RESERVE

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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 16

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 The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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NOTICE SECTION

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the proposed amendment of ARM 4.4.312	)	NOTICE OF PROPOSED AMENDMENT OF ARM 4.4.312 RELATING TO THE PROCESS OF PAYMENT FOR LOSSES

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On September 24, 1994 the Department of Agriculture proposes to amend ARM 4.4.312 pertaining to the process of payment for losses.

2. The rule as proposed to be amended reads as follows: (New matter underlined, deleted matter interlined)

4.4.312 PROCESS OF PAYMENT FOR LOSSES (1) Any losses occurring under ~~the policy~~ policies issued for this application shall be payable ~~in two parts with state warrants~~ within forty (40) days of the occurrence of the loss as follows: ~~any amount owing for current or delinquent state hail insurance shall be deducted from one-half the adjustment and forty (40) days of the occurrence of the loss. The balance due on the loss shall be mailed to the insured after the close of the hail season.~~

(a) Loss payment shall be applied to outstanding policy premium (regardless of location in Montana); loss payment shall be applied to policy of loss first, remaining loss payment shall be applied to additional policies of record in descending order based on date of issuance.

(b) Policy holders will be identified by tax identification number. Policies having the same tax identification number will be considered the same entity and loss payment policies enacted accordingly.

AUTH: 80-2-201, MCA IMP: 80-2-244, MCA

REASON:

The Montana State Hail Board held its annual meeting January 24, 1994. At this meeting the Hail Board instructed department personnel to clarify rule 4.4.312 concerning loss payment to policy holders. The Board felt that the rule as it existed was too vague and desired a more specific method of payment.

3. Interested persons may present their data, views, or arguments either orally or in writing to the Montana State Board of Hail Insurance, P.O.Box 200201, Helena, MT 59620, no later than September 22, 1994.

4. If a person who is directly affected by the proposed amendment 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 Ralph Peck, Administrator, Agricultural Development Division, Ag/Livestock Building, P.O.Box 200201, Helena, MT 59620, no later than September 22, 1994.

5. If the agency 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 agency or subdivision or from any 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 and mailed to all interested persons.

Leo V. Giacometto, Director
DEPARTMENT OF AGRICULTURE

8/15/94
Timothy J. Meloy, Attorney
Rule Reviewer
DEPARTMENT OF AGRICULTURE

Certified to the Secretary of State Office August 15, 1994

BEFORE THE BOARD OF NURSING
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed amendment of a rule pertaining to fees	)))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF 8.32.425 FEES

TO: All Interested Persons:

1. On September 14, 1994, at 9:00 a.m., a public hearing will be held in the Professional and Occupational Licensing Bureau conference room, Arcade Building, Lower Level, 111 N. Jackson, Helena, Montana, to consider the proposed amendment of the above-stated rule.

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

"8.32.425 FEES (1) The fee for licensure (RN or LPN) by examination (NCLEX) is ~~$35~~ 70, payable at the time the application is submitted. This fee is retained by the board if the application is withdrawn.

(2) The fee for repeating the examination (NCLEX) for RN or LPN will be ~~$35~~ 70.

(3) The fee for licensure (RN or LPN) by endorsement is ~~$35~~ 70, payable at the time the application is submitted. This fee is retained by the board if the application is withdrawn.

(4) The application fee for specialty area recognition shall be ~~$25~~ 50, and a fee of ~~$10~~ 25 for each annual renewal thereafter.

(5) The license (RN or LPN) renewal fee is ~~$20~~ 40 per year.

(6) The fee to reactivate a license (RN or LPN) is ~~$20~~ 40.

(7) The fee for late renewal of a license is double the regular renewal fee.

(8) The prescriptive authority application fee is ~~$60~~ 75.

(9) The renewal fee for prescriptive authority is $50.

(10) The verification fee is ~~$10~~ 25.

(11) The fee for a duplicate renewal certificate is $10."

Auth: Sec. 37-8-202, MCA; IMP, Sec. 37-1-134, 37-8-202, MCA

REASON: The proposed fee increases are necessary to reflect changes in the Board of Nursing's functions. The Nurses Assistance Program has been implemented; an investigator has been hired; and other new programs have been implemented. The Board operated on reserve funds for Fiscal Year 1994 to decrease the fund balance. The budget expenditures for Fiscal Year 1995 are projected to be $602,508. Income under the current fee schedule would be

$314,800. The fee increase is projected to generate revenue of $730,175, which amount would cover the expenditures for Fiscal Year 1995. It is necessary to replace money spent from the reserve fund. This increase should fund the Board's program through Fiscal Year 1997.

3. Interested persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Board of Nursing, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, to be received no later than 5:00 p.m., September 22, 1994.

4. Lance Melton, attorney, has been designated to preside over and conduct this hearing.

BOARD OF NURSING
NANCY HEYER, CHAIRMAN

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


ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, August 15, 1994.

BEFORE THE BOARD OF OUTFITTERS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed amendment of rules pertaining to fees and misconduct	))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF 8.39.518 FEES and 8.39.708 MISCONDUCT

TO: All Interested Persons:

1. On September 15, 1994, at 9:00 a.m., a public hearing will be held in the Professional and Occupational Licensing Bureau conference room, Arcade Building, Lower Level, 111 N. Jackson, Helena, Montana, to consider the proposed amendment of the above-stated rules.

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

"8.39.518 LICENSURE--FEES FOR OUTFITTER, OPERATIONS PLAN, AND PROFESSIONAL GUIDE (1) Fees for outfitters, operations plan, and professional guides shall be as follows:

(a)	new outfitter license	
(i)	application processing	$ ~~50~~ 300
(ii)	examination	~~50~~ 100
(iii)	investigation	~~175~~ 300
(iv)	annual license	~~100~~ 200
(b)	amendment to outfitter license	
(i)	application processing	~~50~~ 75
(ii)	examination	~~50~~ 75
(c)	renewal of outfitter license	
(i)	annual license	~~100~~ 150
(ii)	late renewal penalty	~~50~~ 300
(iii)	inactive status	~~100~~ 150
(d)	new operations plan	
(i)	review and processing	~~75~~ 125
(ii)	equipment inspection	~~200~~ 300
(e)	amendment to operations plan	
(i)	review and processing	~~75~~ 100
(ii)	equipment inspection	~~200~~ 300
(f)	new professional guide license	
(i)	processing	~~25~~ 75

(2) New applicants for an outfitter license shall include, with application for license, payment in the amount of $~~375~~ 900 (this does not include fees related to operation plan), which shall be nonrefundable, except:

(a) an applicant failing to meet the qualifications to take the examination shall be refunded the entire amount less the application processing fee; and,

(b) an applicant failing to pass the examination shall be refunded the entire amount less the application processing fee and the examination fee.

(3) Applicants for amendment to license shall include, with application for amendment, payment in the amount of $~~100~~

150, ~~$50~~ 75 of which shall be refunded if examination is not necessary for the amendment.

(4) Applicants for amendment to operations plan shall include, with application for amendment, payment in the amount of ~~$275~~ 400, ~~$200~~ 300 of which shall be refunded if inspection of equipment is not necessary for the amendment.

(5) Operations plans submitted for approval by the board requiring no inspection, such as in the case of an outfitter presently licensed submitting an operations plan to comply with this chapter, shall be accompanied by the review and processing fee only.

(6) Minor amendments to license or operations plan, not involving change to type of license or operation or area of operation, shall not require a fee."

Auth: Sec. 37-47-201, MCA; IMP, Sec. 37-1-134, 37-47-306, MCA

8.39.708 MISCONDUCT Misconduct, for purposes of defining subsection (9) of 37-47-341, MCA, is determined by the board to mean conduct of either a licensed outfitter or licensed professional guide which fails to conform to the accepted standards of the outfitting and guiding profession and which could jeopardize the health, safety and welfare of the public, and shall include the following:

(1) any violation of ARM 8.39.701 through 8.39.707;

(2) failure to account, in records submitted to the board with the outfitter's renewal application, for every client certified under the set aside license as provided in 87-2-511, MCA;

(3) failure to cooperate with a board-authorized investigation;

(4) resorting to fraud, misrepresentation or deceit in taking the licensing examination, or ~~in~~ attempting to obtain or obtaining an outfitting, guiding, hunting or fishing license;

(5) aiding, abetting, assisting, or hiring an individual to violate or circumvent any of the laws relating to licensure under Title 37, chapter 47, MCA;

(6) acting beyond the scope of activities for which the individual is licensed;

(7) having hunting or fishing privileges suspended, revoked, placed on probation, or voluntarily surrendered in the state of Montana, or any other jurisdiction;

(8) having a license to act as an outfitter or guide denied, suspended, revoked, placed on probation, or voluntarily surrendered in another jurisdiction;

(9) pleading guilty to or having been found guilty of a crime involving fraud, deceit, theft, or other deception;

(10) violation of a disciplinary order of the board;

(11) failure to properly license a guide in accordance with ARM 8.39.505~~.~~;

(12) providing or offering to provide services as an outfitter or guide without a current, active license to do so, whether before obtaining a license, or during a time when the license has not been renewed;

(13) taking or attempting to take a game animal or fish

whether providing services or not, in violation of legal limits or without a proper license to do so;

(14) allowing or facilitating the use of an outfitting, guiding, hunting, or fishing license by anyone other than the individual to whom the license was legally issued.

Auth: Sec. 37-47-201, MCA; IMP, Sec. 37-47-341, MCA

REASON: The proposed fee increases are necessary to meet the existing budget of the Board. Since 1993, the Board has added an executive director, and has increased investigations and enforcement of the outfitting industry and of illegal outfitting. The Board operated on reserve funds for Fiscal Year 1994 to decrease its fund balance. The budget expenditures for Fiscal Year 1995 are projected to be $320,000. Income under the current fee schedule would be $306,151. The fee increase is necessary to generate sufficient revenue to continue Board operations through the end of the fiscal year.

The proposed additions to the misconduct rule are necessary to further identify actions that could result in disciplinary action against a licensed outfitter or guide, or denial of a license to a prospective licensee. This rule is being further developed to follow the intent of the legislature in granting the Board the authority to define misconduct by rule.

3. Interested persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Board of Outfitters, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, to be received no later than 5:00 p.m., September 22, 1994.

4. Lance Melton, attorney, has been designated to preside over and conduct this hearing.

BOARD OF OUTFITTERS
O. KURT HUGHES, CHAIRMAN

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

_____
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, August 15, 1994.

BEFORE THE DEPARTMENT OF
FAMILY SERVICES OF THE
STATE OF MONTANA

In the matter of the amendment of Rules 11.12.413 and 11.12.416, the repeal of Rule 11.12.417 and the adoption of Rules I, II, III, IV, and V, VI, VII, and VIII pertaining to medical necessity requirements of therapeutic youth group homes.	NOTICE OF PROPOSED AMENDMENT OF RULES 11.12.413 AND 11.12.416, THE REPEAL OF RULE 11.14.417, AND THE ADOPTION OF RULES I, II, III, IV, V, VI, VII AND VIII PERTAINING TO MEDICAL NECESSITY REQUIREMENTS OF THERAPEUTIC YOUTH GROUP HOMES

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On October 13, 1994, the Department of Family Services proposes to amend ARM 11.12.413 and 11.12.416, repeal ARM 11.12.417, and adopt Rules I, II, III, IV, V, VI, VII and VIII pertaining to medical necessity requirements of therapeutic youth group homes.

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

11.12.413 YOUTH GROUP HOME, STAFF (1) through (5) remain the same.

(6) Moderate level therapeutic youth group home providers must meet additional minimum staffing requirements to provide a therapeutic environment and treatment interventions identified in the child's individual treatment plan as set out in [Rule II] in regard to medical necessity and as follows for the purpose of licensing:

(a) Child/staff ratio must be no more than 4:1 each day for a 15 hour period beginning at, or between, 7:00 a.m. and 7:30 a.m., (or beginning at or between some other reasonable morning half-hour which is approximately 15 hours prior to the bedtime of the children), when children are in care.

(b) Child/awake staff ratio must be no more than 8:1 each night for a nine hour period beginning no earlier than 15 hours from the time day-time staffing of 4:1 is initiated.

~~(c) Each program manager shall be responsible for no more than eight children.~~

~~(d) There must be adequate staff to allow the LCS, or the program manager who is providing services under the supervision of a masters or higher level clinician, to conduct the following on a weekly basis:~~

~~(i) two group treatment sessions per child;~~

~~(ii) one individual treatment session per child;~~

~~(iii) one treatment team meeting; and~~

~~(iv) family therapy when appropriate and medically necessary.~~

~~(c) Each LCS shall be responsible for no more than 16 children.~~

(7) Campus based level therapeutic youth group home providers must meet additional minimum staffing requirements to provide a therapeutic environment and treatment interventions identified in the child's individual treatment plan as set out in [Rule III] in regard to medical necessity and as follows for the purpose of licensing:

(a) Child/staff ratio must be no more than 4:1 each day for a 15 hour period beginning at, or between, 7:00 a.m. and 7:30 a.m., (or beginning at or between some other reasonable morning half-hour which is approximately 15 hours prior to the bedtime of the children), when children are in care.

(b) Child/awake staff ratio must be no more than 8:1 each night for a nine hour period beginning no earlier than 15 hours from the time day-time staffing of 4:1 is initiated.

~~(c) Each program manager shall be responsible for no more than four children.~~

~~(d) There must be adequate staff to allow the LCS, the program manager and/or professional support staff who provide services under the supervision of a masters or higher level clinician, to implement individualized treatment plans developed by the treatment team. Documentation of individual, group and family therapy must be completed for each session and be included in quarterly treatment summaries. Treatment plans shall include, but are not limited to:~~

~~(i) specific treatment plan objectives and interventions which are carried out in the treatment environment and documented by daily charting;~~

~~(ii) one age-appropriate individual therapy session per week;~~

~~(iii) two age-appropriate group therapy sessions per week; and~~

~~(iv) family therapy sessions when appropriate and medically necessary.~~

~~(e) Individualized treatment plans are monitored weekly by the treatment team which includes but is not limited to, the directors of clinical services, operational services, and educational services, and the consulting child psychiatrist.~~

~~(f) Each LCS shall be responsible for no more than eight children.~~

~~(g) Each campus based level therapeutic youth group home shall either employ or contract for a .25 full-time social worker for each eight children in care. The social worker shall meet the minimum qualifications of a bachelor's degree and two years of related experience. Under this subsection, .25 full-time social worker means a social worker working a minimum of 10 hours per week.~~

~~(h) Each campus based therapeutic youth group home shall either employ or contract for a .25 full-time clinical director for each eight children in care. The clinical director shall be licensed by the Montana board of psychologists. Under this subsection, .25 full-time clinical director means a clinical~~

~~director working a minimum of 10 hours per week.~~

~~(i) Each campus based level therapeutic youth group home shall either employ or contract for a .25 full-time director of operations for each eight children in care. The director of operations position is a master's level position. Under this subsection, .25 full-time director of operations means a director of operations working a minimum of 10 hours per week.~~

~~(j) Each campus based level therapeutic youth group home shall either employ or contract for a .20 full-time registered nurse for each eight children in care. The registered nurse shall be licensed by the Montana board of nursing. Under this subsection, .20 full-time registered nurse means a registered nurse working a minimum of 8 hours per week.~~

(8) Intensive level therapeutic youth group home providers must meet additional minimum staffing requirements to provide a therapeutic environment and treatment interventions identified in the child's individual treatment plan as set out in [Rule IV] in regard to medical necessity and as follows for the purpose of licensing:

(a) Child/staff ratio must be no more than 2:1 each day for a fifteen hour period beginning at, or between, 7:00 a.m. and 7:30 a.m., (or beginning at or between some other reasonable morning half-hour which is approximately fifteen hours prior to the bed-time of the children), when children are in care.

(b) Child/awake staff ratio must be no more than 4:1 each night for a nine hour period beginning no earlier than fifteen hours from the time that day-time staffing of 4:1 is initiated, when children are in care.

~~(c) Each program manager shall be responsible for no more than four children.~~

~~(d) There must be adequate staff to allow the LCS, or the program manager who is providing services under the supervision of a masters or higher level clinician, to conduct the following on a weekly basis:~~

~~(i) three group treatment sessions per child;~~

~~(ii) two individual treatment sessions per child;~~

~~(iii) two treatment team meetings; and~~

~~(iv) family therapy when appropriate and medically necessary.~~

~~(e) Each LCS shall be responsible for no more than 12 children.~~

~~(9) In addition to the 4 hours of orientation referenced in subsection (4) above, child care staff in a moderate, campus based or intensive level therapeutic youth group home must receive 15 hours of initial training, and each year must complete 15 hours of additional in-service training in an area directly related to their duties. Initial and additional training must include the use of physical and non-physical methods of controlling children and adolescents to assure protection and safety of the client and staff.~~

~~(10) These rules do not preclude a medicaid eligible youth from receiving individual therapy services in addition to moderate or intensive level therapeutic youth group home services when there is compliance with medicaid requirements and reimbursement.~~

~~(11) Each therapeutic youth group home provider must assure, and provide appropriate documentation that:~~

~~(a) all children receiving treatment in the therapeutic youth group home receive a well-child screening on an annual basis; and~~

~~(b) all children receiving chemotherapy are seen by a licensed medical doctor at least quarterly or more often as required by the accepted protocol for the prescribed chemotherapy.~~

AUTH: Sec. 41-3-1103, 41-3-1142 and 52-2-111, MCA.
IMP: Sec. 41-3-1103, 41-3-1142 and 52-2-111, MCA.

11.12.416 YOUTH GROUP HOME, CHILDREN'S CASE RECORDS
(1) remains the same.
(2) The case record of each child receiving moderate, campus based or intensive level therapeutic youth group home services must contain the ~~following~~ additional documentation set out in [Rule VIII]:

~~(a) referral form/authorization for services;~~

~~(b) medical necessity statement;~~

~~(c) individual treatment plan, signed by the LCS, which documents the child's response to treatment (progress or lack of progress), and the staff's interaction and involvement with the client; and~~

~~(d) weekly clinical progress notes, reviewed and signed by the LCS, which summarize the child's program participation and psychosocial/behavioral status and functioning~~.

AUTH: Sec. 41-3-1103, 41-3-1142 and 52-2-111, MCA.
IMP: Sec. 41-3-1103, 41-3-1142 and 52-2-111, MCA.

Rule I. THERAPEUTIC YOUTH GROUP HOME, MEDICAL NECESSITY CRITERIA (1) Moderate, campus based and intensive level therapeutic youth group home services must be ordered by a licensed physician, a licensed clinical psychologist, a licensed master level social worker (MSW), or a licensed professional counselor (LPC), and must be authorized by the department.

(a) Providers of moderate level therapeutic youth group home services shall accept placement of only those children who meet at least three of the medical necessity criteria listed in subsection (2) below.

(b) Providers of campus based level therapeutic youth group home services shall accept placement of only those children who meet at least four of the medical necessity criteria listed in subsection (2) below.

(c) Providers of intensive level therapeutic youth group home services shall accept placement of only those children who meet at least five of the medical necessity criteria listed in subsection (2) below.

(2) Medical necessity criteria:

(a) The child is at risk of psychiatric hospitalization or placement in a residential treatment facility licensed by the department of health and environmental sciences of the state of Montana.

(b) The child has been removed from his or her home and has a mental or emotional disorder, the severity of which impairs his or her ability to function in a less restrictive environment.

(c) The child exhibits behavior which indicates disturbances of a severe or persistent nature, or is at risk of developing disturbances due to mental illness or a history of sexual, physical or emotional trauma.

(d) The child is currently placed, or has a history of previous placement(s), at the inpatient psychiatric hospital or a residential treatment facility licensed by the department of health and environmental sciences of the state of Montana and continues to require 24 hour supervision and treatment at a less restrictive level of care.

AUTH: Sec. 41-3-1103, 41-3-1142 and 52-2-111, MCA.
IMP: Sec. 41-3-1103, 41-3-1142 and 52-2-111, MCA.

Rule II. MEDICAL NECESSITY STAFFING - MODERATE LEVEL THERAPEUTIC YOUTH GROUP HOMES (1) Moderate level therapeutic youth group homes are subject to the staffing/treatment requirements of this rule in addition to the applicable staffing requirements of ARM 11.14.413.

(2) Each program manager shall be responsible for no more than eight children.

(3) There must be adequate staff to allow the LCS, or the program manager who is providing services under the supervision of a masters or higher level clinician, to conduct the following on a weekly basis:

(a) two group treatment sessions per child;

(b) one individual treatment session per child;

(c) one treatment team meeting; and

(d) family therapy when appropriate and medically necessary.

(4) Each LCS shall be responsible for no more than 16 children.

AUTH: Sec. 41-3-1103, 41-3-1142 and 52-2-111, MCA.
IMP: Sec. 41-3-1103, 41-3-1142 and 52-2-111, MCA.

Rule III. MEDICAL NECESSITY STAFFING - CAMPUS BASED LEVEL THERAPEUTIC YOUTH GROUP HOMES (1) Campus based level therapeutic youth group homes are subject to the staffing/treatment requirements of this rule in addition to the applicable staffing requirements of ARM 11.14.413.

(2) Each program manager shall be responsible for no more than four children.

(3) There must be adequate staff to allow the LCS, the program manager and/or professional support staff who provide services under the supervision of a masters or higher level clinician, to implement individualized treatment plans developed by the treatment team. Documentation of individual, group and family therapy must be completed for each session and be included in quarterly treatment summaries. Treatment plans shall include, but are not limited to:

(a) specific treatment plan objectives and interventions which are carried out in the treatment environment and documented by daily charting;

(b) one age-appropriate individual therapy session per week;

(c) two age-appropriate group therapy sessions per week; and

(d) family therapy sessions when appropriate and medically necessary.

(4) Individualized treatment plans are monitored weekly by the treatment team which includes but is not limited to, the directors of clinical services, operational services, and educational services, and the consulting child psychiatrist.

(5) Each LCS shall be responsible for no more than eight children.

(6) Each campus based level therapeutic youth group home shall either employ or contract for a .25 full-time social worker for each eight children in care. The social worker shall meet the minimum qualifications of a bachelor's degree and two years of related experience. Under this subsection, .25 full-time social worker means a social worker working a minimum of 10 hours per week.

(7) Each campus based therapeutic youth group home shall either employ or contract for a .25 full-time clinical director for each eight children in care. The clinical director shall be licensed by the Montana board of psychologists. Under this subsection, .25 full-time clinical director means a clinical director working a minimum of 10 hours per week.

(8) Each campus based level therapeutic youth group home shall either employ or contract for a .25 full-time director of operations for each eight children in care. The director of operations position is a master's level position. Under this subsection, .25 full-time director of operations means a director of operations working a minimum of 10 hours per week.

(9) Each campus based level therapeutic youth group home shall either employ or contract for a .20 full-time registered nurse for each eight children in care. The registered nurse shall be licensed by the Montana board of nursing. Under this subsection, .20 full-time registered nurse means a registered nurse working a minimum of 8 hours per week.

AUTH: Sec. 41-3-1103, 41-3-1142 and 52-2-111, MCA.
IMP: Sec. 41-3-1103, 41-3-1142 and 52-2-111, MCA.

Rule IV. MEDICAL NECESSITY STAFFING - INTENSIVE LEVEL THERAPEUTIC YOUTH GROUP HOMES (1) Intensive level therapeutic youth group homes are subject to the staffing/treatment requirements of this rule in addition to the applicable staffing requirements of ARM 11.14.413.

(2) Each program manager shall be responsible for no more than four children.

(3) There must be adequate staff to allow the LCS, or the program manager who is providing services under the supervision of a masters or higher level clinician, to conduct the following on a weekly basis:

(a) three group treatment sessions per child;
(b) two individual treatment sessions per child;
(c) two treatment team meetings; and
(d) family therapy when appropriate and medically necessary.

(4) Each LCS shall be responsible for no more than 12 children.

AUTH: Sec. 41-3-1103, 41-3-1142 and 52-2-111, MCA.
IMP: Sec. 41-3-1103, 41-3-1142 and 52-2-111, MCA.

Rule V. MEDICAL NECESSITY, ADDITIONAL TRAINING REQUIREMENTS (1) In addition to the 4 hours of orientation referenced in ARM 11.12.413 (4), child care staff in a moderate, campus based or intensive level therapeutic youth group home must receive 15 hours of initial training, and each year must complete 15 hours of additional in-service training in an area directly related to their duties. Initial and additional training must include the use of physical and non-physical methods of controlling children and adolescents to assure protection and safety of the client and staff.

AUTH: Sec. 41-3-1103, 41-3-1142 and 52-2-111, MCA.
IMP: Sec. 41-3-1103, 41-3-1142 and 52-2-111, MCA.

Rule VI. MEDICAL NECESSITY, ADDITIONAL SERVICES (1) These rules do not preclude a medicaid eligible youth from receiving individual therapy services in addition to moderate or intensive level therapeutic youth group home services when there is compliance with medicaid requirements and reimbursement.

AUTH: Sec. 41-3-1103, 41-3-1142 and 52-2-111, MCA.
IMP: Sec. 41-3-1103, 41-3-1142 and 52-2-111, MCA.

RULE VII. MEDICAL NECESSITY, WELL-CHILD SCREENING AND CHEMOTHERAPY (1) Each therapeutic youth group home provider must assure, and provide appropriate documentation that:

(a) all children receiving treatment in the therapeutic youth group home receive a well-child screening on an annual basis; and

(b) all children receiving chemotherapy are seen by a licensed medical doctor at least quarterly or more often as required by the accepted protocol for the prescribed chemotherapy.

AUTH: Sec. 41-3-1103, 41-3-1142 and 52-2-111, MCA.
IMP: Sec. 41-3-1103, 41-3-1142 and 52-2-111, MCA.

RULE VIII. MEDICAL NECESSITY, ADDITIONAL CASE RECORDS (1) The case record of each child receiving moderate, campus based or intensive level therapeutic youth group home services must contain the documentation required by this rule in addition to the documentation required by ARM 11.12.413:

(a) referral form/authorization for services;
(b) medical necessity statement;

(c) individual treatment plan, signed by the LCS, which documents the child's response to treatment (progress or lack of progress), and the staff's interaction and involvement with the client; and

(d) weekly clinical progress notes, reviewed and signed by the LCS, which summarize the child's program participation and psychosocial/behavioral status and functioning.

3. The rule to be repealed, 11.12.417 THERAPEUTIC YOUTH GROUP HOME, MEDICAL NECESSITY CRITERIA is on pages 11-590 and 11-591, ARM.

AUTH: Sec. 41-3-1103, 41-3-1142 and 52-2-111, MCA.
IMP: Sec. 41-3-1103, 41-3-1142 and 52-2-111, MCA.

4. Those requirements of ARM 11.14.413 and 11.14.416 pertaining primarily to medical necessity of treatment as opposed to licensing requirements are proposed to be deleted from the licensing rules. The deleted requirements are proposed to be adopted into the new rules, Rules II through VIII. Rule 11.12.417, the rule setting out specific medical necessity requirements for therapeutic youth group homes, is proposed to be repealed, and its entire text is proposed for adoption in Rule I.

The changes will benefit department workers and providers by clearly differentiating between licensing and medical necessity requirements. In addition, the changes will clarify that medical necessity requirements should be checked pursuant to utilization review, while the other requirements are more appropriately addressed in a licensing study.

5. Interested persons may submit their data, views or arguments to the proposed rules in writing to the Office of Legal Affairs, Department of Family Services, 48 North Last Chance Gulch, P.O. Box 8005, Helena, Montana 59604, no later than September 23, 1994.

6. If a person who is directly affected by the proposed rules wishes to express data, views and arguments orally or in writing at a public hearing, that person must make a written request for a public hearing and submit such request, along with any written comments, to the Office of Legal Affairs, Department of Family Services, 48 North Last Chance Gulch, P.O. Box 8005, Helena, Montana 59604, no later than September 23, 1994.

7. If the Department of Family Services receives requests for a public hearing on the proposed rules from either 10% or 25, whichever is less, of those persons who are directly affected by the proposed rules, 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 are directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register.

DEPARTMENT OF FAMILY SERVICES

Hank Hudson, Director

John Melcher, Rule Reviewer

Certified to the Secretary of State, August 15, 1994.

BEFORE THE DEPARTMENT OF
FAMILY SERVICES OF THE
STATE OF MONTANA

In the matter of the adoption of Rule I pertaining to counting children considered to be in day care, and Rule II pertaining to infant needs of non-infants, and the amendment of Rule 11.14.102 pertaining to defining day care center, family day care home, and group day care home.	NOTICE OF PUBLIC HEARING ON THE PROPOSED ADOPTION OF RULE I PERTAINING TO COUNTING CHILDREN CONSIDERED TO BE IN DAY CARE, AND RULE II PERTAINING TO INFANT NEEDS OF NON-INFANTS, AND THE PROPOSED AMENDMENT OF RULE 11.14.102 PERTAINING TO DEFINING DAY CARE CENTER, FAMILY DAY CARE HOME, AND GROUP DAY CARE HOME

TO: All Interested Persons.

1. On September 20, 1994, at 1:30 p.m., a public hearing will be held in the second-floor conference room of the Department of Family Services, located at 48 North Last Chance Gulch, Helena, Montana, to consider the adoption of Rule I pertaining to counting children considered to be in day care, and Rule II pertaining to infant needs of non-infants, and the amendment of Rule 11.14.102 pertaining to defining day care center, family day care home, and group day care home.

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

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

Rule I, COUNTING CHILDREN IN CARE (1) Children of the provider's household or children who are present in the home or facility only when their own parent is also present shall not be counted in determining whether supplemental parental care is provided to three or more children.

(2) A provider of supplemental parental care to three or more children shall be licensed or registered as a day care facility.

(3) Once it is determined that registration or licensure is required under this rule, all children (except the provider's own children over the age of six) who are present during hours when supplemental parental care is provided shall be counted for determining:

(a) whether, among the three types of day care facilities, the provider must be registered as a family day care home, group day care home, or licensed as a day care center;

(b) whether the facility is in compliance with applicable

child:staff ratios;

(c) whether sufficient space is provided; and

(d) whether any other safety, health, or program requirement or registration/licensure restriction requiring counting of children is affected or violated.

(4) This rule does not apply to persons and facilities excluded from the definition of day care facility as set out in ARM 11.14.102 in regard to preschools and blood relatives.

AUTH: Sec. 52-2-704, MCA. IMP: Sec. 52-2-704; 52-2-731, MCA.

REASON: Parental and non-parental care are often combined in a household or a facility creating confusion on whether registration or licensure as a day care facility is required. Confusion also exists on registration requirements among providers of supplemental parental care for one or two children.

Rule I is intended to clarify these issues. Registration or licensure is required based on a determination that three children are receiving "supplemental parental care," on a "regular basis" as the terms are defined by ARM 11.14.102. Under the proposed rule, children of the provider's household or children who are only present when their own parent is also present are not counted for determining the presence of three children receiving supplemental parental care. This is in accord with the definition of supplemental care, and with existing practices based on the definitions of "family day care home," "group day care home," and "day care center".

After counting children in care and making a determination that facility registration or licensure is required, children must also be counted to determine facility-type, space requirements, and child:staff ratios. Under Rule I, it is intended that all children, (except the provider's children over the age of six), regardless of parental presence, be counted to determine the type of registration or licensure that must be obtained, how many children may be present given available space, and the number of staff persons who must be present.

The department also intends that children who are dropping by to play at the facility be counted. Therefore, provider's must use care in allowing for an increase in numbers as a result of such children.

The proposal for counting all children (except the provider's children over the age of six) is intended to prevent over-crowding, under-staffing, and other problems connected to supervision of groups of children. On these issues, the existing definitional exclusion on counting children of the provider over the age of six is the only applicable exclusion. This clarification is in accord with existing interpretations from the facility definitions.

The terms "provider's children" and "children of the provider's

household" are used inter-changably to indicate that the provider's stepchildren or other children who are not birth children of the provider but who are clearly residing in the facility under circumstances making them the equivalent of the provider's natural children may qualify for the blanket-exclusion.

In the Montana Child Care Act there is also an exclusion from facility registration/licensure requirements for child care situations limited to care for children who are related by blood or marriage to the provider, (Section 52-2-703(4)(a) & (14)(a), MCA), and an exclusion for care chiefly for educational purposes for children at least three years of age. Section 52-2-703(4)(a) & (4)(b). This rule-making is not intended to make changes on defining these two types of exclusions. See ARM 11.14.102(1).

Rule II. INFANT NEEDS OF NON-INFANTS (1) Providers caring for children who are not infants but whose level of development requires that they be treated as infants shall provide care to such children in compliance with the infant-care requirements of Title 11, chapter 14, subchapter 5 of the Administrative Rules of Montana.

AUTH: Sec. 52-2-704, MCA. IMP: Sec. 52-2-704; 52-2-731, MCA.

REASON: Rule II is proposed to allow for imposition of rules from subchapter 5 of chapter 14, Title 11 on care of non-infants who continue to have infant-needs. Currently, the rules in this area cover care for children only up to the age of 24 months. There should be more flexibility in determining whether a provider must treat a child as an infant under the infant-care rules. For example, many children past of the age of 24 months need diapering. However, there is no rule specifying that ARM 11.14.502, which covers diapering and toilet training, may be invoked for care requirements on caring for a child who is not defined as an "infant" under the rule.

It should be noted that the proposed adoption of Rule II is not intended to mean that children past the age of 24 months who have infant needs are to be counted as infants under the infant:staff ratio of ARM 11.14.516.

11.14.102 DEFINITIONS Subsections (1) and (2) remain the same.

(3) "Family day care home" means a place in which supplemental parental care is provided to three to six children, no more than 3 children under 2 years of age ~~from separate families on a regular basis -- including the provider's own children who are less than 6 years of age,~~ unless care is provided for infants only. For places providing care only for infants, "family day care home" means a place in which supplemental parental care is provided for up to 4 infants. No other children shall be in attendance.

(4) "Day care center" means a place in which supplemental parental care is provided to 13 or more children on a regular

~~basis, including the provider's own children who are less than 6 years of age~~.

(5) "Group day care home" means a place in which supplemental parental care is provided to 7 to 12 children on a regular basis ~~including the provider's own children who are less than 6 years of age,~~ unless care is provided for infants only. For places providing care only for infants, "group day care home" means a place in which supplemental parental care is provided for up to 8 infants. No other children shall be in attendance. The staff/infant ratio of ARM 11.14.516 applies to group day care homes. ~~all day care facilities, including group day care homes serving infants only.~~

Subsections (6) through (17) remain the same.

AUTH: Sec. 52-2-704, MCA. IMP: Sec. 52-2-704; 52-2-731, MCA.

REASON: If Rule I is adopted, the provisions in the facility definitions referencing the provider's children would be repetitive. Therefore, they are proposed to be deleted.

The amendments also delete language in the definition of group day home stating that ARM 11.14.516 applies to all day care facilities. Family day care homes that are not registered as infant-only homes may care for only three infants, while the minimum infant:staff ratio of ARM 11.14.516 is 4:1. Therefore, the language of the last sentence of (3) is changed to reference group homes only.

3. Interested persons may submit their data, views or arguments to the proposed rules either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Office of Legal Affairs, Department of Family Services, 48 North Last Chance Gulch, P.O. Box 8005, Helena, Montana 59604, no later than September 23, 1994.

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

DEPARTMENT OF FAMILY SERVICES

Hank Hudson, Director

John Melcher, Rule Reviewer

Certified to the Secretary of State, August 15, 1994.

BEFORE THE DEPARTMENT OF
FAMILY SERVICES OF THE
STATE OF MONTANA

In the matter of the amendment of Rule 11.14.103 pertaining to registration and licensing of day care facilities.	NOTICE OF PROPOSED AMENDMENT OF RULE 11.14.103 PERTAINING TO REGISTRATION AND LICENSING OF DAY CARE FACILITIES

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On October 13, 1994, the Department of Family Services proposes to amend Rule 11.14.103 pertaining to registration and licensing of day care facilities.

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

11.14.103 DAY CARE FACILITIES, REGISTRATION OR LICENSING APPLICATION (1) Any individual may apply for a registration certificate to operate a family day care home or group day care home. Any individual, agency or group may apply for a license to operate a day care center. However, an applicant who has had a previous day care application denied or who has had a day care license or registration certificate revoked or suspended may not reapply for licensure or registration within six months of the denial or revocation. If the suspension or revocation is contested and upheld after a fair hearing, reapplication may not be made until six months after the date of the decision of the hearing officer. Applications may be obtained from any district office of the department. Subsections (2) - (5) remain the same.

(6) The department, after written notice to the applicant, licensee or registrant, may deny, suspend, restrict, revoke or reduce to a provisional status a registration certificate or license upon finding that:

(a) The applicant has not met the requirements for licensure or registration set forth in these rules, and

(b) the licensee or registrant has received 3 warnings of non-compliance with the registration or licensing requirements.

(c) However, suspension or revocation may be immediate if:

(i) upon referral of suspected child abuse or neglect regarding an operating day care facility, the initial investigation reveals that there are reasonable grounds to believe that a child in the facility may be in danger of harm, suspension or revocation will be immediate; ~~or~~

(ii) the department requests and is denied access to the licensed or registered facility;

~~(c)~~ (iii) the provider has made any misrepresentations to the department, either negligent or intentional, regarding any information requested on the application form or necessary for registration or licensing purposes; or

~~(d)~~ (iv) the provider, a member of the provider's household or staff has been named as the perpetrator in a substantiated

report of child abuse or neglect as defined in ARM 11.5.515. Subsections (7) through (11) remain the same.

AUTH: Section 52-2-704, MCA. IMP: Sections 52-2-721; 52-2-732; 52-2-733, MCA .

3. The department proposes to amend (1) to clarify that after fair hearing six months must pass prior to consideration of a new application. This clarification is necessary to end confusion on the time period after fair hearing. The department also proposes amending the rule to allow for immediate suspension or revocation following a provider's refusal to allow entry by the department. The Montana Child Care Act mandates access for investigations and inspections. Providers denying access may conceal severe health or safety problems. Therefore, suspension or revocation should be immediate.

4. Interested persons may submit their data, views or arguments to the proposed amendment in writing to the Office of Legal Affairs, Department of Family Services, 48 North Last Chance Gulch, P.O. Box 8005, Helena, Montana 59604, no later than September 23, 1994.

5. If a person who is directly affected by the proposed amendment wishes to express data, views and arguments orally or in writing at a public hearing, that person must make a written request for a public hearing and submit such request, along with any written comments, to the Office of Legal Affairs, Department of Family Services, 48 North Last Chance Gulch, P.O. Box 8005, Helena, Montana 59604, no later than September 23, 1994.

6. If the Department of Family Services receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of those persons who are directly affected by the proposed amendment, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision, or from an association having no less than 25 members who are directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register.

DEPARTMENT OF FAMILY SERVICES

Hank Hudson, Director

John Melcher, Rule Reviewer

Certified to the Secretary of State, August 15, 1994.

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

In the matter of the amendment of rule 16.10.101 incorporating federal food standards	)))))	NOTICE OF PROPOSED AMENDMENT OF RULE NO PUBLIC HEARING CONTEMPLATED

(Food, Drugs & Cosmetics)

To: All Interested Persons

1. On October 3, 1994, the department proposes to amend the above-captioned rule, which incorporates by reference the US Food & Drug Administration's food standards.

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

16.10.101 FOOD STANDARDS (1) The department adopts by reference the following federal regulations establishing food definitions and standards ~~and all subsequent revisions thereto~~ promulgated by the United States ~~Federal~~ Food and Drug Administration which are found in the corresponding parts of Title 21 of the Code of Federal Regulations (CFR) as of April 1, 1993:

(a)-(g) Remain the same.

(h)	General (food for human consumption)	21 CFR 100 Subpart G
(i)-(m)	Remain the same.	
(n)	Unavoidable contaminants in food for human consumption and food-packaging material	21 CFR 109
(o)	Current good manufacturing practice in manufacturing, packing or holding human food	21 CFR 110
~~(o)~~ (p)	Thermally processed low-acid foods packaged in hermetically sealed containers	21 CFR 113
~~(p) Cacao products and confectionery~~		~~21 CFR 118~~
~~(q) Smoked and smoke flavored fish~~		~~21 CFR 122~~
~~(r) Frozen raw breaded shrimp~~		~~21 CFR 123~~
(q)	Acidified foods	21 CFR 114

(s)-(x) Remain the same but are renumbered (r)-(w).

~~(y)~~ (x)	Cereal flours and related ~~flours~~ products	21 CFR 137

(z)-(ak) Remain the same but are renumbered (y)-(aj).

~~(al) Nonalcoholic beverages 21 CFR 165~~
(am)-(at) Remain the same but are renumbered (ak)-(ar).
~~(au)~~(as) Indirect food additives:
adhesives and ~~coatings and~~
components of coatings 21 CFR 175
~~(av)~~(at) Indirect food additives:
paper and ~~cardboard~~ paperboard
components 21 CFR 176
(aw)-(bb) Remain the same but are renumbered (au)-(az).
~~(be)~~(ba) Direct food substances affirmed
as generally recognized as safe 21 CFR 184
(bd)-(be) Remain the same but are renumbered (bb)-(bc).
~~(bf) Tolerances for pesticides in food administered by the Environmental Protection Agency 21 CFR 193~~

(2) Copies of the federal regulations which were adopted and incorporated by reference under (1) may be obtained, upon payment of copying costs, from the Food and Consumer Safety Bureau, Montana Department of Health and Environmental Sciences, PO Box 200901, Capitol Station, Helena, Montana 59620-0901, phone: (406)444-2408.

AUTH: 50-31-104, 50-31-108, 50-31-201, MCA
IMP: ~~50-31-101~~, 50-31-104, 50-31-203, MCA

3. The department is proposing these amendments to the rule in order to update the federal standards for ensuring the safety of food which have been incorporated by reference and which have not been updated since 1983. The amendment of these standards will allow the department to more efficiently enforce the Montana Food, Drug, and Cosmetic Act, and adoption of the most current nationally recognized public health standards for food, i.e., those contained in the updated federal rules, is necessary to most effectively protect public health.

4. Interested persons may submit their written data, views, or arguments concerning this amendment to Cynthia Brooks, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620, no later than September 23, 1994.

5. If a party who is directly affected by the proposed amendments wishes to express his/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 Cynthia Brooks, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620, no later than September 23, 1994.

6. If the department receives requests for a public hearing under Section 2-4-315, MCA, 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 number of persons manufacturing, producing, processing, packing, exposing, offering, possessing, selling, dispensing, giving, supplying, and applying food, drugs, and/or cosmetics.

ROBERT J. ROBINSON, Director

Certified to the Secretary of State August 15, 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 adoption of new rules I-V establishing administrative enforcement procedures for the public water supply act.	)))))	NOTICE OF PUBLIC HEARING FOR PROPOSED ADOPTION OF NEW RULES I-V

(Public Water Supply)

To: All Interested Persons

1. On September 16, 1994, at 1:00 or as soon thereafter as it may be heard, the board will hold a public hearing in Room C209 of the Cogswell Building, 1400 Broadway, Helena, Montana, to consider the adoption of the above-captioned rules.

2. The rules, as proposed, appear as follows:

RULE I PURPOSE (1) This subchapter implements 75-6-103, MCA, which requires rules establishing administrative enforcement procedures and administrative penalties authorized under the Public Water Supply Act, Title 75, chapter 6, part 1, MCA. AUTH: 75-6-103, MCA; IMP: 75-6-109, MCA

RULE II DEFINITIONS Unless the context clearly states otherwise, the following definitions, in addition to those in 75-6-102, MCA, and ARM 16.20.202 apply throughout this subchapter.

(1) "Act" means Title 75, chapter 6, part 1, MCA.

(2) "Class I violation" means a violation of the act or regulations requiring an immediate action or response by a person because of the health risk involved. These violations include, but are not limited to, the following:

(a) failure to act in an emergency situation, including, but not limited to, disease outbreaks, spills, tampering, treatment facility failures, interruption in service, and natural disasters;

(b) failure to provide continuous disinfection when continuous disinfection has been required by the department; and

(c) failure to respond to nitrate, total coliform, turbidity, or MCL violations, including reporting to the department, check sampling, implementation of corrective action within twenty-four hours, and public notification.

(3) "Class II violation" means any violation determined by the department not to be a Class I violation.

(4) "Consent order" means a legally binding agreement signed by a person and the director or designee, whereby correction of recorded violations may be scheduled and penalties may be established for failure to comply within the time scheduled for compliance. Penalties for recorded past violations

may also be included in the agreement.

(5) "Designee" means an employee of the department who has been authorized by the director to issue orders under this subchapter.

(6) "Director" means the director of the department.

(7) "Fees" means the annual assessment of fees for public water supply systems and fees assessed for the review of plans and specifications submitted to the department, as provided by 75-6-108, MCA.

(8) "Final order" means an order of the department issued or in force pursuant to 75-6-109, MCA, the recipient of which has failed to exercise in timely fashion its right to a hearing before the board or has waived such right, or has exercised such right to a hearing, following which the board has issued a final order either affirming or modifying the department's order.

(9) "Notice of violation" or "NOV" means a notice that a violation exists and includes an order directing the person to respond.

(10) "Order" means a written direction to a person to take an action or series of actions to comply with a provision of the act or rules implementing the act found at ARM Title 16, chapter 20, subchapters 2 and 4, within a time established under the order and may include a penalty assessment. It also means any consent order issued pursuant to this subchapter.

(11) "Person" is defined in 75-6-102, MCA, and includes a certified operator or any authorized agents of or contractors to any entity defined as a person.

(12) "Warning letter" means a letter notifying a person that they are in violation of the act, rules implementing the act, a condition of approval, or an order of the department.

AUTH: 75-6-103, MCA; IMP: 75-6-109, MCA

RULE III ENFORCEMENT PROCEDURES (1) Administrative enforcement under this subchapter encourages progressive enforcement from an initial enforcement response, such as a written or verbal communication, through optional follow-up or additional enforcement actions. The department may proceed with higher levels of enforcement actions, including the immediate imposition of penalties, whenever the violator has not responded to the initial enforcement response or is not expected to comply with the initial response, or whenever the violation is a Class I violation. The initial enforcement action taken will be determined according to the following:

(a) A Class I violation may be responded to by the issuance of a notice of violation (NOV) and order for immediate corrective action. An NOV and order issued pursuant to this subsection, which includes penalties, must be signed by the director or designee.

(b) Those violations determined by the department to be Class II violations require the issuance of a warning letter prior to the issuance of any NOV and order or consent order under this subchapter. Any NOV and order or consent order issued after failure of the recipient to respond to a warning

letter may include administrative penalties.

(c) Failure to comply with the terms of an order or consent order may be followed by an increased administrative penalty assessment or a judicial action for penalties as provided by law.

(d) Except for Class I violations, the issuance of a warning letter must precede an imposition of penalties and must identify violations, require appropriate corrective measures within a specified time period, and give notice that the violation may result in the assessment of administrative penalties if:

(i) there is a failure to take corrective action within the time specified in the letter, or

(ii) the same or similar violation occurs within 12 months of the date of the warning letter.

(2) Orders under this subchapter may include, but are not limited to, the following requirements or conditions:

(a) that the existing public water supply be repaired or modified;

(b) that treatment be installed or improved;

(c) that the source of water supply be changed;

(d) that no additional service connections be made to the system;

(e) that the water supply system be monitored as required by ARM Title 16, chapter 20, subchapter 2;

(f) that a report concerning the condition and operation of the plant, works, system, or water supply required by ARM 16.20.212 be submitted to the department;

(g) that project reports, construction documents, and construction report forms required by ARM 16.20.401 be submitted to the department;

(h) that corrective measures be implemented to eliminate a violation or exceedence of an MCL;

(i) that construction cease and that further use of the public water supply system, public sewage system, or improvements to those systems be halted until all written approvals or fees required by statute or rule are obtained;

(j) that activities be conducted to remove a source of pollution from a place that will cause pollution of a public water supply system or of state water used for domestic purposes; and

(k) that public notification be given as specified by rule or order.

(3) Judicial action may be taken for failure to comply with any term or condition of an order issued under this subchapter. The judicial action may be criminal or civil.

AUTH: 75-6-103, MCA; IMP: 75-6-109, MCA

RULE IV ADMINISTRATIVE PENALTIES (1) Any imposition of penalties under this subchapter becomes effective upon issuance of a final order and due according to a schedule established in the order. If a person submits compelling financial evidence, the department may, prior to issuing an NOV and order, incorporate into an order a reasonable payment schedule, taking into

consideration the person's ability to pay and allowing consecutive monthly payments for a penalty assessed pursuant to this rule. The department may charge an additional amount in interest for funds owed to the state of Montana at the interest rate established by the revenue department.

(2) Penalties imposed against any person under this subchapter will be assessed according to the seriousness of the violation, the culpability of the person, the size of the system, the duration of the violation, the economic benefit of noncompliance, and the occurrence of the same or similar violation within a 12 month period, as follows:

(a) Penalty amounts assessed against any person for all violations, including but not limited to those listed in (b) below, may not exceed $500 for each day a violation occurred or continues to occur beyond the date specified for correction in the order.

(b) Penalty amounts for the following list of violations may not be less than the amounts specified in Table I below and may be adjusted upward according to the criteria in (2) above for the following list of violations:

Table I
Schedule of Minimum Administrative Penalties for Violations of the Public Water Supply Act. Penalty amounts in U.S. Dollars

VIOLATION	S1 ($)	S2 ($)	S3 ($)
Acute MCL Violations	25/day	100/day	200/day
FAILURE TO PROVIDE PUBLIC NOTIFICATION FOR:			
(a) acute MCL Violations	60/violation plus 60/day	240/violation plus 240/day	480/violation plus 480/day
(b) non-acute MCL Violations	45/violation plus 30/day	180/violation plus 120/day	360/violation plus 240/day
(c) treatment technique violations	45/violation plus 30/day	180 violation plus 120/day	360/violation plus 240/day
(d) monitoring or reporting violations	40/violation plus 20/day	160/violation plus 80/day	320/violation plus 160/day
(e) AO, court order or consent order	40/violation plus 20/day	160/violation plus 80/day	320/violation plus 160/day
FAILURE TO USE A CERTIFIED OPERATOR	60/violation plus 20/day	240/violation plus 80/day	480/violation plus 160/day
FAILURE TO SELF MONITOR FOR:			
(a) nephelometric turbidity units daily	10/day	40/day	80/day
(b) disinfectant residuals daily	10/day	40/day	80/day
(c) fluoride levels daily	10/day	40/day	80/day
FAILURE TO SAMPLE FOR:			

(a) coliform bacteria	75/sample + 25/day/sample	75/sample + 25/day/sample	75/sample + 25/day/sample
(b) nitrate or nitrite (each)	75/sample + 25/day/sample	75/sample + 25/day/sample	75/sample + 25/day/sample
FAILURE TO PAY ANNUAL FEE AS REQUIRED IN ARM 16.20.240	5/day	20/day	40/day
FAILURE TO MAINTAIN REQUIRED DISTRIBUTION SYSTEM DISINFECTANT RESIDUAL DAILY	25/day	100/day	200/day

S1: Public water system serving 1 - 100 service connections
S2: Public water system serving 101 - 1000 service connections
S3: Public water system serving 1001 or more service connections

(c) Whenever, in Table I above, two penalties are listed, separated by "plus" or "+", the first amount is the minimum penalty for the violation, and the second amount is the minimum penalty for each day of violation extending beyond the date specified for compliance in an order issued by the department. AUTH: 75-6-103, MCA; IMP: 75-6-109, MCA

RULE V SUSPENDED PENALTIES (1) Prior to issuing an NOV and order that is to include administrative penalties, the department director or designee may consider suspending a portion of the administrative penalties when deemed appropriate. In evaluating the appropriateness of suspended penalties, the department director or designee shall consider the following criteria:

(a) timeliness in response to violation;
(b) history of past violations;
(c) cooperative efforts toward compliance;
(d) severity of violation and relative risk to human health; and
(e) other extenuating circumstances.

(2) Penalties suspended under this provision will be deemed waived if the violator complies with all provisions of the administrative order and remains in compliance for a period of one year from the date of issuance of the administrative order.

AUTH: 75-6-103, MCA; IMP: 75-6-109, MCA

3. The department is proposing these rules in order to establish procedures for the administrative enforcement of the Montana Public Water Supply Act, including the imposition of administrative penalties. The rules contain minimum penalties that may be imposed for certain categories of violations under the Public Water Supply Act and agency procedures for imposing those penalties. These proposed rules are necessary to respond to action taken by the 1991 Legislature, which mandated rules for the administrative enforcement and administrative penalties authorized by the Public Water Supply Act.

4. Interested persons may submit their data, views, or arguments concerning the proposed rules, either orally or in writing, at the hearing. Written data, views, or arguments may

also be submitted to Yolanda Fitzsimmons, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620, no later than September 23, 1994.

/s/ ROBERT J. ROBINSON, Director

Certified to the Secretary of State August 15, 1994.

Reviewed by:

/s/ Eleanor Parker, DHES Attorney

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

In the matter of the repeal of rules 16.10.501, 16.10.502, and 16.10.503 regarding bottled drinking water and ice regulations	NOTICE OF PUBLIC HEARING FOR PROPOSED REPEAL OF RULES (Bottled Drinking Water & Ice)

To: All Interested Persons

1. On September 16, 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 repeal of the above-captioned rules.

2. The rules, as proposed to be repealed, are found on pages 16-405 to 16-407 of the Administrative Rules of Montana.

3. The board is proposing to repeal these rules for a number of reasons. First, the rules were enacted in 1972 and no authority section was given for their implementation. Upon reviewing the rules, the board discovered that the implementing section, § 75-6-103, MCA, is found in the public water supply statutes. That implementing section provides that "[t]he board has general supervision over all state waters which are directly or indirectly being used by a person for a public water supply system or domestic purposes or as a source of ice." The statute then gives the board rulemaking authority over a number of specific items, all of which relate to public water systems and none of which directly relate to bottled drinking water and ice. Based on this language, it appears that the board did not have specific authority to promulgate these rules. The Department of Health and Environmental Sciences has rulemaking authority over bottled drinking water and ice under 50-31-104, 50-31-201, and 50-50-103, MCA. Therefore, the Board has concluded that it is appropriate to repeal the rules it promulgated and allow the Department to promulgate updated standards under its specific statutory rulemaking authority.

4. Interested persons may submit their data, views, or arguments concerning the proposed repeal, in writing, to Yolanda Fitzsimmons, Board of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620, and must submit them in sufficient time so that they are received no later than September 23, 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: /s/ William J. Opitz
ROBERT J. ROBINSON, Secretary

Certified to the Secretary of State August 15, 1994.

Reviewed by:

/s/ Eleanor A. Parker
Eleanor Parker, DHES Attorney

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the re-adoption, re-amendment, and repeal of rules regulating public gambling	)	NOTICE OF THE PROPOSED RE-ADOPTION, RE-AMENDMENT AND REPEAL, WITH MINOR CHANGES, OF RULES REGULATING PUBLIC GAMBLING

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On September 26, 1994, the Department of Justice proposes to re-adopt, re-amend and repeal again certain rules regulating gambling as specifically shown below. A public hearing is not necessary because the Department is proposing to re-adopt, re-amend, and repeal, with only minor changes, the rules regulating gambling because of a procedural oversight in not responding to certain comments of the Legislative Council during a previous rulemaking action described below.

On August 26, 1993 the Department of Justice published a notice of public hearing on the proposed adoption, amendment, and repeal of the rules regulating gambling at page 1974 of the 1993 Montana Administrative Register, Issue No. 16 and further, on September 20, 1993 the Department held a public hearing on the proposal. On November 15, 1993 the Department of Justice issued a notice of the adoption, amendment and repeal of the rules regulating gambling and the notice was published on November 24, 1993, at page 2786 of the 1993 Montana Administrative Register, Issue No. 22. It was at the time of this adoption that the Department did not address comments on the rules submitted by the Legislative Council.

2. The proposal relates to provisions concerning withdrawal of applications; reapplication for licensing; change of liquor license type; change of operator location; merchandise, prizes and shake-a-day games; transfers of ownership interests in grandfathered locations; poker runs; sports pools for pig, gerbil and hamster races; distributor's licenses; route operator's licenses; procedure for admission of hearsay evidence; approval of promotional games of chance, devices or enterprises; financial incentive definition; and review of carnival games; general licensure procedures; card game tournaments; record keeping requirements; video gambling machine specifications and record keeping requirements; importation of illegal gambling devices; and live keno and bingo game awards.

3. The previously adopted rules with additional minor changes proposed in this notice, provide as follows:

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

(1) through (4) remain the same.

~~(5) "Distributor" means a person who:~~

~~(a) purchases or obtains from a licensed manufacturer~~

~~equipment of any kind for use in gambling activities; and~~

~~(b) sells the equipment to a licensed distributor, route operator, or operator.~~

(6) is renumbered (5).

~~(7) "Manufacturer" means a person who:~~

~~(a) assembles from raw materials or subparts a completed piece of equipment or pieces of equipment of any kind, except for electronic live bingo or keno equipment, for use as a gambling device.~~

(8) through (13) are renumbered (6) through (11).

~~(14) "Route operator" means a person who:~~

~~(a) purchases from a licensed manufacturer or distributor equipment of any kind for use in a gambling activity;~~

~~(b) leases the equipment to a licensed operator for use in public; and~~

~~(c) may sell to a licensed operator equipment that had previously been authorized to operate on the operator's premises.~~

AUTH: §23-5-115, MCA IMP: §23-5-112, MCA

23.16.103 INVESTIGATION OF APPLICANTS, FINGERPRINTS MAY BE REQUIRED - DISCLOSURE FROM NONINSTITUTIONAL LENDER (1) through (3) remain as amended in the 1993 MAR, Issue 22.

~~*(4) The department may require the holder of a contingent ownership interest to complete a document (form 13) authorizing examination and release of information and (form 10) personal history statement on the lender to assess the suitability pursuant to 23-5-176, MCA. (Form 13 and form 10 as the forms read on October 1, 1991 and June 30, 1993, respectively, are incorporated by reference and available upon request from the Gambling Control Division, 2687 Airport Rd., Helena, Montana 59620).*~~

AUTH: §23-5-115, MCA IMP: §23-5-115, MCA

RULE I (23.16.105) WITHDRAWAL OF APPLICATION (1) through (3) remain as amended in the 1993 MAR, Issue 22.

AUTH: §23-5-115, MCA IMP: §23-5-115, MCA

23.16.107 GROUNDS FOR DENIAL OF GAMBLING LICENSE, PERMIT OR AUTHORIZATION (1) through (1) (k) remain as amended in the 1993 MAR, Issue 22.

AUTH: §23-5-115, MCA IMP: §23-5-115, §23-5-176 MCA

RULE II (23.16.111) REAPPLICATION RULE (1) remains as amended in 1993 MAR, Issue 22.

AUTH: §23-5-115, MCA IMP: §23-5-115, MCA

23.16.115 DEFINITIONS (1) through (10) remain as amended in 1993 MAR, Issue 22.

AUTH: §23-5-115, MCA IMP: §§23-5-118, 23-5-176, MCA

23.16.116 TRANSFER OF INTEREST AMONG LICENSEES (1) through (5) remain as amended in 1993 MAR, Issue 22.

AUTH: §23-5-115, MCA IMP: §§23-5-118, 23-5-176, MCA

23.16.117 TRANSFER OF INTEREST TO A STRANGER TO THE LICENSE (1) through (9)(a)(ii) remain as amended in 1993 MAR, Issue 22.

(9)(a)(iii) personal history statement, form (10) as that form is described in ARM 23.16.102(3)(b), for the person designated to act in the capacity of a receiver or trustee;

(iv) authorization to disclose form, (form 1) as that form is described in ARM 23.16.102(3)(a), filed in the name of the receivership, trust or estate; and

(9)(a)(v) through (b) remain as amended in 1993 MAR, Issue 22.

AUTH: §23-5-115, MCA IMP: §§23-5-118, 23-5-176, MCA

23.16.120 LOANS TO LICENSEES (1) through (6) remain as amended in 1993 MAR, Issue 22.

AUTH: §23-5-115, MCA IMP: §§23-5-118, 23-5-176, MCA

RULE III(23.16.125) CHANGE OF LIQUOR LICENSE TYPE (1) through (2) remain as amended in 1993 MAR, Issue 22.

AUTH: §23-5-115, MCA IMP: §23-5-115, MCA

RULE IV(23.16.126) CHANGE OF LOCATION (1) through (2) remain as amended in 1993 MAR, Issue 22.

AUTH: §23-5-115, MCA IMP: §23-5-117, MCA

RULE V(23.16.301) MERCHANDISE PRIZES AND SHAKE-A-DAY GAMES (1) remains as amended in 1993 MAR, Issue 22.

AUTH: §23-5-115, MCA IMP: §23-5-160, MCA

RULE VI(23.16.130) TRANSFERS OF OWNERSHIP INTERESTS IN LOCATIONS THAT DO NOT POSSESS AN ON PREMISE CONSUMPTION ALCOHOL BEVERAGE LICENSES GRANDFATHERED FOR THE PURPOSE OF OBTAINING PERMITS TO OPERATE VIDEO GAMBLING MACHINES (1) and (2) remain as amended in 1993 MAR, Issue 22.

AUTH: §23-5-115, MCA IMP: §§23-5-306, 23-5-611, MCA

RULE VII(23.16.1001) POKER RUNS (1) through (3) remain as amended in 1993 MAR, Issue 22.

AUTH: §23-5-115, MCA IMP: §23-5-318, MCA

23.16.1101 CARD GAME TOURNAMENTS (1) through (10) remain as amended in 1993 MAR, Issue 22.

AUTH: §23-5-115, MCA IMP: §§23-5-311, 23-5-317, MCA

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

(1) through (19) remain as amended in 1993 MAR, Issue 22.

AUTH: §23-5-115, MCA IMP: §23-5-115, MCA

23.16.1202 TYPES OF CARD GAMES AUTHORIZED (1) through (6) remain as amended in 1993 MAR, Issue 22.

AUTH: §23-5-115, MCA IMP: §23-5-311, MCA

RULE VIII(23.16.1709) CONDUCT OF SPORTS POOL FOR PIG, GERBIL OR HAMSTER RACES (1) ~~A licensee of premises authorized~~

~~to sell alcoholic beverages may conduct one or more sports pools on races between pigs, gerbils or hamsters.~~ The A sports pools on races between pigs, gerbils or hamsters must be conducted in accordance with 23-5-501 through 512, MCA and ARM 23.16.1701 through 1706.

~~(2) Only licensees in incorporated cities or towns with a population of less than 100 or located outside the boundaries of an incorporated city or town may conduct such races.~~

(2)~~(3)~~ ~~The races must be conducted on the premises but outside of interior areas of the premises where food and beverages are usually stored, prepared, or served.~~ ~~The~~ A licensee conducting such a sports pool must comply with additional health or safety measures as may be required by the county board of health or local law enforcement officials in which the premises are located.

~~(4) Prior to commencing the races, the licensee must submit, in writing, the rules for the sports pool for the department's approval. The licensee must also submit a certification from the county clerk and recorder or city clerk that the premises are located in an unincorporated area or in a city or town with a population less than 100.~~

~~(5) Sports pools are the only type of wagering on the races conducted between pigs, gerbils, or hamsters, authorized by §23-5-502, MCA.~~

AUTH: §23-5-115, MCA IMP: §23-5-502, MCA

23.16.1716 SPORTS TAB CARD MANUFACTURER LICENSE (1) through (4) remain as amended in 1993 MAR, Issue 22.

AUTH: §23-5-115, MCA IMP: §§23-5-115, 23-5-502, §23-5-503, MCA

23.16.1719 MANUFACTURER RECORDKEEPING REQUIREMENTS - DECAL INVENTORIES (1) through (3) remain as amended in 1993 MAR, Issue 22.

AUTH: §23-5-115, MCA IMP: §23-5-502, MCA

23.16.1802 DEFINITIONS (1) through (17) remain as amended in 1993 MAR, Issue 22.

AUTH: §23-5-115, MCA IMP: §§23-5-602, 23-5-603, 23-5-607, 23-5-609, 23-5-610, 23-5-612, MCA

23.16.1822 PERMIT NOT TRANSFERABLE (1) through (5) remain as amended in 1993 MAR, Issue 22.

AUTH: §23-5-115, MCA IMP: §§23-5-603, 23-5-605, 23-5-611, 23-5-612, MCA

23.16.1826 QUARTERLY REPORTING REQUIREMENTS (1) through (6) remain as amended in 1993 MAR, Issue 22.

AUTH: §23-5-115, MCA IMP: §§23-5-115, 23-5-605, 23-5-610, MCA

23.16.1827 RECORD RETENTION REQUIREMENTS (1) through (5) remain as amended in 1993 MAR, Issue 22.

AUTH: §23-5-115, MCA IMP: §§23-5-115, 23-5-605,

23-5-610, MCA

23.16.1901 GENERAL SPECIFICATIONS OF VIDEO GAMBLING MACHINES (1) through (3) remain as amended in 1993 MAR, Issue 22.

AUTH: §23-5-115, MCA IMP: §§23-5-136, 23-5-602 23-5-606, 23-5-609, 23-5-621, MCA

RULE IX(23.16.1914) DISTRIBUTOR'S LICENSE (1) through (3) remain as amended in 1993 MAR, Issue 22.

~~(4) A person licensed under this section must comply with all laws and rules of the state of Montana and the department of justice.~~

AUTH: §23-5-115, MCA IMP: §23-5-128, MCA

RULE X(23.16.1915) ROUTE OPERATOR'S LICENSE (1) through (3) remain as amended in 1993 MAR, Issue 22.

~~(4) A person licensed under this section must comply with all laws and rules of the state of Montana and the department of justice.~~

AUTH: §23-5-115, MCA IMP: §23-5-129, MCA

23.16.1916 MANUFACTURERS/~~DISTRIBUTORS'S~~ LICENSE (1) through (4) remain as amended in 1993 MAR, Issue 22.

AUTH: §23-5-115, MCA IMP: §§23-5-605, 23-5-625, MCA

23.16.1917 GENERAL REQUIREMENTS OF MANUFACTURERS, ~~SUPPLIERS, AND~~ DISTRIBUTORS, AND ROUTE OPERATORS, OF VIDEO GAMBLING MACHINES OR PRODUCERS OF ASSOCIATED EQUIPMENT (1) through (3) remain as amended in 1993 MAR, Issue 22.

AUTH: §23-5-115, MCA IMP: §§23-5-115, 23-5-605, 23-5-625, 23-5-626, MCA

23.16.1918 VIDEO GAMBLING MACHINES TESTING FEES (1) through (3) remain as amended in 1993 MAR, Issue 22.

AUTH: §23-5-115, MCA IMP: §23-5-631, MCA

23.16.1925 POSSESSION OF UNLICENSED MACHINES BY MANUFACTURER, DISTRIBUTOR, ROUTE OPERATOR, OWNER, OR REPAIR SERVICE (1) remains as amended in 1993 MAR, Issue 22.

AUTH: §23-5-115, MCA IMP: §§23-5-603, 23-5-605, 23-5-616, MCA

23.16.1927 APPROVAL OF VIDEO GAMBLING MACHINES AND/OR MODIFICATIONS TO APPROVED VIDEO GAMBLING MACHINES BY DEPARTMENT (1) through (4) remain as amended in 1993 MAR, Issue 22.

AUTH: §23-5-115, MCA IMP: §23-5-605, 23-5-606, 23-5-631, MCA

23.16.1940 VIDEO GAMBLING MACHINES - TRADE SHOWS (1) through (3) remain as amended in 1993 MAR, Issue 22.

AUTH: §23-5-115, MCA IMP: §23-5-621, MCA

23.16.2004 IMPORTATION OF ILLEGAL GAMBLING DEVICES (1) through (3) remain as amended in 1993 MAR, Issue 22.
AUTH: §23-5-115, MCA IMP: §23-5-152, MCA

23.16.2401 DEFINITIONS (1) through (14) remain as amended in 1993 MAR, Issue 22.
AUTH: §23-5-115, MCA IMP: §23-5-409, MCA

23.16.2406 PRIZE AWARDS FOR LIVE KENO AND BINGO GAMES (1) through (2) remain as amended in 1993 MAR, Issue 22.
AUTH: Sec. 23-5-115, MCA IMP: §23-5-412, MCA

RULE XI(23.16.204) PROCEDURE FOR ADMISSION OF HEARSAY EVIDENCE (1) remains as amended in 1993 MAR, Issue 22.
AUTH: §23-5-115, MCA IMP: §23-5-138, MCA

RULE XII(23.16.3501) DEPARTMENT APPROVAL OF PROMOTIONAL GAMES OF CHANCE, DEVICES OR ENTERPRISES (1) through (4) remain as amended in 1993 MAR, Issue 22.
AUTH: §23-5-115, MCA IMP: §23-5-112, MCA

RULE XIII(23.16.3502) CASHING PAYROLL CHECKS -- DEFINITION OF FINANCIAL INCENTIVES (1) through (2) remain as amended in 1993 MAR, Issue 22.
AUTH: §23-5-115, MCA IMP: §23-5-164, MCA

RULE XIV(23.16.3801) REVIEW OF CARNIVAL GAMES (1) through (5) remain as amended in 1993 MAR, Issue 22.
AUTH: §23-5-115, MCA IMP: §23-6-104, MCA

4. ARM 23.16.1808 (deemed invalid by the Administrative Code Committee without specific statutory authorization) is proposed to be repealed.

5. The Department received written comments on the proposed adoption, amendment and repeal of these rules conducted during the fall of 1993, and more particularly described in paragraph one above, from the Montana Legislative Council staff on behalf of the Administrative Code Committee. These comments were not addressed at the time of final adoption, amendment and repeal of the rules. The Department is, therefore, engaging in this effort to re-adopt, re-amend and repeal again the rules so that the Administrative Code committee comments can be addressed.

The Committee first commented on the language of the proposed definitions of "distributor," "gift enterprise" and "route operator." The comment pointed out that these definitions at times unnecessarily repeated statutory language and at other times left out portions of the statutory definitions. As each of the terms are defined in statute, the Department is now removing them, as well as the definition of "manufacturer," which is also found in statute, from 23.16.101. The definition of "gift enterprise" was not adopted in the previous rulemaking effort.

The Committee's next comment concerned subsections (4) and

(5) of 23.16.103, which were not seen as relating to the implemented statute. Subsection (5) was not adopted in the previous rulemaking effort and subsection (4) of 23.16.103 is being removed here.

The next comment from the Committee reflects its concern with 23.16.117(9)(a)(iii) and (iv) and the lack of specificity regarding the requirements for the personal history statement and the authorization to disclose form. These forms have previously been adopted in ARM 23.16.102 and a reference to that rule is now proposed to be added to ARM 23.16.117 to address the Committee's concern.

The language adopted last fall in ARM 23.16.117(8) regarding ownership interests arising from foreclosure on a contract for deed or other instrument of transfer next concerned the Committee. It suggested that the rule language did not anticipate foreclosure by a mortgagee. The rule, however, was specifically intended not to cover foreclosures by a mortgagee but only those by a former owner of the licensed operation and, then, only if the foreclosure takes place within five years of the original transfer or within half the term of the contract. Because of this intent, the Department does not propose to amend the existing language.

The Committee pointed out that proposed new Rule III (now ARM 23.16.125) is questionably authorized by MONT. CODE ANN. § 23-5-115. The Department believes that the language in the statute authorizing it to adopt rules to implement the gambling code and to provide licensing procedures supports the adoption of ARM 23.16.125 and, therefore, proposes no change here to that rule.

The Committee's next comment identified an error in citing the statute implemented by new Rule VII (now ARM 23.16.1001). This minor change is included in this proposal.

New Rule VIII (now ARM 23.16.1709) concerned the Committee due to repetition of statutory language, inaccurate use of statutory language and questionable statutory authority. The rule is being extensively revised here to address each of these comments.

New Rules IX and X (now ARM 23.16.1914 and 1915) each include a subsection requiring gambling licensee's to comply with all laws and rules of the Department. The Committee commented that this language appeared superfluous. The Department agrees and is here proposing the removal of the language.

Finally, the Committee was critical of the reasonable necessity statements found in paragraph (5)(k) and (l) of the original rulemaking proposal published on August 26, 1993. The proper justification for those rules is as follows. Amendments to 23.16.1901 were necessary because if video gambling machine keys are not kept on the operator's premise, inspectors conducting unannounced inspections cannot have ready access to the interior of the machines, which is critical to the conduct of a proper machine inspection. Amendments to 23.16.1918, increasing the Department's laboratory machine testing fees from $40 per hour to $50 per hour, were necessary so that the

Department's costs of providing this service are covered by the fees assessed. This fee has not been raised since 1987 and the current fee does not cover the Department's cost of providing the service. These rule amendments are not reflected by this action but were completed in the adoption on November 24, 1993.

6. Interested persons may present written data, views, or arguments to Janet Jessup, Administrator, Gambling Control Division, 2687 Airport Road, Helena, Montana, 59620, no later than September 22, 1994.

7. If the agency receives requests for a public hearing on this proposed re-adoption, re-amendment and repeal from either 10 percent 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 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 approximately 225 persons based on the fact that approximately 2,257 persons are currently licensed by the state of Montana to operate public gambling operations, manufacture gambling equipment or provide gambling equipment for use by the public.

By: JOSEPH P. MAZUREK
Attorney General

By: CHRIS TWETEN
Chief Deputy Attorney General
Rule Reviewer

Certified to the Secretary of State August 15, 1994.

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

In the matter of adoption of new Rule I and amendment of ARM 26.4.301, 26.4.1001, 26.4.1002, 26.4.1005, 26.4.1006, 26.4.1007, 26.4.1009, 26.4.1011, and 26.4.1014, pertaining to the regulation of prospecting for coal and uranium.	)	NOTICE OF PROPOSED ADOPTION AND AMENDMENT NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On October 17, 1994, the Board of Land Commissioners and Department of State Lands propose to adopt new Rule I and amend ARM 26.4.301, 26.4.1001, 26.4.1002, 26.4.1005, 26.4.1006, 26.4.1007, 26.4.1009, 26.4.1011, and 26.4.1014, pertaining to prospecting for coal and uranium.

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

26.4.301 DEFINITIONS The following definitions apply to all terms used in the Strip and Underground Mine Reclamation Act and sub-chapters 3 through 13 of this chapter:

(1) through (112) remain the same.

(113) "Substantially disturb" means, for purposes of prospecting, to significantly impact land or water resources by:

(a) drilling or blasting;

(b) removal of vegetation, topsoil, or overburden;

(c) construction of roads or other access routes;

(d) placement of excavated earth or waste material on the natural land surface; or

(e) other similar activities.

Sections (113) through (135) remain the same but are renumbered (114) through (136).

(AUTH: Sec. 82-4-205, MCA; IMP: Sec. 82-4-226, MCA.)

26.4.1001 ~~APPLICATION REQUIREMENTS~~ PERMIT REQUIREMENT (1) A person who intends to prospect for coal or uranium on land not included in a valid strip or underground mining permit must obtain a prospecting permit from the department if the prospecting will be conducted to determine the location, quality or quantity of a natural mineral deposit or will be conducted on an area designated unsuitable for strip or underground coal mining pursuant to 82-4-227 or 82-4-228, MCA.

(2) An application for a prospecting permit must be made on forms provided by the department and must be accompanied by the following information:

~~(1)~~ (a) the name, address, and telephone number of the

applicant and, if applicable, the representative of the applicant who will be present at and be responsible for the prospecting;

~~(2)~~ (b) documentation that the proposed exploration program would not adversely affect any area possessing special, exceptional, critical, or unique characteristics as defined in 82-4-227, MCA. The applicant shall promptly report the existence of such characteristics if in the course of prospecting he becomes aware of them;

~~(3)~~ (c) identification of any ~~significant~~ historical, archaeological, ~~technological,~~ and ~~cultural~~ ethnological values in the area to be affected to the same extent required for a permit application by ARM 26.4.304(2) and possible mitigating measures to be exercised should any of those values be encountered;

~~(4)~~ (d) a narrative description of the significant fish and wildlife species and habitats in the general area of operations, including rare and endangered species and critical habitats, as listed by the U.S. fish and wildlife service and other appropriate agencies, and written documentation from appropriate management agencies that the proposed prospecting activity will not adversely affect such species;

~~(5)~~ (e) documentation that habitats of unique or unusually high value to fish and wildlife would not be disturbed;

~~(6)~~ (f) a narrative description of the local topographic and geologic formations, scenic values, and vegetation in the area to be affected;

~~(7)~~ (g) a prospecting map that meets the following requirements:

~~(a)~~ (i) The map must be of sufficient size and scale to adequately show all areas to be prospected. Standard United States geological survey topographic quadrangle maps must be used as base maps, if available;

~~(b)~~ (ii) Whenever prospecting by test hole is proposed, the maps must include proposed locations of test holes. Specific locations for initial exploration shall be shown by quarter section, section, township, and range. New road construction for drill rig or seismic equipment access must be clearly indicated on the maps. Permanent roads, and roads that are to be abandoned, must be identified;

~~(c)~~ (iii) Each map must contain:

~~(i)~~ (A) proposed excavations or test ~~cuts~~ pits and disposal areas for excavated earth and waste materials shown by location and size;

~~(ii)~~ (B) locations of streams, lakes, stockwater ponds, wells, and springs that are known or readily discoverable proximate to prospecting operations;

~~(iii)~~ (C) ~~the route taken~~ roads and access routes ~~to each drill site~~;

~~(iv)~~ (D) location of occupied dwellings and pipelines;

~~(v)~~ (E) a description and location of historic, topographic, cultural and drainage features;

~~(vi)~~ (F) the location of habitat of species described in ~~section~~ (4d) above; and

~~(vii)~~ (G) the name, address, and phone number of surface owners and surface lessees of the land affected;

~~(viii)~~ (H) a certification in the same form required in ARM 26.4.305(2)(b)~~.~~;

~~(8)~~ (h) a narrative description of the exploration program including at a minimum:

~~(a)~~ (i) a description of the proposed method of exploration;

~~(b)~~ (ii) the type of equipment to be used in the exploration;

~~(c)~~ (iii) the size, depth, and number and location by legal description, of proposed drill holes (refer to map location), the depth(s) of any known subsurface groundwater occurring above the deepest projected depth of the exploration operation, the drilling medium used (air, water, mud, etc.), and the method of containing drilling fluids;

~~(d)~~ (iv) a description of the plugging procedures and materials used to comply with the provisions of ARM 26.4.1005 (3);

~~(e)~~ (v) a discussion of preventive and corrective measures that will be taken to guard against or correct water pollution problems that may develop with streams, lakes, stockwater ponds, wells or springs, and other measures proposed to be followed to protect the environment from adverse impacts;

~~(f)~~ (vi) a plan showing earth moving proposed for roads, disposal pits, and drill sites in compliance with ARM 26.4.1006 (2) and 26.4.1009; and

~~(g)~~ (vii) a drill hole marking technique that provides durable markers and that will allow the department to locate the drill hole for bond release inspection purposes;

~~(9)~~ (i) the mineral or minerals to be prospected;

~~(10)~~ (j) the source of the applicant's legal right to prospect for the mineral or minerals on the land affected by the permit, including a listing of all surface and subsurface estate owners. The listing must include the current mailing address and phone numbers of each party affected;

~~(11)~~ (k) an estimated timetable for conducting and completing each phase of exploration and reclamation;

~~(12)~~ (l) the measures to be taken to comply with the performance standards of this sub-chapter; and

~~(13)~~ (m) the proposed postdisturbance land use.

(3) A prospecting permit is issued on a yearly basis and is subject to renewal, suspension, and revocation in the same manner as a strip or underground mining permit.

(4) Each person who conducts prospecting shall, while in the exploration area, have available a copy of the prospecting permit for review by the department upon request.

(5) Prospecting operations conducted pursuant to a prospecting permit are subject to all provisions of this subchapter except [Rule I].

(AUTH: Sec. 82-4-205, MCA; IMP: Sec. 82-4-226, MCA.)

26.4.1002 INFORMATION AND MONTHLY REPORTS (1) Whenever the department must investigate possible environmental damage or

complaints which may occur as a direct result of prospecting activities conducted by means of drilling, the ~~applicant~~ prospector shall furnish sufficient information to the department to facilitate such investigation. Such information must include, but is not limited to, ~~electrographic~~ stratigraphic findings, geophysical and lithological logs and related data.

(2) A monthly report must be submitted for each successive 30 day period no later than the 15th of the following month, provided, however, that monthly reports need not be submitted for 30 day periods of inactivity. Reports must include, but are not limited to, the following information:

(a) the legal description (to nearest 10 acres) of each bore and core hole drilled, and drill hole identification numbers;

(b) updated maps showing bore and core hole locations and identification numbers, as well as drill hole additions, deletions or relocations;

(c) the date each hole was drilled, logged, and abandoned;

(d) total depth and diameter of each hole drilled;

(e) trade name and amount of abandonment material used on each drilled hole;

(f) ~~viscosity (in seconds/quart) of drilling medium before and after abandonment material was added;~~

~~(g)~~ results of additional mud, cement, ~~or~~ concrete or other grout tests required by the department (i.e., gel strength, fluid loss or water-chemical analyses, etc.) completed for each hole drilled and abandoned or converted to a well;

~~(h)~~ (g) depths of all encountered water-bearing zones for each hole drilled, including all artesian conditions;

~~(i)~~ (h) depth of all lost circulation zones;

~~(j)~~ (i) a detailed report of all prospecting holes converted to water or monitor wells including:

(i) water-bearing zone developed (depth, formation name, lithology);

(ii) type of material used to case, grout, seal and cap each well;

(iii) casing diameter; and

(iv) anticipated plans for the well;

~~(k)~~(j) mapped location of any surface disturbance such as road, disposal pit, or mud pit construction;

~~(l)~~(k) mapped location of areas seeded or otherwise reclaimed; and

~~(m)~~(l) anticipated location of activity in next reporting period.

(3) Transfer of a prospecting permit must meet the same requirements as for a transfer of mining permit in ARM 26.4.412(1) and (2).

(AUTH: Sec. 82-4-205, MCA; IMP: Sec. 82-4-226, MCA.)

26.4.1005 DRILL HOLES (1) Prospecting operations must be conducted to completely avoid:

(a) degradation or diminution of any existing or potential water supply; and

(b) adverse impacts to existing or potential mining

operations. All prospecting holes must be abandoned in accordance with the following provisions unless the hole has been transferred as a water well in compliance with ARM 26.4.647 or unless a delay is approved by the department.

(2) The ~~operator~~ prospector shall use appropriate techniques to:

(a) prevent the escape of water, oil, or gas from all drill holes;

(b) prevent contamination of all surface and ground waters, and prevent interaquifer mixing;

(c) prevent aquifer contamination by surface drainage; and

(d) reclaim all surface impacts and prevent subsidence that may result from prospecting related activities.

(3) Unless alternative procedures are approved or required by the department, the ~~permittee~~ prospector shall use the following reclamation techniques:

(a) Cuttings must be spread over the earth's surface to a depth less than one-half inch or be removed to an approved disposal pit. Cuttings must not be placed in the hole. Proper soil salvage and reclamation techniques consistent with ARM 26.4.501 and 26.4.701 through 26.4.703 must be used at the disposal pit;

(b) Whenever a cased drill hole is not transferred to the affected landowner as a water well, the casing must be cut off at the surface on rangeland and 2 feet below the surface on cropland or pastureland;

(c) Promptly after exploration on a site is completed, and unless otherwise approved by the department, all drill holes must be abandoned in accordance with the following:

(i) Whenever circulation is lost to the formation or artesian conditions are encountered, a homogeneous cement ~~mixture~~ grout must be slurried into the hole from the bottom ~~to the surface on rangeland, or~~ to within 2 feet of the surface and topsoil placed in the remaining 2 feet ~~on cropland or pastureland and on other lands~~.

(ii) Whenever circulation is not lost, a ~~homogeneous fluid must be slurried into the hole from the bottom to within 5 feet of the surface on rangeland and to within 7 feet of the surface on cropland. The fluid must contain water of sufficient quality to insure that the proper performance of the plugging medium is not adversely affected, and a high quality sodium bentonite with no toxic nor degradable additives, with:~~

~~(A) an A.P.I. (American petroleum institute) filtrate volume of not more than 12.0 cubic centimeters based on a 30-minute filtration test at 100 P.S.I. (pounds per square inch) and ambient temperature;~~

~~(B) an A.P.I. 10 minute gel strength of not less than 20 lb./100 square feet; and~~

~~(C) a minimum density of 9 pounds per gallon~~ swelling bentonitic clay grout with no less than 50 percent bentonite solids per unit volume must be placed in each abandoned drill hole, from the bottom of the hole to within two feet of the land surface. Precautions must be taken to ensure that no bridging occurs between the bottom and top of the hole. The entire hole

must be filled with the grout to form a continuous grout column from bottom of the hole to two feet below the natural land surface.

(iii) ~~A 5 foot cement plug must be placed in all holes that are plugged with bentonite from the top of the bentonite to the surface on rangeland and to 2 feet below the surface, with topsoil placed in the remaining 2 feet on cropland~~ A magnetic marker must be placed on the top of the grout. The remaining two feet of the hole must be backfilled with cuttings or suitable soil material;

(d) ~~(i) Whenever the permittee encounters, or the permittee or the department anticipates encountering, drilling conditions such that the drill hole cannot be adequately plugged in accordance with the performance standards described in section (2) of this rule using procedures described in paragraphs (3)(c)(i) or (3)(c)(ii) above, or both procedures, the permittee shall propose or the department shall stipulate an alternative plugging procedure. Alternative plugging procedures approved by the department, must be implemented promptly after exploration is completed on a site. The department may approve alternate plugging procedures only if it finds that the procedures required in paragraphs (3)(c)(i) or (3)(c)(ii) would not meet the requirement of subsection (a) and the alternative procedures would meet these requirements. Upon request of the department, the permittee must document why standard procedures would not be effective.~~

~~(ii) Whenever the department, upon inspection of a drill hole, determines that the hole may not have been plugged in accordance with subsections (3)(a) through (3)(d) above or may not meet the standards of section (2), it shall notify the permittee in writing. Within 30 days of receipt of the notice, the permittee shall submit a mitigation plan. If the department finds that the proposed plan would not be effective, the department shall provide an opportunity for informal conference within 30 days. After the informal conference, the department shall either approve the proposed plan or order compliance with an amended plan. Upon approval, the permittee must implement the plan within a reasonable time set by the department~~ A detailed description of all methods and materials to be used for casing and grouting all water wells, monitor wells, or holes that are not abandoned in accordance with (c) immediately after drilling must be provided to the department. All cased holes, water wells, and monitor wells must be completed in a manner approved by the department. All wells and other drill holes must be constructed and maintained in compliance with the performance standards contained in ARM 26.4.632, 26.4.647, 26.4.1005, and 26.4.1011 through 1013.

~~(e) Each drill hole must be marked in the manner approved by the department in the application.~~

(4) If excavations, artificially flat areas, or embankments are created for or during prospecting, they must be promptly returned to approximate original contour after they are no longer needed for prospecting.

(AUTH: Sec. 82-4-205, MCA; IMP: Sec. 82-4-226, MCA.)

26.4.1006 ROADS AND OTHER TRANSPORTATION FACILITIES (1) The ~~permittee~~ prospector shall limit vehicular travel on other than established graded and surfaced roads to the minimum that is necessary to conduct the exploration. Travel must be confined to graded and surfaced roads during periods when excessive damage to vegetation or erosion of the land surface could result.

(2) Any new roads or other transportation facilities constructed for prospecting activities must meet the requirements of ARM 26.4.601 through ~~26.4.607~~ 26.4.608 and 26.4.609(2).

(3) Existing roads and transportation facilities may be used for exploration in accordance with the following:

(a) All applicable federal, state, and local requirements must be met.

(b) Whenever the road is significantly altered, including, but not limited to, change of grade, widening, or change of route, or if use of the road contributes additional suspended solids to streamflow or runoff, ARM 26.4.1009 applies to all areas of the road that are altered or that result in additional contributions.

(c) Whenever the road or other transportation facility is ~~significantly altered and will remain as a permanent road after exploration~~ substantially disturbed by prospecting, the design, construction, alteration, ~~and~~ maintenance, and reclamation of the road must meet the appropriate requirements of ARM 26.4.601 through ~~26.4.607~~ 26.4.608 and 609(2).

~~(4) Promptly after operations are completed, existing roads used during exploration must be reclaimed either:~~

~~(a) to a condition equal to or better than that which existed prior to the exploration activities, or~~

~~(b) to the condition required for pemanent roads under ARM 26.4.601 through 26.4.607.~~

(AUTH: Sec. 82-4-205, MCA; IMP: Sec. 82-4-226, MCA.)

26.4.1007 GRADING, SOIL SALVAGE, STORAGE AND REDISTRIBUTION

(1) Excavations, artificially flat areas, or embankments that are created during prospecting must be returned to the approximate original contour promptly after the features are no longer needed for prospecting.

(2) All soil handling must be conducted in compliance with ARM 26.4.701 through 26.4.703. Prior to any surface disturbance, all soil suitable for reclamation use must be salvaged and stored in an area that will be undisturbed and not subject to excessive wind or water erosion. Exceptions may be granted if the operator demonstrates that the site-specific disturbance would be insignificant and that soil loss, contamination, or impairment of quality would not occur. Immediately upon cessation of operations, the soil must be replaced with the surface left in a roughened condition in such a manner that the disturbed area blends smoothly with the adjacent undisturbed land surface.

(AUTH: Sec. 82-4-205, MCA; IMP: Sec. 82-4-226, MCA.)

26.4.1009 DIVERSIONS (1) With the exception of small and temporary diversions of overland flow of water around new roads, drill pads, test pits, and support facilities, no ephemeral, intermittent, or perennial stream may be diverted.

(2) Overland flow of water must be diverted in a manner that:

~~(1)~~ (a) prevents erosion;

~~(2)~~ (b) to the extent possible, using the best technology currently available, prevents additional contributions of suspended solids to streamflow or runoff; and

~~(3)~~ (c) complies with applicable portions of ARM 26.4.635 and 636 and all other applicable state or federal requirements. (AUTH: Sec. 82-4-205, MCA; IMP: Sec. 82-4-226, MCA.)

26.4.1011 HYDROLOGIC BALANCE (1) Prospecting must be conducted to minimize disturbance of the prevailing hydrologic balance in accordance with ARM 26.4.631 through 26.4.634, 26.4.638 through 26.4.651 and must include appropriate sediment control measures, such as those listed in ARM 26.4.638 or sedimentation ponds that comply with the requirements of ARM 26.4.639. The department may specify additional measures.

(AUTH: Sec. 82-4-205, MCA; IMP: Sec. 82-4-226, MCA.)

26.4.1014 TEST PITS: APPLICATION REQUIREMENTS, REVIEW PROCEDURES, BONDING, AND ADDITIONAL PERFORMANCE STANDARDS (1) In addition to all the other performance standards set forth in ARM 26.4.1005 through 26.4.1012, prospecting test pits must also comply with the following requirements:

(a) Test pits or other excavations must be located out of stream channels (dry or flowing) unless otherwise approved by the department.

(b) Applications, permits, bonds, exploration activities, and related procedures, and reclamation relating to test pits or excavations that are to produce test shipments of minerals, must comply with the applicable provisions of sub-chapters 3 and 5 through ~~10~~ 9 and ARM 26.4.1101 through 26.4.1138 ~~unless otherwise approved by the department~~.

(2) An application for a coal test pit prospecting permit must contain ~~an affidavit stating~~:

(a) ~~why~~ a demonstration that the test pit extraction method is necessary for development of a mining operation for which an operating permit application is to be submitted in the near future and that the minerals are being extracted for testing purposes only;

(b) the name of the testing firm and the locations at which the coal will be tested;

(c) if the coal will be sold directly to, or commercially used directly by, the intended end user, a statement from the intended end user, or, if the coal is sold through a broker or agent, a statement from the broker or agent, that contains:

(i) the specific reason for the test, including why the mineral may be so different from the end user's other mineral supplies as to require testing;

(ii) a statement of the amount of mineral necessary for the test and why a lesser amount is not sufficient; and

(iii) a description of the specific tests that will be conducted;

(d) evidence that sufficient reserves of mineral are available to the person conducting the exploration or its principals for future commercial use or sale to the intended end user, or agent or broker of such user identified above, to demonstrate that the amount of mineral to be removed is not the total reserve, but is a sampling of a larger reserve; and

(e) an explanation as to why other means of prospecting, such as core drilling, are not adequate to determine the quality of the mineral and the feasibility of developing a mining operation.

(3) An application for a test pit must include a time table for the sampling and reclamation activities.

(4) Sub-chapter 4 is applicable to test pit prospecting permit applications and permits. The notice of receipt of application must contain, in addition to the information required in ARM 26.4.401(3), the date the application was filed. (AUTH: Sec. 82-4-205, MCA; IMP: Sec. 82-4-226, MCA.)

3. The rule proposed to be adopted provides as follows:

Rule I NOTICE OF INTENT TO PROSPECT (1) A person who conducts a prospecting operation outside an area designated unsuitable for coal mining pursuant to 82-4-227 or 82-4-228, MCA, and that is not conducted for the purpose of determining the location, quality or quantity of a natural mineral deposit, must, before conducting the prospecting operations, file with the department a notice of intent to prospect that meets the requirements of (2) or (3). A notice of intent to prospect is effective for one year after it is filed. If prospecting activities described in a notice are not conducted within the year, they may be incorporated by reference in a subsequent notice of intent to prospect.

(2) A notice of intent for prospecting activities that will not substantially disturb, as defined in ARM 26.4.301, the natural land surface must contain the following:

(a) information required in ARM 26.4.1001(2)(a) through (h), and (2)(k) through (m);

(b) sufficient additional information to demonstrate to the department's satisfaction that the prospecting activity will not substantially disturb the natural land surface.

(3) A notice of intent to prospect for prospecting operations that will substantially disturb, as defined in ARM 26.4.301, the natural land surface, must contain the following:

(a) information required in ARM 26.4.1001 (2)(a) through (h), and (2)(k) through (m);

(b) a statement that information required in ARM 26.4.1002 (1) and (2) will be provided;

(c) a statement that exploration activities will be conducted in compliance with the requirements of ARM 26.4.1004 through 26.4.1013 and sufficient information to demonstrate to

the department's satisfaction that the performance standards of these rules will be met.

(4) Within 30 days of receipt of a notice of intent to prospect pursuant to (2) or (3), the department shall notify the person who filed the notice whether the notice meets the requirements of (2) or (3).

(5) Each person who conducts prospecting which substantially disturbs the natural land surface shall, while in the exploration area, have available to the department for review upon request a copy of the notice of intent to prospect.

(6) All provisions of this subchapter, except ARM 26.4.1001(1), (2)(i) and (j), (3), (4), and (5), 26.4.1003, 26.4.1014, 26.4.1016, and 26.4.1017, apply to a prospecting operation for which a permit is not required pursuant to ARM 26.4.1001.

(AUTH: Sec. 82-4-205, 82-4-226, MCA; IMP: Sec. 82-4-226, MCA.)

4. This rulemaking is being proposed for several reasons. First, the 1993 Montana Legislature amended Sections 82-4-203(26) and 82-4-226, MCA. The amendment to 82-4-226, MCA, requires the agency to adopt content requirements for notices of intent to prospect. Amendments to that statute and 82-4-203(26), MCA, also require other amendments to conform the existing rules to the statute as amended. New Rule I and the amendments to ARM 26.4.301, 26.4.1001(1) and (5) and 26.4.1002(1) are proposed to make the necessary changes.

Second, 30 USC 1253 provides that, in order to have authority to regulate coal exploration, a state must have adopted statutes and rules that are as effective as the federal Surface Mining Control and Reclamation Act and the regulations adopted pursuant to that Act by the Office of Surface Mining Reclamation and Enforcement (OSM) of the United States Department of the Interior. Thirty CFR, Part 732, requires that a state modify its statute and rules to comply with any amendments made to federal law or regulations. OSM has notified the Department that it must make a number of changes to its prospecting rules. To comply with this directive, the agency is proposing the changes to ARM 26.4.1001(2)(c) and (g), (4), 26.4.1006(2) and (3), 26.4.1007, 26.4.1009, 26.4.1011 (references to 26.4.631 through 649 and 26.4.638 through 649), and 26.4.1014.

Third, the agency is proposing the amendments to reporting requirements in ARM 26.4.1002(2) and the drill hole plugging procedures in ARM 26.4.1005 for several reasons. The requirements in the language that has been replaced are not sufficient to comply with sections (1) and (2) of the rule and do not require state-of-the-art plugging in accordance with recent advancements in technology. In addition, the current language in (3)(c)(ii)(C) cannot be complied with using conventional drilling and abandonment equipment.

Fourth, the agency has amended ARM 26.4.1011 to require prospecting operations to comply with ARM 26.4.650 and 26.4.651. While compliance with these rules has not been mandated by the Office of Surface Mining, it is, in the opinion of the Depart-

ment, necessary to ensure that stream sedimentation is avoided.

Finally, some changes are made for completeness, clarification, correction of misspellings and typographical errors, and elimination of redundancies. These changes are made in ARM 26.4.1001(2)(c) ("technological" and "cultural" to "ethnological") and (3), 26.4.1002(1) ("statigraphic" to "stratigraphic") and (3), 26.4.1005(2) and (3), and 26.4.1006(1) and (4).

5. Interested parties may submit their data, views, or arguments concerning the proposed new rules and amendments, in writing, to Bonnie Lovelace, Chief, Coal and Uranium Bureau, Department of State Lands, PO Box 201601, Helena, MT 59620-1601. To guarantee consideration, comments must be received or postmarked no later than September 26, 1994.

6. If a person who is directly affected by the proposed adoption or amendment wishes to express his or her data, views, or arguments orally or in writing at a public hearing, he or she must make written request for hearing and submit this request along with any written comments to Bonnie Lovelace, Chief, Coal and Uranium Bureau, Department of State Lands, PO Box 201601, Helena, MT 59620-1601. A written request for hearing must be received no later than September 26, 1994.

7. If the agency receives request for public hearing on the proposed adoption or amendment, from either 10 percent or 25, whichever is less, of the persons who are directly affected by the proposed action; 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 one person based on fewer than 10 active coal or uranium prospectors in Montana.

Reviewed by:

John F. North
Chief Legal Counsel

Arthur R. Clinch
Commissioner

Certified to the Secretary of State August 15, 1994.

BEFORE THE COMMISSIONER
OF POLITICAL PRACTICES
OF THE
STATE OF MONTANA

In the matter of the amendment of Rule 44.12.107 pertaining to waiver of registration fees of state government employees who register as lobbyists	NOTICE OF PROPOSED AMENDMENT OF RULE 44.12.107 PERTAINING TO WAIVER OF REGISTRATION FEES OF STATE GOVERNMENT EMPLOYEES WHO REGISTER AS LOBBYISTS

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On September 26, 1994, the Commissioner of Political Practices proposes to amend Rule 44.12.107 that pertains to the waiver of registration fees of state government employees who register as lobbyists.

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

44.12.107 STATE GOVERNMENT EMPLOYEES--WAIVER---OF REGISTRATION FEE (1) State government employees whose lobbying activities are covered by the Act and these rules are required to register as lobbyists in the usual manner. ~~The $10 fee mentioned in section 5-7-103, MCA, will be waived for such employees.~~

AUTH: Section 5-7-111, MCA
IMP: Section 5-7-103, MCA

3. Rationale: The proposed amendment is needed to conform the rule to the mandate of section 5-7-103, MCA, as amended in the November 1993 Special Legislative Session, requiring that each lobbyist registering with the Commissioner of Political Practices must pay a registration fee of $50. (Prior to this amendment, the registration fee was $10 and payment of the fee had been waived for state government employees who registered as lobbyists for state agencies.)

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to the Commissioner of Political Practices, P. O. Box 202401, Helena, MT 59620, no later than September 22, 1994.

5. If any person who is directly affected by this proposed amendment wishes to express data, views and arguments orally or in writing at a public hearing, then the person must make written request for a public hearing and submit this request, along with any written comments, to the Commissioner of Political Practices, P. O. Box 202401, Helena, MT 59620, no later than September 22, 1994.

6. If the agency receives requests for a public hearing on the proposed amendment from either 10 percent or 25, whichever is fewer, of the persons who are directly affected by the proposed action; 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 scheduled 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 30 persons based on 304 state government employees who registered as lobbyists in 1993.

Rule Reviewer
GARTH JACOBSON

Commissioner of Political Practices
ED ARGENBRIGHT, Ed.D.

Certified to the Secretary of State August 8, 1994.

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

In the matter of the amendment of rule 46.12.2002 pertaining to medicaid coverage of abortion services in cases of rape or incest	))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF RULE 46.12.2002 PERTAINING TO MEDICAID COVERAGE OF ABORTION SERVICES IN CASES OF RAPE OR INCEST

TO: All Interested Persons

1. On September 16, 1994, at 9:00 a.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana to consider the proposed amendment of rule 46.12.2002 pertaining to medicaid coverage of abortion services in cases of rape or incest.

The Department of Social and Rehabilitation Services will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you request an accommodation, contact the department no later than 5:00 p.m. on September 9, 1994, to advise us of the nature of the accommodation that you need. Providing an interpreter for the deaf or hearing impaired may require more time. Please contact Dawn Sliva, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970.

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

46.12.2002 PHYSICIAN SERVICES, REQUIREMENTS Subsections (1) through (1)(e)(i) remains the same.

(ii) The pregnancy is the result of an act of rape or incest and the certifications required by subsection (f) are attached to the claim form.

(f) Medicaid will reimburse for abortions in cases of pregnancy resulting from an act of rape or incest only if:

(i) the mother certifies in writing that the pregnancy resulted from an act of rape or incest; and

(ii) the physician certifies in writing either that:

(A) the mother has stated to the physician that she reported to the proper authorities that the pregnancy is the result of an act of rape or incest; or

(B) in the physician's professional opinion, the mother was and is unable for physical or psychological reasons to report the act of rape or incest.

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

3. The proposed amendments are necessary to implement medicaid coverage of abortions in cases of pregnancy resulting from acts of rape or incest. The current rule limits medicaid coverage of abortions to cases where the mother's life would be endangered if the fetus were carried to term.

The Health Care Financing Administration (HCFA), which administers the medicaid program on the federal level, has directed state medicaid agencies in a December 28, 1993 letter that they must expand medicaid coverage of abortions to include cases of pregnancy resulting from acts of rape or incest. This directive was based upon a provision in the annual appropriations bill for the United States Department of Health and Human Services, commonly known as the "Hyde Amendment," and found in section 509 of the Departments of Labor, Health and Human Services, and Education, and Related Agencies' Appropriations Act, 1993, 107 Stat. 1113. The department believed that the 1993 Hyde Amendment merely allowed but did not require the expanded abortion coverage. However, two separate courts have agreed with HCFA's position and found the current rule to be out of compliance with the Hyde Amendment. The proposed amendments are necessary to maintain the current coverage of abortion in cases of danger to the mother's life and to implement the expanded abortion coverage mandated by HCFA and the courts in cases of pregnancy resulting from rape or incest.

The proposed amendments would also specify the patient and physician certification requirements that must be met to obtain reimbursement under the expanded coverage. The proposed rule would require that the physician certify either that the mother has stated to the physician that she reported the act of rape or incest to the proper authorities or that the mother was unable for physical or psychological reasons to report the offense. The reporting requirement, when coupled with a physician waiver provision, is specifically permitted in the December 28, 1993 HCFA directive. The department considers the reporting requirement necessary to provide some degree of assurance that allegations of rape or incest are credible and not advanced solely for the purpose of obtaining public funding of an abortion.

In addition, to obtain reimbursement under the expanded coverage, the proposed rule would require that the mother certify in writing that the pregnancy resulted from an act of rape or incest. The mother is the only person involved in the abortion service who is in a position to certify that the pregnancy resulted from an act of rape or incest. Again, the department considers this certification requirement necessary to provide some degree of assurance that allegations of rape or incest are credible and not advanced solely for the purpose of obtaining public funding of an abortion. The proposed rule

would require that the required certifications be attached to the physician's medicaid claim form.

The department has an obligation under federal law to safeguard against unnecessary or inappropriate utilization of services. By requiring the certifications be made and attached to the claim form, the department believes that far fewer inquiries will need to be made of physicians or patients, and the potential difficulty associated with such inquiries will be minimized. We believe that the required certifications strike a reasonable balance between the department's documentation responsibilities and the patient's need for privacy under such difficult circumstances.

4. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Russell E. Cater, Chief Legal Counsel, Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, MT 59604-4210, no later than September 22, 1994.

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

Rule Reviewer

Director, Social and Rehabilitation Services

Certified to the Secretary of State August 15, 1994.

BEFORE THE LOCAL GOVERNMENT ASSISTANCE DIVISION
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment of rules pertaining to report filing fees paid by local government entities, financial statements and incorporation by reference of various standards, accounting policies and federal laws and regulations under the Montana Single Audit Act	)))))))	NOTICE OF AMENDMENT OF 8.94.4102 REPORT FILING FEES, 8.94.4110 REVIEW OF FINANCIAL STATEMENTS AND 8.94.4111 INCORPORATION BY REFERENCE OF VARIOUS STANDARDS, ACCOUNTING POLICIES, AND FEDERAL LAWS AND REGULATIONS

TO: All Interested Persons:

1. On April 28, 1994, the Local Government Assistance Division published a notice of proposed amendment of the above-stated rules at page 999, 1994 Montana Administrative Register, issue number 8.

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

3. No comments or testimony were received.

LOCAL GOVERNMENT ASSISTANCE DIVISION

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

_____
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, August 15, 1994.

BEFORE THE DEPARTMENT OF
FAMILY SERVICES OF THE
STATE OF MONTANA

In the matter of the repeal of Rules 11.5.501, 11.5.508, 11.5.520, and 11.5.522, the adoption of Rules I and II, and the amendment of Rule 11.5.515 pertaining to child protective services.	NOTICE OF REPEAL OF RULES 11.5.501, 11.5.508, 11.5.520, AND 11.5.522, AND THE ADOPTION OF RULES I AND II, AND THE AMENDMENT OF RULE 11.5.515 PERTAINING TO CHILD PROTECTIVE SERVICES.

TO: All Interested Persons

1. On July 7, 1994, the Department of Family Services published notice of the proposed repeal of Rules 11.5.501, 11.5.508, 11.5.520, and 11.5.522, the adoption of Rules I [11.5.502] and II [11.5.504], and the amendment of Rule 11.5.515 pertaining to child protective services at page 1792 of the 1994 Montana Administrative Register, issue number 13.

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

11.5.515 PROTECTIVE SERVICES INFORMATION SYSTEM OPERATION (1) through (2)(d) remain the same.

(3) Operation of central file:

(a) Definitions:

(i) "Protective services information system" means a collection of records in a central location of all reports of child abuse or neglect cases.

(ii) "Substantiated" has the meaning as defined by ARM 11.5.602.

(iii) "Unsubstantiated" has the meaning as defined by ARM 11.5.602.

(b) Unless an investigation of a report conducted pursuant to state law determines there is some credible evidence of alleged abuse or neglect, all information identifying the subject of the report may be expunged from the protective services information system forthwith. The decision to expunge the record shall be made by the appropriate regional administrator ~~of the program and planning division based upon the investigation made by the county department or the local law enforcement agency~~.

(3)(c) to (3)(e) remain the same.

AUTH: Sec. 52-2-111, 41-3-208, MCA; IMP: Sec. 41-3-202, 41-3-302, 41-3-102, 52-2-741, 41-3-1142, MCA

3. The department received one comment:

COMMENT: The authority to expunge records should rest with the regional administrator or other department personnel involved in

field operations. There may be a need at some later date to further define "persons responsible for a child's welfare" to exclude incapacitated adults.

RESPONSE: The department agrees that the regional administrator whose region the record originated from should be the person to decide on expungement. The rule is amended to assign this duty to the "appropriate regional administrator." The department has considered adding a capacity requirement for the definition, and has decided for the time being to not add such a limitation. Whether the person who abuses or neglects a child has the capacity to understand the abuse or neglect should not prevent a finding that such abuse or neglect occurred.

DEPARTMENT OF FAMILY SERVICES

Hank Hudson, Director

John Melcher, Rule Reviewer

Certified to the Secretary of State, August 15, 1994.

BEFORE THE DEPARTMENT OF
FAMILY SERVICES OF THE
STATE OF MONTANA

In the matter of the amendment of Rules 11.5.601, 11.5.602 and 11.5.607 pertaining to case records of abuse and neglect.	NOTICE OF AMENDMENT OF RULES 11.5.601, 11.5.602 AND 11.5.607 PERTAINING TO CASE RECORDS OF ABUSE AND NEGLECT

TO: All Interested Persons

1. On July 7, 1994, the Department of Family Services published notice of the proposed amendment of Rules 11.5.601, 11.5.602 and 11.5.607 pertaining to case records of abuse and neglect at page 1789 of the 1994 Montana Administrative Register, issue number 13.

2. The department has amended the rules as proposed.

3. No comments were received.

DEPARTMENT OF FAMILY SERVICES

Hank Hudson, Director

John Melcher, Rule Reviewer

Certified to the Secretary of State, August 15, 1994.

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

In the matter of the adoption of an emergency rule extending the no wake speed zone in Bigfork Bay of Flathead Lake	))))	NOTICE OF EMERGENCY ADOPTION

To: All Interested Persons

1. The western boundary of the present no wake speed restriction for watercraft in Bigfork Bay of Flathead Lake is the Highway 35 bridge. This emergency rule extends the western boundary approximately 100 yards further into Flathead Lake as marked by signed buoys. The Fish, Wildlife and Parks Commission (commission) has determined that, without a speed restriction on watercraft immediately west of the Highway 35 bridge, there will continue to exist an imminent peril to public safety. Watercraft traffic has been rapidly increasing in the narrow waterway of Bigfork Bay. The growing congestion of watercraft has been compounded by divers from the Highway 35 bridge, growing use of the new fishing access site, parasail rides rented from vendors, lake tours, pontoon aircraft, and the swift current of the Swan River. Speeds greater than no wake are dangerous to all water users in the congested area. The present no wake zone does not cover the congested portion of Bigfork Bay west of the Highway 35 bridge. The bay east of the bridges is already a no wake zone. An emergency rule is necessary to cover the remainder of the recreational season.

2. The emergency rule will be effective at 12:00 p.m. on August 12, 1994. The commission adopted the rule on August 5, 1994.

3. The emergency rule is an amendment to 12.6.901 and the text is as follows:

12.6.901 WATER SAFETY REGULATIONS (1) In the interest of public health, safety, or protection of property, the following regulations concerning the public use of certain waters of the state of Montana are hereby adopted and promulgated by the Montana fish and game commission.

(a) through (b) remain the same.

(c) The following waters are limited to a controlled no wake speed. No wake speed is defined as a speed whereby there is no "white" water in the track or path of the vessel or in created waves immediate to the vessel:

Big Horn County through Fergus County remain the same.

Flathead County: (A) on Flathead Lake: Bigfork Bay to a point approximately 100 yards west of the Highway 35 bridge as marked by signed buoys;

(B) Beaver Lake (near Whitefish) 5:00 a.m. to 10:00 a.m. and 7:00 p.m. to 11:00 p.m. each day;

(C) Whitefish River from its confluence with Whitefish Lake to the bridge on the JP Road;

Gallatin County through (2) remain the same.

AUTH: 87-1-303, 23-1-106(1), MCA
IMP: 87-1-303, 23-1-106(1), MCA

4. The rationale for the emergency rule is as set forth in paragraph 1.

5. A standard rulemaking procedure will be undertaken prior to the expiration of this emergency rule.

6. Interested persons are encouraged to submit their comments during the upcoming standard rulemaking process. If interested persons wish to be personally notified of that rulemaking process, they should submit their names and addresses to Dan Vincent, Region One Supervisor, Department of Fish, Wildlife & Parks, 490 North Meridian Road, Kalispell, Montana 59901.

FISH, WILDLIFE AND PARKS COMMISSION

Robert N. Lane
Rule Reviewer

Patrick Graham
Secretary

Certified to the Secretary of State on August 12, 1994.

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

In the matter of the amendment of rule 16.32.373 and the adoption of new rules I and II setting standards for licensure of hospices.	)))))	NOTICE OF AMENDMENT AND ADOPTION OF RULES (Hospice Licensure)

To: All Interested Persons

1. On March 31, 1994, the department published notice of the proposed amendment of ARM 16.32.373 and the adoption of two new rules at page 631 of the Montana Administrative Register, Issue No. 6.

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

16.32.373 MINIMUM STANDARDS FOR A HOSPICE PROGRAM--GENERAL (1) Same as proposed:

(a)-(c) Same as proposed.

(d) "Core services" means physician services, nursing services, pastoral counseling, services provided by trained volunteers, and counseling services routinely provided by a hospice~~, either directly by hospice~~ staff ~~or through other arrangements~~.

(e)-(f) Same as proposed.

(g) "Hospice care" means ~~home based, residential hospice, and inpatient hospice, and hospital or long term health care that provides or coordinates~~ palliative and supportive care to meet the needs of a terminally ill patient and the patient's family arising out of physical, psychological, spiritual, social, and economic stresses experienced during the final stages of illness and dying, and that includes a formal bereavement component.

(h) Same as proposed.

(i) "Interdisciplinary team" means the number of appropriately qualified interdisciplinary health care professionals and volunteers that are needed to meet the hospice's patients' care needs ~~a group of qualified individuals, consisting of at least a physician, registered nurse, member of the clergy as appropriate, a counselor as appropriate, volunteer director and/or trained volunteers, and appropriate hospice program staff who are qualified by education, training, licensure or experience to meet the special needs of hospice patients and their families~~.

(j) "Managed directly by" means that core ~~hospice~~ services are provided ~~or coordinated~~ by a hospice program.

(2)-(3) Same as proposed.

(4)(a)-(b) Same as proposed.

(c) ~~Allow for inclusion within the care team of the patient/ and the patient's family and other personnel resources within the community, as appropriate~~ Encourage the patient/fam-

ily to participate in developing the interdisciplinary team plan of care and in the provision of hospice services.

(5)-(8) Same as proposed.

(9) A hospice program must assure that all services identified in the hospice plan of care for a patient, including skilled nursing services, are ~~provided~~ offered to the patient.

(10) A hospice program must:

(a) Same as proposed.

(b) ~~ensure~~ monitor and assess the quality of contract services;

(c) ensure that hospice nursing emergency care is available on a 24-hour basis;

(d)-(e) Same as proposed.

AUTH: 50-5-103, 50-5-210, ~~50-5-221,~~ MCA; IMP: 50-5-103, 50-5-204, 50-5-210, ~~50-5-211, 50-5-221,~~ MCA

RULE I (16.32.374) MINIMUM STANDARDS FOR AN INPATIENT HOSPICE FACILITY Same as proposed.

AUTH: ~~50-5-221~~ 50-5-103, 50-5-210, MCA; IMP: ~~50-5-221~~ 50-5-210, MCA

RULE II (16.32.375) MINIMUM STANDARDS FOR A RESIDENTIAL HOSPICE FACILITY (1)-(3) Same as proposed.

(4)(a)-(i) Same as proposed;

(j) food~~,~~ and nutrition~~, diet planning, etc.~~;

(k)-(l) Same as proposed.

(5)-(6) Same as proposed.

(7)(a)-(d) Same as proposed;

(e) provide a separate ~~drawer~~ dresser and wardrobe or closet space for each occupant in a bedroom;

(f)-(h) Same as proposed.

(8)-(9) Same as proposed.

(10) A residential hospice must meet the following meal service, menu planning, and supervision standards:

(a) Foods must be served in amounts and variety to meet the ~~nutritional~~ needs of each hospice patient.

(b)-(c) Same as proposed.

(d) A staff member trained or experienced in food management must be appointed to:

(i) provide ~~therapeutic~~ diets as indicated on the plan of care for each patient; and

(ii) Same as proposed.

(e) Same as proposed.

(11)(a)-(f) Same as proposed.

(g) Allow medications to be left at the bedside of a hospice patient when to do so is ~~authorized by a physician~~ approved in the hospice plan of care, and, whenever such ~~authorization~~ approval exists, provide for the storage of such medications in a safe and sanitary manner.

(h)-(i) Same as proposed.

(j) Develop and follow a written policies and procedures for destruction of legend drugs that ~~requires, at a minimum, the following:~~

~~(i) destruction of the drugs in the presence of a pharmacist and at least one other licensed health care professional;~~

~~and~~

~~(ii) documentation of the destruction that~~ includes listing the type of drug(s) destroyed and the amount destroyed.

(12) Same as proposed.

AUTH: ~~50-5-221~~ 50-5-103, 50-5-210, MCA; IMP: ~~50-5-221~~ 50-5-210, MCA

3. The department has thoroughly considered all commentary received. The comments pertaining to rule language and the department's response to each are noted below:

ARM 16.32.373

SUBSECTION (1)(d): Julia Jardine, President of the Hospice Association, asked that the portion of the sentence after "staff" or "hospice" be deleted because the core services in residential and inpatient facilities should be provided by hospice staff only, since very tight control is necessary by hospice staff in residential and inpatient facilities. She also suggested that if removing the language referenced below in subsection (1)(j) would have the same impact, her association would be satisfied.

Bonnie Addie, Supervisor of the St. Peter's Hospital hospice in Helena and a member of the Board of Directors of the Montana Hospice Association (Addie) agreed with Ms. Jardine's comments on grounds that the association did not want a facility deciding to become a hospice residential facility and then developing some kind of an arrangement with a hospice to bring in "hospice labor", but rather that it should have to do more than be in conversation with the hospice and that hospice staff should be providing the care in the other facility.

RESPONSE: The department agrees that ending the subsection with the language "hospice staff" is appropriate and amended the rule accordingly.

SUBSECTION (1)(g): Ms. Jardine stated that the definition was confusing and that it should be changed to take out all the potential sites where hospice care could be provided. She also suggested that if the department feels it is necessary, a definition of "hospice service" could be added to explain where the services are provided, although she thought it was more appropriate to leave that general so that, if other types of facilities come in to existence, the definition does not have to be changed.

RESPONSE: The department agrees that the proposed definition change is appropriate and amended the rule accordingly.

SUBSECTION 1(i): Ms. Jardine commented that, upon reviewing the National Hospice Organization's (NHO) standards, she believed that "interdisciplinary team" should be defined as "appropriately qualified number of interdisciplinary health care professionals and volunteers to meet its patient's care needs."

RESPONSE: The department agrees that the proposed definition is appropriate and the rule has been amended accordingly, with editing for clarity.

SUBSECTION 1(j): Ms. Jardine requested that the language "or coordinated by" be deleted, since this language is only used in the residential and inpatient section of these rules and core services should only be provided by hospice staff in those facilities rather than under arrangement with another entity.

RESPONSE: The department agrees that the proposed change is appropriate and amended the definition accordingly. Also, the language "core hospice services" was amended to "core services", as that is the term that is defined by the rule.

SUBSECTION 4(c): Ms. Jardine recommended the wording be replaced with the following from the NHO standards: "encourage the patient/family to participate in developing the interdisciplinary team plan of care and in the provision of hospice services."

RESPONSE: The department agrees and amended the subsection accordingly.

SUBSECTION 9: Ms. Jardine requested that the word "provided" be deleted and replaced with the word "offered" because some patients may decline services that are offered to them, and hospices should not be mandated to provide those services in that case.

RESPONSE: The department agrees and amended the subsection accordingly.

SUBSECTION 10(b): Ms. Jardine requested replacing the word "ensure" with "monitor" or "monitor and coordinate," "monitor and supervise," or "review and promote" because it is difficult to guarantee something in relation to contract services.

RESPONSE: The department agrees with the comment, felt that the wording "monitor and assess" would be most appropriate in this case, and amended the subsection accordingly.

SUBSECTION 10(c): Ms. Jardine requested that "emergency care" be replaced with "hospice nursing emergency care."

RESPONSE: The department agreed, since there may be types of emergency care that the hospice is not responsible for, and amended the subsection accordingly.

RULE I

GENERAL COMMENT: Ms. Jardine recommended adding that an inpatient hospice facility must be managed directly by a medicare certified hospice program since the Hospice Association's intent in proposing the legislation was to ensure that anyone wanting to provide hospice services through an inpatient hospice facility be held to the medicaid regulations for hospice.

RESPONSE: The department notes that, by statutory definition, an inpatient hospice facility is one which is "managed directly by a medicare-certified hospice that meets all medicare certification regulations for freestanding inpatient hospice facilities." [Section 50-5-101(22)(a), MCA] In

addition, the department, in Rule I, already requires inpatient hospices to meet the requirements of 42 CFR Part 418, Subparts C-E, for participation in the Medicare program. Therefore, the department declines to amend the rules as requested above, since the requested requirements are already included.

RULE II

SUBSECTION 4(j), COMMENT AND RESPONSE: Upon reviewing the rules, the department realized that it inadvertently included "diet planning" as one of the required training components. Since the department does not believe that diet planning should be required, as the rules already require that a trained staff member provide diets and supervise meal preparation and service, the rule has been amended to remove this requirement.

SUBSECTION 7(e), COMMENT AND RESPONSE: Upon reviewing the rules, the department realized that the word "drawer" was written in the rule rather than the word "dresser", which is what was intended. Since, clearly, one drawer per person is not adequate, the rule has been amended accordingly.

SUBSECTION 9(a): Ms. Jardine requested that the language regarding an isolation room should be deleted and replaced with language such as "reference OSHA-universal precautions; complies with all applicable state and federal regulations regarding communicable disease" because hospices are already required to follow the OSHA bloodborne pathogen regulations and utilize universal precautions.

RESPONSE: The department has carefully reviewed this comment, but disagrees that the rule should be amended as proposed, since the current language is necessary to adequately protect the family and visitors of all hospice patients from exposure to communicable diseases. The commentator has suggested adopting OSHA's bloodborne pathogen rules; however, this does not cover airborne pathogens. It is believed that an isolation room provides protection to all persons from these airborne carriers. A facility is free to adopt policies and procedures which address universal precautions and OSHA regulations, so long as this rule is complied with.

SUBSECTION 10(a): Ms. Jardine requested that the word "nutritional" be deleted because hospice patients often are not able to consume what is normal for their age, height and weight, and forcing terminal patients to eat normal meals is contradictory to hospice philosophy and training.

RESPONSE: The department agrees that the proposed change is appropriate and has amended the rule accordingly.

SUBSECTION 10(d)(i): Ms. Jardine requested that the word "therapeutic" be deleted for the same reason as that given above regarding subsection (10)(a).

RESPONSE: The department agrees that the proposed change is appropriate and has amended the rule accordingly.

SUBSECTION 11(g): Ms. Jardine requested that the phrase

"when to do so is authorized by a physician" be deleted and replaced by "when approved in the hospice plan of care" because requiring physician authorization increases paperwork and the hospice staff, who on a day-by-day basis evaluate the patient's ability to administer his/her own medication, in fact make this determination.

RESPONSE: The department agrees that the proposed change is appropriate and amended the rule accordingly.

SUBSECTION 11(j): Ms. Jardine asked that the requirement that drugs be destroyed in the presence of a pharmacist and at least one other licensed health care professional be replaced by a requirement that there be a written policy regarding the destruction of medications. Otherwise, the rules for residential facilities are more stringent than the rules for inpatient hospice facilities, which follow medicare regulations.

RESPONSE: The department agreed that it is appropriate that each individual residential facility develop policies and procedures regarding the destruction of medications and amended the rule accordingly.

OTHER COMMENTS ON THE RULES

COMMENT: Ms. Addie commended and supported the department's integration of the existing licensing regulations for hospice with the new regulations for inpatient hospice facilities and residences, instead of having two separate sets of regulations.

RESPONSE: The department acknowledges and appreciates the expression of support.

COMMENT: The staff of the Administrative Code Committee pointed out an error in the authority and implementing sections for the rules.

RESPONSE: The requested changes were made.

/s/ William L. Spitz for ROBERT J. ROBINSON, Director

Certified to the Secretary of State August 15, 1994.

Reviewed by:

/s/ Eleanor J. Parker

Eleanor Parker, DHES Attorney

BEFORE THE COMMISSIONER
OF POLITICAL PRACTICES
OF THE
STATE OF MONTANA

In the matter of the amendment of Rule 44.10.331 pertaining to limitations on receipts from political committees to legislative candidates	NOTICE OF AMENDMENT OF RULE 44.10.331 PERTAINING TO LIMITATIONS ON RECEIPTS FROM POLITICAL COMMITTEES TO LEGISLATIVE CANDIDATES

TO: All Interested Persons

1. On March 31, 1994, the Commissioner of Political Practices published a notice of proposed amendment of ARM 44.10.331 pertaining to limitations on receipts from political committees to legislative candidates, at page 659, 1994 Montana Administrative Register, Issue No. 6.

2. The Commissioner has amended the rule exactly as proposed.

3. No comments or testimony were received.

Commissioner of Political Practices

Ed Argenbright, Ed.D.

Garth Jacobson, Rule Reviewer

Certified to the Secretary of State, August 8, 1994.

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

In the matter of the amendment of rule 46.12.702 pertaining to medicaid outpatient drugs	))))	NOTICE OF THE AMENDMENT OF RULE 46.12.702 PERTAINING TO MEDICAID OUTPATIENT DRUGS

TO: All Interested Persons

1. On June 9, 1994, the Department of Social and Rehabilitation Services published notice of the proposed amendment of rule 46.12.702 pertaining to medicaid outpatient drugs at page 1525 of the 1994 Montana Administrative Register, issue number 11.

2. The Department has amended rule 46.12.702 as proposed.

3. The Department has thoroughly considered all commentary received:

COMMENT: Numerous objective studies have confirmed that closed drug formularies have a direct impact on costs to other health care services. Limited drug coverage simply shifts costs to other more costly solutions, such as surgery, hospitalization and increased physician visits. When closed formularies are established, patients suffer and medicaid picks up the additional costs.

We strongly urge you to withdraw this proposal to implement a closed drug formulary.

RESPONSE: The Department of Social and Rehabilitation Services, Medicaid Services Division disagrees with these views as we feel a well implemented formulary, extending coverage to products of a therapeutic class proven to be the most therapeutically effective and safe, will only guarantee Montana medicaid recipients receive the finest products available on the market. Montana medicaid's decision to include these products in its formulary will also reduce program costs as more effective products lead to faster recoveries, reduced hospitalizations and reduced physician visits. The associated prior authorization program will extend consideration to a prescriber's request for medicaid coverage of a non-formulary item. This will insure a non-formulary item will not totally be excluded from consideration.

COMMENT: Prior approval requirements restrict access of medicaid patients to needed prescription drugs. Despite assertions to the contrary by sponsors of the medicaid rebate legislation, several states have signaled their intention to use a prior-approval requirement as a means to restrict access to

certain prescription drugs, based solely on the cost of the drug or the size of the rebate offered by the manufacturer above that specified by the law. This converts the prior-authorization list into a de facto restrictive formulary.

RESPONSE: The Department of Social and Rehabilitation Services, Medicaid Services Division has no intention of restricting a product that, through product labeling, demonstrates superiority through therapeutic effectiveness or safety. We do however intend to require review for products which do not demonstrate these same standards. We realize, in some instances, non-formulary drugs may be medically necessary and in these instances they will be available for review through the prior authorization process.

COMMENT: Restricting access to needed prescription drugs hurts patient care. Strong opposition to prior authorization was registered by physicians nationwide in a 1990 Gallup poll. The poll found 77% of physicians respondents "strongly disapprove" of prior authorization, while another 13% "disapprove." Their reasons? Seventy-seven percent believe prior-authorization programs have a negative impact on the quality of medical care they are able to deliver. Of even greater concern, the average physicians responding to the survey had been involved in more than 16 cases in which a restrictive drug policy impaired a patient's recovery. This negative impact on quality of medical care is unacceptable to many physicians.

RESPONSE: The department realizes studies have been conducted regarding the effectiveness of drug formularies however, many factors can influence the results of these studies. For example, a formulary developed solely for the purposes of reimbursing for the most inexpensive drug in a class would produce different results than from a formulary developed to reimburse for the products proven to be the most effective based upon safety, efficacy, and therapeutical effectiveness. The Medicaid program does not feel the formulary it proposes will reduce the quality of care recipients receive as the prior authorization program will insure any drug determined to be medically necessary will have the opportunity to be considered for coverage.

COMMENT: The proposed rule would substitute time pressures for medical judgements. The proposed rule may dampen the demand for covered medications because of the "red tape factor." Some physicians, under large caseloads and related time pressures, might yield to bureaucratic coercion and avoid prescribing medications that require prior authorization. This result conceivably could save money in the medicaid prescription drug line item, but it would cost the Medicaid program more money over the long-run for the reasons already discussed.

RESPONSE: The department agrees a formulary and prior authorization program will, in some instances, require additional effort by the prescriber. This is necessary to assure the non-formulary item they wish to prescribe will be dispensed. We would hope these same physicians who are also residents and taxpayers of the State of Montana will realize their actions help to insure the taxpayer's dollars are spent for medically necessary products proven effective, safe and cost effective.

COMMENT: Restricting access to effective medications increases total medical costs by increasing demand for other services. A December 1989 study by William J. Moore, Ph.D., and Robert Newman, Ph.D., of Louisiana State University's Department of Economics found significant increases in general inpatient hospital care, mental intermediate care, and other practitioner services when medicaid programs restricted access to medications.

As an example, Moore and Newman noted that when several drug products were removed from the Louisiana State Medicaid formulary in 1976 medicaid officials, at that time, estimated that the removal of these drugs would decrease the drug budget by 15.68% and provide a savings (reduced expenditures) to the total medicaid program of $5.6 million. In fact, however, actual drug budget expenditures fell by about $3.6 million, or roughly 10.0%, but at the same time, total medicaid expenditures rose by $27.1 million or approximately 14.1%.

Moreover, a recent study by Peter G. Sassone, Ph.D., of Georgia Tech's College of Management concluded that a prior authorization system saved no money for Georgia Medicaid but instead showed significant increases in the inpatient hospital, doctor and outpatient treatment budget categories.

In addition, the cost of administering a prior-authorization program often outweighs any direct savings from reducing drug utilization. In 1981, for example, according to a study by Pracon, Inc., California's Department of Health Services spent an average of $8.21 to process each Treatment Authorization Request (TAR) for drugs under Medi-Cal, compared to average savings of only $5.44 per TAR, for a net loss of $2.77 per request.

RESPONSE: We do not believe the implementation of the formulary and prior authorization program will increase demands for other services. The department's decision to establish a formulary and prior authorization program will reduce pharmacy program costs as well as other costs as a more effective product leads to a faster recovery, reduced hospitalizations and reduced physician visits.

4. This rule change will be implemented on October 1, 1994 to coincide with the implementation of the drug formulary and prior authorization programs.

Rule Reviewer

Director, Social and Rehabilitation Services

Certified to the Secretary of State, August 15, 1994.

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

In the matter of the of adoption of Rules I through IX pertaining to child support enforcement suspension of licenses process	)))))	NOTICE OF THE ADOPTION OF RULES I THROUGH IX PERTAINING TO CHILD SUPPORT ENFORCEMENT SUSPENSION OF LICENSES PROCESS

TO: All Interested Persons

1. On May 26, 1994, the Department of Social and Rehabilitation Services published notice of the proposed adoption of Rules I through IX pertaining to child support enforcement suspension of licenses process at page 1386 of the 1994 Montana Administrative Register, issue number 10.

2. The Department has adopted rules [RULE I] 46.30.1701, PURPOSE STATEMENT; [RULE II] 46.30.1702, DEFINITIONS; [RULE III] 46.30.1705, CRITERIA FOR STANDARD PAYMENT PLAN; [RULE IV] 46.30.1708, FINANCIAL HARDSHIP PAYMENT PLAN; [RULE V] 46.30.1711, EFFECT OF FINANCIAL HARDSHIP PAYMENT PLAN DETERMINATION; [RULE VI] 46.30.1712, PROCEDURES FOR DETERMINING FINANCIAL HARDSHIP PAYMENT PLAN TERMS; [RULE VII] 46.30.1715 PROCEDURES AND CRITERIA FOR RESULTANT HARDSHIP; [RULE VIII] 46.30.1718, STAY OF LICENSE SUSPENSION; and [RULE IX] 46.30.1722, CONTESTED CASE HEARING PROCEDURES as proposed.

4. The Department has thoroughly considered all commentary received:

COMMENT: Department of Family Services requested that the Child Support Enforcement License Suspension Rules be waived when applied to licensed foster care providers. The license for foster care providers is not a mode of obtaining income for the providers and the Department is concerned with the impact a license suspension would have on their program and children in foster care.

RESPONSE: Section 40-5-701, et seq., MCA gives the Child Support Enforcement Division (CSED) the authority to suspend any license, certificate, registration, or authorization issued by an agency of the state of Montana granting a person a right or privilege to engage in a business, occupation or profession or any other privilege. When a Notice of Intent to Suspend a License is issued, it does not mean the license will be suspended. An obligor may pay the support arrears debt, may enter into a payment plan to pay the debt or may request a hearing. Section 40-5-710(3), MCA allows the judge or hearing officer to stay suspension or continued suspension of a license

upon a showing that suspension would create a significant hardship to the obligor, the obligor's employees, to legal dependents residing in the obligor's household, or to persons, businesses, or other entities served by the obligor.

Should an obligor providing foster care to children through the Department of Family Services be served a Notice of Intent to Suspend his foster care license, he may avoid suspension of that license by paying the debt or entering into a payment plan to do so. If neither of these options are chosen, the obligor may request a stay of suspension by showing that suspension of the foster care license will create a significant hardship to the children in his foster care and to any entities, including the Department of Family Services, served by his provision of foster care.

Although the license suspension authority will not be waived for foster care providers, clearly there are means within the statutory scheme and the regulations to avoid suspension of a foster care license.

Dawn Sliva
Rule Reviewer

Russell G. Carter acting for
Director, Social and Rehabilitation Services

Certified to the Secretary of State August 15, 1994.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE Petition of Vehrs Wine, Inc., d/b/a Vehrs Mountain States Beverage, Inc., for a Declaratory Ruling as to the Applicability of 16-3-220(1), MCA.	)	Docket No. LQ-94-01
	)	DECLARATORY RULING
TO: All Interested Persons	)	

INTRODUCTION

1. On January 26, 1994, the Montana Department of Revenue, (Department), received a Petition for Declaratory Ruling from Vehrs Wine Inc., a Montana Corporation, d/b/a/ Vehrs Mountain States Beverage (Vehrs), whose principal place of business is in Missoula, Montana. The mailing address of the petitioner is 1701 Rankin, Missoula, Montana 59802.

2. The facts upon which a ruling will be made are as follows: Vehrs is a registered wine and beer wholesaler which is a wholesaler of a micro-beer from Seattle, Washington known as Red Hook Ale. Red Hook Ale is available in limited quantities. Vehrs is authorized by Redhook Ale to distribute in the Missoula, Kalispell, and Bozeman marketing area. More specifically, Vehrs is authorized to distribute in Lincoln, Flathead, Sanders, Lake, Mineral, Missoula, Powell, Ravalli, Granite, Deer Lodge, Madison, Silver Bow, Lewis and Clark, Jefferson, Gallatin, Broadwater, Meagher, Wheatland, Park, Golden Valley, Sweetgrass Counties and Glacier Park Concessions.

3. The question of law as stated in the Petition is whether § 16-3-220(1), MCA, is invalid and therefore unenforceable because:

a. It does not serve the purpose of its enactment bill;

b. It creates an undue and unnecessary burden on Vehrs Wine Inc. and other similarly situated wholesalers; and

c. It is inconsistent and conflicts with other provisions of § 16-3-217 et seq., MCA, and its effect is to create an unequal application of the law.

4. The petitioner's arguments go to the issue of whether or not § 16-3-220(1), MCA, is unconstitutional either on it face or as it applies to them. A statute cannot be declared invalid unless it violates a constitutional provision.

ANALYSIS

5. Section 16-3-220(1), MCA, states that a wholesaler appointed to distribute a brand of beer within a territory specified by agreement pursuant to § 16-3-221(3), MCA, shall call on and offer that brand to at least seventy-five percent of the retailers within that territory at least every three weeks.

6. The purpose of this statute is codified as § 16-3-217, MCA. The legislature found and declared that the purpose of §§ 16-3-218 through 16-3-226, MCA, is to assure continued interbrand competition in malt beverage sales through competing independent wholesalers and to assure breweries the ability to protect the reputation of their products through quality control arrangements.

7. Vehrs Inc. believes that § 16-3-220(1), MCA, should be determined to be invalid because when applied to them it requires them to solicit sales with retail licenses which cannot be supplied with the limited quantity of Red Hook Ale allocated to the state of Montana. Vehrs claims that it should not be compelled to offer for sale that which it is unable to deliver.

8. A brewer is not required by § 16-3-214, MCA, to cover the entire state of Montana with wholesaler appointments or other distributive arrangements if allowed under § 16-3-214, MCA.

9. It appears that Red Hook Ale and Vehrs have created their own problem by constructing an unrealistic territorial appointment.

10. As an executive agency, the Department must adhere to and enforce the Montana statutes (Article VI, § 4 of the 1972 Montana Constitution). Constitutional issues are not proper subjects for administrative hearings or appeals. In many instances an appellant must raise issues in the lower administrative proceedings to preserve the issue for later judicial review. This corollary of the administrative exhaustion doctrine does not apply to constitutional issues. Jarussi v. Board of Trustees, 204 Mont. 131, 135, 664 P.2d 316, 318 (1983) citing Davies Warehouse Co. v. Bowles, 321 U.S. 144; 1 Am. Jur. 2d Administrative Law, § 185 at 484-490.

11. This Department is an administrative body and as such is deemed to be an arm of the executive branch of state government. Constitutional issues must be decided by the judicial branch of government. Administrative decisions of constitutional issues would violate the constitutional doctrine of the separation of powers. Jarussi, 204 Mont at 135, 664 P.2d at 316; See also Mitchell v. Town of West Yellowstone, 235 Mont. 104, 109, 765 P.2d 745, 748 (1988).

DECLARATORY RULING

12. The Department of Revenue does not have the authority to declare this statute invalid on constitutional grounds as the petitioner has requested. The Department believes that the district court is the more appropriate forum to resolve such matters.

13. Moreover, the petitioner has filed suit in the Fourth Judicial District, Missoula County thus rendering the issue moot.

DATED this 18th day of July, 1994.

MICK ROBINSON
Director

CERTIFICATE OF MAILING

I hereby certify that on the 19th day of July, 1994, a true and correct copy of the foregoing has been served by placing same in the United States Mail, postage prepaid, addressed as follows:

Timothy D. Geiszler
Geiszler & Newcomer
265 West Front
Missoula, Montana 59802

Tom Hopgood
Luxan & Murfit
Fourth Floor, Montana Club Building
P.O. Box 1144
Helena, Montana 59624

Roger Tippy
Montana Beer & Wine Wholesalers Assoc.
P.O. Box 124
Helena, Montana 59624

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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