MONTANA ADMINISTRATIVE REGISTER

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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 9

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing and where written comments may be submitted.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

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

IN THE MATTER OF THE AMENDMENT of ARM 2.55.301 relating to the method for assignment of classifications of employments.	NOTICE OF PROPOSED AMENDMENT OF RULE 2.55.301 RELATING TO THE METHOD FOR ASSIGNMENT OF CLASSIFICATIONS OF EMPLOYMENTS

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On June 15, 1991, the State Compensation Mutual Insurance Fund proposes to amend rule 2.55.301 which updates the issuance date of the classifications section of the State Compensation Mutual Insurance Fund Policy Services Underwriting Manual.

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

2.55.301 METHOD FOR ASSIGNMENT OF CLASSIFICATIONS OF EMPLOYMENTS (1) through (2) remain the same.

(3) The state fund shall assign its insureds to classifications contained in the classifications section of the State Compensation Mutual Insurance Fund Policy Services Underwriting Manual effective July 1, ~~1990~~ 1991. That section of the manual is hereby incorporated by reference. Copies of the classification section of the manual may be obtained from the Underwriting Department of the State Fund, 5 South Last Chance Gulch, Helena, Montana 59601.

AUTH. 39-71-2316
IMP. 39-71-2311 and 39-71-2316

3. The administrative rule pertaining to the method for assignment of employment classifications is being amended to reflect the latest issuance date of the classifications section of the State Compensation Mutual Insurance Fund Policy Services Underwriting Manual in that an update is necessary to reflect new classification codes.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to Nancy Butler, State Compensation Mutual Insurance Fund, P.O. Box 4759, Helena, Montana 59604, no later than June 13, 1991.

5. If a person who is directly affected by the proposed amendment 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 Nancy Butler, State Compensation Mutual Insurance Fund, P.O. Box 4759, Helena, Montana 59604, no later than June 13, 1991.

6. If the agency receives request for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendment; 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 2,700 persons based on the approximately 27,000 state fund policyholders.

7. The authority of the agency to make the proposed amendment is based on section 39-71-2316, MCA, and the rule implements sections 39-71-2311 and 39-71-2316, MCA.

State Compensation Mutual
Insurance Fund

By: Patrick J. Sweeney, President

Certified to the Secretary of State May 6, 1991.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the proposed amendment of existing rule pertaining to the grain fee schedule	)))	NOTICE OF PROPOSED AMENDMENT OF ARM 4.12.1012 GRAIN FEE SCHEDULE

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On June 15, 1991 the Department of Agriculture proposes to amend ARM 4.12.1012 relating to the grain fee schedule.

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

4.12.1012 GRAIN FEE SCHEDULE (1) The department has adopted a revised schedule of fees to be charged by the State Grain Laboratory at Great Falls, Montana.

(2) SCHEDULE OF FEES AND CHARGES
EFFECTIVE DATE: ~~August 1, 1990.~~ July 1, 1991.

(a) REGULAR HOURS AND HOURLY RATE: 8:00 a.m. to 5:00 p.m. Monday through Friday at $15.00 per hour per individual assessed in half-hour intervals, EXCEPT for holidays. All other hours and holidays will be considered overtime. ~~Minimum 2-hour charge.~~

(b) OVERTIME HOURLY RATE: $22.50 per hour per individual assessed in half-hour intervals with a minimum 2 hour charge except before or a continuation of a regular work day.

(c) OVERTIME HOURLY RATE IN CONJUNCTION WITH OFFICIAL SAMPLING OF UNIT TRAINS CONSISTING OF 20 OR MORE CARS: $10.00 per hour per individual, assessed in half-hour intervals with a minimum 2 hour charge except before or a continuation of a regular work day.

(d) HOLIDAYS: New Years Day, Presidents' Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veteran's Day, Thanksgiving Day, Christmas Day and Heritage Day (floating).

(e) MILEAGE, TRAVEL TIME AND TRAVEL EXPENSES:

1. Mileage charges based on current Montana state schedule. (Prorated where possible). Mileage will not be charged within the Great Falls metropolitan area.

2. Travel Time (Out of Town Trips): For each trip requested, the applicant will be ~~assessed $30.00.~~ charged at regular hourly rate except for overtime and holidays. These will be charged at appropriate overtime rate. (Prorated where possible).

3. Travel expenses when incurred, i.e. mileage, or lodging, those expenses in addition to other fees and charges will be assessed the applicant.

(f) PAYMENT TERMS: Net 30 days with a One and One/Half Percent (1 1/2%) interest charge on past due balances.

(g) OFFICIAL SERVICES: Fees include FGIS supervision fees.

(h) LEVEL ONE SERVICE: Submitted samples done within 48 hours or less, on a first arrival basis, includes telephone report, fees listed below plus $2.50 per request.

(i) Level One Service will be automatically suspended if back-log of Level Two samples exceeds two (2) weeks. If Level One service is suspended all submitted sample fees will be assessed at the Level Two rate.

(j) LEVEL TWO SERVICE: Submitted samples done on a first arrival basis after Level One samples, fees listed below.

OFFICIAL SERVICES FOR USGSA

OFFICIAL SERVICES UNDER THE UNITED STATES GRAIN STANDARDS ACT
Includes FGIS supervision fees.

(k) Official Lot Inspection bulk, boxcar, hopper car or truck/trailer, (all grains), per request, sampling and grade only..... ~~15.00~~ 20.00
Submitted Sample Inspection, per sample, grade only. ~~5.50~~ 7.00
Submitted Sample Inspection With Sprout Damaged Kernels, Sprout Damage Automatically Shown with Grade, except if applicant requests sprout not be shown, per sample..... ~~8.00~~ 9.50
Ineffectual Factor, factor only determination (per factor) 2.50
Sampling only - all lots, bulk, boxcar or truck/trailer, per request, (all grains) ..... ~~7.00~~ 8.00
Protein Tests, NIR per sample..... 4.50
Protein Test, Kjeldahl method (malting barley) per sample..... ~~5.50~~ 7.00
Moisture Tests - (oven), per sample..... 4.00
*Malting Barley Analysis, per request..... 4.00
Copies of Certificates 2.50
Mailing of Samples - postage only charged
Stowage Examination ~~(minimum 1 hour), per hour.....15.00~~
Per Unit (in excess of one hour, hourly rate applies)... 7.00

Re-inspection based on file sample (original grade sustained) - regular fee assessed..... 7.00
Re-inspection based on file sample (original grade changed) - no fee will be assessed.

Official Lot Re-inspection (original grade sustained) - all regular fees assessed.
Official Lot Re-inspection (original grade changed) - mileage, travel time applies when applicable and sampling only fee assessed. No grade fee assessed.
Protein Retest - (original protein test sustained) - regular protein fee assessed. Protein Retest - (original protein test changed) - differences of more than 0.3% - no fee will be assessed.

(l)* Includes actual percent of plump barley, skinned and broken kernels, and thin barley.

(m) In case of a material error in grade or protein, a corrected certificate will be issued without a fee.

(n) Requests for services not covered by the above schedule of fees and charges will be performed at the applicable hourly rate stated herein plus mileage and travel time if applicable.

(3) OFFICIAL SERVICES FOR AMA

OFFICIAL SERVICES UNDER THE AGRICULTURAL MARKETING ACT OF 1946, AMENDED. Includes FGIS supervision fees.

SCHEDULE OF
FEES AND CHARGES

(a) REGULAR/HOURLY OVERTIME RATE, MILEAGE, TRAVEL TIME AND TRAVEL EXPENSES SAME AS ASSESSED UNDER THE USGSA.

~~1.--Mileage charges:--based on current Montana state schedule.~~

~~(a) Mileage:--round trip charged from origin to sampling location.~~

~~2.--Travel time:--regular hourly rate, round trip, from origin to sampling location.~~

~~3.--Travel expenses:--when additional expenses are incurred, i.e., mileage or lodging those expenses in addition to other fees and charges will be assessed the applicant.~~

(b) SERVICES: BEANS, PEAS AND LENTILS

Field run (per lot or sample) - grade only.....$12.00
Other than field run (per lot or sample) - grade only.. 10.00
Ineffectual factor, factor only determination, per factor 2.50
Sampling Bulk: boxcar, hopper car, truck/trailer, all. 8.00
Sampling Bagged:.....Hourly Rate

(c) ~~In case of material error in grade, a corrected certificate will be issued without a fee.~~

Re-inspection based on file sample (original grade sustained - regular fee assessed either.....12.00 or 10.00
Re-inspection based on file sample (original grade changed - no fee will be assessed.
Official Lot Re-inspection (original grade sustained) - all regular fees assessed.
Official Lot Re-inspection (original grade changed) - mileage, travel time assessed when applicable and sampling only fee assessed. No grade fee assessed.

(d) Requests for services not covered by the above schedule of fees and charges will be performed at the applicable hourly rate stated herein plus mileage and travel time if applicable.

(4) NONOFFICIAL SERVICES NOT PERFORMED UNDER THE USGSA OR AMA:

Malting Barley Germination, 48 hour hydrogen peroxide or 72 hour blotter test per determination.....~~5.00~~ 6.00
Malting Barley Chit Determination, per determination...~~5.00~~ 7.00
Malting Barley, Variety Identification, per sample.....4.00
Falling Numbers Determination, per determination.~~7.50~~ 10.00
FAX Charge, of grade certificate per transmission.....3.00
Aflatoxin (Quick Card Test), per determination.....15.00
Oil, per determination.....10.00
Montana Specialty Crop Grades, (unless specifically listed), per grade..... 7.00
Buckwheat Grades, (Processed), per grade..... 7.00
Buckwheat Grades, (Field Run), per grade.....12.00
Hulless or Hulless Waxy Barley Grades, (includes Oven Moisture), per grade..... .11.00

AUTH: 80-4-403, MCA; IMP: 80-4-721, MCA
The Montana Department of Agriculture State Grain Laboratory has reviewed all fees and services. By statute the laboratory must be self supporting and in compliance with audit recommendations, fees must be commensurate with costs of services provided. The State Grain Laboratory fees are reviewed on an annual basis to correlate fees with services provided. The new services are to provide additional services requested by Montana producers, and the proposed fees are commensurate with cost.

3. If a person who is directly affected by the proposed amendment wishes to express his data, views or 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 Allen Williams, Unit Manager, Department of Agriculture, P.O. Box 1397, Great Falls, MT 59403-1397, no later than June 13, 1991.

4. If the agency receives requests for a public hearing on the proposed amendment 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 agency or subdivision or from any association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register and mailed to all interested persons.

Everett M Snortland

EVERETT M. SNORTLAND, DIRECTOR
DEPARTMENT OF AGRICULTURE

Certified to the Secretary of State May 6, 1991.

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

In the matter of the proposed amendment of rules pertaining to fees and record retention) NOTICE OF PROPOSED AMENDMENT OF 8.20.402 FEES AND 8.20.407 RECORD RETENTION

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On June 15, 1991, the Board of Hearing Aid Dispensers proposes to amend the above-stated rules.

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

"8.20.402 FEES

(1) will remain the same.

(2) ~~$125.00 of t~~The application fee is refundable within the first 60 days after application, with ~~$25.00~~ $50.00 being retained for board administrative costs.

(3) will remain the same."

Auth: Sec. 37-1-134, 37-16-202, MCA; IMP, Sec. 37-16-402, MCA

REASON: This amendment is being proposed to raise the portion of the fee to be retained by the board to make it commensurate with program area costs associated with processing an application.

"8.20.407 RECORD RETENTION (1) will remain the same.

(2) Records of deceased clients must be retained for one year after death and then may be destroyed."

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

REASON: This amendment is necessary to relieve unnecessary storage of obsolete files on deceased clients and is in compliance with the Food and Drug Administration regulations on records that must be retained by manufacturers and dispensers of hearing aids.

3. Interested persons may submit their data, views or arguments concerning the proposed amendments in writing to the Board of Hearing Aid Dispensers, 111 North Jackson, Helena, Montana 59620-0407, no later than June 13, 1991.

4. If a person who is directly affected by the proposed amendments wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any comments he has to the Board of Hearing Aid Dispensers, 111 North Jackson, Helena, Montana 59620-0407, no later than June 13, 1991.

5. If the board receives requests for a public hearing on the proposed amendments from either 10% or 25, whichever is less, of those persons who are directly affected by the proposed amendments, from the Administrative Code Committee of the Legislature, from a governmental agency or subdivision or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 10 based on the 101 licensees in Montana.

BOARD OF HEARING AID DISPENSERS
BYRON RANDALL, CHAIRMAN

BY: _____
ANNIE BARTOS, ATTORNEY
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, May 6, 1991.

BEFORE THE BOARD OF PASSENGER TRAMWAY SAFETY
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed amendment of rules pertaining to ANSI standards and fees	))))	NOTICE OF PROPOSED AMENDMENT OF 8.63.501 ADOPTION OF THE ANSI STANDARD AND 8.63.519 FEE AND ASSESSMENT SCHEDULE

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On June 15, 1991, the Board of Passenger Tramway Safety proposes to amend the above-stated rules.

2. The proposed amendments will read as follows:

"8.63.501 ADOPTION OF THE ANSI STANDARD (1) The board of passenger tramway safety hereby adopts and incorporates by reference the "American national standard for passenger tramways - Aerial Tramways and Lifts, Surface Lifts, and Tows - Safety Requirements" (referred to herein as ANSI Standard) promulgated by the American national standards institute, incorporated, on July 16, 1982 (publication number ANSI B77.1-1982) amended December 2, 1985 (ANSI B77.1a-1986), amended March 14, 1988 (ANSI B77.1b-1988), amended March 26, 1990 (ANSI B77.1-1990), to the extent that said standard does not conflict with Montana statutory laws or these regulations. The ANSI standard establishes safety requirements for the passenger use of cables or ropes in passenger transportation systems, including reversible aerial tramways, detachable and fixed grip aerial lifts, surface lifts, and tows. Copies of the ANSI standard text may be obtained from the Department of Commerce, Professional and Occupational Licensing Bureau, Board of Passenger Tramway Safety, Arcade Building, 111 North Jackson, Helena, Montana 59620-0407, upon request at cost.

(2) will remain the same."

Auth: Sec. 23-2-721, MCA; IMP, Sec. 23-3-701, 23-2-721, MCA

REASON: ANSI has adopted a new code, approved 3/26/90, and the Board of Passenger Tramway Safety wishes to update its rule in order to stay current.

"8.63.519 FEE AND ASSESSMENT SCHEDULE

(1) will remain the same.

(2) The assessment shall be ~~1/4~~ 1/6 of 1% on the gross receipts of all passenger tramways operated in Montana with minimum of $100.00 per passenger tramway facility."

Auth: Sec. 23-2-714, 23-2-715, 23-2-721, MCA; IMP, Sec. 23-2-714, 23-2-715, 23-2-721, MCA

REASON: This amendment is necessary because gross receipts have increased at Montana ski areas. A lesser percentage of the total receipts is needed to be assessed to provide funding

for the Board in order to keep fees commensurate with program area costs as mandated by section 37-1-134, MCA.

3. Interested persons may present their data, views or arguments concerning the proposed amendments in writing to the Board of Passenger Tramway Safety, Arcade Building, 111 North Jackson, Helena, Montana 59620-0407, no later than June 13, 1991.

4. If a person who is directly affected by the proposed amendments wishes to present his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit the request along with any comments he has to the Board of Passenger Tramway Safety, Arcade Building, 111 North Jackson, Helena, Montana 59620-0407, no later than June 13, 1991.

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

BOARD OF PASSENGER TRAMWAY SAFETY
TIM PRATHER, CHAIRMAN

BY: _____
ANNIE BARTOS, ATTORNEY
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, May 6, 1991.

BEFORE THE BUSINESS DEVELOPMENT DIVISION
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed adoption of new rules pertaining to definitions, composition of the council and soliciting nominations	))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION OF NEW RULES PERTAINING TO THE MICROBUSINESS FINANCE PROGRAM

TO: All Interested Persons:

1. On June 6, 1991, at 10:00, a.m., a public hearing will be held in the upstairs conference room, Department of Commerce, 1424 - 9th Avenue, Helena, Montana, to consider the proposed adoption of rules pertaining to the Microbusiness Finance Program.

2. The proposed new rules will read as follows:

"I DEFINITIONS As used in this sub-chapter, the following definitions apply:

(1) "Program" means the microbusiness finance program established in (HB 477).

(2) "Council" means the microbusiness advisory council established in (HB 477).

(3) "Certified community lead organization" means an agency that has sponsored and maintained current community certification under the certified community program of the department.

(4) "Department" means the department of commerce provided for in 2-15-180, MCA.

(5) "Microbusiness" means a Montana business with fewer than ten full time equivalent employees and annual gross revenues of less than $500,000.

(6) "Microbusiness development corporation" means a nonprofit corporation certified by the department to provide technical assistance and loans to microbusinesses, as provided in (HB 477)."

Auth: HB 477; IMP, HB 477

"II COMPOSITION OF THE COUNCIL (1) (HB 477) establishes a microbusiness advisory council consisting of 13 members, and prescribes the composition of the council as follows:

(a) no more than seven members may reside in any one of the state's congressional districts, as those districts existed on December 31, 1990;

(b) at least three members must be representatives of certified community lead organizations. At least two of these must reside in communities of under 15,000 population.

(c) at least three members must be owners of microbusinesses, as defined in (the Act);

(d) at least two members must have expertise in administering revolving loan funds that primarily serve microbusinesses.

(e) The membership must include representation of minorities, women and low-income persons."

Auth: HB 477; IMP, HB 477

"III SOLICITING NOMINATIONS (1) The director of the department shall solicit nominations by written request, from the following organizations for the following prescribed positions:

(a) all certified community lead organizations shall be polled for nominations of the three certified community representatives;

(b) if there are less than three microbusiness development corporations certified and funded under the program, then all certified community lead organizations shall also be polled for nominations of the three representatives of microbusiness and the two representatives of revolving loan funds serving microbusiness;

(c) if there are three or more microbusiness development corporations certified and funded under the program, then all certified and funded microbusiness development corporations shall be polled for nominations of the three representatives of microbusiness and the two representatives of revolving loan funds serving microbusiness;

(d) the Montana bankers association and the Montana independent bankers association shall be polled for nominations of the two representatives of the financial community;

(e) associations organized under the laws of Montana, maintaining a listing in the Montana association directory and identifying themselves as representing minorities and low income persons shall be polled for nominations of one representative for each of these groups.

(2) The director of the department shall review the nominations received, and may add no more than three nominees to the list, for the purpose of assuring balanced geographic representation, gender balance, and an appropriate mix of skills on the council.

(3) If, after the department director's additions, the list contains insufficient names to offer the governor a choice for the appointment of each position on the council, the director may poll such additional organizations as the director deems suitable in each category for additional nominations.

(4) The director of the department shall forward the list of nominees to the governor's office for the governor's appointment."

Auth: HB 477; IMP, HB 477

3. Interested parties may present their data, views or arguments either orally or in writing at the hearing or by mailing the same to the Business Development Division, 1424 - 9th Avenue, Helena, Montana 59620, no later than June 13, 1991.

4. Annie M. Bartos, Esq., of Helena, Montana, has been designated to preside over and conduct the hearing.

BUSINESS DEVELOPMENT DIVISION

BY: _____
ANNIE BARTOS, ATTORNEY
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, May 6, 1991.

BEFORE THE FISH AND GAME COMMISSION
OF THE STATE OF MONTANA

IN THE MATTER OF THE PROPOSED AMENDMENT OF ARM 12.6.901 TO ALLOW THE USE OF ELECTRIC MOTORS ON GARTHSIDE RESERVOIR	NOTICE OF PROPOSED AMENDMENT OF ARM 12.6.901, WATER SAFETY REGULATIONS NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On June 27, 1991, the Fish, Wildlife and Parks Commission (Commission) proposes to amend ARM 12.6.901, to allow the use of electric motors on Garthside Reservoir in Richland County.

2. The rule as proposed to be amended provides as follows:
12.6.901 WATER SAFETY REGULATIONS (1) remains the same.
(1)(a) through (1)(e) remains the same.
(f) The following waters are limited to manually operated boats and boats powered by electric motors:

Fergus County:	(a) Crystal Lake
Richland County:	(a) Garthside Reservoir

(1)(g) through (2) remains the same.

3. The Commission believes that the use of electric motors on Garthside Reservoir in Richland County, will not be a safety hazard, nor will the use endanger public health or property. The Department of Fish, Wildlife and Parks (department) met with public users of Garthside Reservoir in the summer of 1990. These public users and the department support the use of electric motors on Garthside Reservoir as an appropriate use of the reservoir.

The amendment must be reviewed and approved by the Department of Health and Environmental Sciences before becoming effective as required by section 87-1-303, MCA.

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

Erv Kent, Administrator
Enforcement Division
Department of Fish, Wildlife and Parks
1420 East Sixth Avenue
Helena, MT 59620

no later than June 13, 1991.

5. If a person who is directly affected by the proposed amendment 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:

Erv Kent, Administrator
Enforcement Division
Department of Fish, Wildlife and Parks
1420 East Sixth Avenue
Helena, MT 59620

no later than June 13, 1991.

6. If the agency receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendment; from the Administrative Code Committee of the legislature, from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be greater than 25 persons.

6. The authority of the Commission to make the proposed amendment is based on section 87-1-303, MCA, and the rule implements section 87-1-303, MCA.

For K.L. Cool, Secretary
Montana Fish and Game Commission

Certified to the Secretary of State May 6, 1991.

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

In the matter of the amendment of rules 16.8.1423 and 16.8.1424	))	NOTICE OF DATE CHANGE OF PUBLIC HEARING FOR AMENDMENT OF RULES

(Air Quality Bureau)

To: All Interested Persons

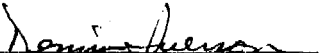
1. On June 28, 1991, at 9:00 A.M., the Board will hold a public hearing in Room C209 of the Cogswell Building, 1400 Broadway, Helena, Montana, to consider the amendment of the above-captioned rules. This hearing was previously scheduled for the Board's meeting on June 21, 1991 and has been rescheduled to June 28, 1991 at the request of the chairman of the Board.

2. The proposed amendments would incorporate federal regulatory changes occurring since July 1, 1987 to the "Standard of Performance for New Stationary Sources" and the "Emission Standards for Hazardous Air Pollutants".

3. The rules, as proposed to be amended, appear in the Montana Administrative Register, 1991 Issue No. 6, dated March 28, 1991, pages 348-349.

4. Interested persons may submit their data, views, or arguments concerning the proposed amendments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Jeff Chaffee, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620, no later than June 28, 1991.

DAVID W. SIMPSON, Chairman
BOARD OF HEALTH AND
ENVIRONMENTAL SCIENCES

by 
DENNIS IVERSON, Director

Certified to the Secretary of State May 6, 1991.

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

In the matter of the amendment of ARM 16.35.111 concerning conditions) for payment of claims under the end stage renal disease (ESRD) program	NOTICE OF PUBLIC HEARING FOR AMENDMENT OF ARM 16.35.111 CONCERNING ESRD PAYMENT CONDITIONS (End Stage Renal Disease)

To: All Interested Persons

1. On June 5, 1991, at 11:00 a.m. in Room C209 of the Cogswell Building, 1400 Broadway, Helena, Montana, the Department of Health and Environmental Sciences will hold a public hearing to consider amending ARM 16.35.111, which sets conditions governing payments made under the department's ESRD program to victims of end stage renal disease.

2. The rule, as proposed to be amended, appears as follows:

16.35.111 CONDITIONS OF CLAIM PAYMENT (1) Payment of a claim will be made only when the balance due exceeds $20 and:

(a) - (b) remain the same.

(c) for the portion of the cost of an ESRD-eligible service or supply which does not exceed either the amount allowed by medicare for that service or supply or the actual cost of that service or supply, whichever is less; ~~and~~

(d) in the case of a charge for a drug, to the extent it does not exceed the average wholesale price specified in the drug topics redbook (excluding updates to that volume) for that drug ~~plus, in the case of all ESRD-eligible drugs other than immunosuppressants, a $4 dispensing fee.~~; and

(e) for services and supplies obtained by a claimant during a given month, up to a maximum of $2,000, subject to the proviso that if any ESRD funds remain at the end of a fiscal year in excess of the eligible claims against them, the excess funds will be used to pay for claims unpaid because they exceeded the $2,000 limit, payment being made in the order in which such claims from all claimants were submitted to the department.

(2) The department hereby adopts and incorporates by reference the "Annual Pharmacists' Reference", ~~1987~~ 1991 edition ~~and its updates~~, referred to as the drug topics redbook, which contains the average wholesale prices for most commercially available drugs. ~~The drug topics redbook is updated quarterly, and the most recent update will be utilized by the ESRD program.~~ A copy of the drug topics redbook may be obtained from Drug Topics Redbook Publications, Medical Economics Co., Inc., Oradell, New York 07649, and the average wholesale prices currently set by the Redbook for drugs may be obtained from the

ESRD program, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620; telephone (406) ~~444-4740~~ 444-3121.
AUTHORITY: 53-6-202, MCA; IMPLEMENTING: 53-6-202, MCA

3. The proposed amendment of ARM 16.35.111 to limit monthly disbursements for each client is necessary in order to spread the limited resources of the ESRD program more evenly among all of its clients. The proposal to obtain drug cost figures solely from the primary annual issue of the Redbook, rather than also from its updates as well, is needed to reduce the amount of time necessary to determine the reimbursable cost of drugs prescribed to clients, given the fact that there are no administrative funds available for the ESRD program. Lastly, the elimination of the drug dispensing fee would save the ESRD program approximately $15,000 or more, money more appropriately spent for client services such as dialysis.

4. Interested persons may submit their data, views, or arguments concerning the proposed amendments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Ellie Parker, Legal Unit, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620, no later than June 13, 1991.

5. Ellie Parker, at the above address, has been designated to preside over and conduct the hearing.

DENNIS IVERSON, Director

Certified to the Secretary of State May 6, 1991.

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

In the matter of the amendment of rules 16.38.105, 16.38.111-112, 16.38.115 and 16.38.126 dealing with licensure and requirements for analysis of public water supplies	)))))	NOTICE OF PUBLIC HEARING FOR AMENDMENT OF RULES (Water Quality Bureau)

To: All Interested Persons

1. On June 28, 1991, at 10:30 a.m., the Board will hold a public hearing in Room C209 of the Cogswell Building, 1400 Broadway, Helena, Montana, to consider the amendment of the above-captioned rules.

2. The proposed amendments would incorporate changes in analytical methodology and reporting requirements for laboratories approved to analyze water samples for microbiological contaminants. The proposed changes are prompted by the 1986 Amendments to the federal Safe Drinking Water Act. The changes are necessary for water sample analyses to meet the federal requirements of public water supply compliance monitoring. The proposed rules would also allow the department to assess an annual fee to recover the costs of implementing the laboratory approval process. The fee would be paid by laboratories desiring to become certified for potable water analysis.

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

16.38.105 REQUIREMENTS FOR A LABORATORY DOING MICROBIOLOGICAL ANALYSES OF PUBLIC WATER SUPPLIES A laboratory, in order to be licensed to perform microbiological analyses of public water supplies, must meet the following requirements:

(1)-(2) Remain the same.

(3) The laboratory must have available or access to the items required for the total coliform membrane filter or ~~most probable number~~ multiple tube fermentation procedures which are listed below, and which meet the specifications noted:

(a)-(b) Remain the same.

(c) Temperature-monitoring devices must meet the following requirements:

(i) Glass or metal thermometers must be graduated in 0.5° C. increments. (Graduated in 0.1 degree C increments for fecals.)

(ii)-(iv) Remain the same.

(d)-(f) Remain the same.

(g) A refrigerator must hold temperature at 1° to ~~4.4~~ 5.0° C (34° to ~~40~~ 41° F.)

(h)-(o) Remain the same.

(4) The following sterilization procedures are required:

(a) The following times and temperatures must be used for autoclaving materials:

Material	Temperature/minimum time
Membrane filters and pads	121°C/10 min.
Carbohydrate-containing media (lauryl tryptose, brilliant green lactose bile broth, etc.)	121°C/12-15 min.
Contaminated materials and discarded tests	121°C/30 min.
Membrane filter assemblies (wrapped),	121°C/30 min.
Plastic filter assemblies	121°C/20 min.
~~s~~Sample collection bottles (empty),	121°C/30 min.
~~i~~Individual glassware items	121°C/30 min.
Rinse water volumes of 500 ml to 1,000 ml	121°C/45 min.
Rinse water in excess of 1,000 ml	121°C/time adjusted for volume; check for sterility
Dilution water blank	121°C/30 min.

(b)-(c) Remain the same.

(5) Remains the same.

(6) Any stock buffer solution must be prepared according to "Standard Methods of Examination of Water and Waste Water," ~~13th~~ 17th Ed., published by the American Public Health Association, using laboratory pure water adjusted to pH 7.2. Stock buffer must be autoclaved or filter-sterilized, labeled, dated, and stored at 1° to ~~4.4~~ 5° C. The stored buffer solution must be free of turbidity. ~~A copy of the above manual may be obtained from the Water Quality Bureau.~~

(7) Remains the same.

(8) The following are minimum requirements for storing and preparing media:

(a)-(f) Remain the same.

(g) ~~Most probable number (MPN)~~ Multiple tube fermentation (MTF) media prepared in tubes with loose-fitting caps must be used within one week. If ~~MPN~~ MTF media are refrigerated after sterilization, they must be incubated overnight at 35° C to confirm usability. Tubes showing growth or gas bubbles must be discarded.

(h) Remains the same.

(9) Testing methodology shall meet the following requirements:

~~(a) Test procedures must be those described in the 13th edition of "Standard Methods for the Examination of Water and Waste Water," published by the American Public Health Association. Those procedures are the standard coliform MPN tests (pp. 664-668), single step, or the enrichment standard total coliform membrane filter procedure (pp. 679-683).~~

(a) The standard sample volume required for total coliform analysis, regardless of analytical method used, is

100 ml.

(b) Public water system suppliers need only determine the presence or absence of total coliforms; a determination of total coliform density is not required.

(c) Public water system suppliers must conduct total coliform analyses in accordance with one of the following analytical methods:

(i) Multiple tube fermentation (MTF) technique, as set forth in "Standard Methods for the Examination of Water and Wastewater" (1989), American Public Health Association et al. (17th edition), except that 10 fermentation tubes must be used for the analysis;

(ii) Membrane filter (MF) technique, as set forth in "Standard Methods for the Examination of Water and Wastewater" (1989), American Public Health Association et al. (17th edition); or

(iii) Presence-absence (P-A) coliform test, as set forth in "Standard Methods for the Examination of Water and Wastewater" (1989), American Public Health Association et al. (17th edition);

(d) In lieu of the 10-tube MTF technique specified in subsection (c)(i), a public water system may use the MTF technique using either five tubes (20-ml sample portions) or a single culture bottle containing the culture medium for the MTF technique, i.e., lauryl tryptose broth (formulated as described in "Standard Methods for the Examination of Water and Wastewater" (1989), American Public Health Association et al. (17th edition), provided a 100 ml water sample is used in the analysis.

(e) Public water system suppliers must conduct fecal coliform analysis in accordance with the following procedure:

(i) When the MTF technique or presence-absence (P-A) coliform test is used to test for total coliforms, shake the lactose-positive presumptive tube or P-A bottle vigorously and transfer the growth with a sterile 3-mm loop or sterile applicator stick into brilliant green lactose bile broth and EC medium to determine the presence of total and fecal coliforms, respectively.

(ii) For EPA-approved analytical methods which use a membrane filter, remove the membrane containing the total coliform colonies from the substrate with a sterile forceps and carefully curl and insert the membrane into a tube of EC medium. (The laboratory may first remove a small portion of selected colonies for verification.) Gently shake the inoculated EC tubes to ensure adequate mixing and incubate the tubes in a waterbath at 44.5 ± 0.2°C for 24 ± 2 hours. Gas production of any amount in the inner fermentation tube of the EC medium indicates a positive fecal coliform test. The preparation of EC medium is described in "Standard Methods for the Examination of Water and Wastewater", American Public Health Association (17th edition). Public water systems need only determine the presence or absence of fecal coliforms; a determination of fecal coliform density is not required.

(f) Test procedures to determine heterotrophic plate

counts (HPC) must be conducted in accordance with the procedures outlined in the "Standard Methods for the Examination of Water and Wastewater" (17th edition), published by the American Public Health Association.

~~(b)~~(g) The membrane filter procedure is preferred because it permits analysis of large sample volumes in reduced analysis time. If used, the membranes shall show good colony development over the entire surface. The golden green metallic sheen colonies must be counted and recorded as the coliform density per 100 ml of water sample.

~~(c)~~(h) The following rules must be observed whenever any of the following problems with membrane filters exists and no evidence of coliform colony growth is visible:

(i) Whenever confluent growth -- growth ~~with or~~ without discrete sheen colonies covering the entire filtration area of the membrane occurs, results must be reported to the supplier as "confluent growth per 100 ml, ~~with or~~ without coliforms," and a new sample requested from it.

(ii) Whenever the total number of bacterial colonies on the membrane is too great (usually greater than 200 total colonies), not sufficiently distinct, or both, and an accurate count cannot be made, results must be reported to the supplier as "TNTC per 100 ml, ~~with or~~ without coliform," and a new sample requested from it.

(iii) Confluent growth and TNTC: A new sample must be requested from the supplier and the sample volumes filtered must be adjusted to apply the MF procedure; otherwise the ~~MPN~~ MTF procedure must be used.

(iv) Whenever heavy growth without gas production occurs using the MTF technique, all presumptive tubes must be submitted to the confirmed test to check for coliform suppression. Growth without gas production in the confirmatory media indicates test interference, which renders the sample invalid and requires a new sample from the public water supply system supplier.

~~(d)~~(i) If the laboratory has elected to use the ~~MPN~~ MTF test on water supplies that have a continued history of confluent growth or TNTC with the MF procedure, all presumptive tubes with heavy growth ~~without~~ and no gas production must be submitted to the confirmed ~~MPN~~ MTF test to check for ~~the~~ suppression of coliforms and perform heterotrophic plate counts. The count must be adjusted based upon confirmation and a new sample requested from the supplier. ~~This procedure must be carried out on one sample from each problem water supply once every three months.~~

(10) Sample bottles supplied to sample collectors must be of at least 120 ml capacity, sterile plastic or hard glass, wide-mouthed with stopper or plastic screw cap, and capable of withstanding repeated sterilization. Sodium thiosulfate (100 mg/l) must be added to all sample bottles during preparation. As an example, 0.1 ml of a 10 percent solution is required in a 4-oz. (120 ml) bottle. Sterile disposable 4-ounce containers containing sodium thiosulfate are acceptable.

(11) Remains the same.

(12) The laboratory must maintain the following quality control program:

(a) Remains the same.

(b) Minimum requirements for analytical quality control tests for general practices and methodology are:

(i) Each positive plate containing sheen or borderline sheen colonies must be verified, with the following exceptions:

(A) At least ~~5~~ 10 sheen or borderline sheen colonies must be verified from each membrane containing ~~5~~ 10 or more such colonies, but no more than ~~5~~ 10 need be verified per membrane.

(B) Remains the same.

~~(C) If the laboratory provides the department with one year's data showing positive presumptive plates and their verifications correlate at least 75 percent of the time, the laboratory may receive written approval from the department to verify at least 50 percent, rather than 100 percent, of all positive plates containing sheen or borderline sheen colonies.~~

(ii) Counts must be adjusted based on verifications. The verification procedure must be conducted by transferring growth from colonies into lauryl tryptose broth (LTB) tubes and then transferring growth from gas-positive LTB cultures to brilliant green lactose bile (BGLB) tubes. Colonies must not be transferred exclusively to BGLB because of the lower recovery of stressed coliforms in this more selective medium. However, colonies may be transferred to LTB and BGLB simultaneously. Negative LTB tubes must be reincubated a second day and confirmed if gas is produced. An optional verification procedure using the ONPG/CO test is acceptable.

(iii) A start and finish MF control test plus mid-run controls after no more than 10 samples (rinse water, medium, and supplies) must be conducted for each filtration series. If sterile controls indicate contamination, all data on samples affected must be rejected and a request made for immediate resampling of those waters involved in the laboratory error.

(iv) The ~~MPN~~ MTF test must be carried to completion, except for gram staining, on no less than 10 percent of positive confirmed samples. If no positive tubes result from potable water samples, the completed test except for gram staining must be performed ~~quarterly~~ monthly on at least one positive source water.

(v) Laboratory pure water must be analyzed annually by the test for bactericidal properties for distilled water contained in "Standard Methods of Examination of Water and Waste Water~~,~~" ~~13th~~ (17th Edition)~~, at page 646~~. Only satisfactorily tested water is permissible in preparing media, reagents, rinse, and dilution water. If the tests show the water does not meet the requirements of "Standard Methods", cited above, corrective action must be taken and the water retested.

(vi) Laboratory pure water must be analyzed monthly for conductance, pH, chlorine residual, and ~~standard~~ heterotrophic plate count, using the test for each specified in "Standard Methods~~,~~" ~~cited in (v) above, page 908~~. If a test shows the water does not meet the requirements of "Standard Methods" for

any of those elements, corrective action must be taken and the water retested.

(vii) Laboratory pure water must not be in contact with heavy metals. It must be analyzed initially and annually thereafter for trace metals (especially Pb, Cd, Cr, CU, NI, and Zn), using the test for metals set out in "Standard Methods," ~~cited in (v) above, page 143~~. If the test does not meet the requirements of "Standard Methods" ~~on page 143~~ for trace metals, corrective action must be taken and the water retested.

(viii) ~~Standard~~ Heterotrophic plate count procedures must be performed as described in "Standard Methods of Examination of Water and Waste Water" (17th edition) ~~cited in (v) above, on pages 660-662~~. Plates must be incubated at 35°± 0.5° C for 48 hours.

(ix) Requirements for laboratory pure water are as follows:

pH	5.5 - 7.5
Conductivity	Greater than ~~0.2~~ 0.5 megohm as resistivity or less than 2 micromhos/cm at 25° C.
Trace metals:	
a single metal	Not greater than 0.05 mg/l
total metals	Equal to or less than ~~1.0~~ 0 mg/l
Test for bactericidal properties of distilled water ["Standard Methods," cited in (v) above, ~~page 646~~]	0.8 - 3.0
Free chlorine residual	0.0
~~Standard~~ Heterotrophic plate count	Less than ~~10,000~~ 500/ml

(x) A culture of Bacillus stearothermophilus must be run ~~quarterly~~ monthly in the autoclave in order to ensure it is sterilizing properly.

(xi) A laboratory must analyze at least one set of quality control ~~sample~~ samples per year (when available) for each parameter measured.

(xii)-(xiv) Remain the same.

(xv) If there is more than one analyst in a laboratory, at least once per month each analyst must count the sheen colonies on a membrane from a polluted water source. Colonies on the membrane shall be verified and the analysts' counts compared to the verified count. Each analyst shall analyze a minimum of 25 samples per month. If a rotation of analysts is used, each analyst shall spend no less than 5 working days in the laboratory each month.

(c) Minimum requirements for quality control checks of laboratory media, equipment, and supplies are:

(i) The pH meter must be clean and calibrated each use period with pH 7.0 and pH 4.0 standard buffers. Buffer aliquot

must be used only once. Commercial buffer solutions must be dated on initial use.

(ii) The conductivity meter must be calibrated monthly and have a range of at least 2 ohms to 2 megohms or equivalent microhms.

~~(ii)~~(iii) A balance, top loader or pan, must be calibrated ~~annually~~ monthly.

~~(iii)~~(iv) A glass thermometer or continuous recording device for an incubator must be checked yearly and a metal thermometer quarterly against a certified thermometer or one of equivalent accuracy.

~~(iv)~~(v) The temperature in an air, or water jacketed incubator, water bath, or aluminum block incubator must be recorded continuously or recorded twice daily from an in-place thermometer immersed in liquid and placed on shelves in use.

~~(v)~~(vi) Date, time, and temperature must be recorded continuously or recorded for each sterilization cycle of the autoclave.

~~(vi)~~(vii) A hot oven must be equipped with a thermometer calibrated in the range of 170° C or with a temperature recording device. A record must be maintained showing date, time, and temperature of each sterilization cycle. It is desirable to place the temperature bulb in sand and to avoid overcrowding.

~~(vii)~~(viii) Any membrane filter used must be recommended by the manufacturer for water analysis. The recommendation must be based on data relating to ink toxicity, recovery, retention, and absence of growth-promoting substances.

~~(viii)~~(ix) The washing process must provide clean glassware with no stains or spotting. With initial use of a detergent or washing product and annually thereafter or whenever a different washing product is used, the rinsing process must demonstrate that it provides glassware free of toxic material by the inhibitory residue test set out ~~on page 643 of~~ in "Standard Methods," cited in subsection (12)(b)(v) above.

~~(ix)~~(x) At least one bottle per batch of sterilized sample bottles must be checked by adding approximately 25 ml of sterile ~~LTB broth~~ non-selective media to each bottle. It must be incubated at 35 ± 0.5° C for 24 hours and checked for growth.

(x)-(xv) Remain the same but are renumbered (xi)-(xvi).

AUTH: 75-6-103(2)(e), MCA; IMP: 75-6-106, MCA

16.38.111 RECORDS (1) Remains the same.

(2) Record-keeping requirements for laboratories performing microbiological analyses are as follows:

(a) All microbiological data must be kept for at least ~~3~~ 5 years, including records of analytical quality control tests and quality control checks on media, materials, and equipment.

(b) The laboratory shall complete a sample report form immediately after each sample is received. The information on the form shall include sample identification number, sample

collector's name, time and date of collection, time and date of arrival in the laboratory, ~~direct count, MF verified count, MPN completed count,~~ laboratory results, analysts' name, and other relevant special information.

(3) Remains the same.

AUTH: 75-6-103(2)(e), MCA; IMP: 75-6-106, MCA

16.38.112 REPORTS (1) All analyses of samples not meeting the requirements of Title 16, chapter 20, subchapter 2 of the Administrative Rules of Montana ~~shall~~ must be promptly, on that day or no later than noon of the next working day, reported by telephone to the Water Quality Bureau of the Department (phone: 444-2406).

(2) Reporting requirements for laboratories performing microbiological or chemical analyses of water from public water supplies are as follows:

(a) When a maximum contaminant level set out in Title 16, chapter 20, subchapter 2 of the Administrative Rules of Montana is found to be exceeded in any sample, the laboratory shall notify the water supplier within 24 hours of the analysis and request resampling ~~from the same sampling point~~ according to the requirements of Title 16, chapter 20, subchapter 2 of the Administrative Rules of Montana.

~~(3) Reporting requirements for laboratories performing microbiological analyses of water from public water supplies are as follows:~~

~~(a)~~(b) Written reports of contaminated microbiological samples must be sent to the department within 48 hours of the test.

~~(b)~~(c) Written reports of all microbiological samples other than those which are contaminated must be sent to the department within ~~40~~ 5 days after the tests are completed.

~~(c)~~(d) When a maximum contaminant level is found to be exceeded, the laboratory must notify the water supplier within 24 hours of the analysis and request resampling from the sampling point according to the requirements of Title 16, chapter 20, subchapter 2 of the Administrative Rules of Montana. If the membrane filter method shows contamination of the sample, the laboratory must notify the supplier immediately without waiting for MF verification. After MF verification, the adjusted counts must be reported to the supplier.

~~(4)~~(3) The department must retain copies of sample report forms submitted pursuant to subsection ~~(3)(a)~~ (2)(b) of this rule for at least ~~3~~ 5 years. If the results are entered into a computer storage system, a printout of the data must be returned to the laboratory submitting it for verification with bench sheets.

AUTH: 75-6-103(2)(e), MCA; IMP: 75-6-106, MCA

16.38.115 PROCEDURE FOR LICENSURE (1) Any laboratory desiring a license to perform analyses of public water supplies shall submit a written application on a form available from the Water Quality Bureau, Cogswell Building, Helena, Montana 59620 (phone: 444-2406). A laboratory may be licensed

to conduct analyses for one, several, or all of the parameters included in Title 16, chapter 20, subchapter 2 of the Administrative Rules of Montana. An application for a license must state the parameters for which the applicant wants to conduct analyses. The department may assess an annual fee to cover department expenses in licensure.

(2)-(4) Remain the same.

AUTH: 75-6-103(2)(e), MCA; IMP: 75-6-106, MCA

16.38.126 REVOCATION OF LICENSE (1) The department may revoke a license if it determines, after investigation, that the laboratory has failed to follow proper analytical procedures, released erroneous results, failed to report results of unsatisfactory samples or MCL violations to the department as required under ARM 16.38.112, acted unethically, or otherwise violated the provisions of this subchapter.

(2)-(3) Remain the same.

AUTH: 75-6-103(2)(e), MCA; IMP: 75-6-106, MCA

4. The Board is proposing these amendments to the rules in order to ensure approved laboratories in Montana will continue to be qualified to provide analysis of water samples for public water supplies.

5. Interested persons may submit their data, views, or arguments concerning the proposed amendments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Yoli Fitzsimmons, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620, no later than June 28, 1991.

6. David Simpson, Chairman of the Board of Health and Environmental Sicences has been designated to preside over and conduct the hearing.

DENNIS IVERSON, Director

Certified to the Secretary of State May 6, 1991.

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

In the matter of the amendment of rules 16.20.202 - 205, 16.20.207, 16.20.210-214, 16.20.216 - 217, 16.20.220, 16.20.224 - 225, 16.20.242, 16.20.250 - 252, the repeal of 16.20.227-228, & the proposed adoption of new Rules I-V relating to public water supplies	NOTICE OF PUBLIC HEARING FOR PROPOSED AMENDMENT OF RULES, ADOPTION OF NEW RULES I-V, AND THE REPEAL OF 16.20.227 AND 16.20.228 (Water Quality Bureau)

To: All Interested Persons

1. On June 28, 1991, at 10:00 a.m., the board will hold a public hearing in Room C209 of the Cogswell Building, 1400 Broadway, Helena, Montana, to consider the amendment of the above-captioned rules, adoption of new rules and repeal of 16.20.227 and 16.20.228.

2. The rules to be repealed are on pages 16-207 and 16-208 of the Administrative Rules of Montana.

3. The proposed amendments would establish detailed public water supply requirements for turbidity, volatile organic chemicals, and coliform. The rules also describe a public notification process to be used by public water suppliers if a system fails to comply with these requirements. The proposed rules are in response to requirements imposed by the 1986 amendments to the Federal Safe Drinking Water Act, which the department administers through a primacy agreement with the U.S. Environmental Protection Agency.

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

16.20.202 DEFINITIONS In this subchapter, the following terms have the meanings or interpretations indicated below and must be used in conjunction with and supplemental to those definitions contained in section 75-6-102, MCA.

(1) "Act" means Title 75, Chapter 6, Part 1, MCA.

(2) "Approved laboratory" means a laboratory licensed and approved by the department to analyze water samples to determine their compliance with maximum contaminant levels (MCLs).

(3) "Best available technology" or "BAT" means the best technology, treatment techniques or other means which the United States Environmental Protection Agency (EPA) finds, after examination for efficacy under field conditions and not solely under laboratory conditions, are available (taking cost into consideration). For the purposes of setting MCLs for synthetic organic chemicals, any BAT must be at least as effective as technology relying on granular activated carbon.

(4) "Coagulation" means a process using coagulant chemicals and mixing by which colloidal and suspended materials are destabilized and agglomerated into flocs.

(5) "Confluent growth" means a continuous bacterial growth covering either the entire filtration area of a membrane filter or a portion of a membrane filter in which bacterial colonies are not discrete.

(6) "Conventional filtration treatment" means a series of processes including coagulation, flocculation, sedimentation, and filtration that result in substantial particulate removal.

~~(3)~~(7) "Contaminant" means any physical, chemical, biological, or radiological substance or matter in water.

(8) "CT" or "CTcalc" means the residual disinfectant concentration (C) in milligrams per liter (mg/l) determined from a sample taken before or at the point of delivery to the first customer, times the corresponding disinfectant contact time (T) in minutes, i.e., "C"x"T". If a supplier applies disinfectants at more than one point prior to the public water supply system's first customer, the supplier must determine the CT of each disinfectant sequence before or at the first customer to determine the total percent inactivation or total inactivation ratio.

(9) "$CT_{99.9}$" means the CT value required for 99.9 percent (3-log) inactivation of Giardia lamblia cysts. $CT_{99.9}$ for a variety of disinfectants and conditions appear in Department Circular PWS-3, (June 1991 edition).

(10) "Diatomaceous earth filtration" means a process resulting in substantial particulate removal in which:

(a) a precoat cake of diatomaceous earth filter media is deposited on a support membrane (septum); and

(b) while the water is filtered by passing through the cake on the septum, additional filter media known as body feed is continuously added to the feed water to maintain the permeability of the filter cake.

(11) "Direct filtration" means a series of processes including coagulation and filtration but excluding sedimentation, that upon completion results in substantial particulate removal.

(12) "Disinfectant" means any oxidant, including but not limited to chlorine, chlorine dioxide, chloramines, and ozone added to water in any part of the treatment or distribution process, that is intended to kill or inactivate pathogenic microorganisms.

(13) "Disinfectant contact time" ("T" in CT calculations) means the time in minutes that it takes for water to move from the point of disinfectant application or the previous point of disinfectant residual measurement to a point before or at the point where residual disinfectant concentration ("C") is measured.

(a) If only one "C" is measured, "T" is the time in minutes that it takes for water to move from the point of disinfectant application to a point before or at the point where residual disinfectant concentration ("C") is measured.

Where more than one "C" is measured, "T" is:

(i) for the first measurement of "C", the time in minutes that it takes for water to move from the first or only point of disinfectant application to a point before or at the point where the first "C" is measured, and

(ii) for subsequent measurements of "C", the time in minutes that it takes for water to move from the previous "C" measurement point to the "C" measurement point for which the particular "T" is being calculated.

(b) Disinfectant contact time in pipelines is calculated as "plug flow" by dividing the internal volume of the pipe by the maximum hourly flow rate through that pipe.

(c) Disinfectant contact time within mixing basins and storage reservoirs is determined by tracer studies or an equivalent demonstration.

(14) "Disinfection" means a process that inactivates pathogenic organisms in water by chemical oxidants or equivalent agents.

(15) "Domestic or other non-distribution system plumbing problem" means a microbiological contamination problem in a public water supply system with more than one service connection that is limited to the specific service connection from which the contaminated sample was taken.

~~(4)~~(16) "Dose equivalent" means the product of the absorbed dose from ionizing radiation and such factors as account for differences in biological effectiveness due to the type of radiation and its distribution in the body as specified by the International Commission on Radiological Units and Measurements (ICRU).

~~(5)~~(17) "EPA" means the United States Environmental Protection Agency.

(18) "Filtration" means a process for removing particulate matter from water by passage through porous media.

(19) "Flocculation" means a process to enhance agglomeration or collection of smaller floc particles into larger, more easily settleable particles through gentle stirring by hydraulic or mechanical means.

~~(6)~~(20) "Gross alpha particle activity" means the total radioactivity due to alpha particle emission as inferred from measurements on a dry sample.

~~(7)~~(21) "Gross beta particle activity" means the total radioactivity due to beta particle emission as inferred from measurements on a dry sample.

(22) "Groundwater under the direct influence of surface water" means any water beneath the surface of the ground that the department determines to have:

(a) significant occurrences of insects or other microorganisms, algae, or large-diameter pathogens such as Giardia lamblia; or

(b) significant and relatively rapid shifts in water characteristics such as turbidity, temperature, conductivity, or pH in close correlation with climatological or surface water conditions.

(23) "Inactivation ratio" means the value derived when

CTcalc is divided by $CT_{99.9}$. The sum of the inactivation ratios, or "total inactivation ratio", is calculated by adding together the inactivation ratio for each disinfection sequence. A total inactivation ratio equal to or greater than 1.0 is assumed to provide a 3-log inactivation of Giardia lamblia cysts.

(24) "Legionella" means a genus of bacteria, some species of which have caused a type of pneumonia called Legionnaires Disease.

~~(8)~~(25) "Man-made beta particle and photon emitters" means all radionuclides emitting beta particles ~~and/~~or photons, or both, listed in Maximum Permissible Body Burdens and Maximum Permissible Concentration of Radionuclides in Air or Water for Occupational Exposure, NBS Handbook 69, except the daughter products of thorium-232, uranium-235, and uranium-238.

~~(9)~~(26) "Maximum contaminant level" or "MCL" means the maximum permissible level of a contaminant in water which is delivered to any user of a public water supply system.

(27) "Near the first service connection" means within the first 20 percent of all service connections in the public water supply system that are nearest the water supply treatment facility, as measured by water transport time within the distribution system.

~~(10)~~(28) "Person" means any individual, corporation, association, partnership, municipality, ~~other~~ or political subdivisions of the state or federal agency.

~~(11)~~(29) "Picocurie (pCi)" means that quantity of radioactive material producing 2.22 nuclear transformations per minute.

(30) "Point of disinfectant application" means the point where the disinfectant is applied such that water downstream of that point is not subject to recontamination by surface water runoff.

~~(12)~~(31) "Public water supply system" means a system for the provision of water for human consumption from any community well, water hauler for cisterns, water bottling plant, water dispenser, or other water supply that serves 10 or more families or 25 or more persons daily or has at least 10 service connections at least 60 days out of the calendar year.

(a) "Community water system" means any public water supply system which serves at least 10 service connections used by year-round residents or regularly serves at least 25 year-round residents.

(b) "Non-community water system" means any public water supply system which is not a community water system that serves either transient or non-transient populations.

(i) "Non-transient non-community water system" or "NTNCWS" means any non-community water system and that regularly serves the same persons over six months per year.

(ii) "Transient non-community water system" means any non-community water system that does not regularly serve the same persons over six months per year.

(32) "Point-of-entry treatment device" means a treatment

device applied to the drinking water that enters a house or building for the purpose of reducing contaminants in the drinking water provided throughout the house or building.

(33) "Point-of-use treatment device" means a treatment device applied to a single tap used for the purpose of reducing contaminants in drinking water at that one tap.

~~(13)~~(34) "Rem" means the unit of dose equivalent from ionizing radiation to the total body or any internal organ or organ system. A "millirem (mrem)" is 1,1000 of a rem.

(35) "Residual disinfectant concentration" ("C" in CT calculations) means the concentration of disinfectant measured in milligrams per liter (mg/l) in a representative sample of water.

~~(14)~~(36) "SDWA" means the Safe Drinking Water Act, as amended, 42 U.S.C. Section~~,~~ 300f~~, et seq.~~ -300j-11.

~~(15)~~(37) "Sanitary survey" means an on-site review of the water source, facilities, equipment, operation and maintenance of a public water supply system for the purpose of evaluating the adequacy for producing and distributing safe drinking water.

~~(16)~~(38) "Satisfactory bacteriological sample" means less than one coliform found per 100 ml sample or less than one portion positive for coliform organisms when 5 or more portions are examined.

(39) "Sedimentation" means a process for removal of solids before filtration by gravity or separation.

(40) "Slow sand filtration" means a process involving passage of raw water through a bed of sand at low velocity (generally less than 0.4 meters per hour) resulting in substantial particulate removal by physical and biological mechanisms.

~~(17)~~(41) "Standard sample" means the 100 milliliter (ml) aliquot of ~~finished drinking~~ water that is examined for the presence of coliform bacteria regardless of the analytical method used.

~~(18)~~(42) "Supplier of water" or "supplier" means any person who owns or operates a public water supply system.

(43) "Surface water" means all water that is open to the atmosphere and subject to surface runoff.

(44) "System with a single service connection" means a system which supplies drinking water to consumers by a single service line.

(45) "Too numerous to count" (TNTC) means that the total number of bacterial colonies exceeds 200 on a 47-millimeter (mm) diameter membrane filter used for coliform detection.

~~(19)~~(46) "Trihalomethane (THM)" means one of the family of organic compounds, named as derivatives of methane, wherein 3 of the 4 hydrogen atoms in methane are each substituted by a halogen atom in the molecular structure.

~~(20)~~(47) "Total trihalomethanes (TTHM)" means the sum of the concentration in milligrams per liter of the trihalomethane compounds (chloroform, dibromochloromethane, bromodichloromethane and tribromomethane), rounded to 2 significant figures.

(48) "Virus" means a virus of fecal origin that is infectious to humans by waterborne transmission.

(49) "Waterborne disease outbreak" means the significant occurrence of acute infectious illness that is epidemiologically associated with the ingestion of water from a public water supply system, as determined by the department or appropriate local, state or federal agency.

AUTH: 75-6-103 MCA; IMP: 75-6-103 MCA

16.20.203 MAXIMUM INORGANIC CHEMICAL CONTAMINANT LEVELS

(1) ~~No~~ A community water system may not exceed the following maximum inorganic chemical contaminant levels:

	Constituent	Level, milligrams per liter
(a)-(i)	Remain the same.	
(j)	Fluoride	~~2.4~~ 4.0

(2) Remains the same.

AUTH: 75-6-103 MCA; IMP: 75-6-103 MCA

16.20.204 MAXIMUM ORGANIC CHEMICAL CONTAMINANT LEVELS

(1) ~~No~~ A community water system may not exceed the following maximum organic chemical contaminant levels:

	Constituent	Level, milligrams per liter
~~(1) Chlorinated hydrocarbons which include:~~		
(a)-(d)	Remain the same.	
~~(2) Chlorophenoxys which include:~~		
~~(a)~~(e)	2,4-D (2,4-Dichlorophenoxyacetic acid)	0.1
~~(b)~~(f)	2,4,5-TP Silves (2,4,5-Trichlorophenoxy-propionic acid)	0.01
~~(3) Total trihalomethanes~~		~~0.10~~

(2) A community water system that uses unfiltered surface water or unfiltered groundwater under the direct influence of surface water as a source, or that serves a population of 10,000 or more individuals and adds a disinfectant to the water may not exceed the maximum contaminant level for total trihalomethanes of 0.10 mg/l.

(3) A community or non-transient non-community water system may not exceed the following volatile organic chemical (VOC) maximum contaminant levels:

	Constituent	Level, milligrams per liter
(a)	trichloroethylene (TCE)	0.005
(b)	carbon tetrachloride	0.005
(c)	vinyl chloride	0.002
(d)	1,2, dichloroethane	0.005
(e)	benzene	0.005
(f)	para-dichlorobenzene	0.075
(g)	1,1-dichloroethylene	0.007
(h)	1,1,1 trichloroethane	0.20

AUTH: 75-6-103, MCA; IMP: 75-6-103, MCA

16.20.205 MAXIMUM TURBIDITY CONTAMINANT LEVELS

(1)(a) This subsection (1) is in effect until:

(i) December 30, 1991, for public water supply systems that use unfiltered surface water or unfiltered groundwater under the direct influence of surface water, except that the department may apply the requirements of subsection (2) of this section to a public water supply system if it determines that the system requires filtration;

(ii) June 29, 1993, for public water supply systems that use filtered surface water or filtered groundwater under the direct influence of surface water; and

(iii) either June 29, 1993, or until filtration is installed, whichever is later, for public water supply systems that use unfiltered surface water or unfiltered groundwater under the direct influence of surface water and which the department has determined must install filtration.

(b) ~~No~~ A public water supply system ~~which~~ that uses surface water in whole or in part may not exceed the following maximum contaminant levels for turbidity at a representative entry point to the distribution system:

~~(1)~~(i) One turbidity unit (TU), as determined by a monthly average, except that a level not exceeding 5 turbidity units may be allowed if the supplier of water can demonstrate to the department that the higher turbidity does not do any of the following:

~~(a)~~(A) interfere with disinfection;

~~(b)~~(B) prevent maintenance of an effective disinfectant agent throughout the distribution system; or

~~(c)~~(C) interfere with microbiological determinations.

~~(2)~~(ii) Five turbidity units based on an average for 2 consecutive days.

~~(3)~~(iii) If results of turbidity analyses indicate the maximum contaminant level has been exceeded, a second sample must be taken within one hour. The repeat sample, and not the initial one, must be used in calculating the monthly average.

(2) This subsection applies to public water supply systems using surface water or groundwater under the direct influence of surface water after the dates provided in subsection (1) of this rule.

(a) For public water supply systems using conventional filtration treatment or direct filtration:

(i) The turbidity level of representative samples of the system's filtered water, measured at a representative entry point to the distribution system must be less than or equal to 0.5 nephelometric turbidity unit (NTU) in at least 95 percent of the measurements taken each month, and at no time exceed 1.0 NTU.

(ii) The turbidity level of representative samples of a system's effluent from individual filters, measured at a point prior to mixing with effluent from other filters or other sources, must be less than or equal to 0.5 NTU in at least 95 percent of the measurements taken each month.

(b) For systems using slow sand filtration:

(i) The turbidity level of representative samples of a system's filtered water, measured at a representative entry point to the distribution system, must be less than or equal

to 1.0 NTU in at least 95 percent of the measurements taken each month. However, if the system demonstrates to the department that there is no significant interference with disinfection or microbiological determinations at a higher turbidity level, the department may substitute a higher turbidity limit for that system.

(ii) The turbidity level of representative samples of a system's filtered water may not at any time exceed 5.0 NTU.

(c) For systems using diatomaceous earth filtration:

(i) The turbidity level of representative samples of a system's filtered water, measured at a representative entry point to the distribution system must be less than or equal to 1.0 NTU in at least 95 percent of the measurements taken each month, and at no time exceed 5.0 NTU.

(ii) The turbidity level of representative samples of a system's individual filter effluent, measured at a point prior to mixing with effluent from other filters or other sources, must be less than or equal to 1.0 NTU in at least 95 percent of the measurements taken each month.

(d) For systems using other filtration technologies, a public water supply system may use a filtration technology not listed in subsections (2)(a)-(2)(c) of this rule if the supplier demonstrates to the satisfaction of the department, using pilot plant studies or other means approved by the department, that the alternative filtration technology, in combination with disinfection treatment, meets the requirements of RULE I(4)(c). For a system that makes this demonstration, the requirements of subsection (2)(b) of this rule apply.

(e) For purposes of this subsection (2), an "event" means a series of consecutive days during which at least one turbidity measurement each day exceeds 5.0 NTU. A public water supply system that uses surface water or groundwater under the direct influence of surface water in whole or in part and that does not filter the water may not exceed 5.0 NTU in representative samples of the source water immediately prior to the first or only point of disinfectant application unless:

(i) the department determines that the event was caused by circumstances that were unusual and unpredictable, and

(ii) no more than two events have occurred in the past 12 months in which the system has served water to the public and no more than five events have occurred in the past 120 months the system has served water to the public.

(3) A supplier must determine compliance with the MCL for turbidity in subsections (1) and (2) of this rule for each month in which the supplier is required to monitor for turbidity.

AUTH: 75-6-103, MCA; IMP: 75-6-103 MCA

16.20.207 MAXIMUM MICROBIOLOGICAL CONTAMINANT LEVELS

(1) ~~No~~ A public water supply system may not exceed the following maximum microbiological contaminant levels:

~~(1) When the membrane filter technique is used:~~

~~(a) 4 per 100 ml in more than one sample when less than 20 samples are examined per month; or~~

~~(b) 4 per 100 ml in more than 5% of the samples when 20 or more samples are examined per month;~~

~~(c) 1 per 100 ml as the arithmetic mean of all validated samples examined per month.~~

~~(2) When the 10 ml fermentation tube method is used, coliform bacteria may not be present in any of the following:~~

~~(a) More than 10% of the portions in any month;~~

~~(b) 3 or more portions in more than one sample when less than 20 samples are examined per month;~~

~~(c) 3 or more portions in more than 5% of the samples when 20 or more samples are examined per month.~~

~~(3) When coliform bacteria are found, daily samples from the same sampling point must be collected until the results obtained from at least 2 consecutive samples are shown to be satisfactory bacteriological samples.~~

(a) For monthly and annual MCL's for microbiological contaminants:

(i) a system which collects at least 40 samples per month may have no more than 5 percent of the samples collected during a month analyzed as total coliform-positive;

(ii) a system which collects fewer than 40 samples/month may have no more than one sample collected during a month analyzed as total coliform-positive;

(iii) a system may have no more than 10 percent of the samples collected within any consecutive 12-month period analyzed as total coliform-positive;

(iv) a system may have no more than 20 percent of the samples collected within any 12 month period either analyzed as total coliform-positive or invalidated by the laboratory because of heavy bacterial growth, confluent growth, TNTC noncoliform, or heterotrophic plate counts greater than 500 colony forming units per milliliter (cfu/ml).

(b) In addition to the requirements of subsection (1)(a), a fecal coliform-positive repeat sample or E. coli-positive repeat sample, or any total coliform-positive repeat sample following a fecal coliform-positive or E. coli-positive routine sample is prohibited. (For purposes of the public notification requirements in Department Circular 90-20, (June 1991 edition), this is a violation that may pose an acute risk to health.)

(2) The supplier of a public water supply system must determine compliance with the MCL for microbiological contaminants stated in subsections (1)(a) and (1)(b) of this section for each month in which it is required to monitor for total coliforms.

(3) Failure to submit the required number of repeat samples for the public water supply system is a violation of the coliform MCL set forth in subsection (1)(a), and subjects the system to the required public notification as described in Department Circular PWS-2 (June 1991 edition), and additional routine sampling specified in ARM 16.20.210.

(4) The following are the best technology, treatment techniques, or other means available for achieving compliance with the maximum contaminant level for microbiological contaminants in subsection (1) of this section:

(a) placement and construction of wells in a manner that protects the public water supply system from contamination by coliforms;

(b) maintenance of a disinfectant residual throughout the distribution system;

(c) proper maintenance of the distribution system including appropriate pipe replacement and repair procedures, main flushing programs, proper operation and maintenance of storage tanks and reservoirs, and continual maintenance of positive water pressure in all parts of the distribution system;

(d) disinfection or filtration and disinfection of surface water, or disinfection of groundwater using strong oxidants such as chlorine, chlorine dioxide, or ozone; and

(e) for systems using groundwater, the development and implementation of a department-approved Wellhead Protection Program under section 1428 of the federal Safe Drinking Water Act, as amended.

AUTH: 75-6-103, MCA; IMP: 75-6-103, MCA

16.20.210 BACTERIOLOGICAL QUALITY SAMPLES ~~(1) The minimum number of samples to be collected from a public water supply system and submitted for examination must be in accordance with the following table:~~

(1)(a) The minimum monitoring frequency for total coliforms for community and non-transient non-community public water supply systems is based on the average daily population served by the system during the month of peak use, and must be in accordance with the following table:

TOTAL COLIFORM MONITORING FREQUENCY
FOR PUBLIC WATER SUPPLY SYSTEMS

Population served:	Minimum number of samples per month
1 to 1,000	1
1,001 to 2,500	2
2,501 to 3,300	3
3,301 to 4,100	4
4,101 to 4,900	5
4,901 to 5,800	6
5,801 to 6,700	7
6,701 to 7,600	8
7,601 to 8,500	9
8,501 to ~~9,400~~ 12,900	10
~~9,401 to 10,300~~	~~11~~
~~10,301 to 11,100~~	~~12~~
~~11,101 to 12,000~~	~~13~~
~~12,001 to 12,900~~	~~14~~
12,901 to ~~13,700~~ 17,200	15
~~13,701 to 14,600~~	~~16~~
~~14,601 to 15,500~~	~~17~~
~~15,501 to 16,300~~	~~18~~
~~16,301 to 17,200~~	~~19~~
17,201 to ~~18,100~~ 21,500	20
~~18,101 to 18,900~~	~~21~~
~~18,901 to 19,800~~	~~22~~

~~19,801 to 20,700~~	~~23~~
~~20,701 to 21,500~~	~~24~~
21,501 to ~~22,300~~ 25,000	25
~~22,301 to 23,200~~	~~26~~
~~23,201 to 24,000~~	~~27~~
~~24,001 to 24,900~~	~~28~~
~~24,901 to 25,000~~	~~29~~
25,001 to ~~28,000~~ 33,000	30
~~28,001 to 33,000~~	~~35~~
33,001 to ~~37,000~~ 41,000	40
~~37,001 to 41,000~~	~~45~~
41,001 to ~~46,000~~ 50,000	50
~~46,001 to 50,000~~	~~55~~
50,001 to ~~54,000~~ 59,000	60
~~54,001 to 59,000~~	~~65~~
59,001 to ~~64,000~~ 70,000	70
~~64,001 to 70,000~~	~~75~~
70,001 to ~~76,000~~ 83,000	80
~~76,001 to 83,000~~	~~85~~
83,001 to ~~90,000~~ 96,000	90
~~90,001 to 96,000~~	~~95~~
96,001 to ~~111,000~~ 130,000	100

~~(2) Based on a history of no coliform bacterial contamination and on a sanitary survey by the department showing the water system to be supplied solely by a protected groundwater source and free of sanitary defects, a community water system serving 1 to 500 persons, with written permission from the department, may reduce the sampling frequency required in section (1) of this rule except that in no case may the sampling frequency be reduced to less than one sample per quarter.~~

~~(3)~~(b) The supplier of water for a transient non-community water system that:

(i) uses only groundwater (except groundwater under the direct influence of surface water) and serves a maximum daily population of 1000 persons or fewer shall sample for coliform bacteria in each calendar quarter during which the system provides water to the public; ~~except that, on the basis of sanitary surveys or sampling, the department may either increase of decrease the required sampling frequency as deemed appropriate~~ except that beginning October 1, 1993, these suppliers must sample according to the table in subsection (1)(a) of this rule.

(ii) uses only groundwater (except groundwater under the direct influence of surface water) and serves a maximum daily population of over 1000 persons must sample according to the table in subsection (1)(a) of this rule.

(iii) uses surface water or groundwater under the direct influence of surface water must sample according to the table in subsection (1)(a) of this rule.

(c) The department may increase the required sampling frequency based upon sampling results or other conditions that indicate a risk to the health of the water users.

(2) Each supplier of a public water supply system must

collect routine samples at regular time intervals throughout the month, except that a system which uses only groundwater (except groundwater under the direct influence of surface water) and serves a maximum daily population of 4,900 persons or fewer, may collect all required routine samples on a single day if the samples are taken from different sites.

(3) A supplier of a public water supply system that uses surface water or groundwater under the direct influence of surface water and does not practice filtration in compliance with department rules must collect at least one sample near the first service connection each day the turbidity level of the source water exceeds 1.0 NTU and have the sample analyzed for the presence of total coliforms. When one or more turbidity measurements in any day exceed 1.0 NTU, the supplier must collect this coliform sample within 24 hours of the first exceedance, unless the department determines that the system for logistical reasons outside the supplier's control cannot have the sample analyzed within 30 hours of collection. These sample results must be included in determining compliance with the MCL for microbiological contaminants under ARM 16.20.207.

(4) Special purpose samples, including those taken to determine whether adequate disinfection has occurred after pipe placement or repair, may not be used to determine compliance with ARM 16.20.207. Repeat samples taken pursuant to subsection (5) of this rule are not special purpose samples.

(5) If a routine sample is total coliform-positive:

(a) the supplier of the public water supply system must begin submitting a set of repeat samples within 24 hours after notification of the positive result. A supplier that collects more than one routine sample per month must collect no fewer than three repeat samples for each total coliform-positive sample. A supplier who normally collects one routine sample per month or less must collect no fewer than four repeat samples for each total coliform-positive sample found. The department may extend the 24-hour limit for a specified time period if the supplier has a logistical problem in collecting the repeat samples that is beyond his control.

(b) The supplier must collect at least one repeat sample from the tap where the original total coliform-positive sample was taken, at least one repeat sample at a tap within five service connections upstream of the original sampling site, and at least one repeat sample at a tap within five service connections downstream of the original sampling site. If a total coliform-positive sample is at the end of the distribution system, or one service connection from the end of the distribution system, the department may waive the requirement to collect at least one repeat sample upstream or downstream of the original sampling site.

(c)(i) A supplier of a public water supply system with more than one service connection must collect all repeat samples on the same day.

(ii) A supplier of a public water supply system with a single service connection must collect the required set of repeat samples on each of four consecutive days, or on each of

three consecutive days if the system collects more than one routine sample per month, unless the department extends the time period as provided in subsection (5)(a) of this rule.

(d) If one or more repeat samples in the set is total coliform-positive, the supplier must collect an additional set of repeat samples in the manner specified in subsections (5)(a)-(5)(c) of this rule. Collection of the additional samples must begin within 24 hours of receipt of notice of the positive result, unless the department extends the limit as provided in paragraph (5)(a) of this rule. The supplier must repeat this process until either total coliforms are not detected in one complete set of repeat samples or the supplier determines that the microbiological contaminant MCL specified in ARM 16.20.207 has been exceeded and notifies the department.

(e) If a supplier who collects fewer than five routine samples per month has one or more total coliform-positive samples and the department does not invalidate the sample or samples under subsection (6) of this rule, he must collect at least five routine samples during the next month the system provides water to the public. At least one of these routine samples must be collected from the site where the previous month's contaminated sample was taken.

(f) All routine and repeat sample results not invalidated by the department must be included in determining compliance with the microbiological contaminant MCLs specified in ARM 16.20.207. Repeat samples may be included in determining compliance with the minimum number of samples per month required under subsection (1)(a) of this rule.

(6) A total coliform-positive sample that is invalidated according to this subsection may not be used to meet the minimum monitoring requirements of this subsection.

(a) The department may invalidate a total coliform-positive sample only if:

(i) the laboratory establishes that improper sample analysis caused the total coliform-positive result;

(ii) the department, based on results of the repeat samples, determines that the total coliform-positive sample resulted from a domestic or other non-distribution system plumbing problem. The department may not invalidate a sample on the basis of repeat sample results unless all repeat samples collected at the same tap as the original total coliform-positive sample are also total coliform-positive, and all repeat samples collected from within five service connections of the original tap are total coliform-negative (e.g., the department may not invalidate a total coliform-positive sample based on repeat samples if the repeat samples are all total coliform-negative, or if the public water supply system has only one service connection);

(iii) the department has substantial grounds to believe that a total coliform-positive result is caused by a circumstance or condition that does not reflect water quality in the distribution system. In this case, the supplier must collect all repeat samples required under subsection (5) of this rule,

and the department must use the repeat sample analysis to determine compliance with the MCL specified in ARM 16.20.207. The department's decision to invalidate a total coliform-positive sample must be documented in writing with the rationale for the decision stated, and approved by the supervisor of the department official who recommended the decision. The department must make this document available to the EPA and the public. The written document must also state the specific cause of the total coliform-positive sample and what action the system has taken or will take to correct the problem.

(b) The department may not invalidate a sample based on repeat samples if the repeat samples are all total coliform-negative or if improper sample collection procedures were used.

(c) A laboratory must invalidate a sample unless total coliforms are detected, if the sample:

(i) produces a turbid culture in the absence of gas production using an analytical method where gas formation is examined (e.g., the multiple-tube fermentation technique);

(ii) produces a turbid culture in the absence of an acid reaction in the presence-absence (P-A) coliform test; or

(iii) exhibits confluent growth or produces colonies too numerous to count using an analytical method with a membrane filter (e.g., membrane filter technique);

(iv) if the interference described in subsection (c) occurs, the supplier must collect another sample from the same location as the original sample within 24 hours after notification by the laboratory and have it analyzed for the presence of microbiological contaminants. The system supplier must continue to re-sample every 24 hours and have the samples analyzed until the system shows a valid result. The department may waive the 24-hour time limit on a case-by-case basis.

(7) If any routine or repeat sample is total coliform-positive, the supplier must analyze that total coliform-positive culture medium to determine if fecal coliforms are present, except that the system may test for E. coli in lieu of fecal coliforms. If fecal coliforms or E. coli are present, the supplier must notify the department on the same day when the system is notified of the test result, unless the system is notified of the result after the department office is closed, in which case the supplier must notify the department before the end of the next business day.

AUTH: 75-6-103, MCA; IMP: 75-6-103, MCA

16.20.211 CHEMICAL AND RADIOLOGICAL QUALITY SAMPLES

(1) Water as served to consumers, which may be a mixture from several sources, must be analyzed for inorganic chemicals every 3 years for community groundwater supplies and annually for community surface water supplies. The scope of the analysis for a community water system must include all constituents indicated in ARM 16.20.203 and in the following list:

(a) Alkalinity Total
(b) Calcium
(c) pH value
(d) Sodium

(e) Iron
(f) Manganese
(g) Hardness
(h) Potassium
(i) Sulphate
(j) Chloride
(k) Total Dissolved Solids

(2)(a) A community water system utilizing surface water must be sampled every 3 years for the organic chemicals listed in ARM 16.20.204(1) ~~and (2)~~. Surface water samples for the organic chemicals listed in ARM 16.20.204(1) must be collected during that portion of the year when pesticides or herbicides are commonly in use in the area.

(b) Community and non-transient non-community systems must be monitored for volatile organic chemicals listed in ARM 16.20.204(3) and certain unregulated organic chemicals as specified in Department Circular PWS-1 (June 1991 edition).

~~(3)~~(c) A community water system which either uses unfiltered surface water or unfiltered groundwater under the direct influence of surface water or serves a population of 10,000 or more individuals ~~and which adds a disinfectant to the water~~ must ~~be~~ monitored ~~for~~ for total trihalomethanes if the system adds a disinfectant to the water supply. ~~This monitoring must begin by November 29, 1982.~~

~~(a)~~(i) The analysis for total trihalomethanes must be performed at quarterly intervals on at least 4 samples for each treatment plant used by the system. At least 25% of the samples must be taken at locations reflecting the maximum residence time of the water in the distribution system. The remaining samples must be taken at representative locations taking into account the number of persons served, the different sources of water and the treatment methods employed. The results of all analyses must be arithmetically averaged to determine compliance with the maximum contaminant level with the exception of those results which are invalidated for technical reasons by the department.

~~(b)~~(ii) The monitoring frequency may be reduced by the department to a minimum of one sample per quarter taken at a point in the distribution system reflecting the maximum residence time of the water in the system. This reduction in monitoring may be granted only if the data from at least one year of monitoring demonstrates that total trihalomethane concentrations will be consistently below the maximum contaminant level.

~~(4)~~(3) Water as served to the consumer from community water systems must be analyzed initially by June 24, 1980, and every 4 years thereafter for radiological content by analyzing 4 consecutive quarterly samples or a composite of 4 consecutive quarterly samples for gross alpha and radium-226 and radium-228.

(a)-(c) Remain the same.

~~(5)~~(4) Analysis for man-made beta and photon emitters must be required for community systems using surface water sources and serving more than 100,000 persons and such other water systems as required by the department.

~~(6)~~(5) A test for nitrates must be made initially for all transient non-community and all non-transient non-community water supplies by June 24, 1979, and must be repeated at least once every 5 years. More frequent testing may be required for those supplies where the nitrate content approaches or exceeds the maximum contaminant level.

~~(7)~~(6) A public water supply system which exclusively purchases water from another public water supply system is considered an extension of the original public water supply system and is not required to perform chemical or radiological analyses to determine compliance with maximum contaminant levels unless specifically required by the department due to known or potential problems.

~~(8)~~(7) Every new source of supply, both surface and ground, added to a community water supply must be analyzed for chemical and radiological content. All new sources of water supply for transient non-community and non-transient non-community water must be analyzed for nitrates.

~~(9) Department personnel, where their programs allow, may assist in the collection, submission, and analysis of the samples.~~

AUTH: 75-6-103, MCA; IMP: 75-6-103, MCA

16.20.212 SAMPLING AND REPORTING RESPONSIBILITY (1) The supplier of water is responsible for the proper collection and submission of samples for microbiological, inorganic, organic, and radiological analysis to a licensed laboratory, or to the state laboratory at the times designated by the department. Department personnel, where their programs allow, may assist in the collection, submission and analysis of the samples.

(2) ~~Where less than 4 bacteriological samples are taken monthly, the sampling points shall be rotated so as to cover all of the system every 3 months except where only a quarterly sample is required.~~ Suppliers of public water supply systems must collect total coliform samples at sites which are representative of water throughout the distribution system according to a written sample siting plan. These plans must be submitted to the department and are subject to department review and revision.

(3) A supplier of a public water supply system that has exceeded the microbiological contaminant MCLs specified in ARM 16.20.207 must report the violation to the department no later than the end of the next business day after it learns of the violation, and notify the public in accordance with Department Circular PWS-2 (June 1991 edition).

(4) A supplier of a public water supply system that has failed to comply with a total coliform monitoring requirement, including the sanitary survey requirement stated in RULE II, must report the monitoring violation to the department within ten days after the system supplier discovers the violation, and notify the public in accordance with Department Circular PWS-2 (June 1991 edition).

(5) A supplier of a community water system must notify

the public as specified in Department Circular PWS-2 (June 1991 edition) when the fluoride level exceeds 2.0 milligrams per liter (mg/l).

(6) A supplier of a public water supply system, upon discovering that a waterborne disease outbreak potentially attributable to that water system has occurred, shall report that occurrence to the department as soon as possible, but no later than by the end of the next business day.

(7)(a) For any of the systems listed below, the system supplier upon learning of a turbidity measurement for water entering the distribution system that exceeds 5.0 NTU shall inform the department of the exceedance as soon as possible and no later than the end of the next business day:

(i) a system that uses unfiltered surface water;

(ii) a system that uses unfiltered groundwater under the direct influence of surface water; or

(iii) a system employing slow sand filtration, diatomaceous earth filtration, or other approved filtration technology.

(b) A system supplier employing conventional filtration treatment or direct filtration upon learning of a turbidity measurement for water entering the distribution system that exceeds 1.0 NTU shall notify the department as soon as possible and no later than the end of the next business day.

(8) If the disinfectant residual falls below 0.2 mg/l in the water entering the distribution system, in a surface water or groundwater supply under the direct influence of surface water, the system supplier must notify the department as soon as possible, but no later than by the end of the next business day. The supplier of water must also notify the department by the end of the next business day as to whether the residual was restored to at least 0.2 mg/l within 4 hours after discovery that the 0.2 mg/l standard was not being met.

(9) Unless a shorter period is specified by the department, the supplier shall report to the department the results of any test measurement or analysis required by these rules within the following time periods:

(a) the first ten days following the month in which the result is received by the supplier; or

(b) the first ten days following the end of the required monitoring period as stipulated by the department.

(10) Unless a different reporting period is specified in these rules, the supplier of water must report to the department within 48 hours any failure to comply with any drinking water regulation (including failure to comply with monitoring requirements) set forth in these rules.

(11) The supplier of water is not required to report analytical results to the department in cases where the department's laboratory performs the analysis and reports the results to the department office which would normally receive such notification from the supplier.

(12) A supplier of water, within ten days of completion of each public notification required pursuant to these rules and Department Circular PWS-2 (June 1991 edition), shall submit

to the department a representative copy of each type of notice distributed, published, posted, or made available to the persons served by the system or to the media.

(13) Upon request by the department, a supplier of water shall timely submit to the department copies of any records required to be maintained by these rules.

AUTH: 75-6-103, MCA; IMP: 75-6-103, MCA

16.20.213 VERIFICATION SAMPLES (1) When the results of an inorganic chemical analysis indicates that the level of any constituent, except nitrate, exceeds the maximum contaminant level, verification samples are required. At least 3 verification samples must be collected within one month of the time the supplier of water receives notification that the first sample exceeded the maximum contaminant level. The arithmetic mean of the 4 samples determines if the maximum contaminant level is exceeded.

(2) When the maximum contaminant level for nitrate is exceeded, an additional sample will be collected within 24 hours of notification. The mean of the 2 samples will determine if the maximum contaminant level is exceeded.

(3) The department may require verification samples for positive or negative results of organic chemical analyses in accordance with Department Circular PWS-1 (June 1991 edition).

AUTH: 75-6-103, MCA; IMP: 75-6-103, MCA

16.20.214 SPECIAL SAMPLES (1) Under special conditions, additional samples may be required from time to time by the department. Such samples may be to determine adequacy of disinfection following line installation, replacement, or repair. Samples may also be required for determination of adequacy of source, storage, treatment or distribution of water to the public. ~~These special samples may not be used to determine compliance with bacteriological requirements.~~ The department may use these samples to determine compliance with the microbiological contaminant MCLs specified in ARM 16.20.207.

AUTH: 75-6-103, MCA; IMP: 75-6-103, MCA

16.20.216 CONTROL TESTS -- GENERAL (1) A control test permits the ~~operator~~ supplier of the system to judge variations in water quality, to identify objectionable water characteristics, and to detect the presence of foreign substances which may adversely affect the potability of the water. A control test must be performed, recorded and reported in accordance with procedures approved by the department.

(2) A minimum of 2 chlorine residual tests must be made daily for a public water supply system employing full time chlorination of a groundwater source, one at the point of application and one in the distribution system. The frequency of chlorine residual monitoring may be reduced by the department for non-community water systems on a case-by-case basis.

(3) A test for chlorine residual in the distribution

system must be made at selected points consistent with the microbiological sample siting plan specified in ARM 16.20.212(2) and changed regularly so as to cover the system completely at least each week.

(4) Only the analytical methods specified in this subsection, or otherwise approved by the department, may be used to demonstrate compliance with the requirements of these rules:

(a) Turbidity - Method 214A (Nephelometric Method - Nephelometric Turbidity Units), pages 134-136, as set forth in Standard Methods for the Examination of Water and Wastewater, 1985, American Public Health Association et al. (16th edition). Secondary turbidity standards may be used for daily calibration of turbidimeters if those standards are calibrated against an EPA-approved primary standard on no less than a quarterly basis. Documentation of the date, analyst performing the procedure, procedures used and results of the quarterly calibration checks must be maintained by the water system and reported to the department within 10 days following the end of the month during which this procedure took place.

(b) Residual disinfectant concentration - Residual disinfectant concentrations for free chlorine and combined chlorine (chloramines) must be measured by Method 408C (Amperometric Titration Method), pages 303-306, Method 408D (DPD Ferrous Titrimetric Method), pages 306-309, Method 408E (DPD Colorimetric Method), pages 309-310, or Method 408F (Leuco Crystal Violet Method), pages 310-313, as set forth in Standard Methods for the Examination of Water and Wastewater (1985), American Public Health Association et al. (16th edition). Residual disinfectant concentrations for free chlorine and combined chlorine may also be measured by using DPD colorimetric test kits if approved by the department. Residual disinfectant concentrations for ozone must be measured by the indigo method as set forth in Bader, H., Hoigne, J., "Determination of Ozone in Water by the Indigo Method; A Submitted Standard Method"; Ozone Science and Engineering, Vol. 4, pages 169-176, Pergamon Press Ltd. (1982), or automated methods which are calibrated in reference to the results obtained by the indigo method on a regular basis, if approved by the department. (Note: This method will be published in the 17th edition of Standard Methods for the Examination of Water and Wastewater, American Public Health Association et al.; the iodometric method in the 16th edition may not be used.) Residual disinfectant concentrations for chlorine dioxide must be measured by Method 410B (amperometric method) or Method 410C (DPD Method), pages 323-324, as set forth in Standard Methods for the Examination of Water and Wastewater (1985), American Public Health Association et al. (16th edition.)

(c) Temperature - Method 212 (Temperature), pages 126-127, as set forth in Standard Methods for the Examination of Water and Wastewater (1985), American Public Health Association et al. (16th edition).

(d) pH - Method 423 (pH Value), pages 429-437, as set forth in Standard Methods for the Examination of Water and Wastewater (1985), American Public Health Association (16th

edition.)

(5) Measurements for pH, temperature, turbidity, and residual disinfectant concentrations for a community water supply must be conducted by a party certified under the provisions of Title 37, chapter 42, MCA. Samples for total coliform analysis for a community water system must be collected by a party certified under the provisions of Title 37, Chapter 42, MCA. Measurements for total coliforms, fecal coliforms, and HPC must be conducted by an approved laboratory.

AUTH: 75-6-103, MCA; IMP: 75-6-103, MCA

16.20.217 CONTROL TESTS -- SURFACE SUPPLIES (1) A supplier of water utilizing a water treatment plant for surface water or groundwater under the direct influence of surface water where the plant employs in its operation coagulation, settling, softening, or filtration, shall perform at least daily, unless otherwise specified, the following chemical control tests on the filtered water, list them on a report form approved by the department, and submit the completed form monthly to the department:

(a) Chlorine residual.

(i) Beginning June 29, 1993, or when filtration is installed, whichever is later, the supplier of water must continuously monitor and record the residual disinfectant concentration of the water entering the distribution system. The lowest value must be recorded each day. If there is a failure in the continuous monitoring equipment, grab sampling every four hours may be conducted in lieu of continuous monitoring, but for no more than 5 working days following the failure of the equipment.

(ii) Prior to June 29, 1993, chlorine residual determinations must be performed at least daily, one at the point of application and one in the distribution system.

(b) Alkalinity--Phenolphthalein (P)

(c) Alkalinity--Total

(d) pH value

(e) Hardness (where softening is utilized)

(f) Turbidity.

(i) Beginning June 29, 1993, or when filtration is installed, whichever is later, the supplier of water must monitor and record turbidity measurements of representative samples of the system's filtered water and individual filter effluent at least every four hours that the system serves water to the public. A supplier may substitute continuous turbidity monitoring for grab sample monitoring if the supplier validates the continuous measurement-turbidimeter using a primary turbidity standard or a bench-top turbidimeter at least monthly. For any system using slow sand filtration or filtration treatment other than conventional treatment, direct filtration, or diatomaceous earth filtration, the department may reduce the sampling frequency to once per day if it determines that less frequent monitoring is sufficient to describe filtration performance.

(ii) Prior to June 29, 1993, turbidity determinations must

be performed at least daily, from a location representative of the water entering the distribution system. These values must be used to determine compliance with the turbidity MCL of ARM 16.20.205(1).

~~(g) Stability to calcium carbonate (weekly)~~

(2) A supplier of water utilizing surface water or groundwater under the direct influence of surface water which does not filter but which ~~and employing~~ employs disinfection shall perform, at least daily, unless otherwise specified, the following chemical control tests on the treated water, list them on a report form approved by the department and submit the completed form monthly to the department:

(a) Chlorine residual -- must be monitored according to Department Circular PWS-3 (June 1991 edition);

(b) pH value;

(c) Turbidity.

(i) A supplier of water utilizing a surface source and not providing filtration treatment must begin monitoring, as specified in these rules and Department Circular PWS-3 (June 1991 edition), beginning December 31, 1990, unless the department has determined that filtration is required. The department may specify alternative monitoring requirements, as appropriate, until filtration is in place.

(ii) A supplier of water that uses a groundwater source under the direct influence of surface water and does not provide filtration treatment must begin monitoring as specified in Department Circular PWS-3 (June 1991 edition), beginning December 31, 1990 or six months after the department determines that the groundwater source is under the direct influence of surface water, whichever is later, unless the department has determined that filtration is required. If filtration is required, the department may specify alternative monitoring requirements, as appropriate, until filtration is in place.

(iii) Daily turbidity sampling requirements are applicable for public water supply systems not filtering and not required to filter through December 30, 1991. Until December 30, 1991, results of these samples will be used for determining compliance with the turbidity MCL stated in ARM 16.20.205(1).

~~(i)~~(iv) The monitoring frequency required in section (2) of this rule may be reduced by the department for a non-community water system on a case-by-case basis.

AUTH: 75-6-103, MCA; IMP: 75-6-103, MCA

16.20.220 CHLORINATION (1) Full time chlorination is mandatory where the source of water is from lakes, reservoirs, ~~or~~ streams, or groundwater sources under the direct influence of surface water.

(2) Full time chlorination of the water supply is mandatory whenever the water may be exposed to a potential source of contamination including but not limited to; losses of positive pressure within the system, unprotected or poorly protected groundwater sources, the introduction of chemicals

or gases for treatment, or substandard distribution, pumping or storage facilities.

~~(2)~~(3) Full time chlorination of the water in a ground-water supply system must be employed whenever the record of bacteriological tests of the system does not indicate a safe water under the criteria listed in ARM 16.20.207 and 16.20.210.
AUTH: 75-6-103, MCA; IMP: 75-6-103, MCA

16.20.224 TESTING AND SAMPLING RECORDS (1) In order to insure the safety of water delivered to the consumers, it is essential that there be a record of laboratory examinations of the water sufficient to show it is safe with respect to both bacteriological quality and other maximum contaminant levels.

(2) Unless specified otherwise in these rules, ~~The~~ the records of all laboratory checks and control tests ~~shall~~ must be kept on file for a period of ten years by the supplier of water and ~~shall~~ must be readily available for inspection by the department or its authorized representative. ~~The records must indicate when, where and by whom the tests were made and such other information as set forth in 40 CFR 141.33.~~

(3) Actual laboratory reports may be kept or data may be transferred to tabular summaries, provided the following information is included:

(i) the date, place and time of sampling;

(ii) the name of the person who collected the sample;

(iii) identification of the sample as to whether it was a routine distribution system sample, check sample, raw or process water sample, or other special purpose sample;

(iv) date of analysis;

(v) laboratory and person responsible for performing analysis;

(vi) the analytical technique/method used, analysis number; and

(vii) the results of the analysis.
AUTH: 75-6-103, MCA; IMP: 75-6-103, MCA

16.20.225 OPERATING RECORDS (1)-(2) Remains the same.

(3) A supplier of water utilizing a water treatment plant employing ~~conventional~~ coagulation, settling, softening, or filtration shall keep:

(a) a daily record of the operations performed in the treatment process together with measured flows, chemical doses, observations, costs and occurrences related to the operation of the plant, in addition to the control tests and laboratory analyses previously described~~.~~; and

(b) a monthly tabulation that includes:

(i) the total number of filtered water turbidity measurements taken during the month;

(ii) the number and percentage of filtered water turbidity measurements taken during the month that are less than or equal to the turbidity limits specified in ARM 16.20.205 for the filtration technology being used.

(iii) the date and value of any finished water turbidity measurements taken during the month which exceed 1.0 NTU;

(iv) raw water turbidity measured during the month;

(v) flow rates measured during the month;

(vi) filtration rates in gallons per minute per square foot for the month;

(vii) coagulation chemicals added in pounds per day for the month;

(viii) calculated coagulation chemical dosages in mg/l;

(ix) disinfectant added in pounds per day during the month;

(x) calculated disinfectant residual in mg/l during the month;

(xi) measured disinfectant residual at the point of application during the month;

(xii) disinfectant residuals measured in the distribution system during the month;

(xiii) for each day, the lowest measurement of residual disinfectant concentration in mg/l in water entering the distribution system;

(xiv) the date and duration of each period during the month when the residual disinfectant concentration in water entering the distribution system fell below 0.2 mg/l and when the department was notified of the occurrence;

(xv) the following information on the samples taken in the distribution system in conjunction with total coliform monitoring pursuant to RULE I:

(A) number of instances during the month where the residual disinfectant concentration is measured;

(B) number of instances during the month where the residual disinfectant concentration is not measured but heterotrophic bacteria plate count (HPC) is measured;

(C) number of instances during the month where the residual disinfectant concentration is measured but not detected and no HPC is measured;

(D) number of instances during the month where no residual disinfectant concentration is detected and where HPC is >500/ml;

(E) number of instances during the month where the residual disinfectant concentration is not measured and HPC is >500/ml;

(F) for the current and previous month during which the system served water to the public, the value of "V" in the following formula:

$$V=\frac{c+d+e}{a+b}\times 100$$

where a = the value in (A) above, b = the value in (B) above, c = the value in (C) above, d = the value in (D) above, and e = the value in (E) above.

(4)-(5) Remains the same.

(6) A supplier of water shall keep records of actions taken to correct violations of primary drinking water standards for a period of not less than 3 years after the last action taken with respect to the particular violation involved.

(7) A supplier of water shall keep copies of any written reports, summaries or communications relating to sanitary surveys of the system for a period of not less than 10 years after

completion of the sanitary survey involved.

(8) A supplier of water shall keep records concerning a variance or exemption granted to the system for a period ending not less than 5 years following the expiration of the variance or exemption.

(9) A supplier of water using unfiltered groundwater under the direct influence of surface water or unfiltered surface water shall keep records in accordance with Department Circular PWS-3 (June 1991 edition).

AUTH: 75-6-103, MCA; IMP: 75-6-103, MCA

16.20.242 DESIGNATED CONTACT PERSON (1) The supplier of water for community systems shall designate, no later than 30 days after the effective date of this rule, a person who shall be responsible for contact and communications with the department in matters relating to system alteration and construction, monitoring and sampling, maintenance, operation, record keeping, and reporting. This person must be certified in accordance with the requirements of Title 37, chapter 42, MCA.

(2)-(3) Remains the same.

AUTH: 75-6-103, MCA; IMP: 75-6-103, MCA

16.20.250 VARIANCE "A" (1) The department may grant a variance "A" to any public water supply system from any maximum contaminant level, except the microbiological contaminant MCLs specified in ARM 16.20.207, upon a finding that:

(a)-(b) Remain the same.

(2) Remains the same.

AUTH: 75-6-103, MCA; IMP: 75-6-103, 75-6-107, MCA

16.20.251 VARIANCE "B" (1) The department may grant a variance "B" to any public water supply system from any requirement of a specified treatment technique (except the filtration and disinfection requirements of Department Circular PWS-3 (June 1991 edition); ARM 16.20.205 and RULE I) upon a finding that the public water supply system applying for the variance has demonstrated that such treatment technique is not necessary to protect the health of persons because of the nature of the raw water source of such system.

(2) Remains the same.

AUTH: 75-6-103, MCA; IMP: 75-6-103, 75-6-107, MCA

16.20.252 EXEMPTIONS (1) The department may grant an exemption to any public water supply system from any requirement respecting a maximum contaminant level (except a microbiological contaminant MCL specified in ARM 16.20.207) or treatment technique, or from both, upon finding that:

(a)-(c) Remain the same.

(2) Remains the same.

AUTH: 75-6-103, MCA; IMP: 75-6-103, 75-6-107, MCA

RULE I TREATMENT TECHNIQUES--FILTRATION AND DISINFECTION (1) Beginning June 29, 1993, unless otherwise specified

in these rules, each public water supply system with a surface water source or a groundwater source under the direct influence of surface water must provide treatment which meets the treatment technique requirements of this rule. The treatment technique requirements consist of installing and properly operating water treatment processes that reliably achieve:

(a) at least 99.9 percent (3-log) inactivation or removal and inactivation of Giardia lamblia cysts between a point where the raw water is not subject to recontamination by surface water runoff and a point downstream before or at the first customer; and

(b) at least 99.99 percent (4-log) inactivation or removal and inactivation of viruses between a point where the raw water is not subject to recontamination by surface water runoff and a point downstream before or at the first customer.

(2) A public water supply system using a surface water source or a groundwater source under the direct influence of surface water is considered to be in compliance with the requirements of section (1) of this rule if the system is operated by qualified personnel certified under the provisions of Title 37, chapter 42, MCA, and:

(a) the system meets all of the requirements for avoiding filtration and the requirements for disinfection of an unfiltered surface source as described in Department Circular PWS-3 (June 1991 edition); or

(b) the system filters and meets the turbidity requirements of ARM 16.20.205 and the disinfection requirements in section (4) of this rule.

(3)(a) A public water supply system using a surface source or a groundwater source under the direct influence of surface water is in violation of the treatment techniques requirement imposed by this rule if the system:

(i) fails to meet any one of the criteria in subsection (2) of this rule or the department has determined that filtration is required; or

(ii) fails to install filtration by June 29, 1993 or 18 months after the department determines that filtration is required, whichever is later.

(b) A system that has installed filtration is in violation of a treatment technique requirement if the system violates the MCL specified in ARM 16.20.205 for turbidity.

(c) Any system using surface water or groundwater under the direct influence of surface water that is identified as a source of a waterborne disease outbreak is in violation of the treatment technique requirements imposed by this rule.

(4)(a) A supplier for a public water supply system that uses a surface water source and does not provide treatment by filtration must provide the disinfection treatment specified in Department Circular PWS-3 (June 1991 edition), beginning December 30, 1991, unless the department determines that filtration is required.

(b) A supplier for a public water supply system that uses a groundwater source under the direct influence of surface water and does not provide treatment by filtration must provide the

disinfection treatment specified in Department Circular PWS-3 (June 1991 edition), beginning December 30, 1991 or 18 months after the department determines that the groundwater source is under the influence of surface water, whichever is later, unless the department has determined that filtration is required.

(c) A supplier for a public water supply system that uses a surface water source that provides filtration treatment or uses a groundwater source under the direct influence of surface water and provides filtration treatment must provide the disinfection treatment specified in (e) of this section beginning June 29, 1993, or beginning when filtration is installed, whichever is later. Failure to meet any requirement of this subsection after the specified date is in violation of the treatment technique requirements imposed by this rule.

(d) If the department has determined that filtration is required for a public water supply system, the system must comply with any interim disinfection requirements the department deems necessary prior to installation of filtration.

(e) Each public water supply system that provides filtration treatment must provide disinfection treatment as follows:

(i) The disinfection treatment must be sufficient to ensure compliance with subsection (1) of this rule.

(ii) The residual disinfectant concentration in the water entering the distribution system cannot be less than 0.2 milligrams per liter (mg/l) for more than 4 hours.

(iii) The residual disinfectant concentration in the distribution system, measured as total chlorine, combined chlorine, or chlorine dioxide cannot be less than 0.2 mg/l in more than 5 percent of the samples each month for any two consecutive months that the system serves water to the public. Water in the distribution system with a heterotrophic bacteria concentration less than or equal to 500 per milliliter, measured as heterotrophic plate count (HPC), is an acceptable disinfectant residual for purposes of determining compliance with this requirement.

(iv) If the department determines, based on site-specific considerations, that a supplier of water is precluded from having a sample transported and analyzed for HPC by a certified laboratory under the requisite time and temperature conditions and that the system is providing adequate disinfection in the distribution system, the requirements of subsection (4)(e)(iii) of this rule do not apply.

AUTH: 75-6-103, MCA; IMP: 75-6-103, MCA

RULE II SANITARY SURVEYS (1) Public water supply systems must undergo an initial sanitary survey by June 29, 1994. Thereafter, systems must undergo sanitary survey at least once every three years. The department must review the results of each sanitary survey to determine whether the existing monitoring frequency is adequate and what additional measures, if any, the system needs to undertake to improve drinking water quality.

(a) Sanitary surveys must be performed by the department or an agent approved by the department. The system supplier

is responsible for ensuring the survey takes place.
AUTH: 75-6-103, MCA; IMP: 75-6-103, MCA

RULE III PUBLIC NOTIFICATION FOR COMMUNITY AND NON-COMMUNITY SUPPLIES (1) The owner or supplier of a public water supply system shall notify persons served by the system as specified in Department Circular PWS-2 (June 1991 edition) and the department as required under ARM 16.20.212 if the system:

(a) fails to comply with an applicable MCL, treatment technique, variance or exemption schedule, monitoring requirement, testing procedure;

(b) is granted a variance or exemption; or

(c) incurs any other violation pursuant to these rules.

AUTH: 75-6-103, MCA; IMP: 75-6-103, MCA

RULE IV VARIANCE AND EXEMPTIONS FROM MAXIMUM CONTAMINANT LEVELS (MCL'S) FOR VOLATILE ORGANIC CHEMICALS (VOC'S) (1) The EPA has identified the following as best available technology (BAT), treatment techniques, or other means available for achieving compliance with the maximum contaminant levels for volatile organic chemicals:

(a) removal using packed tower aeration; and

(b) removal using granular activated carbon (except for vinyl chloride).

(2) Suppliers of community water systems and non-transient, non-community water systems must install or use treatment method identified in subsection (1) as a condition for receiving a variance, except as provided in subsection (3). If the system cannot meet the MCL after installation of the treatment method, that system shall be eligible for a variance.

(3) The department may grant a variance from ARM 16.20.204 subject to the requirements of subsection (4) through (8) of this rule.

(4) If a system can demonstrate through comprehensive engineering assessments, which may include pilot plant studies, that the treatment methods identified in subsection (1) would only achieve a de minimis reduction in contaminants, the department may issue a schedule of compliance that requires the system being granted the variance to examine other treatment methods as a condition of obtaining the variance.

(5) If the department determines that a treatment method identified in subsection (1) of this rule is technically feasible, the department may require the system to install and/or use that treatment method in connection with a compliance schedule. The department's determination must be based upon studies by the system supplier and other relevant information.

(6) The department may require a public water supply system to use bottled water, point-of-use devices, or other means as a condition of granting a variance or an exemption from the requirements of section 3.0, Department Circular PWS-1 (June 1991 edition), to avoid an unreasonable risk to health.

(7) Public water supply systems that use bottled water as a condition for receiving a variance or an exemption from the requirements of section 3.0 of Department Circular PWS-1

(June 1991 edition), must meet the following requirements:

(a) The supplier of water shall submit and obtain department approval of a monitoring program for bottled water. The monitoring program must provide reasonable assurance that the bottled water meets all MCLs. The supplier must monitor a representative sample of bottled water for all contaminants regulated under Department Circular PWS-1 (June 1991 edition), during the first quarter it supplies the bottled water to the public and annually thereafter. Results of the monitoring program must be provided to the department within 30 days after the end of the first quarter and thereafter within 30 days after the end of a 12-month period.

(b) The supplier of water must receive a letter of certification from the bottled water company that:

(i) the bottled water supplied has been taken from an "approved source" as defined in 21 CFR 129.3(a);

(ii) the bottled water company has conducted monitoring in accordance with 21 CFR 129.80(g)(1) through (3); and

(iii) the bottled water does not exceed any MCLs or quality limits as set out in 21 CFR 103.35, 110 and 129.

(c) The supplier of water shall provide the certification to the department within 30 days after the end of the first quarter after it supplies bottled water and thereafter within 30 days after the end of a 12-month period.

(d) The supplier of water is fully responsible for the provision of sufficient quantities of bottled water to every person supplied by the public water supply system, via door-to-door bottled water delivery.

(8) Public water supply systems that use point-of-use devices as a condition for obtaining a variance or an exemption from ARM 16.20.204 for volatile organic compounds must meet the following requirements:

(a) It is the responsibility of the supplier of water to operate and maintain the point-of-use treatment system.

(b) The supplier of water must develop an operations and monitoring plan and obtain department approval for the plan before point-of-use devices are installed. The operations and monitoring plan must provide for:

(i) proper application of effective technology; and

(ii) health protection equivalent to an operations and monitoring plan for central water treatment.

(c) The supplier of water must ensure that the microbiological safety of the water is maintained.

(d) The supplier of water must certify the system for performance, undertake field testing and, if not included in the certification process, commit to a rigorous engineering design review of the point-of-use devices to ensure the technology used is effective.

(e) The design and application of the point-of-use devices must account for the tendency for increase in heterotrophic bacteria concentrations in water treated with activated carbon. Frequent backwashing, post-contactor disinfection, and heterotrophic plate count monitoring may be necessary to ensure that the microbiological safety of the water is not compromised.

(f) All consumers must be protected. Every building connected to the public water supply system must have a point-of-use device installed, maintained and adequately monitored. The rights and responsibilities of the public water supply system customer must convey with title upon sale of property.
AUTH: 75-6-103, MCA; IMP: 75-6-103, 75-6-107, MCA.

RULE V ADOPTION AND INCORPORATION BY REFERENCE (1) The board hereby adopts and incorporates by reference:

(a) Department Circular PWS-1, "Volatile Organic Chemical Standards and Monitoring Requirements for Other Organic Chemicals" (June 1991 edition);

(b) Department Circular PWS-2, "Public Notification Requirements for Public Water Supply System Suppliers" (June 1991 edition); and

(c) Department Circular PWS-3 "Criteria to Avoid Filtration of a Surface Water Source or a Groundwater Source Under the Direct Influence of Surface Water" (June 1991 edition).

(2) Copies of the Department Circulars referenced in these proposed rules may be obtained by contacting the Water Quality Bureau, Montana Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, MT 59620, (406) 444-2406.

AUTH: 75-6-103, MCA; IMP: 75-6-103, MCA.

5. The board is proposing these amendments to the rules in order to implement public drinking requirements established nationally pursuant to the federal Safe Drinking Water Act, as amended, and to ensure that public drinking water systems are managed in a manner that protects the health of Montana's citizens.

6. Interested persons may submit their data, views, or arguments concerning the proposed amendments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Yoli Fitzsimmons, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620, no later than June 28, 1991.

7. David Simpson, Chairman of the Board of Health and Environmental Sciences has been designated to preside over and conduct the hearing.

DENNIS IVERSON, Director

Certified to the Secretary of State May 6, 1991.

BEFORE THE DEPARTMENT OF LIVESTOCK
OF THE STATE OF MONTANA

In the Matter of Proposed Rules Regulating and Controlling the Disease of Pseudorabies	)	NOTICE OF PROPOSED ADOPTION OF RULES RELATIVE TO THE CONTROL AND ELIMINATION OF THE DISEASE OF PSEUDORABIES AND THE REPEAL OF ARM 32.3.136 AND AMENDING ARM 32.3.219

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On June 15, 1991, the Board of Livestock, acting through the Department of Livestock, proposes to adopt the following rules for treatment, control, and elimination of the disease of pseudorabies and to repeal ARM 32.3.136. The rules, as repealed, amended, and proposed, provide as follows:

32.3.136 PSEUDORABIES (is proposed to be repealed and can be found on p. 32-83 of the Administrative Rules of Montana) (Auth: Sec. 81-2-102, MCA; IMP, Sec. 81-2-102, MCA.)

32.3.219 SPECIAL REQUIREMENTS FOR SWINE

(1) through (3)(a)(ii) Remains the same.
(iii) Originate directly from a farm premises in a Stage IV or Stage V pseudorabies-free state.
(b) Remains the same (feeding swine)
(i) Remains the same.
(ii) Remains the same.
(iii) Originate directly from a farm premises in a Stage IV or Stage V pseudorabies-free state.
(c) Remains the same.

AUTH: 81-2-102 and 81-2-103, MCA IMP: 81-2-102,AMD 81-2-103, MCA.

RULE I DEFINITIONS (1) "Pseudorabies" is an acute, sometimes fatal, disease caused by a specific herpes virus and characterized by a variety of clinical signs, involving mainly the nervous and respiratory systems. Most species of domestic and wild animals are susceptible to infection by this viral agent, but only swine are known to become chronic carriers. Man and higher primates are resistant.

(2) "Department" is the Montana Department of Livestock, Animal Health Division.

(3) An "animal" is any quadruped of a species which can become infected with pseudorabies.

(4) An "official test" is any department-approved pseudorabies test conducted by a person authorized by the

department and the USDA, as specifically qualified to conduct such test on animals or animal tissues. Official tests are designed to indicate the presence of pseudorabies infection, utilizing one or more of the following procedures: Latex agglutination (LA), serum neutralization (SN), florescent antibody (FA), enzyme labeled immunosorbant assay (ELISA), or any other virus isolation test or serological procedure recognized for use in the diagnosis of pseudorabies. To be considered official, the test must be conducted in an approved facility. Interpretation of test results is to be made by an individual qualified to make such scientific judgments and who is in the employ of the department or the USDA. Interpretation and test results are to be reported on official forms of the department.

(5) An "approved reagent" is a standardized biologic product approved by USDA for use in pseudorabies testing. Use of approved reagents, which includes antigens and test serums, is restricted to official tests only.

(6) "Official vaccination" is the administration of an approved pseudorabies immunization biologic licensed by USDA. The administration will be by a deputy state veterinarian or other person approved by the state veterinarian. The vaccination will be administered only with the express permission of the state veterinarian, and all such vaccinations will be reported on forms provided by the department. Only official vaccination is permitted in Montana.

(7) An "official vaccinate" is an animal receiving an official vaccination and which is given proper permanent identification.

(8) "Proper permanent identification" means use of the official nine-character alpha-numeric eartag, as provided by the department, or individual identification, as otherwise prescribed by the department. Proper permanent identification is required with blood samples used for official tests.

(9) An "infected or positive animal" is any animal that discloses sufficient reaction to an official test which indicates the presence of field strain pseudorabies virus or which is found to be infected with field strain pseudorabies virus by other recognized diagnostic procedures.

(10) A "suspect animal" is an animal disclosing an equivocal result to an official test or diagnostic procedure in which there is sufficient reaction, indicating the possible presence of pseudorabies infection, but is, in itself, insufficient to justify classification of the animal as infected.

(11) A "non-infected or negative animal" is an animal free of clinical signs of pseudorabies and giving a negative result to an official test designed to detect pseudorabies infection with field strain virus.

(12) An "exposed animal" is any animal that is part of a herd or the herd premises infected with pseudorabies or an animal in a herd containing official test positive animals or an animal that has had sufficient contact anywhere with pseudorabies infection or test reactors for the transmission of

pseudorabies virus to have occurred. Animals other than swine that have not had significant contact with infected pseudorabies animals within the previous ten days are not considered exposed.

(13) A "herd" is one or more animals of the same species owned or supervised by one or more persons and that permits intermingling of animals unhindered or in which interchange of animals without regard to health status is allowed.

(14) A "contact herd" is a herd of animals of the same species that, through epidemiological investigation, is shown to come proximal to infected or test positive animals sufficiently for the transmission of pseudorabies virus to occur and, also, a herd containing exposed animals.

(15) A "herd test" is a test of all animals six months of age and older contained as a herd. Blood samples taken at the herd test will be identified to the donor animal, using proper permanent identification applied to that animal.

(16) A "random herd test" is a herd test at recognized random rates that yields significant confidence that any infection would have been detected. Recognized random rates are shown in the UM&R for pseudorabies eradication.

(17) "Offspring segregation plan" means a procedure whereby offspring of pseudorabies-infected sows are segregated from those infected sows at an age where they are passively immune to pseudorabies, and, by applying test and separation, principles can be developed into pseudorabies-free breeding swine that serve as the foundation for a pseudorabies-free breeding herd. (Reference: UM&R for pseudorabies eradication herd plan manual.)

(18) "Emergency circumstances" means events or situations which, in the opinion of the Board of Livestock, pose an immediate or impending economic or livestock health danger to the livestock industry. (Auth: Sec. 81-2-102, 81-2-103, MCA; IMP, Sec. 81-2-102, MCA.)

RULE II REPORTING OF PSEUDORABIES (1) Any swine producer or person in custody of swine who has reason to suspect the presence of pseudorabies infection shall report that fact immediately to the state veterinarian or a practicing accredited deputy state veterinarian of his choice.

(2) An accredited deputy state veterinarian who suspects or has reason to suspect the presence of pseudorabies in Montana swine shall immediately report the particulars to the state veterinarian's office by the fastest means possible. (Auth: Sec. 81-2-102, 81-2-103, MCA; IMP, Sec. 81-2-102, MCA.)

RULE III QUARANTINE OF SWINE HERDS - USE OF QUARANTINE (1) Swine found infected with or exposed to pseudorabies and other animals infected with or exposed to pseudorabies shall be quarantined by official order, including any premises where these animals are found or have been recently kept.

(2) No susceptible animal shall be brought into or removed from the quarantine premises without express written permission by the department. (Auth: Sec. 81-2-102, 81-2-103, MCA; IMP, Sec. 81-2-102, MCA.)

RULE IV QUARANTINE OF EXPOSED HERDS AND ANIMALS (1) When the state veterinarian has reason to suspect the presence of pseudorabies, he shall place the premises and animals of this suspicion under quarantine, pending assurance testing. He may prescribe or may handle the premises and animals according to standard quarantine release provisions. (Auth: Sec. 81-2-102, 81-2-103, MCA; IMP, Sec. 81-2-102, MCA.)

RULE V RELEASE OF QUARANTINE (1) Swine herds and the quarantined premises where they are located, quarantined pursuant to this sub-chapter as a consequence of infection with or exposure to pseudorabies, may be released from quarantine upon:

(a) A negative response to an official pseudorabies herd test made upon all swine in the quarantined herd, not including suckling pigs, and performed at least 60 days after the last clinical sign of pseudorabies has been detected in the herd and the last reactor animals have been removed; or

(b) Be identified as progeny of quarantined breeding swine that have completed an approved offspring segregation plan; or

(c) The removal, through euthanasia or through removal directly to an approved slaughter destination, without first passing through an auction market or a buying station or other concentration point where exposure to other livestock could result. Animals so moved to slaughter must be accompanied by a quarantine release issued by the department; or

(d) The removal of all pseudorabies quarantined swine to other premises specifically approved on a case-by-case basis by the state veterinarian to receive these animals. The approved premises may or may not be already under quarantine for pseudorabies. The following conditions must be met:

(i) The swine are moved to the approved receiving premises under and accompanied by a permit issued for this purpose by the department. The permit shall set forth appropriate conditions for the transfer and for the handling of the swine at the approved receiving premises.

(ii) Swine fed at the approved receiving premises are moved directly to slaughter by special permit pursuant to subsection (b) of this rule after reaching an acceptable condition for slaughter.

(iii) All other animals in the approved receiving premises, if not so already, are placed under quarantine subject to quarantine release pursuant to Sections 1 and 2, subsections (a), (b), (d), and (e) of this rule.

(iv) Any swine remaining at the original quarantine premise shall be released from quarantine only after compliance with subsections (a), (b), (d), and (e) of this rule.

(e) In any event, the quarantine premises must be cleaned and disinfected in a manner and within a time interval approved by the department as a condition for quarantine release. All carcasses of animals dead of any cause must be disposed of, as directed by the state veterinarian. The premises must remain vacant of swine for 30 days following quarantine release or for that period of time recommended by the state veterinarian.

(f) The vehicles used for transporting swine to the approved receiving premises shall be cleaned and disinfected in a manner approved by the Department of Livestock before being used in the further transportation of any livestock.

(g) The department may order the disposal by slaughter of any reactor swine.

(2) Animals other than swine that are free of clinical signs of pseudorabies, and that have not had exposure to pseudorabies for at least ten days, may be released from quarantine and may move without restriction. (Auth: Sec. 81-2-102, 81-2-103, MCA; IMP, Sec. 81-2-102, MCA.)

RULE VI USE OF PSEUDORABIES VACCINE (1) No person, firm, or corporation shall import into the state of Montana or possess, sell, barter, exchange, or give away any pseudorabies vaccine without express written permission from the state veterinarian.

(2) No person, firm, or corporation shall manufacture or produce within the state of Montana any pseudorabies vaccine without written permission of the state veterinarian.

(3) The use of pseudorabies vaccine in Montana is prohibited, except when used under the official supervision of a licensed, accredited veterinarian by persons approved by the state veterinarian with:

(a) Written permission of the department; and

(b) Within use patterns prescribed by the department.

(4) Any animal vaccinated with a pseudorabies vaccine shall be properly and permanently identified and disposed of, as directed by the state veterinarian. Such vaccinated animals may be subject to follow-up differentiable testing, as the state veterinarian may direct, using official tests capable of recognizing and distinguishing between vaccine virus and field strain exposed and infected animals. (Auth: Sec. 81-2-102, 81-2-103, MCA; IMP, Sec. 81-2-102, MCA.)

RULE VII DEPARTMENT-ORDERED PSEUDORABIES TESTING (1) The department may, at any time, order the official testing or retesting of animals for the presence of pseudorabies if it considers such tests necessary to prevent the introduction or spread of pseudorabies.

(2) Orders shall state the approximate number and location of the animals and shall be signed by the state veterinarian or any designated deputy state veterinarian. (Auth: Sec. 81-2-102, 81-2-103, MCA; IMP, Sec. 81-2-102, MCA.)

RULE VIII CHANGE OF PREMISES TESTING (1) The department, through the Board of Livestock, may, for urgent surveillance purposes or other emergency circumstances, implement changes of ownership or first point of concentration pseudorabies test requirements on swine moving from Montana ranches to any destination.

(2) The Board action will specify the class of swine (feeder, breeder, slaughter), the area (county) involved, the time period of validity, and a justification for the action.

(3) The order will specify who will be the party (buyer, seller, department) responsible for these test expenses.

(4) Any exemptions to the testing under 32.3.307A will be specified, such as for qualified or monitored free swine herds. (Auth: Sec. 81-2-102, 81-2-103, MCA; IMP, Sec. 81-2-102, 81-2-103, MCA.)

RULE IX TEST EXPENSES AND DUTIES (1) When the department has ordered a test for pseudorabies under 32.3.307, the owner shall present all animals to the department's agent for the initial official tests for the presence of pseudorabies within ten days of the date of the order. The state veterinarian may allow more time if there is a good cause shown.

(a) An owner of animals quarantined or identified as suspects, as the result of an initial official pseudorabies test, shall present the animals for an official retest within ten days of the date of retest order. The state veterinarian may allow more time for a good cause shown.

(b) An owner presenting animals for an ordered test shall provide manpower, equipment, and facilities sufficient to restrain the animals for the purposes of successfully accomplishing the test.

(c) Expenses of sampling, bleeding, individually identifying, and testing for pseudorabies will be met by the department unless the owner or agent in charge of the animals has violated Montana law, administrative rule, or department order. In violation cases, bleeding, sampling, and testing expenses shall be met by the owner or person in charge of the animals when the test is ordered. Other expenses may be charged in accordance with 81-2-109, MCA.

(2) The cost of obtaining blood for testing under 32.3.307A will be met, as specified in the test order, at the time of issue. *Lab test cost will be met by the department. (Auth: Sec. 81-2-102, 81-2-103, MCA; IMP, Sec. 81-2-102, 81-2-103, MCA.)

RULE X DISPOSAL OF DEAD ANIMALS (1) Dead animals on any swine premises, quarantined or otherwise, will be handled in accordance with ARM 32.3.125. (Auth: Sec. 81-2-101, 81-2-102, MCA; IMP, Sec. 81-2-101, 81-2-102, 81-2-107, MCA.)

RULE XI PROCEDURE UPON DETECTION OF PSEUDORABIES (1) Immediately upon quarantine of a herd of animals for pseudorabies, a deputy state veterinarian shall conduct an epidemiological investigation of the infected herd and premises involved to determine methods and actions necessary to extirpate the disease and to determine contact herds, exposed animals, and the sum of the factors responsible for the presence of the disease.

(2) Upon request of the owner of the infected herd, the investigation in paragraph (1) may be conducted with assistance and participation of a licensed veterinarian selected and paid for by the owner.

(3) An official epidemiological report must be prepared that specifies methods and timetables necessary for control and eradication of the disease. This report will be prepared by the person(s) who conducted the investigation and will be based on the findings of that investigation. (Auth: Sec. 81-2-102, MCA; IMP, Sec. 81-2-102, MCA.)

RULE XII MEMORANDUM OF UNDERSTANDING (1) Using the epidemiological report required by ARM 32.3.309 as its basis, a memorandum of understanding must be developed between the infected herd owner and the department representative to establish a pseudorabies eradication plan for the infected herd.

(a) The eradication plan must follow recognized cleanup guidelines, as supported by the National Pseudorabies Control Board and the Uniform Methods and Rules, for pseudorabies eradication.

(b) Specific dates for accomplishing tasks will be included.

(c) The owner may select, at his expense, a licensed veterinarian to participate in the preparation of the memorandum and eradication plan.

(d) Herd management practices will be employed to facilitate disease eradication and/or interim disease control leading to eradication.

(2) The memorandum will be the basis for managing the infected herd until the quarantine is released. Any modifications of the memorandum must be made in writing and subscribed to by both parties. Any agreement to depopulate is part of the memorandum of understanding.

(3) If, in the judgment of the department, emergency circumstances warrant actions beyond the terms of the memorandum, the department, through the Board of Livestock, may take such actions as are lawful and necessary to control and eradicate this disease. This may include an ordered depopulation of the herd with or without indemnity, as authorized by law.

(4) The memorandum of understanding shall be considered a binding agreement, having the force of an order, as contemplated under Section 81-2-102, MCA. Failure by the owner of an infected herd to agree on a memorandum of understanding within 30 days of issuance of the infected herd quarantine will constitute an emergency circumstance in which the department may immediately slaughter or cause to be slaughtered any quarantined animals. The state veterinarian may, for good cause, extend the time limit for completion of a memorandum of understanding. (Auth: Sec. 81-2-102, MCA; IMP, Sec. 81-2-102, MCA.)

RULE XIII EXTENSION OF TIME LIMITS (1) Whenever a rule in this subchapter imposes a time limit within which an action must be performed and further provides that such time limit may be extended by the state veterinarian for good cause shown, the state veterinarian shall investigate the claim for a good cause, and, upon finding that such good cause does exist and that no other livestock producer will suffer significant harm as a

result of such action, a time extension for a period not to exceed 60 days may be granted. (Auth: Sec. 81-2-102, 81-2-103, MCA; IMP, Sec. 81-2-102, MCA.)

RULE XIV MOVEMENT OF SWINE THROUGH LICENSED LIVESTOCK MARKETS AND OTHER CONCENTRATION POINTS (1) Montana feeder and breeder swine moving through concentration points, such as licensed livestock markets, buying stations, and stockyards, must be handled so as to prevent contact or exposure to pseudorabies and to swine of unknown status consigned for immediate slaughter only. This may be accomplished by:

(a) Use of separate facilities--pens, docks, and alleys.

(b) Cleaning and disinfection of impervious surfaces between classes and before use.

(c) A combination of (a) and (b), together with separate sale days.

(2) If contact closer than ten feet between classes occurs or if direct use of contaminated facilities occurs:

(a) Any such exposed feeder and breeding swine will be identified by official eartag and released only to a Montana destination under quarantine for pseudorabies testing 30 days after arrival at that destination; or

(b) Be released only for immediate slaughter.

(3) Out-of-state swine shall move to Montana markets and concentration points, in accordance with part 76, 9CFR agreement conditions only, and then consistent with the Uniform Methods and Rules for pseudorabies eradication, under the following categories:

(a) 9CFR approved slaughter only markets.

(b) 9CFR approved feeder pig markets.

(c) 9CFR approved all classes markets.

(4) Identification: All swine moving to a slaughter plant or to a livestock market or buying station for sale to immediate slaughter shall be individually identified to herd of origin upon arrival at such concentration point, using any of the approved forms of the following devices: eartag, backtag, tattoo, or any other device the department may approve or require. Identification to origin by lot at slaughter plants will be acceptable identification. (Auth: Sec. 81-2-102, 81-2-103, MCA; IMP, Sec. 81-2-102, MCA.)

RULE XV HERD STATUS ESTABLISHMENT (1) The Montana Department of Livestock will certify and recertify a swine breeding herd as qualified pseudorabies negative upon determination of compliance with the provisions of 9CFR85, subsection 1.

(a) Copies of the current 9CFR are on file with the Department of Livestock and may be reviewed at the offices located at 6th Avenue and North Roberts in Helena, Montana. Copies are available from the Superintendent of Public Documents, Government Printing Office, Washington, D.C., upon payment of a fee and identification by rule number.

(2) The Montana Department of Livestock will certify and recertify a breeding swine herd as pseudorabies monitored for

feeder pig production when sampled and tested negative in compliance with the current Uniform Methods and Rules for pseudorabies eradication or the provisions of the National Pseudorabies Control Board criteria for monitored herds.

(a) Copies of the Uniform Methods and Rules for pseudorabies eradication and criteria of the National Pseudorabies Control Board are available from the Department of Livestock upon request. (Auth: Sec. 81-2-102, MCA; IMP, Sec. 81-2-102, MCA.)

2. The Board of Livestock proposes to repeal, amend, and adopt these rules pursuant to the mandates of Section 81-2-102 and 81-2-103, MCA.

3. Interested parties may submit their data, views, or arguments concerning the proposed repeal, amendments, and proposed rules in writing to Les Graham, Executive Secretary to the Board of Livestock, Capitol Station, Helena, Montana 59620, no later than June 16, 1991.

4. If a person who is directly affected by the proposed repeal, amendment, or new rules 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 Les Graham, Executive Secretary to the Board of Livestock, no later than June 16, 1991.

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

Jack Salmond

Jack Salmond, Chairman
Board of Livestock

By: Lon Mitchell

Lon Mitchell, Staff Attorney
Department of Livestock

Certified to the Secretary of State May 3, 1991.

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

In the matter of proposed amendment of rule relating to water right application fees	))))	NOTICE OF PROPOSED AMENDMENT OF ARM 36.12.103

NO PUBLIC HEARING CONTEMPLATED

To: All interested persons.

1. On June 17, 1991 the Board of Natural Resources and Conservation proposes to amend Rule 36.12.103.

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

36.12.103 APPLICATION AND SPECIAL FEES (1) ...
(a) ...
(d) For a Notice of Completion of Groundwater Development (for groundwater developments with a maximum use ~~less than 100 gpm~~ of 35 gpm or less not to exceed 10 acre-feet per year), Form No. 602, there shall be a fee of $10. The department shall collect an additional $10 fee to be deposited in the ground water assessment account as required by 85-2-306(5), MCA. The total fee to be paid for the filing of a Form 602 shall be $20.

Auth: Sec. 85-2-113, MCA Imp: Sec. 85-2-113, 306, MCA

3. The 1991 Legislature passed Senate Bill 94 establishing a ground water monitoring program. The statute requires that $10 of the filing fee for Notices of Completion of Groundwater Development, Form 602 be deposited into the groundwater study account. The current fee for filing Form 602 is $10. Without an increase in the filing fee there would be no fee left for processing and issuing Certificates of Water Rights on groundwater developments of 35 gallons per minute or less not to exceed 10 acre-feet per year. The Montana Bureau of Mines and Geology will receive $10 of the new fee for administering the new groundwater monitoring program and the Department of Natural Resources and Conservation will receive the remaining $10 of the fee to help cover costs of processing the Form 602.

4. Interested persons may submit their data, views or arguments concerning the proposed rule change in writing to Ronald J. Guse, Program Supervisor, Water Rights Bureau, 1520 East 6th Avenue, Helena, MT 59620-2301, no later than June 14, 1991.

5. If a person who is directly affected by the proposed adoption wishes to express his data, views or arguments orally

or in writing at a public hearing, he must make a written request for a hearing and submit this request along with any written comments to Ronald J. Guse by no later than June 14, 1991.

6. If the Board 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 agency or subdivision; 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. The number of persons to be possibly directly affected will be greater than 250.

BOARD OF NATURAL RESOURCES
AND CONSERVATION

JANICE L. REHBERG, CHAIR

BY: _____
KAREN L. BARCLAY, Director
DEPARTMENT OF NATURAL
RESOURCES AND CONSERVATION

Certified to the Secretary of State on May 6, 1991.

STATE OF MONTANA
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION
BEFORE THE BOARD OF WATER WELL CONTRACTORS

In the matter of the proposed amendment of 36.21.415 concerning fees.	) NOTICE OF THE PROPOSED) AMENDMENT OF 36.21.415) FEES

TO: ALL INTERESTED PERSONS:

1. On June 15, 1991, the Board of Water Well Contractors proposes to amend 36.21.415 concerning fees.

2. The proposed amendment to 36.21.415 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at page 36-393.17, Administrative Rules of Montana)

"36.21.415 FEE SCHEDULE

(1) Application and examination	
(a) Contractors	~~$250.00~~ 275.00
(b) Drillers	~~150.00~~ 165.00
(c) Monitoring well constructor	~~150.00~~ 165.00
(2) ...	
(3) Renewal	
(a) Contractor	~~115.00~~ 140.00
(b) Driller	~~75.00~~ 90.00
(c) Monitoring well constructor	~~115.00~~ 140.00
(4) ..."	

Auth: 37-43-202, MCA Imp: Sec. 37-43-202, 303, 305, 307, MCA

3. The Board is amending the rule as directed by Senate Bill 94 passed by the 1991 Legislature, the text of which sets forth the reasons for the amendment.

BOARD OF WATER WELL CONTRACTORS
WESLEY LINDSAY, CHAIRMAN

BY: _____
KAREN BARCLAY, DIRECTOR
DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

Certified to the Secretary of State, May 6, 1991.

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

In the matter of the proposed new rules relating to financial assistance available under the wastewater treatment revolving fund act	) NOTICE OF PUBLIC HEARING) OF PROPOSED ADOPTION OF) NEW RULES I THROUGH X) RELATING TO FINANCIAL) ASSISTANCE AVAILABLE UNDER) THE WASTEWATER TREATMENT) REVOLVING FUND ACT

TO: All interested persons:

1. On June 14, 1991 at 1:00 p.m. a public hearing will be held in the Main Conference Room of the Department of Natural Resources and Conservation Building, 1520 East 6th Avenue, Helena, Montana to consider the proposed adoption of the above stated rules. The Board of Natural Resources and Conservation proposes to adopt the above-captioned rules I through X relating to financial assistance available under the Wastewater Treatment Revolving Fund Act. These rules were noticed on December 13, 1990 at page 2148 of the Montana Administrative Register, 1990 Issue No. 23. Based on comments by the Environmental Protection Agency (EPA) these rules were changed to allow the Department of Natural Resources and Conservation to use the services of a trustee. A trustee would service the disbursement and repayment of the loans. Also based on EPA comments the rules were changed to make the loan terms consistent with the bond documents. The Board of Natural Resources and Conservation on May 2, 1991 approved these rule changes. Because of these changes the Department of Natural Resources and Conservation has decided to notice the public again. The material that is interlined and underlined reflects changes since the original notice.

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

3. The rules, as proposed, provide as follows:

RULE I PURPOSE (1) The purpose of this subchapter is to implement provisions of the Wastewater Treatment Revolving Fund Act pursuant to Title 75, Chapter 5, Part 11; and Sections 601 through 607 of Federal Water Pollution Control Act, 33 U.S.C. 1381 through 1387, as amended.

(2) The act creates a financing mechanism for wastewater treatment projects and certain non-profit source control pollution projects through use of loans and other financial incentives.

(3) The board of health and environmental sciences has adopted rules to assure that the state's Wastewater Treatment Program complies with the Clean Water Act. ARM 16.18.301 et seq.

(4) The act, authorizes the use of the revolving fund to provide several types of financial assistance to municipalities and private concerns. The These rules implement one of the authorized forms of financial assistance, a direct loan to municipalities. AUTH: 75-5-1105, MCA IMP: 75-5-1103, MCA

RULE II DEFINITIONS AND CONSTRUCTION OF RULES In this subchapter, the following terms have the meanings indicated below and are supplemental to the definitions contained in Mont. Code Ann. Title 75, chapter 5, part 11, MCA, sections 601 through 607 of the Federal Water Pollution Control Act, 33 U.S.C. 1251 through 1387, as amended, and ARM 16.18.302. Terms used but not defined herein have the meanings proscribed in ARM 16.18.302 or the ~~general resolution~~ indenture of trust. Any conflict between this subchapter and the ~~general resolution~~ indenture of trust shall be resolved in favor of the ~~general resolution~~ indenture of trust.

(1) "Act" means Wastewater Treatment Revolving Fund Act, Mont. Code Ann. Title 75, Chapter 5, Part 11.

(2) "Administrative expense surcharge" means a surcharge on each loan charged by the department to the municipality expressed as a percentage per annum on the outstanding principal amount of the loan, payable by the municipality on the same dates that payments of principal and interest on the loan are due, calculated in accordance with these rules.

(3) "Administrative fee" means the fee expressed as a percentage of the initial committed amount of the loan retained by the department from the proceeds of the loan at closing, calculated in accordance with these rules.

(4) "Application" means the form of application provided by the department and the department of health which must be completed and submitted in order to request a loan.

(5) "Application fee" means the fee which must accompany a completed application in the amount specified in these rules.

(6) "Binding commitment" means ~~a written agreement between the borrower and the department pursuant to which the department agrees to make a loan to the borrower in a specified principal amount on or before the date specified in the agreement.~~ an executed commitment agreement.

(7) "Bond" means an obligation issued by a municipality pursuant to the provisions of Montana law and the Code.

~~(8) "Bond purchase agreement" means a written agreement between the department and the borrower setting forth the terms and conditions for the purchase of bonds of the borrower by the department.~~

(8) ~~(9)~~ "Borrower resolution" means a resolution of a municipality authorizing the issuance of bonds.

(9) ~~(10)~~ "Borrower" means a municipality to whom a loan is made.

(10) ~~(10a)~~ "Borrower obligation" means a bond.

(11) "Closing" means, with respect to a loan, the date of delivery of the borrower resolution ~~or loan agreement~~ and the borrower obligation to the department.

(12) "Code" means the Internal Revenue code of 1986, as amended.

(13) ~~(12a)~~ "Commitment agreement" means a written agreement between the borrower and the department pursuant to which the department agrees to make a loan to the borrower in a specified principal amount on or before the date and subject to the terms and conditions specified in the agreement.

(14) ~~(13)~~ "Department" means the Montana Department of Natural Resources and Conservation.

(15) ~~(14)~~ "Department of health" means the Montana Department of Health and Environmental Sciences.

(16) ~~(15)~~ "Eligible water pollution control project" means projects that meet the requirements of the federal act and approved by the department of health.

(17) ~~(16)~~ "EPA" means the United States environmental protection agency.

(18) ~~(17)~~ "EPA agreement" means the operating agreement between the state and the EPA.

(19) ~~(18)~~ "Federal act" means the Federal Water Pollution Control Act, also known as the Clean Water Act, 33 U.S.C. 1251 through 1387, as amended.

(20) ~~(19)~~ "General obligation" means an obligation of a municipality pledging the full faith and credit of and unlimited taxing power of the municipality.

(21) "Governing body" means the duly elected or appointed board, council, or commission or other body authorized by law to govern the affairs of the municipality.

(22) "Gross revenues" means with respect to revenue bonds, all revenues derived from the operation of a sewage or wastewater system, including but not limited to rates, fees, charges, and rentals imposed for connections with and for the availability, benefit, and use of the sewage or wastewater system as now constituted and of all replacements and improvements thereof and additions thereto, and from penalties and interest thereon, and from any sales of property acquired for the system and all income received from the investment of all moneys on deposit in system accounts.

(23) ~~(20)~~ "~~General resolution~~ Indenture of trust" means the Indenture of Trust ~~general resolution adopted by~~ between the board of examiners and a trustee establishing, and implementing, ~~and authorizing~~ the program, ~~and the~~ establishing certain terms and conditions for the sale and issuance of the state's ~~general obligation wastewater revolving fund program~~ bonds to fund the program, providing for the application of the proceeds of the state's bonds and the repayments of the state's bonds and establishing the funds and accounts for the program.

(24) ~~(23)~~ "Loan" means the loan of money from the department to a municipality from the revolving fund in accordance with the provision of the act and these rules.

(25) ~~(24)~~ "Loan loss reserve surcharge" means a surcharge expressed as percentage per annum on the outstanding principal amount of the loan at the rate determined in these rules and

imposed on all borrowers unless waived in accordance with the provisions of these rules.

(26) ~~(25)~~ "Municipality" means a city, town, or other local government unit having authority to own and operate a sewage system or wastewater treatment work.

(27) ~~(26)~~ "Net revenues" means the entire amount of gross revenues of the system less the actual operation and maintenance cost plus additional annual costs of operation and maintenance estimated to be incurred, including sums to be deposited in an operating reserve.

(28) ~~(26a)~~ "Origination fee" means borrowers pro rata share of the costs of issuing the series of the state's bonds, the proceeds of which are used to make a loan.

(29) ~~(27)~~ "Outstanding bond" means any bonds currently outstanding payable from gross or net wastewater revenues.

(30) ~~(27a)~~ "Pro rata share" means a fraction, the numerator of which is the committed amount of the loan of a borrower to be funded from proceeds of state bond of a series and the denominator of which is the original principal amount of such series of bonds.

(31) ~~(28)~~ "Program" means the Montana wastewater treatment revolving fund program.

(32) ~~(29)~~ "Project" means the facilities, improvements, and activities financed, refinanced, or the cost of which is being reimbursed to the borrower with the proceeds of the loan.

(33) ~~(30)~~ "Reserve requirement" means the amount required to be maintained in a reserve fund securing the payment of the bond as set forth in the ~~bond-purchase~~ commitment agreement which amount shall be the lesser of (1) 10% of the principal amount of the bond, or (2) maximum annual debt service on the bond in the then current or any future fiscal year.

(34) ~~(31)~~ "Revenue bonds" means bond payable from the net revenues ~~(gross-or-net)~~ derived from the system.

(35) ~~(32)~~ "Sewage system" means any device for collection or conducting sewage, or other waste, to an ultimate disposal point.

(36) ~~(33)~~ "State bonds" means the state's general obligation wastewater treatment revolving fund program bonds.

(37) ~~(34)~~ "State revolving fund" means the wastewater treatment works revolving fund.

(38) ~~(35)~~ "Special assessments" means assessments imposed on a property benefitted from the construction or operation of a project in accordance with Mont. Code Ann. Title 7, chapter 7, part 21, and Mont. Code Ann. Title 7, chapter 7, parts 41 and 42.

(39) ~~(36)~~ "State ~~match-account~~ allocation account" means the account in which state monies received through the sale of ~~general-obligation~~ the state's bonds are deposited.

(40) ~~(37)~~ "System" means the sewage or wastewater system of a municipality and all extension, improvements, and betterments thereof.

(41) ~~(38)~~ "Wastewater" means sewage, industrial waste, other waste, and drainage of sewage from all sources, or any combination thereof.

(42) ~~(39)~~ "Wastewater debt" means debt incurred to acquire, construct, extend, improve, add to, or otherwise pay expenses related to the system, without regard to the source of payment and security for such debt (i.e., without regard to whether it is general obligation revenue or special assessment debt).

(43) ~~(40)~~ "Wastewater revenue" means revenues (gross or net) received by the municipality from or in connection with the operation of the system.

(44) ~~(41)~~ "Wastewater System" means a public sewage system or other system that collects, transports, treats, or disposes of wastewater.

AUTH: 75-5-1105, MCA IMP: 75-5-1102, MCA and HB 551

RULE III DIRECT LOANS (1) The department may make a direct loan to a municipality for the purpose of financing or refinancing an eligible water pollution control project. The loan must be evidenced by a bond issued by the governing body of the municipality pursuant to a bond resolution. The bond resolution must be in a form acceptable to the department and contain provisions and covenants appropriate to the type of bond being issued, consistent with the provisions of these rules, the commitment agreement and any financial or other requirements imposed by the department pursuant to these rules. The department has adopted a form of bond resolution that is available for review by prospective borrowers. The bond shall be issued in full compliance with all pertinent statutory provisions of Montana law and these rules, and applicable provisions of the code so that the interest thereon is exempt from federal income taxation.

(2) The municipality shall indicate on the application the type of bond it proposes to issue to secure the requested loan. The municipality shall submit with its application the financial information necessary to enable the department to determine compliance with the provisions of these rules.

AUTH: 75-5-1105, MCA IMP: 75-5-1113, MCA

RULE IV TYPES OF BONDS; FINANCIAL AND OTHER REQUIREMENTS (1) The following types of bonds will be accepted by the department as evidence of and security for a loan under the program if Montana law authorizes the municipality to issue such bonds to finance the project and the department determines the municipality has the ability to repay the loan. ~~The bonds must be issued in full compliance with the pertinent provisions of the Montana Code Annotated.~~ Notwithstanding compliance with the provisions of state law, the department may determine that it will not approve the loan if it determines that the loan is not likely to be repaid in accordance with its terms or it may

impose additional requirements that in its judgment it considers necessary.

(a) General obligation bonds. The department may accept general obligation bonds issued by a municipality, upon the following terms:

(i) the bond will not cause the municipality to exceed its statutory indebtedness limitation; and

(ii) the election authorizing the issuance of the bonds has been conducted by the date of a binding commitment unless such requirement is waived by the department.

(b) Revenue bonds. The department may accept revenue bonds issued by a municipality in accordance with the provisions of Mont. Code Ann. Title 7, chapter 7, part 44, subject to the following terms and conditions:

(i) the bonds must be payable from the revenues of the system on a parity with any outstanding revenue bonds payable from the system. The bond must be secured by a pledge of the net revenues of the system. If bonds are currently outstanding payable from the gross revenues of the system, a gross revenue pledge will be acceptable provided the requirements of (ii)-(iv) are met.

(ii) the payment of principal and interest on the revenue bonds must be secured by a reserve account equal to reserve requirement, such requirement to be met upon the issuance of the bonds;

(iii) the municipality shall covenant to collect and maintain rates, charges, and rentals such that the revenue for each fiscal year the bonds are outstanding will be at least sufficient to pay the current expenses of operation and maintenance of the system, to maintain the operating reserve, and to produce net revenues during each fiscal year not less than 125% of the maximum amount of principal and interest due on all outstanding bonds payable from the revenues of the system in any future fiscal year;

(iv) the municipality shall agree not to incur any additional debt payable from the revenues of the system, unless the net revenues of the system for the last complete fiscal year preceding the issuance of such additional bonds have equaled at least 125% of the maximum amount of principal and interest payable from the revenue bond account in any subsequent fiscal year during the term of the then outstanding bonds and the additional bonds proposed to be issued. For the purpose of the foregoing computation, the net revenues must be those shown by the financial reports caused to be prepared by the municipality, except that if the rates and charges for service provided by the system have been changed since the beginning of the preceding fiscal year, then the rates and charges in effect at the time of issuance of the additional bonds must be applied to the quantities of service actually rendered and made available during such preceding fiscal year to ascertain the gross

revenues, from which there shall be deducted, to determine the net revenues, the actual operation and maintenance cost plus any additional annual costs of operation and maintenance which the engineer for the municipality estimates will be incurred because of the improvement or extension of the system to be constructed from the proceeds of the additional bonds proposed to be issued. In no event may any such additional bonds be issued and made payable from the revenue bond account if there then exists any deficiency in the balances required to be maintained in any of the accounts of the fund or if the municipality is in default in any of the other provisions;

(v) applications indicating the loan will be evidenced by the issuance of a revenue bond must be accompanied by:

(A) audited financial statements of the system for the last two completed fiscal years;

(B) a certificate as to ~~its~~ the municipality's current population and number of wastewater system customers and the amount of outstanding wastewater debt;

(C) a pro forma showing revenues of the system in an amount sufficient to meet the requirements of these rules and any outstanding obligations payable from the system;

(D) if the pro forma indicates an increase in rates and charges to meet the requirements of these rules, a copy of the proposed rates and charge resolution and a proposed schedule for the adoption of the charges and if subject to review by the public service commission, the schedule for hearing before the public service commission.

(vi) notwithstanding the fact that the municipal revenue bond act does not require that the issuance of ~~the~~ revenue bonds be approved by the voters, the department may require the municipality to conduct an election to evidence community support and acceptance of the project or require the bonds be authorized by the electors and issued as general obligation bonds in accordance with Mont. Code Ann. 7-7-4202. A municipality shall conduct an election to evidence community support and acceptance of the project when in the opinion of the department there are projected large rate increases due to the improved facility or the facility is a projected high cost facility.

(c) County water and sewer district bonds. Bonds issued by county water and sewer districts created pursuant to Title 7, chapter 13, parts 22 and 23, MCA will be accepted as evidence of the loan, subject to the following terms and conditions:

(i) The issuance of the bonds must be authorized by the electors of the district as provided in § 7-13-2321 through 7-13-2328, MCA;

(ii) the election authorizing the incurrence of the debt shall be conducted by the date of the binding commitment, unless such requirement is waived by the department;

~~(iii)~~ (iii) the district shall covenant that it will cause taxes to be levied to meet the district's obligation on any bond issued to the department in the event that the revenues of the system are inadequate therefore in accordance with the provisions of § 7-13-2302 through 7-13-2310, MCA;

~~(iii)~~ (iv) the bonds must be payable from the revenues of the system on a parity with any outstanding revenue bonds payable from the system;

~~(iv)~~ (v) the district ~~should~~ shall covenant to collect and maintain rates, charges, and rentals such that the revenue for each fiscal year the bonds are outstanding will be at least sufficient to pay the current expenses of operation and maintenance of the system, to maintain the operating reserve and to produce net revenues during each fiscal year not less than 125% ~~115%~~ of the maximum amount of principal and interest due on all outstanding bonds payable from the revenues of the system in any future fiscal year;

~~(v)~~ (vi) the payment of principal and interest on the bonds must be secured by a reserve account equal to the reserve requirement, such requirement to be met upon the issuance of the bond;

~~(vi)~~ (vii) the district shall agree not to incur any additional debt payable from the revenues of the system without the written consent of the department, unless the net revenues of the system for the last complete fiscal year preceding the issuance of such additional bonds have equaled at least ~~115%~~ 125% of the maximum amount of principal and interest payable from the revenue bond account in any subsequent fiscal year during the term of the then outstanding bonds and the additional bonds proposed to be issued. For the purpose of the foregoing computation, the net revenues must be those shown by the financial reports caused to be prepared by the district, except that if the rates and charges for services provided by the system have been changed since the beginning of the preceding fiscal year, then the rates and charges in effect at the time of issuance of the additional bonds must be applied to the quantities of service actually rendered and made available during such preceding fiscal year to ascertain the gross revenues, from which there shall be deducted, to determine the net revenues, the actual operation and maintenance cost plus any additional annual costs of operation and maintenance which the engineer for the district estimates will be incurred because of the improvement or extension of the system to be constructed from the proceeds of the additional bonds proposed to be issued. In no event shall any such additional bonds be issued and made payable from the revenue bond account if there then exists any deficiency in the balances required to be maintained in any of the accounts of the fund or if the district is in default in any of the other provisions;

~~(viii)~~ (viii) an application by a district must be accompanied by:

(A) audited financial statements of the system for the last two completed fiscal years if there is an existing system;

(B) a map depicting the boundaries of the district;

(C) a certificate as to numbers of persons in the district subject to levy described in (v) and the number of wastewater system customers and the amount of outstanding wastewater debt;

(D) a pro forma showing revenues of the system in an amount sufficient to meet the requirements of these rules and any outstanding obligations payable from the system;

(E) if the pro forma indicates an increase in rates and charges to meet the requirements of these rules, a copy of the proposed rates and charge resolution and a proposed schedule for the adoption of the charges.

(d) Special improvement district bonds. The department may accept as evidence of the loan, bonds issued by a municipality payable from assessments levied upon real property included within a special improvement district and specially benefited by the project being financed from the proceeds of the loan, upon the following terms and conditions:

(i) The district be created in accordance with the provisions of Title 7, chapter 12, part 21 and/or Title 7, chapter 12, parts 41 and 42, MCA;

(ii) the city or county agrees to maintain a revolving fund as authorized by sections 7-12-2181 through 7-12-2186 and 7-12-4221 through 7-12-4225, MCA (respectively, the revolving fund statutes) and covenants to secure the bonds by such revolving fund and agrees to provide funds for the revolving fund by levying such tax or making such loan from the general fund as authorized by the revolving fund statutes;

(iii) five percent (5%) of the principal amount of the loan be deposited into the revolving fund and the city or county shall agree to maintain in the revolving fund to the extent allowed by law, an amount not less than 5% of the principal of the bonds secured by the revolving fund;

(vi) the special improvement district be at least 75% developed. For purposes of this section, a district will be deemed to be 75% developed if 75% of the lots or assessable area in the district has a habitable residential dwelling thereon that is currently occupied or there is a commercial, professional, manufacturing, industrial, or other non-residential facility thereon;

(v) the total amount of special assessment debt including the amounts to be assessed for repayment of the loan against the lots or parcels of land in the district does not exceed 50% of the fair market value of such lots or parcels within the district;

(vi) if the project to be financed from the loan secured by a special assessment bond is not part of a wastewater system

currently existing and operated by a the municipality receiving the loan and for the normal maintenance and operation of which the municipality is responsible and provides for such through rates and charges, a special maintenance district must be created at the time the improvement district is created pursuant to the applicable statutes in order to provide for the operation and maintenance of the project or an agreement must have been entered into at the time the loan is made between the municipality and another governmental entity, pursuant to which the governmental entity agrees to operate and maintain the project.

AUTH: 75-5-1105, MCA IMP: 75-5-1113, MCA.

RULE V OTHER TYPES OF BONDS (1) If a municipality wishes to secure a loan by a type of bond not specifically authorized in these rules, the department may accept the bond if the bond is duly authorized and issued in accordance with Montana law as evidenced by an opinion of bond counsel to that effect and the department determines that the terms and conditions of the bond, including the security therefore, are adequate. The department may impose upon the municipality wishing to issue such bonds such terms, conditions, and covenants consistent with the provisions of the law authorizing the issuance of such bonds that it deems necessary to make the bonds creditworthy and thus protect the viability of the program.

AUTH: 75-5-1105, MCA IMP: 75-5-1113, MCA.

RULE VI COVENANTS REGARDING FACILITIES FINANCED BY THE LOAN (1) Specific requirements and covenants with respect to the system or improvements to the system being financed from the proceeds of the loan must be contained in the form of bond resolutions, which are available from the department, and may include the requirements and covenants set forth herein. The bond resolution should be consulted for more specific detail as to each of these covenants.

(2) The borrower must acquire all property rights necessary for the project including rights-of-way and interest in land needed for the construction, operation, and maintenance of the facility; to furnish title insurance, a title opinion, or other documents showing the ownership of the land, mortgages, encumbrances, or other lien defects; and to obtain and record the releases, consents, or subordinations to the property rights for holders of outstanding liens or other instruments as necessary for the construction, operation, and maintenance of the project.

(3) The borrower at all times shall acquire and maintain with respect to the system property and casualty insurance and liability insurance with financially sound and reputable insurers, or self-insurance as authorized by state law, against such risks and in such amounts, and with such deductible

provisions, as are customary in the state in the case of entities of the same size and type as the borrower and similarly situated and shall carry and maintain, or cause to be carried and maintained, and pay or cause to be paid timely the premiums for all such insurance. All such insurance policies shall name the department as an additional insured. Each policy must provide that it cannot be cancelled by the insurer without giving the borrower and the department 30 days' prior written notice. The borrower shall give the department prompt notice of each insurance policy it obtains or maintains to comply with this rule and of each renewal, replacement, change in coverage or deductible under or amount of or cancellation of each such insurance policy and the amount and coverage and deductibles and carrier of each new or replacement policy. The notice shall specifically note any adverse change as being an adverse change.

(4) The department, the department of health, and the EPA and their designated agents have the right at all reasonable times during normal business hours and upon reasonable notice to enter into and upon the property of the borrower for the purpose of inspecting the system or any or all books and records of the borrower relating to the system.

(5) The borrower agrees that for each fiscal year it shall furnish to the department and the department of health, promptly when available:

(a) the preliminary budget for the system, with items for the project shown separately; and

(b) when adopted, the final budget for the system, with items for the project shown separately.

(6) The borrower shall maintain proper and adequate books of record and accounts to be kept showing complete and correct entries of all receipts, disbursements, and other transactions relating to the system, the monthly gross revenues derived from its operation, and the segregation and application of the gross revenues in accordance with this resolution, in such reasonable detail as may be determined by the borrower in accordance with generally accepted governmental accounting practice and principals. It will maintain the books on the basis of the same fiscal year as that utilized by the borrower. The borrower shall, within 180 days after the close of each fiscal year, cause to be prepared and supply to the department a financial report with respect to the system for such fiscal year. The report must be prepared at the direction of the financial officer of the borrower in accordance with applicable generally accepted governmental accounting principals and, in addition to whatever matters may be thought proper by the financial officer to be included therein, must include the following:

(a) a statement in detail of the income and expenditures of the system for the fiscal year, identifying capital expenditures and separating them from operating expenditures;

(b) a balance sheet as of the end of the fiscal year;

(c) the number of premises connected to the system at the end of the fiscal year;

(d) the amount on hand in each account of the fund at the end of the fiscal year; and

(e) a list of the insurance policies and fidelity bonds in force at the end of the fiscal year, setting out as to each the amount thereof, the risks covered thereby, the name of the insurer or surety and the expiration date of the policy or bond.

(7) The borrower shall also have prepared and supplied to the department and the department of health, within 180 days of the close of every other fiscal year, an audit report prepared by an independent certified public accountant or an agency of the state in accordance with generally accepted governmental accounting principals and practice with respect to the financial statements and records of the system. The audit report shall include an analysis of the borrower's compliance with the provisions of the resolution.

(8) The borrower shall maintain project accounts in accordance with generally accepted government accounting standards, and as separate accounts, as required by section 602(b)(9) of the Clean Water Act.

(9) After reasonable notice from the EPA, the borrower shall make available to the EPA such records as the EPA reasonably requires to review and determine compliance with Title VI of the Clean Water Act, as provided in section 606(e) of the Clean Water Act.

(10) The borrower shall agree to comply with all conditions and requirements of the Clean Water Act pertaining to the loan and the project.

(11) The borrower shall agree not to sell, transfer, lease, or otherwise encumber the system, any portion of the system, or interest in the system without the prior written consent of the department while the bond resolution is in effect.

(12) The borrower shall agree to secure written approval from the department for any changes or modifications in the project before or during construction as set forth in the bond resolution.

AUTH: 75-5-1105, MCA IMP: 75-5-1113, MCA

RULE VII FEES (1) The following fees and charges are established and imposed for participation in the revolving fund program.

(a) Environmental impact statement fees. If an environmental impact statement is required pursuant to the Montana Environmental Policy Act and the department or the department of health rules, the applicant shall bear the cost of the environmental impact statement.

(b) Administrative fee. An administrative fee up to 1% of the amount of the committed amount of the loan must be charged each borrower. The department shall retain the

administrative fee from the proceeds of the loan at the time of closing and transfer the fee to the state revolving fund administration account as provided in the ~~general resolution~~ indenture of trust. The department and department of health may determine and establish from time to time, the precise amount of the administrative fee to be charged, based on the projected costs of administering the program and other revenues available to pay such costs.

(c) Administrative expense surcharge. Each borrower shall be charged a surcharge on its loan equal to .75% per annum on the outstanding principal amount of the loan, payable on the same dates that payment of principal and interest on the loan are due. The department and department of health may determine and establish from time to time, the precise amount of the administrative expense surcharge to be charged, based on the projected costs of administering the program and other revenues available to pay such costs. The administration expense surcharge must be deposited in the ~~non-state revolving fund administration~~ special administrative costs account as provided in the ~~general resolution~~ indenture of trust.

(d) "Origination fee". Each borrowers origination fee shall be paid at closing by the retention by the DNRC of such amount from the proceeds of the loans.

~~(d)~~ (e) Loan loss reserve surcharge. All borrowers unless excepted from the requirement by the department shall pay a loan loss reserve surcharge equal to 1% per annum on the outstanding principal amount of the loan, payable on the same dates that payments of principal surcharge must be deposited in the loan loss reserve account established in the ~~general resolution~~ indenture of trust until the loan loss reserve requirement as defined in the general resolution is satisfied at which point it can be deposited in the ~~match~~ state allocation account. The department and department of health may determine and establish from time to time, the precise amount of the loan loss reserve surcharge to be charged, based on the loan loss reserve requirement and the amounts in the match account. The borrower shall repay the following items: the loan at an interest rate determined in accordance with rule X, plus the loan loss reserve surcharge plus the administrative expense surcharge. The borrower shall propose rates and charges for all wastewater services necessary to repay the above items. The department and the department of health shall rank all applications. Based on a consideration of social economic factors and measures of financial condition the department and department of health may agree not to impose the loan loss reserve surcharge on the borrower.

AUTH: 75-5-1105 MCA IMP: 75-5-1113, MCA

RULE VIII EVALUATION OF FINANCIAL MATTERS AND COMMITMENT AGREEMENT (1) Before the ~~bond purchase~~ commitment agreement is

executed, the department shall conduct a review of the applicant's financial status and determine based on the information available as to whether the borrower will be able to repay the loan. This review must include an analysis of all assets and liabilities as well as an analysis of the system's financial capability and may include but not be limited to: condition of the system, number of current and potential users, existing and proposed user fees for system, existing and proposed user fees for other utilities in the jurisdiction, overlapping indebtedness within the jurisdiction and any other financial or demographic condition relevant to the applicant's ability to repay the loan. If on the review of such material, the department determines that the loan cannot be repaid in accordance with its terms, the application must be denied.

(2) Prior to the department requesting the board of examiners to issue the state bonds in an amount sufficient to fund a loan to a municipality, the municipality, upon approval by its governing body, shall have entered into a commitment agreement in the form provided by the department with the department, pursuant to which the municipality agrees to adopt the bond resolution and issue the bond described therein, the municipality agrees to pay its pro rata share of the costs of issuance of the State's Bonds.

AUTH: 75-5-1105, MCA IMP: 75-5-1113, MCA

RULE IX REQUIREMENTS FOR DISBURSING OF LOAN (1) Loans will be disbursed by warrants drawn by the state auditor or wire transfers authorized by the state treasurer in accordance with the provisions of this rule, and the bond resolution and the indenture of trust. No disbursement of any loan shall be made unless the department has received from the municipality, the following:

(a) a duly adopted and executed bond resolution in a form acceptable to the department;

(b) a duly executed bond in a principal amount equal to the amount of the loan in a form acceptable to the department;

(c) a certificate of an official of the municipality that there is no litigation threatened or pending challenging the municipality's authority to undertake the project, to incur the loan, issue the bonds, collect wastewater charges in a form acceptable to the department;

(d) an opinion of bond counsel acceptable to the department that the bond is a valid and binding obligation of the municipality payable in accordance with its terms and that the interest in a form acceptable to the department thereon is exempt from state and federal income taxation in a form acceptable to the department;

(e) such other closing certificates or documents that the department or bond counsel may require to satisfy requirements of these rules;

(f) if all or part of a loan is being made to refinance a project or reimburse the borrower for the costs of a project paid prior to the closing, evidence, satisfactory to the department and the bond counsel;

(i) that the acquisition or construction of the project was begun no earlier than March 7, 1985;

(ii) of the borrower's title to the project;

(iii) of the costs of such project and that such costs have been paid by the borrower~~,~~; and

(iv) if such costs were paid in a previous fiscal year of the borrower, that the borrower intended at the time it incurred such costs to finance them with tax-exempt debt or a loan under a state revolving fund program such as the program;

(g) any certificate of insurance as evidencing insurance coverage as required by these rules and the bond resolution;

(h) a certified copy of the wastewater rate and charge ordinance, if applicable, and if subject to approval by the public service commission, evidence that such approval has been obtained;

(i) executed copy of the construction contract accompanied by the appropriate performance and payment bonds;

(j) any additional documents required by the department or department of health as a condition to the approval of the loan described in the bond purchase agreement;

(k) a written order signed by a department of health representative authorizing a disbursement;

(l) a copy of the municipality's request for such disbursement on the form prescribed by the department~~,~~; and

(m) payment of the origination fee.

AUTH: 75-5-1105, MCA IMP: 75-5-1113, MCA

RULE X TERMS OF LOAN AND BONDS (1) Rate of interest.

(a) The source of funding of the loans under this program initially will be 83.33% from the EPA and 16.67% from the proceeds of ~~general obligations bonds issued by the state to provide its matching share~~ the state's bonds. The interest rate on the loan will be determined by the department at the time the loan is made. The rate on a loan must be such that the interest payments there on and on other loans funded from the proceeds of the state's bonds will be sufficient, if paid timely and in full, with other available funds in the revolving fund including investment income, ~~in an amount sufficient~~ from which the loan was funded to pay the principal of and interest on the state's bonds issued by the state.

(b) The rate of interest on loans from the program will vary in accordance with the rate on the state's bonds from which the loan is made. The rate of interest on all loans financed from the proceeds of a specific issue of bonds will be the same. The net interest cost on any loan may not exceed the net interest cost to the state on the state bonds from which such

loan was made. ~~The department shall not set a rate of interest higher than the maximum rate permitted by applicable state and federal law and the EPA agreement.~~

(2) Loan term and loan repayments. Unless the department otherwise agrees, each loan shall be ~~amortized on a level debt service basis (treating~~ payable, including principal and interest thereon and the administrative expense surcharge and loan loss reserve surcharge, if any, ~~as debt service for this purpose)~~ over a term approved by the department, not to exceed 20 years. Interest, administrative expense surcharge and loan loss reserve surcharge, if any, payments on each disbursement of each loan or portion thereof which is not a construction loan shall begin no later than 15 days prior to the next interest payment date (unless the loan is closed within 15 days of the next interest payment date, in which case the first payment date shall be no later than 45 ~~15~~ days prior to the next following interest payment date). For construction loans, the department may permit principal amortization to be delayed until as late as ~~the sixth month~~ one year after completion of the project, provided that ~~whether or not construction is completed the borrower shall begin repaying the principal amount of a disbursement no later than the twenty-fourth month after such disbursement is made provided further, that~~ the payment of interest on each disbursement of a construction loan shall begin no later than ~~15~~ 45 days prior to the next interest payment date (unless the loan is closed within 15 days of the next interest payment date, in which case the first payment date shall be no later than 15 days prior to the next following interest payment date) unless the state has provided for the payment of interest on its bonds by capitalizing interest. In any event, the payment of interest must commence no later than the payment of principal.

(3) The department may also permit the borrower of a construction loan not to pay administrative expense surcharge and loan loss reserve surcharge, if any, on such construction loan until up to five months after the completion of construction of the project, but such administrative expense surcharge and loan loss reserve surcharge, if any, shall nonetheless accrue and shall be payable not later than the fifth month following completion of construction. Notwithstanding the previous sentence, the borrower shall pay all interest, administrative expense surcharge and loan loss reserve surcharge, if any, accrued on any construction loan disbursement no later than the twenty-fourth month after such disbursement is made and must thereafter make regular payments of interest, administrative expense surcharge and loan loss reserve surcharge, if any, on such disbursement.

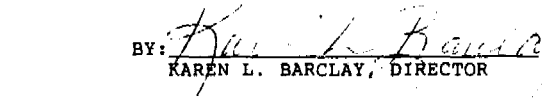
AUTH: 75-5-1105, MCA IMP: 75-5-1113, MCA

4. The Board is proposing these rules in order to implement a direct loan to municipalities financial assistance mechanism for new or improved wastewater treatment facilities.

5. Interested persons may present their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to Anna Miller, Financial Officer, Conservation and Resource Development Division, Department of Natural Resources and Conservation, 1520 East Sixth Avenue, Helena, MT 59620-2301, no later than June 14, 1991.

6. Anna Miller of the above address has been designated to preside over and conduct the hearing.

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

BY: 
KAREN L. BARCLAY, DIRECTOR

Certified to the Secretary of State, May 7, 1991.

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

In the matter of the adoption of Rule I and the amendment of Rule 46.11.101 pertaining to the food stamp program and transfer of resources	)))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED ADOPTION OF RULE I AND THE AMENDMENT OF RULE 46.11.101 PERTAINING TO THE FOOD STAMP PROGRAM AND TRANSFER OF RESOURCES

TO: All Interested Persons

1. On June 6, 1991, at 11:30 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 Rule I and the amendment of Rule 46.11.101 pertaining to the food stamp program and transfer of resources.

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

[RULE I] FOOD STAMPS, TRANSFER OF RESOURCES (1) Households which have knowingly transferred resources for less than fair market value for the purpose of qualifying or attempting to qualify for food stamps shall be disqualified from receiving food stamps for a period of time determined in accordance with subsection (4).

(a) This disqualification period shall apply only to transfers made in the 3-month period immediately preceding application or after the household is determined eligible for food stamps.

(b) There shall be no disqualification period if a transfer was made for a reason other than to qualify for food stamps, even if qualifying for food stamps was also one reason or the primary reason for the transfer.

(c) This transfer rule shall apply to transfers by any household member or by any ineligible alien or disqualified person whose resources are considered available to the household.

(2) Households applying for food stamps must provide to the department information regarding any resource which any household member or ineligible alien or disqualified person whose resources are considered available to the household has transferred within the 3-month period immediately preceding application. A household which has already been certified to receive food stamps must provide to the department information regarding any such transfer which occurs during their certification period.

(3) Eligibility for food stamps shall not be affected by the following transfers:

(a) transfers where fair market value or value near fair market value is received for the property;

(i) value within 5% of the fair market value shall be considered to be near fair market value;

(b) transfers which would not affect eligibility, including:

(i) transfers of excluded resources;

(ii) transfers of non-excluded resources that, when added to other non-excluded resources of the household, had a value at the time of transfer of less than the allowable resource limit; and

(iii) transfers between members of the household, including ineligible aliens or disqualified persons whose resources are considered available to the household.

(4) The length of the disqualification period shall be based on the amount by which the transferred resource, when added to the other non-excluded resources of the household, exceeds the allowable resource limit, in accordance with the following table:

Amount in Excess of Resource Limit	Period of Disqualification (months)
$0 to 249.99	1
$250 to 999.99	3
$1,000 to 2999.99	6
$3,000 to 4,999.99	9
$5,000 or more	12

(5) Any transfer for less than fair market value or a value near fair market value which is not exempted by subsection 3(b)(i) through (iii) and which is made within the 3-month period immediately preceding application or after a determination of eligibility has been made shall raise a rebuttable presumption that the transfer was made for the purpose of qualifying for food stamps; provided, however, that this presumption shall not apply if the food stamp applicant or recipient states a reason for the transfer other than to qualify or continue to qualify for food stamps and supports the statement with clear and convincing evidence.

(a) Whenever the department determines that such a transfer has occurred, it shall send a written notice to the applicant or recipient prior to making a determination of eligibility or ineligibility explaining the household's right to rebut the presumption.

(b) The household shall have ten (10) days from the date of mailing of the written notice required by (5)(a) to provide the department with clear and convincing evidence that the transfer was for a reason other than to qualify or attempt to qualify for food stamps.

(c) The determination of whether a disqualifying transfer has occurred shall be based on all facts and circumstances known to the department, including:

(i) the reason stated by the applicant or recipient for the transfer;

(ii) the household's attempts, if any, to transfer the property at or near fair market value and/or the reason the household accepted less than fair market value;

(iii) evidence that the household did receive an amount of compensation equal to or near fair market value;

(d) The presence of one or more of the following factors, while not necessarily conclusive, may indicate that the property was transferred for some purpose other than to qualify or continue to qualify for food stamps:

(i) the occurrence or onset of an unexpected event or condition after the transfer which necessitates application for food stamps;

(ii) the transfer was ordered by a court of law based upon statute, regulation, a bona fide condition of settlement or other legal requirement;

(iii) the transfer occurred as a result of fraud, misrepresentation, or coercion perpetrated upon the person who transferred the property, provided that person has taken all reasonable steps, including legal action, to recover such property or obtain fair compensation for it.

(e) If the household fails to rebut the presumption as required in subsection (5)(b), the household shall be disqualified for a period of time in accordance with subsection (4).

(6) If the department determines that a disqualifying transfer has occurred, it shall send a written notice to the household as follows:

(a) A household already receiving food stamps at the time the transfer is discovered shall be sent a notice of adverse action explaining the reason for the disqualification and its length. The disqualification shall be effective with the first allotment to be issued after the notice of adverse action period has expired, unless the household has requested continuation of benefits pending a fair hearing.

(b) An applicant household shall be sent a denial of eligibility explaining the reason for the denial and the length of the disqualification. The disqualification shall begin in the month of application.

AUTH: Sec. 53-2-201 MCA
IMP: Sec. 53-2-306 MCA

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

46.11.101 FOOD STAMP PROGRAM (1) The department of social and rehabilitation services hereby adopts and incorporates by reference 7 CFR 271 through 275, as amended through ~~June 1, 1988~~ December 31, 1990, which are the food stamp program regulations as adopted by the food and nutrition services, United States department of agriculture. These federal regulations set forth the food stamp program and

include general information and definitions, requirements for participating state agencies, certification of eligible households, issuance and use of food coupons, performance reporting system and state agency liabilities and federal sanctions. A copy of 7 CFR 271 through 276, as amended through ~~June 1, 1988~~ December 31, 1990, may be obtained from the Department of Social and Rehabilitation Services, 111 Sanders, Box 4210, Helena, MT 59604-4210.

AUTH: Sec. 53-2-201 MCA
IMP: Sec. 53-2-306 MCA

4. Federal regulations at 7 CFR 273.8(i) require disqualification of food stamp applicants and recipients who transfer property for less than fair market value, subject to certain conditions and exceptions. The Department is adopting a new rule summarizing this policy.

The rule change also updates the amendment date of 7 CFR 271 through 275, which ARM 46.11.101 incorporates by reference.

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 59604-4210, no later than June 13, 1991.

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

Director, Social and Rehabilitation Services

Certified to the Secretary of State May 6, 1991.

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

In the matter of the amendment of Rules 46.12.545 and 46.12.547 pertaining to occupational therapy	))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF RULES 46.12.545 AND 46.12.547 PERTAINING TO OCCUPATIONAL THERAPY

TO: All Interested Persons

1. On June 6, 1991, at 4:00 p.m. a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana to consider the proposed amendment of Rules 46.12.545 and 46.12.547 pertaining to occupational therapy.

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

46.12.545 OCCUPATIONAL THERAPY SERVICES, DEFINITION

(1) "Occupational therapy" means ~~the use of purposeful activity with an individual who is limited by physical injury or illness, psychosocial dysfunction, developmental or learning disability, or the aging process in order to maximize independence, prevent disability, and maintain health~~ those services authorized by 37-24-103, MCA. Occupational therapy are those services provided other than by a hospital or home health agency.

Subsections (1)(a) through (4) remain the same.

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-6-101 MCA

46.12.547 OCCUPATIONAL THERAPY SERVICES, REIMBURSEMENT

Subsections (1) through (2)(c) remain the same.

~~(3) Effective July 1, 1990, the reimbursement rates listed will be increased by four percent (4%). All items paid by report will remain at the rate indicated.~~

(43) Occupational therapy fee schedule:

EVALUATION AND INSTRUCTION

H5240	Occupational therapy evaluation Each 15 minute unit (maximum 4 units).....	~~8.32~~ 8.66
Z9210	Home instruction including design of maintenance plans Each 15 minute unit (maximum 4 units)....	~~8.32~~ 8.66

ACTIVITIES OF DAILY LIVING (ADL)

(Physical & Psychological)

Z9217 Each 15 minute unit..... ~~7.50~~ 7.80

~~MODALITIES~~

~~Modality is the employment, or method of employment, of a therapeutic agent (used in conjunction with occupational therapy procedures)~~

~~H5300 Modalities, initial 15 minutes .... 13.31~~
~~Z9216 Each additional 15 minutes ..... 3.00~~

MEDICARE CROSSOVER CLAIMS
(Billing procedure codes to be used when medicare payments are also available)

H5300 Occupational Therapy 1 unit
equals 30 minutes or
2 medicaid units 13.31
H5300-52 Occupational therapy additional
15 minute unit(s) 3.00

TRAINING PROCEDURES

All Procedures

Each 15 minute unit ..... ~~7.50~~ 7.80

Z9211 Prosthetic training (upper extremity only)
Z9212 Orthotics training (upper extremity dynamic bracing, splinting)

Neuromuscular Procedures

Z9218 Reflex integration
Z9219 Range of motion
Z9220 Gross and fine coordination
Z9221 Strength and endurance

Cognitive Integration Procedures

Z9213 Orientation to environment
Z9214 Conceptionalization/comprehension
Z9215 Cognitive integration

Sensory Integration Procedures

Z9222 Sensory awareness
Z9223 Visual spatial awareness
Z9224 Body integration

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-6-101 MCA

3. These rules are being changed to conform with recent changes in Montana law contained in Senate Bill 54 Chapter No. 35, Laws of Montana 1991. Prior to the passage of the bill, the Attorney General's Office ruled that the Medicaid rules concerning occupational therapy were not in conformance with state law.

Historically, there has been a controversy between occupational therapists and physical therapists concerning the use of the term "modality" which is the employment, or the method of employment, of a therapeutic agent used, such as heat, cold, air, light, water, electricity and sound in conjunction with occupational therapy procedures. The new legislation requires that we remove the language that refers to modalities which may be used by occupational therapists. The specific therapeutic agents that occupational therapists may use are set forth in 37-24-104, MCA, as amended by Senate Bill 54.

In addition, changes were necessary in order to include payments for claims that may also be billed to the Medicare program. The 4% multiplier in ARM 46.12.547(3) was also removed, therefore, allowing for the increase in the amounts in the fee schedule. This fee schedule change does not increase payments but was made to more clearly express in the rule the fee schedule for services.

4. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana 59604-4210, no later than June 13, 1991.

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

Director, Social and Rehabilitation Services

Certified to the Secretary of State May 6, 1991.

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

In the matter of the amendment of Rules 46.12.3401 and 46.12.3801 pertaining to non-institutionalized medical assistance for children	)))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF RULES 46.12.3401 AND 46.12.3801 PERTAINING TO NON-INSTITUTIONALIZED MEDICAL ASSISTANCE FOR CHILDREN

TO: All Interested Persons

1. On June 6, 1991, at 9:30 a.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana to consider the proposed amendment of Rules 46.12.3401 and 46.12.3801 pertaining to non-institutionalized medical assistance for children.

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

46.12.3401 GROUPS COVERED, NON-INSTITUTIONALIZED AFDC-RELATED FAMILIES AND CHILDREN Subsections (1) through (g)(i) remain the same.

(h) a child born on or after October 1, 1983, ~~whose family income and resources meet the requirements listed in ARM 46.10.403 and 46.10.406.~~ who has attained age 6 but has not yet reached the age 19 and whose family income does not exceed 100% of the federal poverty guidelines;

Subsections (1)(i) through (4) remain the same.

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

46.12.3801 INDIVIDUALS COVERED, NON-INSTITUTIONALIZED MEDICALLY NEEDY Subsection (1) remains the same.

(a) pregnant women whose pregnancy has been verified ~~and whose family income and resources meet the requirements listed in ARM 46.10.403 and 46.10.406;~~

Subsection (1)(b) remains the same.

(c) ~~caretaker relatives as defined in ARM 46.10.302;~~ a child born on or after October 1, 1983, through the month of their 7th birthday whose family income and resources meet the requirements listed in ARM 46.12.3803 and 46.12.3805;

Subsections (1)(d) through (3)(b) remain the same.

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

3. The Department is making this rule change to comply with section 4601 of OBRA 1990 which mandates coverage to children born on or after October 1, 1983 who have attained the age of 6 but are not yet 19; reside with a specified relative; and whose household's countable income does not exceed 100% of the poverty standards. 42 CFR 435.116 mandates Medicaid coverage to certain children born on or after October 1, 1983, who have not attained age 7. These children are commonly referred to as "Ribicoff" children. This rule change implements the federal regulation.

Based on the amount appropriated for medical assistance by the 52nd Montana Legislature in House Bill 2, the Department has chosen to eliminate Medicaid coverage for AFDC caretaker relatives, which is optional under federal law, in order to allocate limited funds to mandatory Medicaid coverage groups.

4. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana 59604-4210, no later than June 13, 1991.

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

Julia E. Robinson

Director, Social and Rehabilitation Services

Certified to the Secretary of State May 6, 1991.

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

In the matter of the amendment of Rules 46.25.727 and 46.25.744 pertaining to general relief assistance and general relief medical income standards	)))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF RULES 46.25.727 AND 46.25.744 PERTAINING TO GENERAL RELIEF ASSISTANCE AND GENERAL RELIEF MEDICAL INCOME STANDARDS

TO: All Interested Persons

1. On June 6, 1991, at 11:00 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 amendment of Rules 46.25.727 and 46.25.744 pertaining to general relief assistance and general relief medical income standards.

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

46.25.727 MONTHLY INCOME AND RESOURCE STANDARD FOR GENERAL RELIEF ASSISTANCE (1) The monthly income standards are:

Monthly Income Standard

Number of Persons in Household	Monthly Income Standard
1	$ ~~209~~ 232
2	~~281~~ 311
3	~~352~~ 390
4	~~424~~ 469
5	~~495~~ 548
6	~~566~~ 627
7	~~638~~ 706
8	~~709~~ 785
9	~~781~~ 865
10	~~852~~ 944
11	~~923~~ 1,023
12	~~995~~ 1,102
13	~~1,066~~ 1,181
14	~~1,138~~ 1,260
15	~~1,209~~ 1,339
16 or more	~~1,280~~ 1,418

AUTH: Sec. 53-2-201, 53-2-803 and 53-3-114 MCA
IMP: Sec. 53-2-205 and 53-2-206 MCA

46.25.744 INCOME FOR GENERAL RELIEF MEDICAL Subsections (1) through (4) remain the same.

(5) The monthly income levels are:

MONTHLY INCOME LEVELS

Family Size	Monthly Income Level
1	$ ~~314~~ 348
2	~~422~~ 466
3	~~528~~ 585
4	~~636~~ 704
5	~~743~~ 822
6	~~849~~ 941
7	~~957~~ 1,059
8	~~1,064~~ 1,178
9	~~1,172~~ 1,297
10	~~1,278~~ 1,415
11	~~1,385~~ 1,534
12	~~1,493~~ 1,653
13	~~1,599~~ 1,771
14	~~1,707~~ 1,890
15	~~1,814~~ 2,009
16 or more	~~1,920~~ 2,127

AUTH: Sec. 53-2-201, 53-2-803 and 53-3-114 MCA
IMP: Sec. 53-2-205 and 53-2-206 MCA

3. This rule is necessary in order to comply with 53-3-205 and 53-3-206, MCA and House Bill 2 recently passed by the 52nd Montana Legislature. These laws require the Department to set the standards of eligibility at 42% of the federal poverty index. General relief medical is 150% of the amount established for general relief assistance as required by 53-3-206, MCA.

4. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana 59604-4210, no later than June 13, 1991.

5. 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 May 6, 1991.

MAR Notice No. 46-2-648 9-5/16/91

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

In the matter of the amendment of Rules 46.12.2011 and 46.12.2013 pertaining to nurse specialist non-covered services	))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF RULES 46.12.2011 AND 46.12.2013 PERTAINING TO NURSE SPECIALIST NON-COVERED SERVICES

TO: All Interested Persons

1. On June 6, 1991, 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 amendment of Rules 46.12.2011 and 46.12.2013 pertaining to nurse specialist non-covered services.

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

46.12.2011 NURSE SPECIALIST SERVICES, DEFINITIONS
Subsections (1) through (1)(j) remain the same.
(k) "Psychiatric counseling" means individual, family, or group therapy relating to psychosocial, behavioral, or emotional issues which is the primary purpose of the visit.

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

46.12.2013 NURSE SPECIALIST SERVICES, REIMBURSEMENT
Subsections (1) through (8) remain the same.
(a) psychiatric ~~nurse~~ counseling;
Subsections (8)(b) through (8)(e) remain the same.
(f) consultations with other nurse specialists; and
~~(g) dietary counseling; and~~
(~~h~~g) delivery services not provided in a licensed health care facility unless an emergency situation.

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

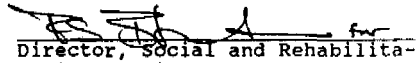
3. These proposed changes are necessary to clarify those services performed by nurse specialists which will be reimbursed under the Medicaid program. ARM 46.12.2013 currently states that psychiatric nurse counseling is not reimbursed by Medicaid if provided by a nurse specialist. This proposed change clarifies the definition of counseling. Psychiatric counseling services will be reimbursed by Medicaid

only when provided by licensed counselors such as psychiatrists, clinical social workers, and clinical psychologists.

The rule as currently written lists dietary counseling as a non-covered service. Dietary counseling is often an integral part of risk and/or disease management and would be considered to be a necessary medical service as part of a routine office visit. Therefore, the reference to dietary counseling is being deleted.

4. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana 59604-4210, no later than June 13, 1991.

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



Director, Social and Rehabilitation Services

Certified to the Secretary of State May 6, 1991.

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

In the matter of the amendment of Rule 46.12.3803 pertaining to medically needy income standards	))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF RULE 46.12.3803 PERTAINING TO MEDICALLY NEEDY INCOME STANDARDS

TO: All Interested Persons

1. On June 6, 1991, at 9:30 a.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana to consider the proposed amendment of Rule 46.12.3803 pertaining to medically needy income standards.

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

46.12.3803 MEDICALLY NEEDY INCOME STANDARDS

Subsections (1) through (3)(a) remain the same.

(b) Institutionalized recipients must also meet the income criteria of ARM 46.12.4008.

MEDICALLY NEEDY INCOME LEVELS
FOR SSI and AFDC-RELATED INDIVIDUALS
AND FAMILIES

Family Size	One Month Net Income Level	~~Two Month Net Income Level~~	~~Three Month Net Income Level~~
1	$ ~~400~~ 386	~~$ 800~~	~~$ 1,200~~
2	400	~~800~~	~~1,200~~
3	423	~~846~~	~~1,269~~
4	445	~~890~~	~~1,335~~
5	519	~~1,038~~	~~1,557~~
6	594	~~1,188~~	~~1,782~~
7	669	~~1,338~~	~~2,007~~
8	744	~~1,488~~	~~2,232~~
9	780	~~1,560~~	~~2,340~~
10	814	~~1,628~~	~~2,442~~
11	846	~~1,692~~	~~2,538~~
12	876	~~1,752~~	~~2,628~~
13	904	~~1,808~~	~~2,712~~
14	930	~~1,860~~	~~2,790~~
15	954	~~1,908~~	~~2,862~~
16	976	~~1,952~~	~~2,928~~

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-6-101 and 53-6-131 MCA

3. Per OBRA '90, Section 4718, the Department is required to base the medically needy standards on a one person family as opposed to the two person family. This rule change implements the federal policy.

The income levels for two and three months are being deleted because income eligibility is now computed using a one month rather than a three month prospective period, pursuant to ARM 46.12.3804 as recently amended.

4. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana 59604-4210, no later than June 13, 1991.

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

Director, Social and Rehabilitation Services

Certified to the Secretary of State May 6, 1991.

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

In the matter of the amendment of Rules 46.12.508 and 46.12.509 pertaining to outpatient hospital reimbursement	)))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF RULES 46.12.508 AND 46.12.509 PERTAINING TO OUTPATIENT HOSPITAL REIMBURSEMENT

TO: All Interested Persons

1. On June 5, 1991, at 9:30 a.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana to consider the proposed amendment of Rules 46.12.508 and 46.12.509 pertaining to outpatient hospital reimbursement.

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

46.12.508 OUTPATIENT HOSPITAL SERVICES, REIMBURSEMENT
Subsection (1) remains the same.
(a) Facilities located within the borders of the state of Montana will be reimbursed on a retrospective basis. Allowable costs will be determined in accordance with ARM 46.12.509(2) and subject to the limitation specified in ARM 46.12.509(2)(a).

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-6-101 MCA

46.12.509 ALL HOSPITAL REIMBURSEMENT, GENERAL
Subsection (1) remains the same.
(2) Allowable costs will be determined in accordance with generally accepted accounting principles as defined by the American Institute of Certified Public Accountants. Such definition of allowable costs is further defined in accordance with the HIM-15, subject to the exceptions and limitations provided in the department's administrative rules. The department hereby adopts and incorporates herein by reference the HIM-15, which is a manual published by the United States department of health and human services, social security administration, which provides guidelines and policies to implement medicare regulations which set forth principles for determining the reasonable cost of provider services furnished under the Health Insurance for Aged Act of 1965, as amended. A copy of the HIM-15 may be obtained through the Medicaid Services Division, Department of Social and Rehabilitation Services, P.O. Box 4210, 111 Sanders, Helena, Montana 59604-4210.

(a) Reimbursement to each provider of outpatient hospital services for reasonable costs, other than the capital-related costs of such services, shall be limited to allowable costs, as determined in accordance with subsection (2), less 5.8% of such costs.

Subsections (3) through (7) remain the same.

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-6-101 MCA

3. The proposed amendments are necessary to implement a mandatory 5.8% reduction in the reimbursement of reasonable costs, other than capital-related costs, for outpatient hospital services. This reduction will be applied as a percentage reduction in reimbursement to each provider for otherwise allowable costs. Allowable costs are determined for each provider under the provisions of the HIM-15, which is the manual used by the Medicaid program for determining reasonable costs. This reduction is required by section 4401 of the Omnibus Reconciliation Act of 1990 and has been authorized by the 1991 legislature under House Bill 2.

4. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana 59604-4210, no later than June 13, 1991.

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

Director, Social and Rehabilitation Services

Certified to the Secretary of State May 6, 1991.

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

In the matter of the amendment of Rules 46.12.503 and 46.12.505 pertaining to inpatient hospital reimbursement	))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF RULES 46.12.503 AND 46.12.505 PERTAINING TO INPATIENT HOSPITAL REIMBURSEMENT

TO: All Interested Persons

1. On June 5, 1991, at 9:30 a.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana to consider the proposed amendment of Rules 46.12.503 and 46.12.505 pertaining to inpatient hospital reimbursement.

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

46.12.503 INPATIENT HOSPITAL SERVICES, DEFINITION

Subsections (1) through (4) remain the same.

(5) "Distinct part rehabilitation unit" is a unit of an acute care general hospital that meets the requirements in 42 CFR 412.25 and 412.29 (~~1986~~ 1990).

Subsections (6) through (17) remain the same.

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-6-101 MCA

46.12.505 INPATIENT HOSPITAL SERVICES, REIMBURSEMENT

Subsections (1) through (2)(b) remain the same.

(c) The department computes a Montana average base price per case. This average ~~budget neutral~~ base price per case is $1,471.31 ~~for fiscal year ending June 30, 1991~~ ,effective beginning July 1, 1990.

Subsections (2)(d) through (13) remain the same.

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-6-101 MCA

3. This rule change is necessary to correct an erroneous citation. The reference to 42 CFR 412.29 will be changed to 42 CFR 412.25 and 412.29.

For FY92, the legislature did not authorize an increase in the base DRG price. Therefore, the base rate remains unchanged, although the "ending" date needs to be revised. The rule will be revised to leave the current base DRG price in effect indefinitely. The department will amend the rule in the

future as necessary to implement any future increases in the base DRG price.

4. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana 59604-4210, no later than June 13, 1991.

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

Director, Social and Rehabilitation Services

Certified to the Secretary of State May 6, 1991.

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

In the matter of the amendment of Rules 46.12.590, 46.12.591 and 46.12.599 pertaining to inpatient psychiatric services	)))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF RULES 46.12.590, 46.12.591 AND 46.12.599 PERTAINING TO INPATIENT PSYCHIATRIC SERVICES

TO: All Interested Persons

1. On June 5, 1991, at 1:30 p.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana to consider the proposed amendment of Rules 46.12.590, 46.12.591 and 46.12.599 pertaining to inpatient psychiatric services.

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

46.12.590 INPATIENT PSYCHIATRIC SERVICES, PURPOSE AND DEFINITIONS Subsections (1) through (2)(m) remain the same.

(n) "Residential treatment facility" means a facility~~, located in Montana or another state, of not less than 30 beds that is accredited by the Joint Commission on Accreditation of Health Care Organizations (JCAHO), and is~~ operated ~~by a non-profit corporation or association~~ for the primary purpose of providing ~~active treatment services for mental illness in a non-hospital based~~ residential psychiatric care ~~setting~~ to persons under 21 years of age.

Subsections (2)(o) through (5) remain the same.

~~(6) The provisions of ARM 46.12.590 and 591 which provide medicaid coverage of and payment for residential treatment facility services terminate on July 1, 1991.~~

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-6-101 MCA and 1991 Mont. Laws, Ch._____ [HB 977].

46.12.591 INPATIENT PSYCHIATRIC SERVICES, PARTICIPATION REQUIREMENTS Subsection (1) remains the same.

(a) maintain a current license as a hospital or a residential treatment facility under the rules of the department of health and environmental sciences to provide inpatient psychiatric services, or, if the provider's facility is not located within the state of Montana, maintain a current license in the equivalent category under the laws of the state in which the facility is located;

(b) maintain a current certification for Montana medicaid under the rules of the department of health and environ-

mental sciences to provide inpatient psychiatric services, or, if the provider's facility is not located within the state of Montana, meet the requirements of subsections (h) and (i);

(c) maintain a current agreement with the department to provide inpatient psychiatric services, including a provider enrollment form, or, if the provider's facility is not located within the state of Montana, maintain a current provider enrollment form with the department's fiscal agent;

Subsections (1)(d) through (1)(f) remain the same.

(g) for hospital providers:

Subsection (1)(g)(i) remains the same.

(ii) be accredited by the Joint Commission on Accreditation of Health Care Organizations (JCAHO) or any other organization designated by the secretary of the United States department of health and human services as authorized to accredit psychiatric hospitals for medicaid participation.

(h) for residential treatment facility providers, be accredited by the Joint Commission on Accreditation of Health Care Organizations (JCAHO) or any other organization designated by the secretary of the United States department of health and human services as authorized to accredit inpatient psychiatric facilities, including residential treatment facilities, for medicaid participation;

(i) for hospital providers electing to meet the requirement of subsection (g)(ii) rather than (g)(i) and for all residential treatment facility providers, submit to the department prior to receiving initial reimbursement payments and thereafter within 30 days after receipt, all accreditation determinations, findings, reports and related documents issued by the accrediting organization to the provider;

Subsections (1)(h) and (1)(i) remain the same in text but will be renumbered as subsections (1)(j) and (1)(k).

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-6-101 MCA and 1991 Mont. Laws, Ch.____ [HB 977].

46.12.599 INPATIENT PSYCHIATRIC SERVICES, UTILIZATION REVIEW AND CONTROL (1) Prior to admission and as frequently as the department or its designated agent may deem necessary, the department or its designated agent will evaluate the necessity and quality of services for each medicaid patient, in accordance with 42 CFR sections 441.150 through 441.156, 456.3, 456.150 through 456.245 and 456.600 through 456.614, which are federal regulations which set forth utilization review and control criteria and which the department hereby adopts and incorporates by reference. A copy of the cited regulations may be obtained through the Medicaid Services Division, Department of Social and Rehabilitation Services, P.O. Box 4210, 111 Sanders, Helena, MT 59604-4210.

(a) The provider shall make available to the department or its designated agent upon request any records related to recipients admission and/or services provided.

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-6-101 MCA and 1991 Mont. Laws, Ch.____ [HB 977].

3. The rule changes are necessary to implement the provisions of House Bill 977, enacted by the 1991 legislature.

Under previous law and under the current rule, medicaid coverage of inpatient psychiatric services provided in residential treatment facilities would terminate on July 1, 1991. HB 977 authorized continued coverage of these services and the amended rule is necessary to repeal the July 1, 1991 sunset provision.

HB 977 also removed several restrictions contained in previous law which prevented certain facilities from participating in the medicaid program. These restrictions required that the facility be non-profit, have at least 30 beds, and be nonhospital-based. The amended rule is necessary to remove these restrictions from the medicaid program definition of residential treatment facility in accordance with HB 977.

The amended rule is necessary to clarify the medicaid participation requirements for certain inpatient psychiatric facilities. Because of the less restrictive requirements of HB 977, the department anticipates that out-of-state facilities will seek reimbursement from the Montana medicaid program. The amended rule is necessary to clarify licensure, certification, enrollment and accreditation requirements for out-of-state facilities.

Currently, JCAHO accreditation is required as a condition of medicaid participation for all residential treatment facilities and for psychiatric hospitals electing not to obtain medicare certification. Under federal law, the Secretary of Health and Human Services may designate other organizations to accredit inpatient psychiatric facilities. The Secretary has not yet designated any such organizations. However, it is anticipated that this may occur within the near future. The amended rule is necessary to allow the medicaid program to recognize such designations should they occur.

In addition to requiring JCAHO or other accreditation as provided in the amended rule, the department is required to review and assure the quality of medical services provided to medicaid recipients. Accreditation may be conditional and/or may contain statements of deficiencies. The amended rule is

necessary to allow the department to review accreditation determinations, findings and reports so that it may better fulfill its responsibility in reviewing and assuring quality of care.

Additional technical amendments are necessary to clarify that utilization review and quality of care reviews may be performed by the department's designated agent.

4. These rule changes will be effective July 1, 1991.

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 59604-4210, no later than June 13, 1991.

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

Director, Social and Rehabilitation Services

Certified to the Secretary of State May 6, 1991.

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

In the matter of the amendment of Rule 46.12.702 pertaining to drug rebates	))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF RULE 46.12.702 PERTAINING TO DRUG REBATES

TO: All Interested Persons

1. On June 6, 1991, at 10:30 a.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana to consider the proposed amendment of Rule 46.12.702 pertaining to drug rebates.

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

46.12.702 OUTPATIENT DRUGS, REQUIREMENTS (1) These requirements are in addition to those contained in ARM 46.12.301 through 46.12.~~308~~ 309.

Subsections (2) through (6)(b) remain the same.

(c) effective April 1, 1991, of a manufacturer with which the secretary of HHS has not signed a drug rebate agreement as required by section 4401 of the Omnibus Budget Reconciliation Act of 1990, Public Law 101-508.

(7) Effective January 1, 1991, the department will not deny reimbursement, based upon lack of a rebate agreement between the manufacturer and the secretary of HHS, for the first six months following approval of a new drug by the FDA. However, if the manufacturer has not entered into a rebate agreement as required by subsection (6)(c) within six months of approval of the new drug by the FDA, the department will not reimburse for the drug.

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-6-101 MCA

3. This proposed rule change is necessary in order to comply with federal laws pertaining to reimbursement for pharmaceuticals in the Medicaid program. The Omnibus Budget Reconciliation Act (OBRA) of 1990 requires all drug manufacturers to enter into a rebate agreement with the federal government in order to be entitled to reimbursement from the Medicaid program. Effective April 1, 1991, the drugs of manufacturers not entering into a rebate agreement will not be eligible for Medicaid reimbursement. The Secretary of HHS extended the initial deadline for signing the rebate agreement by 30 days, the last date to sign was April 30, 1991. In addition, OBRA 1990 requires state Medicaid program to

reimburse for all new legend drugs for the first six months after USFDA approval. The manufacturer must sign a rebate agreement by the end of this six month period in order to continue to have the drug reimbursed by Medicaid. The change to subsection (1) is necessary to correct an erroneous citation.

4. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana 59604-4210, no later than June 13, 1991.

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

Director, Social and Rehabilitation Services

Certified to the Secretary of State May 6, 1991.

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

In the matter of the adoption of Rules I, II and III and the amendment of Rules 46.12.571, 46.12.581 and 46.12.588 pertaining to licensed professional counselor services	))))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED ADOPTION OF RULES I, II AND III AND THE AMENDMENT OF RULES 46.12.571, 46.12.581 AND 46.12.588 PERTAINING TO LICENSED PROFESSIONAL COUNSELOR SERVICES

TO: All Interested Persons

1. On June 5, 1991, at 3:30 p.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana to consider the proposed adoption of Rules I, II and III and the amendment of Rules 46.12.571, 46.12.581 and 46.12.588 pertaining to licensed professional counselor services.

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

[RULE I] LICENSED PROFESSIONAL COUNSELOR SERVICES, DEFINITION (1) Licensed professional counselor services are those services provided by a licensed professional counselor which are within the scope of the practice as provided in Title 37, chapter 23, MCA and ARM Title 8, chapter 61, subchapter 12.

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-6-101 MCA

[RULE II] LICENSED PROFESSIONAL COUNSELOR SERVICES, REQUIREMENTS (1) These requirements are in addition to those contained in ARM 46.12.301 through 46.12.309.

(2) Licensed professional counselor services for purposes of medicaid reimbursement are limited to:

(a) individual counseling;
(b) group counseling; and
(c) family therapy.

(3) Licensed professional counselor group counseling services shall consist of one and one-half hour sessions with no more than 8 individuals participating in the group.

(4) Licensed professional counselor services, psychological services as defined in ARM 46.12.580 and licensed clinical social workers provided for in ARM 46.12.588 are limited to a combined total of 22 hourly visits or the equivalent per state fiscal year.

(a) Six (6) hours may be used for consultation with family members or agencies involved with the care of the

recipient. The six (6) hours shall count against the time available for testing and consultation by psychologists provided in ARM 46.12.571 and 46.12.581 and consultation by licensed clinical social workers provided in ARM 46.12.588.

(b) When an eligible child receives professional counselor services and the professional counselor consults with the parent as part of the child's treatment, the time with the parent shall be billed to medicaid under the child's name. The provider shall indicate on the claim that the child is the patient and state the child's diagnosis. He shall also indicate consultation was with the parent. Any treatment done in this manner shall be charged against the 22 hours available to the child.

(c) Appropriate medical record documentation must be present to support the necessity of professional counselor services.

(5) Telephone contacts are not a professional counselor service unless the consultation is with an adoption placement agency or a governmental agency.

(6) Services that can be included under a facility's long-term care per diem are not payable as licensed professional counselor services.

(7) Inpatient professional counselor services provided in a hospital on an inpatient basis that are covered by medicaid as part of the diagnosis related group (DRG) payment under ARM 46.12.505 are not reimbursable as professional counselor services. These noncovered services include:

(a) services provided by a professional counselor who is employed or under a contract with a hospital;

(b) services provided for purposes of discharge planning as required by 42 CFR 482.21; and

(c) services, including, but not limited to, group therapy, that are required as part of licensure or certification.

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-6-101 MCA

[RULE III] LICENSED PROFESSIONAL COUNSELOR SERVICES, REIMBURSEMENT (1) The department will pay the lowest of the following for licensed professional counselor services not also covered by medicare:

(a) provider's actual charge for the service as submitted to the department; or

(b) the department's fee schedule as provided in subsection (3).

(2) The department will pay the lowest of the following for licensed professional counselor services which are also covered by medicare:

(a) the provider's actual charge for the service as submitted to the department;

(b) the amount allowable for the same service under medicare which is the allowed amount on the medicare explanation of benefits; or

(c) the department's fee schedule as provided in subsection (3).

(3) Payment for licensed professional counselor services shall not exceed the following:

(a) $34.49 per hour for individual counseling, paid at the rate of $8.62 per fifteen minute unit;

(b) $10.38 per hour and one half session for group counseling, to be billed as six fifteen minute units paid at the rate of $1.73 per fifteen minute unit; or

(c) $34.49 per hour for family therapy, paid at the rate of $8.62 per fifteen minute unit.

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-6-101 MCA

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

46.12.571 CLINIC SERVICES, REQUIREMENTS Subsections (1) through (9)(b)(ii) remain the same.

(10) No more than twelve (12) hours per state fiscal year may be used for psychological testing of the recipient, and or consultation with family members or agencies involved with the care of the recipient. The twelve (12) hours shall count against the time available ~~and~~ for consultation by licensed clinical social workers provided in ~~for~~ ARM 46.12.588 ~~(4)(a)~~, licensed professional counselors provided for in [RULE II] and for testing and consultation by psychologists provided ~~for~~ in ARM 46.12.581~~(4)(a)~~.

Subsections (10)(a) through (13) remain the same.

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-6-101 MCA

46.12.581 PSYCHOLOGICAL SERVICES, REQUIREMENTS Subsections (1) through (3) remain the same.

(4) Psychological services, ~~and/or~~ licensed social worker services, as defined in ARM 46.12.587, and licensed professional counselors services provided in [RULE II] are limited to 22 hourly visits or the equivalent per fiscal year.

(a) Twelve (12) hours may be used for psychological testing of the recipient, and or consultation with family members or agencies involved with the care of the recipient. The twelve (12) hours shall count against the clinic service time limitations provided ~~for~~ in ARM 46.12.571, ~~(10) and by~~ the time limitations of licensed clinical social workers provided ~~for~~ in ARM 46.12.588~~(4)(a)~~ and the time limitations of licensed professional counselors provided in [RULE II]. Consultations with agencies may be conducted via the telephone.

Subsections (4)(b) through (7)(c) remain the same.

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-6-101 MCA

46.12.588 LICENSED CLINICAL SOCIAL WORK SERVICES, REQUIREMENTS Subsections (1) through (3) remain the same.

(4) Licensed social work services, ~~and/or~~ psychological services as defined in ARM 46.12.580 and licensed professional counselors services provided in [RULE II] are limited to 22 hourly visits or the equivalent per state fiscal year.

(a) Six (6) hours may be used for consultation with family members or agencies involved with the care of the recipient. The six (6) hours shall count against the time available for testing and consultation by psychologists provided ~~for~~ in ARM 46.12.571~~(10)~~ and 46.12.581~~(4)(a)~~ and consultation by licensed professional counselors provided in [RULE II]. Consultation with agencies may be conducted via the telephone.

Subsections (4)(b) through (7)(c) remain the same.

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-6-101 MCA

4. These rules are necessary in order to implement Medicaid coverage of licensed professional counselors as provided in Senate Bill 306 and House Bill 2 passed by the 52nd Montana Legislature. The inclusion of this service will expand the availability of counseling services to Medicaid recipients particularly in rural areas that lack other counseling services covered by Medicaid.

5. The rules and the proposed amendments are to be effective July 1, 1991.

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 the Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana 59604-4210, no later than June 13, 1991.

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

8. These rules will become effective July 1, 1991.

Director, Social and Rehabilitation Services

Certified to the Secretary of State May 6, 1991.

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

In the matter of the adoption of Rules I and II pertaining to conditional medical assistance	))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED ADOPTION OF RULES I AND II PERTAINING TO CONDITIONAL MEDICAL ASSISTANCE

TO: All Interested Persons

1. On June 6, 1991, at 9:00 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 and II pertaining to conditional medical assistance.

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

[RULE I] CONDITIONAL MEDICAL ASSISTANCE, DEFINITIONS

(1) Definitions for the purposes of conditional medical assistance include:

(a) "Non-liquid resource" is personal property which is not cash and which cannot be converted to cash within twenty workdays.

(b) "Liquid resource" is property which is cash or can be converted to cash within twenty workdays.

(c) "Net proceeds" is the current market value of the resource less sale costs and encumbrances.

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-6-101 and 53-6-131 MCA

[RULE II] CONDITIONAL MEDICAL ASSISTANCE, ELIGIBILITY

(1) Medicaid applicants may qualify for assistance conditioned on the sale, at current market value, of excess non-liquid resources.

(2) To be eligible for conditional assistance an applicant must:

(a) be categorically eligible as being:

(i) age 65 or older;

(ii) blind; or

(iii) disabled;

(b) have or apply for a social security number;

(c) meet the citizenship or alienage requirements of ARM 46.12.3201;

(d) meet the residency requirements of ARM 46.12.3202;

(e) have total countable resources which exceed the SSI-related resource standard of ARM 46.12.3805;

(f) not have countable liquid resources exceeding three times the appropriate federal supplemental security income benefit payment standard at the time of application; and

(g) agree in writing to:

(i) sell excess non-liquid resources during the period of conditional assistance; and

(ii) use the net proceeds of the sale of the excess non-liquid resources to refund to the department conditional medical assistance payments paid on the applicant's behalf.

(3) Conditional assistance may be provided to an eligible applicant for up to three months. An additional three months of conditional assistance may be provided to an applicant when the department determines that the sale of the resource has been prevented by circumstances beyond the applicant's control.

(4) The amount of conditional medical assistance to be refunded to the department is equal to the:

(a) balance of the net proceeds after an amount is deducted to raise the applicant's and spouse's, if any resources to the applicable resource limit; or

(b) total conditional medical assistance payments made on the applicant's and spouse's, if any, behalf.

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-6-101 and 53-6-131 MCA

3. This rule implements conditional assistance in the Montana Medicaid program.

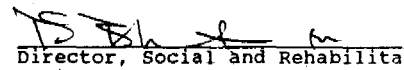
To be eligible for federal financial participation in the Medicaid program, Montana must use the same eligibility criteria to determine the Medicaid eligibility of a person receiving federal supplemental security income (SSI) as is used to determine eligibility for the SSI program. Conditional assistance is a provision of the SSI program.

Federal regulations specify that federal supplemental security income applicants may qualify for three months of conditional assistance if their countable resources exceed the SSI resource limit (currently $2,000 for one person) but their liquid resources do not exceed three times the SSI benefit standard (currently $407 for one person). Applicants must also agree in writing to sell excess non-liquid resources and use the net proceeds to refund conditional medical assistance payments paid on their behalf.

4. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Office of Legal Affairs, Department of Social and Rehabilitation

Services, P.O. Box 4210, Helena, Montana 59604-4210, no later than June 13, 1991.

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



Director, Social and Rehabilitation Services

Certified to the Secretary of State May 6, 1991.

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

In the matter of the adoption of Rules I, II and III pertaining to medicaid for qualified disabled working individuals	)))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED ADOPTION OF RULES I, II AND III PERTAINING TO MEDICAID FOR QUALIFIED DISABLED WORKING INDIVIDUALS

TO: All Interested Persons

1. On June 6, 1991, at 2:30 p.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana to consider the proposed adoption of Rules I, II and III pertaining to medicaid for qualified disabled working individuals.

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

[RULE I] QUALIFIED DISABLED WORKING INDIVIDUALS, APPLICATION AND ELIGIBILITY FOR MEDICAID (1) A qualified disabled working individual (QDWI) is an individual:

(a) who is entitled to enroll in hospital insurance benefits (medicare Part A) under 42 USC 1395i-2a because he lost premium-free Part A medicare coverage due solely to excess earned income from substantial gainful activity;

(b) meets the non-financial criteria in subsection (2) of this rule;

(c) whose income does not exceed 200 percent of the official federal poverty guideline as defined by the executive office of management and budget; and

(d) whose resources do not exceed twice the supplemental security income (SSI) resource limit set forth at 42 USC 1382 (a)(3)(A) and (B) (1990 edition).

(2) The non-financial criteria for determining eligibility of a qualified disabled working individual are that the person:

(a) has not attained the age of 65;

(b) is blind or disabled as defined in 42 USC 416(i)(1) (1990 edition);

(c) has a social security number;

(d) meets the citizenship or alienage requirements of ARM 46.12.3201; and

(e) meets the residency requirements of ARM 46.12.3202.

(3) A person in applying for and receiving medicaid as a qualified disabled working individual is subject to the following provisions:

(a) ARM 46.12.304 concerning third party liability;

(b) ARM 46.12.3001 concerning application requirements;

(c) ARM 46.12.3002 concerning determinations of eligibility;

(d) ARM 46.12.3003 concerning redetermination;

(e) ARM 46.12.3204 concerning limitation on the financial responsibility of relatives;

(f) ARM 46.12.3205 concerning application for other benefits; and

(g) ARM 46.12.3206 concerning assignment of rights to benefits.

(4) Countable income and resources will be determined using SSI criteria incorporated by reference in ARM 46.12.3603 (2).

(5) A person receiving medicaid as a qualified disabled working individual must report within ten days any changes in circumstances that may affect eligibility.

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-6-101 and 53-6-131 MCA

[RULE II] QUALIFIED DISABLED WORKING INDIVIDUALS, EFFECTIVE DATE OF ELIGIBILITY (1) A person is eligible for QDWI benefits as of the date that all eligibility criteria set forth in [Rule I] are met and he is enrolled in medicare Part A under 42 USC 1395i-2a.

(2) Retroactive coverage is available for up to three (3) months prior to date of application.

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-6-101 and 53-6-131 MCA

[RULE III] QUALIFIED DISABLED WORKING INDIVIDUALS, MEDICAID BENEFITS (1) Medicaid benefits for a qualified disabled working individual are limited to payment of the monthly medicare hospital insurance (Part A) premium.

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-6-101 and 53-6-131(3) MCA

3. Section 6012 of the Omnibus Reconciliation Act (OBRA) of 1989 allows certain disabled individuals who have exhausted their Medicare coverage an option to purchase Medicare hospital benefits (Part A) for an indefinite period. Section 6408(d) of OBRA requires states to pay Part A premiums for these individuals if they meet certain income and resource requirements. The 52nd Montana Legislature in House Bill 545 amended Section 53-6-131(3), MCA, to provide for payment of these premiums as a medicaid benefit in compliance with Section 6408(d). These new rules implement this policy.

4. These rules are to be effective July 1, 1991.

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 59604-4210, no later than June 13, 1991.

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

Director, Social and Rehabilitation Services

Certified to the Secretary of State May 6, 1991.

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

In the matter of the amendment of Rules 46.12.575 and 46.12.577 pertaining to family planning services	))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF RULES 46.12.575 AND 46.12.577 PERTAINING TO FAMILY PLANNING SERVICES

TO: All Interested Persons

1. On June 6, 1991, at 2:00 p.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana to consider the proposed amendment of Rules 46.12.575 and 46.12.577 pertaining to family planning services.

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

46.12.575 FAMILY PLANNING SERVICES Subsections (1) through (1)(g) remain the same.

(2) "Annual visit" means a return visit at least once per year, following the initial visit, for a physical examination, laboratory services, and health history. The physical will include all examinations and services required for the initial physical, ~~and~~ ~~t~~The laboratory services may include a urinalysis, hematocrit, and PAP test.

Subsection (3) remains the same.

(4) "Contraceptive supplies" means FDA approved intrauterine devices (IUD), spermicidals, barrier methods, implants and oral contraceptives.

Subsections (5) through (6)(e) remain the same.

(f) abdominal examination; ~~and~~

(g) pelvic, including speculum, bimanual and recto vaginal examination~~.~~;

(h) insertion fitting or removal of an IUD or diaphragm; and

(i) implantation or removal of subcutaneous contraceptives.

Subsections (7) through (7)(e) remain the same.

(f) post examination interview; ~~and~~

(g) any counseling rendered the day of the visit~~.~~;

(h) insertion fitting or removal of an IUD or diaphragm; and

(i) implantation or removal of subcutaneous contraceptives.

Subsections (8) through (9)(g) remain the same.

(10) "Routine visit" means a visit to provide contraceptive follow-up and monitoring and to correct any problems associated with utilization of medical services ~~(~~including treatment for vaginal infections~~)~~. Medical revisit may be

used for a return visit for a diaphragm, ~~or~~ IUD or subcutaneous device and includes the insertion, fitting, implantation or removal of the device.

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-6-101 MCA

46.12.577 FAMILY PLANNING SERVICES, REIMBURSEMENT
Subsections (1) through (2)(a) remain the same.
(b) ~~the fees in the fee schedule for fiscal year 1991 may not exceed 2% of the fee schedules provided in fiscal year 1990; and~~ the adjustments to the fee schedule based upon the annual averaging described in subsection (a) may not exceed the adjustment for family planning services authorized or directed by the legislature for that fiscal year.
Subsections (2)(c) and (3) remain the same.

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-6-101 MCA

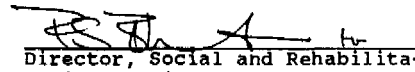
3. This rule change is necessary to add a U.S. Food and Drug Administration recently approved contraceptive device, which now qualifies for Medicaid reimbursement, as a contraceptive supply. The change in reimbursement for the insertion, fitting and removal of IUDs during an annual or initial visit will allow these activities to be done in conjunction with these visits, as well as a routine visit. This will be more convenient for the recipient and the clinics.

In addition, the rule change is necessary to ensure that reimbursement rates are in accord with legislative appropriations. The current wording requires a rule revision every time the legislature changes the Medicaid reimbursement for family planning services. The revision substitutes language to respond to any legislative action as it affects this reimbursement.

4. These proposed amendments are to be effective July 1, 1991.

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 59604-4210, no later than June 13, 1991.

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



Director, Social and Rehabilitation Services

Certified to the Secretary of State May 6, 1991.

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

In the matter of the amendment of Rules 46.12.3601 and 46.12.3603 pertaining to medicaid for disabled widows/widowers	)))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF RULES 46.12.3601 AND 46.12.3603 PERTAINING TO MEDICAID FOR DISABLED WIDOWS/WIDOWERS

TO: All Interested Persons

1. On June 6, 1991, at 2:30 p.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana to consider the proposed amendment of Rules 46.12.3601 and 46.12.3603 pertaining to medicaid for disabled widows/widowers.

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

46.12.3601 GROUPS COVERED, NON-INSTITUTIONALIZED SSI-RELATED INDIVIDUALS AND COUPLES Subsections (1) through (4)(b)(ii) remain the same.

(5) Medicaid will be provided to a disabled widow, disabled widower or disabled surviving divorced spouse who loses supplemental security income benefits or state supplemental payments and therefore medicaid eligibility because the person is determined to be eligible for social security, if the person meets the following criteria:

(a) The person was eligible for supplemental security income or state supplemental payments the month before the person began receiving social security benefits;

(b) The person would continue receiving supplemental security income or state supplemental payments if the person's social security benefit was not counted as income; and

(c) The person is not entitled to enroll in the hospital insurance plan (Part A) of medicare.

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

46.12.3603 FINANCIAL REQUIREMENTS, NON-INSTITUTIONALIZED SSI-RELATED INDIVIDUALS AND COUPLES Subsections (1) through (2)(b)(ii)(B) remain the same.

(c) For a disabled widow, disabled widower or disabled surviving divorced spouse receiving social security benefits who is eligible for medicaid as provided in ARM 46.12.3601 the social security benefits are excluded from countable income.

Subsections (3) through (4)(a) remain the same.

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

3. These rule amendments implement Section 5103 of the Omnibus Budget Reconciliation Act of 1990 (OBRA 90) which requires the provision of medicaid benefits to disabled widows, disabled widowers and disabled surviving spouses who have become eligible for social security and as a consequence of the increased income lost their supplemental security income or state supplementation payments and therefore their medicaid eligibility. These changes provide that their social security derived income will not be counted for purposes of determining medicaid eligibility; thus allowing them to become medicaid eligible. Continuation of medicaid benefits to these people will be of significant benefit to their well-being.

4. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana 59604-4210, no later than June 13, 1991.

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

Director, Social and Rehabilitation Services

Certified to the Secretary of State May 6, 1991.

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

In the matter of the amendment of Rule 46.10.403 pertaining to AFDC table of assistance standards	))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF RULE 46.10.403 PERTAINING TO AFDC TABLE OF ASSISTANCE STANDARDS

TO: All Interested Persons

1. On June 6, 1991, at 11:00 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 amendment of Rule 46.10.403 pertaining to AFDC table of assistance standards.

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

46.10.403 TABLE OF ASSISTANCE STANDARDS Subsection (1) remains the same.

(a) Gross monthly income standards to be used when adults are included in the assistance unit are compared with gross monthly income defined in ARM 46.10.505.

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

No. Of Persons in Household	With Shelter Obligation Per Month	Without Shelter Obligation Per Month
1	$ ~~499~~ 526	$ ~~179~~ 189
2	~~670~~ 705	~~289~~ 304
3	~~838~~ 885	~~394~~ 416
4	~~1,010~~ 1,065	~~501~~ 529
5	~~1,178~~ 1,244	~~601~~ 634
6	~~1,347~~ 1,424	~~694~~ 732
7	~~1,519~~ 1,603	~~786~~ 829
8	~~1,689~~ 1,783	~~871~~ 919
9	~~1,771~~ 1,817	~~953~~ 1,005
10	~~1,848~~ 1,894	~~1,030~~ 1,087
11	~~1,921~~ 1,967	~~1,103~~ 1,163
12	~~1,989~~ 2,035	~~1,171~~ 1,235
13	~~2,052~~ 2,098	~~1,234~~ 1,301
14	~~2,111~~ 2,157	~~1,293~~ 1,364
15	~~2,167~~ 2,213	~~1,349~~ 1,422
16	~~2,217~~ 2,263	~~1,399~~ 1,475

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

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

No. of Persons in Household	With Shelter Obligation Per Month	Without Shelter Obligation Per Month
1	$ ~~177~~ 187	$ ~~68~~ 72
2	~~351~~ 371	~~179~~ 189
3	~~528~~ 556	~~289~~ 304
4	~~701~~ 739	~~394~~ 416
5	~~877~~ 925	~~500~~ 527
6	~~1,053~~ 1,110	~~603~~ 636
7	~~1,227~~ 1,295	~~703~~ 741
8	~~1,402~~ 1,479	~~801~~ 845
9	~~1,483~~ 1,565	~~882~~ 931
10	~~1,563~~ 1,649	~~962~~ 1,014
11	~~1,641~~ 1,730	~~1,040~~ 1,096
12	~~1,715~~ 1,808	~~1,114~~ 1,174
13	~~1,789~~ 1,887	~~1,188~~ 1,252
14	~~1,859~~ 1,961	~~1,258~~ 1,327
15	~~1,927~~ 2,033	~~1,326~~ 1,399
16	~~1,992~~ 2,101	~~1,391~~ 1,467

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

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

No. Of Persons in Household	With Shelter Obligation Per Month	Without Shelter Obligation Per Month
1	$ ~~270~~ 284	$ ~~97~~ 102
2	~~362~~ 381	~~156~~ 165
3	~~453~~ 478	~~213~~ 225
4	~~546~~ 575	~~271~~ 286
5	~~637~~ 673	~~325~~ 343
6	~~728~~ 770	~~375~~ 395
7	~~821~~ 867	~~425~~ 448
8	~~913~~ 964	~~471~~ 497
9	~~957~~ 982	~~515~~ 543
10	~~999~~ 1,024	~~557~~ 587

11	~~1,038~~	1,063	~~596~~	629
12	~~1,075~~	1,100	~~633~~	668
13	~~1,109~~	1,134	~~667~~	703
14	~~1,141~~	1,166	~~699~~	737
15	~~1,171~~	1,196	~~729~~	769
16	~~1,198~~	1,223	~~756~~	797

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

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

No. of Children in Household	With Shelter Obligation Per Month		Without Shelter Obligation Per Month	
1	$ ~~96~~	101	$ ~~37~~	39
2	~~190~~	200	~~97~~	102
3	~~285~~	301	~~156~~	165
4	~~379~~	400	~~213~~	225
5	~~474~~	500	~~270~~	285
6	~~569~~	600	~~326~~	344
7	~~663~~	700	~~380~~	401
8	~~758~~	799	~~433~~	457
9	~~802~~	846	~~477~~	503
10	~~845~~	891	~~520~~	548
11	~~887~~	935	~~562~~	593
12	~~927~~	978	~~602~~	635
13	~~967~~	1,020	~~642~~	677
14	~~1,005~~	1,060	~~680~~	717
15	~~1,042~~	1,099	~~717~~	756
16	~~1,077~~	1,136	~~752~~	793

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

(a) Benefit standards to be used when adults are included in the assistance unit are compared with net monthly income defined in ARM 46.10.505.

BENEFIT STANDARDS TO BE USED WHEN ADULTS ARE INCLUDED IN THE ASSISTANCE UNIT

No. Of Persons in Household	With Shelter Obligation Per Month	With Shelter Obligation Per Day	Without Shelter Obligation Per Month	Without Shelter Obligation Per Day
1	$ ~~220~~ 232	$ ~~7.33~~ 7.73	$ ~~79~~ 83	$ ~~2.63~~ 2.77
2	~~295~~ 311	~~9.83~~ 10.37	~~127~~ 134	~~4.23~~ 4.47

3	~~370~~ 390	~~12.33~~ 13.00	~~174~~ 183	~~5.80~~ 6.10
4	~~445~~ 469	~~14.83~~ 15.63	~~221~~ 233	~~7.37~~ 7.77
5	~~519~~ 548	~~17.30~~ 18.27	~~265~~ 279	~~8.83~~ 9.30
6	~~594~~ 627	~~19.80~~ 20.90	~~306~~ 322	~~10.20~~ 10.73
7	~~669~~ 706	~~22.30~~ 23.53	~~346~~ 365	~~11.53~~ 12.17
8	~~744~~ 785	~~24.80~~ 26.17	~~384~~ 405	~~12.80~~ 13.50
9	~~780~~ 800	~~26.00~~ 26.67	~~420~~ 443	~~14.00~~ 14.77
10	~~814~~ 835	~~27.13~~ 27.83	~~454~~ 479	~~15.13~~ 15.97
11	~~846~~ 866	~~28.20~~ 28.87	~~486~~ 512	~~16.20~~ 17.07
12	~~876~~ 897	~~29.20~~ 29.90	~~516~~ 544	~~17.20~~ 18.13
13	~~904~~ 924	~~30.13~~ 30.80	~~544~~ 573	~~18.13~~ 19.10
14	~~930~~ 950	~~31.00~~ 31.67	~~570~~ 601	~~19.00~~ 20.03
15	~~954~~ 975	~~31.80~~ 32.50	~~594~~ 627	~~19.80~~ 20.90
16	~~976~~ 997	~~32.53~~ 33.23	~~616~~ 650	~~20.53~~ 21.67

(b) Benefit standards to be used when no adults are included in the assistance unit are compared with net monthly income defined in ARM 46.10.505.

BENEFIT STANDARDS TO BE USED WHEN NO ADULTS ARE INCLUDED IN THE ASSISTANCE UNIT

No. Of Persons in Household	With Shelter Obligation Per Month	With Shelter Obligation Per Day	Without Shelter Obligation Per Month	Without Shelter Obligation Per Day
1	$ ~~78~~ 83	$ ~~2.60~~ 2.77	$ ~~30~~ 32	$ ~~1.00~~ 1.07
2	~~155~~ 163	~~5.17~~ 5.43	~~79~~ 83	~~2.63~~ 2.27
3	~~232~~ 245	~~7.73~~ 8.17	~~127~~ 134	~~4.23~~ 4.47
4	~~309~~ 326	~~10.30~~ 10.87	~~174~~ 183	~~5.80~~ 6.10
5	~~386~~ 407	~~12.87~~ 13.57	~~220~~ 232	~~7.33~~ 7.73
6	~~464~~ 489	~~15.47~~ 16.30	~~266~~ 280	~~8.87~~ 9.33
7	~~541~~ 571	~~18.03~~ 19.03	~~310~~ 327	~~10.33~~ 10.90
8	~~618~~ 651	~~20.60~~ 21.70	~~353~~ 372	~~11.77~~ 12.40
9	~~654~~ 689	~~21.80~~ 22.97	~~389~~ 410	~~12.97~~ 13.67
10	~~689~~ 726	~~22.97~~ 24.20	~~424~~ 447	~~14.13~~ 14.90
11	~~723~~ 762	~~24.10~~ 25.40	~~450~~ 483	~~15.27~~ 16.10
12	~~756~~ 797	~~25.20~~ 26.57	~~491~~ 517	~~16.37~~ 17.23
13	~~788~~ 831	~~26.27~~ 27.70	~~523~~ 552	~~17.43~~ 18.40
14	~~819~~ 864	~~27.30~~ 28.80	~~554~~ 584	~~18.47~~ 19.47
15	~~849~~ 896	~~28.30~~ 29.87	~~584~~ 616	~~19.47~~ 20.53
16	~~878~~ 926	~~29.27~~ 30.87	~~613~~ 646	~~20.43~~ 21.53

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

3. This rule change is necessary to comply with 53-4-241, MCA, which requires the Department to establish rules and standards of assistance, and with the legislative mandate contained HB 2 which requires benefit payment levels

based on 42% of the federal poverty index. The needs standards (NMI) and the gross monthly income (GMI) standards and the benefit standards must increase due to the increase in the federal poverty index.

4. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana 59604-4210, no later than June 13, 1991.

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

Director, Social and Rehabilitation Services

Certified to the Secretary of State May 6, 1991.

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

In the matter of the amendment of Rule 46.12.1025 pertaining to ambulance services, reimbursement	)))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF RULE 46.12.1025 PERTAINING TO AMBULANCE SERVICES, REIMBURSEMENT

TO: All Interested Persons

1. On June 5, 1991, at 11:00 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 amendment of Rule 46.12.1025 pertaining to ambulance services, reimbursement.

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

46.12.1025 AMBULANCE SERVICES, REIMBURSEMENT (1) ~~Ambulance attendant services are included in the provider's base rate.~~

~~(2) Reusable devices and equipment such as backboards, neckboards and inflatable leg and arm splints are considered part of the ambulance service and are included in the provider's base rate.~~

~~(3) Nonreusable items and disposable supplies such as oxygen, gauze and dressings, are reimbursable as a separate charge.~~

~~(4) Medicaid reimbursement for mileage is allowed for patient loaded miles only outside the city limits.~~

~~(5)~~ The department will pay the lowest of the following for ambulance services ~~not also covered by medicare~~:

(a) the provider's actual submitted charge for the service;

(b) the amount allowable for the same service under medicare; or

(c) ~~the individual provider's June 1990 medicaid rate plus 2%.~~ the department's fee as provided for in subsections (3) and (4).

(2) The fees for ancillary ambulance services are the fees provided for in ARM 46.12.806.

(a) Ancillary ambulance services are those items of durable medical equipment and medical supplies as defined in ARM 46.12.801.

(3) The fees for basic life support and advanced life support ambulance services are 90% of the average of all the provider charges submitted to the department for the particular service in fiscal year 1990.

(a) The fee will be adjusted as necessary so that the fees in the aggregate are in accord with adjustments

authorized for the particular fiscal year by the legislative appropriation process for that fiscal year.

(4) The department's fees for ground and air transportation ambulance services mileage are those fees the department determines are authorized for the services in the particular fiscal year by the legislative appropriation process for that fiscal year.

(5) Current fees for ambulance services are published by the department in a pricing manual.

~~(6) Basic life support and mileage fees for providers certified after June 30, 1989, will be established at 65.2% of usual and customary fee.~~

(6) Providers must bill for services using procedure codes set forth, and according to the definitions contained, in the health care financing administration's common procedure coding system (HCPCS).

(7) Copies of the pricing manual, billing codes and HCPCS may be obtained from the Medicaid Services Division, Department of Social and Rehabilitation Services, 111 Sanders, P.O. Box 4210, Helena, Montana 59604-4210.

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-6-101 MCA

3. This proposed amendment is necessary in order to implement the appropriations provided in House Bill 2. This bill passed by the 52nd legislative session and this rule amendment will increase reimbursement for ambulance services generally, provide for a higher rate of reimbursement for ambulance services involving advance life support features, allow reimbursement for medical equipment and supplies, and provide reimbursement for mileage. These changes are necessary in order to improve the availability of ambulance services for Medicaid recipients.

4. This amendment is to be effective July 1, 1991.

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 59604-4210, no later than June 13, 1991.

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

Julia E. Rokus
Director, Social and Rehabilitation Services

Certified to the Secretary of State May 6, 1991.

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

In the matter of the amendment of Rules 46.25.101, 46.25.724, 46.25.731, 46.25.742, 46.25.751 and 46.25.752 pertaining to general relief assistance and general relief medical assistance	)))))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF RULES 46.25.101, 46.25.724, 46.25.731, 46.25.742, 46.25.751 AND 46.25.752 PERTAINING TO GENERAL RELIEF ASSISTANCE AND GENERAL RELIEF MEDICAL ASSISTANCE

TO: All Interested Persons

1. On June 6, 1991, at 8:30 a.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana to consider the proposed amendment of Rules 46.25.101, 46.25.724, 46.25.731, 46.25.742, 46.25.751 and 46.25.752 pertaining to general relief assistance and general relief medical assistance.

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

46.25.101 DEFINITIONS For purposes of this chapter, the following definitions apply:

(1) "Acute medical need" means an illness, injury, or other serious medical condition that:

(a) demands urgent medical attention; and

(b) is expected to last less than 12 months if treated.

Original subsections (1) through (5) remain the same in text but will be renumbered as subsections (2) through (6).

(7) "Chronic illness" or "chronically ill" means the condition of a person who is diagnosed as having an illness, injury or physical or mental impairment that:

(a) is expected to last for a continuous period of at least 12 months; and

(b) would be considered a disability under 42 U.S.C. 1382c if evaluated under criteria used to determine eligibility for the federal supplemental security income program.

Original subsections (6) through (12) remain the same in text but will be renumbered as subsections (8) through (14).

(~~13~~15) "Employability development plan (EDP)" means an individualized plan of action to get a job, including training or treatment to overcome serious barriers or chemical dependency. The employability development plan is jointly developed by the claimant and ~~employment~~ vocational specialist.

Original subsections (14) through (19) remain the same in text but will be renumbered as subsections (16) through (21).

(~~20~~22) "Good cause" means the test used to determine whether a general relief for basic necessities claimant has failed to comply with the requirements of 53-3-303~~,~~ and 53-3-305, MCA regarding job search, training, work programs, and other work-related activities. Good cause may include, but is not limited to:

Original subsections (20)(a) through (25) remain the same in text but will be renumbered as subsections (22)(a) through (27).

~~(26) "Infirm" means the condition of a person who is diagnosed by a licensed medical practitioner and confirmed by an expert medical review to have a physical or mental handicap that significantly impairs the person's ability to be employed.~~

Original subsections (27) through (29) remain the same in text but will be renumbered as subsections (28) through (30).

(31) "Managed care system" means a program organized to serve the medical needs of general relief medical assistance recipients in an efficient and cost-effective manner by managing the receipt of medical services for a geographic or otherwise defined population of recipients through primary physicians and other health care providers.

(32) "Medical certification" means written documentation of a serious physical, emotional or mental handicap, a permanent or temporary illness, injury or incapacity as diagnosed or determined by a licensed medical practitioner for physical conditions, and a licensed psychiatrist, psychologist, social worker or chemical dependency counselor for emotional and mental conditions.

Original subsections (30) through (38) remain the same in text but will be renumbered as subsections (33) through (41).

(~~39~~42) "Serious barriers to employment" means a limitation in obtaining employment as determined by a vocational specialist resulting from:

Original subsections (39)(a) through (39)(c) remain the same in text but will be renumbered as subsections (42)(a) through (42)(c).

(~~40~~43) "Serious medical condition" means a mental or physical condition that causes a serious health risk to a person and for which treatment is medically necessary. Diagnosis and determination of necessary treatment must be made by a licensed medical practitioner for physical conditions, and by a licensed psychiatrist, psychologist, social worker or chemical dependency counselor for emotional and mental conditions.~~, and t~~The department may confirm ~~it~~ the diagnosis through ~~expert medical~~ a departmental review. Necessary treatment includes ~~prenatal~~ essential medical care and ~~such other elective treatments as are determined~~ other services that the department determines by ~~department~~ rule to be medically necessary. A serious medical condition is limited to chronic illness, an acute medical need, or a medical condition that requires services in order for a person to obtain or retain employment.

Original subsections (41) through (44) remain the same in text but will be renumbered as subsections (44) through (47).

(48) "Unemployable" means the condition of a person who:

(a) is at least 55 years of age and has a limited ability to obtain or retain suitable employment because of advanced age as determined by a vocational specialist;

(b) has a serious physical, emotional, or mental handicap that is medically certified and that prevents him from being employed in any substantial, gainful employment as determined by a vocational specialist; or

(c) suffers from a permanent or temporary illness, injury or incapacity that is medically certified and that prevents the person from working in any substantial, gainful employment, as determined by a vocational specialist.

(49) "Vocational specialist" means an employment counselor or other experienced personnel who are qualified to evaluate a recipient's ability to work in substantial, gainful employment.

Original subsections (45) and (46) remain the same in text but will be renumbered as subsections (50) and (51).

AUTH: Sec. 53-2-803, 53-3-114 MCA
IMP: Sec. 53-2-201, 53-3-109, as amended by HB 927, 53-3-205 and 53-3-206 MCA

46.25.724 DETERMINATION OF ~~INFIRMITY~~ UNEMPLOYABILITY

(1) In order to be determined an ~~infirm~~ unemployable person for the purpose of eligibility for general relief assistance, the following nonfinancial criteria must exist:

(a) a diagnosed disability established through a physical or mental examination provided by a licensed medical practitioner for physical conditions, and by a licensed psychiatrist, psychologist, social worker or chemical dependency counselor for emotional and mental conditions;

Subsections (1)(b) and (1)(c) remain the same.

(2) The diagnosis of ~~infirmity~~ unemployability is subject to ~~professional medical~~ departmental review.

(3) A finding of ~~infirmity~~ unemployability is subject to redetermination:

Subsections (3)(a) through (3)(c) remain the same.

(4) A vocational specialist will review the documentation provided by the medical practitioner or other person authorized in subsection (1)(a) to diagnose disabilities and will determine whether the applicant or recipient is able to obtain and retain substantial, gainful employment.

AUTH: Sec. 53-2-803 and 53-3-114 MCA
IMP: Sec. 53-2-201 and 53-3-205 MCA

46.25.731 STRUCTURED JOB SEARCH AND TRAINING PROGRAM

Subsection (1) remains the same.

(2) All claimants for general relief assistance for basic necessities will be referred by the county office of

human services to the project work program, where the ~~employment~~ vocational specialist will do an intake interview and initial assessment to determine whether the claimant is employable or unemployable.

Subsection (3) remains the same.

(4) Based on information gained during the intake and assessment, the ~~employment~~ vocational specialist will recommend to the county office of human services that the claimant be classified as either employable or unemployable.

(5) All unemployable claimants will be referred back to the county office of human services. ~~Unemployable claimants are those who:~~

~~(a) are at least 55 years old and have limited ability to obtain or retain suitable employment because of advanced age; or~~

~~(b) have been determined unemployable, as defined by 53-3-109 MCA, by the department's contract physician.~~

Subsections (6) through (6)(a)(iv) remain the same.

(7) During the initial month and upon reassessment by the vocational specialist, employable claimants shall inform the ~~employment~~ vocational specialist of serious barriers to employment or chemical dependency. In addition, all other employable claimants will be observed for indications of serious barriers or chemical dependency. A reassessment of all claimants will be held in their final month of eligibility to determine whether the claimant should be reclassified as employable or unemployable or should remain classified as having serious barriers to employment.

Subsections (8) through (9) remain the same.

(10) If at any time during the initial month or upon reassessment, serious barriers and/or chemical dependency are found or identified, the claimant will be referred for further assessment and development of an individualized plan.

Subsection (11) remains the same.

(a) An EDP and treatment plan will be jointly developed by the claimant and the ~~employment~~ vocational specialist.

(12) Claimants with serious barriers will meet with the ~~employment~~ vocational specialist for further assessment.

(a) An EDP and training plan will be jointly developed by the claimant and the ~~employment~~ vocational specialist.

Subsections (13) through (13)(e) remain the same.

(14) If at any time during successive months' participation in the project work program or upon reassessment, a serious barrier or chemical dependency is found or identified, that claimant will meet with the ~~employment~~ vocational specialist to have further assessment done to determine if a serious barrier or chemical dependency exists. An individualized EDP/training/treatment plan will be jointly developed. A reassessment must include an evaluation of the applicant's education, training, experience, and ability to work in substantial gainful employment.

Subsection (15) remains the same.

(16) Claimants with serious barriers identified in the EDP or the reassessment must be willing to participate in a component to assist them to overcome those barriers to be eligible for an additional two months of general relief assistance for basic necessities benefits.

(17) Claimants with chemical dependency, as identified in the EDP or the reassessment, must be participating or willing to participate in an approved program to assist them overcome their dependency to be eligible for additional two months of general relief assistance for basic necessities benefits.

Subsections (18) through (21)(d)(iii) remain the same.

AUTH: Sec. 53-2-803 and 53-3-114 MCA
IMP: Sec. 53-2-822, 53-3-303 and 53-3-304 MCA

46.25.742 PERIODS OF ELIGIBILITY FOR GENERAL RELIEF MEDICAL Subsections (1) and (2) remain the same.

(3) Recipients who are required by the department to participate in a managed-care system will become ineligible to receive general relief medical assistance if they fail to comply with managed-care requirements.

Subsections (3) through (3)(c) remain the same in text but will be renumbered as subsections (4) through (4)(c).

AUTH: Sec. 53-2-201, 53-2-803 and 53-3-114 MCA
IMP: Sec. 53-3-206 and 53-3-209 MCA

46.25.751 SELECTION OF MEDICAL PROVIDER (1) The department may through a managed care system or other means designate a medical provider to provide diagnosis and treatment of the serious medical condition for eligible persons.

Subsections (2) through (2)(j)(iii) remain the same.

AUTH: Sec. 53-2-803 and 53-3-114 MCA
IMP: 53-3-313 as amended by SB 391 MCA

46.25.752 SCOPE OF GENERAL RELIEF MEDICAL ASSISTANCE (1) Medically necessary ~~S~~services will be provided to ~~alleviate~~ treat a specific serious medical condition related to chronic illness or which requires immediate medical attention to alleviate a serious health risk in the amount and scope provided under the medicaid program described at Title 46, chapter 12 of the Administrative Rules of Montana.

(2) Medically necessary services to children less than 18 years of age under this section are limited to services of the same scope and duration as provided under the Montana medicaid program provided in Title 53, chapter 6, MCA.

Original subsections (2) through (4) remain the same in text but will be renumbered as subsections (3) through (5).

(6) A general relief medical recipient requiring medical services in order to obtain or retain employment may receive services similar to those provided under the Montana medicaid program, but only for the duration of the need.

Original subsections (5) and (6) remain the same in text but will be renumbered as subsections (7) and (8).

AUTH: Sec. 53-2-201, 53-2-803 and 53-3-114 MCA
IMP: Sec. 53-3-310 MCA

3. These amendments are necessary to implement changes in the general relief program adopted by the 52nd Montana Legislature. Senate Bill 269 amends sections 53-3-109 and 53-3-206, MCA, to limit eligibility for general relief medical assistance to persons who are chronically ill, have an acute medical need, are less than 18 years of age, or require medical services in order to obtain or retain employment, whereas previously any person was eligible who had a serious medical need and met certain financial and other requirements. Senate Bill 269 amends section 53-3-109, MCA, to define a chronic illness as an illness, injury, or physical or mental impairment which meets the definition of a disability for federal Supplemental Security Income purposes.

Senate Bill 269 and Senate Bill 391 both authorize the Department to develop managed care systems for general relief medical assistance recipients and to require recipients to participate in such systems as a condition of eligibility.

House Bill 927 amends section 53-3-109, MCA, to require that classification of recipients as employable, employable with serious barriers to employment or unemployable be done by vocational specialists and defines the term vocational specialist. It further requires that a reassessment of each recipient be done during the final month of eligibility. These proposed rules implement those changes.

4. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana 59604-4210, no later than June 13, 1991.

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

6. These rules will become effective July 1, 1991.

Julia E. Rehberg
Director, Social and Rehabilitation Services

Certified to the Secretary of State May 6, 1991.

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

In the matter of the adoption of Rule I and the amendment of Rules 46.10.803, 46.10.805, 46.10.809, 46.10.811, 46.10.819, 46.10.821, 46.10.823, 46.10.825, 46.10.827, 46.10.839 and 46.10.843 pertaining to transition-to-work allowance and the JOBS program	)	NOTICE OF PUBLIC HEARING ON THE PROPOSED ADOPTION OF RULE I AND THE AMENDMENT OF RULES 46.10.803, 46.10.805, 46.10.809, 46.10.811, 46.10.819, 46.10.821, 46.10.823, 46.10.825, 46.10.827, 46.10.839 AND 46.10.843 PERTAINING TO TRANSITION-TO-WORK ALLOWANCE AND THE JOBS PROGRAM

TO: All Interested Persons

1. On June 6, 1991, at 1:30 p.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana to consider the proposed adoption of Rule I and the amendment of Rules 46.10.803, 46.10.805, 46.10.807, 46.10.809, 46.10.811, 46.10.819, 46.10.821, 46.10.823, 46.10.825, 46.10.827, 46.10.839 and 46.10.843 pertaining to transition-to-work allowance and the JOBS program.

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

[RULE I] TRANSITION-TO-WORK ALLOWANCE (1) A transition-to-work allowance may be provided, to the extent that funds are available, to AFDC recipients who verify that they have obtained employment in another county or state. The allowance is to be used for travel and relocation expenses of the recipient and recipient's family to the new job location.

(a) AFDC recipients enrolled in the JOBS program will not be eligible for the transition-to-work allowance.

(2) A transition-to-work allowance will be provided to a recipient only if the recipient is unable to obtain sufficient funds from other sources to pay necessary travel and relocation expenses. A transition-to-work allowance may be provided as a supplement to other funding sources such as JTPA relocation allowance.

(3) The maximum amount of the allowance provided to a recipient shall be four times the AFDC benefit amount the recipient is receiving at the time of qualification for the allowance.

AUTH: 53-2-202 and 53-4-212 MCA
IMP: 53-4-211 and 53-4-241 MCA and HB 2

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

46.10.803 DEFINITIONS Subsections (1) through (13) remain the same.

(14) "General education development (GED)" means training provided to persons who need a high school education or its equivalent ~~in order to obtain appropriate employment~~.

Subsections (15) through (35) remain the same.

AUTH: Sec. 53-4-212 and 53-4-719 MCA
IMP: Sec. 53-2-201, 53-4-211, 53-4-215, 53-4-702 through 53-4-718 MCA

46.10.805 ELIGIBILITY, EXEMPT STATUS Subsections (1) through (2)(a) remain the same.

(b) a person residing at a location more than 1 hours ~~distance~~ distant in commuting time. This excludes the time necessary to transport a child to and from a child care facility;

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

(i) In an unemployed parent assistance unit, the family may decide which parent will be exempted to care for the child. This decision cannot be changed more often than once every six (6) months.

Subsections (2)(i) through (5)(c) remain the same:

(6) Not all eligible AFDC recipients will be ~~selected for~~ enrolled in the JOBS ~~participation~~ program. Those persons not selected ~~will~~ may be ~~referred~~ considered for enrollment at a later time.

Subsections (7) through (8) remain the same.

(9) If an on-the-job training participant becomes ineligible for AFDC due to excess earned income or due to exceeding the limitations set forth in ARM 46.10.304A as to number of hours of employment per month in the case of an unemployed parent, the participant may remain a JOBS participant for the duration of the training and may be eligible for case management, child care, and supportive services available to other JOBS participants who become employed~~, for up to ninety (90) days after the ineligibility.~~ until the participant completes the training described in the on-the-job contract.

AUTH: Sec. 53-4-212 and 53-4-719 MCA
IMP: Sec. 53-2-201, 53-4-211, 53-4-215, 53-4-703, 53-4-706, 53-4-707, 53-4-708, 53-4-715, 53-4-717 and 53-4-720 MCA

46.10.809 PARTICIPATION REQUIREMENTS FOR EDUCATIONAL ACTIVITIES (1) A caretaker relative who is 16 years or older but under 20 who has not completed high school or its

equivalent must participate in educational activities in pursuit of a high school diploma or its equivalent if the case manager determines that such educational activities are appropriate.

Subsections (1)(a) through (3)(d) remain the same.

AUTH: Sec. 53-4-212 and 53-4-719 MCA
IMP: Sec. 53-2-201, 53-4-211, 53-4-215, 53-4-703, 53-4-705, 53-4-708, 53-4-715 and 53-4-720 MCA

46.10.811 ~~PARTICIPATION REQUIREMENTS FOR~~ UNEMPLOYED PARENTS TRACK PARTICIPATION AND OTHER REQUIREMENTS

(1) In an unemployed parent assistance unit, ~~both parents may~~ the primary wage earner will be required to participate in the unemployed parent track of the JOBS program, unless specifically exempt under one of the exemptions set forth in ARM 46.10.805.

(a) In an assistance unit with a child under the age of three, the family may decide ~~which parent~~ whether the primary wage earner or the other spouse will ~~qualify for the exemption of caring~~ be exempted to care for the child. This decision cannot be changed more often than once every six (6) months.

~~(b) If the other parent in an assistance unit with a sanctioned unemployed parent refuses to participate in the JOBS program, that person as provided for in ARM 46.10.839 will not receive their portion of the assistance unit's grant.~~

(2) If the primary wage earner in an unemployed parent assistance unit is specifically exempt under one of the exemptions set forth in ARM 46.10.805, or is required to participate but fails or refuses to do so, then the other spouse will be required to participate in the unemployed parent track of the JOBS program unless specifically exempt under one of the exemptions set forth in ARM 46.10.805.

(3) The spouse who is not the primary wage earner in an unemployed parent assistance unit may elect to participate in the unemployed parent track of the JOBS program.

(a) If such a spouse who is not specifically exempt under ARM 46.10.805 after electing to participate fails or refuses without good cause to participate or to accept or maintain employment, that spouse shall be sanctioned according to the terms of ARM 46.10.839.

(b) If such a spouse who is exempt under ARM 46.10.805 after electing to participate fails or refuses without good cause to participate or to accept or maintain employment, that spouse shall not be sanctioned but shall lose priority for participation in the program in the future.

(4) The unemployed parent track shall be limited to the following activities:

(a) job search, which shall not exceed eight weeks in any period of twelve (12) consecutive months;

(b) community work experience; and

(c) educational activities as follows:

(i) in the case of a parent under age 25 who has not completed high school or an equivalent course of education, high school education or education designed to prepare a person to qualify for a high school equivalency certificate; or

(ii) in other cases, as determined appropriate by the case manager after assessment and development of an employability plan.

(5) Hours of participation required of an unemployed parent are as follows:

(a) a total of 40 hours per week in a county having a complete JOBS program; or

(b) a total of 20 hours per week in a county having a minimal JOBS program.

(6) Supportive services as set forth in ARM 46.10.825 will be available to persons participating in the unemployed parent track of the JOBS program.

AUTH: Sec. 53-4-212 and 53-4-719 MCA
IMP: Sec. 53-2-201, 53-4-211, 53-4-215, 53-4-703, 53-4-706, 53-4-707 and 53-4-720 MCA

46.10.819 TRAINING SERVICES--POST SECONDARY Subsections (1) through (2) remain the same.

(a) If an AFDC recipient who is required to participate in JOBS and is pursuing post-secondary education to fulfill the JOBS requirement is unable to obtain from other sources funds for tuition, books, fees or other necessary costs of education after making diligent and reasonable attempts to do so, the recipient shall not be sanctioned for failure to participate in JOBS but shall then be required in the future to participate in another activity or activities to fulfill the JOBS requirement.

Subsection (3) remains the same.

AUTH: Sec. 53-4-212 and 53-4-719 MCA
IMP: Sec. 53-2-201, 53-4-211, 53-4-215, 53-4-703, 53-4-705, 53-4-708, 53-4-715 and 53-4-720 MCA

46.10.821 COMMUNITY WORK EXPERIENCE PROGRAM (CWEP)

Subsections (1) through (3)(b) remain the same.

(c) The maximum number of hours per month that a participant may be required to participate in a work experience assignment during the first nine (9) months of the assignment is the number of hours which would result from dividing the monthly AFDC grant amount by the federal minimum wage.

(i) The portion of the monthly grant for which the state is reimbursed by the collection of child support (not including the $50 pass-through) shall be excluded in determining the number of hours that a participant may be required to work.

(d) After a participant has been assigned to a position for nine months, the maximum hours per month that a participant may be required to participate in that assignment is the number of hours which would result from dividing the monthly AFDC grant by the federal minimum wage or the prevailing wage paid to individuals employed in the same or similar occupations by the same employer at the same site, whichever is higher.

(i) The portion of the monthly grant for which the state is reimbursed by the collection of child support (not including the $50 pass-through) shall be excluded in determining the number of hours that a participant may be required to work.

Subsections (3)(d) and (3)(e) remain the same in text but will be renumbered as subsections (3)(e) and (3)(f).

Subsections (4) through (9) remain the same.

AUTH: Sec. 53-4-212 and 53-4-719 MCA
IMP: Sec. 53-2-201, 53-4-211, 53-4-215, 53-4-703, 53-4-705, 53-4-715 and 53-4-720 MCA

46.10.823 SELF-INITIATED SERVICES Subsections (1) and (2) remain the same.

(a) The department has conducted an assessment of the education or training and has developed an employability plan and has determined that the education or training provides skills for jobs that will lead to self-sufficiency and that are available in the local area or areas within Montana the person is willing to move to;

Subsections (2)(b) through (3) remain the same.

AUTH: Sec. 53-4-212 and 53-4-719 MCA
IMP: Sec. 53-2-201, 53-4-211, 53-4-215, 53-4-703, 53-4-705, 53-4-708 and 53-4-720 MCA

46.10.825 SUPPORTIVE SERVICES AND ONE TIME WORK-RELATED EXPENSES AVAILABILITY Subsections (1) through (1)(a)(i)(A) remain the same.

(B) liability insurance for necessary private transport ~~as a one time work-related expense~~ not to exceed $110.00 during the twelve (12) months following enrollment in the program and any twelve months of any successive twelve month enrollment period in the program; and

(C) auto repairs for necessary private transport ~~as a one time work-related expense~~ not to exceed $500.00 during the twelve (12) months following enrollment in the program and any twelve months of any successive twelve month enrollment period in the program.

(b) tools for specific job or training needs ~~as a one time work-related expense~~ not to exceed $300.00 during the twelve (12) months following enrollment in the program and any

twelve months of any successive twelve month enrollment period in the program;

(c) clothing and personal grooming and hygiene needs not to exceed a total cost of $100.00 during the twelve (12) months following enrollment in the program and any twelve months of any successive twelve month enrollment period in the program;

Subsection (1)(d) remains the same.

(e) medical services including physical, prescription eyeglasses, drugs, immediate dental care can be provided if not available through medicaid or another source ~~as a one-time work-related expense~~ not to exceed $150.00 during the twelve (12) months following enrollment in the program and any twelve months of any successive twelve month enrollment period in the program;

(f) counseling if medicaid services have been exhausted; and

(g) ~~other items necessary to search for employment as a one time work-related expense per month not to exceed $25.00 per month; and~~ items necessary to search for or obtain employment including legal or housing fees or services; business start-up fees or licenses (not to include loans); energy related emergency; relocation costs; and union dues. Such items must be:

(i) not available through other services including emergency AFDC; and

(ii) consistent with the employability plan and not to exceed $300.00 during the twelve (12) months following enrollment in the program and any twelve months of any successive twelve month enrollment period in the program.

~~(h) other items necessary to obtain and retain employment including legal or housing fee services:~~

~~(i) not available through other sources including emergency AFDC;~~

~~(ii) consistent with employability plan; and~~

~~(iii) a one time work-related expense not to exceed $300 during the twelve (12) months following enrollment in the program and any twelve months of any successive twelve month enrollment period in the program.~~

(2) One time work-related expenses are those expenses determined necessary to accept or maintain employment and may include:

(a) transportation costs not to exceed $150.00 per job;

(b) liability insurance for necessary private transportation not to exceed $110.00 per job;

(c) auto repair for necessary private transportation not to exceed $500.00 per job;

(d) tools for employment not to exceed $300.00 per job;

(e) clothing, personal grooming and hygiene needs not to exceed $100.00 per job;

(f) fees, transcripts, applications, birth certificates, GED or equivalency fees not to exceed $50.00 per job;

(g) medical physicals, prescriptions, eye glasses and immediate dental care not to exceed $50.00 per job;

(h) counseling services not to exceed $500.00 per year; and

(i) items necessary to search for or obtain employment including legal or housing fees or services; business start-up fees or licenses (not to include loans); energy related emergency, relocation costs; and union dues.

(~~2~~3) Supportive services and one time work-related expenses may be provided as appropriate by the case manager or service provider.

(~~3~~4) Provision of supportive services and one time work-related expenses is contingent upon the availability of funding.

(~~4~~5) The provision of supportive services and one time work-related expenses will be through voucher payments.

(~~5~~6) Supportive services and one time work-related expenses must be referenced in the employment plan and be consistent with employment goals.

(~~6~~7) Supportive services and one time work-related expenses may not be utilized if the participant has similar services available through other programs including medicaid.

(~~7~~8) Supportive services and one time work-related expenses are available to a participant for up to fourteen (14) days when a recipient is awaiting receipt of any of the services listed in ARM 46.10.807.

AUTH: Sec. 53-4-212 and 53-4-719 MCA
IMP: Sec. 53-2-201, 53-4-211, 53-4-215, 53-4-703, 53-4-715, 53-4-716 and 53-4-720 MCA

46.10.827 AVAILABILITY OF SERVICES AFTER LOSS OF AFDC ELIGIBILITY Subsection (1) remains the same.

(2) A JOBS participant who is participating in on-the-job training funded by JOBS or JTPA or in work supplementation and loses AFDC eligibility due to excess earned income or due to exceeding the limitations set forth in ARM 46.10.304 as to the number of hours of employment per month in the case of an unemployed parent may receive case management activities, supportive services and child care until the participant completes the training described in the on-the-job contract, even if the time required to complete the training exceeds 90 days after the date the participant's AFDC case is closed.

AUTH: Sec. 53-4-212 and 53-4-719 MCA
IMP: Sec. 53-2-201, 53-4-211, 53-4-215, 53-4-703, 53-4-716 and 53-4-720 MCA

46.10.839 SANCTIONS Subsections (1) and (2) remain the same.

(a) for the first occurrence: loss of the person's portion of the household grant ~~for 1 month or~~ until the failure to comply ceases~~, whichever is longer~~;

Subsections (2)(b) and (2)(c) remain the same.

~~(3) A person who begins to participate again in the program must participate for two weeks after the date of beginning participation before benefits may be received. After successful completion of the two weeks, sanctions are to cease as of the date of agreed participation.~~

Subsections (4) through (4)(b) remain the same in text but will be renumbered as subsections (3) through (3)(b).

(~~5~~4) An exempt volunteer participant in the JOBS program who has entered the program and who fails to participate in the program will not be ~~allowed to reenter the program unless there is no other person seeking an opening in the program~~ sanctioned. However, the individual will lose priority for participation in the future.

AUTH: Sec. 53-4-212 and 53-4-719 MCA
IMP: Sec. 53-2-201, 53-4-211, 53-4-215, 53-4-706, 53-4-707 and 53-4-717 MCA

46.10.843 FAIR HEARING PROCEDURE (1) A recipient ~~appealing a sanction that has not been resolved by the conciliation process provided for in ARM 46.10.841~~ participating in any work-related program or activity under the JOBS program, including on-the-job training, work supplementation, and community work experience programs, is entitled to a fair hearing and appeal provided for in ARM 46.2.201 et seq. with respect to the following issues:

(a) a sanction that has not been resolved by the conciliation process provided for in ARM 46.10.841;

(b) on-the-job working conditions;

(c) workers' compensation coverage, but not for purposes of adjudicating the recipient's workers' compensation claim; and

(d) wage rates used in calculating the hours of participation required of persons in community work experience programs.

Subsection (2) remains the same.

(3) A recipient who is dissatisfied with the decision of the fair hearing officer with regard to any of the matters set forth in subsections (1)(b) through (d) may appeal to the office of administrative law judges of the U.S. department of labor.

(a) An appeal under this subsection must be filed within twenty (20) days of receipt by the recipient of the fair hearing officer's written decision.

(b) An appeal under this subsection shall be the recipient's exclusive remedy in cases concerning matters set forth in subsections (1)(b) through (d) and shall be in lieu of the appeal process provided in ARM 46.2.211 and 46.2.212.

AUTH: Sec. 53-4-212 and 53-4-719 MCA
IMP: Sec. 53-2-201, 53-2-606, 53-4-211, 53-4-215, 53-4-703 and 53-4-720 MCA

4. [RULE I] is being adopted to implement the transition-to-work allowance for AFDC recipients authorized by House Bill 2, the General Appropriations Act of the 52nd Montana Legislature.

The changes to ARM 46.10.825 regarding the unemployed parent track of the JOBS program are mandated by the Family Support Act of 1988, which requires the states to have a JOBS program for unemployed parents in place by 1994. ARM 46.10.843 is being amended in order to comply with a recently promulgated federal regulation, 45 CFR 251.5, which requires the states to provide fair hearings to AFDC recipients participating in work programs to resolve complaints about on-the-job working conditions and other work-related matters. Section 251.5 also provides for an appeal to the Office of Administrative Law Judges of the U.S. Department of Labor from any fair hearing decision regarding such work-related matters.

The remaining amendments to the JOBS rules are necessary to clarify the Department's policy and ensure compliance with federal law.

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 59604-4210, no later than June 13, 1991.

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

Director, Social and Rehabilitation Services

Certified to the Secretary of State May 6, 1991.

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

In the matter of the amendment of Rules 46.12.521, 46.12.522, 46.12.802, 46.12.805, 46.12.806, 46.12.2001, 46.12.2002 and 46.12.2003 and the repeal of Rules 46.12.523 and 46.12.524 pertaining to billing and reimbursement for physician services, durable medical equipment and podiatry services	)	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF RULES 46.12.521, 46.12.522, 46.12.802, 46.12.805, 46.12.806, 46.12.2001, 46.12.2002 AND 46.12.2003 AND THE REPEAL OF RULES 46.12.523 AND 46.12.524 PERTAINING TO BILLING AND REIMBURSEMENT FOR PHYSICIAN SERVICES, DURABLE MEDICAL EQUIPMENT AND PODIATRY SERVICES

TO: All Interested Persons

1. On June 5, 1991, at 8:30 a.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana to consider the proposed amendment of Rules 46.12.521, 46.12.522, 46.12.802, 46.12.805, 46.12.806, 46.12.2001, 46.12.2002 and 46.12.2003 and the repeal of Rules 46.12.523 and 46.12.524 pertaining to billing and reimbursement for physician services, durable medical equipment and podiatry services.

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

46.12.521 PODIATRY SERVICES, REQUIREMENTS (1) These requirements are in addition to those contained in ARM 46.12.301 through 46.12.~~308~~309.

Subsection (2) remains the same.

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-6-101 ~~and 53-6-141~~ MCA

46.12.522 PODIATRY SERVICES, REIMBURSEMENT/GENERAL REQUIREMENTS AND MODIFIERS Subsections (1) and (1)(a) remain the same.

(b) the department's fee schedule ~~found in ARM 46.12.523~~ maintained in accordance with the methodology described in subsection (4).

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

(c) the department's fee schedule ~~found in ARM 46.12.523~~ maintained in accordance with the methodology described in subsection (4).

(3) ~~For services paid by report (BR) the department will pay 70% of the provider's usual and customary charges.~~ Providers must bill for services using the procedure codes and

modifiers set forth, and according to the definitions contained, in the health care financing administration's common procedure coding system (HCPCS). Information regarding billing codes, modifiers and HCPCS is available upon request from the Medicaid Services Division, Department of Social and Rehabilitation Services, 111 Sanders, P.O. 4210, Helena, Montana 59604-4210.

(4) ~~Effective July 1, 1990, the reimbursement rates listed in ARM 46.12.523 and 46.12.524 will be increased by four percent (4%). All items paid by report will remain at the rate indicated.~~ The department's fee schedule, referred to in subsections (1) and (2), shall include fees set and maintained according to the following methodology:

(a) At least annually, the department will review billings for procedures, except those procedures for which a specific fee has been set under the provisions of subsection (b), to determine the total number of times each such procedure has been billed by all providers in the aggregate within the previous 12-month period.

(b) Upon review of the aggregate number of billings as provided in subsection (a), the department will establish a fee for each procedure which has been billed at least 50 times by all providers in the aggregate during the previous 12-month period. The department shall set each such fee at 70% of the average charge billed by all providers in the aggregate for such procedure during such previous 12-month period.

(i) Once the department has established a fee as provided in subsection (4)(b), such fee will not be adjusted except as provided in subsection (d).

(ii) When billed with a modifier, payment for a procedure for which a fee has been established under the provisions of subsection (4)(b) shall be as provided in subsection (5).

(c) For all procedures for which no fee has been set under the provisions of subsection (4)(b), the department's fee schedule amount shall be 70% of the provider's actual charge, regardless of whether the procedure is billed with a modifier.

(d) The department shall adjust the fee schedule to implement increases or decreases in reimbursement authorized or directed by enactment of the legislature as follows:

(i) The department shall increase or decrease those fees established as provided in subsection (4)(b) by the amount or percentage authorized or directed by the legislature. Such increase or decrease shall be effective at the time provided by the legislature.

(ii) The department shall not apply any legislative increase or decrease to those procedures described in subsection (c), unless specifically directed by legislative enactment to do so.

~~(5) MODIFIERS~~

~~Listed services and procedures may be modified under certain circumstances. When applicable, the modifying circum-~~

~~stance should be identified by the addition of the appropriate modifier code, which is a two digit number placed after the usual procedure number from which it is separated by a hyphen. If more than one modifier is used, the "Multiple Modifiers" code placed first after the procedure code indicates that one or more additional modifier codes will follow. All procedures where a modifier is used may be paid By Report (BR). Modifiers commonly used are as follows:~~

~~-22 Unusual Services: When the service(s) provided is greater than that usually required for the listed procedure, it may be identified by adding modifier '-2' to the usual procedure number. A report may also be appropriate. (Pertains to Medicine, Anesthesia, Surgery, Radiology, and Pathology and Laboratory.)~~

~~-23 Unusual Anesthesia: Periodically, a procedure, which usually requires either no anesthesia or local anesthesia, because of unusual circumstances must be done under general anesthesia. This circumstance may be reported by adding the modifier '-23' to the procedure code of the basic service. (Pertains to Anesthesia, Surgery.)~~

~~-26 Professional Component: Certain procedures (eg, laboratory, radiology, specific diagnostic services) are a combination of a podiatric component and a technical component. When the podiatric component is reported separately, the service may be identified by adding the modifier '-26' to the usual procedure number. (Pertains to Medicine, Surgery, Radiology, and Pathology and Laboratory.)~~

~~-30 Anesthesia Service: The anesthesia service may be identified by adding the modifier '-30' to the usual procedural code number of the basic service. (Pertains to Anesthesia.)~~

~~-47 Anesthesia by Surgeon: When regional or general anesthesia is provided by the surgeon, it may be reported by adding the modifier '-47' to the basic service. (This does not include local anesthesia.) (Pertains to Anesthesia, and Surgery.)~~

~~-50 Multiple or Bilateral Procedures: When multiple or bilateral procedures are provided at the same operative session, the first major procedure may be reported as listed. The secondary or lesser procedure(s) may be identified by adding the modifier '-50' to the usual procedure number(s). (Pertains to Surgery, and Radiology.)~~

~~-52 Reduced Services: Under certain circumstances a service or procedure is partially reduced or eliminated at the podiatrist's election. Under these circumstances the service provided can be identified by its usual procedure number and the addition of themodifier '-52', signifying that the service is reduced. This provides a means of reporting reduced services without disturbing the identification of the basic service. (Pertains to Medicine, Anesthesia, Surgery, Radiology, and Pathology and Laboratory.)~~

~~-54 Surgical Care Only: When one podiatrist performs a surgical procedure and another provides preoperative and/or postoperative management, surgical services may be identified by adding the modifier '-54' to the usual procedure number. (Pertains to Surgery.)~~

~~-55 Postoperative Management Only: When one podiatrist performs the postoperative management and another podiatrist has performed the surgical procedure, the postoperative component may be identified by adding the modifier '-55' to the usual procedure number. (Pertains to Medicine, and Surgery.)~~

~~-56 Preoperative Management Only: When one podiatrist performs the preoperative care and evaluation and another podiatrist performs the surgical procedure, the preoperative component may be identified by adding the modifier '-56' to the usual procedure number. (Pertains to Medicine, and Surgery.)~~

~~-66 Surgical Team: Under some circumstances, highly complex procedures (requiring the concomitant services of several podiatrists, plus other highly skilled, specially trained personnel and various types of complex equipment) are carried out under the 'surgical team' concept. Such circumstances may be identified by each participating podiatrist with the addition of the modifier '-66' to the basic procedure number used for reporting services. (Pertains to Surgery.)~~

~~-75 Concurrent Care. Services Rendered by More than One Podiatrist: When the patient's condition requires the additional services of more than one podiatrist, each podiatrist may identify his or her services by adding the modifier '-75' to the basic service performed. (Pertains to Medicine, Anesthesia, Surgery, and Radiology.)~~

~~-76 Repeat Procedure by Same Podiatrist: The podiatrist may need to indicate that a procedure or service was repeated subsequent to the original service. This may be reported by adding the modifier '-76' to the procedure code of the repeated service (Pertains to Medicine, Surgery, and Radiology.)~~

~~-77 Repeat Procedure by Another Podiatrist: The podiatrist may need to indicate that a basic procedure performed by another podiatrist had to be repeated. This may be reported by adding modifier '-77' to the repeated service. (Pertains to Medicine, Surgery, and Radiology.)~~

~~-80 Assistant Surgeon: Surgical assistant services may be identified by adding the modifier '-80' to the usual procedure number(s). (Pertains to Surgery.)~~

~~-81 Minimum Assistant Surgeon: Minimum surgical assistant services are identified by adding the modifier '-81' to the usual procedure number. (Pertains to Surgery.)~~

~~-90 Reference (Outside) Laboratory: When laboratory procedures are performed by a party other than the treating or reporting podiatrist, the procedure may be identified by adding the modifier '-90' to the usual procedure number. (Pertains to Medicine, Surgery, Radiology, and Pathology and Laboratory.)~~

~~-99 Multiple Modifiers: Under certain circumstances two or more modifiers may be necessary to completely delineate a service. In such situations modifier '-99' should be added to the basic procedure, and other applicable modifiers may be listed as a part of the description of the service. (Pertains to Medicine, Anesthesia, Surgery, and Radiology.)~~

(5) Subject to the provisions of subsection (5)(b), when billed with a modifier, payment for a procedure for which a fee has been established under the provisions of subsection (4)(b) will be a percentage of the fee established for the procedure under subsection (4)(b).

(a) The methodology to determine the specific percent for each modifier is as follows:

(i) The department will calculate the difference between the average billed charge for the procedure with the modifier and the averaged billed charge for the procedure without a modifier.

(ii) The department will obtain information from medicare and other third party payers regarding the comparative value utilized for payment of procedures billed with modifiers.

(iii) The department will establish a specific percentage for each modifier based upon the purpose of the modifier, the comparative value of the modified service and the medical insurance industry trend of reimbursement for the modifier.

(b) Regardless of the provisions of subsections (4)(b), (5) and (5)(a), when a procedure-modifier combination is so unusual as to prevent the department from gathering sufficient data to set a fee, payment for procedures billed with a modifier will be as provided in subsection (4)(c).

(c) The department will periodically review and update the modifier percentages established under subsection (a).

(d) Subsection (5) shall not apply to any procedure for which no fee has been established under subsection (4)(b).

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-6-101 ~~and 53-6-141~~ MCA

46.12.802 PROSTHETIC DEVICES, DURABLE MEDICAL EQUIPMENT, AND MEDICAL SUPPLIES, GENERAL REQUIREMENTS (1) These requirements are in addition to those contained in ARM 46.12.301 through 46.12.~~308~~309. Requirements for prosthetic devices, durable medical equipment, and medical supplies utilized by nursing ~~home~~ facility residents are contained in ~~ARM 46.12.1205~~ the department's rules governing nursing facility reimbursement.

Subsections (2) through (3)(d) remain the same.

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-6-101 ~~and 53-6-141~~ MCA

46.12.805 PROSTHETIC DEVICES, DURABLE MEDICAL EQUIPMENT, AND MEDICAL SUPPLIES, REIMBURSEMENT REQUIREMENTS

Subsections (1) through (1)(a)(i) remain the same.

(ii) the ~~medicaid~~ department's fee schedule maintained in accordance with the methodology described in ARM 46.12.806(2).

Subsections (1)(b) and (1)(b)(i) remain the same.

(ii) the ~~medicaid~~ department's fee schedule maintained in accordance with the methodology described in ARM 46.12.806(2); or

Subsection (1)(b)(iii) remains the same.

(c) ~~All prosthetic devices, durable medical equipment and medical supplies listed as by report (BR), or those not listed in the fee schedule, will be reimbursed at the lower of 90 percent of the provider's actual (submitted) charge, or the amount allowable for the same item under medicare.~~

~~(i) Those items not listed in the fee schedule, including all miscellaneous items, must be submitted to the department for approval.~~

~~(d)~~ A prior authorization must be attached to each claim:

(i) on which charges exceed $200.00 for any line item ~~listed in ARM 46.12.806 except~~; and

(ii) with respect to those items specified in the department's fee schedule maintained in accordance with the methodology described in ARM 46.12.806(2).

~~(i) as otherwise indicated in the fee schedule; or~~

~~(ii) as provided in subsection (2)(a) of this rule.~~

Subsection (1)(e) remains the same in text but will be renumbered as subsection (1)(d).

(~~f~~e) Reimbursement for prosthetic devices, durable medical equipment and medical supplies utilized by nursing

~~home patients are~~ facility residents and billed by a nursing facility is subject to the limits in ~~ARM 46.12.1205 if billed by a nursing home~~ the department's rules governing nursing facility reimbursement.

~~(2) Effective July 1, 1989, the reimbursement rates listed in ARM 46.12.806 will be increased by two percent (2%). All items paid by report will remain at the rate indicated.~~

(2) Regardless of the provisions of subsection (1)(c), oxygen supplies and oxygen equipment need not be prior approved.

Subsection (3) remains the same.

~~(a) Oxygen supplies or oxygen equipment need not be prior approved.~~

Subsection (4) remains the same.

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-6-101 ~~and 53-6-141~~ MCA

46.12.806 PROSTHETIC DEVICES, DURABLE MEDICAL EQUIPMENT, AND MEDICAL SUPPLIES, FEE SCHEDULE (1) ~~The Montana medicaid program effective November 1, 1990 will reimburse prosthetic devices, durable medical equipment and medical supplies in accordance with the codes and fees in the pricing manual for prosthetic devices, durable medical equipment, and medical supplies. The Montana medicaid program for payment for prosthetic devices, durable medical equipment, and medical supplies adopts and incorporates by reference the pricing manual for prosthetic devices, durable medical equipment and medical supplies adopted and published by the department on October 1, 1990. Copies of the pricing manual may be obtained from the~~ Providers must bill for prosthetic devices, durable medical equipment and medical supplies using the procedure codes and modifiers set forth, and according to the definitions contained, in the health care financing administration's common procedure coding system (HCPCS). Information regarding billing codes, modifiers and HCPCS is available upon request from the Medicaid Services Division, Department of Social and Rehabilitation Services, 111 Sanders, P.O. Box 4210, Helena, Montana 59604-4210.

(2) The department's fee schedule, referred to in ARM 46.12.805(1), shall include fees set and maintained according to the following methodology:

(a) At least annually, the department will review billings for items, other than those items for which a specific fee has been set under the provisions of subsection (b), to determine the total number of times each such item has been billed by all providers in the aggregate within the previous 12-month period.

(b) Upon review of the aggregate number of billings as provided in subsection (a), the department will establish a fee for each item which has been billed at least 50 times by all providers in the aggregate during the previous 12-month period. The department shall set each such fee at 90% of the

average charge billed by all providers in the aggregate for such item during such previous 12-month period.

(i) Once the department has established a fee as provided in subsection (b), such fee will not be adjusted except as provided in subsection (d).

(c) For all items for which no fee has been set under the provisions of subsection (b), the department's fee schedule amount shall be 90% of the provider's actual charge.

(d) The department shall adjust the fee schedule to implement increases or decreases in reimbursement authorized or directed by enactment of the legislature as follows:

(i) The department shall increase or decrease those fees established as provided in subsection (b) by the amount or percentage authorized or directed by the legislature. Such increase or decrease shall be effective as provided by the legislature.

(ii) The department shall not apply any legislative increase or decrease to those items described in subsection (c), unless specifically directed by legislative enactment to do so.

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-6-101 ~~and 53-6-141~~ MCA

46.12.2001 PHYSICIAN SERVICES, DEFINITIONS Subsections (1) and (2) remain the same.

(3) The department hereby adopts and incorporates by reference the definitions found in the introduction to Physicians Current Procedural Terminology, fourth edition (CPT4), published by the American Medical Association of Chicago, Illinois. These materials set forth meanings of terms commonly used by the Montana medicaid program in implementation of the program's physician fee schedule. A copy of the definitions herein incorporated may be obtained through the ~~Economic Assistance~~ Medicaid Services Division, Department of Social and Rehabilitation Services, P.O. Box 4210, 111 North Sanders, Helena, Montana 59604-4210.

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-6-101 and 53-6-113 ~~and 53-6-141~~ MCA

46.12.2002 PHYSICIAN SERVICES, REQUIREMENTS (1) These requirements are in addition to those contained in ARM 46.12.301 through 46.12.~~308~~309.

Subsection (1)(a) remains the same.

(b) Physician services for conditions or ailments that are generally considered cosmetic in nature are not a benefit of the medicaid program except in such cases where it can be demonstrated that the physical and psycho-social wellbeing of the recipient is severely affected in a detrimental manner. Such services must be prior authorized by the ~~economic assistance~~ medicaid services division and will be based on recommendations of the designated peer review organization.

Subsections (1)(b)(i) through (1)(e)(i) remain the same.

~~(2) Use of procedure codes must comport with guidelines set forth by the American Medical Association. The department hereby adopts and incorporates by reference the guidelines set forth throughout the Physicians Current Procedural Terminology, fourth edition (CPT4), published by the American Medical Association of Chicago, Illinois. The CPT4 sets forth guidelines in applying medical procedure codes. A copy of the guidelines herein incorporated may be obtained through the Medicaid Division, Department of Social and Rehabilitation Services, P.O. Box 4210, 111 North Sanders, Helena, Montana 59604.~~

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-6-101 and 53-6-113 ~~and 53-6-141~~ MCA

46.12.2003 PHYSICIAN SERVICES, REIMBURSEMENT/GENERAL REQUIREMENTS AND MODIFIERS (1) ~~The department hereby adopts and incorporates by reference the procedure code report (PCR) as amended through July 1, 1990. The PCR is published by the Montana department of social and rehabilitation services and lists medicaid payable physician procedure codes and descriptions as delineated in the CPT4 and/or the Health Care Financing Administration's common procedure coding system (HCPCS), fees assigned to relevant procedures and effective dates of fees assigned. A copy of the PCR may be obtained from the Medicaid Division, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana 59604.~~ Providers must bill for services using the procedure codes and modifiers set forth, and according to the definitions contained, in the health care financing administration's common procedure coding system (HCPCS). Information regarding billing codes, modifiers and HCPCS is available upon request from the medicaid services division at the address stated in ARM 46.12.2001(3).

~~(a) Amendments of the PCR will consist of changes to the CPT and HCPCS, and the setting of fees as procedures are billed to medicaid in sufficient numbers to justify a reasonable fee.~~

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

(c) the department's fee schedules ~~as discussed in ARM 46.12.2003(1) above and listed in the PCR~~ maintained in accordance with the methodology described in subsection (3).

(3) ~~Services paid by report (BR) will be paid at 65.2% of usual and customary charges which are reasonable.~~ The department's fee schedule, referred to in subsection (2), shall include fees set and maintained according to the following methodology:

(a) At least annually, the department will review billings for procedures, except those procedures for which a specific fee has been set under the provisions of subsection (b), to determine the total number of times each such proce-

dure has been billed by all providers in the aggregate within the previous 12-month period.

(b) Upon review of the aggregate number of billings as provided in subsection (a), the department will establish a fee for each procedure which has been billed at least 50 times by all providers in the aggregate during the previous 12-month period. The department shall set each such fee at 65.2% of the average charge billed by all providers in the aggregate for such procedure during such previous 12-month period.

(i) Once the department has established a fee as provided in subsection (3)(b), such fee will not be adjusted except as provided in subsection (d).

(ii) When billed with a modifier, payment for a procedure for which a fee has been established under the provisions of subsection (3)(b) shall be as provided in subsection (4).

(c) For all procedures for which no fee has been set under the provisions of subsection (3)(b), the department's fee schedule amount shall be 65.2% of the provider's actual charge, regardless of whether the procedure is billed with a modifier.

(d) The department shall adjust the fee schedule to implement increases or decreases in reimbursement authorized or directed by enactment of the legislature as follows:

(i) The department shall increase or decrease those fees established as provided in subsection (3)(b) by the amount or percentage authorized or directed by the legislature. Such increase or decrease shall be effective at the time provided by the legislature.

(ii) The department shall not apply any legislative increase or decrease to those procedures described in subsection (c), unless specifically directed by legislative enactment to do so.

(4) Subject to the provisions of subsection (4)(b), when billed with a modifier, payment for a procedure for which a fee has been established under the provisions of subsection (3)(b) will be a percentage of the fee established for the procedure under subsection (3)(b).

(a) The methodology to determine the specific percent for each modifier is as follows:

(i) The department will calculate the difference between the average billed charge for the procedure with the modifier and the averaged billed charge for the procedure without a modifier.

(ii) The department will obtain information from medicare and other third party payers regarding the comparative value utilized for payment of procedures billed with modifiers.

(iii) The department will establish a specific percentage for each modifier based upon the purpose of the modifier, the comparative value of the modified service and the medical insurance industry trend of reimbursement for the modifier.

(b) Regardless of the provisions of subsections (3)(b), (4) and (4)(a), when a procedure-modifier combination is so unusual as to prevent the department from gathering sufficient data to set a fee, payment for procedures billed with a modifier will be as provided in subsection (3)(c).

(c) The department will periodically review and update the modifier percentages established under subsection (a).

(d) Subsection (4) shall not apply to any procedure for which no fee has been established under subsection (3)(b).

Subsections (4) and (4)(a) remain the same in text but will be renumbered as subsections (5) and (5)(a).

~~(5) MODIFIERS~~

~~Listed services and procedures may be modified under certain circumstances. When applicable, the modifying circumstance should be identified by the addition of the appropriate modifier code, which is a two character alpha numeric modifier placed after the usual procedure code from which it is separated by a hyphen. If more than one modifier is used, the "Multiple Modifiers" code placed first after the procedure code indicates that one or more additional modifier codes will follow. Procedures where a modifier is used will be paid By Report (BR) or by a fee established for the particular procedure code/modifier combination. Modifiers commonly used are as follows:~~

~~-20 Microsurgery: When the surgical service is performed using the technique of microsurgery, including the aid of an operating microscope, modifier '-20' may be added to the surgical procedure. The use of this modifier is not warranted when surgery is done with the aid of a magnifying loupe or magnifying binoculars worn by the surgeon. The necessity of the microsurgical approach should be documented. (Pertains to surgery.)~~

~~-22 Unusual Services: When the service(s) provided is greater than that usually required for the listed procedure, it may be identified by adding modifier '-22' to the usual procedure number. A report may also be appropriate. (Pertains to Medicine, Anesthesia, Surgery, Radiology, and Pathology and Laboratory.)~~

~~-23 Unusual Anesthesia: Occasionally, a procedure, which usually requires either no anesthesia or local anesthesia, because of unusual circumstances must be done under general anesthesia. This circumstance may be reported by adding the modifier '-23' to the procedure code of the basic service. (Pertains to Anesthesia.)~~

~~-26 Professional Component: Certain procedures (e.g., laboratory, radiology, electrocardiogram, specific diagnostic services) are a combination of a physician component and a technical component. When the physician component is reported separately, the service may be identified by adding the modifier '-26' to the usual procedure number. (Pertains to Medicine, Surgery, Radiology, and Pathology and Laboratory.)~~

~~-47 Anesthesia by Surgeon: When regional or general anesthesia is provided by the surgeon, it may be reported by adding the modifier '-47' to the basic service. (This does not include local anesthesia.) (Pertains to Surgery.)~~

~~-50 Bilateral Procedures: Unless otherwise identified in the listings, bilateral procedures requiring separate incisions that are performed at the same operative session should be identified by the appropriate five digit code describing the first procedure. The second (bilateral) procedure is identified by adding modifier '-50' to the procedure number. (Pertains to Surgery.)~~

~~-51 Multiple Procedures: When multiple procedures are performed at the same operative session, the major procedure may be reported as listed. The secondary, additional or lesser procedure(s) may be identified by adding the modifier '-51' to the secondary procedure number(s).~~

~~-52 Reduced Services: Under certain circumstances a service or procedure is partially reduced or eliminated at the physician's election. Under these circumstances the service provided can be identified by its usual procedure number and the addition of the modifier '-52', signifying that the service is reduced. This provides a means of reporting reduced services without disturbing the identification of the basic service. (Pertains to Medicine, Surgery, Radiology, and Pathology and Laboratory.)~~

~~-54 Surgical Care Only: When one physician performs a surgical procedure and another provides preoperative and/or postoperative management, surgical services may be identified by adding the modifier '-54' to the usual procedure number. (Pertains to Surgery.)~~

~~-55 Postoperative Management Only: When one physician performs the postoperative management and another physician has performed the surgical procedure, the postoperative component may be identified by adding~~

~~the modifier '-55' to the usual procedure number. (Pertains to Medicine, and Surgery.)~~

~~-56 Preoperative Management Only: When one physician performs the preoperative care and evaluation and another physician performs the surgical procedure, the preoperative component may be identified by adding the modifier '-56' to the usual procedure number. (Pertains to Medicine, and Surgery.)~~

~~-62 Two Surgeons: Under certain circumstances, the skills of two surgeons (usually with different skills) may be required in the management of a specific surgical procedure. Under such circumstances, the separate services may be identified by adding the modifier '-62' to the procedure number used by each surgeon for reporting his services. (Pertains to Surgery and Radiology.)~~

~~-66 Surgical Team: Under some circumstances, highly complex procedures (requiring the concomitant services of several physicians, often of different specialties, plus other highly skilled, specially trained personnel and various types of complex equipment) are carried out under the 'surgical team' concept. Such circumstances may be identified by each participating physician with the addition of the modifier '-66' to the basic procedure number used for reporting services. (Pertains to Surgery and Radiology.)~~

~~-75 Concurrent Care. Services Rendered by More than One Physician: When the patient's condition requires the additional services of more than one physician, each physician may identify his or her services by adding the modifier '-75' to the basic service performed. (Pertains to Medicine, Anesthesia, Surgery, and Radiology.)~~

~~-76 Repeat Procedure by Same Physician: The physician may need to indicate that a procedure or service was repeated subsequent to the original service. This may be reported by adding the modifier '-76' to the procedure code of the repeated service (Pertains to Medicine, Surgery, and Radiology.)~~

~~-77 Repeat Procedure by Another Physician: The physician may need to indicate that a basic procedure performed by another physician had to be repeated. This may be reported by adding modifier '-77' to the repeated service. (Pertains to Medicine, Surgery, and Radiology.)~~

~~-80 Assistant Surgeon: Surgical assistant services may be identified by adding the modifier '-80' to the usual procedure number(s). (Pertains to Surgery and Radiology.)~~

~~-81 Minimum Assistant Surgeon: Minimum surgical assistant services are identified by adding the modifier '-81' to the usual procedure number. (Pertains to Surgery.)~~

~~-90 Reference (Outside) Laboratory: When laboratory procedures are performed by a party other than the treating or reporting physician, the procedure may be identified by adding the modifier '-90' to the usual procedure number. (Pertains to Medicine, Surgery, Radiology, and Pathology and Laboratory.)~~

~~-99 Multiple Modifiers: Under certain circumstances two or more modifiers may be necessary to completely delineate a service. In such situations modifier '-99' should be added to the basic procedure, and other applicable modifiers may be listed as a part of the description of the service. (Pertains to Medicine, Surgery, and Radiology.)~~

~~-AA Anesthesia services personally furnished by anesthesiologist. (Pertains to Anesthesia and Surgery.)~~

~~-AB Medical direction of own employee(s) by anesthesiologist (not more than four individuals). (Pertains to Anesthesia and Surgery.)~~

~~-AC Medical direction of other than own employees by anesthesiologist (not more than four individuals). (Pertains to Anesthesia and Surgery.)~~

~~-AD Supervision of more than four concurrent anesthesia services by anesthesiologist. (Pertains to Anesthesia and Surgery.)~~

~~-PS Professional component charge for separate specimen. (Pertains to Pathology and Laboratory.)~~

~~-AF Anesthesia complicated by total body hypothermia. (Pertains to Anesthesia and Surgery.)~~

~~-AG Anesthesia for emergency surgery on a patient who is moribund or who has an incapacitating systemic disease that is a constant threat to life. (Pertains to Anesthesia and Surgery.)~~

~~-MP Multiple patients seen. (Pertains to Medicine.)~~

~~-AN Physician assistant services for other than assistant at surgery. This modifier is for informational purposes only.~~

~~-AS Physician assistant services for assistant at surgery. This modifier is for informational purposes only.~~

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-6-101 and 53-6-113 ~~and 53-6-141~~ MCA

3. The Rules 46.12.523 and 46.12.524 as proposed to be repealed are on pages 46-1265 through 46-1279.23 of the Administrative Rules of Montana.

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-6-101 ~~and 53-6-141~~ MCA

4. The proposed rule is necessary to specify the methodology used by the department to set medicaid fees for podiatry services, durable medical equipment and physician services, including obstetrical and pediatric services. The proposed rule will revise the manner in which the department implements the Health Care Financing Administration (HCFA) common procedure coding system (HCPCS) in billing procedures for these medicaid providers. This rule change will improve and simplify billing practices for providers and the department. The proposed rule will eliminate unnecessary future rule changes.

Federal regulation and policy require that the department use HCPCS in its medicaid billing and claims payment system, known as MMIS. See 42 CFR 433.112(b)(2) and State Medicaid Manual, Part 11. HCPCS describes and assigns billing code numbers for specific medical procedures employed by various medical service and equipment providers. HCPCS also describes "modifiers" to be used when procedures are billed under certain circumstances, for example, when a procedure is performed by a physician assistant. HCPCS is used by certain providers for billing under both the medicare and medicaid programs. HCPCS neither assigns fees nor prescribes any methodology for setting fees.

Medicaid fees for physicians, podiatrists and durable medical equipment suppliers are set according to a methodology that is uniform within each provider group. If a particular procedure code has been billed to the medicaid program 50 or more times within a 12-month period, a fee is set for that procedure at a fixed percentage (e.g., 90% for durable medical equipment) of the average charge billed within the 12-month period. If a procedure has been billed less than 50 times within a 12-month period, the procedure will be paid at a fixed percentage (e.g., 70% for podiatry services) of the actual charge.

Procedures billed with modifiers are paid at an established percentage of the fee which has been established based upon averaging of 50 or more billings. Procedures billed with modifiers are paid under the same methodology as those without modifiers where no fee has been established based upon averaging. Once a fee has been set based upon an averaging of 50 or more billed charges, the set fee is changed only when the legislature specifically authorizes an increase or decrease.

The current rule does not specifically describe the fee-setting methodology. Rather the department has attempted to maintain a single document, known as the procedure code report (PCR), which includes the most current HCPCS codes and the fee, if any, set for each service code. The PCR is essentially the internal guide used in the medicaid system to manage claims submission and payment. The current rule incorporates the PCR by reference, but does not describe the fee-setting methodology.

The current system of maintaining procedure codes and fees in the incorporated PCR has proved burdensome and impractical. Under the current system, it is impossible to respond in a timely manner to HCPCS revisions. HCPCS is updated at least annually. Currently, these annual updates require a number of rule changes to implement the most current version of HCPCS into the PCR. Historically, HCPCS updates have not been received from the federal government soon enough to allow the department to meet the required effective dates or rulemaking time schedule to avoid retroactive application. For example, the 1991 HCPCS changes were effective March 1, 1991; however, complete information necessary to make these changes was not received until February 28, 1991.

The inability of the department to implement timely the HCPCS revisions means that providers participating in both the medicare and medicaid programs have been required without good reason to use different procedure codes for the same service. This is an unnecessary burden on providers. Billing code information can be communicated to providers through mailings from the department in a timely manner. There is no requirement that billing codes be part of the administrative rule.

The rule amendment will eliminate the unnecessary incorporation of the PCR. Instead, the proposed rule specifies the billing code system which the department uses and specifies the fee-setting methodology. This will allow the department to more timely and efficiently maintain its billing codes and fee schedule.

The proposed rule provides that the department will adjust fees as authorized or directed by the legislature and specifies how such adjustments will apply. This will allow the department to simply implement legislatively mandated fee

adjustments without the necessity of rulemaking. Under this rule language, the department will implement any fee increases granted by the 1991 legislature and any fee adjustments authorized or directed by future legislatures.

The proposed rules also contains several minor correction and clarification amendments. The amendments correct an incomplete citation to ARM 46.12.301 through 46.12.308, broadens the overly restrictive citation of ARM 46.12.1205, and updates references to the former Economic Assistance Division.

Specific information regarding billing codes and established fees and modifier percentages, developed under the stated methodology, will be provided by the department to participating providers on a continual basis. Such information is also available from the department upon request.

5. These rule changes will be effective July 1, 1991.

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 the Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana 59604-4210, no later than June 13, 1991.

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

Director, Social and Rehabilitation Services

Certified to the Secretary of State May 6, 1991.

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 federally qualified health centers	))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED ADOPTION OF RULES I, II, III AND IV PERTAINING TO FEDERALLY QUALIFIED HEALTH CENTERS

TO: All Interested Persons

1. On June 6, 1991, at 3:00 p.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana to consider the proposed adoption of Rules I, II, III and IV pertaining to federally qualified health centers.

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

[RULE I] FEDERALLY QUALIFIED HEALTH CENTERS, DEFINITIONS

(1) In [RULES I through IV], the following definitions apply:

(a) "Federally qualified health center (FQHC)" means an entity which is a federally-qualified health center within the meaning of 42 U.S.C. § 1396d(l)(2)(B), as amended.

(b) "FQHC services" means ambulatory services for which the Montana medicaid program will reimburse an FQHC under the provisions of [RULE IV] and includes the following services:

(i) physician services;

(ii) the following services provided under the supervision of a physician:

(A) physician assistant services; and

(B) nurse midwife services;

(iii) nurse practitioner services;

(iv) services and supplies, including drugs and biologicals that cannot be self-administered, furnished as an incident to a physician's professional services, of kinds which are commonly furnished in physicians' offices and are commonly either rendered without charge or included in physicians' bills;

(v) clinical psychologist services;

(vi) clinical social worker services;

(vii) services and supplies incidental to the services of a clinical psychologist, clinical social worker, physician assistant, nurse practitioner, nurse midwife, which would be covered if such services would otherwise be covered if furnished by a physician or incidental to physician services;

(viii) part-time or intermittent skilled nursing services and related medical supplies, other than drugs and biologicals, to a homebound individual in geographic areas

with a shortage of home health agencies and services, as designated by the department. Such services and supplies must be provided under a written plan of treatment which is either:

(A) established and periodically reviewed by a physician; or

(B) established by a nurse practitioner or physician assistant and periodically reviewed and approved by a physician;

(ix) pneumococcal vaccine and its administration;

(x) influenza vaccine and its administration; and

(xi) any other ambulatory service which is a covered service under the Montana medicaid program, subject to all rules which would apply to such service if not provided by an FQHC.

(c) "Reporting period" means a period of 12 consecutive months specified by an FQHC as the period for which the FQHC must report its costs and utilization. The first and last reporting periods may be less than 12 months.

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-6-101 MCA

[RULE II] FEDERALLY QUALIFIED HEALTH CENTERS, REQUIREMENTS (1) As a condition of participation in Montana medicaid, an FQHC must meet all requirements generally applicable to medicaid providers, including but not limited to those provided in ARM 46.12.301 through 46.12.309.

(2) As a condition of participation in Montana medicaid, an FQHC must maintain a current Montana medicaid provider enrollment form with the department's fiscal agent.

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-6-101 MCA

[RULE III] FEDERALLY QUALIFIED HEALTH CENTERS, RECORD KEEPING AND REPORTS (1) An FQHC must maintain adequate financial and statistical records, in the form and containing the information required by the department, to allow the department and its agents to determine payment for FQHC services provided to medicaid recipients and to provide a record that is auditable through the application of generally accepted audit procedures. Financial data must be maintained on an accrual basis. Such records must be maintained for a period of three years after a cost report is filed with respect to the period covered by such records or until such cost report is finally settled, whichever is later.

(2) The records described in subsection (1) must be available at the facility at all reasonable times and shall be subject to inspection, review and audit by the department or its agents, the United States department of health and human services, the general accounting office, the Montana legisla-

tive auditor, and other appropriate governmental agencies.

(3) Upon failure or refusal of the provider to make available and allow access to such records or upon failure or refusal to submit a required cost report or upon submission of an inadequate cost report, the department may recover in full all payments made to the provider during the reporting period to which such records relate.

(4) Within 90 days after the beginning of its initial reporting period, an FQHC must submit to the department or its agent an estimate of budgeted costs and visits for FQHC services for the reporting period, in the form and detail required by the department and such other information as the department may require to establish an interim payment rate.

(5) Within 90 days after the end of its reporting period, an FQHC must submit to the department or its agent in the form and detail required by the department, a cost report covering the reporting period and containing the following information:

(a) the allowable costs actually incurred in providing FQHC services for the period and the actual number of visits for FQHC services provided during the period; and

(b) the amounts of all payments received or due from other payors, including but not limited to medicare and private insurers, with respect to such services.

(6) Overpayments and underpayments will be collected or paid as provided in ARM 46.12.509(6) and references in that rule to a "hospital" shall be deemed to be references to an "FQHC."

(7) A provider who is dissatisfied with the department's interim rate determination, determination of overpayment or underpayment, or other adverse determination may request an administrative review or fair hearing in accordance with the requirements and procedures of ARM 46.12.1210.

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-6-101 MCA

[RULE IV] FEDERALLY QUALIFIED HEALTH CENTERS, REIMBURSEMENT (1) The department will reimburse an FQHC for allowable costs, determined in accordance with subsections (5) and (6), of providing FQHC services to eligible medicaid recipients.

(2) The amount of reimbursement due to an FQHC under this subsection shall be determined retrospectively by the department following submission of and based upon review of the reporting period cost report required under [RULE III](5). The department shall notify the provider in writing of any overpayment or underpayment determination, which shall be based upon a comparison of total allowable costs for the reporting period to total interim payments for the reporting period.

(3) The department will establish an interim single rate per visit, based for the initial period upon the estimate and related information required under [RULE III](4) and based for subsequent years upon the cost report required under [RULE III](5). The interim rate will be determined by dividing the estimated total allowable costs by estimated total visits for FQHC services. The interim rate determination shall be subject to any tests of reasonableness applicable to allowable cost determinations under subsections (5) and (6).

(4) The department may, but is not required to, review and adjust the interim rate established under subsection (3) during the reporting period to assure that interim payments approximate actual allowable costs and visits for FQHC services if:

(a) there is a significant change in the utilization of FQHC services;

(b) actual allowable costs vary materially from the clinic's estimated allowable costs; or

(c) the department in its discretion determines that other circumstances warrant an adjustment.

(5) Subject to the provisions of subsection (6), allowable costs include the following:

(a) allowable costs determined in accordance with 42 CFR 405.2428, which is a federal regulation that is hereby adopted and incorporated herein by this reference. A copy of the cited regulation is available upon request from the Medicaid Services Division, Department of Social and Rehabilitation Services, 111 Sanders, P.O. Box 4210, Helena, MT 59604-4210. In applying the cited federal regulation, the terms "rural health clinic" or "clinic" shall mean FQHC and the terms "HCFA" and "carrier" shall be deemed to include the department and its agents; and

(b) allowable costs of other FQHC services not addressed under subsection (a).

(6) No cost shall be allowable unless it is reasonable and related to the provision of FQHC services. In the event no reasonableness test is otherwise specified for a particular cost item, reasonableness shall be determined in accordance with the provisions of 42 CFR 405.2428.

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-6-101 MCA

3. The Omnibus Budget Reconciliation Act (OBRA) of 1989 requires state medicaid programs to provide payments for federally-qualified health center (FQHC) services. These payments were mandated to begin on April 1, 1990 unless state law was needed to enact this mandatory service. On July 19, 1990, the Department requested that the Health Care Financing Administration (HCFA) issue a waiver to postpone implementation until the legislature could authorize this additional

service. This waiver was granted on August 24, 1990 with the understanding that coverage would be implemented on July 1, 1991. House Bill 545, authorizing FQHC coverage, was enacted by the 52nd Legislature to be effective July 1, 1991.

The proposed rule is necessary to implement coverage of FQHC services, to define the scope of services covered, and to specify participation requirements and reimbursement methodology. The proposed rule will be effective July 1, 1991.

4. These rules will be effective July 1, 1991.

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 59604-4210, no later than June 13, 1991.

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

Director, Social and Rehabilitation Services

Certified to the Secretary of State May 6, 1991.

BEFORE THE DEPARTMENT OF AGRICULTURE
STATE OF MONTANA

In the matter of the amendment of ARM 4.12.3402 SEED LABORATORY INSPECTION - REPORTS - ENFORCEMENT	NOTICE OF AMENDMENT OF ARM 4.12.3402, SEED LABORATORY-REPORTS-ENFORCEMENT

TO: All Interested Persons:

1. On March 28, 1991, the Department of Agriculture published a notice to amend Rule 4.12.3402 relating to the seed laboratory inspection - reports - enforcement on page 341 of the 1991 MAR register, issue number 6.

2. No comments or testimony were received.

3. No public hearing was held nor was one requested. The department has amended the rule as proposed.

BY E M Snortland
E.M. SNORTLAND, DIRECTOR
DEPARTMENT OF AGRICULTURE

BEFORE THE DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the petition by Associated Credit Bureaus to amend ARM 8.78.301	)))	NOTICE OF THE AMENDMENT OF 8.78.301 DISCLOSURE FEES

TO: All Interested Persons:

1. On February 14, 1991, the Montana Department of Commerce published a notice of proposed amendment of the above-stated rule.

2. The Department has amended that rule as proposed but with the following changes: (section 31-3-153, MCA, listed as an authority and implementing section is not the proper section as noted below)

"8.78.301 DISCLOSURE FEES (1) A consumer reporting agency shall make all disclosures pursuant to section 31-3-133, MCA, without charge to the consumer, if within thirty (30) days after receipt by such consumer or a notification pursuant to section 31-3-131, MCA, or notification from a debt collection agency stating that the consumer's credit rating may be or has been adversely affected, the consumer makes a request under section 31-3-122, MCA. Otherwise, the consumer reporting agency shall charge the consumer no more than ~~seven dollars and fifty cents ($7.50)~~ eight dollars and fifty cents ($8.50) for making disclosure to such consumer pursuant to section 31-3-122, the charge for which shall be indicated to the consumer prior to making disclosure. No charge may be made for notifying users of deletion of information found to be verified as required by section 31-3-124, MCA."

Auth: Sec. 31-3-125, ~~31-3-153~~ 31-3-152, MCA; IMP, Sec. 31-3-125, ~~31-3-153~~ 31-3-152, MCA

3. Comments and testimony received were in support of the proposed amendment. Those comments and testimony indicated that these credit reporting agencies bear costs significantly higher than the currently allowed three dollar ($3.00) allowable charge. An eight dollar and fifty cent ($8.50) charge more accurately reflects actual costs to these credit reporting agencies.

4. No adverse comments or testimony were received.

DEPARTMENT OF COMMERCE

BY: _____
ANNIE BARTOS, ATTORNEY

Certified to the Secretary of State, May 6, 1991.

BEFORE THE FISH AND GAME COMMISSION
OF THE STATE OF MONTANA

In the matter of the proposed amendment of ARM 12.6.901 pertaining to water safety regulations	))))	NOTICE OF AMENDMENT OF ARM 12.6.901: 10 HORSEPOWER RESTRICTION ON YELLOWSTONE RIVER

TO: All interested persons

1. On February 19, 1991, the Fish and Game Commission gave notice of reconsideration of an amendment to Rule 12.6.901 pertaining to a 10 horsepower restriction on motorboats on the Yellowstone river, at page 180 of the Mt Administrative Register, issue no. 3.

2. Written and oral comments were received at public hearings on March 6 and 7, 1991. Other written comments were received through March 14, 1991.

3. A report summarizing the public comment was prepared and submitted to the commission.

4. The Department of Fish, Wildlife and Parks recommended to the commission that the ban on boats with motors greater than 10 horsepower should remain in effect on the Yellowstone River upstream from the U.S. Highway 89 bridge to the I-90 bridge at Livingston and that use of the river by such boats should be limited between the U.S. Highway 89 bridge and the Springdale bridge from December 1 to June 30.

5. After considering the public comment and the department's recommendation, the commission has decided to completely lift the restriction on motorboats of greater than 10 horsepower on the Yellowstone River between the Highway 89 bridge and the Springdale bridge while retaining the 10 horsepower restriction between the Highway 89 bridge and the I-90 bridge.

6. Therefore, ARM 12.6.901 is amended as follows:

12.6.901 WATER SAFETY REGULATIONS (1) remains the same.

(1) (a) remains the same.

(b) The following waters are closed to the use of all boats propelled by machinery of over 10 horsepower, except the cases of use for search and rescue, official patrol, or for scientific purposes:

(i) all rivers and streams in the following counties east of the continental divide:

Silver Bow:	
Beaverhead:	
Jefferson:	
Madison:	
Gallatin:	exception--Missouri downriver from Headwaters State Park;

Park: exception--Yellowstone downriver from ~~Springdale Bridge~~ Highway 89 bridge (near mouth of Shields River)

Broadwater: exception--Missouri downriver from the Broadwater-Gallatin county line:

(ii) through (2) remains the same.

AUTH: 87-1-303, 23-1-106(1), MCA
IMP: 87-1-303, 23-1-106(1), MCA

7. The commission feels the ban on motorboats of greater than 10 horsepower should remain in effect on the Yellowstone River between the I-90 bridge at Livingston and the U.S. Highway 89 bridge near the mouth of the Shields River. The safety concerns presented in the public comment and by the department for this section of the river are compelling. The river is relatively narrow in this section and there is a high frequency of rapids. In addition, the river upstream from the Highway 89 bridge is used a great deal by floaters and waders. In short, because of the physical characteristics of this stretch of the river, large motorboats will create safety hazards for other recreational users.

However, the commission finds that the characteristics of the Yellowstone downriver from the Highway 89 bridge are different than above. The river is wider and slower and recreational use is less. The commission believes that injury to persons or property is not likely to occur by allowing large motorboats on this reach of the river. Therefore, the commission believes that the restrictions on motorboats between the Highway 89 bridge and the Springdale bridge should be removed.

K.L. Cool, Secretary
Montana Fish and Game Commission

CERTIFIED to the Secretary of State May 6, 1991.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT of ARM 42.20.423; 42.20.429; 42.20.438; 42.20.450; 42.20.453; 42.20.468; and REPEAL of ARM 42.20.426; and ADOPTION of Rule I (42.20.454) and II (42.20.455) Property Tax - Sales Assessment Ratio Study.	NOTICE OF AMENDMENT of ARM 42.20.423; 42.20.429; 42.20.438; 42.20.450; 42.20.453; 42.20.468; and REPEAL of ARM 42.20.426; and ADOPTION of Rule I (42.20.454) and Rule II (42.20.455) for Property Tax - Sales Assessment Ratio Study.

TO: All Interested Persons:

1. On February 28, 1991, the Department published notice of the proposed adoption of Rule I (42.20.454) and Rule II (42.20.455); amendment of ARM 42.20.423, 42.20.429, 42.20.438, 42.20.450, 42.20.453, 42.20.468; and repeal of ARM 42.20.426, relating to the Sales Assessment Ratio Study at page 239 of the 1991 Montana Administrative Register, issue no. 4.

2. Several public hearings were held throughout the state from March 20, 1991 through March 27, 1991 to consider the proposed adoption of rules. Testimony was received at these hearings and written comments were received. Comments and responses are addressed in paragraph 6 of this notice.

3. From the public comments received, additional meetings were held in Madison, Gallatin, Cascade and Flathead counties. Based upon information from these meetings it was decided to make additional changes to the areas in Gallatin and Madison counties. The Department therefore repeals ARM 42.20.426 and adopted the new rules I (42.20.454) and II (42.20.455). The Department has determined ARM 42.20.423; 42.20.450; and 42.20.453 shall be adopted with the amendments as they were proposed in its notice of February 28, 1991.

4. Additional changes are necessary to ARM 42.20.429; 42.20.438; and 42.20.468 and those changes are as follows:

42.20.429 CRITERIA FOR REDUCING OR INCREASING PROPERTY VALUE (1) When a stratified sales assessment ratio study conducted under 15-7-111(4) MCA, establishes an assessment level of greater than 105% for residential property, the department shall independently adjust residential property values in those identified sales assessment areas to 105%. If an established assessment level is less than 95% and equal to or greater than 80%, the department shall adjust property values to the 95% level. No adjustment will be made in those cases where an assessment level is between 105% and 95%.

(2) The following procedure will be implemented if an assessment level of less than 80% is established:

(a) For tax year 1991, if the result of the sales assessment ratio study on residential property for tax year 1990 shows for any area an assessment level of less than 80%, then

the department shall perform a selective reappraisal of residential property in the area. The reappraisal shall be performed using a computer assisted mass appraisal system based on the market approach to value, using comparable sales of similar property. If insufficient sales are available for market modeling or if data selection criteria are unacceptable for market modeling, then the department shall reappraise the property using the cost approach to value.

(b) For tax year 1992, if the result of the sales assessment ratio study on residential property for tax year 1991 shows for any area an assessment level of less than 80% or a coefficient of dispersion with respect to the value weighted mean ratio of more than 20% rounded to the nearest 1/10 of 1% and an adjustment multiplier of 1.01 or greater, then the department shall perform a selective reappraisal of the residential property in the area. The reappraisal shall be performed using the same criteria provided in (2) (a).

(c) For tax year 1993, if the result of the sales assessment ratio study on residential property for tax year 1992 shows for any area ~~an assessment level of less than 80% or a coefficient of dispersion with respect to the value weighted mean ratio of more than 20% rounded to the nearest 1/10 of 1%~~ and an adjustment multiplier of 1.01 or greater, then the department shall perform a selective reappraisal of the residential property in the area. The reappraisal shall be performed using the same criteria provided in (2) (a).

(d) For those areas subject to reappraisal under the provisions of (2) (a) for tax year 1992, the department shall compare the sales assessment ratio study performed in 1991 to the 1991 assessed value to determine whether the area will be subject to further selective reappraisal. If that comparison of residential property shows for the area ~~an assessment level of less than 80% or~~ a coefficient of dispersion with respect to the value weighted mean ratio of more than 20% rounded to the nearest 1/10 of 1% and an adjustment multiplier of 1.01 or greater, then the department shall complete another selective reappraisal of residential property in the area. The reappraisal shall be performed using the same criteria provided in (2) (a).

(e) When selective reappraisal is implemented within an area, there will be no sales assessment adjustments made to residential property values within that area for that tax year.

(3) When a stratified sales assessment ratio study conducted under 15-7-111(4) MCA, establishes an assessment level of greater than 105% for commercial property, the department shall independently adjust commercial property values in those identified sales assessment areas to 105%. If an assessment level of less than 95% is established, the department shall adjust commercial property values to the 95% level. No adjustment will be made in those areas where an assessment level is between 105% and 95%.

(4) The department shall make percentage adjustments rounded to the nearest whole number to coincide with the estimated assessment level from the following table: the tables

remain the same. (AUTH: 15-1-201, MCA; IMP: 15-7-111, MCA.)

42.20.438 DESIGNATED AREAS - RESIDENTIAL For purposes of conducting the sales assessment ratio study and applying any subsequent percentage adjustments as required by 15-7-111, MCA, the sales assessment areas for residential property are:

(1) through (8) remain the same.

(9) Area 3.0:

(a) Rural North Gallatin County - the exterior borders of Gallatin County except the areas described in 3.1, 3.2, 3.3, and 3.4.

(10) Area 3.1:

(a) through (xxvii)(A) remains the same.

(XXVIII) TOWNSHIP 1 NORTH, RANGE 5 EAST.

(A) ALL SECTIONS AND PORTIONS OF SECTIONS LOCATED IN GALLATIN COUNTY.

(XXIX) TOWNSHIP 1 NORTH, RANGE 6 EAST.

(A) ALL SECTIONS AND PORTIONS OF SECTIONS LOCATED IN GALLATIN COUNTY.

~~(xxviii)~~ (XXX) Township 1 North, Range 7 East.

(A) ~~Sections 19-36.~~ ALL SECTIONS AND PORTIONS OF SECTIONS LOCATED IN GALLATIN COUNTY.

(b) Bozeman Fringe and Canyon Area - Area General Description.

(i) Beginning at the northeast corner of Township 1 North, Range 7 East, proceed in a westerly direction along section line to the north~~east~~WEST corner of Township 1 North, Range ~~6~~ 5 East, ~~then south along section to Base line, then along baseline to the northwest corner of Range 5 East~~, then south ~~6~~ 12 miles to the southwest corner of Township 1 South, proceed west 1 mile to Jackrabbit Lane, then south 3 miles, then east 1 mile, then proceed south to the southwest corner of Township 3 South, Range 5 East, then west to the Madison County/Gallatin County line, then south along line to Idaho Border, then east along Idaho Border to Yellowstone Park Boundary, then north along county line to northeast corner of Township 3 South, Range 6 East, then east to Park County line, then north along Park County/Gallatin County line to point of beginning, but excluding Area 3.3 and 3.4 area.

(11) through (48) remain as proposed.

(AUTH: 15-1-201, MCA; IMP: 15-7-111, MCA.)

42.20.468 PERCENTAGE ADJUSTMENTS FOR THE 1991 TAX YEAR (1) The following table reflects the sales assessment ratios and the adjustment multipliers (percentage adjustments converted to decimal form) as calculated in conformance with the provisions of 15-7-111 MCA, for each of the areas specified in ARM 42.20.438 Designated Areas - Residential.

(a) Residential area results for tax year 1991:

		Sales Assessment Ratio		Adjustment Multipliers
Area No. 1.0	Carbon County	.9330		1.02
Area No. 2.0	Rural Cascade County	.9351		1.02
Area No. 2.1	Downtown Great Falls	~~.8002*~~		~~1.20*~~
Area No. 2.2	Great Falls East	~~.8949*~~		~~1.07*~~
Area No. 2.3	Great Falls South	.9200		1.04
Area No. 2.4	Great Falls Southwest	.9221		1.03
Area No. 2.5	Great Falls West	.9354		1.02
Area No. 2.6	Great Falls Northwest	.9406		1.01
Area No. 3.0	Remainder of Gallatin	~~.8903~~	.8990	1.076
Area No. 3.1	Bozeman Fringe and Canyon	~~.9179~~	.9161	1.04
Area No. 3.2	West & East rural Gallatin	.9291		1.03
Area No. 3.3	Bozeman	.8867		1.068
Area No. 3.4	Big Sky Area	~~.8522~~	.8478	1.123
Area No. 4.0	Jefferson County	1.1168		0.95
Area No. 5.0	Rural Lewis and Clark	.9168		1.04
Area No. 5.1	Urban Helena	.9138		1.04
Area No. 6.0	Lincoln County	1.0173		1.00
Area No. 7.0	Northwest Madison County	.9940		1.00
Area No. 7.1	Southeast Madison County	~~1.0637~~	1.0666	0.99
Area No. 8.0	Rural Missoula County	~~.8798~~	.8785	1.09
Area No. 8.1	Eastern Urban Missoula	~~.8916~~	.8911	1.07
Area No. 8.2	Central Urban Missoula	~~.9386~~	.9378	1.02
Area No. 8.3	Western Urban Missoula	~~.8889~~	.8871	1.078
Area No. 9.0	Remainder of Silver Bow County	.9302		1.03
Area No. 9.1	Butte Flats and Westside	.9414		1.01
Area No. 10.0	Stillwater County	.9561		1.00
Area No. 11.0	Rural Yellowstone County	1.0147		1.00
Area No. 11.1	Billings Lockwood	1.0130		1.00
Area No. 11.2	Billings South Side	.9598		1.00
Area No. 11.3	Billings South West Side	.9916		1.00
Area No. 11.4	Billings West Side	1.0167		1.00
Area No. 11.5	Billings Heights	1.0094		1.00
Area No. 11.6	Laurel	1.0351		1.00
Area No. 12.0	Mineral and Sanders	.9422		1.01
Area No. 13.0	Rural Flathead County	.8547		1.12
Area No. 13.1	Kalispell Area	.8891		1.07
Area No. 13.2	Columbia Falls	.9118		1.05
Area No. 14.0	Fergus, Golden Valley, Judith Basin, Musselshell, Petroleum, Sweet Grass, Treasure and Wheatland	1.0151		1.00
Area No. 15.0	Beaverhead, Broadwater, Deer Lodge, Granite, Meagher, Park and Powell	.9553		1.00
Area No. 16.0	Blaine, Glacier, Phillips and Roosevelt	1.0476		1.00
Area No. 17.0	Big Horn and Rosebud	1.0164		1.00
Area No. 18.0	Dawson, Fallon, Powder River, Richland and	1.0665		0.99

	Wibaux		
Area No. 19.0	Chouteau, rural Hill, Liberty, Pondera, Teton and Toole	.9807	1.00
Area No. 19.1	Greater Havre	.9677	1.00
Area No. 20.0	Carter, rural Custer, Daniels, Garfield, McCone, Prairie, Sheridan and Valley	1.0804	0.98
Area No. 20.1	Miles City	1.0852	0.97
Area No. 21.0	Lake County	.9150	1.04
Area No. 22.0	Ravalli County	.9694	1.00

* SELECTIVE REAPPRAISALS WILL DETERMINE THE VALUE OF RESIDENTIAL PROPERTY IN AREA NO. 2.1 AND 2.2 FOR TAX YEAR 1991.

(b) Commercial area results for tax year 1991:

		Sales Assessment Ratio		Adjustment Multipliers
Area No. 100	Silver Bow, and Lewis and Clark Counties	.9717		1.00
Area No. 200	Cascade County	1.0508		1.00
Area No. 300	Yellowstone County	1.0152		1.00
Area No. 400	Missoula County	.9546		1.00
Area No. 500	Beaverhead, Broadwater, Deer Lodge, Granite, Jefferson, Lake, Lincoln, MADISON, Meagher, Mineral, Park, Powell, Ravalli and Sanders	~~.9471~~	.9613	1.0~~1~~0
Area No. 600	Gallatin ~~and Madison~~	~~.9502~~	.9506	1.00
Area No. 700	Flathead County	1.0190		1.00
Area No. 800	All other counties	1.0912		0.97

(AUTH: 15-1-201, MCA; IMP: 15-7-111, MCA.)

5. New rules which were proposed in the February 28, 1991 notice have had two minor changes made which are reflected below:

RULE I (42.20.454) CONSIDERATION OF SALES PRICE AS AN INDICATION OF MARKET VALUE (1) (a) remains as proposed.

(b) In order to be considered, the property adjustment form (AB-26) must be filed by April 1 of the current tax year or 15 days after receipt of a valuation notice, whichever is later. For tax year 1991 only, the application deadline will be May 6 31 or within 15 days after receipt of a valuation notice, whichever is later;

(1) (c) through (4) remains as proposed.

(AUTH: 15-1-201, MCA; IMP: 15-7-111 and 15-8-111, MCA.)

RULE II (42.20.455) CONSIDERATION OF INDEPENDENT APPRAISALS AS AN INDICATION OF MARKET VALUE (1) (a) through (d) remains as proposed.

(e) In order to be considered, ~~must file~~ the property adjustment form (AB-26) and the original long form narrative appraisal MUST BE FILED by April 1 of the current tax year or within 15 days after receipt of a valuation notice whichever is later. For tax year 1991 only, the application deadline will be May ~~1~~ 31 or within 15 days of receipt of a valuation notice, whichever is later.

(2) through (4) remains as proposed.

(AUTH: 15-1-201, MCA; IMP: 15-7-111 and 15-8-111, MCA.)

6. The Department has compiled the comments and prepared responses to the same. The comments and responses are reflective of each specific area where a hearing was conducted and comments were received. No one appeared at the Butte or Helena hearing and no written comments were received. No comments were received from the Missoula area. Therefore, the comments listed below reflect comments from Kalispell, Great Falls and Bozeman hearings and subsequent written comments from those areas.

KALISPELL HEARING COMMENTS:

COMMENTS: We need to see lower taxes in Montana, not an increase. At the least they should be held where they are now.

RESPONSE: The adjustments being made using the results from sales assessment ratio studies do not necessarily mean increases or decreases in taxes. The adjustments are made to ensure that all Montanans are treated equally. The adjustments serve to equalize property values statewide. Whether taxes increase or decrease will depend upon the mill levies set by local governments.

COMMENTS: A local appraiser mentioned that he was concerned about the area designations. He thought it might be better to break out some of the neighborhoods and make some of them smaller. The real estate business is not seeing the increases reflected in the rules.

RESPONSE: The department's sales assessment ratio studies clearly show increases in property values for most areas in Flathead County since 1982. The department used information from Realty Transfer Certificates to conduct the ratio studies. Over 1,000 sales were included in the department's study of residential properties in Flathead County. Changes in area designations were considered but after additional meetings with county officials and department staff it was determined the area designations would remain the same as originally proposed.

COMMENTS: Is every sale being used to arrive at the value? If a property that was valued at $100,000, but sold for $120,000 in

1982 which was a base year, and you now sell it for $115,000, do you have a 20% increase or a 5% decrease?

RESPONSE: The sales assessment ratio studies only apply to residential and commercial property. The ratio study adjustments do not apply to agricultural and timber lands since they are assessed on productivity nor to centrally assessed inter-county properties. Valid sales that occurred from November 1, 1989 through October 31, 1990, are included in the study. Property values are adjusted based upon the results of conducting ratio studies using sufficient number of sales. The ratio is determined by comparing the sales priced properties sold in the previous 12-month period to the appraised value of the property. This is standard procedure for conducting a sales assessment ratio study.

COMMENTS: Flathead County has some isolated pockets where values have increased substantially but properties outside those isolated pockets have not increased to that extent since 1982. The department is dealing with too large a volume in this process.

RESPONSE: Based on this comment and other comments the department received from Flathead County property owners, the areas were reviewed but it was determined that the designated areas would remain as proposed. The reappraisal that concludes on December 31, 1992 will address any isolated pockets of valuation concern that may exist.

COMMENTS: If the department selects certain areas where you will increase the property taxes 5% - 12% and ignores the rest of the state, isn't that a violation of equal protection under the law? The State of Montana, like the rest of the country, has gone steadily downward since 1982 and 1983 when it was, like the rest of the country, at its economic peak. The department says that the property values on the properties do not reflect the true value of the property. That may be true, but the department is failing to realize that the values of the properties have decreased so drastically because of the economic slump.

RESPONSE: The department has conducted sales assessment ratio studies for all areas of the state. The purpose of the sales assessment ratio study adjustments is to ensure that property owners receive equal protection under the law and that their values are all measured according to current market value. The department's studies indicate property values have both increased and decreased in the State of Montana, dependent on the area. In Flathead county, most areas have experienced an increase in property values.

COMMENTS: What are our appeal rights under Senate Bill 412? Are they going to change from what was proposed under House Bill 703 last time around?

RESPONSE: Property owners are permitted by law to appeal the department's 1982 base value of their property. The department may consider actual sales and fee appraisals in determining value. The law indicates that the area designations and sales assessment ratio study adjustments cannot be appealed but must be adopted by rule and a public hearing must be held in areas where the percentage adjustment exceeds 10%. If a property owner is aggrieved by either the percentage adjustment or the area designations established by the department, they may file suit seeking declaratory judgment action to review the area determination or area designation.

GREAT FALLS HEARING COMMENTS:

COMMENTS: Why isn't residential business property down, if business property is down 20-25 points?

RESPONSE: The department is required by law to conduct separate ratio studies for commercial and residential properties. The studies in Cascade County indicate residential property values have increased by more than 5% since 1982. However, studies indicate that the value of commercial properties has not changed significantly since 1982. Residential property, by law, includes only single family residences and condominiums.

COMMENTS: The split should be different. There are too many variables in the property in the areas you have chosen to lump together.

RESPONSE: The department's sales assessment ratio studies clearly show increases in property values for all areas in Cascade County since 1990. The department used information from Realty Transfer Certificates to conduct the ratio studies. Over 600 sales were included in the department's study of residential properties in Cascade County. Changes in area designations were considered but after additional meetings with county officials and department staff it was determined the area designations would remain the same as originally proposed.

COMMENTS: House Bill 703 was ruled unconstitutional and the court said that the property had to be homogeneous with each other. Should appraise each piece of property within the state to get a fair appraisal and method of taxation.

RESPONSE: The application of the percentage adjustments as a result of the sales assessment ratio study in sales area 2.1 for the 1990 tax year was ruled unconstitutional. The legislature recently addressed the constitutional question for all other sales areas in the State with the passage of Senate Bill 412. The state cannot afford to reappraise every property every year.

COMMENTS: How can you include the real estate commission of a house in the value you are placing on it from the realty

transfer certificates?

RESPONSE: The value the buyer is willing to pay for the property includes the commission paid to the realtor.

COMMENTS: Why was Glacier County classified with other counties with Indian reservations rather than with others that have oil production? There appears to be no examination made of Glacier County and the decrease in market values in the homes there. If this is true, these people are being severely discriminated against.

RESPONSE: The area designation for Glacier County was determined using economic, demographic, and geographic information. Using that information, it was determined that for the purposes of the residential ratio study, Glacier County was similar to Blaine, Phillips, and Roosevelt Counties. All of these counties have Indian reservations and oil/gas production. The fact that the county had an Indian reservation or oil and gas production was not the sole criteria for determining its area. The law required the department to consider economics, demographics, and geography.

COMMENTS: What logic or reasoning goes into a situation in which a county can decrease for commercial property but does not change for residential?

RESPONSE: The demand for commercial properties in an area can be different than the demand for residential properties. Thus, the value increases or decreases will be different. The legislature provided for separate ratio studies on commercial and residential properties. The ratio studies the department conducted showed that in many cases the value changes for commercial and residential properties were different.

COMMENTS: Two pieces of property that are properly assessed at this time - one house is purchased for approximately $30,000 and in the next six months, that house is going to be worked on and sold for $150,000, maybe even $180,000 - because this happens should that affect the other house alongside of it that's properly appraised or assessed at market value?

RESPONSE: The property at the time of sale must have the same components as the property at the time of appraisal. If the new construction or improvements have not been included in the appraised value prior to the selling of the property, the property is to be excluded from the ratio study by law.

COMMENTS: Having this adjustment late in the cycle creates real problems because it makes for big adjustments.

RESPONSE: The law for adjusting properties according to ratio studies was first passed in 1987, one year after the last reappraisal cycle was completed. However, because of the

provisions of Initiative 105, increases in values could not be made until the legislature made amendments to the law in 1989. The adjustments made in 1991 only reflect the value changes since 1990 where the last adjustment was made.

COMMENTS: If the Legislature won't listen to us when we pass an initiative like I-105, we will have to pass an initiative that will create a problem so bad the state will have to say, "these people mean business."

RESPONSE: Concerns about legislative actions should be brought to the attention of the legislators in property owners' districts.

COMMENTS: Why does the assessment cycle take so long. It seems unconscionable that it takes seven years to appraise every piece of property in a given county.

RESPONSE: The State of Montana is a large state with over 700,000 parcels of real property which must be appraised. The department has a relatively small staff to complete reappraisal. The department recognizes the problem with the length of each reappraisal cycle and is implementing a statewide computer assisted mass appraisal system to assist in reappraising property and reducing the time it takes to complete a reappraisal cycle.

COMMENTS: If as many people protest as say they will, the county budget will be in a mess for several years to come. Yes, these increases could be offset by decreases in the mill levies if the county and the school district could set the mill levy differently in different parts of the county and the city, but they can't do that. The Department is putting the county and the school district in an impossible situation.

RESPONSE: In fact the mill levy can be and is different for different parts of each county. As an example, there are separate and distinct mill levies for individual school districts and cities. In the past local government officials have decreased levies to offset increases in taxable valuation.

BOZEMAN HEARING COMMENTS:

COMMENT: Dividing Gallatin County just into the City of Bozeman and the outlying areas is not valid. There is a difference between Big Sky and Manhattan. Even variations within the city itself.

RESPONSE: The department has considered this comment and others relative to the area designations in Gallatin County. As a result, the department is amending the rule. The Big Sky Development and the City of Manhattan are in different areas.

COMMENT: The law appears to discriminate. If my property is reappraised 20% higher will my taxes go up 20%?

RESPONSE: The sales assessment ratio study adjustments apply to property values. Mill levies are applied to those property values to determine the tax. If property values increase by 20% and mill levies decrease by 20%, the taxes on the property will not change.

COMMENT: Areas need readjusting because some areas have had loss of economy and you are raising taxes.

RESPONSE: The department has considered this comment and others relative to the area designations in Gallatin County. As a result, the department is amending the rule for Gallatin County.

COMMENT: Maybe we have been getting a break since 1982 and what is occurring now is "catching up".

RESPONSE: The department is required to equalize property values statewide. The adjustments made in 1991 using sales assessment ratio studies will further ensure that values are equalized statewide. If the property in an area has been undervalued in the past, the ratio study adjustments will ensure that it is further equalized with other property in the state in 1991.

COMMENT: The intent of the bill is good and is evidenced by only 1/10 of one percent statewide in the value of Montana property.

RESPONSE: The comment is correct. The valuation increases are almost equal to the property value decreases.

COMMENTS: Condominiums should be treated separately than other single homes.

RESPONSE: Residential Condominiums provide the same housing requirements for residential users as single family residences. Current law (Senate Bill 412) requires the inclusion of residential condominiums with other residential property for purposes of the sales ratio study and subsequent adjustments.

COMMENTS: Coefficient disparity is reasonable but not between adjacent properties. So areas should not be referred to as this. This does not work in Montana. This method should be scrapped. Why will this method not be used after 1994? Local appeals will be heavy. This method does not take into account the difference between two pieces of property.

RESPONSE: The measurement of the Coefficient of Dispersion between sold properties in a sales area is a criteria provided for in law. It's a measurement of appraisal uniformity and equity. In tax year 1991, the coefficient of dispersion measurement is not used. In tax year 1992, if the coefficient

of dispersion with respect to the value weighted mean is more than 20% or there is an assessment level of less than 80% the department must perform a reappraisal of the residential property in the area.

COMMENTS: Turn key properties are not being taken into consideration with the sales study. This includes cattle, furniture, and other items besides the property.

RESPONSE: The Department uses verified and valid information gathered from Realty Transfer Certificates when conducting the sales assessment ratio study. Each sale is screened to insure all personal property is subtracted from the stated sales price before using the information in the sales ratio study. Sales used in the sales ratio study reflect the value of real property only.

COMMENTS: The Department should redefine the areas where there are pockets. What was used to determine the split in the Big Sky area any way?

RESPONSE: The department held public hearings and meetings with county officials and interested taxpayers on this issue. As a result of the information received at these meetings, it was determined that property in the Big Sky area definitely sells differently than other areas in Gallatin and Madison county.

COMMENTS: Why is Madison County's commercial property being lumped with Gallatin County's? We feel that this needs to be reconsidered. The two counties are not comparable in anyway such as economics, population, taxable valuation or size.

RESPONSE: The department held public meetings with county officials and interested taxpayers regarding this issue. As a result of information received, the commercial area designation for Madison county has been changed.

Denis Adams

DENIS ADAMS, Director
Department of Revenue

Certified to Secretary of State May 6, 1991.

NOTICE OF FUNCTIONS OF ADMINISTRATIVE CODE COMMITTEE

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

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

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

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

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

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

Use of the Administrative Rules of Montana (ARM):

Known Subject Matter	1. Consult ARM topical index. Update the rule by checking the accumulative table and the table of contents in the last Montana Administrative Register issued.
Statute Number and Department	2. Go to cross reference table at end of each title which lists MCA section numbers and corresponding ARM rule numbers.

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies which have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through March 31, 1991. This table includes those rules adopted during the period April 1, 1991 through June 30, 1991 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 March 31, 1991, this table and the table of contents of this issue of the MAR.

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