MONTANA ADMINISTRATIVE REGISTER

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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 3

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 The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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NOTICE SECTION

PLEASE NOTE: Pages 219 through 221 have been omitted from this publication.

BEFORE THE BOARD OF CHIROPRACTORS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed amendment of rules pertaining to applications, renewals and unprofessional conduct	))))))	NOTICE OF PROPOSED AMENDMENT OF 8.12.601 APPLICATIONS, EDUCATIONAL REQUIREMENTS, 8.12.606 RENEWALS - CONTINUING EDUCATION REQUIREMENTS, 8.12.607 UNPROFESSIONAL CONDUCT

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On March 12, 1994, the Board of Chiropractors proposes to amend the above-stated rules.

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

"8.12.601 APPLICATIONS, EDUCATIONAL REQUIREMENTS

(1) The admission to examination for licensure shall be based upon ~~proof that the applicant has completed 2 years of college in addition to graduation~~ official verification from ~~an~~ a ~~approved chiropractic~~ college of chiropractic that has maintained accreditation ~~status~~ with the council on chiropractic education (CCE) during the entire duration of the applicant's course of study. As part of either the two years of college or the education program at the chiropractic college, each applicant must have had 120 classroom hours of instruction in physiotherapy.

(2) will remain the same.

(3) In addition, all applicants, including reciprocal applicants, must provide a certified copy of examination results from the national board ~~scores~~, parts I & II including physiotherapy and part III, written clinical competency exam, ~~shall be supplied~~ to the board prior to examination.

(4) will remain the same."

Auth: Sec. 37-1-131, 37-1-134, 37-12-201, MCA; IMP, Sec. 37-1-131, 37-1-134, 37-12-302, 37-12-304, 37-12-305, 37-12-307, MCA

REASON: The board is proposing changing the rule on applicants' course of study as there are several chiropractic colleges that are not currently accredited who are seeking accreditation status with the council on chiropractic education. The board is putting prospective applicants on notice that they must have completed a course of study from a fully accredited program for their entire course of study in order to be approved for examination in the state of Montana. The board relies on the CCE accreditation, thus it has no way to judge the school's propriety for any time in which it lacked such accreditation. In addition, the board wants to clarify

that applicants must pass the national board as well as submit a certified copy of their scores.

"8.12.606 RENEWALS - CONTINUING EDUCATION REQUIREMENTS (1) will remain the same.

(2) Continuing education courses recognized by the board pertaining to the practice of chiropractic may include those sponsored by CCE approved chiropractic colleges. ~~Other~~ pPrograms will be approved by the board on a per case basis.

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

Auth: Sec. 37-1-134, 37-12-201, 37-12-307, MCA; IMP, Sec. 37-1-134, 37-12-307, MCA

REASON: The board is proposing adding the word "may" in continuing education rules to allow the board more flexibility in approving or disapproving a program offered by a CCE approved chiropractic college, as not all programs are germane to the practice of chiropractic in Montana.

"8.12.607 UNPROFESSIONAL CONDUCT For the purpose of implementing the provisions of section 37-12-321(14), MCA, the board defines "conduct unbecoming a person licensed to practice chiropractic or detrimental to the best interests of the public" as follows:

(1) will remain the same.

(2) Engaging in or soliciting sexual relations with a patient, sexual misconduct either verbal or physical, sexual contact, sexual exploitation or a sex offense, as defined in section 45-2-101, MCA, when such act or solicitation is related to the practice of chiropractic.

(3) through (13) will remain the same."

Auth: Sec. 37-12-201, MCA; IMP, Sec. 37-12-321, 37-12-322, MCA

REASON: This amendment is being proposed to clarify that sexual misconduct may be verbal as well as physical contact with a patient, staff or the public.

3. Interested persons may submit their data, views or arguments concerning the proposed amendments in writing to the Board of Chiropractors, Lower Level, Arcade Building, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, to be received no later than 5:00 p.m., March 10, 1994.

4. If a person who is directly affected by the proposed amendments wishes to present his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit the request along with any comments he has to the Board of Chiropractors, Lower Level, Arcade Building, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, to be received no later than 5:00 p.m., March 10, 1994.

5. If the Board receives requests for a public hearing on the proposed amendments from either 10 percent or 25, whichever is less, of those persons who are directly affected by the proposed amendments, from the Administrative Code Committee of the legislature, from a governmental agency or

subdivision or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 32 based on the 320 licensees in Montana.

BOARD OF CHIROPRACTORS
DWAYNE BORGSTRAND, D.C.
PRESIDENT

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

_____
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, January 31, 1994.

BEFORE THE STATE ELECTRICAL BOARD
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed amendment of rules pertaining to applications, general responsibilities, temporary permit, fees, examinations, continuing education and the adoption of a new rule pertaining to pioneer electrician certificates	)))))))	NOTICE OF PROPOSED AMENDMENT OF RULES PERTAINING TO MASTER, JOURNEYMAN AND RESIDENTIAL ELECTRICIANS AND THE PROPOSED ADOPTION OF A NEW RULE PERTAINING TO PIONEER ELECTRICIAN CERTIFICATES

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On March 12, 1994, the State Electrical Board proposes to amend rules pertaining to master, journeyman and residential electricians and adopt a new rule pertaining to pioneer electrician certificates.

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

"8.18.402 APPLICATIONS (1) through (a)(i) will remain the same.

(ii) The board will only accept a maximum of two years practical experience in the residential field toward fulfilling the requirements for licensure as a journeyman electrician.

(b) An applicant will be given one year from the date of his/her approval to take the examination for which he/she is applying. If the examination is not taken within that one year period, the applicant will be required to submit a new application and pay the applicable fees.

(2) The board's requirements set forth in section 37-68-312, MCA, shall include certification to the board of the following by the electrical contractor applicant before a license will be issued or renewed:

(a) worker's compensation coverage as required under section 39-71-101, MCA;

(b) unemployment insurance coverage as required under section 39-51-101, MCA; and

(c) contractor bond for wages and benefits as provided under section 39-3-703, MCA.

(3) Commencing with the July 15, 1994 renewal date, each master, journeyman, and residential electrician license shall be renewed for a three year period. Each original license expires on a July 1st that is not more than three years subsequent to the date of issuance, at the discretion of the board.

(4) Commencing with the July 1, 1994 renewal date, each electrical contractor license shall be renewed for a three year period. Each original license expires on a July 1st that

is not more than three years subsequent to the date of issuance, at the discretion of the board.

(2) will remain the same but will be renumbered (5)."

Auth: Sec. 37-1-131, 37-68-201, MCA; IMP, Sec. 37-68-103, 37-68-302, 37-68-304, 37-68-305, 37-68-310, MCA

REASON: The Board is proposing the amendments for the following reasons:

1) Subsection (a)(ii) is being amended to ensure applicants applying for the journeyman electrician license obtain training and are proficient in both commercial and residential wiring;

2) Subsection (1)(b) is being proposed to ensure applicants complete their examinations in a timely manner and become valid license holders;

3) Subsections (2)(a), (b) and (c) are being proposed to ensure applicants for electrical contractor's licenses have met the requirements for worker's compensation coverage, unemployment insurance coverage and contractor bond for wages and benefits prior to becoming licensed and starting business;

4) Subsections (3) and (4) are being proposed to coincide with the new three year license renewal enacted by the 1993 legislature (effective October 1, 1993).

"8.18.403 GENERAL RESPONSIBILITIES (1) Licensed residential, journeyman, or master electricians shall have their license on their person at all times when employed at the trade.

(2) will remain the same.

(3) Each electrical contractor, not licensed as a master electrician, shall employ a master electrician on a full-time basis. No holder of a master electrician's license shall be named as the master electrician for more than one contractor and the master named shall be actively engaged in a full-time capacity with that contracting company.

~~(a)~~ (4) ~~For~~ Each electrical contractor, limited to residential construction consisting of less than 5 living units in a single structure, ~~subsection (3) above shall also apply to the holder of a journeyman electrician's license~~ not licensed as a master electrician or journeyman electrician, shall employ a master electrician or a journeyman electrician on a full-time basis. No holder of a master electrician's license or journeyman electrician's license shall be named as the master electrician or journeyman electrician for more than one electrical contractor and the master or journeyman named shall be actively engaged in a full-time capacity with that contracting company.

(5) A licensed residential electrician shall perform work only in the employment of an electrical contractor and shall be supervised by a licensed master electrician or a licensed journeyman electrician. A licensed residential electrician shall perform work only on residential construction consisting of less than five living units in a single structure.

(6) A licensed journeyman electrician, not licensed as a residential electrical contractor, shall perform work only in

the employment of a licensed master electrician or licensed journeyman electrician licensed as an electrical contractor.

~~(4)~~ (7) No electrical contractor or the master or journeyman electrician named as the responsible electrician for said company shall allow any person in his employ to perform electrical work unless properly licensed or working on a temporary permit.

~~(5)~~ (8) A licensed master electrician or journeyman electrician, in the case of residential construction, is required to sign all permit applications~~, certificates, countersign all tags~~ and ~~should~~ shall ascertain that all such electrical installations meet the minimum safety standards as prescribed by the board and the bureau.

~~(a)~~ (9) The licensed master electrician or journeyman electrician, in the case of residential construction, may be relieved from further responsibility under any application or owner, provided he sends a notice in writing to that effect within 5 days to the state electrical board and the bureau or certified local code enforcement jurisdiction.

(10) Electrical contractors, master electricians, and journeyman electricians in the case of residential construction, are responsible for obtaining any permit required by the bureau or local code enforcement jurisdiction. The licensee is responsible to ensure that all work performed under the permit meets the requirements of the state building code, including the national electrical code.

(11) An electrical contractor shall not allow his/her license to be used by any persons, firm, corporation, or business other than his/her own for the purpose of obtaining electrical permits or for performing electrical work under said license.

(12) If the licensed master electrician or licensed journeyman electrician, named as the "responsible electrician" for an electrical contractor, leaves the full-time employment of the electrical contractor, the board shall be notified within ten days. Failure to name another properly licensed electrician as the "responsible electrician", within the said ten day period, shall cause the electrical contractor license to be suspended and subject to revocation."

Auth: Sec. 37-68-201, MCA; IMP, Sec. 37-68-301, 37-68-302, MCA

REASON: The Board is proposing these amendments to clarify the duties and responsibilities of the journeyman or master electrician named as the "responsible electrician" for an electrical contractor.

"8.18.404 TEMPORARY PERMIT (1) An applicant for a ~~licensed~~ journeyman electrician license or residential electrician license may act as a licensed ~~master~~ journeyman electrician or licensed residential electrician respectively after making application for such ~~master~~ journeyman or residential electrician license, stating his qualifications to the board and being issued a temporary permit.

(2) Temporary permits issued to applicants for a journeyman electrician license or residential electrician

license shall expire on the date of the next scheduled licensure examination.

(3) An applicant for a journeyman electrician license or residential electrician license shall not be issued more than one temporary permit.

(4) An applicant for a master electrician license shall not be issued a temporary permit to act as a licensed master electrician."

Auth: Sec. 37-68-201, MCA; IMP, Sec. 37-68-306, MCA

REASON: The Board is proposing these amendments to end the confusion of when a temporary permit will be issued, to whom it will be issued and for how long it will be valid.

"8.18.407 FEE SCHEDULE

(1)	Examination fee	~~$40.00~~	$ 50.00
(2)	will remain the same.		
(3)	Original licenses		
(a)	Contractor	~~75.00~~	225.00
(b)	Master	~~25.00~~	75.00
(c)	Journeyman	~~10.00~~	30.00
(d)	Residential	~~10.00~~	30.00
(4)	~~Annual r~~Renewal fee (three years)		
(a)	Contractor	~~50.00~~	225.00
(b)	Master	~~20.00~~	75.00
(c)	Journeyman	~~7.50~~	22.50
(d)	Residential	~~7.50~~	22.50
(5)	Reciprocity	~~10.00~~	25.00
(6)	Late renewal fee	~~5.00~~	25.00

(7) Each original electrical contractor, master, journeyman, and residential electrician license issued after July 15 of the last year in the renewal cycle, will be assessed a fee, prorated by year, based on the fee schedule found in subsection (3) of this rule."

Auth: Sec. 37-1-131, 37-1-134, 37-68-201, MCA; IMP, Sec. 37-1-134, 37-68-304, 37-68-306, 37-68-307, 37-68-309, 37-68-310, 37-68-311, 37-68-312, 37-68-313, MCA

REASON: The board is proposing the changes in the fee schedule to reflect the three year license renewal enacted by the 1993 legislature. In addition, the board is raising the examination fee to reflect the increase in the fee charged by the National Assessment Institute to administer the examination for the Board. The Board is also increasing the reciprocal fee because the current $10.00 does not cover the administrative costs to process the application.

"8.18.408 EXAMINATIONS (1) through (1)(b) will remain the same.

(c) provide evidence of having attended at least one eight hour electrical code seminar presented by the plumbing/mechanical/electrical ~~safety~~ section of the state building codes bureau or other course approved by the board, since his/her initial failure to pass.

(2) through (d) will remain the same.

(e) provide evidence of having attended at least two eight hour electrical code seminars presented by the plumbing/mechanical/electrical ~~safety~~ section of the state building codes bureau or other course approved by the board.

(3) An applicant who has failed the master or journeyman examination two or more times may apply for and take a lower level licensing examination without obtaining the supplementary education and study hours as set forth in subsections (1) and (2) of this rule."

Auth: Sec. 37-1-131, 37-68-201, MCA; IMP, Sec. 37-68-201, 37-68-304, 37-68-305, MCA

REASON: The Board is proposing the amendments to this section to set a specific amount of continuing education hours to be completed by the applicant before being allowed to retest. Currently the rule does not specify how many hours of continuing education is required, so an applicant could obtain as few as 2 hours of schooling before being retested. In addition, the current rule limited the courses to only those conducted by the building codes bureau. The Board is proposing to expand this to any approved course, which will increase the availability of courses and give the applicant a larger variety of courses to choose from.

"8.18.409 CONTINUING EDUCATION (1) Each master, journeyman, and residential electrician license shall not be renewed unless the continuing education requirements imposed by this rule have been met, prior to a July 15th renewal date. Any licensee who fails to fulfill the continuing education requirements, imposed by this rule, by the August 15th following a July 15th renewal date, shall be required to remit all applicable fees and re-examine for licensure.

(a) If a licensee who let his/her license expire reapplies for re-licensure, within the next three year license period, he/she will be required to obtain the 24 hours of continuing education before he/she is issued another license.

(1) will remain the same but will be renumbered (2).

(a) Courses or seminars must have prior approval of curriculum by the state electrical board. Board approval of said courses and seminars expires one year from date of approval.

(b) Instructors must be certified by the state electrical board prior to presentation of course or seminar. Certification of instructors shall be at the discretion of the board, based on applicants for certification being credentialed as one or more of the following:

(i) graduate electrical engineer licensed as an electrician;

(ii) Montana licensed electrician with additional training in related subject areas;

(iii) community college or vo-tech instructor with board-approved electrical credentials;

(iv) certified teacher with board-approved electrical credentials;

(v) certified electrical apprentice instructors;

(vi) certified electrical inspectors; and

(vii) electrical continuing education instructors from other areas as approved by the board.

(c) will remain the same.

(d) Completion certificates for courses or seminars and the hours attended shall be attached to the application for license renewal to a maximum verification of ~~16 hours by 1990 and every 3 years thereafter~~ twenty-four hours in the three year period prior to each license renewal date. A minimum of twelve of the twenty-four hours shall be verified as being on the national electrical code updates.

(e) ~~In general,~~ Curriculum of courses or seminars ~~must~~ shall be on the national electrical code updates, or ~~advances in~~ other subjects related to the electrical industry. Approval of course curriculum shall be at the discretion of the board.

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

(h) The board must be notified ~~of every~~ fifteen days prior as to the time and place of ~~the~~ every course or seminar ~~in advance~~.

(i) In general, courses should be designed for advancing knowledge or skills of trained individuals; basic courses or apprentice type courses ~~may~~ will not be approved.

(j) Attendance lists and the hours attended by each person shall be forwarded to the state electrical board by the instructor within thirty days of the completion of the course."

Auth: Sec. 37-1-131, 37-68-201, MCA; IMP, Sec. 37-68-201, MCA

REASON: The board is proposing these amendments to specifically set a penalty for not complying with the continuing education requirements. In addition the Board is increasing the continuing education requirements from sixteen hours to twenty-four hours every three years, and requiring at least twelve of those hours be on the National Electrical Code. This requirement will remain consistent with most of the surrounding states, which require eight hours of code update per year. The Board is also establishing requirements to be approved as an instructor for continuing education. Currently there are no set standards for evaluating an instructor's credentials.

3. The proposed new rule will read as follows:

"I PIONEER ELECTRICIAN CERTIFICATE (1) The purpose of a pioneer electrician certificate is to show appreciation for past services and support to the electrical industry.

(2) A pioneer electrician certificate is not a license and does not permit the holder of said certificate to act as a licensed electrical contractor, master, journeyman, or residential electrician.

(3) Pioneer electrician certificates will be issued at the discretion of the state electrical board."

Auth: Sec. 37-1-131, 37-68-201, MCA; IMP, Sec. 37-68-201, MCA

REASON: The Board is proposing creation of a Pioneer Electrician Certificate to issue to those electricians who are retired and cannot afford the license fee or the cost of obtaining the continuing education, but would like a certificate to hang on their wall for personal reasons.

4. Interested persons may submit their data, views or arguments concerning the proposed amendment in writing to the State Electrical Board, 1218 East Sixth Avenue, Helena, Montana 59620, to be received no later than 5:00 p.m., March 10, 1994.

5. If a person who is directly affected by the proposed amendment wishes to present his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit the request along with any comments he has to the State Electrical Board, 1218 East Sixth Avenue, Helena, Montana 59620, to be received no later than 5:00 p.m., March 10, 1994.

6. If the Board receives requests for a public hearing on the proposed amendment from either 10 percent or 25, whichever is less, of those persons who are directly affected by the proposed amendment, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to 250 based on the 2500 licensees in Montana.

STATE ELECTRICAL BOARD
CHARLES T. SWEET, CHAIRMAN

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

_____
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, January 31, 1994.

BEFORE THE BOARD OF REALTY REGULATION
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed amendment of a rule pertaining to license discipline	))))	NOTICE OF PROPOSED AMENDMENT OF 8.59.419 GROUNDS FOR LICENSE DISCIPLINE - GENERAL PROVISIONS - UNPROFESSIONAL CONDUCT

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On March 12, 1994, the Board of Realty Regulation proposes to amend the above-stated rule.

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

"8.58.419 GROUNDS FOR LICENSE DISCIPLINE - GENERAL PROVISIONS - UNPROFESSIONAL CONDUCT (1) through (3)(ag) will remain the same.

(ah) A licensee shall repay the recovery account for any amounts due and owing the account based on any actions, negligence, or misrepresentation of the licensee."

Auth: Sec. 37-1-131, 37-1-136, 37-51-203, MCA; IMP, Sec. 37-51-201, 37-51-202, 37-51-321, 37-51-512, MCA

REASON: This amendment is being proposed to clarify that the Board may discipline a licensee for his or her failure to reimburse the real estate recovery account for any payments made by that account on behalf of the licensee. The recovery account, authorized by section 37-51-501, et. seq., MCA, is an account established to allow individuals who have obtained judgments against real estate licensees to seek compensation if those real estate licensees do not satisfy the judgment. The recovery account is intended to be a last resort for the diligent judgment creditor; it is not intended to be an asset for the licensees to which they can direct their creditors. The Board therefore seeks to notify licensees that failure to honor the debts incurred by the recovery account on their behalf must be made up by the licensee or the licensee faces potential discipline including suspension or revocation from practice.

3. Interested persons may submit their data, views or arguments concerning the proposed amendment in writing to the Board of Realty Regulation, Lower Level, Arcade Building, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, to be received no later than 5:00 p.m., March 10, 1994.

4. If a person who is directly affected by the proposed amendment wishes to present his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit the request along with any

comments he has to the Board of Realty Regulation, Lower Level, Arcade Building, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, to be received no later than 5:00 p.m., March 10, 1994.

5. If the Board receives requests for a public hearing on the proposed amendment from either 10 percent or 25, whichever is less, of those persons who are directly affected by the proposed amendment, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 490 based on the 4900 licensees in Montana.

BOARD OF REALTY REGULATION
JACK MOORE, CHAIRMAN

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

_____
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, January 31, 1994.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the amendment of teacher certification	)	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT TO ARM 10.57.501 SCHOOL PSYCHOLOGISTS, SCHOOL SOCIAL WORKERS, NURSES AND SPEECH AND HEARING THERAPISTS

To: All Interested Persons

1. On March 24, 1994 at 2:00 p.m., or as soon thereafter as it may be heard, a public hearing will be held at the Board of Public Education offices 2500 Broadway, Helena, Conference room 102, in the matter of the proposed amendments to ARM 10.57.501 School Psychologists, School Social Workers, Nurses and Speech and Hearing Therapists.

2. The rule as proposed provides as follows:

10.57.501 SCHOOL PSYCHOLOGISTS, SCHOOL COUNSELORS, SOCIAL WORKERS, NURSES AND SPEECH AND HEARING THERAPISTS (1) Professionals such as school psychologists, master's degree school counselors, social workers, nurses and speech and hearing therapists who are teaching in a classroom must have a teaching certificate appropriate for the level(s) and area(s) taught.

(2) will remain the same.

(3) School psychologists and master's degree school counselors. A professional serving as a school psychologist in the public schools must be certified with a specialists certificate. A professional serving in the role of a master's degree school counselor in the public schools must be appropriately certified under the class 1 teaching certificate or the class 6 specialists.

(4) will remain the same.

(5) ~~Psychologists who have been fully approved for funding by the special education unit of the office of public instruction by December 31, 1980, and have had at least half time employment during the school year between September 1, 1975, and May 31,1984, can continue to serve as a school psychologists until the expiration date of the approval when they must be certified. After July 1, 1984, all school psychologists must be certified with a class 6 specialist certificate.~~ Class 6 (specialist) certificate. School counselor

(a) Term: 5 years, renewable.

(b) Basic education: Master's degree in school guidance and counseling (K-12) or master's degree with equivalent graduate level school counseling content. The program must include a supervised internship of at least 600 hours, or appropriate waiver.

(c) Renewal: Verification of one year of successful

specialist experience or the equivalent, plus presentation of acceptable evidence of 4 additional graduate semester (6 graduate quarter) credits of academic or equivalent inservice coursework. Renewal credits must supplement, strengthen and update the specialist preparation.

(d) Reinstatement and recent training:

(i) For reinstatement of lapsed certificates of initial certification for applicants with training more than 5 but less than 15 years old, a class 6 certificate cannot be issued until the required number of credits are presented. Reinstatement credits must supplement, strengthen and update the specialist preparation.

(ii) Credits presented must have been earned within the five-year period preceding the date of application on the basis of 8 semester (12 quarter) credits for the first 5 years plus 4 semester (6 quarter) credits for each additional 5-year period since certification or original training.

(iii) The applicant may, however, practice under a class 5 provisional (specialist) certificate for one (1) year while completing the credit deficiency.

(A) For provisional certification a plan of intent outlining the specific courses required must be submitted to teacher certification in the office of public instruction.

(B) The plan of intent section, a part of the application form, may be obtained from the office of public instruction and must be signed by the applicant and the college certification official where the coursework will be completed (if applicable).

(C) An applicant applying for a class 5 provisional certificate may not have more than four (4) of the required courses to complete in the one-year period of the certificate.

(D) A class 5 is issued for one (1) year and is not renewable.

(iv) The individual who has allowed a certificate to lapse for more than 15 years or has not completed any recent academic training on the basis of 4 semester (6 quarter) credits for every five years, must contact the office of public instruction for evaluation of his/her certification position and procedures to obtain a certificate.

(v) Individuals lacking the recent training requirements, may qualify for the provisional certificate providing other academic requirements are met.

~~(6) Psychologists who have been approved for funding by the special education unit of the office of public instruction December 31, 1980, and have practices continuously in Montana since September 1, 1975, under the Montana special education rules and regulations may receive class 6 certification without additional training, upon application, commencing January 1, 1981. These people who have received their certification under this provision should obtain credits for certificate renewal in their area of deficiency.~~

AUTH: Sec. 20-4-102 IMP: Sec. 20-4-102 MCA

3. This change will add another route to school counselor certification which will not require a teaching degree, thus allowing counselors prepared in other states to qualify in Montana.

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 submitting to John Kinna, Chairman, Board of Public Education, 2500 Broadway, Helena MT 59620, no later than March 24, 1994.

5. John Kinna of the Board of Public Education, 2500 Broadway, Helena, MT 59620 has been designated to preside over and conduct the hearing.

WAYNE BUCHANAN, Executive Secretary
Board of Public Education

Certified to the Secretary of State on 1/31/94.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the adoption of teacher certification	)))	NOTICE OF PUBLIC HEARING ON PROPOSED NEW RULE I AREA OF SPECIALIZED COMPETENCY

To: All Interested Persons

1. On March 24, 1994 at 1:30 p.m., or as soon thereafter as it may be heard, a public hearing will be held at the Board of Public Education offices 2500 Broadway, Helena, in the matter of the proposed new rule Area of Specialized Competency.

2. The rule as proposed provides as follows:

I AREA OF SPECIALIZED COMPETENCY (1) A holder of a Montana teaching certificate may apply for a statement of specialized competency to appear on the certificate. A certificate holder may qualify for a statement of competency by the completion of a minimum of the equivalent of 20 semester college credit hours in a specific academic area and the recommendation of an appropriate teacher education official. The teacher education official may consider skills or competencies, acquired by the applicant from sources other than higher education, for a portion or all of the 20 hour requirement.

AUTH: Sec. 20-4-102 IMP: Sec. 20-4-103

3. The board has proposed this rule in order to identify specialized areas of competency, in which some teachers have been prepared, but which the board feels should not be mandated as necessary to receive a teaching certificate. There is presently no means of identifying these areas on the teaching certificate.

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 John Kinna, Chairman, Board of Public Education, 2500 Broadway, Helena, MT 59620, no later that March 24, 1994.

5. John Kinna of the Board of Public Education, 2500 Broadway, Helena, MT 59620 has been designated to preside over and conduct the hearing.

WAYNE BUCHANAN, Executive Secretary
Board of Public Education

Certified to the Secretary of State on 1/31/94.

BEFORE THE DEPARTMENT OF
FAMILY SERVICES OF THE
STATE OF MONTANA

In the matter of the amendment of Rules 11.5.602 and 11.5.609 pertaining to case records of abuse or neglect.	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT OF RULES 11.5.602 AND 11.5.609 PERTAINING TO CASE RECORDS OF ABUSE AND NEGLECT

TO: All Interested Persons.

1. On March 4, 1994, at 1:30 p.m., a public hearing will be held in the second floor conference room of the Department of Family Services, 48 North Last Chance Gulch, Helena, Montana, to consider the amendment of Rules 11.5.602 and 11.5.609 pertaining to case records of abuse and neglect.

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

11.5.602 DEFINITIONS (1) For purposes of this part, the following definitions shall apply:

(a) "Case records containing reports of child abuse or neglect" means any records ~~case files~~ generated and maintained by the department alleging child abuse or neglect as defined in ~~section~~ 41-3-201, MCA. Photographs, video and audio tapes may also be included as part of the case record. The term does not include:

(i) confidential reports or evaluations, such as psychological evaluations, provided to the department by other professionals; or

(ii) licensing or registration files of providers licensed or registered by the department.

~~(b) "Child placing agency" means any corporation, partnership, association, firm, agency, institution or person who places or who arranges for the placement of any child with any family, person, or facility not related by blood or marriage, either for foster care or for adoption.~~

~~(c)~~(b) ~~"Confidentiality" or~~ "eConfidential information" means information that is subject to being withheld ~~to withhold~~ from disclosure.

~~(d) "Day care facility" means a person, association or place, incorporated or unincorporated, that provides supplemental parental care on a regular basis. It includes a family day care home, a day care center, or a group day care home. It does not include a person who limits care to children who are related to him by blood or marriage or under his legal guardianship, or any group facility established chiefly for educational purposes.~~

~~(e)~~(c) "Disclosure" means to release for inspection or copying or to make known or reveal in any manner any information contained in case records containing reports of child abuse or neglect.

~~(f) "Guardian" means a person appointed by the court to assume the powers and responsibilities of a parent for the child.~~

~~(g) "Parent" means the biological or adoptive mother or father of the child.~~

~~(h)~~(d) "Person responsible for a child's welfare" means those persons specified in ~~section~~ 41-3-102(~~7~~1), MCA, and includes the child's parent, guardian, foster parent, staff at a day care facility and an employee of a residential facility.

~~(i) "Reasonable cause to believe" means a belief based upon credible information or facts.~~

~~(j)~~(e) "Reports of child abuse or neglect" means a referral made pursuant to ~~section~~ 41-3-201, MCA alleging that a child ~~is~~ may be an abused or neglected child as defined by ~~section~~ 41-3-102, MCA.

~~(k) "Seal" means to make secure against access and withhold from disclosure.~~

~~(l)~~(f) "Subject" means the child alleged to have been abused, dependent or neglected, or his parents, guardian or other person responsible for the child's welfare.

~~(m)~~(g) "Substantiated report" means that, upon investigation, the investigating worker has determined there is reasonable cause to ~~believe~~ suspect, based upon credible information or facts that ~~the reported~~ child abuse or neglect, as defined in 41-3-102(5) caused or is causing harm or threatened harm to the child's health or welfare as defined in ~~section~~ 41-3-102~~(3)~~ (8) and (15), MCA.

~~(n)~~(h) "Unfounded report" means that, upon investigation, the investigating worker has determined that ~~there is reasonable cause to believe that~~ the reported child abuse or neglect has not occurred.

~~(o)~~(i) "Unsubstantiated report" ~~or "inconclusive report"~~ means that, upon investigation, the investigating worker was unable to determine whether ~~the~~ any abuse or neglect occurred, ~~or the report was unfounded.~~

~~(p) "Youth care facility" means a facility in which substitute care is provided to youth in need of care, youth in need of supervision, or delinquent youth and includes youth foster homes, youth group homes, and child care agencies.~~

AUTH: 41-3-208, MCA IMP: 41-3-205, MCA.

REASON: The changes made to subsection (a) of the rule are reasonably necessary to allow third parties to maintain control over distribution of records they have authored and submitted to the department, and to properly distinguish licensing and registration records of providers from abuse and neglect records.

The definitions in the current rule's subsections (b), (d), (f), (p), and the phrase "inconclusive report" in (o) are deleted because the terms are no longer used in this subchapter.
The department also proposes deletion of the current rule's version of subsection (k), which defines "seal" because the proposed amendments to 11.5.609 eliminate the procedure for sealing records.

The current subsection (m) is changed to re-define substantiated report. The amendment to the definition is reasonably necessary to clarify the term under the governing statutory language defining abuse and neglect in Section 41-3-102, MCA.

11.5.609 REQUEST FOR REVIEW AND AMENDMENT ~~AND SEALING~~ OF THE RECORD (1) The subject of a case record containing a substantiated report of child abuse or neglect has the right~~, at any time,~~ to request that the department ~~to~~ amend or make additions to the case record on the grounds that the information is incomplete~~,~~ or incorrect ~~or is being maintained improperly~~.

(a) The subject must request, in writing, a departmental review of their records within 30 days of the date of the notice of substantiated abuse or neglect. The subject must specifically identify in writing the portions of the record he believes to be in error and must state the specific reasons why he believes the record to be in error. All requests for amendment to a record should be sent or forwarded to the regional administrator of the department's region from which the records originated.

(b) The ~~department~~ regional administrator, or his/her designee will review the subject's request for amendment and notify the subject in writing of the ~~its~~ decision regarding the request for amendment.

(i) If the ~~department~~ regional administrator, or his/her designee determines the information contained in the case record is correct, the ~~department will deny the~~ request for amendment will be denied, but ~~will allow~~ the subject's ~~to prepare a written~~ statement of the reasons why he believes the records to be in error ~~which~~ will be made a part of the permanent record.

(ii) If the ~~department~~ regional administrator, or his/her designee determines the information contained in the case record is in error, the information will be amended in the case record and a copy of the amended record shall be sent to the subject and to each person or agency to whom the incorrect information was disclosed.

(c) If the subject is dissatisfied with the decision of the ~~department~~ regional administrator or his/her designee, he may request ~~an administrative~~ review of the decision by the director. The request for ~~an administrative~~ review by the director must be made in writing within ~~thirty (30)~~ (15) days from the date of the ~~department's response~~ decision of the regional administrator or his/her designee ~~to the request for amendment~~.

(d) In making a determination regarding a request for an amendment to the record, the director will not conduct an independent investigation of the report, but may review any records or documentation relevant to the case or consult with individuals with relevant information to decide whether the actions of department staff were consistent with applicable policy, rules, and law.

~~(2) The subject of a case record which contains an unsubstantiated or unfounded report may request the department to seal the case record if there are no substantiated reports contained in the case record.~~

~~(3) Once sealed, the record shall not be disclosed to any~~

~~person or entity except upon the written approval of the department director. Prior to the department director issuing approval, the department shall notify the subjects of the records, at their last known address, and give them an opportunity to respond to the request to open the sealed record.~~

AUTH: 41-3-208, MCA IMP: 41-3-205, MCA.

REASON: The current version of the rule does not provide for notification upon the creation of records substantiating abuse or neglect. The proposed amendments add language providing for notification and for a process allowing the subject to contest the determination at the time of notification.

Sealing and requests for review of maintenance of records are eliminated. Sealing is unnecessary because the records are required to be kept confidential by statute. Similarly, the statutory mandate of confidentiality already serves to enforce proper maintenance of the records.

Additions to the rule also provide a single procedure for reviewing findings in records at the regional level, with a direct review of the regional decision by the director. The amendments are reasonably necessary to improve the procedure in the rule. Initial review should be before the regional administrator or his/her designee because these department staff are charged with supervisory authority over personnel making the findings at issue. Therefore, these staff have a great deal of expertise in determining the appropriateness of decisions connected to child protective services issues.

3. Interested persons may submit their data, views or arguments to the proposed amendment either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Office of Legal Affairs, Department of Family Services, 48 North Last Chance Gulch, P.O. Box 8005, Helena, Montana 59604, no later than March 14, 1994.

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

DEPARTMENT OF FAMILY SERVICES

Doug Mathers
for Hank Hudson, Director

John Melcher, Rule Reviewer

Certified to the Secretary of State, January 31, 1994.

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

In the matter of the proposed adoption of a new rule relating to a nonresident hunting license preference system.	))))	NOTICE OF PROPOSED ADOPTION No Public Hearing Contemplated

To: All Interested Persons

1. On March 31, 1994, the Fish, Wildlife and Parks Commission proposes to adopt rule I pertaining to a nonresident hunting license preference system.

2. The new rule provides as follows:

RULE I COMBINATION LICENSE PREFERENCE SYSTEM (1) The department will issue 11,400 B-10 licenses through a preference system. Persons who submitted a valid application but did not receive a general nonresident big game combination license (class B-10) during the year immediately preceding the drawing shall be given preference in the current year's allocation. The preference system will begin in 1994 so that those who were unsuccessful in the 1994 license year will be given preference if they apply in 1995.

(2) Applicants entitled to this preference will be given a class B-10 license if the number of preference applicants is 11,400 or less. If the number of preference applicants is greater than 11,400, the preference applicants will be entered in a random drawing to select license recipients.

(3) Any remaining licenses after the preference allocation will be issued through a random drawing to the remaining applicants.

(4) Applicants will be required to indicate on their application whether they were unsuccessful in the preceding year's drawing.

(5) Parties will receive preference only if all members of the party were unsuccessful the prior year in the class B-10 license category. If every member of the party does not meet this qualification, the entire party will be placed in the random drawing for any remaining licenses after the preference allocation.

AUTH: Sec. 87-1-304(1), MCA IMP: Sec. 87-2-505, MCA

3. The Montana Fish, Wildlife and Parks Commission is evaluating the current method of issuing general nonresident big game combination licenses. One alternative is to go to a preference system.

Under current licensing system, a computerized random drawing is used to issue the licenses. Each year, all applicants are considered equally. Preferential treatment is not given to those who were unsuccessful the previous year. The chances of receiving a license have been declining over the past five years.

Under a preference system, priority would be given to those who were unsuccessful the previous year. Licenses would be issued to this group first. Any remaining licenses would be issued through a random drawing of the remaining license applicants.

Only the 11,400 big game combination licenses available to the general nonresident public would be included. The license allows hunting for elk, deer, birds, and fishing.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to Nancy Kraft, 1420 E. Sixth Ave., P.O. Box 200701, Helena, Montana 59620-0701 no later than March 10, 1994.

5. If a person who is directly affected by the proposed amendment wishes to express his or her data, views and arguments orally or in writing at a public hearing, he or she must make written request for a hearing and submit this request along with any written comments he or she has to Nancy Kraft, Department of Fish, Wildlife and Parks, 1420 East Sixth, P.O. Box 200701, Helena, Montana 59620-0701. A written request for hearing must be received no later than March 10, 1994.

6. If the agency receives requests for a public hearing on the proposed amendment from 25 or more persons who are directly affected by the proposed action, from the Administrative Code Committee or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register.

FISH, WILDLIFE AND PARKS COMMISSION

Robert N. Lane
Rule Reviewer

Patrick J. Graham
Secretary

Certified to the Secretary of State on 1-31-94, 1994.

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

In the matter of the amendment of rules 16.20.1003 and 16.20.1010-16.20.1011 regarding ground water quality standards, mixing zones, and water quality nondegradation.	))))	NOTICE OF PUBLIC HEARING FOR PROPOSED AMENDMENT OF RULES (Water Quality)

To: All Interested Persons

1. On March 18, 1993, at 8:00 a.m., or as soon thereafter as it may be heard, the board will hold a public hearing in Room C209 of the Cogswell Building, 1400 Broadway, Helena, Montana, to consider the amendment of the above-captioned rules.

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

16.20.1003 GROUND WATER QUALITY STANDARDS (1)(a) The board hereby adopts and incorporates by reference the following EPA publications:~~,~~

(i) EPA 600/4-79-020, "Methods for Chemical Analysis of Water and Wastes";

(ii) EPA 600/4-88-39, "Methods for the Determination of Organic Compounds in Drinking Water;

(iii) EPA 600/4-91-010, "Methods for the Determination of Metals in Environmental Samples";

(iv) EPA-SW-846, "Test Methods for Evaluating Solid Waste";

(v) 40 CFR 136, "Guidelines for Establishing Test Procedures for the Analysis of Pollutants" (July, 1992);

(b) These publications set ~~which sets~~ forth EPA-approved testing procedures for chemical analysis of water and wastes. Copies of ~~EPA-600/4-79-020~~ the publications in (i)-(v) above may be obtained from the Water Quality Bureau, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620.

(2)-(4) Remain the same.

(5) Concentrations of other dissolved or suspended substances must not exceed levels which render the waters harmful, detrimental or injurious to public health. Maximum allowable concentrations of these substances also must not exceed acute or chronic problem levels which would adversely affect existing beneficial uses or the designated beneficial uses of ground water of that classification. The values listed in "Quality Criteria for Water", U.S. Environmental Protection Agency, Washington, D.C., (U.S. EPA ~~Red Book~~ 440/5-86-001, Gold Book), July, ~~1976~~ 1986; Hem, John D., "Study and Interpretation of the Chemical Characteristics of Natural Water," Second Edition, USGS Water Supply Paper 1473, USGPO, Washington, D.C., 1970; McKee, J.E.,

and Wolf, H.W., "Water Quality Criteria," Second Edition, California State Water Quality Control Board, Publication No. 3-A, 1963; and "Diagnosis and Improvement of Saline and Alkali Soils," Agriculture Handbook No. 60, U.S. Department of Agriculture, February, 1954, shall be used as a guide to determine problem levels unless local conditions make these values inappropriate.

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

(i) "Quality Criteria for Water", U.S. Environmental Protection Agency, Washington, D.C., (U.S. EPA ~~Red~~ Gold Book), July, ~~1976~~ 1986;

(ii) Hem, John D., "Study and Interpretation of the Chemical Characteristics of Natural Water," Second Edition, USGS Water Supply Paper 1473, USGPO, Washington, D.C., 1970;

(iii) McKee, J.E., and Wolf, H.W., "Water Quality Criteria," Second Edition, California State Water Quality Control Board, Publication No. 3-A, 1963; and

(iv) "Diagnosis and Improvement of Saline and Alkali Soils," Agriculture Handbook No. 60, U.S. Department of Agriculture, February, 1954.

(b) ~~, which are government~~ These publications set~~ting~~ forth standards and criteria for ground water quality. Copies of ~~"Quality Criteria for Water", U.S. Environmental Protection Agency, Washington, D.C., (EPA Red Book), July, 1976; Hem, John D., "Study and Interpretation of the Chemical Characteristics of Natural Water," Second Edition, USGS Water Supply Paper 1473, USGPO, Washington, D.C., 1970; McKee, J.E., and Wolf, H.W., "Water Quality Criteria," Second Edition, California State Water Quality Control Board, Publication No. 3-A, 1963; and "Diagnosis and Improvement of Saline and Alkali Soils," Agriculture Handbook No. 60, U.S. Department of Agriculture, February, 1954,~~ the publications listed in (i)-(iv) above may be obtained from the Water Quality Bureau, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620.

AUTH: 75-5-301 MCA; IMP: 75-5-301, MCA

16.20.1010 MIXING ZONE (1) Discharges of pollutants to ground waters may be ~~entitled to~~ granted a mixing zone by the department, provided the mixing zone is specifically identified and conforms with the requirements and procedures of department circular WQB-8.

(2) The board hereby adopts and incorporates by reference department circular WQB-8, entitled "Montana Mixing Zone Requirements" (January, 1994), which establishes requirements and procedures for the granting or denying of mixing zones by the department.

~~(1) The areal and vertical extent of the mixing zone will be established by the department to prevent adverse effects on existing or reasonably anticipated beneficial uses. The size of the mixing zone will generally not extend beyond the property boundaries of the operator of the source.~~

~~(2) The burden will be on the applicant to show, based on~~

~~best professional judgment, that beneficial uses of ground water will not be adversely affected by the allowance of a mixing zone, and that the ground water standards established in this subchapter will not be violated beyond the boundaries of the mixing zone.~~

~~(3) If local geology, soils, hydrology, ground water use, nature of the discharge or other factors indicate that beneficial uses cannot otherwise be protected, no mixing zone will be allowed.~~

~~(4) For the purposes of this rule, only those beneficial uses need be protected which are:~~

~~(a) not owned by the applicant; or~~

~~(b) owned by the applicant but are unrelated to the operations for which a MGWPCS permit is being requested.~~

AUTH: 75-5-301, MCA; IMP: 75-5-301, MCA

16.20.1011 NONDEGRADATION (1) Any ground water whose existing quality is higher than the established ground water quality standards for its classification must be maintained at that high quality in accordance with 75-5-303, MCA, and ARM Title 16, Chapter 20, subchapter 7. ~~, unless it has been affirmatively demonstrated to the board that a change is justifiable as a result of necessary economic or social development and will not preclude present or anticipated use of such waters.~~

~~(2) Except as provided in section (3) of this rule, "degradation" means that as a result of any source discharging pollutants to ground waters, the concentration, outside of applicable mixing zones, of a pollutant for which maximum contaminant levels are established in section (4) of ARM 16.20.1003 has become worse, or that the concentration of other pollutants, outside of mixing zones, has become worse and will adversely affect existing beneficial uses or beneficial uses reasonably expected to occur in the future.~~

~~(3) Changes in ground water quality, whether or not applicable ground water quality standards for dissolved substances are violated, resulting from nonpoint source pollutants from lands or operations where all reasonable land, soil and water conservation practices have been applied do not constitute degradation.~~

AUTH: 75-5-301, 75-5-303, MCA; IMP: 75-5-303, MCA

3. The proposed amendment of portions of ARM 16.20.1003 is to update references to EPA publications in the Montana Groundwater Pollution Control System rules by deleting references to outdated water quality criteria and by incorporating EPA's updated version. In addition, the proposed amendments incorporate new EPA publications regarding testing procedures for chemical analysis of water and wastes. The amendments are necessary to incorporate the most up-to-date federal standards and thereby enable the department to retain primary responsibility for enforcement of the federal Clean Water Act within Montana.

The proposed amendments of ARM 16.20.1010 establish procedures and requirements for decisions by the department

regarding the application of mixing zones and is undertaken in response to actions taken by the 1993 Legislature (Senate Bill 401). The deletion of portions of the rule delete sections that are no longer consistent with the new law.

The proposed amendment of ARM 16.20.1011 deletes portions of the rule that are no longer consistent with Senate Bill 401 and adds language that references the requirements of the new law and implementing regulations.

4. Interested persons may submit their data, views, or arguments concerning the proposed amendments, either orally or in writing, at the hearing. Written data, views, or arguments must be received by Yolanda Fitzsimmons, Board of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620, no later than 5:00 p.m., March 18, 1993.

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

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

By William C Gate
ROBERT J. ROBINSON, Director

Certified to the Secretary of State January 31, 1994.

Reviewed by:

Eleanor Parker, DHES Attorney

BEFORE THE OFFICE OF THE WORKERS' COMPENSATION JUDGE
OF THE STATE OF MONTANA

In the matter of the amendment of procedural rules.	))))	NOTICE OF PROPOSED AMENDMENT OF RULES ARM 24.5.322, 24.5.323, 24.5.324, 24.5.325, 24.5.331, 24.5.340, 24.5.346, 24.5.350 AND 24.5.351 NO PUBLIC HEARING CONTEMPLATED.

TO: All Interested Persons.

1. On March 12, 1994, the Office of the Workers' Compensation Judge proposes to amend procedural rules of the Court.

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

24.5.322 DEPOSITIONS (1) Any party may take the testimony of any person, including a party, by deposition upon oral examination after the petition has been ~~filed~~ served. Leave of court, granted with or without notice, must be obtained only if the ~~claimant~~ petitioner seeks to take a deposition prior to the expiration of ~~twenty-three~~ 20 days from the date of ~~filing~~ service of the petition. The taking of a post-trial deposition requires leave of court. The attendance of witnesses may be compelled by subpoena as provided by ARM 24.5.331.

(2) Language remains the same.

~~(3) If a party shows that, when he was served with notice under subsection (2) of this rule, he was unable through the exercise of diligence to obtain counsel to represent him at the taking of the deposition, the deposition may not be used against him.~~

(~~4~~3) Language remains the same.

(~~5~~4) Examination and cross-examination of witnesses may proceed as permitted at the trial. The officer before whom the deposition is to be taken shall put the witness on oath and shall personally, or by someone acting under her/his direction and in her/his presence, record the testimony of the witness. The testimony shall be ~~taken~~ stenographically ~~or~~ recorded ~~by any other reliable means.~~ unless otherwise ordered by the court. If requested by one of the parties, the testimony shall be transcribed.

(~~6~~5) Unless otherwise agreed, all objections must be made at the time of taking the deposition and be included within the transcript of the deposition. Evidence objected to shall be taken subject to the objections. Any ~~o~~objections~~, and objections~~ to evidence made at the time of the deposition ~~must be presented to the court at the time of trial or~~ must be briefed in the parties' proposed findings of fact and conclusions of law. Failure to do so will be deemed a withdrawal of the objection.

(~~7~~6) Language remains the same.

(~~8~~7) When the testimony is fully transcribed, the deposition shall be submitted to the witness for examination and shall be read to or by the witness ~~him~~. Any changes in form or substance which the witness desires to make shall be entered upon the deposition, which shall then be signed by the witness under oath, unless the parties and the witness waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness within ten days of its submission to her/him, the officer shall sign it and state on the record the reason, if any, that the deposition has not been signed and it may then be used as fully as though signed.

(~~9~~8) Language remains the same.

(~~10~~9) Language remains the same.

(10) Any party participating in a deposition may make a simultaneous videotape recording of the deposition. A party who intends to videotape a deposition shall in the notice of deposition notify all parties of her/his intention. A copy of the videotaped deposition must be provided to all parties. If any party proposes to offer the videotaped deposition for the court's consideration, that party shall provide a copy to the court. Any videotaped deposition provided to the court shall be in VHS format and shall be labeled with the name of the case and the name or names of all witnesses whose depositions are contained on the videotape. Each videotaped deposition filed with the court shall be accompanied by a transcript prepared by the court reporter who was present at the deposition.

(11) A party may take a deposition upon written questions. Reasonable notice of the name and address of the person who is to answer the questions and the name or descriptive title and address of the officer before whom the deposition is to be taken shall be given opposing parties. Within 10 days after the notice and written questions are served, a party may serve cross questions upon all other parties. Thereafter, within 10 days a party may serve redirect questions. Recross questions must be served upon all other parties within 5 days of the service of the redirect questions.

AUTH: Sec. 2-4-201, MCA IMP: Sec. 2-4-201, 39-71-2901, MCA

24.5.323 INTERROGATORIES (1) A party may serve upon an adverse party, with the petition or at any time after the ~~filing~~ service of a petition, written interrogatories to be answered by the party served. Where a party wishes to serve interrogatories with the petition, the party shall furnish sufficient copies to the court for service with the petition. The answers shall be signed by the person making them, and the party upon whom the interrogatories have been served shall serve a copy of the answers on the party submitting the interrogatories within 20 days after the service of the interrogatories, unless the court lengthens or shortens the time. In no event shall answers be due in less than 30 days from the ~~filing~~ service of the petition. ~~A notice that interrogatories and/or answers to interrogatories have been served, must be filed with the court.~~

(2) Interrogatories and answers thereto shall not be ~~routinely~~ filed except by leave of ~~with~~ the court. When any

motion is filed making reference to ~~interrogatories or~~ interrogatory answers, the party filing the motion shall submit with the motion the relevant interrogatories and interrogatory answers to which reference is made. ~~All interrogatory answers and other discovery responses may be filed at the time of trial at either party's request.~~ Answers to interrogatories may be used at trial to the extent allowed by the Mont. R. Evid. and the Mont. R. Civ. P.

(3) through (5) Language remains the same.

(6) An interrogatory is not objectionable merely because it is phrased in the form of a request for admission.

AUTH: Sec. 2-4-201, MCA IMP: Sec. 2-4-201, 39-71-2901, MCA

24.5.324 REQUESTS FOR ~~TO~~ PRODUCTION (1) A party may serve upon an adverse party with the petition or at any time after the ~~filing~~ service of a petition a request:

(a) to produce and permit the party making the request, or her/his agent, to inspect and copy any designated documents or records, or to copy, test, or sample any tangible things, which may be relevant and which are in the possession, custody or control of the party upon whom the request is served; or

(b) Language remains the same.

(2) Requests for production and answers thereto shall not be filed except by leave of the court. When a motion is filed making reference to a request for production, the party filing the motion shall submit with that motion, the request for production, the response thereto and the documents produced pursuant to the response. Requests for production and answers thereto may be used at trial to the extent allowed by the Mont. R. Evid. and the Mont. R. Civ. P.

(~~2~~3) The party upon whom ~~the~~ a request is served shall serve a written response within ~~twenty~~ 20 days after service of the request. The court may allow a longer or shorter time. In no event shall a response be due in less than ~~thirty~~ 30 days from the ~~filing~~ service of the petition. The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for objection shall be stated. For a partial objection, the part shall be specified.

(~~3~~4) If the request is for production of the file of a party and objection is made to such production on the grounds of privilege or work product, the objecting party shall produce all documents other than those specific documents which are subject to objection. Where the objection is only to part of a document, the document shall be produced with the objected portions deleted. The objecting party shall also provide in its response a list of documents which are subject to objections, specifically identifying:

(a) the type of document;

(b) the number of pages of the document;

(c) the general subject matter of the document;

(d) the date of the document;

(e) where the document is a communication, the author of the document and her/his address and the relationship of the author and the addressee;

(f) whether the objection extends to the entire document or only to portions of the document; and,

(g) the specific privilege, including work product, which is being claimed as to each document.

(5) Where the objecting party asserts that this minimal information would encroach upon the attorney-client privilege or the work product doctrine, the party must state how disclosure of the information would violate the privilege or doctrine.

(6) ~~t~~The objection will be ruled on only ~~after an in camera inspection of such file upon the following conditions:~~ upon the filing of a motion to compel, at which time the following procedure shall apply:

(a) along with its answer brief, counsel for the objecting party shall ~~number each document in the file~~ furnish the court with a copy of its original response to the request for production and the original or a copy of all documents which are identified in the motion to compel;

~~(b) counsel for the objecting party shall identify all documents he will concede are not privileged and further classify them on the basis of whether they are relevant or irrelevant, and if objected to on that basis;~~

~~(c) counsel for the objecting party shall classify all the remaining documents on the basis of whether each is privileged under the attorney-client privilege, the work product rule, or both;~~

~~(d) counsel for the objecting party shall support his classification of the documents he asserts are privileged with special emphasis on why material purportedly within the ordinary, as opposed to opinion, work product rule is either:~~

~~(i) not substantially needed by the opposing party; or~~

~~(ii) if substantially needed by the opposing party, is material he can obtain without undue hardship by other means.~~

(b) where only parts of the document are subject to an objection, counsel for the objecting party shall identify those parts;

(c) the court will review the documents in camera and sustain or overrule each objection.

(~~4~~7) If the request is intended to obtain production of ~~medical records, the party to whom it is directed may,~~ documents which are not in the adverse party's possession but are within her/his custody or control, unless otherwise ordered by the court, the adverse party may in lieu of providing the documents, provide an authorization or a release as necessary to obtain such ~~medical records~~ documents from all persons or entities physically possessing the documents.

AUTH: Sec. 2-4-201, MCA IMP: Sec. 2-4-201, 39-71-2901, MCA

24.5.325 LIMITING DISCOVERY (1) ~~The frequency or extent of use of the discovery methods set forth in ARM 24.5.322, ARM~~

~~24.5.323 and ARM 24.5.324 may be limited by the court if it determines that:~~

~~(a) the discovery sought is unreasonably cumulative or duplicative, or obtainable from some other source that is either more convenient, less burdensome, or less expensive;~~

~~(b) the party seeking discovery has had ample opportunity through previous discovery to obtain the information sought;~~

~~(c) the discovery is unduly burdensome or expensive, given the needs of the case, the amount in controversy, the parties' available resources, and the values at stake in the case. The court may act upon its own initiative or pursuant to a motion of either party~~. Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the court may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(a) that the discovery not be had;

(b) that the discovery may be had only on specified terms and conditions, including a designation of the time or place;

(c) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery;

(d) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters;

(e) that discovery be conducted with no one present except persons designated by the court;

(f) that a deposition after being sealed be opened only by order of the court;

(g) that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way;

(h) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court.

(2) If the motion for a protective order is denied in whole or in part, the court may, on such terms and conditions as are just, order that any party or person provide or permit discovery.

AUTH: Sec. 2-4-201, MCA IMP: Sec. 2-4-201, 39-71-2901, MCA

24.5.331 SUBPOENA (1) Every subpoena shall be issued by the clerk under the seal of the court, shall state the name of the court and the title of the action, and shall command each person to whom it is directed to attend and give testimony at a time and place therein specified. The clerk shall issue a subpoena, or a subpoena for the production of documentary evidence~~,~~. Unless otherwise ordered by the court, subpoenas shall be issued for the limited purposes of taking a duly noticed deposition or attendance of a witness at trial, signed and sealed but otherwise in blank, to a party requesting it, who shall fill it in before service.

(2) Language remains the same.

(3) A subpoena may be served by any person who is not a party and is not less than eighteen years of age. Service is

made by exhibiting the original and delivering a true copy to the witness personally, giving or offering to her/him at the same time, if demanded ~~by him~~, the fees to which s/he is entitled for travel to and from the place designated, and one day's attendance there. The service must be made so as to allow the witness a reasonable time for preparation and travel to the place of attendance.

(4) Language remains the same.

~~(5) At the request of any party subpoenas for attendance at a hearing or trial shall be issued as provided by subsection (1) of this rule.~~

(65) Failure by any person without adequate excuse to obey a subpoena served upon her/him may be deemed a contempt of the court.

AUTH: Sec. 2-4-201, MCA IMP: Sec. 2-4-201, 39-71-2901, MCA

24.5.340 MASTERS AND EXAMINERS--PROCEDURE--RECOMMENDATIONS FOR BENCH ORDERS (1) Language remains the same.

(2) Masters will be appointed and serve pursuant to Rule 53, M.R.Civ.P. ~~(1979)~~. In the event that a master is appointed, the procedures set forth in Rule 53 shall be utilized insofar as they relate to a trial without a jury.

(3) Examiners will be appointed and serve pursuant to 2-4-611, MCA ~~(1979)~~. However, because of the overriding concern in a workers' compensation case to render a prompt decision, especially in matters concerning the payment of a workers' biweekly compensation benefits, and because of the time delays inherent in the procedures set forth in 2-4-621 and 2-4-622, MCA ~~(1979)~~, such provisions are not appropriate in workers' compensation court proceedings within the meaning of 39-71-2903, MCA ~~(1979)~~. In lieu thereof, the court will utilize the following procedure in cases where a hearing examiner has been appointed.

(a) Following submission of the case, the hearing examiner will submit her/his proposed findings of fact and conclusions of law to the judge. The proposed decision of the hearing examiner will not be served upon the parties until after the judge has made ~~his~~ a ruling thereon. The judge will make ~~his~~ a decision as to whether to adopt the proposed findings of fact and conclusions of law of the hearing examiner based solely upon the record and pleadings made before the hearing examiner. Findings of fact made by a hearing examiner will not be rejected or revised unless the court first determines from a review of the complete record and states with particularity in the order that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law. Conclusions of law and interpretations of statutes or rules written by a hearing examiner may be reconsidered or altered by the court upon its own motion. Subject to the provisions of this subsection, the court will enter its order and judgment adopting the decision of the hearing examiner.

(b) Any party aggrieved by a decision of a hearing examiner adopted pursuant to this rule, may obtain review thereof by filing a motion pursuant to ARM 24.5.344. Upon the

filing of such a motion by either party, the court will, in its discretion, liberally grant opportunity for oral argument as to whether the decision should be amended, additional evidence should be heard, or a new trial should be granted.

(4) An examiner may, during or at the conclusion of a trial or a pretrial conference, advise the parties that an interlocutory order for payment of benefits or other relief to a party appears to be justified and such an order will be forthwith submitted for approval by the judge.

AUTH: Sec. 2-4-201, MCA IMP: Sec. 2-4-201, 39-71-2901, MCA

24.5.346 STAY OF JUDGMENT PENDING APPEAL (1) The party appealing a judgment of the workers' compensation judge may request a stay of execution of the judgment or order pending resolution of the appeal. A request for new trial and/or request for amendment to findings of fact and conclusions of law shall be deemed an automatic stay until the request is ruled upon. If the parties stipulate that no bond shall be required, or if it is shown to the satisfaction of the court that adequate security exists for payment of the judgment, the court may waive the bond requirement.

~~(2) The appellant may request a stay by presenting a supersedeas bond to the workers' compensation judge and obtaining his approval of the bond. The bond must have two sufficient sureties or a corporate surety as authorized by law and must otherwise comply with the requirements of the Montana Rules of Appellant Procedure.~~

~~(3) If it is shown to the satisfaction of the court by affidavit or certification of the department of labor and industry that adequate security exists for payment of the judgment, such as through bonds or other security deposits by the insurer with the department of labor and industry pursuant to sections 39-71-2106 or 39-71-2206, MCA, or if the appellant is the state of Montana or an officer or agency or governmental subdivision thereof, the court will waive the bond requirement.~~

(42) Except as provided for herein, the procedure for requesting a stay and the procedure for posting a supersedeas bond will be the same as the procedure in Rule 7(a) and 7(b), respectively, of the Montana Rules of Appellate Procedure.

AUTH: Sec. 2-4-201, MCA IMP: Sec. 2-4-201, 39-71-2901, MCA

24.5.350 APPEALS TO WORKERS' COMPENSATION COURT UNDER TITLE 39, CHAPTERS 71 and 72 (1) An appeal from a final decision of the department of labor and industry under Title 39, chapters 71 and 72, MCA, shall be filed with the court or with the department by filing a notice of appeal which should include:

(a) the relief to which the appellant believes s/he is entitled;

(b) the grounds upon which the appellant contends s/he is entitled to that relief.

~~(2) Service deadlines for filing an appeal are as follows:~~

~~(a) from an order of determination following a rehabilitation panel evaluation, within ten working days of the final order;~~

~~(b) from an order regarding noncooperation with the rehabilitation provider, within ten working days of the department order;~~

~~(c) from all other proceedings within thirty days of service of the final order of the department of labor and industry.~~

(~~3~~2) Language remains the same.

(43) ~~Within ten days after the service of the petition, the department shall transmit to the court the original or a certified copy of the entire record of the proceedings under review.~~ Any party or the court may request a transcript of the proceeding. Upon receiving such request the department shall have 30 days in which to prepare and file the transcript, unless such time is shortened or extended by the court. The parties may, in the alternative, agree by written stipulation to other arrangements for transcribing the hearing. The appealing party shall be responsible for the cost of preparing the transcript unless otherwise ordered by the court.

(~~5~~4) Language remains the same.

(~~6~~5) Language remains the same.

(~~7~~6) Language remains the same.

AUTH: Sec. 2-4-201, MCA IMP: Sec. 2-4-201, 39-71-2901, MCA

24.5.351 DECLARATORY RULINGS (1) Where ~~T~~the court has jurisdiction it can ~~to~~ issue declaratory rulings ~~in genuine disputes arising under chapter 71, Title 39, MCA~~.

(2) Language remains the same.

AUTH: Sec. 2-4-201, MCA IMP: Sec. 2-4-201, 39-71-2901, MCA

2. The rationale for amending these rules is to place emphasis on the application of the Rules of Evidence; to clearly set forth deadlines; to specifically address procedures which must be followed in trial preparation; to clarify discovery procedure; to simplify procedures for obtaining a stay of judgment pending appeal; to clarify the subpoena process; to assure that the rule regarding declaratory rulings is as broad as the Court's jurisdiction to issue such rulings; and to give the court sufficient time to rule on pretrial motions. These changes were discussed and a consensus of the court's rules committee was obtained at a rules committee meeting. The rules are written as gender neutral.

3. Interested parties may submit their data, views or arguments concerning these changes in writing to Workers' Compensation Court, 1625 Eleventh Avenue, P.O. Box 537, Helena, MT 59601-0537 on or before March 10, 1994.

4. If a person who is directly affected by the proposed adoption wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to the Workers' Compensation Court, 1625 Eleventh Avenue, P.O. Box 537, Helena, MT 59601-0537, no later than March 10, 1994.

5. If the agency receives requests for a public hearing on the proposed rules from 25 persons or 10%, which ever is less, of the persons who are directly affected by the proposed rules, from the Administrative Code Committee of the legislature, or from a governmental subdivision or agency, or from another association not having less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be more than twenty-five.

MIKE McCARTER
JUDGE, WORKERS' COMPENSATION COURT

CLARICE V. BECK
RULE REVIEWER

CERTIFIED TO THE SECRETARY OF STATE: January 31, 1994
DATE

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

In the matter of the proposed adoption of rules related to implementation of education-based safety programs for workers' compensation purposes)	) NOTICE OF PUBLIC HEARING ON) THE PROPOSED ADOPTION OF) RULES I THROUGH IV) (SAFETY CULTURE ACT)

TO ALL INTERESTED PERSONS:

1. On March 7, 1994, at 10:00 a.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services building (north entrance), 111 North Sanders, Helena, Montana, to consider the adoption of new rules related to the implementation of education-based safety programs for workers' compensation purposes. The proposed new rules do not replace any existing administrative rules.

The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you request an accommodation, contact the Department by not later than 5:00 p.m., March 1, 1994, to advise us of the nature of the accommodation that you need. Please contact the Employment Relations Division, Attn: Ms. Jean Branscum, P.O. Box 1728, Helena, MT 59624-1728; telephone (406) 444-6401; TDD (406) 444-5549; fax (406) 444-4140.

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

RULE I PURPOSE (1) The Safety Culture Act enacted by the 1993 Montana state legislature encourages workers and employers to come together to create and implement a work place safety philosophy. It is the intent of the act to raise work place safety to a preeminent position in the minds of all Montana's workers and employers. Therefore, it is the responsibility and duty of employers to participate in the development and implementation of safety programs that will meet the specific needs of their work place; thereby establishing a safety culture that will help create a safe work environment for all future generations of Montanans.

(2) The purpose of these rules is to set forth requirements employers must meet to comply with the Safety Culture Act passed by the 1993 Montana legislature. These rules also offer employers guidelines for implementation of workplace safety programs to help reduce the incidence of occupational injury and illness by promoting safety in the workplace. Nothing in these rules relieves the employer from compliance with other industry or association standards or other legal requirements. AUTH: Sec. 39-71-1505, MCA IMP: Sec. 39-71-1505, MCA

RULE II DEFINITIONS (1) "Department" means the department of labor and industry.

(2) "Employee" means any person defined as an employee in the Workers' Compensation Act, section 39-71-118, MCA.

(3) "Employer" means any person or business entity defined as an employer in the Workers' Compensation Act, section 39-71-117, MCA.

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

RULE III EACH EMPLOYER TO HAVE EDUCATIONAL-BASED SAFETY PROGRAM (1) Every employer shall establish, implement and maintain an education - based training program which shall, at a minimum:

(a) provide each new employee with a general safety orientation containing information common to all employees and appropriate to the business operations, before they begin their regular job duties. The department recommends this orientation contain both oral and written instruction and include, but not be limited to information on:

(i) accident and hazard reporting procedures;

(ii) emergency procedures;

(iii) fire safety;

(iv) first aid;

(v) personal protective equipment; and

(vi) work site hazards;

(b) provide job or task-specific safety training appropriate for employees before they perform that job or task without direct supervision. The department recommends this training:

(i) include specific safety rules, procedures and hazards;

(ii) clearly identify the employee's responsibilities regarding safety in the workplace;

(iii) be conducted by personnel knowledgeable of the task being trained; and

(iv) be conducted:

(A) when the safety program is established;

(B) whenever employee job assignments change;

(C) whenever new substances, processes, procedures or equipment are introduced to the work place; and

(D) whenever a new hazard is identified;

(c) offer continuing regular refresher safety training. This training could be accomplished through periodic safety meetings or various other formats. The department recommends this training:

(i) be held as often as is appropriate, but at least annually; and

(ii) contain material to maintain and expand knowledge and awareness of safety issues in the workplace;

(d) provide a system for the employer and its employees to develop an awareness and appreciation of safety through tools such as:

(i) newsletters;

(ii) periodic safety meetings;

(iii) posters; and

(iv) safety incentive programs;

(e) provide periodic self-inspection for hazard assessment when the safety program is implemented, new worksites are established and thereafter as is appropriate to the business operations, but at least annually, which:

(i) identifies hazards and unsafe work practices or conditions;

(ii) identifies corrective actions needed; and

(iii) documents corrective action taken; and

(f) include documentation of performance of activities listed in (a) through (e) above. The documentation must be retained by the employer for three years. The documentation should include:

(i) the date, time, location and description of training, inspections and corrective actions; and

(ii) a list of the participants, i.e. inspectors, trainers, employees.

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

RULE IV EMPLOYERS WITH MORE THAN FIVE EMPLOYEES TO HAVE COMPREHENSIVE AND EFFECTIVE SAFETY PROGRAM (1) All employers having more than five employees must have a comprehensive and effective safety program. In making the determination of employment levels, the employer shall count all regular, temporary, leased and seasonal workers under the employer's direction and control, and shall base the number on peak employment. This comprehensive and effective safety program must include all of the mandatory elements contained in [Rule III] and must also include, but need not be limited to:

(a) policies and procedures that assign specific safety responsibilities and safety performance accountability. The department recommends these policies and procedures:

(i) include a statement of top management commitment to the safety program;

(ii) encourage and motivate employee involvement in the safety program;

(iii) define safety responsibilities for managers, safety personnel, supervisors and employees;

(iv) be reflected in job descriptions and performance evaluations, if they exist; and

(v) be communicated and accessible to all employees;

(b) safety committee(s) composed of employee and employer representatives that holds regularly scheduled meetings, at least quarterly. The committee(s) should be of sufficient size and number to provide for effective representation of the workforce. Employers with multiple workplaces may elect to have more than one committee. The department recommends the safety committee(s):

(i) includes in its membership representatives of employees and management, with management members not exceeding employee members;

(ii) includes in its membership appointed, elected and/or volunteer members;

(iii) documents committee activities, i.e. attendees,

subjects discussed; and

(iv) assists the employer and make recommendations for:

(A) assessing and controlling hazards;

(B) communicating with employees regarding safety committee activities;

(C) developing safety rules, policies and procedures;

(D) educating employees on safety-related topics;

(E) evaluating the safety program on a regular basis;

(F) inspecting the workplace;

(G) keeping job-specific training current;

(H) motivating employees to create a safety culture in the workplace;

(I) recommending safety training and awareness topics; and

(J) reviewing incidents of workplace accidents, injuries and illnesses; and

(c) procedures for reporting, investigating and taking corrective action on all work-related incidents, accidents, injuries, illnesses and known unsafe work conditions or practices. The department recommends these procedures be non-punitive and that they include, but need not be limited to:

(i) provisions for timely and effective reporting, investigating and for taking corrective action;

(ii) recommendations and follow-up for corrective action;

(iii) documentation;

(iv) signature requirements for reports, investigations and corrective action; and

(v) periodic evaluation of the procedure's effectiveness.

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

Rationale: The Department is required by section 39-71-1505, MCA, to adopt rules to implement mandatory safety programs required of all employers in Montana, regardless of the number of employees. The Department is also required by section 39-71-1505 to adopt rules that apply to employers that have more than five employees. Accordingly, these rules are reasonably necessary to implement the statutory mandates.

The Department has endeavored to balance the need to make certain components of safety programs mandatory with the practical concerns of a diverse Montana economy. To that end, the department has intentionally allowed some flexibility of interpretation and application in these rules, so that employers and their workers' compensation insurers can establish safety programs that are appropriate to the employer's and employee's needs and circumstances.

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

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

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

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

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

David A. Scott
Rule Reviewer

Laurie Ekanger, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State: January 31, 1994.

BEFORE THE BOARD OF NATURAL RESOURCES AND CONSERVATION
OF THE STATE OF MONTANA

In the matter of the proposed amendment and repeal of certain rules and the adoption of new rules pertaining to water reservations	)))))	NOTICE OF PUBLIC HEARING

TO: All Interested Persons.

1. On March 8, 1994 at 1:00 P.M. a public hearing will be held in the Director's Conference Room of the Lee Mecalf Building, the Department of Natural Resources and Conservation, 1520 East 6th Avenue, Helena, MT. to consider the amendment of rules 36.16.102, 36.16.103, 36.16.105B, 36.16.106, 36.16.107, 36.16.107A, 36.16.107B, 36.16.110, 36.16.112, 36.16.114, 36.16.117, 36.16.118, the repeal of 36.16.108 and 36.16.116 and adoption of new Rule I, II, III, and IV concerning water reservations under the Water Use Act.

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

"36.16.102 DEFINITIONS Unless the context requires otherwise, in these rules:

(1) remains the same.

(2) "Applicant" means the state or any political subdivision or agency thereof or the United States or any agency thereof that is ~~eligible~~ qualified to reserve water pursuant to 85-2-316 and 85-2-331, MCA.

(3) "Application for permit" means an application for beneficial water use permit, form no. 600.

~~(3)~~(4) remains the same but renumbered.

~~(4)~~(5) remains the same but renumbered.

(6) "Board order" means an order issued by the Board granting, denying, modifying, subordinating, revoking, extending, changing, transferring, reallocating or otherwise amending a water reservation under 85-2-316 and 85-2-331, MCA.

(7) "Change" means to change the point of diversion, place of use, purpose of use or place of storage of a water reservation granted under 85-2-316 and 85-2-331, MCA.

~~(5)~~ through ~~(9)~~ remain the same but are renumbered (8) through (12).

(13) "Entity" means the state or any political subdivision or agency thereof or the United States or any agency thereof that is qualified to reserve water pursuant to 85-2-316 and 85-2-331, MCA.

~~(10)~~ through ~~(16)~~ remain the same but are renumbered (14) through (20).

(21) "Modify" means to alter a term or condition of the order of the board establishing water reservations issued pursuant to 85-2-316 and 85-2-331, MCA.

~~(17)~~(22) remains the same but renumbered.

(23) "Objectives" means the purpose, the need, the amount, and the public interest of a water reservation granted

by the board.

~~(18)~~(24) remains the same but renumbered.

(25) "Periodic review" means the board review required to determine whether the objectives of a reservation are being met.

~~(19)~~(26) remains the same but renumbered.

~~(20)~~(27) remains the same but renumbered.

(28) "Qualified reservant" means any entity to which a reservation may be reallocated or transferred.

~~(21)~~(29) remains the same but renumbered.

(30) "Reallocate" means to convey an instream flow reservation or a portion of an instream flow reservation from a reservant to another qualified reservant.

(31) "Reasonable diligence" means a fair, honest, and proper degree of activity or attention under the circumstances to perfect the reservation, as would be expected from a person exercising ordinary prudence.

~~(22)~~(32) "Reservant" means an ~~applicant~~ entity that has been granted a reservation of water pursuant to 85-2-316 and 85-2-331, MCA.

~~(23)~~(33) remains the same but renumbered.

~~(24)~~(34) remains the same but renumbered.

(35) "Revoke" means to repeal all or a portion of a water reservation.

(36) "Subordinate" means to place a water reservation with a senior priority date to a permit in a lower position than the permit in the prior appropriation system of "first in time-first in right".

(37) "Substantial accordance" means compliance with the terms of a reserved water use authorization, allowing for minor variations from those terms if the variation will not cause injury to other appropriators or otherwise does not warrant changing the department's water use records. A variation may reduce the authorized rate, volume or acres irrigated but in no way can they be increased under the reserved water use authorization.

(38) "Transfer" means for a reservant to voluntarily relinquish a reservation or part thereof, and convey it to a qualified reservant.

~~(25)~~(39) remains the same but renumbered.

~~(26)~~(40) remains the same but renumbered.

AUTH: 85-2-113, MCA; IMP: 85-2-316, 331, 605, MCA

36.16.103 FORMS (1) remains the same.

(a) Form No. 600, Application for Beneficial Water Use Permit.

(b) Form No. 606, Application for Change of Appropriation Water Right.

(c) Form No. 608, Water Right Transfer Certificate.

~~(a)~~(d) remains the same but is renumbered.

~~(b)~~(e) remains the same but is renumbered.

~~(c)~~(f) remains the same but is renumbered.

AUTH: 85-2-113, MCA; IMP: 85-2-316, 331, 605, MCA

36.16.105B APPLICATION CONTENT - DETERMINATION OF AMOUNT

(1) remains the same.

(a) remains the same.

(i) through (iv) remain the same.

(b) The amount of water for future full-service and supplemental irrigation uses must be determined on the basis of monthly crop irrigation requirements, conveyance and on-farm delivery system efficiencies, and the acreage of irrigable land to be served. Irrigable lands shall include those lands as defined in ARM 36.16.102 (~~15~~)18 for which landowners have expressed an interest in developing new or supplemental irrigation. Interest may be determined from a survey of all potential irrigators in the area that would be affected by the proposed reservation, or by other methods acceptable to the department. Lands for which no survey of landowners was taken or no response to the survey or a negative response to the survey was received may be included in an application only if an explanation of how landowner interest in developing irrigation on these lands was determined is included in the application.

(c) through (f) remain the same.

(2) remains the same.

(a) through (c) remain the same.

AUTH: 85-2-113, MCA; IMP: 85-2-316, 331, 605, MCA

36.16.106 APPLICATION CONTENT - MANAGEMENT PLANS

(1) remains the same.

(a) through (f) remain the same.

(2) A management plan shall accompany all reservation applications for instream use(s), as defined in ARM 36.16.102 ~~(14)~~(19), and shall include an explanation of how reserved instream flows will be protected from future depletions by later priority water users.

AUTH: 85-2-113, MCA; IMP: 85-2-316, 331, 605, MCA

36.16.107 PROCESSING APPLICATIONS AND MONITORING RESERVATIONS - DEPARTMENT RESPONSIBILITIES

(1) through (6) remain the same.

(7) The department shall review all change and transfer proceedings required in ARM 36.16.118 and ~~recommend~~ provide information and options to the board ~~any~~ for action ~~needed~~ on changes or transfers.

AUTH: 85-2-113, MCA; IMP: 85-2-316, 331, 605, MCA

36.16.107A ACTION ON APPLICATIONS AND MONITORING RESERVATIONS - BOARD RESPONSIBILITIES

(1) and (2) remain the same.

(3) When several applications are being considered concurrently within the same drainage basin, the board shall establish the priority of granted reservations by the chronological order in which the reservations are adopted pursuant to 85-2-316(9), MCA, or by the order of the board for reservations within the Missouri Basin or Little Missouri Basin pursuant to 85-2-331, MCA. Such priorities will be

established only after a consideration of the positive as well as detrimental effects of establishing such priorities on applicants.

(4) The board may subordinate a water reservation to a permit issued if the permit application was accepted by the department before the date of the board order granting the reservation. The board may provide for subordination only if it finds that such permits would not substantially interfere with the purpose of a reservation. The board may consider subordination after issuing its order reserving water. The hearing convened in the matter of objections to the reservations may be separated into two proceedings to consider the establishment of the water reservations and the subordination of those reservations independently. A request to subordinate a water reservation to a permit may be initiated by the Board, the department, or by petition of an affected permittee. The record of evidence and testimony presented at the hearing establishing the reservations will be considered part of the record in the hearing on subordination. Additional evidence and testimony limited to the matter of subordination may be presented. The person seeking the subordination has the burden to prove by preponderance of evidence the criteria in 85-2-316(9)(d), MCA. Notice of the hearing shall be provided to all affected permittees, permit applicants, reservants, and all parties who participated in the hearing on the matter of establishing the reservations. A separate final order may then be issued by the board on the matter of subordination.

(5) A permit does not substantially interfere with the purpose of a reservation if the reservation is not significantly diminished in value as defined in ARM 36.16.105A through 36.16.105C from water use under the permit.

(6) Substantial interference with the purpose of a reservation may result from water use under an individual permit or from the cumulative effect of water use under two or more permits. The board may subordinate a reservation to water use under only those permits, in order of priority, which cumulatively would not result in substantial interference.

(7) If a reservation is subordinated to one or more permits, and that reservation is senior in priority to one or more reservations in the same water course, all junior reservations granted pursuant to 85-2-331, MCA, shall also be subordinate to the same permit or permits.

~~(4)~~(8) The board shall periodically, but at least once every 10 years, review reservations pursuant to 85-2-316 (10), MCA, and RULE II. ~~It shall include as part of the review a determination of whether the steps presented in the reservant's management plan, and conditions in the board order are being fulfilled.~~ Where the objectives of the reservation are not being met, the board may extend the term of, revoke, or modify the reservation after the reservant has been granted an opportunity to be heard by the board.

~~(5)~~(9) remains the same but is renumbered.

AUTH: 85-2-113, MCA; IMP: 85-2-316, 331, 605, MCA

36.16.107B ACTION ON APPLICATIONS - BOARD DECISION CRITERIA (1) For the board to adopt an order reserving water, it must find that:

(a) remains the same.

(b) the purpose of the reservation is a beneficial use as defined in ARM 36.16.102~~(3)~~(4).

(2) through (8) remain the same.

AUTH: 85-2-113, MCA; IMP: 85-2-316, 331, 605, MCA

36.16.110 WATER USE UNDER A RESERVATION - RESERVANT RESPONSIBILITIES

(1) remains the same.

(2) A conservation district reservant shall set a deadline by which an individual holding a reserved water use authorization shall file a certified statement notifying the district the project is complete pursuant to 85-2-316(8), MCA. Upon receipt of the certified statement the district shall determine whether the project is in substantial accordance with the water use authorization. The department may assist the district in conducting an inspection if necessary to make this determination within staffing and budgeting limitations.

~~(2)~~(3) A reservant must file an annual report with the department that summarizes the progress made in complying with provisions of the board order reserving water, except where otherwise required by board order.

~~(3)~~(4) remains the same but is renumbered.

(5) The reservant shall adhere to all filing requirements for the periodic review of objectives under Rule II.

AUTH: 85-2-113, MCA; IMP: 85-2-316, 331, 605, MCA

36.16.112 INDIVIDUAL USERS (1) The act does not provide for the reservation of water by individuals and no reservation right may be transferred in whole or in part to persons not qualified to reserve water ~~private individuals or entities~~. However, an applicant's request for a reservation is appropriate if it is based on behalf of the needs of individual users.

AUTH: 85-2-113, MCA; IMP: 85-2-316, 331, 605, MCA

36.16.114 FEES AND COSTS

(1) and (2) remain the same.

(a) through (d) remain the same.

(3) When the board provides notice of a proposed board action on an existing water reservation, by first class mail and publication in a newspaper of general circulation, the reservant or applicant shall be required to pay the notice costs.

AUTH: 85-2-113, MCA; IMP: 85-2-316, 331, 605, MCA

36.16.117 APPLICATIONS IN MISSOURI RIVER BASIN AND THE LITTLE MISSOURI RIVER BASIN

(1) Applicants seeking a reservation of water for instream purposes or diversionary uses with points of diversion in the Missouri River basin above Fort Peck Dam pursuant to 85-2-331, MCA, shall submit applications on or before July 1, 1991. The board shall make a final determination on all applications for water reservations above Fort Peck Dam on or before July 1, 1992. Applications for the reservation of water for instream purposes or diversionary uses with points of diversion below Fort Peck Dam and the Little Missouri River basin must be submitted on or before July 1, 1991. The board shall make a final determination on applications for water reservations below Fort Peck Dam on or before December 31, 19934. For the purposes of this rule, the Missouri River basin below Fort Peck Dam includes all drainages that would enter the Missouri River downstream of Fort Peck Dam, including the Milk River basin, the Little Missouri River basin, and any groundwater therein. An application to reserve water below Fort Peck Dam may be filed as an amendment to an application to reserve water above Fort Peck Dam, if filed by the same applicant for the same purpose.

(2) The priority date of Missouri reservations applied for and granted in accordance with the deadlines provided in (1) is July 1, 1985 in the Missouri River basin and July 1, 1989 in the Little Missouri basin. Applications for water reservations in the basins submitted after the deadlines provided in (1) will be accepted, but the priority date shall be the date of filing with the department a notice of intention to apply for a water reservation ~~the order reserving water is adopted by the board~~. Separate environmental impact statements and board hearings may be required for such late applications.

(3) The use of reserved water with a July 1, 1985 priority date may, at the discretion of the board, be subordinated to the use of water under permits with priority dates after July 1, 1985 which are issued before the date of the board order granting such reservations. The use of reserved water with a July 1, 1989 priority date may, at the discretion of the board, be subordinated to the use of water under permits with priority dates after July 1, 1989 which are issued before the date of the board order granting such reservations. The board may provide for subordination only if it finds that such permits would not substantially interfere with the purpose of a reservation. The board may consider subordination after issuing its order reserving water. The hearing convened in the matter of objections to the reservations may be ~~bifurcated to separately~~ separated into two proceedings to consider the establishment of the water reservations and the subordination of those reservations independently.

(4) If, after issuing a final order reserving water in the Missouri basin, the board decides to consider the subordination of the established reservations, the department

shall, if necessary, prepare a supplement to the environmental impact statement prepared for the decision to establish the water reservations. This supplement, if necessary, shall address the matter of subordination, including an evaluation of the effects of subordination to the reservants. A request to subordinate a water reservation to a permit may be initiated by the Board, the department, or by petition of an affected permittee. The record of evidence and testimony presented at the hearing establishing the reservations will be considered part of the record in the hearing on subordination. Additional evidence and testimony limited to the matter of subordination may be presented. The person seeking the subordination has the burden to prove by preponderance of evidence the criteria in 85-2-316(9)(d), MCA. Notice of the hearing shall be provided to all affected permittees, permit applicants, reservants, and all parties who participated in the hearing on the matter of establishing the reservations. A separate final order may then be issued by the board on the matter of subordination.

(5) A permit does not substantially interfere with the purpose of a reservation if the reservation is not significantly diminished in value as defined in ARM 36.16.105A through 36.16.105C ~~by any reduction in amount or frequency of flows resulting~~ from water use under the permit.

(6) through (7) remain the same.

AUTH: 85-2-113, MCA; IMP: 85-2-316, 331, MCA

36.16.118 CHANGES AND TRANSFERS (1) Points of diversion, ~~and~~ places of use, places of storage, and purposes of use not indicated in the original public notice of the reservation, and otherwise not the subject of proceedings authorized in 85-2-316(10) and (11), MCA, may be included in the reservation at a later date if approved by the board.

(2) An application for change of appropriation water right shall be filed with the department pursuant to 85-2-402, MCA, by the reservant or other entity.

(3) An application for change shall include the information required under ARM 36.16.104 through 36.16.106.

(4) The department shall process the application for change pursuant to 85-2-402, MCA. If the department approves the change it shall give notice to the board on action taken on the application.

(5) The board shall set a date for hearing and direct the applicant to establish at a show cause hearing conducted under the contested case provisions of the Administrative Procedure Act, that the reservation criteria will be met under the approved change. The board shall provide notice of the hearing date by first class mail on persons who according to the department's notice list as determined under RULE IV have an interest in the reservation and shall publish such notice at least once in a newspaper of general circulation in each county as determined by the board within the basin 60 days prior to board action.

(6) A person wishing to intervene in the show cause

hearing must file a notice with the board 30 days prior to board action.

(7) The applicant shall pay for notice and publication of hearing under this rule as required under ARM 36.16.114.

(8) Any water reservation authorized to be changed shall maintain the priority date of the original water reservation.

~~(2)~~(9) A reservant may voluntarily transfer all or any portion of its reservation to a transferee without loss of priority ~~if the transferee is qualified to reserve water pursuant to 85-2-316(1), MCA and~~ if the transfer is approved by the board.

(10) A water right transfer certificate shall be filed by the reservant with the department pursuant to 85-2-424, MCA.

(11) The transfer certificate shall include an affidavit from the entity receiving the water reservation that:

(a) the entity qualifies to reserve water under 85-2-316(1), MCA,

(b) the entity agrees to comply with the requirements of 85-2-316, MCA, and the conditions of the water reservation, and

(c) the entity can meet the objectives of the reservation as granted or will be able to meet the objectives under an authorized change in the water reservation.

(12) Transfers of water reservations which involve a change in the original reservations' criteria under 85-2-316(4), MCA, shall file an Application for Change of Appropriation Water Right according to subsections (2) through (8) above.

~~(3)~~(13) All decisions regarding changes and transfers shall reflect a consideration of the decision criteria listed in 85-2-316(4), MCA and ARM 36.16.107B.

AUTH: 85-2-113, MCA; IMP: 85-2-316, 331, 605, MCA

3. The following rules are proposed to be repealed:

36.16.108 RECORDING ORDER RESERVING WATERS (found on page 36-346.4 of the Administrative Rules of Montana)

AUTH: 85-2-113, MCA; IMP: 85-2-316, 331, 605, MCA

36.16.116 APPLICABILITY (found on page 36-346.6 of the Administrative Rules of Montana)

AUTH: 85-2-113, MCA; IMP: 85-2-316, 331, MCA

4. The proposed new rules provide as follows:

RULE I REALLOCATION OF INSTREAM RESERVATIONS (1) The board may reallocate a water reservation for instream flows, or a portion thereof, to a qualified reservant not more than once every five years.

(2) A qualified reservant shall apply to the board for a reallocation by filing a petition on a form prescribed by the board. The petition must include the information required under ARM 36.16.104 through 36.16.106 and the following:

(a) an analysis of the need for the reserved water showing that the need of the petitioner is greater than that identified by the original reservant for the instream flows, and

(b) an analysis showing that all or part of the reservation is not required for its purpose.

(3) Upon receipt of a petition the board shall notify the original reservant for instream flows that a petition for reallocation has been filed. The board may require the original reservant to submit appropriate information in accordance with ARM 36.16.105, 105A, 105B, 105C, such as whether the amount of water needed for the instream flow reservation has changed due to new or refined methodologies for determining flow needs. The board may require the reservant to submit revised estimates of instream flow needs based on these new or refined methodologies.

(4) The board shall set a date for hearing and direct the petitioner to establish at a show cause hearing that the reservation criteria under 85-2-316(4), MCA, the reallocation criteria under 85-2-316(11), MCA, and the requirements of this rule will be met under a reallocation of reserved water. The board shall provide notice by first class mail on persons who according to the department's notice list as determined under RULE IV have an interest in the reservation and shall publish such notice at least once in a newspaper of general circulation in each county as determined by the board within the basin 60 days prior to the hearing.

(5) A person wishing to intervene in the show cause hearing must file a notice with the board 30 days prior to board action.

(6) The petitioner for reallocation shall pay for notice and publication of hearing and proposed action under this rule as required under ARM 36.16.114.

(7) To reallocate an instream reservation the Board must find that all or part of the reservation is not required for its purpose and that the need for the reallocation has been shown by the petitioner to outweigh the need shown by the original reservant. In making such determinations, the board must follow the criteria defined under ARM 36.16.107B.

AUTH: 85-2-113, MCA; IMP: 85-2-316, 331, 605, MCA

RULE II BOARD PERIODIC REVIEW OF RESERVATION OBJECTIVES

(1) The board shall review water reservations at least once every 10 years to determine if the objectives of the reservation are being met.

(2) The board shall issue an order for the review including the information which must be submitted by the reservant and the deadline for its submittal.

(3) All reservants shall submit a report reviewing the objectives of the reservation and how they are being met, including but not limited to the following:

(a) a summary of the amount granted, allocated to date, any change in the amount required to satisfy the purpose and need of the reservation, and any change in the methodology

originally used to determine the amount. For instream flow reservants, if there are new or refined methodologies for quantifying instream flow amounts, the reservant is required to discuss the appropriateness and feasibility of reviewing the granted instream flows in light of the new or refined methodologies.

(b) whether the purpose remains the same as identified in the application and board order,

(c) whether the need still exists as identified in the application and board order,

(d) whether the amount is still appropriate in accordance with the application and board order, and

(e) whether the reservation remains in the public interest as identified in the application and board order.

(4) All reservants shall provide information evidencing compliance with the board's order granting the reservation. The information shall include a list of all compliance documents such as general plans, detailed plans, annual and biennial reports and their submittal dates.

(5) If a diversionary reservation is not in compliance with the development schedule identified in the application, general development plan or management plan under ARM 36.16.106, what factors have deterred the progress towards perfecting the water reservation and what actions will the reservant take to insure perfection of the reservation.

(6) Instream use reservations shall include information showing how they are protecting the reservation from adverse affect by junior water users and where appropriate, that they are in compliance with their management plan under ARM 36.16.106 and any other conditions required by the board.

(7) The board shall consider the following when determining whether the objectives are being met:

(a) all information above and as ordered by the board,

(b) the period of time which has elapsed since the date of the order granting the reservations and whether the reservant's actions reflect reasonable diligence in the perfection of the water reservation,

(c) new or changed circumstances, information or values, and

(d) any other considerations set out in the board order granting the reservation.

(8) Reasonable diligence is demonstrated by actions of the reservant in investment of time and money in the perfection of the reservation, including but not limited to:

(a) partial development of water reservation,

(b) completion of additional economic analyses, project design plans, or environmental assessments.

(9) If the board determines that the objectives of a reservation are not being met it shall set a date for hearing and require the reservant to show cause why the proposed board action should not be taken. The board shall provide notice of the proposed action by first class mail on persons who according to the department's notice list have an interest in the reservation as determined under RULE IV and shall publish

such notice at least once in a newspaper of general circulation in each county as determined by the board within the basin 60 days prior to board action.

(10) Any person wishing to intervene in the show cause hearing must file a notice with the board 30 days prior to the hearing date.

(11) The reservant shall pay for notice and publication of hearing and proposed action under this rule as required under ARM 36.16.114.

(12) Reasons a water reservation may be modified or revoked include but are not limited to:

(a) a reservant is unable to meet the objectives of the water reservation or show reasonable diligence in perfecting the water reservation as determined under RULE II(9),

(b) a reservant relinquishes all or a portion of its water reservation, or

(c) failure of the reservant to comply with the boards order granting the reservation.

(13) A reservation term may be extended for a reasonable period of time to enable the reservant to meet the objectives of the reservation. An extension may be considered at the request of the reservant or on the board's own motion.

AUTH: 85-2-113, MCA; IMP: 85-2-316, 331, 605, MCA

RULE III PERMIT FOR RESERVED WATER (1) Throughout the term of a water reservation and with the approval of the board, the department may issue a permit for the appropriation of unperfected reserved water.

(2) A permit for reserved water authorizes the permittee to appropriate water granted in a water reservation for a period of time until the reservant requires the water to meet the objectives of the reservation.

(3) An application for permit of reserved water shall be submitted to the department and processed according to 85-2-307 thru 85-2-314, MCA.

(4) A permit for reserved water shall be conditioned so as not to affect the objectives of the reservation. Upon perfection of the reservation or revocation of it by the board the permit shall terminate.

(5) The priority date of the permit is the date of the filing of an application for permit with the department.

(6) A permit may only be issued with the approval of the board.

(7) The board shall give its approval unless it determines that the conditions imposed by the department do not adequately protect the objectives of the reservation.

AUTH: 85-2-113, MCA; IMP: 85-2-316, 331, 605, MCA

RULE IV NOTICE LIST FOR BOARD ACTIONS (1) After the effective date of this rule, other than reservants, persons who wish to receive notice by first class mail of proposed board actions under ARM 36.16.118, RULE I, or RULE II, must notify the department in writing to be placed on the notice list maintained by the department.

(2) Notification must include the name of the person, current mailing address, and the specific basin the person is interested in.

(3) The person shall receive notice of board actions in the specific basin requested.

AUTH: 85-2-113, MCA; IMP: 85-2-316, 331, 605, MCA

5. Amendment of ARM 36.16.102 is proposed to clarify terms used in 85-2-316 and new rules I, II, and III.

Amendment of ARM 36.16.103 is necessary to identify the forms required to initiate Board actions.

Amendment of 36.16.105B, 36.16.106, and 36.16.107B is to correct subsection numbers in rule reference cites.

Amendment of ARM 36.16.107 clarifies the Department of Natural Resources and Conservation role as a provider of information or adviser to the Board rather than a party to any Board action.

Amendment of ARM 36.16.107A provides for consistency in the subordination of water reservations in other basins to the procedure in the Missouri River basin under 85-2-331, MCA and ARM 36.16.117. Subsection (8) is amended to eliminate duplication of rules with new Rule II.

Amendment of 36.16.110 is necessary to accommodate changes to 85-2-316(8)(b), MCA made during the 1993 legislative session and to clarify the requirements of the conservation district reservant.

Amendment of 36.16.112 is necessary because the term entity has been defined in ARM 36.16.102(12) and is no longer proper in this rule. Person as defined in 85-2-102(14), MCA is the proper term.

Amendment of 36.16.114 is necessary to identify who is responsible for the cost of giving public notice of Board actions. When the action of a reservant or an applicant requires the Board to provide public notice, the reservant or the applicant must be responsible for these costs.

Amendment of 36.16.117 clarifies certain aspects of the subordination process. The Board granted water reservations in the Missouri River basin in 1992 and will be addressing the subordination of those reservations in the near future.

Amendment of 36.16.118 is the result of legislative changes to 85-2-316(12) and (13), MCA made in 1991. It identifies the process for Board review of changes and transfers in water reservations.

6. ARM 36.16.108 is proposed to be repealed to maintain consistency in recording practices. The Water Use Act was amended in 1991 to no longer require quarterly and annual summary reports of water rights be filed in the local counties. ARM 36.12.116 is proposed to be repealed because the proposed amended and new rules are applicable to all existing water reservations and future water reservation applications.

7. The proposed new Rules I, II, and III are necessary to establish the procedures and guidelines for certain Board actions on water reservations authorized under 85-2-316, MCA. The water reservations in the Yellowstone River basin are in their sixteenth year of development and the Board granted several new water reservations in the Upper Missouri River basin in 1992. There are administrative duties required of the Board which necessitate developing rules to identify what is required of reservants and applicants and provide guidelines for the Board in making its determinations. New Rule IV will expedite the required notice procedures the Board must follow when taking the above actions.

8. Interested parties may present their data, views and arguments, either orally or in writing, at the hearing. Written data, comments or arguments may also be submitted to Teresa McLaughlin, Administrative Officer, Department of Natural Resources and Conservation 1520 East Sixth Avenue, Helena, Montana, 59620 no later than March 16, 1994.

9. Vivian Lighthizer, will preside over and conduct the hearing.

BOARD OF NATURAL RESOURCES
AND CONSERVATION

Jack E. Galt, Chairman

Donald D. MacIntyre
Rule Reviewer

Certified to the Secretary of State January 31, 1994.

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

In the Matter of Proposed Amendment and Repeal of Rules Pertaining to Registration of Intrastate, Interstate, and Foreign Motor Carriers to Implement New Federal Requirements on Single State Registration.	)))))))	NOTICE OF PROPOSED AMENDMENT TO RULES 38.3.201 THROUGH 38.3.204 AND REPEAL OF RULE 38.3.205 NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On March 14, 1994 the Department of Public Service Regulation proposes to amend and repeal the rules identified in the above title and described in the following paragraphs, all related to motor carriers and single state registration.

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

38.3.201 INTRASTATE CARRIERS (1)(a) through (f) Remain the same.

(g) payment of an annual per vehicle registration fee of five dollars ($5) for which ~~an identification stamp~~ a registration receipt will be issued, a copy of which shall be ~~attached to an identification card furnished by the commission, which card, with affixed stamp, shall be~~ carried in ~~the~~ each vehicle at all times ~~(69-12-421, 69-12-423, MCA)~~;

(h) through (n) remain the same.

Auth: Sec. 69-12-201, MCA; IMP, Sec. 69-12-421, MCA.

38.3.202 INTERSTATE AND FOREIGN CARRIERS (1)(a) through (d) Remain the same.

(e) payment of an annual per vehicle registration fee of five dollars ($5) for which ~~an identification stamp~~ a registration receipt will be issued, a copy of which shall be ~~attached to an identification cab card, which card with affixed stamp, shall be~~ carried in ~~the~~ each vehicle at all times ~~(69-12-421, 69-12-423, MCA)~~;

(f) and (g) Remain the same.

Auth: Sec. 69-12-201, MCA; IMP, Secs. 69-12-103, 69-12-421, MCA.

38.3.203 ~~REGISTRATION OF INTERSTATE AUTHORITIES~~ REGISTRATION OF INTRASTATE, INTERSTATE, AND FOREIGN AUTHORITIES

(1) Every intrastate motor carrier authorized to transact business under authority of the commission and every interstate or foreign carrier authorized to transact business under provisions of the Interstate Commerce Act ~~or the U.S. department of transportation,~~ and authority of the interstate commerce commission and which performs a transportation service for compen-

sation on the public highways of the state of Montana, is required to register ~~its interstate authority, permits, orders and appropriate vehicles with this commission within 30 days after the carrier has notified the commission that it has been granted interstate or foreign carrier authority~~ annually, pursuant to this rule and applicable rules of the commission and the interstate commerce commission.

~~(2) Such initial registration of certificate and vehicle shall be accepted and permit granted upon payment of the appropriate filing fee of twenty five dollars ($25), as prescribed by the interstate commerce commission rules under PL, 89-170.~~

(2) An intrastate carrier is deemed properly registered if, prior to the date of commencing intrastate operations within this state and renewal thereafter between August 1 and November 30 prior to each following calendar year, the carrier is in compliance with all initial filing and annual reporting requirements, has maintained the operating certificate in good standing, and has paid the appropriate fee or fees.

~~(3) If the interstate or foreign carrier fails to register with commission within the 30 day period, the carrier will be subject to citation for operating without proper authority.~~

(3) An interstate or foreign carrier is deemed properly registered if, by the date of initially commencing interstate operations within or through this state and renewal thereafter between August 1 and November 30 prior to each following calendar year, the carrier has initially filed or submitted and thereafter maintained with the appropriate supplements and certification with the carrier's participating registration state, including this commission if so designated, copies of operating authorities and permits, proof of approved public liability security or approved self-insured status (which may be by commission-approved electronic data base), a copy of its approved designation of agent for service of process, and has identified and paid the appropriate fee or fees, all under rules of the designated registration state and the interstate commerce commission.

~~(4) No filing fee shall be charged for the registration of supplementary interstate commerce commission operating authority.~~

Auth: Sec. 69-12-201, MCA; IMP, Secs. 69-12-103, 69-12-401, MCA.

38.3.204 ~~"NARUC" AND I.C.C.~~ INTERSTATE COMMERCE COMMISSION RULES (1) By reference, this commission hereby adopts the rules ~~promulgated by the National association of regulatory utility commissioners and adopted by~~ of the interstate commerce commission ~~under PL, 89-170, and~~ codified as part 1023 of title 49 of the code of federal regulations, as amended from time to time.

Auth: Sec. 69-12-201, MCA; IMP, Sec. 69-12-103, MCA.

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

38.3.205 TRIP PERMITS AUTH: Sec. 69-12-201, MCA; IMP, Secs. 69-12-201 and 69-12-421, MCA. 38.3.205 can be found on page 38-166 of the Administrative Rules of Montana.

4. Rationale: The above rules are reasonably necessary for this agency to comply with recently implemented substantial revisions by Congress (Intermodal Surface Transportation Efficiency Act of 1991; Pub. L. No. 102-240) and the Interstate Commerce Commission (Ex Parte No. MCC-100, Sub-No. 6; 49 CFR 1023.1 through 1023.7) to the existing federal laws and rules pertaining to state registration of interstate and foreign motor carriers.

5. Interested parties may submit their data, views or arguments concerning the proposed amendment and repeal in writing (original and 10 copies) to Martin Jacobson, Public Service Commission, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601 no later than March 14, 1994.

6. If a person who is directly affected by the proposed amendment and repeal wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a public hearing and submit this request along with any written comments he has (original and 10 copies) to Martin Jacobson, Public Service Commission, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, no later than March 14, 1994.

7. If the agency receives requests for a public hearing on the proposed amendment and repeal from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendment and repeal; from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be in excess of 25 persons based on the over 6,000 motor carriers registering vehicles under the previous registration program.

8. The authority of the agency to make rules as proposed and the statutes being implemented are set forth following each rule above.

9. The Montana Consumer Counsel, 34 West Sixth Avenue, P.O. Box 201703, Helena, Montana 59620-1703, (406) 444-2771, is available and may be contacted to represent consumer interests in this matter.

Bob Anderson

Bob Anderson, Chairman

CERTIFIED TO THE SECRETARY OF STATE JANUARY 31, 1994.

Ron A. McKay

Reviewed By

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

In the matter of the amendment of rule 46.10.403 pertaining to the revision of AFDC standards concerning shared living arrangements	)))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF RULE 46.10.403 PERTAINING TO THE REVISION OF AFDC STANDARDS CONCERNING SHARED LIVING ARRANGEMENTS

TO: All Interested Persons

1. On March 2, 1994, at 2:00 p.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana to consider the proposed amendment of rule 46.10.403 pertaining to the revision of AFDC standards concerning shared living arrangements.

The Department of Social and Rehabilitation Services will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you request an accommodation, contact the department no later than 5:00 p.m. on February 21, 1994, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970.

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

46.10.403 TABLE OF ASSISTANCE STANDARDS (1) The tables of assistance standards contain the income and grant limits for assistance units according to the number of persons ~~and~~ in the assistance unit. whether ~~or not~~ the assistance unit has a shelter obligation~~.~~, and whether the assistance unit lives with other persons with whom the assistance unit shares the shelter obligation.

(a) An assistance unit is considered to have a shelter obligation if a member of the assistance unit is obligated to meet any portion of the shelter expenses of the assistance unit's place of residence, such as rent, a house payment, mortgage payment, taxes or home owner's insurance, mobile home lot rent, or utilities such as heating fuel, water or lights. An assistance unit receiving a government rent or housing subsidy is considered to have a shelter obligation even if the assistance unit's share of the rent or housing payment is zero.

(b) The assistance unit may be considered to be sharing the shelter obligation if it shares a place of residence as a household with one or more individuals who are not members of the assistance unit and whose income and resources are not considered in determining the assistance unit's grant, but who

pays a portion of the shelter obligation as defined in subsection (1)(a) for the shared place of residence.

(c) The assistance unit is not considered to be sharing the shelter obligation for purposes of this rule if:

(i) any of the persons with whom the assistance unit shares a place of residence receives supplemental security income (SSI);

(ii) the assistance unit receives a government rent or housing subsidy;

(iii) any of the other persons with whom the assistance unit shares a place of residence also receives AFDC;

(iv) there is a bona fide landlord-tenant relationship between the assistance unit and the person or persons with whom it shares a place of residence. A bona fide landlord-tenant relationship means there is a written agreement between a landlord who owns the property and a tenant in which the landlord gives the tenant temporary possession and use of real property for a specified sum of money;

(v) a member of the assistance unit provides necessary in-home medical care to a relative who is 60 years of age or older; or

(vi) a member of the household who is not included in the assistance unit provides child care which enables a member of the assistance unit to attend school or job training or maintain gainful employment.

(2) If the assistance unit has a shelter obligation as defined in subsection (1)(a) but does not live with other persons with whom it shares the shelter obligation, the gross income standards, net monthly income standards, and maximum payment amounts used to determine eligibility and grant amount are those designated "with shelter obligation". If the assistance unit has a shelter obligation and also lives with other persons with whom it shares the shelter obligation, the gross monthly income standards, net monthly income standards, and maximum payment amounts used to determine eligibility and grant amount are those designated "with shared shelter obligation". Provided, however, that if the individual with whom the assistance unit shares a place of residence contributes less than $50 per month toward the shelter obligation, the standards and maximum payment amounts designated "with shared shelter obligation" will not be used, but instead those designated "with shelter obligation" will be used minus the actual monthly amount contributed toward the shelter obligation. The standards and maximum payment amounts designated "without shelter obligation" are used when the assistance unit has no shelter obligation as defined in subsection (1)(a).

Subsection (2) remains the same in text but is renumbered (3).

(a) Gross monthly income standards to be used when adults are included in the assistance unit are compared with the

assistance unit's gross monthly income as defined in ARM 46.10.505.

GROSS MONTHLY INCOME STANDARDS TO BE USED WHEN ADULTS ARE INCLUDED IN THE ASSISTANCE UNIT

No. Of Persons in Household	With Shelter Obligation Per Month	With Shared Shelter Obligation Per Month	Without Shelter Obligation Per Month
1	$ 553	$ 503	$ 202
2	749	699	326
3	945	895	446
4	1,140	1,090	564
5	1,336	1,286	675
6	1,532	1,482	779
7	1,726	1,676	884
8	1,922	1,872	991
9	2,015	1,965	1,073
10	2,103	2,053	1,162
11	2,181	2,131	1,240
12	2,261	2,211	1,319
13	2,329	2,279	1,388
14	2,396	2,346	1,454
15	2,461	2,411	1,519
16	2,516	2,466	1,574

(b) Gross monthly income standards to be used when no adults are included in the assistance unit are compared with the assistance unit's gross monthly income as defined in ARM 46.10.505.

GROSS MONTHLY INCOME STANDARDS TO BE USED WHEN NO ADULTS ARE INCLUDED IN THE ASSISTANCE UNIT

No. of Persons in Household	With Shelter Obligation Per Month	With Shared Shelter Obligation Per Month	Without Shelter Obligation Per Month
1	$ 202	$ 152	$ 76
2	396	346	202
3	594	544	326
4	790	740	446
5	986	936	562
6	1,184	1,134	679
7	1,382	1,332	792
8	1,576	1,526	901
9	1,671	1,621	993
10	1,759	1,709	1,082
11	1,846	1,796	1,171

12	1,930	1,880	1,251
13	2,015	1,965	1,338
14	2,092	2,042	1,415
15	2,170	2,120	1,493
16	2,242	2,192	1,565

(c) Net monthly income standards to be used when adults are included in the assistance unit are compared with the assistance unit's net monthly income as defined in ARM 46.10.505.

NET MONTHLY INCOME STANDARDS TO BE USED WHEN ADULTS ARE INCLUDED IN THE ASSISTANCE UNIT

No. of Persons in Household	With Shelter Obligation Per Month	With Shared Shelter Obligation Per Month	Without Shelter Obligation Per Month
1	$ 299	$ 249	$ 109
2	405	355	176
3	511	461	241
4	616	566	305
5	722	672	365
6	828	778	421
7	933	883	478
8	1,039	989	530
9	1,089	1,039	580
10	1,137	1,087	628
11	1,179	1,129	670
12	1,222	1,172	713
13	1,259	1,209	750
14	1,295	1,245	786
15	1,330	1,280	821
16	1,360	1,310	851

(d) Net monthly income standards to be used when no adults are included in the assistance unit are compared with the assistance unit's net monthly income as defined in ARM 46.10.505.

NET MONTHLY INCOME STANDARDS TO BE USED WHEN NO ADULTS ARE INCLUDED IN THE ASSISTANCE UNIT

No. of Children in Household	With Shelter Obligation Per Month	With Shared Shelter Obligation Per Month	Without Shelter Obligation Per Month
1	$ 109	$ 59	$ 41
2	214	164	109
3	321	271	176
4	427	377	241
5	533	483	304
6	640	590	367
7	747	697	428
8	852	802	487
9	903	852	537
10	951	901	585
11	998	948	633
12	1,043	993	676
13	1,089	1,039	723
14	1,131	1,081	765
15	1,173	1,123	807
16	1,212	1,162	846

Subsections (3) through (4) remain the same in text but are renumbered (4) through (5).

(a) Maximum payment amounts to be used when adults are included in the assistance unit are compared to the difference between the assistance unit's net monthly income and the net monthly income standard defined in ARM 46.10.505.

MAXIMUM PAYMENT AMOUNTS TO BE USED WHEN ADULTS ARE INCLUDED IN THE ASSISTANCE UNIT

No. of Persons in Household	With Shelter Obligation Per Month	With Shared Shelter Obligation Per ~~Day~~ Month	Without Shelter Obligation Per Month	~~Without Shelter Obligation Per Day~~
1	$ 235	$ ~~7.83~~ 185	$ 86	~~$ 2.87~~
2	318	~~10.60~~ 268	138	~~4.60~~
3	401	~~13.37~~ 351	189	~~6.30~~
4	484	~~16.13~~ 434	239	~~7.97~~
5	567	~~18.90~~ 517	287	~~9.57~~
6	650	~~21.67~~ 600	330	~~11.00~~
7	732	~~24.40~~ 682	375	~~12.50~~
8	816	~~27.20~~ 766	416	~~13.87~~
9	855	~~28.50~~ 805	455	~~15.17~~
10	893	~~29.77~~ 843	493	~~16.43~~
11	926	~~30.87~~ 876	526	~~17.53~~
12	959	~~31.97~~ 909	560	~~18.67~~
13	988	~~32.93~~ 938	589	~~19.63~~
14	1,017	~~33.90~~ 967	617	~~20.57~~
15	1,044	~~34.80~~ 994	644	~~21.47~~
16	1,068	~~35.60~~ 1,108	668	~~22.27~~

(b) Maximum payment amounts to be used when no adults are included in the assistance unit are compared to the difference between the assistance unit's net monthly income and the net monthly income standard as defined in ARM 46.10.505.

MAXIMUM PAYMENT AMOUNTS TO BE USED WHEN NO ADULTS ARE INCLUDED IN THE ASSISTANCE UNIT

No. of Persons in Household	With Shelter Obligation Per Month	With Shared Shelter Obligation Per ~~Day~~ Month	Without Shelter Obligation Per Month	~~Without Shelter Obligation Per Day~~
1	$ 86	$ ~~2.87~~ 36	$ 32	~~$ 1.07~~
2	168	~~5.60~~ 118	86	~~2.87~~
3	252	~~8.40~~ 202	138	~~4.60~~
4	335	~~11.17~~ 285	189	~~6.30~~
5	418	~~13.93~~ 368	239	~~7.97~~
6	502	~~16.73~~ 452	288	~~9.60~~
7	586	~~19.53~~ 536	336	~~11.20~~
8	669	~~22.30~~ 619	382	~~12.73~~
9	709	~~23.63~~ 659	422	~~14.07~~
10	747	~~24.90~~ 697	459	~~15.30~~
11	783	~~26.10~~ 733	497	~~16.57~~
12	819	~~27.30~~ 769	531	~~17.70~~
13	855	~~28.50~~ 805	568	~~18.93~~
14	888	~~29.60~~ 838	601	~~20.03~~
15	921	~~30.70~~ 871	633	~~21.10~~
16	951	~~31.70~~ 901	664	~~22.13~~

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

3. The November Special Session of the 53rd Montana Legislature directed the Department in House Bill 2, Section 15, to reduce by $50 per month the assistance grants of Aid to Families with Dependent Children (AFDC) recipients who share living arrangements with anyone who is not in the assistance unit or whose income and resources are not considered in determining the assistance unit's grant. The Legislature adopted the policy of reducing grants for recipients with shared living arrangements because recipients who share shelter expenses with other individuals spend less on shelter expenses and therefore need less assistance to provide basic necessities for their families.

House Bill 2 provides for exceptions when AFDC recipients share living quarters with a household receiving Supplemental Security Income (SSI), where AFDC recipients live in government-subsidized housing, and where two or more AFDC assistance units share living quarters. It also directs the Department to apply for federal approval of hardship exceptions to this policy in addition to the exceptions required by House Bill 2.

Federal regulations governing the AFDC program at 45 C.F.R. 233.20(a)(5) gives states the option of prorating allowances in the AFDC need and payment standards for shelter and utilities when the AFDC assistance unit lives together with other individuals as a household. Section 233.20(a)(5) provides that a state choosing this option must prorate the need standards as well as the payment standards.

Section 233.20(a)(5) also provides that a state choosing to reduce payments to households who live with other individuals must make an exception when a bona fide landlord-tenant relationship exists or where the living quarters are being shared with a household receiving SSI.

The amendment of ARM 46.10.403 is necessary to implement the policy mandated by the Legislature in House Bill 2. Because the federal regulations require the proration of the need standards as well as the payment standard for AFDC recipients sharing living quarters, the gross monthly income standards and net monthly income standards must be adjusted for recipients sharing living quarters as well as the maximum payment amounts in ARM 46.10.403.

ARM 46.10.403 as amended will define in what circumstances an AFDC assistance unit's grant will be reduced and the exceptions to the policy of reducing the grant due to a shared living arrangement. In addition to the exceptions specifically required by the federal regulation, the rule will also provide for hardship exceptions. The Legislature in H.B. 2 directed the

Department to make exceptions in case of hardship without specifying what circumstances would constitute a hardship. The Department has determined that an exception should be made in situations where the assistance unit is providing in-home medical care to an elderly relative or where the individual sharing quarters with the assistance unit is providing necessary child care the AFDC grant will not be reduced.

Subsection (2) of ARM 46.10.403 provides that the reduced standards and payment amounts applicable to households which share living quarters will not be used in cases where the individual sharing the residence with the assistance unit contributes less than $50 per month toward the shelter obligation. Instead the standards and payment amounts normally used for a household with a shelter obligation are used but the amount actually contributed per month for shelter is deducted from those standards and payment amounts. This exception to the policy mandated by the Montana Legislature of reducing by $50 all grants for AFDC households sharing living quarters is necessitated by the federal requirement at 45 CFR 233.20(a)(5)(ii)(B) that need and payment standards be prorated on a reasonable basis when the state chooses to prorate due to shared living arrangements. It would not be reasonable to reduce by $50 the assistance unit's payment amount or the standards used to determine the assistance unit's eligibility if the individual with whom they share the residence is contributing less than $50 per month toward living expenses.

ARM 46.10.403 currently contains different gross and net income standards and payment amounts depending on whether the household has a shelter obligation. However, the rule currently does not define what constitutes a shelter obligation. The Department is now taking this opportunity to state what constitutes a shelter obligation.

4. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Russell E. Cater, Chief Legal Counsel, Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, MT 59604-4210, no later than March 10, 1994.

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

Rule Reviewer

Director, Social and Rehabilitation Services

Certified to the Secretary of State January 31, 1994.

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

In the matter of the amendment of rule 46.12.204 pertaining to medicaid recipient requirements for co-payments	)))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF RULE 46.12.204 PERTAINING TO MEDICAID RECIPIENT REQUIREMENTS FOR CO-PAYMENTS

TO: All Interested Persons

1. On March 2, 1994, at 9:15 a.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana to consider the proposed amendment of rule 46.12.204 pertaining to medicaid recipient requirements for co-payments.

The Department of Social and Rehabilitation Services will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you request an accommodation, contact the department no later than 5:00 p.m. on February 21, 1994, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970.

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

46.12.204 RECIPIENT REQUIREMENTS,CO-PAYMENTS Subsection (1) remains the same.

(a) inpatient hospital services, ~~$3.00 per day not to exceed $66.00 per admission~~ $100.00 per discharge;

(b) outpatient hospital services, $1.00 per service;

(c) podiatry services, ~~$1.00~~ $2.00 per service;

(d) outpatient physical therapy services, ~~$.50~~ $1.00 per service;

(e) speech ~~pathology, $.50~~ therapy services, $1.00 per service;

(f) audiology services, ~~$.50~~ $1.00 per service;

(g) hearing aids~~, $.50~~ services, $1.00 per service;

(h) ~~outpatient~~ occupational therapy services, ~~$.50~~ $1.00 per service;

(i) home health services not including durable medical equipment and medical supplies, ~~$1.00~~ $2.00 per service;

~~(j) home dialysis for end stage renal disease, $.50 per service, except for attendant back-up service;~~

~~(k) private duty nursing services, $.50 per service;~~

(~~l~~j) clinic services, $1.00 per visit;

(~~m~~k) licensed clinical psychologi~~cal~~st services, ~~$.50~~ $1.00 per service;

(~~n~~l) dental services, $1.00 per service~~e~~;

(~~o~~m) outpatient drugs, $1.00 per prescription for generic drugs and $2.00 per prescription for name brand drugs;

(~~p~~n) prosthetic devices, durable medical equipment and medical supplies, $.50 per ~~line item~~ service;

(~~q~~o) optometric services, $1.00 per service;

(~~r~~p) physician's services, ~~$1.00~~ $2.00 per service;

(~~s~~q) eyeglasses, except for those eyeglasses purchased by the medicaid program under a volume purchasing arrangement, $1.00 per service;

(~~t~~r) licensed clinical social workers~~'~~ services, ~~$.50~~ $1.00 per service; ~~and~~

(~~u~~s) ~~nurse specialist~~ mid-level practitioner services, ~~$1.00~~ $2.00 per service~~.~~;

(t) federally qualified health center services, $2.00 per service;

(u) rural health clinic services, $2.00 per service;

(v) free standing dialysis clinic services, $2.00 per service;

(w) specialized non-emergency medical transportation services, $1.00 per service;

(x) licensed professional counselor services, $1.00 per service.

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

(d) health maintenance organization enrollees.

(3) ~~No co-payment will be imposed with respect to:~~ Co-payments may not be charged for services provided for the following purposes:

(a) emergency~~ies services~~;

(b) family planning ~~services~~; or

(c) hospice. ~~services; or~~

~~(d) eyeglasses provided under a volume purchasing agreement.~~

(4) The total co-payment for each medicaid ~~case~~ household shall not exceed ~~5 percent of the maximum yearly AFDC grant for one adult~~ $200.00 per state fiscal year. ~~The maximum shall be based on the AFDC grant in effect at the end of the state fiscal year (June 30).~~

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

3. The proposed changes to ARM 46.12.204 are necessary to implement increased cost sharing on the part of recipients of the medicaid program. The changes involve increases in the amounts of co-payment and the addition of services to which co-payment requirements apply. The changes were mandated by the Montana Legislature in House Bill 2 during the November 1993 Special Session to encourage appropriate utilization of medical

services by recipients and to effectuate savings in state medicaid appropriations of approximately $1,000,000.

The implementation of co-payments are permitted by the federal regulations governing the medicaid program. The Legislative Fiscal Analyst in the Legislative Budget Action summarizing legislative action on House Bill 2, the appropriation bill, shows that the legislature chose to increase the co-payments for medicaid services to the maximum permitted under the governing federal regulations.

A co-payment is a set amount of monies that are the responsibility of a medicaid recipient to pay towards the billable amount for the particular service under the medicaid program. As with other insurance plans, a co-payment is the amount of the billed charge which is the responsibility of the insured party. It is the responsibility of the provider of services to bill the recipient for the co-payment. A provider of services may chose to not bill the recipient for the co-payment.

The amounts of co-payment proposed for adoption in the rule are in accordance with the maximum allowable co-payment charges provided in 42 CFR § 447.54 and 42 CFR § 447.55. Co-payment increases are proposed for implementation only for those noninstitutional services where the new amounts of co-payment will be permissible under 42 CFR § 447.54(a)(3) and 42 CFR § 447.55 which allow for standard co-payments to be set in relation to the average cost of each service category to the department. The co-payment increase for inpatient hospital services is within the amount permissible under 42 CFR § 447.54 (c) for institutional services. The proposed $200 limitation upon co-payments chargeable during the course of a year to a medicaid household as defined for eligibility purposes is permissible under 42 CFR § 447.54.

The proposed larger co-payment for name brand drugs as opposed to the co-payment for generic drugs reflects the higher average cost to the department for name brand drugs and will impose a disincentive on the use of name brand drugs.

The proposed removal of co-payment requirements for home dialysis for end stage renal disease is necessary in that the reimbursement/billing scheme for the service is not suited for the implementation of co-payment.

The proposed removal of co-payment requirements for private duty nursing is necessary in that the service is only available for persons under the age 21 years and co-payments are not imposed upon services that are only available to that age group.

The proposed addition of federally qualified health center services, rural health clinic services, free standing dialysis clinic services, specialized non-emergency medical transportation and licensed professional counselor services is necessary to place co-payments on these services.

The proposed changes of the terms "nurse specialist" to "mid-level practitioner", "speech pathology" to "speech therapy", "psychological" to "licensed clinical psychologists", and "outpatient occupational" to "occupational therapy" are necessary to conform the language of the rule with current terminology.

The proposed addition of language exempting from co-payment eyeglasses purchased by the department under a volume purchasing agreement is necessary since there is no provider charge for those eyeglasses and consequently a co-payment is not possible.

The proposed addition of health maintenance organization enrollees to the list of recipients exempt from co-payments is necessary to bring the rule into compliance with 42 CFR § 447.53(b) which mandates the exemption. The State medicaid program intends to incorporate health maintenance organizations into the program in the near future.

The proposed deletion from subsection (3) of eyeglasses provided under volume purchasing is necessary since the exception is proposed to be stated in subsection 1 which is a more appropriate location for it to be stated in.

The increased amounts of co-payment will expand the financial responsibility of recipients for the services they receive. This will result in more critical analysis of needs by recipients in the use of the services and thereby foster informed consumerism. Utilization of services by medicaid recipients and former medicaid recipients are expected to be more appropriate to their health needs.

Recipient access to services will not be adversely affected. For noninstitutional services the co-payment charges will remain nominal. The limitation of the total of co-payments for each household per state fiscal year to $200 will protect the households from incurring debts that are beyond their means and that preclude service delivery. The hospital co-payment will not adversely affect recipients access since the hospitals have independent obligations to treat persons.

The impact of the increased co-payment responsibilities are not expected to place a significant financial burden on any one portion of the medical provider community. The co-payment imposition and increases involve several types of services. Historically, the payment of co-payments by recipients has

varied by the type of service reflecting differences in the delivery of services and billing practices among the services. It is not expected that any one group of service providers will be economically disadvantaged to a degree that will cause financial difficulty or result in significant loss of recipient access to services.

4. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Russell E. Cater, Chief Legal Counsel, Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, MT 59604-4210, no later than March 10, 1994.

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

Rule Reviewer

Director, Social and Rehabilitation Services

Certified to the Secretary of State January 31, 1994.

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

In the matter of amending ARM 2.43.302, 2.43.303, 2.43.403, 2.43.408, 2.43.436, 2.43.502, and 2.43.606; and the repeal of ARM 2.43.608.	NOTICE OF AMENDMENT AND REPEAL OF RULES GOVERNING THE RETIREMENT SYSTEMS ADMINISTERED BY THE PUBLIC EMPLOYEES' RETIREMENT BOARD

TO: All Interested Persons.

1. On December 9, 1993, the Public Employees' Retirement Board published notice of the proposed amendment and repeal of rules concerning the retirement systems administered by the Public Employees' Retirement Board in the Montana Administrative Register, Issue number 23, starting at page 2864 and inclusive of page 2869.

2. No written comments or testimony were received from any interested party.

3. On January 27, 1994, the Public Employees' Retirement Board amended and repealed the rules as proposed.

4. The authority for these rules is found in section 19-2-403, MCA, and the rules implement Title 19, Chs. 2, 3, 5, 6, 7, 8, 9, and 13, 19-2-403, 19-2-406, 19-3-108, 19-3-403, 19-3-703, 19-3-1002, 19-3-1005, 19-3-1006, 19-3-1501, 19-5-403, 19-5-601, 19-6-101(3), 19-6-403, 19-6-601, 19-7-102(2),19-7-301, 19-7-304, 19-7-803, 19-7-601, 19-8-101(2), 19-8-503, 19-8-701, 19-9-104(4), 19-9-304, 19-9-602, 19-9-902, 19-13-104(5), 19-13-301(3), 19-13-304, 19-13-403, 19-13-802, MCA.

Terry Teichrow, President
Public Employees' Retirement Board

Dal Smilie, Chief Legal Counsel and
Rule Reviewer

Certified to the Secretary of State January 28, 1994.

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

In the matter of the amendment of ARM 2.55.327 pertaining to the construction industry program and the adoption of new rules pertaining to scheduled rating for loss control noncompliance modifier and unique risk characteristics modifier.	)))))))	NOTICE OF AMENDMENT OF RULE 2.55.327 AND ADOPTION OF NEW RULES I AND II

TO: All Interested Persons:

1. On December 9, 1993, the Board published notice of the proposed amendment of ARM 2.55.327 pertaining to the construction industry program, and the proposed adoption of new rules I (2.55.405) and II (2.55.406) pertaining to scheduled rating for loss control noncompliance modifier and unique risk characteristics modifier at pages 2870 through 2874 of the 1993 Montana Administrative Register, issue number 23. The hearing was held on December 29, 1993 at 2:00 p.m. in Helena, Montana. Public comments were accepted until January 6, 1994. The comments are summarized below.

2. After consideration of the comments received on the proposed amendment of ARM 2.55.327, the Board has adopted the rule as proposed.

COMMENT: Comment was received from Mr. Lars Ericson, Executive Secretary of Montana Council of Carpenters on the construction premium credit program. He gave a presentation on the original intent of House Bill 187 (1991) and mentioned the 1993 change in threshold from the state's average weekly wage to one and one-half times. He stated the old schedule submitted by NCCI was poor; the proposed schedule is better than the old one, but doesn't go far enough. Mr. Ericson handed out a spreadsheet of "Workers' Compensation premiums as dollars per hour before and after the construction premium credit is utilized for Class Code #5403 (Commercial Carpenter)", and stated the spreadsheet demonstrates a problem for employers paying $12 to $15 per hour, as opposed to $8 to $9 per hour. He believes the percentage credit should be loaded so it is higher at the lower end of the scale, perhaps 10 to 11 percent instead of 6 percent. The scale should be cost neutral, but the proposed rule costs employers more money than it saves them in the long run.

RESPONSE: State Fund concurs with the comments concerning the intent of the 1991 legislation (House Bill 187), which was to

"level the playing field" in the construction industry. However, the "leveling of the playing field" must take into consideration other factors affecting premium charged such as experience modification and volume discount, not just the manual rate per $100 of payroll and the discount table in these rules. Considering these other factors, we believe the suggested table is valid as it will minimize the load on the construction classifications and provide rate stabilization. Particularly since Mr. Ericson could not suggest specific changes; he only stated the table should be higher than it is for the $13.59 through $15.08 range. The State Fund agrees to study the results of this year's program to determine if further changes should be made next year.

3. After consideration of the comments received on proposed new Rule I (2.55.405), the Board has adopted the rule with the following changes:

RULE I. (2.55.405) SCHEDULED RATING - LOSS CONTROL NONCOMPLIANCE MODIFIER (1) remains the same.

(a) an insured does not satisfactorily establish a safety program in accordance with 39-71-1504, MCA, as determined by and after the state fund has provided on-site safety consultative services; or

(b) through (2) remain the same.

(3) An insured who has been subject to the premium modifier for at least one full quarter, may have the modifier removed at the end of a quarter in which a satisfactory safety program has been approved by the State Fund and adequately implemented by the employer following provision of on-site safety consultative services.

(4) remains the same.

AUTH: Sec. 39-71-2315 and 39-71-2316, MCA.
IMP: Sec. 39-71-2316 and 39-71-2341, MCA.

COMMENT: Mr. Mark Cadwallader, Legal Counsel for Department of Labor and Industry, submitted written comments as well as testified in regards to Rule I. Mr. Cadwallader stated the Department of Labor and Industry supports the State Fund's decision not to implement this rule until after the Department has promulgated rules for the Safety Culture Act. He requested that use of the term "satisfactory" be clarified in Rule I (1)(a). If the intent is to provide the State Fund flexibility in responding to the Department's rules, then it should be stated that the State Fund is the judge of what is a "satisfactory" safety program. He also suggested clarifying Rule I (3) to state it is the State Fund who will be the judge of what is "satisfactory", not the Department of Labor and Industry.

RESPONSE: The State Fund concurs with the comments and as stated in the notice of public hearing, the State Fund will not implement this rule until after the Department of Labor has promulgated rules for employers' safety programs under the Safety Culture Act.

4. The Board has adopted new Rule II (2.55.406) as proposed.

5. The authority of the State Compensation Insurance Fund to adopt the proposed rules is based on sections 2-4-201, 2-3-103, and 39-71-2316, MCA, and the rules implement sections 2-4-201, 2-3-103, 39-71-2311, 39-71-2316, MCA.

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 January 31, 1994.

BEFORE THE BOARD OF BARBERS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment) NOTICE OF AMENDMENT OF
of a rule pertaining to fees) 8.10.405 FEE SCHEDULE

TO: All Interested Persons:

1. On September 30, 1993, the Board of Barbers published a notice of public hearing on the proposed amendment of the above-stated rule at page 2168, 1993 Montana Administrative Register, issue number 18. The hearing was held on November 8, 1993, at 9:00 a.m., in the conference room of the Professional and Occupational Licensing Bureau, Helena, Montana. No one in support of or in opposition to the proposed amendment attended the hearing and only written comments were received.

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

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

COMMENT: Big Sky College of Barber Styling, Gary Lucht, stated his belief that a fee increase should not be enacted simply to maintain the status quo. Mr. Lucht stated his belief that a fee increase should be accompanied by a full-time administrative assistant to the Board.

RESPONSE: The Board has no authority to hire a full-time administrative assistant to the Board, and is in a position where the licensing program for barbers will cease to operate without a fee increase.

COMMENT: John Span, licensed barber, opposed the fee increase because he believed it to be excessive. Ken Berg, licensed barber, opposed the increase on the same grounds.

RESPONSE: The Board is increasing fees only enough to allow the licensing program for barbers to continue operations.

COMMENT: Marc Kingler, licensed barber, requested that the Board try to keep the price of the license fees at the current levels.

RESPONSE: The Board is increasing fees only enough to allow the licensing program for barbers to continue operations.

COMMENT: Hair Master Barber/Styling Shop requested that the Board justify its increase in fees.

RESPONSE: The current budget for the Board is approximately $32,500 dollars per year, while the current license fees generate approximately $21,500 dollars per year. The Board has a cash balance of $3,354 dollars. The Board has no choice but to raise fees in order to cover the cash shortage that will result without a fee increase.

COMMENT: Linda Berg, licensed barber, stated her belief that the fee increase is unnecessary, and that money could be raised by fining individuals who practice barbering in their homes.

RESPONSE: The Board has no authority to fine individuals under its statutes and rules.

COMMENT: Thayne Orton, licensed barber, and Norman Becker, licensed barber, co-signed a written comment that expressed opposition to any fee increase because their shop had been inspected only twice in the last five years, they had never received a copy of current barber laws, and because they have not been informed of topics discussed at Board meetings.

RESPONSE: The Board is working on getting inspections performed at least once per year. In addition, the Board has sent Mr. Orton and Mr. Becker a copy of statutes and rules of the Board, and has placed their names on a list of interested individuals who will receive notice of Board meeting agendas.

COMMENT: Charles Grasseschi, licensed barber, submitted a written comment that the Board should consider down-sizing their operation rather than increasing fees. Mr. Grasseschi suggested that the Board of Barbers be consolidated with the Board of Cosmetologists.

RESPONSE: The Board is exploring options for consolidation of its functions with those of the Board of Cosmetologists. This consolidation, however, may not be completed without statutory amendments. Such amendments cannot be enacted until the 1995 general legislative session. In the meantime, the fee increase is necessary to prevent the licensing program for barbers from shutting down.

BOARD OF BARBERS
AMY ADLER, CHAIRMAN

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

_____
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, January 31, 1994.

BEFORE THE BOARD OF REALTY REGULATION
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment of a rule pertaining to unprofessional conduct	)	NOTICE OF AMENDMENT OF 8.58.419 GROUNDS FOR LICENSE DISCIPLINE - GENERAL PROVISIONS - UNPROFESSIONAL CONDUCT

TO: All Interested Persons:

1. On November 24, 1993, the Board of Realty Regulation published a notice of proposed amendment of the above-stated rule at page 2719, 1993 Montana Administrative Register, issue number 22.

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

"8.58.419 GROUNDS FOR LICENSE DISCIPLINE - GENERAL PROVISIONS - UNPROFESSIONAL CONDUCT (1) through (3)(m) will remain the same as proposed.

(n) A licensee shall disclose the fact that he/she is a licensee when the licensee first seeks information FROM THE OWNER, THE OWNER'S AGENT, OR TENANT about any property, whether for the licensee's own account or as agent for another.

(o) through (5) will remain the same as proposed."

Auth: Sec. 37-1-131, 37-1-136, 37-51-203, MCA; IMP, Sec. 37-51-201, 37-51-202, 37-51-321, MCA

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

COMMENT: The Board received two comments from individuals claiming that this regulation, as originally noticed, would be unduly cumbersome on the licensee since it would not allow the licensee to inspect or scrutinize the public record without making disclosure of his licensed status.

RESPONSE: The Board adopted the language proposed by one of the commenters and amended the regulation language to provide that the licensee must disclose his licensed status when he makes inquiry of the property "owner, the owner's agent, or tenant."

BOARD OF REALTY REGULATION
JACK MOORE, CHAIRMAN

ANNIE M. BARTOS
RULE REVIEWER

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

Certified to the Secretary of State, January 31, 1994.

BEFORE THE BOARD OF SOCIAL WORK
EXAMINERS AND PROFESSIONAL COUNSELORS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment of rules pertaining to fees and ethical standards for social work examiners and professional counselors and the adoption of new rules pertaining to inactive status licenses	NOTICE OF AMENDMENT OF 8.61.404 FEE SCHEDULE, 8.61.405 ETHICAL STANDARDS, 8.61.1203 FEE SCHEDULE AND 8.61.1204 ETHICAL STANDARDS AND THE ADOPTION OF NEW RULES PERTAINING TO INACTIVE STATUS LICENSES

TO: All Interested Persons:

1. On December 23, 1993, the Board of Social Work Examiners and Professional Counselors published a notice of proposed amendment and adoption of the above-stated rules at page 2988, 1993 Montana Administrative Register, issue number 24.

2. The Board has amended and adopted the rules exactly as proposed. The new rules have been numbered 8.61.406 and 8.61.1205 respectively.

3. There were no comments or testimony received.

BOARD OF SOCIAL WORK EXAMINERS
AND PROFESSIONAL COUNSELORS
RICHARD SIMONTON, CHAIRMAN

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

_____
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, January 31, 1994.

BEFORE THE BUILDING CODES BUREAU
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment of rules pertaining to incorporation by reference and amendment of codes, standards and fees and the adoption of new rules pertaining to refunds or credits and system review fees	NOTICE OF AMENDMENT AND ADOPTION OF RULES PERTAINING TO BUILDING CODES (CHAPTER 70)

TO: All Interested Persons:

1. On September 30, 1993, the Building Codes Bureau published a notice of public hearing at page 2173, 1993 Montana Administrative Register, issue number 18. The public hearing was held on October 29, 1993, at 9:00 a.m., in the downstairs conference room of the Department of Commerce, Helena, Montana.

2. The Bureau has amended ARM 8.70.102, 8.70.105, 8.70.301 through 8.70.303, 8.70.401, 8.70.402, 8.70.404, 8.70.407, 8.70.408, 8.70.501, 8.70.522, 8.70.523, 8.70.531, 8.70.533, 8.70.534, 8.70.535, 8.70.537, 8.70.540, 8.70.543, 8.70.544, 8.70.549, 8.70.556, 8.70.557, 8.70.563, 8.70.566, 8.70.567, 8.70.569, 8.70.601, 8.70.612, and has adopted new rules I (8.70.410) and II (8.70.570) exactly as proposed. The Board has amended ARM 8.70.101, 8.70.104 and 8.70.304 as proposed but with the following changes:

"8.70.101 INCORPORATION BY REFERENCE OF UNIFORM BUILDING CODE (1) through (13) will remain the same as proposed.

(14) ~~Only noncommercial buildings are exempted~~ THE EXEMPTIONS in section 50-60-102(a), MCA, ~~and the exemptions~~ do not apply to any building used as or in conjunction with a hotel, motel, inn, motor court, guest or dude ranch, tourist home, public lodging house, bed and breakfast establishment or other place where sleeping accommodations are furnished for a fee to a transient guest.

~~(a)~~ "Transient guest" means a ~~person who pays a fee to stay at a place for 180 days or less at which sleeping accommodations are furnished~~ guest for only a brief stay, such as the traveling public.

~~(b) "Noncommercial" means a use that is other than commercial and that is not for the ordinary purpose of trade, agriculture, industry, or commerce, whether or not the primary use is for profit.~~

(15) through (27) will remain the same as proposed."

Auth: Sec. 50-60-104, 50-60-203, MCA; IMP, Sec. 50-60-103, 50-60-104, 50-60-108, 50-60-109, 50-60-201, 50-60-203, MCA

"8.70.104 INCORPORATION BY REFERENCE OF THE MODEL ENERGY CODE (1) through (c) will remain the same as proposed.

(d) Where ~~self-certification~~ THE ENERGY LABELING STICKER is required by ~~section 5, chapter 383, laws of 1993,~~ SECTION 50-60-803, MCA, ~~new residential buildings must be certified by~~

~~having~~ the labeling stickers ~~that~~ SHALL describe the energy efficient components of the home. The builder or representative shall ~~certify compliance by~~ sign, ~~ing, dating,~~ DATE, and ~~completing~~ COMPLETE the label and permanently attach~~ing~~ it to the interior electrical panel. The energy efficiency component labeling sticker must be a permanent self adhesive label four by six inches in size that includes the following information:

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

Auth: Sec. 50-60-201, 50-60-203, MCA; IMP, Sec. 50-60-201, 50-60-203, MCA

"8.70.304 PLUMBING PERMITS (1) through (6) will remain the same as proposed.

(7) The exception to the plumbing permit requirement listed in 50-60-506(4), MCA, for the owner of residential property applies to the owner of a single family dwelling who does the work on the plumbing installation in the dwelling in which (s)he will reside. The "homeowner exemption" applies to those dwellings intended for the owner's personal use and not for dwellings built on speculation of resale or intended as rental property. ~~Buildings or structures other than single family dwellings and other noncommercial buildings such as private garages and other noncommercial buildings such as private garages and barns are not exempt from the plumbing permit requirement.~~

(8) through (13) will remain the same as proposed."

Auth: Sec. 50-60-203, 50-60-501, 50-60-504, MCA; IMP, Sec. 50-60-201, 50-60-504, 50-60-505, 50-60-506, 50-60-507, 50-6-508, MCA

3. The reason for the changes to 8.70.104 is that Senate Bill 340 (Ch. 383, L. 1993) intends home builder self-certification to be outside the department's regulatory enforcement. Departmental regulation is limited to designing the energy labeling sticker. The rule as proposed is too broad because it includes self-certification, thus necessitating this amendment.

4. The Bureau has thoroughly considered all comments and testimony received. Those comments in substance and the Bureau's responses thereto follow:

COMMENT: With respect to 8.70.101(8)6. This is an attempt to establish immunity from lack of required action. Immunity can only be granted by law, not regulation. If the building official inspects a finished structure, a certificate of occupancy should be issued with no strings attached.

RESPONSE: This is not an attempt to establish immunity and the section does not establish immunity. This is merely a statement of reality. The bureau has insufficient staff to conduct all of the key inspections identified in the UBC and the issued certificate of occupancy is not a certification or guarantee of total compliance with the code. The certificate of occupancy issued by the bureau will indicate substantial compliance with the UBC to the extent that the bureau can determine.

COMMENT: With respect to 8.70.101(9). Mandatory engineering/architecture on basic designs such as single family dwellings will further increase already high construction costs, to the detriment of potential homeowners in the lower price market who cannot afford professional design fees. Design criteria for single family dwellings are already adequately covered by local codes and inspections.

RESPONSE: This section applies to the bureau's jurisdiction only and it does not require professional design of single family dwellings because such buildings, in 4-plexes and less, are exempt from the bureau's jurisdiction. The bureau has always had the authority to require professionally designed and stamped plans by section 302(b) of the UBC.

COMMENT: With respect to 8.70.101(14). The proposed rule refers to hotels and other public accommodation establishments but does not define them. To coordinate with DHES regulation over these establishments the Bureau should subscribe to the definitions used in section 50-51-102, MCA.

RESPONSE: For the purposes of enforcement of section 50-60-108, MCA, ARM 8.70.101(14) and the definitions found in Chapter 4 of the UBC are sufficient and no conflict is seen with the DHES definitions.

COMMENT: With respect to 8.70.101(14)(a). The Bureau should use the definition of "transient guest" in section 50-51-102, MCA. That definition is not tied to a fee paid by the transient guest. The proposed definition does not exempt establishments from the state building codes if a fee is not paid.

RESPONSE: The Bureau is adopting the wording of section 50-51-102(7), MCA, defining transient guest.

COMMENT: Also with respect to 8.70.101(14)(a). Rooming houses, boarding houses, or retirement homes as defined in section 50-51-102(7), MCA, may become exempt from the state building codes by virtue of the proposed rule which limits time to 180 days and requires payment of a fee.

RESPONSE: Rooming houses, boarding houses, and retirement homes would be covered by the language "or other places where sleeping accommodations are furnished for a fee to a transient guest." The subject building uses are treated in a fashion similar to hotels and motels and, just like hotels and motels, long-term rentals do not result in exemption from the bureau's jurisdiction. If the building is a rooming house, boarding house, or retirement home it is covered by 8.70.101, ARM. Other definitions of these establishments used in other MCA titles do not affect the application of the building codes.

COMMENT: With respect to 8.70.101(19). This proposal conflicts with section 10.507(f)2. of the Uniform Fire Code, which requires any hazardous occupancy over 3,000 square feet of floor space to have an automatic fire extinguishing system. It does not provide equal or better protection than the UFC

provision. By virtue of section 1.103(b), fire officials will be required to apply the UFC provisions if a distinct fire hazard is present, notwithstanding compliance with the Uniform Building Code.

RESPONSE: It is the bureau's position that requiring one-hour fire resistant construction throughout, 40 feet or more on three sides, and a minimum of three exits, properly signed and illuminated, provides an equal degree of protection and serves as an equivalent alternative to automatic fire suppression in this occupancy. The building official has the authority via section 105 of the UBC to this type of alternate method and material.

COMMENT: With respect to 8.70.304(3). All single family dwellings, regardless of water source or sewer system, should require plumbing permits to protect both consumers and public health.

RESPONSE: The proposed rule is intended to clarify the existing requirements imposed in sections 50-60-501, et seq., MCA, pertaining to the issuance of plumbing permits. The concept of requiring plumbing permits as indicated by this comment would require amendments to both the plumbing licensure statutes (sections 37-69-301, et seq., MCA) and plumbing permitting statutes (sections 50-60-501, et seq., MCA).

COMMENT: With respect to 8.70.304(4). The definition of public water supply should refer to "two or more dwellings", as in the public sewer system definition (8.70.304(5)).

RESPONSE: The proposed rule employs the same definition of "public water supply" as used in section 37-69-101, MCA. Any change to that definition would require legislative amendment.

COMMENT: With respect to 8.70.304(6). Clarify this rule to make it understood that hotels, motels, dude ranches, and so on must have permits obtained by licensed master plumbers and be plumbed by licensed plumbers.

RESPONSE: The proposed rule accomplishes the intent of this comment with the wording contained in the last sentence. It specifically states that such buildings or structures are not exempt from a plumbing permit. Because such buildings do not qualify for any exemption from plumbing licensure or permitting (sections 37-69-301, et seq., and 50-60-501, et seq., MCA), only master plumbers will be able to obtain plumbing permits for them.

COMMENT: With respect to 8.70.304(11). This rule allows the homebuilder to buy all the permits and do the work with carpenters, by-passing master plumbers.

RESPONSE: The proposed rule is intended to clarify the existing statutory requirements. To allow only "master plumbers" to obtain plumbing permits would require legislative amendment. The proposed rule does not allow non-plumbers to obtain plumbing permits except where they may already do so under sections 50-60-501, et seq., MCA.

COMMENT: With respect to 8.70.407. A $5 fee should be added to allow the Bureau to issue special electrical permits to DOT personnel to perform the inspections on traffic control devices.

RESPONSE: The comment is unresponsive in that it fails to address any proposed amendment under consideration at this hearing. The proponent of the comment (DOT) may resubmit it for inclusion in the 1994 proposed rule amendments, or seek a legislative amendment.

BUILDING CODES BUREAU
JAMES BROWN, BUREAU CHIEF

BY: _____
JON NOEL, DIRECTOR
DEPARTMENT OF COMMERCE

_____
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, January 31, 1994.

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

In the matter of the adoption of rules containing licensure standards for residential treatment facilities	NOTICE OF ADOPTION OF RULES I-III (Health Care Facility Licensing)

To: All Interested Persons

1. On August 12, 1993, the department published notice of the proposed adoption of new rules I-III, at page 1809 of the Montana Administrative Register, issue number 15.

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

RULE I (16.32.399M) RESIDENTIAL TREATMENT FACILITY--APPLICATION OF OTHER RULES Same as proposed.
AUTH: 50-5-103, MCA; IMP: 50-5-103, 50-5-201, MCA

RULE II (16.32.399N) RESIDENTIAL TREATMENT FACILITY--LICENSURE STANDARDS (1) Same as proposed.

(2) A residential treatment facility may not share direct care staff or provide joint activities or treatment in conjunction with another type of health care facility, even if both facilities are under the same management, unless the joint activity involves facilities under a single management and is a specific treatment program that is clinically appropriate for all of the children engaged in it (e.g. appropriate for patients of both a residential treatment facility and an inpatient acute psychiatric facility).

(3)-(4) Same as proposed.
AUTH: 50-5-103, MCA; IMP: 50-5-103, 50-5-201, MCA

RULE III (16.32.399O) RESIDENTIAL TREATMENT FACILITIES--SEPARATE LICENSES Same as proposed.
AUTH: 50-5-103, MCA; IMP: 50-5-103, 50-5-201, MCA

3. The following comments were received; the department's response to each follows:

COMMENT: Yellowstone Treatment Centers generally supported the rules, but, in regard to Rule II(1), made a request that certain of the accreditation standards established by the Council on Accreditation of Services for Families and Children be allowed as alternative licensure standards, in addition to those from the Joint Commission on Accreditation of Healthcare Organizations (JCAHO), because they contain more specific and appropriate standards for residential treatment facilities than the JCAHO standards and the JCAHO accreditation fees are far higher than those for the Council, thereby hiking the cost of

care at a facility.

RESPONSE: Currently, all residential treatment facilities wishing to be certified for Medicaid are required to meet the federal requirements of 42 CFR 441 Subpart D, which, in 42 CFR Sec. 441.151(b), requires accreditation by JCAHO. Since it is extremely unlikely that any residential treatment providers would apply solely for licensure and not for Medicaid certification as well, given that they would then have to rely on private pay or insurance for payment, and until federal rules allow accreditation by the Council on Accreditation as well as by JCAHO, there is little reason to change the state licensure rules at this time to incorporate Council on Accreditation standards.

COMMENT: Dr. Susan Sachsenmaier of Rivendell, Butte, expressed Rivendell's support for all of the rules except Rule II(2), which prohibits a residential treatment facility from sharing activities, treatment, or staff with another type of health care facility, even if they are both under the same management. Her concern was that certain specialty group treatment programs worked better with a certain minimum number of children, that children in both Rivendell's residential treatment facility and its acute care facility needed those programs, that the acute care hospital no longer had enough children to meet the minimum number of participants recommended, and that there were no contraindications to letting kids in the same age group but from different facilities share in the same specialty program.

Jack Casey, administrator of Shodair Children's Hospital, agreed that joint activities should be allowed if they are clinically appropriate, a decision which, at his facility, would be confirmed by a supervisory physician. He also noted that it would be cost prohibitive to repeat the same clinical program separately for each of Shodair's facilities.

RESPONSE: The department agreed that there were strong clinical reasons for letting facilities under the same management share certain programs under the circumstances mentioned, and allowed that exception to the rule.

COMMENT: Jack Casey also suggested that staff from one facility should not be counted as staff of another, even if under the same management, in the event of shared activities.

RESPONSE: The department did not make the suggested change because it is relevant to Medicaid reimbursement rather than licensing, and Medicaid reimbursement is under the jurisdiction of the Department of Social and Rehabilitation Services rather than the Department of Health and Environmental Sciences.

COMMENT: Administrative Code Committee staff suggested that Sec. 50-5-201, MCA, requiring licensing standards to be met by every health care facility, including a residential treatment facility, should be added to the rules' histories as a section

implemented by the rules.

RESPONSE: The department agreed and added the cite to the statutory sections implemented by each rule.

/s/ William J. Opitz
for ROBERT J. ROBINSON, Director

Certified to the Secretary of State January 31, 1994.

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

STATE OF MONTANA
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION
BEFORE THE BOARD OF NATURAL RESOURCES AND CONSERVATION

In the matter of proposed amendments of 36.12.202 through 36.12.210, 36.12.212 through 36.12.217, and 36.12.219 through 36.12.230 and the adoption of a new rule pertaining to water right contested case hearings	))))))	NOTICE OF AMENDMENT OF ARM 36.12.202-36.12.210, 36.12.212-36.12.217, AND 36.12.219-36.12.230 AND ADOPTION OF RULE I (36.12.234) PERTAINING TO WATER RIGHT CONTESTED CASE HEARINGS

TO: All Interested Persons.

1. On September 16, 1993, the Board of Natural Resources and Conservation published a notice of public hearing on the proposed amendment of certain rules and the adoption of a new rule pertaining to water right contested cases hearings at pages 2086 through 2106, 1993 Montana Administrative Register, Issue number 17.

2. On October 19, 1993, at 1:30 p.m., a public hearing was held at the Director's Conference Room of the Lee Metcalf Building, the Department of Natural Resources and Conservation, 1520 East Sixth Avenue, Helena, Montana. No comments were offered or received at the public hearing. During the prescribed comment period, written comments were received from Ted J. Doney, attorney-at-law, Helena, Montana; Russ McElyea, attorney-at-law, Bozeman, Montana; The Montana Power Company through Holly J. Franz, attorney-at-law, Helena, Montana; and the Montana Department of Fish, Wildlife & Parks, Helena, Montana. The comments are summarized below.

3. The Board has amended rules 36.12.202, 36.12.203, 36.12.205 through 36.12.209, 36.12.212 through 36.12.214, 36.12.216, 36.12.217, 36.12.219, and 36.12.221 through 36.12.230, and adopted Rule I as proposed.

4. The Board has amended rules 36.12.204, 36.12.210, 36.12.215, and 36.12.220 with the following changes:

36.12.204 COMMENCEMENT OF A CONTESTED CASE A contested case is commenced, subsequent to the assignment of a hearing examiner, by the service of a notice of and order for hearing by the director.

Subsection (1) (a) through (i) remain the same.

(j) a statement advising the parties that communication with the hearings examiner containing obscene, lewd, profane, or abusive language which terrifies, intimidates, threatens, or harasses~~, annoys, or offends~~ the hearing examiner will be returned. Any communication returned shall be conclusively presumed to have not been served or filed with the department for purposes of these rules.

(2) and (3) remain as proposed.

AUTH: 2-4-201, 85-2-113, MCA IMP: 2-4-601, MCA

36.12.210 CONSOLIDATION (1) through (2) remain as proposed.

(3)(a) Any party may object to consolidation by filing, at least 10 days prior to the hearing in the case, a motion for severance from consolidation, setting forth the party's name and address, the title of the case prior to consolidation, and the reasons for that party's motion.

(b) If the hearing examiner finds that consolidation would prejudice the party, ~~he~~ the hearing examiner may, without hearing, order such severance or other relief as ~~he~~ the hearing examiner deems necessary.

AUTH: 2-4-201, 85-2-113, MCA IMP: 85-2-309, MCA

36.2.215 DISCOVERY (1) Discovery under this rule may commence following the department's acknowledgement of receipt of valid objections.

(1) through (4) remain the same but are renumbered (2) through (5)

~~(5)~~(6) Any means of discovery available pursuant to the Montana Rules of Civil Procedure, excepting Rule 37(b)(1) and 37(b)(2)(D), is allowed provided such discovery is needed for the proper presentation of a ~~parties'~~y's case, is not for purposes of delay, and the issues in controversy are significant enough to warrant such discovery. Copies of all requests for discovery under this subsection must be filed with the hearings examiner. Objection for a demand for discovery may be made by motion to quash, and the form, filing, and disposition of such motion shall be governed by the provisions of ARM 36.12.213. If a party fails to reasonably comply with a proper demand for discovery, the hearing examiner may:

(a) and (b) remain as proposed.

~~(6)~~(7) Any ~~A~~ demand for ~~other~~ discovery made pursuant to subsection ~~(5)~~(6) must be made so as to allow all responses to be completed at least 5 days prior to the hearing ~~hereof shall be served at least 30 days prior to the hearing; except that such demand may be served less than 30 days prior to the hearing upon showing of good cause~~.

AUTH: 2-4-201, 85-2-113, MCA IMP: 2-4-602, MCA

36.12.220 WITNESSES (1) through (2) remain as proposed.

(3) All parties shall be advised of a staff expert witness' findings, if any, based on any prepared written testimony filed by the parties pursuant to ARM 36.12.220~~(1)~~(2), site observations taken pursuant to ARM 36.12.225, materials noticed pursuant to ARM 36.12.221(4) and ARM 36.12.228(1)(b), or testimony or other documents introduced during the proceeding. A staff expert witness' deposition may be taken by any party and the expert may be called to testify by any party and/or by the hearing examiner. The expert witness shall be subject to cross-examination by all parties. Nothing in this rule shall prevent any of the parties from producing other expert evidence on the same fact or matter to which the testimony of the staff expert witness appointed by the hearing examiner relates.

AUTH: 2-4-201, 85-2-113, MCA IMP: 2-4-611, 2-4-612, MCA

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

COMMENT: Rule 36.12.203(1) should not be amended to remove the requirement that the hearing examiner shall not simultaneously be an employee of the agency which also assumes an applicant or objector position to the hearing. This prohibition is necessary to prevent conflicts of interest. It eliminates any possible bias or potential influence on the hearing examiner. The amended rule gives the appearance of impropriety. Furthermore, the amended rule removes the distinction between trier of fact and parties with adverse interests which is a departure from equitable due process.

RESPONSE: The amendment deleting the provision does nothing more than make the rule consistent with the Montana Administrative Procedure Act which, at § 2-4-611(1), places appointment of the hearing examiner totally within the discretion of the agency. Who, specifically, the agency appoints is to be governed principally with regard to the expertise necessary for the particular matter. The Act does not govern the impartiality of the hearing examiner, that must be determined by the agency, presumably through consideration of the circumstances surrounding each case. Nothing about the amended rule inhibits the ability of the Department to obtain a hearing examiner from outside the agency.

Rules of conduct and procedures in contested case hearings before other agencies of Montana state government (as well as other states and the federal government, which are not detailed here) allow for complete agency discretion on appointment of the hearing examiner. See, e.g., Mont. Admin. R. 46.2.207; Mont. Admin R. 42.16.116. Furthermore, in contested cases heard and decided by these other agencies, the agency is usually a party. See, e.g., Mont. Admin. R. 46.2.201(2). The apparent presumption in the Montana Administrative Procedure Act and in the other agencies' rules is that agency's hearings examiners are impartial, and that if the circumstances of a case require, the agency will seek an outside hearing examiner. Rule 36.12.203 as amended is consistent with this.

The amendment to rule 36.12.203(1) brings the rule into compliance with the Administrative Procedure Act. The amendment to rule 36.12.203(1) shall not be modified.

COMMENT: The amendment of rule 36.12.204(1) provides that documents containing obscene, lewd, profane, or abusive language be returned and conclusively presumed to have not been served or filed. The issue should be dealt with by resorting to sanctions.

RESPONSE: The Board is not aware of any agency of Montana's state government which has adopted contempt powers for use in administrative hearings. It appears that administrative hearing examiners do not have the range of sanctions

available to the judiciary. One sanction is used, however, as a means of controlling improper activities in contested case hearings, such as repeated *ex parte* communications. The sanction available to administrative hearings examiners is dismissal of the offending party's interest. This sanction is harsher than the action proposed in the amended rule, i.e., deeming documents containing improper language to be "unfiled". For these reasons, the Board believes the proposed action is better than the suggestion in the comments. Therefore, the amendment to rule 36.12.204 will not be modified to allow sanctions for communications containing obscene, lewd, profane, or abusive language.

COMMENT: The proposed amendment of 36.12.204(1) is too broad. There is a possibility that the provision would itself be abused.

RESPONSE: The Board agrees with the commentator's concern about possible abuse of the proposed provision. The terms "annoys" and "offends" are too broad and could allow for too liberal an application of the provision. These two terms should be deleted from the amendment.

COMMENT: Gender neutral language is not used in 36.12.210(3)(b). This subsection should also be amended so it is gender neutral.

RESPONSE: The Board agrees. One of the purposes of amending this set of rules is to make the language consistently gender neutral. The failure to propose such an amendment in the cited subsection was a clerical oversight.

COMMENT: The amendment of 36.12.215(5) will allow unlimited discovery. Lawyers will take advantage of this to initiate unnecessary discovery consequently bogging down proceedings. This would be contrary to the current policy of the Department. Furthermore, experience has shown that discovery in water rights contested cases usually produces nothing which was not already known or could be learned by reasonable investigation. The existing rule works well and should not be amended.

RESPONSE: The amendment of rule 36.12.215 does not expand the means of discovery available to parties. The same means of discovery were available under the previous wording of the rule. The amendment removes the requirement for prior approval of the hearing examiner. The danger of requiring prior approval is the potential for a hearing examiner to underestimate the importance of an issue, when, through discovery, facts may show the issue to be important. Therefore, removal of the prior approval provision will stand.

Nevertheless, the potential for misuse or abuse of discovery is increasingly of concern throughout the legal system, and a provision which allows a check on the discovery activities in a case would be prudent. Therefore, the amendment to rule 36.12.215 is modified to add the requirement that copies of all requests for expanded discovery be filed with the

hearing examiner. This allows the hearing examiner to provide oversight of the discovery process. If the discovery requests raise concerns about delay or relevance, the hearing examiner may call a prehearing conference.

COMMENT: The amendments to 36.12.215 allow the filing of any means of discovery available under the Montana Rules of Civil Procedure. Subsection 36.12.215(6) requires requests be served at least 30 days prior to the hearing, and the Rules of Civil Procedure allow 30 days to respond to requests. This may leave no time for the hearing examiner to deal with discovery disputes prior to the hearing. Such requests should be made at least 45 to 60 days before the hearing.

RESPONSE: The Board agrees the amendment creates a time sequence which could become troublesome. To minimize this, the following modifications to the amendments of rule 36.12.215 are made. A new subsection (1) is added stating that discovery may begin as soon as the parties have been notified the Department has received valid objections to an application. (The Department routinely mails a letter to the applicant and to each objector which notifies them of the objections and of future action to be taken.) Subsection (6) is revised to state that discovery requests must be timed to allow all responses to be completed at least five days prior to the hearing.

COMMENT: There is an incorrect internal reference in 36.12.220(3). The reference to written testimony filed pursuant to 36.12.220(1) should refer to 36.12.220(2).

RESPONSE: The Board agrees. The incorrect reference was a clerical oversight.

6. No other written or oral comments of testimony were received.

BOARD OF NATURAL RESOURCES
AND CONSERVATION

By: _____
Jack E. Galt, Chairman

_____
Donald D. MacIntyre,
Rule Reviewer

Certified to the Secretary of State on January 31, 1994.

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

In the matter of the amendment of rule 46.10.404 pertaining to Title IV-A day care for children	)))	NOTICE OF THE AMENDMENT OF RULE 46.10.404 PERTAINING TO TITLE IV-A DAY CARE FOR CHILDREN

TO: All Interested Persons

1. On December 9, 1993, the Department of Social and Rehabilitation Services published notice of the proposed amendment of rule 46.10.404 pertaining to Title IV-A day care for children at page 2910 of the 1993 Montana Administrative Register, issue number 23.

2. The Department has amended rule 46.10.404 as proposed.

3. No written comments or testimony were received.

Rule Reviewer

Director, Social and Rehabilitation Services

Certified to the Secretary of State January 31, 1994.

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

In the matter of the amendment of rules 46.12.501, 46.12.570 through 46.12.573, 46.12.575, 46.12.577, 46.12.2001, 46.12.2010, 46.12.2011, 46.12.2013, 46.12.5002, 46.12.5007, 46.12.5010 and the repeal of 46.12.2012 pertaining to mid-level practitioners	)	NOTICE OF THE AMENDMENT OF RULES 46.12.501, 46.12.570 THROUGH 46.12.573, 46.12.575, 46.12.577, 46.12.2001, 46.12.2010, 46.12.2011, 46.12.2013, 46.12.5002, 46.12.5007, 46.12.5010 AND THE REPEAL OF 46.12.2012 PERTAINING TO MID-LEVEL PRACTITIONERS

TO: All Interested Persons

1. On December 23, 1993, the Department of Social and Rehabilitation Services published notice of the proposed amendment of rules 46.12.501, 46.12.570 through 46.12.573, 46.12.575, 46.12.577, 46.12.2001, 46.12.2010, 46.12.2011, 46.12.2013, 46.12.5002, 46.12.5007, 46.12.5010 and the repeal of 46.12.2012 pertaining to mid-level practitioners at page 2994 of the 1993 Montana Administrative Register, issue number 24.

2. The Department has amended rules 46.12.501, 46.12.570 through 46.12.573, 46.12.575, 46.12.577, 46.12.2001, 46.12.2010, 46.12.2011, 46.12.5002, 46.12.5007, 46.12.5010 and repealed 46.12.2012 as proposed.

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

46.12.2013 ~~NURSE SPECIALIST~~ MID-LEVEL PRACTITIONER SERVICES, REIMBURSEMENT

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

(5) Reimbursement for immunizations, FAMILY PLANNING SERVICES, SERVICES BILLED UNDER HCPCS "J" CODES, and for kids count/early and periodic screening, diagnostic and treatment services as authorized at ARM 46.12.514 through 46.12.517 is the lowest of:

Subsection (5)(a) through (8)(h) remain as proposed.

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

4. The Department has thoroughly considered all commentary received:

COMMENT: "Mid-level groups nonphysician providers together under one heading without regard for their educational background and expertise."

RESPONSE: Mid-Level is a "reimbursement group" designation under the Medicaid program the same as physician and clinic. Both of the latter groups are umbrella designations which allow similar reimbursement activities irrespective of exact specialties or ranges of services. These are not meant to reflect specific training or educational backgrounds.

COMMENT: "The term "mid-level" suggests that there must be a higher level. To define an advanced practice nurse as a mid-level practitioner is to imply that the level of care this individual provides is not the best. This is wrong."

RESPONSE: This term is not meant to designate either quality or quantity of service provided by these practitioners. Rather, this term is a readily identifiable one for a reimbursement group in the medicaid system which has been used in the Medicaid Provider Manual since November, 1992.

COMMENT: "We suggest that the reimbursement rate in proposed ARM 46.12.2013(4)(b) be 100% rather than 90%. This would better accomplish the goals published by SRS as justification for the amendment of that rule."

RESPONSE: This is one of the very few areas in medicaid which received any enhanced reimbursement following the recent regular and special Montana Legislative sessions. The Department intends to monitor the results of these changes over the next biennium to see if they "cause" an increase in the availability of medicaid primary care providers. Mid-level practitioners will continue to receive 100% of physician reimbursement for family planning, well-child, J-Codes and immunization services.

COMMENT: Commentor noted that the Department should add a section regarding the charges allowable and paid for by the Department for family services and J-Codes.

RESPONSE: The Department agrees and has amended ARM 46.12.2013 accordingly.

COMMENT: The requirements and definitions concerning the relationships of mid-level practitioners to physicians should be retained.

RESPONSE: The requirements and definitions concerning the relationships of mid-level practitioners to physicians are licensing and individual matters. The rules governing the licensing of the professionals who are mid-level practitioners are the proper location for the placement of appropriate requirements and definitions governing the practice of a profession. The rules governing medicaid services are not

appropriate for the imposition of licensing requirements and do not need to reiterate the licensing requirements.

The Department does not desire to place requirements upon the practice of professionals that are not necessary for the purposes of the medicaid program and that may be in addition to or contrary to the licensing requirements.

Rule Reviewer

Director, Social and Rehabilitation Services

Certified to the Secretary of State January 31, 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, 1993. This table includes those rules adopted during the period October 1, 1993 through December 31, 1993 and any proposed rule action that is 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, 1993, this table and the table of contents of this issue of the MAR.

This table indicates the department name, title number, rule numbers in ascending order, catchphrase or the subject matter of the rule and the page number at which the action is published in the 1993 Montana Administrative Register.

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