RESERVE

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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 23

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 The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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BEFORE THE TEACHERS' RETIREMENT BOARD
OF THE STATE OF MONTANA

In the matter of the adoption of new rule, and amending Rule 2.44.518, and repeal of Rule 2.44.514 relating to the Teachers' Retirement System	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION, AMENDMENT AND REPEAL OF RULES RELATING TO THE TEACHERS' RETIREMENT SYSTEM

TO: All Interested Persons.

1. On January 5, 1995, at 10 A.M. a public hearing will be held in the office of the Teachers' Retirement System, at 1500 Sixth Avenue, Helena, Montana, to consider the adoption of new Rule I; and amendment of rule 2.44.518; and repeal of rule 2.44.514.

2. The proposed new rule does not replace or modify any section currently found in the Administrative Rules of Montana.

3. The proposed new rule is as follows:

Rule I. INDEPENDENT CONTRACTOR (1) Any person employed as an independent contractor shall be ineligible for membership in the Teacher's Retirement System. Certification from the Montana Department of Labor and Industry as an independent contractor shall be accepted as prima facie evidence of independent contractor status by the Teacher's Retirement Board.

(2) In absence of certification by the Department of Labor and Industry, it must be shown that the worker is both free from direction and control of the party utilizing their services and have an independently established business. The burden of proof before the Teacher's Retirement Board is on the employer.

(3) If a person's status as an independent contractor is in question they must become a member of the Teachers' Retirement System as provided under 19-20-302, MCA.

AUTH: 19-20-201, MCA., IMP: 19-20-302, MCA.

Rationale: There appears to be a growing interest by school districts to use contract labor as a cost effective way of addressing budget reductions. The Teachers' Retirement Board has had an informal policy of honoring certificates issued by the Department of Labor and Industry as verification that an individual is an independent contractor and not eligible for membership. The adoption of the proposed rule will formalize this policy in ARM.

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

2.44.518 LIMIT ON EARNED COMPENSATION (1) The amount of earnings that may be used in calculating a member's average

final compensation may not exceed either the member's actual earned compensation or earnings adjusted by this rule for the preceding year, by more than 10% except for ~~earnings~~ increases that:

(a) result from collective bargaining agreements;

(b) have been granted by the employer to all other similarly situated employees. The employer must certify the similarly situated group of employees, the increase received by each employee and the methodology for determining the increases;

(c) ~~have been received as compensation under contract for summer employment.~~ result from compensation received for summer employment, not to exceed one-ninth of the academic year contract for each month employed during the summer;

(d) have resulted from change of employer or;

(e) have resulted from re-employment for a period of not less than one year following a break in service.

(2) The member must provide adequate documentation to permit the board to make an informed decision concerning exceptions to the 10% limitation. Adequate documentation includes but is not limited to the following:

(a) employment contracts;

(b) official minutes of board meetings.

(3) The assignment of additional duties of a one time or temporary nature shall not be exempt from the 10% limitation.

AUTH: 19-20-201, MCA., IMP: 19-20-101(5), MCA.

Rationale: The 1989 legislature limited compensation that may be used in the calculation of retirement benefits. The statement of intent attached to the bill stated that it was the intent of the legislature to limit the impact on the retirement system of salary increases granted to selected individuals in their final years. The legislature directed the Board to adopt rules that, among other things, would exempt increases received for summer employment. At the time the legislation was debated our experience showed that summer employment was reported each month at one-ninth or less of the member's academic year contract. However, since summer employment is exempt, we have seen 15, 20, 30 & 40% of the member's academic year salary reported as "summer employment". This amendment is necessary to bring the administration of the 10% cap into compliance with the legislative intent.

5. The following rule is to be repealed:

2.44.514 LUMP SUM PAYMENTS AT THE END OF THE SCHOOL TERM Can be found on page 2-3266 of the Administrative Rules of Montana.

AUTH: 19-20-201, MCA., IMP: 19-20-101(8), MCA.

Rationale: Since the implementation of this rule, employers have misunderstood the provisions and have inconsistently reported unused sick leave days, which are normally considered termination pay and reported only at the time of retirement. The members and employers covered under TRS will best be served

if this rule is repealed.

6. Interested parties may submit their data, views, or arguments, either orally or in writing, at the public hearing. Written views, comments or data may also be submitted to David L. Senn, Administrator, Teachers' Retirement System, 1500 Sixth Avenue, Helena, MT 59620-0139, no later than January 5, 1995.

7. Gary Warren has been designated to preside over and conduct the hearing.

8. The authority of the Board to make the proposed rules is based on section 19-20-201, MCA. and the rules implement Title 19, Section 20, MCA.

By:

Dal Smilie, Chief Legal Counsel
Rule Reviewer

David L. Senn, Administrator
Teachers' Retirement System

Certified to the Secretary of State November 28, 1994.

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

In the matter of the proposed adoption of new rules implementing standardized health claim forms	))))	NOTICE OF PUBLIC HEARING

TO: All Interested Persons.

1. On January 4, 1995, at 8:00 o'clock a.m., MDT, a public hearing will be held in Room 160 of the Mitchell Building, 125 N. Roberts, Helena, Montana. The hearing will be to consider the proposed adoption of new rules implementing standardized health claim forms.

2. The proposed new rules provide as follows:

RULE I PURPOSE OF RULES (1) The purpose and intent of this subchapter is to standardize the forms used in the billing and reimbursement of health care, reduce the number of forms utilized, increase efficiency in the reimbursement of health care through standardization, and encourage the use of and prescribe a timetable for implementation of electronic data interchange of health care expenses and reimbursement.

AUTH: 50-4-501, MCA
IMP: 50-4-305 and 50-4-501, MCA

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

(1) "ASC X12N standard format" means the standards for electronic data interchange within the health care industry developed by the accredited standards committee X12N insurance subcommittee of the American national standards institute.

(2) "CDT-1 codes" means the current dental terminology prescribed by the American dental association.

(3) "CPT-4 codes" means the physicians' current procedural terminology, fourth edition published by the American medical association.

(4) "HCFA" means the health care financing administration of the U.S. department of health and human services.

(5) "HCFA form 1450" means the health insurance claim form maintained by HCFA for use by institutional care practitioners.

(6) "HCFA form 1500" means the health insurance claim form maintained by HCFA for use by health care practitioners.

(7) "HCPCS" means HCFA's common procedure coding system, a coding system which describes products, supplies, procedures and health professional services and includes, the American medical association's (AMA's) physicians' current procedural terminology, fourth edition (CPT-4) codes, alpha-numeric codes, and related modifiers. This includes:

(a) "HCPCS level 1 codes" which are the AMA's CPT-4 codes and modifiers for professional services and procedures;

(b) "HCPCS level 2 codes" which are national alpha-numeric codes and modifiers for health care products and supplies, as well as some codes and modifiers for health care products and supplies, as well as some codes for professional services not included in the AMA's CPT-4; and

(c) "HCPCS level 3 codes" which are local alpha-numeric codes and modifiers for items and services not included in HCPCS level 1 or HCPCS level 2.

(8) "Health care practitioner" means a person licensed or certified to provide health care services.

(9) "ICD-9-CM codes" means the diagnosis and procedure codes in the international classification of diseases, ninth revision, clinical modifications published by the U.S. department of health and human services.

(10) "Institutional care practitioner" means a facility or institution that is licensed to provide health care services.

(11) "Issuer" means an insurance company, fraternal benefit society, health care service plan, or health maintenance organization. This may include third party administrators and any other entity reimbursing the costs of health care expenses at the direction of an issuer.

(12) "J512 Form" means the uniform dental claim form approved by the American dental association for use by dentists.

(13) "Revenue Codes" means the codes established for use by institutional care practitioners by the national uniform billing committee.

AUTH: 50-4-501, MCA
IMP: 50-4-305 and 50-4-501, MCA

RULE III APPLICABILITY AND SCOPE (1) Except as otherwise specifically provided, the requirements of this subchapter apply to issuers, health care practitioners, and institutional care practitioners.

(2) Nothing in this subchapter shall prevent an issuer from requesting additional information that is not contained on the forms required under this subchapter to determine eligibility of the claim for payment if required under the terms of the policy or certificate issued to the claimant.

(3) Nothing in this subchapter shall prohibit an issuer, health care practitioner or institutional care practitioner from using alternative forms or procedures for filing claims as are specified in a written contract between the health care practitioner or institutional care practitioner and issuer.

AUTH: 50-4-501, MCA
IMP: 50-4-305 and 50-4-501, MCA

RULE IV REQUIREMENTS FOR USE OF HCFA FORM 1500

(1) Health care practitioners, other than dentists, shall use the HCFA form 1500 and instructions provided by HCFA for use of the HCFA form 1500 when filing claims with issuers for professional services. Health care practitioners that bill patients directly shall provide a properly completed HCFA form 1500 in addition to any other explanatory information used to bill the patient when requested by the patient.

(2) Issuers may only require health care practitioners to use the following coding system for the initial filing of claims for health care services:

(a) HCPCS codes; and

(b) ICD-9-CM codes.

(3) Issuers may only require health care practitioners to use other explanations with a code or to furnish additional information with the initial submission of an HCFA form 1500 under the following circumstances:

(a) when the procedure codes used describe a treatment or service that is not otherwise classified; or

(b) when the procedure code is followed by the CPT-4 modifier 22, 52, or 99. Health care practitioners may use item 19 of the HCFA form 1500 to explain multiple modifiers, unless item 19 is used for other purposes in accordance with the instructions for this form.

(4) Health care practitioners may use box 19 of the HCFA form 1500 to indicate the form is an amended version of a form previously submitted to the issuer by inserting the word "amended" in the space provided.

(5) Health care practitioners billing for services based on the amount of time involved shall define on line 19 the time interval in item 24 G of the HCFA form 1500, if the time interval is not already defined the HCPCS code. If not defined by either HCPCS or in line 19, units will be assumed to be days of treatment.

(6) Health care practitioners shall provide the unique physician identification number, as assigned by HCFA, in box 17a and the federal tax identification number or social security number to complete item 25 of the HCFA form 1500, as required by the HCFA instructions.

AUTH: 50-4-501, MCA
IMP: 50-4-305 and 50-4-501, MCA

RULE V REQUIREMENTS FOR USE OF HCFA FORM 1450

(1) Institutional care practitioners shall use the HCFA form 1450 and instructions provided by HCFA for use of the HCFA form 1450 when filing claims with issuers for health care services. Institutional care providers that bill patients directly shall provide a properly completed HCFA form 1450 in addition to any other explanation information used to bill the patient when requested by the patient.

(2) Issuers may only require institutional care practitioners to use the following coding system for the initial filing of claims for health care services:

(a) ICD-9-CM codes;
(b) Revenue codes;
(c) HCPCS codes; and
(d) the information outlined in RULE IV,

if the charges include direct service furnished by a health care practitioner, and the direct service is not covered by the instructions for the HCFA form 1450.

(3) Hospitals may use the HCFA form 1500 to supplement a HCFA form 1450 if necessary in billing patients or their representatives or filing claims with issuers for outpatient services.

AUTH: 50-4-501, MCA
IMP: 50-4-305 and 50-4-501, MCA

RULE VI REQUIREMENTS FOR USE OF J512 FORM (1) Dentists shall use the J512 form and instructions provided by the American dental association CDT-1 for use of the J512 form for filing claims with issuers for professional services. Dentists that bill patients directly shall provide a properly completed J512 form in addition to any other form used to bill the patient when requested by the patient.

(2) Issuers may not require a dentist to use any code other than the CDT-1 codes for the initial filing of claims for dental care services, unless the use of supplemental codes are defined and permitted in a written contract between the issuer and dentist.

AUTH: 50-4-501, MCA
IMP: 50-4-305 and 50-4-501, MCA

RULE VII GENERAL PROVISIONS (1) Health care practitioners and institutional care practitioners shall file claims in a manner consistent with the requirements of this subchapter. Claims filed in paper form shall be printed on 8.5" x 11" paper.

(2) Issuers shall accept forms submitted in compliance with this subchapter for the processing of claims.

(3) Health care practitioners, institutional care practitioners, and issuers shall:

(a) use and accept the most current editions of the HCFA form 1500, HCFA form 1450, or J512 form and most current instructions for these forms in the billing of patients or their representatives and filing claims with issuers; and

(b) modify their billing and claim reimbursement practices to encompass the coding changes for all billing and claim filing by the effective date of the changes set forth by the developers of the forms, codes, and procedures required under this subchapter.

AUTH: 50-4-501, MCA
IMP: 50-4-305 and 50-4-501, MCA

RULE VIII MANDATORY ELECTRONIC FORMAT (1) Issuers that receive claims or send payments by electronic means shall, within one year after [the effective date of these rules] or the date on which the health care financing administration requires it of medicare intermediaries and carriers, whichever is earlier, accept the ASC X12N standard format for the health care claims submission transaction set (837) and send the ASC X12N health care payment transaction set (835).

AUTH: 50-4-501, MCA
IMP: 50-4-305 and 50-4-501, MCA

3. REASON: These rules are being proposed because they are needed to implement health care billing simplification authorized by 50-4-305, MCA, and uniform claim forms authorized by 50-4-501, MCA.

4. Interested persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Frank Cote', Deputy Commissioner of Insurance, P.O. Box 4009, Helena, Montana 59604, and must be received no later than January 5, 1995.

5. The State Auditor will make reasonable accommodations for persons with disabilities who wish to participate at this public hearing. If you request an accommodation, please contact the State Auditor's Office not later than 5:00 p.m., December 28, 1994, and advise the office of the nature of the accommodation needed. Please contact Frank Cote', Deputy Commissioner of Insurance, P.O. Box 4009, Helena, Montana 59604; telephone (406) 444-2997; toll free dial 1 and then 800-332-6148; fax (406) 444-3497.

6. Gary L. Spaeth, State Auditor's Office, 126 N. Sanders, P.O. Box 4009, Helena, Montana 59604-4009, has been designated to preside over and conduct the hearing.

MARK O'KEEFE
State Auditor

By: _____

_____
GARY L. SPAETH
Rules Reviewer

Certified to the Secretary of State this 28th day of November, 1994.

BEFORE THE BOARD OF NURSING
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed amendment of rules pertaining to non-disciplinary track, admission criteria and educational requirements	) NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT OF 8.32.1606 NON-DISCIPLINARY TRACK, 8.32.1607 ADMISSION CRITERIA AND 8.32.305 EDUCATIONAL REQUIREMENTS

TO: All Interested Persons:

1. On January 5, 1995, at 9:00 a.m., a public hearing will be held in the Board of Nursing conference room, Professional and Occupational Licensing Bureau, Arcade Building, 4th Floor, 111 North Jackson, Helena, Montana, to consider the proposed amendment of the above-stated rules.

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

"8.32.1606 ~~VOLUNTARY~~ NON-DISCIPLINARY TRACK (1) Participation in the nurses' assistance program (NAP) may be a choice of licensees who volunteer for assistance with alcohol and/or drug use/abuse, or who qualify for enrollment under ARM 8.32.1607, and enroll in lieu of formal disciplinary action. Involvement by the licensee on the ~~voluntary~~ non-disciplinary track will remain confidential, provided that the individual complies with all conditions of the program."

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

"8.32.1607 ADMISSION CRITERIA (1) through (5) will remain the same.

(6) Licensee has not had any previous~~, current or pending~~ disciplinary action from a licensing board ~~except where approved by the board~~.

(7) Licensee is not currently facing charges under a notice of proposed board action issued by a licensing board.

~~(7)~~ (8) ~~Licensee has not been terminated from~~ If previously involved in the NAP or any other such assistance program, the individual must have complied in all material respects with such program ~~for noncompliance~~.

~~(8) Licensee has not had any drug and/or alcohol related employment problems.~~

~~(9) Licensee has not been convicted of, plead guilty to, or plead nolo contendre to a crime involving a violation of state or federal laws relating to drugs.~~

(10) will remain the same, but will be renumbered (9).

~~(11)~~ (10) Licensee has not had evidence of diversion of controlled substances or caution legend drugs for purposes of sale or distribution.

~~(12) If the licensee's eligibility in NAP is questionable, the licensee may request permission to participate from the board.~~"

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

REASON: The amendments to ARM 8.32.1606 and 8.32.1607 will clarify which individuals qualify for the non-disciplinary track of the Nurses Assistance Program before disciplinary action is taken. The amendments also encourage voluntary participation by nurses who may seek help or intervention prior to disciplinary action by their employers or the Board.

"8.32.305 EDUCATIONAL REQUIREMENTS AND OTHER QUALIFICATIONS APPLICABLE TO ADVANCED PRACTICE REGISTERED NURSING (1) will remain the same.

(a) Successful completion of a post-basic professional nursing education program in the advanced practice registered nurse area of specialty with the minimum length of one academic year consisting of at least ~~four months~~ 250 hours of didactic instruction and ~~the remainder~~ 400 hours under a preceptor; and individual certification from a board-approved certifying body for those recognized prior to July 1, 1995;

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

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

REASON: This amendment is necessary to provide more consistency in determining the amount of instruction required under the advanced practice registered nurse specialty area, due to the variance in courses offered by different nursing programs.

3. Interested persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Board of Nursing, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, to be received no later 5:00 p.m., January 5, 1995.

4. Colleen Graham, attorney, has been designated to preside over and conduct the hearing.

BOARD OF NURSING
NANCY HEYER, RN, CNA, PRESIDENT

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

_____
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, November 28, 1994.

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

In the matter of the proposed adoption of a new rule for the administration of the 1995 Federal Community Development Block Grant Program	NOTICE OF PUBLIC HEARING ON THE PROPOSED ADOPTION OF NEW RULE I INCORPORATION BY REFERENCE OF RULES FOR ADMINISTERING THE 1995 CDBG PROGRAM

TO: All Interested Person:

1. On January 10, 1995, at 2:30 p.m., a public hearing will be held in the large downstairs conference room of the Department of Commerce building, 1424 Ninth Avenue, Helena, Montana, to consider the adoption by reference of rules governing the administration of the 1995 Federal Community Development Block Grant (CDBG) program.

2. The proposed new rule will read as follows:

"I INCORPORATION BY REFERENCE OF RULES FOR ADMINISTERING THE 1995 CDBG PROGRAM (1) The department of commerce herein adopts and incorporates by this reference the Montana Community Development Block Grant Program 1995 Application Guidelines for Housing & Public Facilities Projects, the Montana Community Development Block Grant Program 1995 Application Guidelines for Economic Development Projects, and the Montana Community Development Block Grant Program, 1995 Grant Administration Manual published by it as rules for the administration of the 1995 CDBG program.

(2) The rules incorporated by reference in (1) above, relate to the following:

(a) the policies governing the program,
(b) requirements for applicants,
(c) procedures for evaluating applications,
(d) procedures for local project start up,
(e) environmental review of project activities,
(f) procurement of goods and services,
(g) financial management,
(h) protection of civil rights,
(i) fair labor standards,
(j) acquisition of property and relocation of persons displaced thereby,
(k) administrative considerations specific to public facilities, housing rehabilitation and neighborhood revitalization, and economic development projects,
(l) project audits,
(m) public relations, and
(n) project monitoring.

(3) Copies of the regulations adopted by reference in (1) of this rule may be obtained from the Department of Commerce, Local Government Assistance Division, Capitol Station, Helena, Montana 59620."

Auth: Sec. 90-1-103, MCA; IMP, Sec. 90-1-103, MCA

REASON: This rule is necessary because the federal regulations governing the state's administration of the 1995 CDBG program and section 90-1-103, MCA, require the Department to adopt rules to implement the program.

3. Interested persons may present their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to the Local Government Assistance Division, Department of Commerce, Capitol Station, Helena, Montana 59620, to be received no later than 5:00 p.m., January 10, 1995.

4. Richard M. Weddle, attorney, will preside over and conduct the hearing.

LOCAL GOVERNMENT ASSISTANCE
DIVISION
DEPARTMENT OF COMMERCE

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

_____
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, November 28, 1994.

BEFORE THE BOARD OF INVESTMENTS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed amendment of a rule pertaining to the Intercap Program	)))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT OF 8.97.919 INTERCAP PROGRAM - SPECIAL ASSESSMENT BOND DEBT - DESCRIPTION - REQUIREMENTS

TO: All Interested Persons:

1. On December 28, 1994, at 9:00 a.m., a public hearing will be held in the conference room of the Board of Investments, 555 Fuller Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rule.

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

"8.97.919 INTERCAP PROGRAM - SPECIAL ASSESSMENT BOND DEBT - DESCRIPTION - REQUIREMENTS (1) through (2)(c) will remain the same.

(d) The loan amount may not exceed ~~$100,000~~ 250,000; and

(e) will remain the same."

Auth: Sec. 17-5-1605, MCA; IMP, Sec. 17-5-1606, MCA

REASON: Plan participants indicated that the $100,000 limit for loans was too low. Therefore, at their urging, the loan limit is being raised to $250,000.

3. Interested persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Board of Investments, 555 Fuller, Helena, Montana 59620, to be received no later than 5:00 p.m., January 5, 1995.

4. Julie Endner has been designated to preside over and conduct this hearing.

BOARD OF INVESTMENTS
WARREN VAUGHAN, CHAIRMAN

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

_____
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, November 28, 1994.

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

In the matter of the amendment of rules 16.8.401, 16.8.403 and 16.8.404, regarding emergency procedures, 16.8.807, regarding ambient air monitoring, 16.8.1001-16.8.1003, 16.8.1006 and 16.8.1008, regarding visibility impact assessment, 16.8.1102, 16.8.1107 and 16.8.1119, regarding preconstruction permits, 16.8.1204 and 16.8.1206, regarding stack heights and dispersion techniques, 16.8.1302 and 16.8.1307, regarding open burning, 16.8.1803 and 16.8.1804, regarding preconstruction permits for major stationary sources or major modifications located within attainment or unclassified areas, 16.8.1903 and 16.8.1905, regarding operating and permit application fees, 16.8.2002-16.8.2004, 16.8.2113, 16.8.2021 and 16.8.2025, regarding operating permits, and the adoption of new rule I, regarding acid rain permits.	NOTICE OF PUBLIC HEARING FOR PROPOSED AMENDMENT OF RULES AND ADOPTION OF NEW RULE I (Air Quality)

To: All Interested Persons

1. On January 20, 1995, at 8:00 a.m., the board will hold a public hearing in Room C209 of the Cogswell Building, 1400 Broadway, Helena, Montana, to consider the amendment and adoption of the above-captioned rules.

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

16.8.401 CONDITIONS (1) Emergency conditions exist if the director finds:

(a) Remains the same.

(b) That emissions from the operation of one or more air contaminant sources ~~is~~ are causing ~~eminent~~ imminent danger to human health or safety.

AUTH: 75-2-111, MCA; IMP: 75-2-402, MCA

16.8.403 NOTICE OF HEARING--SERVICE (1) Notice of hearing

~~shall~~ must be given to the alleged violator concurrently with the order to reduce or discontinue immediately the emission of air contaminants. The elements of the notice ~~shall~~ must be essentially the same as those given under ARM 1.3.213 with the following particular changes:

(1)-(3) Remain the same but are renumbered (a)-(c).

AUTH: 75-2-111, MCA; IMP: 75-2-402, MCA

16.8.404 HEARING (1) The alleged violator shall have the right to know and meet the evidence and arguments of the ~~board~~ director, including the right to present evidence, cross-examine witnesses, and present oral argument ~~or both; and the right of cross-examination of witnesses~~.

(2) Remains the same.

AUTH: 75-2-111, MCA; IMP: 75-2-402, MCA

16.8.807 AMBIENT AIR MONITORING (1) and (2) Remain the same.

(3) Failure to comply with this rule is grounds to partially or totally invalidate the appropriate ambient air monitoring data which subsequently could result in:

(a) and (b) Remain the same.

(c) a determination that insufficient ambient air quality data is available to determine compliance with any ambient air quality standard contained in subchapter 8 or a prevention of significant deterioration increment contained in ARM ~~16.8.925~~ 16.8.947.

(4) Remains the same.

AUTH: 75-2-111, MCA; IMP: 75-2-201, 75-2-202, MCA

16.8.1001 APPLICABILITY--VISIBILITY REQUIREMENTS (1) This subchapter is applicable to the owner or operator of a proposed major stationary source, as defined by ARM ~~16.8.921~~ 16.8.945(22), or of a source proposed for a major modification, as defined by ARM ~~16.8.921(21)~~ 16.8.945(20), proposing to construct such a source or modification after July 1, 1985, in any area within the state of Montana designated as attainment, unclassified, or nonattainment, in accordance with 40 CFR 81.327. The requirements of this subchapter shall be integrated with the requirements of ~~Administrative Rules of Montana~~ ARM Title 16, chapter 8, subchapters 9 (~~PSD~~ Prevention of Significant Deterioration of Air Quality) and 11 (~~Permits~~ Permit, Construction and Operation of Air Contaminant Sources).

(2) Remains the same.

AUTH: 75-2-111, 75-2-203, MCA; IMP: 75-2-203, 75-2-204, 75-2-211, MCA

16.8.1002 DEFINITIONS For the purposes of this subchapter:

(1) "Federal Class I area" means those areas listed in ARM ~~16.8.923(2)~~ 16.8.949(1) and any other federal land that is classified or reclassified as Class I.

(2)-(3) Remain the same.

AUTH: 75-2-111, 75-2-203, MCA; IMP: 75-2-203, 75-2-204,

75-2-211, MCA

16.8.1003 VISIBILITY IMPACT ANALYSIS (1) The owner or operator of a major stationary source or modification, as described in ARM 16.8.1001, shall demonstrate that the actual emissions [as defined by ARM ~~16.8.921(2)~~ 16.8.945(1)] from the major source or modification (including fugitive emissions) ~~shall~~ will not cause or contribute to adverse impact on visibility within any federal Class I area, or the department shall not issue a permit.

(2) Remains the same.

AUTH: 75-2-111, 75-2-203, MCA; IMP: 75-2-203, 75-2-204, 75-2-211, MCA

16.8.1006 ADVERSE IMPACT AND FEDERAL LAND MANAGER (1) Federal land managers may present to the department, after the preliminary determination required under ARM 16.8.1107(2), a demonstration that the emissions from the proposed source or modification may cause or contribute to adverse impact on visibility in any federal Class I area, notwithstanding that the air quality change resulting from the emissions from such source or modification would not cause or contribute to concentrations which would exceed the maximum allowable increment defined in ARM ~~16.8.925~~ 16.8.947 (PSD) for a federal Class I area.

(2) and (3) Remain the same.

AUTH: 75-2-111, 75-2-203, MCA; IMP: 75-2-203, 75-2-204, 75-2-211, MCA

16.8.1008 ADDITIONAL IMPACT ANALYSIS (1) The owner or operator of a proposed major stationary source or major modification subject to the requirements of ARM ~~16.8.935~~ 16.8.959 (PSD) shall provide a visibility impact analysis of the visibility impact likely to occur as a result of the major source or major modification and as a result of general commercial, residential, industrial, and other growth associated with the source or major modification.

AUTH: 75-2-111, 75-2-203, MCA; IMP: 75-2-203, 75-2-204, 75-2-211, MCA

16.8.1102 WHEN PERMIT REQUIRED--EXCLUSIONS (1) Except as hereafter specified, no person shall construct, install, alter or use any air contaminant source or stack associated with any source without first obtaining a permit from the department or the board. A permit ~~shall not be~~ is not required for the following:

(a)-(n) Remain the same.

(o) asphalt concrete plants and mineral crushers, which do not have the potential to emit more than five tons per year of any pollutant, other than lead, for which a rule has been adopted in this chapter.

AUTH: 75-2-111, 75-2-204, MCA; IMP: 75-2-204, 75-2-211, MCA

16.8.1107 PUBLIC REVIEW OF PERMIT APPLICATIONS (1) Remains the same.

(2) With the exception of those permit applications subjected to ~~(4)~~ (3) below, ~~where~~ when the application for a permit does not require the compilation of an environmental impact statement, an application ~~shall~~ will be deemed to be complete and filed on the date the department received it, unless the department notifies the applicant in writing within 30 days thereafter that it is incomplete. The notice shall list the reasons why the application is considered incomplete and shall specify the date by which any additional information requested ~~shall~~ must be submitted. If the information is not submitted as required, the application ~~shall~~ will be considered withdrawn unless the applicant requests in writing an extension of time for submission of the additional information. The application is complete and filed on the date the required additional information is received.

(a)-(c) Remain the same.

(3) Remains the same.

AUTH: 75-2-111, 75-2-204, 75-20-216, MCA; IMP: 75-2-204, 75-2-211, 75-20-216, MCA

16.8.1119 GENERAL PROCEDURES FOR AIR QUALITY PRECONSTRUCTION PERMITTING (1) Remains the same.

(2) An air quality preconstruction permit issued~~,~~ ~~altered, revised~~ or modified under this chapter ~~will be~~ is valid for the life of the air contaminant source or stack associated with the source, unless:

(a) Remains the same.

(b) the air quality preconstruction permit is revoked or ~~revised~~ modified as provided for in ARM 16.8.1112~~,~~ and 16.8.1113; or

(c) the air quality preconstruction permit clearly provides otherwise.

(3)-(5) Remain the same.

AUTH: 75-2-111, 75-2-204, MCA; IMP: 75-2-204, 75-2-211, MCA

16.8.1204 DEFINITIONS For the purposes of this subchapter, the following definitions apply:

(1)-(3) Remain the same.

(4) "Excessive concentration" as used in (2)(c) of this rule means:

(a) Remains the same.

(b) For sources seeking credit after October 1, 1983, for increases in existing stack heights up to the heights established under (2)(b) of this rule, either:

(i) a maximum ground-level concentration due in whole or in part to downwash, wakes or eddy effects as provided in (4)(a) of this rule, except that the emission rate specified by any applicable state implementation plan (or, in the absence of such a limit, the actual emission rate as defined in ARM ~~16.8.921(2)~~ 16.8.945(11) ~~shall~~ will be used, or

(ii) Remains the same.

(c) Remains the same.

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

16.8.1206 EXEMPTIONS (1) The requirements of ARM 16.8.1205 do not apply to stack heights in existence or dispersion techniques implemented on or before December 31, 1970, except when pollutants are being emitted from such stacks or using such dispersion techniques by stationary sources (as defined by ARM ~~16.8.921(28)~~ 16.8.945(28)) that were constructed or reconstructed or for which major modifications (as defined in ARM ~~16.8.921(21)~~ 16.8.945(20)) were carried out after December 31, 1970.
AUTH: 75-2-111, 75-2-203, MCA; IMP: 75-2-203, MCA

16.8.1302 PROHIBITED OPEN BURNING--WHEN PERMIT REQUIRED
(1) Remains the same.
(2) The following material may not be disposed of by open burning:
(a)-(d) Remain the same.
(e) wood and wood byproducts other than trade wastes that have been ~~treated,~~ coated, painted, stained, or contaminated by a foreign material, such as papers, cardboard, or painted or stained wood, unless a public or private garbage hauler or rural container system is unavailable, or unless open burning is allowed under ARM 16.8.1310;
(f)-(w) Remain the same.
(x) standing or demolished structures except as provided in ARM 16.8.1306, 16.8.1307, or 16.8.1310;
(3) Remains the same.
AUTH: 75-2-111, 75-2-203, MCA; IMP: 75-2-203, MCA

16.8.1307 CONDITIONAL AIR QUALITY OPEN BURNING PERMITS
(1)-(5) Remain the same.
(6) The department may place any reasonable requirements in a conditional air quality open burning permit that the department determines will reduce emissions of air pollutants or minimize the impact of emissions, and the recipient of a permit must adhere to those conditions. For a permit granted under ~~(3)~~ (4)(a) above, BACT for the year covered by the permit will be specified in the permit; however, the source may be required, prior to each burn, to receive approval from the department of the date of the proposed burn to ensure that good ventilation exists and to assign burn priorities if other sources in the area request permission to burn on the same day. Approval may be requested by calling the Air Quality ~~Bureau~~ Division at (406)444-3454.
(7)-(10) Remain the same.
AUTH: 75-2-111, 75-2-203, MCA; IMP: 75-2-203, MCA

16.8.1803 WHEN AIR QUALITY PRECONSTRUCTION PERMIT REQUIRED (1) and (2) Remain the same.
AUTH: 75-2-111, 75-2-203, MCA; IMP: 75-2-202, 75-2-203, 75-2-204, MCA

16.8.1804 ADDITIONAL CONDITIONS OF AIR QUALITY PRECONSTRUCTION PERMIT (1) Remains the same.
(2) If the department determines that technological or

economic limitations on the application of measurement methodology to a particular class of sources would make the imposition of an enforceable numerical emission standard infeasible, the department may, instead, prescribe a design, operational or equipment standard. In such cases, the department shall make its best estimate as to the emission rate that will be achieved, and must take such steps as are necessary to ensure that this rate is federally enforceable. Any air quality preconstruction permit issued without an enforceable numerical emission standard must contain enforceable conditions which assure that the design characteristics or equipment will be properly maintained (or that the operational conditions will be properly performed) so as to continuously achieve the assumed degree of control. As used in this subchapter, the term "emission limitation" shall also include such design, operational, or equipment standards.

(3)-(4) Remain the same.

(5) The issuance of an air quality preconstruction permit ~~will~~ does not relieve any owner or operator of the responsibility to comply fully with applicable provisions of the Montana state implementation plan and any other requirements ~~contained in or pursuant to~~ of local, state or federal law.

(6) Remains the same.

AUTH: 75-2-111, 75-2-203, MCA; IMP: 75-2-202, 75-2-203, 75-2-204, MCA

16.8.1903 AIR QUALITY OPERATION FEES (1) Remains the same.

(2)(a) ~~The~~ Annually, the department shall give written notice of the amount of the air quality operation fee to be assessed, and the basis for such fee assessment, to the owner or operator of the air contaminant source ~~annually~~.

(b) The air quality operation fee is due 30 days after receipt of the notice unless the fee assessment is appealed pursuant to ARM 16.8.1906. If any portion of the fee is not appealed, that portion of the fee that is not appealed is due 30 days after receipt of the notice. Any remaining fee which may be due after completion of the appeal is immediately due and payable upon issuance of the board's decision or when judicial review of the board's decision has been completed, whichever is later.

(c) If an owner or operator assessed an air quality operation fee fails to pay the required fee (or any required portion of an appealed fee) within 90 days after the due date of the fee, the department may impose an additional assessment of 15% of the fee or $100, whichever is greater, plus interest on the fee computed at the interest rate established under 15-31-510(3), MCA.

(3)-(5) Remain the same.

AUTH: 75-2-111, MCA; IMP: 75-2-211, 75-2-220, MCA

16.8.1905 AIR QUALITY PERMIT APPLICATION FEES

(1)-(4) Remain the same.

(5) The fee is the greater of:

(a) Remains the same.
(b) or a minimum fee of:
(i) $1000 for sources of air contaminants subject to ARM 16.8.901, et seq. (Prevention of Significant Deterioration of Air Quality), or those sources of air contaminants which are major stationary sources or major modifications [as defined in ~~40 CFR 51.165(a) adopted by incorporation in ARM 16.8.1109(8)~~ ARM 16.8.945(20) and (22)], and are seeking to locate within an area which is designated as nonattainment in 40 CFR 81.327 [adopted by incorporation in ARM ~~16.8.1109(8)~~ 16.8.1702(2)(a)] for any air contaminant;
(ii) and (iii) Remain the same.
AUTH: 75-2-111, MCA; IMP: 75-2-211, 75-2-220, MCA

16.8.2002 DEFINITIONS (1)-(26) Remain the same.
(27) "Proposed air quality operating permit" or "proposed permit" means the version of an air quality operating permit that the department proposes to issue and forward to the administrator for review in compliance with ARM 16.8.2025. This includes any final permit which has been appealed to the board of health and environmental sciences, if the board has directed the department to issue a permit that differs from the proposed permit previously forwarded to the administrator for review in compliance with ARM 16.8.2025.
AUTH: 75-2-217, MCA; IMP: 75-2-217, 75-2-218, MCA

16.8.2003 INCORPORATIONS BY REFERENCE (1) Remains the same.
(2)(a) and (b) Remain the same.
(c) 42 USC 7429(g), which defines solid waste incineration unit for the purposes of Title V of the FCAA; ~~and~~
(d) Remains the same.
(e) 40 CFR Part 72, which describes the operating permit requirements for acid rain sources subject to Title IV of the FCAA;
(f) 40 CFR Part 75, which describes the continuous emission monitoring requirements for acid rain sources subject to Title IV of the FCAA; and
(g) 40 CFR Part 76, which describes the nitrogen oxides emission reduction requirements for acid rain sources subject to Title IV of the FCAA.
(eh) A copy of the above materials is available for public inspection and copying at the Air Quality Division, Department of Health and Environmental Sciences, 836 Front Street, Helena, Montana 59620. Copies of the federal materials may also be obtained at EPA's Public Information Reference Unit, 401 M Street SW, Washington DC 20460, and at the libraries of each of the ten EPA Regional Offices. Interested persons seeking a copy of the CFR may address their requests directly to: Superintendent of Documents, US Government Printing Office, Washington DC 20402. The standard industrial classification manual (1987) (Order no. PB 87-100012) may also be obtained from the US Department of Commerce, National Technical Information Service, 5285 Port Royal Road,

Springfield, Virginia 22161.
AUTH: 75-2-217, MCA; IMP: 75-2-217, 75-2-218, MCA

16.8.2004 AIR QUALITY OPERATING PERMIT PROGRAM APPLICABILITY (1)-(2) Remain the same.

(3) The department may exempt a source listed in (1) above from the requirement to obtain an air quality operating permit by establishing federally enforceable limitations which limit that source's potential to emit, such that the source is no longer ~~required to obtain an air quality operating permit under this subchapter~~ a major stationary source, as defined by ARM 16.8.2002(23).

(a)-(b) Remain the same.

(c) Federally enforceable limitations that limit a source's potential to emit may be established through conditions contained in an air quality preconstruction permit, or through a judicial order or an administrative order issued by the department or the board that has been adopted into the Montana state implementation plan.

(d) The department may issue an air quality preconstruction permit to establish federally enforceable permit terms, solely to limit a source's potential to emit, even if there is no associated construction at the source, the source has an air quality preconstruction permit, or the source otherwise is not required to obtain a preconstruction permit.

(4)-(7) Remain the same.
AUTH: 75-2-217, MCA; IMP: 75-2-217, MCA

16.8.2013 REQUIREMENTS FOR AIR QUALITY OPERATING PERMIT CONTENT RELATING TO ~~THE~~ OPERATIONAL FLEXIBILITY

(1)-(3) Remain the same.
AUTH: 75-2-217, 75-2-218, MCA; IMP: 75-2-217, 75-2-218, MCA

16.8.2021 ADDITIONAL REQUIREMENTS FOR SIGNIFICANT AIR QUALITY OPERATING PERMIT MODIFICATIONS (1) The modification procedures set forth in (3) below must be used for any application requesting a significant modification of an air quality operating permit. Significant modifications include the following:

(a)-(b) Remain the same.

(c) every ~~significant~~ relaxation of permit reporting or recordkeeping terms or conditions; or

(d) Remains the same.

(2)-(4) Remain the same.
AUTH: 75-2-217, MCA; IMP: 75-2-217, 75-2-218, MCA

16.8.2025 PERMIT REVIEW BY THE ADMINISTRATOR AND AFFECTED STATES (1) The department shall provide to the administrator a copy of each proposed and each final air quality operating permit, including any permit that has been appealed to the board of health and environmental sciences if the board has directed the department to issue a permit that differs from the proposed permit previously forwarded to the administrator for review in compliance with this section ~~and each final permit~~.

(2)-(3) Remain the same.

(4) The department shall give notice of each draft air quality operating permit to any affected state on or before the time that the department provides this notice to the public under ARM 16.8.2024, except to the extent ARM 16.8.2020(4) or (8) requires the timing of the notice to be different. The department shall also give notice to any affected state of any appeal of an operating permit to the board, on or before the time that the department provides this notice to the public.

(5)-(11) Remain the same.

(12) If, after an appeal, the board directs the department to issue an air quality operating permit that differs from the proposed permit previously forwarded to the administrator for review, and the administrator objects to issuance of the permit, the department may not issue the permit until the administrator's objection has been resolved. The department may thereafter issue only a revised permit that satisfies the administrator's objection. Until final resolution, the source will not be in violation of the requirement to submit a timely and complete application. The permit shield described in ARM 16.8.2012(1) will remain in effect during any judicial appeal of the administrator's objection until such time as a final action is taken.

(~~12~~13) Consistent with (6)-(~~11~~12) above, the department may not issue an air quality operating permit (including a permit renewal or modification) until ~~affected states and~~ the administrator ~~have~~ has had an opportunity to review the proposed permit and affected states have had an opportunity to review the draft permit as required under this subchapter. The administrator may waive the opportunity for such review by the administrator and affected states.

AUTH: 75-2-217, MCA; IMP: 75-2-217, 75-2-218, MCA

RULE I ACID RAIN--PERMITS REGULATION (1) For the purpose of this rule, the following definitions apply:

(a) "Permitting authority," as used in 40 CFR Part 72, means the air quality division of the Montana department of health and environmental sciences, except when duties cannot be delegated to the state by the U.S. environmental protection agency, in which case "administrator" means the administrator of the U.S. environmental protection agency.

(b) The terms and associated definitions specified in 40 CFR Part 72 apply to this rule, except as specified in (1)(a).

(2) Any source that is subject to the requirements of 40 CFR Part 72 shall comply with all applicable requirements of 40 CFR Parts 72, 75, and 76 in obtaining an operating permit under this subchapter.

AUTH: 75-2-217, MCA; IMP: 75-2-217, MCA

3. Several of the proposed amendments are intended to correct grammatical errors, to correct mistaken references, to update references to other rules, to clarify existing rule provisions and to make minor clerical revisions. The proposed amendments to ARM 16.8.401, 16.8.403 and 16.8.2013 are

necessary to correct grammatical errors. The proposed amendment to ARM 16.8.404 is necessary to correct the mistaken reference to the board. The director, rather than the board, presents the evidence and arguments in support of an emergency order. The proposed amendments to ARM 16.8.807, 16.8.1001, 16.8.1002, 16.8.1003, 16.8.1006, 16.8.1008, 16.8.1204, and 16.8.1206 are necessary to delete references to Prevention of Significant Deterioration (PSD) rules that have been repealed and to insert updated rule references. The proposed amendment to ARM 16.8.1102 is necessary to clarify that the calculation of potential emissions for determining whether a preconstruction permit is required for an asphalt concrete plant or mineral crusher is made on an annual basis. The proposed amendment to ARM 16.8.1107 is necessary to correct an internal reference. The proposed amendments to ARM 16.8.1119 are necessary to correct mistaken references to alteration and revision of a preconstruction permit; there are no provisions in the rules for alteration or revision, but there are for revocation and modification. The proposed amendments to ARM 16.8.1302 are necessary to correct an incorrect wording and to insert a missing rule reference. The proposed amendments to ARM 16.8.1307 are necessary to correct an internal reference and to reflect the reorganization of the Air Quality Bureau into the Air Quality Division. The proposed amendments to ARM 16.8.1803 and 16.8.1804 are necessary to clarify that the permit referred to is a preconstruction permit. The proposed amendments to ARM 16.8.1905 are necessary to correct internal rule references.

The proposed amendment to ARM 16.8.1903 is necessary to implement the department's new authority, under the 1993 amendment of 75-2-220, MCA, to collect a penalty for failure of a facility to timely pay an air quality operation fee.

The proposed amendments to ARM 16.8.2002 and ARM 16.8.2025(1) and (12) are necessary to comply with federal regulations that require the administrator of the U.S. EPA to review any proposed air quality operating permit before it is issued, including a permit that the board has directed the department to issue after an appeal. The proposed amendment to ARM 16.8.2025(4) is necessary to provide other affected states with notice when an operating permit is appealed to the board. The proposed amendment to ARM 16.8.2025(13) is necessary to clarify that the department must notify affected states of draft permits, rather than proposed permits.

The proposed amendment to ARM 16.8.2003 and the adoption of new Rule I are necessary to incorporate new federal operating permit regulations regarding facilities that contribute to acid rain and, thereby, to maintain the state's primacy status.

The proposed amendment to ARM 16.8.2004 is necessary to provide the department with the authority to issue an air quality permit to any stationary source that would not otherwise need a preconstruction permit, to limit the facility's potential emissions to a level that does not require an operating permit under Title V of the federal Clean Air Act

Amendments of 1990. Without this authority, many minor sources with actual emissions much lower than the Title V operating permit limit will be required to obtain a Title V permit, and the department will be required to devote substantial resources to process permit applications from these facilities.

The proposed amendment to ARM 16.8.2021 is necessary to conform to federal operating permit regulations that provide that every relaxation of permit reporting or recordkeeping terms must be processed under the procedures for significant modifications.

4. Interested persons may submit their data, views, or arguments concerning the proposed amendments and proposed new rule, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Yolanda Fitzsimmons, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620, no later than 5:00 p.m. on January 13, 1995.

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

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

by William J. Robinson
ROBERT J. ROBINSON, Director

Certified to the Secretary of State November 28, 1994 .

Reviewed by:

Eleanor D. Parker
Eleanor Parker, DHES Attorney

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT of ARM 42.11.301; 42.11.303; and 42.11.304 and ADOPTION of NEW RULES I through V relating to Agency Franchise Agreements for the Liquor Division	NOTICE OF EXTENSION OF THE COMMENT PERIOD FOR THE PROPOSED AMENDMENT of ARM 42.11.301; 42.11.303 and 42.11.304; and ADOPTION of NEW RULES I through V relating to Agency Franchise Agreements for the Liquor Division

TO: All Interested Persons:

1. On September 9, 1994, at 1:30 p.m., a public hearing was held in the Fourth Floor Conference Room of the Mitchell Building, at Helena, Montana, to consider the amendment of ARM 42.11.301; 42.11.303 and 42.11.304 and the adoption of New Rules I through V relating to Agency Franchise Agreements for the Liquor Division, as was noticed by the department in MAR Issue No. 15, page 2097, August 11, 1994.

2. At that hearing Capital Consultants International, representing several liquor store agents, requested a sixty day extension of the comment period so that they could prepare additional written comments regarding this proposal. The department granted this extension until November 18, 1994.

3. Representative Robert Gilbert has asked for a further extension of time.

4. Upon due consideration, the Department grants this extension and continues the comment period for the amendments and adoption of the rules proposed above to be extended to January 13, 1995.

5. Interested parties may submit their data, views, or arguments in writing to:

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

no later than January 13, 1995.

CLEO ANDERSON
Rule Reviewer

MICK ROBINSON
Director of Revenue

Certified to Secretary of State November 28, 1994.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT of ARM 42.17.147 relating to Wage Exceptions	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT of ARM 42.17.147 relating to Wage Exceptions

TO: All Interested Persons:

1. On January 4, 1995, at 9:00 a.m., a public hearing will be held in the Fourth Floor Conference Room of the Mitchell Building, at Helena, Montana, to consider the amendment of ARM 42.17.147 relating to wage exceptions.

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

42.17.147 WAGES - EXCEPTIONS (1) As a general rule, all wages~~,~~ and other compensation~~s is~~ are subject to the old fund liability tax with few exceptions. Both employer and employee portion exceptions:

(a) compensation for casual labor not in the course of the employer's trade or business, if less than $50 per quarter;

(b) compensation for services which payment is in the form of lodging or meals provided at the request of and the convenience of the employer;

~~(c) the compensation paid to workers in the rail industry subject to the jurisdiction of the federal railroad administration, United States department of transportation;~~

(~~d~~c) employer paid benefits, not included in the gross wage of an employee; and

(~~e~~d) wages paid by an employer to enrolled members of an Indian tribe who live and work within the boundaries of his or her tribe's reservation.

(2) remains the same.

(3) An employee portion only exception applies to the compensation paid to workers in the rail industry subject to the jurisdiction of the federal railroad administration, United States department of transportation.

AUTH: Sec. 15-30-305 and 39-71-2503 MCA; IMP: Sec. 39-71-2501 MCA.

3. The Department is proposing to amend the rule because as it is currently written the railroad employers would be required to pay the old fund liability tax on the Montana source wages of the Montana resident employees, i.e., .005 percent of gross wages earned in Montana. The administrative rule as previously written exceeded the exception granted in the statute. The Department does not have the authority to exceed the statutory exception.

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:

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

no later than January 6, 1995.

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

CLEO ANDERSON
Rule Reviewer

MICK ROBINSON
Director of Revenue

Certified to Secretary of State November 28, 1994.

BEFORE THE BOARD OF THE
STATE COMPENSATION INSURANCE FUND
OF THE STATE OF MONTANA

In the matter of the adoption of new rule I (2.55.407) pertaining to Optional Deductible Plans and new rule II (2.55.408) pertaining to Retrospective Rating Plans, and the amendment of rules 2.55.322, 2.55.324, and 2.55.325 pertaining to premium rates.	NOTICE OF ADOPTION AND AMENDMENTS

TO: All Interested Persons:

1. On October 13, 1994, the Board published notice of the proposed adoption of new rule I (2.55.407) pertaining to Optional Deductible Plans, new rule II (2.55.408) pertaining to Retrospective Rating Plans, and the amendment of rules 2.55.322, 2.55.324, and 2.55.325 pertaining to premium rates, at page 2690 of the 1994 Montana Administrative Register, Issue No. 19. The hearing was held on November 2, 1994 at 2:00 p.m. in Helena, Montana.

2. The amendment of rule 2.55.327 is not included in this notice of adoption. The prior notice omitted the rationale on the credit percentage table change and the time for the public hearing has been rescheduled to November 30, 1994 at 2:00 p.m. in Room 302 of the State Compensation Insurance Fund building, 5 South Last Chance Gulch, Helena, Montana, as noticed at page 2881 of the Montana Administrative Register, Issue No. 21.

3. The Board has adopted new Rule I (2.55.407) as proposed, and new rule II (2.55.408) with the following changes.

RULE II (2.55.408) RETROSPECTIVE RATING PLANS (1) through (2) remain the same.

(3) To qualify for participation in a plan the employer shall:

(a) be selected by the state fund pursuant to criteria established by the board, and be provided a written proposal for a state fund retrospective rating plan;

(b) ~~(a)~~ execute an agreement with the state fund; and

(c) ~~(b)~~ have an annual estimated earned premium that equals or exceeds an amount determined by the board.

(4) through (5) remain the same.

AUTH: Secs. 39-71-2315 and 39-71-2316
IMP: Sec. 39-71-2316

4. The Board has amended Rules 2.55.322, 2.55.324, and 2.55.325 as proposed.

5. The Board has thoroughly considered all comments received. Those comments and the Board's responses thereto are as follows:

COMMENT:
A comment was made stating that the Legislature never intended State Fund "unrestricted pricing capacity" or "ability to continuously underprice the product and the private insurance market." The rules appear drafted to avoid legislative intent and the rules as proposed contravene 39-71-2316(5), MCA.

RESPONSE:
The comment cites no specific legislative intent to prohibit the implementation of the proposed Rules. The State Fund and the Board of Directors have the powers of private insurance carriers by statute. Further, by law the State Fund is required to be neither more nor less than self-supporting; a provision added in the 1989 legislation. In addition, the State Fund must set rates at a level sufficient to ensure the adequate funding of the insurance program, including costs of administration, benefits and adequate reserves. See, 39-71-2311, MCA. Therefore, sufficient mechanisms are in place to prohibit any perceived "unrestricted pricing capacity". The State Fund believes the legislature intended the State Fund to function as a competitive insurer in the state of Montana subject to the limitations of being no more nor less than self-supporting and operating as the insurer of last resort. The State Fund does not find a conflict between the proposed rules and 39-71-2316(5), MCA, particularly in that ARM 2.55.322 and 2.55.324 reference NCCI (National Council on Compensation Insurance) rates in the establishment of State Fund rates.

COMMENT:
The comment stated that the proposed Rule II appears simple but that "retros" are hard to administer and will create "financial challenges" for the State Fund and that adequate answers are not provided.

RESPONSE:
The State Fund is aware of the financial challenges and is preparing to properly administer "retros." The proposed rule comports with the formulas and methodologies for retrospective rating plans as filed by NCCI. While the formula components are determined by the State Fund Board of Directors so that State Fund information can be utilized, the formulas and methods are the same employed by any insurer utilizing the NCCI retrospective rating plans.

However, the Board agrees to amend the rule to include the requirement that the criteria the State Fund will use in determining how to select an employer for a retrospective rating plan will be established by the Board. As these are special products, the employer who participates must be selected by the State Fund based on appropriate criteria, as such products are not appropriate for most employers.

COMMENT:
The comment stated that proposed Rule I is limited to optional deductibles for "medical benefits" contained in 39-71-434, MCA.

RESPONSE:
The Board acknowledges that 39-71-434 refers only to medical benefits. However, the authority for Rule I is derived from 39-71-435, MCA, not 39-71-434, MCA. Section 435 refers to "optional deductibles for benefits" and is not limited to "medical benefits".

COMMENT:
The comment to Rule I stated the provisions of an optional deductible plan offered under 39-71-434(1) are mandatory and not subject to State Fund approval.

RESPONSE:
The rule derives its authority from 39-71-435, MCA, which provides an insurer "may" offer optional deductibles for benefits.

COMMENT:
The comment stated the term "endorsement" is inappropriate, in Rule I (3)(b) and (c).

RESPONSE:
The State Fund interprets the term endorsement to include any written modification to the insurance policy, whether executed by the insured or the State Fund.

COMMENT:
The comment stated that Rule II (Retrospective Rating Plans) fails to provide "effective stated guidelines or limits", in that the State Fund determines the components and that 39-71-2316(5) should be referenced.

RESPONSE:
The rule requires the State Fund to utilize the methods and formulas published by NCCI. However, not all the formula components necessarily apply to the State Fund. The rule contemplates flexibility to adapt the NCCI published plans

to meet the unique characteristics of the State Fund. Section 39-71-2316(5), MCA requires the State Fund to utilize the classifications and rates of NCCI as a basis for establishing the State Fund's own rates and classifications. The statute does not mandate the State Fund to adopt NCCI rates.

COMMENT:
The comment stated that amendments to ARM 2.55.322 should define "another rating source" and "another source" as used in the rule, otherwise there are no guidelines or limits.

RESPONSE:
The proposed amendment to ARM 2.55.322 does not affect the language to which the comment applies. Therefore, the comment is not relevant to the proposed rule change.

COMMENT:
The comment stated a decision could be made now on the rate for all or a portion of the fiscal year at a percentage of the NCCI, in ARM 2.55.324.

RESPONSE:
The proposed amendment to ARM 2.55.324 only adds the phrase "adjusted for State Fund expenses" to the existing rule. Therefore, the comment relating to existing language is inappropriate.

COMMENT:
The comment suggests referral to outside or independent actuarial source. In addition, the comment suggests suspicion that State Fund expenses are not defined properly.

RESPONSE:
The comment regarding use of an "outside or independent actuarial source" relates to the existing rule, not the proposed amendment. It is therefore, inappropriate to the proposed amendment. The State Fund is required to be neither more nor less than self-supporting. The expense components affecting the NCCI rate filing do differ from the expenses of the State Fund. The proposed rule simply adjusts the NCCI rate for the difference in NCCI and State Fund expense components. State Fund expense procedures have been reviewed by the Legislative Auditors Office and found to be appropriate.

COMMENT:
The comment stated that existing ARM 2.55.324 creates a 40% rate filing advantage over NCCI filed rates because of the language "not less than 75% of the NCCI rate adjusted for expenses".

RESPONSE:
This subsection addresses specific situations in (3)(a)-(d) as to when it is applied. The "75%" portion of the rule is not being amended, just that the NCCI rate will be adjusted for State Fund expenses. The expense components affecting the NCCI rate filing do differ from the expenses of the State Fund. The proposed rule simply adjusts the NCCI rate for the difference in NCCI and State Fund expense components.

COMMENT:
The comment suggests the terms "or substitute rate" or "state fund actuary" as used in the existing rule provide little definition or limitation and is not provided by Sections 39-71-2316(5) or 39-71-2330.

RESPONSE:
Again, the comment relates to an existing rule and not the proposed amendments to the rule. The comment is therefore inappropriate.

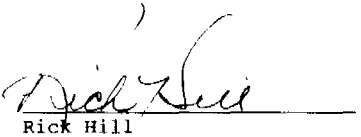
COMMENT:
The comment objects to "[g]eneral descriptions" by the rule's use of the phrase "also be subject to limitations in (4)" as used in the existing rule.

RESPONSE:
The comment relates to the existing rule and not the proposed amendments to the rule. Therefore, the comment is inappropriate.

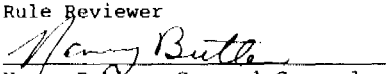
COMMENT:
General comments suggest that proposed rules and amendments are not designed to be rules, are "mysteriously dysfunctional," and with a "hearty disregard for stated legislative purpose." The rules would allow the State Fund to underprice the market and allow creation of "non-standard products with special pricing questions"; the exact opposite of the legislature's intent, and "contrary to a healthy insurance market." To have an insurer of last resort with an adverse selection of risks be the "least expensive" may be politically correct, but defies "insurance logic".

RESPONSE:
The State Fund through the powers of the Board, has the authority to offer its insureds the same products as would a private insurance carrier. These products will provide additional pricing options to customers, but the State Fund in doing so will protect the financial integrity of the State Fund, as required by law.

Dal Smilie, Chief Legal Counsel
Rule Reviewer



Rick Hill
Chairman of the Board



Nancy Butler, General Counsel
Rule Reviewer

Certified to the Secretary of State November 28, 1994.

BEFORE THE BOARD OF DENTISTRY
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment of rules pertaining to fees for dentists, dental hygienists, anesthesia and denturists and dental hygienist credentials	))))	NOTICE OF AMENDMENT OF RULES PERTAINING TO THE PRACTICE OF DENTISTRY, DENTAL HYGIENE AND DENTURITRY

TO: All Interested Persons:

1. On September 22, 1994, the Board of Dentistry published a notice of public hearing on the proposed amendment of rules pertaining to the practice of dentistry, dental hygiene and denturitry at page 2573, 1994 Montana Administrative Register, issue number 18. The hearing was held on October 26, 1994, at 9:00 a.m., in Helena, Montana.

2. The Board has amended the rules (ARM 8.16.405, 8.16.605A, 8.16.606, 8.16.909, and 8.17.501) exactly as proposed.

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

COMMENT NO. 1: Seventeen comments were received stating opposition to raising the fees for dental hygienists by 100%, while only a 65% increase is proposed for dentists.

RESPONSE: The increases are not pro-rated, but are instead across-the-board raises. The different percentages arise from the fact that the MPAP program is paid for proportionately by the dentist members only, and not the denturist or dental hygienists.

COMMENT NO. 2: One comment was received stating the Board holds too many costly hearings on rule change proposals, when the hearings are not mandated until the rules will be adopted.

RESPONSE: This comment is incorrect, in that the Board may hold rule hearings, under MAPA, when the rules are proposed, but does not hold hearings at the adoption stage. The Board therefore holds these proposal hearings whenever it deems necessary.

COMMENT NO. 3: Three comments were received stating the budget proposals are usually planned for 2-3 years in advance, and should have predicted the amount of increases in expenditures, so the fees would not need to increase by as much as 100%.

RESPONSE: The Board's budget is projected on a two year cycle, and shortages were anticipated. However, a previous fee increase request in 1992 was rejected by the Department of Commerce, thus necessitating this increase request.

COMMENT NO. 4: Eleven comments were received stating the Board is not getting its money's worth out of the MPAP program, which is merely a referral and tracking program, and the hygienists are required to pay for it, but cannot participate or take advantage of its benefits.

RESPONSE: The MPAP program provides intervention and treatment, as well as referral and tracking, for licensed dentists. Therefore, the denturist and dental hygienist members do not now, and have never, paid for this service.

COMMENT NO. 5: Two comments were received stating there has been an 80% increase in the Board budget since 1991, yet the number of complaints has dropped from 41 in 1991 to 25 in 1994.

RESPONSE: Greater legal costs, and a general increase in other Board costs have required this increase, despite the drop in the numbers of complaints.

COMMENT NO. 6: Six comments were received stating other health care boards with similar numbers of licensees to the hygienists ranged from $25 to $40 per year, and the national average for hygienists is $49.00 per year.

RESPONSE: The Board has high costs, and is currently working to bring them down, but the costs must be shared by all licensees. The costs cannot equitably be compared strictly on the numbers of licensees.

COMMENT NO. 7: One comment was received stating it would be more equitable to base license fees for dentists and hygienists on the income each profession can generate, because hygienists are employees of a dentist, and thus this disproportionate raise in fees is another form of discrimination.

RESPONSE: No professional licenses in Montana are based on income, the license fees are instead based on the Board costs, as set by statute.

COMMENT NO. 8: Three comments were received stating it would be more reasonable to have a lower fee for inactive licensees, especially from other states, since expenditures for that group are much lower.

RESPONSE: Inactive licensees also incur costs such as mailings and administrative time spent. The Board attempts to keep the costs fairly distributed throughout the licensing pool.

COMMENT NO. 9: One comment was received stating inactive license fees will discourage those license holders from renewing, and will defeat the purpose of a fee increase.

RESPONSE: See response to comment No. 8 above.

COMMENT NO. 10: One comment was received stating renewal license money is not spent in the hygienists' best interests, as mandatory CE is also costly, and it is unfair to raise license fees in the face of these other costs.

RESPONSE: The dental hygienists were in favor of CE when it was implemented, and supported the costs at that time. The Board is also aware that it is possible to obtain CE with the dentists, at a lower cost.

COMMENT NO. 11: One comment was received stating the conscious sedation increase is 400%, compared to 60% for dentists license renewal increase, and will cause providers to stop providing conscious sedation, even though it is needed.

RESPONSE: Conscious sedation costs reflect the program costs, which are high due to inspection requirements, etc. The Board will have to pass the costs along to those in the program.

COMMENT NO. 12: Two comments were received opposing the increases to the dentist renewal, and the dentist late renewal, as one is 38% and the other is 100%, neither of which are acceptable nor realistic.

RESPONSE: See response to No. 6 above.

BOARD OF DENTISTRY
CAROL SCRANTON, DDS, PRESIDENT

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

_____
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, November 28, 1994.

BEFORE THE BOARD OF RESPIRATORY CARE PRACTITIONERS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment and repeal of rules pertaining to continuing education	NOTICE OF AMENDMENT AND REPEAL OF RULES PERTAINING TO CONTINUING EDUCATION

TO: All Interested Persons:

1. On October 13, 1994, the Board of Respiratory Care Practitioners published a notice of proposed amendment and repeal of rules pertaining to continuing education, at page 2700, 1994 Montana Administrative Register, issue number 19.

2. The Board has amended ARM 8.59.601 through 8.59.605 and 8.59.607 and repealed ARM 8.59.606 exactly as proposed.

3. No comments or testimony were received.

BOARD OF RESPIRATORY CARE PRACTITIONERS
RICH LUNDY, CHAIRMAN

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

_____
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, November 28, 1994.

BEFORE THE MONTANA LOTTERY COMMISSION
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment of rules pertaining to sales staff incentive plan	)))	NOTICE OF AMENDMENT OF 8.127.1007 SALES STAFF INCENTIVE PLAN

TO: All Interested Persons:

1. On July 11, 1994, the Montana Lottery Commission published a notice of proposed amendment of the above-stated rule at page 1947, 1994 Montana Administrative Register, issue number 14.

2. The commission amended the rule exactly as proposed.

3. No comments or testimony received.

MONTANA LOTTERY COMMISSION
BECKY ERICKSON, CHAIRMAN

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


ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, November 28, 1994.

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

In the matter of the adoption of new rules I through V and the repeal of ARM 12.9.501 through 12.9.507 relating to wildlife habitat	NOTICE OF ADOPTION AND REPEAL

To: All Interested Persons

1. On June 23, 1994, the Fish, Wildlife & Parks Commission published notice of proposed adoption of Rule I, Rule II, Rule III, Rule IV, and Rule V; as well as the repeal of ARM 12.9.501 through 12.9.507, at page 1644, issue number 12 of the 1994 Montana Administrative Register.

2. Public hearings were held on July 19, 1994, in Missoula and Helena; and on August 4, 1994, in Billings and Glasgow. Comments were received at the hearings and in written form at the department.

3. The commission has repealed ARM 12.9.501 through 12.9.507, and has adopted new Rule I (12.9.508), Rule II (12.9.509), and Rule IV (12.9.511) as proposed. Rule III (12.9.510) and Rule V (12.9.512) have been adopted with the following changes:

RULE III (12.9.510) BENEFITS (1) The commission intends Habitat Montana to deliver the following services and benefits:

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

(b) contribute to hunting and fishing opportunities;

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

(d) contribute to non-hunting recreation;

(e) protect open space and scenic areas;

(f) promote habitat-friendly agriculture; and

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

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

RULE V (12.9.512) IMPLEMENTATION (1) The commission directs the department to complete a comprehensive statewide habitat plan and to execute that plan within the following parameters:

(a)-(f) Remain the same.

(g) ~~Leases and easements will be the preferred methods of habitat protection. Fee title acquisition will be the least preferred alternative. However, as recognized by the~~

~~legislature, the wishes of the landowner will also influence the method used~~. It is preferable to acquire interests in habitat through conservation easement or lease. However, the legislature has acknowledged that the willing seller will determine the manner by which such interest is obtained and thus has provided for acquisition by fee title as well. The most effective use of capital and operational funds must be determined on a case by case basis. The commission encourages the department to utilize other methods such as land exchanges, conservation buyers and easement exchanges to meet the Habitat Montana program objectives.

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

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

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

(k) - (m) Remain the same.

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

4. The commission has considered all comments, and has the following responses:

COMMENT: Habitat Montana should be funded by all recreationists and businesses that benefit from it, rather than funded entirely by hunting license dollars.

RESPONSE: The mechanics of how "Habitat Montana" is funded is beyond the scope of this rule-making process. The Montana legislature provided that the program be funded by hunting license dollars (from nonresident sportsman licenses, primarily). Any changes in the funding mechanism would require legislative action.

COMMENT: Public access to areas under easement must be assured.

RESPONSE: Provisions for public access are negotiated with each willing seller and are spelled out in the easement agreement, a legally binding document. However, HB526 (87-1-241) does not specify public or hunting access as a criterion for acquisition. Legislative intent is focused on protecting important habitats that are seriously threatened.

COMMENT: In the case of partnerships between FWP and other organizations, make sure that goals of HB526 - not the goals of the other organizations in the partnership - are followed.

RESPONSE: The terms of "Habitat Montana" agreements achieved as a result of partnerships between FWP and other

organizations would be negotiated under provisions of HB526 and the policies stated in the new rules for "Habitat Montana." A partnership approach would necessitate that the cooperating partner concurs with both.

COMMENT: How will public access to sensitive habitats, which in some cases could be counterproductive, be handled?
RESPONSE: In cases where certain levels of public access, or seasons of public use, would be detrimental to habitats and populations to be protected, terms of the lease, easement, or management plan would reflect these problems and address them in specific terms. Earlier in the process, the situation would have also been subject to public review and input.

COMMENT: "Habitat Montana" should include provisions for enhancing habitat, as well as protecting it.
RESPONSE: Enhancement is specifically referred to in Rule III (1)(a). Several properties protected under provisions of HB526 are currently being enhanced through implementation of rest-rotation grazing systems, water developments, plantings, and other means.

COMMENT: An array of concerns were expressed about the stated preference for use of leases and easements as opposed to fee title acquisition.
RESPONSE: Language in Rule V (1)(g) amended to reflect language in HB526.

COMMENT: Concern about mixing monies from other ear-marked sources (upland bird program, bighorn sheep and moose auction funds, etc) with "Habitat Montana" monies, and accounting of funds from those various funding sources.
RESPONSE: Rule IV states that the Habitat Montana policy will apply to other sources of funds earmarked for habitat, but it does not direct funds for these various programs to be pooled. It merely extends guidance for "Habitat Montana" to FWP's other habitat programs.

COMMENT: "Habitat Montana" funds should be spent equitably among geographic regions of the state and should benefit an array of species (not just elk).
RESPONSE: The statement of intent for HB526 (87-1-241) provided that the commission should identify habitat needs by administrative region and compile these needs in a consolidated statewide habitat acquisition plan. The legislature intended that the rules ensure acquired interests in land are reasonably distributed around the state in accordance with the statewide plan, and that emphasis be placed on these areas where important habitat is seriously threatened. Rule V provides for development of draft criteria and sources of information to identify regional priorities.

COMMENT: Enable the department to use HB526 monies for habitat preservation on State Lands.

RESPONSE: Neither provisions of HB526 or administrative rules for "Habitat Montana" exclude lands managed by the Department of State Lands, or lands owned by any other entity, from habitat protection under the "Habitat Montana" program.

COMMENT: Use of the "Natural Areas Act" should be included with easements and leases as a method of habitat protection.
RESPONSE: The Montana Natural Areas Act of 1974 authorizes the Board of Land Commissioners to designate lands under its control as natural areas - or to purchase or **otherwise** obtain sufficient interest in private property to protect natural features. While the goals of the Montana Natural Areas Act of 1974 are related to those of "Habitat Montana," they are separate programs and each is implemented under a different authority (Board of Land Commissioners and Fish, Wildlife and Parks Commission, respectively).

COMMENT: State directly that money can be used in partnership approaches to habitat protection.
RESPONSE: Incorporated in Rule II (1)(j).

COMMENT: Ensure that FWP and 501(c)3 organizations work cooperatively rather than competitively.
RESPONSE: Incorporated in Rule II (1)(j).

COMMENT: It's important to develop partnerships with landowners that meet both the needs of the department and those of the landowner.
RESPONSE: FWP is only able to enter into agreements with willing landowners who foresee mutual benefits.

COMMENT: FWP should not be able to purchase lands at prices above market value.
RESPONSE: The department will utilize various methods, including certified appraisals, to establish an opinion of value for negotiation. The department priorities will be for below market sales but will use its land agents to negotiate the final value with the property owner(s).

Robert N. Lane
Rule Reviewer

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

Certified to the Secretary of State November 23, 1994.

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

In the matter of the amendment of rule 16.20.604 regarding water use classification	NOTICE OF AMENDMENT OF RULE 16.20.604

(Water Quality)

To: All Interested Persons

1. On October 13, 1994, the board published notice of the proposed amendment of the above captioned rule at page 2707 of the Montana Administrative Register.

2. The board has adopted the rule as proposed, with the following amendments (new material is underlined and deleted material interlined):

16.20.604 WATER-USE CLASSIFICATIONS--CLARK FORK-COLUMBIA RIVER DRAINAGE EXCEPT THE FLATHEAD AND KOOTENAI RIVER DRAINAGES The water-use classifications adopted for the Clark Fork of the Columbia River drainage are as follows:

(1) Clark Fork River drainage except waters listed in (1)(a) through (1)(n) B-1

(a) Warm Springs drainage to Myers Dam near Anaconda A-1

(i) Hearst Lake drainage to the Lower Hearst Inlet and Fifer Gulch drainage~~s to and including the Fifer Gulch reservoir~~ to the Anaconda city limits. (Anaconda municipal water supply) . . . . . A-Closed

(b)-(n) Remains the same.

3. Comment: Anaconda-Deer Lodge County (ADL), which originally petitioned the board to make the above change in water-use classification, requested the following language be adopted modifying the proposed amendment of ARM 16.20.604:

"(i) Hearst Lake drainage to the Lower Hearst Inlet and Fifer Gulch drainage to the Anaconda City limits. (Anaconda municipal water supply). . . . . A-Closed"

At the time the petition was initially filed, Petitioner ADL was unaware of the precise location of the collection point for the Hearst/Fifer component of proposed improvements to the Anaconda water supply system. The above change to the amended rule was requested in order to extend the A-Closed designation to the Anaconda city limits and to assure flexibility in locating a collection system inlet so that Hearst/Fifer can be connected to the main municipal system.

Response: The requested change was made because: (1) the additional stream segment to be included in the A-Closed classification is minor; (2) baseline water quality in the additional segment is of the same high quality as the waters initially proposed for reclassification; and (3) the proposed

modification will allow flexibility in determining the location for the collection system inlet for the Hearst/Fifer component of ADL's proposed improvements to Anaconda's water supply system.

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

/s/ William J. Gute
for ROBERT J. ROBINSON, Secretary

Certified to the Secretary of State November 28, 1994.

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

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT of ARM 42.12.128 relating to Catering Endorsements	NOTICE OF THE AMENDMENT to ARM 42.12.128 relating to Catering Endorsements

TO: All Interested Persons:

1. On August 11, 1994, the Department published notice of the proposed amendment of ARM 42.12.128 relating to catering endorsements at page 2094 of the 1994 Montana Administrative Register, issue no. 15.

2. A public hearing was held on September 9, 1994, where written and oral comments were received. The Montana Tavern Association through its attorney, Douglas Olson, requested a thirty day extension for the close of comment so that they could review the matter with the members at their annual meeting. This request was granted and the comment period was extended to October 17, 1994, as shown by the notice published at page 2626 of the 1994 Montana Administrative Register, issue no. 18.

3. Oral and written comments received during and subsequent to the hearing are summarized as follows along with the response of the Department:

COMMENT: The Montana Tavern Association petitioned the Department of Revenue to amend ARM 42.12.128, Catering Endorsement. Mr. Douglas Olson, representing the Petitioner, MTA, testified that current rules do not allow the Department to determine whether or not a licensee with a catering endorsement is actually sponsoring a special event. Mr. Olsen stated that the amendments to this rule would allow such a determination. The amendments would also prevent a licensee from operating under a single license out of two locations that the licensee owns or controls. Mr. Olson indicates that this practice is an abuse of the limits intended under the license quota system. The MTA amendments also include changes that address Chapter 599, Session Laws of 1993.

RESPONSE: The Department believes that the Petitioners' amendment defines the term "sponsor" in a manner that exceeds the Department's authority to make such a definition under the law. The law states that a licensee who holds a catering endorsement may not cater an event in which the licensee is the sponsor. The Petitioner's proposed amendment deems a licensee to be a sponsor when the licensee, a member of a licensee's immediate family, or a shareholder of the licensee owns, rents or leases a premises in which a sponsored special event occurs. The Department does not believe law gives the Department the latitude to base a definition of "sponsor" on property ownership

or control.

COMMENT: Mr. Olson states that the Department's position is unnecessarily limited and that the law grants the Department wide latitude in administering the alcoholic beverage code.

RESPONSE: The Department counters with its interpretation of the law that the Petitioner's amendment regarding definition of "sponsor" exceeds the Department's latitude allowed in the law. However, the Department agrees, in substance, with the Petitioner's proposal for a rule change regarding legislation that provides certain beer-wine on-premises licensees with the opportunity to obtain a special catering endorsement and eliminates the requirement that the Liquor Division must approve applications to hold special events.

The rule amendment that the Department is adopting will eliminate those parts that deem a licensee to be a sponsor when the licensee owns or controls the premises upon which a special event is held and retains with slight modification those parts that address recent changes in the law related to catering endorsements and catered special events.

42.12.128 CATERING ENDORSEMENT (1) Any ~~all beverages~~ licensee, having obtained a catering endorsement under the provisions of 16-4-111 or 16-4-204, MCA, is authorized to sell alcoholic beverages authorized under the license to persons attending a special event upon premises not otherwise licensed. Only the licensee or the licensee's employees are authorized to sell and serve alcoholic beverages at the special event.

(2) ~~Any on-premises beer and wine licensee who is engaged primarily in the business of providing meals with table service, having obtained a catering endorsement under the provisions of 16-4-111, MCA, is authorized to sell beer and wine to persons attending a special event upon premises not otherwise licensed.~~

~~(3) A licensee granted a catering endorsement by the department as described in this rule may not cater a special event of which the licensee is the sponsor. A licensee shall be deemed to be the sponsor of the special event if the premises upon which the special event is held is owned, rented or leased by the licensee, a member of the licensee's immediate family, or by a shareholder of the licensee. For purposes of this rule, the term "immediate family" shall be defined as including the licensee's spouse, or the parent, sibling or child of the licensee or the licensee's spouse.~~

~~(4) Only the licensee or the licensee's employees are authorized to sell and serve alcoholic beverages at the special event.~~

~~(5)~~ The holder of ~~A licensee with~~ a catering ~~permit~~ endorsement may sell and serve ~~all~~ alcoholic beverages at retail only at a booth, stand, or other fixed place of business within the exhibition enclosure, confined to specified premises or designated areas described in the ~~application, and approved by~~

~~the division~~ notice given to the local law enforcement agency that has jurisdiction over the premises where the event is to be catered. ~~A holder of any such permit~~ Such a licensee, or his agents or employees may also sell and serve beer, in the case of an all-beverage licensee, or beer and wine, in the case of a beer/wine licensee, in the grandstand or bleacher.

(3) ~~(6)~~ Licensees granted approval to cater such special events ~~a catering endorsement by the department~~ are subject to the provisions of ~~16-3-306 Proximity to churches and schools restricted. 16-6-103 Examination of retailer's premises and carriers' cars and aircraft. 16-6-314~~ 16-3-306, 16-4-111, and 16-4-204, MCA, ~~Penalty for violating code -- revocation of license -- penalty for violation by underage person~~ and ARM 42.13.101 ~~Compliance with laws and rules~~.

AUTH: 16-1-103, MCA; IMP: Secs. 16-3-103, 16-4-111, and 16-4-204, MCA.

4. The Department has adopted the rule with the above-stated amendments.

Cleo Anderson
CLEO ANDERSON
Rule Reviewer

Mick Robinson
MICK ROBINSON
Director of Revenue

Certified to Secretary of State November 28, 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 September 30, 1994. This table includes those rules adopted during the period October 1, 1994 through December 31, 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 September 30, 1994, this table and the table of contents of this issue of the MAR.

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