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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 17

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 The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

Inquiries regarding the rulemaking process, including material found in the Montana Administrative Register and the Administrative Rules of Montana, may be made by calling the Administrative Rules Bureau at (406) 444-2055.

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NOTICE SECTION

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

In the matter of the proposed amendment of rules 6.6.503, 6.6.504, 6.6.507 through 6.6.507B, 6.6.509 through 6.6.511, 6.6.519 and the proposed adoption of new rule I pertaining to medicare supplement insurance.	)))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND ADOPTION OF RULES

TO: All Interested Persons:

1. On October 6, 1998, at 9:30 a.m., a public hearing will be held in room 413 of the State Capitol, at Helena, Montana, to consider the proposed amendments and adoption of rules pertaining to medicare supplement insurance.

2. The proposed rule amendments are as follows (new material is underlined; material to be deleted is interlined):

6.6.503 APPLICABILITY AND SCOPE (1) Except as otherwise specifically provided in ARM 6.6.507, 6.6.508, 6.6.509, 6.6.515, ~~and~~ 6.6.521, and [New rule I], this subchapter shall apply to:

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

AUTH: Sec. 33-1-313, MCA
IMP: Sec. 33-22-904, MCA

6.6.504 DEFINITIONS ~~(1)~~ For purposes of this subchapter, the terms defined in ~~section~~ 33-22-903, MCA, will have the same meaning in this subchapter unless clearly designated otherwise. The following definitions are in addition to those in 33-22-903, MCA.

(1) "Bankruptcy" means when a Medicare+Choice organization that is not an issuer has filed, or has had filed against it, a petition for declaration of bankruptcy and has ceased doing business in the state.

(2) "Continuous period of creditable coverage" means the period during which an individual was covered by creditable coverage, if during the period of the coverage the individual had no breaks in coverage greater than sixty-three days.

(3) "Creditable coverage" means, with respect to an individual, coverage of the individual provided under any of the following:

(a) A group health plan;

(b) Health insurance coverage;

(c) Part A or Part B of Title XVIII of the Social Security Act (medicare);

(d) Title XIX of the Social Security Act (medicaid), other than coverage consisting solely of benefits under section 1928;

(e) Chapter 55 of Title 10 United States Code (CHAMPUS);

(f) A medical care program of the Indian Health Service or of a tribal organization;

(g) A state health benefits risk pool;

(h) A health plan offered under chapter 89 of Title 5 United States Code (Federal Employees Health Benefits Program);

(i) A public health plan as defined in federal regulation; and

(j) A health benefit plan under section 5(e) of the Peace Corps Act (22 United States Code 2504(e)).

(4) "Creditable coverage" shall not include one or more, or any combination of the following:

(a) Coverage only for accident or disability income insurance, or any combination thereof;

(b) Coverage issued as a supplement to liability insurance;

(c) Liability insurance, including general liability insurance and automobile liability insurance;

(d) Workers' compensation or similar insurance;

(e) Automobile medical payment insurance;

(f) Credit-only insurance;

(g) Coverage for on-site medical clinics; and

(h) Other similar insurance coverage, specified in federal regulations, under which benefits for medical care are secondary or incidental to other insurance benefits.

(5) "Creditable coverage" shall not include the following benefits if they are provided under a separate policy, certificate or contract of insurance or are otherwise not an integral part of the plan:

(a) Limited scope dental or vision benefits;

(b) Benefits for long-term care, nursing home care, home health care, community-based care, or any combination thereof; and

(c) Such other similar, limited benefits as are specified in federal regulations.

(6) "Creditable coverage" shall not include the following benefits if offered as independent, noncoordinated benefits:

(a) Coverage only for a specified disease or illness; and

(b) Hospital indemnity or other fixed indemnity insurance.

(7) "Creditable coverage" shall not include the following if it is offered as a separate policy, certificate or contract of insurance:

(a) Medicare supplemental health insurance as defined under section 1882(g)(1) of the Social Security Act;

(b) Coverage supplemental to the coverage provided under chapter 55 of Title 10, United States Code; and

(c) Similar supplemental coverage provided to coverage under a group health plan.

(8) "Employee welfare benefit plan" means a plan, fund or program of employee benefits as defined in 29 U.S.C. section 1002 (Employee Retirement Income Security Act).

(9) "Insolvency" means when an issuer, licensed to transact the business of insurance in this state, has had a

final order of liquidation entered against it with a finding of insolvency by a court of competent jurisdiction in the issuer's state of domicile.

(10) "Medicare+Choice plan" means a plan of coverage for health benefits under medicare Part C as defined in section 1859 found in Title IV, subtitle A, chapter 1 of Public Law 105-33, and includes:

(a) Coordinated care plans which provide health care services, including but not limited to health maintenance organization plans (with or without a point-of-service option), plans offered by provider-sponsored organizations, and preferred provider organization plans;

(b) Medical savings account plans coupled with a contribution into a Medicare+Choice medical savings account; and

(c) Medicare+Choice private fee-for-service plans.

(11) "Secretary" means the secretary of the United States Department of Health and Human Services.

AUTH: Sec. 33-1-313, MCA
IMP: Sec. 33-22-903, MCA

6.6.507 MINIMUM BENEFIT STANDARDS (1) through (1)(c)(ix) will remain the same.

(A) ~~An~~ Some annual clinical preventive medical history and physical examinations that may include tests and services from (B) and patient education to address preventive health care measures.

(B) will remain the same.

(I) ~~fecal occult blood test and/or~~ digital rectal examination;

~~(II) mammogram;~~

(III) through (VII) will remain the same but are renumbered (II) through (VI).

~~(VIII)~~(VII) ~~influenza vaccine administered at any appropriate time during the year and~~ tetanus and diphtheria booster (every ten years);

(IX) will remain the same but is renumbered (VIII).

(C) through (E) will remain the same.

AUTH: Sec. 33-1-313 and 33-2-901, MCA
IMP: Sec. 33-15-303 & 33-22-901 through 33-22-924, MCA

6.6.507A STANDARD MEDICARE SUPPLEMENT BENEFIT PLANS (1) through (5)(f) will remain the same.

(g) Standardized medicare supplement benefit high deductible plan F shall include only the following: 100% of covered expenses following the payment of the annual high deductible plan F deductible. The covered expenses include the core benefit as defined in ARM 6.6.507, plus the medicare Part A deductible, skilled nursing facility care, the medicare Part B deductible, 100% of the medicare Part B excess charges, and medically necessary emergency care in a foreign country as defined in ARM 6.6.507(1)(c)(i), (ii), (iii), (v), and (viii)

respectively. The annual high deductible plan F deductible shall consist of out-of-pocket expenses, other than premiums, for services covered by the medicare supplement plan F policy, and shall be in addition to any other specific benefit deductibles. The annual high deductible Plan F deductible shall be $1500 for 1998 and 1999, and shall be based on the calendar year. It shall be adjusted annually thereafter by the secretary to reflect the change in the Consumer Price Index for all urban consumers for the twelve-month period ending with August of the preceding year, and rounded to the nearest multiple of $10.

(g) through (j) will remain the same but are relettered (h) through (k).

(l) Standardized medicare supplement benefit high deductible plan J shall consist of only the following: 100% of covered expenses following the payment of the annual high deductible plan J deductible. The covered expenses include the core benefit as defined in ARM 6.6.507, plus the medicare Part A deductible, skilled nursing facility care, medicare Part B deductible, 100% of the medicare Part B excess charges, extended outpatient prescription drug benefit, medically necessary emergency care in a foreign country, preventive medical care benefit and at-home recovery benefit as defined in ARM 6.6.507(1)(c)(i), (ii), (iii), (v), (vii), (viii), (ix), and (x) respectively. The annual high deductible plan J deductible shall consist of out-of-pocket expenses, other than premiums, for services covered by the medicare supplement plan J policy, and shall be in addition to any other specific benefit deductibles. The annual deductible shall be $1500 for 1998 and 1999, and shall be based on a calendar year. It shall be adjusted annually thereafter by the secretary to reflect the change in the Consumer Price Index for all urban consumers for the twelve-month period ending with August of the preceding year, and rounded to the nearest multiple of $10.

AUTH: Sec. 33-1-313, MCA
IMP: Sec. 33-22-904 and 33-22-905, MCA

6.6.507B OPEN ENROLLMENT (1) will remain the same.

(2) If an applicant qualifies under ARM 6.6.507B(1) and submits an application during the time period referenced in (1) and, as of the date of application, has had a continuous period of creditable coverage of at least six months, the issuer shall not exclude benefits based on a preexisting condition.

(3) If the applicant qualifies under ARM 6.6.507B(1) and submits an application during the time period referenced in (1) and, as of the date of application, has had a continuous period of creditable coverage that is less than six months, the issuer shall reduce the period of any preexisting condition exclusion by the aggregate of the period of creditable coverage applicable to the applicant as of the enrollment date. The secretary shall specify the manner of the reduction under this rule.

~~(2)~~(4) This rule must not be construed as preventing the

exclusion of benefits under a policy, except as provided in ARM 6.6.522 and 6.6.507B(2) and (3), during the first six months, based on a preexisting condition for which the policyholder or certificateholder received treatment or was otherwise diagnosed during the six months before it became effective.

AUTH: Sec. 33-1-313, MCA
IMP: Sec. 33-22-904, MCA

6.6.509 REQUIRED DISCLOSURE PROVISIONS (1) through (8)(c) will remain the same.

[COMPANY NAME]
Outline of Medicare Supplement Coverage-Cover Page:
Benefit Plan(s) _____[insert letter(s) of plan(s) being offered]

Medicare supplement insurance can be sold in only ten standard plans plus two high deductible plans. This chart shows the benefits included in each plan. Every company must make available Plan "A". Some plans may not be available in your state.

Basic Benefits: Included in All Plans.
Hospitalization: Part A coinsurance plus coverage for 365 additional days after Medicare benefits end.
Medical Expenses: Part B coinsurance (generally 20% of Medicare-approved expenses).
Blood: First three pints of blood each year.

A	B	C	D	E	F [1]	G	H	I	J [2]
Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits
		Skilled Nursing Co-Insurance	Skilled Nursing Co-Insurance	Skilled Nursing Co-Insurance	Skilled Nursing Co-Insurance	Skilled Nursing Co-Insurance	Skilled Nursing Co-Insurance	Skilled Nursing Co-Insurance	Skilled Nursing Co-Insurance
	Part A Deductible	Part A Deductible	Part A Deductible	Part A Deductible	Part A Deductible	Part A Deductible	Part A Deductible	Part A Deductible	Part A Deductible
		Part B Deductible			Part B Deductible				Part B Deductible
					Part B Excess (100%)	Part B Excess (80%)		Part B Excess (100%)	Part B Excess (100%)
		Foreign Travel Emergency	Foreign Travel Emergency	Foreign Travel Emergency	Foreign Travel Emergency	Foreign Travel Emergency	Foreign Travel Emergency	Foreign Travel Emergency	Foreign Travel Emergency
			At-Home Recovery			At-Home Recovery		At-Home Recovery	At-Home Recovery
							Basic Drugs ($1,250 Limit)	Basic Drugs ($1,250 Limit)	Extended Drugs ($3,000 Limit)
				Preventive Care					Preventive Care

*Plans F and J also have an option called a high deductible plan F and a high deductible plan J. These high deductible plans pay the same or offer the same benefits as plans F and J after one has paid a calendar year ($1500) deductible. Benefits from high deductible plans F and J will not begin until out-of-pocket expenses are $1500. Out-of-pocket expenses for this deductible are expenses that would ordinarily be paid by the policy. These expenses include the Medicare deductibles for Part A and Part B, but does not include, in plan J, the plan's separate prescription drug deductible or, in plans F and J, the plan's separate foreign travel emergency deductible.

(9) and (10) will remain the same.

AUTH: Sec. 33-1-313, 33-22-904, and 33-22-907, MCA
IMP: Sec. 33-15-303 and 33-22-901 through 33-22-924, MCA

6.6.510 REQUIREMENTS FOR APPLICATION FORMS AND REPLACEMENT COVERAGE (1) Application forms must include the following questions designed to elicit information as to whether, as of the date of application, the applicant has another medicare supplement or other health policy or certificate in force or whether a medicare supplement policy or certificate is intended to replace any other accident and sickness policy or certificate presently in force. A supplementary application or other form to be signed by the applicant and producer containing such questions and statements as the following may be used:

(STATEMENTS)

You do not need more than one medicare supplement policy.

If you purchase this policy, you may want to evaluate your existing health coverage and decide if you need multiple coverages. You may be eligible for benefits under medicaid and may not need a medicare supplement policy.

The benefits and premiums under your medicare supplement policy ~~can~~ must be suspended if requested during your entitlement to benefits under medicaid for 24 months. You must request this suspension within 90 days of becoming eligible for medicaid. Upon receipt of timely notice, the issuer must either return to the policyholder or certificateholder that portion of the premium attributable to the period of medicaid eligibility or provide coverage to the end of the term for which premiums were paid, at the option of the insured, subject to adjustment for paid claims. If you are no longer entitled to medicaid, your policy will be reinstated if requested within 90 days of losing medicaid eligibility.

Counseling services may be available in your state to provide advice concerning your purchase of medicare supplement insurance and concerning medical assistance through the state

medicaid program, including benefits as a Qualified Medicare Beneficiary (QMB) and a Specified Low-Income Medicare Beneficiary (SLMB).

(QUESTIONS)

To the best of your knowledge:

(1) through the end of rule 6.6.510 will remain the same.

AUTH: Sec. 33-1-313, 33-22-904 and 33-22-907, MCA
IMP: Sec. 33-15-303 and 33-22-901 through 33-22-924, MCA

6.6.511 SAMPLE FORMS OUTLINING COVERAGE (1) will remain the same.

(a) Inpatient hospital deductible = ~~$760.00~~ $764.00;

(b) Daily coinsurance amount for the 61st through 90th days of hospitalization in a benefit period = ~~$190.00~~ $191.00;

(c) Daily coinsurance amount for lifetime reserve days = ~~$380.00~~ $382.00;

(d) Daily coinsurance amount for the 21st through 100th days of extended care services in a skilled nursing facility in a benefit period = ~~$95.00~~ $95.50.

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

(f) PLAN E

MEDICARE (PART A) - HOSPITAL SERVICES - PER BENEFIT PERIOD

*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOSPITALIZATION*			
Semiprivate room and board, general nursing and miscellaneous services and supplies		$[6.6.511(1)(a)] (Part A deductible)	
First 60 days	All but $[6.6.511(1)(a)]		$0
61st thru 90th day	All but $[6.6.511(1)(b)]	$[6.6.511(1)(b)]	$0
91st day and after:	a day	a day	
---While using 60 lifetime reserve days	All but $[6.6.511(1)(c)] a day	$[6.6.511(1)(c)] a day	$0
---Once lifetime reserve days are used:		100% of Medicare	
---Additional 365 days	$0	eligible expenses	$0
---Beyond the additional 365 days	$0	$0	All costs
SKILLED NURSING FACILITY CARE*			
You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital			
First 20 days	All approved amounts	$0	$0
21st thru 100th day	All but $[6.6.511(1)(d)]/day	Up to $[6.6.511(1)(d)] a day	$0
101st day and after	$0	$0	All costs
BLOOD			
First 3 pints	$0	3 pints	$0
Additional amounts	100%	$0	$0
HOSPICE CARE			
Available as long as your doctor certifies you are terminally ill and you elect to receive these services	All but very limited coinsurance for outpatient drugs and inpatient respite care	$0	Balance

PLAN E

MEDICARE (PART B) - MEDICAL SERVICES - PER CALENDAR YEAR

*Once you have been billed $100 of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	AFTER YOU PAY $1500 DEDUCTIBLE.** PLAN PAYS	IN ADDITION TO $1500 DEDUCTIBLE.** YOU PAY
MEDICAL EXPENSES - IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment,			$100 (Part B deductible)
First $100 of Medicare approved amounts*	$0	$0	
Remainder of Medicare approved amounts	Generally 80%	Generally 20%	$0
Part B excess charges (Above Medicare approved amounts)	$0	$0	All costs
BLOOD			
First 3 pints	$0	All costs	$0
Next $100 of Medicare approved amounts*	$0	$0	$0
Remainder of Medicare approved amounts	80%	20%	$0
CLINICAL LABORATORY SERVICES -- BLOOD TESTS FOR DIAGNOSTIC SERVICES	100%	$0	$0

PARTS A & B

HOME HEALTH CARE MEDICARE APPROVED SERVICES			
Medically necessary skilled care services and medical supplies	100%	$0	$0
Durable medical equipment			
First $100 of Medicare approved amounts*	$0	$0	$100 (Part B deductible)
Remainder of Medicare approved amounts	80%	20%	$0

PLAN E

OTHER BENEFITS - NOT COVERED BY MEDICARE

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
FOREIGN TRAVEL - NOT COVERED BY MEDICARE Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA			
First $250 each calendar year	$0	$0	$250
Remainder of charges	$0	80% to a lifetime maximum benefit of $50,000	20% and amounts over the $50,000 life-time maximum
*PREVENTIVE MEDICARE CARE BENEFIT-NOT COVERED BY MEDICARE ~~Annual~~ Some annual physical and preventive tests and services such as: ~~fecal occult blood test,~~ digital rectal exam, ~~mammogram~~ hearing screening, dipstick urinalysis, diabetes screening, thyroid function test, ~~influenza shot~~ tetanus and diphtheria booster and education, administered or ordered by your doctor when not covered by Medicare			
First $120 each calendar year	$0	$120	$0
Additional charges	$0	$0	All costs

*Medicare benefits are subject to change. Please consult the latest Guide to Health Insurance for People with Medicare.

(g) PLAN F or HIGH DEDUCTIBLE PLAN F

MEDICARE (PART A) - HOSPITAL SERVICES - PER BENEFIT PERIOD

*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.
**This high deductible plan pays the same or offers the same benefits as plan F after one has paid a calendar year ($1500) deductible. Benefits from the high deductible plan F will not begin until out-of-pocket expenses are $1500. Out-of-pocket expenses for this deductible are expenses that would ordinarily be paid by the policy. This includes the Medicare deductibles for Part A and Part B, but does not include the plan's separate foreign travel emergency deductible.

SERVICES	MEDICARE PAYS	AFTER YOU PAY $1500 DEDUCTIBLE.** PLAN PAYS	IN ADDITION TO $1500 DEDUCTIBLE.** YOU PAY
HOSPITALIZATION* Semiprivate room and board, general nursing and miscellaneous services and supplies			
First 60 days	All but $[6.6.511(1)(a)]	$[6.6.511(1)(a)] (Part A deductible)	$0
61st thru 90th day	All but $[6.6.511(1)(b)] a day	$[6.6.511(1)(b)] a day	$0
91st day and after:			
---While using 60 lifetime reserve days	All but $[6.6.511(1)(c)] a day	$[6.6.511(1)(c)] a day	$0
---Once lifetime reserve days are used:		100% of Medicare eligible expenses	$0
---Additional 365 days	$0		
---Beyond the additional 365 days	$0	$0	All costs
SKILLED NURSING FACILITY CARE* You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital	All approved amounts	$0	$0
First 20 days	All but $[6.6.511(1)(d)]/day	Up to $[6.6.511(1)(d)] a day	$0
21st thru 100th day			
101st day and after	$0	$0	All costs

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SERVICES	MEDICARE PAYS	AFTER YOU PAY $1500 DEDUCTIBLE.** PLAN PAYS	IN ADDITION TO $1500 DEDUCTIBLE.** YOU PAY
BLOOD First 3 pints Additional amounts	 $0 100%	 3 pints $0	 $0 $0
HOSPICE CARE Available as long as your doctor certifies you are terminally ill and you elect to receive these services	All but very limited coinsurance for out-patient drugs and inpatient respite care	$0	Balance

PLAN F or HIGH DEDUCTIBLE PLAN F

MEDICARE (PART B) - MEDICAL SERVICES - PER CALENDAR YEAR

*Once you have been billed $100 of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

**This high deductible plan pays the same or offers the same benefits as plan F after one has paid a calendar year ($1500) deductible. Benefits from the high deductible plan F will not begin until out-of-pocket expenses are $1500. Out-of-pocket expenses for this deductible are expenses that would ordinarily be paid by the policy. This includes the Medicare deductibles for Part A and Part B, but does not include the plan's separate foreign travel emergency deductible.

SERVICES	MEDICARE PAYS	AFTER YOU PAY $1500 DEDUCTIBLE,** PLAN PAYS	IN ADDITION TO $1500 DEDUCTIBLE,** YOU PAY
MEDICAL EXPENSES - IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment,			
First $100 of Medicare approved amounts*	$0	$100 (Part B deductible)	$0
Remainder of Medicare approved amounts	Generally 80%	Generally 20%	$0
Part B excess charges (Above Medicare approved amounts)	$0	$100%	$0
BLOOD			
First 3 pints	$0	All costs $100 (Part B deductible)	$0
Next $100 of Medicare approved amounts*	$0		$0
Remainder of Medicare approved amounts	80%	20%	$0
CLINICAL LABORATORY SERVICES - - BLOOD TESTS FOR DIAGNOSTIC SERVICES	100%	$0	$0

PLAN F or HIGH DEDUCTIBLE PLAN F

PARTS A & B

SERVICES	MEDICARE PAYS	AFTER YOU PAY $1500 DEDUCTIBLE.** PLAN PAYS	IN ADDITION TO $1500 DEDUCTIBLE.** YOU PAY
HOME HEALTH CARE MEDICARE APPROVED SERVICES Medically necessary skilled care services and medical supplies	100%	$0	$0
Durable medical equipment First $100 of Medicare approved amounts*	$0	$100 (Part B deductible)	$0
Remainder of Medicare approved amounts	80%	20%	$0

~~PLAN F~~

OTHER BENEFITS - NOT COVERED BY MEDICARE

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
FOREIGN TRAVEL - NOT COVERED BY MEDICARE Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA			
First $250 each calendar year	$0	$0	$250
Remainder of charges	$0	80% to a lifetime maximum benefit of $50,000	20% and amounts over the $50,000 life-time maximum

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

(k) PLAN J or HIGH DEDUCTIBLE PLAN J

MEDICARE (PART A) - HOSPITAL SERVICES - PER BENEFIT PERIOD

*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row. **This high deductible plan pays the same or offers the same benefits as plan J after one has paid a calendar year ($1500) deductible. Benefits from the high deductible plan J will not begin until out-of-pocket expenses are $1500. Out-of-pocket expenses for this deductible are expenses that would ordinarily be paid by the policy. This includes the Medicare deductibles for Part A and Part B, but does not include the plan's separate foreign travel emergency deductible.

SERVICES	MEDICARE PAYS	AFTER YOU PAY $1500 DEDUCTIBLE.** PLAN PAYS	IN ADDITION TO $1500 DEDUCTIBLE.** YOU PAY
HOSPITALIZATION*			
Semiprivate room and board, general nursing and miscel-			
laneous services and supplies	All but	$[6.6.511(1)(a)] (Part	$0
First 60 days	$[6.6.511(1)(a)]	A deductible)	
61st thru 90th day	All but $[6.6.511(1)(b)]a day	$[6.6.511(1)(b)] a day	$0
91st day and after:			
---While using 60			
lifetime reserve days	All but $[6.6.511(1)(c)] a day	$[6.6.511(2)(c)] a day	$0
---Once lifetime reserve days			
are used:		100% of Medicare	
---Additional 365 days	$0	eligible expenses	$0
---Beyond the additional			
365 days	$0	$0	All costs
SKILLED NURSING FACILITY CARE*			
You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving			
the hospital	All approved	$0	$0
First 20 days	amounts		
	All but	Up to $[6.6.511(1)(d)]	$0
21st thru 100th day	$[6.6.511(1)(d)]/day	a day	
101st day and after	$0	$0	All costs

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SERVICES	MEDICARE PAYS	AFTER YOU PAY $1500 DEDUCTIBLE.** PLAN PAYS	IN ADDITION TO $1500 DEDUCTIBLE.** YOU PAY
BLOOD First 3 pints Additional amounts	 $0 100%	 3 pints $0	 $0 $0
HOSPICE CARE Available as long as your doctor certifies you are terminally ill and you elect to receive these services	All but very limited coinsurance for out-patient drugs and inpatient respite care	$0	Balance

PLAN J or HIGH DEDUCTIBLE PLAN J

MEDICARE (PART B) - MEDICAL SERVICES - PER CALENDAR YEAR

*Once you have been billed $100 of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

**This high deductible plan pays the same or offers the same benefits as plan J after one has paid a calendar year ($1500) deductible. Benefits from the high deductible plan J will not begin until out-of-pocket expenses are $1500. Out-of-pocket expenses for this deductible are expenses that would ordinarily be paid by the policy. This includes the Medicare deductibles for Part A and Part B, but does not include the plan's separate foreign travel emergency deductible.

SERVICES	MEDICARE PAYS	AFTER YOU PAY $1500 DEDUCTIBLE.** PLAN PAYS	IN ADDITION TO $1500 DEDUCTIBLE.** YOU PAY
MEDICAL EXPENSES - IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment,	$0	$100 (Part B deductible)	$0
First $100 of Medicare approved amounts*			
Remainder of Medicare approved amounts	Generally 80%	Generally 20%	$0
Part B excess charges (Above Medicare approved amounts)	$0	$100%	$0
BLOOD			
First 3 pints	$0	All costs $100 (Part B deductible)	$0
Next $100 of Medicare approved amounts*	$0		$0
Remainder of Medicare approved amounts	80%	20%	$0
CLINICAL LABORATORY SERVICES -- BLOOD TESTS FOR DIAGNOSTIC SERVICES	100%	$0	$0

PLAN J or HIGH DEDUCTIBLE PLAN J

PARTS A & B

SERVICES	MEDICARE PAYS	AFTER YOU PAY $1500 DEDUCTIBLE.** PLAN PAYS	IN ADDITION TO $1500 DEDUCTIBLE.** YOU PAY
HOME HEALTH CARE MEDICARE APPROVED SERVICES Medically necessary skilled care services and medical supplies	100%	$0	$0
Durable medical equipment First $100 of Medicare approved amounts*	$0	$100 (Part B deductible)	$0
Remainder of Medicare approved amounts	80%	20%	$0
AT-HOME RECOVERY SERVICES-NOT COVERED BY MEDICARE Home care certified by your doctor, for personal care during recovery from an injury or sickness for which Medicare approved a Home Care Treatment Plan			
--Benefit for each visit	$0	Actual charges to $40 a visit	
--Number of visits covered (Must be received within 8 weeks of last Medicare Approved visit)	$0	Up to the number of Medicare Approved visits, not to exceed 7 each week	Balance
--Calendar year maximum	$0	$1,600	

OTHER BENEFITS - NOT COVERED BY MEDICARE

FOREIGN TRAVEL - NOT COVERED BY MEDICARE Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA First $250 each calendar year	$0	$0	$250
Remainder of charges	$0	80% to a lifetime maximum benefit of $50,000	20% and amounts over the $50,000 life-time maximum

SERVICES	MEDICARE PAYS	AFTER YOU PAY $1500 DEDUCTIBLE,** PLAN PAYS	IN ADDITION TO $1500 DEDUCTIBLE,** YOU PAY
EXTENDED OUTPATIENT PRESCRIPTION DRUGS - NOT COVERED BY MEDICARE			
First $250 each calendar year	$0	$0	$250
Next $6,000 each calendar year	$0	80%-$3,000 calendar year maximum benefit	50%
Over $6,000 each calendar year	$0	$0	All costs
***PREVENTIVE MEDICAL CARE BENEFIT-NOT COVERED BY MEDICARE ~~Annual~~ Some annual physical and preventive tests and services such as: ~~fecal occult blood test,~~ digital rectal exam, ~~mammogram,~~ hearing screening, dipstick urinalysis, diabetes screening, thyroid function test, ~~influenza shot,~~ tetanus and diphtheria booster and education, administered or ordered by your doctor when not covered by Medicare			
First $120 each calendar year	$0	$120	$0
Additional charges	$0	$0	All costs

***Medicare benefits are subject to change. Please consult the latest Guide to Health Insurance for People with Medicare.

AUTH: Sec. 33-1-313, 33-22-904, and 33-22-907, MCA
IMP: Sec. 33-15-303 and 33-22-901, MCA

6.6.519 STANDARDS FOR MARKETING (1) through (f) will remain the same.

(g) Provide to the enrollee appropriate disclosure statement(s) if the enrollee has accident and sickness insurance. These statements must be identical to the disclosure statements in Appendix C of the NAIC Model Regulation To Implement The NAIC Medicare Supplement Insurance Minimum Standards Model Act, ~~April 1995~~ June 1998~~, with the corrections contained in the Health Care Financing Administration letter to Insurance Commissioners, dated March 21, 1996~~. These disclosure statements are hereby adopted and incorporated by reference. These disclosure statements may be obtained by writing to the Montana Insurance Commissioner, P.O. Box 4009, Helena, Montana 59604-4009.

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

AUTH: Sec. 33-1-313, 33-18-235, and 33-22-904, MCA
IMP: Sec. 33-15-303, 33-18-235, and 33-22-901 through 33-22-924, MCA

3. The new rule proposed for adoption provide as follows:

Rule I GUARANTEED ISSUE FOR ELIGIBLE PERSONS

(1) The following are general provisions relating to guaranteed issue of Medicare+choice plans:

(a) Eligible persons are those individuals described in (2) who apply to enroll under the policy not later than sixty-three days after the date of the termination of enrollment described in (2), and who submit evidence of the date of termination or disenrollment with the application for a medicare supplement policy.

(b) With respect to eligible persons, an issuer shall not:

(i) deny or condition the insurance or effectiveness of a medicare supplement policy described in (3) that is offered and is available for issuance to new enrollees by the issuer;

(ii) discriminate in the pricing of such a medicare supplement policy because of health status, claims experience, receipt of health care, or medical condition; and

(iii) impose an exclusion of benefits based on a preexisting condition under such a medicare supplement policy.

(2) An eligible person is an individual described in any of the following paragraphs:

(a) The individual is enrolled under an employee welfare benefit plan that provides health benefits that supplement the benefits under medicare, and the plan terminates, or the plan ceases to provide all such supplemental health benefits to the individual;

(b) The individual is enrolled with a Medicare+Choice organization under a Medicare+Choice plan under Part C of medicare, and the individual disenrolls from a Medicare+Choice plan because:

(i) The organization's or plan's certification has been

terminated or the organization has terminated or otherwise discontinued providing the plan in the area in which the individual resides;

(ii) The individual is no longer eligible to elect the plan because of a change in the individual's place of residence or other change in circumstances specified by the secretary, but not including termination of the individual's enrollment on the basis described in section 1851(g)(3)(B) of the federal Social Security Act (where the individual has not paid premiums on a timely basis or has engaged in disruptive behavior as specified in standards under section 1856), or the plan is terminated for all individuals within a residence area;

(iii) The individual demonstrates, in accordance with guidelines established by the secretary, that:

(A) The organization offering the plan substantially violated a material provision of the organization's contract under this part in relation to the individual, including the failure to provide an enrollee on a timely basis medically necessary care for which benefits are available under the plan or the failure to provide such covered care in accordance with applicable quality standards; or

(B) The organization, or agent or other entity on the organization's behalf, materially misrepresented the plan's provisions in marketing the plan to the individual; or

(C) The individual meets such other exceptional conditions as the secretary may provide.

(c) The individual is enrolled with:

(i) An eligible organization under a contract under section 1876 (medicare risk or cost);

(ii) A similar organization operating under demonstration project authority, effective for periods before April 1, 1999;

(iii) An organization under an agreement under section 1833(1)(A)(health care prepayment plan); or

(iv) An organization under a medicare select policy.

(d) The enrollment ceases under the same circumstance that would permit discontinuance of an individual's election of coverage under the first sentence of section 1851(e)(4) of the federal Social Security Act as delineated above in (2)(b).

(e) The individual is enrolled under a medicare supplement policy and the enrollment ceases because:

(i) Of the insolvency of the issuer or bankruptcy of the nonissuer organization; or

(ii) Of other involuntary termination of coverage or enrollment under the policy;

(iii) The issuer of the policy substantially violated a material provision of the policy; or

(iv) The issuer, or an agent or other entity acting on the issuer's behalf, materially misrepresented the policy's provisions in marketing the policy to the individual.

(f) The individual was enrolled under a medicare supplement policy and terminates enrollment and subsequently enrolls, for the first time, with any Medicare+Choice organization under a Medicare+Choice plan under Part C of medicare, any eligible organization under a contract under

section 1876 (medicare risk or cost), any similar organization operating under demonstration project authority, an organization under an agreement under section 1833(a)(1)(A)(health care prepayment plan), or a medicare select policy.

(g) The subsequent enrollment under (f) is terminated by the enrollee during any period within the first twelve months of such subsequent enrollment (during which the enrollee is permitted to terminate such subsequent enrollment under section 1851(e) of the federal Social Security Act).

(h) The individual, upon first becoming eligible for benefits under Part A of medicare at age 65 or older, enrolls in a Medicare+Choice plan under Part C of medicare, and disenrolls from the plan not later than twelve months after the effective date of enrollment.

(3) The following describe the type of medicare supplement policy which must be issued to an eligible person:

(a) An eligible person defined in (2)(a), (2)(b), (2)(c), or (2)(d) is entitled to the issuance of a medicare supplement policy with any level of benefits up to the level of the previous policy without underwriting. If such an eligible person chooses a medicare supplement policy with a higher level of benefits than the previous policy, the issuer may underwrite the new policy.

(b) An eligible person defined in (2)(e) is entitled to the issuance of the same medicare supplement policy in which the eligible person was most recently enrolled, if available from the same issuer, or, if not available, a policy described in (3)(a).

(c) Section (2)(f) shall include any medicare supplement policy offered by any issuer.

(4) The following establish standards for notification upon termination and disenrollment:

(a) At the time of an event described in (2) of this rule because of which an individual loses coverage or benefits due to the termination of a contract or agreement, policy, or plan, the organization that terminates the contract or agreement, the issuer terminating the policy, or the administrator of the plan being terminated, respectively, shall notify the individual of his or her rights under this rule, and of the obligations of issuers of medicare supplement policies under (1). Such notice shall be communicated contemporaneously with the notification of termination.

(b) At the time of an event described in (2) of this rule because of which an individual ceases enrollment under a contract or agreement, policy, or plan, the organization that offers the contract or agreement, regardless of the basis of the cessation of enrollment, the issuer offering the policy, or the administrator of the plan, respectively, shall notify the individual of his or her rights under this rule, and of the obligations of issuers of medicare supplement policies under (1). Such notice shall be communicated within ten working days of the issuer receiving notification of disenrollment.

AUTH: Sec. 33-1-313 and 33-22-904, MCA
IMP: Sec. 33-22-904, MCA

4. REASON: The Commissioner is making changes in these rules in order to comply with federal mandates primarily required under the Health Insurance Portability and Accountability Act and the Balanced Budget Act of 1997 (Public Law 105-33).

5. Interested persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Clyde Dailey, Montana Insurance Department, P.O. Box 4009, Helena, Montana 59604, no later than October 16, 1998.

6. The State Auditor's Office will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you require an accommodation, contact the office no later than 5:00 p.m., September 28, 1998, to advise us as to the nature of the accommodation needed. Please contact Darla Sautter at 126 North Sanders, Mitchell Building, Room 270, Helena, Montana, 59620; telephone (406) 444-2726; Montana Relay 1-800-332-6148; TDD (406) 444-3246; facsimile (406) 444-3497. Persons with disabilities who need an alternative accessible format of this document in order to participate in this rule-making process should contact Darla Sautter.

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

8. The State Auditor's Office maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies whether the person wishes to receive notices regarding insurance rules, securities rules, or both. Such written request may be mailed or delivered to the State Auditor's Office, P.O. Box 4009, Helena, MT 59604, faxed to the office at 406-444-3497, or may be made by completing a request form at any rules hearing held by the State Auditor's Office.

MARK O'KEEFE, State Auditor
and Commissioner of Insurance

By: _____
Frank Coté
Deputy Insurance
Commissioner

By: _____
Russell B. Hill
Rules Reviewer

Certified to the Secretary of State this 31st day of August, 1998.

BEFORE THE BOARD OF HEARING AID DISPENSERS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed amendment of rules pertaining to unprofessional conduct and continuing educational requirements	)))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF 8.20.408 UNPROFESSIONAL CONDUCT AND 8.20.501 CONTINUING EDUCATIONAL REQUIREMENTS

TO: All Interested Persons:

1. On October 5, at 1:00 p.m., a public hearing will be held in the Division of Professional and Occupational Licensing Conference room, Lower Level, Arcade Building, 111 North Jackson, Helena, Montana, to consider the proposed amendment of the above-stated rules.

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

"8.20.408 UNPROFESSIONAL CONDUCT For the purpose of implementing the provisions of Title 37, chapter 1, MCA, and in addition to the unprofessional conduct provisions set forth at 37-1-316, MCA, the board defines unprofessional conduct as follows:

(1) through (22) will remain the same.

(23) failing to supply continuing education documentation as requested by the audit procedure set forth in ARM 8.20.501 or supplying misleading, incomplete or false information relative to continuing education taken by the licensee."

Auth: Sec. 37-1-319, 37-16-202, MCA; IMP, Sec. 37-16-411, MCA

REASON: The Board proposes to amend ARM 8.20.501 to provide for a method of auditing licensees for compliance with continuing education requirements. Pursuant to 37-1-305 and 37-16-407, MCA, the Board is authorized to adopt rules relative to continuing education including reporting requirements. It is grounds for license discipline under 37-16-411, MCA, to violate any provisions of Title 37, chapter 16, MCA, including submission of proof of meeting continuing education requirements. On that basis, the Board proposes the above rule amendment to clarify that failure to provide proof in the form specified by the board is grounds for license discipline.

"8.20.501 CONTINUING EDUCATIONAL REQUIREMENTS (1) The licensee must ~~present evidence satisfactory to the board of having~~ submit an affidavit, subscribed and sworn, stating that the licensee completed at least ~~4~~ 10 clock hours of continuing education. Such evidence must be presented by June 30th of each year.

(2) The board will conduct an audit of licensee's continuing education affidavits on an annual basis. Each year, the board will choose, at random, 30% of licensees to audit. Those licensees shall submit evidence of completion of continuing education courses as set forth in the affidavit. Requested evidence shall be received in the board's office within 10 days of receipt of the notice to submit.

(2) through (7) will remain the same, but will be renumbered (3) through (8)."

Auth: Sec. 37-16-202, MCA; IMP, Sec. 37-16-404, MCA

REASON: Pursuant to 37-1-306, MCA, the Board is authorized to adopt rules pertaining to the acquisition of continuing education. An integral part of the renewal process is the submission of proof of continuing education completion. The Board determined that, based on staff workload and the time involved in a 100% review, that the prudent course is to audit a stated percentage of licensees for compliance.

The amendment to 10 clock hours is simply because the number was not changed in a past rulemaking effort.

3. The Department of Commerce will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you wish to request an accommodation, contact the Department no later than 5:00 p.m., September 20, 1998, to advise us of the nature of the accommodation that you need. Please contact Cheryl Smith, Board of Hearing Aid Dispensers, 111 N. Jackson, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 444-5433; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 444-1667. Persons with disabilities who need an alternative accessible format of this document in order to participate in this rule-making process should contact Cheryl Smith.

4. Interested persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Board of Hearing Aid Dispensers, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, or by facsimile, number (406) 444-1667, to be received no later than 5:00 p.m., October 8, 1998.

5. R. Perry Eskridge, attorney, has been designated to preside over and conduct this hearing.

6. Persons who wish to be informed of all Board of Hearing Aid Dispensers administrative rulemaking proceedings or other administrative proceedings may be placed on a list of interested persons by advising the Board at the hearing or in writing to the Board of Hearing Aid Dispensers, 111 North

Jackson, P.O. Box 200513, Helena, Montana 59620-0513 or by phone at (406) 444-5433.

BOARD OF HEARING AID DISPENSERS
DUDLEY ANDERSON, CHAIRMAN

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

_____
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, August 31, 1998.

BEFORE THE BOARD OF PHARMACY
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed amendment, repeal and adoption of rules pertaining to the practice of pharmacy	)))	NOTICE OF PROPOSED AMENDMENT, REPEAL AND ADOPTION OF RULES PERTAINING TO THE PRACTICE OF PHARMACY

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On October 10, 1998, the Board of Pharmacy proposes to amend, repeal and adopt rules pertaining to the practice of pharmacy.

2. The proposed amendment of ARM 8.40.401, 8.40.404, 8.40.414, 8.40.415, 8.40.502, 8.40.602, 8.40.606, 8.40.903, 8.40.905, 8.40.907, 8.40.909, 8.40.1001, 8.40.1002, 8.40.1003, 8.40.1004, 8.40.1005, 8.40.1203, 8.40.1207, 8.40.1209, 8.40.1212, and 8.40.1215 will read as follows: (new matter underlined, deleted matter interlined)

"8.40.401 DEFINITIONS ~~(1) The practice of pharmacy is that profession, which is concerned with the art and science of preparing from natural and synthetic sources suitable and convenient materials for distribution and use in the treatment and prevention of disease. It embraces a knowledge of the identifications, selection, pharmacologic action, preservation, combination, analysis, and standardization of drugs and medicines. It also includes their proper and safe distribution and use whether dispensed on the prescription of a licensed physician, dentist, or dispensed or sold directly to the customer.~~

~~(a) In the art of compounding and dispensing a prescription, the following procedures are necessary:~~

~~(i) to compound, prepare, or mix the ingredients, weigh, measure, or count the ingredients, package and label the contents of the prescription.~~

~~(b) Under Title 37, chapter 7, section 37-7-301(2), MCA, these are the duties of a registered pharmacist or an intern pharmacist, under the direct supervision of a registered pharmacist.~~

~~(2) The term "dispense" shall mean the issuing of one or more doses of a drug for use by a patient for a legitimate medical purpose on the order of a physician, dentist, podiatrist, veterinarian, or other registered practitioner who is authorized to prescribe by the jurisdiction in which he or she is licensed to practice the profession, and acting in the usual course of his or her profession. Dispense includes receiving an oral order, reducing it promptly to writing, and placing it on file. Dispense shall also include the refilling of an order if so authorized.~~

(3) through (5) will remain the same, but will be renumbered (1) through (3).

(4) "Dispense" means the issuing of one or more doses of a drug for use by a patient for a legitimate medical purpose on the order of a physician, dentist, podiatrist, veterinarian, or other registered practitioner who is authorized to prescribe by the jurisdiction in which he or she is licensed to practice the profession, and acting in the usual course of his or her profession. Dispense includes receiving an oral order, reducing it promptly to writing, and placing it on file. Dispense shall also include the refilling of an order if so authorized.

(6) through (8) will remain the same, but will be renumbered (5) through (7).

~~(9) "Non-resident pharmacy" means a pharmacy located outside Montana.~~

~~(10) "Patient counseling" means the oral communication by the pharmacist of information, as defined in the rules of the board, to the patient or caregiver, in order to improve therapy by ensuring proper use of drugs and devices.~~

~~(11) "Pharmaceutical care" is the provision of drug therapy and other pharmaceutical patient-care services intended to achieve outcomes related to cure or prevention of a disease, elimination or reduction of patient's symptoms, or arresting or slowing of a disease process. Pharmaceutical care includes the judgment of a pharmacist in dispensing an equivalent drug or device in response to a prescription drug order, after appropriate communication with the prescriber and the patient.~~

(12) through (13)(b) will remain the same, but will be renumbered (8) through (9)(b).

~~(14) "Prospective drug review" means a review of the patient's drug therapy record and prescription drug order, as established in the rules of the board, prior to dispensing.~~"

Auth: Sec. 37-7-201, MCA; IMP, Sec. 37-7-102, 37-7-201, 37-7-301, 37-7-406, MCA

REASON: The proposed amendments will delete some definitions which are not used elsewhere in the rules, and are therefore unnecessary. Other definitions are included elsewhere in the rules, and it is not necessary to list them in the definition rule.

"8.40.404 FEE SCHEDULE

(1) through (13) will remain the same.

(14) Multistate Pharmacy Jurisprudence Examination (MPJE) exam fee (NABP = $85; board = $15)	100

(14) through (20) will remain the same, but will be renumbered (15) through (21)."

Auth: Sec. 37-1-134, 37-7-201, ~~50-32-103,~~ MCA; IMP, Sec. 37-1-134, 37-7-201, 37-7-302, 37-7-303, 37-7-321, 37-7-703, MCA

REASON: The proposed amendment will add a fee for the Multistate Pharmacy Jurisprudence Exam (MPJE). The new fee is necessary as the Board will be using a new, computerized multistate jurisprudence exam beginning in 1999. The previous paper and pencil jurisprudence exam did not have as many costs associated with its administration. The new fee will accurately reflect the costs of the new MPJE exam.

"8.40.414 LEGAL SUSPENSION OR REVOCATION (1) through (3)(a) will remain the same."

Auth: Sec. 37-7-201, MCA; IMP, Sec. 37-7-201, ~~37-7-311,~~ 37-7-321, MCA

REASON: The proposed amendment will delete reference to a statute which was repealed. The statute is therefore no longer appropriate for the rule.

"8.40.415 ~~SUSPENSION OR REVOCATION - GROSS IMMORALITY~~ UNPROFESSIONAL CONDUCT ~~(1) For the purpose of implementing the provisions of 37-7-311(4), MCA, t~~The board defines ~~"gross immorality"~~ "unprofessional conduct" as follows:

(1) ~~(a)~~ ~~knowingly~~ engaging in any activity which violates state and federal statutes and rules governing the practice of pharmacy;

(2) ~~(b)~~ ~~knowingly~~ dispensing an outdated or questionable product;

(3) ~~(c)~~ ~~knowingly~~ dispensing a cheaper product and charging for a more expensive product;

(4) ~~(d)~~ ~~knowingly~~ charging for more dosage units than ~~is~~are actually dispensed;

(5) ~~(e)~~ ~~knowingly~~ altering prescriptions or other records which the law requires pharmacies and pharmacists to maintain;

(6) ~~(f)~~ ~~knowingly~~ dispensing medication without proper authorization;

(7) ~~(g)~~ ~~knowingly~~ defrauding any persons or government agency receiving pharmacy services;

(h) and (i) will remain the same, but will be renumbered (8) & (9).

(10) ~~(j)~~ ~~knowingly~~ buying, selling, purchasing or trading any prescription drug samples or offering to sell, purchase or trade drug samples. A "drug sample", as used herein, is defined to mean a unit of a prescription drug which is not intended to be sold and is intended to promote the sale of a drug. Auth: Sec. 37-1-319, 37-7-201, MCA; IMP, Sec. ~~37-7-311,~~ 37-1-316, MCA

REASON: The proposed amendment will delete the word "knowingly" from the unprofessional conduct rules, as this creates a higher standard and burden of proof in prosecuting under the rule. The board is not required to use a criminal standard in which intent must be proven, to impose license disciplinary sanctions against their licensees. Instead, the board will rely on the general unprofessional conduct standards set out in 37-1-316, MCA, and implement these additional standards unique to the practice of pharmacy.

"8.40.502 AUTOMATED DATA PROCESSING SYSTEMS (1) ~~As an alternative to procedures in ARM 8.40.501 and 502, a~~An automated data processing system may be employed for the record-keeping system, if the following conditions have been met:

(a) will remain the same.

~~(b) Such information shall include, but not be limited to the prescription requirements and records of dispensing as indicated in ARM 8.40.501 and 502.~~

(c) through (f) will remain the same, but will be renumbered (b) through (e)."

Auth: Sec. 37-7-201~~(2)(i)~~, MCA; IMP, Sec. 37-7-201~~(2)~~, MCA

REASON: The proposed amendment will delete outdated language on automated data processing systems. All pharmacies rely on computerized systems to track patients and medications and maintain records. The rule will be amended slightly to reflect the universal use of these systems.

"8.40.602 SANITATION AND EQUIPMENT REQUIREMENTS

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

(d) ~~motors~~ mortars and pestles - at least one glass 60 mls, and at least one glass 240 mls~~.~~;

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

(i) one prescription counter with sufficient drawers and/or storage space; ~~and~~

(j) suitable refrigeration (if biologicals are stocked)~~.~~; and

(k) reference text."

Auth: Sec. 37-7-201, MCA; IMP, Sec. 37-7-201~~(2)(b)~~, MCA

REASON: The proposed amendment will correct a spelling error in (3)(d) and add (k) requiring reference manuals in all pharmacies. Pharmacy registration applicants have been notified of this reference text requirement for many years, but it has not been listed as required items in a pharmacy. The board will not list specific reference texts, but will recognize several adequate texts, and allow acceptance of new texts as they are published.

"8.40.606 PHARMACIST-IN-CHARGE CHANGE (1) When the registered pharmacist charged with the management of a pharmacy leaves the employment of such pharmacy, ~~he~~ the pharmacist will be held responsible for the proper notification to the board of such termination of ~~his~~ services.

(2) will remain the same."

Auth: Sec. 37-7-201, MCA; IMP, Sec. 37-7-321~~(2)~~, MCA

REASON: The proposed amendments will make the language of the rule gender neutral.

"8.40.903 INTERNSHIP REQUIREMENTS (1) through (10) will remain the same.

(11) An intern will be allowed ~~two years plus one meeting of the board~~ six months after taking the ~~theoretical~~ NABPLEX examination to complete his or her internship. The above time may be extended, subject to the approval of the board, if extenuating circumstances prohibit completion in the above prescribed time."

Auth: Sec. 37-7-201, MCA; IMP, Sec. 37-7-201, MCA

REASON: The proposed amendment will change the amount of time an intern will be allowed for completion of the internship after taking the NABPLEX exam for licensure. Internship is intended as an experience-gaining situation, and should be completed or mostly completed before the applicant takes the licensure exam. Since the NABPLEX exam is now computerized, the applicants have much more flexibility in scheduling the exam, and should be able to do so at or near the completion of their internship.

"8.40.905 APPROVED INSTRUCTION AREAS (1) through (2)(a) will remain the same.

(b) no deficiencies relevant to the observance of all federal, state and municipal laws and regulations governing any phase of activity in which the pharmacy is engaged~~; and~~.

~~(c) additional available reference materials and professional publications and literature other than those required by minimum standards.~~

(3) will remain the same.

~~(4) Instruction received in areas other than retail or hospital will be of an acceptable nature as to assure the board that such instruction will contribute to the intern's qualifications for licensure.~~"

Auth: Sec. 37-7-201, MCA; IMP, Sec. 37-7-201, MCA

REASON: The proposed amendments will update the approved instruction areas for internship completion by deleting unnecessary general requirements such as reference materials, and deleting a reference to "other areas" which is not used by intern applicants.

"8.40.907 OUT-OF-STATE INTERNSHIP (1) and (2) will remain the same.

(3) Certification of the training area and the preceptor shall be made to the board by ~~the~~ that state's board of pharmacy ~~of the reciprocal state~~."

Auth: Sec. 37-7-201, MCA; IMP, Sec. 37-7-201~~(2)(f)~~, MCA

REASON: The proposed amendment will update the language on out-of-state internships to delete the reference to "reciprocity," as reciprocity is not used by the board in evaluating out-of-state internship experience.

"8.40.909 REVOCATION OR SUSPENSION OF CERTIFICATE (1) A certificate may be suspended or revoked by violation of any statute or rule, or failing to comply with approved program after due notice.

(2) will remain the same."

Auth: Sec. 37-7-201, MCA; IMP, Sec. 37-7-201~~(2)(f)~~, ~~311,~~ MCA

REASON: The proposed amendment will make the language of (1) consistent with (2), and allow the board more flexibility in determining an appropriate sanction against a certificate holder. The amendment will also correct a citation in the implementing section, and delete a reference to a repealed statute.

"8.40.1001 REQUIREMENTS (1) will remain the same.

(2) The board ~~will require 1.5 C.E.U. from the period of January 1, 1978 to June 30, 1980, and thereafter~~ will required 1.5 ~~C.E.U.~~ for each fiscal year.

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

Auth: Sec. ~~37-7-305~~ 37-1-319, MCA; IMP, Sec. ~~37-7-304~~ 37-1-306, MCA

REASON: The proposed amendment will delete an outdated timeframe for CEU, and will amend the authority and implementing sections to delete references to statutes which have been repealed.

"8.40.1002 SUBJECTS (1) through (1)(c) will remain the same."

Auth: Sec. ~~37-7-305~~ 37-1-319, MCA; IMP, Sec. ~~37-7-304~~ 37-1-306, MCA

"8.40.1003 APPROVED PROGRAMS (1) through (3) will remain the same."

Auth: Sec. ~~37-7-305~~ 37-1-319, MCA; IMP, ~~37-7-304~~ 37-1-306, MCA

"8.40.1004 RENEWAL NOTICE AND APPLICATION (1) through (2)(a) will remain the same."

Auth: Sec. ~~37-7-305~~ 37-1-319, MCA; IMP, Sec. ~~37-7-304~~ 37-1-306, MCA

"8.40.1005 NON-COMPLIANCE (1) will remain the same."

Auth: Sec. ~~37-7-305~~ 37-1-319, MCA; IMP, Sec. ~~37-7-303, 304~~ 37-1-306, MCA

REASON: The proposed amendments to ARM 8.40.1001, 8.40.1002, 8.40.1003, 8.40.1004 and 8.40.1005 will delete references to statutes which have been repealed, and insert the correct citations from the Uniform Professional Licensing Act.

"8.40.1203 REQUIREMENTS FOR REGISTRATION ~~(1) Every person who manufactures, distributes, or dispenses any~~

~~dangerous drug within this state must...obtain annually a registration issued by the department in accordance with board rules.~~

~~(a) Persons so registered by the board shall be authorized to manufacture, distribute, dispense, or conduct research with dangerous drugs...to the extent authorized by their registration and in conformity with other provisions of sections 50-32-101 through 50-32-313, MCA.~~

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

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

~~(3)~~ (2) The board shall register a person or entity to distribute dangerous drugs included in schedules I through V under the following conditions:

(a) and (b) will remain the same, but the ending period in (b) will be changed to a semi-colon.

(c) the category of distributor as above-stated shall include any person or entity who distributes dangerous drugs or samples thereof within the state of Montana and may include a manufacturer not otherwise required to be registered if such manufacturer also distributes dangerous drugs or samples thereof within the state of Montana~~.~~;

(d) representatives of drug manufacturers who distribute controlled substance samples to licensed practitioners shall be exempt from the requirement of registration.

~~(4)~~ (3) The board shall register a person ~~to dispense any dangerous drug in schedule II through V~~ or to analyze or conduct research with narcotic dangerous drugs in schedules II through V upon ~~the following conditions:~~

~~(a) the applicant is a practitioner licensed under the laws of the state of Montana;~~

~~(b) the applicant is registered for such purposes pursuant to the Federal Controlled Substances Act of 1970;~~

~~(c)~~ the applicant has made making proper application and ~~paid~~ paying the applicable fee~~; and~~

~~(d) the category of dispenser as above stated shall include individual dispensers such as physicians, dentists, veterinarians, and podiatrists. The term dispenser shall also include certified pharmacies.~~

~~(5)~~ (4) The board shall register a person to analyze or conduct research with dangerous drugs in schedule I, if:

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

~~(6) The board shall register an applicant to analyze dangerous drugs in schedules I and V if:~~

~~(a) the applicant has furnished the board evidence of registration for such purpose pursuant to the Federal Controlled Substances Act of 1970; and~~

~~(b) the applicant has made proper application and paid the applicable fee.~~"

Auth: Sec. 50-32-103, MCA; IMP, Sec. 50-32-306, 50-32-308, MCA

REASON: The proposed amendment to (1) and (2) will delete unnecessary language which is already found in statute and repeated elsewhere in the rule. The addition of the words "or entity" throughout the rules will clarify that a person or entity may register under the Dangerous Drug Act, and are required by statute to do so. The proposed addition of (3)(d) will exempt representatives of drug manufacturers who are distributing samples to licensees from the registration requirement, as the board does not regulate this group of people. The amendment to (4) and (5) will clarify and simplify the registration for researchers. Finally, the proposed amendment to (6) will delete language no longer used by the board.

"8.40.1207 APPLICATION FOR REGISTRATION OR RE-REGISTRATION (1) All applications for registration ~~of re-registration~~ shall be made on forms ~~designated or~~ provided by the board and shall be filed with the ~~B~~board ~~of Pharmacists, Department of Commerce, 1424 9th Avenue, Helena, Montana 59620~~.

~~(2) Applications shall be completed and contain all information called for on the respective forms provided, except for such information which is not applicable, in which case this fact shall be stated.~~

~~(3) The board may require an applicant to submit documents and statements pertinent to the application to amend the application to make it more definite and certain.~~

~~(4) Each application and each additional document or statement as may be required by the board shall be signed by the applicant if an individual, by a general partner of the applicant if a partnership, or an officer of the applicant if a corporation or other entity.~~

~~(a) This signature will constitute the applicant's consent granting the board the right of inspection mentioned in rule ARM 8.40.1210.~~

~~(5) Any person who is required to be registered and who is not so registered may apply for registration at any time.~~

~~(6)~~ (2) Forms for renewal will be mailed to each registered person ~~approximately 40~~ or entity 30 days before the expiration date of ~~his~~ the registration at ~~his~~ the last known address. The applicant is required to notify the board of current changes of address within 10 days. ~~Failure to renew shall result in the automatic expiration of the license on the expiration date.~~

~~(7)~~ (3) ~~While new applications will be accepted at any time, t~~The registration~~, when issued,~~ shall ~~be considered to~~ expire ~~for any applicant~~ on December 31 of the year for which the registration was issued. ~~Therefore, application for renewal for the following year shall be according to the above procedure, regardless of when the original certificate was issued.~~

(4) The registrant shall prominently display the certificate of registration to be visible to the public."

Auth: Sec. 50-32-103, MCA; IMP, Sec. 50-32-301, MCA

REASON: The proposed amendments will delete much unnecessary language in outlining the procedures to be followed in applying for registration. The amendment should make it easier for applicants to understand what is required of them.

"8.40.1209 FEES (1) will remain the same.

REGISTRATION	ANNUAL FEE
(a) through (c) will remain the same.	
(d) conduct research/analyze	~~50.00~~
~~(e) analyze~~	~~50.00~~"

Auth: Sec. 37-1-134, 37-7-201, 50-32-013, MCA; IMP, Sec. 37-1-134, 37-7-201, 37-7-303, 37-7-321, 50-32-103, MCA

REASON: The proposed amendment will combine the research and analysis fee, as they are the same amount.

"8.40.1212 REQUIRED RECORDS (1) and (1)(a) will remain the same.

~~(2) The registered individual practitioner is not required to keep records with respect to dangerous drugs or samples thereof listed in schedules II through V which he prescribes or administers in the lawful course of his practice. He shall keep records, however, with respect to such drugs that he dispenses other than by prescribing or administering.~~

~~(3) A practitioner is not required or compelled to furnish the name or identity of a patient or research subject to the board when the practitioner is otherwise obligated to keep such information confidential.~~

(4) through (4)(b) will remain the same but will be renumbered (2) through (2)(b)."

Auth: Sec. 50-32-103, MCA; IMP, Sec. 50-32-309, MCA

REASON: The proposed amendments will delete unnecessary rule language to clarify the records requirement for the registrants.

"8.40.1215 ADDITIONS, DELETIONS, & AND RESCHEDULING OF DANGEROUS DRUGS ~~(1) Whereas certain substances have been designated as controlled substances by the legislature of the state of Montana through enactment and amendment of sections 50-32-221 through 50-32-232, MCA; and whereas the board considers that such statutory enactments preempt the list of controlled substances as originally adopted and stated in ARM 8.40.1215, thereby making it unnecessary to adopt and publish the statutorily created schedules of controlled substances as a part of their rules, the board herein consents to the omission of the text of such schedules from the Administrative Rules of Montana.~~

~~(2) It is therefore the intent of this amendment to incorporate the schedules as referred to in the above statutory sections, as controlled substances adopted by the board.~~

~~(3) Generally, the contents of the above stated statutory sections list the substances by certain schedules. Assignment of a particular substance to a schedule, is based~~

~~on a determination made according to certain criteria set out in those sections. The controlled substances are therefore listed in schedules I through V set out therein.~~

~~(4) The above statutory sections referred to may be found in the Montana Code Annotated, part 2, Title 50, chapter 32, which may be reviewed at the office of the Secretary of State, Capitol Building, Helena, Montana or at the office of the Board of Pharmacy, 1424 9th Avenue, Helena, Montana 59620.~~

~~(5) In addition to the controlled substances identified and referred to above, the board has adopted, pursuant to the authorization in section 50-32-103, MCA, the following substances to be added, deleted or rescheduled thereto:~~

(1) The following controlled substances have been rescheduled or deleted by federal law:

(a) through (6)(s) will remain the same."

Auth: Sec. 50-32-103, 50-32-203, MCA; IMP, Sec. 50-32-103, 50-32-202, 50-32-203, 50-32-209, 50-32-222, 50-32-223, 50-32-224, 50-32-225, 50-32-226, 50-32-228, 50-32-229, 50-32-231, 50-32-232, MCA

REASON: The rule amendment will reflect the statutory amendments enacted by the 1997 Legislature. Many of the controlled substances are now listed in statute, and do not need to be repeated in rule. The rule will still contain those drugs re-scheduled by the FDA during the interim between legislative sessions in Montana.

3. The Board proposes to repeal the following rules:

ARM 8.40.410 (authority section 37-7-201, MCA; implementing section 37-7-102, 37-7-201), located at page 8-1139, Administrative Rules of Montana;

ARM 8.40.412 (authority section 37-7-201, MCA; implementing section 37-7-102, 37-7-201), located at page 8-1140, Administrative Rules of Montana;

ARM 8.40.501 (authority section 37-7-201, MCA; implementing section 37-7-201, MCA), located at page 8-1143, Administrative Rules of Montana;

ARM 8.40.701 (authority section 37-7-201, MCA; implementing section 37-7-102, 37-7-321, MCA), located at page 8-1151, Administrative Rules of Montana;

ARM 8.40.1201 (authority section 50-32-103, MCA; implementing section 50-32-101, MCA), located at page 8-1173, Administrative Rules of Montana;

ARM 8.40.1202 (authority section 50-32-103, MCA; implementing section 50-32-101, MCA), located at page 8-1173, Administrative Rules of Montana;

ARM 8.40.1204 (authority section 50-32-103, MCA; implementing section 50-32-302, MCA), located at page 8-1175, Administrative Rules of Montana;

ARM 8.40.1205 (authority section 50-32-103, MCA; implementing section 50-32-306, 50-32-308, MCA), located at page 8-1175, Administrative Rules of Montana;

ARM 8.40.1206 (authority section 50-32-103, MCA; implementing section 50-32-301, 50-32-312, MCA), located at page 8-1176, Administrative Rules of Montana;

ARM 8.40.1210 (authority section 50-32-103, MCA; implementing section 50-32-310, MCA), located at page 8-1178, Administrative Rules of Montana;

ARM 8.40.1211 (authority section 50-32-103, MCA; implementing section 50-32-309, 50-32-310, MCA), located at page 8-1179, Administrative Rules of Montana;

ARM 8.40.1214 (authority section 50-32-103, MCA; implementing section 50-32-311, 50-32-312, MCA), located at page 8-1180, Administrative Rules of Montana.

REASON: The rules are being proposed for repeal as they contain outdated and unused language which the Board no longer uses or follows. The Board is following a legislative mandate to reduce rules by repealing those which are unnecessary.

4. The proposed new rules will read as follows:

"I TRANSFER OF LICENSE FROM ANOTHER STATE

(1) Applicants seeking a license on the basis of having been examined and then issued a license by another state shall submit the following information to the board:

(a) NABP transfer of licensure application;

(b) proof of passing examination score on the NABPLEX examination;

(c) verification of current licensure in good standing from all other states where licensed; and

(d) appropriate fees.

(2) In addition to the above, the applicant will be required to pass a jurisprudence examination designated by the board, to measure the competence of the applicant regarding the statutes and rules governing the practice of pharmacy. A score of not less than 75 shall be a passing score for this examination."

Auth: Sec. 37-7-201, MCA; IMP, Sec. 37-1-304, MCA

REASON: The proposed new rule will outline the Board procedures for transfer of out-of-state license applicants to this state. The Board has allowed this transfer for many years under the NABP license transfer program, but has not previously put the requirements in rule form. This new rule will notify potential applicants of the process and requirements for license transfer into Montana.

"II SCREENING PANEL (1) The board screening panel shall consist of three board members, including the two pharmacist members who have served longest on the board, and one public member who has served longest on the board. The board president may reappoint screening panel members as necessary at the president's discretion."

Auth: Sec. 37-7-201, MCA; IMP, Sec. 37-1-307, MCA

REASON: The proposed new rule will clarify the board's screening panel make-up. The screening panel has been operational since the 1995 effective date of the Uniform Professional Licensing Act, but the board has not previously put this information in rule so it could be reviewed by all licensees or other interested persons.

"III COMPLAINT PROCEDURE (1) A person, government or private entity may submit a written complaint to the board charging a licensee or license applicant with a violation of board statutes or rules, and specifying grounds for the complaint.

(2) Complaints must be in writing, and shall be filed on the proper complaint form prescribed by the board.

(3) Upon receipt of the written complaint form, the board office shall log in the complaint and assign it a complaint number. The complaint shall then be sent to the licensee or license applicant complained about for a written response. Upon receipt of the licensee's or license applicant's written response, both complaint and response shall be considered by the screening panel of the board for appropriate action including dismissal, investigation or a finding of reasonable cause of violation of a statute or rule. The board office shall notify both complainant and licensee or license applicant of the determination made by the screening panel.

(4) If a reasonable cause violation determination is made by the screening panel, the Montana Administrative Procedure Act shall be followed for all disciplinary proceedings."

Auth: Sec. 37-7-201, MCA; IMP, Sec. 37-1-308, 37-1-309, MCA

REASON: The proposed new rule will outline the board's complaint procedure, which has been in use since the 1995 effective date of the Uniform Professional Licensing Act. This new rule will serve to inform licensees, license applicants and the public as to what procedure will be used in handling complaints. The Board had previously simply explained the procedure, without adopting a formal rule on the procedure. This will help all interested persons in understanding the complaint procedure followed by this Board.

5. Interested persons may submit their data, views or arguments concerning the proposed amendments, repeals and adoptions in writing to the Board of Pharmacy, 111 N. Jackson, P.O. Box 200513, Helena, Montana 59620-0513, or by facsimile to (406) 444-1667, to be received no later than 5:00 p.m., October 8, 1998.

6. If a person who is directly affected by the proposed amendments, repeals and adoptions 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 Pharmacy, 111 N.

Jackson, P.O. Box 200513, Helena, Montana 59620-0513, or by facsimile to (406) 444-1667, to be received no later than 5:00 p.m., October 8, 1998.

7. If the Board receives requests for a public hearing on the proposed amendments, repeals and adoptions from either 10 percent or 25, whichever is less, of those persons who are directly affected by the proposed amendments, repeals and adoptions, 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 170 based on the 1688 licensees in Montana.

8. Persons who wish to be informed of all Board of Pharmacy administrative rulemaking proceedings, or other administrative proceedings, may be placed on a list of interested persons by advising the Board in writing at 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513 or by phone at (406) 444-1698.

BOARD OF PHARMACY
SHIRLEY BAUMGARTNER, PRESIDENT

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

_____
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, August 31, 1998.

BEFORE THE BOARD OF PRIVATE SECURITY
PATROL OFFICERS AND INVESTIGATORS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed amendment of rules pertaining to employers' responsibility and type of firearm	))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF 8.50.505 EMPLOYERS' RESPONSIBILITY AND 8.50.506 TYPE OF FIREARM

TO: All Interested Persons:

1. On October 5, at 9:00 a.m., a public hearing will be held in the Division of Professional and Occupational Licensing Conference room, Lower Level, Arcade Building, 111 North Jackson, Helena, Montana, to consider the proposed amendment of the above-stated rules.

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

"8.50.505 EMPLOYERS' RESPONSIBILITY (1) All ~~employers of~~ companies employing ~~of~~ private security guards and investigators are responsible for ~~providing or obtaining~~ ensuring that all private security guard and investigator employees receive the necessary training ~~to~~ enable~~ing~~ ~~the~~ individuals to meet the standards required by these rules and regulations."

Auth: Sec. 37-60-202, MCA; IMP, Sec. 37-60-202, MCA

REASON: The Board, during its regular rule review, determined that this rule required clarification with respect to the responsibility intended. The Board does not intend to mandate that employers provide training for employees. Rather, the Board intends that employers assume responsibility for providing training and merely ensuring that employers are capable of maintaining the standards set forth in the Board's rules.

"8.50.506 TYPE OF SIDEARM (1) ~~Solid frame revolver or pistols capable of single and double action fire. Caliber .38 357 (only 38 special ammunition will be used), 380, 9 and 10 millimeter automatic with barrel length from two to six inches, revolvers with five or six round cylinder, all steel construction, (except model 39 Smith) fixed or adjustable sights will be approved by the board.~~ Upon proper application, verification of training and submission of firearm specifications on a form provided, the board will approve the following types of firearms for use by licensees with an armed designation:

(a) double action revolver (single action revolvers are expressly prohibited);

(b) semi-automatic pistol; and

(c) shotgun, 12 gauge, pump or semi-automatic.

(2) Ammunition used with an approved firearm shall be limited to any centerfire pistol cartridge between .380 ACP and .45 ACP caliber inclusive and 12 gauge shotgun."

Auth: Sec. 37-60-202, MCA; IMP, Sec. 37-60-405, 37-60-406, MCA

REASON: During its regular rule review, the Board received input from licensees regarding the types of weapons approved by the Board. In the course of discussing the matter, the Board was convinced that the types of weapons approved, as well as the ammunition used with the weapons was much too limited. This rule is drafted to further specify the weapons approved by the Board after reviewing the types of weapons now available and provide guidance with respect to ammunition.

3. The Department of Commerce will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you wish to request an accommodation, contact the Department no later than 5:00 p.m., September 20, 1998, to advise us of the nature of the accommodation that you need. Please contact Sandra Blanton-Donahue, Board of Private Security Patrol Officers and Investigators, 111 N. Jackson, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 444-3728; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 444-1667. Persons with disabilities who need an alternative accessible format of this document in order to participate in this rule-making process should contact Sandra Blanton-Donahue.

4. Interested persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Board of Private Security Patrol Officers and Investigators, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, or by facsimile, number (406) 444-1667, to be received no later than 5:00 p.m., October 8, 1998.

5. R. Perry Eskridge, attorney, has been designated to preside over and conduct this hearing.

6. Persons who wish to be informed of all Board of Private Security Patrol Officers and Investigators administrative rulemaking proceedings or other administrative proceedings may be placed on a list of interested persons by advising the Board at the hearing or in writing to the Board of Private Security Patrol Officers and Investigators, 111 North

Jackson, P.O. Box 200513, Helena, Montana 59620-0513 or by phone at (406) 444-3728.

BOARD OF PRIVATE SECURITY
PATROL OFFICERS AND INVESTIGATORS
GARY GRAY, CHAIRMAN

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

_____
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, August 31, 1998.

BEFORE THE BOARD OF PUBLIC ACCOUNTANTS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed amendment of rules pertaining to fees, inactive status, basic requirement, and alternatives and exemptions	NOTICE OF PROPOSED AMENDMENT OF 8.54.410 FEE SCHEDULE, 8.54.418 INACTIVE STATUS AND REACTIVATION, 8.54.802 BASIC REQUIREMENT AND 8.54.905 ALTERNATIVES AND EXEMPTIONS

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On October 10, 1998, the Board of Public Accountants proposes to amend rules pertaining to the practice of public accounting.

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

"8.54.410 FEE SCHEDULE (1) through (10) will remain the same.

(11) Fees for PMP reviews:	
(a) audits	$450
(b) reviews	225
(c) compilations with disclosures	225
(d) compilations without disclosures	115"

Auth: Sec. 37-1-134, 37-50-203, MCA; IMP, Sec. 37-1-134, 37-50-204, 37-50-314, 37-50-317, MCA

REASON: The Board conducted a study to determine the fees to charge to participants of the Profession Monitoring Program (PMP) in order to cover the contracted hours paid to the Positive Enforcement Coordinator (PEC) to carry out the program. The fees for report submission are based on the complexity and number of hours required to accomplish the review. These fees are commensurate with the Board's cost of contracting with the PEC to conduct the PMP.

"8.54.418 ~~INACTIVE STATUS AND~~ REACTIVATION OF INACTIVE AND REVOKED STATUS (1) A licensee may place the license on inactive status (certificate/maintenance) by either indicating on the renewal form that inactive status is desired, or by informing the board office, in writing, that an inactive status is desired~~,~~ and paying the appropriate fee. It is the sole responsibility of the inactive licensee to keep the board informed as to any change of address during the period of time the license remains on inactive status.

(2) will remain the same.

(3) Upon application and payment of the appropriate fee, the board may reactivate an inactive license if the applicant ~~does each of the following:~~ presents satisfactory evidence that the applicant has complied with the continuing education rules of the board under ARM 8.54.802.

~~(a) signifies to the board, in writing, that upon issuance of the active license, the applicant intends to be an active practitioner in the state of Montana;~~

~~(b) presents satisfactory evidence that the applicant has complied with the continuing education rules of the board under ARM 8.54.802;~~

~~(c) submits certification from the licensing body of all jurisdictions where the licensee is licensed or has practiced that the applicant is in good standing and has not had any disciplinary actions taken against the applicant's license, or if the applicant is not in good standing by that jurisdiction, an explanation of the nature of the violation(s) resulting in that status, including the extent of the disciplinary treatment imposed.~~

(4) Upon application and payment of the appropriate fee, the board may reactivate a revoked license provided the following requirements are met:

(a) submits written petition stating the reasons for requesting reactivation and outlining employment since certificate or permit was revoked;

(b) presents satisfactory evidence that the applicant has complied with the continuing education requirements of the board under ARM 8.54.802 if applying for a permit to practice; and

(c) submits certification from the licensing body of all jurisdictions where the licensee is licensed or has practiced that the applicant is in good standing and has not had any disciplinary actions taken against the applicant's license, or if the applicant is not in good standing by that jurisdiction, an explanation of the nature of the violation(s) resulting in that status, including the extent of the disciplinary treatment imposed.

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

Auth: Sec. 37-1-319, 37-50-203, MCA; IMP, Sec. 37-1-319, MCA

REASON: Upon implementation of HB 518, the option to reactivate a revoked license without rewriting the Uniform CPA Examination was inadvertently omitted from rule promulgation. This rule would allow for individuals to reactivate their license based on specific criteria but excluding original certification requirements. Retaking the exam would exclude basically everyone from reactivating a revoked license. Depending upon the circumstance, the Board reserves the authority to require individuals to meet any and all requirements that it deems necessary along with the option of denying recertification to applicants. The rule also clarifies certificate/maintenance status (inactive).

"8.54.802 BASIC REQUIREMENT (1) and (2) will remain the same.

(3) As of July 1, 1998, ~~a portion~~ at least two hours of the 120 hours of acceptable continuing education credit must consist of knowledge and the application of board rules and how board unprofessional conduct rules may compare and contrast with the codes of professional conduct of certified public accountant and licensed public accountant primary professional organizations. These hours are not considered subjects related to the reporting on financial statements required in (2) above.

(4) and (5) will remain the same."

Auth: Sec. 37-1-319, 37-50-201, MCA; IMP, Sec. 37-1-306, MCA

REASON: The Board determined that at least two hours of ethics training during any three-year reporting period would be less confusing than "a portion of" and in line with the number of hours available by continuing education sponsors.

"8.54.905 ALTERNATIVES AND EXEMPTIONS (1) A practice unit which has undergone an AICPA or board-sanctioned peer or quality review within three calendar years ~~may satisfy the requirements of ARM 8.54.904 by filing~~ must file a copy of ~~the~~ its ~~unqualified~~ peer or quality review report including comments, responses thereto and acceptance of the review report, if available, by the AICPA or other oversight agency. ~~If the report is other than unqualified, then a complete copy of the report, including all findings and recommendations and the practice unit's responses to such findings and recommendations, may be filed in order to satisfy the requirement.~~

(2) ~~Upon receipt of an other than unqualified peer or quality review report, the board may require the practice unit to also file a report and/or workpapers pursuant to ARM 8.54.904.~~ The board reserves the authority to request a practice unit to submit a copy of all financial statements and supporting workpapers associated with a peer or quality review report.

(3) will remain the same."

Auth: Sec. 37-50-203, MCA; IMP, Sec. 37-50-203, MCA

REASON: The Board determined that it was necessary to require firms, that have undergone a peer or quality review and participating in the PMP, to submit a copy of the peer or quality review reports, and if the Board deems necessary, all financial statements and supporting workpapers associated with the report in order to assure the quality of all reports issued by practitioners to the public.

3. Interested persons may submit their data, views or arguments concerning the proposed amendments in writing to the Board of Public Accountants, 111 N. Jackson, P.O. Box 200513, Helena, Montana 59620-0513, or by facsimile to (406) 444-1667, to be received no later than 5:00 p.m., October 8, 1998.

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 Public Accountants, 111 N. Jackson, P.O. Box 200513, Helena, Montana 59620-0513, or by facsimile to (406) 444-1667, to be received no later than 5:00 p.m., October 8, 1998.

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 330 based on the 3291 licensees in Montana.

6. Persons who wish to be informed of all Board of Public Accountants administrative rulemaking proceedings, or other administrative proceedings, may be placed on a list of interested persons by advising the Board of Public Accountants in writing at 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513 or by phone at (406) 444-3739.

BOARD OF PUBLIC ACCOUNTANTS
CURTIS AMMONDSON, CPA, CHAIRMAN

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

Annie M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, August 31, 1998.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of amendment of ARM 17.8.302 and 17.8.340, adopting and incorporating by reference emission guidelines for hospital/medical/ infectious waste incinerators	))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT (Air Quality)

TO: All Interested Persons

1. On October 16, 1998, at 2:00 p.m., or as soon thereafter as it may be heard, the Board will hold a public hearing at Room 35 of the Metcalf Building, 1520 E. Sixth Avenue, Helena, MT, to consider amendment of the above-captioned rules.

The Board will make reasonable accommodations for persons with disabilities who wish to participate in this hearing. Persons who need an accommodation may contact the Board's secretary, Leona Holm, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, MT 59620-0901; phone (406)444-2544; fax (406)444-4386, by 5:00 p.m., October 2, 1998, to advise the Board of the nature of the accommodation needed.

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

17.8.302 INCORPORATION BY REFERENCE (1) For the purposes of this subchapter, the board hereby adopts and incorporates herein by reference, the following:

(1)(a) through (j) Remain the same.

(k) 40 CFR Part 60, Subpart Ce, (currently found at 62 Fed. Reg. 48348, September 1997) specifying emission guidelines for existing hospital/medical/infectious waste incinerators that would be subject to a standard of performance if they were new sources.

(2) through (4) Remain the same.

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

17.8.340 STANDARD OF PERFORMANCE FOR NEW STATIONARY SOURCES AND EMISSION GUIDELINES FOR EXISTING SOURCES

(1) through (4) Remain the same.

(5) Designated hospital/medical/infectious waste incinerator facilities under 40 CFR Part 60, Subpart Ce, shall comply with the requirements in 40 CFR 60.33e, 60.34e, 60.35e, 60.36e, 60.37e and 60.38e that are applicable to designated facilities and that must be included in a state plan for state plan approval. Designated facilities under 40 CFR Part 60, Subpart Ce, that are not excluded under 40 CFR 60.32e, shall:

(a) submit a final control plan to the department for review and final approval within 15 months after the date of

EPA's publication of approval of the state plan in the Federal Register;

(b) award contracts for any necessary control systems/process changes within 18 months after the date of EPA's publication of approval of the state plan in the Federal Register;

(c) initiate on-site construction or installation of any necessary air pollution control devices, and initiate any necessary process changes, within 24 months after the date of EPA's publication of approval of the state plan in the Federal Register;

(d) complete on-site construction or installation of any necessary air pollution control devices, and complete any necessary process changes, within 30 months after the date of EPA's publication of approval of the state plan in the Federal Register; and

(e) achieve final compliance with all requirements of the state plan within 36 months after the date of EPA's publication of approval of the state plan in the Federal Register, or by September 15, 2002, whichever is earlier.

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

3. The Board is proposing these amendments to adopt and incorporate by reference emission guidelines for existing hospital/medical/infectious waste incinerators (HMIWI) for which construction commenced on or before June 20, 1996. The guidelines include emission limits and requirements regarding operator training and qualifications, waste management, inspections, compliance, performance testing, monitoring, reporting and recordkeeping. The U.S. Environmental Protection Agency (EPA) promulgated the guidelines on September 15, 1997, at 62 Fed. Reg. 48348, as the minimum requirements necessary for EPA to approve a state plan to implement the guidelines and for EPA to delegate enforcement authority to the state. Under Section 129(b)(3) of the Federal Clean Air Act, if a state does not submit an approvable plan to EPA, EPA is required to develop a federal implementation plan for federal enforcement within that state. The policy of the state legislature has been for the state to obtain, and maintain, enforcement primacy for the state's environmental protection programs. Adoption of the proposed guidelines is necessary to obtain and maintain state primacy regarding implementation of the guidelines.

The Board is proposing the minimum emission guidelines necessary to obtain EPA approval of the State's plan. The Board is not proposing alternative guidelines because adoption of guidelines at least as protective as the EPA guidelines is required for EPA approval. The Board is not proposing guidelines that exceed the minimum requirements for EPA approval because the Board has not met the requirements of Section 75-2-207, MCA, of the Clean Air Act of Montana, which implements House Bill 521 of the 1997 legislature, and prohibits the Board from adopting rules more stringent than comparable federal regulations or guidelines without first conducting a public hearing and making certain written

findings.

Sections 111(d) and 129(b)(2) of the Federal Clean Air Act require each state to submit a written plan to EPA demonstrating that the state has the legal authority to implement and enforce the HMIWI guidelines. Interested persons may obtain a copy of the Department's proposed plan from David Klemp, Air & Waste Management Bureau, Department of Environmental Quality, 1520 E. Sixth Ave., P.O. Box 200901, Helena, MT 59620-0901, (406) 444-0286.

4. Interested persons may submit their data, views, or arguments regarding the proposed rule amendments and/or the proposed state plan for implementation and enforcement of the guidelines either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to the Board of Environmental Review, P.O. Box 200901, Helena, MT 59620-0901, no later than October 19, 1998.

5. David Rusoff has been appointed to preside over and conduct the hearing.

BOARD OF ENVIRONMENTAL REVIEW

by _____
CINDY E. YOUNKIN, Chairperson

Reviewed by:

_____
John F. North, Rule Reviewer

Certified to the Secretary of State August 31, 1998.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.24.101 through 17.24.103, 17.24.108, 17.24.115 through 17.24.119, 17.24.121, 17.24.128, 17.24.129, 17.24.132 through 17.24.134, 17.24.136, 17.24.137, 17.24.140 through 17.24.146, 17.24.153, 17.24.159, 17.24.165, 17.24.181 and 17.24.185, and the repeal of 17.24.151 and 17.24.152 pertaining to hard rock mining reclamation	)	NOTICE OF PUBLIC HEARING OF PROPOSED AMENDMENT AND REPEAL (Hard Rock)

TO: All Interested Persons

1. On October 2, 1998, at 1:30 p.m., the board will hold a public hearing in Room 111 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment of ARM 17.24.101 through 17.24.103, 17.24.108, 17.24.115 through 17.24.119, 17.24.121, 17.24.128, 17.24.129, 17.24.132 through 17.24.134, 17.24.136, 17.24.137, 17.24.140 through 17.24.146, 17.24.153, 17.24.159, 17.24.165, 17.24.181 and 17.24.185 and the repeal of 17.24.151 and 17.24.152 pertaining to hard rock mining reclamation.

The board will make reasonable accommodations for persons with disabilities who wish to participate in this hearing. If you need an accommodation, contact the department no later than 5 p.m., September 23, 1998, to advise us of the nature of the accommodation you need. Please contact the board at P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2544; fax (406) 444-4386.

2. The rules as proposed to be amended provide as follows. Matter to be added is underlined. Matter to be deleted is interlined.

17.24.101 GENERAL PROVISIONS (1) and (2) Remain the same.

(3) A small miner who signs an agreement described in 82-4-305, MCA, and does not violate the Act and this sub-chapter, is excluded from certain ~~the other~~ requirements of the Act as they relate to mining, except as noted in 82-4-305~~(3) through (8)~~, MCA. See definition of "small miner" in ARM 17.24.102. All exploration operations, regardless of size, must comply with the requirements of 82-4-331 and 82-4-332, MCA, and ARM 17.24.103 through 17.24.107. See definitions of "exploration" and "mining" in ARM 17.24.102.

(4) The Act is not applicable to:

(a) any person engaged in mining activities if the ~~or persons collecting rock samples as a hobby or when the collection of rocks and minerals is offered for sale in any amount not exceeding $100 per year~~ miner's operations and activities do not:

(i) use motorized excavating equipment;

(ii) use blasting agents;

(iii) disturb more than 100 square feet or 50 cubic yards of material per site;

(iv) leave disturbed and unreclaimed surface sites as defined in 17.24.102(8)that are less than 1 mile apart;

(v) use a suction dredge with an intake of more than 4 inches in diameter; and

(vi) operate a suction dredge beyond the area of the streambed that is naturally under water at the time of operation; or

(b) a person who allows other persons to engage in mining activities on land owned or controlled by that person, if those activities cumulatively meet the requirements of (a) above.

(5) Remains the same.

(6) As used in this sub-chapter, the term "operator" includes a licensee, a permittee, and a small miner. The Act covers the operator's, ~~permittee's or licensee's~~ employees and agents as well as subcontractors and the subcontractor's employees and agents. The operator ~~permittee, or licensee~~ is liable for violations of the Act by its employees, agents and subcontractors (drilling, construction, maintenance or otherwise) and the subcontractor's employees and agents when they are working on the project for which the permit or license was issued or which is subject to an exclusion.

(7) Remains the same.

AUTH: 82-4-321, MCA; IMP: 82-4-305, 82-4-309, 82-4-320, 82-4-331, 82-4-332, 82-4-335, 82-4-361 and 82-4-362, MCA

17.24.102 DEFINITIONS As used in the Act and this sub-chapter, the following definitions apply.

(1) and (2) Remain the same.

(3) "Amendment" is defined in 82-4-303(2), MCA, and means, for the purposes of this sub-chapter, a change in an approved plan of operations that is not a revision.

(4) through (6) Remain the same.

(7) "Collateral bond" means an indemnity agreement for a fixed amount, payable to the department, executed by the operator ~~permittee~~ and supported by the deposit with the department of cash, negotiable bonds of the United States (not treasury certificates), state or municipalities, negotiable certificates of deposit or an irrevocable letter of credit of any bank organized or authorized to transact business in the United States.

(8) "Disturbed and unreclaimed surface" means, as used in the definition of "small miner" and ARM 17.24.101 (4), land affected by mining activities, including reprocessing of tailing

or waste material, that has not been restored to a continuing productive use, with proper grading and revegetative procedures to assure:

(8)(a) through (d) Remain the same.

(9) "Exclusion" means a statement filed by a small miner pursuant to 82-4-305, MCA.

(9) and (10) remain the same in text, but are renumbered (10) and (11).

~~(11)~~ (12) "Mineral" means any ore, rock or substance, other than oil, gas, bentonite, clay, coal, sand, gravel, phosphate, scoria or uranium, taken from below the surface or from the surface of the earth for the purpose of milling, leaching, concentration, refinement, smelting, manufacturing, or other subsequent use or processing or for stockpiling for future use, refinement or smelting.

(12) through (19) remain the same in text, but are renumbered (13) through (20).

~~(20)~~ (21) "Revision" means~~:~~

~~(a)~~ a ~~major amendment~~ change to an operating permit that is exempt under 82-4-342, MCA from the requirement to prepare an environmental assessment or environmental impact statement~~:~~.

~~(i) does not may add acreage to the permit area; and~~

~~(ii) will not have significant environmental impact that was not previously and substantially evaluated in an environmental impact statement; or~~

~~(b) a minor amendment that:~~

~~(i) is subject to categorical exclusion under 82-4-342, MCA;~~

~~(ii) removes undisturbed acreage from the permit area; or~~

~~(iii) changes a plan of operations without adding new acreage to the permit area.~~

(21) Remains the same in text, but is renumbered (22).

~~(22)~~ (23) "Small miner" means, as defined in 82-4-303, ~~any~~ person~~, firm, or corporation~~ that engage~~s~~d in the business of mining or reprocessing of tailings or waste materials and who meets the following criteria:

(a) A small miner may not hold an operating permit under 82-4-335 except for a small miner's cyanide permit or a permit issued pursuant to 82-4-335 that does not exceed 100 acres. Any such permit may be amended to add new disturbance areas, but the total area permitted for disturbance may not exceed 100 acres at any time.

(b) A small miner ~~that~~ may conduct:

~~(a) does not remove from the earth during any calendar year material in excess of 36,500 short tons in the aggregate, and conducts:~~

(i) an ~~mining~~ operation that result~~s~~~~ing~~ in not more than 5 acres of the earth's surface being disturbed and unreclaimed; or

(ii) two ~~mining~~ operations that ~~which~~ disturb and leave unreclaimed less than 5 acres per operation if ~~, providing~~ the respective mining properties are the only operations engaged in by the person~~, firm, or corporation,~~ and are at least 1 mile

apart at their closest point. ~~, and not operated simultaneously except during seasonal transitional periods not to exceed 30 days; and~~

~~(b)~~ (c) ~~does not hold an operating permit under 82-4-335, MCA, except for a permit issued under 82-4-335(2), MCA.~~ The department shall, in computing the area covered by the operation:

(i) exclude access or haulage roads that are required by a local, state, or federal agency having jurisdiction over the road to be constructed to certain specifications if the agency notifies the department in writing that the agency desires to have the road remain in use and will maintain the road after mining ceases; and

(ii) exclude access roads for which the person has submitted a bond to the department in the amount of the estimated total cost of reclamation along with a description of the location of the road and the specifications to which it will be constructed.

(23) and (24) remain the same in text, but are renumbered (24) and (25).

AUTH: 82-4-321, MCA; IMP: 82-4-303, 82-4-305, 82-4-309, 82-4-310, 82-4-331(2), MCA

17.24.103 EXPLORATION LICENSE--APPLICATION AND CONDITIONS

(1) Remains the same.

(2) On approval by the department, the applicant will be issued an exploration license renewable annually on application and payment of the renewal fee. The license must not be renewed if the applicant is held by the department to be in any violation of the Act or rules and regulations promulgated by the ~~department~~ board.

(3) and (4) Remain the same.

AUTH: 82-4-321, MCA; IMP: 82-4-332, MCA

17.24.108 EXPLORATION RECLAMATION DEFERRED (1) Remains the same.

(2) The licensee shall comply with the following conditions of a reclamation deferral:

(a) a current exploration license shall be maintained;

(b) a current and adequate bond shall be maintained;

(c) the licensee shall be actively pursuing an operating permit or have filed a valid exclusion; and

(d) the licensee shall observe any interim monitoring or reclamation requirements as may be reasonably required by the department.

(3) The department shall cancel the deferral and issue an order to reclaim if the licensee fails to meet any of the conditions outlined in (2) of this rule, listed above.

AUTH: 82-4-321, MCA; IMP: 82-4-331, 82-4-332 and 82-4-338, MCA

17.24.115 RECLAMATION PLANS (1) The definition of reclamation plan (82-4-303(14)(a), MCA) lists nine considerations which "to the extent practical at the time of application" must be included in the plan. Using the same letter headings as in the above-referenced definition, the

following are the ~~board's~~ standards for each of the required provisions that must be included in the plan:

(1) Remains the same, but is renumbered (a).

(a) through (c) Remain the same, but are renumbered (i) through (iii).

~~(2)~~ (b) With the use of cross-sections, topographic maps or detailed prose, the proposed topography of the reclaimed land must be adequately described. As specific situations warrant, proper grading must provide for adequately designed contour trenches, benches and rock-lined channelways on disturbed areas. The applicant must submit evidence to assure the department ~~board~~ that upon partial or complete saturation with water, graded fill, tailings or spoil slopes will be stable. The proposed grading methods must be described. Where practicable, soil materials from all disturbed areas must be stockpiled and utilized.

~~(3)~~ (c) To the extent reasonable and practicable, the operator ~~permittee~~ must establish vegetative cover commensurate with the proposed land use specified in the reclamation plan. Should an initial revegetation attempt be unsuccessful, the operator ~~permittee~~ must seek the advice of the department ~~board~~ and make another attempt. The second revegetation operation, insofar as possible, shall incorporate new methods necessary to reestablish vegetation.

~~(4)~~ (d) Where operations result in a need to prevent acid drainage or sedimentation, on or in adjoining lands or streams, there shall be provisions for the construction of earth dams or other reasonable devices to control water drainage, provided the formation of such impoundments or devices shall not interfere with other landowner's rights or contribute to water pollution (as defined in 75-5-102, MCA).

(5) through (11) Remain the same, but are renumbered (e) through (k).

~~(12)~~ (l) All final grading shall be made with non-noxious, nonflammable, noncombustible solids unless approval has been granted by the department ~~board~~ for a supervised sanitary fill.

(13) Remains the same, but is renumbered (m).

~~(14)~~ (n) In a reclamation plan ~~accompanying an application for operating permit~~, the applicant shall provide the department ~~board~~ with sufficiently detailed information regarding method(s) of disposal of mining debris, including mill tailings, and the location and size of such areas.

(15) and (16) Remain the same, but are renumbered (o) and (p).

~~(a)~~ (i) the relocation channel shall be of a length equal to or greater than the original channel, unless the department ~~board~~ after consideration of the local circumstance shall grant a variance;

(b) through (d) Remain the same, but are renumbered (ii) through (iv).

(17) Remains the same, but is renumbered (q).

~~(a)~~ (i) outline of the area to be disturbed in the first ~~permit~~ year of operation;

(b) through (d) Remain the same, but are renumbered (ii) through (iv).

(18) Remains the same, but is renumbered (r).

AUTH: 82-4-321, MCA; IMP: 82-4-335, 82-4-336, MCA

17.24.116 OPERATING PERMIT: APPLICATION REQUIREMENTS (1) Applicant must obtain an operating permit for each mine complex on a form prescribed by the department ~~board~~.

(2)(a) through (d) Remain the same.

(2)(e) provide a reclamation plan that meets the requirements of 82-4-336, MCA, and this sub-chapter ~~the rules of the board~~.

AUTH: 82-4-321, MCA; IMP: 82-4-336, MCA

17.24.117 PERMIT CONDITIONS (1) through (1)(a)(ii) Remain the same.

(1)(b) If the department issued the permit because the applicant was maintaining a good faith direct appeal in accordance with 82~~3~~-4-335, MCA, the permittee will immediately submit proof upon resolution of the appeal that the violation has been or is being corrected to the satisfaction of the regulatory agency or the permittee will cease operations.

(1)(c) Remains the same.

AUTH: 82-4-321, MCA; IMP: 82-4-335, 82-4-336 and 82-4-351, MCA

17.24.118 ANNUAL REPORT (1) Each permittee ~~operator~~ shall file copies of an annual report with the department within a time period specified in 82-4-339, MCA, until such time as full bond is released. No less than 30 days prior to the permit anniversary date for the annual report, the department shall notify the permittee in writing that an annual report is due.

(2) through (11) Remain the same.

(12) Each annual report must include the names of key personnel for maintenance and monitoring if the operation is shut down.

(12) through (14) Remain the same in text, but are renumbered (13) through (15).

AUTH: 82-4-321, MCA; IMP: 82-4-335 through 82-4-339, 82-4-362, MCA

17.24.119 PERMIT AMENDMENTS (1) An application for a major amendment ~~that is not a revision~~ must:

(1)(a) through (f) Remain the same.

(2) For an application for a major amendment ~~that is not a revision~~, the department shall implement the application, notice and hearing requirements for new permits pursuant to 82-4-337 and 82-4-353, MCA, and prepare necessary environmental analyses pursuant to the Montana Environmental Policy Act.

(3) An application for a minor amendment ~~that is not a revision~~ must:

(a) through (f) Remain the same.

(4) For a minor amendment ~~that is a not a revision~~, the department shall not implement the application, notice and hearing requirements for new permits pursuant to 82-4-337 and 82-4-353, MCA. The department shall provide the permittee with a notice of decision on the adequacy of the minor amendment application within 30 days of receipt of the application.

AUTH: 82-4-321, 82-4-337 and 82-4-342, MCA; IMP: 82-4-337 and 82-4-342, MCA

17.24.121 PERMIT REVIEWS (1) through (5) Remain the same.

(6) A modification must be submitted in the form of an amendment or a revision and the department shall process the applicant's submittal in accordance with ARM 17.24.119 or 17.24.120.

AUTH: 82-4-321, MCA; IMP: 82-4-337, MCA

17.24.128 INSPECTIONS: FREQUENCY, METHOD, AND REPORTING (1) and (1)(a) Remain the same.

(1)(b) at least ~~once per quarter~~ three times per year for each active operation that:

(1)(b)(i) through (3) Remain the same.

AUTH: 82-4-321, MCA; IMP: 82-4-337 and 82-4-339, MCA

17.24.129 INSPECTIONS: RESPONSE TO CITIZEN COMPLAINTS (1) Any person may request an inspection by the department of any operation by furnishing the department with a signed statement, or an oral report followed by a signed statement, giving the department reason to believe that there exists a violation of the Act, the rules adopted pursuant thereto, the permit, the license, or the exclusion; or that there exists a condition or practice that creates an imminent danger to the public or that is causing or can be reasonably expected to cause a significant, imminent environmental harm to land, air, or water resources. The statement must identify the basis for the allegation or provide corroborating evidence. The statement must be placed in the ~~permittee's~~ alleged violator's file and becomes a part of the permanent record. The identity of the person supplying information to the department must remain confidential with the department, if requested by that person.

(2) and (3) Remain the same.

AUTH: 82-4-321, MCA; IMP: 82-4-337, 82-4-354, MCA, and Article II, Sec. 9, Montana Constitution

17.24.132 ENFORCEMENT: PROCESSING OF VIOLATIONS AND PENALTIES (1) Except as provided in (4) of this rule, the department shall issue a notice of ~~noncompliance~~ violation, if a violation of the Act, this sub-chapter, or the permit, license, or exclusion is identified as a result of any inspection. The notice ~~shall~~ must be served ~~by certified mail~~ and ~~shall~~ must state that the violator, may, by filing a written response within 15 days of receipt of the notice, provide facts to be considered in further assessing whether a violation occurred and in assessing the penalty.

(2) Within 30 days after issuance of the notice of ~~noncompliance~~ violation, the department shall serve a statement of proposed penalty. ~~If the statement of proposed penalty is tendered by mail at the address of the person, as set forth in the permit or in case of a permittee, and he or she refuses to~~

~~accept delivery of or to collect such mail, service is completed upon such tender.~~

(3) The person may, within 20 days of service ~~receipt~~ of the statement of proposed penalty, respond in writing to the statement and may request an informal conference, a contested case hearing, or both, on the issues of whether the violation occurred, whether the abatement ordered by the department is reasonable, and whether the penalty proposed to be assessed is proper.

(4) Whenever an authorized representative of the department observes a minor violation that clearly does not represent a potential harm to public health, public safety, or the environment and clearly does not impair administration of the Act or this subchapter, the representative may issue a ~~10-day notice~~ violation letter to the person. The ~~notice~~ violation letter must describe the violation and how the violation can be corrected. If, within 10 days, ~~the person provides the department with documentation that~~ the violation has been corrected, the department shall waive the imposition of penalty. If the ~~person does not provide that documentation~~ violation is not corrected within 10 days, the department shall issue a notice of ~~noncompliance~~ violation pursuant to (1) of this rule.

(5) If a contested case hearing has not been requested, the department shall make findings of fact, issue a written decision, and order payment of any penalty as provided in 82-4-361, MCA. If a contested case hearing has been requested, the ~~board of environmental review~~ department shall hold a hearing~~;~~ ~~and~~ make the findings of fact~~,~~; issue the decision~~,~~; and, if a violation is found, order payment of any penalty, as provided in 82-4-361, MCA.

AUTH: 82-4-321, MCA; IMP: 82-4-337, 82-4-339 and 82-4-361, MCA

17.24.133 ENFORCEMENT: ABATEMENT OF VIOLATIONS AND PERMIT SUSPENSION (1) Except when the violation has already been abated, the department shall issue an abatement order with any notice of ~~noncompliance~~ violation or suspension order.

(2) Remains the same.

(3) Each abatement order shall identify a time frame for completion and may be extended only if the violator ~~permittee~~ documents good cause for extension and the department finds in writing that good cause exists.

(4) Within 30 days of notification by a violator ~~permittee~~ that an abatement order has been satisfied, the department shall inspect or review the abatement and determine whether or not the abatement order has been satisfied. The department shall notify the violator ~~permittee~~ of its determination.

(5) The director shall immediately issue an order suspending the license or permit or for each violation of the Act, this sub-chapter, ~~or~~ the license, or the permit that is creating an imminent danger to the health or safety of the persons outside the permit area.

(6) The director may, after opportunity for an informal

conference, suspend a permit or license or for a violation of the Act, this sub-chapter, or the license or permit that:

(6)(a) through (c) Remain the same.

AUTH: 82-4-321, MCA; IMP: 82-4-357, 82-4-361 and 82-4-362, MCA

17.24.134 ENFORCEMENT: ASSESSMENT AND WAIVER OF PENALTIES

(1) ~~The department shall determine the proposed penalty for each violation based upon the following criteria:~~ The department shall consider the following factors in determining whether to institute an administrative civil penalty action and in determining the amount of penalty for the violation:

(a) ~~History of recent noncompliances: $50 must be assessed for each noncompliance issued in the last 3 years; $250 must be assessed for each suspension order issued in the last 3 years. A violation for which the notice of noncompliance or suspension order has been vacated must not be counted. A noncompliance or suspension order that is not resolved must not be counted.~~ the nature, extent and gravity of the violation. The nature of the violation must be characterized as either actually or potentially resulting in harm to public health or safety, the environment, or as impairing the department's administration of the act. This penalty must be determined as follows:

(i) If the violation created a situation in which the health or safety of the public or the environment was or could have been harmed, up to $1,000 may be assessed, depending upon the extent and gravity of such harm. If the violation created an imminent danger to the health or safety of the public or caused significant actual environmental harm, up to $5,000 may be assessed.

(ii) In the case of a violation of an administrative requirement up to $1,000 may be assessed depending on the extent and gravity of the violation. Violation of an administrative requirement does not involve actual or potential harm to public health, safety, or the environment.

(b) ~~The assessment for seriousness must be based on either:~~ the degree of negligent or willful conduct involved, if any. In addition to the amount assessed under (1)(a), a violation involving negligent or willful conduct on the part of the violator may be assessed up to $500 depending on the degree of negligence.

~~(i) harm to public health, public safety or environment. If the violation created a situation in which the public health, public safety, or environment could have been harmed, and the violated law, rule, order, or permit term or condition was designed to prevent such harm, up to $1,000 may be assessed, depending upon the severity of the probable or actual harm which the violated standard was designed to prevent; if the violation created an imminent danger to the health or safety of the public or caused significant environmental harm, up to $5,000 may be assessed; or~~

~~(ii) impairment of administration. If the violation was of an administrative requirement but did not impair the~~

~~administration of the Act, rules, or permit, the department may assign no penalty under this section. In the case of a violation of an administrative requirement that causes impairment of administration, up to $1,000 may be assessed, depending on the severity of the impairment. An administrative requirement, such as the keeping of records and filing of reports, is one that does not directly affect public health, safety, or the environment.~~

(c) ~~If a violation has occurred through no negligence on the part of the permittee, it must not be assessed under this category. A violation involving negligence may be assessed, up to $1,000, depending upon the degree of negligence.~~ the violator's recent history of prior violations. In addition to the amounts assessed under (1)(a) and (1)(b), $50 may be assessed for each notice of violation issued in the last 3 years; $250 may be assessed for each suspension order issued in the last 3 years. A notice of violation or suspension order that is not resolved or that has been vacated must not be counted.

(d) ~~If the person abates the violation in an adequate manner upon being notified of the violation or if the violation requires no abatement, no credit may be assigned. If the violator takes extraordinary measures to achieve compliance before the time set in the abatement order or to minimize harm, up to $200 may be deducted from the total penalty. However, reduction of a penalty due to good faith does not allow waiver of an otherwise unwaivable penalty.~~ any voluntary mitigation by the violator. If the violator takes measures beyond those required by law to address or mitigate the violation or its impacts, up to $200 may be deducted from the total penalty assessed depending on the amount of time, money, or effort voluntarily expended and the degree of success. This includes mitigating the violation before the time set in the abatement order. No amount may be deducted for corrective action conducted by the violator in a merely adequate manner pursuant to a department permit, notice or order.

(e) ~~The total proposed penalty must not exceed $1,000 per day, unless the violation created imminent danger to the health and safety of the public or caused significant environmental harm, in which case the total proposed penalty must not exceed $5,000 per day.~~ Notwithstanding the provisions of (1)(a) through (1)(d), the department may not assess a penalty that is less than $100 or more than $1,000 except that for a violation that created an imminent danger to the health and safety of the public, the maximum penalty is $5,000.

~~(f) A noncompliance resulting from a 1 time occurrence must be assessed a penalty for 1 day. A noncompliance resulting from an ongoing action of the permittee must be assessed for each day it is demonstrated that the violator took an action which contributed to the harm or impairment assessed. The total civil penalty assessed under (1) of this rule is the penalty for the initial day of violation. The penalty for additional days of violation must be assessed at the same rate as the first day~~

~~of violation.~~

(2) In addition to the penalty for the violation, the department may assess a penalty for each day on which the practice or condition constituting the violation continues. The penalty for each day must be equal to the penalty for the violation.

(3) ~~The department may also waive or reduce a proposed penalty based on the following criteria:~~ The department shall determine any economic benefit or savings that the violator gained as a result of the violation using the best information reasonably available to it at the time of calculating the penalties. If the amount of penalties calculated pursuant to (1) and (2) is less than the economic benefit or savings, the department shall increase the penalty to equal the lesser of:

(a) the economic benefit or savings; or

(b) the total maximum penalties for the violation and days of violation assessable under (1)(e).

~~(a) The penalty may be waived if it receives no assessment for seriousness and a total of $500 per day or less before reduction for good faith.~~

~~(b) The abatement is completed, the environmental damage is minimal, the violator has demonstrated a bona fide inability to pay, and the violator is not proposing to continue operation.~~

(4) ~~When a suspension order is issued for failure to comply with an abatement order and the order is under appeal, the department may not assess a penalty for failure to comply until the appeal is resolved.~~ If the violator is unable to immediately pay the full penalty amount, the department may place the violator on a payment schedule with interest on the unpaid balance at the rate assessed by the Montana department of revenue on income tax due. The department may secure the payment schedule with a promissory note, collateral, or both.

~~(2)~~ (5) The department may waive or modify the penalty if it finds the penalty demonstrably unjust or demonstrably inadequate as a deterrent. The department shall set forth the basis for waiver or modification in writing including the consideration of any other matters that justice may require in addition to those factors described in this rule. The department may not waive or reduce the penalty for the sole reason that a reduction in the penalty could be used to offset the costs of abatement.

AUTH: 82-4-321 and 82-4-361, MCA; IMP: 82-4-361, MCA

17.24.136 NOTICES AND ORDERS: ISSUANCE AND SERVICE

(1) A notice of ~~noncompliance~~ violation, statement of proposed penalty, or an abatement, suspension, or revocation order, an order to reclaim, and other orders issued pursuant to the Act must be served upon the person to whom it is directed promptly after issuance by:

(a) ~~tendering~~ delivering a copy of the notice, statement or order in person to the violator ~~permittee~~; or

(b) sending a copy of the notice, statement or order by certified mail to the violator ~~permittee~~ at the address on the

violator's application for a license or permit or exclusion.

(2) Service is complete upon tender of the notice, statement or order ~~document~~ in person. Service by mail is complete upon deposit in the U.S. mail, certified, postage prepaid, as set forth above and is not incomplete because of refusal to accept.

AUTH: 82-4-321, MCA; IMP: 82-4-341, 82-4-357, 82-4-361 and 82-4-362, MCA

17.24.137 NOTICES AND ORDERS: EFFECT (1) Remains the same.

(2) If a suspension order will not completely abate the imminent danger to the health or safety of persons outside the permit or license area in the most expeditious manner physically possible, the director or his authorized representative shall impose affirmative obligations on the person to whom it is issued to abate the condition, practice, or violation. The order must specify the time by which abatement must be accomplished and may require, among other things, the use of existing or additional personnel and equipment.

(3) Remains the same.

(4) If a permit or license has been suspended or revoked, the operator or licensee may not conduct any operations or prospecting ~~on the permit area~~ pursuant to the permit or license and shall:

(4)(a) and (b) Remain the same.

AUTH: 82-4-321, MCA; IMP: 82-4-361 and 82-4-362, MCA

17.24.140 BONDING: DETERMINATION OF BOND AMOUNT (1) The department shall require submission of bond in the amount of the estimated cost to the department if it had to perform the reclamation, contingency procedures and associated monitoring activities required of an operator subject to bonding requirements ~~permittee~~ under the Act, the rules adopted thereunder, and the permit, license or exclusion. This amount is based on the approved permit, license or any exclusion and shall include:

(1)(a) Remains the same.

(1)(b) the additional estimated costs to the department which may arise from additional design work, applicable public contracting requirements or the need to bring personnel and equipment to the ~~permit~~ operating area after its abandonment by the ~~permittee~~ operator; and

(1)(c) through (2)(b) Remain the same.

(3) An incremental bond proposal must not be accepted if the ~~permittee~~ operator has received a bonding noncompliance, notice of ~~noncompliance~~ violation for exceeding the small miner or other acreage limitations, or a notice of ~~noncompliance~~ violation for conducting activities outside the ~~permit~~ bonded operating area. This prohibition does not apply if the ~~noncompliance~~ violation is vacated or if a court rules ~~feels~~ that a violation did not occur.

(4) An operator ~~permittee~~ may submit bond higher than the

amount required by the department. The extra amount remains unobligated to any disturbance until applied against disturbances which result from additional activities approved under an operating permit, license, or ~~exemption~~ exclusion.

(5) Remains the same.

AUTH: 82-4-321, MCA; IMP: 82-4-338, MCA

17.24.141 BONDING: ADJUSTMENT OF AMOUNT OF BOND (1) and (2) Remain the same.

(3) The department shall notify the operator ~~permittee~~ of any proposed bond adjustment and provide the operator~~, licensee, or small miner~~ an opportunity for an informal conference on the adjustment.

(4) For bond reduction requests by the operator ~~permittee~~ for release of undisturbed land, the operator ~~permittee~~ shall submit a map of the area in question, revise the appropriate active ~~permit~~ operation maps and document that the area has not been disturbed as a result of previous~~ly permitted~~ operating activities. The department shall then conduct an inspection of the proposed area before responding to the request.

(5) An operator ~~permittee~~ or an interested party may request an adjustment of the required performance bond amount upon submission of evidence to the department demonstrating that the method of operation or other circumstances will change the estimated cost to the department to complete the reclamation, contingency procedures, or monitoring activities and therefore warrant a change in the bond amount.

AUTH: 82-4-321, MCA; IMP: 82-4-338 and 82-4-342, MCA

17.24.142 BONDING: REPLACEMENT OF BOND (1) The department may allow an operator ~~permittee~~ to replace existing surety or collateral bonds with other surety or collateral bonds, if the liability that has accrued against the operator ~~permittee on the operating permit area, exploration site or small mine~~ is transferred to such replacement bonds.

(2) The department may not release an existing performance bond until the operator ~~permittee~~ has submitted and the department has approved an acceptable replacement performance bond. A replacement of performance bond pursuant to this rule does not constitute a release of bond under 82-4-338, MCA.

AUTH: 82-4-321, MCA; IMP: 82-4-338, MCA

17.24.143 BONDING: FORM OF BOND (1) Remains the same.

(2) Liability under any bond, including separate bond increments and indemnity agreements applicable to a single operation, must extend to the entire bonded ~~permit~~ area.

AUTH: 82-4-321, MCA; IMP: 82-4-338, MCA

17.24.144 BONDING: SURETY BONDS (1) through (1)(d) Remain the same.

(e) The surety bond must provide a mechanism for the surety company to give prompt notice to the department and the operator ~~permittee~~ of:

(1)(e)(i) Remains the same.

(1)(e)(ii) cancellation by the operator ~~permittee~~; and

(1)(e)(iii) Remains the same.

(1)(f) Upon incapacity of a surety by reason of bankruptcy, insolvency or suspension or revocation of its license, the operator ~~permittee~~ shall be deemed to be without bond coverage and shall promptly notify the department in the manner described in the bond. The department, upon notification, shall, in writing, notify the operator of a reasonable period, not to exceed 90 days, to replace bond coverage. If an adequate bond is not posted by the end of the period allowed, the operator ~~permittee~~ shall cease mineral extraction, ~~and shall~~ comply with the provisions of 82-4-336(1), MCA, and ~~shall~~ immediately commence reclamation in accordance with the Act, this sub-chapter and the reclamation plan. Mining operations must not resume until the department has determined that an acceptable bond has been posted.

(1)(g) Remains the same.

AUTH: 82-4-321, MCA; IMP: 82-4-338, 82-4-341 and 82-4-360, MCA

17.24.145 BONDING: CERTIFICATES OF DEPOSIT (1) The department may accept as bond an assignment of a certificate of deposit in a denomination not in excess of $100,000, or the maximum insurable amount as determined by FDIC and FSLIC, whichever is less. The department may not accept a combination of certificates of deposit for ~~a~~ one operator ~~permittee~~ on ~~a~~ one institution in excess of that limit.

(2) Remains the same.

(3) The department shall require the operator ~~applicant~~ to deposit sufficient amounts of certificates of deposit, to assure that the department will be able to liquidate those certificates prior to maturity, upon forfeiture, for the amount of the bond required pursuant to ARM 17.24.140 and 17.24.141.

(4) Remains the same.

AUTH: 82-4-321, MCA; IMP: 82-4-338, MCA

17.24.146 BONDING: LETTERS OF CREDIT (1) Remains the same.

(2) If the department determines that the bank has become unable to fulfill its obligations under the letter of credit, the department shall, in writing, notify the operator ~~permittee~~ and specify a reasonable period, not to exceed 90 days, to replace bond coverage. If an adequate bond is not posted by the end of the period allowed, the operator ~~permittee~~ shall cease mineral extraction and shall comply with the provisions of 82-4-341, MCA, and shall immediately begin to conduct reclamation operations in accordance with the Act, this sub-chapter and reclamation plan. Mining operations must not resume until the department has determined that an acceptable bond has been posted.

AUTH: 82-4-321, MCA; IMP: 82-4-338, 82-4-341 and 82-4-360, MCA

17.24.153 GENERAL COMPLIANCE (1) The operator ~~licensee~~ shall comply with all federal and state laws, and such rules and regulations as are promulgated by the board ~~commission~~ under ~~this~~ the ~~A~~act.

AUTH: 82-4-321, MCA; IMP: 82-4-336, MCA

17.24.159 BLASTING OPERATIONS: ORDERS OF THE DEPARTMENT (1) If the department ~~it~~ determines that the preponderance of evidence indicates that property damage or safety hazards are or were caused by blasting associated with exploration or mining activities by an operator, the department shall issue an order. In the event the order is not complied with, the department shall issue ~~implement~~ an ~~noncompliance procedures. The~~ order ~~must~~ imposeing requirements reasonably necessary to prevent property damage or safety hazards.

(2) Remains the same.

AUTH: 82-4-321, MCA; IMP: 82-4-356, MCA

17.24.165 MILLS AND REPROCESSING OPERATIONS: DEFINITIONS As used in this sub-chapter and the Act, unless the context clearly indicates otherwise, the following additional definitions apply:

(1) through (8) Remain the same.

(9) "Reclamation to the extent practicable and feasible" means, with regard to reprocessing of waste rock and tailings:

(a) where waste rock and tailings have previously been reclaimed under the Act and this sub-chapter ~~part~~, compliance with the standards set for an operating permit;

(b) where waste rock and tailings have not previously been subject to the reclamation requirements of the Act and this sub-chapter ~~part~~ and are to be redisturbed under the proposed permit, the following:

(9)(b)(i) through (vi) Remain the same.

AUTH: 82-4-321, MCA; IMP: 82-4-335, 82-4-336 and 82-4-337, MCA

17.24.181 SMALL MINER PLACER AND DREDGE BONDING (1) ~~(a)~~ A small miner who operates a placer or dredge mine shall post a $~~5~~10,000 bond unless the department approves a lower amount based on the criteria below or unless it is documented that a bond for reclamation is posted with another government agency.

(b) and (c) Remain the same, but are renumbered (a) and (b).

(c) A small miner placer or dredge mine operator that posted a bond with the department prior to May 15, 1997, for a

mine is not required to post a bond in excess of $5,000 for that mine.

(2) The department shall reduce the required bonding amount if the small miner submits an operating plan documenting that the cost of reclamation to the department would be less than $~~5~~10,000. The information needed to make such a determination includes the following:

(2)(a) through (q) Remain the same.

AUTH: 82-4-321, MCA; IMP: 82-4-305, MCA

17.24.185 SMALL MINER CYANIDE APPLICATIONS (1) A small miner proposing to operate cyanide-processing facilities and a mine under a small miner exemption must continue to meet the criteria for a small miner exemption under 82-4-305, MCA, concerning the mining ~~for the~~ operation. The ~~total~~ acreage ~~committed to~~ disturbed by the cyanide ore-processing operation and covered by the operating permit pursuant to 82-4-335(2), MCA, is excluded from the 5 acre limit. ~~mining must remain within the acreage limitations contained in 82-4-303, MCA.~~

(2) through (4) Remain the same.

AUTH: 82-4-321, MCA; IMP: 82-4-305 and 82-4-335, MCA

3. ARM 17.24.151 and 17.24.152 as proposed to be repealed may be found on page 17-1880 of the Administrative Rules of Montana.

AUTH: 82-4-321, MCA; IMP: 82-4-336, MCA

4. The Board is proposing the amendments above to implement the various acts amending the Hard Rock or Metal Mine Reclamation Act ("Act") passed by the Legislature. In Chapter 204, Laws of 1995, the Legislature amended the language pertaining to the scope of activities that are guaranteed by the performance bond submitted under the Act. In Chapter 418, Laws of 1995, and Chapter 273, Laws of 1997, the Legislature transferred to the Department of Environmental Quality certain functions that it had previously vested in the Board of Land Commissioners or the Board of Environmental Review.

In Chapter 271, Laws of 1997, the Legislature gave the Department prosecutorial discretion to determine whether to institute a proceeding for civil penalty and specified the criteria that the Department is to use in the exercise of this discretion. In Chapter 272, Laws of 1997, the Legislature made a number of revisions in the Act relating to small miners and recreational miners. Most of the proposed changes would modify the rules to conform with these changes in the Act. In addition, the board is proposing additional "housekeeping" changes to the rules for clarification, and to correct typographical and other errors.

Rule 17.24.101: In section (3) the phrase "does not violate the Act and this sub-chapter" and the word "certain" are added to clarify the rule and provide notice of the requirement in 82-4-305, MCA, that a small miner must comply with the applicable portions of the Act to retain the small miner status

and may be subject to bonding, reclamation, penalty and other relevant portions of the Act.

Section (4) is changed in response to the legislation passed in Chapter 272, Laws of 1997, modifying the recreational miner exemption. The amendments grant an exemption for recreational miners on the basis of mining methods and disturbed areas rather than mining as a hobby or a valuation of the collected rock samples.

In Section (6) the term "operator" is defined to include a licensee, a permittee, and a small miner. The term "operator" has been defined to also cover the operator's and subcontractor's agents. The change is proposed because small miners can be operators under the Act and subject to certain provisions thereof just as permittees and licensees are. The change also recognizes that the law holds an operator liable for the actions of its agents as well as its employees and subcontractors.

Rule 17.24.102: In Section (3) the definition of "amendment" is changed by the addition of the phrase "that is not a revision" to provide that an amendment to a plan of operations is distinctly different from a revision to a plan of operations under these rules. This change is part of the changes made to 17.24.119. The purpose of these changes is to make the requirements relating to amendments and revisions more understandable. No substantive change in the requirements is proposed.

Section (7) defining "collateral bond" is changed by the deletion of the word "permittee" and the addition of the word "operator" in its place to reflect the fact that licensees and small miners may also be subject to bonding under the Act.

In Section (8) the definition of "disturbed and unreclaimed surface" has been changed by the addition of the phrase "and ARM 17.24.101(4)" to permit the definition to be used in connection with the definition of a recreational miner in ARM 17.24.101(4) and Ch. 272, Laws of 1997.

A definition of "exclusion" has been added because that term is used throughout the rule to refer to the small miner exclusion.

Section (11) defining "mineral" is amended to include the word "scoria" to clarify the fact that scoria is not a mineral subject to the Act. The mining and reclamation of scoria is covered by the Opencut Mining Act under 82-4-403(7), MCA.

In Section (20) the definition of "revision" is amended. See rationale for amendment to section (3).

Section (22) defining "small miner" has been amended to conform it with the 1997 Legislature's amendment of the definition of that term in section 1 of Chapter 272, Laws of 1997.

Rule 17.24.103: In Section (2) an amendment is made to reflect that the Board, and not the Department, promulgates rules under the Act.

Rule 17.24.108: In Section (2) the words "or exclusion" have been added to take into account that the holder of an

exploration license may be pursuing a small miner exclusion instead of obtaining an operating permit.

Rule 17.24.115: Amendments replacing the term "board" with the term "department" have been made throughout the rule. The existing language was correct because the Act was administered by the Department of State Lands, which was headed by the Board of Land Commissioners and because the Act used the term "Board". It is now incorrect because the Board of Environmental Review is not the head of the Department of Environmental Quality and the Act has been changed. The term "operator" has been substituted for "permittee" because exploration licensees and small miners have to submit reclamation plans and file reports under certain circumstances. The references to the "Montana Water Pollution Control Act" has been replaced with a reference to the statute that contains the definition of water pollution. The water quality statutes are not called the Montana Water Pollution Control Act. Other changes are not substantive.

Rule 17.24.116: Amendments replacing the terms "board" with "department" have been made to reflect that the Department administers the Act. Replacement of "the rules of the board" with "this sub-chapter" is made for clarification.

Rule 17.24.117: An amendment replacing the terms "83-4-335, MCA" with "82-4-335, MCA" has been made to correct a typographical error.

Rule 17.24.118: In Section (1) an amendment replaces the term "operator" with "permittee" to conform to the requirements that only holders of operating permits are required to submit annual reports pursuant to ARM 17.24.118.

A new Section (15) has been added to require that each annual report include the names of key personnel for maintenance and monitoring if the operation is shut down. The Board is proposing this amendment in order to allow the Department to expeditiously determine whether an operation that is shut down is being maintained so that environmental harm does not occur.

Rule 17.24.119: See explanation of amendment to 17.24.102(3).

Rule 17.24.121: See explanation of amendment to 17.24.102(3).

Rule 17.24.128: In Subsection (1)(b) an amendment is made to require the Department to perform inspections of active mines at least 3 times a year rather than once per quarter. This change is made because many active mines are located in mountainous regions that are either closed during the winter months or are not easily accessible. The change gives the Department the flexibility to inspect mines at times of the year which are most efficient for the enforcement of the Act.

Rule 17.24.129: In Section (1) an amendment was made adding the phrase "the license, or the exclusion" to require the Department to act on requests from the public to inspect exploration and small miner's operations as well as operations conducted pursuant to operating permits. The word "permittee's" was replaced with the phrase "alleged violator's" to recognize

that licensees, small miners and recreational miners, as well as permittees may violate the Act.

Rule 17.24.132: In Section (1) the word "noncompliance" has been replaced by "violation". This change is made for purposes of consistency with the Department's other programs. The prefix "sub" has been added to "chapter" to correct an error. The phrase "by certified mail" has been deleted to avoid redundancy since the matter of proper service is covered in detail in ARM 17.24.136.

Section (2) is amended by replacing "noncompliance" with "violation". The second sentence is deleted to avoid redundancy since the matter of proper service is covered in detail in ARM 17.24.136.

In Section (3) the word "receipt" is replaced by "service" because under certain circumstances, it is not practical to use receipt as the lawful means of service of process. The matter of proper service is covered in detail in ARM 17.24.136.

Section (4) is amended by replacing the phrase "10 day notice" with "violation letter" for purposes of consistency with other Department enforcement programs. The phrase "the person provides the department with documentation that" has been deleted because the Department inspects these sites to determine whether the violation has been abated. Violator documentation is therefore not necessary.

Section (5) has been amended to replace the phrase "board of environmental review" with "department". Under 82-4-361(4), MCA, the Department holds the hearing.

Rule 17.24.133: In Section (1) the word "noncompliance" has been deleted and the word "violation" has been used in its place. This change is made for purposes of consistency with the Department's other programs.

Section (3) has been amended by deleting the word "permittee" and replacing it with "violator" to recognize that licensees, small miners and recreational miners as well as permittees may violate the Act. The phrase "and the department finds that good cause exists" was added. This addition is necessary to allow the department to ensure that violations are abated in a timely manner.

Section (4) has been amended by deleting the word "permittee" and replacing it with "violator" to recognize that licensees, small miners and recreational miners, as well as permittees may violate the Act.

Section (5) has been amended by adding the word "license" to cover situations involving an exploration license.

In Section (6) the word "license" was added to cover situations involving an exploration license.

Rule 17.24.134: In Chapter 271, Laws of 1997, the Legislature amended the penalty statute (82-4-361) that this rule implements by making the imposition of a penalty discretionary rather than mandatory and by specifying the criteria the Department must consider in determining whether to impose a penalty and in determining the amount of that penalty. Chapter 271 requires consideration of the factors currently

contained in 17.24.134 and adds additional factors. The amendments to the rule add those factors and mandate that, subject to the statutory maximum penalty, a penalty must not be lower than the economic benefit to the violator resulting from the violation. The purpose of this latter change is to provide an effective deterrent. Violations might not be adequately deterred if the violator can derive economic benefit from not complying with requirements. Section (4) is added to provide a requirement that violators who pay penalties over time must pay interest and authorization to require security to guarantee payment. These provisions are proposed in order to ensure that a violator does not gain economic advantage from delaying payment and that the Department has authority to ensure that persons who have the means to pay the penalty will do so. This also is necessary to provide an effective deterrent.

Rule 17.24.136: In Section (1) the word "noncompliance" has been replaced with "violation". This change is made for consistency with the Department's other enforcement programs.

Subsections (1)(a) and (1)(b) have been amended by deleting the word "permittee" and replacing it with "violator" to recognize that licensees, small miners and recreational miners, as well as permittees may need to receive orders and the like from the department.

Section (2) is proposed to be amended to delete the word "document" and insert the phrase "notice, statement or order" to clarify the meaning of the rule. The phrase "in person or by certified mail as set forth above" was added to ensure that an alleged violator may not avoid service by refusing to accept delivery of a notice, statement or order.

Rule 17.24.137: In Section (2) the words "or license" has been added because suspensions do apply to exploration licenses.

Rule 17.24.140: In Section (1) the word "permittee" has been replaced by "operator" and "exclusion, license" because small miners and licensees may be required to submit bonds under the Act.

Subsection (1)(b) has been changed replacing "permit" and "permittee" with "operating" and "operator" because small miners and licensees may be required to submit bonds under the Act.

In Subsection (2)(a) the words "licensee or small miner" have been deleted because they are included in the term "operator".

Section (3) has been changed to delete the word "permittee" and add the word "operator" because small miners and licensees may be required to submit bonds under the Act. The word "permit" has been replaced with "operating" because small miners and licensees may also have operating areas that are bonded. The word "feels" has been replaced with the word "rules" to better conform with legal process.

In Section (4) the word "permittee" has been replaced with "operator" because small miners and licensees may be required to submit bonds under the Act. The word "exemption" has been replaced with the word "exclusion" throughout the Act for

clarity and consistency.

Rule 17.24.141, 17.24.142 and 17.24.143: The changes in these rules are all proposed because bonds are submitted by exploration licensees and some small miners.

Rule 17.24.144: In Subsection (1)(e), (1)(e)(ii) and (1)(f) the word "permittee" was deleted and the word "operator" was added to make it clear that licensees and small miners are also subject to bonding requirements. Minor grammatical changes were also made. The phrase "Act, this sub-chapter and the" was added because the Act and the rules also contain reclamation requirements.

Rule 17.24.145: In Section (1) the word "permittee" was replaced by "operator" to make it clear that licensees and small miners are also subject to bonding requirements.

Section (3) was changed by replacing "applicant" with "operator" because licensees and small miners are also subject to bonding requirements.

Rule 17.24.146: In Section (2) the word "permittee" was replaced by "operator" because licensees and small miners are also subject to bonding requirements. The phrase "Act, this sub-chapter and the" was added because the Act and the rules also contain reclamation requirements.

Rule 17.24.151: The Board proposes to repeal this rule because, with the exception of the last sentence, the rule merely repeats the requirements of 75-5-102, 75-5-306, and 75-5-631 through 75-5-635, MCA. The last sentence prohibits discharges that exceed 1/100th of the median tolerance limit for game fish present in receiving water. The Board proposes to repeal this standard because it is vague and outdated. Aquatic life, when this standard was adopted to protect, is now protected by standards adopted pursuant to the water quality laws.

Rule 17.24.152: The Board proposes repeal of this rule because 82-4-306, MCA, sets the requirements for disclosure of information. The rule cannot be left in place as is because it conflicts with amendments that have been made to 82-4-306.

Rule 17.24.153: In Section (1) the word "licensee" has been replaced with the word "operator" and the word "commission" has been replaced with the word "board" because small miners and permittees, in addition to licensees, must comply with all federal and state laws, and such rules and regulations as are promulgated by the Board of Environmental Review rather than by the commission.

Rule 17.24.159: In Section (1) the word "it" has been replaced with the phrase "the department" for clarification. The remedy contained in the rule has been changed to reflect that 82-4-356(1) requires that, in the event the Department determines that blasting caused property or safety hazards, the Department shall issue and implement an order imposing requirements reasonably necessary to prevent property damage or safety hazards.

Rule 17.24.165: The word "subchapter" has been replaced with "sub-chapter" to correct a typographical error.

In Subsection (9)(a) and (b) the phrases "under this part" are proposed to be amended to "under the Act and this sub-chapter" to reflect that the rules are set forth in a sub-chapter while a part is a unit of the statutes enacted by the legislature.

Rule 17.24.181: This rule is proposed to be amended to reflect the 1997 Legislature's amendment to 82-4-305(3) requiring small miners to post a $10,000 (rather than a $5,000) bond to operate a placer or dredge mine (Ch. 272, Laws of 1997), and the grandfather that provides that operators who posted a bond with the Department prior to May 15, 1997, for a mine are not be required to post a bond in excess of $5,000 for that mine.

Rule 17.24.185: The changes to ARM 17.24.185 are made to bring the rule into compliance with amendments made to 82-4-305, MCA, in Chapter 272, Laws of 1997.

5. Interested persons may submit their data, views or arguments concerning the proposed rules either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Board of Environmental Review, P.O. Box 200901, Helena, Montana 59620-0901, no later than October 9, 1998.

6. John F. North or his designee has been appointed to preside over and conduct the hearing.

BOARD OF ENVIRONMENTAL REVIEW

by _____
CINDY E. YOUNKIN, Chairperson

Reviewed by:

_____
John F. North, Rule Reviewer

Certified to the Secretary of State August 31, 1998.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.8.321, regarding opacity limits and other requirements for kraft pulp mills.	)))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT OF RULE (Air Quality)

TO: All Interested Persons

1. On October 9, 1998, at 2:00 p.m., the board will hold a public hearing at Missoula City Council Chambers, 435 Ryman, Missoula, Montana, to consider the proposed amendment of the above-captioned rule.

The board will make reasonable accommodations for persons with disabilities who wish to participate in this hearing. If you need an accommodation, contact the board no later than 5 p.m., September 25, 1998, to advise us of the nature of the accommodation you need. Please contact the board at P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2544; fax (406) 444-4386.

2. This proposed action is in response to a petition for rulemaking. Three alternative amendments to the rule are proposed. The three alternatives represent the proposed approach of Stone Container Corporation (ALTERNATIVE I), Missoula County (ALTERNATIVE II), and the Department of Environmental Quality (ALTERNATIVE III). Paragraphs 3, 4, and 5 of this notice contain rationale statements for each proposed alternative. The rationale statements have been prepared by the proponents of the alternatives. After hearing public comment on the alternatives, the board will decide which, if any, of the proposed alternatives to adopt.

The alternative amendments are as follows:

ALTERNATIVE I

17.8.321 KRAFT PULP MILLS (1) For the purposes of this rule, the following definitions apply:

(a) and (b) Remain the same

(c) "Dry electrostatic precipitator (ESP) system" means an electrostatic precipitator with a dry bottom (i.e., no black liquor, water, or other fluid is used in the ESP bottom) and a dry particulate matter (PM) return system (i.e., no black liquor, water, or other fluid is used to transport the collected PM to the mix tank).

(d) "Existing recovery furnace" means a recovery furnace installed on or before August 28, 1998.

(c) Remains the same in text but is renumbered (e).

(f) "New recovery furnace means a recovery furnace installed after August 28, 1998.

(d) through (i) Remain the same in text, but are renumbered (g) through (l).

(2) through (7) Remain the same

(8) No person may cause or authorize to be discharged into the outdoor atmosphere, from any existing recovery furnace ~~installed on or before November 23, 1968,~~ equipped with an ESP emissions that exhibit ~~35% opacity or greater averaged over 6 consecutive minutes~~ opacity greater than 35% averaged over 6 consecutive minutes for 6% or more of the time within any 6-month reporting period. For recovery furnaces, this opacity limitation supersedes any other opacity limitation contained in this chapter, including ARM 17.5.304 and 17.5.340.

(9) No person may cause or authorize to be discharged into the outdoor atmosphere, from any new recovery furnace ~~installed after November 23, 1968~~ equipped with an ESP, emissions that exhibit ~~30% opacity or greater averaged over 6 consecutive minutes~~ opacity greater than 20% averaged over 6 consecutive minutes for 6% or more of the time within any 6-month reporting period. For recovery furnaces, this opacity limitation supersedes any other opacity limitation contained in this chapter, including ARM 17.8.304 and 17.5.340.

(10) Any person subject to (8) or (9) shall within 60 days of becoming subject to this rule develop and implement a written plan that requires that such person implement corrective action if 10 consecutive 6-minute averages result in a measurement greater than 20% opacity.

(10) Remains the same in text, but is renumbered (11).

~~(11)~~ (12) COMS will be the primary measure of compliance with the opacity limits specified in (8) ~~or~~ and (9) of this rule, except that the department may use another appropriate method of determining compliance, as specified in the Montana source test protocol and procedures manual, including the test method contained in 40 CFR Part 60, appendix A, method 9, when the department has reason to believe that COMS data is not accurate or when COMS data is unavailable.

~~(12)~~ (13) Any person subject to ~~(10)~~ (11) of this rule shall report ~~every time period of excess opacity from any recovery furnace,~~ quarterly if measured parameters exceed the conditions specified in (8), (9) or (10) of this rule as determined by the COMS, and shall report every time period when the COMS was not operational. ~~For the purposes of this report, excess emissions means any 6-minute average opacity of 35% or greater for any recovery furnace installed on or before November 23, 1968, or 30% or greater for any recovery furnace installed after November 23, 1968~~ When no exceedances of parameters have occurred, persons subject to (11) of this rule shall submit a semi-annual report stating that no excess emissions occurred during the reporting period. These reports must be submitted on forms provided by the department and must be made in compliance with department procedures and applicable requirements for submittal of excess emissions reports. These reports must be submitted to the department ~~quarterly,~~ within 30 days after the end of each applicable calendar quarter or 6-month reporting period.

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

ALTERNATIVE II

17.8.321 KRAFT PULP MILLS (1) through (8) Remain the same.

(9) No person may cause or authorize to be discharged into the outdoor atmosphere, from any recovery furnace installed after November 23, 1968 and installed prior to January 1, 1998, emissions that exhibit ~~30%~~ 20% opacity or greater averaged over 6 consecutive minutes, except that during each calendar month 6 minute average opacity measurements greater than 20% must not be counted as a violation when the source has accrued an adequate number of emission credits to offset the number of violation debits.

(a) The number of accrued emission credits available for any calendar month must be calculated by subtracting each 6 minute average opacity measurement of greater than or equal to 10% and less than 15% from 15, sum the results and multiply by .003, plus the sum of subtracting each 6 minute average opacity measurement of greater than or equal to 5% and less than 10% from 15, and multiplying by .005 plus the sum of subtracting each 6 minute average opacity measurement of greater than 0% and less than 5% from 15, and multiply by .010. Periods when no black liquor is fired may not be used to earn opacity credits.

(b) Total calendar month violation debits shall be calculated by subtracting 20 from each non-malfunction 6 minute average opacity measurement of greater than 20 that occurs within a calendar month and totaling the results.

(c) If the number of emission credits equals or exceeds the number of violation debits during any calendar month, no violations have occurred. If the number of violation debits exceeds the number of emission credits in a calendar month, then the credits shall be subtracted from the number of debits in the order (by day & hour) in which the potential violation occurred. A non-malfunction 6 minute average opacity measurement in excess of 20% that is not entirely offset by earned emission credits shall count as a violation. Unused accrued emission credits shall not carry over from month to month.

(d) For recovery furnaces, this opacity limitation supersedes any other opacity limitation contained in this chapter, including ARM 17.8.304 and 17.8.340.

(~~9~~10) No person may cause or authorize to be discharged into the outdoor atmosphere, from any recovery furnace installed after January 1, 1998, emissions that exhibit 20% opacity or greater averaged over 6 consecutive minutes. For recovery furnaces, this opacity limitation supersedes any other opacity limitation contained in this chapter, including ARM 17.8.304 and 17.8.340.

(~~10~~11) Any person subject to (8), ~~or~~ (9) or (10) of this rule shall install, calibrate, maintain, and operate a continuous opacity monitoring system (COMS) to monitor and record the opacity of emissions discharged into the atmosphere from any recovery furnace subject to this rule. This COMS shall comply with the requirements of 40 CFR Part 60, regarding the

installation, calibration, maintenance, and operation of COMS for kraft pulp mill recovery furnaces and any other applicable requirement in this chapter regarding the installation, calibration, maintenance, and operation of COMS.

(~~11~~12) COMS will be the primary measure of compliance with the opacity limits specified in (8), ~~or~~ (9), and (10) of this rule, except that the department may use another appropriate method of determining compliance, as specified in the Montana source test protocol and procedures manual, including the test method contained in 40 CFR Part 60, appendix A, method 9, when the department has reason to believe that COMS data is not accurate or when COMS data is unavailable.

(~~12~~13) Any person subject to (~~10~~11) of this rule shall report every time period of excess opacity from any recovery furnace and the data and calculations for all accrued emission credits, as determined by the COMS, and shall report every time period when the COMS was not operational. For the purposes of this report, excess emissions means ~~any 6-minute average opacity of 35% or greater for any recovery furnace installed on or before November 23, 1968, or 30%~~ any 6-minute average opacity of 20% or greater for any recovery furnace installed after November 23, 1968 and before January 1, 1998, that does not have an offsetting earned emission credit accrued during the same calendar month, and any 6-minute average opacity of 20% or greater for any recovery furnace installed after January 1, 1998. These reports must be submitted on forms provided by the department and must be made in compliance with department procedures and applicable requirements for submittal of excess emissions reports. These reports must be submitted to the department quarterly, within 30 days after the end of each calendar quarter.

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

ALTERNATIVE III

17.8.321 KRAFT PULP MILLS (1) through (8) Remain the same.

(9) No person may cause or authorize to be discharged into the outdoor atmosphere, from any recovery furnace installed after November 23, 1968 and on or before September 4, 1976, emissions that exhibit ~~30%~~ 20% opacity or greater averaged over 6 consecutive minutes for more than 3% of the 6 minute time periods during which a source is operating within any calendar month. For recovery furnaces, this opacity limitation supersedes any other opacity limitation contained in this chapter, including ARM 17.8.304 and 17.8.340.

(10) No person may cause or authorize to be discharged into the outdoor atmosphere, from any recovery furnace installed after September 4, 1976, emissions that exhibit 20% opacity or greater averaged over 6 consecutive minutes for more than 1% of the 6 minute time periods during which a source is operating within any calendar month. For recovery furnaces, this opacity limitation supersedes any other opacity limitation contained in

this chapter, including ARM 17.8.304 and 17.8.340.

(11) For the purposes of this rule, excess opacity emissions means any 6-minute average opacity of 35% or greater for any recovery furnace installed on or before November 23, 1968, and 20% or greater for any recovery furnace installed after November 23, 1968.

(12) Any person subject to (8), (9), or (10) of this rule shall submit a corrective action plan addressing periods of excess opacity emissions, as defined in (11) of this rule, to the department for review and approval within 60 days of becoming subject to this rule. A revised corrective action plan may be submitted to the department for review and approval at any time. The department may revise an existing corrective action plan if it believes that the amount, length or severity of excess emissions exhibited by a facility indicate a need for additional corrective action. If the Department revises an existing corrective action plan, the revision may be appealed by the facility to the board.

(13) During any period of excess opacity emissions, any person subject to (8), (9), or (10) of this rule must take corrective action as described in the approved corrective action plan.

~~(10)~~ (14) Any person subject to (8), ~~or~~ (9), or (10) of this rule shall install, calibrate, maintain, and operate a continuous opacity monitoring system (COMS) to monitor and record the opacity of emissions discharged into the atmosphere from any recovery furnace subject to this rule. This COMS shall comply with the requirements of 40 CFR Part 60, regarding the installation, calibration, maintenance, and operation of COMS for kraft pulp mill recovery furnaces and any other applicable requirement in this chapter regarding the installation, calibration, maintenance, and operation of COMS.

~~(11)~~ (15) COMS will be the primary measure of compliance with the opacity limits specified in (8), ~~or~~ (9), and (10) of this rule, except that the department may use another appropriate method of determining compliance, as specified in the Montana source test protocol and procedures manual, including the test method contained in 40 CFR Part 60, appendix A, method 9, when the department has reason to believe that COMS data is not accurate or when COMS data is unavailable.

~~(12)~~ (16) Any person subject to ~~(10)~~ (14) of this rule shall report every time period of excess opacity emissions from any recovery furnace, as determined by the COMS, and shall report every time period when the COMS was not operational. ~~For the purposes of this report, excess emissions means any 6-minute average opacity of 35% or greater for any recovery furnace installed on or before November 23, 1968, or 30% or greater for any recovery furnace installed after November 23, 1968.~~ These reports must include descriptions of any corrective action measures taken during period of excess opacity emissions. These reports must be submitted on forms provided by the department and must be made in compliance with department procedures and applicable requirements for submittal of excess

emissions reports. These reports must be submitted to the department quarterly, within 30 days after the end of each calendar quarter.
AUTH: Sec. 75-2-111, 75-2-203, MCA; IMP: Sec. 75-2-203, MCA

3. Stone Container Corporation has prepared the following statement of reasonable necessity for ALTERNATIVE I:

The proposed amendments to ARM 17.8.321 are based upon opacity standards recently proposed by the EPA for Kraft Pulp Mills. 63 Fed. Reg. 18754 (April 15, 1998). The EPA proposal, founded on the principle that public health and the environment will be protected by reducing emissions "to the level corresponding to the maximum achievable control technology" (MACT II), reflects an economically sound approach based on a reasoned analysis of the best performing 6% of mills across the United States. Under the proposed amendments, owners and operators of existing Kraft recovery furnaces must operate so that the opacity of emissions is not "greater than 35% for 6% or more of the time within any 6-month reporting period." In addition, the proposed amendments require operators of all recovery furnaces to begin to implement a start-up, shutdown, and malfunction corrective action plan if ten consecutive 6-minute averages are over 20% opacity.

EPA based the MACT II opacity standard on the already-existing new source performance standards (NSPS) for Kraft Pulp Mills. 40 C.F.R. Part 60, Subpart BB. The NSPS Subpart BB 35% opacity standard (set out in 40 C.F.R. § 60.282) is universally recognized as an enforceable emission standard. The NSPS standards also establish that excess emissions violate the 35% standard only if the emissions occur greater than 6% of the time. 40 C.F.R. § 60.284(e)(1)(ii). Those very same standards have been incorporated into the MACT II requirements for those Kraft and Soda recovery furnaces equipped with electrostatic precipitators (ESP). The proposed amendments to ARM 17.8.321 are reasonably necessary to maintain consistent regulation under state and federal law and to allow for variability which can occur even in top-performing and properly run facilities. The current rule does not allow for any exceedances contrary to the analysis and conclusions underlying the current NSPS and proposed MACT II requirements.

Adoption of the proposed amendments to ARM 17.8.321 will not result in increased particulate matter (PM) emissions. Recovery furnaces at Kraft Pulp Mills are subject to specific limits on hourly and daily particulate matter emissions. Owners and operators of recovery furnaces must demonstrate compliance with permit conditions by conducting quarterly stack-testing. In addition, owners and operators of Kraft Pulp Mills are required to calculate compliance with particulate matter limitations daily and monthly through a correlation with continuous opacity monitoring. These standards for PM emissions

are not affected by the proposed rule and will continue to protect public health and the environment.

A recent study looking at sources of PM_{10} in the Missoula airshed conducted by John A. Cooper, Ph.D. under contract with the Missoula City-County Health Department concluded that Kraft recovery furnace impacts would be insignificant on high PM days. In fact, they were substantially less than 1%. Moreover, Missoula County has not had a PM_{10} standard violation in over 9 years. EPA recognizes Missoula as meeting all current and previous PM_{10} standard requirements. Thus, Missoula County meets the requirement for PM_{10} attainment reclassification. EPA has also concluded that it is highly probable that Missoula County will also meet new, stricter $PM_{2.5}$ standards. Concentrations have not exceeded even the new standard criteria since 1990 and the most recent 3-year average is 40% below the standard.

4. Missoula County has prepared the following statement of reasonable necessity for ALTERNATIVE II:

Alternative II is offered by the Missoula City County Air Pollution Control Board. Alternative II proposes an opacity limit of 20% for recovery boilers installed after November 23, 1968 and before January 1, 1998. In addition to a proposed 20% opacity limit and other requirements, this alternative contains a provision which uses credits and debits to determine violations on a monthly basis. Accrued credits may be used to offset periods of upset. The current state rule allows an opacity limit of 30% for the kraft recovery boilers. Lowering the opacity limit to 20% results in lower particulate emissions, which protects public health and the unique Missoula Valley environment.

There is a direct correlation between the opacity readings of a recovery boiler and its mass emissions of particulate. Kraft recovery boilers are sources of particulate in the Missoula Valley, as shown in the 1986 and 1996 CMB analyses. According to the April 15, 1998 Federal Register, Proposed Standards for Hazardous Air Pollutants From Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills, hazardous air pollutants (HAP) account for approximately 0.2 percent of the particulate emissions from recovery furnaces. Available emission data shows that metals, various organic compounds and hydrochloric acid are the most significant HAP's emitted from pulp and paper combustion sources. Organic compounds emitted from pulp and paper combustion sources include acetaldehyde, benzene, formaldehyde, methyl ethyl ketone, methyl isobutyl ketone, methanol, phenol, styrene, toluene, and xylenes. These organic compounds have a range of potential health effects associated with short and long term exposure. Health and environmental effects associated with exposure to PM are described in EPA's Criteria Documents "Air Quality Criteria for Particulate Matter", EPA-600/P-95-001.

Results from a study of grammar school children by Ransom and Pope (1992) indicate that school absenteeism was significantly related to elevated PM 10 concentrations as low as 50 parts ug/M3. Further, they found that absenteeism increased as PM 10 concentrations increased above 50 ug/M3. PM10 records for Missoula from 1994 to 1997 indicate that, although Missoula did not exceed the federal standard of 150 ug/m3, there were many days when particulate levels exceeded the 50 ug/m3 of the Ransom and Pope study.

Alternative II will benefit the environment by reducing particulate emissions in the Missoula Valley's unique and sensitive airshed. Missoula Valley has a long history of air pollution that led to its designation as a non-attainment area for particulate. Missoula remains subject to inversions and air stagnation caused by its physical setting. Air quality monitoring shows a change in the previous trend of air quality improvement with annual average particulate increasing during the past two years.

Current data from the mill indicates it can operate under this proposed rule.

5. The Department of Environmental Quality has prepared the following statement of reasonable necessity for ALTERNATIVE III:

The state kraft pulp mill rule establishes opacity limits and other requirements for the Stone Container facility in Missoula, Montana. Under the current rule, recovery boilers installed after November 23, 1968, must meet an opacity limit of 30%. Proposed Alternative III revises the opacity limit, for these boilers, from 30% to 20%.

Alternative III allows exceedances of the proposed 20% opacity limit for a certain percentage of time every month. For recovery boilers installed after November 23, 1968, but before September 24, 1976, the proposed excess emissions allowance is 3%. This applies to Stone's recovery boiler #4. For recovery boilers installed after September 24, 1976, the proposed excess emissions allowance is 1%. This applies to Stone's recovery boiler #5. Under both the current and the proposed rule, opacity must be monitored by means of continuous opacity monitors (COMS).

The proposed 20% opacity standard is technology-based rather than health-based. Opacity limits traditionally have been set at levels designed to ensure that air pollution control equipment will be properly operated and maintained. The proposed 20% opacity standard was developed based on data regarding the capabilities of air pollution control equipment at Stone Container. COMS data collected at the facility since 1995 indicate that the #4 and #5 recovery boilers, with proper

operation and maintenance, can meet an opacity limit of 20%, with some allowance for unpreventable conditions as discussed below. Current actual emissions from these boilers are generally at or below the proposed 20% opacity limit. However, by establishing 20% as an enforceable opacity limit, the proposed amendment will help ensure that the facility continues to follow good air pollution control practice in the future.

Lowering the opacity limit from 30% to 20% will contribute to lower particulate matter emissions from the facility. A correlation equation has been developed, based on emissions tests at the facility, which shows a relationship between opacity and particulate emissions at the recovery boilers. When opacity is lower, particulate emissions generally are lower. When opacity is higher, particulate emissions generally are higher. Based on the correlation equation, reducing opacity levels from 30% to 20% will reduce particulate emissions from the Stone Container recovery boilers. Because boilers #4 and #5 are generally operated at or below the proposed 20% limit, the proposed rule will not result in immediate substantial reductions of particulate emissions. However, by lowering the enforceable opacity limit from 30% to 20%, the proposed rule will help insure that particulate emissions remain at or below their current levels.

The proposed amendment will benefit the environment because a 20% opacity limit will require the facility to use good air pollution control practice, and will help control particulate emissions at the facility. The proposed amendment will also benefit human health. Although the opacity limit is not a health-based standard, the state air quality permit for the facility does contain emission limits for particulate matter. These health-based emission limits are based on health studies and on the state and national ambient air quality standards. Good air pollution control practice is essential for compliance with the health-based emission limits in the air quality permit. Because compliance with the 20% opacity limit will require good air pollution control practice, the proposed amendment will contribute to the attainment of health-based emission limits at the facility.

The particulate controls resulting from the proposed 20% opacity limit will also add a margin of safety to the facility's health-based emission limits. The health-based emission limits in Stone's air quality permit cannot be exceeded. Consequently, particulate matter emissions from the facility will not be a threat to human health regardless of which opacity limit is applicable. However, there is some evidence that, at boiler #4, compliance with the proposed 20% opacity limit will result in lower particulate emissions than under the health-based emission limits. This will create a margin of safety for particulate emissions from the #4 recovery boiler. Because the #4 boiler is generally operated now at or below 20% opacity, the proposed

rule would not result in immediate health benefits. However, the proposed rule will ensure that the margin of safety for particulate emissions continues to exist in the future.

The COMS data from Stone Container shows some periods of excess opacity that are not the result of improper operation or maintenance. These excess opacity levels are due to unpreventable conditions such as sudden changes in the composition of the materials burned in the boilers. The current rule does not make allowance for such excess emissions. In enforcing the current rule, the Department has discretion whether to pursue civil penalties in such cases. The proposed rule quantifies, through an excess emissions allowance, the extent to which inherent process variability is allowed. COMS data from 1997 indicate that unpreventable excess opacity levels occurred in that year approximately 1.9% and .1% of the time for the #4 and #5 boilers, respectively. The proposed excess emission allowances of 3% and 1% for the #4 and #5 boilers, respectively, reflect adjustments to the 1997 data to allow for yearly variations.

6. Interested persons may submit their data, views or arguments concerning the proposed rules either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Board of Environmental Review, P.O. Box 200901, Helena, Montana 59620-0901, no later than October 16, 1998.

BOARD OF ENVIRONMENTAL REVIEW

by _____
CINDY E. YOUNKIN, Chairperson

Reviewed by:

_____
John F. North, Rule Reviewer

Certified to the Secretary of State August 31, 1998.

BEFORE THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES OF THE STATE OF MONTANA

In the matter of the adoption of rules I through III, the transfer and amendment of 11.5.1003, 11.5.1004, 11.14.601, 11.14.602, 11.14.604, 11.14.605 and 11.14.607 through 11.14.611, and the repeal of 11.5.1001, 11.5.1002, 11.5.1005 and 11.14.613 pertaining to child care assistance	))))))))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION, TRANSFER AND AMENDMENT AND REPEAL

TO: All Interested Persons

1. On September 30, 1998, at 1:30 p.m., a public hearing will be held in the auditorium of the Department of Public Health and Human Services Building, 111 N. Sanders, Helena, Montana to consider the adoption of rules I through III, the transfer and amending of 11.5.1003, 11.5.1004, 11.14.601, 11.14.602, 11.14.604, 11.14.605 and 11.14.607 through 11.14.611, and the repeal of 11.5.1001, 11.5.1002, 11.5.1005 and 11.14.613 pertaining to child care assistance.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you request an accommodation, contact the department no later than 5:00 p.m. on September 21, 1998, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970.

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

RULE I CONFIDENTIALITY (1) Applicant or participant information may be shared with other state and federal agencies who are supporting or assisting in administration of the program for the following purposes:

(a) to report child abuse and neglect to the appropriate agency or authority;

(b) to administer and establish eligibility, to determine the amount of assistance, to provide the service, and to conduct audits, investigations, prosecution of criminal or civil proceedings involving state and federal public assistance

programs;

(c) to provide the applicant or participant's current address to a state or local law enforcement officer, if the officer documents that the person is a fugitive felon whose arrest is the responsibility of the officer. The officer shall provide the name and social security of the participant by written request; or

(d) to provide information necessary for emergency medical or other critical needs. Notice of release shall be given as soon as possible to the applicant or participant.

AUTH: Sec. 52-2-704 and 53-4-212, MCA
IMP: Sec. 52-2-704 and 53-2-211, MCA

RULE II CHILD CARE RATES (1) The hourly rate is paid for services provided less than 6 hours during a calendar day.

(2) The daily rate is paid for 6 to 10 hours of service during a calendar day.

(3) Child care certification plans may allow extended care during a calendar day. When care is provided for 10 to 16 hours per day, the daily rate applies to the first 10 hours of service. The hourly rate applies up to 6 hours of additional service. If the certification plan specifies service exceeding 16 hours of care during a calendar day, the state may pay up to twice the daily rate.

(a) Following are the state rates by resource and referral district. Child care providers will be paid the rate for the district in which their facility is physically located.

(i) Billings District

Provider Type	Day Rate	Hour Rate
Family Home		
Regular	15.00	2.25
Infant	16.00	2.50
Special Needs	15.00	2.00
Group Home		
Regular	15.00	2.50
Infant	16.00	2.50
Special Needs	15.00	2.50
Center		
Regular	16.50	3.00
Infant	22.00	3.50
Special Needs	16.00	2.65
Legally Unregistered		
Regular	11.25	1.50
Infant	12.00	1.50
Special Needs	12.00	1.75

(ii) Bozeman District

Provider Type	Day Rate	Hour Rate
Family Home		
Regular	17.00	2.50
Infant	18.00	2.90
Special Needs	18.00	2.50
Group Home		
Regular	17.75	2.75
Infant	20.00	2.75
Special Needs	16.75	2.50
Center		
Regular	17.75	2.75
Infant	20.00	3.00
Special Needs	18.00	2.90
Legally Unregistered		
Regular	11.25	1.50
Infant	12.00	1.50
Special Needs	12.00	1.75

(iii) Butte District

Provider Type	Day Rate	Hour Rate
Family Home		
Regular	15.00	2.00
Infant	15.00	2.25
Special Needs	15.00	2.25
Group Home		
Regular	15.00	2.00
Infant	16.00	2.25
Special Needs	16.00	2.25
Center		
Regular	15.00	2.50
Infant	16.10	2.65
Special Needs	15.25	2.50
Legally Unregistered		
Regular	11.25	1.50
Infant	12.00	1.50
Special Needs	12.00	2.00

(iv) Glasgow District

Provider Type	Day Rate	Hour Rate
Family Home		
Regular	14.00	2.00
Infant	15.00	2.00
Special Needs	15.00	2.00
Group Home		
Regular	14.00	2.00
Infant	15.00	2.15
Special Needs	15.00	2.15
Center		
Regular	16.00	2.50
Infant	16.00	2.40
Special Needs	16.00	2.50
Legally Unregistered		
Regular	11.25	1.50
Infant	12.00	1.50
Special Needs	12.00	1.75

(v) Glendive District

Provider Type	Day Rate	Hour Rate
Family Home		
Regular	14.00	2.00
Infant	15.00	2.00
Special Needs	15.00	2.00
Group Home		
Regular	14.00	2.00
Infant	15.00	2.25
Special Needs	15.00	2.25
Center		
Regular	14.50	2.50
Infant	16.00	2.40
Special Needs	15.00	2.50
Legally Unregistered		
Regular	11.25	1.50
Infant	12.00	1.50
Special Needs	12.00	1.75

(vi) Great Falls District

Provider Type	Day Rate	Hour Rate
Family Home		
Regular	14.00	2.00
Infant	15.00	2.00
Special Needs	15.00	2.00
Group Home		
Regular	14.00	2.00
Infant	15.00	2.25
Special Needs	15.00	2.25
Center		
Regular	14.50	2.50
Infant	16.00	2.50
Special Needs	15.00	2.50
Legally Unregistered		
Regular	11.25	1.50
Infant	12.00	1.50
Special Needs	12.00	1.75

(vii) Havre District

Provider Type	Day Rate	Hour Rate
Family Home		
Regular	14.00	2.00
Infant	15.00	2.00
Special Needs	15.50	2.00
Group Home		
Regular	15.40	2.50
Infant	16.00	2.50
Special Needs	16.00	2.50
Center		
Regular	14.50	2.50
Infant	16.00	2.50
Special Needs	15.50	2.50
Legally Unregistered		
Regular	11.25	1.50
Infant	12.00	1.50
Special Needs	12.00	1.75

(viii) Helena District

Provider Type	Day Rate	Hour Rate
Family Home		
Regular	14.25	2.00
Infant	16.00	2.25
Special Needs	15.00	2.00
Group Home		
Regular	14.00	2.00
Infant	15.00	2.25
Special Needs	15.00	2.25
Center		
Regular	15.50	2.75
Infant	17.00	2.50
Special Needs	16.00	2.50
Legally Unregistered		
Regular	11.25	1.50
Infant	12.00	1.50
Special Needs	12.00	1.75

(ix) Kalispell District

Provider Type	Day Rate	Hour Rate
Family Home		
Regular	14.00	2.00
Infant	15.00	2.25
Special Needs	15.00	2.15
Group Home		
Regular	15.00	2.35
Infant	16.00	2.50
Special Needs	15.00	2.50
Center		
Regular	14.75	2.50
Infant	16.00	2.75
Special Needs	15.00	2.50
Legally Unregistered		
Regular	11.25	1.50
Infant	12.00	1.50
Special Needs	12.00	1.75

(x) Lewistown District

Provider Type	Day Rate	Hour Rate
Family Home		
Regular	14.00	2.00
Infant	15.00	2.00
Special Needs	15.00	2.50
Group Home		
Regular	14.00	2.00
Infant	15.00	2.25
Special Needs	15.50	2.25
Center		
Regular	16.45	2.50
Infant	17.20	2.45
Special Needs	17.20	2.75
Legally Unregistered		
Regular	11.25	1.50
Infant	12.00	1.50
Special Needs	12.00	1.75

(xi) Miles City District

Provider Type	Day Rate	Hour Rate
Family Home		
Regular	14.00	2.00
Infant	15.00	2.00
Special Needs	15.00	2.00
Group Home		
Regular	14.00	2.00
Infant	15.00	2.25
Special Needs	15.00	2.25
Center		
Regular	14.50	2.50
Infant	16.50	2.40
Special Needs	15.00	2.50
Legally Unregistered		
Regular	11.25	1.50
Infant	12.00	1.50
Special Needs	12.00	1.75

(xii) Missoula District

Provider Type	Day Rate	Hour Rate
Family Home		
Regular	15.90	2.50
Infant	16.75	2.50
Special Needs	16.00	2.50
Group Home		
Regular	16.00	2.50
Infant	17.00	2.75
Special Needs	16.25	2.75
Center		
Regular	16.00	2.50
Infant	17.00	2.75
Special Needs	16.00	2.50
Legally Unregistered		
Regular	11.25	1.50
Infant	12.00	1.50
Special Needs	12.00	1.75

(4) Child care operators will be allowed to claim a day's care only when actually provided to the child, with the following two exceptions:

(a) Licensed or registered child care facilities may charge the state for holidays for which the program charges non-state paid families for the same service. A day of authorized child care must fall on the holiday when the provider is closed for business.

(b) The licensed or registered child care facility participates in the certified enrollment program defined in ARM 11.5.1003.

(5) The rates set forth in this rule are the maximum rates payable. The rate charged by the child care provider for children whose child care is paid for by the department cannot exceed the rate charged to private paying parents for the same service.

AUTH: Sec. 52-2-704 and 53-4-212, MCA
IMP: Sec. 52-2-704 and 52-2-713, MCA

RULE III CHILD CARE UNDERPAYMENT, OVERPAYMENT, FRAUDULENT OBTAINING OF ASSISTANCE (1) The provider or the participant shall promptly notify the department of any overpayment or underpayment.

(2) The department is entitled to promptly recover the amount of any child care overpayment made to a child care provider or to a participant. Recovery will be accomplished by the provider or the participant making payment of the overpayment within 30 days of notification of the overpayment. If the provider or the participant fails to repay the overpayment within 30 days, the department may reduce future child care payments or increase family child care copayments until the overpayment is recovered in full.

(3) Where an underpayment of child care payments is made it will be corrected by increasing the payment for the following month to cover the underpayment.

(4) The department may demand repayment, and may pursue civil remedies for overpayment against any person who may be reported under (5) of this rule for overpayment of benefits.

(5) The department may report to the appropriate office of the county attorney, as a theft, the actions of whoever knowingly obtains by means of a willfully false statement, representation, or impersonation or other fraudulent device, public assistance to which such person is not entitled under this subchapter.

AUTH: Sec. 52-2-704 and 53-4-212, MCA
IMP: Sec. 52-2-704 and 52-2-713, MCA

3. The Department is transferring and amending the rules as follows. Material to be added is underlined. Matter to be deleted is interlined.

11.14.601 [37.80.101] PURPOSE AND GENERAL LIMITATIONS (1) This subchapter of rules pertains to payment for ~~day~~ child care services provided to parents eligible for benefits funded under section 5082 of the Omnibus Reconciliation Act of 1990, Public Law 101-508, entitled "Child Care and Development Block Grant Act of 1990," as amended in 1996, and the "Personal Responsibility and Work Opportunity Reconciliation Act," of 1996. These rules also pertain to subsequent re-funding of this program. In addition, this subchapter's requirements for certification of legally unregistered providers under ARM 11.14.609 apply to all child care programs administered by the department where the department allows participation of legally unregistered providers.

(2) Eligibility of parents and the amount of benefits provided under this subchapter depend~~s~~ generally on income as set out in ARM 11.14.605.

(3) All providers must be certified for the purpose of receiving payment under a state assisted child care program. Certification under a state assisted child care program is separate and apart from registration as a group or family ~~day~~ child care home, or licensure as a ~~day~~ child care center, and means simply that the provider has been approved as eligible to receive state payment for ~~day~~ child care services as allowed by this subchapter. Those operating as a group or family ~~day~~ child care home or ~~day~~ child care center as defined by department rule and the Montana Child Care Act remain subject to ~~day~~ child care facility registration and licensing rules in addition to requirements for certification under this subchapter.

(4) Eligibility of parents and providers for ~~day~~ child care benefits is contingent on meeting all applicable requirements under this subchapter.

(5) Payment of funds under this subchapter also depends on continued federal funding. Termination of any and all benefits may occur based on the loss or depletion of federal funding.

(6) Provision of benefits for child ~~day~~ care services under this subchapter, or under any other department ~~day~~ child care program, shall not be deemed to obligate the department to pay employment-related benefits to ~~day~~ child care providers.

AUTH: Sec. 52-2-704 and 53-4-212, MCA
IMP: Sec. 52-2-702, 52-2-704, 52-2-713, 52-2-731, 53-2-201, 53-4-211, 53-4-601, 53-4-611 and 53-4-612, MCA

11.14.602 [37.80.102] DEFINITIONS As used in this subchapter, the following definitions apply:

(1) "~~Day~~ Child care" means supplemental parental care as defined in ARM 11.14.102(6) provided by either a ~~day~~ child care facility or by a legally unregistered provider, for a child:

(1)(a) and (1)(b) remain the same.

~~(2) A legally unregistered provider certified under this subchapter, or under any day care program administered by the department allowing for participation of legally unregistered~~

~~providers, may be a relative of the child, and may provide day care in the home of the parents, notwithstanding the definition of supplemental parental care in ARM 11.14.102(6).~~

~~(4)~~ (2) "~~Day~~ Child care facility" has the same meaning as in ARM 11.14.102(1).

(3) "Copayment" means the portion of ~~day~~ child care expenses paid by parents under the sliding scale established in ARM 11.14.605.

~~(4) "Day care facility" has the same meaning as in ARM 11.14.102(1).~~

(5) and (6) remain the same in text, but are renumbered (4) and (5).

~~(7)~~ (6) "Legally unregistered provider" means a person providing ~~day~~ child care under this subchapter, or under any ~~day~~ child care program administered by the department allowing for legally unregistered providers, who is not required to be registered as a ~~day~~ child care facility, including providers whose ~~day~~ child care services are provided in the home of the parent~~(s)~~.

(a) A legally unregistered provider certified under this subchapter, or under any child care program administered by the department allowing for participation of legally unregistered providers, may be a relative of the child, and may provide child care in the home of the parents, notwithstanding the definition of supplemental parental care in ARM 11.14.102(6).

(8) through (8)(q) remain the same in text, but are renumbered (7) through (7)(q).

(r) ~~SSDI~~ SSI payments; and

(8)(s) remains the same, but is renumbered (7)(s).

~~(9)~~ (8) "Parent" means the ~~natural~~ birth parent, guardian, or person acting in loco parentis who may be deemed to bear financial responsibility for procuring ~~day~~ child care for a particular child.

~~(10)~~ (9) "Provider" means both legally unregistered providers, and licensees and registrants of other ~~day~~ child care facilities.

(11) through (13) remain the same in text, but are renumbered (10) through (12).

AUTH: Sec. 52-2-704 and 53-4-212, MCA
IMP: Sec. 52-2-704, 52-2-713, 52-2-721, 52-2-722, 52-2-723, 52-2-731, 53-2-201, 53-4-211, 53-4-601, 53-4-611 and 53-4-612, MCA

11.14.604 [37.80.201] ELIGIBILITY OF PARENTS FOR PAYMENT

(1) In addition to other requirements, to be eligible for payments under this subchapter, ~~one~~ each parent (or other adult who is included in the calculation of family size) in the household must be working~~.~~ a minimum of 60 hours each month; two parent families must work a total of 120 hours per month, with any combination of work hours. This work requirement does not apply to FAIM families, teen parent families attending high

school or an equivalency program and working families experiencing short-term medical emergencies. Non-FAIM ~~P~~parents may receive benefits under this subchapter to cover ~~day~~ child care while at training ~~only~~ if ~~a~~ one or both parents (or other adult who is included in the calculation of family size) in the household ~~is~~ are employed. Hours worked under a work study grant shall be counted in meeting the work requirement if income is earned, or if the cash equivalent of benefits received is counted as income for purposes of computing the benefit amount under the sliding scale in ARM 11.14.605.

(2) If a birth parent is absent from the household and is not paying child support, the custodial parent must apply for child support enforcement services. A custodial parent failing to cooperate with the child support enforcement division may be decertified for benefits under this subchapter. Good cause exemptions may be granted by child care eligibility workers or the child support enforcement division.

~~(2)~~(3) The household of the parent~~(s)~~ must also meet eligibility requirements based on income under the sliding scale set out in ARM 11.14.605.

~~(3)~~(4) The parent~~(s)~~ may apply for certification/re-certification under this subchapter at the nearest ~~district~~ child care resource and referral ~~office~~ agency, local county office of human services or office of public welfare. ~~District~~ Child care resource and referral ~~offices~~ agencies are located in Billings, Bozeman, Butte, Glasgow, Great Falls, Helena, Kalispell, Miles City, Havre, Glendive, Lewistown and Missoula. Following completion and submission of all applicable forms, the child care resource and referral ~~office~~ agency, ~~in cooperation with the department representative,~~ for non-FAIM cases, will approve or deny the application. FAIM cases will be approved or denied by the WoRC operator or FAIM coordinator in cooperation with the child care resource and referral agency. If approved, the parent~~(s)~~ will be certified eligible for benefits under this subchapter according to the sliding scale in ARM 11.14.605. The parent~~(s)~~ must obtain eligibility recertification every ~~three~~ 3 months~~,~~ or as designated by their worker.

(4) through (4)(b) remain the same in text, but are renumbered (5) through (5)(b).

(i) the highest priority for services, after ~~TANF~~/FAIM/TANF families are ~~full-time~~ families with each parent in the household working a minimum of 60 hours each month; two parent families must work a total of 120 hours per month, with any combination of work hours. ~~families,~~ teen parents attending high school or equivalency programs, and families experiencing short-term (expected to last fewer than 3 months) medical emergencies who need the child care so they may return to work;

~~(ii) part-time working families have the next priority for services;~~

~~(iii) part-time working families who are also attending post-secondary education or training programs are last priority;~~

~~(iv)~~(ii) among ~~working~~ families listed in (5)(b)(i), those

with lower income are a higher priority than those with higher income; and

(4)(v) remains the same, but is renumbered (5)(b)(iii).

(c) Payment may only be made for care provided during time both parents or, in single parent households, the parent, and any other adult included in calculating family size under this subchapter, is/are required to be out of the home to attend work or training or due to a short-term medical emergency. Under no circumstances may payment be made for ~~day~~ child care provided by a parent or person acting in loco parentis of the child(ren), even if such parent does not reside in the child's household. In addition, no payment under this subchapter may be made for ~~day~~ child care provided by any person residing in the household whether or not such person is included in calculating family size under this subchapter.

(5) remains the same, but is renumbered (6).

~~(6)~~(7) ~~Day~~ Child care benefits allowed for training under this subchapter are also limited to:

(6)(a) through (7) remain the same in text, but are renumbered (7)(a) through (8).

~~(8)~~(9) Parents may only claim payment under this subchapter for ~~day~~ child care provided by:

(8)(a) remains the same, but is renumbered (9)(a).

(b) a licensed or registered ~~day~~ child care facility certified under this subchapter.

AUTH: Sec. 40-4-234, 52-2-704 and 53-4-212, MCA
IMP: Sec. 52-2-704, 52-2-713, 52-2-721, 52-2-722, 52-2-723, 52-2-731, 53-2-201, 53-4-211, 53-4-601 and 53-4-611, MCA

11.14.605 [37.80.202] INCOME ELIGIBILITY AND COPAYMENTS

(1) The child care sliding fee scale chart, and other subsections of this rule, set the maximum and minimum benefits to be paid under this subchapter.

(2) The child care sliding fee scale is based on federal poverty level (FPL) income guidelines and state median income (SMI) for the current federal fiscal year.

(3) Parents eligible for benefits under this subchapter are required to pay or make arrangements to pay a monthly copayment. The parent~~(s)~~ will be charged a percentage of their gross monthly income for the applicable family size according to the chart. Households with income exceeding 85% of SMI or ~~185~~ 150% of the FPL appearing in the chart are ineligible for benefits. The department may establish other priorities for distributing available benefits.

(4) The department ~~hereby adopts and incorporates by reference the sliding fee scale chart, revised October 1, 1997, which appears within the appendix of the child care and development block grant plan of the state of Montana.~~ will provide benefits for eligible participants according to a sliding fee scale. Revisions to the sliding fee scale may occur

due to changes in the federal poverty level, changes in the state median income or changes in budget allocations. The child care sliding fee scale chart is established pursuant to the requirements of 45 ~~C.F.R.~~ ~~Section~~ 98.16 (1991). The chart sets forth the copayments paid by parents receiving payment for ~~day~~ child care services under this subchapter. A copy of the child care sliding fee scale chart ~~may be obtained from the Department of Public Health and Human Services, Child and Family Services Division, Program Management Bureau, P.O. Box 8005, Helena, Montana 59604.~~ is located at the end of this rule.

(5) The daily/hourly payment rate for ~~day~~ child care services under this subchapter is the applicable rate in ARM ~~11.5.1002~~ [RULE II]. Once the appropriate rate is multiplied by the number of child ~~day~~ care hours/days in any month which may be paid under this subchapter, the monthly benefit amount paid by the department is reduced by the amount of the copayment.

(6) Each family eligible under this subchapter may receive benefits covering hours/days of child ~~day~~ care for all eligible children in the household. For purposes of calculating copayments only, a maximum of one child is counted as residing in the household.

(7) The amount of the monthly copayment in the child care sliding fee scale chart is paid by the parent~~(s)~~ to the provider regardless of the number of children in care or number of days/hours child ~~day~~ care is provided.

(8) Parents are solely responsible for paying or making arrangements to pay the copayment and any balance necessary to meet the contract rate to the provider. Parents failing to pay or make arrangements to pay copayments and any balance necessary to meet the contract rate to their provider may be decertified for benefits under this subchapter.

(9) remains the same.

(a) income, household membership, employment, training or medical status which may reasonably be expected to affect their eligibility under this subchapter;

(b) the identity of their provider and/or reduction in the amount of child ~~day~~ care for which payment may be made under this subchapter; and

(9)(c) remains the same.

(10) Reports under (9) of this rule must be made to the ~~district~~ child care resource and referral ~~office~~ agency, or if a FAIM family, to the WoRC operator or FAIM coordinator certifying eligibility for the parents. The certifying ~~district~~ child care resource and referral agency, WoRC operator or FAIM office may act to change, reduce, or deny benefits under this subchapter based on information received from the parents or from any source.

[The chart on the following page is all new material, but is not shown with underlines to make it easier to read.]

CHILD CARE SLIDING FEE SCALE								
FAMILY SIZE		2	3	4	5	6	7	8
%Poverty	Gross Income	Below 95.5% +$1 of the Federal Poverty Level						
%Income	CoPay	$5	$5	$5	$5	$5	$5	$5
95.5% + $1	Gross Income	$865	$1,087	$1,309	$1,533	$1,755	$1,977	$2,201
1%	CoPay	$9	$11	$13	$15	$18	$20	$22
100%	Gross Income	$904	$1,138	$1,371	$1,604	$1,838	$2,071	$2,304
3%	CoPay	$27	$34	$41	$48	$55	$62	$69
105%	Gross Income	$949	$1,194	$1,439	$1,684	$1,929	$2,174	$2,419
5%	CoPay	$47	$60	$72	$84	$96	$109	$121
110%	Gross Income	$995	$1,251	$1,508	$1,765	$2,021	$2,278	$2,535
7%	CoPay	$70	$88	$106	$124	$141	$159	$177
115%	Gross Income	$1,040	$1,308	$1,576	$1,845	$2,113	$2,381	$2,650
9%	CoPay	$94	$118	$142	$166	$190	$214	$239
120%	Gross Income	$1,085	$1,365	$1,645	$1,925	$2,205	$2,485	$2,765
11%	CoPay	$119	$150	$181	$212	$243	$273	$304
125%	Gross Income	$1,130	$1,422	$1,714	$2,005	$2,297	$2,589	$2,880
13%	CoPay	$147	$185	$223	$261	$299	$337	$374
130%	Gross Income	$1,175	$1,479	$1,782	$2,085	$2,389	$2,692	$2,995
15%	CoPay	$176	$222	$267	$313	$358	$404	$449
135%	Gross Income	$1,221	$1,536	$1,851	$2,166	$2,481	$2,796	$3,111
17%	CoPay	$208	$261	$315	$368	$422	$475	$529
140%	Gross Income	$1,266	$1,593	$1,919	$2,246	$2,573	$2,899	$3,226
19%	CoPay	$241	$303	$365	$427	$489	$551	$613
145%	Gross Income	$1,311	$1,649	$1,988	$2,326	$2,664	$3,003	$3,341
21%	CoPay	$275	$346	$417	$488	$559	$631	$702
150%	Gross Income	$1,356	$1,706	$2,056	$2,406	$2,756	$3,106	$3,456
23%	CoPay	$312	$392	$473	$553	$634	$714	$795

AUTH: Sec. 52-2-704 and 53-4-212, MCA
IMP: Sec. 52-2-704, 52-2-713, 52-2-721, 52-2-722, 52-2-723, 52-2-731, 53-2-201, 53-4-211, 53-4-601 and 53-4-611, MCA

11.14.607 [37.80.301] REQUIREMENTS FOR ~~DAY~~ CHILD CARE FACILITIES, COMPLIANCE WITH EXISTING RULES, CERTIFICATION (1) ~~Day~~ Child care facilities must be in compliance with applicable licensing and registration requirements to receive payment under this ~~sub~~chapter. Loss of eligibility for funds under this ~~sub~~chapter for failing to comply with ~~day~~ child care facility licensing and registration requirements is in addition to other remedies available for such violations.

(2) The provider bears responsibility for informing parents for whom benefits are provided that loss of eligibility due to failure to comply with ~~day~~ child care facility licensing and registration rules has occurred.

(3) ~~Day~~ Child care facilities must be certified as eligible for payment under this ~~sub~~chapter through the nearest ~~district~~ child care resource and referral agency or district office ~~of~~ of DPHHS. All applicable forms must be completed and submitted to such office for approval.

AUTH: Sec. 52-2-704, MCA
IMP: Sec. 52-2-704, 52-2-713, 52-2-721, 52-2-722, 52-2-723 and 52-2-731, MCA

11.14.608 [37.80.305] LEGALLY UNREGISTERED PROVIDERS: INTRODUCTION (1) Except where otherwise specified, unregistered providers are not subject to department licensing or registration requirements applicable to "~~day~~ child care facilities" as the term is defined by statutes and rules. Nevertheless, legally unregistered providers must be properly certified under this ~~sub~~chapter to receive payment for ~~day~~ child care services.

AUTH: Sec. 52-2-704, MCA
IMP: Sec. 52-2-704, 52-2-713, 52-2-721, 52-2-722, 52-2-723 and 52-2-731, MCA

11.14.609 [37.80.306] LEGALLY UNREGISTERED PROVIDERS: CERTIFICATION REQUIREMENTS (1) Application to provide ~~day~~ child care under this ~~sub~~chapter as a legally unregistered provider may be made at the nearest ~~district~~ child care resource and referral ~~office or department office~~ agency.

(2) In addition to completing all required application forms for certification under this ~~sub~~chapter, ~~and absent a written exception granted by the regional administrator,~~ applicants for certification to provide ~~day~~ child care as legally unregistered providers must truthfully attest in writing that he or she:

(2)(a) through (2)(e) remain the same.

(3) ~~Unless an exception is granted by the regional administrator, t~~ The provider applicant proposing to provide care outside the home of the parent~~(s)~~ must also truthfully attest in writing that, to the best information and belief of the applicant, no member of the applicant's household, and no person coming in contact with children for whom the provider applicant proposes to provide ~~day~~ child care under this subchapter:

(3)(a) through (3)(e) remain the same.

(4) An applicant for legally unregistered provider status under this subchapter will be denied eligibility if such applicant is included in the ~~AFDC~~ FAIM/TANF cash assistance payment of the parent~~(s)~~.

(5) When child care is provided in the child's home, the state payment shall be paid to the parent. The parent must pay the provider or lose eligibility for services.

(5) through (7) remain the same in text, but are renumbered (6) through (8).

AUTH: Sec. 52-2-704, MCA
IMP: Sec. 52-2-704, 52-2-713, 52-2-721, 52-2-722, 52-2-723 and 52-2-731, MCA

11.14.610 [37.80.315] COPY OF CONTRACT FOR SERVICES

(1) In addition to certification requirements, providers must enter into a contract with parents for payment under this subchapter on the form provided by the department. The minimum agreed terms filled in on the form must be sufficient to verify selection of the provider by the parent~~(s)~~ and indicate that the provider is willing to provide the ~~day~~ child care services. Once the contract is executed by the parent~~(s)~~ and the provider, a copy must be delivered to the ~~district~~ child care resource and referral agency ~~office providing~~ processing certification for the provider.

AUTH: Sec. 52-2-704, MCA
IMP: Sec. 52-2-704, 52-2-713, 52-2-721, 52-2-722, 52-2-723 and 52-2-731, MCA

11.14.611 [37.80.316] PROCEDURE FOR PAYMENT TO PROVIDERS

(1) remains the same.

(a) for obtaining provider certification through this subchapter prior to claiming payment for covered ~~day~~ child care hours/days under this subchapter; and

(1)(b) remains the same.

(2) For direct payment to the provider, the provider must submit a ~~voucher~~ billing form for covered ~~day~~ child care hours/days to the department using the form required by the department. The ~~voucher~~ billing form is submitted ~~at the end~~ by the 5th of each month following child care services in which the parent~~(s)~~ and provider are eligible, whether or not eligibility

is for the entire month.

(3) Parents may be decertified for benefits under this subchapter for failure to reimburse providers for ~~day~~ child care services the department has paid by direct payment to the parent~~(s)~~.

AUTH: Sec. 52-2-704, MCA
IMP: Sec. 52-2-704 and 52-2-713, MCA

11.5.1003 [37.80.206] CERTIFIED ENROLLMENT (1) Certified enrollment means that ~~day~~ child care facility operator, upon completing a form, may charge on a monthly basis rather than on a daily basis. The form is signed by the parents and the facility operator and submitted to the ~~district office.~~ child care resource and referral agency.

(2) Certified enrollment of children in a ~~day~~ child care facility is possible through the use of a form obtainable at any ~~district office~~ child care resource and referral agency. Certified enrollment is intended to assist ~~day~~ child care facilities in obtaining a more stable income by charging for days when a child is temporarily absent.

(3) Specific guidelines~~:~~ must be followed for all certified enrollment including:

(a) Certified enrollment shall be used for full-time ~~day~~ child care receivers only. Part-time ~~day~~ child care is not eligible for certified enrollment benefits.

(b) Certified enrollment enables ~~day~~ child care operators to charge for days of temporary absence of a child for reasons of vacation, illness, or other similar reasons within the limits expressed in the department of ~~family services~~ public health and human services child care manual.

~~(c) Charges cannot be made for major holidays unless actual care is provided by the day care facility.~~

~~(d)~~(c) Certified enrollment shall begin with the first day of the billing month following the initial day of ~~day~~ child care services.

~~(e)~~(d) Children shall be re-enrolled at 6 month intervals.

~~(f)~~(e) Spaces are not to be reserved for children absent for a period of ~~two~~ 2 weeks (10 working days) or more for any reason.

~~(g)~~(f) ~~Day~~ Child care operators shall not charge for children under enrollment when the parent has indicated the intent either verbally or through actions of not returning the child(ren) to the facility for ~~day~~ child care services.

(i) ~~Day~~ Child care facilities shall be responsible for notifying the ~~county social service~~ child care resource and referral agency worker when an unexplained absence of a child is for 5 working days.

(ii) ~~Day~~ Child care facilities shall charge for actual days of care provided only. The ~~day~~ child care eligibility shall be terminated for the facility the last day of care actually provided.

~~(h) Day care facility operators shall use a form obtainable at any district office for the de-enrollment of the child(ren). This form is signed by the day care facility operator and submitted to the district office.~~

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

11.5.1004 [37.80.501] TERMINATION OF ~~DAY~~ CHILD CARE SERVICES (1) Payments for child care will be terminated in the following situations and upon written notification to the recipient and the ~~day~~ child care facility 10 days prior to the effective date of the action:

(a) when the ~~district office~~ child care resource and referral agency disapproves the reevaluation plan at ~~6~~ 3 months;

(1)(b) remains the same.

(c) when the parent misuses ~~day~~ child care or abuses ~~day~~ child care services;

(d) when the parent voluntarily requests by clear written notice to the ~~social~~ child care resource and referral agency worker that ~~day~~ child care services be closed;

(e) when the ~~day~~ child care operator no longer meets licensing standards;

~~(f) when the WIN registrant is found to be inappropriate for work assignment following orientation and/or training or deregistration;~~

~~(g) when the WIN registrant has been deregistered for such reasons as refusal to accept job placement, or refusal to participate in the WIN program; or failure to complete training;~~

~~(h)~~(f) when the ~~client~~ participant has been terminated from ~~the ADC grant;~~ either Pathway, Job Supplement or Community Services and no longer meets eligibility for day care services;

~~(i)~~(g) when the child is no longer within the age limit;

~~(j)~~(h) when the child no longer is using the ~~day~~ child care facility and a review of the ~~day~~ child care situation indicates there is no intent to use the facility in the near future.

(2) Where the ~~district office~~ child care resource and referral agency disapproves the initial ~~day~~ child care plan, written notice of termination is required although the 10 day notice period is not required. Such notice shall include reasons for termination and inform the client of their right to a fair hearing and the procedure of requesting said hearing.

(3) Written notice to the ~~day~~ child care facility shall preserve confidentiality of client information, but shall include the date of termination, child's name, and parent's name.

(4) remains the same.

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

4. The rule 11.5.1001 as proposed to be repealed is on page 11-259, Administrative Rules of Montana.

AUTH: Sec. 53-4-111 and 53-4-503, MCA
IMP: Sec. 53-4-514, MCA

The rule 11.5.1002 as proposed to be repealed is on pages 11-260 and 11-261, Administrative Rules of Montana.

AUTH: Sec. 52-2-704, 53-4-201 and 53-4-212, MCA
IMP: Sec. 52-2-713, 53-4-201, 53-4-716 and 53-4-719, MCA

The rule 11.5.1005 as proposed to be repealed is on page 11-263, Administrative Rules of Montana.

AUTH: Sec. 52-2-704, MCA
IMP: Sec. 52-2-713, MCA

The rule 11.14.613 as proposed to be repealed is on page 11-726, Administrative Rules of Montana.

AUTH: Sec. 52-2-704, MCA
IMP: Sec. 52-2-704 and 52-2-713, MCA

5. These rule changes amend the eligibility criteria for families seeking child care assistance. The rule changes are necessary to bring child care assistance spending into compliance with budgetary limits of the Child Care Development fund as authorized by the Montana Legislature. The rule changes also update and clarify the procedures participants follow in obtaining child care assistance and providers follow in obtaining payments. Department reorganization has changed the name and/or location of the primary contact point for services. The rule changes are necessary to adjust to reorganization in child care and FAIM public assistance programs. The alternative would be leave the references to outdated programs and processes. The Department chooses to keep such references and procedures current in rule. Changes include the following:

ARM 11.14.604(1) requires each adult in the family receiving child care services, except teen parents attending high school, to work a minimum of 60 hours a month; two parent families must work a total of 120 hours per month. Any combination of work hours are accepted to meet the 120 hour work requirement. The emphasis on work requirements meets the intention of the Child Care Development Fund and FAIM programs. A minimum of 60 work hours per month for single-parent families and 120 work hours per month for two-parent families was chosen for two reasons:

1. 60 work hours per month was a minimum required for families under the Block Grant prior to the rule change in October, 1997, and

2. 60 work hours per month averages out to be about 15

hours per week, an amount most work study students can attain; 120 work hours for two-parent families simply doubles the work hours required of single-parent families.

ARM 11.14.604(2) requires families with absent parents, who are not receiving child support, to cooperate with child support enforcement. As in FAIM programs, collection of child support payments reduces the need for public assistance. Participants should note child care eligibility workers or child support enforcement may grant "good cause" exemptions in cases of spousal abuse.

ARM 11.14.605 decreases the upper limits of the sliding fee scale from 185% to 150% of the federal poverty level. Because the Department must stay within budget limits, services are not guaranteed up to 150% of the federal poverty level. Currently families at or below 125% of the federal poverty level may be served. A family's income can increase to 150% of the federal poverty level before reaching the limits of the sliding fee scale.

ARM 11.14.605 increases family copayments as calculated by a percentage of gross income on the child care sliding fee scale. In order to serve more families, participants are required to pay more toward the cost of their own child care as their gross income increases. Paying more as income increased helps families ease into the eventual loss of eligibility, so they do not experience a "cliff".

Alternatives explored include capping the child care sliding fee scale at 133% of the federal poverty level and maintaining lower copayment. Maintaining low copayments and an upper limit of 133% of the federal poverty level creates a barrier to participants reaching the upper limit. As income levels exceed upper limits, participants face a large increase in child care expenses with a disproportional increase in income. Higher copayments and a higher upper limit reduces the financial impact of moving off child care assistance.

ARM 11.14.609 specifies in-home legally unregistered child care providers, who care for children in the family's home, must be paid as an employee of the parent. Parents failing to pay their provider may lose eligibility for child care services. The rule change is necessary to enforce parental responsibility for payment to their child care provider. Non-payment of child care service contributes to provider turnover. Provider turnover interferes with continuity of care for the child, employment of the parents and increases the need to recruit child care providers.

The rules 11.5.1001, 11.5.1002, 11.5.1005 and 11.14.613 are being proposed for repeal because they contain redundant and/or

out-dated language that is no longer used by the department. In addition, some rules or subsections have been transferred to new or different rules and consolidated with existing language to make them more readable and easier to use. In light of the additional rule changes, the Department is pursuing the consolidation and clean-up of these subsections. ARM 11.14.612 outlines the use of child care rates during extended care and presents child care rates in a more readable table format.

Finally, the rule changes update titles and text of ARM 11.14.601 to 11.14.611 to use the language "child care", as opposed to "day care". The change is necessary to reflect the fact such programs care for children, not days, and that child care occurs during evening and nighttime hours as well. The rule change is consistent with current literature and the Child Care Development Fund. The alternative would be to continue using "day care" as the descriptor. The Department chooses to use this opportunity to update the language in the rules.

New Rule I is added to address sharing information associated with applicants or participants to allow for coordination of services among state and federal public assistance programs. The rule is necessary to ensure confidentiality of applicant or participant information. The Department considered both expanding and limiting the release of confidential information but proposes this rule as a means of protecting privacy but also allowing a release of information when necessary for legitimate government purposes.

For new Rule II the 55th Montana Legislature directed the Department to develop a new system of paying child care providers within the same provider groups to take into account differences in market rates, geography and other economic factors. The purpose of this new payment system is to assure state assisted families equal access to quality child care providers. In order to meet this requirement, the Department conducted a market rate survey of provider rates by county and by resource and referral district. The survey indicated child care provider rates are very different from one county or resource and referral district to another. The statewide child care advisory council advised the Department to set child care provider rates by resource and referral districts rather than by county. The Department accepted this recommendation because in some counties there were no providers or very few and this is not a large enough sample to determine the local market rate.

In some districts the survey indicated substantial rate increases, while in others it indicated rate decreases. The statewide child care advisory council advised the Department not to give any provider a decrease. The Department decided that for the first year of this change, the current rates would be

grand-fathered unless an increase was indicated. Thus, no provider would be decreased below current rates and most providers would receive an increase based on the survey. Additionally, the rates ending in odd cents were rounded to the nearest number divisible by 5.

New Rule II also specifies two exceptions to claiming payment for actual care. Specific holidays may be claimed if the provider charges non-state paid families for the same service. Certified enrollment allows providers to claim service during temporary absence as outlined in ARM 11.14.613. The rule change is necessary to provide consistency with current practices.

New Rule III combines rules 11.5.1005 and 11.14.613 that pertain to child care overpayment, underpayment and fraudulent obtaining of assistance.

6. Interested persons 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 Kathy Munson, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 202951, Helena, MT 59620-2951, no later than October 8, 1998. The Department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write the person at the address above.

7. The Office of Legal Affairs, Department of Public Health and Human Services has been designated to preside over and conduct the hearing.

Rule Reviewer

Director, Public Health and Human Services

Certified to the Secretary of State August 31, 1998.

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES OF THE
STATE OF MONTANA

In the matter of the transfer and amendment of rules 16.29.101, 16.29.102, 16.29.103, 16.29.104 and 16.29.106 and the repeal of 16.29.105 pertaining to public health control measures for dead human bodies	)))))))	NOTICE OF PUBLIC HEARING ON PROPOSED TRANSFER AND AMENDMENT AND REPEAL

TO: All Interested Persons

1. On September 30, 1998 at 10:00 a.m., a public hearing will be held in the auditorium of the Department of Public Health and Human Services Building, 111 N. Sanders, Helena, Montana to consider the proposed transfer and amendment of rules 16.29.101, 16.29.102, 16.29.103, 16.29.104 and 16.29.106 and the repeal of 16.29.105 pertaining to public health control measures for dead human bodies. This hearing will be held concurrently with the hearing pertaining to the transmission of infectious diseases to emergency medical service providers as proposed in MAR Notice No. 37-108 in this issue of the Montana Administrative Register.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you request an accommodation, contact the department no later than 5:00 p.m. on September 21, 1998, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970.

2. The rules as proposed to be transferred and amended provide as follows. Matter to be added is underlined. Matter to be deleted is interlined.

16.29.101 [37.116.101] DEFINITIONS For the purpose of this chapter, the following definitions apply:

(1) "Common carrier" means a person or ~~legal entity transporting a dead human body~~ organization that offers to the public, transportation of people and/or materials for compensation, including railroads, airlines, or other public transportation.

(2) "Coroner" means a county coroner elected or appointed

pursuant to 7-4-2203, MCA.

~~(2)~~(3) "Department" means the department of public health and ~~environmental sciences~~ human services.

~~(3)~~(4) "Destination" means a cemetery, ~~or a~~ crematorium, or other place of ultimate disposition of a dead human body.

(5) "Embalming" has the meaning provided in 37-19-101, MCA.

(6) "Health care facility" has the meaning provided in 50-16-1003, MCA.

(7) "Health care provider" has the meaning provided in 50-16-1003, MCA, including but not limited to a physician, nurse, or emergency medical technician.

(8) "Infectious disease" means any of the following:

(a) meningococcal meningitis;

(b) communicable pulmonary tuberculosis;

(c) human immunodeficiency virus (HIV) infection;

(d) hepatitis B, C, or D; and

(e) any disease attributed to a specific bacterial, parasitic, or other agent recognized by the Control of Communicable Diseases Manual as transmitted person to person by an aerosol or by contact with infectious blood or body fluids. The department hereby adopts and incorporates by reference the Control of Communicable Diseases Manual published by American Public Health Association, 16th edition, 1995, which specifies the modes of transmission for communicable diseases. The portions of the manual that will be used are those identifying the diseases transmittable by the foregoing means. A copy of the manual may be obtained from the American Public Health Association, 1015 15th Street, NW, Washington, DC 20005.

~~(4)~~(9) "Local health officer" means a county, city, city-county, or district health officer appointed by a local board of health or the board of a multijurisdictional service district formed pursuant to Title 7, chapter 11, part 11, MCA, to provide health services.

(10) "Mortuary" means a facility licensed pursuant to Title 37, chapter 19, MCA.

~~(5)~~(11) "Private conveyer" means ~~one who~~ any entity other than a common carrier that transports a dead human body, including but not limited to, a mortuary or an ambulance service.

~~(6) "Specified communicable disease" means one of the following diseases:~~

~~(a) smallpox;~~

~~(b) cholera~~

~~(c) pneumonic plague~~

~~(d) lassa fever, ebola fever, Marburg virus disease, and any other undiagnosable febrile disease occurring shortly after returning from international travel;~~

~~(e) communicable pulmonary tuberculosis, as determined by a local health officer;~~

~~(f) acquired immune deficiency syndrome (AIDS);~~

~~(g) hepatitis B, non-A non-B, or unspecified~~.

~~(7)~~(12) "Transport" means to carry a dead human body from one location to another.

AUTH: Sec. 50-1-202, 50-16-701 and 50-16-705, MCA
IMP: Sec. 50-1-202, 50-16-701 and 50-16-705, MCA

16.29.102 [37.116.102] DEATH ~~FROM A SPECIFIED COMMUNICABLE~~ OF A PERSON WITH AN INFECTIOUS DISEASE AND NOTIFICATION OF MORTUARY (1) When a person dies ~~or is suspected of dying of a specified communicable disease~~, the ~~attending physician~~ person's health care provider, the local coroner who certifies the death, or, if the death occurs in a health care facility, a facility staff member designated by the facility must notify ~~a local health officer and the department of the death~~ the mortuary receiving the person's body, at the time of transfer of the body to the mortuary or as soon after transfer as possible, whether or not the person had an infectious disease at the time of death. If the person did have an infectious disease, the notice must also include what infectious disease the deceased individual had at the time of death and the nature of the disease. ~~The local health officer or the department must determine whether or not further examination of the body is necessary to establish the cause of death within reasonable medical certainty.~~

(2) If a person ~~dies or is suspected of dying with a specified communicable disease that may be communicated to anyone handling the body,~~ has or is suspected by the person's health care provider or the local health officer of having an infectious disease at the time of death, the local health officer must immediately inform the mortician or any other person handling the body (before or after death) of that fact and of the appropriate measures which should be taken to prevent transmission.

(3) As soon as reasonably possible following death or the conclusion of further examination required ~~by a local health officer or the department~~ to determine the cause of death, ~~a human~~ the body ~~dead of specified communicable disease must be embalmed~~ of a person who had or is suspected by the person's health care provider or the local health officer of having a viral hemorrhagic fever (lassa, ebola, Marburg, Congo-Crimean) or any other undiagnosable febrile disease occurring shortly after returning from international travel must be placed in an airtight bag or other airtight container, handled only to the extent necessary, and either cremated or buried immediately, unless an exception is granted pursuant to ARM 16.29.106. ~~If embalming cannot be performed at the place of death, a local health officer or the department must be contacted for instructions on precautions to be observed in transporting the body to the place of embalming.~~

(4) Whether or not the mortuary receives notice that a deceased person had an infectious disease, blood and body fluid precautions as defined in ARM 16.28.101 must be taken by the

mortuary staff in order to prevent transmission of any potential infectious disease to mortuary personnel.

(5) The definitions in ARM 16.28.101 apply to this chapter. A copy of ARM 16.28.101 may be obtained from the Department of Public Health and Human Services, Health Policy and Services Division, Communicable Disease Control and Prevention Bureau, Cogswell Building, P.O. Box 202951, Helena, MT 59620-2951.

AUTH: Sec. 50-1-202, 50-16-701 and 50-16-705, MCA
IMP: Sec. 50-1-202, 50-16-705 and 50-16-712, MCA

16.29.103 [37.116.103] TRANSPORTATION OF DEAD HUMAN BODIES (1) ~~No embalmed human~~ The body ~~dead~~ of a ~~specified communicable~~ person who died or is suspected by the person's health care provider or the local health officer of dying with a disease listed in ARM 16.29.102(3) may not be transported unless enclosed in a sealed casket or equivalent ~~suitable~~ airtight container~~.~~ and the plans for transporting the container are approved by the local health officer.

(2) ~~A human~~ The body ~~dead of a cause other than a specified communicable~~ a person who, at the time of death, did not have a disease listed in ARM 16.29.102(3)~~, being transported by common carrier,~~ must be placed in a casket or equivalent ~~suitable~~ airtight container in order to be transported by common carrier. If such body is en route more than 8 hours, or if the termination of common carrier transport occurs more than 36 hours after the time of death, the body must be either embalmed, refrigerated at 35°F or colder, or otherwise treated prior to transport so as to prevent or substantially retard decomposition and the resultant effluents and odors.

(3) When ~~a human~~ the body ~~dead of a cause other than a specified communicable~~ of a person who did not have a disease listed in ARM 16.29.102(3) is being transported by a private conveyer and the body will not reach its destination within 48 hours after the time of death, the body must be either embalmed, refrigerated at 35°F or colder, or otherwise treated so as to prevent or substantially retard decomposition and the resultant effluents and odors.

~~(a) Minimum requirements for transport under (3) of this rule shall~~ Such a body must, at a minimum, be transported on a ~~transporting~~ cot or stretcher ~~and~~ with a proper covering.

AUTH: Sec. 50-1-202, MCA
IMP: Sec. 50-1-202, MCA

16.29.104 [37.116.104] PROHIBITIONS ~~(1) A dead human body may not be transported unless it is accompanied by a burial-transit permit. The permit must be enclosed in a strong envelope and attached to the shipping container containing the body.~~

~~(2)~~ (1) A disinterred human body may not be accepted for

transportation unless the remains are enclosed in an airtight container.

AUTH: Sec. 50-1-202, MCA
IMP: Sec. 50-1-202, MCA

16.29.106 [37.116.105] EXCEPTIONS (1) The department or a local health officer may grant ~~An~~ an exception to the provisions of:

(a) ARM 16.29.103(2), 16.29.103(3), or 16.29.104(1) ~~may be granted by the department or a local health officer~~ if such exception is requested prior to transportation of the dead human body and if such exception does not constitute a hazard to public health, create a public nuisance, or violate the provisions of Title 50, chapter 15, part 4, ~~of the Montana Code Annotated~~ MCA;

(b) the requirement of ARM 16.29.102(3) for immediate cremation or burial if special circumstances exist that ensure protection against exposure to the disease in question.

AUTH: Sec. 50-1-202, MCA
IMP: Sec. 50-1-202, MCA

3. The rule 16.29.105 as proposed to be repealed is on page 16-1343 of the Administrative Rules of Montana.

AUTH: Sec. 50-1-202, MCA
IMP: Sec. 50-1-202, MCA

4. The department is proposing the above amendments in part in order to implement Chapter 396, 1995 Laws of Montana, passed by the 54th Legislature, which added 50-16-712, MCA, and required coroners, health care facilities, and health care providers to notify mortuary personnel whether or not any deceased individual whose body is being transferred (presumably to the mortuary) had an infectious disease as defined in 50-16-701, MCA. The rest of the proposed amendments are needed to update the rules to conform to the most currently accepted public health practices necessary to protect the general public and those handling dead human bodies. To that end, department staff requested information from state epidemiologists in the 50 state health departments concerning their regulations controlling infectious diseases and the handling of dead bodies. It received and reviewed such information from the thirteen states that responded, and utilized that information, along with guidance from the U.S. Centers for Disease Control (CDC), in determining what changes were necessary in Montana's corresponding rules.

The definitions added to ARM 16.29.101 of the terms "coroner", "embalming", "health care facility", "health care provider", and "mortuary" were needed because they were used in the accompanying rules and their meaning, therefore, needed to be

clear. The reference to "specified communicable disease" was changed to "infectious disease" to be consistent with the terminology used in Chapter 396, 1995 Laws of Montana. The definition of "infectious disease" itself had to be amended to conform to the statutory definition applicable to Chapter 396, 1995 Laws of Montana, which is the definition found in 50-16-701, MCA. Because the definition in 50-16-701, MCA, since its amendment in 1993 (Chapter 476, 1993 Laws of Montana), appears to include any disease that may be transmitted person to person by aerosol or contact with blood or body fluids, the definition in ARM 16.29.101 also had to be expanded to include all such diseases in order to be consistent. The Control of Communicable Diseases Manual (CCDM) of the American Public Health Association was included as the source determining what diseases were transmittable as described above because it is the acknowledged communicable disease reference used in public health. The department decided to include the CCDM as the determinator of what diseases were to be included within the definition because the lack of a reference source controlling the definition could lead to confusion and conflict over what diseases were in fact covered.

The requirement that communicable pulmonary TB be determined by a health officer was deleted in order to avoid a possible delay in the required reporting by coroners, health care providers, and health care facilities to morticians.

The changes in the definitions of "common carrier" and "private conveyor" were necessary to clarify the distinction between the two and were not intended to change the commonly understood meaning of those terms. The addition to the definition of "local health officer" was necessary to recognize that, by action of the 1997 Legislature (Ch. 114, Laws of 1997), public health duties may be performed by a multijurisdictional service district created pursuant to Title 7, Chapter 11, Part 11, MCA, rather than by a board of health created pursuant to Title 50, Chapter 2, MCA; the Yellowstone City-County Health Department is such a district.

As for alternatives to the proposed amendments, conforming to the applicable statutory definition of "infectious disease" is legally mandatory, and limiting the definition to those diseases recognized by the American Public Health Association's CCDM was preferable for the reasons stated above. The department also rejected the alternative of including an exhaustive list of infectious diseases because such a list would be prohibitively long and difficult to determine. Most of the relevant diseases included in the CCDM but not specifically listed in the definition pose no risk to mortuary personnel handling dead bodies who are using universal precautions, and the choice of using the CCDM provides those obligated to report to morticians an easy, compact reference to refer to in order to determine if

a disease is required to be reported.

The references in ARM 16.29.102 to dying "of a disease" were changed to refer to a deceased person who "has" an infectious disease at the time of death because the fact that a person simply had an infectious disease at the time of death is what is important to know in order to prevent transmission, and whether it is the cause of death is irrelevant.

The language in subsection (1) of ARM 16.29.102 requiring notification of the department and local health officer of a case of infectious disease was stricken as unnecessary because reporting a communicable disease is already required by ARM 16.28.201 of the rules governing reporting of communicable diseases. The deletion also eliminates a conflict with the communicable disease reporting rules, which, except in the case of HIV infection, require reporting directly to the local health officer, not the department. Deletion of the last sentence of subsection (1) is necessary to eliminate a provision arguably beyond the statutory authority for these rules, since establishing the cause of death is not relevant to control of communicable diseases.

The provisions added to ARM 16.29.102(1) are primarily those mandated by Chapter 396, 1995 Laws of Montana. The department also added language indicating that the coroner certifying the cause of death and a designated staff member of a health care facility, if the death occurs there, is the one who has to report to the mortician, in order to logically narrow and define the range of people who have that obligation. The department rejected the alternative of notifying mortuaries in each and every case where a deceased had a communicable and reportable disease because it was not required by Chapter 396, 1995 Laws of Montana and because it would create an unnecessary burden on coroners, health care providers, and health care facilities to provide notice to morticians of diseases that present no risk to them. For instance, Rocky Mountain Spotted Fever is a reportable disease, but is not directly communicable from person to person.

ARM 16.29.102(2) is amended only slightly to indicate and clarify that the determination whether a deceased person had or is suspected of having an infectious disease will be made by either that person's health care provider or the local health officer, so that a health officer knows precisely who can make that decision.

In ARM 16.29.102(3), the requirement for embalming of bodies infected, or suspected of being infected, with specific diseases was removed because the threat to public health from the conditions listed is not sufficient to require embalming in most situations. In fact, in many instances embalming procedures and

the generation of infective waste may increase the risk of disease transmission. For example, in the case of tuberculosis, embalming does not kill the TB mycobacterium in the lungs of a dead person, and manipulation of that person's body to accomplish embalming may cause exhalation of the mycobacterium into the air breathed by the mortician. Rather than require embalming for certain diseases, the department is choosing to rely on the local health officer's instructions regarding the handling of the body, as indicated in subsection (2) of ARM 16.29.102. This general approach requires the health officer to provide instructions to any individuals handling a person with an infectious disease at the time of death, and allows the health officer to deal with different situations on a case by case basis. The department considered leaving the embalming requirement intact, but chose not to do so after determining that requiring embalming when most infectious diseases are present is of little or no public benefit. In those instances, where a public health benefit exists, the health officer has the option of requiring embalming. For the same reasons, adding more diseases for which embalming would be required was not considered justifiable.

The special handling requirements added to ARM 16.29.102(3) for a person who died with a viral hemorrhagic fever or "undiagnosable febrile disease" were added because they are prescribed by the U.S. Centers for Disease Control and Prevention (CDC) as necessary precautions to prevent transmission of these extremely dangerous diseases. Embalming was specifically not required because CDC indicated that embalming, as well as all unnecessary handling of the body, should be avoided to prevent transmission. The department is proposing to allow a local health officer to grant an exception to the requirement for immediate cremation or burial in order to allow the officer to respond to unforeseen peculiar situations, so long as the body is handled under precautions that equally protect against transmission. The alternative of making that requirement apply in all cases, without exception, was rejected by the department as unnecessarily rigid, so long as the plans for disposal of the body effectively prevent transmission, as, for example, when immediate burial is impossible because the body is of a foreign national, is in a sealed container, and is to be flown home.

The reference in subsection (3) of ARM 16.29.102 to the department and local health officer requiring further examination to determine a cause of death was deleted because someone other than those two entities, e.g., a coroner, may be making the decision that extra time is needed.

New subsection (4) of ARM 16.29.102 was added because some infectious diseases may not be known and therefore not reported to the mortician, meaning that, in order to ensure that the

mortician is not exposed to an undiagnosed infectious disease, universal (blood and body fluid) precautions should always be followed. In addition, the requirement duplicates that imposed by the federal Occupational Safety and Health Administration (OSHA) in 29 CFR 1910.1030. No other option was considered because blood and body fluid precautions are the only preventive measures accepted universally, and to fail to require them of morticians would leave morticians without clear notice that the precautions are needed to prevent their exposure to unknown pathogens.

As in ARM 16.29.102 above, the references in ARM 16.29.103 to dying "of a disease" in the rules were changed to refer to a deceased person who "has" an infectious disease at the time of death. As previously noted, the change is because the fact that a person simply had an infectious disease at the time of death is what is important to know in order to prevent transmission, and whether it is the cause of death is irrelevant. The requirement in subsection (1) that any transport, under any circumstances, of a body of a person who died infected with a viral hemorrhagic fever or an undiagnosed febrile disease must be in an airtight container is necessary in order to prevent possible transmission of any remnant of those particularly virulent pathogens. There is a negligible risk of communicating pathogens from the body of a person who did not die with one of the foregoing diseases, so an airtight container is not being required if such a body is being transported, the exception being if transportation is by common carrier. The reason for that exception is to prevent the general public also using the common carrier from being exposed to effluents or odors from the body. Finally, the requirement for a "proper" covering of a body being transported by private conveyer was deleted as vague and unnecessary for the public health purposes that are the source of the department's rulemaking authority.

The proposed amendments to ARM 16.29.104 delete language requiring burial transit permits because Chapter 287 of the 1993 Laws of Montana eliminated burial transit permits and because the provision in question has nothing to do with control of communicable diseases.

ARM 16.29.105 is proposed to be repealed because it imposes a responsibility on local registrars before they issue burial transit permits, whereas local registrars have not had to issue such permits since 1993 (Chapter 287 of the 1993 Laws of Montana).

ARM 16.29.106 was amended to allow an exception to be granted to the requirements of ARM 16.29.102(3) if special circumstances exist that provide equivalent protection against exposure, for the reasons cited above. The exception currently allowed by ARM 16.29.106 to the provisions of ARM 16.29.104(1) is, in effect,

amended because the original subsection (1) of ARM 16.29.104 is proposed to be deleted. Therefore, current subsection (2), requiring a disinterred body to be transported in an airtight container, will become subsection (1). Allowing an exception to that latter requirement is needed because there may be occasions, such as when only bone and no decomposing matter is present, where an airtight container is unnecessary to protect public health. The alternative, requiring an airtight container under all circumstances, is therefore unnecessarily stringent and was rejected.

5. Interested persons 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 Kathy Munson, Office of Legal Affairs, Department of Public Health and Human Services, Box 202951, Helena, MT 59620-2951 no later than October 8, 1998.

6. The Office of Legal Affairs, Department of Public Health and Human Services has been designated to preside over and conduct the hearing.

Rule Reviewer

Director, Public Health and Human Services

Certified to the Secretary of State August 31, 1998.

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES OF THE
STATE OF MONTANA

In the matter of the amendment of rules 16.30.801, 16.30.803 and 16.30.804 pertaining to control of transmission of infectious diseases to emergency medical service providers	))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Interested Persons

1. On September 30, 1998, at 10:00 a.m., a public hearing will be held in the auditorium of the Department of Public Health and Human Services Building, 111 N. Sanders, Helena, Montana to consider the proposed amendment of rules 16.30.801, 16.30.803 and 16.30.804 pertaining to control of transmission of infectious diseases to emergency service providers. This hearing will be held concurrently with the hearing pertaining to the public health control measures for dead human bodies as proposed in this issue of the Montana Administrative Register in MAR Notice No. 37-107.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you request an accommodation, contact the department no later than 5:00 p.m. on September 21, 1998, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970.

2. The rules as proposed to be amended provide as follows. Matter to be added is underlined. Matter to be deleted is interlined.

16.30.801 TRANSMITTABLE INFECTIOUS DISEASES (1) The following infectious diseases are designated as having the potential of being transmitted to emergency services providers through an exposure described in ARM 16.30.802:

(a) human immunodeficiency virus infection (AIDS or HIV infection);
(b) hepatitis B;
(c) hepatitis C;
(d) hepatitis D;
(e) communicable pulmonary tuberculosis;
(f) meningococcal meningitis; and
~~(g) diphtheria;~~

~~(h) plague;~~

~~(i) hemorrhagic fevers (Lassa, Marburg, Ebola, Crimean-Congo, and other viruses yet to be identified); and~~

~~(j) rabies.~~

(g) any disease attributed to a specific bacterial, parasitic, or other agent recognized by the Control of Communicable Diseases Manual as transmittable person to person any of the exposures listed in ARM 16.30.802.

(2) remains the same.

(3) For the purpose of (1)(g) above, the department hereby adopts and incorporates by reference the Control of Communicable Diseases Manual published by American Public Health Association, 16th edition, 1995, which contains a list of transmission and control measures for communicable diseases. A copy of the manual may be obtained from the American Public Health Association, 1015 15th Street NW, Washington, DC 20005.

AUTH: Sec. 50-16-701 and 50-16-705, MCA
IMP: Sec. 50-16-701 and 50-16-705, MCA

16.30.803 EXPOSURE FORM (1) through (2)(i) remain the same.

(3) A copy of the required form is available from the ~~department's~~ Department of Public Health and Human Services, Health Policy and Services Division, Emergency Medical Services ~~Bureau~~ and Injury Prevention Section, ~~Cogswell Building~~ 1400 Broadway, ~~Capitol Station~~ P.O.Box 202951, Helena, Montana 59620-2951; ~~[~~ telephone: 406-444-3895~~]~~.

(4) through (5) remain the same.

AUTH: Sec. 50-16-705, MCA
IMP: Sec. 50-16-702 and 50-16-705, MCA

16.30.804 RECOMMENDED MEDICAL PRECAUTIONS AND TREATMENT (1) At a minimum, a health care facility that notifies the designated officer of the emergency services provider who attended a patient prior to or during transport or who transported a patient who has been diagnosed as having one of the infectious diseases listed in ARM 16.30.801 must recommend that the exposed emergency services provider take the medical precautions and treatment:

(a) specified in "Control of Communicable Diseases ~~in Man~~ Manual, An Official Report of the American Public Health Association", ~~15th~~ 16th Edition, ~~1990~~ 1995; and

(1)(b) and (2) remain the same.

(3) The department hereby adopts and incorporates by reference "Control of Communicable Diseases ~~in Man~~ Manual, An Official Report of the American Public Health Association", ~~15th~~ 16th Edition, ~~1990~~ 1995, which lists and specifies control measures for communicable diseases. A copy of the "Control of Communicable Diseases ~~in Man~~ Manual" may be obtained from the American Public Health Association, 1015 15th Street NW,

Washington, DC 20005.

AUTH: Sec. 50-16-705, MCA
IMP: Sec. 50-16-703 and 50-16-705, MCA

3. The amendments to the above rules are necessary to conform their language to changes in the underlying statutory language and the need to update referenced written standards. The changes to ARM 16.30.801 parallel the changes made by the 1993 Legislature (Chapter 476, 1993 Laws of Montana) to the definition in 50-16-701, MCA, of "infectious disease". The 1993 amendment requires the definition of "infectious disease" to include any disease transmittable through an "exposure", itself defined in 50-16-701, MCA, and more specifically delineated by rule in ARM 16.30.802. Since the list of diseases possibly transmitted by such "exposure" is extensive and the possibility of some of them being missed if the department attempted to list them all in the rule, it is necessary to adopt the alternative of using the Control of Communicable Diseases Manual of the American Public Health Association, the acknowledged communicable diseases reference used in public health, as the means of determining which diseases are "infectious diseases".

The amendments proposed to ARM 16.30.803 are necessary to reflect changes in the name and address of the department's Emergency Medical Services and Injury Prevention Section.

In ARM 16.30.804, the incorporated standards of the American Public Health Association have been updated and the name of the document containing them changed to conform to its current title. The proposed amendments will incorporate the updated standards and are necessary to ensure that the most up-to-date nationally recognized public health standards are required for use in Montana.

4. Interested persons 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 Kathy Munson, Office of Legal Affairs, Department of Public Health and Human Services, Box 202951, Helena, MT 59620-2951 no later than October 8, 1998.

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

Rule Reviewer

Director, Public Health and Human Services

Certified to the Secretary of State August 31, 1998.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT of ARM 42.12.104, 42.12.131, 42.12.144, 42.12.401, 42.12.404, 42.12.406, 42.12.410, 42.12.412, and 42.12.414 and ADOPTION of NEW RULE I relating to Lottery Process for Liquor Licensing	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENTS AND ADOPTION

TO: All Interested Persons:

1. On October 2, 1998, at 9:00 a.m., a public hearing will be held in fourth floor conference room of the Mitchell Building, at Helena, Montana, to consider the amendments to ARM 42.12.104, 42.12.131, 42.12.144, 42.12.401, 42.12.404, 42.12.406, 42.12.410, 42.12.412, and 42.12.414 and adoption of New Rule I relating to Lottery Process for Liquor Licensing.

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

42.12.104 ACTION TAKEN WITH CENSUS UPDATE (1) through (3) remain the same.

(4) If more applications are received than licenses available within a quota area the procedure in ARM 42.12.131(1)(d) is followed.

AUTH: Sec. 16-1-303, MCA
IMP: Sec. 16-4-105, 16-4-106, 16-4-201, 16-4-203, and 16-4-502, MCA

42.12.131 APPLICATIONS FOR LAST AVAILABLE LICENSES IN QUOTA AREA (1) When the ~~liquor division~~ department receives ~~an~~ applications for the last available licenses in a quota area, the following procedures apply:

(a) When fewer applications than licenses available are filed, the applications will be processed.

(b) When an application has been received after the filing deadline in the original publication announcing available licenses within a quota area for the last license available within that quota area, the applicant will be advised, in writing, that he has applied for the last available license and may choose to direct the ~~license bureau~~ department to:

(i) publish notice of the last available license and set a final date for receipt of all applications for that license; or

(ii) continue processing the application with the knowledge that if another application is received before his application is approved the department will publish notice of the last available license and set a deadline for receipt of all applications for that license.

~~(b)~~ (c) All applications received at the ~~liquor division office~~ department or postmarked on or before the final date for

receipt of all applications will be considered; and

~~(c)~~ (d) When more ~~than one~~ applications than licenses available are filed, a ~~public hearing~~ lottery shall be conducted in accordance with ~~the provisions of the Montana Administrative Procedure Act~~ ARM 42.12.401 through 42.12.414.

AUTH: Sec. 16-1-303, MCA
IMP: Secs. 16-4-105 and 16-4-201, MCA

42.12.144 TRANSFERS BETWEEN QUOTA AREAS - PROCEDURES AND DOCUMENTATION (1) An applicant applying to the ~~liquor division~~ department to transfer an all-beverages license under the provisions of 16-4-204(1), MCA, may:

(a) negotiate a bona fide sale with the owner of a license, located in a quota area from which that license may be transferred, to purchase a license and, if no lottery drawing is required, submit an application for transfer of ownership and location; or

(b) defer purchase of a license until after the ~~entry of a final agency decision on the application~~ lottery drawing has determined the applicant able to apply.

(2) An applicant applying pursuant to (1)(b), whose ~~application is granted by the department,~~ lottery entry is successful in the lottery drawing, is required to purchase a transferable license within 60 days after ~~receipt of the final agency decision~~ the lottery drawing and submit additional documents needed to effect a transfer of ownership and location. However, additional time can be requested and approved by the department when the applicant can demonstrate he is actively pursuing the purchase of a license and that failure to purchase a license is through no fault of the applicant. The additional time is not to exceed 60 days. An additional fee is required to cover the costs of republishing the transfer notice in a newspaper within the area from which the license is proposed to be transferred.

(3) Documentation required under (1)(a) includes:

(a) completed application form;

(b) transfer fee;

(c) ~~completed assignment form~~ purchase agreement;

(d) request for termination of existing secured parties' interest and the applicable fee ($10 each);

(e) floor plan of proposed premises; and

(f) ~~evidence that public convenience and necessity would be served by such transfer; and~~

~~(g)~~ other documents which may be needed or specified on the application form, depending upon the response to certain questions~~,~~ ~~f~~For example: lease or sales agreements. The department or hearing examiner, in the event of contested case proceedings, may require additional documentation as deemed necessary to reach a final decision.

(4) Documentation required under (1)(b) is the same as that itemized in (3)(a) through ~~(g)~~ (f). However, a ~~completed assignment form~~ signed purchase agreement and a request for

termination of secured parties' interests are not required upon initial filing of the application.

(5) If an applicant is unable to purchase a license within the time provided in ~~subsection~~ (2) the application will be rejected and the application ranked next in the ~~decision~~ lottery drawing will be processed. ~~If there are no other applicants ranked in the decision, the availability of a license shall be republished and applications accepted.~~ This procedure is not constrained by 16-4-413, MCA.

AUTH: Sec. 16-1-303, MCA
IMP: Sec. 16-4-204, MCA

42.12.401 DEFINITIONS (1) The following terms will be used in this chapter and apply to all lottery processes.

(a) "Available license" means a newly created license which can be issued by the department of revenue or an existing license that can be transferred between quota areas because of:

(i) a population increase verified by the most recent census population figures;

(ii) a lapse or revocation of an existing license; or

(iii) it is the last available license within a quota area for which an application has been received.

~~(1)~~ (b) "Conditional license" means one that is issued upon completion of the investigation and public protest period, but prior to completion of the premises. A conditional license can be revoked by the ~~Montana~~ department of revenue if the premises does not meet the required specifications upon completion. This designation is not to be confused with a license that is issued with conditions written on the face of the license itself pursuant to 16-1-302, MCA. Such conditions are permanent and last throughout the existence of the license itself.

(c) "Lottery" means an objective mechanical process to randomly select persons eligible to submit applications for available licenses.

(d) "Lottery application" means a brief one sheet application for an available license stating the applicant's name and the location of the establishment. If more applications than the number of licenses available for any given incorporated city or town quota area have been submitted, a lottery will be held.

(2) ~~"Evening dinner menu" means a menu with a separate section for dinner items or a separate dinner menu with the majority of items offered in the dinner menu distinct from menu offerings for breakfast or lunch and available only during dinner hours.~~ The following terms specifically apply to restaurant beer/wine lottery process:

~~(3)~~ (a) "Existing beer/wine/all beverage license" means either an on-premises or off-premises retail license that is either currently being used at the location in question, or has been approved for nonuse status, or is a license for which a sale has occurred or is pending but not approved by the ~~Montana~~

department of revenue.

(i) A license in nonuse status does not constitute an existing license if the licensee and the applicant are separate and unrelated entities and the licensee does not control possession of the premises.

~~(4)~~ (b) "Existing preference" means a preference that will be given to a restaurant that has existed for one year prior to the lottery deadline and which will give it a priority in the final ranking of restaurants over a new restaurant in the lottery procedures. However, an existing preference will not supersede the limits within any quota area on licenses of restaurants with a seating capacity of 101 or more persons.

~~(5)~~ (c) "Existing restaurant" means one that has been open to the public as a full service restaurant, preparing and serving individually priced meals, including meals from an evening dinner menu, for on premises consumption continuously for one year before the deadline for filing of the lottery application for the restaurant beer/wine license. These restaurants will be given an existing preference in the final ranking. In the initial lottery to be held November 1997, an "existing restaurant" is one that has been open to the public as a full service restaurant, preparing and serving individually priced meals, including meals from an evening dinner menu, for on premises consumption since on or before October 1, 1996. Such restaurant will receive an existing preference.

~~(6) "Lottery application" means a brief one sheet application for a restaurant beer/wine license stating the location of the restaurant, whether it is licensed at that location, whether it has been in existence for a continuous year, and what the seating capacity of the restaurant is, or will be when completed. If more applications than the number of licenses available for any given incorporated city or town quota area have been submitted, a lottery will be held.~~

~~(7)~~ (d) "Restaurant beer/wine/license" means a license which must be attached to a restaurant and can only be used in conjunction with food service. The restaurants must agree to forego any kind of gambling, maintain 75% of their income from food sales, and must only have table service of beer and wine to those customers who are eating or waiting to be seated to eat. Licenses will be issued only in incorporated cities and towns in a number derived from a percentage of the beer licenses in use in these quota areas. A lottery will be held to determine which restaurants will receive these restaurant beer/wine licenses as necessary.

~~(8)~~ (e) "Seasonal restaurant" means one that is only open during one, two, or three seasons of any year, but never for a full year. Seasonal restaurants can be open any part of a season and not the full season as long as the restaurant is not open year round.

~~(9)~~ (f) "Service bar" means an area where alcoholic beverages are stored and prepared for table service delivery to patrons for on-premises consumption. Consumption of alcoholic

beverages by patrons or any other person is not permitted at the service bar.

AUTH: Sec. 16-1-303, MCA
IMP, Sec. 16-4-105, 16-4-201, 16-4-204, 16-4-420 and 16-4-502, MCA.

42.12.404 APPLICATION LIMITATION PER PREMISES (1) If more than one person per location files a lottery application for ~~a restaurant beer/wine license for the same premises~~ an available license for the same premises, the department will have a pre-lottery drawing to determine which one of the names submitted ~~for a single location~~ will actually be entered into the ~~incorporated city or town~~ quota area lottery. Only one application per location is permitted ~~to be entered~~ entry into the ~~incorporated city or town quota~~ area lottery.

AUTH: Sec. 16-1-303, MCA
IMP: Sec. 16-4-420, MCA

42.12.406 ~~INITIAL~~ LOTTERY APPLICATION PROCESS (1) ~~Procedures making a restaurant beer/wine license effective begin with the initial step of a person applying to be included in a lottery held for their applicable incorporated city or town. Lotteries will be conducted only for those incorporated cities and towns which have more applicants than new licenses available.~~ When an available license within a quota area is determined and public notice of the availability is required, a notice will be promptly published once a week for four consecutive weeks in the newspaper of general circulation in the quota area. There will be a deadline of 30 days from the last publication date to apply for an available license. The publication notice will state:

(a) the type of license(s) available;

(b) the reason for the availability;

(c) applicant(s) will be selected through a lottery process;

(d) instructions for making an application; and

(e) the deadline to apply.

(2) ~~Applications that are not complete will cause the application to be disqualified.~~ Procedures making an available license effective require a person apply to be included in a lottery held for their applicable county or incorporated city or town quota area. Lotteries will be conducted only for those areas which have more applicants than available licenses.

(3) Lottery applications to be included in the available license lotteries can be acquired through the department of revenue.

~~(3)~~ (4) ~~Applications~~ Lottery applications must state the name of the applicant(s). All potential owners including all stockholders of a corporation, all partners of a partnership, and all members of a limited liability company must be noted on the initial lottery application form.

~~(4)~~ (5) ~~Applications~~ Lottery applications must state the

exact address as well as the city or town in which the ~~restaurant~~ establishment or proposed ~~restaurant~~ establishment is or ~~is to be~~ will be located.

~~(5)~~ (6) ~~Applications~~ Lottery applications must state whether the location already has an existing beer/wine/all beverage license, as previously defined in this chapter. If a retail license is currently issued to the location, no restaurant beer/wine license will be considered for this location.

~~(6)~~ (7) Seating capacity will be a factor in determining the allocation of the restaurant beer/wine licenses and the appropriate fees.

(a) Using the following categories, a lottery application for the restaurant beer/wine lottery must state the exact seating capacity of the restaurant:

(i) 60 persons or less;

(ii) 61 to 100 persons; or

(iii) 101 or more persons.

~~(7)~~ (8) ~~Applications~~ Lottery applications to be included in the ~~restaurant beer/wine~~ license lotteries can be acquired through the department of revenue.

~~(8)~~ (9) Answers to questions in the initial lottery application must be identical to answers in the subsequent application for a ~~restaurant beer/wine~~ license. Failure to produce identical information on both documents will cause disqualification of the applicant(s).

(9) Those lottery applicants selected by the lottery process will subsequently be sent application packets to be returned to the department within 30 days of receipt.

AUTH: Sec. 16-1-303, MCA
IMP, Sec. 16-4-105, 16-4-201, 16-4-204, 16-4-420 and 16-4-502, MCA

42.12.410 WHEN LOTTERY WILL NOT BE HELD (1) If fewer lottery applications are received within an ~~incorporated city~~ quota area than available licenses ~~available~~ for that quota area, no lottery will be necessary ~~unless the number of larger restaurants with seating of 101 or more exceeds the 25% maximum limit for this size restaurant. In such cases, a lottery of these restaurants will be held in order to determine which applicant will be afforded the opportunity to apply for the license. Each applicant must still meet minimum qualifications for applicants of the restaurant beer/wine license~~.

AUTH: Sec. 16-1-303, MCA
IMP: Sec. 16-4-420, MCA

42.12.412 WHEN LOTTERY WILL BE HELD (1) When the number of lottery applications exceed the number of new licenses available ~~for each incorporated city or town~~ within a quota area, a public lottery will be held by the department.

(2) Applicants will be notified of the date, time, and place of the lottery.

(3) The lottery process will be verified by a third party, not employed or associated with the department, as well as by the public who may attend the lottery drawings.

(4) Applicants do not need to be present to be chosen in the lottery. Those applicants selected to apply for ~~a restaurant beer/wine~~ an available license will be notified by mail.

(5) In the case of a restaurant beer/wine application, if the number of larger restaurants with seating of 101 or more exceeds the 25% maximum limit for this size restaurant a lottery will be held in order to determine which applicant will be afforded the opportunity to apply for the license. Each applicant must still meet minimum qualifications for applicants of the restaurant beer/wine license.

AUTH: Sec. 16-1-303, MCA
IMP: Sec. 16-4-420, MCA

42.12.414 HOW APPLICANTS WILL BE CHOSEN (1) ~~Successful applicants will be chosen based upon:~~

~~(a) rank (order of being drawn);~~

Successful applicants will be chosen based upon rank (the order of being randomly drawn).

(2) In addition, successful applicants for a restaurant beer/wine license will be chosen based upon:

~~(b)~~ (a) qualified seating capacity:

(i) 60 persons or less;

(ii) 61 to 100 persons; or

(iii) 101 or more persons; and

~~(c)~~ (b) whether the applicant is eligible for an existing preference.

~~(2)~~ (3) The department will ~~first~~ construct a list of the applicants in the order drawn in the lottery.

(a) For a restaurant beer/wine lottery applicant, the ~~D~~department personnel will then look to see, within this ordering, which restaurants have an existing preference and the seating capacity of the restaurant.

(b) A final ranking of applicants will then be made.

~~(3)~~ (c) The department will not issue to the restaurants shown in ~~(1)~~(2) ~~(b)~~(a)(iii) more than 25% of the available restaurant beer/wine licenses in any given quota area. This may result in a quota area not being able to immediately award all of its available restaurant beer/wine licenses. This could also result in larger restaurants who have received a preference being unable to receive a restaurant beer/wine license if many larger restaurants apply to the initial lottery in a given area.

(4) A successful applicant cannot sell his ranking nor can the applicant transfer his ranking to another.

AUTH: Sec. 16-1-303, MCA
IMP: Sec. 16-4-105, 16-4-201, 16-4-204, 16-4-420 and 16-4-502, MCA

3. The proposed new rule does not replace or modify any section currently found in the Administrative Rules of Montana. The rule as proposed to be adopted provides as follows:

NEW RULE I RESTAURANT BEER AND WINE LICENSE APPLICATION FEES (1) The application fee based on seating capacity described in 16-4-420, MCA, must be submitted with an application to transfer ownership when an ownership change in the business operated under the license results in new owners who are required to meet the qualifications in 16-4-401, MCA, or with an application to transfer location.

(2) No application to transfer ownership and no application fee is required when an owner divests ownership or when ownership interest changes hands between currently qualified and disclosed owners. The licensee must provide satisfactory evidence of the ownership change to the department within 30 days of the change.

(3) If an application is terminated, either the actual expenses incurred by department of justice and the department of revenue or $100, whichever is greater, will be retained by the department. The balance of the application fee will be refunded.

AUTH: Sec. 16-1-303, MCA
IMP: Sec. 16-4-420, MCA

4. The Department is proposing the amendments to ARM 42.12.131 to explain how an applicant will be selected from a pool of applicants applying for the last available license and to bring the rule in line with the lottery rules in sub-chapter 4 of this chapter.

Amendments to ARM 42.12.104 are necessary to clarify the procedure to be used when the census statistics as reported by the U.S. Bureau of Census, result in the availability of new licenses.

Amendments to ARM 42.12.131 explain how applicants will be selected from a pool of applicants applying for the last available licenses within a quota area. The amendments also bring the rule in line with the lottery rules.

Amendments to ARM 42.12.144 are necessary to conform with rules describing the selection of successful applicants from a pool of applicants by lottery drawing. Therefore, it is necessary to clarify that the successful lottery entrant must purchase a transferable license within 60 days of the lottery drawing rather than receipt of the final agency decision. Also, the requirement to provide evidence of public convenience and necessity is no longer required so the rule needs to be amended.

Amendments to ARM 42.12.401 are proposed at the request of Senator Fred Thomas to address the problem of a premises not being able to be used for the sale and service of alcoholic beverages if a license issued to the location is on nonuse status. The amendments make exception for the department to consider an application for a license at a location if the

licensee is not using the license and no longer has the ability to use the license at that location.

Additional amendments to ARM 42.12.401 are proposed based on the July 30, 1998 petition for rule review by Steve Shuel, President of MacKenzie Northwest, Inc., 232 East Main, Bozeman, Montana. Mr. Shuel proposes the deletion of the definition of "evening dinner menu". Mr. Shuel expressed concern that the term was too restrictive. He suggested the department depend on the statutory language of 16-4-420, MCA to assure the operation of a full service restaurant.

Amendments to ARM 42.12.404 thru 414 are proposed to include the entire lottery process rather than just the restaurant beer/wine applicants because it has been determined to be a fair and objective means of selecting an applicant for an available license when more applications have been received than licenses available. These amendments are necessary due to passage of HB78 during the 1997 legislative session which amended 16-4-203, MCA. Those amendments deleted the department's authority to make determinations based on public convenience and necessity absent a requisite number of protests. The department no longer has a basis upon which to decide who is the best qualified applicant from among a pool of applicants. Therefore, the department is proposing the lottery process as the selection process.

New Rule I is necessary because 16-4-420, MCA requires the payment of an application fee, based on the restaurant seating capacity, to accompany an application for a restaurant beer/wine license. New Rule I clarifies the instances when an application and the application fee is required. New Rule I also makes clear that a portion of the application fee, based on expenses incurred, will be retained if the application is terminated during the application process.

5. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to:

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

no later than October 9, 1998.

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

7. All parties interested in receiving notification of any change in rules pertaining to this subject should contact the Rule Reviewer in writing at the address shown in section 5 above.

8. The notice requirements of 2-4-302(2)(d), MCA, have been satisfied.

CLEO ANDERSON
Rule Reviewer

MARY BRYSON
Director of Revenue

Certified to Secretary of State August 31, 1998

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE PROPOSED AMENDMENTS of ARM 42.21.113, 42.21.122, 42.21.123, 42.21.131, 42.21.137, 42.21.138, 42.21.139, 42.21.140, 42.21.151, 42.21.153, and 42.21.155, relating to Personal Property Trended Depreciation Schedules and Valuations for the 1999 Tax Year.	NOTICE OF PUBLIC HEARING

TO: All Interested Persons:

1. On October 2, 1998, at 1:00 p.m., a public hearing will be held in the fourth floor conference room of the Mitchell Building, at Helena, Montana, to consider the amendments of ARM 42.21.113, 42.21.122, 42.21.123, 42.21.131, 42.21.137, 42.21.138, 42.21.139, 42.21.140, 42.21.151, 42.21.153, and 42.21.155 relating to Personal Property Trended Depreciation Schedules and Valuations for the 1999 Tax Year.

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

42.21.113 LEASED AND RENTED EQUIPMENT (1) Leased or rental equipment which meets the criteria of 15-6-136, MCA, will be valued in the following manner:

(a) For equipment that has an acquired cost of $0 to $500, the department shall use a four-year trended depreciation schedule. The trended schedule will be the same as ARM 42.21.155, category 1.

~~YEAR NEW/ACQUIRED — TRENDED % GOOD~~
~~1997 — 70%~~
~~1996 — 41%~~
~~1995 — 17%~~
~~1994 or older — 8%~~

YEAR NEW/ACQUIRED	TRENDED % GOOD
1998	70%
1997	40%
1996	17%
1995 or older	8%

(b) For equipment that has an acquired cost of $501 to $1,500, the department shall use a five-year trended depreciation schedule. The trended schedule will be the same as ARM 42.21.155, category 2.

~~YEAR NEW/ACQUIRED TRENDED % GOOD~~
~~1997 85%~~
~~1996 69%~~
~~1995 52%~~
~~1994 34%~~
~~1993 or older 20%~~

YEAR NEW/ACQUIRED	TRENDED % GOOD
1998	85%
1997	69%
1996	52%
1995	34%
1994 or older	20%

(c) For equipment that has an acquired cost of $1,501 to $5,000 the department shall use a ten-year trended depreciation schedule. The trended schedule will be the same as ARM 42.21.155, category 8.

~~YEAR NEW/ACQUIRED TRENDED % GOOD~~
~~1997 92%~~
~~1996 86%~~
~~1995 79%~~
~~1994 72%~~
~~1993 64%~~
~~1992 55%~~
~~1991 44%~~
~~1990 35%~~
~~1989 29%~~
~~1988 or older 25%~~

YEAR NEW/ACQUIRED	TRENDED % GOOD
1998	92%
1997	85%
1996	78%
1995	71%
1994	63%
1993	55%
1992	44%
1991	34%
1990	28%
1989 or older	24%

(d) For equipment that has an acquired cost of $5,001 to ~~$20,000~~ $15,000 the department shall use the depreciation schedule for heavy equipment. The schedule will be the same as ARM 42.21.131.

~~YEAR NEW/ACQUIRED TRENDED % GOOD~~
~~1998 80%~~
~~1997 65%~~

~~1996~~	~~52%~~
~~1995~~	~~50%~~
~~1994~~	~~47%~~
~~1993~~	~~43%~~
~~1992~~	~~40%~~
~~1991~~	~~38%~~
~~1990~~	~~35%~~
~~1989~~	~~32%~~
~~1988~~	~~32%~~
~~1987~~	~~28%~~
~~1986~~	~~26%~~
~~1985~~	~~26%~~
~~1984~~	~~24%~~
~~1983~~	~~22%~~
~~1982~~	~~24%~~
~~1981~~	~~25%~~
~~1980~~	~~24%~~
~~1979 or older~~	~~25%~~

YEAR NEW/ACQUIRED	TRENDED % GOOD
1999	80%
1998	65%
1997	54%
1996	47%
1995	46%
1994	44%
1993	41%
1992	38%
1991	36%
1990	33%
1989	31%
1988	29%
1987	27%
1986	24%
1985	24%
1984	23%
1983	20%
1982	22%
1981	23%
1980 or older	22%

(e) For rental video tapes the following schedule will be used:

~~YEAR NEW/ACQUIRED~~	~~TRENDED % GOOD~~
~~1997~~	~~25%~~
~~1996~~	~~15%~~
~~1995 or older~~	~~10%~~

YEAR NEW/ACQUIRED	TRENDED % GOOD
1998	25%
1997	15%

1996 or older	10%

(2) and (3) remain the same.

(4) This rule is effective for tax years beginning after December 31, ~~1997~~ 1998.

AUTH: Sec. 15-1-201, 15-23-108, MCA; IMP: Sec. 15-6-135, 15-6-136, 15-6-138, 15-6-207, 15-24-921, 15-24-922, and 15-24-925, MCA.

42.21.122 LIVESTOCK (1) through (5) remain the same.

(6) Miscellaneous livestock shall be valued as follows:

(a) and (b) remain the same.

(c) ~~male~~ all llamas and alpacas shall be valued the same as ~~horses, 15 years and older;~~ sheep, registered bucks;

~~(d) neutered llamas and alpacas and deer shall be valued the same as mules, shetland ponies, etc.;~~

~~(e) female llamas and alpacas shall be valued the same as work and pack horses, riding and pack mules;~~

~~(f)~~ (d) miniature horses shall be valued the same as mules, shetland ponies, etc.;

~~(g)~~ (e) exotic goats shall be valued the same as doe goats; and;

~~(h)~~ (f) exotic pigs shall be valued the same as boars.

(7) This rule is effective for tax years beginning after December 31, ~~1997~~ 1998.

AUTH: Sec. 15-1-201, MCA; IMP: Sec. 15-6-135, 15-6-136, 15-6-137, 15-6-138, 15-6-207, 15-24-921, 15-24-922, and 15-24-925, MCA.

42.21.123 FARM MACHINERY AND EQUIPMENT (1) through (4) remain the same.

(5) The trended depreciation schedule referred to in (2) through (4) is listed below and shall be used for tax year ~~1998~~1999. The schedule is derived by using the guidebook listed in (1) as the data base. The trended depreciation schedule will approximate average wholesale value.

~~YEAR NEW/ACQUIRED~~	~~TRENDED % GOOD AVERAGE LOAN~~
~~1998~~	~~65%~~
~~1997~~	~~64%~~
~~1996~~	~~61%~~
~~1995~~	~~53%~~
~~1994~~	~~47%~~
~~1993~~	~~44%~~
~~1992~~	~~43%~~
~~1991~~	~~38%~~
~~1990~~	~~39%~~
~~1989~~	~~32%~~
~~1988~~	~~30%~~

~~1987 28%~~
~~1986 26%~~
~~1985 24%~~
~~1984 24%~~
~~1983 24%~~
~~1982 26%~~
~~1981 29%~~
~~1980 31%~~
~~1979 28%~~
~~1978 26%~~
~~1977 25%~~
~~1976 23%~~
~~1975 22%~~
~~1974 and before 20%~~

YEAR NEW/ACQUIRED	TRENDED % GOOD AVERAGE LOAN
1999	65%
1998	65%
1997	64%
1996	60%
1995	57%
1994	49%
1993	43%
1992	40%
1991	41%
1990	36%
1989	36%
1988	30%
1987	27%
1986	26%
1985	24%
1984	23%
1983	21%
1982	21%
1981	22%
1980	24%
1979	25%
1978	24%
1977	23%
1976	22%
1975 and before	20%

(6) remains the same.

(7) This rule is effective for tax years beginning after December 31, ~~1997~~ 1998.

AUTH: Sec. 15-1-201, MCA; IMP: Sec. 15-6-135, 15-6-136, 15-6-138, 15-6-207, 15-24-921, 15-24-922, and 15-24-925, MCA.

42.21.131 HEAVY EQUIPMENT (1)through (4) remain the same.

(5) The trended depreciation schedule referred to in (2),

(3) and (4) is listed below and shall be used for tax year ~~1998~~1999. The percentages approximate the "quick sale" values as calculated in the guidebooks listed in (1).

HEAVY EQUIPMENT TRENDED DEPRECIATION SCHEDULE

~~YEAR NEW/ACQUIRED~~	~~TRENDED % GOOD WHOLESALE~~
~~1998~~	~~80%~~
~~1997~~	~~65%~~
~~1996~~	~~52%~~
~~1995~~	~~50%~~
~~1994~~	~~47%~~
~~1993~~	~~43%~~
~~1992~~	~~40%~~
~~1991~~	~~38%~~
~~1990~~	~~35%~~
~~1989~~	~~32%~~
~~1988~~	~~32%~~
~~1987~~	~~28%~~
~~1986~~	~~26%~~
~~1985~~	~~26%~~
~~1984~~	~~24%~~
~~1983~~	~~22%~~
~~1982~~	~~24%~~
~~1981~~	~~25%~~
~~1980~~	~~24%~~
~~1979 and before~~	~~25%~~

YEAR NEW/ACQUIRED	TRENDED % GOOD WHOLESALE
1999	80%
1998	65%
1997	54%
1996	47%
1995	46%
1994	44%
1993	41%
1992	38%
1991	36%
1990	33%
1989	31%
1988	29%
1987	27%
1986	24%
1985	24%
1984	23%
1983	20%
1982	22%
1981	23%
1980 and before	22%

(6) This rule is effective for tax years beginning after December 31, ~~1997~~ 1998, and applies to all heavy equipment. AUTH: Sec. 15-1-201, MCA; IMP: Sec. 15-6-135, 15-6-136, 15-6-138, 15-6-140, 15-6-207, 15-24-921, 15-24-922, and 15-24-925, MCA.

42.21.137 SEISMOGRAPH UNITS AND ALLIED EQUIPMENT

(1) through (3) remain the same.

(4) The trended depreciation schedules referred to in (1) through (3) are listed below and shall be used for tax year ~~1998~~ 1999.

SEISMOGRAPH UNITS

~~TRENDED~~

~~YEAR/NEW ACQUIRED~~	~~% GOOD~~	~~TREND FACTOR~~	~~TRENDED % GOOD~~	~~WHOLESALE FACTOR~~	~~WHOLESALE % GOOD~~
~~1998~~	~~100%~~	~~1.000~~	~~100%~~	~~80%~~	~~80%~~
~~1997~~	~~85%~~	~~1.000~~	~~85%~~	~~80%~~	~~68%~~
~~1996~~	~~69%~~	~~1.010~~	~~70%~~	~~80%~~	~~56%~~
~~1995~~	~~52%~~	~~1.030~~	~~54%~~	~~80%~~	~~43%~~
~~1994~~	~~34%~~	~~1.068~~	~~36%~~	~~80%~~	~~29%~~
~~1993~~	~~20%~~	~~1.090~~	~~22%~~	~~80%~~	~~18%~~
~~1992 & older~~	~~5%~~	~~1.110~~	~~6%~~	~~80%~~	~~5%~~

TRENDED

YEAR/NEW ACQUIRED	% GOOD	TREND FACTOR	TRENDED % GOOD	WHOLESALE FACTOR	WHOLESALE % GOOD
1999	100%	1.000	100%	80%	80%
1998	85%	1.000	85%	80%	68%
1997	69%	1.010	70%	80%	56%
1996	52%	1.022	53%	80%	42%
1995	34%	1.042	35%	80%	28%
1994	20%	1.081	22%	80%	18%
1993 & older	5%	1.103	6%	80%	5%

SEISMOGRAPH ALLIED EQUIPMENT

~~YEAR/NEW ACQUIRED~~	~~% GOOD~~	~~TREND FACTOR~~	~~TRENDED % GOOD~~
~~1998~~	~~100%~~	~~1.000~~	~~100%~~
~~1997~~	~~85%~~	~~1.000~~	~~85%~~
~~1996~~	~~69%~~	~~1.010~~	~~70%~~
~~1995~~	~~52%~~	~~1.030~~	~~54%~~
~~1994~~	~~34%~~	~~1.068~~	~~36%~~
~~1993~~	~~20%~~	~~1.090~~	~~22%~~
~~1992 & older~~	~~5%~~	~~1.110~~	~~6%~~

YEAR/NEW ACQUIRED	% GOOD	TREND FACTOR	TRENDED % GOOD
1999	100%	1.000	100%
1998	85%	1.000	85%
1997	69%	1.010	70%
1996	52%	1.022	53%
1995	34%	1.042	35%
1994	20%	1.081	22%
1993 & older	5%	1.103	6%

(5) This rule is effective for tax years beginning after December 31, ~~1997~~ 1998.

AUTH: Sec. 15-1-201, MCA; IMP: Sec. 15-6-135, 15-6-136, 15-6-138, 15-6-207, 15-24-921, 15-24-922, and 15-24-925, MCA.

42.21.138 OIL AND GAS FIELD MACHINERY AND EQUIPMENT

(1) and (2) remain the same.

(3) The trended depreciation schedule referred to in (1) and (2) is listed below and shall be used for tax year ~~1998~~ 1999.

OIL AND GAS FIELD PRODUCTION
EQUIPMENT TRENDED DEPRECIATION SCHEDULE

~~YEAR NEW/ ACQUIRED~~	~~% GOOD~~	~~TREND FACTOR~~	~~TRENDED % GOOD~~
~~1998~~	~~100%~~	~~1.000~~	~~100%~~
~~1997~~	~~95%~~	~~1.000~~	~~95%~~
~~1996~~	~~90%~~	~~1.010~~	~~91%~~
~~1995~~	~~85%~~	~~1.030~~	~~88%~~
~~1994~~	~~79%~~	~~1.068~~	~~84%~~
~~1993~~	~~73%~~	~~1.090~~	~~80%~~
~~1992~~	~~68%~~	~~1.110~~	~~75%~~
~~1991~~	~~62%~~	~~1.112~~	~~69%~~
~~1990~~	~~55%~~	~~1.136~~	~~62%~~
~~1989~~	~~49%~~	~~1.166~~	~~57%~~
~~1988~~	~~43%~~	~~1.232~~	~~53%~~
~~1987~~	~~37%~~	~~1.285~~	~~48%~~
~~1986~~	~~31%~~	~~1.299~~	~~40%~~
~~1985~~	~~26%~~	~~1.305~~	~~34%~~
~~1984~~	~~23%~~	~~1.323~~	~~30%~~
~~1983 & older~~	~~20%~~	~~1.358~~	~~27%~~

YEAR NEW/ ACQUIRED	% GOOD	TREND FACTOR	TRENDED % GOOD
1999	100%	1.000	100%
1998	95%	1.000	95%
1997	90%	1.010	91%
1996	85%	1.022	87%
1995	79%	1.042	82%
1994	73%	1.081	79%

1993	68%	1.103	75%
1992	62%	1.117	69%
1991	55%	1.126	62%
1990	49%	1.150	56%
1989	43%	1.180	51%
1988	37%	1.246	46%
1987	31%	1.300	40%
1986	26%	1.315	34%
1985	23%	1.321	30%
1984 & older	20%	1.339	27%

(4) remains the same.

(5) This rule is effective for tax years beginning after December 31, ~~1997~~ 1998.

AUTH: Sec. 15-1-201, MCA; IMP: Sec. 15-6-135, 15-6-136, 15-6-138, 15-6-207, 15-24-921, 15-24-922, and 15-24-925, MCA.

42.21.139 WORKOVER AND SERVICE RIGS (1) through (4) remain the same.

(5) The trended depreciation schedule referred to in (2) and (4) is listed below and shall be used for tax year ~~1998~~ 1999.

SERVICE AND WORKOVER RIG TRENDED DEPRECIATION SCHEDULE

~~YEAR NEW/ ACQUIRED~~	~~% GOOD~~	~~TRENDED FACTOR~~	~~WHOLESALE FACTOR~~	~~TRENDED WHOLESALE % GOOD~~
~~1998~~	~~100%~~	~~1.000~~	~~80%~~	~~80%~~
~~1997~~	~~92%~~	~~1.000~~	~~80%~~	~~74%~~
~~1996~~	~~84%~~	~~1.010~~	~~80%~~	~~68%~~
~~1995~~	~~76%~~	~~1.030~~	~~80%~~	~~63%~~
~~1994~~	~~67%~~	~~1.068~~	~~80%~~	~~57%~~
~~1993~~	~~58%~~	~~1.090~~	~~80%~~	~~51%~~
~~1992~~	~~49%~~	~~1.110~~	~~80%~~	~~44%~~
~~1991~~	~~39%~~	~~1.112~~	~~80%~~	~~35%~~
~~1990~~	~~30%~~	~~1.136~~	~~80%~~	~~27%~~
~~1989~~	~~24%~~	~~1.166~~	~~80%~~	~~22%~~
~~1988 & older~~	~~20%~~	~~1.232~~	~~80%~~	~~20%~~

YEAR NEW/ ACQUIRED	% GOOD	TRENDED FACTOR	WHOLESALE FACTOR	TRENDED WHOLESALE % GOOD
1999	100%	1.000	80%	80%
1998	92%	1.000	80%	74%
1997	84%	1.010	80%	68%
1996	76%	1.022	80%	62%
1995	67%	1.042	80%	56%
1994	58%	1.081	80%	50%
1993	49%	1.103	80%	43%
1992	39%	1.117	80%	35%
1991	30%	1.126	80%	27%
1990	24%	1.150	80%	22%

1989 & older	20%	1.180	80%	19%

(6) This rule is effective for tax years beginning after December 31, ~~1997~~ 1998.

AUTH: Sec. 15-1-201, MCA; IMP: Sec. 15-6-135, 15-6-136, 15-6-138, 15-6-207, 15-24-921, 15-24-922, and 15-24-925, MCA.

42.21.140 OIL DRILLING RIGS (1) remains the same.

(2) The department shall prepare a 10-year trended depreciation schedule for oil drilling rigs. The trended depreciation schedule shall be derived from depreciation factors published by Marshall and Swift Publication Company. The "% good" for all drill rigs less than one year old shall be 100%. The trended depreciation schedule for tax year ~~1998~~ 1999 is listed below.

DRILL RIG TRENDED DEPRECIATION SCHEDULE

~~YEAR NEW/ ACQUIRED~~	~~TREND FACTOR~~	~~% GOOD~~	~~TRENDED % GOOD~~
~~1998~~	~~1.000~~	~~100%~~	~~100%~~
~~1997~~	~~1.000~~	~~92%~~	~~92%~~
~~1996~~	~~1.010~~	~~84%~~	~~84%~~
~~1995~~	~~1.030~~	~~76%~~	~~78%~~
~~1994~~	~~1.068~~	~~67%~~	~~72%~~
~~1993~~	~~1.090~~	~~58%~~	~~63%~~
~~1992~~	~~1.110~~	~~49%~~	~~54%~~
~~1991~~	~~1.112~~	~~35%~~	~~39%~~
~~1990~~	~~1.136~~	~~30%~~	~~34%~~
~~1989~~	~~1.166~~	~~24%~~	~~28%~~
~~1988 and older~~	~~1.232~~	~~20%~~	~~25%~~

YEAR NEW/ ACQUIRED	% GOOD	TREND FACTOR	TRENDED % GOOD
1999	100%	1.000	100%
1998	92%	1.000	92%
1997	84%	1.010	85%
1996	76%	1.022	78%
1995	67%	1.042	70%
1994	58%	1.081	63%
1993	49%	1.103	54%
1992	35%	1.117	39%
1991	30%	1.126	34%
1990	24%	1.150	28%
1989 & older	20%	1.180	24%

(3) remains the same.

(4) This rule is effective for tax years beginning after December 31, ~~1997~~ 1998.

AUTH: Sec. 15-1-201, MCA; IMP: Sec. 15-6-135, 15-6-136, 15-6-138, 15-6-207, 15-24-921, 15-24-922, and 15-24-925, MCA.

42.21.151 TELEVISION CABLE SYSTEMS (1) through (3) remain the same.

(4) The trended depreciation schedules referred to in (2) and (3) are listed below and shall be in effect for tax year ~~1998~~ 1999.

~~TABLE 1: 5 YEAR "DISHES"~~

~~YEAR NEW/ ACQUIRED~~	~~% GOOD~~	~~TREND FACTOR~~	~~TRENDED % GOOD~~
~~1997~~	~~85%~~	~~1.000~~	~~85%~~
~~1996~~	~~69%~~	~~1.014~~	~~70%~~
~~1995~~	~~52%~~	~~1.029~~	~~54%~~
~~1994~~	~~34%~~	~~1.066~~	~~36%~~
~~1993 & older~~	~~20%~~	~~1.096~~	~~22%~~

TABLE 1: 5-YEAR "DISHES"

YEAR NEW/ ACQUIRED	% GOOD	TREND FACTOR	TRENDED % GOOD
1998	85%	1.000	85%
1997	69%	1.008	70%
1996	52%	1.025	53%
1995	34%	1.040	35%
1994 & older	20%	1.078	22%

~~TABLE 2: 10 YEAR "TOWERS"~~

~~YEAR NEW/ ACQUIRED~~	~~% GOOD~~	~~TREND FACTOR~~	~~TRENDED % GOOD~~
~~1997~~	~~92%~~	~~1.000~~	~~92%~~
~~1996~~	~~84%~~	~~1.014~~	~~85%~~
~~1995~~	~~76%~~	~~1.029~~	~~78%~~
~~1994~~	~~67%~~	~~1.066~~	~~71%~~
~~1993~~	~~58%~~	~~1.096~~	~~64%~~
~~1992~~	~~49%~~	~~1.118~~	~~55%~~
~~1991~~	~~39%~~	~~1.131~~	~~44%~~
~~1990~~	~~30%~~	~~1.154~~	~~35%~~
~~1989~~	~~24%~~	~~1.185~~	~~28%~~
~~1988 & older~~	~~20%~~	~~1.248~~	~~25%~~

TABLE 2: 10-YEAR "TOWERS"

YEAR NEW/ ACQUIRED	% GOOD	TREND FACTOR	TRENDED % GOOD
1998	92%	1.000	92%
1997	84%	1.008	85%
1996	76%	1.025	78%
1995	67%	1.040	70%
1994	58%	1.078	63%

1993	49%	1.108	54%
1992	39%	1.130	44%
1991	30%	1.143	34%
1990	24%	1.166	28%
1989 & older	20%	1.198	24%

(5) This rule is effective for tax years beginning after December 31, ~~1997~~ 1998.

AUTH: Sec. 15-1-201, MCA; IMP: Sec. 15-6-135, 15-6-136, 15-6-138, 15-6-140, 15-6-207, 15-24-921, 15-24-922, and 15-24-925, MCA.

42.21.153 SKI LIFT EQUIPMENT (1) and (2) remain the same.

(3) The depreciation schedules shall be determined by the life expectancy of the equipment and will normally compensate for the loss in value due to ordinary wear and tear, offset by reasonable maintenance, and ordinary functional obsolescence due to the technological changes during the life expectancy period.

DEPRECIATION TABLE FOR SKI LIFT EQUIPMENT

~~Installed Cost X Trended Percent Good = Average Market Value~~

~~YEAR~~	~~TREND FACTOR~~	~~PERCENT GOOD~~	~~TRENDED % GOOD~~
~~1997~~	~~1.000~~	~~92%~~	~~92%~~
~~1996~~	~~1.014~~	~~84%~~	~~85%~~
~~1995~~	~~1.029~~	~~76%~~	~~78%~~
~~1994~~	~~1.066~~	~~67%~~	~~71%~~
~~1993~~	~~1.096~~	~~58%~~	~~64%~~
~~1992~~	~~1.118~~	~~49%~~	~~55%~~
~~1991~~	~~1.131~~	~~39%~~	~~44%~~
~~1990~~	~~1.154~~	~~30%~~	~~35%~~
~~1989~~	~~1.185~~	~~24%~~	~~28%~~
~~1988 & older~~	~~1.248~~	~~20%~~	~~25%~~

Installed Cost X Trended Percent Good = Average Market Value

YEAR	TREND FACTOR	PERCENT GOOD	TRENDED % GOOD
1998	1.000	92%	92%
1997	1.008	84%	85%
1996	1.025	76%	78%
1995	1.040	67%	70%
1994	1.078	58%	63%
1993	1.108	49%	54%
1992	1.130	39%	44%
1991	1.143	30%	34%
1990	1.166	28%	28%
1989 & older	1.198	24%	24%

(a) and (b) remain the same.

(4) This methodology is effective for tax years beginning

after December 31, ~~1997~~ 1998. AUTH: Sec. 15-1-201, MCA; IMP: Sec. 15-6-135, 15-6-136, 15-6-138, 15-6-207, 15-24-921, 15-24-922, and 15-24-925, MCA.

42.21.155 DEPRECIATION SCHEDULES (1) remains the same. (2) The trended depreciation schedules for tax year 1998 are listed below. The categories are explained in ARM 42.21.156. The trend factors are derived according to ARM 42.21.156 and 42.21.157.

~~CATEGORY 1~~

~~YEAR NEW/ ACQUIRED~~	~~% GOOD~~	~~TREND FACTOR~~	~~TRENDED % GOOD~~
~~1997~~	~~70%~~	~~1.000~~	~~70%~~
~~1996~~	~~45%~~	~~0.918~~	~~41%~~
~~1995~~	~~20%~~	~~0.859~~	~~17%~~
~~1994 and older~~	~~10%~~	~~0.824~~	~~8%~~

CATEGORY 1

YEAR NEW/ ACQUIRED	% GOOD	TREND FACTOR	TRENDED % GOOD
1998	70%	1.000	70%
1997	45%	0.899	40%
1996	20%	0.825	17%
1995 and older	10%	0.772	8%

~~CATEGORY 2~~

~~YEAR NEW/ ACQUIRED~~	~~% GOOD~~	~~TREND FACTOR~~	~~TRENDED % GOOD~~
~~1997~~	~~85%~~	~~1.000~~	~~85%~~
~~1996~~	~~69%~~	~~1.001~~	~~69%~~
~~1995~~	~~52%~~	~~1.007~~	~~52%~~
~~1994~~	~~34%~~	~~1.006~~	~~34%~~
~~1993 and older~~	~~20%~~	~~1.011~~	~~20%~~

CATEGORY 2

YEAR NEW/ ACQUIRED	% GOOD	TREND FACTOR	TRENDED % GOOD
1998	85%	1.000	85%
1997	69%	1.004	69%
1996	52%	1.005	52%
1995	34%	1.012	34%
1994 and older	20%	1.010	20%

~~CATEGORY 3~~

~~YEAR NEW/ ACQUIRED~~	~~% GOOD~~	~~TREND FACTOR~~	~~TRENDED % GOOD~~
~~1997~~	~~85%~~	~~1.000~~	~~85%~~
~~1996~~	~~69%~~	~~0.995~~	~~69%~~
~~1995~~	~~52%~~	~~0.926~~	~~48%~~
~~1994~~	~~34%~~	~~0.907~~	~~31%~~
~~1993 and older~~	~~20%~~	~~0.907~~	~~18%~~

CATEGORY 3

YEAR NEW/ ACQUIRED	% GOOD	TREND FACTOR	TRENDED % GOOD
1998	85%	1.000	85%
1997	69%	0.954	66%
1996	52%	0.911	47%
1995	34%	0.883	30%
1994 and older	20%	0.865	17%

~~CATEGORY 4~~

~~YEAR NEW/ ACQUIRED~~	~~% GOOD~~	~~TREND FACTOR~~	~~TRENDED % GOOD~~
~~1997~~	~~85%~~	~~1.000~~	~~85%~~
~~1996~~	~~69%~~	~~0.975~~	~~67%~~
~~1995~~	~~52%~~	~~0.967~~	~~50%~~
~~1994~~	~~34%~~	~~0.957~~	~~33%~~
~~1993 and older~~	~~20%~~	~~0.949~~	~~19%~~

CATEGORY 4

YEAR NEW/ ACQUIRED	% GOOD	TREND FACTOR	TRENDED % GOOD
1998	85%	1.000	85%
1997	69%	0.989	68%
1996	52%	0.963	50%
1995	34%	0.956	33%
1994 and older	20%	0.946	19%

~~CATEGORY 5~~

~~YEAR NEW/ ACQUIRED~~	~~% GOOD~~	~~TREND FACTOR~~	~~TRENDED % GOOD~~
~~1997~~	~~85%~~	~~1.000~~	~~85%~~
~~1996~~	~~69%~~	~~1.011~~	~~70%~~
~~1995~~	~~52%~~	~~1.030~~	~~54%~~
~~1994~~	~~34%~~	~~1.047~~	~~36%~~
~~1993 and older~~	~~20%~~	~~1.066~~	~~21%~~

CATEGORY 5

YEAR NEW/ ACQUIRED	% GOOD	TREND FACTOR	TRENDED % GOOD
1998	85%	1.000	85%
1997	69%	1.001	70%
1996	52%	1.012	53%
1995	34%	1.030	35%
1994 and older	20%	1.047	21%

~~CATEGORY 6~~

~~YEAR NEW/ ACQUIRED~~	~~% GOOD~~	~~TREND FACTOR~~	~~TRENDED % GOOD~~
~~1997~~	~~85%~~	~~1.000~~	~~85%~~
~~1996~~	~~69%~~	~~1.015~~	~~70%~~
~~1995~~	~~52%~~	~~1.041~~	~~54%~~
~~1994~~	~~34%~~	~~0.054~~	~~36%~~
~~1993 and older~~	~~20%~~	~~1.009~~	~~20%~~

CATEGORY 6

YEAR NEW/ ACQUIRED	% GOOD	TREND FACTOR	TRENDED % GOOD
1998	85%	1.000	85%
1997	69%	1.027	71%
1996	52%	1.042	54%
1995	34%	0.069	36%
1994 and older	20%	1.083	22%

~~CATEGORY 7~~

~~YEAR NEW/ ACQUIRED~~	~~% GOOD~~	~~TREND FACTOR~~	~~TRENDED % GOOD~~
~~1997~~	~~92%~~	~~1.000~~	~~92%~~
~~1996~~	~~84%~~	~~1.019~~	~~86%~~
~~1995~~	~~76%~~	~~1.045~~	~~79%~~
~~1994~~	~~67%~~	~~1.069~~	~~72%~~
~~1993~~	~~58%~~	~~1.092~~	~~63%~~
~~1992~~	~~49%~~	~~1.116~~	~~55%~~
~~1991~~	~~39%~~	~~1.150~~	~~45%~~
~~1990~~	~~30%~~	~~1.196~~	~~36%~~
~~1989~~	~~24%~~	~~1.246~~	~~30%~~
~~1988 and older~~	~~20%~~	~~1.294~~	~~26%~~

CATEGORY 7

YEAR NEW/ ACQUIRED	% GOOD	TREND FACTOR	TRENDED % GOOD

1998	92%	1.000	92%
1997	84%	1.015	85%
1996	76%	1.034	79%
1995	67%	1.061	71%
1994	58%	1.085	63%
1993	49%	1.107	54%
1992	39%	1.133	44%
1991	30%	1.167	35%
1990	24%	1.213	29%
1989 and older	20%	1.264	25%

~~CATEGORY 8~~

~~YEAR NEW/ ACQUIRED~~	~~% GOOD~~	~~TREND FACTOR~~	~~TRENDED % GOOD~~
~~1997~~	~~92%~~	~~1.000~~	~~92%~~
~~1996~~	~~84%~~	~~1.019~~	~~86%~~
~~1995~~	~~76%~~	~~1.046~~	~~79%~~
~~1994~~	~~67%~~	~~1.072~~	~~72%~~
~~1993~~	~~58%~~	~~1.098~~	~~64%~~
~~1992~~	~~49%~~	~~1.116~~	~~55%~~
~~1991~~	~~39%~~	~~1.132~~	~~44%~~
~~1990~~	~~30%~~	~~1.163~~	~~35%~~
~~1989~~	~~24%~~	~~1.208~~	~~29%~~
~~1988 and older~~	~~20%~~	~~1.263~~	~~25%~~

CATEGORY 8

YEAR NEW/ ACQUIRED	% GOOD	TREND FACTOR	TRENDED % GOOD
1998	92%	1.000	92%
1997	84%	1.012	85%
1996	76%	1.032	78%
1995	67%	1.060	71%
1994	58%	1.086	63%
1993	49%	1.113	55%
1992	39%	1.131	44%
1991	30%	1.147	34%
1990	24%	1.178	28%
1989 and older	20%	1.223	24%

(3) This rule is effective for tax years beginning after December 31, ~~1997~~ 1998. AUTH: Sec. 15-1-201, MCA; IMP: Sec. 15-135, 15-6-136, 15-6-138, 15-6-139, 15-6-207, 15-24-921, 15-24-922, and 15-24-925, MCA.

3. The Department is proposing these amendments because 15-8-111, MCA, requires the department to assess all property at 100% of market value except as otherwise provided. The statute does not address in detail how the department is to arrive at market value.

To determine the market value of certain property, the department has historically used and adopted the concept of trending and depreciating. The method by which trended depreciation schedules are derived is described in the existing rules, and that method is not being changed. However, the method does result in annual changes to schedules. The District Court has indicated that those schedules should be adopted in rule form.

Additionally, proposed amendments to existing ARM 42.32.122 were made as a result of a declining market in Montana for llamas.

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

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

no later than October 9, 1998.

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

6. All parties interested in receiving notification of any change in rules pertaining to this subject should contact the Rule Reviewer in writing at the address shown in section 4 above.

CLEO ANDERSON
Rule Reviewer

MARY BRYSON
Director of Revenue

Certified to Secretary of State August 31, 1998

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION) NOTICE OF PROPOSED ADOPTION
of NEW RULES I through IV)
relating to Universal Access)
Fund Surcharge) NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On November 6, 1998, the Department of Revenue proposes to adopt new rules I through IV relating to Universal Access Fund Surcharge.

2. The proposed rules I through IV, do not replace or modify any section currently found in the Administrative Rules of Montana. The rules as proposed to be adopted provide as follows:

RULE I DEFINITIONS (1) "Customer premise equipment" means all items generally classified as customer premise equipment such as telephone and terminal equipment. This includes, but is not limited to:

(a) telephone instruments;
(b) station sets;
(c) dialers;
(d) modems;
(e) private branch exchanges (PBX);
(f) switches;
(g) computers;
(h) wire;
(i) cable;
(j) facsimile machines; and
(k) pagers and non-electronic associated items such as manuals, and furniture.

(2) The term "quarters" means quarters which end September 30, December 31, March 31, and June 30.

(3) The term "retail revenue" applies to both intrastate and interstate telecommunications. To be considered retail revenue the communications need to:

(a) originate in Montana; or
(b) terminate in Montana; and
(c) be billed for a service address in Montana.

(4) The term "telecommunications service" means the offering of telecommunications for a fee directly to the public or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

AUTH: Sec. 69-3-860, MCA, IMP: Sec. 69-3-860, MCA

RULE II DUE DATES (1) A telecommunication provider who is liable for the surcharge shall within 60 days after the end of each quarter file on a form provided by the department:

(a) a statement showing the taxable revenue during the

preceding quarter; and

(b) pay the tax owed for the preceding quarter.

(3) De minimus filing and reporting will be allowed. If the total amount of the surcharge due is less than $50 in each quarter, the telecommunications provider may file a fiscal annual return for the period beginning July 1 and ending June 30 of the following year. A return may be filed in lieu of filing the quarterly report forms, provided the annual return along with full payment is filed within 30 days after the close of the fiscal year ending June 30.

AUTH: Sec. 69-3-860, MCA, IMP: Sec. 69-3-860, MCA

RULE III TAXPAYER RECORDS (1) Each telecommunication provider who is liable for the tax under this sub-chapter will keep records showing the total retail revenue to support the tax liability as required in these rules.

(2) Anytime during usual business hours, the department, or its duly authorized agents, may enter any office or other area where the provider maintains business records to examine the records and other supporting data from which the reports were prepared. These audits may be conducted at the same time as audits are conducted for other state taxes.

(3) Records and other supporting data used to prepare the quarterly returns must be maintained for a period of five years from the due date of the return or five years from the date of payment, whichever is later.

AUTH: Sec. 69-3-860, MCA, IMP: Sec. 69-3-860, MCA

RULE IV OFFSET OF SURCHARGE AND REFUND PROCEDURES (1) The telecommunications provider may offset their surcharge liability by applying their reimbursable discounted services to their tax liability. To receive a credit, a copy of the letter from the public service commission showing the amount of discounted services which they are entitled to receive must be attached.

(2) A request for refund of the discounted services must be made in writing to the public service commission.

AUTH: Sec. 69-3-860, MCA, IMP: Sec. 69-3-860, MCA

3. New Rules I through IV are proposed because the 55th Legislature enacted Senate Bill 89, which was codified in Title 69, chapter 3, part 8, L. 1997. The law directs the Department of Revenue to collect the surcharge quarterly. It further, instructs the Department to adopt rules for reporting, assessing and offsetting the surcharge liability from discounts granted by the Public Service Commission.

The proposed rules will allow the Department to collect this surcharge in the same way it collects the Telephone Company License Tax.

New Rule I is necessary to clarify language contained in the statute to explain three critical terms used in the collection and enforcement of the surcharge.

New Rule II clarifies 69-3-860, MCA, which states that the Department will set the due date for collecting the surcharge. The rule sets the due date at 60 days after the quarter ends. This is the same time frame that the Telephone Company License Tax (TCLT) is due. All telephone companies subject to the TCLT are also subject to this surcharge so having the same due date for this surcharge will be more accommodating to the taxpayer.

New Rule III is necessary because the statute directs the Department to adopt rules concerning record keeping methods necessary for reporting the tax liability by the telecommunication providers. This rule is consistent with the record keeping requirement for TCLT.

New Rule IV provides for an offset of the surcharge owed against the discounted services that are to be reimbursed to companies that qualify for the reimbursement. The Public Service Commission (PSC) has the responsibility to determine which companies can receive a reimbursement for providing universal access under this new act. The telecommunication company can receive a check from the PSC or can use the amount to offset future surcharge liability that may be owed to Department. This rule provides a way that the company can offset their surcharge liability on the same form that they report the surcharge.

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

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

no later than October 9, 1998.

5. If a person who is directly affected by the proposed amendments wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Cleo Anderson at the above address no later than October 9, 1998.

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

7. All parties interested in receiving notification of any change in rules pertaining to this subject should contact the Rule Reviewer in writing at the address shown in section 4 above.

CLEO ANDERSON
Rule Reviewer

MARY BRYSON
Director of Revenue

Certified to Secretary of State August 31, 1998

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 4.5.102, 4.5.108, and 4.5.111 relating to the ranking of weed grant projects and identifying new Noxious Weeds.	) NOTICE OF AMENDMENT))))

To: All Interested Persons

1. On July 30, 1998, the Department of Agriculture published a notice of proposed amendment of rules 4.5.102, 4.5.108, and 4.5.111 relating to the ranking of weed grant projects and identifying new Noxious Weeds, at page 1986 of the 1998 Montana Administrative Register, Issue No. 14.

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

3. No comments or testimony were received.

DEPARTMENT OF AGRICULTURE

Ralph Peck
DIRECTOR

Timothy J. Meloy, Attorney
Rule Reviewer

Certified to the Secretary of State August 31, 1998.

BEFORE THE BOARD OF NURSING
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment of a rule pertaining to Intravenous Therapy	)))))	NOTICE OF AMENDMENT OF 8.32.1408 STANDARDS RELATING TO THE LICENSED PRACTICAL NURSE'S ROLE IN INTRAVENOUS (IV) THERAPY

TO: All Interested Persons:

1. On March 12, 1998, the Board of Nursing published a notice of public hearing on the proposed amendment of the above-stated rule at page 623, 1998 Montana Administrative Register, issue number 5.

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

"8.32.1408 STANDARDS RELATING TO THE LICENSED PRACTICAL NURSE'S ROLE IN INTRAVENOUS (IV) THERAPY (1) through (5)(a) will remain the same as proposed.

(b) ~~perform sticks,~~ accessing, blood draws, flushes and dressing changes.

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

Auth: Sec. 37-8-415, MCA; IMP, Sec. 37-8-415, MCA

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

COMMENT NO. 1: Two commentors support (4)(j) and oppose (5) based upon the National Intravenous Standards, as prepared by the Intravenous Nurses' Society. The standards define an educated LPN involved in IV therapy as having two years experience in med/surg and 1600 hours in the care and delivery of IV therapies within the past two consecutive years. Helena College of Technology states that students are not theoretically prepared to maintain proper care of a patient or client with a central line.

RESPONSE: The Board rejects the comment. The Board established curriculum standards which are applicable to all licensed practical nurse education programs. Upon review of those adopted standards, the Board has determined that the tasks set forth in the rule are appropriate for LPNs.

COMMENT NO. 2: Two commentors oppose (4)(m) on the basis that LPNs using injectable local anesthesia risk allergic reaction, anaphylaxis, injection into the vascular system and destruction of the vein. The nurse performing the task should be responsible for implementing emergency intervention.

RESPONSE: The Board rejects the comment as it is fundamentally understood that nurses are responsible for completely understanding the tasks they perform and the risks involved. Prior to using injectable local anesthesia, the

practical nurse must obtain proper training regarding the use of such anesthesia to ensure minimal risk of side effects.

COMMENT NO. 3: One commentor suggested defining the phrase "standard solution" as a hypotonic or isotonic solution.
RESPONSE: The Board rejects the comment as it is not a part of this rulemaking notice. The Board invites commentor to raise the issue at a future Board meeting.

COMMENT NO. 4: Two commentors oppose LPNs performing central venous blood draws and flushes, unless under direct RN supervision, because patients are usually more acute and the venous system is compromised, increasing complication risk and narrowing the margin of error.
RESPONSE: The Board rejects to comment. Commentors presume, erroneously, that the situations in which LPNs perform IV therapy will always involve acute patients. Not all patients receiving IV therapy are acute and by removing this provision, the intent of the rule amendment is negated.

COMMENT NO. 5: Three commentors stated that LPNs, as charge nurses, are capable of whole patient assessment done under institutional supervision. Moreover, whole patient assessment is an integral part of home health care and performed under physician supervision.
RESPONSE: The Board rejects the comment as the comment relates to matters not a part of this rulemaking notice.

COMMENT NO. 6: Two commentors stated that LPNs, in charge nurse capacity, are already assessing PICC lines and a ruling to the contrary would be detrimental to patients.
RESPONSE: See Response to Comment No. 5.

COMMENT NO. 7: One commentor stated LPNs are already being asked to maintain PICC lines, regardless of scope of practice, because they are the only nurse available.
RESPONSE: See Response to Comment No. 5.

COMMENT NO. 8: One commentor suggested (5)(b) be reworded to eliminate the phrase "perform sticks," as it could mean insertion of a central line which is clearly not intended.
RESPONSE: The Board agrees with the comment and has amended the rule as shown above.

COMMENT NO. 9: One commentor suggested keeping the language in (6) as it is important that LPNs be allowed to perform dialysis.
RESPONSE: The Board agrees with the comment and no change is needed.

COMMENT NO. 10: One commentor wishes to have clarification regarding "direct supervision" as used in (6). The commentor suggests the language require "physical

availability of an RN to provide immediate intervention in the event of a complication relating to central venous catheter."

RESPONSE: The Board rejects the comment. The commonly understood definition of "direct supervision" is on site and immediate physical supervision by an individual qualified to provide such supervision. Although not expressly defined in these rules, individuals within the nursing profession, and based upon definitions elsewhere, provide adequate notice of the type of supervision required.

BOARD OF NURSING
KIM POWELL, BSN, PRESIDENT

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

_____
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, August 31, 1998.

BEFORE THE CONSUMER AFFAIRS DIVISION
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the adoption of a rule pertaining to the notice of resale of returned vehicles	))))	NOTICE OF THE ADOPTION OF RULE 8.78.520 PERTAINING TO THE NOTICE OF RESALE OF RETURNED VEHICLES

TO: All Interested Persons:

1. On July 30, 1998, the Consumer Affairs Division published a notice of proposed adoption of a rule pertaining to the notice of resale of returned vehicles, at page 1989, 1998 Montana Administrative Register, issue number 14.

2. The Division has adopted new Rule I (8.78.520) exactly as proposed. The comments and the Division's responses thereto, are as follows:

COMMENT NO. 1: A response was received from Mark Gabelsberg, Manager with Mazda North American Operations. He states that "Mazda has no objection to the adoption of the proposed new rule pertaining to the notice of resale of returned vehicles. In fact, for the past several years, Mazda has been providing complete disclosure and a special warranty for all qualified vehicles that have been returned to Mazda, even in those states where such a disclosure and warranty are not required by law. Our only request with respect to the proposed rule would be an exception that would allow for the use of a manufacturer's resale disclosure form, rather than a form provided by the state. Other states that require resale disclosure on a mandated form allow the use of a manufacturer's resale disclosure form, provided the language is similar to that on the state's form and the form has received prior approval from the state agency responsible for the enforcement of the disclosure requirements. Perhaps Montana could look into such an allowance if a state-mandated form is required under the new law?"

RESPONSE: The Department appreciates the comment submitted by Mr. Gabelsberg. Regarding his suggestion, the Department first notes that the statute implemented by the rule, 61-4-525, MCA, places the burden of providing notice on both the manufacturer and the dealer ultimately selling the vehicle. The manufacturer accepts return of the vehicle, triggering the disclosure requirement prior to resale. The dealer acts as the direct agent of the manufacturer in selling the vehicle to the consumer. Both parties are bound by statute to provide notice to the consumer that the vehicle has been repurchased. Second, it is noted that the Department of Justice may, but is not required to proscribe by rule the form and content of the disclosure:

"61-4-525. Notice on resale of replaced vehicle. A motor vehicle which is returned to the manufacturer and which requires replacement or refund may not be sold in the state

without a clear and conspicuous written disclosure of the fact that the vehicle was returned. The department of justice may prescribe by rule the form and content of the disclosure statement and a procedure by which the disclosure may be removed upon a determination that the vehicle is no longer defective."

To date, the Department of Justice has not proscribed by rule the form and content of the disclosure. Consequently, the form and content of the disclosure will be determined by the manufacturer. Of course, the disclosure must be within the requirements of the statute - "clear and written disclosure of the fact that the vehicle was returned." Id.

Finally, the Department notes that a procedure does not exist by which the manufacturer may have such a disclosure notice removed, regardless of the repairs performed on the returned vehicle. The disclosure notice must remain on the vehicle until such time as it is sold. Believing it to be in the best interest of Montana consumers, the Department supports the practice of requiring posting of the disclosure notice regardless of the repairs performed on a returned vehicle. The consumer is then fully advised of the history of the vehicle and can independently determine whether repairs performed after its return remedied the problem.

COMMENT NO. 2: A response was received from H.S. Teasley, CR Manager with the Chrysler Corporation. He states that Chrysler is in full agreement with this law and he feels it is in the best interest of the customer and manufacturer.

RESPONSE: The Department appreciates Chrysler's response.

COMMENT NO. 3: A response was received from Mona Jamison, Attorney for General Motors Corporation. She states that "GM has long supported such disclosure as in the best interests of customers, dealers and GM. This proposed rule seems to provide for disclosure to the ultimate consumer by the dealer, which is the most appropriate entity to effect such disclosure. For this reason, GM enthusiastically supports this proposed rule."

RESPONSE: The Department appreciates General Motor's response, however, reiterates that the manufacturer, as well as the dealer, is obligated under section 61-4-525, MCA, to provide notice to the ultimate consumer. (See response to Comment Number 1).

CONSUMER AFFAIRS DIVISION

BY: Annie M. Bartos

ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

Annie M. Bartos

ANNIE M. BARTOS
RULE REVIEWER

Certified to the Secretary of State, August 31, 1998.

BEFORE THE DIVISION OF BANKING AND FINANCIAL INSTITUTIONS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the repeal of a rule pertaining to fees for the approval of point-of-sale terminals	NOTICE OF REPEAL OF RULE 8.80.110 PERTAINING TO FEES FOR THE APPROVAL OF POINT-OF-SALE TERMINALS

TO: All Interested Persons:

1. On June 25, 1998, the Division of Banking and Financial Institutions published a notice of proposed repeal of the above-stated rule at page 1556, 1998 Montana Administrative Register, issue number 12.

2. The Division has repealed the rule exactly as proposed.

3. No comments or testimony were received.

DIVISION OF BANKING AND
FINANCIAL INSTITUTIONS

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

Annie M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, August 31, 1998.

BEFORE THE DIVISION OF BANKING AND FINANCIAL INSTITUTIONS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment of a rule pertaining to the dollar amounts to which consumer loan rates are to be applied	))))	NOTICE OF AMENDMENT OF RULE 8.80.307 PERTAINING TO THE DOLLAR AMOUNTS TO WHICH CONSUMER LOAN RATES ARE TO BE APPLIED

TO: All Interested Persons:

1. On June 25, 1998, the Division of Banking and Financial Institutions published a notice of proposed amendment of the above-stated rule at page 1558, 1998 Montana Administrative Register, issue number 12.

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

3. No comments or testimony were received.

DIVISION OF BANKING AND
FINANCIAL INSTITUTIONS

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

Anne M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, August 31, 1998.

BEFORE THE STATE BANKING BOARD
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the transfer and amendment of rules pertaining to state banking board	)))	NOTICE OF TRANSFER AND AMENDMENT OF RULES PERTAINING TO STATE BANKING BOARD

TO: All Interested Persons:

1. On June 25, 1998, the State Banking Board published a notice of proposed transfer and amendment of the above-state rules at page 1560, 1998 Montana Administrative Register, issue number 12.

2. The Board has amended 8.87.401 and 8.87.601 exactly as proposed. The Board has transferred 8.87.401, 8.87.601 and 8.87.701 to ARM Title 8, Chapter 80 exactly as proposed. ARM 8.87.702 and 8.87.703 should have also been proposed for transfer, but were inadvertently omitted from the proposal notice.

3. The Department of Commerce has determined that the transferred rules will be numbered as follows:

OLD	NEW	
8.87.401	8.80.901	Change of Location
8.87.601	8.80.1001	Application Procedure For Approval To Merge Affiliated Banks
8.87.701	8.80.1101	Application Procedure For Approval To Establish A New Branch
8.87.702	8.80.1102	Review Procedure For Applications For Approval To Establish A New Branch Bank
8.87.703	8.80.1103	Procedure Following Approval Of An Application To Establish A New Branch Bank

4. No comments or testimony were received.

STATE BANKING BOARD

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

Annie M Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, August 31, 1998.

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

In the matter of the amendment of a rule pertaining to the administration of the 1998 Federal Community Development Block Grant Program	)))))	NOTICE OF AMENDMENT OF RULE 8.94.3714 PERTAINING TO THE ADMINISTRATION OF THE 1998 FEDERAL COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM

TO: All Interested Persons:

1. On March 26, 1998, the Local Government Assistance Division of the Department of Commerce published a notice of public hearing on the proposed amendment of a rule pertaining to the administration of the 1998 Federal Community Development Block Grant Program, at page 706, 1998 Montana Administrative Register, issue number 6.

2. The Department has amended ARM 8.94.3714 exactly as proposed. The comments and the Division's responses thereto, are as follows:

COMMENT NO. 1: The Montana Community Development Corporation, a nonprofit development corporation located in Missoula, was supportive of the procurement proposal which they felt would encourage long-term, stable, and business-like relationships between local governments and nonprofits that allows investments in staffing and training to carry out effective projects and ultimately build economic capacity in rural Montana. There was a need for clarification on the sentence in bold-faced type that stated:

"This would not include contractor relationships where the for-profit entity is paid by the grantee in return for specific services, and payment is made as compensation."

RESPONSE: The Department concurs and has clarified the bold-face type section in the final procurement policy by using examples. The Department has rewritten the section to state:

"A long-term partnership arrangement would not include contractor relationships where the for-profit or nonprofit entity is paid by the grantee solely for project administrative services over the project contract period or until formal project close-out by the Montana Department of Commerce, and payment is made as regular compensation for services rendered during the term of the contract."

COMMENT NO. 2: A representative of the Midwest Assistance Program commented that the Department's current procurement policy regarding infrastructure projects is reasonable, is currently accepted by local governments and protects the public and private funds better than would the proposed policy. He maintained that requiring formal competitiveness through review of qualifications and selection by a committee helps build public trust and confidence in the project.

RESPONSE: The Department has concluded that the state's

procurement policy should be no more stringent than the federal requirements. In addition, the Department believes that as local nonprofit development corporations build long-term partnership relationships with local governments to manage economic development loans and revolving loan funds, the CDBG Program should recognize and facilitate these relationships to the extent permitted by federal procurement standards. The Department has, however, clarified the language in its Administration Manual to emphasize that the waiver of the RFP process applies only to long-term partnerships that will continue after close-out of the CDBG project. In addition, local governments must still adhere to their own city or county procurement standards. The Department has also modified the Manual to make clear that the liberalized procurement policy applies only to grant administration services and not to the procurement of engineering or architectural services which are explicitly addressed by state law.

COMMENT NO. 3: A representative from the Consulting Engineers Council of Montana reiterated that organization's concern that the proposed procurement policy not apply to the procurement of engineering services.

RESPONSE: See response to Comment No. 2.

COMMENT NO. 4: Bear Paw Development Corporation commented that allowing local governments to form partnerships with local development corporations, whereby these corporations would not be required to comply with a formal procurement process, would be a welcome change because, in the case of Bear Paw, the formal process is artificial. The proposed changes would streamline the process.

RESPONSE: The Bear Paw Development Corporation's situation was a case in point for developing a new policy. That organization has had a long-term contractual relationship with four counties to provide grant administration services and manage a revolving loan fund pool. Many local development corporations are emulating Bear Paw in trying to provide a more efficient, regional approach to community development through the pooling of resources. The Department agrees that the new procurement standard will promote these constructive arrangements.

LOCAL GOVERNMENT ASSISTANCE DIVISION
DEPARTMENT OF COMMERCE

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

Annie M Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, August 31, 1998.

BEFORE THE BOARD OF TRUSTEES
OF THE MONTANA HISTORICAL SOCIETY
OF THE STATE OF MONTANA

In the matter of the adoption of rules regarding procedures that state agencies must follow to protect heritage properties and paleontological remains and providing general procedures which the state historic preservation office must follow in implementing its general statutory authority	)))))))	CORRECTED NOTICE OF ADOPTION OF RULE

TO: All Interested Persons

1. On July 30, 1998, the State Historic Preservation Office of the Montana Historical Society published a notice of adoption of new rules regarding procedures that state agencies must follow to protect heritage properties and paleontological remains and providing general procedures which the state historic preservation office must follow in implementing its general statutory authority at page 2022, 1998 Montana Administrative Register, issue number 14.

2. That notice inadvertently omitted the specific version of the federal standards and guidelines being incorporated by reference in rule XVI (10.121.916) and is amended as follows:

RULE XVI (10.121.916) SHPO STANDARDS, PROCEDURES, AND GUIDELINES (1) SHPO standards, procedures, and guidelines shall be referenced in SHPO recommendations when required by statute or rule. The standards and guidelines used by the national park service of the United States department of the interior and the advisory council on historical preservation are, in part, the standards and guidelines to be used to identify and protect heritage properties eligible for listing on the register, and are hereby incorporated by reference. These are:

(a) the secretary of the interior's standards for archaeology and historic preservation located at: 36 CFR 60 (1997), 36 CFR 61 (1997), 36 CFR 63 (1997), 36 CFR 65 (1997), 36 CFR 67 (1997), and 36 CFR 79 (1997);

(b) the secretary of the interior's standards for the treatment of historic properties, as they existed on July 30, 1998;

(c) the secretary of the interior's standards for rehabilitation and guidelines for rehabilitating historic buildings, as they existed on July 30, 1998;

(d) the national park service, national register bulletin series (technical information on comprehensive

planning, survey of cultural resources, and registration in the national register of historic places), as they existed on July 30, 1998; and

(e) Advisory Council Regulations, 36 CFR 800 (1997).

(2) Copies may be obtained free of charge from the State Historic Preservation Office, 1410 Eighth Avenue, Helena, Montana 59620; telephone (406) 444-7715.

BOARD OF TRUSTEES
MONTANA HISTORICAL SOCIETY

By: _____
William Holt, President

_____
Rule Reviewer

Certified to the Secretary of State August 25, 1998.

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

In the matter of the amendment of ARM 12.3.202, establishing a new class of license agent who may receive compensation from clients for preparation of hunting license and permit applications.	))))))	NOTICE OF AMENDMENT OF RULE

TO: All Interested Persons.

1. On March 12, 1998, the Montana Department of Fish, Wildlife and Parks (department) published notice of the proposed amendment of the above-captioned rule at page 629, 1998 Montana Administrative Register, issue number 5.

2. The department has amended rule 12.3.202 as proposed.

AUTH: 87-1-201, MCA IMP: 87-2-901, MCA

3. A total of two comments supporting the rule amendment were received. In addition, a request was made asking the department to provide license publications and information to the new license agent class. The department agreed and will include the new license agents on their mailing list for regulation distribution, information and updates.

RULE REVIEWER

Robert N. Lane

DEPARTMENT OF FISH, WILDLIFE AND PARKS

Patrick J. Graham, Director

Certified to the Secretary of State on August 31, 1998.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of rules 17.8.504 and 17.8.505 pertaining to air quality application and operation fees	))))	NOTICE OF ADOPTION (Air Quality)

TO: All Interested Persons

1. On June 25, 1998, the Board published notice of the above-stated rules at page 1574 of the 1998 Montana Administrative Register, issue number 12.

2. The Board has amended rules 17.8.504 and 17.8.505 as proposed.

3. No comments were received. Testimony was received by Charles Homer, supervisor of the technical support section of the air and waste management bureau as a proponent of the rule. No other testimony was received.

BOARD OF ENVIRONMENTAL REVIEW

by Cindy E. Younkin
CINDY E. YOUNKIN, Chairperson

Reviewed by:

John F. North
John F. North, Rule Reviewer

Certified to the Secretary of State August 31, 1998.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of rule 17.30.502 amending the Montana mixing zone rules.	))))	NOTICE OF AMENDMENT OF RULE (Water Quality)

TO: All Interested Persons

1. On April 16, 1998, the board of environmental review published notice of public hearing on proposed amendment outlined above at page 847 of the 1998 Montana Administrative Register, Issue No. 7.

2. The board has amended the following rule as proposed with the following changes from the original proposal.

17.30.502 DEFINITIONS The following definitions, in addition to those in 75-5-103, MCA, and ARM Title 17, chapter 30, subchapters 6 and 7, apply throughout this subchapter:

(1)through(12) Remain as proposed.

(13) Not amended.

(14) Amended as proposed.

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

3. The board received the following comments; board responses follow:

COMMENT #1: Several commentors testified in opposition to the proposed amendment of ARM 17.30.502(13), which defines "zone of influence." Although these commentors agreed that there is a need to change the existing definition, they did not believe that the proposed language fixed the problem. Under the existing definition, a zone of influence using a 0.01 feet drawdown may extend thousands of feet up gradient from a well, even though a distance of 100 feet between the well and any ground water mixing zone may be protective of public health. According to these commentors, the proposed language will only make the current situation worse, because it will now require the 0.01 drawdown and will eliminate the DEQ's flexibility in determining a more reasonable length for any given situation. One commentor stated that the proposed rule is much more stringent than necessary to protect public health and will eventually eliminate the granting of mixing zones and the use of septic systems for a distance of thousands of feet from any drinking water well.

These commentors suggested that the Department research the scientific literature to ensure that the right definition was being used to protect drinking water. There was no consensus among the commentors as to whether a "capture zone", "zone of influence", or "zone of contribution" more accurately described the area of ground water that should be protected.

RESPONSE: The Board agrees with the comments suggesting that the Board not adopt the proposed amendment of "zone of influence", as currently defined in ARM 17.30.502(13). The Board also agrees that, prior to the amendment of the existing definition, further research into the scientific literature should be conducted before proposing an amendment to this definition. Since there were no comments on the deletion of WQB-7 from the rule, the Board is amending (14) as proposed.

BOARD OF ENVIRONMENTAL REVIEW

by _____
CINDY E. YOUNKIN, Chairperson

Reviewed by:

_____
John F. North, Rule Reviewer

Certified to the Secretary of State on August 31, 1998.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of rule 17.30.610 regarding Montana surface water quality standards	))))	NOTICE OF AMENDMENT OF RULE (WATER QUALITY)

TO: All Interested Persons

1. On April 16, 1998, the board of environmental review published notice of public hearing on proposed amendment outlined above at page 857 of the 1998 Montana Administrative Register, Issue No. 7.

2. The board has adopted the rule 17.30.610 as proposed.

3. The board received comments in support of the proposed amendment from the Departments of Environmental Quality, Montana Fish, Wildlife and Parks and a retired federal wildlife fisheries research biologist. The board received comments from the City of Lewistown, the Sage Creek County Water District and several individuals in opposition to the proposed amendment. The board also received comments from individuals who neither opposed nor supported the proposed amendment. The following is a summary of the comments in opposition to the proposed amendment, along with the board's responses:

COMMENTS ON BIG SPRING CREEK RECLASSIFICATION FROM B-2 TO B-1.

COMMENT #1: The Lewistown City Manager, speaking on behalf of the City of Lewistown, commented that the proposed reclassification of Big Spring Creek from B-2 to B-1 could impact the amount of taxes paid by the citizens of Lewistown. The City expressed concern that reclassification, and subsequent monitoring and analysis, might require Lewistown to take some sort of action in the future with regard to Lewistown's Wastewater Treatment Plant (a point source of discharge to the pertinent section of Big Spring Creek) and/or storm water runoff (a non-point source of discharge). If these systems were required to alter their procedures, or if further infrastructure work was mandated by the reclassification, it could equate to an expense the Lewistown taxpayers could not afford to undertake. An individual also commented that he had concerns over the types of controls that would be placed on the stream after reclassification.

RESPONSE: Comments concerning the potential for future regulation, to the extent they are valid, do not address the propriety of the reclassification. Current salmonid populations, pH and turbidity ratings indicate the lower portion of Big Spring Creek should be classified B-1. Reclassification is thus mandated by Section 75-5-302(1), MCA.

Also, concerns over the potential for future regulation are

largely without basis. There are differences between B-1 and B-2 classifications, but they are nominal in terms of impacting the level of regulation at Big Spring Creek. B-1 streams support "propagation of salmonids" versus B-2's "marginal propagation of salmonids". Waters classified as B-1 maintain a pH of 6.5 to 8.5, while B-2 maintains a pH of 6.5 to 9.0. Streams classified as B-1 have a limit of 5 nephelometric turbidity units (NTU), while streams classified as B-2 have a limit of 10 NTUs. Streams meeting either B-1 or B-2 classification must comply with Department Circular WQB-7 requirements.

The requirements for Lewistown's municipal waste water discharge will be the same regardless of whether Big Spring Creek is classified as B-1 or B-2. In either case, the discharge must meet the limits set forth in WQB-7. Therefore, reclassification of Big Spring Creek to B-1 will have no future effect on Lewistown's waste water discharge.

The present federal and state municipal storm water discharge requirements apply only to cities with a population in excess of 100,000 persons. The population of Lewistown does not exceed 100,000 persons. Proposed federal regulations require the development of a plan to minimize discharges from municipalities regardless of stream classification. Industrial storm water dischargers currently must use best management practices to control turbidity; they do not have to meet NTU limits. Therefore, Lewistown does not now, and will not in the future, incur any storm water discharge responsibilities as a result of the reclassification of Big Spring Creek from B-2 to B-1.

State law currently requires the use of "all reasonable land, soil and water conservation practices," [Section 75-5-306(2), MCA] regardless of stream classification. Therefore, reclassification of Big Spring Creek from B-2 to B-1 will not cause any alteration in land use requirements.

Point source discharges without a short term exemption under Section 75-5-308, MCA, and ARM 17.30.637(3)(a), would have to meet the 5 NTU limit. They would also be subject to new pH requirements. Any activity which measurably affects "propagation" could fall subject to regulation. These are the regulatory changes caused by reclassification. As previously noted, they do address the propriety of the reclassification of Big Spring Creek. Reclassification is mandated by Section 75-5-302(1), MCA.

COMMENT #2: Two individuals commented that the lower portion of Big Spring Creek is too polluted with polychlorinated biphenyls (PCBs) to warrant reclassification from B-2 to B-1. One individual acknowledged that Montana Fish, Wildlife and

Parks bases reclassification upon fish populations, but considered that basis inadequate to support reclassification in the face of PCB contamination. The other individual commented that the reclassification would attract additional fisherman to the creek. This individual considered additional fishermen a negative impact in its own right, but was also concerned because these fishermen would be catching, and possibly consuming, PCB contaminated fish. This individual testified that she would not fish Big Spring Creek herself due to her concern with PCBs. She was also troubled by the prospect of the elderly or very young consuming fish caught from the pertinent section of Big Spring Creek.

RESPONSE: The criteria for reclassification do not include consideration of PCB levels. Regardless of PCB contamination, if the other factors are present, stream reclassification is mandated by Section 75-5-302(1), MCA. Altering the criteria for reclassification to include consideration of PCB contamination is beyond the scope and purpose of this rulemaking proceeding. Likewise, the potential that reclassification will attract greater numbers of fishermen is not germane to the appropriate classification of Big Spring Creek.

COMMENTS ON SAGE CREEK RECLASSIFICATION FROM B-3 TO B-1.

COMMENT #3: The Sage Creek County Water District, and several individuals, commented that they wanted reclassification of Sage Creek to go from B-3 to A-1 or A-closed, as opposed to the proposed reclassification from B-3 to B-1. The Sage Creek County Water District represents a community of 163 people in 59 households near Sage Creek. This community is interested in using water from a source well near Sage Creek as a source of potable water, and classification as A-closed would allow them to utilize this water without the need of a costly filtration system.

RESPONSE: The criteria for reclassification from B-3 to A-1 or A-closed requires a demonstration of compliance with fecal coliform requirements. No data exist that demonstrate that Sage Creek meets these requirements. Therefore, reclassification from B-3 to A-1 or A-closed is not possible at this time. However, adequate data exists to support reclassification from B-3 to B-1.

COMMENT #4: Another member of the Sage Creek County Water District commented that the proposed reclassification covered a larger portion of the creek than was relevant to the District. Specifically, the District is concerned only with the classification of Sage Creek from the source to the headwaters, whereas the proposed reclassification addresses the entire Sage Creek drainage to the section line between Sections 1 and 12, Township 36 North, Range 5 East. The District suggested that

reclassification to A-closed from the source to the headwaters should not be foreclosed by the general reclassification of the entire drainage.

RESPONSE: There are no data to indicate that the portion of Sage Creek from its source to its headwaters meets the fecal coliform requirements of an A-closed or A-1 classification. The data do support reclassification to B-1 status, along with the remainder of the designated drainage. Further subdivision of the Sage Creek drainage is not supported by distinct areas of divergent water quality, and is also beyond the scope and purpose of this rulemaking proceeding.

BOARD OF ENVIRONMENTAL REVIEW

by _____
CINDY E. YOUNKIN, Chairperson

Reviewed by:

_____
John F. North, Rule Reviewer

Certified to the Secretary of State August 31, 1998.

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES OF THE
STATE OF MONTANA

In the matter of the amendment of ARM 16.28.101, 16.28.601, 16.28.601A, 16.28.605D and 16.28.609A concerning control of sexually transmitted diseases	))))))	NOTICE OF AMENDMENT

TO: All Interested Persons

1. On June 25, 1998, the Department of Public Health and Human Services published notice of the proposed amendment of rules 16.28.101, 16.28.601, 16.28.601A, 16.28.605D and 16.28.609A concerning control of sexually transmitted diseases at page 1690 of the 1998 Montana Administrative Register, issue number 12.

2. The Department has amended rules 16.28.101 and 16.28.601 as proposed.

3. The Department has amended the following rules as proposed with the following changes from the original proposal. Matter to be added is underlined. Matter to be deleted is interlined.

16.28.601A ACQUIRED IMMUNE DEFICIENCY SYNDROME (AIDS) AND HIV INFECTION (1) through (3)(d) remain as proposed.

(4) The health care provider ~~may~~ must either conduct the interview with the case and assist the case with contact notification~~,~~ or ~~the provider may~~ request the department to assist in conducting the interview and/or notifying contacts.

AUTH: Sec. 50-1-202, 50-2-118 and 50-16-1004, MCA
IMP: Sec. 50-1-202, 50-2-118 and 50-16-1004, MCA

16.28.605D CHLAMYDIAL GENITAL INFECTION (1) remains as proposed.

(2) An individual who contracts the infection must be interviewed to determine the person's sexual contacts, and those contacts must be examined and must receive the medical treatment indicated by clinical ~~and~~ or laboratory findings.

(3) remains as proposed.

AUTH: Sec. 50-1-202, 50-2-118 and 50-18-105, MCA
IMP: Sec. 50-1-202, 50-2-118, 50-18-102 and 50-18-107, MCA

16.28.609A GONOCOCCAL INFECTION (1) remains as proposed.

(2) An individual who contracts the infection must be interviewed to determine the person's sexual contacts, and those

contacts must be examined and must receive the medical treatment indicated by clinical ~~and~~ or laboratory findings.

(3) remains as proposed.

AUTH: Sec. 50-1-202, 50-2-118 and 50-18-105, MCA
IMP: Sec. 50-1-202, 50-2-118, 50-18-102 and 50-18-107, MCA

4. The Department has thoroughly considered all commentary received. The comments received and the department's response to each follow:

COMMENT #1: A comment was received suggesting amendment of the language in subsections (2) of both ARM 16.28.605D and 16.28.609A by substituting "or" for "and" in order to clarify that the appropriate treatment of the diseases in question need not be indicated in every case by laboratory findings, but may be determined through clinical evidence alone.

RESPONSE: The department agrees with the comment and has made the requested change.

COMMENT #2: A commentor requested that ARM 16.28.601A(2) be amended to require a report to be made whenever HIV infection is confirmed, not just when an AIDS diagnosis is made.

RESPONSE: The department declined to make the requested change because it is unnecessary, since HIV infection is already required to be reported by ARM 16.28.201, which will continue to require such reporting. Reporting requirements and report contents are detailed in other administrative rules and are not the primary focus of the rules in this proposal. Once the department receives the reports currently required by existing rules, it follows up on those reports to the same degree as it does AIDS case reports, and every attempt is made to identify, locate, and offer testing to contacts of HIV-positive individuals regardless of whether an AIDS diagnosis has been made. Nevertheless, the department is currently considering how to improve HIV-reporting mechanisms and is awaiting the publication of national recommendations from the Centers for Disease Control and Prevention, after which the appropriate departmental rules will be evaluated to determine whether they may be improved.

COMMENT #3: Another comment was made suggesting that subsection (3) of ARM 16.28.601A be revised to make it clear that a health care provider must carry out HIV counseling, referrals for health care, and notification and counseling of contacts.

RESPONSE: The department has decided not to make such a change at this time. The amendments as proposed allow either the health care provider or a representative of a local or state

health department to perform these tasks. While the department strongly encourages health care providers to perform these tasks, due to time constraints or other factors, many health care providers defer all or a part of this responsibility to public health authorities. In other instances, a report may be received on a person who does not currently have a health care provider or who wishes not to discuss the matter with his or her provider. The language as proposed allows for the variety of situations which may arise and ensures that the steps are performed by either a health care provider or a public health professional.

COMMENT #4: The same commentor suggested changing "may" to "must" in both places that it occurs in subsection (4) of ARM 16.28.601A, in order to compel the health care provider to take action either to interview the infected individual and notify contacts or to refer the matter to the department for action.

RESPONSE: The department concurs and has made the requested change, with a slight change in style that does not affect the substance.

Dawn Sliva
Rule Reviewer

Director, Public Health and Human Services

Certified to the Secretary of State August 31, 1998.

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES OF THE
STATE OF MONTANA

In the matter of the amendment of ARM 46.30.507 pertaining to child support enforcement distributions of collections	)))))	NOTICE OF AMENDMENT

TO: All Interested Persons

1. On May 28, 1998, the Department of Public Health and Human Services published notice of the proposed amendment of ARM 46.30.507 pertaining to child support enforcement distributions of collections at page 1395 of the 1998 Montana Administrative Register, issue number 10.

2. The Department has amended rule 46.30.507 as proposed.

3. The Department has thoroughly considered all commentary received. The comments received and the department's response to each follow:

COMMENT #1: One comment was received in support of the proposed amendments. The commentor stated that she would like to see support paid to persons receiving assistance, while the assistance is provided. However, the commentor also stated that she understood changes in the federal law would be needed to accomplish the commentor's wishes.

RESPONSE: The Department agrees that changes would be needed in Federal law to accomplish the commentor's request. Further, changes would be needed in the program funding structure as well, since the Department is funded, in part, from collection of support assigned to the State of Montana by persons receiving public assistance.

COMMENT #2: A commentor suggested that the Department provide day care services during its rulemaking hearings under the Montana Administrative Procedure Act.

RESPONSE: At the present time, the Department lacks the resources and facilities to accommodate the request. Further, the Department does not wish to accept any liability which may arise from the provision of day care services during rulemaking hearings. Parents who are unable to obtain day care during rulemaking hearings may bring their children to the hearings, which are open to the public.

4. The rule amendments will take effect on October 1, 1998.

Rule Reviewer

Director, Public Health and Human Services

Certified to the Secretary of State August 31, 1998.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT of ARM 42.11.301 and 42.11.305 and the ADOPTION of NEW RULE I (ARM 42.11.306), RULE II (ARM 42.11.307), RULE III (ARM 42.11.308), RULE IV (ARM 42.11.309), and RULE V (ARM 42.11.310) relating to Commissions Earned by Agents Operating Liquor Stores in Montana	NOTICE OF AMENDMENT AND ADOPTION

TO: All Interested Persons:

1. On April 30, 1998, the Department published notice of the proposed amendment of ARM 42.11.301 and 42.11.305, and adoption of New Rule I (ARM 42.11.306), New Rule II (ARM 42.11.307), New Rule III (ARM 42.11.308), New Rule IV (ARM 42.11.309), and New Rule V (ARM 42.11.310) relating to commissions earned by agents operating liquor stores in Montana at page 1132 of the 1998 Montana Administrative Register, issue no. 8.

2. A public hearing was held on May 20, 1998, where comments were received from the Liquor Store Owners Association. Attorney Michael G. Garrity appeared on behalf of the Liquor Store Owners Association along with 26 agents. Testimony was presented which covered several areas of concern and Mr. Garrity, on behalf of the association, requested the appointment of a committee to further review and discuss the proposed rules. The Director agreed to convene a committee which consisted of 4 agents and 4 department personnel. The committee met and resolved the concerns of the Association.

3. Based on the meeting with the Association and the Department, the department has further amended the rules as follows:

42.11.301 DEFINITIONS As used in this subchapter, the following definitions apply:

(1) "Agency store" means a state liquor store operated by an agent.

(2) "Agent" means a person, partnership, or corporation that markets liquor on a commission basis under an agency agreement with the department and provides all the resources, including personnel and store premises, needed to market liquor under the agreement.

(3) "Average commission percentage" means the simple average of the commission percentage of agents with similar GROSS sales volumes. This percentage is calculated by adding the commission percentages of all agents with similar GROSS sales volumes and dividing by the number of agents with similar

GROSS sales volumes.

(4) "~~Calendar~~ CALENDAR year" means January 1 through December 31.

(5) "Community boundary" means:

(a) in the case of an incorporated city or town, the city or town limits;

(b) in other communities, the generally recognized and commonly accepted outer edge of the community.

(6) "Gross Sales VOLUME" means an agency liquor store's purchases AT POSTED PRICE AS DEFINED IN 16-1-106, MCA.

~~(7) "Liquor" includes table wine when the alcoholic beverage code permits the department to distribute table wine to a state liquor store.~~

~~(8)~~ (7) "Minimum qualified petitioners" means the number of adults who reside in the community which number equals 5% of the community population as determined in the most recently available census estimate for the community or 20 adults who reside in the community if 5% of the community population is less than 20.

~~(9)~~ (8) "New state agency liquor store" means~~;~~ a state agency liquor store that begins operation in a community that has not had a state agency liquor store in operation for one or more years.

~~(10)~~ (9) "Sales Band" means a group of agents with similar GROSS sales volumes.

~~(11)~~(10) Other words and phrases used in these rules shall have the meaning ascribed to them in the Montana Alcoholic Beverage Code, as amended, and if not defined therein have their usual and customary meaning.

AUTH: Sec. 16-1-303, MCA; IMP, Sec. 16-2-101, MCA

42.11.305 OPENING A NEW STATE AGENCY LIQUOR STORE

(1) The number of state agency liquor stores that may be located in a community will vary with the population in a community. The number of stores that may be located in a community may vary as prescribed in 16-2-109, MCA.

(2) A new state agency liquor store will be operated by an agent.

(3) The department will conduct a public hearing to open a new STATE agency store in a community when all of the following conditions are met:

(a) The department receives a petition signed by at least the minimum qualified petitioners to open an STATE agency store in the community. The petition must clearly state that its purpose is to have the department open a STATE AGENCY liquor store in the community which will be operated by an agent under contract with the department. The petition must show the printed name, mailing address and signature of each person signing the petition.

(b) The department receives a letter from a person willing to submit a proposal or bid to operate an STATE agency store in the community. This person must control or expect to control a building in the community that could be used as the STATE agency

store location.

(c) The number of STATE agency liquor stores currently operating in the community does not exceed the limit in ~~(1)~~ 16-2-109, MCA.

(d) The nearest community with an operating STATE agency liquor store is more than 35 miles as measured from the nearest community boundaries along the shortest route on a paved road between the two communities unless the new store is to be located in a community eligible for more than one store pursuant to ~~(1)~~ 16-2-109, MCA.

(e) The department has not solicited for an agent in the community within the previous three years.

(f) The petition identified in (3)(a) and the letter from a potential agent in (3)(b) must be received within six months of each other.

(4) When all of the conditions in (3) are met, the department will hold a public hearing in the community to receive comments from interested parties concerning the department's intention to advertise for proposals or bids for a liquor store agent. The procedures concerning the public hearing are:

(a) The notice will contain the following:

(i) the date, time and place in the community where the public hearing will be conducted; and

(ii) provide the name and address of the hearing officer appointed by the department to conduct the hearing.

(b) Notice of the public hearing will be advertised twice during a two-week period in the legal section of:

(i) the nearest daily newspaper in general circulation for the affected area; and

(ii) in the local community newspaper, if there is one.

(c) The hearing will be conducted no less than 14 days but no more than 20 days following the last publication of the notice in the newspapers.

(d) The hearing officer will preside over the hearing and collect the information presented by all persons. The hearing will be directed to the following:

(i) whether the department should proceed with its intention to advertise for proposals or bids for a liquor store agent for the community;

(ii) whether any limitations or restrictions on the location and operation of the agency should be considered; and

(iii) whether any other issues directly related to the operation of the proposed store in the community or its possible effects on the community should be considered in the determination of whether to proceed with its intention to advertise for proposals or bids for a liquor store agent for the community.

(e) Within one week following the public hearing, the hearing officer will submit a report to the ~~liquor division administrator~~ DEPARTMENT. This report will provide the following:

(i) identify all of the issues raised at the hearing;

(ii) recommend whether proceeding with the advertisement for proposals or bids for a liquor store agent is in the best interest of the state, and the community; and

(iii) recommend whether any limitations or restrictions on the location and operation of the agency should be considered.

(f) One week following receipt of the hearing officer's report, the department will decide what action will be taken in response to the hearing officer's recommendations.

(5) Notice of the department's decision will be mailed to all parties who signed the petition and gave a mailing address or who attended the public hearing and gave a mailing address.

(6) If the decision is to proceed with the advertisement for request for proposals or invitation for bids for a liquor store agent, the process to select an agent will be conducted in accordance with ~~new rule V~~ ARM 42.11.310.

(7) If no proposals or bids are received in response to a request for proposals or invitation for bids, or none of the proposals or bids received meet the minimum requirements specified in the request for proposals or the invitation for bids, the department will make no further solicitation for an agent in the community for three years. If the conditions in (3) and (4) are met after the three-year period, the department will begin the process again. However, if the department determines that the petition required in (3)(a) was not generated in good faith, the department may waive the three-year limitation.

AUTH: Sec. 16-1-303, MCA; IMP, Sec. 16-2-101 and 16-2-109, MCA

NEW RULE I (ARM 42.11.306) COMMISSION PERCENTAGE REVIEW

(1) The department shall review the commission percentage paid to agents pursuant to 16-2-101, MCA.

(2) The department ~~will~~ MAY examine agent stores with similar GROSS sales volumes to determine commission rate adjustments. ~~The department will create guidelines for determining "similar sales volumes" of the agents.~~

AUTH: Sec. 16-1-303, MCA; IMP: Sec. 16-2-101, MCA

NEW RULE II (ARM 42.11.307) DETERMINATION OF SIMILAR GROSS SALES VOLUMES (1) An agent's commission percentage may be adjusted to the average commission percentage of agents with similar GROSS sales volumes as prescribed in 16-2-101, MCA.

(2) ~~The department will determine sales bands for agents with similar sales volumes.~~ EXCEPT AS OTHERWISE PROVIDED, sales information from the two most recent ~~calender~~ CALENDAR years will be used when determining the ~~sales bands~~ GROSS SALES VOLUMES.

(3) The department will apply standard statistical measures to establish the sales bands. The agents will be divided into six sales bands. The sales bands will be proportioned using a standard bell curve.

(4) The proposed sales bands with corresponding proposed

average commission rates for each band, will be made available to the public for comment 60 days prior to the commencement of the review period.

(5) Copies of the sales bands with corresponding proposed average commission rates for each band, may be obtained by contacting the Department of Revenue, Liquor Distribution, P.O. 1712, Helena, MT 59624-1712.

AUTH: Sec. 16-1-303, MCA; IMP: Sec. 16-2-101, MCA

NEW RULE III (ARM 42.11.308) ~~MINIMUM~~ QUALIFICATIONS FOR COMMISSION RATE REVIEW (1) Agent's GROSS sales volumes can be distorted by closure of a business; other than for holidays, weekends, inventory, or other temporary closures which occur in the ordinary course of business. This distortion could potentially result in the agent being placed in a sales band which does not accurately reflect the agent's average GROSS sales volumes. Such misplacement of an agent within a sales band would also affect the average commission percentage determination within the band. THE DEPARTMENT MAY, IF SUFFICIENT DATA EXIST, PROJECT AN AGENT'S GROSS SALES FROM A PERIOD OF LESS THAN THE TWO MOST RECENT CALENDAR YEARS AS A REPRESENTATION OF THE AGENTS TWO YEAR GROSS SALES. Therefore, for an agent to be eligible for a commission rate REVIEW, the store must be open for business ON A REGULAR AND CONTINUOUS BASIS for the ~~entire~~ two ~~calender~~ CALENDAR years preceding the review period.

(2) ~~To qualify for a greater than average commission under 16-2-101(6)(b), MCA, an agent must first qualify for a commission rate adjustment under 16-2-101(6)(a), MCA.~~ ALL STATE AGENCY STORES ARE ELIGIBLE FOR A COMMISSION RATE ADJUSTMENT UNDER 16-2-101(6)(b), MCA.

AUTH: Sec. 16-1-303, MCA; IMP: Sec. 16-2-101, MCA

NEW RULE IV (ARM 42.11.309) COMMISSION ADJUSTMENT (1) ~~An agent's commission percentage will be increased to the average commission percentage within the sales band if that agent's commission percentage is less than the average in that sales band.~~ AN AGENT'S COMMISSION PERCENTAGE MAY BE INCREASED TO AVERAGE COMMISSION PERCENTAGE WITHIN THE SALES BAND IF THAT AGENT'S COMMISSION PERCENTAGE IS LESS THAN THE AVERAGE IN THAT SALES BAND.

(2) ~~An agent's commission may be increased to a percentage greater than the average commission percentage within the sales band sufficient to yield net income similar to the agent's net income prior to the uncontrollable cost increase if:~~

~~(a) the commission percentage is less than the average commission percentage within the relevant sales band; and~~

~~(b) the agent meets the criteria set forth in 16-2-101(6)(b), MCA.~~ AN AGENT'S COMMISSION PERCENTAGE MAY BE INCREASED TO A PERCENTAGE GREATER THAN THE AVERAGE COMMISSION PERCENTAGE WITHIN THE SALES BAND IF IT IS ESTABLISHED TO THE SATISFACTION OF THE DEPARTMENT THAT:

(a) THE AGENT HAS EXPERIENCED INCREASED EXPENSES IN OPERATING THE BUSINESS FOR THE TWO MOST RECENT CALENDAR YEARS INCLUDING, BUT NOT LIMITED TO:

(i) INCREASED LABOR COSTS;

(ii) RENTAL OR LEASE COSTS;

(iii) UTILITIES;

(iv) INSURANCE PREMIUMS; AND

(v) INCREASED UTILIZATION OF THE CASE LOT DISCOUNT.

(b) THE AGENT CONSIDERED ALL REASONABLE MITIGATION MEASURES; AND

(c) THE AVERAGE COMMISSION PERCENTAGE WOULD BE INSUFFICIENT TO YIELD NET INCOME COMMENSURATE WITH THE NET INCOME EXPERIENCED IN THE TWO MOST RECENT CALENDAR YEARS.

AUTH: Sec. 16-1-303, MCA; IMP: Sec. 16-2-101, MCA

NEW RULE V (ARM 42.11.310) SELECTION OF AGENT (1) The agent for an agency liquor store will be selected according to competitive procedures under the Montana Procurement Act, 18-4-121 through 18-4-407, MCA.

(2) For stores in communities with less than 3,000 population according to the federal bureau of the census' last decennial final census count:

(a) an agent will be selected according to procedures for competitive sealed proposals as defined in ARM 2.5.602; and

(b) the agent's commission will be ~~fixed~~ INITIALLY ESTABLISHED at 10% of adjusted gross sales.

(3) For stores in communities with a population of 3,000 or more according to the federal bureau of the census' last decennial final census population count:

(a) an agent will be selected according to procedures for competitive sealed bids as defined in ARM 2.5.601; and

(b) the agent's commission ~~being~~ WILL BE INITIALLY SET AT the percentage ~~of adjusted gross sales~~ bid by the lowest responsible and responsive bidder.

AUTH: Sec. 16-1-303 MCA; IMP, Sec. 16-2-101, 16-2-109, and 16-2-407, 18-4-303, and 18-4-304, MCA

4. Therefore, the Department adopts the rules with the amendments listed above.

CLEO ANDERSON
Rule Reviewer

MARY BRYSON
Director of Revenue

Certified to Secretary of State August 31, 1998

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT) NOTICE OF AMENDMENT
of ARM 42.17.131 relating to)
Withholding Allowances)

TO: All Interested Persons:

1. On July 16, 1998, the Department published notice of the proposed amendment of ARM 42.17.131 relating to Withholding Allowances at page 1909 of the 1998 Montana Administrative Register, issue no. 13.

2. No comments were received regarding the rule.

3. The Department has amended the rule as proposed.

CLEO ANDERSON
Rule Reviewer

MARY BRYSON
Director of Revenue

Certified to Secretary of State August 31, 1998.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT) NOTICE OF AMENDMENT
of ARM 42.20.160, 42.20.161,)
42.20.162, 42.20.165, 42.20.)
167, and 42.20.168 relating)
to Forest Classification and)
Appraisal for Property Tax)

TO: All Interested Persons:

1. On April 30, 1998, the Department published notice of the proposed amendment of ARM 42.20.160, 42.20.161, 42.20.162, 42.20.165, 42.20.167 and 42.20.168 relating to Forest Classification and Appraisal for Property Tax at page 1128 of the 1998 Montana Administrative Register, issue no. 8.

2. A public hearing was held on May 22, 1998, where written comments were received. Oral and written comments received during and subsequent to the hearing are summarized as follows along with the response of the Department:

COMMENT 1: Thorn Liechty, President of the Montana Forest Land Association states that the language inserted in ARM 42.20.161(1)(c), which reads: "For the purposes of determining the 15-acre forest land ownership criteria...", is misleading since forest land is defined as 15 acres or more. Section 15-44-102(5), MCA, states the forest land ownership criteria is not restricted solely to lands of fifteen acres (excluding properties of, 15.1 acres, or 19.9 acres, and so forth).

RESPONSE: The Department concurs that the term "15-acre forest land ownership criteria" is misleading. This rule will be amended to better clarify the term.

COMMENT 2: Mr. Liechty testified that the Department's proposal for ARM 42.20.161(1)(m) turns the original definition of "contiguity" on its head. The change states that contiguity will be broken by the existence of non-forest lands (such as rivers and streams, roads, highways, power lines, and railroads) which exceed a particular dimension. In addition to creating an arbitrary redefinition of contiguity, the proposals leave unclear the forest land taxation position of larger-sized properties, say 19, 29, or 109 acres, which are transected by a wide highway or large river (over 120 feet etc.), leaving one or more of the residual segments less than 15 acres. Potentially, the Department's proposal may be at odds with Montana forest land conservation efforts by encouraging development of newly defined "non-contiguous" tracts which might better be left as forest land. Further, if the newly-defined "discontiguous" segments of forest land are not accessible for development but are taxed as tract land, the landowner's problems are compounded.

RESPONSE: Forest land classification procedures are

consistent on all ownerships, regardless of size. Neither the current forest land classification rules nor the proposed amendments to the rules change this basic premise.

COMMENT 3: Mr. Liechty also stated that taken together, the Department's proposals in (c) and (m) which redefine forest land contiguity seem to derive from motives other than simple clarification, since the changes deviate so markedly from the original language without adding precision or enhancing fairness. Mr. Liechty pointed out that the Department lost an appeal in June 1997 entitled State of Montana v. Robert and Marietta Pfister, PT-1995-53, before the State Tax Appeal Board pertaining to this issue. Mr. Liechty stated that he believes the wording now proposed appears to be specifically designed to prevent the type of decision rendered by the State Tax Appeal Board in the Pfister case.

RESPONSE: The amendments proposed by the Department in ARM 42.20.161(1)(c) and (m) clarify forest land classification rules the Department has used since 1986. The Department currently uses the proposed amendments to this rule to classify more than 14,000 forest landowners, who own approximately 4.1 million acres of private forest land. No forest landowner will have their land changed to a different land classification as a result of the clarification of these classification procedures.

The Department's forest land classification procedures are applied uniformly, regardless of ownership size. Forested-land less than 15 acres in size on ownerships less than 20 acres in size is classified as agricultural land or appraised at its market value. Forested-land less than 15 acres in size on an ownership between 20 and 160 acres in size is classified as agricultural or non-qualified agricultural land. Forested-land less than 15 acres in size on ownerships more than 160 acres in size is classified as agricultural land.

Therefore, the Department declines to change ARM 42.20.161(1)(c) and (m).

COMMENT 4: Fred Hodgeboom submitted written comments concerning the legislative intent of the law. He stated that the original language of ARM 42.20.161(1)(c) clearly recognized the intent of the law and exempted features which the landowner had no control such as "rivers and streams, county boundaries, local taxing jurisdiction boundaries, roads, highways, power lines, and railroads" from creating "non-contiguous" forest land for tax purposes.

RESPONSE: The Department's amendments to ARM 42.20.161 do not change the procedures for recognizing contiguous tracts of land in the same ownership. The Department's amendments are not a departure from current application of classification rules and they will not create newly defined "noncontiguous" tracts.

COMMENT 5: Mr. Hodgeboom and Representative Bob Lawson presented concern that artificial and natural "non-forest land

breaks" can have unnecessary negative impacts upon landowners.

RESPONSE: Only a few of the smallest and most marginally eligible forest properties are impacted by classification rules defined in ARM 42.20.161. Most forest landowners don't want bonafide non-forest land classified as forest land and benefit from these rules.

COMMENT 6: Representative Bob Lawson also presented concern that the attempt to increase tax revenues on forest tracts may act as an incentive for the landowner to use the land for things other than growing trees - perhaps subdivisions and such.

RESPONSE: The amendments proposed by the Department were not developed to increase tax revenues. They are proposed to acknowledge longstanding practices and to provide clarification in the area of forest land classification and valuation for taxpayers, the forest industry, appeal boards and Department staff. It has been contended that the Legislature's decision to move from a standing inventory timber assessment taxation system to a productivity system encouraged taxpayers to retain timber on their property rather than cutting it down. We're not aware of situations where the proposed amendments will alter current timber practices.

COMMENT 7: Representative Lawson also stated that 15 acre plots may well be too big of an arbitrary size and perhaps 10 acre plots would be more appropriate. He stated that maybe it would be more appropriate to determine the classification based upon the actual use of each acre of land rather than lumping into either 10 or 15 acre tracts.

RESPONSE: The 15 acre requirement is statutory (15-44-102, MCA), and has been the minimum requirement at least since 1991. The Department does not have the ability to determine the current classification of each 1 acre tract of land individually through use of current technology.

COMMENT 8: Al Kington of the Montana Tree Farm System testified regarding the proposed amendments to ARM 42.20.161. He stated that it was his belief that since the appeals and discrepancies related to tracts covered in this rule are rare and handled now on a site by site basis the rule should not be amended. He further stated that he felt the amendments complicate the issue.

RESPONSE: A significant portion of ARM 42.20.161 was not changed. While it is true there are relatively few appeals and questions regarding forest land assessment, the proposed amendments will bring additional clarification and will resolve questions raised at appeal hearings.

COMMENT 9: Mr. Kington also stated that he had concerns covering the forest land valuation formula which is addressed in ARM 42.20.167. During the last session of the legislature the lending institution used to determine the capitalization rate

used in the productivity formula was changed from the Federal Land Bank to the Northwest Farm Credit Services. Due to the many different ag loans available through this institution, the 15 year term used (since it gives the highest rate), should be specified in the rules.

RESPONSE: The Department accepts the comments on the proposed amendment to ARM 42.20.167(8) and will amend the rule accordingly.

COMMENT 10: Mr. Kington testified at the hearing and Cary Hegreberg of the Montana Wood Products Association presented written comments regarding the amendments to ARM 42.20.168 and their concern regarding forest costs. They both testified that they felt these amendments were needed and they were necessary to increase accountability of the Department of Revenue and Department of Natural Resources and Conservation, Division of Forestry (DNRC-DOF) to accurately reflect costs in each forest zone. However, they felt there were some major terminology errors in the proposed changes.

RESPONSE: The Department agreed prior to the rule hearing to make two terminology changes to this rule. The proposed amendments were submitted as part of the Department's written testimony at the hearing and are part of the record of the hearing. Those amendments are reflected below.

COMMENT 11: Robert Pfister, Research Forester and Private Land Owner presented written testimony regarding ARM 42.20.160. Mr. Pfister stated that the proposed change to (1)(a)(ii) is a definite improvement to retain forest land classification after harvesting, unless (1)(a)(iii) the land is purposefully converted to "nonforest land".

RESPONSE: Land purposefully converted to "nonforest land" would, in accordance with amended ARM 42.20.160(1)(a)(iii), be classified and valued according to its converted use which may be agricultural, nonqualifying agricultural, industrial, commercial, or residential.

COMMENT 12: Mr. Pfister stated that the new definition in ARM 42.20.161(1) provides a much needed improvement to protect the forest land owners from nitpicking subtractions from forest land acreage. He further stated that the definition found in (m) may still be ambiguous under the proposed changes. He stated that "right-of-way" easements are often wider than 120 feet, yet the area actually used for the highway is usually less than 120 feet; furthermore, the property owner retains the right to harvest and grow timber within the easement as long as it doesn't interfere with the purpose of the easement.

RESPONSE: The Department acknowledges Mr. Pfister's approval of the new definition in ARM 42.29.160. Mr. Pfister's indication that the definition found in (m) might still be ambiguous is noted.

COMMENT 13: Mr. Pfister stated that he felt the 3 percent of gross timber income is unbelievably low from the viewpoint of a professional forester.

RESPONSE: The management cost is calcuated using information obtained from the Department of Natural Resources and Conservation.

3. As a result of the comments received the Department has further amended ARM 42.20.161, 42.20.167, and 42.20.168 as follows:

42.20.161 FOREST LAND CLASSIFICATION DEFINITIONS

(1) (a) and (b) remain as proposed.

(c) For purposes of determining the MINIMUM 15-acre forest land ownership criteria identified in 15-44-102, MCA, the term "contiguous land" means land that touches or shares a common boundary or that would have shared or touched a common boundary had the lands not been separated by rivers and streams, county boundaries, local taxing jurisdiction boundaries, roads, highways, power lines and railroads. For purposes of determining forest land classification, that land must be uninterrupted forest land that meets the requirements of ARM 42.20.160 and is unbroken by non-forest land.

(d) through (m) remain as proposed.

AUTH: Sec. 15-44-105, MCA; IMP: Sec. 15-44-101, 15-44-102 and 15-44-103, MCA

42.20.167 FOREST LAND VALUATION FORMULA (1) and (2) remain the same.

(3) The valuation of forest land shall be based on a 5-year average of income, expense, and capitalization rate for the years ~~1987~~ 1991 through ~~1991~~ 1995.

(4) through (7) remain the same.

(8) The capitalization rate is the 15-YEAR annual average interest rate on agricultural loans as reported by the northwest farm credit services, agricultural credit association of Spokane, Washington, plus the effective tax rate.

(9) Remains the same.

AUTH: Sec. 15-1-201 and 15-44-105, MCA; IMP: Sec. 15-44-101, 15-44-102, 15-44-103, and 15-44-104, MCA

42.20.168 FOREST COSTS (1) The determination of forest costs in ARM 42.20.167 represent the average costs for reforestation, fire assessment, slash disposal, timber stand improvement, timber harvest, forest practices, and ~~management~~ ADMINISTRATION over the base period specified in ARM 42.20.167. Forest costs, with the exception of the ~~hazard reduction~~ FIRE ASSESSMENT FEE and ~~management~~ ADMINISTRATIVE cost, are calculated from the actual expenditures for those activities conducted by the Department of natural resources and conservation, division of forestry (DNRC-DOF). The average

forest cost in each forest valuation zone is derived from DOF land management areas. The ~~hazard reduction cost~~ FIRE ASSESSMENT FEE will be the ~~average fire assessment~~ fee the DOF charges landowners. The ~~management~~ ADMINISTRATIVE cost is 3 percent of the gross timber income in each valuation zone. Those costs shall be deducted from the per acre gross timber income.

AUTH: Sec. 15-1-201 and 15-44-105, MCA; IMP: Sec. 15-44-101, 15-44-102, 15-44-103, and 15-44-104, MCA

4. Therefore, the Department adopts ARM 42.20.160, 42.20.162, and 42.20.165 as originally proposed and adopts ARM 42.20.161, 42.20.167, and 42.20.168 with the amendments listed above.

CLEO ANDERSON
Rule Reviewer

MARY BRYSON
Director of Revenue

Certified to Secretary of State August 31, 1998

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT) of ARM 42.38.101, 42.38.102, 42.38.103, 42.38.104, 42.38.201, 42.38.203, 42.38.204, 42.38.206, and REPEAL of ARM 42.38.205 relating to Unclaimed Property	NOTICE OF AMENDMENT AND REPEAL

TO: All Interested Persons:

1. On May 28, 1998, the Department published notice of the proposed amendment of 42.38.101, 42.38.102, 42.38.103, 42.38.104, 42.38.201, 42.38.203, 42.38.204, 42.38.206, and repeal of ARM 42.38.205 relating to Unclaimed Property at page 1399 of the 1998 Montana Administrative Register, issue no. 10.

2. Written comments received by the Department are summarized as follows along with the responses of the Department:

COMMENT 1: Jeanne Bauman, from the Montana Credit Union Network asked, when a member dies, a beneficiary designated by the member receives the life savings insurance proceeds. These proceeds are distributed in one of two ways:

(A) If the beneficiary is also the beneficiary of the money in the decedent's account, then the insurance money is deposited into that account.

(B) If the beneficiary is not entitled to the money in the decedent's account, then the credit union deposits the insurance proceeds into a credit union accounts payable account and issues a check to the beneficiary. (The insurance company issues the insurance check payable to the credit union first; then the credit union turns around and issues a check in the same amount to the beneficiary.)

RESPONSE: In scenario (A), where the beneficiary is the same person on the decedent's account and the insurance policy, the money becomes abandoned after five years. The insurance money is deposited into the decedent's account with the rest of the money in the account which is presumed abandoned under 70-9-803(1)(d), MCA.

In scenario (B), where the beneficiary is not the same person as the beneficiary of the decedent's account, the money is presumed abandoned after five years. In the example provided, the credit union deposits the insurance check, which is made payable to the credit union, into the credit union's accounts payable account and the credit union writes a check to the beneficiary from the credit union's account. In this case the money is presumed abandoned under 70-9-803(1)(q), MCA, which is five years after the owner has a right to demand the property.

COMMENT 2: Ms. Bauman also asked, if the beneficiary cannot be found, would the life savings insurance proceeds be considered abandoned after three years for life insurance under 70-9-803(1)(h), MCA, or would it be five years for "accounts" or "all other property" under 70-9-803(1)(d) and (q), MCA?

RESPONSE: In both cases the insurance check is cashed and cannot be considered abandoned under 70-9-803(1)(h), MCA.

3. The Department is amending the authority and implementing cites for ARM 42.38.206 as follows:

42.38.206 PROPERTY (1) through (3) remain the same.

AUTH: ~~70-9-105~~ 70-9-828, MCA; IMP: Sec. ~~70-9-310 and 70-9-311~~ 70-9-820, MCA.

4. The Department has amended the rules as proposed and repealed ARM 42.38.205.

CLEO ANDERSON
Rule Reviewer

MARY BRYSON
Director of Revenue

Certified to Secretary of State August 31, 1998

NOTICE OF FUNCTIONS OF ADMINISTRATIVE CODE COMMITTEE

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

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

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

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

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

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

Use of the Administrative Rules of Montana (ARM):

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

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies which have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through June 30, 1998. This table includes those rules adopted during the period July 1, 1998 through September 30, 1998 and any proposed rule action that was pending during the past 6-month period. (A notice of adoption must be published within 6 months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through June 30, 1998, 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 1996, 1997 and 1998 Montana Administrative Registers.

To aid the user, the Accumulative Table includes rulemaking actions of such entities as boards and commissions listed separately under their appropriate title number. These will fall alphabetically after department rulemaking actions.

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