the school plans to enroll. The equipment listed in subsections (a) through (p) below shall be required for a school with 1 to 15 students, unless otherwise specified below. For 16 to 30 students, the amount of equipment required below shall be doubled. For ~~46~~ 31 to ~~60~~ 45 students, the amount of equipment required below shall be tripled, and so on:

(a) through (c) will remain the same as proposed.

(d) 4 wet sterilizerS consisting of 1 covered cleanser and 1 covered disinfectant~~.~~. NON-COVERED CLEANSERS AND DISINFECTANTS MAY BE USED, PROVIDED THAT THE CLEANSING AND DISINFECTING SOLUTION IS CHANGED AFTER EACH USE;

(e) through (7) will remain the same as proposed."

"8.14.603 SCHOOL OPERATING STANDARDS (1) through (14) will remain the same as proposed.

(15) If for any reason a student discontinues his or her enrollment, the school shall within ~~2~~ 14 days, send notification to the office of the department to that effect together with a statement of the hours completed by the student. Upon re-enrollment in any school, the school shall, within ~~2~~ 14 days, send notification to the office of the department to that effect.

(16) through (18) will remain the same as proposed."

"8.14.608 INSTRUCTOR REQUIREMENTS - TEACHER-TRAINING PROGRAMS (1) through (6) will remain the same as proposed.

(7) UPON COMPLETION OF 650 HOURS OF TEACHER-TRAINING, CADET TEACHERS MAY CONTINUE TO FUNCTION AS CADET TEACHERS UNTIL THE EXAMINATION RESULTS ARE AVAILABLE FROM THE NEXT REGULARLY SCHEDULED EXAMINATION FOR INSTRUCTORS."

"8.14.815 CONTINUING EDUCATION - INSTRUCTORS (1) will remain the same as proposed.

(2) No more than 5 hours out of the 15 hours per year required for continuing education may be obtained at trade shows or courses in which a particular product is being promoted. CREDIT WILL BE ALLOWED FOR EDUCATION AT TRADE SHOWS OR COURSES IN WHICH A PARTICULAR PRODUCT IS BEING PROMOTED ONLY IF THE COURSE HAS BEEN APPROVED BY THE BOARD AS A SCHOOL OF CONTINUING EDUCATION. SUCH APPROVAL SHALL REQUIRE A METHOD OF VERIFYING ATTENDANCE, SUBMITTED BY THE INDIVIDUALS PUTTING ON THE SHOW.

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

"8.14.816 SALONS - COSMETOLOGICAL/MANICURING (1) through (4)(a) will remain the same as proposed.

(b) 1 wet sterilizer consisting of 1 covered cleanser and 1 covered disinfectant. NON-COVERED CLEANSERS AND DISINFECTANTS MAY BE USED, PROVIDED THAT THE CLEANSING AND DISINFECTING SOLUTION IS CHANGED AFTER EACH USE;

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

(g) mechanical ventilation to include ~~either a manicure table with an activated charcoal filtering system,~~ a general, FRESH AIR exhaust system that provides for ~~the dilution of room air, or a local exhaust system that provides for the dilution of room air~~ AT LEAST 4 AIR CHANGES PER HOUR;

(5) through (11) will remain the same as proposed.

(12) Salon licenses must be placed in a location that can be viewed by the general public. Personal and booth rental licenses for personnel must be displayed at the person's work station. THE ADDRESS ON PERSONAL LICENSES MAY BE COVERED."

"8.14.903 INSPECTION AND EQUIPMENT (1) will remain the same as proposed.

(2) A separate classroom is required and must have sufficient charts, blackboards, chairs and up-to-date books, ~~to include:~~

~~(a) Electrolysis, Thermolysis and the Blend, by A.R. Hinkle,~~

~~(b) Electrolysis, by Julius Shapiro,~~

~~(c) The Hirsute Woman, by Dr. Robert Greenblatt; and~~
~~(d) The Pill Book, by Harold Silverman and Gilbert Simon,~~ medical dictionary, current electrology magazines and a copy of electrology laws and rules. This room may be used as a recitation, demonstration, study room and reference library.

(3) through (4)(e) will remain the same as proposed.

(f) ~~1 wet sterilizer~~ LIQUID STERILIZERS AND AN AUTOCLAVE;

(g) and (h) will remain the same.

(i) 24 pair tweezers,

(j) 12 pair regular forceps for ingrown hair,

(k) through (11) will remain the same as proposed.

(12) ONLY PRE-STERILIZED, DISPOSABLE NEEDLES MAY BE USED FOR ELECTROLYSIS SERVICES ON ANY INDIVIDUAL IN A LICENSED SCHOOL."

"8.14.1004 SALON (1) through (4) will remain the same as proposed.

(a) either a high frequency generator, galvanic generator, or electrolysis machine (dispersive or inactive electrode with connections to the machine, such as wet pad, metal rod or water jar, necessary for electrology treatments, ~~plus one multiple needle arm~~)

(b) DISPOSABLE PRE-STERILIZED needles ~~of various~~ IN sizes 2, 3, 4, and 5 .....~~4~~ 12 each

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

(h) covered containers for ALL lotions, soaps, sterilizing agents and cotton.....~~4~~ TO BE USED ON PATIENTS

(i) will remain the same as proposed.

(j) fine pointed epilation forceps.....~~1~~ 4

(k) will remain the same as proposed.

(l) draping sheets OR TOWELS.....6.

(5) ONLY PRE-STERILIZED, DISPOSABLE NEEDLES MAY BE USED FOR ELECTROLYSIS SERVICES ON ANY INDIVIDUAL IN A LICENSED SALON."

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

Comments regarding 8.14.401

COMMENT 1: Farrel Griffin (Mr. Griffin) submitted written comments on the proposed rule changes. Mr. Griffin suggests that 8.14.401 (1) should be changed to read "at their work station, reception area or a central office."

RESPONSE: The Board disagrees with Mr. Griffin's suggestion, and believes that the license should be displayed at the work station in order to allow the public to see whether the individual working on them is licensed to practice as a cosmetologist.

COMMENT 2: Darlene Battaiola (Ms. Battaiola) submitted written comments on the proposed rule changes. In addition, eight other individuals signed a sheet indicating their

agreement with Ms. Battaiola's comments. Ms. Battaiola states that requiring the posting of the license at the work station serves no purpose. Ms. Battaiola believes that requiring the posting of licenses in the general work area is sufficient. Ms. Battaiola also states that the posted licenses should not have the home address on them, as it allows the dissemination of personal information to the public.

RESPONSE: With respect to the issue on location of the license, please see response to comment 1 above. With respect to the issue of private address of the licensee, the Board has changed the language of 8.14.401 to reflect that the private address of the licensee may be covered.

Comments regarding 8.14.602

COMMENT 3: Ms. Battaiola indicates her support for the change to 8.14.602(1) if the intent is to disallow a board member from inspecting a school. Ms. Battaiola suggests that subsection (5)'s requirement of doubling the equipment for one extra student would be costly, and that a ratio system would be much fairer. Ms. Battaiola also states that the rule needs further review, as it does not provide for an increase in equipment for increases of students from 30 to 46.

Ms. Battaiola states that the requirement for wet sterilizers with a covered cleanser (subsection (5)(d)) is confusing. Ms. Battaiola states that implements should be cleaned in detergent and hot water prior to being immersed in a disinfectant, and that the containers of hot water and detergent should be changed after each use. Ms. Battaiola suggests that the rule be changed to provide for this method without a covered cleanser requirement.

Ms. Battaiola questions whether subsection (5)(j) requires step-on lids as the inspection report calls for.

RESPONSE: The Board disagrees with Ms. Battaiola's suggestion to use a pro-rated system for required equipment, and believes that the proposed system provides the licensee with a clear guideline the way it is currently proposed. With respect to an increase in equipment for increases of students from 30 to 46, the Board has changed the rule as suggested. With respect to the issue of covered cleanser in (5)(d), the Board has changed the rule to provide that a non-covered cleanser or disinfectant may be used if the solution is changed after each use, and that otherwise a covered cleanser and disinfectant is required. With respect to section (5)(j), it does not require a step-on lid.

COMMENT 4: Mr. Griffin suggests that the proposed changes to 8.14.602 should apply only to schools licensed after the date of the rule change. Mr. Griffin suggests adding language that would clarify that the new rule changes do not affect schools that were licensed prior to the rule changes.

RESPONSE: The Board disagrees with Mr. Griffin's suggestion that the rules may not apply to existing schools. The rule changes affect sanitation requirements that apply to new and existing schools. The Board notes, in addition, that

the proposed rule change lowers the requirement for much of the equipment required in a school, and does not affect the structure of the building in which the school is located. The Board intends to enforce this rule equally with respect to all licensees.

Comments regarding 8.14.603

COMMENT 5: Mr. Griffin states that the two day requirement for notification of the dis-enrollment of a student is unreasonable. Mr. Griffin states that this rule does not allow for a school owner to be away from his/her school for any purpose for longer than two days. Mr. Griffin states that the rule should be changed to provide for notification within thirty days. Ms. Battaiola submitted a concurring comment.

RESPONSE: The Board has changed its rule in response to the comments, and will require notification within fourteen days.

COMMENT 6: Ms. Battaiola suggests that making school records available to the inspector (subsection (6)) seems unnecessary and beyond the scope of the duties of the inspectors. Ms. Battaiola states that disciplinary actions against a student should not be required to be reported to the Board (subsection (14)), as it constitutes a violation of the student's privacy.

RESPONSE: The Board disagrees with Ms. Battaiola's comments. Supervision of schools and students is the direct responsibility of the Board, under Section 37-31-203(4) & (5), MCA. Making school records available to the inspector is a necessary component of such supervision. Requiring the reporting of school disciplinary actions to the Board does not constitute a violation of the student's privacy, as the Board has the duty to regulate students under its rulemaking authority. The Board will, of course, maintain the confidentiality of student files.

Comments regarding 8.14.605

COMMENT 7: Donovan Lindsay (Ms. Lindsay) submitted written comments on the proposed rule changes. Ms. Lindsay states that subsection (8) of 8.14.605 should be changed. Ms. Lindsay states that allowing 125 hours of credit for a manicurist who enrolls in a cosmetology course is unfair, given that a manicurist has 350 hours of manicuring education at the time of licensure. Ms. Lindsay states that subsection (8) should allow 200 hours of credit for a manicurist who enrolls in a cosmetology course, as there are 200 hours of manicuring instruction required as part of the cosmetology course.

RESPONSE: The Board agrees with Ms. Lindsay that there should be some standard for reviewing requests for transfer of credit between a manicuring and cosmetology program. The substance of subsection (8), however, was not proposed for change in the notice of proposed rule changes, and cannot be

changed in the adoption notice. Proposed changes to subsection (8) would have to be noticed separately.

COMMENT 8: Mr. Griffin states that the five day requirement for notification of a student's completion of training is unreasonable, as it does not allow for a school owner to be away from his or her business for a period longer than five days. Mr. Griffin suggests that the rule be changed to provide for notification within thirty days.

RESPONSE: The Board disagrees with Mr. Griffin's comment, and will require notification within five days as proposed. The Board will not allow thirty days as suggested by Mr. Griffin because students who complete their training program often need documentation of final hours sent to the Board offices immediately to allow them to start work on a temporary permit.

Comments regarding 8.14.606

COMMENT 9: Mr. Griffin states that the law does not provide for the Board to make rules requiring submission of registration papers of students to the Board. Mr. Griffin states that the rule should be removed.

RESPONSE: The Board disagrees with Mr. Griffin's comment. The Board has specific authority to develop rules governing the instruction of students and supervision of schools, under Section 37-31-203(4) & (5), MCA. Requiring submission of registration papers of such students is a legitimate exercise of the Board's rulemaking authority in this regard, as it allows the Board to keep track of the status of students in the licensed schools.

COMMENT 10: Ms. Battaiola states that she does not believe that subsection (3) should be removed if it would then require a school to transfer hours for a student not in good standing. Ms. Battaiola suggests that the removal of this section would encourage violation of school contracts by students who wish to avoid paying their school bills.

RESPONSE: The Board disagrees with Ms. Battaiola's comments on this section. Subsection (3) was removed to take the Board out of an area over which it does not wish to be involved. Bill collection is a private matter between the student and the school, and will not be enforced through a licensing regulation.

Comments regarding 8.14.608

COMMENT 11: Mr. Griffin states that there is no statute that requires a cadet instructor to register with the Board upon enrollment into school. Mr. Griffin states that subsection (5) should be removed.

RESPONSE: The Board disagrees with Mr. Griffin's comment. The Board has specific authority to develop rules governing the instruction of students and supervision of schools, under Section 37-31-203(4) & (5), MCA. A cadet instructor is a student. Requiring submission of registration papers of such

cadets is a legitimate exercise of the Board's rulemaking authority in this regard, as it allows the Board to keep track of the status of cadets in the licensed schools. A cadet instructor can operate only under the direct supervision of a licensed instructor. Thus, the Board needs to know the status of individuals who are teaching in schools of cosmetology, whether as licensed instructors or cadet instructors.

COMMENT 12: Ms. Battaiola states that subsection (7) should not be removed, as it opens the door for cadet teachers to function in a school for an indefinite period. Ms. Battaiola suggests that this could lead to cadet teachers being misused as an additional instructor.

RESPONSE: The Board agrees with Ms. Battaiola that there needs to be a provision prohibiting a cadet teacher from functioning indefinitely once training is complete. The Board, however, is uncomfortable with the language of subsection (7) as previously written. The Board will change subsection (7) to provide that a cadet instructor who has completed the training may continue to function as a cadet instructor until the examination results are available from the next regularly scheduled examination for licensed instructors, but no longer.

Comments regarding 8.14.801

COMMENT 13: Mr. Griffin suggests that subsection (5)(a) should be changed to provide for administration of the instructor's exam at a test site convenient for the applicant. Mr. Griffin suggests that there are other individuals or agencies qualified to administer this test, such as the Adult Education Center, the Job Service, high schools, or colleges. Mr. Griffin suggests that subsection (5)(d) is in conflict with section 37-31-308(1), MCA, and should be removed.

RESPONSE: With respect to subsection (5)(a), the Board contracts with a national testing agency that requires confidentiality of examination materials, and prohibits disclosure of examination materials to parties outside of the Professional and Occupational Licensing Bureau. Thus, the Board will leave subsection (5)(a) as proposed. With respect to Mr. Griffin's comment on subsection (5)(d), that section was not proposed for change in the notice of proposed rule changes, and cannot be changed in this adoption notice. Changes to section (5)(d) will need to be noticed separately.

Comments regarding 8.14.815

COMMENT 14: Mr. Griffin states that subsection (2) is in conflict with section 37-31-322, which requires that continuing education be offered at "a school approved by the Board." Mr. Griffin states that classes taught at trade shows do not qualify under this requirement, and that subsection (2) should be removed. Ms. Battaiola submitted a concurring comment, and states that there is no means to establish creditable attendance at trade shows.

RESPONSE: The Board disagrees with Mr. Griffin that the rule is in conflict with section 37-31-322, MCA. Section 37-31-322(2)(a), MCA, requires that the training be completed "at a school approved by the board." The rule does not provide that such approval is no longer necessary. The Board would have to approve of a trade show as an approved school of continuing education in order for such program to qualify for continuing education. In order to clarify its intent in this regard, the Board will add the language "provided that the trade show has been approved by the Board as a school of continuing education." With respect to Ms. Battaiola's comment, the Board will change the rule to provide that there must be documented attendance at trade shows in order for credit to be given.

Comments regarding 8.14.816

COMMENT 15: Tracy Hayward of Hennessy's Hair Salon, appeared at the hearing and presented oral testimony regarding the proposed rule changes. Ms. Hayward questions whether modelling touch-up will be allowed outside of the salon, at for instance, a fashion show. Ms. Hayward suggests that this should be allowed by rule. Ms. Hayward also requests whether the address may be covered up when a license is posted on the mirror. Ms. Hayward states that the personal address should not be required to be displayed.

RESPONSE: The Board disagrees with Ms. Hayward's suggestion. The rule does not provide for practice of cosmetology or manicuring outside of a licensed salon, because section 37-31-301, MCA, provides that such practice may occur only in a licensed salon. With respect to Ms. Hayward's comment on the personal address, please see response to comment 2 above.

COMMENT 16: Valerie Meyer and Janice Hays both appeared separately at the hearing and presented oral testimony regarding the proposed rule changes. Both also submitted written comments as well. Ms. Meyer and Ms. Hays suggest that subsection (4)(g) of 8.14.816 is inadequate. Ms. Meyer states that the federal studies (IOSH) have determined that charcoal filtration systems at manicuring tables are insufficient, and that the Board should require at least manufacturer's specifications which require local exhaust. Ms. Hays indicates, in addition, that more ventilation should be enforced for all services in a cosmetology salon. Both of the individuals indicate that there are many health problems associated in the cosmetology profession that are directly attributable to lack of sufficient ventilation, and suggests that the Board of Cosmetologists draft rules that will reduce the exposure of such individuals to harmful chemicals.

RESPONSE: The Board agrees with Ms. Meyer and Ms. Hays that ventilation needs to be improved. The Board will strike the language in subsection (4)(g) starting with the words "either a manicure", and ending with the words "charcoal filtering system," and will require a general, fresh air

exhaust system that provides for at least four air changes per hour.

COMMENT 17: Scott and Val Steckly (The Stecklys) submitted written comments on the proposed rule changes. The Stecklys state that this rule should require some form of fresh air circulation in addition to the charcoal filter systems, in order to adequately protect the customer's and the licensee's safety.

RESPONSE: Please see the response to comment 16 above.

COMMENT 18: Ms. Battaiola suggests that the requirement for a covered cleanser (subsection (3)(b)) be left out. Ms. Battaiola questions whether the requirement for an accessible restroom will be eliminated with the deletion of subsection (5). Ms. Battaiola agrees with the changes to subsections (9) and (10), but questions why this language was rejected when suggested at an earlier rule hearing. Ms. Battaiola suggests that subsection (12) be changed according to her comments on 8.14.401.

RESPONSE: With respect to the issue of covered cleanser in (3)(b), the Board has changed the rule to provide that a non-covered cleanser or disinfectant may be used if the solution is changed after each use, and that otherwise a covered cleanser and disinfectant is required. The Board notes that there is still a requirement for a separate restroom under new subsection (5). With respect to the comment on subsections (9) & (10), the Board cannot respond without information as to when such a proposal was rejected. With respect to subsection (12), the Board has added language that the personal address may be covered by the licensee.

Comments regarding 8.14.817

COMMENT 19: Ms. Battaiola questions whether this rule change would now allow booth renters to work at various stations within a salon. Ms. Battaiola suggests that the intent of the rule is good, but that it allows far too much personal interpretation.

RESPONSE: The Board disagrees with Ms. Battaiola's comments on this section, and will allow booth renters to move within a salon from one booth to another without obtaining a new license for each location moved to within the salon.

Comments regarding 8.14.902

COMMENT 20: Ms. Battaiola suggests that making school records available to the inspector (subsection (2)) seems unnecessary and beyond the scope of the duties of the inspectors. Ms. Battaiola states that disciplinary actions against a student should not be required to be reported to the Board (subsection (14)), as it constitutes a violation of the student's privacy.

RESPONSE: The Board disagrees with Ms. Battaiola's comments. Supervision of schools and students is the direct responsibility of the Board, under Section 37-31-203(4) & (5),

MCA. Requiring the reporting of school disciplinary actions to the Board does not constitute a violation of the student's privacy, as the Board has the duty to regulate students under its rulemaking authority. The Board will, of course, maintain the confidentiality of student files.

Comments regarding 8.14.903

COMMENT 21: Helen Arthur (Ms. Arthur) submitted written comments on the proposed rule changes. Ms. Arthur suggests that the book "Electrolysis" by Shapiro be replaced by "Modern Electrology-Excess Hair, Its Causes and Treatment" by Fino Gior. Ms. Arthur states that Gior's book is more up to date, comprehensive, and easy to read. Ms. Arthur also suggests the deletion of the reference to "The Hirsute Female" as it is written to physicians rather than electrologists. Ms. Arthur suggests the addition of the book "Female Hirsutism: An Enigma" by Linda Edsell.

Ms. Arthur suggests that subsection (3) be changed to require liquid sterilants for wet sterilizer and an autoclave for complete sterilization. Ms. Arthur also suggests that only pre-sterilized disposable needles be allowed to prevent the spread of infectious diseases. Ms. Arthur also suggests that subsection (3)(j) be changed to require at least two dozen regular tweezers and one dozen forceps for ingrown hair, as they cannot be used for more than one patient without first sterilizing.

RESPONSE: With respect to the comments on texts, the Board believes that the specification of particular books is no longer necessary, and would unnecessarily prohibit the use of appropriate texts as they become available. Thus, the Board will delete all of subsection (2), after the words "up-to-date-books" through "Gilbert Simon". This will allow greater leeway for the schools to chose its own texts. With respect to Ms. Arthur's comments on subsection (3), the Board agrees with the comments, and has changed the rule in accordance with such suggestions.

Comments regarding 8.14.906

COMMENT 22: Ms. Arthur suggests that a student be given credit for performance of service on his or her self. Ms. Arthur states that all students start out by working on themselves and graduate to working on other people.

RESPONSE: The Board disagrees, and will not provide for credit when a student works on his or her self.

Comments regarding 8.14.1004

COMMENT 23: Ms. Arthur suggests the deletion of "plus one multiple needle arm" in subsection (4)(a), as it is not necessary or desired by most electrologists. Ms. Arthur suggests that subsection (4)(b) be changed to require at least a dozen needles in sizes 2, 3, 4, and 5. Ms. Arthur suggests that the needles be required to be disposable or autoclaved. Ms. Arthur suggests that subsection (4)(h) be changed to

require covered containers for all supplies and agents used on patients, with no required number of covered containers. Ms. Arthur suggests that subsection (4)(j) be changed to require at least four fine pointed epilation forceps, and that subsection (4)(l) be changed to provide for draping sheets or towels.

Ms. Arthur suggests that if needles are re-used, an ultra sonic cleaner is absolutely necessary to adequately clean the needles before sterilization.

RESPONSE: The Board agrees with the comments on this section, and has changed its rule to comply with such comments.

Rule II - Disciplinary Action

COMMENT 24: Donald Henderson (Mr. Henderson) submitted written comments on the proposed rule changes. Mr. Henderson, Ms. Battaiola and eight individuals also signing Ms. Battaiola's comments, and Mr. Griffin state that this rule should not be adopted. These individuals state that the rule is similar to legislation that the Board tried, but failed, to pass under House Bill 519 of the 1990 legislative session.

RESPONSE: The Board disagrees with the comments on this proposed rule. The Board has specific authority, under Section 37-1-136, MCA, to adopt rules specifying grounds for disciplinary action up to and including probation, suspension for a period of not more than one year, or revocation of a license. The Board has proposed this new rule in strict compliance with its specific authority to do so under section 37-1-136, MCA.

BOARD OF COSMETOLOGY
MARY BROWN, CHAIRMAN

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

_____
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, June 13, 1994.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the adoption of the Teacher certification	)))	NOTICE OF AMENDMENT OF ARM 10.57.301 ENDORSEMENT INFORMATION

To: All Interested Persons

1. On May 27, 1994, the Board of Public Education held a hearing on the proposed amendments to ARM 10.57.301 Endorsement Information noticed on page 815 of the Montana Administrative Register, issue # 7.

2. The board has adopted the rule as proposed.

3. The board has adopted this rule in order to bring up-to-date the areas of endorsement and add the endorsement for technology education offered by the universities.

Wayne D Buchanan

WAYNE BUCHANAN, Executive Secretary
Board of Public Education

Certified to the Secretary of State on 6/13/94.

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

In the matter of the adoption of new rules I through X pertaining to block management.) NOTICE OF ADOPTION OF NEW RULES I (12.4.201) THROUGH X (12.4.210)

TO: All interested persons

1. On April 28, 1994, the Fish, Wildlife and Parks Commission published notice at page 1064 of the Montana Administrative Register, Issue No. 8, to consider the adoption of new rules I through X pertaining to block management.

2. The Commission adopts rules I (12.4.201) through X (12.4.210) as proposed with the following changes:

RULE I (12.4.201) through RULE IV (12.4.204) are adopted as proposed.

AUTH: 87-1-301 and 87-1-303, MCA
IMP: 87-1-301 and 87-1-303, MCA

RULE V (12.4.205) USE OF BLOCK MANAGEMENT AREAS (1) The following governs use of BMAs:

(a) through (d) adopted as proposed.

(e) Priority consideration for block management enrollment will be given for lands that are open to all species and gender of game birds and animals and that run concurrently with the duration of the big game hunting season. Any restrictions on the gender or species available for hunting on a BMA, other than those established by the commission, must be approved by the regional supervisor in writing, documenting any biological or management reasons for such restrictions before implementation of the BMA. Species and gender restrictions, other than those established by the commission, may not be imposed on state or federal land.

(f) BMAs which impose daily hunter number limits will allow free, equitable opportunities for access to all hunters requesting use of the BMA based on a daily hunter number capacity agreed upon by the cooperator and the department. The allocation of this hunter capacity will be on a first come, first served basis. In the event that hunting demand for a certain BMA is greater than supply, similar hunting opportunities may be offered on other days on the BMA or on other BMAs. On BMAs where hunter demand regularly exceeds available opportunity, the department, where practical, or the cooperator, with department approval, will develop equitable methods of allocation such as telephone reservations or drawings.

(g) adopted as proposed.

(h) Enrollment in the block management program may be terminated by the department or the cooperator if the terms of

the contract or enrollment form are violated; or, by the department or the cooperator within 30 days following the end of the hunting season. DSL may withdraw state lands from inclusion in a BMA under ~~Rule IV(6) which is proposed by DSL in MAR Notice No. 26-2-72 as published in issue No. 8~~ 26.3.199 C. Any such notice must be in writing. A contract or enrollment may be canceled and a cooperator's property withdrawn from the program at any time due to circumstances beyond the control of the cooperator or the department, such as death, illness, natural disaster, or acts of nature.

(i) through (j) adopted as proposed.

AUTH: 87-1-301 and 87-1-303, MCA
IMP: 87-1-301 and 87-1-303, MCA

RULE VI (12.4.206) COMPENSATION TO COOPERATORS (1) Cooperators in the program may receive various forms of compensation for their participation including, but not limited to, the following:

(a) department oversight and supervision of hunting on a BMA including the development and implementation of a hunter reservation system administered by the department when practical;

(b) supplying of permission books, signs or hunting-season related supplies; and

(c) monetary compensation based on an estimate of the hours spent by a cooperator attending to hunters utilizing the BMA. Payments to cooperators will be made immediately following the close of the use season.

(2) adopted as proposed.

AUTH: 87-1-301 and 87-1-303, MCA
IMP: 87-1-301 and 87-1-303, MCA

RULE VII (12.4.207) OUTFITTING AND COMMERCIAL HUNTING ACTIVITY (1) Outfitting and commercial hunting activities on BMAs are not consistent with the intent of providing free public access to recreational opportunities on private lands. ~~Outfitting and other forms of commercial hunting activity may not take place on BMAs.~~ Outfitting may not take place on a BMA unless public recreation and hunting opportunities are not restricted and the cooperator and regional supervisor approve the activity. This rule does not regulate licensed outfitters legally operating on federal or state lands under license or permit obtained from the bureau of land management, forest service, department of state lands or other resource management agency.

AUTH: 87-1-301 and 87-1-303, MCA
IMP: 87-1-301 and 87-1-303, MCA

RULE VIII (12.4.208) and RULE IX (12.4.209 are adopted as proposed.

AUTH: 87-1-301 and 87-1-303, MCA
IMP: 87-1-301 and 87-1-303, MCA

RULE X (12.4.210) COMPLAINT RESOLUTION SYSTEM (1) BMA cooperators or hunters may make complaints to the department of problems they have encountered on a BMA. The department shall use the following procedure to investigate and resolve complaints.

(a) though (g) adopted as proposed.

(h) For BMAs with any complaints which remain unresolved on March 1 annually after having been investigated through this process, the complaints will be reviewed as set forth in ~~Rule V proposed by DGL in MAR Notice No. 26-2-72 as published in issue No. 8~~ 26.3.199 D to determine if a public review is necessary to assess if continued enrollment in the program is appropriate.

AUTH: 87-1-301 and 87-1-303, MCA
IMP: 87-1-301 and 87-1-303, MCA

3. The commission received both oral and written comments which are combined below by subject area raised and which have been considered by the commission:

COMMENT: Eleven comments suggested that the MDFWP should establish a system on BMA's that require permission and reservations where the department would act as intermediary, taking reservations from hunters for opportunities on BMA's. The department would communicate these reservations to cooperators and the cooperators would then issue permission slips on-site to hunters.

RESPONSE: Proposed Rule V (f) states that "...on BMA's where hunter demand regularly exceeds available opportunity, the department will develop equitable methods of allocation such as telephone reservations or drawings." The department is committed to developing workable reservation systems. Currently, we do not have the experience or personnel necessary to operate an effective system. The department plans to work with cooperators to develop systems which will work for both hunters and cooperators and intends to experiment with reservation systems beginning in the 1994 hunting season.

COMMENT: Fourteen comments were received suggesting that all BMA's should operate concurrently with the general big game season and that no BMA's be established which operate for less than the big game season.

RESPONSE: When negotiating agreements or contracts, the department seeks to maximize public opportunities on private lands. Priority for participation is given to cooperators who offer longer duration of opportunity for the public on their property. To clarify this, the commission amended RULE V (1)

(e) by adding language that makes BMA's that run concurrently with the duration of the big game hunting season priorities for enrollment.

COMMENT: Nine comments suggested that non-contiguous tracts of state or federal lands should not be included in Block Management Areas. It was commented that there was no good management reason to include such lands which are physically separate and distant from the main operation "block" and should therefore fall under DSL or federal recreational access rules.

RESPONSE: Rule IX of the FWP proposed rules and Rules II and III of the proposed DSL rules for the inclusion of state trust lands in block management areas address issues of procedure and criteria for inclusion of state trust lands in BMA's. Rule V(b) requires that when lands under the authority of federal agencies are proposed for inclusion in a BMA, the managing federal agency must approve the inclusion. The commission felt that these rules are adequate in scope so as to provide a reasonable, public participation process for the inclusion of any state or federal lands in BMA's.

COMMENT: Four comments expressed concern that under the proposed rules BMA's which were enrolled with multiple-year contracts would not be subject to investigation or review of any complaints until the end of the enrollment period. It was believed that the proposed rules required such review only at the time of re-enrollment, and problems would persist in the interim without resolution.

RESPONSE: Rule X, (Complaint Resolution System) in the proposed FWP rules and section V of the DSL rules provide for the investigation and resolution of formal complaints made by hunters, cooperators or others on any BMA. Although the rule infers timely response and resolution to complaints the commission added wording to Rule X which required that complaints are to be resolved by March 1 after the hunting season in which the complaint was received.

COMMENT: The department received 35 comments on the Commission option on outfitting and commercial hunting activity, Rule VII of the proposed rules. 7 favored allowing outfitting on BMA's, 3 suggested no action (thus allowing it as an option) and 25 opposed any commercial hunting activities whatsoever on BMA's.

RESPONSE: The majority of comments received on the commission option on outfitting and commercial hunting supported the retention of RULE VII which would prohibit outfitting and commercial hunting activities on BMA's. However, after further consideration, the commission felt that an outright prohibition of these activities on BMA's would be too restrictive and may not allow a cooperator latitude in making

decisions on the use of his or her property. Furthermore, the commission believed that local department personnel should be allowed the flexibility to act on situations when the benefits of expanded public hunting opportunity would not be impeded by the presence of limited outfitting on a BMA. Therefore, the commission has struck the second sentence of RULE VII and replaced it with the following:

> Outfitting may not take place on a BMA unless public recreation and hunting opportunity are not restricted and the cooperator and the regional supervisor approve the activity.

COMMENT: Amend Rule V,(h) to read "DSL may withdraw state lands from inclusion in a BMA under Rule IV, (1) (c) {refers to DSL rules.}

RESPONSE: The commission concurred. This was apparently a typographical mistake in the text.

COMMENT: Section V (h) of the rules read that the department or DSL may terminate agreements with cooperators if the terms of the agreements are violated. Yet, a cooperator may only cancel within 30 days following the end of a hunting season. This is unfair to the cooperator and may cause some landowners not to participate.

RESPONSE: The commission concurred and amended Rule 5(h) so that the cooperator may also terminate an agreement if terms of the agreement are violated by the department.

COMMENT: Three commentors suggested the department should make BMA maps available at sporting goods stores so that potential users would have easy access to them and be able to plan their hunts without complications.

RESPONSE: Rule VIII, INFORMATION DISSEMINATION, sets out specific guidelines for the quality and source of information on BMA's. Regional offices are the central point of dissemination for this information. Regions may, at their discretion, coordinate their information efforts with other sources such as local sporting goods stores, to distribute information.

COMMENT: Rule V(1) (j): A comment was received suggesting that for cooperators to start taking reservations after September 1, would cause a major inconvenience. As it is now, the commentor is deluged with calls after the permits are drawn in August and a September 1 start date would hinder reservations by out-of-state hunters and those trying to make plans in advance.

RESPONSE: This date was put into place to provide a start date where all hunters wanting access to BMA's which require

advance reservations would have equal, first-come, first-served opportunities. September 1 provides a date whereby a substantial number of the total BMA's for that year will have been enrolled and also give a reasonable lead time for planning before the opening of antelope and the general rifle seasons.

COMMENT: Three commentors did not agree with the requirement to possess a State Lands Recreational Use Permit to hunt on a BMA which included state school trust land.

RESPONSE: A State Lands Recreational Use Permit is required by law to hunt any accessible trust lands in a BMA. It is not a prerequisite for access to a BMA or to hunt on federal or private BMA lands.

COMMENT: One comment suggested that Rule V(1) (c) and (d), contain a "hold harmless" statement covering a cooperator's decisions in managing sportsmen access and conduct on a BMA. The sportsman would have an option of appealing to the department in the event of a disagreement.

RESPONSE: Rule X provides for a method of resolving any complaints formally filed by either a cooperator or hunters using a BMA.

COMMENT: Three comments were received suggesting that BMA's should not have restrictions on species or gender available for hunting by the public.

RESPONSE: Rule V(1) (e) provides that priority consideration will be given for enrollment of lands that are open to all species and gender of game birds and animals. Furthermore, the rules require that any restrictions on species and /or gender opportunity on a BMA which differ from those established by the fish, wildlife and parks commission must be approved by the regional supervisor in writing, documenting any biological or management reasons for such restrictions.

COMMENT: Cooperators should be allowed to charge sportspersons for specific services rendered during the course of the sportsperson's access and not have that charge considered as outfitting.

RESPONSE: The Commission does not think it is appropriate to allow cooperators to charge for outfitting-type services on BMAs, except under the limited circumstances allowed in Rule VII (12.4.207) as amended.

COMMENT: A suggestion was received that other compensation such as access trail improvement or weed control be provided.

RESPONSE: RULE VI(1) (a) through (c) and (2) (a) through (c) lists various possibilities for compensation. However, the

rule specifically states that options for kinds of compensation are not limited to those listed.

COMMENT: One commentor did not recognize the authority given in 87-1-301 MCA and 87-1-303 MCA (Powers of the Commission and Rules for Use of Lands and Waters.)

RESPONSE: The authority of these statutes were not at issue in the proposal, review and adoption of these rules.

COMMENT: A federal agency expressed concern about the possibility of confusion when private, state and federal land managers are involved in a BMA which restricts hunter numbers and additional hunters are allowed at the landowners' discretion. The concern here lies in having private lands mixed with federal or state lands which are legally accessible, and having the private landowner exercise access control over the public lands.

RESPONSE: Rule V(1) (b) requires that whenever federal lands are included in a BMA, the managing agency must approve the inclusion.

COMMENT: The September 1 annual date for information dissemination coincides with the usual opening of upland bird seasons. Setting back that deadline for information even just a week would be helpful for those wishing to utilize BMA bird-hunting opportunities.

RESPONSE: Generally, BMA's have provided big-game hunting opportunities and therefore, the September 1 date was viewed as providing ample time for sign-up of cooperators while still providing lead time before the opening of big game seasons. The September 1 date does provide adequate lead time for Block Management opportunities for pheasant hunting which does not open until the second week of October. However, if more upland bird hunting opportunities present themselves on BMA's in the future, it may be necessary to move this date back.

COMMENT: The rules do not preclude preferential treatment on BMA's but encourage it.

RESPONSE: The rules contain various checks and balances to insure equal opportunities for all hunters on BMA. They include first-come, first-served sign up, a standard annual date for the taking of reservations and the responsibility of the department to initiate drawings or other systems for popular BMA's which have historically heavy demand for use.

COMMENT: To insure equitable use of BMA's, all uses, both the public and discretionary, should be monitored by FWP.

RESPONSE: The department is encouraging cooperators to utilize permission slips with all hunters who hunt on private lands

which could help to monitor uses other than assigned hunters on BMA's.

COMMENT: The staff of the Legislative Council pointed out that the notice of proposed rulemaking for these rules incorrectly referenced the Department of Fish, Wildlife and Parks in the notice heading and elsewhere in the rule notice text implying that these were department rules rather than Fish, Wildlife and Parks Commission rules.

RESPONSE: The Legislative Council is correct. These are commission rules. The statutory sections for rulemaking authority by the commission were correctly stated in the notice of proposed rulemaking. However, the heading and text incorrectly used department rather than commission. This has been corrected in this adoption notice.

Robert N. Lane
Rule Reviewer

Patrick J. Graham, Director
Montana Department of Fish, Wildlife and Parks

Certified to the Secretary of State June 13, 1994.

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

In the matter of the amendment of Rule 12.6.901 relating to the establishment of a no wake speed zone on portions of the Blackfoot and Clark Fork Rivers, Missoula County.	)))))	NOTICE OF AMENDMENT TO RULE 12.6.901

To: All Interested Persons

1. On April 14, 1994, the Fish, Wildlife and Parks Commission published notice for a public hearing of amendment to Rule 12.6.901 establishing a no wake speed zone on portions of the Blackfoot and Clark Fork Rivers in Missoula County, at page 825 of the 1994 Montana Administrative Register, issue number 7.

2. The commission has amended 12.6.901 as proposed.

3. The commission received 14 oral and 16 written comments which are combined below by subject area raised and which have been thoroughly considered by the commission:

COMMENT: Most of the commentors supported the proposed amendment for safety reasons. The safety problems raised were too many water users in a small body of water; underwater hazards such as bridge abutments, pilings, trees and branches; children jumping off the bridge to swim in the water; the possibility of being swept into or over the dam (although one commentor felt this risk would increase if boats were restricted to no wake speeds); high speeds in narrow and congested areas; range of speeds resulting in dangerous wakes for non-motorized boaters; jet skiers who show off, especially in the area of the boat ramp, who spin circles around other water users, who are careless enough to move between a motor boat and its water skier, and who do not handle their machines in a safe or responsible manner; and various accidents including one head-on collision between two jet skiers, an inexperienced jet skier hitting an underwater piling, a commercial demonstration of a motor boat which capsized a canoe, and similar incidents of swamping or capsizing non-motorized boats.

RESPONSE: The Commission agrees that the area has safety problems and believes that creation of the no wake zone as proposed should make the area safer for all water users.

COMMENT: Many of the commentors stated that the area of the Milltown Dam has sediment containing arsenic and other toxins. They believe that motor boats, especially going at high speeds in shallow areas, will churn up the sediments and resuspend them, adversely affecting the water quality. This area is part of a Superfund site. One person thought all motorized craft should be excluded from the area.

RESPONSE: The Commission does not have subject information on the potential problem with toxins, and the issue is beyond the scope of this rule.

COMMENT: Many of the commentors were concerned with waterfowl in the area, especially during the nesting season. There was a difference of opinion as to whether wakes from a motor boat going down the center of the main channel disturb nesting waterfowl. Some people believed that this area is an important nesting area for ducks and geese which are adversely affected by the waves thrown up by boats and jet skis operated at high speeds. Some people felt all boat use during the nesting season should be excluded. Others felt that boats should be kept out of side channels, backwaters, and swampy areas. Some people felt that boats along the shoreline disturbed waterfowl. One person stated that populations of mallards, widgeon and the blue-wing teal are down 30% of what they were in 1970 and need help to successfully nest and raise young. One comment said the area is also an important staging area for northbound waterfowl in the spring. People disagreed on what date would be appropriate for seasonal restrictions and proposed dates from June 1 through July 15.

RESPONSE: The Commission has collected little data about nesting in the area and the effect boating has on nesting. The Commission believes that the no wake rule will help reduce disturbance of waterfowl. Seasonal restrictions may be beneficial to waterfowl but are outside the scope of this rulemaking.

COMMENT: One comment signed by four individuals said that not only is the area prime nesting habitat for waterfowl but that there is a nest of a bald eagle in the area of the Clark Fork channel above the old Milwaukee railroad bridge pilings. They state that bald eagles and other raptors use the area, and that it may be necessary to totally restrict use of the area during the nesting season to avoid a violation of the Endangered Species Act.

RESPONSE: The department determined that an eagle's nest used in 1992 and 1993 which is located about 3/4 mile from the area proposed as a no wake zone appears to have been abandoned, and a new nest has been established about 1/4 mile further away to the south. Nesting eagles apparently have not been and are not expected to be disturbed by watercraft in the area. The Bald Eagle Working Group recommends no activity within 1/4 mile of nest sites. The nest site is located on private land, but because it is just beyond 1/4 mile from the river south of the area affected by the rule, monitoring will be done to determine that river use does not adversely affect the nesting eagles.

COMMENT: A number of local residents and users of non-motorized watercraft raised the issue of tranquility and

enjoyment of the area. Many felt the quality of life has been adversely affected by noisy motorized use, particularly jet skis. One commentor compared them to a nest of chain saws. One person commented that bicycle and hiking access to the area was being improved, but that the tranquility of the experience was adversely affected by increasing motorized use.

RESPONSE: The issue of tranquility is beyond the scope of the Commission's authority.

COMMENT: A number of commentors stated that high speed craft and their wave action increases erosion of the banks and sediment in the water.

RESPONSE: The issue is beyond the scope of the Commission's authority.

COMMENT: One person was concerned with his liability and taxpayers' liability for allowing high speed boats in an unsafe area where there are likely to be accidents. He owns property and a dock extending into the river.

RESPONSE: Although the Commission does not think there is a liability issue for the public due to boat speeds here, the no wake rule should improve the safety of the rivers and reservoir.

COMMENT: The Montana Power Company raised the issue of fast moving motor boats causing aquatic vegetation to break loose and drift downstream into the intake screens of the dam. The company also stated that wake actions from motorboats cause debris collected in front of the trash boom to roll under it and also collect on the intake screens. Removal of the debris is costly and adds many hours of work for dam operators. One commentor said he thought this was not a valid reason for the rule because our taxes pay for employees to remove debris from the area. He also stated that he had never seen anything backed up against the barrier.

RESPONSE: The dam is privately owned and no tax dollars are used to clean out debris from the dam. The Commission believes the no wake rule will reduce the debris problem.

COMMENT: One comment, signed by four individuals, is totally opposed to the proposed amendment. They assert that although they have once or twice observed careless activities of others, they do not believe that the carelessness of a few should close the area to all but canoeists. They do not believe that recreational activity adversely affects the wildlife. They live close to the area and cannot afford to drive 120 miles round trip for an afternoon of boating elsewhere.

RESPONSE: The Commission sympathizes with their concerns.

Although most boaters using the area are responsible, the actions of a minority and the congestion of so many users make the area unsafe for high speed boating. The no wake rule will undoubtedly adversely affect the experience of those people who want to travel at higher speeds and those who want to water ski in the area, but the Commission believes the no wake rule is necessary to protect the numerous water users, the water quality, and the waterfowl in the area.

COMMENT: Several people offered amendments to the rule to change the area restricted by the no wake speed. Two people wanted the area extended for another 400 to 500 yards to the north because the Blackfoot River is narrow and dangerous in this area and it is used for nesting by waterfowl. Some people wanted boat type restrictions with an area set aside primarily for jet skiers and one primarily for water skiers with both having to yield to non-motorized watercraft. There was a difference of opinion on which area should be which. Motor boats are generally demonstrated north of the boat ramp on the Blackfoot River. Water skiers generally use the area from the Milltown Dam upstream on the Clark Fork River to the end of an island near the old Milwaukee Bridge. Two people would like the water skiers to have a preference in this area. One person described the water skiing as being done responsibly and cooperatively, with one boat at a time using the stretch because it is too narrow for two water skiers to safely pass. Someone else suggested restricting this areas to jet skis because they do not have large wakes.

RESPONSE: The Commission has considered the proposed amendments and rejects them. The congestion north of the proposed no wake line has not been a problem, and the Commission does not wish to restrict all of the recreational opportunities for motor boat users. Although the Commission recognizes that water users can reasonably police themselves and often take turns in a responsible and safe manner, the Commission believes that the area close to the dam on the Clark Fork River is not safe for water skiing. The area is narrow and often congested with different types of users and there are changing underwater hazards which could be a problem for water skiers. Designating preferred areas for different types of equipment is difficult to properly sign and impossible to enforce. Although the no wake speed limit will lessen the pleasure of some of the users, it is felt that this will still allow various types of equipment to use the area in a safer manner.

COMMENT: One comment suggested banning sailboats because of the danger of the power lines. This area was described as poor for sailing because of the limited space and lack of wind.

RESPONSE: The Commission rejects this amendment because it is outside the scope of the rulemaking. The department will

consider providing appropriate signing to discuss the dangers of sailboats and power lines.

COMMENT: Several comments suggested banning jet skis. Many people testified to observing jet skis being operated in careless, irresponsible and obnoxious manners. They were also blamed for noise and disturbance of waterfowl.

RESPONSE: The Commission recognizes that tranquility is important to local residents and other users. Although the proposed amendment will not exclude motorized use, watercraft travelling at no wakes speeds will be substantially quieter than high speed boats or jet skis. Jet skis and motor boats are normally within the legal noise level allowable under state law; that is, they are under 86 dbA measured at a distance of 50 feet. The Commission's rulemaking authority under 87-1-303, MCA, is limited to rules adopted in the interest of public health, safety, and protection of property. Thus the Commission has no authority to restrict types of watercraft based on noise levels so long as they are within legal noise limits.

COMMENT: A number of people commented that many of the problems in the area are caused by inexperience and irresponsible watercraft users. They suggested more education to respond to a growing problem as more persons become involved in water-based recreation.

RESPONSE: The Commission agrees that more education is needed and encourages the department to work with local groups to provide such education. The proposal is, however, outside the scope of this amendment.

COMMENT: One person asked the Commission to extend the no wake concept to all small lakes and reservoirs and to establish quiet areas on larger lakes. He stated that this would promote safety, aesthetics, and wildlife as well as the enjoyment of paddlers. He stated that the Commission should prevent the motorized domination of our lakes and reservoirs, and now with jet skiers, some of our rivers.

RESPONSE: The Commission sympathizes with his concerns, but this is outside the scope of the proposed amendment. Regulating use in congested areas of other lakes, reservoirs, and rivers needs to be considered on an individual site basis with input from the users and local residents.

FISH, WILDLIFE AND PARKS COMMISSION

Robert N. Lane
Rule Reviewer

Patrick J. Graham
Secretary

Certified to the Secretary of State on June 13, 1994.

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

In the matter of the amendment of rules 16.30.801-16.30.804 and the repeal of rule 16.30.805 concerning reporting of exposure to infectious diseases	NOTICE OF AMENDMENT OF ARM 16.30.801-804 AND THE REPEAL OF ARM 16.30.805

(Emergency Medical Services)

To: All Interested Persons

1. On May 12, 1994, the department published notice at page 1251 of the 1994 Montana Administrative Register, issue No. 9, to consider the amendment of the above-captioned rules and the repeal of ARM 16.30.805.

2. The department adopted and repealed the rules as proposed with no changes.

3. The following comments were received and department response follows:

Comment: Kalispell Regional Hospital requested that hepatitis D be eliminated from the list of infectious diseases in ARM 16.30.801 because testing for it is not readily available, it always co-exists with hepatitis B, and it is not one of the diseases required to be reportable by the federal Ryan White CARE Act.

Response: The department did not delete hepatitis D from the list of infectious diseases because it does not have the authority to do so, since 50-16-701, MCA, lists hepatitis D as an "infectious disease" for purposes of the law these rules implement.

Comment: Kalispell Regional Hospital also requested that the rules reflect the Ryan White CARE Act's provisions that testing of transported patients for one of the listed infectious disease is neither mandatory nor recommended.

Response: Such a statement is not authorized by the limited rulemaking authority of 50-16-705, MCA, but is in any case unnecessary because the statutes these rules implement (Title 50, Ch. 16, part 7, MCA,) do not authorize mandatory testing.

Robert J. Robinson

ROBERT J. ROBINSON, Director

Certified to the Secretary of State June 13, 1994.

Reviewed by:

Eleanor Parker

Eleanor Parker, DHES Attorney

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

In the matter of Montana's prevailing wage rates, ARM 24.16.9007	)))	NOTICE OF AMENDMENT OF PREVAILING WAGE RATES CONSTRUCTION OCCUPATIONS

TO ALL INTERESTED PERSONS:

1. On April 14, 1994, the Department published notice at pages 912 to 913 of the Montana Administrative Register, Issue No. 7, to consider the amendment of the above-captioned rule.

2. On May 6, 1994, a public hearing was held in Helena concerning the proposed amendments at which oral and written comments were received. Additional written comments were received prior to the closing date of May 13, 1994.

3. The Department did not receive any comments or testimony on the proposed amendments to the text of the rule.

4. The Department has thoroughly considered the comments and testimony received on the proposed prevailing wage rates. The following is a summary of the comments received, along with the Department's response to those comments:

Comment 1: Mr. Ron Senger, Business Manager, Sheetmetal Workers Local #103, commented that wage rates for sheetmetal workers were low in all districts. He submitted a copy of the collective bargaining agreement. The Sheet Metal and Air Conditioning Contractors' National Association of Montana submitted data for sheetmetal workers.
Response 1: The Department added this information to the calculation of the prevailing rate for sheetmetal workers. As a result, the wage rate for this occupation increased in all but two districts.
Comment 2: Chuck Cashell, Business Agent, International Union of Operating Engineers Local #400, commented on wage and fringe benefit rates. He submitted copies of their collective bargaining agreement. He also submitted data from signatory employers to be considered in calculating the final prevailing wage rates.
Response 2: The Department considered the collective bargaining agreement in setting revised fringe benefit rates, and as a result, the fringe benefit rates increased. The Department also added information from employers to the calculation of the prevailing rates for operating engineer occupations. As a result, the wage rates for these occupations increased.
Comment 3: Rondy Crawford, Business Manager, Boilermakers Local #11, commented that the vacation rate of pay was inaccurately stated in the preliminary rates and noted that vacation is paid over and above wages.

Response 3: The Department reviewed vacation pay for boilermaking foreperson and boilermakers. It was determined that the statement at the bottom of the page in the rate publication regarding vacation pay will be deleted for these occupations. This change will show that vacation pay is over and above wages.

Comment 4: Randy Konzen, Roofers Local #229, commented that wage rates for roofers were low in District 8. He submitted data from signatory employers to be considered in calculating the final prevailing wage rates.

Response 4: The Department added this information to the calculation of the prevailing rate for roofers. As a result, the wage rate for this occupation increased.

Comment 5: John Forkan, Plumbers and Pipefitters Local #41, submitted data for plumbers and pipefitters.

Response 5: The Department added this information to the calculation of the prevailing rate for plumbers and pipefitters. As a result, the rate for these occupations increased in four districts.

Comment 6: Gordon McCleary, Plasterers' and Cement Masons' International Union, submitted a copy of the collective bargaining agreement. He commented that preliminary fringe benefit rates were not correct.

Response 6: The Department considered the collective bargaining agreement in setting revised fringe benefit rates. As a result, the fringe benefit rates increased.

Comment 7: Pete Forrest, Business Manager, International Association of Heat & Frost Insulators & Asbestos Workers Local #82, submitted a copy of the collective bargaining agreement and data for heat and frost insulators.

Response 7: The Department considered the collective bargaining agreement in setting revised fringe benefit rates. The fringe benefit rates increased. The Department also added information from employers to the calculation of the prevailing rates for heat and frost insulators, and as a result, the wage rate for this occupation increased in all districts.

Comment 8: Don Halverson, Business Manager, Plumbers and Pipefitters Local #459, submitted a revised collective bargaining agreement and asked that fringe benefit rates be changed accordingly. He also asked that the description of plumbers and pipefitters be changed to better explain the work done in the occupation.

Response 8: The Department considered the collective bargaining agreement in setting revised fringe benefit rates, and as a result, the fringe benefit rates increased. The Department will consider changing the description of plumber and pipefitter duties when it undertakes its next wage survey of the occupation.

Comment 9: Don Herzog, Business Manager, International Brotherhood of Electrical Workers Local #532, submitted collective bargaining fringe benefits rates.

Response 9: The Department considered the collective bargaining agreement in setting revised fringe benefit rates, and as a result, the fringe benefit rates increased.

Comment 10: Lars Eriksen, Business Manager, Montana State Council of Carpenters, commented on low fringe benefit rates for Districts 2 and 5.
Response 10: The Department considered the collective bargaining agreement in setting revised fringe benefit rates, and as a result, the fringe benefit rates increased.
Comment 11: David Rachor, Organizer, International Brotherhood of Electrical Workers Local #768, commented on low fringe benefit rates for Districts 1 and 2.
Response 11: The Department considered the collective bargaining agreement in setting revised fringe benefit rates, and as a result, the fringe benefit rates increased.
Comment 12: Ron H. James, Business Agent, Ironworkers' Local 841, submitted a copy of the collective bargaining agreement and data for ironworkers.
Response 12: The Department used the collective bargaining agreement to include the annuity fund. The Department also included additional information received from employers to the calculation of the prevailing rates for ironworkers. As a result, the wage rate for this occupation increased in all districts.
Comment 13: Mike McLaughlin, Bricklayers and Allied Craftsmen Local #1, submitted collective bargaining fringe benefits rates.
Response 13: The Department considered the collective bargaining agreement in setting revised fringe benefit rates, and as a result, the fringe benefit rates increased.
Comment 14: Debra Fulton, Administrator, General Services Division, Montana Department of Administration, commented on large increases for three occupations. She stated that the Department of Administration has concerns about the process used to set prevailing wage rates. She suggested considering a process which caps rates at a maximum percentage increase or decrease over the survey period.
Response 14: The prevailing wage law requires that the Department set standard prevailing rates of wages, including fringe benefit rates, that accurately reflect those paid to employees for work of a similar nature. There is no statutory authority for the Department to limit the percentage increase or decrease in those rates.

The Department believes that the statistical analysis process it uses in calculating the rates is valid. The Department's process does not consider the possible economic or social impact of the rates it establishes; rather the Department is concerned with preparing rates that accurately reflect the labor market. However, the Department recognizes that the accuracy of the rates it establishes is limited by the completeness of the response received for each occupation.
Comment 15: Betty C. Kemp, President, LITEIRON, Inc., commented generally on the likely effect of lowering prevailing wage rates. Another employer also commented on the likely effects of setting rates at less than the collectively bargained rate.
Response 15: The Department's procedure for setting rates does not take into account the possible social or economic impact of the rates. Please see response 14, above.

Comment 16: Mr. Gene Fenderson, President/Business Manager, Montana District Council of Laborers, commented on the three-year timeframe of the building construction wage surveys, noting that the lag in time between survey periods and changes in rates results in lower wages for workers.
Response 16: The Department is aware of the time lag involved in the prevailing wage survey process. Funding constraints limit the timeliness of the survey. If sufficient increased funding was given to the prevailing wage program, the wage survey could be done every year, thus decreasing the lag period.
Comment 17: Mr. Fenderson, also speaking on behalf of teamsters, operators, laborers and carpenters on heavy and highway projects, commented on statewide heavy and highway construction rates that were being submitted to the U.S. Department of Labor and urged the adoption of those rates by the state.
Response 17: The Department has received confirmation of the adoption of those rates by the U.S. Department of Labor and the Montana Department of Transportation, and therefore adopts those rates.
Comment 18: As noted above, additional data was submitted to the Department by employers and labor groups during the comment period.
Response 18: As a result of the additional data received, prevailing wage rates for certain occupations were raised and others were lowered. Additionally, on final review of wage rates, Department staff noted that several occupations had preliminary rates higher than collective bargaining agreement rates. Pursuant to section 18-2-402(3), MCA, prevailing wage rates cannot be set higher than collective bargaining agreement rates. Rates for these occupations were lowered due to this requirement.

5. After consideration of the comments received on the proposed amendments, the Department has amended the text of the rule exactly as proposed, and the Department adopts and incorporates by reference the prevailing rates of wages entitled "State of Montana Prevailing Wage Rates" for building construction, heavy and highway construction, dated July 1, 1994. The building construction rates are as proposed, but with changes in the standard prevailing rate of wages for following occupations:

Wage increases due to additional data:
Asphalt Distributor Tender: Districts 1 through 10
Asphalt Paving Foreperson: Districts 1 through 10
Asphalt Paving Machine Operator: Districts 1 through 10
Backhoe Operator: Districts 1 through 10
Carpenter: District 8
Carpenters Foreperson: Districts 5, 7, 9, 10
Cement Mason: District 8
Concrete Paving Machine Operator: Districts 1 through 10
Crane Operator: Districts 1 through 10
Cut Off Saw Operator: District 3

Drywall Applicator: Districts 3, 8
Drywall Applicator Foreperson: District 3
Fork Truck Operator: Districts 1 through 10
Front End Loader Operator: Districts 1 through 10
General Laborer: Districts 7, 8
Heat and Frost Insulator: Districts 1 through 10
Ironworker: Districts 1 through 10
Motor Grader Operator: Districts 1 through 10
Oiler: Districts 1 through 10
Painter: Districts 5, 7, 8, 9, 10
Pile Driver: District 3
Plant Operator: Districts 1 through 10
Plasterer: Districts 4, 9
Plumber and Pipefitter: Districts 3, 5, 6, 8, 10
Plumber and Pipefitter Foreperson: Districts 5, 6
Road Roller Operator: Districts 1 through 10
Roofer: Districts 1, 3, 4, 5, 7, 8, 9, 10
Scraper Operator: Districts 1 through 10
Sheet Metal Worker: Districts 2, 3, 4, 6, 7, 8, 9, 10
Sider: District 3
Stone Mason: District 7
Tile Setter: District 7
Truck Crane Operator: Districts 1 through 10
Water Well Laborer: District 1

Wage decreases due to additional data:
Bulldozer Operator: Districts 1, 3, 4, 5, 6, 7, 8, 9, 10
Carpenter: Districts 1, 2, 5
Roofer: Districts 2, 6
Water Well Laborer: Districts 2, 4, 5, 6, 7, 8, 9, 10
Water Well Driller: Districts 1, 3, 4, 5, 6, 7, 8, 9, 10

Wage decreases - preliminary rates higher than collective bargaining rates:
Bricklayer: Districts 1, 2, 3, 5, 8
Carpenter Foreperson: Districts 1, 2
Cement Mason: District 3
Fence Erector: District 9
Hod Carrier: Districts 7, 9
Painter: Districts 2, 3, 4
Plasterer: District 2
Plumber and Pipefitter: Districts 2, 7
Plumber and Pipefitter Foreperson: Districts 1, 2, 3, 4, 7, 9
Roofer Foreperson: Districts 1, 3, 4, 5, 6, 7, 8, 9, 10
Sheet Metal Foreperson: Districts 4, 8
Stone Mason: District 3
Tile Setter: District 3

AUTH: 18-2-431 and 2-4-307 MCA;
IMP: 18-2-401 through 18-2-432 MCA.

6. The amendments, including the standard prevailing rate of wages, are effective July 1, 1994.

David A. Scott
Rule Reviewer

Laurie Ekanger, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State: June 13, 1994.

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

In the Matter of Adoption of Rules Pertaining to the Exclusion from Motor Carrier Regulation for Transportation Incidental to a Principal Business.	))))))	NOTICE OF ADOPTION OF NEW RULES I THROUGH V

TO: All Interested Persons

1. On January 13, 1994 the Department of Public Service Regulation published notice of a public hearing on the proposed adoption of the proposals identified in the above title at page 18, issue number 1 of the 1994 Montana Administrative Register.

2. The Department has adopted the following rules as proposed.

RULE I. 38.3.1001 EXCLUSION FROM THE DEFINITION OF MOTOR CARRIER FOR TRANSPORTATION INCIDENTAL TO PRINCIPAL BUSINESS

RULE II. 38.3.1002 SUBSTANTIVE DEFINITION OF KEY WORDS AND PHRASES

RULE IV. 38.3.1004 EFFECT OF COMPETITION WITH REGULATED MOTOR CARRIERS

3. The Department has adopted the rules as proposed, but with the following changes:

RULE III. 38.3.1003 FACTORS (1) When considering whether transportation is incidental to a principal business the commission may consider any and all factors that have a reasonable bearing on the required ultimate determination of whether a principal business actually exists and whether the transportation activities in question are actually in furtherance of, in the scope of, and subordinate to the principal business. Factors that may be considered include any that are relevant and material and not duplicative or established with more certainty by a more appropriate means.

~~(2) Factors having a reasonable bearing on whether a principal business exists, whether transportation is "in the furtherance of," and whether transportation is "in the scope of" are those which tend to establish that the definitions of these are met or not met.~~

~~(3) The primary factor having a reasonable bearing on whether transportation is "subordinate to" will be comparative financial data, including a listing of assets at risk, revenues generated, and expenses incurred, including payroll, separately stated for the transportation and nontransportation aspects of the business. In this regard the commission will compare the transportation aspects with the nontransportation aspects. Factors that are clearly represented by financial data will~~

generally not be separately considered, but may be for good cause.

~~(4) No single factor, whether designated "primary," "having a reasonable bearing," "general," or other, will be determinative. The commission will consider all factors and related evidence and arguments as a whole.~~

~~(5) General factors which may also be considered include, but are not limited to:~~

~~(a) time devoted to transportation -- if the time devoted to transportation is extensive in comparison to the time devoted to other aspects of the business, it tends to indicate motor carriage;~~

~~(b) ownership of property transported -- if ownership is in one other than the principal business, it tends to indicate motor carriage, unless the transportation is direct delivery from the principal business's place of business after retail or wholesale sale;~~

~~(c) preexisting orders by customers -- if the principal business transports property from the point of manufacture or wholesale sale, other than the principal business's place of business, to a customer having a preexisting order, it tends to indicate motor carriage;~~

~~(d) storage facilities -- if the principal business has no reasonable storage facilities for property transported from a point of manufacture or wholesale sale, it tends to indicate motor carriage;~~

~~(e) transportation charge -- if the principal business assesses a transportation charge, it tends to indicate motor carriage;~~

~~(f) advertising or holding out to transport for others -- if the principal business advertises or holds itself out to transport for others, it tends to indicate motor carriage.~~

AUTH: Sec. 69-12-201, MCA; IMP, Sec. 69-12-101, MCA

RULE V. 38.3.1005 EXCLUSION INAPPLICABLE IN CERTAIN PRINCIPAL BUSINESSES (1) and (a) No changes.

(b) the principal business is a transportation business (except nontransportation divisions of a principal transportation business).

AUTH: Sec. 69-12-201, MCA; IMP, Sec. 69-12-101, MCA

3. Comments received and responses by Commission:

Comment: The Administrative Code Committee staff comments that it is unclear as to why the agency is responding with rules over 50 years since Gamble-Robinson was decided. It suggests that the agency reference evidence, event, or reason why rules are necessary at this time.

Response: Problems experienced in recent increased activity on the topic have made it apparent that relying solely on prior agency opinions as the means through which the basic law and related requirements are reviewable by the agency, parties, and the public is inefficient and cumbersome. Rules are reasonably necessary to resolve this. In addition, rulemaking is an adequate means of providing an opportunity to a broad seg-

ment of the public for general comment, previously a matter left to a few contesting parties in specific cases.

Comment: Jerome Anderson comments that the agency application of the primary business test has been case by case and should continue to be so. He suggests that the guidelines should continue to be formed in agency opinions. Beach Transportation agrees that the rules are unnecessary as the system in place for over 50 years works fine. Rocky Mountain Transportation also agrees that there is no need for the rules and suggests that the absence of rules has not hampered the agency. On the other hand, Grouse Mountain and Montana Innkeepers comment that the rules will foster a uniform application of Gamble-Robinson and promote predictability. Solid Waste Contractors comments that the rules will improve the public understanding and facilitate the agency decision-making process.

Response: Both sides of this argument have some positive points. However, in this instance, the PSC favors rules and anticipates that they will make the law applying more accessible and application of the law more predictable. Furthermore the proposed rules are not intended to be the final word on the "primary business test." In the absence of a fairly clear factual case, much is left for case-by-case determination. For additional response, please also refer to the response immediately above.

Comment: Mr. Anderson suggests that the rigid criteria is not good when the nature of transportation needs and facts can vary so widely. He is concerned that, under the rules, form will take precedence over substance. He suggests that the rules actually confine the agency and do not untangle any existing quandary. Similarly, Vern and Shane Reum (Tires-R-Us) suggest that it is difficult to attempt to reconcile, by rule, the different requirements of the wide variety of possible facts and shipper and carrier needs. Because of this, it suggests that the rules will not resolve the problem of consistent application. Rocky Mountain argues that the rules will not provide for consistency because the facts of each case are the true variable. It also suggests that the rules create a situation wherein the agency can act in any way it sees fit, inviting inconsistency, and that the rules set the stage for granting any request for exclusion. Beach Transportation and Hall Transit Charter Service comment that the rules may simply invite further legal challenges.

Response: The PSC acknowledges that these comments point to a general problem that could occur with any rule. However, although this attempt to codify the basic concepts of something that has long been dealt with on a case-by-case basis, does remove a certain amount of "comfort" in permissible "flexibility," it also tends to reduce the probability of being arbitrary or ruling inconsistently or promoting unnecessary debate or inviting administrative action or litigation on points simply because the basic law is not clear or certain enough to guide an interested person in the right direction. To the extent that is presently possible, the rules commit on many of the basic points and should eliminate uncertainty and dispute over them.

Comment: Randall Johnson (Flathead Glacier Transportation and Whitefish Sober Chauffeur Taxi) comments that Gamble-Robinson does not apply to the transportation of persons or the property of others. Rocky Mountain suggests that the rules should apply only to freight (not passengers), but it bases its argument on safety reasons.

Response: It is true that the facts in Gamble-Robinson involved only the transportation of property. However, the statutes being analyzed by the court pertain to the transportation of both property and persons, with no distinction whatsoever. An interpretation of the statutes in regard to one (property) would certainly extend (logically and legally) to the other (persons), as it is the same law which governs both.

Comment: Mr. Johnson submits that the rules are in violation of the agency duty to promote common carriage. Solid Waste Contractors suggests that the agency should consider the rules in the context of a strong motor carrier industry. Beach comments that the public, through its legislature, has demonstrated that it wants regulated carriers. Beach, Hall, Foosco (City Cab), and TBB Limited (Yellow Cab) are concerned about degradation of the transportation industry resulting from the proposed rules, as there would be no monitoring or regulation of the excluded transportation for safety and insurance purposes and there would be unfair competition for rate purposes. Hall also comments that the rules amount to deregulation and jeopardize the transportation industry. Intermountain Transportation also submits written comments that it is opposed to the rules.

Response: The PSC agrees that it has a duty to promote common carriage. However, this duty cannot be properly fulfilled by ignoring valid law. The "primary business test" is valid law, as declared by the highest court of this state. The legislature has done nothing to indicate that it wants this judicial interpretation changed. Being valid law, it must be considered and applied. Please also refer to the response immediately below.

Comment: Foosco and TBB comment that cab companies are losing business to lodging facilities providing shuttle transportation service to airports and shopping and recreational activities. However, they do not generally oppose lodge transportation to and from points of connection with other common carriers and support the rules if implemented in accordance with the initial declaratory ruling in Grouse Mountain. They comment that it is unfair to allow unregulated carriers to perform the same service as regulated carriers, as it dilutes the ability to operate in a financially secure manner.

Response: The PSC would like to ensure that regulated carriers remain sound businesses. The PSC realizes that exemptions and exclusions from regulation will have some effect on regulated carriers, especially when they result in placing an unregulated carrier in direct competition with a regulated carrier. However, in regard to the "primary business test" rules, the PSC is not attempting to create the law, it is attempting to codify the existing law. Whether the law is by rule or otherwise, it must still be administered.

Comment: Big Sky of Montana, Bucks T-4 Lodge, and Winter Sports (Big Mountain) comment that it is essential that hotels, resorts, dude ranches, and similar destination resort operations, full service or otherwise, be able to provide transportation services to guests. They, along with Grouse Mountain and Montana Innkeepers, also urge the agency to add a specific subsection which allows the transportation of lodge and recreation customers. Grouse Mountain comments that tourists arrive with the expectation that they will be cared for, including being transported when and where they want, and it cannot compete unless it can meet its guests needs in the transportation area. Grouse Mountain submits that its own destination resort operations would be in jeopardy absent ability to transport its guests. Montana Innkeepers comment that destination resorts need the flexibility to meet guest expectations in the area of ground transportation. Winter Sports, as a destination resort, feels that it must meet the needs of its guests by being able to provide transportation. On the other hand, from the carrier perspective, Rocky Mountain comments that tourism is Montana's largest industry and the rules allow unregulated entry for scores of tourism related businesses.

Response: Through the proposed rules, the PSC is not intending to go beyond simply codifying the law of the "primary business test." It is not intending (it may not have the authority anyway) to extend or diminish the exclusion in regard to any particular segment of the regulated or unregulated transportation industry (unless there is case law tending direct otherwise). The comments above identify individual interests that the PSC cannot remedy through the proposed rules.

Comment: Reum comments that Gamble-Robinson does not address many of the matters proposed in the rules.

Response: The PSC disagrees. Directly or indirectly, there is a reasonable basis in Gamble-Robinson for all points expressed in the rules.

Comment: Rocky Mountain Transportation suggests there is no legislative direction to make the rules. It comments that the rules simply codify prior agency decisions which have been properly and judiciously considered to a score of various scenarios and infringe on the prerogative of the legislature. Reum also questions the statutory authority to make the rules. They also question whether the public has been adequately noticed of the rulemaking. They and Rocky Mountain suggest that legislation is the proper way to address such significant policy decisions.

Response: This agency has a law to administer and it has a broad authority to make rules on the law that it administers. The PSC believes that the authority clearly extends to the present proposed "primary business test" rules. The public has been lawfully noticed as this proceeding has been conducted pursuant to MAPA. Public notice has been given in accord with that law.

Comment: Sure-Way suggests that pretreated wastes should be separately considered. Solid Waste Contractors suggests that recyclables should be given special consideration. Reum

suggest that the agency must take into account different classes of carriers.

Response: Again, the PSC is not intending (and it might not have the required authority) to fashion the exclusion in a way favorable to any particular segment of the regulated or unregulated transportation industry.

Comment: Solid Waste Contractors proposes that a general statement capturing the "global" concept of incidental transportation be included.

Response: The PSC believes that any required "global" concept is adequately expressed in the proposed rules. Rule I expresses what is believed to be an adequate overall picture. To place the remaining details in some kind of narrative does not appear to be necessary.

Comment: In regard to proposed Rule III(5), Solid Waste Contractors propose that the dominant character (transportation or nontransportation) of the service to the customer be an element.

Response: The PSC believes that dominant character or value to the customer (the relative weight that the customer gives to the transportation element of the overall service) may be a relevant factor. However, dominant character should be disclosed by an analysis of the business itself. Value to the customer is somewhat extrinsic to the main concern of identifying the principal and incidental parts of the business. Therefore, it might only be considered if all other factors leave a legitimate question. In any event the PSC has determined that it will not adopt the factors rule in question.

Comment: Solid Waste Contractors oppose, and predict problems with, financial data as being a prime factor, especially in small businesses where accounting may not properly differentiate between elements and also in the context that financial data may be allocated in various ways and can be a subject of debate. It is uncertain of the meaning of the last sentence in Rule III(3).

Response: The PSC believes that financial data is of paramount importance in determining whether an aspect of a business is principal or incidental. The PSC recognizes that supporting financial data must be in line with accepted accounting practices and must be credible and carefully reviewed. The last sentence in Rule III(3) was intended to mean that something like employee hours devoted to transportation would not be separately considered as a factor if the employee payroll expenses already provide the answer to any pertinent question. In any event the PSC has determined that it will not adopt the factors rule in question.

Comment: Sure-Way Systems comments that the rules do not establish a pass or fail test and simply provide more room to argue about the concept. It argues that the rules should be more clear cut.

Response: The rules attempt to set forth the basics of the "primary business test." It is true that they do not resolve all possible argument and debate. There will still be questions of fact. There will still be a case-by-case analysis. Parts of the "primary business test" are presently inca-

pable of being reduced to absolute certainty or mathematical precision.

Comment: Sure-Way suggests a fixed percent ratio of financial data be assigned for determining principal or incidental.

Response: The PSC rejects a fixed percent ratio. There is no fixed point at which an element of a business can be deemed "clearly" principal or incidental under the "primary business test." The test is not mathematical. However, as a guide, in theory, transportation probably becomes a candidate for being incidental at just less than 50 percent of the overall business and the further below 50 percent the more incidental it becomes.

Comment: In regard to Rule II, Sure-Way suggests that words used in the rules, like "incidental," "subordinate," and "appendage," are litigation dream words. Northern Plains Resource Council, Waste Task Force, submits a similar comment that the undefined term "incidental" will pose legal problems in the future and should be replaced by more tangible terminology. In regard to Rule III, Solid Waste Contractors suggest that the rule terminology that is permissive (agency "may consider" certain factors) be changed to mandatory as it is difficult to tell when the PSC will apply the factors.

Response: The PSC disagrees that the words themselves are problematic. The debate will be over whether the facts establish that the definitions are met. Under the rules this will be no more problematic than in the absence of rules. In regard to making factors mandatory, the PSC prefers to preserve discretion in what factors it will consider. However, if a factor is demonstrated to be material and not duplicative of another, the PSC will consider it.

Comment: In regard to Rule II(1)(b), WWSS Associates comments that every business and aspect of a business is to generate a profit. Solid Waste Contractors comment that it is important to determine whether the purpose of transportation is to profit and also suggests that it be a designated factor.

Response: This "profit" concept can only be understood in context. In context, the rule means that if the transportation does not directly benefit the business in some way other than merely generating a profit, it will not be considered incidental.

Comment: In regard to Rule IV, Johnson argues that Gamble-Robinson does provide that the effect of the "primary business test" on licensed carriers must be considered. Solid Waste Contractors also questions whether this rule on competition is consistent with Gamble-Robinson and Schock and suggests that the proposed rule is in direct conflict.

Response: If the rule is adopted it will essentially overrule Schock on that point. However, the proposal is not in conflict with or even inconsistent with Gamble-Robinson. Under Gamble-Robinson incidental transportation can compete with regulated transportation -- those engaged in incidental transportation simply cannot venture out and compete by actions constituting "motor carriage."

Comment: In regard to Rule V(1)(a), Reum argues that Solid Waste Contractors opinion could vary from court to court under identical facts, that the underlying facts in that case were never completely developed in any event, and that the case cannot be a basis for the proposal that it has been referenced as supporting. Sure-Way also disagrees that Solid Waste Contractors stands for the proposition proposed in the rules.

Response: The PSC recognizes the legal effect of the district court ruling. However, its interpretation of the ruling is consistent with the proposed rules.

Comment: In regard to Rule V(1)(b), Suhr Transport is concerned about the inapplicability of the incidental transportation rules to a transportation business. Suhr, a transportation business, also operates a nontransportation business (furniture), and is concerned that the rule would preclude incidental transportation for that business. Security Armored questions whether the rules prohibit the separate divisions of a transportation business from engaging in incidental transportation. WWSS Associates (Big Sky Industrial) comments that the inapplicability of the exclusion rule to a transportation business may be extended to preclude carriers from engaging in incidental transportation simply because they hold a certificate.

Response: The concerns are well taken, the rule is amended to clarify that nontransportation divisions (in fact or in law) of a transportation business qualify for the "primary business test" exclusion.

Comment: Solid Waste Contractors is concerned about what procedure will be applied to process questions on the primary business test.

Response: The procedure will be any of the standard procedures used to resolve questions of fact and questions of law (contested case or declaratory ruling procedure). The PSC does not intend to create another procedure for processing questions on the "primary business test."

4. Responses by Commissioner Bob Rowe.

General: Persons commenting on all sides erroneously believed the Commission was attempting to revise its interpretation of the primary business test. In fact, the Commission sought to agree on basic statements which would inform potential parties of the key elements. In that it succeeded.

I disagree that the primary business test is "complicated." Rather, despite our best efforts to produce an objective, measurable standard, a large element of subjectivity remains. Individual commissioners still have quite different interpretations of key terms such as "in the furtherance of" and "in the scope of." My preference continues to be that we avoid making arcane distinctions unrelated to how businesses function in the real world. With one exception, noted below, these rules will not change my application of the primary business test in cases before the Commission.

Factors: The Commission agreed to delete subsections (2) through (5)(f) of proposed rule III, which listed factors to be considered in making a primary business interpretation. The

rule had much merit, and was a sound response to the District Court's order in Montana Solid Waste Contractors v. PSC, First Judicial District, Cause No. BDV-92-448 (Order, September 21, 1993). I reluctantly agree that an abbreviated discussion of factors is more workable.

Percentage of Business: I found much merit in Sure-Way's suggestion that we set a ratio of transportation and nontransportation business, using relevant financial data. This would have provided much certainty and avoided much disputation. I would have set the percentage low, for example no more than 20 percent transportation business in order for the primary business test exception to apply. A low figure would have eliminated most all concern that nontransportation businesses were encroaching on regulated transportation enterprises.

Landfilling: The rules as proposed and adopted deny the primary business test exclusion to transportation of solid waste associated with a principal business of landfilling. Given the capital-intensive nature of landfilling the policy makes sense, ensuring that landfill operators do not escape regulation for their hauling businesses. As part of settlement negotiations in Solid Waste Contractors, supra, the Commission agreed to support legislation to this effect. Adopting the policy by rule is based upon the court's decision in that case.

My only concern is that the rule we are now adopting may exceed what the district court thought it was doing. At the least, adoption of the rule constitutes one of the Commission's clearest acknowledgements that in fact it does make policy in the area of transportation regulation, rather than merely applying dusty Interstate Commerce Commission rulings. Having made that acknowledgement, the Commission should now take care that its decisions in other areas of transportation regulation also make sense in the real world.

Bob Anderson

Bob Anderson, Chairman

CERTIFIED TO THE SECRETARY OF STATE JUNE 13, 1994.

Reviewed By

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT of ARM 42.15.308 relating to Adjusted Gross Income	NOTICE OF THE AMENDMENT of ARM 42.15.308 relating to Adjusted Gross Income

TO: All Interested Persons:

1. On March 31, 1994, the Department published notice of the proposed amendment of ARM 42.15.308 relating to adjusted gross income at page 657 of the 1994 Montana Administrative Register, issue no. 6.

2. No public comments were received regarding the rule.

3. The Department has adopted the rule as proposed.

CLEO ANDERSON
Rule Reviewer

MICK ROBINSON
Director of Revenue

Certified to Secretary of State June 13, 1994

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION of NEW RULES I (ARM 42.23.701) and II (ARM 42.23.702) relating to Limited Liability Companies	NOTICE OF THE ADOPTION of NEW RULES I (ARM 42.23.701) and II (ARM 42.23.702) relating to Limited Liability Companies

TO: All Interested Persons:

1. On April 14, 1994 the Department published notice of the proposed adoption of New Rules I (ARM 42.23.701) and II (ARM 42.23.702) relating to limited liability companies at page 931 of the 1994 Montana Administrative Register, issue no. 7.

2. No public comments were received regarding these rules.

3. The Department has adopted the rules as proposed.

CLEO ANDERSON
Rule Reviewer

MICK ROBINSON
Director of Revenue

Certified to Secretary of State June 13, 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	CORRECTED NOTICE OF 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 May 26, 1994, the department published a notice at page 1453 of the 1994 Montana Administrative Register, Issue No. 10, of the adoption of the above-captioned 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.

2. At the hearing held on these rules, the department agreed to make an amendment to ARM 42.31.315(2)(a) and ARM 42.31.316(2)(a) and these two amendments were inadvertently omitted from the notice published on May 26, 1994. The corrected rule amendments read as follows:

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) Costs of doing business by the wholesaler shall include:

(a) all direct costs, including but NOT limited to:

(i) inbound freight charges;

(ii) labor costs to affix tax indicia;

(iii) cost of equipment to affix hand stamps;

(iv) ink;

(v) glue;

(vi) rental and maintenance expenses for the cigarette tax indicia;

(vii) state and local cigarette licenses; and

(b) indirect overhead costs and expenses paid or incurred including but not limited to:

(i) pre-opening expenses;

(ii) management fees;

(iii) labor costs (including salaries of executives and officers);

(iv) rents;

(v) depreciation;

(vi) selling costs;

(vii) maintenance expenses;

(viii) interest expenses;

(ix) delivery costs;

(x) all types of licenses;

(xi) all types of taxes;

(xii) all types of insurance;

(xiii) advertising; and

(xiv) any and all district, central, regional and national administrative and operational costs and expenses.

(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) Costs of doing business by the retailer shall include:

(a) all direct costs, including but NOT limited to:

(i) inbound freight charges; and

(ii) state and local cigarette licenses.

(b) indirect overhead costs and expenses paid or incurred including but not limited to:

(i) pre-opening expenses;

(ii) management fees;

(iii) labor costs (including salaries of executives and officers);

(iv) rents;

(v) depreciation;

(vi) selling costs;

(vii) maintenance expenses;
(viii) interest expenses;
(ix) delivery costs;
(x) all types of licenses;
(xi) all types of taxes;
(xii) all types of insurance;
(xiii) advertising; and
(xiv) any and all district, central, regional and national administrative and operational costs and expenses.

(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.

3. All other rules found on the notice published at page 1453 of the 1994 Montana Administrative Register, Issue No. 10, remain the same. Replacement pages for the corrected notice of amendment will be submitted to the Secretary of State on June 30, 1994.

CLEO ANDERSON
Rule Reviewer

MICK ROBINSON
Director of Revenue

Certified to Secretary of State June 13, 1994

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

In the matter of the adoption of [Rule I] 46.9.611 and the amendment of rule 46.9.606 pertaining to contractor allotments for community block grants	)))))	NOTICE OF THE ADOPTION OF [RULE I] 46.9.611 AND THE AMENDMENT OF RULE 46.9.606 PERTAINING TO CONTRACTOR ALLOTMENTS FOR COMMUNITY BLOCK GRANTS

TO: All Interested Persons

1. On April 14, 1994, the Department of Social and Rehabilitation Services published notice of the proposed adoption of [Rule I] 46.9.611 and the amendment of rule 46.9.606 pertaining to contractor allotments for community block grants at page 933 of the 1994 Montana Administrative Register, issue number 7.

2. The Department has amended rule 46.9.606 as proposed.

3. The Department has adopted [Rule I] 46.9.611, TERMINATION OR REDUCTION OF ALLOTMENT as proposed.

4. No written comments or testimony were received.

Dawn Sliva
Rule Reviewer

Director, Social and Rehabilitation Services

Certified to the Secretary of State June 13, 1994.

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

In the matter of the amendment of rule 46.10.403 pertaining to AFDC standards and payment amounts concerning shared living arrangements	)))))	NOTICE OF THE AMENDMENT OF RULE 46.10.403 PERTAINING TO AFDC STANDARDS AND PAYMENT AMOUNTS CONCERNING SHARED LIVING ARRANGEMENTS

TO: All Interested Persons

1. On May 12, 1994, the Department of Social and Rehabilitation Services published notice of the proposed amendment of rule 46.10.403 pertaining to AFDC standards and payment amounts concerning shared living arrangements at page 1264 of the 1994 Montana Administrative Register, issue number 9.

2. The Department has amended rule 46.10.403 as proposed.

3. The Department has thoroughly considered all commentary received:

COMMENT: The department's proposed policy concerning shared living arrangements does not comply with federal regulations governing the AFDC program at 45 CFR 233.20(a)(5). 45 CFR 233.20(a)(5) requires that proration of the allowance for shelter and utilities be made on a reasonable basis. Thus proration must be based on actual shared expenses, rather than on assumptions regarding the sharing of expenses.

RESPONSE: The department believes that the AFDC standards for assistance units in shared living arrangements are reasonably based using the current methodology for setting needs and payment standards and therefore are in compliance with the requirements of 45 CFR 233.20(a)(5).

COMMENT: The department's proposed policy conflicts with 45 CFR 233.90(a)(1), which states that "the inclusion in the family, or the presence in the home, of a 'substitute parent' or 'man-in-the-house' or any individual other than one described in this paragraph is not an acceptable basis for a finding of ineligibility or for assuming the availability of income by the State..."

RESPONSE: The proposed policy is not based on the assumption that the other individuals sharing a place of residence with the AFDC assistance unit also are sharing their income and/or resources with the AFDC unit. Rather it is based on a proration of the shelter component of the needs standard among all the individuals who reside together, including non-members of the

AFDC assistance unit. The income and resources of non-members of the assistance unit are not considered in any way available to the AFDC unit.

4. These rule amendments will take effect on July 1, 1994.

Rule Reviewer

Director, Social and Rehabilitation Services

Certified to the Secretary of State, June 13, 1994.

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

In the matter of the amendment of rule 46.10.403 pertaining to AFDC income standards and payment amounts	))))	NOTICE OF THE AMENDMENT OF RULE 46.10.403 PERTAINING TO AFDC INCOME STANDARDS AND PAYMENT AMOUNTS

TO: All Interested Persons

1. On April 28, 1994, the Department of Social and Rehabilitation Services published notice of the proposed amendment of rule 46.10.403 pertaining to AFDC income standards and payment amounts at page 1090 of the 1994 Montana Administrative Register, issue number 8.

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

46.10.403 TABLE OF ASSISTANCE STANDARDS Subsections (1) through (2) remain as proposed.

(a) Gross monthly income standards to be used when adults are included in the assistance unit are compared with the assistance unit's gross monthly income as defined in ARM 46.10.505.

GROSS MONTHLY INCOME STANDARDS TO BE USED WHEN ADULTS ARE INCLUDED IN THE ASSISTANCE UNIT

No. of Persons in Household	With Shelter Obligation Per Month	Without Shelter Obligation Per Month
1	$ ~~553~~ 585	$ ~~202~~ 213
2	~~749~~ 783	~~326~~ 344
3	~~945~~ 9801	~~446~~ 4710
4	~~1,140~~ 1,177	~~564~~ 596
5	~~1,336~~ 1,3745	~~675~~ 7132
6	~~1,532~~ 1,5723	~~779~~ 823
7	~~1,726~~ 1,769	~~884~~ 934
8	~~1,922~~ 1,9667	~~991~~ 1,036
9	~~2,015~~ 2,0645	~~1,073~~ 1,1332
10	~~2,103~~ 2,1587	~~1,162~~ 1,227
11	~~2,181~~ 2,240	~~1,240~~ 1,30910
12	~~2,261~~ 2,324	~~1,319~~ 1,393
13	~~2,329~~ 2,396	~~1,380~~ 1,4665
14	~~2,396~~ 2,466	~~1,454~~ 1,5356
15	~~2,461~~ 2,535	~~1,519~~ 1,604
16	~~2,516~~ 2,5934	~~1,574~~ 1,6623

(b) Gross monthly income standards to be used when no adults are included in the assistance unit are compared with the assistance unit's gross monthly income as defined in ARM 46.10.505.

GROSS MONTHLY INCOME STANDARDS TO BE USED WHEN NO ADULTS ARE INCLUDED IN THE ASSISTANCE UNIT

No. of Persons in Household	With Shelter Obligation Per Month	Without Shelter Obligation Per Month
1	~~$ 202~~ 213	~~$ 76~~ 80
2	~~396~~ 418	~~202~~ 213
3	~~594~~ 627	~~326~~ 344
4	~~790~~ 834	~~446~~ 4710
5	~~986~~ 1,0412	~~562~~ 5934
6	~~1,184~~ 1,2501	~~679~~ 7178
7	~~1,382~~ 1,45960	~~792~~ 836
8	~~1,576~~ 1,6645	~~901~~ 951
9	~~1,671~~ 1,7645	~~993~~ 1,049
10	~~1,759~~ 1,8587	~~1,082~~ 1,143
11	~~1,846~~ 1,950	~~1,171~~ 1,2376
12	~~1,930~~ 2,0387	~~1,251~~ 1,321
13	~~2,015~~ 2,1278	~~1,338~~ 1,4132
14	~~2,092~~ 2,21009	~~1,415~~ 1,4945
15	~~2,170~~ 2,292	~~1,493~~ 1,5776
16	~~2,242~~ 2,368	~~1,565~~ 1,6532

Subsections (2)(c) through (4) remain as proposed.

(a) Maximum payment amounts to be used when adults are included in the assistance unit are compared to the difference between the assistance unit's net monthly income and the net monthly income standard defined in ARM 46.10.505.

MAXIMUM PAYMENT AMOUNTS TO BE USED WHEN ADULTS ARE INCLUDED IN THE ASSISTANCE UNIT

No. of Persons in Household	With Shelter Obligation Per Month	~~With Shelter Obligation Per Day~~	Without Shelter Obligation Per Month	~~Without Shelter Obligation Per Day~~
1	~~$ 235~~ 248	~~$ 7.83~~	~~$ 86~~ 910	~~$ 2.87~~
2	~~318~~ 332	~~10.60~~	~~138~~ 146	~~4.60~~
3	~~401~~ 416	~~13.37~~	~~189~~ 200199	~~6.30~~
4	~~484~~ 499	~~16.13~~	~~239~~ 2523	~~7.97~~
5	~~567~~ 583	~~18.90~~	~~287~~ 3032	~~9.57~~
6	~~650~~ 667	~~21.67~~	~~330~~ 3489	~~11.00~~
7	~~732~~ 750	~~24.40~~	~~375~~ 396	~~12.50~~
8	~~816~~ 834	~~27.20~~	~~416~~ 43940	~~13.87~~
9	~~855~~ 8756	~~28.50~~	~~455~~ 480	~~15.17~~
10	~~893~~ 9165	~~29.77~~	~~493~~ 5210	~~16.43~~
11	~~926~~ 94951	~~30.87~~	~~526~~ 5546	~~17.53~~
12	~~959~~ 986	~~31.97~~	~~560~~ 591	~~18.67~~
13	~~988~~ 1,017	~~32.93~~	~~589~~ 622	~~19.63~~
14	~~1,017~~ 1,0476	~~33.90~~	~~617~~ 652	~~20.57~~
15	~~1,044~~ 1,075	~~34.80~~	~~644~~ 6801	~~21.47~~
16	~~1,068~~ 1,12201	~~35.60~~	~~668~~ 72706	~~22.27~~

(b) Maximum payment amounts to be used when no adults are included in the assistance unit are compared to the difference between the assistance unit's net monthly income and the net monthly income standard as defined in ARM 46.10.505.

MAXIMUM PAYMENT AMOUNTS TO BE USED WHEN NO ADULTS ARE INCLUDED IN THE ASSISTANCE UNIT

No. of Persons in Household	With Shelter Obligation Per Month	~~With Shelter Obligation Per Day~~	Without Shelter Obligation Per Month	~~Without Shelter Obligation Per Day~~
1	~~$ 86~~ 910	~~$ 2.87~~	~~$ 32~~ 34	~~$ 1.07~~
2	~~168~~ 177	~~5.60~~	~~86~~ 910	~~2.87~~
3	~~252~~ 266	~~8.40~~	~~138~~ 146	~~4.60~~
4	~~335~~ 354	~~11.17~~	~~189~~ 200199	~~6.30~~
5	~~418~~ 4412	~~13.93~~	~~239~~ 252	~~7.97~~
6	~~502~~ 5301	~~16.73~~	~~288~~ 3045	~~9.60~~
7	~~586~~ 619	~~19.53~~	~~336~~ 355	~~11.20~~
8	~~669~~ 7067	~~22.30~~	~~382~~ 403	~~12.73~~
9	~~709~~ 749	~~22.63~~	~~422~~ 4465	~~14.07~~
10	~~747~~ 7898	~~24.90~~	~~459~~ 485	~~15.30~~
11	~~783~~ 827	~~26.10~~	~~493~~ 5254	~~16.57~~
12	~~819~~ 8654	~~27.30~~	531 5610	~~17.70~~
13	~~855~~ 903	~~28.50~~	~~568~~ 600599	~~18.93~~
14	~~888~~ 9387	~~29.60~~	~~601~~ 6354	~~20.03~~
15	~~921~~ 973	~~30.70~~	~~633~~ 6689	~~21.10~~
16	~~951~~ 1,0045	~~31.70~~	~~664~~ 701	~~22.13~~

AUTH: Sec. 53-4-212 and 53-4-241 MCA
IMP: Sec. 53-4-211 and 53-4-241 MCA

3. No written comments or testimony were received. However, some figures are being changed in the tables of gross monthly income standards and maximum payment amounts are being made because computational errors were discovered.

4. These amendments will take effect on July 1, 1994.

Rule Reviewer

Director, Social and Rehabilitation Services

Certified to the Secretary of State, June 13, 1994.

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

In the matter of the amendment of rules 46.12.503, 46.12.504, 46.12.505, 46.12.506, 46.12.507, 46.12.508 and 46.12.509 pertaining to medicaid coverage and reimbursement of inpatient and outpatient hospital services	)))))))	NOTICE OF THE AMENDMENT OF RULES 46.12.503, 46.12.504, 46.12.505, 46.12.506, 46.12.507, 46.12.508 and 46.12.509 PERTAINING TO MEDICAID COVERAGE AND REIMBURSEMENT OF INPATIENT AND OUTPATIENT HOSPITAL SERVICES

TO: All Interested Persons

1. On April 28, 1994, the Department of Social and Rehabilitation Services published notice of the proposed amendment of rules 46.12.503, 46.12.504, 46.12.505, 46.12.506, 46.12.507, 46.12.508 and 46.12.509 pertaining to medicaid coverage and reimbursement of inpatient and outpatient hospital services at page 1076 of the 1994 Montana Administrative Register, issue number 8.

2. The Department has amended rules 46.12.503, 46.12.504, 46.12.507 and 46.12.508 as proposed.

3. The Department has amended the following rules as proposed with the following changes:

46.12.505 INPATIENT HOSPITAL SERVICES, REIMBURSEMENT

Subsections (1) through (10)(b) remain as proposed.

(11) Inpatient hospital service providers shall be subject to the billing requirements set forth in ARM 46.12.303. The attending physician must, shortly before, at, or shortly after discharge (but before a claim is submitted), attest in writing to the principal diagnosis, secondary diagnoses, and names of procedures performed. The following statement must immediately precede the physician's signature: "I certify that the narrative descriptions of the principals and secondary diagnoses and the major procedures performed are accurate and complete to the best of my knowledge." In addition, when the claim is submitted, the hospital must have on file a current signed acknowledgement from the attending physician that the physician has received the following notice: "Notice to physicians: medicaid payment to hospitals is based in part on each patient's principal and secondary diagnoses and the major procedures performed on the patient, as attested to by the patient's attending physician by virtue of his or her signature in the medical record. Anyone who misrepresents, falsifies, or conceals essential information required for payment of federal funds, may be subject to fine, imprisonment, or civil penalty

under applicable federal laws." The acknowledgement must have been completed ~~within the year prior to the submission of the claim~~ UPON BEING GRANTED ADMITTING PRIVILEGES AT THE HOSPITAL. The provider may, at its discretion, add to the language of this statement the word "medicare" so that two separate forms will not be required by the provider to comply with both state and federal requirements. In addition, ~~the~~ except for distinct part rehabilitation units and hospital resident cases, providerg may not submit a claim until the recipient has been either:

Subsections (11)(a) through (12)(b)(iii) remain as proposed.

(13) The medicaid statewide average cost to charge ratio equals ~~.68~~ .66.

Subsections (14) through (17) remain as proposed.

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

46.12.506 OUTPATIENT HOSPITAL SERVICES, DEFINITION

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

~~(2) Medicaid shall not make any payment or reimbursement for outpatient hospital services provided in satellite or branch facilities of provider hospital facilities that are not physically located within a licensed and certified hospital facility unless the satellite or branch facility meets the licensure and certification requirements of subsection (1).~~

~~(a) Services provided in satellite or branch facilities of provider hospital facilities will be considered to be provided by an institution that is licensed or formally approved as a hospital for purposes of subsection (1)(a) only if the satellite or branch facility itself has been inspected, surveyed or otherwise determined by the licensing authority to meet applicable standards and:~~

~~(i) the satellite or branch office is independently licensed or formally approved as a hospital; or~~

~~(ii) the provider hospital's license or formal approval documents specifically indicate that the satellite or branch office is licensed or formally approved as part of the provider facility's hospital license or formal approval.~~

~~(b) Services provided in satellite or branch facilities of provider hospital facilities will be considered to be provided by an institution that meets the requirements for participation in medicare for purposes of subsection (1)(b) only if the satellite or branch facility itself has been inspected, surveyed or otherwise determined by the certification or accreditation entity to meet applicable standards and:~~

~~(i) the satellite or branch office is independently certified or accredited as a hospital; or~~

~~(ii) the provider hospital's certification or accreditation documents specifically indicate that the satellite or~~

~~branch office is certified or accredited as part of the provider facility's hospital certification or accreditation.~~

Subsection (3) remains as proposed in text but is renumbered as subsection (2).

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

46.12.509 ALL HOSPITAL REIMBURSEMENT, GENERAL

Subsection (1) remains as proposed.

(a) The department may require providers of inpatient or outpatient hospital services to obtain authorization from the department or its designated review organization either prior to provision of services or prior to payment. ~~To be effective, any department prior authorization requirement must be set forth in Title 46, chapter 12, in the department's provider manual applicable to the service category or in a written notice mailed to all providers in the affected service category at least 30 days in advance of the effective date of the prior authorization requirement.~~

(i) MEDICAID REIMBURSEMENT SHALL NOT BE MADE UNLESS THE PROVIDER HAS OBTAINED AUTHORIZATION FROM THE DEPARTMENT OR ITS DESIGNATED REVIEW ORGANIZATION PRIOR TO PROVIDING ANY OF THE FOLLOWING SERVICES:

(A) INPATIENT PSYCHIATRIC SERVICES PROVIDED IN AN ACUTE CARE GENERAL HOSPITAL OR A DISTINCT PART PSYCHIATRIC UNIT OF AN ACUTE CARE GENERAL HOSPITAL;

(B) INPATIENT REHABILITATION SERVICES;

(C) ALL INPATIENT HOSPITAL SERVICES PROVIDED IN HOSPITALS LOCATED MORE THAN 100 MILES OUTSIDE THE BORDERS OF THE STATE OF MONTANA;

(D) SERVICES RELATED TO ORGAN TRANSPLANTATIONS COVERED UNDER ARM 46.12.583 AND 46.12.584;

(E) OUTPATIENT PARTIAL HOSPITALIZATION OR DAY TREATMENT SERVICES; OR

(F) OUTPATIENT HOSPITAL CHEMICAL DEPENDENCY TREATMENT SERVICES.

Subsections (1)(b) and (2) remain as proposed.

(a) Inpatient and outpatient hospital services reimbursement under the retrospective cost-based methodology for a hospital that is identified by the department as a distinct part rehabilitation unit, an isolated hospital or an out-of-state hospital located more than 100 miles outside the state of Montana is subject to the provisions regarding cost reimbursement and coverage limits and rate of increase ceilings specified in 42 CFR 413.30 through 413.40 (1992), EXCEPT AS OTHERWISE PROVIDED IN THESE RULES. The department hereby adopts and incorporates herein by reference 42 CFR 413.30 through 413.40 (1992). A copy of 42 CFR 413.30 through 413.40 (1992) may be obtained through the Department of Social and Rehabilitation

Services, Medicaid Services Division, P.O. Box 4210, 111 Sanders, Helena, Montana 59604-4210.

Subsections (2)(b) through (5) remains as proposed.

(a) For facilities located outside the state of Montana and more than 100 miles from the Montana border, the base year is the facility's cost report for the first cost reporting period ending during or after calendar year 1991 that both covers 12 months and includes Montana medicaid inpatient hospital costs. EXCEPTIONS WILL BE GRANTED ONLY AS PERMITTED BY THE APPLICABLE PROVISIONS OF 42 CFR 413.30 OR 413.40 (1992). ~~No exceptions to this rule will be granted. Exception provisions contained in HCFA Pub. 15 and 42 CFR 413.40 do not apply for purposes of determining the base period under these rules.~~

(b) For distinct part rehabilitation units identified in ARM 46.12.503(5), the base year is the facility's cost report for the first cost reporting period ending after June 30, 1985 that both covers 12 months and includes Montana medicaid inpatient hospital costs. EXCEPTIONS WILL BE GRANTED ONLY AS PERMITTED BY THE APPLICABLE PROVISIONS OF 42 CFR 413.30 OR 413.40 (1992). ~~No exception to this rule will be granted. Exception provisions contained in HCFA Pub. 15 and 42 CFR 413.40 do not apply for purposes of determining the base period under these rules.~~

(c) For isolated hospitals as identified in ARM 46.12.503 (17), the base year is the facility's cost report for the first cost reporting period ending after June 30, 1993 that both covers 12 months and includes Montana medicaid inpatient hospital costs. EXCEPTIONS WILL BE GRANTED ONLY AS PERMITTED BY THE APPLICABLE PROVISIONS OF 42 CFR 413.30 OR 413.40 (1992). ~~No exceptions to this rule will be granted. Exception provisions contained in HCFA Pub. 15 and 42 CFR 413.40 do not apply for purposes of determining the base period under these rules.~~

Subsections (6) through (8) remain as proposed.

4. The Department has thoroughly considered all commentary received:

COMMENT: One commentor, after review of the proposed FY95 DRG tables provided by the department, suggests that two additional DRGs be included in the FY95 tables. These are DRG 493 (laparoscopic cholecystectomy with complication) and DRG 494 (laparoscopic cholecystectomy without complication), which are missing from the tables. These two DRGs are included in the medicare DRG tables and it would promote consistency if DRG 493 and 494 were in the medicaid tables also.

RESPONSE: The department updated and installed a new grouper version for the medicaid program in fiscal year 1994. The department is currently using the version 9.0 DRG grouper. Prior to this change, the department was using medicare's version 4.0 DRG grouper. Medicare is currently using the

version 11.0 DRG grouper. The version 11.0 grouper was implemented by medicare on October 1, 1993 and includes additional DRGs that are not included in version 9.0. The department will not include these additional DRGs in the medicaid DRG table as we are not proposing that the medicaid grouper be updated from version 9.0 to version 11.0.

COMMENT: Some commentors expressed concern regarding the cost outlier thresholds in the new table of DRG weights and thresholds for fiscal year 1995. The commentors feel that several of the DRG cost outlier thresholds are inappropriately high when compared to the corresponding relative weights. The commentors believe that these cost outlier thresholds should be reduced. In addition, one commentor feels that most cost outlier thresholds have increased, resulting in an additional financial loss to health care providers.

RESPONSE: The cost outlier thresholds are calculated using a standard deviation test based upon 1991 hospital claims data. The cost outliers were determined during the calibration of the DRG weights and thresholds for fiscal year 1994. The cost outlier thresholds are updated annually to reflect the average statewide increase in charge levels, to account for changes in charge factors that affect the costs of providing services to recipients. The department applied a 4.3% state charge index to the cost outliers for fiscal year 1994. For fiscal year 1995 the cost outlier thresholds will be inflated by 7.9%. This percentage increase is the "state charge index", which is calculated by the department based upon inpatient hospital claims information. This index represents the percentage change in hospital charges, adjusted for case mix, from the 1991 base year.

The changes to the cost outliers do not result in financial losses for health care providers. Outliers thresholds are set at levels such that cases being paid as outliers are, in fact, infrequently occurring cases. The outliers do not represent an important payment algorithm for the prospective payment system, but reflect marginal costs so that a hospital is no better or worse off as a result of the patient stay extending beyond the threshold as compared to the patient being discharged at the threshold.

With respect to many of the DRGs and cost outliers identified by the commentors, it should be noted that some of these DRGs include stop loss provisions. These stop loss provisions are provided for DRGs which were determined to be unstable. The DRG weight is the basis for payment of these DRGs, except that, if estimated charges are less than 75% or greater than 400% of the DRG payment, then the DRG is paid at estimated cost. The estimated cost is determined by applying the statewide cost-to-

charge ratio to the billed charge. The large referral hospitals are not included in this provision because their case load is large enough for the DRG payment to be intrinsically stable.

COMMENT: One commentor expressed concern whether the DRG system modifications established one year ago fulfilled the department's goals. Hospitals previously expressed concern that the department had not adequately monitored the old DRG system and SRS had pledged to keep hospitals informed about the performance of the new system. To date, no reports have been shared with hospitals. The commentor is particularly concerned whether the system is paying less than the department's goal of paying hospitals 93 percent of aggregate hospital costs, whether the outlier pool set aside was over- or under-estimated and completely expended, and whether adequate funds are available for catastrophic payments.

RESPONSE: The department shares the commentor's concern and has been working toward implementation of a reporting system. The Department, in conjunction with Abt Associates, is developing a series of quarterly reports which will be generated from the paid claims files. These quarterly reports will monitor all aspects of the inpatient hospital payment system. The department expected implementation of the reporting system quite some time ago but has encountered problems with claims data and staff changes. The department apologizes for the delay in implementing this reporting system and will continue to work toward its implementation.

COMMENT: One commentor asked what the new statewide cost-to-charge ratio is and how it was calculated. Incremental changes proposed to the system should be modeled by the department and the impact should be shared with hospitals.

RESPONSE: The department calculated a new statewide cost-to-charge ratio (66%) for rate year 1995. This ratio is based upon the methodology recommended in the inpatient hospital reimbursement study. The department applied the TEFRA inflationary percentage to the 1991 cost base to inflate cost to the same point in time as current claims data (June 1993) and divided this figure by indexed charges for 1991. The indexed charges for 1991 were computed based upon the percentage increase in hospital charges for inpatient hospital claims submitted subsequent to 1991. The percentage increase in charges from the 1991 base period to June 30, 1993 was 12.2%. With the percentage increase in hospital charges exceeding the allowable TEFRA percentage increase for costs the statewide cost-to-charge ratio decreased from 68% in FY94 to 66% in FY95. ARM 46.12.505(13) has been revised to reflect this change.

COMMENT: One commentor suggested that the department include language at ARM 46.12.505 requiring SRS to determine the adequacy of money available for catastrophic payments at some point during the fiscal year prior to submission of payment requests by hospitals. This language should include consideration of both the hospital appropriation and the total medicaid appropriation. The commentor learned earlier this year that substantial funds were transferred out of the hospital budget to other medicaid program areas. This transfer should not allow a later determination that adequate funds for catastrophic payment are not available to the department. Likewise, if SRS policy is to fund all programs from any area of the medicaid budget, other areas of surplus appropriation should be available for catastrophic payments to hospitals.

RESPONSE: The inpatient hospital study indicated that catastrophic cases do occur and recommended additional reimbursement for hospitals that experience these cases. The study identified approximately 86 catastrophic cases in the 1988-1991 data. The department implemented a methodology to provide additional reimbursement for such cases and estimated the funding necessary for the catastrophic payments. The department adopted a catastrophic payment methodology in recognition of the occasional extremely high cost cases which previously had been primarily the burden of the hospitals. The department, in adopting this policy, assumed a great deal of the risk for these cases. The department is making a good faith effort to implement a reimbursement system that more equitably reimburses all hospitals in Montana.

The department makes every effort to estimate the fiscal impact of operating the inpatient hospital program and working with the legislature and provider association to secure appropriate funding. But the department will not make unlimited funds available for catastrophic reimbursement. Rule language requiring the department to determine the adequacy of money available for a portion of the total program will not be added. The administrative rule currently includes an estimate of the funding allocated for catastrophic reimbursement. Under the rule, the amount of funding for catastrophic cases increases or decreases proportionately, depending upon increases or decreases in actual discharges in relation to estimated discharges. The department believes that the rule adequately addresses funding available for catastrophic reimbursement.

The commentor correctly notes that the department has authority to transfer medicaid funds among medicaid programs under certain circumstances. Such transfers are considered on a case by case basis depending upon circumstances affecting the medicaid program as a whole. If the department considered it necessary

and if other funds were available, fund transfers to the hospital program could be considered.

COMMENT: Several commentors are opposed to the proposed language governing outpatient hospital care provided in satellite or branch facilities. The commentors object to the proposed rule language which requires satellite or branch facilities to meet the licensure and certification requirements of the department of health and environmental sciences. Further, SRS is exceeding its authority in attempting to set standards for health care facilities. The proposed amendment would impose requirements beyond those contained in the existing federal regulation, which will unnecessarily increase the costs to hospitals of providing outpatient hospital services.

RESPONSE: The department originally proposed changes to ARM 46.12.506 in an attempt to assure that satellite or branch facilities in remote locations meet applicable licensure and certification requirements, and to establish a requirement that verification of compliance be provided to the department. The department did not intend to establish or set standards for such facilities, but only to assure that existing federal and state requirements are met. Federal medicare conditions of participation for hospitals at 42 CFR 482.54 do establish standards that must be met by hospitals furnishing outpatient hospital services. However, since the proposed rule was published, the department has been informed that the federal government does not interpret the federal medicaid outpatient hospital regulation, 42 CFR 440.20, to require that outpatient hospital services be provided in licensed facilities. Also, the department of health and environmental sciences apparently has taken the position that state licensure laws do not apply to outpatient hospital services provided in satellite or branch facilities.

At the public rule hearing, the department proposed deletion of the original proposed language and addition of revised rule language that would require hospitals furnishing outpatient hospital services in satellite or branch facilities located outside the community where the hospital is located to separately enroll the satellite or branch facility as a medicaid provider. The department proposed that hospitals bill services provided by the satellite or branch facility under this separate provider number and report costs under a separate cost center in the hospital's cost report. The department subsequently has received additional comments concerning this requirement, regarding the broad range of clinical services provided by hospital providers to surrounding communities.

At this time, the department will not adopt either the original proposed requirements or the second set of proposed require-

ments. The department will remove all proposed language with reference to satellite or branch facilities. However, the department will continue to study and review the use of branch or satellite facilities. The department will continue to consider approaches to address the question of the quality, safety and appropriateness of these services. The department will continue to conduct research and inquiry to determine whether federal medicaid laws and regulations require or authorize the state medicaid agency to set and enforce methods and standards to assure that services are of high quality. The department will encourage appropriate agencies to take action to assure that outpatient hospital facilities and services comply with safety and quality standards.

COMMENT: Some commentors oppose the language proposed at ARM 46.12.509, relating to prior authorization of inpatient and outpatient hospital services. SRS proposes to require, by administrative fiat, prior authorization of all hospital services or any particular hospital service. The department has the authority to require prior review of hospital care as contemplated by the rule. But the commentors specifically object to the vague language in the rule, and the use of the provider manual as a means of implementing program requirements. The commentors request that the department amend the proposed language to specify exact prior authorization requirements in the rule. Adoption of rule language would allow significant SRS policies and procedures to be included in the rule as required by the Montana Administrative Procedure Act.

RESPONSE: The department proposed changes to the rule regarding prior authorization because current rules require prior authorization of all inpatient hospital services but no outpatient hospital services. Since January 1, 1993, the department has not required prior authorization for many inpatient hospital services. Prior authorization currently is required for out-of-state inpatient hospital services, inpatient psychiatric hospital services, inpatient rehabilitation hospital services, outpatient psychiatric day treatment (partial hospitalization) services and chemical dependency treatment services. The department made these changes to prior authorization requirements and notified providers of the requirements through provider notices and letters directly from the department. The proposed rules would not change the policy applied by the department in the past few years.

However, in light of the commentors' concerns, the department will modify the proposed rule to remove the reference to notification through the provider manual or other written notice. The department will adopt language specifying the current inpatient and outpatient hospital services requiring prior authorization. These services are out-of-state inpatient

hospital services, inpatient psychiatric hospital services, inpatient rehabilitation hospital services, organ transplantation services, outpatient psychiatric day treatment (partial hospitalization) services and chemical dependency treatment services.

COMMENT: One commentor is concerned regarding the rule language indicating that prior authorization is not an assurance of subsequent payment. Hospitals, and all medical providers, are subject to department review activities on both ends of delivering care. This duplication of SRS scrutiny represents an inefficient bureaucratic approach to controlling health care costs. SRS should either implement real prior authorization requirements, or retrospective reviews, and reduce the administrative burden of utilization review activities.

RESPONSE: The language referred to by the commentor is not new to the administrative rules. This section of the rule was merely moved from ARM 46.12.504 to ARM 46.12.509. This language has been in the department's rules as a reminder that prior authorization is not a guarantee of payment. There may be circumstances related to a particular case involving other policies and procedures whereby a claim will not be paid. These include client eligibility, additional medical information on retrospective review which does not support the medical necessity of the procedures authorized. These exceptions are not necessarily a duplication of the prior authorization requirements but a caveat that other circumstances or additional information may prohibit medicaid from reimbursing a provider for services.

COMMENT: Commentors opposes ARM 46.12.509(5) which they believe establishes cost reporting requirements that would apply retroactively to services delivered after July 1, 1993. Federal and state standards prohibit the department from implementing retroactive rules which have an adverse impact on provider payment.

RESPONSE: The proposed rule changes do not impose any retroactive requirements upon providers. The rules referred to merely require the specified providers to submit a base period cost report for use in determining cost increase ceilings for subsequent years. The proposed rules do not change the cost reporting requirements or reimbursement for prior years.

COMMENT: Some commentors oppose the department's language that excludes exceptions to the TEFRA limits included under 42 CFR 413.40. The commentors question the authority of the department to subject hospitals to only part of the federal law, while failing to implement the full intent of the federal law designed to limit program payment growth. The exception language is

intended to allow program adjustments for events beyond the control of the provider and for instances where service volume fluctuations skew the TEFRA calculations. The department has the ability to deny these exceptions, but we don't believe they have the authority to exclude them. Adopting the TEFRA limits without the exceptions is arbitrary and capricious.

RESPONSE: In ARM 46.12.509(2)(a), the department has incorporated by reference 42 CFR 413.30 through 413.40 relating to cost reimbursement and coverage limits and rate of increase ceilings, known as the TEFRA limits. The proposed rule language would have excluded application of the medicare exception provisions for purposes of determining the base cost reporting year. Because the federal TEFRA provisions do not apply to the medicaid program under federal law, the department has authority to adopt all, none or some of the federal provisions for use in the medicaid program. However, after further review, the department agrees that adoption of the exceptions provided in the federal medicare regulations makes sense. The department has modified the proposed rule language to remove the last two sentences of ARM 46.12.509(5)(a), (5)(b) and (5)(c). The department has added language to each subsection providing that exceptions will be granted only as permitted by the applicable provisions of 42 CFR 413.30 or 413.40.

COMMENT: In ARM 46.12.503(15) the department defines "large referral hospitals". Kalispell Regional Hospital is conspicuously missing from that list, and yet it is the rural referral center of northwestern Montana. It would seem appropriate that Kalispell Regional Hospital should also have the "large referral hospital" designation under medicaid's rules.

RESPONSE: A hospital will be designated as a large referral hospital only at the time of recalibration of the DRG system. That process is planned to occur every three years. At that time, the rules will be amended to update the list of referral hospitals if necessary. Case mix was not the only criterion for designation as a large referral hospital. There were four criteria used. To qualify as a large referral hospital, the facility had to be in the top ten hospitals in at least three of the four categories. The four tests were: size, referral ratios, average case mix index (CMI), and volume of medicaid business. The department conducted sensitivity tests for the six mid-sized referral hospitals for consideration of inclusion in the large referral hospitals. Based upon this analysis, it was determined that the six mid-sized hospitals would be reimbursed according to the standard weights.

COMMENT: ARM 46.12.505(11) indicates that hospitals will be required to have the physician's signed acknowledgement completed within the year prior to the submission of the claim.

Medicare recently changed this requirement and requires hospitals to have the physician sign only once. Medicaid should emulate medicare in the requirement to minimize trivial administrative requirements that are different for the two agencies.

RESPONSE: The department will adopt the suggested change to the proposed rule. This change pertains to the physician's attestation acknowledgement in ARM 46.12.505(11). The department will follow the same requirements adopted by medicare under the regulations published in the Federal Register, Volume 59, No. 46, March 9, 1994. Medicaid will eliminate the requirement of an annual acknowledgement statement and has modified the rule language to require a physician's acknowledgement statement only upon being granted admitting privileges at a hospital.

5. These amendments will become effective July 1, 1994.

Dawn Sliva
Rule Reviewer

Director, Social and Rehabilitation Services

Certified to the Secretary of State, June 13, 1994.

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

In the matter of the amendment of rules 46.12.590, 46.12.591, 46.12.592, 46.12.509A and 46.2.202 pertaining to medicaid coverage and reimbursement of residential treatment services	))))))	NOTICE OF THE AMENDMENT OF RULES 46.12.590, 46.12.591, 46.12.592, 46.12.509A AND 46.2.202 PERTAINING TO MEDICAID COVERAGE AND REIMBURSEMENT OF RESIDENTIAL TREATMENT SERVICES

TO: All Interested Persons

1. On April 28, 1994, the Department of Social and Rehabilitation Services published notice of the proposed amendment of rules 46.12.590, 46.12.591, 46.12.592, 46.12.509A and 46.2.202 pertaining to medicaid coverage and reimbursement of residential treatment services at page 1111 of the 1994 Montana Administrative Register, issue number 8.

2. The Department has amended rules 46.2.202 and 46.12.509A as proposed.

3. The Department has amended the following rules as proposed with the following changes:

46.12.590 RESIDENTIAL TREATMENT SERVICES, PURPOSE AND DEFINITIONS Subsections (1) through (4)(b) remain as proposed.

(5) The provider must notify the department's designated review organization of each admission of a medicaid-eligible individual within three working days of ~~an emergency~~ the admission, OR, IF MEDICAID ELIGIBILITY IS DETERMINED AFTER ADMISSION, WITHIN 14 DAYS AFTER THE ELIGIBILITY DETERMINATION ~~so that a certification can be completed within 14 days of admission~~. If the provider fails to ~~timely~~ notify the review organization ~~within 3 working days of the admission~~ THE TIME SPECIFIED IN THIS SUBSECTION, the department shall deny reimbursement for the period from admission to the actual date of notification.

Auth: Sec. 53-2-201 and 53-6-113 MCA
IMP: Sec. 53-2-201, 53-6-101, 53-6-111, 53-6-113, 53-6-139 and 53-6-141 MCA

46.12.591 RESIDENTIAL TREATMENT SERVICES, PARTICIPATION REQUIREMENTS Subsections (1) through (2)(b) remain as proposed.

(c) ~~enroll in the Montana medicaid program and maintain a current provider agreement with the department to provide residential treatment services, including a provider enrollment~~

~~form, or, if the provider's facility is not located within the state of Montana,~~ FOR ALL PROVIDERS, enter into and maintain a current provider enrollment form with the department's fiscal agent TO PROVIDE RESIDENTIAL TREATMENT SERVICES;

Subsections (2)(d) through (2)(j) remain as proposed.

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-2-201, 53-6-101, 53-6-111, 53-6-113, 53-6-139 and 53-6-141 MCA

46.12.592 RESIDENTIAL TREATMENT SERVICES, REIMBURSEMENT

Subsections (1) through (6)(b) remain as proposed.

(c) The cost per PATIENT day ceilings established under this section ~~applies~~ apply to operating costs and educational and vocational training costs incurred by a provider in furnishing ~~inpatient~~ RESIDENTIAL TREATMENT services. For purposes of calculating and applying the rate of increase ceiling on operating costs under these rules, operating costs exclude the costs of malpractice insurance and capital-related costs described in subsection (5)(c). Such costs shall be allowable operating costs to the extent otherwise permitted by these rules.

(d) Base period ~~operating costs~~ and subsequent ~~operating~~ costs subject to the ceilings as described in this subsection will be determined on a cost per PATIENT day basis. Allowable medicaid costs as defined in subsection (2) will be divided by the total number of medicaid ~~inpatient~~ PATIENT days to determine the cost per day.

Subsections (6)(e) through (11)(c) remain as proposed.

(12) No more than ~~24 10~~ 14 days per recipient in each rate year will be allowed for therapeutic home visits.

(13) The provider must submit to the department's medicaid services division or its designee a request for a therapeutic home visit bed hold, on the appropriate form provided by the department, within 90 days of the first day a recipient leaves the facility for a therapeutic home visit. Reimbursement for therapeutic home visits will not be allowed unless the properly completed form is filed timely with department's medicaid services division OR ITS DESIGNEE.

(14) Providers must bill for residential treatment services using the revenue codes listed in the department's residential treatment services provider manual. THE DEPARTMENT MUST PROVIDE 30 DAYS PRIOR WRITTEN NOTICE TO PROVIDERS OF ANY CHANGES IN REVENUE CODES.

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

4. The Department has thoroughly considered all commentary received:

COMMENT: A provider requested clarification regarding the admission of children who are not medicaid eligible at the time of admission but who will be applying for medicaid. Will providers be required to contact First Mental Health within 3 days for these individuals?

RESPONSE: No. The department's policy for individuals who are not medicaid eligible at the time of admission is not being changed at this time. Providers will be required to notify the designated review organization within 14 days after the eligibility determination, if the determination is made after admission. Providers will also be required to submit a complete and accurate certificate of need to the department's designated review organization within 14 days after an eligibility determination has been made for those individuals whose medicaid eligibility is pending at the time of admission. The certificate of need must cover the individual's entire stay in the facility.

COMMENT: Regarding ARM 46.12.590(5), we feel the wording of this paragraph will create duplication and additional work for both the department's review organization and providers. The review organization under current rules issues all pre-certifications for residential treatment. This certification is specific to the provider and includes the date of admission. Patients are not admitted without this pre-certification because there would be no reimbursement. If implemented as proposed, this rule would require all facilities to notify the review organization of every admission, regardless of payor, in order to create a documentation trail.

RESPONSE: As indicated above, the department will allow 14 days from the date of eligibility determination for individuals who are determined eligible for medicaid after they have been admitted to a residential treatment facility.

Comment: The commentor expressed some concern that the reduction in therapeutic home visits from 24 days to 10 days may be too restrictive, particularly for sexual offenders and suggested that the department consider a limit of 17 days, which is half way between the current rule and the proposed rule.

RESPONSE: The department conducted a review of all Therapeutic Home Visits (THV) which were billed between January 1, 1993 and December 31, 1993. The ARM limitations with respect to allowable THV days are based on a state fiscal year and not a calendar year, however the calendar year data was the most current information available and does provide the department

with THV utilization data. This review disclosed that providers billed for THV for 80 different individuals. The median number of THV days was 6.11 and only 15 individuals received more than 10 THV days. In reviewing the proposed threshold, the department has decided to revise the threshold to 14 days. The revised threshold is more than adequate for the vast majority of individuals. Providers have the responsibility of ensuring the threshold is not exceeded and should plan and monitor THV days accordingly.

COMMENT: The commentor suggested that the word "inpatient" in ARM 46.12.592 (6)(c) be changed to "residential".

RESPONSE: The term "inpatient" is commonly used in a variety of medical settings to depict the status of a patient. Either term is acceptable and changing it to "residential" will have no impact on the meaning of the rule. The department will incorporate the suggested change by using the term "residential treatment" in place of "inpatient", in order to be consistent with other terminology used in the rule.

COMMENT: One provider requested clarification of ARM 46.12.592 (5). Why is the department proposing not to follow the rules of HCFA Pub. 15? We believe this publication pertains to the Medicaid program.

RESPONSE: It appears that the commentor is commenting on a change that was made to the rule last year. That change specified that the base period would be the provider's first full 12-month cost reporting period ending after June 30, 1985 and that no exceptions would be granted. The department has wide latitude in reimbursement approaches for RTCs and is not required to follow HCFA-Pub. 15. It was the department's desire to establish base periods for RTCs without incorporating all of the exceptions allowed by medicare for hospitals. No change will be made in this rule.

COMMENT: ARM 46.12.592(5)(d) has new language added to address educational costs calculated on a per patient day as being treated separately from other allowable medicaid costs. We are unclear based on the wording of subsection (6) of this rule, whether or not the cost of living ceiling will also apply separately to educational costs. Also in subsection (6)(c) and (d) of this rule, the language refers to costs per day rather than cost per patient day.

RESPONSE: The department's intent is to establish a separate base period for educational costs which will be set using the provider's first full 12 month cost reporting period on or after December 21, 1993, which is one year after the date certain educational and vocational costs could be considered as

allowable costs. We believe it is appropriate to establish a separate base period for educational costs since these costs were previously unallowable. The ceiling on the rate of increase will be applied separately to educational costs. The department will modify the language in ARM 46.12.592(6)(c) and (d) so that the term "cost per patient day" is used on a consistent basis.

COMMENT: We would like to see the wording of ARM 46.12.592(7)(a) changed to read "the provider's allowable operating and educational costs per patient day . . ."

RESPONSE: The department has proposed that this section be worded as "the provider's allowable operating or educational costs per patient day" in order to specify that operating and educational will be indexed separately. No change will be made.

COMMENT: A provider has requested that ARM 46.12.592(9)(a) be changed to read: "the provider will receive reimbursement for the actual allowable costs . . ."

RESPONSE: The department does not believe that the addition of the words "reimbursement for" is necessary.

COMMENT: A provider requested that facilities be notified at least 30 days prior to the beginning of the facility's fiscal year what the maximum allowable increase in the facility's rate will be.

RESPONSE: The Health Care Financing Administration publishes preliminary estimates of the TEFRA increases normally in June preceding the start of the federal fiscal year which begins on October 1 and ends on September 30. The rate of increase for a particular facility depends on the facility's fiscal year end. Normally, the facility's TEFRA increase is calculated based on a proration of two federal fiscal years. The department can provide the estimated TEFRA increase if it is requested by the facility. The department does not believe it is necessary to make the provision of this information a requirement of the rule since the information can be obtained upon request.

COMMENT: A provider is not comfortable with the wording of ARM 46.12.592(13) that says the provider must submit a request for therapeutic leave hold days to the department or its designee but then concludes the paragraph by saying that the provider will be denied reimbursement if the form is not timely filed with the department's Medicaid Services Division. If we are required to file with the designated review organization, providers should not be held responsible for whether or not the form reaches the Medicaid Services Division.

RESPONSE: The department will add language clarifying that the completed form must be filed with the Medicaid Services Division or its designee. The department will require that all therapeutic leave days be approved by the designated review organization. The provider will be required to maintain documentation which indicates how the therapeutic leave contributes to the patient's plan of care. Failure to maintain this documentation will be a basis for retrospective denial of the therapeutic leave by the department.

COMMENT: A provider has requested that language be added to ARM 46.12.592(14) which will give providers 30 days written notice prior to any revenue code changes.

RESPONSE: The department does not foresee any instance in which a 30 day notice would not be possible and will modify the rule as suggested.

COMMENT: A provider was concerned about the wording of ARM 46.12.591(2)(c) which states that the facility must maintain a current provider agreement. It was the commentor's understanding that providers only be enrolled as a provider with the fiscal intermediary.

RESPONSE: The department will remove the current reference to the provider agreement. Currently, the department utilizes the provider enrollment form as the provider agreement. Since the enrollment requirement will be the same for both in-state and out-of-state providers, the subsection will be revised to delete the repetitive language.

5. These rule changes will become effective July 1, 1994.

Rule Reviewer

Director, Social and Rehabilitation Services

Certified to the Secretary of State, June 13, 1994.

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

In the matter of the amendment of rule 46.12.3803 pertaining to medically needy income standards	)))	NOTICE OF THE AMENDMENT OF RULE 46.12.3803 PERTAINING TO MEDICALLY NEEDY INCOME STANDARDS

TO: All Interested Persons

1. On April 28, 1994, the Department of Social and Rehabilitation Services published notice of the proposed amendment of rule 46.12.3803 pertaining to medically needy income standards at page 1109 of the 1994 Montana Administrative Register, issue number 8.

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

46.12.3803 MEDICALLY NEEDY INCOME STANDARDS

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

MEDICALLY NEEDY INCOME LEVELS
FOR SSI and AFDC-RELATED INDIVIDUALS
AND FAMILIES

Family Size	One Month Net Income Level		
1	$ ~~425~~	446	
2	~~425~~	450	
3	~~455~~	475	
4	~~484~~	499	
5	~~567~~	583	
6	~~650~~	667	
7	~~732~~	750	
8	~~816~~	834	
9	~~855~~	~~875~~	876
10	~~893~~	~~916~~	915
11	~~926~~	~~949~~	951
12	~~959~~	986	
13	~~988~~	1,017	
14	~~1,017~~	~~1,047~~	1,046
15	~~1,044~~	1,075	
16	~~1,068~~	~~1,122~~	1,101

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-6-101, 53-6-131 and 53-6-141 MCA

3. No written comments or testimony were received. Some figures in the medically needy income level tables have been changed due to computational errors.

4. These amendments will take effect on July 1, 1994.

Rule Reviewer

Director, Social and Rehabilitation Services

Certified to the Secretary of State, June 13, 1994.

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.

This table indicates the department name, title number, rule numbers in ascending order, catchphrase or the subject matter of the rule and the page number at which the action is published in the 1994 Montana Administrative Register.

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BOARD APPOINTEES AND VACANCIES

House Bill 424, passed by the 1991 Legislature, directed that all appointing authorities of all appointive boards, commissions, committees and councils of state government take positive action to attain gender balance and proportional representation of minority residents to the greatest extent possible.

One directive of HB 424 was that the Secretary of State publish monthly in the *Montana Administrative Register* a list of appointees and upcoming or current vacancies on those boards and councils.

In this issue, appointments made in May, 1994, are published. Vacancies scheduled to appear from July 1, 1994, through September 30, 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 June 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 MAY, 1994

Appointee	Appointed by	Succeeds	Appointment/End Date
Advisory Council on Corrections and Criminal Justice Policy (Corrections and Human Services)			
Mr. Earl Peace	Governor	Heetderks	5/10/1994
Bozeman			4/28/1996
Qualifications (if required): not listed			
Board of Banking (Commerce)			
Mr. Douglas K. Morton	Governor	Grobel	5/31/1994
Kalispell			7/1/1995
Qualifications (if required): national bank officer			
Board of Nursing Home Administrators (Commerce)			
Ms. Arline Rabenberg	Governor	Munro	5/31/1994
Wolf Point			5/28/1999
Qualifications (if required): public member of age 55			
Board of Physical Therapy Examiners (Commerce)			
Ms. Christine Jensen	Governor	Delano	5/19/1994
Clinton			1/1/1997
Qualifications (if required): public member			
Board of Real Estate Appraisers (Commerce)			
Ms. Jeannie Flechsenhar	Governor	Cunningham	5/1/1994
Cascade			5/1/1997
Qualifications (if required): public member			
Mr. A. Farrell Rose	Governor	reappointed	5/1/1994
Helena			5/1/1997
Qualifications (if required): licensed appraiser			

BOARD AND COUNCIL APPOINTEES FROM MAY, 1994

Appointee	Appointed by	Succeeds	Appointment/End Date
Board of Realty Regulation (Commerce)			
Mr. Jack K. Moore	Governor	reappointed	5/9/1994
Great Falls			5/9/1998
Qualifications (if required): public member			
Board of Speech Pathologists and Audiologists (Commerce)			
Ms. Linda Solem	Governor	Carrier	5/20/1994
Kalispell			12/31/1996
Qualifications (if required): speech pathologist			
Community Services Advisory Council (Governor)			
Ms. Norma Bixby	Governor	Spotted Elk	5/19/1994
Lame Deer			7/1/1995
Qualifications (if required): represents Native Americans			
Executive Board of Montana College of Mineral Science & Technology (Education)			
Ms. Catherine Williams	Governor	Barry	5/19/1994
Butte			4/15/1997
Qualifications (if required): public member			
Executive Board of Eastern Montana College (Education)			
Ms. Kelly Holmes	Governor	Willis	5/19/1994
Bozeman			4/15/1997
Qualifications (if required): public member			
Executive Board of Montana State University (Education)			
Ms. Jenny Martin	Governor	Morgan	5/19/1994
Bozeman			4/15/1997
Qualifications (if required): public member			

BOARD AND COUNCIL APPOINTEES FROM MAY, 1994

Appointee	Appointed by	Succeeds	Appointment/End Date
Executive Board of Northern Montana College (Education)			
Ms. Debbie Leeds	Governor	reappointed	5/19/1994
Havre			4/15/1997
Qualifications (if required): public member			
Executive Board of Western Montana College (Education)			
Mr. Joe Womack	Governor	reappointed	5/19/1994
Dillon			4/15/1997
Qualifications (if required): public member			
Executive Board of the University of Montana (Education)			
Mr. Leonard Landa	Governor	reappointed	5/19/1994
Missoula			4/15/1997
Qualifications (if required): public member			
Family Services Advisory Council (Family Services)			
Ms. Patricia Coats	Governor	not listed	5/16/1994
Whitefish			4/15/1996
Qualifications (if required): public member			
Ms. Joan-Nell Macfadden	Governor	reappointed	5/16/1994
Great Falls			4/15/1996
Qualifications (if required): public member			
Ms. Jani McCall	Governor	reappointed	5/16/1994
Billings			4/15/1996
Qualifications (if required): public member			
Ms. Barbara Sample	Governor	reappointed	5/16/1994
Billings			4/15/1996
Qualifications (if required): public member			

BOARD AND COUNCIL APPOINTEES FROM MAY, 1994

Appointee	Appointed by	Succeeds	Appointment/End Date
Flathead Basin Commission (Governor)			
Mr. Jerry Sorensen Kalispell Qualifications (if required): public member	Governor	Abell	5/19/1994 10/1/1997
Historical Society Board of Trustees (Historical Society)			
Ms. Ana Brenden Scobey Qualifications (if required): public member	Governor	Reger	5/31/1994 7/1/1995
Ms. Ruby Settle Wibaux Qualifications (if required): public member	Governor	Poulsen	5/31/1994 7/1/1997
Montana Arts Council (Education)			
Ms. Jackie Parsons Browning Qualifications (if required): public member	Governor	Horse Capture	5/19/1994 2/1/1998
State Library Commission (Education)			
Ms. Eleanor N. Gray Miles City Qualifications (if required): public member	Governor	Taylor	5/22/1994 5/22/1997
Ms. Peggy Guthrie Choteau Qualifications (if required): public member	Governor	reappointed	5/22/1994 5/22/1997

VACANCIES ON BOARDS AND COUNCILS -- July 1, 1994 through September 30, 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 VI		
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		
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 -- July 1, 1994 through September 30, 1994

Board/current position holder	Appointed by	Term end
Board of Hearing Aid Dispensers (Commerce)		
Dr. Wilson Higgs, Kalispell Qualifications (if required): otolaryngologist	Governor	7/1/1994
Mr. James Lopez, Kalispell Qualifications (if required): hearing aid dispenser	Governor	7/1/1994
Mr. Byron Randall, Kalispell Qualifications (if required): hearing aid dispenser	Governor	7/1/1994
Board of Landscape Architects (Commerce)		
Ms. Jean Stephenson, Helena Qualifications (if required): public member	Governor	7/1/1994
Mr. Patrick A. Thomas, Kalispell Qualifications (if required): licensed landscape architect	Governor	7/1/1994
Board of Medical Examiners (Commerce)		
Dr. James Bonnet, Kalispell Qualifications (if required): doctor of medicine	Governor	9/1/1994
Dr. Robert Brace, Billings Qualifications (if required): podiatrist	Governor	9/1/1994
Mr. David B. Huebner, Great Falls Qualifications (if required): podiatrist	Governor	9/1/1994
Dr. Esther Larson, Helena Qualifications (if required): doctor of osteopathy	Governor	9/1/1994
Board of Morticians (Commerce)		
Mr. Guy W. Miser, Fort Benton Qualifications (if required): licensed mortician	Governor	7/1/1994

VACANCIES ON BOARDS AND COUNCILS -- July 1, 1994 through September 30, 1994

Board/current position holder	Appointed by	Term end
Board of Nursing (Commerce)		
Ms. Helen Carey, Boulder Qualifications (if required): public member	Governor	7/1/1994
Ms. Laura A. Lenau, Miles City Qualifications (if required): registered nurse	Governor	7/1/1994
Ms. Blanche Proul, Anaconda Qualifications (if required): public member	Governor	7/1/1994
Ms. Suzzie Thomas, Stevensville Qualifications (if required): licensed practical nurse	Governor	7/1/1994
Board of Pharmacy (Commerce)		
Mr. Robert J. Kelley, Helena Qualifications (if required): pharmacist	Governor	7/1/1994
Mr. H. Dean Mikes, Jr., Missoula Qualifications (if required): hospital pharmacist	Governor	7/1/1994
Board of Physical Therapy Examiners (Commerce)		
Ms. Charlotte Fannon, Billings Qualifications (if required): physical therapist	Governor	7/1/1994
Board of Private Security Patrol Officers and Investigators (Commerce)		
Mr. Jeffrey "Jeff" T. Patterson, Missoula Qualifications (if required): private investigator	Governor	8/1/1994
Mr. Joseph H. Servel, Missoula Qualifications (if required): licensed private investigator	Governor	8/1/1994
Sheriff Bill Slaughter, Bozeman Qualifications (if required): sheriff	Governor	8/1/1994

VACANCIES ON BOARDS AND COUNCILS -- July 1, 1994 through September 30, 1994

Board/current position holder	Appointed by	Term end
Board of Private Security Patrol Officers and Investigators (Commerce) cont.		
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		
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 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		

VACANCIES ON BOARDS AND COUNCILS -- July 1, 1994 through September 30, 1994

Board/current position holder	Appointed by	Term end
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' Assocociation		
Mr. Richard Periman, Butte	Governor	8/22/1994
Qualifications (if required): representative of Montana Archaeological Assocociation		
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		
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		

VACANCIES ON BOARDS AND COUNCILS -- July 1, 1994 through September 30, 1994

Board/current position holder	Appointed by	Term end
Council for Transportation of Hazardous Wastes & Materials (Natural Resources and Conservation)		
Mr. Rick Bartos, Helena Qualifications (if required): none specified	Governor	9/22/1994
Mr. Dennis Christenson, Kalispell Qualifications (if required): none specified	Governor	9/22/1994
Mr. John Delano, Helena Qualifications (if required): none specified	Governor	9/22/1994
Mr. Dave Galt, Helena Qualifications (if required): none specified	Governor	9/22/1994
Mr. William K. Good, Jr., Helena Qualifications (if required): none specified	Governor	9/22/1994
Colonel Robert Griffith, Helena Qualifications (if required): none specified	Governor	9/22/1994
Mr. Ben Havdahl, Helena Qualifications (if required): none specified	Governor	9/22/1994
Mr. Greg Munther, Missoula Qualifications (if required): none specified	Governor	9/22/1994
Mr. Duane Robertson, Helena Qualifications (if required): none specified	Governor	9/22/1994
Mr. George Teslovick, Great Falls Qualifications (if required): none specified	Governor	9/22/1994

VACANCIES ON BOARDS AND COUNCILS -- July 1, 1994 through September 30, 1994

Board/current position holder	Appointed by	Term end
Family Support Services Advisory Council (Social and Rehabilitation Services)		
Ms. Linda Botten, Bozeman Qualifications (if required): none specified	Governor	9/9/1994
Ms. Sylvia Danforth, Miles City Qualifications (if required): none specified	Governor	9/9/1994
Ms. Laurie DeLong, Helena Qualifications (if required): public member	Governor	9/9/1994
Ms. Becky Fleming, Helena Qualifications (if required): none specified	Governor	9/9/1994
Ms. Sue Forest, Missoula Qualifications (if required): none specified	Governor	9/9/1994
Ms. Nita Freeman, Helena Qualifications (if required): none specified	Governor	9/9/1994
Ms. Margaret Grogan, Great Falls Qualifications (if required): none specified	Governor	9/9/1994
Senator Ethel M. Harding, Polson Qualifications (if required): none specified	Governor	9/9/1994
Mr. John Holbrook, Helena Qualifications (if required): public member	Governor	9/9/1994
Ms. Beth Kenny, Helena Qualifications (if required): none specified	Governor	9/9/1994
Mr. Ted Maloney, Missoula Qualifications (if required): none specified	Governor	9/9/1994

VACANCIES ON BOARDS AND COUNCILS -- July 1, 1994 through September 30, 1994

Board/current position holder	Appointed by	Term end
Family Support Services Advisory Council (Social and Rehabilitation Services) cont.		
Ms. Sandi Marisdotter, Helena Qualifications (if required): none specified	Governor	9/9/1994
Mr. Dan McCarthy, Helena Qualifications (if required): none specified	Governor	9/9/1994
Ms. Jeanette McCormick, Choteau Qualifications (if required): none specified	Governor	9/9/1994
Ms. Maria Pease, Lodge Grass Qualifications (if required): none specified	Governor	9/9/1994
Mr. Bill Prickett, Great Falls Qualifications (if required): public member	Governor	9/9/1994
Ms. Barbara Stefanic, Laurel Qualifications (if required): public member	Governor	9/9/1994
Mr. Pete Surdock, Helena Qualifications (if required): none specified	Governor	9/9/1994
Ms. Chris Volinkaty, Missoula Qualifications (if required): none specified	Governor	9/9/1994
Ms. Judy Wright, Helena Qualifications (if required): none specified	Governor	9/9/1994

VACANCIES ON BOARDS AND COUNCILS -- July 1, 1994 through September 30, 1994

Board/current position holder	Appointed by	Term end
Historical Society Board of Trustees (Education)		
Mr. William R. Mackay, Roscoe Qualifications (if required): none specified	Governor	7/1/1994
Ms. Susan R. McDaniel, Miles City Qualifications (if required): none specified	Governor	7/1/1994
Ms. Marjorie W. King, Winnett Qualifications (if required): public member	Governor	7/1/1994
Rock Creek Advisory Council (Natural Resources and Conservation)		
Mr. Karl Englund, Missoula Qualifications (if required): none specified	Director	9/3/1994
Ms. Lorraine Gillies, Philipsburg Qualifications (if required): none specified	Director	9/3/1994
Mr. Chris Marchion, Anaconda Qualifications (if required): none specified	Director	9/3/1994
Mr. Jim Posewitz, Helena Qualifications (if required): none specified	Director	9/3/1994
Ms. Tracy Stone Manning, Missoula Qualifications (if required): none specified	Director	9/3/1994
Mr. Greg Tollefson, Missoula Qualifications (if required): none specified	Director	9/3/1994
Mr. Wayne Wetzel, Helena Qualifications (if required): represents DNRC	Director	9/3/1994

VACANCIES ON BOARDS AND COUNCILS -- July 1, 1994 through September 30, 1994

Board/current position holder	Appointed by	Term end
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 Charlie Russell Country		
Mr. Art Peterson, Billings	Governor	7/1/1994
Qualifications (if required): representative of Yellowstone Country and camping		
Ms. Velda Shelby, Ronan	Governor	7/1/1994
Qualifications (if required): Native American		
Transportation of Hazardous Wastes and Materials (Natural Resources and Conservation)		
Mr. Pat Keim, Helena	Governor	9/22/1994
Qualifications (if required): none specified		
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	Governor	8/20/1994
Qualifications (if required): rep. District VI and a Democrat		

VACANCIES ON BOARDS AND COUNCILS -- July 1, 1994 through September 30, 1994

Board/current position holder	Appointed by	Term end
Wheat and Barley Committee (Agriculture) cont.		
Mr. Richard E. Sampsen, Dagmar	Governor	8/20/1994
Qualifications (if required): rep. District I and Democrat		