MONTANA ADMINISTRATIVE REGISTER

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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 8

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 The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

In the matter of the proposed amendment of rules pertaining to definitions, prohibitions, physical examinations, physician requirements, elimination-type events, point system - scoring and promoter-matchmaker and the adoption of a new rule pertaining to a medical advisor	)))))))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF 8.8.2802 DEFINITIONS, 8.8.2803 PROHIBITIONS, 8.8.2903 PHYSICAL EXAMINATION, 8.8.2904 PHYSICIAN REQUIREMENTS, 8.8.2906 ELIMINATION-TYPE EVENTS, 8.8.3103 POINT SYSTEM - SCORING AND 8.8.3301 PROMOTER-MATCHMAKER AND THE ADOPTION OF NEW RULE I MEDICAL ADVISOR

TO: All Interested Persons:

1. On June 11, 1998, at 9:00 a.m., a public hearing will be held in the Professional and Occupational Licensing Conference room, Lower Level, Arcade Building, 111 North Jackson, Helena, Montana, to consider the proposed amendment and adoption of the above-stated rules.

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

"8.8.2802 DEFINITIONS (1) through (5) will remain the same.

(6) "Semi-professional" means a person seeking compensation or reward by participating in an athletic event who has not previously competed professionally.

(6) and (7) will remain the same, but will be renumbered (7) and (8)."

Auth: Sec. 23-3-405, MCA; IMP, Sec. 23-3-404, MCA

REASON: This amendment is being proposed to define a semi-professional in comparison to a professional athlete. The Board is sanctioning more semi-professional athletic events than in the past and has determined that clarification is needed to identify that semi-professional athletes have different qualifications than professional athletes.

"8.8.2803 PROHIBITIONS (1) The Board will not ~~license~~ sanction and will seek to enjoin the following types of athletic events:

(a) and (b) will remain the same, but the ending periods will be changed to semi-colons.

(c) ~~A~~any barroom type brawls, "so you think you're tough" type challenge contests, and roughneck type bouts ~~or bouts where contestants receive remuneration directly or indirectly,~~

~~and where they have no prior organized amateur or professional training.~~;

(d) ~~A~~any exotic form of activity which is advertised as a form of wrestling, boxing or fighting including "ultimate challenge" contests and which involves recognition, a prize~~, or a purse,~~ or a purse at which an admission fee is charged, either directly or indirectly, in the form of dues or otherwise."

Auth: Sec. 23-3-405, MCA; IMP, Sec. 23-3-404, 23-3-405, MCA

REASON: There has been a great increase in "bare-fisted" type events in the state. These types of events create a grave risk to the health, safety and welfare of participants. The Board is charged with protecting the public health, safety and welfare and also that of athletic event participants. The Board is clarifying that such events are prohibited and the Board will not sanction or license them.

"8.8.2903 PHYSICAL EXAMINATION (1) through (3)(m) will remain the same, but the ending periods for (a) through (m) will be changed to semi-colons.

(n) exam performed by M.D. or D.O. only for professional boxing and wrestling events. Semi-professional event examinations can be performed by an M.D., D.O., D.C. (with ~~sports medicine specialty~~), nurse practitioners and physician's assistants~~.~~;

(o) and (p) will remain the same, but the ending period for (o) will be changed to a semi-colon.

(4) through (8) will remain the same."

Auth: Sec. 23-3-405, MCA; IMP, Sec. 23-3-404, 23-3-405, MCA

REASON: This amendment is being proposed to allow other health care providers, in addition to medical doctors and doctors of osteopathy, who have adequate medical training in sports medicine, to perform contestant examinations. The Board would like to utilize the services of other health care providers in order to avoid discrimination against such providers.

"8.8.2904 PHYSICIAN REQUIREMENTS (1) ~~An~~ The examining ~~physician~~ health care provider identified in ARM 8.8.2903 shall be present at ringside and be available to assist the referee until the conclusion of the final bout. ~~He~~ The health care provider will be compensated for ~~his~~ the health care provider's services by the promoter.

(2) The ringside ~~physician~~ health care provider will perform a post-bout examination. The ~~physician's~~ health care provider's recommendations, medical disqualifications, injuries to contestants and any other examination results shall be reported to the board within 24 hours after the athletic event."

Auth: Sec. 23-3-405, MCA; IMP, Sec. 23-3-405, MCA

REASON: See reason for amendment to ARM 8.8.2903.

"8.8.2906 ELIMINATION-TYPE EVENTS (1) All ~~"toughman" and other similar~~ semi-professional elimination-type boxing contests shall be conducted under the authority of the board and conform where applicable to Title 8, chapter 8, sub-chapters 28, 29, 31, 32, 33, and 34 of the Administrative Rules of Montana, unless provided for specifically in this rule.

(2) through (5) will remain the same.

(6) Contestants will not be made to comply with the HIV testing required in ARM 8.8.2804(15). Contestants must comply with all remaining requirements pertaining to physical condition."

Auth: Sec. 23-3-405, MCA; IMP, Sec. 23-3-404, 23-3-405, MCA

REASON: The word "Toughman" is being deleted because it is a registered trademark name. The Board wants to continue to license semi-professional elimination-type boxing contests without being limited to licensing only "Toughman" events.

The Board has determined that HIV testing for semi-professional elimination-type boxing contests does not affect the public health, safety and welfare because, based on information received by the Board from various medical authorities, the risk of transmission in the very limited time frame involved in semi-professional bouts is essentially non-existent.

"8.8.3103 POINT SYSTEM - SCORING (1) through (2)(b) will remain the same.

~~(c) 10-8 In favor of the contestant that has shown more control.~~

~~(d)~~ (c) 10-~~7~~8 If the contestant was severely punished or thoroughly dominated.

(e) through (h) will remain the same, but will be renumbered (d) through (g).

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

Auth: Sec. 23-3-405, MCA; IMP, Sec. 23-3-406, MCA

REASON: This amendment is necessary to correct the scoring criteria so it complies with the national boxing standards.

"8.8.3301 PROMOTER-MATCHMAKER (1) through (7)(b) will remain the same.

(8) Promoters shall provide notice to an ambulance service or hospital that an event is taking place and that an ambulance may be needed in case of injury.

(9) Promoters shall provide security guards who either hold a license issued by the state of Montana or are law enforcement officers."

Auth: Sec. 23-3-405, MCA; IMP, Sec. 23-3-404, 23-3-405, 23-3-501, 23-3-601, MCA

REASON: The addition of (8) is necessary for public safety. The Board has determined that notice should be provided to an ambulance service or hospital to make the service aware that an event is being held so that such service can respond promptly in an emergency situation.

Subsection (9) is being added to provide athletic events with the security needed to protect public health, safety and welfare.

3. The proposed new rule will read as follows:

"I MEDICAL ADVISOR (1) The board will appoint a medical advisor to the board to provide competent medical advice regarding issues of health and safety implicated in the course and conduct of boxing contests. The duties of the medical advisor include:

(a) preparing and submitting appropriate standards for the physical and mental examination of contestants;

(b) advising the board of the physical or mental fitness of a contestant at the board's request.

(2) The medical advisor shall submit his recommendations in writing to the board. During board deliberations the medical advisor will be permitted to participate, however, will not be permitted to vote on the board's adoption or rejection of the recommendation. Any recommendations accepted by the board will be adopted through a formal rulemaking process.

(3) The board may request the medical advisor to attend specific athletic events."

Auth: Sec. 23-3-405, MCA; IMP, Sec. 23-3-405, MCA

REASON: The Board has determined that many questions regarding the physical capabilities of boxing contestants are outside the expertise and knowledge of the board members. In an effort to more effectively protect the health and safety of boxing participants, the Board believes it is appropriate to retain the services of a health care professional with knowledge of boxing and wrestling to assist the Board in making such decisions.

4. 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., June 1, 1998, to advise us of the nature of the accommodation that you need. Please contact Cheryl Smith, Board of Athletics, 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.

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 the Board of

Athletics, 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., May 28, 1998.

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

7. Persons who wish to be informed of all Board of Athletics 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 Athletics, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513 or by phone at (406) 444-5433.

BOARD OF ATHLETICS
GARY LANGLEY, CHAIRMAN

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

_____
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, April 20, 1998.

BEFORE THE BOARD OF LANDSCAPE ARCHITECTS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed amendment of a rule pertaining to fees	NOTICE OF PROPOSED AMENDMENT OF 8.24.409 FEE SCHEDULE

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On May 30, 1998, the Board of Landscape Architects proposes to amend the above-stated rule.

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

"8.24.409 FEE SCHEDULE (1) through (2)(c) will remain the same.

(d) License renewal ~~175~~ 125

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

Auth: Sec. 37-1-134, 37-66-202, MCA; IMP, Sec. 37-1-134, 37-66-202, 37-66-301, 37-66-305, 37-66-307, 37-66-308

REASON: The Board is proposing this amendment to reduce the Board's cash balance. The Legislature requires that Boards can only retain two times the amount of appropriation.

3. Interested persons may submit their data, views or arguments concerning the proposed amendments in writing to the Board of Landscape Architects, 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., May 28, 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 Landscape Architects, 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., May 28, 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 7 based on the 77 licensees in Montana.

6. Persons who wish to be informed of all Board of Landscape Architects 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) 444-5433.

BOARD OF LANDSCAPE ARCHITECTS
JAMES FOLEY, CHAIRMAN

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, April 20, 1998.

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

In the matter of the proposed amendment of ARM 24.16.9003 and ARM 24.16.9007, related to Montana's prevailing wage rates	))))	NOTICE OF EXTENSION OF COMMENT PERIOD (BUILDING CONSTRUCTION SERVICES)

TO ALL INTERESTED PERSONS:

1. On March 26, 1998, the Department published notice at pages 718 through 721 of the Montana Administrative Register, Issue No. 6, to consider the amendment of the above-captioned rules.

2. On April 17, 1998, a public hearing was held in Helena concerning the proposed amendments at which oral and written comments were received.

3. Based on the comments received at the public hearing, the Department has decided to extend the public comment period. Written data, views, or comments may be submitted to:

Kate Kahle
Job Service Division
Office of Research and Analysis
Department of Labor and Industry
P.O. Box 1728
Helena, Montana 59624-1728

so that they are received by not later than 5:00 p.m., May 15, 1998.

David A. Scott
Rule Reviewer

Patricia Haffey, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State: April 20, 1998.

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

In the matter of the proposed amendment of ARM 24.28.101 and 24.28.112, related to workers' compensation mediation	) NOTICE OF PUBLIC HEARING ON) PROPOSED AMENDMENT OF ARM) 24.28.101 AND 24.28.112)

TO ALL INTERESTED PERSONS:

1. On May 28, 1998, at 9:30 a.m., a public hearing will be held in Room 104 of the Walt Sullivan Building (Dept. of Labor Building), 1327 Lockey Street, Helena, Montana, to consider the amendment of rules related to workers' compensation mediation.

2. The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you request an accommodation, contact the Department by not later than 5:00 p.m., May 22, 1998, to advise us of the nature of the accommodation that you need. Please contact the Employment Relations Division, Attn: Ms. Kay Henry, P.O. Box 1728, Helena, MT 59624-1728; telephone (406) 444-6534; TTY (406) 444-5549; fax (406) 444-4140. Persons with disabilities who need an alternative accessible format of this document in order to participate in this rule-making process should contact Ms. Henry.

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

24.28.101 JURISDICTION (1) Parties having a dispute about any issue concerning claimant's benefits under Title 39, chapters 71 and 72, MCA, ~~excluding those enumerated in (2),~~ must bring the dispute before a department of labor and industry mediator prior to petitioning the workers' compensation court. Except as otherwise provided in statute or rule, the practices and procedures described in these rules apply to all benefit disputes under Title 39, chapters 71 and 72.

~~(2) Parties having a dispute concerning benefits involving one of the following issues are not required to bring the dispute to mediation, but instead must attempt to resolve the dispute according to the appropriate procedures set forth in the statutes:~~

~~(a) Determination of the value of work paid for in property other than money (39-71-303, MCA);~~

~~(b) Requests to waive the one year statute of limitations up to 24 months (39-71-601, MCA);~~

~~(c) Disputes concerning the medical condition of a claimant when one side requests the division to order an independent evaluation (39-71-605, MCA);~~

~~(d) Disputes concerning attorney fees;~~

~~(e) Disputes concerning impairment ratings for injuries occurring between July 1, 1987, and June 30, 1991 (39-71-711, MCA);~~

~~(f) Disputes regarding dependency for purposes of determining beneficiaries (39-71-723, MCA);~~

~~(g) Disputes concerning certification as vocationally handicapped under Title 39, chapter 71, part 9, MCA;~~

~~(h) Disputes concerning vocational rehabilitation for injuries occurring prior to July 1, 1991;~~

~~(i) Disputes concerning whether or not a claimant is suffering from an occupational disease (39-72-602, MCA) or disputes concerning apportionment between occupational and nonoccupational causes for disease on claims for which the department has issued an order determining the percentage (39-72-706, MCA);~~

~~(j) Disputes concerning benefits under 39-72-405, MCA, for occupational diseases prior to July 1, 1993;~~

~~(k) Disputes over attorney fees on occupational disease claims (39-72-712, MCA); and~~

~~(l) Disputes over medical claims when benefits available directly to claimants are not an issue (ARM 24.29.1404).~~

~~(3) A mediator shall have no jurisdiction over any dispute about which a party has filed a petition with the workers' compensation court prior to July 1, 1987, except by consent of all parties to the dispute.~~

(4) Remains the same, but is renumbered as (2).

AUTH: 39-71-2407, MCA
IMP: 39-71-2408, MCA

24.28.112 FILE INFORMATION (1) The petitioner shall submit with the petition a copy of all information or documentation that supports their position and that will be used at the mediation conference. Upon receipt of notice of mediation conference, the respondent shall submit to the mediator a copy of all information or documentation that supports their position and that will be used at the mediation conference. In addition, the parties are responsible for exchanging pertinent information with each other. If appropriate, the mediator may ask for additional information. The information must be sent to the mediator at least ~~1~~ one week prior to the conference date.

(2) Remains the same.

AUTH: 39-71-2407, MCA
IMP: 39-71-2411, MCA

Reason: There is reasonable necessity for the amendment of these rules in order to ensure that jurisdictional references correctly track with statutory changes in the Workers' Compensation and Occupational Disease Acts and to delete language that is either in the mediation statutes or made obsolete due to statutory changes. The changes are made in response to a staff review of the rules and requests from the users of mediation for clarification.

4. The use of the phrase "remains the same" is encouraged by the Secretary of State in order to improve readability by highlighting the proposed changes in a rule and also to lower the cost of rule-making. Any person wishing to obtain the full text of any Department rule proposed for amendment or repeal in this Notice may do so by contacting Ms. Henry (identified in paragraph 2, above), identifying the rule(s) sought, and requesting a copy.

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:

Nikki Noland
Mediation Unit
Employment Relations Division
Department of Labor and Industry
P.O. Box 1728
Helena, Montana 59624-1728

and must be received by no later than 5:00 p.m., June 5, 1998.

6. The Department maintains a number of mailing lists of interested persons regarding a variety of topics. For more information about the mailing lists, or to have your name and address added to any or all of the interested persons lists, please contact Mark Cadwallader, Office of Legal Services, P.O. Box 1728, Helena, MT 59624-1728; telephone (406) 444-4493; TTY (406) 444-0532.

7. The Department is not required by 2-4-302, MCA, to notify any bill sponsor about the proposed action regarding this rule action.

8. The Department proposes to make the amendments effective July 1, 1998. The Department reserves the right to adopt only portions of the proposed amendments, or to adopt some or all of the amendments at a later date.

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

David A. Scott
Rule Reviewer

Patricia Haffey, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State: April 20, 1998.

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

In the matter of the proposed amendment of ARM 24.29.207, 24.29.703, 24.29.801, 24.29.1201, 24.29.1203, 24.29.1204, 24.29.2329, 24.29.2803 and 24.29.2839, the adoption of 11 new rules, and the repeal of ARM 24.29.707, 24.29.708, 24.29.802, 24.29.803, 24.29.805, 24.29.807, 24.29.808, 24.29.2821, 24.29.2824, 24.29.2827, 24.29.2829, 24.29.2834, 24.29.2837, 24.29.3701, 24.29.3703, 24.29.3704, 24.29.3707, 24.29.3711, 24.29.3721, 24.29.3726, 24.29.3731, and 24.29.3741, all related to workers' compensation matters	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF 9 RULES, THE ADOPTION OF 11 NEW RULES, AND THE REPEAL OF 22 EXISTING RULES

TO ALL INTERESTED PERSONS:

1. On May 28, 1998, at 10:00 a.m., a public hearing will be held in Room 104 of the Walt Sullivan Building (Dept. of Labor Building), 1327 Lockey Street, Helena, Montana, to consider the amendment of 9 rules, the adoption of 11 new rules and the repeal of 22 existing rules, all related to workers' compensation matters.

2. The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you request an accommodation, contact the Department by not later than 5:00 p.m., May 22, 1998, to advise us of the nature of the accommodation that you need. Please contact the Employment Relations Division, Attn: Ms. Linda Wilson, P.O. Box 8011, Helena, MT 59604-8011; telephone (406) 444-6531; TTY (406) 444-5549; fax (406) 444-4140. Persons with disabilities who need an alternative accessible format of this document in order to participate in this rule-making process should contact Ms. Wilson.

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

24.29.207 CONTESTED CASES (1) Parties having a dispute involving legal rights, duties or privileges, other than

disputes over benefits available directly to a claimant under Title 39, chapters 71 and 72, MCA, must bring the dispute to the department for a contested case hearing. Such disputes include, but are not limited to:

(a) disputes regarding attorneys' fee agreements (39-71-613, MCA);

~~(b) disputes regarding the value of work paid for in property other than money (39-71-303, MCA);~~

(c) through (n) Remain the same, but are re-lettered (b) through (m).

(2) through (4) Remain the same.

AUTH: 2-4-201, 39-71-203 and 39-72-203, MCA
IMP: Title 2, chapter 6, part 6, MCA, 39-71-204, 39-71-415, 39-71-2905, 39-72-611 and 39-72-612, MCA

24.29.703 ELECTION TO BE BOUND BY COMPENSATION PLAN NO. 2 OR 3 (1) Any employer, except state agencies specified in 39-71-403, MCA, may elect coverage under plan no. 2 by owning an insurance policy that is in force, sold by a private insurance carrier authorized by the insurance commissioner's office to sell workers' compensation insurance in Montana.

(2) Remains the same.

AUTH: 39-71-203, MCA
IMP: 39-71-2201 and 39-71-2301, MCA

24.29.801 ACCIDENT REPORTING (1) Upon notice of an accident, ~~industrial~~ injury, or occupational disease an employer shall, within ~~6~~ six days of such notice, submit to the employer's workers' compensation insurer or to the ~~division~~ department, a completed form known as the ~~employer's~~ first report of occupational injury/occupational disease ~~(form 37)~~.

(2) If an insurer changes an adjuster or an employer changes its third party adjuster, the department must be notified in writing by the office assuming the account(s), within 30 days from the time the account is transferred. The notification must include:

(a) the adjuster's or third party adjuster's business address and telephone number;

(b) an effective date of transfer;

(c) a general description of the type of claims transferred (if there are identifiable categories or classes of claims); and

(d) upon request for each claim transferred:

(i) the claimant's name;

(ii) the claimant's social security number;

(iii) the date of injury or occurrence; and

(iv) the insurer's claim number.

AUTH: 39-71-203 and 39-71-307, MCA
IMP: 39-71-307 and 39-71-603, MCA

24.29.1201 INTRODUCTION (1) The procedure for determining whether lump sum conversion of permanent disability biweekly payments will be approved is generally defined in 39-71-741, MCA.

(2) The conversion can only be made upon written application of the injured worker or the worker's beneficiary, with the concurrence of the insurer, subject to the discretionary approval of the ~~division~~ department as to the amount of the lump sum payment and the advisability of the conversion.

(3) It is presumed that biweekly payments are in the best interests of the worker or his beneficiary. The approval of an application for lump sum conversion by the ~~division~~ department must be the exception, not the rule, and may be given only if the worker or his beneficiary demonstrates that his ability to sustain himself financially is more probable with a whole or partial lump sum conversion than with the biweekly payments and his other resources.

(4) Remains the same.

(5) Controversies between claimants and insurers regarding a conversion to a lump sum or a denial of approval of a conversion to a lump sum by the ~~division~~ department, are considered disputes for which the workers' compensation judge has jurisdiction to make a decision.

(6) Lump sum settlement agreements reached prior to April 15, 1985, will be allowed and approved, or denied, under provisions of 39-71-741, MCA, in effect before enactment of senate bill 281. Section 39-71-741 as amended, will be applied to all lump sum settlements reached on or after April 15, 1985. An injured worker or his beneficiary submitting a lump sum settlement reached before April 15, 1985, must provide to the ~~division~~ department a written statement that agreement was reached before April 15, 1985.

AUTH: 39-71-203, MCA
IMP: 39-71-741, MCA

24.29.1203 METHODS THE ~~DIVISION~~ DEPARTMENT WILL APPLY TO EVALUATE INFORMATION PROVIDED (1) through (4) Remain the same.

(5) The ~~division~~ department will deny or approve all lump sum settlement applications within ~~thirty (~~30~~)~~ days of receipt. If additional information is required to enable a determination on such applications, it will be requested within the ~~thirty~~ 30 day review period. If additional information is not received

within ~~thirty (30)~~ days, the application will be denied on the basis of lack of information.
AUTH: 39-71-203, MCA
IMP: 39-71-741, MCA

24.29.1204 FURTHER STUDIES MAY BE REQUIRED (1) If the ~~division~~ department finds that an application for lump sum conversion does not adequately demonstrate the ability of the worker or his beneficiary to sustain himself financially, the ~~division~~ department may order, at the insurer's expense, financial, medical, vocational rehabilitation, educational or other evaluative studies to determine whether a lump sum conversion is in the best interest of the worker or his beneficiary.

(2) The ~~division's~~ department's order will specify the reasons why the application for lump sum conversion is inadequate and the type of evaluative studies required.

(3) The ~~division~~ department must be advised of the results of all evaluative studies and may determine after the studies have been completed whether to act on the pending application or to require a new application for lump sum conversion.

(4) If, after receipt of the order, the worker or his beneficiary and the insurer cannot agree on a provider or providers to perform the evaluative studies, the ~~division~~ department shall make such designation.
AUTH: 39-71-203, MCA
IMP: 39-71-741, MCA

24.29.2329 STRUCTURE OF ORGANIZATION (1) and (2) Remain the same.

(3) Remains the same.

(a) and (b) Remain the same.

(c) management or ownership by any person or entity that was or currently is associated with a MCO or MCO applicant; or

(d) the name of any entity, other than individual health care providers, with whom the MCO has a joint venture or other agreement to perform any of the functions of the plan, and a description of the specific functions to be performed by each entity~~; or~~

~~(e) ownership interests in any facility to which the physician self-referral prohibitions in sections 39-71-315 and 39-71-1108, MCA may apply~~.
AUTH: 39-71-203, 39-71-1103 and 39-71-1105, MCA
IMP: 39-71-1103 and 39-71-1105, MCA

24.29.2803 DEFINITIONS (1) through (5) Remain the same. ~~(6) "UIEF" means the underinsured employers' fund created in 39-71-534, MCA.~~

(7) Remains the same, but is renumbered (6).

AUTH: 39-71-203, MCA
IMP: 39-71-503~~,~~ and 39-71-504, ~~and 534~~ MCA

24.29.2839 COMPROMISE OF PENALTIES ASSESSED (1) Remains the same.

~~(2) The UIEF, in its sole discretion, may enter into a compromise settlement with an underinsured employer of the amount assessed pursuant to ARM 24.29.2837, upon such terms and conditions that the UIEF deems expedient and appropriate.~~

AUTH: 39-71-203, MCA
IMP: 39-71-506, ~~39-71-533~~ MCA

Reason: There is reasonable necessity to amend the above rules. Reasonable necessity exists for the amendment of ARM 24.29.207 in order to delete references to Department jurisdiction regarding disputes over the value of non-cash wages, in order to implement section 3, Chap. 172, L. of 1997.

There is reasonable necessity to amend ARM 24.29.703 to clarify that plan No. 2 insurers must be approved by the commissioner of insurance, because of inquiries from a growing number of employers seeking private sector (plan No. 2) insurance and the growing number of private sector insurers that wish to underwrite workers' compensation policies in Montana.

There is reasonable necessity to amend ARM 24.29.803 because of recent problems claimants and the Department have experienced when insurers transfer claims handling without notifying the involved claimant or the Department. The amendments are also reasonably necessary to make technical changes identifying the Department as the regulatory agency.

There is reasonable necessity to amend ARM Title 24, chapter 29, subchapter 12 in order to make technical corrections regarding the identity of the Department, and to clarify the documentation requirements for obtaining lump sum conversions for existing versus new business ventures proposed by claimants. The clarification is the result of recent inquiries and petitions to the Department for lump sum conversions for business ventures.

There is reasonable necessity to amend ARM 24.29.2329, because of statutory changes to 39-71-315, MCA, resulting from Chap. 516, L. of 1995.

There is reasonable necessity to amend ARM 24.29.2803 and 24.29.2837 in order to delete references to the underinsured employers' fund, which was eliminated by Chap. 172, L. of 1997 and Chap. 310, L. of 1997.

4. The use of the phrase "remains the same" is encouraged by the Secretary of State in order to improve readability by highlighting the proposed changes in a rule and also to lower the cost of rule-making. Any person wishing to obtain the full text of any Department rule proposed for amendment or repeal in this Notice may do so by contacting Ms. Wilson (identified in paragraph 2, above), identifying the rule(s) sought, and requesting a copy.

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

NEW RULE I EVIDENCE OF INSURANCE COVERAGE (1) The department may require an employer to submit a complete signed copy of a workers' compensation policy evidencing Montana workers' compensation coverage is or has been in place during all periods during which that coverage is or was required.
AUTH: 39-71-203, MCA
IMP: 39-71-304, 39-71-401, 39-71-402, 39-71-2201 and 39-71-2336, MCA

NEW RULE II PAYMENT OF REHABILITATION EXPENSES FROM THE INDUSTRIAL ACCIDENT REHABILITATION ACCOUNT FOR CLAIMS ARISING BEFORE JULY 1, 1991 (1) For claims arising before July 1, 1987, and thus subject to the provisions of Title 39, chapter 71, part 10, MCA (1979) or 39-71-1003, MCA (1985), the claimant or insurer must request vocational rehabilitation trust funds on a form provided by the department. A copy of the individualized written rehabilitation plan (IWRP) prepared by the department of public health and human services (DPHHS) should be provided to the department with the request for trust funds.

(a) The department will determine whether the claimant is eligible for trust funds and the duration for which trust funds may be used for rehabilitation. The department will notify the claimant and insurer in writing of its decision.

(b) Disputes between the claimant and/or insurer and the department regarding the department's determination of eligibility or duration of trust funds must be brought before a department contested case hearing officer.

(2) For claims arising on or after July 1, 1987 and before July 1, 1991, and thus subject to the provisions of Title 39, chapter 71, part 10, MCA (1987), the claimant or insurer must request payment of vocational rehabilitation trust funds on a form provided by the department. A copy of the department's final order of determination finding the worker needs retraining must be submitted with the request for trust funds. In addition, a copy of the IWRP prepared by the DPHHS must be submitted with the request for trust funds.

(a) The department will determine whether the claimant is

eligible for trust funds and determine the maximum duration for which trust funds may be used for rehabilitation services. The department will notify the claimant and insurer in writing of its decision.

(b) Disputes between the claimant and/or insurer and the department regarding the department's determination of eligibility or duration of trust funds must be brought before a department contested case hearing officer.

AUTH: 39-71-203, MCA
IMP: Title 39, chap. 71, part 10, MCA

NEW RULE III PAYMENT OF REHABILITATION EXPENSES FROM THE INDUSTRIAL ACCIDENT REHABILITATION ACCOUNT FOR CLAIMS ARISING ON OR AFTER JULY 1, 1991 AND BEFORE JULY 1, 1997 (1) For claims arising on or after July 1, 1991, and before July 1, 1997, and thus subject to the provisions of Title 39, chapter 71, part 10, MCA (1991) or Title 39, chapter 71, part 10, MCA (1995), the claimant or insurer must request payment of vocational rehabilitation trust funds on a form provided by the department. A copy of the signed rehabilitation plan must be attached to the form or already on file in the department's office.

AUTH: 39-71-203, MCA
IMP: Title 39, chap. 71, part 10, MCA

NEW RULE IV INFORMATION TO BE INCLUDED IN THE REHABILITATION PLAN (1) The rehabilitation plan must include the following information:

(a) plan objectives that summarize the type and duration of the training agreed to by the parties. It should include where the claimant will receive the training and identify any prerequisites and/or contingencies;

(b) the beginning and completion dates of the rehabilitation plan;

(c) a projection of expenditures to be made pursuant to the plan. The plan should include an estimate of the amount of tuition, fees, books, and other reasonable retraining expenses needed to successfully complete the plan. The plan should also include the date the funds are needed and to whom the funds should be paid;

(d) a description of the claimant's responsibilities under the plan. The plan should identify the responsibilities the claimant has agreed to undertake for successful completion of the plan. For example, the claimant agrees to attend classes and maintain a 2.0 grade point average, or the claimant agrees to timely register for classes, etc.;

(e) a description of the insurer's responsibilities under the plan. The plan should identify the responsibilities the insurer has agreed to undertake for successful completion of the plan. For example, the insurer will pay rehabilitation benefits for a period of 70 weeks to begin on a specific date, etc.;

(f) a description of the vocational rehabilitation provider's responsibilities. The plan should identify and list what actions or understandings the provider has agreed to undertake for successful completion of the plan. For example,

the provider will continue to monitor the claimant's progress and provide further vocational rehabilitation services necessary to successfully complete the plan, etc.; and

(g) the signatures of both the claimant and the authorized insurer's representative.

AUTH: 39-71-203, MCA
IMP: Title 39, chap. 71, part 10, MCA

NEW RULE V DEPARTMENT'S NOTICE OF AUTHORIZATION OR DENIAL OF USE OF TRUST FUNDS (1) The department will notify in writing the claimant, claimant's representative (if any), insurer, and the vocational rehabilitation provider of the authorization for use of trust funds. The department will instruct the parties on the procedures and/or documentation needed to make payments from the trust funds.

(2) If the request is denied, the department will notify the parties in writing. If additional information is required by the department, the written denial will serve as notice requesting the additional information. Upon receipt of the additional information, the request for trust funds will be reconsidered.

AUTH: 39-71-203, MCA
IMP: Title 39, chap. 71, part 10, MCA

NEW RULE VI ALLOWABLE REHABILITATION EXPENSES (1) The department will pay, from the trust fund account, tuition required for the agreed upon rehabilitation plan. The department will pay, from the trust fund account, fees, books, supplies and equipment which are a prerequisite for the retraining and required by the provider of the training. Unless otherwise agreed upon between the claimant and insurer, the department will not pay for fees, books, supplies and/or equipment which are optional and not required to complete the retraining plan. For example, the purchase of student health insurance at a Montana university is an optional fee not required for enrollment. The payment of parking fees is required for enrollment at Montana universities.

(a) Supplies include, but are not limited to, pens, paper, notebooks, etc. and are limited to $25 for each term of training. For example, a term of training is a semester, quarter, etc.

(b) Equipment includes, but is not limited to, calculators, computer hardware and/or software, ergonomic furniture, tools, etc. If it is more cost effective, the department may choose to rent or lease rather than purchase the equipment.

AUTH: 39-71-203, MCA
IMP: Title 39, chap. 71, part 10, MCA

NEW RULE VII DISALLOWED REHABILITATION EXPENSES (1) The department will not authorize the use of trust funds for any of the following items:

(a) travel or living expenses;

(b) expenses covered under 39-71-1025, MCA; or

(c) tuition, fees, books or equipment costs incurred if the claimant fails to complete registration requirements or fails to properly withdraw from the agreed upon training program.

(2) The department will not authorize continued used of trust funds, if the claimant is not successfully completing his/her responsibilities specified in the rehabilitation plan or is no longer attending the retraining program.

AUTH: 39-71-203, MCA
IMP: Title 39, chap. 71, part 10, MCA

NEW RULE VIII DOCUMENTATION REQUIRED (1) The department will release payment upon receipt of proof of enrollment from the provider of the retraining, of the date the funds are needed, and of the payee's federal employer identification number (FEIN). If reimbursement is requested, a copy of the paid invoice or receipt of payment is required.

AUTH: 39-71-203, MCA
IMP: Title 39, chap. 71, part 10, MCA

NEW RULE IX INSURER RESPONSIBILITY TO PROVIDE INFORMATION TO THE DEPARTMENT (1) The insurer, or its designated rehabilitation provider, is required to provide any information requested by the department necessary to consider a request for trust funds.

(2) The insurer, or its designated rehabilitation provider, is required to notify the department immediately if the claimant is not successfully completing his/her responsibilities specified in the rehabilitation plan or is no longer attending the retraining program.

AUTH: 39-71-203, MCA
IMP: Title 39, chap. 71, part 10, MCA

NEW RULE X PAYMENT OF REHABILITATION EXPENSES FOR CLAIMS ARISING ON OR AFTER JULY 1, 1997 (1) For claims arising on or after July 1, 1997, a disabled worker is entitled to receive payment for tuition, fees, books, and other reasonable and necessary retraining expenses, excluding travel and living expenses paid pursuant to the provisions of 39-71-1025, MCA.

(2) The insurer and claimant must agree to payment of tuition, fees, books and other reasonable and necessary retraining expenses. The expenses must be specified in the rehabilitation plan agreed upon between the insurer and claimant. The expenses must be paid directly by the insurer.

(3) The insurer must pay for tuition required for the agreed upon rehabilitation plan. The insurer must pay for fees, books, supplies and equipment which are a prerequisite for the retraining and required by the provider of the training. Unless otherwise agreed upon by the insurer and the claimant, the insurer is not responsible for fees, books, supplies and/or equipment which are optional and not required to complete the retraining plan. For example, the purchase of student health insurance at a Montana university is an optional fee not required for enrollment. The payment of parking fees is

required for enrollment at Montana universities.

(a) Supplies include, but are not limited to, pens, paper, notebooks, etc. and are limited to $25 for each term of training. For example, a term of training is a semester, quarter, etc.

(b) Equipment includes, but is not limited to, calculators, computer hardware and/or software, ergonomic furniture, tools, etc. The insurer may choose to rent or lease rather than purchase the equipment, if the insurer determines it is more cost effective to do so.

(4) The insurer is not liable for tuition, fees, books or equipment costs incurred if the claimant fails to complete registration requirements or fails to properly withdraw from the agreed upon training program.

AUTH: 39-71-203, MCA
IMP: Title 39, chap. 71, part 10, MCA

NEW RULE XI DISPUTES OVER REHABILITATION EXPENSES

(1) Disputes between claimants and insurers over the entitlement to or payment of rehabilitation expenses must first be mediated and then may proceed to the Workers' Compensation Court.

AUTH: 39-71-203, MCA
IMP: Title 39, chap. 71, part 10, MCA

Reason: There is reasonable necessity to adopt proposed NEW RULE I in order to clarify the Department's ability to require employers to provide proof of coverage in Montana. The Department has recently had difficulty in confirming that some employers operating in the state have proper Montana workers' compensation coverage. While a certificate of insurance provides some evidence that a policy of workers' compensation insurance exists, in a number of instances the Department has discovered that coverage does not provide benefits pursuant to Montana law. This allows employers an alternative means to verify compliance with coverage requirements.

There is reasonable necessity to adopt proposed NEW RULES II through XI in order to implement the provisions of Chap. 122, L. of 1997, regarding the Department's role in payment of rehabilitation expenses to or on behalf of injured workers. The rules generally provide for a consistent form of requesting payment of rehabilitation expenses, the type of expenses eligible for payment, and criteria upon which the request will be evaluated, regardless of who or what is the payor or payment source. Because of the various forms of workers' compensation rehabilitation statutes in place over the years, it is reasonably necessary to generally cite the rules as implementing Title 39, chap. 71, part 10, MCA, so as to minimize the length and number of the rules necessary to implement the various statutory provisions as they have evolved through the years.

6. The Department of Labor and Industry proposes to repeal the following rules in their entirety. The rules

proposed for repeal are identified by the rule number, the catchphrase for the rule, the statute(s) that authorize and the statute(s) that the rule had implemented. In addition, the page number(s) where the rule can be found in the Administrative Rules of Montana is identified. Any person wishing to obtain a complete copy of any rule proposed for repeal should contact the person listed in paragraph 2 and request a copy of the rule or rules desired.

24.29.707 INEFFECTIVE ELECTION TO BE BOUND, RESULTING DIVISION ACTION
AUTH: 39-71-203, MCA
IMP: 39-71-408, 39-71-504 and 39-71-507, MCA
pages: 24-2097 and 24-2098

24.29.708 POSTING INSURANCE STATUS IN WORKPLACE
AUTH: 39-71-203 and 39-71-401, MCA
IMP: 39-71-401, MCA
pages: 24-2098 and 24-2099

24.29.802 SUPPORT DOCUMENTS FOR REPORTING
AUTH: 39-71-203, MCA
IMP: 39-71-203, MCA
page: 24-2101

24.29.803 COMPENSATION TO BE PAID
AUTH: 39-71-203, MCA
IMP: 39-71-740, MCA
page: 24-2101

24.29.805 CONTINUITY OF COMPENSATION PAYMENT
AUTH: 39-71-203, MCA
IMP: 39-71-741, MCA
page: 24-2102

24.29.807 PROTECTION OF PERSONS
AUTH: 39-71-203, MCA
IMP: 39-71-203, MCA
page: 24-2102

24.29.808 GENERAL RULES
AUTH: 39-71-203, MCA
IMP: 39-71-203, 39-71-605, and 39-71-1001, MCA
page: 24-2102

24.29.2821 MONTHLY CALCULATIONS OF FUND BALANCES AND TRANSFERS--UIEF
AUTH: 39-71-203, MCA
IMP: 39-71-532, MCA
page: 24-2294

24.29.2824 DETERMINING THE AMOUNT OF THE ADMINISTRATIVE COSTS BALANCE--UIEF
AUTH: 39-71-203, MCA

IMP: 39-71-532, MCA
page: 24-2294

24.29.2827 DETERMINING WHETHER THERE IS A POSITIVE FUND BALANCE--UIEF
AUTH: 39-71-203, MCA
IMP: 39-71-532, MCA
page: 24-2294.1

24.29.2829 NO BENEFITS PAID FROM THE UIEF TO CLAIMANTS
AUTH: 39-71-203, MCA
IMP: 39-71-532, MCA
page: 24-2294.1

24.29.2834 COLLECTION OF PENALTIES AND OTHER PAYMENTS FROM UNDERINSURED EMPLOYERS
AUTH: 39-71-203, MCA
IMP: 39-71-532, MCA
page: 24-2294.2

24.29.2837 CALCULATION OF PENALTY ON UNDERINSURED EMPLOYERS
AUTH: 39-71-203, MCA
IMP: 39-71-532, MCA
page: 24-2294.5

24.29.3701 PURPOSE
AUTH: 39-71-203, MCA
IMP: 39-71-433, MCA
page: 24-2335

24.29.3703 DEFINITIONS
AUTH: 39-71-203, MCA
IMP: 39-71-433, MCA
pages: 24-2335 and 24-2336

24.29.3704 PLAN OF OPERATION
AUTH: 39-71-203, MCA
IMP: 39-71-433, MCA
pages: 24-2336 and 24-2337

24.29.3707 ORGANIZATIONAL STRUCTURE
AUTH: 39-71-203, MCA
IMP: 39-71-433, MCA
page: 24-2337

24.29.3711 CERTIFICATION OF A GROUP
AUTH: 39-71-203, MCA
IMP: 39-71-433, MCA
page: 24-2337

24.29.3721 ANNUAL REPORT
AUTH: 39-71-203, MCA
IMP: 39-71-433, MCA

page: 24-2338

24.29.3726 DECERTIFICATION OF A GROUP
AUTH: 39-71-203, MCA
IMP: 39-71-433, MCA
page: 24-2338

24.29.3731 INDIVIDUAL APPLICANTS
AUTH: 39-71-203, MCA
IMP: 39-71-433, MCA
pages: 24-2339 and 24-2339

24.29.3741 DISPUTES
AUTH: 39-71-203, MCA
IMP: 39-71-433, MCA
page: 24-2339

Reason: There is reasonable necessity to repeal ARM 24.29.707 because the subject matter of the rule has been superseded by rules in ARM Title 24, chapter 29, subchapter 28, regarding operation of the uninsured employers' fund, and certain terms of the rule are in conflict with statute.

There is reasonable necessity to repeal ARM 24.29.708 because the main provisions of the rule are, in the Department's judgment, adequately expressed in statute, and thus the rule appears to be obsolete.

There is reasonable necessity to repeal ARM 24.29.802 because the subject matter of the rule has been superseded by ARM 24.29.1513.

There is reasonable necessity to repeal ARM 24.29.803 because the provisions of the rule are now expressed in statute, and thus the rule appears to be obsolete.

There is reasonable necessity to repeal ARM 24.29.805 because the provisions of the rule are now expressed in statute, and thus the rule appears to be obsolete.

There is reasonable necessity to repeal ARM 24.29.807 because the rule is no longer relied upon, and has not been invoked by any person for at least the last 10 years, and thus the rule appears to be obsolete and unnecessary.

There is reasonable necessity to repeal ARM 24.29.808 because the general requirements contained in the rule are now, in the Department's judgment, adequately expressed in statute, and thus the rule appears to be obsolete.

There is reasonable necessity to repeal the rules related to the Underinsured Employers' Fund (UIEF), found in ARM Title 24, chapter 29, subchapter 28, because of the elimination of the UIEF by Chap. 172, L. of 1997, and Chap. 310, L. of 1997.

There is reasonable necessity to repeal the rules related to trade group discounts, found in ARM Title 24, chapter 29, subchapter 37, because the Department's roles in certifying groups and individual members, as well as providing oversight, was eliminated by Chap. 310, L. of 1997.

7. 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:

Jim Hill, Bureau Chief
Workers' Compensation Regulations Bureau
Employment Relations Division
Department of Labor and Industry
P.O. Box 8011
Helena, Montana 59604-8011

and must be received by no later than 5:00 p.m., June 5, 1998.

8. The Department maintains a number of mailing lists of interested persons regarding a variety of topics. For more information about the mailing lists, or to have your name and address added to any or all of the interested persons lists, please contact Mark Cadwallader, Office of Legal Services, P.O. Box 1728, Helena, MT 59624-1728; telephone (406) 444-4493; TTY (406) 444-0532.

9. The Department has complied with the provisions of 2-4-302, MCA, and notified the bill sponsors about the proposed action regarding these rule amendments.

10. The Department proposes to make the amendments, adoptions and repeals effective July 1, 1998. The Department reserves the right to adopt only portions of the proposed amendments, adoptions or repeals, or to adopt some or all of the amendments, adoptions or repeals at a later date.

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

David A. Scott
Rule Reviewer

Patricia Haffey, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State: April 20, 1998.

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

In the matter of the proposed amendment of ARM 24.33.121 and 24.33.131, and the proposed repeal of ARM 24.33.141, related to the operation of the construction contractor registration program	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF ARM 24.33.121 AND 24.33.131, AND THE PROPOSED REPEAL OF ARM 24.33.141

TO ALL INTERESTED PERSONS:

1. On May 29, 1998, at 1:30 p.m., a public hearing will be held in the auditorium of the Scott Hart Building, 303 North Roberts, Helena, Montana, to consider the amendment of ARM 24.33.121 and 24.33.131, and the repeal of ARM 24.33.141, related to the operation of the construction contractor registration program.

2. The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you request an accommodation, contact the Department by not later than 5:00 p.m., May 22, 1998, to advise us of the nature of the accommodation that you need. Please contact the Employment Relations Division, Attn: Ms. Linda Wilson, P.O. Box 8011, Helena, MT 59604-8011; telephone (406) 444-6531; TTY (406) 444-5549; fax (406) 444-4140. Persons with disabilities who need an alternative accessible format of this document in order to participate in this rule-making process should contact Ms. Wilson.

3. The Department of Labor and Industry proposes to amend ARM 24.33.121 and 24.33.131 as follows: (new material underlined, deleted material interlined)

24.33.121 ~~CONSTRUCTION~~ CONTRACTOR REGISTRATION FEES

(1) ~~Effective October 1, 1995, the~~ The fee for the issuance, renewal or reinstatement of a ~~construction~~ contractor certificate of registration is ~~$80.00~~ $70.00. As of July 1, 1997, registrations are made for a two-year period, as provided by law.

AUTH: 39-9-103, MCA
IMP: 39-9-206, MCA

24.33.131 EVIDENCE OF COMPLIANCE WITH LAWS

(1) Compliance with workers' compensation laws must be demonstrated by ~~either~~:

~~(a) a certificate of insurance issued by the contractor's workers' compensation insurer (or self insured group) stating that the contractor's employees are covered for liability under the Montana Workers' Compensation Act and Occupational Disease Act; or~~

(a) verification by the department by use of the National Council on Compensation Insurance (NCCI) national workers' compensation database that the entity applying for construction contractor registration has current workers' compensation coverage; or

(b) a declarations page from the workers' compensation policy or a binder of coverage, provided all of the following conditions are met:

(i) the insurer is a company authorized to write workers' compensation coverage in Montana;

(ii) the name of the insured as shown on the declaration page or binder is the name of the applicant entity;

(iii) the federal employer identification number as shown on the declaration page or binder is consistent with the federal employer identification number of the applicant entity;

(iv) Montana is listed as a state under which laws the policy affords coverage;

(v) a policy number appears on the declaration page or binder; and

(vi) the declaration page or binder is signed by an authorized agent of the insurer; or

(~~b~~c) a written statement, made under oath, declaring the basis for each and every exemption to the coverage requirements of the Workers' Compensation Act that the applicant contends applies. If the applicant claims the independent contractor exemption, a copy of the applicant's exemption or an application for exemption must be attached to the registration application form.

~~(2) Compliance with unemployment insurance laws must be demonstrated by either:~~

~~(a) the Montana unemployment insurance account number; or~~

~~(b) a written statement, made under oath, that the contractor does not have any employees that are required to be covered for unemployment insurance purposes.~~

AUTH: 39-9-103, MCA
IMP: 39-9-202, MCA

Reason: There is reasonable necessity to amend ARM 24.33.121 in order to conform the rule to the provisions of House Bill 252 (Chapter 548, Laws of 1997) that change the terminology from "contractor" to "construction contractor" and establish a fee of $70.00 for a two-year registration.

There is reasonable necessity to amend ARM 24.33.131 in order to provide a person or entity wishing to register as construction contractors a method of proving compliance with the coverage requirements of the Workers' Compensation Act when coverage information has not yet been updated by the NCCI database. There is also reasonable necessity to amend the rule in order to specify the evidence that will prove compliance with Montana workers' compensation laws. The Department has recently had incidents where applicants have submitted a certificate of insurance, proving that the applicant has a workers' compensation insurance policy, but upon further inquiry, finding

out that coverage is not provided pursuant to Montana law. In addition, the Department has been tendered altered or forged certificates of insurance by employers as "proof of coverage". Accordingly, it is reasonably necessary to identify what documents must be presented in order to demonstrate compliance with Montana workers' compensation coverage requirements. In addition, there is also reasonable necessity to amend the rule in order to reflect the deletion of the requirement that the applicant demonstrate compliance with Montana's unemployment insurance laws, as provided by House Bill 252 (Chapter 548, Laws of 1997).

4. The Department of Labor and Industry proposes to repeal ARM 24.33.141 (ACCEPTABLE FORMS OF SECURITY) in its entirety. The rule proposed for repeal is found at pages 24-3005 and 24-3006 of the Administrative Rules of Montana. The rule implemented the provision of former sections 39-3-703 and 39-9-203, MCA. Authority to repeal the rule is section 39-9-103, MCA. There is reasonable necessity for the proposed repeal in order to implement House Bill 252 (Chapter 548, L. of 1997), because it repealed all the provisions of Title 39, chapter 3, part 7, MCA, as well as section 39-9-203, MCA, thereby removing the requirement for a construction contractor to post security with the Department. The rule, therefore, no longer serves any purpose. Any person wishing to obtain the text of the rule proposed for repeal may do so by contacting Ms. Wilson, as identified in paragraph 2.

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:

Jim Hill, Bureau Chief
Workers' Compensation Regulations Bureau
Employment Relations Division
Department of Labor and Industry
P.O. Box 8011
Helena, Montana 59604-8011

and must be received by no later than 5:00 p.m., June 5, 1998.

6. The Department maintains a number of mailing lists of interested persons regarding a variety of topics. For more information about the mailing lists, or to have your name and address added to any or all of the interested persons lists, please contact Mark Cadwallader, Office of Legal Services, P.O. Box 1728, Helena, MT 59624-1728; telephone (406) 444-4493; TTY (406) 444-0532.

7. The Department has complied with the provisions of 2-4-302, MCA, and notified the bill sponsor about the proposed action regarding these rule amendments.

8. The Department proposes to make the amendments and repeal effective as soon as feasible.

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

David A. Scott,
Rule Reviewer

Patricia Haffey, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State: April 20, 1998.

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

In the matter of the proposed amendment of ARM 24.35.111, 24.35.121, and 24.35.141, all related to the independent contractor exemption	) NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF ARM 24.35.111, 24.35.121 AND 24.35.141

TO ALL INTERESTED PERSONS:

1. On May 29, 1998, at 9:30 a.m., a public hearing will be held in the auditorium of the Scott Hart Building, 303 North Roberts, Helena, Montana, to consider the amendment of ARM 24.35.111, 24.35.121, and 24.35.141, all related to the independent contractor exemption.

2. The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you request an accommodation, contact the Department by not later than 5:00 p.m., May 22, 1998, to advise us of the nature of the accommodation that you need. Please contact the Employment Relations Division, Attn: Ms. Linda Wilson, P.O. Box 8011, Helena, MT 59604-8011; telephone (406) 444-6531; TTY (406) 444-5549; fax (406) 444-4140. Persons with disabilities who need an alternative accessible format of this document in order to participate in this rule-making process should contact Ms. Wilson.

3. The Department of Labor and Industry proposes to amend its rules as follows: (new material underlined, deleted material interlined)

24.35.111 APPLICATION FOR INDEPENDENT CONTRACTOR EXEMPTION

(1) As provided by 39-71-401(3), MCA, a sole proprietor, working member of a partnership, working member of a limited liability partnership, or working member of a member-managed limited liability company who represents to the public that the person is an independent contractor shall elect to be bound by the provisions of a workers' compensation plan but may apply for an exemption from the Workers' Compensation Act. In order to obtain an independent contractor exemption, an applicant must:

(a) submit a department application affidavit form bearing the applicant's notarized signature in which the applicant swears or affirms under oath that the statements contained in the form are true and accurate to the best of their ability; and

(b) pay a fee, ~~if~~ as required by ARM 24.35.121.

(2) Remains the same.

(3) An application that is approved and for which the exemption certificate is issued, shall be in effect for ~~one~~ three years unless the department revokes the exemption certificate or is notified in writing prior to the expiration date that the exemption holder wishes to have the exemption

revoked.
AUTH: 39-71-203 and 39-71-401, MCA
IMP: 39-71-120, 39-71-401 and 39-71-409, MCA

24.35.121 APPLICATION FEE FOR INDEPENDENT CONTRACTOR EXEMPTION (1) For the purposes of this rule, the following definitions apply:

(a) "Initial application" means a person's first-time application for exemption as an independent contractor in a particular trade(s), occupation(s), profession(s) or business(es). ~~For example, if a person holds an exemption for general carpentry, and that person wishes to become exempt as a mechanic, the application for exemption as a mechanic will be considered an initial application.~~

(b) "Renewal application" means an application for ~~annual~~ renewal of an existing independent contractor exemption held by that person.

(c) "Subsequent application" means:

(i) an application submitted for reconsideration following the department's denial of an initial application or renewal application;

(ii) an application submitted during a current exemption period requesting the deletion, revision or addition of the trades, occupations, professions, or businesses for which the current exemption was issued; ~~and~~ or

(iii) an application to reinstate an independent contractor exemption that has been suspended, revoked or terminated.

~~(2) There is no application fee for an initial application.~~

(~~3~~2) There is a $25 fee for each initial and renewal application.

~~(a) For persons holding valid independent contractor exemptions as of June 30, 1995, the $25 fee is waived for the first renewal application during fiscal year 1996.~~

(~~4~~3) The department may charge a $25 fee for each subsequent application.

(4) The department may charge a $10 fee for the reissuance of a current certificate.

(5) If a person is concurrently registering with the department as a construction contractor pursuant to Title 39, chapter 9, MCA, and rules adopted to implement that chapter, the initial and renewal application fee for an independent contractor exemption is waived.

AUTH: 39-9-103, 39-71-203 and 39-71-401, MCA
IMP: 39-9-206, 39-71-120 and 39-71-401, MCA

24.35.141 GUIDELINES FOR DETERMINING WHETHER AN INDEPENDENT CONTRACTOR EXEMPTION IS NEEDED (1) and (2) Remain the same.

(3) As used in this rule, "owner" means a sole proprietor, working member of a partnership, working member of a limited liability partnership, or working member of a member-managed limited liability company.

(4) and (5) Remain the same.

AUTH: 39-71-203 and 39-71-401, MCA
IMP: 39-71-120 and 39-71-401, MCA

Reason: There is reasonable necessity to amend ARM 24.35.111 and 24.35.121 in order to implement the changes to 39-71-120 and 39-71-401, MCA, that resulted from the provisions of Chap. 458, L. of 1997 (HB 252) and Chap. 310, L. of 1997. In addition, there is reasonable necessity to amend ARM 24.35.111 and 24.35.141 in order to implement the addition of working members of a limited liability partnership in 39-71-401(2)(d) and (3)(a), MCA, as provided by Chap. 172, L. of 1997.

4. The use of the phrase "remains the same" is encouraged by the Secretary of State in order to improve readability by highlighting the proposed changes in a rule and also to lower the cost of rule-making. Any person wishing to obtain the full text of any Department rule proposed for amendment in this Notice may do so by contacting Ms. Wilson (identified in paragraph 2, above), identifying the rule(s) sought, and requesting a copy.

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:

Jim Hill, Bureau Chief
Workers' Compensation Regulations Bureau
Employment Relations Division
Department of Labor and Industry
P.O. Box 8011
Helena, Montana 59604-8011

and must be received by no later than 5:00 p.m., June 5, 1998.

6. The Department maintains a number of mailing lists of interested persons regarding a variety of topics. For more information about the mailing lists, or to have your name and address added to any or all of the interested persons lists, please contact Mark Cadwallader, Office of Legal Services, P.O. Box 1728, Helena, MT 59624-1728; telephone (406) 444-4493; TTY (406) 444-0532.

7. The Department has complied with the provisions of 2-4-302, MCA, and notified the bill sponsor about the proposed action regarding these rule amendments.

8. The Department proposes to make the amendments effective as soon as feasible.

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

David A. Scott,
Rule Reviewer

Patricia Haffey, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State: April 20, 1998.

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

In the matter of the proposed amendment of ARM 24.35.202, 24.35.205, 24.35.213, 24.35.301 and 24.35.303, all related to the independent contractor central unit	) NOTICE OF PUBLIC HEARING ON) THE PROPOSED AMENDMENT OF ARM) 24.35.202, 24.35.205,) 24.35.213, 24.35.301) AND 24.35.303

TO ALL INTERESTED PERSONS:

1. On May 29, 1998, at 10:30 a.m., or as soon thereafter as is possible, a public hearing will be held in the auditorium of the Scott Hart Building, 303 North Roberts, Helena, Montana, to consider the amendment of ARM 24.35.202, 24.35.205, 24.35.213, 24.35.301 and 24.35.303, all related to the operation of the Department's independent contractor central unit.

2. The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you request an accommodation, contact the Department by not later than 5:00 p.m., May 22, 1998, to advise us of the nature of the accommodation that you need. Please contact the Employment Relations Division, Attn: Ms. Linda Wilson, P.O. Box 8011, Helena, MT 59604-8011; telephone (406) 444-6531; TTY (406) 444-5549; fax (406) 444-4140. Persons with disabilities who need an alternative accessible format of this document in order to participate in this rule-making process should contact Ms. Wilson.

3. The Department of Labor and Industry proposes to amend its rules as follows: (new material underlined, deleted material interlined)

24.35.202 DETERMINATIONS REGARDING EMPLOYMENT STATUS

(1) through (4) Remain the same.

(5) ICCU determinations regarding employment status are binding on the department and on any other agency which elects to be included as a member of the department's ICCU, subject to the limitations contained in ARM 24.35.205(3), as well as on all similarly situated individuals in the employer's business. This does not include any agency which is merely appearing before the ICCU as a party in an employment status case (for example the state compensation insurance fund), and has not elected to be included as a member of the ICCU.

AUTH: 39-3-202, 39-3-403, 39-51-301, 39-51-302 and 39-71-203, MCA
IMP: 39-3-208, 39-3-209, 39-3-210, 39-51-201, 39-51-203, 39-71-120 and 39-71-415, MCA

24.35.205 BINDING NATURE OF DETERMINATIONS REGARDING EMPLOYMENT STATUS (1) Unless appealed pursuant to ARM

24.35.206, written determinations issued by the ICCU are binding on all parties with respect to employment status issues under the jurisdiction of the department of labor and industry and the jurisdiction of any other agency which elects to be included as a member of the ICCU. These determinations may affect a party's liability in matters related to unemployment insurance, the uninsured employers' fund, ~~the underinsured employers' fund,~~ wage and hour issues, state income tax withholding and old fund liability tax.

(2) through (4) Remain the same.

AUTH: 39-3-202, 39-3-403, 39-51-301, 39-51-302 and 39-71-203, MCA
IMP: 39-3-212, 39-51-1109, 39-71-120 and 39-71-415, MCA

24.35.213 APPEAL OF FINDINGS, CONCLUSIONS AND DECISION ON EMPLOYMENT STATUS (1) through (3) Remain the same.

(4) If the appeals referee's findings of fact, conclusions of law and decision concerns a determination regarding an uninsured employers' fund ~~or underinsured employers' fund~~ penalty issue, the appeal will be to the Montana workers' compensation court, pursuant to 39-71-504 and 39-71-532, MCA.

(5) Remains the same.

AUTH: 39-3-202, 39-3-403, 39-51-301, 39-51-302 and 39-71-203, MCA
IMP: 2-4-611, 2-4-623, 39-3-216, 39-51-1109, 39-71-415, 39-71-504, 39-71-532 and 39-71-2401, MCA

24.35.301 DEFINITION OF INDEPENDENT CONTRACTOR

(1) Remains the same.

(2) For independent contractor determinations made pursuant to 39-71-120, MCA, the above two-part test is augmented by the requirement that the individual also receive "an exemption granted under 39-71-401(3) or elect to be bound personally and individually by the provisions of a workers' compensation plan." Rules regarding the exemption process are located at ARM Title 24, chapter 35, subchapter 1.

AUTH: 39-3-202, 39-3-403, 39-51-301, 39-51-302 and 39-71-203, MCA
IMP: 39-3-201, 39-51-201, 39-51-204, 39-71-120 and 39-71-401(3), MCA

24.35.303 DEFINITION OF INDEPENDENT CONTRACTOR--INDEPENDENTLY ESTABLISHED BUSINESS (1) To be an independent contractor, an individual must be engaged in an independently established trade, occupation, profession or business. An independently established business may exist if the individual:

(a) through (j) Remain the same.

(k) has an independent contractor exemption or is bound personally and individually by the provisions of a workers' compensation plan as required by ~~39-71-120 and~~ 39-71-401(3), MCA;

(l) and (m) Remain the same.

(2) Remains the same.

AUTH: 39-3-202, 39-3-403, 39-51-301, 39-51-302 and 39-71-203,

MCA
IMP: 39-3-201, 39-51-201, 39-51-204, 39-71-120 and 39-71-401(3), MCA

Reason: There is reasonable necessity to amend ARM 24.35.202 in order to clarify that the independent contractor central unit (the ICCU) will make determinations regarding not only named individuals, but also any similarly situated individual. The term "similarly situated individual" is defined in ARM 24.35.201(8). The inclusion of the phrase does not preclude a putative employer from challenging the determination as to any specific individual, whether named by the ICCU or not in its determination.

There is reasonable necessity to amend ARM 24.35.205 and 24.35.213 in order to delete the reference to the underinsured employers' fund, which was eliminated pursuant to Chap. 172, L. of 1997 and Chap. 310, L. of 1997.

There is reasonable necessity to amend ARM 24.35.301 and 24.35.303 in order to clarify that an individual may be in compliance with the Workers' Compensation Act as an independent contractor by either obtaining an exemption or by being personally bound for coverage under the Act. The amendments are necessary to implement provisions of Chap. 548, L. of 1997, which changed the definition of an independent contractor for purposes of the Workers' Compensation Act by eliminating the requirement in 39-71-120(1), MCA, that an independent contractor obtain an exemption.

4. The use of the phrase "remains the same" is encouraged by the Secretary of State in order to improve readability by highlighting the proposed changes in a rule and also to lower the cost of rule-making. Any person wishing to obtain the full text of any Department rule proposed for amendment in this Notice may do so by contacting Ms. Wilson (identified in paragraph 2, above), identifying the rule(s) sought, and requesting a copy.

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:

Jim Hill, Bureau Chief
Workers' Compensation Regulations Bureau
Employment Relations Division
Department of Labor and Industry
P.O. Box 8011
Helena, Montana 59604-8011

and must be received by no later than 5:00 p.m., June 5, 1998.

6. The Department maintains a number of mailing lists of interested persons regarding a variety of topics. For more

information about the mailing lists, or to have your name and address added to any or all of the interested persons lists, please contact Mark Cadwallader, Office of Legal Services, P.O. Box 1728, Helena, MT 59624-1728; telephone (406) 444-4493; TTY (406) 444-0532.

7. The Department has complied with the provisions of 2-4-302, MCA, and notified the bill sponsor about the proposed action regarding these rule amendments.

8. The Department proposes to make the amendments effective as soon as feasible.

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

David A. Scott,
Rule Reviewer

Patricia Haffey, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State: April 20, 1998.

BEFORE THE BOARD OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of adoption of new rules I through VI as they relate to equine infectious anemia and amendment of rule 32.3.216 as it relates to importation of animals into Montana	))))))	NOTICE OF PROPOSED ADOPTION AND AMENDMENT NO PUBLIC HEARING CONTEMPLATED

TO: ALL INTERESTED PERSONS:

1. On June 1, 1998, the board of livestock (board) proposes to adopt new rules I, II, III, IV, V and VI; and amend rule 32.3.216.

2. The proposed new rules provide as follows:

"RULE I DEFINITIONS (1) "Equidae or equids" include all horses (E. cabalus), asses (E. asinus), zebras (E. equiferus), their crosses, and other members of the equidae family as determined by the state veterinarian.

(2) "Equine infectious anemia" (EIA) is an infectious, contagious and potentially fatal viral disease of equidae.

(6) "Official tests" for EIA shall include the AGID test, the C-ELISA test and other EIA tests approved by USDA or the state veterinarian conducted by an approved individual at an approved laboratory.

(5) "Official identification" of equine tested for EIA is a description of the equine to include the following: age, sex, breed, color, the animal's name and distinctive markings (e.g., color patterns, brands, tattoos, scars, or blemishes). In the absence of any distinctive color markings or any form of visible permanent identification (brands, tattoos, or scars) the animal must be identified by showing the location of all hair whorls, vortices or cow licks with an "X" on the illustration provided on an official form. Other forms of identification may be used as they are developed and approved by the state veterinarian.

(4) "Official EIA test report forms" are the USDA, APHIS VS form 10-11 or other similar form approved by the state veterinarian. A completed form must contain official identification of the equid and must list the owner's name, the address and county of the animal's home premise, the name and address of the authorized individual collecting the test sample, the laboratory name and address, and the individual's name that conducted the test. The EIA test document shall list one animal only.

(7) A "reactor" is an equid that is positive to an official EIA test. It shall be declared to be infected with EIA and shall be designated as an EIA reactor.

(3) "Exposed equids" are equidae that have been in a herd with reactors or have been in contact with a reactor for 7 days or more at a distance of less than 200 yards."

AUTH: 81-2-102, MCA
IMP: 81-2-102, MCA

"RULE II BLOOD TESTING PROCEDURES (1) Equine blood samples collected for official EIA tests shall be collected by a state or federal animal health official or a veterinarian who is licensed, deputized and accredited in the state in which the animal being tested is located.

(2) Official EIA test samples shall be accompanied to the testing laboratory by a completed official EIA test report form. The veterinarian or animal health official collecting the EIA test samples shall record the date the samples were collected and affix his/her signature to the official EIA test report.

(3) Official EIA tests shall be conducted in a laboratory approved by USDA and the office of the state veterinarian."

AUTH: 81-2-102, MCA
IMP: 81-2-102, MCA

"RULE III A REPORTABLE DISEASE (1) All laboratories conducting EIA tests on Montana origin equids and all veterinarians who diagnose EIA in Montana equids shall report positive results of all EIA tests and diagnoses to the department of livestock within one working day of such test or diagnosis. Negative test results shall be reported in the regular manner."

AUTH: 81-2-102 MCA
IMP: 81-2-102, MCA

"RULE IV RETESTING OF REACTOR HORSES (1) The department of livestock may require or recommend a retest of an EIA reactor to confirm infection or identification of the animal. In cases where a confirmatory test is conducted, the final determination of infection shall be delayed until the results of the confirmatory test are available. The animal on which a confirmatory test is to be conducted shall be placed under an official hold order until the results of the confirmatory test are available."

AUTH: 81-2-102, MCA
IMP: 81-2-102, MCA

"RULE V DISPOSITION OF REACTOR HORSES (1) Equids found to be infected with EIA shall be quarantined to the premise where the animal was found to be infected, the owner's

premise, or another premise approved by the department of livestock and are subject to the provisions of ARM Title 32, chapter 3, sub-chapter 1.

(2) The EIA reactor shall remain under quarantine until it is:

(a) consigned to slaughter at a USDA approved equine slaughter establishment;

(b) euthanized (or dies) and is buried or incinerated; or

(c) is donated to an approved university or other research facility for use in EIA research projects.

(3) Movement of any rector must be accompanied by a USDA, APHIS VS form 1-27.

(4) The quarantine premise or area for EIA reactors shall provide no less than 200 yards separation from all other equids. The quarantine area and quarantined animals therein may be monitored periodically by a representative of the department of livestock to ensure that provisions of the quarantine are being met. Any EIA reactor not held in quarantine may be ordered euthanized or sent to slaughter.

(5) All equids found to be infected with EIA shall be identified with an 81A brand on the left neck or left shoulder which will be followed by a number issued by the state veterinarian's office. Identification as an EIA reactor shall be accomplished within 15 days of notification that the animal is infected with EIA. The 81A brand shall be at least 2 inches high and may be either a hot iron brand or a freeze brand. The 81A brand will be assigned in sequence from the state veterinarian's office."

AUTH: 81-2-102, MCA
IMP: 81-2-102, MCA

"RULE VI TESTING OF EXPOSED EQUIDS (1) EIA exposed equids, as defined by new Rule I shall be placed under a hold order until the animals have been tested negative to EIA at least 45 days after the last reactor animal has been removed from the premise. Individual exposed equids may be allowed to move under hold order for specific purposes as approved by the state veterinarian if they have a negative EIA test prior to movement. Such movement shall not be longer than 15 days."

AUTH: 81-2-102, MCA
IMP: 81-2-102, MCA

3. The board proposes the adoption of these rules for the purpose of allowing the department of livestock flexibility in dealing with a changing disease scenario involving equine infectious anemia (EIA) which could have serious adverse affects upon the horses in the state of Montana and those citizens of Montana who own them.

4. The rule proposed to be amended by the board provides as follows: (text of present rule with matter to be stricken interlined and new matter added, then underlined)

"32.3.216 HORSES, MULES AND ASSES (1) Horses, mules and asses and other equidae may enter the state of Montana provided they are transported or moved in conformity with ARM 32.3.201 through 32.3.211. Such animals 6 months of age and over must be tested negative for EIA within the previous 12 months as a condition for obtaining the permit required by ARM 32.3.204.

(2) Unless otherwise specifically provided in this rule all horses, asses and other equidae that are moved into the state of Montana shall be accompanied by an official certificate of veterinary inspection or equine passport certificate from the state of origin stating that the equidae are free from evidence of any communicable disease and have completed EIA test and identification requirements as defined in new Rule I using procedures outlined in new Rule II.

(3) Entry of equidae into Montana shall not be allowed until the EIA test has been completed and reported negative. Equidae with tests pending are not acceptable. Equidae that test positive to EIA test shall be not permitted entry into Montana except by special written permission from the state veterinarian and must be branded and moved in conformity with the USDA EIA movement regulations.

(4) A nursing foal accompanied by the EIA negative dam is exempt from the test requirements.

(5) Working equids used for seasonal ranching purposes may be exempt from the requirements of this rule if the animals have been included on a current grazing herd plan that has received prior approval from the department of livestock and the chief livestock sanitary official in a western state that reciprocates with Montana in honoring grazing herd plans.

(6) Equids being moved directly to a USDA approved equine slaughter establishment may be exempted from EIA test requirements.

(7) The department of livestock may develop cooperative reciprocal agreements with neighboring states that exempt EIA testing requirements for movement of equidae between the cooperating states.

(8) Provided there is a written agreement between the department of livestock and the chief livestock sanitary official of the state of destination, equids may be moved from Montana to other states or from other states to Montana for shows, rides or other equine events and return on an equine passport certification under a state system of equine certification acceptable to the cooperating states.

(a) Equine passport certificates cannot be used when equids are moved for the purposes of sale or change of ownership of the equid, animal breeding activities, or

movements that involve stays of longer than 90 days. Equids moved for these purposes must be accompanied by a certificate of veterinary inspection.

(b) Equine passport movement must involve short term travel to or from the state of Montana for participation in equine activities including but not limited to participation in equine events, shows, rodeos, roping, trail rides and search and rescue activities.

(c) Equine passport certificates shall be valid for only one animal and shall contain the following information:

(i) the name and address of the owner;

(ii) the location at which the animal is stabled, housed, pastured or kept, if different from that of the owner;

(iii) an accurate description and identification of the animal as defined in new Rule I;

(iv) the date of veterinary inspection;

(v) the date and results of the EIA or other required tests or vaccinations; and

(vi) the signature of the inspecting veterinarian.

(d) No certificate or veterinary inspection or equine passport certificate shall be issued for equine to enter Montana unless it is complete in all respects with requirements of the state of Montana.

(e) Equine passport certificates must be properly completed with the required tests and certifications recorded on the certificate and a copy of the completed certificate must be submitted to and approved by the department of livestock.

(f) Equine passport certificates shall be valid for no longer than 6 months from the date the EIA sample is collected if an EIA test is required, or 6 months from the date of inspection if no EIA test is required.

(g) The recipients of equine passport certificates shall be required to submit a travel itinerary to the state veterinarian's office within 10 working days following the date of expiration of the certificate. The travel itinerary shall include a listing of all travel, including dates, purpose and destinations of travel that the equid made into and out of the state of Montana during the validity of the certificate.

(h) The department of livestock may cancel any equine passport certificate in the event of serious or emergency disease situations or for certificate holder's failure to comply with the rules that apply to such certificates. Cancellation of the certificate may be accomplished by written or verbal notice to the certificate holder. Verbal notice shall be confirmed by written notice. The canceled certificate will become invalid on the date and at the time of notification."

AUTH: 81-23-302, MCA
IMP: 81-23-302, MCA

5. Rule 32.3.216 is being amended because it will allow the department of livestock to effectuate better control mechanisms for the prevention of the introduction of equine infectious anemia (EIA) into the state of Montana.

6. Interested parties may submit their data, views, or arguments concerning the proposed adoption and amendments in writing to the Department of Livestock, 301 N. Roberts St. - RM 307, PO Box 202001, Helena, MT 59620-2001. Any comments must be received no later than May 29, 1998.

7. If a person who is directly affected by the proposed adoption and 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 the Department of Livestock, 301 N. Roberts St. - RM 307, PO Box 202001, Helena, MT 59620-2001. Any comments must be received no later than May 29, 1998.

8. If the agency receives requests for a public hearing on the proposed adoption and amendments from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed actions; from the administrative code committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be greater than 25 persons based on the number of brands and organizations which are exclusive to horse ownership.

9. The two-bill sponsor notice requirements of section 2-4-302, MCA, do not apply.

10. The board of livestock maintains a list of interested persons who wish to receive notices of rule making 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. Such written request may be mailed or delivered to the board of livestock office at PO Box 202001, Helena, Montana, 59620-2001, or faxed to the office at (406)444-1929.

MONTANA BOARD OF LIVESTOCK
JOHN PAUGH, Chairman

By: _____
A. Laurence Petersen, Exec. Officer, Board of Livestock

By: _____
Lon Mitchell, Rule Reviewer
Livestock Chief Legal Counsel

Certified to the Secretary of State April 20, 1998.

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

In the matter of the amendment of 46.12.1221, 46.12.1222, 46.12.1228, 46.12.1229, 46.12.1231, 46.12.1232, 46.12.1235, 46.12.1237, 46.12.1241, 46.12.1245, 46.12.1246, 46.12.1251, 46.12.1254, 46.12.1258, 46.12.1260 and 46.12.1265 pertaining to medicaid coverage and reimbursement of nursing facility services	)	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Interested Persons

1. On May 20, 1998, at 1:30 p.m., a public hearing will be held in Room 107 of the Department of Public Health and Human Services Building, 111 N. Sanders, Helena, Montana to consider the proposed amendment of 46.12.1221, 46.12.1222, 46.12.1228, 46.12.1229, 46.12.1231, 46.12.1232, 46.12.1235, 46.12.1237, 46.12.1241, 46.12.1245, 46.12.1246, 46.12.1251, 46.12.1254, 46.12.1258, 46.12.1260 and 46.12.1265 pertaining to medicaid coverage and reimbursement of nursing facility services.

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 May 11, 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.

46.12.1221 SCOPE, APPLICABILITY AND PURPOSE (1) through (3) remain the same.

~~(4) The purpose of the department's rules relating to medicaid reimbursement of nursing facility services is to provide, as required by federal law, for payment for nursing facility services through rates which are reasonable and adequate to meet the costs, including the costs of services required to attain or maintain the highest practicable physical,~~

~~mental and psychosocial well being of each medicaid recipient, which must be incurred by efficiently and economically operated facilities in order to provide care and services in conformity with applicable state and federal laws, regulations and quality and safety standards.~~

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

46.12.1222 DEFINITIONS Unless the context requires otherwise, in subchapter 12 the following definitions apply:

(1) through (12) remain the same.

(14) through (14)(g) remain the same in text but are renumbered (13) through (13)(g).

(h) nonemergency routine transportation as defined in ~~(13)~~ (12).

(15) through (20) remain the same in text but are renumbered as (14) through (19).

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

46.12.1228 RATE EFFECTIVE DATES (1) Except as specifically provided in these rules, per diem rates and interim rates are set ~~only~~ no more than once a year, effective July 1, and remain in effect at least through June 30 of the following year. ~~Revised rates based on new calculations are effective only on July 1 of each year, except as specifically otherwise provided in these rules.~~

(a) Nothing in this subchapter shall be construed to require that the department apply any inflation adjustment, recalculate the median operating costs or the statewide median average wage, or otherwise adjust or recalculate per diem rates or interim rates on July 1 of a rate year, unless the department adopts further rules or rule amendments providing specifically for a rate methodology for the rate year.

(b) After the department has determined the median operating costs under ARM 46.12.1229 and the statewide median average wage under ARM 46.12.1231 for a rate year and has established provider rates based upon those determinations, the median operating costs and the statewide median average wage will not be revised or redetermined, except as provided in (1)(c), regardless of changes in provider costs resulting from base period cost report adjustments or other causes.

(c) The median operating costs under ARM 46.12.1229 and the statewide median average wage under ARM 46.12.1231 used to establish rates for a rate year will be redetermined only as required to set new rates for all providers for a subsequent rate year based upon adoption of further rules or amendments to these rules providing specifically for a rate methodology for a

new or a subsequent rate year.

(2) A provider's rate established July 1 of the rate year shall remain in effect throughout the rate year and throughout subsequent rate years, regardless of any other provision in this subchapter, until the earlier of:

(a) the effective date of a new rate established in accordance with a new rule or amendment to these rules, adopted after the establishment of the current rate, which specifically provides a rate methodology for the new or subsequent rate year;

~~(2)~~ (b) the effective date of a ~~The department will~~ change ~~a~~ in the provider's operating cost component ~~on a date other than July 1 of the rate year only upon~~:

(i) as specified in the department's notice of final settlement of a cost report based upon a desk review or audit which results in adjustment of the base period operating costs used by the department to calculate the provider's ~~rate~~ operating cost component; or

(ii) as provided in ARM 46.12.1243 ~~(2)(e)~~.;

~~(3)~~ (c) the effective date of a ~~The department will~~ change ~~a~~ in the provider's direct nursing personnel cost component ~~on a date other than July 1 of the rate year only~~:

~~(a)~~ (i) ~~as of January 1 of the rate year~~ as provided in ARM 46.12.1232(7)(a);

~~(b)~~ (ii) as specified in ~~upon~~ the department's notice of final settlement of a cost report based upon a final desk review or audit which results in adjustment of the base period direct nursing personnel costs used by the department to calculate the provider's ~~rate~~ direct nursing personnel cost compenent; or

~~(c)~~ (iii) as provided in ARM 46.12.1243~~(2)(c)~~.; or

~~(4)~~ (d) the effective date of a ~~The department will~~ change ~~a~~ in the provider's property cost component ~~on a date other than July 1 of the rate year only upon~~:

~~(a)~~ (i) upon certification of newly constructed beds as provided in ARM 46.12.1237(4);

~~(b)~~ (ii) upon completion of an extensive remodeling (as defined in ARM 46.12.1222) as provided in ARM 46.12.1237(5);

(iii) as specified in the department's notice of final settlement of a cost report based upon a final desk review or audit which results in adjustment of the base period property costs used by the department to calculate the provider's property cost component; or

~~(c)~~ (iv) as provided in ARM 46.12.1243~~(2)(e)~~.

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

46.12.1229 OPERATING COST COMPONENT (1) remains the same.

(a) Nothing in this rule shall be construed to provide for an automatic rate increase on July 1 of a new rate year. A provider's rate in effect immediately prior to July 1 of a new rate year shall remain in effect throughout the new rate year

and subsequent rate years except as provided in ARM 46.12.1228.

(2) As used in this rule, the following definitions apply:

(2)(a) and (b) remain the same.

(c) "Inflated" means that the costs in question are indexed from the midpoint of the base period to the midpoint of the rate year, according to the DRI-HC. Regardless of any other provision of these rules, if base period costs are from the same period for which the rate is being set, such costs will not be inflated for purposes of this rule. Base period costs will not be inflated and a new rate will not be effective for a new rate year or a subsequent rate year except as provided in ARM 46.12.1228.

(2)(d) remains the same.

(e) "Operating costs" means allowable patient-related administrative costs (including home office and management fees), dietary, laundry, housekeeping, plant operation, social services, activities, insurance and taxes, other than employment related insurance and taxes that are direct nursing personnel costs as defined in ARM 46.12.1231, and all other allowable direct and indirect patient-related ~~service~~ costs, subject to the provisions of ARM 46.12.1258, which are not ~~included in the~~ direct nursing personnel costs, ~~component~~ as defined in ARM 46.12.1231, or ~~the~~ property ~~cost component~~ costs, as defined in ARM 46.12.1237.

(2)(e)(i) through (3)(a) remain the same.

(4) The operating cost limit is ~~103%~~ 102% of median operating costs.

(5) If the provider's inflated base period per diem operating cost is less than the operating cost limit calculated in accordance with (4), the provider's operating cost component shall include an incentive allowance equal to the lesser of 10% of median operating costs or ~~27%~~ 20% of the difference between the provider's inflated base year per diem operating cost and the operating cost limit.

(5)(a) remains the same.

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

46.12.1231 DIRECT NURSING PERSONNEL COST COMPONENT

(1) remains the same.

(a) Nothing in this rule shall be construed to provide for an automatic rate increase on July 1 of a new rate year. A provider's rate in effect immediately prior to July 1 of a new rate year shall remain in effect throughout the new rate year and subsequent rate years except as provided in ARM 46.12.1228.

(2) As used in this rule, the following definitions apply:

(2)(a) through (2)(b)(i) remain the same.

(c) "Direct nursing personnel cost" means allowable direct nursing personnel wages, salaries and benefits, to the extent such are direct costs of patient-related services actually rendered within the facility and are separately identifiable,

rather than merely allocable, as such. Direct nursing personnel costs include the accrued wages, salaries and benefits of direct nursing personnel, ~~registered nurses, licensed practical nurses, nurse aides, and director of nursing, if any,~~ to the extent such wages, salaries and benefits meet the other requirements of this definition and subject to the provisions of ARM 46.12.1258. For purposes of this subchapter, direct nursing personnel include only registered nurses, licensed practical nurses, nurse aides, and, to the extent engaged in actual patient care rather than nursing administration, the director of nursing.

(2)(d) remains the same.

(e) "Inflated" means that the costs in question are indexed from the midpoint of the base period to the midpoint of the rate year, according to the DRI-HC. Regardless of any other provision of these rules, if base period costs are from the same period for which the rate is being set, such costs will not be inflated for purposes of this rule. Base period costs will not be inflated and a new rate will not be effective for a new rate year or a subsequent rate year except as provided in ARM 46.12.1228.

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

(4) The direct nursing personnel cost limit is ~~109%~~ 104% of the statewide median average wage, multiplied by the provider's most recent average patient assessment score, determined in accordance with ARM 46.12.1232.

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

46.12.1232 PATIENT ASSESSMENT SCORING AND STAFFING REQUIREMENTS (1) Each provider must report to the department each month the care provided for each medicaid resident in the facility on the forms provided and in accordance with the patient assessment manual and instructions supplied by the department, which contains requirements and instructions for completion of patient abstracts. The patient assessment manual dated September 1991 is hereby adopted and incorporated herein by reference. A copy of this manual is available from the Department of ~~Social and Rehabilitation Services, Medicaid Services Division~~ Public Health and Human Sevices, Senior and Long Term Care Division, 111 N. Sanders, P.O. Box 4210, Helena, MT 59604-4210.

(2) through (4)(a) remain the same.

(5) No more than ~~Once~~ once a year, for purposes of determining the direct nursing personnel cost component as provided in ARM 46.12.1231, the department will determine the provider's average patient assessment score, using the methodology described in ~~subsection~~ (4)(a), considering such hours as are allowable under the patient assessment manual and based upon all patient assessment information for the provider from a survey period consisting of the previous 6-month period of October through March inclusive.

(5)(a) through (8)(b)(ii) remain the same.

(9) Nothing in this rule shall be construed to require the department to revise the provider's rate or establish a new rate based upon an annual monitor or new or revised patient assessment score, except as provided in ARM 46.12.1228.

AUTH: Sec. 53-6-113, MCA
IMP: Sec. 53-2-201, 53-6-101, 53-6-108, 53-6-111 and 53-6-113, MCA

46.12.1235 OBRA COST REIMBURSEMENT (1) remains the same.

(2) Each provider must document and submit to the department on a quarterly basis information on the nurse aide certification training and competency evaluation (testing) costs, including but not limited to the costs of training for nurse aides ~~other than~~ and the costs of actual testing required for nurse aides, incurred at the facility and, in the case of competency evaluation (testing) costs for providers that are not testing entities, incurred in payment of a qualified testing entity's fee for competency evaluation (testing). The required information must be submitted quarterly on the nurse aide certification/training and competency evaluation (testing) survey reporting form provided by the department and must include the total dollars incurred in each of the categories of facility personnel, supplies and equipment, ~~and~~ subcontracted services and testing fees. The reporting form must include a brief description of the items included in each of the ~~three~~ four categories.

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

(a) Nurse aide certification training and competency evaluation (testing) costs documented in accordance with (2) and allowable under ARM 46.12.1258 will be reimbursed to the extent provided under the per diem rate determined under ARM 46.12.1226. No further reimbursement will be provided for such costs.

~~(b) Medicaid reimbursement for nurse aide competency evaluation (testing) will be reimbursed quarterly according to the following procedures and requirements.~~

~~(i) The department will reimburse the nursing facility as provided in this subsection for the medicaid share of the facility's test costs for qualifying nurse aide tests.~~

(4) ~~(ii) Qualifying~~ For purposes of reporting under (2), nurse aide tests are those tests which:

~~(A)~~ (a) demonstrate competency through testing methods which address each course requirement and include successful completion of both a written or oral examination and a demonstration of the skills required to perform the tasks required of a nurse aide;

~~(B)~~ (b) are performed at either a nursing facility which is currently in compliance with medicaid nursing facility participation requirements or at a regional testing site at regularly scheduled testing times;

~~(c)~~ (c) are administered to nurse aides actually employed by the facility ~~seeking reimbursement~~; and

~~(d)~~ (d) do not exceed a third attempt by the individual nurse aide to successfully complete the portion of the test for which ~~reimbursement is sought~~ costs are reported. The written/oral examination and the skills demonstration may be taken separately if the nurse aide passed only one portion of the test in a previous exam.

~~(iii) Facility test costs will be determined by the department based upon information provided from the testing entity's records, including the identity and employment status of the nurse aides tested, the number and type of tests actually administered, the facility or site at which the tests were administered, and the basic fee for each test charged by the testing entity to the facility.~~

~~(A) The payment under this subsection for a facility's nurse aide test costs shall include only the testing entity's basic fee charged to the facility and shall not include reimbursement for any fees, service charges or any costs not associated with actual completion of a competency examination. Any other such costs incurred may be reported by the facility on its annual cost report required under ARM 46.12.1260, subject to allowable cost limitations specified in these rules.~~

~~(iv) The medicaid share of the facility's test cost is determined by multiplying the facility's medicaid utilization percentage by the facility's total test costs for the period.~~

~~(A) For rate years beginning on or after July 1, 1994, the facility's medicaid utilization percentage will be determined based upon the form MA 15 staffing reports on file with the department for the previous 3 month period of January through March inclusive, by dividing the total medicaid patient days reflected in the staffing reports for such period by the total patient days reflected in the staffing reports for such period.~~

~~(v) The department will reimburse nursing facilities quarterly through an adjustment to the provider's claim payment information for the amount due under this subsection. The department will issue quarterly to each facility a summary sheet itemizing the nurse aide competency testing reimbursement allowed to the provider for that quarter.~~

(5) Competency evaluation (testing) costs reported by a provider shall include the testing entity's basic fee charged to the facility and other costs associated with competency testing, to the extent allowable under ARM 46.12.1258.

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

46.12.1237 CALCULATED PROPERTY COST COMPONENT

(1) remains the same.

(a) Nothing in this rule shall be construed to provide for an automatic rate increase on July 1 of a new rate year. A

provider's rate in effect immediately prior to July 1 of a new rate year shall remain in effect throughout the new rate year and subsequent rate years except as provided in ARM 46.12.1228.

(2) As used in this rule, the following definitions apply:

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

(b) "Property costs" means allowable patient-related costs for building depreciation, equipment depreciation, capital-related interest, building lease, and equipment leases, subject to the provisions of ARM 46.12.1258~~, not included in the operating or direct nursing personnel cost component~~. Property costs do not include insurance or tax costs.

(2)(c) through (2)(d)(i) remain the same.

(e) "~~1997~~ 1998 property component" means the provider's calculated property component determined for rate year ~~1997~~ 1998 in accordance with ARM 46.12.1237.

(i) For any provider providing nursing facility services in a facility constructed prior to June 30, 1982 and for whom a calculated property component has not been determined by the department in accordance with ARM 46.12.1237 for rate year ~~1997~~ 1998, the ~~1997~~ 1998 property component shall equal the June 30, 1985 property rate computed for the facility according to the rules in effect as of June 30, 1985 and indexed forward to the 1992 rate year according to the rules in effect for rate year 1992.

(3) For rate years beginning on or after July 1, ~~1997~~ 1998, the provider's calculated property cost component is as follows:

(a) If the provider's ~~1997~~ 1998 property component is greater than the provider's base year per diem property costs, then the provider's calculated property cost component is the lesser of the provider's ~~1997~~ 1998 property component or the property rate cap of $11.50.

(b) If the provider's base year per diem property costs exceed the provider's ~~1997~~ 1998 property component by more than $1.86, then the provider's calculated property cost component is the lesser of the sum of the provider's ~~1997~~ 1998 property component plus $1.86, or the property rate cap of $11.50.

(c) If the provider's base year per diem property costs exceed the provider's ~~1997~~ 1998 property component by $1.86 or less, then the provider's calculated property cost component is the lesser of the provider's base year per diem property costs or the property rate cap of $11.50.

(4) through (5)(a) remain the same.

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

46.12.1241 CHANGE IN PROVIDER DEFINED (1) through (3)(a) remain the same.

(b) "Related party" means:

(i) a person, including a natural person and a corporation, who is an owner, partner or stockholder in the

current provider and who has a direct or indirect interest of 5% or more or a power, whether or not legally enforceable to directly or indirectly influence or direct the actions or policies of the entity;

(ii) A spouse, ancestor, descendant, sibling, uncle, aunt, niece, or nephew of a person described in (3)(b)(i) or a spouse of an ancestor, descendant, sibling, uncle, aunt, niece or nephew of a person described in (3)(b)(i); or

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

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

46.12.1245 SEPARATELY BILLABLE ITEMS (1) through (6) remain the same.

(7) Nonemergency routine transportation for activities other than those described in ARM ~~46.12.1222(13)~~ 46.12.1222(12), may be billed separately in accordance with department rules applicable to such services. Emergency transportation may be billed separately by an ambulance service in accordance with department rules applicable to such services.

(8) through (10) remain the same.

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

46.12.1246 ITEMS BILLABLE TO RESIDENTS (1) through (1)(n) remain the same.

~~(i)~~ (o) the difference between the cost of items usually reimbursed under the per diem rate and the cost of specific items or brands requested by the resident which are different from that which the facility routinely stocks or provides (e.g., special lotion, powder, diapers);

(2) through (2)(b) remain the same.

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

46.12.1251 REIMBURSEMENT TO OUT-OF-STATE FACILITIES (1) through (4)(d)(i) remain the same.

(e) a copy of the preadmission-screening determination for the resident completed by ~~a~~ the department ~~long-term care specialist~~ or its designee;

(4)(e)(i) through (5) remain the same.

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

46.12.1254 BED HOLD PAYMENTS (1) through (1)(c) remain

the same.

(d) the provider has received written approval from the department's ~~medicaid services~~ senior and long term care division as provided in ~~subsection~~ (4).

(2) through (3) remain the same.

(4) A provider's request for the department's written approval of bed hold days as required in ~~subsection~~ (1) must be submitted to the department's ~~medicaid services~~ senior and long term care division on the form provided by the department within 90 days after the first day of the requested bed hold period. The request must include a copy of the waiting list applicable to each bed hold day claimed for reimbursement.

(5) Where the conditions of (1) through (4) are met, providers are required to hold a bed and may not fill the bed until these conditions are no longer met. The bed may not be filled unless prior approval is obtained from the department's ~~medicaid services~~ senior and long term care division. In situations where conditions of billing for holding a bed are not met, providers must hold the bed and may not bill medicaid for the bed hold day until all conditions of billing are met and may not bill the resident under any circumstances.

(6) through (8) remain the same.

(9) The provider must submit to the department's ~~medicaid services~~ senior and long term care division a request for a therapeutic home visit bed hold, on the appropriate form provided by the department, within 90 days of the first day a resident leaves the facility for a therapeutic home visit. Reimbursement for therapeutic home visits will not be allowed unless the properly completed form is filed timely with the department's ~~medicaid services~~ senior and long term care division.

(10) remains the same.

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

46.12.1258 ALLOWABLE COSTS (1) This ~~section~~ rule applies for purposes of determining allowable costs for cost reporting periods beginning on or after July 1, 1991. Allowable costs for cost reporting periods beginning prior to July 1, 1991 will be determined in accordance with rules for ~~includable~~ allowable costs then in effect.

(2) For purposes of reporting and determining allowable costs, the department hereby adopts and incorporates herein by reference the health insurance manual 15 (HIM-15), published by the United States department of health and human services, social security administration, which provides guidelines and policies to implement medicare regulations and principles for determining the reasonable cost of provider services furnished under the Health Insurance for Aged Act of 1965, as amended. A copy of the HIM-15 may be obtained through the ~~Medicaid Services~~ Senior and Long Term Care Division, Department of ~~Social and~~

~~Rehabilitation~~ Public Health and Human Services, P.O. Box 4210, 111 Sanders, Helena, Montana 59604-4210. Applicability of the HIM-15 is subject to the exceptions and limitations specified in this ~~section~~ rule.

(a) The term "allowable costs" means costs which are ~~reportable~~ allowable under the provisions of this subchapter and which are considered in determining the costs of providing medicaid nursing facility services. The determination that a cost is an allowable cost does not require the department to reimburse the provider for that cost. Providers will be reimbursed only as specifically provided in these rules.

(3) through (3)(b)(iv) remain the same.

(v) In accordance with sections 1861(v)(1)(O) and 1902(a)(13) of the Social Security Act, ~~includable~~ allowable property costs shall not be increased on the basis of a change in ownership which takes place on or after July 18, 1984 and before December 1, 1997. Sections 1861(v)(1)(O) and section 1902(a)(13) of the Social Security Act are hereby adopted and incorporated herein by reference. The cited statutes are federal statutes governing allowability of certain facility property costs for purposes of medicare and medicaid program reimbursement. Copies of these sections may be obtained through the ~~Medicaid Services~~ Senior and Long Term Care Division, Department of ~~Social and Rehabilitation~~ Public Health and Human Services, P.O. Box 4210, 111 Sanders, Helena, Montana 59604-4210.

(vi) In accordance with section 1861(v)(1)(O) of the Social Security Act, allowable property costs shall not be increased on the basis of a change in ownership which takes place on or after December 1, 1997. Section 1861(v)(1)(O) of the Social Security Act, as amended by the Balanced Budget Act of 1997, P.L. 105-33, is hereby adopted and incorporated herein by reference. The cited statute is a federal statute governing allowability of certain facility property costs for purposes of medicare program reimbursement. Copies of this section may be obtained through the Senior and Long Term Care Division, Department of Public Health and Human Services, P.O. Box 4210, 111 Sanders, Helena, Montana 59604-4210.

(3)(c) through (4) remain the same.

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

46.12.1260 COST REPORTING, DESK REVIEW AND AUDIT

(1) through (2) remain the same.

(3) Cost finding means the process of allocating and prorating the data derived from the accounts ordinarily kept by a provider to ascertain the provider's costs of the various services provided. In preparing cost reports, all providers must use the methods of cost finding described at 42 CFR 413.24 ~~(1990 ed.)~~ (1997), which the department hereby adopts and incorporates herein by reference. 42 CFR 413.24 is a federal

regulation setting forth methods for allocating costs. A copy of the regulation may be obtained from the Department of Public Health and Human Services, ~~Medicaid Services~~ Senior and Long Term Care Division, 111 N. Sanders, P.O. Box 4210, Helena, MT 59604-4210. Notwithstanding the above, distinctions between skilled nursing and nursing facility care need not be made in cost finding.

(4) All providers must report allowable costs based upon the provider's fiscal year and using the financial and statistical report ~~form~~ forms designated and/or provided by the department. Reports must be complete and accurate. Incomplete reports or reports containing inconsistent data will be returned to the provider for correction.

(a) The report forms required by the department include certain medicare cost report forms and related instructions, including but not limited to certain portions of the most recent version of the HCFA-2540 or HCFA-2552 cost report forms, as more specifically identified in the department's cost report instructions. The department also requires providers to complete and submit certain medicaid forms, including but not limited to the most recent version of the medicaid expense statement, form DPHHS-MA-008A.

(i) In preparing worksheet A on the HCFA-2540 or HCFA-2552 cost report form, providers must report costs in the worksheet A category that corresponds to the category in which the cost is reportable on the medicaid expense statement, as designated in the department's cost report instructions.

(ii) For purposes of the medicaid cost report required under this rule, all medicare and medicaid cost report forms must be prepared in accordance with applicable cost report instructions. Medicare cost report instructions shall apply to medicare cost report forms to the extent consistent with medicaid requirements, but the medicaid requirements specified in these rules and the department's medicaid cost reporting instructions shall control in the event of a conflict with medicare instructions.

(4)(a) through (e) remain the same in text but are renumbered (4)(b) through (f).

(5) through (7) remain the same.

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

46.12.1265 UTILIZATION REVIEW AND QUALITY OF CARE

(1) Upon admission and as frequently thereafter as the department may deem necessary, the department or its agents, in accordance with 42 CFR 456 ~~subparts E and~~ subpart F ~~(1994)~~ (1997), may evaluate the necessity of nursing facility care for each medicaid resident in an intermediate care facility for the mentally retarded. 42 CFR 456 ~~subparts E and~~ subpart F ~~are~~ contains federal regulations which specify utilization review

criteria for ~~nursing facilities~~ intermediate care facilities. The department hereby adopts and incorporates herein by reference 42 CFR 456 ~~subparts E and~~ subpart F ~~(1994)~~ (1997). A copy of these regulations may be obtained from the Department of Public Health and Human Services, ~~Medicaid Services~~ Senior and Long Term Care Division, 111 N. Sanders, P.O. Box 4210, Helena, MT 59604-4210.

~~(2) As frequently as the department may deem necessary, the department or its agents, in accordance with 42 CFR 456 subpart I, may evaluate the quality of medical care provided to each medicaid resident in an intermediate care facility for the mentally retarded. 42 CFR 456 subpart I contains federal regulations which specify medical review criteria for nursing facilities. The department hereby adopts and incorporates herein by reference 42 CFR 456 subpart I (1994). A copy of these regulations may be obtained from the Department of Public Health and Human Services, Medicaid Services Division, 111 N. Sanders, P.O. Box 4210, Helena, MT 59604-4210.~~

AUTH: Sec. 53-2-201 and 53-6-113, MCA
IMP: Sec. 53-2-201, 53-6-101, 53-6-111, 53-6-113 and 53-6-142, MCA

3. The proposed changes would make adjustments in the methodology for setting reimbursement rates for providers of Medicaid nursing facility services and would implement other miscellaneous changes related to Medicaid reimbursement and coverage of nursing facility services.

Rate Year 1999 Operating, Nursing and Property Rate Variables

The proposed changes to ARM 46.12.1229(4) and (5), 46.12.1231(4) and 46.12.1237(2)(e) through (3)(c) implement legislative funding increases for nursing facility reimbursement for state fiscal year 1999. The total state and federal funding available for fiscal year 1999 is $100,672,628. The estimated total funding available for fiscal year 1999 nursing facility reimbursement is approximately $127,318,442 of combined state funds, federal funds, and patient contributions. The estimated financial impact of the proposed changes is an increase of approximately $2,469,271 in state and federal funds in fiscal year 1999 when compared to the fiscal year 1998 expenditure projections. The legislature appropriated a 1.5% provider rate increase and a 1% increase in case load or bed day growth for nursing facility providers in fiscal year 1999. Appropriated days for state fiscal year 1999 are 1,421,282.

The department proposes to continue to use the current reimbursement methodology with modifications to the operating, direct nursing and property cost components, applying DRI McGraw-Hill Nursing Home market basket inflationary adjustments to 1996 base period cost reports, and adjusting the median rate

arrays to establish reimbursement levels for fiscal year 1999. These components, percentages and caps must be set in combination to assure that the reimbursement system and levels of reimbursement further the goals of the reimbursement system.

Based upon the data available at this time, the department proposes to set the operating cost limit in ARM 46.12.1229(4) at 102% of median operating costs and the operating incentive at the lesser of 10% of median operating costs or 20% of the difference between the provider's projected cost and the operating cost limit. The department proposes to set the direct nursing personnel cost limit in ARM 46.12.1231(4) at 104% of the statewide median average wage. The department proposes to revise ARM 46.12.1237(2)(e) through (3)(c) to allow for an increase in the property component over rate year 1998 levels up to $1.86 per diem, not to exceed the provider's base year per diem property costs or the $11.50 property rate cap.

Based upon current information, the department believes that adoption of these proposed values is necessary to achieve reimbursement system goals of providing reasonable and equitable rates, emphasizing necessary spending on direct nursing care over administrative expenditures, retaining a reserve for mid-year rate adjustments and containing program expenditures within appropriated funds. These percentages must be adjusted in conjunction with each other in order to meet these goals.

At this time, not all data is available that will be needed to make final decisions on each rate variable and to establish rates. For example, updated patient assessment averages and deficient facility monitor scores, updated private pay surveys, and the bed day allocation to distribute the bed days appropriated across all facilities in proportion to their current utilization are not yet available. The department anticipates that adjustments in the proposed percentages will be necessary as all of the relevant data becomes available in the continuing reimbursement methodology analysis. The department will provide rate sheets to all providers in advance of the rule hearing for verification purposes and to facilitate comments. Those rate sheets will incorporate the complete information that is unavailable at this time and will reflect further department reimbursement analysis.

The department has proposed these variable values because it believes based upon currently available data that this combination of variable values best addresses the reimbursement system goals noted above. There is no single combination of values that must be adopted and the department will continue to analyze the incoming data and other options for variable combinations that may be necessary or preferable for rate setting purposes.

Elimination of Boren Amendment Language

The proposed changes to ARM 46.12.1221 would eliminate subsection (4). This subsection provides that the purpose of the reimbursement rules is to meet certain requirements, which are included as a restatement of the language of the so-called Boren Amendment. The Boren Amendment was repealed by Congress in section 4711 of the Balanced Budget Act of 1997, effective October 1, 1997. The Boren Amendment has been the federal standard for Medicaid nursing facility reimbursement for a number of years, but no longer exists. The option of retaining the language of subsection (4) is not acceptable. To the extent this language has remained in the rule, the department interprets it to impose Boren standards only "as required by federal law." However, retention of this language might be interpreted by some as a voluntary continued application by the department of the former Boren Amendment standards to Medicaid nursing facility reimbursement methodology and rates under these rules. Such an interpretation could lead to litigation by providers that might seek to require the department to comply with certain procedural requirements of the Boren Amendment or to force the department to pay higher rates that Boren might arguably have required. Federal law no longer imposes the Boren Amendment requirements and the department's purpose will be to comply with current requirements, rather than with the repealed Boren provisions.

No Automatic Annual Inflation Increases

The proposed amendments to ARM 46.12.1228(1), (1)(a), (2) and (2)(a), ARM 46.12.1229(1) and (2)(c), ARM 46.12.1231(1)(a) and (2)(e), ARM 46.12.1232(5), and ARM 46.12.1237(1)(a), and the proposed addition of new ARM 46.12.1232(9) are necessary to prevent an unintended interpretation of the current reimbursement rules. The department generally adopts rule amendments each year to specify the particular rate methodology variables that will apply for purposes of calculating and establishing new rates for all providers effective July 1. The department generally either adopts a new base period or applies a further inflation factor to base period costs for purposes of setting new rates.

When providers recently disagreed with the department's proposed rate methodology for an approaching rate year, they argued that the rule as currently drafted and without any rule amendments would require application of an inflation factor to base period costs and a resulting rate increase for all providers effective July 1. The providers threatened to file suit to enjoin the department's proposed rule, contending that if the proposed rule did not take effect, providers would automatically be entitled to a rate increase on July 1. The department disagrees that there was any basis upon which the proposed rule could have been

enjoined or that if the rule had been enjoined the existing rule would have provided for any automatic increase. The department believes that the current rule was intended to provide for establishment of new rates only on a year by year basis as provided in additional rule amendments. However, the department wishes to avoid any implication or argument that the rule provides for an automatic rate increase on July 1 of each year.

To address this issue, the department proposes amendments to ARM 46.12.1228(1), (1)(a), (2) and (2)(a), ARM 46.12.1229(1) and (2)(c), ARM 46.12.1231(1)(a) and (2)(e), ARM 46.12.1232(5) and (9) and ARM 46.12.1237(1)(a). The proposed language would clarify rather than change the existing rules to provide clearly that new rates for all providers will be established for a new rate year only if the department actually adopts new rule material to so provide. If no new rule material is adopted, or if implementation of new rule material is enjoined, the provider's existing rate would remain in effect until otherwise provided by the new rule material or until the occurrence of an event that triggers a rate change under one of the situations recognized in ARM 46.12.1228(2)(b) through (2)(d)(iv). Under proposed ARM 46.12.1228(2)(b) through (2)(d)(iv), individual provider rates may continue to be adjusted, other than through the typical annual rate setting process, as provided in existing rules, such as in the case of a change in provider, based upon cost adjustments resulting from desk review or audit, settlement of an interim rate, certification of newly constructed beds or completion of an extensive remodeling. Otherwise, except as specifically provided in the rules, rates will not be changed annually on July 1 unless the department specifically so provides in a new or amended rule.

The option of not adopting these proposed amendments to foreclose the providers' suggested automatic rate increase interpretation was not selected because it could lead to a result that is inconsistent with the department's intent under, and interpretation of, the existing rules. In adopting the current rules, the department intended that inflation would be applied and rates adjusted only as part of a comprehensive adjustment of all methodology variables to take into account not only inflation, but also changes in patient acuity, availability of appropriated funds and other factors. As the department has noted on past occasions, the variables in the rate methodology must be set as a total package rather than in isolation one from another. If providers were to succeed in their argument, the result would be that rates would be increased for inflation, regardless of changes in patient acuity or availability of appropriations to fund increases. Some providers might receive inappropriate increases, because in light of decreased patient acuity, it might actually cost them less to provide services currently and no increase would be warranted. Further, such automatic rate increases might require department expenditures

in excess of appropriations. The department believes such results would be unwarranted and contrary to the purposes of the reimbursement system.

Arrays and Medians Not Recalculated After Adjustment of Provider Costs

The proposed amendments to ARM 46.12.1228(1)(b) and (c) are necessary to prevent another unintended interpretation of the current reimbursement rules. In setting rates for the new year using new base period cost information or further inflated costs from the same base period, the department has annually arrayed facility cost data to determine the median operating costs and statewide median average wage for purposes of determining the operating cost limit, operating incentive allowances and the direct nursing personnel cost limit. The department's interpretation of the reimbursement rules has consistently been that once these determinations have been made for the rate year, they are not redone until the next rate year to implement a specific methodology adopted for the new rate year. The department did not intend, and does not interpret the current rules to provide, that these determinations would be redone when the cost data for particular facilities changes based upon cost adjustments resulting from an audit or desk review of the provider's base period cost report, or for any other reason.

The proposed amendments would clarify rather than change the existing rules to provide clearly that the median operating costs and statewide median average wage determined for a rate year, and the rates based upon those determinations, will be redetermined only when new rates are set for providers generally based upon new rule material. Those calculations will not be redetermined based upon changes in provider cost data resulting from cost report adjustments made after audit or desk review or from other causes.

The option of forgoing the proposed clarification was not selected because redetermining these calculations every time some providers' cost data and individual rates changed would be unfeasible and unnecessary. If such recalculations were made, every provider's rate would have to be revised each time one provider's cost data was revised, rather than merely revising the rate of the particular providers with cost data changes. The resulting across the board rate revisions would include rate reductions as well as rate increases, and rate reductions could not be made retroactively. Cost data revisions occur frequently, but even if similar adjustments were made for a large number of providers, the changes would not have a significant effect on rates overall. The effects are not substantial enough to warrant revising the arrays and resulting rates each time provider cost data is revised.

The remaining proposed amendments in ARM 46.12.1228(2)(b) through (d)(iii) revise the language to improve clarity and to correspond to the changes made to other rule subsections.

Cost Category Definition Clarifications

The proposed changes to ARM 46.12.1229(2)(e), 46.12.1231(2)(c) and 46.12.1237(2)(b) are necessary to define more specifically the terms "operating costs," "direct nursing personnel cost," and "property costs" for purposes of reporting cost and determining the related rate components. The proposed changes are intended to state more specifically the department's interpretation of the current rule, rather than to change the substance of the current rule. In recent cost reporting periods, some providers have included certain types of costs in incorrect cost categories on their cost reports. These errors often are not discovered until an audit is performed on the cost reports. These errors then require cost report adjustments, rate adjustments and overpayment recoveries. The proposed changes address the major areas in which errors have occurred. These changes are expected to eliminate a significant number of errors and related rate adjustment disputes.

More specifically, the proposed changes to ARM 46.12.1229(2)(e) revise the definition of "operating costs" to refer specifically to social services, activities, insurance and taxes (other than employment related insurance and taxes, such as unemployment insurance and federal, state or FICA taxes paid for direct nursing personnel and that are includable as direct nursing personnel costs), and to include all other allowable costs that are not either property or direct nursing personnel costs. The proposed changes to ARM 46.12.1231(2)(c) revise the definition of "direct nursing personnel cost" to provided more specifically that direct nursing personnel costs include only the allowable separately identifiable wages, salaries and benefits of RNs, LPNs, nurse aides, and to the extent engaged in actual patient care rather than administration, the director of nursing. Wages, salaries and benefits of social services and activities staff and any other personnel not specified in the definition are not direct nursing personnel cost. The proposed changes to ARM 46.12.1237(2)(b) revise the definition of "property costs" to provide specifically that property costs do not include tax and insurance costs, which are included specifically in the proposed definition of operating costs.

These definition revisions address particular types of costs that providers have tended to misclassify. Although the department believes the current rules are the same in substance, providers have nonetheless misclassified costs. Particularly in the case of social services and activities costs, it tends to be advantageous for providers to classify these costs as direct nursing personnel costs rather than operating costs, because the

nursing cost limits are higher and because lower operating costs may result in an incentive payment to the provider. The department previously sent letters to providers advising them of the correct categories that these costs should be reported in and how they will be used for reimbursement purposes. However, the department believes the proposed rule changes are necessary to avoid any question on these issues.

The option of forgoing the proposed changes was not selected because these issues have given rise to a significant number of disputes and the department wishes to avoid any confusion and disputes. The option of defining social services and activities costs as direct nursing personnel rather than operating costs was not selected because it would be inconsistent with the department's historical inclusion of these costs in the operating category, and because the higher direct nursing cost limits are intended to apply only to nursing services and not to other services. The option of including property related taxes and insurance as property costs rather than operating costs was not selected because property costs are intended to include only capital related property costs, rather than operational costs like taxes and insurance.

Elimination of Separate Reimbursement for Nurse Aide Competency Testing

The department proposes to amend ARM 46.12.1235 to eliminate the separate reimbursement for the costs of nurse aide competency evaluation. After the requirement to reimburse for nurse aide competency evaluation costs was enacted in federal law, the department adopted a payment mechanism that was separate from the per diem rate because the per diem rate was based upon facility cost reports that did not contain these costs. Since adoption of this payment mechanism, more than sufficient time has passed to assure that the testing costs are now contained in base period cost reports and these costs are being reimbursed through the per diem rate. This separate testing cost reimbursement is therefore duplicate recognition and payment for these costs. The proposed changes are necessary to eliminate this duplicate reimbursement. The option of continuing the separate payment was not selected because it would allow unnecessary and wasteful duplicate reimbursement of nurse aide testing costs.

"Change in Provider" Clarification

The department proposes to revise ARM 46.12.1241(3)(b)(i) to make it clear that a "person" includes a corporation for purposes of the change in provider rule. The department interprets the current rule to include corporations in the term "person," but believes that the proposed change will eliminate any possible ambiguity on this point. Many of the potential

change in provider scenarios reviewed by the department involve corporate reorganizations in which there are multiple layers of parent and subsidiary corporations. In this context, the related party definition would be too narrow if "person" did not include corporations that own other corporations. The result would be that many corporate reorganizations would be considered to be a change in provider under the rule, even though there is no substantial change in ownership or control of the facility or business. This proposed change is necessary to assure that the rule is interpreted in accordance with the department's intent. The option of not including a corporation as a person under the rule was not selected because it would result in applying change in provider requirements to situations where there is no substantial change in ownership or control of the facility or business, triggering significant additional requirements on the provider and triggering a rate change where none is necessary or appropriate. The proposed change to ARM 46.12.1241(3)(b)(ii) is necessary to insert the word "or" that was inadvertently omitted in drafting of the current rule. Only one of the three subsections (3)(b)(i) through (iii) need be met to constitute a "related party" under the rule.

Deletion of Reference to Long Term Care Specialist

The proposed change in ARM 46.12.1251(4)(e) is necessary to remove the outmoded reference to "long term care specialist." Preadmission screening determinations for nursing facility residents are no longer completed by department long term care specialists. These screening determinations are now performed under a contract with an outside agent of the department. This change is necessary to correctly describe the required screening determination. The option of forgoing the proposed revision was not selected because it would lead to misdirected requests for screening determinations.

Allowable Cost Rule Revisions

The proposed changes to ARM 46.12.1258(3)(b)(v) and the addition of (3)(b)(vi) are necessary to update the material that is adopted and incorporated by reference. For ownership changes occurring after December 1, 1997, the incorporated material has been superseded by an amendment to the incorporated federal statute, section 1861(v)(1)(O) of the Social Security Act, enacted as part of the Balanced Budget Act of 1997, P.L. 105-33 (BBA). The federal law change revises the medicare allowable cost limits concerning an increase in capital costs based upon a change in ownership which takes place on or after December 1, 1997. Medicare has adopted a regulation implementing this statutory amendment relating to allowable costs and setting a limit on the value of depreciable assets that may be recognized in establishing an appropriate allowance for depreciation and for interest on capital indebtedness after a change of ownership

that occurs on or after December 1, 1997. See 63 Fed. Reg. 1379 (Jan. 9, 1998). In addition, BBA repealed the provisions of section 1902(a)(13) of the Social Security Act that are incorporated in (3)(b)(v). For ownership changes occurring on or after December 1, 1997, the department proposes to adopt and incorporate the amended federal statute for purposes of consistency with the medicare program and to follow these updated limits which will be more effective at assuring that only reasonable costs are allowed. The department did not select the option of not adopting the updated federal provision because it believes the amended federal provision will be more effective in assuring that only reasonable costs are allowed, and because using a different provision than medicare would require use of different cost report information for the two programs, increasing the paperwork requirements for the program. The current rule will continue to apply with respect to ownership changes occurring from July 18, 1984 until December 1, 1997. The wording of (3)(b)(v) is revised for clarity and compliance with incorporation requirements.

The proposed revisions to ARM 46.12.1258(1) and (2)(a) are necessary to revise the terminology for purposes of consistency and clarity. The current rule uses the terms "includable" and "reportable" but does not define these terms. The terms were intended to be interchangeable with the term "allowable," and the department is removing "includable" and "reportable," and replacing them with the term allowable, which is undefined in the rule.

Cost Reporting Forms and Categories

The proposed changes to ARM 46.12.1260(4) through (4)(a)(ii) are necessary to assure that providers report particular categories of costs in the proper cost report categories and in accordance with applicable Medicaid requirements. The changes will help to assure that costs are reported in the correct category for purposes of setting the separate rate components and applying the component limits. The proposed amendments add language requiring that costs be reported on the Medicaid expense statement form in the category designated on the form or that most closely relates to the cost, and that, in reporting the costs on worksheet A of the medicare cost report form, costs are reported in the worksheet A category that corresponds to the Medicaid expense statement category. The department's cost report instructions will specifically designate the worksheet A lines that correspond to the particular expense statement categories for the particular cost report form used by the provider.

The department's cost report instructions currently indicate that providers should report costs on Worksheet A in the category that corresponds to the expense statement category, but

providers have not routinely or uniformly done so, increasing the chances that costs may not be included in the proper component category for ratesetting purposes. While this has not in the department's view been significant enough to undermine functioning or effectiveness of the component median or limit calculations, it has caused problems and litigation. The department is proposing these rule changes to instruct providers that Worksheet A must correspond to the Medicaid expense statement. Proposed subsection (4)(a)(ii) indicates that the applicable medicare or Medicaid cost report instructions must be followed, but that in the event of a conflict between medicare and Medicaid requirements, Medicaid requirements will control. For example, if medicare allows a certain cost but Medicaid does not, the medicare form must be prepared without including the cost unallowable under Medicaid requirements.

The department believes that the option of forgoing these rule changes is unacceptable. The department anticipates that with the repeal of the Boren Amendment, providers will look to other aspects of the reimbursement system and rules for issue upon which to challenge department rates. One of the areas in which the department anticipates increasing challenges is in the area of cost reporting, as providers seek to maximize reimbursement through shifting costs to the most advantageous component category. In addition, recent challenges to audit adjustments and resulting rate adjustments demonstrate that improved clarity can help to avoid disputes and litigation.

Utilization Control and Inspection of Care Updates

The proposed changes to ARM 46.12.1265(1) are necessary to update the incorporation by reference of federal regulations regarding utilization control procedures. Since adoption of the current rule, 42 CFR 456 subpart E has been repealed, and only subpart F remains. Under previous law, federal law included separate standards for skilled nursing care and intermediate nursing care, but that distinction has been eliminated for Medicaid program purposes and a single nursing facility category now applies. The regulations at 42 CFR 456 subpart F specify the applicable utilization control procedures for nursing facility services. The proposed changes are necessary to reflect the applicable regulations. The options of not correcting these references or of incorporating different standards were not selected because federal law requires that these particular standards be followed and it is necessary to reference the correct standards.

The proposed elimination of ARM 46.12.1265(2) is necessary because the federal requirement for inspections of care in intermediate care facilities for the mentally retarded have been repealed from federal law. See section 4751 of the Balanced Budget Act of 1997 (BBA). Therefore, the underlying federal

statutory authority for the incorporated federal regulations no longer exists and the regulations are no longer applicable. The option of adopting an alternate set of procedures for assessing quality of care was not selected because quality of care in these facilities is being evaluated through the survey and certification process, and addition of another process here would be redundant.

Correction of Numbering Errors

The proposed amendments to ARM 46.12.1222 and to 46.12.1245 are necessary to correct a numbering error that exists in the current rule. When ARM 46.12.1222 was amended in January 1996, former ARM 46.12.1222(3) was removed. Subsections (4) through (13) were renumbered as (3) through (12), but subsections (14) through (20) were not renumbered. See MAR notice number 37-49. The result is that there the numbering of the current rule subsections skips from (12) to (14). In addition, internal references to former subsection (13) must be changed to refer to the correct subsection (12). The option of not correcting this numbering error was not selected because the current references are simply incorrect and would lead to confusion.

The proposed amendment to ARM 46.12.1246(1) is necessary to correct an error in numbering. In the current rule, subsection (1)(n) is followed by a subsection (i). This subsection was intended to be the next item in the series (a) through (n), rather than a subsection under (n). This change is necessary to reflect the intent of the rule and to avoid confusion in this rule section. The option of forgoing the proposed correction was not selected because the current rule numbering is incorrect and could lead to confusion as to whether subsection (i) modifies only (n) or whether it is another item in addition to (a) through (n).

Updating of Department and Division Names

The proposed update of the department and division names contained in current ARM 46.12.1232(1), 46.12.1254, 46.12.1258(2) and (3)(b)(v), 46.12.1260 and 46.12.1265(1) correct the current references to the former department and division names, so that the current department and division names are specified. The option of not correcting these references or of using other references was not selected because use of the current references is likely to lead to confusion and any other references would be incorrect. Under the current references, requests for incorporated materials and other bed hold approval requests might not be received by the proper division, leading to confusion and delayed responses. Similar incorrect references in ARM 46.12.1268 are not being corrected here because that rule section will be affected by proposed rule changes that the department expects to propose in a separate

notice in the near future.

4. The proposed changes will become effective and will apply to nursing facility services provided on or after July 1, 1998.

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 Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-421, no later than May 28, 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.

6. The Office of Legal Affairs, Department of Public Health and Human Services has been designated to preside over and conduct the hearing.

Dawn Sliva
Rule Reviewer

Director, Public Health and Human Services

Certified to the Secretary of State April 20, 1998.

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

In the Matter of the Proposed Adoption of Rules Implementing Senate Bill 390 (Electric Utility Industry Restructuring and Customer Choice Act, Title 69, chapter 8, (MCA)), Pertaining to Electricity Supplier Licensing, Reporting	NOTICE OF PUBLIC HEARING ON THE PROPOSED ADOPTION OF ELECTRICITY SUPPLIER LICENSING AND REPORTING RULES

TO: All Interested Persons

1. On May 20, 1998 at 2:00 p.m. in the Bollinger Room, Public Service Commission Offices, 1701 Prospect Ave., Helena, Montana, the Montana Public Service Commission (Commission) will conduct a hearing to consider the proposed adoption of electricity supplier and reporting rules.

2. The proposed rules do not replace or modify any section currently found in the Administrative Rules of Montana.

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

RULE I. GENERAL REQUIREMENT TO OBTAIN LICENSE TO SUPPLY ELECTRICITY (1) All electricity suppliers, including unregulated public utility affiliates, for profit affiliates of cooperative utilities that provide electricity supply service using public utility distribution facilities, market aggregators, marketers and brokers must file an application and receive a license from the public service commission before selling or offering to sell electricity to consumers in the state of Montana. An application must include a certificate of service showing that the application was sent to each distribution services provider on a list of providers created and maintained by the commission. The commission will issue a license within 30 days of receipt of a complete application. The commission may reject an application deemed incomplete or inadequate, and issue an order specifying the deficiencies of the application and, if practical, identify alternative ways to overcome deficiencies.

AUTH: 69-8-403, MCA IMP: 69-8-404, MCA

RULE II. CONTENTS OF APPLICATION FOR LICENSE TO SUPPLY ELECTRICITY (1) Except as provided for in (2) and (3), an applicant shall include the following information in an application for a license to supply electricity:

(a) complete business name of the applicant, and all names that may be used when marketing electricity supply services to consumers;

(b) complete street and mailing address of the applicant's principal office;

(c) if intending to serve or solicit residential or commercial (under 20 KW) consumers, the address and direct, toll-free phone number of the department or office that should be contacted by consumers regarding supply;

(d) the name of a regulatory contact who should be contacted regarding the application, and the address, direct phone number, fax number and e-mail address of that person;

(e) the name and business address of all applicant's officers and directors, partners, or other similar officials, and a statement that neither the applicant, nor any of its officers and directors, partners or other similar officials are currently in violation of, and within the past three years have not violated, any state or federal consumer protection laws or rules;

(f) descriptions of the activities and purposes of applicant, including:

(i) customer segments which applicant intends to serve or solicit (e.g., residential, commercial, industrial);

(ii) products offered to each customer segment; and

(iii) geographic areas, including a list of Montana cities, in which applicant intends to provide service or solicit customers;

(g) a list of affiliates, a corporate organization diagram, a description of each affiliate's activities and purposes, a description, including location, of any distribution facilities owned or operated by the affiliate and a statement on whether the facilities are open and accessible on a nondiscriminatory basis to all electricity suppliers;

(h) the state(s) under which applicant is organized, the form(s) of organization (corporation, partnership, association, firm, individual, etc.), the date of organization and duration, and a list of states where applicant is currently licensed or registered to provide electricity supply;

(i) a complete description of principal property owned by the applicant and the scope of its operations;

(j) verification that the applicant has obtained or will obtain generation capacity, power purchases and transmission rights sufficient to deliver subscribed retail electricity services with a 10 percent reserve margin;

(k) demonstration of applicant's financial integrity through one of the following:

(i) a long term bond (or other senior debt) rating of BBB-, or equivalent rating, obtained in one of the following ways:

(A) the rating must be determined by Standard & Poors or another recognized U.S. or Canadian debt rating service, or

(B) the applicant may, at its own expense, obtain a private rating from a recognized debt rating service, or request that an independent accountant or financial advisor, mutually acceptable

to the commission and the applicant, prepare an equivalent evaluation based on the financial rating methodology, criteria, and ratios for the industry as published by the above rating agencies from time to time;

(ii) two years of audited financial statements; or

(iii) a performance bond in an amount sufficient to cover the supplier's maximum level service obligations for a period of 12 months;

(l) most recent annual report to shareholders; and

(m) copies of standard forms or contracts used to provide service to residential and commercial (under 20 KW) customers.

(2) An electricity supply broker not taking title to electricity supplies but acting as an agent or intermediary in the sale or purchase of electricity shall include the following information in an application to supply electricity:

(a) complete name of the applicant, and all names that may be used when marketing brokering services;

(b) complete street and mailing address of the applicant's principal office;

(c) the name of the person to contact regarding the application, and the address, direct phone number, fax number and e-mail address of that person;

(d) descriptions of the activities and purposes of applicant, including:

(i) customer segments which applicant intends to serve or solicit (e.g., residential, commercial, industrial);

(ii) products offered to each customer segment; and

(iii) geographic areas, including a list of Montana cities, in which applicant intends to provide service or solicit customers;

(e) a list of affiliates, a corporate organization diagram, a description of each affiliate's activities and purposes and any distribution facilities owned or operated by the affiliate and a statement on whether the facilities are open and accessible on a nondiscriminatory basis to all electricity suppliers; and

(f) a description of all ownership interests in any supplier operations.

(3) A broker or marketer obtaining a license pursuant to (2) of this rule may not sell retail electricity supplies in the state of Montana, be an aggregator or engage in market aggregation unless it has submitted the information listed in (1) of this rule and the commission has determined the information to be complete and adequate.

AUTH: 69-8-403, MCA IMP: 69-8-404, MCA

RULE III. ELECTRONIC REGISTRATION (1) Licensed electricity suppliers must complete and maintain an electronic registration form on the commission's internet web site as a condition of remaining licensed. Licensed suppliers must provide the following information electronically:

(a) the complete business name of the applicant, and all names that may be used when marketing electricity supply or brokering services to consumers;

(b) the complete street and mailing address of the applicant's principal office;

(c) the name, address, direct phone number, fax number and e-mail address of a regulatory contact person;

(d) a customer service telephone number, which must be toll-free if the supplier serves or solicits residential and commercial (under 20 KW) customers;

(e) descriptions of: (i) customer segments served (e.g., residential, commercial, industrial); and (ii) principal geographic areas, including a list of Montana cities, where products are offered, by customer segment; and

(f) if serving or soliciting residential and commercial (under 20 KW) customers, a description of, and prices for, the standard service offer.

AUTH: 69-8-403, MCA IMP: 69-8-404, MCA

RULE IV. ANNUAL REPORTS (1) On an annual basis on or before August 1, or more frequently if the commission so orders, licensed electricity suppliers must update the information required under Rule II and file reports containing the following information for the previous 12 month period ending June 30:

(a) a descriptive list of all products and services offered to residential and commercial (under 20 KW) customers;

(b) a table with market areas, such as cities or counties, listed on one axis and the services identified in (a) on the other. Each cell in the table must contain: (i) the date on which the product or service was first offered; (ii) the average number of residential and commercial (under 20 KW) subscribers; and (iii) total sales in units and revenues, broken down by residential and commercial (under 20 KW);

(c) the number of times distribution companies had to provide emergency supply service for the reporting supplier;

(d) total number of residential and commercial (under 20 KW) subscribers; number and average term of residential and commercial (under 20 KW) customer service contracts processed during the reporting period;

(e) a description of purchases, leases, billings and other contracts, and the services involved;

(f) a schedule of price changes and discounts by date; and

(g) a list of principal facilities, and their capacities, owned, sold or leased to, or acquired from, others;

(2) A supplier may request a protective order for information provided in (1)(a) through (g).

AUTH : 69-8-403, MCA IMP: 69-8-404, MCA

RULE V. STANDARD SERVICE OFFER (1) Licensed suppliers serving residential and commercial (under 20 KW) customers must, maintain a standard service offer characterized by:

(a) a month-to-month service contract that the consumer may terminate at the end of any billing cycle after providing the supplier at least 14 days notice; and

(b) fixed prices per kilowatt-hour of consumption, subject to (2) through (4).

(2) Standard service offer prices may vary by season and for consumption blocks of at least 400 kilowatt-hours.

(3) The standard service offer may include a budget/fixed monthly bill arrangement so long as the historical average consumption used to compute the customer's bill amount is prominently identified and explained on the monthly bill.

(4) Licensed suppliers may modify the price(s) and structure of their standard service offers, within the framework set forth in this rule, at any time by updating the supplier's electronic registration information.

(5) Licensed suppliers serving residential and commercial (under 20 KW) customers may offer other services to these customer segments, in addition to the standard service offer.

AUTH: 69-8-403, MCA IMP: 69-8-404, MCA

RULE VI. SERVICE CONTRACT (1) All rates, terms and conditions for supply service must be provided to a retail consumer in a service contract, written in plain language. The service contract must be signed by the consumer and returned to the supplier before any service is provided. For residential and commercial (under 20 KW) electricity consumers, and for residential and commercial (under 500 dkt or mcf per year) natural gas consumers, the front page of a service contract shall prominently and clearly disclose:

(a) the term of the contract;

(b) the effective price of supply service, as follows:

(i) for electricity supply service, in cents per kilowatt-hour for various levels of consumption typical for the consumer's customer segment;

(ii) for natural gas supply service, in price per dkt or mcf for various levels of consumption typical for the consumer's customer segment;

(c) whether the price is fixed or variable and, if variable, a general description of the potential range and possible causes of price variations;

(d) the amount of any late payment penalties and an explanation of when they apply; and

(e) an explanation of conditions under which the supplier will terminate the supply agreement.

(2) All customer or miscellaneous surcharges must be prominently identified and explained in the service contract.

(3) No supplier, distribution service provider, transmission service provider, system services provider, energy service provider, metering service provider, billing service provider, or other company or individual involved in the sale or delivery of electricity or natural gas, may disclose individual consumer information to others without prior written consent from the consumer except as provided by commission rule or order.

(4) Residential and commercial (under 20 KW or 500 dkt per year) consumers shall have a 45-day grace period from the time of entering into a service contract to notify the supplier of termination of the contract without incurring liability for supply services not consumed or taken under the contract.

(5) A consumer may terminate a service contract without incurring liability for supply services not consumed or taken under the contract by notifying the supplier that the consumer is relocating outside the geographic area served by the sup-

plier, or is moving to a location where the consumer is not responsible for payment of the service consumed.

(6) A supplier must notify its customers, the commission and the distribution companies in writing at least 30 days prior to ceasing business under an existing license or terminating service to an entire customer segment. AUTH: 69-8-403, MCA IMP: 69-8-404, 69-8-408, 69-8-409, 69-8-410, MCA

4. Rationale: Senate Bill 390 (1997)("Electric Utility Industry Restructuring and Customer Choice Act"), passed by the Montana State Legislature and codified at Title 69, Chapter 8, Montana Code Annotated, requires the Commission to license electricity suppliers and to promulgate rules to implement licensing and related provisions. Customers with loads greater than 1,000 kilowatts and/or loads of the same customer with individual loads at a meter greater than 300 kilowatts that aggregate to 1,000 kilowatts or more are entitled to choice of electricity supplier on July 1, 1998. The Commission must be prepared to license electricity suppliers as quickly as possible, to implement Senate Bill 390. Later rule-makings will address other issues necessary to implement the act.

The Commission has put proposed draft rules on electricity supplier licensing and reporting out to a substantial number of interested parties for input, discussion and comment in two separate notices, first on November 7, 1997 then on March 20, 1998. The Commission's March 20, 1998 proposed draft rules respond to comments received on the November 7, 1997 proposed draft rules and explain the Commission's rationale. The Commission has taken into consideration the comments of interested persons in the present notice.

5. Interested persons may submit their data, views, or arguments concerning the proposed adoption, either orally or in writing, at the hearing. Written data, views, or arguments (original and 13 copies) may also be submitted to Denise Peterson, Public Service Commission, Legal Division, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, no later than Tuesday, May 28, 1998. (PLEASE NOTE: When filing written data, views, or arguments pursuant to this notice please reference "Docket No. L-97.8.6-RUL.")

6. Anyone needing an accommodation for a physical, hearing or sight impairment in order to attend or participate in the hearing should contact the PSC at (406) 444-6199 at least one week before the date of the hearing. The PSC will make every effort to accommodate individual impairments.

7. The Montana Consumer Counsel, 616 Helena Avenue, P.O. Box 201703, Helena, Montana 59620-1703, (406) 444-2771, is available and may be contacted to represent consumer interests in this matter.

8. Both bill sponsor notice requirements of section 2-4-302, MCA, apply and have been complied with.

9. The Public Service Commission maintains a list of persons interested in Commission rulemaking proceedings and the subject or subjects in which each person on the list is interested. Any person wishing to be on the list must make a written request to the Commission, providing a name, address and description of the subject or subjects in which the person is interested. Direct the request to the Public Service Commission, Legal Division, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601. In addition, persons may be placed on the list by completing a request form at any rules hearing held by the Public Service Commission.

Dave Fisher
DAVE FISHER, Chairman

CERTIFIED TO THE SECRETARY OF STATE APRIL 20, 1998.

Robin A. McHugh
Reviewed by Robin A. McHugh

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER 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	NOTICE OF PUBLIC HEARING

TO: All Interested Persons:

1. On May 22, 1998, at 10:00 a.m., a public hearing will be held in the Fourth Floor Conference Room of the Mitchell Building, at Helena, Montana, to consider the proposed amendments to 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.

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

42.20.160 FOREST LAND ASSESSMENT (1) Effective January 1, 1994, the department of revenue shall assess land as forest lands according to the following basic determinations.

(a) Forest lands are:

(i) Remains the same.

(ii) land which is producing timber ~~unless~~ or land in which the trees have been removed by man through harvest, including clearcuts, or by natural disaster, including but not limited to fire;

~~(iii) land that has a dedicated use evidenced by a statement of intent by the owner for the eventual harvest of timber; and~~

(~~iv~~iii) land which is not classified as nonforest land. ~~or~~ Nonforest land is used for agricultural, nonqualifying agricultural, industrial, commercial or residential purposes.

AUTH: Sec. 15-44-105, MCA; IMP: Sec. 15-44-101, 15-44-102 and 15-44-103, MCA

42.20.161 FOREST LAND CLASSIFICATION DEFINITIONS (1) Effective January 1, 1994, the department of revenue shall use the following definitions to determine forest land classification and the productive capacity of land to grow timber:

(a) and (b) remain the same.

(c) For purposes of determining the 15-acre forest land ownership criteria identified in 15-44-102, MCA, ~~T~~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 nonforest land.

(d) through (l) remain the same.

(m) The term "nonforest land" means land which is at least 120 feet in width and at least 5 acres in size which does not meet the requirements of ARM 42.20.160. Nonforest land can include rivers and streams, roads, highways, power lines, and railroads.

AUTH: Sec. 15-44-105, MCA; IMP: Sec. 15-44-101, 15-44-102 and 15-44-103, MCA

42.20.162 EXCEPTIONS TO FOREST LAND ASSESSMENT

(1) Effective January 1, 1994, the following land shall not be classified and assessed as forest land:

(a) land that is incapable of yielding ~~commercially marketable~~ wood products because of adverse site conditions or which are so physically inaccessible as to be unavailable ~~economically~~ now or prospectively;

(b) through (d) remain the same.

AUTH: Sec. 15-44-105, MCA; IMP: Sec. 15-44-101, 15-44-102 and 15-44-103, MCA

42.20.165 FOREST LAND ELIGIBILITY - GENERAL PRINCIPLES

(1) remains the same.

(2) The property owner of record or the owner's agent must provide proof of eligibility on an application form prescribed by the department.

(a) Forest land application forms shall be available at each county appraisal/assessment office. Applications must be submitted to the ~~county~~ appraisal/assessment office in the county which the property resides prior to March 1 of the year for which the reclassification is being sought or within ~~15~~ 30 days after receiving the notice of classification and appraisal from the department ~~being notified of a classification change~~, whichever is later.

(b) through (d) remain the same.

(3) All terms and classification procedures pertaining to forest lands are defined in ARM 42.20.160, 42.20.161, 42.20.162, 42.20.163, 42.20.164, 42.20.166, 42.20.167, 42.20.168, 42.20.169, and 42.20.170 and the "Forest Productivity Classification Manual" as compiled by the property assessment division of the department of revenue.

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

42.20.167 FOREST LAND VALUATION FORMULA (1) through (7) remain the same.

(8) The capitalization rate is the annual average interest rate on agricultural loans as reported by the ~~federal land bank~~ 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~~(4)(b)(v) shall be based upon~~ represent the average costs ~~expenses~~ for reforestation, fire assessment, ~~brush control~~ slash disposal, timber stand improvement, timber harvest, forest practices, and management ~~administration in zones 1 and 2 only, timber sale, and administrative overhead as determined by the department of natural resources and conservation (DNRC)~~ over the base period specified in ARM 42.20.167. ~~For forest land valuation zone 1, the allowable expenses will be those calculated by the DNRC northwest land office in Kalispell. For forest land valuation zone 2, the allowable expenses will be those calculated by the DNRC southwest land office in Missoula. For forest land valuation zones 3, 4, and 5, the allowable expenses will be those calculated by the DNRC central land office in Helena.~~ Forest costs, with the exception of the hazard reduction and management 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 will be the average fire assessment fee the DOF charges landowners. The management 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

3. The department is proposing these amendments to clarify changes made by the 1997 legislature.

ARM 42.20.160(1)(a)(ii) as amended clarifies the premise that harvested forest lands are classified as forest land. The current statement is confusing to the public and tax appeal boards.

The elimination of the current wording in ARM 42.20.160(1)(a)(iii) complies with changes made by the 1997 legislature. The 1997 legislature eliminated any reference to the statement, "intent to eventually harvest timber". The proposed language in ARM 42.20.160(1)(a)(iii) will help clarify the definition of forest land and explain what uses occur on nonforest lands.

ARM 42.20.161 amendments are proposed to clarify the term for contiguous forest land versus contiguous parcels of land. According to the State Tax Appeal Board, the department's classification procedures for contiguous forest land do not correspond to the current definition.

Amendments to ARM 42.20.162(1) clarify a definition which is currently broad and open to interpretation.

Amendments to ARM 42.20.165 are necessary to bring this

rule into compliance with procedures used in the informal review process. The 1995 legislature extended the time period taxpayers may informally seek appraisal resolutions from 15 days to 30 after receipt of their property assessment. The first amendment brings the forest land application deadline into conformance with the deadlines used in the AB-26 (informal review) process. The second amendment expands the ability of taxpayers to file a forest land application.

Amendments to ARM 42.20.165(3) expands the reference for forest terms and classification procedures to include all the department's forest land administrative rules.

The Amendments to ARM 42.20.167(8) comply with changes made by the 1997 legislature.

The Amendments to ARM 42.20.168(1) comply with changes the department made in the computation of forest valuation schedules found in ARM 42.20.170.

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 May 29, 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
CLEO ANDERSON
Rule Reviewer

Mary Bryson
MARY BRYSON
Director of Revenue

Certified to Secretary of State April 20, 1998

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT of ARM 42.11.301 and 42.11.303 and the ADOPTION of NEW RULES I through V relating to Commissions Earned by Agents Operating Liquor Stores in Montana	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND ADOPTION

TO: All Interested Persons:

1. On May 20, 1998, at 10:00 a.m., a public hearing will be held in the Fourth Floor Conference Room of the Mitchell Building, at Helena, Montana, to consider the amendment and adoption to rules relating to commissions earned by agents operating liquor stores in Montana. The department proposes to amend ARM 42.11.301 and 42.11.303. It also proposes to adopt new rules I through V.

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

42.11.301 DEFINITIONS ~~(1)~~ As used in this subchapter, the following definitions apply:

~~(a)~~ (1) "Agency store" means a ~~state~~ liquor store operated by an agent.

~~(b)~~ (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 ~~except the liquor product, which is owned by the department until purchased by a customer~~.

(3) "Average commission percentage" means the simple average of the commission percentage of agents with similar sales volumes. This percentage is calculated by adding the commission percentages of all agents with similar sales volumes and dividing by the number of agents with similar sales volumes.

(4) "Calender year" means January 1 through December 31.

~~(g)~~ (5) "Community boundary" means:

~~(i)~~ (a) in the case of an incorporated city or town, the city or town limits;

~~(ii)~~ (b) in other communities, the generally recognized and commonly accepted outer edge of the community.

(6) "Gross Sales" means an agency liquor store's purchase price plus agency discount plus agency commission.

~~(c)~~ (7) "Liquor" includes ~~table~~ fortified wine when the alcoholic beverage code permits the department to distribute ~~table~~ fortified wine to an ~~state~~ agency liquor store.

~~(e)~~ (8) "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.

~~(f)~~ (9) "New ~~state~~ agency liquor store" means, an ~~state~~ agency liquor store that begins operation in a community that has not had an ~~state~~ agency liquor store in operation for one or more years.

(10) "Sales Band" means a group of agents with similar sales volumes.

~~(d) "State liquor store" includes agency stores and liquor stores operated by state employees.~~

~~(2)~~(11) 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 ~~liters of liquor sold~~ population in a community ~~annually~~. ~~If there is no history of liquor sales for a community, the department will estimate the liter sales based on experience with communities that have similar population sizes.~~ The number of stores that may be located in a community ~~per liter volume is as follows:~~ may vary as prescribed in 16-2-109, MCA.

~~(a) 5 stores for 930,000 liters or more annually;~~

~~(b) 4 stores for 680,000 to 929,999 liters annually;~~

~~(c) 3 stores for 430,000 to 679,999 liters annually;~~

~~(d) 2 stores for 180,000 to 429,999 liters annually; and~~

~~(e) 1 store for less than 180,000 liters annually.~~

~~(2)~~ A new ~~state~~ agency liquor store will be operated by an agent ~~unless operation by state employees would be less expensive to the department~~.

(3) The department will conduct a public hearing to open a new 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 agency store in the community. The petition must clearly state that its purpose is to have the department open a ~~state~~ 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 agency store in the community. This person must control or expect to control a building in the community that could be used as the agency store location.

(c) The number of ~~state~~ agency liquor stores currently operating in the community does not exceed the limit in (1).

(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).

(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 ~~subsection~~ (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 ~~liquor division administrator~~ 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. 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 ~~liquor division administrator~~ department will decide what action will be taken in response to the hearing officer's recommendations.

(5) Notice of the ~~liquor division administrator's~~ 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 ~~ARM 42.11.303~~ new rule V.

(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 ~~subsections~~ (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 ~~for~~ required in ~~subsection~~ (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

3. The proposed new rules 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:

NEW RULE I COMMISSION PERCENTAGE REVIEW (1) The department shall review the commission percentage paid to agents pursuant to 16-2-101, MCA.

(2) The department will examine agent stores with similar 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 DETERMINATION OF SIMILAR SALES VOLUMES

(1) An agent's commission percentage may be adjusted to the average commission percentage of agents with similar sales volumes as prescribed in 16-2-101, MCA.

(2) The department will determine sales bands for agents with similar sales volumes. Sales information from the two most recent calender years will be used when determining the sales bands.

(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 MINIMUM QUALIFICATIONS FOR COMMISSION RATE REVIEW (1) Agent's 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 sales volumes. Such misplacement of an agent within a sales band would also affect the average commission percentage determination within the band. Therefore, for an agent to be eligible for a commission rate, the store must be open for business for the entire two calender 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.

AUTH: Sec. 16-1-303, MCA; IMP: Sec. 16-2-101, MCA

NEW RULE IV 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.

(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.

AUTH: Sec. 16-1-303, MCA; IMP: Sec. 16-2-101, MCA

NEW RULE V 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 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 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. The department is proposing the amendments to ARM 42.11.301 to further implement amendments made by the 1997 legislature to 16-2-101, MCA.

The amendments to ARM 42.11.303 are generally housekeeping amendments to correct the references from "state" liquor stores to "agency" liquor stores.

New Rules I through IV reflect clarification of 16-2-101, MCA. Pursuant to 16-2-101, MCA, the department of revenue is instructed to perform liquor store commission percentage reviews. Subsection (6)(a) of the code provides that an agent's commission may be increased to the "average commission percentage being paid to agents with similar sales volumes."

In order to implement this provision, the department must divide agents into groups which constitute similar sales volumes. The department must then calculate an average commission percentage for each group.

The group an agent falls into may affect the average commission percentage that can be obtained by that agent. Therefore, the department believes public input in creating the groups and the average commission percentage is necessary.

Other minor provisions are also addressed to help implement 16-2-101, MCA.

New Rule V is necessary to explain how the department will conduct selection of an agent for agency stores throughout the state.

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 May 28, 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.

CLEO ANDERSON
Rule Reviewer

MARY BRYSON
Director of Revenue

Certified to Secretary of State April 20, 1998

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT of ARM 42.11.244, 42.12.101, 42.12.106, 42.12.108, 42.12.111, 42.12.207, 42.13.101, and 42.13.105; ADOPTION of NEW RULES I through IV, and REPEAL of ARM 42.12.102 and 42.13.212 relating to Liquor License Transfers	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENTS, ADOPTION AND REPEAL

TO: All Interested Persons:

1. On May 27, 1998, at 10:00 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 42.11.244, 42.12.101, 42.12.106, 42.12.108, 42.12.111, 42.12.207, 42.13.101, and 42.13.105; adoption of New Rules I through IV; and Repeal of ARM 42.12.102 and 42.13.212 relating to Liquor License Transfers.

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

42.11.244 RECORDS RELATED TO SAMPLES -- DEPARTMENT EXAMINATIONS (1) Each registered representative shall maintain a permanent sample log which must contain a listing of all sample purchases, the name and location of each recipient, and the date the sample was received.

(2) ~~A sample distributed to a licensee must be reported to the department of revenue investigation program on a monthly basis on the form supplied by the investigation program.~~

~~(3)~~ The department may, at any reasonable time and place, examine the records of a registered representative. For the purposes of this rule, reasonable time and place means normal business hours at the representative's place of business.

AUTH: Sec. 16-1-303, MCA; IMP, Sec. 16-3-103, MCA

42.12.101 APPLICATION FOR LICENSE (1) All applications for licenses to sell alcoholic beverages at retail or wholesale must be made to the ~~liquor division of the~~ department upon forms supplied by the ~~liquor division~~ department.

(2) Applications for licenses shall be in the names of all persons ~~financially interested~~ with an ownership interest or to ~~be financially interested~~ have an ownership interest in the business to be ~~conducted~~ operated under the license. The names of all such persons shall appear on the licenses. The disqualification of any one or more applicants to hold the license disqualifies all.

(3) In addition to other information required on the application form, the department may require an applicant to submit all information necessary to determine qualifications, including but not limited to, personal history statements and

authorization to access state and federal income tax information for all persons who appear to have an ownership interest or control over the business operated or to be operated under the license.

AUTH: Sec. 16-1-303, MCA; IMP, Sec. 16-4-201 and 16-4-402, MCA

42.12.106 DEFINITIONS (1) "Associated business" means a business that is not licensed by the State to keep or sell alcoholic beverages but has an alcoholic beverages licensed business located within or on the premises owned or controlled by the "Associated business." Examples of associated businesses are a partnership or corporation which owns a hotel that is not licensed to keep or sell alcoholic beverages but leases space in the hotel to a licensee, or a shopping mall that is not licensed to keep or sell alcoholic beverages but leases space in the mall to a licensee for use as tavern.

~~(2) "Financial interest" means a direct financial sharing in the profits, the losses, or the liabilities incurred through the daily operation of the business conducted under the alcoholic beverage license.~~

~~(3)~~ (2) "Bona fide grocery store" means a retail establishment where a variety of articles of staple foodstuffs, including meats, vegetables, fruits, bakery items, dairy products, and household supplies are sold for consumption off the premises.

(3) "Bona fide sale" means a transaction that completely transfers the license to a qualified purchaser for consideration.

(4) "Business operated under the license" means the privilege of keeping alcoholic beverages for sale.

~~(8)~~ (5) "Cosmetic change" means, in addition to the examples given in 16-3-311, MCA, the correction of structural defects that do not entail reconfiguration of the premises.

(6) "Loan" means a written contract by which one delivers a sum of money to another with the agreement that the money be returned with interest within a definite time.

(7) "Non-institutional lender" means a person other than a state or federally regulated banking or financial institution who loans money to an applicant for a license or to a licensee. A non-institutional lender must provide evidence to show it does not have an ownership interest in the business operated under the license it is financing.

(8) "Ownership interest" means the involvement in the business operated under the license by someone who shares in the profits, losses, or liabilities of the business. Someone with an ownership interest in a liquor license shares in the financial risks of the business, is entitled to the profits or suffers the losses. Examples of ownership interests would include participation in such business decisions as sale of the license, relocation of the license, change or creation of any financial arrangements for loan repayment or funding sources, or

any responsibilities listed in ARM 42.12.132 to be held by the licensee. A right of first refusal is not an ownership interest.

~~(1)~~ (9) "Parties" means a licensee; applicant; secured party; protestant; or attorney representing the licensee, applicant, secured party, protestor or other interested party.

~~(6)~~ (10) "Prepared food business" means a restaurant, except the food need not be prepared on site.

~~(7)~~ (11) "Primarily meals with table service" means a restaurant where the business records show that the gross sales of food is greater than the sum of any other activity conducted on the premise.

~~(5)~~ (12) "Restaurant" means a public eating establishment allowing for seated service for a minimum of 12 persons at tables or booths where the sale of food served is prepared on site.

~~(4)~~ (13) "Special event" means any occasion including but not limited to picnics, fairs, conventions, receptions, civic or community enterprises, or sporting events lasting one or more consecutive days.

(14) "Undisclosed ownership interest" means a person with an ownership interest in a license who is not identified as an applicant, shareholder or member of an applicant on an application for the license or as a licensee on the face of the license.

AUTH: Sec. 16-1-303, MCA; IMP, Secs. 16-3-311, 16-4-105, 16-4-205, 16-4-207 and 16-4-404, MCA

42.12.108 HEARING PROCEDURE (1) When it is determined that a hearing is necessary the matter will be forwarded to the hearing examiner who will determine the time, date, and place for the hearing. The date and time of the hearing shall be during regular business hours. The place of the hearing shall be:

(a) in Helena, if other than a public convenience and necessity hearing or a resort determination hearing; ~~for an in-person hearing, the hearing will be held in Helena, Montana; and~~

(b) in the community nearest the location of the applicant's proposed premises if a public convenience and necessity hearing or a resort determination hearing; or

(c) in Helena for a telephonic hearing, when agreed to by all parties to the hearing, the hearing will be initiated from Helena by the hearing examiner through a conference call to the telephone numbers provided by the parties.

(2) remains the same.

AUTH: Sec. 16-1-303, MCA; IMP, Sec. 16-4-105, 16-4-203, 16-4-207 and 16-4-404, MCA

42.12.111 APPLICATION PROCESSING FEES (1) through (6) remain the same.

~~(7) The application processing fee for addition of driveup window is $50.~~

AUTH: Sec. 16-1-303 MCA; IMP, Sec. 16-1-302 and 16-1-303 MCA

42.12.207 APPLICATION APPROVED SUBJECT TO FINAL INSPECTION OF PREMISES (1) remains the same.

(2) If, upon investigation, the department determines the applicant is qualified to own a license and it appears that the proposed premises, based on sufficient evidence provided by the applicant, meets all criteria for suitability, the department ~~may enter a final agency decision conditionally approving the application~~ shall issue a conditional approval letter. The conditional approval is subject to a final inspection of the completed premises conducted by department investigative personnel, state or local health officials, state or local building codes personnel and state or local fire code officials.

(3) remains the same.

(4) An applicant who receives approval conditioned on the construction or remodeling of a premises is required to complete the premises and arrange for final inspection within a reasonable time. For purposes of this rule, "reasonable time" means 180 days in the case of an unconstructed building and 90 days in the case of a building which requires substantial remodeling, unless otherwise provided in the final agency decision approving the application. In the case of a major construction project, the final agency decision may provide additional time for completion of construction or remodeling and final inspection. ~~An applicant must request such additional time in writing prior to entry of a final agency decision.~~

(5) In the event an applicant fails to ~~construct or remodel a proposed premises and arrange for final inspection in accordance with this rule, the liquor division may set aside a previously entered final agency decision approving an application, and deny the same application~~ meet the requirements of the conditional approval, the application will be denied. If intervening circumstances beyond an applicant's control prevent completion of a proposed premises and final inspection within a reasonable time, an applicant must notify the liquor ~~division~~ license bureau in writing and provide evidence establishing grounds for extension of time in order to avoid denial of application.

(6) When an applicant applies for either transfer of ownership or location, or both, the license shall remain in the name of the recorded owner of the license until the terms of a conditional approval are satisfied. The recorded owner shall be sent copies of all final agency decisions affecting the license. If the ~~liquor division sets aside a previously entered final agency decision approving an application, and subsequently denies the same~~ application is denied, the recorded owner must resume operating the license within 90 days or the license may lapse as provided in 16-3-310, MCA.

(7) remains the same.

AUTH: Sec. 16-1-303 MCA; IMP, Secs. 16-4-104, 16-4-106,

16-4-201, 16-4-402, and 16-4-404, MCA

42.13.101 COMPLIANCE WITH LAWS AND RULES (1) All licensees, their agents and employees must abide by all:

(a) provisions of the laws of Montana and the United States related to alcoholic beverages;

(b) county and city or town ordinances related to alcoholic beverages;

(c) Indian liquor laws applicable within the areas of Indian country, as defined by 18 U.S.C. 1151, provided a tribe having jurisdiction over such area of Indian country adopted an ordinance, certified by the secretary of the interior, and published in the federal register; and

(d) rules of the department relating to alcoholic beverages. In addition, all licensees must conduct the licensed premises in compliance with the rules of other state and local agencies. ~~the department of health and environmental sciences, the department of administration and the department of justice.~~

(2) Proof of violation by a licensee or his agent or employee of any of the provisions of the above laws, ordinances, or rules is sufficient grounds for revocation or suspension of the license and licensees may be reprimanded or assessed a civil penalty in accordance with 16-4-406, MCA.

(3) The department will impose progressive penalties for multiple violations of any laws, ordinances and rules within any three-year period unless mitigating circumstances indicate the penalty should be reduced or aggravating circumstances indicate the penalty should be increased. Violations and progressive penalties include, but are not limited to, those listed on the following chart. Any combination of 4 of the below violations occurring within a three-year period could result in license revocation action.

Violation	1st Offense	2nd Offense	3rd Offense	4th Offense
Sale to a Minor	$250	$500	20 day Suspension	Revocation
Sale to Intoxicated Persons	$250	$500	20 day Suspension	Revocation
Open after Hours	$150	$300	12 day Suspension	Revocation
Sale after Hours	$150	$300	12 day Suspension	Revocation
Repouring	$250	$500	20 day Suspension	Revocation
Denial of Right to Inspect	$150	$300	12 day Suspension	Revocation
No approval to Alter	$150	$300	12 day Suspension	Revocation
No management Agreement	$150	$300	12 day Suspension	Revocation
Improper use of Catering Endorsement	$150	$300	12 day Suspension	Revocation
Accept more than 7 Days Credit	$250	$500	20 day Suspension	Revocation
Extend more than 7 Days Credit	$250	$500	20 day Suspension	Revocation
Undisclosed Ownership Interest			revocation	
90 Day Nonuse Without Approval			lapse	

(4) Reinstatement of a revoked license pursuant to this rule will not be considered until the number of violations in a three-year period from the date that revocation was effective totals to three or less but in no event less than 1 year. In every case, reinstatement will only be allowed if:

(a) the licensee demonstrates to the department that the licensee has taken steps to insure the causes of the license revocation will be prevented from occurring, and

(b) a license is available under the quota.

(5) A revoked license will affect a license quota area and the following may result:

(a) if it causes the area to be under quota, a notice of availability of a license will be published in the newspaper of general circulation in the quota area and invite applications for the available license, or

(b) if the area is over quota the revoked license will cease to be available for issuance.

(6) A revoked beer or beer and wine license issued within a city quota area before October 1997, if reinstated will not allow any gaming or gambling activity on the licensed premises.

(7) Mitigating circumstances in the case of sale to a minor could result in a reprimand for the first offense within the most current three-year period if the licensee has provided alcohol beverage service training acceptable to the department to all of its employees and reinforces that training with each employee at least every two years. The person who made the sale to a minor must have completed alcohol beverage service training prior to the sale for the department to consider issuing a reprimand.

(8) Aggravating circumstances may result in the imposition of maximum monetary penalties, maximum suspension time or revocation and will not bind the department to the progressive penalty framework indicated in (3) of this rule.

(9) Aggravating circumstances include, but are not limited to:

(a) no effort on the part of a licensee to prevent a violation from occurring,

(b) a licensee's failure to report a violation,

(c) a licensee's ignoring warnings issued by a regulating authority about compliance problems,

(d) a licensee's failure to timely respond to requests during the investigation of a violation, or

(e) a violation's significant negative effect on the health and welfare of the community in which the licensee operates.

(10) Nothing in this rule prevents the department from revoking, suspending or refusing the renewal of a license if revocation, suspension or refusing renewal are expressly allowed in law or rule with reference to a prohibited act.

AUTH: Sec. 16-1-303, MCA; IMP, Sec. 16-3-301, 16-6-305, 16-6-314 and 16-4-406, MCA

42.13.105 APPLICABILITY OF LICENSES; PREMISES DEFINED; GOLF COURSE EXCEPTION; PORTABLE SATELLITE VEHICLE, MOVABLE DEVICES (1) All licenses shall be applicable only to the premises in respect to which they were issued. The premises is described by a floor plan on file with the department which

accompanied the application and was approved by the department. The licensee must have possessory interest in the entire premises. No more than one license can be issued for the area described in the floor plan ~~unless the first license has been granted nonuse status~~. The floor plan may be amended by a licensee submitting an application to alter the licensed premises and gaining department approval pursuant to ARM 42.13.106. Where a licensee conducts as a single business enterprise two or more service areas located on the same premises and which have such inter-communication as will enable patrons to move freely from one service area to another without leaving the premises, the various service areas shall be regarded as but one premises for which but one license is required. In all other cases licenses must be obtained for each service area even though operated in the same building with another service area.

(2) through (8) remain the same.

AUTH: Sec. 16-1-303, MCA, IMP, Sec. 16-3-302, 16-3-311, 16-4-404, 16-4-420 and 16-6-104, MCA

3. The proposed rules 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:

NEW RULE I TRANSFER OF A LICENSE TO ANOTHER PERSON (1) A license may be transferred to another qualified person only if:

(a) the person is a purchaser upon a bona fide sale,

(b) the person is the personal representative of the estate of a deceased licensee,

(c) the person has a security interest in a license being foreclosed pursuant to ARM 42.12.205,

(d) the person is gifted the license and the donor completely transfers ownership interest, as provided in Title 70, chapter 3, part 1, MCA, or

(e) the person is appointed receiver under the license receivership.

(2) A potential buyer of a liquor license or a potential buyer of 10% or more of stock in a liquor business is required to submit an application for transfer of a liquor license or transfer of shares of stock pursuant to ARM 42.12.101. The applicant for ownership of either the business or its stock must be notified in writing by the department that such a transfer of the license is approved by the department before the buyer may pay to or in any way transfer any money or other valuable consideration to the seller in payment for the liquor business or stock. However, as part of the sale or purchase of the liquor business or stock the seller and the buyer may enter into an earnest money agreement for the purpose of guaranteeing performance of the sale so long as the amount of the earnest money agreement is not more than 5% of the total price of the liquor business or stock.

(3) The department may revoke a license for a violation of

the requirements in (2).

AUTH: Sec. 16-1-303, MCA; IMP, Secs. 16-4-401, 16-4-402 and 16-4-404, MCA

NEW RULE II COMPLETED TRANSACTIONS UNDER BONA FIDE SALES

(1) A transaction under bona fide sale is complete only if the department receives an application for a license submitted pursuant to ARM 42.12.101 and the department approves the application pursuant to 16-4-402, MCA, and this rule.

(2) An application will not be approved if the sales transaction:

(a) provides for another person other than the applicant to have an option to purchase the license,

(b) involves an escrow agent unless the agent is required to report to the department all changes or assignments to the original escrow agreement within 30 days of the change,

(c) involves a loan from a non-institutional lender or a loan guarantor unless the loan from a non-institutional lender has been approved in writing by the department because the lender has no ownership interest in the liquor business,

(d) involves a lessor of the licensed premise who is not qualified to own the license being applied for unless the department approves in writing such a business arrangement because the lessor does not have an ownership interest in the liquor business,

(e) involves an applicant who is or will be the manager of an associated business if the associated business is owned or controlled by a person who is not qualified to own the license being applied for unless the department approves in writing the associated business owner because the associated business owner does not have an ownership interest in the liquor business, or

(f) involves any business relationship, with respect to the proposed alcoholic beverages business, with a person who is not qualified to own the license being applied for unless the department approves in writing that the other person in the business relationship does not have an ownership interest in the liquor business.

(3) An application may be approved if the sales transaction:

(a) Is a contract for deed and the seller and the purchaser are persons each of whom is qualified to own the license being applied for at the time the application is submitted to the department and thereafter.

(b) The seller and the purchaser in a contract for deed must each submit with the application for the license the same level of supporting documentation required of the applicant in ARM 42.12.101 and 42.12.103 and cooperate in any investigation associated with the application or the license once it is approved.

(c) If the application is approved, the license will be issued with the purchaser named on the face of the license as the owner and the seller named on the face of the license as the

secured party.

(d) A license may be revoked if either the seller or the purchaser in a contract for deed is found to be unqualified to own the license.

(e) For purposes of this rule a contract for deed shall be construed to mean any sale in which the seller intends to retain legal ownership of the license until the terms and conditions of the contract are completely executed or performed by the purchaser.

AUTH: Sec. 16-1-303, MCA; IMP, Secs. 16-4-401, 16-4-402 and 16-4-404, MCA

NEW RULE III TRANSFER OF A LICENSE DUE TO FORECLOSURE (1) A transfer of a license resulting from a foreclosure on a sale under a contract for deed requires an application to transfer the license back to the seller pursuant to ARM 42.12.101 and the department's approval of the application pursuant to 16-4-402, MCA, and this rule.

(2) An application for the transfer of a license resulting from a rescission or cancellation including breach or default on a contract for deed may be approved if the applicant's name is on the license as a secured party.

(3) An application for the transfer of a license resulting from a rescission or cancellation including breach or default on a contract for deed may be denied and the license revoked if the party with the security interest is found at any time to be unqualified to own the license.

(4) A transfer of a license resulting from a foreclosure on a security interest based on a loan to the licensee requires the filing of documents evidencing the foreclosure. Based on the foreclosure documents, the transfer may be approved pursuant to ARM 42.12.205. A foreclosing secured party may retain ownership of the transferred license in a nonuse status for a period of no more than 180 days. If the license has not transferred to a qualified purchaser within 180 days, the license will be revoked.

AUTH: Sec. 16-1-303, MCA; IMP, 16-4-401, 16-4-402, and 16-4-404, MCA

NEW RULE IV LOAN STANDARDS (1) The department will further evaluate a designated loan to determine if the transaction is in reality a loan or an ownership interest. Such a review of the transaction will be conducted by using standards found in the uniform commercial code, the internal revenue code and generally accepted commercial lending practices.

(2) The department will decline to find a loan arrangement where the money borrowed has not been returned when due and alternate arrangements have not been memorialized in a written contract. Such an extended financial arrangement, if not disclosed to the department, will be determined by the department to be an undisclosed ownership interest.

AUTH: Sec. 16-1-303, MCA; IMP, Secs. 16-4-401, 16-4-402

and 16-4-404, MCA

4. The department proposes to repeal the following rules:

42.12.102 SUPPORTING DOCUMENTATION -- PUBLIC CONVENIENCE found at page 42-1205 of the Administrative Rules of Montana.
AUTH: Sec. 16-1-303, MCA; IMP: Secs. 16-4-105 and 16-4-203, MCA

42.13.212 ADVERTISING MEDIA found at page 42-1315 of the Administrative Rules of Montana.
AUTH: Sec. 16-1-303, MCA; IMP: Secs. 16-3-241 and 16-3-244, MCA

5. The department is proposing the amendments, adoption, and repeal of these rules to further clarify procedures required when applying for an alcoholic beverage license in Montana.

The amendments to ARM 42.11.244 and 42.12.111 are general housekeeping amendments that remove the references to actions that are no longer required by the department. The amendment to ARM 42.11.244 is necessary because the department no longer has its own investigative program. The department's investigations, by law, are performed by the department of justice. Further, the amendment to ARM 42.12.111 is necessary because the department no longer allows the sale of alcoholic beverage through a drive up window.

The amendments to ARM 42.12.101 specify the information the department may require the applicant to provide when making an application for an alcoholic beverage license. The information will be used to determine applicant qualifications. The amendments found in (1) and (2) of ARM 42.12.101 are housekeeping.

Through the rules, the department has clarified the type of ownership interests in liquor licenses which are allowed by law and which ownership interests are prohibited. The department's rules no longer use the term "financial interest", therefore the rule is being amended to reflect this change in terminology. Pursuant to 16-4-402, MCA, an application must be filed with the department before it can either issue a license or transfer a license. New subsection (3) to ARM 42.12.101, sets out the type of information needed to be provided to the department for the application to be reviewed.

The amendments to ARM 42.12.106 define terms found in the alcoholic beverage code, Title 16, Chapters 1-6, MCA, and these rules for the purpose of clarifying the meaning of those terms as they relate to alcoholic beverage regulations. The definition of "associated business" is necessary because the department must distinguish between those premises which are licensed for the sale of alcoholic beverages and the unlicensed premises which may surround or contain the licensed premises. The department pursuant to 16-4-404(6), MCA, may only transfer

ownership of a license upon a bona fide sale. Therefore, it is necessary to implement that section by defining the type of sales which are allowed by law. Section 16-4-205, MCA, requires a person named on the face of the license be the person who actually operates the license. Section 16-4-404(7), MCA, allows a license to be used as collateral. As a result, it is necessary for the department to adopt definitions of "loan" and "non-institutional lender" to distinguish between those business relationships which are bona fide loans and those business relationships which are ownership interests. The department is amending ARM 42.12.106 by deleting the term "financial interest" and replacing it with "ownership interest". The term ownership interest accurately reflects the type of interests which are allowed by the Alcoholic Beverage Code and those interests which are prohibited by 16-4-205 and 16-4-404, MCA.

Amendments to ARM 42.12.108 conform to the changes in 16-4-207, MCA which provide for local hearings in specific instances. The changes are necessary to implement the provisions of 16-4-105, et seq., MCA, which requires that if the department receives the required number of protests to issuance or transfer of location of a license a hearing must held in the community where the licensed premises is located.

The amendments to ARM 42.12.207 also conform to the changes in the law during 1997. Section 16-4-402, MCA provides for a letter of conditional approval when the premises proposed for licensing is not completed. The change to 16-4-402, MCA, was the result of an amendment made by Chapter 528, Laws 1997. The amendment provides the circumstances under which the department must issue a conditional approval letter and further provides for the contents of the letter. The amendment to the rule is necessary to implement that change in the law.

The amendments to ARM 42.13.101 provide a framework of progressive penalties that allow for consideration of both mitigating and aggravating circumstances. Pursuant to 16-4-406, MCA, the department is empowered to impose a range of penalties for infractions of the Alcoholic Beverage Code. The amendments implement that provision by setting out the policy which the department will use to insure that penalties are imposed in a fair and consistent manner to meet the requirements of due process.

The amendments in ARM 42.13.105 will remove the inconsistency between the rule and 16-4-420, MCA. The current language in this rule allows for the issuance of a license to a location if the license currently issued to that premise is presently in nonuse status. This amendment is required by the adoption of Chapter 465, Laws 1997, as codified in 16-4-420, MCA, which prohibits the consideration of an application for a license to be used at a location already licensed.

New Rule I describes how a license may be transferred to another qualified person. It specifies the criteria that must be met to be a qualified person. It further explains that prior approval and qualification of the purchaser must be achieved

before anything more than earnest money changes hands between the parties. The need for this rule is contained in 16-4-404(6), MCA, which allows the department to transfer the ownership of a liquor license upon a bona fide sale. To properly exercise its authority under that statutory requirement the department is by rule establishing which transfer meets the statutory requirement.

New Rule II specifies the restrictions upon sales transactions that, if existing, will not be considered a bona fide sale. If the necessary criteria are not met, an application to transfer ownership will not be approved by the department. The need for this rule is contained in 16-4-404(6), MCA, which allows the department to transfer the ownership of liquor license upon a bona fide sale. Like Rule I this rule sets out the criteria the department will use to determine which transactions are permitted and the rule is necessary for department's exercise of the authority granted it by 16-4-404(6), MCA.

New Rule III allows a person possessing a security interest in a license to foreclose and transfer ownership of the license to that person for a period of 180 days. During the 180-day period, the license will remain inactive while the person divests himself of the license. Pursuant to 16-4-404(7), MCA, a liquor license may be mortgaged. To implement that section it is necessary for the department to adopt a rule to provide how a license may be transferred to a new owner if the mortgage must be foreclosed.

New Rule IV describes permissible loan arrangements. The rule addresses how the review of such loan arrangements will be conducted and what standards will be applied when conducting such reviews. Pursuant to 16-4-404(7), MCA, a license may be mortgaged. However, undisclosed ownership interests in licenses are prohibited by 16-4-205, and 16-4-404(6), MCA. The provisions of New Rule IV are necessary so that the department can distinguish between those loans which are permitted and those undisclosed ownership interests which are prohibited.

The department is proposing to repeal ARM 42.12.102 because amendments to 16-4-203, MCA eliminate the department's requirement to determine the issuance of a new license or the transfer of location of an existing license based on public convenience and necessity criteria. The amendments to 16-4-203, MCA, made ARM 42.12.102 obsolete.

The department is proposing to repeal ARM 42.13.212 for general housekeeping to remove reference to actions no longer required by the department. Based upon a review of the Alcoholic Beverage Code the department determined ARM 42.13.212 was not supported by any statutory authority.

6. 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 May 29, 1998.

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

8. 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 6 above.

Cleo Anderson
CLEO ANDERSON
Rule Reviewer

Mary Bryson
MARY BRYSON
Director of Revenue

Certified to Secretary of State April 20, 1998

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE PROPOSED AMENDMENT OF ARM 42.21.113 relating to the Personal Property Schedules	NOTICE OF THE PROPOSED AMENDMENT NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On June 12, 1998, the Department of Revenue proposes to amend ARM 42.21.113 relating to the Personal Property Schedules.

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

42.21.113 LEASED AND RENTED EQUIPMENT (1) (a) through (c) remain the same.

(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%

(1)(e) remains the same.

(2) through (4) remain the same.

AUTH: 15-1-201, 15-23-108, MCA IMP: 15-6-136, MCA

3. Proposed amendments to existing ARM 42.21.113 are required to correct an error. Initially Senate Bill 300, passed during the 1997 session, proposed to increase the threshold amount of lease and rental equipment that can be taxed as class 6 property from $5,000 to $20,000. In the final version, the $20,000 level was reduced to $15,000. Unfortunately, when the

rule was changed to reflect a new threshold level, the incorrect amount of $20,000 was used. This amendment corrects that error.

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 May 28, 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 May 28, 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 action; 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 April 20, 1998

BEFORE THE DEPARTMENT OF COMMERCE
BOILERS, BLASTERS AND CRANE OPERATORS PROGRAM
STATE OF MONTANA

In the matter of the amendment of rules pertaining to the construction blasters, hoisting operators and crane operators and the adoption of a new rule pertaining to boiler engineer training	))))))	CORRECTED NOTICE OF AMENDMENT

TO: All Interested Persons:

1. On December 1, 1997, the Boilers, Blasters and Crane Operators Program of the Department of Commerce published a notice of proposed amendment and adoption of rules pertaining to the industry at page 2149, 1997 Montana Administrative Register, issue number 23. On February 12, 1998, the Program published a notice of adoption of the rules at page 453, 1998 Montana Administrative Register, issue number 3.

2. ARM 8.15.106 was amended exactly as proposed in the adoption notice. The second reference to the word "laborers" in (2)(a) should have been stricken in the adoption notice as follows:

"8.15.106 TRAINING PROGRAMS (1) and (2) will remain the same as proposed.

(a) northwest laborers employers training program ~~laborers~~;

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

3. Replacement pages for this rule were submitted for the March 31, 1998 filing date with the change made as shown above.

DEPARTMENT OF COMMERCE
BOILERS, BLASTERS AND CRANE
OPERATORS PROGRAM

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

_____
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, April 20, 1998.

BEFORE THE BOARD OF HORSE RACING
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment of rules pertaining to pari-mutuel wagering, annual license fees, timers, jockeys, trainers, general requirements, weight penalties and allowances, exacta betting, requirements of licensee and the repeal of a rule pertaining to bonus for owners of Montana breds	NOTICE OF AMENDMENT AND REPEAL OF RULES PERTAINING TO THE HORSE RACING INDUSTRY

TO: All Interested Persons:

1. On March 12, 1998, the Board of Horse Racing published a notice of proposed amendment and repeal of rules pertaining to the horse racing industry at page 615, 1998 Montana Administrative Register, issue number 5.

2. The Board has amended ARM 8.22.503, 8.22.611, 8.22.706, 8.22.710, 8.22.801, 8.22.802, 8.22.1619, 8.22.1802 and repealed ARM 8.22.1623 exactly as proposed. The Board has amended ARM 8.22.502 as proposed, but with the following changes:

"8.22.502 LICENSES ISSUED FOR CONDUCTING PARIMUTUEL WAGERING ON HORSE RACING MEETINGS (1) through (14) will remain the same as proposed.

(15) Any request by a licensee to relinquish or cancel dates allotted to said licensee shall be filed in writing with the board within 30 days after the final awarding of dates for the ensuing racing season. The board will then consider whether or not to grant the request to relinquish, and shall notify the licensee in writing of its decision. If a date relinquishment is granted by the board, any other applicant may request the vacant dates. A date relinquishment may be denied by the board, and Ffailure of a licensee to conduct racing on all dates allotted to the licensee by the board thereafter shall subject the licensee to a fine not to exceed the sum of $500 per day for each racing day allocated and not used, unless such non-use or cancellation of racing was due to fire, riot, strike, inclement weather, act of God or other causes deemed excusable by the board of horse racing.

(16) through (50) will remain the same as proposed."

Auth: Sec. 23-4-104, 23-4-201, 23-4-202, 37-1-131, MCA; IMP, Sec. 23-4-104, 23-4-201, 23-4-202, MCA

3. The Board noted that the language "A date relinquishment may be denied by the board, and" should have been underlined in the proposal notice. Also, the capital letter "F" in the word "Failure" should have been stricken and the lower case letter "f" in the word "failure" should have been underlined in the original notice.

4. No comments or testimony were received.

BOARD OF HORSE RACING
JOE ERICKSON, CHAIRMAN

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

_____
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, April 20, 1998.

BEFORE THE BOARD OF PLUMBERS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment of rules pertaining to definitions and fees	)))	NOTICE OF AMENDMENT OF 8.44.402 DEFINITIONS AND 8.44.412 FEE SCHEDULE

TO: All Interested Persons:

1. On October 6, 1997, the Board of Plumbers published a notice of proposed amendment of the above-stated rules at page 1751, 1997 Montana Administrative Register, issue number 19. The Board subsequently received a request for public hearing. On December 15, 1997, the Board of Plumbers published a notice of public hearing at page 2226, 1997 Montana Administrative Register, issue number 24. The hearing was held on January 21, 1998, in Helena, Montana.

2. The Board has amended ARM 8.44.412 exactly as proposed, and has amended ARM 8.44.402 as proposed, but with the following changes:

"8.44.402 DEFINITIONS (1) through (5) will remain the same as proposed.

(6) "Farm or ranch" means buildings located on and used in conjunction with agricultural parcels of land that total 160 or more contiguous acres under one ownership or are otherwise classified as agricultural, pursuant to Title 15, chapter 7, part 2, MCA, and upon which agricultural products are produced and marketed.

(7) through (9) will remain the same as proposed."

Auth: Sec. 37-69-202, 37-69-401, MCA; IMP, Sec. 37-69-102, 37-69-202, 37-69-401, 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: One comment was received stating the proposed change to ARM 8.44.402(6) does not define the source of the phrase "classified as agricultural." The comment stated that the classification for property tax purposes should be referenced as "classified for agricultural pursuant to Title 15, Chapter 7, part 2, MCA."

RESPONSE: The Board agreed with the comment and will amend the rule as shown above.

COMMENT NO. 2: One comment was received stating the proposed change to ARM 8.44.402(7) improperly limits the scope of exemptions to licensing found in 37-69-102(1)(e). The comment stated the statutory exemption to licensure applies to the installation of water conditioners in all private dwellings, and should not be limited to only those dwellings on private water systems. The comment also stated there was no statutory authority to limit the installation connections of

water conditioners to water piping only requiring the drain systems to be hooked up to a previously installed indirect waste receptor. The comment concluded that the proposed rule exceeds the Board's rule-making authority.

RESPONSE: The Board noted the comment does not take into account the Uniform Plumbing Code. The installations of a water conditioner is not the same as connection to services, as noted in the UPC in effect in this state. Additionally, the Board has been granted broad rule-making authority, and this propose rule amendment is clearly within their scope and authority.

COMMENT NO. 3: One comment was received stating the proposed amendment to ARM 8.44.402(8) defining the term "minor work" creates an excessive restriction on the ability of appliance dealers to tap into waste water systems. The comment stated the proposed rule change goes beyond the long-accepted use of the term. The comment also stated that by allowing only the connection to water piping systems, and not allowing a vendor to tap drain pipes, the installation of common household appliances by the appliance dealer would be eliminated.

RESPONSE: The Board noted the Uniform Plumbing Code currently in effect in this state prohibits the direct tap into a waste line, therefore the rule is entirely consistent with the UPC, which has been adopted by the Building Codes Division in this state.

BOARD OF PLUMBERS
RICHARD GROVER, CHAIRMAN

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

_____
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, April 20, 1998.

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

In the matter of the amendment of ARM 12.6.901 limiting the use of motor-propelled water craft to ten horsepower on Lake Helena	NOTICE OF AMENDMENT

TO: All Interested Persons.

1. On January 15, 1998, The Montana Fish, Wildlife and Parks Commission (commission) published notice at page 95 in the 1998 Montana Administrative Register, issue number 1, of public hearing and the commission's intent to consider the amendment of a rule regarding restriction of motor-propelled craft on Lake Helena.

2. On February 18, 1998, a hearing was held in Helena. Written comments were accepted through February 24, 1998.

3. After consideration of the comments received on the proposed amendment, the commission has amended the rule with the following changes from the original proposal. Matter to be added is underlined. Matter to be deleted is interlined.

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

(a) remains the same

(b) the following waters are closed to the use of all boats propelled by machinery over 10 horsepower, except in cases of use for search and rescue, official patrol, or for scientific purposes:

(b)(i) remains the same

(b)(ii) other waters of the state as follows:

Hill County:	Beaver Creek Reservoir
~~Lewis and Clark County~~	~~Lake Helena~~
Lincoln County:	Carpenter Lake
Missoula County:	(A) Blanchard Lake (on Clearwater River)

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

Lewis and Clark County:	(A) through (E) remain the same (F) on Lake Helena from April 1 to the opening day of waterfowl season.

AUTH: 87-1-303, MCA IMP: 87-1-303, MCA

4. A total of 21 comments were received on the proposed amendment to the water safety regulations in 12.6.901. Fourteen comments supported either the proposed horsepower restriction or some variation which would protect waterfowl on Lake Helena during the spring and summer months. Seven comments expressed opposition to any restriction. Two individuals offered options or alternatives to the proposal. The following is a summary of the comments received along with the commission's responses to those comments:

COMMENT 1: There has been no problem with power boats or jet skis on Lake Helena. Therefore, no action should be taken.

RESPONSE 1: The request for commission action was initiated by the Last Chance Audubon Society because of concerns over the increasing use of jet skis and other high-powered watercraft on adjacent Hauser and Canyon Ferry Lakes. Potential exists for such activities on Lake Helena to affect nesting waterfowl. The current increased residential development on Lake Helena with many of these sites being advertised as lake-front property could easily lead to increased motorized boating activity during the next few years. Adoption of a rule regarding motorized water craft use on the lake would be a proactive step to avoid conflicts in the future.

COMMENT 2: A no-wake zone on the lake would provide the sought after protection for the waterfowl.

RESPONSE 2: The commission concurs and believes that a seasonal no-wake zone instituted on the lake from April 1 until the opening of waterfowl season would be the preferred option.

COMMENT 3: Instituting a no-wake zone on Lake Helena would be essentially the same as the 10 horsepower restriction. A no-wake zone would prevent effective entry by most motor boats into the three principal hunting bays.

RESPONSE 3: A no-wake zone would not be the same as the proposed restriction because it would allow any boat which can navigate the lake, regardless of engine size. High speed operation of a boat on the lake during waterfowl season is uncommon as most hunters are traveling to blinds in the dark and don't want to risk hitting objects in the lake or other hunters with their boats.

COMMENT 4: A 10 horsepower restriction would affect a large number of individuals who use Lake Helena for waterfowl hunting in the fall whose boats are powered by engines larger than 10 horsepower. A number of commentors favored a no-wake restriction rather than a horsepower restriction.

RESPONSE 4: Although no formal survey was initiated to find the average size of motor used by most waterfowl hunters on Lake

Helena, the 10 horsepower restriction would probably affect quite a few hunters. The Audubon Society stated that their purpose in promoting a rule amendment is not to discourage or negatively affect waterfowl hunters. They recognize that hunting license dollars were used to purchase the wildlife management area and these dollars continue to be used to enhance and improve the WMA. The purpose of the proposal is to protect waterfowl during very vulnerable periods in the spring and summer. The commission concurs and has changed the adopted rule to a no-wake restriction. The commission determined that this restriction would protect nesting waterfowl without unduly restricting waterfowl hunters and fishers.

COMMENT 5: If restrictions are necessary, a 35 horsepower limit would effectively eliminate high-power watercraft while still allowing most hunting boats in the fall.

RESPONSE 5: The 10 horsepower restriction was proposed because it is a standard for other bodies of water in Montana. The commission has adopted a no-wake restriction.

COMMENT 6: Lake Helena is too shallow and muddy for jet skis.

RESPONSE 6: If other types of watercraft, particularly those with outboard motors can utilize the lake, then jet skis and other shallow-draft, non-propeller craft are just as likely to use the lake.

COMMENT 7: A commercial fishing business is currently operating on Lake Helena. Any kind of restriction would adversely affect this operation.

RESPONSE 7: The department legal staff reviewed this issue and concluded that the commission would have the option of conditioning the commercial license as an exception. Prior to the original issuing of the permit, a completed environmental assessment concluded that the activities of commercial fisherman would have little or no negative impact the Lake Helena waterfowl.

COMMENT 8: If the problem is jet skis, then why not simply ban jet skis from Lake Helena?

RESPONSE 8: Such a ban would not address other forms of shallow-draft, high powered vessels which would have the potential to use the lake and disrupt waterfowl in the area.

COMMENT 9: If the commission feels a restriction is necessary, such limits should exclude the hunting season.

RESPONSE 9: The commission adopted the rule with an exception for the waterfowl hunting season. The commission can set restrictions inclusive of certain time periods. For example, the commission currently has set a restriction on the south side

of Lake Helena, closing the area during the entire waterfowl season.

COMMENT 10: The commission should postpone final action until the April 3, 1998, meeting rather than at the March meeting that will be in Hamilton. This postponement would allow the commission to hear from other Lake Helena users if the other users chose to come to the meeting.

RESPONSE 10: The commission concurs and on February 25, 1998, sent a letter to all members of the public who had commented to inform them that the issue would be put on the April commission agenda for final action. The commission considered final action on the rule at its April 3, 1998 meeting.

COMMENT 11: Why not adopt a rule establishing a seasonal closure of the west half or even the entire lake.

RESPONSE 11: This idea was considered but rejected for two reasons. First, as previously mentioned, there currently exists a seasonal closure on the south portion of the lake during waterfowl season. Many individuals have expressed their confusion about the boundaries, purpose, and scope of this closure. While the department is using new signs and additional education efforts to remedy the confusion about the existing area closure, the commission believes that adding yet another closure, on top of the existing one, would only serve to further bewilder lake users.

Second, the commission thinks that closing a portion of the lake or the entire lake would restrict the area more than necessary and eliminate opportunities for anglers who fish from small power boats or motor-driven canoes during the summer months.

5. The rule has been reviewed and approved by the Department of Public Health and Human Services as required by 87-1-303, MCA, with a determination that the rule would not have an adverse impact on public health or sanitation.

RULE REVIEWER

Robert N. Lane

FISH, WILDLIFE & PARKS COMMISSION

Patrick J. Graham, Secretary

Certified to the Secretary of State April 20, 1998.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of rule 17.30.1022 amending the Montana ground water pollution control system requirements.	))))	NOTICE OF AMENDMENT OF RULES (Water Quality)

To: All Interested Persons

1. On January 29, 1998, the Board published notice of proposed amendment of the above-captioned rule at page 271 of the 1998 Montana Administrative Register, Issue No. 2.

2. The Board adopted the rule as proposed with the following amendments (new material is underlined; material to be deleted is interlined):

17.30.1022 EXCLUSIONS FROM PERMIT REQUIREMENTS (1) In addition to the permit exclusions identified in 75-5-401, MCA, the following activities or operations are not subject to the permit requirements of ARM 17.30.1023, 17.30.1024, 17.30.1030 through 17.30.1033, 17.30.1040 and 17.30.1041:

(a) motor vehicle wrecking facilities and county motor vehicle graveyards licensed pursuant to Title 75, chapter 10, MCA;

(b) sources that obtain an MPDES permit pursuant to ARM Title 17, chapter 30, subchapter 13;

(c) public sewage systems that were reviewed and approved by the department prior to [effective date of this rule] under Title 75, chapter 6, and ARM 17.38.101. However, this exclusion does not apply to systems with a design capacity greater than 5000 gallons per day, if the operator of the system requests a modification after [the effective date of this rule], or if the department determines that operation of the system has caused a violation of a statute or rule administered by the department after [the effective date of this rule];

(d) public sewage systems with a design capacity less than 5000 gallons per day, that are reviewed and approved by the department after [effective date of this rule] under Title 75, chapter 6, and ARM 17.38.101;

(e) multi-family sewage disposal systems reviewed and approved by the department under Title 76, chapter 4, MCA, and multi-family sewage disposal systems reviewed and approved by a local government under Title 76, chapter 3, MCA, after [the effective date of this rule]. However, this exclusion does not apply to aerobic package plant systems, mechanical treatment plants, and nutrient removal systems, which require a high degree of operation and maintenance, or systems which require monitoring pursuant to ARM 17.30.517(1)(d)(ix);

(f) multi-family sewage disposal systems reviewed and approved by the department of public health and human services under Title 50, chapters 50, 51 and 52, MCA, and multi-family sewage disposal systems reviewed and approved by local boards of health under Title 50, chapter 2, MCA, after [the effective date

of this rule]. However, this exclusion does not apply to aerobic package plant systems, mechanical treatment plants, and nutrient removal systems, which require a high degree of operation and maintenance, or systems which require monitoring pursuant to ARM 17.30.517(1)(d)(ix)~~;~~ , and

(g) public sewage systems that use land application as a method of disposal and that have been reviewed and approved by the department under Title 75, chapter 6, and ARM 17.38.101.

(2) Same as proposed.

AUTH: 75-5-401, MCA; IMP: 75-5-401, 75-5-602, MCA

3. A public hearing was held on February 20, 1998, and written comments were received on the amendments. Following are the comments and the Board's responses:

COMMENT 1: One commentor suggested that the design capacity for systems that qualify for an exemption in 17.30.1022(1)(c) and (d) should be raised from 5,000 gallons per day (gpd) to 15,000 gpd, because the current nondegradation requirements and subdivision rules already require sufficient site-specific information to determine whether the location and treatment method is adequate to properly treat the discharge. Furthermore, it is not reasonable to require a discharge permit for typical public sewage systems simply because they have a design capacity of over 5,000 gpd. The additional cost of permitting, monitoring, testing, reviewing, and enforcing should be weighed against the benefit of imposing a permit requirement on relatively small systems.

RESPONSE: As this commentor suggests, current rules for the review and approval of public sewage systems already require an evaluation of site characteristics to ensure that the system is adequate. Once a system is approved, however, there is no existing mechanism to ensure that the treatment system is performing at the level anticipated by the department during its approval.

The site-specific information relied on by the department during its approval, such as percolation tests, monitoring wells, test pits, and nutrient accumulation formulas, may not completely or accurately characterize the site. An inaccurate prediction of the level of performance may occur due to natural variability in subsurface conditions or from substandard construction. Natural variability in subsurface conditions and substandard construction may significantly affect the treatment ability of soils in a manner that cannot be anticipated during the department's approval. Because of these factors, a permit is necessary for systems with a design capacity of over 5,000 gpd in order to provide continual monitoring and, ultimately, ensure effective treatment.

The board does not agree that the additional costs associated with the permit requirements for systems with a design capacity of over 5,000 gpd outweigh any benefits. The intent of exempting systems with a design capacity of less than

5,000 gpd is to exclude small businesses from the burden of obtaining a discharge permit, because smaller systems have less potential for impacting ground water. As proposed, the amendment will exclude systems with a design capacity of up to 5,000 gpd. Businesses that use a system with a design capacity of 5,000 gpd include a 40-room hotel, a bar serving over 1,500 persons per day, or a laundromat with eight or more washing machines. The board does not believe that businesses requiring systems with a design capacity of 5,000 gpd or more, such as a 41-room hotel, will be over-burdened by the costs associated with discharge permits. Furthermore, the benefits of preventing adverse impacts by requiring a permit for these larger systems outweighs the burden of any costs associated with a permit.

COMMENT 2: A commentor suggested that the rules be modified to include a permit exemption for public sewage systems that use land application as a method of disposal. The commentor noted that these systems have a proven record of performance.

RESPONSE: The board agrees with this comment and will modify the proposed amendments to include a permit exclusion for public sewage systems that only use land application as a method of disposal.

Reviewed by: BOARD OF ENVIRONMENTAL REVIEW

JOHN F. NORTH, Rule Reviewer CINDY E. YOUNKIN, Chairperson

Certified to the Secretary of State April 20, 1998

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of rules 17.38.101, 17.38.202, 17.38.207, 17.38.208, 17.38.215 through 17.38.218, 17.38.226, 17.38.229, 17.38.234, 17.38.235, 17.38.239, 17.38.244, 17.38.256 and 17.38.270, updating public water supply and public sewage system rules.	)	NOTICE OF AMENDMENT OF RULES (Public Water Supply)

To: All Interested Persons

1. On January 29, 1998, the Board published a notice of public hearing for proposed amendment of the above-stated rules at page 242 of the 1998 Montana Administrative Register, Issue No. 2.

2. The board has not amended sub-section 17.38.215(1)(b)(i), but deferred action on that sub-section to its meeting on June 12, 1998.

3. The board has amended rules 17.38.101, 17.38.202, 17.38.207, 17.38.216 through 17.38.218, 17.38.226, 17.38.234, 17.38.235, 17.38.239, 17.38.244, 17.38.256 and 17.38.270 exactly as proposed. Rules 17.38.208, 17.38.215, and 17.37.229 are amended as proposed, but with the following changes (new material is underlined; material to be deleted in interlined):

17.38.208 TREATMENT TECHNIQUES--FILTRATION AND DISINFECTION (1) through (4)(b) same as proposed.

(4)(c) A supplier that uses a surface water source that provides filtration treatment or uses a ground water source under the direct influence of surface water and provides filtration treatment must provide the disinfection treatment specified in (e) ~~above~~ below beginning June 29, 1993, or beginning when filtration is installed, whichever is later. Failure to meet any requirement of this section after the specified date is in violation of the treatment technique requirements imposed by this rule.

(4)(d) through (5) same as proposed.

17.38.215 BACTERIOLOGICAL QUALITY SAMPLES (1)(a) through (1)(b) same as proposed.

(1)(b)(i) remains the same (i.e. not amended at this time).

(1)(b)(ii) through (3) same as proposed.

(4) A special purpose sample, including a sample taken to determine whether adequate disinfection has occurred after pipe placement or repair, may not be taken from a part of the public water supply distribution system that is actively serving the public. Repeat samples taken pursuant to (5) of this rule are not special purpose samples.

(5) through (8) same as proposed.

17.38.229 CHLORINATION (1) through (3) same as proposed.

(4) The residual disinfectant concentration ~~in the distribution system for a public water supply using ground water and full time disinfection,~~ measured as free chlorine, ~~must not be less than 0.2mg/l using the DPD method or~~ total chlorine, combined chlorine or chlorine dioxide, in the distribution system of a ground water supply system required by the department to use continuous disinfection must not be less than 0.2mg/l using the DPD method, or 0.1mg/l using the amperometric titration method. ~~Water in the distribution system with a~~ A heterotrophic bacteria concentration less than or equal to 500 per milliliter, measured as heterotrophic plate count (HPC), is an acceptable substitute for disinfectant residual for purposes of determining compliance with this rule.

3. The notice of public hearing specified the reasons for these amendments. Spoken and written comments were received at the public hearing held on February 23, 1998, and additional written comments were received. The comments are summarized below along with the agency's response.

Comments concerning 17.38.208(4)(e)(iii):

COMMENT 1: The requirement pertaining to residual concentrations of disinfectant in the distribution system should apply only to systems legally mandated to use full time disinfection. Otherwise it would discourage systems not legally required to use disinfection from doing so. Brad Hafar, Mountain Water Company (Missoula).

RESPONSE: The requirements of 17.38.208 apply only to public water supply systems with a surface water source or a ground water source under the direct influence of surface water. Some type of disinfection is required for all such systems. The rule does not apply to systems with only ground water sources which are not under direct influence of surface water.

Comments concerning 17.38.215(1)(b)(i):

COMMENT 2: Microbial contamination often occurs on an intermittent and sporadic basis. Monitoring quarterly is likely to be ineffective at detecting this type of contamination. Consider eating at your favorite rural restaurant or bar and not knowing if the water is safe to drink, because it hasn't been sampled for several months. Ruth Powers, R.S., Missoula City-County Health Department.

COMMENT 3: Microbiological contamination of ground water (well) sources may occur sporadically in response to seasonal effects or other influencing factors and does not necessarily persist for a lengthy time period. Quarterly sampling may miss the period of contamination. Dick Quist, Ph.D., R.S., Flathead County Health

Department.

COMMENT 4: From a public health perspective, contaminated water can result in contamination of foods, utensils, dishes, food preparation surfaces and ice. This can be a significant causal factor of food borne illness. The very young and elderly are most at risk. Dick Quist, Ph.D., R.S., Flathead County Health Department.

COMMENT 5: Many instances of contamination may be occurring daily that go unnoticed. Reducing the frequency of testing may only further endanger our fragile potable water supplies. David Haverfield, Lolo Water and Sewer District, Missoula County.

COMMENT 6: The proposal to reduce sampling frequency for small public water systems under 17.38.215(1)(b)(i) is a setback, not a step in the right direction, due to health risks involved with contaminated drinking water. Quarterly sampling is not adequate to detect problems in a timely manner. Jake Kammerer, R.S., Ravalli County Sanitarian.

COMMENT 7: Bacteriological water sampling is one of the least expensive of all required water tests, but serves one of the most important public health roles. Peter M. Frazier, Great Falls/Cascade County City-County Health Department.

COMMENT 8: The cost of monthly sampling, for as little as $10 per month, does not seem a significant hardship. David Haverfield, Lolo Water and Sewer District, Missoula County.

COMMENT 9: While there may be circumstances that warrant quarterly sampling for public water supplies that are not at risk to microbial contamination, in many situations reducing the sampling would unnecessarily expose the public to microbial contamination. Ruth Powers, R.S., Missoula City-County Health Department.

COMMENT 10: Although there are probably a number of systems throughout the state where monthly sampling may not be warranted, there are many systems where quarterly monitoring could put the public at risk. Peter M. Frazier, Great Falls/Cascade County City-County Health Department.

COMMENT 11: While there may be circumstances that warrant quarterly sampling for public water supplies that are less at risk from microbial contamination, in many situations reducing the sampling frequency may unnecessarily expose the public to dangerous bacteria. David Haverfield, Lolo Water and Sewer District, Missoula County.

COMMENT 12: Commentor opposes the proposed amendment, at least until a more detailed rationale is provided to the public with additional opportunity for public comment. No reason for the change in terms of protecting public health was stated other than

to conform with federal requirements which have not changed since 1993 when the requirement for monthly sampling of these systems was adopted. Jeff McCleary, Montana Association of Water and Sewer Systems.

COMMENT 13: Commentor requests that the board require answers to the following questions and allow additional public comment before approving the proposed amendment.

(1) Why is this change being proposed at this time?

(2) Is the change proposed in order to better protect public health?

(3) What were the reasons given in 1993 when the sampling requirement for such systems was changed from quarterly to monthly?

(4) Do sanitary surveys, bacteriological sampling results, absence of boil orders and overall conditions of transient non-community public water supply systems suggest that quarterly bacteriological sampling is again adequate to protect public health?

(5) Is this change being proposed to give transient non-community systems monitoring relief, or to relieve the paperwork burden of someone else?

(6) Is it in the best interests of public health to impose a stringent regulation in 1993 and then change it back to a less stringent regulation in 1998?

Jeff McCleary, Montana Association of Water and Sewer Systems.

COMMENT 14: Missoula City-County Health Department recommends alternate language to the effect that monthly samples would be required for these systems for each month during which the system provides water to the public. An exception to this requirement would be made for such systems to sample for coliforms on a quarterly basis if the following conditions were met: (1) if no routine samples from the previous 3 years contained coliform; and (2) a sanitary survey conducted by the department or county sanitarian within the past 3 years showed no relevant risk to the well or distribution system; and (3) no changes have been made to the well or to the distribution system. Ruth Powers, R.S., Missoula City-County Health Department;

COMMENT 15: Great Falls/Cascade County Health Department supports the language proposed by Missoula City-County Health Department. This is a good, common sense approach that provides protection where needed without creating major financial hardship to any operator. Peter M. Frazier, Great Falls/Cascade County City-County Health Department.

COMMENT 16: Gallatin City-County Health Department concurs in the modification recommended by Missoula City-County Health Department. In other words, commentor recommends that the rule be amended to require a 3-year record of monthly, uncontaminated sampling before the public water supplier is offered the option to decrease sampling frequency. A 3-year "clean" sample period requirement is long enough to provide sampling results from the water source over several seasonal changes thus increasing the probability of having sampled during both high and low ground water periods. This time period also coincides with the sanitary survey inspection cycle for public water supplies. Denise Moldroski, R.S. and Thomas Moore, R.S., Gallatin City-County Health Department.

COMMENT 17: Commentor suggests that bacteriological sampling of these samplings continue to generally be required on a monthly basis, but that certain individual systems could be allowed to reduce sampling frequency to a quarterly basis if it was demonstrated: (1) that the system had a history of good bacteriological sampling results; (2) that sanitary surveys of the system reflected appropriate conditions; and (3) that the system had a history of compliance with pertinent regulations. Jeff McCleary, Montana Association of Water and Sewer Systems.

COMMENT 18: Commentor suggests that sampling schedules could be designed around periods of high contamination risk such as spring runoff. Dick Quist, Ph.D., R.S., Flathead County Health Department.

COMMENT 19: Commentor proposes that the rules establish a special class of transient non-community water supplies having (1) a satisfactory track record of microbiological sampling, and (2) a satisfactory current sanitary survey of the water source. These facilities would qualify for quarterly microbiological sampling while the remaining sources would continue with monthly sampling. A monthly update of facility status would be required. Dick Quist, Ph.D., R.S., Flathead County Health Department.

COMMENT 20: Contracted local sanitarians should be authorized to reduce sampling from quarterly to monthly for systems which have consistently shown safe results. Local sanitarians should also be authorized to again require monthly sampling for 6 months to 1 year if an operator fails to send in a quarterly sample. Jake Kammerer, R.S., Ravalli County Sanitarian.

COMMENT 21: Commentor is concerned that some small system operators do not use proper techniques in taking samples. If the board goes to quarterly sampling, the department should contract with counties to take the samples. Jake Kammerer, R.S., Ravalli County Sanitarian.

COMMENT 22: Commentor states that transient non-community systems are ignored and neglected and operators are untrained and may not use proper sampling techniques. Commentor believes that

monthly monitoring would be more likely to detect contamination. Robert A. Davidson, microbiologist, AMATEC Water and Wastewater Analysis & Consulting, Billings.

RESPONSE TO COMMENTS 2 THROUGH 22: At its meeting on April 3, 1998, the board decided to defer consideration of this proposed amendment until the meeting on June 12, 1998. The board has requested that the department develop amendments to this subsection that would continue the monthly sampling requirement but would include criteria under which an operator of this class could sample for coliform bacteria quarterly rather than monthly. The board will consider these amendments at its meeting on June 12, 1998.

Comments concerning 17.38.215(4):

COMMENT 23: Proposed change implies that special purpose samples cannot be taken from wells since wells are "part of the public water supply system that is actively serving the public". Commentor agrees that source water samples should not be used in Total Coliform Rule (TCR) compliance, but they should not be discouraged from being taken. Commentor suggests that the rule be amended to provide that such samples may not be ". . . taken from a part of the public water supply ***distribution*** system that is actively serving the public." Arvid M. Miller and Brad Hafar, Mountain Water Company (Missoula).

RESPONSE: The suggested change has been made. Special purpose samples that are taken from a source prior to disinfection would continue to be regarded as special purpose samples. Samples that are taken from sources would typically not be regarded as compliance samples since coliform samples should be taken from the distribution system. However, unsatisfactory samples taken from sources that supply water to the distribution system without treatment should be reported immediately to the department. The department may require check sampling and corrective measures. If appropriate, public notification may also be required. This clarification is provided to dispel the belief that unsatisfactory "special" samples taken from public water supplies do not require immediate resolution or public notification.

COMMENT 24: Commentor recommends that this rule should allow for samples taken on mains which are repaired under pressure. These type of repairs are made on mains ". . . actively serving the public" and should be sampled, not discouraged from being sampled. This type of repair is common and is adequately addressed in AWWA Disinfection Standards as a single bacteriological sample with standards for follow-up, when necessary. It is not appropriate for these types of samples to be regarded as TCR compliance samples. Arvid M. Miller and Brad Hafar, Mountain Water Company (Missoula).

RESPONSE: The response to this question is effectively the same as the response to comment 23 above. The requirement is proposed

to protect the public health. Unsatisfactory samples taken from an active part of the distribution system indicate that the water is at risk, and should be reported to the department immediately. Depending upon circumstances, public notification may be required. Immediate resolution of the problem would be required. Regardless of whether the repair practice is accepted by the industry, the sample results would still be indicative of the quality of water actually being served to the public. Again, these samples would not typically be regarded as routine samples, but they may be used in a compliance determination.

Comments concerning 17.38.217(8):

COMMENT 25: 17.38.217(8): The language of this subsection should be amended to read: "... public water supply ***mandated to use*** ~~using~~ full time disinfection ..." Otherwise, this notification requirement creates a disincentive for voluntary chlorination or other disinfection on a water system that is not legally required to use disinfection. Commentor believes that the changes proposed in ARM 17.38.217(8) will do more to discourage ground water systems from disinfecting than it will do good. Arvid M. Miller and Brad Hafar, Mountain Water Company (Missoula).

RESPONSE: This subsection applies only to surface water sources, and to ground water sources under the direct influence of surface water. Disinfection of these sources is already mandatory.

Comments concerning 17.38.229(4):

COMMENT 26: 17.38.229(4): The language of this subsection should be amended to apply only to ground water systems which are legally mandated to disinfect so as to avoid creating a disincentive to voluntary disinfection. Arvid M. Miller and Brad Hafar, Mountain Water Company (Missoula).

RESPONSE: The rule has been amended as suggested.

COMMENT 27: Regarding 17.38.217(8) and 17.38.229(4), it would seem wise not to impose any new regulations now which would produce an incentive for a ground water system not to voluntarily disinfect. The federal ground water disinfection rule (GWDR) is currently under development and is scheduled for proposal in 1999. The guidelines developed in the GWDR should go a long way to providing the State of Montana with adequate direction for monitoring of ground water systems that disinfect. Arvid M. Miller and Brad Hafar, Mountain Water Company (Missoula).

RESPONSE: The point is well-taken, and the above responses to comments 23 through 26 should address these concerns. As noted, future rulemaking requirements by EPA may require further modifications to these rules.

BOARD OF ENVIRONMENTAL REVIEW

CINDY E. YOUNKIN, Chairperson

Reviewed by:

JOHN F. NORTH, Rule Reviewer

Certified to the Secretary of State April 20, 1998.

BEFORE THE DEPARTMENT OF CORRECTIONS
OF THE STATE OF MONTANA

In the matter of the adoption of new rules I through VI pertaining to the siting and construction standards of private correctional facilities in Montana	CORRECTED NOTICE OF ADOPTION

TO: All Interested Persons

1. On January 15, 1998, the Department of Corrections published a notice at page 172 of the Montana Administrative Register, Issue No. 1, of the adoption of the above-captioned rules pertaining to the siting and construction standards of private correctional facilities in Montana.

2. The notice of adoption incorrectly stated that ARM 20.27.105(4), renumbered (3), remained the same. In re-earmarking the paragraphs, the internal reference to paragraph (3) was overlooked and should have been changed to (2). The corrected rule reads as follows:

RULE V (20.27.105) LETTERS IN SUPPORT OF PROPOSED SITES FOR PRIVATE CORRECTIONAL FACILITIES (1) through (3) remain the same as adopted.

(a) through (g) remain the same as adopted.

~~(4)~~ (3) If the proposed site is located within seven and one-half air miles of an adjacent county, proposers shall also obtain letters of support and/or concern from the officials listed in ~~(3)~~ (2)(a)- through (g) in the adjacent county.

(4) remains the same as adopted.

AUTH: 53-30-604, MCA; IMP: 53-30-607, MCA

3. All other rules remain the same as adopted.

4. Replacement pages for the corrected notice of adoption were submitted to the Secretary of State on March 31, 1998.

Rick Day, Director
Department of Corrections

David L. Ohler
Rule Reviewer

Certified to the Secretary of State, April 20, 1998.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the amendment and repeal of rules regulating public gambling	))))	NOTICE OF AMENDMENT AND REPEAL OF RULES REGULATING PUBLIC GAMBLING

TO: All Interested Persons

1. On November 17, 1997, the Department of Justice published a notice of public hearing on the proposed amendment and repeal of rules regulating public gambling at pages 2023 to 2037 of the 1997 Montana Administrative Register, issue no. 22. The hearing was held on December 10, 1997, at 9:00 a.m. in the auditorium of the Scott Hart Building, 1st Floor, 303 N. Roberts, Helena, Montana.

2. The department has amended rules 23.16.101, 23.16.102, 23.16.103, 23.16.120, 23.16.121, 23.16.502, 23.16.1701, 23.16.1712, 23.16.1713, 23.16.1715, 23.16.1716, 23.16.1718, 23.16.1719, 23.16.1720, 23.16.1827, 23.16.1901, 23.16.1911, 23.16.1913, 23.16.1914, 23.16.1915, 23.16.1916, 23.16.1918, 23.16.1925 as proposed; and repealed Rule 23.16.2004, found on pages 23-805 and 23-806 of the Administrative Rules of Montana as proposed.

3. The department has amended rules 23.16.1717, 23.16.1828, 23.16.1925 and 23.16.2001 as proposed but with the following changes (text of rule with stricken matter interlined, new matter underlined)(authority and implementing sections remain the same as proposed):

23.16.1717 SALE OF SPORTS TAB GAMES BY SPORTS TAB GAME SELLERS - COLLECTION OF TAX (1) ~~A sports tab game seller shall only acquire sports tab games from a manufacturer of sports tabs.~~ A sports tab game shall be sold only by a licensed sports tab game seller. Sports tab game sellers shall only sell sports tab games that meet the requirements of statute and rule.

(2) through (5) same as proposed.

23.16.1828 GENERAL REQUIREMENTS OF OPERATORS, MANUFACTURERS, MANUFACTURERS OF ILLEGAL DEVICES, DISTRIBUTORS AND ROUTE OPERATORS OF VIDEO GAMBLING MACHINES OR PRODUCERS OF ASSOCIATED EQUIPMENT (1) through (3) same as proposed.

(4) Every manufacturer or distributor proposing to import video gambling machines not approved under ARM 23.16.1901 for research and development or proposing to export legal gambling machines from the state must:

(a) comply with the applicable requirements of ARM 23.16.2001(5) and report such shipments to the department on form 22~~as described in ARM 23.16.2001(5)(b)~~; and

(b) same as proposed.

23.16.1925 POSSESSION OF UNPERMITTED MACHINES BY

MANUFACTURER, DISTRIBUTOR, ROUTE OPERATOR, ~~OR~~ OPERATOR, OR REPAIR SERVICE (1) A manufacturer, distributor, route operator, ~~or~~ operator, or repair service may possess or own unpermitted machines or associated equipment which conform to the statutory requirements and rules relating to electronic video gambling machines. Such machines may not be made available for play by the public without a current permit issued by the department.

23.16.2001 MANUFACTURER OF ILLEGAL GAMBLING DEVICES - LICENSE - FEE - REPORTING REQUIREMENTS - INSPECTION OF RECORDS - REPORTS (1) through (6) same as proposed.

(7) A person importing or exporting illegal gambling devices and associated equipment or either of them under (5)(a) must provide monthly report(s) to the department using form 22 and must supply information ~~as~~ described in (5)(b)(i), (ii) (in the case of imports only), and (iv). All monthly reports under this rule must be filed with the department within 15 days after the end of each required monthly reporting period.

(8) and (9) same as proposed.

4. Several individuals and organizations offered written comments about the proposed rules and one organization presented comments at the public hearing. The department has given careful consideration to all of these comments. For the sake of clarity and due to the volume of comments received, the department has organized the comments and its responses by rule number and subsection.

After analyzing the comments and objections and in light of applicable law and regulations, the department responds as follows:

A. Proposed Rule 23.16.1717(1).

COMMENT:

The Administrative Code Committee challenged the proposed change to rule 23.16.1717(1), which provided "[A] sports tab game seller shall only acquire sports tab games from a manufacturer of sports tabs." The Administrative Code Committee argued the proposed amended rule was improper because there is "no provision in the MCA sections cited as implemented by this rule that can fairly be said to be implemented by this rule." Citing 2-4-305, MCA, the Administrative Code Committee concluded that the proposed rule exceeds the subject matter or agency function "clearly and specifically" set out in the antecedent statute.

RESPONSE:

Under the circumstances presented here, the department concurs with the Administrative Code Committee's analysis and withdraws the challenged portion of the rule.

B. Proposed Rule 23.16.1925.

COMMENT:

Gambling Industry Association (GIA) and Montana Independent Machine Operators Association (MIMOA) object to the proposed changes to Rule 23.16.1925 insofar as the proposed rule would no longer permit a "repair service" to possess video gambling machines and regulated components.

RESPONSE:

The department set out to correct several existing problems with this rule, the most significant of which was the existence of a "repair service" class of businesses entitled to unrestricted access to regulated gambling machines and components. Significantly, no repair service offered comments on the proposed rule. Another notable fact is that none of the comments received suggest that a "repair service" is or ever was a legislatively authorized class of gambling enterprise. In fact, the term "repair service" is not a legislative creation, but has been used for some time in the rules, perhaps as a result of pragmatic issues raised by workaday business. Consequently, the rules developed a number of references to how repairs are to be recorded, when "loaner" machines may be put in play, etc., but nothing in the code suggests authority for a "repair service" class of gambling businesses.

The code limits commerce in regulated devices to the statutorily prescribed licensees -- manufacturers, distributors, etc. See 23-5-112(10), MCA (authorized functions of a licensed distributor). Under Montana's longstanding regulatory scheme, a repair service may neither purchase nor sell a gambling machine or regulated component. Approximately one year ago the Gambling Control Division Administrator issued a notice reiterating that fact. Under the existing statutes and regulations, it would be a violation for a gambling licensee to sell regulated gambling devices or components to a repair service and it would be a violation for the repair service to purchase and/or resell such devices.

In spite of these restrictions on their activities, repair services do exist. Since they are unregulated, the department is unaware of the number of repair services that may be operating in Montana on a full-time or part-time basis and is unaware of their share of the market. The department, therefore, is unaware of the potential impact of the proposed rule on repair services or on the gambling licensees they serve. Considering these uncertainties, the department is reluctant to adopt the proposed rule eliminating repair services.

In light of this unusual situation, the department concurs with GIA's and MIMOA's comments. The rule as adopted will retain the reference to repair services.

Background Information Regarding Remaining Comments:

The remaining comments to the proposed rules concern prerequisites to importing illegal devices and exporting legal devices. There are several common themes in these objections which will be taken up in turn below. Before addressing those

specific objections, it is instructive to review the general framework the legislature has established for these gambling activities.

1) Illegal Devices Are Subject To Unique Standards.

The illegal device manufacturer license is unique among Montana's gambling licenses. In every other form of license related to gambling, the legislature expressly created and defined the license by affirmative legislative enactments. See e.g. 23-5-112, MCA, (definitions); 23-5-128, MCA, (distributor); 23-5-129, MCA, (route operator); 23-5-177, MCA, (operator); 23-5-424, MCA, (manufacturer of electronic bingo/keno equipment); and 23-5-625, MCA, (video gambling machine manufacturer). However, in the case of illegal devices the legislature deferred to the department of justice to adopt appropriate rules. See 23-5-152(3)(a), MCA.

While it charged the department with creating a regulatory scheme for illegal devices, the legislature did not attempt to detail that scheme. The legislature did, however, establish three guiding principles and declared that:

a) illegal devices may only be imported into Montana for limited, expressed, purposes;
b) the devices may only be imported after "the licensee has notified the department and has received authorization from department to bring the illegal video gambling machine into the state;" and
c) the licensee must abide by reporting requirements left to the rule making discretion of the department.

23-5-152(4)(b) and (c), MCA.

2) A Gambling Device Is Either Legal Or It Is Illegal.

In Montana, a gambling device is either legal or it is illegal. Those that are legal are both authorized and approved. Everything else is illegal. This is an easily understood system with no grey areas to confuse the unwary. An unapproved device is equally illegal whether possessed by a manufacturer of illegal devices or a distributor. The regulations governing illegal devices, therefore, should apply equally whether one is a manufacturer or a distributor.

3) Records Submission And Review Should Be Meaningful.

Records submission and review should not be idle "busy work" for licensees or for the department. If the legislature directed a licensee to undertake the effort necessary to submit detailed records to the department it is reasonable to infer that:

a) the records are meaningful; and
b) the department should examine and consider those records.

The department will not assume that the legislature imposed upon

licensees or the department idle tasks.

4) The Legislature Is Concerned About Montana Licensees' Conduct Outside Of Montana.

Legislative policy and department history have shown that checks are necessary on Montana licensees' gambling-related conduct even outside Montana's borders. Federal law contains no blanket approval of interstate gambling trade under the guise of "interstate commerce." Montana should not become a safe harbor for those licensees who would engage in violations of federal law or a sister state's law. Consequently, the department should be able to ascertain through record keeping requirements whether a licensee's conduct outside Montana is unscrupulous. See 23-5-110, MCA.

If Montana's concern about our licensees' out-of-state conduct was ever in doubt, that doubt was obliterated when the 1997 legislature passed amendments to 23-5-614, MCA. In 1997 the legislature required manufacturers and distributors to submit details of a proposed export of Montana-legal gambling machines. Under this amendment, a Montana manufacturer or distributor may sell gambling machines and equipment outside of Montana, but only if the proposed sale "complies with all applicable local, tribal, state, and federal laws and regulations." 23-5-614(3), MCA. This legislative expression of public policy makes it clear that Montana licensees must abide by other jurisdictions' laws.

With this four-point framework in mind, the department now addresses the specific objections offered by the opponents to the proposed rules.

C. Proposed Rule 23.16.2001(5)(a), 23.16.2001(7) and Form 22.

COMMENT:

VLC wrote to object to the proposed requirement of rule 23.16.2001(5)(a), as it was implemented through proposed rule 23.16.2001(7) and Form 22, which, in some instances, require disclosure of certain contracts for the export of illegal gambling devices.

RESPONSE:

In promulgating proposed rule 23.16.2001, the department relied on recently amended 23-5-614, MCA, for guidance. Amended 23-5-614, MCA, creates rigid rules for exporting Montana-legal devices. A primary goal of the department's rules is to promote uniform, consistent, application of the law. There is no rational reason to make it more difficult to export a legal device than it is to export an illegal device. Consequently, proposed rule 23.16.2001 is designed to do the following:

a) treat exports of legal and illegal devices similarly; and

b) guarantee that Montana is not a safe haven for those who would violate another jurisdiction's gambling

laws.

Proposed rule 23.16.2001 accomplishes these goals by creating a dual system for securing department approval to import or export illegal gambling devices. The first method, described in rule 23.16.2001(5)(a), concerns Montana licensees who hold gambling licenses in each jurisdiction involved in the transaction (the VLC scenario). The premise of this approval method is that if the licensee holds an appropriate license in the other jurisdictions involved, there is little likelihood that the transaction will run afoul of local, tribal, state or federal law.

The second alternative method of approval, described in rule 23.16.2001(5)(b), concerns licensees who hold a Montana license, but do not routinely conduct business in the other affected jurisdictions and, consequently, do not hold licenses in those jurisdictions. In this second scenario, the department must consider the proposed transaction and must have sufficient information about the proposed transaction to conclude that it is not on its face improper. Proposed rule 23.16.2001(5)(b) requires some licensees to disclose contract terms.

VLC argues that the rule 23.16.2001(7) reporting requirements compel disclosure of contract terms that was meant to be unnecessary under the rule 23.16.2001(5)(a) approval method. VLC has identified an unintended flaw in the approval/reporting process envisioned through rule 23.16.2001. Considering the illegal device statutory framework set forth above and the department's regulatory goals expressed in 23.16.2001(5), the department concludes that VLC is correct in its conclusion that rule 23.16.2001(7) requires disclosures deemed unnecessary in rule 23.16.2001(5)(a). Nevertheless, even those licensees operating under the abbreviated approval method must fulfill certain general reporting requirements. In light of this discussion, rule 23.16.2001(7) and Form 22 are modified accordingly.

D. Proposed Rule 23.16.1828(4)(b).

COMMENT:

The department received three objections to proposed rule 23.16.1828(4)(b). Offering objections were Gambling Industry Association, Senator John "J.D." Lynch and Montana Independent Machine Operators Association. While varying some in presentation, each objection essentially stated that the proposed rule improperly requires the department's prior approval before importing unapproved gambling devices into Montana for research and development purposes. They conclude, therefore, that proposed rule 23.16.1828(4)(b) should be deleted in its entirety.

RESPONSE:

The operative new language of 23-5-631(1), MCA, follows: "A licensed manufacturer or distributor may bring a video gambling machine or associated equipment authorized by this chapter into

the state for research and development on behalf of a licensed manufacturer prior to submission of the machine or equipment to the department for approval." (emphasis added). It is vital to this analysis to note that the statute contemplates authorized gambling machines which have not been approved by the department. As noted in the general discussion above, an unapproved gambling machine is a form of an illegal device.

In 23-5-152, MCA, the legislature declared that the department must be notified of, and issue prior approval for, any proposed imports of illegal gambling devices. The challenged regulation harmonizes the legislature's prohibition on importing illegal devices without department approval (23-5-152) and the legislature's authorization of importation of illegal devices for research and development (23-5-631). The department could not justify the obvious preferential treatment that would result if manufacturers and distributors of legal devices were allowed to import illegal devices without prior approval, but manufacturers of illegal devices were not. Without some prior examination of the proposed importation, the department could not determine if the devices were even authorized. Accordingly, the department does not agree with the objections. Rule 23.16.1828 is adopted with the modifications described in the next section.

E. Proposed Rules 23.16.1828(4) and 23.16.2001.

COMMENT:

Senator Lynch and Montana Independent Machine Operators Association object to proposed rule 23.16.2001 as it implements amendments to 23-5-614(3), MCA, concerning exporting Montana-legal gambling machines. In sum, the objections to this proposed rule are that the department's approval is not necessary for an export of Montana-legal gambling devices. Additionally, the opponents argue that the rule frustrates what is already legal to do under "federal law." Finally, the opponents assert that the department's role in exporting Montana-legal devices is limited to simply recording that a sale has taken place.

RESPONSE:

Amended 23-5-614(3), MCA, may be the clearest pronouncement in all the gambling code declaring how the department is to regulate a particular gambling activity. The legislature must have had a reason for requiring a licensee to submit such detailed information prior to a sale. The department will not assume that the legislature intended to impose upon the industry idle records submission tasks and will not assume that the department should disregard information tendered to it.

Prior notice and prior department approval allows an opportunity to review a proposal before it has been finalized. The opponents incorrectly assume that all such transactions are "already legal under federal law." Furthermore, the legislature declared that a violation of 23-5-614(3), MCA, is a crime. Under the opponents' understanding of the statute, a defective

sale would be addressed after the fact as a felony. The function of the department is not to act as legal counsel for licensees, but it is considerably more sensible to allow the department to review a proposed improper transaction beforehand rather than after the fact. Considering this analysis, 23.16.2001 is adopted as proposed, with the above-mentioned modifications to subsection (7).

In one set of circumstances, manufacturers and distributors may take advantage of rules simplifying the export of Montana-legal devices (see section C above). That simplified procedure should apply to this rule as well. Consequently, proposed rule 23.16.1828(4) should be modified to make uniform the treatment of similarly situated licensees.

Imports and exports of all sorts are addressed in 23.16.2001. Imports and exports of illegal devices fall directly within proposed rule 23.16.2001. Exports of Montana-legal devices are addressed in rule 23.16.1828 which, in turn, refers the licensee back to rule 23.16.2001. As noted above, rule 23.16.2001(5) contains two provisions for securing approval of exports:

a) the rule 23.16.2001(5)(a) scenario where the Montana licensee holds licenses in the other affected jurisdictions; and
b) the rule 23.16.2001(5)(b) scenario where the Montana licensee does not hold licenses in each affected jurisdiction.

It is appropriate to allow those proposing exports under 23-5-614(3), MCA, to take advantage of the abbreviated prior approval method described in rule 23.16.2001(5)(a). Should a Montana manufacturer or distributor happen to hold a license in another jurisdiction, that licensee should be free to take any advantage offered by the dual approval methods set out in 23.16.2001(5). Proposed rule 23.16.1828(4) is modified accordingly.

By: Mizabeth B. Baker for
JOSEPH P. MAZUREK
Attorney General

By: Melanie A. Symons
MELANIE A. SYMONS
(Rule Reviewer)

Certified to the Secretary of State April 20, 1998.

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

In the Matter of the Repeal of Certain Rules Pertaining to Railroads	)))	NOTICE OF REPEAL

TO: All Interested Persons

1. On January 29, 1998, the Department of Public Service Regulation published notice of public hearing on the proposed repeal of certain rules pertaining to railroads at pages 342 through 344, issue number 2 of the 1998 Montana Administrative Register.

2. The Department has repealed the following rules as proposed:

38.4.105 NOTICE PERIOD FOR FILING RAILROAD TARIFFS
38.4.106 CONTENT OF NOTICE
38.4.107 CONSEQUENCE OF DEFECTIVE NOTICE
38.4.108 SAVINGS PROVISION
38.4.109 WAIVER OF TARIFF FILING REQUIREMENTS
38.4.110 COMMENCEMENT OF INVESTIGATION AND SUSPENSION PROCEEDINGS
38.4.111 DURATION OF SUSPENSION PERIOD
38.4.112 GROUNDS FOR SUSPENSION
38.4.113 MARKET DOMINANCE
38.4.114 REASONABLENESS
38.4.115 BURDEN OF PROOF - GENERAL
38.4.116 ZONE OF RATE FLEXIBILITY-INVESTIGATION THRESHOLD
38.4.117 MONETARY ADJUSTMENTS FOR SUSPENSION ACTIONS
38.4.118 FILING PROCEDURES
38.4.119 REFUND OR COLLECTION OF FREIGHT CHARGES
38.4.120 WAIVER OF MONIES DUE TO RAILROAD
38.4.125 INTRAMODAL COMPETITION
38.4.126 INTERMODAL COMPETITION
38.4.127 GEOGRAPHIC COMPETITION
38.4.128 PRODUCT COMPETITION
38.4.132 ZONE OF RATE FLEXIBILITY
38.4.133 MARKET DOMINANCE THRESHOLD
38.4.134 REASONABLENESS OF RATES
38.4.135 BURDEN OF PROOF
38.4.136 NONAPPLICABILITY
38.4.141 CONTRACTS
38.4.142 GROUNDS FOR REVIEW OF CONTRACTS
38.4.143 FILING OF COMPLAINTS
38.4.144 COMMISSION DECISION UPON REVIEW OF CONTRACT
38.4.145 APPROVAL DATE OF CONTRACTS

38.4.146 LIMITATION OF RIGHTS OF A RAIL CARRIER TO ENTER FUTURE CONTRACTS
38.4.147 ENFORCEMENT
38.4.148 LIMITATION ON AGRICULTURAL EQUIPMENT AND RELIEF
38.4.149 SPECIAL TARIFF RULES FOR CONTRACTS
38.4.150 CONTRACT AND CONTRACT TARIFF TITLE PAGE
38.4.151 CONTRACT TARIFF NUMBERING SYSTEM
38.4.152 CONTRACT TARIFF CONTENT
38.4.153 COMMON CARRIER RESPONSIBILITY
38.4.156 EXEMPTIONS
38.4.162 CONTRACT AND CONTRACT SUMMARY AVAILABILITY AND INFORMAL DISCOVERY
38.4.163 PRELIMINARY SHOWING REQUIRED FOR FORMAL CONTRACT DISCOVERY
38.4.164 PROCEDURES FOR FORMAL CONTRACT DISCOVERY

AUTH. (all rules above) 69-2-101, MCA
IMP. (all rules above) 69-1-102, 69-14-111, MCA

38.4.301 DISCONTINUANCE OF STATION AGENTS, STATIONS AND SIDETRACKS

AUTH. 69-2-101, MCA
IMP. 69-1-102, 69-14-111, 69-14-202, MCA

3. The United Transportation Union (UTU) filed written comments on the proposed repeal. The Department views UTU's comments as information pertaining to federal laws governing railroads and the effect those federal laws may have on state regulation. The Department appreciates the information, has considered it, and determines that the information does not warrant modifications to the proposed repeal.

Dave Fisher
Dave Fisher, Chair

CERTIFIED TO THE SECRETARY OF STATE APRIL 13, 1998.

Robin A. McHugh
Reviewed By Robin A. McHugh

BEFORE THE BOARD OF OCCUPATIONAL THERAPISTS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the petition for declaratory ruling on the interpretation of 37-24-106, MCA, to recognize iontophoresis as an additional modality option.	DECLARATORY RULING

1. On November 3, 1997, the Board of Occupational Therapists published a Notice of Petition for Declaratory Ruling in the above-entitled matter at page 2000, 1997 Montana Administrative Register, issue number 21.

2. On December 3, 1997, R. Perry Eskridge, Hearing Examiner, presided over a hearing in this matter to consider oral testimony from interested individuals.

3. On January 26, 1998, the Board met via a conference call to consider the results of the hearing held December 3, 1997, and written comments received prior to the deadline. On that same day, the Board made a motion to issue this declaratory ruling.

Issue

4. Petitioners requested a declaratory ruling on whether the performance of iontophoresis is within the scope of practice for occupational therapists pursuant to 37-24-106, MCA, permitting the use of sound and electrical physical agent modalities.

Summary of Comments

5. The Board received sixteen written comments in support of occupational therapists performing iontophoresis. The comments asserted that under the definition of physical agent modalities, it was important to note that iontophoresis is a physical agent modality which is not excluded under the statutory language. Other commentors stressed the need to ensure that the various occupational therapists who engage in the use of this modality are adequately trained in the proper implementation of the modality. Some commentors stated that by answering this question in the affirmative would negate the current practice of involving a physical therapist in this process thereby reducing complexity in terms of billing, scheduling and, ultimately, cost to the patient.

6. The Montana Board of Pharmacists also provided a comment regarding the proper method of obtaining an iontophoresis transfer pad and urged the Board to implement those procedures into the declaratory ruling.

Analysis

7. 2-4-510, MCA, provides statutory authority for agencies to issue declaratory rulings. Based on the receipt of a petition, proper notification of the petition in the Montana Administrative Register, and having considered the written and oral comments received, it is appropriate to issue the ruling at this time.

8. Pursuant to 37-24-202(1)(a), MCA, the Board is authorized to enforce the provisions of Title 37, chapter 24 relative to the practice of occupational therapy within the state of Montana.

9. The term "physical agent modalities" is defined at 37-24-103(7) as:

> those modalities that produce a response in soft tissue through the use of light, water, temperature, sound, or electricity. Physical agent modalities are characterized as adjunctive methods used in conjunction with or in immediate preparation for patient involvement in purposeful activity. Superficial physical agent modalities include hot packs, cold packs, ice, fluidotherapy, paraffin, water, and other commercially available superficial heating and cooling devices. Use of superficial physical agent modalities is limited to the shoulder, arm, elbow, forearm, wrist, and hand and is subject to the provisions of 37-24-105. Use of sound and electrical physical agent modality devices is limited to the elbow, forearm, wrist, and hand and is subject to the provisions of 37-24-106.

10. There is no express prohibition on the use of iontophoresis contained within the definition of physical agent modalities as defined in 37-24-103(7), MCA. In interpreting whether iontophoresis is within an occupational therapist's scope of practice, the Board shall not insert a prohibition where one does not exist. *See* 1-2-101, MCA.

11. With regard to proper training in the use of the iontophoresis modality, 37-24-106, MCA, adequately sets forth those requirements which must be met prior to the Board granting a licensee authority to utilize the modality.

12. The Board has, as one of its statutory mandates, to "safeguard the public health, safety, and welfare." 37-24-102, MCA.

13. In addressing the Board of Pharmacy's concern, the Board adopts the following statement of procedure with respect to obtaining an iontophoresis pad.

a. A Physician prescribes the modality of iontophoresis. A prescription is obtained from the physician and supplied to

the patient/therapist by the physician.

b. The prescription is delivered to the pharmacy, specific instructions are indicated on the prescription, as to medication, strength, etc.

c. Medication is brought to the clinic and applied to appropriate pad with appropriate strength, duration, etc.

d. The occupational therapist applies the pad to the patient following appropriate sequence, iontophoresis treatment is initiated and at completion of treatment, medicated pad is placed in the appropriate container.

After discussing this process with the executive director of the Montana Board of Pharmacy, the Pharmacy Board verified this process as appropriate and, therefore, approved of the declaratory ruling.

Conclusion

14. After consideration of the comments and the relevant statutes, the Board of Occupational Therapy makes the following declaratory ruling:

15. The performance of iontophoresis as a physical agent modality is within the scope of practice for appropriately licensed occupational therapists within the state of Montana.

Board of Occupational Therapists

BY: _____
LYNN BENSON, OTR
CHAIRMAN

Certified to the Secretary of State, April 20, 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 December 31, 1997. This table includes those rules adopted during the period January 1, 1998 through March 31, 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 December 31, 1997, 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.

GENERAL PROVISIONS, Title 1

1.2.419 Filing, Compiling, Printer Pickup and Publication of the Montana Administrative Register, p. 1913, 2301

ADMINISTRATION, Department of, Title 2

I and other rules - State Procurement, p. 1107, 1816
I-VI and other rules - Payroll Administration - Decedent's Warrants, p. 1855, 2278
2.13.201 and other rules - 9-1-1 Emergency Telephone Systems, p. 1691, 2178
2.21.122 and other rules - Sick Leave, p. 971, 1440, 2057
2.21.216 and other rules - Annual Vacation Leave, p. 966, 1442
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BOARD APPOINTEES AND VACANCIES

Section 2-15-108, MCA, passed by the 1991 Legislature, directed that all appointing authorities of all appointive boards, commissions, committees and councils of state government take positive action to attain gender balance and proportional representation of minority residents to the greatest extent possible.

One directive of 2-15-108, MCA, is that the Secretary of State publish monthly in the ***Montana Administrative Register*** a list of appointees and upcoming or current vacancies on those boards and councils.

In this issue, appointments effective in March 1998, appear. Vacancies scheduled to appear from May 1, 1998, through July 31, 1998, are listed, as are current vacancies due to resignations or other reasons. Individuals interested in serving on a board should refer to the bill that created the board for details about the number of members to be appointed and necessary qualifications.

Each month, the previous month's appointees are printed, and current and upcoming vacancies for the next three months are published.

IMPORTANT

Membership on boards and commissions changes constantly. The following lists are current as of April 3, 1998.

For the most up-to-date information of the status of membership, or for more detailed information on the qualifications and requirements to serve on a board, contact the appointing authority.

BOARD AND COUNCIL APPOINTEES FROM MARCH, 1998

Appointee	Appointed by	Succeeds	Appointment/End Date
AIDS Advisory Council (Public Health and Human Services)			
Mr. Kevin Petersen	Governor	Cyr	3/18/1998
Clancy			11/26/1998
Qualifications (if required): public member			
Advisory Council on Community Service (Governor)			
Ms. Kelly Raths	Governor	not listed	3/4/1998
Lewistown			7/1/2001
Qualifications (if required): youth representative			
Board of Architects (Commerce)			
Ms. Pamela J. Hill	Governor	reappointed	3/27/1998
Bozeman			3/27/2001
Qualifications (if required): registered architect on staff at MSU-Bozeman			
Mr. Thomas Geelan	Governor	reappointed	3/27/1998
Havre			3/27/2001
Qualifications (if required): public member			
Board of Dentistry (Commerce)			
Dr. George Olsen	Governor	Nordstrom	3/29/1998
Missoula			3/29/2003
Qualifications (if required): dentist			
Board of Hail Insurance (Agriculture)			
Mr. Keith Arntzen	Governor	reappointed	3/18/1998
Hilger			4/18/2001
Qualifications (if required): public member			

BOARD AND COUNCIL APPOINTEES FROM MARCH, 1998

Appointee	Appointed by	Succeeds	Appointment/End Date
Board of Livestock (Livestock)			
Mr. John C. Paugh	Governor	reappointed	3/2/1998
Bozeman			3/1/1999
Qualifications (if required): none specified			
Board of Public Education (Education)			
Ms. Diane Fladmo	Governor	Listerud	3/12/1998
Glendive			2/1/2005
Qualifications (if required): Independent residing in District 4			
Board of Regents of Higher Education (Commissioner of Higher Education)			
Mr. Richard Roehm	Governor	Boylan	3/23/1998
Bozeman			2/1/2005
Qualifications (if required): representative of District 2 and an Independent			
Developmental Disabilities Planning and Advisory Council (Public Health and Human Services)			
Ms. Marlene Tocher	Governor	Rolfe	3/16/1998
Great Falls			1/1/2002
Qualifications (if required): consumer			
Governor's Vision 2005 Task Force on Agriculture (Agriculture) (new task force)			
Mr. Peter Blouke	Governor		3/3/1998
Helena			12/31/1998
Qualifications (if required): representative of the Department of Commerce			
Rep. Ernest Bergsagel	Governor		3/3/1998
Malta			12/31/1998
Qualifications (if required): representative of the state legislature			

BOARD AND COUNCIL APPOINTEES FROM MARCH, 1998

Appointee	Appointed by	Succeeds	Appointment/End Date
Governor's Vision 2005 Task Force on Agriculture (Agriculture) cont.			
Rep. Linda J. Nelson Medicine Lake Qualifications (if required): representative of the state legislature	Governor		3/3/1998 12/31/1998
Mr. W. Ralph Peck Helena Qualifications (if required): representative of the Department of Agriculture	Governor		3/3/1998 12/31/1998
Mr. David Sagmiller Ronan Qualifications (if required): representative of the Montana Agricultural Business Association	Governor		3/3/1998 12/31/1998
Ms. Esther McDonald Philipsburg Qualifications (if required): representative of the Montana Cattle Women's Association	Governor		3/3/1998 12/31/1998
Mr. Tim Huls Corvallis Qualifications (if required): representative of the Montana Dairymen's Association	Governor		3/3/1998 12/31/1998
Mr. Thad Willis Big Sandy Qualifications (if required): representative of the Montana Farm Bureau Federation	Governor		3/3/1998 12/31/1998
Mr. Ken Maki Great Falls Qualifications (if required): representative of the Montana Farmers Union	Governor		3/3/1998 12/31/1998

BOARD AND COUNCIL APPOINTEES FROM MARCH, 1998

Appointee	Appointed by	Succeeds	Appointment/End Date
Governor's Vision 2005 Task Force on Agriculture (Agriculture) cont.			
Mr. Merlin R. Boxwell Cut Bank Qualifications (if required): representative of the Montana Grain Growers Association	Governor		3/3/1998 12/31/1998
Mr. Harold Clarke Columbia Falls Qualifications (if required): representative of the Montana Mint Growers Association	Governor		3/3/1998 12/31/1998
Mr. Loren Wolery Turner Qualifications (if required): representative of the Montana Pork Producers Council	Governor		3/3/1998 12/31/1998
Ms. Marilyn E. Johnson Kalispell Qualifications (if required): representative of the Montana State Grange	Governor		3/3/1998 12/31/1998
Mr. Lynn Cornwell Glasgow Qualifications (if required): representative of the Montana Stockgrowers Association	Governor		3/3/1998 12/31/1998
Mr. Ron Devlin Terry Qualifications (if required): representative of the Montana Wool Growers Association	Governor		3/3/1998 12/31/1998
Ms. Sharon Kindle Malta Qualifications (if required): representative of Women Involved in Farm Economics	Governor		3/3/1998 12/31/1998

BOARD AND COUNCIL APPOINTEES FROM MARCH, 1998

Appointee	Appointed by	Succeeds	Appointment/End Date
Governor's Vision 2005 Task Force on Agriculture (Agriculture) cont.			
Mr. Chris Reiquam	Governor		3/3/1998
Bozeman			12/31/1998
Qualifications (if required): representative of the Montana Bankers Association			
Mr. Kenneth M. Walsh	Governor		3/3/1998
Twin Bridges			12/31/1998
Qualifications (if required): representative of the Montana Independent Bankers Association			
Ms. Linda Reed	Governor		3/3/1998
Helena			12/31/1998
Qualifications (if required): representative of the Governor's Office			
Dr. Tom McCoy	Governor		3/3/1998
Bozeman			12/31/1998
Qualifications (if required): representative of Montana State University			
Mr. Kerry Schaefer	Governor		3/3/1998
Great Falls			12/31/1998
Qualifications (if required): representative of the Montana Chamber of Commerce			
Mr. Bud Leuthold	Governor		3/3/1998
Billings			12/31/1998
Qualifications (if required): representative of the public			
Mr. Chuck Merja	Governor		3/3/1998
Sun River			12/31/1998
Qualifications (if required): representative of the public			

BOARD AND COUNCIL APPOINTEES FROM MARCH, 1998

Appointee	Appointed by	Succeeds	Appointment/End Date
Governor's Vision 2005 Task Force on Agriculture (Agriculture) cont.			
Mr. Bob Quinn	Governor		3/3/1998
Fort Benton			12/31/1998
Qualifications (if required): representative of the public			
Mr. Greg Rauschendorfer	Governor		3/3/1998
Poplar			12/31/1998
Qualifications (if required): representative of the public			
Mr. Ron Ueland	Governor		3/3/1998
Belgrade			12/31/1998
Qualifications (if required): representative of the public			
Montana Public Safety Communications Council (Administration)			
Ms. Anita Parkin	Governor	Brown	3/2/1998
Superior			11/13/1999
Qualifications (if required): representative of the 9-1-1 community			
Montana-Alberta Boundary Advisory Council (Commerce) (new council)			
Mr. Peter Blouke	Governor		3/9/1998
Helena			3/9/2000
Qualifications (if required): representing the Department of Commerce			
Rep. Ernest Bergsagel	Governor		3/9/1998
Malta			3/9/2000
Qualifications (if required): representing the legislative branch			
Rep. Linda J. Nelson	Governor		3/9/1998
Medicine Lake			3/9/2000
Qualifications (if required): representing the legislative branch			

BOARD AND COUNCIL APPOINTEES FROM MARCH, 1998

Appointee	Appointed by	Succeeds	Appointment/End Date
Montana-Alberta Boundary Advisory Council (Commerce) cont.			
Lt. Governor Judy Martz	Governor		3/9/1998
Helena			3/9/2000
Qualifications (if required): representing the executive branch			
Mr. Brian Cockhill	Governor		3/9/1998
Helena			3/9/2000
Qualifications (if required): representing the Montana Historical Society			
Mr. Marvin Dye	Governor		3/9/1998
Helena			3/9/2000
Qualifications (if required): representing the Department of Transportation			
Mr. Mark A. Simonich	Governor		3/9/1998
Helena			3/9/2000
Qualifications (if required): representing the Department of Environmental Quality			
Mr. W. Ralph Peck	Governor		3/9/1998
Helena			3/9/2000
Qualifications (if required): representing the Department of Agriculture			
Mr. Mark Cole	Governor		3/9/1998
Hysham			3/9/2000
Qualifications (if required): representing transportation			
Rep. George Heavy Runner	Governor		3/9/1998
Browning			3/9/2000
Qualifications (if required): representing the legislative branch			

BOARD AND COUNCIL APPOINTEES FROM MARCH, 1998

Appointee	Appointed by	Succeeds	Appointment/End Date
Montana-Alberta Boundary Advisory Council (Commerce) cont.			
Mr. Alan Nicholson Helena Qualifications (if required): representing the Montana Ambassadors	Governor		3/9/1998 3/9/2000
Mr. Richard A. Crofts Helena Qualifications (if required): representing the University System	Governor		3/9/1998 3/9/2000
Sen. Mike Taylor Proctor Qualifications (if required): representing the legislative branch	Governor		3/9/1998 3/9/2000
Mr. Robert Dompier Great Falls Qualifications (if required): representing the Tourism Advisory Council	Governor		3/9/1998 3/9/2000
Mr. Lynn Cornwell Glasgow Qualifications (if required): representing agriculture	Governor		3/9/1998 3/9/2000
Ms. Linda Reed Helena Qualifications (if required): representing the Governor's Office	Governor		3/9/1998 3/9/2000
Mr. Gary Broyles Rapelje Qualifications (if required): representing agriculture	Governor		3/9/1998 3/9/2000

BOARD AND COUNCIL APPOINTEES FROM MARCH, 1998

Appointee	Appointed by	Succeeds	Appointment/End Date
Montana-Alberta Boundary Advisory Council (Commerce) cont.			
Mr. Ron Mercer	Governor		3/9/1998
Helena			3/9/2000
Qualifications (if required): representing air transportation			
Mr. Steven Maly	Governor		3/9/1998
Helena			3/9/2000
Qualifications (if required): representing the Legislative Services Division			
Petroleum Tank Release Compensation Board (Environmental Quality)			
Mr. Terry Phillips	Governor	Suenram	3/24/1998
Helena			6/30/1999
Qualifications (if required): representative of the State Fire Prevention and Investigation Program			
Senate District 32 (Senate)			
Sen. George Turman	commissioners	Van Valkenburg	3/19/1998
Missoula			11/23/1998
Qualifications (if required): none specified			
State Emergency Response Commission (Military Affairs)			
Mr. Terry Phillips	Governor	Suenram	3/24/1998
Helena			8/10/1999
Qualifications (if required): representative of the Department of Justice			
State Employees' Combined Campaign Steering Committee (Administration)			
Ms. Joy McGrath	Director	not listed	3/30/1998
Helena			3/30/2000
Qualifications (if required): none specified			
Ms. Jane Hamman	Director	not listed	3/30/1998
Helena			3/30/2000
Qualifications (if required): none specified			

BOARD AND COUNCIL APPOINTEES FROM MARCH, 1998

Appointee	Appointed by	Succeeds	Appointment/End Date
State Employees' Combined Campaign Steering Committee (Administration) cont.			
Ms. Adeline Miller Helena Qualifications (if required): none specified	Director	not listed	3/30/1998 3/30/2000
Ms. Marcia Armstrong Helena Qualifications (if required): none specified	Director	not listed	3/30/1998 3/30/2000
Mr. Randy Poulsen Helena Qualifications (if required): none specified	Director	not listed	3/30/1998 3/30/2000
Mr. Wayne Budt Helena Qualifications (if required): none specified	Director	not listed	3/30/1998 3/30/2000
Ms. Ellen Calnan Helena Qualifications (if required): none specified	Director	not listed	3/30/1998 3/30/2000
Mr. Don Artley Missoula Qualifications (if required): none specified	Director	not listed	3/30/1998 3/30/2000
Ms. Barbara Proulx Helena Qualifications (if required): none specified	Director	not listed	3/30/1998 3/30/2000

BOARD AND COUNCIL APPOINTEES FROM MARCH, 1998

Appointee	Appointed by	Succeeds	Appointment/End Date
State Employees' Combined Campaign Steering Committee (Administration) cont.			
Ms. Karen Shipley	Director	not listed	3/30/1998
Butte			3/30/2000
Qualifications (if required): none specified			
Ms. Carol Townsend	Director	not listed	3/30/1998
Bozeman			3/30/2000
Qualifications (if required): none specified			
Mr. Tim McCauley	Director	not listed	3/30/1998
Helena			3/30/2000
Qualifications (if required): none specified			

VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 1998 through JULY 31, 1998

Board/current position holder	Appointed by	Term end
Aging Advisory Council (Governor)		
Mr. M.L. Cook, Helena	Governor	7/18/1998
Qualifications (if required): representing Region III		
Ms. Fern Prather, Big Timber	Governor	7/18/1998
Qualifications (if required): representing Region II		
Mr. R.H. Hultman, Drummond	Governor	7/18/1998
Qualifications (if required): representing Region V		
Mr. Irvin Hutchison, Chester	Governor	7/18/1998
Qualifications (if required): representing Region III		
Agriculture Development Council (Agriculture)		
Mr. Peter Blouke, Helena	Governor	7/1/1998
Qualifications (if required): Director of the Department of Commerce		
Mr. Larry Johnson, Kremlin	Governor	7/1/1998
Qualifications (if required): active in agriculture		
Mr. P.L. "Joe" Boyd, Billings	Governor	7/1/1998
Qualifications (if required): actively engaged in agriculture		
Mr. W. Ralph Peck, Helena	Governor	7/1/1998
Qualifications (if required): Director of the Department of Agriculture		
Alfalfa Leaf-Cutting Bee Advisory Committee (Agriculture)		
Mr. Allen Whitmer, Bloomfield	Governor	7/1/1998
Qualifications (if required): representative of an alfalfa seed association		
Mr. W. Ralph Peck, Helena	Governor	7/1/1998
Qualifications (if required): representative of the Department of Agriculture		

VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 1998 through JULY 31, 1998

Board/current position holder	Appointed by	Term end
Alfalfa Leaf-Cutting Bee Advisory Committee (Agriculture)	cont.	
Ms. Sue Blodgett, Bozeman	Governor	7/1/1998
Qualifications (if required): representative of the extension service of Montana State University		
Board of Banking (Commerce)		
Mr. Douglas Morton, Kalispell	Governor	7/1/1998
Qualifications (if required): national bank officer		
Ms. Shirley Gierke, Miles City	Governor	7/1/1998
Qualifications (if required): public member		
Board of Barbers (Commerce)		
Mr. Max DeMars, Big Timber	Governor	7/1/1998
Qualifications (if required): barber		
Board of Funeral Services (Commerce)		
Mr. Douglas D. Lowry, Big Timber	Governor	7/1/1998
Qualifications (if required): licensed mortician		
Board of Hearing Aid Dispensers (Commerce)		
Ms. Kristy Foss, Billings	Governor	7/1/1998
Qualifications (if required): hearing aid dispenser		
Board of Landscape Architects (Commerce)		
Mr. Robert Broughton, Hamilton	Governor	7/1/1998
Qualifications (if required): licensed architect		
Mr. Lester Field, Townsend	Governor	7/1/1998
Qualifications (if required): public member		

VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 1998 through JULY 31, 1998

Board/current position holder	Appointed by	Term end
Board of Nursing (Commerce)		
Ms. Blanche Proul, Anaconda Qualifications (if required): public member	Governor	7/1/1998
Ms. Suzzie Thomas, Stevensville Qualifications (if required): licensed practical nurse	Governor	7/1/1998
Ms. Rita Harding, Edgar Qualifications (if required): registered nurse	Governor	7/1/1998
Ms. Kathy Barkus, Kalispell Qualifications (if required): public member	Governor	7/1/1998
Board of Nursing Home Administrators (Commerce)		
Mr. Douglas Faus, Chester Qualifications (if required): nursing home administrator	Governor	5/28/1998
Board of Pharmacy (Commerce)		
Ms. Ann H. Pasha, Highwood Qualifications (if required): public member	Governor	7/1/1998
Board of Physical Therapy Examiners (Commerce)		
Ms. Colleen Hatcher, Miles City Qualifications (if required): physical therapist	Governor	7/1/1998
Board of Plumbers (Commerce)		
Mr. Duane Steinmetz, Billings Qualifications (if required): journeyman plumber	Governor	5/4/1998
Mr. Richard Grover, Missoula Qualifications (if required): master plumber	Governor	5/4/1998

VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 1998 through JULY 31, 1998

Board/current position holder	Appointed by	Term end
Board of Professional Engineers and Land Surveyors (Commerce)		
Mr. Paul Dana, Billings Qualifications (if required): public member	Governor	7/1/1998
Mr. Richard Ainsworth, Missoula Qualifications (if required): professional land surveyor	Governor	7/1/1998
Board of Public Accountants (Commerce)		
Mr. James R. Smrcka, Glasgow Qualifications (if required): certified public accountant	Governor	7/1/1998
Board of Radiologic Technologists (Commerce)		
Mr. Jim Winter, Great Falls Qualifications (if required): radiologic technologist	Governor	7/1/1998
Dr. Daniel Alzheimer, Helena Qualifications (if required): physician who employees a radiologic technologist	Governor	7/1/1998
Board of Real Estate Appraisers (Commerce)		
Ms. Cheryl Van Every, Sidney Qualifications (if required): public member	Governor	5/1/1998
Mr. William Northcutt, Joliet Qualifications (if required): real estate appraiser	Governor	5/1/1998
Board of Realty Regulation (Commerce)		
Mr. Jack K. Moore, Great Falls Qualifications (if required): public member and a Republican	Governor	5/9/1998
Board of Regents of Higher Education (Education)		
Mr. Jason Thielman, Missoula Qualifications (if required): student representative	Governor	6/1/1998

VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 1998 through JULY 31, 1998

Board/current position holder	Appointed by	Term end
Board of Sanitarians (Commerce)		
Ms. Melissa Tuemmler, Ulm	Governor	7/1/1998
Qualifications (if required): sanitarian		
Board of Veterans' Affairs (Military Affairs)		
Ms. Karen Furu, Bozeman	Governor	5/18/1998
Qualifications (if required): veteran		
Board of Veterinary Medicine (Commerce)		
Dr. Robert P. Myers, Bozeman	Governor	7/31/1998
Qualifications (if required): licensed veterinarian		
Board of Water Well Contractors (Environmental Quality)		
Mr. Pat Byrne, Great Falls	Governor	7/1/1998
Qualifications (if required): water well contractor		
Committee on Telecommunications Services for the Handicapped (Social and Rehabilitation Services)		
Mr. John Delano, Helena	Governor	7/1/1998
Qualifications (if required): non-handicapped and engaged in business		
Mr. Ben Havdahl, Helena	Governor	7/1/1998
Qualifications (if required): hard of hearing		
Mr. Ron Bibler, Great Falls	Governor	7/1/1998
Qualifications (if required): handicapped		
Community Services Advisory Council (Governor)		
Mr. Bob Simoneau, Helena	Governor	7/1/1998
Qualifications (if required): representing the Department of Labor and Industry		
Ms. Patricia J. Gunderson, Belgrade	Governor	7/1/1998
Qualifications (if required): representing labor unions		

VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 1998 through JULY 31, 1998

Board/current position holder	Appointed by	Term end
Community Services Advisory Council (Governor) cont.		
Ms. Billie Krenzler, Billings Qualifications (if required): representing local government	Governor	7/1/1998
Ms. Candace Bowman, Lewistown Qualifications (if required): representing human services	Governor	7/1/1998
Mr. Bill Cain, Butte Qualifications (if required): representing business	Governor	7/1/1998
Electrical Board (Commerce)		
Mr. Todd Stoddard, Dillon Qualifications (if required): licensed journeyman electrician	Governor	7/1/1998
Family Education Savings Program Oversight Committee (Commissioner of Higher Education)		
Mr. Gerry Meyer, Great Falls Qualifications (if required): public member	Governor	7/1/1998
Governor's Council on Families (Public Health and Human Services)		
Rep. Loren Soft, Billings Qualifications (if required): public member	Governor	6/25/1998
Rep. Betty Lou Kasten, Brockway Qualifications (if required): public member	Governor	6/25/1998
Mr. Kirk Astroth, Bozeman Qualifications (if required): public member	Governor	6/25/1998
Judge Katherine "Kitty" Curtis, Columbia Falls Qualifications (if required): public member	Governor	6/25/1998
Dr. Stephen Duncan, Bozeman Qualifications (if required): public member	Governor	6/25/1998

VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 1998 through JULY 31, 1998

Board/current position holder	Appointed by	Term end
Governor's Council on Families (Public Health and Human Services) cont.		
Ms. Bonnie Bowman McGowan, Highwood Qualifications (if required): public member	Governor	6/25/1998
Mr. Wade Riden, Chinook Qualifications (if required): public member	Governor	6/25/1998
Ms. Kathleen Jensen, Westby Qualifications (if required): public member	Governor	6/25/1998
Mr. John Vincent, Gallatin Gateway Qualifications (if required): public member	Governor	6/25/1998
Mr. Peter Bruno, Glendive Qualifications (if required): public member	Governor	6/25/1998
Mr. Stanley Rathman, Choteau Qualifications (if required): public member	Governor	6/25/1998
Mr. Bill Pena, Seeley Lake Qualifications (if required): public member	Governor	6/25/1998
Mr. Michael McCarvel, Helena Qualifications (if required): public member	Governor	6/25/1998
Judge Gary Acevedo, Ronan Qualifications (if required): public member	Governor	6/25/1998
Ms. Kathy Peoples, Butte Qualifications (if required): public member	Governor	6/25/1998

VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 1998 through JULY 31, 1998

Board/current position holder	Appointed by	Term end
Governor's Council on Families (Public Health and Human Services) cont.		
Ms. M.J. Fors, Great Falls Qualifications (if required): public member	Governor	6/25/1998
Ms. Kim Visser, Missoula Qualifications (if required): public member	Governor	6/25/1998
Ms. Kathleen Heiser, Billings Qualifications (if required): public member	Governor	6/25/1998
Historical Society Board of Trustees (Historical Society)		
Dr. Thomas A. Foor, Missoula Qualifications (if required): anthropologist/archeologist	Governor	7/1/1998
Mr. William M. Holt, Lolo Qualifications (if required): public member	Governor	7/1/1998
Ms. Vicki A. McCarthy, Billings Qualifications (if required): public member	Governor	7/1/1998
Montana Mint Committee (Agriculture)		
Mr. Darrel Sperry, Corvallis Qualifications (if required): mint grower	Governor	7/1/1998
Petroleum Tank Release Compensation Board (Health and Environmental Sciences)		
Ms. Laura Nordahl, Helena Qualifications (if required): representative of the industry	Governor	6/30/1998
Petroleum Tank Release Compensation Board (Environmental Quality)		
Mr. Gary Basso, Billings Qualifications (if required): representative for the insurance industry	Governor	6/30/1998

VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 1998 through JULY 31, 1998

Board/current position holder	Appointed by	Term end
Petroleum Tank Release Compensation Board (Environmental Quality) cont.		
Mr. Dallas Herron, Kalispell	Governor	6/30/1998
Qualifications (if required): representative of the petroleum services industry		
State Library Commission (Education)		
Ms. Mary Doggett, White Sulphur Springs	Governor	5/22/1998
Qualifications (if required): public member		
Teachers' Retirement Board (Administration)		
Dr. Rick Stuber, Culbertson	Governor	7/1/1998
Qualifications (if required): teacher		
Tourism Advisory Council (Commerce)		
Ms. Diane Brandt, Glasgow	Governor	7/1/1998
Qualifications (if required): representing Missouri Country		
Ms. Maureen Averill, Bigfork	Governor	7/1/1998
Qualifications (if required): representing Glacier Country		
Ms. Edythe McCleary, Hardin	Governor	7/1/1998
Qualifications (if required): representing Custer Country		
Ms. Lisa Reid Perry, Shepherd	Governor	7/1/1998
Qualifications (if required): representing Custer Country		
Ms. Betsy Baumgart, Helena	Governor	7/1/1998
Qualifications (if required): representing Gold Country		
Mr. Robert Dompier, Great Falls	Governor	7/1/1998
Qualifications (if required): representing the Montana Innkeepers Association		

VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 1998 through JULY 31, 1998

Board/current position holder	Appointed by	Term end
Western Interstate Commission on Higher Education (Education)		
Rep. Emily Swanson, Bozeman	Governor	6/19/1998
Qualifications (if required): legislator		