RESERVE

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 17
SEPTEMBER 8, 1994
PAGES 2469-2561

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 17

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 The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

TABLE OF CONTENTS

Page Number

NOTICE SECTION

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the adoption of new rule I and proposed amendments of Rules 2.5.201, 2.5.301, 2.5.302, 2.5.403, 2.5.404, 2.5.501, 2.5.502, 2.5.605, 2.5.606 relating to state purchasing.	)))))))	NOTICE OF PROPOSED ADOPTION OF RULES AND AMENDMENTS PERTAINING TO STATE PURCHASING. NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On October 8, 1994, the Department of Administration proposes to adopt Rule I relating to protest procedures for vendors, and to amend rules 2.5.201, 2.5.301, 2.5.302, 2.5.403, 2.5.404, 2.5.501, 2.5.502, 2.5.605 and 2.5.606, relating to state purchasing.

2. The proposed new rule will read as follows:

RULE I VENDOR PROTEST PROCEDURE (1) Bidders and offerors may protest a bid, proposal, or award by notifying the procurement officer as soon as possible after they discover any potential irregularity in the procurement process. The protest must be in writing and state in detail all of the protestor's objections.

(2) The state is under no obligation to delay, halt, or modify the procurement process due to a protest, but it will conduct an internal review of the procurement.

(3) The procurement officer must notify the protestor in writing of the findings within thirty (30) working days of the protest. The procurement officer may extend this time period if sufficient evidence cannot be obtained within the thirty (30) working days. Written notice must be sent to the protesting party with justification for extension.

(4) If the procurement officer finds an irregularity, the procurement officer will adopt the course of action which is in the best interest of the state. AUTH: Sec. 18-4-221 MCA; IMP, Sec. 18-4-221 MCA

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

2.5.201 DEFINITIONS (1) -(5) Remain the same.

(6) "Central stores" ~~or "property and supply bureau~~ means the proprietary program operated by the division which develops standard specifications, procures, warehouses and delivers certain ~~common use~~ supplies for state agencies.

(7)- (12) Remain the same.

(13) "Exigency" means a purchase made without following normal purchasing procedures due to a sudden and unexpected happening or unforeseen occurrence or condition which requires immediate action.

(13)-(17) remain the same but renumbered (14) - (18)

(19) "Property and supply bureau" means the bureau of the division which is responsible for the central stores program and for operating the state and federal surplus programs for eligible donees.

(18)-(30) remain the same but renumbered (20) - (32)

AUTH: Sec. 18-1-114 and 18-4-221 MCA; IMP, Sec. 18-4-221 MCA

2.5.301 DELEGATION OF PURCHASING AUTHORITY

(1) - (2) Remain the same.

(3) Unless specifically addressed in a delegation agreement, agencies must buy controlled items through the division except office supply items (as defined in ARM 2.5.201(17)) supplied by central stores or purchased through central stores term contracts. These items may be purchased directly from vendors if the vendor's price is a publicly advertised ~~listing~~ price, ~~or~~ established catalog price, or discount price offered to the purchasing agency and is less than the price available from the central stores program or a central stores term contract and the specifications, terms, conditions, and delivery of these items meet or exceed the central stores program.

(4) Remains the same.

AUTH: Sec. 18-4-221 MCA; IMP, Sec. 18-4-221, 18-4-222, and 18-4-302 MCA

2.5.302 REQUISITIONS FROM THE AGENCIES TO THE DIVISION

(1)-(3) Remain the same.

(4) The division may cancel a requisition if deemed appropriate for reasons such as, but not limited to, the following. The requisition:

(a) does not contain sufficient specifications;

(b) cannot be processed in a timely manner;

~~(c) is within the agency's delegated authority;~~

(d)-(e) remain the same, but renumbered (c)-(d)

AUTH: Sec. 18-4-221 MCA; IMP, Sec. 18-4-221 MCA

2.5.403 ~~RESIDENT~~ BIDDING PREFERENCES (1) ~~In order to provide for an orderly administration of the business of the state of Montana in awarding public contracts for the purchase of goods and services and for construction, repair, and public works of all kinds, a public agency shall apply the preferences required in Sections 18-1-102 and 18-1-112, MCA.~~ Montana resident

and Montana-made preferences, as required in 18-1-102 and 18-1-112 MCA, must be applied by a public agency when awarding contracts for supplies except in the following instances:

(a) procurements using the competitive sealed proposal process (request for proposal) as defined in 18-4-304 MCA and ARM 2.5.602;

(b) small purchases as defined in 18-4-305 MCA and ARM 2.5.603;

(c) cooperative purchasing as defined in 18-4-401 MCA;

(d) procurements involving services as defined in 18-4-123 MCA; or

(e) procurements involving funds obtained from the federal government where the application of preferences has been expressly prohibited.

(2) To assess eligibility, the department requires vendors to apply for preference by completing the applicable sections of the bidder affidavit form described in 18-1-113, MCA. The affidavit must be on file with the division at the time of bid ~~or proposal~~ opening, or be submitted with the bid ~~or proposal~~ to be considered for preference eligibility. Vendors who submit inaccurate information on this form may be subject to the provisions of ARM 2.5.402.

(3) A third preference, as required in 18-7-107 MCA, must be applied to all state printing, binding, and stationery work.

AUTH: Sec. 18-1-114 and 18-4-221 MCA; IMP, 18-1-102 and 18-4-221 MCA

2.5.404 BID PREPARATION (1)-(6)(a) Remain the same.

(b) upon delivery of the merchandise received in a satisfactory condition, whichever is later.

(7)-(9) Remain the same.

AUTH: Sec. 18-4-221 MCA; IMP, Sec. 18-4-221 MCA

2.5.501 SPECIFICATIONS (1) Remains the same.

(2) Specifications shall, to the extent practicable, emphasize functional or performance criteria and limit design or other detailed physical descriptions to those necessary to meet the needs of the state. To facilitate the use of the criteria, an agency shall attempt to include as a part of its requisitions, the principal functional or performance needs to be met and any compatibility requirements.

(3) In developing specifications, accepted commercial standards shall be used and unique requirements shall be avoided, to the ~~extend~~ extent practicable.

(4)-(7) Remain the same.

AUTH: Sec. 18-4-232 MCA; IMP, Sec. 18-4-231 through 18-4-234 MCA

2.5.502 BID AND CONTRACT PERFORMANCE SECURITY

(1)-(4)(a) Remain the same.

(b) If certificates of deposit or money market certificates are determined to be acceptable, they shall be issued in the name of the state of Montana from any bank or savings and loan association licensed to do business in Montana.

~~The certificate shall be in the amount of the required security plus the certificate of deposit early withdrawal penalty.~~

(c) If irrevocable letters of credit are determined to be acceptable, they shall be issued in the name of the state of Montana from any bank or savings and loan association licensed to do business in Montana. Irrevocable letters ~~or~~ of credit in excess of $100,000 may not be accepted as security for contracts.

(5) - (8) Remain the same.

AUTH: Sec. 18-4-221 MCA; IMP, Sec. 18-1-201 and 18-4-312 MCA

2.5.605 EXIGENCY PROCUREMENTS (1) An exigency procurement of $2,000 or greater shall be limited to those supplies or services necessary to meet the exigency~~.~~, as defined in ARM 2.5.201.

(2) - (4) Remain the same.

AUTH: Sec. 18-4-221 MCA; IMP, Sec. 18-4-133 MCA

2.5.606 PROCUREMENT OF USED EQUIPMENT (1) Remains the same.

(2) Unless justified as sole source or exigency, the award of the contract will be made by identifying the requirements and proceeding with the competitive bidding or proposal process, pursuant to ARM 2.5.601.

(3) Remains the same.

AUTH: Sec. 18-4-221 MCA; IMP, Sec. 18-4-221 MCA

3. Rule I is proposed to establish an administrative procedure to handle vendor protests. Generally the court system supports every administrative effort possible to resolve a dispute prior to litigation. This proposed rule formalizes the process used to address vendors concerns.

It is necessary to amend the rules for the following reasons:

ARM 2.5.201 is amended in (6) to clarify the function of the "central stores program" and to add a definition of the "property and supply bureau" and "exigency."

ARM 2.5.301 is amended to reflect a change in 18-4-302, MCA made by the First Special Session, 1994. This change allows agencies to purchase office supplies, under certain conditions, directly from a vendor instead of through the central stores program. The amendments also clarify that the "term contract" referred to in this section, means central stores term contracts not state term contracts in general.

ARM 2.5.302 removes the option of the state purchasing bureau to return requisitions to agencies if it is for an item within the agency's delegated authority. With the adoption of a previous rule (ARM 2.5.301), we made it optional for agencies to exercise their delegated authority.

ARM 2.5.403 is amended in two places. The first amendment is to the catchline by removing the word "resident" to clarify that the rules refer to preferences other than resident only. The second amendment clarifies when agencies need to apply

resident and Montana-made preferences.

ARM 2.5.404 concerning bid preparation is amended to insert the word "received" to clarify the meaning of the sentence.

ARM 2.5.501 concerning specifications is amended to add punctuation and correct a typographic error.

ARM 2.5.502 is amended to delete the unnecessary requirement that certificates of deposit used as bid security must include an early withdrawal penalty. In practice, CD's are not issued in this manner.

ARM 2.5.605 is amended to reference a definition of "exigency" placed under the definition section of ARM 2.5.201.

ARM 2.5.606 is amended to clarify that competitive bidding for used equipment does not need to take place until the item is anticipated to cost over $5,000 -- consistent with other state purchases of supplies and services.

4. Interested persons may submit their data, views, or arguments concerning the proposed adoption or amendments to Marvin Eicholtz, Administrator, Procurement and Printing Division, Room 165 Mitchell Building, Helena, Montana 59620 no later than October 8, 1994.

5. If a person who is directly affected by the proposed amendments or adoption of rule wishes to express his data, views and arguments orally or in writing at a public hearing, he must make a written request for hearing and submit this request along with any written comments to Marvin Eicholtz, Administrator, Procurement and Printing Division, Department of Administration, Room 165, Sam W. Mitchell Building, Helena, Montana, 59620. A written request for hearing must be received no later than October 8, 1994.

6. 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 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 800 persons based on 8000 vendors interested in submitting bids for supplies and services to the state of Montana.

Dal Smilie, Chief Legal Counsel
Rule Reviewer

Lois A. Menzies, Director
Department of Administration

Certified to the Secretary of State on 8/29/94.

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

In the matter of the adoption of rules I-III regarding drinking water and ice regulations	)))))	NOTICE OF PROPOSED ADOPTION OF RULES NO PUBLIC HEARING CONTEMPLATED

(Drinking Water & Ice)

To: All Interested Persons

1. On October 17, 1994, the department proposes to adopt new rules I-III regarding drinking water and ice regulations.

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

RULE I DRINKING WATER (1) Any person engaged in the production, packaging, manufacturing or processing of drinking water, culinary bottled water, or water otherwise processed and packaged for human consumption, is subject to the licensing requirements of 50-50-201, MCA, for food manufacturing establishments. Any manufacturing or bottling plant located in a state, territory, or nation other than Montana that prepares water in bottles or other containers for drinking or culinary purposes for sale in Montana must also be licensed by the department.

(2) Each food manufacturing establishment in Montana where water is prepared for sale in bottles or other containers for human consumption and the sources of all such water must be inspected at least once each year by the local health officer, sanitarian or sanitarian-in-training employed by or contracted with the local board of health having jurisdiction. A copy of each inspection must be submitted to the department within 30 days after the inspection occurs.

(3) Each food manufacturing establishment in Montana where water is prepared for sale in bottles or other containers for human consumption must:

(a) obtain its water from a community public water system approved by the water quality division of the department, or, if water is obtained from a separate or independent system, that system must comply with the statutes governing public water supplies, 75-6-101 et seq., MCA, the rules governing public water supplies, ARM 16.20.201 et seq., and the rule governing plans for public water supplies or wastewater systems, ARM 16.20.401.

(b) maintain sampling records demonstrating compliance with the bacteriologic, chemical and radiologic sampling requirements specified in 6(b) of this rule for at least 12

months after the date of sampling.

(4) The operation of all food manufacturing establishments involved in producing, packaging, manufacturing, or processing drinking or bottled water and the products marketed must comply with these rules and with the Montana Food, Drug and Cosmetic Act, 50-31-101 et seq., MCA; the food manufacturing establishment rules, ARM 16.10.301 et seq.; the federal standards regarding food labeling, 21 CFR 101; the federal quality standards for foods with no identity standards, 21 CFR 103; the federal standards for processing and bottling of bottled drinking water, 21 CFR 129; and the Fair Packaging and Labeling Act, 15 USC 1451 et seq.

(5) Every food manufacturing establishment desiring to sell, market or distribute bottled water in Montana, whether located in Montana or not, must apply for a license on a form provided by the department, which must be signed by the owner or the owner's legal representative, and must submit the fee required by 50-50-206, MCA. Such fee must be payable to the department and the application must be postmarked no later than midnight on December 31 of each year. Submission of a renewal application and fee after this time will require the food manufacturing establishment to submit the late fee required by 50-50-206, MCA. The license year is January 1 through December 31.

(6) In addition to the fee, the late fee, if applicable, and the application form identified in (5) above, the food manufacturing establishment must submit the following to the department for review:

(a) A certification affidavit from the state or local health officer, sanitarian or sanitarian-in-training employed by or contracted with the local board of health having jurisdiction, affirming that the establishment meets the requirements of 21 CFR 103 and 129;

(b) If the source water is not mineral water, copies of the most recent inorganic, volatile organic, organic chemical and radiological analyses of the establishments water showing compliance of the source water with the maximum contaminant levels for regulated water systems as required by 40 CFR 141; or a certification affidavit from the state or local health officer, sanitarian, or sanitarian-in-training employed by or contracted with the local board of health having jurisdiction, affirming that the water source complies with these standards;

(c) Test results for pesticides and synthetic organic chemicals, if the department determines such tests are necessary or if random testing has shown there is or may be contaminants present at levels which may adversely effect public health;

(d) A copy, photocopy, or printer's proof of each label for each product to be marketed and for each size to be marketed; and

(e) A description of the source of the water, water treatment used, all substances added to the water, and any other documentation required by the department to verify that

labels and terminology used on the labeling conform with applicable law.

(7)(a) The department hereby adopts by reference:

(i) ARM 16.10.301 et seq., setting standards for food manufacturing establishments;

(ii) ARM 16.20.201 et seq., setting standards for public water supplies;

(iii) ARM 16.20.401, governing plans for public water supplies;

(iv) 21 CFR 101, setting food labelling standards;

(v) 21 CFR 103, setting quality standards for foods with no identity standards;

(vi) 21 CFR 129, setting standards for processing and bottling bottled drinking water;

(vii) 40 CFR 141, containing maximum contaminant levels for drinking water, and

(viii) 15 USC 1451 et seq., containing federal law on packaging and labelling.

(b) Copies of these statutes and rules may be obtained, upon payment of copying costs, from the Food and Consumer Safety Bureau, Montana Department of Health and Environmental Sciences, Capitol Station, Box 200901, Helena, Montana, 59620-0901.

AUTH: 50-31-104, 50-31-201, 50-50-103, MCA
IMP: 50-31-104, 50-31-201, 50-50-103, MCA

RULE II ICE (1) This rule applies only to ice that is intended for human consumption and is sold in packaged form or in bulk form for food, drink or culinary purposes. This rule does not apply to persons, hotels, restaurants, inns, caterers, food service contractors, or theaters that manufacture or furnish ice solely to or for their customers in a manner that is incidental to the production, sale or dispensing of other goods and services.

(2) Natural ice that is cut from water on a stream, creek, river, lake, pond, or other body of surface water may not be used as ice for human consumption.

(3) Except as provided in (1) above, any person who manufactures, transports, distributes, sells or provides ice, with or without charge, to the public must obtain a food manufacturing license and must comply with these rules and with the statutes governing food manufacturing establishments, 50-50-101 et seq., MCA; the rules governing food manufacturing establishments, ARM 16.10.301, et seq.; and the rules governing public water systems, ARM 16.20.201 et seq.

(4) Ice plants must be operated in a clean and sanitary manner. The room in which ice production occurs may not be used for any purposes other than ice or food production and the storage and refrigeration of ice or food.

(5) Ice production facilities shall meet the provisions of 21 CFR 110, which provides standards for current good manufacturing practice in manufacturing, packing, or holding human food.

(6) Ice produced and packaged for sale to the public

must be labeled in accordance with the Montana Food, Drug and Cosmetic Act, Title 50, chapter 31, MCA, and in accordance with 21 CFR 101, which establishes federal food labeling standards, and must display legible labeling including, but not limited to, the identity of the product, the net weight or contents of the package, and the name and place of business of the manufacturer, packer, distributor, seller, or provider.

(7) Packaged ice transportation, hauling vehicles, and bulk containers, including display or storage freezers, are regarded as a part of the licensed premises and are subject to review or inspection by the department or the local health officer, sanitarian, or sanitarian-in-training employed by or contracted with the local board of health having jurisdiction, prior to issuance or renewal of its license or on a regular annual inspection.

(8) The food manufacturing establishment must sample and have analyzed its manufactured ice products, and the waters from which the ice is made, at least once a month for compliance with the maximum microbiological contaminant levels contained in ARM 16.20.207, and send the results to the department. The food manufacturing establishment is also required to comply with the bacteriological quality sampling provisions of ARM 16.20.210(3)-(7) for transient non-community water systems. The department may increase the required sampling frequency based upon sampling results or other conditions which indicate an increased risk to the health of the users of the product. The department may decrease the required sampling frequency to quarterly or biannually based on a showing that the source consistently does not contain the contaminant, is either a community water system or a groundwater source not under direct influence of surface water, and that the samples consistently meet the required sanitary standards, rendering the source and operation generally not vulnerable to microbiological contamination.

(9) The delivery of ice to the customer must be done under sanitary conditions. Ice must be packaged in durable freezable containers labeled in conformance with the labeling requirements as described in (6) above. Boxes or containers intended for non-food use or for use in packaging another food are not acceptable transport containers. All boxes, containers, cases or contact surfaces within bins or transport vehicles must be constructed of food grade materials.

(10) Natural or manufactured ice that does not conform to standards set forth in this rule must be conspicuously identified or labeled as unsafe or inedible and may not be sold or distributed for human consumption. Such ice may be used for cooling or refrigeration purposes only if such use does not permit it to come in direct contact with food or drink meant for human consumption. If such ice is sold or distributed for refrigeration purposes, the seller or distributor must notify the buyer or consumer that it is not safe for human consumption.

(11) The department hereby adopts by reference ARM

16.10.301 et seq., setting standards for food manufacturing establishments; ARM 16.20.201, et seq., setting standards for public water supply systems; 21 CFR 110, setting standards for packing, manufacturing, or holding human food; and 21 CFR 101, setting food labelling standards. Copies of these rules may be obtained, upon payment of copying costs, from the Food and Consumer Safety Bureau, Montana Department of Health and Environmental Sciences, Capitol Station, Box 200901, Helena, Montana, 59620-0901.
AUTH: 50-31-104, 50-31-201, 50-50-103, MCA
IMP: 50-31-104, 50-31-201, 50-50-103, MCA

RULE III COMMON CARRIERS (1) Water and ice provided by common carriers for drinking or culinary purposes in railway trains, buses, or other public transportation conveyances and in all railway stations in Montana must be taken from supplies which conform to standards for drinking water contained in 40 CFR 141 and 40 CFR 142.

(2) The department hereby adopts by reference 40 CFR 141, setting maximum contaminant levels and other standards for drinking water, and 40 CFR 142, establishing procedures for implementing and enforcing drinking water standards. Copies of these rules may be obtained, upon payment of copying costs, from the Food and Consumer Safety Bureau, Montana Department of Health and Environmental Sciences, Capitol Station, Box 200901, Helena, Montana, 59620-0901.
AUTH: 50-50-103, MCA
IMP: 50-50-103

3. The department is proposing to adopt these rules for the following reasons. The Board of Health and Environmental Sciences has proposed to repeal rules 16.10.501-16.10.503 which contain the current standards for bottled water and ice. Upon reviewing the rules, the board discovered that the section containing its rulemaking authority, § 75-6-103, MCA, 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 drinking water and ice. Based on this language, it appears that the board did not have specific authority to promulgate these rules, but that the department does both under the Montana Food, Drug and Cosmetic Act, Title 50, chapter 31, and under the Food Establishment Act, Title 50, chapter 50. The department has specific rulemaking authority under both these acts pursuant to §§ 50-31-104, 50-31-201, and 50-50-103, MCA. Therefore, in order to ensure the rules are adopted pursuant to the most appropriate rulemaking authority and to most adequately protect public health by adopting the most current standards and requirements for drinking water and ice, the board is proposing to repeal its rules and the department is proposing to

adopt new updated rules on the same subject.

4. Interested persons may submit their data, views, or arguments concerning the proposed rules, in writing, to Cynthia Brooks, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620-0901, and must submit them in sufficient time so that they are received no later than 5:00 p.m. on October 7, 1994.

5. If a person who is directly affected by the proposed amendment wishes to express his/her data, views, and arguments orally or in writing at a public hearing, he/she must make written request for a hearing and submit this request along with any written comments he/she has to Cynthia Brooks, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620-0901. A written request for hearing must be received no later than 5:00 p.m. on October 7, 1994.

6. If the agency receives requests for a public hearing on the proposed amendments from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed 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 in excess of 25 persons, based on the number of persons producing, packaging, manufacturing, processing, and drinking water and producing, packaging, manufacturing, processing, and consuming ice.

ROBERT J. ROBINSON, Director

Certified to the Secretary of State August 29, 1994.

Reviewed by:

Eleanor Parker, DHES Attorney

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

In the matter of the amendment of rule 16.32.399G regarding medical assistance facilities emergency services	)))))	NOTICE OF PROPOSED AMENDMENT NO PUBLIC HEARING CONTEMPLATED (Medical Assistance Facilities)

To: All Interested Persons

1. On October 17, 1994, the department proposes to amend ARM 16.32.399G regarding the required emergency services in medical assistance facilities.

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

16.32.399G MEDICAL ASSISTANCE FACILITIES--EMERGENCY SERVICES (1) Remains the same.

(a)-(c) Remain the same.

(d) The emergency services must ~~be equipped and staffed at levels equal to or greater than those provided for ambulance services in ARM 16.30.203 and 16.30.204~~ comply with the rules governing emergency medical services, subchapters 2, 3 and 4 of ARM Title 16, chapter 30.

(e) The department hereby adopts and incorporates by reference ARM ~~16.30.203 and 16.30.204, which contain equipment and personnel standards ambulance services must meet~~ subchapters 2, 3 and 4 of ARM Title 16, chapter 30, which contain the standards for all the various types of emergency medical services which may be provided. A copy of ~~ARM 16.30.203 and 16.30.204~~ the above rules may be obtained from the department's ~~Licensing and Certification~~ Licensure Bureau, Cogswell Building, Capitol Station, Box 200901, Helena, Montana 59620-0901.

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

3. The department is proposing to amend this rule because it adopts and incorporates by reference ARM 16.30.203 and 16.30.204, which have been repealed. The new references reflect the most current standards applicable to emergency medical services.

4. Interested persons may submit their data, views, or arguments concerning the proposed amendments, in writing, to Cynthia Brooks, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Box 200901, Helena, Montana, 59620-0901, no later than October 7, 1994.

5. If a person who is directly affected by the pro-

posed amendment wishes to express his/her data, views, and arguments orally or in writing at a public hearing, he/she must make written request for a hearing and submit this request along with any written comments he/she has to Cynthia Brooks, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Box 200901, Helena, Montana, 59620-0901. A written request for hearing must be received no later than October 7, 1994.

7. If the agency receives requests for a public hearing on the proposed amendments from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed 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, 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 persons, based on the number of medical assistance facilities in the State and the number of persons served by them.

/s/ William H. Kirk
ROBERT J. ROBINSON, Director

Certified to the Secretary of State August 29, 1994.

Reviewed by:
Eleanor J. Parker
Eleanor Parker, DHES Attorney

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

In the matter of the adoption of rules I-V regarding procedures and criteria for the certification of air and water pollution equipment as eligible for special property tax treatment.	NOTICE OF PUBLIC HEARING FOR PROPOSED ADOPTION OF RULES (Air & Water Quality)

To: All Interested Persons

1. On October 12, 1994, at 9:00 a.m., the department will hold a public hearing in Room C209 of the Cogswell Building, for the purpose of taking public comment on the proposed adoption of the above-captioned rules.

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

RULE I DEFINITIONS For the purpose of this subchapter, the following definitions apply, in addition to the definitions contained in 15-6-135, MCA:

(1) "Apportionment" means the identification of the extent to which multi-purpose property, facilities, machinery, devices or equipment are used for pollution control purposes.

(2) "DHES" means the Montana department of health and environmental sciences.

(3) "DOR" means the Montana department of revenue.

(4) "Substantial compliance" means either full compliance with all applicable rules, laws, orders, or permit conditions, or noncompliance with such requirements, provided that incidents of noncompliance are isolated and do not result in the filing by DHES of an administrative or judicial enforcement action. For purposes of this definition, issuance by DHES of a notice of violation or a citation does not constitute the filing of an administrative or judicial enforcement action.

AUTH: 15-6-135, MCA; IMP: 15-6-135, MCA

RULE II APPLICATION FOR CERTIFICATION AS AIR OR WATER POLLUTION EQUIPMENT (1) Applications for certification pursuant to this subchapter must be made on forms prescribed by DHES. Application forms must be made available by DOR.

(2) The applicant shall submit an original signed application to DHES with copies to DOR and the county commissioners of the county in which the property is located. Applications must contain the following information:

(a) a detailed description of the air or water pollution equipment and how it functions to control pollution. Design or engineering drawings showing the placement and use of the equipment must be provided;

(b) if the equipment is used for purposes other than pollution control, a description of the extent to which the equipment is or will be used for each purpose;

(c) itemization of capital and operating costs associated with the equipment, with apportionment of costs to multiple purposes, when applicable;

(d) identification of existing or pending air or water quality permits for the equipment, and a description of the applicant's compliance status in regard to applicable rules, laws, orders, and permit conditions;

(e) certification that the applicant is in substantial compliance with all applicable rules, laws, orders, and permit conditions; and

(f) certification that the information provided in the application is correct and complete.

(3) Within 45 days of receipt of an application, DHES shall determine whether additional information is required to made a certification decision. If DHES determines that additional information is required, DHES shall notify the applicant in writing and specify the date by which any additional information must be submitted. If the information is not submitted as required, the application must be considered withdrawn unless the applicant requests in writing, and DHES approves, an extension of time for submission of the additional information. DHES may make additional information requests within 45 days after receipt of any required additional information, following the same procedure as the original information request. DHES shall notify DOR and the appropriate county commissioners of any information requests.

(4) DHES shall make a final decision whether to certify within 120 days after the date it receives a complete certification application. DHES shall provide written notice of its final determination to the applicant, DOR, and the appropriate county commissioners. Monetary valuations or costs used by DHES in the certification process are for purposes of identifying qualifying portions of the equipment, and are not binding on DOR or a county as to actual taxable valuation.

AUTH: 15-6-135, MCA; IMP: 15-6-135, MCA

RULE III ELIGIBILITY CRITERIA (1) To be certified as air and water pollution equipment, property, facilities, machinery, devices, and equipment must meet the definition of air and water pollution equipment contained in 15-6-135, MCA.

(2) Operational techniques that reduce pollutants but do not require the installation or modification of specific facilities, machinery, devices, or equipment are not eligible for certification under this subchapter.

(3) To the extent that air or water pollution equipment is used for production or any purpose other than pollution control, it is not eligible for certification under this subchapter. Pursuant to the procedures in [RULE IV], DHES shall apportion the value of multipurpose equipment into that used

for production and other purposes and that used for pollution control.

(4) For certification to be granted, an applicant must be in substantial compliance on the date of application with all applicable rules, laws, orders, and permit conditions. Any failure to remain in substantial compliance shall void certification for all of the applicant's air and water pollution equipment. Procedures for compliance inspection and voidance of certification are as provided in [RULE V].

(5) Examples of equipment or facilities that may, to the extent used for pollution control purposes, qualify for certification are:

(a) inertial separators (cyclones, multiclones);

(b) wet collection devices (scrubbers);

(c) electrostatic precipitators;

(d) cloth filter collectors (baghouses);

(e) vapor recovery systems;

(f) wastewater treatment facilities;

(g) plants or equipment that render water safe for discharge;

(h) wastewater recycling systems that store or prevent pollutants from reaching the environment;

(i) spill control systems;

(j) secondary storage pond liners;

(k) monitoring wells that are part of a pollution control system.

(6) Examples of equipment or facilities that generally are not certifiable as air or water pollution equipment include, but are not limited to, the following:

(a) continuous air emission monitors that function as emission indicators but are not part of an air emission control system;

(b) dispersion devices such as stacks, chimneys, or vents;

(c) non wastewater treatment facilities;

(d) stack sampling equipment, platforms, access facilities, stack extensions, portable monitoring equipment, or any other type of measuring device that is not part of a pollution control system;

(e) fuel changes except to the extent they achieve pollution control and require the installation or modification of specific facilities, machinery, devices, or equipment; and

(f) energy conservation measures, except to the extent they achieve pollution control and require the installation or modification of specific facilities, machinery, devices, or equipment.

AUTH: 15-6-135, MCA; IMP: 15-6-135, MCA

RULE IV APPORTIONMENT PROCEDURES (1) When air or water pollution equipment is used for production or any other purpose in addition to pollution control, DHES shall conduct an apportionment so that the certified portion of the multi-purpose equipment reflects the extent to which it is used for pollution control purposes.

(2) The applicant shall provide DHES with all information necessary to conduct an apportionment under this rule. DHES shall conduct the apportionment based upon the specific facts and circumstances of each case. Methods for apportionment include, but are not limited to, the following:

(a) assessment of the difference in value between equipment with integrated pollution controls and similar equipment without pollution controls. An example is a fluidized bed boiler with limestone injection for air emission control. The value of the fluidized bed boiler would be compared with the value of a similarly-sized conventional boiler, and the difference would be certified as the air pollution equipment value;

(b) assessment of the difference in value between a facility designed for multiple purposes and a facility designed for pollution control only. The difference would be denied certification;

(c) distinguishing between equipment in a facility or process that removes pollutants and equipment that is used for production or other purposes;

(d) any other method based on specific facts and circumstances that achieves a fair and reasonable apportionment of pollution control and other uses.

AUTH: 15-6-135, MCA; IMP: 15-6-135, MCA

RULE V COMPLIANCE (1) DHES shall conduct periodic inspections of certified pollution control equipment for the purpose of determining whether the applicant is in substantial compliance with all applicable rules, laws, orders, and permit conditions. These inspections may be part of any required air or water quality inspection.

(2) Failure to operate any certified air and water pollution equipment in substantial compliance with all applicable rules, laws, orders, or permit conditions shall void the certification for all of the applicant's equipment for as long as the failure persists. DHES shall provide written notice of its determination of a failure of substantial compliance to DOR and the appropriate county commissioners.

(3) Compliance determinations on pollution control equipment for which certification has already been received must be submitted to DOR by DHES no later than March 1 of the year following the year of inspection.

AUTH: 15-6-135, MCA; IMP: 15-6-135, MCA

3. The proposed rules are necessary to comply with the 1993 Legislature's directive in House Bill 436 that the department adopt rules describing procedures and criteria for the department's certification of air and water pollution equipment as eligible for special property tax treatment [see Section 15-6-135(2)(c), MCA]. In the statute and in the Statement of Intent accompanying House Bill 436, the department is specifically directed to adopt rules clarifying the definition and use of air and water pollution equipment, setting out the procedure and timeframes for application for certification, and establishing a procedure to apportion the value of multi-purpose

equipment into that used for production and other purposes and that used for pollution control.

Rule I contains definitions of key terms used in the proposed rules.

Rule II requires the department to develop an application form, sets out the required content of complete applications, establishes timeframes for department review and final certifications, and provides for notice to the Montana department of revenue and affected counties of applications, requests for additional information, and final certifications.

Rule III sets out criteria for certification of air or water pollution equipment, provides examples of equipment that generally will be certified, and provides examples of equipment or operations that generally will not be certified.

Rule IV sets out procedures and methods the department generally will use in apportioning multi-purpose equipment between pollution control and other purposes.

Rule V implements the 1993 Act's requirement that the department monitor certified pollution equipment for compliance with all applicable rules, laws, orders, and permit conditions; requires periodic inspections of equipment; and provides for notice of noncompliance to the Montana department of revenue.

4. Interested persons may submit their data, views, or arguments concerning the proposed new rules, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Jeff Chaffee, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620, no later than October 12, 1994.

5. Jim Madden has been designated to preside over and conduct the hearing.

ROBERT J. ROBINSON, Director

Certified to the Secretary of State August 29, 1994.

Reviewed by:

Eleanor Parker, DHES Attorney

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

In the matter of the proposed adoption of rules related to the workers' compensation data base system and amendment of the attorney fee rule	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION OF NEW RULES I THROUGH V AND AMENDMENT OF 24.29.3802

TO ALL INTERESTED PERSONS:

1. On October 6, 1994, at 10:00 a.m., a public hearing will be held in the auditorium of the Scott Hart Building (Highway Patrol Building), 303 North Roberts Street, Helena, Montana, to consider the adoption of new rules concerning the workers' compensation data base established by 39-71-225, MCA, and the amendment of ARM 24.29.3802.

The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you request an accommodation, contact the Department by not later than 5:00 p.m., October 3, 1994, to advise us of the nature of the accommodation that you need. Please contact the Employment Relations Division, Attn: Mr. John Weida, P.O. Box 8011, Helena, MT 59604-8011; telephone (406) 444-4661; TDD (406) 444-5549; fax (406) 444-4140. Persons with disabilities who need an alternative accessible format of this document in order to participate in this rule-making process should contact Mr. Weida.

2. The Department of Labor and Industry proposes to adopt the new rules as follows:

RULE I LEGAL FEES NOT TRACKED BY PAYEE (1) In order to provide certain information that is required for the data base system, all insurers and all claimants' attorneys must report the amount of legal fees that are paid. The department finds that the purpose of the data base system is to track workers' compensation claim costs, not to identify the specific individuals who provide services within the field of workers' compensation. In order to preserve the attorney-client privilege and the attorney work-product doctrine, and in order to protect the individual right of privacy, the department will track those fees only by claim, and not by payee.

(2) In accordance with (1), the data base system is not designed to generate reports that identify the amounts paid to a particular attorney.

AUTH: Sec. 39-71-203 MCA
IMP: Sec. 39-71-224, 39-71-225 MCA

RULE II CLAIMANT CONSULTANT AND LEGAL FEE REPORTING REQUIREMENTS (1) All attorneys that represent claimants shall report, on a per-claim basis, the amount of consultant and legal

fees that are paid by the claimant, for each claim where:

(a) the attorney has an approved fee agreement; or

(b) the attorney actually receives a fee from the claimant.

(2) The information must be reported to the department, on or in the form prescribed by the department, each time there is a triggering event:

(a) the settlement of the claim;

(b) the closure of the claim by the insurer;

(c) if there is payment of attorney fees by the claimant, when the case is not closed or settled, annually upon request by the department; or

(d) the termination of the attorney's representation of the client.

(3) A claimant attorney must report to the department the following information:

(a) the amount of attorney fees paid by the claimant; and

(b) the amount of consultant fees paid by the claimant. For the purpose of this rule and [RULE III], a consultant is a person or firm hired to evaluate the claimant's condition or abilities. A fee charged for providing treatment or restorative services to or for the claimant is not a consultant fee.

(4) Although this rule becomes effective December 1, 1994, in order that attorneys have adequate time to prepare for compliance with these rules, reporting is not required until January 1, 1995. Reports must be submitted to the department within 10 days of the triggering event.

(5) Reports must be filed for all claims where there is an attorney fee agreement in effect on January 1, 1995, regardless of date of injury, if a triggering event occurs on or after January 1, 1995. Reports which would have been due prior to January 1, 1995, do not have to be submitted.

AUTH: Sec. 39-71-203 MCA
IMP: Sec. 39-71-225 MCA

RULE III INSURER CONSULTANT AND LEGAL FEE REPORTING REQUIREMENTS (1) All insurers shall report, on a per-claim basis, the amount of the consultant fees, insurer's legal fees and claimant's legal fees that have been paid to date by the insurer, associated with each indemnity claim. That information must be reported on the subsequent report required by [proposed new RULE IX, published in 1994 MAR issue 14, at pages 1949-1955].

(2) If an insurer uses in-house counsel, and the insurer does not allocate the cost of in-house counsel directly to specific claims, the insurer shall report as required by [RULE IV].

AUTH: Sec. 39-71-203 MCA
IMP: Sec. 39-71-225 MCA

RULE IV IN-HOUSE COUNSEL COST ALLOCATION (1) Insurers that use the services of in-house counsel for assistance in handling Montana indemnity claims shall report the cost of that legal assistance. If the insurer does not separately track and

report in-house legal costs on a per-claim basis, the insurer shall report the cost allocation information required by this rule.

(2) The purpose of this cost allocation rule is to obtain a figure that reasonably reflects the per-claim cost of having in-house counsel. The insurer shall report annually to the department:

(a) the dollar amount that represents the following information about the cost of in-house legal staff:

(i) total compensation (salary and cost of benefits and employer contributions) of all attorneys who provide counsel on indemnity claims;

(ii) total compensation of support staff (such as secretaries, paralegals, and assistants) working for those attorneys; and

(iii) overhead costs attributable to the legal staff, such as a proportionate share of rent or building expense and administrative costs, such as payroll and accounting; and

(b) a percentage figure that reasonably approximates the percentage of time spent by the attorneys providing advice, counsel or representation on indemnity claims.

AUTH: Sec. 39-71-203 MCA
IMP: Sec. 39-71-225 MCA

RULE V VERIFICATION OF CONSULTANT AND LEGAL FEE REPORTING

(1) For the sole purpose of verifying the accuracy of the data reported, the department may periodically verify a consultant's billing documents used in the preparation and reporting of the information required by [RULE II and RULE III].

(2) For the sole purpose of verifying the accuracy of the data reported, the department may periodically verify the amount of an attorney's billing reported pursuant to [RULE II and RULE III]. Documents protected by the attorney-client privilege or attorney work-product doctrine are not subject to verification.

(3) At least 14 days advance notice of the time and place of the verification will be given to the reporting party. A reporting party is responsible for full cooperation with the department.

AUTH: Sec. 39-71-203 MCA
IMP: Sec. 39-71-225, 39-71-304 MCA

REASON: These rules are reasonably necessary to implement the new workers' compensation data base created by Chapter 512, Laws of 1993, so as to meet the statutory requirement that the data base system be fully operational by July 1, 1995. The new rules are intended to be codified as an integral part of the same subchapter that will contain the other data base system rules. The definitions and other general provisions of the data base system rules will apply to these proposed new rules. Interested persons should see 1994 MAR issue 14, pages 1949 - 1955 for more information concerning the other proposed data base system rules. As noted in RULE III, there is a cross-reference to one of the other proposed data base system rules.

3. The Department of Labor and Industry proposes to amend ARM 24.29.3802 as follows: (new matter underlined, deleted matter interlined)

24.29.3802 ATTORNEY FEE REGULATION

(1) through (10) Remain the same.

(11) Attorneys subject to this rule must report to the department as required by [RULE II].

(11) Remains the same, but is renumbered (12).

AUTH: 39-71-203 MCA
IMP: 39-71-225, 39-71-612 MCA

REASON: The proposed amendment to ARM 24.29.3802 is reasonably necessary to provide an enforcement mechanism for ensuring attorney compliance with RULE II.

4. Interested persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to:

John W. Weida, Bureau Chief
Workers' Compensation Claims Assistance Bureau
Employment Relations Division
Department of Labor and Industry
P.O. Box 8011
Helena, Montana 59604-8011

and must be received by no later than 5:00 p.m., October 13, 1994.

5. The Department proposes to make these new rules effective December 1, 1994. The Department reserves the right to adopt only portions of these proposed rules, or to adopt some or all of the proposed rules at a later date.

6. The Hearing Bureau of the Legal/Centralized Services Division of the Department has been designated to preside over and conduct the hearing.

David A. Scott
Rule Reviewer

Laurie Ekanger, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State: August 29, 1994.

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

In the matter of the proposed amendment of rules related to fees for construction blaster licenses) NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT OF 24.30.1703, CONSTRUCTION BLASTER LICENSE REQUIREMENTS

TO ALL INTERESTED PERSONS:

1. On October 7, 1994, at 10:00 a.m., a public hearing will be held in the first floor conference room at the Walt Sullivan Building (Dept. of Labor Building), 1327 Lockey Street, Helena, Montana, to consider the amendment of ARM 24.30.1703, related to fees for construction blaster licenses.

The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you request an accommodation, contact the Department by not later than 5:00 p.m., September 9, 1994, to advise us of the nature of the accommodation that you need. Please contact the Employment Relations Division, Attn: Tim Gottsch, P.O. Box 1728, Helena, MT 59624-1728; telephone (406) 444-6420; TDD (406) 444-5549; fax (406) 444-4140. Persons with disabilities who need an alternative accessible format of this document in order to participate in this rule-making process should contact Mr. Gottsch.

2. The Department of Labor and Industry proposes to amend the rule as follows: (new matter underlined, deleted matter interlined)

24.30.1703 CONSTRUCTION BLASTER LICENSE REQUIREMENTS

(1) and (2) Remain the same.

(3) The following fees must be paid to the ~~division~~ department and are nonrefundable:

(a) application fee - ~~$5.00~~ 25
(b) examination fee - ~~$5.00~~ 25
(c) license fee - ~~$15.00~~ 30
(d) annual renewal fee - ~~$10.00~~ 25
(e) reexamination fee - ~~$3.00~~ 20
(f) duplicate license fee - ~~$2.00~~ 10

(4) through (6) Remain the same.

AUTH: Sec. ~~37-72-201~~ 37-72-202, MCA
IMP: Sec. ~~37-73-201~~ 37-72-301 and 37-72-303 - 37-72-306, MCA

REASON: These amendments are reasonably necessary to adjust the fees so that they more closely approximate the costs of the licensing services provided. The fees have not been raised since the rules were originally adopted in 1985. The Department has surveyed the neighboring states and has found that the proposed fees are generally consistent with the fees charged in

those states, or lower. In addition, there are technical amendments to the rule that correct the authorization and implementation citations.

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:

John Maloney, Bureau Chief
Safety Bureau
Employment Relations Division
Department of Labor and Industry
P.O. Box 8011
Helena, Montana 59604-8011

and must be received by no later than 5:00 p.m., October 14, 1994.

4. The Department proposes to make these amendments effective December 1, 1994. The Department reserves the right to adopt only portions of these proposed amendments, or to adopt some or all of the proposed amendments at a later date.

5. The Hearing Bureau of the Legal/Centralized Services Division of the Department has been designated to preside over and conduct the hearing.

David A. Scott
Rule Reviewer

Laurie Ekanger, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State: August 29, 1994.

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

In the matter of the proposed adoption of rules related to the implementation of safety committees	) NOTICE OF PUBLIC HEARING ON) THE PROPOSED ADOPTION OF) RULES I THROUGH V) (SAFETY CULTURE ACT)

TO ALL INTERESTED PERSONS:

1. On October 4, 1994, at 10:00 a.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services building (north entrance), 111 North Sanders, Helena, Montana, to consider the adoption of new rules related to the implementation of safety committees for certain employers, as required by the Safety Culture Act. The proposed new rules do not replace any existing administrative rules.

The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you request an accommodation, contact the Department by not later than 5:00 p.m., September 23, 1994, to advise us of the nature of the accommodation that you need. Please contact the Employment Relations Division, Attn: Ms. Jean Branscum, P.O. Box 1728, Helena, MT 59624-1728; telephone (406) 444-6401; TDD (406) 444-5549; fax (406) 444-4140.

2. The Department of Labor and Industry proposes to adopt new rules as follows:

RULE I SAFETY COMMITTEE REQUIRED FOR EVERY EMPLOYER WITH MORE THAN FIVE EMPLOYEES (1) Every employer that is subject to the requirements of ARM 24.30.2541 must also have a safety committee. If an employer is a party to a collective bargaining agreement that provides for the establishment and operation of a safety committee, the terms of the collective bargaining agreement shall govern the operation of the safety committee, notwithstanding any other provisions of this rule and [RULES II through V].

(2) The Montana legislature has mandated the formation of safety committees that include representatives of the employer and the employees in order to foster a safety culture in Montana workplaces. It is the intent of the department that employer and employees meet together for the purpose of creating a safety culture in Montana workplaces and reducing on-the-job injuries and illnesses, in the hope that by improving occupational safety, workers' compensation insurance rates for all industries in Montana will be limited. Accordingly, the department is exercising its delegated authority to require that employers form safety committees in order to carry out the statutory duty imposed by 39-71-1505, MCA.

(3) A safety committee should not be dominated by either management or labor. Federal law prohibits domination of a safety committee by management. In order to avoid domination by management, these rules govern the following aspects of a safety committee:

(a) composition of the committee (see [RULE II]);
(b) scheduling of meetings (see [RULE III]);
(c) role of the committee (see [RULE IV]); and
(d) scope of duties of the committee (see [RULE V]).

(4) In order to promote the purpose of the Montana Safety Culture Act, the department finds that the recommendations of a safety committee are not intended to establish a standard of care or duty owed by the employer to either employees or third persons, and should not be used to establish a standard of care or duty that does not otherwise exist in law.

AUTH: Sec. 39-71-1505 MCA IMP: Sec. 39-71-1505 MCA

RULE II COMPOSITION OF THE SAFETY COMMITTEE (1) A safety committee must have at least one member representing the employees and at least one member representing the employer. The number of employer representatives may not exceed the number of employee representatives on the committee. However, an employer may have fewer representatives than the employees have as representatives. A safety committee must select a presiding officer from among its members.

(2) The committee should be of sufficient size and number to provide for effective representation of the workforce. While employers are encouraged to have as many safety committee members as is appropriate, the following membership schedule is the recommended minimum for compliance with this rule:

(a) for employers of more than 5, but less than 16 employees, one employee representative;

(b) for employers of more than 15, but less than 50 employees, two employee representatives; and

(c) for employers of 50 or more employees, three employee representatives.

(3) The employee representative(s) can either volunteer or otherwise be chosen by the non-managerial employees. While the selection process may be informal, it must be fundamentally fair and allow non-managerial employees a meaningful opportunity for a choice in the selection of the representative(s). An alternate representative may also be chosen to attend safety committee meetings in the absence of any other employee representative.

(a) If a collective bargaining agreement exists (which does not provide for a safety committee), then the exclusive bargaining representative shall decide how to select the employee representative(s). The exclusive representative may either appoint the representative(s) and an alternate, or may hold an election.

(4) The employer may designate an alternate employer representative to attend safety committee meetings in the absence of any other employer representative.

(5) The employer may provide appropriate support staff assistance to the safety committee, in addition to the employer representative(s).

(6) Employers may have a separate safety committee for each worksite location or for each type of operation where the risks of on-the-job injury or disease are distinct and different. If there are multiple safety committees due to multiple worksites or operations, then the employee representatives for each are to be selected by the non-managerial employees who are assigned to that worksite or operation.

AUTH: Sec. 39-71-1505 MCA IMP: Sec. 39-71-1505 MCA

RULE III SCHEDULING OF THE SAFETY COMMITTEE MEETINGS

(1) The safety committee must meet periodically. While employers are encouraged to have safety committees meet as often as is appropriate, a safety committee must meet at least once every 6 months.

(2) The employer must make available a meeting space for safety committee meetings. The meeting space may either be on the employer's premises or worksite, or at another location. The employer should provide such other resources (such as photocopies) as are appropriate to the size and nature of the employer's business and the needs of the safety committee.

(3) Safety committee meetings may be held either during the normal workday or outside of normal work hours. Members of the safety committee must be compensated for their time spent in meetings. If the meetings are held at a place other than the employer's premises or worksite, reasonable travel expenses of the members must be reimbursed by the employer upon request of a member.

(4) A safety committee meeting may not be conducted unless there is a quorum. A quorum exists when at least half of the employer representatives are present and at least half of the employee representatives are present.

(5) Employers in the same type of business or industry, or located in the same region may, from time to time, hold joint meetings concerning safety issues that are of common interest. In order to count in lieu of a regular meeting, at least a quorum of the employer's safety committee must attend the joint meeting.

AUTH: Sec. 39-71-1505 MCA IMP: Sec. 39-71-1505 MCA

RULE IV ROLE OF THE SAFETY COMMITTEE (1) The role of a safety committee is to advise the employer on ways to implement a safety culture in the workplace, with a goal of improving safety in the workplace. Because the safety committee is an advisory body, the employer (through management) remains responsible for making the decision whether to implement the suggestions of the safety committee. An employer may not delegate that decision-making responsibility to the safety committee(s).

AUTH: Sec. 39-71-1505 MCA IMP: Sec. 39-71-1505 MCA

RULE V SCOPE OF DUTIES OF THE SAFETY COMMITTEE

(1) Employers are encouraged to make the scope of the duties of a safety committee as broad as possible in order to obtain the greatest benefit from the safety committee(s). However, at a minimum, a safety committee should assist the employer by making recommendations about the following education and communication matters:

(a) assessing and communicating hazards;

(b) communicating with employees regarding safety committee activities;

(c) educating employees on safety related topics; and

(d) motivating employees to create a safety culture in the workplace.

(2) A safety committee may assist the employer by gathering information for:

(a) the development of safety rules, policies and procedures;

(b) the control of hazards;

(c) the periodic evaluation of the safety program;

(d) the inspection of the workplace;

(e) the development of safety training and awareness topics; and

(f) keeping job specific training current.

(3) At the employer's discretion, a safety committee may have other duties consistent with the obligations imposed by the Montana Safety Culture Act. For example, the safety committee may review the reports of work-related incidents, accidents, injuries and illnesses.

(4) A safety committee must document its meetings and activities. The documentation must be retained by the employer for 3 years. The documentation should include:

(a) the date, time and location of the meeting;

(b) a list of the participants;

(c) the topics or issues discussed; and

(d) the recommendations or suggestions made.

AUTH: Sec. 39-71-1505 MCA IMP: Sec. 39-71-1505 MCA

REASON: These rules are reasonably necessary to implement certain provisions of the Safety Culture Act, enacted as Ch. 295, L. 1993. Safety committees are required for all employers with more than 5 employees, pursuant to § 39-71-1505(2)(a), MCA. The Department had previously proposed language regarding safety committees (see 1994 MAR issue no. 3, pp. 257-261), but did not adopt the language due to comments from public regarding conflicts with federal labor law and decisions of the National Labor Relations Board (see 1994 MAR issue no. 8, pp. 1156-1164). The proposed rules have been drafted to take into account the NLRB's 1993 rulings in Electromation and duPont [construing certain types of employer-employee joint committees (including safety committees) as violating provisions of the National Labor Relations Act]. These rules are intended to be codified as an integral part of Title 24, chapter 30, subchapter 25 of the Administrative Rules of Montana.

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:

John Maloney, Bureau Chief
Safety Bureau
Employment Relations Division
Department of Labor and Industry
P.O. Box 1728
Helena, Montana 59624-1728

and must be received by no later than 5:00 p.m., October 11, 1994.

4. The Department proposes to make these new rules effective December 1, 1994; however, the Department reserves the right to adopt some or all of the proposed rules at a later time, or to withdraw one or more of the proposed rules.

5. The Hearing Bureau of the Legal/Centralized Services Division of the Department has been designated to preside over and conduct the hearing.

DEPARTMENT OF LABOR & INDUSTRY
Laurie Ekanger, Commissioner

David A. Scott
David A. Scott
Rule Reviewer

By: David A. Scott
David A. Scott, Chief Counsel
DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State: August 29, 1994.

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

In the matter of amendment of ARM 26.4.301, 26.4.303, 26.4.404, 26.4.405, 26.4.407, and 26.4.1206, regarding refusal to issue operating permits because of violation of reclamation or environmental laws.	))))))	NOTICE OF PROPOSED AMENDMENT NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On November 21, 1994, the Board of Land Commissioners and Department of State Lands propose to amend ARM 26.4.301, 26.4.303, 26.4.404, 26.4.405, 26.4.407, and 26.4.1206, regarding refusal to issue operating permits because of violation of reclamation or environmental laws.

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:

Sections (1) through (77) remain the same.

(78) "Owned or controlled" and "owns or controls" mean any one or a combination of the following relationships:

(a) being a permittee of a surface coal mining operation;

(b) based on instruments of ownership or voting securities, owning of record in excess of 50 percent of an entity;

(c) having any other relationship which gives one person authority, directly or indirectly, to determine the manner in which an applicant, operator, or other entity conducts strip or underground coal mining operations; or

(d) unless it is demonstrated that the person does not in fact have the authority, directly or indirectly, to determine the manner in which the relevant coal mining operation is conducted:

(i) being an officer or director of an entity;

(ii) being the operator of a coal mining operation;

(iii) having the ability to commit the financial or real property assets or working resources of an entity;

(iv) being a general partner in a partnership;

(v) based on the instruments of ownership or the voting securities of a corporate entity, owning of record 10 through 50 percent of the entity; or

(vi) owning or controlling coal to be mined by another person under a lease, sublease, or other contract and having the right to receive such coal after mining or having authority to determine the manner in which that person or another person con-

ducts this coal mining operation.

Sections (78) through (135) remain the same, except they are renumbered Sections (79) through (136).

(AUTH: Sec. 82-4-204, 205, MCA; IMP, Sec. 82-4-227, MCA.)

26.4.303 LEGAL, FINANCIAL, COMPLIANCE, AND RELATED INFORMATION Each application must contain, in any format prescribed by the department, the following information:

(1) the name, permanent and temporary post office addresses, telephone numbers, and, as applicable, social security numbers and employer identification numbers of the applicant, applicant's resident agent, and the person who will pay the abandoned mine reclamation fee pursuant to 30 USC 1232 ~~including phone number~~;

(2) through (5) remain the same.

(6) a statement of whether the applicant is a corporation, partnership, single proprietorship, association or other business entity~~. For businesses other than single proprietorships, the application shall contain the following information, where applicable:~~

~~(a) names and addresses of every officer, partner, director, or other person performing a function similar to a director to the applicant;~~

~~(b) name and address of any person who is a principal shareholder of the applicant; and~~

~~(c) names under which the applicant, partner, principal shareholder or any entity owned or controlled by the applicant previously operated a strip or underground coal mining operation in the United States within the five years preceding the date of application~~;

(7) ~~if any owner, holder, purchaser, or operator, identified under (1) through (5) of this rule, is a business entity other than a single proprietor, the names and addresses of its respective principals, officers, and resident agents~~ for each person who owns or controls the applicant under the definition of "owned or controlled" and "owns or controls" in ARM 26.4.301, as applicable:

(a) the person's name, address, social security number, and employer identification number;

(b) the person's ownership or control relationship to the applicant, including percentage of ownership and location in organizational structure;

(c) the title of the person's position, date position was assumed, and, when submitted under ARM 26.4.407(4), date of departure from the position;

(d) each additional name and identifying number, including employer identification number, federal or state permit number, and mine safety and health administration number with date of issuance, under which the person owns or controls, or previously owned or controlled, a coal mining and reclamation operation in the United States within the five years preceding the date of the application; and

(e) the application number or other identifier of, and the regulatory authority for, any other pending coal mining

operation permit application filed by the person in any state in the United States;

(8) ~~a statement of any current or previous coal mining permits in the United States held by the applicant subsequent to 1970 and by any person identified in (6)(c) of this rule, and of any pending permit application to conduct strip or underground coal mining and reclamation operations in the United States. The information must be listed by permit or application number and identify the regulatory authority for each of those coal mining operations~~ for any coal mining operation owned or controlled by either the applicant or by any person who owns or controls the applicant, the operation's:

(a) name; address; identifying numbers, including employer identification numbers, federal or state permit number, and mine safety and health administration number; date of issuance of the mine safety and health administration number; and the regulatory authority; and

(b) ownership or control relationship to the applicant, including percentage of ownership and location in organizational structure;

(9) through (12) remain the same.

(13) ~~a listing of each violation notice received by the applicant, or any subsidiary, affiliate or persons controlled by or under common control with the applicant, in connection with any strip or underground coal mining operation during the 3-year period before the application date, for violations of any law, rule, or regulation of the United States, or of any state law, rule, or regulation pertaining to air, water and other matters of environmental protection. The application must also contain a statement regarding each violation notice, including:~~

~~(a) the date of issuance and identity of the issuing regulatory authority, department, or agency;~~

~~(b) a brief description of the particular violation alleged in the notice;~~

~~(c) the date, location, and type of any administrative or judicial proceedings initiated concerning the violation, including, but not limited to, proceedings initiated by the applicant to obtain administrative or judicial review of the violations;~~

~~(d) the current status of the proceedings and of the violation notice; and~~

~~(e) the actions, if any, taken by the applicant to abate the violation~~ for any violation of a provision of 30 USC 1201 et seq., or of any law, rule, or regulation of the United States, or of any state law, rule, or regulations enacted pursuant to federal law, rules, or regulations pertaining to air or water environmental protection incurred in connection with any coal mining operation, a list of all violation notices received by the applicant during the three-year period preceding the application date, and a list of all unabated cessation orders and unabated air and water quality violation notices received prior to the date of the application by any coal mining and reclamation operation owned or controlled by either the applicant or by any person who owns or controls the applicant.

For each violation notice or cessation order reported, the list must include the following information, as applicable:

(a) any identifying numbers for the operation, including the federal or state permit number and mine safety and health administration number, the dates of issuance of the violation notice and mine safety and health administration number, the name of the person to whom the violation notice was issued, and the name of the issuing regulatory authority, department, or agency;

(b) a brief description of the violation alleged in the notice;

(c) the date, location, and type of any administrative or judicial proceeding initiated concerning the violation, including, but not limited to, proceedings initiated by any person identified in (13) to obtain administrative or judicial review of the violation;

(d) the current status of the proceedings and of the violation notice; and

(e) the actions, if any, taken by the person identified in (13) to abate the violation;

(14) ~~A~~a description of the documents upon which the applicant bases his or her legal right to enter and begin mining operations in the permit area and whether that right is the subject of pending litigation. The description shall identify those documents by type and date of execution, identify the specific lands to which the document pertains, and explain the legal rights claimed by the applicant;

(15)(a) ~~Whenever~~ whenever the private mineral estate to be strip mined has been severed from the private surface estate, an applicant shall also submit:

(i) through (iii) remain the same.

(b) remains the same.

(16) through (21) remain the same.

(22) a copy of the newspaper advertisement of the application and proof of publication as required in ARM 26.4.401~~;~~; and

(23) ~~A~~ a map of the mine plan area showing the areas upon which strip or underground mining occurred:

(a) prior to August 3, 1977;

(b) after August 3, 1977, and prior to May 3, 1978;

(c) after May 3, 1978, and prior to April 1, 1980; and

(d) after April 1, 1980, and before January 13, 1989.

This map must designate the areas from which coal removal had not commenced as of January 13, 1989.

(AUTH: Sec. 82-4-204, 205, MCA; IMP, Sec. 82-4-222, MCA.)

26.4.404 REVIEW OF APPLICATION

(1) through (6) remain the same.

(7) If, based on available information concerning federal and state failure-to-abate cessation orders, unabated federal and state imminent harm cessation orders, delinquent civil penalties issued pursuant to 30 USC 1269, bond forfeitures where violations upon which the forfeitures were based have not been corrected, delinquent abandoned mine reclamation fees, and

unabated violation of federal and state laws, rules, and regulations pertaining to air or water environmental protection incurred in connection with any surface coal mining operation, the department determines that issuance of the permit is prohibited pursuant to 82-4-227(11), MCA, the department may issue the permit only upon a showing that the applicant or person who owns or controls the applicant has filed and is presently pursuing, in good faith, a direct administrative or judicial appeal to contest the validity of the violation. If the ~~administrative or~~ initial judicial hearing authority either denies a stay applied for in the appeal or affirms the violation, then any strip or underground coal mining operations being conducted under a permit issued according to this subsection must be immediately terminated.

(8) Any permit that is issued on the basis of proof submitted under 82-4-227(11), MCA, that a violation is in the process of being corrected, or pending the outcome of an appeal described in (7), must be conditionally issued.

~~(8)~~(9) Before any final determination that section 82-4-227 (11), MCA prohibits issuance of a permit or major revision, the applicant is entitled to a hearing pursuant to the case provisions of the Administrative Procedure Act.

~~(9)~~(10) The department may not approve an application if the mining and reclamation would be inconsistent with other such operations or proposed or anticipated operations in areas adjacent to the proposed permit area.

(AUTH: Sec. 82-4-204, 205, MCA; IMP, Sec. 82-4-227, MCA.)

26.4.405 FINDINGS AND NOTICE OF DECISION

(1) through (7) remain the same.

(8)(a) If the department decides to approve the application, it shall:

(i) require the applicant to date, correct, or indicate that no change has occurred in the information submitted pursuant to ARM 26.4.303(1) through (8) and (11) through (13);

(ii) reconsider the decision to approve the application based on the compliance review required by ARM 26.4.404 and 82-4-227(11), MCA, in light of any new information submitted pursuant to (i); and

(iii) if, after reconsideration pursuant to (i), the department determines that permit issuance is not prohibited, require that the applicant file the required performance bond or provide other equivalent guarantee ~~before the application is granted~~; and~~,~~

(b) upon submission of bond or guarantee, the department shall grant the permit, revision, or amendment.

(AUTH: Sec. 82-4-204, 205, MCA; IMP, Sec. 82-4-227, MCA.)

26.4.407 CONDITIONS OF PERMIT The following conditions accompany the issuance of each permit:

(1) ~~except~~ Except to the extent that the department otherwise directs in the permit that specific actions be taken, the permittee shall conduct all operations as described in the application as approved by the department~~;~~.

(2) ~~the~~ The permittee shall comply with any express conditions which the department places on the permit to ensure compliance with the act or this rule promulgated pursuant thereto.

(3) The permittee shall pay all reclamation fees for coal produced under the permit~~;~~.

(4) ~~If the department issued the permit with a finding that issuance was not prohibited by 82-4-227(11), MCA because the applicant was maintaining a good faith direct appeal and the initial judicial appeal authority denies a stay or affirms the violation, the permittee will immediately submit proof that the violation has been or is being corrected to the satisfaction of the regulatory agency or will cease operations; and~~ Within 30 days after a cessation order is issued under 30 CFR 843.11 or 82-4-251, MCA, for operations conducted under the permit, except where a state cessation order is granted and remains in effect, the permittee shall either submit to the department the following information, current to the date the cessation order was issued, or notify the department in writing that there has been no change since the immediately preceding submittal of such information:

(a) any new information needed to correct or update the information previously submitted to the department by the permittee under ARM 26.4.303(1) through (8); or

(b) if not previously submitted, the information required from a permit applicant by ARM 26.4.303(1) through (8).

(5) remains the same.

(AUTH: Sec. 82-4-204, 205, MCA; IMP, Sec. 82-4-227, MCA.)

26.4.1206 NOTICES, ORDERS OF ABATEMENT AND CESSATION ORDERS; ISSUANCE AND SERVICE (1) The department shall issue a cessation order for each violation, condition, or practice that creates an imminent danger to the health or safety of the public or is causing or can reasonably be expected to cause significant and imminent environmental harm to land, air, or water resources, for failure to comply with an order of abatement, and for conducting mining operations or prospecting without a permit. Within 60 days after issuance of a cessation order, the department shall notify, in writing, any person who has been identified pursuant to ARM 26.4.303(7) and (8) and ARM 26.4.407(4) as owning or controlling the permittee, that the cessation order was issued and that the person has been identified as an owner or controller. The department shall issue a notice of noncompliance for other violations.

(2) through (5) remain the same.

(AUTH: Sec. 82-4-204, 205, MCA; IMP, Sec. 82-4-251, MCA.)

3. Thirty U.S.C. 1253 provides that, in order to have authority to regulate coal mining, 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 the act by the Office of Surface Mining, Reclamation, and Enforcement. That agency has notified the Department that the state law and rules are not as stringent as

30 U.S.C. 1260(c) and 30 C.F.R. 773.5, 773.15, 773.17, 778.13, 778.14, and 843.11. The Montana Legislature, in section 3 of Chapter 225, Laws of 1993, amended the Montana statute to eliminate the statutory deficiency. The rule amendments are proposed to implement that statute change and to comply with federal laws and regulations.

4. Interested parties may submit their data, views, or arguments concerning the proposed 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 October 11, 1994.

5. If a person who is directly affected by the proposed 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 October 11, 1994.

6. If the agency receives request for public hearing on the proposed 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 then 10 active coal miners in Montana.

Reviewed by:

John F. North
Chief Legal Counsel

Arthur R. Clinch
Commissioner

Certified to the Secretary of State August 29, 1994.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT of ARM 42.12.222 relating to Revocation Or Suspension of a Liquor License	NOTICE OF THE PROPOSED AMENDMENT of ARM 42.12.222 relating to Revocation Or Suspension of a Liquor License

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On October 27, 1994, the Department of Revenue proposes to amend ARM 42.12.222 relating to revocation or suspension of a liquor license.

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

42.12.222 PROCEDURE UPON REVOCATION OR SUSPENSION OF LICENSE (1) When any alcoholic beverages license, is suspended or revoked by the department, the administrator of the liquor division shall cause a notice to be posted on the inside of the licensed premise so that the notice can be seen from the outside, stating that the license has been suspended or revoked. The notice must identify the number of the license, the name of the licensee, the reason for the suspension or revocation, and the period of suspension. The notice must be dated and signed by the administrator of the liquor division, or designee. The notice must be posted at all times during the period of suspension. In the case of a revocation, the notice must be posted on the premises for a period of 10 days. If the notice is removed or caused to be removed by the licensee or any employee of the licensee during a period of suspension, the license shall be permanently revoked and the licensee must be so notified in writing at the time the notice is posted. The license or licenses suspended will be held by the department during the period of suspension.

AUTH: Sec. 16-1-303 MCA; IMP: Sec. 16-1-303 and 16-4-406 MCA.

3. ARM 42.12.222 is proposed to be amended to allow administrator to delegate responsibility to sign suspension notices. The amendment would enhance licensing administration by eliminating any delay were the administrator unavailable at the time a notice was to be issued.

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

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

no later than October 7, 1994.

5. If a person who is directly affected by the proposed amendments wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Cleo Anderson at the above address no later than October 7, 1994.

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

CLEO ANDERSON
Rule Reviewer

MICK ROBINSON
Director of Revenue

Certified to Secretary of State August 29, 1994.

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

In the matter of the amendment of rules 46.12.5002, 46.12.5003 and 46.12.5007 pertaining to the passport to health program	)))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF RULES 46.12.5002, 46.12.5003 AND 46.12.5007 PERTAINING TO THE PASSPORT TO HEALTH PROGRAM

TO: All Interested Persons

1. On September 28, 1994, at 9:30 a.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana to consider the proposed amendment of rules 46.12.5002, 46.12.5003 and 46.12.5007 pertaining to the passport to health program.

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 19, 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 rules as proposed to be amended provide as follows:

46.12.5002 PASSPORT TO HEALTH PROGRAM: DEFINITIONS

Subsections (1) through (7) remain the same.

(8) "Passport to health program" or "the program" means the primary care case management (PCCM) program ~~of managed care~~ for medicaid recipients.

Subsections (9) and (11) remain the same.

AUTH: Sec. 53-2-201 and 53-6-113 MCA
IMP: Sec. 53-6-116 MCA

46.12.5003 PASSPORT TO HEALTH PROGRAM: ELIGIBILITY

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

(c) supplemental security income (SSI); ~~or~~

(d) SSI-related~~;~~ ; or

(e) home and community services for persons with developmental disabilities.

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

(l) is receiving medicaid home and community services for persons who are aged or disabled;~~-or~~

(m) is in the medicaid restricted card program~~;~~ ; or

(n) is enrolled in a health maintenance organization (HMO).

Subsections (3) through (5) remain the same.

AUTH: Sec. 53-2-201 and 53-6-113 MCA
IMP: Sec. 53-6-116 and 53-6-117 MCA

46.12.5007 PASSPORT TO HEALTH PROGRAM: SERVICES

Subsections (1) through (1)(a)(ix) remains the same.

~~(A) admission for inpatient psychiatric facility services as defined in ARM 46.12.590;~~

(BA) ~~well child~~ screening services for children as defined in ARM 46.12.5145; and

(CB) chiropractic services as defined in ARM 46.12.5156;

Subsections (1)(a)(x) through (2)(b)(v) remains the same.

(vi) pathology services; ~~and~~

(vii) ophthalmology services~~,~~;

(viii) immunization;

(ix) testing for sexually transmitted diseases;

(x) testing for lead blood levels; and

(xi) dental, vision and hearing services portion of the screening services for children.

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

(ad) case management services as defined in ARM 46.12.1903, 46.12.1916, 46.12.1926 and 46.12.1935; ~~and~~

(ae) nonhospital laboratory and radiology (x-ray) as defined in ARM 46.12.2101~~,~~; and

(af) admission for residential treatment services as defined in ARM 46.12.590.

AUTH: Sec. 53-2-201 and 53-6-113 MCA
IMP: Sec. 53-6-116 MCA

3. The changes proposed to the rules governing the Montana Medicaid program of primary care case management, otherwise known as the Passport to Health program, will conform the program with new requirements and changes occurring in the Montana Medicaid program.

The proposed amendment to ARM 46.12.5002(8) is necessary to change the reference in the definition of "passport to health program" from managed care to primary care case management program. This change is necessary to clarify that the Passport program is a program that is directed at primary care case management and does not relate generally to all programs of managed care.

The proposed amendment to ARM 46.12.5003(1) requires the participation of persons receiving medicaid home and community services for persons with developmental disabilities in the Passport program. This change is necessary since the department

has determined that primary care case management for persons in the home and community services program for persons with developmental disabilities will be of significant value to that population of recipients.

The proposed amendment to ARM 46.12.5003(2)(l) is necessary to clarify that the exemption from the Passport program participation requirement for persons eligible for the medicaid home and community services will only extend to those persons who are in the home and community services program for persons who are aged or disabled.

The proposed amendment to ARM 46.12.5003(2) includes enrollment in a health maintenance organization (HMO) as one of the exemptions from required participation in the Passport program. This change is necessary since the medicaid program is initiating an HMO opportunity for medicaid participants and an HMO functions in a manner which is similar to a primary care case management program such as the Passport program.

The proposed amendment to ARM 46.12.5007(1)(a)(ix), deletes admission of youth for inpatient psychiatric facility services as a service subject to the Passport program. This change is necessary since the provision of those services, now known as "residential treatment services", are subject to a primary care case management program that is separate from the Passport program.

In addition, the cross-referenced citations for children's screening services and children's chiropractic services were incorrect in the current rule. The proposed changes to those cross-references are necessary to provide the correct citations.

The proposed addition to ARM 46.12.5007(1)(b) of particular aspects of services for which primary care case management is not required is necessary in that the department has determined that the primary care case management process is deterring the receipt of those essential services.

4. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Russell E. Cater, Chief Legal Counsel, Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, MT 59604-4210, no later than October 6, 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 29, 1994.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 2.21.6701, 2.21.6702, 2.21.6703, 2.21.6708, the repeal of 2.21.6704, 2.21.6706, 2.21.6707, 2.21.6713, 2.21.6718 and adoption of 2.21.6709 relating to the Incentive Award Program	)	NOTICE OF THE AMENDMENT OF ARM 2.21.6701, 2.21.6702, 2.21.6703, 2.21.6708, THE REPEAL OF 2.21.6704, 2.21.6706, 2.21.6707, 2.21.6713, 2.21.6718 AND ADOPTION OF 2.21.6709 RELATING TO THE INCENTIVE AWARD PROGRAM

TO: All Interested Persons.

1. On July 7, 1994, the Department of Administration published notice of the proposed amendment of ARM 2.21.6701, 2.21.6702, 2.21.6703, 2.21.6708, the repeal of ARM 2.21.6704, 2.21.6706, 2.21.6707, 2.21.6713, 2.21.6718, and adoption of ARM 2.21.6709 relating to the Incentive Award Program at page 1784 of the 1994 Montana Administrative Register, issue number 13.

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

2.21.6701 SHORT TITLE (1) This sub-chapter may be cited as the ~~statewide employee~~ incentive award program.

(Auth. 2-18-1103, MCA; Imp. 2-18-1101 et seq. MCA)

2.21.6703 POLICY AND OBJECTIVES (1) It is the policy of the state of Montana that:

(a) there be an ~~statewide employee~~ incentive award program that recognizes and monetarily rewards individual employees, groups or teams of employees, and nonemployees, as provided in 2-18-1105, MCA, for:

(i) Same as proposed rule.

(ii) improving the effectiveness of state government or improving services to the public by permitting more work to be accomplished within an agency without increasing the cost of governmental operations~~;~~"

(b) each state agency make reasonable accommodation for persons with disabilities who wish to participate in the ~~statewide employee~~ incentive award program, and

(c) Same as proposed rule.

(2) It is the objective of this policy to:

(a) establish minimum standards for the administration of the ~~statewide employee~~ incentive award program; and

(b) Same as proposed rule.

(Auth. 2-18-1103, MCA; Imp. 2-18-1101 et seq., MCA)

2.21.6708 PROGRAM ADMINISTRATION

(1) Same as proposed rule.

(2) An agency head may adopt an internal agency policy consistent with this sub-chapter to implement and administer the ~~statewide employee~~ incentive award program. The policy may include, but is not limited to:

(a) ~~a system to collect and track suggestions or ideas, including designation of a point of contact for employees and nonemployees~~ criteria and methods used to evaluate and prioritize the usefulness or monetary value of documented outcomes or achievements;

(b) ~~a system to collect and track nominations for proposed incentive awards that document an outcome or achievement~~ a contact point for employees and nonemployees to submit nominations for awards and a means to track nominations, ideas or suggestions; and

~~(c) an evaluation process to include criteria and methods to evaluate and prioritize the usefulness or monetary value of documented outcomes and achievements and to determine how often during a year awards will be made; and~~

~~(d)~~ (c) any other matters ~~that~~ the agency head believes are necessary to administer the program.

(3) Same as proposed rule.

~~(4) The acceptance of a monetary payment or paid leave through the statewide employee incentive award program shall constitute an agreement by the employee, by a group or team of employees, or by a nonemployee that all reasonable claims, immediate and future, on the state of Montana are waived.~~

(Auth. 2-18-1103, MCA; Imp. 2-18-1103, 2-18-1105 and 2-18-1106, MCA)

2.21.6709 (RULE I) REPORTING REQUIREMENTS (1) In order to comply with 2-18-1106, MCA, each agency shall submit to the department of administration ~~shall issue requirements for reporting on statewide employee incentive award program activity, including, as provided in 2-18-1103, MCA, "a list of incentive awards and corresponding savings to the state and improvements in the effectiveness of state government . . ."~~ a list of the number of incentive awards granted, to whom each award was granted, the estimated value of each achievement or outcome and the amount of each award. The information must be submitted on a format prescribed by the department within 30 days after the end of each fiscal year.

(Auth. 2-18-1103, MCA; Imp. 2-19-1106, MCA)

3. The following written comments were received. No testimony was provided at the public hearing.

COMMENT: It is misleading to call the program the Statewide Employee Incentive Award Program when nonemployees of state government can participate.

RESPONSE: The department agrees and has renamed the program the "Incentive Award Program."

COMMENT: Additional clarification is requested concerning who is considered an "employee" and who is a "nonemployee."

RESPONSE: In 2-18-1101, MCA, the term "employee" is defined as one who works for one of the branches of state government or the university system—not for an individual agency. The term "nonemployee" is used in the statute, but not separately defined. It includes anyone not covered by the "employee" definition. The department does not find additional definitions would be useful.

COMMENT: Additional clarification is requested concerning the procedure to be followed when an employee of one state agency submits a nomination for an award for an outcome or achievement which occurs in another state agency.

RESPONSE: This issue is resolved in 2-18-1105, MCA, which provides that "suggestions relating to an agency are eligible for an award from that agency's agency head even if the employee or group or team of employees, or one or more members of the group or team, do not work for that agency." The nomination is submitted to the agency where the outcome or achievement occurs. The submitter of the nomination remains an employee. The department will expand a discussion of this issue in guide material, but does not find an additional rule is necessary.

COMMENT: The organization of ARM 2.21.6708 (2) appears to be confusing and suggests an alternate organization.

RESPONSE: The department has restructured and revised (2) as shown above in an effort to promote clarity.

COMMENT: In ARM 2.21.6708 (4), the waiver of all reasonable claims against the state should have language of limitation as to the specific suggestion for which the award is given.

RESPONSE: The department reexamined the waiver provision. Because in (1) the agency head now is given complete authority to make the final decision to grant an award and to resolve any and all disputes, the department has determined the requirement for a waiver is unnecessary and will delete it from the rule.

COMMENT: The reference to reporting requirements in ARM 2.21.6709 (Rule I) appears to be vague and asks the department to state the requirements.

RESPONSE: The department agrees and has revised the rule as shown above to list specific items to be reported.

COMMENT: Because the amendments to the statute eliminated the advisory council for the old program and the smaller limit on a maximum award, the potential for inconsistencies in program administration widens. The rules should be tightened to promote consistency and prevent possible abuse.

RESPONSE: The department disagrees. By repealing those sections of the statute requiring central administration, the Legislature

has created a program which requires each agency to develop and administer its own procedures. While the commenter does not provide specific examples of possible "abuse," the requirement to reward "documented" outcomes and achievements after they have been implemented would make it difficult for an agency head to make an inappropriate award.

COMMENT: The addition of paid leave as an award seems peculiar. A nonemployee couldn't receive paid leave and with regard to an employee the maximum amount of paid leave is already established by law.

RESPONSE: Granting paid leave as an award is provided for in 2-18-1106, MCA, and is limited to an employee. Paid leave as an award is a statutory benefit now provided in addition to other types of paid leave, such as annual leave, which carry maximum accruals.

COMMENT: Consideration should be given to confidentiality of the person presenting an idea.

RESPONSE: Any number of ideas or suggestions which are advanced could, if implemented, be nominated later for an incentive award. Decisions to implement ideas or suggestions are part of the regular management responsibilities in an agency. Nominations for awards will deal with documented outcomes and achievements. The department finds it is appropriate that the rules require documents and meetings related to administration of the incentive award program to be public information.

Dal Smilie, Chief Legal Counsel
Rule Reviewer

Lois Menzies, Director
Department of Administration

Certified to the Secretary of State August 29, 1994

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

In the matter of the adoption of rules relating to mailing membership information about non-profit organizations	)))	NOTICE OF ADOPTION OF RULES I THROUGH III (2.43.305 THROUGH 2.43.307)

TO: All Interested Persons.

1. On March 17, 1994, the Public Employees' Retirement Board published notice of a public hearing to consider the adoption of rules pertaining to mailing membership information about non-profit organizations in the Montana Administrative Register, Issue number 5, starting at page 508 and inclusive of page 510.

2. On April 18, 1994, at 9:00 a.m. in the Board Meeting Room of the Public Employees' Retirement Division, 1712 Ninth Avenue, Helena, Montana, a public hearing was held pursuant to the March 17, 1994 notice. No oral testimony or written comments were received at this hearing.

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

COMMENT NO. 1: The Public Employees' Retirement Board does not appear to have authority to adopt the regulation.

RESPONSE: The Public Employees' Retirement Board has broad authority to administer and operate several retirement systems pursuant to § 19-2-403, MCA (note particularly subpart (2) of the statute which suggests operational functions other than administration). Historically, this has included the authority to distribute to system members information deemed appropriate. In the past this was limited to newsletters written by staff. This regulation provides another natural but limited source of distributed information which may be of interest and use to retirement system members.

COMMENT NO. 2: The proposed regulation seems to violate the intent of § 2-6-109, MCA, which prohibits state agencies from distributing or selling for use as a mailing list any list of persons without first securing the permission of those on the list.

RESPONSE: The Board's position is that the state constitutional basis for § 2-6-109 is the individual's right of privacy. Without that basis, there would be no constitutionally valid reason for withholding public information, such as the addresses of public retirement system members. The proposed regulation does not infringe the privacy rights of retirement system members, because their addresses are not made public, but remain

available only to the administrators of the retirement systems.

COMMENT NO. 3: The Board has no authority to discriminate between nonprofit organizations and for-profit organizations.

RESPONSE: The Board assumes this refers not to authority but to whether the proposed regulation violates a federal or state constitutional right of equal protection. It is the Board's position that the distinction between nonprofit organizations and for-profit organizations in the context of this regulation is rationally related to legitimate governmental interests, such as remaining apart from the regular flow of commerce (in which for-profit organizations engage), while providing members access to useful information available from membership based nonprofit organizations.

4. The following oral comments were received at the Board meeting held on August 25, 1994.

COMMENT NO. 4: RULE I (3)(c) requires a certified copy of the organizations bylaws. Normally bylaws are not certified.

RESPONSE: A certified copy of the bylaws is not required, but a copy of the bylaws is required. The phrase "a copy of the" will be inserted after the word "and" in RULE I (3)(c) for clarification.

COMMENT NO. 5: RULE II (2) requires that all pieces approved for mailing must be 8-1/2 by 17 inches; does the size requirement apply to pieces sent by bulk mail described in RULE II (3)?

RESPONSE: RULE II (2) and (3) are separate requirements. RULE II (2) applies to pieces which will be inserted in a business envelope with an estimate of a members retirement benefit. Since the piece must fit in the business envelope, a size restriction is necessary. The size restriction does not apply to bulk mailing described in RULE II (3). The word "also" will be stricken from both subsections to clarify this point.

5. On August 25, 1994, the Public Employees' Retirement Board adopted the rules with the following changes:

RULE I MAILING INFORMATION ABOUT NON-PROFIT ORGANIZATIONS

(1)-(2) same as proposed rule.

(3)(a)-(b) same as proposed rule.

(3)(c) a certified copy of the articles of incorporation and a copy of the current bylaws of the organization;

(3)(d)-(f) same as proposed rule.

RULE II DOCUMENTS ACCEPTABLE FOR MAILING -- NON-PROFIT ORGANIZATIONS (1) same as proposed rule.

(2) Each piece approved for insertion with mailings of retirement estimates ~~also~~ must be no more than one single page, 81/2 inches by 17 inches (or smaller), folded to fit within a regular business envelope (and not stapled or sealed in any

manner).

(3) Each piece approved for bulk mailings ~~also~~ must be no more than a single page, folded (but not stapled or sealed in any manner) in an acceptable manner for bulk mailings by the U.S. postal service. Each piece must be preprinted with the non-profit organization's non-profit mailing permit.

(4) same as proposed rule.

RULE III same as proposed rule.

6. The new rules which have been adopted will be numbered as follows:

Rule I	ARM 2.43.305
Rule II	ARM 2.43.306
Rule III	ARM 2.43.307

Terry Teichrow, President
Public Employees' Retirement Board

Pursuant to 2-4-110, MCA, the department rules reviewer affirms that he has completed a review of the rules. Contrary to the decision of the Board, it is the opinion of the rules reviewer that the use of a mailing list for the sole benefit of others than the agency, without the permission of those persons on the list, is violative of 2-6-109(1)(b), MCA.

Dal Smilie, Chief Legal Counsel and
Rule Reviewer

Certified to the Secretary of State August 29, 1994.

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

In the matter of the amendment of rules pertaining to prescriptive authority	)))	NOTICE OF AMENDMENT OF RULES PERTAINING TO PRESCRIPTIVE AUTHORITY

TO: All Interested Persons:

1. On March 31, 1994, the Boards of Nursing and Medical Examiners published a notice of proposed amendment of rules pertaining to prescriptive authority at page 615, 1994 Montana Administrative Register, issue number 6. In response to requests for a hearing from the public, the Boards published a notice of public hearing at page 1326, 1994 Montana Administrative Register, issue number 10. The hearing was held on June 16, 1994 at 9:00 a.m., in the conference room of the Professional and Occupational Licensing Bureau, Helena, Montana.

2. The Boards have amended ARM 8.32.1501, 8.32.1505, 8.32.1507, 8.32.1509 and 8.32.1510 exactly as proposed. The Boards have amended ARM 8.32.1502, 8.32.1504, 8.32.1506 and 8.32.1508 as proposed, but with the following changes:

"8.32.1502 DEFINITIONS The following definitions apply in and for this subchapter:

(1) will remain the same as proposed.

(2) "Advanced practice registered nurse" is a registered nurse recognized by the board to practice as an advanced practice registered nurse pursuant to 37-8-202(5)(a), MCA, and ARM 8.32.305. THIS TERM IS INTERCHANGEABLE WITH THE TERM "NURSE SPECIALIST", AS USED IN SECTION 37-8-202(5)(b), WITH THE ADDITIONAL CATEGORY OF CLINICAL NURSE SPECIALISTS.

(3) through (6) will remain the same as proposed."

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

"8.32.1504 INITIAL APPLICATION REQUIREMENTS FOR PRESCRIPTIVE AUTHORITY (1) will remain the same as proposed.

(a) evidence of completion of a minimum of 15 ~~contact~~ CONTINUING EDUCATION hours of education in pharmacology and/or the clinical management of drug therapy which has been obtained within a three-year period immediately prior to the date the application is received at the board office. THIS REQUIREMENT IS IN ADDITION TO THE EDUCATION NECESSARY FOR AN ADVANCED PRACTICE REGISTERED NURSE TO OBTAIN ORIGINAL CERTIFICATION. Six of the 15 ~~contact~~ CONTINUING EDUCATION hours must have been obtained within one year immediately prior to the date the application is received at the board office. One third of all ~~contact~~ CONTINUING EDUCATION hours must be face-to-face meetings or interaction.

(b) will remain the same as proposed.

(c) a brief description of the proposed practice, including proposed siteS.

(d) through (2)(e) will remain the same as proposed."

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

"8.32.1506 SPECIAL LIMITATIONS RELATED TO THE PRESCRIBING OF CONTROLLED SUBSTANCES (1) and (2) will remain the same as proposed.

(3) A prescription for schedule II drugs will not exceed the quantity necessary for ~~seventy-two (72) hours~~ 34 DAYS. Prescriptions for schedule III-V drugs will not exceed the quantity necessary for ~~thirty-four (34)~~ days.

~~(4) An advanced practice registered nurse will, within 30 days of the initial prescription, record in the client record his or her evaluation of the effectiveness of controlled substances prescribed. If unable to evaluate effectiveness, the advanced practice registered nurse shall document a reason for such inability.~~

(5) will remain the same as proposed, but will be renumbered (4)."

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

"8.32.1508 QUALITY ASSURANCE OF ADVANCED PRACTICE REGISTERED NURSE PRACTICE (1) and (2) will remain the same as proposed.

(a) ~~10~~ 30 charts or 5% of all charts handled by the advanced practice nurse, whichever is ~~greater~~ LESS, must be reviewed ~~monthly by a peer or physician~~ QUARTERLY. REVIEW SHALL BE ACCOMPLISHED THROUGH THE USE OF A MIXTURE OF PEER REVIEW AND REVIEW BY A PHYSICIAN OF THE SAME SPECIALTY, AS APPROPRIATE.

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

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

I. General Comments on change in terminology/advanced practice as a policy matter:

COMMENT NO. 1: Twenty-seven individuals and the Montana Nurse Practitioners Association expressed their support for a change in the term "nurse specialist" to advanced practice registered nurse.

RESPONSE: The comment is noted, and is addressed in conjunction with the response to comment 2 immediately below.

COMMENT NO. 2: The Montana Academy of Physician Assistants (MAPA) submitted written comments on the proposed rule changes. MAPA expressed concern regarding the change in terminology from "nurse specialist" to "advanced practice registered nurse", contending that such change could result in prescriptive authority being granted in the sole discretion of the Board of Nursing without input from the Board of Medical Examiners. MAPA requested that the proposed rule changes specifically define the advanced practice registered nurse as being the same group of nurse specialists previously covered by the legislation, and suggested that prescriptive authority should not be extended to clinical nurse specialists at this time.

RESPONSE: The Boards agree that the change in terminology from "nurse specialist" to "advanced practice registered nurse" is necessary, as both boards believe that the failure of the legislature to change the terminology in

section 37-8-202(5)(b) was due to a mistake in the legislative council's office in drafting amendments to Senate Bill 121. Language in section 37-8-102(5), bears this interpretation out, as the language provides that a nurse may administer medications and treatments prescribed by, among other individuals, advanced practice registered nurses. The Boards do not believe that clinical nurse specialists should be excluded from prescriptive authority at this time, as their educational preparation requirements in the Board of Nursing's rules is currently greater than other categories of APRN's. Clinical nurse specialists are currently required to hold a masters degree in nursing, along with certification by a board-approved certifying agency.

COMMENT NO. 3: The Montana Academy of Family Physicians expressed concern regarding the lack of supervision of advanced practice by licensed physicians. The Academy contends that the level of training for an advanced practice registered nurse is vague, and determined solely by the Board of Nursing. The Academy suggests that the Board of Medical Examiners have a strong role in choosing national certifying organizations and in reviewing training programs. The Academy contends that advanced practice by registered nurses should not be allowed without adequate supervision by experienced physicians.

RESPONSE: The level of training required for advanced practice nurses is adequately set forth in Board of Nursing rules at sub-chapter 3 of the rules of the Board of Nursing. The review and approval of certifying programs is a task delegated to the Board of Nursing under section 37-8-202(5)(a), and is beyond the purview of the Board of Medical Examiners. With respect to the suggestion that the rules include greater supervision by physicians, such comment goes beyond the scope of the rules proposed in this notice of proposed rulemaking. The Boards note, however, that practice of advanced practice nursing does require collaboration of the advanced practice registered nurse with other health care professionals.

II. 8.32.1504

COMMENT NO. 4: The Montana Academy of Family Practitioners suggests that contact hours in pharmacology required under subsection (1) is insufficient, and notes that a physician obtains hundreds of hours in didactic training in pharmacology. The Academy also expresses concern with subsections (1)(d) and (1)(e), and contends that these subsections should require a collaborative relationship with a physician.

RESPONSE: The Boards note that advanced practice registered nurses are required to have significant continuing education hours under requirements of the national certifying bodies. Such hours must be obtained in order for the APRN to maintain his or her status as an APRN. The comment, however, points out that the term "contact hours" may be creating confusion. The Boards, therefore, will change the language to

read "continuing education hours", and to note that the requirement for such hours is in addition to the education necessary for an APRN to obtain original certification as an APRN.

COMMENT NO. 5: Twenty-seven individuals suggest that subsection (1)(c) be changed so that "site" becomes "sites".
RESPONSE: Comment accepted.

III. 8.32.1505

COMMENT NO. 6: Two individuals suggest that subsection (5) be changed to allow delegation of prescribing of unscheduled medications to an appropriate support person.
RESPONSE: The Boards disagree with this comment. The comment proposes a change that would require changes to the rules on delegation of nursing tasks, which is beyond the purview of the notice of proposed rulemaking in this matter. In addition, prescriptive authority is a complex task that is not appropriate for delegation in any setting.

COMMENT NO. 7: The Montana Nurse Practitioners Association suggests the deletion of subsections (2)(b) and (2)(f). MNP suggests that the expiration date of prescriptive authority should not be required, as the dispensing pharmacy has the expiration date of the APRN. MNP suggests that the address of the patient is also kept in the dispensing pharmacy, as well as the client medical record.
RESPONSE: The comments are rejected, as subsections (2)(b) and (f) were not proposed for change in this notice of proposed rulemaking. Thus, the comment goes beyond the scope of this proposed rulemaking.

IV. 8.32.1506:

COMMENT NO. 8: Twenty-five individuals and the Montana Nurse Practitioners Association suggest a change to subsection (3) to provide for a thirty-four day supply of all scheduled medications. The individuals suggest that requiring the client to return for a new prescription as frequently as currently required (every 72 hours) is over-burdensome. Examples of specific difficulties in this regard included the use of Ritalin for management of behavioral problems in children, and the use of pain medication for terminally ill patients.
RESPONSE: The Boards agree that 72 hours may be over-burdensome, and will change the rule to provide for a thirty-four day supply.

COMMENT NO. 9: Forty-five individuals and the Montana Nurse Practitioner Association expressed opposition to the changes proposed to subsection (4) regarding documentation of effectiveness of treatment. The individuals submitting comment request that subsection (4) be stricken in its entirety, and contend that the section places a rigid, unmanageable burden upon the advanced practice registered

nurse. The individuals submitting comment suggest that evaluating effectiveness can be better achieved through an individualized plan for each client. An alternative suggestion was to replace the words "within 30 days of the initial prescription" with the words "on the client's next visit."

RESPONSE: The Boards agree with the comment, and will strike subsection (4) in its entirety as requested.

V. 8.32.1507

COMMENT NO. 10: The Montana Academy of Family Physicians suggests that the requirement in subsection (1) for a method of referral to a physician is vague, and does not ensure a collaborative working relationship with a physician. The Academy suggests that the current rule would allow a method of referral that would involve nothing more than telling the patient to go to the ER and see the physician who is on call.

RESPONSE: The Boards disagree with the comment, and believe that the requirement of prescriptive authority committee approval of referral plans sets up an adequate safeguard in ensuring an adequate referral plan. The Boards note that a referral plan that would provide for telling the patient to "go to the ER" would not be approved by the prescriptive authority committee.

COMMENT NO. 11 The Montana Nurse Practitioners Association suggests that subsection (2)'s requirement of prior approval for a change in site should be deleted. MNP suggests that site changes be subject to notification to the Board, and a requirement that the practice guidelines at the new site be identical or greater than the standards at the previous site.

RESPONSE: The Boards note that the proposed change does not address an appropriate section of the rules, as subsection (2) does note address changes in sites. Thus, the comment is rejected.

VI. 8.32.1508

COMMENT NO. 12: The Montana Academy of Family Physicians suggests that the change to (2)(a) does not adequately ensure a collaborative relationship with a physician, as the peer review may be accomplished by either a "peer or physician".

RESPONSE: The Boards agree that peer review should include review by physicians in some cases. The Boards will change the rule to provide that there will be a requirement that the peer review be completed by a mixture of both peers and physicians. The Boards will also add the words "of the same specialty" immediately after "physician".

COMMENT NO. 13: Forty-eight individuals and the Montana Nurse Practitioner Association suggest that the requirement for chart review is over-burdensome and does not increase public safety. The individuals note that JCAHO recommendations for chart review are 5% or 30 charts per

quarter, whichever is lower. The individuals request that a task force of APRN's be formed to consider and recommend an appropriate quality assurance method to the Board, and request that either the original language be retained in the interim, or that the JCAHO requirements be implemented. MNP also suggests deletion of the word "prior" in subsection (3), and contends that the prior approval requirement unnecessarily inhibits mobility of practice.

RESPONSE: The Boards agree with the submitted comment on number of charts reviewed, and will change the rule to provide for the JCAHO standards (5% or 30 charts per quarter, whichever is lower). With respect to the issue of prior approval, the Boards believe that prior approval of a change in quality assurance method is necessary to safeguard the public health. Thus, this aspect of the comment is rejected.

VII. 8.32.1510

COMMENT NO. 14: The Montana Academy of Family Physicians suggests that the continuing education requirement for renewal of prescriptive authority is inadequate. The Academy notes that certification in family practice by a physician requires fifty hours of continuing education per year. The Academy contends that no practitioner could remain current in prescriptive authority with only three hours of continuing education per year.

RESPONSE: The Boards note that advanced practice registered nurses are required to have significant continuing education hours under requirements of the national certifying bodies in order to maintain certification as an APRN. Such hours must be obtained in order for the APRN to maintain his or her status as an APRN in the State of Montana. The requirement in this rule is specific to pharmacology hours required for renewal of prescriptive authority, which must be obtained above and beyond continuing education hours required for private certification. Interested individuals may contact the Board of Nursing for specific continuing education hour requirements of approved certifying bodies for advanced practice registered nurses.

BOARD OF NURSING
BOARD OF MEDICAL EXAMINERS

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

_____
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, August 29, 1994.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the amendment of Accreditation Standards; Procedures	)	NOTICE OF AMENDMENT OF ARM 10.55.601 ACCREDITATION STANDARDS; PROCEDURES

To: All Interested Persons

1. On June 23, 1994, the Board of Public Education published a notice of proposed amendment concerning ARM 10.55.601 Accreditation Standards; Procedures at page 1642 of the 1994 Montana Administrative Register, Issue number 12.

2. The board has amended the rule as proposed.

3. No written comments were received.

4. The board has adopted this amendment to include the smaller districts in the deferral process for a central library.

Wayne H. Buchanan

WAYNE BUCHANAN, Executive Secretary
Board of Public Education

Certified to the Secretary of State on 8/29/94.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the adoption of Teacher certification	)))	NOTICE OF ADOPTION OF NEW RULE I, 10.57.605 SURRENDER OF A TEACHER, SPECIALIST OR ADMINISTRATOR CERTIFICATE

To: All Interested Persons

1. On April 14, 1994, the Board of Public Education published notice of proposed adoption of New Rule I (10.57.605) Surrender of a Teacher, Specialist or Administrator Certificate on page 817 of the 1994 Montana Administrative Register, Issue Number 7.

2. The board has adopted the rule as proposed.

3. At the public hearing which was held May 27, 1994, two persons testified as proponents and no persons testified as opponents. There were no written comments received.

4. The board has adopted this new rule to allow teachers, specialists and administrators holding a Montana teaching certificate to surrender the certificate. The certificate director can then enter the information on the national clearinghouse register to notice other states. This new rule also allows Montana to recognize, gather information and consider other out-of-state applicants for certification that may have already surrendered their certificates in other states.

Wayne Buchanan

WAYNE BUCHANAN, Executive Secretary
Board of Public Education

Certified to the Secretary of State on 8/29/94.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the amendment of Transportation	)))	NOTICE OF AMENDMENT OF ARM 10.64.355 BUS BODY

To: All Interested Persons

1. On April 14, 1994, the Board of Public Education published a notice of proposed amendment concerning ARM 10.64.355 Bus Body at page 733 of the 1994 Montana Administrative Register, Issue number 7.

2. The board has amended the rule as proposed.

3. No written comments were received.

4. The board has adopted this amendment to reconcile a conflict that would have existed between the existing standard and the revised Federal Motor Vehicle Safety Standard (FMVSS) 217, Bus Emergency Exits and Window retention and Release, which have taken effect May 2, 1994. The amendment allows for greater student capacity than the current rule and is in compliance with federal standards.

Wayne Buchanan

WAYNE BUCHANAN, Executive Secretary
Board of Public Education

Certified to the Secretary of State on 8/29/94.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the adoption of Hours and Days of Instruction	)	NOTICE OF AMENDMENT OF ARM 10.65.101 POLICY GOVERNING PUPIL INSTRUCTION-RELATED DAYS APPROVED FOR BASE FUNDING PROGRAM CALCULATIONS

To: All Interested Persons

1. On June 23, 1994, the Board of Public Education published a notice of proposed amendment concerning ARM 10.65.101 Policy Governing Pupil Instruction-Related Days Approved for Base Funding Program Calculations at page 1640 of the 1994 Montana Administrative Register, Issue number 12.

2. The board has adopted the rule as proposed.

3. No written comments were received.

4. The board has adopted this amendment to allow for more flexibility to the local school districts in determining their needs in the record keeping process.

Wayne S Buchanan
WAYNE BUCHANAN, Executive Secretary
Board of Public Education

Certified to the Secretary of State on 8/29/94.

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

In the matter of the amendment of rules 16.8.1301 - 1308, regarding open burning, and the adoption of new rules I and II, regarding open burning of Christmas tree waste and open burning for commercial film or video productions.	NOTICE OF AMENDMENT OF RULES AND ADOPTION OF NEW RULES

(Air Quality)

To: All Interested Persons

1. On April 14, 1994, the board published notice of the above proposed amendment of existing rules and adoption of new rules at page 867 of the Montana Administrative Register, Issue No. 7.

2. The board has amended and adopted the rules as proposed with the following changes (new material is underlined; material to be deleted is interlined):

16.8.1302 PROHIBITED OPEN BURNING--WHEN PERMIT REQUIRED

(1) Same as proposed.

(2) ~~Except as otherwise provided, the~~ The following material may not be disposed of by open burning:

(a)-(x) Same as proposed.

RULE I (16.8.1309) CHRISTMAS TREE WASTE OPEN BURNING PERMITS Same as proposed.

RULE II (16.8.1310) COMMERCIAL FILM PRODUCTION OPEN BURNING PERMITS Same as proposed.

3. The board received a number of comments on the proposed rules; a summary of those comments and the board's response follow:

COMMENT: EPA commended the board for proposing to rescind the permit system for open burning of railroad ties, stating that open burning of creosote treated ties violated the federally-approved State Implementation Plan.

EPA commented that the phrase "except as otherwise provided," in the proposed amendments to ARM 16.8.1302(2), along with the proposed amendments to ARM 16.8.1305(2), could be interpreted to mean that open burning listed in ARM 16.8.1302(2), that is not one of the four categories listed in ARM 16.8.1305(1), would be allowed during March through November. EPA also commented that this phrase also suggests the possibility that a type of open burning prohibited by ARM 16.8.1302(2) would be allowed without a permit if it otherwise met the requirements of ARM 16.8.1303 or if it was open

burning by a major open burning source under a permit.

RESPONSE: In response to these comments, to remove any ambiguity, the board removed the phrase "except as otherwise provided" from the proposed amendments to ARM 16.8.1302(2) because its intent is to allow general open burning of non-prohibited materials during the months of March through November and to allow open burning of materials prohibited under ARM 16.8.1302(2) only as specifically allowed under one of the listed categories (emergency, firefighter training, etc.).

COMMENT: EPA commented that it was not clear under ARM 16.8.1301(3) and ARM 16.8.1301(7) who would determine whether open burning meets the requirements for "essential agricultural open burning" and "prescribed wildland open burning." EPA suggested that the rules include an advance notice requirement under which the department would have the option to place restrictions on such burning, when appropriate.

RESPONSE: The board responded that individuals have the initial responsibility to determine if planned burning meets the criteria of the rules. If there is a dispute, complaint or violation, the department will make a determination regarding applicability of the rules. If a dispute cannot be resolved, the board or a court will make the ultimate determination. An advance notice requirement would be similar to requiring a permit and would require all open burners to contact the state prior to burning. While the department will assist persons in interpreting the rules, it does not have the resources to review every planned open burning and the board does not believe such a program is necessary.

COMMENT: EPA commented that the state should provide documentation to explain why the proposed extension of the open burning season for prescribed wildland open burning, open burning to train firefighters, emergency open burning and essential agricultural open burning will not adversely impact the state's PM-10 nonattainment areas. EPA questioned whether open burning source apportionments in nonattainment area chemical mass balance studies will continue to be negligible with open burning being allowed during the winter months.

RESPONSE: The board responded that the amendments will only extend the essential agricultural open burning season to correspond with the current open burning season for prescribed wildland open burning, emergency open burning and open burning to train firefighters and that it does not believe that this extension will significantly increase the amount of agricultural open burning during the winter months or that it will adversely impact PM-10 nonattainment areas. The majority of agricultural open burning during the winter months is in areas sufficiently removed from the nonattainment areas as to cause only minimal adverse impact and exten-

sion of the essential agricultural open burning season will reduce the pressure on the airsheds during the times that agricultural burning is currently allowed. The department operates a smoke management program during the fall to minimize the impact of smoke from open burning during that period and it allows open burning during the winter only for essential purposes on a case-by-case basis during times of good ventilation. The board believes that the smoke management program provides sufficient controls to ensure that ambient standards are met and that public health is protected.

COMMENT: Browning-Ferris Industries (BFI) suggested replacing the present and proposed open burning rules with rules allowing open burning only by public health or safety officers pursuant to performance of an official duty, for fire hazard abatement, for firefighter training (liquid fuels only), for non-commercial cooking, for ceremonial or recreational fires and for construction site warming fires. In the alternative, BFI requested that the board reject the proposed rules allowing Christmas tree waste open burning and commercial film production open burning and that the rules limit open burning to situations when no reasonable disposal or non-disposal alternative exists.

RESPONSE: The board responded that open burning in compliance with the procedures specified in the rules will not constitute a threat to public health or safety or the environment. It agrees with BFI that persons should investigate and, whenever possible, use non-burning methods of disposal.

COMMENT: At the hearing, Ronald R. McOwen, representing Western Conservation Services, Inc. and the Gallatin County Agricultural Preservation Association, testified that his organizations support extending the season for prescribed wildland and essential agricultural open burning through November. He testified that an extension would improve air quality because, presently, because of urbanization, dry and windy conditions and poor air quality, agricultural burners are forced into all burning during limited and inappropriate times. He also testified that agricultural burning is limited in Gallatin County because the county issues open burning permits to persons who may not be trained and lose control of their fires, causing the county to restrict all open burning. He testified that it is difficult for wildland and agricultural burners to coordinate burns with long-term advance notice. He stated that a system is already established for agricultural burners to telephone for permission to burn during November and that agricultural burners would benefit from having the same opportunity to burn as the forestry industry.

RESPONSE: The board agrees with Mr. McOwens' comments and that his comments reflect the board's reasons for proposing to extend the season for prescribed wildland and essential

agricultural open burning.

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

by /s/ ROBERT J. ROBINSON, Director

Certified to the Secretary of State August 29, 1994.

Reviewed by:

Eleanor Parker, DHES Attorney

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

In the matter of the amendment of rules 16.44.303, 304, 330, 351, 402, 430 and 505, concerning hazardous waste management, and the adoption of new rule I dealing with the use of used oil as a dust suppressant	NOTICE OF AMENDMENT OF RULES AND ADOPTION OF NEW RULE I (Solid & Hazardous Waste)

To: All Interested Persons

1. On March 17, 1994, the department published notice at page 556 of the Montana Administrative Register, Issue No. 5, to consider the amendment and adoption of the above-captioned rules.

2. The rules were amended and adopted as proposed, with the following changes (new material in the rules to be amended is underlined; material to be deleted is interlined):

RULE I (16.14.589) USED OIL AS DUST SUPPRESSANT PROHIBITED (1) Remains the same.

(2) Except as otherwise provided in (3), no person may apply used oil as a dust suppressant.

(3) ~~This rule does not apply to household "do-it-yourselfer" used oil generators and farmers who generate in a calendar year an average of 25 gallons per month or less of used oil from vehicles or machinery used on the farm.~~ Subsection (2) does not prohibit the following persons from applying their own used oil as a dust suppressant upon land owned or leased by that person or covered by easement or permit as long as such application does not violate any applicable state or local laws or regulations or create a nuisance or public health hazard:

(a) household "do-it-yourselfer" used oil generators; and

(b) farmers who generate in a calendar year an average of 25 gallons per month or less of used oil from vehicles or machinery used on the farm.

3. The department received the following comments and department responses follow:

COMMENT: Three commentors objected to the proposed exemption from the ban on the use of used oil as a dust suppressant found at [New Rule I(3)]. That proposed exemption applies to household "do-it-yourselfer" used oil generators and to farmers who generate in a calendar year an average of 25 gallons per month or less of used oil from vehicles or machinery used on the farm. The objections to these exclusions were primarily based upon the view that these generators produce a significant volume of used oil which, if not managed properly, may pose a hazard to human health and the environment. In addition, two comments raised concerns that the exemptions are "discriminatory" by exempting farmers while providing no similar exemption for other industries, such as loggers and road oilers.

RESPONSE: In order to maintain federal authorization of its hazardous waste program under Section 3006 of the Resource Conservation and Recovery Act (RCRA), the Department is required to adopt regulations concerning used oil which are equivalent to applicable federal regulations. The proposed prohibition on the use of used oil as a dust suppressant is equivalent to the federal regulation, 40 CFR 279.12(b). Similarly, the proposed exemptions for farmers and household "do-it-yourselfer" used oil generators are equivalent to those found in the federal regulation, 40 CFR 279.20(a).

In its efforts to maintain equivalence with the federal hazardous waste program, the Department generally avoids adopting state regulations which are more stringent or broader in scope than the analogous federal regulations. The Department's statutory authority for adopting rules relating to hazardous waste prohibits the adoption of rules which are "more restrictive" than the federal rules, except in certain specified areas. §75-10-405(2), MCA. While the proposed rules are not specifically adopted under the authority of §75-10-405, MCA, they are intended to be implemented as a part of the Department's hazardous waste program. If the Department eliminated the exemptions for household "do-it-yourselfers" and farmers, the State rule would be broader in scope than the federal rule by making farmers and household "do-it-yourselfers" subject to the restriction on the use of used oil as a dust suppressant.

The rule prohibiting the use of oil as a dust suppressant was proposed under the authority of the Montana Solid Waste Management Act, §75-10-204, MCA. That Act specifies that a person may not be prohibited from disposing of his own solid waste that is generated in reasonable association with his household or agricultural operations upon land owned or leased by that person as long as the disposal does not create a nuisance or public health hazard. §75-10-214(1)(a), MCA. The Department believes the proposed exemptions are consistent with the Montana Solid Waste Management Act. However, it should be noted in this context that the exemptions do not allow the application of used oil as dust suppressant if the used oil is identified as a hazardous waste under the laws and regulations concerning the management of hazardous waste (§75-10-401, et seq., MCA; Title 16, Chapter 44, ARM).

Thus, while the Department recognizes the potential dangers associated with releases of even small amounts of used oil, it believes these risks are outweighed by the need to be consistent with the federal standards and with the Department's existing statutory rulemaking authority.

Regarding the claim that the exemptions are "discriminatory", the Department believes there exist valid reasons for distinguishing farmers and household "do-it-yourselfers" from other categories of used oil generators. Small farming operations (those that generate less than 25 gallons per month on average) and households typically generate less used oil than commercial generators. Due to their rural locations, small farmers may have fewer recycling options and a greater need for dust suppression as compared to other used oil generators. In addi-

tion, the proposed exemptions for small farmers and households are consistent with exemptions from the federal hazardous waste regulations promulgated under RCRA. See, e.g. 40 CFR 261.5(b), 40 CFR 262.10(d). Moreover, as discussed above, the Department believes it is necessary to retain the exemptions in order to stay within the limits of its rulemaking authority under the Montana Solid Waste Management Act.

COMMENT: One person commented that the exemptions for farmers and household "do-it-yourselfer" used oil generators should be limited to use on the exempt generator's own property.
RESPONSE: The Department agrees with this suggestion. The proposed rule has been amended to limit the exemption to the application of the exempt generator's own used oil to land owned or leased by the generator or covered by easement or permit, as long as such application does not violate any applicable state or local laws or regulations or create a nuisance or public health hazard. This language is consistent with the exclusion provided by the Montana Solid Waste Management Act at §75-10-214. MCA.

COMMENT: One comment stated that the definition of "farm" contained in [Rule I(3)] needs to be clarified in order to prevent allowing a "maximum amount of oil to be generated on a minimally sized farm".
RESPONSE: The proposed rule limits the extent of the exemption to those farmers who generate an average of 25 gallons or less per month. Regardless of the size of the farm, the exemption does not apply to those farmers who generate greater than 25 gallons per month. It stands to reason that minimally sized farms would generate smaller volumes of used oil than larger farms. The Department considers the volume limit more significant than the size of the farm. Therefore, the Department feels a definition of "farm" is unnecessary.

COMMENT: After the expiration of the formal comment period, the Fire Prevention and Investigation Bureau of the Montana Department of Justice notified the Department of its belief that the proposed exemptions for farmers and household "do-it-yourselfers" conflict with Section 79.113 of the Uniform Fire Code of 1991.
RESPONSE: Section 79.113 of the Uniform Fire Code of 1991 provides in relevant part:

> **Sec. 79.113.** Flammable and combustible liquids and petroleum waste products shall not be discharged or released upon sidewalks, streets, highways, drainage canals, ditches, storm drains, sewers, flood control channels, lakes, rivers, tidal waterways or the ground. Unauthorized discharge or release of such products shall be handled as set forth in Section 80.105.

That section also contains the following provision on exceptions:

> **EXCEPTIONS:** 1. Materials and products intended for use in weed abatement, pest control, erosion

control, paving and similar applications when applied in accordance with the manufacturer's instructions or nationally recognized practices.

2. Materials released in accordance with federal, state or local government regulations or permits of the jurisdictional air-quality management board with a national pollutant discharge elimination system permit, with waste discharge requirements established by the jurisdictional water-quality control board, or with local sewer pretreatment requirements for publicly owned treatment works.

The Department notes that the placing of used oil on the ground as a dust suppressant may be exempt from the prohibition of 79.113 under the first exception set forth above. Absent the ban proposed by [Rule I], the use of used oil as a dust suppressant might be considered "erosion control, paving [or] similar applications ... applied in accordance with ... nationally recognized practices". The Department is aware of at least two local governments and numerous individuals which have routinely applied used oil as a dust suppressant in the past. In addition, the Department believes several other states currently allow the practice of using used oil as a dust suppressant.

In any event, the proposed exemption set forth in [Rule I(3)] simply states that the proposed rule does not apply to small farmers and household "do-it-yourselfer" used oil generators. The Department does not interpret the exemption proposed in [Rule I(3)] to authorize the application of used oil as a dust suppressant if such application would violate other applicable laws or regulations. For example, a farmer or household "do-it-yourselfer" used oil generator would not be allowed to apply his/her used oil as a dust suppressant in a manner or in a location which would violate applicable water quality laws. Similarly, a farmer or household "do-it-yourselfer" used oil generator would not be allowed to apply his/her used oil as a dust suppressant if such application would violate any applicable provision of the fire code.

The Department has amended the proposed rule to clarify this interpretation. The rule as adopted prohibits the application of used oil by farmers and household "do-it-yourselfers" if such application would violate "any applicable state or local laws or regulations or create a nuisance or public health hazard".

COMMENT: Two commentors stated their view that used oil applied as a dust suppressant should not be considered a health hazard when properly applied.

RESPONSE: In considering the proposed rule the Department reviewed the results of studies conducted nationwide by the US EPA beginning in 1985. These studies relied upon extensive sampling of a wide variety of used oils generated from different sources. The results of these studies are discussed in numerous notices published in the Federal Register. 50 FR 49258 (Nov. 29, 1985); 51 FR 41900 (Nov. 19, 1986); 56 FR 4800

(Sept. 23, 1991); 57 FR 21524 (May 20, 1992); 57 FR 41566 (Sept. 10, 1992).

Based upon the sampling data, the US EPA has concluded that approximately 20% of industrial used oil samples and 50% of transportation engine oil samples tested exhibited the toxicity characteristic (TC) for hazardous waste. The US EPA concluded that automotive crank case oils from unleaded gasoline engines exhibited the TC, primarily for lead, in 75% of samples taken. All samples from used oil storage tanks at automotive maintenance facilities exhibited the TC for lead as well as other constituents such as solvents. The US EPA has concluded that automotive crank case oil and oils from used oil storage tanks may exhibit the TC for benzene. The federal data also suggest that used oils from gasoline powered marine craft exhibit the TC for lead.

The US EPA data suggest that used oils from turbo jet/turbo fan type aircraft do not exhibit the TC, while used oils from piston engine aircraft exhibit the TC for lead and cadmium. Approximately 86% of used oil from storage tanks at aircraft maintenance facilities exhibit the TC for lead. Of the remaining categories evaluated by the US EPA, no electrical insulating oils exhibited the TC and only 17% of the metal working oils exhibited the TC. Diesel engine crankcase oils from trucks, buses, heavy equipment and railroad engines were not generally found to be TC hazardous. However, adulteration of used oil with other materials was found in a significant number of samples taken.

The Department has experienced, on occasion, cases where used oil either applied to the ground or intended for application to the ground has been found to be altered with hazardous substances, specifically, used solvents. Department experience is that used oil is utilized as a convenient mechanism for the introduction of other hazardous materials, such as chlorinated solvents.

Based upon the federal studies and the Department's experience with respect to the potential hazards of used oil and adulterated used oils, it is the Department's conclusion that there are significant risks to human health and the environment associated with the application of used oil as a dust suppressant. The Department agrees that these risks may be increased by improper application to the ground. However, the Department believes that even when applied in the safest manner, the risks associated with used oil are sufficient to justify the prohibition of its application to the ground as a dust suppressant.

COMMENT: Two commentors suggested that the application of used oil as a dust suppressant is an economical method of controlling dust problems on dirt roads. One of the commentors also expressed a concern over the availability of alternatives to used oil for dust suppression.

RESPONSE: The Department recognizes that the use of used oil as a dust suppressant may be less expensive than the use of alternative methods of dust abatement. However, this view of costs does not necessarily consider true long-term costs. The initial lower cost and convenience of this practice may well be

offset by the risks to human health and the environment discussed above.

In considering the adoption of the rule prohibiting the use of used oil as a dust suppressant, Department staff evaluated potential alternatives to the use of used oil as a dust suppressant. The simple application of water to the ground as a dust suppressant is commonly used in the State and is considered to be an effective dust suppressant, at least on a short term basis. However, one potential limiting factor to the use of water for dust suppression is that on dirt roads which experience heavy traffic the application of water may have to occur on a frequent basis.

A material commonly used as a dust suppressant is calcium ligno sulfonate. This material consists of spent sulfide wood pulp liquor. The material is used in pavement applications, dust control, and erosion control. It has been used fairly extensively on haul roads in eastern Montana coal mines with apparent success.

Another material currently used as a dust suppressant is concentrated magnesium chloride brine. The material is a dense clear liquid weighing approximately 11 pounds per gallon. It is principally used for the suppression of dust associated with dirt roads, construction sites, unpaved parking lots, mines and gravel quarries. This material has been used extensively by the U.S. Forest Service in Region I.

Calcium chloride in solution has also been used to a large extent both in Western and Eastern Montana. The U.S. Forest Service has had moderate success with the use of this material, and a large coal mining company in eastern Montana believes that is comparable in its effectiveness to magnesium chloride. Calcium chloride in a flake form is also being evaluated by individuals in the state.

Thus, the Department has concluded that there are numerous available alternatives to used oil as a dust suppressant. While most of these alternatives may be more expensive than used oil, the Department believes the additional economic burden is outweighed by the protection to human health and the environment afforded by prohibiting the use of used oil as a dust suppressant.

COMMENT: One commentor stated that used oil "should be burned".

RESPONSE: The Department believes the proposed ban on the use of used oil as a dust suppressant will encourage the legitimate recycling and recovery of used oil, including the burning of used oil for energy recovery.

COMMENT: The Department received two comments suggesting the development of a program to allow the application of used oil as a dust suppressant under controls that would ensure protection to the public health and the environment. Specifically, the comments suggested the Department develop a program for licensing used oil applicators.

RESPONSE: During the development of the proposed regulation, Department staff considered the potential of establishing a

formal program which would establish adequate controls over the practice of placing used oil on the ground as a dust suppressant.

When promulgating the federal used oil regulations, the EPA established in 40 CFR 279.82 provisions which would allow for such a program. Under 40 CFR 279.82(b), a State may petition EPA to allow the use of used oil (which is not mixed with hazardous waste and does not exhibit a characteristic other than ignitability) as a dust suppressant. The State must show that it has a program in place to prevent the use of used oil/-hazardous waste mixtures or used oil exhibiting a characteristic other than ignitability as a dust suppressant. In addition, such a program must minimize the impacts of use as dust suppressant on the environment.

Due to the numerous issues and potential health concerns surrounding used oil, the Department is not prepared to create a program for licensing used oil applicators at this time. It is the Department's intent to continue to evaluate the desirability of such a program to allow some form of application of used oil as a dust suppressant. If it is determined that acceptable criteria and controls could be developed to establish the appropriate use of used oil as dust suppressant, the Department will seek public input on developing such a program.

COMMENT: Two commentors expressed a concern that the Department would not have available resources to adequately enforce the proposed ban on the use of used oil for dust suppression. **RESPONSE:** During the period of April through September of each year, the Department normally receives approximately 100 formal complaints pertaining to the application of used oil to the ground. It is the Department's view that the promulgation of the ban on the use of used oil for dust suppression will cause a substantial reduction in the practice and therefore decrease the number of complaints received. Accordingly, the resources required for the enforcement of this regulation should not be significantly more burdensome than the status quo. Moreover, even if the regulation causes an increase in workload, the Department believes adequate resources could be devoted to the enforcement of the regulation.

/s William J. Gatz
/s ROBERT J. ROBINSON, Director

Certified to the Secretary of State August 29, 1994.

Reviewed by:
/s Eleanor J. Parker
Eleanor Parker, DHES Attorney

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

In the matter of the amendment of ARM 26.3.180, 26.3.181, 26.3.182, 26.3.183, 26.3.186, 26.3.187, 26.3.189, 26.3.192, and 26.3.193 and adoption of new Rules I, II, and III pertaining to recreational use of state lands.	CORRECTED NOTICE OF ADOPTION AND AMENDMENT

TO: All Interested Parties

1. On July 7, 1994, the agency published a notice at page 1844 of the Montana Administrative Register, Issue No. 13, of the amendment and adoption of rules pertaining to the recreational use of state lands.

2. The notice inadvertently omitted a cross-reference in the definition of "drop box" in ARM 26.3.182(9). The additional cross-reference is necessitated by the adoption of ARM 26.3.192A, which also requires a drop box. The corrected amendment reads as follows:

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

(1) through (8) same as in notice of adoption.

(9) "Drop box" means a receptacle in which a person making general recreational use of state lands may leave notice required pursuant to ARM 26.3.192(3) and (4) or 26.3.192A.

(10) through (22) same as in notice of adoption.

AUTH: 77-1-804, MCA; IMP: 77-1-806, MCA.

3. In the July 7, 1994, notice of adoption, the agency adopted a new rule, ARM 26.3.190, regarding management closures and restrictions. The agency should have amended 26.3.183(1) and (3) to cross-reference the new rule, but inadvertently failed to do so. The agency has therefore amended that rule, and the amendment reads as follows:

26.3.183 GENERAL RECREATIONAL USE OF STATE LANDS; LICENSE REQUIREMENT (1) Subject to restrictions imposed pursuant to ARM 26.3.186 and ARM 26.3.190 and closures imposed pursuant to ARM 26.3.187, ARM 26.3.188, ~~and~~ ARM 26.3.189 and ARM 26.3.190, state lands administered by the department, except those lands described in ARM 26.3.181(2)(b), (g) and (h), are open to general recreational use to a person under the age of 12 years or a person 12 years old or older who obtains a recreational use license, signs that license, and has a valid signed license in his or her possession. Under 77-1-801, MCA, general recreational use without a license is a misdemeanor.

(2) remains the same.

(3) A person who uses state lands for general recreational use shall abide by the restrictions imposed pursuant to ARM 26.3.186 and may not use for general recreational purposes state lands that have been closed pursuant to ARM 26.3.187, ARM 26.3.188, ~~or~~ ARM 26.3.189 or ARM 26.3.190. Violation of this provision subjects the violator to civil penalties pursuant to ARM 26.3.193.

(4) through (7) remain the same.

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

4. The notice of adoption of ARM 26.3.192A inadvertently failed in section (4) to provide that the notice provisions of that rule pertain to persons engaging in overnight use. Furthermore, the notice inadvertently included language allowing a floater to "attempt to" contact the lessee, rather than requiring the floater to contact the lessee. The agency has corrected those errors, and the corrected rule, as adopted, reads as follows:

26.3.192A GENERAL RECREATIONAL USE OF STATE LANDS: NOTICE TO LESSEES OF OVERNIGHT USE, HORSEBACK USE FOR ANY PURPOSE OTHER THAN LICENSED HUNTING, AND FOR DISCHARGE OF A FIREARM FOR ANY PURPOSE OTHER THAN LICENSED HUNTING

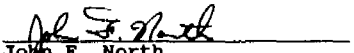
(1) through (3) same as in notice of adoption.

(4) If the person designated pursuant to (1)(a) wishes to be notified in person or by telephone, that person shall be available to receive notice by telephone or in person from the hours of 7:00 A.M. until 9:00 P.M. A person wishing to engage in overnight use not in conjunction with floating, horseback use for any purpose other than licensed hunting or discharge of a firearm for any purpose other than licensed hunting shall contact the person designated for notice pursuant to (1)(a) during those hours, unless the person is not available. A floater wishing to engage in overnight use shall ~~attempt to~~ contact a person designated for notice pursuant to (2)(a) between 7:00 A.M. and 9:00 P.M. unless the person is not available. The recreationist may determine which method of contact to employ. If the recreationist contacts the person in person or by telephone, the recreationist shall, upon request provide his or her name, address, recreational use license number, and the name and recreational use license number of each person in his or her party. Notice authorizes the recreationist to engage in firearm or horse use for three consecutive days, or any longer period specified by the lessee, without further notice. In addition, no further notice is required as long as the recreationist is engaged in continuous general recreational use that includes the state land and that makes further notice impossible or extremely impractical, such as a back country hunting or fishing trip. Notice authorizes overnight use for two consecutive days only.

(5) and (6) same as in notice of adoption.

AUTH: 77-1-806, MCA; IMP: 77-1-806, MCA.

Reviewed by:



John F. North
Chief Legal Counsel

Arthur R. Clinch
Commissioner

Certified to the Secretary of State August 29, 1994.

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

In the matter of the adoption of [Rule I] 46.10.110 and the amendment of rules 46.10.314, 46.10.402, 46.10.408 and 46.10.409 pertaining to transitional child care	)))))	NOTICE OF THE ADOPTION OF [RULE I] 46.10.110 AND THE AMENDMENT OF RULES 46.10.314, 46.10.402, 46.10.408 AND 46.10.409 PERTAINING TO TRANSITIONAL CHILD CARE

TO: All Interested Persons

1. On May 26, 1994, the Department of Social and Rehabilitation Services published notice of the proposed adoption of [Rule I] 46.10.110 and the amendment of rules 46.10.314, 46.10.402, 46.10.408 and 46.10.409 pertaining to transitional child care at page 1400 of the 1994 Montana Administrative Register, issue number 10.

2. The Department has amended rules 46.10.314, 46.10.402, 46.10.408 and 46.10.409 as proposed.

3. The Department has adopted [Rule I] 46.10.110, DEFINITIONS as proposed.

4. No written comments or testimony were received.

Rule Reviewer

Director, Social and Rehabilitation Services

Certified to the Secretary of State, August 29, 1994.

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

In the matter of the adoption of Rule I [46.10.210] and the amendment of rules 46.10.108, 46.10.207, 46.10.403, 46.10.505, 46.11.120 and 46.11.125 pertaining to AFDC and food stamp monthly reporting requirements	)))))))	NOTICE OF THE ADOPTION OF RULE I [46.10.210] AND THE AMENDMENT OF RULES 46.10.108, 46.10.207, 46.10.403, 46.10.505, 46.11.120 AND 46.11.125 PERTAINING TO AFDC AND FOOD STAMP MONTHLY REPORTING REQUIREMENTS

TO: All Interested Persons

1. On May 12, 1994, the Department of Social and Rehabilitation Services published notice of the proposed adoption of Rule I [46.10.210] and the amendment of rules 46.10.108, 46.10.207, 46.10.403, 46.10.505, 46.11.120 and 46.11.125 pertaining to AFDC and food stamp monthly reporting requirements at page 1271 of the 1994 Montana Administrative Register, issue number 9.

2. The Department has amended rules 46.10.108, 46.10.207, 46.11.120 and 46.11.125 as proposed.

3. The Department has adopted [RULE I] 46.10.210, REPORTING REQUIREMENTS as proposed.

4. The Department has amended the following rules as proposed with the following changes:

46.10.403 TABLE OF ASSISTANCE STANDARDS; METHODS OF COMPUTING PAYMENTS Subsection (1) remains as proposed.

(2) ELIGIBILITY FOR ASSISTANCE IS ALWAYS DETERMINED PROSPECTIVELY FOR ALL APPLICANTS AND RECIPIENTS. THAT IS, BASED ON THE DEPARTMENT'S BEST ESTIMATE OF INCOME AND OTHER CIRCUMSTANCES WHICH WILL EXIST IN A FUTURE MONTH OR MONTHS. AN ELIGIBLE APPLICANT OR RECIPIENT'S BENEFIT FOR A PARTICULAR MONTH IS COMPUTED USING EITHER RETROSPECTIVE OR PROSPECTIVE BUDGETING AS SET FORTH IN SUBSECTION (3) OF THIS RULE.

Subsections (2) through (2)(b) remain as proposed but are renumbered (3) through (3)(b).

(c) WHEN COMPARING GROSS MONTHLY INCOME TO THE GROSS MONTHLY INCOME STANDARD, FOR ASSISTANCE UNITS WITH EARNED INCOME OR WHO LIVE WITH PERSONS WITH EARNED INCOME WHOSE INCOME IS DEEMED TO THE ASSISTANCE UNIT, THE BUDGET MONTH IS THE SAME AS THE BENEFIT MONTH FOR THE FIRST 2 MONTHS OF ELIGIBILITY AND FOR THE THIRD AND SUBSEQUENT MONTHS OF ELIGIBILITY THE BUDGET MONTH IS 2 MONTHS PRIOR TO THE BENEFIT MONTH. FOR ASSISTANCE UNITS

WITH NO EARNED INCOME AND WHO DO NOT LIVE WITH PERSONS WITH EARNED INCOME WHOSE INCOME IS DEEMED TO THE ASSISTANCE UNIT, THE BUDGET MONTH IS THE SAME AS THE BENEFIT MONTH FOR THE FIRST 2 MONTHS OF ELIGIBILITY AND FOR THE THIRD AND SUBSEQUENT MONTHS OF ELIGIBILITY.

(d) WHEN COMPARING NET MONTHLY INCOME TO THE NET MONTHLY INCOME STANDARDS, FOR ASSISTANCE UNITS WITH EARNED INCOME OR WHO LIVE WITH PERSONS WITH EARNED INCOME WHOSE INCOME IS DEEMED TO THE ASSISTANCE UNIT, THE BUDGET MONTH IS THE SAME AS THE BENEFIT MONTH FOR THE FIRST 2 MONTHS OF ELIGIBILITY, AND FOR THE THIRD AND SUBSEQUENT MONTHS OF ELIGIBILITY THE BUDGET MONTH IS 2 MONTHS PRIOR TO THE BENEFIT MONTH. FOR ASSISTANCE UNITS WITH NO EARNED INCOME AND WHO DO NOT LIVE WITH PERSONS WITH EARNED INCOME WHOSE INCOME IS DEEMED TO THE ASSISTANCE UNIT, THE BUDGET MONTH IS THE SAME AS THE BENEFIT MONTH FOR THE FIRST 2 MONTHS OF ELIGIBILITY AND FOR THE THIRD AND SUBSEQUENT MONTHS OF ELIGIBILITY.

Subsections (2)(c) through (2)(f) remain the same as proposed in text but are renumbered (3)(e) through (3)(h). Subsections (3) through (4)(b) remain the same as proposed in text but are renumbered (4) through (5)(b).

AUTH: Sec. 53-4-212 and 53-4-241 MCA
IMP: Sec. 53-4-211 and 53-4-241 MCA

46.10.505 DEFINITIONS Subsections (1) through (4)(a) remain as proposed.

~~(b) When comparing gross monthly income to the gross monthly income standard as defined in ARM 46.10.403, the budget month is the same as the benefit month for the first two months of eligibility and for the third and subsequent months of eligibility the budget month is two months prior to the benefit month.~~

Subsection (5) remains as proposed.

~~(a) When applying net monthly income to the net monthly income standard as defined in ARM 46.10.403, the budget month is the same as the benefit month for the first two 2 months of eligibility, and, ffor the third and subsequent months of eligibility, the budget month is two 2 months prior to the benefit month. for recipients required to file a monthly report, and the budget month is the same as the benefit month for all other recipients.~~

Subsections (6) and (7) remain as proposed.

AUTH: Sec. 53-4-212 and 53-4-241 MCA
IMP: Sec. 53-4-211, 53-4-231, 53-4-241 and 53-4-242 MCA

5. The Department has thoroughly considered all commentary received:

COMMENT: Subsection (5)(a) of ARM 46.10.505, which describes the methodology used to budget net income, does not belong in ARM 46.10.505, which is a definitions rule. Additionally, the budgeting method described in subsection (5)(a) appears to conflict with the methodology described in ARM 46.10.403(2) as proposed to be amended.

RESPONSE: The department agrees. Therefore subsection (5)(a) of ARM 46.10.505 has been moved to ARM 46.10.403 and has been changed to reflect accurately the department's new budgeting methodology. For the same reasons the department is also amending subsection (4)(b) of ARM 46.10.505, which describes the methodology used to budget gross income, and is moving it to ARM 46.10.403.

COMMENT: ARM 46.10.403 should state more clearly that eligibility for AFDC is always determined prospectively.

RESPONSE: The department agrees. Subsection (2) has been added to ARM 46.10.403 stating more clearly that eligibility is always determined prospectively.

Russell E. Cater
Rule Reviewer

Russell E. Cater, acting
Director, Social and Rehabilitation Services

Certified to the Secretary of State, August 29, 1994.

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

In the matter of the amendment of rules 46.12.802, 46.12.805 and 46.12.806 pertaining to medicaid coverage and reimbursement of wheelchairs and wheelchair accessories	)))))	NOTICE OF THE AMENDMENT OF RULES 46.12.802, 46.12.805 AND 46.12.806 PERTAINING TO MEDICAID COVERAGE AND REIMBURSEMENT OF WHEELCHAIRS AND WHEELCHAIR ACCESSORIES

TO: All Interested Persons

1. On July 7, 1994, the Department of Social and Rehabilitation Services published notice of the proposed amendment of rules 46.12.802, 46.12.805 and 46.12.806 pertaining to medicaid coverage and reimbursement of wheelchairs and wheelchair accessories at page 1811 of the 1994 Montana Administrative Register, issue number 13.

2. The Department has amended rule 46.12.802 as proposed.

3. The Department has amended the following rules as proposed with the following changes:

46.12.805 PROSTHETIC DEVICES, DURABLE MEDICAL EQUIPMENT, AND MEDICAL SUPPLIES, REIMBURSEMENT REQUIREMENTS

Subsections (1) through (1)(c)(v) remain as proposed.

(A) All wheelchairs and wheelchair accessories WITH COMBINED CHARGES EXCEEDING $1,500 OR WITH CHARGES FOR ANY SINGLE ITEM EXCEEDING $1,000 are subject to review by the department for medical necessity and must be prior authorized by the department. All prior authorization requests must include submission to the department of the pertinent manufacturer's price list pages for the requested item.

Subsections (1)(d) through (4) remain as proposed.

(5) If the department's fee calculated under ARM 46.12.806(3) for a requested wheelchair and/or wheelchair accessories would exceed ~~$2,500~~ $3,499.99, including both the wheelchair and any accessories, the wheelchair and accessories will be purchased and the reimbursement amount determined through a competitive bid process conducted by the department OR THE DEPARTMENT of administration.

Subsection (5)(a) remains as proposed.

(i) the wheelchair or accessory was not purchased through a competitive bid process because the fee was less than ~~$2,500~~ $3,500;

(ii) the department determines on post-payment review that accessories were later added WITH NO DOCUMENTED CHANGE IN MEDICAL CONDITION AND that THE FEES FOR THE ADDITIONAL ACCESSORIES, together with the amount of the wheelchair and accessories originally purchased, exceed ~~$2,500~~ $3,500; and

Subsection (5)(iii) remains as proposed.

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

46.12.806 PROSTHETIC DEVICES, DURABLE MEDICAL EQUIPMENT, AND MEDICAL SUPPLIES, FEE SCHEDULE Subsections (1) through (2)(d)(ii) remain as proposed.

(3) The department's fee schedule, referred to in ARM 46.12.805(1), for ALL wheelchairs and wheelchair accessories shall be as follows: 83% OF THE MANUFACTURER'S LIST PRICE AT THE DATE THE ITEM IS ORDERED BY THE PROVIDER.

~~(a) The fee schedule amount for standard wheelchairs shall be 80% of the manufacturer's list price applicable to the wheelchair. For purposes of this rule, a standard wheelchair is a basic wheelchair that is not designed for modification and that accommodates a person weighing 250 pounds or less.~~

~~(b) The fee schedule amount for specialty wheelchairs shall be 85% of the manufacturer's list price applicable to the wheelchair. For purposes of this rule, a specialty wheelchair is any wheelchair that is not a standard wheelchair. Examples of specialty wheelchairs are lightweight, hemi, pediatric, recliner, tilt-n-space and heavy duty wheelchairs.~~

~~(c) The fee schedule amount for all wheelchair accessories shall be 85% of the manufacturer's list price applicable to the item.~~

(a) ITEMS HAVING NO MANUFACTURER'S LIST PRICE, SUCH AS ITEMS CUSTOMIZED BY THE PROVIDER, WILL BE REIMBURSED IN ACCORDANCE WITH SUBSECTION (2)(c).

Subsections (4) through (4)(b) remain as proposed.

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

4. The Department has thoroughly considered all commentary received:

COMMENT: The 20% discount off list price for standard wheelchairs is too large a discount for smaller durable medical equipment (DME) dealers, and would not allow them to participate in the medicaid wheelchair business.

RESPONSE: In order to retain this important group of wheelchair providers, the proposed discount on standard chairs will be lowered to 17% and the discount on specialty chairs and accessories will be raised to 17%. This should help the small dealers while maintaining the cost savings by receiving a larger discount on the specialty items.

COMMENT: The maximum cost on wheelchairs of $2,500 before the chair must go out on bid is too low and would cause unnecessary delays in the delivery of the chairs.

RESPONSE: The department has reevaluated the ceiling and raised the maximum to $3,499.99. Items with charges of $3,500 or more will be purchased through a competitive bid process.

COMMENT: The prior authorization process is too time consuming and adds additional costs to the chair.

RESPONSE: The department has evaluated the prior authorization system and has found that few requests for chairs under $1,500 have been denied. To expedite the process, these chairs will not require prior authorization unless an individual line item goes over the $1,000 limit set for other DME supplies. However, chairs for nursing home recipients will continue to require prior authorization, since the department already pays the nursing home to provide a standard chair as part of their daily rate. The department will bid out chairs between $3,500 and $5,000, instead of using the Department of Administration (DOA). Chairs over $5,000 will be bid through DOA.

COMMENT: Using the January 1 price list for the current year would give the department an additional discount because manufacturers increase their prices throughout the year.

RESPONSE: The department has revised the rule to allow the provider to attach copies of price lists pages that are in effect at the time the chair was ordered. This will allow the provider to receive a fee which reflects wholesale prices actually effective at the date of purchase. This will assure that the discount off list price will remain at the 17% level.

COMMENT: A vendor that invests time and expense to determine specifications for chairs that are to be bid by the department currently gets no monetary compensation if they are not the low bidder on the chair, even though considerable time and expense has been invested.

RESPONSE: The department will provide a local code that can be used in instances where the supplier that provided the specifications is not the one selected to provide the chair. This amount will not exceed $50.00. The provider that supplies this chair will not be allowed to bill for this service.

COMMENT: Providers that do their own customizing are unable to submit price lists for services. How will they be compensated?

RESPONSE: The local codes that are already in place (W2600, wheelchair equipment not listed; W2661, wheelchair repair;

W2663, adaptive equipment for the handicapped) will still be available and should be utilized for these circumstances. These items will be reimbursed under ARM 46.12.806(2)(c) at 90% of the provider's actual charge. Language has been added to the rule to clarify this payment method.

COMMENT: How will the department determine if equipment added on after the initial purchase, and exceeding the $3,500 bid threshold was justified or subject to penalty?

RESPONSE: It will be done through retrospective reviews. If the recipient's medical condition has changed and the equipment added to the chair reflects that change, then the provider would not be subject to any penalty. If the recipient's medical status had not changed and it appears that the equipment was added later just to avoid the dollar amount ceiling for bidding equipment, then the department will seek recovery.

5. The proposed changes will be applied retroactively to September 1, 1994.

Rule Reviewer

Director, Social and Rehabilitation Services

Certified to the Secretary of State, August 29, 1994.

NOTICE OF FUNCTIONS OF ADMINISTRATIVE CODE COMMITTEE

The Administrative Code Committee reviews all proposals for adoption of new rules, amendment or repeal of existing rules filed with the Secretary of State, except rules proposed by the Department of Revenue. Proposals of the Department of Revenue are reviewed by the Revenue Oversight Committee.

The Administrative Code Committee has the authority to make recommendations to an agency regarding the adoption, amendment, or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. In addition, the Committee may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt or amend a rule.

The Committee welcomes comments from the public and invites members of the public to appear before it or to send it written statements in order to bring to the Committee's attention any difficulties with the existing or proposed rules. The address is Room 138, Montana State Capitol, Helena, Montana 59620.

HOW TO USE THE ADMINISTRATIVE RULES OF MONTANA AND THE MONTANA ADMINISTRATIVE REGISTER

Definitions: Administrative Rules of Montana (ARM) is a looseleaf compilation by department of all rules of state departments and attached boards presently in effect, except rules adopted up to three months previously.

Montana Administrative Register (MAR) is a soft back, bound publication, issued twice-monthly, containing notices of rules proposed by agencies, notices of rules adopted by agencies, and interpretations of statutes and rules by the attorney general (Attorney General's Opinions) and agencies (Declaratory Rulings) issued since publication of the preceding register.

Use of the Administrative Rules of Montana (ARM):

Known Subject Matter	1. Consult ARM topical index. Update the rule by checking the accumulative table and the table of contents in the last Montana Administrative Register issued.
Statute Number and Department	2. Go to cross reference table at end of each title which lists MCA section numbers and corresponding ARM rule numbers.

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies which have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through June 30, 1994. This table includes those rules adopted during the period July 1, 1994 through September 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 June 30, 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.

ADMINISTRATION, Department of, Title 2

2.21.137 and other rules - Sick Leave, p. 480, 1407
2.21.704 Leave of Absence Without Pay, p. 483, 1409
2.21.903 and other rules - Leave of Absence Due to Disability and Maternity, p. 473, 1410
2.21.1604 and other rule - Alternate Work Schedules, p. 476, 1411
2.21.3702 and other rules - Recruitment and Selection, p. 487, 1412
2.21.5006 and other rules - Reduction in Work Force, p. 498, 1419
2.21.6701 and other rules - Statewide Employee Incentive Award Program, p. 1784
2.21.8011 Grievances, p. 485, 1421
2.21.8109 Equal Employment Opportunity/Affirmative Action, p. 478, 1422

(Public Employees' Retirement Board)

I-III Mailing Membership Information about Non-Profit Organizations, p. 508
I-XI and other rules - Medical Review of Members - Discontinuance of Disability Retirement Benefits - Procedures for Requesting an Administrative Hearing - Model Rules - Definitions - Disability Application Process - Election of Disability Coverage, p. 1191, 1816, 2106
2.43.204 Administrative Procedures for Contested Cases, p. 2039

(Teachers' Retirement Board)

2.44.405 and other rules - Adjusting Disability Allowances - Interest on Non-Payment for Additional Credits - Creditable Service for Teaching in Private Educational Institutions, p. 2858, 561

(State Compensation Insurance Fund)

2.55.320 and other rules - Method for Assignment of Classifications of Employments - Premium Ratesetting - Construction Industry Premium Credit Program - Medical Deductible, p. 597, 1423

2.55.324 Premium Ratesetting, p. 1497, 2108

2.55.326 Minimum Yearly Premium, p. 981, 1817

2.55.327 and other rules - Construction Industry Program - Scheduled Rating for Loss Control Non-compliance Modifier and Unique Risk Characteristics Modifier, p. 2870, 292, 661

2.55.404 Scheduled Rating - High Loss Modifiers, p. 661

AGRICULTURE, Department of, Title 4

I Emergency Rule to Allow the Use of the Pesticide Pirimor Under Section 18 of FIFRA, p. 2109

I-VIII Rinsing and Disposal of Pesticide Containers, p. 1317, 1988

I-VIII Pesticide Disposal Program, p. 600, 1280

4.2.102 and other rule - Exceptions and Additions for Agricultural Sciences Division - Exceptions and Additions for Plant Industry Division, p. 1501, 1987

4.4.312 Process of Payment for Losses, p. 2373

4.5.202 and other rule - Category 1 Noxious Weeds, p. 93, 563

4.15.101 and other rule - Fees - Mediation Scheduling and Agreement Procedures, p. 1499, 1989

STATE AUDITOR, Title 6

I-II Emergency Adoption - Allowing Credit to Domestic Ceding Insurers - Reduction of Liability for Reinsurance Ceded by Domestic Insurers to Assuming Insurers, p. 564

I-III Electronic Filing of the Appointment and Termination of Insurance Producers, p. 1323, 1820

I-XIII Small Employer Carrier Reinsurance Program, p. 1200, 2111

I-XXIV Small Employer Health Benefit Plans, p. 511, 1528, 1990

(Classification and Rating Committee)

6.6.8301 Updating References to the NCCI Basic Manual for Workers' Compensation and Employers' Liability Insurance, 1980 Edition, p. 608, 1669

6.10.102 and other rules - Exempting Certain Foreign Securities from Registration - Requiring that Exempt Foreign Savings and Loan Associations be Members of the Federal Deposit Insurance Corporation and that their Certificates of Deposit be Fully Insured by the Federal Deposit Insurance Corporation, p. 95, 569

COMMERCE, Department of, Title 8

(Board of Architects)
8.6.405 Reciprocity, p. 715, 1577
8.6.407 Examination, p. 983
(Board of Athletics)
8.8.2804 and other rules - Licensing Requirements - Contracts and Penalties - Fees - Promoter-Matchmaker, p. 985, 1670
(Board of Chiropractors)
8.12.601 and other rules - Applications - Reciprocity - Reinstatement - Interns and Preceptors, p. 1503
8.12.601 and other rules - Applications, Educational Requirements - Renewals - Continuing Education Requirements - Unprofessional Conduct, p. 222, 1578
(Board of Clinical Laboratory Science Practitioners)
I Continuing Education, p. 611, 1671
(Board of Cosmetologists)
8.14.401 and other rules - Practice of Cosmetology, Manicuring and Electrolysis, p. 331, 1679, 1822
(Board of Dentistry)
8.16.602 and other rules - Dental Hygienists - Use of Auxiliary Personnel and Dental Hygienists - Exemptions and Exceptions - Definitions, p. 2743, 1120
8.16.904 and other rules - Administration of Anesthesia and Sedation by Dentists - Prohibition - Permits Required for Administration - Minimum Qualifying Standards - Minimum Monitoring Standards - Facility Standards - On-site Inspection of Facilities, p. 2478, 1130
8.16.1002 and other rules - Continuing Education - Requirements and Restrictions, p. 988, 1506
(State Electrical Board)
8.18.402 and other rules - Applications - General Responsibilities - Temporary Permit - Fees - Examinations - Continuing Education - Pioneer Electrician Certificates, p. 225, 951
(Board of Hearing Aid Dispensers)
8.20.402 and other rules - Fees - Examinations - Licensees from Other States, p. 717
(Board of Horse Racing)
8.22.501 and other rules - Definitions - Licenses - Fees - Clerk of Scales - General Provisions - Grooms - Jockeys - Owners - Declarations and Scratches - Claiming - Paddock to Post - Permissible Medication, p. 547, 1282
8.22.1402 and other rule - Permissible Medication - Trifecta Wagering, p. 1507, 2128
(Board of Landscape Architects)
8.24.409 and other rule - Fee Schedule - Renewals, p. 991, 1579
(Board of Medical Examiners)
8.28.502 and other rules - Requirements for Licensure - Unprofessional Conduct - Definitions with Regard to the Practice of Acupuncture, p. 613, 1580

(Building Codes Bureau)
8.70.101 Incorporation by Reference of Uniform Building Code, p. 1331, 1994
8.70.101 and other rules - Building Codes, p. 2173, 299, 670
(Banking and Financial Institutions Division)
I-II and other rules - Retention of Bank Records - Investment Securities, p. 355, 1137
8.80.104 and other rules - Semi-Annual Assessments Upon Banks, Investment Companies and Trust Companies - Fees for Approval of Automated Teller Machines and Point-of-Sale Terminals, p. 353, 1143
8.80.307 Dollar Amounts to Which Consumer Loan Rates are to be Applied, p. 359, 953
(Board of Milk Control)
8.86.301 and other rule - Establishment of the Class III for Milk in the State - Purchase and Sale of Surplus Milk between Distributors within the State, p. 1334
(Banking and Financial Institutions Division)
8.87.202 and other rules - Investigation Responsibility - Application Procedures and Requirements for a Certificate of Authorization for a State Chartered Bank - Assuming Deposit Liability of Any Closed Bank - Merger of Affiliated Banks - Establishment of New Branch Banks - Discovery and Hearing Procedures - Application Requirement, p. 361, 1146
(Local Government Assistance Division)
I Administration of the 1994 Treasure State Endowment (TSEP) Program, p. 125, 1589
I Administration of the 1994 Federal Community Development Block Grant (CDBG) Program, p. 127, 1587
8.94.4102 and other rules - Report Filing Fees Paid by Local Government Entities - Financial Statements - Incorporation by Reference of Various Standards, Accounting Policies and Federal Laws and Regulations under the Montana Single Audit Act, p. 999, 2430
(Hard-Rock Mining Impact Board)
8.104.101 and other rules - Administration of the Hard-Rock Mining Impact Act, p. 1627
(Board of Housing)
8.111.405 Income Limits and Loan Amounts, p. 5, 577
(Montana State Lottery)
8.127.407 and other rule - Retailer Commissions - Sales Staff Incentive Plan, p. 1002, 1823, 1995
8.127.1007 Sales Staff Incentive Plan, p. 1947

EDUCATION, Title 10

(Superintendent of Public Instruction)
10.10.301A and other rules - School Funding and Tuition, p. 1006, 1824
(Board of Public Education)
I Teacher Certification - Surrender of a Teacher Specialist or Administrator Certificate, p. 817
I Teacher Certification - Area of Specialized Competency, p. 237, 954

HEALTH AND ENVIRONMENTAL SCIENCES, Department of, Title 16

	Integrated Solid Waste Management Plan, p. 1510
I	Water Quality Permit and Degradation Authorization Fees, p. 2489, 393, 672
I-V	Establishing Administrative Enforcement Procedures for the Public Water Supply Act, p. 2398
I-IX	and other rules - Implementation of the Water Quality Act's Nondegradation Policy, p. 2723, 849, 2136
I-X	Water Quality - Use of Mixing Zones, p. 835, 2136
I-XIII	Home Infusion Therapy Licensing, p. 882
16.8.708	and other rules - Air Quality - Incorporation of Federal Air Quality Rules and Incorporation of the Montana Source Testing Protocol and Procedures Manual, p. 2043
16.8.945	and other rules - Air Quality - Prevention of Significant Deterioration of Air Quality, p. 2048
16.8.1301	and other rules - Air Quality - Open Burning of Christmas Tree Waste - Open Burning for Commercial Film or Video Productions, p. 867
16.8.1413	and other rule - Air Quality - Opacity Requirements at Kraft Pulp Mills, p. 1654
16.8.1903	and other rule - Air Quality - Air Quality Operation and Permit Fees, p. 2052
16.8.1907	Air Quality - Fees for the Smoke Management Program, p. 1511, 2130
16.8.1908	Air Quality - Fees for Christmas Tree Wastes and Commercial Film Production Open Burning, p. 2054
16.10.101	Food, Drugs and Cosmetics - Incorporating Federal Food Standards, p. 2395
16.10.239	and other rules - Minimum Performance Requirements for Local Health Authorities, p. 1797
16.10.501	and other rules - Bottled Drinking Water and Ice Regulations, p. 2404
16.10.1001	Annual Jail Inspections, p. 2041
16.10.1311	Swimming Pool Inspections - Indication of What Constitutes a Full Facility Inspection and a Critical Point Inspection of a Public Bathing Place or Swimming Pool, p. 1513, 1998
16.20.202	and other rules - Drinking Water - Setting Standards for Public Drinking Water that Incorporate Federal Requirements for Phase II and V Contaminants and Lead and Copper, p. 1362, 2131
16.20.603	and other rules - Water Quality - Surface Water Quality Standards, p. 2737, 827, 2136
16.20.1003	and other rules - Water Quality - Ground Water Quality Standards - Mixing Zones - Water Quality Nondegradation, p. 244, 846, 2136
16.24.104	and other rules - Children's Special Health Services - Standards for the Children's Special Health Services Program, p. 1340, 1836
16.28.202	and other rules - Communicable Diseases - Reportable Diseases, p. 623, 1295
16.28.1005	Tuberculosis Control Requirements for Schools and Day Care Facilities, p. 1652, 2305

16.30.801 and other rules - Emergency Medical Services - Reporting of Exposure to Infectious Diseases, p. 1251, 1704

16.32.110 Health Planning - Certificate of Need Required Findings and Criteria, p. 639, 1296

16.32.356 and other rules - Adult Day Care - Licensure of Adult Day Care Centers, p. 1255, 1838

16.32.373 and other rules - Standards for Licensure of Hospices, p. 631, 2436

16.32.380 and other rules - Personal Care - Licensure of Personal Care Facilities, p. 1342, 2306

16.44.303 and other rules - Solid and Hazardous Waste - Hazardous Waste Management - Use of Used Oil as a Dust Suppressant, p. 556

16.45.1201 and other rules - Underground Storage Tanks - Underground Storage Tank Installer and Inspector Licensing - Tank Permits - Tank Inspections - Inspector Licensing Fees, p. 1221

TRANSPORTATION, Department of, Title 18

18.7.302 and other rules - Motorist Information Signs, p. 137, 674

18.8.101 and other rules - Motor Carrier Services (Formerly "Gross Vehicle Weight"), p. 2875, 1148

JUSTICE, Department of, Title 23

I-VII Regional Youth Detention Services, p. 2886, 579

I-XI and other rules - Instituting Procedures for the Revocation or Suspension of the Certification of Peace Officers and Other Public Safety Officers - Procedures for Peace Officer Standards and Training, p. 893, 1449

23.5.101 State Adoption of Federal Hazardous Materials Regulations, p. 1469, 141, 578

23.15.102 and other rules - Crime Victims Compensation, p. 1381, 1999

23.16.101 and other rules - Public Gambling, p. 2406

LABOR AND INDUSTRY, Department of, Title 24

I-IV Implementation of Education-based Safety Programs for Workers' Compensation Purposes, p. 257, 1156

I-IX Groups of Business Entities Joining Together for the Purchase of Workers' Compensation Insurance, p. 9, 681

I-XI Workers' Compensation Data Base System, p. 1949

I-XIX and other rules - Claims for Unpaid and Underpaid Wages - Calculation of Penalties, p. 367, 1152 (Workers' Compensation Judge)

24.5.322 and other rules - Procedural Rules of the Court, p. 248, 675

24.11.202 and other rules - Unemployment Insurance Benefit Eligibility, p. 2056

STATE LANDS, Department of, Title 26

NATURAL RESOURCES AND CONSERVATION, Department of, Title 36

PUBLIC SERVICE REGULATION, Department of, Title 38

REVENUE, Department of, Title 42

SECRETARY OF STATE, Title 44

SOCIAL AND REHABILITATION SERVICES, Department of, Title 46