MONTANA ADMINISTRATIVE REGISTER

1990 ISSUE NO. 19
OCTOBER 11, 1990
PAGES 1872-1917

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 19

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing and where written comments may be submitted.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

TABLE OF CONTENTS

Page Number

NOTICE SECTION

BEFORE THE FINANCIAL DIVISION
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed amendment of rules pertaining to credit unions	))))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF 8.80.401 CREDIT UNIONS - SUPERVISORY AND EXAMINATION FEES AND 8.80.402 CREDIT UNIONS - LIMITED INCOME PERSONS, DEFINITION

TO: All Interested Persons:

1. On October 31, 1990, at 10:00 a.m., a public hearing will be held in the downstairs conference room of the Department of Commerce building, 1424 - 9th Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules.

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

"8.80.401 CREDIT UNIONS - SUPERVISORY AND EXAMINATION FEES (1) Supervisory fees (annual):

Total Assets	Fee
$500,000 or less	~~20~~ 30 cents per $1,000 ($10 min.).
Over $500,000 and not over $1,000,000	~~$100~~ 150 plus ~~17~~ 26 cents per $1,000 in excess of $500,000.
Over $1,000,000 and not over 2,000,000	~~$185~~ 280 plus ~~14~~ 21 cents per $1,000 in excess of $1,000,000.
Over $2,000,000 and not over $5,000,000	~~$325~~ 490 plus ~~10~~ 15 cents per $1,000 in excess of $2,000,000.
Over $5,000,000	~~$625~~ 940 plus ~~7~~ 10 cents per $1,000 in excess of $5,000,000.

The above fees will be assessed upon the December 31 total assets of each year and become due and payable on or before February 15 of the next succeeding year.

(2) Examination fees will be billed upon completion of each examination and based on the following*:

(a) Examiner time spent at credit union site and in office will be billed based on total examiner hours times examiner hour compensation.

(b) Office staff and supervisory review will be based on staff hours used times hourly compensation of staff involved in review and analysis.

(c) Examiners in training will not be included in hourly billing until such time as supervisors are assured of the individual's capability.

Total Assets	Fee
$25,000 or less	~~$25.00~~ 37.50 (minimum fee).
Over $25,000 and not over $500,000	~~$25~~ 37.50 plus ~~6~~ 9 cents per $100 in assets over $25,000.
Over $500,000 and not over $5,000,000	~~$447.50~~ 670 plus ~~2~~ 3 cents per $100 in assets over $1,000,000.
Over $5,000,000	~~$1,247.50~~ 1,870 plus ~~.75~~ 1.10 ~~cents~~ per $100 in assets over $5,000,000.

A charge of ~~$5.00~~ 10.50 per hour per examiner engaged in the examination will be made in addition to the above charges.

(*) Newly chartered credit unions receive an examination during the first year at no cost."

Auth: Sec. 32-3-201, MCA; IMP, Sec. 32-3-201, MCA

REASON: These fees are being increased to make them commensurate with program area costs.

"8.80.402 CREDIT UNION - LIMITED INCOME PERSONS, DEFINITION

(1) Existing credit unions may include within their field of membership limited income persons for whom credit union services are not otherwise available.

(2) Limited income persons are defined as those persons whose annual income is less than that specified below based upon family size:

Family Size	Annual Income
1	~~$3,240~~ 6,314
2	~~4,260~~ 8,075
3	~~5,290~~ 9,890
4	~~6,310~~ 12,675
5	~~7,340~~ 14,994
6	~~8,360~~ 16,927

For family units with more than six members, add ~~$1,025~~ 1,780 for each additional member."

Auth: Sec. 32-3-201, MCA; IMP, Sec. 32-3-307, MCA

REASON: This amendment is necessary to apply an inflation factor to poverty thresholds of the previous year. The

poverty threshold is derived by the United States Department of Commerce, Bureau of the Census.

3. Interested persons may submit their data, views and arguments, either orally or in writing, at the hearing. Written data, views and arguments may also be submitted to the Financial Division, 1520 E. Sixth Avenue, Lee Metcalf Building, Room 50, Helena, Montana 59620-0542, no later than November 8, 1990.

4. Annie Bartos, attorney, has been designated to preside over and conduct the hearing.

FINANCIAL DIVISION
DONALD W. HUTCHINSON,
COMMISSIONER

BY: _____
ANDY POOLE, DEPUTY DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, October 1, 1990.

BEFORE THE BOARD OF LAND COMMISSIONERS
AND THE DEPARTMENT OF STATE LANDS
OF THE STATE OF MONTANA

In the matter of the ADOPTION OF A RULE PROHIBITING EXPORT OF LOGS HARVESTED FROM STATE LANDS AND REQUIRING PURCHASERS OF STATE TIMBER TO ENTER INTO NONEXPORT AGREEMENTS IMPLEMENTING THE FOREST RESOURCES CONSERVATION AND SHORTAGE RELIEF ACT OF 1990	NOTICE OF PROPOSED ADOPTION OF A RULE REQUIRING PURCHASERS OF STATE TIMBER TO ENTER INTO NONEXPORT AGREEMENTS NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On November 19, 1990, the Board of Land Commissioners and the Department of State Lands propose to adopt a rule requiring that all purchasers of state timber enter into an agreement with the department promising not to export unprocessed timber originating from state lands.

2. The proposed rule provides as follows:

RULE I AGREEMENT NOT TO EXPORT STATE LOGS (1) This rule carries out the purposes of section 491 of the Forest Resources Conservation and Shortage Relief Act of 1990 (referred to hereinafter as the Act) which became effective on September 10, 1990 and the definitions stated in that Act are hereby incorporated by reference. The text of the Act may be found at pages H5920 through H5924 of the Congressional Record for July 30, 1990. [proper citation to be added when available] This rule replaces and supercedes any prohibitions imposed by subsection 491(d)(3)(B) of the Act.

(2) Any person purchasing timber from the state of Montana must first have entered into an agreement with the department (referred to hereinafter as a nonexport agreement) containing the following commitments on behalf of the purchaser:

(a) Unprocessed timber, as defined in the Act, originating from lands owned by the state of Montana shall not:

(i) be exported from the United States; or

(ii) be sold, traded, exchanged, or otherwise given to any person unless that person agrees not to export such unprocessed timber from the United States and agrees to require such a prohibition in any subsequent resale or other transaction involving such unprocessed timber.

(b) in the event purchaser violates any of the provisions of the nonexport agreement, the department, after notice and opportunity for a hearing, may:

(i) terminate any timber sale contracts or timber sale permits with that purchaser; and/or

(ii) bar purchaser from entering into any future contracts for the purchase of timber with the state of Montana for a period of up to five (5) years.

(d) For purposes of such nonexport agreement, the term "export" shall mean either direct or indirect export to a foreign country and occurs on the date that a person enters into a contract or other binding transaction for the export of unprocessed timber or, if that date cannot be established, when unprocessed timber is found in an export yard or pond, bundled or otherwise prepared for shipment, or aboard an ocean-going vessel. An export yard or pond is an area where sorting and/or bundling of logs for shipment outside the United States is accomplished. Timber is exported indirectly when export occurs as a result of a sale to another person or as a result of any subsequent transaction.

(e) The nonexport agreement may be terminated by the purchaser upon the termination of any and all contracts or permits for the purchase of unprocessed timber originating from lands owned by the state of Montana. The nonexport agreement may be terminated by the department upon thirty (30) days notice.

(3) The provisions of such nonexport agreement shall not apply to any contract or permit for the purchase of unprocessed timber from state lands entered into before the effective date of such nonexport agreement.

(4) The prohibitions of such nonexport agreement shall not apply to specific quantities of grades and species of unprocessed timber originating from state lands which the United States secretary of commerce determines by rule to be surplus to the needs of timber manufacturing facilities in the United States as provided in the Act.

(5) The provisions of such nonexport agreement shall be suspended or modified as provided in any order of the president of the United States pursuant to subsections 491 (e), (f), or (i) of the Act.
AUTH: Section 77-5-201, MCA; IMP: Section 77-5-201, MCA.

3. This rule is adopted to carry out the purposes of Section 491 of the federal Forest Resources Conservation and Shortage Relief Act of 1990 which prohibits the export of unprocessed timber originating from state lands to promote the conservation of forest resources and improve the supply of

forest resources available to domestic processors. This rule replaces and supercedes any prohibitions imposed by subsection 491(d)(3)(B) of the Act.

4. Interested persons may submit their data, views or arguments concerning the proposed rule in writing to Gary Brown, State Forester, 2705 Spurgin Road, Missoula, Montana 59801 postmarked no later than November 8, 1990.

5. If a person who is directly affected by the proposed adoption wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Gary Brown, State Forester, 2705 Spurgin Road, Missoula, Montana 59801 postmarked no later than November 8, 1990.

6. If the agency 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 Administrative Code Committee of the legislature; from a governmental sub-division 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 seven (7) persons based on the number of persons bidding on state timber sales during the past two fiscal years.

7. The authority of the department and board to make the proposed rule is based on Section 77-5-201, MCA and the rule implements the same section together with the federal Act cited above.

Dennis D. Casey, Commissioner
Department of State Lands

Certified to the Secretary of State on October 1, 1990.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION of New Rules I through IV relating to telephone license tax.	NOTICE OF PUBLIC HEARING on the PROPOSED ADOPTION New Rules I through IV relating to telephone license tax.

TO: All Interested Persons:

1. On November 14, 1990 at 10:00 a.m., a public hearing will be held in Room 212 of the Montana State Library, 1515 East Sixth Avenue, Helena, Montana, to consider the adoption of new rules I through IV, relating to telephone license tax.

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

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

Rule I DEFINITIONS (1) The term "gross income" means all the gross operating income derived from intrastate telephone business without allowance for expenses and deductions. Gross operating income includes, but is not limited to, local revenues, private line revenues, access revenues and long distance service revenues. Gross income does not include non-operating income or uncollectible accounts actually written off during the year provided recoveries of uncollectible accounts are included in gross income in the year of recovery.

(2) The term "non-operating income" means income derived from non-transmission related services or activities. This would include income from activities that are not necessary for or directly related to the transmission of messages. Non-operating revenues must be segregated and separately identified from other charges. Examples of non-operating income are interest income, dividends, and rents.

(3) The phrase "non-transmission related services or activities" includes, but is not limited to, installation, repair, maintenance, construction, termination, engineering handling, financing, interest, billings and collection, automated data storage, data retrieval and processing services, and the use of computer time or other equipment if the sales or rentals of that equipment are not includable as gross income. For example, a company that provides access to an on-line computer data base would not be subject to the tax on the receipts from the data processing or inquiry, but would be subject to tax on the receipts from the separately stated transmission of the data.

(4) The term "telephone business" means the access and transport, for hire, of two-way communications originating from a point of access to a point of termination within the

state of Montana. This includes, but is not limited to, the transmission of messages or information through use of local, toll and wide area telephone service, private line service, channel service, teletypewriter, computer exchange service, cellular mobile telecommunications service, specialized mobile radio, stationary two-way radio, paging service, or any other form of mobile and portable communications. Telephone business does not include the sale, lease, repair, installation, or maintenance of equipment or the provision of non-transmission related services.

(5) The term "equipment" means all items generally classified as customer premise equipment such as telephone and terminal equipment. This includes, but is not limited to, telephone instruments, station sets, dialers, modems, private branch exchanges (PBX), computers, inside wiring, facsimile machines, pagers and non-electronic associated items such as documentation, manuals, and furniture.

AUTH: 15-53-104 MCA IMP: 15-53-101 MCA

RULE II ANNUAL PAYMENTS FOR SMALL FILERS (1) If the total amount of tax due is less than $50 in each of the quarters during the preceding calendar year, the taxpayer may file an annual return in lieu of filing the quarterly returns, provided the annual return is filed along with full payment within 60 days after the close of the calendar year.

AUTH: 15-53-104 MCA IMP: 15-53-101 MCA

RULE III PENALTY AND INTEREST (1) Penalty attaches if delinquent tax is not paid within ten days of notice of final determination. Thereafter interest is calculated on the amount of tax plus penalty.

(2) In the instance of a delinquent telephone license tax liability, interest is calculated at the rate of 1% per month on the unpaid balance of both the tax and the 10% penalty.

(3) In the instance of a deficiency, the interest is calculated at the rate of 1% per month on the unpaid tax until such time as penalty attaches.

AUTH: 15-53-104 MCA IMP: 15-53-111 MCA

RULE IV EFFECTIVE DATE Rules I through IV are effective January 1, 1991.

AUTH: 15-53-104 MCA IMP: 15-53-104 MCA

4. The authority of the Department of Revenue to adopt the proposed rules is based on Section 15-53-104, MCA.

5. The Department proposes to adopt new rules I through IV because the industry has changed dramatically since the divestiture of A T & T in 1984. In response to the change, the department is changing its interpretation and implementation of the existing law. The law is no longer easily understood and requires interpretation.

Rule I is necessary because "gross income" and "telephone business" now require definition. The ancillary terms used in those definitions needed clarification as well.

Rule II is necessary to minimize the administrative costs for both the telephone business and the department.

Rule III is necessary because Sections 15-53-105 and 15-53-111, MCA) do not specify when the penalty attaches in the case of a deficiency assessment.

Rule IV states the effective date of the change in interpretation and implementation.

6. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to:

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

no later than November 26, 1990.

7. Cleo Anderson, Department of Revenue, has been designated to preside over and conduct the hearing.

DENIS ADAMS, Director
Department of Revenue

Certified to Secretary of State October 1, 1990.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 1.2.419 regarding scheduled dates for the Montana Administrative Register	) NOTICE OF PROPOSED AMENDMENT OF ARM 1.2.419 FILING, COMPILING, PRINTER PICKUP AND PUBLICATION OF THE MONTANA ADMINISTRATIVE REGISTER

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On November 10, 1990, the office of the Secretary of State proposes to amend ARM 1.2.419 regarding the scheduled dates for the Montana Administrative Register.

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

1.2.419 FILING, COMPILING, PRINTER PICKUP AND PUBLICATION SCHEDULE FOR THE MONTANA ADMINISTRATIVE REGISTER

(1) The scheduled filing dates, time deadlines, compiling dates, printer pickup dates and publication dates for material to be published in the Montana Administrative Register are listed below:

199091 Schedule

Filing	Compiling	Printer Pickup	Publication
January 27	January 38	January 49	January 1117
January 1521	January 1622	January 1723	January 2531
~~January 29~~	~~January 30~~	~~January 31~~	~~February 8~~
February 4	February 5	February 6	February 14
February 1219	February 1320	February 1421	February 2228
~~March 54~~	March 65	March 76	March 1514
March 1918	March 2019	March 2120	March 2928
April 21	April 32	April 43	April 1211
April 1615	April 1716	April 1817	April 2625
May 76	May 87	May 98	May 1716
May 2120	May 2221	May 2322	May 3130
June 43	June 54	June 65	June 1413
June 1817	June 1918	June 2019	June 2027
July 21	July 32	July 53	July 1211
July 1615	July 1716	July 1817	July 2625
August 65	August 76	August 87	August 1615
August 2019	August 2120	August 2221	August 3029
September 43	September 54	September 65	September 1312
September 1716	September 1817	September 1918	September 2726
October 17	October 28	October 39	October 1117
October 1521	October 1622	October 1723	October 2531

November ~~5~~4	November ~~7~~5	November ~~8~~6	November ~~15~~14
November ~~19~~18	November ~~20~~19	November ~~21~~20	November ~~29~~27
December ~~3~~2	December ~~4~~3	December ~~5~~4	December ~~13~~12
December ~~17~~16	December ~~18~~17	December ~~19~~18	December ~~27~~26

(3) remains the same.
AUTH: Sec. 2-4-312, MCA IMP, Sec. 2-4-312, MCA

3. The rule is proposed to be amended to set dates pertinent to the publication of the Montana Administrative Register during 1991.

4. Interested persons may submit their data, views or arguments concerning the proposed amendment in writing to:

Kathy Lubke, Chief
Administrative Rules Bureau
Secretary of State's Office
Room 225, Capitol Building
Helena, MT 59620
no later than November 8, 1990.

MIKE COONEY
Secretary of State

Dated this 1st day of October, 1990.

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

In the matter of the adoption of Rules I through V and amendment of ARM 46.12.4008 pertaining to treatment of income and resources of institutionalized spouses for medicaid purposes	))))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED ADOPTION OF RULES I THROUGH V AND THE AMENDMENT OF ARM 46.12.4008 PERTAINING TO TREATMENT OF INCOME AND RESOURCES OF INSTITUTIONALIZED SPOUSES FOR MEDICAID PURPOSES

TO: All Interested Persons

1. On November 1, 1990, at 10:00 a.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana to consider the proposed adoption of Rules I through V and amendment of Rule 46.12.4008 pertaining to treatment of income and resources of institutionalized spouses for medicaid purposes.

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

RULE I INSTITUTIONALIZED SPOUSE, DEFINITIONS (1) The following definitions apply with respect to [Rules I, II, III, IV and V] and ARM 46.12.4008.

(a) "Community spouse" is the member of the married couple who continues to reside in the community after the institutionalization of the other spouse.

(b) "Community spouse resource allowance" means the amount of the couple's combined countable resources which are transferrable to the community spouse, as determined under [Rule III].

(c) "Continuous period of institutionalization" means at least thirty (30) consecutive days of institutionalization without a break in care.

(d) "Countable resources" are those resources defined as countable in ARM 46.12.3603(2).

(e) "Dependent" means only minor or dependent children, dependent parents, or dependent siblings of the institutionalized or community spouse who are residing with the community spouse and are recognized as dependents for federal income tax purposes.

(f) "Institutionalization" means admission to a medical institution.

(g) "Institutionalized spouse" means an individual who:

(i) is in a medical institution or nursing facility;

(ii) is married to a spouse who is not in a medical institution or nursing facility; and

(iii) is likely to meet conditions (i) and (ii) of this definition for at least thirty (30) consecutive days.

(h) "Medical institution" means an institution organized to provide medical care and includes, but is not limited to, hospitals and nursing facilities.

(i) "Shelter expenses" means the following expenses for the community spouse's principal residence:

(i) the monthly amount of rent or mortgage payment, including principal and interest;

(ii) real estate taxes on the community spouse's principal residence;

(iii) homeowners insurance on the community spouse's principal residence;

(iv) any required condominium or cooperative maintenance charge on the community spouse's principal residence; and

(v) a monthly amount for major heating and cooling expenses for the community spouse's principal residence, unless such utility expenses are included in any other expense such as rent or a maintenance charge.

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-6-131 MCA

RULE II INSTITUTIONALIZED SPOUSE, RESOURCE ASSESSMENTS

(1) A resource assessment is available to any married individual who:

(a) entered a medical institution on or after October 1, 1989;

(b) is likely to remain in the institution for at least thirty (30) consecutive days; and

(c) has a spouse who continues to reside in the community.

(2) An institutionalized spouse, community spouse or a representative for either spouse may request a resource assessment based on the married couple's combined countable resources, whether owned individually or jointly, as of the first moment of the first month of the most recent continuous period of institutionalization.

(3) The individual requesting the assessment must provide all relevant documentation and/or verification required by the department within forty-five (45) days of the assessment request date.

(4) The department will complete a resource assessment within 45 days of:

(a) the assessment request date, unless documentation or verification is delayed due to a third party; or

(b) documentation or verification receipt when the individual requesting the resource assessment does not provide necessary information in a timely manner.

(5) When the resource assessment is complete the department will provide written notice to both spouses including:

(a) the amount of the combined countable resources at the beginning of the most recent continuous period of institutionalization;

(b) the method used to compute the community spouse's resource allowance [Rule III(2)]; and

(c) the method used to compute the amount of resources available to the institutionalized spouse.

(6) The resource assessment is appealable through a fair hearing by either spouse after the institutionalized spouse applies for medicaid benefits, and the hearing must be held within thirty (30) days of the date it is requested.

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 56-6-131 MCA

[RULE III] INSTITUTIONALIZED SPOUSE, RESOURCE ELIGIBILITY DETERMINATION (1) The institutionalized spouse is resource eligible when the institutionalized spouse and community spouse's combined countable resources are less than or equal to the community spouse's resource allowance [Rule III(2)] plus the supplemental security income (SSI) resource limitation for one person as defined in ARM 46.12.3805.

(2) The community spouse resource allowance is the greatest of the following:

(a) one-half, but no more than $60,000, of the couple's combined countable resources. Effective January 1 of each calendar year after 1989, the $60,000 limit shall increase by the same percentage increase in the consumer price index as adopted by the federal government for all urban consumers which occurred between September 1988 and the September before the calendar year involved;

(b) Montana's standard community spouse resource allowance of $12,000. Effective January 1 of each calendar year after 1989, the $12,000 limit shall increase by the same percentage increase in the consumer price index as adopted by the federal government for all urban consumers which occurred between September 1988 and the September before the calendar year involved;

(c) an amount established under a court order; or

(d) an amount designated by a department hearings officer.

(3) The community spouse resource allowance must be revised when inaccurate information was used to calculate the resource allowance.

(4) After the month in which the institutionalized spouse is determined eligible for medicaid, no resources of the community spouse shall be deemed available to the institutionalized spouse as long as the institutionalized spouse remains continuously institutionalized.

(5) Eligibility will not be denied an institutionalized spouse whose resources exceed the supplemental security income resource limit for one when denial of eligibility will create an undue hardship or when the conditions of 42 U.S.C. §1396r-

5(c)(3)(A) and (B) are met. The department hereby adopts and incorporates 42 U.S.C. §1396r-5(c)(3)(A) and (B), (sub 1990 edition) by reference. Copies may be obtained through the Department of Social and Rehabilitation Services, P.O. Box 4210, 111 Sanders, Helena, Montana, 59604-4210.

(6) Unless specifically refused by the institutionalized spouse, a portion or all of his resources may be used to ensure adequate resources are available to meet the community spouse resource allowance.

AUTH: Sec. 53-6-113 MCA IMP: Sec. 53-6-131 MCA

RULE IV INSTITUTIONALIZED SPOUSE, RECEIPT OF ADDITIONAL RESOURCES (1) When additional resources are received by an institutionalized spouse after the initial eligibility determination and receipt of such resources would cause ineligibility for the institutionalized spouse, the resources will be exempt as countable resources for ninety (90) days from receipt if:

(a) the institutionalized spouse intends to transfer the new resources to the community spouse;

(b) receipt of the additional resources is reported within ten days of receipt; and

(c) a written statement of the intent to transfer the resources to the community spouse is made by the institutionalized spouse.

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-6-131 MCA

[RULE V] INSTITUTIONALIZED SPOUSE, TRANSFER OF RESOURCES TO COMMUNITY SPOUSE (1) Within ninety days of the initial eligibility determination or court order, or within any time period specifically required under the court order, an institutionalized spouse must irrevocably transfer resources:

(a) to or for the sole benefit of the community spouse resources which constitute the community spouse's resource allowance; or

(b) to or for the sole benefit of the community spouse or a family member, if such transfer is pursuant to a court order.

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-6-131 MCA

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

46.12.4008 POST-ELIGIBILITY APPLICATION OF PATIENT INCOME TO COST OF CARE (1) After the non-financial and resource eligibility criteria ~~for eligibility~~ are met, the income of individuals in residential medical institutions ~~and intermediate care facilities~~ will be applied toward the cost

of care as provided in this section. This provision applies to all covered groups in this subchapter, except:

(a) individuals under age 19 who continue to receive AFDC even though they are in a medical institution or intermediate care facility, as provided in ARM 46.12.4002(1)(a)~~;~~; and

(b) ~~to~~ individuals receiving ~~SSI~~ supplemental security income on the basis of the ~~SSI~~ supplemental security income standard for institutional individuals, as provided in ARM 46.12.4003(1)(a).

(2) ~~The following~~ Aamounts will be deducted from a single individual's gross income in the following order to determine the amount applicable toward ~~in computing the amount of an AFDC-related institutionalized individual's income which must be applied to~~ his cost of care:

(a) up to $65.00 of gross earned income;

(b) $40.00 personal needs allowance for the institutionalized individual;

(c) ~~amounts for incurred expenses for medical or remedial care that are not subject to payment by a third party, including:~~ a home maintenance allowance, when applicable, determined in accordance with subsection (7).

~~(i) medicare and other health insurance premiums, deductibles, or coinsurance charges; and~~

~~(ii) necessary medical or remedial care recognized under Montana law but not provided for under this chapter.~~

(d) Medical or remedial care expenses of the institutionalized individual as defined in subsection (8).

~~(3) The following amounts will be deducted from gross income in computing the amount of SSI-related institutionalized individual's income which must be applied to his cost of care:~~

~~(a) up to $65.00 of gross earned income;~~

~~(b) $40.00 personal needs allowance for the institutionalized individual;~~

~~(c) the SSI-related medically needy income level for an individual for maintenance of the non-institutionalized spouse only;~~

~~(d) amounts for incurred medical expenses not subject to payment by a third party, including:~~

~~(i) medicare and other health insurance premiums, deductibles, or coinsurance charges; and~~

~~(ii) necessary medical or remedial care recognized under Montana law but not provided for under this chapter.~~

~~(e) An amount for maintenance of a single individual's home for not longer than 6 months, if a physician has certified that the individual is likely to return home within that period. The amount allowed for maintenance of the home is SSI-related medically needy income level for an individual.~~

(3) During any month in which an institutionalized spouse is in the institution, no income of the community spouse may be deemed available to the institutionalized spouse except as specifically provided in this section.

(a) In determining whether any income, including income from a trust or from any other source, is income of the institutionalized or community spouse after the institutionalized spouse has been determined eligible for medical assistance, the following rules shall apply regardless of state law regarding the division of marital property to the contrary:

(i) income from a trust or other written agreement shall be considered available according to the terms of the trust or agreement; or

(ii) if there is no trust or written agreement making provision for distribution of income, the income shall be considered available according to the manner in which it is distributed.

(b) The rules in subsection (3) shall not apply, unless otherwise made applicable under state or federal law, to determinations of an individual's interest in any income or resource under any public assistance or medical assistance program to individuals who are not institutionalized or community spouses.

(4) The following amounts will be deducted monthly in the following order from the gross income of an institutionalized spouse to determine the amount applicable toward the cost of care:

(a) up to $65.00 of gross earned income;

(b) $40.00 personal needs allowance for the institutionalized spouse;

(c) a monthly income allowance for the community spouse determined in accordance with subsection (9);

(d) a family allowance for each family member equal to one-third of the difference between the basic needs standard, as determined under subsections (9)(b)(i)(A) through (C) of this rule, and the family member's gross monthly income;

(e) incurred medical or remedial care expenses of the institutionalized spouse as defined in subsection (8); and

(f) Regardless of any other provision of this section, the community spouse's monthly income allowance as defined in subsection (9) of this rule shall not be less than the amount of any monthly support which an institutionalized spouse has been ordered by a court to pay to the community spouse.

(5) The institutionalized spouse or his representative is responsible to report to the department any changes to his own and the community spouse's income within ten days of the change.

(6) Unless the institutionalized spouse specifically objects, a community spouse monthly income allowance will be deducted from the institutionalized spouse's monthly income and provided to the community spouse.

(7) The home maintenance allowance for purposes of subsection (2)(c) of this rule shall consist of the greater of the following:

(a) an amount for each dependent family member equal to one-third the difference between the basic needs standard, as

determined according to subsections (9)(b)(i)(A) through (C) of this rule, and the family member's gross monthly income:

(b) the medically needy income level for one as defined in ARM 46.12.3803 if the client:

(i) entered the facility from a community living arrangement after the first day of the month; or

(ii) leaves the facility into a community living arrangement on or before the last day of the month;

(c) for a maximum of six months, the medically needy income level for one as defined in ARM 46.12.3803 when a physician certifies that the individual is likely to return to the home within six months.

(8) Medical or remedial care expenses of the institutionalized individual for purposes of subsection (2)(d) and (4)(e) of this rule include:

(a) medicare and other health insurance premiums, deductibles or coinsurance;

(b) for three months or until paid in full, whichever comes first, medical or remedial care expenses which:

(i) were incurred during the three months prior to application;

(ii) were unpaid at the time of application; and

(iii) are not payable by a third party;

(c) medical expenses incurred by the institutionalized individual which are:

(i) for services or items prescribed by a physician;

(ii) not for a medicaid covered service or item; and

(iii) not payable by a third party.

(9) A monthly income allowance for the community spouse for purposes of subsection (4)(c) of this rule shall consist of the lesser of:

(a) $1,500 minus the community spouse's own gross monthly income. Effective January 1 of each calendar year after 1989 the $1,500 limit will increase by a percentage equal to the increase in the consumer price index for all urban consumers which occurred between September of the calendar year for which the increase is being made and September of the preceding year; or

(b) the total of:

(i) a basic needs standard which is equal to:

(A) one-twelfth (1/12) of 122% of the federal poverty level for a family unit of two persons effective through June 30, 1991;

(B) one-twelfth (1/12) of 133% of the federal poverty level for a family unit of two persons from July 1, 1991 through June 30, 1992;

(C) one-twelfth (1/12) of 150% of the federal poverty level for a family unit of two persons beginning July 1, 1992; plus

(ii) shelter expenses as defined in [Rule I] which exceed 30% of the amount determined under (5)(c)(ii)(A); minus

(iii) the amount of gross monthly income otherwise available to the community spouse, without regard to the community spouse's monthly income allowance.

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-6-131 MCA

4. These rule changes are necessary to comply with changes mandated by the Medicaid Catastrophic Coverage Act, PL 100-360. The spouse who continues to reside in the community will be entitled to retain a minimum of $12,000 and a maximum one-half (not to exceed $60,000) of the combined countable resources of the couple. Additionally, the community spouse may receive a portion of the institutionalized spouse's monthly income if the community spouse's own income is insufficient to meet his/her monthly income maintenance needs.

5. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana 59604, no later than November 9, 1990.

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

Julia E. Roberts
Director, Social and Rehabilitation Services

Certified to the Secretary of State October 1, 1990.

BEFORE THE BOARD OF HORSE RACING
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment, repeal and adoption of rules of procedure, general rules, occupational licenses, general conduct of racing, medication, corrupt practices and penalties and trifecta wagering	NOTICE OF AMENDMENT, REPEAL AND ADOPTION OF RULES PERTAINING TO HORSE RACING

TO: All Interested Persons:

1. On August 16, 1990, the Board of Horse Racing published a notice of public hearing on the proposed amendment, repeal and adoption of rules pertaining to the Board of Horse Racing at page 1500, 1990 Montana Administrative Register, issue no. 15.

2. The Board amended ARM 8.22.304, 8.22.503, 8.22.701, 8.22.711, 8.22.801, 8.22.1401, 8.22.1402, 8.22.1502 and 8.22.1803; repealed ARM 8.22.305, 8.22.306, 8.22.308, 8.22.309, 8.22.311 through 8.22.320, 8.22.322 and 8.22.323; and adoption of new rules II and III (8.22.713 and 8.22.714) exactly as proposed. The Board did not adopt proposed new rule IV.

3. The Board amended ARM 8.22.321 and 8.22.1503 and adopted new rule I (8.22.712) as proposed but with the following changes:

"8.22.321 BOARD CONDUCT - NATIONAL ASSOCIATION OF STATE RACING COMMISSIONERS 5 POINT DOCTRINE (1) through (3) will remain the same as proposed.

~~(5)~~ (4) will remain the same as proposed."

Auth: Sec. 23-4-202, MCA; IMP, Sec. 23-4-202, MCA

"8.22.1503 ALCOHOL AND DRUG TESTING RULE (1) through (4) will remain the same as proposed.

~~(5)~~ (a) Jockeys shall be ~~routinely tested for drug or alcohol usage~~ REQUIRED TO FURNISH URINE OR BLOOD SAMPLES as a part of their pre-licensing medical examination. The testing procedure and safeguards set forth in this rule shall be followed by the examining physician and others involved in the testing procedure.

(a) through (d) will remain the same as proposed but will be renumbered (b) through (e).

(6) through (13) will remain the same as proposed but will be renumbered (5) through (12).

~~(14)~~ (13) Acting with reasonable cause, the stewards or a designated board of horse racing representative may direct any such licensee or employee to deliver a specimen of urine in the presence of the ~~track physician~~ STATE STEWARD OR STATE SECURITY or other PROPERLY TRAINED, duly licensed ~~physician~~ OFFICIALS as designated by the board or subject ~~his/herself~~ HIMSELF/HERSELF to the taking of a blood sample or sample of other body fluids by ~~the track physician or other~~ a duly

licensed physician as designated by the board of horse racing.

~~(15)~~ through (19) will remain the same as proposed but will be renumbered (14) through (18)."

Auth: Sec. 23-4-104, MCA; IMP, Sec. 23-4-104, MCA

"I (8.22.712) PROGRAM COMPANIES (1) Program companies must provide current and complete and accurate past performance lines on each horse entered in a race PROVIDED THAT SUCH DATA IS AVAILABLE.

(2) and (3) will remain the same as proposed.

(4) All employees of program companies must be licensed as program employees before entering the grounds of a race ~~met~~ MEET.

(5) will remain the same as proposed."

Auth: Sec. 23-4-104, MCA; IMP, Sec. 23-4-104, MCA

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

COMMENT: Darrell Ost, the president of Truform Racing Publications, requested clarification of the language in 8.22.503(cc) regarding a $20 licensing fee for program managers.

RESPONSE: The Board indicated that the proposed language seemed to clearly indicate that the individual in charge of program sales at the track would be subject to this licensing fee.

COMMENT: James H. Bailey, a veterinarian from Great Falls, spoke in favor of the proposed amendments to ARM 8.22.711 and 8.22.1401.

COMMENTS: Raleigh Swensrud, Steward for the Montana Board of Horse Racing, favored adoption of the proposed amendments to ARM 8.22.1402 to make the rule regarding administration of phenylbutazone consistent with acceptable practice. Other supporters favored the rule change because, they claimed, the unavailability of veterinarians makes the cost of veterinarian-injected phenylbutazone prohibitive.

Dr. Bailey spoke in opposition to this proposed rule amendment arguing that as more and varied people are authorized to administer a particular medication, the risk of abuse becomes greater.

RESPONSE: The Board concurred with the proponents because the board felt that requiring a vet to administer final medication (Phenylbutazone) would result in an undue hardship on the horsemen. The board also took into account the fact that final medication (Phenylbutazone) has in the past been administered by licensed trainers with minimal problems and adopted the proposed amendments.

COMMENT: Taylor Powell representing the Jockey's Guild stated his concern with the amendments to ARM 8.22.1053 making the jockeys subject to a pre-licensing test for drugs/alcohol. The proposed language seemed to indicate that a jockey could be denied licensure for usage of alcohol.

RESPONSE: The Board struck the language as section (5) of the rule and made it section (4)(a). In addition, the language was amended to read that a jockey need only provide a urine or blood sample for evaluation during his or her physical examination.

COMMENT: Darrell Ost, president of Truform Racing Publications, expressed concern about language in proposed new Rule I (8.22.712), which would require program publishers to print the history of horses in previous races. He noted this is sometimes impossible when horses come from states that lack formal racing commissions that compile such data.

RESPONSE: The Board amended the new rule to state that such historical material must be printed when it is available.

5. No other comments or testimony were received.

BOARD OF HORSE RACING
STEVE CHRISTIAN, CHAIRMAN

BY: 
ANDY POOLE, DEPUTY DIRECTOR

Certified to Secretary of State, October 1, 1990.

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

In the matter of the emergency amendment of ARM 16.45.1220, 16.45.1221 and 16.45.1232 relating to the inspection of certain underground storage tanks	NOTICE OF EMERGENCY AMENDMENT OF ARM 16.45.1220, 16.45.1221 AND 16.45.1232 (Underground Storage Tanks)

To: All Interested Persons

1. Statement of emergency. On September 17, 1990, the Department of Health and Environmental Sciences adopted, effective October 1, 1990, permanent rules governing the licensing of underground tank installers and inspectors and the permitting of underground tank installations and closures. In the course of the adoption of these rules, the Department received public comments concerning the fees to be charged for tank installations, closures and inspections and for permit applications under rules XX (ARM 16.45.1220) and XXIX (ARM 16.45.1229), respectively, noting public concern over the size of the fees. In response to those comments, the agency reduced the size of the fee for review of permit applications but noted that other than by subsidizing one type of inspection by another, there was little the Department could do to reduce inspection fees and still maintain program services by payment of reimbursement to local governments for inspection services. Since adoption of the rules on September 17, 1990, the agency has reviewed evidence that there were representations made by the agency to the Legislature at the time of consideration of the implemented legislation that certain fees would be kept at minimal levels and/or certain program services would be supported with other funds rather than user fees. In order to maintain this previous position, the Department has chosen to change the frequency of inspections of small farm and ranch and home heating oil tanks and to not charge owners and operators of those tanks for these inspections. These changes must be made effective on the same date as the rules to be amended, October 1, 1990.

2. The Department adopts the emergency rules effective October 1, 1990. A standard rulemaking procedure will be followed prior to the expiration of the emergency rules

3. ARM 16.45.1220, 16.45.1221, and 16.45.1232 are amended effective October 1, 1990, as follows:

16.45.1220 INSPECTION FEES

(1) - (4) Remain the same.

(5) Notwithstanding subsections (1) through (4), no inspection fee is required to be paid to the department for the inspection of the installation or closure of a farm or residential tank with a capacity of 1,100 gallons or less that is used for storing motor fuel for non commercial purposes or a tank used for storing home heating oil for consumptive use on the premises where stored.

AUTH: 75-11-204, MCA; IMP: 75-11-204, MCA

16.45.1221 REQUIREMENTS FOR INSPECTION GENERALLY (1) Except as provided in subsection (2), Aan owner or operator intending to install or close an underground storage tank without the services of a licensed installer in accordance with section 75-11-213 and 75-11-217, MCA, must have the installation or closure inspected by a department inspector or a local inspector licensed by the department.

(2) The owner or operator of a farm or residential tank with a capacity of 1,100 gallons or less that is used for storing motor fuel for non commercial purposes or a tank used for storing heating oil for consumptive use on the premises where stored is not required to use the services of a licensed installer but must have the installation or closure inspected by a department inspector or a local inspector licensed by the department unless the department determines otherwise.

AUTH: 75-11-204, MCA; IMP: 75-11-204, MCA

16.45.1232 INSPECTION REIMBURSEMENT

(1) Remains the same.

(2) Notwithstanding subsection (1), reimbursement for the inspection of tanks exempt under ARM 16.45.1220(5) from the payment of an inspection fee shall be paid from a maximum of 80% of the fee assessed under ARM 16.45.1001 or 16.45.1219 or both, at the rate provided in ARM 16.45.1004(3).

~~(2)~~(3) The statement for services and claims by an implementing agency shall be prepared and submitted to the department in accordance with ARM 16.45.1004.

~~(3)~~(4) Claims for reimbursement not in accordance with this rule shall be and are denied. Claims shall be paid only within the limitations of departmental budgets and legislative appropriations.

AUTH: 75-11-204, MCA; IMP: 75-11-204, 75-11-213, MCA

4. The rationale for the emergency amendments is set forth in the statement of emergency in paragraph 1.

William J. Opitz

WILLIAM J. OPITZ, Acting Director

Certified to the Secretary of State October 1, 1990.

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

In the matter of the amendment of ARM 36.12.1010, 36.12.1011, 36.12.1013 and repeal of 36.12.1012 concerning definitions and basin closures	)))))	NOTICE OF AMENDMENT OF RULES 36.12.1010 DEFINITIONS, 36.12.1011 GRANT CREEK BASIN CLOSURE, 36.12.1013 ROCK CREEK BASIN CLOSURE AND REPEAL OF 36.12.1012 DEFINITIONS

TO: ALL INTERESTED PERSONS

1. On August 16, 1990 the Department of Natural Resources and Conservation published a notice of proposed amendments of rules 36.12.1010 Definitions, 36.2.1011 Grant Creek Basin Closure, 36.12.1013 Rock Creek Basin Closure, and repeal of 36.12.1012 Definitions at pages 1542 and 1543, 1990 Montana Administrative Register, Issue number 15.

2. No public hearing was contemplated or held, nor was one requested. Public comments were accepted until September 14, 1990. No oral or written comments concerning these rules were received.

3. The Department has amended and repealed the rules exactly as proposed.

DEPARTMENT NATURAL RESOURCES
AND CONSERVATION

Karen L. Barclay

KAREN L. BARCLAY, DIRECTOR

Certified to the Secretary of State, October 1, 1990

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

In the Matter of Amendment of Rule 38.5.2202 and Adoption of a New Rule Regarding Investigation and Reports of Accidents	))))	NOTICE OF AMENDMENT AND ADOPTION OF RULES REGARDING FEDERAL PIPELINE SAFETY REGULATIONS INCLUDING DRUG-TESTING REQUIREMENTS

TO: All Interested Persons

1. On February 8, 1990 the Department of Public Service Regulation published Notice of Proposed Amendment and Adoption at page 275, issue number 3 of the 1990 Montana Administrative Register. Requests were received for a hearing and on April 12, 1990 the Department of Public Service Regulation published a Notice of Public Hearing to consider the above matter at page 698, issue number 7 of the 1990 Montana Administrative Register.

2. The Department of Public Service Regulation has adopted and amended the rule as proposed with the following changes:

38.5.2202 INCORPORATION BY REFERENCE OF FEDERAL PIPELINE SAFETY REGULATIONS (1) The public service commission hereby adopts and incorporates by reference the U.S. Department of Transportation Pipeline Safety Regulations, Code of Federal Regulations, Title 49, Chapter 1, Subchapter D, Parts 191, and 192, including all revisions and amendments enacted by the department of transportation on or before the effective date of this rule, October 12, 1990 ~~and--199~~. A copy of CFR Title 49, Chapter 1, Subchapter D, Parts 191, and 192 ~~and--199~~ may be obtained from the U.S. Department of Transportation, ~~Materials-Transportation-Bureau,--Office-of Operations--and--Enforcement--(Pipeline--Safety)~~ Research and Special Programs Administration, Western Region, Pipeline Safety, 555 Zang Street, Lakewood, Colorado 80228, or may be reviewed at the Public Service Commission Offices, 2701 Prospect Avenue, Helena, Montana 59620.

Comments: No comments were received regarding Parts 191 and 192. As adopted, ARM 38.5.2202 now incorporates the latest revisions to Parts 191 and 192. All comments received were regarding Part 199. Since substantial changes were made to Part 199 they have been adopted as new rules II through XIII.

3. The Commission has adopted the rule as proposed:

RULE I. 38.5.2220 INVESTIGATION AND REPORTS OF INCIDENTS OF INTRASTATE GAS PIPELINE OPERATORS

Comments: No comments were received.

4. The Commission has adopted the following new rules as stated above. Random and post-accident drug testing requirements are not being adopted. Other minor revisions to 49 C.F.R. 199 as proposed have also been made. Since the PSC does not enforce 49 C.F.R. Parts 193 and 195, all references to those parts have been deleted. Due to the date these rules are being adopted, § 199.1(b) is being deleted as unnecessary.

RULE II. 38.5.2301 SCOPE AND COMPLIANCE (1) This subchapter requires pipeline facilities subject to 49 Code of Federal Regulations (C.F.R.), Part 192 to test employees for the presence of prohibited drugs and provide an employee assistance program. However, this subchapter does not apply to "master meter systems" defined in 49 C.F.R. § 191.3.

(2) Nothing contained in this subchapter shall be construed or applied in a manner inconsistent with the provisions and requirements of § 39-2-304, MCA.

(3) This subchapter shall not apply to any person for whom compliance with this subchapter would violate the domestic laws or policies of another country.

(4) This subchapter is not effective until January 2, 1992, with respect to any person for whom a foreign government contends that application of this subchapter raises questions of compatibility with that country's domestic laws or policies. On or before December 2, 1991, the administrator will issue any necessary amendment resolving the applicability of this subchapter to such person on and after January 2, 1992. AUTH: 69-3-207, MCA; IMP, Sec. 69-3-207, MCA

RULE III. 38.5.2303 DEFINITIONS As used in this subchapter:

(1) "Accident" means an incident reportable under 49 C.F.R. part 191 involving gas pipeline facilities.

(2) "Administrator" means the administrator of the research and special programs administration (RSPA) of the U.S. department of transportation (DOT), or any person who has been delegated authority in the matter concerned.

(3) "DOT procedures" means the "procedures for transportation work place drug testing programs" published by the office of the secretary of transportation in 49 C.F.R. part 40.

(4) "Employee" means a person who performs on a pipeline, an operating, maintenance, or emergency-response function regulated by 49 C.F.R. part 192. This does not include clerical, truck driving, accounting, or other functions not subject to 49 C.F.R. part 192. The person may be employed by the operator, be a contractor engaged by the operator, or be employed by such a contractor.

(5) "Fail a drug test" means that the confirmation test result shows positive evidence of the presence under DOT procedures of a prohibited drug in an employee's system. The testing procedure must provide for the verification of test results by two or more different testing procedures before judging a test positive.

(6) "Operator" means a person who owns or operates pipeline facilities subject to 49 C.F.R. part 192.

(7) "Pass a drug test" means that initial testing or confirmation testing under DOT procedures does not show evidence of the presence of a prohibited drug in a person's system.

(8) "Prohibited drug" means any of the following substances specified in schedule I or schedule II of the Controlled Substances Act, 21 U.S.C. 801.812 (1981 and 1987 Cum.P.P.): marijuana, cocaine, opiates, amphetamines, and

phencyclidine (PCP). In addition, for the purposes of reasonable cause testing, "prohibited drug" includes any substance in schedule I or II if an operator has obtained prior approval from RSPA, pursuant to the "DOT procedures" in 49 C.F.R. part 40, to test for such substance, and if the department of health and human services has established an approved testing protocol and positive threshold for such substance.

(9) "State agency" means an agency of any of the several states, the District of Columbia, or Puerto Rico that participates under section 5 of the Natural Gas Pipeline Safety Act of 1968 (49 App. U.S.C. 1674) or section 205 of the Hazardous Liquid Pipeline Safety Act of 1979 (49 App. U.S.C. 2009). AUTH: 69-3-207, MCA; IMP, Sec. 69-3-207, MCA

RULE IV. 38.5.2305 DOT PROCEDURES (1) The anti-drug program required by this subchapter must be conducted according to the requirements of this subchapter and the DOT procedures. In the event of conflict, the provisions of this subchapter prevail. Terms and concepts used in this subchapter have the same meaning as in the DOT procedures. AUTH: 69-3-207, MCA; IMP, Sec. 69-3-207, MCA

RULE V. 38.5.2307 ANTI-DRUG PLAN (1) Each operator shall maintain and follow a written anti-drug plan that conforms to the requirements of this subchapter and the DOT procedures. The plan must contain:

(a) Methods and procedures for compliance with all the requirements of this subchapter, including the employee assistance program;

(b) The name and address of each laboratory that analyzes the specimens collected for drug testing; and

(c) The name and address of the operator's medical review officer; and

(d) Procedures for notifying employees of the coverage and provisions of the plan. AUTH: 69-3-207, MCA; IMP, Sec. 69-3-207, MCA

RULE VI. 38.5.2309 USE OF PERSONS WHO FAIL OR REFUSE A DRUG TEST (1) An operator may not knowingly use as an employee any person who:

(a) Fails a drug test required by this subchapter and the medical review officer makes a determination under ARM 38.5.2315(4)(b); or

(b) Refuses to take a drug test required by this subchapter.

(2) Paragraph (1)(a) of this rule does not apply to a person who has:

(a) Passed a drug test under DOT procedures;

(b) Been recommended by the medical review officer for return to duty in accordance with ARM 38.5.2315(3); and

(c) Not failed a drug test required by this subchapter after returning to duty. AUTH: 69-3-207, MCA; IMP, Sec. 69-3-207, MCA

RULE VII. 38.5.2311 DRUG TESTS REQUIRED: PRE-EMPLOYMENT, REASONABLE CAUSE AND RETURN TO DUTY (1) Each operator shall conduct the following drug tests for the presence of a prohibited drug:

(a) No operator may hire or contract for the use of any person as an employee unless that person passes a drug test or is covered by an anti-drug program that conforms to the requirements of this subchapter.

(b) Each operator shall drug test each employee when there is reasonable cause to believe the employee is using a prohibited drug. The decision to test must be based on a reasonable and articulable belief that the employee is using a prohibited drug on the basis of specific, contemporaneous physical, behavioral, or performance indicators of probable drug use. At least two of the employee's supervisors, one of whom is trained in detection of the possible symptoms of drug use, shall substantiate and concur in the decision to test an employee. The concurrence between the two supervisors may be by telephone. However, in the case of operators with 50 or fewer employees subject to testing under this subchapter, only one supervisor of the employee trained in detecting possible drug use symptoms shall substantiate the decision to test.

(c) An employee who refuses to take or does not pass a drug test may not return to duty until the employee passes a drug test administered under this subchapter and the medical review officer has determined that the employee may return to duty. AUTH: 69-3-207, MCA; IMP, Sec. 69-3-207, MCA

RULE VIII. 38.5.2313 DRUG TESTING LABORATORY (1) Each operator shall use for the drug testing required by this subchapter only drug testing laboratories certified by the department of health and human services under the DOT procedures.

(2) The drug testing laboratory must permit:

(a) Inspections by the operator before the laboratory is awarded a testing contract; and

(b) Unannounced inspections, including examination of records, at any time, by the operator, the administrator, and if the operator is subject to state agency jurisdiction, a representative of that state agency.

(3) Nothwithstanding the above, a person tested may request retesting by a laboratory of his choice, pursuant to ARM 38.5.2317. AUTH: 69-3-207, MCA; IMP, Sec. 69-3-207, MCA

RULE IX. 38.5.2315 REVIEW OF DRUG TESTING RESULTS: MEDICAL REVIEW OFFICER (1) Each operator shall designate or appoint a medical review officer (MRO). If an operator does not have a qualified individual on staff to serve as MRO, the operator may contract for the provision of MRO services as part of its anti-drug program.

(2) The MRO must be a licensed physician with knowledge of drug abuse disorders.

(3) The MRO shall perform the following functions for the operator:

(a) Review the results of drug testing before they are reported to the operator.

(b) Review and interpret each confirmed positive test result as follows to determine if there is an alternative medical explanation for the confirmed positive test result:

(i) Conduct a medical interview with the individual tested.

(ii) Review the individual's medical history and any relevant biomedical factors.

(iii) Review all medical records made available by the individual tested to determine if a confirmed positive test resulted from legally prescribed medication.

(iv) If necessary, require that the original specimen be reanalyzed to determine the accuracy of the reported test result.

(v) Verify that the laboratory report and assessment are correct.

(c) Determine whether and when an employee who refused to take or did not pass a drug test administered under DOT procedures may be returned to duty.

(d) Ensure that an employee has been drug tested in accordance with the DOT procedures before the employee returns to duty.

(4) The following rules govern MRO determinations:

(a) If the MRO determines, after appropriate review, that there is a legitimate medical explanation for the confirmed positive test result other than the unauthorized use of a prohibited drug, the MRO is not required to take further action.

(b) If the MRO determines, after appropriate review, that there is no legitimate medical explanation for the confirmed positive test result other than the unauthorized use of a prohibited drug, the MRO shall refer the individual tested to an employee assistance program, or to a personnel or administrative officer for further proceedings in accordance with the operator's anti-drug program.

(c) Based on a review of laboratory inspection reports, quality assurance and quality control data, and other drug test results, the MRO may conclude that a particular drug test result is scientifically insufficient for further action. Under these circumstances, the MRO should conclude that the test is negative for the presence of a prohibited drug or drug metabolite in an individual's system.

(5) A copy of all drug test results shall be provided to the person tested.

(6) The person tested must be given the opportunity to rebut or explain the results of all drug tests and retests.
AUTH: 69-3-207, MCA; IMP, Sec. 69-3-207, MCA

RULE X. 38.5.2317 RETENTION OF SAMPLES AND RETESTING

(1) Samples that yield positive results on confirmation must be retained by the laboratory in properly secured, long-term, frozen storage for at least 365 days as required by the DOT procedures. Within this 365-day period, the employee or his representative, the operator, the administrator, or, if

the operator is subject to the jurisdiction of a state agency, the state agency may request that the laboratory retain the sample for an additional period. If, within the 365-day period, the laboratory has not received a proper written request to retain the sample for a further reasonable period specified in the request, the sample may be discarded following the end of the 365-day period.

(2) The person tested must be provided the opportunity, at the expense of the operator, to obtain a confirmatory retest of the urine by an independent laboratory selected by the person tested.

(3) If the employee specifies retesting by a second laboratory, the original laboratory must follow approved chain-of-custody procedures in transferring a portion of the sample.

(4) Since some analytes may deteriorate during storage, detected levels of the drug below the detection limits established in the DOT procedures, but equal to or greater than the established sensitivity of the assay, must, as technically appropriate, be reported and considered corroborative of the original positive results. AUTH: 69-3-207, MCA; IMP, Sec. 69-3-207, MCA

RULE XI. 38.5.2319 EMPLOYEE ASSISTANCE PROGRAM (1) Each operator shall provide an employee assistance program (EAP) for its employees and supervisory personnel who will determine whether an employee must be drug tested based on reasonable cause. The operator may establish the EAP as a part of its internal personnel services or the operator may contract with an entity that provides EAP services. Each EAP must include education and training on drug use. At the discretion of the operator, the EAP may include an opportunity for employee rehabilitation.

(2) Education under each EAP must include at least the following elements: display and distribution of informational material; display and distribution of a community service hotline telephone number for employee assistance; and display and distribution of the employer's policy regarding the use of prohibited drugs.

(3) Training under each EAP for supervisory personnel who will determine whether an employee must be drug tested based on reasonable cause must include one 60-minute period of training on the specific, contemporaneous physical, behavioral, and performance indicators of probable drug use. AUTH: 69-3-207, MCA; IMP, Sec. 69-3-207, MCA

RULE XII. 38.5.2321 CONTRACTOR EMPLOYEES (1) With respect to those employees who are contractors or employed by a contractor, an operator may provide by contract that the drug testing, education, and training required by this subchapter be carried out by the contractor provided:

(a) The operator remains responsible for ensuring that the requirements of this subchapter are complied with; and

(b) The contractor allows access to property and records by the operator, the administrator, and if the operator is sub-

ject to the jurisdiction of a state agency, a representative of the state agency for the purpose of monitoring the operator's compliance with the requirements of this subchapter. AUTH: 69-3-207, MCA; IMP, Sec. 69-3-207, MCA

RULE XIII. 38.5.2323 RECORDKEEPING (1) Each operator shall keep the following records for the periods specified and permit access to the records as provided by paragraph (2) of this rule:

(a) Records that demonstrate the collection process conforms to this subchapter must be kept for at least three years.

(b) Records of employee drug test results that show employees failed a drug test, and the type of test failed (e.g., post-accident), and records that demonstrate rehabilitation, if any, must be kept for at least five years, and include the following information:

(i) The functions performed by employees who failed a drug test.

(ii) The prohibited drugs which were used by employees who failed a drug test.

(iii) The disposition of employees who failed a drug test (e.g., termination, rehabilitation, leave without pay).

(iv) The age of each employee who failed a drug test.

(c) Records of employee drug test results that show employees passed a drug test must be kept for at least one year.

(d) A record of the number of employees tested, by type of test (e.g., post-accident), must be kept for at least five years.

(e) Records confirming that supervisors and employees have been trained as required by this subchapter must be kept for at least three years.

(2) Information regarding an individual's drug testing results or rehabilitation may be released only upon the written consent of the individual, or as required by a court of law. Statistical data related to drug testing and rehabilitation that is not name-specific and training records must be made available to the administrator or the representative of a state agency upon request. AUTH: 69-3-207, MCA; IMP, Sec. 69-3-207, MCA

5. Comments: The Oil, Chemical and Atomic Workers International Union, Local 2-493 (OCAW) submitted written and oral comments in opposition to the random and post-accident drug testing requirements contained in the proposed rules. OCAW did not oppose the reasonable cause and nonrandom return-to-duty testing provisions. OCAW did not take a position on pre-employment testing.

The American Civil Liberties Union (ACLU) submitted written and oral comments in opposition to pre-employment and random drug-testing. At the hearing the ACLU also expressed some reservations regarding the scope of the proposed post-accident testing. The ACLU did not take a position on return-to-duty testing and did not oppose reasonable cause testing.

The ACLU's objections to pre-employment testing were not stated in specific terms. The ACLU's statement simply ex-

pressed general opposition to drug testing, based upon the intrusion of individual privacy and violation of constitutional rights. Drug tests are unfair if administered to workers without any reason to suspect illegal drug use; and unnecessary because they cannot detect actual job impairment. Drug tests are also sometimes inaccurate. Performance tests in safety-sensitive positions are more appropriate. Competent supervision, professional counseling and voluntary rehabilitation would better address the drug problem. Finally, the ACLU stated that § 39-2-304, MCA is a good law, probably the best in the country that balances the rights of individual privacy against the rights of the public interest.

The Montana Power Company did not take a position for or against the rules, but did offer oral comments and presented a copy of the company's anti-drug plan.

Response: The Commission has determined that the random and post-accident drug testing provisions of the proposed rules would violate § 39-2-304, MCA. These types of tests are therefore not being adopted in the Administrative Rules of Montana, including the random provisions of the return-to-duty testing.

In response to the ACLU's objections to pre-employment testing, the Commission first notes that the U.S. 9th Circuit Court of Appeals recently upheld 49 C.F.R. Part 199 against challenges based upon Federal law, including the 4th Amendment of the United States Constitution. IBEW v. Skinner, ___F.2d ____, 1990 WL 129349 (Sept. 12, 1990). In addition, the Commission believes the pre-employment testing required by the proposed rules is permitted by § 39-2-304(1)(b), due to the nature of the pipeline industry and the functions performed by operations, maintenance and emergency response personnel.

The rules as proposed contain other provisions which are inconsistent with § 39-2-304, MCA, in the areas of testing procedure, verification, test review, retesting, and release of results. Appropriate revisions have been made to conform the rule as adopted to the requirements of § 39-2-304, MCA. A general provision has also been added requiring application and construction of these rules in a manner consistent with § 39-2-304, MCA.

The Commission is of the opinion that the types of testing adopted herein (reasonable cause, pre-employment and nonrandom return-to-duty) are consistent with Montana statutory and constitutional law. The Commission also considers the revised drug-testing rules to be reasonable and appropriate in view of the important governmental interest in assuring public safety in the pipeline industry.

Howard L. Ellis

HOWARD L. ELLIS, Chairman

CERTIFIED TO THE SECRETARY OF STATE OCTOBER 1, 1990.

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

In the matter of the adoption of Rules I, II, III and IV pertaining to rural health clinics	))))	NOTICE OF THE ADOPTION OF RULES I, II, III, IV PERTAINING TO RURAL HEALTH CLINICS

TO: All Interested Persons

1. On August 16, 1990, the Department of Social and Rehabilitation Services published notice of the proposed adoption of Rules I, II, III and IV pertaining to rural health clinics at page 1544 of the 1990 Montana Administrative Register, issue number 15.

2. The Department has adopted [Rule I] 46.12.1601, RURAL HEALTH CLINICS, DEFINITIONS; [Rule II] 46.12.1603, RURAL HEALTH CLINICS, SERVICES; [Rule III] 46.12.1605, RURAL HEALTH CLINICS, REQUIREMENTS; [Rule IV] 46.12.1607, RURAL HEALTH CLINICS, REIMBURSEMENT as proposed.

3. No written comments or testimony were received.

Director, Social and Rehabilitation Services

Certified to the Secretary of State September 27, 1990.

NOTICE OF FUNCTIONS OF ADMINISTRATIVE CODE COMMITTEE

The Administrative Code Committee reviews all proposals for adoption of new rules, amendment or repeal of existing rules filed with the Secretary of State, except rules proposed by the Department of Revenue. Proposals of the Department of Revenue are reviewed by the Revenue Oversight Committee.

The Administrative Code Committee has the authority to make recommendations to an agency regarding the adoption, amendment, or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. In addition, the Committee may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt or amend a rule.

The Committee welcomes comments from the public and invites members of the public to appear before it or to send it written statements in order to bring to the Committee's attention any difficulties with the existing or proposed rules. The address is Room 138, Montana State Capitol, Helena, Montana 59620.

HOW TO USE THE ADMINISTRATIVE RULES OF MONTANA AND THE MONTANA ADMINISTRATIVE REGISTER

Definitions: Administrative Rules of Montana (ARM) is a looseleaf compilation by department of all rules of state departments and attached boards presently in effect, except rules adopted up to three months previously.

Montana Administrative Register (MAR) is a soft back, bound publication, issued twice-monthly, containing notices of rules proposed by agencies, notices of rules adopted by agencies, and interpretations of statutes and rules by the attorney general (Attorney General's Opinions) and agencies (Declaratory Rulings) issued since publication of the preceding register.

Use of the Administrative Rules of Montana (ARM):

Known Subject Matter
1. Consult ARM topical index. Update the rule by checking the accumulative table and the table of contents in the last Montana Administrative Register issued.

Statute Number and Department
2. Go to cross reference table at end of each title which lists MCA section numbers and corresponding ARM rule numbers.

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies which have been designated by the Montana Procedure Act for inclusion in the ARM. The ARM is updated through June 30, 1990. This table includes those rules adopted during the period July 1, 1990 through September 30, 1990 and any proposed rule action that is pending during the past 6 month period. (A notice of adoption must be published within 6 months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through June 30, 1990, this table and the table of contents of this issue of the MAR.

This table indicates the department name, title number, rule numbers in ascending order, catchphrase or the subject matter of the rule and the page number at which the action is published in the 1990 Montana Administrative Register.

ADMINISTRATION, Department of, Title 2

I-XIII	and other rules - Veteran's Employment Preference - Veteran's and Handicapped Person's Employment Preference, p. 1361, 478
2.5.118	and other rules - Procuring Supplies and Services, p. 1419, 1770
2.13.102	Use of the State Telecommunication Systems, p. 397, 928
2.21.3712	and other rule - Recruitment and Selection - Reduction in Force, p. 1417
2.21.8017	and other rule - Grievances, p. 1997, 377
(Public Employees' Retirement Board)	
2.43.302	and other rules - Montana's Retirement Systems - State Social Security Program - Purchasing Service Credit - Post-retirement Benefit Adjustments - Return to Covered Employment After Retirement, p. 1999, 994A, 1250

AGRICULTURE, Department of, Title 4

I-LV	Montana Agricultural Chemical Ground Water Protection Act, p. 1199
4.12.1012	Grain Fee Schedule, p. 1056, 1452
4.12.1202	and other rules - Alfalfa Leafcutting Bees, p. 1, 378, 704

STATE AUDITOR, Title 6

I-VII Loss Cost System in Property-Casualty Lines Other Than Workers' Compensation, p. 1806

I-VII Establishment and Operations of a Prelicensing Education Program, p. 8, 487

6.6.505 and other rules - Medicare Supplement Insurance Minimum Standards, p. 1285, 1688

COMMERCE, Department of, Title 8

(Board of Architects)

8.6.406 and other rules - Reciprocity - Qualification Required for Branch Office - Examinations - Individual Seal - Renewals - Standards of Professional Conduct - Fee Schedule - Architect Partnerships to File Statement with Board Office - Board Meetings - Seal - Governor's Report - Financial Records and Other Records - Grant and Issue Licenses - Duplicate License - Public Participation, p. 250, 583

(Board of Athletics)

8.8.2804 and other rules - Licensing Requirements - Contracts and Penalties - Boxing Contestants - Physical Examination - Ring - Equipment - Disciplinary Actions - Relationship of Managers and Boxers, p. 765, 1143

(Board of Chiropractors)

I-V Applications - Minimum Requirements for Certification - Approval of Training Programs - Recertification and Fees of Impairment Evaluators, p. 255

I-V Applications - Minimum Requirements for Certification - Approval of Training Programs - Recertification - Fees of Impairment Evaluators, p. 399, 1453

8.12.601 and other rules - License Applications - Educational Standards for Licensure - License Examinations - Temporary Permits - Renewals - Unprofessional Conduct Standards - Reinstatement of Licenses - Disciplinary Actions - Recordation of License - Definitions, p. 258, 995

8.12.601 and other rules - Applications - Renewal Fees - Consolidating Board Fees Into One Central Rule, p. 769, 1144, 1251

(Board of Cosmetologists)

8.14.401 and other rules - Practice of Cosmetology - Booth Rentals, p. 658, 1145

8.14.605 and other rule - Curriculum for Students - Fees, p. 1644

(Board of Hearing Aid Dispensers)

8.20.401 Traineeship Requirements and Standards, p. 771, 1698

(Board of Horse Racing)

8.22.304 and other rules - Rules of Procedure - General Rules - Occupational Licenses - General Conduct of Racing -

Medication - Corrupt Practices and Penalties - Trifecta Wagering, p. 1500

(Board of Landscape Architects)

8.24.409 Fee Schedule, p. 1062, 1699

(Board of Medical Examiners)

8.28.402 and other rules - Definitions - Reinstatement - Hearings and Proceedings - Temporary Certificate - Annual Registration and Fees - Approval of Schools - Requirements for Licensure - Application for Licensure - Fees - Supervision of Licensees - Application for Examination - Reciprocity, p. 867, 1700

(Board of Optometrists)

8.36.401 and other rules - Meetings - Examinations - Reciprocity - Practice Requirements - Fees - Continuing Education Requirements - Approved Courses and Examinations - Permissible Drugs for Diagnostic Pharmaceutical Agents - Approved Drugs for Therapeutic Pharmaceutical Agents - Definitions - Unprofessional Conduct - Continuing Education, p. 1748

(Board of Physical Therapy Examiners)

8.42.402 and other rules - Examinations - Fees, Temporary Licenses - Licensure by Endorsement - Exemptions - Foreign-Trained Applicants - Lists, p. 1810

(Board of Professional Engineers and Land Surveyors)

8.48.902 and other rules - Statements of Competency - Land Surveyor Nonresident Practice in Montana - Avoidance of Improper Solicitation of Professional Employment, p. 773, 1701

(Board of Private Security Patrolmen and Investigators)

8.50.423 and other rules - Definitions - Temporary Employment - Applications - Examinations - Insurance - Applicant Fingerprint Check - Fees - Probationary Private Investigators - Firearms Safety Tests - Unprofessional Standards - Record Keeping - Code of Ethics for Licensees - Code of Ethics for Employees - Powers of Arrest and Initial Procedures - Disciplinary Action, p. 776, 1772, 1825

(Board of Public Accountants)

8.54.204 and other rules - Licensing of Public Accountants, p. 1870, 584

8.54.817 and other rules - Credit for Service as Report Reviewer - Definitions - Filing of Reports - Alternatives and Exemptions Reviews and Enforcement, p. 1866, 586

(Board of Radiologic Technologists)

8.56.602 and other rules - Permit Applications - Course Requirements - Permit Examinations - Temporary Permits - Permit Restrictions, p. 402, 1321

(Board of Realty Regulation)

8.58.401 and other rules - Administration, Licensing and

FISH, WILDLIFE AND PARKS, Department of, Title 12

HEALTH AND ENVIRONMENTAL SCIENCES, Department of, Title 16

STATE LANDS, Department of, Title 26

I-III and other rules - Sale of Cabinsites and Homesites on State Trust Lands, p. 1660
I-III Investigation of Complaints Regarding Effects of Hard Rock Blasting Operations, p. 458, 1470
I-VII Authorizing Permitting and Requiring Reclamation of Hard Rock Mills and Operations that Reprocess Tailings and Waste Rock from Previous Operations, p. 267, 1008
I-XII and other rules - Disposal of Underground Coal Mine Waste - Individual Civil Penalties - Restrictions on Financial Interests of Multiple Interest Advisory Boards, p. 1309, 366A, 936
26.4.724 and other rules - Revegetation of Land Disturbed by Coal and Uranium Mining Operations, p. 1885, 964

LIVESTOCK, Department of, Title 32

32.2.401 Fee Change for Recording of Brands, p. 1823
32.18.101 Hot Iron Brands Required, p. 1315

NATURAL RESOURCES AND CONSERVATION, Department of, Title 36

I Reject or Modify Permit Applications for Consumptive Uses and to Condition Permits for Nonconsumptive Uses in Walker Creek Basin, p. 893, 1837
36.12.1010 and other rules - Definitions - Grant Creek and Rock Creek Basin Closures, p. 1542
(Board of Water Well Contractors)
I Mandatory Training, p. 896, 1568
I Abandonment of Monitoring Wells, p. 273, 739
(Board of Oil and Gas Conservation)
I Incorporating by Reference Rules Pertaining to the Montana Environmental Policy Act, p. 2164, 531

PUBLIC SERVICE REGULATION, Department of, Title 38

I-III and other rules - Motor Carrier Status - Class C Contracts - Class C Pickups and Delivery - Contract and Common Carrier Distinction - Insurance - Transfer of Authority - Carrier Rate Increases - Vehicle Identification, p. 467, 1263
38.3.706 Emergency Amendment - Motor Carrier Insurance, p. 1786
38.5.2202 and other rule - Federal Pipeline Safety Regulations Including Drug-Testing Requirements, p. 275, 698
38.5.3332 Customer Billing, p. 192, 593

REVENUE, Department of, Title 42

I Gasoline From Refineries, p. 1071, 1717