

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 2

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 The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

Page Number

TABLE OF CONTENTS

NOTICE SECTION

STATE AUDITOR, Title 6

6-128 (Classification Review Committee) Notice of Public Hearing on Proposed Amendment - Updating References to the NCCI Basic Manual for Workers Compensation and Employers Liability Insurance 1996 ed. - New and Amended Classifications.

132-135

COMMERCE, Department of, Title 8

8-40-49 (Board of Pharmacy) Notice of Public Hearing on Proposed Amendment - Labeling for Prescriptions - Unprofessional Conduct - Definitions - Preceptor Requirements - Conditions of Registration.

136-140

8-59-10 (Board of Respiratory Care Practitioners) Notice of Public Hearing on Proposed Amendment - Definitions - Fees.

141-143

8-111-15 (Board of Housing) Notice of Proposed Adoption - Confidentiality and Disclosure of Information in Possession of the Board of Housing. No Public Hearing Contemplated.

144-147

EDUCATION, Title 10

10-2-104 (Superintendent of Public Instruction) Notice of Proposed Amendment - Special Education - Aversive Treatment Procedures - Discovery Methods. No Public Hearing Contemplated. 148-150

FISH, WILDLIFE, AND PARKS, Department of, Title 12

12-264 (Fish, Wildlife, and Parks Commission) Notice of Public Hearing on Proposed Adoption - Limiting the Number of Class B-1 Nonresident Upland Game Bird Licenses that May be Sold Each Hunting Season. 151-153

LABOR AND INDUSTRY, Department of, Title 24

24-5-143 (Workers' Compensation Judge) Notice of Proposed Amendment - Procedural Rule - Medical Records. No Public Hearing Contemplated. 153A-153C

24-26-144 (Board of Personnel Appeals) Notice of Public Hearing on Proposed Amendment - Board of Personnel Appeals. 154-159

LIVESTOCK, Department of, Title 32

32-3-152 (Board of Livestock) Notice of Proposed Amendment - Food Safety and Inspection Service (Meat and Poultry). No Public Hearing Contemplated. 160-162

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

37-180 Notice of Proposed Amendment - Health Care Licensure. No Public Hearing Contemplated. 163-164

RULE SECTION

AGRICULTURE, Department of, Title 4

AMD Mint Definitions - Conditions Governing Importation of Mint and Mint Rootstock. 165

COMMERCE, Department of, Title 8

NEW (Board of Clinical Laboratory Science Practitioners) Temporary Practice Permits. 166

AMD (Board of Nursing) Advanced Practice Nursing - Program Director - Nurses' Assistance Program. 167-168

ENVIRONMENTAL QUALITY, Department of, Title 17

NEW Identification and Management of Hazardous
REP Wastes. 169-182

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

AMD FAIM Financial Assistance Standards. 183

SPECIAL NOTICE AND TABLE SECTION

Functions of Administrative Rule Review Committee. 184-185

How to Use ARM and MAR. 186

Accumulative Table. 187-198

Boards and Councils Appointees. 199-202

Vacancies on Boards and Councils. 203-207

BEFORE THE CLASSIFICATION REVIEW COMMITTEE
OF THE STATE OF MONTANA

In the matter of the proposed	)	NOTICE OF PUBLIC HEARING
amendment of ARM 6.6.8301,	)	ON PROPOSED AMENDMENT
concerning updating references	)	OF ARM 6.6.8301 REGARDING
to the NCCI Basic Manual for	)	ADOPTION AND AMENDMENT
Workers Compensation and	)	OF CLASSIFICATIONS
Employers Liability Insurance)	
1996 ed. and adoption of new)	
and amended classifications)	

TO: All Concerned Persons

1. The Montana Classification Review Committee will conduct a public hearing at 9:30 a.m., February 15, 2001, at Cavanaugh's Colonial Inn, Clark Room, 2301 Colonial Drive, Helena, Montana, to consider the amendment of ARM 6.6.8301 updating references to the NCCI Basic Manual for Workers Compensation and Employers Liability Insurance, 1996 edition.

2. The Montana Classification Review Committee 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 require an accommodation, contact the Montana Classification Review Committee no later than 5:00 p.m., February 1, 2001, to advise us of the nature of the accommodation needed. Please contact the Montana Classification Review Committee, attn: Tim Hughes, National Council on Compensation Insurance, Inc., 7220 West Jefferson Avenue, Suite 310, Lakewood, Colorado 80235, telephone (303) 969-9456; fax (303) 969-9423; e-mail tim_hughes@ncci.com.

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

6.6.8301 ESTABLISHMENT OF CLASSIFICATION FOR COMPENSATION PLAN NO. 2 (1) The committee hereby adopts and incorporates by reference the NCCI Basic Manual for Workers Compensation and Employers Liability Insurance, 1996 ed., as supplemented through December 31, 2000, ~~August 1, 1999~~, which establishes classifications with respect to employers electing to be bound by compensation plan No. 2 as provided in Title 39, chapter 71, part 22, MCA. A copy of the Basic Manual for Workers Compensation and Employers Liability Insurance is available for public inspection at the Office of the Commissioner of Insurance, ~~Room 270, Sam w. Mitchell Building, 126 North Sanders,~~ 840 Helena Ave., P.O. Box 4009, Helena, MT 59620-4009. Copies of the Basic Manual for Workers Compensation and Employers Liability Insurance may be obtained by writing to the Montana Classification Review Committee in care of the National Council on Compensation Insurance, Inc., 7220 West Jefferson Avenue, Suite 310, Lakewood, Colorado 80235. Persons obtaining a

copy of the Basic Manual for Workers Compensation and Employers Liability Insurance must pay the committee's cost of providing such copies.

(2) Remains the same.

AUTH: 33-16-1012, MCA;
IMP: 33-16-1012, 2-4-103, MCA

RATIONALE: The proposed amendments are necessary in order to update references to the NCCI Basic Manual for Workers Compensation and Employers Liability. Changes to the NCCI Basic Manual for Workers Compensation and Employers Liability affect classifications for those employers listed below:

MT-00-01 -Item B-1362 - Code 5551 - Roofing - Amended.

Purpose: Effective July 1, 2000, the national treatment of Code 5551 will no longer include yard operations. With this change, it is no longer necessary for Montana to note its special treatment of yard operations under Code 5551. Approval of this filing will result in the deletion of this exception as printed in the Montana State pages of the Basic Manual.

MT-00-02 -Item B-1363, Codes 7403, 7405, 7423 and 7431 - Air Carrier Classifications - Amended Phraseologies.

Purpose: This filing amends the phraseology of Air Carrier - Commuter and Air Carrier - Scheduled or Supplemental to comply with recent changes made by the Federal Aviation Regulations.

MT-00-03 -Item B-1364, Basic Manual Rule IV.D.4 - Assignment of Additional Basic Classifications.

Purpose: This filing enhances the current version of the Basic Manual Rule 1) Defining certain words to provide the reader clearer meaning of the rule's intent, 2) Modifies the current financial record keeping requirements and 3) Subsection C is reworded to better state the rule's intent.

MT-00-04 -Item B-1366, Revisions to the Admiralty and Federal Employer's Liability Act Classifications.

Purpose: This filing proposes to 1) increase the standard limit of liability under part two - employers' liability insurance for admiralty law (maritime) or Federal Employers' Liability Act (FELA), 2) modify the ratemaking methodology for the admiralty classifications and 3) change the manner in which the rates/loss costs for FELA classifications are displayed.

MT-00-05 -Item Filing 08-MT-99, Classification Phraseology for Code 1016 - Coal Mining NOC & Drivers.

Purpose: The purpose of this filing is to add the phraseology for Code 1016 - Coal Mining NOC and Drivers to the Montana State pages of the Basic Manual.

MT-00-10 - Code 8280 - New Outfitters and Guides classification.

Purpose: The Committee proposes to establish a separate classification, Code 8280, for Outfitters and Guides. Workers' compensation coverage for outfitters and guides in Montana is classified by NCCI under Code 7720 - Police Officers & Drivers. The NCCI loss-cost is driven primarily by the loss experience of municipal and state law enforcement agencies. Montana State Fund presently writes the majority of this business in Montana under its own Code 8280, which more accurately reflects the loss experience of outfitters and guides in Montana. This classification change is needed to provide a workers' compensation insurance class code for these occupations that will correlate with the risks that exist in the Outfitter and Guide industry. Code 7720 for police officers does not correlate with the risks found in this industry.

4. Concerned persons may submit their data, views or arguments, either in writing or orally at the hearing. Written data, views or arguments may also be submitted to Laurence Hubbard, c/o National Council on Compensation Insurance, Inc., 7220 West Jefferson Avenue, Suite 310, Lakewood, Colorado 80235, or by electronic mail to tim_hughes@ncci.com and must be received no later than 5:00 p.m., February 22, 2001.

5. The Montana Classification Review Committee maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies whether the person wishes to receive notices regarding rulemaking actions of the Classification Review Committee. Such requests may be mailed or delivered to Laurence Hubbard, c/o National Council on Compensation Insurance, Inc., 7220 West Jefferson Avenue, Suite 310, Lakewood, Colorado 80235, or may be made by completing a request form at any rules hearing held by the Montana Classification Review Committee.

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

7. Laurence Hubbard, Chairperson of the Committee, has

been designated to preside over and conduct the hearing.

CLASSIFICATION AND
REVIEW COMMITTEE

By: /s/ Laurence Hubbard
Laurence Hubbard
Chairperson

By: /s/ Elizabeth Griffing
Elizabeth Griffing
Rules Reviewer

Certified to the Secretary of State January 12, 2001.

BEFORE THE BOARD OF PHARMACY
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed amendment of rules pertaining to labeling for prescriptions, unprofessional conduct, definitions, preceptor requirements and conditions of registration) NOTICE OF PUBLIC HEARING) ON THE PROPOSED AMENDMENT) OF ARM 8.40.406 LABELING) FOR PRESCRIPTIONS,) 8.40.415 UNPROFESSIONAL) CONDUCT, 8.40.702) DEFINITIONS, 8.40.902) INTERNSHIP PROGRAM) DEFINITIONS, 8.40.904) PRECEPTOR REQUIREMENTS, AND) 8.40.1603 CONDITIONS OF) REGISTRATION

TO: All Concerned Persons

1. On February 26, 2001, at 9:00 a.m., a public hearing will be held in the Division of Professional and Occupational Licensing conference room, 4th Floor, Federal Building, 301 South Park Avenue, Helena, Montana to consider the proposed amendment of the above-stated rules.

2. The Department of Commerce 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 require an accommodation, contact the Board of Pharmacy no later than 5:00 p.m., on February 16, 2001, to advise us of the nature of the accommodation that you need. Please contact Cami Robson, Board of Pharmacy, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2356; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail compolpha@state.mt.us.

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

8.40.406 LABELING FOR PRESCRIPTIONS (1) On prescription drugs, the label shall contain the name, address and phone number of the dispenser, name of prescriber, name of patient, name and strength of the drug, directions for use and date of filling unless the prescriber otherwise specifies.

(2) will remain the same.

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

REASON: The Board is proposing this amendment to update the Administrative Rules of Montana to reflect the current standards of labeling for prescriptions dispensed as established by the National Association of Boards of Pharmacy in the Model Practice Act.

8.40.415 UNPROFESSIONAL CONDUCT (1) The board defines "unprofessional conduct" as follows:

(1) through (8) will remain the same, but are renumbered (a) through (h).

~~(9)~~ (i) Any act performed in the practice of pharmacy which is hostile to the public health and which is knowingly committed by the holder of a license; and

~~(10)~~ (j) Buying, selling, purchasing or trading any prescription drug samples or offering to sell, purchase or trade drug samples. A "drug sample," as used herein, is defined to mean a unit of a prescription drug which is not intended to be sold and is intended to promote the sale of a drug;

(k) Conviction, including conviction following a plea of nolo contendere, of an offense involving moral turpitude, whether misdemeanor or felony, and whether or not an appeal is pending;

(l) Fraud, misrepresentation, deception or concealment of a material fact in applying for or securing a license, or license renewal, or in taking an examination required for licensure; as used herein, "material" means any false or misleading statement or information;

(m) Use of a false, fraudulent or deceptive statement in any document connected with the practice of pharmacy;

(n) Having been subject to disciplinary action of another state or jurisdiction against a license or other authorization to practice pharmacy, based upon acts or conduct by the licensee similar to acts or conduct that would constitute grounds for disciplinary actions under Title 37, chapter 7, MCA or these rules; a certified copy of the record of the action taken by the other state or jurisdiction is evidence of unprofessional conduct;

(o) Willful disobedience of a rule adopted by the board, or an order of the board regarding evaluation or enforcement of discipline of a licensee;

(p) Habitual intemperance or excessive use of an addictive drug, alcohol or any other substance to the extent that the use impairs the user physically or mentally;

(q) Failing to furnish to the board or its investigators or representatives information legally requested by the board;

(r) Failing to cooperate with a lawful investigation conducted by the board;

(s) Conviction or violation of a federal or state law regulating the possession, distribution or use of a controlled substance, as defined by the federal food and drug administration or successors, whether or not an appeal is pending;

(t) Failure to transfer pertinent and necessary patient records to another licensed pharmacy, the patient or the patient's representative when requested to do so by the patient or the patient's legally designated representative;

(u) Failure to comply with an agreement the licensee has entered into with the impaired pharmacist program.

Auth: Sec. 37-1-319, 37-7-201, MCA
IMP: Sec. 37-1-316, MCA

REASON: The Board is proposing to add sections (k) through (u) to this rule to further define acts which constitute unprofessional conduct on the part of licensees regulated by the Montana Board of Pharmacy.

8.40.702 DEFINITIONS (1) through (3) will remain the same.

(4) "Class III hospital or long-term care facility" means any other health care related facility, including any facility dispensing emergency or start-up quantities of prescription medication.

(5) will remain the same.

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

REASON: The Board is proposing to amend this rule to insure that rural areas of Montana have access to pharmacy services through health care facilities that may not be staffed by a physician.

8.40.902 INTERNSHIP PROGRAM DEFINITIONS (1) through (5) will remain the same.

(6) "Internship period" means 1500 hours of practical experience in an approved pharmacy, hospital or other facility. The intern must acquire a minimum of 20 hours experience per calendar week ~~in not less than five days per calendar week,~~ and may acquire a maximum of 48 hours experience per calendar week. However, the student may acquire up to 1000 hours concurrently with school attendance in approved courses, externships and clerkships, or demonstration projects in the B.S. program and up to 1500 hours concurrently with school attendance in approved courses, externships and clerkships, or demonstration projects in the Pharm.D. program.

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

REASON: The Board is proposing the amendment to this rule to allow an intern pharmacist to be more flexible in obtaining required training hours for reporting to the Board of Pharmacy. For example, an intern could work three days per week and obtain 24-30 hours of quality training.

8.40.904 PRECEPTOR REQUIREMENTS (1) through (b) will remain the same.

(c) be engaged in full-time active pharmacy practice;
(d) through (2) will remain the same.

(3) A preceptor ~~shall~~ may supervise ~~only one intern,~~ or ~~only one extern~~ and one pharmacy technician at any time. A pharmacist preceptor may, however, supervise two students ~~at a~~

~~time if the students are completing a clerkship experience through attending an approved school of pharmacy.~~

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

REASON: The Board is proposing to amend this rule for clarification purposes. The current language is cumbersome and often times questioned by licensees. This also will allow a qualified pharmacist preceptor who may not work 40 hours a week, but is active in the practice of pharmacy, to mentor an intern or student.

8.40.1603 CONDITIONS OF REGISTRATION (1) will remain the same.

(a) be registered and in good standing in this state as a foreign corporation;

(b) be registered and in good standing ~~in the state of Montana with the national association of boards of pharmacy~~ verified internet pharmacy practice sites (VIPPS) if registered after June 1, 2001;

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

Auth: Sec. 37-7-712, MCA
IMP: Sec. 2-18-704, 37-7-701, 37-7-702, 37-7-703, MCA

REASON: The Board is proposing the amendment to this rule to protect the public health, safety and welfare by insuring that out-of-state mail order pharmacies have met the national standards for patient care and record keeping as required by VIPPS, which is a recognized entity of the National Association of Boards of Pharmacy.

4. Concerned 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 Pharmacy, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to compolpha@state.mt.us and must be received no later than the close of the hearing. If comments are submitted in writing, the Board requests that the person submit seven copies of their comments.

5. Lewis K. Smith, attorney, has been designated to preside over and conduct this hearing.

6. The Board of Pharmacy maintains a list of interested persons who wish to receive notices of rule making actions proposed by this Board. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all Board of Pharmacy administrative rule making proceedings or other administrative proceedings. Such written request may be mailed or delivered to the Board of Pharmacy, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-

0513, faxed to the office at (406) 841-2305, e-mailed to compolpha@state.mt.us or may be made by completing a request form at any rules hearing held by the agency.

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

BOARD OF PHARMACY
JOHN POUCH, R.Ph., PRESIDENT

By: /s/ Annie M. Bartos
ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

By: /s/ Annie M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, January 12, 2001.

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

In the matter of the proposed) NOTICE OF PUBLIC HEARING
amendment of rules pertaining) ON THE PROPOSED AMENDMENT
to definitions and fees) OF ARM 8.59.402 DEFINITIONS
) AND 8.59.506 FEE SCHEDULE

TO: All Concerned Persons

1. On February 14, 2001, at 10:00 a.m., a public hearing will be held in the Division of Professional and Occupational Licensing conference room, 4th Floor, Federal Building, 301 South Park Avenue, Helena, Montana to consider the proposed amendment of the above-stated rules.

2. The Department of Commerce 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 require an accommodation, contact the Board of Respiratory Care Practitioners no later than 5:00 p.m., February 5, 2001, to advise us of the nature of the accommodation that you need. Please contact Helena Lee, Board of Respiratory Care Practitioners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2385; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail compolrcp@state.mt.us.

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

8.59.402 DEFINITIONS (1) through (3) will remain the same.

(4) The board defines "pulse oximetry," "pulmonary function testing" and "spirometry" as diagnostic procedures that, pursuant to the orders of a physician, may be performed only by, or under clinical supervision of, a licensed respiratory care practitioner and/or other licensed health care provider who has met the minimum competency standards. The individual performing Ppulmonary function testing and spirometry must meet minimum competency standards, as they currently exist, are as established by the national institute for occupational safety and health (NIOSH) or the national board for respiratory care (NBRC) certification examination for entry level respiratory therapist, certification examination for entry level pulmonary function technologist (CPFT) credential or registry examination for advanced pulmonary function technologists (RPFT) specific to pulmonary function testing.

Auth: Sec. 37-28-104, MCA
IMP: Sec. 37-28-102, MCA

REASON: The Board received comments on the current rule from the Board of Medical Examiners. Under the physicians unlimited practice license, physicians may delegate tasks to other personnel. The Board wants to clearly state in its rule, that the individual performing the tests must be competent and provide evidence of that competency by established guidelines for minimum competency standards for pulmonary function testing and spirometry.

8.59.506 FEE SCHEDULE (1) The following fees are hereby adopted:

- (a) Application fee \$~~10~~ 20
- (b) License fee ~~20~~ 40
- (c) Renewal fee ~~20~~ 50
- (d) through (f) will remain the same.

Auth: Sec. 37-28-104, MCA
IMP: Sec. 37-28-203, MCA

REASON: The Board is required to set fees commensurate with costs in administering the program. The Board has recently entered into a biennial renewal. At the end of fiscal year 2000, the cash balance of the board decreased to \$9,450.44. The Board's general operating expenses are \$6,663. The Board's projected revenue in fiscal year 2001 is \$1,200. Renewal fees will not be collected until May, 2002. The renewal fee increase is reflective of a \$10 increase if the board were still on a \$20 annual renewal. The increase in the application and license fee is reflective of the administrative costs of processing applications. The Board estimates that it will receive an additional \$25,000 per biennium and that approximately 500 licensees will be affected as a result of the proposed fee increases.

4. Concerned 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 Respiratory Care Practitioners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to compolrcp@state.mt.us and must be received no later than February 22, 2001. The Board requests that persons submitting written comments submit seven copies of their comments.

5. F. Lon Mitchell, attorney, has been designated to preside over and conduct this hearing.

6. The Board of Respiratory Care Practitioners maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this Board. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all Board of Respiratory Care Practitioners administrative rule making proceedings or other administrative proceedings. Such written request may be

mailed or delivered to the Board of Respiratory Care Practitioners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2305, e-mailed to compolrcp@state.mt.us or may be made by completing a request form at any rules hearing held by the agency.

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

BOARD OF RESPIRATORY CARE
PRACTITIONERS
GREGORY PAUALAUSKIS, CHAIRMAN

By: /s/ Annie M. Bartos
ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

By: /s/ Annie M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, January 12, 2001.

BEFORE THE MONTANA BOARD OF HOUSING
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed) NOTICE OF THE PROPOSED
adoption of a rule pertaining) ADOPTION OF A RULE
to confidentiality and disclo-) PERTAINING TO CONFIDEN-
sure of information in posses-) TIALITY AND DISCLOSURE OF
sion of the Board of Housing) INFORMATION IN POSSESSION
) OF THE BOARD OF HOUSING

NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On March 15, 2001, the Board of Housing proposes to adopt a rule pertaining to confidentiality and disclosure of information in possession of the Board of Housing.

2. The Board of Housing will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Housing no later than 5:00, on February 15, 2001, to advise us of the nature of the accommodation that you need. Please contact Diana Hall, 836 Front Street, P.O. Box 200528, Helena, MT 59620-0528; telephone (406)444-3040; Montana Relay 1-800-253-4091; TDD (406)444-2978; facsimile (406)444-4688; e-mail dihall@state.mt.us.

3. The proposed new rule will read as follows:

I CONFIDENTIALITY AND DISCLOSURE OF INFORMATION

(1) Information submitted to the board by private parties is generally open to public review and disclosure. Therefore, applications, financial information and other information submitted to the board under any of its programs are subject to inspection and copying by interested members of the public except as provided in this rule. Some information may be protected from public disclosure. Information that is constitutionally protected from disclosure is information in which there is an individual privacy interest that clearly exceeds the merits of public disclosure.

(2) If a person or entity submitting information to the board considers any of that information confidential and wishes the information documents to be withheld from public disclosure, the submitting party must identify which part of the information is considered confidential upon their submission and the basis upon which the party believes the information should be withheld from public disclosure.

(3) The type of information which may be withheld from the public disclosure is very limited. If individual documents are not specified and a basis not identified, the board will deem all the information submitted to the board as subject to public disclosure. A submitting party should consult with legal counsel to determine what information may

be protected and for what reason. A statement that all information submitted by a submitting party is confidential will be considered ineffective.

(4) The board will take reasonable steps to protect information designated as confidential from public disclosure and for which a reasonable basis is stated for the confidentiality. If information has been designated as confidential and a basis for confidentiality stated, upon receiving a request to review any such information board staff will notify the submitting party of the request in writing by United States mail at an address provided by the submitting party. The notice will identify the party making the request, and the stated purpose for the request.

(5) It is the responsibility of the submitting party upon receipt of the notice to take such action as is necessary to protect the information from disclosure, including obtaining a court order protecting the documents from disclosure if necessary. If the board does not receive an order from a court of competent jurisdiction ordering the board to maintain confidentiality of the requested information or the board is not notified of other arrangements made between the requesting and submitting parties within 10 days from the date of the notice of the request, the information will be disclosed to the requesting party. The board will not assert the right of confidentiality for a submitting party in a court of law.

(6) Any information not designated as confidential with a specified basis for confidentiality will be subject to public disclosure without notification to the submitting party.

(7) Tenant certifications, income information and information in individual loan files are confidential and will not be disclosed to the public.

(8) If a requesting party wants copies of information maintained by the board, and depending on the number of copies to be made, the board may require the requesting party to provide for their own copying, either by making the copies with a copier and paper provided by the requesting party or by paying the expense of a copy service to make the copies.

Auth: Sec. 90-1-106, 90-6-104, MCA; IMP, Sec. 2-6-102, MCA

REASON: This rule is necessary to provide for a procedure for a person submitting information to the board to protect the confidentiality of information that the person considers should not be disclosed to the public. The Board of Housing is an agency of state government subject to Article II, Sect. 9, 1972 Montana Constitution, otherwise known as the "right to know." For this reason, documents submitted to the board by private citizens are, generally, open to public review. The right to know is not absolute, however, and is limited by the companion section Article II, Sect. 10, 1972 Montana Constitution, otherwise known as the "right to privacy." Under these constitutional provisions, the public's

right to know must be balanced with the individual right of privacy. Section 2-6-102, MCA, provides that every citizen has a right to inspect and take a copy of any public records. Documents in the possession of a public agency are public records. That section also provides that public records that are constitutionally protected from disclosure are not subject to the provisions of this section. Information that is constitutionally protected from disclosure is information in which there is an individual privacy interest that clearly exceeds the merits of public disclosure, including legitimate trade secrets, as defined in 30-14-402, MCA. It is the intent of the proposed rule to provide a procedure by which a private party may take steps to protect information submitted to the board that the party considers confidential.

4. Concerned persons may submit their data, views or arguments concerning the proposed rule in writing to Bruce Brensdal, Executive Director, Montana Board of Housing, 836 Front Street, P.O. Box 200528, Helena, MT 59620-0528, to be received no later than March 1, 2001.

5. If persons who are directly affected by the proposed adoption wish to express their data, views and argument orally or in writing at a public hearing, they must make a written request for a hearing and submit this request along with any written comments they have to Bruce Brensdal, Executive Director, Montana Board of Housing, 836 Front Street, P.O. Box 200528, Helena, MT 59620-0528. The comments must be received no later than March 1, 2001.

6. If the Board of Housing receives requests for a public hearing on the proposed adoption from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed adoption, from the appropriate administrative rule review 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 1000 persons based on 10% of the number of parties who have submitted data to the board.

7. The Board of Housing maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding Board of Housing programs. Such written requests may be mailed or delivered to Diana Hall, Montana Board of Housing, 836 Front Street, P.O. Box 200528, Helena, MT 59620-0528 or by facsimile at (406)444-4688, or may be made by completing a request form at any rules hearing held by the Board of Housing.

8. The notice requirements of 2-4-302, MCA, apply and have been satisfied.

MONTANA BOARD OF HOUSING
BOB THOMAS, CHAIR

By: /s/ Annie M. Bartos
ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

By: /s/ Annie M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, January 12, 2001

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

In the matter of the	)	NOTICE OF PROPOSED
proposed amendment of	)	AMENDMENT
ARM 10.16.3346 and)	
10.16.3514, pertaining	)	NO PUBLIC HEARING
to special education	)	CONTEMPLATED

TO: All Concerned Persons

1. On February 26, 2001, the Office of Public Instruction proposes to amend the above-stated rules.

2. The Office of Public Instruction will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Office of Public Instruction no later than 5:00 p.m. on February 12, 2001, to advise us of the nature of the accommodation that you need. Please contact Pat Reichert, Office of Public Instruction, P.O. Box 202501, Helena, Montana 59620-2501, telephone: (406)444-3172, FAX: (406)444-2893. A TTD number will be available upon request.

3. The rules as proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

10.16.3346 AVERSIVE TREATMENT PROCEDURES (1) through (4) remain the same.

(5) Exclusion time-out is not considered an aversive treatment procedure. Exclusion time-out is defined as any removal of a student from a regularly scheduled activity for disciplinary purposes that does not result in placing the student in an isolation room under all of the conditions described in (2)~~(d)~~(b).

(6) through (8) remain the same.

AUTH: 20-7-402, MCA
IMP: 20-7-403, 20-7-414, MCA

REASONABLE NECESSITY: This amendment is needed to correct a typographical error that occurred during the last revision in the citing of a section of this rule.

10.16.3514 DISCOVERY METHODS (1) remains the same.

(2) Any evidence to be introduced at the hearing or on file shall be disclosed to the opposing party at least five business days before the hearing ~~or the evidence will not be admitted.~~

AUTH: 20-7-402, MCA
IMP: 20-7-402, MCA

REASONABLE NECESSITY: ARM 10.16.3514(2) is revised to comply with the Individuals with Disabilities Education Act and its implementing regulations at 34 Code of Federal Regulations 300.509(a)(3), by removing the authority of the hearing officer to exclude evidence from a due process hearing. In its analysis of the Office of Public Instruction's eligibility document, the Office for Special Education Programs, United States Department of Education, noted the inconsistency and requires the proposed change before approval will be given to Montana's Part B application.

4. Concerned persons may submit their data, views or arguments concerning the proposed amendments in writing to the Office of Public Instruction, P.O. Box 202501, Helena, Montana 59620-2501, or by e-mail to opirules@state.mt.us and must be received no later than 5:00 p.m. on February 22, 2001.

5. If persons who are directly affected by the proposed amendments wish to express their data, views and arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to Pat Reichert, Office of Public Instruction, P.O. Box 202501, Helena, Montana 59620-2501. A written request for hearing must be received no later than February 22, 2001.

6. If the Office of Public Instruction 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 actions; from the appropriate administrative rule review 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 students in public schools in Montana who are receiving special education services and the number of responsible school officials who provide those services.

7. The Office of Public Instruction maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding special education or education in general. Such written request may be mailed or delivered to Pat Reichert, Office of Public Instruction, 1227 11th Avenue, P.O. Box 202501, Helena, Montana 59620-2501, faxed to the office at 406-444-2893; or may be made by completing a request

form at any rules hearing held by the Office of Public Instruction.

8. The bill sponsor notice requirements of 2-4-302, MCA do not apply. The requirements of 20-1-501, MCA, have been fulfilled. Copies of these rules have been sent to all tribal governments in Montana.

By: /s/ Linda McCullough
Linda McCulloch
Superintendent
Office of Public Instruction

/s/ Jeffrey A. Weldon
Jeffrey A. Weldon
Rule Reviewer
Office of Public Instruction

Certified to the Secretary of State January 12, 2001.

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

In the matter of the adoption)
of a new rule limiting the)
number of class B-1 nonresident)
upland game bird licenses that)
may be sold each hunting season)

NOTICE OF PUBLIC
HEARING ON PROPOSED
ADOPTION

TO: All Concerned Persons

1. The Montana Fish, Wildlife and Parks Commission (commission) will hold public hearings to consider a new rule limiting the number of class B-1 nonresident upland game bird licenses that may be sold each season. The hearing dates and places are as follows:

February 20, 2001, 7:00 p.m.
Fish, Wildlife and Parks, Region 1 Headquarters
490 North Meridian Road
Kalispell, Montana

February 20, 2001, 7:00 p.m.
Cottonwood Inn
U.S. Highway 2 East
Glasgow, Montana

February 21, 2001, 7:00 p.m.
Fish, Wildlife and Parks, Region 7 Headquarters
Industrial Site West (W)
Miles City, Montana

February 22, 2001, 7:00 p.m.
Fish, Wildlife and Parks, Region 5 Headquarters
2300 Lake Elmo Drive
Billings, Montana

March 6, 2001, 7:00 p.m.
Fish, Wildlife and Parks, Region 3 Headquarters
1400 South 19th
Bozeman, Montana

March 7, 2001, 7:00 p.m.
Fish, Wildlife and Parks, Region 2 Headquarters
3201 Spurgin Road
Missoula, Montana

March 8, 2001, 7:00 p.m.
Fish, Wildlife and Parks, Region 4 Headquarters
4600 Giant Springs Road
Great Falls, Montana

2. The commission 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 require an accommodation, contact the Department of Fish, Wildlife and Parks no later than 5:00 p.m. on February 6, 2001, to advise us of the nature of the accommodation that you need. Please contact Faye Moore, Fish, Wildlife and Parks, 1420 East 6th Ave., P.O. Box 200701, Helena, Montana 59620-0701; telephone (406) 444-2612; fax (406) 444-7456.

3. The proposed new rule provides as follows:

NEW RULE I SALE OF NONRESIDENT UPLAND GAME BIRD LICENSES

(1) No more than 11,000 class B-1 nonresident upland game bird hunting licenses may be sold each license year.

(2) Nonresident class B-1 upland game bird hunting licenses will be sold on a first come, first served basis.

(3) This rule is effective for the March 1, 2002, license year.

AUTH: 87-1-301, 87-1-304, 87-2-402, MCA

IMP: 87-2-402, MCA

4. On December 15, 2000, the commission directed the department to initiate rulemaking to limit the number of class B-1 nonresident upland game bird licenses sold to 11,000 in each license year beginning in 2002. The commission was granted the authority to limit the license sales by the 56th Legislature in HB 478 and codified in 87-2-402, MCA. An analysis of the impacts of limiting the number of licenses was completed by the department as required. Public comment was accepted by the commission prior to the December 15th decision.

Nonresident bird license sales have increased from 5,884 in 1984 to 10,969 in 1999. A combination of increasing numbers of nonresident bird hunters and a general decrease in access is a concern for resident bird hunters. Both resident and nonresident bird hunters utilize free, open, private land, public land and Block Management areas for hunting. These lands account for over 85 percent of the lands hunted by residents and nonresidents. Any increase in hunter numbers or additional lands closed will result in greater competition. Two thirds of the resident hunters surveyed felt that access to private land had decreased over the past five years. During this same period, the number of acres leased by outfitters has increased over thirty percent.

Sales of nonresident game bird licenses are projected to be down twenty percent or greater in license year 2000. The increase in cost to \$110 in license year 2000 may be the primary factor responsible for the decline, although other factors such as the well publicized fire closures had some influence. Historically, license sales rebound in subsequent years after a fee increase.

The limit of 11,000 on the nonresident sales will not reduce the current level of leasing or land closures since the current numbers are below the 11,000 level. It does define the upper limit for future sales however.

The commission is charged with the preservation, protection and propagation of Montana's wildlife resources while providing for the equitable opportunity for Montana residents. The institution of the 11,000 limit of nonresident game bird license sales on a first come, first served basis is one aspect of executing the responsibility.

5. Concerned 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 Don Childress, Montana Department of Fish, Wildlife and Parks, 1420 East 6th Avenue, P.O. Box 200701, Helena, MT, 59620, dchildress@state.mt.us, and must be received no later than March 18, 2001.

6. A hearing examiner designated by the department will preside over and conduct the hearings.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this department. 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 the notice and specifies the subject or subjects about which the person wishes to receive notice. Such written request may be mailed or delivered to Fish, Wildlife and Parks, Legal Unit, P.O. Box 200701, 1420 East 6th Avenue, Helena, MT 59620-0701, faxed to the office at (406) 444-7456, or may be made by completing the request form at any rules hearing held by the department.

8. The bill sponsor notice requirements of 2-4-302, MCA apply and have been met.

BY:

/s/ S.F. Meyer

S.F. MEYER
Commission Chairman

/s/ Robert N. Lane

ROBERT N. LANE
Rule Reviewer

Certified to the Secretary of State January 12, 2001

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

In the matter of the) NOTICE OF PROPOSED AMENDMENT
amendment of a) OF ARM 24.5.317
procedural rule) NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On March 1, 2001, the Office of the Workers' Compensation Judge proposes to amend the above procedural rule of the Court.

2. The Workers' Compensation Court will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative, accessible format of this notice. If you require an accommodation, contact the Court no later than 5:00 p.m., on February 23, 2001, to advise us of the nature of the accommodation that you need. Please contact Patricia J. Kessner, Workers' Compensation Court, P.O. Box 537, Helena, MT 59624-0537; telephone (406) 444-7794; FAX (406) 444-7798.

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

24.5.317 MEDICAL RECORDS (1) "Medical records" for purposes of this rule includes all medical notes, reports, test results, correspondence and other written records or materials regularly maintained by any medical provider as a part of the provider's records or file. The term shall also include all reports, correspondence and other documents authored by any medical provider.

~~(1)(2)~~ Prior to any scheduled trial and w Within the time set by the scheduling or other order of the court, the parties shall exchange all pertinent medical records in their possession relating to the claimant's work-related medical conditions, other than records of professional consultants who have not examined the claimant and who will not be witnesses at trial or and whose records a the party does not intend to offer into evidence. Failure to exchange any medical record by the exchange deadline shall preclude its use at trial except by stipulation of the parties or order of the court for good cause.

~~(2)(3)~~ Any party who intends to object to the authenticity or genuineness of any medical record, or to its admissibility pursuant to Rule 803(6) Mont.R.Evid., or to its admissibility on any ground other than relevancy, shall make such objections in writing, All objections to medical records shall identifying each medical record to which an objection is made and the particular objections to the record. The objections shall be served upon the adverse party within 5 business days after the deadline for the final exchange of medical records, or within such other time fixed by the scheduling or other order of

the court. Failure to object to a medical record in the manner and within the time specified by this rule shall be deemed a waiver of any objection to the record, other than on relevancy grounds, on grounds of authenticity or hearsay and shall operate as constitute an admission by the party that the record is authentic and admissible pursuant to Rule 803(6) Mont.R.Evid. under the Montana Rules of Evidence and the Rules of the Workers' Compensation Court.

(4) Where a timely objection under this rule to a medical record is served, the record shall nonetheless be admitted, however, the party objecting to the record is entitled to call the medical provider or, if the objection is to the authenticity of the record, the custodian of the record as a witness either at trial or by deposition and to cross-examine the witness. offering a medical record to which the objection is made shall comply with provisions of the Mont.R.Evid. relating to foundation and hearsay. However, this rule shall have the same effect as a request for admission under Rule 36 Mont.R.Civ.P., and a party who thereafter successfully offers the medical record at trial may apply to the court for an order requiring the objecting party to pay reasonable expenses incurred in authenticating the record and/or establishing its admissibility under Rule 803(6), Mont.R.Evid., including reasonable attorney's fees. The court shall award such reasonable expenses unless it finds that there was a good and substantial reason for the objection.

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

RATIONALE: The proposed amendment represents a return to the sort of rule considered and approved by the Montana Supreme Court in Miller v. Frasure, 264 Mont. 354, 871 P.2d 1302 (1994). The amendment is consistent with current practice and will diminish evidentiary disputes and provide a clear, precise line concerning admission of medical records.

4. It is reasonably necessary to amend the rule proposed in order for the Workers' Compensation Court to properly and timely decide and hear cases. In addition, the rules committee of the Court has reviewed and agreed to the rule changes.

5. Concerned parties may submit their data, views, or arguments concerning these changes in writing to the Workers' Compensation Court, 1625 Eleventh Avenue, P.O. Box 537, Helena, MT 59624-0537, to be received no later than February 23, 2001. Comments may also be submitted electronically to the Court at mlindgren@state.mt.us.

6. If persons who are directly affected by the proposed action wish to express their data, views, and arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to the Workers' Compensation Court, 1625 Eleventh Avenue, P.O. Box 537, Helena, MT 59624-0537, no later than February 23, 2001.

7. If the Workers' Compensation Court receives requests for a public hearing on the proposed action from either 10% or 25 persons, whichever is less, of those individuals who are directly affected by the proposed action, from the appropriate administrative rule review committee of the legislature, from a governmental agency or subdivision, or from another association having no less than 25 members that are directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be more than 25 based on the number of petitions filed in a year.

8. The Court also maintains lists of interested persons who wish to receive notice of rulemaking actions proposed by the Court. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding Workers' Compensation Court rules. Such written request may be mailed or delivered to the Workers' Compensation Court, 1625 Eleventh Avenue, P.O. Box 537, Helena, MT 59624-0537, faxed to the Court at 406-444-7798, may be made by completing a request form at any rules hearing held by the Court, or e-mailed to mlindgren@state.mt.us.

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

/s/ Mike McCarter

MIKE McCARTER
JUDGE

/s/ Jay Dufrechou

JAY DUFRECHOU
Hearing Examiner - Rule Reviewer

CERTIFIED TO THE SECRETARY OF STATE: January 5, 2001

BEFORE THE BOARD OF PERSONNEL APPEALS
OF THE STATE OF MONTANA

In the matter of the proposed) NOTICE OF PUBLIC HEARING ON
amendment of ARM 24.26.630,) THE PROPOSED AMENDMENT
24.26.650, 24.26.666,)
24.26.707, all relating to)
board of personnel appeals)
matters)

TO: All Concerned Persons

1. On February 16, 2001, at 10:00 a.m. a public hearing will be held in the first floor conference room of the Walt Sullivan Building, 1327 Lockey, Helena, Montana, to consider the proposed amendment of the above-stated rules, all related to board of personnel appeals matters.

2. The Board of Personnel Appeals 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 require an accommodation, contact the Department by not later than 5:00 p.m., February 9, 2001, to advise us of the nature of the accommodation that you need. Please contact the Board of Personnel Appeals, Attn: Ms. Jennifer Jacobson, P.O. Box 6518, Helena, MT 59604-6518; telephone (406) 444-2718; TTY (406) 444-5549; fax (406) 444-7071; or e-mail jejacobson@state.mt.us.

3. The Board of Personnel Appeals proposes to amend the rules as follows: (new matter underlined, deleted matter stricken)

24.26.630 PETITION FOR UNIT CLARIFICATION OF BARGAINING UNIT (1) A petition for clarification of bargaining unit may be filed with the board by an exclusive representative of the bargaining unit in question or by the public employer only if:

(a) there is no question concerning representation;

(b) the parties to the agreement are neither engaged in negotiations nor within 120 days of the expiration date of the agreement, unless there is mutual agreement by the parties to permit the petition;

(c) a petition for clarification has not been filed with the board concerning substantially the same unit within the past 12 months immediately preceding the filing of the petition; and

(d) no election has been held in substantially the same unit within the past 12 months immediately preceding the filing of the petition.

(2) A copy of the petition shall be served by the board upon the bargaining representative if filed by a public employer and upon the employer if filed by a bargaining representative.

(3) A petition for clarification of an existing bargaining unit shall contain the following:

- (a) the name and address of the bargaining representative involved;
- (b) the name and address of the public employer involved;
- (c) the identification and description of the existing bargaining unit;
- (d) a description of the proposed clarification of the unit;
- (e) the job classification(s) of employees as to whom the clarification issue is raised, and the number of employees on each such classification;
- (f) a statement setting forth the reason why petitioner desires a clarification of the unit;
- (g) a statement that no other employee organization is certified to represent any of the employees who would be directly affected by the proposed clarification;
- (h) a brief and concise statement of any other relevant facts; and
- (i) the name, affiliation, if any, and the address of petitioner.

(4) Should an agent of the board determine that the petition is defective in time or form as set forth in ARM 24.26.630(1) and (2), the agent may issue a recommended order that the petition be dismissed. The recommended order is subject to review by the board provided an appeal is timely filed within 10 business days of the date the recommended order is mailed. If no appeal is taken, the recommended order is the final order of the board.

(4)(5) The party on whom the petition was served shall have 20 days to file a response with the board. Absent an agreed upon stipulation of the parties to extend the response time, failure to respond will result in the agent of the board issuing a recommended order granting the relief requested by the petitioner. The recommended order is subject to board review if appealed within 10 business days. If not appealed, the recommended order is the final board order.

(a) If upon investigation it is determined that no question of fact exists and if the parties stipulate to a modification of the existing unit, the board agent shall issue a recommended order consistent with the agreement of the parties.

(5)(6) Upon a determination that a question of fact exists, the parties will mediate the dispute before an agency mediator within a time frame and mediation method determined by the mediator and the parties. Mediation will be concluded within 45 days of assignment unless the parties mutually agree to an extension. If the parties are unable to mediate the dispute, the board shall set the matter for hearing. Upon completion of the hearing the board may:

- (a) grant the petitioned-for clarification in whole or in part; or
- (b) deny the petitioned-for clarification in whole or in part.

AUTH: 39-31-104, MCA

IMP: 39-31-207, MCA

24.26.650 PETITIONS TO AMEND CERTIFICATION OF EXCLUSIVE REPRESENTATIVE (1) A petition to amend the certification of an exclusive representative may be filed by a labor organization when there is no question of representation and one of the following reasons exists:

(a) to reflect a change in name or affiliation of the exclusive representative; or

(b) a change in name of the employer.

(2) Petitions to affiliate exclusive representatives of bargaining units with other labor organizations shall show that members of the bargaining unit were afforded due process and will have continuity of representation.

(a) Due process in the affiliation process shall be demonstrated by a showing that members of the bargaining unit were:

(i) given notice of the impending affiliation vote;

(ii) given an opportunity to discuss the proposed affiliation at a meeting prior to voting; and

(iii) permitted to vote by secret ballot on the affiliation question.

(b) Continuity of representation shall be demonstrated by a showing that:

(i) there will be a continuation of bargaining unit autonomy;

(ii) local officers will be retained;

(iii) financial arrangements are not substantially different under the affiliation than before; and

(iv) procedures regulating grievance handling, voting and by-law changes are continued.

(3) The board will conduct an investigation upon receipt of the petition and will issue an amendment to the certification or recognition, or will deny the petition.

AUTH: 39-31-104, MCA

IMP: 39-31-207, MCA

24.26.666 BALLOT TALLY AND OBJECTIONS (1) Ballots will be tallied on the day of the election. Within 5 working days after the tally of ballots, has been furnished to the parties in writing, any party the parties to the election may file objections with the board, objections relating to the conduct of the election or conduct affecting the results of the election. The board agent conducting the election will attempt to notify the parties of the results of the ballot tally. However, in either on site or mail ballot elections the burden is on the parties to confirm the election tally with the board agent assigned to the election.

(2) Objections relating to the conduct of the election or conduct affecting the results of the election such objections shall be in writing and shall contain a brief statement of facts upon which the objections are based. An original and three copies of such objections shall be signed and filed with the board, the original being sworn to. The party filing an objection shall serve a copy upon each of the other parties to the election.

AUTH: 39-31-104, MCA

IMP: 39-31-208, MCA

24.26.707 REVIEW PROCEDURE (1) The review is to be conducted informally. However, any party may be represented by an attorney.

(2) The board may hear argument concerning the findings of fact and the conclusions of law reached by the hearings examiner officer.

(3) Findings of fact must be supported by substantial competent evidence of record. ~~The findings of fact shall be deemed correct by the board and shall not be overturned except upon proof of collusion, fraud or lack of due process.~~ Failure of the hearing examiner officer to make a finding on a critical fact may be corrected by the board's remanding to the hearings officer.

(4) The board shall not consider any new evidence tendered at the review unless good cause is shown for the failure to produce the evidence before the hearings officer. If good cause is shown and new evidence is to be introduced, the board may remand the matter to the hearings examiner officer for a ruling.

(5) The board may include in the record before it and consider as evidence all records of the department that are material to the issues. If the department records, or portions thereof, are not part of the record below, good cause must be shown why it was not offered into evidence before the hearings examiner officer.

(6) If deemed necessary, the board may request briefs.

AUTH: 2-4-201, MCA

IMP: 39-3-217, MCA

REASON: There is reasonable necessity to amend ARM 24.26.630 to enable board agents to effectively address issues such as procedural defects, timeliness, non-response and stipulations that resolve the petition before the hearing.

There is reasonable necessity to amend ARM 24.26.650 in order to correct an oversight in the rule drafting that was recently brought to the board's attention. Recognition of bargaining units is an employer prerogative, while certification is a board function.

There is reasonable necessity to amend ARM 24.26.666 in order to clarify that the department will attempt to advise the parties' representatives of tally results by phone, but the parties have the ultimate burden to verify the results of the vote count.

There is reasonable necessity to amend ARM 24.26.707 in order to conform the board rule to the standards of review in the Montana Administrative Procedure Act at 2-4-621, MCA. Although the statute giving the board appellate review authority of wage claim disputes was repealed in 1999 by House Bill 592, the board retains appellate authority for all matters accruing before April 23, 1999. The board believes that it is necessary to

amend these rules to ensure that appropriate due process rights of parties are protected and the correct legal standards are applied to those matters still "in the pipeline" of litigation.

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

Board of Personnel Appeals
c/o John Andrew
Department of Labor and Industry
P.O. Box 6518
Helena, Montana 59604-6518

and must be received by no later than 5:00 p.m., February 23, 2001. Comments may also be submitted electronically as noted in paragraph 6.

5. The Board of Personnel Appeals will meet on February 28, 2001, in Helena to consider the comments made by the public, the proposed responses to those comments, and take final action on the proposed rule changes. The meeting will be held in conjunction with the Board's regular meeting. Members of the public are welcome to attend the meeting and listen to the Board's deliberations, but the Board can not accept any comments concerning the proposed rule changes beyond the February 23 deadline.

6. An electronic copy of this Notice of Public Hearing is available through the Department's site on the World Wide Web at <http://dli.state.mt.us/calendar.htm>, under the Calendar of Events, Administrative Rule Hearings section. Interested persons may make comments on the proposed rules via the comment forum, <http://forums.dli.state.mt.us>, linked to the Notice of Public Hearing, but those comments must be posted to the comment forum by 5:00 p.m., February 23, 2001. The Department and the Board strive to make the electronic copy of this Notice of Public Hearing conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Department strives to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems, and that a person's technical difficulties in accessing or posting to the comment forum does not excuse late submission of comments.

7. The Board maintains a list of interested persons who wish to receive notices of rule-making actions proposed by the Board of Personnel Appeals. Persons who wish to have their name added to the mailing list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices

regarding any specific topic or topics over which the Board has rule-making authority. Such written request may be delivered to Mark Cadwallader, 1327 Lockey St., Room 412, Helena, Montana, mailed to Mark Cadwallader, P.O. Box 1728, Helena, MT 59624-1728, faxed to the office at (406) 444-1394, e-mailed to mcadwallader@state.mt.us, or made by completing a request form at any rules hearing held by the Department.

8. The bill sponsor notice provisions of 2-4-302, MCA, do not apply.

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

/s/ KEVIN BRAUN
Kevin Braun
Rule Reviewer

/s/ JACK HOLSTROM
Jack Holstrom, Chair
BOARD OF PERSONNEL APPEALS

Certified to the Secretary of State: January 12, 2001.

BEFORE THE BOARD OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of amendment) NOTICE OF PROPOSED
of ARM 32.6.712 as it relates) AMENDMENT
to food safety and inspection)
service (meat and poultry)) NO PUBLIC HEARING
) CONTEMPLATED

TO: All Concerned Persons

1. On February 26, 2001, the board of livestock proposes to amend ARM 32.6.712 as it relates to food safety inspection service (meat and poultry).

2. The board of livestock will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the board of livestock no later than 5:00 p.m. on February 1, 2001, to advise us of the nature of the accommodation that you need. Please contact Tammy Bridges, 301 N. Roberts St. - Rm. 301, PO Box 202001, Helena, MT 59620-2001; phone: (406)444-5205; TTD number: 1-800-253-4091; fax:(406)444-1929.

3. The rule as proposed to be amended provides as follows, stricken matter interlined, new matter underlined:

32.6.712 FOOD SAFETY AND INSPECTION SERVICE (MEAT, POULTRY) (1) The department of livestock hereby incorporates by reference the following as they were effective July 25, 1996: 9 CFR 301 through 9 CFR 320.7; 9 CFR 325 through 9 CFR 325.21; 9 CFR 329.1 through 9 CFR 329.9; 9 CFR 352 through 9 CFR 362.5; 9 CFR 381 through 9 CFR 381.37; 9 CFR 381.45 through 9 CFR 381.95; 9 CFR 381.115 through 9 CFR 381.182; 9 CFR 381.190; 9 CFR 381.194; 9 CFR 381.300 through 9 CFR 381.311; 9 CFR 416; 9 CFR 417; 9 CFR 424; 9 CFR 500, which set forth the federal rules on meat and poultry inspection with the following exceptions and clarifications thereto:

(1) through (35) remain the same but are renumbered (a) through (ah).

(2) CFR's are available for review at the Montana State Law Library, 215 North Sanders in Helena or online at www.access.gpo.gov/hara/cfr/index.html.

AUTH: 81-9-220, MCA
IMP: 81-9-220, MCA

4. ARM 32.6.712 is being amended for the following reasons:

(a) Section 81-9-220, MCA, requires the board of livestock to adopt rules consistent with the requirements of

the rules of the U. S. department of agriculture governing meat and poultry inspection.

(b) Effective July 25, 1996, rules were adopted by the U. S. department of agriculture, food safety inspection service (FSIS) to address the following:

- (1) 9 CFR 416: (sanitation)
- (2) 9 CFR 417: (hazard analysis and critical control point (HACCP) systems)
- (3) 9 CFR 424: (preparation and processing operations)
- (4) 9 CFR 500: (rules of practice)

(c) To comply with 81-9-220, MCA, the department now wishes to incorporate, by this reference, the 1996 FSIS rules set forth in (b).

(d) To provide that, as the federal rules incorporated by reference into ARM 32.6.712 are subsequently modified, so too will ARM 32.6.712 be modified accordingly so as to maintain the consistency of the department's rules with the federal rules.

5. Concerned persons may submit their data, views or arguments concerning the proposed amendments in writing to Carol Olmstead, 301 N. Roberts Street - Room 301, PO Box 202001, Helena, MT 59620-2001, to be received no later than February 23, 2001.

6. If persons who are directly affected by the proposed amendment wish to express their data, views and arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to the same address as above. The comments must be received no later than February 23, 2001.

7. If the board 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 appropriate administrative rule review 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 had been determined to be 11 persons based on the 111 licensed processors and distributors in Montana.

8. The Meat and Poultry Inspection Bureau of the Montana Department of Livestock maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons who wish to have their name added to the list shall make a written request which includes

the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding meat and poultry inspection issues. Such written request may be mailed or delivered to the Meat and Poultry Inspection Bureau, 301 N. Roberts Street - Room 301, PO Box 202001, Helena, MT 59620-2001.

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

By: /s/ Marc Bridges
Marc Bridges, Exec. Officer,
Board of Livestock
Department of Livestock

By: /s/ Bernard A. Jacobs
Bernard A. Jacobs, Rule Reviewer
Livestock Chief Legal Counsel

Certified to the Secretary of State January 12, 2001.

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

In the matter of the	)	NOTICE OF PROPOSED
amendment of ARM 16.32.302	)	AMENDMENT
pertaining to health care)	
licensure	)	NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On February 24, 2001, the Department of Public Health and Human Services proposes to amend the above-stated rule.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you need to request an accommodation, contact the department no later than 5:00 p.m. on February 22, 2001, 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; Email dphslegal@state.mt.us.

2. The rule as proposed to be amended provides as follows. Matter to be added is underlined. Matter to be deleted is interlined.

16.32.302 MINIMUM STANDARDS OF CONSTRUCTION FOR A LICENSED HEALTH CARE FACILITY: -- ADDITION, ALTERATION, OR NEW CONSTRUCTION: -- GENERAL REQUIREMENTS (1) Except as may otherwise be provided in (2) of this rule, a health care facility and the construction of, alteration, or addition to a facility shall comply with:

(a) all standards set forth in:

(i) the 1996- through 1997 Guidelines for Design and Construction of Hospitals and Health Care Facilities and NFPA 101, "Life Safety Code", ~~1994~~ 2000 edition," except that a facility already licensed under an earlier edition of the "Life Safety Code" published by the national fire protection association, is not required to comply with later editions of the "Life Safety Code". Copies of the cited editions are available at the Department of Public Health and Human Services, Quality Assurance Division, Licensing Bureau, ~~Cogswell Building,~~ P.O. Box ~~202951~~ 202953, Helena, Montana, 59620-~~2951~~ 2953.

(ii) through (4)(f) remain the same.

AUTH: Sec. 50-5-103, MCA

IMP: Sec. 50-5-103, 50-5-201 and 50-5-204, MCA

3. The proposed change to ARM 16.32.302 is necessary because the National Fire Protection Association (NFPA) 101,

"Life Safety Code", 1994 edition is out of date. The Life Safety Code is updated every three years to reflect the changes in building technology and fire safety design. There have been two updated editions of the Life Safety Code since the 1994 edition. The proposed change to ARM 16.32.302 aims to regulate construction of licensed health care facilities using the updated 2000 edition of the Life Safety Code. The Joint Commission on Hospital Accreditation has endorsed the 2000 edition of the Life Safety Code.

4. Interested persons may submit their data, views or arguments concerning the proposed action in writing to Kathy Munson, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 202951, Helena, MT 59620-2951, no later than 5:00 p.m. on February 22, 2001. Data, views or arguments may also be submitted by facsimile (406) 444-1970 or by electronic mail via the Internet to dphhslegal@state.mt.us. 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.

5. If a person who is directly affected by the proposed action wishes to express data, views and arguments orally or in writing at a public hearing, that person must make a written request for a public hearing and submit such request, along with any written comments to Kathy Munson, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 202951, Helena, MT 59620-2951, no later than 5:00 p.m. on February 22, 2001.

6. If the Department of Public Health and Human Services receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of those who are directly affected by the proposed action, from the Administrative Rule Review Committee of the legislature, from a governmental agency or subdivision, or from an association having no less than 25 members who are directly affected, a hearing will be held at a later date and a notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 18 recipients of health care facility licenses based on the 180 licensed health care facilities affected by this proposed rule change.

/s/ Dawn Sliva
Rule Reviewer

/s/ Gail Gray
Director, Public Health and
Human Services

Certified to the Secretary of State January 12, 2001.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the) NOTICE OF AMENDMENT
amendment of ARM 4.12.1507)
and 4.12.1508 relating to)
mint definitions and)
conditions governing)
importation of mint and mint)
rootstock)

TO: All Concerned Persons

1. On December 7, 2000 the Department of Agriculture published notice of the proposed amendment of ARM 4.12.1507 and 4.12.1508 relating to mint definitions and conditions governing importation of mint and mint rootstock at page 3286 of the 2000 Montana Administrative Register, Issue Number 23.

2. The agency has amended ARM 4.12.1507 and 4.12.1508 exactly as proposed.

3. No comments or testimony were received.

By: /s/ W. Ralph Peck
Ralph Peck, Director
Montana Department of Agriculture

/s/ Tim Meloy
Tim Meloy, Attorney
Rule Reviewer

Certified to the Secretary of State January 12, 2001.

BEFORE THE BOARD OF CLINICAL LABORATORY SCIENCE PRACTITIONERS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the adoption) NOTICE OF ADOPTION
of a rule pertaining to)
temporary practice permits)

TO: All Concerned Persons

1. On August 24, 2000, the Board of Clinical Laboratory Science Practitioners published a notice of the proposed adoption of the above-stated rule at page 2130, 2000 Montana Administrative Register, issue number 16. The hearing was held October 4, 2000.

2. The Board adopted NEW RULE I (ARM 8.13.309) TEMPORARY PRACTICE PERMITS as proposed.

3. The Board received no comments.

BOARD OF CLINICAL LABORATORY
SCIENCE PRACTITIONERS
SONJA BENNETT, CHAIRPERSON

By: /s/ Annie M. Bartos
ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

By: /s/ Annie M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, January 12, 2001.

BEFORE THE BOARD OF NURSING
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment) NOTICE OF AMENDMENT
of rules pertaining to advanced)
practice nursing, program)
director and the nurses')
assistance program)

TO: All Concerned Persons

1. On August 24, 2000, the Board of Nursing published a notice of the proposed amendment of the above-stated rules at page 2132, 2000 Montana Administrative Register, issue number 16. The hearing was held September 25, 2000.

2. The Board has amended ARM 8.32.1110, 8.32.1601, 8.32.1602, 8.32.1603, 8.32.1604, 8.32.1605, 8.32.1606, 8.32.1607, 8.32.1608, 8.32.1609, 8.32.1610, 8.32.1611, and 8.32.1612 exactly as proposed.

3. The Board has amended ARM 8.32.304 as proposed with the following changes from the original proposal. Matter to be added is underlined. Matter to be deleted is interlined.

8.32.304 ADVANCED PRACTICE NURSING TITLE (1) through (2)(d) will remain as proposed.

(e) councils on certification or re-certification of nurse anesthetists;

(f) through (h) will remain as proposed.

4. The Board received three comments. The comments received and the Board's response are as follows:

COMMENT NO. 1: One commentor suggested that ARM 8.32.304(2)(e) read: "councils on certification or re-certification of nurse anesthetists."

RESPONSE: The Board considered the suggestion and voted to amend ARM 8.32.304(2)(e) read "councils on certification or re-certification of nurse anesthetists."

COMMENT NO. 2: One commentor suggested that ARM 8.32.304 read: "council on certification of nurse anesthetists; council on re-certification of nurse anesthetists."

RESPONSE: The Board considered the suggestion and voted as set forth above.

COMMENT NO. 3: A comment was received from Carol Sem, RN, CCDC, NACII which was in total support of the proposed amendments.

RESPONSE: The Board thanks Ms. Sem for her comment.

BOARD OF NURSING
RITA HARDING, RN, MN, PRESIDENT

By: /s/ Annie M. Bartos
ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

By: /s/ Annie M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, January 12, 2001.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the adoption)	
of NEW RULES I through LII, on)	NOTICE OF ADOPTION
the identification and)	AND REPEAL
management of hazardous)	
wastes, and the repeal of ARM)	(HAZARDOUS WASTE)
Title 17, chapter 54)	

TO: All Concerned Persons

1. On October 26, 2000, the Department of Environmental Quality published notice of the proposed adoption of New Rules I through LII and repeal of ARM Title 17, chapter 54, pertaining to the identification and management of hazardous wastes, at page 2795 of the 2000 Montana Administrative Register, Issue No. 20.

2. The Department has adopted New Rules I (17.53.101), II (17.53.102), III (17.53.104), V (17.53.106), VII through IX (17.53.111 through 17.53.113), X (17.53.201), XI (17.53.202), XII through XIV (17.53.206 through 17.53.208), XV (17.53.212), XVI (17.53.213), XVII (17.53.301), XVIII through XX (17.53.401 through 17.53.403), XXIII through XXV (17.53.601 through 17.53.603), XXVII through XXX (17.53.701 through 17.53.704), XXXI through XXXIII (17.53.706 through 17.53.708), XXXIV (17.53.801), XXXV (17.53.802), XXXVII (17.53.901), XXXVIII (17.53.902), XL (17.53.1001), XLII (17.53.1003), XLIII (17.53.1004), XLIV (17.53.1101), XLV (17.53.1102), XLVIII (17.53.1203), XLIX through LI (17.53.1301 through 17.53.1303), and LII (17.53.1401) as proposed.

3. The Department has adopted New Rules IV (17.53.105), VI (17.53.107), XXI (17.53.501), XXII (17.53.502), XXVI (17.53.604), XXXVI (17.53.803), XXXIX (17.53.903), XLI (17.53.1002), XLVI (17.53.1201), and XLVII (17.53.1202) with the following changes (matter to be added is underlined; matter to be deleted is interlined):

RULE IV (17.53.105) INCORPORATION BY REFERENCE (1) and (2) remain the same.

(3) When incorporated by reference in this chapter, references to 40 CFR 124 and 40 CFR 260 through 270, 273, or 279 refer to the version of that publication revised as of July 1, 1999. References in this chapter to 40 CFR 124 and 40 CFR 260 through 270, 273, or 279 that incorporate publications refer to the version of the publication as specified at 40 CFR 260.11. 40 CFR 60, Appendix A, methods 10-5, are also incorporated by reference.

(4) through (7) remain the same.

AUTH: 75-10-405, MCA
IMP: 75-10-405, MCA

RULE VI (17.53.107) SUBSTITUTION OF STATE TERMS FOR FEDERAL TERMS (1) through (1)(n) remain the same.

(2) The definitions of the following terms found in 40 CFR 260.10 are excluded from substitution pursuant to (1)(a) (b) and (j) of this rule:

- (a) administrator; and
- (b) regional administrator.

(3) The definitions of the following terms found in 40 CFR 260.10 are excluded from substitution pursuant to (1)(b), (e) and (j) of this rule:

- (a) administrator;
 - (b) EPA region; and
 - (c) regional administrator.
- (4) and (5) remain as proposed.

AUTH: 75-10-405, MCA
IMP: 75-10-405, MCA

RULE XXI (17.53.501) ADOPTION OF FEDERAL PROCEDURES FOR IDENTIFICATION AND LISTING OF HAZARDOUS WASTE (40 CFR 261)

(1) Except as provided otherwise in [RULE XXII], the department hereby adopts and incorporates by reference 40 CFR 261, pertaining to identification, characteristics, listing, and criteria for identification and listing of wastes regulated as hazardous waste.

AUTH: 75-10-204, 75-10-404, 75-10-405, MCA
IMP: 75-10-203, 75-10-204, 75-10-403, 75-10-405,
75-10-602, MCA

RULE XXII (17.53.502) EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL STANDARDS FOR IDENTIFICATION AND LISTING OF HAZARDOUS WASTE (1) and (2) remain as proposed.

~~(3) In addition to the requirements in 40 CFR 261.6(c)(2), owners or operators of facilities that legitimately recycle materials without storing them before they are recycled are subject to 40 CFR 265.10 through 265.77.~~

(4) through (8) remain as proposed, but are renumbered (3) through (7).

AUTH: 75-10-204, 75-10-404, 75-10-405, MCA
IMP: 75-10-203, 75-10-204, 75-10-403, 75-10-405,
75-10-602, MCA

RULE XXVI (17.53.604) ADDITIONAL REPORTING REQUIREMENTS

(1) The department, as deemed necessary under 75-10-404, MCA, may require generators to furnish additional reports concerning the quantities and disposition of hazardous wastes identified or listed in this chapter.

AUTH: 75-10-405, MCA
IMP: 75-10-405, MCA

RULE XXXVI (17.53.803) ANNUAL REPORT FROM FACILITIES

(1) The owner or operator of a permitted hazardous waste management facility shall prepare and submit an annual report to the department, on forms obtained from the department, by March 1 of each year. The annual report must cover facility activities during the previous calendar year and must include the following information:

(a) through (e) remain as proposed.

(f) the most recent closure cost estimate under 40 CFR 264.142 ~~or 265.142~~, and for disposal facilities the most recent post-closure cost estimate under 40 CFR 264.144 ~~or 265.144~~;

(g) through (i) remain as proposed.

AUTH: 75-10-204, 75-10-405, MCA

IMP: 75-10-204, MCA

RULE XXXIX (17.53.903) ANNUAL REPORT

(1) The owner or operator of an interim status hazardous waste management facility shall prepare and submit an annual report to the department by March 1 of each year, on forms obtained from the department. The report must cover facility activities during the previous calendar year and must include the following information:

(a) through (f) remain as proposed.

(g) the most recent closure cost estimate under 40 CFR 264.142 ~~or 265.142~~, and for disposal facilities the most recent post-closure cost estimate under 40 CFR 264.144 ~~or 265.144~~;

(h) through (j) remain as proposed.

AUTH: 75-10-404, 75-10-405, MCA

IMP: 75-10-405, MCA

RULE XLI (17.53.1002) EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES

(1) remains as proposed.

(2) The following is substituted for 40 CFR 266.80(b), pertaining to spent lead acid batteries being reclaimed: "Owners or operators of facilities that store spent lead acid batteries before reclaiming them, other than spent batteries that are to be regenerated, are subject to the following requirements:

~~(A) Notification requirements under Section 3010 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6901 et seq.;~~

~~(B) All applicable provisions in the following subparts of 40 CFR 264:~~

~~(i) Subpart A through subpart B, excluding 40 CFR 264.13;~~

~~(ii) Subpart C through subpart E, excluding 40 CFR 264.71 and 40 CFR 264.72; and~~

~~(iii) Subpart F through subpart L.~~

~~(C) All applicable provisions in the following subparts of 40 CFR 265:~~

~~(i) Subpart A through subpart B, excluding 40 CFR 265.13;
(ii) Subpart C through subpart E, excluding 40 CFR 265.71 and 40 CFR 265.72; and~~

~~(iii) Subpart F through subpart L; and~~

~~(D) All applicable provisions in 40 CFR 270 and 40 CFR 124."~~

(3) through (10) remain as proposed.

~~(11) The following is substituted for 40 CFR 266.104(e) and (e)(1): "(e) Controls for dioxins and furans. Owners and operators of boilers and industrial furnaces shall conduct a site-specific risk assessment as follows to demonstrate that emissions of chlorinated dibenzo-p-dioxins (PCDDs) and dibenzofurans (CDDs/CDFs) do not result in an increased lifetime cancer risk to the hypothetical maximum exposed individual (MEI) exceeding 1 in 100,000 (this provision may be waived if the owner or operator of the facility can demonstrate, to the satisfaction of the department, that raw materials and fuels used are such that dioxins and furans would not be present in waste residues or emissions):~~

~~(1) During the trial burn, determine emission rates of the tetra-octa congeners of PCDDs and CDDs/CDFs using Method 0023A, 'Sampling Method for Polychlorinated Dibenzo-p-Dioxins and Polychlorinated Dibenzofurans Emissions from Stationary Sources', from EPA Publication SW-846."~~

(12) and (13) remain as proposed, but are renumbered (11) and (12).

AUTH: 75-10-405, MCA

IMP: 75-10-405, MCA

RULE XLVI (17.53.1201) ADOPTION OF FEDERAL PROCEDURES FOR STATE ADMINISTERED PERMIT PROGRAM (40 CFR 270 AND 124)

(1) Except as provided otherwise in [RULE XLVII], the department hereby adopts and incorporates by reference 40 CFR 270 and 124, pertaining to federal procedures for a state administered permit program.

AUTH: 75-10-404, 75-10-405, MCA

IMP: 75-10-405, 75-10-406, MCA

RULE XLVII (17.53.1202) EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL PROCEDURES FOR STATE ADMINISTERED PERMIT PROGRAM (1) through (16) remain as proposed.

~~(17) 40 CFR 270.42(i), pertaining to the permit modification list, is not adopted and incorporated by reference.~~

(18) through (21) remain as proposed, but are renumbered (17) through (20).

AUTH: 75-10-404, 75-10-405, MCA

IMP: 75-10-405, 75-10-406, MCA

3. The Department has repealed rules 17.54.101, 17.54.102, 17.54.105 through 17.54.113, 17.54.118 through 17.54.120, 17.54.125 through 17.54.128, 17.54.130 through 17.54.133, 17.54.136 through 17.54.138, 17.54.140, 17.54.145, 17.54.146, 17.54.150, 17.54.155, 17.54.201, 17.54.301 through 17.54.303, 17.54.307 through 17.54.312, 17.54.315, 17.54.316, 17.54.320 through 17.54.328, 17.54.330 through 17.54.335, 17.54.350 through 17.54.353, 17.54.401 through 17.54.404, 17.54.408 through 17.54.411, 17.54.415 through 17.54.418, 17.54.421, 17.54.425 through 17.54.427, 17.54.435, 17.54.440, 17.54.501 through 17.54.506, 17.54.508, 17.54.511, 17.54.512, 17.54.524 through 17.54.528, 17.54.601 through 17.54.603, 17.54.605 through 17.54.607, 17.54.609, 17.54.610, 17.54.612, 17.54.613, 17.54.701, 17.54.702, 17.54.705, 17.54.801 through 17.54.803, 17.54.807 through 17.54.814, 17.54.817, 17.54.818, 17.54.820 through 17.54.825, 17.54.830 through 17.54.833, 17.54.901 through 17.54.903, 17.54.905, 17.54.907 through 17.54.912, 17.54.915, 17.54.1001, 17.54.1002, 17.54.1006 through 17.54.1008, 17.54.1012, 17.54.1013, 17.54.1017, 17.54.1101, 17.54.1102, 17.54.1105 through 17.54.1109, 17.54.1112 through 17.54.1114, 17.54.1118, 17.54.1119, 17.54.1201, 17.54.1202, 17.54.1205, 17.54.1206, 17.54.1210, 17.54.1211, 17.54.1301 through 17.54.1303, 17.54.1311 through 17.54.1313 as proposed.

4. The Department received the following comments and responds as follows (page numbers referenced in the following comments refer to pages of the 2000 Montana Administrative Register, Issue No. 20):

COMMENT #1: PAGE 2824; RULE XLVI(1). The Department commented that language incorporating by reference 40 CFR 124, pertaining to public participation, inadvertently was omitted from Rules IV and XLVI.

RESPONSE: The omission was a clerical error made in propounding various draft editions of the rules. The Department has amended Rule XLVI(1) to incorporate by reference 40 CFR 124.

COMMENT #2: PAGE 2808; RULE XXII(1). Several commentators supported repeal of ARM 17.54.301(2), but objected to adoption of proposed Rule XXII(1) as an impermissibly stringent grant of discretion to hazardous waste inspectors to define hazardous waste on an ad-hoc basis.

RESPONSE: The Department agrees. This is existing language from ARM 17.54.301(2) that may not be appropriate. However, the Department is concerned that deleting proposed rule XXII(1), the reformatted version of ARM 17.54.301(2), may be outside the scope of the public notice issued for this rulemaking. Therefore, while the Department is not making the suggested revision at this time, it will address this issue in a future rulemaking.

One commentor submitted the following Comments #3 and #4:

COMMENT #3: PAGE 2808; RULE XXII. The commentor suggested an additional exception to incorporation of 40 CFR 261. The commentor requested that the Department amend Rule XXII to include revised language to be substituted for 40 CFR 261.2(e)(1)(iii), to conform the rules to the decision of the U.S. Court of Appeals for the D.C. Circuit in Battery Recyclers, Inc. v. EPA, 208 F.3d 1047 (D.C. Cir. 2000).

RESPONSE: The Department will propose to amend Rule XXII, with respect to 40 CFR 261.2(e)(1)(iii), if the Environmental Protection Agency (EPA) promulgates an amendment to 40 CFR 261.2(e)(1)(iii), or the Department will incorporate by reference EPA amendments to the subsection with the Department's annual revision of Rule IV(3). The Department intends to annually revise Rule IV(3) to incorporate by reference the most recent version of the relevant portions of the Code of Federal Regulations (CFR). Therefore, any EPA revision to 40 CFR 261.2(e)(1)(iii) will be incorporated into the Department's hazardous waste rules when the Department incorporates by reference the version of the CFR that contains the revision.

COMMENT #4: The commentor requested that the Department include within each rule specifying "exceptions and additions" to incorporations by reference an explanation of why the Department is adopting each proposed exception and addition, i.e., the reason Montana is departing from the federal regulation and whether that departure complies with Senate Bill 212 (1981), House Bill 521 (1995), and House Bill 311 (1995).

RESPONSE: The scope of this rulemaking is to change the format of the existing state hazardous waste rules and to adopt recent revisions to RCRA regulations. The Department is not adopting any new regulatory requirements that are more stringent than the comparable federal regulations, beyond the existing rules already contained in ARM Title 17, chapter 54. Each rule containing exceptions and additions to federal regulations incorporated by reference merely carries over into the new format existing state requirements that differ from the federal regulations.

SB 212 was intended to separate from the Montana Solid Waste Management Act, Title 75, Chapter 10, Part 2, as it existed in 1981, all references to the treatment, storage, disposal, generation, and transportation of hazardous waste and place the statutes regulating hazardous waste into a separate part of the code. The statement of intent for SB 212 indicated the "rules promulgated and permitting procedures adopted under this bill shall meet minimum standards under RCRA and shall not be more restrictive than those analogous provisions in which EPA has adopted regulations under RCRA." However, in

1991 the legislature enacted Section 75-10-405(2), MCA, which provides that the Department may adopt certain specified rules that are more stringent than comparable federal RCRA regulations. All of the current rules that are carried over into the new format that are more stringent than comparable federal RCRA regulations are rules that are specifically allowed to be more stringent under Section 75-10-405(2), MCA.

Under HB 521, the Department is prohibited from adopting rules in certain programs that are more stringent than comparable federal regulations or guidelines unless the Department has made certain written findings after a public hearing and public comment. HB 521 is codified for the Hazardous Waste Act at Sections 75-10-107 and 75-10-405, MCA. However, Section 15 of HB 521 contained an exemption for certain specified categories of rules adopted under the Hazardous Waste Act for which the legislature had previously determined more stringent rules were appropriate. That exemption and those rules are listed in Section 75-10-405(2), MCA. When requested as an amendment to the bill, the exemption was explained in relevant part as follows. Mr. Everts explained amendment 9 to the committee members. That amendment inserts, "Notwithstanding the provisions of [Section 3]". This would apply to Title 75, Chapter 10, which clarifies that when you are dealing with rules for boilers and industrial furnaces that the provisions of the bill do not apply to those rules.

See, Minutes of Senate Natural Resources Committee, March 28, 1995, page 5.

Rules concerning boilers and industrial furnaces are one of the categories of rules that the legislature had previously determined could be more stringent than the comparable RCRA regulations. While the explanation of the amendment to HB 521, as recited in the Senate minutes, refers only to rules concerning boilers and industrial furnaces, the language of the amendment applies equally to all of the categories of rules that the legislature has determined may be more stringent than comparable federal regulations.

All of the existing and new rules that are more stringent than comparable federal regulations are rules listed in Section 75-10-405(2), MCA, as rules that may be more stringent than federal RCRA regulations. Because the Department is not adopting any other rules that are more stringent than comparable federal regulations, HB 521 does not apply to this rulemaking.

HB 311 is codified at Sections 2-10-101 through 2-10-105, MCA, as the Private Property Assessment Act. The act requires a state agency to prepare a taking or damaging impact assessment for each state agency action with taking or damaging implications. Section 2-10-103(4), MCA, provides as follows:

"Taking or damaging" is defined as "depriving a property owner of private property in a manner requiring compensation under the 5th and 14th amendments to the constitution of the United States or Article II, section 29, of the Montana constitution."

Most of the requirements of the existing state rules and the new rules already apply to regulated entities under the RCRA regulations. The effect of adopting those requirements as state rules is only that the state has authority to enforce the requirements along with the federal government. Obtaining state enforcement authority over requirements that already apply under federal law does not deprive a property owner of private property or deprive a property owner of private property in a manner requiring compensation. Also, none of the requirements of the new rules that are more stringent than RCRA regulations deprive a property owner of private property or deprive a property owner of private property in a manner requiring compensation.

Pursuant to Section 2-10-105, MCA, the record in this proceeding includes an Attorney General's checklist that the hearing officer who presided over the public hearing completed, pursuant to the Attorney General's guidelines, to evaluate the proposed rulemaking for taking or damaging implications. The hearing officer concluded that the rulemaking did not have taking or damaging implications.

EPA submitted comments to the Department. Many of EPA's comments addressed issues outside the scope of this rulemaking, and EPA ultimately withdrew its comments by letter dated December 12, 2000.

However, the following EPA comments led to revisions of the proposed new rules by the Department:

COMMENT #5: PAGES 2816 and 2819; RULES XXXVI(1)(f) and XXXIX(1)(g). EPA commented that, in establishing requirements for annual reports, the proposed new rules referenced the closure cost estimates for both permitted and interim status facilities and that the Department should clarify which cost estimate each type of facility is allowed to use.

RESPONSE: The Department agrees and has corrected inaccurate citations to CFR sections in Rules XXXVI(1)(f) and XXXIX(1)(g) that created the lack of clarity.

COMMENT #6: PAGE 2825; RULE XLVII. EPA commented that Rule XLVII(17) would except 40 CFR 270.42(i), pertaining to the permit modification list (a product of the expanded RCRA public participation initiative), from the incorporation by reference of 40 CFR 270 and that this provision either must be

present in the rules or must be addressed in the Memorandum of Understanding between the Department and EPA.

RESPONSE: The Department agrees and has deleted Rule XLVII(17). Montana has implemented the three-tiered permit modification system. The three-tiered system of permit modifications categorizes changes to permits into three broad groups, Class 1, 2 or 3, depending on the nature and scope of change desired. The three-tiered system is the functional equivalent of the existing major/minor permit modification system. Each class prescribes procedures to be followed to evaluate the requested modification, conduct public participation and approve the modification. Class 1 modifications constitute minor changes to permits, such as routine alterations or typographical corrections, whereas Class 3 modifications are major changes to permits that require more detailed agency and public review. All other modifications are designated as Class 2.

COMMENT #7: PAGE 2798; RULE VI(2). EPA commented that Rule VI(2) and (3) except the definitions of "administrator" and "regional administrator" in 40 CFR 260.10 from the substitution of terms in Rule VI(1)(a) (definition of "act") and Rule VI(1)(j) (definition of "regional administrator") and that the provision cited should have been Rule VI(1)(b), which defines "administrator".

RESPONSE: The Department agrees and has corrected the citation in Rule VI and added "administrator" and "regional administrator" to Rule VI(3).

One commentor submitted the following Comments #8 through #18:

COMMENT #8: PAGES 2856 through 2858. The commentor stated that "reasonable necessity" for each rule was not shown, as the Montana Administrative Procedure Act (MAPA) requires, specifically, regarding technology-based land disposal restrictions and the Bevill mixture rule.

RESPONSE: Section 2-4-305(6)(b), MCA, of MAPA, requires that: "...reasonable necessity..." be clearly and thoroughly demonstrated for each adoption, amendment, or repeal of a rule in the agency's notice of proposed rulemaking..." Thus, while MAPA requires that reasonable necessity be clearly and thoroughly demonstrated for each action, it does not require that the Department demonstrate such necessity through a separate statement of reasonable necessity for each proposed new rule. This is confirmed by ARM 1.3.206(3)(a)(i)(A)(III), of the Attorney General's Model Rules, which states in relevant part that: "One statement [of reasonable necessity] may cover several proposed rules if appropriate, and if the language of the statement clearly indicates which rules it covers."

The statement of reasonable necessity on pages 2856 through 2858 of the Notice of Public Hearing On Proposed Adoption and Repeal addressed the necessity for the proposed action, which is a change of format and adoption of recent revisions to RCRA regulations. Because the requirements of technology-based land disposal restrictions and the Bevill mixture rule are merely undergoing a change of format, the Department believes that this statement of reasonable necessity conforms to the requirements of MAPA and ARM 1.3.206.

COMMENT #9: PAGES 2856 through 2858. The commentor stated that "reasonable necessity" for rules that are allowed to be more stringent than federal regulations has not been shown, as MAPA requires, specifically regarding boilers and industrial furnaces and transfer facilities.

RESPONSE: See, responses to Comments #4 and #8. As authorized by Section 75-10-405(2), MCA, certain existing state rules, including rules dealing with boilers and industrial furnaces and transfer facilities, are more restrictive than comparable RCRA regulations. The Department maintained these requirements in the new rules.

COMMENT #10: PAGES 2856 through 2858. The commentor stated that adoption of some of the proposed rules that are more stringent than their federal counterparts, particularly Rules XXI, XXII(3), XXXIX, and XLI(2), would violate both the MAPA requirement for a statement of reasonable necessity and Section 75-10-107(1), MCA, because these rules are more stringent than comparable federal regulations.

RESPONSE: See, responses to Comments #4, #8 and #9. Rule XXI, "Adoption of Federal Procedures for Identification and Listing of Hazardous Waste", merely adopts and incorporates by reference 40 CFR 261, so it is not more stringent than the comparable federal regulation. Rule XXIX, "Annual Report", includes the requirements of existing ARM 17.54.426, only in a new format.

Due to clerical errors, proposed Rules XXII(3) and XLI(2) contained more comprehensive requirements for certain recyclers than the requirements in the federal RCRA program and in the existing state rules. The Department has deleted these subsections.

COMMENT #11: PAGES 2856 through 2858. The commentor stated that the new rules must be re-proposed because the notice of proposed rulemaking did not include a statement of reasonable necessity, and the Department cannot correct this infirmity through simply amending the proposal.

RESPONSE: The Department disagrees. See, responses to Comments #4, #8, #9, and #10.

COMMENT #12: PAGES 2798 and 2799; RULE VI(4). The commentor stated that the language in proposed New Rule VI(4), stating that the substitution of terms in New Rule VI(1) does not apply to certain rules, is confusing.

RESPONSE: The new rule format was suggested by EPA, and is modeled after Indiana's administrative rules. The Department does not believe this format is confusing. Readers need to remember that, when the rules refer to portions of the CFR as incorporated by reference, the regulatory entity is either the Department or EPA, depending upon whether the provision is delegable. However, as the Department gains experience with the new rule format, the Department will consider future revisions to address any confusion within the regulated community arising from the rule format.

COMMENT #13: PAGE 2797; RULE IV(3) and (4). The commentor stated that each proposed rule must contain a citation to the material adopted by reference, must contain a statement of the general subject matter of the regulation adopted by reference, and must state where a copy of the material adopted by reference may be obtained. The commentor stated that, because the rules do not include the dates of the CFR provisions adopted by reference, the regulated community has no notice now or in the future of the versions of the federal regulations that have been adopted.

RESPONSE: Each proposed rule that incorporates a CFR provision by reference cites the specific provision incorporated, and each incorporation by reference briefly describes the subject matter of the provision incorporated. Rule IV(3) contains the date of the CFR version incorporated by reference (July 1, 1999), and Rule IV(4) states where copies of the incorporated materials may be obtained. The Department intends to annually update the CFR version incorporated by reference, and this will be conducted through a public notice of proposed rulemaking.

COMMENT #14: PAGES 2804 and 2805; RULES XII, XIII, and XV. The commentor stated that citizens are entitled to inspect and copy public writings, under Section 2-6-102, MCA, and that proposed Rules XII, XIII and XV conflict with this requirement.

RESPONSE: Rules XII, XIII, and XV correspond to existing ARM 17.54.1006, 17.54.1007, and 17.54.1012. Revision of these rules at this time would be outside the scope of the public notice of proposed rulemaking in this proceeding. However, the Department will review the rules for possible conflicts with Montana statutes and for possible future proposed amendments.

COMMENT #15: PAGE 2805; RULE XIV. The commentor stated that Rule XIV should incorporate by reference 40 CFR 260.2 so the

rules would include standards for determining when business information is confidential.

RESPONSE: Rule XIV corresponds to existing ARM 17.54.1008. The suggested revision is outside the scope of the public notice of rulemaking in this proceeding. However, as discussed in response to Comment #14, the Department will consider amending the rules concerning public access to business information in a future rulemaking.

COMMENT #16: PAGE 2807; RULE XXI(1). The commentor stated that it is unclear in Rule XXI whether the Department is adopting all of 40 CFR 261 or only those subsections "pertaining to identification of wastes regulated as hazardous waste."

RESPONSE: The Department agrees. The Department is adopting all of 40 CFR 261, except as provided otherwise in Rule XXII. The "pertaining to" phrase has been amended to more completely indicate the general subject matter of 40 CFR 261.

COMMENT #17: PAGES 2795, 2796, and 2821; RULES II(1) and XLII(1). The commentor stated that Rule XLII, "Hazardous Wastes and Other Wastes That May Not Be Burned in a Boiler or Industrial Furnace", overstates the Department's intent, described in Rule II, "Scope of Rules", because it appears to potentially regulate non-hazardous "wastes derived from" materials with the EPA hazardous waste listings of D017, D037, D041, and D042 and that the Department could remedy this by including the word "hazardous" in Rule XLII(1) before the words "wastes derived from" so that the sentence would read: "The following hazardous wastes or hazardous wastes derived from any of the following wastes may not be burned in a boiler or industrial furnace"

RESPONSE: Rule II(1) explains that Montana uses the terms "waste" and "solid waste" differently than the way these terms are used in the CFR. The use of the term "waste" in Rule XLII(1) conforms to use of the term in Rule II(1).

COMMENT #18: PAGES 2856 through 2858. The commentor stated that, for the reasons stated in the commentor's comments discussed above, the rulemaking is legally deficient, contrary to Montana law, and the new rules must be re-proposed before adoption.

RESPONSE: The Department disagrees that the rulemaking is legally deficient or contrary to Montana law and that the rules must be re-proposed. See, responses to Comments #8 through #18.

One commentor submitted Comments #19 through #22:

COMMENT #19: The commentor stated that more time should be afforded to affected parties to comment on the proposed rules.

RESPONSE: The Department published notice of the proposed rulemaking on October 26, 2000. The notice notified interested persons of the opportunity to submit written comments through November 24, 2000. The notice also notified interested persons of the opportunity to submit oral or written comments at the public hearing conducted on November 15. The rulemaking did not involve substantive changes to the Department's rules other than adoption of recent revisions to federal RCRA regulations that already applied to regulated entities under federal law. The Department complied with the public notice requirements specified in MAPA for rulemaking and the Department believes that the public had adequate opportunity to comment.

COMMENT #20: The commentor suggested that the state adopt a rule numbering system that correlates to the numbering of the federal RCRA regulations, to provide numerical identity between each Montana rule and its federal analogue.

RESPONSE: The proposed numbering system cannot be implemented to attain the commentor's goal, because it would not conform with ARM rule numbering protocols specified by the Secretary of State.

COMMENT #21: The commentor stated that the proposed rulemaking will not result in a state program equivalent to the federal RCRA program and that the state should explain why it is departing from the federal program.

RESPONSE: As discussed above, all of the exceptions and additions to the adoption and incorporation by reference of RCRA regulations are current rule provisions that the Department is carrying over into the new format. The Department is not adopting any new provisions that depart from comparable RCRA regulations. Therefore, the rulemaking does not depart from the current level of state adherence to the federal RCRA program.

COMMENT #22: PAGE 2797; RULE IV(3). The commentor stated that, to ensure that the proposed rules are not ambiguous and to prevent confusion, each rule incorporating a federal regulation by reference should contain the date of the regulation incorporated by reference.

RESPONSE: One of the purposes of the new format is to allow the Department to annually update the date of the CFR version adopted and incorporated by reference by amending only one rule, Rule IV(3), which specifies the date of the CFR version incorporated by reference (July 1, 1999). The expected annual update of the CFR version date will apply to all rules in the program. If the Department placed a specific CFR date in each

rule incorporating a federal regulation by reference, the Department would need to annually revise many individual rules. The new format will allow the Department to more efficiently update the version of the CFR incorporated by reference.

By: Jan P. Sensibaugh
JAN P. SENSIBAUGH, Director

Reviewed by:

David Rusoff
David Rusoff, Rule Reviewer

Certified to the Secretary of State January 12, 2001.

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

In the matter of the) NOTICE OF AMENDMENT
amendment of ARM 46.18.122)
pertaining to FAIM financial)
assistance standards)

TO: All Interested Persons

1. On November 9, 2000, the Department of Public Health and Human Services published notice of the proposed amendment of the above-stated rule at page 3109 of the 2000 Montana Administrative Register, issue number 21.

2. The Department has amended the rule as proposed.

3. No comments or testimony were received.

/s/ Dawn Sliva
Rule Reviewer

/s/ Gail Gray
Director, Public Health and
Human Services

Certified to the Secretary of State January 12, 2001.

NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEE
Interim Committees and the Environmental Quality Council

Administrative rule review is a function of interim committees and the Environmental Quality Council (EQC). These interim committees and the EQC have administrative rule review, program evaluation, and monitoring functions for the following executive branch agencies and the entities attached to agencies for administrative purposes.

Business and Labor Interim Committee:

- ▶ Department of Agriculture;
- ▶ Department of Commerce;
- ▶ Department of Labor and Industry;
- ▶ Department of Livestock;
- ▶ Department of Public Service Regulation; and
- ▶ Office of the State Auditor and Insurance Commissioner.

Education Interim Committee:

- ▶ State Board of Education;
- ▶ Board of Public Education;
- ▶ Board of Regents of Higher Education; and
- ▶ Office of Public Instruction.

Children, Families, Health, and Human Services Interim Committee:

- ▶ Department of Public Health and Human Services.

Law, Justice, and Indian Affairs Interim Committee:

- ▶ Department of Corrections; and
- ▶ Department of Justice.

Revenue and Taxation Interim Committee:

- ▶ Department of Revenue; and
- ▶ Department of Transportation.

State Administration, Public Retirement Systems, and Veterans' Affairs Interim Committee:

- ▶ Department of Administration;
- ▶ Department of Military Affairs; and
- ▶ Office of the Secretary of State.

Environmental Quality Council:

- ▶ Department of Environmental Quality;
- ▶ Department of Fish, Wildlife, and Parks; and
- ▶ Department of Natural Resources and Conservation.

These interim committees and the EQC have 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. They also 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, amend, or repeal a rule.

The interim committees and the EQC welcome comments and invite members of the public to appear before them or to send written statements in order to bring to their attention any difficulties with the existing or proposed rules. The mailing address is PO Box 201706, Helena, MT 59620-1706.

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. |

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 December 2000, appear. Vacancies scheduled to appear from February 1, 2001, through April 30, 2001, 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 January 9, 2001.

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 DECEMBER, 2000

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Board of Medical Examiners (Commerce) Dr. Beth Thompson Missoula Qualifications (if required): doctor of medicine	Governor	Markette	12/7/2000 9/1/2004
Board of Radiologic Technologists (Commerce) Ms. Jane Christman Dutton Qualifications (if required): radiologic technologist	Governor	reappointed	12/22/2000 7/1/2003
Montana Alfalfa Seed Committee (Agriculture) Mr. Kim Martinson Townsend Qualifications (if required): representative of alfalfa seed sellers	Governor	Matchett	12/21/2000 12/21/2003
Mr. John Wold Laurel Qualifications (if required): representative of the alfalfa seed growers	Governor	Patrick	12/21/2000 12/21/2003
Montana Geographic Information Council (Administration) Mr. Ken Jenkins Missoula Qualifications (if required): President of Montana Association of Registered Land Surveyors	Governor	not listed	12/18/2000 12/31/2001
Mr. Bill McGill Billings Qualifications (if required): local government representative	Governor	not listed	12/18/2000 12/31/2001
Mr. Jeff Miller Helena Qualifications (if required): state representative	Governor	not listed	12/18/2000 1/12/2002

BOARD AND COUNCIL APPOINTEES FROM DECEMBER, 2000

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Montana Geographic Information Council (Administration) cont. Mr. Martin Prather Missoula Qualifications (if required): federal representative	Governor	not listed	12/18/2000 12/31/2001
State Trauma Care Committee (Public Health and Human Services) Dr. A. Craig Eddy Missoula Qualifications (if required): chairman of the Montana Committee on Trauma	Governor	Middleton	12/8/2000 11/2/2004
Ms. Dory Fried Malta Qualifications (if required): representative of the Eastern Regional Trauma Advisory Committee	Governor	reappointed	12/8/2000 11/2/2004
Ms. Elena Guevera Helena Qualifications (if required): representative of the Emergency Nurses Association	Governor	Phillips	12/8/2000 11/2/2004
Mr. John M. Mootry Dillon Qualifications (if required): representative of the Montana Hospital Association	Governor	reappointed	12/8/2000 11/2/2004
Ms. Jennie Catlin Nemec Helena Qualifications (if required): representative of the Central Regional Trauma Care Committee	Governor	Peterson	12/8/2000 11/2/2004
Dr. J. Bradley Pickhardt Missoula Qualifications (if required): representative of the Western Regional Trauma Care Committee	Governor	Eddy	12/8/2000 11/2/2004

BOARD AND COUNCIL APPOINTEES FROM DECEMBER, 2000

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
State Trauma Care Committee (Public Health and Human Services) cont.			
Ms. Kim Sorensen	Governor	reappointed	12/8/2000
Billings			11/2/2004
Qualifications (if required): trauma coordinator committee representative			

VACANCIES ON BOARDS AND COUNCILS -- February 1, 2001 through April 30, 2001

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Architects (Commerce) Ms. Pamela J. Hill, Bozeman Qualifications (if required): registered architect on staff at MSU-Bozeman	Governor	3/27/2001
Mr. Thomas Geelan, Havre Qualifications (if required): public member	Governor	3/27/2001
Board of Athletics (Commerce) Mr. Gary Langley, Helena Qualifications (if required): public member	Governor	4/25/2001
Board of Clinical Laboratory Science Practitioners (Commerce) Ms. Sonja Bennett, Billings Qualifications (if required): clinical laboratory science practitioner	Governor	4/16/2001
Dr. David Walker, Kalispell Qualifications (if required): physician qualified to direct a high complexity laboratory	Governor	4/16/2001
Board of County Printing (Commerce) Mr. Verle L. Rademacher, White Sulphur Springs Qualifications (if required): representative of the printing industry	Governor	4/1/2001
Ms. Nancy Clark, Ryegate Qualifications (if required): public member	Governor	4/1/2001
Mr. Curtis Starr, Malta Qualifications (if required): representative of the printing industry	Governor	4/1/2001
Ms. Marianne Roose, Eureka Qualifications (if required): County Commissioner	Governor	4/1/2001

VACANCIES ON BOARDS AND COUNCILS -- February 1, 2001 through April 30, 2001

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of County Printing (Commerce) cont. Ms. Julie Jordan, Miles City Qualifications (if required): County Commissioner	Governor	4/1/2001
Board of Dentistry (Commerce) Dr. Wayne Hansen, Billings Qualifications (if required): dentist	Governor	3/29/2001
Board of Directors of the State Compensation Insurance Fund (State Compensation Insurance Fund) Mr. Brian Donahue, Billings Qualifications (if required): licensed insurance producer	Governor	4/28/2001
Board of Directors of the State Compensation Mutual Insurance Fund Board (Administration) Mr. Herbert Leuprecht, Butte Qualifications (if required): policy holder	Governor	4/28/2001
Mr. James A. Brouelette, Stevensville Qualifications (if required): policy holder	Governor	4/28/2001
Board of Hail Insurance (Agriculture) Mr. Keith Arntzen, Hilger Qualifications (if required): public member	Governor	4/18/2001
Board of Livestock (Livestock) Mr. John C. Paugh, Bozeman Qualifications (if required): cattle producer	Governor	3/1/2001
Mr. Lee Cornwell, Glasgow Qualifications (if required): cattle producer	Governor	3/1/2001

VACANCIES ON BOARDS AND COUNCILS -- February 1, 2001 through April 30, 2001

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Optometry (Commerce) Dr. Cynthia Johnson, Bozeman Qualifications (if required): optometrist	Governor	4/3/2001
Board of Public Education (Education) Ms. Joyce A. Silverthorne, Dixon Qualifications (if required): represents northwest quadrant of the state	Governor	2/1/2001
Board of Regents of Higher Education (Education) Ms. Deborah Wetsit, Billings Qualifications (if required): representative of District 4 and a Democrat	Governor	2/1/2001
Commission on Practice of the Supreme Court (Justice) Mr. John Warren, Dillon Qualifications (if required): elected	elected	4/1/2001
Mr. Gary Ryder, Hysham Qualifications (if required): elected	elected	4/1/2001
Mr. Donald R. Marble, Chester Qualifications (if required): elected	elected	4/1/2001
Mr. John V. Potter, White Sulphur Springs Qualifications (if required): elected	elected	4/1/2001
Missouri River Basin Advisory Council (Natural Resources and Conservation) Ms. Diane Brandt, Glasgow Qualifications (if required): public member	Governor	2/24/2001
Mr. Don Pfau, Lewistown Qualifications (if required): public member	Governor	2/24/2001

VACANCIES ON BOARDS AND COUNCILS -- February 1, 2001 through April 30, 2001

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Missouri River Basin Advisory Council (Natural Resources and Conservation) cont. Mr. Bud Clinch, Helena Qualifications (if required): Director of the Department of Natural Resources and Conservation	Governor	2/24/2001
Mr. Jim Rector, Glasgow Qualifications (if required): public member	Governor	2/24/2001
Mr. Ron Miller, Glasgow Qualifications (if required): public member	Governor	2/24/2001
Mr. Steve Page, Glasgow Qualifications (if required): public member	Governor	2/24/2001
Mr. Tom Huntley, Sidney Qualifications (if required): public member	Governor	2/24/2001
Mr. John Foster, Lewistown Qualifications (if required): public member	Governor	2/24/2001
Mr. Boone A. Whitmer, Wolf Point Qualifications (if required): public member	Governor	2/24/2001
Mr. Buzz Mattelin, Brockton Qualifications (if required): public member	Governor	2/24/2001
Montana State University - Billings Executive Board (Education) Ms. Carol Willis, Billings Qualifications (if required): public member	Governor	4/15/2001
Montana State University Executive Board (Education) Ms. Beatrice Taylor, Bozeman Qualifications (if required): public member	Governor	4/15/2001

VACANCIES ON BOARDS AND COUNCILS -- February 1, 2001 through April 30, 2001

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Montana State University - Northern Executive Board (Education) Mr. Doug Ross, Havre Qualifications (if required): public member	Governor	4/15/2001
Montana Tech of the University of Montana (Education) Mr. Tad Dale, Butte Qualifications (if required): public member	Governor	4/15/2001
Public Employees' Retirement Board (Administration) Ms. Carol Lambert, Hammond Qualifications (if required): public member	Governor	4/1/2001
State Mutual Insurance Fund (State Compensation Insurance Fund) Mr. Jack Morgenstern, Lewistown Qualifications (if required): policy holder and representing private enterprise	Governor	4/28/2001
University of Montana Executive Board (Education) Ms. Arlene Breum, Missoula Qualifications (if required): public member	Governor	4/15/2001
Vocational Rehabilitation Advisory Council (Public Health and Human Services) Ms. Kris Kleinschmidt, Great Falls Qualifications (if required): none specified	Director	2/5/2001
Mr. Chris Clasby, Missoula Qualifications (if required): represents people with disabilities and advocates	Director	3/15/2001
Western Montana College of the University of Montana (Education) Ms. Betty Iverson, Dillon Qualifications (if required): public member	Governor	4/15/2001